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A History of Ancient Near Eastern Law

Volume One

Edited by
Raymond Westbrook

Brill

A HISTORY OF ANCIENT NEAR EASTERN LAW

HANDBOOK OF ORIENTAL STUDIES
HANDBUCH DER ORIENTALISTIK

SECTION ONE

THE NEAR AND MIDDLE EAST

EDITED BY

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A HISTORY OF ANCIENT NEAR EASTERN LAW

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RAYMOND WESTBROOK

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PREFACE

For their generous sponsorship of this *History*, it is my pleasant duty to thank Mr. Melvyn Sykes, attorney at law, the law firm of Cadwallader, Wickersham, and Taft, and the office of the Dean of the School of Arts and Sciences of the Johns Hopkins University. I would also like to thank all those involved in the production of the volume. Their expertise, diligence, and patience were instrumental in bringing this large and complex project to fruition. The manuscript was copy-edited by Wendy Jacobs and the electronic version prepared by Dr. Bruce Wells. The legal index was compiled by Enid Zafran and the indexes of ancient sources and terms by Lance Allred, Athena Gadotti, Elaine Sullivan, and Il-sung Andrew Yun.

Raymond Westbrook
Editor
Baltimore, June, 2003

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BIBLIOGRAPHICAL ABBREVIATIONS

The following are abbreviations of secondary literature that recurs in more than one chapter. Special abbreviations and abbreviations of special text publications may be found before the bibliography of individual chapters. The *sigla* of cuneiform text publications follow the abbreviations of the Chicago Assyrian Dictionary, unless otherwise stated.

AfO	Archiv für Orientforschung
AHw	Akkadisches Handwörterbuch, ed. W. von Soden (Wiesbaden: Otto Harrassowitz, 1965–81)
AJA	American Journal of Archaeology
AO	Aula Orientalis
AoF	Altorientalische Forschungen
ArOr	Archiv Orientalni
ASJ	Acta Sumerologica
BASOR	Bulletin of the American Schools of Oriental Research
BIFAO	Bulletin de l'institut français d'archéologie orientale
BiOr	Bibliotheca Orientalis
BSEG	Bulletin, Société d'Égyptologie, Genève
CAD	Chicago Assyrian Dictionary, ed. A.L. Oppenheim, E. Reiner, M. Roth et al. (Chicago: Oriental Institute, 1968–)
CdE	Chronique d'Égypte
CRIPEL	Cahier de Recherches de l'Institut de Papyrologie et d'Égyptologie de Lille
DE	Discussions in Egyptology
GM	Göttinger Miszellen, Beiträge zur ägyptologischen Diskussion
HUCA	Hebrew Union College Annual
IEJ	Israel Exploration Journal
JANES	Vols. 1–13 = Journal of the Ancient Near Eastern Society of Columbia; vols. 14ff. = Journal of the Ancient Near Eastern Society
JAOS	Journal of the American Oriental Society
JARCE	Journal of the American Research Center in Egypt
JBL	Journal of Biblical Literature
JCS	Journal of Cuneiform Studies

JEA	Journal of Egyptian Archaeology
JEOL	Jaarbericht ex Oriente Lux
JESHO	Journal of the Economic and Social History of the Orient
JNES	Journal of Near Eastern Studies
JSOT	Journal for the Study of Old Testament
JSSEA	Journal of the Society for the Study of Egyptian Antiquities
KZ	Zeitschrift für vergleichende Sprachforschung ("Kuhns Zeitschrift")
LÄ	Lexikon der Ägyptologie, ed. W. Helck, E. Otto, and W. Westendorf (Wiesbaden: Otto Harrassowitz, 1975–92)
MDAIK	Mitteilungen des Deutschen Archäologischen Instituts. Abteilung Kairo
MDOG	Mitteilungen der Deutschen Orient-Gesellschaft
MIO	Mitteilungen des Instituts für Orientforschung
N.A.B.U.	Nouvelles Assyriologiques Brèves et Utilitaires
OA	Oriens Antiquus
OLZ	Orientalistische Literaturzeitung
RA	Revue d'Assyriologie
RB	Revue Biblique
RdE	Revue d'Égyptologie
RHA	Revue hittite et asianique
RIDA	Revue International des Droits de l'Antiquité
RlA	Reallexikon der Assyriologie, vols. 3– (Berlin and New York: de Gruyter, 1957–)
SAK	Studien zur Altägyptischen Kultur
UF	Ugarit-Forschungen
VA	Varia Aegyptiaca
VO	Vicino Oriente
VT	Vetus Testamentum
WO	Die Welt des Orients
WZKM	Wiener Zeitschrift zur Kunde des Morgenlands
ZA	Zeitschrift für Assyriologie
ZAR	Zeitschrift für Altorientalische und Biblische Rechtsgeschichte
ZÄS	Zeitschrift für ägyptische Sprache und Altertumskunde
ZSS	Zeitschrift der Savigny-Stiftung

NOTE ON TRANSLITERATION

The ancient languages reproduced in transliteration have been set in italic type, with the exception of Sumerian. There is as yet no settled convention for the transliteration of Sumerian. For original Sumerian texts, scholars use lower case roman type with dashes and dots to divide the elements of a word or word chain; some also extend the spacing between letters. Upper case is reserved for uncertain readings. For Sumerian words in Akkadian or Hittite texts (Sumerograms), some scholars use upper case, divided by dots; others use lower case, divided either by dots or by dashes, with uncertain readings in upper case. Accordingly, the transliteration of Sumerian in the individual chapters has been left in the form chosen by the author. Akkadian words in Hittite texts (Akkadograms) are presented in upper case and italics.

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CHRONOLOGICAL CHART

In this *History*, all dates are B.C.E. unless otherwise stated.

Period	Date	Egypt	Mesopotamia	Anatolia & Levant
Early Bronze	3000			
			Early Dynastic	
		Old Kingdom		
	2500	(2675–2130)		Ebla
			Sargonic	
		1st Intermediate	Neo-Sumerian	
		(2130–1980)	(2112–2002)	
Middle Bronze	2000			
		Middle Kingdom	Old Assyrian	[Old Assyrian
		(1980–1539)	(1950–1840)	(1950–1840)]
			Old Babylonian	
				Alalakh VII
				Canaan
		New Kingdom	Middle Babylonian	
		(1539–1000)	Middle Assyrian	
Late Bronze	1500			Hittite
				Nuzi
				(1450–1340)
				Alalakh IV
				Ugarit
				Emar
Iron				
	1000	3rd Intermediate	Neo-Babylonian	
		(1000–650)	(1000–331)	Israel
			Neo-Assyrian	
		Demotic	(1000–617)	
		(650 B.C.E.–	*Persian*	
		30 C.E.)	(539–331)	
	500	Elephantine		
			Hellenistic	
			(331–141)	
			Arsacid	
	0		(141 B.C.E.–	
			225 C.E.)	

INTRODUCTION

THE CHARACTER OF ANCIENT NEAR EASTERN LAW

Raymond Westbrook

Prolegomenon

The Ancient Near East and Legal History

Law has existed as long as organized human society. Its origins are lost in the mists of prehistory: we can only speculate as to what kind of law our early ancestors practiced. It was not until the advent of writing that lawmaking could leave durable traces, a record from which modern historians may reconstruct what were once living institutions. Writing was first invented toward the end of the fourth millennium B.C.E., in the ancient Near East. A few hundred years later, the earliest recognizably legal records appear. The ancient Near East is thus home to the world's oldest known law, predating by far the earliest legal records of other ancient civilizations, such as India or China.

The ancient Near East also has the distinction of being the cradle of the two great modern Western legal systems, the Common Law and the Civil Law, and in consequence of modern law in general.[1] Its influence has left few visible traces apart from the Hebrew Bible, the one relic that survived the collapse of its constituent civilizations and whose hold on the minds of Western lawmakers continues to this day. Rather, the connection is indirect, through the intermediary of the classical systems of Jewish, Greek, and Roman law. The legacy of these systems to the two great modern law traditions is

[1] By modern law I mean law based upon the Common Law or Civil Law traditions, as mediated by the Enlightenment of the eighteenth century and consequently characterized by restless innovation. The two traditions have been carried, in part by imperialism and in part by their own intellectual force, to virtually every corner of the globe. Today they are the basis, directly or indirectly, of the legal systems of most of the member states of the United Nations and of international law. The only other widely prevalent legal traditions are conservative systems: local customary law and religious law.

well known; the legacy of much more ancient cultures to classical law is only now coming to light.[2]

The law of the ancient Near East is by no means that of a single system; it is the product of many societies, with different languages and cultures, that flourished, declined, and were replaced by others over the course of thousands of years. This *History* is the first attempt to produce a comprehensive analytical survey of their law, through the collaborative effort of twenty-two scholars.

Scope and Structure

The *History* covers an area situated in what is now called the Middle East, extending from Iran to Egypt, and concentrated in an arc of territories sometimes known as the Fertile Crescent. It begins with the earliest intelligible legal records, from Sumer in the twenty-eighth century B.C.E., and ends toward the close of the fourth century B.C.E., after the conquest of Alexander had made the ancient Near East part of the wider legal world of the Hellenistic period.[3] Such are the variations in quantity and quality of sources that a neat division into separate legal systems, as in classical or modern legal history, is not feasible. Each chapter is designed to cover the sources of a geographical area often defined more in cultural or political terms than by the formal criteria of a sovereign legal system—a military outpost at Elephantine for example, or a trading colony in Anatolia. The chronological division is likewise based on cultural or political criteria current among historians or simply by virtue of the availability of archives. The lack of continuity in the sources means that a "history of events" is not possible. At most, a series of snapshots, scattered at random in time and place, can be compiled.

Within each chapter, the subject matter is divided into legal categories that cover all the structural and substantive aspects of a legal

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[2] For example, the Roman concept of the universal heir was a fundamental characteristic of inheritance in the ancient Near East, traceable to the earliest sources. On a more specific level, the Talmud contains a rule that on divorce, a former widow receives half the amount of compensation to which a virgin bride is entitled (Mishna Ketuboth 1.2). That same rule is already found in a Sumerian law code from the third millennium B.C.E. (LU 9–10).

[3] All dates henceforth are B.C.E. unless otherwise stated. The chapters on Demotic Law and the Neo-Babylonian and Persian period contain some later material, reflecting the continuation of their legal traditions into the Hellenistic period.

system (excluding International Law, which is dealt with in separate chapters): the machinery of justice, such as the administration and the courts, and the rules that would be applied by those institutions in the resolution of conflicts. Within those parameters, all legal rules presented as such by the sources, whether real or ideal, are included. The question of their practical application is discussed later in this introduction and, where appropriate, in the following chapters. Institutions that would not be regarded as part of modern legal systems, such as divine courts and supra-rational evidentiary procedure, are taken into consideration if regarded by the societies in question as part of their normal machinery of justice. On the other hand, sacral law, i.e., structures and rules dealing with the cult, festivals, ritual purity, relationships between humans and divinities, etc., has been excluded, except insofar as it sheds light on non-sacral law.

Since the political map of the area was subject to many alterations over the long period of time under review, historians have adopted the convenient but anachronistic convention of dividing it into regions according to the provinces of the later Roman Empire: Mesopotamia, Anatolia, Syria, Palestine, and Egypt. This nomenclature is used here to group the chapters geographically into three sections that roughly coincide with major cultural spheres: Mesopotamia, Anatolia and the Levant (Syria-Palestine), and Egypt. The chapters are likewise arranged chronologically by millennium, juxtaposing the major cultural spheres in each of the three millennia. The division is not entirely artificial, since the end of the third and of the second millennia saw something of a hiatus in the flow of records, followed by major political and cultural changes. The close of the third millennium is marked by the demise of the Old Kingdom in Egypt and by the end of Sumerian as a living cultural force in Mesopotamia. The close of the second millennium sees the breakup of the club of great powers that had dominated the region, including the total destruction of the Hittite empire, to be replaced in the first millennium by a succession of superpowers: Assyria, Babylonia, and Persia. Culturally, the first millennium is witness to the gradual rise of Aramaic as a lingua franca and the spread of new writing systems: alphabetic scripts in Western Asia and Demotic in Egypt.

In total, the survey covers more than a score of legal systems (in the loose sense described above), based on different languages, cultures, and political regimes, scattered over a period of nearly three thousand years. Each chapter reflects the special expertise and approach

of the individual contributor, but at the same time it is hoped that the *History*'s standardized system of classification will enable the reader to compare a given legal institution with relative ease across the different systems and periods.

In the light of such variety and lack of continuity, it may well be asked whether the ancient Near East is an appropriate forum for this type of intellectual inquiry: whether it is a coherent subdivision in the history of human law. Is it possible to speak of "ancient Near Eastern law" in any meaningful sense? In my opinion it is (although my view is not shared by all historians of the ancient Near East nor even by all the contributors to this volume). Notwithstanding the autonomous nature of the different systems, they demonstrate a remarkable continuity in fundamental juridical concepts over the course of three millennia. Without wishing to press too far more recent historical models, such as the spread of Roman law or of the English Common Law, I would argue that all the ancient Near Eastern systems belonged in varying degrees to a common legal culture, one very different from any that obtains today. At the very least, they shared a legal ontology: a way of looking at the law that reflected their view of the world and determined the horizon of the lawmaker.[4] The question is bound up with the fundamental issue of the nature of the ancient legal sources.

1. Sources

In the context of a history of law, the term "source" has two meanings. In an historical sense, it refers to written records from which historians obtain evidence of legal rules and institutions. In a legal sense, it is those norms, written or unwritten, from which the courts drew authority for their decisions. (In modern law, the latter are items like statutes, precedent, and treaties.) From an historical point of view, the test of validity for a source is its credibility; from a jurisprudential point of view, the test is its authoritativeness. It is therefore necessary to consider the sources in turn from each of these two viewpoints—as historical records and as legal authority.

[4] For a contrary view, distinguishing between Israel and Mesopotamia, see Finkelstein, *The Ox That Gored*, 39–46.

1.1 *Historical Records*

1.1.1 *Distribution*

1.1.1.1 The vast bulk of our records come from Mesopotamia, in the form of clay tablets inscribed with cuneiform writing. The reason is the chance circumstance that clay, when baked or at least dried, is a very durable material. Paradoxically, the destruction of a city by fire would help to preserve the tablets under a mantle of ash and rubble until unearthed by the archaeologist's spade. Tens of thousands of legal records in this form have been excavated, and more are discovered every year. They are unevenly distributed over time, being concentrated mainly in two periods: the Old Babylonian period (nineteenth to sixteenth century) and the Neo-Babylonian/Persian period (sixth to fourth century).

1.1.1.2 In Syria and Anatolia, a growing number of cuneiform tablets have been discovered from the third and second millennia. In the first millennium, alphabetic scripts on perishable materials were adopted in these areas, which cease thenceforth to be a significant source of records. Some compensation is provided by the Hebrew Bible, a major source of law for Syria-Palestine of the first millennium. It differs, however, from other records in deriving from a continuous manuscript tradition, rather than excavation. Special problems arise from its not being a strictly contemporary source, especially as regards the chronology and practical application of the legal rules that it contains.

1.1.1.3 Records from Egypt are mostly in the form of papyri, with a necessarily small supplement of inscriptions from tombs, monuments, and temples. Due most probably to the accidents of preservation, their number is tiny until the Hellenistic period.

1.1.1.4 The uneven distribution of sources creates an innate distortion in any survey of ancient Near Eastern law. The focus of attention will inevitably fall on Mesopotamia, by reason of the sheer abundance of records available. Egypt had no less law in quantity or complexity, but large areas of it are lost to us or are represented by isolated pieces of evidence. Unevenness of distribution in the type of records available gives rise to further distortions.

1.1.2 *Type*

Two admittedly rough and sometimes contradictory criteria may be employed in assessing the credibility of the historical records. The primary criterion is whether they provide *direct or indirect evidence* of legal norms. The distinction is not a sharp one; it is rather a question of degree, depending on the origin of the document (public or private) and whether it expounds an actual norm or principle or merely alludes to one. A secondary criterion is the *self-consciousness* with which a source presents the law. Ancient sources (and not only ancient ones) are not necessarily neutral in their presentation of legal norms. Paradoxically, the most direct statement of a law may be a distortion, by reason of ideology, self-interest, or idealization. The more incidental a value judgment of the law in question is to the purpose of the source, the less it is likely to be biased in its report.

The various types of legal sources found in the ancient Near East are presented here in roughly descending order of directness.

1.1.2.1 *Decrees*

The source most closely identifiable with what we would think of today as statutes are royal decrees, at least those which were of general application. There are many references to such decrees, but only a few actual texts are preserved.

The earliest known text is from Sumer: the Edict of King Irikagina of Lagash, dating from the twenty-sixth century. It is not found in an independent document, but in the body of several dedicatory inscriptions as part of an historical narrative reciting the abuses of former times and the reforms undertaken by the king. The extant versions post-date the actual reforms by some years.

The Old Babylonian period has furnished the texts of three decrees, from kings of the Hammurabi dynasty. Two are fragments: the Edict of Samsu-iluna from the late eighteenth century, and an edict of an unknown king (Edict X). The most complete exemplar is the Edict of Ammi-ṣaduqa from the late seventeenth century, with twenty-two paragraphs preserved, including a preamble.

From Anatolia, the texts of two royal decrees have been preserved. The earlier is the Edict of King Telipinu, from the late sixteenth century. There are nine copies in Hittite and two fragmentary copies in Akkadian, all dating from several hundred years later. It is probable that Akkadian was the original language of the decree, which was then translated into Hittite. The later decree is the Edict of

King Tudhaliyah IV from the late thirteenth century, which exists in one contemporary copy, in Hittite. Not royal, but apparently a decree, is a document containing rules concerning the assembly of an Old Assyrian trading colony (see 1.2.3.1 below).

From Egypt comes the Edict of King Horemheb (Eighteenth Dynasty), from the beginning of his reign, toward the end of the fourteenth century. It is in the form of an inscription on the Tenth Pylon at Karnak, but there were probably other contemporary copies. There is a preamble, a main section containing about ten provisions, and an encomium of the king's achievements in the matter of justice, possibly referring to further provisions.

1.1.2.2 *Instructions*

A special type of text found in the late second millennium is royal instructions. These are directives by the king to persons or classes of persons within the administration—civil, religious, and military—on the performance of their duties of office. They are mostly represented by Hittite texts, directed, for example, to the commander of the border guards, to princes, to governors, and to temple functionaries.

Comparable are a number of decrees from the palace of the Middle Assyrian kings concerning the conduct of members of the royal harem—wives, concubines and eunuchs.[5]

1.1.2.3 *Trial Records*

Trial records are academic or practical. The first category is represented by "model court cases" found in a handful of documents from Old Babylonian Nippur. The principal published exemplar records three trials: a dispute over an office, the seizure of a slave girl, and a homicide. It derives from a scribal school, and the homicide trial exists in several copies. The latter is the only trial record to document discussion of the legal grounds for the judgment, although a comparable discussion is found in the account of the trial of Jeremiah in the Bible (Jer. 26). All other trial records are records of fact: the

[5] A text from Nuzi (AASOR 16, no. 51) may be classified in the same genre, but contains only a single directive. It is a royal proclamation directed to palace slaves (which is more likely to mean simply royal officials than actual slaves), forbidding them to give their daughters into certain professions without the king's permission.

parties, the claims, significant evidence, and the verdict. They serve practical purposes, private or official.

The majority of cuneiform trial records were of civil disputes. They were drafted for the benefit of the successful litigant, to provide documentation of rights acquired as a result of the case. In most cases, the document was kept by the litigant. Sometimes only an interim record is made, of the claims and evidence, without the outcome. Their purpose is not certain but may be linked to ongoing litigation or to litigation that has been suspended, for some reason.

The hieratic ostraca from the tomb workmen's village at Deir al Medinah in Thebes (New Kingdom) contain many trial records. Scholars do not agree on whether they were official documents or memoranda for litigants.

Trial records from the Neo-Sumerian period, known as di-til-la ("case completed"), after the notation with which they typically end, differ slightly from later records in that they appear to have been an official record kept in official archives. Nonetheless, they concern mostly civil disputes and contain essentially the same information as later private litigation documents, which suggests that they were also designed to document private rights.

1.1.2.4 *Law Codes*

The "law codes" are a particular genre of literature, consisting of collections of legal rules. Although few in number, examples are found in various parts of the region and from all three millennia.[6] They are recognizable by similarities of style and content, although as physical records they are preserved in a number of different forms.

1. The Laws of Ur-Namma (LU), from Ur in southern Mesopotamia, in Sumerian and dating to around 2100.
2. The Laws of Lipit-Ishtar (LL), from Isin in southern Mesopotamia, in Sumerian and dating to around 1900.
3. The Laws of Eshnunna (LE), from a city of that name in northern Mesopotamia, in Akkadian and dating to around 1770.
4. The Laws of Hammurabi, from Babylon (LH), in Akkadian and dating to around 1750.
5. The Middle Assyrian Laws (MAL), from Assur, in Akkadian and dating to the fourteenth century.

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[6] The major exception is Egypt, where no law code has been found. On the other hand, the late Demotic "Legal Code of Hermopolis" (= P. Mattha) has features which suggest that the same literary tradition existed (see 1.1.2.5 below).

6. The Neo-Babylonian Laws (NBL), from Sippar in central Mesopotamia, in Akkadian and dating to the seventh century.

The examples from Mesopotamia are all written in cuneiform.

7. The Hittite Laws (HL), from Anatolia, written in cuneiform script in Hittite and dating between the sixteenth and the twelfth centuries.

Two codes (or possibly fragments of codes) have been identified in the Hebrew Bible:

8. The Covenant Code (CC), found in chapters 21 and 22 of Exodus.
9. The Deuteronomic Code (DC), scattered over chapters 15–25 of Deuteronomy, with the main concentration in chapters 21 and 22.[7]

There is no consensus among scholars as to the date of the biblical codes, but the majority would place the Deuteronomic Code in the seventh century.

The best known of the codes, LH, is a large diorite obelisk, at the top of which is carved a representation of King Hammurabi before Shamash, the god of justice. Covering the rest of the stone is an inscription consisting of a prologue, the collection of legal rules, and an epilogue. It was one of several such obelisks set up in temples in various parts of the kingdom. It was recovered by archaeologists from Susa, whither it had been brought as booty at some point. The Laws of Ur-Namma and of Lipit-Ishtar have the same tripartite structure and were apparently copied from monuments. The original context of the Laws of Eshnunna was probably the same, although no epilogue is preserved and it begins with a date rather than a prologue. LU, LL and LE are preserved in copies on clay tablets which were, in fact, scribal exercises, forming part of the school curriculum of trainee scribes. Similar versions exist of sections of LH, which was excerpted and copied as a regular part of the scribal curriculum until well into the first millennium. The Neo-Babylonian Laws are likewise a scribal copy.

The Middle Assyrian Laws, on the other hand, give no indication of having originally had a monumental form, nor are they a school exercise. They are associated with royal archives and may

[7] Scholars have associated scattered laws found in Leviticus and Numbers with a similar law code, mostly concerned with sacral law (Priestly Code). The Ten Commandments do not belong to this genre; they are a unique source, perhaps not to be associated with positive law at all.

well have served some official purpose. It is true that they exist in an eleventh century copy of a fourteenth century original, but it is not clear that this was a school activity. A further copy was made in the seventh century for the library of King Assurbanipal.

Similar considerations apply to the Hittite Laws, whose text history is even more complicated. They exist in many copies, all apparently from the royal archives. Four are Old Hittite, dating to the sixteenth century; the rest are Middle Hittite or New Hittite (fifteenth to twelfth centuries). There is thus some revision of language between the versions. Certain versions also record changes in the law.

The biblical collections are placed in a narrative frame (the journey of the Israelites to the Promised Land and the revelation on Mount Sinai) designed to establish their divine origin in the distant past. Although it is unlikely that they were created together with the frame narrative, the context in which the individual codes were originally compiled is not known. The manuscript witness itself cannot be traced back further than the Dead Sea Scrolls of the first century B.C.E.

1.1.2.5 *Lexical Texts*

A form of intellectual activity for cuneiform scribes was the compiling of "dictionaries," lists of Sumerian words and phrases together with their Akkadian equivalents. These were collected in series, according to subject matter—for example, lists of flora, fauna, and types of stone—which came to form a canon of scribal learning. Among the canonical series were lists of legal terms and phrases. These are found in two main sources:

1. The lexical series *ana ittišu* (MSL 1), from the library of King Assurbanipal (seventh century). Dedicated exclusively to legal material, it contains many standard clauses that scribes might be expected to use in drafting legal documents. It also contains small narratives that provide an explanatory context to the clauses.
2. Tablets I and II of the canonical series ḪAR.ra = *ḫubullu* (MSL 5), most copies of which come from Assurbanipal's library but which has forerunners dating back to the early second millennium. Their content overlaps that of *ana ittišu*.

An earlier variant of the same genre is a number of scribal exercises in Sumerian from the early Old Babylonian period.[8] They con-

[8] See LOx, SLEx, and SHLF in Roth, *Law Collections* . . ., 40–54.

tain a mixture of paragraphs: some appear to be excerpts from a law code; others are clearly clauses from standard contracts.

The same mixture of law-code paragraphs and contractual forms is found in the Demotic Law Code of Hermopolis (P. Mattha), from Egypt of the Hellenistic period. The document is evidence that a similar scholastic tradition must have existed in Egypt, earlier manifestations of which have not survived.

1.1.2.6 *Transactional Records*

The overwhelming mass of legal sources consists of records of legal transactions—contracts, testaments, grants, treaties, etc. Most of these are in Sumerian or Akkadian from Mesopotamia and Syria, but a sprinkling of documents is found in other languages and scripts, such as hieratic, Demotic, and Aramaic. On the one hand, these documents are a highly credible source of evidence about the law; they are a contemporary record of the law in practice, untrammeled by any literary or ideological distortions. On the other, it should be remembered that private contracts and comparable transactions do not make law; they function within a framework of the existing laws. A contract is not direct evidence of legal norms but of the reactions of the parties to those norms. A contract seeks to exploit laws, it may even to try to evade laws, but (except perhaps for international treaties) it cannot make or alter laws by itself. The norms of positive law remain a shadowy presence behind the terms of the individual transaction, still to be reconstructed by the historian.

1.1.2.7 *Letters*

Both public and private letters may be a source of law. If the sender is a person in authority acting in his official capacity, then the letter can be a direct source of law—a judgment, directive, command, or response regulating the rights of an individual or group of persons. The only qualification is that the very individuality of the letter's focus may leave obscure the legal principles on which the authority's decision was based. If the sender is a private individual, then the evidence it provides, while often of great value, is indirect. Nonetheless, a complaint or petition may invoke a particular law, and many references, conscious and unconscious, to laws are found in private correspondence. This is particularly so for the merchants of the Old Assyrian period, whose copious correspondence provides deep insight into the legislative and judicial activity of the authorities that governed them.

1.1.2.8 *Historiographical Documents*

A certain amount of legal material is to be gleaned from the monumental inscriptions in which kings recounted their exploits, some of which related to their legal activities. The same is true of annals, autobiographies and the like (e.g., the statue of Idrimi of Alalakh and the apologia of Hattusili III of Hatti), and of the historical books of the Hebrew Bible. The defect that these sources share is that they are tendentious literature, and the criterion of self-consciousness as regards the law needs to be applied.

1.1.2.9 *Literature*

The rich storehouse of myth, legend, and wisdom from the literatures of the ancient Near Eastern civilizations also contains a good deal of legal material. The obvious caveats apply as to their connection with the reality of ordinary mortals.

1.2 *Legal Authority*[9]

1.2.1 *Written and Oral*

Sources as historical evidence of law are of necessity documentary; sources as legal authority may be written or oral. Therefore, before listing the sources of legal authority, it is necessary first to consider the relationship between orality and writing in ancient Near Eastern law.

In developed legal systems, writing may play a number of roles. It may be necessary to the validity of a legal act, as for example in wills, treaties, and legislation. In these cases it may be said that the document is the legal act. While not necessary, a written document may, when used, still constitute the legal transaction, as where a contract is negotiated purely by correspondence. It may be irrefutable evidence of an oral legal act, as is a marriage certificate or an affidavit. Finally, it may be mere evidence of an oral legal act, cogent evidence indeed, but no more compelling than other forms of evidence, such as the minutes of a meeting.

In the ancient Near East, although writing was widely used to document legal acts, orality played a far more important role than in modern systems. Speech acts, ceremonies, and solemn oaths were

[9] See the essays in Theodorides, ed., *La Formazione* . . .

the means used to create legal obligations. Except perhaps toward the very end of our period, documents had no independent role in this regard. The thousands of "contractual" documents preserved are not contracts as such; they are protocols of oral transactions made usually before witnesses. The names of the witnesses to the oral proceedings were then appended to the document to ensure its authenticity but also to provide a reference should a dispute arise. The court would normally rely on the document as decisive evidence, but that evidence could be rebutted by the testimony of the witnesses to the transaction. Even international treaties, some of which were committed to writing on tablets of silver and gold, derived their authority from the solemn oaths taken by the parties before witnesses. In this case, the documentation may have reached the level of irrefutable evidence, but it was still no more than evidence of an oral proceeding.

The situation of legislation and administrative orders is less clear. A letter from the king giving an order was an oral statement dictated to a scribe, to be repeated to the recipient by another scribe. Laws were committed to writing in monumental form or in multiple copies for distribution and are sometimes referred to as "the word of the stele/tablet." They could equally be referred to as "the word of" the lawgiver. The ambiguity of the evidence is epitomized by HL 55, which records that in response to a delegation of feudal tenants, "the father of the king [stepped] into the assembly and sealed a deed (regarding?) them: 'Go! You shall do like your colleagues.'" Was the procedure therefore oral, or written, or both?[10]

Accordingly, in assessing the sources of legal authority in the ancient Near East, we must not only take into account oral as well as written forms. We must also recognize that the document in which the source is now found would not necessarily have played the same role as in modern law and may not have been identical with the authoritative source itself.

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[10] The historical preamble of the Edict of Telipinu is separated from the normative rules by the statement: "Then I, Telipinu, called an assembly in Hattusa" (§27:34). Neither here nor in HL 55 is the particle of direct speech used for the decree.

1.2.2 *Precedent and Custom*

There is some evidence that previous decisions were regarded as a source of law. In the epilogue to his law code, Hammurabi advises one who is wronged to consult the list of his "just judgments" on the stele so as to know his rights. Etiological narratives in the Hebrew Bible trace the origin of certain rules of law back to an earlier judgment in an individual case, which then became a rule of universal validity (Num. 27:1–11; 1 Sam. 30). In the trial of Jeremiah (sixth century) the acquittal of an earlier prophet on a similar charge is cited before the court in his favor (Jer. 26:17–19). Otherwise, citation of cases before a court as in modern systems is not attested.

Much of the law applied by the courts was probably customary law, derived not from known cases but from timeless tradition. The Hittite Instructions to the Commander of the Border Guard demonstrate respect for local custom (iii 9–14):

> Furthermore, the Commander of the Border Guard, the town governor, and the elders shall judge cases carefully and bring them to closure. As from olden times, as the binding rule has been followed regarding abomination in the districts: in any town in which they have practiced execution, let them continue to execute; in any town where they have practiced banishment, let them continue to banish. . . .

1.2.3 *Legislation*

Legislation is used here to include all orders issued by the sovereign, his officials or the local authorities. Most of these would not meet the criterion set out by John Austin for legislation:

> . . . where it obliges generally to acts or forbearances of a class, a command is a law or rule. But where it obliges to a specific act or forbearance, or to acts or forbearances which it determines specifically or individually, a command is occasional or particular.[11]

The ancient Near Eastern orders are ad hoc commands, mostly concerning the rights of individuals, or temporary expedients to meet

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[11] Austin, *The Province of Jurisprudence Determined* (1832), 25–26. The example given by Austin is of great relevance: "If Parliament prohibited simply the exportation of corn, either for a given period or indefinitely, it would establish a law or rule: a kind or sort of acts being determined by the command, and acts of that kind or sort being generally forbidden. But an order issued by Parliament to meet an impending scarcity, and stopping the exportation of corn then shipped in port, would not be a law or rule, though issued by the sovereign legislature."

an immediate problem. As the scope of the orders widens to the level of universal decrees, so their number diminishes precipitously, and it is clear that legislation in the Austinian sense was not a major source of new law.

Three main areas are covered by general decrees: constitutional law, administrative law, and economic activity. A single decree may contain provisions concerning more than one area; the Edict of Irikagina covers all three.

1.2.3.1 In the sphere of constitutional law, the Edict of Telipinu lays down rules for succession to the Hittite throne. The Edict of Irikagina restructures the royal control of some of the temples. A unique document from the Old Assyrian trading colony at Kanish, the "Statutes of the Colony," sets out rules for convening the assembly of the colony and for its making decisions.

1.2.3.2 A source of administrative law was the genre of royal instructions, noted above, which were issued to various high officials in the administration but also to such purely household institutions as the Hittite royal bodyguard and the Assyrian royal harem. The administration also figures prominently in reform edicts, which contained provisions directed at corrupt and oppressive officials (e.g. Irikagina, Horemheb). Regulation of operations under the control of the palace is also a concern, such as the saffron harvest mentioned in the Edict of Horemheb and the royal granaries mentioned in the Hittite decrees.

1.2.3.3 Decrees regulating economic matters had a wider scope, affecting ordinary subjects directly. It was the practice of rulers to issue decrees fixing the prices of commodities and services. Royal inscriptions boast of this activity, the tariffs apparently being affixed in a public place such as the city gate, but unfortunately no actual examples have been preserved.[12] Nor do we know how strictly they were applied by the courts or what the sanctions were for disobedience.

The broadest and most complex form of legislation was debt-release decrees, which cancelled not only taxes and debts owed to the crown but also debts arising out of private transactions, as well

[12] The law codes contain some price lists; see below.

as land and persons pledged, sold, or enslaved in direct consequence of debt. They could apply to particular cities or to the population as a whole; one manner of referring to them is to say that the king has "established equity for the land." While most of our information, and actual texts, comes from the Old Babylonian kings, it was a widespread practice, to which there are copious references from all parts of the region with the exception of Egypt. The text of a Hittite decree of Tudhaliyah IV, although mainly concerned with administrative reforms, includes several debt-release provisions. The Bible records a decree by Zedekiah in the sixth century releasing debt slaves during the siege of Jerusalem (Jer. 34:8–10). There are references in litigation, letters and petitions to the effects of a debt-release decree, but the most frequent mention is in contracts. A clause is often inserted in the contract to ward off the effects of a decree, by stating that the transaction has taken place after the date of the decree or affirming that it is outside the purview of the decree. A petition from the Old Babylonian period reveals that a whole administrative apparatus was established to execute the provisions of the decree: peripatetic commissions of judges and high officials examined private contracts to determine whether they fell within the terms of the decree or not (AbB 7 153).

Debt-release decrees are the clearest example of legislation as we would understand it today, issuing directly from a sovereign and applied by the courts. Their limitation from a modern point of view is in their duration. Being for the most part retrospective in effect, they did not do what legislation most typically seeks to achieve, namely establish norms to control conduct in projected future situations.[13]

1.2.4 *Law Codes*

The law codes are considered separately here for two reasons: firstly because they are so important and secondly because it is a matter of considerable debate among scholars whether they were normative legislation at all.[14]

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[13] Two sets of laws in the Bible, Lev. 25:8–16, 23–54 and Deut. 15:1–2, purport to do just this, providing for release of debts, land, and slaves in the future, every seven and fifty years. The impracticality of these measures is obvious, and most biblical scholars dismiss them as utopian.

[14] The scholarship is reviewed in Fitzpatrick-McKinley, *Transformation* . . .; Renger, "Noch einmal . . ."; and in the essays in Lévy, ed., *Codification* . . .

1.2.4.1 The provisions of the law codes are direct statements of legal norms. Unlike demonstrably legislative sources such as decrees and instructions, they cover most areas of legal relations between individuals. They are also widely distributed in time and place and, at the same time, closely related in form and content.

1.2.4.2 The form is casuistic. The law is expressed as a series of individual cases, the circumstances of which are put into a hypothetical conditional sentence, followed by the appropriate legal response in the particular case. For example:

> If an ox gores an ox and causes its death, the owners of both oxen shall divide the value of the live ox and the carcass of the dead ox.

While there is some variation within the framework of this form, for example, the protasis can begin "a man who . . .," or the whole rule can be cast as a direct order ("a loan of fungibles shall not be given to . . . a slave"), the approach is always the same.

1.2.4.3 As regards the content, a large number of the same cases recur in different codes. They are not necessarily presented in the same language, nor do they always have the same solution. Furthermore, they tend to be presented in sets of variants, only some of which overlap. For example, the case above of the goring ox comes from LE, which also has a variant where the victim is a person. Both variants are found in CC, but in LH only the human victim. All three sources break the identity of the human victim down into the same set of further variants; whether the victim is a man, a son, or a slave. They also share the use of the same legal distinction: between an owner who was warned by the local authorities of his ox's propensity to gore and one who was not.

1.2.4.4 The common features of these codes mark them as originating in the sphere of Mesopotamian science. The method of Mesopotamian scientific inquiry was to compile lists. We have seen above the use of this technique for lexical purposes and its application to legal words and phrases. A more sophisticated type of list attempted to classify the product of theoretical disciplines—medical symptoms and their diagnosis, omens and their significance, and conflicts and their legal resolution—by presenting them in casuistic form, a hallmark of Mesopotamian scientific style. Lists of this type consisted of hypothetical cases grouped in sets of variants.

For jurisprudence, the starting point was a legal case, perhaps a real case that had been judged by a court (as in the Nippur trial reports above) or a fictitious case invented for the sake of argument. Preferably it was a case that involved some delicate or liminal legal point that would provide food for discussion and throw into relief more commonplace rules. The case was then stripped of all non-essential facts (e.g., the names of the parties, circumstances not relevant to the decision) and turned into a theoretical hypothesis, with its legal solution. Details of the hypothetical circumstances were then altered to create a series of alternatives, for example, that would change liability to non-liability, or would aggravate or mitigate the penalty. That series of variations around a single case formed a scholarly problem, which could be used as a paradigm for teaching or for further discussion. Over time, a canon of traditional problems emerged that for several millennia was passed on from school to school and society to society.

1.2.4.5 Notwithstanding their small number, therefore, the law codes point to a significant stream of juridical scholarship running through the academies of the ancient Near East. In Mesopotamia, most of this scholarly activity took place in the scribal schools, where the cuneiform script was taught. Thus it is not surprising to find the law codes in school copies. They may well represent only a small sample of the tradition, written or oral, from which they are drawn. As we have seen, however, the codes are all associated with rulers, human or divine, some actually being promulgated by named rulers. Did this transformation also convert them into authoritative sources of law, binding on the courts, and was their transmission as much from one legal system to another as from one society to another? This was the assumption of scholars when the cuneiform codes were first discovered and continues to be the view of a number of legal historians. It was challenged, however, by certain Assyriologists who regarded them as no more than intellectual exercises, given their affinity to the scholastic products of the scribal schools.[15] As for the monumental aspect of LH (and, by implication, other codes in monumental form), it has been argued that its purpose was a typical one

[15] The seminal article was by Kraus, "Ein zentrales Problem . . .," elaborated by Bottéro, "The 'Code' . . ."

of monumental royal inscriptions, namely propaganda. The stela, set up in a temple, was intended to demonstrate to public opinion, human and divine, that Hammurabi had fulfilled his divine mandate to be a just king.[16]

The debate on the law codes turns on two issues: whether the literary contexts in which they are found, scribal schools and royal monuments, determine their function, and whether the absence of reference to their practical application in any of the sources is evidence that they were not applied by the courts. Arguments from silence should always be treated with caution, but in this instance it is a very powerful one, given the contrast with contemporary evidence for the practical application of known legislative acts such as royal decrees. At the same time, the silence of the sources is strictly true only for the third and second millennia; from about the seventh century onwards changes are noticeable in the way certain sources refer to the codes. They may point to a conceptual change that affected not only law codes but legislation in general. The very fact of that change suggests that assumptions should not be made about ancient Near Eastern law on the basis of later, familiar models.

1.2.5 *Citation and Authority*

References to decrees are to their existence; they are not citations of the text. The closest that the early sources come to citation are references to actions or decisions being in accordance with the words of the stele or tablet. By contrast, in the classical systems of the Hellenistic and Roman periods, we can see an explosion of citation. The exact words of the statute are quoted, analyzed and obeyed by the courts, or in the inverse process, a legal ruling is justified by reference to the exact words of the statute. The reason is that, as in modern law, the words of the text have become the ultimate point of reference for the meaning of the law. The text is both autonomous, meaning that once a law is promulgated, it is regarded as the lawgiver itself, and it is exhaustive, meaning that what is not in the text is not regarded as law (unless covered by another text). As a result, interpretation of statutes becomes from the Hellenistic period on a specialized form of close reading, usually requiring the services of experts trained in the law—jurists.

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[16] Finkelstein, "Ammi-ṣaduqa's Edict . . ."

In the ancient Near East, on the other hand, a term for jurist is not found, not even in the long lists of professions compiled by the scribes. Those responsible for the law—judges, officials, or parties—did not "read" what legal authorities they had in the same way as we do. They did not engage in interpretation of the exact words of the text because the text was regarded neither as autonomous nor as exhaustive, irrespective of whether it was a contract, a decree, or a law code.

If a reason is to be sought for the difference, it probably lies in the realm of scientific thought. Inasmuch as the formulation of law depends upon a system of abstract reasoning, it is evident that the jurisprudence of a given society cannot be more advanced than its general scientific logic. The "science" of the ancient Near East was by the standards of Aristotelian logic a proto-science. It lacked two vital factors: definition of abstract concepts and vertical categorization (i.e., into two or more all-embracing categories, which can then be broken down into sub-categories). Instead, it has been dubbed a "science of lists," the concatenation of endless examples, grouped suggestively in associated sequences but incapable of ever giving an exhaustive account of a subject. Hence the casuistic nature of the law codes.

Just as a law code could never be exhaustive, so no particular text could ever be an exhaustive statement of a rule, even when it took the form of a peremptory order, because the mode of thinking was in examples, not principles. And without definition of its terms, application of a rule could only be approximate—by analogy, inference, or even looser associations.

Signs of a transition from this archaic jurisprudence to the system familiar to us begin to appear in the seventh century, not from the ancient centers of power in Mesopotamia and Egypt but on the periphery. References are found in the Hebrew prophets to obeying the law (*torah*) of God as an independent body of rules rather than simply the will of God. The autonomy of the law reaches a dramatic climax in the book of Daniel (written in the second century), according to which the king's decree, once written down, might not be changed, even by the king himself (Dan. 6:9). Between these two poles, there are tentative moves toward citation of the words of the legal text, as illustrated by a glossator's comment on an historical incident:

> But he did not put to death the sons of the murderers, as it is written in the book of the law (*torah*) of Moses, that God ordered: "Fathers shall not be put to death for sons and sons shall not be put to death for fathers . . ." (2 Kings 14:6 = 2 Chron. 25:4, citing Deut. 24:16).

Somewhere within this transition also lies the whole conceit of the Bible's historical narrative, assimilating the paragraphs of several codes to a single act of legislation, but projecting that act of legislation back into the distant past. It is a conceit mirrored in contemporary Greek narratives, attributing the laws of particular cities to the single legislative act of a heroic ancestor. The change in the way law was regarded points to a revolution in ideas that takes us beyond the strict limits of the ancient Near East, being centered upon the Eastern Mediterranean in the mid-first millennium. For the purposes of our history, it is the archaic system that we are concerned to describe, a system that needs to be understood on its own terms, without the overlay of later legal developments.

1.3 *The Archaic Legal System*

1.3.1 *Legal Science*

The contribution of the "science" of the law codes should not be underestimated. Statutes, in the form of edicts, orders, and decrees, would have played only a minor role in the work of a court. As we have seen, most would have dealt with narrow matters of immediate interest only; they were not a source of central tenets or basic principles of the law. Likewise, the role of precedent is likely to have been limited. Our only certain example, in the trial of Jeremiah mentioned above, is a case from recent memory adduced as a persuasive analogy, not a binding rule. The bulk of the law would have been customary, and it is here that the law codes, either in the written forms that we possess or as a larger oral canon from which the extant codes were drawn, could serve a vital function. Their achievement was to constitute an intellectualization of the amorphous mass that would have been customary law. They concretized experience in the form of individual but objectivized cases, extended its scope by analogy and extrapolation (a method still used by jurists today, especially in the Common Law tradition), and thus created a critical mass of paradigms which, collected in sequences, could infer, if they could not express, underlying principles of law and justice. Thus the parameters of liability for dangerous property, although they

could not be defined, could at least be demarcated by juxtaposing cases where there was liability for the goring ox with ones where there was not, or by juxtaposing the penalties for a goring ox with those for a vicious dog and a collapsing wall. In this way, they presented the court not with a text to be interpreted but with a font of wisdom to be accessed. We do not know whether they lay directly before the judges or influenced them indirectly as part of the expected knowledge of the educated. In either event, they offered contemporary courts and rulers a middle ground between a vague sense of justice and mechanical rules.

1.3.2 *Continuity*

It is generally assumed by scholars that the law must have changed and developed considerably over so long a period of time as is covered by this *History*. Such assumptions should not be made without examining closely the evidence, for fear of falling into the trap of anachronism. Modern law changes at a frenetic pace, but only in a desperate attempt to keep up with the pace of technological, economic, social, and ideological changes in society as a whole. Moreover, an immense investment of intellectual resources is dedicated to the task of reform, through jurists, officials, and institutions.

Different conditions prevailed in the ancient Near East. The earliest legal records come from highly structured Bronze Age urban societies that had already been in place for hundreds of years. Their basic features underwent no radical change for the next three millennia, nor did their social or economic structure, in spite of repeated invasions and new demographic elements. Technologically, the Persian empire was little more advanced than the Sumerian city states, save for the smelting of iron.

The same is true of intellectual development. The invention of writing may have had some impact on the law, but if so, it predates our legal records and did not continue to have any noticeably innovative effect. (As we have seen, the written word remained auxiliary to the spoken in legal practice.) The proto-science that we have discussed was already well established at the beginning of the third millennium. One achievement that remained beyond the grasp of a casuistic-based jurisprudence was radical reform or restatement of the law. The ability to express the law differently through definition, categorization, broad statements of principle and similar intellectual tools is required and, as we have seen, such tools were lacking for

almost all of the period in question, until the mid-first millennium.[17]

Empirical evidence supports the theoretical picture. The huge quantity of records in cuneiform give us a reliable control, and the most striking feature of the cuneiform legal material is its static nature. The first legal documents reveal a mature system that had been developed hundreds, perhaps thousands, of years earlier. The basic pattern of contractual transactions found in the early Sumerian legal documents survives, differences of detail notwithstanding, throughout the cuneiform record. Continuity is no less evident in the law codes, where the same rules, tests, and distinctions recur in codes hundreds of years apart.

1.3.3 *Connections*

The law codes are not confined to a single culture. Their wide dispersal beyond the bounds of Mesopotamia attests to the intellectual power of their methodology and ideas. They are only one part of the spread of Sumero-Akkadian learning through the medium of cuneiform, which by the second millennium dominated all parts of the region except Egypt, which also did not remain entirely unaffected. The dominance was particularly strong in law, as attested by the universal practice in non-Akkadian-speaking cities of drafting legal documents not in the native language but in Akkadian. In areas where cuneiform prevailed, therefore, it is reasonable to speak of a common legal culture, at the level of legal science, both in its theoretical and practical manifestations.

It is possible to do so also beyond the sphere of cuneiform culture. The law codes of Israel in the first millennium are deeply embedded in the cuneiform law code tradition. Part of their dependency may be attributed to the conquest of the region by Mesopotamian powers, Assyria and Babylonia, but part has older roots. Even Egypt does not escape. For example, the technical phrase "his heart is satisfied" may be traced in contracts across the cuneiform

[17] It is no coincidence that during the first millennium major intellectual and institutional shifts characteristic of a so-called "axial age" occur, with the rise of monotheism, skepticism, and republican and democratic forms of government (see Jaspers, *Vom Ursprung . . .*, chap. 1). Developments in the law follow, as ever, with some time lag. For a trenchant critique of this "developmental" approach, see Roth, "Reading Mesopotamian Law Cases . . ." This writer cheerfully admits to being a developmentalist.

record from Sumer to the Persian period, at which time it is also to be found in Egypt, in Aramaic and Demotic contracts from Elephantine.[18] The connections may be more complex than a simple surface transmission. Special contractual clauses change over time, but some surprise us by reappearing in unconnected places, for example, a penalty clause from mid-third millennium Sumer disappears, only to resurface in mid-second millennium Nuzi.[19]

A common legal culture is, however, also discernable at a deeper level, that of structures and concepts. The judicial use of the oath is the same for all societies of the region, at all periods. The structure of inheritance is essentially the same, despite a wide variety of local customs on matters of detail. The Adoption Papyrus, which is virtually the sole adoption document from New Kingdom Egypt, reveals a conception of inheritance, family property, adoption, and the use of legal fictions that is entirely in accord with that of its counterpart systems in Mesopotamia. Doubtless certain similarities may be dismissed as inevitable coincidences in agricultural societies of a certain level of technology, comparable to developments elsewhere, such as in China or South America. Yet the correlations are too many and too specific to speak in terms of comparability rather than continuity. At the deeper level, however, it is impossible to identify any particular path of transmission, whether through trade or similar contacts and whether in historical times or much earlier.

In conclusion, perhaps the best way to describe the common legal culture of the ancient Near East is negatively. The different legal systems were indeed different. They were independent; they had rules peculiar to themselves and their own internal dynamic. Laws changed and developed within individual systems, if not at the pace or in the mode familiar to us from modern law. Nonetheless, it is impossible to say of any legal system from any place or period within the parameters set by this history, that its laws come from a conceptual world alien to the others. The same finding would not hold if we compared its laws with a classical or modern legal system. The chapters of this *History* will deal with each individual system on its own terms. The remainder of the introduction will attempt to summarize those aspects that, in my opinion, they have in common.

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[18] Traced by Muffs, *Studies* . . .

[19] See Hackett and Huehnergard, "On Breaking Teeth."

2. Constitutional and Administrative Law

In the conceptual universe of the ancient Near East, there were three spheres of government: divine, state, and local. The divine and the local sphere shared the characteristic of being essentially collective. There could be a leader—the local mayor or the most senior god—but he was still one of the council, primus inter pares, and decisions were given in the name of the collectivity—the city or the gods, not the leader.[20] For the state, by contrast, the natural form of government was considered to be monarchy, with the king situated alone above his subjects and the rest of his administration.

2.1 *The King*

2.1.1 The king in constitutional terms was head of a household consisting of the population of the state. The state, unlike the town or village, was not seen as an autonomous entity nor the king merely as its representative.[21] Rather, the king was the embodiment of the state. He is sometimes called the master of his subjects and they his slaves, but this attribute has political rather than legal consequences. The king likewise may be referred to as the owner of his state's territory, but his ownership likewise tends to be political or residual, although kings did own large estates in their own right.

2.1.2 The king's right to rule, his legitimacy, derived from two competing sources: selection by the gods and dynastic succession. The first is exemplified by the Sumerian king Gudea's boast that the god had chosen him from among 216,000 people; the second by the Hittite king Telipinu's constitutional edict regulating the hereditary order of succession to the throne. Whereas the hereditary principle could be overridden by divine selection (a doctrine eagerly espoused by usurpers such as Hattisili III, who took the throne of Hatti from his nephew, and David, who took the throne of Israel from Saul's son), the opposite was not true; accession by hereditary right had, at the very least, to be ratified by the gods.

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[20] Myths involving the pantheon contain many variations: between periods with no leader at all to periods when one god assumes supreme power. The council, however, is always the basic form of government.

[21] Note that the Old Assyrian ruler, who was (in theory) on a par with his people and their mere representative, was not called king but "steward" (*waklu*). Later Assyrian rulers, who were conventional kings, also retained this title as a conceit.

2.1.3 Moreover, continued legitimacy depended on the king fulfilling the mandate that the gods assigned to him, the most important element of which from the legal perspective was the duty to do justice. The justice in question is expressed by pairs of terms in Akkadian (*kittum/mīšarum*) and in Hebrew (*mišpaṭ/ṣedaqah*), the first member reflecting respectively its static aspect of upholding the existing legal order and the second its dynamic aspect of correcting abuses or imbalances that have invaded the system. In particular, the king was expected to protect the weaker members of society, such as the poor, the orphan and the widow, against the stronger. In Egyptian, the same motif is expressed through the wider concept of cosmic order (*maat*), of which justice was a part.[22]

2.1.4 The king, therefore, was not in law an absolute ruler. Although not answerable to a human tribunal, he was subject to the jurisdiction of the gods. Failure to fulfill his divine mandate could lead to divine punishment, which might affect not only himself but also his entire kingdom. As a Neo-Assyrian text puts it: "If a king does not heed justice, his people will be thrown into chaos and his land will be devastated." Although in theory a matter for divine justice alone, the king's malfeasance could in practice provide retroactive justification for rebellion or usurpation of the throne.

2.1.5 The king's constitutional role was not affected by divine kingship. In Egypt, this concept attached as a matter of routine to the office, not the individual. The same is true even in those few cases in Egypt and Mesopotamia where a king was deemed personally a god, in that he had a divine cult of himself during his lifetime. Such kings are still found worshiping the gods. It should be remembered in any case that the pantheon had a hierarchy too: the Egyptian king was explicitly referred to as a "junior god" (*nṯr nfr*).

2.2 *The Legislature*

2.2.1 The king was the primary source of legislation. If advisers were consulted beforehand, or if officials drafted the text and issued it in his name, they had no legal role and have left little or no trace

[22] See Foster, "Social Reform . . ."; Morschauser, "Ideological Basis . . ."

in the sources. The constitutional convention was that the king issued decrees in the form of personal orders, although that authority was sometimes delegated to subordinates. What appears to be lacking is a legislative branch of government, in the form of some assembly or collective body to debate, formulate, and promulgate new laws. The Hittite king announced a decision regarding feudal tenure in an assembly (*tuliya*), but the report assigns to the assembly no role other than as a forum for the royal decree (HL 55).

2.2.2 There is, however, one significant exception. In the Old Assyrian period, the city council of Assur, in which the king was a member, not only issued decrees in its collective name but also had them recorded in solemn written form, on a stone stele. The words of the legislation are referred to in their inscribed version, if not actually cited in court. It is unlikely that this legislative body was a singularity, which flourished for a short period in one city and was never adopted anywhere else. The special features of Old Assyrian kingship may derive from a telescoping of central and local forms of government. The actions of the assembly may be indicative of widespread practice in local government, which the sources normally ignore, because it was overshadowed by central government legislation and royal ideology. If so, the seeds of the modern legislative assembly may already have existed in the ancient Near East, long before the advent of the Greek *polis*.

2.3 *The Administration*

There was no distinction between the executive and judicial branches of government. The same officials or bodies made administrative decisions and judgments, and the same legal character was attributed to both. There were three levels of administration: central, provincial, and local.

2.3.1 *Central*

2.3.1.1 The king was head of a bureaucratic apparatus centered upon the palace. His rule could be more or less direct: the letters of Hammurabi reveal a deeply personal involvement of the king in day-to-day matters, while Egyptian rulers preferred to interpose another layer of bureaucracy, in the form of one or more viziers, between themselves and their citizens.

2.3.1.2 "The palace" was sometimes referred to as the ruling authority, especially in fiscal matters. It was also referred to as an owner of land and other property. It would be anachronistic to think of it in terms of modern abstract conceptions in which members of the government are mere agents of the state. The palace did, however, function as the king's administrative persona (cf. "The White House" for the U.S. president), and thus to some extent constituted a juridical entity independent of the person of the king.

2.3.1.3 The duties of royal officials (central and provincial) are set out, often in great detail, in various types of royal legislation, such as the Edict of Irikagina, the Edict of Telipinu, the Hittite Instructions, the Edict of Horemheb, and the Assyrian Harem Decrees. Their constitutional importance is that the king, in delineating the duties of his officials, places transparent legal limits on their powers. Thus the actions of officials are made subject to the rule of law. In some cases, the legislation imposes sanctions for abuse of power.

2.3.2 *Provincial*

The larger polities were divided into provinces administered by governors and sometimes further into districts with their own administrator. The governors and lesser officials were normally appointed by the king, acted as his representatives in the province, and reported to him. Some provincial officials were peripatetic and could work in conjunction with the local authorities, but unequivocally as their superiors.

2.3.3 *Local*[23]

Local authority consisted of the mayor and a council or assembly of leading free citizens, sometimes referred to as elders. These were customary bodies whose members appear to have been drawn from the local population rather than appointed from above. They acted as a collectivity, with the mayor as primus inter pares, that is, head of the council but not independent of it.

2.3.3.1 If any body attained the status of a juridical entity in the ancient Near East, it was the city, town, or village, by which was

[23] Van de Mieroop, "Government . . ."

meant the local council. The evidence is most striking in the case of Assur of the Old Assyrian period but can be seen elsewhere, for example, in Middle Kingdom Egypt, where the town had its own bureau and scribe and where property was in the hands of the "town."

2.3.3.2 The local authority was responsible for a wide range of local matters, both as an administrative and a judicial body, but had also to enforce central government orders, for example, with regard to taxation and corvée. Local officials were subject to the rule of law, as the corruption trial of Kuššiharbe, mayor of Nuzi, graphically illustrates. A series of individuals accused Kuššiharbe and his associates of crimes against the central government and against local citizens: misappropriating crown property, taxes, and corvée labor, taking bribes, misappropriating private property, intimidation, and even sexual harassment.

2.3.4 *Autonomous Organizations*

2.3.4.1 In most periods the temples were independent economic units and were autonomous or semi-autonomous entities within the state, in that they generally had jurisdiction over their internal affairs. Sometimes they constituted a branch of the government, functioning within or alongside the royal administration. In the New Kingdom and in the Neo-Babylonian period, for example, the functions of temple and royal officials could overlap.

2.3.4.2 In Mesopotamia, merchants' associations (*kārū*) had jurisdiction over their members and over transactions between them (i.e., wholesale trade). In Anatolia of the early second millennium, they were the governing bodies of autonomous Assyrian trading colonies within the local kingdoms, with whose rulers they negotiated a special status by treaty.

2.3.5 *The Courts*

As with the administration, there were central, provincial, and local courts. A court could be constituted by an official sitting alone; by an administrative body, such as a local council, temple, or merchants' association exercising judicial functions, or by persons designated solely as judges, who usually sat as a college.

2.3.5.1 The king was everywhere the supreme judge, although his judicial activity is more in evidence in some periods than in others. There was no formal machinery of appeal from a lower court; rather, a subject would petition the king to redress an injustice suffered by a lower court or official. The king could also try cases at first instance. Various law-code provisions suggest that certain serious crimes involving the death penalty were reserved for the king (e.g., LE 48; MAL A 15; HL 111), but he is also found judging apparently trivial matters.

2.3.5.2 Royal officials, whether central or provincial, exercised jurisdiction in the same manner. Provincial officials sometimes sat with the local council to constitute a court. The local courts give the impression of being ad hoc assemblies, especially with such designations as the Egyptian "court of this day" (*qnbt n hrw pn*). They could have large numbers, as the terms like Akkadian "assembly" (*puḫrum*) and Egyptian "The Thirty" suggest. The local council (*qenbet*) at Deir-el-Medina, when sitting as a court, comprised between eight and fourteen villagers, meeting after work. Jeremiah was tried before an assembly of "princes" (*śarim*), priests, prophets, and "all the people" (Jer. 26).

2.3.5.3 "The judges" seem to be different from the official- or council-based courts but remain shadowy figures in the sources. At all periods, it is a matter of debate whether the term designated a profession or merely a function. Certainly, they were not trained jurists in the manner of modern judges, but the terms "royal judges" and "judges of the city X" may point to a special status, with different hierarchical levels. Neo-Sumerian litigation records sometimes contain a number of diverse cases (presumably the day's docket), all before the same named judges, who must have sat on a more or less permanent basis.

2.3.5.4 There appears to have been no special term for courthouse before the Neo-Babylonian period. The location of the court is occasionally mentioned as a temple or temple gate, but it was by no means the universal practice and, where so situated, did not necessarily involve participation of priests in the court.

2.3.5.5 Being administrative as well as judicial bodies, the courts were not mere arbitrators but had coercive powers. They also had attached officers charged with executing their orders, for example, *ḫalzuḫlu* at Nuzi, *redû* in Babylonia, and *šmsw n qnb.t* in New Kingdom Egypt.

3. Litigation

3.1 *Parties*

Women appear to have had access to court as litigants in all periods, although their interests were often represented by a male member of the family. Slaves appear in litigation in the same way as free persons in the Neo-Babylonian period, when they acted as agents for the great merchant houses. In the documentation of earlier periods, however, slaves are rarely litigants in court.[24] Children are not attested as parties. Litigants appeared in person, but in some periods the possibility of a representative is mentioned (Egyptian *rwḏ.w*; Old Assyrian *rābiṣu*; Nuzi *puḫu*). It is doubtful if an advocate in the modern sense is meant: the Egyptian representative may have been an official who assisted the party in the preparation of his case, while the Nuzi term (lit. "substitute") suggests a representative for an absent party.

3.2 *Procedure*

If there was any distinction in procedure, it was not between criminal and civil cases (which are anyway anachronistic categories; see 8 below) but between private disputes and cases involving vital interests of the state or the public, such as an offense against the king or the gods.

3.2.1 In private disputes, the plaintiff appears to have been responsible for securing his opponent's appearance in court. Nonetheless, the court could summon a party to court, and at Nuzi there is even

[24] Slaves do appear frequently in the Neo-Sumerian court records but only on the issue of their status—claiming freedom or being claimed as slaves. The Hittite Instructions to the Commander of the Border Guard order him, on his circuit through the towns under his command, to judge the lawsuits of male and female slaves and single women (iii 31–32).

evidence of judgment by default. Some systems attest to a "seizure" of one party by another (or mutually) prior to their appearing before the judges, which may have represented a formal claim initiating proceedings.

3.2.2 There is little information on the course of a trial, which may not have followed set rules of procedure. The parties were normally responsible for marshaling their own case and bringing witnesses and other evidence. The court, however, also had inquisitorial powers: it could interrogate parties and witnesses, and could summon witnesses on its own initiative. In cases of serious public interest, the proceeding was in the nature of a judicial investigation.

3.2.3 Besides awarding damages, courts adjudicating private disputes could make a wide variety of orders. They could order the restoration or division of property, recognition of free or slave status, and enslavement for debt, and even forbid a man to consort with a named woman.

3.2.4 A party dissatisfied with a local court's ruling could seek a re-hearing by a differently constituted bench. A New Kingdom party litigated four times over compensation for the same dead donkey (O. Gardner 53). The losing party was often obliged to draft a document conceding the case and undertaking not to litigate again. Appeal of a judgment was by way of petition to a higher official and, ultimately, to the king. Whereas hearings at first instance were essentially oral, a petition could be oral (in person or through the mouth of an official) or in writing.

3.2.5 *Evidence*

The law of evidence knew no standard of proof such as "beyond reasonable doubt" because if conventional evidence failed to reveal the truth, it could be ascertained by supra-rational methods. For the same reason, and given the inquisitorial powers of the court, it is difficult to speak of a burden of proof as in modern law. Nonetheless, use was made of evidentiary presumptions, where evidence of a provable state of affairs gave rise to the presumption that a second state of affairs existed. The forms of conventional evidence were witnesses, documents, and physical evidence. The supra-rational methods were the oath, the ordeal, and the oracle. The latter were generally administered by the priests.

3.2.5.1 *Witnesses*

Oral testimony was the most common form of evidence. The parties were competent witnesses on their own behalf. Women were competent witnesses; slaves may have been, but their appearance in this role is notably rare. Testimony could include hearsay. Witnesses did not initially give their evidence under oath; the court might then order them to take an oath. It was possible to have witnesses of a trial, that is, persons present at the proceedings who at a later stage of the case or in a different case would testify about the earlier hearing.

3.2.5.2 *Documents*

Documentary evidence was usually decisive for a case but was not irrefutable. Documents recording transactions might need to be authenticated in court by witnesses, and their record could be contradicted by witnesses to the transaction, who were named on the document. Precautions were taken at the time of drafting to protect the authenticity of contractual documents, for example, encasing a clay tablet in a clay envelope on which the terms were repeated, or rolling and sealing a papyrus scroll before witnesses, whose names were appended on the outside, along with a summary of the transaction. The personal seals of parties and witnesses, impressed on documents or on tags affixed to them, were a prime means of authentication.[25]

3.2.5.3 *Physical Evidence*

Examples of physical evidence are the bloodstained sheet that attests to a bride's virginity (Deut. 22:13–17) and the remains of a sheep that a shepherd must bring to prove that it was devoured by a wild beast (Exod. 22:12). In a Neo-Babylonian trial for the theft of two ducks, the carcasses of the stolen ducks are brought into court for examination.

3.2.5.4 *The Oath*[26]

The declaratory oath was a solemn curse that the taker called down upon himself if his statement were not true. Two types of oath are attested in the sources.

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[25] See Gibson and Biggs, eds., *Seals and Sealing* . . .

[26] On the oath, declaratory and promissory, see the essays in Lafont, ed., *Jurer et maudire*.

3.2.5.4.1 The first type of oath is almost universal in its application. It invokes the name of a god and is taken at the temple or before a symbol of the god. It is imposed by the court upon one of the parties only, and/or his witnesses. The oath is deemed irrefutable proof, so much so that records of litigation often end with the court's decision to send a party or witnesses to the oath. The theory was that fear of divine retribution would constrain the oath-taker to speak the truth. (If later uncovered, a false oath could also lead to punishment by the court.) Indeed, so great was the fear in practice that persons sometimes refused to take the oath, or the parties reached a compromise rather than proceed with the oath. In earlier records, particularly from the Neo-Sumerian period, much of the court's adjudication is directed toward deciding on which side to impose the oath. It should be noted, however, that by the Neo-Babylonian period the courts, even the temple courts, seem to show a marked reluctance to proceed beyond rational evidence.

3.2.5.4.2 The second type of declaratory oath is much less common. It is an oath taken at the litigant's initiative during the trial, usually invoking the king only. Apparently, it could be taken by both parties. Its function is not altogether clear; it was not decisive proof but may have been persuasive evidence. It may also have indicated a preliminary to the ordeal.

3.2.5.5 *Ordeal*[27]

The ordeal was not so much a means of giving evidence as a referral of the issue to a higher court—that of the gods. Clear examples are found only in Mesopotamia and Anatolia, where it took the form of a river ordeal, the river being conceived of as a divinity. The trial could involve one or both parties. The mechanics are not well documented, but it seems that ordeals were carefully monitored and could involve swimming or carrying an object in water a certain distance. At Mari, the use of substitutes for the parties is attested. Drowning indicated guilt, but the unsuccessful subject could be rescued prior thereto and punished. The issue need not be criminal; already in the third millennium, disputes over property could be settled by ordeal.

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[27] Frymer-Kensky, The Judicial Ordeal . . .; Durand, "L'ordalie."

3.2.5.6 *Oracle*

The oracle was a divinatory procedure, a means of consulting a god on a specific question—in principle, one that could be answered yes or no. It could thus be used in non-judicial contexts as well as trials. Oracular procedures to decide judicial matters are attested for certain only in Egypt and Israel. In Egypt, it involved interpreting the movements of an image of the god carried on a litter; in Israel, the casting of lots.

3.2.5.7 *Presumptions*

The court might avoid resort to supra-rational procedures by use of evidentiary presumptions. A number are found in the law codes: a buyer is presumed a thief if he cannot identify the seller (LE 40); a woman is presumed to have consented to intercourse in the city (because she could have cried out) but not in the country (HL 197; Deut. 22:23–25); a baby is presumed abandoned, not lost, if it has not been cleaned of amniotic fluid (LH 185).

4. Personal Status

The first historian of ancient law, Sir Henry Maine, observed that the progress of law "has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place."[28] In his celebrated dictum, it was "a movement *from Status to Contract*."[29] The notion of such a movement is not borne out by the evidence from the ancient Near East, where a dense network of contracts between individuals existed alongside status, some even impinging upon the rules of status (as in marriage and adoption) in a way that would be unacceptable to modern systems. Nonetheless, Maine's observation contains a profound insight: in ancient law, the role of status was altogether more important and far-reaching in its consequences.

The societies of the ancient Near East were strongly hierarchical in structure, with little social mobility. The place of an individual in the hierarchy determined his legal rights and duties not only with

[28] Maine, *Ancient Law* . . ., 163.
[29] Ibid., 165.

respect to public and family law but also in areas that modern law would regard as incongruous, such as contract and criminal law.

The basic unit of society was the household. Ideally, it comprised an extended family that could cover three generations and additional dependants, such as slaves, apprentices, and persons in debt bondage, although in practice it might exist with only fragments of these components. The head of household was typically the father (a household is often called "house of the father"), but again there were many variations according to circumstances. The head of household himself might be ranked by class, feudal tenure, or profession.

Society was in some sense a coalition of households, but it would be a mistake to apply the analogy of international law and to regard the household as replacing the individual, as Maine and many others have.[30] Nor is the image of a paterfamilias with arbitrary power of life and death over his family at all appropriate. The walls of the household were not, legally speaking, impermeable. The law applied to individuals; it regulated inner-household relations as well as relations between heads of household. What the hierarchy within the household meant was that the head of household could to some extent use the subordinate members of household, even the free ones, as the objects of legal transactions. He could certainly enter into legal obligations on their behalf. By the same token, the subordinate members had limited legal capacity when acting on their own behalf but could, as agents, create rights and duties in the head of household. They might also suffer the consequences of his criminal acts, through the doctrines of vicarious and collective liability (see 8 below).

4.1 *Citizenship*

4.1.1 There was a definite notion of belonging to a political unit, which, if not having the clear-cut contours of citizenship in the modern sense, was associated with privileges and duties, and attended by legal consequences. It was expressed from two perspectives: a broad and a narrow concept of citizenship. Where monarchy was

[30] "Ancient jurisprudence, if a perhaps deceptive comparison may be employed, may be likened to International Law, filling nothing, as it were, except the interstices between the great groups which are the atoms of society. In a community so situated, the legislation of assemblies and the jurisdiction of Courts reach only to the heads of families, and to every other individual the rule of conduct is the law of his home, of which his Parent is the legislator" (ibid., 161).

the constitutional form, citizenship in the broad sense meant being a subject of the ruler. The subjects of rulers were called their "slaves," even when they were personally free. Within this broad perspective, a narrower definition was that of freeborn native, as opposed to foreigner. The native population was described in two ways:

1. by place of birth, for example, "son of Idamaraz," "daughter of Ugarit," "sons of the land," or as an abstract, for example, "Hanigalbatship";
2. by ethnicon, for example, "Akkadian," "Amorite," "Assyrian" or "Assyrianess," "Hebrew," or "son of X" (a tribal ancestor).

The importance of the distinction is that freeborn natives had citizenship by right (and did not lose it merely by the fact of being enslaved). Foreigners, chattel slaves, and others lacking citizenship by right could acquire it by the king's discretionary power. In theory, they could be included simply by virtue of becoming a subject of the ruler. The ruler, however, might choose to assimilate them artificially into the category of freeborn natives, for example, by granting "Hanigalbatship." Private arrangements could also lead to inclusion in an ethnic group, through marriage or adoption. They were thus indirect means of acquiring citizenship.

4.1.2 The difference between the "native" and "subject" perspectives is illustrated by the contrast in the practice of imperial Persia and Deuteronomic Israel. In the latter, citizenship was strictly on an ethnic basis, with foreign residents being given a separate status, albeit with limited possibilities of acquiring citizenship by ethnic assimilation, for example, by marriage. By contrast, in the Persian garrison of Elephantine in Egypt, Jews, Aramaeans, Khwarezmians, and other ethnic groups were all regarded as subjects of the Persian emperor and, as such, on an equal footing with the native Egyptians.

4.1.3 A non-citizen had no protection under the local law, except insofar that as a foreign citizen of a friendly state, he was protected by the rules of international law. A citizen, by contrast, was entitled in theory to expect protection under the law and the respect of his legal rights even by his monarch. A ruler could grant special protection to resident aliens (Akk. *ubaru/ubru*; Heb. *ger*). Once granted resident status, foreigners appear to have had equal access to the local courts. Separate courts for foreigners were a Hellenistic innovation, as with the separate Greek and Demotic courts in Egypt.

The Old Assyrian trading colonies in Anatolia were a special case in that they obtained extra-territorial status, including the right to constitute their own courts, through treaties made with local rulers. Native Anatolians, it should be noted, had access to the Assyrian courts in their disputes with Assyrian merchants.

4.1.4 There are very few legal rules recorded that distinguished between citizens and non-citizens. The most important were provisions for the relief of debt and debt slavery, and for the protection of debt slaves or pledges from further abuse. These social justice measures, found in a number of systems, often limited their benefits exclusively to citizens. Another possible area of distinction was in landholding. In some systems there are indications that foreigners needed permission of the ruling authorities in order to acquire landed estates. Thus in Genesis 23 Abraham as a resident alien in Hebron seeks the intermediary of the city council in order to purchase land from an individual. The king at Ugarit makes a royal land grant to a beneficiary designated as an Egyptian (RS 16.136).

4.2 *Class*

4.2.1 Laws did not generally distinguish between social classes. A notable exception is LH, in which a distinction is sometimes made between a gentleman (*awīlum*) and a commoner (*muškēnum*). In particular, the penalties for physical injury differed according to the respective class of the victim and the perpetrator.

4.2.2 In many periods we encounter "serfs," persons somehow tied to the land and owing loyalty to the landowner. There are cases, as in Middle Assyrian documents, where serfs pass with ownership of the land. The sources do not provide any other information as to their legal status.

4.3 *Gender*[31]

As far as the legal systems were concerned, the archetypal "person" was a male head of household. Women as a class had no special

[31] Lafont, *Femmes . . .*; essays in Matthews, ed., *Gender and Law . . .*; Johnson, "Status of Women . . ."; Müller, *Stellung der Frau . . .* (bibliography).

status in the law; rather, all subordinate members of a household, whether wives or male or female children, had more limited rights and duties. Legal capacity was therefore more a function of one's position in the household than of one's gender or age, and the patriarchal household was by no means the sole configuration possible. A household might be headed by a widow or divorcée, either alone or together with her adult sons, or brothers might together form a joint household, or a single person, male or female, might be entirely independent.

4.3.1 In theory, women had the legal capacity to own property, make contracts, litigate, and give evidence in court. In practice, they were restricted in these activities by their status as daughter or wife. Married women did act on their own account but more frequently together with or on behalf of their husbands. Examples of independent action tend to be confined to widows, divorcées, or members of the few professions open to women: priestess, prostitute, wetnurse, or taverness. Documents from Syria in the late second millennium recognize the normal disadvantage of women when applying legal fictions such as "father and mother" to a widow in order to strengthen her legal position.

4.3.2 The one area of law from which women appear to have been excluded on principle was the public sphere. Women are almost entirely absent from public office. The only public positions reserved for women were queen, queen mother, and priestess. With rare exceptions, women are not found as witnesses to contracts.

4.4 *Age*

The legal sources give no clear age of majority. MAL (A 43) mentions the age of ten for a boy, but for special purposes. Individual puberty was probably a common measure of adulthood. Although a child, especially a male child, took on more legal responsibilities with age, a legal age of majority was less important than in modern law. The vital question of whether a person was independent or a subordinate member of household did not depend on biological age. A grown man remained the son of a man in status as long as his father remained head of household, namely, until the father's death or division of his estate inter vivos. A woman remained the daughter of a

man until she married, when she assumed the status of wife of a man. If the man she married was still the son of a man, then her primary status would be that of daughter-in-law. Only where a mother was head of household did her position cease when her children came of age.

4.5 *Slavery*[32]

4.5.1 *Definition*

Freedom in the ancient Near East was a relative, not an absolute state, as the ambiguity of the term for "slave" in all the region's languages illustrates. "Slave" could be used to refer to a subordinate in the social ladder. Thus the subjects of a king were called his "slaves," even though they were free citizens. The king himself, if a vassal, was the "slave" of his emperor; kings, emperors, and commoners alike were "slaves" of the gods. Even a social inferior, when addressing a social superior, referred to himself out of politeness as "your slave." There were, moreover, a plethora of servile conditions that were not regarded as slavery, such as son, daughter, wife, serf, or human pledge.

A better criterion for a legal definition of slavery is its property aspect, since persons were recognized as a category of property that might be owned by private individuals. A slave was therefore a person to whom the law of property applied rather than family or contract law. Even this definition is not wholly exclusive, since family and contract law occasionally intruded upon the rules of ownership. Furthermore, the relationship between master and slave was subject to legal restrictions based on the humanity of the slave and concerns of social justice.

4.5.2 *Property Law*

Slaves could be purchased, inherited, hired and pledged like any other property. The purchaser of a slave had remedies for hidden defects—medical (e.g., epilepsy), moral (e.g., tendency to run away), or legal (defective title). Slaves, being owned, could not own property themselves (but could hold a *peculium*: see 4.5.4 below). The

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[32] Chirichigno, Debt-Slavery . . .; Westbrook, "Slave and Master . . ." and "The Female Slave."

property aspect of slavery is most in evidence in laws protecting the owner's rights against third parties. Causing the death of or injury to a slave gave its owner a right to compensation as for loss of or damage to an economic asset, no different than for an ox. The same applied to the defloration of another's slave woman, which was treated as an economic rather than a sexual offense.

4.5.3 *Servile Conditions*

4.5.3.1 *Pledges*

At first sight, the situation of a free person given in pledge to a creditor was identical to slavery: the pledge lost his personal freedom and was required to serve the creditor, who exploited the pledge's labor. Nonetheless, the relationship between pledge and pledge holder remained one of contract, not property. Since the creditor did not own the pledge, he could not alienate him, nor did property of the pledge automatically vest in the creditor. It was in the nature of a pledge that it could be redeemed by payment of the debt, at which point the human pledge would go free. During the period of his service, failure by the pledge to fulfill his duties led to contractual penalties, not punishment under the general disciplinary powers of a master.

4.5.3.2 *Family*

Native terminology did not distinguish between "master" and "owner"; a husband was sometimes called the "owner" of his wife (and a king the "owner" of his subjects). Indeed, many of a husband's powers over his wife and children overlapped with ownership: he could sell them into slavery (but apparently only under economic duress), pledge them for debt, and discipline them. Nonetheless, a wife or son sold into slavery retained their original status and received some protection from it. Apart from this extreme case, a wife could own property independently (including slaves), and a son had a vested right to inherit his father's estate that could only be taken away for cause. Wives and children were heirs, not the object of inheritance. Causing death or injury to a wife or child or committing a sexual offense against a wife or daughter gave rise to different rights in the head of household, rights that were more than mere compensation for economic loss (see 8 below).

4.5.4 *Contract*

As with other conditions of status, slavery was frequently accompanied by ancillary contracts. When persons sold themselves or members of their family into slavery, contractual terms might be added to alter the conditions of service and of release. Those terms could considerably improve the lot of the slave or make it harsher.

A slave could act as agent for his master. In this capacity, he could make contracts with free persons and litigate. He could also manage property on his own behalf, in the form of a *peculium* given him by his master.

4.5.5 *Humanity and Social Justice*

In determining who should benefit from their intervention, the legal systems drew two important distinctions: between debt and chattel slaves, and between native and foreign slaves. The authorities intervened first and foremost to protect the former category of each—citizens who had fallen on hard times and had been forced into slavery by debt or famine. The tendency was to assimilate them for these purposes into the class of pledges, that is, persons whose labor might be exploited under a contractual arrangement but who remained personally free in terms of status. At the other end of the scale, foreigners who had been acquired by capture, purchase abroad, or some such means received little succor from the local legal system. The benefits of the law related to enslavement, length of service and conditions of service.

4.5.5.1 *Enslavement*

A citizen could not be enslaved against his will if independent or without the permission of the person under whose authority he was if a subordinate member of a household. The only exception was enslavement by court order for commission of a crime or civil wrong. Although in practice economic circumstances would often force a person into slavery, in law his act was, strictly speaking, voluntary. The foreigner, by contrast, could be enslaved through capture in war, kidnapping, or force, unless protected by the local ruler or given resident alien status. In the latter case, protection still might only be partial. As a proverb puts it: "A resident alien in another city is a slave."

4.5.5.2 *Length of service*

Three means were available for the debt-slave to gain his freedom:

1. Through redemption, that is, payment of the original debt. Where found, this appears to have been a legal right, which attached to the slave, binding subsequent purchasers. It vested in both the slave himself and in close relatives, and possibly also the king.
2. Through manumission after a period of service. The law codes where this means is attested set different periods of service, one as short as three years, which, if it had applied automatically, would have made all other measures superfluous. Probably it was not a right like redemption, but a discretion of the authorities to intervene in individual cases and free a debt slave after a reasonable length of service in relation to his debt. The fixed periods in the codes would be attempts to set a "fair" standard.
3. Through release under a general cancellation of debts. This was the most radical measure but was unpredictable, being entirely dependent on the king's equitable discretion (except in the Bible, where it is stipulated every seventh and fiftieth year). It was confined to native debt slaves.

4.5.5.3 *Conditions*

The slave was protected against three forms of maltreatment:

1. Excessive physical punishment. Even chattel slaves appear to have benefited to some extent from this protection.
2. Sexual abuse. Sexual intercourse with a woman amounted to an offense in the ancient Near East when it was an infringement of the rights of the person under whose authority she was, for example her father or her husband. Ownership of a chattel slave eliminated that authority but not entirely so in the case of a debt slave.
3. Sale abroad. Only native debt slaves were protected by this prohibition, which must in any case have been difficult to enforce in practice.

4.5.6 *Family Law*

A natural conflict existed between family law, which applied to slaves as persons, and property law, which applied to slaves as chattels. Sometimes the one institution prevailed, sometimes the other, and sometimes the rules represented a compromise between the two.

4.5.6.1 The marriage of slaves was recognized as legitimate, whether with other slaves or with free persons. Although their different rules led to conflicts, marriage and slavery were not legally incompatible. The slave's legal personality was expressly said to be split: "to X she

is a wife; to Y she is a slave." (The one exception was that a person could not be both spouse and owner of the same slave.) Where a slave owned by a third party was married to a free person, married status provided some protection against the owner's property rights. For example, LH 175–76 rule that the offspring of the marriage remain free, although this principle was often overridden by contractual clauses (cf. LU 5). Where a married couple were enslaved for debt, they would be released together, but if the master had given the slave a female slave of his own as wife, property law prevailed and he would have to leave without her (Exod. 21:2–6; LU 4).

4.5.6.2 Since a female slave was property, her owner could exploit her sexuality and her fertility like any other beneficial aspect of property. She could thus be made her owner's concubine. Where concubinage resulted in motherhood, the slave might be accorded some qualified protection from the consequences of her status as property. She and her offspring might even gain their freedom on the death of the master/father (LH 171). The intention appears to have been to accord the slave concubine some of the rights of a married woman, not including, the sources emphasize, the right of inheritance for her children.

5. Family Law

5.1 *Marriage*

Marriage was a private arrangement, involving neither public nor religious authorities. Intermarriage between different societies and cultures was not seen as anything out of the ordinary. It is not until the Persian period that the question of a religious or ethnic bar on intermarriage is raised in certain Biblical texts. A man could marry more than one wife, but in practice the incidence of polygamy (strictly speaking, polygyny) varied greatly between cultures. Slaves could make a valid marriage, either to another slave or to a free person.

5.1.1 *Formation*

There were at least three possible stages in the formation of marriage:

1. An agreement between the person(s) under whose authority the bride was (i.e., parent or guardian) and the groom (or his father, if the groom was still young). The bride was the object of this agree-

ment, the purpose of which was her release from the authority of the former into that of the latter. If the bride was independent, for example, a divorcée or a widow, she could contract on her own behalf. Provisions in several law codes declare a formal contract between the parties a necessary condition to the validity of the marriage (LE 27; LH 128).

2. Betrothal, indicated by payment of the "bride-price," an amount usually in silver or other metals, which had perhaps been settled in the preceding agreement. The consequence of the "bride-price" was to create what has been called "inchoate marriage": the couple were deemed married as far as outsiders are concerned, but the arrangement was still subject to rescission by the parties to the contract. The nature of the "bride-price" has been much debated. It is intimately linked to the nature of marriage itself, which will be discussed below. As well as initiating betrothal, the "bride-price" acted as a measure of damages (*in simplum* or in multiples) for breach of betrothal, and, in some systems, for divorce without cause. At the end of our period, in Demotic and subsequent rabbinic law, this last function takes over entirely: the bride-price is transmuted into a fictional payment, becoming in effect agreed damages payable to the bride if the husband should divorce her.
3. Completion, the point at which the bride passed *de facto* into her husband's authority. The ancient sources are remarkably reticent on the subject of what is regarded in modern cultures as the most important stage—the wedding itself—perhaps because of the prominence of betrothal in establishing the legal context. There were, it seems, religious ceremonies and elaborate celebrations, but they were not legally dispositive. It would seem that there were several alternative ways of completing marriage, according to the different circumstances of the parties:

   (a) by a speech act, such as is recorded in a marriage contract from Elephantine: "She is my wife and I am her husband from this day (and) forever" (*EPE* B28:4; cf. MAL A 41).
   (b) by entry into the husband's house, as is mentioned in Demotic marriage contracts. In LH 151–52, entry is significant as the point at which a wife becomes liable for her husband's debts. A widow is often referred to as entering the house of her second husband. A wife could, however, continue to live in her father's house, being visited by her husband occasionally (MAL A 32–34, 38).
   (c) by consummation. LH 155–56 marks consummation as the point at which marriage is complete also as regards the contracting parties, but in special circumstances: the bride had moved into her father-in-law's house already on betrothal (and evidently before puberty).
   (d) by cohabitation for a minimum period (LE 27; MAL A 34). For a widow, this can repair the lack of a formal contract (MAL A 34).

Perhaps this wide variety of possibilities reflects not so much modes of completion as modes of proof, *ex post facto*, that the bride had passed into the groom's authority.

5.1.2 *Nature*

Marriage created a relationship of status between husband and wife. The essence of that status was that the wife, while remaining a free person, became subordinate in law to her husband. The husband's authority replaced that of her father, but it was not the same in content. In order to determine its nature, it is necessary first to resolve the problem of the "bride-price" adumbrated above.

5.1.2.1 A preliminary payment from the groom's party to the bride's party is attested in most of the legal systems, signified by a dedicated technical term (Sum. nì.mí.ús.sá/ku$_4$.dam.tuku; Akk. *terḫatu*; Hitt. *kusata*; Heb. *mohar*; Aram. *mhr*; Dem. *šp n ḥm.t*). It was translated as "bride-price" by early scholars on the assumption that marriage was a purchase of the bride from her father by the groom and that this payment therefore represented the purchase price. The traditional view has been hotly contested by later scholars, including contributors to this volume, who have offered a variety of translations: "bridal gift" (on the basis that it was a mere liberality), "bridewealth" (based on modern anthropological parallels), or "betrothal payment" (on the basis of its initial effect).

5.1.2.2 On the one hand, the existence of a dedicated term might be thought to negate any connection between the world of marriage and the world of sale of goods. On the other, in a few instances sources do speak of "price" in the context of marriage, using the standard commercial term (Old Assyrian: TPK 1 161; MAL A 55: *šīm batulte* "price of a virgin"). Nevertheless, the "bride-price" did not always behave like a normal price, often finding its way into the property of the wife herself. Thus "bride-price" and commercial price were not identical, but an association between the two existed in ancient juridical consciousness.[33]

[33] It is sometimes stated that with respect to marriage arrangements (e.g., at Nuzi), in which poverty-stricken parents received a payment for their daughters, the transaction was one of sale. This may have been true in economic reality, but that

5.1.2.3 Purchase is a mode of acquiring ownership, and ancient Near Eastern law knew ownership of women. As slaves, they could be bought, used, pledged, and sold like any other property, and they could be exploited sexually. The law distinguished between wives and slaves, both in legal terminology and in the rules that applied to each. For example, unlike a slave, a wife could own property herself and have heirs. In all languages, there were entirely different technical phrases for marrying a wife and buying a slave. Where a wife herself had slave status, the law can be seen navigating between the law of property and the law of persons, favoring one or the other or finding a compromise between the two. For a master who married his own slave, it was the law of persons that triumphed: the marriage emancipated her.

5.1.2.4 Nonetheless, the boundaries between the two legal categories were not as sharp as a modern perspective would lead one to expect. The husband is sometimes called his wife's "master" (Akk. *bēlu*; Heb. *'adon*), a term that can refer to legal ownership but is looser than "owner" in modern law. If in dire financial straits, a husband was entitled to pledge his wife or sell her into slavery. It is true that she did not cease thereby to be his wife, as she would have ceased to be his property. Still, these powers demonstrate that, to some extent, the authority of a husband and the rights of an owner overlapped. Ancient jurisprudence recognized their commonality and at the same time, the limits set by the exclusive nature of marriage as a status with its own unique rules.

5.1.2.5 Of the rules for which we have evidence, the most important are the following:

1. The husband had exclusive sexual rights over his wife. They were not alienable and were fiercely protected against third parties by severe punishments for adultery and rape. By contrast, the owner's sexual rights over his slave woman were protected only by compensation for damage to property.
2. Children of the marriage were the legitimate heirs of both the husband and the wife.

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is not the same as law. However pedantic it may seem, reductionism of this sort should be avoided; law is as different from social or economic reality as reality is from metaphor.

3. The marriage was in theory dissoluble by a unilateral act of either husband or wife.

5.1.3 *Status and Contract*

Marriage was a status, but the many marriage documents inform us of a variety of contractual arrangements that could be made ancillary to the status. There are three types of documents:

1. A protocol of the completed marriage, sometimes containing a receipt for the "bride-price" and/or the dowry, with terms added on to the initial betrothal agreement. Those terms bind husband and wife and relate to future contingencies such as misconduct, polygamy, and divorce.
2. Adoption documents or wills that also record marriage arrangements made by the adopter or testator with regard to the adoptee and other persons under his authority.
3. Post-nuptial settlements between husband and wife.

While contractual terms could not directly abrogate rights of the husband or wife under the rules of the status of marriage, they could affect them indirectly, by imposing penalties on their exercise, for example, on divorce (see 5.1.4.1 below). Those penalties could be pecuniary, physical, or even capital. The contract was thus a prior condition for the status and an important way of fixing subordinate issues, such as property arrangements, but it was also a continuing influence on the status, the contours of which it helped to determine.

5.1.4 *Dissolution*

Marriage could be terminated by divorce, death, or desertion.

5.1.4.1 Divorce was a unilateral act, which in theory either the husband or the wife could perform. It was effected by a speech act: "You are (/she is) not my wife" and "You are (/he is) not my husband" respectively. In practice, many systems precluded the wife's right to divorce.

The right to divorce was exercisable at will but was restrained by penalties imposed by the general law or by contractual terms. Since a wife was entitled to restoration of her dowry on termination of the marriage, the consequences of her husband divorcing her would be the loss of that property together with his spouse. Typically, the contract provided for a further financial penalty upon the husband. In the absence of contractual provisions, some systems imposed

financial penalties by operation of law, although they varied in severity from the amount of the "bride-price" where there were no children (LH 138), up to the whole of the husband's property where there were children (LE 59; LH 137), to nothing (MAL A 37).

The existence of contractual penalties on its exercise proves that the wife had a right to divorce under the rules of status. The severity of the penalties varies from system to system and between individual cases within systems. In some contracts, there is effective parity between the penalties on husband and wife. Others condemn her to be sold into slavery or even to be killed, for example, "if (the wife) says (to her husband), 'You are not my husband,' she shall be thrown into the water." Clearly, this was tantamount to an absolute bar on divorce by the wife.

Penalties for divorce could be avoided if the divorcing spouse could show sufficient grounds. A husband who divorced his wife for adultery, for example, did not have to pay her compensation and could probably keep her dowry. Even when he had grounds, however, the husband might find himself obliged to negotiate a divorce settlement, as in the case of a royal divorce at Ugarit (RS 17.159).

5.1.4.2 Death of the spouse ends the marriage, but a widow might not be free to remarry a man of her own choice. Since her late husband's family did not wish to lose her dowry, contractual provisions sometimes penalize her departure from the marital home. The Middle Assyrian Laws (MAL) allow a widow to depart only when she has neither sons or sons-in-law to support her nor any relative of her husband to marry her. The biblical law of levirate obliges a childless widow to marry her brother-in-law or closest relative.

5.1.4.3 The case of a husband who is missing on active service abroad is a classic scholarly problem considered by three law codes (LE 29; LH 133a–35; MAL A 36, 45). The wife is allowed to remarry on certain conditions, notably that sufficient time has passed and that there are insufficient means in her husband's house to sustain her, but should her first husband later return, she is to return to him. Both her marriages are deemed valid, but the second is voidable on restoration of the first.

5.1.4.4 The same scholarly problem also considers the possibility that the husband has fled his city voluntarily (LE 30; LH 136). If

his wife remarries under those circumstances, he may not claim her back. Note that desertion of his wife is not the cause but abandonment of his city and his civic obligations. On the other hand, a wife who deserts the matrimonial home may be divorced without compensation (MAL A 24).

5.2 *Children*[34]

5.2.1 The father and mother had the right to give their children in pledge for their debts or to sell them into slavery. The latter right appears to have been exercised only by necessity due to debt or famine. There is no historical evidence of a "right of life and death" over one's children; all examples are from legends set in an earlier age. Deuteronomy 21:18–21 provides for the execution of a rebellious son but by court order on application by the parents.

5.2.2 It was the duty of sons and sometimes of daughters to support their parents in their old age. Some sources also mention a duty to bury them and mourn them. A term often used in this context is "honor" (Akk. *palaḫu/kubbudu*; Heb. *kbd*)—which implies that more than mere material support was expected; the child had to serve the parents with respect.

5.3 *Adoption*

5.3.1 Adoption was far more widely practiced than in modern societies. The reason is as much juridical as social. It is true that the prevalence of disease, famine, and war left many couples childless and many children orphans, with adoption as the obvious cure. But adoption was by no means confined to childless couples or to the sphere of family affection. It developed into one of the most powerful tools of ancient jurisprudence, a flexible juridical instrument that was used to facilitate matrimonial, property, and even commercial arrangements.

The relationship of parent and child is a natural, biological phenomenon. The concept of legitimacy, by contrast, is purely legal, the result of an artificial legal construct, namely marriage. A legitimate

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[34] Fleishman, *Parent and Child . . .*; Westbrook, "Life and Death . . ."

son or daughter is a person with certain recognized rights and duties in law—a legal status. Only the qualifications for that status are biological. Adoption is a legal fiction that creates the same legal status for persons who lack the biological qualification. The essential quality of adoption in the ancient Near East is that it did not merely create filiation, called "sonship" or "daughtership" in the native terminology; it created *legitimate* sonship or daughtership.

The ancient law of property, inheritance, and contract contained certain limitations in the assignment of rights and duties. Legitimate filiation was a conduit for such rights and duties. Adoption was therefore used as a mode of transferring rights and duties, employing family law to circumvent limitations in other legal spheres. It could be used within a family, where gaps had appeared in its biological structure, to restore it in law to an integral unity of persons and property. It could be used beyond the family, to negotiate arrangements of mutual benefit between strangers, since adoption was not confined to children. The more the benefits incidental to filiation became the essence of the relationship between adopter and adoptee, the more the family relationship was reduced to a mere fiction. In its most extreme commercial forms, adoption became a legal fiction upon a legal fiction.

5.3.1.1 From the point of view of the adopter, adoption brought two principal benefits. Firstly, it enabled a childless person to maintain the family line. Secondly, it ensured care and support in one's old age, which was a fundamental filial duty. Not only the childless took advantage of this benefit; it might be more convenient to impose this duty on someone adopted expressly for the purpose than on one's own children.

5.3.1.2 The principal benefit for the adoptee was the right to inherit the adopter's estate, since adoption gave the status of legitimate heir. More than this, it was the only way to acquire such a right. Inheritance law knew nothing of bequests to outsiders; to inherit a share of the estate, even under a testament, the beneficiary had to be entitled already under the rules of intestate succession, which normally meant being a member of the testator's immediate family. Anyone else wishing to receive an inheritance share had first to become a member of the family, by adoption.

5.3.1.3 *Matrimonial Adoption*
A special benefit for female adoptees was to come under the authority of the adopter for the purpose of matrimony. The idea was that the adopter, as her new parent, would give her in marriage and possibly dower her.

5.3.1.4 In the light of these advantages, natural parents might give their children in adoption in order to secure their future. Their contracts stipulated that the adopter would bequeath an adopted son a share of the estate or would marry off an adopted daughter.

5.3.1.5 Adoption was a means by which a father could legitimate his natural children born to his concubine or slave. They would be entitled to a share in his estate equally with his offspring from a legitimate wife. It could also be used by a master in manumitting a slave. Manumission was a separate legal process but was often combined with adoption, to take place immediately or on the master's death. Either way, the master gained the slave's continued services for the remainder of his life.

5.3.1.6 The flexibility of adoption allowed it to be used in creating complex family settlements. A common arrangement was for a man to adopt a son and give the adoptee his daughter in marriage, making him his son and son-in-law at the same time. In rare instances it is the adoptive daughter who is married to the son. In the Adoption Papyrus from Egypt, a man secures his succession by adopting his wife, who in turn adopts both the children of a slave woman purchased by the couple and her younger brother, who then marries one of those children. In the Old Babylonian period, a certain type of priestess (*nadītum*), who could not marry, made a practice of adopting a niece, also a *nadītum*, so as to ensure continuity in both the family tradition and property. At Nuzi, adoption as a brother or sister is common, alongside adoption as a son or daughter.

5.3.1.7 Often, adoption barely conceals a purely commercial arrangement. An elderly person grants his estate to a stranger in return for a pension. A financier pays off a person's debts in return for the same. In these cases, possession of the estate may already be transferred *inter vivos*. The most extreme example is from Nuzi, where apparently it was impossible to purchase land in the conventional

way. Instead, the seller had to adopt the buyer and transfer to him the land (with immediate possession) as an inheritance share. Instead of payment, he received a "gift" from the buyer. There is little attempt to maintain the pretense: the contract also contains standard clauses from a contract of sale, and the same purchaser is adopted hundreds of times.

5.3.2 Like marriage, adoption was a purely private arrangement. It was effected by a unilateral act of the adopter. Only one mode is attested, namely a speech act by the adopter: "You are my son/daughter!" Where the adoptee was an orphan child, this act would be sufficient. Where the child had parents, a contract with them was necessary first in order to release the child from their authority. Adults could also be adopted; if independent, the adult adoptee himself made the contract with his adopter.

5.3.3 Both men and women could adopt. In some systems, it is clear that adoption by one spouse does not automatically make the adoptee the child of the other spouse. In a document from Emar, for example, a man gives children, probably by his slave concubine, in adoption to his wife. In other systems the evidence is more ambiguous, in that the documents record adoption by the father alone as head of household. Whether the adopter's wife was implied therein or whether the act of one automatically ensured adoption by both is not certain. The law makes no distinction between the adoption of relatives and strangers.

5.3.4 Adoption could be dissolved unilaterally by either party. The form was a speech act: "You are not my son/daughter," and "You are not my father (and mother)," respectively. For the adopter, it meant the loss of his investment; for the adoptee, the loss of his inheritance. The contracts therefore included clauses against these contingencies. As with marriage, the contract could not directly annul rights under the rules of status, but they could penalize their exercise. For the adopter the penalty was loss of patrimony—from an inheritance share to the whole of his property, sometimes even with an extra payment. For the adoptee, it was generally being sold into slavery, but occasionally it could be harsher, such as having hot pitch poured over his head, as prescribed in a Middle Babylonian document. Where the adoption was a business arrangement with an adult,

the penalties tended to be purely loss of property (estate or preassigned inheritance share) or pecuniary.

For a foundling adopted without a contract and brought up in the adopter's house, the latter's exercise of his right to dissolve—a real danger if later natural children were born—meant homelessness and destitution. Only LH 191 offers any relief, obliging the fickle adopter to send his erstwhile son away with an inheritance share in movable property.

6. Property

Distinct categories of property can only be inferred from their different treatment in law. Land obviously was the object of many special rules, but the distinction between land and movables was not the only significant division. Legal records of sale and pledge are attested only for certain types of property: land, temple prebends (right to a share of temple income) slaves, and occasionally farm animals (such as a cow or a donkey; not herds) and cargo boats. Their common feature is that they are all major capital assets. The reason for their special treatment is probably that they were the focus of rights of inheritance and redemption.

6.1 *Tenure*[35]

Three types of landholding are consistently attested: institutional, feudal, and private.

6.1.1 The two great institutional landowners were the palace and the temple. They controlled large tracts of arable land, which they exploited directly or through tenants.

6.1.2 The king granted land in feudal tenure: that is to say, in return for certain services. There has been a great deal of scholarly discussion about whether the term "feudal" is appropriate to the ancient Near East. In my view, it is a convenient term to describe a basic, recurrent form of landholding, as long as one does not

[35] Lafont, "Fief et féodalité . . ."; Allam, ed., *Grund und Boden* . . .; Renger, "Institutional, Communal, and Individual Ownership . . ."; Ellickson and Thorland, "Ancient Land Law . . ."

attribute to it all the special characteristics of medieval feudalism. It was more than a system for quartering troops on land; the services required could be military or civilian or could be commuted into payments. If any form of landholding is to be excluded from the category "feudal," it is outright land grants made by the king in perpetuity to a loyal servant, as, for example, those recorded in Middle Babylonian *kudurru*'s. Such grants were not conditional on any continuing services (indeed, they were often exempt from taxes) and could only be forfeited for outright treason, like any land.

The allocation of land for civilian services was essentially a means of remunerating government officials, as an alternative to allocation of rations. Land for payment, on the other hand, was functionally the same as a lease of public land, except that the tenure was not for a fixed term. The native terminology sometimes distinguished between the different types of tenure, but in many cases the categories were not exclusive to begin with or lost their original focus over time. In particular, lessees or civilian officials are often found as the incumbents of martial-sounding fiefs, such as "bowman" and "charioteer."

Land held in fief could be heritable, as long as the holder continued to provide the appropriate services. There were restrictions on alienation that varied from system to system.

6.1.3 Private ownership of land existed at all periods, although scholars have argued that in certain systems it was very restricted, for example, during the Neo-Sumerian period, where there are no extant records of private sale or inheritance of arable land. Nonetheless, even in that period the sale and inheritance of private houses and orchards is attested. The question is of little importance for the law, since the evidence is quantitative, not normative, that is, there is no evidence of a legal bar on private landholding. Only at Nuzi does there appear to have been an actual prohibition on the outright sale of private land (for unknown reasons), which was circumvented by a legal fiction.

6.1.4 A classic evolutionary theory postulated that communal ownership of land by the clan or village preceded individual ownership.[36]

[36] Maine, *Ancient Law*, 251–52; contra, de Coulanges, *Origin of Property* . . .

Traces of communal landholding have been claimed in ancient Near Eastern sources; for example, villages or towns as landowners in Late Bronze Age Syria, or joint ownership by brothers.[37] The evidence, however, is inferential and open to other explanations. At Emar, for example, the land that the town sells to private individuals has been confiscated from other individuals. Fratriarchy is explicable by the joint ownership of heirs, a transitional stage in inheritance (see 6.2.3.3 below).

6.2 *Inheritance and Transfer inter vivos*[38]

The same basic principles applied throughout the ancient Near East to the transfer of property between generations. Within that framework there were regional differences, in particular in the identity and entitlements of heirs. A major dichotomy existed between Egypt and the Asiatic systems as regards daughters as heirs, in addition to which there were diverse local customs.

Inheritance was universal, direct, and collective. The whole estate of the deceased, both assets and liabilities, passed upon death directly to the legitimate heirs, who initially held the estate in common. Division of the estate into individual shares was a subsequent voluntary act of the heirs, in principle by mutual agreement.

Natural heirs (those automatically entitled on intestacy) had a vested right to inherit, at least as regards the core property of the estate, in particular family land. The owner of the property could only disinherit an heir for cause. Application of this fundamental principle varied in its severity. According to LH 168–69, a court order was necessary for a father to disinherit his son and only after a second offense. In Egypt of the New Kingdom, a father could disinherit some of his children in favor of others.

Testamentary disposition was possible, but given the rights of the natural heirs, the ancient testament was considerably more circumscribed in its scope than a modern will.

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[37] Jankowska, "Extended Family Commune . . ."; Koschaker, "Fratriarchat . . ."
[38] See Brugman, ed., *Law of Succession* . . .

6.2.3 *Intestate Succession*

6.2.3.1 *Heirs*

The heirs of the first rank who inherited automatically were the deceased's legitimate sons, namely, sons born of a legitimate marriage. Where a son had already died but had left sons, the grandchildren would take his share alongside their uncle (*per stirpes*) and divide it between them. Under Egyptian law, although the same principle prevailed, it applied also to daughters, who ranked equally with sons.

Failing sons, the estate passed to the deceased's male collaterals—brothers or their descendants. Alternatively, some Asiatic systems did allow for daughters to inherit, albeit with conditions. LL §b allows only unmarried daughters to inherit, presumably since married daughters would have already received their share in the form of a dowry. Biblical law (Num. 36:1–12) insists on their marrying their cousins, like the contemporary Greek *epikleros/patroiokos*. The biblical narrative points to a rivalry between daughters and uncles as potential heirs, a tension that the ancient legal systems had hitherto failed to resolve, given the sporadic recurrence of the issue over millennia. Possibly, the courts had a discretion that they occasionally exercised in favor of undowered daughters, especially when there were no close relatives.

A few systems allowed an illegitimate son, that is, the deceased's natural son by a concubine (MAL A 41) or even a prostitute (LL 27), to inherit in the absence of legitimate sons. How an illegitimate son ranked against a legitimate daughter is not known. Again, the courts may have had a discretion where no close relatives were available. Otherwise, the law insisted that prior to his death, the father should have legitimized the son by way of adoption, in order for him to inherit alongside legitimate heirs.

Spouses did not in principle inherit from each other on intestacy. The property and inheritance of a wife followed a separate line of devolution (see below). Nonetheless, NBL 12 gives the court the power to grant an indigent widow some property from her husband's estate, at its discretion, according to the value of the estate (cf. an analogous grant by LH 172 in special circumstances).

6.2.3.2 *Division*

The standard method was to divide the estate into parcels and cast lots for them. In principle, the heirs divided the estate into equal shares. Many systems, however, awarded the first-born son an extra

share. There were different ways of computing the extra share, according to local custom. The first-born might also have first choice of his extra share, before the regular shares were drawn by lot (e.g., MAL B 1).

6.2.3.3 *Joint Ownership*

If the children were still young, the widow might continue to administer the estate until they came of age. Even then, the heirs might postpone division, sometimes for years. In the interim, a curious legal situation prevailed in which each heir was theoretically owner of the whole estate but at the same time owner of no particular asset within it. Special problems arose that are a favorite topic of discussion in the law codes. For example, LE 16 forbids the granting of credit to an undivided son, since the creditor could claim against the whole estate. Likewise, if an undivided brother commits homicide, MAL B 2 rules that if the victim's relative accepts composition in lieu of revenge, payment can only be to the level of a single inheritance share. Deuteronomy 25:5–10 rules that if an undivided brother dies childless, his brother must marry the widow and produce an heir to the deceased's potential share, which would otherwise disappear, since it passes by survivorship, not succession. The Demotic Legal Code (P. Mattha VIII.30–31) provides for the eldest son to be manager of the estate during indivision.

6.2.4 *Testamentary Succession*

6.2.4.1 The sources are very unevenly distributed. The highest concentration is in Late Bronze Age sites, where in a comprehensive document the testator may settle not only the estate but also a wide range of family matters, appending to the basic gift related transactions such as adoption, marriage, manumission, and disinheritance. There are no examples from early Mesopotamia, but there are references to the use of deeds of gift *mortis causa*. Testaments are found in Egypt already in the Old Kingdom, but in the Demotic record they are replaced by complex post-nuptial marriage settlements between husband and wife.

6.2.4.2 The documents allude to an oral transaction but give no details. The core of the procedure appears to have been a speech act making a gift. The speech act drew its legal effect from the use

of a completed tense: "I have given. . . ." Hence the sources are frequently ambiguous: it looks as if the gift took effect immediately, whereas in fact it only vested in the beneficiary on the testator's death. The context, which would reveal whether the gift was *inter vivos* (e.g., dowry) or *mortis causa*, is not always available to us. Where the gift was in contemplation of death, many years might still pass before the testator's death gave it effect. A document might therefore be necessary to protect the rights of the beneficiaries if disputes should arise after the testator's death. The extant documents tend to record unusual inheritance patterns.

6.2.4.3 A testament was revocable, although there is no suggestion in the sources that testators did so arbitrarily. It is more likely that changes were necessitated by a supervening life event.[39]

6.2.4.4 The rights of the natural heirs meant that a father could not make a gift of family property to a stranger.[40] The gift would indeed be valid but only for the donor's lifetime, after which it would be subject to a claim by the donor's natural heirs. As we have seen, the method for giving legacies to outsiders was to adopt them. The powers of the father as testator were as follows:

1. To assign specific property to individual heirs. How far he could affect the total value of their shares in this way is not clear.
2. To transfer the extra share from the first-born to another sibling. Apparently, the father could act out of pure favoritism, at least in some systems. Note that biblical law (Deut. 21:15–17) forbids transfer from the first-born son by a hated wife to the son of a beloved wife, that is, where the father's favoritism relates to the mothers, not the sons.
3. To give his daughters an inheritance share alongside their brothers. A daughter was a potential but not automatic heir. The father already had the power to grant her a share of the family patrimony in the form of a dowry (see below). Therefore, no adoption or other special procedure was necessary. In a testament from

[39] A poignant illustration is the testator at Emar who leaves a debt to be collected by whichever of his sons survives the current plague (RE 18).

[40] For the powers of a mother, see below. In Egypt, it was possible to make a gift of land to mortuary priests to cover the cost of maintaining one's mortuary cult in perpetuity. This was a special exception to the vested rights of heirs and, in turn, had special restrictions on alienation and partition.

Alalakh (AT 87), this power is exercised in relation to the "elder daughter-in-law."

4. To give his wife an inheritance share. This was part of a husband's power to make marital gifts (discussed in 6.2.5).
5. To disinherit a natural heir, for cause. In the testament of Naunakhte from New Kingdom Egypt, the testatrix disinherits four of her children on the grounds that they failed to support her—the most common reason. A testator at Emar disinherits a son who "spoke an insult" (*AO* 5:17). A testator at Nuzi disinherits one of his sons because he has arranged for that son to be adopted by his childless uncle instead (AASOR 10 21).

6.2.5 *Female Inheritance*

6.2.5.1 *Dowry*

6.2.5.1.1 Upon marriage, a daughter received a share of the paternal estate in the form of a dowry. Although functionally the equivalent of an inheritance share, it differed insofar as it was not in law a vested right, like a son's inheritance, but depended on her father's discretion. In Akkadian, most of the technical terms for dowry are, in fact, words for "gift" (*nudunnû*, *šeriktu*). The difference is logical, firstly, because a daughter normally received her dowry in advance of her father's death, when the size of the inheritance shares could not be determined, and secondly, because the size of the dowry might be a matter for negotiation between the bride's family and the groom's family. Nonetheless, NBL 9 gives the daughter's interest something of the character of an inheritance share in ruling that if her father, having assigned her a dowry, suffers a decrease in his wealth, he may reduce the dowry proportionately but not arbitrarily in collusion with his son-in-law. Where the father dies before his daughter is married, the question arises whether she has a legal right to a share of the estate alongside her brothers or only has an expectation that they will dower her. Although LH assigns a share in the case of certain priestesses, there does not appear to have been a general principle of entitlement (except in Egypt). It is not surprising, therefore, that fathers often explicitly gave their unmarried daughters an inheritance share by testament.

6.2.5.1.2 The dowry enters the groom's house together with the bride, on marriage. The bride's father is often expressly said to give it to the groom. Thereafter, it is subsumed into the husband's assets

for the duration of the marriage, to be restored to the wife on divorce or widowhood. Its legal status during the marriage would appear to be that of a fund owned by the wife but managed by the husband. On his death, she is entitled to be refunded its full value prior to division of the paternal estate among the heirs. In the late period, protection of the widow's interest in her dowry is strengthened: she is preferred over her late husband's creditors, making the extension of credit to the husband a more risky business. In more than one period, we find desperate attempts to keep the dowry in the husband's family, at least temporarily: clauses in marriage contracts penalized the widow with forfeiture of her dowry if she remarried or even left her late husband's house.

6.2.5.1.3 In practice, wives are found managing assets, but it is usually impossible to tell whether the assets were specifically dowry property, wealth from earned income, or undifferentiated marital property in collaboration with the husband. Certain parts of the dowry, however, could be designated for the wife's control. The Neo-Babylonian term *quppu* ("cash-box") refers to a cash fund for the wife's exclusive use. Talmudic sources refer to a category of dowry property called *melog*, which has earlier equivalents in Akkadian and Ugaritic (*mulūgu; mlg*). It is distinguished from the rest of the dowry (which the Talmud calls "iron sheep") by the fact that its destruction, loss, or loss of value is entirely to the wife's account—which suggests that it was in her control. An obvious example would be personal slaves, whom the husband was not obliged to replace if they died.

6.2.5.1.4 On the wife's death, her dowry was divided by her heirs, just like the paternal estate. Her primary heirs on intestacy were her sons—from all her marriages, if she had contracted more than one. She was entitled to make a will separately from her husband and assign shares in her property among her legitimate heirs, including daughters. In the testament of Naunakhte mentioned above, the testatrix emphasizes that the children she has disinherited will still inherit from her husband's estate. If the wife died childless, the dowry reverted to her paternal family; under no circumstances could her husband or his family (including his children from other wives) inherit it. If she predeceased her husband, however, her children would, at least according to LH 167, have to wait until his death before dividing her estate.

6.2.5.2 *Marital Gifts*

Gifts of property from husband to wife, mostly post-nuptial, are frequently attested. The gift took effect after the husband's death, which meant that it remained the husband's property during the marriage, unlike the dowry. If the wife predeceased her husband, the gift was void. Alternatively, the husband could assign his wife a share in his estate, or even the whole of it, by testament.

The purpose in all these cases was to maintain the wife during widowhood, it being anticipated that the property would eventually pass to the children of the marriage. Her children from another marriage or her paternal family were not entitled to inherit it. The effect of such a gift was therefore only to delay devolution of the donor's estate, or part of it, on his legitimate heirs. However, a power often granted to the wife in the gift or testament could change the pattern of inheritance to some extent. She was entitled to give her share "to the son who loves her" or "the son who honors (i.e., supports) her" or the like. In consequence, the widow could disinherit some of the legitimate heirs from part of their father's estate. Indeed, it was theoretically possible for her to bequeath it to a stranger, contrary to the principles of male inheritance (and to the impression given by LH 150). Most documents of grant emphasize that she could not give the property to an outsider, but a few expressly allow her to give the property "wherever she pleases." A Nuzi testament applies this liberality only to a gift of movables such as perfumes, utensils, and sheep (HSS 5 70). But in a remarkable clause from Emar the husband states that his wife may "throw it in the water, give my estate wherever she pleases" (TBR 47).

6.2.5.3 By a long-established custom, already attested in the early second millennium, the bride's father upon marriage returned the "bride-price" to the groom, but as part of the bride's dowry. It thus became part of the wife's marital assets, although in recognition of its origins, it did not always devolve in the same way as the rest of the dowry.

7. Contracts

The ancient Near Eastern sources on contract present us with a paradox. On the one hand, contractual documents are the most prolific legal source, especially in cuneiform. On the other, the legal

basis of contract in any or all of the systems of the region remains an enigma. There are two reasons: the lack of theoretical discussion in the ancient literature, and the oral character of the contracts (see 1.2.1 above). The written record not only omits many types of oral contract; we cannot be sure that the document contains all the terms of the contract it purports to record. It is not surprising, therefore, that in spite of the many monographs written on the form of individual contracts, no scholar has addressed the theoretical question of what made a contract binding. In this brief introduction, we can only attempt some preliminary proposals based on first principles and salient features of the data.

7.1 *Principles of Contract Law*

A contract is an agreement whose terms a court is prepared to enforce. Each legal system has its own criteria for what it will recognize as a legally binding agreement and under what conditions and to what extent it will enforce its terms. It is sometimes difficult to decide when parties have reached an agreement, but the law needs to select a point at which to freeze the bargaining between the parties, making it irrevocable.[41] The simplest means from the point of view of the law—but a cumbersome one for the parties—is to require some formality. It can be *verba solemnia*, a gesture or ceremony, a written document, or the like. If the law decides to give effect to an informal agreement, the task is more complex. It may rely on mechanical presumptions[42] or await some concrete expression of the agreement, that is, actual performance by at least one of the parties (the so-called real contract), or again it may confine itself to recognizing only certain types of transaction, according to content (e.g., sale, hire, or partnership).[43] Whatever criteria were applied in the ancient Near Eastern systems can only be deduced from the documents of practice.

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[41] It also needs to distinguish between agreements that are worthy of enforcement by the law and those that are not, either because the parties would not normally regard them as such (e.g., purely social arrangements) or because of the dictates of public policy (e.g., immoral purposes).

[42] As in the Common Law, where the criteria of offer + acceptance + consideration provide a crude test, which does not always distinguish between social and legal undertakings.

[43] As in Civil Law systems, which therefore present a law of contracts, with multiple criteria, rather than a law of contract.

7.2 *Features of Contract*

7.2.1 The records, whether cuneiform, hieratic, Demotic, or Aramaic, share the same basic structure: they are styled as the protocol of an oral proceeding that was performed before witnesses. The description can sometimes be extremely terse, as in debt notes, which consist merely of an acknowledgement that "A owes B x silver." More explicit parallels confirm that what is being described is the result of an oral transaction such as loan, or sale on credit, even if the particular transaction behind the debt note often cannot be identified. At the other extreme, the "dialogue documents" of the Neo-Babylonian and Persian periods give a graphic account of the oral proceeding itself, albeit still in summary form.

7.2.2 The agreements recorded fall into standard categories, easily identifiable by a key word or phrase. It is rare to find a contract *sui generis*, although a recognized type may occasionally have in addition a unique special term. Certainly, there is no question of each agreement having been drafted verbatim by the scribes. Of course, it could always be the case that standardization applied exclusively to those transactions recorded in writing, but the evidence of the decrees and law codes does not give that impression. They contain paragraphs imposing implied terms on various types of contract, including many that have left no trace in the written record and may have existed only orally.

7.2.3 There is an equally high degree of standardization in the drafting of individual clauses of the contracts, some of which may be used in more than one type of contract. Notwithstanding the fact that they change over time and place, they tend to follow collective patterns, the idiosyncrasies of individual scribes notwithstanding. The lexical lists and model contracts attest to the fact that scribal training involved learning standard contractual clauses.

7.2.4 The contracts recorded are bilateral, that is to say, with mutual obligations. With certain important exceptions, to be discussed below, they are either fully executed, with only contingent obligations outstanding, or at least one of the parties has already performed his obligations, in whole or in part. The important point is that they are not wholly executory; they do not consist solely of promises for

future performance. Likewise, the provisions in decrees and law codes that regulate contractual obligations intervene in completed or partly executed contracts.

7.2.5 HL 28–29 represent a clear exception to the above. In a contract of betrothal between the bride's parents and the groom, the law distinguishes between a daughter who is "promised" (*taranza*) and one who is "bound" (*ḫamenkanza*). The second condition results from a betrothal payment by the groom. If the parents then give their daughter to another in breach of contract, they must pay the injured groom double the betrothal payment that they received. If the parents commit the same breach in the first case, it is likewise treated as a breach of contract, even though the contract is wholly executory. They must pay the groom compensation, in an unspecified amount. Furthermore, a third party who abducts a "promised" daughter in disregard of the contract must pay the groom compensation for interference in his contractual relations.

7.2.6 Evidence from Neo-Sumerian trial records (di-til-la) suggests that the betrothal promise was more than a simple statement; it took the form of a solemn promissory oath. The promissory oath was a self-curse invoking a god or the king, by which a person imposes a strict obligation upon himself.[44] It was in its nature unilateral and was very flexible, being adaptable to any situation, contractual or otherwise. At the same time, it was a highly formal procedure.

7.2.7 One other type of contract is attested that is based purely on promissory oaths: the international treaty. Treaties were governed by the same law as private contracts, albeit with kings as parties and gods as witnesses (see 9 below). Their special features are that their provisions generally concern purely future conduct and that they can be bilateral or unilateral. Bilateral treaties are simply two sets of oaths that may or may not coincide. In parity treaties the obligations to which each side swears are identical, or at least mirror images. Vassal treaties are a list of obligations on the vassal, and only the vassal takes the oath.

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[44] On the oath, declaratory and promissory, see the essays in Lafont, ed., *Jurer et maudire . . .*

7.2.8 Documents recording the standard contractual forms may also record a promissory oath by one or both parties. For the most part, the oath relates to ancillary matters: either special terms not usually found in that type of contract or (most frequently) a promise not to deny, contest, or alter the terms of the completed contract in the future. In the third millennium, oaths are sometimes recorded for central obligations of the contract, for example, repayment of a loan. This type of oath disappears in the second millennium, where only ancillary oaths are recorded. By the first millennium, it is rare to find any mention of an oath in the records of standard contracts.

7.3 *Findings*

7.3.1 So far as may be discerned from the limited evidence, a single juridical conception of contract prevailed throughout the region, though manifesting itself in autonomous forms in each society and period. In that conception, there were two ways of creating a binding contract:

1. By a bilateral, oral transaction of a standard type recognized by law, for example, sale, hire, or partnership. Its enforceability arose from the performance by one party of his obligations (possibly in part), which triggered the duty of the other party to fulfill his contractual promises (i.e., a "real" contract).
2. By solemn oath, which created a unilateral obligation. Its enforceability arose from its form, which bound the promisor from the moment of his promise. It is not certain how far mutual oaths created mutual obligations, where breach by one side would absolve the other from his oath.

7.3.2 Bilateral standard contracts and oaths might be used:

1. as alternatives, where the parties could choose either a standard contract or an oath to create the obligations;
2. successively, as in the Hittite marriage contract, which could progress from an oath-based agreement to a standard contract (based on payment of the "bride-price"), with different consequences for breach;
3. in a complementary manner, where oaths were used in standard contracts to secure ancillary obligations;
4. cumulatively, where oaths were used in standard contracts to secure fundamental obligations.

7.3.3 The documentary record gives the impression of a gradual decline in the use of the oath. Any conclusions, however, should be

drawn with extreme caution. The reason could be that the relevant obligations became implied in the standard contract or that the oath was so self-evident that it did not need to be recorded. Even in the third millennium, when mention of the oath is frequent, it is not consistent. In the contract of suretyship, for example, the oath is recorded often enough to suggest that it was the basis of the surety's obligation to the creditor. Its occasional omission would therefore be attributable to brevity, not substance. Does its total omission from suretyship documents of the second millennium then mean that the oath was no longer the basis of the obligation or that it did not need any mention, being the sole basis?

7.3.4 A major difficulty is that use of the oath, in contractual and non-contractual situations, was often strictly speaking superfluous: it was used as an extra precaution where an obligation already existed on some other basis, for example, vassal status, citizenship, or even slavery. The reason is that it secured an extra level of sanctions, royal or divine. Only in fully executory situations like the betrothal contract and the treaty could it be argued that the oath was indispensable. On the other hand, if an oath not to contest an executed agreement in the future were regarded as indispensable, then the oath would be the only possible means of making an agreement into a binding contract. A slave already transferred and paid for would not be acquired unless and until the oath not to renege had been taken by one or perhaps both parties.

7.3.5 A further complication that may affect the credibility of the evidence is the possibility that the oral transactions recorded may sometimes have been fictitious. Occasionally, payments are recorded which external evidence shows not to have been received, or statement of completed performance on the envelope is contradicted by a requirement of future performance on the inner tablet. Even loans may be fictitious, masking some bookkeeping transaction (e.g., Middle Assyrian KAJ 66). While the principle of the oral contract was upheld, its role was usurped by the document, which became virtually a mode of creating contracts in its own right. Although rare (as far as we can tell), the fictitious document provided a conceptual stepping-stone to acceptance of a dispositive written contract. But could a solemn oath be taken as read?

7.4 *Typology*

7.4.1 The core contracts that are found in any modern legal system are present in the ancient Near East: sale, hire, deposit, loan, pledge, suretyship, and partnership. Exchange of land follows the pattern of land sale; barter of goods is rarely attested. (Individual chapters should be consulted for the specific terms of contracts, which vary from system to system.)

7.4.2 There were contracts that are not found in modern legal systems:

1. Contracts ancillary to status, for example, marriage, adoption, and slavery. Such contracts interfere far more profoundly with the rules of status than would be conceivable in modern law. For example, penalty clauses in a marriage contract could effectively block a spouse's right to divorce.
2. Contracts between criminal and victim (or their families) arranging a substitute penalty for a crime. Thus, a Neo-Assyrian contract arranged for the transfer of slaves in payment of the criminal's blood-debt—his liability for murder—which would otherwise have been payable with his life (ADD 321 = SAA 14 125).
3. A contract for a prostitute's services was legally binding, even if the profession was not altogether socially respectable. In Genesis 34, Judah even leaves a pledge for payment with a woman whom he supposes to be a prostitute.
4. In Egypt, a person might make a contract with a mortuary priest for the provision of cult offerings after his death, in return for an endowment of land.

7.5 *Terms*

7.5.1 The law codes have relatively few provisions regarding contract. Most of them insert implied terms into standard contracts. Some of those terms are in fact found expressed in contractual documents themselves, such as the liability of the seller of a slave for epilepsy. Most terms were undoubtedly customary law, even if not recorded in detail in the contractual document, such as the tariff for damage to parts of a rented ox (LOx). The most intrusive form of implied term is the tariffs of prices for goods and services, which are found in LE, LH, and HL. A few provisions deal with allocation of risk if the contract is frustrated, for example, if a crop is destroyed by a natural disaster (LH 45), others with penalties for breach by negligence or fraud (e.g., HL 149: fraudulent declaration that a slave died before delivery).

7.5.2 The penalties set by the contracts themselves were not confined to the pecuniary. Even pecuniary penalties could be impossibly high sums, which leads one to wonder what was the alternative to non-payment. One definite possibility was slavery, since a party could agree directly to be sold into slavery as penalty for breach. Other penalties were mutilation or even death. Again, these are found as direct penalties for breach: "a peg shall be driven into her mouth and nose" (Old Sumerian: SRU 43); "his head shall be smeared with hot pitch" (Old Babylonian: TCL 1 237) "molten lead shall be poured into his mouth" (AT 28), "he shall put out the eyes of A. and her children and sell them" (Nuzi: JEN 449), "she shall die by the dagger" (Neo-Babylonian: Roth 5). A character in 1 Kings 20:39 reveals the link between excessive payments and cruel and unusual punishments: "Your servant went out to battle and a man came up to me and said: 'Guard this man; if he goes missing, it is your life for his, or you will pay a talent of silver.'" While such penalties are not common and tend to be imposed in situations involving status or extremes such as war, some are for breach of unexceptional commercial bargains.[45] There is an instinctive inclination to deny that they were ever applied in practice, but in a world where criminal penalties could be exceedingly harsh by modern standards, there was nothing fantastic about the penalties themselves.[46] Rather, it would appear that the sharp distinction drawn in modern penology between criminal and contractual liability did not exist. As the king of Israel expresses it in his uncomforting reply to the guard mentioned above, who had managed to lose his prisoner in spite of the terrible penalty threatened (1 Kings 20:40): "This is your sentence: you yourself pronounced it."

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[45] Cf. a penalty clause in Old Babylonian sale documents: "If there is a claimant (to the property sold), he (seller) shall pay 2 minas of silver or his tongue will be torn out" (e.g., TIM 5 19).

[46] Less credible is a cumulative list of the kind found in a Neo-Assyrian sale document: ". . . he shall pay 5 minas of silver and 5 minas of gold to (the god) Adad of Kurbail, and shall dedicate 7 male and 7 female votaries to Shala, the consort of Adad. He shall offer 2 white horses at the feet of Assur. He shall eat 1 mina of carded wool and drink a standard *agannu*-bowl. They shall strew for him 1 seah of cress-seed from the gate of Kurbail to the gate of Kalhu and he shall pick it up with the tip of his tongue and fill their seah-bowl to the brim. He shall repay the price to its owners tenfold; he shall plead in his lawsuit and not succeed" (CTN 2 15). Clearly, the penalties are *in terrorem*, but they are of a different order to the others discussed: they are not inflicted but require action by the party at fault, in the manner of a forfeit.

7.6 *Social Justice*[47]

A special feature of the ancient Near Eastern systems was the intervention of the king or the courts to unravel valid contracts of loan, pledge, or sale, in order to relieve the social consequences of debt. Intermittent royal decrees canceled existing debts and sale or pledge transactions judged to be dependent on them. These were solemn acts of general application ("the king has decreed justice for the land"), although exceptions were made, such as for commercial loans or debts owed to foreigners. We have seen above how sale of family members as debt slaves also gave rise to a right of redemption or of release after a period of service. The right of redemption also applied to family land sold under pressure of debts.

Interference in contractual rights on this basis was neither universal nor systematic and where applied, might be hedged with exceptions and qualifications. As a principle of justice, however, it was universally recognized.

8. Crime and Delict

8.1 *Sources*

Most of our knowledge of criminal law derives from the law codes, since criminal cases, if recorded at all, were seldom preserved in legal archives. This gives rise to two problems.

Firstly, the evidence is very unevenly distributed between the societies of the region, even more so than for other branches of the law. Those sites which have only produced private archives are particularly bereft of information. On the other hand, criminal law provides the most striking examples of the common intellectual tradition reflected in the law codes. The same cases recur from code to code, occasionally in almost identical language, or in recognizable variants. Standard situations, such as the goring ox and the rape of a betrothed woman, provide the strongest evidence for a canon of scholarly problems that was passed on from system to system.

Secondly, since the law codes were theoretical documents, it is difficult to know how far they represent the law in practice. The

[47] Westbrook, "Social Justice . . ."

ideological agenda of the biblical codes is obvious, but the cuneiform codes, some of which served the purposes of royal propaganda, may have been no less colored by ideology, idealization, or hyperbole. There is also the suspicion, especially strong in the case of the Middle Assyrian Laws, that some of the punishments reflect the scribal compilers' concern for perfect symmetry and delicious irony rather than the pragmatic experience of the law courts. Certainly, the few documents of practice, including those contemporary with the codes, show striking discrepancies in matters of detail, especially as regards punishments, which tend to be milder than in the codes. But they do conform to the general principles, structures, and procedures found in the law codes.

Since the intellectual method of the codes was to set out principles by the use of often extreme examples, and they were based, if at some remove, on the activity of the courts, it is probable that they inform us what the courts could do and in perfect justice should do, whereas the courts themselves, in dealing with less tidy situations, were more flexible in their judgments, within the given parameters. Accordingly, we can reconstruct a picture of how the ancients thought about crime—what they regarded as wrongs and what means they devised for redressing them—even if we cannot always be sure how they applied their ideas on a day-to-day basis.

8.2 *Development*

In considering the overall patterns of criminal law in the ancient Near East, the influence of evolutionary theories from the nineteenth century has been the cause of a great deal of confusion. The classic theory, which dates from before the discovery and decipherment of cuneiform legal records, drew upon Roman law, biblical law, diverse "primitive" systems such as medieval Germanic law, and anthropological observations of tribal customs.[48]

The theory envisaged several stages in the development of the criminal law. In the pre-state period, wrongs were redressed not by law but by feud between families or clans, a condition marked by unrestrained revenge. The appearance of organized society, with

[48] E.g., Jhering, *Geist* . . ., 127–140; Kohler, *Blutrache* . . ., 9–12; cf. Sulzberger, *Homicide* . . ., 1–6; Cherry, "Evolution . . ."

courts of law and legislatures, introduced in the first instance limits on revenge. The next stage was that composition, an agreement between the parties for a payment in substitution for revenge, was allowed. Later, the state was strong enough to impose composition on the parties, often with fixed tariffs for the loss of life or limb. In the final stage, the state took over entirely, imposing criminal sanctions.

With the discovery of the cuneiform law codes, scholars tried to impose the theory on the evolution of ancient Near Eastern legal systems, since some codes seem to embody revenge while others concentrate on payments.[49] The codes, however, do not follow the chronological order postulated by the evolutionary pattern: it is in the earliest examples of their genre that fixed payments are found. Consequently, a counter-theory was proposed: the earliest stage was payment, since human life was seen in terms of its economic value to the group. As civilization developed, human life came to be regarded as more precious and the state became stronger, leading to the development of criminal sanctions.[50] Unfortunately, the chronological pattern of the codes does not fit this theory, either. Accordingly, proponents of these theories and subsequent refinements upon them have assigned the societies of different periods and places in the region to primitive and advanced categories, or a mixture of both, depending on where the penalties in their law codes stand in the proposed evolutionary model.[51]

In my opinion, the scholarly debate over the evolution of criminal law is irrelevant to the ancient Near Eastern systems. If any such developments took place in the region, they were over and done with long before the appearance of written legal records. By that time, the civilizations to which those records attest were based on centralized states with well-established courts and settled laws. Those states may not have had a police force or all the apparatus of a modern state for imposing law and order, but they certainly could and did enforce rules punishing crimes and redressing wrongs. Consciousness of the state's responsibility was such that when the culprits could not be brought to justice for crimes such as murder and robbery, there were established procedures for compensating the victims and their families from the public purse (LH 22–24; HL 4).

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[49] Driver and Miles, *Babylonian Laws* . . ., 501–2.
[50] Diamond, "An Eye for an Eye."
[51] Cardascia, "La place du talion . . ."; Finkelstein, "Ammi-ṣaduqa's Edict . . ."

If there is anywhere in the ancient Near East where pre-state conditions could be said to have prevailed, it is in relations between states, where no central authority existed. Even in that area, however, we find already in the third millennium a recognized system of customary international law and treaties governing disputes between states. It is true that self-help (i.e., through war) was the sole means of redress, but the protagonists followed the rule of law in having recourse to it or, at least, paid lip-service to the rule of law. Indeed, there were even rules of international law imposing liability on a state to investigate the robbery or murder of foreign nationals on its territory, to pursue the culprits, and if not found, to pay compensation, as in internal law. There could be no clearer manifestation of a developed criminal law with universally accepted principles.

At the same time, the ancient system bore little resemblance to modern criminal law, either in its aims or its methods. Revenge was an integral part of the system, as was composition. Justice was deemed to be served by punishments that would be unacceptable, on persons who would be considered innocent and, in some cases, for crimes that would not be recognized, in modern law.

8.3 *The Mental Element*

A basic principle of modern criminal law is that a crime must have two elements: a guilty act and a guilty state of mind: premeditation, intention, awareness, recklessness, or some other level of consciousness. In practice, there exist in every legal system crimes where the demand for a mental element is dispensed with or is very attenuated.

Again, the scholarship on ancient law has been muddled by an old theory, that of *Erfolgshaftung*. According to that theory, primitive criminal law did not distinguish between deliberate and accidental harm, attributing guilt purely on the basis of the consequences of an act. Scholars have agonized, in my view unnecessarily so, over whether this condition still prevailed in the ancient Near East.[52] There is ample evidence in the sources of distinctions between deliberate and accidental acts, and even of nuances in between, such as foreseeability of consequences. What has given grounds for confusion is that the paragraphs of the law codes do not systematically mention

[52] E.g., Cardascia, "Le caractère volontaire . . ."

the mental element. This is due, however, to their casuistic structure, which leads to a great deal of information being omitted from any given paragraph. The mental element may be omitted because the paragraph is concerned to illustrate some other aspect of the rule, or because it was regarded as self-evident in that case. Certain standard examples were used to discuss the mental element; it does not mean that it applied only to those instances.[53] Of course, there were significant offenses for which a mental element was not necessary.

8.4 *Status*

The gravity of the offense could vary according to the status of the parties, especially the victim. If the victim were a head of household, the consequences for the culprit could be considerably more serious than for a son, daughter, or wife. In some systems, even the class of the parties, aristocrat or commoner, could make a difference. A slave was considered property and did not enter into the same category of offenses at all.

8.5 *Punishments*

8.5.1 It was considered perfect justice to "let the punishment fit the crime." The most notorious example is talion (like for like). It was used most typically for physical injuries—"an eye for an eye"—where it was particularly appropriate as a judicial limitation on revenge. The death penalty was too widely employed to be regarded as specifically talionic but could be given a talionic character, as when an Old Babylonian king ordered a murderer who had thrown his victim into an oven to suffer the same death (BIN 7 10). A special form was vicarious talion: if the victim was a subordinate member of household, punishment was inflicted on a parallel member of the culprit's household, for example, a son killed for a son (LH 229–30), or a wife violated for a daughter raped (MAL A 55).

8.5.2 "Ironic punishments" sought to make a similar association, for example, severing the hand that strikes (LH 195; MAL A 8; Deut. 25:11–12), the lip that steals a kiss (MAL A 9), the pudenda

[53] The standard case concerns non-permanent injury: LH 206–8; HL 10; Exod. 21:18–19. Note that LH 207 extends the case to homicide.

of an adulterer (MAL A 15). Note stinging by bees for stealing a hive (HL 92) and the strikingly visual consequences for a prostitute who dared to veil herself in public—hot pitch poured on her head (MAL A 40).

8.5.3 There were many methods of execution, but hanging was not used, except to expose the corpse. Prison sentences were unknown, but fixed periods of forced labor could be imposed.[54]

Humiliation was a valid form of punishment, for example, adulterers might be stripped naked and led around town by a nose-rope. Flogging is often associated with offenses that call for shaming the culprit.

8.6 *Classification*

Modern law divides unlawful wrongs into two categories: crimes and civil wrongs (torts). Crimes are considered wrongs against society as a whole; it is the public authority that pursues the offender through litigation and the principal aim is to punish. Torts are considered wrongs against an individual, on whose initiative litigation depends, and the principal aim is to compensate. The same act may be a crime and a tort.

The modern classification is unhelpful for the ancient law, which had a different theoretical basis, albeit never expressed in the native sources. From the pattern of treatment and remedies, we can distinguish three main categories: wrongs against a hierarchical superior; serious wrongs against the person, honor, or property of an individual; and minor harm to an individual's person or property.

8.6.1 *Hierarchical Superior*

Acts that harm, disobey or displease a superior carry a very high level of moral culpability. The appropriate response is disciplinary, at the superior's discretion. They may be further divided into an upper level, where the cosmic order is compromised, and a lower level, where the social order is compromised. Offenses comprising the cosmic order are the following:

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[54] Prison was used as an interim measure to hold persons until their punishment was decided or until they paid a penalty or debt owing.

8.6.1.1 *Offenses against the Gods*

Offenses against the gods constitute what, in modern parlance, would be called sins. Examples of direct harm to a god's interests are blasphemy, sacrilege, and (in a monotheistic system) apostasy, which was an elevated form of treason. Disobedience could be offenses against cultic rules or taboos (in Israel, work on the Sabbath), or breach of an oath sworn by a god. Practices displeasing to the gods were witchcraft, abortion, sexual aberrations such as incest and bestiality (homosexuality in some but not all systems), and adultery. Some of the latter could be victimless crimes.

The offended god would, of course, wreak divine punishment on the offender, but the consequences could be worse. Many of these offenses were thought to cause "pollution" of the surrounding area, which in itself invoked divine wrath. Pollution could affect the culprit's family or home, the local town, or even the whole populace if the culprit were a representative, such as a king. Divine punishment could then be collective, in the form of drought, pestilence, or defeat in war.

The human reaction, which is relevant to our history of law, was to forestall divine punishment by killing the offender, his family, or even a whole city (e.g., where implicated in apostasy), or else to separate the offender from the polluted area by banishment. Juridical distinctions were made between offenses that required collective punishment and those where only the offender would be affected (e.g., MAL A 2). So feared was the danger to the population from the former category that individuals were obliged to report cases of witchcraft, for example, to the authorities. Purification rituals might follow execution of the sentence.

To some extent these measures can be called punishment, but an equally valid analogy would be to drastic public health precautions.

8.6.1.2 *Offenses against the King*

Offenses against the king were treason, sedition, disobedience of orders, and breach of an oath taken in the name of the king. Corruption by royal officials would also fall under this heading. The king could impose punishment at his discretion. Treason typically involved death and confiscation of the traitor's property; it could occasionally include execution of the traitor's family (e.g., the priests of Nob, 2 Kings 9:26). In the New Kingdom Harem Conspiracy Trial, punishments ranged from enforced suicide through mutilation to a mere rebuke.

8.6.1.2.1 It is to be noted that collective punishment was a rare form of punishment, which is associated only with offenses against gods and kings.

8.6.1.3 According to Exodus 21:28, 32, an ox that gores a man to death is to be stoned and its flesh not eaten. It has been suggested that this sentence is imposed because the animal has killed a superior in the cosmic order, namely a human being.[55]

Offenses compromising the social order are:

8.6.1.4 Disobeying judges and officials, which was punishable with death (HL 173; Deut. 17:12).

8.6.1.5 Adultery was a serious offense by the wife against her husband. Called the "great sin" in a number of societies, it was regarded in some way as analogous to treason.[56] It gave the husband a broad discretion in punishing his wife, ranging from death through mutilation to divorce with confiscation of all her property. Adultery, however, was a complex crime, and other elements limited the husband's exercise of his discretion (see below).

8.6.1.6 Cursing, striking, or disobeying a parent was punishable with variable severity in different systems, ranging from death through mutilation to disinheritance (cf. Exod. 21:15, 17; Lev. 20:9; Deut. 21:18–21; LH 195).

Note that in the last two cases, the law intrudes into inner-family relations, with the courts determining the offense and limiting the disciplinary discretion of the head of household.[57] MAL further limit the right of a husband to discipline his wife by maltreatment or mutilation.

8.6.2 *Serious Wrongs*[58]

Serious wrongs comprise what in modern law would be the principal crimes: homicide, injury, rape, perjury, theft. The category also includes insult and slander, which would be regarded only as civil wrongs, and adultery. All carried a high degree of moral culpability.

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[55] Finkelstein, *The Ox That Gored*, 26–29.
[56] Rabinowicz, "Great Sin . . ."; Moran, "Great Sin . . ."
[57] Cf. Roth, "Mesopotamian Legal Traditions . . .," 26–27.
[58] Westbrook, *Studies* . . ., 39–128.

This is the most complex category, involving redress on several levels. The basic approach (in my view, and in this I differ fundamentally from the evolutionary school) was that these wrongs gave rise to a *dual* right in the victim or his family, namely to take revenge on the culprit, *or* to make composition with the culprit and accept payment in lieu of revenge. The right was a legal right, determined and regulated by the court, which set the level of revenge permissible, depending on the seriousness of the offense and the circumstances of the case. The court could also fix the level of composition payment. If it did, the effect was to make revenge a contingent right, which only revived if the culprit failed to pay. Some law codes impose physical punishments and others payments for the same offenses, while some codes have a mixture of the two. There is not necessarily a contradiction: they are two sides of the same coin. In highlighting one or the other alternative, the codes are making a statement as to their view of the gravity of the offense.[59]

Because it was a private right, the initiative in bringing a case lay with the victim. At times, however, the impersonal language used or the circumstances suggest that a public authority is pursuing the lawsuit, especially as regards homicide. Nonetheless, it would be anachronistic to think in terms of a public prosecutor bringing cases on behalf of the state. In homicide, it was obviously not the victim who brought the case; a member of his family took the role of avenger. For victims who had no one to claim revenge, the king was regarded as the ultimate avenger, as would any head of household for his subordinates. (Beyond the king, the ultimate avengers are, of course, the gods.) The situation is particularly clear in the case of foreigners, who have no one to sue on their behalf in the local courts. The king of Babylon expects the king of Egypt to avenge Babylonian merchants murdered on Egyptian territory (EA 8). The authorities might therefore be expected to intervene if the victim or his family were unable to do so.

A further complication is that some of the offenses in this category—homicide and adultery in particular—were also regarded as causing pollution, that is, they were at the same time an offense

[59] Thus CC tends to allow revenge (and thus free bargaining over composition) in cases where LE or LU would impose fixed composition. (Cf. Exod. 21:29–31 and LE 54 for death caused by a goring ox, but note that LE 58 takes the same attitude as CC where death is caused by a falling wall.)

against the gods. The pollution might not be as widespread as in serious crimes of the previous category, but the authorities had an interest in removing it. In addition, they were responsible for compensating the victims of unsolved robberies and murders, as we have seen (LH 23; Ugarit: RS 20.22:40–55; Deut. 21:1–9). Their intervention would thus be expected. It still did not amount to the role expected of the modern state—to proceed against criminals irrespective of the wishes of the victims or their families. In ancient law, the latter were the ultimate right-holders.[60]

The fundamental characteristics of the major offenses in this category are reviewed below. Not every legal system applied them in their entirety, but they formed the conceptual framework within which the different systems functioned.

8.6.2.1 *Homicide*

Murder was thought to cause the loss of the victim's blood (the symbol of his life) to the family. They could get the blood back by killing the culprit. Terms for the avenger, generally the nearest male relative, reflect this understanding: he was called the "owner/redeemer of the blood/life." Alternatively, he could accept payment. If there were mitigating circumstances, such as lack of premeditation or low status of the victim, the victim's family was entitled to a lesser penalty, for example, vicarious talion or a payment fixed by the court. A scholarly problem found in several codes was the owner's liability for death caused by a goring ox (LE 53–58; LH 250–52; Exod. 21:28–32).[61]

8.6.2.2 Injury is typically dealt with in the law codes by lists of body parts, with talionic punishments or a tariff of payments or both. Inclusion in the lists of the biting off a nose and references to an affray (Akk. *risbātum*) are indications that deliberate wounding was at issue. Furthermore, inclusion among the injuries of a slap in the face shows that these offenses were as much about insult as about injury.[62] Negligent injury was not considered, at least not in the codes, unless it was also a breach of contract. Where a surgeon's negligence caused

[60] Some biblical scholars regard biblical law as special in this regard, e.g., Greenberg, "Some Postulates . . ."

[61] Yaron, "Goring Ox . . ."

[62] See Roth, "Mesopotamian Legal Traditions . . .," 25–37.

death or injury, the punishment was "ironic"—his hand was cut off (LH 218). A scholarly problem found in several codes is a blow to a woman that causes a miscarriage (LU 23'–24'; LH 209–14; HL 17–18; Exod. 21:22–25).

8.6.2.3 *Adultery*[63]

Adultery was consensual sexual intercourse by a married woman with a man other than her husband. Husbands could have multiple sexual partners and although certain liaisons were restricted by law or morality, they were not regarded as adultery. Juridically, adultery was a triple offense. As regards the wife, it was an offense of disloyalty against her husband, which we have discussed under the first category above. As regards the paramour, it was a serious wrong against the husband, which gave the husband the dual right of revenge or payment (cf. Prov. 6:32–35). The husband could demand the death penalty, but his revenge could not exceed the punishment that he imposed on his wife, and if he forgave his wife, the paramour was to be pardoned (LH 129; MAL A 14–16; HL 198). The husband could kill the lovers if he caught them *in flagranti delicto*, on condition that he killed both (LH 129; HL 198). The concern of the law was to prevent husband and wife conspiring to entrap a third party. As regards both lovers, adultery was also an offense against the gods, especially since it often went undetected.

8.6.2.4 *Rape*[64]

Rape of a married woman (or a betrothed—a standard scholarly problem) was a serious wrong against her husband or fiancé, exactly like adultery (LU 6; LH 130; MAL A 12; Deut. 22:23–27). The difference was that lack of consent on the woman's part exonerated her from punishment for adultery. Nonetheless, the wife was not regarded merely as property for these purposes; the rape of a slave woman, which was a property offense, was treated altogether differently. In both adultery and rape, the attaint was to the husband's honor and marital rights.

Rape of an unbetrothed maiden was an offense against her father. MAL A 55 imposes vicarious talion; Deuteronomy 22:28–29 treats

[63] Lafont, *Femmes . . .*; Westbrook, "Adultery . . ."
[64] Lafont, *Femmes . . .*, 133–71.

it more like seduction, which falls into the category of minor harm (see below).

8.6.2.5 *Perjury and Slander*[65]

False accusation was considered particularly appropriate for talionic punishment: the accuser suffered the penalty that he had sought for the accused (LL 17; LH 1–4; Deut. 19:16–21). Slanderous remarks impugning the sexual honor of a man or a woman led to various penalties, especially flogging and shaming punishments (LH 127; MAL A 17–19; Deut. 22:13–19).

8.6.2.6 *Theft*[66]

Theft is, of course, not defined but seems to have covered not only actual removal but also fraudulent misappropriation of goods left in one's care or found and not reported to the authorities. The fraudulent receiver of stolen goods was treated in the same way as the thief.

As in modern law, the gravity of the offense could vary greatly according to the circumstances, especially the value of the object stolen. Aggravated forms were treated as severely as homicide or adultery, while the treatment of petty theft comes close to that of minor harm (see below).

The standard penalty for simple theft was a multiple of the value of the object stolen, but fixed sums are found as well. If the thief failed to pay, it became a debt for which he could be taken into debt bondage or sold into slavery, depending on the seriousness of the offense and the policy of the legal system. A thief at Emar gave his sister into slavery in place of himself (Emar 257).

Examples of aggravated theft were kidnapping of persons for sale into slavery (and their purchase), theft from a temple, and using fraudulent weights, all punishable by death. Where a multiple payment was imposed, the alternative for an aggravated offense was death (e.g., fraudulent avoidance of a debt-release decree: AS 7). It was thus the equivalent of fixed payment in lieu of revenge.

Two theft-related scholarly problems are found in several law codes: the innocent receiver of stolen goods (LH 9–12; HL 57–70;

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[65] Lafont, *Femmes* . . ., 237–88.
[66] Westbrook, *Studies* . . ., 111–31.

Exod. 22:3), and the burglar killed while breaking in at night (LE 12–13; Exod. 22:2–3).

8.6.3 *Minor Harm*
In the category of minor harm fall offenses that carry a low level of moral culpability. The mental element is negligence or, at most, lack of foresight; the loss caused is mostly pecuniary. The penalties are also pecuniary, their primary purpose being to compensate. Failure to pay could lead to debt-slavery, however. This category is close to the modern notion of civil wrongs (torts).

8.6.3.1 Personal injury is treated in a scholarly problem that posits a case of non-permanent injury incurred in a brawl. The culprit must pay the victim's medical expenses and compensation for his period of invalidity (LH 206; HL 10; Exod. 21:18–19).

8.6.3.2 Negligent damage to property, such as flooding a neighbor's field (LH 55–56) or allowing fire or grazing animals to encroach upon it (HL 106–7; Exod. 22:4–5) results in various compensation formulas, according to the economic loss.

8.6.3.3 Crimes such as homicide, wounding, or rape, when the victim is another's slave, are treated as damage to property. The culprit must pay the owner compensation, usually based on the value of the slave.

8.6.3.4 A special case is the seduction of an unbetrothed maiden.[67] The seducer must marry her and/or pay her father for the loss of her potential bride-price (MAL A 56; Exod. 22:15–16).

9. International Law

International law has a venerable history: references to treaties and to the sanctity of international borders are already found in the twenty-sixth century. The following two millennia have so far produced copies of more than forty treaties, with references to many more.

[67] Lafont, *Femme* . . ., 93–132.

9.1 *The International System*

9.1.1 International law was not separate from internal law, as it is today. The paradigmatic form of the state was monarchy. Its theoretical basis was the domestic household, that is, the territory and population of the state constituted a household, and the king was head of household. Like any head of household, he could enter into obligations that bound his subjects and was responsible for crimes committed by and upon them. International law was therefore based on principles of law common to all the civilizations of the region. At the same time, the peculiarities of international discourse endowed it with its own special character.

9.1.2 What made the society of sovereign states special was that their kings were answerable to no human tribunal. Instead, they were under the direct jurisdiction of the gods. In practice, this meant that breach of the international rules could only be remedied by self-help; in theory, the king in doing so was acting as a human agent for divine retribution. In addition, direct divine retribution could be expected in the form of drought, plague, or defeat in battle. Since the existence of the gods was universally regarded as a fact, the divine tribunal was as real in ancient eyes as a modern court of international justice and probably not much less effective. Of course, treaties and rules were broken, but no ruler would undertake an act of aggression without seeking to justify it before his gods in terms of international law, however weak his grounds. The gods could be disobeyed; they could not be disregarded.

9.1.2.1 Given that different nations might worship entirely different gods, a certain theological tolerance was necessary for the system to work. To some extent, this could be achieved by synchretism: there was only one sun in the sky, if worshipped under different names. But there was also "recognition" of the other party's gods, who were expected to punish their own subject for his sin against them in breaching international rules. The ancient protagonists' approach, not being conceptualized, remains somewhat impenetrable but it would seem that the divine tribunal was regarded sometimes as consisting of one's own gods, sometimes of the other party's gods, and sometimes of a sort of joint committee.

9.1.3 The international system was complicated by the structure of empires, which tended to consist of a core state surrounded by vassal kingdoms, over which they exercised varying degrees of control. Vassal kings would often have not only internal autonomy but also a measure of freedom in their foreign relations. They could wage war on their own account, make alliances, and even acquire their own vassals, provided that their actions were not prejudicial to the overlord's interests. Vassal states therefore must also be regarded as the subjects of international law.

9.2 *Treaties*

9.2.1 An international treaty derived its binding character from a solemn oath sworn by the gods. The oath was a standard way of creating contractual obligations but in a domestic context is seldom found as the sole constituent of a contract. The reason for its central role in treaties is that their provisions related exclusively to future conduct. It was therefore the only possible form (see the discussion of contracts, 7 above). The oath could be by the party's own gods, the other party's gods, or both, depending on the political conditions. The promisor was more likely to fear the wrath of his own gods but an oath by the promisee's gods gave the promisee the right to intervene as his gods' representative to punish violation.

9.2.2 Conclusion of the treaty could be accompanied by ceremonies solemnizing the bargain, such as a communal meal and sacrifices. The parties were the kings, or officials acting as their agents when, as was frequently the case, they did not meet face to face. The procedure in both cases was oral. Writing was not necessary to the validity of a treaty, although a written record was often made and accorded great significance. Copies were sometimes deposited in a temple, and there are examples of important treaties being recorded on tablets of silver or gold.

9.2.3 Treaties differed from ordinary contracts in that the witnesses to the transaction were primarily gods. Unlike human witnesses, the gods had a dual role: to attest to the oaths and, at the same time, to be potential avengers of their breach. Long lists of the gods of one or both parties were appended to treaty documents, which were sometimes also impressed with seals stated to be those of named

gods, in the same way as the seals of human witnesses were impressed on contracts.

9.2.4 Multilateral conventions are not attested; all extant treaties are bilateral. Scholars generally classify them as parity or vassal treaties. Parity treaties were strictly reciprocal agreements between equals. Although the two parties each took an oath that in theory bound them unilaterally, the treaty attained mutuality through the exchange of oaths to identical terms. Vassal treaties were agreements between an overlord and vassal, in which only the vassal swore an oath, undertaking unilateral obligations. Although the terms were dictated by the overlord and might have resulted from force or the threat of force, in theory, a vassal treaty was a consensual agreement freely entered into by the vassal.

9.2.5 Some treaties fall between these two pure forms, as, for example, the Hittite treaty with Sunassura of Kizzuwatna, which is styled as a parity treaty but contains unequal terms marking its true nature as a vassal treaty.[68] By the same token, an overlord might give undertakings in a vassal treaty. Even if not under oath, such undertakings would serve to make the vassal's obligations conditional upon the overlord respecting them. In any case, such conditionality might arise from the general relationship of overlord and vassal. Thus a vassal might deem himself freed from his loyalty oath (in the eyes of the gods) by an egregious act of his overlord.[69]

9.2.6 Treaties were personal contracts between monarchs that bound their respective states as would a contract made by a head of household. Theoretically, the contracting king's rights and obligations passed to his successor under the normal rules of inheritance. In practice, it was usual for treaties, especially vassals' loyalty oaths, to be renewed upon succession.

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[68] Liverani, "Storiografia . . ."
[69] Altman, "On the Legal Meaning . . .," 203–5.

9.3 *Customary Law*

9.3.1 Diplomacy was conducted by envoys rather than by residential ambassadors. Envoys enjoyed immunity in the sense of inviolability of their person; there is no allusion to the modern doctrine of immunity from liability for illegal acts. The envoy of a friendly state was deemed a guest of the host monarch, to be treated in accordance with the accepted norms of hospitality. Permission of the host was required before the envoy could depart. Inordinate detention might lead to diplomatic protests but was, strictly speaking, legal. Violation of an envoy's person, on the other hand, was a *casus belli.*

9.3.2 A state was responsible for crimes committed against foreign nationals on its territory. The victims' ruler would intervene on their behalf with the ruler of the state deemed responsible. The problem arose mostly with regard to foreign merchants, who were vulnerable to murder and robbery. The state was obliged to pay compensation to the victims or their families if the culprits were not caught. The modalities of compensation might be regulated by treaty, as examples from Ugarit in the late second millennium show.

9.3.3 Kings had a natural prerogative to grant asylum to fugitives. They were under no legal obligation to return fugitives to the country from which they had fled, except under the express terms of a treaty. For this reason, many treaties contain clauses regulating extradition. Another exception may have been vassals, who would be obliged (legally, not just politically) to return fugitives to their overlord under their general duty of loyalty. Hittite treaties, however, make the vassal's duty of extradition an express term.

9.3.4 Nothing certain can be said about the rules of war. A declaration of war sometimes preceded hostilities, but there appears to have been no general obligation. Prisoners of war were at the mercy of their captors, to treat at their discretion. They were either killed, enslaved (often being blinded), or ransomed. Civilians were regarded as legitimate booty. Humane treatment seems to have depended on political expediency and internal inhibitions rather than on recognized legal rules.

10. The Legacy of Ancient Near Eastern Law

I have described the law of the ancient Near East as lacking certain features of modern law. That lack is not absolute, however: the seeds of many modern legal institutions are already in evidence. It is perhaps in these embryonic forms rather than in developed structures that the legacy of the ancient Near East to later legal systems is to be sought.

The ancient kingdoms lacked a legislature in the modern sense, but they had assemblies, which at the local level were capable of creating binding rules. They had no legal theory as we would understand it, but they developed a pragmatic science of lists, which served as a vehicle for theorization and categorization of the law, albeit by inference. They had no jurists, but the drafting of decrees, contracts and treaties reveals a dedicated legal vocabulary and an ability to manipulate terminology in the interests of guarding against eventualities. They did not have a formal system of citation, but they referred to decrees and precedents and relied upon a formalized wisdom to trace some of the contours of amorphous custom and fill some of its gaps. They did not have legalism, with its reliance on the strict letter of the law, but they showed some consciousness of the notion in their careful formulation of oaths and in their creative use of legal fictions, which maneuvered between legal categories if not yet between legal terms.

There are, however, two highly developed features of the ancient law that modern systems can truly be said to emulate. The first is case-law method, or the objectivization of cases into paradigms and the use of analogy to extend their reach—a method that is still a pillar of modern jurisprudence. The second is their view of the office of judge. The qualities expected of a judge included not only probity, but also a heightened sense of right and justice, and a special regard for the weaker elements of society. Indeed, greater stress was laid upon these qualities than in modern society, and for good reason. Modern law relies upon the absence of personal interest and adherence to the letter of the law to ensure the objectivity of its judges. Ancient judges, often administrators and wealthy local landowners, were not shielded from personal interest in disputes or from acquaintance with the parties, and could not seek refuge in the strict wording of legal texts. It therefore fell to personal qualities to achieve the same ends. As the hymn to Shamash, god of justice, declares (99–102):

. . . he who takes no perquisite, who takes up the cause of the weak,
Is pleasing to Shamash, who lengthens his life.
The judicious judge, who gives equitable judgments,
Has the palace at his command, makes the seat of princes his place.

Abbreviations

AS	Edict of Ammi-ṣaduqa
CC	Covenant Code
HL	Hittite Laws
LE	Laws of Eshnunna
LH	Laws of Hammurabi
LL	Laws of Lipit-Ishtar
LOx	Law about Rented Oxen
LU	Laws of Ur-Namma
MAL	Middle Assyrian Laws
NBL	Neo-Babylonian Laws
SLEx	Sumerian Laws Exercise Tablet
SLHF	Sumerian Laws Handbook of Forms

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PART ONE

THIRD MILLENNIUM

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EGYPT

OLD KINGDOM AND FIRST INTERMEDIATE PERIOD

Richard Jasnow

1. Sources of Law

Explicit sources for law from the Old Kingdom are rare, although there is considerable indirect evidence in the form of titles and references to legal institutions or situations.[1] This chapter begins with the Old Kingdom and First Intermediate period (Fourth through Tenth Dynasties), since documentation on the subject from the Archaic period (Zero to Third dynasties) is exceedingly scarce and its interpretation highly speculative.[2]

No law code proper has been preserved from the Old Kingdom.[3]

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[1] In general, see Théodoridès, "Problème . . ." and "Concept of Law . . ."; Allam, "Droit . . ."; Menu, "Bibliographie . . ." Although outdated, still useful is Seidl, *Einführung* . . . Allam, "Gerichtsbarkeit," col. 536, tellingly declares: "Puisque la documentation juridique ne nous permet de retracer suffisamment que l'organisation de la Justice égyptienne sous le Nouvel Empire, nous nous contenterons de mettre celle-ci en évidence." References in these chapters are chiefly to monographs and articles written from a legal perspective. Worthwhile general observations on Egyptian law from a different viewpoint are in Brunner-Traut, *Frühformen des Erkennens*, 94–98.

[2] The evidence for the earliest periods consists largely of labels, seals, and dockets; see Eyre, "Work . . .," 7–8. Dreyer, "Drei archaisch-hieratische Gefässaufschriften," publishes several such early hieratic inscriptions from an administrative archive of the late Third Dynasty (?). For the Early Dynastic Period text corpus, see Kahl, *Das System der ägyptischen Hieroglyphenschrift in der 0. bis 3. Dynastie*; the classic, if outdated treatment, is still Pirenne, *Histoire* . . ., 1: *Des Origines à la fin de la IV^e Dynastie*.

On the early administration, see also Leprohon, *Civilizations* . . ., 1: 278; Théodoridès, "Concept of Law . . .," 292; Seidl, *Einführung* . . ., 61. For *s3w Nḫn* ("guardian(?) of Hierakonpolis") and *ỉry Nḫn* ("keeper (?) of Hierakonpolis") as legal titles in the Archaic Period, see Franke, "Ursprung . . .," 213. For the *šms-Ḥr* ("Following/serving of Horus") as the periodic journey of the Thinite king for purposes of judging throughout the land, see Goedicke, *Königliche Dokumente* . . ., 48–52.

[3] Allam, "Traces . . ."; Théodoridès, "Formation . . .," 4–5. For a positive view regarding the existence of an Egyptian law code, see Lorton, "Treatment . . .," 5. Lurje, *Studien zum altägyptischen Recht*, 126–29, also believes that such a code probably did exist. He asserts (129) that the precise and very elaborate form of the royal decrees, together with the court records and private documents, suggest that not only customary law but also written laws existed. Allam, "Le droit égyptien ancien," 1, observes: "on n'a trouvé jusqu'à présent aucune trace tangible de codification.

1.1 *Royal Edicts*

The corpus of royal decrees of a legal character[4] has been divided into six categories:[5] decrees concerning administration and tax exemptions;[6] endowment of offerings;[7] endowment decree for real estate or immovables;[8] decrees for appointments;[9] stipulations for the benefit of private individuals;[10] letters.[11]

The most extensive group is the so-called exemption decrees of the later Old Kingdom conferring freedom upon various mortuary establishments and temples from corvée labor and taxation.[12] Each document represents a royal wish regarding a particular temple. The status and position of individuals and property connected with the temple establishments are regulated.[13] Infringements result in specific punishments.[14] An example is the decree of Pharaoh Neferirkare on behalf of the temple in Abydos.[15] Addressed in letter form to the

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Néanmoins, la documentation contient des allusions qui ne laissent aucun doubte sur l'existence de lois en Egypte."

[4] Basic collection in Goedicke, *Königliche Dokumente* . . .; for an overview of legal aspects of the corpus, see Goedicke, *Königliche Dokumente* . . ., 231–47. See also Vernus, "Typologie . . ."; Boochs, *Strafrechtliche Aspekte* . . ., 15–16; Goedicke, "Cult-temple . . .," esp. 126–31.

[5] Goedicke, *Königliche Dokumente* . . ., 2.

[6] E.g., Coptos B, Goedicke, *Königliche Dokumente* . . ., 87–116. See Théodoridès, "Charte . . .," 667–714 (*Maat*) for a translation and commentary of Coptos B. A few decrees may deal with misconduct in office: see Goedicke, *Königliche Dokumente* . . ., 204–5.

[7] E.g., Abydos III, Goedicke, *Königliche Dokumente* . . ., 81–86. In Pantalacci, "Décret . . .," 250, 252 there is the installation of a funerary cult for a governor of Dakhla Oasis, which may also refer to usufruct of endowment.

[8] Coptos L, Goedicke, *Königliche Dokumente* . . ., 161–71. Coptos L deals with the division of land, possibly connected with the establishment of a royal endowment.

[9] Coptos O, Goedicke, *Königliche Dokumente* . . ., 178–83. On the form, see Helck, *Akten* . . ., 108; Posener-Krieger, "Décrets . . .," 203.

[10] Coptos R, Goedicke, *Königliche Dokumente* . . ., 214–25.

[11] Coptos M (concerns appointment to office), Goedicke, *Königliche Dokumente* . . ., 184–89.

[12] The motivation behind these exemption decrees is much debated. See Strudwick, *Administration* . . ., 341; Lurje, *Studien zum altägyptischen Recht*, 88–90; Harari, "Les Decrets . . ."; Schenkel, *Memphis*, 11–25 (translation of royal decrees of the Memphite Eighth Dynasty); Martin-Pardy, *Untersuchungen* . . ., 127, 226–30; Hornung, *Gründzuge* . . ., 40.

[13] They are not called *hp.w*, "laws," but rather *wḏ-nswt*, "royal decrees." On the relationship between *hp.w* and *wḏ.w*, see Lorton, *BiOr* 40 (1983): col. 367.

[14] In Coptos B, one who "trangresses" a command is described so: "It/he is one who has fallen into a deed of rebellion" (*sbi.t*) (Théodoridès, "Charte . . .," 689).

[15] *Urk.* 1, 170–72; Goedicke, *Königliche Dokumente* . . ., 22–36, and "Cult . . .,"

"overseer of prophets," the king forbids the removal of any prophet or serf for corvée or construction work in the nome (administrative district), as well as the seizing of temple lands or equipment, which are protected for the "extent of eternity." No "written document" (ʿ) can give any right over them. Two penalty clauses follow, covering infringements of these stipulations by "any man of the nome." The punishment in both cases seems to be identical: "He is brought to the workhouse (?) of the temple, having been taken himself for corvée work or cultivation." Any magistrate disobeying the decree is taken to the "great house," *ḥ.t-wr.t*, "after his house, people, and property, are taken from him," and he is set to corvée work.

The phraseology already seems well developed in the oldest example (Shespeskaf, last ruler of the Fourth Dynasty), a consistency of wording indicating an established chancery style.[16] Nevertheless, the genre cannot be traced earlier than the end of the Fourth Dynasty.[17] Several of the surviving decrees were issued on the same day, suggesting that only a small percentage of such decrees has been preserved.[18] One fragmentary Coptos decree has been interpreted as an exemption of temple priesthood issued by the overseer of priests and not the king.[19]

Such decrees may be copies of texts written on papyrus, transferred to stone for the purpose of publicity and security.[20] The royal seal applied in the presence of the king gives the decrees legal validity.[21] The dating is also an important element of a royal decree, but is not always present in our copies.[22]

128–29. See also Gundlach, *Pharao*, 252–54; Boochs, *Strafrechtliche Aspekte*, 70; Lorton, "Treatment . . .," 6–7.

[16] Goedicke, *Königliche Dokumente* . . ., 8–9. On the phraseology of Old Kingdom through New Kingdom legal documents, see Helck, *Akten*, 117–34.

[17] Goedicke, *Königliche Dokumente* . . ., 2.

[18] Ibid., 4.

[19] Fischer, "Notes . . .," 269.

[20] Goedicke, *Königliche Dokumente* . . ., 6. On the inscriptions as copies of papyrus originals, Helck, *Akten*, 4 and on format, *10–38. For an actual fragment on papyrus of a royal decree, sealed before Pharaoh Isesi, see Posener-Krieger, "Décrets . . ." On the subject of publicity, see Allam, "Publizität . . ."

[21] Goedicke, *Königliche Dokumente* . . ., 12.

[22] Ibid., 13.

1.2 *Administrative Orders and Documents*

The Abu Sir papyri, which contain the records of the mortuary temple of Nerferikara (Fifth Dynasty), also preserve occasional legal information.[23]

1.3 *Private Legal Documents*

Private legal documents, either original or quoted in tomb inscriptions, are rare in the Old Kingdom proper.[24] They are preserved from the late Third through the late Sixth Dynasties, but the late Fifth Dynasty is best represented.[25] By the end of the Fifth Dynasty, there is a tendency to provide greater personal detail in the tomb biographies, graffiti, and expedition records.[26] Of particular importance are P. Berlin 9010, the record of a private court case (Sixth Dynasty),[27] and the sale contract of Tjenti (Sixth Dynasty).[28] Most of the legalistic tomb inscriptions deal with aspects of the mortuary cults and estates. The oldest significant example of this type is from the Tomb of Metjen (late Third to early Fourth Dynasties), which provides data on the transfer of property.[29] Exceptionally important, too, is the Inscription of Wepemnofret, in which he gives his son a part of the tomb and offerings.[30] The few private legal texts do not permit a confident reconstruction of a standard format.[31] Letters only rarely refer to legal matters, although P. Berlin 8869 alludes to the misdeeds of a Count Sabni, and mentions the "Court of Horus."[32]

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[23] Posener-Krieger, *Papyri d'Abousir*. See, e.g., Kemp, *Ancient Egypt*, 141, and apud Trigger et al., *Social History* . . ., 89–90; Van den Boorn, "*wḏ*," 8–9.

[24] Most of the relevant texts are in Goedicke, *Rechtsinschriften* . . .

[25] Ibid., 2.

[26] Eyre, "Work . . .," 6. Der Manuelian, "Essay . . .," 1, suggests that the "duty table" of Nikaankh is a "stone copy of a single, original legal document in its entirety."

[27] Théodoridès, "Concept of Law . . .," 295–300. Basic publication is in Sethe, "Prozessurteil . . ." See also Théodoridès, "Propriéte . . .," 44–57; Green, "Perjury . . ."; Goedicke, "Zum Papyrus Berlin 9010" and *Königliche Dokumente* . . ., 8.

[28] See Allam, "*Quenbete*," 60–61; Théodoridès, "L'acte . . .," 715–72; Helck, *Akten* . . ., 19–20; Doret, *Verbal System* . . ., 79.

[29] Gödecken, *Meten* . . .; Endesfelder, "Metjen . . ."

[30] Goedicke, *Rechtsinschriften* . . ., 31–43; Helck, *Akten* . . ., 22, 142.

[31] See Helck, *Akten* . . ., 108–10.

[32] Smither, "Old Kingdom Letter . . ." See now Vittmann, *Elephantine* . . ., 32–34. See also P. Cairo 58043, Baer, "Deed . . ."

1.4 *Miscellaneous Non-legal Sources*

1.4.1 Old Kingdom titles, often honorific, attest to the complexity of the court and society. Scholars frequently attempt to determine the specific functions of titles possessing a legal character.[33] The appearance and disappearance of such titles may naturally reflect reorganisation of the legal and administrative system.[34] However, since there is generally no other evidence apart from the title itself, the results are speculative.[35]

1.4.2 The relatively abundant Old Kingdom tomb biographies are normally of an idealizing character and reveal few details of the legal system or legal cases. There are some exceptions, such as the Biography of Weni, which mention, albeit vaguely, legal situations and transactions. High officials often emphasize their probity: "I have given bread to the hungry, clothes to the naked. I have never judged one of two contestants in a manner in which I could deprive a son of his father's property."[36]

1.4.3 In a graffito, another worthy proclaims: "I did not rob another of his property. No citizen[37] was driven from his plot. There was never another complaining about me among all the people. There was no one else satisfied with his favour (alone) without graft."[38]

1.4.4 Scarcely any literary texts survive on Old Kingdom manuscripts, but several works, preserved on later papyri, may date from that period.[39] The Teaching of Ptahhotep, for example, is often attributed

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[33] On titles, see esp. Strudwick, *Administration* . . ., 172–346. On the legal significance or meaning of names, see Ranke, "Personennamen . . ." (not seen).

[34] Thus Strudwick, *Administration* . . ., 197, observing that the title *ỉmy-r ḥ.t wr.t* vanished after the early Sixth Dynasty, remarks: "Perhaps there was an administrative reorganisation at that time, the main result of which was to reduce the number of titles extant in various institutions." See also Eichler, *Untersuchungen* . . ., 157–61, and esp. 160–61, where he distinguishes between "rank-titles," indicating the place in the social hierarchy (e.g., *smr-wʿ.ty*), and official titles which do indicate a specific activity; Eyre, "Work . . .," 6; de Cenival, "A propos . . ."

[35] See, e.g., Coulon, "Véracité . . .," 119.

[36] Inscription of Pepinakht, *Urk.* 1, 133.

[37] *nḏs*, or "private person, commoner."

[38] Hatnub Gr. 22, 6–10 (Anthes, *Hatnub* . . ., 48–49); translation of Doret, *Verbal System* . . ., 155.

[39] But compare Schipper, "Von der Lehre des Sehetep-ib-reʿ," 172.

to the late Old Kingdom, although only first extant on Middle Kingdom papyri.[40] The instruction is placed in the mouth of the chief legal officer of the land, the vizier, Ptahhotep, who seeks "a staff of old age," a well-attested expression for one assisting an elderly person or official (and succeeding them in their office).[41] This composition touches upon legal topics, such as inheritance and court-setting disputes.[42]

1.4.5 Throughout their history, the Egyptians composed letters of complaint or petition to deceased relatives. Such Letters to the Dead sometimes have a legal background, often having to do with disputes over inheritance (see 9.2 below).

1.4.6 The Old Kingdom religious compositions, such as the Pyramid Texts, also occasionally refer to legal matters, albeit vaguely.[43]

2. Constitutional and Administrative Law

2.1 *The King*

By the time of Snoferu (Third to Fourth Dynasties), and presumably during much of the formative Archaic period (Zero to Third Dynasties),[44] the pharaoh is the absolute monarch in Egypt.[45] His position was supported theologically, and in theory at least, he firmly controlled the administrative and legal machinery of the Old Kingdom.[46] Scholars have long debated whether the Egyptians consid-

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[40] *LÄ* 3, col. 990; cf. Johnson, "Legal Status . . .," 180, and Eyre, "Work . . .," 38. Significantly, perhaps, it does mention *hp.w* "laws," a term that only comes into common usage in the Middle Kingdom; see Boochs, *Strafrechtliche Aspekte* . . ., 19; Lurje, *Studien* . . ., 67.

[41] See McDowell, "Legal Aspects . . ."

[42] The *djadjat* court, however, does not appear in Ptahhotep.

[43] E.g., Lichtheim, *AEL* 1, 47 (Utterance 486). See Crozier-Brelot, "Projet de lexique . . .," 39–40; Boochs, *Strafrechtliche Aspekte* . . ., 36 (on *wḏ*ʿ [*mdw*]), 70–71 and also "Religiöse . . ."; Loprieno, *Egyptians* . . ., 195; Mrsisch, "Gehört . . ."; Lorton, "Treatment . . .," 4 (on the concept of Last Judgment).

[44] See now Menu, "Naissance du pouvoir pharaonique."

[45] On the position of the king within the law, see Théodoridès, "Concept of Law . . .," 294–95; Boochs, *Strafrechtliche Aspekte* . . ., 37–38.

[46] See, e.g., Martin-Pardey, "Gedanken . . .," 235; Goedicke, *Rechtsinschriften* . . ., 190–91.

ered the pharaoh essentially human or divine; the office displays both aspects.[47] In any case, the image of the pharaoh effectively overwhelms and permeates our evidence—almost all of the extant sources relate in some way to the king.[48] The pharaoh is closely associated with *maat*, the Egyptian concept of right order and justice, personified as a goddess.[49] A remote figure, no Old Kingdom texts recount the active participation of the king in court cases.[50] The exemption decrees provide the best insight into the mechanics of the enforcement of royal will.[51] A mortuary priest litigating against a fellow member of a mortuary endowment (Sixth Dynasty) may be accused in the name of the king, that is, under the authority of the royal courts.[52]

2.1.1 The mortuary endowments forming the subject of most Old Kingdom legalistic texts appear to have been ultimately royal gifts to the officials named.[53] In *Urk.* 1, 12, l. 17, for example, the mortuary endowment (fields, servants, and other property) is clearly described as having been given to the man by the king.[54]

2.1.2 *The Legislature*

If orders issued by a king are considered a form of legislation, then Old Kingdom royal decrees may be described as such.[55]

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[47] O'Conner and Silverman, eds., *Ancient Egyptian Kingship*. See also Menu, "régicide . . ."

[48] Indeed, some explain the absence of a comprehensive legal code by the unique nature and position of the pharaoh, e.g., Wilson, *Culture* . . ., 49. A person generally attributes his office to the king, not to a lesser official, e.g., *Urk.* 1, 99, 3: "His [majesty appointed] me as warden of Nekhen."

[49] See Teeter, *Presentation of Maat* (New Kingdom); Lorton, "King . . .," 58 and "Towards . . .," 464; Otto, Prolegomena . . ."

[50] Hornung, "Pharaoh . . .," 311–12; contra, Boochs, *Strafrechtliche Aspekte* . . ., 32. See also Lorton, "Treatment . . .," 10; Otto, "Prolegomena . . .," 156; Goedicke, "Origins . . ." Müller-Wöllermann, "Alte Reich . . .," 37, doubts annual visits of the king throughout the land (the so-called *šms-Ḥr*) in the later Old Kingdom; see fn. 2.

[51] See Blumenthal, "Befehl . . .," 76.

[52] The relevant text is much restored; see Lorton, "Treatment . . .," 7.

[53] See, e.g., Weeks, "Care . . ."

[54] *rdi.t.n n(=y) nswt r ỉm3ḫ*, "which the king gave to (me) to be honored/endowed(?)." On the "property (goods-*ỉšt*) of a *sr* (i.e., an official)" being a tomb, see Théodoridès, "Les Égyptiens . . .," 69 (= *Maat*, 89).

[55] Johnson, "Legal Status . . .," 176: "In ancient Egypt all law was given from above; there was no 'legislature' or any concept of 'legislation.'" However, see also Pirenne, "La Population . . ."

2.1.3 *The Administration*

The Old Kingdom administration of government essentially consisted of central administration, provincial administration, and local government.[56] Naturally, the dynamics and power structure changed through time.

2.1.3.1 The central administration is generally further divided into departments of treasury,[57] agriculture, and labor.[58] The chief officials of these departments were the *ỉmy-r pr-ḥḏ*, "overseer of the treasury," the *ỉmy-r šnwt*,[59] "overseer of granaries," and the *ỉmy-r k3.t*, "overseer of works." This administration monitored the wealth and productivity of the land, especially with a view towards taxation and corvée labor.[60] Much effort is devoted to the registration of persons and property.[61] In the early Old Kingdom, the pharaoh often entrusted members of the royal family with administrative assignments, but these princes with such authority are replaced about the Fourth Dynasty by non-royal families of officials.[62] A deliberate policy of shifting high officials from one administrative district to another also prevented undesirable concentration of power in the hands of indi-

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[56] For an overview of Old Kingdom administration, see Leprohon, *Civilization* . . ., 1: 279–80; Goedicke, "Royal Administration . . ."; Kanawati, *Governmental Reforms* . . .; Eyre, "Work . . .," 39–40; Gundlach, *Der Pharao* . . ., 202, 228, 231, 275–79 (description of administration of the Fifth Dynasty). On the lack of strong division in administrative competence among officials, see Müller-Wöllerman, "Alte Reich . . .," 32–33. For Old Kingdom administration, see also Martin-Pardey, *Untersuchungen* . . .

[57] For remarks on the treasury, see Eichler, *Untersuchungen* . . ., 281–84; Kemp apud Trigger et al., *Social History* . . ., 82–83.

[58] Leprohon, *Civilization* . . ., 1: 279. Leprohon emphasizes the importance of the minister of labor ("overseer of royal works" *ỉmy-r k3.wt nswt*) and the head of the treasury. The minister of labor was, along with the vizier, the chief officer of the Fourth Dynasty. On the *ỉmy-r k3.t*, who was not only responsible for building but also for the workers, see Goedicke, *Königliche Dokumente* . . ., 58.

[59] The office of overseer of the granary (*ỉmy-r šnwt*) was created in the Fifth Dynasty (earlier perhaps under the overseer of the ministry of labor or vizierate). See also Schmitz, "Scheunen, Scheunenvorsteher . . .," cols. 591–98; O'Connor apud Trigger et al., *Social History* . . ., 214–15 and 218.

[60] See Eyre, "Work . . ."; Bakir, *Slavery* . . ., 2, 4. On corvée labor, see also Strudwick, *Administration* . . ., 247–49; on corvée in the Old Kingdom royal decrees, see Hafemann, "Arbeitspflicht im alten Ägypten. I." On corvée labor terminology, see Gödecken, *Meten* . . ., 137–39.

[61] See, e.g., Goedicke, *Königliche Dokumente* . . ., 19; Eyre, "Work . . .," 39 (on taxation having its origin in biennial royal progress through the country counting the livestock).

[62] So Helck, *LÄ* 1, col. 672. See also Müller-Wöllerman, "Alte Reich . . .," 31. On the transition of the Fourth Dynasty, see Helck, *Wirtschaftsgeschichte* . . ., 56 (officials/princes receive towns for their support).

vidual provincial officials.[63] The details of the process by which the king transmitted his orders are still obscure.[64] The exemption decrees illuminate to some extent the role and position of the temples.[65] In the Fifth Dynasty, a general secretariat was formed, presumably to help expedite the king's orders.[66] A bureaucratic mechanism must have existed for receiving complaints and requests; some royal edicts seem to result from direct petition, the decree being addressed to a specific official.[67]

2.1.3.1.1 The central administration was headed by the vizier.[68] The office of vizier existed from about the Third Dynasty through the Thirtieth Dynasty (fourth century). Until the later Old Kingdom the holders of this office were generally royal princes.[69] There is considerable New Kingdom evidence on the vizierate, but relatively little from the Old Kingdom.[70] The limitations of the office are therefore not clear; at times, there may even have been two viziers, one responsible for Lower Egypt, one for Upper Egypt.[71] Some suppose that

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[63] Hornung, *Gründzuge* . . ., 21.

[64] Martin-Pardey, *Untersuchungen* . . ., 103–04. Garcia, "Administration . . .," 126, emphasizes the gradual extension of powers to officials with older titles (Fifth Dynasty), a process leading towards the influential *ḫry tp ʿ3* of the Sixth Dynasty.

[65] See Eichler, *Untersuchungen* . . ., 289–93. On the connection between the royal estates and the temples, see, e.g., Weeks, "Officials . . .," 14–17.

[66] Leprohon, *Civilization* . . ., vol. 1, 279. This office may have composed the royal decrees and memoranda which guided the individual departments in their decisions and actions. On the *sš ʿ-nswt* ("scribe of the king's documents"), see Martin-Pardey, *Untersuchungen* . . ., 102–03; Eyre, "Work . . .," 6. On the royal secretariat, see Helck, *Zur Verwaltung* . . ., 277–78; Ward, "Old Kingdom . . .," 382–83.

[67] See Hafemann, "Arbeitspflicht im alten Ägypten. I," 6; Théodoridès, "Charte . . .," 693.

[68] Lurje, *Studien zum altägyptischen Recht*, 31–32; Strudwick, *Administration* . . ., 330. On the vizier in general, see Strudwick, *Administration* . . ., 300–335. He observes (304) that the vizier often receives the designations *t3yty*, "he of the curtain," *s3b* "judge (?)," *ṯ3ty* "vizier." On the vizier's functions, see Strudwick, *Administration* . . ., 328–34. On early juristic evidence for the vizier, see Goedicke, *Königliche Dokumente* . . ., 222. One of the chief sources for the vizierate is the "Duties of the Vizier," only preserved in early Eighteenth Dynasty copies. Some scholars believe that sections of this composition may derive originally from the Old Kingdom; see Lurje, *Studien* . . ., 171. See further Trigger et al, *Social History* . . ., 84, Boochs, *Strafrechtliche Aspekte* . . ., 38–39; Gestermann, *Kontinuität* . . ., 147–53. A rare example of a text illustrating the administrative workings of the vizierate is Gardiner, "Administrative Letter" (Sixth Dynasty). On the vizier as head of the bureaucracy, above the overseer of Upper Egypt, see Hafemann, "Arbeitspflicht im alten Ägypten. I," 18.

[69] Hornung, *Grundzüge* . . ., 21. See also: Valloggia, "Vizier . . .," 132; Helck, *Zur Verwaltung* . . ., 17–64; Strudwick, *Administration* . . ., 312–13.

[70] Leprohon, *Civilization* . . ., 1: 279.

[71] See Van den Boorn, *Vizier* . . ., 20; Strudwick, *Administration* . . ., 321–28.

in the Old Kingdom the vizier could announce legal decisions only on behalf of the king, but this, too, is not certain. Since he was also chief finance minister, the exemption decrees are issued in his name. The viziers of the Old Kingdom held such titles as "overseer of the six great houses," which is a term for the legal establishment,[72] and "overseer of the royal document-scribes."[73] His functions naturally changed through time. The Old Kingdom vizier does not appear, for example, to have had, even theoretically, the responsibility of sealing or witnessing sale deeds, as was true for the New Kingdom.[74]

2.1.3.1.2 The king's role in the administration is illustrated by a Coptos Decree of the late Old Kingdom wherein the king appoints the son of the chief justice and vizier to prestigious government positions.[75] The son is to act as or become a *sr*, "magistrate." The pharaoh clearly delineates his geographic area of jurisdiction, namely, the First through Seventh Nomes in Upper Egypt. His authority is also closely defined.[76] He is to serve under his father, but above other counts, seal-bearers, and similar officials. The inheritable nature of the office is also apparent from this inscription.[77] The procedure which lends official validity to the decree is in the end of the document: "Sealed in the King's own presence in the second month of the second season, day 20."

2.1.3.1.3 In the royal decrees for appointments it is explicitly said that others had no legal right to contest the appointment.[78]

2.1.3.1.4 The precise character of the connection between the central government and the provinces, as well as the details of provincial administration, remain obscure.[79] Leprohon emphasizes that royal

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[72] Strudwick, *Administration* . . ., 188–98.

[73] Goedicke, *Königliche Dokumente* . . ., 57; Strudwick, *Administration* . . ., 199–216.

[74] This seems to have been the responsibility of the witnesses to the transaction; see Strudwick, *Administration* . . ., 333, citing Goedicke, *Rechtsinschriften* . . ., 41, 195.

[75] Coptos Decree M (Eighth Dynasty; Neferkauhor: Goedicke, *Königliche Dokumente* . . ., 184–89); translation in Wente, *Letters* . . ., 21; Théodoridès, "Les Egyptiens . . .," *Maat*, 74–78; Fischer, *Dendera* . . ., 94.

[76] Goedicke, *Königliche Dokumente* . . ., 184.

[77] Martin-Pardey, *Untersuchungen* . . ., 146.

[78] See, e.g., Goedicke, *Königliche Dokumente* . . ., 153.

[79] Leprohon, *Civilization* . . ., 1: 280. Some administrators may have traveled throughout Egypt, but still lived, presumably, in the capital; see Harari, "Les Administrateurs itinérants . . ."

authority over the provinces "increased gradually" but that the provincial local administrations retained responsibilities.[80] These were largely agricultural, and presumably the villages were generally left to themselves, once they had paid their taxes.[81] The exemption decrees, on occasion issued by the king in response to complaints by officials,[82] are informative on the nature of provincial administration, particularly regarding the officials addressed and charged with executing royal directives.

Such directives from the king and central authorities were presumably carried throughout the land by royal messengers. Limitations could be placed on the aid which such emissaries might require from local institutions.[83]

2.1.3.2 *Provincial Administration*

2.1.3.2.1 It can be difficult to identify the provincial or royal court origin of certain officials.[84] Several titles occur for offices dealing with provincial administration.[85] In the early Fourth Dynasty the *mr-wp.t* seems have been in charge of one or more nomes.[86] The overseer of Upper Egypt (*imy-r šmʿw*) was created in the Fifth Dynasty as a sort of minister of provincial affairs.[87] In the late Old Kingdom there was apparently a division of Upper Egypt into three distinct sections, each of which was subordinate to an "Overseer-of-Upper-Egypt," *imy-r Šmʿ*.[88]

These officials were evidently responsible for civic order. Weni, for example, boasts that he acted as "overseer of Upper Egypt" so that "no one did any harm to his fellow."[89]

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[80] Leprohon, *Civilization* . . ., 1: 279, but see also Kanawati, *Governmental Reforms* . . ., 131.

[81] Leprohon, *Civilization* . . ., 1: 279. On Old Kingdom taxes and corvée labor, see Müller-Wöllermann, "Warenaustausch . . .," 150–58; Goedicke, *Königliche Dokumente* . . ., 69; Hafemann, "Arbeitspflicht im alten Ägypten. I," 10–11.

[82] Goedicke, *Königliche Dokumente* . . ., 111.

[83] E.g., ibid., 41.

[84] Eichler, *Untersuchungen* . . ., 261, and see also 259.

[85] These titles naturally change through time. See also Fischer, *Dendera* . . ., 12.

[86] Gödecken, *Meten* . . ., 50–51.

[87] Leprohon, *Civilization* . . ., 1: 279–80; Martin-Pardey, *Untersuchungen* . . ., 152–70; Gardiner, *Egypt* . . ., 103–4; Hornung, *Gründzuge* . . ., 31; Théodorides, "Charte.," 705–6; Goedicke, *Königliche Dokumente* . . ., 112; Kanawati, *Government Reforms* . . ., 14.

[88] See also Goedicke, *Königliche Dokumente* . . ., 183; Gödecken, *Meten* . . ., 66; Vittmann, *Priester und Beamte im Theben der Spätzeit*, 190.

[89] *Urk.* 1, 106, 4–5, and cf. also Doret, *Narrative Verbal System* . . ., 53.

2.1.3.2.2 The nome is the basic geographical unit of administration in the Old Kingdom,[90] although the precise divisions are still in process throughout this period. Each of the approximately forty-two nomes (the traditional number) was governed by a nomarch (*ḥry-tp-ʿ3 n* GN) in the late Old Kingdom.[91] Nomarchs wielding significant independent power only appear in the Sixth Dynasty.[92] The nomarch's duties were probably also partly juridical in character.[93] In addition to the nome centers there were separately administered pyramid towns.[94] The First Intermediate period is characterized by nomarchic families usurping royal authority.[95] There is a gradual decrease in central authority, and a corresponding increase in local power.[96]

2.1.3.2.3 The local provincial officials often inherit their office from their fathers. Even those administrators of provincial royal estates and nomes of the central government may have resided in the capital of Memphis. It seems that through most of the Old Kingdom the central government exerted a strong control over the provinces.[97] Such provincial administrators were apparently concerned with taxation and labor obligations, but the details of their authority are lacking.[98] Not only the central administration but also provincial officials exercised some juridical functions as well. Such worthies often state in their tomb biographies: "I judged two disputants so that they were satisfied."[99]

2.1.3.2.4 Temple functionaries might also exercise juridical functions.[100] The heads of priestly establishments could initiate proceed-

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[90] Gestermann, *Kontinutät* . . ., 135.

[91] Leprohon, *Civilization* . . ., vol. 1, 280. See also Gestermann, *Kontinuität* . . ., 136; Kanawati, *Government* . . ., 33.

[92] Leprohon, *Civilization* . . ., vol. 1, 280; Hornung, *Grundzüge* . . ., 21. On the rise of the *ḥry-tp-ʿ3* in the Sixth Dynasty, see Gestermann, *Kontinuität* . . ., 155–56. Martin-Pardey, *Untersuchungen* . . ., 111.

[93] Martin-Pardy, *Untersuchungen* . . ., 184. For the association of the powerful nomarchs of the First Intermediate Period with *qenbet* courts, see Allam, "*Quenbete* . . .," 28–30.

[94] Gestermann, *Kontinuität* . . ., 135.

[95] Cf. Hornung, *Gründzuge*, 42.

[96] Gestermann, *Kontinuität* . . ., 137. Cf. Müller-Wöllermann, "Alte Reich . . .," 31.

[97] Goedicke, *Königliche Dokumente* . . ., 25–26, 112.

[98] Eyre, "Work . . .," 19.

[99] Martin-Pardy, *Untersuchungen* . . ., 185.

[100] See Hafemann and Martin-Pardey, "Arbeitspflicht im alten Ägypten. I," 4; Eyre, "Work . . .," 7; Roth, "Organization . . .," 117–18.

ings against disobedient subordinates. In the Decree of Neferirkare the king addresses the "overseer of priests," who has the power to transfer those disobeying the royal commands to the *Ḥw.t-wr.t*, the "Great House" (i.e., the court).[101]

2.1.3.3 *Local Government*

The *ḥ3ty-ʿ*, "local prince," "nomarch," "mayor," is an important administrative and juridical title. In the Old Kingdom "new towns" or "villages," are established, controlled by *ḥq3.w ḥ.wt* ("rulers of manors").[102] There is also a "court of the district" (*qnb.t n.t w*).[103] Pious foundations possibly played a major role on the local level.[104] The "local governors" (*ḥry-tp*) and "nobles," "magistrates," (*sr.w*) may also be designations of local officials.[105]

2.1.4 *The Courts*

2.1.4.1 The usual term for the court or court system in the Old and Middle Kingdoms is the "Six Great Houses" (*ḥ.t wr.t* 6).[106] The Sixth Dynasty official Weni, for example, states "(that he heard) cases alone with only the Judge and Vizier concerning every secret and everything related to the name of the king from the Royal Harem and the Six Great Houses."[107] The institution is still obscure, the chief source of information being the enigmatic titles of persons connected with it.

D3d3.t (*djadjat*)[108] is a particularly common term for a "court" in the Old Kingdom and thereafter. Such courts seem to have had significant administrative or advisory functions, in addition to judicial duties.[109]

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[101] Martin-Pardey, *Untersuchungen* . . ., 93–94.

[102] Andrassy, "Das *Pr-šn*ʿ," 31–32. For the *ḥry.w-tp* ("local governors") and *ḥq3.w-ḥ.wt* ("rulers of manors"), see Eyre, "Work . . .," 19. Van den Boorn, *Vizier* . . ., 100, also discusses the "leader of the funerary domain."

[103] Allam, "*Quenbete* . . .," 45.

[104] Trigger et al. *Social History* . . ., 107, and also 105.

[105] Goedicke, *Königliche Dokumente* . . ., 112–13.

[106] See Strudwick, *Administration* . . ., 188–98; Boorn, *Vizier* . . ., 8; Trigger et al., *Social History* . . ., 83–85. See further Boochs, *Straftrechtliche Aspekte* . . ., 32–33.

[107] *Urk.* 1, 99. Baines, "Restricted Knowledge . . .," 17, discusses the legal authority of Weni. See also Kanawati, *Governmental Reforms* . . ., 29.

[108] See especially Hayes, *Papyrus* . . ., 45–46; Lurje, *Studien* . . ., 64.

[109] Hayes, *Papyrus* . . ., 45.

2.1.4.2 The court appears to be sometimes the public place where formal legal agreements are confirmed.[110] Thus, a transaction concerning transfer of property was to be concluded before a "court (*ḏ3ḏ3.t*) of *Akhet-Khufu*," apparently the local court near the Cheops pyramid.[111] Actual investigations seem occasionally to be conducted where the crime was committed. Weni (*Urk.* 1, 100) implies that the inquiry into the charge against the queen took place in the royal harem itself.[112] The vizier himself would possibly judge in his bureau. The Abu Sir papyri (Sixth Dynasty) indicate the existence of an "open room" or place wherein judicial hearings were held.[113]

2.1.4.3 The vizier exercised authority over the court in the middle of the Fifth Dynasty, presumably in his function as "overseer of the great house," *imy-r ḥw.t wr.t.*[114] Unfortunately, as already mentioned, the details of the court machinery are still unknown. Other officials with titles incorporating such terms as *wḏʿ-mdw*, "judging the matter/words," may also have presided over cases.[115] P. Berlin 11310 refers to *sr.w nw rt H.t-wr.t* "magistrates of the gate of the Great House."[116]

2.1.4.4 There were other types of courts or designations for such apart from the "Six Great Houses" and the *djadjat.* A "Hall of Horus" (i.e., the king) appears in the Old Kingdom exemption decrees as the place to which those disobeying their stipulations are brought.[117] This is perhaps parallel to the "Six Great Houses" (*ḥw.t-wr*).[118] The letter P. Berlin 8869 (Sixth Dynasty), mentioning various "crimes" of a Count Sabni, also refers to a dispute in the "Hall of Horus."[119] There is no actual evidence for a formal court system of appeal. Some scholars have suggested that there may have been traveling courts.[120]

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[110] Allam, "Publizität . . .," 32.
[111] Goedicke, *Die privaten Rechtsinschriften* . . ., 159–60.
[112] Cf. McDowell, *Jurisdiction* . . ., 242.
[113] Van den Boorn, "*Wḏʿ-ryt*," 7.
[114] For the important titles *imy-r ḥ.t-wr.t* 6 and *imy-r ḥ.t wr.t*, see Strudwick, *Administration* . . ., 176–98, with remarks on the association with the vizier, 178.
[115] Thus, Strudwick, *Administration* . . ., 178, mentions the *mdw rḫy.t*, *iwn Knm.t*, *nst ḫntt*, *ḫm-nṯr m3ʿ.t* as possessing a legal significance but with unclear details. The *ḫry-tp nswt* also had legal functions (183).
[116] Van den Boorn, "*Wḏʿ-ryt*," 8.
[117] Lorton, "Treatment . . .," 9; Goedicke, *Königliche Dokumente* . . ., 109–10; Théodoridès, "Charte . . .," 102 (= *Maat*, 698).
[118] Lorton, "Treatment," 9.
[119] See now Vittmann, *Elephantine Papyri* . . ., 33.
[120] Goedicke, *Königliche Dokumente* . . ., 222.

2.1.4.5 While we have numerous references to "judges," the details are sparse.[121] One common title for a judge (*ỉmy-r3 sš s3b*) implies a position within the legal branch of the vizirate.[122] A judge is mentioned in Weni's biography (*Urk.* 1, 99) in connection with cases concerning the king, the Royal Harem, and the Six Great Houses. Weni (*Urk.* 1, 100), to be sure, boasts that he can conduct inquiries without a "chief judge and vizier" or any other official being present.[123]

2.1.4.6 Officials other than those formally entitled "judges" probably fulfilled such functions on occasion.[124] Martin-Pardey even doubts the existence of an independent judicial agency in the Old Kingdom and that such titles as *s3b* should be translated "judge."[125] In tomb biographies, the deceased often claims that he never abused his office of judge: "I gave bread to the hungry, clothes to the naked. I have never judged one of two contestants in a manner in which I could deprive a son of his father's property."[126]

Weni was involved in important legal cases as a "senior warden of Hierakonpolis" (*Urk.* 1, 99). He also was apparently empowered to conduct weighty investigations into harem conspiracies while still an "overseer of the *Ḥnty-š*," that is, an overseer of the mortuary workers (*Urk.* 1, 101).[127]

The *wr md̲ šmʿw*, "great one of the tens of Upper Egypt," was "possibly concerned with work-organisation as well as legal matters,"[128] and may have also exercised judicial authority.[129]

Such titles as *ỉmy-r sḫ sḫ.t tš n* (Tenth Nome), "overseer of the field-scribe of (Tenth Nome)," indicate an administrative mechanism

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[121] Allam, "Richter," col. 254; Boochs, *Strafrechtliche Aspekte* . . ., 39–40. On judging correctly, see Coulon, "Véracité . . .," 121–22.

[122] There are other similarly formed titles, e.g., "sub-overseer of the scribes of the two Great Houses, right side of the palace" (cf. the common Old Kingdom term for the court house "six great houses"; and *ḥry sšt3 n sd̲m.t wʿ* "master of that which one alone judges"): Fischer, "Marginalia II," 69. See also Allam, "Richter," cols. 255–56.

[123] On the *s3b r3 Nḫn*, see de Cenival, "A propos . . .," 68–69.

[124] Cf. Goedicke, *Königliche Dokumente* . . ., 186. See also Fischer, *Varia Nova* . . ., 132, 227.

[125] "Richten . . .," 157–58. Cf. Gödecken, *Meten* . . ., 69.

[126] Inscription of Pepinakht (*Urk.* 1, 133)

[127] See Kanawati, "Deux . . ."

[128] Strudwick, *Administration*, 197.

[129] Ibid., Van den Boorn, *Vizier* . . ., 33–34; Hafemann, "Arbeitspflicht im alten Ägypten. I," 8; Ryholt, *Political Situation* . . ., 92.

for agriculture and fields disputes.[130] Several other scribal positions appear to have legal significance as well, such as the "overseer of the scribe of the royal document."[131]

2.1.5 *Police*

The designations for police varied widely in different places and times in Egypt. It is difficult to discern a distinct hierarchical system of police bureaucracy.[132] In the Old Kingdom, the *s3-pr*, "gendarmerie," are responsible for enforcing justice and economic sanctions.[133] They punish delinquent taxpayers, and provide security for desert expeditions. The so-called "pacified Nubians" may also have been a type of police.[134] The *ỉmy-r šnt*, "overseer of disputes," first appears in the First Intermediate period. The office is attested into the New Kingdom and then, in an archaizing form, in the Late period.[135]

Jails or prisons for long-term incarceration in the modern sense are hardly known from ancient Egypt.[136]

3. Litigation

3.1 *Parties*

The meager evidence does not suggest that women were at any disadvantage as litigants in law suits.[137] Slaves nowhere appear as litigants.

3.2 *Procedure*

3.2.1 The evidence is too sparse to speak confidently of standard procedure in the Old Kingdom. A lawsuit may have commenced with a written complaint.[138] The plaintiff possibly had to take upon

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[130] Martin-Pardey, *Untersuchungen* . . ., 182.
[131] Strudwick, *Administration* . . ., 181, 199, 204–5, 208–16.
[132] Andreu, "Polizei," cols. 1068–71.
[133] Andreu, "Sobek . . ."
[134] But see Goedicke, *Königliche Dokumente* . . ., 62–63.
[135] Van den Boorn, *Vizier* . . ., 50–51.
[136] Boochs, *Strafrechtliche Aspekte* . . ., 81.
[137] Cf. Pestman, *Marriage* . . ., 182.
[138] Seidl, *Einführung* . . ., 34. Cf. Menu, "Prête . . .," 68.

him/herself the responsibility of seeing that the opponent was brought to court (i.e., self-help).[139] Other means of reconciliation were probably attempted before proceeding to the formal court. Judging from such texts as P. Berlin 9010,[140] civil lawsuits consisted of oral petitions or arguments presented to the courts by plaintiff and defendant.[141] There is no evidence for lawyer advocates. While the mortuary estate obviously played a major role in the society and much care was lavished on setting up such institutions, the mode of enforcing the mortuary estate stipulations is often left quite vague: "As for any person who will cause a dispute, there is a case with him."[142] On occasion, accusations are made in the name of the king.[143]

3.2.2 We do not know, unfortunately, in which court the case of the exceptionally important P. Berlin 9010 was tried.[144] Interpretations of the case recorded in P. Berlin 9010 differ.[145] The two contestants are Sebekhotep (no title preserved) and Tjau (who inherited his father's title "overseer of caravans"). According to Théodoridès,[146] Tjau inherited the property of his deceased father, User, and indeed has formal control over his mother and his siblings. Sebekhotep brings a suit against him, claiming that the father, User, made a will or document according to which Sebekhotep controls the family and its assets. Tjau disputes the existence of this will, declaring: "His father never made it in any place whatever."

A central point, therefore, is the existence and authenticity of the document. This can only be verified by three(?) witnesses swearing that the document is genuine. They must confirm that they were present when the document was written.[147]

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[139] On the technical vocabulary for the process of bringing a law-breaker before the court, see, e.g., Goedicke, *Königliche Dokumente* . . ., 169.

[140] Théodoridès, "Concept of Law . . .," 295–300, and "Contrat . . .," 387–94 (= *Maat*); Martin-Pardy, *Untersuchungen* . . ., 186–87; Goedicke, "Zum Papyrus Berlin 9010," 338; Lorton, *Civilizations* . . ., 347; Coulon, "Véracité . . .," 125–26; Gödecken, *Meten* . . ., 189–90.

[141] Johnson, "Legal Status . . .," 6; Goedicke, *Rechtsinschriften* . . ., 40–41; Seidl, *Einführung* . . ., 17.

[142] *wnn wḏ-mdw ḥnʿ=f*, (*Urk* 1, 30, line 13).

[143] Goedicke, *Königliche Dokumente* . . ., 220–21.

[144] Seidl, *Einführung* . . ., 32.

[145] See, e.g., Goedicke, "Zum Papyrus Berlin 9010"; Baer, "Letters . . .," 13.

[146] "Concept of Law . . .," 297.

[147] Cf. Goedicke, *Rechtsinschriften* . . ., 43; Manuelian, "Essay . . .," 16.

According to Théodoridès, P. Berlin 9010 may record in fact a preliminary investigation of the dispute. Sebekhotep having brought this complaint against Tjau, the judges, not otherwise mentioned, decide how to proceed. The text contains numerous legally interesting, if obscure, statements and phrases, such as "to satisfy his wife and children."[148] While the position of Sobekhotep and the nature of the presiding court are unknown, the document exhibits several basic elements that are significant throughout Egyptian legal history: the oral nature of the proceedings, and the importance of documents, witnesses, and oaths.

3.2.3 In some (particularly sensitive?) cases, investigations or trials may have been secret. At least so the description of the conspiracy trial of the queen in Weni's inscription seems to suggest.[149]

3.3 *Evidence*

The oath or witnesses could serve to establish authenticity, but we do not know what methods an Old Kingdom court would use to ascertain proof of an assertion.[150] There is no evidence for recourse to oracles in the Old Kingdom proper; divine judgments are a phenomenon most popular in the New Kingdom and Third Intermediate period.

3.3.1 *Witnesses*

3.3.1.1 *Forensic*

In P. Berlin 9010, if Sobekhotep fails to present three (?) witnesses in support of his statement, he loses his case.[151]

3.3.1.2 *Transactional*

The property transfer of Wepemnofret (Fifth Dynasty) is recorded "in writing" and carried out before "numerous witnesses."[152] The

[148] Cf. also the obscure phrase *m ḫnw=f*, "in seinem (Haus)-Inneren," in P. Berlin 9010, for which, see Franke, *Verwandtschaftsbezeichnungen* . . ., 300–301.

[149] Poalcek, "Procès . . ."

[150] Pirenne, "Preuve . . .," 22–24, discusses P. Berlin 9010, with regard to the subject of proof. See also Seidl, *Einführung* . . ., 34.

[151] Doret, *Verbal System* . . ., 54.

[152] Goedicke, *Rechtsinschriften* . . ., 31. Cf. also the sale of Tjenti, *Urk.* 1, 158, l. 5.

legal authority of the document may be derived primarily from the list of witnesses.[153]

3.3.2 *Documents*[154]

3.3.2.1 Numerous texts refer to documents (ꜥ) establishing or supporting ownership, which seem to form the basis for executing legal actions or supporting claims.[155] In P. Berlin 9010, the court is concerned with establishing the existence and authenticity of the relevant document. Witnesses are called upon to swear oaths that the document is genuine. Apparently, three witnesses are deemed sufficient.

3.3.2.2 In the decree of Pharaoh Neferirkare forbidding the removal of any prophet for corvée or construction work, the prohibitions are followed by the declaration: "There is no 'written document' which can give any right over them."[156]

3.3.2.3 The emphasis on writing in the texts and titles implies that court verdicts and legal transactions were recorded and placed in archives.[157] Weni also characterizes one of an official's functions as "putting into writing" the details of an important case (*Urk.* 1, 101, 2).

3.3.2.4 Most preserved Old Kingdom legal texts are probably stone copies of papyrus documents, which may omit features of the original version.[158]

3.3.2.5 As in later periods, letters may serve as legally valid documents.[159]

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[153] Goedicke, *Rechtsinschriften* . . ., 41.
[154] See ibid., 194–99.
[155] Eyre, "Work . . .," 6; Gödecken, *Meten* . . ., 195. On the legal usage of the term "document" (ꜥ), see Strudwick, *Administration* . . ., 210–13; Goedicke, *Königliche Dokumente* . . ., 29; Baer, "Deed . . .," 6; Moussa and Altenmüller, *Nianchchnum* . . ., 87. On the lack of standardized format for Old Kingdom private legal decrees, see Manuelian, "Essay . . .," 13.
[156] Goedicke, *Königliche Dokumente* . . ., 22.
[157] Strudwick, *Administration* . . ., 181. On sealing as a guarantee of the authenticity of the document, see Boochs, *Siegel und Siegeln* . . .
[158] Helck, "Akten. I." *LÄ* 1, col. 118.
[159] Baer, "Deed . . .," 6.

3.3.3 *Oaths*

The promissory and assertory oaths were an important component of legal procedure throughout Egyptian history.[160]

A promissory oath may be taken in a legal setting before witnesses.[161] In the house sale (?) transaction of Tjenti, the seller, Tjenti, gives a kind of warranty: "The scribe Tjenti said: 'I give justice, and you will be satisfied with it so that the entire content of this house may become transferred. You have fulfilled this payment with goods in kind.' Sealed with the professional seal, in the presence of the council of the pyramid called Horizon of Khufu and in the presence of many witnesses," who are then listed by name.[162] It has been suggested that on the basis of the predominance of priests in the witness section, the oath was taken in a temple.[163] In P. Berlin 9010, three witnesses take an oath regarding the authenticity or existence of a document.[164]

4. Personal Status

4.1 *Citizenship*

4.1.1 While terms, in part quite archaic, such as *ḫnmmt*, "the sun-people,"[165] *rḫy.t*, "commoners,"[166] and *pʿ.t*, "nobility,"[167] suggest a differentiation of status,[168] the legal implications of these designations are still quite unclear. There exists no word in the Old Kingdom generally translated "citizen," and the issue of "citizenship" is not raised in Old Kingdom texts.[169] The Old Kingdom decrees occa-

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[160] See Menu, "serment . . ."; Lurje, *Studien* . . ., 132–53; Coulon, "Véracité . . ."; Wilson, "Oath . . ."

[161] Wilson, "Oath . . .," 140.

[162] Translation after Théodoridès, "L'acte . . .," 727, and see also 743–44; Wilson, "Oath . . .," 141; Seidl, *Einführung* . . ., 24; Malinine, "Notes juridiques . . .," 100.

[163] Seidl, *Einführung* . . ., 51.

[164] Green, "A Means of Discouraging Perjury . . ."

[165] This is of quite uncertain meaning, see Lorton, "Legal and Social Institutions . . .," 351.

[166] Loprieno, *Egyptians* . . ., 191.

[167] As Lorten notes, it is the "hereditary elite that comprised the civil administration, the priesthoods, and (beginning in the New Kingdom), the upper echelons of the military" ("Legal and Social Institutions . . .," 351).

[168] See Helck, *Wirtschaftsgeschichte* . . ., 98–103, on population and class in the Old Kingdom; Théodoridès, "Les Égyptiens . . ." On the legal status of *rmṯ*, "man," in the Inscription of Metjen, see Goedicke, *Rechtsinschriften* . . ., 7–8.

[169] Goedicke, *Königliche Dokumente* . . ., 218–19, takes *ʿnḫ.w*, "living-ones," to denote

sionally raise questions regarding the free or unfree status of the persons mentioned.[170] On the basis of the exemption decrees, Goedicke, however, emphasizes the equality before the law of "free" individuals, observing that there does not seem to have existed any difference between the legal standing of the priesthood from that of the laity.[171]

4.1.2 Some consider that the private individual in the Old Kingdom had, in fact, significant rights.[172] Théodoridès, observing that the Old Kingdom sale of Tjenti, concluded in a local council, was witnessed by craftsmen of comparatively humble status, claims that such persons must have enjoyed "civil rights."[173] Several scholars have remarked on the occasional signs of independence of Old Kingdom workmen.[174] Théodoridès stresses, moreover, that even under the Fourth Dynasty, a queen was obligated to pay those who built her tomb.[175]

4.2 *Class*

4.2.1 The *sr.w*, "noblemen, magistrates," were the potential legal authority for lawsuits pertaining to property[176] and were responsible for dispensing justice.[177] The *sr.w* possess administrative power, establishing the imposts and corvees. High officials could also be brought up on charges before the *sr.w*.[178] Some argue that *sr* is not a true title but rather an indicator of status.[179] An individual might become

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"citizens." See also Lorton, "Treatment . . .," 11; Théodoridès, "Concept of Law . . .," 302.

[170] Goedicke, *Königliche Dokumente* . . ., 207–8.

[171] Goedicke, *Königliche Dokumente* . . ., 114.

[172] An extreme expression in Nordh, *Aspects* . . ., 169.

[173] "Concept of Law . . .," 293. On the relative freedom of craftsmen, see also Helck, *Wirtschaftsgeschichte* . . ., 104–6.

[174] Eyre, "Work . . .," 25. Cf. Goedicke, *Rechtsinschriften* . . ., 39,

[175] Théodoridès, "Concept of Law . . .," 293, and see also 301.

[176] Theodorides, "Citoyens . . .," 67 (= *Maat*, 87), enumerates their duties. See also Martin-Pardey, *Untersuchungen* . . ., 182; Goedicke, *Königliche Dokumente* . . ., 113–14; Lurje, *Studien* . . ., 37–39. Helck, *Wirtschaftsgeschichte* . . ., 100, distinguishes (1) officials; (2) expressly "freed" persons (from labor); (3) the mass of people registered and liable for work; (4) craftsmen and specialists; (5) royal family, which is outside of state organization.

[177] See Helck, "Beamtentum," col. 672, on the judging power of the *sr.w*.

[178] See especially Martin-Pardey, *Untersuchungen* . . ., 184–85. Cf. also the Inscription of Pepiankhheriyeb (*Urk.* 1, 223, 12–16; Doret, *Verbal System* . . ., 74; Théodoridès, *Maat*, 88–90). See also Théodoridès, "Les Égyptiens . . .," 68–70.

[179] Goedicke, *Königliche Dokumente* . . ., 32 and *Rechtsinschriften* . . ., 60; Eichler, *Untersuchungen* . . ., 169. See also Théodoridès, *Maat* . . ., 75.

a *sr* through appointment.[180] In the Sixth Dynasty inscription of *Henqw* from Deir el-Gabrawi, is the statement "As for the ones among them who belonged to the servants (*mry.w*), their position was made into that of an official (*sr*)."[181]

4.2.2 The state was clearly interested in tabulating and classifying the population; the exemption decrees may refer to the registration of inhabitants.[182]

4.2.3 If not possessing a strictly legal sense, some words such as *nḏs*, "commoner, poor person," do seem to indicate a lower status, if not one of complete servitude.[183] Thus in an Old Kingdom text the speaker boasts: "I did not rule against a commoner (*nḏs*) because he did not appear before me in the proper manner as a petitioner bringing gifts."[184]

4.2.4 Several other terms pertaining especially to land and those cultivating it may have legal significance. Of these may be mentioned the *mr.t* who are "tenants on non-royal lands," "perhaps including usufruct lands."[185] The *mr.t* are under the control of private persons, mortuary foundations, and religious institutions. They are mentioned in lists together with land and cattle.[186] However, they are not necessarily slaves.[187] *Mr.t* may belong to the "queen," the "princes," or any "friend" or magistrate (*smr sr nb*).

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[180] Coptos Decree M. But see Fischer, *Dendera* . . ., 101. On social mobility, see Eyre, "Work . . .," 38–39.

[181] Schenkel, *Memphis* . . ., 43. See also Loprieno, *Egyptians* . . ., 191–92; Eyre, "Work . . .," 38–39.

[182] See, e.g., Goedicke, *Königliche Dokumente* . . ., 76, 212, and 219; Fischer, *Varia Nova* . . ., 52. Pirenne "Preuve . . .," 9–25.

[183] *nḏs* "Bürger," *Wb.* 2, 385/11. Cf. Hornung, *Gründzuge* . . ., 41.

[184] Schenkel, *Memphis* . . ., 78.

[185] Lorton, "Legal and Social Institutions . . .," 351. See now Garcia, "La Population *MRT*"; Eyre, "Feudal Tenure . . .," 111–12; Eyre, "Work . . .," 35; Garcia, "Administration . . .," 125; Andrassy, "*pr-šnʿ*," 19; Helck, *Wirtschaftsgeschichte* . . ., 102; Goedicke, *Königliche Dokumente* . . ., 35, 64, 211–12.

[186] Compare also *Urk.* 1, 214, l. 12 ("consisting of *mr.t*, cattle, goats").

[187] According to Goedicke, *Königliche Dokumente* . . ., 146, Coptos D makes clear that the *mr.t* are by no means slaves, in contrast to Bakir, *Slavery*, 23. See further Goedicke, *Königliche Dokumente* . . ., 211–12.

4.2.5 Much discussed are also the class of *ḫnty-š*, "those who govern the lake(?)."[188] They were the inhabitants of the pyramid towns,[189] whose basic obligation was performance of the mortuary cult for the deceased king. These people could also be exempt from military service and corvée labor.[190] They are registered apparently in special offices.[191] *Mr.t* could themselves be dependent on such *ḫnty-š*.[192]

4.2.6 Other terms may also represent a particular legal status, such as *nswtyw*, "royal ones," which Goedicke takes to be "royal lessees" ("Königspächter")[193] and "pacified Nubian."[194] Persons described as *ỉsw.w* have been understood as "wage earners."[195] The common word *rmṯ*, "man, person," may in some contexts have the sense of "dependent, servant."[196]

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[188] Lorton, "Legal and Social Institutions . . .," 351. The translation of *š* is uncertain (= *š* "work," Eyre, "Work . . .," 35). The title is often rendered "tenant landholder," but as Ann Roth observes, they seem to have carried out religious functions as well. They are organized in divisions, with their own inspectors, and often appear in the Abu Sir Papyri; see Roth, "Organization . . .," 119. See further Eyre, "Feudal Tenure . . .," 111 and "Peasants . . .," 377; Hafemann, "Staatl. I . . .," 14–15; Helck, *Wirtschaftsgeschichte* . . ., 66; Eichler, *Untersuchungen* . . ., 264.

[189] Goedicke, *Königliche Dokumente* . . ., 60–61.

[190] Loprieno, *Egyptians* . . ., 193.

[191] *Urk.* 1, 211, 5, seems to deal with the registration of the mortuary tenant farmers (*ḫnty-š*) *r s.t ḥ.t*.

[192] Goedicke believes that *mr.t* are associated with private persons, while *ḫnty-š* are associated with kings (*Königliche Dokumente* . . ., 61).

[193] Ibid., 134–35. Cf. Lichtheim, who proposes "serfs," or similar (*AEL* 1, 162) and Baer, "some kind of small freeholder" ("Letters," 13). Müller-Wöllermann reads *sw.tyw*, and takes them to be a social group which possesses and alienates land. They are, in her view, colonizing farmers sent to prepare fields for cultivation. Garcia proposes "dependents attached to the service of the king" ("Administration . . .," 124–25). See further Endesfelder, "Zum Stand . . .," cols. 8–9; Gödecken, *Meten* . . ., 294–95; Eyre, "Peasants . . .," 377; Eyre, "Work . . .," 34; Helck, *Wirtschaftsgeschichte* . . ., 101.

[194] See Helck, *Wirtschaftsgeschichte*, 113; Goedicke, *Königliche Dokumente* . . ., 62–63 ("auxiliary troops").

[195] Gödecken, *Meten* . . ., 287. Eyre suggests either "wage-earners" or "a type of slave" ("Work . . .," 25). See further Loprieno, *Egyptians* . . ., 195–96; Goedicke, "Bilateral . . .," 84 and *Rechtsinschriften* . . ., 184; Müller-Wöllermann, "Warenaustausch . . .," 147–48.

[196] Goedicke, *Rechtsinschriften* . . ., 7. Cf. also the designations of dependent persons compounded with *ḏ.t* or *pr-ḏ.t*, Perepelkin, *Rechtsinschriften* . . ., 164–72.

4.3 *Gender and Age*

4.3.1 Scholars now tend to discern no fundamental difference in the legal status between men and women.[197] Already in the Old Kingdom women held rights in immovables.[198] One of the earliest references to a land-transfer document is from the late Third Dynasty/early Fourth Dynasty tomb of Metjen. The passage describes how Metjen's mother made a *imyet-pr* document in order to transfer land not to her immediate heir, Metjen, but rather to her grandchildren.[199] So, too, in the considerably later Stela Berlin 24032 (First Intermediate period) a man declares that he "acquired his property, while he was still in the house of his father, but it was his mother, rather than his father, who gave him the property or the means to acquire it."[200]

4.3.2 Old Kingdom market scenes portray women participating actively in the economy or "public spheres," while in religious contexts, they functioned as priestesses, particularly of the goddess Hathor.[201] The absence of women within the administrative bureaucracy is possibly due to social convention rather than explicit legal prohibition.[202] Female involvement in "illegal" or "criminal" affairs is, at least, suggested by the tantalizing reference to the trial of a queen in the Biography of Weni.[203]

4.3.3 Women could be responsible for the private mortuary cult and therefore benefit from the mortuary endowments.[204] Tjenti (Fifth

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[197] Johnson, "Legal Status . . .," 175. See further: Goedicke, *Rechtsinschriften* . . ., 38; Harari, "Capacité . . .," 41–42; Gödecken, *Meten* . . ., 258–62; Franke, *Verwandtschaftsbezeichnungen* . . ., 334–39.

[198] Eyre, "Work . . .," 37. The common title *nb.t-pr*, "mistress of the house," which some scholars believe had a legal significance, only appears in the Middle Kingdom; see Pestman, *Marriage* . . ., 11, correcting *Wb.* 1, 512/9.

[199] *Urk.* 1, 2, 9–11; Johnson, "Legal Status . . .," 177–78. Cf. also Goedicke, *Rechtsinschriften* . . ., 17–18.

[200] Fischer, "Nubian Mercenaries . . .," 52, quoted in Théodoridès, "Propriété . . .," 48. See also Lichtheim, *AEL* 1, p. 90.

[201] Johnson, "Legal Status . . .," 178. Feucht, *Egyptians* . . ., 315; Eyre, "Work . . .," 37–38.

[202] A royal edict is preserved which apparently records the appointment of a woman to an office. However, the office named is unfortunately not preserved; see Goedicke, *Königliche Dokumente* . . ., 201. In one case a woman receives the high title of "vizier"; see Bryan, "In Women . . .," 39. Cf. Feucht, *Egyptians* . . ., 344.

[203] Johnson, "Legal Status . . .," 176.

[204] *Urk.* 1, 115–17. See Goedicke, *Rechtsinschriften* . . ., 108; Helck, *Wirtschaftsgeschichte* . . ., 85.

Dynasty), when endowing his mortuary cult, mentions two equal plots of land belonging to his mother. One aroura is given to his wife, and four servants are assigned to her and named as usufructuaries.[205] *Urk.* 1, 35, is the record of a mortuary endowment given to a woman through a transfer document (*imy.t-pr*) by her father.[206]

4.3.4 Pirenne argued on the basis of P. Berlin 9010 (Sixth Dynasty) that women during the later Old Kingdom endured a period of reduced legal status. According to this view, a woman is under the guardianship of her husband or, following his death, of her eldest son or a court-appointed guardian.[207] Family lands or endowments were always controlled as an entity by the "eldest son."[208] On one son's death, the next in line would become the administrator or trustee of the estate. Daughters did not figure in this hierarchy. However, other scholars have challenged Pirenne's view,[209] and even supporters of Pirenne emphasize that this does not mean daughters or women in general had no legal rights at the end of the Old Kingdom.[210]

4.4 *Slavery*

4.4.1 *Terminology*

There is little evidence for slavery in the Old Kingdom;[211] nevertheless, there were clearly "unfree" persons, whose personal rights and mobility seem to have been restricted (e.g., the *mr.t*).[212] Even

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[205] Johnson, "Legal Status . . .," 184.

[206] One phrase in this text seems curious: "As for these children given to me by my father through a *imy.t-pr*-document" (Edel, *Grammatik* . . ., 319, parag. 646); see also Harari, "Capacité . . .," 41–42; Allam, "Zur Adoption . . .," 6.

[207] Théodoridès, "Concept of Law . . .," 296. See also Théodoridès, "Propriété . . .," 45; Malaise, "Position . . .," esp. 184; Goedicke, *Rechtsinschriften* . . ., 212; Boochs, "Zur Funktion des *Sn-d.t*," 5.

[208] Théodoridès, "Concept of Law . . .," 296–97.

[209] Goedicke, *Rechtsinschriften* . . ., 42–43. Pestman, *Marriage* . . ., 183. See also Seidl, *Einführung* . . ., 43.

[210] Théodoridès, "Concept of Law . . .," 297.

[211] See Bakir, *Slavery* . . ., 64 (who, however, does believe that it existed); Gödecken, *Meten* . . ., 287; Goedicke, *Rechtsinschriften* . . ., 43; Eyre, "Work . . .," 37; Hornung, *Grundzüge* . . ., 22; Lorton, "Legal and Social Institutions . . .," 351. For the distinction between slavery and serfdom, see Bakir, *Slavery* . . ., 6–7. He renders several of the terms generally now translated as "servants" or "wage-earners" (e.g., *ỉsw.w*) as "slave" (*Slavery* . . ., 14).

[212] Gugesell, "Entstehung . . .," 78. Cf. Loprieno, *Egyptians* . . ., 195.

those not technically slaves were subject to corvée-labor or other limitations on their freedom.[213] Scholars have suggested the opposition between "officials" and "dependents" as being more useful than that between "slaves" and "free persons."[214]

4.4.2 *Categories*

Both *b3k* and *ḥm*,[215] the standard terms for "servants," "slaves," are attested in the Old Kingdom, but little can be determined about the legal status of such persons, apart from their evident dependence on an owner/master.[216] The word *ḥm*, usually rendered "slave" by Egyptologists, only appears towards the end of the Old Kingdom.[217] The "royal servants" (*ḥm.w-nswt*) portrayed working at the harvest in tombs from Sheikh Said and Saujet el-Meitin may be prisoners (i.e., prisoners of war or convicted criminals).[218]

4.4.3 *Creation*

It is not certain whether a person could be enslaved for debt, but one document may contain a stipulation against debt slavery.[219] The possibility of an official reducing an individual to servitude is raised in Old Kingdom biographies.[220]

5. Family

Both legal and extra-legal texts indicate that the mutual responsibilities of family members were well recognized, in a moral if not legal sense in ancient Egypt. This is most clearly expressed in the form of support of elderly parents, their proper burial by the eldest

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[213] Loprieno, *Egyptians* . . ., 189.

[214] Ibid., 191.

[215] See Fischer, "An Early Occurrence of *ḥm* "servant."

[216] See Goedicke, *Königliche Dokumente* . . ., 217–19, on *b3k* and similar terms. Cf. Spalinger, "Revisions . . .," 28.

[217] Loprieno, *Egyptians* . . ., 194. Goedicke, *Rechtsinschriften* . . ., 105–6, contra Bakir's interpretation.

[218] Cf. Eyre, "Work . . .," 34; Berlev, "Social Experiment . . .," 155; Bakir, *Slavery* . . ., 30; Helck, *Wirtschaftsgeschichte* . . ., 102.

[219] So Goedicke, *Königliche Dokumente* . . ., 69.

[220] "I have never reduced anyone to servitude (*b3k*)," claims the architect Nekhebu (Sixth Dynasty, *Urk.* 1, 217, lines 3–5); Loprieno, *Egyptians* . . ., 194. Cf. the different rendering of Doret, *Verbal System* . . ., 100–101. So, too: "I have never reduced one of your daughters to servitude (*Urk.* 1, 77, line 4)"; Loprieno, *Egyptians* . . ., 194.

son, and the maintenance of the mortuary cult by the same.[221] The possibility of conflicting interests within the family is also perceived, so that a person might explicitly prohibit descendants or siblings from raising a counterclaim to possession of property.[222] The pharaoh forbids that the office of a malefactor be inherited by his son.[223]

5.1 *Marriage*

While the institution of marriage had economic and legal significance throughout Egyptian history, the legal nature of marriage in the Old Kingdom is nowhere specified.[224] It was presumably a private matter, requiring no secular or religious ceremony.[225] The idiom "to give X to Y as his wife" is attested, but no more information regarding the event is provided in the texts.[226]

5.1.1 *Conditions*

As in the Late period, a man and woman could apparently contract agreements of support. For example (concerning a maidservant): "This maidservant of Meriri is surely elated whenever she sees her lord's agent. Mehu, however, has set forth his legal commitment to support her [in] this letter which I had him bring to me."[227] This has been equated with the Late period *sʿnḫ*, a document assuring regular support for a woman in connection with marriage.[228]

It is not always clear whether the wife had absolute control over property inherited by her. She may have received only the income from the property, and not full authority over it.[229]

There is no evidence for consanguinous marriages in the Old Kingdom.[230]

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[221] Allam, "Familie . . .," cols. 101–2. See also Goedicke, *Rechtsinschriften* . . ., 88, 211–13; Pirenne, *Histoire* . . ., 2: 345–89.

[222] Allam, "Obligations . . .," 95; Gödecken, *Meten* . . ., 256–58.

[223] Allam, "Obligations . . .," 90–91. See also Willems, "Crime . . .," 33.

[224] See Allam, "Ehe," cols. 1162–81; Théodoridès, "Droit Matrimonial . . ."; Pestman, *Marriage* . . .

[225] Johnson, "Legal Status . . .," 179.

[226] *Urk.* 1, 52, l. 2; see Pestman, *Marriage* . . ., 9. *Ḥm.t* is the standard word for "wife" from the Old Kingdom onward (Pestman, *Marriage* . . ., 10).

[227] Cairo CG 58043 (Sixth Dynasty; Wente, *Letters* . . ., 56), edited in Baer, "Deed . . ."

[228] Baer, "Deed . . .," 7. Cf. Menu, *Recherches* . . ., 323; Allam, "Mariage . . .," 119.

[229] Goedicke, *Rechtsinschriften* . . ., 128–29.

[230] See Černý, "Consanguineous Marriages . . ."

5.1.2 *Divorce*

Evidence for divorce is vague. Pestman suggests that an Old Kingdom statue group wherein the woman's figure is cut away may be evidence of divorce.[231] The same scholar also cites Ptahhotep: "If you marry a woman . . . do not repudiate her."[232]

5.1.3 *Polygamy*

While it is not impossible that polygamy may have been occasionally practiced, it does not seem to have been the norm.[233]

5.2 *Children*[234]

In P. Berlin 9010, it is stated that the "elder children were treated in accordance with their seniority, the younger in accordance with their minority." The age of majority may have coincided with the onset of puberty.[235]

5.3 *Adoption*

There are no clear examples of adoption in Old Kingdom Egypt. Some suggest that the *ḥm-k3*, "mortuary priests," were, in effect, adopted by the endower, but this has been doubted.[236]

6. Property and Inheritance

There is much discussion concerning the nature of the ancient Egyptian economy[237] and the closely connected problem of the existence of private property.[238] Individuals, particularly those of higher

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[231] Pestman, *Marriage* . . ., 59.

[232] Ibid. However, the Instruction of Ptahhotep may reflect later (Middle Kingdom) practice.

[233] Kanawati, "Polygamy . . ."; idem, "Was Ibi . . ." for a possible example of polygamy; idem, "Eldest Child . . .," 250–51; Va chala, "Neuer . . ."; Strudwick, *Administration* . . ., 7.

[234] See, in general, Feucht, *Das Kind* . . .

[235] Feucht, "Kind," col. 428.

[236] Allam, "Adoption . . .," 6. See also Harari and Menu, "Notion . . .," 148–49; Kanawati, "Eldest Child . . .," 250.

[237] Bleiberg, *Official Gift* . . ., 5–12, 29–53. See also Müller-Wöllermann, "Warenaustausch . . ."; Helck, *Wirtschaftsgeschichte* . . .; Warburton, *Economy* . . .

[238] Théodoridès, "Concept of Law . . .," 292 and "Propriété . . ."; Goedicke, *Rechtsinschriften* . . ., 199–201; Menu, *Recherches* . . ., 43ff.; Kemp, *Social History* . . ., 81;

status and exercising official functions, may often have been supported by usufruct of state- or temple-owned property.[239] There seems to have also been private property in the Old Kingdom in the sense that people felt able to alienate,[240] bequeath, or sell property without explicit recourse to the state. Already Metjen (Third to Fourth Dynasty) distinguishes between his paternal property and property deriving from other sources.[241] This land may have originally derived from the king but was ultimately considered personal property.[242] The *ḏ.t* or *pr-ḏ.t* were apparently a "more personal" type of property, which was not bound to any administrative function.[243]

6.1 *Tenure*

Officials take pains to assert that they built their tombs with their own means on land belonging to themselves.[244] They emphasize, moreover, that they properly compensated the tomb workers, who depart *ḥtp*, "satisfied."[245]

Most land was presumably under royal or temple control,[246] cultivated by persons effectively bound to the fields. There were large landholdings designated *ḥ.wt*, "mansions," "manors," and *nỉw.wt*, "villages," throughout Egypt.[247] As already mentioned, high officials and

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Andrassy, "Überlegungen . . ."; Menu and Harari, "Propriété privée . . ."; Helck, "Wege zum Eigentum . . ."

[239] Helck, *Wirtschaftsgeschichte* . . ., 59.

[240] Gutgesell, "Entstehung . . .," 76.

[241] Harari and Menu, "Notion . . .," 140, 145; Goedicke, *Rechtsinschriften* . . ., 191, and *Königliche Dokumente* . . ., 217.

[242] Boochs, "Zur Bedeutung der *b3k(w)t* "Leistungen," 211; Roth, "Organization . . .," 116.

[243] Harari and Menu, "Notion . . .," 142; Goedicke, *Königliche Dokumente* . . ., 208. Goedicke, *Rechtsinschriften* . . ., 34–35, discusses the nature of the *pr-ḏ.t*. There are other technical terms for kinds of property as well: e.g., Goedicke, *Königliche Dokumente* . . ., 31–32 (*sk3*). See further Gödecken, *Meten* . . ., 304–25; Perepelkin, *Privateigentum* . . .

[244] E.g., Doret, *Verbal System* . . ., 28, 42 (= *Urk.* 1, 50, and 71).

[245] Thus, part of their private property was used by the officials to pay craftsmen; see Eichler, *Untersuchungen* . . ., 318–20; Eyre, "Work . . .," 24–25. See further Roth, "Practical Economics . . ."

[246] See Menu, "Fondations . . ." *3ḥ.t-nṯr*, for example, is perhaps land dedicated to the god and tax-exempt (Goedicke, *Königliche Dokumente* . . ., 30). The royal edicts can deal with the establishment of endowments, using royal land (Goedicke, *Königliche Dokumente* . . ., 170).

[247] See Eyre, "Work . . .," 32–36, on land tenure, and 33 for *ḥw.t* ("manor," "mansions," "estates") and *nỉw.t* ("villages").

lesser individuals might also possess land and estates, which, while perhaps fundamentally belonging to the state or temple (a usufruct),[248] came to be considered, for practical purposes, the property of those individuals.[249] Our information concerning such lands tends to be restricted to enigmatic terms.[250] Land may be transferred through inheritance[251] or gift, but we have no actual examples of land sales, to my knowledge (although allusions to such sales, *ỉsw*, may possibly be found).[252]

A rather elaborate bureaucracy handled questions of land and land tenure.[253] There are "field scribes," possibly responsible for land survey and similar matters,[254] while a special office, the *ḫry tbʿ/ ḫtm*, dealt with issues of land ownership.[255] A royal document (*ʿ-nswt*) may have been required in order to acquire land (Third to Fourth Dynasty).[256]

6.1.2 Metjen (Third to Fourth Dynasty) already mentions compensation of land in such a way as to imply the ability to transfer the rights freely (*Urk.* 1, 2, 8–11).[257] Scholars have underscored the constant interflow between royal and private mortuary cult property.[258] There seems to be good evidence for at least small-scale private trading and enterprise.[259] It is unclear to what extent royal craftsmen were involved in private mortuary provisions.[260]

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[248] Eyre, "Work . . .," 34. For a discussion of *dt*, *pr-d.t* property as usufruct, see Boochs, "Niessbrauchs . . ." See Goedicke, *Rechtsinschriften* . . ., 58, on the distinction between property connected with office and the office itself.

[249] Goedicke, *Rechtsinschriften* . . ., 188; Eyre, "Work . . .," 23.

[250] Lexicographical problems abound. Goedicke suggests, for example, that *šnʿ.t* is a type of legal institution connected with land or land ownership (*Königliche Dokumente* . . ., 124); that *sḫt* may have the special meaning of ownerless land (167); and that *šʿ* is a "share of land being the property of someone" and not a term for a type of document ("Juridical," 32).

[251] But cf. Müller-Wöllermann, "Alte Reich . . .," 35.

[252] Eyre, "Peasants . . .," 377; Harari and Menu, "Notion . . ."; Gutgesell, "Entstehung . . .," 72. According to Menu, *Recherches* . . ., 3–4, land comes from the king and through inheritance, but there are no transactions between individuals.

[253] Grunert, "Eigentum . . ."

[254] Goedicke, *Königliche Dokumente* . . ., 166.

[255] Ibid., 169 (uncertain).

[256] Seidl, *Einführung* . . ., 47 and 61.

[257] Ibid., 46. See also Goedicke, *Rechtsinschriften* . . ., 24; Roth, "Organization . . .," 116; Eyre, "Work . . .," 33; Helck, *Wirtschaftsgeschichte* . . ., 135.

[258] Eyre, "Work . . .," 23.

[259] Cf. Kuhrt, *Near East* . . ., 1: 150; Kemp apud Trigger et al., *Social History* . . ., 81.

[260] Eyre, "Work . . .," 21.

6.1.3 The king also endowed land and priests specifically for his cult. In Coptos G, for example, the king gives land for the support of priests connected with his own statue cult.[261]

6.1.4 The mortuary endowments may be considered a special type of property, in that the person endowing the property places special stipulations upon it so as to avoid the division and loss which might adversely affect his cult offerings.[262] One was generally "endowed" (*im3ḫ*) by the king, but also occasionally by private individuals, i.e., the tomb owners.[263] Mortuary priests could be "paid" by means of land grants.[264] The rights and limitations of the mortuary service are clearly specified in contracts:[265]

> The servants (*iswˁw*) of my funerary estate[266]—It was in order that they make for me invocation-offerings consisting of bread and beer in the necropolis that I hired them, (the transaction) being registered in a sealed contract.[267]

6.1.4.1 Priests disobeying the stipulations of the mortuary endowment could be threatened with a charge of breaking the contract before the king.[268] The will of Kaemnofret (*Urk.* 1, 12, 9–12), dealing with the restrictions on a mortuary endowment, forbids any *ḫm-kȝ* (mortuary priest) from "giving a field, a person, [or anything which I have made over to him for invocation-offerings for me therefrom] for compensation to any person."[269] The same document forbids a mortuary priest from giving "through a *imy.t-pr* to any person" other than his own son "his share." The mortuary priest who attempts to sell ("give away for compensation [*r iswˁ*]) his share, shall have his property confiscated and given to the (other) mortuary priests of his phyle."[270] The same penalty applies to the mortuary priest who would

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[261] Goedicke, *Königliche Dokumente* . . ., 130.
[262] See Théodoridès, "Concept of Law . . .," 294; Allam, "Rolle . . .," 107–8; Edel, "Inschriften . . .," 97–98; Goedicke, *Rechtsinschriften* . . ., 197–99, and "Bilateral . . .," 90.
[263] Eyre, "Work . . .," 22.
[264] Goedicke, *Rechtsinschriften* . . ., 71.
[265] E.g., ibid., 72.
[266] On the *iswˁw n pr-ḏ.t*, see Boochs, "Niessbrauchs . . .," 77. The *pr-ḏ.t* is potentially, but not necessarily inheritable. Eichler, *Untersuchungen* . . ., 316; Eyre, "Work . . .," 23, 32.
[267] Inscription of *ỉt.f-ḫȝ.wy*, ll. 1–3 (after Doret, *Verbal System* . . ., 79).
[268] Boochs, *Strafrechtliche Aspekte* . . ., 70.
[269] Goedicke, *Rechtsinschriften* . . ., 54. See also Théodoridès, "Contrat . . .," 370–71.
[270] So too, *Urk.* 1, 15.

go to court with his colleagues.[271] The priestly phylai had precedence over the individual, and could assume control over the property in case of delict.[272]

6.1.4.2 The inscription of *Urk.* 1, 278–80, expressly forbids the presenting of offerings to persons other than those who had provided for them. The offerings seem to be considered a type of possession of the mortuary priests, who might attempt, unless prevented, to distribute or alienate them with some freedom.[273] This fact is recognized implicitly in the mortuary contracts prohibiting the alienation of the mortuary endowment property.[274]

6.1.4.3 The mortuary cult *sn-ḏ.t* land is held in trust for the deceased, as it were, by a co-beneficiary.[275]

6.2 *Inheritance*[276]

6.2.1 In the will of Heti, the man, speaking "with his living mouth,"[277] gives to his children property "in order that they may live."[278]

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[271] Moussa and Altenmüller, *Nianchchnum* . . ., 87; Goedicke, *Rechtsinschriften* . . ., 57.

[272] Goedicke, *Rechtsinschriften* . . ., 57.

[273] Helck, *Wirtschaftsgeschichte* . . ., 92.

[274] Goedicke, *Königliche Dokumente* . . ., 86.

[275] Eyre, "Work . . .," 33; Boochs, "Zur Funktion des *Sn-ḏ.t*," 7; Goedicke, *Rechtsinschriften* . . ., 27–28, 127–29; Gödecken, *Meten* . . ., 197; Franke, *Verwandtschaftsbezeichnungen* . . ., 303–4; Perepelkin, *Privateignetum* . . ., 30–65; Helck, *Wirtschaftsgeschichte* . . ., 89ff. In the Stela of Merer, Lichtheim renders the *sn-ḏ.t* title of a wife as "one who shares his [= the husband's] estate" (*AEL* 1, 87); Schenkel translates "Dienerin . . ." (*Memphis*, 64).

[276] Harari and Menu, "Notion . . .," 132–33, 148–50. As always, there are problems of terminology. Thus, *mḏd.t* in *Urk.* 1, 14, can only be vaguely defined as a "share by a division(?)" (*Wb.* 2, 192/15); *iḫ.t* may be a term for paternal inheritance (Goedicke, *Rechtsinschriften* . . ., 6). According to Goedicke, *Rechtsinschriften* . . ., 55, the expression *ny-pssˇ.t.f* "that which belongs to his hereditary share," means that there were stipulations concerning inheritance and that the division was not left up to the free choice of the legator. See also Edel, "Inschriften . . .," 98. Literary texts also refer to problems of inheritance, e.g., Ptahhotep (Lichtheim, *AEL* 1, 69).

[277] See Théodoridès, "Concept of Law . . .," 293. Several such texts contain the similar statement that the stipulations are made "while he (the legator) was alive upon his two feet" (*Urk.* 1, 11, 8–9, Fourth Dynasty; also *Urk.* 1, 16, 16–17); Goedicke, *Rechtsinschriften* . . ., 49. In *Urk* 1, 24–32, the official is represented as "he speaks with his mouth before his children, while he is upon his two legs, alive before the king." Cf. also the expression *m rd.wy=f* ("with/in his two feet") found in the Inscription of Metjen (Goedicke, *Rechtsinschriften* . . ., 11).

[278] Boochs, "*ḫtm*," 22, believes that the *imy.t-pr* was a substitute for the will, not

However, he sets conditions on his gift; namely that they cannot give the property away, or sell it to a stranger.[279] The only type of transfer which they themselves can execute is to their own children. In Heti's will, the elder son is especially important. It is he who must supervise the mortuary priests performing the rites for the deceased Heti.[280] It is expressly stated in such documents that they are drawn up while the party A is alive. In the "wills," it remains unclear whether the transfer of property takes place immediately or only upon the death of the giver. We do have clear instances in the Old Kingdom of a division of property instituted through a testament.[281]

6.2.2 P. Berlin 9010 (Sixth Dynasty) seems to be the record of a dispute between the eldest son and an administrator appointed through a testament. P. Berlin 9010 designates the trustee (= usufructuary?) as "one who eats, but does not diminish."[282]

6.2.3 One man, who designates himself as his mother's "eldest son," "heir," and possessor of her property because he had buried her and acted as her mortuary priest, transfers the property and the obligation of serving as his mortuary priest to his wife. She would in turn have used income from the land to recruit men to perform the mortuary rites.[283] The burial of a parent may indeed have been necessary in order to claim one's full rights as heir.[284]

6.2.4 The inscription of Nikauankh provides evidence that the "eldest son" had "particular rights and obligations regarding the mortuary priests."[285] In the property transfer of Wepemnofret (Fifth Dynasty),

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yet attested in Egypt, according to him. It generally elucidates the origin and nature of the ower's legal claim to the property (Der Manuelian, "Essay . . .," 15).

[279] See also Johnson, "Legal Status . . .," 216, n. 37.

[280] See also Goedicke, *Rechtsinschriften* . . ., 146; Seidl, *Einführung* . . ., 57, with regard to P. Berlin 9010.

[281] E.g., *Urk.* 1, 16; Seidl, *Einführung* . . ., 58.

[282] Seidl, *Einführung* . . ., 35; cf. Green, "Perjury . . .," 33.

[283] *Urk.* 1, 163–65; see Johnson, "Legal Status . . .," 183–84. The man declares, "I am her eldest son, her heir. It is I who buried her in the necropolis" (*Urk.* 1, 164/2–3). See also Seidl, *Einführung* . . ., 57, 59.

[284] Eyre, "Work . . .," 24.

[285] Goedicke, *Rechtsinschriften* . . ., 146. On Nikauankh and his mortuary endowment, see Roth, "Organization . . .," 120–21.

that official gives his oldest son a section of his tomb for his burial and permission to receive funerary offerings from his own endowment.[286] Other relations are forbidden from contesting this provision.[287] The transfer is recorded "in writing" and executed before fifteen witnesses.[288]

6.2.5 The Inscription of Wepemnofret contains a number of juristically significant statements concerning the burial and the mortuary cult.[289] The term "eldest son" in this text possibly refers to legal standing and, in fact, is used for two individuals shown in the tomb.[290] This text gives an unusual list of heirs, namely, brother, wife, and children.[291]

6.2.6 The son may receive more than the daughters, while the wife obtains more than the son. Goedicke believes that the unequal position of the various inheritors shows that the thesis of Pirenne concerning the equality of heirs is not valid.[292] The fact that the wife receives the largest share is important and shows her full legal authority.

6.2.7 Goedicke suggests that only private offices could be inherited and not royal offices, which required the confirmation of the king.[293]

6.2.8 Statements in tomb settings imply that the son who took care of the mortuary cult inherited the property. One text, for example, speaks of "That which his eldest son, beloved by him, the possessor of all his property, did for him"—this found in a tomb in Hagarsa from the period just following the Sixth Dynasty.[294]

6.2.9 A brother might inherit if there are no children.[295]

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[286] Eyre, "Work . . .," 29; Goedicke, *Rechtsinschriften* . . ., 31–43.
[287] Pestman, *Marriage* . . ., 132.
[288] See Goedicke, *Rechtsinschriften* . . ., 39.
[289] Ibid., 37.
[290] Ibid., 34.
[291] Ibid., 38.
[292] Ibid., 28.
[293] Ibid., 56.
[294] Schenkel, *Memphis* . . ., 39.
[295] Boochs, "Zur Funktion des *Sn-d.t*," 5–6.

7. Contracts

The term *ḫtm* is used for "contract" (lit. "what has been sealed").[296]

7.1 *Sale and Transfer Documents*

Despite the rarity of true sale documents, some scholars do believe that already in the Old Kingdom there was a standard sale contract in use.[297] The main Egyptian instrument of transfer in the Old and Middle Kingdoms was the *imy.t-pr*, literally, "what-is-in-the-house (document),"[298] but these are not apparently instruments of sale in the Old Kingdom. Johnson defines the *imyet-pr* as "(a document) used to transfer property to someone *other than* the person(s) who would inherit said property if the owner died intestate (i.e., without a will)."[299] The *imy.t-pr* is mentioned already in Metjen (*Urk.* 1, 2/10), where a woman has made one on behalf of her grandchildren concerning fifty arouras of land.[300] Théodoridès observes that this type of document was in the Old Kingdom a deed of transfer by gift but came in the Middle Kingdom to refer to all types of conveyances (i.e., exchange for money).[301] Already in the Old Kingdom there exist property transfers, deeds of conveyance, implying that people could dispose of their property as they wished. The state could apparently confirm such transfers through registration and the depositing of copies.[302]

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[296] See Boochs, "*ḫtm*." On "sales," see Pirenne, *Histoire* . . ., 2, 293–97; Goedicke, *Rechtsinschriften* . . ., 202–3; Müller-Wöllerman, "Warenaustausch . . .," 148–50. On sale transactions, see Harari, "Exchange . . ." Pestman, *Marriage* . . ., 18, defines Seidl's principle of *notwendige Entgeltlichkeit*, prominent in discussions of Egyptian sale transactions, as the doctrine that "no title can pass to another without a corresponding consideration being given." On contracts, see Goedicke, *Rechtsinschriften* . . ., 197.

[297] Römer, "Der Handel . . .," 258.

[298] Théodoridès, "Concept of Law . . .," 304–6. On the *imy.t-pr* as a "unilateral" contract, which differs from the format used in a true sale, see Théodoridès, "Contrat . . .," 373, and 393 for a concise statement on the *imy.t-pr*. See also Mrsich, *Untersuchungen* . . .; idem, "Gehört"; Harari and Menu, "Notions . . .," 145.

[299] Johnson, "Legal Status . . .," 177.

[300] Gödecken, *Meten* . . ., 211–18.

[301] See Théodoridès, "Concept of Law . . .," 304. Seidl, *Einführung* . . ., 47, seems to state that there were two ways of alienating property: "through the *imyet-pr* or through sale." See also Seidl, *Einführung*, 61. On the *imy.t-pr*, see now Logan, "The *imy.t-pr* Document . . ."

[302] Theodorides, "The state guaranteed the execution of deeds by conveyance by registering them, as is shown for example by the document called 'the contract for

7.1.1 There is a possible sale transaction or exchange of land already between Metjen and the *nswtyw*, literally, "the-ones-of-the-king,"[303] in the late Third or early Fourth Dynasty. However, the most important Old Kingdom house-sale transaction is the Inscription of Tjenti (Sixth Dynasty).[304] This record, presumably a copy or abridgment of a papyrus document, is probably from the area of the mortuary temple of Chufu at Giza. The speaker seems to be the buyer. The text utilizes sale phraseology known from later periods, for example, "to bring away for payment" in the sense of "purchase."[305] The sale price is carefully recorded by means of a standard unit of value: the *shat*.[306] The buyer then apparently takes a royal oath regarding the future compensation for the interior items ("everything which is within this house").[307] The document was sealed (*ḫtm*), perhaps at "the place of sealing" in the presence of the court of the "Horizon of Chufu" (*Akhet-Khufu*).[308] The numerous witnesses to the sale transaction of Tjenti are a diverse group, including a builder, a phyle attendant, a necropolis worker, and three mortuary priests.[309]

7.1.2 The vizier was apparently not responsible for sealing a sale deed or witnessing the same, as was the case in the New Kingdom. This seems rather to have been the responsibility of the witnesses to the sealing procedure.[310]

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the sale of a small house' (in the Pyramid city of Khufu of the early Fourth Dynasty)" ("Concept of Law," 292). See also Goedicke, *Rechtsinschriften* . . ., 124 and 201–02 (a transfer of property for which royal permission is necessary).

[303] Endesfelder, "Zum Stand . . .," 8–9; Gödecken, *Meten* . . ., 207–8; Goedicke, "Appendix . . .," 70–71. Metjen declares that he bought about 6,000 arouras of land from *nswtyw*, a very sizable amount; see Baer, "Letters . . .," 13.

[304] Théodorides, "L'acte . . .". See also Menu, "Ventes de maisons . . ." The subject may be either a house or a tomb (*pr* having both meanings); see Théodoridès, "L'acte . . .," 729. See also Goedicke, *Rechtsinschriften* . . ., 150–51; Eyre, "Work . . .," 29; Gödecken, *Meten* . . ., 204ff.; Boochs, "*ḫtm r ḫt*"; Goedicke, "Bilateral Work-contract . . .," 76–78; Menu and Harari, "Notion . . .," 148.

[305] But see Goedicke, *Rechtsinschriften* . . ., 54–55 and 152–53.

[306] On *shat*, see also Vycichl, "Shat . . ." See further Helck, *Wirtschaftsgeschichte* . . ., 116–17; Théodoridès, "L'acte . . .," 720–23.

[307] Boochs, "*ḫtm r ḫt*," 22. See also Posener-Krieger, "Prix . . .," 325–29.

[308] The procedure of sealing was of great importance. Cf. *Urk.* 1, 278, 13 ("sealed before the king himself," *ḫtm r-gs nswt ḏs*). On the *ḫtm.t* formation and expressions of satisfaction in bilateral contracts, see Gödecken, *Meten* . . ., 291.

[309] Théodoridès, "L'acte . . .," 727.

[310] Strudwick, *Administration* . . ., 333, who quotes Goedicke, *Rechtsinschriften* . . ., 41, 195 (= *Urk.* 1, 35, 157–58).

7.1.3 A rare representation of a sale transaction is in the tomb of *Ḥnmw-ḥtp* and *Nj-ʿnḫ-Ḥnmw* in Saqqara, with the text "cubits X of cloth for payment of 6 *shat.*"[311] The very existence of independent merchants in this period has been doubted.[312]

7.1.4 It was presumably possible to alienate property deriving from mortuary endowments through a sale or transfer document; this may be assumed, for example, from the stipulations forbidding such actions as found in *Urk.* 1, 36, 9–10.

While not an explicit contract agreement document, *Urk.* 1, 50, 3–7, implies a type of contract or understanding between a tomb builder and the construction workers, who are assured compensation in goods for their work.[313]

7.1.5 There is some variation in format in the sale or transfer documents. Thus, according to Goedicke, the inscription of Nikawre is also essentially an example of a *imy.t-pr*, although it apparently lacks a date or a confirmation through a list of witnesses.[314] It is not clear whether through this document a complete transfer of property took place or whether it needed another confirmation, as is the case for the New Kingdom.[315] Renunciation clauses are already attested in the later Old Kingdom.[316]

7.2 *Debt*

There is scarcely any evidence for loans, debts, or security from this period.[317] Since oaths are attested by the Fifth Dynasty, Seidl assumes that "an actionable obligation is created regarding the debtor" (quoting *Urk.* 1, 157).[318]

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[311] Moussa and Altenmüller, *Nianchchnum* . . ., 85. See also Menu, *Recherches* . . ., 65.

[312] For *šwty*, "merchant" (not attested before the New Kingdom), see Römer, "Handel und Kaufleute . . .," 270. See further Eyre, "Work . . .," 31–32; Helck, *Wirtschaftsgeschichte* . . ., 114–15, 120–25; Müller-Wöllermann, "Warenaustausch . . .," 134.

[313] Roth, "Tomb Building . . .," 237. See also Kadish, "Observations . . .," 440; Harari and Menu, "Notions . . .," 149; Goedicke, "Bilateral Business . . .," 74; Gutgesell, "Entstehung . . .," 78; Helck, *Wirtschaftsgeschichte* . . ., 75–76; Pirenne, *Histoire* . . ., 2, 319–23; Müller-Wöllerman, "Warenaustausch . . .," 132, 145–46; Eyre, "Work . . .," 31.

[314] Goedicke, *Rechtsinschriften* . . ., 22–23.

[315] Ibid., 28

[316] Allam, "Obligations . . .," 95. See also Goedicke, "Bilateral Business . . .," 79–81.

[317] See, e.g., Seidl, *Einführung* . . ., 54.

[318] Ibid., 52.

7.3 *Hire*

If none of one's own children were suitable as mortuary priests, or other persons from the household were not available, one could hire people to perform this function.[319]

8. Crime and Delict

8.1 *Homicide*

There is scarcely any information regarding homicide in the Old Kingdom.[320]

8.2 *Theft and Related Offenses*

Theft is mentioned in non-legal documents such as letters and biographies. Thus, in P. Berlin 8869, the writer declares: "If you have written to me in order that you might expose the robbery (*ʿw3*) committed against me, well and good."[321]

Abundant, too, are such autobiographical statements as the following, wherein the speaker claims to have acted so: "that no one did any harm to his fellow, so that no one seized the loaf or the sandals of a traveler, so that no one took a bolt of cloth from any town, so that no one took any goat from anyone."[322]

There is little information regarding the punishment of theft, although there is evidence for cases dealing with theft of tomb property.[323]

8.3 *False Accusation*

The Inscription of Pepiankhheriyeb implies that false accusation may have had consequences for the accuser.[324]

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[319] Helck, *Wirtschaftsgeschichte* . . ., 88, 116–17.
[320] Boochs, *Strafrechtliche Aspekte* . . ., 106, 118; Hoch and Orel, "Murder . . ."
[321] P. Berlin 8869 (Old Kingdom), Doret, *Verbal System* . . ., 43.
[322] *Urk.* 1, 102, 9–16, translated in Doret, *Verbal System* . . ., 53.
[323] Eichler, *Untersuchungen* . . ., 319–20.
[324] *Urk.* 1, 223, 12–16. See also Lorton, "Treatment . . .," 24; Goedicke, *Rechtsinschriften* . . ., 59–60.

8.4 *Punishment*

Among the penalties in the exemption decrees of the Old Kingdom and the First Intermediate period are the family's loss of hereditary office, loss of office and attendant income, and loss of free status.[325] In an exemption decree (Fifth Dynasty), those who disobey the king and compel priests of that temple to do corvée labor, will be "given over to the granite quarry."[326] Lorton believes that one possible Old Kingdom penalty might have been the denial of burial rights in the royal cemetery.[327] There is evidence for beating as the punishment for nonpayment of taxes.[328]

8.4.1 In the Exemption Decree Coptos D, disobedience results in being brought before the court, which may lead to a condemnation and loss of property and income.[329] The guilty person loses social status as well, since he is forbidden to act as a priest in connection with the royal cult.

8.4.2 Not all of the exemption decrees contain punishments for infringements. A text from the time of King Pepi I, for example, lacks such provisions.[330]

8.4.3 Coptos R is a detailed listing of the punishments facing those who damage the statues of a high offical or otherwise harm property belonging to his mortuary estate.[331]

8.4.4 According to Willems, an Ankhtyfy inscription (9th Dynasty) provides the "earliest" evidence for the death penalty in Egypt.[332]

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[325] Lorton, "Treatment . . .," 11–12, 50. See also Boochs, *Strafrechtliche Aspekte* . . ., 75, 77.

[326] Lorton, "Treatment . . .," 7, follows Goedicke's restoration in this very damaged section; Goedicke, *Königliche Dokumente* . . ., 31.

[327] Lorton, "Treatment . . .," 10–12 (inscription of Demedjibtawy, Ninth Dynasty?).

[328] Ibid., 24 (but punishment is not the result of judicial proceeding). See further Goedicke, "Bilateral Business . . .," 80.

[329] Goedicke, *Königliche Dokumente* . . ., 217.

[330] Ibid., 77.

[331] Ibid., 214.

[332] "Crime . . .," 27. Cf. Fischer, *Varia Nova* . . ., 219; Goedicke, "Juridical . . .," 29, *Königliche Dokumente* . . ., 221–22, and *Rechtsinschriften* . . ., 58–59.

9. Special Institutions

9.1 *Curses*

In addition to secular penalties, curses play a role in Old Kingdom legalistic texts,[333] for example: "It was for bread and beer that I made this tomb. He who shall do anything against this tomb—let the crocodile be against him in the water and the snake be against him upon the land. Otherwise never would I do anything evil to any man."[334]

In P. Berlin 9010, the oath taken by the three defence witnesses contains the statement "Your *bas* shall be against me, o god."[335]

9.2 *Letters to the Dead*

Persons in difficult circumstances sent letters to deceased relatives asking for help.[336] These letters, known from the Old Kingdom onward, sometimes have a legal background, being especially associated with problems of inheritance. It is quite probable that such a letter would be the final attempt of an individual to seek justice, the legal system proper having failed.

9.2.1 The earliest example of such a letter is Cairo Linen 25975,[337] in which a wife and son write to the dead father. The dispute itself seems to revolve about some furniture and possessions which have been or are in danger of being seized. Servants have been taken and the house devastated. The woman tries to enlist also the help of their ancestors in their battle against those who have injured them.[338]

9.2.2 The Hu bowl of a somewhat later date also contains the plea of a wife to her deceased husband.[339] The woman quite clearly states that she has carried out the necessary mortuary offering ritual and

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[333] See Nordh, *Aspects* . . ., 85; Morschauser, *Threat-Formulae* . . .
[334] *Urk.* 1, 226, Doret, *Verbal System* . . ., 85.
[335] Nordh, *Aspects* . . ., 94; Green, "Perjury . . ."
[336] Sethe and Gardiner, *Letters to the Dead.* See Boochs, "Niessbrauchs . . .," 78.
[337] See Théodoridès, "Droit Matrimonial . . .," 35–44.
[338] Sixth Dynasty; see Wente, *Letters* . . ., 211.
[339] Ibid., 215.

questions why indeed should one do that if the ancestors do not help the living in their turn. In this case, it is the daughter who has been having difficulties because of an unnamed individual. The person creating these problems is possibly dead as well.

9.3 *Oracles*

Willem tentatively suggests that Moalla Inscription 8 (First Intermediate period) refers to a procession with oracular aspects, although this institution is only firmly established considerably later.[340]

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[340] Willems, "Crime . . .," 51.

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MESOPOTAMIA

EARLY DYNASTIC AND SARGONIC PERIODS

Claus Wilcke

1. Sources of Law[1]

Writing was invented at the end of the fourth millennium (in archaeological terminology: the Uruk IVa period). It is (perhaps) first documented at Uruk (Warka)[2] in southern Mesopotamia, more than a millennium after the advent of urban civilization in that area. By that time, the societie(s) of ancient Mesopotamia could look back on a long but undocumented history of public and private law. Documentation of law emerges only slowly, acquiring recognizable contours as records of private transactions only some five hundred years after the invention of writing, in the Early Dynastic (ED) I period (or possibly a little earlier, in the Uruk III period), which is followed by the Fāra (ED II–IIIa), Old Sumerian (OS = ED III) and Sargonic periods. Dating is highly uncertain for the earlier periods, which may vary from city to city.

1.1 *Law Codes and Edicts*

1.1.1 Inscriptions of Enmetena and Irikagina,[3] rulers of Lagaš (twenty-fifth to twenty-fourth century) refer to edicts that they issued against social inequity and the abuse of administrative power. Enmetena claims:

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[1] The sources from these early periods are difficult to decipher. Their interpretation in this chapter is based on the author's own readings and reconstructions, which will be provided, along with detailed technical arguments, in a separate publication in SBAW 2003.

[2] At Susa, according to Glassner, *Écrire à Sumer*, 151ff.

[3] Also read Urukagina, Uruinimgina.

> He established the liberation[4] of Lagaš, he let the child return to the mother, he let the mother return to the child. He established the liberation of barley debts . . . He established the liberation of the "children" of (the city) Uruk, the "children" of (the city) Larsa.m and of the "children" of (the city) Patibira.k. He let them return to (the goddess) Inana.k, to Uruk into her hand; he let them return to (the god) Utu, to Larsa.m into his hand; he let them return to (the god) Lugalemuš.k, to the Emuš into his hand.[5]

The basic purpose was to reunify nuclear families separated by corvée labor (e.g., temple building), imprisonment for debt, and perhaps debt bondage.

1.1.2 Irikagina's edicts present legally exemplary cases of former abusive customs or rules (bi_5-lu_5-da, nam-tar-ra) and their abolition and/or replacement by new precepts.[6] The ruler claims to have proclaimed a general amnesty at the beginning of his reign:

> He cleared the prisons[7] of indebted children of Lagaš, of those having committed gur-gub- and še-si.g- offenses,[8] of those having committed theft or murder. He established their liberation (ama-r gi_4).

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[4] Use of the technical term /ama-r gi_4/ "to return to the mother," corresponding to Old Babylonian *andurārum* "to run free", "freedom", shows that its derived meaning "liberation" was well established. Cooper (SARI, La 5.4) translates, "He cancelled the obligations."

[5] FAOS 5/1 Ent. 79 iii 10–vi 6.

[6] The so-called reforms of Irikagina exist in three different versions, only one of them complete: (a) = FAOS 5/1 Ukg. 4–5; 60. Version (b) of Ukg. 1–3 and AO 27621 (Cooper, "Medium . . .," 104) is very fragmentary, as is version (c) of Ukg. 6. Versions (a) and (b) are written on so-called cones, i.e., conical clay vessels (Cooper, "Medium . . ."); version (c) is found on a fragmentary "clay plaque." Versions (a) and (b) begin with an enumeration of building activities of and canals dug by Irikagina; they describe the reforms and name a final act, namely the occasion marked by the inscription ([a]: the liberation of the people of Lagaš; [b]: the digging and renaming of a canal). Version (c) begins with the reforms and continues with a historical narrative about the conflict between the neighboring city-states of Lagaš and Umma and a catalogue of Irikagina's building activities. Versions (a) and (c) catalogue former abuses in comparison with the new rules. Version (b) as far as it is preserved enumerates only reforms named in (a), although in a partly different sequence. In omitting the catalogue of abuses, (b) gives up the basic binary structure and, when necessary, refers to them in subordinate clauses. Version (c) contains material present in neither (a) or (b). Several building and canal-digging activities mentioned in (b) and (c) are absent from (a). The documentation therefore seems to point to three different edicts with a common core and special segments in each. Version (a) seems to be the earliest of the edicts.

[7] Steinkeller, "The Sumerian Term for Prison."

[8] Referring to taxes and or rental payments?

> Irikagina made a contract with (the god) Nin-ĝirsu.k, that he will not deliver to the powerful the orphan and the widow.[9]

The other basic purpose was the (re)establishment of divine ownership over estates administered (and allegedly exploited in the past) by the ruler and members of his family.[10] Some scholars now view with skepticism the ruler's claim to have enacted these "reforms."[11]

1.1.3 In the twenty-second century, Gudea of Lagaš claims to have given inheritance rights to daughters of families without male heirs (Stat. B vii 44–46; cf. Laws of Urnamma §a9').

1.2 Administrative orders and appeals to higher authority (letters) first occur during the Sargonic period.[12]

1.3 *Private Legal Documents*

1.3.1 The earliest documents refer to huge areas of land (ELTS 1–13; 19) and were written on stone artefacts. They are of unknown provenance, except for one found in a secondary layer of the Sîn temple at Ḫafāǧī and one in Tell K at Tellō, which is said to have contained the remains of a temple of Nin-ĝirsu.k. Most record more than one transaction, with one person seemingly acquiring different tracts of land from more than one previous owner. Two are most probably linked to marital property (ELTS 10 with 11 and 12).[13]

1.3.2 The stone tablet with the "Figure aux plumes" contains a literary, (partly) hymnal inscription and may relate to a gift or a declaration of immunity of the fields mentioned.[14] Later OS stone documents, among them a statue,[15] are clearly abbreviated copies

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[9] FAOS 5/1 Ukg. 4 xii 13–28 = 5 xi 20–xii 4.

[10] FAOS 5/1 Ukg. 1 v 1"–10"; 4 iv 9–v 3 = 5 iv 9–25 || 4 ix 7–21 = 5 viii 16–27; 6 i 22'–26'. See Wilcke, "Neue Rechtsurkunden . . .," 46; Steinkeller, "Land-tenure . . ."; Kraus, "Provinzen . . ." See further 6.1.2 below.

[11] Hruška, "Die innere Struktur . . .," 5; Edzard, "'Soziale Reformen' . . .," 148f. and n. 17.

[12] FAOS 19.

[13] Wilcke, "Anfänge . . ."

[14] Wilcke, "Die Inschrift . . ."; Cavigneaux, "Un détail . . ."

[15] The Lú-pà.d Statue (ELTS no. 21). Later statues dedicated to the wellbeing of Gudea of Lagaš and Šulgi of Ur report immunities.

of originals written on clay and suggest that this was the case with their earlier counterparts, too. Understanding of their content is still limited.

1.3.3 Sources from ca. 2600 (Fāra period) onward are scattered in time and space. Most are written in Sumerian on clay tablets found at Šuruppag/k (Tall Fāra), Ĝirsu (Tellō) and Uruk (Warka) and after the Fāra period; there are also sources from Adab (Bismaya), Isin (Išān Baḥrīyāt), and Nippur.

1.3.4 Fragments of stone objects with logographic inscriptions and dated roughly to the Fāra period were found at Kiš in northern Babylonia (ELTS 16a–j, 17). These and some late ED stone tablets from Sippir, Dilbat and unknown provenance (ELTS nos. 34–38) are to be read in a pre-Old Akkadian dialect.

1.3.5 In the Sargonic period, tablets from northern Babylonia, from the Diyala region, from Kiš, and from Mugdan (Umm al-Ğīr) widen the geographical horizon.

1.3.6 The majority of stone and clay documents record field and house purchases. Written records of purchases of movable property (slaves) begin in the early twenty-fourth century. Later in that century, contracts of all kinds, debt notes, and records of litigation are committed to writing.

1.4 *Non-legal sources*

1.4.1 Administrative sources provide information on taxes and other dues and purchases made by the state or temple administration. Royal inscriptions and letters provide details of legal procedure.

1.4.2 With the invention of writing there began a rich tradition of texts used to teach the writing system. Early school texts mainly took the form of word lists arranged in semantically related and often hierarchically ordered groups.[16] One of the best documented lists

[16] Englund, "Texts . . .," 82–110.

administrative, priestly, and professional offices and functions: ED LÚ A, first found at Uruk (end of fourth and early third millennia) and copied during the next millennium and a half in different cities of the country.[17]

2. Constitutional and Administrative Law

2.1 *Organs of Government*

The list ED LÚ A begins with the word nám-ĜIŠ.ŠITA (nám-éšda),[18] meaning "king(ship)" according to second millennium sources.[19] It is followed by nám-lagar$_x$(ĦÚB), most probably "viziership."[20] Both entries occur in (published) administrative documents of the Uruk III period.[21] The offices of nám-sá, nám-umuš "councilor" and "adviser" follow, then nám-iri "city office."

2.1.1 *The King*

2.1.1.1 The realm ruled by the nám-éšda cannot yet be determined with certainty. It may have comprised several city-states in southern and northern Babylonia, organized in a league under a central authority (of limited power) or the provinces of a state.[22]

2.1.1.2 The word lugal (= *šarrum*) with a clear political meaning "king" is not attested before the inscriptions of the "Kings of Kiš," Me-bára-si (Me-baragesi) and *Mesalim*, at the end of the ED II period.

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[17] Englund and Nissen, *Die Lexikalischen Listen* . . ., 14–19, 69–86; MSL 12, 4–12; Wilcke, "ED Lú A . . ."

[18] Reading *ti-iš-tá-*LUM for ĜIŠ.ŠITA at Ebla in the third millennium (MEE 3, 196: Sillabario 1) and éšda in the canonical series Lú = *šá* (MSL 12, 93: 26 $^{\text{eš-da}}$ŠITA.ĜIŠ.KU = *šar-ru*). See MSL 12, p. 11f.; Wilcke, "ED Lú A . . ."

[19] Englund, "Texts . . .," 104f., with reservations.

[20] Assuming that ĦÚB is an early writing for the word later written SAL.ĦÚB = lagar$_x$, a synonym of sukkal "vizier" as shown by Wiggermann, "An Unrecognized Synonym . . ."

[21] Englund, *Archaic* . . ., 133, 144, esp. W 9656g i 1–2 on pl. 86.

[22] The term "state" is used here for a sovereign body politic ruled by a "king" (lugal) and of unknown internal structure which may comprise several city states. By "city state" is meant a political entity named after a city which may be independent, may with limited sovereignty form part of the state, and may in a centralized state become a province. It is generally ruled by a "steward" (énsi or ÉNSI.GAR).

The *Mesalim* inscriptions (from Adab[23] and Ĝirsu)[24] show the "King of Kiš" as a sovereign over (partly or occasionally) independent "city-states," which became provinces during the Sargonic and Ur III periods and were ruled by princes called énsi.k[25] "steward" (of the city-state X), being either an independent prince or a governor. The political organization of the country ruled by the "king" (lugal) may therefore not have changed much after the earliest period.

2.1.1.3 Early kingship and stewardship seem to have been hereditary in principle, passing from father to son, to the ruler's brother, or to his sons-in-law.

2.1.1.4 According to a third millennium political theory harking back to the Sargonic period (and continuing into the second millennium), kingship originated in heaven and migrated from one city to the next following rules that changed over time. It was given to a city and taken from it by decision of the divine council, which also selected the king.[26] The theory was modified at Lagaš at the time of or shortly after the reign of Gudea of Lagaš (twenty second century), by crediting the office of "steward" (énsi.k), with greater seniority than that of "king."[27]

2.1.1.5 In political titles the term énsi.k is always linked to the territory ruled by him ("steward of Lagaš") but as shown by the edicts of Irikagina (1.1.2 above) it also relates to the deity for whom he administrates his or her property, that is, the city state.

2.1.1.6 A third title relating to the highest office in a state or city state is that of "lord" (en), restricted—with the exception of epic tales and divine epithets—to the city (state) of Uruk. The word is homonymous with that for the highest priestly office (en); their relationship, if any, has not yet been satisfactorily explained.[28]

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[23] FAOS 5/2 Kiš: Mesalim 2.
[24] FAOS 5/2 Kiš: Mesalim 1.
[25] At Adab, the title is énsi.k-ĜAR.
[26] Wilcke, "Gestaltetes Altertum . . .," 99–116.
[27] Sollberger, "The Rulers of Lagaš."
[28] See Edzard, "Problèmes . . ."; "Herrscher," and Heimpel, "Herrentum . . .," with earlier literature.

2.1.1.7 Presargonic kings claimed divine parents[29] but, other than Narām-Su'en of Agade, kings were not worshipped as gods.

2.1.2 *The Legislature*

Kings (Irikagina) and stewards (Enmetena) issued edicts binding the commoners and officials of their state or city-state.

2.1.3 *The Administration*

2.1.3.1 *Central Administration*

2.1.3.1.1 Traces of a central administration can be found in a few documents from Šuruppak (Fāra period), cited by Jacobsen as evidence for a "Kengir League."[30] Mention of part of the price for a field (twenty shekels of silver and six sheep) sent from Isin to the OS king Ur-zà.g-è at Uruk seems to arise from a private obligation; no reason is given for a gift sent from Nippur to King Lugal-kisalsi of Uruk and a prince.[31]

2.1.3.1.2 During the Sargonic period huge royal households administered by a šabra é.k ("manager of the house")[32] were established in different parts of the land, especially in the Sumerian south.[33] Such administrators could attend to affairs in different provinces, e.g., Lagaš and Adab.[34] At Umma the local steward (énsi.k) and a royal scribe measure out together the enormous area of eighty-eight bùr of land (ca. 5.7 km^2) for a person (Yiṭīb-Mēr) high in the royal hierarchy.[35] All this points to a central administration in the capital centered around the king and his family and, most probably, not distinguishing between the king's private and state affairs.

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[29] Bauer, "Der vorsargonische Abschnitt . . .," 462; Wilcke, "Familiengründung . . .," 298–303.

[30] Jacobsen, "Early Political Development . . .," 121f.; Steinkeller, "Archaic Seals . . ."

[31] Wilcke, "Neue Rechtsurkunden . . .," 48f. (Isin); Westenholz, *Early Cuneiform Texts* . . ., no. 140 (Nippur).

[32] Foster, "Management . . .," 28f.

[33] Documented for northern Babylonia by the Man-ishtushu-Obelisk (Gelb et al., *Earliest Land Tenure* . . ., no. 40); for discussion and references, see Steinkeller, "Land Tenure . . .," esp. 554 and n. 5.

[34] Kienast and Volk, *Briefe* . . ., pp. 53ff.

[35] Foster, *Umma* . . ., 88 and pl. 6 no. 18; see Westenholz, Review, 78 and n. 12, who calls Yiṭīb-Mēr "the powerful Prime Minister under Sharkalisharri."

2.1.3.2 *Provincial and City-State Administration*

2.1.3.2.1 City-states and provinces had capitals (e.g., Ĝirsu for Lagaš) where the temple of the main god was to be found, but there were also sub-centers (in Lagaš, e.g., Niĝin and Gu'aba), which also housed temples of other important deities. In OS times, the temples served as administrative centers and their administrators, the saĝĝa, played an important role in governing temple estates. They also had to defend their territory against enemies.

2.1.3.2.2 An important civil office not (directly) related to the temples, was that of the Great Vizier (sukkal-maḫ), who, in the edicts of Irikagina is named second to the steward, both having received payments for divorces and marriages(?), a custom now abolished.[36] In OS Lagaš, other senior offices are the Great Scribes (dub-šar-maḫ), Great Lamentation Priests (gala-maḫ) of different (divine) households, the Great Seafaring-Merchant (ga:eš$_8$-maḫ), the Great One of Heralds (gal nimgir.k), and, again related to different households, the Great One of Merchants (gal dam-gàr.k).[37]

2.1.3.2.3 Sargonic provinces enjoyed a certain independence: in Umma, the royal "Akkadian" standard measures were used alongside a local system called "Sumerian" (see further below).[38]

2.1.3.3 *Local Government*

Elders (ábba) and city elders (ábba-iri.k) are attested, as is a "town overseer" (ugula iri.k).[39] Nothing is known of the latter's functions.

2.1.3.4 *Taxes, Public Service and Corvée*

2.1.3.4.1 The OS records of the Ba'u temple at Ĝirsu show a large number of personnel receiving rations all year round. Professionals,

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[36] FAOS 5/1 Ukg. 6 ii 15'–27' || iii [x]–5'[+y].

[37] In lú-IGI.NÍĜIN-texts; see Bauer, *Altsumerische Wirtschaftstexte* . . ., 214.

[38] Wilcke, "Zum Königtum . . .," 205 B 4–9, and "Politische Opposition . . .," 44–47.

[39] Bauer, *Altsumerische Wirtschaftstexte* . . ., p. 128; BIN 8 347 (FAOS 15/2 75) iv 4–5; the summary speaks of lú IGI.NÍĜIN ŠUB-lugal-ke$_4$-ne "important people (and) royal servants(?)." For the Sargonic period, see, e.g., Gelb, *Old Akkadian* . . ., no. 6:1; Foster, "Business Documents . . .," no. 8:2–3.

holders of allotted subsistence fields (lú šuku.r dab_5-ba)[40] and deep-sea fishermen (šu-ku_6 ab-ba.k)[41] are given rations only for four months (ix–xii) in the year and seem to have served the temple directly only during this period. From Irikagina's second year as king onward, these people are qualified in the ration lists as "owned" (lú ú-rum),[42] which suggests a status of slavery probably no different from that of slaves owned by private individuals. Other personnel took temple fields encumbered with duties (ku_5-ŕá ús-sa) on lease ($aša_5$.g apin-lá) and paid rent (še gub-ba, maš) for them.[43]

2.1.3.4.2 A special tax which must have replaced an original duty of corvée labor is called dusu "bricklayer's basket", a word which comes to mean "corvée." This tax may be one of the central concerns of the still poorly understood Enlilemaba Archive from Nippur[44] and it occurs occasionally in other documents.[45] Responsibility for the tax seems to have been upon the head of the (extended) family, while individual members had to contribute.

2.1.3.4.3 Iri-kagina.k claims by his reforms to have changed taxes or fees collected on special occasions (weddings, divorces, funerals) or from holders of special offices, for example, the dusu-tax collected from the saĝĝa.[46]

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[40] Attested from Lugalanda 5 to Irikagina 3. Only one undated source is available for year 4; year 5 is not attested; monthly rations were given throughout year 6 due to the difficult military situation (rations no. 5; 6; 9 and 11 are attested). In chronological sequence: VAS 25 12; RTC 54; VAS 25 23; FAOS 15/2 5, 4; VAS 25 73; FAOS 15/2 6; VAS 27 6; FAOS 15/1 Nik 13; FAOS 15/2 55; TSA 20; FAOS 15/2 7, 10, 118, 8, 68, 9; FAOS 15/1 Nik 52; FAOS 15/2 67; DP 121; FAOS 15/2 81, 11.

[41] TSA 19; FAOS 15/2 28.

[42] First attested in DP 113 $xv^{!}$ 3–5 (year 2, 8th ration) "Ba'u's barley rations of (= for) blind persons, porters, and single šà-dub workers, owned persons." From this time on, (lú) ú-rum in the ration lists also qualifies the géme "female slaves" and their children and the lú šuku dab_5-ba "holders of subsistence fields."

[43] See Steinkeller, "Renting of Fields . . .," 142–145; Bauer, *Altsumerische Wirtschaftstexte* . . ., no. 7; note that in the summary (ix) the field is called $aša_5$ še mú apin-lá $aša_5$ dusu "rental barley-producing field, corvée field."

[44] Westenholz, *Old Sumerian* . . ., 59–86, nos. 44–78; he considers it a "common fund . . . literally the family 'basket'" (60).

[45] See, e.g., Donbaz and Foster, *Sargonic Texts* . . ., no. 59.

[46] FAOS 5/1 Ukg. 4 v 4–21 || 5 v 1–18; 4 ix 2–6 || 5 viii 11–15.

2.1.4 *The Courts*

2.1.4.1 *Judges*

The organization and structure of the judiciary prior to the late OS period is unknown. The Sumerian word for judge is di.d-ku$_5$; its Akkadian counterpart, *dayyānum*, is not attested in syllabic spelling. The king's (in city-states, the steward's) role as supreme judge may be inferred from non-legal sources. Ur-Emuš, who passed sentence in the earliest attested lawsuit,[47] is known as "the Great One of Merchants" (gal dam-gàr.k) at the time of Lugalanda and Irikagina.[48] A herald acts as a judge in a college of judges.[49] In the provinces of the Sargonic empire, the governor[50] and/or the saĝĝa (of Isin)[51] appear as the highest judicial authority: two governors of Kazallu (one of them a prince) judge the same case in three different consecutive trials.[52] But the competence of the provincial administration to administer justice in capital cases was restricted if citizens of Agade itself were involved.[53]

2.1.4.2 *The Commissioner*

2.1.4.2.1 Documents recording litigation (with as yet no fixed form, some records giving the impression of private notes) often mention a commissioner (maškim).[54] He receives a special payment (in silver or in kind) recorded sometimes in the court document itself: níĝ nam-maškim.k "that of the maškim-office," or níĝ ĝìri-na.k "that of

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[47] SRU 78 from the time of Lugalanda, steward of Lagaš.

[48] See Lambert, "Ur-Emush . . ."; FAOS 15/1, p. 522.

[49] SRU 88.

[50] See Yang, *Sargonic Inscriptions* . . ., nos. 650, 815 (governor of Adab); SRU 92 = FAOS 19 Is 4; no. 96 = FAOS 19 Gir 4 (letter to the Lagaš governor Lugalušumgal); Gir 2 seemingly also deals with a legal problem. The governor of Nippur decided the litigation; see Krecher, "Neue sumerische . . .," no. 26 (reading [U]r-^{d}En-líl, énsi Nibru^{ki}-k[e$_4$], di-⌜bì⌝ s[i] ⌜ì?⌝-sá). SRU 80, a lawsuit concerning an ass let free (by gross negligence or with malice) states that the lawsuit is closed and that it had been put before the governor of Nippur (restoring ll. 11–12 as é[n]si Nibru^{ki}-šè, in[im] a-ĝál). Cf. Steinkeller, *Third-Millennium* . . ., p. 6.

[51] See SRU 78a (see Steinkeller, *Third-Millennium* . . ., p. 7 on *JCS* 20 [1966] 126); 84–85a; Steinkeller, *Third-Millennium* . . ., no. 5.

[52] BIN 8 121.

[53] In the letter FAOS 19 Um 5, a certain Ur-Utu instructs or advises one Šeššeš-ĝu not to kill citizens of Agade and to send them to Irgigi because "Agade is king." It seems reasonable to regard this Irgigi as the king of the same name who, according to the Sumerian King List, ruled in the three-year interregnum after King Šarkali-šarrī.

[54] Edzard and Wiggermann, "Maškim."

his responsibility."[55] Payment of such fees could be enforced, which then led to an additional fee.[56] Lists of the fees were kept, perhaps in some official archive.[57] A document from Adab suggests that these payments ultimately went into the coffers of the palace.[58] Some records of purchases and gifts mention a commissioner among the witnesses.[59]

2.1.4.2.2 The office of maškim at this time was a function, not a profession, and it was not restricted to the judiciary. The commissioner may be a scribe,[60] a barber,[61] a gendarme of the manager of an estate,[62] a royal gendarme,[63] or a party to an earlier transaction.[64] His duties are for the most part not described. According to Edzard and Wiggerman, he had to investigate economic and legal matters relating to the lawsuit.[65] He is said to have divided the estate of a woman,[66] and once he is said to have decided the case.[67] He might be relieved of his office for misconduct.[68]

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[55] SRU p. 223 s.vv.; Foster, "Notes . . .," 21–24. In MVN 3 52, a royal "gendarme" receives 8 shekels of silver for his responsibility and 1 shekel as travel expenses. According to col. ii 1' he acted as commissioner.

[56] Foster, "Notes . . .," no. 11 (translit. only); I read: 11 giĝ$_4$ [kù-babbar], dam Túl-t[a-ra], *Šu-ni*-DIĜIR nam-maš[kim-šè], ì-na-ab-[lá-e], níĝ nam-maškim 1 [giĝ$_4$ kù-babbar] "Šuni-ilu will [pay] the wife of Tulta 11 shekels of silver as commissioner's (fee). The commissioner's fee is 1 [shekel of silver]."

[57] SRU 69; MAD 1, nos. 208, 228, 242; Foster, "Ethnicity . . .," no. 9ff.

[58] OIP 14 90 (Yang, *Sargonic Inscriptions* . . ., no. 819): "3 [. . .] cows, 1 one-year-old bull, are the commissioner's fee for the fact that the house of Geme-Emaš.k had been divided. [Out] of these [the . . . cows by. . . .], and the one-year-old bull by the herder Ur-diĝira.k were taken in charge from the palace. Month vii."

[59] E.g., SRU 1; 63 (after an obscure passage) (Fāra period); 64. Yang, *Sargonic Inscriptions* . . ., no. 815 (Sargonic period), although very similar to a sale contract, has features of a lawsuit resulting in the transaction: "1 female slave—she will bring 15 shekel of silver—Akalla on behalf of (the governor) Lugal-ĝiš made her pass the wooden (pestle). Ĝissu was the commissioner. The Zabar[dab] paid him 1 shekel of silver. (4 witnesses) are its witnesses."

[60] SRU 1 vi 4–6.

[61] SRU 91 iii 7–8; Yang, *Sargonic Inscriptions* . . ., no. 650, 10–13.

[62] Krecher, "Neue sumerische . . .," no. 25.

[63] MVN 3 52; SRU 71.

[64] SRU 56 iii 12 (= Westenholz, *Old Sumerian* . . ., no. 50); see i 1–ii 2; he is an inspector of the silversmiths.

[65] "Maškim," §1.

[66] OIP 14 90 (Yang, *Sargonic Inscriptions* . . ., no. 819).

[67] Krecher, "Neue sumerische . . .," no. 25, 8–10: "Ur-Damu.k, the gendarme of the manager of the estate, was the one who had rendered justice in this case" (maškim d[i] si-sá-a-bi).

[68] I understand FAOS 19 Gir 31:5–8 as, "I have relieved PN$_1$ and PN$_2$ of their office as commissioner." The reason may be mentioned in ll. 14–16: "A gift/bribe

3. Litigation

3.1 *Terminology*

The general term for litigation and lawsuit is di.d ("speaking")[69] in Sumerian and *dīnum* in Akkadian. In both languages it also means judgment. Even more general is the word inim ("word(s)," "affair") which may also refer to legal transactions.

3.2 *Parties*

The parties to the lawsuit are called lú-di-da.k[70] (lit., "the person of the lawsuit"). There is no restriction according to gender. There is one possible case of a slave contesting his status.[71]

3.3 *Procedure*

3.3.1 The texts occasionally name the place where the lawsuit was held. One judgment was rendered in(?) the palace gate,[72] one "at the place of (the god) Pabilsaĝ." One text speaks of the "place of the judges."[73]

3.3.2 The only mention of initiating a lawsuit occurs in a royal inscription: gù ĝar[74] "to shout", "to lay a claim to something (against someone)." An Akkadian Narām-Su'en inscription uses the verb *dīānum* "to litigate" for the opening speech in a case (see 2.1.4.1 above).

3.3.3 The initial claim may be followed by one party or their representative seeking access to the court, directly or indirectly. Attested

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has been given to him for the commis[sioner]ship. My lord took [the gift/bribe] away from him."

[69] Attinger, *Éléments* . . ., § 329; Wilcke, "Flurschäden . . .," 304f. (to be used only with "Korrekturen").

[70] SRU 149; 216 s.v.

[71] So understood in SRU 86. The fragment does not name the plaintiff; it could also be that a third party claims property rights to the slave.

[72] SRU 82: 9 BAD abulla(KÁ.GAL) é-g[al].

[73] MVN 3 77, 8(?); 18; perhaps a school text.

[74] The traditional reading: inim-ĝar results from not differentiating gù ĝar = *ragāmu* and the similarly written inim-ma ĝar, a term used at Old Babylonian Ur in renunciation clauses (see, e.g., Charpin, *Archives* . . ., 10) and found already in Sargonic times: Krecher, "Neue sumerische . . .," no. 27, 11–13: "*zur Sprache bringen*" (Krecher's italics).

are one letter requesting the addressee to judge the case of a certain person[75] and two letters from a certain Ur-lugal.k to an otherwise unknown Inim-ma[76] informing him about the opposing party and requesting him to prompt the judicial authority to render judgment and to issue a sealed document. In one case, this is the (local) saĝĝa of Isin. In the other, the opposing party comprises citizens of Nippur; here the governor of Nippur is to be urged to act as judge. A third letter[77] reports the next preliminary step: the unnamed sender tells a man who has authority over two people, the opponents of the same Ur-lugal.k, to send them to him.

3.3.4 After these preliminaries, the investigation of the commissioner and the litigation proper begin.[78] The reports mostly introduce the object of the litigation with a short summary of the previous transaction or, in the case of an offense, the wrong caused to the injured party.[79] These summaries presumably represent the results of the commissioner's research. Declarations of the parties during litigation[80] and an occasional withdrawal (nam-gú-šè ba-ni-a_5)[81] may be recorded. The successful efforts of the court to establish the truth by weighing conflicting statements and evidence are referred to by the term bar-tam "to examine, select" (PSD).[82]

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[75] SRU 94; FAOS 19 Gir 30. The addressee (Du-du) is asked to render judgment ki Ad-da-ta "from the place of Adda" understood by the editors as substitution. I understand it as "under the authority of Adda."

[76] SRU 92–93; FAOS 19 Is 1–2.

[77] SRU 94; FAOS 19 Is 4.

[78] The Sumerian term di.d du_{11}.g "to litigate with someone for something" is extremely rare at this time: see SRU p. 219 and 91 ii 10–iii 1: Nin-ĝiš-e, di-bi, Úr-ni, Zà-mu-ra in-na-du_{11} "because of N., Urni conducted this litigation against Zamu.k;" See further Yang, *Sargonic Inscriptions* . . ., no. 650, 1–3: Lú-^{d}En-[líl-lá-ra/da], Ur-^{d}En-líl-lá da[m-gàr], di ì-da-du_{11} "The merchant Ur-Enlila.k litigated with Lu-En[lila.k]." An Akkadian document uses *dīānum* (SRU 26 i 3: *i-dè-na-ma*).

[79] SRU 80.

[80] SRU 80: 4–5; 85: rev. 11–15; 85a: 1–5; 87: 3–11; 100: 1'–3'; Steinkeller, *Third-Millennium* . . ., no. 6: 2'–7'; 61: (= Krecher, "Neue Sumerische . . .," no. 19) 18–21.

[81] Literally "A made it (an object of) loot(ing) for B," implying, apparently, relinquishment of the object but not of the claim; see SRU, pp. 106–7 on no. 55:43–44 "auf etwas verzichten" (for the PBS 9 texts see now Westenholz, *Old Sumerian* . . ., nos. 75: 16–17; 76: 7–10); Krecher, "Neue sumerische . . .," 26 iii 8 (with commentary); Foster, "Business Documents . . .," no. 7:6–10. (I do not understand the translation on p. 152.)

[82] SRU 91: 9–10: [saĝ g]u-šè, bar ì-na-tam "He examined (it for?) him thoroughly ('to the tip of the thread')"; iii 5–6: saĝ gu-šè, bar bí-tam "He examined it

3.3.5 The terminology of judgment varies. The request to render justice is worded di-bi di ḫé-bé "may he render justice in this case" (literally: "may he speak a judgment for this litigation"). The OS documents from Lagaš and Isin and Adab texts (one each) from the Sargonic period use the verb di-ku$_5$.r "to judge," "to render a judgment", (lit., "to break off the litigation").[83] Very frequent is the use of the verb si-sá "to be/make straight/just," "to render justice" in the formulation PN (+function)-e di-bi si bí-sá "The official PN rendered justice in this case."[84] Twice the Akkadian expression *dīnam dīānum* is used.[85]

3.3.6 The judgment may be a direct decision closing the case (di-til-la)[86] in favor of one party.[87] It may also be a decision depending on further proof. This can be realized by a declaratory oath (nam-érim) of one of the parties[88] or of one or more witnesses to the fact or to the original transaction.[89] As the oath will be taken in a tem-

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thoroughly"; iv 11–12: saĝ gu-šè <bar> im-mi-tam "He examined it here thoroughly." This interpretation is not without difficulties.

[83] SRU 78 (OS Ĝirsu), 78a (Sargonic Isin); FAOS 19 17 (Sargonic Adab).

[84] See SRU p. 219 s.v. di; Yang, *Sargonic Inscriptions* . . ., A 650, 5–8; Steinkeller, *Third-Millennium* . . ., no. 6 (TIM 9 100): 7–8; cf. Krecher, "Neue sumerische . . .," no. 25:10: maškim d[i] si sá-a-bi; SRU 82:10: di-bi si ab-sá "in this lawsuit justice was rendered." Edzard and Krecher translate di si--sá as "Prozeß leiten," which gives the idea of an authority presiding over the litigation but not taking an active part in it and not itself rendering the judgment. Since besides the commissioner no other persons but the parties and their witnesses are mentioned in the relevant documents, and since in SRU 88 three persons jointly "rendered justice in this lawsuit," it seems difficult to conceive of such a remote role for the official(s) in charge of the case.

[85] Steinkeller, *Third-Millennium* . . ., no. 74: 23–24; MVN 9 193: 5–7.

[86] SRU 79: 11. This short list records payments made by different persons (1 sheep each) for commissioners. The concluding phrase, di-til-la, indicates that the cases are closed. If this interpretation is correct, the "payments of silver to judges and their bailiffs," MAD 1, nos. 208, 228 and 242, should be similarly understood as DI.KU$_5$ PN$_1$, amount × (sc. of silver), PN$_2$, MAŠKIM "Judgment for PN$_1$, (who paid) the amount × for the commissioner PN$_2$."

[87] Yang, *Sargonic Inscriptions* . . ., no. 650: 5–8: "Because of 10 shekels of silver, Lugal-ĝiš, the governor of Adab, decided the case for Ur-Enlila.k (di Ur-^{d}En-líl-lá-[ra] si b[í-sá])."

[88] SRU 81.

[89] SRU 82:13–15 where I restore: lú in[im-ma-k]e$_4$-ne, ì-g[i-né-é]š, nam-[érim-šè b]a-an-˹šúm˺-[mu-uš] "The witnesses confirmed it. They were handed over to take the declaratory oath." See also FAOS 19 Gir 4 (SRU 96), where one person had taken the declaratory oath but another had not.

ple, there may be a time gap, during which, again, the judicial authority may be approached with the request for a judgment: "May he render a judgment in this case!"[90]

3.3.7 An alternative to the oath is the river ordeal. It seems to have been practiced quite frequently, as a large list with seventeen short protocols of ordeals and another fragmentary tablet, both from Nippur, show.[91] A single tablet reports a river ordeal and a declaratory oath.[92] The protocols of the large tablet succinctly mention the object in dispute, the party who "went down to the divine River," the opponent, and a commissioner. Most disputes are over fields, some over silver, barley, oxen, and sheep; one is about a slave. In the fragmentary text, the issue is a "stolen slave from Isin."

3.3.8 The final step is a promissory oath of the losing party not to bring up the same issue again, normally phrased as in contracts: "not to return to it he/they swore by the name of the king."[93]

3.4 *Self-help*

In the course of a dispute over a debt, the creditor seems to have taken two small children of the debtor in lieu of the debt. The debtor then "stole" his children, but the creditor took them back.[94]

3.5 *Settlement*

A complicated dispute over a family inheritance (Enlile-maba archive) contains settlements in and out of court.[95]

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[90] See the previous note.

[91] SRU 98 (= Westenholz, *Early Cuneiform* . . ., no. 49); 99 (= ibid., no. 159).

[92] Owen, "A Unique . . ." I translate: "Ur-Dumuzida.k came, he had come forth for Ur-En-lila.k from the place of (the goddess) Ninḫursaĝ.k from the divine River and he swore for him the declaratory oath. (Now Ur-Enlila.k) has renounced the claim. (Witnesses). They are its witnesses."

[93] See in general Oelsner, "Klageverzicht(sklausel)" and SRU p. 223f. s.v. mu; pa; pà; Krecher, "Neue Sumerische . . .," p. 264 s.v. mu; mu . . . pà.

[94] SRU 89.

[95] Westenholz, *Old Sumerian* . . ., no. 48 iii 6–15.

4. Personal Status

4.1 *Citizenship*

4.1.1 From the Fāra period onward persons outside their native city are characterized by reference to that city. A certain notion of citizenship may be found in Enmetena's remark that he "freed the children" of the cities Uruk, Larsa.m and Patibira.k and let them return to their respective deities (see 1.1.2 above). They were all subjects of Lugal-kineš-dudu of Uruk. Their ties to their local deities and cities seem stronger than to their suzerain. The strength of the bond with one's city of origin is also shown when an officer from Umma taken captive by Urnanše of Lagaš and acquiring landed property in Lagaš is there called the "field recorder of Umma."[96]

4.1.2 If no city could be named, affiliation to one's own native land was in late OS times expressed by qualifying a person as being "of (our) country" (kalam-ma-ke$_4$), parallel to the description of another man as "from Adab."[97]

4.1.3 In Sargonic Umma, that is, in the Sumerian part of the empire, we find a group of people qualified as "of Akkadian offspring" in contrast to another group called "Sumerian."[98]

4.1.4 A group called *nisqu* "selected" occurs in texts from southern Babylonia during the Sargonic period. It is organized under "inspectors/officers" (nu-banda) and "overseers" (ugula).[99] It is likely that

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[96] Bauer, "Der vorsargonische . . .," 452.

[97] Wilcke, "Neue Rechtsurkunden . . .," 57 and n. 110.

[98] MAD 4 161 (see Wilcke, "Zum Königtum . . .," 205):

21 *6* lú, a uri-me, "21 people à 6 (units of something unnamed): they are of Akkadian offspring";

22 *2* eme-gi$_7$, "22 (people) à 2 (units of something unnamed): Sumerian."

This unique, small, and very laconic document uses two seemingly different categories to differentiate the groups of people. The first, a biological one, is well known from animal terminology; see J.N. Postgate apud Steinkeller, "Studies . . .," 4f. and n. 22; "Sheep . . .," 54, 59, on the terminology for hybrids; Wilcke, "Neusumerische Merkwürdigkeiten," 636: gu$_4$ a am. The second category is language related but also used figuratively to qualify other things Sumerian, among them domestic sheep in contrast to foreign breeds; see Wilcke, "Zum Königtum . . .," 218–19 (repeated by Steinkeller, "Sheep . . .").

[99] OIP 14 162; FAOS 19 Ad 9;

these were resettled people originally from Akkadian territory or settlers on the payroll of the royal Akkadian administration. King Urnamma claims to have abolished the privileges they enjoyed.[100]

4.1.5 Citizens of the capital Agade could not be condemned to death by a provincial authority (see 2.1.4.1 above). If citizens of Nippur were party to a lawsuit, it had to take place under the authority of the governor of Nippur (see 3.2.3 above). The possibility of selling Nippurians into slavery may also have been restricted.[101]

4.2 *Class*

The Sumerian word for "free citizen" (dumu-gi$_7$.r) qualifies a group of men in a Sargonic text. Whether the legal status of the people employed in the great estates differed in principle from that of free persons is questionable. Nothing certain is known about a possible class of serfs called *maška'en*, well known from later periods.[102]

4.3 *Gender*

The head of household was, as a rule, a man, but from the beginning of the documentation women also appear in this function. A married woman could make contracts independently[103] or together with her husband.[104] Irikagina's reforms seemingly attempt to reduce the legal status of women in threatening severe punishment for uttering a curse against a man and in denying them the right to a second marriage.[105]

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[100] Wilcke, "Der Kodex Urnamma . . .," 306f. and n. 54.

[101] SRU 54 (from Isin). The document was obviously written for the buyer of the slave in question, who is not mentioned in the text. (Edzard assumes the merchant Ur-dun [i 2] to be the buyer, but he is also one of the witnesses [iii 9 = 33]). The mother's right to sell her son must have been contested because "when Aḫūšuni had come because of the status of citizen of Nippur, Ur-Gilgameš.k was the judge."

[102] See Edzard, "Sumerer und Semiten . . .," 246f.; Kienast, "Zu muškēnum . . ."; also MVN 3 102:3.

[103] See the list of women as buyers and sellers in sales contracts and as a party in other legal contexts in third millennium documents before Ur III, in Wilcke, "Vom Verhältnis . . .," 362–64.

[104] E.g., SRU 53 (l. 11 read: šu-ne-ne ab-si$^{?}$); Krecher, "Neue sumerische . . .," no. 5(?); 19.

[105] Reading in FAOS 5/1 Ukg. 6 iii 14–17: munus-e nita-ra, ⌜áš ḫul$^{?}$⌝ rib-ba ì-ni-du$_{11}$, munus-ba ka-ka-ni BAḪAR ì-šu$_4$ "if a woman utters a *terrible* curse against a man, that woman's mouth will be closed with a brick"; see further 5.1.1 below.

4.4 *Slavery*

4.4.1 *Terminology*

There are two Sumerian words for male slave: ìr and úrdu.d. Both are written with the sign NÍTA×KUR, indicating an original meaning of "mountain man." The word for female slave is géme (written MUNUS×KUR, i.e., "mountain woman"), a word also used for female workers in the great estates. Frequently, the texts simply use "head" (saĝ), qualified as female or male. The texts differentiate between "houseborn slaves" (eme_4-dú.d)[106] of both sexes and other slaves.

4.4.2 *Status*

4.4.2.1 Slaves were owned by private persons[107] or institutions[108] and could be sold.

They had some legal capacity of their own, as they could witness a contract,[109] sell another person (a foundling) into slavery, and perhaps also contest his or her status.[110] They thus could acquire property, although on the basis of later practice, it may be presumed that it would ultimately become property of their owner.

4.4.2.2 A small Sargonic tablet with an unwitnessed judicial finding suggests that houseborn slaves enjoyed a special status.[111] An OS source counts them not with the (normal) slaves but with the owner's

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[106] Or more simply: ama-tu.d.

[107] See above and the persons purchased by private persons, e.g., SRU 40–58a; Krecher, "Neue Sumerische . . .," nos. 14–15; 17–19 (no. 19 = Steinkeller, *Third-Millennium* . . ., 61); MVN 3 62; 80; 81; 102 (cf. also 60 iv 1–3; 77); Donbaz and Foster, *Sargonic Texts* . . ., no. 155; Foster, "Business Documents . . .," nos. 1–4; FAOS 15/2 90; VAS 25 13; Yang, *Sargonic Inscriptions* . . ., no. 713; Steinkeller, *Third-Millennium* . . ., nos. 57–59.

[108] See above 2.1.3.4 and, e.g., FAOS 15/1 19 vi 8: "They are female slaves (géme) of the Pasir temple"; SRU 86 2': nam-úrdu-^{d}Nin-ĝír-[su-ka] "status as slave of the god Nin-ĝirsu.k." Note that in SRU 43 a female slave of Nin-ĝír-su.k sells a foundling to the wife of the saĝĝa. ITT 1 1336: 1–2: Lugal-zà-mí, eme_4-dú É-babbar; 2/1, 4543:1–6: KA-[x x x], zà-šu$_4$ l[ugal-kam], 3 dumu E$^{?}$, eme_4-dú, lugal-kam, ì-zàḫ "K., branded for the k[ing], (together with) 3 (. . .) children—he is a houseborn slave of the king—fled." (This fragmentary letter should be added to those from Ĝirsu edited in FAOS 19.)

[109] SRU 62 iv 1 (note, p. 117).

[110] See previous footnote and 3.1 above.

[111] OIP 97 8: "Gan-Gula.k, wife of Kabani-maḫ, fixed for Nin-šud the responsibility fee of 5 shekels of silver when Geme-Enlil.k had seized Nin-šud for the status of houseborn slave (nam-eme_4-dú-šè). Geme-Enlil.k need not replace Nin-šud."

children, suggesting that they were children born to the head of the family by a female slave.[112]

4.4.3 *Creation*

4.4.3.1 Despite the meaning "mountain (wo)man" suggested by the logograms MUNUS×KUR and NITA×KUR, the slaves in the sources do not seem to be of foreign origin, with the possible exception of the igi-nu-du$_8$ "blind ones."[113] As a Great Merchant was employed to acquire them,[114] they would have been purchased outside the borders of the city-state of Lagaš.

4.4.3.2 The majority of published slave sale documents record the creation of slavery rather than resale. Nearly a third deal with the creation of slavery by family members. In eight documents[115] a mother[116] sells a child, with the person sold being named in three instances as one of the recipients of the price—an indication of consent barring later revendication.[117] In five, the father is the seller (once father and brother).[118] Once a husband sells his wife[119] and once brothers their sister.[120]

4.4.3.3 Debt as the cause of slavery is evident when creditors receive the price of an adult "cantor" (gala).[121] The same seems probable where the governor buys from a judge a family consisting of its head (a "cantor"), his wife, two daughters and two brothers brought back to Ĝirsu by the seller's brother,[122] and it may well be the reason why a slave woman was sold on behalf of the governor for less than

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[112] Gelb, "Terms for Slaves . . .," 85f.
[113] See Farber, "Akkadisch blind," 221.
[114] SRU 42.
[115] Further unpublished material is listed in ELTS.
[116] In Yang, *Sargonic Inscriptions* . . ., A 713, 2'–3' I restore [*T*]*á-qù-la*, [am]a$^{!}$-ni "her [mot]her Taqūla."
[117] SRU 44; 54; Krecher, "Neue sumerische . . .," nos. *14; *15; *17; 18; 19; cf. also MVN 3 60 iv 1–3 (asterisk: person sold among recipients of price).
[118] BIN 8 363; VAS 25 13; Steinkeller, *Third-Millennium* . . ., no. 59; MVN 3 80; *102; cf. also 77 (asterisk: father and brother).
[119] Steinkeller, *Third-Millennium* . . ., no. 57, reading dam-⌜ni⌝ (l. 3).
[120] Ibid., no. 58, reading [še]š saĝ-ĝá-me (l. 9).
[121] SRU 45.
[122] SRU 46.

her estimated price.[123] It is also probable in cases where the person sold (so far all are male) is qualified by his patronymic, which indicates that a free person is sold into slavery,[124] and where a profession is mentioned.[125] Note the exclamation of a defaulter, "let them take away the area of the Inana irrigation-ditch, but let them not lead away my children!"[126]

5. Family

5.1 *Marriage*

5.1.1 *Conditions*

Irikagina prides himself in version (c) of his edicts[127] on the abolition of the crime of women "taking," that is, marrying, two husbands: "It was so that women of former times took two husbands each. Today's women have abandoned that crime."

Formerly, this was understood as the abolition of polyandry; later the alleged abuse was explained as abstention from divorce in view of high costs.[128] It would be simpler to assume that Irikagina is talking about the remarriage of widows (and divorcées). Equally, no evidence for polygamy can be found in our sources. Marriage was monogamous. Taking a female slave as a concubine was probably not exceptional.[129]

5.1.2 *Terminology*

In Sumerian, both partners to a marriage are called dam. To take a spouse is tuku; apart from the text of Irikagina cited above (5.1.1), it is to date only attested with the husband as the (ergative) subject. dam taka$_4$ means "to divorce."

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[123] Yang, *Sargonic Inscriptions* . . ., A 815.
[124] SRU 40–50; 58; MVN 3 62; see also 77.
[125] Foster, "Business Documents . . .," no. 3: má-laḫ$_5$ "(ship's) captain."
[126] Wilcke, "Neue Rechtsurkunden . . .," 56ff.: Grand document juridique, K.
[127] FAOS 5/1 Ukg. 6 iii 20–24.
[128] Hruška, "Die Innere Strukur . . .," 121f.,
[129] See 4.4.2.2 above on houseborn slaves.

5.1.3 *Formation*

5.1.3.1 Following a contractual agreement between the heads of two families, the groom('s family) brings gifts (níĝ-mussa$_x$ + verb ak, *terḫatum* + verb *wabālum*), a kind of "bridewealth," to the house of the bride's father or guardian.[130] Breach of the contract leads to litigation: Ur-lugal.k swears an oath before the saĝĝa of Isin not to raise claims against Nin-gula and declares under oath: "A husband of her choice (lit.: heart) may marry Ningula. I certainly shall not hinder her!"[131] He therefore had a right to marry her (not a right to her),[132] a right resulting from a marriage contract, which he now relinquished.[133] This would have occurred before consummation, in the state modern scholars call "inchoate marriage."[134]

5.1.3.2 Iri-kagina.k's edicts revoke payments to be made to the steward, the Great Vizier and an abgal-priest after someone "poured" *kohl* on a head—a symbolic act of anointing to be understood as a process of the formation of marriage.[135] Although Iri-kagina.k also claims to have abolished it, the mention of "silver of having taken a spouse" (kù dam tuku-a) in a Sargonic list of commissioner's fees from Ĝirsu points to a continued use of payments to the administration for (the approval of a?) marriage at Lagaš.[136]

5.1.4 *Marital property*

5.1.4.1 The relief engraved on the Ušumgal Stele (ED I) shows a woman and a man (Ušumgal) of equal height meeting at a door,

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[130] Falkenstein, *Die neusumerischen* . . ., 103f., has argued convincingly that originally these gifts were meant for the wedding feast. The earliest example is found in the Fāra text TSŠ 515 rev. ii 3–5: "5 pound of wool, price for fattened pig(s), is the bridewealth (níĝ-mussa$_x$) of 1 sister"; see Edzard, "Fāra . . .," 176. An Old Akkadian document from Ešnunna (MAD 1 169) lists the *terḫatum* brought by a man to a woman and a man in the presence of witnesses: sheep, silver, several garments, pigs, oil, malt, wool, shoes, and unidentified objects. This list demonstrates that the Sargonic *terḫatum* is still far from the cash payment of Old Babylonian times and much closer to the Neo-Sumerian níĝ dé-a and níĝ-mussa$_x$ ^{sá}.

[131] SRU 85.

[132] Wilcke, "Einige Erwägungen . . .," 157f.

[133] Since neither parents nor a guardian are mentioned, Ningula must have been an independent woman.

[134] Westbrook, *Old Babylonian* . . ., 34–38.

[135] Following Hruška, "Die innere Struktur . . ."

[136] ITT 2 2917; see Falkenstein, *Die neusumerischen* . . ., 105; Wilcke, "Familiengründung . . .," 253.

both followed by persons depicted on a smaller scale, each of them identified by a caption. The name of one is repeated (at the feet of the woman) and is qualified as niĝir-si "best man". The text enumerates property and summarizes the fields as za_x(LAK 384) Ušumgal, "property of Ušumgal."[137] In my interpretation, text and image combined tell of a marriage and the formation of marital property, partly given to the groom by single persons (of his family, presumably, as a marital gift) and partly by the best man and witnesses to the defloration[138] who may have a common bond with the bride.

5.1.4.2 A similar constellation, a man and a woman facing each other, is depicted on the Blau Stones, one of them naming a field, its location and a person, the other a group of commodities which may be for the wedding feast.

5.1.4.3 Women frequently occur as sellers of landed property. In the Grand document juridique, a widow sells a large field designated as her female gift-field ($aša_5$ MUNUS saĝ-rig_9), deriving from a dowry or marital gift.[139]

5.1.4.4 We noted above gifts to the groom, possibly from his family, listed on the Ušumgal stele. When Prince Ur-Tarsirsira.k had led away (from her home) his wife, Nin-eneš, his parents gave him a rich array of, inter alia, luxury goods and household utensils, perhaps in lieu of a dowry from the bride.[140]

5.1.5 *Dissolution of marriage*

As for marriage, Iri-kagina.k claims by his reforms to have abolished payments to the steward and the Great Vizier "after a man divorced a wife."[141]

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[137] On za_x(LAK 384) see Civil, "The Sign LAK 384"; Westenholz, *Old Sumerian . . .*, no. 45 ii 14–iii 1 = 48 ii 12–14 (cf. no. 44: 8: za_x Lugal-inim-e-kam); no. 52: 11; 53: 5.

[138] Reading é-gi = é-gi_4.

[139] Wilcke, "Neue Rechtsurkunden . . .," 54–56: Grand document juridique, I+J.

[140] DP 75; see Wilcke, "Familiengründung . . .," 284.

[141] FAOS 5/1 Ukg. 6 ii 15'–21'; iii 1'–5'.

6. Property and Inheritance

6.1 *Tenure*

6.1.1 Private ownership of fields and houses (and later of slaves and animals) is attested from the earliest sources. Although the evidence is not conclusive, it is safe to assume that the transactions recorded on the earliest stone documents are purchases of land. The areas changing hands can be extensive, sometimes amounting to latifundia: according to the En-ḫeĝal tablet, the išib priest Lugal-kigala acquired an area of 150 bùr, (15 km by 650 m).

6.1.2 Dependents of temples and of the state held prebend land ($aša_5$.g šuku-ra.k) or could lease fields from their employer (see 2.1.3.4 above). The hereditary nature of prebends may have led to a failure to distinguish between prebend and private property. Practically all the alleged abuses of power in Iri-kagina.k's edicts can be understood as the exercise of prebend privileges, in which case the reforms would be, inter alia, an attempt to replace the old system of prebend holders with one comprising officers of temple and state.

6.2 *Inheritance*

6.2.1 *From ED I to the Pre-Sargonic Period*

6.2.1.1 Information on inheritance is only indirect. Some of the earliest stone documents recording field sales point to an underlying division of inheritance, for example, ELTS 1 divides a total area of fifty-five bùr coming from four people, three listed for fifteen bùr each and the fourth for ten (cf. ELTS 3; 8). Similarly, in the majority of Fāra period land sales, two or more persons receive the price. It is clear from sections A+B of the Grand document juridique that a wife and her son not only inherited the property of the deceased head of the household but also his obligations.[142] The dissolution of a common inheritance may be seen also in ELTS 14–15,[143] 22–23, and 32.

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[142] Wilcke, "Neue Rechtsurkunden . . .," 47–67:A+B (mother and son), F (brothers), M (2 brothers and the wife of the third one), P+Q+R (children of 3 brothers?), V (brother and sister), W-CC (descendants of PN and the wife of one of them: 2 generations).

[143] Wilcke, "Neue Rechtsurkunden . . .," 38; 41–43.

6.2.1.2 According to document Foxvog (ELTS 32a) from Adab, a son inherits a claim to payments.[144]

6.2.1.3 Widows inherit the administration of their husband's estate, for the benefit of their sons.[145]

6.2.1.4 A right of inheritance of brothers, a sister and other members of the household of the deceased may be concluded from their role as witnesses to sales contracts (by which they forego future claims to the property),[146] especially when the scribes call them "brother" or "sister of the person,"[147] "brother of the field" or "(member of the) household of the field."[148] The "little sister" (nin-TUR) of a deceased seller receives the last installment of the price at the time of his funeral.[149]

6.2.2 *Sargonic Period*

6.2.2.1 A commissioner is involved in dividing a woman's estate at Adab[150] and in a division of slaves at Ĝirsu.[151] Evidently, the aid of a law court had been necessary in these cases. The Enlile-maba archive documents the passage of a disputed estate, called the property (za_x [LAK 384]) of the deceased, through three generations of merchants at Nippur.[152] As well as property, responsibility for the family corvée tax (dusu é-ad-da.k, see 2.1.3.4.2 above) passed on the deathbed, perhaps to the next eldest brother.[153]

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[144] Wilcke, "Neue Rechtsurkunden . . .," 44–47.

[145] E.g. Grand document juridique, A+B (Wilcke, "Neue Rechtsurkunden . . .," 48–50).

[146] E.g. SRU 13 iii 1; ELTS 14 section F (Wilcke, "Neue Rechtsurkunden . . .," 41; of the two alternatives mentioned, it seems more plausible that the witnesses are the father and the brothers of the deceased); ELTS 32a (Document Foxvog, "Funerary Furnishings . . .").

[147] šeš lú.k or nin lú.k: see Krecher, "Neue sumerische . . .," p. 169f.; 4 iii 9; SRU 7 iii 8; 8 iv 3; Visicato and Westenholz, "Some Unpublished . . .," no. 5 v iii 10.

[148] Wilcke, "Neue Rechtsurkunden . . .," 36, on ELTS 15 vi 19 (ad sections F, G, L).

[149] SRU 35 iv 3; see Wilcke, "Neue Rechtsurkunden . . .," 46f., and "Vom Verhältnis . . .," 364.

[150] OIP 14, no. 90.

[151] ITT 2 2917 (Foster, "Notes . . .," no. 10).

[152] Westenholz, "*Old Sumerian* . . .," nos. 44–78.

[153] Ibid., no. 48 iii 17–iv 5: "In the presence of his wife Urni, Ur-Namma.k, when dying, burdened E-lu with the corvée tax, ⅔ of a pound of silver . . ."; cf. 62 i 1–11.

6.2.2.2 Two other (possibly related) texts from this archive refer to female inheritance. One lists "property of the mother" and continues: "a sister renounced (all claims) in favor of the sister." In the other, Ama-níĝ-tu.d renounces claims to the listed property of Za-pa'e.[154]

6.2.3 Gudea (Stat. B vii 44–46) introduced the right of a daughter to become an heir to her parental estate, that is, not just to her mother's property.

7. Contract

The documents of this period are never title-deeds. They serve as an aide-mémoire and do not create a claim to something or against somebody. The contract is an oral procedure which may be accompanied by legally operative actions, either symbolic or directly effective (e.g., payment).

7.1 *Sale*

The commonly held view that Mesopotamian sale was a cash transaction (Barkauf), in which ownership was transferred by payment of the price,[155] is contradicted by the Sargonic document MVN 3 81 (see 7.1.5.2.2 and 7.3.2 below) and by the possibility of crediting the price (see 7.3.2).

7.1.1 *Terminology*

The Sumerian word "to buy" is sa_{10}, from which the word "price" is derived: níĝ-sa_{10}.m (< *níĝ sa_{10}-a-m "it is the thing which bought"), sometimes shortened to simple sa_{10}.m (< *sa_{10}-a-m "it is what has bought"). This again produces words for "buyer" (lú níĝ-sa_{10}.m ak, "price maker") and seller (lú níĝ-sa_{10}.m kú, "price consumer"). The buyer may also be called "the person who bought the object" (lú OBJECT sa_{10}-a). Additional parts of the price are: níĝ-diri.g "addition," níĝ-ba "gift," munsub—ku_5.ŝ "haircut," iš-gána < *iškinū*, originally perhaps "installation," but changing in meaning over time to "extra payment in kind in a fixed ratio to the price" and, finally,

[154] Westenholz, "*Old Sumerian* . . .," no. 75:15–17.
[155] See, e.g., San Nicolò, *Schlussklauseln* . . ., 45–70.

perhaps to "finalizing payment" (see below). A special feature of Sargonic texts from the Diyala region is the use of *šadādum ana* "to measure for someone," for "to sell (a house) to (someone)."[156]

7.1.2 *ED I Period*

The exchange of property against a payment in kind is the earliest recorded transaction in private law. For a long time, the written form is restricted to landed property. The earliest inscribed stone documents contain a description of the object sold (measurements, location), the buyer's and sellers' names, a description of the payment, and a reference to a feast (KAŠ/TIN.SÌLA).[157]

7.1.3 *Fāra Period*

With the advent of the Fāra period, the documents develop a fixed pattern in which the element of a festive meal also plays an important role. It creates the necessary social context for the transaction.[158]

7.1.3.1 Documents from Fāra and contemporaneous texts from Uruk[159] and of unknown provenance[160] have a set form, naming first different parts of the price and the relevant qualities of the object sold.[161] The "price" (sa_{10}.m, níĝ-sa_{10}.m) is related to the dimensions of the object sold and appears to be standardized, at least for fields.[162]

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[156] Gelb, *Old Akkadian* . . ., nos. 1; 2.

[157] The sign group names a kind of vat for alcoholic liquids (see FAOS 5/1: Ukg. 6 v 2–3; 10 I 6) and may also designate a drinking party, which fits well with the later evidence from Fāra of sales being concluded with a feast.

[158] See Bottéro, "Antiquités . . .," Krecher, "Neue Sumerische . . .," "Die Aufteilung . . .," and "Kauf," Glassner, "Aspects du don . . .," and "La gestion . . .," Wilcke, "Neue Rechtsurkunden . . .," 16f.

[159] See Krebernik, "Die Texte aus Fāra . . ." 243 and n. 73.

[160] See ibid., "Die Texte aus Fāra . . .," 372–377.

[161] See Wilcke, "Neue Rechtsurkunden," 9–26.

[162] The authors of ELTS observed that "in field sales in which the price is paid in copper . . . the value of one iku of land usually is two pounds of copper." Fixed prices per unit of field may also be observed in ELTS 25 (Nippur Stele) where 1 rope of land corresponds to 10 pound of copper. In the Isin stone tablets, the rate is 10 shekels of silver per rope of land and an additional tenth of that in grain as iš-gána (< *iškinū*). Lummatur in ELTS no. 22 pays four times the amount of 2 kor of barley per dike (= iku) of land; in no. 23 he pays 8 times 2 kor of barley à 2 ul (= a half sized kor) and 3 pounds of wool per dike. In "Appendix to nos. 22–23" the rate would be 1¼ kor per dike.

The "addition" (níĝ-diri.g) corresponds to extra attributes. A third part, the "gift"[163] (níĝ-ba) has no identifiable counterpart in the extant texts and varies to such an extent that that it may be negotiable and prestige-related. In two documents, it is replaced by a payment with a possible reference to a haircut (munsub (am_6-)ku_5)—a symbolic act of separation. These three payments are made or at least calculated in one of the standard currencies: copper, silver, or grain. As the last part of the price, several payments in kind (clothing and food) for the sellers, i.e. the recipients of the price (lú sa_{10}.m kú), and their relatives at the feast are listed. A list of witnesses—normally very long—follows, concluded by public witnesses such as the field scribe (dub-šar $aša_5$.g.k), the owner of a neighboring field (ABSIN-ús), the surveyors (um-mi-a lú é éš ĝar "scholar who put(s) the measuring rope to the house"), and the town crier (niĝir sila.k)—not all on the same occasion. Finally, the agricultural district and the buyer of the field or house (lú $aša_5$.g/é sa_{10}) are named, followed by an entry noting the "turn" (bala) of a named person, perhaps an eponym as a means for dating the document.

7.1.3.2 As a rule these texts do not use any finite verbal forms. They list facts and are stylized neither from the buyer's point of view (*ex latere emptoris*) nor the seller's (*ex latere venditoris*). And neither does one party "buy" nor the other "sell"; rather, one of them provides goods labeled "price (of the object)" and the other accepts (lit., eats) it. This act of acceptance changes the object's legal status: the provider of the price may take possession, the recording of which does not seem to be of importance.

7.1.4 *Between the Fāra Period and Ur-Nanše.k of Lagaš*

From this period date clay and stone documents from several cities in southern Mesopotamia: Nippur, Isin and Adab. Best preserved are two stone tablets (ELTS 14–15) in which the price consists of a standardized silver payment of ten shekels of silver per rope of land and an additional grain payment (iš-gána < *iškinū*) of one tenth the value (rounded) of the silver.[164] In addition wool and fat—again

[163] Or "allotment", according to Krecher, "Neue sumerische . . .," 150, and "Kauf," 492.

[164] Wilcke, "Neue Rechtsurkunden . . .," 19–21, 33–43.

at a fixed ratio—and (occasionally) bread and beer bread are given. The iš-gána and other payments in kind again suggest a feast, but the fixed rates clearly demonstrate that they are already developing into a kind of monetary contribution to the price. That state will be reached at the end of the OS period, when they are included in the price. Then they seem to become a means of finalizing the transaction with a last concluding payment—a matter of some importance, since payment could extend over a long period.[165] Frequently, a ritual act performed with oil is mentioned ("oil was spread at the side"), together with a public announcement (thereof?). In ELTS 32–33, the buyer's witnesses each receive a gift of a cloth (probably recorded because the document was drafted in the buyer's interest; the seller may well have given his witnesses gifts).

7.1.5 *Old Sumerian and Sargonic Periods*

7.1.5.1 *Ĝirsu/Lagaš*

7.1.5.1.1 In the inscription on the Lú-pà.d Statue (ELTS 21), from the time of Ur-Nanše.k or his son A-kurgal (see 4.1 above),[166] purchases are drafted *ex latere emptoris*. This is the first occurrence of the form which was later to become dominant throughout the country and to remain so for millennia, though undergoing many changes over time. The Lú-pà.d Statue also mentions a ritual act using oil and the use of a nail driven into a wall.

7.1.5.1.2 By the time of Enanatum (Lumma-tur-tablets: ELTS 22–23 and appendix),[167] the standard formula for landed property (fields and houses) is as follows:

> (1) OBJECT (2) from SELLER(S) (3a) PURCHASER (3b) bought from him/them. (4a) The PRICE—(4b) it is the price of OBJECT (/or 4b': its price) was received (or 5': SELLER(S) received). (6a) GOODS IN KIND (6b) as/its "gift" (7) were received (/7' SELLER(S) received), (8) LIST OF WITNESSES (ENDING WITH THE HERALD). (9a) He drove the nail into the wall, (9b) he had spread oil at the side.[168]

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[165] See the discussion in Wilcke, "Neue Rechtsurkunden . . .," 13–14, 19–24.
[166] See Bauer, *Altorientalische Notizen*, 14 no. 22.
[167] Hallo, "The Date of the Fara Period . . ." (time of Enmetena.k); SRU 30–35.
[168] The order is not fixed; e.g., (2) and (3) may be reversed.

The meaning of the nail-and-oil clause seems to be the protection of the purchaser from any attempt by the seller's side to contest the concluded contract. Driving in the nail evokes an analogous punishment,[169] namely, driving a nail into the offender's mouth, as attested by the penalty clause in a slave sale contract.[170] Anointing the nail and its place in the wall makes them sacred.

7.1.5.1.3 Purchase of slaves is first recorded in the reign of Enmetena.k.[171] Except for the oldest example, which follows the form of sales of landed property, they display a different form:

> (1) OBJECT, (2) from SELLER(S) (3) PURCHASER (4) bought from him. (5a) His/her (= OBJECT's) price, (5b) PRICE, (6) PURCHASER (7) weighed out for him/her (= OBJECT)/gave to him/her (= SELLER(S)). (8) LIST OF WITNESSES. (9) (oil+nail clauses).

The gifts that are standard in sales of landed property are lacking.[172]

7.1.5.1.4 In Sargonic Lagaš, slave purchases display a new form marking the change of possession. This innovation seems to have taken place in several steps, the last occurring in the time of the governor Lugal-ušumgal, who officiated under the kings Narām-Su'en and Šar-kali-šarrī.[173] The first step was the introduction of a new clause recording that the object sold had passed over a wood(en pestle).[174] The second step was putting price, payment, and receipt at the beginning of the document, as follows:

> (1) PRICE is the price of OBJECT(S). (2) PURCHASER weighed it out for him/her/them. (3) SELLER received it. (4) He made him/her/them pass over the wood(en pestle). LIST OF WITNESSES.[175]

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[169] See the references and the discussion in ELTS pp. 240–242. I differ from the authors, who assume that the contract was written on a perforated clay nail and fixed either in the wall of a house or in a public place.

[170] SRU 43, discussed together with its parallels by Krecher, "Neue sumerische . . .," 188–92, Müller, "Ursprung . . .," and Kienast, "Verzichtklausel . . ." See also Edzard, "Zum Sumerischen Eid . . ."

[171] SRU 40–45; the earliest is no. 43.

[172] In SRU 30, no "gift" is mentioned, but the price includes things given as níĝ-ba in other documents.

[173] See Sollberger, "Sur la chronologie . . .," 30f.

[174] Edzard, "Die *bukānum*-Formel . . ."; Malul, "The *bukannum*-Clause . . ."

[175] SRU 47–52; Donbaz and Foster, *Sargonic Texts* . . ., no. 155; ITT 1 1041 after ELTS pl. 147.

7.1.5.1.5 The ceremony of passing (over) the pestle is known from an isolated occurrence in the Ušumgal Stele from the ED I period (see 5.1.4.1 above).[176] Thus, the custom had for centuries been part of legal practice. Its introduction into the canon of recorded operative clauses gave possession a new importance, pointing to a differentiation between ownership and possession. On the other hand, its surprisingly early occurrence with reference to a field shows that it had already become a merely symbolic act.

7.1.5.2 *Central Babylonia*

7.1.5.2.1 In OS sales of landed property (attested only from Isin),[177] the land is identified by measurement and location, after which receipt of the price and sometimes of iš-gána payments by the seller are recorded.[178] The iš-gána may be included in the price[179] or missing.[180] There are indications that it functioned as a concluding payment settling the transaction.[181] A "gift" may be mentioned.[182] Now also gardens occur as objects of purchase. A seller who reneged was obliged to repay double the price received.[183]

7.1.5.2.2 Sargonic field and house purchases sometimes contain an additional penalty clause: double the price if the purchaser's possession is disturbed.[184] Two individual texts document that payment was

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[176] ELTS 12, "Side E" 4, may tentatively be read: ⌜2⌝;0.0 gána É-mud A-ĝír² ĝíš ab-bala "2 bùr of field of E-mud's; it was made over to A-ĝir."

[177] See Steinkeller, *Third-Millennium* . . ., p. 7, listing OS and Sargonic tablets separately (most of them edited in SRU and Krecher, "Neue sumerische . . .," without the information now available on provenance and date), and his edition of nos. 4–6; Wilcke, "Neue Rechtsurkunden . . .," 47–67 with the re-edition of the Grand document juridique. The purchase of the house is recorded on MVN 3 13 iv 3–9.

[178] Grand document juridique, F (with duplicate SRU 19) and I+J (Wilcke, "Neue Rechtsurkunden . . .," 52–56). Both wool and barley iš-gána are paid in barley and so may the "gift" (F) be.

[179] Steinkeller, *Third-Millennium* . . ., no. 4 xv 17–18.

[180] Wilcke, "Neue Rechtsurkunden . . .," 22–23, suspects that the iš-gána was often included in the price without being explicitly stated, that it was not paid to absentees, and that several documents that look like purchases were, in reality, different transactions.

[181] Wilcke, "Neue Rechtsurkunden . . .," 23.

[182] Grand document juridique, F (with duplicate SRU 19) and I+J; MVN 3 53 (Wilcke, "Neue Rechtsurkunden . . .," 52–56, 63)

[183] MVN 3 36; see Wilcke, "Neue Rechtsurkunden . . .," 58. See Kienast, "Verzichtklausel . . .," 29–30 and n. 9; Steinkeller, "Studies . . .," 55.

[184] Krecher, "Neue sumerische . . .," no. 6; SRU 17:16–19. See Kienast, "Verzichtklausel . . .," 29–30 and n. 9; Steinkeller, "Studies . . .," 55.

extended over a long period—four and nine years—but in the latter case, the seller could still withhold the object sold from the buyer.[185]

7.1.5.2.3 Purchases of animals (donkeys) follow the pattern of slave sales.[186] The forms of the central Babylonian contracts for the purchase of movables show even more clearly than those from Ĝirsu that the role of the "seller" is, for the most part, passive. Note especially the wording "the price has been filled into the seller's hands." Only when he has received the price must the seller do something: he has to cause the object to move from his own side of the pestle into the purchaser's possession. Therefore, with movables, the change of (rightful) possession marks the change of ownership.

7.1.5.3 *Northern Babylonia*

7.1.5.3.1 The Man-ištusu Obelisk (ELTS 40) represents the northern Presargonic (Sippar, Kiš) and Sargonic tradition of registers of records on stone and clay (Dilbat, Ešnuna) but on a much grander scale and in much greater detail. After an introductory section (mostly lost), the measurements of the fields are given, then the "field price" (NÍĜ.SA$_{10}$.AŠA$_5$) in barley is calculated in silver, followed by the "field *iškinū*" (NÍG.KI.ĜAR.AŠA$_5$), the "field gift" (NÍĜ.BA.AŠA$_5$) and the list of "field owners" receiving ("eating") the silver (*bēlū* AŠA$_5$, KÚ KÙ.BABBAR). A list of "brothers, field owners" may follow. After several such transactions are summarized, the text describes the borders of the area acquired and enumerates five "field witnesses" (ÁBBA.ÁBBA.AŠA$_5$). It then states that 190 citizens of Dūr Su'en, i.e., "Fortress of the Moon God," to which the fields belong, have been fed. Forty-nine individually identified citizens of Agade follow as "field witnesses."[187] The remark that king Man-ištusu has bought the fields ends that section of the text. *Mutatis mutandis*, the same is then repeated for fields belonging to the cities of Gir$_{13}$-tab, Marad, and Kiš. Only at Kiš does a woman appear among the "field owners."

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[185] MVN 3 25, 81.

[186] MVN 3 100 and Krecher, "Neue sumerische . . .," no. 20, from Umma; Steinkeller, "Two Sargonic . . .," no. 2, possibly from northern Babylonia.

[187] See now Foster, "The Forty-nine Sons . . ."

7.1.5.3.2 Among six Akkadian texts recording slave purchases, two[188] introduce a guarantor: GUARANTOR (subject) PURCHASER (object) *yuqīp*. MVN 3 102 is special in two respects: three witnesses are qualified as *maška'en* (MAŠ.EN.KAK) (see 4.2 above), and they are called *šībūt kiššātim*, marking the sale of the girl sold by her father and brother as one of debt bondage caused by an offence.[189] The receipt of the price by the sellers recorded in the document might therefore be fictitious.

7.2 *Exchange*

An exchange of a field for a garden is recorded once, with the operative clauses ab-ši-ĝar "he put it for it" and ba-ĥe$_6$ "he carried it away" = "he took possession of it."[190] Another exchange of landed property is styled as a purchase: the "price" of a garden consists of another (bigger!) garden, a house and ten shekels of silver. The "purchaser" is again said to have carried away the "price."[191]

7.3 *Loan*

7.3.1 Loans may either take the form of a receipt (using šu--ti = *maḫārum* "to receive") or that of a debt note acknowledging an obligation due to the creditor.[192] Rarely were they committed to writing as witnessed contracts, despite the important role they played in economic life.[193] Much more frequent are debt notes without witnesses.[194] The Sumerian term ur$_5$ "interest-bearing loan" is used in OS texts from Ĝirsu and occasionally in Sargonic times;[195] texts from the

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[188] MVN 3 102; Foster, "Business Documents . . .," no. 1, plus another unpublished document: MAD 3 222, quoted by Foster "Business Documents . . .," 148; CAD M s.v. *muqippu*.

[189] See Steinkeller, "(z)a-áš-da . . ."; Wilcke, "Die Lesung . . ."; Westbrook, "zíz.da . . ."

[190] SRU 21.

[191] Grand document juridique, N (Wilcke, "Neue Rechtsurkunden . . .," 60).

[192] tuku with the ergative of the creditor and the comitative of the debtor: MAD 4 41:10–12; CREDITOR *al* (*itti* in Susa) DEBTOR *yišû*: MAD 5 21:3–5; or simply "it is on DEBTOR": *al* DEBTOR *yibašši*: BIN 8 125:6–8.

[193] E.g., SRU 75 (Ĝirsu), 74, 77 (Adab), and 76 (Nippur); MAD 4 124 (Umma); 4 (Ešnuna?); Gelb, *Old Akkadian . . .*, no. 15 (Diyala region); MAD 5 21 (Kiš).

[194] E.g., SRU 72–73.

[195] Bauer, "Darlehensurkunden . . ."; Steinkeller, "The Renting . . ."; MAD 5 71:17–21 (Umma): "The wife of the cook E. has received 16 heaped kor of barley from the house of the smith L. as an interest bearing loan. She has not paid it back."

Diyala region differentiate between loans that bear interest (*ḫubullum*) and those that do not (*ḫubuttatum*).[196]

7.3.2 Where the price was credited to a purchaser over seven years, but the contract of sale was rescinded for non-payment, interest was added to the price still payable by the defaulting purchaser.[197] Interest was also payable on the price received by a seller should he not provide the field paid for.[198] The term ku_5-îrá ús used for interest added is the same as that for the rent due on leased fields.[199] At the same time, ur_5 is also used in the context of a field rental.[200]

7.3.3 The interest due is once declared as "half"[201] and once so calculated[202] and expressly written into the document. In both cases, the currency credited is silver, for which normally (in later times) 20 percent is charged. In the case of the field bought but not paid for,[203] the amounts stated equal 33 percent, the traditional interest rate for barley.[204] Explicitly mentioned rates are therefore exceptional and account for the loan being written down.

7.3.4 Nothing is said about penalties for default, but it may be inferred from the penalty clauses in purchase contracts (see 7.1.5.2.2 above) that the double penalty also applied to loans. It is not clear whether the A.RU.BA (a-ru-ba?) payment in MVN 3 105:2–3 was a penalty.[205]

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[196] MAD 1 17, 105, 110, 291, 321: *ḫubullum*; Gelb, *Old Akkadian* . . ., no. 32: *ḫubuttatum*.

[197] Grand document juridique, K (Wilcke, "Neue Rechtsurkunden . . .," 56–58). Note that there is no separate loan contract.

[198] MVN 3 81: payment had apparently been made over 9 years.

[199] See Krecher, "Neue sumerische . . .," commentary on no. 24; Steinkeller, "The Renting . . .," 143–145.

[200] FAOS 5/1 Ean. 1 xii 12; xvi 23–24; Ent. 28 ii 22–24 || 29 iii 6–8; see also Grand document juridique, G vii 9–11: ur_5 kú-a-ne-ne i-su-su "he will repay their interest-bearing loan," which could also mean "he will pay their rental payments" (due on the field in question).

[201] SRU 74, with commentary (see also Yang, *Sargonic Inscriptions* . . ., 119–120).

[202] Krecher, "Neue sumerische . . .," no. 24:1–3.

[203] Grand document juridique, K; see above.

[204] MVN 3 105; see Wilcke, "Neue Rechtsurkunden . . .," 56–58.

[205] Wilcke, "Neue Rechtsurkunden . . .," 57.

7.4 *Pledge*

No direct information is available. Nonetheless, several sale contracts give the impression that the field sold had been pledged before.[206] This might mean that the creditors, at least in these cases, could not execute their claim directly by appropriating the object pledged.

7.5 *Suretyship*

7.5.1 Suretyship is mentioned as dangerous already in a version of the "Instructions of Šuruppag" from the Fāra period.[207] The earliest documents come from the Sargonic period.[208]

7.5.2 The formula used is šu-du$_8$-a-ni/bi tùm/ĥe$_6$: the surety "brings" PN (away) either as his (-ni) "bound person"[209] or as its (-bi) "bound person" (i.e. of the case in question). [210] In Old Akkadian, the formulation is: *qātāt* PN *wabālum* "to bring the hands of/for PN," following the Sumerian wording and differing from later *qātāt* PN *leqû*.[211]

7.5.3 The transaction behind the taking of a surety may or may not be mentioned: an amount of silver[212] (doubtless to be provided in due course) or the purchase of a slave[213] (probably guaranteeing that she is not owned by someone else, or that she will not run away).

7.5.4 Another form of surety is the guarantor in purchase contracts, to date attested only in northern Babylonia (see 7.1.5.3.2 above).

7.6 *Hire*

7.6.1 No house rentals are attested. A lease of land from the governor (ÉNSI) is mentioned in an account from Mugdan about the

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[206] See, e.g., ibid., 50–51, 53 (Grand document juridique, A-C, G)
[207] Alster, *The Instructions* . . ., 11 ii 7 (l. 19 of the Old Babylonian version).
[208] Not the OS period as erroneously maintained by Wilcke, "Neue sumerische Merkwürdigkeiten," 624.
[209] SRU 69–70.
[210] Krecher, "Neue sumerische . . .," no. 23.
[211] Wilcke, "Neusumerische Merkwürdigkeiten," 623–26 (very fragmentary).
[212] SRU 69.
[213] Krecher, "Neue sumerische . . .," no. 23.

activities of a certain Lulu.[214] No information on the terms is given. Temple personnel lease land from their temple (see 2.1.3.4.1 above) and a lease of land between city-states is mentioned in an international treaty (see International Law in the Third Millennium).

7.6.2 The hire of a man over two years is reported in the sister document to the land lease.[215] The same Lulu "led him away (*it-ru*). Silver for him, ⅓ mina 4 shekels of silver in(? text: of) the second year Ù-ì-lí gave as his hire (*ig-ri-šu*$_{11}$)." That means at least twelve shekels a year, a not inconsiderable amount.

7.6.3 The use of ten donkeys as draft animals for plowing—worth 2 shekels of silver—is counted among the purchaser's disbursements to the seller in a field purchase.[216] Nothing is known about the terms.

7.6.4 *Oath*

Promissory oaths not to go back on the contract are attested throughout the period, albeit infrequently. In one case, a man had bought two female slaves, and the parties to the contract had sworn the respective promissory oath by the king's name. But the seller afterward sold the same slaves to a business partner of the first purchaser, who acted as "commissioner" in this second sale, from which it may be assumed that he consented to the breach of contract.[217] Nonetheless, the fact that another "commissioner" was also involved in the second sale is a strong indicator that such a sworn contract could not be annulled without the intervention of a court of law.

8. Delict

8.1 Where a donkey had been freed (by gross negligence or malice), one offender promises in court to replace it.[218]

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[214] BIN 8 144:55–59 (cf. the parallel text MAD 5 101, without mention of the lease.)

[215] MAD 5 101 ii 1–8. In BIN 8 144:27–31, Lulu is said to have led away this man, too.

[216] Grand document juridique, I+J (Wilcke, "Neue Rechtsurkunden . . .," 54–56).

[217] SRU 56.

[218] SRU 80.

8.2 Theft and murder are mentioned among the offenses punished with imprisonment in the edicts of Irikagina, alongside tax offences (see 1.1.2 above).

8.3 A fragmentary list of persons detained(?) in some cases gives the reason for detention: stolen barley, a stolen slave, a [stolen(?)] donkey, a house burnt down, and a murder. The list may be a prison roster.[219]

Abbreviations

ADFU	Ausgrabungen der Deutschen Forschungsgemeinschaft in Uruk-Warka
DP	F.M. Alotte de la Fuye, *Documents Présargoniques* (Paris: E. Leroux, 1908)
ED	Early Dynastic
ELTS	I.J. Gelb, P. Steinkeller, and R. Whiting, *Earliest Land Tenure Systems in the Ancient Near East: Ancient Kudurrus*, OIP 104 (Chicago: Oriental Institute, 1991)
FAOS	Freiburger Altorientalische Studien (Wiesbaden/Stuttgart: F. Steiner)
5/1–2	H. Steible, *Die altsumerischen Bau- und Weihinschriften*, Bd. 1–2 (1982)
9/1–2	H. Steible, *Die neusumerischen Bau- und Weihinschriften*, Bd. 1–2 (1991)
15/1	G. Selz, *Die Altsumerischen Wirtschaftsurkunden der Eremitage zu Leningrad* (1989)
15/2	G. Selz, *Altsumerische Wirtschaftsurkunden aus amerikanischen Sammlungen*, Bd. 1–2 (1993)
19	B. Kienast and K. Volk, *Die sumerischen und akkadischen Briefe des III. Jahrtausends aus der Zeit vor der III. Dynastie von Ur* (1995)
MEE	Materiali Epigrafici di Ebla: Seminario di Studi Asiatici. Series Maior, vol. 3 = G. Pettinato, *Testi lessicali monolingui della Bibliotheca L. 2769* (Napoli: Istituto Universitario di Napoli, 1981)
MVN	Materiali per il Vocabulario Neosumerico (Rome: Multigrafica editrice)
3	D. Owen, *The John Frederick Lewis Collection* (1975)
9	D. Snell, *The E.A. Hoffman Collection and Other American Collections* (1979)
OIP	Oriental Institute Publications, University of Chicago
14	D. Luckenbill, *Inscriptions from Adab* (1930)
97	R.D. Biggs, "The Cuneiform Inscriptions." In D.E. McCown et al., *Nippur II: The North Temple and Sounding E* (1978) 71–95
OS	Old Sumerian
PSD	*The Sumerian Dictionary of the University Museum of the University of Pennsylvania* (Philadelphia: Babylonian Section of the University Museum, 1984–)
SARI	J. Cooper, *Sumerian and Akkadian Royal Inscriptions I: Presargonic Inscriptions* (New Haven: American Oriental Society, 1986)
SRU	D.O. Edzard, *Sumerische Rechtsurkunden des III. Jahrtausends aus der Zeit vor der III. Dynastie von Ur*. ABAW 67 (München: Bayerische Akademie der Wissenschaften, 1968)
TSA	H. de Genouillac, *Tablettes Sumériennes Archaiques* (Paris: J. Geuthner, 1909)

[219] RTC 96 iii 4'–8'; iii 17'–iv 18; v 1–11.

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MESOPOTAMIA

NEO-SUMERIAN PERIOD (UR III)

Bertrand Lafont and Raymond Westbrook[1]

1. Sources

The legal sources of this period all derive from cities under the control of the Third Dynasty of Ur (Ur III), being mostly from excavations at Ur, Girsu/Lagash, Nippur, Drehem, and Umma. They are almost exclusively written in Sumerian, and the bulk of them fall within a period of about fifty years, between the latter half of Shulgi's reign and the first years of Ibbi-Sin's.[2]

1.1 *Law Codes*

The single law code from this period has the distinction of being the earliest known of its genre. The Laws of Ur-Namma (LU), named after the founder of the dynasty (2112–2095), were originally inscribed on monuments set up in various temples of his kingdom, which have not survived. It is preserved in copies on five tablets from the Old Babylonian period.[3] The beginning and end are missing, and from the extant fragments it is not possible to reconstruct a continuous text. Preserved are part of the prologue, some of the laws, and some of the curses against effacing the inscription. A block of about thirty laws are preserved more or less intact; a further twenty are in a more or less fragmentary form that allows only partial reconstruction and a provisional order.

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[1] Sections 2 (Constitutional Law), 4.2 (Class), and 6.1 (Tenure): Lafont.

[2] For an overview of the sources, see Sallaberger, "Ur III Zeit . . .," 200–390.

[3] References to paragraphs of the Code follow the reconstruction of Wilcke, "Kodex Urnamma . . ." For an English edition, see Roth, *Law Collections* . . ., 13–22, 36–39, which assigns one of the witnesses (tablet D) to a separate code (Laws of X). Wilcke assigns another of the witnesses (tablet E) to LU, but other scholars to the post-Ur III Laws of Lipit-Ishtar (Roth: secs. a–g, pp. 26–27). The difficulty of assignment between the two Sumerian codes is indicative of the continuity of the legal tradition between the Ur III and early Old Babylonian periods.

1.2 *Trial Reports*

1.2.1 Special to this period are official records of trials, which were preserved in state archives. Most published texts are from Girsu/Lagash, where they usually bear the superscript di-til-la ("case completed"). The second largest group is from Umma (and not headed di-til-la) and there are scattered examples from Ur and Nippur. Among the thousands of administrative documents from Puzriš-Dagan (see 1.5 below), a single trial record has been found.

1.2.2 The records contain an extremely terse account of the trial proceedings: the parties, the claim, the witnesses, the key issue on which evidence was given (and an oath taken), the "commissioner" (maškim) responsible for the case, the judges, and the date. Some tablets (Germ. *Sammeltafel*) contain a number of cases before the same judges—apparently, their case-load for the day. In these the account is even more concise. There are also cases in which no decision appears; indeed, they give the impression of a private arrangement made before the court.[4] They may represent litigation ended by a settlement of the parties before the court. On the other hand, some records from Umma are clearly protocols of interim stages, such as witness statements.

1.2.3 A. Falkenstein edited 215 texts in his authoritative work, *Die neusumerischen Gerichtsurkunden*, which remains fundamental to the study of neo-Sumerian law. A few dozen tablets have been published since.[5]

1.3 *Procedural Records*

A number of documents are protocols of legal steps taken by or before officials, for example, a promissory oath, a protocol of incarceration in prison, or a payment of damages. It is sometimes hard to tell whether they are records of litigation or not.

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[4] See Falkenstein, *Gerichtsurkunden* I . . ., 13–14.

[5] Çiğ, Kızılyay, and Falkenstein, *ZA* 53, 52–70; Kienast, "Eine neusumerische . . .," 93–96; Sollberger, "Some Legal Documents . . ."; Sigrist, "Some di-til-la Tablets . . ." (partly same); Edzard *JCS* 16, 78; Lafont DAS 332bis; MVN 18 321, 326, 515, 635; NATN 511, 571, 635; NRVN 49 (+ NATN 493); Gomi SNATBM 320, 321, 334, 360, 372, 374, 535, 541.

1.4 *Contracts*

Over a thousand private contracts have now been published. More than half are loan documents, followed by sale—of houses, orchards, slaves, and animals. There are no records of the sale of arable land, but the lease of fields is well attested, as well as the hire of persons and animals. The only other contract represented in any quantity is suretyship. Some of these documents, especially loan documents, come from institutional archives such as the temples, but many come from private business archives, a few of which have been identified, such as those of the herdsman SI.A-a,[6] the merchant Turam-ili,[7] and the merchant Ur-Nusku.[8]

1.5 *Administrative Records*

Strictly legal records represent a small proportion of the huge mass of documentation produced by a highly bureaucratized administration. More than forty thousand documents from this period have been published. Over ten thousand documents, mostly accounts of deliveries and transfers of animals, have been discovered at the site of Drehem, the ancient administrative center of Puzriš-Dagan.[9] Cumulatively, they provide us with a wealth of information about the administration of the State and the relationship between the royal administration and the provincial governments. Sealed administrative tablets may be regarded as legal documents inasmuch as the official sealing a tablet thereby renders himself responsible for its veracity and the proper execution of procedures recorded in it.

2. Constitutional and Administrative Law

2.1 *The Imperial Structure*

This period is also referred to as the Third Dynasty of Ur ("Ur III"), a régime which is usually thought of as an empire on the Sargonic model of some two centuries earlier. The term empire, however,

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[6] Steinkeller, *Sale* . . ., 305–7. They are mostly in Akkadian and come from a northern site near Babylon; see Frayne, "On the Home . . ."

[7] Van de Mierop, "Tûram-Ilî . . ."

[8] Neumann, "Zur privaten Geschäftstätigkeit . . .," 169–73.

[9] Sigrist, *Drehem*, 12–21.

applies properly speaking only to the last third of the reign of Shulgi, after the latter in a number of military expeditions had conquered territory far from the heartland of Sumer. This empire lasted no more than forty years or so, until the beginning of the reign of Ibbi-Suen. It may most conveniently be seen as consisting of a "core," represented by the traditional regions of Sumer and Akkad, and a "periphery," which developed mainly in the Transtigridian region and in the direction of modern-day Iran.[10]

During this period there are signs of a concerted effort to establish bureaucratic control over the society and the economy. Many new institutions and administrative procedures were created, as attested by the enormous quantities of documentation discovered. The structural reforms that led to this imperial administration are usually attributed to Shulgi, although the attribution has been disputed.[11] The machinery of state installed and organized at this time continued to function as a framework and point of reference for several centuries after the fall of Ur III.

2.2 *The King*

Ur III was an hereditary monarchy based on the dynastic principle, although the succession was often problematic. The evolution of the royal titulature is indicative: Ur-Namma at first declares himself "king of Ur" (lugal $urim_2^{ki}$-ma), then "king of Sumer and Akkad" (lugal ki-en-gi ki-uri) after he gains control of Nippur. His son and successor Shulgi then proclaims himself "king of the four quarters (of the world)" (lugal an-ub-da $limmu_2$-ba) and places the determinative of a god before his name, as do his successors. These official titles were propagated throughout the empire, appearing, for example, on the seals of royal administrators.

The king stands at the pinnacle of the state apparatus, with comprehensive powers. As head of the administration, he wages war and dispenses justice, appoints provincial governors, generals, judges, and high officials. The assertions of certain literary texts have led to speculation on the existence of an assembly or council with authority to debate royal decisions or even oppose them.[12] If such a body existed, however, it finds no reflection in the documents of practice.

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[10] Steinkeller, "Administrative . . ."
[11] Sallaberger, "Ur-III-Zeit . . .," 148; Maekawa, "Temples . . ."
[12] Wilcke, "Politische Opposition . . ."

The members of the royal family played an important role in the machinery of government, as is shown by the activities of the "Shulgi-simtum Foundation" (named after Shulgi's wife) at Drehem,[13] the role of several queens such as Abi-simti,[14] the duties assigned to prince Shu-Suen by his father Shulgi,[15] the office of high priest or high priestess occupied by several princes and princesses in various temples, and the prominent position that Babati, brother-in-law of King Amar-Suen, held for some time and with some renown.[16]

2.3 *The Public Sector*

The public sector was predominant in the empire, but the evidence must be treated with caution, since it is practically the only sector that is revealed by the extant documentation. During this period there were probably a number of different socio-economic structures coexisting within the same legal and political framework.[17]

Members of the public sector supplied their services in return for parcels of royal land allocated to them as prebends (šuku) or, in the case of the lowest ranks of the social order, were maintained by a system of regularly distributed rations.[18]

The duties owed to the crown extended to all ranks, so that each holder of an administrative position was personally responsible to the state. He had to submit accounts with regard to his activities, production, and so forth, under pain of having his property confiscated by the administration if they were not satisfactory.[19] The lowest ranks were unskilled manual workers who did not have their own means of production and were organized into labor gangs, either male (guruš) or female ($geme_2$), under various types of foremen (ugula) on the great institutional estates.[20]

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[13] Sigrist, *Drehem*, 222–46.

[14] Steinkeller, "More on the Ur III Royal Wives"; Michalowski, "Royal Women . . ."

[15] Michalowski, "Durum and Uruk . . ."; Sallaberger, "Ur-III-Zeit . . .," 167–68.

[16] Whiting, "Tiš-atal . . ."; Michalowski, *Letters* . . ., 60–61; Sallaberger, "Ur-III-Zeit . . .," 167–68; Huber, "La Correspondance . . .," 197–200.

[17] See Neumann, "Zur privaten Geschäftstätigkeit . . ."

[18] Food (še-ba), clothing (tug_2-ba), etc., see Gelb, "Ration System . . ."; Waetzoldt, "Compensation . . ."

[19] Waetzoldt and Sigrist, "Haftung . . ."; Maekawa, "Confiscation . . ."

[20] Maekawa "The erin-people . . .," and "Collective Labor . . ."; Englund, *Fischerei* . . ., 58–63.

2.4 *The Administration*

Although the sources are restricted to the public sector, it is possible to discern fairly clearly, in addition to the central authority, the different political and administrative situation prevailing in the core provinces of the empire and in the outlying regions.

2.4.1 *The Central Authority*

The seat of government was doubtless at Nippur, where the king most frequently resided. Not a great deal is known about the central administration, however, since we do not have its own archives.

2.4.1.1 The highest official was the sukkal-maḫ, the "grand vizier"—a sort of prime minister or chancellor—whose exact role is not well understood. Directly below the king, he had wide powers in both civilian and military matters, in particular as regards the lands on the eastern border of the empire. It is at least in this sphere that we can follow the career of Arad-Nanna (also known as Arad-mu), whose father and grandfather had been sukkal-maḫ before him and who, from the reign of Shu-Suen, was at the same time sukkal-maḫ, civil governor (ensik) and military governer (šagina) of several eastern provinces of the empire.[21] In particular, he was in charge of the major network of peripatetic officials (sukkal) who were sent throughout the country on missions and who exercised authority in many different fields.

2.4.1.2 Another high official, whose honorific title was "great cupbearer" (zabar-dab$_5$), was likewise a key figure in the central administration. He is known mostly from the Drehem archive and his real area of responsibility seems to have been the religious and cultic affairs of the empire. Like the sukkal-maḫ Arad-Nanna, he could combine this function with the office of provincial governor (ensik).[22]

2.4.1.3 From this central power a hierarchical organization spreads outward and downward, consisting of officials who took personal responsibility for their acts by way of their signature (in the form of

[21] Sallaberger, "Ur-III-Zeit . . .," 188–90; Huber, "La Correspondance . . .," 195–97.
[22] Sallaberger, "Ur-III-Zeit . . .," 187–88.

a seal impression) on administrative documents.[23] There was a marked tendency to record in writing all transactions and administrative operations and to file them in archives, with a system of multiple checks. These officials operated exclusively under the delegated authority of the king, referring to themselves as his servants (arad), in particular in their seal inscriptions.

2.4.1.4 Ur III is often characterized as a period of administrative centralization, but the situation was not that simple. It is true that there existed in the central authority a strong desire for social and economic control, which led to the installation of an enormous bureaucracy, but at the same time there is evidence of decentralized control, with each province jealously guarding its own local practices. It can be seen, for example, in the fact that these provinces each kept their own calendar (without coordinating among themselves the setting of intercalary months) and their own administrative procedures.

2.4.2 *The Core Provinces*

2.4.2.1 The heartland of the empire was divided into some twenty provinces, mostly corresponding to the old Sumerian city-states and central provinces of the former Akkadian empire. Politically, the most important of these provinces were Ur (the political capital), Uruk (cradle of the dynasty) and Nippur (religious capital and main seat of government).

2.4.2.2 At the head of most provinces was a civil governor (ensik). Although directly appointed by the king, in practice he was often chosen from among the leading local families and in the course of the empire his office tended to become hereditary.

The role of the ensik consisted mainly in overseeing and coordinating the activities of the great institutional estates of his province, which were the prime source of local wealth: public works, assessment and oversight of productive capacity, management of raw materials, organization of labor, collection of taxes and their remission to the central government; administration of the temples and organization

[23] Steinkeller, "Seal Practice . . .," 1977.

of the cult; administration of justice. For all these functions he had at his disposal specialized offices.[24] It is probable that most of the extant archives, which were found mainly at Tello/Girsu and Jokha/Umma, come from these offices. From these archives we can reconstruct the operation of the various services (e.g., fisheries,[25] textile manufacture,[26] metallurgy,[27] forests,[28] agriculture,[29] organization of the local cults[30]) and their administrative procedures.

2.4.2.3 Apart from the ensik, many provinces also had a military governor (šagina). Some may have had several. Their distribution was based on the situation of garrisons and the mobilization of troops throughout the empire. Completely independent of the ensik, they had standing troops at their disposal and received their authority directly from the central government, either from the grand vizier (sukkal-maḫ) or the king himself. Unlike the ensik, they were frequently of foreign origin, as shown by their names, which are less often Sumerian than Elamite, Hurrian, Akkadian, or Amorite. Many of these "new men" came to be directly linked to the royal family by marriage.[31]

2.4.2.4 *The Great Estates*

The socioeconomic and administrative structure of each of the core provinces rested on the existence of large estates (é),[32] mostly attached to the temples (é + name of divinity).[33] The income of these estates, which were practically self-sufficient, came from their own land, their herds, and their tenants, from gifts and ex voto offerings (a-ru-a),[34]

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[24] See, e.g., the functioning of the "fiscal office" of the province of Umma, whose task was to collect taxes, as described by Steinkeller, "Foresters . . .," 76, n. 17.

[25] Englund, *Organisation* . . .

[26] Waetzoldt, *Untersuchungen* . . .

[27] Limet, *Le travail* . . .; Neumann, "Handwerk . . ."; Lafont, "Les forgerons . . ."

[28] Steinkeller, "Foresters . . ."

[29] Maekawa, "Agricultural Texts . . ." and "Management . . ."; Heimpel, "Plow Animal . . ."

[30] Sallaberger, *Der kultische Kalender* . . .

[31] Goetze, "Šakkanakkus . . ."; Steinkeller, "Administrative . . ."

[32] Gelb, "Household . . ."

[33] In the province of Girsu there were some fifteen temple estates (Maekawa, "Agricultural Texts . . ."; Heimpel, "Plow Animal . . ."; de Maaijer, "Land Tenure . . ."). The temple of Inanna at Nippur (é-^{d}inanna) offers a well-documented example of one of these institutional estates, managed by the members of the same extended family for several generations (Zettler, *Ur III Temple* . . .).

[34] Gelb, "The arua . . ."

and from other wealth that they exploited. Together they controlled most of the agricultural land, the principal source of the empire's wealth. From the reign of Shulgi, they came under the control of the state, being directly under the ensiks' authority.[35]

A chief administrator (sanga) headed the productive sector of each estate. Alongside him or, sometimes, instead of him, there could be one or two foremen (šabra or ugula-é), often more specifically in charge of the agricultural land and the specialized teams responsible for work on the irrigated fields. The texts from Tello/Girsu and Jokha/Umma provide information on organization and administrative hierarchy within these estates.[36]

External trade was in the hands of specialized commercial agents (dam-gàr), whose status vis-à-vis the administration is still not very clear, notwithstanding recent research which tends to stress their independence and the private nature of their commercial activities,[37] revealing the existence of veritable associations of private entrepreneurs.[38] For this trade barley as well as silver was used as a "money" standard, on the understanding that the provincial administration functioned more or less as a bank.[39]

2.4.2.5 *The bala System*

Shulgi established an important institution that ensured remission to the central authority of the contributions, taxes, and production surpluses of the core provinces of the empire. This was the bala system, a fixed annual rota of monthly payments within the framework of which each ensik had to provide "in turn" (the etymological meaning of the word "bala") a certain quantity of contributions and payments.[40] They were administered from a large center situated near Nippur: Esagdana-Nibru (on the site of modern Drehem), which was expanded and renamed Puzriš-Dagan after an official re-foundation in year 38 of Shulgi's reign.[41]

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[35] It has been called the "nationalization of the temples by Shulgi" (Postgate, *Early Mesopotamia*, 300).

[36] Gelb, "Household . . ."; Lafont, "L'avènement . . ."; Englund, *Fischerei* . . ., 58–63; Maekawa, "Temples . . ."

[37] Powell, "Sumerian Merchants . . ."; Neumann, "Ur-dumuzida . . ."; Snell, *Ledgers* . . .

[38] Van de Mieroop, "Tûram-Ilî . . . . . ."

[39] Powell, "Monies . . ."

[40] Hallo, "Amphictyony . . ."; Steinkeller, "Administrative . . ."; Maeda, "Balensi . . .," and "Šà-bal-a . . ."

[41] Steinkeller, "Administrative . . .,"and "New Light . . .," 65; Sigrist, *Drehem*, 14–20.

The provincial dues for the bala were delivered either to Puzriš-Dagan or, if the central administration decided that a neighboring province ought to benefit from a certain product, directly to that province. Another part of the bala income was used directly within the province itself to maintain the various services and officials of the state. The bulk of the bala income went to the three royal cities of Nippur, Ur, and Uruk.

The archives found at Drehem document mainly the management of livestock collected and distributed under the bala system. More than sixty thousand animals passed each year through Puzriš-Dagan or its accounts.[42] The annual rota spread the deliveries from the provinces over the year and ensured the warehouses a constant and regular supply.

The bala system functioned properly only for about twenty years after Shulgi's reign. The empire collapsed when the system ceased to work and the central authority was no longer able to use it to collect the provinces' surplus resources.

2.4.3 *The Peripheral Regions*

Information is much more sparse for the peripheral regions of the empire. Having conquered areas to the north and east of the Tigris,[43] the Ur III kings found themselves obliged to continue campaigning and to maintain large military garrisons, thus creating a loosely controlled buffer zone on the eastern frontier.

These areas did not participate in the bala system. Instead, they were charged an annual tribute, payable either by the local prince or by the military authority (šagina and nu-banda$_3$) installed by the king of Ur. This annual tribute was called gú-n(a) ma-da.[44] From the attested examples, it would seem that control of these border areas did not last more than about fifteen years after Shulgi's death.[45]

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[42] Sigrist, *Drehem*, 20–21.

[43] Frayne, "Zagros Campaigns . . ."

[44] Michalowski, "Foreign Tribute . . ."; Steinkeller, "Administrative . . ."; Maeda, "Defense Zone . . ." This tribute is explicitly called gu$_2$-n(a) ma-da only from year 3 of Shu-Suen's reign, at which date important reforms appear to have been introduced in the imperial administration.

[45] Shulgi: 35 attested texts; Amar-Suen: 35; Shu-Suen: 19; Ibbi-Suen: 2. See Steinkeller, "Administrative . . ."

2.5 *The Courts*

2.5.1 Judicial authority was a royal prerogative usually delegated to the provincial governors (ensik) or otherwise to judges (di-kud) who administered justice in the name of the king, although the king might occasionally sit in person on a case, as in an important sacrilege trial involving an official of the Innana temple.[46] The judges mostly sat as a college (up to seven per case), while governors could sit alone (e.g., NG 62). The vizier could also sit as a sole judge, but in a second hearing of the sacrilege trial he sat together with the governor of Nippur and a third judge (possibly a priest). Although they are named in the documents and the same names recur frequently, little is known about the judges as regards their origin, training, or remuneration. The same bench might sit on a variety of cases recorded in a single tablet (*Sammeltafel*), evidently the day's docket.[47]

2.5.2 Alongside the judges, the trial reports generally mention a court official, the maškim, whose duties included preparing the case for trial and acting as an "institutional witness." He recorded the particulars of the trial and could be called upon to testify as to previous hearings of the same issue.[48] The maškim seems to have been a function rather than an office: each case was assigned "its maškim," who could already hold an office (NG 205:8; 77:11') or even be a judge.[49]

2.5.3 The di-til-la trial records were not intended for either of the parties, as in later periods, but were official reports drafted for the central administration, to be filed in its archives.

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[46] Roth, "Reassessment . . ." = Lafont, "Les textes judiciaires . . .," no. 9.
[47] E.g. NG 211.
[48] Falkenstein, *Gerichtsurkunden* I . . ., 47–51; e.g., NG 205:2–17.
[49] See Falkenstein, *Gerichtsurkunden* I . . ., 48, no. 17 (Gudea). The maškim at the first sacrilege trial was the vizier who presided over the second.

3. Litigation

3.1 *Parties*

Access to the courts appears to have been available without distinction as to gender or class. Slaves appear as litigants only when their own status is at issue. Priests sue each other over sacral property in the secular court (NG 115).

3.2 *Procedure*[50]

3.2.1 When a person sues (inim . . .gar), the court may as a preliminary step appoint a maškim, who will prepare the evidence, e.g., by taking depositions (NG 121, 138). The maškim had power to interrogate but not apparently to arrest (NG 121). For the latter purpose, the court might send a gendarme (aga_3-ús: NG 120a, 202:1–9) or an officer (nu-$banda_3$: NG 121), although self-help may have been more usual (cf. NG 41). The local mayor (ḫa-za-nu) could also be involved in securing persons and property for the hearing (NG 120a, 120b).

3.2.2 It was the responsibility of the parties to bring their own witnesses. The court could set a time limit for the production of witnesses (NG 209:30–59; Sigrist 1).

3.2.3 Evidence was given unsworn, and if conflicting, the court could decide to put the witnesses of one side to the oath (nam-érim). The oath proceeding took place in the temple, not the court (e.g., NG 126) and marked the termination of court proceedings. If taken, it was absolutely decisive; refusal to take the oath meant loss of the suit. The trial records therefore end with the court's order as to the oath, at which point they can record that the case is closed (di-til-la).

3.2.4 A weaker form of the oath, by the name of the king (mu-lugal—usually reserved for promissory oaths) was sometimes employed by a party on his own initiative, e.g., "I do not owe you silver.

[50] Falkenstein, *Gerichtsurkunden* I . . ., 59–63, 74–80.

Name of the king! If I owe you half a grain, I shall pay you two minas" (NATN 571). It was not decisive.[51]

3.2.5 Where the court gives a verdict, it may be expressed in a variety of ways, such as a completed action by the successful party ("PN has taken the slave"), a future action by the defeated party ("PN_2 shall pay x shekels"), or as an action of the court: "the slave is adjudged to PN" (ba-na-gi-in), "PN_3 was pronounced free" (ba-an-ku_4). Concession by the loser involved a symbolic act—"withdrawing the garment" (túg-ùr), although the same gesture could also be used by the winner to declare his freedom from claims (e.g. NG 207:15–18).[52] An oath by the loser not to raise claims again (nu-ù-gi_4-gi_4-da) is seldom attested and only by an unsuccessful plaintiff.

3.2.6 The king had the power of pardon.[53]

3.3 *Evidence*

3.3.1 Slaves could give evidence under oath, even about matters not related to their status (NG 126).

3.3.2 In NG 202:10–14, a defendant brings witnesses to prove that he had not murdered the plaintiff's husband, presumably to meet a prima facie case. Witnesses were usually multiple; if their evidence was challenged, the court could put one or more of them to the oath (NG 99:23–31, 30, 110). It could also impose the oath on one of the parties (NG 99:11–14) or cumulatively on a party and their witnesses (NG 127). Reasons given for a party taking the oath is that the other party rejected his witnesses (e.g., NG 107; Sigrist 2) or that his witnesses have died (NG 212). Otherwise, an oath by a party is much rarer than by witnesses. The court can also call upon non-party witnesses with local knowledge (NG 101) and if the party's witnesses to a transaction are challenged, impose the oath upon a party to that transaction, albeit not himself a party to the litigation (NG 18).

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[51] See, e.g., Sollberger, no. 9:iii 5–9; Steinkeller, S. 5. See also Steinkeller, *Sale* . . ., 75–80.

[52] See Malul, *Symbolism* . . ., 337–42.

[53] Roth, "Reassessment . . .," l. 8: in-na-ti ("he caused him to live").

3.3.3 LU §a3 (/29) provides that a witness who testifies but then refuses to take the oath must pay the compensation at issue in the case. Court records do note failure to take the oath but not the consequences (NG 113:47–55, 209), except in the case of a wife who refuses to take the oath and then confesses to adultery. She is divorced (NG 205:18–26).[54]

3.3.4 Tablets could be presented in evidence of transactions, but their limitations were recognized, and the witnesses to the transactions were preferred (e.g., NG 45).[55] A tablet was accepted as evidence of manumission by an owner now dead (NG 205:27–42) and of sale but not of actual payment (NG 105). The oath could override the evidence of sealed tablets (NG 208:11–21; cf. NG 205:43–59). LU 11, however, requires that a widow who claims to have (re)married produce a tablet of the marriage contract.

3.3.5 Remarkably, the di-til-la records themselves do not seem to have been used as evidence of the court's decision in later litigation on the same matter. Instead, the maškim was called upon to give oral evidence, and if necessary to take the oath (e.g., NG 106; cf. 41, 89). A further set of institutional witnesses present at the decision are the marza, whose function is not clear.[56] The tablet may also record the presence of interested parties, so as to bar them from challenging the decision at a later date. Witnesses were also present at the taking of the oath in the temple, including a not otherwise attested "judge of the temple of Nanna" (NG 123).

3.3.6 Although well known from earlier periods, the ordeal does not appear in the court records. LU 13 and 14, however, mention the river ordeal in connection with accusations of witchcraft and adultery. Furthermore, frequent recourse to the ordeal is attested by the many administrative texts recording persons going to the river

[54] Following Lafont (S.), *Femmes, Droit et Justice* . . ., 268. Contra Falkenstein ad loc., who interpreted this text as the husband refusing to take the oath. But the oath can only be as to personal knowledge; the husband would not have personal knowledge of the wife's adultery unless he had caught her in flagrante delicto, in which case an oath would hardly be necessary.

[55] See also Oh'e, "Lú-inim-ma . . ."

[56] See Falkenstein, *Gerichtsurkunden* I . . ., 54–58.

ordeal (íd-lú-ru-gú-šè) or returning from it (íd-lú-ru-gú-ta). An administrative document records the safe return of two court ladies, one of them the nurse of Princess Shat-Sin, who acted as substitutes for the princess (Limet, *Textes* . . ., no. 37). It has been suggested that a literary composition contains details of the procedure, namely that a person sinking (and therefore guilty) was rescued with a mooring-pole in order to face punishment.[57]

4. Personal Status

4.1 *Citizenship*

A free citizen is most commonly referred to in Sumerian simply as lú ("man, householder"), a term which assumes rather than asserts the status. A more specific term is "son/daughter of a man" (dumu-lú/dumu-munus-lú), asserting that the person was freeborn.[58] Strictly speaking it is not an absolute criterion, since it only shifts the question to an earlier generation. Since infinite historical inquiry is impossible, however, at some point relative rights are accepted as absolute.

A different criterion is place of birth. "Son of the city GN" (dumu-uru GN) is a widely used expression that focuses on the status of free citizen. It is often used in the plural to describe the citizenry of a particular region (e.g. NG 185:8).

A third term is dumu-gi$_7$, literally "native son."[59] In literary sources, it refers to city dwellers or local inhabitants; in legal texts, it is often used of freed slaves.[60] Note the important distinction made in these texts: a manumitted slave is declared a dumu-gi$_7$ but only "like the son of a man/the city" (dumu-lú-aš-gin$_7$-na-àm/dumu-uru-gin$_7$: NG 75, 74, 178:12–15). Evidently, manumission could not go so far as to make a person freeborn when he had not been free at birth. What the law could do, however, was to deem C's status *analogous* in law to that of a freeborn citizen and thus endowed with the same privileges.

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[57] Frymer, "Nungal Hymn . . ."

[58] Note that the term for woman, "munus," is not used independently in the same way. A free woman is defined by her paternity.

[59] Steinkeller, "Early Political Development . . .," 112–13, n. 9.

[60] NG 75, 76:1–8, 177:17–20; cf. LL-I 25–26. Possibly its legal meaning; see Westbrook, "A Sumerian Freedman."

4.2 *Class*

A large part of the population, if not the majority, were dependants of the state and the great institutional estates. They constituted the core class of $erin_2$, which was characterized internally by a weak hierarchical structure and, at the same time, by considerable social mobility.[61] It is possible to distinguish between the most favored, who were allotted sustenance-land, and those totally dependent upon rations. Among the latter, at the lowest level, was the category of $UN.IL_2$ (reading uncertain; equivalent to Akkadian *kinattu*), doubtless comprising the various types of laborers and carriers, that is, the unskilled workforce.[62]

4.3 *Gender*[63]

Free women appear to have had full capacity in private law—as litigants, witnesses, property-owners, or contracting parties. In some documents a wife is found selling land together with her husband (Steinkeller 29, 88* "both of them"). Often, however, these women were widows, who could find themselves head of household by default. In Steinkeller S. 3, a husband and wife sold a slave, but subsequently it was the wife (presumably because she was now a widow) who had to honor a contingent term in the contract. On the evidence of NG 99, the widow probably relinquished that role on her sons coming of age but maintained her independence.

4.4 *Slavery*[64]

4.4.1 *Terminology*

The general term for a male slave is arad (/arád).[65] A female slave is gemé, but the same term is used in administrative documents to refer to female workers, not necessarily slaves (equivalent of guruš, "able-bodied man"). In sale documents, a slave of either sex may be referred to as sag, "a head."

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[61] Steinkeller, "Foresters . . ."

[62] Sigrist, "Erín—un-íl"; Englund, *Fischerei* . . ., 29 and n. 103, 164–68, 195; Steinkeller, "Foresters . . .," 75, 98; Wu, "$Un\text{-}il_2$."

[63] Falkenstein, *Gerichtsurkunden* I . . ., 81–82.

[64] Siegel, "Slavery . . ."; Falkenstein, *Gerichtsurkunden* I . . ., 82–95.

[65] Additional values are ìr and ir_{11}. See PSD sub arad (forthcoming).

4.4.2 *Status*

Although slaves were regarded as property that could be sold, hired, pledged, and inherited, they were accorded some legal standing. If their freedom was at issue, they could appear before the court and conduct their own case, calling witnesses (NG 37, 169:2–16; Sigrist 1) and testifying themselves. They could also conclude a valid marriage (NG 44, 199:III 3'–15'; Steinkeller 78). The offspring would be regarded as legitimate; reference is occasionally made to a slave's paternity (NG 32, 205:27–42—daughters) and occasionally a slave's name bears a patronymic (e.g., in NG 55, where the father is dead and irrelevant to the transaction; also NG 99). According to LU 5, if a slave married a free woman (dumu-gi$_7$), the offspring of the union were free, save for one male child only, selected by the slave. If, on the other hand, he married a slave, his manumission would not automatically free his wife (LU 4).[66]

4.4.3 *Creation*

War is only mentioned as a source of slavery for public institutions (NG 190). The most frequently mentioned method of enslavement was sale of children by their parents. Most are women, evidently widows, selling a daughter (NG 37, 45, 46, 175:2–14); in one instance a mother and grandmother sell a boy (NG 55). Fathers also sell daughters (NG 37, 204:21–33, Steinkeller 81), and both parents sell a son (NG 53). There are also examples of self-sale (Steinkeller 20, 127). All these cases clearly arose from poverty; it is not stated, however, whether debt was specifically at issue. In NG 38, a mother sold her son but apparently died in the interim, so that the price was paid to the son himself. Since he remained a slave, the price was most probably paid out again to the mother's creditor(s). In NG 32, a man received rations "for his slavery" in the house of the claimant, with the result that his son born in the claimant's house was also his slave—possibly a case of famine slavery.

Slavery could be imposed as a contractual penalty on a guarantor, to replace a slave whose services were lost (Steinkeller 45, 127). Finally, the victims of crimes were entitled to enslave or sell as slaves the family of the culprit (NG 41, 42, 203).[67]

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[66] Following the interpretation of Yaron, "Quelques remarques . . ."

[67] Possibly the culprit himself for peculation; see Kutscher, "From the Royal Court . . .," 186–87.

4.4.4 *Treatment*

4.4.4.1 Slaves could acquire and hold property, but as a *peculium* from the owner. The slave could make transactions regarding it, and it could be called his property (NG 132; cf. Steinkeller 52), but ultimately it could be reclaimed by his owner (NG 199:III 3'–15'). In UET 3 51, a slave redeems herself, presumably with assets acquired for her peculium. Where a slave married a free woman, who would thus have some claim to a share in after-acquired assets, LU 5 ruled that half of his estate ("house") passed to his owner (on his death).

4.4.4.2 The only means attested to restrain runaway slaves was to impose upon them a promissory oath not to run away again, presumably as an alternative to more imminent punishment (BE 3/1 1; NRVN 1). LU 17 orders the owner of a runaway slave to pay a reward of two shekels to one who returns him from beyond the city limits.

4.4.5 *Termination*

UET 3 51 is the sole example of redemption: a slave woman "purchases herself" from her owner for twenty shekels and a cow as her full price. She must, however, continue to serve her owner and his wife for the rest of their lives (i.e., *paramone*); only after their death may she "go where she pleases." The other method of termination—manumission (ama-ar-gi$_4$)—is far more frequently attested (e.g., NG 30, 78). *Paramone* would have been a condition of manumission in many cases.[68] On one occasion, a childless owner also adopts his manumitted slave (possibly his natural son) as his heir (NATN 920). Manumission made the ex-slave a full citizen (see 4.1 above).

5. Family

5.1 *Marriage*[69]

5.1.1 *Conditions*

5.1.1.1 Although there is mention of a "junior wife" (dam-banda) in mythological texts,[70] monogamy is the sole form of marriage found

[68] Wilcke, "Care of the Elderly . . .," 51–53.
[69] Falkenstein, *Gerichtsurkunden* I . . ., 98–109.
[70] Neumann, "Ehe . . .," 135–36.

in legal sources. A partial exception is found in NG 6, where a wife suffering from an incurable disease selects another wife for her husband, the arrangement being that she will remain in his house and receive food and clothing as long as she lives.

5.1.1.2 Permission of both parents was required, although only the father was a protagonist in making the arrangements. Not only the bride but also the groom required permission. In NG 15, the groom made a marriage contract "without his father and mother knowing," and in NG 18, the groom's mother is stated to have been present at the marriage contract (see 3.3.5 above). Permission was usually in the form of a marriage contract between the two families (see 5.1.2.2 below). A contract may not have been necessary in all circumstances; in NG 21, a man divorces his wife for whom he had made no contract.

5.1.1.3 Slave marriages have already been discussed. They could make a valid marriage but presumably needed the owner's permission to marry.

5.1.2 *Formation*

5.1.2.1 The Sumerian verb "to marry" is (nam-dam-šè) tuku, to "take (as a spouse)" (e.g., NG 211:13–17; *ZA* 53, no. 17). The protagonist is typically the groom, but in two texts it is the bride's name that has the agent marker (NG 14:17, 206:23'). Both are dismissed by Falkenstein and subsequent commentators as scribal errors,[71] but only because of their gendered reading of the texts. In fact, the subject is ambiguous in many cases, and it may be that Sumerians could speak with indifference of a man marrying a woman or a woman marrying a man.[72]

5.1.2.2 The first legal step towards marriage was an oral betrothal contract between the two families in which at least one of the parties took a promissory oath. The contracting parties were the two fathers or the groom and the bride's father. In NG 14, a father is

[71] See, however, the comments of Wilcke, "Familiengründung . . .," 245, n. 46.

[72] The agent marker is frequently missing and word order is not helpful: in NG 17:5–7, Falkenstein actually takes the bride as subject (*per incuriam*?), but in NG 22:7, with the same word order, as object.

reported to have taken the oath in both cases when he married off his son and daughter to another man's daughter and son. There are wide variations in the form of undertaking secured by the oath: the groom says "I will marry X daughter of Y" (NG 15:4–6, 16:4–6) or "I am your son-in-law" plus an oath not to enter the house of another (NRVN 5 = Wilcke, "Familiengründung . . .," 246). One father says to the other: "May my son be your son-in-law" (NG 18:8–10), or either "May my child X marry your child Y" or "May your child X marry my child Y."[73]

5.1.2.3 In the trial reports, a promise to marry was often followed by the statement that the groom married the bride (e.g., NG 14:20–21). It is not clear, however, what formal steps were necessary to fulfill the betrothal contract and complete the marriage. Wedding ceremonies and the like are not mentioned in the legal texts.[74] Some terse reports of marriage mention a promissory oath, which could be the betrothal oath or a fresh oath (NG 1, 2, 3; *ZA* 53, no. 17). There is no explicit evidence of a second stage of betrothal ("inchoate marriage") as in later periods, but a woman still living in her father's house is referred to as married (NG 169:17–25). It may be that the bride's entry into the groom's house completed the marriage. Mention of the groom entering a father-in-law's house in NRVN 5 may indicate the reverse, namely, matrilocal marriage, or may be entry merely for the wedding ceremonies.

5.1.2.4 The betrothal contract could be dissolved by marrying (or allowing one's child to marry) someone else (NG 18; NATN 893 = Wilcke, "Familiengründung . . .," 248; NRVN 5) or by withdrawing from the contract (NG 169:17–25). If not justified, it was in breach of contract and attracted heavy damages, analogous to those of divorce. In NG 17, the groom's father had to pay one mina of sil-

[73] Father of bride: NG 14:4–6; BE 3/1 8; father of groom: NG 14:15–17, 17:4–7, 22:8, 206:21'–24'; *JCS* 16, 78, no. 43. Some of the verb forms raise grammatical difficulties: cf. Thomsen, *Sumerian* . . ., §§386, 396–99, and Wilcke, "Familiengründung . . .," 245, n. 46. Wilcke proposes a performative utterance ("I have indeed married your daughter"), which works well in some cases but not at all in others (when the speaker is not the performer) and begs the question of why different verb forms are used. None of the solutions proposed is entirely satisfactory.

[74] For mythological references, see Wilcke, "Familiengründung . . .," 275–81.

ver to the jilted bride. For the same offence after the groom has entered his house (for the wedding ceremonies?), LU 15 imposes on the father-in-law restoration of double the níg-dé-a that the groom brought.[75]

5.1.2.5 The term níg-dé-a is rare, being found elsewhere only in mythological texts and later lexical lists.[76] It is associated with níg-mí-ús-sá, a term that is well attested in Ur III administrative documents. Their Akkadian equivalents are, respectively, *biblum* and *terḫatum*, which in the Old Babylonian period are betrothal payments made by the groom (Laws of Hammurabi 159–61), the latter being principally in silver. In Ur III sources, however, níg-mí-ús-sá is never silver; rather, it consists of commodities, mainly livestock but also other foodstuffs and salt, soap, gold paste and dye, which have been interpreted as provisions for the wedding feast.[77] Wilcke points out that the quantities in some texts are too large for immediate consumption and must have been intended as a gift to the bride's family.[78] Nonetheless, the present state of evidence does not allow us to attribute to níg-mí-ús-sá of Ur III the important legal role as a betrothal payment that *terḫatum* had in the following period.[79] At most it can be said that níg-dé-a and níg-mí-ús-sá were expenditures by the groom's family in favor of the bride's family that formed a basis for damages if the latter failed to honor the betrothal contract.

5.1.2.6 A widow did not require permission to remarry or a formal ceremony, but she might need a contract. According to LU 11, if a man had sexual intercourse with a widow without a contract *in writing*, he was not liable to her for divorce payment. The dual condition for non-liability suggests that a widow could be deemed married by long-term cohabitation, but that consummation would not be sufficient, unless supported by documentary evidence of the parties' marital intent.

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[75] If correctly restored by Finkelstein, "Ur-Nammu . . ., 69, l. 299, formerly §12.
[76] 77–82.
[77] Falkenstein, *Gerichtsurkunden* I . . ., 103–6; Greengus, "Bridewealth . . .," 69–72.
[78] "Familiengründung . . .," 244–45. Similarly, Greengus, "Bridewealth . . .," 84.
[79] See the comparison by Wilcke, "Familiengründung . . .," 252–67.

5.1.3 *Dissolution*

The verb tag_4 is used of dissolution of marriage by the husband or by order of the court (NG 205:25: ba-tag_4). The verb also appears to have been used for the dissolution of betrothal (NG 15, 20, and possibly 205:60–70). If the divorce was without grounds, the husband had to make a divorce payment (níg-dam-tag) in silver. LU 9–10 stipulate one mina for a first-time wife and thirty shekels for a widow; in the court cases, the attested awards are forty shekels (NG 210) and one mina (NG 4, 205:60–70). Where a wife agreed to settle out of court, probably because there were potential grounds, she received only ten shekels (NG 20).

The grounds for divorce attested are failure to consummate the marriage (NG 22; Sigrist 4) and adultery (NG 205:18–26).

5.2 *Adoption*

5.2.1 There are only isolated examples of adoption, but it may lie behind the family relations in many other texts.[80] The examples are not straightforward cases of adoption of children but special arrangements also found in other periods:

(a) Pension. In NATN 131, a man causes another "to enter into his heirship" (6: ibila-na ba-ni-ku_4) as part of a strictly commercial arrangement. The adoptee pays off the adopter's debt and contracts to pay him a pension, in return for the adopter's estate, of which he acquires immediate possession.[81]

(b) Manumission. In NATN 920, a "father" frees his slave for heirship. Probably the slave was his natural son by a slave concubine, whom he adopts in the absence of legitimate sons.[82]

(c) A much discussed text, NG 204:21–33, appears to have a debtor selling his daughter to his creditor and disinheriting his own son in favor of the latter. Falkenstein proposes that it is rather the creditor who is adopting the disinherited son, but the former scenario is not unthinkable. In other periods debtors with capital but no income resort to equally desperate measures.[83]

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[80] E.g. *JCS* 16:78, no. 43, where a man gives his own son a house on condition of his marrying a certain woman—a curious arrangement unless it is part of an adoption bargain.

[81] Wilcke, "Care of the Elderly . . .," 54–55; cf. NATN 149, ibid.

[82] Wilcke, "Care of the Elderly . . .," 53–54.

[83] Siegel, "Slavery . . .," 13–15, who points out that the arrangement takes place before the vizier; Falkenstein, *Gerichtsurkunden* I . . ., 110 and commentary ad loc.

5.2.2 It was possible to take a child for rearing (nam-bulug-šè) without adopting it, as NG 27 shows.

5.2.3 Adoption by one woman of another as her sister (nam-nin-šè) is attested in NG 211:61–65.[84]

6. Property and Inheritance

6.1 *Tenure*

Since there is no evidence of the sale of arable land (as opposed to orchards, urban land, slaves, and animals)[85] for this period, the conclusion might be reached that either the state owned all the land through its network of institutional estates or that the sale of arable land was forbidden.[86] In practice, a distinction must be drawn between the situation prevailing south of Nippur (land of Sumer proper), where the great institutional estates, if not having a complete monopoly of land and the means of production, were certainly predominant, and that observable in the north (land of Akkad), where the private sector seems to have been more developed, while institutional estates were of little importance.[87] The contrast arises from the different ecology of the two regions rather than from any "ethnic" basis (i.e., Sumerians v. Akkadians).[88]

On the estates, as the archives show, arable land was divided into three categories:[89]

1. "Ox-lands" (gán-gu$_4$), cultivated and managed on a system of direct exploitation, using the estate's own personnel and equipment. They were intended principally to satisfy the internal needs of the estate.
2. "Prebend lands" (gán-šuku-ra), periodically allotted to dignitaries and other persons permanently connected with the estate, which they held in lieu of remuneration. The size of the allotment depended

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[84] See Greengus, "Old Babylonian . . .," 531, n. 135. In NSG, Falkenstein wrongly corrected the text to nam-dam!-šè ("marriage").

[85] See the documents in Steinkeller, *Sale* . . .

[86] Neumann, "Zur privaten Geschäftstätigkeit . . .," 164–66; Steinkeller, *Sale* . . ., 127–28.

[87] Gelb, Steinkeller, Whiting, *Earliest Land* . . .; Liverani, "Lower Mesopotamia . . ."; Steinkeller, "Land-Tenure . . ."

[88] Steinkeller, "Land-Tenure . . ."

[89] See, e.g., Zettler, Ur III Temple . . ., 116–32; de Maaijer, "Land Tenure . . ."

upon the rank of the beneficiary. These prebends were in theory inalienable, being granted only in exchange for the beneficiary's services, but despite this, cases are attested of such lands being alienated. Thus, a widow from Nippur disposes as she wishes of a field inherited from her husband, to whom it had been allotted (NATN 258), and an original prebend-holder from Umma does not hesitate to relinquish a part of his officially allotted land to his creditor (YOS 4 21).[90]

3. "Leased lands" (gán-uru$_4$-lá), let to farmers for a rent paid partly in silver and partly in barley, which regularly amounts to one third of the harvest. It is supplemented by a tax (máš a-šà-ga) which the administration levied to finance the cost of irrigation and which the farmer paid in advance, in silver.[91]

6.2 *Inheritance*[92]

6.2.1 *Succession to Paternal Estate*

6.2.1.1 On the death of the father, his natural successors were his sons. The term for heir, ibila, might equally well be translated "son and heir."[93] Daughters did not normally inherit a share of the paternal estate, but according to one law code, if the father died leaving no son, his unmarried daughter should become his ibila.[94] In NG 204:34–37 two apparently adoptive daughters are called ibila.

6.2.1.2 Two texts state that since the deceased had no ibila, his estate could pass to the deceased's brother. In both cases the brother is explicitly not an ibila and his succession appears to have required a court order (NG 80, 183:8'–20'). It may therefore be that inheritance by brothers or more distant relatives was not automatic.

6.2.1.3 Succession was universal: the heirs inherited the deceased's whole estate, including his liabilities as well as his assets (NG 183:8'–20'). Assets included claims which the heir could pursue in litigation (NG

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[90] For these texts, see Steinkeller, *Sale* . . ., 99–100; Lafont (S.), "Fief . . .," 534–36; Steinkeller, "Money-Lending . . .," 120.

[91] Steinkeller, "Renting of Fields . . ."

[92] Falkenstein, *Gerichtsurkunden* I . . ., 111–16.

[93] The sign is, in fact, composed of the signs for 'child' (dumu) and 'male' (nita$_2$), but in some legal documents it is spelled phonetically.

[94] LU §a9', as attributed by Wilcke, "Der Codex Urnamma . . ."; Laws of Lipit-Ishtar §b according to Roth, *Law Collections* . . ., 26. See 1.1 and n. 3 above.

174:6–18) and the right to redeem a slave from a creditor (NG 28). Liabilities included a contract to provide services (NG 27).[95]

6.2.2 *Procedure*

The heirs inherited the estate jointly and divided it among themselves. They might postpone division of all or part of the inheritance (NG 7, 108).[96]

The few sources do not reveal the principles of division, but the eldest probably received a larger share. In a division of prebends among six sons, one gets a far larger share (NG 12). A father who reapportions his estate in unusual circumstances (after his eldest son had been executed for a false accusation against him!) transfers from the eldest son to his younger brother the office of steward (ugula) of the Inanna temple, together with a house and furniture appurtenant to it, and "property (níg-gur$_{11}$) of the father." Two other brothers then agree not to contest the division "into three parts" of the "property of the father." The admittedly ambiguous wording suggests that after deduction of the office and its appurtenances, the residue of estate was divided equally between the three brothers.[97]

6.2.3 *Testamentary Succession*

From the above example, it can be seen that a father could arrange the shares of the heirs to some extent. He could also make a special gift of land or slaves to one son (NG 11, 31, 98, 110). In NG 205:2–17 the other sons unsuccessfully challenge the gift of a slave, which had been made before the governor (ensik). Probably most of these gifts were intended take effect after the donor's death, but in *JCS* 16:78, no. 43, a groom is given a house in court in connection with his wedding, apparently by his father.[98]

6.2.4 Disinheritance is mentioned only in NG 204:21–33 (see 5.2.1c above). From the text, it is not possible to decide whether the father was exercising a right or acting with the son's agreement.

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[95] NG 131, where a son agrees to fulfill a contract to make a chair, may have been a voluntary novation.

[96] In Sigrist 5, an orchard was left undivided for 10 years, but it may have been a partnership rather than an inheritance.

[97] Roth, "Reassessment . . ." = Lafont, "Les textes judiciaires . . .," no. 9.

[98] The missing beginning of the tablet prevents certain identification, but the giver is not the bride's father.

6.2.5 *Female Inheritance*

6.2.5.1 *Sources of Property*

A daughter did not in principle inherit a share of her father's estate, except perhaps when there were no male heirs (see 6.2.1.1 above). Instead, she could acquire property from several sources:

(a) The most important was the dowry (sag-rig$_7$) which she normally received from her father. It could include houses (NG 103, NRVN 230) and slaves (NG 88, 195, Steinkeller 71) as well as personal property.
(b) She could receive a marital gift from her husband (Kienast, ". . . Gerichtsurkunde"), which again could include land and slaves (NG 99:15–17, 206:2'–13'; MCS 2 75 = Wilcke, "Care of the Elderly . . .," 49) and in some cases might amount to the whole estate (NG 29). The different types of gift could be cumulative: in NG 214:37–42 a wife was reported to have received two slaves as dowry (sag-rig$_7$), one slave that her husband gave her, and three slaves that her brother gave her.[99]
(c) She could acquire property from her own earnings, which seem to be behind the silver "from her hand" with which a wife buys land in NG 99.

6.2.5.2 *Control*

During the marriage, the bulk of the dowry was probably in the husband's control. In NG 195:24'–32' a woman defeats her brother's claim to a slave by showing that her mother had given it to her, but it is her husband to whom the court awards the slave. In BE 3/1 8 (= Wilcke, "Familiengründung . . .," 246–47), the bride's father promises to give "my house" (which may mean his whole property) either to the groom or his daughter (the Sumerian forms do not allow us to decide). In either case, the gift is likely to have been by way of dowry, which the husband would control. Nonetheless, a wife controlled some property herself, as she is attested making transactions during the marriage (NG 83, 99).

During widowhood, she certainly had control of her own dowry and marital gifts and, sometimes, of her husband's estate, either because he had bequeathed it to her as a marital gift (NG 7) or because she was acting on behalf of her young children. The for-

[99] Cf. a gift (níg-ba) for a princess on her wedding, of unspecified source: BIN 9 438 = Wilcke, "Familiengründung . . .," 284.

mer explains Sigrist 3, where a widow forfeits her husband's estate ("house") to her son upon her remarriage to a "stranger" (kúr), meaning someone outside the husband's extended family.[100] Similar penalties are imposed on a widow in later periods.[101] The latter is the most likely explanation of NATN 302, where a widow sues her brother-in-law for her late husband's share of his inheritance, notwithstanding Owen's claim that the widow had automatic inheritance rights but the son did not.[102]

6.2.5.3 *Devolution*

The evidence is insufficient for us to distinguish between the different types of marital property. It is most likely that automatic devolution was upon the woman's sons, like the paternal estate (NG 7, 199:III 3'–15'). If she predeceased her husband, her sons would have to wait until after their father's death to inherit (NG 83). The mother, however, had a wide discretion to bequeath, for example, a dowry-slave to a daughter (NG 195:24'–32'), a house received as a marital gift to a female, most probably her daughter (NG 10—tablet broken), or to her daughter-in-law, in return for support in her old age (NG 103). In NG 171:2–9, a slave bequeathed to a guda priest, whose relation to the testatrix is unknown, is unsuccessfully claimed by her sons.

7. Contract

A salient feature of the contracts of this period is the profligate use of the promissory oath. The standard form is in the name of the king (mu lugal); sometimes it is in the name of a king and a god, and sometimes by the life of the king (zi lugal), following Akkadian practice. The oath is used not only for obligations ancillary to standard contracts, as in other periods, but also at times—apparently superfluously—to secure the main object of standard real contracts such as loan and lease. It is also used independently (see 7.7 below).

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[100] Following the interpretation of Wilcke, "Care of the Elderly . . .," 48. (Same text edited by Sollberger in AOAT 25, 440–41.)

[101] E.g., at Emar a penalty clause in the husband's will dispossessed his widow if she went after a "stranger" (*sararu*).

[102] "Widow's Rights . . ."

7.1 *Sale*[103]

7.1.1 Private legal documents (and trial reports) record sales of houses, orchards, slaves, cattle, and donkeys. The absence of sales of arable land means that, unlike other periods, slave sales are the largest recorded category.[104] The purchase price is typically in silver, rarely in barley, and in one case, a cow (Steinkeller 32). Supplementary gifts by the buyer, common in earlier periods, are attested only once (Steinkeller 88*). The sale documents attest to a completed oral transaction before witnesses but, with one small exception, do not give any details of the procedure (see 7.1.3 below). Their purpose was to furnish the seller with a document of title. Their formulation in this period shows some reduction in variety compared with earlier periods but not yet the standardization of the Old Babylonian sale document. As in other periods, there are three basic types of clauses: operative, completion, and contingency clauses.

7.1.2 *Payment*

The dominant type of operative clause is: "A has bought (sa_{10}) the object from B for x price." A less frequent type is a receipt for the price: "B has received from A x as the price of the object." Only a very few documents combine the two elements, as is standard in Old Babylonian practice. Nonetheless, as Steinkeller points out, there is no substantive difference between the two clauses; both attest to payment of the price, which is the crucial element.[105] It is payment of the price that transfers ownership, as demonstrated by a trial record in which the seller sold a slave twice (NG 68). The first buyer was able to recover the slave from the second, who recovered his payment from the buyer.[106] By the same token, where the price had not been paid in full, the seller would be able to reclaim the property from the buyer (NG 104). Steinkeller 25 is anomalous in that it records part payment of the price. Although it could not acquire ownership, part payment may have given the buyer limited rights to the property, for example, against third parties or for a limited time.

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[103] Steinkeller, *Sale* . . ., and Wilcke, "Kauf . . .," are comprehensive surveys. See also Falkenstein, *Gerichtsurkunden* I . . ., 121–27.

[104] Steinkeller S. 4, from Nippur, refers obliquely to the sale of a field.

[105] *Sale* . . ., 22–24.

[106] In another case, the seller's act was regarded as theft, since he sold a slave no longer owned by him (NG 69).

The role of payment in the contract is highlighted by a clause in a few documents from Umma: "he (buyer) has completed the silver" (kug-ta ì-til: e.g., Steinkeller 99). A clause in Nippur contracts, "this silver has filled his (seller's) hands" (kug-bi šu-a . . . si-(g): e.g. Steinkeller 63), has the same function. They are alternatives to the completion clause "he (buyer) has completed this transaction" (inim-bi . . .til; e.g., Steinkeller 91) that in a slightly modified form becomes standard in contracts of later periods.[107]

7.1.3 *Delivery*

Some documents contain a clause, unique to this period, making separate mention of the fact that the seller has delivered the object of sale to the buyer, sometimes before witnesses (e.g., Steinkeller 11). Transfer of possession, therefore, could be separate from transfer of ownership.[108] Indeed, the trial reports attest to cases of deferred delivery, especially of slaves, who could remain many years with the seller (NG 65, 68, 69, 212:11–14). In Steinkeller 17, the envelope states that a slave has been bought, but the tablet reveals that he has not yet been delivered. A promissory oath was used to secure delivery by a fixed date (Steinkeller S. 2; NG 131). Failure to deliver gave the buyer several possible remedies: return of the price (Steinkeller S.4), compensation for the lost hire of a slave (NG 65), a replacement slave (plus?) compensation for hire (NG 70, where the seller sold the slave abroad), or a fixed sum stipulated by the oath (NG 131).

In sales of slaves (and possibly animals), a special clause sometimes states that the seller has caused the slave "to cross over the stick/pestle" (giš-gana . . . bala: e.g. Steinkeller 41, 87, 128). The clause is known from earlier periods and continues into the Old Babylonian period.[109] It is mutually exclusive with the transfer clause above, which suggests that the ceremony had the same purpose: it transferred possession (as opposed to ownership) in creatures that could move of their own volition.

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[107] See *Sale* . . ., 32–33.

[108] The verb is sum ("give"); Steinkeller in his discussion of the clause (*Sale* . . ., 42–43) casts the net too wide in including clauses using the verb "buy" (sa_{10}). The whole point is that purchase and delivery are not synonymous. The verb gin ("make firm") might refer to transfer of possession, but could mean completion of title: see Steinkeller 125; NG 63.

[109] Steinkeller, *Sale* . . ., 34–42; Malul, "The *bukannum*-clause . . ."

7.1.4 *Breach*

Although the documents describe an executed contract, there remained various contingencies for which a party could be liable under an express contractual term, secured by a promissory oath. If someone with better title claimed the property, the seller was obliged to provide a substitute (Steinkeller 26, 36a, 94**:12–16). For this purpose, the seller frequently had a guarantor; in Steinkeller 127, it is the guarantor herself who agrees to substitute as a slave. In another contingency, delinquency by the purchased slave, the sellers agree to become slaves themselves (Steinkeller 45). Note, however, that Steinkeller 94**:8–11 excludes the seller's liability for the death or disappearance of the slave. Finally, the oath binds the seller (and possibly also the buyer) not to deny the contract in the future.[110] Where a seller repossessed his slave, he was condemned to refund the price plus three years' hire (NG 204:2–13).

7.2 *Loan*[111]

The loan documents record mostly loans of silver, some of barley, and a few of other commodities.

7.2.1 *Form*

There are three types of loan document:

(a) The most common is a simple receipt (Lutzmann: *Realvertrag*): "A has received (šu . . .ba-an-ti) x silver from B." Although it may be combined with more explicit clauses, this succinct form only implies the obligation to repay. Indeed, some documents even omit the list of witnesses (the usual mark of a legal document), at which point it is difficult to distinguish from an administrative receipt.

(b) A promissory note (Lutzmann: *Leistungsversprechen*): "A shall pay B x silver in month y." Often it is combined with a promissory oath. This form may also be used for other undertakings, for example, to deliver goods or services.

(c) A debit note (Lutzmann: *Verpflichtungsschein*): "A is owed x silver by B" (in-da-tuku, lit.: "has with"). This is the only form exclusively used for debt and, unless the document contains supplementary clauses, does not reveal the cause of indebtedness.

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[110] See Steinkeller, *Sale* . . ., 44–71.

[111] Lutzmann, Schuldurkunden . . .; Steinkeller, "Money-Lending . . ."

7.2.2 *Legal Basis*

The most common form suggests that loan was a real contract: it was the receipt of funds that generated the obligation to repay them. Bare promises to pay were in principle no different, since they implied prior receipt of the loan. In many cases, however, irrespective of the formulation, the document also contains a promissory oath to repay. Oaths are to be expected to secure ancillary duties but would seem superfluous in respect of the basic obligation of the contract, and they do not occur in this function in later periods.[112] There is no ready explanation for this phenomenon,[113] except to refer to the general observation mentioned above, that heavy use of the oath was a special feature of this period.

7.2.3 *Interest*

Some loans have the annotation ur_5-šè or ur_5-ra, the Akkadian lexical equivalent of which is *ḫubullu*, an interest-bearing loan. Nonetheless, some have the further notation "bears no interest" (máš nu-tuku), which suggests a less strict interpretation. In some cases, the explanation may be that an unstated antichretic pledge is to substitute for interest, since the latter notation is found in antichretic pledge documents, even together with an explicit statement of the interest payable from the yield of the pledge (YOS 4 5).[114] In others, there may have been a special dispensation, as with temple loans ("barley of Enlil"), which were probably interest-free.[115]

The standard rates were 20 percent for silver and 33 ⅓ percent for barley, but could vary. Often the rate was not stated; presumably the customary rate applied. There is also a "merchant's interest" (máš dam-gàr: YOS 4 7). Labor may be stipulated as interest, for example, a number of days' carpentry (NRVN 192).[116]

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[112] Ibid., 83–84.

[113] Lutzmann, without much conviction, speculates on the publicity value of the oath (ibid., 16–17).

[114] = Lutzmann, Schuldurkunden . . ., §104; see Steinkeller, "Money-Lending . . .," 123–24.

[115] See Lutzmann, Schuldurkunden . . ., 51–52.

[116] See ibid., 31–32.

7.2.4 *Repayment*

About half the documents have repayment clauses. Agricultural loans were payable "after the harvest" or "at the threshing floor"; commercial loans after the trading journey (kaskal). Other terms included payment on notice (ki-lu-ti-im-ba).[117] Some relief from payment could apparently be expected if natural disaster had destroyed the farmer's crops (cf. Laws of Hammurabi 48), as we learn from an exclusion clause in temple loans: "He (debtor) shall not say to the king or priest 'My field is flooded; my field is destroyed by a storm'" (NRVN 179, 180; TuM n.F. 1/2 69).

Upon repayment, the creditor had to return the debt tablet to the debtor.[118]

7.2.5 *Penalties*

A contractual penalty for default was to pay in barley a loan given in silver or some other commodity (NATN 72, 102, 266). Effectively, this raised the interest from 25 percent to 40 percent.[119] A harsher penalty was double the loan (e.g., BE 3/1 13); possibly it applied to more extreme situations, like loans already in arrears (cf. NATN 493).[120] Even harsher were the penalties of being declared a criminal ($šer_7$-da: AUCT 2 138), of imprisonment (en-nu: MVN 18 181, 505) or even of death (gaz).[121] Such penalties were normally secured by a separate oath. A promise by the debtor to provide his son as a slave on default is more likely to have been a penalty than a hypothecary pledge.[122]

7.2.6 *Special Terms*

Two contracts have a term excluding recourse by the debtor to litigation or appeal to the grand vizier (MVN 2 1; NATN 322/334). The second is certainly a commercial loan; it may therefore have been an arrangement among merchants. In NATN 368, the debtor swears not to leave town without paying his debt.

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[117] NRVN 96; Kraus, ". . . ana ittišu."

[118] See NATN 403 and Steinkeller, *Sale* . . ., 88.

[119] See e.g. *ZA* 53, no. 24 = Steinkeller, "Ur III . . .," app. 1.

[120] Limet, "La clause du double . . ."; Lutzmann, Schuldurkunden . . ., 70–72.

[121] Owen, "Death for Default . . ." Lieberman's interpretation of this verb as breaking the tablet is improbable ("Death . . ."); cf. MVN 16 1243:7.

[122] *ZA* 53, no. 22; contra Lutzmann, Schuldurkunden . . ., 27.

7.3 *Pledge*[123]

The attested pledges are antichretic in character: the income from the pledge served as interest. Arable land, although not sold, might be pledged, often in a transaction that made the creditor the "tenant" of the debtor.[124] Persons pledged could be the debtor's children, his slaves, or himself.[125] With fields, the tenancy is not limited but would seem to be for annual loans. With persons, no rate of interest is stated, but the length of service may be limited, for example, to five years. Further penalties are imposed on the debtor for the pledge's delinquency (TuM n.F. 1/2 32 = Steinkeller, "Ur III . . .," app., no. 6).

Forfeit of pledge on default is only attested in the form of forced sale of slaves. Some were still redeemable (NG 8), but others may have been definitively alienated (*Verfallspfand*: NG 30, 116).

7.4 *Debt and Social Justice*

In several court records it is noted that a slave was sold "without an order of the king/palace having been handed down" (inim . . . šub: NG 43, 71, 97). It has been suggested that this refers to a royal slave-release decree.[126] In MVN 2 2, it is reported that the grand vizier (sukkal-maḫ) cancelled the arrears on the debt of two individuals because "he was killed and his house destroyed" (ba-gaz é ḫul-a).

7.5 *Suretyship*[127]

To go surety for someone is expressed in this period with the phrase šu-du$_8$-a-ni . . .de$_6$, the etymology of which does not reveal its legal purpose.[128] Although an oath is not always mentioned, when suretyship is expressed elliptically, it is most frequently by way of an oath to perform the substance of the obligation. It is reasonably certain,

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[123] Falkenstein, *Gerichtsurkunden* I . . ., 118–19; Steinkeller, "Ur III . . ."

[124] See Steinkeller, "Ur III . . ." and the sources edited as nos. 1–5 and 12–21 of the appendix.

[125] See Steinkeller, "Ur III . . .," app., nos. 6–11; also NG 117 (children and slave), 195:2–10; Limet, *Textes* . . ., no. 12 (slave); NATN 31 (self).

[126] Falkenstein, *Gerichtsurkunden* I . . ., 90–91; Steinkeller, *Sale* . . ., 99–100.

[127] Falkenstein, *Gerichtsurkunden* I . . ., 116–18; Sauren, "Bürgschaftsrecht . . ."; Steinkeller, *Sale* . . ., 80–89.

[128] For conflicting views, see Falkenstein, *Gerichtsurkunden* . . ., 116, and Malul, *Symbolism* . . ., 229–31.

therefore, that the legal basis of the obligation was a promissory oath. Suretyship had a wide range of applications, as noted below.

7.5.1 In sale, the surety guaranteed the buyer good title on behalf of the seller. The terminology is slightly different: the verb is gi(n), and the guarantor is lú-gi-na-ab-túm. The guarantor functioned as a co-seller, against whom the buyer could proceed if the seller failed to meet his obligations. The specific duty therefore varied according to the duty of the seller: in Steinkeller 127, the guarantor of a woman who sold herself into slavery had to substitute her own person if a third party reclaimed the seller/slave from the buyer. In MVN 3 219 (= Steinkeller S.1), the guarantor had to recompense the buyer (or pay directly) the price and the fine imposed when the sheep sold turned out to be stolen.[129]

7.5.2 In debt, the surety functioned as a co-debtor, liable for the debt if the debtor were to default (e.g., TIM 6 44; NATN 621) or die (YOS 4 7, 55).

7.5.3 A form of debt suretyship was for criminals. Cases of theft are attested (*ZA* 53, no. 14; ITT 3 6225 = Sauren, "Bürgschaftsrecht . . .," no. 1; NG 202:1–9) and possibly also homicide (BCT 1 139). The fine would often have been beyond the culprit's means, so a surety would pay it to prevent the culprit from suffering the alternative penalty (UET 3 25 = Sauren, no. 19, and see also 8.4.1 below).

7.5.4 A relative stood surety against the possibility of a person absconding from slavery or work (probably as an antichretic pledge). In MVN 6 428 (= Sauren, no. 5) a wife stands for her husband, and in BE 3/1 1 (= Sauren, no. 16) a mother and sister for a slave. Possibly the surety's duty is substitution. In NRVN 6 (= Sauren, no. 17), the surety undertakes to bring his brother back if he absconds from work.

7.5.5 The duty to bring a person to a specific venue at a set date (*Gestellungsbürgschaft*) was a common form of suretyship. The purpose

[129] See Westbrook and Wilcke, "Innocent Purchaser . . ."

is not stated. The consequences of default, where expressed, vary: substitution (UET 3 22 = Sauren, no. 20) or payment of a set sum (SNATBM 193 = Sauren, no. 9).

7.5.6 A special case concerns the duty of a creditor to return to the debtor upon payment a sealed tablet recording a debt of one mina. If he fails to do so by a set date, his surety undertakes to pay the ex-debtor double (NATN 403).[130]

7.5.7 The surety had recourse against the debtor to recoup his expenditure. In MVN 3 219 (= Steinkeller S. 1) discussed above, the sellers' guarantor, having paid the fine (either to the buyer or directly to the owner), extracts from the sellers a promise under oath to reimburse him. In NG 195:2–10, the debtor gives the surety a slave as a pledge to secure the surety's undertaking.

7.6 *Hire*

7.6.1 *Land*[131]

7.6.1.1 LU §e4 fixes the unit price for house rental.

7.6.1.2 Arable land was leased by the great institutions or by private prebend holders (šuku land) for cultivation (apin-lá/uru$_4$-e-dè). The tenant paid in advance a small sum of silver or barley, called máš. In this context, the term has been identified as an irrigation tax, which was intended to cover work on the field by the government and which the landowner passed on to the appropriate office.[132] The rent, where stated, amounted to a one-half or one-third share of the crop (Fish Rylands 40: explicitly for one third). The term is occasionally stated as three years (Fish Rylands 40), in one case for a development lease (TuM n.F. 1/2 255+257 = Waetzold *WO* 9, 201f.). Otherwise it is likely to have been annual.

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[130] See Steinkeller, *Sale* . . ., 88.

[131] Kraus, "Feldpachtverträge . . ."; Steinkeller, "Ur III . . .," appendix, nos. 1–5, 12–21.

[132] Steinkeller, "Renting of Fields . . .," 113–28. Other scholars have taken it to be a small advance on the rent; see Maekawa, "Rent . . ."; Kraus, "Feldpachtverträge . . .," 192–96.

7.6.1.3 A special oath by the tenant to cultivate the land is sometimes recorded (e.g., TuM n.F. 1/2 250 = Steinkeller, "Ur III . . .," no. 16). LU §a6 imposes a fixed penalty per acre on a tenant who fails to cultivate the land in the year of the lease. Another special term, if correctly interpreted, is an oath by the lessor not to pledge his field, on pain of paying the lessee double the rent.[133]

7.6.1.4 A complication is that many of the leases, which contain no information as to term or rent, were in fact antichretic pledges, the creditor being the tenant in theory but the lessor actually continuing to farm the land.[134]

7.6.2 *Persons*

LU §d1–4 set the fees a doctor may charge for various (successful) treatments. LU §d5–7 set the monthly and piece-work wages of a female weaver. Although she is called gemé, a free person may have been meant in this context (see 4.4.1 above). Free persons were hired out by sub-contractors, for a fixed period or for the harvest (e.g., NATN 98; YOS 4 23, 30), or could hire themselves out (e.g., NRVN 27). Slaves were hired out by their owners: judgments impose the payment of a slave's hire for services lost (see 7.1.4 above: NG 189:11–17, 204:2–13, and cf. NG 177:2–16). Payment was in advance; in NATN 882, a sub-contractor is paid in wool to provide fifteen hired laborers for the harvest. A daily penalty was imposed by the contracts for failure to deliver or for absenteeism.

7.6.3 *Movables*

LU §a8' sets bi-annual rates for hiring oxen, which varies according to whether they are the back, or the front or middle, of the plough team.[135] NG 209:60–73 mentions oxen hired by the day. In NG 62, a hired boat sank, but its wreck was recovered and returned to the owner. He denied the contract altogether, possibly because he might have been liable for loss of the hirer's goods (e.g., if the boat had not been sound).[136]

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[133] Fish Rylands 38: see Steinkeller, "Money-Lending . . .," 124 and n. 16.
[134] Steinkeller, "Ur III . . ."; see 7.3 above.
[135] They are the same as in Laws of Hammurabi 242–43.
[136] For another interpretation, see Steinkeller, *Sale* . . ., 87.

7.7 *Oath*

The promissory oath is used to secure a wide variety of unilateral obligations. The most important is not to abscond (BE 3/1 1; YOS 4 14). The penalty for breach is to become a criminal ($šer_7$.da), the consequences of which are unstated. In NATN 366, the penalty of "crime of the king" ($šer_7$-da lugal) is invoked for breach of a promise to pay (barley). In NG 20, the oath secures a promise not to sue.

8. Crime and Delict[137]

8.1 *Homicide*

According to LU 1, the penalty for homicide is death. The law in practice was, if anything, harsher; in NG 41, it appears that the murderer was killed and his estate, wife, and children handed over to the sons of the victim. It was possible to plead self-defense (NG 202:15–20).

The penalty for causing a miscarriage to a free woman ("daughter of a man") is thirty shekels, but if the woman dies, it is death (LU 23'). If the victim is a slave woman, the penalties are five shekels and a substitute slave, respectively (LU 24').

8.2 *Injury*

LU 18'–21' contain a tariff of payments for various injuries. The only certain example is cutting off a nose, for which the penalty is forty shekels.

8.3 *Sexual Offences*

8.3.1 LU 6 punishes the rape and defloration of a married (= betrothed?) virgin with death. For the same offence against a slave girl, the penalty is five shekels (LU 8).

8.3.2 LU 7 deals with the case of a married woman who follows a man and sleeps with him. She is put to death; the man is freed.

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[137] Falkenstein, *Gerichtsurkunden* I . . ., 129–33; Neumann, "Gerechtigkeit . . ."; Wilcke, "Diebe . . ."

The language of the law indicates, as an analogous ruling in the Middle Assyrian Laws (A 14) confirms, that intercourse took place away from the matrimonial home, and the man was therefore unaware of the woman's marital status. One copy of the text explicitly says "the man (i.e. the husband) shall kill her," suggesting that it is a right rather than a fixed punishment. This would accord with a trial report, in which a woman who confesses to adultery is divorced (NG 205:18–26).

8.4 *Theft and related offences*

The term for "thief" (lú-im-zuḫ) also covers other offenses of dishonesty, such as fraud and perjury.

8.4.1 Theft was punishable either with servitude to the victim (NG 203:1–6, and 21–22) or with a payment (zíz-da),[138] often a multiple of the thing stolen (NG 186: 1'–15': tenfold; MVN 3 219 = Steinkeller S. 1: fourfold). Servitude may have been the alternative where the culprit was unable to pay the penalty.[139] Where the thief was a slave, the owner had noxal liability, that is, to transfer the slave to the victim (NG 126).

Fraudulent sale of a slave whom the seller had already sold to another was treated as theft (NG 69). Embezzlement of fish destined for the palace was visited with almost a fourteenfold penalty (NG 189:1–10). Embezzlement by a priest of sacrificial offerings was punishable with death.[140]

The innocent purchaser of stolen goods might be liable to the same punitive payments as the thief (in the latter's absence), but could recoup his expenditure from the seller.[141]

8.4.2 Robbery (sa-gaz), unlike other crimes, appears to have attracted police action by the public authorities.[142] Nonetheless, an individual swore an oath to the court that he would bring the real culprit by

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[138] SNATBM 373; see Wilcke, "Lesung . . ."
[139] Westbrook, "zíz.da . . ."
[140] Roth, "Reassessment . . ." = Lafont, "Les textes judiciaires . . .," no. 9.
[141] MVN 3 219 (= Steinkeller S.1); see Westbrook and Wilcke, "Innocent Purchaser . . ."
[142] See Wilcke, "Diebe . . .," 56.

a certain date or be deemed the robber (lú-la-ga) himself.[143] In NG 42 the victim sold the robber's wife, daughter and slave as slaves; the absence of the culprit is not explained.

8.4.3 LU §c1 requires compensation for grain stolen from a neighbor's house through failure to repair one's own (cf. LL 11).

8.5 Damage to a field (= the crop?) was punishable with servitude, like theft (NG 203:7–15). Damage to a neighbor's house led to confiscation of the culprit's house when he refused to pay for the damage (NG 143). LU §a5 (/31) punishes negligent flooding of another's field with a set payment of barley per acre.

8.6 *False Accusation and Perjury*

An accusation of witchcraft or adultery which is proved false by the river ordeal leads only to a fine for the accuser (LU 13', 14'). A son who accused his father of embezzling offerings from the temple, however, suffered the death penalty, perhaps on a talionic principle.[144]

In NG 84, false witnesses were declared "thieves" (lú-im-zuḫ), an offence for which LU §a2 (/28) prescribes a payment of fifteen shekels.

8.7 *Prison*

Imprisonment is mentioned but not specifically as a punishment. It applied to debtors and criminals pending payment of penalties.[145] If Wilcke's interpretation of LU 3 is correct, a person guilty of false imprisonment is imprisoned and pays a fine of fifteen shekels. If the talionic principle is involved, the imprisonment is best understood as imposed pending payment.

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[143] SNATBM 210 (= Sollberger, "Documents . . .," no. 10). He need not have been accused of the crime himself; he may have been a shepherd contractually liable for losses by robbers.

[144] Roth, "Reassessment . . ." = Lafont, "Les textes judiciaires . . .," no. 9; Petschow, "Talion . . ."

[145] MVN 18 181, 286; MVN 20 207. See Wilcke, "Kodex Urnamma . . .," 311, n. 82; Frymer, "Nungal Hymn . . ."

Abbreviations

Sigla of text publications are as in the Chicago Assyrian Dictionary or the Philadelphia Sumerian Dictionary, except as follows:

JCS 16, 78	D. Edzard, (Texts and Fragments), *JCS* 16 (1962) 78
NATN	D. Owen, *Neo-Sumerian Archival Texts* (Winona Lake: Eisenbrauns, 1982)
NG	Falkenstein, *Neusumerische Gerichtsurkunden* . . . vol. 2
NRVN	M. Çığ and H. Kızılyay, *Neusumerische Rechts- und Verwaltungsurkunden aus Nippur* (Ankara: Türk Tarih Kurumu Basimevi, 1965)
Sigrist	"Some di-til-la Tablets in the British Museum," in *Solving Riddles and Untying Knots*, ed. Z. Zevit et al. (Winona Lake: Eisenbrauns, 1995), 609–18
SNATBM	T. Gomi and S. Sato, *Selected Neo-Sumerian Administrative Texts from the British Museum* (Abiko: The Research Institute Chuo-Gakuin University, 1990)
Steinkeller	Steinkeller, *Sale Documents* . . .
ZA 53	M. Çığ, H. Kızılyay, and A. Falkenstein, "Neue Rechts- und Gerichtsurkunden der Ur III-Zeit aus Lagaš," *ZA* 53 (1959) 51–92

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EBLA

Amalia Catagnoti

Tell Mardikh (about 60 km south of Aleppo, Syria) is the site of ancient Ebla, excavated from 1964 by P. Matthiae.[1] The remains date from the Chalcolithic period to the last part of the Middle Bronze Age.

1. Sources of Law

1.1 More than three thousand cuneiform tablets have been recovered from archives within the main excavated building, Palace G,[2] which was the residence of the local ruler and his wife. They are usually dated to the second half of the twenty-fourth century.

1.2 The royal archives are mainly administrative in nature,[3] but they also contain official acts dealing with the royal and elite families, in particular "decrees" (*en-ma*), "verdicts" (di-ku$_5$) and international treaties.[4] Lexical lists, chancery documents, and literary texts were also stored in the main archive, L. 2769. Bilingual lexical lists (VE), not always in the Mesopotamian tradition, help to explain the legal terminology. The local language (written with extensive use of logograms from the Mesopotamian tradition) appears to be a Syrian variant of Archaic Semitic.[5]

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[1] Matthiae, *Ebla* . . .

[2] Archi, "The Archives of Ebla," and "Gli archivi di Ebla . . ."

[3] Archi, "About the Organization . . .," "Ebla: La formazione di uno stato . . .," "Fifteen Years of Studies . . .," and "Trade and Administrative Practice . . ."; Pettinato, *La città sepolta*; Bonechi, "Lexique . . ."

[4] Archi, *Ebla du III^e millénaire* . . .

[5] Fronzaroli, "La lingua . . ."

2. Constitutional and Administrative Law

2.1 The rulers of Ebla Palace G are referred to by terms deriving from **mlk : malkum*, "king," always written with the Sumerogram en, and *malkatum*, "queen," always written with the Akkadogram *ma-lik-tum*. Furthermore, the lexical lists (VE 1088–89) give the terms for "kingship," nam-en = *malīkum*, and for "exercise of the kingship," nam-nam-en = *tumtallikum*. During the short span of time covered by the archives, Palace G was in the hands of kings Yigriš-Ḫalab, Yirkab-damu and Yiṭġar-damu. Two texts (ARET VII 150 and 74.120) offer a list, in reverse order, of previous Eblaite rulers: the dynasty, probably founded by one Kulbānum, may include twenty-six kings, and the date of the establishment at Ebla of this dynasty could coincide with the presumed date of the building of Palace G, approximately the twenty-sixth century.[6]

2.2 The real nature of Early Syrian kingship is not yet fully determined, but it must lie within the notions expressed by West Semitic **mlk*, "to possess, to dominate, to own, to rule, to be master." Nonetheless, the general impression is that Eblaite kingship was not the autocratic type of urbanized central Mesopotamia but rather a palace-based oligarchy ruling over dry farming areas and constantly negotiating with tribal groups.[7]

2.3 Palace G was called "house of the king," *bayt malkim* (é en). ARET IX 104 shows that king Yiṭġar-damu frequently traveled far from Ebla (this may have been common also for previous kings). It may be supposed that during his absence Queen Tabūr-damu remained at Ebla, taking care of the palace together with Yišsî (*Íl-zi*), their "master of the king's house," *baʿal bayti malkim* (BAD é en), also known, late in the reign, as responsible for huge building works in the palace itself.[8]

2.4 Palace G was probably populated, at least during the working day, by hundreds of lower rank men (including guards, craftsmen,

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[6] Archi, "The King-Lists from Ebla"; Bonechi, "The Dynastic Past . . ."
[7] Analysis based on Steinkeller, "Early Political Development . . .," 120.
[8] Bonechi, "Studies on the Architectonic and Topographic Terms . . ."

artists and scribes), and by a larger number of women and children;[9] this may be true also for the dozens of other Early Syrian kingdoms mentioned in the Ebla texts. Data about the "rations" (še-ba) for the palatial personnel may be found in the texts from Archive L. 2712.[10]

2.5 More difficult to establish is the role of the "lords" (lugal), nobles appointed to various offices by the king,[11] and of the lower ranking officials called ugula,[12] as well as the family of the very powerful *Ib-rí-um*. Given the deep differences in the socio-political organization of Early Syria and Early Dynastic Mesopotamia, it is not surprising that the Eblaite use of terms such as lugal and ugula is not the same as in central or southern Mesopotamia.

2.6 The texts show that the Eblaite royal and elite families relied upon a network of overseers (ugula) to control settlements and areas as well as products and means of production. Hundreds of ugula*s* of villages occur: since we know that these were settlements within the area around Ebla where the king exercised his authority, we may presume that local officials of various ranks—probably already with locally derived authority—represented the interests of Ebla in these areas. Although their sheer number suggests petty officials, a few may have been high ranking. This may be indirectly deduced from passages in administrative texts in which men, qualified by geographical names (Arḫatu, Ib'al, and Martu) which were tribal southern Syrian kingdoms, went to Ebla in order to swear political oaths (nam-ku$_5$). These important leaders are ugula*s* and not en*s* or lugal*s*, and whether they were acting independently or as representatives of their kings depends on the political circumstances of the particular kingdom.[13] Furthermore, a chancery text (ARET XIII 11) confirms that ugula*s* were the rulers (maḫ-maḫ) of Ib'al.

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[9] Archi, "Wovon lebte man in Ebla?" "Berechnungen . . .," "Zur Organisation der Arbeit . . .," and "The City of Ebla . . ."

[10] Milano, "Food Rations at Ebla . . ."; ARET IX; Archi, "Prices, Workers' Wages . . ."

[11] Pomponio, "I lugal . . ."; Archi, "Les titres de en et lugal . . .," "Gli Archivi Reali . . .," and "The 'Lords,' lugal-lugal . . ."

[12] Pomponio, "Gli ugula . . ."

[13] Catagnoti, "Sul lessico dei giuramenti . . .," 122ff., and "Les serments . . ."

2.7 As in the case of the other Syrian kingdoms, several (more than 40) Eblaite "elders," ábba, are mentioned.[14] Foreign kings traveled accompanied by their elders. The Eblaite palace guarantees foodstuff rations to the local elders. The elders may have acted as royal advisers, being representatives of groups sharing interests with the royal family.

3. Litigation

3.1 The administrative texts document at least fourteen "judges," di-ku$_5$.[15] Frequently they appear in pairs and are among the lugal*s*. In the few di-ku$_5$ texts, however, which may be classified as verdicts, the one who judges is the king. (In ARET XIII 12, *Ib-rí-um* seems to act as judge in a dispute between a high ranking person from Ebla and the village of Muru.) We know virtually nothing about when, where and how the di-ku$_5$ judges exercised their office.

3.2 di-ku$_5$ texts[16] are 75.1430, 75.1452 and 75.1632 (unpublished). In all of these verdicts, the formula di-ku$_5$ PN, "verdict for PN," occurs in connection with rural property (ki), the PN always referring to a member of *Ib-rí-um*'s family (*A-ḫír-da-mu*, *Ù-ti*, *Gi-rí*). (They will be discussed under 6 below, together with ARET XIII 7.)

4. Personal Status

4.1 While only the lexical lists mention the "commoner" (maš-en-kak = *muškayyinum*, VE 1306), men and women dependent on someone else, irrespective of their own status, activity or personal wealth, occur as ir$_{11}$, "servant" (Eblaitic equivalent unknown, possibly *ʿabdum*), and géme, "female servant" (Eblaitic equivalent unknown). These two terms refer to domestic servants and workers of various origins, probably including prisoners of war.[17] Cases of sacred manumission

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[14] Klengel, "Älteste . . ."; Archi, "Gli Archivi Reali . . .," 115.

[15] Archi, "Studies in Eblaite Prosopography . . .," 263ff.; cf. VE 1327, di-ku$_5$ = *ba-da-gu da-ne-u*[*m*] "to render a verdict."

[16] Milano, "Ebla: Gestion des terres . . .," 155.

[17] See also "female captives," géme-gi/-gi$_4$, probably *asirtu*; note also "prostitute," géme-kar-kid = *ṭamaktum*, EV 084, and "female brewer, alehouse keeper," géme-gàr-ra = *sābi'tum*, VE 1412.

occur, most frequently girls (dumu-mí) bought by the queen or by the mother of the king and then consecrated to the goddess Išḫara.[18]

4.2 When the Palace G administration records people (frequently men) because they are employed for some specific works, terms of clear topographical connotation such as ká, *ìr-a-núm*, and é-duru$_5^{ki}$ may be used. It may be presumed that: (1) ká, "city gate," indicates both an area between the royal palace and a city gate (i.e., a quarter), and the people living there; (2) *ìr-a-núm* indicates (on the basis of VE 1151, uru-bar = *ʿīrīyātum*, "suburbs") people living just outside the city walls; (3) é-duru$_5^{ki}$ (untranslated in VE 317) indicates people living in hamlets and villages near (i.e., up to 25–30 km) a main center such as Ebla.[19] All these people may be entered in the accounts with reference to an overseer (ugula). In such bureaucratic contexts, anonymous workers are recorded as guruš (man), dam (woman), and (probably disregarding their sex) na-se$_{11}$, "people," an Akkadian loanword in Sumerian (VE 900, Eblaitic equivalent *nišum*).

4.3 The Eblaitic term for "family" is *kaymum*.[20] In chancery texts dealing with journeys, however, *kaymum* is used to indicate those who supplied auxiliary troops or men for services such as maintenance of dykes and irrigation canals. These passages seem to refer to one specific and not yet fully understood historical moment, involving a phase of Ebla's expansion toward the East in northern Syria.

4.4 The Eblaitic term for "blood," *damum* (= uš$_x$ (LAK 672), VE 970), is used in chancery and administrative texts and in personal names.[21] It may be that in these cases, *damum* as a collective noun refers to a part (actually the allied members) of a larger social group, the *li'mum*, "clan." On this interpretation, members of a faction belonging to the *damum* may have been not only natural kinsmen but also persons who became blood brothers by means of political accords (including marriages). As in the case of *kaymum*, the relevant available attestations of *damum* refer to regions far from Ebla, generally in semi-nomadic areas.

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[18] Oral communication by J. Pasquali.
[19] Typically grouped in teams of 20 workers (Milano, "é-duru$_5^{ki}$ . . .").
[20] Fronzaroli, "kam$_4$-mu . . ." (Sumerian equivalent unknown), and cf. VE 792.
[21] Bonechi, "Lexique et idéologie royale . . ."; Fronzaroli, "kam$_4$-mu . . ."

4.5 It may be concluded in general that the authority of the Palace G royal family and of the other elite Eblaite families was organized on a topographical basis for people living not far from the palace, and that when interaction was needed with persons located farther away, reference was made to ties based on kinship and politics.

5. Family

5.1 There are no direct sources relating to family law. Indirect information may be gleaned from sources concerning the royal family and a few other elite families (such as *Ib-rí-um*). Features of the marriage (níg-mu-sá) of the king and queen of Ebla (both of local origin) are known thanks to two ritual texts published in ARET XI. They refer to the last two Eblaite kings, and they start with the wedding, at Ebla:

> And (in the following way the king) indeed takes her, the queen, to His Father's House: 1 golden bracelet is delivered (by the groom to the bride) at the time of her/their(/his?) offering of 1 sheep for the Sun-Goddess (and) of 1 sheep for [his] deceased father. And (the king) indeed brings the queen to His Father's House. And, on the day of the queen's wedding, (the king) indeed puts olive oil on the queen's head.[22]

The texts continue with rituals at Ebla prior to the queen's entry into the Temple of Kura (probably the dynastic god) and during the ceremonies at that temple. Then there are the preparations, near Ebla, of the royal procession for the journey to a place called Binaš, the description of the journey and of the rituals en route, the rituals at Binaš, and lastly the return of the royal couple to Ebla, where further rituals were performed. The texts end with a list of gifts received at the time of the wedding of the queen.

5.2 Several interdynastic marriages (preceded by negotiations and exchange of gifts, as in the case of local weddings of members of the Eblaite court) are recorded.[23] Eblaite princesses married kings of Syria (Lumnān, Burmān, Ḫarrān) and Mesopotamia (Nagar, Kiš, but not Mari). In the case of Nagar, the bride received from her

[22] Bonechi, "On the Beginning . . ."
[23] Biga, "I rapporti diplomatici . . ."

own court clothes, jewels and vessels as a personal trousseau, and she was accompanied to Nagar by male and female servants and functionaries.[24] In the case of Kiš,[25] it may be supposed that the recorded income (mu-DU) of thousands of animals refers to the bridal gift perhaps given by the court of Kiš.

5.3 Polygamy, or at least concubinage, is attested in the royal court.[26] Dozens of royal wives/concubines (dam en) are mentioned.[27] They were differentiated by rank, probably according to their age and origin. Among the most important were the four dam-maḫ, "main wives" of king Yirkab-damu, and then, during the following reign of Yiṭ̄ar-damu, one Dusigu, a secondary wife of Yirkab-damu who was his successor's mother (ama-gal en), without having been a queen.

6. Property and Inheritance

6.1 There are many administrative texts concerning real estate.[28] For the maintenance of its personnel, the palace granted subsistence land (gána kú), sometimes together with draft animals.[29] The colophon of 75.1668, a list of rural estates (é) and arable fields (gána-ki) associated with various villages, is: é-é *Ib-du*-^{d}*Aš-dar* lú en ì-na-sum-sù, "rural estates of I., which the king has given to him." Large subsistence fields attributed to the king, the queen, and to members of the elite may also be recorded (75.12448+).

6.2 Six texts list villages (uru^{ki}), sometimes together with their ugula, owned or under the control of named persons, who are sons of *Ib-rí-um*.[30] These documents (as well as ARET II 27 and 75.1844) may

[24] Biga, "The Marriage of Eblaite Princess . . ."
[25] Archi, "Gifts for a Princess."
[26] Biga, "Femmes de la famille royale . . .," "Frauen in der Wirtschaft . . .," "Donne alla corte . . .," "Enfants et nourrices . . .," and "Wet-Nurses . . ."
[27] Archi, "Studies in Eblaite Prosopography," 245–62, also for *Ib-rí-um* and of his son *I-bí-zi-kir*, and "Les femmes du roi . . . . . ."; Tonietti, "Le liste delle dam en . . ."
[28] See Milano, "Ébla: gestion des terres . . ." for a classification of texts dealing with tenure of land.
[29] Ibid., 152.
[30] ARET VII 151, 152, 153, 75.1470, 75.1625, and 75.1964 = MEE 10 33; see Milano, "Ébla: gestion des terres . . .," 154.

be the administrative counterparts of chancery texts of the *en-ma* type, "decrees," such as 75.1444[31] and 75.1766,[32] or of the di-ku$_5$-type, "verdicts," such as 75.1632 (di-ku$_5$ *Gi-rí*, and cf. 75.2614), where the king of Ebla confirms (also by oath) the rights of several of *Ib-rí-um*'s sons to many rural estates. Another royal verdict (di-ku$_5$) dealing with lands, 75.1452, refers to litigation among members of *Ib-rí-um*'s family, namely, his sons *Ù-ti* and *I-rí-iġ-da-mu* and his nephews, all sons of *I-rí-iġ-da-mu, Da-ḫír-Li-im* (a high priestess, dam-dingir), *I-rí-iġ-da-mu* and *Gú-ba-lum*.[33] The king's verdict, against her brothers' claim, confirms *Da-ḫír-Li-im*'s donation to her uncle *Ù-ti* of the lands she had received as an inheritance share (níg-á-gá-2) from her father. The scribal exercise 75.1430 is a royal verdict dealing with villages and lands, confirming the ownership of *A-ḫír-da-mu*, son of *I-bí-zi-kir*, son of *Ib-rí-um*.[34]

6.3 Four documents concerning rural estates of other elite families also contain the key term níg-á-gá followed by the figures 2, 3, or 4, meaning a partition of the father's property into two, three or four inheritance shares for distribution among the sons.[35] In ARET VII 154, it is also said that the sons of *Gi-a-Li-im* swore an oath (nam-ku$_5$) and then received the land.

6.4 A small but important group of difficult chancery and administrative texts concerns king Yirkab-damu of Ebla and queen *Ti-ša-Li-im* of Emar.[36] The administrative texts ARET II 27a, III 460+, 75.2304, Archi (note)[37] and Dietrich (note)[38] are related to two complementary chancery texts. One is a shorter di-ku$_5$-verdict (ARET XIII 7, including the mention of a "pact," ^{giš}sur$_x$ (ÉRIN), lit. "dou-

[31] Edzard, "Der Text TM.75.G.1444 . . ."
[32] Fronzaroli, "Un atto reale . . ."
[33] Fronzaroli, "Un verdetto reale . . ."
[34] Fronzaroli, "Il verdetto per A'mur-Damu . . ."; Milano, "Ébla: Gestion des terres . . .," 155 and n. 150.
[35] Milano, "Ébla: Gestion des terres . . .," 153. ARET VII 154 deals with the shares of the three sons of the lugal *Gi-a-Li-im*, ARET VII 155 with those of the four sons of the lugal *I-rí-iġ-da-mu*, ARET III 377 with those of the sons of the lugal *Ẓi-ba-da*, and ARET VII 156 with those of the three sons of the judge *Ìr-am$_6$-da-mu*.
[36] Bonechi, "Lexique et idéologie royale . . .," 523ff.
[37] Archi, "Un autre document . . ."
[38] Dietrich, "Besitz . . ."

ble yoke"), and the other is a longer *en-ma*-decree (ARET XIII 8). Both deal with two matters: (a) the donation by Yirkab-damu to *Ti-ša-Li-im* of lands (ki-ki) bought (níg-sa_{10}) at *Ìr-péš*^{ki} and *Gú-ra-bal*^{ki}, not far from Emar (XIII 7 [1–2] // 8 [1–4]); (b) dispositions concerning persons (na-se_{11}-na-se_{11}) under *Ti-ša-Li-im*'s control (XIII 7 [3–4] // 8 [5–8]), including their sustenance and the safety and freedom of movement of merchants (lú-kar) traveling in the areas under Yirkab-damu's and *Ti-ša-Li-im*'s control (XIII 7 [5–6] // 8 [9–11]). The verdict adds a summarizing clause (ARET XIII 7 [7]): "therefore: the king has given the land, (and) *Ti-ša-Li-im*'s people have been moved by the king."

6.5 Some "accounts" (šid) are inventories of movable property, and frequent among them are those dealing with royal goods. One account, 75.2304 lists the movable property of the house (é) of the queen of Emar, *Ti-ša-Li-im*.[39]

7. Contracts

7.1 Information about the current prices may be gleaned from the administrative records, where níg-sa_{10}, "price; (to) purchase" (= *gar-atum* in VE 67) occurs hundreds of times, in reference to all sort of goods.[40]

7.2 Some thirty passages in administrative texts show the use of the Eblaitic term for "interest-bearing loan," še-SAGxḪA-mul and var. (untranslated in VE 674), probably a graphic variant of še-ŠU.ḪA-mul = *ḫubullum* (VE 673).[41] The beginning of ARET VII 82 suggests very high interest: one EN-*sa-gi-su* had received from the palace, for two years, 380 *gú-bar* measures of barley (corresponding to 3,10 minas of silver), and the palace received (mu-ti) 500 *gú-bar* of barley as repayment of the entire amount of barley lent (*in* še-še), which bore interest (še-SAGxḪA-mul). The contract 76.749 and the administrative text 75.1919 refer to an interest-bearing loan of

[39] Šid: Archi, "Un autre document . . ."
[40] Archi, "Prices, Workers' Wages . . ."
[41] Gathered by Archi, "'Debt' . . ."

probably sixty minas of silver contracted by some elders of the town of Irkutu, not far from Emar.[42]

8. Crime and Delict

8.1 The treaty between Ebla and Abarsal (ARET XIII 5) contains several clauses dealing with various crimes and their punishments.[43] Since this text is the main Early Syrian source for international law, the extent of its validity in the internal law of Ebla is not certain.

8.1.1 Sections 20–28 of the treaty punish blasphemy of one's own king, gods, and country. For this kind of treason the death penalty may be prescribed. High ranking persons will be extradited and then killed; lower ranking officials may redeem themselves by paying fifty sheep, which is the ransom documented in later clauses. In the case of commanders of conquered fortresses, their weapons must be delivered to inspectors. Objections must be addressed to the king of Ebla.

8.1.2 Sections 47–49 deal with the ransom and the rite of purification for unintentional homicide: the penalty for the killing in a fight of a person from Ebla or from Abarsal is the payment of fifty sheep.

8.1.3 Sections 50–56 deal with theft (12 sheep is the penalty for the theft of wood) and the ransom (50 sheep) of a servant from Abarsal.

8.1.4 Sections 57–63 are provisions, valid in the land of Abarsal, concerning various crimes. Where a murder committed by a person from Abarsal is ascribed to a person from Ebla, the latter can remove suspicion by means of an oath. For theft from Eblaite royal premises in the land of Abarsal (sheepfolds, gates, castles), the death penalty applies. For cases of theft and murder committed by an Eblaite in the land of Abarsal, the penalty is fifty sheep. The penalty for sexual relations with a dam-guruš (possibly another's wife or fiancée) is

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[42] Interestingly, sag (certainly = *rēšum*, as in Akkadian: CAD R, 288) is the term used for "original amount, capital."

[43] For an edition, see Edzard, "Der Vertrag . . ."

a payment in textiles by the paramour. Sexual violation of an unmarried girl is dealt with more leniently, apparently involving marriage.

8.1.5 Some cases dealt with in the treaty occur in other chancery texts. For instance, ARET XIII 14:63–66 deal with blasphemy (a prostitute who curses the god Hadda), extradition, and probably the death penalty. ARET XIII 12 (5–6) shows that the term for ransom (níg-du$_8$) also indicated payment of a penalty in case of infringement of an oath.

Abbreviations

ARET	Archivi Reali di Ebla Testi (Roma: Missione Archeologica Italiana in Siria)
ARET IX	L. Milano, Testi amministrativi: Assegnazioni di prodotti alimentari (Archivio L. 2712—Parte I), 1990
ARET XI	P. Fronzaroli, con la collaborazione di A. Catagnoti, Testi rituali della regalità (Archivio L. 2769), 1993
ARET XIII	P. Fronzaroli, con la collaborazione di A. Catagnoti, Testi di cancelleria: I rapporti con le città, 2002

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INTERNATIONAL LAW IN THE THIRD MILLENNIUM

Jerrold Cooper

1. Sources of International Law

1.1 Sources for the relations between states are entirely lacking prior to ca. 2500. Thereafter our main source of information is royal inscriptions, which refer not only to war and conquest but also to diplomatic relations and treaties. The text of two or possibly three treaties is preserved. The abundant administrative archives provide indirect evidence.

1.2 The vast majority of royal inscriptions come from Girsu, the capital of the state of Lagash. The most significant for our purposes are Eanatum's Stela of the Vultures,[1] which provides the procedure and terms of a treaty between Lagash and Umma, its neighbor to the north,[2] and an inscription of Eanatum's nephew Enmetena, alluding to a treaty with the ruler of Uruk.[3] The sanctity of international borders is proclaimed throughout the corpus.

1.2.1 Few of the royal inscriptions from other contemporary polities are relevant for our subject. The sanctity of borders is reiterated in a boundary demarcation from Umma,[4] and texts from Uruk depict the merger of two previously independent city-states as divinely ordained.[5] The smaller text finds from the contemporary Syrian sites of Mari and Beydar contribute little.

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[1] SARI La 3.1; ABW Ean. 1; RIM E1.9.3.1.

[2] See the extensive discussion and bibliography in Cooper, *Reconstructing History* . . ., and Bauer, in Bauer et al., *Mesopotamien* . . ., 431–574.

[3] SARI La 5.3; ABW Ent. 2; RIM E1.9.5.3; cf. Cooper, *Reconstructing History* . . ., 31f.

[4] SARI Um 7.2; ABW Luzag. 2; RIM E1.12.5.2. Note that this inscription is now ascribed to G/Kishakidu, not Lugalzagesi.

[5] SARI Uk 1.1–2; ABW Lukin. v. Uruk 2 and 4; RIM E1.14,13,1–2.

1.3 The archives from Ebla contain three types of texts relevant to our subject: administrative texts recording expenses and gifts for treaty ceremonies (nam-ku$_5$ or *kittum*) between rulers, officials and other elites of Syrian city-states;[6] the text of an actual treaty between Ebla and "Abarsal"[7] with over forty provisions and perhaps an excerpt from a treaty with Armi on a school tablet;[8] and a letter and a dossier from rulers referring to international claims and obligations.[9]

1.4 The Sargonic period furnishes a treaty between Naramsin of Akkade (ca. 2250) and an Elamite ruler, preserved in an Elamite version from Susa.[10]

1.5 Despite scores of thousands of documents from the Third Dynasty of Ur, none bears directly on our subject.

2. The International System

2.1 Seal impressions and lexical lists from Uruk, Jemdet Nasr and Ur ca. 3100–2800 point to what could be either a centrally controlled state encompassing the major cities of southern and central Babylonia or a loose confederation of relatively independent cities and smaller states.[11]

2.2 From perhaps just before 2600, inscriptions of Mesalim (Mesilim), king of the north Babylonian center Kish, attest to his hegemony over the southern cities of Adab and Girsu. Later use of the title

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[6] Catagnoti, "Les serments . . ." and "Lessico dei giuramenti . . ."

[7] For the reading of the toponym "Abarsal," see, most recently, Tonietti, "Le cas de *Mekum* . . .," 232f., with previous literature. For the treaty, see Edzard, "Der Vertrag . . ."; Pettinato, *Ebla*, 229–37. The assertion by Kienast, "Der Vertrag . . .," 235, that the text cannot be a valid treaty but rather a draft, because it is not sealed, is very unlikely; seals were not used on tablets at all at Ebla or elsewhere in the mid-third millennium. A new edition by Fronzaroli is forthcoming.

[8] Fronzaroli, "Il culto . . .," 18ff.

[9] Michalowski, *Letters*, no. 2; Pettinato, *Ebla*, 241ff.

[10] Hinz, "Elams Vertrag . . ."; cf. Kammenhuber, "Historisch-geographische Nachrichten . . .," 172ff., and Westenholz in Sallaberger and Westenholz, *Mesopotamien* . . ., 92.

[11] Matthews, *Cities* . . . The fact that the writing and bookkeeping system at Jemdet Nasr in the north of Babylonia is virtually identical to that at Uruk in the south ca. 3000 suggests that there could well be some kind of central control.

"King of Kish" by rulers from other cities with hegemonic claims suggests that Mesalim controlled most of northern and southern Babylonia.[12] The administrative archives from Fara,[13] ancient Shuruppak, ca. 2550, attest to a group of six cities in central and southern Babylonia that, again, could represent a centrally controlled state or a loose confederacy, either allied with or subordinate to Kish.[14]

2.3 The period from ca. 2500 to the advent of Sargon of Akkade, ca. 2350, is known as Early Dynastic IIIb, the Presargonic period, or, occasionally, the Old Sumerian period. Evidence for interstate relations expands significantly with numerous royal inscriptions from Babylonia[15] and archival texts from Ebla in northwestern Syria.

2.3.1 In southern Babylonia, three larger polities can be discerned: Lagash (including the major cities of Girsu, Lagash, and Nina), Umma (together with Zabalam), and a union of Uruk and Ur. The north seems to have been dominated by Kish, in concert with Akshak.[16]

2.3.2 Beyond Babylonia, there are, by the end of this period, three regional states to the north and west, as revealed by the Ebla archives: Mari on the middle Euphrates, Ebla in northwestern Syria, and Nagar in the Ḫabur triangle.[17] To the east of Babylonia lay the Elamite confederacy.[18]

2.4 The Sargonic (Akkade, or Old Akkadian) period (ca. 2350–2200) is marked by Akkadian hegemony over Babylonia and regions beyond,

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[12] SARI Ki 3; ABW Mes. v. Kiš; RIM E1.8.1. The inscriptions record building, ritual, or dedicatory activity and in each case mention the name of a local ruler or governor. Later tradition records that Mesalim marked off the boundary between Lagash and Umma (Cooper, *Reconstructing History* . . ., 22; Bauer, in Bauer et al., *Mesopotamien* . . ., 446). The right to set boundaries between cities' territories was traditionally exercised by a strong hegemonic ruler, e.g. Sharkalisharri of Akkade (Volk, "Puzur-Mama . . ."), Utuhegal of Uruk (RIM E2.13.6; cf. RIM E3/2 p. 10), and Urnammu of Ur (RIM E3/2.1.1.21).

[13] See Krebernik in Bauer et al., *Mesopotamien* . . .

[14] Pomponio and Visicato, *Tablets of Suruppak* . . ., 10ff.; Visicato, *Bureaucracy* . . ., 144f.; Krebernik in Bauer et al., *Mesopotamien* . . ., 242.

[15] ABW; RIM E1; SARI (English translations only).

[16] Cooper, *Reconstructing History* . . ., 9; cf. Pomponio, "Re di Uruk . . ."

[17] Archi, "Nagar . . ."

[18] See, most recently, Westenholz in Sallaberger and Westenholz, *Mesopotamien* . . ., 90ff.

destroying or impinging upon the states described in 2.3.2 above.[19] But this hegemony was disrupted by repeated rebellion in Babylonia, and control in surrounding territories was only sporadic.

2.5 The Third Dynasty of Ur (Ur III; ca. 2100–2000) dominated Babylonia, Elam and more northerly parts of western Iran, and the Tigris valley and its tributaries as far north as Assyria, but Mari and the rest of the Northwest, including the newly emergent Ḫurrian centers of the Ḫabur triangle, remained outside imperial authority, as did the Amorite tribes whose movement to the south and east would eventually be one of the main forces leading to the empire's decline and fall.[20]

3. Treaties

Treaties are attested directly in surviving treaty texts and indirectly in royal inscriptions and archival texts.

3.1 Parity treaties are concluded between sovereigns dealing as equals. Vassal treaties are concluded between unequal parties, with the bulk of the treaty stipulations obligating the lesser party to the advantage of the greater.

3.1.1 No parity treaty survives from the third millennium, but evidence for parity treaties can be adduced from the Ebla oath ceremonies (see below) and from a roughly contemporary inscription of Enmetena of Lagash (ca. 2425) which reports that "Enmetena, ruler of Lagash, and Lugalkiginedudu, ruler of Uruk, established brotherhood."[21] The Akkadian term *aḫu* "brother" is known from the second millennium as the term used by one ruler to refer to another of equal stature, and *aḫḫūtu*, "brotherhood," the exact equivalent of the Sumerian *nam-šeš* used by Enmetena, describes a relationship of

[19] The royal inscriptions are in AAK and RIM E2. For the period in general, see Westenholz in Sallaberger and Westenholz, *Mesopotamien* . . .

[20] See the extensive presentation by Sallaberger in Sallaberger and Westenholz, *Mesopotamien* . . .

[21] SARI La 5.3; ABW Ent. 45–73; RIM E1.9.5.3. For the historical context, see Cooper, *Reconstructing History* . . ., 31f., and Frayne, RIM E1 173.

equality between rulers. "Brother" was used similarly at Ebla to describe the relationship between the ruler of Ebla and the ruler of Ḫamazi.[22]

3.1.2 The two surviving third millennium treaties, between the rulers of Ebla and Abarsal and between Naramsin of Akkade and an Elamite king, seem, in the form we have them, to be unequal treaties, the onus of most of the stipulations falling on Abarsal and the Elamite king, respectively. The treaty conditions reported in Eanatum's Stela of the Vultures likewise obligate only the ruler of Umma. Our knowledge of the historical context of all three documents suggests that these treaties are indeed between unequal parties, but the possibility remains that third millennium treaty documents, like those known from the Old Babylonian period, recorded the obligations of one party only[23] and that the obligations of Ebla, Akkade and Lagash were recorded on separate documents.

3.2 The two surviving treaty documents are inscribed on clay tablets. The Ebla treaty is written in the peculiar mixture of Sumerograms, Semitograms, and phonetic Semitic characteristic of the Ebla archive; the Naramsin treaty is in Elamite. Both are very difficult to understand. The Stela of the Vultures, in Sumerian, seems to preserve the text of a treaty document and a description of the ratification procedure, to which is appended an inscription dedicating the stela itself. The Ebla treaty is couched in the third person, with periodic second person instructions to the ruler of Abarsal. The Naramsin treaty consists primarily of first person declarations to Naramsin by the Elamite ruler, who refers to Naramsin either in the second person ("you," "your") or by name. The Stela of the Vultures is in the third person, except for the first person oaths sworn by the ruler of Umma.

3.3 The treaty procedure itself consisted of swearing to the provisions contained in the treaty documents. The Naramsin treaty is presented as one long oath sworn by the Elamite ruler, and the ruler

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[22] Michalowski, *Letters* . . ., no. 2. "Brother" also appears in the dossier regarding relations between Ebla, Hadu, and Mari (Pettinato, *Ebla*, 241ff.). In the treaty between Ebla and Abarsal, however, "brother" seems to denote coconspirators in a potential rebellion (Edzard, "Vertrag . . .," §19).

[23] Charpin, "Représentants . . .," 144.

of Umma swears repeatedly to uphold the treaty provisions on the Stela of the Vultures. Both the Ebla treaty and the Stela of the Vultures record curses against a treaty violator.

3.3.1 Archival documents from Ebla record oil offerings and other gifts for ceremonies referred to as "oath taking" or "treaty making."[24] The protagonists are rulers, officials and other elites of Syrian city-states. When Ebla's treaty partner is one of its northwest Syrian vassals, the ceremony takes place in Ebla or its immediate vicinity, but when the regional powers Mari or Nagar are involved, the ceremony is in Mari itself or in the sanctuary of the transnational high god Dagan at Tuttul.

3.3.1.1 The oil offerings are probably for ceremonial unction. Both the Enna-Dagan letter (see below) and the excerpt from the treaty between Ebla and Armi mention the "oil of the lands." The Stela of the Vultures portrays an elaborate administration of oaths to a series of gods, each involving the anointing and release of birds.

3.3.1.2 Gifts were presented as part of the ratification ceremony and were expected to continue subsequently. In the Ḫamazi letter, the king of Ebla demands a gift of equids from his "brother," king of Ḫamazi, in return for a gift he has given him, justified explicitly on the principle that "brothers" satisfy each other's desires.

3.4 Treaty provisions vary according to the purpose of the pact. The Abarsal treaty is a comprehensive declaration of that city's vassalage to Ebla, whereas the Naramsin treaty has to do primarily with military assistance, and the Lagash-Umma treaty settles a territorial dispute. Many of the documented treaty provisions are familiar from the better understood treaties of the second millennium.

3.4.1 Both preserved treaties and the Stela of the Vultures begin with introductions that are not formally part of the treaty provisions.

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[24] Catagnoti, "Lessico . . .," and "Serments . . ." For the use of Akkadian terms for "oath" to mean "treaty," cf. Kienast, "Vertrag . . .," 232f. Whereas Catagnoti asserts that the actual word for treaty at Ebla is Semitic *kittum* (so used also in the Late Bronze Age), Archi ("Regional State . . .," 1, n. 1) says the word for an agreement between states is *ù-šu-rí* and Pettinato and D'Agostino ("Proposta . . .," 197) suggest that "treaty" is represented by the Sumerogram giš-eren$_2$.

3.4.1.1 The Abarsal treaty introduction lists cities under Ebla's control, stressing that those are indeed controlled by Ebla, whereas the cities controlled by Abarsal—not listed by name—are indeed controlled by "Abarsal." This probably represents an adjustment of the border of the territories controlled by the two city-states in Ebla's favor.

3.4.1.2 The Stela of the Vultures commences with a lengthy history of the border dispute between Lagash and Umma, the settlement of which, in Lagash's favor, is commemorated by the stela.[25]

3.4.1.3 The Naramsin treaty is introduced with an invocation of the gods by whom the two parties swear. The statement that the kings swear by the gods is repeated six times at intervals throughout the text.

3.4.2 Whereas territorial adjustments are only implied in the introduction to the Abarsal treaty, the redrawing of the border with Umma in Lagash's favor (or restoration to Lagash of land wrongly seized by Umma) constitutes the major stipulation of the agreement attested to on the Stela of the Vultures, with the provision that Umma may lease back some of the land for agricultural use.[26] The listing of each tract of contested land by name is reminiscent of the listing of cities under Ebla's authority in the Abarsal treaty.

3.4.3 Both the Abarsal and Naramsin treaties obligate the pledging party to refuse aid to the enemies of the other party. The Elamite king swears that Naramsin's enemies are his enemies, and Naramsin's friends his friends.

3.4.3.1 The Abarsal treaty specifically obligates Abarsal to denounce any conspiracy against the ruler of Ebla.

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[25] The Enna-Dagan letter from Mari found at Ebla (Michalowski, *Letters*, no. 3) may possibly represent a draft, from the Mari side, for a historical introduction to a treaty with Ebla. At Lagash, such histories of relations with Umma are found in other contexts as well (see Cooper, *Reconstructing History* . . ., esp. chap. 5). For a possible source of such retrospectives, see the long Ebla text (TM 75.2561) documenting a conflict between Mari and Ebla over rights to the allegiance and revenues of Adu (Pettinato, *Ebla*, 241ff.; Dercksen, "Ebla . . .," 441ff.).

[26] See Cooper, *Reconstructing History* . . ., and the very different interpretation of Steiner, "Grenzvertrag . . ."

3.4.3.2 The Naramsin treaty also requires that the Elamite ruler support Naramsin and his allies militarily.

3.4.4 Both treaties forbid the harboring of fugitives and, in the Abarsal treaty, specifically a person from Abarsal who has become the slave of an Eblaite.

3.4.5 Both treaties provide for the proper reception of diplomatic envoys. The Abarsal treaty is concerned with their maintenance, the Naramsin treaty that they not be detained. The Abarsal treaty also restricts the right of the ruler of Abarsal to send envoys.

3.4.6 The Abarsal treaty regulates capital crimes such as lèse-majesté and blasphemy, lesser offenses committed by citizens of Ebla against citizens of Abarsal and vice-versa, as well as damage to animals or property. The provisions seem to be mutual in such cases, as are those for the return of lost property or animals.

3.4.7 The Abarsal treaty seems also to restrict the (military?/commercial?) movement of the ruler of Abarsal without the permission of Ebla, and to restrict Abarsal's exports. The ruler of Abarsal even seems restricted regarding the booty he can retrieve from corpses in battle.

3.4.8 The citizens of Abarsal are required to quarter Eblaites in their homes on request, but provision is made for compensation should the Eblaite guest commit theft or sexual offenses.

3.4.9 The ruler of Abarsal is obligated to make offerings to the gods of Ebla as well as to his own. The Elamite ruler in the Naramsin treaty promises to establish a cult for Naramsin's statue.

3.5 The treaties envisage no remedy for breach beyond the intervention of the gods invoked therein. In reality, the remedy employed was self-help, namely, threatened or actual military action.[27] Because

[27] The centuries-long Lagash-Umma boundary dispute is the best example of the use of ultimatums, military force, and (when the two city-states were under the authority of a hegemonic overlord) arbitration to counter perceived breaches of border agreements, many of which must have been marked by treaties such as the

military success was inevitably understood as a sign of divine favor, there was no perceived contradiction between the two remedies.

3.6 Commemoration of the Lagash-Umma treaty was marked by the erection of the Stela of the Vultures by Eanatum. The Naramsin treaty was marked by the erection of a statue of Naramsin and possibly also by deposit of the treaty in a temple by the Elamite party.

4. Customary International Law

In addition to the specific stipulations of the attested treaties, certain general notions and practices relevant to legal obligations between states can be deduced from the treaties and other sources of the third millennium.

4.1 The Abarsal treaty is our best source for the concept of "citizen," meaning, in the international arena, a person under the authority and protection of a given state or ruler.[28] Issues arise between states regarding the rights of citizens of one state when in another, especially the rights of merchants, regarding crimes committed by citizens of one state against citizens of another, and the return of fugitives. These issues usually must have been regulated by customary law; the Abarsal treaty seems to skew matters in Ebla's favor.

4.2 International borders were inviolable, but adjustable by treaty, and land could be granted by one sovereign to another.[29] Royal inscriptions from Lagash frequently mention official boundary stones marking the border with Umma, but none has been recovered.

4.3 Communication between states was effected by diplomatic envoys, often bearing gifts. Custom and treaty governed the envoys' reception and freedom of movement.[30]

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one attested by the Stela of the Vultures. See Cooper, *Reconstructing History* . . .; Pettinato, "Il conflitto . . ."

[28] The issue of citizenship is also taken up in the texts discussed by Pettinato and D'Agostino, "Proposta . . .," with earlier bibliography.

[29] See the texts discussed in ibid. for land granted by the king of Ebla to the queen of Emar.

[30] See, e.g., Biga, "Rapporti diplomatici . . ." and Steiner, "Lú . . ." For the sparse

4.4 Dynastic marriage was a common method for forging and cementing alliances between states. It is well documented at Ebla and in Ur III.[31]

Abbreviations

AAK	I.J. Gelb and B. Kienast. *Die altakkadischen Königsinschriften des dritten Jahrtausends v. Chr.* (FAOS 7. Stuttgart: F. Steiner, 1990)
ABW	H. Steible, *Altsumerische Bau- und Weihinschriften* (FAOS 5. Wiesbaden: F. Steiner, 1982)
RIM E1	D. Frayne, *Presargonic Period*. Royal Inscriptions of Mesopotamia, Early Periods 1 (Toronto: University of Toronto Press, 2001)
RIM E2	D. Frayne, *Sargonic and Gutian Periods*. Royal Inscriptions of Mesopotamia, Early Periods 2 (Toronto: University of Toronto Press, 1993)
RIM E3/2	D. Frayne, *Ur III Period*. Royal Inscriptions of Mesopotamia, Early Periods 3/2 (Toronto: University of Toronto Press, 1997)
SARI	J. Cooper, *Sumerian and Akkadian Royal Inscriptions* (American Oriental Society Translation Series 1. New Haven: American Oriental Society, 1986)

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information on envoys in the Sargonic period, see Westenholz in Sallaberger and Westenholz, *Mesopotamien . . .*, 102. In the Ur III period, we know much about the provisioning of envoys, but little about their diplomatic function; see Sallaberger, in Sallaberger and Westenholz, *Mesopotamien . . .*, 295ff.

[31] Biga, "Rapporti diplomatici . . ." and "Marriage . . .;" Sallaberger, in Sallaberger and Westenholz, *Mesopotamien . . .*, 159–61.

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PART TWO

SECOND MILLENNIUM

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EGYPT

MIDDLE KINGDOM AND SECOND INTERMEDIATE PERIOD

Richard Jasnow

1. Sources of Law

The principal sources of law in the Middle Kingdom are royal inscriptions, administrative papyri, and private documents and inscriptions. Middle Kingdom literary compositions also refer to legal situations.

1.1 *Law Codes*

No law codes proper are preserved from the Middle Kingdom.[1] However, some texts do imply, if not an extensive code, at least limited systematic collections of "laws" (*hp.w*).[2] P. Brooklyn 35.1446 (Thirteenth Dynasty), for example, contains references to:

> "The law pertaining to those who desert."
> "The law pertaining to one who deliberately deserts for six months (or more)."
> "The law pertaining to deliberate desertion of [one's] labors."
> "The law pertaining to one who flees without performing his tasks."
> "The law pertaining to one who flees the prison."[3]

On the basis of such citations, some scholars argue for detailed law codes in ancient Egypt, but this remains a disputed point.[4]

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[1] On law codes, see, e.g., Allam, "Traces . . ."; Ward, *Essay* . . ., 133.

[2] The standard word for "law," *hp*, first appears in the Middle Kingdom; see Nims, "The Term *Hp* "Law, Right" in Demotic," 243. On *hp*, see also Otto, "Prolegomena . . .," 152; Lorton, "King and the Law . . ."; Van den Boorn, *Vizier* . . ., 166–69; Boochs, "*Hpw* . . ." On customary law, see Harari, "Force . . ."

[3] Hayes, *Papyrus* . . ., 47–48. See also Quirke, *Administration* . . ., 135; Théodoridès, "Rapport . . ."; Kemp, *Ancient Egypt* . . ., 129.

[4] Lorton, "Treatment . . .," 5, 53–64. Cf. Hayes, *Papyrus* . . ., 51, 135, and 142; Kemp apud Trigger et al., *Social History* . . ., 84; Helck, "Gesetze . . .," *LÄ* 2, cols. 570–71.

Other possibly significant mentions of "laws" appear in documentary and literary texts. P. Kahun 22 (ll. 2–3) refers, for example, to "the law of Upper Egypt,"[5] while in the literary composition of Merikare (E42), the king is admonished: "Make great your great ones so that they carry out your laws."[6]

1.2 *Royal Inscriptions*

Few royal inscriptions of this period have legal import. The Old Kingdom exemption decrees have no parallel in the Middle Kingdom. Two royal decrees concerning laborers are incorporated into P. Brooklyn 35.1446.[7] The Coptos Decree of Nebkheperre-Intef deals with the dismissal of a count from his office, with resulting loss of official income (Thirteenth Dynasty).[8] The Tod Inscription of Sesostris I may mandate burning as a legal punishment.[9] The Decree of Sesostris I permits his vizier to establish a cenotaph.[10]

1.3 *Administrative Orders*

The two royal edicts just cited from P. Brooklyn 35.1446 may also be considered administrative orders.[11] Notations in P. Brooklyn 35.1446 record the carrying out of those orders and preserve the conclusions of almost all the cases mentioned in the document.[12]

1.4 *Private Legal Documents*

Among the most important archives and documents of legal import from the Middle Kingdom are the Lahun archive,[13] the Hekanakhte letters (significant for leasing and land-holdings),[14] and the Djefa-Hapi

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[5] Hayes, *Papyrus* . . ., 52.

[6] Lorton, "King and the Law . . .," 54; Lorton, "Treatment . . .," 16–17; Quack, *Merikare* . . ., 31.

[7] Translated in Parkinson, *Voices* . . ., 85; Quirke, *Administration* . . ., 139.

[8] Breasted, *Ancient Records* . . ., vol. 1, 339–41; text in Sethe, *Ägyptische Lesestücke*, 98. See also Allam, "Les obligations et la famille . . .," 91.

[9] Assmann, "Justice . . .," 149.

[10] Helck, *Wirtschaftsgeschichte* . . ., 170–71 (Cairo 20539).

[11] Quirke, *Administration* . . ., 140, 142.

[12] Hayes, *Papyrus* . . ., 19.

[13] See Simpson, *Textes et Languages*, 1: 67. See also Helck, *Wirtschaftsgeschichte* . . ., 110–11, and Franke, *Verwandtschaftsbezeichnungen* . . ., 232–33. The texts are still in the process of publication; see Luft, *Illahun* . . .

[14] James, *Ḥekanakhte* . . .; Goedicke, *Hekanakhte* . . .

contracts (mortuary endowments).[15] The lengthy tomb biographies of such notables as the nomarchs of Beni Hasan (Twelfth Dynasty) also contain occasional statements pertaining to legal matters and administration.[16] Texts originally written on papyrus were sometimes important enough to inscribe on temple or chapel walls, an act which naturally lent increased security to the legal document.[17]

As in the Old Kingdom, titles are a rich but problematic source for the study of the Middle Kingdom legal system.[18]

1.5 The major Middle Kingdom literary texts such as The Story of Sinuhe,[19] Papyrus Westcar,[20] Merikare,[21] Instruction of Amenemhet,[22] and the Eloquent Peasant[23] also contain legal material. However, scholars dispute the historical veracity of such sources, which, in any case, are seldom specific.[24]

In a passage vividly describing a society in chaos, the speaker in The Admonitions of an Egyptian Sage, for example, exclaims: "Lo, the laws (*hp.w*) of the chamber (prison?) are thrown out, men walk on them in the streets, beggars tear them up in the alleys."[25]

A few compositions preserved in later copies may illuminate details of Middle Kingdom law and legal administration. The Duties of the Vizier, although found in Eighteenth Dynasty tombs, has been understood by some scholars to reflect the administration of the later Middle Kingdom.[26]

1.6 Religious compositions, such as the Coffin Texts, sometimes contain statements relevant to the history of law.[27]

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[15] Théodoridès, "Contrats . . ." See also Harari, "Verification . . ."; Helck, *Wirtschaftsgeschichte* . . ., 169–70; Spalinger, "Redistributive Pattern . . ."; Allam, "*Quenebete* . . ," 42–43.

[16] See, e.g., Allam, "*Quenebete* . . .," 22–23; Lloyd, "The Great Inscription . . ."

[17] See Helck, *Wirtschaftsgeschichte* . . ., 170; Théodoridès, "Sixième . . .," 455.

[18] Franke, "Problème . . ."; Ward, *Index* . . .; Quirke, *Administration* . . ., 85 ("king's-acquaintance").

[19] Parant, *Sinouhe* . . .; see also Westendorf, "Wasser . . ."; Théodoridès, "Amnestie . . ."

[20] Lorton, "Treatment . . .," 14–16.

[21] Ibid., 12–13.

[22] See, e.g., Anthes, "Legal . . ."

[23] Shupak, "New Source . . .," 2.

[24] Versteeg, "Law . . .," 40–41.

[25] Admonitions 6/9–11, Lichtheim, *AEL* 1, 155.

[26] Kemp apud Trigger et al., *Social History* . . ., 84. Van den Boorn, *Vizier* . . ., 2, 257, 334, 375.

[27] Lorton, "Treatment . . .," 51. See also Mrsich, "Ein *imyt-pr* Rubrum der Sargtexte (S754)"; Assmann, "When Justice Fails," 152.

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

If during the First Intermediate period individual nomarchs such as Ankhtifi asserted more independence,[28] by the Middle Kingdom proper there is good evidence for the reassertion of a powerful central authority.[29] The Twelfth Dynasty (ca. 1991–1785) is distinguished by the gradual disappearance of these nomarchs.[30] The balance of power between such high officials and the families to which they belonged and the king is still much discussed.[31] The royal palace, the vizier's office, and the heads of the individual departments were in the capital, *Itj-tawy* (possibly Lisht), located between Herakleopolis and Memphis.[32] Many of the traditional characteristics of Egyptian royalty are developed by or for the Middle Kingdom pharaohs. As in the Old Kingdom, the image of the king profoundly influences the formulation of Middle Kingdom private inscriptions.[33] In the later Middle Kingdom the king's authority seems to lessen, power being concentrated in the hands of the viziers.[34]

As Quirke observes, kingship is represented as the highest "office" ("the office of the pharaoh" [*i3.t pr-ʿ3*]) and the pharaoh understood as the head of a bureaucracy designed to expedite his legal and political decisions.[35] The king deals with the chief of that bureaucracy, the vizier, in an elaborate and formal manner as described by late Middle Kingdom (or early New Kingdom?) compositions.[36] The king sometimes takes an active role in the administration. Two Thirteenth Dynasty petitions, for example, may have been sent directly to the king. He thereupon gives the vizier, who does not seem to have had any prior information about the situation, explicit instructions on

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[28] Schenkel, "Anchtifi"; Willems, "Nomarchs . . ."
[29] See, e.g., Van den Boorn, *Vizier* . . ., 346–47.
[30] Kuhrt, *Near East* . . ., 1: 167; Lorton, "Legal and Social Institutions . . .," 352; Franke, "Career of Khnumhotep III"; Quirke, "Royal Power . . ."; Gestermann, *Kontinuität* . . ., 154–90; Lloyd, "Great Inscription . . .," 30; Redford, "Tod . . .," 48.
[31] Franke, "Career of Khnumhotep III," 53, 63; Théodoridès, "Sixième . . .," 446.
[32] Hayes, *Papyrus* . . ., 134–35; Gestermann, *Kontinuität* . . ., 108.
[33] Quirke, *Administration* . . ., 215.
[34] But see now Ryholt, *Political Situation* . . ., 282–83.
[35] Quirke, "The Regular Titles . . .," 108, and *Administration*, 51–52.
[36] E.g., the Duties of the Vizier; see Quirke, *Administration* . . ., 144.

how to handle the cases.[37] In the late Middle Kingdom a "scribe of the King's documents of the Presence" was possibly responsible for recording the royal orders in the presence of the king himself.[38]

2.1.2 *The Legislature*

There is no evidence for an active legislature operating independently of the king in the Middle Kingdom.[39]

2.1.3 *The Administration*

2.1.3.1 *Central Administration*

The central administration was enlarged in the Middle Kingdom, the nomes becoming correspondingly less important.[40] In their place were two basic divisions into Upper and Lower Egypt.[41] The country seems to be divided into separate departments (*wʿr.wt*) from the second half of the 12th Dynasty onwards.[42] These are the Department of the North, the Department of the South, and the Department of the Head of the South.[43] Such documents as P. Brooklyn 35.1446, the Kahun papyri, P. Bulaq 18, and Cairo Stela J.52453, suggest a complex, highly centralized governmental system.[44] The distinction between the civil and the religious government can become quite blurred; high officials like Djefa-Hapi apparently operate in both spheres.[45] Scholars discern a very significant level of administrative continuity into the Thirteenth Dynasty and thus include this dynasty within the Middle Kingdom.[46] Naturally, titles still play an unavoidably prominent role in reconstructing the administration.[47] Quirke has characterized the Middle Kingdom as a time when "greater precision and

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[37] Hayes, *Papyrus* . . ., 135–36.
[38] Cf. Ward, "Old Kingdom . . .," 384–89; Quirke, "Regular Titles . . .," 123.
[39] Hayes, *Papyrus* . . ., 135.
[40] See still Helck, *Zur Verwaltung* . . ., and *Wirtschaftsgeschichte* . . ., 174.
[41] Gestermann, *Kontinuität* . . ., 136, 243. See also Franke, "Career of Khnumhotep III," 53.
[42] On the *wʿr.t*, see Leprohon, "Remarks . . ."
[43] Hayes, *Papyrus* . . ., 138; Helck, *Wirtschaftsgeschichte* . . ., 201; Quirke, *Administration* . . ., 4.
[44] Hayes, *Papyrus* . . ., 144; Bleiberg, *Official Gift* . . ., 76.
[45] But cf. the late Middle Kingdom stela Ny Carlsberg 1539, Quirke, "Regular Titles . . .," 109.
[46] Trigger et al., *Social History* . . ., 149; Quirke, *Administration* . . ., 7.
[47] Trigger et al., *Social History* . . ., 80.

demarcation of the official titles" were achieved.[48] He separates late Middle Kingdom titles into seven categories: (1) Palace, (2) Treasury, (3) Bureau of the Vizier, (4) Bureau of Fields, (5) Organization of Labor, (6) Local Administration, (7) Military.[49]

2.1.3.1.1 The complicated administrative and legal bureaucracy of the Middle Kingdom, and into the Second Intermediate period, was ultimately directed by the vizier.[50] At various times, the post was possibly divided up into two positions: a vizier of Upper Egypt and a vizier of Lower Egypt. This may have been the case only beginning in the Late Middle Kingdom (Thirteenth Dynasty) and into the New Kingdom.[51] The vizier seems to have appointed the holders of the main administrative positions in the local governments.[52] The vizier was also much concerned with public works.[53] Particular attention was naturally paid to the organization of manpower, under the aegis of the "office of giving people."[54] His bureaucracy was responsible for the maintenance of the laws.[55] The vizier himself does not seem to have made the laws; this was a prerogative of the king alone. He presumably had an influential advisory function. P. Brooklyn 35.1446 indicates that the vizier could receive direct decrees from the king, which ordered him to investigate legal matters.[56]

According to Hayes, "The vizier appears as a kind of superior court, reviewing the findings of the local *d3d3.t* courts and either confirming or emending them."[57] The vizier is called "Overseer of the Six Great Houses," that is, of the court system.[58] The local officials would presumably have first attempted to deal with disputes,

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[48] As listed in Quirke, "Regular Titles . . .," 124.

[49] Ibid., 116. See also Quirke, "Horn, Feather and Scale . . ."

[50] Hayes, *Papyrus* . . ., 136. See also Gestermann, *Kontinuität* . . ., 147–53; Théodoridès, "Rapport . . .," 133–35; Quirke, *Administration* . . ., 58–61, who does not believe that the vizier ever dominated the king in the Thirteenth Dynasty.

[51] Quirke, *Administration* . . ., 4. See also Valloggia, "Vizirs . . .," 132–34.

[52] Van den Boorn, *Vizier* . . ., 215; *LÄ* 3, col. 920 ("Landesverwaltung").

[53] *LÄ* 4, col. 729; Helck, *Wirtschaftsgeschichte* . . ., 173.

[54] Quirke, *Administration* . . ., 110–13. See also Menu, *Recherches* . . ., 116–21; Théodoridès, "Rapports . . .," 135–37.

[55] Hayes, *Papyrus* . . ., 143.

[56] Ibid., 135–36. Compare also Théodoridès, "Rapport . . .," 116–17.

[57] Hayes, *Papyrus* . . ., 141; Théodoridès, "Vente . . .," 60; Lorton, "Legal and Social Institutions . . .," 355.

[58] Allen, "Some Theban Officials . . .," 13. See also Vittmann, "Hieratic Texts," 38; Quirke, *Administration* . . ., 69.

but still unresolved cases could end with the vizier in the capitals.[59] Even in such instances, the vizier may just remit the case to those whom he considers the proper officials.[60] In P. Berlin 10470, the office of the vizier issues instructions about a transaction dealing with the labor of a servant woman.[61]

An official, attested already in the Old Kingdom, "Great one-of-the-tens-of-Upper-Egypt," (*wr-mḏ šmʿw*) may have assisted the vizier in legal matters.[62]

2.1.3.1.2 The official, *iry-ḫt*, "he-who-pertains-to-the-thing/matter," mentioned in the Duties of the Vizier, was present at the sittings in which the vizier transacted state affairs. He was apparently "responsible for the smooth conduct of such sittings,"[63] ensuring that the cases were presented without any problems.

2.1.3.1.3 The "Elder of the Portal" may have had important judiciary functions.[64] In Cairo Stela 30770 this official is ordered to conduct an investigation at the Temple of Min in Coptos,[65] while in the Stèle juridique, an individual holding this position confirms an oath of assent.[66] Among the other officials charged with performing legal duties may be mentioned a "judge of the workers in the workhouse," attested in the Thirteenth Dynasty.[67]

2.1.3.2 *Provincial Administration*

It is not always clear whether a particular office is to be classified as belonging to the central or provincial administration. Every significant town probably had at least one herald or "reporter" (literally, "repeater," *wḥmw*), which Hayes equates with modern town and village clerks.[68] These by no means insignificant heralds apparently

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[59] Van den Boorn, *Vizier* . . ., 165.
[60] Ibid., 165.
[61] Vittmann, "Hieratic Texts," 39.
[62] Van den Boorn, *Vizier* . . ., 33–34; Quirke, *Administration* . . ., 80–81.
[63] Quirke, "Regular Titles . . .," 127.
[64] Hayes, *Papyrus* . . ., 136.
[65] Wente, *Letters* . . ., 26.
[66] Spalinger, "Stèle juridique," col. 7.
[67] *sḏm šnʿ* (Franke, "Beititel . . ."). Cf. also the *sḏmj rmṯ*, "judge of people," ("Richter der Hörigen"), a title of the Thirteenth Dynasty, apparently judges active in the workhouse (Franke, "Nachtrag . . .").
[68] *Papyrus*, 139. See also Hayes, *Papyrus* . . ., 143–44; Quirke, *Administration* . . ., 141 and 167.

received orders directly from the "office of the Vizier." They also were responsible for ensuring that communications from that office reached the proper persons, the desired action was performed, and the communication was filed away.[69] The *wḥmw*, "herald" is the next most powerful administrator after the mayor (*ḥ3ty-ʿ*, see 2.1.3.3 below).[70] Public records are kept in his archive.[71] The case of a temporary labor agreement regarding a servant woman, for example, is considered in the office of the Vizier and the Bureau of the Reporter in Elephantine.[72] One of the royal herald's other functions was apparently to summon persons to court. Sinuhe boasts of his good reputation in Egypt: "No one had spat in my face. I had not heard a reproach; my name had not been heard in the mouth of the herald."[73]

2.1.3.2.1 The vizier sent scribes to the provinces as agents and observers to ensure that his directives were being followed.[74] The *ṯ3w* official was "responsible for the material arrangements of a scribe away from his office; he may have been attached more to the documents or scribal business than to the person of the scribe."[75]

2.1.3.2.2 The "overseer of fields" officiates in the case recorded in P. Kahun II.1. He may have been involved as a witness and been in charge of cases dealing with the recovery of debts in grain.[76]

2.1.3.2.3 Several other possibly significant epithets or titles are compounded with *ḥp*, "law." In a text from the time of Sesostris I, a man calls himself "one who knew the procedure of the laws (*ḥp.w*) of inflicting punishment in judging (*wḏʿ*) two men."[77] A *imy-r ḥp*, "overseer of law," is also attested.[78] An expedition leader from the time of Sesostris II describes himself as "one who knows the laws,"

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[69] Hayes, *Papyrus* . . ., 139–40.
[70] On the *wḥm.w*, see Parent, *L'Affaire* . . ., 81–85; Spalinger, "Will of Senimose . . .," 641; Quirke, *Administration* . . ., 206.
[71] Vittmann, "Hieratic Texts," 36. Cf. further Ward, "Middle Egyptian *Sm3y.t*."
[72] Vittmann, "Hieratic Texts," 34.
[73] Lichtheim, *AEL* 1, 225.
[74] Hayes, *Papyrus* . . ., 140.
[75] Quirke, "Regular Titles . . .," 130.
[76] So Goedicke, *Hekanakhte* . . ., 77, 80.
[77] Lorton, "King and the Law . . .," 56.
[78] So rendered in *Wb.* 2, 488/26 (title of the Middle Kingdom). On this title, see Lorton, "King and the Law . . .," 55–56.

possibly referring to judicial activity.[79] An official, entitled *iry-ḥp*, (lit. "one who pertains to the law") appears in P. Harageh 3.[80]

2.1.3.2.4 The government was primarily interested in recruiting manpower[81] and material resources for state projects.[82] The subjects were conscripted for the former,[83] while the royal land and other types of taxable fields provided the latter.[84] P. Brooklyn 35.1445 contains stipulations which prove the "existence of specific regulations relating to labor obligations."[85] We have little information regarding taxation in the Middle Kingdom[86] or the extent of temple holdings in this period.[87]

2.1.3.2.5 The administration may have taken steps against possible abuse of power. It was thought desirable, for example, that two scribes from the "Bureau of Fields" compile listings of households, the redundancy possibly designed to minimize the risk of corruption.[88]

2.1.3.3 *Local Government*

The nomarch is of ever decreasing importance in the Middle Kingdom, whereas local officials such as the town mayors, and local councils often appear in the documents.[89]

2.1.3.3.1 An especially significant figure was the "mayor," *ḥ3ty-ʿ*, the term for the official in charge of a town.[90] One of his primary

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[79] Franke, "The Career of Khnumhotep III," 59–60.
[80] Van den Boorn, *Vizier* . . ., 166; Quirke, *Administration* . . ., 175.
[81] On corvée, see Hafemann, "Arbeitspflicht im alten Ägypten.II."
[82] Quirke, *Administration* . . ., 215.
[83] Ibid., 162–64, 215; Kadish, "Observations on Time . . ."
[84] Kuhrt, *Near East* . . .1, 168.
[85] Quirke, *Administration* . . ., 135.
[86] Trigger et al., *Social History* . . ., 83; Helck, *Wirtschaftsgeschichte* . . ., 176.
[87] Helck, *Wirtschaftsgeschichte* . . ., 166–68 ("Tempelbesitz").
[88] So Quirke, *Administration* . . ., 169.
[89] Thus, for the middle Thirteenth Dynasty, on the basis of Bulaq 18 and the Karnak Donation Stela, "the administration of Thebes consisted of four authorities; *pr-ḥḏ*, "treasury," *ḥ3 n ṯ3ty*, "office of the vizier," *wʿr.t tp-rs*, "branch (of state) of the Head of the South," *ḥ3 n dd rmṯ*, "bureau of the people's giving" (Quirke, "Regular Titles . . .," 125). See further Uphill, "Office . . ."
[90] It was possible to be both a *ḥ3ty-ʿ* and a chief priest, as was Djefa-Hapi. The *ḥ3ty-ʿ* in the Middle Kingdom had a double meaning. It was later employed as a ranking title as in the Old Kingdom but could also denote an actual town mayor with real functions; see Gestermann, *Kontinuität* . . ., 101. See also Ryholt, *Political*

functions was collecting taxes for the state.[91] The state could order such "mayors" or "town governors" to supply men for royal quarrying expeditions in the Wadi Hammamat.[92] According to Quirke, no "source attests to an "office of the mayor" (**ḫ3 n ḥ3ty-ʿ* or **sḫ n ḥ3ty-ʿ*). In his view, the mayor oversaw local administration but did not participate directly in the bureaucracy. As Quirke further remarks, "the town itself operated as an active juridical entity, with its own bureau and scribe; fields, herds and cattlestalls were *r-ḫt* 'in the charge of' the town, rather than its scribe or mayor, according to the terminology of the accounts papyri."[93] The mayor of Elephantine is, however, kept informed of legal matters such as the transaction concerning the servant woman in P. Berlin 10470 (Thirteenth Dynasty).[94]

2.1.3.3.2 A *ḥry tm3*, "chief of the mat(?)," acts on behalf of the city in the case recorded in P. Berlin 10470.[95] Also mentioned in the texts are a "scribe of the mat" (*sš n tm3*) and a "court of the mat" (*d3d3.t n.t tm3*).[96] The "judge(?), mouth of Hierakonpolis," *s3b r3 Nḫn*, which occurs in legal situations, has been understood as an honorific title.[97]

2.1.4 *Courts*

The Old Kingdom institution of the "six great houses" continues into the Middle Kingdom. The titles "overseer of the six law courts"[98] and "foremost of the Six Great Ones"[99] are still employed well into the Hyksos period, being associated especially with the viziers.[100]

The *djadjat* remains important in the Middle Kingdom, but by the later Twelfth Dynasty the *qnb.t* may have assumed the functions of the older *d3d3.t*.[101]

Situation . . ., 87; Van den Boorn, *Vizier* . . ., 243; Quirke, *Administration* . . ., 161, 167; Théodoridès, "Sixième . . .," 440, 449.

[91] Trigger et al., *Social History* . . ., 110–11.

[92] Ibid., 111.

[93] Quirke, *Administration* . . ., 167.

[94] Vittmann, "Hieratic Texts," 39 (with further references). Van den Boorn, *Vizier* . . ., 255.

[95] Vittmann, "Hieratic Texts," 36.

[96] Van den Boorn, *Vizier* . . ., 268. See also Ward, *Essay* . . ., 125.

[97] Ryholt, *Political Situation* . . ., 236; Franke, "Ursprung . . .," 209–17; Simpson, *Reisner Papyri*, vol. 2, 42.

[98] Sometimes so translated; see Fischer, *Egyptian Titles* . . ., 4.

[99] Fischer, *Egyptian Titles* . . ., 19. See also Ward, *Titles* . . ., 34.

[100] Hayes, *Papyrus* . . ., 142.

[101] Ibid., 140. See also Quirke, *Administration* . . ., 54–55; Allam, "*Quenebete* . . .";

2.1.4.1 The authorities can instruct a local *djadjat* court to release persons held as security for absentee fugitives and reserve for themselves the privilege of pronouncing or confirming sentence against the convicted offenders. They cite the laws of the pharaoh to justify their actions, a fact which suggests that "the issuer of the directives was not the king himself, though one very close to him in the judicial hierarchy."[102]

Another important juridical term is the *mʿb3y.t* "the thirty," perhaps a general designation for government officials in their judicial function.[103] As in other periods of Egyptian history, administrative officials might act as judges; indeed, a separate specialized class of "judges"[104] or permanent courts of law[105] may not have existed.

2.1.4.2 Judgment was possibly carried out at the gates or entrance ways of temples or palaces. One official, for example, declares: "I did not speak an (unjust?) word at the two door-jambs."[106]

2.1.4.3 The Old Kingdom *s3-pr* is still mentioned in connection with security.[107] In the First Intermediate period, an "overseer of quarrels" may have been responsible for keeping the peace.[108] This "overseer of quarrels" deals with the judgment of thieves, interrogations, and police inquiries.[109] According to the Duties of the Vizier, the "overseers of policemen, the policemen, and the overseers of the district report to him (scil. the vizier) their affairs."[110] As chief legal

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Vittmann, "Hieratic Texts," 40. There is a *qnb.t w*, "district-court," in the Middle Kingdom; see Lurje, *Studien* . . ., 49–51.

[102] Hayes, *Papyrus* . . ., 141–42.

[103] Quirke, *Administration* . . ., 53–54. See also Théodoridès, "Les Égyptiens . . .," 108–9.

[104] Thus Quirke, *Administration* . . ., 69; Ward, *Essay* . . ., 133. Cf. also Quirke, *Middle Egyptian Studies*, 61.

[105] Quirke, *Administration* . . ., 54, 166.

[106] Schenkel, *Memphis* . . ., 102.

[107] Andreu, "Sobek," 3. See Quirke, *Administration* . . ., 83, 192; Andreu, "Les Titres . . ."

[108] Quirke, *Administration* . . ., 192; Simpson, *Reisner Papyri* . . ., vol. 2, 41.

[109] Cf. "overseer of all disputes," Fischer, *Egyptian Titles* . . ., 9. See also Fischer, *Inscriptions* . . ., 108–09, discussing *ỉmy-r šnʿw ḥr mw ḥr t3*, "overseer of all police upon water and upon land." See further Berman, "The Stela of Shemai," 95; cf. Franke, "Probleme . . .," 123.

[110] Van den Boorn, *Vizier* . . ., 250. The dating of this text is insecure. It may describe the early New Kingdom.

officer, the vizier supervised the police officials charged with maintaining public order: "It is he who appoints the overseer of police."[111]

Among the officials responsible for border security was the "judicial (*s3b*) border official of all deserts(?)."[112]

2.1.4.4 Imprisonment in the sense of our "jails" or prisons does not figure very prominently in the sources. P. Brooklyn 35.1446 provides for life imprisonment for those who desert their work in a *ḫnr.t*, a term often rendered "prison."[113] P. Kahun XII.1, 21 records "the turning over of a runaway slave" to the *ḫnr.t n sḏm*, rendered by Griffith as "the prison of trial."[114] This institution also appears in the literary texts. In the Westcar Papyrus, for example, Khufu commands that a prisoner (from the *ḫnr.t*) be executed.[115]

There is little evidence for amnesty in Middle Kingdom Egypt.[116]

2.2 *Functions*

2.2.1 *Corvée*

Corvée labor was essential for state projects. Men are designated *ḥsb.w* "counted," and were dispatched to work, for example, in quarries or in transporting stones.[117] Organized into labor batallions (*ṯsw*), under the authority of "leaders" (*ḫpr.w*) and "scribes and "commanders" (*ṯs.w*), such workers could labor for a period of months.[118] Another prominent, but obscure term for a type of corvée worker is *mny.w*.[119]

2.2.2 *Military*

In the Middle Kingdom are the first indications for a military supported by land grants.[120]

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[111] Ibid., 250.

[112] Fischer, *Egyptian Titles* . . ., 32. See also Quirke, *Administration* . . ., 22.

[113] Hayes, *Papyrus* . . ., 53, 137, and 142; Quirke, "Regular Titles . . .," 111, 115. See further Franke, "Beititel . . .," 18; Van den Boorn, *Vizier* . . ., 127 and 136; Ward, *Titles* . . ., and *Essay* . . ., 78–80.

[114] Hayes, *Papyrus* . . ., 38; Van den Boorn, *Vizier* . . ., 142.

[115] Lichtheim, *AEL* 1, 219.

[116] Théodoridès, "L'Amnistie."

[117] Helck, "Frondienst," cols. 333–34. See Hafemann, "Arbeitspflicht im alten Ägypten. II."

[118] P. Reisner 1 is especially informative concerning the provisioning of drafted laborers.

[119] Helck, "Frondienst," col. 333.

[120] Helck, "Militär," col. 130.

3. Litigation

3.1 *Parties*

Such disputes and transactions as are documented occur between relative social equals. Of some interest, however, is the suit of a daughter against her father mentioned in P. Brooklyn 35.1446.[121] At least in literature, lower status individuals contend with higher status ones, as is shown in the Eloquent Peasant, wherein a peasant petitions against a dishonest official who has robbed him. So, too, the author of the wisdom text of Ptahhotep raises the possibility that one might contend with a superior, equal, or inferior.[122]

In the transaction concerning the servant woman recorded in P. Berlin 10470, conducted in the vizier's bureau at Thebes, "agents" (*rwḏ.w*) act for the actual masters of the servant in Elephantine.[123]

3.2 *Procedure*

As in the Old Kingdom, court cases were probably conducted orally in the form of claim and rebuttal. The oral statements are taken down in writing. A "scribe of hearing" (*sš n sḏm*) appears in P. Kahun I.4, whose function may have been to record such court proceedings.[124] An oral rebuttal is preserved in P. Brooklyn 35.1446, in the case of a man defending himself against a suit brought by his own daughter.[125] In P. Berlin 10470, the procedure consists of interrogation, consent, and oath.[126] Judging from the Instructions of the Vizier, understood by some to describe Middle Kingdom procedure, the possibility of petitioning a high official was especially important for the ordinary Egyptian.[127] These petitions would have to be at some point recorded in writing.[128]

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[121] Théodoridès, "Concept of Law . . .," 303.
[122] Lichtheim, *AEL* 1, 63–64.
[123] Quirke, *Administration* . . ., 206; Vittmann, "Hieratic Texts," 39. See also Menu, "L'Assistance judiciaire . . ."
[124] Griffith, *Kahun* . . ., 23.
[125] Hayes, *Papyrus* . . ., 115.
[126] Vittmann, "Hieratic Texts," 40. See also Parkinson, *Voices* . . ., 110.
[127] Van den Boorn, *Vizier* . . ., 170–71.
[128] Ibid., 200.

3.3 *Evidence*[129]

3.3.1 *Witnesses*

Witnesses play an important role in Middle Kingdom legal documents. Both male and female witnesses are attested. Most witnesses are priests or scribes. In the contracts of Djefa-Hapi, witnesses are lacking,[130] but this is probably because these stone tomb inscriptions are excerpts from a papyrus original.[131]

3.3.2 *Documents*

Documents[132] had legal validity as regards proof of title. The will of P. Kahun I.1, for example, includes a copy of a document whereby one brother gives his property to another.[133] A title deed could be used to confirm one's claim on a priestly office, as in Cairo Stela 30770. For added security a copy might be placed in an archive, such as the "office of the second Reporter (Herald) of the South."[134] Witnesses were naturally an important guarantee of the authenticity of a document. In some cases, the preserved document may not be the original legal document, but an incomplete copy prepared for one of the interested parties.[135]

3.3.3 *Oath*

As in other periods oaths are an important legal feature of Middle Kingdom law. The especially important "royal oath" or "oath-by-the-lord" appears first in the Middle Kingdom.[136] In P. Kahun II.1 an oath "by the lord" is required of both parties regarding their satisfaction with the terms of a sale of an office and endowment.[137] In P. Kahun I.3, a list of household members—the entire household (?)—took an oath in the office of the vizier.[138] In P. Berlin 10470,

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[129] Pirenne, "Preuve . . .," 25–28.

[130] See Théodoridés, "Les Contrats d'Hapidjefa," *Maat*, vol. 1, 282–83 (= 168–69). The number of witnesses is probably variable; see Allam, "Zeuge," col. 1398.

[131] But see Théodoridés, "Les Contrats d'Hapidjefa," *Maat*, vol. 1, 351; and "Rapport . . .," 100; Hayes, *Papyrus* . . ., 122.

[132] The standard term for a contract was *ḫtm.t*, lit., "what has been sealed."

[133] Parkinson, *Voices* . . ., 109–10.

[134] Ibid., 110.

[135] Théodoridés, "Testament dans l'Égypte ancienne," *Maat*, 426–27.

[136] Kaplony, "Eid," col. 1189.

[137] Parkinson, *Voices* . . ., 111. See also Seidl, *Einführung* . . ., 49–50; Kaplony, "Eid," col. 1195.

[138] Griffith, *Kahun* . . ., 20.

the parties involved in the temporary (?) transfer of a servant woman are required to take oaths.[139]

4. Personal Status

4.1 *Citizenship*

The documents do not seem generally to treat "citizens" as a legal category, nor do they explicate the criteria for admission to the class of "citizen."[140] However, the female members of a soldier's family, included in a household census list, are described as: "freewomen of the town of the necropolis-workers of the Northern Sector."[141] The privileges restricted to citizens and the relationship between the states of servitude/slavery and citizenship are uncertain.[142]

Some scholars perceive a difference between the Old and Middle Kingdoms, supposing that a class of "free citizens," not liable to state corvée labor duty, emerges in the latter.[143] Later terms, often rendered "citizen" (although the precise meaning is actually unclear), begin to appear at this time. The standard New Kingdom term translated "citizen," *ʿnḫ-n-niw.t*, also occurs in the Middle Kingdom.[144] *wʿb* "be pure," is another designation which may be applied to citizens not subject to governmental restrictions,[145] whereas *ḫsb.w*, "conscript," may denote laborers drafted by the state.[146] P. Brooklyn 35.1446 probably deals in part with royal subjects who unlawfully avoid corvée labor.[147]

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[139] Vittmann, "Hieratic Texts," 35.

[140] Literary compositions, such as The Instruction of Merikare, evidently distinguish between various grades of economic, social, and legal status or position; see Quack, *Studien zur Lehre für Merikare*, 39. See further Breasted, *Ancient Records*, vol. 1, 259; Johnson, "Legal Status . . .," 215; Andrássy, "Überlegungen zur Bezeichnung . . ."

[141] Parkinson, *Voices* . . ., 112.

[142] Cf. Goedicke, *Hekanakhte* . . ., 72.

[143] See Loprieno, "Loyalty to the King . . .," 545. See further Théodoridès, "Les Égyptiens . . ."

[144] Helck, "Sklaven," col. 984. See also Andreu, "Sobek . . .," 4; Franke, "Problème . . .," 120; Ward, "Reflections . . .," 72.

[145] Helck, *Wirtschaftsgeschichte* . . ., 143, 146.

[146] Ibid., 148; Menu, *Recherches* . . ., 124–25; "enlistee," Simpson, *Reisner* . . ., vol. 1, 34; Hafemann, "Arbeitspflicht im alten Ägypten. II," 208–11. See also Helck, *Wirtschaftsgeschichte* . . ., 150–51.

[147] Quirke, *Administration* . . ., 135–136.

4.2 *Class*

The Old Kingdom title *sr*, "official, magistrate," is still important in the Middle Kingdom.[148] It is the vizier in the Middle Kingdom who appoints the leading members in the magistracy.[149] The exact status of the *sr* and its relationship to royal power are still a matter of dispute, some believing that it can be used for any high or low official.[150]

Another basic term is *nḏs*, which Lorton, for example, defines as "the term for a common person who was not a member of the administrative structure."[151] Still, a significant official of the Eleventh Dynasty, *Ỉty*, could refer to himself as a *nḏs*.[152] The Middle Kingdom *nḏs.w* have been compared to the earlier *ḫnty-š*, "independent holders of land."[153]

The Old Kingdom term *mr.t* "serfs," is another problematic designation still employed in the Middle Kingdom. There seem to have been tenant farmers very closely attached to the land which they work.[154] On the basis of P. Brooklyn 35.1446, scholars assume that the rural population was held to production targets.[155]

An official's dependents are called *ḏ.t* or *nḏ.t.* (= "his property"),[156] which certainly implies subservience. However, the precise terms of the relationship are unknown.

The common later designation, "mistress of the house," which may have a legal or economic significance, appears first in the Middle Kingdom.[157]

4.3 *Gender and Age*

The archetypal legal "person" may have been the male head of a household. The El-Lahun house census, for example, presumably

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[148] Cf. Hayes, "Ḥoremkhaʿuef . . .," 4.
[149] Van den Boorn, *Vizier* . . ., 208, 211.
[150] Ibid., 24.
[151] Lorton, "Legal and Social Institutions," 351. On this designation, see Helck, *Wirtschaftsgeschichte* . . ., 147; Théodoridès, "Sixième . . .," 440.
[152] Breasted, *Ancient Records*, vol. 1, 218.
[153] Eyre, "Peasants . . .," 377.
[154] Helck, *Wirtschaftsgeschichte* . . ., 154. Other basic terms such as *rmṯ*, "man," may have sometimes a sense of "dependants," Franke, "Beititel . . .," 19. Cf. also Lichtheim, *AEL* 1, 171; Posener, "Anachoresis . . .," 666.
[155] Eyre, "Peasants . . .," 379.
[156] Eyre, "Work . . .," 33.
[157] E.g., Kahun XV.1, Griffith, *Kahun*, 72. On *nb.t-pr*, see also Obsomer, "Di.f," 166–67; Malaise, "Position . . .," 187.

drawn up for purposes of inheritance, taxation, or property transfer, begins with the male head of the household.[158] Nevertheless, females probably enjoyed equal rights under the law.[159] Indeed, only the mother's name is often given in Middle Kingdom filiations.[160] The lesser presence of females as parties of litigation or witnesses is probably due to social causes and not legal restriction. In general, women did not hold public offices.[161] Ward having eliminated one possible example of women serving on such judicial councils,[162] female "magistrates," *sr.w*, are not attested for the Middle Kingdom.

4.3.1 Women were able to hold and alienate private property. The purpose of P. Brooklyn 35.1446, for example, may have been to "establish the right of a woman named Senebtisy to the ownership of ninety-five household servants."[163] A transfer document giving a woman property to administer nevertheless contains the statement by the man: "It is the Deputy Geb who will educate my children."[164]

4.3.2 In P. Brooklyn 35.1446, there is a reference to a married woman apparently conducting a lawsuit against her own father.[165] This papyrus records a gift of property made by a private individual to his second wife (a deed of gift), which has been then disputed by the daughter of the man's first wife. This case is heard before a *djadjat* court, which confirmed the donor's right to transfer the property to his second wife.[166]

4.3.3 The wife seems to have had an assured interest in the matrimonial property.[167] Eyre points out that the will of Wah provides his widow with a lifetime interest in property which he inherited

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[158] Parkinson, *Voices*, 112.

[159] See Johnson, "Legal Status . . ." See further Ward, *Essays* . . ., 59–60; Malaise, "Position . . ."

[160] Allam, "Familie-Struktur," col. 107.

[161] Johnson, "Legal Status . . .," 175.

[162] Ward, "Female Member . . ."

[163] Simpson, *Textes et Languages* . . ., 69. See also Pestman, *Marriage* . . ., 85. The seal of a wife is mentioned in P. Brooklyn 35.1446; see Hayes, *Papyrus* . . ., 116.

[164] Johnson, "Legal Status . . .," 178.

[165] Théodoridès, "Concept of Law . . .," 303; Johnson, "Legal Status . . .," 183. See also Lorton, "Legal and Social Institutions . . .," 349; Pestman, *Marriage* . . ., 138; Quirke, *Administration* . . ., 147.

[166] Hayes, *Papyrus* . . ., 143.

[167] Eyre, "Adoption . . .," 219.

from his brother, and this before it goes to their children.[168] There is some indication for a widow's guardianship of her young children.[169]

4.4 *Slavery*[170]

4.4.1 *Terminology and Definition*

4.4.1.1 The later common word for "slave," *ḥm*, which originally meant "body," hardly occurs in the indisputable sense of "slave" in the Old and Middle Kingdoms.[171] There is evidence for the existence of classes with limited freedom of activity, and persons possessing the status of alienable property.[172] In P. Brooklyn 35.1446 a group of slaves (?) seems to be transferred to a woman,[173] while the Kahun papyri also suggest that slaves could be bought or inherited.[174] One document (P. Kahun 1.2) seems to deal with the "transfer of servants between brothers."[175]

4.4.1.2 Individuals, mortuary foundations, and religious institutions, could possess *mry.t*, "serfs," acquired by bequest or transaction. They appear in lists together with cattle and offices. One man declares, for example: "I have been one who is clever and one who controls his *mr.t* until the day comes wherein it is well with me (scil. "die"). I have given them to my son in a conveyance (*imy.t-pr*)."[176]

4.4.1.3 P. Brooklyn 35.1446 mentions a "Labor-Bureau," literally, "an Office of Giving People" (*ḫ3 n dd-rmṯ*).[177] Hayes suggests that the "Labor-Bureau" probably co-operated with the prison administration (*ḫnr.t wr*) and the Office of Fields or Agricultural Office.[178] This same text contains a list of seventy-six residents, mostly with Asiatic names,

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[168] Ibid.
[169] Franke, *Verwandtschaftsbezeichnungen* . . ., 269.
[170] Helck, *Wirtschaftsgeschichte* . . ., 163. See also Helck, "Sklaven," col. 984; Hayes, *Papyrus* . . ., 134.
[171] Cf. Bakir, *Slavery* . . ., 30. See, too, Helck, *Wirtschaftsgeschichte* . . ., 154–55.
[172] Loprieno, "Slaves," 196.
[173] Pestman, *Marriage* . . ., 85. This is Text verso B of P. Brooklyn 35.1446 (Hayes, *Papyrus* . . ., 116), discussed in Théodoridès, "Rapport . . .," 72.
[174] Griffith, *Kahun* . . ., pls. 12 and 13; Helck, "Sklaven," col. 984.
[175] Quirke, *Administration* . . ., 168.
[176] Bakir, *Slavery* . . ., 22.
[177] Quirke, *Administration* . . ., 112–16. See also Franke, "Beititel . . .," 20.
[178] Hayes, *Papyrus* . . ., 136–37.

who appear to have fled without completing the services required of them by the state.[179]

4.4.1.4 In P. Berlin 10470 there is another term for "serfs," *d.t*, in the expression "a servant woman of the serfs of Elephantine."[180] The phrase "the woman who covers (*ḥbs*) a servant of the king" may designate a servant woman registered to perform the work for a royal servant.[181]

4.4.2 *Categories*

The documents seldom provide insights into categories of slavery. There is a possible reference to house slaves (*ms.w nw pr*) in the tomb inscription of *It=i-ib-i*.[182] Children of slaves remain slaves.[183] However, there is some slight evidence for a person changing from slave status to citizen status, depending on the interpretation of P. Berlin 10470.[184]

4.4.3 *Creation*

4.4.3.1 Middle Kingdom documents mention "Asiatics," *ʿ3m.w*, possibly taken in raids.[185]

4.4.3.2 Egyptians might become virtual slaves, being reduced to the same status as the Asiatics. In this case they are called "royal servants."[186] Persons naturally attempted to escape their labor commitments, and so became fugitives. When recaptured, they could be assigned by the state to private individuals, who might alienate them as desired.[187]

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[179] Johnson, "Legal Status . . .," 215. On this list, see also Théodoridès, "Rapport . . ."; Schneider, "Namen . . ."

[180] Vittmann, "Hieratic Texts," 36–37. See also Quirke, *Administration* . . ., 203–7.

[181] The view of Quirke, quoted in Vittmann, "Hieratic Texts," 37.

[182] Schenkel, *Memphis* . . ., 78–79.

[183] Bakir, *Slavery*. . . ., 65, 117; Loprieno, "Slaves," 200.

[184] Vittmann, "Hieratic Texts," 35.

[185] See Hayes, *Papyrus* . . ., 133. Cf. also Bakir, *Slavery* . . ., 65, 82, 110; Helck, *Wirtschaftsgeschichte* . . ., 151, 153; Berlev, "Social Experiment . . .," 154.

[186] Thus Loprieno, "Slaves," 198; Helck, *Wirtschaftsgeschichte* . . ., 153. On *ʿ3m.w*, "Asiatic," as a term for "slave," see Baines, "Contextualizing Egyptian Representations . . .," 375–76.

[187] So Loprieno, "Slaves," 198–99.

4.4.4 *Treatment*

Bakir has suggested that female slaves could be shorn.[188] An escaped slave seems to have been captured and condemned to death in a court.[189] Slaves or servants could be trained in professions, such as the scribal art.[190]

4.4.5 *Termination*

According to one view, P. Berlin 10470 may document emancipation.[191] The woman mentioned in that text had belonged to a collective (*ḏ.t* = "serfs" or "tenants"?) in Elephantine. Her owners are transferring the woman to the town. Helck thought that she is to marry one member of the collective, and therefore must be declared a "citizen" (lit., "a living-one-of-the-town," *ʿnḫ.t n.t nw.t*), that is, "free," in a rather complicated court case. This view receives little support from the text itself. There does, however, seem to be a change in ownership and perhaps status, all occurring due to the petition of a man. Significantly, the woman appears to have been kept informed of every step in the process, even when still a slave or servant.[192]

5. Family

The legal interconnectedness of families is illustrated by the joint responsibility of the family for individuals fleeing from corvée labor.[193]

5.1 *Marriage*

5.1.1 *Legal Nature and Conditions*

No marriage contracts or agreements are known from the Middle Kingdom.The very word for a "wife" is not certain; some propose that *ḥbs.wt* (lit., "she-who-is-covered" or "clothed female") may mean "wife" in the early Middle Kingdom.[194] The common term *nb.t-pr*

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[188] Bakir, *Slavery*, 68.

[189] Helck, "Sklaven," col. 984, quoting Kahun XII.1, 16–40 (Griffith, *Kahun*, 79).

[190] Kahun, pl. 35, 10–13, Griffith, *Kahun*, 79, quoted in Helck, "Sklaven," col. 984. See also Loprieno, "Slaves," 200.

[191] Smither, "Report . . .," 31; cf. Helck, *Wirtschaftsgeschichte*, 154; Quirke, *Administration*, 203–7; Vittmann, "Hieratic Texts," 35–40.

[192] Cf. Loprieno, "Slaves," 196.

[193] Allam, "Obligations . . .," 90.

[194] Johnson, "Legal Status . . .," 217. See also Ward, "Reflections . . .," 73, and

"mistress of the house," which first appears in the Middle Kingdom, may suggest that the holder is a married woman.[195] According to Černý, brother-sister marriage was possible but by no means common.[196] He presents two instances of such a marriage in the Middle Kingdom. These marriages may be between half-siblings.

5.1.2 *Divorce*

P. Kahun I.1, lines 13–14, may confirm the right of a wife to dwell in the conjugal house in the case of a divorce.[197]

5.1.3 *Remarriage*

P. Kahun VII.1 may deal with a man's changing the disposition of his property on the basis of a second marriage.[198] The suit between a daughter and her father recorded in P. Brooklyn 35.1446 is possibly the result of a divorce and remarriage.[199]

5.1.4 *Polygamy*

There may be very slight documentation for polygamy, although it does not seem to have been common.[200] The Hekanakht letters may provide evidence for concubinage.[201]

5.2 *Children*[202]

Such texts as the Hekanakht letters are a primary source for the status of children in the Middle Kingdom.[203] The father probably retained control of the estate until death. The mother may have

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Essays . . ., 65–69; Goedicke, *Hekanakhte* . . ., 35; Fischer-Elfert, "Der ehebrecherische Sohn . . .," 24; Parkinson, "'Homosexual' Desire . . .," 73. In general, see Pestman, *Marriage* . . .

[195] Ward, *Titles* . . ., 99.

[196] Černý, "Consanguineous Marriage . . .," 29ff.

[197] Pestman, *Marriage* . . ., 157–58; Johnson, "Legal Status . . .," 178 (translation). On P. Kahun I.1, Ter Manuelian, "Essay . . .," 15; Théodoridès, "Propriété . . .," 33–36.

[198] Théodoridès, "Concept of Law . . .," 305; Théodoridès, "Le Testament . . .," *Maat*, 423–26.

[199] Johnson, "Legal Status . . .," 182–83.

[200] Simpson, "Polygamy . . .," 104. See further Ward, *Essays* . . ., 57–59; Franke, *Verwandtschaftsbezeichnungen* . . ., 340–41.

[201] Baer, "Letters . . .," 6; Eyre, "Crime . . .," 98. See also Ward, *Essays* . . ., 61–65, and "Reflections . . .," 74.

[202] In general, see Feucht, *Das Kind* . . .

[203] See the texts translated in Wente, *Letters* . . ., 58–63.

been compelled to cede control to her eldest son when he reached age, but this is not entirely certain. P. Kahun I.1 apparently contains provisions for the appointment of a guardian of a child, in case of the father's death.[204] In P. Brooklyn 35.1446 a daughter disputes with her father regarding a "transfer-document" (*imy.t-pr*).[205]

5.3 *Adoption*

There are no clear examples of formal adoption before the Nineteenth Dynasty.[206] Allam suggests that *s3.t wr.t* means "adoptive daughter" in Sinuhe.[207]

6. Property and Inheritance

While royal and temple holdings and property must have been greater by far, there does seem to exist private property, at least to some extent.[208] The Hekanakht letters present a man who is clearly entrepreneurial,[209] interested in adding industriously to his own wealth through renting and leasing.[210]

6.1 *Tenure of Land*[211]

6.1.1 The state owned and administered various types of land (e.g., *ḫbs.w*-land).[212] Individual land-owners could apparently lease their fields to others; P. Hekanakht no. 1 may point to this practice.[213]

Ethics of the period condemns the unfair eviction of cultivators. Thus, in Cairo tomb-stele 20512, the speaker declares: "There does not exist one whom I expelled from his plot of land (*šˁ*)."[214]

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[204] Parkinson, *Voices* . . ., 110. On P. Kahun I.1, see also Théodoridès, "Rapport . . .," 61–67, and "Vente . . .," 52–53.

[205] See Théodoridès, "Rapport . . .," 87, 104–05.

[206] Allam, "Adoption," cols. 66–67.

[207] Allam, "Sinuhe's Foreign Wife . . ."

[208] See, e.g., Théodoridès, "Rapport . . .," 126–27. See also Eyre, "Work . . .," 32.

[209] Théodoridès, "Concept of Law . . .," 301.

[210] Baer, "Letters . . .," 15.

[211] See, e.g., Menu, *Recherches* . . ., 4–7.

[212] Hayes, *Papyrus* . . ., 137. See also Menu, "Quelques . . .," 125, and *Recherches* . . ., 5–6.

[213] Hekanakht letters 1 and 2, Parkinson, *Voices* . . ., 103–04. See also: Bleiberg, *Official Gift* . . ., 13. On Hekanakht 1, see also Menu, *Recherches* . . ., 4–5. On *qdb*, "lease(?)," see Menu, *Recherches* . . ., 81–94; Kessler, "Land . . .," 109–10; Goedicke, "Tax-deductions . . .," 73–74.

[214] Schenkel, *Memphis*, 94.

The Khnumhotep tomb inscription attests to an interest in establishing boundaries, which were apparently set down in land registers (*ḫd.t*). The speaker declares: "It has been caused that he should know his boundary according to the land-register."[215]

6.1.2 *State and Private Ownership*

The documents indicate that private individuals could, in some cases, leave or lease land to whomever they wished, apparently without recourse to higher authority. The ownership of land was obviously of great importance to tax officials because of the land taxes and the poll tax obligations connected to land ownership. Therefore the tax registers were maintained regarding the plots, and this is attested since at least the Middle Kingdom. We have from that time a tax declaration in the Kahun Papyri.[216] Seidl suggests that the tax registers may serve a function later assumed in the Roman period by the *Grundbuch*.[217]

A distinction was legally made between a paternal estate, which one could bequeath at will, and an "official estate" (lit., a "count's estate"), closely associated with the office and which could not be bequeathed.[218]

6.1.3 *Special Types of Ownership*

Individuals concluded contracts with mortuary priests in order to guarantee the proper ceremonies and offerings after death.[219] There was a particular concern that the endowment and office remain undivided into the following generations.[220]

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[215] Lloyd, "Great Inscription . . .," 23.

[216] Trigger et al., *Social History* . . ., 83.

[217] *Einführung* . . ., 46–47.

[218] So already Breasted, *Ancient Records*, vol. 1, 259. Van den Boorn, *Vizier* . . ., 181. See further, Spalinger, "Redistributive Pattern . . .," 8; Théodoridès, "Contrats . . .," 226; Helck, *Wirtschaftsgeschichte* . . ., 164; Théodoridès, "Contrats . . .," 127 (= *Maat*, 241); Théodoridès, "Sixième . . .," 456. The problematic terminology of land may naturally denote legal status. *Šdw*-land, for example, possibly designates usufruct lands given to certain classes of persons; see Helck, *Wirtschaftsgeschichte* . . ., 175; see also Van den Boorn, *Vizier* . . ., 187; Schenkel, *Memphis* . . ., 77.

[219] Spalinger, "Redistributive Pattern . . .," 8–9. See further Allam, "*ḥm-k3*"; Théodoridès, "Contrats . . .," 170–71. Examples of such contracts are Djefa-Hapi (note that Djefa-Hapi never mentions his own family; see Théodoridès, "Contrats . . .," 296.); Schenkel, *Memphis*, 235, no. 379; Sethe, *Lesestücke*, 96, no. 31 (= Simpson, *Terrace* . . ., pl. 43).

[220] Kaplony, "Sklaven," col. 692. See also Allam, "De la divinité . . .," 28.

6.2 *Inheritance*

6.2.1 According to Théodoridès, the right of primogeniture, the rule maintained through a testamentary provision from the Fourth Dynasty, no longer obtains in the Middle Kingdom. He sees as proof of this development the will of Djefa-Hapi, a nomarch and high priest of Siut in the Twelfth Dynasty.[221] In that text, Djefa-Hapi addresses his funerary priest, making the arrangements directly with the priesthood of Siut concerning his mortuary cult.[222] He transfers properties, which as he declares are part of his patrimony, and do not come from the "house" of the nomarch. He thus commits the high priesthood for the future.[223] Texts such as that of Djefa-Hapi suggest that the eldest son was not necessarily guaranteed the control of the property.[224] The contracts of Djefa-Hapi are made in the presence of a temple court, which thus assures their validity.[225] It is not clear whether a widow also became subject to the control of her eldest son upon the death of her husband, as some have suggested.[226] In literature, one observes that Sinuhe also leaves his possessions and his tribe in the charge of his eldest son.[227]

6.2.2 The transfer deed of Ankhreni confirms that his possessions in "country and in town" go to his brother, Wah. This brother in turn composed a will, giving the property to his own wife.[228] He specifies that his wife will then give the property to any children which she may bear him (i.e., Wah). He further states that he gives to her three Asiatics and that she will be buried with him in his tomb. Wah declares that his wife shall be able to dwell unmolested in the house built for him by his brother.[229]

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[221] On the Djefa-Hapi texts, see Théodoridès, "Contrats . . ."; Menu, "Quelques . . .," 196–97.

[222] See Harari, "L'échange," 49–51; Théodoridès,"Sixième . . .," 466.

[223] Théodoridès, "Concept of Law . . .," 303. See also Edel, "Erbschaftsbestimmungen . . .," 98–99. For *3wi-tr.t* as a term for the transfer of property between living persons, as in Brooklyn 35.1445, Théodoridès, "Rapport . . .," 76, but see also comments ibid., 78–79, on the "delivery of property."

[224] Théodoridès "Sixième . . .," 445.

[225] Ibid., 462.

[226] Théodoridès, "Concept of Law . . .," 296, and "Vente . . .," 55.

[227] Lichtheim, *AEL* 1, 231.

[228] On the "will" of Kahun VII.1, see Théodoridès, "Le testament . . ."

[229] Johnson, "Legal Status . . .," 178. See also Eyre, "Adoption . . .," 219; Janssen-Pestman, "Boulaq X . . .," 152.

Wills are not numerous, but there are texts clearly designed to determine the fate of a person's estate after his decease. In P. Kahun II.1, for example, a father obviously desires that his affairs should be in order before his death.[230]

6.2.3 According to Baer, the Egyptians did not generally entail estates but divided them successively through the generations.[231] Stela JdE 52456 (Second Intermediate period) may allude to a division of goods, possibly in connection with the man's wife.[232]

7. Contracts

In one case, a man (Djefa-Hapi) in his private capacity apparently concludes a contract with himself in his official capacity.[233]

According to Hayes, in the late Middle Kingdom, at least, the legality of a transaction may have been confirmed in four distinct ways:

1. by decision of the *sr.w* magistrates;
2. by oral statement of the terms and content of the gift made by the donor before the Herald/Reporter of the Southern City (= Thebes);
3. by a written version of this statement drawn up under the supervision of this same official, and deposited in his office;
4. by the formal sealing of this written statement. This then becomes a "sealed document" (*ḫtm.t*), a contract.[234]

7.1 *Sale*

According to Théodoridès, the *ỉmy.t-pr* document was in the Old Kingdom a deed of transfer by gift but in the Middle Kingdom referred to all types of conveyances, including exchange for "money".[235] He cites P. Kahun II.1, wherein the plaintiff wants to collect on an outstanding debt due his father, deriving from a credit sale concluded

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[230] Translation in Parkinson, *Voices* . . ., 110.
[231] Baer, "Letters . . .," 13.
[232] Vernus, "Allusion . . ."
[233] Théodoridès, "Sixième . . .," 447. See also Allam, "*Quenebete* . . .," 43–44.
[234] Following Hayes, *Papyrus* . . ., 143; see also Pirenne, "Preuve . . .," 26. The Djefa-Hapi contracts include satisfaction clauses: "Then they (the priests) were satisfied (herewith)" (Théodoridès, "Contrats . . .," 132).
[235] Théodoridès, "Concept of Law . . .," 304. See Harari, "L'échange . . ."; Théodoridès, "Contrats . . .," 335–44, and "Rapport . . .," 87ff.

by a *ỉmy.t-pr*.[236] P. Kahun VII.1 shows that such a deed of conveyance could be revoked or annuled (lit., "back is to it").[237]

There are occasional references to sales and purchases.[238] Safeguard clauses (protecting the title) often appear in Middle Kingdom and later texts.[239] The term for "title," (*ḏ3t.t*, "possessory title" to X) is employed with regard to a servant woman in P. Berlin 10470.[240] Kahun 1.2 has also been interpreted as a sale for credit.[241]

7.2 *Loan*

Evidence for loans is exceedingly scanty, although loans of grain or seed are mentioned.[242] The conditions of the transaction are unknown. It has been suggested that *w3w3* be rendered "interest" in P. Kahun 13.[243] P. Kahun 13 may deal with debts and the canceling of debts.[244] Hekanakht may also refer to the collection of outstanding debts.[245]

7.3 *Security*

The family itself may have been used as security in the case of a fugitive from justice, in that the family was compelled to perform corvée labor.[246]

7.4 *Hire*

The Hekanakht letters remain the best evidence for "private" leasing in the pre-New Kingdom period.[247] It appears that craftsmen

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[236] See also Parkinson, *Voices* . . ., 110; Menu, "Prêt . . .," 68–70, and "Note . . .," 133.

[237] Translation and commentary in Théodoridès, "Testament . . .," 417–28, "Contrats . . .," 345–57, 386, and "Propriété . . .," 58–62.

[238] See, e.g., Schenkel, *Memphis*, 61, and Wente, *Letters* . . ., 64.

[239] Pestman, *Marriage* . . ., 132.

[240] Vittmann, "Hieratic Texts," 37.

[241] Théodoridès, "Vente . . .," 42, 71–72. But see also Menu, *Recherches* . . ., 197, on Kahun 1.2. Théodoridès, "Vente . . .," 43, thinks that Kahun I.1 is an act of cession.

[242] Schenkel, *Memphis*, 59. See also Menu, "Prêt . . .," 71; Baer, "Letters . . .," 10.

[243] (So *Wb*. 1, 250.) See Ray, "A Consideration . . ." See also Lorton, "Legal and Social Institutions . . .," 353.

[244] Ray, "A Consideration . . .," 222–23. He discusses the possibility of debt imprisonment, attested in Roman times. The term *tp*, which occurs in this text (lit., "head") may mean "capital." See also Menu, "Quelques . . .," 118–20.

[245] Goedicke, *Hekanakhte* . . ., 75, 77.

[246] Allam, "Les obligations . . .," 89–90. For other possible security arrangements, see Goedicke, *Hekanakhte* . . ., 77; Shupak, "New Source . . .," 8.

[247] Eyre, "Peasants . . .," 381. See also Goedicke, *Hekanakhte* . . ., 31, 39.

and artisans, who often worked for state or private workshops, did not generally hire out their services.[248] According to Helck, one could rent out animals for profit.[249]

8. Crime and Delict

Lorton contrasts New Kingdom penalties with those of the Old Kingdom and Middle Kingdom.[250] According to him, in the Old Kingdom there was one set of penalties for infringement of temple exemptions: loss of civic status in life and death, and perhaps assignment to labor in unfree status. He suggests that this was the case also in the Middle Kingdom. The work on the state lands certainly had a "penal aspect."[251] On the basis of such texts as the Instruction of Merikare, Lorton proposes that beating was a standard penalty of the Middle Kingdom.[252] Lorton doubts that a son would inherit the office of his father, if the latter has been deprived of his office.[253]

8.1 *Theft*

The Hekanakht letters may indicate that the thief might be compelled to make restitution for twice the stolen amount.[254] The dishonest official in the Eloquent Peasant is punished by having his possessions confiscated and presented to the peasant.[255] The Illahun papyri contain lists of stolen objects.[256] Nubian graffiti (Twelfth Dynasty) may refer to the death penalty for the violation of tombs.[257] The penalty for trespassing on a restricted area of the Abydos cemetery in the First Intermediate period or the Twelfth Dynasty was branding (?),[258] possibly in conjunction with a reduction to "unfree status."

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[248] Drenkhahn, *Civilizations* . . ., vol. 1, 334.
[249] Quoting *Urk.* 1, 151 (Old Kingdom); Dendereh, pl. 11 C (Helck, *Wirtschaftsgeschichte* . . ., 161).
[250] Lorton, "Treatment . . .," 50.
[251] Posener, "Anachoresis . . .," 666.
[252] Lorton, "Treatment . . .," 13.
[253] Ibid., 52. See Assmann, "Justice . . .," 149.
[254] Goedicke, *Hekanakhte* . . ., 61.
[255] A *terminus technicus* is the *ḏb3*, "recompense," due the peasant (Shupak, "New Source . . .," 13).
[256] Simpson, *Textes et Langages* . . ., 67.
[257] Willems, "Crimes . . .," 38, 41–42.
[258] Lorton, "Treatment . . .," 18; Willems, "Crime . . .," 40; Leahy, "Death . . .," 199.

8.2 *Treason*

Death may have been the penalty for treason. At any rate, it is declared in a funerary stela: "There is no tomb for one who commits a crime against (*sbi ḥr*) his majesty, his corpse being thrown into the river."[259]

It was also, not surprisingly, a crime to harbor state enemies in temples, according to one interpretation of a problematic text. The penalty would be expulsion from the temple and loss of office for perpetrator and heirs.[260]

9. Special Institutions

9.1 *Curses*

Curses appear in legalistic texts such as Cairo Stele 30770.[261] There is also a curse on every king who pardons a convicted criminal.[262]

9.2 The Letters to the Dead, which often have a legal background, are found in the Middle Kingdom.[263]

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[259] Lorton, "Treatment . . .," 14.
[260] Ibid., 18–23.
[261] See Assmann, "Justice . . .," 154–55; Morschauser, *Threat-Formulae . . .*; Nordh, *Curses and Blessings . . .*
[262] Lorton, "Treatment . . .," 21 (Seventeenth Dynasty).
[263] E.g., Wente, *Letters . . .*, 215–16; Gardiner and Sethe, *Letters to the Dead.*

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EGYPT

NEW KINGDOM

Richard Jasnow

1. Sources of Law

The New Kingdom offers a more abundant and varied corpus of legal texts than the Old and Middle Kingdoms.[1]

1.1 *Law Codes*

As with the Old and Middle Kingdoms, no law code proper is preserved but only detailed royal edicts (e.g., Nauri Decree), together with possible references to systematic law collections. In the Decree of Horemheb, for example, the king declares, "I have given to them (i.e., the judges) oral instructions and law(s) in their books."[2] In P. Bulaq 10, one party cites the "law of the pharaoh" as a precedent,[3] while in P. Turin 2021, a man introduces a law with the words: "The King said: . . ."[4]

Iconographic evidence has also been utilized in the discussions of a law code. A scene in the tomb of Rekhmire (reign of Tuthmosis III) shows forty enigmatic objects (*šsmw*) on display before the vizier during an official session. These have been interpreted as the "law-

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[1] Still basic is the overview in Seidl, *Einführung* . . . Among the most active researchers in New Kingdom law have been Allam, Théodoridès, and Menu (see bibliography). An excellent introduction is also McDowell, *Jurisdiction* . . . A useful collection of sources is in Lurje, *Studien* . . ., 170–98. The relatively few pharaonic legal documents may be, in fact, exceptional cases; see Eyre, "Feudal Tenure . . .," 109. See further Eyre, "Peasants . . .," 381.

[2] Kruchten, *Horemheb* . . ., 154. On the possibility of extensive law codes, see Lorton, "Treatment . . .," 53–62; Allam, "Traces . . ."

[3] See Janssen and Pestman, "Burial . . .," 167–68; Théodoridès, "Dénonciation . . .," 62–63; Théodoridès, "Ouvriers . . .," 171–72.

[4] Johnson, "Legal Status . . .," 177 (translation). See also Allam, "Papyrus Turin 2021 . . .," 25.

books,"[5] but scholars now generally understand them rather to be batons, emblems of office, whips, or the like.[6]

While numerous researchers do believe that there was a law code in New Kingdom Egypt,[7] others deny that the Egyptians had comprehensive collections of laws possessing a validity independent of the reigning pharaoh.[8]

1.2 *Royal Edicts*[9]

1.2.1 In the fragmentary Decree of Horemheb,[10] the king acts against abuse of citizens by officials, and also reorganizes the courts and the palace administration. The king forbids, for example, the seizure of boats, declaring such an action "a transgression of the laws (*hp.w*) of Egypt."[11] Horemheb establishes harsh penalties, such as the mutilation of noses and banishment to fortress towns on the Asiatic frontier. The law courts were to be composed of the priests of the temples and the mayors of the towns. Those serving well were to be amply compensated by the king.

1.2.2 Similar is the Nauri Decree, in which Seti I exempts and protects Nubian property and personnel of a foundation of Osiris of Abydos.[12] The most common type of administrative abuse would be the forced labor of persons or confiscation of material.[13] Even the highest officials in Nubia, such as a viceroy of Kush, are considered as possible wrongdoers.

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[5] Allam, "La Problématique . . ."

[6] Van den Boorn, *Vizier* . . ., 29–32. But see also Posener, "Les quarante rouleaux de lois . . .," 63–66; Allam, "Traces . . .," 16.

[7] See also Lurje, *Studien* . . ., 126–32; Théodoridès, "A propos . . ."

[8] Wilson, *Culture of Ancient Egypt* . . ., 49. See also Eyre , "Crime . . .," 92; Johnson, "Legal Status . . .," 215; Edgerton, "Government . . .," 154; Lorton, "Legal and Social Institutions . . .," 355.

[9] Lorton, "Treatment . . .," 56. See also Wilson, *Culture of Ancient Egypt*, 237; Allam, "*Quenebete* . . .," 50–53; Kruchten, *Horemheb* . . ., 64–65; Théodoridès, "Formation . . .," 7–11.

[10] Lorton, "Punishment . . .," 24. See also Polacek, "Le Décret d'Horemheb"; Shupak, "New Source . . .," 3–4; Eyre, "Work . . .," 209.

[11] *Urk.* 4, 2244. Cf. Lorton, "King and the Law . . .," 57. For remarks on *hp.w*, "laws," see also Kruchten, *Horemheb* . . ., 214–20.

[12] See Spalinger, "Revisions . . .," 31–39. On the Nauri Decree, see also Harari, "Principe . . ."; Lorton, "Treatment . . .," 25–27; Harari, "Recruitement . . ." See Kruchten, "Gestion . . .," 523–24, for similar decrees.

[13] The series of persons or objects wronged or misused are: persons, goods, corvée work, boats, and fields.

1.2.3 Other royal edicts of a legal character should be mentioned. The Donation Stela of King Ahmosis to Queen Ahmes Nefertari is significant for the history of law.[14] In his coronation decree, Tuthmosis I proclaims the full royal name to be used in oaths,[15] while an inscription of Tuthmosis III deals with the "health of the nation."[16] The Decree of Seti I at Kanais (Wadi Mia) also contains legal material.[17]

1.3 *Administrative Orders and Official Documents*

1.3.1 In this category may be considered such texts as the records of official investigations into state matters as the royal tomb robberies[18] (ca. 1100) and the Harem Conspiracy.[19] The Tomb Robbery papyri preserve protocols of the examination and questioning of suspects, together with the verdicts and findings of the officers.[20] P. Salt 124 contains numerous accusations against a chief of the work crew at Deir el-Medina presented to the vizier.[21] The so-called "Turin Indictment Papyrus" records a series of charges against several officials, especially concerning embezzlement of grain due to the Temple of Khnum in Elephantine.[22]

1.3.2 Extensive land surveys or cadastral records such as Papyrus Wilbour provide information concerning land tenure.[23] These are, unfortunately, notoriously difficult to interpret.

Another valuable but problematic source of information on the legal system is titles.[24]

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[14] The inscription deals with the office of Second Prophet of Amun at Karnak; see Gitton. "La résiliation . . ."; Menu, "Le Stèle . . ."

[15] Breasted, *Ancient Records* . . ., vol. 2, 25.

[16] Vernus, "Une Décret d'Thoutmosis III . . ."; Van den Boorn, *Vizier* . . ., 9.

[17] See Harari, "Les dispositions . . ."; Théodoridès, "Mettre . . ."; Lorton, "Treatment . . .," 27.

[18] Peet, *The Great Tomb-Robberies*. See also Lorton, "Treatment . . .," 30–37.

[19] Lorton, "Treatment . . .," 28–30. The record of the so-called Harem Conspiracy against Ramses III (ca. 1182–1151) is chiefly preserved in the Judicial Papyrus of Turin; see ibid., 28. See also Johnson, "Legal Status . . .," 176. This is the only known Egyptian trial for sorcery or misuse of magic (wax figurines and magical books). See also Ritner, *Practice* . . ., 199ff.

[20] Vernus, *Affaires* . . .

[21] Černý, "P. Salt . . ."

[22] Peet, "Historical Document . . ." See now Vittmann, *Elephantine* . . ., 45–56.

[23] P. Reinhardt (edited by Vleeming, *Papyrus Reinhardt*) and P. Wilbour (edited by Gardiner, *Wilbour Papyrus*) have been understood to be land registers (*dnỉw.t*) of the Domain of Amun (Van den Boorn, *Vizier* . . ., 269). On these, see also Gasse, *Données* . . ., 229–31.

[24] See, e.g., Onasch, "Aufbau . . .," on the various possible meanings of *sš*, "scribe."

1.4 *Private Legal Documents*

1.4.1 In comparison with the Old and Middle Kingdoms, the quantity of material is considerable. The documents, many of which form archives or dossiers, attest to sale, loan, lease, various kinds of disputes and litigation concerning movables and immovables, marriage, adoption, partnership, and inheritance matters. While most of our legal material is from southern Egyptian Thebes, the exceptionally important Legal Text of Mes[25] comes from Memphis, in the north. This inscription records complicated court disputes and confirms the existence of governmental archives.

1.4.2 The large corpus of texts from the town of Deir el-Medina in Thebes is the most important single source of information for law in the New Kingdom.[26] Deir el-Medina, home of the royal tomb builders near the Valley of the Kings, was presumably no typical village, being under the direct control of the vizier (and later, the high priest of Amun).

1.4.2.1 Most cases from Deir el-Medina deal with fulfillment or non-fulfillment of obligations (payment, sale and loan of objects, rent and sale of animals, usually donkeys).[27] There is also litigation concerned with landed property, family law, and inheritance. Theft is occasionally prosecuted.[28] Much less common are cases of violence,[29] slander, or blasphemy. Some consider these ostraca official records or documents, while others think them generally mere private notes and "memoranda for litigants."[30] They do not follow any very rigid

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[25] Inscribed on a tomb chapel in North Saqqara, near modern Cairo, the text lacks both the beginning and end; see Gardiner, *Inscription of Mes*; Gaballa, *Tomb-Chapel* . . ., 22–27; Allam, "Publizität . . .," 38–39; Eyre, "Feudal Tenure . . .," 116–18; Allam, "Remarks . . .," 105.

[26] See McDowell, *Jurisdiction* . . ., 3.

[27] On types of cases, see McDowell, *Jurisdiction* . . ., 155–59. She stresses that most cases were economic in character and not criminal. Théodoridès, "Dénonciation . . .," 60–62, lists the following: (1) infractions against individual liberty or mortuary cult; (2) violation of private property rights; (3) violation of professional oath and obligations; (4) abuse or excess of power; (5) damage to king's property.

[28] See, for example, Lorton, "Treatment . . .," 44.

[29] Janssen, "Rules . . .," col. 296.

[30] Théodoridès, "Concept of Law . . .," 300. See especially on this subject, Allam, "Schriftostraka . . ." See also Janssen, "Proceedings . . .," col. 296; Malinine, "Notes juridiques . . .," 96.

format but are normally records of oral proceedings, often giving the parties involved, the transaction, the date, and, occasionally, witnesses(?).[31] P. Deir Medina 26 has been interpreted as a record of numerous distinct legal cases and as evidence for the existence of local archives.[32] Despite their limitations and idiosyncrasies, much of the scholarly reconstruction of New Kingdom Egyptian law is perforce based on the analysis of the texts from this single village.

1.4.3 Legal documents of exceptional legal importance are the *Stèle juridique*,[33] the Adoption Papyrus,[34] P. Turin 2021,[35] and the Will of Naunakhte.[36]

1.4.4 Private tomb inscriptions, or compositions preserved in private tombs, naturally contain relevant material. Of these may be mentioned the Duties of the Vizier[37] and the already cited Legal Text of Mes.

1.4.5 Personal letters (e.g., the corpus of Late Ramesside letters) also occasionally shed light on legal matters or allude to legal situations.[38]

1.5 *Scholastic documents*

The collection of model letters and compositions known as the Late Egyptian Miscellanies contains texts of legal interest.[39] Scholars of law have also discussed the penalties of the schoolbook P. Lansing in passages portraying the plight of the peasant unable to pay his taxes.[40]

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[31] One notes that many transactions recorded in the Deir el-Medina ostraca lack witnesses, where they might be expected.

[32] McDowell, *Jurisdiction* . . ., 4.

[33] Lacau, *Stèle Juridique* . . . The so-called *Stèle juridique* (Seventeenth Dynasty), Spalinger, "Stèle Juridique," cols. 6–8, was discovered at Karnak. The text records the sale of the office of provincial governor. See also Allam, "*ḥm-k3*"; Johnson, "Legal Status . . .," 184; Helck, *Akte* . . ., 111–13.

[34] Gardiner, "Adoption . . ."

[35] Allam, "Papyrus Turin 2021."

[36] Černý, "Will . . ."

[37] Van den Boorn, *Vizier* . . .

[38] See Wente, *Late Ramesside Letters* . . ., and Janssen, *Communications* . . .

[39] E.g., Caminos, *Late-Egyptian Miscellanies* . . ., 326. See also Brunner, "Schulhandschriften," col. 738; Allam, "*Quenebete* . . .," 50.

[40] See Lichtheim, *AEL* 2, 170–71. See also Lorton, "Treatment . . .," 37 (on the imprisonment of a deserter's family).

1.6 *Miscellaneous*

New Kingdom literature often raises legal points or contains a plot with a legal background, e.g., the Tale of Two Brothers,[41] the Report of Wenamun,[42] and the Story of Horus and Seth, which incorporates legal proceedings transferred to the mythological realm.[43] Wisdom literature sometimes refers to specific legal situations. The Instruction of Amenemope warns, for example, against falsifying temple rations, weights, or documents.[44] The significance of law for the Egyptians is clearly expressed in the image of the Judgment of the Dead.[45] Occasionally, quite specific legal points are raised in the Book of the Dead. The deceased maintains, for example, that he "did not increase or diminish the measure."[46] The letters to the deities and to the dead are probably from individuals despairing of receiving justice in a corrupt or inefficient legal system. Such letters frequently refer to legal conflicts, particularly in connection with inheritance.[47]

2. Constitutional and Administrative Law[48]

2.1 *The King*

2.1.1 For much of the New Kingdom, Egypt was ruled by powerful kings in firm control of the administration. Emphasizing their close association with *Maat*, "Justice," the kings issued detailed legal edicts regulating the status and behavior of individuals, such as the Nauri Decree. In theory the king was all-powerful. In practice, there were probably limitations on the authority or ability of a king to interfere in the legal sphere. The pharaohs certainly displayed on occasion an active interest in the law. Horemheb, for example, main-

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[41] Translation in Lichtheim, *AEL* 2, 203–11.

[42] Thus Green, "Wenamun . . .," believes that Wenamun's demand for compensation is in accordance with the procedures recorded in the Hammurabi Code.

[43] Allam, "Legal Aspects . . .," and "L'Ordalie . . ." See also Lurje, *Studien* . . ., 121. Cf. Lichtheim, *AEL* 2, 111; Posener, "Amon, juge . . ."; Allam, "*Quenebete* . . .," 52–53.

[44] See Lichtheim, *AEL* 2, 157; cf. Quack, *Ani* . . ., 93.

[45] See Lorton, "Treatment . . .," 4.

[46] Lichtheim, *AEL* 2, 125.

[47] Sethe-Gardiner, *Letters* . . .

[48] Much of the following is drawn from O'Connor in Trigger et al., *Social History* . . . Still useful is Edgerton, "Government . . ."

tains that he "gave regulations in their (the officials') faces and laws in their book collections."[49]

2.1.2 It was perhaps possible to turn to a pharaoh for a legal decision or at least to dispute in the royal presence.[50] In Late Ramesside Letter 37 a writer declares: "Now Preunemef has contended in court with your father in the presence of the Pharaoh. The King has caused your father to be justified against him; and the King has charged the officials to make the examination of his men in order to give them to him. And the Pharaoh has said: 'Give him men as is fitting.'"[51]

2.1.3 Sometimes legal parties cite the "law of the pharaoh," generally in the form of a spoken order of the king, such as: "Let each act with his own property as he wishes,"[52] and "let one give the inheritance to the one who undertook the burial."[53]

2.1.4 In later periods one could petition the king directly, but there is little evidence for this practice in the New Kingdom. Still, in O. Ashmolean 1945.37+1945.33 + O. Michaelides 90, a man speaks of bringing up an accusation against gatekeepers of the palace before the pharaoh when he appears in his jubilee.[54]

2.1.5 An amnesty seems to be attested in the Israel Stela, wherein Merneptah sets free the "many who are imprisoned in every district."[55] So, too, in O. BM 5631, a man declares that the pharaoh has released him from prison.[56]

2.1.6 Theoretically, the king would hardly need the consent or support of his court in sentencing, but literary texts suggest a desire to win the courtiers' approval. In the Tale of the Two Brothers, the

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[49] Cf. fn. 2. For the role of the pharaoh in Deir el-Medina, see McDowell, *Jurisdiction* . . ., 235–44.
[50] Ibid., 236–39.
[51] Wente, *Late Ramesside Letters* . . ., 72. See also Allam, *Hieratische Ostraka* . . ., 304.
[52] Cf. Lorton, "Legal and Social Institutions . . .," 355.
[53] P. Cairo 58092, Allam, *Hieratische Ostraka* . . ., 290.
[54] Allam, *Hieratische Ostraka* . . ., 22.
[55] Hayes, *Papyrus* . . ., 44. See also Théodoridès, "Procès relatif . . .," 48.
[56] Allam, *Hieratische Ostraka* . . ., 49.

new pharaoh commands that his evil wife be brought to him: "He judged her in their ('the court's') presence, and they gave their assent."[57]

2.1.7 The king has authority over punishment by death[58] and mutiliation.[59] An official could suffer severe consequences for ordering such a mutilation without the king's knowledge.[60]

2.2 *The Legislature*

As in the earlier periods, there is no evidence for an acting assembly or legislature which confirmed the king's decisions, but only a court with an advisory capacity.[61]

2.3 *The Administration*

The administration comprised separate bureaucracies dealing with civil government, religious government, the military, and the royal domain.[62] However, these bureaucratic divisions are not rigidly maintained; men from the priesthoods and temples, for example, could fill judicial and police positions.[63]

2.3.1 *Central Administration*

2.3.1.1 The king and the palace officials formed the central administration,[64] based for much of the New Kingdom in northern Memphis and southern Thebes.[65] Vast royal holdings and the associated bureaucracy have been labeled the "Royal Domain."[66] A "Royal Son" (not a blood relation of the king)[67] ruled the rich province of Nubia. The king and the royal court maintained contact with subordinates by

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[57] Lichtheim, *AEL* 2, 210.
[58] Baines, "Emhab . . .," 45; De Buck, "Turin . . .," 157, 163.
[59] Van den Boorn, *Vizier* . . ., 119.
[60] Vittmann, *Elephantine* . . ., 48. See also Peet, "Historical . . .," 125.
[61] See Allam, "Traces . . .," 25, and "Legal Aspects . . .," 137; Helck, *Zur Verwaltung* . . ., vii.
[62] Trigger et al., *Social History* . . ., 208. See also Murnane, "Organization . . ."
[63] Compare Murnane, "Organization . . .," 196.
[64] Cf. Edgerton, "Government . . .," 160.
[65] Trigger et al. *Social History* . . ., 214.
[66] Ibid., 211.
[67] Murnane, "Organization . . .," 177.

traveling through the country, visiting Thebes, for example, on the occasion of major religious festivals.[68]

2.3.1.2 Each of the two (?) viziers had their own treasury, the grain supply remaining centralized.[69] Royal appointees were in charge of the royal domain,[70] the military,[71] religious government, and civil government.[72] The administrative section responsible for the temples, of great economic significance, was led by such high officials as the "Overseer of the Prophets of Upper and Lower Egypt" (sometimes held by the vizier)[73] and the "High Priest of Amun."[74] The relationship between the temple administration and the royal authority through the years is still debated.[75] The king apparently appointed prominent temple officials himself[76] and dispatched his own officials periodically to inspect the temples.[77] Supervisors were named of particularly important commodities, such as an "overseer of granaries" or an "overseer of cattle."[78] The organization of corvée labor was an especially significant aspect of New Kingdom administration.[79]

2.3.1.3 The vizier headed the internal government, a task which naturally involved juridical duties.[80] There may have been two viziers at times.[81] The Duties of the Vizier minutely describes his many responsibilities. This oft-cited source may not, however, accurately represent the New Kingdom office but rather that of the later Middle Kingdom.[82] In P. Berlin 10470 (Seventeenth Dynasty) the vizier is

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[68] Trigger et al. *Social History* . . ., 215.
[69] See Lurje, *Studien* . . ., 27–34.
[70] Royal officials were the "Chancellor" (*imy-r sḏ3wty*), the "Chief Steward" (*imy-r pr-wr*), the "Chamberlain" (*imy-r ḫnwty*); see Trigger et al., *Social History* . . ., 208.
[71] A "Scribe of Recruits" oversaw the military.
[72] See Trigger et al., *Social History* . . ., 209.
[73] Ibid., 208.
[74] Allam, "*Quenebete* . . .," 39. Cf. Allam, "Zur Tempelgerichtbarkeit . . .," 1.
[75] Trigger et al. *Social History* . . ., 211.
[76] Edgerton, "Government . . .," 157–58.
[77] Vittmann, *Elephantine* . . ., 48.
[78] Trigger et al. *Social History* . . ., 214.
[79] Helck, *Wirtschaftsgeschichte* . . ., 226–30. See further Vleeming, *Papyrus Reinhardt*, 52–55.
[80] Van den Boorn, *Vizier* . . ., 315–20. See also Martin-Pardey, "Wesir," cols. 1227–35; Théodoridès, "Dénonciation . . .," 64–69.
[81] Allam, "*Quenebete* . . .," 37. See also Trigger et al., *Social History* . . ., 214.
[82] Theodorides, "Concept of Law . . .," 307.

still called by the ancient Old Kingdom title, "Director of the Six Great Houses."[83] According to the Duties of the Vizier, the vizier hears cases of governmental malfeasance; he receives a copy of every transfer document (*imy.t-pr*); he appoints magistrates and overseers of police. He is especially involved in cases concerning land, being particularly responsible for land titles and boundaries.[84] Especially significant is the declaration: "He will hear each petitioner according to the law which is in his hand."[85] It was theoretically possible for any Egyptian to petition the vizier directly.[86] There are occasional procedural inconsistencies between the Duties of the Vizier and statements in other legal texts.[87]

2.3.1.3.1 Under the vizier would have been the treasury overseers, granary overseers, and the overseers of cattle.[88] The "overseer of fields" was one such important official in charge of land survey and land assessment or cadastral rights.[89] The vizier, who may even have been ultimately responsible for the temples,[90] is thus virtually in charge of the entire state bureaucracy in Egypt.[91]

2.3.1.3.2 The vizier took a special interest in the affairs of Deir el-Medina.[92] He directs the Tomb Robbery trials.[93] P. BM 10055 (= P. Salt 124), the detailed list of accusations against the chief of the work crew, *Pa-nb*, is addressed to the vizier.[94] He also appears in more modest situations. O. Nash 1, a record of the court trial of a woman accused of theft, seems to be the draft of a letter to the

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[83] Théodoridès, "Procedure . . .," 138.
[84] Van den Boorn, *Vizier* . . ., 161.
[85] Lorton, "King and the Law . . .," 56.
[86] Bierbrier, *Tomb-Builders* . . ., 107. So too O. DeM 663 (petition to the vizier), Allam, *Hieratische Ostraka* . . ., 145. See also Allam, "Remarks . . ."; Théodoridès, "Mise . . .," 40.
[87] Hayes, *Papyrus* . . ., 143.
[88] Trigger et al., *Social History* . . ., 208.
[89] Van den Boorn, *Vizier* . . ., 156.
[90] Martin-Pardey, "Wesir," 6, col. 1230.
[91] Ibid.
[92] See McDowell, *Jurisdiction* . . ., 10; Eyre, Employment . . ., 109–24. The vizier even concerns himself with kilts belonging to the temple of Horemheb and to some anonymous necropolis scribe (Wente, *Letters* . . ., 219).
[93] See Capart, "New Light . . .," 171.
[94] Allam, *Hieratische Ostraka* . . ., 287. See also Théodoridès, "Dénonciation . . .," 58; Peet, *Tomb-Robberies* . . ., 16–18.

vizier.[95] In P. Turin 2021 (Twentieth Dynasty) a marriage settlement between two rather "middle-class" individuals is drawn up in the presence of the vizier.[96]

2.3.1.3.3 One turns to the vizier for instruction in especially complicated legal cases.[97] In P. Turin 2071/224+1960, the servant of the Great Court of the City (= Thebes) acts as an intermediary between the officials of Deir el-Medina and the vizier himself, who dispatches through him a letter of instruction regarding a case.[98] In O. Toronto A 11, a chief of police in Thebes communicates directly with the vizier.[99] The vizier confirms the court decision in the Will of Senimose.[100]

2.3.1.3.4 The vizier was not all-powerful and not always able to deliver a final judgment. In particularly serious cases, such as the Tomb Robberies, he too may depend on a royal verdict. The vizier might institute the proceedings, conduct the investigations, and make a report to the king. However, in Théodoridès's view, the pharaoh ultimately pronounced the penalty.[101] The vizier may have been empowered to pardon or amend sentences in certain cases. In O. Berlin 12654, the court has condemned a man to quarry work "until the vizier is gracious to him."[102]

2.3.1.4 Oral or written messages within the bureaucracy were conveyed by "followers" (*šmsw*)[103] or "messengers" (*wpwtyw*) dispatched by the vizier or other officials.[104] "Scribes of the vizier" are prominent in Deir el-Medina legal cases.[105]

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[95] McDowell, *Jurisdiction* . . ., 157. See Allam, *Hieratische Ostraka* . . ., 214–17.
[96] Černý and Peet, "Marriage Settlement . . ."
[97] Van den Boorn, *Vizier* . . ., 278.
[98] Allam, *Hieratische Ostraka* . . ., 329. So too P. Turin 2072/142, Allam, *Hieratische Ostraka* . . ., 330.
[99] Wente, *Letters* . . ., 46.
[100] Spalinger, "Will . . .," 639.
[101] Théodoridès, "Concept of Law . . .," 312.
[102] Allam, *Hieratische Ostraka* . . ., 36; Théodoridès, "De la 'grace' vizirale . . ."
[103] Vittmann, *Elephantine* . . ., 49.
[104] Trigger et al. *Social History* . . ., 215. On the role of the messengers in the Duties of the Vizier, see Valloggia, *Recherches* . . ., 220–27.
[105] McDowell, *Jurisdiction* . . ., 76–85.

2.3.2 *Provincial Administration*

Each of the administrative districts or *nomes* had a provincial capital, where the local administration was based.[106] Nomarchs wielding independent power as in the time of the Middle Kingdom have been abolished.[107] Throughout the districts were towns, villages, and settlements. Many of these would have *qenbets*, councils probably responsible for both administrative and judicial matters.[108] In the village of Deir el-Medina, "superiors" (*ḫry.w*) are mentioned, who seem to function as intermediaries between the town and the agents of central power.[109]

The Nauri Decree of Seti I (in Nubia) illustrates the wide range of officials to which such an edict might be addressed, beginning apparently with the most important and concluding with the least:[110] vizier, magistrates (*sr.w*), courtiers, councils of hearers (the courts), viceroy of Kush (chief military officer), commandants, superintendents of gold (Nubia being the gold-producing region), mayors of towns (civil authorities), controller of Bedawi camps (local nomadic populations in the area), charioteers, stable chiefs, standard bearers, and, finally, every agent of the king's estate.

2.3.3 *Local Government*

The local administration of the early New Kingdom distinguished between the urban/town centers, under the charge of "mayors" (*ḥ3ty-ʿ*)[111] or "rulers of manors" (*ḥq3.w-ḥ.wt*)[112] and rural areas (designated *w*-districts)[113] in the charge of "overseer(s) of the district" (*imy-r-w*) and "councils of the *w*-district" (*qnb.wt w*).[114] Mayors apparently could reopen court cases, as is shown by an early New Kingdom inscription (Seventeenth Dynasty).[115] Legal documents might be drawn up in the office of the mayor.[116] In the Horemheb Decree, mayors

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[106] Trigger et al. *Social History* . . ., 213.
[107] Fischer, "Gaufürst," col. 408.
[108] Edgerton, "Government . . .," 155–56.
[109] Allam, "La vie municipale . . .," 2. Černý, *Community* . . ., 130–31.
[110] See Edgerton, "Nauri . . .," 220–21.
[111] Murnane, "Organization . . .," 193; Eyre, Employment . . ., 135–38; Théodoridès, "Procedure . . .," 140; Allam, "*Quenebete* . . .," 47; Katary, *Land* . . ., 207.
[112] They were responsible to the vizier, being charged with coordinating with the local government (Van den Boorn, *Vizier* . . ., 107).
[113] Ibid., 174.
[114] Ibid., 174, 108, 110.
[115] Lorton, "Treatment . . .," 23, n. 107.
[116] Helck, "Bürgermeister," 1, col. 876.

are members of the *qenbet* courts.[117] A herald still appears in such texts as P. Berlin 10470, just as in the Middle Kingdom,[118] although the office of the local herald (*wḥm.w*) has been abolished.[119] Royal butlers (*wb3*) are often dispatched from the Residence on special commissions of the king.[120] Occasionally, local officials seem to deal with minor infractions outside of the court system.[121]

2.3.3.1 On a very local level, gatekeepers are significant officials, quite visible, at least in Deir el-Medina, where they frequently appear in legal proceedings.[122] Persons flee to the "place of the gatekeepers" in order to swear an oath (e.g., P. Salt 124). The gatekeepers could collect debts, risking a beating by enraged losers of legal disputes.[123]

2.3.3.2 The old title "eldest one of the gate" (*smsw h3y.t*), possibly endowed with legal functions, still appears in the New Kingdom.[124]

2.3.3.3 The elaborate temple bureaucracy also became involved in legal matters. Important temples had *qenbet* councils or courts, which were also ultimately under the control of the vizier, and operated hardly differently from the "secular" courts.[125] In Cairo 30770 (Seventeenth Dynasty) the temple authorities, namely, scribes holding responsible positions, for example, "scribe of the God's Treasury," investigate the theft of valuable religious objects.[126]

2.3.3.4 The institution of police responsible for public order, as distinguished from the military proper,[127] is fairly well attested. As chief legal officer in the land, the vizier supervised the police.[128] In the

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[117] Kruchten, *Horemheb* . . ., 156 (but based on restoration).
[118] Théodoridès, "Procedure . . .," 138.
[119] Helck, "Landesverwaltung," col. 921.
[120] Schmitz, "Truchsess."
[121] McDowell, *Jurisdiction* . . ., 201–2.
[122] On *iry-ʿ3*, "gatekeepers," see McDowell, *Jurisdiction* . . ., 41–46; Černý, *Community* . . ., 161–73.
[123] McDowell, *Jurisdiction* . . ., 45; Allam, *Hieratische Ostraka* . . ., 207.
[124] Römer, "Handel . . .," 278; Meeks, "Donations . . .," 648.
[125] Allam, "Zur Tempelgerichtbarkeit . . .," 3. See also Allam, "Egyptian Law Courts . . .," 110–11.
[126] See Janssen, *Village* . . ., 29–33.
[127] Trigger et al. *Social History* . . ., 215. For terms designating police, see Andreu, "Titres . . ."; Andreu, "Policiers . . ." For police, see also Wente, "A Goat for an Ailing Woman," 858–59.
[128] Van den Boorn, *Vizier* . . ., 43.

New Kingdom there is a basic change in the police bureaucracy. The Medjay,[129] Nubians organized in quasi-military troops, assume police functions in both towns and in the desert.[130] In O. DeM 558 a policeman is apparently charged with bringing a reluctant defendant to court.[131] The *s3-pr* is no longer attested in the New Kingdom, his place being taken by the "gatekeeper" (*iry-ʿ3*) and Medjay.[132] The "superiors" (*ḫry.w*), already mentioned above, also play a role as police[133] and judges in Deir el-Medina.[134]

2.4 *Courts*

2.4.1 In the New Kingdom there were great courts (*qnb.wt ʿ3.wt*) in the national capitals and chief cities (such as Memphis, Thebes,[135] and Heliopolis), the members of which are drawn from the highest levels of the temple or state.[136] They could issue orders to lesser local courts,[137] and also apparently had administrative functions.[138] In the Horemheb Decree, a *qenbet* is said to comprise prophets, mayors, and priests (*ḥm-ntr, ḥ3ty-ʿ, wʿb*).[139] The common term for a court in the Old and Middle Kingdoms, *djadjat*, appears infrequently in the New Kingdom.[140] The designation "Thirty" (*Mʿb.t*) is occasionally employed for a type of court.[141]

2.4.2 The composition of the court in the legal case of Messuia is priestly. The members of that court are referred to in the text as

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[129] See McDowell, *Jurisdiction* . . ., 51; Černý, *Community* . . ., 261–84. Cf. Wente, *Letters* . . ., 183; Jansen-Winkeln, "Plünderung . . .," 72–73.
[130] Andreu, "Polizei," col. 1070.
[131] Allam, *Hieratische Ostraka* . . ., 131.
[132] Andreu, "Sobek . . .," 4.
[133] Allam, "La vie municipale . . .," 14.
[134] Ibid., 15.
[135] See Allam, "Gerichtsbarkeit," col. 550. The "Great Court of Thebes" is last attested in the Twenty-fifth Dynasty; see Malinine, "Un jugement . . .," 175.
[136] Allam, "Egyptian Law Courts . . .," 111. On the *qnb.t ʿ3.t*, see Allam, "Papyrus Turin 2021," 24, 32–33.
[137] Allam, "Egyptian Law Courts . . .," 111.
[138] Allam, "*Quenebete* . . .," 35, and "L'administration . . ."; Eyre, "Strike . . .," 80; Toivari, "Man versus Woman . . .," 160–62. But cf. McDowell, *Jurisdiction* . . ., 143.
[139] Allam, "Zur Tempelgerichtbarkeit . . .," 1. For the Horemheb Decree and the *qenbet* courts, see Allam, "*Quenebete* . . .," 50–51.
[140] Lurje, *Studien* . . ., 63.
[141] Wente, *Letters* . . ., 46.

"the people of the town who heard the matter."[142] In P. Gurob II, 2, the court (council of judges of the Temple of Osiris) is composed of four priests and one military man.[143] The *ḥwtyw* of Deir el-Medina could act as judges with the power to punish subordinates.[144]

2.4.3 The best known local *qenbet* court is from Deir el-Medina.[145] The *qenbet* comprised between eight and fourteen relatively high-status persons in the village.[146] These were generally the work foremen, deputies, and scribes but on occasion even less distinguished townspeople.[147] They would all then be designated the "magistrates" (*sr.w*, lit., "nobles").[148] In O. DeM 225, the court consists of two scribes and two police officials,[149] while in O. Gardiner 53 it had four representatives of the "Interior" and four representatives of the harbor.[150] The *qenbet* held its meetings outside, quite possibly in public. They met on rest days or perhaps during the night after work.[151] Very rarely, it seems, did members take time off from work for court.[152] The texts often list the names of the members of a council under the heading "the council of this date," implying that the membership changed daily.[153]

Occasionally, no court was formed, but a single individual was charged with dealing with a particular case.[154] Indeed, a legal dispute was most simply solved by consulting a single local official in a form of arbitration, thus avoiding the court altogether.[155] There was usually a local judge for local cases, but in serious situations, outside officials might be called in.[156]

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[142] Gardiner, "Four Papyri . . .," 36. See also Gaballa, *Tomb-chapel* . . ., 27 (on the court of Mes).
[143] Gardiner, "Four Papyri . . .," 38.
[144] McDowell, *Jurisdiction* . . ., 146.
[145] See esp. ibid., 143–86. Cf. also Allam, *Hieratische Ostraka* . . ., 38.
[146] Allam, "Egyptian Law Courts . . .," 110. Cf. also Lurje, *Studien* . . ., 55; Kruchten, *Horemheb* . . ., 157.
[147] Bierbrier, *Tomb-Builders* . . ., 103.
[148] So Théodoridès, "Concept of Law . . .," 312; McDowell, *Jurisdiction* . . ., 65–69.
[149] Allam, *Hieratische Ostraka* . . ., 106.
[150] Ibid., 158–59.
[151] Bierbrier, *Tomb-builders* . . ., 103.
[152] Vleeming, *Gleanings* . . ., 189. See also McDowell, *Jurisdiction* . . ., 149–51.
[153] Edgerton, "Government . . .," 156.
[154] Allam, "Legal Aspects . . .," 138.
[155] But see McDowell, *Jurisdiction* . . ., 176, who holds that a clear verdict was indeed the aim of such courts.
[156] Allam, "Legal Aspects . . .," 142.

2.4.3.1 The court was also where private individuals registered or confirmed transactions and declarations concerning immovables, deeds of gift or property divisions,[157] and rights of inheritance or family.[158]

2.4.4 Because of the seriousness of the case, the Tomb Robbery suspects were not interrogated in the local *qenbet* of Deir el-Medina.[159] Not only the vizier but also the high priest of Amun took part. The Tomb Robbery documents reveal the very close connection between the local scribes and the central administration.[160] In case of any irregularities or need, these local scribes could report directly to the vizier.[161]

2.4.5 The precise nature of the court or committee investigating the Harem Conspiracy is unclear. It may well have been a special court.[162]

Scholars disagree on the enforcement power of such local courts as those in Deir el-Medina.[163] Allam, for example, thinks that they had no very great authority and would try first to reach a compromise,[164] while Janssen suggests that a real de facto power (on the basis of custom, *hp*) over the disputants existed.[165] The local courts did not indeed seem to have much formal power of compulsion, although the force of peer pressure on the losers of a court case should perhaps not be underestimated.[166]

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[157] Bierbrier, *Tomb-builders* . . ., 104.

[158] Allam, "Egyptian Law Courts . . .," 111.

[159] On the composition of the court for the tomb robbery cases, see Peet, *Tomb-Robberies* . . ., 18–20. The cases involving tomb robbery, harem conspiracy, and temple theft are examples of state investigations forming a special class of trial. They are not conducted in a *qenbet* court, but rather in a *s.t smtr*, "a place of interrogation"; see Boochs, "Strafverfahren . . .," 22.

[160] See also McDowell, *Jurisdiction* . . ., 189–200.

[161] Allam, "Egyptian Law Courts . . .," 113–14. See McDowell, *Jurisdiction* . . ., 192.

[162] See Lurje, *Studien* . . ., 68–72; Peet, *Tomb-Robberies* . . ., 25–27; Lorton, "Treatment . . .," 29–30; Théodoridès, "Concept of Law . . .," 313; Weber, "Harimverschwörung," col. 989.

[163] See Eyre, "Crime . . .," 102; McDowell, *Jurisdiction* . . ., 179–82; Théodoridès, "Grace . . .," 235.

[164] Allam, "Legal Aspects . . .," 142.

[165] Janssen, "Rules . . .," col. 295; Eyre, "Crime . . .," 102–3.

[166] McDowell, *Jurisdiction* . . ., 117; Lorton, "Legal and Social Institutions . . .," 357.

Sometimes an offender is repeatedly brought up on the same charge, as happens to an adulterer.[167] In O. Gardiner 53, a man is said to have been taken to court four times regarding compensation for a dead donkey.[168] In the very few cases wherein a person was condemned to death, the court could not carry this sentence out on its own responsibility. Such punishments and cases went to the vizier for his judgment.[169]

2.4.6 The gathering and evaluation of the evidence might be distinguished from the final sentencing, the two functions sometimes being carried out by separate authorities.[170] When, however, the matter concerned the state or temple, the judicial tribunal, the *qenbet* itself, combined the functions of investigator, prosecutor, and judge.[171] Sometimes the courts take an active part in the investigation. The length of a court case naturally varied. In O. Cairo 25556, the case seems to be resolved within one day.[172]

2.4.7 Since the members of a *qenbet* probably had no special knowledge of legal formulae, experienced professional scribes may have been assigned to the courts.[173] Such local scribes possibly represented the vizier, who had ultimate control over the town or temple courts. The Great *Qenbet* in the capital, presided over by the vizier, was possibly supervised by a royal scribe representing the king,[174] and not by a local scribe. It is a scribe who carries out the instructions of the vizier in O. Nash 1,[175] while in O. DeM 73, a scribe is sole

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[167] Lorton, "Treatment . . .," 38–39.

[168] Allam, *Hieratische Ostraka* . . ., 158–59; Théodoridès, "Notion . . .," 779–80. See also Janssen, "Proceedings . . .," 295.

[169] Bierbrier, *Tomb-builders* . . ., 106.

[170] Lorton, "Treatment . . .," 29. "In criminal cases authority for the examination of a case was distinct from authority to pass judgment" (Théodoridès, "Concept of Law . . .," 313).

[171] Lorton, "Legal and Social Institutions . . .," 356. O. Deir el-Medina 126 (Wente, *Letters* . . ., 143) preserves an interesting case of investigation following a death. See also Green, "The Passing of Harmose . . ."; Allam, *Hieratische Ostraka* . . ., 277–80.

[172] So Allam, *Verfahrensrecht*, 48, and *Hieratische Ostraka* . . ., 61–63.

[173] Allam, "Egyptian Law Courts . . .," 112. But cf. Janssen, "Rules . . .," col. 295. See further Allam, "Aspects . . .," 138; Peet, *Tomb-Robberies* . . ., 139; Černý, *Community* . . ., esp. 228; McDowell, *Jurisdiction* . . ., 69–89, 212–19.

[174] Allam, "Egyptian Law Courts . . .," 114–15.

[175] On O. Nash 1, see Parant, "Recherches . . .," 34–36.

judge in a dispute concerning a donkey.[176] A "scribe of the mat," whose function is obscure, appears rather often in New Kingdom texts.[177] In the Deir el-Medina texts, scribes sometimes serve as middlemen. In O. Berlin 10629, for example, a daughter declares that her father had presented to her certain objects, and that "it was the scribe PN who gave them to me."[178] The Royal Scribe intervenes on behalf of one party in the Mes case and plays a significant role in collecting evidence.[179]

2.4.7.1 The *qenbet* courts had other subordinates to execute their directives.[180] An "officer of the court" made known the shares to the descendents of Neshi in the Mes affair.[181] So, too, in O. Gardiner 67, there is the "apparitor of the court,"[182] who could confiscate property in its name. Allam also mentions an "attendant of the court" (*šmsw n qnb.t*), who is authorized to carry out house searches or seizure of goods.[183]

2.4.8 Justice was often apparently administered at a gate, forecourt, or portico, presumably of a temple.[184] Indeed, one well-attested term for "judge," *wḏꜥ-ryt*, seems to mean "one who judges at the gate."[185] There is little specific textual or archaeological evidence for courthouses.[186] The "enclosure/fortress (*ḫtm*) of the tomb" often appears in the Deir el-Medina texts. McDowell has suggested that this enclosure, not yet archaeologically identified, may be assumed to have been where the court often met, even if not explicitly mentioned.[187]

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[176] Allam, *Hieratische Ostraka* . . ., 88–89, 228, and *Verfahrensrecht* . . ., 105.

[177] See Allam, "Papyrus Turin 2021"; Van den Boorn, *Vizier* . . ., 159; Gabella, *Tomb-chapel* . . ., 27.

[178] Allam, *Hieratische Ostraka* . . ., 28.

[179] Allam, "Remarks . . .," 109.

[180] See Allam, "*Quenebete* . . .," 37–38. See also McDowell, *Jurisdiction* . . ., 216–19. For other minor officials sometimes involved in legal matters in Deir el-Medina, see Černý, *Community* . . ., 245–48, and McDowell, *Jurisdiction* . . ., 47–49, 55–65.

[181] Gaballa, *Tomb-chapel* . . ., 22.

[182] Allam, *Hieratische Ostraka* . . ., 166.

[183] O. IFAO 1277, in Allam, *Hieratische Ostraka* . . ., 196–97; O. Nash 1, ibid., 215; Allam, "Egyptian Law Courts . . .," 110; McDowell, *Jurisdiction* . . ., 49–51.

[184] Van den Boorn, "*Wḏꜥ-ryt*," 13; Helck, "Der Papyrus Berlin P 3047," 65–66; Lurje, *Studien* . . ., 81–82; Théodoridès, "Jugement . . ."

[185] Van den Boorn, "*Wḏꜥ-ryt*."

[186] P. Turin 1977, Wente, *Letters* . . ., 46. The legal case of Mes mentions, e.g., a "Hall of Judgment of the Pharaoh"; see Gaballa, *Tomb-chapel* . . ., 22–25.

[187] McDowell, *Jurisdiction* . . ., 93–105. See also Janssen, *Village Varia* . . ., 4–5.

The "riverbank" in Deir el-Medina is perhaps where interrogations are conducted,[188] while in the trials of the tomb robbers, the examinations are carried out in "the treasury of the house of Montu."[189]

2.4.9 According to the Duties of the Vizier, the names of guilty officials, together with their crimes, were entered on "criminal registers" kept in the "Great Prison."[190] P. Leopold mentions the *šʿr*, a prison or jail in the Temple of Amun.[191]

3. Litigation

3.1 *Parties*

Occasionally, as in the Duties of the Vizier, there is an awareness of the relative status or position of parties in a legal conflict.[192] Some lower status people did indeed bring suits against higher status people,[193] but as McDowell observes, this was a relatively rare phenomenon.[194] Penalties do not seem to be differentiated on the basis of status.[195] Women appear in legal proceedings, with no discernible disadvantage. Scholars have suggested that the poorer classes, disenchanted with the secular courts, turned to the oracles, which become popular in the later New Kingdom. However, this theory is not necessarily supported by the evidence.[196] Sometimes, "agents" (*rwḏ.w*) are apparently authorized to represent others in court situations.[197] There are no cases in which slaves are litigants.

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[188] McDowell, *Jurisdiction* . . ., 219–23.
[189] See Capart, "New Light . . .," 171.
[190] Van den Boorn, *Vizier* . . ., 124, 337. This probably descibes Middle Kingdom and not New Kingdom practice.
[191] Capart, "New Light . . .," 183.
[192] Van den Boorn, *Vizier* . . ., 278.
[193] McDowell, *Jurisdiction* . . ., 116. Cf. Tovari, "Man versus Woman . . .," 164; Glanville, "Letters . . .," 305.
[194] McDowell, *Jurisdiction* . . ., 117, 151–54. Cf. also Janssen, "Rules . . .," col. 296.
[195] Lorton, "Treatment . . .," 47.
[196] McDowell, *Jurisdiction*, 117.
[197] Kruchten, "Gestion . . ."; see Vleeming, *Papyrus Reinhardt* . . ., 58, on *rwḏ.w*. See also Boochs, "Vertreter . . .," col. 1020–21, Menu, "L'assistance judiciaire . . ."

3.2 *Procedure*

3.2.1 In private law, it was probably the responsibility of the injured party to bring the issue to court.[198] There may have been a first attempt at arbitration before an actual court process.[199] Many details of court administration are unknown.[200] Seidl claims that the court case begins with a written complaint, as in the Old and Middle Kingdoms. In the Court-case of Mes, there is a written complaint and rebuttal.[201] Court procedures could be conducted orally, with the plaintiff and defendant giving their own free-form[202] statements of the case (e.g., O. Cairo 25556).[203] The Mesuia case seems to be a *procès-verbal* in a civil lawsuit, the subdivisions being as follows:

1. introduction (date etc.)
2. speech of the plaintiff *Mesuia*
3. speech of the defendant (*H3.t*), comprising a deposition and an oath
4. verdict in favour of *Mesuia*
5. a list of the judges, persons present, and the name of the scribe."[204]

The depositions are verbal.[205]

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[198] But compare Allam, "Recht," col. 184. See further Allam, "Legal Aspects . . .," 141; Théodoridès, "Dénonciation . . .," 15; Eyre, "Crime . . .," 93. McDowell, *Jurisdiction* . . ., 248–49, proposes that these might have been resolved by self-help. In O. DeM 592, a man proposes to take the matter of an unpaid debt to a commissioner of the pharaoh and the court; see Allam, *Hieratische Ostraka* . . ., 141, and *Verfahrensrecht* . . ., 23. In P. Turin 1880, a scribe threatens to take the work crew to court. This is, however, not a private, but a state matter; see Allam, *Hieratische Ostraka* . . ., 310, and *Verfahrensrecht* . . ., 23.

[199] In O. Staring, Brussels, a man apparently attempts to resolve a conflict with his brother before it reaches the stage of a court case; see Allam, *Hieratische Ostraka* . . ., 247, *Verfahrensrecht* . . ., 22, and "Legal Aspects . . .," 141. So too in O. Berlin 12630, a man seeks to recover a debt without yet going to court; see Allam, *Hieratische Ostraka* . . ., 35, and *Verfahrensrecht* . . ., 22. On *qenbet* procedure, see McDowell, *Jurisdiction* . . ., 165–70.

[200] Cf. Allam, *Hieratische Ostraka* . . ., 58, 63, and *Verfahrensrecht* . . ., 55, 58. See also Vittmann, *Elephantine* . . ., 49. See also Théodoridès, "Dénonciation . . .," 59, on P. Salt 124.

[201] Seidl, *Einführung* . . ., 35.

[202] Allam, *Verfahrensrecht* . . ., 58.

[203] Allam, *Hieratische Ostraka* . . ., 62.

[204] So Gardiner (with a few omissions), "Four Papyri . . .," 41.

[205] McDowell, *Jurisdiction* . . ., 18–21, discusses the expressions of saying, speaking employed (e.g., *ḏd, r, mdw*).

3.2.2 Lawyers, that is, professional advocates for a defendant, are not attested in ancient Egypt.[206] There are a few examples of third party individuals pleading the case of accused persons.[207] In O. DeM. 558, an artist apparently entrusts a third party with the mission of bringing his opponent to court.[208]

3.2.3 The court could question the parties and send servants of the court to obtain relevant documents. An order could be issued by an official to "bring" somebody (to court?).[209] The court has the authority to dispatch an investigator. The power of such investigators as the "servant of the court" is not well defined, but they do seem to be able to interrogate persons and to confiscate items on behalf of the court. In O. Nash 1, the court interrogates the accused, imposes an oath on her and dispatches an investigator to search her premises before pronouncing its verdict.[210]

3.2.4 The court concluded a session by declaring its verdict ("in the right is PN; in the wrong is PN")[211] and, generally, the course of action to be followed by the convicted person. The decisions and sentencing of courts were not always unanimous. One *qenbet* member dissents, for example, from his colleagues in the adultery case of P. DeM 27.[212] The defeated party in a court case concerning a contract had to take an oath of obligation.[213] In some cases there does not seem to be an explicit verdict, but the weaker party swears that he or she will fulfill any obligations due an opponent.[214]

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[206] Lorton, "Treatment . . .," 4, and "Legal and Social Institutions . . .," 355.

[207] On *rwḏ.w*, "agents," see, e.g., Théodoridès, "Jugement . . .," 29–30, and "Mise . . .," 36.

[208] Allam, *Hieratische Ostraka* . . ., 131, and *Verfahrensrecht* . . ., 21.

[209] Vittmann, *Elephantine* . . ., 49.

[210] Allam, *Hieratische Ostraka* . . ., 214–15.

[211] E.g., O. Gardiner 165, Allam, *Hieratische Ostraka* . . ., 183.

[212] Allam, *Hieratische Ostraka* . . ., 301–2, and *Verfahrensrecht* . . ., 34.

[213] Kaplony, "Eid," col. 1191. On the verdict, see McDowell, *Jurisdiction* . . ., 22–25.

[214] Allam, "Legal Aspects . . .," 139. Cf. Janssen and Pestman, "Bulaq X . . .," 143.

3.2.5 Legal precedent is cited in P. Bulaq X[215] and O. Nash 1. The writer of the letter in O. Nash 1 urges the vizier to impose a harsh punishment,[216] directing his attention to a similar case from the past.

3.2.6 Not all court cases are actual conflicts. The so-called "Scheinprozess" ("fictitious suit") has as its purpose not litigation but rather the confirmation of a transaction or agreement in court.[217]

3.2.7 There is no formal system of appeal, but it was certainly possible to take a case to a "higher" court.[218] One could set aside earlier decisions, as Mes does, for his side had lost the case before, apparently because of forged documents. Appeals seem sometimes to be brought by the winners in order to enforce a decision in their favor and not by the losers in order to gain justice.

3.2.8 Boochs differentiates between criminal acts against individuals and those against the state.[219] While in normal cases, the enforcement capabilities of the judge might be problematic,[220] in government cases, the state and its officials certainly had that power.[221] In the Harem Conspiracy Case, the god himself seems to ordain the punishment: "And there were done to him the great punishments of death which the gods said: 'Do them to him.'"[222]

3.2.9 In the New Kingdom, especially in association with state investigations, torture was a means for obtaining information and confessions.[223] Torture (by the stick, the birch, and the screw) was probably employed in eliciting the statements in the tomb robbery papyri.

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[215] Janssen and Pestman, "Bulaq X . . .," 139–40, 142.
[216] Allam, *Hieratische Ostraka* . . ., 215.
[217] Théodoridès, "Procès . . .," 84–85; Seidl, "Neue Urkunde . . .," 52.
[218] McDowell, *Jurisdiction* . . ., 183–86; Lorton, "Treatment . . .," 23. See also Seidl, *Einführung* . . ., 38; Théodoridès, "Concept of Law . . .," 310.
[219] Boochs, *Strafrechtliche Aspekte* . . ., 8. Cf. McDowell, *Jurisdiction* . . ., 247; Janssen, "Proceedings . . .," 294.
[220] See McDowell, *Jurisdiction* . . ., 170–79.
[221] Boochs, "Strafverfahren . . ."
[222] Ritner, *Practice* . . ., 198.
[223] Lorton, "Legal and Social Institutions . . .," 356; Van den Boorn, *Vizier* . . ., 85–86.

3.3 *Evidence*[224]

3.3.1 *Witnesses*

Witnesses (either male or, less commonly, female)[225] are extremely important in Egyptian law.[226] In the Legal Text of Mes, for example, witnesses are brought to declare that the plaintiff is in fact descended from the original owner of the land.[227] Hostile witnesses against defendants play an essential role in criminal law.[228] In P. Cairo 65739, the woman must swear that she will be liable to punishment if witnesses are found declaring that she has stolen property.[229] In O. Cairo 25556, the four witnesses concerning blasphemy against the king apparently withdraw their initial statement and are punished with one hundred blows.[230] One could be obligated by an oath to report crimes witnessed.[231]

3.3.2 *Documents*[232]

3.3.2.1 The safeguards of recording, registration, and archiving were apparently valued in New Kingdom Egypt.[233] Strong evidence for official archives exists in the early New Kingdom. The will in the *Stèle juridique* ends with a witness list and a docket noting that a copy of the original document was stored in the bureau (*ḫ3*) of the herald/reporter (*wḥm.w*) of the Northern Waret ("administrative sector").[234] The Legal Text of Mes demonstrates the ability to resort to archives

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[224] On proof and registration in the New Kingdom, see Pirenne, "Preuve . . .," 29–36. Cf., e.g., Gardiner, "Four Papyri . . .," 41–42.

[225] Seidl, *Einführung* . . ., 43. See, e.g., Gardiner, "Four Papyri . . .," 32; Allam, *Hieratische Ostraka* . . ., 89–91, 217–19; Capart, "New Light . . .," 172.

[226] On the basic term for witness, *mtr*, see McDowell, *Jurisdiction* . . ., 21–22.

[227] The Legal Text of Mes comprises a series of testimonies; see Gaballa, *Tomb-chapel* . . ., 22–25.

[228] Judges confront witnesses (or suspects) with one another: "Let him who has accused me be brought" (Peet, *Tomb-Robberies* . . ., 24). Lorton, "Treatment . . .," 35, remarks on the difficulty of sometimes distinguishing between suspects and witnesses.

[229] Gardiner, "Lawsuit . . .," 142.

[230] Allam, *Hieratische Ostraka* . . ., 61–63, and *Verfahrensrecht* . . ., 107; McDowell, "Schijnproces en Egypte . . ."

[231] McDowell, *Jurisdiction* . . ., 209–12.

[232] On the writing of a document being the exception and not the rule, see Eyre, "Adoption . . .," 209.

[233] See esp. Allam, "Publizität . . .," 33; Eyre, Employment . . ., 13–14.

[234] Lacau, *Stéle Juridique* . . ., 39–40.

preserving documents dating back centuries.[235] In that text, a court document from the reign of Horemheb is presented as evidence.[236] The later *Stèle de l'apanage* (end of tenth century) further illustrates how land ownership was recorded and relevant documents carefully preserved in the registers.[237] Documents prove or strengthen claims of ownership and were therefore conscientiously stored.[238] According to Allam many Deir el-Medina ostraca may derive from the official central archive in Deir el-Medina, a view not universally shared.[239]

3.3.2.2 In the case of Mes, a possibly forged or altered document is evidence against the plaintiff. This document is contested through witnesses attesting to the truth of his claim, supported too by earlier documents which strengthen the case as well.[240] Eyre emphasizes just how important the registers held by the Treasury and the Granary were in the case of Mes.[241] Since they did not contain the names of Mes's family, he was compelled to produce oral witnesses to prove that he was in fact a member of the family and to show to the judges that the registers were indeed incorrect.[242] The registers do not appear to have been conclusive evidence; they could be defeated by witness testimony.

3.3.2.3 Especially important documents, such as a will, might be drawn up in the presence of the court (e.g., the Will of Naunakhte).[243] In P. Turin 2021, the vizier's statement is to be recorded on a roll in the Temple of Ramesses II, where the man involved with the case in question was probably a priest.[244] The person recording that statement was "priest and scribe of accounts, Ptahemhab, of the *qen-*

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[235] McDowell, *Jurisdiction* . . ., 7; see also ibid., 126. On the court document cited in the Mes inscription, see Helck, *Akten* . . ., 115; Seidl, *Einführung* . . ., 46–47.

[236] Seidl, *Einführung* . . ., 26; Allam, *Hieratische Ostraka* . . ., 44, and *Verfahrensrecht* . . ., 92.

[237] Allam, "Publizität . . .," 37, 41.

[238] Allam, *Verfahrensrecht* . . ., 61–62 (P. Berlin 10496, Allam, *Hieratische Ostraka* . . ., 278). Cf. also Vittmann, *Elephantine* . . ., 47.

[239] Janssen, "Rules . . .," cols. 295–96.

[240] Seidl, *Einführung* . . ., 36. See also Eyre, "Feudal Tenure . . .," 131–32; Allam, "Implications . . ."

[241] Eyre, "Peasants . . .," 385. The *Stèle juridique* may also refer to the search in the archives of the vizier's office (Théodoridès, "Mise . . .," 52).

[242] Eyre, "Feudal Tenure . . .," 131.

[243] Allam, *Hieratische Ostraka* . . ., 268, and *Verfahrensrecht* . . ., 62.

[244] Černý and Peet, "Marriage Settlement . . .," 33, 37.

bet court of the temple." Another copy was made for the "Great Court of Thebes," where the records of such property deeds were possibly stored from this area.[245]

Letters, although not apparently witnessed, may serve as a legal "testimony."[246]

3.3.3 *Oath*[247]

Wilson well describes an oath as a "solemn appeal to divine authority, a god, gods, or the pharaoh who was himself a god."[248] Common words for "oath" are *ʿrq*, meaning "to bind (oneself)" and *ʿnḫ*, "to live," this being the first word of a typical oath formula. A distinction is generally made between assertory or declaratory oaths, which confirm a statement, and promissory oaths, in which a promise is made concerning the future.[249] An example of a promissory oath is O. Petrie 67, wherein a man swears: "As Amun endures, as the ruler endures! If I let 10 days go by and have not given back this *mss*-clothing to PN, then it should be doubled against me."[250]

In practice, combinations of both types may appear in the same oath. Oaths can be taken in either a judicial setting, that is, before legal authorities in a court, or in non-judicial settings, that is, in the course of daily life.[251]

3.3.3.1 An oath could require a person to report the wrongdoings of others. Thus, in the Strike Papyrus, it is stated:[252] "That which the artisan Paankue said to the scribe Amennakht and the chief artisan Khonsu: 'You are my superiors, you are the controllers of the Tomb. Pharaoh, my good lord, has caused me to swear an oath that I will not hear a word nor will I see an evil deed (?) in the great and profound place of Pharaoh without reporting it.'"

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[245] Ibid., 33.

[246] See, e.g., *LRL* 30 (= Wente, *LRL*, 66) and *LRL* 32 (= Wente, *LRL*, 68).

[247] On terms for oaths, see McDowell, *Jurisdiction* . . ., 33–37. On oath formulae, see also Lurje, *Studien* . . ., 132–53.

[248] Wilson, "Oath . . .," 129. An oath "raises the stakes," as Eyre puts it, in that the accused invokes punishment upon his or her own head, and thus helps in enforcement ("Crime . . .," 103).

[249] For oaths made in connection with loans, see Menu, "Prêt . . .," 74.

[250] Allam, *Hieratische Ostraka* . . ., 244, and *Verfahrensrecht* . . ., 21.

[251] Wilson, "Oath . . .," 130. An oath is pronounced, for example, before the herald in the *Stèle juridique* . . ., Théodoridès, "Mise . . .," 40.

[252] Edgerton, "Strikes . . .," 141.

He proceeds with a report of theft and seduction in the Valley of the Kings.

3.3.3.2 Oaths could be sworn in numerous places, including the "enclosure" (*ḥtm*) of Deir el-Medina and, especially, in the temple forecourts. An example is: "If you do not find him, you shall seek out those people to whom *Ankhef* shall tell you to administer an oath, and you shall take them to the forecourt of their god so they can swear by him (the god)."[253]

3.3.3.3 According to Diodorus Siculus, a man who has borrowed money, without any written documentation of the loan, may clear himself of the charge of delinquency by taking an oath that he owed nothing. This innovation he attributed to Pharaoh Bocchoris.[254] While Seidl believed that such purgatory oaths in fact existed in New Kingdom Egypt,[255] Malinine claimed that this view is based on faulty translations of the ostraca in question (O. Deir-el Med. 56 and 57).[256] He concludes that there was no such purgatory oath in Egypt.[257]

3.3.3.4 The plaintiff in O. Nash 1, having discovered his chisel missing, first asks all those concerned or suspected to swear an oath, asserting that they themselves had not taken the chisel. His next step was to approach the *qenbet* court. Presumably, the oath taking was an informal course of action initiated by the wronged person, which might or might not bring results. It seems that only after the oath administration does the court become actively involved.[258]

In O. Nash 1 nothing resulted from the pre-trial oaths at first. However, Nebefer reports that sometime afterward a woman came and declared: "The anger of god happened to me. I saw Herya take your chisel." This expression "the anger/wrath of god happened to me" appears in other Deir el-Medina texts.[259] In every case it seems

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[253] P. Strasbourg 39; Wente, *Letters* . . ., 206.
[254] Oldfather (tr.), *Diodorus Siculus*, 1, 271.
[255] See Malinine, "Notes juridiques . . ."
[256] See ibid., "Notes juridiques . . .," 107. See also Allam, *Hieratische Ostraka* . . ., 84, and "Abstandsurkunde . . .," 48.
[257] Malinine, "Notes juridiques . . .," 111.
[258] Allam, *Hieratische Ostraka* . . ., 214.
[259] E.g., Allam, *Hieratische Ostraka* . . ., 185. The nature of the divine manifestation varies. In some cases, a physical illness or sickness afflicts the guilty person.

to indicate a manifestation of a god to a person who has in some way been sacrilegious and sinned. The most usual cause of such divine anger is perjury.

3.3.3.5 The Tomb Robbery papyri provide much information concerning perjury. Each witness took an oath concerning false witness, declaring: "If I speak falsehood, may I be mutilated and sent to Kush."[260]

3.3.3.6 The royal oath was often sworn in court, while the divine oath is taken in private situations.[261] Papyrus Lee begins where one of the defendants has been accused of breaking a particularly powerful royal oath of obedience by giving a "magical roll" (?) to a conspirator.

3.3.3.7 A subordinate could be released from his service, in which case he might be freed from his oath in a court.[262] Inheritors might swear an oath regarding adherence to a settlement,[263] but wills do not, it seems, generally contain oaths.[264] The *sḏf3-try.t* has been interpreted as a "negative promissory oath," whereby one swears, for example, not to use one's office for treasonable or criminal purposes."[265]

3.3.4 *Ordeal*

There is no explicit evidence for the ordeal in New Kingdom Egypt.[266]

Thus, a person may become blind, and attribute this affliction to the god. In such a case, he or she may declare "The anger of god happened to me." O. Gardiner 166 contains a verbal statement to the court concerning a theft. A woman steals a cake. The thief returns, presumably with compensation for the theft, declaring "'A manifestation' (or 'the anger') of the god has happened to me." Her confession apparently brings the case to an end; there is no further record of action taken by the court. See, in general, Borghouts, "Divine Intervention . . ."

[260] Lorton, "Treatment . . .," 32–33.

[261] Kaplony, "Eid," col. 1189.

[262] See, e.g., P. Bologna 1094, 9,7–10.9, Junge, *Neuägyptisch* . . ., 258.

[263] Allam, "Familie . . .," 38.

[264] Théodoridès, "Le testament de Naunakhte . . .," 557.

[265] Baer, "Oath . . ." Cf. the negative promissory oath in connection with a sex case; Toivari, "Man versus Woman . . .," 164. See also Théodoridès, "Dénonciation . . .," 28–29; Eyre, Employment . . ., 100–8; McDowell, *Jurisdiction* . . ., 202–8.

[266] Allam, "Sur l'ordalie . . .", and "Legal Aspects . . .," 139–40. Pirenne, "Preuves . . .," 39, denies the existence of an ordeal.

4. Personal Status

4.1 *Citizenship*

While the Egyptians distinguished themselves from the inhabitants of other countries[267] and were keenly aware of rank and hierarchy among themselves, there are few explicit statements concerning citizenship in a legal sense.[268] Several terms, however, may possess legal connotations. Very common in the New Kingdom is *nmḥ*, generally translated "citizen" or "freeman/freewoman."[269] Often contrasted with *sr* "magistrate,"[270] it seems to designate a private individual with certain basic rights and privileges, although without much wealth or power. According to Eyre, the *nmḥ.w* were a class of people not dependent on any house, not clients of any higher official, and just dependent ultimately on the king: thus the full designation is "*nmḥ.w* of the land of the pharaoh."[271] He connects the class with royal grants of land in return for, usually, military service.[272] In the Will of Naunakhte, for example, the woman making the will declares that she is a "free woman (*nmḥ.t*) of the land of the pharaoh."[273] So, too, in the Adoption Papyrus the woman elevates her slaves to the status

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[267] The foreign lands, often portrayed as laboring for the pharaoh, are designated as "subjects," or "serfs" of the king. On foreigners or foreign countries as *nḏ.t* "subjects" of the pharaoh, see Lorton, *Juridical Terminology* . . ., 115–17; Bleiberg, "King's Privy Purse . . .," 160–61.

[268] Helck, *Wirtschaftsgeschichte* . . ., 217–25, distinguishes (1) state officials; (2) various occupations, such as herdsmen, farmers, craftsmen belonging to a temple (218); (3) settled soldiers, dependent on the king (218). See also Eyre, "Adoption . . .," 208.

[269] See the discussion of Harari, "La capacité . . .," 44–45; Gitton, "La résiliation," 86; Bakir, *Slavery* . . ., 48–52; Kruchten, *Horemheb* . . ., 32–33; Katary, *Land Tenure* . . ., 210–12 ("virtual owners of land"); Théodoridès, "Adoptions . . ."; Eyre, "Work . . .," 209.

[270] *Wb.* 2, 268/6. It seems to mean, etymologically, "one bereft of mother and father" (Bakir, *Slavery* . . ., 48). New Kingdom texts contain such statements as: "I am one orphaned (*nmḥ*) of mother and father" (Bakir, *Slavery* . . ., 48) and "As for the one who does not have a child, he takes for himself another, an orphan (*nmḥ*) whom he may raise." The orphan was possibly considered as one unencumbered by obligations or independent and thus acquired the specific meaning "free person" (Bakir, *Slavery* . . ., 50). Vittmann, *Elephantine* . . ., 59, states: "Mostly, it is understood as a 'private person,' 'private owner' (of small holdings) or also 'private possessor' . . . At any rate, they occupy a low social position."

[271] Eyre, "Work . . .," 209. See also Eyre, "Peasants . . .," 375, 377–78; Cruz-Uribe, "Slavery . . .," 52; Castle, "Shipping . . .," 248; Allam, "Zwei Schlussklauseln . . .," 18. Cf. Gutgesell, *Datierung* . . ., 568–70; Helck, *Wirtschaftsgeschichte* . . ., 220–21.

[272] Eyre, "Work . . .," 209.

[273] Černý, "Will of Naunakhte . . .," 31.

of *nmḥ.w*, "free persons" of the land of the pharaoh.[274] This change of status, initiated by the woman herself, enables them to inherit her property.

On the basis of the ability to alienate property and personal freedom, Allam separates New Kingdom society into "fully free persons" (*nmḥ*); less free (e.g., emancipated slaves or prisoners, who do not have unlimited ability to alienate property or personal mobility); serfs ("Hörige");[275] and slaves.[276] Still, as he emphasizes, these divisions are by no means water-tight.

4.1.1 The common New Kingdom phrase *ʿnḫ.t n Nw.t* ("living one of the city"), often rendered "citizeness,"[277] also seems to denote a free person of middling rank. It may replace a more usual title.

4.1.2 Foreign captives enjoyed widely varying levels of status, ranging from virtual slavery to that of military man or colonist with some independence.[278]

4.2 *Gender and Age*

While males appear more often in legal texts, there seem to be few explicit restrictions on the rights of women.[279] Women certainly act less frequently as witnesses, and there are scarcely any examples of female judges.[280]

Women could acquire and alienate property, and enjoy usufruct without visible limitations.[281] In P. Cairo 65739, women purchase

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[274] Gardiner, "Adoption Extraordinary," 24.

[275] On the condition of the peasants in the New Kingdom, see Eyre, "Work . . .," 207–8.

[276] "Bevölkerungsklassen," col. 774.

[277] Cf. Allam, *Hieratische Ostraka* . . ., 60; Janssen, *Village Varia* . . ., 82; Černý, "Will of Naunakhte . . .," 48; Janssen, "Economic History . . .," 144. See also Kruchten, *Horemheb* . . ., 133; Gasse, *Données* . . ., 47.

[278] Eyre, "Work . . .," 204. See also Eyre, "Crime . . .," 96; Bresciani, *Egyptians* . . ., 231; Spalinger, "Will of Senimose . . .," 638.

[279] See Johnson, "Legal Status . . ."; Harari, "Capacité . . .," 53–54. See further Allam, "Familie . . .," 25; Toivari, "Man versus Woman . . ."

[280] In O. Gardiner 150, two women are in the court; see Allam, *Hieratische Ostraka* . . ., 181, *Verfahrensrecht* . . ., 34, and "Legal Aspects . . .," 143; Toivari, "Man versus Woman . . .," 161. On the virtual absence of women as witnesses and scribes, see Harari, "Capacité . . .," 50. On a mythic level, Allam compares the role of the goddess Neith in the Tale of Horus and Seth ("Legal Aspects . . .," 138).

[281] See Pestman, *Marriage* . . ., 88; Eyre, "Market . . .," 178. See further Menu, "Women and Business Life . . ."; Eyre, "Adoption . . .," 220.

tombs and sell them as they please.[282] The Legal Text of Mes shows that law courts acknowledged women's rights to tenure of land, and illustrates the ability of a woman to initiate a court case. Women probably acquired property chiefly by inheritance but could extend their holdings by purchase. The Wilbour Papyrus shows that women also were liable to the same taxes and rent as men.[283] P. Cairo CG 58056 indicates that a woman could represent her husband in official or financial matters.[284] Nevertheless, despite such clear evidence that women enjoyed some legal and economic independence, Egyptian society as a whole was basically patriarchal in structure and dominated by men.[285]

Since women had legal responsibilities, they also sometimes appear as defendants in court regarding transactions which they had concluded[286] or possible involvement in criminal activities. The wives of the tomb robbers were brutally questioned. Their feet were twisted or they were beaten with the stick. They were compelled to swear an "oath by the lord" not to lie. Questioned as to how they came to acquire such possessions as silver or slaves, the women deny all knowledge of wrongdoing. As Johnson observes:

(a) The women state that their husbands did not inform them of details as to how they acquired the slaves.
(b) A wife of a gold-worker claims that she got the slave with money earned from garden produce or weaving cloth.

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[282] In a trial at Thebes, a soldier accuses a woman of using the property of another lady to purchase two slaves. A tomb is said to belong to a woman (= Gardiner, "Lawsuit . . ."). On women trafficking in slaves, see ibid., 140. In O. DeM 235, a woman successfully contends with three men concerning "the places" of her husband (Allam, *Hieratische Ostraka* . . ., 109). See also Allam, "Familie . . .," 27. On women active in transactions and as sellers, McDowell, "Agricultural Activity . . .," 198. On women in the marketplace, see Eyre, "Market . . .," and "Work . . .," 200.

[283] In P. Wilbour, about 10 percent of the land belongs to women (228 plots out of a total of 2110); see Johnson, "Legal Status . . .," 178. It should be emphasized that it is by no means clear just what the amounts mentioned in P. Wilbour are—taxes or yields—and to whom the amounts are to be given; see Vleeming, *Papyrus Reinhardt* . . ., 73.

[284] Allam, "Trois lettres . . .," 22. Cf. Allam, "Implications . . .," on a husband consulting his wife.

[285] Menu, "Business . . .," 205. See further, Whale, *Family* . . ., 273, on the practical difficulties of a woman exercising her own will in economic and legal matters,

[286] Johnson, "Legal Status . . .," 176, 178, but cf. Lorton, "Treatment . . .," 35. In O. Berlin 12630, a man seeks to recover from the wife a debt incurred by a husband; see Allam, *Hieratische Ostraka* . . ., 35, 106, and *Verfahrensrecht* . . ., 22.

(c) One woman declares that when her father learned that her husband was robbing the tombs, he forbade the thief to enter the father's home.[287]

4.3 *Slavery*

4.3.1 *Definition and Terminology*

As in the Old and Middle Kingdoms, it is often difficult to determine the degree of servile status of subordinate persons; some scholars therefore prefer to speak of "degrees of servitude."[288] *Ḥm* and *b3k*[289] are the two words most commonly rendered "slave," but Allam argues against their always having this meaning in the New Kingdom.[290] Eyre proposes that a more important distinction is that between office holders (*sr.w*) and the rest of society, that is, between administrators and workers.[291]

4.3.2 *Categories*

Slavery is better documented in the New Kingdom than in earlier periods in Egypt.[292] Numerous texts clearly attest to the buying and selling of slaves,[293] but its economic significance is also not clear.[294]

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[287] This may imply that the couple were living with her parents; see Johnson, "Legal Status . . .," 176.

[288] E.g., Allam, "Trois lettres . . .," 25. See also Helck, *Wirtschaftsgeschichte* . . ., 223; Cruz-Uribe, "Slavery . . .," 63.

[289] See Bakir, *Slavery* . . ., 18. *B3k ỉm*, "this servant" (lit. "the servant there"), is a standard term used by the writer of a letter when referring to himself.

[290] "Trois lettres . . .," 25–26. There is sometimes variation between *ḥm* and *b3k* in the same text; see Edwards, "Bankes . . .," 131.

[291] Eyre, "Work . . .," 204 and 211.

[292] Gardiner, e.g., says that the Messuia archive is very "welcome" evidence for the "prevalence of slavery in the 18th Dynasty," ("Four Papyri . . .," 43). He observes that no other earlier contracts of this kind are found and none after until the time of Taharqa. He is dubious about the existence of true slavery before this date, although servants were undoubtedly very dependent upon their masters. Especially in the New Kingdom all sorts of persons seem to have held slaves, including: herdsman, son of soldier, priests, king's barber, stable-master, charioteer, scribe in the place of truth, merchant, and sandal-maker, see Bakir, *Slavery* . . ., 99. On slavery, see further Janssen, "Economic History . . .," 171–73; Steinmann, "Sklavenarbeit . . ."; Théodoridès, "Procedure . . .," 146–54; Helck, *Wirtschaftsgeschichte* . . ., 222–25. For a list of documents recording legal cases associated with slavery, see Allam, *Hieratische Ostraka* . . ., 40. The Seventeenth Dynasty Stela of Emhab may mention the purchase of a (foreign) female slave; see Baines, "Emhab . . .," 46–47.

[293] Purchase of a female slave in Bankes Pap. I; see Edwards, "Bankes . . .," 127. Bakir, *Slavery* . . ., 70–71, lists several relevant texts but says that no sale contract from the Eighteenth Dynasty is known to him.

[294] Endesfelder, "Sklaven . . .," 24. Janssen, "Economic History . . .," 173. Cf. also Helck, *Wirtschaftsgeschichte* . . ., 223.

P. Cairo 65739 records a trial at Thebes wherein a soldier accuses a woman of using another lady's property to purchase two slaves.[295] P. Berlin 9784 may be an actual sale of a female slave, conducted before two witnesses.[296] Undisputable sale documents for slaves are known only from the much later Twenty-fifth to Twenty-seventh Dynasties.[297] In the New Kingdom the ownership of slaves by individuals was apparently more closely regulated than before.[298] Temples also possessed slaves, which could be protected by royal decree.[299]

Texts document court inquiries into questions of slave ownership. In P. Bologna 1086, a scribe reports on his investigation of a "Syrian" slave (?) previously assigned to be a cultivator of the Temple of Thoth.[300] He came originally from the "slaves of the ships' cargoes" that the superintendent of fortresses had brought back. There seems to be a dispute concerning his owner, which is being settled in the "Great Court."[301] In P. BM 10052, X, 14–20, there is an inquiry also into ownership: "The scribe Djehutymose said to her: 'How did you acquire these slaves (*b3k.w*) whom you bought?' She said 'I acquired them in exchange for crops from my garden.'"[302]

Communities may have held slaves in common, whose labor was then sold or hired.[303]

4.3.3 *Creation*

The aggressive foreign policy of New Kingdom pharaohs presumably resulted in an abundance of war captives who were put to work as slaves.[304] While a "citizen" might be punished by being set to work as a "cultivator" or in the "quarry," reduction to slavery is not explicitly mentioned, to my knowledge. Debt slavery or voluntary servitude is apparently not attested in the New Kingdom.[305] The children of slaves seem to have been regarded as slaves.[306]

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[295] See Pestman, *Marriage* . . ., 151; Théodoridès, "Procès relatif . . .," 76.
[296] Gardiner, "Four Papyri . . .," 32.
[297] Bakir, *Slavery* . . ., 71.
[298] Loprieno, *The Egyptians* . . ., 206–7.
[299] Bakir, *Slavery* . . ., 80.
[300] See Gardiner, "Ramesside Texts . . .," 21–22 (with remarks on the term for "cultivator," *iḫwty*).
[301] Bakir, *Slavery* . . ., 70. The translation is in Wente, *Letters* . . ., 125.
[302] Bakir, *Slavery* . . ., 70.
[303] Janssen, "Economic History . . .," 172; Eyre, "Work . . .," 210.
[304] See Bakir, *Slavery* . . ., 109–16. But see Janssen, "Economic History . . .," 172–73.
[305] See Bakir, *Slavery* . . ., 119–20.
[306] See ibid., 118. Bakir believes the offspring of a mixed marriage (free man/slave

4.3.4 *Treatment*

Little is known of the treatment of slaves in New Kingdom Egypt. Bakir has suggested that royal slaves, war captives, might be branded with the king's name.[307] Female slaves in Deir el-Medina may receive considerably fewer rations than ordinary workmen.[308] Slaves might be expected on occasion to pay substantial monetary penalties in case of conviction of theft, which suggests that they had financial means.[309] Slaves apparently own fields.[310] Slaves can give evidence in court.[311] No document attests to a marriage between slaves.[312] On the basis of the obscure Eighteenth Dynasty letter, P. Louvre 3230, Helck believes that slave children were not to be drafted for work.[313] Texts mention the pursuit and capture of fugitive slaves.[314]

4.3.5 *Termination*

Already P. Berlin 10470 (Second Intermediate period) may deal with the "granting of citizenship to a slave who had previously been shared between public and private ownership."[315] Apparently, a simple declaration of the master before a local court was enough to free a slave. Eyre cites cases whereby the slave is brought later into the family.[316] Under Tuthmosis III, a royal barber received a slave, whom he officially freed and then married off to his niece, making him joint heir with his wife and sister.[317]

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woman) were still slaves (84). On the problem of the status of the children of freed slaves, see Théodoridès, "Le papyrus des adoptions," 634; Eyre, "Adoption . . .," 217; Eyre, "Work . . .," 210.

[307] See Bakir, *Slavery* . . ., 98. See also Cruz-Uribe, "Slavery . . .," 48–49; Eyre, "Work . . .," 210.

[308] Černý, *Community* . . ., 175–81, discusses female slaves in Deir el-Medina and notes that their work may have consisted of grinding grain into flour. They seem to receive less than ordinary workmen.

[309] Bakir, *Slavery* . . ., 86. See also Théodoridès, "La procédure . . ."

[310] See Bakir, *Slavery* . . ., 86. The evidence is not very strong. On slaves as landholders and acting as traders, Eyre, "Work . . .," 210; Helck, "Sklaven," col. 985.

[311] Bakir, *Slavery* . . ., 88–89.

[312] Ibid., 82.

[313] "Sklaven," col. 985; text is published in Peet, "Two Eighteenth Dynasty . . ."

[314] Bakir, *Slavery* . . ., 79.

[315] So Loprieno, *The Egyptians* . . ., 201.

[316] I.e., as Bakir points out, instances of slaves marrying free individuals (*Slavery* . . ., 82–84).

[317] Following Eyre, "Adoption . . .," 215. Bakir provides a translation in *Slavery* . . ., 83. See also Eyre, "Work . . .," 210; Rabinowitz, "Semitic Elements . . ."; Cruz-Uribe, "Slavery . . ."; Helck, *Akten* . . ., 114; Lurje, *Studien* . . ., 69–70; Spalinger, "Will of Senimose . . .," 649.

The Adoption Papyrus is, however, the clearest act of emancipation.[318] A woman frees three children of her slave by declaring them "free-persons (*nmḥ*) of the land of the pharaoh." The woman further makes them her heirs, together with her younger brother, who marries one of them (see 5.3 below). An oath includes an exclusion clause preventing others from contending with them. This exclusion clause is enforced by a curse and not, as often, by a legal penalty.

It is just possible that a slave might undertake to free himself on his own initiative. Some suggest, at any rate, that a slave could leave a master and take refuge with a third party, if justifiable cause existed.[319]

5. Family[320]

In the Nauri Decree women and children are punished for the infractions of the head of the household, suggesting that a family could be considered a juristic entity.[321] It has been proposed that the authority of the father was not absolute.[322] Parents of persons involved in legal transactions sometimes declare their agreement within the body of the document.[323] If not legally mandated, there was evidently a sense of moral responsibility for caring for the elderly parents, a situation which found legal form or expression in the so-called "staff of old age."[324]

5.1 *Marriage*

5.1.1 *Legal Nature*

It is difficult to determine the legal framework of marriage.[325] Through marriage presumably the man acquired sole sexual rights to the

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[318] Bakir, *Slavery* . . ., 123; Pestman, *Marriage* . . ., 8.

[319] Cruz-Uribe, "Slavery . . .," 54–55, quoting Glanville (on the basis of New Kingdom letter P. BM 10107), "Letters . . .," 305.

[320] See Allam, "Familie, soziale Funktion," cols. 101–103, and "Familie (Struktur)," cols. 104–13.

[321] Allam, "Familie (Struktur), col. 109. He notes that the family could be held responsible for the obligations of individual members ("Familie . . .," 27–29). See also Janssen, "Structure . . .," 64 (on family responsibility); Eyre, Employment . . ., 158.

[322] Allam, "Familie . . .," 24–25.

[323] Allam, "Obligations . . .," 94.

[324] See McDowell, "Legal Aspects . . .," 201–3; Théodoridès, "L'art . . ."

[325] See Allam, "*Quenebete* . . ."; Eyre, "Adoption . . .," 209–10. Some scholars discern a legal distinction between those cases in which a woman is said to be explic-

woman, the offspring consequently being his legal heirs. Neverthless, the woman does not seem to have come under the legal control of her husband upon marriage.[326] There was an awareness of the mutual obligations of a marriage, as well as of the fundamental separation of goods.[327] In O. Petrie 18, a man declares that his wife[328] abandoned him when he was ill and sold off some of his or their joint property. He swears an oath in court that she has no right to his property. It was his son who nursed him, and it is he who will inherit all upon his death. The woman must swear that she would give up any claim to his property.[329]

5.1.2 *Conditions*

The subject of virginity is hardly raised in Egyptian sources.[330] According to Johnson, the man gave a gift to his bride's parents previous to the marriage "to break the woman's bond with her biological family."[331] No New Kingdom marriage contracts are preserved. There is little information concerning a dowry.[332] An ostracon indicates that the parents might organize a party to celebrate the marriage,[333] but there is no evidence for any kind of religious ceremony.[334] Monogamy seems to have been the rule.[335] It may have been possible for persons to live in "loose marriages" (*Geschlechtsgemeinschaft*), that is, not fully valid marriage arrangements.[336] In some

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itly the "wife of" (a man) and those in which a woman said to be "with a man"; see Janssen, *Growing Up* . . ., 112. See also Pestman, *Marriage* . . ., 51; Eyre, "Crime . . .," 100–01.

[326] Allam, "Familie (Struktur)," col. 106. See also Pestman, *Marriage* . . ., 53–57; Janssen, *Growing Up* . . ., 111.

[327] Allam, "Mariage . . .," 118.

[328] Or "sister," as McDowell notes in "Legal Aspects . . .," 216–17. See also Allam, *Hieratische Ostraka* . . ., 234–35; Allam, "Familie . . .," 34–35 (on O. Petrie 18).

[329] Cf. Johnson, "Legal Status . . .," 217. An interesting but fragmentary oath is O. Cairo 25227, "[. . . took the] Oath of the Lord: 'As Amun endures and as the ruler endures, the wife was (only) a wife; she did not make love, and she did not commit adultery'" (Wilson, "Oath . . .," 136).

[330] Johnson, "Legal Status . . .," 216; Allam, "Mariage . . .," 118.

[331] Johnson, "Legal Status . . .," 179. See also Lichtheim, *AEL* 2, 20. Cf. further O. Berlin 10629, Allam, *Hieratische Ostraka* . . ., 28–29; Allam, *Verfahrensrecht* . . ., 21. On the bridal gift, see Janssen, *Commodity Prices* . . ., 548. See now also Toivari, "Marriage at Deir el-Medina."

[332] On "dowry," see Théodoridès, "Droit matrimonial . . .," 47–48.

[333] Johnson, "Legal Status . . .," 179. See also Janssen, "Allusion . . .," and "Absence . . .," 146.

[334] See Pestman, *Marriage* . . ., 6.

[335] Allam, "Familie (Struktur)," col. 106; Pestman, *Marriage* . . ., 3.

[336] Allam, "Allusion . . .," 9. This may have been the case in mixed relationships

cases, the male may have resided in his father-in-law's house; in others, the wife moved in with the husband.[337] A father might still exercise some protection of his daughter after marriage.[338] Full brother-sister marriages in pharaonic Egypt seem to have been rare, apart from the royal house.[339]

It was presumably possible for an Egyptian to marry a non-Egyptian, but here, too, the evidence is scarce and ambiguous. In the marriage settlement of P. Turin 2021,[340] the vizier declares: "Even if it were not his wife, but a Syrian or a Nubian whom he loved and to whom he gave his property, who can annul what he did?"

5.1.3 *Marital Property*

Černý believed, on the basis of P. Turin 2021, that in the pharaonic period the two spouses possessed a common conjugal property, with the husband contributing two thirds, the wife one third.[341] The wife was apparently assured of at least one third of the property in case of the dissolution of the marriage.[342] In the case of death of either spouse, the survivor would continue to enjoy the usufruct of the common property but could dispose freely only of the part contributed by him or herself.[343] These "two thirds" may be mentioned in O. Gardiner 55: "As to the objects which he gave, these are the two-thirds which were given to me after he had made the division with his mother."[344] In P. Turin 2021, some scholars identify the four slaves given by the man to his second wife with the "gift of a wife (*šp n s-ḥm.t*)," found in later Demotic and Coptic documents.[345] This was a gift made to the wife at the time of marriage but which only became her undivided property at the time of his death or divorce. According to Johnson the husband seems to have had

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between "free" and "unfree" persons. He thus disagrees with Janssen's interpretation in "Allusion . . ."

[337] Allam, "Familie . . .," 26.

[338] Ibid. See also Černý, "Constitution . . .," 47–48.

[339] See Černý, "Consanguineous Marriages . . .," 23–29. See also Whale, *Family* . . ., 251; Pestman, *Marriage* . . ., 4.

[340] Černý and Peet, "Marriage Settlement . . ." On P. Turin 2021, see also Théodoridès, "Imenkhau . . ."

[341] Théodoridès, "Droit Matrimonial . . .," 30.

[342] Allam, "Familie . . .," 25–26.

[343] Černý, "Constitution . . .," 44.

[344] Ibid., 46. On O. Gardiner 55, see Théodoridès, "Ouvriers . . .," 190; Allam, *Hieratische Ostraka* . . ., 160–61, and *Verfahrensrecht* . . ., 18.

[345] Černý and Peet, "Marriage Settlement . . .," 37.

"usufruct" of the property acquired jointly by a couple during their marriage, that is, he could dispose of it without the permission of his wife. Nevertheless, he was then required to compensate her with something of equal value.[346]

On the basis of the later material, Johnson suggests that daughters received their inheritance as a dowry[347] when they married, unlike sons, who only acquired their inheritance upon the actual death of the parents.[348] In the Late period (sixth century and after), the women often received a house or part of it as a dowry or wedding gift, which suggests that the "generic" title *nb.t-pr*, "mistress of the house," common in the New Kingdom, may be more significant than is generally assumed.[349]

5.1.4 *Divorce*

There is very little detailed evidence for divorce, although several texts allude to it.[350] True divorce documents are only attested in the Late period.[351] An unfortunately obscure text (O. Bodleian Library 253) contains the oath of a man before the court, declaring that if he divorces his wife, he receives one hundred blows and loses his share of their common property.[352] That division of property after a divorce could be problematic is suggested by O. Gardiner 157, a "list of the objects of A which are in his house after he divorced B, his former/first wife."[353] Both the husband and the wife could probably divorce without offering any particular grounds. Some Deir el-Medina texts apparently aim to protect women from the economic impact of divorce.[354]

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[346] Johnson, "Legal Status . . .," 177.

[347] An Egyptian word for "dowry" is not securely attested. *Sfr* may mean "dowry"; see Černý, "Constitution . . .," 46. On *sfr*, see Théodoridès, "A propos de la loi . . .," 39.

[348] Johnson, "Legal Status . . .," 184.

[349] Ibid., 185. But see also Eyre, "Adoption . . .," 212.

[350] See Pestman, *Marriage* . . ., 60, 75, 78; Théodoridès, "Droit Matrimonial . . .," 48–49; Johnson, "Legal Status . . .," 182–83; Eyre, "Adoption . . .," 217. Also Late Ramesside Letter 46, transl. in Wente, *Letters* . . ., 173. See also Eyre, "Crime . . .," 99; Janssen, "Marriage Problems . . .," 137 (discussed in 8.3.1 below).

[351] Allam, "Mariage . . .," 122.

[352] Lorton, "Treatment . . .," 42; Allam, *Hieratische Ostraka* . . ., 40–41, and *Verfahrensrecht* . . ., 24.

[353] Janssen, *Commodity Prices* . . ., 508.

[354] Eyre, "Crime . . .," 99.

5.1.5 *Remarriage*

In several instances, men who have remarried seem to have gone to court in order to regulate matters of inheritance concerning children of the first wife.[355] In the Letter to the Dead P. Leiden I 371, the man observes that he has not even remarried although a man in his position should have done so.[356]

5.1.6 *Polygamy*

While polygamy was not perhaps impossible, monogamy seems to have been the rule (except for the pharaohs themselves).[357] The wife of a tomb robber declares: "I am one of four wives, two being dead and another still alive."[358] Concubines are attested in the documentation, although not abundantly.[359]

5.2 *Children*[360]

The father seems to have controlled the family estate until death, while the mother may have had such authority only until her children came of age. The age of majority is not certainly known.[361]

A father could theoretically disinherit a son because of disobedience or filial neglect.

The Deir el-Medina ostraca well document intrafamilial disputes. In O. Cairo 25725 + O. Louvre E. 3259, a man accuses his daughter of not returning a borrowed piece of clothing and of having sold another piece of clothing for him without giving to him the full payment.[362]

There are also cases in which a father displays a sense of responsibility towards family members. In P. Turin 1880 a man swears not

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[355] Allam, "Obligations . . .," 96.

[356] Wente, *Letters* . . ., 217. Cf. the literary topos of the unloving stepmother in Lichtheim, *AEL* 2, 201.

[357] But see Spalinger, "Will of Senimose . . .," 637–38.

[358] See Johnson, "Legal Status . . .," 215. See also Allam, "Familie (Struktur)," col. 106; Eyre, "Adoption . . .," 212; Amir, "Monogamy . . .," 105; Whale, *Family* . . ., 247.

[359] Lorton, "Legal and Social Institutions . . .," 349. Compare also Théodoridès, "Dénonciation . . .," 46. On subordinate wives, slave women who bear children for a childless couple, see Eyre, "Adoption . . .," 211–12. Cf. Helck, "Sklaven," col. 985.

[360] See Théodoridès, "L'enfant . . ." In general, see now Feucht, *Das Kind im alten Ägypten*.

[361] See Janssen, *Growing Up* . . ., 99; Théodoridès, "L'Enfant . . .," 91–93.

[362] Allam, *Hieratische Ostraka* . . ., 68–69.

to "distance himself" from his three daughters, that is, to support them.[363] A man may represent or speak for his accused daughter in O. Gardiner 4.[364]

5.3 *Adoption*

5.3.1 In the Adoption Papyrus (a text comprising several individual documents), a woman declares that her husband, having prepared "a writing for her," "made me a daughter of his" and his sole heir. The second document is a joint statement by the husband and wife that they have together bought a slave girl who has given birth to one boy and two girls. The wife then speaks (?), declaring that she has brought up and adopted the children. The wife makes the three children "free persons of the land of the pharaoh" (see 4.4.5.1 above). The wife also adopts her younger brother as a son, and he marries the eldest of the two girls. On her death, the woman's estate is to be divided among all four adopted children.[365]

The reason for the arrangement seems to be the wife's childlessness. In other Near Eastern lands, a childless wife may procure a surrogate mother who is a slave girl, subordinate to the first wife.[366] The document may be designed then to formalize the children of this slave woman as rightful heirs, with a more powerful claim to the property than the brothers of the husband. The actual occasion for this document may have been the marriage of the woman's brother to the eldest daughter of the slave woman.[367] The first section (or document) of the Adoption Papyrus seems to enable the husband to avoid divorcing his childless wife, while ensuring direct issue by means of a slave girl.

Allam also interprets P. Turin 2021 as a similar adoption document rather than as a marriage settlement or will of a man twice

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[363] Ibid., 311; Allam, *Verfahrensrecht* . . ., 34, and "Mariage . . .," 131.

[364] Allam, *Hieratische Ostraka* . . ., 151–52, and *Verfahrensrecht* . . ., 83.

[365] Johnson, "Legal Status . . .," 183 (translation). See also Allam, "Adoption . . ."; Theodorides, "Le Papyrus des adoptions," *Maat*, 603–66; Cruz-Uribe, "Adoption Papyrus . . ."; McDowell, "Legal Aspects . . .," 217.

[366] Eyre, "Adoption . . .," 209–11. For a discussion of possible "semitic" features (e.g., the phrase "tomorrow and after tomorrow" = the future) of this papyrus, see Théodoridès, "Adoption . . .," 617.

[367] This would explain why a gap of 18 years exists between the first memorandum of adoption and the second. The finished document may come from the family archive of this younger brother (Eyre, "Adoption . . .," 212–13).

married.[368] Allam believes that the man desires to guarantee his second wife a greater share of his property; he wishes to assign to her, "in addition to her legal one-third, the two-third share belonging to him."[369] He thus renders the relevant sentence so: "[And I] made her as a daughter just like the children of my first wife who was in my house."[370]

So, in order to make sure that his wife receives more than she was strictly entitled to, he had to adopt her. However, he wished to be certain that his children by his first wife give up any claim to the two-thirds share which would normally have gone to them upon his death. This second wife does not seem to have any children of her own; she may have been particularly legally and economically vulnerable in case her husband died. The document may not, then, record an actual dispute but was perhaps intended to avoid future conflict.

5.3.2 Another possibly significant mention of adoption occurs in O. Berlin 10627: "As for him who has no children, he adopts an orphan instead to bring him up."[371]

6. Property and Inheritance[372]

6.1 *Tenure of Land*

While numerous documents seem to attest to private ownership of land, the precise nature of the conditions of ownership is not clear.[373] The king and the temples[374] had vast tracts of land. The pharaoh

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[368] See Allam, "Papyrus Turin 2021," and "*Quenebete* . . .," 36.

[369] Allam, "Papyrus Turin 2021," 25.

[370] Ibid., 27.

[371] Johnson, "Legal Status . . .," 217. See also Théodoridès, "Dénonciation . . .," 21–22; Allam, "Adoption . . .," 4; Hoverstreydt, "A Letter . . .," 121.

[372] See, e.g., Edgerton, "Government . . .," 159. On ownership, see also Allam, "Familie und Besitz . . ."; Gasse, *Données* . . ., 213; Théodoridès, "La notion . . .," 778; Helck, *Wirtschaftsgeschichte* . . ., 235–36; Janssen, "Economic History . . .," 159; Eyre, "Work . . .," 205; Gutgesell, *Datierung* . . ., 558–67. On the question of ownership by peasants, e.g., of animals, see Kruchten, *Horemheb* . . ., 91.

[373] Baer, "Letters . . .," 16. See also McDowell, "Agricultural Activity . . .," 196; Eyre, "Work . . .," 203–4. On the possible legal distinction between *iḫ.t* and *3ḫ.t*, see Van den Boorn, *Vizier* . . ., 153–54; Janssen, "Economic History . . .," 141; Gasse, *Données* . . ., 28.

[374] E.g., P. Bologna 1086 (Nineteenth Dynasty) has been understood as suggest-

might donate land (*ḥnk*) from his estates for a variety of reasons, for example, to support a statue cult.[375] Soldiers would receive land in return for military service, also a later Ptolemaic practice.[376]

The soldiers might well have been able to lease or perhaps even alienate some of their land so long as they were available for military service.

Helck maintains that while in the Old and Middle Kingdoms we hear only of "assigned" fields, towns, people, or herds, in the New Kingdom fields given *m ḥs.t*, "in favor," from the king are the true and complete property of the new owner.[377]

The impressive cadastral records or land surveys, such as the Wilbour[378] or later Reinhardt[379] papyri, do not generally illuminate the status of the individual named or the relationship between that person and the field in question.[380]

It is not clear how statistically significant private holdings were in the New Kingdom. It may have been possible, for example, to purchase land at Deir el-Medina, although the evidence is not very plentiful.[381]

Claims for the ownership of land might be documented over a considerable period. In the Mes inscription, for example,[382] Mes himself lived during the reign of Ramesses II (1279–1213), but the key ancestor is Neshi who, having fought with King Kamose (1557–1552) against the Hyksos,[383] later received land. It is this allotment which

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ing that temple officials were responsible for lands and were expected to guarantee a quota of grain production, using gangs of three men and one boy. The field laborers were assigned to the official for this purpose (Eyre, "Peasants . . .," 379). On P. Bologna 1086, see Théodoridès, "Parler . . .," 88–90. In the New Kingdom, some portions of the Amun Domain were cultivated by foreigners or prisoners (Kruchten, *Horemheb* . . ., 324).

[375] Hoverstreydt, "A Letter . . .," 116. On temple land, Helck, *Wirtschaftsgeschichte* . . ., 239–43.

[376] See, e.g., Lichtheim, *AEL* 2, 67.

[377] Helck, *Wirtschaftsgeschichte* . . ., 235. See also Hoverstreydt, "A Letter . . .," 120.

[378] Katary, *Land Tenure* . . .

[379] Vleeming, *Papyrus Reinhardt* . . ., 71–75. Cf. also Janssen, *Communications* . . ., 45.

[380] Quirke, Review . . ., 243. See also Eyre, "Peasants . . .," 371–72, 380–81; Castle, "Shipping . . .," 248; Kruchten, "Gestion . . .," 523; Gasse, *Données* . . ., 38, 214–17; Katary, *Land Tenure* . . ., 16.

[381] O. Gardiner 165 suggests that "fields could be bought by members of the community" (McDowell, "Agricultural Activity . . .," 197, 205).

[382] Eyre, "Feudal Tenure . . .," 116–17, 131–32. See also Katary, *Land Tenure* . . ., 220–22.

[383] See Eyre, "Feudal Tenure . . .," 116.

is disputed in the Legal Text of Mes. During the interim, the estate was possibly maintained undivided, being administered by one heir acting as a trustee (*rwḏ*) for all concerned. Presumably, this trustee took care that each of the beneficiaries received a share of the income.[384]

6.1.1 *State and private ownership*

The major landowners are the king and the temples; New Kingdom land surveys and cadastral lists show that both the king and the various temples controlled vast tracts of land.[385] The most important of these texts is the Wilbour Papyrus, a cadastral land survey made by Egyptian officials surveying and measuring fields in Middle Egypt.[386] Smaller landholders are also a legal or administrative presence. This text appears to show that in addition to large landowning institutions such as temples, there existed small landholders, with such professions as stable masters, soldiers, priests, herdsmen, scribes, and farmers.[387]

It is, however, not always clear who actually cultivated these lands and what was the nature of the relationship between the individual farmers and the landholding establishments.[388] The exact terms under which a farmer worked and held land are poorly understood.[389] It may be kept in mind that, according to Eyre, since land was inexpensive, ownership in itself was not necessarily "a vital factor."[390] Ultimately, one supposes, all the land, including temple land, was in the possession of the king, who might theoretically remove it at any time.

6.1.1.1 Much, if not most such family land was the result of a grant by the king for some past service. Thus, the pharaoh may have given to the ancestor of Mes the contested fields as a reward for military services.[391] There was possibly a military obligation con-

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[384] Cf. ibid.

[385] E.g., the *ḫ3-n-t3* land would be fields of the pharaoh; see Vittmann, *Elephantine* . . ., 58. See also Eyre, "Peasants . . .," 381.

[386] Baer, "Letters . . .," 15–16.

[387] Lorton, "Legal and Social Institutions . . .," 353. See also Allam, "Women as Owners . . .," 128.

[388] Eyre, "Peasant . . .," 379.

[389] Eyre, "Feudal Tenure . . .," 108.

[390] Eyre, "Work . . .," 203–4.

[391] The admiral Ahmose (Early New Kingdom) declares: "Then I was given five

nected with the land, but it may not have always been the case.[392] A few individual landowners are quite well documented.[393]

Private persons often refer to "their own" fields in legal documents. A typical example is in the Adoption Papyrus, where the woman declares: "If I have fields in the country, or if I have any property in the world, . . . these shall be divided among my four children."[394]

6.1.1.2 The temples appear to have leased out much of their land.[395] In the letter P. Berlin 8523,[396] the Temple of Osiris seems to be involved in some aspect of land tenure. The writer of the missive leases or rents out a field which he himself (or his wife) may be renting from the temple holdings.[397] It may occasionally have been advantageous to donate or lease fields to a temple, in which case the temple authorities still paid a certain amount to the original owner.[398]

6.1.1.3 Taxes or imposts, often connected with land tenure, are naturally the subjects of legal cases or disputes. P. Valencay 1 is a protest from the mayor of Elephantine to the chief tax-master regarding what the former considers unjust tax demands.[399] This text reveals the complicated relationship between the "state," "temple," and private persons, especially concerning the cultivation and taxation of land.[400]

6.1.2 *Special Types of Property*

6.1.2.1 Landed property at Deir el-Medina may display unique legal features. According to Helck and Bogoslovsky, a necropolis workman was assigned specific buildings as his official property,

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persons and portions of land amounting to five arurae in my town" (Lichtheim, *AEL* 2, 13).

[392] The king gives *ḥnk* land to foreign soldiers for support (Kessler, "Landschenkung . . .," 116–17).

[393] Eyre, "Feudal Tenure . . .," 114.

[394] Gardiner, "Adoption Extraordinary," 24.

[395] Bleiberg, *Official Gift* . . ., 13. On *qdb* land ("leased, rented"), see Gasse, *Données* . . ., 35; Eyre, "Feudal Tenure . . .," 123.

[396] Wente, *Letters* . . ., 209. See also Eyre, "Peasants . . .," 384.

[397] The identity of the acutal owner of the land is unclear.

[398] Helck, "Der Papyrus Berlin P 3047," 70. See also McDowell, "Legal Aspects . . .," 206–7.

[399] Vittmann, *Elephantine* . . ., 56.

[400] Thus, ibid., 59.

perhaps ultimately by the vizier.[401] While the property effectively belonged to the workman, he could not alienate or share it with others. Naturally, people might also build for themselves other structures which they could in fact freely alienate. This system was bound to produce disputes revolving around the individual's right to dispose of a piece of property. In O. BM 5624, for example, there is a case concerning the inheritance of such a Deir el-Medina tomb, apparently allocated by the state. The plaintiff declares: "He (the chief-administrator of the town) gave the tomb of PN to my (fore)-father by order. My mother, PN, his daughter, was his only child. He had no male child. His places had remained deserted."[402]

There is evidence in Deir el-Medina for joint property.[403] In O. Florence 2620, for example, a man transfers possession of a house to two workers jointly.[404]

6.1.2.2 Private individuals make endowments of land in support of statue cults.[405] These transactions have been variously interpreted.[406] In the New Kingdom, people may link their own funerary or mortuary endowments with those of the kings. For example, a high functionary may create an offering cult to the royal statue. After the offerings are presented to the royal statue, they are presented to his own. Such a procedure was thought to provide maximum security for the mortuary cult—always a concern for Egyptians.[407]

6.1.2.3 Plunder and the rewards of successful soldiers also form a special type of property. The king effectively owned captured enemies, whom he would then distribute to individual soldiers.[408]

6.2 *Servitudes*

Servitudes were occasionally a subject of legal dispute. O. Cairo 25555, for example, seems to deal in part with a conflict over the right of way, which is decided by oracular decision.[409]

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[401] Cf. McDowell, *Jurisdiction* . . ., 123, 125.
[402] Allam, *Hieratische Ostraka* . . ., 44.
[403] Janssen, *Commodity Prices* . . ., 531–33.
[404] Allam, *Hieratische Ostraka* . . ., 147.
[405] See Hoverstreydt, "A Letter . . ."
[406] Ibid., 117. See also McDowell, "Legal Aspects . . .," 203ff.
[407] Allam, "De la divinité . . .," 29.
[408] Lorton, "Legal and Social Institutions . . .," 351.
[409] Allam, *Hieratische Ostraka* . . ., 59; McDowell, *Jurisdiction* . . ., 294.

6.3 *Inheritance and Transfer* inter vivos

6.3.1 According to Janssen and Pestman,[410] a married couple could have three different kinds of property:

1. private property of the husband, inherited from his parents.
2. private property of the wife, inherited from her parents.
3. joint property, being goods acquired while the couple was married. On termination of the marriage, through death or divorce, two thirds were for the husband (or his heirs); one third went to the wife (or her heirs).[411]

The husband does not seem normally to have inherited from his (deceased) wife, nor did she inherit from him.[412] While some changes were possible in the usual sequence of inheritance, there were restrictions. Janssen and Pestman assert that "the testator cannot disinherit his children in favour of other persons, at least not without their agreement, but he is free to disinherit some of his children in favour of others or to allot a larger share to some than to others."[413]

6.3.2 The usual heirs were the children. This explains why a man sometimes adopts his own wife as a daughter, since she could thus inherit, with less danger of other parties contesting the transfer, as in the Adoption Papyrus[414] and, perhaps, P. Turin 2021.[415] According to Seidl, a person could inherit either through a testament or through the customary rights of inheritance, that is, the eldest son would normally inherit.[416] He points out that it is not clear whether the eldest son was then compelled to compensate the mother and other children of the deceased or, rather, administered the estate in the interests of all.[417] Explicit wills are rare.[418]

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[410] Janssen and Pestman, "Bulaq X . . .," 164–70. See also Eyre, "Adoption . . .," 213.

[411] Janssen and Pestman, "Bulaq X . . .," 164–65. See also Allam, "Papyrus Turin 2021 . . .," 24; Černý, "Will of Naunakhte . . .," 49.

[412] Janssen and Pestman, "Bulaq X . . .," 165–66.

[413] Ibid., 167.

[414] See ibid., 166.

[415] See Černý and Peet, "Marriage Settlement . . ." See also Černý, "Constitution . . ."; Allam, "Papyrus Turin 2021 . . ."

[416] Seidl, *Einführung* . . ., 57.

[417] But cf. Allam, "Familie und Besitzverhältnisse . . .," 36.

[418] Černý, "Will of Naunakhte . . .," 42, lists only three testaments from the New Kingdom (Naunakhte, Senimose, O. Deir el-Medina 108); one from the Middle Kingdom, Kahun (pls. 11–13), and one from the Old Kingdom, Wepemnofret.

6.3.3 In the fragmentary text of O. Gardiner 55, a man arranges to give his entire wealth to his family.[419] In the Will of Senimose, the wife retains property until she attains old age. At this point the property is divided among her children.[420] Steps may be taken to assure the future of women in case of their husband's death. McDowell observes that huts were often left to women at Deir el-Medina.[421] Woman could also inherit land in Deir el-Medina.[422]

6.3.4 Property could remain undivided (under the control of a family head) after the death of both parents.[423] According to the Legal Text of Mes, for example, the authorities of the great *qenbet* court, responsible for the division of the estate, appointed Urnero as *rwḏ* "trustee," not for her children, which seems to have been legally self-understood, but for her siblings.[424] Although the inheritance under law was divided into parts, it remained economically in the control of a single person, who conducted the entire process as a "trustee" or "representative."[425]

The estate was administered, then, by a single trustee, especially necessary in the case of Mes's family, because it was torn by internicine squabbles. This trustee would have been effectively the head of the family.[426] It was he or she who cultivated the estate and divided the income into separate shares. This trustee was apparently able to exclude those whom he or she did not recognize as family members. Such people obviously received no shares (*pš.w*) from the estate.[427]

6.3.5 The undertaking to bury an individual apparently gives the one financing the burial the right to inherit from the deceased.[428]

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[419] Allam, *Hieratische Ostraka* . . ., 160, 161 (no. 157); Allam, *Verfahrensrecht* . . ., 18.

[420] See Spalinger, "Will of Senimose . . .," 633. See also Théodoridès, "Le testament dans l'Égypte ancienne," 440–61.

[421] McDowell, "Agricultural Activity . . .," 202.

[422] Ibid., 205.

[423] Inscription of Mes; see Allam, "Les Obligations . . .," 97.

[424] Eyre, "Feudal Tenure . . .," 120. On the role of the *rwḏ*, see also Janssen-Pestman, "Bulaq X . . .," 169–70.

[425] Allam, "Obligations . . .," 97, remarks that the familial patrimony may be kept undivided following the death of the parents, citing Mes.

[426] Eyre, "Feudal Tenure . . .," 116.

[427] Cf. ibid.

[428] Janssen and Pestman, "Bulaq X . . .," 168. Cf. O. Petrie 16 (Allam, *Hieratische Ostraka* . . ., 232); O. DeM 225; (ibid., 105–6).

The eldest (?) son was generally expected to bury the parents.[429] In P. Bulaq 10,[430] one party, who wishes to exclude his siblings from inheriting, clearly states: "'Let the possessions be given to him who buries,' says the law of the pharaoh."

6.3.6 A document of exceptional importance for inheritance is the will of Naunakhte (reign of Ramesses V).[431] It belongs to a small archive relating to the inheritance of that woman. The archive comprises four documents containing six separate texts: Document 1; the last will of Naunakhte, outlining the special arrangements for two sons (two texts); Documents 2–3: the division of Naunakhte's property; and Document 4; the two dispositions of Khauamun (second husband of Naunakhte).

In the second text of Document 1, Khauamun and his children present themselves (again) in court and promise to execute Naunakhte's will exactly, which they were apparently not willing to do before. One son, presumably unhappy with his share, seems to have disputed the will previously, but now he swears an oath affirming not to contest it again.[432]

In her will, Naunakhte makes a special disposition, stating which of her children are to inherit from her.[433] Naunakhte, who has been married more than once, distinguishes her own property from that of her current husband. She disinherits the four who failed to support her with a monthly income but expressly mentions that they are to inherit from their father. A great concern of hers is to exclude one of her sons in particular from further shares in her property.

6.3.7 In the Judicial Stela of Amarah,[434] a married couple confirms that their property (consisting of field, slaves, and trees) is to go to

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[429] Allam, "Familie . . .," 29; Johnson, "Legal Status . . .," 184.

[430] Janssen and Pestman, "Bulaq X . . ." See also Allam, *Hieratische Ostraka* . . ., 289–93.

[431] Černý, "Will of Naunakhte . . ."; Pestman, "Accession . . ." See also Allam, "Zwei Schlussklauseln . . .," 17–20; Pestman, *Marriage* . . ., 162–64; Théodoridès, "Le testament de Naunakhte . . ."

[432] Pestman, "Accession . . .," 177. Another example of a renunciation clause is in the *Stèle juridique*, JdE. 52453, which is a *imy.t-pr*; see Allam, "Zwei Schlussklauseln . . .," 20.

[433] See Allam, "Familie . . .," 34; McDowell, "Legal Aspects . . .," 215–17; Černý, "Will of Naunakhte . . .," 31.

[434] Dated to the end of the New Kingdom; see Janssen-Pestman, "Bulaq X . . .,"

their daughter, who has acted as a "staff of old age" (for the wife and mother).

6.3.8 Texts occasionally illuminate the mechanisms of land transfer. In a letter from the Late Egyptian Miscellanies, the chief archivist of the Treasury of the Pharaoh gives orders to his subordinates to transfer several fields from the royal domain to a certain stallmaster. He also instructs them: "Let us bring in a (special) document, containing a copy of everything which you have done, and this should be preserved in writing in the office of the Granary of the Pharaoh."[435]

P. Turin cat. 2070/154 II, lines 1–9 is apparently an inventory of property, the items being registered with a view to a division.[436]

7. Contracts

The economic conditions of the New Kingdom were rather more conducive to the use of written contracts than earlier times.[437] Numerous contracts or written agreements between parties survive from the New Kingdom. Unfortunately, even well-preserved texts sometimes pose almost insurmountable obstacles, obscuring the legal relationship of the parties to each other or the legal framework in which the transaction is conducted.[438]

There are provisions or contractual oaths regarding future performance, with a penalty of (usually) double for breach. The penalties for nonperformance may also include a physical punishment.[439]

165; Théodoridès, "La Stèle juridique d'Amarah"; McDowell, "Legal Aspects . . .," 220–21.

[435] Caminos, *Late-Egyptian Miscellanies* . . ., 326.

[436] Harari, "Capacité . . .," 47–48.

[437] Warburton, *Economy* . . .; Janssen, "Economic History . . .", and "Gift-giving . . ."; Eyre, "Market . . ."; Eichler, "Polyani . . .," 27; Gutgesell, "Struktur . . ."; Helck, *Wirtschaftsgeschichte* . . ., 259–60; Römer, "Der Handel . . ."; Vittmann, *Elephantine* . . ., 48; Castle, "Shipping . . .," 250–53, 270.

[438] See the example of O. DeM 433, discussed by McDowell, *Jurisdiction* . . ., 7–8, and Eyre, "Work . . .," 199, 200.

[439] Lurje, *Studien* . . ., 164–66.

7.1 *Sale*

The basic components of sales documents are the transfer of the object, the reception of the price, and the guarantee against future liabilities.[440] The *imy.t-pr* or "transfer-document," well attested for the Old and Middle Kingdoms, is rarer in the New Kingdom.[441] There are, however, numerous examples of this genre. The transaction recorded in the Donation Stela of Ahmose-Nefertari involves a *imy.t-pr*, although the precise nature of that inscription is obscure.[442] O. DeM 108 is an unusual example of a *imy.t-pr* document made by a man on behalf of his children (*donatio in vivos*).[443] The *Stèle juridique*, possibly a fictitious sale, is another example of the *imy.t-pr* document.[444] The ultimate purpose of that text was possibly to confirm the inheritance.[445]

7.1.1 P. Berlin 9784 (reign of Akhenaten) contains possibly the most ancient Egyptian land sale.[446] The seller states: "Let there be given to me a cow as the price of 3 acres of field."[447] The same papyrus contains the apparent lease (or sale of labor) of a slave woman. In connection with that transaction there are phrases confirming receipt of compensation such as, "I am fully and completely paid with the price of [my] female slave," which occur also in later sale papyri.[448] Important also is the promissory oath: "As Amun endures, so the Prince endures! If the two days are hot which I have given to you

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[440] Malinine, "Notes juridiques . . .," 105–6. On Seidl's principle of "notwendige Entgeltlichkeit," i.e., no title passes until "corresponding compensation" is given, see Pestman, *Marriage* . . ., 18.

[441] Van den Boorn, *Vizier* . . ., 180–83; Menu, "La Stèle . . .," 91–93, and *Recherches* . . ., 200–15.

[442] Gitton, "La résiliation . . .," 73, 79, 87; Harari, "Capacité . . .," 43; Gitton, "La résiliation . . ."; Menu, "La Stèle . . ."

[443] Allam, *Hieratische Ostraka* . . ., 89–91, and *Verfahrensrecht* . . ., 20. A *imy.t-pr* of Pharaoh Seti I is inscribed at Wadi Mia; see Théodoridès, "Mettre . . .," 402. See further the discussion of the *imy.t-pr* in Spalinger, "Will of Senimose . . .," 632, and Janssen and Pestman, "Bulaq X . . .," 150–51.

[444] Gitton, "La résiliation . . .," 68. See Allam, "Zwei Schlussklauseln . . .," 19. See also Spalinger, "Stèle juridique," cols. 6–8; Ryholt, *Political* . . ., 234; Van den Boorn, *Vizier* . . ., 182–83; Théodoridès, "Mise . . .," 44.

[445] Spalinger, "Will of Senimose . . .," 645–46.

[446] See Allam, "Publizität . . .," 140. This document is not a *imy.t-pr*; see Anagnostou-Canas, "Colonisation . . .," 362; Théodoridès, "Procès relatif . . .," 61ff.

[447] Gardiner, "Four Papyri . . .," 31.

[448] Ibid., 32; the text contains a clear instance of *in*, meaning "to buy" (34).

in (service of) the female slave PN, compensation shall be given ring for ring.[449] (Made) before many witnesses."[450]

Of some interest, too, is the mode of expressing the possibility of human interference with the work of the slaves, if the expression "to be hot" is not taken literally.[451] At the end of P. Berlin 9784, there may be an actual sale of a female slave, transacted before two witnesses.[452]

7.1.2 Most Deir el-Medina court cases concern "non-payment for goods and services."[453] Goods are generally paid for by objects, but these are often given a value in terms of copper or some other standard.[454] A person might become indebted to another individual through borrowing an item to "pay" another party for a desired object.[455]

The Deir el-Medina material offers numerous examples of transfers or sales. O. Gardiner 152 may record the purchase (or barter?) of an ox in return for a donkey. On day 22, A gives B an ox. One week later B brings the donkey in exchange, and states, apparently in the presence of witnesses: "Look, this donkey is for the compensation of your ox."[456] A buyer has the right to expect a defect-free object or animal. In O. DeM 73, a man complains that he has been sold a poor-quality donkey, which the seller thereupon replaces with one of more satisfactory quality.[457]

7.1.3 There are many Late period cession documents (called "documents of being far"), by means of which a person relinquishes any claim to property or rights. One possible New Kingdom specimen is O. Gardiner 104 (Twentieth Dynasty). Allam understands this to be the earliest example of a cession document, drawn up either in

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[449] This enigmatic expression has not yet been convincingly explained.
[450] Gardiner, "Four Papyri . . .," 32.
[451] Ibid., 33. See now Navailles, "Qu'entendait-on . . ."
[452] Gardiner, "Four Papyri . . .," 32.
[453] Bierbrier, *Tomb-builders* . . ., 103.
[454] Helck, *Wirtschaftsgeschichte* . . ., 270. See Janssen, *Commodity Prices* . . ., 101–11, 494–509; Castle, "Shipping . . .," 256–71.
[455] Janssen, "Debts and Credit . . .," 135.
[456] Allam, *Hieratische Ostraka* . . ., 181–82, and *Verfahrensrecht* . . ., 20.
[457] Allam, *Hieratische Ostraka* . . ., 88–89, and *Verfahrensrecht* . . ., 107. Cf. also O. Gardiner 165 (Allam, *Hieratische Ostraka* . . ., 184); O. Petrie 14 (Théodoridès, "Ouvriers . . .," 117–19).

connection with a sale transaction or by the loser of a court case concerning a donkey.[458]

7.1.4 Sale receipts may be represented by Deir el-Medina ostraca containing the formula: "In order to cause to be known the money which I, X, have given to Y as compensation (*ḏb3*) for an object." This is followed by the amount in the silver *šnʿty* standard.[459]

Baines suggests that the stela of Emhab (Seventeenth Dynasty) may be the "monumental imitation of a sale document" (concerning a slave woman).[460]

7.2 *Loan*

There are few actual explicit loan documents from the New Kingdom.[461] P. Turin 1881 contains a loan of grain made at the very high interest of some 100 percent yearly.[462] P. Turin (Journal of the Theban Necropolis B) is a court record concerning payment or partial payment of numerous debts.[463] The court could order that a debtor's payments to his creditor be reported to the court.[464] In O. Cairo 25553, it appears that the court appoints an official to see that the debtor pays his debt.[465] The penalty for failure to repay loans is 100 percent.[466]

Numerous texts record debts,[467] payment, or partial payment of debts. P. Turin (Journal of the Theban Necropolis) may contain a partial repayment by a woman for various objects (including a sarcophagus).[468] In O. Gardiner 68, a man who has received services in the form of the engraving of a bowl swears in public (apparently)

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[458] Allam, "Eine Abstandsurkunde . . ." Published in Allam, *Hieratische Ostraka* . . ., 171, and discussed in *Verfahrensrecht* . . ., 20, 21, 24.

[459] So Helck, "Kauf," col. 370; contra Janssen, "Gift-giving . . .," 256. Cf. also Helck, "Zahlungsquittung . . ."

[460] "Emheb . . .," 50.

[461] Cheshire, "Darlehen," col. 993. See McDowell, "Agricultural Activity . . .," 205; Menu, "Prêt . . .," and "Modalités . . ."

[462] Allam, *Hieratische Ostraka* . . ., 316. Cf. also Lichtheim, *AEL* 2, 138; Quack, *Ani* . . ., 101.

[463] Allam, *Hieratische Ostraka* . . ., 332–34; O. DeM 433 (ibid., 123–24).

[464] O. Brussel E 6311 (ibid., 53–54); Allam, *Verfahrensrecht* . . ., 107.

[465] Allam, *Hieratische Ostraka* . . ., 58.

[466] Menu, "Prêt . . .," 83.

[467] O. Gardiner 204 (Allam, *Hieratische Ostraka* . . ., 189–90). See also Boochs, "Zur Problematik . . ."

[468] Allam, *Hieratische Ostraka* . . ., 331, and *Verfahrensrecht* . . ., 17.

to reimburse the craftsman for his labor.[469] In O. Gardiner 137, two policemen take an oath that they will repay a grain debt or pay a penalty (double the amount owed).[470] Disputes concerning debts could last a long time. In O. Turin 9611, a man claims a debt unpaid for eleven years.[471]

In cases of failure to pay an agreed-upon debt, the complainant would first go to court. Then the debtor would have to take an oath to pay the debt by a specific date. Penalties would be sworn upon, usually one hundred blows and double penalty.[472] In O. Turin 9754, a man swears to return property within a certain amount of time. If he fails to do so, he declares that he can be punished as a *gm-nḥm* ("one-found-to-have-taken"?), possibly a technical designation for a person convicted of illegally taking possession of another's property.[473]

7.3 *Hire*

7.3.1 *Animals*

The hire of animals, especially donkeys, was common.[474] O. Petrie 4 is the record of a rental dispute between a policeman and an unnamed creditor. The donkey is returned together with a goat, representing the payment of the hire. This amount is judged too small, and a scribe must decide upon a new amount.[475] In O. DeM 62, the owner of the donkey assures the hirer in an oath that no third person has a claim on the animal.[476] O. DeM 582 is a complaint to the court concerning the use, without any hire agreement, of a donkey.[477]

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[469] Allam, *Hieratische Ostraka* . . ., 166–67; *Verfahrensrecht* . . ., 21.

[470] See also Allam, *Hieratische Ostraka* . . ., 179; O. DeM 61 (ibid., 85); Allam, *Verfahrensrecht* . . ., 24.

[471] See also Allam, *Hieratische Ostraka* . . ., 250–51. The same situation exists in O. Chicago 12073, where a period of 18 years is mentioned; see Manning et al. "Chicago Oriental Ostracon 12703 . . ."

[472] Lorton, "Treatment . . .," 42–43. O. DeM 433 (Allam, *Hieratische Ostraka* . . ., 123).

[473] Allam, *Hieratische Ostraka* . . ., 252, and *Verfahrensrecht* . . ., 33; McDowell, *Jurisdiction* . . ., 182.

[474] Allam, "Zwei Schlussklauseln . . ."; Janssen, "*B3k.w* . . ."

[475] Allam, *Hieratische Ostraka* . . ., 227–28, and *Verfahrensrecht* . . ., 28 and 33.

[476] Allam, "Zwei Schlussklauseln . . .," 15.

[477] Allam, *Hieratische Ostraka* . . ., 138–39, and *Verfahrensrecht* . . ., 41.

7.3.2 *Persons*

Several Fayum papyri seem to deal with the hiring out of the services of female slaves. The slaves are rented out by the day and for quite high prices.[478] In P. Gurob Pap. II, 1 Messuia buys seventeen days of service by one female slave and four days of service by another.[479] He purchases these days from a woman and her son. They then swear that they have been fully paid and that compensation will be given for any days lost.[480] P. Berlin 9785 is the record of a court case between Messuia and a man who had sold his slave woman's service to Messuia in return for two cows and two calves. There was apparently a dispute concerning the slave woman's work.[481] A class of texts called "work journals" (*ḥrw n b3k; ḥrw m ḥm/ḥm.t*) seems to be records of such labor transactions.[482] The Bryce Tablet may also document the hire of ten days' service of a slave.[483]

7.3.3 *Lease*

P. Berlin 8523 seems to imply a leasing or rental relationship.[484] In this letter the correspondent writes of "tillage rights" for a Kushite cadet. Allam characterizes the Kushite as a tenant, legally authorized to farm the land because of an agreement. The addressee receives instructions as to what to cultivate, and no rental amount is mentioned.[485] The writer says that his wife has "overturned" his original decision not to rent out his fields.[486] There is, apparently, the possibility of someone objecting to the recipient's cultivation of the land, since the writer urges him to keep the letter as a testimony or proof that he has the right to do so.[487] The role of the

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[478] Gardiner, "Four Papyri . . ." See also Allam, "Familie . . .," 22; Lorton, "Treatment . . .," 46–47. The question of the ownership of these slaves is still open to doubt, see Théodoridès, "Procès . . .," 97–98. Théodoridès believes that they belong to the town and not to individuals. See now Navailles, "Qu'entendait-on . . ."

[479] Gardiner, "Four Papyri . . .," 36. See also Théodoridès, "Procès . . .," 56–60.

[480] Gardiner, "Four Papyri . . .," 36.

[481] Ibid., 40.

[482] See Kruchten, "Une notion juridique égyptienne . . .," 65, quoting Navailles, "Qu'entendait-on . . ."

[483] See Bakir, *Slavery* . . ., 31.

[484] Allam, "Implications . . ." See also McDowell, "Agricultural Activity . . .," 197, 200; Eyre, "Work . . . . . ," 204.

[485] In contrast with Late period leasing agreements, see Allam, "Implications . . .," 4.

[486] Johnson, "Legal Status . . .," 216.

[487] The same procedure is found in P. Cairo 58056; see Kruchten, "Une notion . . .," 69. Cf. also Wente, *LRL*, 66 (P. BM 10100).

person of authority to whom the letter should be shown, namely, the "grain-reckoning scribe of the Temple of Osiris," is not clear.[488]

8. Crime and Delict

Most of our information derives from the royal edicts (e.g., Nauri Decree, Decree of Horemheb), Deir el-Medina texts, and state investigations (e.g., Tomb Robbery and Harem Conspiracy documents). It is sometimes difficult to be certain whether the punishments were in fact carried out.[489] There is not always a distinction clearly drawn between the punishments decided upon for civil and criminal wrongs.[490] Physical punishments could be ordered for what would now be considered civil cases (e.g., false suit or failure to render payment).[491] Most penalties are the result of offenses "against the king and god"; fewer are known for offenses against other private parties.[492] The punishments in the Horemheb Decree tend to be mutilation, deportation, or forced labor, and loss of status.[493] The Nauri and Horemheb Decrees provide that officials who do not carry out the penalty will not receive a proper burial, a boon also denied to their wives and children. The condemned official will be deprived of office and set to work as a cultivator.[494]

Severe corporal punishments are characteristic of the New Kingdom and not earlier periods.[495] However, Lorton argues that the earlier penalties included the lack of a proper burial, thus endangering the afterlife of the deceased. This, he maintains, would in fact be even harsher than the purely physical penalties of the New Kingdom, so that one cannot simply say that the later penalties are harsher than

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[488] See Allam, "Implications . . .," 3.

[489] See Allam, "Droit pénal . . .," 68. On punishment, also McDowell, *Jurisdiction* . . ., 223–33. On delicts considered by the *qenbet*, see Allam, "*Quenebete* . . .," 58–59.

[490] See Lorton, "Treatment . . .," 46. See also Boochs, "Strafverfahren . . .," 21; Théodoridès, "Dénonciation . . .," 64; Allam, "Droit . . .," 66.

[491] Lorton, "Legal and Social Institutions . . .," 358. See also Allam, "Droit . . .," 67.

[492] Lorton, "Treatment . . .," 6; and see also "Legal and Social Institutions . . .," 357–58.

[493] Lorton, "Treatment . . .," 25.

[494] On the possibility of convicted criminals serving sentences as agricultural workers, see Katary, *Land Tenure* . . ., 186.

[495] Van den Boorn, *Vizier* . . ., 336; Lorton, "Treatment . . .," 25, 50.

the earlier ones.[496] Death through burning is apparently attested in the New Kingdom.[497]

8.1 *Homicide*

There is very meager evidence regarding murder.[498]

8.2 *Injury*

While not abundant, there is some information concerning injury. P. Turin 1887 (the Turin Indictment Papyrus), for example, contains a list of serious charges of corruption and crime, including crimes of bodily injury, chiefly against a priest of the Temple of Khnum in Elephantine.[499]

An instance of wife-abuse is attested in O. Nash 5 (= O. BM 65938). A woman apparently accuses her husband before a court of having beaten her. Found guilty, he must swear an oath not to beat his wife in the future.[500]

8.3 *Adultery*[501]

Several papyri contain complaints or accusations concerning immoral behavior, especially fornication with married women. P. Turin 1887 records such charges against priests and administrators of the Temple of Khnum at Elephantine.[502] This accusation is made against the infamous Paneb in the Salt Papyrus 124.[503] P. DeM 27 is a court case concerning adultery but which may have to do primarily with marriage and the question of offspring.[504] P. DeM 26 may also contain a charge of adultery made against a man by a woman.[505]

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[496] Lorton, "Treatment . . .," 52–53.
[497] Leahy, "Death . . ."; see also 8.4 below.
[498] Hoch and Orel, "Murder . . ."; Eyre, "Crime . . .," 93.
[499] Vittmann, *Elephantine* . . ., 45. See also McDowell, *Jurisdiction* . . ., 225–27.
[500] Allam, *Hieratische Ostraka* . . ., 221–22, and *Verfahrensrecht* . . ., 108.
[501] "Eyre, Crime . . ." See further Théodoridès, "Droit Matrimonial . . .," 50–54; Johnson, "Legal Status . . .," 216; Toivari, "Man versus Woman . . .," 163; Lorton, "Treatment . . .," 38–39.
[502] Vittmann, *Elephantine* . . ., 46.
[503] Théodoridès, "Dénonciation . . .," 18. See also Eyre, "Crime . . .," 104.
[504] Allam, "Familie (Struktur)," col. 109, *Hieratische Ostraka* . . ., 301–2, *Verfahrensrecht* . . ., 109, and "Legal Aspects . . .," 144; Théodoridès, "Parler . . ."
[505] Allam, *Hieratische Ostraka* . . ., 299, 301.

Adultery is called the "abomination of (the god) Montu" (e.g., O. DM 439).[506] The strictures against adultery occur in religious contexts, as in the Negative Confession of the Book of the Dead (chapter 125) "I have not copulated with a married woman."[507]

An obscure papyrus (P. BM 10416)[508] may show how Egyptians settled such problems on their own outside of the legal system. The text suggests, at least, that a married man who committed adultery could be urged to go to court for a divorce.

8.4 *Theft*[509]

The most dramatic records of theft are the Tomb Robbery Papyri. The penalty for theft from royal tombs was death.[510] Penalties such as mutilation and impalement befell Deir el-Medina workers who stole from private tombs.[511] Another penalty for this act, presumably committed under mitigating circumstances, was one hundred blows.

Theft from a private individual was punishable by the return of the stolen object together with a penalty (*ṯ3wt*) of two or three times its value.[512] Černý publishes two short texts which contain lists of stolen items, apparently to be returned, together with a penalty based on the value of the items.[513] The victim could possibly renounce his claim to the penalty when the stolen goods were not found with the thief.[514] This penalty for theft from a private individual is in contrast with the extraordinarily high penalties for theft from the state, amounting to eighty or a hundred times the value of the stolen object.[515]

One lady accused of using another woman's property to purchase a slave took an oath of denial, then invoked the penalty of one hundred blows and the confiscation of the slave.[516]

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[506] See Eyre, "Crime . . .," 100.
[507] See ibid., 95.
[508] Janssen, "Marriage Problems . . ." See also Toivari, "Man versus Woman . . .," 158–59; Janssen, *Late Ramesside Letters* . . ., 28–32.
[509] McDowell, *Jurisdiction* . . ., 227–32; Lurje, *Studien* . . ., 154–60.
[510] Lorton, "Treatment . . .," 31.
[511] Ibid., 40; on the penalties of the tomb robberies in general, see ibid., 30–49. On impalement, see Boochs, "Über den Strafzweck des Pfählens."
[512] Lorton, "Treatment . . .," 47. On fines, see Janssen, *Commodity Prices* . . ., 548–49; McDowell, *Jurisdiction* . . ., 29.
[513] "Restitution . . ."
[514] Ibid., 189.
[515] Lorton, "Treatment . . .," 37–38; Théodoridès, "Dénonciation . . ."
[516] Lorton, "Treatment . . .," 48–49. On women committing theft, see Toivari, "Man versus Woman . . .," 166–67.

The texts record theft or misuse of state property. In O. Florence 2625, for example, a worker is apparently charged with failure to return tools to the proper authorities in Deir el-Medina.[517]

The "wrath of god," a somewhat enigmatic term appearing several times in Deir el-Medina texts, afflicts those confessing to perjury or theft.[518] It seems, for example, to denote illness or blindness perceived as divine punishment by those guilty of sins.

8.4.1 The receiving of stolen goods was punished by mutilation and impalement.[519]

8.4.2 Abuse of authority, by taking or misappropriating exempted persons or property of temple institutions, was regarded as the equivalent of theft from the state. A good example is P. Salt 124, which deals with Paneb using state workers for his own purposes.[520]

8.4.3 The penalty in the Horemheb or Nauri Decrees for "requisitioning free personnel or slaves" (probably cultivators) is two hundred blows, five open wounds, and replacement of the work-days lost.[521]

8.4.4 The penalty for detention of a boat belonging to the temple foundation or any of its agents is two hundred blows, five open wounds, and replacement of the lost work-days.

8.4.5 The penalty for stealing an animal of the foundation is the cutting off of the nose and ears and setting the offender as a cultivator on foundation land. The offender's family also become cultivators or serfs.

8.4.6 The penalty for stealing goods of the foundation is the restoration of goods and payment of additional penalty, at a rate of a hundred to one.

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[517] Allam, *Hieratische Ostraka* . . ., 149–50, and *Verfahrensrecht* . . ., 17.
[518] See Borghouts, "Divine Intervention . . ."
[519] At least in the case of the Tomb Robberies (Lorton, "Treatment . . .," 35).
[520] Théodoridès, "Dénonciation . . .," 47; Eyre, "Work . . .," 175.
[521] Following examples excerpted from Lorton, "Treatment . . .," 24–27.

8.5 *Perjury*

To judge from the Deir el-Medina material, the standard penalty for false litigation was one hundred blows.[522] In the Legal Text of Mes, male witnesses invoke as the penalty for perjury the cutting off of the nose and ears and being sent to Kush; a woman agrees that perjury will be punished by being sent to "the rear of the house," possibly a term for domestic slavery.[523] Perjury in the Tomb Robbery cases was also punished by mutilation and expulsion to Kush.[524]

Swearing falsely in the name of a god could result in divine punishment.[525]

8.6 *Slander and Blasphemy*

During the reign of Seti II, several villagers accused their foreman of uttering blasphemies against the pharaoh. The case was heard but, not surprisingly, the accusers recanted.[526]

8.7 *Bribery*

P. Turin 1887 includes a charge of bribery of a priest.[527]

9. Special Institutions

9.1 *Curses*

Curses often strengthen the provisions of both royal and private texts.[528] Pharaohs may even employ curses to ensure the proper conduct of future rulers. King Neb-kheperu-Re Antef (Seventeenth Dynasty), for example, concludes a decree concerning a crime committed by an official in the temple of Min at Koptos with the dec-

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[522] Ibid., 41. On perjury, see also Lurje, *Studien* . . ., 161–64.
[523] Lorton, "Treatment . . .," 37–38. See also Seidl, *Einführung* . . ., 54.
[524] Lorton, "Treatment . . .," 32–34.
[525] See Lichtheim, *AEL* 2, 110.
[526] Bierbrier, *Tomb-builders* . . ., 107 (O. Cairo 25556); Allam, *Hieratische Ostraka* . . . . . ., 61–63. See Toivari, "Man versus Woman . . .," 167; Lorton, "Treatment . . .," 42; McDowell, "Schijnproces . . .," and *Jurisdiction* . . ., 251–53; See also Janssen, "Rules . . .," 292; Théodoridès, "Dénonciation . . .," 11–12, and "Ouvriers . . .," 123–28.
[527] Vittmann, *Elephantine* . . ., 48.
[528] See Assmann, "When Justice Fails . . ."; Morschauser, *Threat-formulae* . . .; Nordkh, *Curses* . . .

laration: "With regard to any king and any potentate who shall pardon him, he shall not assume the White Crown, he shall not take up the Red Crown, he shall not sit on the Horus-throne of the Living, and the Two Ladies shall not be gracious to him as one whom they love."[529]

An example of a curse in a private legal documents is in the Adoption Papyrus: "[As for any who shall contest their rights]—may a donkey copulate with him and a donkey with his wife."[530]

One may also achieve security by invoking divine aid or authority.[531] The god Amun, for instance, places the agreement regarding a priestly office between King Ahmose and Queen Ahmosenefertere under his protection.[532]

9.2 *Oracular Judgments*

By the later Ramesside period, private individuals often turn to the gods in order to solve their legal problems through oracular judgments.[533] People consulted also deified pharaohs, such as Ahmose, Ramesses II, and Amenhotep I.[534] The nature of these oracular procedures and their relationship to the "secular" courts are still the subject of debate.

9.2.1 Especially significant in Deir el-Medina was the oracle of the deified Eighteenth Dynasty Pharaoh Amenhotep I (considered the founder of the community). His statue, borne by priests, was consulted in oracular fashion. Generally, people sought such decisions during processions.[535] These events could take place at the Temple of Amenhotep I (near the Ptolemaic Temple of Hathor), but oracles and inquiries happened elsewhere as well, such as at the workmen's tombs, for example.

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[529] Translated by Lorton, "Treatment . . .," on 18–21. See also Théodoridès, "Rapports . . .," 132.

[530] Gardiner, "Adoption . . .," 24. See also Lorton, "Treatment . . .," 27.

[531] Allam, "Publizität . . .," 31.

[532] Gitton, "La résiliation . . .," 72.

[533] See McDowell, *Jurisdiction* . . ., 107–41 (oracles). See also Allam, "Zur Gottesgerichtsbarkeit . . ."; Lurje, *Studien* . . ., 97–125; Ryholt, "Oracular Petitions . . ."

[534] See Römer, *Gottes-und Priesterherrschaft* . . ., 455–56; Théodoridès, "Ouvriers . . .," 199–201.

[535] Lorton, "Legal and Social Institutions," 357. On the *ph-ntr* oracular mechanism (lit., "god-arrival" or "reaching the god"), see Kruchten, "Instrument . . ." See also Eyre, "Work . . .," 176.

Questions were put to the god on the bark carried by the priests. The god would answer "yes" by moving forward on the priests' shoulders, while "no" would be indicated by a backward movement.[536] The witnesses before an oracle are at least once referred to as *sr.w*, "nobles, officials."[537]

9.2.2 Another procedure was to write down two alternative responses on papyri or ostraka and place them before the god (e.g., O. Gardiner 103).[538] The god would then answer by moving towards one of the two responses. Such questions were naturally phrased in positive-negative form: "Will one give the place to Menena as is her plan?"[539]

9.2.3 In a few cases the god is said to "speak." Although mechanical methods by means of which a priest could actually speak through the god are not impossible, scholars seem to be most inclined to understand this "speaking" in a metaphorical or figurative sense.[540] According to Lorton, the oracular deity did not so much give judgments as confirm verdicts already reached.[541]

The potential ability of the priests to manipulate the oracular procedure is quite clear. P. Turin 1887 indeed preserves such an accusation.[542]

9.2.4 It is difficult to determine when someone would turn to the oracular procedure for redress and when he or she would resort rather to the courts, the *qenbet*.[543] The same people who carried the god about during the oracular procedure would presumably have served on the local courts or *qenbet*.[544] Both criminal and civil matters were brought to the oracle.[545] The god might be called upon

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[536] Still useful is Černý's clear description of the procedure in Parker, *Saite Oracle Papyrus* . . .

[537] Janssen, "Rules . . .," col. 294.

[538] Allam, *Hieratische Ostraka* . . ., 169–71. See also McDowell, *Jurisdiction* . . ., 254–56.

[539] McDowell, *Jurisdiction* . . ., 121.

[540] Ibid., 109–10.

[541] Lorton, "Legal and Social Institutions," 357.

[542] McDowell, *Jurisdiction* . . ., 111. See also Lichtheim, *AEL* 2, 158.

[543] The views of scholars differ. See McDowell, *Jurisdiction* . . ., 114, 116, 118, and 135. See also Tovari, "'Man versus Woman," 168; Janssen, "Rules . . .," cols. 296ff.; Janssen and Pestman, "Bulaq X . . .," 146; Théodoridès, "Concept of Law . . .," 318; Allam, *Verfahrensrecht* . . ., 89.

[544] Lorton, "Legal and Social Institutions . . .," 357.

[545] Janssen, "Rules . . .," col. 296; Allam, *Hieratische Ostraka* . . ., 28–29, 169–71, 193–95, 237, and *Verfahrensrecht* . . ., 21 and 108.

to establish the value of disputed objects.[546] One might also turn to the deity, especially Amenhotep, in order to learn the identity of a thief (e.g., O. Gardiner 4).[547] It was not possible, in Allam's view, for a person simply to present a petition during a procession without preparation by court officials.[548]

9.2.5 There are parallels to this type of legal oracular decision from localities other than Deir el-Medina. For example, a stela from Abydos, north of Luxor, records an oracular decision of the deified king Ahmose I concerning the ownership of two plots of land.[549]

In matters of real estate, there seems to have been "cooperation" between the court magistrates and the oracles.[550] O. BM 5624 describes how the oracular statement of Amenophis I presents a man with a tomb and confirms this transaction with a document.[551]

As with the courts, some cases could drag on before the oracles, and we also do not know how enforcement of decisions was achieved.[552] It is not totally clear to what extent the villagers were sure that divine retribution would follow non-compliance.[553]

9.2.6 The texts show that on occasion, the complainants would prepare their legal arguments before the god in exactly the same way as they would before the *qenbet* court.[554] The decision of the god is also phrased in a manner identical to that of a secular court,[555] and may conclude with an imperative "give/cause . . ." (e.g., O. BM 5625).[556] Oracular judgments are also witnessed, just like secular decisions.[557]

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[546] Allam, *Hieratische Ostraka* . . ., 56–57 (O. Cairo 25242), and *Verfahrensrecht* . . ., 93.
[547] Allam, *Hieratische Ostraka* . . ., 151. See also Allam, "Zum Ostrakon British Museum 5637" (victim of robbery asks god for help in identifying thief).
[548] Allam, "Rolle . . .," 111. See also Kruchten, "Tentative . . ."
[549] McDowell, *Jurisdiction* . . ., 122. See Allam, "Remarks . . .," 111; Pirenne, "Preuve . . .," 38–39.
[550] McDowell, *Jurisdiction* . . ., 114–27, 135.
[551] Allam, *Hieratische Ostraka* . . ., 43–45, and *Verfahrensrecht* . . ., 20.
[552] McDowell, *Jurisdiction* . . ., 135–38.
[553] Ibid., 136–37.
[554] Ibid., 139.
[555] "PN is right; PN_2 is wrong," O. DeM 342 (Allam, *Hieratische Ostraka* . . ., 117); see Allam, "Rolle . . .," 111.
[556] Allam, *Hieratische Ostraka* . . ., 46.
[557] E.g. O. Cairo 25555, Allam, *Hieratische Ostraka* . . ., 59.

9.2.7 In certain Karnak inscriptions of the Twenty-first Dynasty, the major deities Amun-Re, Mut, and Khonsu confirm the claims of two important women of this period to property inherited and purchased by them.[558]

9.3 *Letters to the Dead*

As in the Old and Middle Kingdoms, Letters to the Dead occasionally contain legal material.[559] Problems of inheritance or family conflict especially motivate the writers. In New Kingdom P. Leiden I 371, for example, the writer questions why his deceased wife should be making difficulties for him. He even threatens to go to court against her if she does not mend her ways. The widower concludes by emphasizing his good treatment of her when she was ill.[560]

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MESOPOTAMIA

OLD BABYLONIAN PERIOD

Raymond Westbrook

1. Sources of Law

The Old Babylonian period is particularly rich in sources, both in quantity and type. The following types of source may be distinguished.

1.1 *Law Codes*[1]

Three law codes have been preserved. The earliest is the Laws of Lipit-Ishtar (LL), named after the ruler of the southern Mesopotamian kingdom of Isin (ca. 1930). It is written in Sumerian, a prologue, an epilogue and some fifty paragraphs (by a modern division) being preserved. The Laws of Eshnunna (LE) is a code named after the northern Mesopotamian kingdom of Eshnunna and is probably datable to the reign of Dadusha (ca. 1770). It has been divided by scholars into sixty paragraphs. The Laws of Hammurabi (LH) is a code promulgated by King Hammurabi of Babylon towards the end of his reign (ca. 1750). It comprises a prologue, an epilogue, and a body of provisions divided by scholars into 282 paragraphs. It is inscribed on a black diorite stela discovered at Susa, whence it had been taken as booty. The Elamites erased a portion containing about 35 paragraphs, most of which has been reconstructed thanks to duplicate copies from scribal exercise tablets. The other two codes are preserved only on exercise tablets but would also have originated as monumental inscriptions.

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[1] The law codes have been most recently edited and translated by Roth, *Law Collections* . . . See also Driver and Miles, *Babylonian Laws* . . . (legal commentary on LH), and Yaron, *Eshnunna* . . . (legal commentary on LE).

1.2 *Edicts*

Copies of three royal decrees canceling debts have been preserved.[2] The edict of King Ammi-Ṣaduqa of Babylon (AS, ca. 1640) is the most complete, with a preamble and twenty-two paragraphs. That of King Samsu-iluna of Babylon (ca. 1740) has only a date and three paragraphs extant, while a fragmentary text contains about six paragraphs of the edict of a third Babylonian king, whose identity is not known.

1.3 *Administrative Orders*

These are contained in letters from the king to his high officials.[3] In addition to purely administrative matters such as public works, they contain many directives concerning the administration of justice: to try or re-try cases, to execute judgments, or to correct abuses of power.

1.4 *Private legal documents*

These are derived from family or business archives, such as that of the businessman Balmunamhe, who was active in the kingdom of Larsa in the reigns of Warad-Sin and Rim-Sin (ca. 1830–1790).[4] The vast majority (several thousand have been published) are records of legal transactions, such as sale, lease, hire, loan, partnership, marriage, adoption, or division of inheritance. They are characterized by an objective description of the transaction, followed by a list of witnesses and the date. They were usually impressed with the seals of the witnesses and the party under obligation. The other category is records of litigation: a very summary account of the parties, the object of litigation, and the result, with an occasional mention of the decisive proof. In this period they were private documents, drawn up most probably by the losing party for the benefit of the winning

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[2] Edited by Kraus, *Verfügungen* . . .; also Hallo, "Slave Release . . ." Cf. Lieberman, "Reforms . . ."

[3] References to the letters are mostly to the series in which they are edited: Altbabylonische Briefe (AbB).

[4] Studied by Van de Mieroop, "Archive. . . ." See also Charpin, *Archives* . . .; Goetze, "Archive of Atta . . ."

party and retained in the archives of the latter, as proof of the rights, mostly property rights, that were thereby established.[5]

1.5 *Scholastic documents*

These were exercises in Sumerian produced in the scribal schools that used legal material as their base. They were of two types, the first being model court cases, that is, literary accounts of celebrated trials.[6] Unlike the litigation records, their purpose was purely academic. A murder trial, for example, recounts the arguments for and against convicting a wife for complicity in her husband's murder.[7]

The second type was legal exercise tablets containing a mixture of casuistic laws of the kind found in law codes, contractual clauses, and legal phrases of the kind found in later lexical texts.[8]

1.6 There are a large number of miscellaneous non-legal sources from which indirect knowledge may be gained about the law in practice. Most prominent among these are private letters and administrative or accounting records; occasionally, prayers and omens may contain information of legal interest. For example, the prayer of an unrequited creditor provides us with valuable information about marriage law and litigation.[9]

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

In this period Mesopotamia was divided into a number of kingdoms ruled by hereditary monarchs. The king's power was not absolute but, in theory at least, was subject to the rule of law. The legitimacy

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[5] Studied by Dombradi, *Darstellung* . . ., see also Leemans, "Textes paléo-babyloniens . . ."

[6] Reviewed by Hallo, "A Model Court Case . . ."

[7] Jacobsen, "Homicide . . ."

[8] Such as LOx, SLEx, and SHLF, edited by Roth, *Law Collections* . . ., 40–54. *ana ittišu*, often cited for this period, is a lexical text from the Neo-Assyrian period (= MSL 1). It undoubtedly reflects earlier traditions but is not reliable as independent evidence.

[9] UET 6 402 = Charpin, *Clergé*, 326–27.

of his rule rested on a divine mandate to do justice. It has been suggested that the stele of the Laws of Hammurabi was a royal apologia addressed to the gods with the laws as evidence of that king's fulfillment of his divine mandate "to make equity prevail in the land, to destroy the wicked and the evil, to prevent the strong from oppressing the weak."[10] Justice in this context had two facets: to uphold traditional law (*kittum*) and to temper the harsh letter of the law with equity (*mīšarum*). An example of the former is Hammurabi's rhetorical question to an official when ordering the restoration of a wrongfully expropriated family estate: ". . . When is a permanent property ever expropriated?" (AbB 4 16). The remark appeals to an established principle of law. The latter is reflected in the right of subjects to petition the king when the normal machinery of justice had failed them but receives its strongest expression in the debt-release decrees, whereby the king canceled existing obligations arising from perfectly legal loan transactions. That act was called by the king "establishing equity (*mīšarum*) for the land."[11]

2.1.2 *Legislature*

Although there is no evidence of the existence of a legislature, in the sense of an assembly that proposed, advised upon, or ratified legislation, orders were issued by the king (*ṣimdat šarrim/awat šarrim*), which could be of general application.[12] Thus an order of King Samsu-iluna of Babylon banned purchase of citizens of certain cities from the Sutean nomads (AbB 3 1). Again, the prime example is the debt-release decrees, which applied in part to the whole citizen body, in part to all the citizens of particular cities. They were promulgated through a solemn ceremony, enforced through an ad hoc administrative apparatus, and their application gave rise to a great deal of litigation.[13] There is no clear evidence, on the other hand, for application of the law codes, the legislative character of which has been disputed by some scholars (see Introduction).

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[10] Finkelstein, "Edict . . .," 103.
[11] See Kraus, *Verfügungen* . . ., 6–7.
[12] All references are discussed by Veenhof, "Relation . . ."
[13] See Olivier, "Effectiveness . . .," 107–13.

2.1.3 *The Administration*

2.1.3.1 Central administration consisted of the king and his palace officials. Collectively, it was known as "the palace" (Akk. *ekallum*, Sum. é.gal), a term also used in its function as a property owner. LH mentions responsibilities of the palace in two laws: identification of the owner of a slave who refuses to name his master (18) and surveillance of criminal activities through the duty of tavernesses to report suspicious gatherings (109). There is no sign of a "chancery" issuing orders in the king's name, but there was delegation of authority. High officials acting in their own name gave orders to provincial officials much in the same way as the king did (e.g., AbB 2 45; 4 69; cf. 13 8).

2.1.3.2 Provincial administration consisted of a number of royal officials whose rank, responsibilities, and geographical area of authority can only be vaguely discerned. At the highest level, Hammurabi corresponded with two senior officials (with no title designated) in the southern part of his kingdom: Sin-iddinam, responsible for the "lower district," and Shamash-hazir, based in the Larsa region.[14] They appear to have had a wide range of responsibilities, especially collecting taxes, public works, allocation of feudal tenancies, and the administration of justice. Beneath them were local governors responsible for smaller areas (*šāpir mātim*) or cities (*šakkanakkum*). Still lower ranking officials had a confusing variety of titles, including notably the *abi ṣābim*, in charge of royal lands and granaries, and the *mu'errum*, who recruited labor for work on crown lands. There were also special government agencies, such as an irrigation bureau responsible for the maintenance of canals.[15]

All these officials were appointed by the central administration and reported ultimately to the king. Hammurabi's correspondence with his high officials shows him intervening directly in day-to-day administration, frequently giving instructions on individual cases.

2.1.3.3 Local government operated at two levels: the city (*ālum*) and the ward (*babtum*). Its functionaries were appointed from within the

[14] Correspondence with the former is collected in AbB 2 and with the latter in AbB 4.

[15] Walters, *Water for Larsa.*

community and were independent of the royal administration, although they were of course subordinate to it and often acted in concert with provincial officials.

2.1.3.3.1 The city was governed by a mayor (*rabiānum*) and elders. The basis of tenure is not clear, but some mayors are attested holding office for several successive years and there are also cases of a son succeeding his father.[16] According to LH 23–24, the mayor and city administration bore responsibility for public safety: they had to compensate the victims of brigandage (presumably from public funds). Their administrative duties included sale of ownerless property and registration of taxpayers.[17] Otherwise, they appear in the records in their function as a court (see below).

2.1.3.3.2 At the same level as the city but operating independently was the merchants' association (*kārum*). It collected taxes for the king and supervised royal granaries, as well as having judicial functions.

2.1.3.3.3 The ward was a smaller unit than the city, representing a neighborhood. The head of a ward could also be styled *rabiānum*. The ward's best known legal function was to notify owners of potentially dangerous property: a habitually goring ox (LE 54; LH 126), a vicious dog (LE 56), or a sagging wall (LE 58). It also appears to have been officially notified of changes in personal status, as with the betrothal of a girl still living in her father's house (CT 45 86; see 5.1.2.2.2 below).

2.1.4 *The Courts*[18]

2.1.4.1 In his capacity as judge, the king constituted the highest court. Sitting alone, he had jurisdiction both at first instance and on appeal. According to LE 48, crimes that potentially carried the death penalty were reserved for the king. This jurisdiction could apparently be delegated to a royal official (AbB 10 19). Adultery in particular was regarded as a matter for the king's jurisdiction (LH 129,

[16] Stol, *Studies*, 80. Against the idea of an annual term of office, see Charpin, "Marchands . . .," 64, n. 86.
[17] See, e.g., Goetze, "Tavern Keepers . . ."
[18] Ishikida, "Dispute Management . . ."

UET 5 203). A charge of burglary was brought directly before Hammurabi, who prepared to hear the evidence himself (AbB 13 12). The king is occasionally found trying civil disputes (property and contract), but on what basis they were selected—the difficulty of the issue, the status of the litigants, or a royal interest—is not clear (e.g., ARN 163).

2.1.4.2 The king might deal with a case brought before him in one of three ways. He either tried the case himself and gave final judgment, decided a point of law and remitted the case to a local court for a decision on the facts, or remitted the entire case to a local court.[19]

2.1.4.3 There were also royal judges who tried disputes at first instance. They were undoubtedly higher in standing than the local courts, but there does not appear to have been any formalized hierarchy of courts.[20] Nor does there appear to have been a formal system of appeal. A party dissatisfied with the judgment of a court probably applied to the king by way of petition (see 2.2.2 below).

2.1.4.4 Provincial officials are frequently seen acting in a judicial capacity, either independently or as a member of a court alongside those described as judges. Thus the head of the irrigation bureau tried two men charged with embezzling workers' wages.[21] Hammurabi referred many cases to his district governor Sin-iddinam for trial (e.g., AbB 13 10).

2.1.4.5 Local courts were constituted by a college of judges, which could vary in size. They functioned at the administrative level of the city. The ward could be a venue for litigation, but it is not certain that it constituted a court with powers of final judgment.[22] In some cities (notably Nippur), the court was known as an assembly (*puḫrum*);

[19] Leemans, "King Hammurapi as Judge"; Dombradi, *Darstellung* . . ., 215–21.
[20] Dombradi, *Darstellung* . . ., 226–30.
[21] Waters, *Water* . . ., 67.
[22] The ward could investigate (LH 142) and take evidence (BE 6/2 58 = Westbrook, *Marriage Law* . . ., 116). Its dignitaries could form part of a larger court (VAS 7 56; 18 1 = Westbrook, *Marriage Law* . . ., 135) and could at least broker a settlement (VAS 7 16 = UAZP 279).

otherwise, there was no special term for a court of law, which was usually referred to simply as "the judges."

2.1.4.6 The office of judge itself may well have been permanent, since the title "judge" was appended to personal names even in non-litigious contexts, indicating a professional or at least an honorific status. The court need not, however, consist of titular judges. The city elders and mayor functioned as a local court, sometimes joined by the local merchants' association (*kārum*). Titular judges, royal officials, and possibly even laymen might be joined together to form a court (AbB 2 106). In the same way, royal officials might supplement a local bench, such as that of the city elders.

2.1.4.7 The criteria for composition of a particular bench are not known, nor is it clear whether the choice was in the litigants' hands. The courts of certain local centers such as Nippur enjoyed special prestige (AbB 11 7; 11 159).

2.1.4.8 In earlier records from Babylonia, judges are often found sitting in a local temple, although there is no indication that they were priests or applied religious law.[23] The one case in which priests join the local bench involved a theft from their temple (TCL 11 245 = Wilcke, "Diebe . . .," 59).

2.2 *Functions*

2.2.1 *Compulsory Service*[24]

One of the main points of contact between the government and its subjects arose from the obligation upon free citizens to perform certain services (*ilkum*) for the palace. There were two main types of service.

2.2.1.1 Corvée (*tupšikkum*)

Persons were summoned to do forced labor on public works, especially maintaining the canals and harvesting, for a set number of days in the year.[25] It is probably to this labor that Lipit-Ishtar refers

[23] Dombradi, *Darstellung . . .*, 233–39.
[24] Evans, "Labour-Service . . ."
[25] See Stol, "Corvée . . ."

in the prologue to his law code, stating that he obligated households for seventy days (per year) and single men for ten days (per month). The local authorities were responsible for ensuring that corvée workers were supplied when required by the administration. It was possible for individuals to hire a substitute.

2.2.1.2 *Military*

To go on the "campaign of the king" (*ḫarrān šarrim*) was the duty of the soldier (*redûm*) and the "fisher" (*bā'irum*), but also of non-military personnel. A third category, the "bearer" (*nāši biltim*) had to supply the palace with agricultural produce, possibly for the provisioning of armies, and some may have staffed the baggage train.[26] All three received land from the palace in return (see 6.1 below). Persons could be hired for "bearer" service, but LH 26 strictly forbids a "soldier" or a "fisher" to hire a substitute, on pain of death.[27]

2.2.2 *Petitions*

A second point of contact arose from the special role of the king, as head of the judicial and administrative system, in hearing petitions from aggrieved individuals. We are not told how the petition reached the king, who merely states in his correspondence with his officials: "PN has informed me . . ." (*ulammidanni*).

Petitions related either to private litigation or to abuse of power by officials, as where a higher official overrode the decision of a tribunal without due process: "In the matter of breaking tablets in the absence of judges and parties, may my lord render me justice!" (AbB 7 153).

3. Litigation[28]

3.1 *Parties*

A substantial number of litigants were women, who appear to have been subject to no legal disabilities in this respect. Sometimes their interests were represented in court by male relatives (TCL 1 157).

[26] Finet, "*naši biltim* . . ."
[27] Stol, "Miete," §3.9 *in fin.*
[28] Dombradi, *Darstellung* . . .

There are no cases where a slave was a litigant (except where the issue was his slave status). In one case where a slave's business transaction was at issue, it was his mistress who litigated (OLA 21 24; cf. BE 6/1 103 = UAZP 273).

3.2 *Procedure*

A standard procedure applied to all private actions, with slight variants according to the nature of the cause. Formal proceedings could begin prior to the trial, with a claim before witnesses, followed by a rebuttal.[29] If no settlement was reached at this stage, one or both parties (not necessarily the original claimant) would "approach" the judges.[30] In cases concerning debt or crime, the claimant would "seize" the other party and bring him before the court.[31] This could happen in other causes also, but in property disputes and the like was probably little more than a formality. In one such case, both parties "seize" each other (CT 2 43:1–4).

3.2.1 For the most part, it seems that parties relied on self-help to bring their opponent to court. Nonetheless, the courts did have powers to order the appearance of parties, on the basis of a unilateral application. In ARN 163, the king (sitting as a court of first instance) dispatches a soldier to fetch the defendant to a claim of non-payment brought by a female litigant (cf. AbB 2 19). Although it is not clear what executive mechanism they relied on, local courts also had this power (AbB 9 268; 11 158).

3.2.2 The trial proper began with a reiteration by the parties of the formal claim and rebuttal, after which evidence was presented. The procedure was partly adversarial and partly inquisitorial. On the one hand, the parties were responsible for presenting their case and marshaling their evidence. On the other hand, the court had extensive powers to summon witnesses on its own initiative and to interrogate witnesses. By far its most important powers were with

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[29] Ibid., 289–91; AfO 25 (1974–77) 72–82 III; VAS 22 28; cf. LH 9.

[30] Dombradi, *Darstellung* . . ., 304–8. At Larsa, the parties approached an official, who sent them to the appropriate court.

[31] CT 6 34b = Dombradi, *Darstellung* . . ., §394; UCP 10/1 107 = Greengus, *Ischali* . . ., 171–73; UET 5 257; cf. AbB 2 106.

respect to the oath. As in the Neo-Sumerian period, a solemn oath as to the truth of an assertion, imposed by the court, was the core of the trial procedure. It could be taken by one side only, by the party and/or witnesses (although more frequently imposed on a party than in the previous period).[32] If taken by the party, at least, it was absolutely decisive. Trial records often omit any mention of proceedings after the oath, since the verdict was self-evident.[33] The decision whether the oath was to be used, upon which party it was to be used, and the content of its assertions were entirely within the discretion of the court, although the parties undoubtedly presented arguments on these issues.[34] The court, having heard unsworn evidence, sent the witnesses of one side and/or the party himself to a place where the oath would be administered (see 3.3.3.1 below).

3.2.3 Following its decision, the court could issue a variety of orders. Apart from payments, it could order the restitution of property (CT 8 6b = UAZP 268), the division of property in an inheritance (TCL 1 104 = UAZP 293) or partnership (CT 2 22 = UAZP 282), the delivery of a criminal into the service of his victim (see *kiššātum*, under 8.4.2.3 below) or to death (see 8.1.1 and 8.3.1.1 below). In LL 30, the court issues an order restraining a young married man from consorting with a prostitute. The court would often make an ancillary order that any tablets rendered invalid by the decision be broken (e.g., CT 8 43a = UAZP 271), and by the same token could validate a copy of a lost tablet (CT 47 63:62 *ṭuppam anniam uballiṭ*).

If a plaintiff's claim were rejected, the court could also impose a penalty on him for vexatious litigation (see 8.6 below), or for suing again on a matter already litigated. The final order of the court was for an oath of forbearance: this was a promissory oath not to litigate the same issue again. It was not necessarily imposed upon the

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[32] In LH 9, it is taken by the witnesses for both sides, but that is because it is a three-cornered case, where the oaths of owner's and buyer's witnesses serve to join a third party, the seller, as defendant.

[33] Contra Ries, "Beweisurteile . . .," but see Dombradi, *Darstellung . . .*, 368–70.

[34] In VAS 22 28, the plaintiff declares himself unsatisfied with the oath imposed on the other side by the court and insists that a more detailed oath be taken at the locality of the land in dispute. Although presented as a decision of the plaintiff, we consider that the court's agreement was understood. Since the oath was duly taken and the plaintiff thus lost, the record, drafted tendentiously for the benefit of the defendant, emphasizes an incident that served to strengthen the latter's title.

losing party but upon any party who might be tempted to disturb the judgment by raising a claim in connection with its object, and it could be imposed on both parties and even on relatives who could claim through them.[35] The promissor also had to draft a tablet of forbearance (*ṭuppi la ragāmim*) as evidence of the trial, the verdict and the fact of the oath.

The existence of this oath led Lautner to suggest that the court's decision was not binding; only the oath made it so.[36] The oath is only imposed, however, after other court orders, such as for restitution, have been made and penalties imposed.[37] It is more plausible, therefore, that the oath was a supplementary measure. It allowed the court to impose a heavier penalty and raised the possibility of divine sanctions.

3.2.4 While there was no formal system of appeal, there were two channels open to a dissatisfied litigant. In CT 29 42–3 (= Wilcke, "Diebe . . .," 65), the plaintiffs did not accept the court's decision to impose a particular oath on the defendants. They therefore convened a second court, with mostly the same judges. They did not accept the second judgment either, however, which left them only with recourse to a higher authority, the king (see further below). Rejection of the decisions of the two lower courts did not mean that they were not binding, however, merely that the plaintiffs had not yet exhausted their remedies within the system.[38]

3.2.5 The court could execute its judgments. In YOS 2 25:17–20 (= Westbrook, *Marriage Law* . . ., 136–37), the court, having made a restitution order in favor of M., a female litigant, adds: "We have sent a soldier with her—let them give M. anything that is now to be seen." Self-help was available to judgment creditors, in the form of distraint (see 7.4 below).

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[35] E.g. CT 45 18:19–26 = Veenker, "Appeal . . .," 9–10: "A. shall not sue ^{f}B . . . for the (inheritance) again, he shall not say: 'This I forgot.'"

[36] *Entscheidung* . . ., 2–3, 55–56.

[37] Dombradi, *Darstellung* . . ., 362–65.

[38] Cf. AbB 11 7; 10 19, and see Veenker, "Appeal . . .".

3.3 *Evidence*

There were two forms of conventional evidence: witnesses and documents; and two supra-rational methods: the oath and the ordeal. There were also evidentiary presumptions, for example, according to LE 40, the inability of a buyer to establish the identity of his seller is regarded as proof that he is a thief.

3.3.1 *Witnesses*

Witnesses could be male or female; slaves are not attested. They could give evidence on the basis of local knowledge (VAS 18 1:53–67 = Westbrook, *Marriage Law* . . ., p. 135). Hearsay evidence was apparently admitted: "A. swore: 'I heard B. (the accused)'s brother C. say: "The piece of cloth which B. is wearing was stripped from the body (statue) of Nin-Marki"' " (TCL 11 245:20–28 = Wilcke, "Diebe . . .," 59).[39] Testimony was initially given without oath; the court would interrogate the witnesses and then decide whether to send those of one side to confirm their account under oath.

It sometimes happened that witnesses did not corroborate the claims of the party who called them. When witnesses for the plaintiff were unable to answer a key question as to the status of the person in dispute, the judges threw them out (BBVOT 1 23 = Wilcke, "Freiheit . . ."). In BE 6/2 58 (= Westbrook, *Marriage Law* . . ., 116) female witnesses called by a reluctant groom not only failed to confirm his accusations against his bride; they confirmed her accusations against him. In CT 8 12b (= UAZP 260), the plaintiff's witnesses evidently confirmed the defendant's version, for the court ordered the defendant to swear an oath "as the (plaintiff's) witnesses swore."[40]

3.3.2 *Documents*

Documents could be persuasive evidence but were not decisive. They recorded oral legal transactions and might be incomplete, inaccurate, or fraudulent. Witnesses were often required to testify as to the authenticity of documents.[41] They were, nonetheless, prima facie

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[39] Cf. the witness statements in PBS 5 100: see Roth, "Reading Mesopotamian Law Cases . . .," 256–60, 269–77.

[40] Lines 14–16, following the analysis of Loewenstamm, "Cumulative Oath. . . ."

[41] E.g. CT 2 47 = UAZP 261 (claim that testament forged by beneficiary); BE 6/2 49 = UAZP 298 (which of two testaments was the later and therefore valid).

evidence, and the burden of proof would be on the party challenging the document (TCL 1 157:32–41 = UAZP 280). The document was regarded as a safeguard against witnesses' lapse of memory due to the passage of time (*RA* 91, 135–45). To guard against tampering, legal documents were usually enclosed in an envelope on which the text was repeated and the obligated party and some of the witnesses impressed their seals. If any question arose as to the text, the envelope could be broken open in court. On the other hand, tablets could be lost, in which case a new tablet would need to be authenticated, based on the testimony of the witnesses to the original (CT 47 63).

3.3.3 *Oath*

3.3.3.1 The declaratory oath was a solemn curse that the taker called down upon himself if his statement was not true. It was mostly taken in the name of the local city god, at the Temple, before a sacred emblem of that god. One ceremony apparently required the oath-taker to "pull out" (*nasāḫum*) the emblem from its holder. The sacred emblem could come to the court, or to the land in dispute. The oath-taker could establish its boundaries by carrying the emblem around them.[42] The content of the curse is known only in one case, where the borrower of silver for his betrothal payment calls down leprosy, poverty, and (appropriately) childlessness upon himself (UET 6 402 = Charpin, *Le Clergé d'Ur . . .*, 326–27). The content of the statement was prescribed by the court (*RA* 91, 135–45). When taken by a litigant, it could be addressed in the second person to the opposing party (UET 6 402; *RA* 91, 135–45).

3.3.3.2 The law codes list many circumstances in which the oath is prescribed, but no general principles can be discerned. Inadequacy or unavailability of other evidence could be a factor (OECT 13 191: transaction long in the past; *RA* 91, 135–45: witnesses no longer remembered the details), or the credibility of one party (*WO* 8/2 (1976) 160–61).

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[42] E.g. Jean, Tell Sifr 71 = Charpin, *Archives . . .*, 188, 254. See Harris, "Divine Weapon. . . ."

3.3.3.3 Breach of the oath led to divine punishment and probably also human (if discovered).[43] Fear of sanctions was extremely effective. The party selected would sometimes refuse, preferring to lose the case (*WO* 8/2 (1976) 160–61). The other party feared the decisive effect of the oath on the issue in dispute. Not surprisingly, therefore, imposition of the oath very frequently triggered a compromise settlement between the parties (e.g. CT 4 47a = *AfO* 15, 37). Nonetheless, perjury was not unthinkable. When a debtor swore repeated false oaths denying nonpayment of the debt, the creditor's only recourse was a prayer to the gods, calling on them to punish the wrongdoer (UET 6 402 = Charpin, *Le Clergé d'Ur . . .*, 326–27).

3.3.4 *Ordeal*

3.3.4.1 The most explicit accounts come from Mari. According to Durand, the procedure there involved swimming a set distance, perhaps with some handicap, such as carrying a millstone or swimming underwater.[44] Prior to entering the water, the swimmer reiterated the claim at issue, sometimes in answer to a series of interrogatories (ARM 26/1 249, 253). The use of substitutes was possible: townspeople swim for their prince (ARM 26/1 249), a lady-in-waiting for her queen (249), a wife for her husband (254), a mother for her daughter (253). If the swimmer failed to complete the course and *a fortiori* if he drowned, his case was lost, by divine judgment.

3.3.4.2 Although attested in practice mostly from Elam and Mari, use of the ordeal was widespread, as its presence in LH indicates.[45] Nonetheless, it was undoubtedly much less common than the oath procedure. LH applies it to witchcraft (2) and adultery (132), both of which are prominent causes at Mari (ARM 26/1 249, 250, 252, 253). The Mari letters, however, also mention its use for personal

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[43] See Leemans, "Le faux temoin . . .": an oath proved to be false is called "theft of god and king."

[44] See Durand, "Ordalie . . .," for the Mari material. From the mention of carrying a millstone, Cardascia concludes that they did not swim but waded across the river ("L'ordalie fluviale . . .," 281–84). Cf. Heimpel, "Hit . . ." Frymer-Kensky claims that the ordeal at Elam was a drinking trial ("Suprarational Procedures . . .," 115–20).

[45] In AbB 8 102, a man clears himself of an accusation by the palace, somewhere between Eshnunna and Babylon.

injury and theft (254, 256)[46] and a boundary dispute (249). In Elam, it seems to have been used for disputes over property and inheritance.

3.3.4.3 As with the oath, use of this procedure was probably a matter for the court's discretion. In the sources from Elam, it is stressed that the ordeal was undergone freely and voluntarily (e.g., MDP 23 242:1–5 *ina ṭubātišu ina nar'amātišu*), but it could still have been ordered by the court. The subject could refuse to undergo the ordeal, thereby losing the case.

3.3.4.4 The reasons for using the ordeal are unclear. It had the advantage of giving an immediate divine judgment, whereas with the oath, divine punishment would have to be awaited. It may also have been the last resort when all other attempts to ascertain the truth had failed. In CT 29 42–43, after the plaintiff had twice rejected a judgment based on the oath, the king sent the parties to "the river god, the judge of truth."[47]

4. Personal Status

4.1 *Citizenship*

4.1.1 AS 3, 5, 6, and 9 annul the debts of an "Akkadian or Amorite." This phrase appears to base citizenship upon an ethnic criterion, either limiting it to the two groups in question or including all native inhabitants by way of merism. A second criterion is found in the same document, that of place of birth. The phrase "son of GN" is commonly used to designate a freeborn native of a city. AS 20, which directly decrees release from debt slavery, is directed to the natives of particular cities: "a son of Numhia, a son of Emut-balum, a son of Idamaraz, etc." A similar slave-release provision in NBC 8618 (= Hallo, "Slave Release . . .") adds to the list "a son of the land" (*mār mātim*), a phrase which is used in LH in contrast to a "son of another land," a foreigner (281–82). This suggests that the lists of cities are synecdochic for the whole of Babylonia.

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[46] Lafont argues, contrary to Durand's explanation ("L'Ordalie," 515, 534), that 254 concerns two charges: severely injuring a slave woman by beating and misappropriation ("AEM 1/1 254 . . .")

[47] Following the reading of Wilcke, "Diebe . . .," 77, n. 106.

4.1.2 The debt and slave release provisions were a privilege confined to native subjects but at the same time they reveal that slavery was not incompatible with citizenship, although it might prevent the exercise of citizenship functions. According to LH 280, "sons of the land" who are slaves and somehow find their way abroad, where they are purchased and brought home, may then be reclaimed by their local owner. King Samsu-iluna forbade the purchase of a "male or female slave, a son of Idamaraz or a son of Arrapḫum," from the Sutean nomads (AbB 3 1). Since the order refers to men and women alike, gender was not a factor in citizenship.

4.1.3 A foreigner could acquire a protected status from the local ruler and thus become a resident alien (*ubārum*). LE 41 protects the resident alien along with other categories of outsider from economic exploitation by a taverness.[48]

4.2 *Class*

Free persons fell into two main social classes, the *awīlum* (Sum. lú) and the *muškēnum* (Sum. maš.en.kak), which may be roughly designated as "gentleman" and "commoner," respectively. *awīlum* was used for "gentleman" (Herr, monsieur) in polite parlance; *muškēnum* could be synonymous with "wretched." Otherwise the distinction is problematic, both socially and legally.

4.2.1 In the law codes, *awīlum* was used generically, to mean "someone," with no further specification of status or profession. Thus most of the provisions begin: "If an *awīlum* . . ." In a few paragraphs, however, when contrasted with *muškēnum*, it refers to a narrower category, higher in wealth or social standing, or both (LH 196–223).

4.2.2.1 *muškēnum* in the law codes was used in three ways:

1. in a context which suggests nothing more than "someone," as with *awīlum*. Thus in LE 12 and 13 he is the householder or landowner who seizes a burglar on his property and in 24 a man whose wife or son has been wrongfully distrained.

[48] See Westbrook, "*napṭarum* . . ."

2. in connection with the palace. LE 50 and LH 8, 15, 16 penalize the theft or misappropriation of slaves and movable property of the palace or of a *muškēnum*; LH 175–76 concern the marriage of a free woman ("the daughter of an *awīlum*") to a slave of the palace or of a *muškēnum*; LE 34 invalidates the illicit adoption of a child of a palace slave woman by a *muškēnum*.
3. in contrast with an *awīlum*. LH 139–40 prescribe a lower divorce payment if the divorcing husband is a *muškēnum*; 196–223 prescribe lower penalties for physical injury if the victim is a *muškēnum* or a *muškēnum*'s slave and lower payments for surgical procedures.

4.2.2.2 *muškēnum* is also mentioned in the context of debt-release decrees. In AS 15, he is among a list of tenants of crown land who are given release from certain payments, alongside (perhaps in contrast to) "lords and nobles."[49] A letter reports the annulment of the debts of "soldiers," "fishermen" (two types of feudal tenant), and *muškēnum*s (TCL 17 76 = Kraus, *Verfügungen* . . ., 66–67).

4.2.2.3 On the basis of these data, Speiser saw in the *muškēnum* a dependant of the palace, who came under its protection because of his special services to the state.[50] Kraus proposed a relativistic approach: *awīlum* as an ordinary citizen included *muškēnum* but expressly excluded him when a distinction was to be drawn between upper and lower classes of citizen. From the viewpoint of the palace, however, every citizen, including a member of the upper classes, was a subject, for which the term *muškēnum* was more appropriate. Hence in provisions concerning both public and private property, the two spheres were delineated by the terms "palace" and *muškēnum*.[51]

Both explanations provide a rationale for use of the term *muškēnum* in conjunction with the palace or with *awīlum*, but not in provisions where it was used alone (e.g., LE 12–13). In particular, the *muškēnum* who suffers from illegal distraint in LE 24 appears to be identical with the *awīlum* in paragraph 23, which is part of the same law.

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[49] In AS 7, the term *awīlum* (lú) is used of both creditor and debtor.

[50] "The *muškenum*. . . ." Followed by von Soden ("muškēnum und Mawali . . .") and Finkelstein ("Ammi-ṣaduqa's Edict . . .," 96–99).

[51] *Vom mesopotamischen Menschen* . . ., 92–125, and *Verfügungen* . . ., 329–31. Followed by Yaron, *Eshnunna* . . ., 132–46.

Yaron has suggested that all provisions of the codes mentioning the term originated in the legislative or judicial activities of the ruler, not in ordinary court practice, but there is no independent evidence for this premise.[52]

4.3 *Gender and Age*

4.3.1 The archetypal "person," as far as the legal systems were concerned, was a male head of household. Women as a class had no special status in the law; rather, all subordinate members of a household, whether wives or male or female children, had more limited rights and duties. Legal capacity was therefore more a function of one's position in the household than of one's sex or age, and the patriarchal household was by no means the sole configuration possible. A household might be headed by a woman, for example, a widow or divorcée, either alone or together with her adult sons; or brothers might together form a joint household (see 6.3.1.5 below); or a single person, male or female, might be entirely independent.

4.3.2 No free person was entirely lacking in legal capacity, except perhaps a young child. (There is no evidence for a specific age of legal majority.) However, the names of public office holders are exclusively male.

4.3.3 The access of women to the courts, as litigants or witnesses, has been discussed above. Their rights and responsibilities in other areas of law, such as property, contract, debt, or crime, are discussed below under the appropriate heading.

4.3.4 A woman could enjoy an independent status by reason of her profession or vocation. Within the former category fell the taverness, wetnurse, and prostitute, whose professional activities were regulated.[53] Within the latter were a special category of women dedicated to a god, the most important of which was the *nadītum* (see 9 below).

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[52] *Eshnunna* . . ., 142–43. Buccelati, discussing evidence outside the law codes, suggests that a *muškēnum* was a subsistence farmer who owned only the inalienable family estate (a "homesteader"); anyone who owned land in excess thereof (which was therefore marketable) was an *awīlum* ("Homesteader . . .").

[53] Taverness: LE 41; LH 108–9, 111; wetnurse: LE 32; LH 194; prostitute: LL 27, 30.

4.4 *Slavery*[54]

4.4.1 *Terminology*

Identification of the legal status of slave is complicated, as in other periods, by the terminology. The terms for slave (Akk. *wardum*; Sum. ìr) and female slave (Akk. *amtum*; Sum. gemé) might be used to designate any hierarchical inferior. Free citizens were sometimes referred to as slaves of the king (e.g., LH 129). In particular, royal courtiers were referred to in this way: "the gentlemen, slaves of the king" (*awīlē wardū šarrim*: AbB 3 52:27). Even the term "slave of the palace" (ìr é.gal) might sometimes refer to a free man who was merely in the service of the king (e.g., AbB 4 118). "Slave" was also used as a modest form of self-reference, for the purposes of etiquette. Further terms used in this period are "boy" (*ṣuḫārum*) and "girl" (*ṣuḫārtum*).

4.4.2 *Categories*

The legal condition of slaves depended upon a number of distinctions.

4.4.2.1 *Debt Slaves and Chattel Slaves*

Debt slaves were free persons who had entered slavery by reason of a debt (see below). They were alienable, but their slavery was conditional upon the existence of the debt and would be terminated with its extinction, for whatever reason. Chattel slaves were slaves who had entered slavery on any other basis and whose slavery was in theory permanent and unconditional.

4.4.2.2 *Native and foreigner*

Citizenship and slavery were not incompatible (see 4.1.2 above), but *in theory* no native subject could be enslaved against his will, or at least against the will of the person under whose authority he was, for example, a parent. For a foreigner, no such scruples applied. Furthermore, many measures of social justice whereby slaves were released applied exclusively to natives.

4.4.2.3 Special rules applied to the female slave in respect of her sexuality and reproductive capacity.[55] Several types of arrangement are attested.

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[54] Mendelsohn, *Slavery* . . .; Westbrook, "Slave and Master. . . ."
[55] See Westbrook, "The Female Slave . . ."

4.4.2.3.1 A female slave could become her master's concubine. If she bore him children, she could be redeemed after sale for debt, like a family member (LH 119; see 7.5.1 below). Redemption was a right of the master, not the slave, but the advantage to her was that she was not sent to an unknown fate that might involve separation from her children or possibly sale abroad. A further advantage might ultimately accrue: according to LH 171, a slave woman who had borne her master children was to be freed on the master's death, along with her children.

4.4.2.3.2 The female slave of a married woman could become the concubine of her mistress's husband. The slave's legal personality was split: although a concubine, she did not cease to be the slave of her mistress, who could still discipline her or sell her, at will. If the slave's concubinage resulted in offspring, however, the mistress's ownership rights were restrained; she might only discipline her slave by reducing her social status within the household (LH 146–47).

4.4.2.3.3 The same principle obtained where the slave owner gave the female slave in marriage, without relinquishing ownership. (On the marriage of slaves, see 5.1.1.3 and 5.1.5.2.2 below.) As regards her husband, she was a free woman, but not as regards her owner. Nonetheless, the owner's rights became contingent and might be reasserted only by express contractual conditions, for example, if the slave took advantage of her ostensible freedom to deny her slave status, the owner could sell her (CT 6 37a = Westbrook, *Marriage Law . . .*, 117).

4.4.3 *Creation*

4.4.3.1 A free person could be sold into slavery by a person having authority over them, namely a parent or husband. An independent person could sell himself into slavery. The motive was usually debt or hardship.[56]

4.4.3.2 Free persons could be enslaved by the operation of a penalty clause in a contract to which they were a party. In adoption contracts,

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[56] E.g., YOS 8 31 = Mendelsohn, *Slavery . . .*, 15–16. See Van De Mieroop, "Archive . . ."

for example, a standard penalty upon the adoptee for dissolving the adoption was to be sold as a slave.

4.4.3.3 The courts had the power to impose slavery for non-payment of debts arising from wrongdoing. According to LH 53, where a landowner who by his negligence had flooded all his neighbors' fields could not meet the cost of compensation, they could sell him and divide the proceeds.

4.4.3.4 In slave-sale documents, it is occasionally noted that the slave is "houseborn."[57] The offspring of a female slave belonged to her owner no less than the offspring of the owner's herds. The child normally had no paternity and would be designated, if at all, by a matronymic.[58] From a purchaser's point of view, houseborn was a desirable status, being less likely to be encumbered with the claims of third parties or claims to freedom. AS 21 specifically excludes the houseborn slave from its slave-release provisions. LE 33 considers the possibility that the slave mother may attempt to deceive her owner by giving her child to a free woman. It rules that if ever the owner traces the child, he may reclaim him, even when fully grown. On the other hand, LH 175 rules that an owner may not claim as a slave the issue of a marriage between his male slave and a free wife.[59]

4.4.4 *Treatment*

4.4.4.1 A distinctive mark called the *abbuttum* might be placed on the slave. Its exact nature is disputed; it may have been a distinctive hairstyle or a brand or mark.[60]

In contractual penalty clauses, marking with the *abbuttum* often precedes sale as a slave. It may have been an indication that the person would become a chattel slave, not subject to redemption. It is particularly prevalent in clauses penalizing dissolution by the

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[57] *wilid bītim*; e.g., YOS 13 248:2.

[58] E.g., CT 45 37:1–2; cf. AbB 1 129:9–17.

[59] This provision could apparently be nullified by an express contractual term. See the discussion of CT 48 53 in Westbrook, *Marriage Law* . . ., 66–68.

[60] See Driver and Miles, *Babylonian Laws* . . ., 421–25; Szlechter, "Essai d'explication . . ."

adoptee. The point would have been that the adopter then sells the adoptee not as his son (who might be redeemed) but as a slave. Nonetheless, by no means all chattel slaves were so marked. It appears to have been used when the status of the slave might be called into question or when it was feared that the slave might run away. In LH 146, the slave concubine who, having borne children, "makes herself equal" to her mistress, is not sold but marked with the *abbuttum* and "counted among the slave women." Her status, which she previously challenged, is thus placed beyond doubt. In LE 51, a slave bearing fetters, chains, or an *abbuttum* may not pass out through the city gate without his owner, presumably because he has shown a propensity to run away.

4.4.4.2 According to LH 282, an owner may cut off the ear of his slave who has denied his slave status. Ironically, this suggests limits on the owner's right to discipline his slave, since he is allowed to inflict only a specific punishment and only after proof of his slave's status in court.[61] A letter from Mari reports that an owner gouged out the eyes of his runaway slave but could not execute him without an order of the king.[62]

4.4.4.3 Offenses by slaves against third parties occasionally merited special punishment, for example, cutting off an ear for slapping the face of the son of an *awīlum* (LH 205).

4.4.4.4 From LH 176a, we learn that a slave could conduct transactions and accumulate property on his own account, although it would ultimately return to the owner on his death. Further indications of a slave's *peculium* are found in litigation records. In BE 6/1 103 (= UAZP 273) a slave lends grain said to be his and later wrongfully recovers it from the debtor, together with a co-creditor. It is the co-creditor who appears in court and is made liable for payment, while allusions are made to the slave's owner which suggest that the transaction was made with his authority.[63] In OLA 21 24

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[61] Cf. AbB 11 60, in which a slave who made insolent remarks (*miqit pîm*) about his owner's son is held in detention (*ina ṣibittim*), presumably pending final punishment.

[62] Lafont, "Un 'cas royale' . . ."

[63] Ll. 40–43: "If the sealed tablet . . . of A (debtor) turns up in the basket of B (slave owner), it is (deemed) broken."

a female slave is referred to as the property of another slave, but it is his mistress who claims her on his behalf in court.

4.4.4.5 To prevent a slave from running away, physical impediments such as chains and fetters were available. They were not totally reliable, as LE 51 reveals in forbidding unsupervised egress from the city of slaves so encumbered. The law punished persons who aided or harbored fugitive slaves (see 8.4.3.3 below) and offered a reward for their return (LH 17). The existence of a fugitive would be announced by a herald (LH 16), and a slave-mark (*abbuttum*) would serve to identify the fugitive as a slave. Accordingly, LH 226–27 impose severe penalties for its illicit removal.

4.4.5 *Termination*

Slavery could be ended in three ways: by manumission, by redemption, and by debt-release. (The latter two will be dealt with under 7.5 below.) The term for freedom from slavery was *andurārum* (Sum. ama.ar.gi$_4$), which literally meant "restoration."[64] In principle, restoration to one's previous state meant freedom, but it could mean only restoration to one's former owner, where that had been the slave's previous condition.

4.4.5.1 Manumission by the owner took the form of a ceremony in which the slave's forehead was anointed with oil, with the slave facing the rising sun. This was referred to as "cleansing the forehead" (*pūtam ullulum/ubbubum*). Another symbolic act that was sometimes combined with it was "breaking the pot" (of slavery).[65] Manumission in the extant documents was seldom gratuitous. In BE 6/2 8:11–12 (= UAZP 28) the former slave "brought in" (in.na.ni.in.ku$_4$) to her owner ten shekels, presumably representing what she had earned outside. More frequently, the manumitted slave was bound to support the former owner during the latter's lifetime.[66] In Speleers

[64] Charpin, "Décrets royaux . . ."

[65] Akk. *karpatam hepûm.* BE 6/2 28:1–8: "A has established the freedom of her slave-woman B. She has cleansed her forehead. She has broken the pot of her slavery. She has drafted a sealed tablet of her purification . . ." (A B gemé.ni.im ama.ar.gi$_4$.ni in.gar sag.ki.ni in.dadag dug.nam.gemé.ni in.gaz kišib nam.sikil.la.ni.šè in.na.an.tag$_4$). See Malul, *Symbolism*, 40–76.

[66] See Koschaker, "Über einige griechische Rechtsurkunden . . .," 68–83; Stol, "Care . . .," 83–4.

45, a slave is ceremonially manumitted and bound by a support clause but is also said to have "redeemed himself,"[67] which suggests that his future services were seen as a payment in fact, if not in law.

4.4.5.2 LH 171 declares the automatic manumission of a slave concubine who has borne children to her master, together with her children by him, on the master's death.

5. Family

5.1 *Marriage*[68]

5.1.1 *Conditions*

5.1.1.1 It was a necessary prior condition for marriage that there be a contract between the groom (or his parents) and the bride's parents whereby the latter agreed to cede control over the bride to the groom (LE 27–28). Note that permission of the mother as well as the father was required. If the bride was not under parental authority, a contract was still necessary, with the woman herself (LH 128; cf. BE 6/2 40).

5.1.1.2 Marriage could be polygamous. A man could be married to two sisters concurrently; otherwise there is no clear evidence on the limits of consanguinity.

5.1.1.3 Marriage of slaves was valid, either between slaves or between a slave and a free spouse. Marriage between slaves is considered in the sources of this period only in terms of a married couple entering slavery together (AS 20). It was not possible for a person to be the slave and legitimate spouse of their owner at the same time.[69]

5.1.2 *Formation*

There were at least four possible stages in the formation of marriage.[70]

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[67] = Roth, Scholastic Tradition . . ., 109–11; l. 8: ní.te.a.ni in.du$_8$.

[68] Westbrook, *Marriage Law* . . . Unless otherwise stated, all the cuneiform marriage documents cited in this section are translated in the Appendix therein. See also Yaron, "Zu babylonischen Eherechten . . ." and Wilcke, "Familiengründung . . ."

[69] See Westbrook, "The Female Slave . . ."

[70] For a somewhat different analysis of the stages of formation, see now Greengus, "Redefining . . ."

5.1.2.1 Agreement between the parents of the bride and groom or between the parents of the bride and the groom himself. This would appear to be identical with the contract required by the law codes and probably included terms affecting the future marriage, but it is disputed whether it gave rise to legal effects already at this stage, in particular, damages for breach.[71]

5.1.2.2 Payment of an agreed sum (usually in silver) to the parents of the bride (*terḫatum*). This had a profound legal effect: the future bride and groom were henceforth called "husband" and "wife" and as far as third parties were concerned they were already married, even though as between themselves the marriage was not yet complete. In consequence, rape of the bride by a third party was punished with death, like rape of a married woman, which was a far more serious offense than rape of a single girl (LE 26; LH 130).

5.1.2.2.1 The nature of the *terḫatum* has been a matter of dispute among scholars. Koschaker argued that Old Babylonian marriage was legally a sale of the bride to the groom and the *terḫatum* was the bride-price. It did not, however, represent her commercial value, since the husband did not acquire ownership of the wife, only marital authority ("eheherrliche Gewalt"); it was a mere formality necessary to the validity of marriage.[72] But a *terḫatum*, unlike a contract, was not a necessity, and was a variable, not a nominal sum. Cuq regarded it as a mere gift.[73] Unlike a gift, however, the *terḫatum* gave rise to rights in the groom, not only against the bride's father but also against third parties. Since it was unique to marriage, the *terḫatum* cannot usefully be assimilated to other legal categories. Essentially, it secured agreement by the parents to cede control of their daughter and initiated a period of betrothal.

5.1.2.2.2 The period of betrothal between payment of the *terḫatum* and completion of the marriage, which might last for years, could take two forms. If the groom paid the *terḫatum*, his betrothed remained in her parental home in the interim, but if the groom's father paid it (because both groom and bride were still young), the girl might

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[71] Westbrook, *Marriage Law* . . ., 29–34; Yaron, *Eshnunna* . . ., 173.
[72] *Rechtsvergleichende Studien* . . ., 111–235, and "Eheschliessung. . . ."
[73] "Études . . .," 24–42.

immediately come to live in the groom's father's house until the couple were old enough for completion, an arrangement known as "daughter-in-lawship" (*kallūtum*).[74]

5.1.2.3 "Claiming at the house of the father-in-law"—a ceremonial act whereby the groom (in the first type of betrothal) claimed his bride, based on his full payment of the *terḫatum*.[75]

5.1.2.4 Completion of marriage. Although in practice it appears that completion was attended by elaborate wedding ceremonies, there is some ambiguity as to the exact legal act completing marriage. There are three possibilities, all of which have some evidence in their favor: (a) transfer of the bride to the groom's house, which would obviously apply only to the first type of betrothal;[76] (b) sexual intercourse;[77] (c) a solemn declaration by the groom (and possibly the bride): "You are my wife/husband" or the like.[78]

5.1.2.5 If, without justification, the groom refused to complete the marriage, he forfeited the *terḫatum* and any other payments that he had made (LH 159). If the bride's father refused to give his daughter in marriage, he was required to restore double the *terḫatum* and other payments received (LH 160). If his refusal was instigated by a faithless companion of the groom, the latter was prohibited from then marrying the bride instead (LL 29; LH 161).[79] If the bride herself refused to marry, she probably forfeited her dowry, but if her refusal was by reason of her own misconduct, she suffered the death penalty.[80] Death of the groom or the bride's father annulled the obligation to complete, but possibly not death of the bride, at least if her father could provide a substitute.[81]

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[74] See LH 155–6; CT 8 7b; CT 48 22:4–8; see Westbrook, *Marriage Law* . . ., 36–38.

[75] *ana bīt emim šasûm*. Possibly, the phrase means to "claim for the bridal chamber": see Finkelstein, "ana bīt emim . . ."; Westbrook, *Marriage Law* . . ., 39–41.

[76] Koschaker, *Rechtsvergleichende Studien* . . ., 116–17, and "Eheschliessung . . .," 114.

[77] Landsberger, "Jungfräulichkeit . . .," 78–81; Malul, "*ṣillâm paṭārum* . . ."

[78] Greengus, "Marriage Contract . . .," 514–23.

[79] On the function of the companion, see Malul, "Susapinnu."

[80] LH 142–43. For this interpretation, see Westbrook, *Marriage Law* . . ., 45–47. Other commentators regard these paragraphs as concerning dissolution of a completed marriage, e.g., Yaron, "Eherechten . . .," 68, 73–74.

[81] See Westbrook, "Death . . .," 32–36.

5.1.3 *Divorce*

5.1.3.1 *Form*

Marriage was (in theory) dissoluble at will by a unilateral declaration. One exception, where the court could bar divorce, is mentioned in the law codes; if the wife was stricken with a chronic disease (LL 28; LH 148). The formula of the declaration was "You are not my wife(/husband)." There is also reference in a few documents to "cutting the hem" of the wife. This act may have symbolized divorce in addition to or instead of the formula, or it may have referred to some collateral issue, such as marital property.[82] Where a husband married a second wife while his first was incarcerated for debt, it seems to have been regarded as constructive divorce, although the report may have omitted mention of the formalities (*RA* 91, 135–45).

5.1.3.2 *Consequences*

Although no grounds were necessary for divorce, the consequences differed, depending upon (a) justification, (b) whether there were children of the marriage, and (c) the terms of the marriage contract. If there were no children and a husband divorced his wife without grounds, he had to return her dowry plus a sum equal to her *terḫatum* (LH 138). If no *terḫatum* had been paid, a sum of sixty shekels for an *awīlum* or twenty for a *muškēnum* was set (139). In practice, however, the marriage contract would contain a penal clause fixing the amount of the divorce payment (*uzubbûm*). If there were children, LE 59 rules that the husband forfeits all his property and is expelled from the house. LH 137, considering a polygamous marriage, awards the divorced wife one half of her husband's property together with return of the dowry. She must leave the house but has custody of the children, for whose upbringing the financial award is intended to provide.

If the husband had good grounds (which obviously would involve proof in court), he could expel the wife without compensation and even keep her dowry. Justification could be adultery, if the husband chose to forego his right to a harsher penalty (see 8.3.1.1 below)

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[82] CT 45 86; Greengus, Ischali 25; Meissner BAP 91; Newell 1900; VAS 8 9–10. See Westbrook, *Marriage Law . . .*, 69–71; Malul, *Symbolism*, 197–208.

or a lesser marital offense such as slander or financial misfeasance (LH 141).

5.1.3.3 *Capacity*

In theory, a wife had the same facility of divorcing her husband, but the marriage contracts of the period barred it in practice by penalizing its exercise with death, for example, "If ^{f}A says to her husband B "You are not my husband," she shall be bound and thrown into the water" (Meissner BAP 90:11–16). However, a few contracts from southern Mesopotamia, probably made by wealthy widows, have lesser penalties, from enslavement to mere financial penalties.[83]

5.1.4 *Remarriage*

5.1.4.1 Remarriage by a husband was barred in a case where he had divorced his wife in order to marry a prostitute whom the court had already ordered him not to frequent (LL 30). Remarriage by a widow with young children required permission of the court, in order to safeguard the children's inheritance (LH 177). According to LH 137, a divorcée in the same situation had first to raise the children before remarrying. Otherwise a widow or divorcée could remarry at will; indeed, being free of her father's authority, she could, as LH 137 puts it, be married to the husband of her choice (*mut libbiša*).

5.1.4.2 The law codes discuss the possibility of the wife's remarriage after prolonged absence of the husband. If it was because he had been taken prisoner by enemy action, then his wife was allowed to remarry (LE 29), although LH 133–35 adds a further condition, namely that the husband's assets be insufficient for the wife's subsistence. Should the first husband return, the second marriage was annulled in its favor, but the children of the second marriage were still regarded as the legitimate heirs of their father. If, on the other hand, the reason for the husband's absence was that he ran away in order to avoid his public obligations, then the second marriage would not be annulled by his return (LE 30; LH 136).

[83] See Westbrook, *Marriage Law* . . ., 79–85.

5.1.5 *Polygamy*

5.1.5.1 Legal sources on polygamy are confined to bigamous marriages. A complicating factor is that many concern the special classes of *nadītum* and *šugētum* (see 9 below). Nonetheless, the general principles would seem to have applied *mutatis mutandis*.

5.1.5.2 In theory, there need not have been any legal relationship as between the two wives. In practice, both the law codes and marriage contracts were at pains to establish legal bonds and a hierarchy of status. The two explicit relationships were sisterhood and slavery.

5.1.5.2.1 Sisterhood might arise naturally, when a man married two biological sisters (TIM 4 47), or by the first wife adopting the second as a sister (Meissner, BAP 89). The legal result was that their offspring were regarded as the children of both. The second sister was usually subordinated to the first. Indeed, a natural sister might be made the slave of her senior sibling. She could even be included in the latter's dowry (CT 45 119 = Wilcke, "Bigamie . . .").

5.1.5.2.2 The second wife could be the slave of the first, often given by the first to her husband (CT 8 22b). The offspring of a slave belonged to her mistress; at the same time, they were regarded as the free, legitimate issue of their father, since as regards her husband the second wife was not a slave.

5.1.5.3 Relations between the two wives could also be regulated by contractual clauses. For example, loyalty was demanded of the second wife: "With whom she (W_1) is hostile she (W_2) will be hostile; with whom she is friendly, she will be friendly" (CT 48 48).[84]

5.1.5.4 The law codes lay down certain conditions for the taking of a second wife. LL 28 and LH 148 permit it when the wife is suffering from certain (presumably incurable) diseases, and LH 141 when the husband would be entitled to divorce his wife for misconduct but chose not to. If, as these paragraphs infer, a husband

[84] *zeniša izenni salāmiša isallim*. Not following Westbrook, *Marriage Law* . . ., 109. Weinfeld has demonstrated the connection with similar phrases in loyalty oaths ("Covenant . . .," 194).

could not take a second wife at will, but needed special justification, it may well have been that the basic condition was consent of the first wife.

5.2 *Children*

5.2.1 The father retained ownership of the family estate—and thus a considerable instrument of authority—until his death, but a mother only retained control of family assets and authority over her children until adulthood (LH 137). The same would apply to a stepfather if the widow remarried (LH 177). LH 172 envisages the possibility of adult sons coercing their widowed mother to leave the family home.

5.2.2 LH 195 prescribes that if a son strikes his father, his hand is to be cut off.

5.2.3 LH 117 allows a father to sell or pledge his children to cover a debt. On the other hand, he may not disinherit his son without showing cause to a court (LH 168–69). Children could therefore only be sold in cases of dire necessity.

5.2.4 Lipit-Ishtar states in the prologue to his law code: "I made the father support his children, I made the child support his father . . ." (LL ii 16–24). No further details are supplied by any of the law codes. Adoption contracts, on the other hand, frequently stipulate a duty of support of the adopter by the adoptee, sometimes even specifying amounts of annual rations.[85] Presumably, they are aping a duty of support that was regarded as too self-evident to require mention in the context of the natural relationship.

5.3 *Adoption*[86]

5.3.1 Adoption was expressed by the phrase "to take for sonship/daughtership" (*ana mārūtim/mārtūtim leqûm*) and was performed by the adopter making a formal declaration: "(You are) my son/daughter!"[87]

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[85] Stol, "Care of the Elderly . . .," 59–84.

[86] David, *Adoption* . . .; Stone and Owen, *Adoption* . . .; Szlechter, "Des droits successoraux . . ."; Westbrook, "Adoption Laws . . ."

[87] See LH 170, where a man declares "my children!" (*mārū'a*) in order to legitimize children born to him by a slave concubine.

5.3.2 Where the adoptee was under the authority of parents, a prior contract with the latter was necessary whereby the parents first relinquished their authority. Where the adoptee was an independent adult, he himself would be a party to the contract, as well as its object. The contract noted either that the adoption was "with his consent" (*ina migrišu* BIN 2 75:2 = Charpin, *Clergé* . . ., 162–64) or that the adopters adopted him "from himself" (*itti ramānišu* TJA 28:1 = ibid., 5–7; Sum. ki.ní.te.na YOS 8 120:2).

5.3.3 An infant foundling could be adopted unilaterally, provided it had been abandoned, not merely lost (UET 5 260). The law codes applied evidentiary presumptions: If the child was found with its amniotic fluid still on it, that is, without the normal post-natal ablutions, it was deemed abandoned (LH 185). If on the other hand, at the time of adoption, the child was searching for its parents, it was deemed merely lost and could later be reclaimed by the natural parents (LH 189).[88]

5.3.4 Adoption was by no means confined to childless couples or to the sphere of family affection. Its widespread use derived from two advantages that it gave. From the point of view of the adopter, it was a way of ensuring support in his old age. Theoretically, this was the duty of a son, but where no son was available or even where it was merely more convenient, an outsider might be adopted for this purpose.[89] The manumission of a slave with a duty to support the former owner (see 4.4.5.1 above) was most often combined with adoption of the slave, who was then doubly bound by the duties of the contract and of sonship.[90] For the adoptee, it was a way to acquire an inheritance share. The two could be combined in a business arrangement: an elderly person adopted an adult who would support him in return for a share in his inheritance, sometimes even with immediate assignment of the share. The level of support was often specified as quantities of rations—grain, wool and oil, the three staples.[91]

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[88] Yaron, "Varia . . ."; Malul, "Adoption . . ." 106–10; Westbrook, "Adoption Laws . . .," 195–97; cf. Wilcke, "*šilip rēmim* . . ."; Veenhof, "*šilip rēmim* . . ."

[89] See Stol, "Care of the Elderly . . .," 59–84.

[90] E.g., CT 4 42a = UAZP 23.

[91] See Stone and Owen, *Adoption* . . ., 2–5, 8, Table 3.

5.3.5 A specialized form of adoption was matrimonial adoption. A woman adopted a girl from her parents "for daughtership and daughter-in-lawship" (*ana mārūtim u kallūtim*), gave the parents a *terḫatum* as if for a daughter-in-law, and undertook to marry the girl off to a third party.[92]

5.3.6 Dissolution of adoption was by a unilateral act and could be done by either adopter or adoptee. The form was the reverse of the formation formula: "You are not my son," or "You are not my father." The contracts attempted to deter exercise of this right by imposing penalties on both sides. The standard penalty for an adoptee who pronounced the formula was to be sold into slavery; for an adopter, to forfeit his estate, and/or pay a fixed sum. Where the adoptee was an adult who had already been assigned a share of the inheritance, the usual penalty was for him to forfeit that share.[93]

5.3.7 Where childless parents adopted a child, the contract sometimes also protected the adoptee's privileged position as the "firstborn": "Even if A and B (adopters) have ten sons, C (adoptee) is their eldest heir."[94] For a foundling adopted without a contract, however, there was no protection. The adopter could dissolve the adoption at will and send him away penniless. LH 191 gave some relief: a childless man who had ensured the continuation of his line by adopting a child had to give him one third of his inheritance from his movable property.[95]

6. Property and Inheritance[96]

6.1 *Tenure*

The landholding of an individual—summarized as "field, orchard and house" by LH—could be private property or a grant from the

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[92] See Westbrook, *Marriage Law* . . ., 38–39.

[93] E.g., BIN 2 75 = Charpin, *Clergé* . . ., 162–64; TIM 4 13 = Stone and Owen, *Adoption* . . ., 38–39.

[94] E.g., Meissner BAP 95:6–8 = Stone and Owen, *Adoption* . . ., 75–6; ARM 8 1:19–26 (double share).

[95] See Westbrook, "Adoption Laws . . .," 199–203.

[96] Renger, "Privateigentum . . ."; De Kuyper, "Grundeigentum . . ."

palace. The latter was made to officials, merchants, and even *nadītum*s (LH 40) in return for a rent, but when granted to military personnel in return for their service, special rules applied. Their tenure was linked to their ability and willingness to perform military service. Hence it did not amount to full ownership but still gave the holder more security than a private tenant. If captured while on military service, the soldier (*redûm*) or "fisher" (*bā'irum*) could be assured of its restoration to him after his return (LH 27). In the meantime, his son could replace him, but if too young, a part at least was reserved for the wife so as to be able to raise him (LH 28–29). If he abandoned his holding, another could take his place, provided he undertook the service, but a three-year period of grace was allowed. On the other hand, the holding was inalienable: neither a soldier, a "fisher" nor even a "bearer" could validly sell or exchange the land, or give it to his wife or daughter (LH 36–38, 41).

6.2 *Servitudes*[97]

6.2.1 Three rights over neighboring land are recorded: to exit from a building to the street (*mūṣûm*), to take water from an irrigation canal (*mašqītum*), and to drive a nail into a wall (*sikkatam retûm*) or to fix a beam in it (*gušūram ummudum*). These rights were created either by a grant of joint ownership in the door, canal, or wall, or by a concession of the right in the contract of sale.[98] It is not clear whether the latter was a proprietary right or merely a personal right as between the parties to the contract.[99]

6.2.2 A party wall was deemed to be jointly owned, regardless of who built it, provided that the other neighbor paid his share of the cost. Sole ownership could be created by one party "giving" (*iqīš*) the building costs to his neighbor.[100]

6.2.3 Similar to a servitude was the duty to maintain one's land so that it would not provide a burglar access to a neighbor's prop-

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[97] Lautner, "Grenzmauern . . ."

[98] Ibid., 82–94; contra Landsberger, MSL I 218–19.

[99] Lautner, "Grenzmauern . . .," 88–90, considers it a purely personal right, but the logic of the situation would suggest that both the benefit and the burden passed to successors in title.

[100] TCL 1 87/88 = UAZP 198; Lautner, "Grenzmauern . . .," 81.

erty and to indemnify the neighbor for any loss caused by failure to do so (LL 11; LH "e").

6.3 *Inheritance*[101]

Male and female lines of inheritance differed in principle. Sons were entitled to inherit the paternal estate (called "the house of the father") on the death of the father. They could only be disinherited for cause (LH 168–69). Daughters received a share of the paternal estate by way of dowry upon marriage. In law, at least, the grant of a dowry was not obligatory. There were many exceptions to this basic pattern.[102]

6.3.1 *Male Inheritance*

6.3.1.1 The primary heirs were legitimate sons of the deceased. If the father's first wife died and he remarried, the sons of both marriages were equally entitled (LL 24; LH 167). If a son predeceased his father but had sons of his own, the latter would take his place (e.g., BE 6/2 32 = UAZP 191).

If a man died leaving no legitimate son (or grandson), his unmarried daughters would inherit (LL "b"). In the absence of legitimate offspring, his son by a prostitute could inherit (LL 27). The next rank of heir by default is likely to have been the deceased's brothers, as in the previous period. His widow did not inherit by default.[103]

6.3.1.2 The estate included all the deceased's assets, real and personal, expressed as "from chaff to gold" (*ištu pê adi ḫurāṣim*). It also included his debts (*JCS* 8, 137–38:33–36; LH 12).

6.3.1.3 The heirs automatically became joint owners of the whole estate, which they would then proceed to divide. Division was carried

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[101] Klima, *Erbrecht . . .*; Driver and Miles, *Babylonian Laws*, 324–58; Kraus, "Erbrecht . . ."

[102] The law codes use Sumerian terminology, which can be ambiguous as to gender. dumu means "son" (Akk. *mārum*) and dumu.mi$_2$ means "daughter" (Akk. *mārtum*), but especially in the plural, dumu can be gender non-specific. Nonetheless, dumu is paradigmatically a son and should be taken as such unless the context demands otherwise. It should be noted that Sum. ibila/Akk. *aplum* can mean "son," "heir," "son-and-heir," or "first-born son," depending on context. Only rarely could it be interpreted as applying to female heirs. See Kraus, "Erbrechtliche Terminologie . . .," 18–24.

[103] Cf. Kraus, "Erbrecht . . .," 16.

out by casting lots.[104] Responsibility for organizing the division lay with the eldest brother, who might swear a declaratory oath in the temple as to the proper discharge of his functions (CT 8 3a:21–28 = UAZP 194). In southern Mesopotamia, the practice for recording a division was to detail all the shares on a single tablet; in the North, separate tablets were drafted for the share of each individual heir.

6.3.1.4 The heirs each received an equal share of the estate. Any son whose father had not provided a betrothal payment on his behalf during his lifetime was entitled to receive it from the estate in addition to his share (LH 166). Grandsons inherited *per stirpes*; they divided between them the share that their father would have received. The eldest son received an extra share (Akk. *elâtum*, Sum. sib.ta). There were two methods of computing it, varying in part by region. Tablets from Nippur, Ur and Kutalla record 10 percent of the total estate prior to division; tablets from Larsa, Mari and again Kutalla record a double share for the first-born. In Jean, Tell Sifr 4 from Kutalla, the eldest receives 10 percent of the land but more than a double share of prebends and slaves.[105] According to LH 170, the eldest also had the right to select a share first—presumably this refers to his extra share prior to allocation of the ordinary shares by lot.

6.3.1.5 Division could be postponed, as regards all or part of the estate, sometimes for generations.[106] In the meantime, the undivided heirs remained joint owners. LE 16 forbade the advance of credit in the form of fungibles (*qīptum*) to an undivided son. The reason was that a creditor might claim repayment from the resources of the whole estate, impinging upon the other heirs' notional shares. According to Charpin, the purely theoretical division of houses (not by rooms or stories but by ground area) was designed to frustrate creditors, who might otherwise have seized the whole house for one of the heir's debts.[107]

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[104] Jean, Tell Sifr 44:46–47. The Akkadian for "lot" (*isqum*) could also be used to indicate the inheritance share itself (MDP 24 339).
[105] See Kraus, "Erbrecht . . .," 12; Charpin, *Archives* . . ., 36.
[106] Kraus, *JCS* 3, 220; Charpin, *Archives* . . ., 175.
[107] *Archives* . . ., 178.

6.3.1.6 A father had no power of testamentary disposition in the modern sense. He could benefit an outsider only by adopting him as a universal heir. He could rearrange the shares of heirs and grant shares to second-rank heirs, such as a daughter or brother, but apparently only within customary parameters that left vested rights substantially intact.[108] According to LL 31 and LH 165, a father was entitled to make a special bequest to his favorite son, over and above his normal inheritance share, provided he recorded it in a sealed document. Whether it replaced the preferential share of the eldest son or took effect in addition to it, is not clear. The *ṭuppi šīmti* of other periods, whereby a father fixed during his lifetime the shares to be allocated to his sons on his death, is attested only obliquely in adoption contracts.[109]

6.3.2 *Female Inheritance*[110]

In lieu of inheritance, a daughter would receive marital property (*nudunnûm*). It consisted principally of a dowry drawn from the paternal estate and given to her by her father. This was sometimes supplemented by a marital gift from her husband. In the law codes, a special term was used to distinguish the dowry proper from other marital property: Akk. *šeriktum*, Sum. sag.rig$_7$.[111]

6.3.2.1 Dowry was given at the time of the marriage, when the bride entered the house of her husband. It could, however, be assigned to the daughter at a much earlier stage, so that it constituted an identifiable fund within the assets of the paternal estate (CT 8 24). It was transferred to the husband along with the bride and subsumed into the marital assets. If she entered the house of her father-in-law in a *kallūtum* betrothal, the latter held it on trust (*paqid*: CT 47 83), presumably until such time as the young couple would set up an independent household. At the time of transfer of the dowry, the bride's father could return the *terḫatum* as dowry property, which he symbolized by wrapping it in her hem (e.g., CT 48 50).

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[108] E.g. MHET 2/2 248 (to brother).

[109] But individual bequests at Susa are said to be in anticipation of death (*ina pāni šīmtišu*), e.g., MDP 23 285.

[110] Klima, "La position successorale de la fille . . ."; Westbrook, *Marriage Law* . . ., 89–102 (unless otherwise stated, all the cuneiform texts cited in this section are translated in the Appendix thereto).

[111] On the difficulties of the terminology, see Westbrook, *Marriage Law* . . ., 24–28.

6.3.2.2 During marriage, the dowry property was controlled by the husband, except perhaps for personal items such as clothing and personal servants. Ownership of the dowry, however, at least as a fund, remained with the wife.

6.3.2.3 Marital gifts could be assigned to the wife by her husband during marriage, perhaps after the birth of issue (LH 150). Ownership vested in the wife only after the death of the husband. Thus if the wife predeceased him, the gift was void.

6.3.2.4 On the death of the husband, the wife received back her dowry, or its value, together with the marital gift (LH 171b). LH 172 grants her an heir's share in lieu if her husband had not assigned her a marital gift but makes the marital gift conditional upon her remaining in the matrimonial home and not remarrying.

6.3.2.5 On the death of the wife, her marital property is designated her "estate" (*warkatum*: LH 178–79) or simply her property (VAS 18 1:14). It was inherited by her sons as primary heirs (LH 162). If she had remarried, issue from both unions were entitled to share her dowry (LH 173). If she predeceased her husband, he would continue to have the usufruct of the dowry, which would not be separated from his assets. On his death, however, only issue from that union might inherit it, not his sons by a subsequent marriage (LH 167). If the wife died childless, her husband had no rights at all to her dowry, which returned to her father's "house," to the father or his heirs—usually her brothers (LH 163–64).

6.3.2.6 The *terḫatum* may be made part of the dowry (6.3.2.1), a transformation described by the phrase "her sons are her heirs" (BE 6/1 84:43). Nonetheless, its origin with the husband was not forgotten. If the wife died childless, he was not obliged to return it with the dowry. If he had not earlier received it back as dowry, he was even entitled to deduct its value from the dowry that he returned.[112]

6.3.2.7 The wife had some discretion as to the disposition of her marital property. She could use it to provide her daughter with a

[112] LH 163–64. On the difficulties of a possible parallel in LE 17–18, see Westbrook, "Death . . ."

dowry (YOS 2 25) or bequeath it to her as an heir.[113] Furthermore, a marital gift might be accompanied by a special power of disposition. According to LH 150, the widow might give the property to "the son(s) whom she loves"—a condition also found in private documents of grant (CT 6 38a:13–18)—but not to an outsider. Another document allows her to give it among her husband's sons "to him who honors her and satisfies her heart" (CT 8 34b:17–20). This formula refers to support in old age.[114]

7. Contracts

The extant documents cover only some of the possible types of contracts from this period, which were essentially oral agreements.[115] Nonetheless, a wide variety of transactions are recorded. The following are the principal categories.

7.1 *Sale*

Sale was an oral transaction before witnesses. It was completed by payment of the price in silver, which effected transfer of ownership. The verb "to sell" was expressed in Akkadian as "to give for silver" (*ana kaspim nadānum*).[116] The only evidence of an accompanying ceremony is in a land sale document from Mari, reflecting practices attested in earlier periods: "they ate the ram, drank the cup, and anointed themselves with oil."[117]

7.1.1 The vast majority of texts record an executed contract, with only contingent obligations remaining. Four objects are deemed worthy of record: land (fields, orchards, and houses—doors separately), prebends, slaves, and animals, because the sale document served as a title deed to these capital assets.[118] The record was drafted from

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[113] PBS 8/1 1: see Stol, "Care of the Elderly . . .," 79.

[114] See Stol, "Care of the Elderly . . .," 81–2.

[115] The general term for contract was *riksātum*. See Greengus, "Marriage Contract . . .," refuting the earlier view that the term meant a written contract.

[116] However, LH "c" implies that grain or other property (*bīšum*) might be used as payment.

[117] Malul, *Symbolism*, 346–63.

[118] The sale of a door appears to have been as an attachment to land (e.g., VAS 7 46 = UAZP 98).

the buyer's point of view and was formulaic, relying heavily on Sumerian phrases, most of which are already found in earlier periods. The clauses fall into three categories: operative clauses, completion clauses, and contingency clauses. They are followed by a list of witnesses and the date.

7.1.1.1 The operative clauses record the essential elements of the transaction: (i) a description of the object of sale; (ii) a statement that P has purchased the object from its owner, S; (iii) a statement that P has paid him x shekels of silver as the whole price (Sum. šám.til.la.ni/bi.šè x gín kù.babbar in.na.an.lá).[119] Early documents do not state the actual sum.

7.1.1.2 The completion clauses are:

a. "Its transaction is complete" (Sum. inim.bi al.til; Akk. *awassu gamrat*). The function of this clause is not clear. Perhaps it indicates the due performance of rituals not recorded.
b. "His (S's)heart is satisfied" (Sum. šà.ga.ni al.dùg; Akk. *libbašu ṭāb*). This is a conclusive evidence clause, whereby S acknowledges that the correct amount of silver was weighed out.[120]
c. "He/it has been caused to pass over the pestle" (Sum. giš.gan.na íb.ta.bal; Akk. *bukānum šūtuq*). This phrase is known from earlier periods, where it applied exclusively to sales of slaves and animals. In the Old Babylonian period, it applied to land sales as well, which suggests that it had become a frozen expression.[121] The scholarly consensus is that it signals a change of ownership[122] but that would seem superfluous, since payment effects the same. On the evidence of its use in the preceding period, it more probably indicates transfer of possession.

7.1.1.3 Contingency clauses refer to matters that may arise after completion of the sale. A triple clause concerns slave sales only: "he is responsible for *teb'ītum* for three days, for epilepsy (*bennum*) for one month, and for claims to him (the slave) in accordance with the king's order" (*ana baqrišu kīma ṣimdat šarrim izzaz*). *teb'ītum* may refer

[119] See Skaist, "*Šimu gamru* . . ."
[120] See Westbrook, "'His Heart is Satisfied' . . ."
[121] Edzard, "Die *bukānum*-Formel . . ."; Malul, "The *bukannum*-clause . . ."
[122] Malul, "The *bukannum*-clause . . ."

to the slave's status—the possibility that he is in fact free.[123] LH 278–79 cover the latter two warranties, ruling that if epilepsy emerges within one month, the sale is to be rescinded and the purchase price returned, and if a claim to the slave arises, the seller must satisfy the claim. The relationship between the provisions of the code and the contractual clauses, especially the reference in the latter to the king's order, have given rise to much scholarly discussion.[124] The warranty against third party claims is also found in the sale of animals and doors.

A clause common to all sales is an oath sworn by the seller (and sometimes by both parties) not to raise claims.[125] The content of the seller's potential claim is revealed by a few documents as either "(this is) my house/field/orchard" (*RA* 85 (1991) 16, no. 4:7'–8') or "We did not receive the silver" (CT 2 37 = UAZP 95). Both amount to the same: an assertion that ownership did not pass.

7.1.2 The perspective of the sale documents led San Nicolò to argue that Old Babylonian sale was a purely cash transaction. Sale on credit was possible but only by a separate agreement whereby the seller "loaned" the price to the buyer. Accordingly, the sale documents always recorded payment of the price, even if it was a fiction.[126] Nonetheless, a few documents reveal the existence of an executory contract of sale.

7.1.2.1 In YOS 13 513, a person buys the wool that is still on unshorn sheep. He receives the sheep with the duty to pay the agreed price within five days and to return the sheep in good condition after the shearing, together with their dung.[127] The contract does not reveal what sanctions the buyer was liable to for breach but does show a future obligation to pay, at least on the basis of performance by the other party.

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[123] Veenhof, "Relation . . .," 70.

[124] See Wilcke, "Kaufverträge . . .," 257–61; Petschow, "Beiträge . . ."; Stol, *Epilepsy*, 133–35; Veenhof, "Relation . . .," 69–71.

[125] The various forms of this clause are set out in San Nicolò, *Schlussklauseln* . . ., 45–70.

[126] Ibid.; contra Waetzoldt, (review), 142; Skaist, *Loan Contract* . . ., 67–72; but cf. TCL 1 157 (= UAZP 280); YOS 12 73.

[127] Wilcke, "Kaufverträge . . .," 277.

7.1.2.2 A few documents record the receipt of silver for the purchase price of a house (*ana* šám é), with the stipulation that the balance is to be paid within a certain number of days and a document of sale drafted.[128] There would have been no point in giving (and recording) a partial payment if it did not give the buyer some rights to the property.

7.1.2.3 In some otherwise standard sale documents, the payment clause contains the Sumerian form "he shall pay" (ì.lá.e) instead of the expected "he has paid." San Nicolò ascribed this anomaly to scribal error,[129] but it appears too often to be dismissed in this way.

7.1.2.4 Cash sale was therefore not the only recognized form of sale in the Old Babylonian period. San Nicolò's observations nonetheless rightly draw attention to the emphasis in the documents on cash sale. The reason may lie in the law of inheritance. Ownership might pass without cash payment, for example, by gift, but the vested rights of the heirs would restrict the recipient's ownership to the lifetime of the donor. Payment of the price would therefore be necessary to overreach the rights of the heirs and make the buyer's title permanent.

7.1.3 There are many variations, both regional and chronological, in the standard sale formula, both as regards content and order of clauses. There is no consensus as to the legal significance (if any) of these variations.[130]

7.1.4 Barter is not recorded, but contracts of exchange (*puḫum*) are occasionally found. They are always like for like, either land or slaves, except that a prebend could be exchanged for land, being deemed a type of real estate (BE 6/2 39 = UAZP 115). Any difference in value was compensated by an additional payment (*nipiltum*: see LH 41).

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[128] Discussed by Skaist, *Loan Contract* . . ., 67–72. They are to be distinguished from payment to an agent for the purchase of property (see below).

[129] San Nicolò, *Schlussklauseln* . . ., 92–94.

[130] See esp. Wilcke, "Kaufverträge . . .," and "Law of Sale . . ."

7.2 *Loan*[131]

The documents record loans of silver or commodities with repayment of an equivalent value. Loans of items to be returned were not regarded as worthy of record. "Merchant" (*tamkārum*) was synonymous with moneylender.

7.2.1 *Terms*[132]

The basic format "A. has received (Sum. šu ba.an.ti) silver/grain/etc. from B." was sufficient to document a loan. The transaction can be identified as a loan from the repayment clause or from a technical term defining the type of loan. The main types of loan in this period were the following:[133]

ḫubullum (Sum. ur_5.ra) was the standard, interest-bearing loan of silver or grain, already known from the previous period.

qīptum (šu.lá) had no interest recorded in the document, but apparently interest was charged (as the occasional note "does not bear interest" attests), perhaps in a separate contract. It could function as much as a contract of deposit (of fungibles) and was often received by a middleman (LH 107; BE 6/1 103 = UAZP 273). Possibly the purpose was to provide a fund from which further loans could be made.

ḫubuttātum (eš.dé.a) also had no interest recorded. There is no evidence to substantiate the view that the interest was discounted in advance.

ana ze/za-ra-ni was a loan of agricultural produce, usually to be repaid in the same kind at harvest time.

našpakūtum was a loan of grain connected with storage. Its exact purpose is not known.

melqētum figures prominently in AS but is rare in private documents.[134] It may be a more general term covering several of the above types.

tadmiqtum was a loan for investment, whereby the borrower was expected to add value to the object of investment.

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[131] Skaist, *Loan Contract* . . .

[132] Ibid., 33–97.

[133] Skaist excludes two transactions, which involved credit but were not loans: (i) silver given *ana* šám ("for the value of") was either prepayment for partial purchase (see 7.1.2.2) or consignment to an agent to purchase goods for a principal; (ii) a commodity was evaluated in terms of (šám) another commodity when the palace supplied it to a dealer for marketing, for payment after the dealer had sold the goods.

[134] Edzard, Tell-ed-Der 134:19: barley "for silver and *melqētum*."

7.2.2 *Interest*[135]

The interest rate was fixed by LE 18A at 20 percent for silver and 33 1/3 percent for barley.[136] The same rates are frequent in private documents and perhaps reflected a customary or fair rate. Often the rate is not stated in the document, or reference is made to "true interest" (máš.gi.na). There was also an interest "of Shamash" on silver, which was 20 percent. Nonetheless, where stated, there are wide variations in the rates charged.

7.2.3 *Repayment*[137]

7.2.3.1 The contract could set a fixed date or reference point, for example, "at harvest time" or "at the threshing floor" (*ana maškanim*, which meant at the time of threshing) or on completion of a trading journey, or require repayment on notice (*ana ittišu*) or on demand. Social loans made by a temple were repayable when the borrower was able (*ina balṭu u šalmu*).[138] The usual repayment clause states that the borrower shall pay "the silver and its interest" on the due date, indicating that interest was payable only at the time of repayment of the loan. Sometimes interest was payable only after default (e.g., ARM 8 50).

According to LH 48, if a farmer's crop was destroyed by storm, flood, or drought, he could be excused payment of interest for that year.[139]

7.2.3.2 The contract could stipulate that a loan of silver, for example, be repaid with a different commodity "at the going rate" of exchange (*maḫīr(at) illaku*) at maturation. Fluctuations in the rate could be used oppressively by lenders: LE 19–21 appear to be directed against such practices, but the provisions are obscure.[140] LH "u" allows a debtor who cannot repay in silver to pay in grain, referring to a royal order (*ṣimdat šarrim*) on the conversion rate. LE 1–2 contain a list of fixed equivalencies between silver and grain respec-

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[135] Skaist, *Loan Contract* . . ., 98–144.
[136] Cf. LH t (partly broken), which has the same for silver.
[137] Skaist, *Loan Contract* . . ., 148–201.
[138] Harris, "Temple Loans . . ."
[139] See Driver and Miles, *Babylonian Laws* . . ., 144–45.
[140] Interpretations reviewed by Yaron, *Eshnunna* . . ., 235–46.

tively and other commodities. If they relate to conversion payments, they may be drawn from such a royal order. If the debtor has neither grain nor silver, LH "z" allows repayment (before witnesses) in other goods.[141] LH "x" forbids the lender to use different weights for disbursing the loan and for its repayment.

7.2.3.3 The creditor could claim the whole sum from whichever joint debtor was able to pay (*itti šalme u kīni*). The payee could be the "bearer of his document" (*nāši kanīkišu*). It is not clear whether this referred to an assignee of the loan or to an agent of the creditor.

7.3 *Pledge*[142]

7.3.1 The loan contracts specify pledge of land, slaves, and family members (including self-pledge by the debtor). There is mention of the pledge of valuable movables in letters (AbB 8 81: a gold sundisk). It was usually given at the time of the loan, but it could also be given at maturity, presumably in order to gain an extension.

7.3.2 Many of the pledges were antichretic, meaning that the income from the pledge served as interest. Such a pledge was said to be interest for the principal (máš.bi.šè) or was designated by a technical term (*mazzazānum*). Non-antichretic pledge of land might be hypothecary, meaning that the creditor only took possession on default.

7.3.3 The loan documents do not expressly stipulate forfeiture of the pledge upon default, but its automatic application is implied by clauses valuing the pledge at the level of the loan ("the silver is like the field" kù.babbar a.šà.gi.me.en).[143]

7.3.4 LH 49–50 and "a" seek to curb the abusive application as pledge of a type of lease that amounted to a sale of the standing crop (*esip tabal*: "gather and take away!") attested at Susa (e.g., MDP

[141] See Petschow, "Die datio in solutum . . ."

[142] Skaist, *Loan Contract* . . ., 202–30; Kienast, *Kīsurra* . . ., 66–103; Eichler, *Indenture* . . ., 48–83; Westbrook, *Security for Debt* . . ., 63–79.

[143] Kienast, *Kīsurra* . . ., 78–79, 100–102. Kienast's theory of a development from automatic forfeiture to non-forfeitable pledge (102–3) has no historical basis; see Skaist, *Loan Contract* . . ., 202–8.

23 250). The creditor was not allowed to harvest the crop himself in order to satisfy the debt.

7.4 *Distraint*[144]

Pledge was a consensual arrangement, even if it resulted in forfeiture. The ordinary creditor could not otherwise use forcible means to *satisfy* the debt. He could not sell the debtor's property without his consent nor even seize his grain by way of direct payment (LH 113). Nonetheless, he could seize and hold members of the debtor's family, his slaves, and his animals. The purpose was not to satisfy the debt but to put pressure on the debtor to pay. To these ends, the creditor might use harsh tactics, sometimes leading to the death of the person distrained.[145] LH 241 fines the creditor for distraining an ox, but a letter casually mentions the distraint of three oxen (TCL 1 2:19). LH 151 bars the seizure of the debtor's wife for his prenuptial debts, if her marriage contract exempted her.

7.5 *Debt and Social Justice*[146]

Valid contracts of loan, pledge, and sale could be annulled by the courts in the interests of social justice. Three different measures were employed.

7.5.1 A pledge by its nature would be redeemed by payment of the loan. The courts extended this principle to property sold outright, where the transaction was in effect a forced sale to pay off a debt. The seller was, under certain circumstances, allowed to buy his property at the original price. The principle applied only to family land[147] and to family members sold as slaves.[148] It was not intended to affect normal sale at full market price, only cases where the "price" was in reality the amount of the loan and below the true value of

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[144] Jackson and Watkins, "Distraint . . ."; Westbrook, *Security for Debt* . . ., 84–90.

[145] See LH 115–16. He could force them to work (AbB 2 154:10) or imprison them (UET 5 9 = *JEOL* 16 (1959) 28–29; *RA* 91, 135–45).

[146] Westbrook, "Social Justice . . ."

[147] LE 39, but only as first option when the buyer wished to resell. Sale documents sometimes carried the notation that the buyer had redeemed his paternal estate. Under what conditions this occurred is not known.

[148] LH 119, where a slave woman who had borne her master sons was deemed a member of the family.

the property. Clauses valuing the pledge at the level of the loan or higher (7.3.3 above) were presumably intended to bar redemption if the pledge were sold on default.[149]

7.5.2 Family members sold into slavery because of debt could be released without payment after a reasonable period of years, when they were deemed to have worked off the debt (and interest). LL 14 requires proof that the slave had "returned his slavery to his master . . . twofold"; LH 117 sets a fixed term of three years for the debtor's wife or children.

7.5.3 The *mīšarum* edicts occasionally decreed by Old Babylonian kings canceled debts outright and slavery based on debts.[150] AS distinguishes between interest-bearing loans, which were cancelled (3), and credit advanced in business transactions, which were exempt (8: purchase price, (trading) journey, partnership, *tadmiqtum*). If a contract of the latter class contained a penalty clause imposing interest after default, that clause was void, but the advance itself remained valid (9). Free citizens pledged or sold by reason of debt were released, which implies cancellation of the underlying debt (20). A parallel provision of the Edict of Samsu-iluna denies release if the sale or pledge was for the full price, the same considerations applying as with redemption.[151]

7.6 *Suretyship*[152]

A surety was said to assume control over the debtor (Akk. *qātātim leqûm*; Sum. šu.du$_8$.a šu ba.an.ti), reflecting his original obligation to assure the debtor's presence at a specified place on maturity of the debt. If the debtor was dead, fled, or in default, the surety might be liable to deliver another in his place or to perform the obligation himself.

If suretyship began at the time of the loan, the surety's obligation was secondary: the creditor had first to seek satisfaction from the

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[149] Cf. CT 45 37, where a litigant claims her predecessor in title paid full value for land in the midst of severe economic conditions.

[150] E.g., Jursa, "Als König Abi-esuḫ . . ."

[151] Text edited by Hallo, "Slave Release . . ."; see Westbrook, "Hard Times . . ."

[152] Malul, *Symbolism*, 209–52; Ries, "Haftung . . ."; Westbrook, *Security for Debt* . . ., 79–83.

principal debtor. If it began at default or even later (to effect release of the debtor from the creditor), the surety appears to have taken over as primary debtor, usually with an obligation to pay within a very short period. He was said to have removed the creditor's control (*qātam nasāḫum*).

Once the surety had paid the creditor, he had a full right of regress against the original debtor.[153]

7.7 *Hire*[154]

In principle, payment was due at the end of the period of hire, but part payment in advance was common.[155] The hirer was obliged to return the object of hire in good condition.

7.7.1 *Movables*

The following are the main types attested.

7.7.1.1 *Animals*[156]

Mostly oxen and donkeys are attested. The law codes set norms for rates of hire (LH 242–43, 268–70), which may include driver and/or cart (LE 3, 10; LH 271–72). They also fix compensation for loss or damage. If death of the animal is caused by the hirer's negligence or abuse, he is liable for its full value (LH 245; SLEx 10'). The hirer is excused if death were caused by force majeure, such as a lion or disease (LOx 7'; LH 244, 249; SLEx 9'). If, however, the hirer put the animal at risk, he is strictly liable (LOx 6). If it wanders away and is lost, SLEx 10' holds the hirer liable, but a litigation document suggests that he might exculpate himself by oath.[157] The hirer is liable for a proportion of the animal's value if he injures it (LL 34–37; LOx 1–4; LH 246–48).

7.7.1.2 *Boats*

A boat could be hired together with a boatman (*malāḫum*) and crew. An owner might hire out his boat to a boatman who could in turn

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[153] See Ries on YOS 14 158 and ARM 8 71, and cf. Westbrook and Wilcke, "Liability . . .," on MVN 3 219.

[154] Stol, "Miete."

[155] Full prepayment was applied where circumstances demanded; see LE 9 (harvester) and 7.7.4.1 below.

[156] Roth, "Scholastic Exercise . . ."

[157] CT 4 47a = UAZP 305 + *AfO* 15, 77.

hire it out to a third party (LE 5; LH 237). The codes set standard rates (LE 4; LH 239, 275–77).

The contract might impose a fixed penalty on the hirer for the loss or sinking of the boat (e.g., OECT 8 13:11–14). If caused by his negligence, the hirer was liable for its full value, at least if he was a boatman himself.[158] Contracts often stipulated the route; if deviated from, the hirer was strictly liable for loss of the boat.[159]

7.7.2 *Persons*[160]

Slaves could be hired like any movable, but a free man could also hire himself (or his children) out for services. The same type of contract covered everyone from an unskilled laborer (LH 257) to a steward responsible for the running of a farm (LH 253–56). The codes set rates for the hire of persons providing different services. Services could be limited in time, for example, for harvesting (LE 8–9), or specialized, for example, a fuller, who was treated as a hired person although paid per garment (LE 14). The contracts often gave longer term laborers the right to a number of days' leave per month. These self-hire contracts are to be distinguished from labor contracts, in which local officials contracted with managers of royal lands to supply workers for the harvest.[161]

7.7.3 *Services*

7.7.3.1 A wetnurse was engaged for three years.[162] She received payment in rations and apparently had a lien on the child until they were paid (LE 32). For fraudulent misconduct leading to the death of the child in her care, LH 194 punishes her with the excision of a breast.[163]

7.7.3.2 Herds were entrusted by their owner on an annual basis to a herdsman. He accepted personal liability for the herd and was remunerated either by a fixed payment, or by a share of the herd's

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[158] LE 5; LH 237; Petschow, "Havarie."

[159] LL 5; SLHF iv 42–v 11; YBT I 28 (i.e., YOS 1 28 = SLEx 3); Petschow, "YBT I 28 . . ."

[160] Lautner, *Personenmiete* . . .

[161] Yoffee, *Economic Role* . . ., 109. Cf. Yaron, *Eshnunna* . . ., 252.

[162] See VAS 7 10–11 = UAZP 78; TJA pp. 127–30; LE 32.

[163] Cardascia, "La Nourrice . . ."; Lafont, *Femmes* . . ., 424–27.

growth and of its produce, or by a mixture of both.[164] The owner had a minimum entitlement to growth which the herdsman had to meet at the expense of his own payment or share (LH 264). There was, however, an allowance for natural deaths (on production of the skin as proof) and deaths by epidemic or by a lion (upon declaratory oath), but not for an avoidable disease spread by negligence (LH 266–67) or lost strays (LH 263; CBS 727 = Stol, "Fragment . . .").

7.7.3.3 For the performance of a particular task, such as surgery, building a house, or caulking a boat, the provider was paid an honorarium (*qīštum*) rather than hire.[165] LH punishes such providers severely for negligence leading to injury or death (e.g., 218, 229).

7.7.3.4 The "journey" of a divine emblem could be hired for settling disputes.[166]

7.7.4 *Land*

7.7.4.1 *Houses*

Leases were almost always for one year. Payment was often half in advance, half at mid-term. If wholly in advance, premature eviction by the landlord led to his forfeiting the whole rent (LH "g"). In principle, the landlord was responsible for structural repairs, but often a clause in the contract imposed the burden on the tenant.

7.7.4.2 *Fields and Orchards*[167]

Leases were mostly for one year but were probably renewable.[168] Leases for the development of fallow land were three years for fields and five for date orchards, with rent payable only in the final year. Rent was mostly payable at the harvest, but a part could be prepaid (SLHF viii 20–21), and occasionally the whole rent was payable in advance (YOS 13 376; TIM 5 49). There were four types of rent: a fixed sum, sharecropping (usually two thirds to the tenant, sometimes equal shares), a fixed rate per unit of land, or a rate deter-

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[164] LH 261; VAS 9 59–60 = UAZP 158; UCP 10 58 = Greengus, Ishchali; Postgate, "Shepherds . . ."; Stol, "Fragment . . ."; Finkelstein, "Herding Contract . . ."

[165] LH 215–18, 228, 234. Contrast *idū* for a fuller (LE 14) or a shepherd (VAS 9 59–60 = UAZP 158).

[166] See Harris, "Divine Weapon . . .," and 3.3.3 above.

[167] Pomponio, *Affitto . . .*; Mauer, *Bodenpachtverträge . . .*

[168] Mauer, Bodenpachtverträge, 91–92.

mined by local custom ("like his neighbor"). The tenant had to restore the land in good condition, ready for cultivation. If he failed to cultivate it at all, he had to pay compensation for the lost crop and restore the land ready for cultivation.[169] Should the crop be destroyed by storm or flood, if it was a sharecropping arrangement, the loss was shared proportionately, but if the whole rent was payable in advance, the loss was on the tenant.[170]

7.7.4.3 Prebends were leased in the same manner as land (e.g., YOS 12 282 = Charpin, *Clergé . . .*, 165–67).

7.8 *Partnership*[171]

Partnership was based upon the ideal of relations between brothers (*aḫḫūtum/atḫūtum*). A partner (*tappûm*) is sometimes referred to as a brother.

7.8.1 *Types of Partnership*

7.8.1.1 *Common Property*[172]

This type is attested at Susa. It is modeled upon the natural partnership of heirs in an undivided inheritance and was created by one partner adopting the other as a brother (MDP 23 286). It was not necessarily a universal partnership: one partner could, by express condition, exclude his previous assets from the communal property (MDP 18 202 = 22 3).

7.8.1.2 *Commercial*

This type is attested only by documents in which one or more persons borrow money from an investor (*ummeānum*) as a *tadmiqtum* loan for partnership in a commercial venture (CT 6 34b:7–11 = UAZP 316). When the venture, which may be a single transaction, a trading journey, or a period of time (BE 6/1 97 = UAZP 173; BE 6/1 91 = Eilers, 59) is completed, the investor is repaid and the partners divide the profit and loss. Eilers thought the investor, although

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[169] LH 42–44, 62–63. Cardascia, "Dommages Agricoles . . ."

[170] LH 45–46; Petschow, "Die §§45 und 46 . . ."

[171] Akk. *tappûtum*; Sum. nam.tab.ba; see Eilers, *Gesellschaftsformen . . .*; Szlechter, *Société . . .*

[172] Szlechter, *Le contrat de société*, 61–64; Westbrook, *Property . . .*, 127–30.

not called a partner, was a special type of partner who shared in profits but not losses.[173] According to Szlechter, the investor was not a partner but, as lender, theoretically shared in losses as well as profits (LH "cc"). In practice, his liability for losses could be excluded by a clause in the contract of loan.[174] Partners were initially liable to creditors only on a proportional basis but were mutual sureties for the whole of the loan (CT 4 6a = UAZP 315).

7.8.1.3 *Agricultural Lease*

This type is attested in documents in which partners jointly rent land and participate equally in the expenses of cultivation and in the yield at harvest. In some cases, the lessor is a partner himself, splitting his legal personality between lessor and lessee (CT 2 32 = UAZP 177).

7.8.1.4 *Trading Venture*[175]

LH 100–107 discuss various transactions between a merchant (*tamkārum*) and a trading agent (*šamallûm*). They all involve the merchant entrusting goods or capital to the agent, who embarks on a trading journey with them. On his return, they share the profit, but the merchant is guaranteed a 100 percent return on his capital unless the agent makes an actual loss, in which case he is still guaranteed restitution of the capital itself, unless it was lost by force majeure. These transactions were essentially loans (one form is a *tadmiqtum* loan: 102), but they also have some of the legal characteristics of a partnership, although not designated as such.

7.8.2 *Dissolution*

As an adoption, common property partnership was dissolved by verba solemnia ("You are not my brother"). Commercial and agricultural partnerships, although limited in duration, required a special procedure to close the accounts ("purification": *tazkītum*). It was a quasi-litigious procedure before judges in the temple. The partners paid off their creditors, settled the accounts, and divided profits and losses. They took a declaratory oath before a divine emblem that their

[173] Eilers, *Gesellschaftsformen* . . ., 20–25.
[174] Szlechter, *Le contrat de société*, 28–32.
[175] Driver and Miles, *Babylonian Laws* . . ., 188–202.

accounts were true and a promissory oath not to raise further claims (BAP 78 = UAZP 171).

7.9 *Deposit*[176]

The rules of deposit are known to us only from the law codes; it was not a contract customarily recorded in writing.

7.9.1 *Bulk Goods*

LH 121 fixes the rate for storage of grain in a silo (*našpakūtum*). As the depositor's grain was not separately identifiable, there was opportunity for fraud by the depositee through shortfall, abstraction, or denial of the contract. Fraud could be established by a declaratory oath of the depositor and led to a penalty of twofold restoration (LH 120; cf. UET 5 10).

7.9.2 *Specific Goods* (*maṣṣarūtum*)

LH 123–24 require an agreement before witnesses.[177] LH 125 makes the depositee liable for restitution if by his negligence the depositor's goods are stolen along with his own (thus eliminating the possibility of fraud) but possibly gives him the right to recover all the stolen property as his own, if he catches the thief. LE 37 (as restored by Landsberger) in similar circumstances appears to make the depositee liable only for fraud.[178]

7.10 *Carriage* (*šēbultum*)

Silver, gold, or commodities might be consigned to a person for delivery elsewhere. A fee is not stated in the contract, although it might allot the carrier rations for the journey. The contracts imposed various penalties for late delivery calculated on the sum consigned, for example, interest (TIM 3 118), double (YOS 12 201) or loss of standard profit (TCL 10 98).[179] LH 112 imposes a five-fold penalty on the carrier for misappropriation of the goods.

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[176] Ibid., 233–41; Koschaker, *Rechtsvergleichende Studien . . .*, 7–33, 55–57.

[177] *šībī u riksātim*. Contrary to Roth's translation (following Koschaker), it was not a written contract (see Greengus, "Marriage Contract . . .").

[178] On the difficulties of LE 36–37, see Landsberger, "Jungfräulichkeit . . ."; Yaron, *Eshnunna . . .*, 248–51; Westbrook, "*naṭarum . . .*"

[179] See Leemans, *Foreign Trade . . .*, 57–76.

7.11 Contracts could be made ancillary to a status such as marriage, adoption, or slavery. They are discussed under the appropriate status.

8. Crime and Delict[180]

8.1 *Homicide*[181]

The law codes present a series of special cases, from which we can conclude that the level of culpability depended upon various factors: the mental condition of the culprit, the status of the victim (*awīlum* or *muškēnum*, head of household or son, daughter or slave), or the directness of causation.[182] An underlying principle of punishment appears to have been its symbolic association with the crime, especially by talion, either in like means of death or like member of family killed (vicarious talion).

8.1.1 *Premeditated*

In the Nippur Murder Trial, three conspirators found guilty of murdering a man are condemned to be killed before the victim's chair.[183] The victim's wife, who was informed after the event by the conspirators but kept silent, is condemned to death also, on the somewhat dubious grounds that her silence raised a presumption of complicity with her husband's enemies beforehand, which was as bad as actual participation in the deed. LH 153 reveals a similar attitude, condemning to death by impalement a wife who "caused her husband to be killed" on account of another man. The wife's disloyalty in both cases was regarded as an aggravating factor.

A letter of King Rim-Sin of Larsa orders that a slave who threw a boy into an oven suffer the same fate himself (AbB 9 197).[184]

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[180] Renger, "Wrongdoing . . ."

[181] Van den Driessche, "Homicide . . ."; Wilcke, "Diebe . . .," 64–66.

[182] It is a matter of debate whether, e.g., "son of an *awīlum*" refers in this context literally to a son or to a member of the *awīlum* class. See Driver and Miles, *Babylonian Laws*, 86–90; Westbrook, *Studies* . . ., 54–71.

[183] A literary exercise tablet; see Jacobsen, "Homicide . . .," 193–204. Discussed by Roth, "Gender and Law."

[184] LH 1 imposes death on the false accuser of murder (*nērtum*), implying that the same fate would have been the murderer's had the accusation been true.

8.1.2 *Non-premeditated*

8.1.2.1 A fatal blow given in the course of a brawl was not considered to be on the same level as premeditated killing. LE 47A requires a payment of forty shekels and LH 207 one of thirty shekels for the death of the son of an *awīlum* in this way. LH specifically requires an oath that the blow was not intentional (as to its consequences).

8.1.2.2 For a blow to the pregnant daughter of a man leading to a miscarriage, the codes demand a payment, varying according to whether:

1. it was a mere push (SLEx 1: 10 shekels) or a deliberate blow (SLEx 2: 20 shekels; LL "d": 30 shekels);
2. the woman was daughter of an *awīlum* (LH 209: 10 shekels) or of a *muškēnum* (LH 211: 5 shekels).

If the woman herself dies, LL "e" demands the death of the culprit; LH 210, death of the culprit's daughter if the victim was daughter of an *awīlum*; if of a *muškēnum*, a payment of thirty shekels.

8.1.2.3 For causing the death of a distrainee through beating or abuse, LH 116 demands the death of the culprit's son if the victim was the debtor's son. LE 24 regards a false claim of debt to be an aggravating factor: the culprit himself is to be killed, whether the victim was the wife or son of the purported debtor.

8.1.3 *Indirect*

The codes discuss cases where a non-human agent causes death through negligence of the person responsible for it.

8.1.3.1 An ox kills a person by goring.[185] If the ox was proceeding down the street in a normal way, its owner is not liable (LH 250). However, if the ox is a known gorer and the local authority warns the owner, he is liable. If he fails to take precautions, LE 54 imposes a payment of forty shekels if the ox kills a man; LH 251, thirty shekels if it kills the son of an *awīlum*. LE 56 applies the same rule to a vicious dog.

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[185] Finkelstein, *The Ox that Gored* . . ., 21–25; Yaron, *Eshnunna* . . ., 291–303.

8.1.3.2 The owner of a wall whom the local authority had warned of its dangerous condition is to suffer death himself if the wall collapses and kills even a son (LE 58). The collapse of a building is punished by the death of the negligent builder if it killed the householder, or of the builder's son if it killed the householder's son (LH 229–30). These more harsh provisions may have been imposed because an inanimate object was considered more directly controllable than an animal.[186]

8.2 *Injury*

8.2.1 *Intentional*[187]

LE 42–47 contain list of injuries to different parts of the body, with a tariff of payments ranging from sixty shekels for biting off a nose to ten shekels for a slap in the face. LH 196–205 contain a similar, if shorter, list but with a different and more complex scale of punishments. For knocking out an *awīlum*'s eye or tooth or breaking his bone, the penalty is talion—the same injury inflicted on the culprit. If the victim is a *muškēnum*, however, a tariff of payments applies as in LE. The gradations for a slap in the face are yet more subtle: an *awīlum* who slaps an *awīlum* of higher status receives sixty lashes in the assembly; if his equal, he pays sixty shekels. A *muškēnum* who slaps a *muškēnum* pays ten shekels; a slave who slaps an *awīlum* has his ear cut off (202–5). A trial document records a payment of 3 1/3 shekels, but this may have been a compromise after a dispute over evidence.[188]

8.2.2 *Unintentional*

The procedure following homicide committed in a brawl (LH 207) applies equally to inflicting a wound. The culprit must swear the same oath that he did not intend the consequences. Thereupon, his only obligation is to pay for the doctor (LH 206).

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[186] See discussion by Yaron, *Eshnunna . . .*, 300–303.
[187] Cardascia, "Le caractère volontaire . . ."
[188] San Nicolò, "Parerga . . ."

8.3 *Sexual Offenses*[189]

8.3.1 *Adultery*[190]

Adultery was consensual sexual intercourse by a married woman with a man other than her husband. It was seen as an offense against the husband.

8.3.1.1 LE 28 provides that a wife caught in the lap of a man "shall die; she shall not live." This has been interpreted to mean that the husband who catches her in flagrante delicto may kill her with impunity.[191] LH 29, in the same circumstances, assumes that the husband has brought the couple to court. The punishment is death by drowning for both wife and paramour.[192] The husband has the power to pardon his wife, but it will trigger a pardon of the paramour by the king. A literary account of a trial for adultery suggests that the husband had a wide discretion in the punishment of his wife. Having caught the lovers in flagrante, the husband ties them to the bed and brings them, bed and all, before the court.[193] The woman is condemned to pay divorce money, her pudendum is shaved "(like?) a prostitute," her nose is bored with a stick, and she is led around the city.[194]

8.3.1.2 The law codes in principle allowed a wife whose husband was captive abroad to remarry (see 5.1.4.2 above). LH 133, however, provides that it must be out of dire economic necessity, or the woman will be drowned as an adulteress.

8.3.1.3 LH 143 prescribes drowning for a woman who, after refusing to marry her "husband," is found by her local court to have engaged in (unspecified) immoral behavior. This may refer to premarital

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[189] Finkelstein, "Sex Offenses . . ."; Driver and Miles, *Babylonian Laws*, 275–90; Yaron, *Eshnunna*, 278–85.

[190] Westbrook, "Adultery . . ."

[191] Westbrook, "Life and Death . . .," following an earlier view of Yaron, which, however, he now rejects: "Stylistic Conceits . . ." The same phrase occurs in LE 12 and 13 (see 8.4.4 below).

[192] In UET 5 203 (a scribal exercise), a husband who catches the lovers in flagrante approaches the king, who condemns them to the stake.

[193] Greengus, "Textbook Case . . ."

[194] Following the reconstruction of Greengus, "Textbook Case . . .," and Roth, "Scoundrel . . .," 278.

infidelity by a betrothed woman.[195] In a Mari letter, a woman is reported to admit sexual contact with a named man before marriage but solemnly denies full intercourse with him.[196]

8.3.1.4 A woman accused of adultery by her husband but not caught in the act could clear herself by an exculpatory oath (LH 131). If she has "a finger pointed against her," she must undergo the river ordeal "for her husband" (LH 132).[197]

8.3.2 *Rape*

The OB law codes deal only with the rape of a betrothed woman (i.e., after the *terḫatum* has been paid). It is a serious offense punishable with death for the culprit (LE 26; LH 130). From the provisions of law codes of other periods, it is known that rape of an unattached girl was considered far less serious, leading at most to compulsory marriage.[198]

8.3.3 *Seduction*

SLEx 6'–7' contain provisions concerning the seduction of an unattached daughter. Their translation is uncertain, but the possibility of marriage with the seducer is mentioned.[199]

8.3.4 *Incest*

LH presents four cases of incest:

1. A man sleeps with his daughter. The father is banished; the daughter is apparently not punished (154).
2. A man sleeps with his daughter-in-law after consummation by his son. He is drowned; she is not punished. Indeed, if it occurs before consummation, although the father-in-law is not punished, the daughter-in-law is entitled to leave with her dowry and compensation (155–56).

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[195] ". . . she does not keep herself chaste but goes out and about (*la naṣrat-ma waṣiat*)"; see Westbrook, "Adultery . . .," 570–76. Other scholars regard this as adultery by a married woman; see 5.1.3 above.

[196] ARM 26/1 488:29–41, as interpreted by Lafont, "AEM 1/1, 254 . . ."

[197] Most commentators assume that the context is a trial following a specific accusation (e.g., Driver and Miles, *Babylonian Laws*, 284), but it may be the husband's right to demand that his wife clear herself of a bad reputation which brings shame on him.

[198] See Finkelstein, "Sex Offenses . . .," 366–69.

[199] Cf. ibid., 357–58, and Roth, *Law Collections* . . ., 44–45.

3. A man sleeps with his mother after his father's death. Both are burned (157).
4. A man sleeps with his father's principal wife who has borne children (evidently his stepmother)[200] after his father's death. He is disinherited (158).

8.4 *Theft and Related Offenses*[201]

8.4.1 *Definition*

The native terminology for theft (vb. *šarāqum*) is used not only for taking away but also for misappropriation of goods entrusted to one's care and for receiving goods that one knew or ought to have known were stolen.

8.4.2 *Sanctions*

8.4.2.1 Some provisions of LH demand death for simple theft or receiving, whereas others merely exact a payment. The earlier codes and the documents of practice speak only of payments (or servitude—see below). These contradictions have been explained as the result of an historical development or of different geographically or ethnically based systems.[202] In our view, the death penalty existed in all these systems as a theoretical possibility but occurred only rarely in practice, for aggravated forms of theft or where the thief was unable to pay a large pecuniary penalty (AS 7; LH 8, 256; TIM 4 33). In LH, its use for simple theft may in part be hyperbolic, but in part may be attributed to the theoretical nature of some of the discussions.[203]

8.4.2.2 The typical penalty in the law codes was a multiple of the item stolen, ranging from twofold to thirtyfold. There are also fixed sums. It is possible that some of the sums found in documents of practice represent multiples.

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[200] Following Roth's translation, *Law Collections* . . ., 111.
[201] Leemans, "Theft and Robbery . . ."; Westbrook and Wilcke, "Liability . . ."; Wilcke, "Diebe . . ."
[202] Reviewed in Westbrook and Wilcke, "Liability . . .," 111–13, 119.
[203] Westbrook, *Studies* . . ., 121–23.

8.4.2.3 A penalty closely associated with petty theft was *kiššātum* (Sum. zíz.da).[204] It took the form of a fixed payment to the owner of the stolen property or of servitude with him in its stead—by the thief himself or members of his family or his slaves (e.g., UCP 10/1 107 = Greengus, *Ishchali* . . ., 171–73). This servitude was regarded as a type of debt slavery, and release was possible in the same ways as from debt service (AS 20–21; LH 117–18).

8.4.3 *Theft*

8.4.3.1 A case where the defendant was said to have stolen a field and consumed its produce seems to have involved a false claim of ownership, not merely theft of the crop (CT 8 6b = UAZP 268). The standard punishment for theft of movables in LH was tenfold (8, 265), but fivefold for misappropriation of goods consigned for transport (112), and twofold for misappropriation of feed-grain by a steward (254). If stolen grain is found in his possession, however, his hand is cut off (253). Payments of three and five shekels are imposed for theft of agricultural implements from the field (259–60).

8.4.3.2 Theft of temple or palace property was an aggravated offense, carrying the death penalty (LH 6; cf. TCL 11 245 = Wilcke, "Diebe . . .," 59). If, however, the thief took an animal or a boat, not knowing at the time that it belonged to the temple or palace, he pays thirtyfold. Only in the event that he cannot pay is the death penalty specified (LH 8).

8.4.3.3 Theft of a slave was no different from theft of a valuable movable. The enigmatic provisions of LE 49 ("slave will lead slave") indicate a twofold penalty. Helping a slave to escape, harboring an escaped slave, or holding him for oneself are all regarded as capital offenses by LH (15–16, 19–20). Even harsher is the punishment for one who suborns a barber to remove the slave mark: he is killed and hanged in his own doorway. The barber who acts knowingly has his hand cut off (226–27). It is not clear whether LH regarded these as theft or as special, more serious offenses. By contrast, in LL 12–13, the penalty for harboring (defined as keeping for one month)

[204] See Westbrook, "*kiššātum* . . ."

is to give slave for slave (or 15 shekels in lieu), which is akin to ordinary theft. LE 50 is explicit: an official who keeps a runaway slave (or straying animal) for more than a month is to be treated as a thief.

Kidnapping a free person for sale into slavery was an aggravated form of theft, for which LH 14 imposes the death penalty.

8.4.4 *Burglary*[205]

Trespass was not necessarily an aggravating factor in theft: LL 9 imposes only a payment of twenty shekels for cutting down a tree in another's orchard. Trespass with intent to steal was, however, an offense in itself, albeit minor: LL 10 and LE 12–13 both impose a payment of ten shekels. On the other hand, if the trespasser were caught at night, the householder may have had the right to kill him on the spot.[206] LH 25 allows summary justice for the looting of a burning house by one who had gone to help extinguish the blaze: he is thrown into the fire. In the same way, LH 21 provides that a man caught breaking into a house (i.e., by making a breach in the mud-brick wall) was to be killed and hanged in the breach. There is no day/night distinction as in LE; it may reflect the harsher rhetoric of LH or a distinction between mere trespass and the more violent act of housebreaking.

8.4.5 *Robbery*[207]

Theft with violence was regarded as a separate offense (verb *ḫabātum*), probably because it reflected a different social reality. Robbers were typically outsiders who waylaid travelers or raided settled areas. If caught, they would be killed, but they were not often caught. Consequently, it was the local authorities who were obliged to compensate the victims (LH 22–24).

8.4.6 *Fraud*

Fraudulent practices are treated like theft in AS 7. A creditor who seeks to evade the debt-release decree by falsely declaring that an interest-bearing loan given by him was a commercial transaction (not

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[205] Westbrook, *Studies* . . ., 124–25.

[206] For this interpretation of the phrase "he shall die; he shall not live" in LE 12–13, see the discussion of LE 28 at 8.3.1.1 above.

[207] Wilcke, "Diebe . . .," 63–64.

affected by the decree) is condemned to a sixfold payment. If he cannot pay, he is put to death. LH 108 condemns to drowning a taverness who used heavier weights to increase the amount of grain that her customers paid for beer.

8.4.7 *Receiving*

8.4.7.1 A person found in possession of stolen goods had the burden of proving that he acquired them in good faith, usually by producing the seller and witnesses of the sale.[208] If he failed to do so, he was deemed the thief himself (LE 40; LH 9–10). He would likewise be deemed a thief if he received the goods under suspicious circumstances, for example, from a son or slave without witnesses, where he ought to have known that they were being transferred without the authority of the owner (LH 7).

8.4.7.2 The innocent receiver was not merely obliged to return the goods; he may have faced primary liability to the owner for a penal payment if the thief was not available, albeit at a multiple lower than that for theft. It would then be his own responsibility to trace the seller/thief and recoup his outlay.[209]

8.5 *Damage to Property*

8.5.1 A landowner was liable for negligence or nonfeasance in maintaining his irrigation canals. If it resulted in the flooding of his neighbors' land, he had to compensate them for the loss of crops and other damage. If the damage was to many neighbors and thus beyond his means to repay, he was sold as a slave and the proceeds divided among the injured parties (LH 53–56).

8.5.2 To almost every discussion of injury or death in the law codes there is a rider for the case where the victim was a slave. In all cases, the remedy is evidently compensation to the owner for loss or damage to his property. For death by a negligent builder: slave for slave (LH 231): for blinding or breaking a bone: half his value

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[208] Kümmel, "Sklavenhehlerei . . ."; *Sumer* 14 (1958) no. 28; TIM 4 33 (oath by depositee).

[209] LH 12 and see Westbrook and Wilcke, "Liability . . ."; Westbrook, *Studies* . . ., 111–19. YOS 14 40 (= *JCS* 14 (1960) no. 60): innocent partner.

(LH 199)—the same compensation payable by the hirer of an ox (LH 245, 247). For death by a goring ox or from a miscarriage or distraint, the payment is fifteen to twenty shekels, or two slaves for one if the distraint was illegal (LE 23, 55, 57; LH 116, 214, 252). For the miscarried foetus, it is two to five shekels (LL f; LH 213). For deflowering another's slave girl, the payment is twenty shekels, with the proviso that the slave remains the property of her master (LE 31). This is to distinguish it from deflowering a free daughter, where the penalty might have included forced marriage.

8.5.3 If an ox gored another ox, it was regarded as an accident, without liability. The owners divided the value of the live ox and the corpse of the dead ox (LE 53).

8.6 *Perjury*[210]

False accusation and perjury by a witness are treated as the same offense by the law codes (LL 17; LH 1–4). The sanction is talionic: the same penalty that the accused would have suffered had he been guilty. In a letter from Mari, an accuser (of treason?) is to suffer death by burning if the accused survive the river ordeal.[211] In trial records, the judges often impose a penalty (usually unspecified) on one who brought a claim "without knowing," that is, without good grounds.[212] Where explicit, it was designed to shame: "they shaved half his head, bored a hole through his nose, stretched out his arms and led him around the city" (CT 45 18:14–16 = Veenker, 9–11). A broken tablet records that women who gave false evidence suffered a shaming punishment: ". . . they touched their cheek with . . ., they tore off their headdresses."[213] For a false oath by witnesses, see 3.3.3 above.

8.7 *Slander*

LL 17 imposes a payment of ten shekels for falsely impugning the honor of a virgin. For impugning that of a wife, LH 127 prescribes

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[210] Petschow, "Calumnia . . ."; Abusch, "He should continue . . ."
[211] ARM 28 20: Dossin, "Un cas d'ordalie . . ."
[212] *ina la idîm*: CT 47 3:18, 63:48–49. Cf. LL 17: inim nu.zu.ni for an accusation.
[213] Stol, "Falsches Zeugnis . . ."

flogging and shaving half the accuser's head. It is not clear whether the context is a formal accusation in court.[214]

8.8 *Witchcraft*

LH 2 obliquely refers to witchcraft being punished with death and forfeiture of property to the accuser.

9. Special Institutions

This period is notable for a special category of women dedicated to a god, the most important of which was the *nadītum*. Certain special rules of inheritance applied to them.

9.1 A *nadītum* of Shamash was regarded as the god's junior wife (his first wife being a goddess); she was not allowed to marry a mortal but had to live in a type of cloister known as a *gagûm*.[215] This did not prevent her from owning property; indeed, such women actively traded in land and defended their rights through litigation.[216] She received a dowry from her father like any bride, but land was customarily left to her brothers to exploit. If they failed to give her a satisfactory allowance from it, she could put it in the hands of a farmer instead (LH 178). Her dowry was inalienable and would be inherited by her brothers after her death, unless her father had given her free disposition of it, in which case she could bequeath it to whom she wished (LH 179). It was common, however, for a *nadītum* to adopt a niece, also a *nadītum*, as her universal heir. If her father failed to dower her, LH 180 awards her a full inheritance share like a son.

9.2 A *nadītum* of other deities who did not live in a cloister was allowed to marry but not to conceive children herself; instead, she relied on a second wife (*šugētum*—perhaps also a type of dedicated woman) or a slave, becoming the mother of their offspring with her husband through a legal fiction (LH 144–47; see 5.1.5 above). If

[214] See Driver and Miles, *Babylonian Laws*, 277–80.
[215] Harris, "The *nadītu* Woman"; Renger, "Priestertum . . .," 149–76.
[216] Stol, "Care of the Elderly . . .," 84–116.

not dowered, LH awards the *nadītum* a one-third share of a male inheritance (181–82). LH 184 obliges an undowered *šugētum*'s brothers to give her a reasonable dowry.

Abbreviations

AbB	*Altbabylonische Briefe*, ed. F.R. Kraus et al., Leiden: Brill, 1964–
AEM	Archives Epistolaires de Mari
ARM	Archives Royales de Mari
AS	Edict of Ammi-ṣaduqa
LE	Laws of Eshnunna
LH	Laws of Hammurabi
LL	Laws of Lipit-Ishtar
LOx	Laws about Rented Oxen, ed. Roth, *Law Collections* . . ., 40–41
MSL	B. Landsberger, Materialien zum Sumerischen Lexikon, Vol. I: Die Serie *ana ittišu*. Rome: Pontifical Biblical Institute
SLEx	A Sumerian Laws Exercise Tablet, ed. Roth, *Law Collections* . . ., 42–45
SLHF	Sumerian Laws Handbook of Forms, ed. Roth, *Law Collections* . . ., 46–54
UAZP	M. Schorr, *Urkunden des altbabylonischen Zivil- und Prozessrechts*

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MESOPOTAMIA

OLD ASSYRIAN PERIOD

Klaas R. Veenhof

1. Sources of Law

Nearly all sources of the Old Assyrian period stem from the commercial quarter (*kārum*) of the ancient Anatolian city of Kanish, the administrative center of a network of Assyrian trading colonies in Anatolia, dating to ca. 1950–1840 (middle chronology; archaeologically *kārum* level II).[1] Of the approximately 20,000 cuneiform texts found thus far in the houses of the traders living there many qualify as sources of law. The city of Assur itself has thus far yielded almost no written sources of this period, although many of the texts found in Kanish originate from Assur. In addition there are approximaly 250 records from a slightly later period of commercial activity in Anatolia (roughly the first half of the eighteenth century) discovered both in *kārum* Kanish (level Ib) and in commercial settlements in Hattuš and *Alişar Hüyük*. Among the tablets from *Kārum* Kanish there are also a few hundred private legal documents written in Old Assyrian but originating from the native Anatolian population. Though influenced by Old Assyrian legal and scribal tradition, their substance cannot simply be equated with Assyrian law. Because the sources stem from archives of traders, most bear on commercial matters, but there are also a limited number of records dealing with family law and non-commercial conveyance.

1.1 *Law Codes*

No law code has been found, but from some quotes and references in letters and verdicts, which refer to "words written on the stela," we know that laws existed and had been published.[2]

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[1] For general information, see Veenhof, "Kaniš, *kārum* . . .," and "Kanesh . . ." (with bibliography).

[2] For the texts and their analysis, see Veenhof, "Legislation . . ."

1.2 *Statutes*

Rules for the convening of and decision making by the assembly (*puḫrum*) of the *kārum* as administrative body of the Assyrian colonial society are preserved in three large but very damaged tablets, called "Statutes of the Colony" by their latest editor.[3] They deal with settling accounts and passing verdicts.

1.3 *Administrative Orders*

These are contained in a number of so-called "tablets of the City," sent to *kārum* Kanish. They were official letters from the ruler of Assur in his capacity of *waklum*, "overseer" (of the city and perhaps chairman of the city assembly), communicating decisions of the City to the colonies.[4] While most "orders of the City" (*awāt ālim*) are in the form of specific verdicts, some have a more general impact and seem to refer to procedure and substance of law.[5] There are also a few damaged letters from the ruler which contain orders without reference to the City; one deals with judicial procedure, the other perhaps with smuggling.[6] At the end of the former, we read: "Let a copy of this tablet be read out ("heard") in every single colony!" The *kārum* authorities also issued written orders (*awāt kārim*), occasionally made known by circular letters addressed "to every single *kārum*," which deal with administrative and commercial matters, such as smuggling or the rate of interest.

1.4 *Judicial Records*[7]

Hundreds of documents result from the administration of justice in all its forms and stages, ranging from records of private summons and voluntary arbitration to those reporting on or emanating from

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[3] Larsen, *City-State* . . ., 283–332; one of the tablets bears the subscript *tamšimtum*, "wise rule."

[4] In some of these, the *waklum* is only mentioned as sender on the envelope, while the text on the tablet inside lacks an address and immediately starts with: "The City has passed the following verdict:. . . ." (e.g., EL 327; see Larsen, *City-State* . . ., 176).

[5] See Larsen, *City-State* . . ., 173ff.

[6] TC 1 142 (ibid., 153f.), and kt 91/k 100 (unpubl.), both heavily damaged.

[7] A full edition, with comments, of nearly one hundred judicial records is found in EL nos. 238–341, and a representative sample in translation with comments in Michel, "Les litiges commerciaux . . ."

court proceedings, both in the colonies and in Assur. Most numerous are depositions of various kinds and verdicts passed by small "trading stations" (*wabartum*), various *kārum*s, and the City Assembly in Assur. We also have numerous records of interrogations (by parties and by "attorneys," called *rābiṣum*), negotiations, agreements, arbitrations, and oaths sworn. Most of these records—especially depositions under oath made before witnesses, records of arbitration and interrogation, and verdicts—originally were in the form of tablets encased in clay envelopes bearing the impressions of the seals of parties, judges, and witnesses (both material witnesses and court witnesses), which lent them legal validity and evidentiary force. All these documents were found in private archives, apparently because the winner of a case obtained the file as proof of his rights.

1.5 *Private Legal Documents*[8]

The great majority of private legal documents record a variety of legal transactions in the framework of the overland trade. Most are the result of commercial credit granted or loans extended and complications connected with them: hundreds of debt notes and quittances, waivers and transfers of debt claims, settlements of accounts, contracts about the cancellation of debt notes, security (pledge and guarantee), records of seizure, debt bondage, and forced sale of property. There are numerous contracts of service (in the caravans), transport, deposit, agreement, partnership, and investment (in a trader's commercial capital, called *naruqqum*). In addition, there are contracts of a non-commercial nature, on the purchase of houses and slaves and pertaining to family law. A number of contracts bearing on conveyance, family law, obligations, and business (partnerships and agreements) originate from the Anatolian inhabitants of Kanish and have to be kept separate from the purely Assyrian ones because of their special characteristics.

All these records originally were (and many still are) in clay envelopes, sealed by the party who accepted an obligation (payment, service, guaranty, transport, deposit), waived a claim or right, or acknowledged a fact (quittances, sales, settlements, cancellation of a

[8] More than two hundred private legal documents are edited as EL nos. 1–223, and an additional one hundred loan contracts are edited in Rosen, *Studies* . . . The only monograph on a specific topic is Kienast, *Kaufvertragsrecht* . . .

record), and by witnesses, the presence of whose seals is always mentioned in the text written on the envelope.[9] The Assyrians called such records *ṭuppum ḫarmum*, "certified/validated tablet" and they were carefully preserved in sealed containers and sent overland in sealed packages.

1.6 *Miscellaneous*

The Assyrians concluded treaties (called "oath," *mamītum*) with the Anatolian rulers in whose territory they traded, and we have the draft of one treaty with the ruler of a small town whose territory the caravans crossed.[10]

Erishum I, the ruler of Assur during whose reign the trade developed, in the second part of a long inscription, a copy of which was found in *kārum* Kanish, deals with the administration of justice, threatening liars and false witnesses by means of curses and promising honest men a fair trial and the assistance of an "attorney" (*rābiṣum*).[11]

The thousands of business letters are an important source of the law. They provide information not only on commercial law (substance, procedure, legal devices) but also on jurisdiction, when they report on lawsuits and refer to or quote testimonies, appeals, verdicts, and the contents of "tablets of the City."

2. Constitutional and Administrative Law

2.1 *Organs of Government*[12]

2.1.1 *The Ruler*

2.1.1.1 *The Ruler of Assur*

The ruler of the city-state of Assur (called *rubā'um*, "big one," "*primus inter pares*"; the title "king," *šarrum*, was reserved for the city-god) had to share his power with "the City." Both occur together in the oath and in the formula of appeal ("Bring my case before. . . ."), but the

[9] For sealing practices, see Teissier, *Sealing and Seals* . . .
[10] Ed. Çeçen-Hecker, "Wegerecht . . ."
[11] Ed. Grayson, *RIMA* I 20f.
[12] A comprehensive analysis of the political structure of Assur and of the government of the colonies is offered by Larsen, *City-State* . . ., pts. 2 and 3, and earlier by Garelli, *Assyriens* . . ., pt. 2.

City is always mentioned first. Official orders and authorizations are usually referred to simply as "tablets of the City,"[13] and the official messengers sent out to represent Assur in Anatolia are called "Envoys of the City" (*šiprū ša ālim*). The absence in the documentation of the royal palace in Assur and the prominent role played by the "City house" (*bēt ālim*) reveal that the City was the main administrative power. The ruler's responsibility for maintaining justice was exercised in conjunction with the City. He had to make known its decisions (verdicts, orders), which he sent to the colonies (see 1.3 above) in envelopes carrying his seal and the inscription: "Tablet of the *waklum* ("overseer"), to *kārum* Kanish."[14] It was the ruler's prerogative to assign plaintiffs the right to hire an "attorney" (see 7.4 below), which people would call "an 'attorney' of my lord" (*rābiṣ bēlia*), but the ruler himself "my attorney,"[15] although various records show that such measures were based on decisions of the City Assembly.

2.1.1.2 *Anatolian Rulers*

On the Anatolian scene, we meet "rulers" (*rubā'um*) of the various city-states and occasionally also a reigning queen (*rubātum*). The king heads the palace organization, which includes various officials whom we know mainly from their contacts with the Assyrians. Some also appear in purely Anatolian contracts of various kinds, the *rabi maḫīrim* ("head of the market"), for example, in transactions involving houses and slaves. The ruler and the "head of the stairway" figure in particular (and by name) in the so-called "notarization," which occurs (for reasons unknown to us) at the end of certain contracts (especially sale and divorce) and states that the transaction took place "through/by the hand of the ruler . . . (etc.)" (*iqqāti rubā'im . . . .*).[16] A few Anatolian debt notes mention that the ruler could issue a decree of debt release (see 7.3.6 below).

2.1.2 *The City*

The City is the most important organ of government, also the highest judicial authority. It maintained contact with the colonies by

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[13] A rare reference to "a tablet of the City and the ruler" is in TC 2 41:19f.; see Larsen, *City-State . . .*, 179. Cf. TC 1 1:24–30 (Larsen, *City-State . . .*, 163).

[14] See Sever, "*Waklum*," and Veenhof, "Legislation . . ."

[15] See Larsen, *City-State . . .*, 186f.

[16] For examples, see Balkan, *Letter . . .*, 45f., Garelli, *Assyriens . . .*, 63f. ("sous la jurisdiction de . . ."), 214f., and Donbaz, "Remarkable Contracts . . ."

means of "Envoys of the City" and its orders and verdicts were sent there by the ruler. Many records mention "(powerful) tablets of the City" (*ṭuppum* [*dannum*] *ša ālim*), acquired by plaintiffs as an instrument for obtaining justice, which are read out to opponents. In the *kārum*, people are said "to submit" (*šuka'unum*) to them, and they are carefully preserved ("I have a powerful tablet . . ."). "The City" as administrative body means the "City Assembly," which convened and took decisions, as is confirmed by rare references to the "assembly" (*puḫrum*).[17] This happened in the *mušlālum*, "Stepgate," situated "behind the temple of Assur,"[18] also mentioned as such in Erishum's inscription. Other texts mention a *ḫamrum*, a "sacred precinct" (also known from Babylonia), as a place of meeting. The sacredness of the locale may have to do with the presence of the seven divine judges and the "dagger of Assur," on which oaths had to be sworn.

Once we meet the expression "The City, small and big,"[19] which suggests a bicameral system with a plenary assembly alongside a smaller council, a distinction also well attested for the *kārum*s. It links up with the few occurrences of "the elders" (*šībūtum*), as a body which is appealed to and passes verdicts (see 2.1.6.1 below).

2.1.3 *The Colonies* (*kārum and wabartum*)

The center of Assyrian colonial society was *kārum* Kanish. Under it ranked about fifteen other *kārum*s in the main cities of Anatolia (most important were those of Burušḫanda, Wahšušana, Durhumit, and Hahhum) and about the same number of "trading stations" (*wabartum*). The status of *kārum* Kanish is obvious, when other *kārum*s refer to it as "our lords" and Anatolian rulers, keen on renewing their treaty, as "our fathers."[20] *Kārum* Kanish, as an administrative body, mirrored the institutional fabric of Assur, but for its ruler. The *kārum* had a scribe (secretary), archives, and a "*kārum* house," which was used for administrative purposes and storage but was also the place where the assembly (*puḫrum*) of the *kārum* convened and passed verdicts, in a locale also called *ḫamrum*, "sacred precinct," near "the gate of the god," where oaths were sworn on the dagger of the god

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[17] kt n/k 512:8f. mentions legal action "in the City, in the assembly, during a trial, with the help of witnesses."

[18] See Veenhof, "Legislation . . .," 1721.

[19] KTS 2 64:2'f.: *ālum ṣaḫer rabi.*

[20] See Garelli, *Assyriens . . .*, 329–40.

Assur. The Statutes of the *kārum* (see 1.2) distinguish between meetings of its "big" and "small" members, which correlates with the occurrence of "verdicts of the *kārum* big and small," namely, of its plenary assembly, and implies the existence also of a smaller executive committee consisting of the "big men." They may have been identical to "the elders" (*šībūtum*), also twice attested for the *kārum*.[21]

2.1.4 *The Legislature*[22]

The City Assembly most probably was the institution which took care of legislation. Verdicts in frequent and important legal issues in connection with trade (such as payments of debts, compensation for losses during caravan trips, the death of a trader) apparently could become "orders of the City" (*awāt ālim*) of more general validity and formulation ("Anyone who . . .," "No citizen of Assur whatsoever . . ."). In due time, they could be engraved on a stela (*naruʾāum*), which equaled publication. A unique official letter of the ruler sent to *kārum* Kanish, after stating that a recent verdict of the City concerning gold has been canceled, continues: "We have not fixed a (new) rule. The previous ruling (*awātum*) is still (valid) . . . In accordance with the words of the stela, no citizen of Assur whatsoever shall . . .; whoever does so shall not stay alive." It clearly quotes a law with its heavy sanction. That this letter uses the first person plural, suggests that City and ruler together were responsible for "fixing rules" and probably also for publishing them as laws.[23]

On the colonial level, *kārum* Kanish could also issue orders (*awātum*), but its authority probably was limited to practical administrative matters (e.g., the rate of interest among Assyrians) and to issues directly related to the trade, probably in consequence of appeals (e.g., the prohibition on selling goods to an Anatolian official before he has paid his debts to a trader).

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[21] KTK 20:25 and kt m/k 14:12; see Larsen, *City-State* . . ., 165.

[22] Veenhof, "Legislation . . ."

[23] For the sources, see Veenhof, "Legislation . . .," 1732ff., and for "fixing a rule," Veenhof, "*Iṣurtum* . . .," esp. 328f.

2.1.5 *The Administration*

2.1.5.1 *The City*

2.1.5.1.1 Assur

There is much evidence for the City Assembly's function as a court of law and as a body which issued binding orders (*awāt ālim*) and instructions (*têrtum*). The assembly could deal with various aspects of the trade (articles not to be traded in, their relative quantities, settling accounts)[24] but also with the contribution to be paid by the colonies for building the wall of Assur.[25] The City's administrative authority over the colonies was maintained by official letters and by visits of the "Envoys of the City" (*šiprū ša ālim*). They were involved in diplomatic contacts with the Anatolian rulers, but could also interfere in matters concerning Assyrian traders, probably on the basis of a decision of the City Assembly.[26]

In the economic life of Assur the "City house" (*bēt ālim*) played a very important role in collecting taxes, fees, and debts (the result of unpaid taxes and credit sales). Its head was the *līmum* (the institution is also called "*līmu*-house"), a title we cannot translate. He was designated by drawing lots, served for one year, and gave his name to that year, the reason why we call him "year eponym."[27] From the legal point of view, these institutions were important, because many letters and records deal with debts to the "City-house" and report about the powers of the *līmum* (and his "inspectors," *bērū*), no doubt backed by the authority of the City, to enforce payment, which ranged from sealing the debtor's residence (hence freezing his assets) and confiscating valuables to selling the house.[28]

2.1.5.2 *The Colonies*

In Anatolia, the Assyrian administration comprises both the small "trading stations" (*wabartum*) and the colonies (*kārum*). The colonies were autonomous vis-à-vis the local rulers and palaces as to admin-

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[24] See Larsen, *City-State* . . ., 172; Veenhof, "Legislation . . .," 1736; AKT 3 73:23ff.
[25] TC 1 1, see Larsen, *City-State* . . ., 163f.
[26] In CCT 4 7c, they open a trader's sealed strongroom in order to inspect its contents.
[27] Larsen, *City-State* . . ., 123 (pt. 2, chap. 3 of his book is an analysis of the institution); Veenhof, Year Eponyms . . ., chap. 4.
[28] See, e.g., the letters TPK 1 26 and 46.

istration and jurisdiction and were left alone if they did not infringe upon the stipulations agreed in the treaties. The Assyrian system itself was hierarchical, with *kārum* Kanish (itself under the City of Assur) at the top. But there existed a measure of autonomy (which implied self-help) in commercial and judicial matters. *Kārum*s could pass verdicts and levy taxes, and during private summons or trials, people could appeal to *kārum* Kanish.

The administrative functions were concentrated in the "*kārum* house," which must have had its own archives.[29] There the assembly of the *kārum* met, and its administrative tasks were performed by its members according to a rotation scheme, which remains to be reconstructed. It involved functionaries called *līmum* (attested mainly in financial transactions of the *kārum* house) and "week eponyms" (*ḫamuštum*s), best known from datings, but also mentioned in the "Statutes of the *kārum*." The *kārum*'s secretary ("scribe") also played an important role in the running of the assembly.

2.1.6 *Courts*

In the Old Assyrian system, there was jurisdiction on three levels: by private summons and arbitration, by colonial courts, and by the City Assembly.

2.1.6.1 *Assur*

In Assur, the City Assembly together with the ruler[30] constitutes the highest court, to which one may appeal from a decision by a "colonial" court, with the words "Bring my case to the City and my Lord!" (EL 253:19' and 325a:18f.). Alongside the City Assembly a few times we meet "the Elders" (*šībūtum*) as a body which passes verdicts.[31] Verdicts, which never mention names of judges, were sent to Kanish as letters of the ruler (designated as *waklum*, "overseer," see 2.1.1). They are sometimes called "verdicts of the City" (*dīn ālim*). The City could appoint small committees (usually consisting of three to five persons) to handle specific cases, such as the "five-men committee" which in EL 244 issued an order and in EL 283 gave a verdict. It also delegated single persons, called "he who solves the

[29] TPK 1 193, and see Veenhof, "Archives . . ."

[30] They function as a single body: see EL 326:36f. and CTMMA 1 84:70 and 102.

[31] E.g., in AKT 3 37, TC 1 18:3ff., and kt c/k 261.

case" (*pāšir awātim*), whose task it was to work out or implement solutions.[32]

2.1.6.2 *Anatolia*

In Anatolia, the assemblies (*puḫrum*) both of colonies (*kārum*) and "trading stations" (*wabartum*) passed verdicts (e.g., EL 282; on final and provisional verdicts, see 3.4 below). That of *kārum* Kanish must have been the highest judicial authority. Kanish asks other colonies to assist in the forced transfer of persons who have to appear in court there,[33] gives instructions to other *kārum*s about the handling of a case,[34] and cancels a decision of another *kārum* (kt k/k 118, unpubl.). Numerous depositions in court and verdicts are explicitly said to be the result of judicial activity of "the plenary *kārum*" (lit. "big and small"). There are a few cases where persons involved in a legal conflict declare: "Bring my case to the plenary *kārum*!"[35] (see 2.1.3 above). According to text 1 of "the Statutes" the secretary of the *kārum* is not allowed "to convene the plenary assembly without the consent of the majority (*nam'udum*) of the 'big' men," who have to evaluate (*amārum*) a case to decide whether it requires a meeting of the plenary assembly. For passing verdicts or "solving" (*pašārum*) cases the council of the "big men" is divided into three groups. If they fail to reach a decision, the plenary assembly will be convened and divided into seven groups to reach a decision by majority vote.

Most verdicts we have are by the "plenary *kārum*;" we do not know who passed verdicts which are simply said to be "of the *kārum*." A few texts also mention a "trial/verdict of traders" (*dīn tamkārūtim*),[36] Small trading stations, occasionally even a group of traders called "those living in . . .," could pass verdicts together with "those who pay the *dātum* contribution" (see 2.1.3 above) and/or "those who travel to the City" (*ālikūša ḫarrān ālim*).[37]

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[32] Attested in EL 327, kt n/k 147 (unpubl.), and AKT 3 37 (appointed by "the Elders"); see, for them, Larsen, *City-State* . . ., 191, 331.

[33] Larsen, *City-State* . . ., 255ff.

[34] KTK 1; see Larsen, *City-State* . . ., 259f.

[35] EL 320:34f. and 338:21ff.

[36] Attested in the text published in Matouš, "Tempel . . .," and probably in text 2 of the Statutes.

[37] See Larsen, *City-State* . . ., 275f., and Garelli, "Une tablette . . ."

Kārum courts, just like the City Assembly, could appoint single persons (members?) called "he who solves the case" (*pāšir awātim*: EL 275, 278, and kt a/k 503, unpubl.).[38]

2.1.6.3 *Judges*

Members of the *kārum*s and of the City Assembly functioned as a court. They typically "sit" when they take the bench and the causative stem of this verb, "to make someone sit," is used for "to start a formal trial."[39] Most occurrences of the term "judges," however, are in depositions, in which usually three or more "judges" report, in the first person singular, on their activity.

3. Litigation

3.1 *Parties*

Litigants usually are Assyrian men but sometimes Anatolians (EL 251 with ICK 1 61) and women.[40] EL 292 records a lawsuit where one of the parties is "the wife of U.," whose husband "was present" (*wašab*) during the proceedings.

In a society of overland traders originating from Assur, partly settled in Anatolia and regularly absent on business journeys, representation by close relatives or business partners in judicial matters is common (EL 238, 243, 265, 301, 332). This was also necessary for women living in Assur during cases tried in Anatolia. Parties, moreover, could be represented in court by an "attorney" (*rābiṣum*), hired in Assur (EL 325–326, 338, 340; Kienast ATHE 23, etc.). Not only natural persons but also the *kārum* organization as such could be a party to litigation.[41]

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[38] The Statutes (text 2, lines 4'ff.) also use the phrase "to solve a case" to describe the activity of the *kārum* court.

[39] For examples, see *CAD* A/II, 405, b.; see also ll. 57ff. of the Erishum inscription (1.6b). See also Veenhof, "Private Summons . . .," 445ff., type 4.

[40] See, e.g., Garelli, "Tablettes . . .," III, 124 no. 6; AKT 3 94; TC 1 3; an Anatolian woman (presumably the widow of an Assyrian trader) in EL 303.

[41] Kt n/k 203 is the unpublished record of a sworn deposition presented in court by people "seized" (as witnesses or arbitrators) by the *kārum*.

3.2 *Procedure*

3.2.1 *Private Summons and Arbitration*

The first phase of formal proceedings[42] consisted of "seizing" (*ṣabātum*) one's opponent in the presence of witnesses, to confront him with a claim and to hear his rebuttal. Occasionally, the "seizure" was mutual[43] or could lead to legal action by the person seized (EL 241); a claim could trigger a counter claim.[44] "Seizing/holding somebody's hem" (*sikkam ṣabātum/ka'ulum*) meant that the person seized could not leave, usually until satisfaction or security had been provided. The person seized could apply to a court to end the seizure ("to release" *waššurum*).[45]

A next or different step was that both parties, usually by mutual agreement (*ina migrātišunu*), seized "judges" (arbitrators) "to judge their case." These judges normally first had the parties swear an oath, presumably to ensure acceptance of their judgment, and their activity was also recorded in first person depositions.[46]

Most records of the activities of the persons seized as witnesses, arbitrators, and the like, are in the form of a deposition under oath ("before the dagger of Assur," "in the gate of the god"), submitted to a *kārum* court, as their last sentence states: "For this case the *kārum* gave us and we gave our testimony before Assur's dagger." This means that during a formal trial before the *kārum* those who had played a role (as witnesses, arbitrators, etc.) in earlier but failed private attempts to solve a conflict were summoned to give testimony on what had happened during those preceding confrontations.[47]

3.2.2 *Trial by Court*

3.2.2.1 *Colonies or City?*

The next stage was a lawsuit before a colonial court or the City Assembly in Assur. The relation between the two is not simple. Cases

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[42] See Veenhof, "Private Summons . . ."

[43] Expressed by the passive-reflexive stem *naṣbutum*, e.g., EL 263, 335, and I 727.

[44] In kt g/k 100, the parties, "in the gate of the god," lodge claims (*rugummā'e nadā'um*) against each other (Balkan, "Contributions," 409 no. 34); note also TC 3 79:22ff.: *rigmātim A u B ritagmūma.*

[45] For examples, see *CAD* S 254 s.v. *sikkum*. CCT 3 11 speaks of "seizing somebody's hem and taking pledges as security," TC 3 120 of detaining somebody for two months, and in VAS 26 118:11'ff., it leads to an appeal to a court.

[46] EL 268; ICK 1 38; KKS 4, etc.

[47] See Veenhof, "Private Summons . . .," 452ff.

could come directly before the City, if an appeal was made in Assur, or one appealed to it from a colonial court ("Bring my case to the City and my Lord!" see 2.1.6.1). Cases triggered by the death of a trader were invariably tried in the City, since they required settlement, with all parties and evidence "assembled" there. Most trials were started and finished before a *kārum* court, but at some point, a "(strong) tablet of the City" (the result of an appeal) might intervene, without necessitating a transfer of the trial to Assur.[48]

3.2.2.2 *Self-help and "Attorneys"*

Parties, at least at the beginning, had to rely on self-help. The plaintiff applied (*maḫārum, kašādum*) to the court and tried to "bring his opponent before the judges," "to the *kārum*."[49] According to the Statutes, the "big" members of the *kārum* had to evaluate a case to decide whether it warranted the convening of the plenary *kārum*. Once the case had been accepted, the plaintiff could receive help in two ways. A verdict of the City Assembly could authorize him, in order to "win his case," to hire an "attorney,"[50] who could be empowered to inspect tablets or to summon and interrogate people, and could represent him in court. The *kārum* could assist him by ordering a person to appear in court, either by a verdict or simply at the request of the plaintiff, if he accepted responsibility for the measure (and its cost).[51]

3.2.2.3 Many trials were conducted in stages, marked by provisional verdicts (both in Kanish and in Assur) and separated by several months—the time needed for travel to collect evidence.[52]

3.3 *Evidence*

3.3.1 *Witnesses*

Witnesses (*šībū*; rarely *mudē awātim*, "those who know the facts," or *ša pā'ē*, lit., "those of the mouth")[53] were as important in the judicial

[48] But see EL 325–26 (add OIP 27, 60, as EL 325b).

[49] *ana dajjānē/kārim radā'um*, EL 325:43, 325a:11, CCT 5 7a:19f., 8b:18; BIN 6 69:21f. uses *warā'um*.

[50] For the "attorney," see Larsen, *City-State* . . ., 175ff., Veenhof, "Miete . . .," 182f., and 7.4 below.

[51] See Larsen, *City State* . . ., 257ff.

[52] Traveling to Kanish: EL 316, 2 months, ICK 1 86, 6 months.

[53] "PN, *mūdē awātim* is present here . . . let him inspect the tablets" (I 441), and

system as in commercial life, where most transactions took place "in the presence of" (*maḫar*) witnesses. The court could appoint persons to accompany witnesses testifying under oath; they are called "those who heard their utterance" (lit. "mouth") and they seal the envelopes containing the depositions made by the witnesses of fact.[54]

Because traders were frequently absent, parties had "to look for" (*amārum, šeʾāʾum*) and "to secure" (*dannunum*) their witnesses in view of a trial, to make sure they would "turn up" (*elāʾum*) and testify. Verdicts grant parties several months' respite to find and produce them.[55] In such cases, parties had to mention the witnesses they intended to produce by name (*šībē zakārum*),[56] apparently because they were not allowed to produce surprise witnesses. Written depositions[57] could be sent overland; in such cases, the last line of the deposition (see 3.2.1) does not read "we gave our testimony" but "we gave a tablet" (containing our testimony).[58] We have also records of interrogation before witnesses or answers by one of the parties with the subscript "testimony."[59]

Normally, there were at least three witnesses per transaction or summons, and they presented one single deposition, sealed by all of them.[60] In the case of a lost deposition the various witnesses were asked to write down what they remembered in order to arrive at a single testimony;[61] a plaintiff liked to adduce "witnesses in agreement."[62] If one or more witnesses were not available when the court requested their testimony, the testimony of "the majority" (*namʾudum*) was accepted.[63] But the names of their absent "colleagues" (*tappāʾū*)

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the statement: "Look, these gentlemen here know that . . ." (TC 3 78:25). For *ša pāʾe*, see EL 245:38, 293:7, and Balkan, *Letter* 17f.

[54] E.g., EL 243 and ICK 2 152.

[55] One year: kt n/k 41322; 6 months: TPK 1 189, EL 293; 3 months: KBo 9 27.

[56] TPK 1 189. See also EL 250 and AKT 1 74.

[57] See Veenhof, "Private Summons . . .," 450ff.

[58] See EL 252:26; 332:50; KKS 5:18, etc. Witnesses might have to have their memory refreshed by being shown copies or excerpts of the records. They are said to "lie on" (*nālū*) the sealed tablet, perhaps indicating that they are "sleeping" and have to be activated.

[59] See EL 242 and 244. Some end with the words: "It is not a complaint; it is testimony" (*la rigmātum šibuttum*).

[60] See EL 286 and POAT 9, where one witness is reminded by his colleague of facts he did not know.

[61] "May our word become one" (*awatni ana ištêt lītur*), kt 92/k 195 (unpubl.),

[62] *šībū ētamdūtum*, BIN 4 70:17f.

[63] TC 3 76, analyzed in Veenhof, "Private Summons . . .," 455.

were carefully recorded, in particular when, as happened occasionally, only a single witness could testify.[64]

3.3.2 *Written Documents*

Written evidence was as valid as oral, hence demands to "produce either witnesses or tablets" (EL 285:18f.; ICK 2 156:14f.; POAT 13:16f.); records speak of tablets that have to be "brought," "shown," or "heard." Problems concerning written evidence regularly arise when a trader dies and his sons and heirs (who are responsible for his debts) are faced with "valid deeds" (*ṭuppum ḫarmum*) as proof of claims or debts about which they are ignorant and whose validity has to be checked by written evidence (the existence of a quittance annuls a debt) or witnesses.[65] The defendant or plaintiff usually is granted several months' respite to produce evidence and if he does not succeed, the tablet is considered valid ("his tablet remains his tablet"). Verdicts by a *kārum* or the City may state that certain tablets are no longer valid.[66] Such tablets are said to "die" or "are killed." Since the validity of a tablet depends on it being sealed by the person under obligation, the identification of his seal impression on the tablet was essential, and there are judicial records where this is done by relatives.[67]

3.3.3 *The Oath*

For evidentiary oaths, witnesses and parties are "led down to the gate of the god," to swear by/on the symbol/emblem of a deity. This usually happens at the order of the court, as the standard formula at the end of depositions by witnesses shows (see 3.2.1, end). We actually have verdicts of a *kārum* and the City where such oaths are imposed,[68] and they may have been sworn with "the three words of the stele," which are still unknown to us.[69] Men had to swear "by/on the dagger (*patrum*) of the god Assur" and occasionally by/on other symbols or emblems of that deity.[70] Such oaths started with

[64] EL 256, 269, and 271–72.
[65] E.g., CCT 6 13b.
[66] EL 281; CCT 5 18a (verdict of a *kārum*); TC 3 275 (three tablets).
[67] See EL 293; Teissier, *Sealing* . . ., 43ff.
[68] TC 3 130, 271.
[69] See Veenhof, "Legislation . . .," 1721f.
[70] Regularly, mainly in smaller colonies, by the god Assur's *šugarri'ā'um* (see *CAD*

the invocation "Listen, god, lord of the oath."[71] Women swore by/on Ishtar's symbol[72] and invoked her with "Listen, Goddess, Lady of the oath."[73] The person to swear, according to some references, had "to grasp" or even "to produce (pull out?)" the divine attribute.[74]

Such solemn oaths were sworn in the presence of (court) witnesses, "who heard their utterance,"[75] and were usually recorded in writing. Judicial records refer to them as "tablets with the oath of PN" (CCT 5 14b; kt 91/k 402). This applied in particular to oaths sworn by parties, which contain a series of statements (affirmative, negative, formal promises) whose wording seems to have been carefully formulated and written down by the judges, to prevent any ambiguity.[76] Such oaths and their complications were better avoided, hence promises in confrontations "to pay without trial, fight or oath" and the fear of being "seized for an oath."[77] Parties could reach an agreement at the last moment, even "in the gate of the god."[78]

3.3.4 *Ordeal*

The river ordeal is mentioned once as a means of establishing the truth among Anatolians.[79] It is not attested among Assyrians.

3.4 *Verdicts*

Courts could render final verdicts, which "settled a case" (EL 273, 275–77), or provisional ones, which were either of a procedural nature (EL 278, 281) or conditional (EL 279, 334), when their validity depended on facts which still needed proof. Some verdicts were

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Š/3 197b); rarely by Assur's *pirikkum/biriqqum*, perhaps his lion or lightning bolt (CCT 4 43a, BIN 6 97). See also Hirsch, *Untersuchungen* . . ., 66f.

[71] EL 284; CCT 5 14b.

[72] Called *ḫuppum*, a tambourine or metal hoop; see Michel, "Serment . . .," 111f., and also kt 86/k 155.

[73] Kt a/k 244 (unpubl.).

[74] In I 681:25 a person, before swearing an oath, is "(ritually) purified" or "cleansed" (*qaddušum*).

[75] EL 243, ICK 2 152, etc.

[76] AKT 3 35 and 36; EL 284; CCT 5 14b, kt a/k 244; cf. BIN 6 29.

[77] POAT 1:22f., 14:26f.

[78] Kt 86/k 182. In kt 86/k 155, a last-minute agreement and refusal to swear the oath already formulated earns parties a fine to be paid to the *kārum*.

[79] In kt 93/k 145:26 (Michel-Garelli, "Heurts," 278; Günbattı, "River Ordeal . . ."). While Assyrians swear by the dagger of Assur, Anatolian citizens "go to the river ordeal" (*ana īdim alākum*; suggestion of C. Günbattı).

therefore meant to (help to) establish facts, by carefully formulating an oath to be sworn (EL 281:14ff.), by authorizing a plaintiff to inspect tablets (EL 274), to enlist the assistance of an attorney (EL 327; ICK 1 182), by granting a party time to collect his evidence, or by forcing a person to appear in court, to give testimony, to answer questions, or to negotiate with his opponent (EL 282, 319; Kienast ATHE 23). Some verdicts, especially "procedural ones," obliged parties to start negotiations (*atwûm*) or to give an account to one's opponent (*awatam tadānum*),[80] with the obvious goal of reaching an agreement[81] without further bothering the court.

A remarkable feature, totally absent in Babylonia, is that some verdicts of the City Assembly refer to "words on the stele," that is, to written, published law. These short references justify a verdict as the application of a legal rule and refer those affected by it to its written formulation.[82]

Sanctions may be imposed for non-compliance, usually a fine (*arnum*)[83] consisting of a round sum or multiple compensation, a type of penalty also attested in private contracts. A verdict concerning forbidden trade in gold is exceptional in referring to a ruling of the law, which stipulates the death penalty for this crime.[84] Before the final verdict there must have been room for disagreeing with a decision,[85] but we also read that procedings continue "in accordance with an earlier verdict."[86]

4. Personal Status

4.1 *Citizenship*

4.1.1 *Assyrians*

Old Assyrian society comprised free citizens ("sons of Assur"), usually referred to as *awīlum/awīltum*, and slaves. The colonies (in the

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[80] AKT 2 21; Kienast ATHE 23; EL 250, 281, 319; I 445, etc.

[81] *migrātum*; there are several records labeled "tablet of agreement," e.g., TC 3 216.

[82] See Veenhof, "Legislation . . ."

[83] For fines, see EL 277, 325a:13f.; VAS 26 46:20ff.; I 478 (conditional fine imposed by the City Assembly; see Matouš, "Bürgschaft . . .") and CAD A/2, 297f. s.v. *arnum*, 2a.

[84] See Veenhof, "Legislation . . .," 1733.

[85] ICK 2 141: "He refused the verdict of the *kārum*."

[86] "Earlier verdicts" are mentioned in AKL 1 74 and ICK 2 145.

Statutes) and perhaps also Assur itself distinguished between "big" and "small men"[87] and the "big men" might be identical with "the elders" attested for both (see 2.1.2–3 above).

In Old Assyrian society, women in many respects were equal to men in law. Husband and wife both had the right to divorce (with the same penalties, if demanded); daughters inherited just like sons (see 6.2.3). Women could appeal to a court of law (3.1), engage in business (loans, sales, trade, hiring people), and make their own testaments (6.2.1); they do not, however, appear as witnesses to contracts or to depositions under oath (3.3.1). The prolonged absence of husbands in Anatolia made many married women in Assur acquire more independence and responsibilities, including liability for their husbands' debts. Many eldest daughters became *ugbabtu* priestesses and were economically independent.

4.1.2 *Anatolians*

Assyrian documents invariably designate Anatolians collectively as *nuā'ū* ("natives"). In Anatolian sale contracts (see 7.1.3 below), we meet two terms, *tusinnum* and *ubadinnum*, both collectives and designations of groups of men. Its members are called *awīlum*; they also use *bēlu tusinnim*, "those belonging to the *tusinnum*." These groups were probably bound together by profession, service duties, or locale but without evidence of kinship ties. Both can be further identified as belonging with or ranking under (lit. "that of . . .") a high official, such as the chief vizier, the *alaḫḫinnum*, or the general (*rabi sikkatim*).[88] They occur as groups who sell or witness the sale of slaves (free persons into slavery?) and houses and who might vindicate what is sold; in one instance, a man redeems himself by paying his price to the *ubadinnum*.[89] Anatolians could be subject to services duties (called *unuššum*)[90] and could be said "to (go) after" or "to be of/belong to" a high official.[91]

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[87] See Larsen, *City-State* . . ., 288–93, and 2.1.3 above.

[88] In kt a/k 1263:4f.; see Günbattı, "Beş Tableti . . .," 52.

[89] Kienast no. 12 (two men from the *u.* might vindicate a slave).

[90] See, for *unuššum*, which is the equivalent of Akkadian *ilkum* (both the service duty and the material compensation for it), Donbaz-Veenhof, "New Evidence . . .," 151, n. 13 and Veenhof, "Care of the Elderly . . .," 152, no. 8. For *ubadinnum*, related to Ugaritic *ubdy*, see Diakonoff, "Some Remarks . . .," 38ff.

[91] Note esp. kt g/t 36, published in Bilgiç, "Three Tablets . . .," 127ff.

4.2 *Slavery*

4.2.1 *Terminology*

Slaves were called *wardum*, "slave," and *amtum*, "slave girl," by both Assyrians and Anatolians.[92] The second term, however, is also used for free married women with a status lower than the main wife (*aššatum*; see 5.1.3 below). Slaves could also be designated by the collective *subrum*, perhaps originally a term for non-Assyrian chattel slaves.[93] Occasionally, the terms "boy" and "girl" (*ṣuḫārum, ṣuḫārtum*) may refer to young slaves.

4.2.2 *Debt Slaves and Chattel Slaves*[94]

Most slaves owned by Assyrians in Assur and in Anatolia seem to have been (originally) debt slaves—free persons sold into slavery by a parent, a husband, an elder sister, or by themselves.[95]

Debt bondage is clear from a few contracts that write that the sale was not "for" but "instead of" (*kīma*) a sum of silver, hence to cover a debt (see 7.3.1.3 below). Many slave-sale contracts stipulate that the seller (usually a parent, husband, or relative) can get the person sold back ("to take him along," *tar'āum*) by an action described as "to redeem" (*paṭārum*), "to come back for" (*tu'ārum ana*), or simply "to seize" (*ṣabātum*), if a price was paid—sometimes the original sale price, more frequently double or even more.[96]

There are also a few cases which consider the possibility or record the fact that a slave redeems himself (see 7.1.2.4 below). The possibility of redeeming a debt slave was limited in time, ranging from one month (Kienast no. 32, among Anatolians) to two (kt a/k 933, among Assyrians) and perhaps even four years.[97] As long as the people sold were debt slaves they enjoyed a certain protection,[98] after that they could be sold by the creditor/owner "where he liked," even abroad (see 7.1.3).

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[92] See also Kienast, *Kaufvertragsrecht* . . ., 89–100.

[93] See Lewy, "*Subrum* . . ." The term must be related to the geographical designation *šubur, šubarum*.

[94] See, in general, Kienast, *Kaufvertragsrecht* . . ., 95ff., and the text editions on pp. 103–63, referred to here as "Kienast no."

[95] See Farber, "Hanum . . ."; kt a/k 250 (text in Balkan, "Cancellation . . .," 31, n. 14) and presumably LB 1218 (Veenhof, "Money-Lender . . .," 292).

[96] See Veenhof, "Money-Lender . . .," 297, and Kienast, *Kaufvertragsrecht* . . ., 76f.

[97] Kt n/k 71 (Donbaz, "Ašēd . . .," 48).

[98] In LB 1218 (Veenhof, "Money-Lender . . .," 292), maltreatment by the creditor/

Several Anatolian slave sales, which offer no protection to the slave sold and allow the new owner to sell him "as he wishes" or "on the market, if he wishes," must concern chattel slaves.[99]

Manumission is rare but is attested in an adoption contract from Assur (see 5.2.2 below).

4.2.3 *Legal Capacity*

Slave girls could be used to produce children (in concubinage or formal marriage), if the principal wife was infertile (see 5.1.3 and 5.1.5 below).[100] Occasionally, slaves were engaged in trade, at times also by being hired out on behalf of their masters; when in TC 3 129 a slave does not pay his debt, his owner must be seized. Slaves are not attested as witnesses.

5. Family

5.1 *Marriage*[101]

The records concern marriages between Assyrians and between Anatolians, as well as mixed marriages, and hence reflect different legal customs. Terms must also have varied as the result of negotiations, dependant upon the social position of the parties. Written contracts may have been drawn up in particular for non-standard situations which could give rise to later problems.

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owner earns the right of redemption at the original price; in Kienast no. 27, the buyer "shall not sell her nor get rid of her."

[99] Kt 91/k 123; kt 87/k 303.

[100] In Kienast no. 2, a man sells a niece of her husband to a married woman, perhaps as a concubine?

[101] Texts: AKT 1 76 and 77, EL 1–6, KTS 2 6 and 55, TPK 1 161, I 490, 513, and 703; kt d/k 29, kt v/k 147, kt 86/k 203. Further texts edited in Balkan, "Betrothal . . ." (kt i/k 120); Bayram-Çeçen, "6 Neue Urkunden . . ." (kt 88/k 269 and kt 78/k 176, verdicts); Donbaz, "Remarkable Contracts . . ." 80ff. (kt j/k 625; kt k/k 1, kt r/k 19); Garelli, *JCS* 3 (1959) 298 (CCT 5 16a); Ichisar, "Contrat de mariage . . ." (EL 1 with AO 7050); Lewy, "Institutions . . ." (I 490, ICK 1 3 and 32), Matouš, "Beiträge . . ." (I 513 and 702), Michel-Garelli, "Marriage Contracts . . ." (kt 90/k 108 and kt 94/k 149); Sever, "Ehescheidungsurkunde . . ." (kt n/k 1414); Sever, "Anadolu'da . . ." (kt 88/k 625); Veenhof, "Marriage Documents . . ." (kt 91/k 132 and kt 91/k 158+240). See bibliography in Rems, "Kleinigkeit . . ."

5.1.1 *Conditions*

Marriage was based on a prior contract between the groom and the parents of the future bride (several times her mother and/or brother) or the woman herself, if she was independent. It created betrothal (see 5.1.2 below), but whether all the terms were agreed at this stage is not clear. Assyrian marriages could be polygamous, insofar as the traders could have two wives, one in Assur and one in (a particular area of) Anatolia, but never of the same status and never in the same place. Concubinage (with slave girls) is attested. In most cases, husband and wife enjoyed equal status: both could divorce, and the penalties for breach of contract were identical for both.

5.1.2 *Betrothal and Marriage*

The first stage was a betrothal contract, arranged between the future groom (or his parents) and the parents of the girl,[102] basically a mutual promise of a future marriage,[103] to be consummated when the girl had grown up.[104] KTS 2 55 states that a man will marry the (adopted?) daughter of two women (sic) and that both parties will have to pay a fine if they break the contract: the parents if they give their daughter to someone else, the man if he marries another girl. A man's refusal to keep such an (oral?) promise resulted in the verdict EL 275: "PN can give his daughter to whom he wishes" (complete text!). Two other verdicts,[105] which state that parents can give a girl to a husband of their choice, probably record the termination of an inchoate marriage, because in both the girl is already designated as "the wife of PN."[106]

Marriage contracts usually offer no information on details such as payment by the groom, dowry, transfer of the bride, and so forth. Information on ceremonies and verba solemnia is equally lacking, but in a letter the intention to give a girl in marriage is expressed by the phrase "I will put a veil on the girl's head".[107]

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[102] E.g., BIN 6 104; VAS 26 64.

[103] In kt 88/k 625, the brother of the bride states "you gave your word to my father, so marry your wife!"

[104] Balkan, "Betrothal . . .," 4, l. 4ff.

[105] Kt 78/k 176 and kt 88/k 1095.

[106] After a divorce, an independent woman "will go to the husband of her choice" (kt 91/k 158 + 240).

[107] AKT 3 80:22ff.

Payment of an agreed sum (in silver) to the parents of the bride, though probably customary, is mentioned only in TPK 1 161. The use of the words "the price for her" (*šīmūša*)[108] is not convincing evidence for "marriage by purchase" (*Kaufehe*), also because a special term for bridal payment (like the Babylonian *terḫatum*) is not used in Old Assyrian.

5.1.3 *The Status of the Women*

Six marriage contracts concern marriages between Assyrians. Others record mixed marriages and one a purely Anatolian one (KTS 2 6). In the Assyrian contracts, the bride can be married as *aššatum*, "wife," and as *amtum*,[109] which does not mean "slave girl," but refers to a status lower than that of an *aššatum*, (main/first) "wife." There are no indications that an *amtum* wife had fewer rights, but perhaps her children had if there were also children of an *aššatum*.[110] Both Anatolian and Assyrian girls (I 490) could become *amtu* wives. The choice for a particular type of marriage was governed by two principles: (a) no two wives of the same status, and (b) no two wives, whatever their status, in the same area.[111] Hence an Assyrian *amtum* wife in Anatolia for a man who already has an *aššatum* in Assur (I 490), an (Anatolian) *aššatum* in Anatolia and permission to marry a hierodule (*qadištum*) in Assur (ICK 1 3), and an Assyrian *aššatum* in Anatolia, but no hierodule in the same area ("in Kanish and Nehria"; AKT 1 77).[112] Concubinage is attested in EL 287 (division of an inheritance), where one son has taken a slave girl "in concubinage?" (*ana ištariūtišu*), and his brothers acquire "each one of the slave-girls they have known sexually."[113] A number of mainly Anatolian contracts simply forbid the marriage of "another wife" (*aššatum šanītum*).

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[108] It also occurs in AKT 1 77 and kt n/k 1414.

[109] Kt d/k 29; I 490; ICK 1 32; TPK 1 161; 86/k 203. See also Westbrook, "Female Slave . . .," 230ff.

[110] Assumed by Lewy, "Institutions . . .," 3f., but without proof.

[111] Very clear in the expression "he shall not make another wife dwell next to her" (*šanītam' iššaḫatiša lā ušeššab*; AKT 1 77 and kt 94/k 149, where the penalty for the groom is 5 minas of silver).

[112] For other permitted or forbidden polygamous marriages, see AKT 1 76; EL 1; TPK 1 161; kt 86/k 203 ("no *aššatum* in addition to his *amtum*"), and kt 94/k 149.

[113] See Westbrook, "Female Slave . . .," 220f., but note that the last line of this contract has to be read "their offspring is also theirs" (*šunum*[*ma*]).

5.1.4 *Special Clauses*

Two contracts (I 490 and ICK 1 3) consider possible infertility of the wife. In both, after three or two years, she will (shall/can?) buy a slave girl to produce offspring in her place. In the second, she is entitled to sell the slave girl afterwards "where she wishes." Some contracts stipulate the right of the husband (who is a trader) to take his wife along (*radā'um* or *tarā'um*) on his journeys in Anatolia or "wherever he goes/wishes" (TPK 1 161; EL 1; kt 94/k 149), but (thus I 490) "he will bring her back with him to Kanish." EL 2 forbids a man to sell or pledge[114] his newlywed wife. A husband is obliged to provide for his wife during his absence with money (copper) for buying food, oil, and wood and with one garment a year (the verdict kt 88/k 269).

5.1.5 *Financial Aspects*

The damaged contract kt 86/k 203:21 contains one of the rare references to the bride's "gift" (*iddinū*), made by her husband, "who brought her 60 shekels of silver, a house, and slave-girls"; when he divorces her, "(s)he will take her gift (back)." In j/k 625, the wife receives "her divorce money and her gift." Other references[115] show that "gift" refers to a person's private property (once of a son), but there are no indications that it could designate a bride's "dowry." In the purely Anatolian contract KTS 2 6, "the house is their common property," "they will share poverty and wealth," and upon divorce, they will divide it.

5.1.6 *Divorce*

5.1.6.1 *Contractual Provisions*

Most marriage contracts impose a pecuniary penalty for divorce by either partner, ranging from twenty and thirty to three hundred shekels of silver.[116] As a breach of contract, it is similar to marrying a second wife, hence in 86/k 203 the same, and in AKT 1 76, a single penalty "if he marries a second wife and divorces her." Some

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[114] Taking *urrubum* as "turn into an *erubbātu*-pledge," i.e., a person who enters the household of a creditor.

[115] See Veenhof, "Care of the Elderly . . .," 150, n. 66, and also CCT 5 43a:29' (share in an investment!).

[116] See AKT 1 76; CCT 5 16a; kt 91 k/132, I 490 and ICK 1 3.

contracts stipulate a single penalty for divorce and some other misbehavior; in 91/k 132 and d/k 29, for a "misdeed" (*šillatum*)[117] of the wife; in 91/k 132, also for "maltreatment" by the husband. 94/k 141 (unpubl.) allows the husband to strip (*ḫamāṣum*) his misbehaving wife of her clothes and chase her away naked(?). Kt 94/k 141 allows the husband who "hates" (*ze'ārum*) his wife to chase her away (*tarādum*), but he has to pay her divorce money.

5.1.6.2 *Divorce Settlements*[118]

The majority of divorces are consensual,[119] but we also have divorce initiated by the husband (EL 4 and 5, ICK 1 32; 89/k 345) or by the wife (r/k 19). In purely Anatolian marriages, divorce takes place under the supervision of the local ruler or his second-in-command,[120] which suggests a form of public control. One Anatolian divorce contract bears the subscript "penalty/guilt (*arnu*) of N." (the husband).[121] Among Assyrians, divorce was a purely private arrangement, before witnesses,[122] but complications (concerning property, payments or the children) could be a reason to seek legal help. In kt 91/k 240, the divorce took place in the presence of people "seized" by the parties, probably as arbitrators. In EL 276, the verdict that a husband should pay his wife divorce money but obtain their three sons was pronounced by a *kārum* court. Payment of divorce money (*ēzibtum*) to the wife is mentioned in several settlements.[123]

5.1.6.3 *Property Settlements*

In kt 91/k 240, an Assyrian couple balances assets and debts to arrive at the wife's divorce money. The Anatolian husband in EL 4 leaves his wife all his property but also the debts; in kt 89/k 345 the wife (who initiated the divorce) "pays 30 shekels of silver for the creditor"; in KTS 2 6, partners will divide the house which is their common property; and in kt r/k 19, the wife "takes her slave-girl

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[117] See, for its meaning, Veenhof "Marriage Documents . . ."

[118] See esp. Rems, "Kleinigkeit . . ."

[119] Expressed by the passive-reflexive stems of the verbs *ezābum*, "to leave," and *parāsum*, "to separate."

[120] The so-called notarization; see 2.1.1.2 above.

[121] See Balkan, *Letter*, 45f.

[122] I 513 states, "They (husband and wife) settled their case."

[123] EL 3; ICK 1 32; kt j/k 625; kt k/k 1; kt 91/k 240; the verdict EL 276. See also Rems, "Kleinigkeit . . .," 359ff.

and everything there is out of the house" but gives up her claim on the *tusinnum*.

5.1.7 *Remarriage*

Widows and divorcees can marry again. According to kt 91/k 240, the husband is free "to marry a wife of his choice," his wife "to go to a husband of her choice"; kt n/k 1414 specifies that the latter can be an Assyrian (*tamkārum*, "trader") or a native Anatolian.[124] Two verdicts[125] stipulate, as a result of a trial, that a wife's parents "as of today can give her to a husband (of their choice)."

5.2 *Children and Adoption*

5.2.1 *Children*

Upon divorce an Assyrian father seems to have kept his children if he met his financial obligations.[126]

Children under their parents' authority could be pledged (given as *erubbātum*) and sold for their debts, also by mothers (widows?) alone. They occur many times in security clauses of Anatolian debt notes, where girls are mentioned as pledge (*erubbātum*) or the amount of the debt is said to "be bound" also to the debtor's children.[127] The Anatolian adoption contract EL 8 stipulates that the adoptive father may sell his son (only) in case of dire necessity, "if he becomes poor."

Assyrian sons and daughters inherit from their parents and have to care for them in old age and to bury them, but this duty may be assigned to one of them in connection with the division of the inheritance.[128]

5.2.2 *Adoption*

Adoption is poorly attested, because adoptions would have occurred in Assur, where the documents would also have been kept. In the single contract from Assyria proper (a little later than the bulk of

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[124] Remarriage probably also in EL 3:4; see vol. II, p. 168.
[125] Kt 78/k 176 and kt 88/k 1095.
[126] EL 276; ICK 1 32; EL 6; cf. EL 4.
[127] See Veenhof, "Money-lender . . .," 295ff.; Kienast, *Kaufvertragsrecht* . . ., 74ff., and CAD Š/2 sub *šerru* a, l'.
[128] Veenhof, "Care of the Elderly . . .," 126ff., 141ff., ad kt 91/k 389.

the texts from Kanish),[129] a presumably childless couple manumits and adopts a slave. Having served his parents respectfully all their life, he will inherit their property (a field and an ox). The penalty clauses provide that if the father reclaims him as a slave, he will pay a heavy fine; if the son offends and rejects his parents, he will be expelled and sold into slavery. In an unpublished late Old Assyrian adoption contract the adoptive son, as eldest heir (*aplum*), is promised a double share in the inheritance.

In EL 7, an Anatolian couple adopts a daughter (*ana mer'ūtim laqā'um*), who is married to their son. The young couple joins their parents' household, but if they "do not like it" any longer, their parents will provide them with a separate dwelling.[130] The adoptive son of EL 8 has to work for his parents' household, shares with them "anything there is," acquires part of the house (*dunnum*), and ultimately will "obtain" (*laqā'um*) their possessions. If "he hides anything" (of his earnings) or decides to live separately, he is fined and will be killed. The birth of a natural son of his parents has only financial consequences,[131] and his own son will "obtain" (inherit?) the whole household."

5.2.3 *Brotherhood*

EL 8 has some similarity with a group of Anatolian contracts, where two to four young men are said to be each other's brothers (*aḫū*) and to share the household with an elder couple, designated as "father and mother."[132] Some of the "brothers" probably were adopted sons. Clauses oblige them "to live together in one house, to earn money for the one house, to hide nothing, not to ask for a share (in the property)," subject to heavy fines. Only after the head of the family or both parents have died can the "single household" be broken up, "if they like it," and the property "be divided equally." The contracts also contain provisions about the shares of brothers who have died in the meantime, which may go to their wives or sons.

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[129] Veenhof, "Adoption and Manumission . . ."

[130] In l. 6, read: *ē*[*ḫuz*], "he married," in l. 9, [*lā*] *ṭá'-bu-ú*, and at the end of l. 12, *ba*-[*tám*], "separately" (collated).

[131] The clause "6 shekels of silver will be available for *e-le-e*" is not clear.

[132] See 6.2.7 below and the analysis in Veenhof, "Care of the Elderly . . .," 145ff.

6. Property and Inheritance

6.1 *Real Property*

While there is ample evidence of ownership of houses by Assyrian traders, there is none for fields.[133] Neither in Assyria nor in Anatolia are there conveyances of fields, and fields are also absent from last wills and lawsuits involving inheritance. In Assur, traders invested rather in expensive houses, which could be pledged or put up for sale when they ran into financial problems. Ownership of fields in Anatolia is attested for the local population (sold, pledged, inherited) but not for Assyrians, not because of a legal prohibition,[134] but because investment in commercial activities was much more profitable. Among Anatolians, fields were sold (see 7.1.4 below), offered as security (TC 3 238:9f.), and inherited.

6.2. *Inheritance*

Our knowledge of inheritance law is based on a few testaments and scattered references in letters and records. The relationship of the testaments to traditional law is difficult to discern: they may, for example, have ameliorated the entitlements of women. The most detailed, "Tablette Thierry," moreover, is a special case, since the testator did not have children of his own and divided his property between his (half) sisters and (half) brothers.[135]

6.2.1 *Testaments*

Property was inherited on the basis of "testamentary dispositions" (*šīmtum, šīmti bētim*) made by its owner before his death. Women could also make testaments, but the cases we know concern widows.[136] In nearly all cases where a division of a paternal estate (*bēt abim*) is at

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[133] For a single exception in a somewhat later deed of adoption, where the adoptive son will inherit his father's field, see 5.2.2 above and Veenhof, "Manumission . . ."

[134] As suggested by Kienast, *Kaufvertragsrecht* . . ., 6.

[135] Garelli, "Tablettes . . .," III, 131f.; I follow the interpretation of Wilcke, "Testamente . . .," 204ff., who assumes that the testator's father had married twice and divided his inheritance between sons, his (half) brothers and (half) sisters. See also Veenhof, "Care of the Elderly . . .," 139f.

[136] Kt 91/k 453, the testament of Ištar-lamassī. In kt 91/k 423, this lady, "on her deathbed" and in the presence of witnesses, actually divides her assets among her sons and the amounts of silver given to two of them match those mentioned in her testament. See, for these records, Veenhof, "Care of the Elderly . . .," 137f.

issue, the existence of a testament is mentioned or implied. EL 287, the division of an inheritance agreed upon before thirteen witnesses ends with: "All of them have divided (the estate) in accordance with their father's testamentary dispositions." The fact that a trader had died "without having made his testamentary disposition" is noted in a letter (BIN 6 2).[137] The document was formally opened and read in the presence of all the heirs (see AKT 3 94:24ff.).

6.2.2 *Inheritance Rules*

EL 287, "Tablette Thierry," and kt o/k 196c[138] show that the testator could appoint more heirs than his wife, sons and daughters, but we do not know how wide he could draw the circle. An unpublished, somewhat later Old Assyrian adoption contract stipulates that the adoptive son, as oldest heir (*aplum*), will receive a double share, a practice also attested for the Anatolian milieu (see 6.2.7 below), but there is no evidence for this rule in the divisions actually recorded.

The end of "Tablette Thierry" lists three persons (including a scribe) called *bēl šīmātia*, and in I 705, two heirs "acknowledge the acquisition of shares of their father's estate" before the *bēl šīmātim*. Garelli understands the term to mean "executors"; Wilcke, "witnesses to the testamentary disposition."[139]

6.2.3 *Heirs*

Both sons and daughters shared in the deceased's estate, as is clear from records where his investments in other traders' capital are divided equally between all his children.[140] Kt o/k 196 shows the order in which the heirs receive their shares and the privileged position of the eldest son. First the widow, then the eldest son, who will inherit what his mother "leaves behind" (*warkassa*), then the (eldest?)

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[137] BIN 6 2:4ff.; cf. EL 244.

[138] See Albayrak, "Altassyrisches Testament . . .," with Michel, "A propos d'un testament . . ."

[139] Garelli, "Tablettes . . .," III, 135:53; Wilcke, "Testamente . . .," 196, n. 1, where he suggests that the oath was used to contest the validity of the testamentary disposition. The unopened envelope of a testament, kt 91/k 396, proves that it was sealed by the testator and by witnesses.

[140] There is ample evidence of such divisions between the five children (four sons and one daughter) of Pušuken; see AKT 1 11; Kienast ATHE 33; EL 310; CCT 5 11a and 21a; TC 3 274; etc. In AKT 3 94, a daughter and heir appeals to the City, because she wants to know her father's last will, perhaps afraid that her brothers will cheat her.

sister ("she will take her first share"), and then fixed shares for the other sons who have not received a house. Remaining assets with be divided in equal shares (*mutta mutta* "half and half") among all the heirs. In kt o/k 30:22f. a woman states that "on the basis of the last will, a sister has sisterly(?) power of disposition" and intends to open her sister's last will.[141] Frequently the (eldest?) daughter, who had become a priestess (*ugbabtum*) and thus was unmarried and had to live independently, received additional items (e.g., ICK 1 12). The widow's share is also specified: e.g., in ICK 1 12 she inherits a house and money in the form of a debt note, in BIN 6 222 also slave girls and other items (broken). In kt o/k 196c:5f., the authority and life-long ownership of the widow is expressed by the formula "she is father and mother (*abat u ummat*) of her share of the silver," but the silver she leaves behind (*warkassa*) and her other possessions will go to the eldest son. ICK 1 12, after carefully itemizing what the women obtain, states: "the remainder of my tablets (debt notes), both in Assur and in Anatolia, belong to all my sons," and they are also "responsible for my debts." This seems to have been the rule and the sons' responsibility for their father's debts is clear from various judicial records.[142]

6.2.4 *Implementation*

Complications with the implementation of testaments were not rare. In EL 287, a division is only possible after balancing debts and claims; the parties agree, inter alia, that three heirs "each will take one slave-girl with whom they have had intercourse (*lamādum*), which (whose value) will be deducted from their shares." Problems could arise when some heirs were present at their father's deathbed or had easy access to his testament and estate (usually in Assur) and others not, and also by the wish or need not to freeze all assets but to keep the commerce going and the capital flowing.[143] This meant that some heirs had to take decisions and use the assets without formal approval by the others, who also might not have a clear idea of the state of the deceased's finances. In addition, investors and creditors

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[141] In Assyrian, *aḫatum aḫat tabe'el*, quoted by Albayrak, "Altassyrisches Testament . . .," 19.

[142] See also kt 91/k 389:9–11 (Veenhof, "Care of the Elderly . . .," 141f.); kt o/k 196c: 11ff.; CCT 5 8b:24–27.

[143] A fine example is the file published by Matouš, "Nachlass . . ."

of a dead trader would try to realize their claims. It is not surprising that some of the few references we have to Old Assyrian law ("the words of the stela") bear on the problems caused by a trader's death. The City apparently agreed on a standard rule that in such cases "nobody, either in Anatolia or in Assur, shall touch anything, all the silver shall be brought together in the City. Whoever took something shall give it back, who does not give back shall be considered a thief" (see 8 below).[144] Division of the inheritance was to take place as part of a final settlement, in the presence of all those involved, after liabilities had been met and claims collected.

6.2.5 *Arrangements between Heirs*

The division of an estate started soon after the death of the testator but could take time (occasionally a few years) to be completed. Secondary arrangements between heirs for redistributing shares in the testator's investments are attested, for example, receiving the house and contents in return for taking care of the mother's burial, expenses, and debts.[145]

6.2.6 *Anatolian Evidence*

There is some evidence on inheritance law among the native population of Kanish, especially in some "brotherhood contracts" (see 5.2.3 above).[146] In text E, division of the estate will take place upon the death of both parents; in text D, apparently upon the death of the father, in which case the widow will receive a substantial gift and leave. In another case, she is entitled to continue to live in the house.

Some of these contracts stipulate that if the brothers wish to terminate the common household, "they shall divide equally" (*mitḫariš izuzzū*), but in text B, the oldest son receives "two shares," his younger brother one. In contract D, the youngest son receives something "extra, on top of his share," probably because he still has to acquire a wife.

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[144] With slight variations, see Veenhof, "Legislation . . .," 1727.
[145] Veenhof, "Care of the Elderly . . .," 141f.
[146] See ibid., 147ff., where the relevant contracts are numbered (A-K) and discussed.

7. Contracts

The nature of the sources—archives of traders in a colony abroad—explains the absence or rarity of various types of contracts current in Mesopotamia proper, such as leases of houses and fields, herding, adoption, and the abundance, in great variety, of those recording commercial transactions, especially those concerning debts (e.g., resulting from credit sale and settlement of accounts, real loans, or "confirmations").

7.1 *Sale*

7.1.1 *Sale Contracts*[147]

Most sale contracts concern real estate (mainly houses; sale of fields is only attested among Anatolians) and slaves, that is, goods acquired for long-term ownership, where a title deed is important. This was not the case with imported trade goods,[148] which changed hands rapidly, party by cash sale (*ana itaṭlim*), partly by credit sale. The latter resulted in debt notes, which state the amount of silver due and the due date, and stipulate default interest.

Sale was an oral transfer before witnesses, completed by payment of the price, usually in silver (*ana kaspim tadānum*, "to hand over for silver"), which effected the transfer of ownership. Contracts state that the item has been sold, that the buyer has paid its price, and/or that the seller is satisfied (*šabbū*). The "completion clauses" known from Old Babylonian times are absent, but an unpublished sale of a house in Assur states that it was voluntary (*ina migrātim*). The price paid (usually in silver) is regularly mentioned (not in all Anatolian contracts) but without any qualification.[149] A symbolic act is

[147] See Hecker, "Kauf . . .," and Kienast, *Kaufvertragsrecht* . . . The latter edits the forty sale contracts known to him (103–63; pp. 85ff. present additional references to house sales), referred to here as "Kienast no." The number has now doubled: see Bayram-Veenhof, "Real Estate . . ."; TPK 1 157–160; VAS 26 100–101; Wilcke, "Drei Kültepe Texte . . .," no. 1; Müller-Marzahn, "Fünf Texte . . .," no. 4, etc. See also; Donbaz, "Ašēd . . ."; Günbattı, "Beş Tableti . . ."; Sever, "Köle Satışı . . ."; and TPK 1 157–60.

[148] Kienast nos. 33 and 34 in fact are debt notes, and nos. 35 and 36 (for textiles and donkeys) are quittances, resulting from sale on credit.

[149] The single mention of sale "for the full price" (*ana šīm gamer*) is in a deposition (Mayer-Wilhem, "Altassyrische Texte . . .," no. 2) dealing with the sale of a slave, where only part of the price had been paid.

mentioned in a litigation record (kt 91/k 410), where in connection with the sale of a slave girl it is stated that "he cut the *ḫāmum* (*ḫāmam ibtuq*) in our presence."[150]

7.1.2 Contracts could be drafted in a variety of ways, as a sale transaction (buyer bought object from seller for x silver) or a quittance (buyer paid x silver, the price, for object to seller; seller is satisfied [*šabbū*] with x silver, the price of object). Both can be formulated from the point of view of the buyer (verb *ša'āmum*, "to buy"), the seller (*ana kaspim tadānum*, "to sell"), or as a combination of both (seller sold object and buyer bought it for x silver). Assyrian sales regularly also state the result of the transaction: the slave/house (now) belongs to the buyer.[151] Only Assyrian contracts drafted as quittances state that the seller is satisfied,[152] but Anatolian contracts may use "to satisfy" (*šabbu'um*) as the only verb in the operative section.[153]

7.1.3 *Contingency Clauses*

Their purpose is to protect the buyer against attempts to deprive him of his newly acquired property, except by way of redemption and/or at a stipulated price. Such attempts might be undertaken by a third party, who claims to have a title to the item sold or a claim on the seller, or by the seller (and his relatives or the social group to which he belongs), who tries to recover what he sold. For both actions, the verb "to come back" (*tu'ārum*) is most frequent; "to claim" (*baqārum*) is not used in Old Assyrian contracts.[154] There is more terminological variation in slave sales, where "to come back" may even imply redemption (see 4.2.2 above), a meaning not (yet) attested with houses. A measure of the City, called "the mercy of the god Assur," which allows indebted Assyrians to redeem their houses at favorable conditions,[155] is not reflected in the extant house sale contracts.

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[150] See Veenhof, "Three Unusual Contracts . . .," no. 3, with comments.

[151] With a house kt 87/k 282; kt 91/k 522; slave: Kienast no. 27; kt a/k 933 and 1277.

[152] A good example of the full Assyrian formulary is kt 91/k 522: "The house which A and B sold for 2 1/2 minas of silver to C, A and B are satisfied with the price of their house; the house now belongs to C. If anybody claims the house from C, A and B will clear her."

[153] E.g., Bayram-Veenhof, "Real Estate . . .," 97, no. 4, and kt 80/k 25.

[154] Kienast's reading *ibaqqar* in no. 13B:7' is a mistake for *ipaṭṭar*, and read *nipṭur* in BIN 4 65:42 (cited in his note 78).

[155] TPK 1 46; see Veenhof, "Redemption . . ."

"Coming back" occurs in various constructions, "because of" (regularly with slaves), "against/for (*ana*) the item sold," or "against (*ana*) the buyer"; in most cases, we can translate by "to claim" or "to vindicate." Claims by previous owners of houses are simply forbidden in Assyrian contracts.[156] Anatolian contracts impose heavy fines (ranging from one to ten pounds of silver) to be paid to the new owner,[157] once in combination with a death penalty.[158] "Coming back" by sellers, usually parents or relatives, in order to redeem a person sold is acceptable, if the buyer is indemnified by the purchase price or its multiple (see 4.2.2 above). Claims by others are usually forbidden or subject to a fine, but occasionally the claimant of a slave, presumably a relative or former owner, can "take him along" (*tar'āum*) after paying the sale price.[159] This shows that terms could vary, possibly owing to the bargaining power of the parties, and that buyers, probably creditors, were ready to convert the slave into silver by selling him for a fair price. The standard rule is that the seller has "to clear" (*ebbubum, šaḫḫutum*) the buyer or the object bought when it is vindicated by a third party, hence refute the claim by confirming the legitimacy of the sale or satisfy those who have a justified claim. In one instance (TPK 1 157), a guarantor has this duty, which suggests a forced sale by a defaulting debtor.

Vindication could be based on postulated ownership[160] or on financial claims on the seller and, hence, on his property. Most contracts, in order to cover all possibilities, make the seller simply promise protection against "anyone who might come back," but some Anatolian sales, both of slaves and houses, explicitly mention claims by the seller's creditors.[161]

Anatolian sales occasionally specify that the buyer or the item sold is also protected against claims or vindication by the *tusinnum* and the *ubadinnum*, two Anatolian terms for groups of people or social organizations (see 4.1.2 above). Lewy, followed by Kienast, took the first as "redeemer,"[162] but the word is a collective.[163] The basis for

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[156] Kienast no. 1.

[157] Kienast nos. 7, 16, and 31; kt d/k 5, a rare field sale.

[158] Kt n/k 31 (with "ratification" by the ruler).

[159] E.g., Farber, "Hanum . . .," where the *tusinnum*, a creditor, or her husband may vindicate the woman sold.

[160] E.g., kt 91/k 286: "that slave-girl is mine!"

[161] See, e.g., Kienast nos. 5, 9, 29, and 32, and Farber, "Hanum . . ."

[162] Lewy, "Old Assyrian Documents . . .," 100ff.; Kienast, *Kaufvertragsrecht* . . ., §82.

[163] Farber, "Hanum . . .," 200f. In VAS 26 100:13f., 101:10', and kt 87/k 312 (courtesy K. Hecker).

vindication by (members of) a *tusinnum* seems to be that the person or house sold belonged to this group or organization, which wants to recover him or it, but what the *tusinnum* was is not yet clear. This is also the case with the *ubadinnum*, which also figures as the seller of a house and a slave.[164]

Some slave sale contracts contain terms delimiting the right of the new owner to sell the slave. He may be authorized "to sell the slave as he wishes," even on the market,[165] but occasionally only if the slave misbehaves.[166] Limitations may apply to the purpose (once: not for the debts of the family) and the area of the sale, the latter apparently to prevent the slave from turning up again in his homeland, which might lead to claims or problems. One contract forbids sale in Kanish and its territory, and the buyer promises to bring the slave girl across the Euphrates. In other cases, sale to people of Talhad (in northern Syria) is allowed or suggested, hence a sale abroad, which obviously turns the debt slave into a chattel slave.[167]

Of the rare Anatolian field sales, one is conditional (see 7.1.4), the other stipulates that buyer and seller are jointly entitled to the available irrigation water.[168] Breach of contract (*nabalkutum*) by the buyer is penalized with a payment equal to the purchase price, but by the seller, with a double payment.

7.1.4 *Redemption*[169]

Redemption (*paṭārum*) of family members, slaves, or houses sold (usually by defaulting debtors), regularly mentioned as a possibility in the contingency clauses of sale contracts, is attested in a few contracts. It can be done by the object of sale himself (Kienast no. 11, from the *ubadinnum*),[170] or by others (Kienast no. 9), which may result

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[164] In kt v/k 152 (courtesy V. Donbaz) and kt f/k 79 ("*ubadinnum* of the fuller(s) of the ruler").

[165] See Veenhof, Three Unusual Contracts . . .," no. 2 (also on the role of the market in slave sale), and Hecker, "Über den Euphrat . . .," nos. 1–3 (no. 3 states: "I can keep or sell the slave, as I wish").

[166] If "she commits a punishable misdeed," Kienast no. 10, "if she is quarrelsome," kt j/k 288, etc.

[167] See Hecker, "Über den Euphrat . . .," no. 6; Veenhof, "Three Unusual Contracts . . .," comments on no. 2; and Kienast no. 32 (if the debt slave is not redeemed within one month).

[168] Kt o/k 52; see Albayrak, "Kültepe kelimesi . . .," 308.

[169] See 4.2.2 above and 7.3.1.3 below.

[170] This possibility is considered in kt c/k 1340 (Balkan, "Cancellation of Debts . . .," 30, n. 12).

in an (interest-bearing) debt to the redeemer,[171] to be paid or (rarely) worked off (in five years, TPK 1 156; see 7.6.1). In Anatolian deeds, a heavy fine in silver and the death penalty is imposed on whoever vindicates the person redeemed, especially those who had first sold or bought him.[172] A unique case is the conditional sale of a "field in cultivation," which the Anatolian buyers will cultivate for five years, during which period the sellers can get their field back at the original price.[173] It is a forerunner of similar Middle Assyrian "restricted conveyances" for long-term antichretic usufruct of fields, which if they are not recovered, become the full property of the creditor.

7.2 *Debt*

Since most contracts are short and laconic, and all use the formulation, "C(reditor) has a claim of x on D(ebtor)" (x C *iṣṣēr* D *iššû*), the origin and nature of the liabilities frequently are not clear. Those related to trade record claims due to sale on credit and commercial loans, but we also meet debts resulting from balancing accounts and unpaid dues, profits, or shares in expenses.

7.2.1 *Types of Debts*[174]

All manner of debts are called *ḫubullum*, which usually implies the obligation to pay interest, but the word is also used for debts resulting from sale on credit, where only default interest is due. While *ḫubuttatum*, well known in Old Babylonian, is absent, Old Assyrian uses *ebuṭṭum* (frequently in the plural) for a type of substantial, long-term investment loan, whose characteristics still need further analysis.[175] A similar meaning has to be assumed for *būlātum*, literally "(capital) put at somebody's disposal." Existing financial liabilities of all kinds are usually described by stating that a creditor has goods/money "in the heart of" (*ina libbi*) his debtor.

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[171] Ka 1096, Donbaz, "Kanwarta . . ."; also kt 89/313.

[172] In kt 89/k 371 (Donbaz, "Remarkable Contracts, II . . .," 139), a couple probably redeems a daughter, and the sellers are all their creditors (*bēl ḫubullišunu tamkārūšu*) and those forbidden to "come back" on the redeemers ("the *ubadinnum*, *tusinnum* or his creditor, or anybody else").

[173] See Bayram-Veenhof, "Real Estate . . .," 92ff., no. 1.

[174] See Veenhof, *Aspects* . . ., 419ff.

[175] See Derckson, "Financing . . .," 97f. The remarks in CAD E 21, discussion section, require correction.

7.2.2 *Interest*

On debts with a fixed term and resulting from sale on credit, the only interest due is default interest. Real loans, taken out by traders in Assur and also attested in Anatolia, even with native moneylenders, are interest-bearing. For Assyrians, the standard rate of interest, fixed by "order of the *kārum*," for both default and normal interest, was 30 percent per year, but lower rates occur, especially between business associates. Anatolians usually were charged higher rates, frequently 60 percent, by both Assyrians and fellow Anatolian moneylenders.[176] Persons who had to take out a loan in order to be able to pay as guarantors, according to a provision in the laws, were entitled to take "interest and interest on interest" from their debtors.[177]

7.2.3 *Repayment*

7.2.3.1 *Due Date*

The time of repayment can be fixed as a time limit, "within/not later than (*ana*)" x weeks,[178] months or (rarely) years, as "at its (agreed/normal) time" (*ana ettišu*),[179] and rarely "when the creditor asks it."[180] Payment terms usually do not exceed one year, except for *ebuṭṭū* loans and with payment in annual installments. Payment dates can also be indicated by reference points, which in Assyrian contracts are usually related to the practice of the overland trade: "when he arrives/comes up from the City/when the caravan comes in."

Contracts with Anatolian debtors mention as reference points a whole range of events in the agricultural year and a number of seasonal festivals of local gods.[181] A few such loans also contain the clause that the debtor has to pay "(even) when the ruler (variant: one) washes away the debt."[182]

7.2.3.2 *Negotiability*

Many Assyrian debt notes do not mention the name of the creditor but simply write "the creditor" (*tamkārum*), presumably in order

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[176] See Garelli, *Assyriens* . . ., 384.
[177] See Veenhof, "Legislation . . .," 1722f.
[178] See Veenhof, "Seven-day Week . . ."
[179] For this expression, see Landsberger, "Verkannte Nomina . . .," esp. 62ff.
[180] TPK 1 96.
[181] See Landsberger, "Jahreszeiten . . ."; Matouš, "Anatolische Feste . . ."; Bayram, "Kültepe Tabletleri . . ."; Donbaz, "Ašēd . . ."
[182] See Balkan, "Cancellation of Debts . . .," and 7.3.6 below.

to make collection by others or cession of the claim possible. This is clearly the case in debt notes which add the words "the bearer (once: holder) of the tablet is the creditor" (*wābil ṭuppim šut tamkārum*).[183]

7.2.3.3 *Proof of Payment*

Upon payment, the debtor is entitled to get back "his tablet" (on which his seal has been impressed) in order to "kill" it, which primarily means cancellation, presumably by means of physical destruction, at least of the sealed envelope, which lends the contract legal force.[184] If only the capital (*šīmtum*) is paid, the creditor may keep the tablet until he has received the interest (EL 298). When a debt is paid without the original debt note being returned (payment to a representative of the creditor or without access to the original debt note) the recipient of the payment issues the debtor (or his representative) with a quittance ("tablet of satisfaction," *ṭuppum ša šabā'ē*) as proof of payment, which in due time he can exchange for his original debt note, "whereupon both tablets can die."[185] Such quittances (EL 191ff.) usually add that "the tablet of the debt of D which turns up, is invalid (*sar*)." The debt note had to be returned to the debtor, who is the only one entitled "to kill" it.

7.2.3.4 *Default*

A creditor could summon his defaulting debtor (or have him summoned by a representative)[186] in order to make him acknowledge his debt and pay, enforce an arrangement, or acquire a security (see 3.2.1 above). Problems with such debtors in Old Assyrian gave rise to a new type of record, which I call "payment contract." If the debtor refused to pay or did so under protest (denying his debt, claiming his term was not yet over, that payment already had been made to somebody else, etc.), while neither he nor the creditor could

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[183] See Veenhof, "Modern Features . . .," 351ff., and "Silver and Credit . . .," 5.

[184] I 446:33ff. states that in such a case "one tablet smashes (*maḫāṣum*) the other." Survival of debt notes in the archive of a creditor may indicate unpaid debts, but when they are without an envelope, it may reflect the custom of destroying validating envelopes and preserving tablets for administrative reasons. See, for this issue, Veenhof, "Archives . . .," 5.1.

[185] See Veenhof, "Dying Tablets . . .," 46ff. (CCT 3 45a:13ff. and 4 16a:25–32). The survival of quittances shows that their exchange for the debt note might not always take place.

[186] See Veenhof, "Memorandums . . .," 12, ad CCT 2 8.

prove their claim, "hard words" would be spoken (*dannātam qabā'um*). This implies that a contract (*tarkistum*) is made (letters speak of "taking a *tarkistum* against somebody") that if either can prove his claim or disprove that of the other, the loser will pay (back) double or triple (*šušalšum*),[187] without further legal action (TC 3 263).[188]

7.2.3.5 *Joint Liability*

A legal device frequently used in dealing with a plurality of Assyrian and, in particular, of Anatolian debtors (including married couples), is to make sure that the whole sum could be claimed from whichever joint debtor was available (*kīnum*) and able to pay (*šalmum*). This is usually expressed by stating that the debt "is bound to the person of whichever of them is solvent and reliable/available" (*ina qaqqad šalmišunu u kīnišunu rakis*). In debt notes of Anatolians, in order to increase the security, the wife and children of the debtor may be registered both as joint debtors and as (hypothecary) pledges (see 7.3.1.2 above).

7.3 *Security*

The main instruments of security were pledges and guarantors, followed by distraint and the possibility of borrowing at the expense of the defaulting debtor. They are found both in Assyrian and in Anatolian contracts, but there are some differences. In general, security is more frequent in debt notes with Anatolian debtors. Cumulation of security occurs frequently in Anatolian contracts (e.g., TC 3 332; BIN 4 4; I 475).

7.3.1 *Pledge*[189]

7.3.1.1 *Terminology*

The main terms for pledge are *šapartum* (also attested in later Assyria and in Babylonia) and *erubbātum*, used in ancient Assyria only. The first is mainly used for a great variety of movable objects (from gold to pieces of furniture and tablets of value) and the word expresses the idea that the creditor has power of disposition over them.[190] It

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[187] For examples, see Lewy, "Grammatical Studies . . .," 39ff., and CAD Š/3, ad loc.
[188] For details, see Veenhof, "Silver and Credit . . .," 4f.
[189] See also Kienast, "Pfandrecht . . ."
[190] From the verb *šapārum*, "to administer, to direct."

is preferred in Anatolian contracts, where it may even be used for houses (BIN 6 236) and persons (EL 15). Although *šapartu* pledges were used among Assyrians, as letters show, no contracts mention them, which suggests that they were based on oral agreements.[191] Assyrian contracts always use *erubbātum* for pledged immovable objects (houses; fields are not attested) and persons, which "enter" into the power or household of the creditor.[192] Pledges "deposited," "given," or "left to" the creditor are "held" (*ka''ulum*) by him. Pledging is also meant when it is stated that "the creditor's hand rests on" (*qātum ina . . . šaknat*), that he can "seize" (*ṣabātum*),[193] or "look at" ("has a claim on," or "owns," *dagālum*)[194] an object or person. Persons or objects not identified as *šapartum* or *erubbātum*, but simply said to be "held" by the creditor or "on/to which the debt is bound" (*rakis ina ṣēr* object/*ina qaqqad* person; frequent with Anatolian debtors) also function as pledges.

7.3.1.2 *Nature*

The question whether pledges were primarily hypothecary ("Sicherheitspfand") or possessory ("Eigentumspfand"),[195] allows no simple answer. Kienast considers houses hypothecary pledges, because there is no evidence that they substitute for the debt, and actual possession (and hence antichretic use) would be excluded by default interest. While this may be true in many cases, possession of houses by creditors seems certain in EL 92 (Anatolians), TPK 88, 194, TC 3 232, and 240, where whoever pays (back) "takes the house," while the creditor has "to leave" it. Single slaves registered as *erubbātu* pledge or said "to be held" by the creditor probably also "entered" the house of the creditor,[196] but when an Anatolian family, together

[191] See EL 292 and 179 (collated), where the objects pledged have to be enumerated (*zakārum*) in the presence of witnesses.

[192] The verb *erābum* is used of pledged persons in EL 86 and kt a/k 447; the lexicalized doubled stem, "to pledge," is used of a house in TPK 1 106 and 194, and of a person in EL 2.

[193] "To seize," in EL 91:9ff.; "hands resting on," in EL 24:15f.//OIP 27 59:29f.

[194] AKT 1 45; EL 14, 92.

[195] And we might add whether, in that case, pledges were considered antichretic (for capital or interest) or not.

[196] Kt 89/312; note also EL 252.

with its slave and house are pledged,[197] hypothecary security ("General-hypothek") is most likely.[198]

7.3.1.3 *Execution*

If a debt was not paid in time, the pledge could be exploited or sold to indemnify the creditor (e.g., KTS 2 9, Adana 237E). Such actions apparently could be undertaken by the creditor himself, but he might also need help or authorization by the authorities. In EL 188, it is the local Anatolian ruler who "hands over" an Anatolian family to an Assyrian creditor. In kt a/k 447, an Assyrian *kārum* court decides that four persons (two sons and two slaves) "will enter with and be held by" a creditor.

Slaves could be pledged and sold for their owner's debts, but several "slave sales" concern free persons pledged for debts and subsequently sold into debt slavery. This is revealed by the fact that some are sold not "for x silver" but "instead of (*kīma*) x silver"[199] and by clauses which refer to their redemption. Tablets of value given as pledges under particular circumstances (not only when they contained a negotiability formula; see 7.2.3.2 above) could be used by the creditor by collecting the assets or claims that they represented.

7.3.2 *Guarantee*[200]

7.3.2.1 *Terminology*

A guarantor is called *qātātum* (lit. "hands")[201] and figures as such in debt notes and other texts where he is identified by name: "PN is (my, etc.) guarantor," while the combination *ša* (rarely *bēl*) *qātātim* refers to "the/a guarantor" in general (EL 306, I 478,[202] ICK 1 86, TPK 1 171, etc.). *šazzuztum*, "representative," who "stands for" (the debt or the debtor), is also used (EL 254:10, AKT 3, 83:8f.).

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[197] E.g., kt n/k 1716 (Bayram, "Kültepe Tabletleri . . .," 461).

[198] Also in KTK 95, where the words that all property of the debtor "is the creditor's" must refer to legal ownership, not actual possession.

[199] See Kienast no. 32 and EL 215; note, in kt b/k 121, the purchase of a house for "silver and the interest on it."

[200] Veenhof, "Security for Debt . . .," II.

[201] Because the guarantor "takes the hands of," supports the debtor, or because he "pulls away" (*nasāḫum*) the creditor's hands.

[202] Matouš, "Bürgschaft . . ."

7.3.2.2 *Duties*

Guarantors basically had two duties: to secure the presence or availability of the debtor on the due date ("Gestellungsbürge"),[203] and to pay on his behalf if he defaulted or failed to be available. The guarantor who does not hand over the debtor to the creditor is liable to pay the original debt plus interest (TPK 1 171) or a fine.[204]

Where the duty is to pay for the defaulting debtor, the guarantor may also appear as co-debtor,[205] or both may be jointly liable for a debt.[206]

7.3.2.3 *Security and Regress*

Guarantors could secure themselves against the risk of the debtor's insolvency by taking pledges.[207] A guarantor forced to pay for the debtor enjoyed a right of regress. In a well-documented case,[208] a man who had been forced to take out a loan in order to be able to meet his liability as guarantor obtained a verdict from the City Assembly authorizing him to charge the debtor "interest and interest on interest in accordance with the words on the stela" and to take the latter's silver "wherever it is," hence also when converted into merchandise.[209]

7.3.4 *Distraint*

In distraint, which the debtor could try to resist, there was no question of antichretic use. Its effectiveness depended on the debtor's wish or need to get back the items seized, and it must have been similar to that of "holding the debtor by his hem" (the two actually occur together in CCT 3 12), which prevented him from leaving and could make him start a lawsuit. For distraint, Old Assyrian uses *katā'um*[210] (with its nominal derivate *kutu'ātum*); its preferred objects

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[203] See EL 238, 306; ICK 1 86 + 2 141, TPK 1 171(!); and O 3684 (Garelli, "Une tablette").

[204] EL 308; kt 89/352.

[205] CTMMA 1, 84a; EL 321 compared with the letter KTH 15:6f.

[206] EL 226:33–44; BIN 4 4:12ff.; BIN 6 238. EL 325a:5 mentions "a tablet drawn up for the two of us," which EL 326:25ff. shows to be debtor and guarantor.

[207] CCT 5 8a; TC 3 67; kt 91/k 173 (a house); Veenhof, "Security for Debt . . .," 122f.

[208] See Veenhof, "Legislation . . .," 1722ff.

[209] Also TPK 1 46:20ff.

[210] It does not mean surety or guarantee, although this meaning is attested in Babylonian and later Assyrian, also for the nominal derivative *kattû*.

are slaves. Although not based on contractual agreement, it did not require a court order, and it was also practiced by the *līmu* official in Assur (TC 2 46:7).

7.3.5 *Borrowing by the Creditor*[211]

A last device to help a creditor get his money from a defaulting debtor, first attested among the Old Assyrians, is a clause in the debt note which authorizes the creditor to borrow what is owed to him from a moneylender.[212] It is likely that the creditor charged the debtor double interest, for reasons similar to those which allowed a guarantor who had borrowed to pay for the debtor to charge "interest on interest" (see 7.3.2.3 above).

7.3.6 *Debt and Social Justice*

The traditional Mesopotamian royal measures to promote equity and social justice apply primarily to common citizens who have become poor by economic distress and debt-ridden by taking out loans for consumption. Hence we hardly expect them in the records of a trading society, where debts generally were of a commercial nature, belonging to the types enumerated in paragraph 5 of Ammiṣaduqa's Edict as not affected by the royal measures.[213] Their impact, however, is attested in the local Anatolian society, where a small number of debt notes stipulate that this debt has to be paid "even when the (local) ruler washes away the debts" (*ḫubullam masā'um*). Anatolian creditors, like their Mesopotamian colleagues, took care to record that a particular debt was contracted after the royal measure and hence was not affected by it.[214]

There is also proof of social measures in Assur itself, not cancellation of commercial debts but a measure to counter their negative effects on family property. TPK 1 46 reveals that the god Assur, apparently acting through the initiative of his ruler and the decisions of the City Assembly, "had mercy on his city" (ll. 22f.). This meant a measure which made it easier for debt-ridden Assyrians, who had to sell their paternal houses because of huge debts, to

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[211] See Veenhof, "Modern Features . . .," 351ff., and "Silver and Credit . . .," 82f.
[212] Examples are AKT 1 34; EL 87 and 185; ICK 2 95 and 147; I 475.
[213] See Kraus, *Verfügungen* . . ., 172, 205f.
[214] See for the evidence, Balkan, "Cancellation of Debts . . ." There is an unpublished debt note which uses the noun *andurārum* in this context.

redeem them. They could occupy them again after paying back half the sale price; the rest could follow in three annual installments.[215]

7.4 *Hire*[216]

Letters and administrative records use the same terminology (*agārum*) for the lease of houses and the hire of wagons, boats, donkeys, and persons. Contractual details are known only for lease and some categories of persons. Some house-sale contracts deal with the present occupant's right to continue to live in it.[217] Kt a/k 1255 and Donbaz, Sadberk Hanim no. 28, grant a female tenant (*waššābum*) the right during her lifetime and forbid/punish her expulsion; the latter contract forbids her "to sell or remove the house, its six beams and its contents."

An "attorney" (*rābiṣum*) could be hired (*agārum/aḫāzum*) in Assur by a plaintiff, after authorization by the ruler and the City Assembly (see 2.1.1.1 above). He was hired "to assist" the plaintiff and "to win his case" (*awatam kašādum*). He was promised a wage plus compensation for travel expenses and food. He received half in advance, to be returned if he abandoned the case before his mission was completed.[218]

Carriers, charged with the transport of merchandise and money by caravan between Assur and Anatolia,[219] were hired and employed for at least one complete caravan journey, frequently also for longer periods, so that they became employees of the firm. In exchange for his services, the carrier received an interest-free silver loan, called *be'ūlātum*, "(capital) at free disposal."[220] The loan was regularly used to buy a few textiles in Assur, to be sold in Anatolia with profit. Nearly all contracts state that the carrier "is held by the silver" (*išti kaspim uktâl*), hence is obliged to perform his service as long as he keeps the loan. The penalty for breach of contract is interest on the

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[215] See Veenhof, "Redemption . . .," 604f.

[216] See Veenhof, "Miete . . ."

[217] See Kienast ATHE 39 (the seller becomes tenant) kt a/k 1255 (Bayram-Veenhof, "Real Estate . . .," 98, and Wilcke, "Drei Kültepe Texte . . .," no. 1).

[218] TC 1 24 and BIN 6 219. See also Larsen, *City-State* . . ., 175ff., and I 554:13ff.

[219] See Kienast, "*be'ulātum* . . .," also for the variety of clauses, with the modifications proposed in Veenhof, "Miete . . .," 183.

[220] *ana be'ālim*; AKT 1 9 and kt 91/k 473 write: "he (the carrier) will have power over it" (*ibe'el*).

originally interest-free loan or paying back two or three times the amount received.

7.5 *Bailment*

7.5.1 The frequent absence of traders created a need for depositing of valuables (tablets, silver, merchandise, various utensils) in the houses of friends. Deposit is expressed *ana nabšêm* (lit., "in order to get/stay (somewhere)") combined with the verbs "to give," "to leave behind," "to entrust," "to bring into (a house)." It normally happened before witnesses,[221] but is only occasionally recorded in a written contract (EL 136). Testimony by witnesses could establish what was left in deposit (BIN 6 218), frequently under seal.

7.5.2 Contracts by means of which goods to be shipped overland were handed over to caravan personnel, in the presence of witnesses, likewise use the verb *paqādum* ("to entrust to") with personal dative suffix.[222] Since the purpose of the transaction was clear, it is only rarely specified (e.g., "he will bring/carry for making purchases," EL 139) or the destination given ("to the city," EL 140). Most such contracts have the owner speak in the first person, perhaps because he pronounced the words: "I have hereby handed over to you" (ICK 1 61:17ff.). Many records end by listing the witnesses to the transaction (EL 112ff.), which could be produced for judicial purposes (e.g., VAS 26 65:33ff.).

7.6 *Trading Ventures*

7.6.1 *Partnership*

Old Assyrian trade knew many forms of commercial cooperation, but many of them were informal, not fixed in written contracts.[223] Formal partnerships could be both long and short term, of a general nature, and for a specific undertaking. Kienast ATHE 24, a settle-

[221] Garelli, "Tablettes . . . II" no. 23: 22ff.; EL 335–340; but cf. CCT 3 29:31/.

[222] For this reason, EL (nos. 110–35) classified them under the heading "Verwahrung" (deposit).

[223] See Larsen, *City-State* . . ., 99f.; *tappā'um* means "colleague," "fellow" (trader, witness, debtor, creditor) as well as (formal) "business partner" (Veenhof, "Private Summons . . .," 453ff.; OIP 27 59:10).

ment after the death of two closely cooperating traders, mentions that it entailed mutual representation (*šazzuztum*), shipment of consignments, collection of each other's outstanding debt claims (with access to each other's debt notes and depositions), and investments (*šipkātum*) for each other in Assur and Anatolia.

Documented partnerships, which usually imply pooling of capital and labor and rules for the division of profits and losses, concern specific business ventures, such as one to trade in iron,[224] which mentions "common assets" of the partners[225] and stipulates that "the one shall not do anything without the other." To get one's share of the "partnership's silver," a formal clearance of accounts (*zakā'um*) was necessary.

A special type of partnership could be created between a creditor and a debtor. In ICK 1 83 + 2 60, a creditor has a claim of several pounds of silver on his "partner," who "is held by the silver" (see 7.4 above) and apparently has to work for his creditor, who will get two thirds of everything he earns (*kaššu'um*) and will charge him interest of 120 percent per year if he disappears.

A business venture called *ellutum* ("company, caravan") was apparently a joint undertaking by several traders, among whom also costs and losses[226] are shared proportionally.[227] What they are entitled to consists of amounts called "one thirds" (*šalšātum*) and amounts still in the "fund" (*mišittum*) of the company, the latter usually being about double the former. The word "one third" is a technical term for a guaranteed share in the profits of an undertaking.

7.6.2 *The naruqqu Association*[228]

The most important long-term investment and partnership contract was one by which a number of capitalists (*ummē'ānum*) supplied a trader (*tamkārum*; he could also be called *šamallā'um*) with a substantial sum of capital, called his "money-bag" (*naruqqum*). Individual shares were valued in gold (frequently two pounds or its multiple),

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[224] ICK 1 1 with BIN 6 181; see Michel, *Innāya* . . ., I 173ff., and II no. 125.

[225] In Assyrian *barini* ("between us").

[226] According to a verdict of the City; see Veenhof, "Legislation . . .," 1730f.

[227] To be able to do so, the value (*awītum*) of each participating trader's merchandise was expressed in tin.

[228] See Larsen, "Partnerships . . ." and "*Naruqqu*-contract . . .," and Dercksen, "Financing . . .," 92–97.

according to an artificial exchange rate; an investment of four pounds of silver yielded a share of one pound of gold (see e.g., EL 96 and I 555). Since the capital investment was long term (examples range from 9 to 12 years) and was made available not for a particular venture but simply "to conduct trade" (*makārum*), we may call it a "*naruqqu*-association." The trader contributed not only his expertise and labor (texts speak of him as "carrying around" the money-bag), but also his capital, since he regularly figures among the investors.

Each investor/trader kept in his archive sealed records of what "was registered in the *naruqqu* tablet in his name,"[229] but the main document was the witnessed deed of association, which listed all investors with their shares in gold, followed by a total and the length of the term, after which (as one contract adds) the trader will settle accounts. There follows a fairly standard set of contractual provisions which mention that the trader himself will receive one third of the profit and will be responsible for/guarantee the investors their "one third," and that whoever withdraws his investment prematurely receives only what he invested, four pounds of silver for each pound of gold, and no profit at all. Shareholders faithful to the society eventually would be paid out eight pounds of silver for each pound of gold, according to the real exchange rate; hence, at the outset they were guaranteed twice their investment (called *šipkātum*), in addition to the other profit. An investor's shares (important traders invested in several different *naruqqu's*) were inherited by his children and could be sold.[230]

8. Crime and Delict

Homicide, resulting in the death of Assyrians, apparently in Anatolia, is reported in some letters and can result in appeals to the local ruler to punish or extradite the culprits and to make them pay "blood money" (*dāmū*), which is also the subject of some administrative records, when even the City of Assur got involved.[231] One case con-

[229] A key verb is *adāmum*, usually in the stative, *admāku*, "I am entitled to" (x silver in his *naruqqum*), and there are a few occurrences of *bēlū edmātim*, "title holders."

[230] See e.g., EL 246.

[231] For blood money, see Çeçen, "Kan Parasi," with CAD D 79 2, b and VAS 26 26:8ff.

cerns the payment of blood money (80 shekels of silver) for killing an Anatolian, which the *kārum* had advanced for the Assyrian culprit.[232]

When Anatolians tried to rob caravans or plunder houses,[233] the Assyrians turned to the local rulers, who were responsible for their safety and for compensating "losses" (*ḫuluqqā'ū*). The ruler could (or was obliged to) extradite the thieves to be killed.[234] Assyrians guilty of offenses such as smuggling,[235] trading in restricted items, or helping a ruler's enemy usually ended up in jail (*kišeršum*), whereupon their relatives and friends or the Assyrian authorities tried to get them free by offering "presents" (*irbum*) and paying ransom (*iṭirū*). A detailed deposition reveals how an Anatolian accusation against an Assyrian of cooperating with the enemy was handled. The ruler rejects the offer of an exculpatory oath or submission to the river ordeal, insisting on extradition of the culprit or payment of an extremely high ransom, or else "your brother is dead!"[236]

Among Assyrians, entering somebody's strongroom, especially after a trader had died, required good credentials, authorization by authorities, and the presence of a committee of "outsiders," which had to report on what had happened.[237] According to a ruling of the City, those who tried to appropriate a dead trader's assets before the obligatory general settlement of accounts in Assur "had to give back what they had taken; if not they were considered to have committed a theft."[238] Multiple compensation for theft is clear from a single debt note for an amount of silver, which adds at the end: "He stole silver and the *kārum* condemned him to (pay) triple."[239]

9. Treaties

The Old Assyrian traders operated in Anatolia on the basis of formal treaties, called "oath" (*mamītum*), concluded between the Assyrian

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[232] Hecker, "Rechtlos . . .," text no. 2.
[233] Hecker, "Rechtlos . . .," no. 4.
[234] Kt b/k 471; see Balkan, "Cancellation of Debts . . .," 31, n. 16. In TC 3 85, the owner of the lost goods must come to the ruler who will give him his compensation (*arnum*) personally.
[235] See Veenhof, *Aspects* . . ., chap. 14; Kienast ATHE 62.
[236] Michel-Garelli, "Heurts . . .," with Günbatti, "River Ordeal . . ."; see also the events commented on in Lewy, "Kuššara . . .," 51, on ransom.
[237] See Veenhof, "Archives . . .," 3.1.
[238] See Veenhof, "Legislation . . .," 1726f., with n. 28.
[239] Kt 91/k 398; see also ICK 2 308, and TC 2 45, edge.

authorities and the local Anatolian rulers. The Assyrians were granted residence rights in the (commercial districts of the) cities and extraterritoriality, in the sense that their colonies were political and juridical extensions of the government of Assur. Treaties had to be renewed whenever a new ruler ascended the throne.[240] According to one treaty, the local ruler has to bar competitors of the Assyrians, notably Babylonian traders, whom he will extradite to be killed. The ruler is entitled to a minute part of or levy on the goods carried by the Assyrian caravans passing through his country in both directions.[241]

Abbreviations

AKT 1–3	*Ankara Kültepe Tabletleri/Ankaraner Kültepe-Tafeln/*Texte I. Emin Bilgiç et al. Türk Tarih Kurumu Yayınları VI, Dizi-Sa. 33 (Ankara: Türk Tarih Kurumu Basımevi, 1990) II. Emin Bilgiç and Sabahattin Bayram. Türk Tarih Kurumu Yayıları VI, Dizi-Sa. 33a (Ankara: Türk Tarih Kurumu Basımevi, 1995) III. Emin Bilgiç and Cahit Günbattı, Freiburger Altorientalische Studien, Beihefte 3 (Stuttgart: Franz Steiner, 1995)
APU	A.M. Ulshöfer, *Die altassyrischen Privaturkunden*, FAOS Beiheft 4 (Stuttgart: Franz Steiner, 1995)
ArAnat	*Archivum Anatolicum*: *Anadolu Arsivleri*. Ankara Universitesi Dil ve Tarih-Coğrafya Fakültesi, 1ff. (Ankara: Üniversitesi Basımevi, 1995–)
CTMMA	I. Starr, ed., *Cuneiform Texts in the Metropolitan Museum of Art: Tablets, Cones and Bricks of the Third and Second Millennia B.C.* (New York: The Metropolitan Museum of Art, 1988), 92–142 = M.T. Larsen, *Old Assyrian Texts*
EL	G. Eisser and J. Lewy, *Altassyrische Rechtsurkunden vom Kültepe*, I–II. MVAeG 30 und 35/3 (Leipzig: J.C. Hinrichs, 1930–35)
Kienast no.	Texts edited in B. Kienast, *Das altassyrische Kaufvertragsrecht* (on pp. 103–63)
kt a/k+number	Unpublished texts from Kültepe (kt), found in *kārum* Kanish (/k), since the first year of the excavations, 1948 (= a), until 1972 (= z)
kt 73/k+number	Kültepe tablets found in *kārum* Kanish in 1973 and following years
PIHANS	Publications de l'Institut historique-archéologique néerlandais de Stamboul
POAT	W.C. Gwaltney Jr., *The Pennsylvania Old Assyrian Texts*, Hebrew Union College Annual Suppl. 3 (Cincinnati: Hebrew Union College, 1983)
TC	Tablettes Cappadociennes 1–3 (= TCL 4; 14; 19–21)

[240] KTP 14, studied in Garelli, *Assyriens* . . ., 329f.
[241] Edited in Çeçen-Hecker, "Wegerecht . . ."

TPK 1 C. Michel and P. Garelli, *Tablettes paléo-assyriennes de Kültepe, vol. 1 Kt 90/k* (Paris: De Boccard, 1997)

I+number Old Assyrian texts in Prague, edited in the sequence of their I-numbers in K. Hecker, G. Kryszat, and L. Matouš, *Kappadokische Keilschrifttafeln aus den Sammlungen der Karlsuniversität Prag* (Praha: Univerzita Karlova, 1998)

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MESOPOTAMIA

MIDDLE BABYLONIAN PERIOD

Kathryn Slanski

Middle Babylonian is a linguistic term describing the language of documents written in Akkadian in Babylonia (southern Mesopotamia) in the sixteenth through eleventh centuries. Middle Babylonian is also used to designate the historical period of that place and time. The Kingdom of Babylonia, known in international correspondence as *māt Karduniaš*, was ruled by two successive dynasties during this period.[1] Following the collapse of the Old Babylonian Kingdom in 1595, a dynasty identified as Kassite took hold in northern Babylonia and by 1475 had extended control over the south as well. A dynasty claiming to hale from the ancient city of Isin claimed the Babylonian throne in 1157. The Isin II kings ruled for over a century, until 1026.

Upstream from Babylon on the Middle Euphrates lay the Ḫana Kingdom. The Ḫana Kingdom has recently been dated to the Middle Babylonian period,[2] and it is likely that the Middle Euphrates region was at times independent and at times a vassal state under foreign control.

1. Sources of Law

Although there are abundant archaeological and textual sources for this period, these have yet to be systematically studied, and so knowledge of the history of the period, including the history of law, is provisional.

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[1] For the history of Babylonia under the Kassite and Isin II dynasties, see Brinkman, "Kassiten," and "Isin. B. II. Dynastie." For a general overview of the Kassites, see Sommerfeld, "Kassites . . ." Regnal dates follow Brinkman, "Chronology . . ."

[2] Podany, "Middle Babylonian . . ."

1.1 *Public-display inscriptions*

Neither law codes nor royal edicts composed during this latter part of the second millennium have been found.[3] However, a new kind of public-display inscription is introduced during the Middle Babylonian period: the Babylonian Entitlement *narû*.

Formerly known as *kudurru*s ("boundary markers" or "boundary stones") recent research indicates that these artifacts stood not on field boundaries but in temples.[4] They were known to the Babylonians simply as *narû* "(stone) monument," and rather than marking boundaries, their function was to commemorate acquisition of entitlement to a source of income in perpetuity. In most cases, this source of income was a plot of agricultural land, but income from temple prebends and real income stemming from release from traditional tax or labor obligations due the crown are also attested. The Entitlement *narû*s (henceforth simply *narû*s) commemorated acquisition to an entitlement and were intended to ensure that the entitlement be permanent, that is, inheritable, and remain part of the recipient's family holdings theoretically forever.

The *narû* inscriptions have formal characteristics both of monumental and legal texts. On the one hand, like other (i.e., royal) monumental inscriptions from Mesopotamia, the texts are written in archaizing script and elevated language. They are inscribed on stone and partnered with pictorial images of divine symbols or scenes of royal or cultic activity. On the other hand, the inscriptions characteristically open with a pithy description of the entitlement and go on to list witnesses to the entitlement transaction, give account of sealing of the entitlement, and provide a time and place of the transaction—all elements associated with Mesopotamian legal records. Regardless of their formal classification, the *narû*s are a rich source of information for Middle Babylonian social and legal history.

1.2 *Private or Archival Legal Records*

Far fewer private legal texts are available from the Middle Babylonian period than from the preceding Old Babylonian and succeeding Neo-

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[3] Note, however, that the text of the Law Stele of Hammurabi was known in the scribal schools of this time. See Finkelstein, "Hammurapi Law Tablet . . .," and Borger, *BAL* I, 2–4.

[4] See Slanski, Study . . .

Babylonian periods. The texts that are available come primarily from the cities of Ur[5] and Nippur, or are unprovenienced. Many of the Nippur texts have yet to be published. A few texts have been excavated at the Kassite capital, Dur-Kurigalzu. The Ḫana kingdom is the source of a few documents bearing on the history of law, and the texts reveal influence from both the Middle Assyrian and Middle Babylonian heartlands as well as similarities to legal practices known from Nuzi.[6]

1.3 *Royal International Correspondence: The Tel el-Amarna Archive*

The letters found at el-Amarna date to this period, including fourteen letters written by the Kassite king of Babylonia to the Pharoah.[7] The letters shed some light on the royal Babylonian perspective on some legal matters, chiefly theft and murder.

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

A literary text about the Kassite king Kurigalzu (I, late 1400s, or II, 1332–1308) refers to the king as "the judge, who like Šamaš discovers the truth, who among all people restores the one who has been wronged, who decreed *andurāru* (annulment of debt slavery) of the people of Babylon."[8]

Limits on the powers of the king are evident in the *narû*s. According to one text, previously uncultivable land was developed by the king before he granted it;[9] in another we are informed that the previous holder had committed a serious offense before the king claimed his land in order to grant it to another.[10] Both cases demonstrate that royal prerogative to claim and grant land was not boundless and had to be legally justified.

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[5] Copies of the texts from Ur are in UET 7. The texts are edited in Gurney, *Middle Babylonian . . .*

[6] For a discussion of the Ḫana texts, see Podany, et al., "Adoption . . .," and Lion, "L'*anduraru* . . ."

[7] See the introduction to Moran, *Amarna Letters . . .*, xiii–xxxix.

[8] MAH 15922, obv 12–13; discussed by Sommerfeld, "Kurigalzu-Text . . ."

[9] MDP 10, pls. 11–12.

[10] IM 74651 (= Reshid and Wilke, "Grenzstein . . .").

A remarkable statement on the powers of the king is preserved in a *narû* wherein the king grants a huge territory to his son (and future successor).[11] Part of the gift is a series of exemptions placed on the land and the residents of its settlements. Among other restrictions, the king and his officers may not put the residents to work on royal building projects, nor take their produce or equipment, nor quarter soldiers in their homes. The text also states that no future king may violate these exemptions. On the one hand, this text implies that in the absence of such exemptions, the king could exercise these powers. On the other, the king could elect to place restrictions on his own royal powers and, theoretically, hold future kings to those restrictions as well. Throughout the *narû* corpus are statements specifically directed to the king that (even) he may not transgress the terms of the transaction commemorated by the monument.

2.1.2 *The Legislature*

There are a few hints of royal decrees of debt release, which could be considered a form of legislation applying to the whole citizen body.[12]

2.1.3 *The Administration*

2.1.3.1 *Central Administration*

In the absence of evidence to the contrary, we can assume that, as in earlier times, the central administration consisted of the king and his palace officials. In two texts, an individual sitting in judgment and identified as *šakkanaku*, an archaizing title for "governor," is probably the king.[13] In the literary text about Kurigalzu (see 2.1.1 above), the king is also referred to with the titles leader (of a work group or caravan), supervisor, and inspector, as well as *šakkanaku*.

2.1.3.2 *Provincial Administration*[14]

The countryside was organized into provinces (*pīḫatu*, written NAM), named variously after earlier countries, tribes, or a main city. There

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[11] SBKI 2.

[12] E.g., MAH 15922 (see 2.1.1 above), a reference to a decree freeing the women of Nippur (4.3.4 below), and the *andurāru* references from Ḫana (4.4.5 below).

[13] E.g., UET 7 11, 73.

[14] See Brinkman, "Provincial Administration . . ." and Brinkman, *Political History . . .*, 296–331.

are at least twenty-one[15] provinces attested, and there seems to have been little change in the provincial administration system from the Kassite to the Isin II Dynasties. Each province was headed by a governor (*šakin māti*, later *šaknu*),[16] who reported directly to the king. Appointed by the king and moved about by him at will, the governor was responsible for most of the normal business in the province. Other officials subordinate to the provincial governor were also referred to as *šaknu*. In some provinces west of the Tigris, the head of a tribe (*bēl bīti*) would play a role in governing, possibly heading a province without a governor, as a subordinate to the governor or as the ruler of a small territory within yet independent of a province.

Villages and cities were governed by a mayor (*ḫazannu*), who was assisted by a magistrate (*massû*). Persons so identified were called upon by the king to furnish testimony about the historical background in legal cases. Scribes (*ṭupšarru*) recorded transactions and served as surveyors.

2.1.4 *The Courts*

2.1.4.1 *The King*

As in other periods, the king is the highest judge in the land and sits on cases concerning loss of life. In two texts from Ur, judgment is passed by a certain Adad-šuma-uṣur, *šakanakku*, probably to be identified with the king (see 2.1.3.1). Both texts remand the parties to the ordeal (see 3.3.4 below). Several royal decisions are recorded in the *narû* corpus, including one text recording the decisions of three successive kings concerning the same estate.[17] The resolution of a dispute by the king, as commemorated by a *narû*, was to be permanent and inviolable.

2.1.4.2 Provincial officials, such as the mayor (*ḫazannu*), heard cases,[18] as did priests.[19] In one case, a priestess heard a prisoner's protestation

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[15] See Brinkman, "Provincial Administration . . .," 234–5 and Brinkman, *Political History* . . ., 297 and nn. 1941–42, and Gurney, *Middle Babylonian* . . ., 17.
[16] For the title *šaknu*, see, most recently, CAD Š I, 191.
[17] BBSt. 3.
[18] E.g., UET 7 2, 8, 10.
[19] E.g., UET 7 2, 3, 6.

of innocence and granted him an opportunity to apprehend the wrongdoer.[20]

2.1.4.3 Cases were also heard by the "judge" (*dayyānu*), presumably a royal appointee.[21] The title "judge" is not attested outside of legal contexts.

2.2 *Functions*

2.2.1 *Compulsory Service*

A steady point of contact between the citizens and the government was their obligation to perform service for the crown. Several of the *narû*s commemorate the king exempting residents of a given territory from performing these obligations.[22]

2.2.1.1 *ilku, tupšikku*, and *dikûtu*. Compulsory labor for the crown was called most commonly *ilku*, although the terms *tupšikku* and *dikûtu* (something like "called-up-service") also occur, used apparently as parallel terms.[23] Labor on various aspects of the irrigation system is the service principally exempted.[24]

2.2.2 *Petitions*

The citizens also had contact with their king when they petitioned him in his role as highest court in the land. A famous petition is commemorated in a *narû* of Nebuchadnezzar I, wherein an officer, having served the king valiantly in his victory over the Elamites, petitions the king to restore ancient exemptions to the province under his control.[25] Another *narû* records that the recipient of an estate petitioned the king when conflicting claims to the same estate were lodged—according to the text, the petitioner "made (it) known to the king."[26] When we read that the king re-affirmed an individual's

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[20] UET 7 7.
[21] E.g., UET 7 9.
[22] See esp. SBKI 2, as well as MDP 10 pls. 11–12, Hinke *kudurru*, BBSt. 6, BBSt. 24.
[23] E.g., Hinke *kudurru* (*ilku* and *dikûtu*); BBSt. 24 (*ilku* and *tupšikku*).
[24] See 2.1.1 above. Additional exemptions included fieldwork, delivery of agricultural products, seizure of servants, animals and equipment, grazing privileges.
[25] BBSt. 6.
[26] BBSt. 3.

claim to an entitlement held formerly by his father, we can assume that this was in response to a petition.

3. Litigation

3.1 *Parties*

By and large, free men initiate legal proceedings. According to one document a woman and a man appear as opponents together before the court.[27] Her appearance before the court and her subsequent action (see 3.3.4.1 below), and a private letter indicating that a woman could bring a matter before the king,[28] suggest that women had access to the courts. Slaves are not attested as initiating suit.

Women appear in court to defend themselves. In a decision from Ur, a lawsuit is instigated by the brother of a man who has divorced his wife. According to the text, another woman has detained the wife, and the brother accuses the "other woman" of having caused the husband to divorce his wife. When the other woman is asked by the judge to explain her role in the divorce, she declares that the man has been living with her but that since the judge has interrogated her, the man will not enter her bed again.[29] The woman clearly represents her own interests before the court.

3.2 *Procedure*

Private actions began outside of court, and written records indicate that many disputes were resolved without recourse to a trial.[30] If the parties did not settle, a litigant could "begin a lawsuit" and "argue the case" before the court.[31] Cases were heard by priests, mayors, governors, judges, or the king (in some cases with the title *šakanakku*; see 2.1.4.1 above). In a case involving a *šaknu* official, the litigant appealed first to a higher-ranking *šaknu* (probably the provincial governor), and together they went to the *šaknu* in question.[32]

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[27] TuM 5 64 (= Petschow MB Rechtsurkunden 8).
[28] PBS 1/2 (= Waschow, *Babylonische Briefe* . . ., 8).
[29] UET 7 8, and see 5.1.3.1 below.
[30] E.g., UET 7 16, 17, 18.
[31] E.g., UET 7 2.
[32] Actually to his successor; see UET 7 1.

3.2.1 Most documents record the appearance of both parties in court. In one case, following an accusation, the accuser and the accused are simply said to argue their case before the judge.[33] In other cases, the person instigating the lawsuit would bring the accused before the court. The wronged party could "seize" (*ṣabātu*),[34] "hold/imprison" (*kalû*)[35] a suspect, or "detain" (*esēru*, lit., "press")[36] or "hale" (*tarāṣu*) him before the judge.[37] One suspected thief, already seized and in prison (*kili*), petitioned for and received a hearing from a high priestess, who then released him on condition that he produce the true guilty party.[38] In a dispute over the purchase of a slave, litigants on both sides distrain persons until the dispute reaches the level of the *ḫazannu* (who orders a settlement).[39]

3.2.2 The trial began when first the accuser and then the accused presented their case before the judge(s). The judge(s) would then question the parties for clarification and to determine what measures had already been taken. At this stage the judges might ask for evidence, for example, they could send officers to interview witnesses,[40] or send the accused party to take an exculpatory oath (see 3.3.3 below). If the accused took the oath, his statement was considered truthful and the judge would decide in his favor; if he "turned away" from the oath, then his statement was considered false and the decision would go against him. In the one clear-cut instance of exculpatory oath-taking,[41] both parties are sent to the temple (though we cannot know if both parties actually took the oath). Witnesses could also be sent to take the oath.[42] The court could also order the parties to the river for the ordeal (3.3.4).

3.2.3 If the court could decide the case after hearing the evidence, it could order payment or restitution of property in the form of livestock[43]

[33] UET 7 9.
[34] E.g., UET 7 3, 15.
[35] E.g., UET 7 15.
[36] E.g., UET 7 6.
[37] E.g., UET 7 8.
[38] UET 7 7.
[39] UET 7 2.
[40] E.g., BBSt. 3 and BE 1/1 83.
[41] UET 7 6.
[42] E.g., TuM 5 69 (= Petschow MB Rechtsurkunden 13).
[43] UET 7 9, 43.

or persons.[44] Typically, the penalty for a stolen animal was payment in triple, whereas the penalty for breaking a contract was double. The court could also issue an order (*rikiltu*). A unique court order forbade a man from entering the house of a named woman not his wife[45] (see 3.1). A court order from Nippur prohibited a man from leaving the city gate (and declared that the herald (*nāgiru*) would be responsible if he did).[46]

If a challenger's claim to property was rejected as spurious, in addition to reaffirming the holder's claim, the court (in these cases, the king) could impose a severe penalty. For example, in two separate challenges to a landed estate, the plaintiffs were ordered to forfeit their own holdings.[47] In the same text, a legitimate claim to part of the estate was also heard by the king. After hearing the evidence, the court ordered the claimants compensated with an equivalent property and then ordered that the claimants' archival "sealed tablet of no contest" be handed over to the newly ratified owner. This measure would have precluded the compensated claimants from raising the same claim in the future.

If a sealed tablet recording obligations of a party had been made, the court could order the tablet broken once those obligations were met.[48]

The inviolability of the court's decision is reflected in the name given to the document recording the proceedings, decision, witnesses, and oath, which was known as a "tablet of no contest" (*ṭuppi lā ragāmim*).[49] A challenge to the court's decision, by the plaintiff or the defendant, was subject to severe penalties in excess of those imposed in the original decision.[50] The court could also order the parties to take an oath not to challenge the decision in the future.[51]

3.2.4 In one tablet from Ur, parties in dispute over a slave went first to one priest and then another before going to the mayor, who

[44] UET 7 10.
[45] UET 7 8.
[46] UM 29–16–340 (= Brinkman MSKH 24).
[47] BBSt. 6.
[48] E.g., UET 7 7.
[49] E.g., UET 7 2, 6, 7, 8.
[50] UET 7 10.
[51] UET 7 1.

seems to have ordered a settlement.[52] This sequence may reflect a system of appeals from lower to higher court.

3.2.5 There is scant evidence for execution of the court's decision. A text from Nippur records that the governor of Nippur issued an order holding the herald (*nāgiru*) responsible if a certain Nādinu should leave the city (see 3.2.3 above). We can surmise that the court had prohibited Nādinu from leaving Nippur and ordered the herald responsible to see that he did not.

3.3 *Evidence*

Conventional evidence was the testimony of witnesses and written documents. Even in cases in which the critical events had taken place generations before the trial, testimony of the *mudû* "ones who know" was used to determine the truth of the situation. If conventional methods were inconclusive, recourse was made to supra-rational methods—the oath and the river ordeal—to reveal the truth. Thus, there was no standard such as "beyond a reasonable doubt"; if the accused could not prove his innocence, then the decision would be remanded to the realm of the divine.

3.3.1 *Witnesses*

Free men appear as witnesses; women and slaves are not attested. Witnesses are recorded primarily in cases regarding claims to land. When the trial took place at some distance from the disputed land, the king dispatched officers to question "the ones who know" (*mudû*) and report back to the court. They might be asked for first-hand knowledge about land that has been claimed, including one case in which the witnesses reported that land claimed as "the gate of PN's field" belonged, in fact, to another field.[53] Witnesses were questioned not only for knowledge about an immediate contemporary situation but also for knowledge of situations centuries old, as in the case of Nebuchadnezzar BBSt. 6, when the king had witnesses questioned about ancient practice before granting privileges to the head of the province.

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[52] UET 7 2.
[53] MDP 6 31.

3.3.2 *Documents*

In one case adjudicated by the king, land purchased in good faith was "claimed" by the king and restored to a large estate.[54] In order "not to forfeit the hand of the buyer," the king ordered the sons of the buyer to be compensated and ordered those sons to hand over their "sealed record of purchase" (see 6.3.1.1 below). But tablets could also be inaccurate, incomplete, or deliberately falsified, and in most cases the courts relied primarily on witnesses, whose testimony could be supported by an oath, and on documents when their testimony could be supported by witnesses. A legal document was regularly encased in an envelope that was then sealed to ensure its integrity. Sealed tablets could be produced to demonstrate an outstanding obligation of one of the parties. Once the obligations had been met, the tablet could be broken.

3.3.3 *Oath*

3.3.3.1 The oath was a self-curse performed in the temple, in the physical presence of the emblem—or "weapon"—of the god (or multiple gods). No actual oaths from this time are known.

3.3.3.2 The effectiveness of the oath lay in the oath taker's fear of sanctions—divine, and presumably human if discovered. Thus, sending the parties to take the oath was a measure by which the court could test the truthfulness of the claims and also give the parties an opportunity to settle. If a party was afraid to take the oath and refused, he thereby essentially admitted the untruthfulness of his claim/testimony, and the trial was over. Some documents report simply that "PN_1 and PN_2 were sent to take the oath; PN_1 paid PN_2 such-and-such an amount." We can infer that PN_1 had refused to take the oath and the two agreed to settle.

3.3.4 *Ordeal*[55]

3.3.4.1 The mechanics of the ordeal are not made explicit. It takes place at the divine River, or river god. Middle Babylonian sources report that persons were sent to the ordeal;[56] that persons were either

[54] BBSt. 3.
[55] See Gurney, *Middle Babylonian* . . ., 10–12.
[56] UET 7 9; BBSt. 3.

cleared (*zakû*) by the ordeal or "returned" (*târu*), that is, not cleared;[57] that persons asked not to be sent to the ordeal;[58] and that persons refused to take the ordeal.[59] As with refusal to take the oath, refusal to submit to the ordeal meant a willingness to settle.

3.3.4.2 The ordeal is attested in legal documents from Ur and Nippur and in a *narû* recording a decision rendered at the royal court (presumably in Babylon). Although the texts report unequivocally that both sides were sent to the ordeal, they do not tell us if both sides were to plunge into the river. The ordeal is prescribed in cases of theft, rival land claims, and a dispute over a runaway slave. When there were counter-accusations, the ordeal also determined the question of false accusation.[60]

3.3.4.3 The ordeal was prescribed by a priest,[61] a judge,[62] a person likely to have been the mayor (*ḫazannu*),[63] and the king.[64]

4. Personal Status

4.1 *Citizenship*

4.1.1 In sale documents, children being purchased—for slavery or marriage—may be described as *wilid māt Karduniaš* "born of Babylonia," that is, "native born."[65]

4.1.2 If the qualification for citizenship is to be "native born," then slave status and citizenship are not incompatible. A text regarding the status of a woman refers to the time "when (the king) freed the (native-born) women of Nippur" (see 4.3.1 below), indicating not only that citizens could be enslaved but that they retained their citizenship-status and might eventually be returned to their freedom.

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[57] UET 7 9.
[58] UET 7 5 (?).
[59] UET 7 9 and TuM 5 64 (= Petschow MB Rechturkunden 8).
[60] See esp. UET 7 11 and 73.
[61] E.g., UET 7 5.
[62] E.g., UET 7 9.
[63] TuM 5 64 (= Petschow MB Rechturkunden 8).
[64] UET 7 11, 73; BBSt. 3, BBSt. 9.
[65] UET 7 2, 21, 24; CBS 12917 (= Brinkman MSKH 9).

4.1.3 *Foreigners*

A *narû* passage reads: "Whensoever in the future, be he Elamite, or Subarian, or Amorite, or Akkadian, officer, magistrate, who would come forward and litigate . . ."[66] This passage suggests that any of those persons so identified had access to the legal system.

Most *narû*s prohibit ordering a foreigner (*aḫamma*) or a stranger (*nakra*) to violate the monument.[67] Because these terms for "foreigner" occur in the same context as "blind man" or "ignoramus," the implication clearly is that such persons cannot know any better. Sanction for violating the monument is to fall upon the (native-born) person who would take advantage of a foreigner's ignorance in order to violate the entitlement. Such action is severely punishable. This implies that in some circumstances a foreigner might be excused for not understanding the laws or traditions of the land.

Foreigners might also be identified as "fugitive" (*munabittu*). In one text, a craftsman is identified both as "fugitive" and "Hanigalbatian" (*Ḫanigalbatû*).[68] The text itself commemorates a royal land grant to the man, ostensibly in appreciation for services rendered to the king. But in another text, a man identified as an "Elamite fugitive" fared quite differently: he was fettered with a heavy copper chain and assigned, presumably as a slave, to the "apothecary of the house of the assembly."[69]

4.2 *Class*

Class distinctions as known from the Old Babylonian law codes are changed in the Middle Babylonian sources.[70] The abstract term *awīlūtu/amēlūtu* "*awīlu*-ship" or "-status," denoting full citizenship in the earlier period, is used mostly in Middle Babylonian to designate slaves or slave status.[71]

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[66] L. 7076 (Iraq Museum) (= Arnaud, "Deux *kudurru* . . ." 170–72).
[67] MDP 2 99.
[68] MDP 2 pl. 20 (= Wohl, "Agaptaha . . .").
[69] D-K 2.
[70] Brinkman, "Forced Laborers . . .," 21.
[71] Ibid. Brinkman's conclusions are based on his study of temple ration lists, and he notes that in the Middle Babylonian period, the terminology is potentially a "legal historian's nightmare."

4.3 *Gender and Age*

4.3.1 In ration lists, persons are listed under the male head of household. This organization supports the conclusion that the archetypal "person" under the law was the male head of household. Nonetheless, there is evidence for women having a measure of independent legal status.

4.3.2 Women appear in legal contexts most frequently as sellers of their children, but in these transactions they are almost always accompanied by men.

4.3.3 Daughters of the king may have had a special status; there is evidence that they held large estates.[72] In a Kassite *narû*, the daughter of the king receives extensive agricultural land and settlements from him. In addition to setting up the monument for her—commemorating his gift and protecting her interest—the king gave her the sealed tablets regarding the land that he had purchased so that she might not incur any lawsuits in the future.[73]

4.3.4 In an extraordinary text, only partially published, a woman writes to the owner of her sister after the king has declared the (free-born) women of Nippur to be free. She writes in the letter on behalf of her sister's legal rights.[74] Three women appear as the principals in a contract probably from Nippur.[75] One borrows personal items (a lamp, two different garments) from a second woman and then gives them to a third. If the items are not returned, the first woman is to reimburse the owner of the items.

4.3.5 Finally, women appear on their own behalf, unaccompanied by men in a few court decisions. In one record, a man and woman appear together before the mayor of Nippur for a decision concerning an Elamite, presumably a slave, who had disappeared.[76] When the mayor sends them both to the river ordeal (see 3.3.4

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[72] Noted by Balkan, *Babylonian Feudalism*, 10.
[73] MDP 2 99.
[74] Kraus, "Rechtsterminus . . ." 38, and Brinkman, Review of *Symbolae* . . ., 259 and n. 6.
[75] CBS 7241 (= Brinkman MSKH 7).
[76] TuM 5 64 (= Petschow MB Rechtsurkunden 8).

above) the woman refuses to undergo the ordeal, offering to settle with her opponent instead. In another case, a woman is called before the court to explain her role in a man's divorce of his wife.[77] Not only does the woman appear on her own behalf, but she had previously distrained the man's wife. A private letter[78] records that a father enjoined his daughter to take a matter before the king, indicating that women could themselves petition the highest court in the land.

4.4 *Slavery*

4.4.1 *Terminology*

Akkadian *ardu* and Sumerian ìr, "(male) slave," are used in Middle Babylonian, as in other periods, to designate a hierarchical inferior as well as a servant. This is most clearly illustrated by the consistent use of *arassu*, "his slave," in the formulary of the grants of entitlement, for example, RN *šarru ana* PN *arassu irīm*, "RN, the king, granted to PN, his servant."

The terms for "(female) slave," Akkadian *amtu*, Sumerian gemé, are not encountered with a hierarchical meaning. Young slaves are referred to with the terms *ṣeḫru* (m) or *ṣeḫertu* (f), "young one."

4.4.2 *Categories*

4.4.2.1 *Debt Slaves and Chattel Slaves*

Native-born slaves might expect to enjoy citizen's rights and be restored to their freedom by a decree of the king (see 4.4.5 below). Parents sold their children in time of financial hardship,[79] and it was these slaves who were subject to freedom by royal decree. In one text, a man bought a young girl (a baby?) as a wife for his second son.[80] Part of her "purchase price" is food to be given to her parents. Children sold by their parents are usually identified as "Babylonian born" (see 4.1.1–4.1.2 above). This would seem to be a meaningful designation only if it established that the child was to enjoy the rights of citizenship.

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[77] UET 7 8, and see under 5.1.3.1 below.
[78] PBS 1/2 (= Waschow, *Babylonische Briefe* . . ., 8).
[79] E.g., UET 7 2, 21–25, 27.
[80] CBS 12917 (= Brinkman MSKH 9).

4.4.2.2 *Citizen and Foreigner*

An "Elamite fugitive" fettered with a heavy copper chain and assigned to the temple apothecary was presumably reduced to slavery, although not designated as such.[81]

4.4.2.3 *Special Rules for Female Slaves*

Following a royal decree mandating the freedom of the women of Nippur, a woman writes on behalf of her sister to her sister's owner: "My sister will not serve as a slave in your household. If you want my sister and will bring her (formally) into your household so that she may produce a family and bear children, she must be your wife."[82]

4.4.4 *Treatment*

Measures to prevent slaves from running away apparently included a metal chain fastened about the waist.[83] In one case, a slave apprehended after eight years is entrusted to the person with whom he was found to prevent him from escaping by sea.[84]

4.4.5 *Termination*

There are allusions to royal decrees terminating slave status. One comes in the form of a letter written by a woman to the "owner" of her sister. In the letter, the writer refers to the king's decree freeing the women of Nippur (see 4.4.2.3 above). Other evidence includes an adoption text from Ḫana (see 1.2 above) stipulating that the adopted son is "incontestable and free from claims or *andurāru*."[85] *andurāru*, known from earlier periods, is a royal declaration annulling debts and freeing debt slaves.

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[81] D-K 2. But see Wohl, "Agaptaha . . .," in which a "Hanigalbatian fugitive," who was also a craftsman, receives a royal land grant.

[82] Brinkman, Review of *Symbolae* . . ., 259 and n. 6.

[83] D-K 2.

[84] TuM 5 67 (= Petschow MB Rechtsurkunden 10).

[85] RBC 799 (= Podany et al., "Adoption . . .").

5. Family

Evidence for family law is meager.

5.1 *Marriage*

5.1.1 *Conditions*

5.1.1.1 There are a group of texts known as *ṭuppi zununnê*/*ṭuppi aḫuzzati* that are related to marriage (see 5.1.2 above). In a separate text, a father is said to buy a girl as wife (lit., for daughter-in-lawship) for his second son (*ana kallūti ana* PN *mārīšu terdinni ilqīši*).[86]

5.1.1.2 Slave and married status were not incompatible, although a man could not marry his own slave (i.e., give her the status of "wife") without giving that woman her freedom.[87] In one case, a girl was taken from the charge of one *šaknu* by another.[88] She was then taken by yet another *šaknu*, who handed her over to a weaver. Finally, her husband presented himself and she was released to him; in compensation to the weaver from whom she was taken, another girl was given in her place. It seems likely that the first girl had the status of a wife as well as of a slave, and perhaps her husband was able to retrieve her because the claim of a husband outweighed the claim of an owner.[89] At the same time, however, the weaver from whose charge the girl was removed was entitled to equivalent compensation. When a father purchased a girl as a wife for his son (see 5.1.2), she would have had the status of wife vis-à-vis her husband.

5.1.2 *Formation*

5.1.2.1 According to one text, a merchant purchased a girl for daughter-in-lawship for his son (*ana kallūti ana* PN *mārīšu terdinni ilqīši*). The sellers are the girl's parents, who receive garments worth two shekels of gold with the remainder of the price to be paid in food.

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[86] CBS 12917 (= Brinkman MSKH 9).
[87] So implied by the text cited in 4.4.2.3 above.
[88] UET 7 1.
[89] Although Gurney suggests that the husband may have had no legal rights and that by returning the girl to her husband, "the *šaknu* was acting *ex gratia*" (*Middle Babylonian . . .*, 19).

Although broken in the middle, the text mentions the brothers of the mother of the girl—presumably to preclude them raising future claims.

5.1.2.2 A small group of texts describes a financial agreement between a man and persons identified as "her father and mother." Six of these bear the heading *ṭuppi zununnê* ("Document of Maintenance") and one is headed *ṭuppi aḫuzati* ("Document of Marriage"). Other than this single occurrence of the term *aḫūzati*, the texts contain no reference to marriage or to marriage custom. Nonetheless, the texts do record some kind of financial agreement between a man and "her father and her mother," and marriage seems to be the only possible interpretation. It has been suggested that the *ṭuppi zununnê* tablets report the transfer of goods at the time of the marriage from the point of view of father-in-law, and the *ṭuppi aḫuzati* report the transfer from the point of view of the groom.[90] Some of the texts list only the groom and the parents of the bride as recipients of goods—foodstuffs, garments, jars. Others list persons other than the groom and the parents of the bride as receiving commodities. According to one interpretation, the persons listed received goods from the parents of the bride on behalf of the groom as guests for the wedding feast.[91] But this seems contra-indicated by the length of time specified for the maintenance period—in one text seven years, in another as many as fifteen. Another interpretation sees here the custom of *errebu* marriage,[92] whereby upon marriage the couple enters the household of the bride's father and the groom becomes the father's legal son. According to this interpretation, the texts thus record expenditures by the bride's father on the couple's behalf. Finally, these commodities disbursed to persons other than the parents of the bride may be payments made to the bride's relatives to compensate them and preclude them from raising future claims (i.e., maternal uncles of a sold girl renouncing future claims, discussed in 5.1.2.1).

5.1.2.3 A *narû* relates that land was given to a woman as *mulūgu*,[93] a gift to a daughter on the occasion of her marriage. According to

[90] CAD Z, 162–3.
[91] Greengus, "Marriage Ceremonies," 67–68.
[92] Gurney, *Middle Babylonian . . .*, 136–38.
[93] I R 70.

the inscription, the father-in-law was sworn explicitly not to make any claims upon the property,[94] indicating that a *mulūgu* gift was intended solely for the benefit of the woman (and her children) and not for her husband (and his family).[95]

5.1.3 *Status of* kallatu

Texts listing disbursements to household members include women identified as *kallatu* (daughter-in-law),[96] indicating that hers was a recognized legal status and that her father-in-law's household was responsible for her maintenance.[97]

5.1.3 *Divorce*

5.1.3.1 *Form*

A Ḫana text (see 1.2 above) indicates that, as in earlier periods, divorce was accomplished by verbal declaration.[98] A text from Ur pertaining to divorce describes peculiar circumstances.[99] A woman distrained the wife of a man for *napṭarūti*, thereby causing the husband to divorce his wife (*ana napṭarūti iklašī-ma aššassu ušēzibšu*). When called before the judge by the husband's brother and asked why she had caused the man to divorce his wife, the woman responded that up until the hearing the man had been having sexual relations with her. She declares that after the hearing, he will not enter her bed again. The court then prohibits the man from entering the house of the woman, day or night.

The key to understanding the legal principle here may lie in what the text does not report, namely, the status of the woman brought before the court. She is not married (see 8.3.1 below), and she seems

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[94] *ana baqrī lā rašê nīš ilī u Ištaran ina narê šuātu izkur.*

[95] See Westbrook, *Marriage Law*, 27.

[96] E.g., Peiser Urkunden 1; PBS 2/2 103; BE 14 58, 126. Possibly, they refer to a betrothed girl living in her father-in-law's house until old enough for completion of the marriage.

[97] Although note that in BE 14 58, curiously, the woman is included in the list without a corresponding amount of grain received and, in fact, after the disbursements have been totaled.

[98] MLC 613: 8–6: *šumma* ^{m}PN *mussa ana* ^{f}PN *aššatīšu ul aššatī-mi atti iqabbi* (If PN_1, her husband, should say to PN_2 his wife, "You are not my wife"); 11–13: *u šumma* ^{f}PN *aššassu ana* PN *mutīša ul mutī-mi atta iqabbi* (And if PN_2, his wife, should say to PN_1, her husband, "You are not my husband"). Presumably each statement is followed by penalties. Passage cited in Podany et al., "Adoption . . ." 48, n. 39.

[99] UET 7 8.

to possess a remarkable degree of socioeconomic independence. Gurney suggested that she may be the proprietor of a brothel,[100] and Westbrook, drawing upon two pertinent Old Babylonian legal texts, suggested that she is a prostitute.[101]

What remains to be explained in the Middle Babylonian text is the initial act by which this woman detained the wife of the man. The meaning of "she detained her for *napṭarūti*" continues to elude investigators. Nonetheless, much of the scenario can be reconstructed as follows: a prostitute detained the wife of a man, causing the husband to divorce her. When called into court to explain why she caused the man to divorce his wife, the prostitute answers that the man had been sleeping with her, but that from now on he will not enter her bed again. Her response to the question of his divorce suggests her position is one of some claim—perhaps even prior claim—to the man, something along the lines of a common-law wife. She had detained the wife to press the man to divorce, presumably so that they could marry and she could assume wife status.

5.2 *Children*

A number of Middle Babylonian texts from Ur record the sale of children. Several persons act as the sellers of the child, and each text concludes with severe penalties if anyone should come and later claim the child as a family member. In one text, a girl is sold by her parents, and her father's brother and her mother's brother are also listed among the sellers.[102] In a very damaged text, a boy is sold by his mother and maternal uncle.[103] In similar texts, a woman is among the group of men selling the child and is identified as the mother. None of the men is identified as the child's father, and we must assume that they are male relatives who might pose a claim to the child in the future. In some texts recording the sale of a child, none of the sellers is identified as a parent. Although the reason is not stated, it is most likely that dire financial necessity lay behind these sales, as in other periods.

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[100] Gurney, *Middle Babylonian* . . ., 44.
[101] Westbrook, "Morals . . .," 756.
[102] UET 7 25.
[103] UET 7 2.

5.3 *Adoption*

According to a broken adoption and inheritance text from Ḫana (see 6.2.1.2 below), an adoption could be dissolved with a statement by the adopted son to his parents: "You are not my father" or "You are not my mother."[104] The penalty in this text, however, seems unusually harsh: the head of the adopted son who breaks the contract "will be smeared with hot asphalt" (a.esir$_2$ ud.du.a *emmam qaqqassu ikkappar*),[105] and he will pay a penalty in silver. As the adopting couple already has a (presumably biological) son who will follow the adopted son in rank, and because the penalty for breaking the contract includes a payment in silver, it would seem that, as in many contemporary Nuzi adoptions, the function of this adoption was to enable the transfer of family property to an adopted son in exchange for future financial support.

6. Property and Inheritance

6.1 *Tenure*

There is some evidence for royal land grants made to reward officers or ensure their fealty, and as such they are comparable to royal grants from earlier periods. During the Kassite Dynasty, however, the king could grant land to an individual as a permanent holding, a grant that no one, not even a future king, could reverse or encroach upon in any way. This innovation in land tenure occasioned the innovation of a form of public documentation, the Entitlement *narû* (see 1.2 above). The terms of the grant—as well as fierce imprecations against its violation—were inscribed upon stone monuments embellished with sculpted divine emblems and placed in the temple. In this way, the monument commemorated the recipient's entitlement to the holding and protected his right to pass it down to his heirs. These monuments were also used to commemorate acquisition of sources of perpetual income other than land, such as temple prebends and exemptions from tax and labor obligations

[104] Presumably parallel statements by the adoptive parents, which are not preserved, also would suffice to dissolve the relationship.

[105] RBC 779 (= Podany, et al., "Adoption . . .").

traditionally due the crown.[106] The *narû*s are our best source for information about land tenure during the Middle Babylonian period.

6.2 *Inheritance*

6.2.1 *Male Inheritance*

6.2.1.1 Primary heirs were the legitimate sons of the deceased. In the absence of a son, both daughters and male collaterals were potential heirs. A *narû* documenting legal battles over the dispensation of an estate illuminates these considerations.[107]

According to the inscription, a priest died without heir, and the king bestowed his estate[108] upon another priest. This recipient's claim to the estate was later challenged by two men claiming "brotherhood" (*aḫḫūtu*) to the deceased and a third man claiming to be "son of a daughter of the house of the deceased" (*mār mārat ša Bīt* PN). Witnesses who were questioned testified that the first two challengers "were not close for brotherhood to the deceased" (*ana aḫḫūti ana* PN *lā qerbū*), and as for the third challenger, witnesses testified that "his mother was not named" (*ummāšu lā zukkurat*). In the eyes of the law, these conditions apparently rendered the claims of the challengers spurious: the king dismissed their suits, literally "sent them away," and "afterward caused them to forfeit the estates of their fathers" (*šarru ībukšunūtī-ma arki bītāt abbêšunu ušedkīšunūti*).[109]

After the passage of some years, a man seized part of the estate claiming that he was the brother of the deceased and that he had been too young at the time to object to the original bestowal. Now he wanted to assert his claim to a share of the estate that he felt was his. The king now on the throne ordered the circumstances of the claimant and the estate investigated. When he could not come to a decision based on the available evidence, he sent both the

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[106] Slanski, Study . . .

[107] BBSt. 3.

[108] The text is concerned with land and does not state what other property the estate might have included.

[109] Between the first and the third claims, a different challenge was posed to the priest's title. Another individual apparently had sold some lands belonging to the estate and the priest wanted to reclaim them. The king now on the throne had the sale investigated. After reviewing the evidence, he awarded the previously sold land to the priest but ordered that he must compensate the sons of the now-deceased buyer who had purchased in good faith.

claimant and the son of the priest (by then also deceased) to the water ordeal.

From this text we learn that where the original owner had died leaving no male descendants but one female descendant, inheritance could pass through the latter and the deceased's brothers, either by blood or in law through "being brought close for brotherhood." Because one's maternal parentage cannot be in doubt, the problem of the claimant's mother not being named (*lā zukkurāt*) must mean that she was a daughter of PN through a slave and that PN had not legally recognized her as his child. Her child, then, had no legal claim to the estate.

6.2.1.2 An adoption and inheritance text from Ḫana illustrates that the eldest son, in this case the adopted son, receives two inheritance shares.[110]

6.2.2 *Female Inheritance*

A *narû* records an instance whereby land from the paternal estate was given to a daughter, and the land was termed *mulūgu* (dowry).[111] In an adoption and inheritance text from Ḫana (see 6.2.1.2 above), a parcel of property is described as the "share of PN, which she received from the house of her father" (ḥa.la ^{mf}PN *ša in bīt abīša telqâ*). This evidence indicates that a daughter could receive a share of her paternal estate either as a dowry or as inheritance. The same woman is named earlier in the text as the adoptive mother in the contract. It would seem that her dowry is described here to preclude it from being claimed as part of her husband's estate in the event of his death.

7. Contracts

Contract texts are written records of verbally executed agreements, and they record, usually using formulaic Sumerian or Akkadian expressions, the vital information about the contract: the topic of the

[110] RBC 779 (= Podany et al., "Adoption . . ." For texts from Ḫana, see 1.2 above.

[111] Marduk-nādin-aḫḫe, the "*Caillou Michaux*." A Neo-Babylonian *narû*, Nabû-mukīn-apli, BBSt. 9, also documents a gift of *mulūgu* made to a daughter from her father's estate upon her marriage.

contract, names of the parties, operative clauses, any special contingencies, witnesses, date, and seal impressions[112] of participants and witnesses. If it records certain obligations still to be met, the text might add that when so-and-so fulfills the conditions, his tablet will be broken.

7.1 *Sale*

The formulary of the Middle Babylonian "purchase" texts records that the purchaser bought some commodity from the seller. The sale was complete once the purchase price was accepted.

7.1.1 Sale texts record an executed contract; in a very few cases (see 7.1.2.1), contingent obligations remained to be fulfilled. The purchase of persons, animals, furniture, and land is attested.[113] The written contract could serve as the deed of title.[114] The sale contract is written from the buyer's point of view,[115] sealed by the seller and ultimately retained by the buyer. Most sales were recorded on clay tablets, and additional information about land sales is provided by *narû*s (see 6.1 above). The texts of the clay tablets are formulaic, employing set phrases in Sumerian known from earlier periods: the contract includes operative, completive, and contingency clauses. The texts close with a list of the witnesses, a reference to the sealing of the document, and the date.

7.1.1.1 *Operative Clauses*

The operative clauses include a description of the sale item, a statement that PN_1 (the buyer) has purchased (*išām*, in.(ši.)sa_{10}, *ilqi*) the item from (*itti*) PN_2 (the seller), and a statement that the amount paid was the full price (šám.til.la.bi.šè, *ana šīmīšu gamrūti*). This was followed by a statement of the price the sellers received (*maḫir*). In

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[112] In lieu of a seal, a fingernail could be pressed into the clay.

[113] No land-sale texts from this period have been recovered (see Oelsner, Review . . ., 290–91, but note Gurney, *Middle Babylonian* . . ., 4, n. 8, referring to a Sippar tablet inventoried in ABAW 87 100, IB 1018b). Nevertheless, BBSt. 3 (see 6.1 above) certainly attests to the existence of such documents and their role as proof of title.

[114] See BBSt.3 (6.3.1.1), in which sons of the purchaser of a piece of a disputed estate are sent home to find their father's sealed record. The king ordered the tablet handed over to the new owner of the property.

[115] UET 7 23 may be an exception, written from the point of view of the sellers; see Gurney, *Middle Babylonian* . . ., 5.

sales of persons, the sellers often include someone identified as the "surety" (*kattû*), who apparently was liable for the sale (see 7.4). The statements are usually written in Sumerian but occasionally in a mixture of Sumerian and Akkadian (e.g., x item for y silver PN_1 *ki* PN_2 *išām* šám.til.la.bi.šè). The documents invariably state the total sum paid for the sale item.

7.1.1.2 *Completion Clauses*

The completion clauses are written in Akkadian. Predicative forms of the verbs *gamāru* "to complete," *apālu* "to answer, satisfy," *zakû* "to be cleared, free of obligation"—and often all three[116]—signify that the transaction is complete, and are typically followed by the statement *rugummâ ul išû* "he shall have no claims."[117]

7.1.1.3 *Contingency Clauses*

7.1.1.3.1 In cattle sales, the two parties renounce future claims to the animal(s) and the purchase price.

7.1.1.3.2 When children are sold, the contract prohibits family and relations from raising future claims to the sold individual. Oath-taking was intended to forestall such claims in contracts from Nippur,[118] and contracts from Ur prescribe severe physical penalties for raising claims, including the driving of a metal peg or the pouring of molten metal into the mouth.

7.1.1.3.3 In sales of persons and animals, the contract stipulates that the seller must pay double if the sale item is "vindicated," that is, successfully claimed by a third party.

7.1.2 The sale was in principle complete once the purchase price had been received. There is evidence, however, for transactions on a credit basis. In a text from Ur, PN_1 bought a cow valued at nine shekels of silver.[119] After stating that the cow was purchased at her

[116] I.e., "It is complete; he (the seller) is satisfied; he (the buyer) is free (of further obligations)."

[117] See Gurney, *Middle Babylonian* . . ., 3–8.

[118] E.g., TuM 5 66 (= Petschow MB Rechtsurkunden 1); CBS 12917 (= Brinkman MSKH 9).

[119] UET 7 33.

full price, the text goes on to state that PN_1 will pay (*inamdin*) PN_2, the first named seller, two garments valued at nine shekels, as well as a large jar of liquor and an amount of grain. The unusual use of a verb in the durative is unexplained, as are the payments above the nine-shekel price of the cow. It has been suggested that these additional commodities served as interest on the purchase price not yet paid and potentially were regarded as a loan from the sellers to the buyer.[120]

7.1.2.1 In another text from Ur, the buyer contracts with an individual to purchase a suckling calf.[121] The text is broken, and it is not possible to determine if the price has been or is to be paid in the future. In any event, the man receiving the money is to deliver the calf early in the following year. In another contractual purchase, a merchant (*tamkāru*) receives a sum of money as the price for a girl.[122] As merchants frequently served as buyers under contract, the girl presumably was to be purchased and delivered by the merchant at a later date.

7.1.3 Variations in the formulary of sale contracts, including contingency clauses, may have their origins in different locales.[123]

7.2 *Loan*

Few loan texts are known, and only loans of grain or personal items—not silver—are thus far attested. Rates of interest are not specified.

7.2.1 *Terms*

Two types of loan, both well known from preceding periods, are attested: the *ḫubullu* (Sum. ur_5.ra), an interest-bearing loan of grain, and the *ḫubuttu* (variant: *ḫubuttātu*), a loan given without interest. A singular text from Ur records the loan from one woman to another of personal items to be returned or recompensed at a later time (see 4.3.1 above). Another text records that to meet his regular contributions to the temple brewer, a man borrowed (*iḫbutu*) from that

[120] So Petschow, see Gurney, *Middle Babylonian* . . ., 103, note to rev. 1–3.
[121] UET 7 35.
[122] TuM 5 72 (= Petschow MB Rechtsurkunden 7).
[123] See Gurney, *Middle Babylonian* . . ., 7.

brewer malt, which he contracts to pay back (*qāt* PN *utâr*) in grain at an unspecified date.[124]

A transaction known in Old Babylonian texts as *našpakūtu*, whereby one person stored grain with another, may be reflected in a settlement agreement from Ur.[125]

7.2.2 *Repayment*

7.2.2.1 When specified, loans of grain are due to be repaid the day of the harvest.[126] Some texts record that when the debtor paid the loan, he may break his seal (i.e., the tablet bearing his seal; *kunukkašu iḫeppe*).[127]

7.2.2.2 If a debtor had borrowed grain and at the time of payment had no grain to give, he could pay with another commodity.[128]

7.2.2.3 Several means were open to the creditor to press the debtor for payment. In the case of grain deposited for storage (see 7.2.1 above), the depositor of the grain detained (*ēsir*) the individual responsible for its storage, and eventually the two litigated (*dīna idbubū*) before a priest. In other texts, a creditor could seize a debtor who has not paid,[129] and a surety who had paid to have prisoners released—in effect loaning the bail money—could then detain the prisoners himself until his bond was repaid.[130]

7.3 *Pledge*

In a text from Ur, a man "stands an ox and its hire as pledge" (*ana manzazūti ulziz-ma*), presumably in return for a loan.[131]

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[124] UET 7 47.
[125] UET 7 6. PN_1 had placed an amount of grain in the house of PN_2. After PN_2 died, PN_1 litigated against PN_3 (probably his son) for payment.
[126] E.g., UET 7 48.
[127] E.g., UET 7 17; BE 14 111, 115.
[128] E.g., UET 7 36, concluded before witnesses.
[129] E.g., UET 7 18.
[130] UET 7 16.
[131] UET 7 46.

7.4 *Distraint*

The creditor "seized" (*iṣbat*) the debtor, or "detained him in confinement" or "in his house" (*ina kili* or *ina bītīšu ikla*). Distraint is documented most frequently for failure to pay a debt,[132] including situations in which a surety has secured release of a prisoner and then seizes the prisoner himself to recover his bail,[133] and in failed sale transactions.[134] The debtor himself is most often the distrainee, although family members were also subject to distraint.[135] In sales, the surety (*kattû*) and his family were subject to distraint.[136]

7.5 *Debt and Social Justice*

Four texts from the Ḫana kingdom (see 1.2 above) stipulate provisions in the event of *andurāru*: a royal act of remission of debts and manumission of debt slaves. In these texts, concerning real estate and adoption, the commodities exchanged (i.e., property and child) are said to be "irrevocable; not subject to claim or to *andurāru*" (*naṣbum ša lā baqrim u lā andurārim*).[137] Additional evidence for *andurāru* in the Ḫana region is provided by a date formula: "The year when Ḫammu-rabi, king, established *andurāru* in his land." From Babylonia proper, a literary text praises King Kurigalzu as he "he who established *andurāru* of the people of Babylonia" (*šākin andurār nišī Bābili*) (see 2.1.1 above).

The intent of the *andurāru* clauses in the Ḫana contracts is to guarantee the buyer/adopting parents that the transfer cannot be revoked by royal decree of debt cancellation. It is not clear on what basis exemption was possible in these cases.

7.6 *Suretyship*[138]

Suretyship is documented for the release of persons imprisoned for debt,[139] for failure to execute terms of a contract,[140] or on suspicion

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[132] E.g., UET 7 18.
[133] E.g., UET 7 16, 17, 18, and see 7.2.2.3 above.
[134] E.g., UET 7 2, 24.
[135] E.g., Peiser Urkunden 116 (a daughter).
[136] E.g., UET 7 2, in which the wife of the surety is distrained by the dissatisfied buyer of a slave.
[137] See Lion, "L'*andurāru*," 2–3.
[138] See Petschow, *Mittelbabylonische* . . ., 33–36.
[139] UET 7 16, 17, 18.
[140] UET 7 24.

of theft.[141] According to the texts, the surety "took charge of him (the prisoner)" (*pūssu imḫaṣ*, lit., "struck his forehead"), "gave his seal(ed tablet)" (*kunukkašu iddin*), or "stood for him" (*izizz*) and "set him free" (*ušēṣīšu*). The surety could agree to turn over the released prisoner or himself pay what was owed. In cases of theft, he might agree to turn over the culprit or himself pay the penalty,[142] or make good losses suffered.[143] The surety himself could be liable to pay whatever the debtor owed[144] or be himself subject to seizure[145] if he failed to produce the suspect by the appointed time. Having purchased a prisoner's release, the surety had the right to imprison the debtor to recover his bond (see 7.4 above).

The surety's penalty for failure to fulfill the terms of his contract varied from multiples of two to twelve.[146]

7.7 *Hire*

Information about hire is gleaned from references to movables and their hire (*idātū*) in expense lists. We have no texts concerning lease of land.

7.7.1 *Movables*

7.7.1.1 *Animals*

Plow oxen are hired. If the animal suffers damage under the hirer's care, he is obliged to make good the owner's loss.[147]

7.7.1.2 *Vehicles*

Hire of boats and wagons appear in expense lists.[148]

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[141] UET 7 19, 20 (suspicion of stolen goods), 75 (cattle); BE 14 119 (cattle); TuM 5 67 (= Petschow MB Rechtsurkunden 10) (possession of a runaway slave).

[142] UET 7 75.

[143] BE 14 119; Petschow MB Rechtsurkunden 10.

[144] UET 7 18.

[145] UET 7 17.

[146] For penalty multiplied by a factor of two (UET 7 2, 24); six (?; BE 14 119); ten (UET 7 10); twelve (UET 7 75).

[147] E.g., BE 14 48, whereby the hirer failed to provide a replacement ox and must make good the loss of the owner's crop.

[148] E.g., BE 14 65; BE 15 19, 66, 81, 112, 159, 179.

7.7.2 *Persons*

Texts concerning runaway or misappropriated slaves speak of their hire,[149] indicating that slaves could be hired out, probably according to a standard rate.

7.7.3 *Services*

7.7.3.1 *Wet nurse*

Women identified with the title "wet nurse" (*mušēniqtu*), appear in lists of temple disbursements. As in earlier periods, their services were probably available for hire.

7.7.3.2 *Herds*

Flocks of small cattle could be hired out. The herdsman assumed responsibility for the herd in exchange for a portion of wool, meat, and other animal products.[150]

7.8 *Partnership*

Partnerships were formed both for agricultural and non-agricultural undertakings. According to one text, two men "came together with a priest for partnership" (*itti aḫamiš ana šutapūti illikū*),[151] and they received two cows from him and (in exchange) cultivated his field. When one—perhaps both?—cows died, the two partners negotiate who will replace the property of the priest. The text records a settlement conducted in private without a hearing, indicating that the responsibilities and liabilities for such partnerships were commonly understood. Another text documents that a man registered to his partner an amount of grain for brewing.[152]

7.9 *Deposit*

A settlement document records a dispute over grain deposited for storage (see 7.2.1 above).

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[149] TuM 5 67 (= Petschow MB Rechtsurkunden 10): *ṣeḫra u idātīšu ša ištu ūm halqu*, and TuM 5 69 (= Petschow MB Rechtsurkunden 13): *amīlūta u idātīša ša ūmi našû*.

[150] E.g., BE 14 48.

[151] UET 7 4.

[152] TuM 5 21 (= Petschow MB Rechtsurkunden 41).

7.10 Contracts regarding marriage and adoption are discussed under the appropriate status.

8. Crime and Delict

Private and archival documents, including dispute settlements, contracts, and letters, provide scattered information about homicide, adultery, theft, and personal and property damage. The word *sartu*[153] has a wide range of uses and can be translated "crime," "misdeed," "theft" (as in "the crime he committed," *sarta ippušu*), or "falsely/falsehood" (as in "my four donkeys that K. fraudulently led away," 4 *immerīya ša* PN *sarti ībuku*).[154] Additionally, *sartu* can be used to signify reparation for an offense. The word *ḫibiltu* conveys a general meaning of "(criminal) damage," for example, "the damage that PN caused" (*ḫibiltu ša* PN *uḫabbilu*).[155]

8.1 Homicide

The same verb, *dâku*, is used to signify "murder," "kill" (presumably also accidentally), and "execute." Responses to homicide vary. Causing the death of a slave was penalized with a payment far greater than the replacement of the slave, and the penalty for causing other deaths seems to have been death of the perpetrator.

A tenth-century *narû* reports that a man struck with an arrow and killed a female slave of another man.[156] The victim also is identified as the wife of a third man. The king heard the case, as expected in cases concerning loss of life (see 2.1.4.1 above) and ordered the killer to pay the owner of the victim seven persons.

In a damaged text listing persons and their condition,[157] a restored line reads: "As they have sworn [by the king], he has been killed; his killer lives" ([*nīš šarri*] *kî ūšēlû dīk dā'ikšu baliṭ*).[158] The juxtaposition of the statements "he has been killed" and "his killer lives" implies that death was the expected penalty for murder.

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[153] Also *ṣartu*, *saštu*, *ṣaštu*; see CAD S 186–89.
[154] CT 43 60: 5–6.
[155] UET 7 6 and 21.
[156] BBSt. 9.
[157] D-K 8.
[158] Restoration after CAD D 39.

The Amarna Letters provide additional clues about redress for homicide. In EA 8,[159] the Babylonian king Burnaburiash writes to Pharoah that some persons "killed my merchants and took away [th]eir money . . . Put to death the men who put my servants [to] death, and so avenge (lit., "return") their blood." Burnaburiash implies that blood vengeance was the appropriate response to murder in his country.

8.2 *Injury*

A reference to personal injury occurs in a Nippur text listing prisoners and their offenses.[160] According to the text, a man was jailed "because he struck his big brother" (*aššum aḫšu rabâ imḫaṣu*).

8.3 *Sexual Offenses*

In an unparalleled case concerning sexual infidelity, a man brings a woman to court for having caused his brother to leave his wife[161] (see 5.1.3.1, above). When questioned, the woman responds that the man will not enter her bed again, and the judge prohibits him from entering the woman's house, under penalty of being "arrested, examined, and questioned in accordance with the order of PN" (*kî rikilti* PN *ippad issaniq u iššâl*). Because the woman is not censured in any way, we can conclude that she was not married and that her actions did not constitute the crime of adultery. Neither is the (married) man charged with a crime or ordered to pay a penalty.

8.4 *Theft and Related Offenses*

8.4.1 *Definition*

The verb *šarāqu* was applied to the taking of property. A thief himself is known as *sarru*, with bi-forms *sāru* and *ṣarru*—words that at root mean "false" or "fraudulent" and can also designate "criminal" in general. The concept of theft included the receipt of stolen goods, as seen in the equation between "received" and "stole" implied by the statement "this is the total of what PN received and stole and (what) the administrator (?) took from PN_2 (*napḫaru annû ša* PN *imḫuru*

[159] Knudzton, *El-Amarna-Tafeln* I; translation by Moran, *Amarna Letters*, 46.
[160] PBS 2/2 116.
[161] UET 7 8.

u išriqū-ma lú.šid(?) *ina qāt* PN_2 *īkimūšu*).[162] In the letters from Amarna, *ḫabātu* signifies "taking away," with the sense of "raiding" or "plundering," and is used to describe violent crimes against travelers in Syro-Palestine.

8.4.2 *Sanctions*

8.4.2.1 Only payments are recorded as penalty for theft, and these are signified with verbs of restitution—*apālu*, *šullumu*, and *turru*, literally, "to pay (back)," "to make whole," and "to return." The penalty was a multiple of the item stolen, ranging from twofold[163] to fourfold,[164] payable in kind or in value. Thus, failure to return borrowed items was not considered theft (see 7.2.1 above) and was subject to restitution only of the value of the items.

8.4.2.2 A Middle Babylonian tablet indicates that a man caught in possession of an escaped slave was obliged to turn over the slave plus the value of the slave's rent for the period since his flight, in other words, simply to make good the owner's loss without any criminal penalty.[165]

8.4.3 *Burglary*

An apparently unique phrase, *ḫibit bīti* ("housebreaking") heads a list of items that PN and PN_2 had burgled[166] (lit., "broken," *ša* PN *u* PN_2 *iḫpû*) and were seized in the hands of the housebreakers.[167] The verb *mašā'u* was used for theft of barley from the storage piles: "thieves who cut into the grain piles of GN and stole the barley" (*ṣarrūti ša karâ ša* GN *ikkisū-ma uṭṭata imšu'ū*).[168]

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[162] Peiser Urkunden 96.
[163] E.g., UET 7 43.
[164] E.g., UET 7 10.
[165] TuM 5 67 (= Petschow MB Rechtsurkunden 10). The text in fact describes a more complicated situation. A surety had secured the release of the one who had harbored the slave but was obliged to turn over the slave and his wages if he failed to produce the harborer by the appointed date.
[166] For similar lists from Nuzi, see Gurney, *Middle Babylonian* . . ., 115.
[167] UET 7 40.
[168] WZJ 8 Taf. I (= HS 108).

8.4.4 *Receiving*

8.4.7.1 A person imprisoned for possessing stolen goods could petition for release in order to produce the party—presumably the thief—from whom he had received the goods.[169] If a surety secured his release, the surety assumed the obligation to make good the losses if the thief was not produced (see 7.6 above).

Abbreviations

Brinkman MSKH	Brinkman, *Materials* . . ., by text number
D-K	Dūr-Kurigalzu; refers to texts published in Gurney, "Texts from Dur-Kurigalzu"
Peiser Urkunden	Peiser, *Urkunden* . . ., by text number
Petschow MB Rechtsurkunden	Petschow, *Mittelbabylonische* . . ., by text number
SBKI	Hinke, *Selected* . . ., by text number

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[169] E.g., UET 7 7 and 40.

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MESOPOTAMIA

MIDDLE ASSYRIAN PERIOD

Sophie Lafont

1. Sources of Law

1.1 *Law Codes*

No code of laws in the modern sense has been discovered for the Middle Assyrian period. There is, however, a collection of fourteen tablets, the so-called Middle Assyrian Laws (MAL), some of them very fragmentary, compiled in the manner of modern "restatements," which organize laws broadly by subject matter. Thus, Tablet A, the best preserved, sets out laws relating to women ("*Frauenspiegel*"); Tablet B deals principally with landed property, and Tablet C+G with movable property. Most of these documents are copies from Assur from the eleventh century, based on fourteenth-century originals.[1]

1.2 *Palace Regulations*

The so-called "Harem Edicts" are a collection of twenty-three regulations on nine fragmentary tablets. Composed in the reign of Tiglat-Pileser I (1114–1076), it comprises the decrees (*riksū*) of nine kings over three centuries, between 1363 and 1076. They concern the internal running of the palace and the royal harem.[2]

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[1] Translation and/or commentary: Driver and Miles, *Assyrian Laws* . . .; Cardascia, *Lois* . . .; Saporetti, *Leggi* . . .; Borger, "Gesetze . . ." (Tablet A only); Roth, *Law Collections* . . ., 153–94.

[2] Editio princeps, cf. Weidner, *Hof* . . .; supplemented by Cardascia, *Gesetze* . . ., 286–88 and Roth, *Law Collections* . . ., 195–209. Citation follows the numbering in Roth.

1.3 *Documents of practice*

These documents come primarily from Assur,[3] Tell Billa,[4] and Tell al-Rimah,[5] but also from sites in northern Syria such as Tell Fakhariya,[6] Tell Chuera,[7] Tell Šēh Ḥamad,[8] and Tell Sabi Abyad.[9] Some of these tablets come from the archives of the leading noble families, documenting their public and private activities, and some from the archives of the royal administration. They mostly concern loan and sale.

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The Administration*

2.1.1.1 The political rise of Assyria begins in the reign of Aššur-uballiṭ I (fourteenth century) with a series of military successes that enable it to expand into northern Syria (Jezirah). Diplomatic relations with Egypt underline this development: Assyria treats Pharaoh at first with deference but soon thereafter as a political equal.[10] Power is in the hands of the king, in a very centralized system. The prince was perhaps a co-ruler, which would account for oaths sworn by the name of the king and his son (cf. MAL A 47). The kingdom was divided into provinces (*pāḫutu*) administered by governors (*bēl pāḫāti*), who were responsible for provisioning and transport,[11] and into districts (*ḫalṣu*) run by commandants (*ḫassiḫlu*), who were in charge of supply services (provisioning, stores, and census of land holdings). These two offices were later combined in that of the *šaknu*. Villages were represented by "mayors" (*ḫazānū*) and "inspectors" (*rab ālāni*), assisted by officials responsible for collecting the local grain tax and distributing rations to workers. Alongside this local administration,

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[3] Pedersén, *Archives* . . .; Ebeling, KAJ; Schroeder, KAV.
[4] Finkelstein, "Billa . . ."
[5] Saggs, "Tablets . . . 1965"; Wiseman, "Tablets . . . 1966."
[6] Güterbock, "Tablets . . ."
[7] Kühne, "Verwaltungsarchiv . . ."
[8] Cancik-Kirschbaum, *Briefe* . . ., ix–xii, for bibliography relating to the site.
[9] Akkermans and Rossmeisl, "Excavations . . ."
[10] Cf. EA 15 and 16, cited by Kuhrt, *Near East* . . . 1, 350–51.
[11] Kühne, "Aspects . . .," 5–6.

the central administration had numerous dignitaries who reported directly to the king: the *qēpu* was mainly responsible for overseeing government transactions and supervising the governors, who had to account to him for their local administration, while the vizier (*sukkallu*) and grand vizier (*sukkallu rabiu*) had military, civil, and judicial functions. The latter played a decisive political role, as is shown by the example of Aššur-iddin, who held this office at Dūr-katlimmu for several years in the reign of Tukulti-Ninurta I and was responsible for the administrative organization of the new conquests in the West. Finally, the "mayor of the palace" (*rab ekalli*) ran the staff and buildings of the palace. The royal administration included many eunuchs (*ša rēšī*) who held high office, especially in the harem.[12]

2.1.1.2 The economically powerful great families maintained close relations with the political powers and held high office in the administration.[13] Some of their members were chosen as eponyms (*limmu*) for dating documents. Their archives show that they entrusted the management of public and private business to their own household staff, while keeping the two spheres separate. Officers make contracts with individuals whereby they receive "gratuities" (*šulmānu*, lit. "presents") in the form of animals, barley, metal or persons, in remuneration for their work or their intervention in a difficult case.[14]

2.1.2 Administrative acts often take the form of private legal transactions, especially by use of debt notes, which are attested solely in the context of public affairs. Seed or animals, sometimes men, are provided by the central administration to an individual in anticipation of a specific delivery which, once made, extinguishes the debt. The debtor may then "break his tablet" (*ṭuppašu ḫepû*).[15] Apart from this characteristic clause, administrative documents are unwitnessed and are drafted "to the debit of" (*ša qāt*) the supplier. The state, or

[12] Grayson, "Eunuchs . . ."

[13] Postgate, *Archive of Urad-Šerūa* . . ., xxiii–xxv, and "Structure . . .," 202; for the commercial activities of Bābu-aḫa-iddina, high official of Shalmaneser I, cf. KAV 98 and Freydank and Saporetti, "Texte . . .," and Donbaz, "Archive . . ."

[14] Finkelstein, "*Šulmānu* . . ."; David and Ebeling, ARU, nos.84–93.

[15] Koschaker, *Neue keilschriftliche* . . ., 137–145; David and Ebeling, ARU, nos. 78, 81; Freydank, "Archiv . . ."

more rarely, the temple, lends grain, drawn from the public granaries (*bīt ḫašīme*)[16] or from temple reserves allocated for this purpose.[17]

2.1.3 *The Courts*

Judicial powers are shared by the king as ex officio judge under the title *aklu* (see 3.1), administrative officials (see 3.2 below), and judges proper (*dayyānū*). Nothing is known of their training or professional qualifications. According to MAL, they hear the declaration of a widow without means of support and investigate her circumstances (MAL A 45), they establish a landowner's dereliction of duty with regard to irrigation in common (MAL B 17–18), and they attest in writing to the due discharge of formalities in a sale of land (MAL B 6). They have penal jurisdiction in matters of adultery (MAL A 15), theft (MAL C+G 8), and witchcraft (MAL A 47). There is perhaps a geographical division, if the existence of "judges of the land" (*dayyānē ša māti*: MAL C+G 8:6)[18] is accepted, representing local jurisdiction in contrast to royal jurisdiction. The choice of local or royal jurisdiction depends on the victim (MAL A 15) or on the gravity of the offense. Thus, theft is punishable by the judges up to a certain sum, above which the punishment will be at the king's discretion (MAL C+G 8).[19] There is no evidence of priestly courts (see 3.3 below).

2.2 *Feudal Tenure*

2.2.1 There seems to have existed a general royal doctrine giving the palace eminent domain over all the land in the kingdom, including private land.[20] The latter is very difficult to distinguish from land granted by the king in exchange for feudal service (*ilku*). A feudal tenant could actually alienate the land (KAJ 162) or pass it to his heirs. The state, through its high officials, also gave land to provin-

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[16] Postgate, *Archive of Urad-Šerūa* . . ., nos. 28, 54–56; cf. also Harrak, "*bīt ḫašīmi* . . ."

[17] Aynard and Durand, "Documents . . .," no. 3.

[18] Driver and Miles, *Assyrian Laws* . . ., 509; Cardascia, *Lois* . . ., 310; Saporetti, *Leggi* . . ., 125; contra Roth, *Law Collections* . . ., 194, n. 44.

[19] Cf. the interpretation of Roth, *Law Collections* . . ., 184; contra Cardascia, *Lois* . . ., 310–11.

[20] Postgate, "Ilku . . ."; contra Diakonoff, "Conditions . . .," and Freydank, "Grundeigentum . . .," 80, who maintains that communal family property existed in the villages.

cial nobles as a reward for their services.[21] In this way veritable latifundia (up to 40 hectares) were created, for example at Tell Billa,[22] practicing intensive stock-farming and progressively replacing the old wealth based on traditional cereal cultivation.[23] Each estate had to supply the state with a contingent of troops; the landholder had to respond to a call to arms in person or by a substitute, and to report together with his "residents" (*ušbūtu*). The latter owed service to their lord and not to the crown. A feudal tenant enjoyed immunity which allowed him to collect taxes on his own estate and to have royal corvée and military service performed by his farmers.

2.2.2 In case of death or failure to perform feudal duties, the king could in theory repossess the land and assign it to another tenant. A private estate acquired by the state passed into the public domain and constituted the "share of the palace" (*zitti ekalli*).[24] This practice is illustrated by MAL A 45: the wife of a prisoner of war, who is destitute and has no family to support her, must wait two years for her husband's return and ask the public authorities for work in order to support herself. If her husband had an estate, the local authorities can authorize its sale, assessing the price by the current rate of land in the area. The transaction may be annulled by the husband on his return, unless the land has become inalienable by passing into the public domain.[25]

2.3 *Taxes*

2.3.1 The holder of a feudal tenure owed *ilku* service to the king. Service was essentially military in character,[26] although convertible into civilian service in the form of the royal corvée. Sale of a feudal tenure did not necessarily include the obligation to perform the service; most frequently, the seller continued to occupy the field and to live from its income, while performing the service on the buyer's behalf.[27]

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[21] Postgate, *Archive of Urad-Šerūa* . . ., nos. 71–73.
[22] Finkelstein, "Cuneiform Texts . . ."; Garelli, "Féodalité . . .," 13.
[23] Durand and Charpin, "Remarques . . .," 153.
[24] Aynard and Durand, "Documents . . .," 13–14.
[25] For the interpretation of this text, see Lafont, "Fief . . .," 580–84, with bibliography.
[26] Cf. the examples cited by Postgate, "Ilku . . .," 299–300.
[27] Ibid., 307.

2.3.2 The state levied duties on imports, employing a tax collector (*mākisu*) for this purpose. He was charged with "inspecting" (*amāru*) the goods in order to assess their value and determine the amount of duty (*miksu*), which was generally expressed in terms of tin.[28] This tax applied mainly to imports of animals.[29]

3. Litigation

There is little information on this subject, due to the lack of direct sources. Some aspects of procedure and of the administration of justice may be discerned in a few letters and in MAL.

3.1 The king intervenes personally in matters affecting the state. For example, he presides over a case between the governor of the city of Aššur and the Assyrians (KAV 217).[30] The latter demand women and girls as booty assigned to them by the ruler in a tablet and for which they had sworn an oath (not to exceed their share). The governor claims that they have taken double their share by misappropriating women who were due to him. The hearing takes place before the king in person. In the same way, an official defends himself before the king against an accusation of treason, denying that he used the services of deportees for his own benefit.[31] The ruler also settles private disputes. He decides a case between creditors who claim the children of a slave who had been given in pledge to one of them (KAV 211);[32] he cancels the debt of a person who inherited his father's deficit and has the tablet conveyed to the beneficiary so that he can make use of it (VAT 20238);[33] he also judges common crimes when they represent a danger to the public interest (MAL A 47: witchcraft; MAL C+G 8: theft; C+G 10: forgery).

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[28] Aynard and Durand, "Documents . . .," nos. 8 and 11, with commentary; Postgate, review of P. Machinist . . ., 233.

[29] Customs duties for a two year-old mare were 50 minas of tin (OBT 3019); an animal born within the country was exempt from duty (Deller, "Assyrisch *um/nzarḫu* . . .," 236).

[30] Cf. Freydank, "KAV 217 . . ." The tablet, which is very damaged, contains a collection of royal legal decisions dating from the time of Tiglat-pileser I, probably preserved by the royal chancery.

[31] Brinkman and Donbaz, "Texts . . .," 85–86; Freydank, "Anmerkungen 3 . . ."

[32] Cf. Saporetti, *Famiglia A* . . ., 82–84; see sec. 7 below.

[33] Freydank, "*bitqī batāqu* . . ."

Certain persons expressly place themselves under royal protection in exchange for their political loyalty, which guarantees them jurisdictional privileges and freedom of movement (KAV 159). There is no evidence that a hearing before the king was necessarily an appeal from the decision of a lower court.

3.2 *Procedure*

3.2.1 Several documents which have the appearance of letters are in fact legal summonses sent to parties and follow a formalized schema.[34] The sender is evidently acting as a judge, although not explicitly designated as such. He was no doubt a local notable with political or administrative authority, who also exercised judicial powers. These texts adumbrate several aspects of the judicial procedure.

3.2.2 Arbitration seems to be attested, at least in inheritance disputes: an arbitrator chooses the shares to be distributed among the heirs, in the presence of the local authorities. His decision is evidently of future application, since the coheirs decide to keep the estate undivided (*AfO* 20, 122; see 6.2.1 below).

3.2.3 Proceedings are initiated by the claim of a party, a third party (MAL A 17 for an accusation of adultery), or an "informer" (*bātiqānu*: MAL A 40) who is not necessarily involved in the affair, only reporting the name of the culprit to the authorities.[35]

3.2.4 The trial opens with a confrontation between the parties, who are interrogated by/before the judge and give their respective versions of events.[36] If a settlement is not reached, the judge officially summons the defendant, who must appear with his witnesses (KAV

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[34] Hall, "Legal Summons . . .," 75. For KAV 168, 169, 201, cf. Ebeling, "Archiven . . .," 34–36; Saporetti, "Bibliografia . . .," 142; Freydank, "*bitqī batāqu* . . ." (for KAV 201). See also VAS 19 13, 15, 71.

[35] Cf. Kraus, "Sittenkanon . . .," 108; Driver and Miles, *Assyrian Laws* . . ., 408, 481. Freydank, "*bitqī batāqu* . . .," 112–13, argues that the *bātiqānu* is one who, acting on behalf of a plaintiff, can seize his opponent's goods.

[36] Cf. Assur 10017, identified by Freydank, "Anmerkungen 2 . . .," 229–30 and edited by Hall, "Legal Summons . . .," to which should be added Deller, "Assyrisch *um/nzarḫu* . . .," 235, for the reading of ll. 9–14 and translation of the term *um/nzarḫu*, "native, indigenous."

168, 169, 201). It may happen that the summons is ignored, in which case a new summons is sent, perhaps with a threat of arrest.[37]

3.3 *Evidence*

3.3.1 MAL describe the proving of a case with the verb *burru*, which designates proof by any means.[38] It is often associated with *kunnu*, their combined meaning being "to bring charges and convict."[39] The plaintiff must bring material evidence of his claims before the court. The sources mention seizure in flagrante delicto, testimony, oath, and ordeal.

3.3.2 For adultery (MAL A 15) and witchcraft (MAL A 47), seizure in flagrante delicto does not dispense with the need for material evidence: testimony, plus exhibits for witchcraft. On the other hand, the two types of evidence are mutually exclusive in the case of rape of a wife (MAL A 12). A criminal conviction has to be based on the testimony of two witnesses (MAL A 47).[40] A fragmentary document (OBT 2083+) contains the declaration of a witness concerning the fraudulent sale of a slave: the witness confirms that he saw the slave in the house of a man whom he names, and he seems to give a description of the woman and her hairstyle.[41] A solemn declaration before the gods could be demanded of the parties (or the witnesses?)[42] in litigation over the value of the widow's *dumāqū* jewelry (MAL A 25 in fin., which expressly excludes ordeal and oath).

3.3.3 In the absence of rational proof, use was made of the oath or the ordeal. The oath is attested for theft by a wife (MAL A 5), leaving the marital home (MAL A 22) and in cases of witchcraft (MAL A 47). For witchcraft, the law provides for two types of oath, based on a complicated situation: two men saw the sorcerer prac-

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[37] See the proposed readings by Ebeling, "Archiven . . .," 36, for KAV 169:21–24 and the obscure threat in KAV 168:19–22.

[38] CAD *bâru* A, 127b mng 3.

[39] Driver and Miles, *Assyrian Laws* . . ., 339–43; Cardascia, *Lois* . . ., 94–95.

[40] On the application of the rule *testis unus testis nullus* in cuneiform law, cf. Cardascia, "Témoinage . . ."

[41] Postgate, "Ladies . . .," 91–93.

[42] MAL A 25:90–92: "As for the rest, they shall cause (it) to be passed before the gods, they shall prove (it) and take (it)."

ticing magic but one of them retracts his statement. His colleague is thus at the same time an eyewitness and a hearsay witness to statements made in private by the one who recanted. The king, who conducts the inquiry, wishes to obtain the recalcitrant witness's testimony so as to convict the culprit. The hearsay witness first confirms before the deity that there is a second eyewitness (MAL A 47:17); the latter is subsequently interrogated by the king, then handed over to an exorcist who purifies him and hears his statement sworn by the king and his son (MAL A 47:23–24). The procedure is exceptional because the oath sworn applies not only to the witness but also to the sorcerer:[43] apart from the sworn statement being decisive for conviction, the rite performed by the exorcist doubtless countered the curses which the witness thought he would suffer if he made a statement. Note also the unusual reference to the king and his son in a legal source, which might suggest that the prince functioned as a co-ruler.

3.3.4 The river ordeal is prescribed in the absence of witnesses (MAL A 17 and 22 for an accusation of adultery) or to establish a person's good faith (MAL A 24). There is no description of the procedure. MAL are only concerned to accord or deny the parties the possibility of negotiating the practical terms of the ordeal (*riksāte išakkunū* "they shall make an agreement" MAL A 17:70; *riksāte laššu* MAL A 22:9), most probably concerning the distance to be covered in the water. In all cases, the ordeal is ordered by the judge, and all the parties must go to the river. The ordeal itself, however, is undergone by a single person, chosen by the judge on the basis of his considered opinion.[44]

3.4 The judges are obliged to impose the statutory penalties (MAL C+G 8) or those demanded by the plaintiff (MAL A 15). A special case is sacrilegious theft by a woman (MAL A 1): the law provides for an oracular procedure (*bā'erûtu*) to establish the culprit's

[43] MAL A 47:26–31: "No one shall release you (the witness and the sorcerer) from the oath that you swore by the king and his son." The witness would thus have already testified out of court and would regard himself as freed from the curses with which the sorcerer was doubtless threatening him.

[44] Cf. Cardascia, *Lois* . . ., 129, and on the Mesopotamian ordeal in general, "Ordalie . . ."

punishment (not her guilt). The existence of priestly jurisdiction in Aššur has been asserted on the basis of this source.[45] In fact, proceedings that take place "before the gods" (e.g., MAL A 25) attest to the specialized role of the priesthood in the administration of supra-rational methods of proof (oath, ordeal, divination). The verdict nonetheless fell to the secular judges to pronounce, the priests being responsible only for performing and interpreting the rituals.

3.5 After the trial, the successful litigant received a tablet of judgment with which he could assert his rights and repel any new action brought against him on the same issue (e.g., VAT 20328).

4. Personal Status

4.1 Persons are classified either by opposing pairs (native (*umzarḫu*)[46]/ foreigner; free/slave; man/woman) or by economic function. As in earlier periods, the common designation of citizen is "son (*mār*) of X."[47] The administrative texts mention groups of foreigners in varying numbers, listed as "deportees" (Sum. $erin_2$ = Akk. *ṣābu*); it is not clear whether these are prisoners of war or civilians captured during military operations. They are assigned to work on building projects, on the great agricultural estates, or as artisans.[48] Foreigners, in particular Hurrians and Cassites, sometimes occupy senior positions in the administration.

4.2 *Class*

4.2.1 Assyrian society was regarded for a long time as having three classes: free (*a'īlu*), slaves (*ardu*), and an intermediate category of semi-

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[45] Driver and Miles, *Assyrian Laws* . . ., 19 and 336; Cardascia, *Lois* . . ., 95; Walther, *Gerichtswesen*, 180ff.

[46] Deller, "Assyrisch *um/nzarḫu* . . ."

[47] Cf. e.g. AO 20.154 edited and discussed by Aynard and Durand, "Documents . . .," 19–20, where the status given to three villagers continues into the second generation.

[48] Garelli, Charpin, and Durand, "Rôle . . .," 69. Cf. also the studies of Freydank, "Rolle . . .," "Lage . . .," "Anmerkungen . . . 2," 234 (where he disputes the translation "manoeuvre" proposed by Garelli, Charpin, and Durand, "Rôle . . .," 71, for the igi-nu-du_8 and suggests instead "with poor eyesight"), and "Anmerkungen . . . 3," 220–21.

free (*aššurāiu*).[49] But it is hard to see how an ethnic term, "Assyrian,"[50] which would be expected to designate the common status,[51] could have undergone the semantic shift to a term for an inferior class. The question revolves mainly around MAL C+G 3, where it seems to describe a hierarchical difference between "Assyrian" and "patrician" (*a'īlu*). In actual fact, this text concerns the conditions under which a pledge may be sold abroad (see 7.3.3.3 below). In the same way, the law dealing with physical maltreatment that may be inflicted on the pledge (MAL A 44) does not reveal the inferiority of the *aššurāiu* but describes what the creditor is allowed to do if he holds the pledge for the full value of the debt. Furthermore, the powers accorded to the creditor are identical to those of a husband over his wife, who does not belong to an entirely separate social group, even if she occupies a subordinate position in society. The term *aššurāiu* therefore denotes the geographical origin of the individual and by extension, the law applicable to him. It indicates an initially free person who is enslaved as the result of an unpaid debt (MAL C+G 3; MAL A 44).

4.2.2 *Slaves*

4.2.2.1 As in the Old Babylonian period, slavery could be permanent (by birth) or temporary (for debt). There is little information; the laws mention slaves, men and women, principally in penal provisions. Documents of practice concerning slaves are rare: for the fifteenth to twelfth centuries, there are only two slave-sale contracts (KAJ 169 and 170), a loan with the pledge of a slave (KAJ 53), enslavement as a penalty for dereliction of the adoptee's duty to the adopter (KAJ 6), and two cases of female servants given as *šulmānu* gifts (KAJ 98 and 100).

4.2.2.2 Slavery could be a last resort to ensure survival in a time of famine. Thus, an Assyrian woman, who had been enslaved "to stay alive and be taken" (*ana balāṭu u leqe*) is redeemed when the

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[49] Driver and Miles, *Assyrian Laws* . . ., 284–86; Cardascia, *Lois* . . ., 53; Saporetti, *Leggi* . . ., 51.

[50] Koschaker, *Untersuchungen* . . ., 75–76, for whom the noun applies to a "citizen of Aššur."

[51] Cardascia, *Lois* . . ., 53.

crisis is over and replaced with a foreign slave (KAJ 167). Subsequently, her redeemer marries the woman whom he freed in this way (KAJ 7).[52] This practice is illustrated by MAL A 39, where a young girl has been "saved from a catastrophe" (*ina lumne balluṭat*), in other words, sold by her father to keep her alive.[53]

4.2.2.3 A special category of unfree persons is represented by the *šiluḫli*. Their status has been compared to that of the *glebi adscripti* of Roman and medieval times, in that they were bound to the land that they farmed and could accordingly be divided among the heirs when they divided the deceased's fields (MAL B 1; VAS 19 6).[54]

4.2.2.4 A slave had sufficient legal capacity to marry (KAJ 7) or to make a contract. He could doubtless make transactions with a *peculium* but could not receive anything from a married woman (MAL A 4) or from a woman of the harem (Edict 5), under penalty of being deemed a receiver of stolen goods. A female servant was not allowed to wear a veil (MAL A 40).

4.2.3 *Villagers* (*ālaiū*)

A special category of the population is represented by "villagers" (*ālaiū*), mentioned in MAL (A 45) and in two documents of practice (KAJ 7 and Assur 3 no. 5).[55] They are apparently family communities consisting of free persons who owe the state (MAL A 45) or an individual (KAJ 7; Assur 3 no. 5) *ilku* service. These *ālaiū* were perhaps originally small landowners who had been dispossessed by the appearance of the latifundia but retained and resettled in villages by the new proprietor in order to work his estate.[56] Their relations with the landowner were on a client/patron basis. Their obligations bound not only themselves but also their descendants, who had to render the same service to the children of the patron or to the new king. They could gain their liberty by redeeming them-

[52] David and Ebeling, ARU, nos. 1, 7; Westbrook, "Slavery . . .," 1652–54.
[53] Cf. Roth, *Law Collections* . . ., 167, rather than Driver and Miles, *Assyrian Laws* . . ., 407.
[54] Brinkman, "Note . . .," 88–89; Freydank, "Protokoll . . .," 363; Fincke, "Noch einmal . . ."; Brinkman and Donbaz, "Texts . . .," 82–83.
[55] Aynard and Durand, "Documents . . .," no. 5.
[56] Ibid., 26–29.

selves from their master (Assur 3 no. 5:10–13). It is not known whether this redemption (*iṗṭiru*) always consisted of substitution (KAJ 167:8 and 14) or if it could take the form of a money payment. This resettlement of the population on latifundia may have progressively replaced rural communities grouped around a "stronghold" (*dunnu*), often named after a common ancestor. Several texts from Aššur show that members of these communities could receive loans of grain and animals from public institutions in times of crisis.[57]

4.3 *Gender*

4.3.1 *Legal Capacity*

Tablet A of MAL is devoted entirely to women. Its provisions present them as entirely under the authority of a husband or father, only becoming independent when they obtain the status of *almattu* "(orphaned) widow." This image must be adjusted in light of the documents of practice, which show that wives had sufficient legal capacity to enter into contracts in the name of their absent spouse[58] or on their own account. They could also grant a loan (KAJ 211:5'; KAJ 16) or request one (KAJ 111), make a *šulmānu* agreement (KAJ 51, 90, 100), adopt (KAJ 3), and purchase (KAJ 168). The husband (KAJ 51, 90, 168) or the father (KAJ 111) might sometimes act as guarantor for these transactions. A wife could also be sold by her husband (*AfO* 20, 123b),[59] most probably on account of the husband's debt.

4.3.2 *Social Status*

A question arises as to the status of the *mārat a'īle*, "daughter of a free man" (MAL A 21, 50). Literally, this term would designate an unmarried girl still under her father's authority[60] or a daughter-in-law living with her husband in her father-in-law's house who cannot bear the title *aššatu*, which was reserved for the wife of the head

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[57] Ibid., 40–43.

[58] Postgate, *Archive of Urad-Šerūa* . . ., nos. 3 and 16 (wife of Melisaḫ), and no. 48 (wife of Urad-Šerūa). Most probably they are not widows, as Saporetti, "Status . . .," 19, supposed, since if Melisaḫ had died, his duties should have been transferred to Urad-Šerūa; cf. Postgate, *Archive of Urad-Šerūa* . . ., xi.

[59] Cf. Weidner, "Erbteilung . . .," 123–24; Saporetti, *Famiglia A* . . ., 79–80.

[60] Saporetti, *Leggi* . . ., 12–13, 43–44.

of household.[61] In social status, the *mārat a'īle* would be the "patrician (wife)" as opposed to the *aššat a'īle*, "plebeian (wife)," the latter belonging to a class deemed inferior to the *aššurāiu*.[62] But the existence of such an intermediate class of semi-free persons is very doubtful (see 4.2.1 above). It seems rather that the Akkadian expression includes all free women who are not under the authority of a husband; most frequently she would be a spinster, but she could also be a widow, the wife of an absent husband, or a priestess.[63]

4.3.3 *Priestesses and Prostitutes*

MAL (A 40) and a decree of Aššur-uballiṭ I (Edict 1) mention a category of priestess called *qadiltu*. She could marry, in which case she had the right, indeed the obligation, to wear a veil in public, like any other married woman (MAL A 40:61–62). If she is a spinster, on the other hand, she must go bare-headed in the street, like a prostitute or a slave (MAL A 40:63–65). This association has led scholars to conclude that the *qadiltu* was a prostitute rather than a priestess.[64] She is also mentioned alongside the midwife (e.g. Edict 1), which raises the presumption—given the etymology of the term *qadiltu*, "pure"—that she had the task of washing/purifying women after they gave birth.[65] The prostitute (*ḫarimtu*) might not be veiled, indicating her lower status. Only respectable women (wives, daughters) were subject to this duty, which at the same time was regarded as a privilege.[66] Notwithstanding her social position, the prostitute benefited from the protection of the law in case of a miscarriage caused by violence (MAL A 52).

4.3.4 *Harem*

The harem edicts give us an insight into the daily life of the palace women. They are not cloistered but can go out and even travel. They mingle with the royal court but always under the surveillance

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[61] Westbrook, *Studies* . . ., 61–62. For a refutation of these two interpretations, see Lafont, *Femmes* . . ., 355.

[62] Driver and Miles, *Assyrian Laws* . . ., 15–17, 108.

[63] Cardascia, *Lois* . . ., 59–60, 137–38.

[64] Lambert, "Prostitution," 141–42, citing also *ana ittišu* VII iii 7ff. Contra CAD, *qadištu*, 50a.

[65] Lambert, "Prostitution," 145.

[66] Cardascia, *Lois* . . ., 204–5.

of the palace major-domo (*rab ekalli*) and at sufficient distance to avoid physical contact. Breach of these rules raises an irrebuttable presumption of adultery, punishable by death (Edict 19). There is a hierarchy among the women of the harem, dominated by the queen mother, followed by the royal wives (*aššāt šarri*), the palace ladies (*sinnišāti ša ekallim*), women of lower rank, and servants. The edicts encourage informing, threatening witnesses who fail to report a breach of the rules with severe punishments, even burning at the stake (Edict 19). The palace major-domo is held responsible for seeing the harem rules are kept (Edict 21).

5. Family

5.1 *Marriage*

Our knowledge of marriage derives mainly from Tablet A of MAL. To date, there are only two documents of practice on the subject (KAJ 7 and TIM 4 45).

5.1.1 *Conditions*

5.1.1.1 Marriage was negotiated between the heads of two families. Consent of the girl's father was necessary, even when she was held by a creditor as a pledge (MAL A 48). On the other hand, if the father predeceased her, her brothers could not prevent marriage with the creditor, except by redeeming her (MAL A 48). The father could also, by way of punishment, impose marriage on the rapist of his virgin daughter (MAL A 55). In the absence of parents or guardian, the future couple could conclude the marriage themselves (KAJ 7; TIM 4 45).

5.1.1.2 An owner could undertake to provide a wife for his slave (VAS 19 37), as could an adopter for the adoptee (KAJ 2).

5.1.2 *Formation*

5.1.2.1 The promise to marry was sealed by one or more marital gifts, designed to demonstrate the parties' agreement. Besides the *terḫatu* (MAL A 38; KAJ 2), there is the *biblu* (MAL A 30) and the *zubullû* (MAL A 31; OIP 79 82). These three terms are not synonymous: *zubullû* seems to comprise both *terḫatu*, which is the fixed

share in non-consumables (gold, silver, lead), and *biblu*, which is the part in consumables (barley, sheep).[67] The *terḫatu* is to be given to the father of the bride, who may subsequently get all or part of it.[68] A contract (*riksu*) was a necessary precondition to marriage (MAL A 38). It was accompanied or preceded by rites such as anointing with oil and/or a "betrothal" meal (MAL A 42–43). Cohabitation was not necessary to formation or validity of the marriage: the bride could continue to live with her father after her marriage (MAL A 25–27, 32, 33, 38).

5.1.2.2 Where a man wished to marry his concubine, a solemn declaration on his part and the veiling of the bride were sufficient (*esirtu* MAL A 41).

5.1.2.3 Marriage to a woman who was no longer a virgin was called *aḫuzzatu* in MAL (cf. MAL A 30, 33, 55).[69]

5.1.3 *Divorce*

5.1.3.1 MAL make the marriage of a raped virgin to the rapist indissoluble (MAL A 55). Otherwise, a man could divorce his wife without grounds and was not obliged to pay her compensation (MAL A 37). He could only claim restitution of the *dumāqū* jewelry, the *terḫatu* being reserved for the woman (MAL A 38).[70]

5.1.3.2 In the two marriage contracts extant, the spouses have an equal right to divorce, doubtless a result of the equality of conjugal rights and obligations stipulated in each of the two contracts. According to TIM 4 45, dissolution of the marriage was effected by a solemn declaration: "he/she is not my husband/wife." It entailed a payment to the divorced spouse (1/2 mina of silver in TIM 4 45; 3 minas of silver in KAJ 7).[71]

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[67] Cf. Saporetti, "Beni . . .," 44–45.

[68] Cardascia, *Lois* . . ., 195.

[69] Cf. Driver and Miles, *Assyrian Laws* . . ., 177–78; Cardascia, *Lois* . . ., 169; contra CAD *aḫuzzatu*. Cf. also the arguments of Wilcke, "Familiengründung . . .," 249, n. 51, against CAD's translation, and his reading of MAL A 33:65–66.

[70] On the difficult interpretation of MAL A 38:25, *ana sinnilte zaku*, cf. Saporetti, "Beni . . .," 40–41 and *Leggi* . . ., 65.

[71] According to Saporetti, "Beni . . .," 50–51, these two contracts are atypical: in

5.1.4 *Remarriage*

5.1.4.1 Absence of the husband on business for more than five years could dissolve the marriage if the wife had no means of subsistence (MAL A 36). If, however, he was detained involuntarily, due to a judicial error or a royal order, the marriage continued no matter how long his absence. Middle Assyrian law recognized a case of conditional marriage: the wife of a prisoner of war could validly remarry after two years, but on the first husband's return he could take her back. The children of the second union followed their father (MAL A 45).

5.1.4.2 The widow is declared legally independent (status of *almattu*) when she has neither sons nor sons-in-law to maintain her (MAL A 33:57–59,[72] and A 46), nor relatives who could marry her (MAL A 33:65–66).[73] She may then leave the marital or paternal home and enter freely into a new marriage (MAL A 28). The *almattu* widow who remarries without a contract acquires the status of wife after two years' cohabitation (MAL A 34).

5.1.5 *Desertion of the Marital Home*

Two laws discuss this situation. In MAL A 22 a man improperly takes a married woman with him on a journey, presumably as a "traveling companion" (*še'ītu*). Whether he knows of the woman's married status or not, he has to pay her husband two talents of lead in compensation and swear that he has not committed adultery. The culprit is above all blamed for not having demanded the husband's permission to "recruit" his spouse for the journey.[74] In MAL A 24,

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KAJ 7, the wife is a debtor of her husband and is socially superior to him; in TIM 4 45, the woman could be a widow without sons or father-in-law, free to negotiate and to contract her marriage.

[72] Contra Borger, "Gesetze . . .," followed by Otto, "Altersversorgung . . .," 104, for whom the law concerns the levirate for an inchoate spouse (ll. 57–58: dumu *ibaššī*, "there is a son (of the father-in-law)," rather than dumu.meš *ibaššī* "there are sons (to maintain the widow)"). But a wife could be fully married even if living with her father (l. 56).

[73] Following the interpretation of Wilcke, "Familiengründung . . .," 249, n. 51, for whom the phrase *emiša ana aḫuzzete iddanši* means "he (the wife's father) will give her in marriage to her brother-in-law"; in relation to the wife, the term *emu* designates all her male in-laws and not only the father-in-law.

[74] For comparison of MAL A 22 with an incident at Mari, see Durand, ARM 26/1 513.

a wife leaves the marital home in order to take refuge with an Assyrian woman. She is subject to disciplinary measures by her husband and may be divorced without compensation.[75]

5.1.6 *Polygamy*

5.1.6.1 A man could have two wives at the same time, whether voluntarily (MAL A 46)[76] or in fulfilment of the levirate (MAL A 30). In the first case, one of the wives became the "principal" wife (*pānītu*) and the other the "secondary" wife (*urkittu*), her inferior status being marked by less favorable treatment. It is not known whether the same inequality applied to levirate marriage.

5.1.6.2 The levirate allowed the father-in-law to marry his widowed daughter-in-law to another of his sons. Neither the woman nor her father could object. The same applies if the levir was already committed to another family: he will marry his widowed sister-in-law and the woman previously reserved for him by a betrothal payment (MAL A 30–31). The children of the levirate marriage are regarded as those of the deceased. The levirate does not apply if the first marriage had issue,[77] but it may be employed successively with all the father-in-law's adult sons until offspring result (MAL A 43).

5.2 *Children*

5.2.1 *Filiation*

Children born of an adulterous union during the five-year waiting period prescribed in the case of an absent husband were taken from their father and assigned to the husband on his return (MAL A 36). The posthumous son of a widow was not legitimized by the marriage of his mother, even if he grew up in his stepfather's home (MAL A 28). (On filiation by adoption, see 5.3 below.)

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[75] Lafont, *Femmes* . . ., 391–96.

[76] Cf. Cardascia, *Lois* . . ., 229–30; contra Roth, *Law Collections* . . ., 172, for whom the two wives are in succession; cf. also the doubts of Saporetti, *Leggi* . . ., 80.

[77] Contra Otto, "Altersversorgung . . .," 106, with regard to MAL A 46 in fin.: the marriage of the widow as second wife with one of her brothers-in-law would take place as the contractual fulfillment of the dead husband's rights, which passed to his sons.

5.2.2 *Duty of Maintenance*

Children had to support their indigent widowed mother or stepmother: the principal wife resided with one of her own sons and was supported by all her husband's children, including those by another wife of the deceased. The secondary wife could be obliged to work for her sons in exchange for lodging (MAL A 46).

5.2.3 *Paternal Authority*

The head of household had sufficient power over his children to be able to sell them. The principal motive, generally with regard to daughters, was famine. There is an allusion to it in MAL A 39:34–35: the rights of a creditor-pledgee give way to those of the benefactor of a girl whom he has fed in a period of crisis and then married.[78] Documents of practice also attest to this situation. In one, an Assyrian woman enslaved "to stay alive and be taken" is freed by her future husband, who provides a Subarean woman in exchange (KAJ 167).

5.3 *Adoption*

5.3.1 MAL mention adoption only in the context of the inheritance rights of adopted children (MAL A 28).[79] The Middle Assyrian adoption documents do not seem to have a uniform format. All include a date and list of witnesses; some have the adopter's seal at the beginning of the tablet. Some are drafted from the adopter's point of view (e.g., KAJ 3:3–4: ^{f}PN . . . *ana mārūtuša ilqi* "she took ^{f}PN . . . in adoption") and some from that of the natural parents (e.g., KAJ 1:6: *ana mārūti iddinšu* "he gave him in adoption"). If the adoptee is still under his father's authority, a contract is first drafted whereby the natural father foregoes his rights in favor of the adopter (KAJ 6:4–7). The same applies to the posthumous son of a remarried widow: adoption by the stepfather requires the drafting of a tablet (*ṭuppu ša mārūtišu* MAL A 28). On the other hand, when the adoptee is an independent adult, he can give himself in adoption (*ana* PN

[78] Cf. Roth, *Law Collections* . . ., 167; Saporetti, *Leggi* . . ., 66–67.

[79] Aynard and Durand, "Documents . . .," 24, n. 26; see an allusion to adoption in MAL A 39. If the girl had been rescued from destitution, "pour celui qui l'a nourrie, elle est une fille adoptive" (*a-na mu-ba-li-ṭa-ni-ša* [*la-q*]*í-at*). This restitution, contrary to the usual reading [*za*]-*ku-at*, "she is free (of claims)," contradicts the right of redemption, which is still available to the father in such circumstances and is incompatible with adoption.

ana mārūtim erēbu "enter into adoption with PN"; cf. KAJ 2 and 4). The document emphasizes the voluntary character of the proceeding (*ina migrat raminišu/ša*; cf. KAJ 2:3 and 4:4).

5.3.2 The document establishes the new status of the parties[80] by an express provision of the type "A is her mother; B is her daughter" (KAJ 3:5–7). Severance of the adoptive tie was formalized by a solemn declaration of the type "you are not my mother/daughter" (KAJ 3:9, 11) and bore a pecuniary penalty. Where the adoptee was not himself a party to the contract, the sources describe the same situation in an impersonal style, so as to include all parties (*ša ina berišunu ipasiluni*, "whoever among them (i.e. the parties) repudiates the contract"; cf. KAJ 1:25–26; KAJ 4:21–22).

5.3.3 An atypical document, dating from the end of the Middle Assyrian period, is inscribed on a small object in the form of a lower leg.[81] In it, a woman states that she saved from the river and raised a child who is henceforth her son. Any claim regarding the child will entail a penalty in the form of six sons to be given to the woman. Four gods are witnesses to the document. The document thus ensures that an abandoned child will have rights and a status which he could not otherwise attain.

5.3.4 Adoption is a family strategy designed principally to supply the adopter with an heir and to ensure that he is supported in old age, that funerary rites are maintained, and that his line is continued. It is in this light that an uncle adopts his nephew (KAJ 1 and 6), or a woman adopts a foundling (5.3.3 above). It explains the clause that appears in some documents imposing a duty on the adoptee to honor and support the adopter (KAJ 1:8–9; KAJ 6:11–16; KAJ 4:9–10), failing which he will be sold as a slave (KAJ 6:17–23).

5.3.5 For the adoptee, the advantage is that it enables him to inherit from the adoptor (KAJ 1) or guarantees her matrimonial future. In

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[80] David, *Adoption* . . ., 60, wonders whether the written document is merely evidentiary or whether it actually establishes the parties' status. MAL A 28 and KAJ 6 suggest the latter function.

[81] Franke and Gernot, "Mittelassyrische fiktive Urkunde . . ."

KAJ 2:8–15, a girl has herself adopted by a rich and influential man who undertakes not to mistreat and to find her a husband. The adopter promises to treat her "like his own daughter, an Assyrian woman" (ll. 10–11: *kî* dumu.munus-*šu-ma aš-šu-ra-ia-e*), which does not mean that the adoptee will have a lower status but rather that she will be deemed a native of Aššur and, as such, subject to Assyrian customary law with regard to adoption. (On the question of the *aššurāiu*, cf. 4.2.1 above.)

6. Property and Inheritance

6.1 *Marital Property*[82]

6.1.1 Edible items among the gifts (*biblu* and *zubullû*) given by the groom's family to that of the bride were not refundable (MAL A 30–31). For the groom's father, transfer of these gifts gave rise either to an irrevocable right to marriage or to withdrawal from the whole agreement (MAL A 30). For his part, the bride's father could offer (or impose upon?) his future in-law another bride from among his daughters, if the one he had designated dies (MAL A 31). The *terḫatu*, the non-consumable part of the gift, went to the wife if she were divorced without fault (MAL A 38). It returned to the husband's family if the wife predeceased him and died childless (MAL A 31 and 43). Middle Assyrian law knew of an agreed marital gift, *nudunnû*, given at the discretion of the husband during the marriage and subject to its consummation (MAL A 27). On his death, it was acquired by the widow for her maintenance. During his lifetime, however, it remained the husband's property: his creditors could seize it, even if it had been deposited outside the matrimonial home, in the house of the bride's father (MAL A 32).[83] If the marriage ended without issue or by the death of the wife, the marital gift failed. Finally, *dumāqū* jewelry given to the wife remained the property of the husband, who was entitled to take it back if he divorced her (MAL A 38), or of his heirs (children, undivided brothers: MAL A 25–26). A solemn declaration before the gods by the brothers-in-law was sufficient

[82] Cf. Cardascia, *Lois* . . ., 69–71.

[83] Cf., however, the translation of Roth, *Law Collections* . . ., 165, where the term *nudunnû* is not restored in the break.

to rebut any claims as to the origin of the jewelry. If the deceased had no male heirs, his widow could claim it (MAL A 26:101–2).

6.1.2 A married woman's property consisted of her dowry (*šerku*), personal possessions (MAL A 29:13–15: *mimma ša ištu bēt abiša naṣṣutuni*, "everything she brought from her father's house") and items which her father-in-law gave her upon marriage. They were all reserved for her children, unless her husband took them away from her,[84] in which case the husband could assign all or part of the dowry to his own sons. According to MAL, a married woman could not dispose freely of her property; at most, she had a usufruct during her lifetime. The documents of practice, on the other hand, show that she could, for example, lend silver under a pledge agreement whereby she acquired ownership of the pledge on default (*Verfallspfand*: KAJ 168). It is very likely that this loan was financed from the wife's own property.

6.1.3 A husband who divorced his wife could make her leave "empty-handed" (*rāqūteša tuṣṣa*: MAL A 37 in fin.), that is, without divorce money, but he doubtless had to restore her dowry and personal possessions.[85] The two extant marriage contracts from this period, however, mention contractual divorce payments in an equal amount for either spouse (5 minas of refined silver in KAJ 7; ½ mina of silver in TIM 4 45).

6.2 *Inheritance*

6.2.1 In intestate succession, the heirs are ranked in the following order: son of deceased, then his undivided brothers (MAL A 25). Indivision seems to be the most usual state of affairs. Thus, MAL A 25 provides that the undivided brothers of the deceased will inherit the *dumāqū* jewellery of his childless widow.[86] In MAL B 2 and 3,

[84] Following Postgate for the translation of the form *ipūagši* (Review of G. Cardascia . . ., 388): "If her husband takes it away from her" (= her dowry); likewise Saporetti, *Leggi* . . ., 56 and n. 41; see also the differing translations of Cardascia, *Lois* . . ., 160 ("[il] la chasse"); Borger, "Gesetze . . .," 85 ("sie ihr wegnehmen will"); Roth, *Law Collections* . . ., 164 and 193, n. 21 ("[he] intends to take control of her").

[85] In this sense, Cardascia, *Lois* . . ., 192.

[86] According to ibid., 153, if the brothers of the deceased had divided, they no longer had any reason to take precedence over the widow.

commission of a crime (homicide or treason) terminates the state of indivision or allows an outsider to participate in it, through ransom (MAL B 2) or confiscation by the king (MAL B 3); reasoning backwards from this, it may be concluded that a brother could not unilaterally divide the family property.[87] An undivided owner forfeits his rights to his brother when, for the second time, he neglects to cultivate his share but nonetheless takes his part of the harvest (MAL B 4). Heirs could resort to arbitration to determine the content of each share, without necessarily carrying through a division (*AfO* 20, 122).[88]

6.2.2 If they unanimously decide to end the state of indivision, the brothers divide among themselves, reserving a double share for the eldest (MAL B 1 and O 3). The procedure is that the eldest first chooses his share of the landed property, followed by his younger brothers. On the other hand, *šiluḫli* serfs and other appurtenances of the land are divided into shares by the youngest, after which the eldest takes for himself and the other brothers draw lots. Legitimate sons, natural or adopted, inherit from their father (MAL B 1) and their mother, that is, her dowry and personal possessions (MAL A 29). Natural sons from a concubine (*esirtu*) inherit in the absence of legitimate children (MAL A 41). A son from a previous marriage is not legitimized by his mother's remarriage; in order to inherit from his stepfather, he must be adopted by the latter, failing which he will inherit the estate of his natural father (*ālidānu*, "begetter": MAL A 28). Sons inherit both the assets and the liabilities of their father's estate.[89]

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[87] Ibid., 71–72, 264–67.

[88] In Weidner's interpretation of ll. 20–22 ("Erbteilung . . ."), the eldest chooses and the younger brothers contest the division. For Szlechter, "Chronique . . .," 144–45, followed by Cardascia, *Lois* . . ., 263–64, and Saporetti, *Famiglia A* . . ., 104–6, division by an arbitrator is challenged by the eldest and his brothers. In fact, it would appear that the division into shares, which is assigned to a third party and allotted by the public authorities, is only in theory; the parties decline to end the state of indivision for the meanwhile (ll. 20–22: PN *utasīq*/PN_2 *u aḫḫēšu ana zuāzi la imagurū*, "PN has chosen. PN_2 and his brothers do not agree to divide").

[89] E.g. OBT 100, 102, 3025; KAJ 122; and VAT 20328 (Freydank, "*bitqī batāqu* . . ."), where the king relieves the heir of his deceased father's debts.

6.2.3 A father could dispose of his property by testament. Three different introductory formulas are found: (a) the objective style, already found in the Old Assyrian period (PN *šīmti bītišu išīm*, "PN has settled his estate by testament": OBT 105:3–5); (b) the personal formula, known also from Nuzi and in MAL O 1 (PN_1 *šimti ana* PN_2 *išīm*, "PN_1 has settled upon PN_2 by testament . . ."); (c) the will of the testator (PN_1 *ina migrat raminišu šimti* PN_2 *išīm*, "PN_1 of his own free will has settled upon PN_2 by testament . . .": OBT 2037:1–4). From the variety of legal forms it may be concluded that the act consisted less in settling the fate of property than of persons, allowing the testator to designate one or more heirs.[90] The Assyrian testament would thus be analogous to gifts *inter vivos*, being limited to a few items of property assigned to a few persons, with a codicil dividing the rest of the estate in equal parts among the heirs.[91] The documents of practice confirm the rule applied in MAL whereby the eldest takes a double share (OBT 2037). At the same time, co-heirs prefer to remain undivided after the father's death, both in MAL (B 2–5) and in practice. Two documents, KAJ 8 and 10, are of interest in this regard. They concern the same persons, with an interval of twenty-two years. The second records the division of the family estate, by common consent. The first is apparently a gift *mortis causa* by which the father excludes the *peculium* (*sikiltu*)[92] of one of his sons from the heritable estate and threatens any son who contests this gift with disinheritance. It would appear that the family of the *de cuius* remained undivided for twenty-two years. Indivision can extend over several generations for land and functions as joint ownership.[93]

6.2.4 Daughters sometimes inherited on an equal basis with their brothers (OBT 105:8–10) or were the object of special provisions (OBT 2037).[94] They received land, furniture, household utensils, and slaves. Immovable property was reserved for the woman's sons, failing which it passed to her brothers (OBT 2037:39–42). A wife did not inherit from her husband but could receive a gift from him, in

[90] Wilcke, "Testamente . . .," 198–99.
[91] Ibid., 201.
[92] On the meaning of *sikiltu*, see ibid., 200, 222, and Durand, Review of D. Arnaud, 51.
[93] Koschaker, *Neue keilschriftliche . . .*, 40.
[94] Wilcke, "Testamente . . .," 224–26.

the absence of which her sons were obliged to support her (MAL A 46). In KAJ 9, a man designates his wife as sole heir of certain specifically designated property which will pass after her death to one of her sons, most probably the eldest.[95] This practice, which has been compared to Roman *legatum per damnationem*, enables the testator to reserve part of his estate for his widow on condition that she not remarry, so as to preserve intact the inheritance rights of his children.[96]

6.3 *Tenure*

For a discussion of tenure, see 2.2.2 above.

6.4 *Ownership and Servitudes*

6.4.1 MAL protect the interests of the owner of land without, however, guaranteeing him an exclusive right to the land. Thus, a person could cultivate the field of another without the owner's consent. The occupier was subjected to an oath by the king, doubtless in order to prove that the land was abandoned property. If the owner reappeared in person, the occupier nonetheless had the right to harvest but had to pay two thirds of it to the owner (MAL B 19).[97] If, however, the owner was known to the occupier, the latter was expelled and had to leave behind any installations he had constructed (MAL B 13). Only if the owner consented could the occupier become owner of the field, on condition that he provide an equivalent plot of land (MAL B 12). The law also protected boundaries; trespass, deliberate or not, on a neighbor's land was punished with pecuniary and corporal penalties (MAL B 8–9). Building a well or a dyke on another's field constituted an infringement upon his ownership (MAL B 10). Misappropriation of land by digging a ditch, enclosing it, or setting up a boundary stone was punishable (MAL B 20).

6.4.2 MAL impose on the owner of land a servitude of aqueduct to give the neighboring fields access to a common well. If the

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[95] Cf. Wilhelm's interpretation, review of Saporetti, 647, in regard to collations correcting the translation of Wilcke, ibid., 211ff., adopted by Saporetti, *Altre Famiglie . . .*, 77.

[96] Wilcke, "Testamente . . .," 199.

[97] Following the interpretation of Roth, *Law Collections . . .*, 181–82; see 194, n. 41, for a full bibliography on this difficult text.

interested parties refused to participate in the construction of the aqueduct, the owner could obtain from the judges exclusive use of the irrigation water for his own land (MAL B 17 and O 5).

6.4.3 Illegal seizure of property had to be certified by a judge and gave a right of action against the perpetrator. This appears to be the situation described in two letters (KAV 169 and 201) concerning the same person, Ubru, who confiscated[98] the property of two different persons, who declare that they are neither debtors (*ḫabulaku*) nor thieves (*sarraku*). Ubru is summoned together with his witnesses, but in one case at least does not appear at the first summons (KAV 169). The threat of arrest that the judge invokes on the second summons may perhaps have had more effect. At all events, it shows the legal limits on protection of ownership. Ubru seems to have been a dishonest creditor who seized pledged property, notwithstanding repayment of the debt.

7. Contracts[99]

7.1 *Sale*

7.1.1 The sale contracts are essentially of land or slaves. They comprise a description of the object which the seller has given (*iddin*) or transferred (*ušāpi*) to the buyer, who is said to have acquired it (*uppu laqi*). There follow clauses on the payment of the price, the seller's liability, and the irrevocable character of the document.[100] Delivery is not necessary for the sale to be valid; ownership is acquired by payment of the price and not by conveyance. Sale on credit is very rare and takes the form of a fictitious loan.[101]

7.1.2 Sale of land was publicized by three proclamations of the herald in the month preceding the sale. In this way, anyone claim-

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[98] Cf. the interpretation of Freydank, "*bitqī batāqu* . . .," 110–11 for KAV 201.

[99] David and Ebeling, *ARU*, nos. 9ff.

[100] David, "Rechtsurkunden . . .," 552. The final clauses are comparable to those found in the Old Babylonian period. The most striking example is provided by a contract from the Terqa district, which is Middle Assyrian in ductus and date but Babylonian in its formulary (Kümmel, "Kaufvertrag . . .").

[101] Koschaker, *Neue keilschriftliche* . . ., 35 and n. 2 for KAJ, which is probably an example of sale on credit.

ing rights in the land could present themselves (MAL B 6). This procedure is attested in practice in KAJ 310, which lists the goods deposited in a *šaḫūru* building, among which is (l. 19) "a box of proclamations of the herald for the houses of the city of Aššur."[102] Completion of this formality was certified by a committee which validated the transaction, thus making it operative, and drafted three tablets. One was kept by the *qēpu* officials;[103] the other two were given to the buyer and the municipal authority (represented by the town scribe), respectively.[104] Assyria must thus have had a public registry of land-sale contracts. Once completed, the sale was recorded in a "validated tablet" (*ṭuppu dannutu*),[105] which made it final and valid against third parties. The tablet was handed over with each successive sale as a title deed (KAJ 132), but a valid sale could be made without it (KAJ 149:22–25).[106]

7.1.3 Sale was accompanied by a warranty against eviction (MAL C+G 2–6) and hidden defects. In slave-sale contracts, the seller is made liable for all claims regarding the slave (KAJ 169, 170), for the whole country.[107] In sales of land, the seller's duty to free (*zakû*) the land of claims takes the form of public notice, which enables him to indemnify anyone opposed to the sale. In this way the buyer is safeguarded against eviction until the drafting of the "validated tablet," which annuls all further claims to the property.[108]

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[102] Cf. Postgate, *Archive of Urad-Šerūa* . . ., no. 50.

[103] Cf. the restitution by Roth, *Law Collections* . . ., 177. Finkelstein, "Billa . . .," 123ff., translates *qēpu* as "superintendant"; followed by Cardascia, *Lois* . . ., 270–271 ("greffier").

[104] Cf. Villard, "Archivage . . .," rather than the classic analysis of Driver and Miles, *Assyrian Laws* . . ., 320, and Cardascia, *Lois* . . ., 275, for whom the two tablets were given to the two parties to the contract. As Villard rightly observes, this practice would be contrary to customary Mesopotamian law of sale and would contradict the formula of the contracts, which are drafted from the buyer's point of view.

[105] Postgate, "Middle Assyrian Tablets . . .," 18. There is perhaps also an indirect allusion to this official act in the expression *dannat šarri* (MAL A 45), which would designate a sale of land validated by royal authority and henceforth incontestable. Cf. Aynard and Durand, "Documents . . .," 12–13, followed by Roth, *Law Collections* . . ., 193, n. 27.

[106] Postgate, "Middle Assyrian Tablets . . .," 31–32.

[107] Cf. the interpretation of Wilcke, "Testamente . . .," 214–15, n. 30 regarding the clause "for every quay, for every border" (*ana kāre ana taḫume*): it does not limit the validity of the contract to Assyria alone but specifies where suit is to be brought, should the seller be abroad.

[108] Koschaker, *Neue keilschriftliche* . . ., 32–34.

7.1.4 The sale of property belonging to another, for example, by a pledgee, makes the seller liable to indemnify other parties. He must compensate its owner with the value of the pledge, while the buyer keeps the item purchased. If he refuses to pay this compensation, the owner may seize the item from the present possessor (i.e., the buyer in good faith), who can seek reimbursement from the seller (MAL C+G 4).

7.2 *Loans*[109]

7.2.1 In its basic form,[110] a document of loan opens with the name and seal of the debtor, then mentions the object that the debtor has taken (*ilqi*) from the creditor, and finally sets the repayment date. Optional clauses provide for penal interest, security, or payment of the debt to the bearer of the tablet. This last provision allows the debt to be assigned to another creditor or to the bank (KAJ 122; 40; 41).[111] Cancellation of the debt necessitated the drafting of a new tablet and the destruction of the previous one.[112] The document closes with the names of the witnesses, whose seals are impressed anywhere on the tablet, and the date. If the practice of the merchants of Aššur is to be given credence, witnesses were to be furnished by the debtor, while the creditor brought the scribe, whose services had to be paid for.[113] Use of an envelope seems to have been limited mainly to administrative receipts, to prove that the debtor's obligation was extinguished. At the end of the Middle Assyrian period, perhaps under the influence of loans for consumption made to a predominantly Aramean rural population, the practice is found of attaching a seal impressed on a clay bulla and a cuneiform text to a papyrus drafted in Aramaic.[114]

7.2.2 Loan was in general short term, most frequently for six months. It required delivery of the object to the debtor, who undertook to return it, in specie or in value. Nonetheless, the examples of fictitious

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[109] Ibid., 92ff.; Saporetti, "Prestito . . ."
[110] David, "Rechtsurkunden . . ."; Postgate, "Middle Assyrian Tablets . . ."
[111] Deller and Saporetti, "Documenti . . . contratto," 49; Postgate, "Middle Assyrian Tablets . . .," 32–33, and "Archives . . .," 181.
[112] Deller and Saporetti, "Documenti . . . contratto."
[113] Nissen, "Kaufleute . . .," 119 and n. 31.
[114] Postgate, "Shift . . ."

loans, in the form of a novation combining the debts of several persons in a single document (KAJ 66 and 85) or of a contract with oneself (KAJ 47),[115] show that in reality loan was understood as a literal contract, whose binding effect was derived not from delivery of the thing lent but from the drafting of a tablet.[116]

7.2.3 Loans were mostly of lead (*annaku*)[117] or more rarely of silver (*kaspu*) and/or grain (*še'u*). The loan matured generally at the end of the harvest. The texts do not mention the rate of interest; only penal interest is stipulated, payable after the due date (*edanu etiqma*). Loans were nevertheless not gratuitous, with the exception of emergency loans (*ina usiti*). The sum mentioned in the contract doubtless included interest, not being the same amount as the debtor received. Interest could also be replaced by the work of harvesters supplied to the creditor by the debtor (KAJ 50). Partial repayment of the debt could cause the drafting of an "executed tablet" (*ṭuppu ṣabittu*), a formal act before witnesses in which a creditor receives a sum which he deducts from the total of the debt (VAS 19 8; KAJ 104:7–10; OBT 100:9).[118]

7.2.4 Certain contracts contain a *šalmu-kēnu* clause, already found in the Old Assyrian period, which imposes joint liability on multiple debtors (David and Ebeling, ARU 16; KAJ 32). It is also used in the Middle Assyrian period for a single debtor (e.g., KAJ 37, 38, 44, 46) to emphasize his own liability and presumably to serve as a means of execution against him.[119]

7.3 *Security*

7.3.1 Security taken by the creditor may be designated by the general term *našlamtu*, used alone (KAJ 12, 21, 25, 27) or with *šapartu*, "pledge" (KAJ 58, 65; *JCS* 7 150 no. 6).

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[115] Koschaker, *Neue keilschriftliche . . .*, 94.
[116] Ibid., 95.
[117] According to Freydank, "Fernhandel . . .," 74, n. 27, the term *annaku* refers to lead in MAL and sale documents, tin being reserved for international trade.
[118] Deller and Saporetti, "Documenti . . ."; Postgate, "Middle Assyrian Tablets . . .," 20–21.
[119] Koschaker, *Neue keilschriftliche . . .*, 117–26.

7.3.2 Many loan contracts contain a clause giving the creditor a lien (*katû*) on the real estate and, ultimately, on the children of the debtor, in addition to his rights over movable property (KAJ 16, 38, 44, 316).[120]

7.3.3 *Pledge*[121]

7.3.3.1 Pledge is constituted principally by land and persons (wife, children, or slaves of the debtor). It is not regarded as a right *in rem*: the creditor can take the object from the debtor, but he cannot trace it into the hands of a third party; he can only intervene to prevent its alienation. Koschaker distinguishes between three types of loan with pledge: *Verfallspfand*, in which the debtor loses the pledge if he fails to repay the loan on the due date; *Lösungspfand*, which becomes the property of the creditor after maturity, on the judge's decision, and which the debtor can release (*paṭāru*) by payment; and *Nutzungspfand* (antichresis), which gives the creditor the income of the pledge for the duration of the loan in lieu of interest.

7.3.3.2 In antichresis, physical possession of the pledge by the creditor is indicated by a clause specifying, for land, that the principal does not bear interest and that the property is not rented.[122] Personal antichresis seems to be rarer:[123] in most pledges of fields, the person who works the field for benefit of the creditor is a harvester hired by the debtor. The hire of a person is thus a duty ancillary to the loan contract. In other forms of pledge, the distinction between possessory and hypothecary pledge is not always clear. The standard clause *kī šapartu* O(bject) C(reditor) *ukâl* ("the C(reditor) holds/will hold the O(bject) as pledge") indicates that the pledge is legally at the creditor's disposal but does not reveal whether the debtor handed over the property when he contracted the loan or whether he has to deliver it once the term of the loan has expired. Possession seems

[120] Ibid., 117–18.

[121] Ibid., 96ff.

[122] KAJ 13 and Finkelstein, "Cuneiform Texts . . .," no. 150, quoted by Eichler, "Indenture . . .," 94.

[123] Cf. Koschaker, *Neue keilschriftliche* . . ., 109, n. 5, 111; Lautner, Personenmiete . . ., 24–26. According to Eichler, "Indenture . . .," 95, only KAJ 17 is a true example of personal antichresis: the debtor redeems his son by repaying the capital and no interest is provided for default.

to have been the rule for pledge of movables (MAL C+G 3–4) and the exception for land.[124] An undivided owner may pledge his inheritance share. He thereby gives the creditor either the right to enter into joint ownership with the heirs (KAJ 164 and 175) or a future right *in rem*, which will be realized at the moment of division, when the creditor chooses (*nasāqu*) land in the share allotted to his debtor (KAJ 150). The creditor only has a lien over this share, without being able to demand division of the estate.[125]

7.3.3.3 Several laws consider the question of alienation of the pledge by the creditor. Where the pledge is a free person, taken as an antichretic pledge or seized by force by the creditor,[126] the sale is null and void and the creditor is subject to pecuniary and corporal punishment (MAL C+G 2). Punishment is aggravated if the pledge is sold abroad (MAL C+G 3). Unjustified sale entitles the original owner (the debtor) to seize his pledged animal in the hands of a purchaser (MAL C+G 4). In *Verfallspfand*, the creditor obtains full ownership of the pledge on default, without the possibility of redemption by the debtor; if the value of the pledge exceeds the amount of the debt, he pays the debtor the balance (MAL C+G 7). A free person will then change status: he is no longer a pledge but becomes a slave definitively. This is the situation with the Assyrian taken "for the full price" (*ana šīm gamer*: MAL C+G 3 in fin.; MAL A 44). He is acquired definitively by the creditor, who can sell him abroad; he is no longer protected by his status as citizen nor by his ethnic affiliation.[127] Sale of the pledge necessitates an assessment of its financial value (*bulluṭu*),[128] in accordance with an official tariff (KAJ 168)[129] or with the local rate for real estate (Assur 3 no. 2).

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[124] Koschaker, *Neue keilschriftliche* . . ., 99 and n. 3.

[125] Ibid., 41ff.

[126] Interpretation of *kî kaspe* in MAL C+G 2 as referring not to sale but to a pledge for the capital alone given by Westbrook in a lecture to the École Pratique des Hautes Études (Paris) in 1996.

[127] Westbrook, "Slave . . .," 1661–62.

[128] Veenhof, "Figurative Language . . .," 55–56, for the technical meaning of *bulluṭu* "to activate (a pledge)" in contracts of loan; contra Freydank, "Anzeichen . . ."

[129] Freydank, "Anzeichen . . .," gives the verb *šasû* the meaning "to declare" the value of a thing compared to the official price; for Koschaker, *Neue keilschriftliche* . . ., 36, n. 2, the "crying out" is the proclamation of the price, while for Veenhof, "Figurative Language . . .," 56, it denotes a public auction or at least a form of publicity.

7.3.3.4 Human pledges are in theory not subject to disciplining by the creditor, as are debt slaves. A pledge acquired on default, however, in *Verfallspfand*, becomes the property of the creditor, who can mistreat him by whipping him, tearing out his hair, or mutilating his ears. He may also mark his ownership on the newly acquired slave by piercing his ears, as is done for cattle (MAL A 44).[130] Marriage of an antichretic pledge presupposes the prior agreement of the father/debtor (MAL A 48). The rights of any earlier creditor are still not extinguished: having lost possession—but not his debt claim—by transfer of the pledge to another creditor, he retains a secondary charge upon the pledge. He can claim reimbursement from the privileged creditor who has given the pledge in marriage and even has a sort of right of tracing in that he can claim payment from the husband. His debt claim is good against everyone except the benefactor of a girl sold at a time of famine (MAL A 39).[131]

7.4 *Deposit*

A shepherd could not in any way dispose of the animals in his keep without prior permission from their owner. Illicit sale of a horse was subject to corporal punishment (MAL F 2).

7.5 *Liability for Negligence and Breach of Contract*

7.5.1 *Boatman*

A loaded boat going upstream has priority over one going downstream, which must give way. If it fails to do so, its pilot is declared responsible for the collision and must replace or pay compensation for the cargo lost in consequence (MAL M 1). Likewise, fouling a boat going upstream or tied up at the shore by a boat going downstream or crossing the river is the responsibility of the pilot of the downstream boat (MAL M 2).

7.5.2 *Fuller*

A fuller who received clothes from a client for cleaning while he was away on a journey must compensate him for their loss (MAL

[130] Westbrook, "Slave . . .," 1666 and n. 105.

[131] See the interpretation of Roth, *Law Collections* . . ., 167, rather than that of Cardascia, *Lois* . . ., 196–201.

M 3:4–8). If the garments are sold by the fuller, it is deemed to be theft and punished accordingly (MAL 3:9ff.).

8. Crime and Delict

8.1 *The Assyrian System*[132]

Assyrian criminal law has more than a touch of calculated frightfulness: the death penalty is often prescribed alongside mutilation of face or body and beating. Some punishments are ironic (e.g., MAL A 40: the prostitute who has presumed to wear a veil has her head covered in hot pitch); others are talionic (MAL A 20 for sodomy). Cumulation of punishments is common practice. Men can be forced into the royal corvée (*šipar šarre*), generally for one month and doubtless consisting of forced labor on earthworks or construction projects. Punishments are fixed and statutory, with a few exceptions (MAL A 1; C 8 and 10). Talion is applied on several occasions, especially vicarious talion, where it falls on a wife in lieu of her husband (MAL A 50 for abortion; MAL A 55 for rape). The laws punish only the proven culprit who has been tried and convicted in public proceedings (*bâru-kânu*). There is a notable concern for strict equality in punishment, which leads to the paramour being mutilated more extensively than the adulteress so as to make them suffer in the same measure (MAL A 15).

8.2 *Theft and Related Offenses*

8.2.1 Theft of movables, mostly animals, is punished with fifty strokes of the rod and a number of days' royal corvée. The thief must also reimburse the victim. If the value of the objects stolen exceeds a certain amount, punishment is to be decided by the king, even if the victim has been compensated in full (MAL C+G 8).[133] Theft of a sheep is subject to more severe public punishment—a hundred strokes of the rod and a month of royal corvée—and the culprit is in addition said to be "liable for the theft of the sheep" (*šurqa ša immere inaššī*), which perhaps means that the owner will nego-

[132] Cardascia, *Lois . . .*, 77–84.

[133] On the theft of animals and the powers of the *rab ālāni* and the king, cf. also George, "Tablets . . ."

tiate with him the sum to be paid in compensation (MAL F 1). The severity of the penalty may be explained by aggravating circumstances which were described in the broken part of the text at the beginning.

8.2.2 Sacrilegious theft by a free woman is subject to a punishment decided by the god through an oracular procedure but executed by the secular authorities (MAL A 1). Theft within a household is punishable with death if the victim is a sick or dead husband, or with whatever disciplinary measure the husband chooses to inflict if he is in good health (MAL A 3). Simple theft from an outsider gives the victim the right to mutilate the woman responsible by cutting off her nose, unless her husband ransoms her, in which case he may punish her himself by cutting off her ears (MAL A 5). This provision applies to theft of objects exceeding five minas of lead in value; for goods of lesser value, punishment is lighter. Theft of clay for brick-making requires restitution of the bricks plus strokes of the rod and royal corvée (MAL B 15).[134]

8.2.3 A male or female slave who accepts a stolen object from a married woman is considered a receiver of stolen goods and is to suffer facial mutilation (MAL A 4; Edict 5). The female thief has her ears cut off by her husband (MAL A 4). In the same situation, a third party who holds the object in good faith is deemed responsible for the stolen property; in other words, he must return it or pay compensation for it without being able to invoke his ignorance as to its provenience (MAL A 6).[135]

8.2.4 The purchaser in good faith of a stolen animal is reimbursed by the seller/thief (MAL C+G 5). The finder of lost property may

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[134] MAL B 14 provides for the same offense possibly committed by digging a ditch (Roth, *Law Collections* . . ., 180) or by trespass upon a neighbor's land (Cardascia, *Lois* . . ., 285).

[135] For another interpretation, which separates MAL A 5 and 6, see Driver and Miles, *Assyrian Laws* . . ., 27–29, according to whom the wife lacks the legal capacity to pledge, even her own property, and Cardascia, *Lois* . . ., 103–6, for whom this law is a special application of the general principle in MAL C+G 9: the receiver must alert the husband or master when he is given goods by a married woman or a slave. It would appear nonetheless that MAL A 6 represents a variant of theft by the wife in MAL A 5: cf. Lafont, *Femmes* . . ., 302–5.

be treated as a thief if he does not report it to the authorities.[136] A complicated case reported in a letter (Assur 3 no. 1) illustrates this rule: one Abî-ilî tracks down some lost oxen, which he finds in the hands of their herdsman. He incarcerates him along with the animals, then delivers them to Adad-uballiṭ. The latter, however, seems to have pledged the thief and the oxen to a third party. The writer complains that he has had to bear responsibility for this unauthorized disposal by another.[137]

An owner's right to trace his property into the hands of whoever was in possession may possibly have been recognized in Assyrian law.[138] This conclusion is based on the reconstruction of the very damaged MAL C+G 6. It seems that the owner had the right to seize the object, at least from a possessor in good faith, for example, if it had been sold by someone other than the owner (MAL C+G 4) or if the stolen property had been handed over by a wife (MAL A 6). The receiver is presumed to be in bad faith when goods are deposited with him by someone lacking legal capacity (wife, son, slave) and he does not alert the owner (MAL C+G 9).

8.3 *Adultery*

8.3.1 A married woman who has sexual relations with a man other than her husband is put to death. Her paramour suffers the same fate if he knew that she was married (MAL A 13 and 15). If he did not, he is innocent (MAL A 14). Where both are caught by the husband in flagrante delicto, they may be executed after a public trial in the absence of the husband (MAL A 15:41–46),[139] or judged and punished in a trial conducted by the husband himself to establish the guilt of the paramour (MAL A 15:47ff.). The guilty couple are treated with strict equality: they receive the same punishment or are

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[136] Cardascia, *Lois* . . ., 75, for whom MAL C+G 6 concerns loss of property.

[137] Ll. 17–23: "Question Adad-uballiṭ at Aššur. (He will say:) '(I swear) that I gave the thief as a pledge to Aššur-apla-iddin.' They wish to charge me with the crime with which he is charged" (ᵖu-*u*'-ti.la/ *i-na* uru.šà.uru *ša-'a-al/ šum-ma sa-ra a-na qa-ta-te/ a-na* ᵖᵈ*a-šur*-IBILA-SÌ-*na at-ta-din/ sa-ar-ta ša am-me-a/ a-na e-ma-di-ni a-na ia-a-ši/ li-me-du-un-ni*). For the meaning of ll. 21–23, cf. Freydank, "Anmerkungen . . . 2," 229–30 and n. 2.

[138] Contra Cardascia, *Lois* . . ., 74–75, 305–6, but his conclusion is based on a reconstruction of the very damaged MAL C+G 6.

[139] Lafont, *Femmes* . . ., 71–72.

both pardoned (MAL A 15:51–57). A marginal case is that of sexual relations brought about by a procuress, who has lured a married woman into her house and given her to a man. The wife is subject to punishment at her husband's discretion if she does not declare what has happened on leaving the house. She is presumed to have agreed to the offense even if it was not at her initiative. In the opposite case, she is presumed to have been raped (see 8.4 below). The procuress and the paramour are treated like the adulteress (MAL A 23). A kiss granted by a married woman entails punishment at her husband's discretion; her partner is innocent, presumed unaware of her married status (MAL A 16:58–62). A kiss stolen from a married woman, on the contrary, is an affront to her husband and is punished by mutilation of the culprit's lip (MAL A 9:93–96).[140]

8.3.2 An accusation of adultery does not expose its author to retribution if he is in good faith. Thus, the ordeal prescribed to verify an accusation that a man cannot prove by witnesses will have no consequences if the woman is shown to be innocent (MAL A 17). A malicious slander, on the other hand, is punished with forty strokes of the rod, a month's royal corvée, a mark of infamy on the head, and a fine of a talent of lead (MAL A 18).

8.4 *Rape*

8.4.1 Intercourse with a married woman is deemed rape when she has offered firm resistance (MAL A 12). By contrast, any form of physical or psychological violence amounts to rape when the victim is a child (MAL A 55). The rapist of a married woman suffers death (MAL A 12 and 23), as does a procuress who abetted the offense (MAL A 23). The law, however, recognizes attenuating circumstances for a man who, enticed by a woman, first embraced her and then took her by force: he suffers the same punishment as the husband decides for his wife (MAL A 16). In the same way, the wife taken with on a business trip who accuses a man of having slept with her is doubtless claiming rape (MAL A 22).[141] A raped virgin is given

[140] For the various interpretations of this fragmentary text, cf. Lafont, *Femmes* . . ., 163–64.

[141] Cardascia, *Lois* . . ., 140.

to her ravisher as a wife, at her father's discretion, and the latter also receives compensation (*šalšate*, "a third") equal to the "price of a virgin" (*šīm batulte*). If the culprit was already married, his wife is subject to vicarious talion: she is handed over for violation (MAL A 55).

8.4.2 Active sodomy is subject to talionic punishment (the culprit is sodomized himself) and castration (MAL A 20). The nature of the sanction suggests that the law is above all punishing a rape, doubtless seen as particularly humiliating. A slanderous accusation of sodomy in private or public is punished with strokes of the rod, a fine, a mark of infamy, and a month's royal corvée (MAL A 19).

8.5 *Assault and Wounding*

8.5.1 Blows inflicted on a man by a woman are punished with a heavy fine and twenty strokes of the rod (MAL A 7). The severity of the punishment in proportion to the offense reflects the inferiority of women in Assyrian society. Aggravated violence, consisting for a woman in wounding one or both testicles of a man, is punished by cutting off a finger or mutilating the breast(s) (MAL A 8). The case has a parallel in the Bible (Deut. 25:11–12). A man guilty of an obscene gesture towards a woman has a finger cut off (MAL A 9).[142]

8.5.2 A variation on this theme is presented by miscarriage following blows to a pregnant woman. The conditions suggest that the perpetrator intended to strike the woman but not to cause a miscarriage. If the offense is committed against a *mārat a'īle*, a free woman not under a husband's authority (4.3.2 above), the punishment is a heavy fine—fifty strokes of the rod and a month's royal corvée (MAL A 21). The same offense against a married woman (*aššat a'īle*) gives rise to vicarious talion upon the pregnant wife of the culprit; it is capable of composition by payment of ransom money.

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[142] The nature of the culprit's gesture is a matter of debate by reason of the uncertain reading of l. 89: *ki i* BU *ri e-pu-us-si*. The man is said to have attacked the woman "like a rutting bull" (*kî būre ēpussi*, most recently, Roth, *Law Collections* . . ., 157) or to have "treated her as a young child" (*kî šīri ēpussi*), i.e., smacked her (Driver and Miles, *Assyrian Laws* . . ., 32), or made an obscene gesture (Cardascia, "Caractère volontaire . . .," 198, n. 96).

In addition, the culprit will "compensate the life" (*napšāte umalla*), that is, will pay a sum equal to the value of the aborted fetus (MAL A 50:65–69). If the victim is a prostitute, the attacker receives a talionic punishment of "blow for blow" (*miḫṣī kî miḫṣī*) and pays compensation for the loss of the fetus (MAL A 52). A fine is the penalty for a miscarriage caused to a woman who, for physiological reasons, cannot raise the children she bears (MAL A 51). If the injury makes a woman who has not borne sons sterile, it is a serious offense carrying the death penalty (MAL A 50:74–79). Causing a miscarriage is thus defined as an injury inflicted on a pregnant woman and not as an assault on the life of the fetus, which is perceived as part of the mother's property and an item of the father's property.

8.6 *Self-inflicted Abortion*

According to MAL A 53, a woman convicted of this offense is condemned to impalement and denied burial. These punishments are applicable post mortem if the culprit dies as a result of the abortion.[143] It is a punishable offense not to report the crime.

8.7 *Homicide*

8.7.1 The punishment for murder is left to the discretion of the head of the victim's family: he may choose between death or composition, comprising the culprit's property or, if he is insolvent, a son or daughter (MAL A 10). An undivided heir who commits the same offense is also handed over to the avenger of blood, who may demand his death or his inheritance share (MAL B 2). In the latter case, either the coheirs agreed to divide the estate so as to separate off the culprit's share, or they accepted the stranger as a joint owner.[144]

8.7.2 Unpremeditated homicide is envisaged in the case of causing a miscarriage. If the injury results in the death of the pregnant woman, the culprit suffers the death penalty and must, in addition, pay the victim's husband the value of the fetus (MAL A 50:70–73).

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[143] The law could also be understood as covering both an attempted abortion (ll. 92–97) and a successful abortion (ll. 98–101): Roth, *Law Collections* . . ., 174, 193, n. 30.

[144] Cardascia, *Lois* . . ., 265.

8.8 *Domestic Jurisdiction*

Maltreatment of a wife by her husband may not exceed the mutilations listed in Tablet A, which constitute upper limits (MAL A 57).[145] Apart from these punishments for prescribed offenses, he may whip his wife, pull out her hair or crush her ears—all disciplinary measures pertaining to his everyday domestic authority (MAL A 59). Domestic jurisdiction thus appears to be tightly controlled by the state.[146] Statutory provisions authorizing the husband or the father to punish his wife or daughter at his discretion (e.g., MAL A 5, 16, 23, 56) do not recognize a power of life and death; that is exclusively the king's prerogative.[147] Thus, a woman of the harem has the right to discipline her servant by striking her, but will be punished by the king if the slave dies from her blows (Edict 18). Only a crime of passion is excused, where the husband kills an adulterous couple caught in flagrante delicto. Assyrian law has noxal liability: a crime by a subordinate member of household against a third party obliges the head of household to hand them over to the victim for revenge or to ransom them (MAL A 5 and 24 for a thieving wife or a wife who harbors a runaway).

8.9 *Witchcraft*

On witchcraft, see 3.3.3 above.

8.10 *Blasphemy*

A woman who utters blasphemy, intentionally or not,[148] bears sole responsibility for her statements (MAL A 2). A proven offense of blasphemy or of defilement of the temple is punishable with beating and corvée (MAL N 1). The same penalties presumably apply for slanderous accusation of the same offenses, applying the principle of equivalency of punishment for false accusation, but confirmation

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[145] Otto, "Rechtsreformen . . .," 248–49.
[146] Otto, "Einschränkung . . ."
[147] Yaron, "Vitae . . ."; Westbrook, "Life . . .," 64ff.
[148] MAL A 2:16–18: *šillata taqṭibilu miqit pî tartiši*, "has uttered blasphemy or has had a slip of the tongue (against the god)." The latter expression refers to statements the gravity of which the speaker has not grasped, due to her youth or limited mental capacity. Cf. Lafont, *Femmes . . .*, 447–48, with bibliography of other interpretations of *miqit pî rašû*.

is not possible due to a gap in the text (MAL N 2). Blasphemy against a god or the king by a lady of the harem in the course of a quarrel carries the death penalty (Edicts 10 and11).

8.11 *Forgery*

Falsification of a debt note for the purpose of inflating the sum of the debt is a fraud carrying a punishment at the king's discretion (MAL C+G 10). Falsification of accounting records, to the detriment of the creditors of a trading partnership, is punishable with strokes of the rod (MAL C+G 11).

Abbreviations

Assur 3	Aynard and Durand, "Documents . . ."
David and Ebeling	ARU David and Ebeling, *Assyrische Rechtsurkunden* . . ., by text number

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MESOPOTAMIA

NUZI

Carlo Zaccagnini

1. Sources of Law

1.1 *The Archives of Nuzi*

Some seven thousand tablets, from both official and illicit excavations at the sites of Yorghan Tepe (= ancient Nuzi), Kirkuk (= ancient Arraphe/*āl ilāni*), and Tell el-Fahhar (= ancient Kurruhanni), in a small region east of the Tigris and south of the Lower Zab, provide the major documentary evidence for reconstructing the legal institutions and practice of northern Mesopotamia. The ethnic, linguistic, and cultural features of the region were marked to a greater or lesser extent by the presence of the Hurrians. The period covered by the Nuzi and related archives extends over some five or six generations during the third quarter of the second millennium (ca. 1450–1340), corresponding in archaeological terms to the central phase of the Late Bronze Age.

Nuzi was a provincial town in the kingdom of Arraphe, but the site of its capital, the present mound of Kirkuk, has to date yielded only a few scattered documents. The site of Washshukanni, the capital of Mittani, the Hurrian suzerain, has not yet been found. The Nuzi documentation[1] is therefore of exceptional significance, insofar as it provides a unique basis for reconstructing the complex legal situation in a predominantly Hurrian cultural milieu.[2]

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[1] For the sake of simplicity, the term "Nuzi" is henceforward used with reference to the entire set of documents retrieved at Yorghan Tepe, Kirkuk, and Tell el-Fahhar.

[2] The peculiar features displayed by the Nuzi archives are only partially mirrored in the more or less contemporary Syrian archives of Alalakh (Level IV), Ugarit, and Emar.

1.2 *Typology of Documents*

1.2.1 *Documents from the Palace Archives*

1.2.1.1 No codes or law collections have been recovered at Nuzi, nor would one expect to find that kind of document in provincial archives of the period. On the other hand, direct or indirect evidence of royal and/or palace edicts, orders, and proclamations is fairly abundant, if still largely obscure.

1.2.1.2 Aside from a number of royal orders issued in form of letters to palace officials or provincial governors, city mayors, and district governors,[3] a few documents from the palace archives refer to a royal/palace "decree, edict, proclamation" (*šūdūtu*, from the verb *idû* Š (*šūdû*) "to let someone know, announce, proclaim"), a term at times replaced or coupled with *ṭēmu* "decision, communication, order" or *qibītu* "order, command." To judge from the scant evidence at hand, it seems that these "proclamations," regardless of whether they had general legal effect or were limited ad hoc rulings, mainly concerned the protection and the occasional release of people who, for different reasons, were in a state of servitude.

1.2.2 *Documents from Private Archives*

1.2.2.1 In contrast with the meager evidence provided by the palace archives, the *šūdūtu* proclamations/edicts are frequently mentioned in a vast number of private legal deeds of various kinds dating to the late period of Nuzi history. A standard clause at the end of the document states that "the (present) tablet was written after the *šūdūtu*." Scholars have long been tempted to compare the Nuzi *šūdūtu* with the well-known early Mesopotamian debt remission decrees (Akk. *mīšarum* = Sum. NÍG.SI.SÁ), especially since two otherwise well-known terms—Akkadian *andurāru* ("remission, manumission") and Hurrian *kirenzi* ("manumission")—are occasionally attested.[4]

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[3] The sole evidence of a royal order sent to an Arraphean king by the Mittanian overlord is provided by the letter HSS 9 1, which bears the seal of "Sauštatar, son of Parsatatar, King of Mittani."

[4] For a survey of the relationship between *šūdūtu*, *andurāru*, and *kirenzi*, see most recently Lion, "L'*andurāru* . . .," esp. 319–26; Zaccagnini, "Debt . . .," with a summary of previous literature.

1.2.2.2 The bulk of Nuzi texts consists of private legal documents, belonging to family archives of various dimensions. Some cover the entire duration of the kingdom of Arraphe; others are restricted to the time span of two or three generations. A considerable number of texts still lack archival identification.[5]

1.2.2.3 This impressive wealth of documentary evidence covers almost all sectors of private law. Nuzi legal documents include transfers of real estate; personal adoption of sons, daughters, brothers, sisters, daughters-in-law, etc.; gifts; exchange of land (and sporadically also of movables); marriage and related agreements; loans with or without personal or real-estate securities; self-bondage contracts; testaments and related *post mortem* dispositions.

1.2.2.4 In addition, there is ample evidence of judicial acts and court procedures, such as records of trials with final verdict, preliminary or interim depositions in court before or in the course of pending litigation, records of settlement of litigation. The above list by no means exhausts the rich vein of Nuzi documentary evidence, which still requires further study, notwithstanding the many monographs on the main types of juridical records, continuing contributions on matters of detail and repeated historical and comparative interpretations.[6]

1.2.2.5 Worthy of notice is a stylistic feature typical of most of the Nuzi legal documents: the type of transaction recorded is stated in the heading or, less frequently, at the end of the tablet. The standard formulation is: "Tablet of (*tuppi*) adoption/exchange/marriage (agreement)/testament/etc." Alternatively, the documents are formulated as a statement issued by one of the contracting parties: "Tongue of PN—he has declared: . . . (*lišānšu ša* PN . . . *iqtabi*)" or

[5] For a reconstruction based on prosopographic analysis, see Maidman, A Socio-Economic Analysis . . . Among the ongoing projects, note especially G. Wilhelm's complete (re-)edition of the vast archive of Prince Šilwa-Teššup (Wilhelm, *Das Archiv* . . .). For the most recent assessment, see Jas, "Old and New . . ."

[6] Feverish interest in the puzzling intricacies of the Nuzi records, stimulated to a great extent by the possibility of new parallels with the Old Testament, dates back to the late twenties—immediately after the discovery of tablets in the course of the first campaign on the mound of Yorghan-Tepe.

in abbreviated form, "Thus (declares) PN: . . . (*umma* PN)." At times the tablets record a double declaration, issued simultaneously by both contracting parties.

2. Constitutional and Administrative Law

2.1 *Organs of the Government*

2.1.1 *The King*

The kingdom of Arraphe was a minor state subordinate to the "Great King" of Mittani. Very little is known about this "vassal" relationship, for want of pertinent textual evidence.[7] The institutional functions, powers, and interventions of the king of Arraphe are poorly documented. Aside from a few orders addressed to central or peripheral palace officials, concerning various administrative matters (see, e.g., HSS 15 1; JEN 551), the king's role as legislator is possibly attested in the frequent mentions of "edicts/proclamations" (*šūdūtu*) at the end of various private transactions. The standard formula reads: "The tablet was written after the proclamation at the city gate [or other topographical location]" (*ṭuppu ina arki šūdūti ina . . . šaṭir*). As noted above, it is still a matter of dispute whether these "edicts/proclamations" correspond to the Old Babylonian *mīšarum*-edicts, issued for the remission of debts.

2.1.2 *The Administration*

2.1.2.1 Within the limits of its political subordination to the Mittani overlord, the kingdom of Arraphe was administered by the king (*šarru*), as head of the central palace bureaucracy (*ekallu*), under whose control provincial and local authorities operated. The palace archives attest to various officials, whose hierarchical position and powers are still not entirely clear.[8] Among them may be mentioned "governor" (Sum. (LÚ.)GAR.KUR = Akk. *šakin māti* or *šaknu*), "vizier" (Sum.

[7] Cf. Zaccagnini, "Les rapports . . ."

[8] For a preliminary list of the pertinent sources, cf. Mayer, *Nuzi-Studien* 1, esp. 121–31.

(LÚ.)SUKKAL = Akk. *sukkallu*), "district commander (?)" (Akk. *ḫalṣuḫlu*),[9] and "mayor" (Akk. *ḫazannu*).[10]

2.1.2.2 Information as to the limits of the powers of mayors is provided by an extraordinary corpus of court depositions that record the misdeeds of Kuššiharbe, mayor of Nuzi, against a vast multitude of private citizens (AASOR 16 1–14). The astonishing variety of crimes of which Kuššiharbe (and a number of his fellow criminals) is accused sheds significant light on the wide range of administrative functions of an Arraphean mayor, in his official relationship with the king/palace on the one hand, and with individuals belonging to urban and peasant communities on the other.

2.1.2.3 Very little is known about royal/palace real estate and its administration. In spite of the lack of documentary evidence, it is beyond doubt that the "palace" owned fields and (farm)-houses. Nothing is known about how such land was defined or used. The queen and other members of the royal family (see, e.g., Šilwa-Teššup, "son of the king") also owned land. There is every reason to believe that Prince Šilwa-Teššup's estates were not managed as part of the "public" sector of the economy: they did not differ from those of other (wealthy) private landowners and businessmen active at Nuzi.[11]

2.1.3 *The Courts*

The Nuzi archives offer a wealth of information about the organization and procedure of the courts, which in part has parallels in the Mesopotamian documentation of the earlier second millennium. In spite of its modest local setting, the Nuzi judicial world is notable for its special complexities (see sec. 3 below). The following are the principal officials involved in the administration of justice.[12]

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[9] See, however, Maidman, "The Office of *ḫalsuḫlu* . . .," who suggests that the main task of the *ḫalsuḫlu* was to determine the dimensions of fields and to assign or confirm ownership title to new owners or to those whose title had been challenged.

[10] Cf. Cassin, "Heur et malheur . . .," and Zaccagnini, Review . . ., 130–31.

[11] Cf. Zaccagnini, "Proprietà fondiaria . . ."

[12] For a general overview, see Hayden, Court Procedure . . ., 8–19.

2.1.3.1 *The King*

As elsewhere in the ancient Near East, the king, in his capacity as judge, functioned at the highest level of court procedure. Although the evidence in our possession is relatively meager, it is beyond doubt that the final decision lay with the king of Arraphe in cases submitted to him by litigants and in appeals against previous decisions by ordinary judges. We do not know how frequent such appeals were. Note also the king's role in deciding the fate of people who were declared guilty but did not drown at the end of a river ordeal (HSS 9 7: 23–26; HSS 13 422: 32–38).

2.1.3.2 *The Judges*

Civil and criminal lawsuits of all kinds were tried before one or more judges (Sum. DI.KU$_5$ = Akk. *dajānu*), sitting as a college. A variety of people, including "king's sons," acted as judges, but we do not have any specific evidence suggesting a privileged connection between membership of the royal house and appointment to the office of judge.

It is reasonable to suppose that the judges were part of the governmental machinery of justice, even if we lack evidence attesting to their enrolment in the ranks of the palace bureaucracy—judges are never mentioned in the documents of the palace archives. On the other hand, the recurring qualification "judges of the city GN" suggests a functional and probably permanent connection between the judges' office and territorial spheres of jurisdiction, centered on major Arraphean towns and related rural districts. It is therefore quite conceivable that the various courts were composed of local (senior) representatives of the city or village communities, acting as delegates for the settlement of legal disputes and judicial matters. The high number of judges revealed by a comprehensive survey of the Nuzi documents related to trials and court procedures strongly suggests that they did not belong to the ranks of (permanent) palace officials.[13]

The limits of the judges' autonomy vis-à-vis the king—as supreme judicial authority—is still largely unknown: a functional and procedural link was, however, ensured through the intermediary of various administrative officials such as "mayors" (*ḫazannu*), "viziers" (*sukkallu*), and "governors" (*šakin māti*/*šaknu*).

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[13] Ibid., 245–56.

Other court officials taking part in investigations and related procedures under the authority of, or in connection with, the judges included *ḫalsuḫlu* (cf. 2.1.2 above) and "bailiffs" (*manzatuḫlu*) (cf. 3 below).

3. Litigation

3.1 *Parties*

Where there was a multiplicity of litigants, the co-plaintiffs or defendants could be collectively represented by one of their number, who would act in the name and interests of all. Women and slaves—the latter probably acting on behalf of their masters—had full capacity to initiate proceedings before the judges. "Substitutes" (*pūḫu*) could go to court as official representatives of the plaintiffs.

3.2 *Object*

3.2.1 The rich corpus of Nuzi documents recording lawsuits, in their various procedural stages, exclusively concerns litigation between private parties, whatever the object of the accusations, charges, claims, and rebuttals. Disputes between Nuzi citizens and the central palace authority are not documented.[14]

3.2.2 A common feature exhibited by all legal cases dealt with by the courts is that they are within the sphere of civil law. The judges' verdicts exclusively concern (1) decisions about ownership, tenure and usufruct of real or movable property, including chattel slaves and other unfree persons; (2) penalties of various kinds as compensation for material and "moral" damage caused by the unlawful actions of one party against his opponent. In other words, crimes and delicts are dealt with by the courts only insofar as they are relevant to the civil aspects of the litigation. Disputes cover an extremely wide range of matters, but the great majority concern real estate and breach of contract.[15]

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[14] See, however, EN 9/1 405, a case concerning theft of straw from the palace granary by three men who were found guilty and condemned to pay a fine to the palace.

[15] Cf. the catalogue of tablets recording or related to lawsuits in Hayden, Court procedure . . ., 221–26.

3.3 *Procedure*

3.3.1 We lack direct evidence about formal steps to be taken by one party before bringing a case before the judges. The standard clause "PN will not raise (judicial) claims/bring charges (*šasû*) against PN_2," which is recorded at the end of a great number of private deeds, contracts, and agreements,[16] possibly alludes to proceedings prior to formal litigation. The matter is complicated, however, by the frequent association of the *šasû* clause with the clause concerning breach of contract (*nabalkutu*), which foresees payment of a penalty by the claimant/party in breach.

3.3.2 The beginning of a trial implied the presence of plaintiff(s) and defendant(s) before the judges. The most recurrent formula introducing the record of a case is: "PN with PN_2 appeared in a lawsuit before the judges" (PN *itti* PN_2 *ina dīni ana pāni dayānē ītelûma*). At times, the object of the dispute is specified: "as concerns . . ." (*aššum . . .*).

3.3.3 In a few instances, the defendant failed or refused to appear in court: on the plaintiff's initiative, the judges sent "bailiffs" (*manzatuḫlu*) to summon the defaulting party.[17] After formally ascertaining the defendant's refusal to appear in court, the judges found in favor of the plaintiff. On the other hand, the defendant's declaration admitting the correctness of the claim in fact and law ended the trial.[18]

3.3.4 The judges decided on the basis of evidence produced by the litigants either on their own initiative or at the court's request. Within these parameters, the rich corpus of Nuzi court records attests to a surprising variety of procedural situations.[19] No formal rules or restrictions seem to have fettered the judges' broad discretion in collecting evidence.[20] In most cases, judgment required evaluation of written

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[16] For a selected list of textual references, see CAD Š/2, 161a–62a.

[17] For the various technicalities of this procedure, see Hayden, Court Procedure . . ., 13–15. Note that the few records of actual or threatened physical seizure (*ṣabātu*) of persons seem to be restricted to cases of crime or debt; cf. the textual references in CAD Ṣ, 8b–9a.

[18] Cf. Hayden, Court Procedure . . ., 24–25, with nn. 94–95.

[19] For a preliminary overview, see Hayden, Court Procedure . . ., 26–33.

[20] Cf. Liebesny, "Evidence . . .," 140–42.

and/or oral evidence. Written documents recording contracts or agreements formerly concluded between the litigants or their predecessors in title (e.g., parents, grandparents), were often cited at the relevant point in the dispute or brought into court for the judges' inspection.

3.3.5 Witnesses' depositions were the most common means of acquiring pertinent evidence. Note that in some instances, written documents record individual or joint oral depositions relevant to the preparation of a lawsuit.[21]

3.4 *Decisions*

3.4.1 Nuzi trials always ended in a definite decision of the judges in favor of the plaintiff or of the defendant, which included a statement of the penalties imposed, where appropriate. The standard introductory formula of the verdict reads: "PN(s) prevailed in the case" (PN(s) *ina dīni iltê*); after this, the tablets set out the contents of the judicial decision in favor of the winner and against the loser.

3.4.2 In some instances, the final verdict in a case was postponed until further evidence could be made available or interim judicial orders could be executed.[22] These interlocutory decisions were labeled "memorandum" (*tuppi taḫsilti*): they served as additional pieces of documentary evidence that later on would be taken into account by the judges in the final stage(s) of the case.[23]

3.5 *The "Lifting of the Gods"*

Conflicting or inconclusive evidence adduced by the litigants could prompt the judges to order one party to perform the ritual of

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[21] See, e.g., the differing reports relating to the intricate case recorded in JEN 321, 135, 184, 512, 325, 644, and 388. For bibliographic references, see Zaccagnini, "Proprietà fondiaria . . .," 707–8. An unique example of depositions gathered to serve as evidence in a trial of a public nature is provided by fourteen tablets (AASOR 16 1–14) recording the accusations (at times followed by defense statements) of many citizens of Nuzi against the mayor Kuššiharbe and some members of his office. Most charges concern acts of corruption, abuse of office, and related crimes; we do not know the final verdict of the trial or, indeed, if it ever took place.

[22] See, e.g., HSS 5 46, 51; JEN 191, 338, 355, 365, etc.

[23] As correctly pointed out by Müller, "Ein Massenprozess . . .," memorandum tablets did not exclusively refer to litigation.

"lifting the gods" (*našû ilāni*) against his adversary.[24] Scholars have differed in their interpretation of the technical terminology exhibited by some thirty documents that mention this special Nuzi procedure.[25] Its main features may be outlined as follows.

3.5.1 Most of the trials in which *našû ilāni* had to be performed belong to the sphere of criminal law, but the same procedure was at times also prescribed in litigation concerning ownership of land or movable property.[26] The aim of this "suprarational" legal procedure was to give a litigant—in most cases, the defendant—who lacked testimonial support an opportunity to challenge the statements delivered before the judges by the opponent's witnesses or, more rarely, by the opponent himself. The technicalities of this judicial ritual are still far from clear: the Nuzi sources do not provide explicit evidence and there is no adequate comparative documentation from other Mesopotamian legal corpora.

3.5.2 On etymological grounds alone, we can be certain that *našû ilāni* does not correspond to the well-known *nīš ilim*, "oath (lit.: life) of god" (i.e., "(to swear) by the life of a god").[27] Nevertheless, it is clear that the "lifting of the gods" implied a personal confrontation of one litigant and/or his supporting witnesses with the (image of the) gods belonging to (?) or produced by (?) the opponent. The procedure did not take place in court in the judges' presence. Indirect but strong evidence thereof is provided by the frequent occurrences of the formula stating that the parties were "sent" (*šapāru*) to perform the ritual: the bailiffs (*manzatuḫlu*) were to accompany those ordered to "lift the gods"; after completion of the ritual they would deliver a full report to the court.

3.5.3 Whatever the procedural stages and formulaic features of the ritual might have been,[28] the sources attest to three possible out-

[24] Cf. Frymer-Kensky, "Suprarational . . .," 121–22.
[25] Cf. Liebesny, "Evidence . . .," 134–137; Hayden, Court Procedure . . ., 34–39; Frymer-Kensky, "Suprarational . . .," 120–131.
[26] Cf. Frymer-Kensky, "Suprarational . . .," 122.
[27] Note, in the latter case, the use of the singular *ilu* vs. the plural *ilāni.*
[28] Cf. the speculative rendering of CAD N/2, 83b–84a, s.v. *našû* A 1a 3': "to lift an image or sacred object during the oath ceremony."

comes: (a) if the party whom the judges had ordered to "lift the gods" refuses (*lā magāru*) to do so, he loses the case; (b) if the ritual takes place, the party who "turned back (unsuccessfully) from the gods" (*ašar/ištu ilāni ittūr*) loses; (c) if the ritual takes place and one party "lifts the gods" but his opponent insists on his claims or statements, that party loses.

3.6 *The Ordeal*

3.6.1 Some twenty documents attest to the practice of the river ordeal (^{ÍD}*ḫuršan*).[29] It applied mainly to criminal law, but disputes over property and personal rights could also be decided by recourse to this supra-rational legal procedure. Unlike "lifting of the gods," which almost invariably foresaw a ritual confrontation between one party and his opponent's witnesses, the river ordeal was decreed when neither litigant had produced documentary evidence or testimony supporting their claim.

3.6.2 While the procedures of the ancient Near Eastern ordeal are still a matter of dispute, it can be concluded from the Nuzi evidence that both parties or, at times, only one, were ordered to go to a watercourse,[30] where they would undergo a personal (and physical) test, possibly but not necessarily implying death.[31]

3.6.3 Due to the extremely formulaic conciseness of the sources, the judicial implications of the ordeal are not entirely clear. With the sole exception of EN 9/1 430, we do not have any evidence attesting to a sentence pronounced by the court as a result of the ordeal. The standard formula written at the end of most records states: "concerning this (legal) matter they shall go to the ordeal" (*aššum awāti annâti ina/ana ḫuršan illakū*).[32] If one of the litigants refused

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[29] Cf. Hayden, Court Procedure . . ., 39–50 and, most recently, Wilhelm, "Ein neuer Text zum Ordal . . ."

[30] Cf. the standard occurrence of the determinative ÍD = *nāru* "river," which precedes the term *ḫuršānu*.

[31] See EN 9/1 430 (cf. Hayden, Court Procedure . . ., 45–46): both litigants were sent by the judges to the ordeal; the defendant lost and was condemned to indemnify the plaintiff. Whatever the river test involved, both parties plainly came back alive.

[32] See, e.g., JEN 124: 18–20; 631: 18–19; EN 9/1 140: 14–15; etc.

to undergo the test, by stating: "I will not go to the river ordeal" (*ana/ina ḫuršan lā allak*), he lost the case.[33]

3.6.4 In six documents, a further proviso is appended to the customary formula ordering that the parties go to the ordeal: "concerning this (legal) matter, they shall go to the ordeal. Whoever withholds/is held back (*ša ikkallû*) (scil. from the ordeal)" either will be put to death[34] or will be judged according to the king's order.[35] Among other things, the crucial point at issue is to ascertain what *ša ikkallû* (*kalû* N [= passive]) actually means. The many divergent renderings[36] basically infer two different concepts: (a) to turn back, keep away, from the river test, that is, to refuse to undergo the ordeal; (b) to undergo the ordeal without perishing in the river, thus being "held back" from the test. The former interpretation is faced with the problem of clarifying the difference between refusal (*lā alāku*) of one party to take the ordeal and "turning back" from it;[37] the latter must assume that the person who "comes back (alive)" from the ordeal was nevertheless found guilty.[38]

3.6.5 A different and more intriguing scenario is revealed by a few documents in which the party declared the loser in the case must *reimburse* his opponent *and* take the ordeal.[39] In the absence of clear textual evidence, it is difficult to venture any interpretation as to the scope and consequences of the ordeal, as attested in these records.

3.7 *The Oath of the King*

A few litigation records concerning ownership of land or over the sowing and harvesting of grain mention "pronouncement of the oath

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[33] See JEN 467; 659+SMN 1651; cf. Wilhelm, "Ein neuer Text zum Ordal . . ."

[34] AASOR 16 74: 24–26; 75: 29–31.

[35] HSS 9 7: 23–26; HSS 13 422: 35–38; cf. HSS 14 8: 16–18. Gadd 29: 43–44 prescribes the forfeiture of real estate.

[36] Cf., e.g., CAD K, 104a: "who keeps away"; Š/1, 145a: "who refuses"; Š/2: "whoever is found guilty [sic!]"; Hayden, Court Procedure . . ., 160: "whoever holds back"; AHw, 429a, s.v. *kalû* N 1 c: "zurückgehalten werden"; Wilhelm, "Ein neuer Text zum Ordal . . .," 71, n. 3: "(Derjenige), der zurückgehalten wird."

[37] In the first instance, the party loses the case; in the second, he is either to be killed or handed over to the king for judgment.

[38] See Wilhelm, "Ein neuer Text zum Ordal . . .," 71.

[39] HSS 5 50 and 45; see also JEN 467: 24–26; 662: 90–92; cf. JEN 393: 8–13.

of the king" (*niš šarri zakāru* [in one instance, *n. š. qabû*]) by one party as a preliminary means of challenging the opponent's claims or actions.[40] From these records we learn that the party who took the oath appears as defendant in the subsequent trial initiated by the party whose claims had been challenged with the oath. The judicial procedures that then take place do not differ from those of other Nuzi trials. It may be noted, however, that all those who took the oath of the king, for one reason or other, eventually lost their cases.

3.8 *Appeals*

3.8.1 As a rule, the judges' decision at first instance brought the dispute to an end. We have, however, some occurrences of appeals resulting in a second trial; the technical word is *dīna šanû* (lit., "to seek a trial a second time").[41] To judge from the explicit evidence provided by AASOR 16 71, the bench that dealt with the appeal was different from that at first instance. It is impossible to know whether this was a customary rule for all hearings on appeal.

3.8.2 Appeals were never successful,[42] and previous decisions were always confirmed. The court records provide little if any information about the new trials and, in most cases, simply state that the appellant lost the case "because he had sought a trial a second time." Be that as it may, in addition to any orders made at first instance, a standard penalty was imposed on the appellant: the payment of a female slave to the winner. In AASOR 16 71, and perhaps also in the fragmentary record EN 9/1 448, the appellant was condemned in addition to give one ox to each of the judges who had participated in the former trial. Again, we do not know whether this was general practice.

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[40] See, e.g., JEN 324 (cf. Hayden, Court Procedure . . ., 101–5; JEN 333 (cf. Jankovska, N.B., JESHO 12 [1969], 256–58); JEN 362; EN 9/1 498 (cf. Hayden, Court Procedure . . ., 150–52). Cf. Liebesny, "The Oath of the King . . ."

[41] See, e.g., JEN 330, 368; AASOR 16 71; EN 9/1 432, 448, 426. Cf. Hayden, Court Procedure . . ., 52–61.

[42] EN 9/1 426 is a different case; cf. Hayden, Court Procedure . . ., 59–61.

4. Personal Status

4.1 *Citizenship*

4.1.1 The official status of "citizen"—"man/woman/son/daughter/wife of the country of Arraphe" in the wording of the texts—is at times explicitly stated in private documents of various kinds.[43] To all appearances, such a qualification implies a special (and privileged) status of the persons, as concerns the safeguarding of their civil rights. This is especially made clear in a number of transactions whose object is the giving of women in adoption or marriage: the various conditions that are laid down as between alienor and alienee are designed to limit the latter's freedom to deal with the woman as he pleases. See, for example, the case recorded in AASOR 16 43, where a girl is given in adoption by her parents to a woman, who will marry her off to whomever she pleases. The adopter, however, "shall treat the girl as a free citizen (lit., "daughter") of Arraphe and must not make her a slave" (ll. 20–21). A similar case is illustrated by Gadd 12, a marriage contract concerning an "Arraphean daughter": among the various conditions set out in meticulous detail in the document, it is provided that the husband can divorce the woman but shall not drive away (from his house) any children whom she might have given birth to, nor sell them as slaves (ll. 26'–32'). See further YBC 5134, a matrimonial adoption: a girl is handed over by her parents to a man (against payment of a sum of gold); the adopter shall marry her off to "a free citizen (lit. "man") of Arraphe" (ll. 7–8).[44]

4.1.2 It is by no means clear why, out of the hundreds of identical or similar transactions recovered from Nuzi private archives, only a negligible number of documents make explicit mention of the Arraphean citizenship of (young) people who are the object of transfers agreed upon by third parties holding full legal title over them. Be that as it may, present evidence shows that the basic prerogative attached to the personal status of Arraphean citizenship—derived from being a freeborn person from any city, district or village of the kingdom of Arraphe, including the homonymous capital city *āl-ilāni* (= Arraphe)—was protection against the risk of being reduced to

[43] Cf. the textual references gathered by Fincke, RGTC 10, 35.
[44] Lacheman and Owen, "Texts . . .," no. 22, pp. 403, 430.

slavery or treated as a slave. We do not know whether this protection was also automatically extended to a citizen's offspring.

4.1.3 An additional aspect of citizenship is provided by the memorandum of a financial dispute concerning the ransom of an Arraphean citizen who was brought home by a merchant from the nearby country of N/Lullu.[45] In contesting a claim of sixty shekels of silver from a would-be purchaser of the ransomed Arraphean citizen, mention is made of a royal edict that stated: "if a merchant buys a citizen (lit., "man") of Arraphe in the country of the Nullians, and brings him to Arraphe, he may take (as his price only) 30 shekels of silver" (JEN 195: 12–20).[46]

4.1.3.1 Another text (JEN 179) records the sale of a "woman of Arraphe" who was brought home from the country of Kuššuhhe and sold to a man in exchange for two oxen, one ass and ten sheep, for a total value reckoned at forty shekels of silver. This sum is qualified as "(purchase) price" (*šīmu*) of the woman, thus implying that she had become the full property of the purchaser. Notable, however, is the peculiar kind of payment made for the purchase of the woman—a well-known standard assemblage of commodities consisting of one ox, one ass, ten sheep and ten shekels of silver, although in this case the ten shekels of silver are substituted by delivery of another ox. Such a payment is a recurrent feature of some Nuzi marriage transactions.[47] The question therefore arises whether the Arraphean citizenship enjoyed by the woman, who was taken from a foreign land and then sold to a fellow citizen, might have induced the contracting parties to agree to such a peculiar and revealing form of payment; we have no means of knowing to what extent the woman would have personally benefited from such an agreement.

4.1.4 The sporadic yet significant references to people enjoying Arraphean citizenship can be better evaluated if compared with mention of other "nationalities" in connection with various people, of different institutional and social levels, temporarily or permanently

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[45] Note that this region was the major source for the import of (female) slaves into the kingdom of Arraphe.

[46] Cf. Zaccagnini, "Merchant . . .," 175–78.

[47] Cf. Zaccagnini, "Movable Property . . .," 152–53.

operating within the palace or private spheres of the kingdom of Arraphe. Such, for instance, is the case with persons from the kingdom of Hanigalbat (= Mittani), Arraphe's suzerain. Among them, we can single out (1) some private subjects who resided in various Arraphean cities and appear to be totally integrated into the local legal and socio-economic milieu; (2) a number of palace personnel, including female singers; (3) military personnel of different kinds and ranks, among whom is a considerable quantity of chariot drivers; (4) diplomatic personnel of medium and high rank temporarily residing at Nuzi: *mār šipri* (lit: "messenger") and, most frequently, *ubāru* ("resident alien").[48]

4.1.4.1 Hanigalbatean citizenship, or place of origin, does not seem to imply a special status, with the obvious exception of ambassadors and other envoys, whose personal treatment followed the customary rules of diplomatic etiquette current in international relations between Late Bronze Age courts.

4.1.5 Several people from Babylonia and Assyria are also recorded in the Nuzi palace and private documents: their status ranges from official diplomatic envoys down to simple refugees seeking personal protection and sustenance by casting themselves into lifetime servitude. Again, customary Nuzi legal institutions and practices in the sphere of private law are fully operative, regardless of the original citizenship of these people. The same holds true for all other foreigners mentioned in the Nuzi documentary corpus.

4.2 *Social Classes*

Nuzi social stratification is fairly complex but finds appropriate parallels in contemporary documentary sets from northern Mesopotamia and Syria.[49] The textual evidence of palace and private archives attests to a multitude of terms qualifying personal status, rank, professional activities, and temporary functions of Arrapheans—males, in the great majority of cases. Another major problem has been to isolate the factors determining discrete classes in Arraphean society,

[48] For a comprehensive overview, see Zaccagnini, "Les rapports . . .," 11–25.
[49] Cf. Serangeli, "Le liste di censo . . ." (Alalakh); Liverani, "Ugarit" (Ugarit).

due to linguistic difficulties deriving from the parallel or complementary usage of Hurrian and Akkadian technical terms.

4.2.1 The evidence provided by census lists of various contents from the palace archives[50] shows that the basic Nuzi social classes, from the viewpoint of the central Arraphean bureaucracy, were: (1) *rākib narkabti* ("chariot-driver"), (2) *ālik ilki* (lit., "subject of corvée"), (3) *nakkuššu* (possibly "substitute, reservist"), (4) *aššābu* (lit., "resident"). The same division is attested in documents from private archives, most of which concern the administration of large-scale households, such as those of Prince Šilwa-Teššup and the Tehip-tilla families.

4.2.2 Other documents, from palace and private archives, attest to the presence of "slaves" (Sum. ÌR = Akk. *ardu*): as will be seen presently, the term applies to different juridical, institutional, and socio-economic levels of personal servitude and subordination. The four social categories mentioned in the census lists (recording the numbers of adult males and/or "houses" in which these people were resident) belong to the "free" sector of the Arraphean population, regardless of whether they were landowners, tenants, or landless.

4.2.3 A basic feature common to all members of the "free" population is their "tributary" dependence vis-à-vis the central administration. Depending on their class, the permanent, seasonal, or occasional work obligation included military service (on the basis of long- or short-term conscription) at various levels of technical training and capabilities, agricultural and pastoral activities, and a wide range of professional services.[51]

4.2.3.1 In this regard, attention should be drawn to the qualification *ša qašti* (lit., "of the bow"), which is often attached to various people listed in records of the palace administration but occasionally also in documents belonging to private archives (see, e.g., HSS 9 11, from the Šilwa-Teššup archive). The conventional view that the term designates a social class,[52] comprising those liable to the archers'

[50] See esp. Gadd 63 and HSS 15 44; cf. Dosch, *Zur Struktur* . . ., 75–76, and Zaccagnini, *Rural Landscape* . . ., 14–24.

[51] There is no evidence that taxes were levied in currency or in kind.

[52] Cf. CAD Q, 156a.

military corvée, should perhaps be reconsidered in light of the evidence provided by many registers that list groups of people belonging to the four Arraphean social classes. In them, the qualification *ša qašti* is opposed to *ša ana bītātišunu muššuru* (lit., "sent back to their houses"). Whatever the professional activities of the *ša qašti* might originally have been, it seems reasonable to infer that the people "of the bow" were in actual temporary service, whereas the people "sent back to their houses" had completed their civil or military corvée, at the end of which they were allowed to return home.

4.2.4 Notwithstanding many uncertainties, the basic features of the four social classes at Nuzi are the following:

1. "Chariot drivers" (*rākib narkabti* = *mariannu* in contemporary Syrian and Hittite documentation). Title holders to real estate, their original membership of the military élite, concerned with the highly sophisticated techniques of horse training and chariot driving, seems to have been partially lost.[53] In fact, we observe that "chariot drivers"—regardless of their wealth—appear to be professionally active in various not strictly military activities, either on a private basis or by way of temporary compulsory service for the palace.
2. "Subject of corvée" (*ālik ilki*). They are the most frequently attested group of "free" persons at Nuzi, subject to regular tributary obligations. Scholarly opinion diverges widely on the institutional and legal basis of *ilku* service, as well as its content, frequency, and duration. Nevertheless, it is beyond doubt that "subjects of corvée" (or "taxpayers," as Maidman styles them) were owners of real estate (primarily fields) and were recruited seasonally or occasionally for civil and military services required by the central authority. At the same time, as I have argued, they could also be former real-estate owners who had ceded portions of their land to third parties but remained in residence working as tenants for their absentee landlords.[54]
3. *nakkuššu*. On the basis of possible Hurro-Hittite etymological connections,[55] it has been suggested that the term designates "substitutes, reservists," of different professional qualifications, who were

[53] Commutation of military obligations to regular payments in silver is well attested at Ugarit: cf. Zaccagnini, "Prehistory . . .", 206–7. For a possible parallel development, cf. the term *ša qašti* (lit., "of the bow") applied to adult males in temporary service who were not necessarily archers.

[54] Cf. Zaccagnini, "Land Tenure . . .," 90–92; Zaccagnini, "Proprietà fondiaria . . .," 714–23.

[55] Cf. CHD 377a; see however, La Civiltà dei Hurriti (= *La parola del passato* 55 [2000]), 400–401, s.v. *nakk-*.

often employed by the palace administration and also by some private households. There is no evidence that they were owners or regular tenants of landed property. On the other hand, their professional activities—often of medium to high level—are not a result of a permanent status of personal dependence, at least as concerns the palace sector: in fact, they are never labelled "servants of the palace" (*arad ekalli*).[56]

4. "Residents" (*aššābu*). Whatever the etymological implications of the term might have been, these people represented the lowest stratum of the Nuzi "free" population. They held no title to real estate and worked as agricultural dependants in palace (and also private) farms, either permanently or on a seasonal basis.[57]

4.3 *Gender and Age*

4.3.1 The corpus of private legal documents, combined with the palace archival records, shows that the "persons" involved in the Nuzi legal scenery were in the first place adult males, heads of family households. Adult females could also play a comparable role, in the (supervening) absence of a *paterfamilias*' authority over them or, vice-versa, by virtue of permanent or temporary legitimation granted by express disposition, either *inter vivos* or *post mortem* (e.g., through adoption, marriage agreement, testament). Although the legal powers enjoyed by women vary considerably in the documentation, overall they compare favorably with other societies of the ancient Near East.

4.3.1.1 As regards the private sector, the Nuzi documents show an overall predominance of nuclear family units and attest to sporadic traces of extended family groups. The palace bureaucratic organization disregards possible structural differences in the family units to which individuals recruited as "subjects of corvée" (*ālik ilki*), "residents" (*aššābu*), or "reservists(?)" (*nakkuššu*) belonged. On the other hand, large private households made extensive use of male and female workers whose personal status as life-long retainers or serfs in most cases implied a disintegration of their family units, whether they had been nuclear or extended.

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[56] Particularly interesting is the parallel with *eḫele* people at Alalakh, for which cf. Serangeli, "Le liste di censo . . .," 122–23; Zaccagnini, "Proprietà fondiaria. . .," 705–6, and Dosch, *Zur Struktur . . .*, 77–80.

[57] Cf. Zaccagnini, "Proprietà fondiaria . . .," 707–9; Dosch, *Zur Struktur . . .*, 85–87.

4.3.2 Age definitions are fairly loose: the basic categories, both for men and women, foresee adults and children (boys and girls). Old people are not expressly mentioned: the term *šību* appears to be used only in the technical meaning of "witness," both in private legal transactions and in records of litigation. We do not have any significant evidence directly related to the juridical status of children. To judge from the many documents in which they are involved as the object of transactions concluded by their parents or by persons having authority over them, it is clear that children lacked any legal capacity, from the time of birth until departure from the original family and release from absolute paternal (or maternal) authority.

4.4 *Slavery*

4.4.1 The legal status and socio-economic conditions of the unfree sector of the Nuzi population present a complex picture. The most common terms for "slave" (Akk. *ardu*, Sum. ÌR) and "female slave" (Akk. *amtu*, Sum. GEMÉ, SAL.ÌR but also SAL) apply to different personal situations, including that of high-, medium- or low-rank officials, retainers, and chattel slaves. These persons were permanently employed as subordinate personnel in the central and provincial palace administration as well as in private households. In the former case, the overall bureaucratic designation is *arad ekalli* ("servant of the palace"); in the latter, the collective term is *nīš bīti* (lit., "people belonging to the household").

4.4.2 Servitude for debts is widely attested. Direct evidence is provided by loan contracts secured by a personal guarantee (*tidennūtu*-contracts; see 7.5 below). The debtor himself or one of his relatives enters the creditor's house and must work for him in return for the capital lent and the interest accruing on it. Upon full repayment of the amount due, the pledged person is set free. In actual fact, the Nuzi documents never attest to such an event.

4.4.3 Documents of various kinds recording transactions that concern free and unfree persons cast significant light on the sex, age, and physical characteristics of chattel slaves. There is, for example, frequent mention of "girls" (*ṣuḫārtu*) and "boys" (*ṣuḫāru*), whose height, but not age, is at times accurately recorded. Measurements ranged from two to three cubits (i.e., from ca. 80–100 to 120–150 cm.), a

figure that actually corresponds to the bodies of adolescents. In most cases, boys were employed as junior workers, and girls were destined to become the wives of whomever their master would decide. "Able-bodied" and "full-grown" (*eṭlu*) males are also recorded;[58] "good-looking" (*damiqtu*) girls often occur.

4.4.1 *Creation*

4.4.1.1 We do not have definite evidence for foreigners being reduced to slavery as war booty. An isolated and dubious case is HSS 15 58, a list of people that has been tentatively interpreted as a record of Assyrians (prisoners of war?) taken into Arraphean territory.[59] Note, however, the lengthy report of an Assyrian razzia in Arraphean territory (JEN 525//670), as a result of which a number of people were captured and taken away as prisoners.

4.4.1.2 Chattel slaves, women in particular, were the object of a flourishing foreign trade carried out by private merchants. One of the main sources was the country of N/Lullu, still of uncertain location.[60]

4.4.1.3 Sales of wives, children, relatives, or oneself, due to financial duress, are a recurrent feature of the Nuzi socio-economic scene, which is characterized by an overall process of impoverishment of the peasant family groups, mainly as a result of the fiscal burden exerted by the central state apparatus.[61]

4.4.1.4 A somewhat different case is that of male and female foreigners (including persons from Assur and Babylonia), called *ḫapiru* ("immigrants, refugees"), who gave themselves in slavery (*ardūtu*) to private individuals or the palace administration.[62] Poverty was the

[58] See e.g. JEN 458: 9; 555: 7.
[59] Fincke, RGTC 10, 59.
[60] Cf. ibid., 190–93. See, however, Klengel, "Lullu(bum)," 166.
[61] Comparison with other Late Bronze Age Syro-Mesopotamian documentation (especially the Emar archives) is particularly revealing; cf. Zaccagnini, "Feet of Clay . . .," and "War and Famine . . ."
[62] Cf. Bottéro, *Le problème des Habiru . . .*, 43–70; Greenberg, *The Hab/piru*, 23–32, 65–70; Cassin, "Nouveaux documents . . ."

cause of these agreements, whose juridical features require further analysis.[63]

4.4.1.5 Persons handed over to creditors as antichretic pledges until full repayment of the loan (i.e., capital plus interest) are a typical feature of Nuzi credit practices (cf. 7.5 below). The personal status of the pledge (*tidennu*) was analogous to that of a slave, insofar as he was bound to the creditor by a daily work obligation.

4.4.2 *Treatment*

Aside from an isolated occurrence of the well-known Old Babylonian term *abbuttu* (HSS 5 35), which designates some sort of (body?) mark for slaves, the Nuzi texts do not provide significant evidence as concerns the personal treatment of permanent or temporary unfree persons. Ration lists merely attest to maintenance provided by palace or private households.

4.4.2.1 Chattel slaves and their offspring could be the object of transfer and outright sale—under different circumstances and for different purposes—by their owners. Persons in debt servitude, that is, handed over as pledges in antichretic *tidennūtu* contracts, could not be sold or transferred to third parties. On the other hand, failure of the pledged person to work for the creditor incurred payment of compensation, fixed at one mina of copper or one *sūtu* of barley per day. This sum corresponds to the standard Mesopotamian daily wages or hire for a slave.

4.4.2.2 Special attention should be drawn to the penalties recorded in a few contracts dealing with people who gave themselves into servitude (JEN 449, 452, 457). If they should leave their master's house and/or declare that they are no (longer) slaves, their eyes will be gouged out and they will be sold "for a price."

4.4.3 *Termination*

The Nuzi texts do not provide explicit evidence of manumission of chattel slaves owned by private persons. Debt slaves, persons handed over as security, could be released only after full repayment of the

[63] Cf. Eichler, *Indenture . . .*, 47.

loan. It is still a matter of debate whether chattel slaves and/or indentured persons (of the palace or in private hands) were released under edicts issued by the king of Arraphe (*andurāru, kirenzi, šūdūtu*). The textual evidence is scanty and by no means explicit.[64]

5. Family

5.1 *Marriage and Divorce*

Some one hundred Nuzi documents are directly concerned with marriage agreements of various kinds.[65] In addition, an equal number of marriage arrangements are included in adoptions and testaments.[66] All these records belong to the private sector. As a whole, the legal and institutional features of the Nuzi family do not substantially diverge from those attested in Mesopotamia and northern Syria in the latter part of the second millennium, or earlier.[67]

5.1.1 *Marriage Agreements*

Marriage was preceded by an agreement between the parties—the bride and the groom, or their respective legal representatives. The agreement was recorded in a contractual document (*ṭuppi riksi*) in the presence of witnesses who sealed it. A girl could be transferred from her natural family to a third party, who would then arrange her marriage. Her transfer took the form of an adoption[68] whereby she acquired the status of daughter and/or daughter-in-law, or sister (*mārtūtu, kallūtu*, and *aḫātūtu*, respectively).[69]

5.1.2 *Parties*

5.1.2.1 The personal status of a Nuzi bride, as reflected in the marriage documents, is always that of a free person;[70] the groom could

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[64] See Lion, "L'*andurāru* . . .," esp. 319–26; Zaccagnini, "Debt . . ."

[65] For a general overview, cf. Breneman, Nuzi Marriage . . .

[66] Cf. ibid., 330–36.

[67] Again, see especially the evidence of the Emar, Alalakh IV, and Ugarit archives.

[68] The use of this term is largely conventional.

[69] An overview of the Nuzi occurrences of *kallatu* and *kallūtu* (lit., "daughter-in-law" and "status of a daughter-in-law") shows that quite often the terms designated the (status of a) dependent woman placed under the authority of the person who took her in adoption.

[70] See, however, HSS 19 46: 2, concerning the marriage of a woman qualified as "palace servant" (*amtu ša ekalli*).

either be free or a chattel slave. As elsewhere in the ancient Near East, the traditional limitations on women's legal capacity make it unlikely that the bride will be a party to the transaction. In marriage contracts, the agreement is concluded by her father or other person(s)—most often a brother—who exercise legal authority over her and act as her legal representatives. The other party is either the groom or his father (presumably when the groom was too young or at least still subject to paternal authority). Interestingly enough, if the groom is a household slave, the marriage contract is personally concluded by him and not by his master.[71]

5.1.2.2 Adoptions for the purpose of marriage[72] do not substantially differ from marriage contracts. In daughtership adoptions (*mārtūtu*),[73] the (future) bride is usually transferred by her father but occasionally also by her mother or by one or more brothers.[74] The adopter is either a man or a woman; in the latter case, she is often a close relative of the transferor. The same persons are parties in transactions that foresee the marriage of a free woman to a slave:[75] the adopters (among whom are two ladies) are well-known members of the Nuzi upper class, owners of real estate and slaves.

5.1.2.3 A different schema is attested in sistership adoptions (*aḫātūtu*). The one party to the transaction is the adoptee herself, who gives herself as sister to a man or, alternatively, her natural brother, evidently in his capacity as her guardian.[76] The adopter is a man who receives the woman and becomes her legal brother.

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[71] See, e.g., JEN 441, 637, 120; cf. JEN 434. Otherwise in HSS 19 83, where the agreement is between the bride's father and the master of the slave. Note, however, that in these cases the economic provisions concerning the marriage payments are arranged by the slaves' owners.

[72] See Grosz, "On Some Aspects . . .," with previous literature cited, especially Eichler, "Another Look . . ."

[73] Note that in some documents (e.g., HSS 19 87; HSS 9 145), the term *mārtūtu* is coupled with *kallūtu* ("daughter-in-lawship"), although no apparent deviations from the standard *mārtūtu* transactions can be observed. In HSS 19 75 and HSS 5 79, the girl is simply given to a man *ana kallūti*; since in both cases the adopter will marry her to one of his sons, the term "daughter-in-law" is technically appropriate and need not be coupled with *mārtūtu*.

[74] In HSS 19 90, mother and father; in HSS 19 92, mother and brother (?).

[75] In these documents, the woman is adopted "as daughter-in-law" (*ana kallūti*) or "as daughter and daughter-in-law" (*ana mārtūti u kallūti*).

[76] In this case, the documents explicitly record the girl's consent to the transaction or her own initiative.

5.1.2.4 Common to all marriage transactions—whether straightforward marriage contracts or the various types of adoption—is the transfer of the present or prospective bride to the groom or to the person who will choose the groom. The groom may be a son or a relative of the adopter, or an outsider, a freeborn person or a slave.[77] The bride is always "given" (*nadānu*) or "taken" (*leqû*) by someone who exercises authority over her; grooms are never "given" and/or "taken" in marriage.

5.1.3 *Adoption of Young Men for Marriage*

The Nuzi texts also attest to some adoptions in "sonship" (*mārūtu*) in which the adopter provides (or will provide) a wife to the adoptee.[78] At times the bride is the adopter's daughter;[79] alternatively, the adopter will choose an outsider to become the adoptee's spouse. In most cases, these agreements exhibit some of the typical features of real adoptions, including the adoptee's obligation to serve the adopter as long as he or she lives. Note further that the use of the legal term *zittu* ("inheritance share") applies to the bride that the adopter will procure for his adopted son.[80]

5.1.4 *Marriage Payments*

The Nuzi evidence pertaining to marriage payments is substantially in line with the Old Babylonian legal tradition; at the same time, it shows some peculiarities that have long been the object of scholarly attention.[81]

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[77] The most recurrent formula in daughtership (and daughter-in-lawship) and sistership adoptions is that the adopter will give the girl "as wife to whomever he wishes" (*ana aššūti ašar ḫadu inandin*). Note that various *kallūtu* transactions expressly provide for the bride's perpetual bondage as wife of a sequence of slave grooms. See, e.g., AASOR 16 30: 7–12: "And ^{f}PN [i.e., the adopter] to whomever among her slaves she wishes, will give ^{f}PN$_2$ [i.e., the adoptee] as wife. If her first husband dies, she will give her to another man. If the second man dies, she will give her to a third man. If the third man dies, she will give her to a fourth man. If the fourth man dies—and so forth." Cf. AASOR 16 42; JEN 431, 437, 620. AASOR 16 23: 12–13: "If ten of her husbands have died, then she will give her as wife to an eleventh."

[78] Cf. Stohlman, Real Adoption . . ., 151–76.

[79] E.g., Gadd 51; HSS 19 49, 51.

[80] E.g., HSS 19 45: 6; 39: 5–6; 40: 4–5.

[81] Cf. Breneman, Nuzi Marriage . . ., passim; Grosz, "Dowry and Brideprice . . ."; Zaccagnini, "Transfers . . .," 151–53; Zaccagnini, "On Late Bronze Age Marriages," 600–602.

5.1.4.1 As a rule, marriage transactions foresaw (1) the payment of a "bride-price" by the groom (or his legal representative) to the bride's guardian and (2) the settlement of a dowry on the bride by her father or whoever exercised legal authority over her. In matrimonial adoptions, it is the adopter who will receive the bride-price to be paid by the person with whom the marriage agreement will be concluded. Prior thereto, the girl's guardians receive a payment from the adopter, either as full settlement of the transaction or as an advance on the total amount that will be received on conclusion of the marriage. Within this general framework, the texts present us with a great variety of formulas and, more importantly, of concrete cases that significantly enlarge the basic pattern sketched above.

5.1.4.2 The standard technical term for bride-price (Akk. *terḫatu*) is not systematically used in Nuzi marriage transactions. Often the texts simply record the assets (primarily silver) that are handed over to the bride's family or allude to the prospective payment of the girl's bride-price in terms of "her silver" (i.e., her transactional value). In any case, the bride-price most commonly amounted to forty shekels of silver,[82] a sum corresponding to the standard purchase price of a young slave girl.[83] Lesser amounts are also attested, however,[84] presumably depending on the age and beauty (?) of the bride, on the nature of the kinship ties between the contracting parties, and last but not least, on economic factors that might have induced the giving of a girl as (future) spouse to a slave.

5.1.4.3 Noteworthy is the frequent practice of sharing the bride-price between the groom's and the bride's families. In these cases, the texts state that a certain amount of the silver—received as bride-price—was handed over to the woman and "bound in her hem" (*ina qanni rakāsu*). Quite often, it is further specified that this silver represents the woman's dowry (*mulūgu/mulūgūtu*).[85]

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[82] For a comprehensive tabulation see Grosz, "Dowry and Brideprice . . .," 176–77.

[83] See, e.g., JEN 179: 9–10; HSS 19 124: 11–14; JEN 515: 2; cf. the marriage contract Gadd 12, which provides for the payment of "40 shekels of silver, (the value/price) of a girl of Arraphe."

[84] With the sole exception of HSS 19 84: 7 (45 shekels of silver).

[85] Cf. Zaccagnini, "On Late Bronze Age Marriages," 601.

5.1.4.4 The bride-price was normally paid in silver, but at times other items appear in addition to or as an alternative to silver. Particularly interesting are the standard conveyances of one ox, one ass, ten sheep and ten shekels of silver, for a total amount reckoned at forty shekels of silver—the commonest bride-price attested at Nuzi.[86] The ceremonial implications of this peculiar kind of payment are not entirely clear; the same combination also occurs in sale contracts of slave girls.[87] At times, the bride-price consisted of real estate (fields, houses);[88] the import of these unusual transfers escapes us.

5.1.4.5 The dowry often consisted of part of the bride-price which was then "bound in the hem" of the bride.[89] At times, brides were dowered with real estate (fields, houses):[90] the relationship between these infrequent occurrences and the division of the family estate among sons and daughters still requires detailed investigation.[91]

5.1.4.6 An interesting feature of marriage transactions in which the dowry consisted of real estate is the presentation of a gift (*qīštu*) to the dowry giver by the bride.[92] These counter-dowry payments almost invariably consist of textiles, blankets and animals of various kinds; payments in silver are never recorded.[93] Gifts (*qīštu*) also occur in some adoptions. The person who adopts the girl presents her guardian with the same type of goods as in a counter-dowry: blankets, animals, barley, oil.[94] Upon arrangement of the girl's marriage, the adopter will receive "her silver," the bride-price paid by the groom.

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[86] Cf. Zaccagnini, "Transfers . . .," 152–53.
[87] E.g., JEN 179 and HSS 19 124.
[88] E.g., JEN 438, 436; HSS 19 98, 93, 97 (for which cf. Zaccagnini, "Transfers . . .," 153).
[89] Cf. the textual references in CAD M/2, 193b–194a, s.v. *mulūgu* and *mulūgūtu*.
[90] E.g., Gadd 31; HSS 5 76; HSS 19 76. Note that in HSS 19 79 some houses representing a bride's dowry are transferred to the groom.
[91] Cf. Grosz, "Dowry and Brideprice . . .," 165–70.
[92] E.g., Gadd 31; HSS 5 76. In HSS 19 76, the gift is presented by the groom.
[93] Cf. Grosz, "Dowry and Brideprice . . .," 173–75 and Zaccagnini, "On Late Bronze Age Marriages," 602. The transaction recorded in HSS 19 71, which mentions a "gift" of 20 shekels of silver, does not belong to the sphere of marriage agreements.
[94] See, e.g., HSS 19 68, 69; HSS 14 543.

5.1.5 *Second Wife*

A recurrent clause in marriage contacts forbids the groom to take another wife if his bride has borne him children. Penalties of various kinds are at times imposed on the husband, should he violate the agreement.[95] One or more secondary wives are attested, as well as concubines (*esirtu*).[96]

5.2 *Divorce*

Husbands could divorce their wives, but we lack any evidence of divorce instigated by women. Information about divorce is provided by declarations of the husband in the presence of witnesses,[97] and by penalty clauses in marriage agreements or in other documents concerning family affairs.

5.2.1 In declarations, the husband declares that he had taken ^{f}PN as wife but now divorces her (*ezēbu*: lit. to leave). The ritual act sanctioning dissolution of the marriage is "cutting the (wife's) hem" (*sissiqta batāqu*) by the divorcing husband; the symbolic significance and possible legal implications of this ceremonial formality are not clear. The general consensus seems to be that the hem is a material visualization of the wearer's identity. The cutting of the hem would then ostensibly indicate the breaking of the link between husband and wife.

5.2.2 The declarations of divorce do not provide any information about what prompted the husband's decision. On the other hand, marriage agreements often include clauses foreseeing the possibility of the husband deciding to take another wife. The texts explicitly state that if the woman bears children, her husband cannot marry a second wife; if she does not bear children, her husband is allowed to marry a second wife.[98] Noteworthy is the isolated evidence provided by Gadd 12. In addition to the standard clauses (i.e., if the woman bears a son, her husband shall not take another wife; if she

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[95] Cf. briefly Breneman, Nuzi Marriage . . ., 23–24.

[96] An illuminating case is that of Prince Šilwa-Teššup, as plainly revealed by the ration lists concerning his family members (cf. Wilhelm, *Das Archiv* . . ., 4, 24–26).

[97] Cf. Breneman, Nuzi Marriage . . ., 245–56.

[98] See, e.g., HSS 19 84; JEN 435; HSS 19 85.

fails to bear, he may take another wife), the agreement also foresees the husband's divorcing (*ezēbu*) his wife, even though she had borne him a son (ll. 25–27). Should he do so, however, the husband must pay forty shekels of silver to his wife's father. Note that this sum corresponds to the bride-price paid upon conclusion of the marriage contract.

5.2.3 Gadd 12 does not make any mention of the woman's future residence after the divorce. The evidence of this text should be compared with clauses in other marriage contracts concerning a husband who marries a second wife when his first wife had borne children. At times it is stated that the woman shall leave her husband's house[99] or will be taken home by the relative who had concluded the marriage contract.[100] Possibly, such cases should be interpreted as de facto divorce, arising from action taken by the wife or her guardian against the husband's violation of the marriage agreements.

In this regard, attention should be drawn to the clause recorded in the two texts quoted above at note 99: should a husband take a second wife, notwithstanding the existence of sons borne to him by his (first) wife, she "shall cut her hem[101] and leave." The legal effects of this symbolic act are by no means clear, especially in relation to the husband "cutting the hem" on divorcing his wife[102] and to "binding the dowry in the bride's hem" (*ina qanni rakāsu*) on conclusion of a marriage agreement.

5.3 *Children*

5.3.1 The exercise of paternal authority implied uncircumscribed power over children. Fathers could dispose of sons and daughters by pledging them as security for debts, selling them into slavery, or giving them in adoption.

5.3.2 There is little direct information on customary parent-child relations, but some interesting glimpses are provided by the clauses

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[99] E.g., HSS 5 67: 42; HSS 19 51: 19–20.
[100] E.g., HSS 19 84: 15–17; JEN 435: 14–16.
[101] HSS 19 51: 18–19: *qanna nakāsu*; HSS 5 67: 42: *qanna naš/sāqu* (lit.: "to bite").
[102] As seen above, the standard (and synonymous?) expression is *sissiqta batāqu*.

in a number of wills. Common to all of them is the designation of a woman—as a rule, the testator's wife—as successor to the testator in the legal status and powers of *paterfamilias*. (The texts at times expressly mention the technical term *abbūtu*.) Note the summary statement in HSS 19 19: 31–32: "I have made (her = the testator's wife) my equal."

5.3.3 The duties imposed on sons in their behavior towards the appointed (mother-)guardian and the sanctions for breach certainly reproduce the standard complex of rules inherent in the customary way of life of Nuzi family groups. The main filial duties are to serve (*palāḫu*) the *paterfamilias* and to obey (*šemû*) him or her; additional tasks include mourning (*bakû*), and burying (*qebēru*) him or her.[103]

5.3.4 Sanctions for disobedience or failure to serve include physical punishments such as putting the son into fetters (*kurṣû*), casting him into prison (*bīt kīli*), or handing him over to a workhouse (*bīt nupāri*).[104] Additional sanctions foresee the placing of a slave mark (*abbuttu*) and disinheritance (*kirbāna ḫepû*; lit., "to break the clod")[105]—note that the last measure is at times expressly excluded from the legal powers awarded to female guardians. In HSS 19 17: 20–27 the testator states the obligation of his three sons to serve their sister for her entire lifetime and adds, "if any of my three sons fails to obey ^{f}PN, ^{f}PN may deal with him as if he were her own son."

5.4 *Adoption*

5.4.1 The widespread practice of adoption represents one of the most typical features of Nuzi private institutions. Historical antecedents can be easily traced back to Old Babylonian traditions and find significant parallels in late second millennium Syrian documentation. A preliminary observation is in order. The vast corpus of Nuzi legal documents that have been grouped together under the general and rather inadequate heading of "adoption" attests to a great variety of

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[103] Note that these duties are also imposed on adopted sons.

[104] Selected references in CAD K, 569a, s.v. *kurṣû*; 360b, s.v. *bīt kīli*; CAD N/2, 342a, s.v. *bīt nupāri*.

[105] Cf. CAD A1, 50a, s.v. *abbūtu* [sic!]; but see Cassin, *RA* 57 (1963), 134–35; CAD K, 403a, s.v. *kirbānu*.

transactions; their basic common feature is the formal attribution of a familial status to (young) men or women who were natural members of other family groups.[106]

5.4.2 Persons could be given the legal status of a son (*mārūtu*), daughter (*mārtūtu*), daughter-in law (*kallūtu*), brother (*aḫḫūtu*), or sister (*aḫātūtu*). The basic aim of *mārtūtu*, *kallūtu*, and *aḫātūtu* adoptions, as we have seen, was the transfer of a girl to the parental authority of another head of family who would give her in marriage. A closely similar, but not identical, pattern occurs in some adoptions into sonship (*mārūtu*). On the other hand, the formal adoption into sonship of male adults represents the typical Nuzian legal device for recording outright sales of real estate (see 6.3 below).

5.4.3 The rich corpus of "brotherhood" adoptions (*aḫḫūtu*) has been the object of numerous studies, leading to divergent interpretations.[107] It would seem that one of the main concerns of the *aḫḫūtu* agreements was to settle inheritance rights between natural heirs and outsiders who, for various reasons, had been made legal members of the family.

5.4.4 Real adoption of a son is well attested at Nuzi. Except for some isolated cases, boys—and not girls—were adopted by men in their legal capacity of head of the family, who wanted to procure a(nother) son for themselves. Adopters' wives are not mentioned and are not involved in the operative clauses of these agreements.

5.4.4.1 The main purpose of adoption was to secure service and support for the adopter in his old age. The entrance of an outsider into the family was prompted either by lack of natural sons or because it was more convenient to impose filial duties on the adoptee rather than on one or more of the father's existing natural sons. The basic obligation of the adoptee was to serve (*palāḫu*) the adopter for the rest of his life. A number of texts specify that service consists in

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[106] Cf. Cassin, *L'adoption* . . .; Stohlman, Real Adoption . . .; Paradise, Nuzi Inheritance . . ., esp. 269–75.

[107] Cf. briefly Paradise, Nuzi Inheritance . . ., 348–57; Stohlman, Real Adoption . . ., 208–33; Dosch, "Gesellschaftsformen . . .," "Gesellschaftsformen (II) . . .," and *Zur Struktur* . . ., 92–114.

providing the adopter with food and clothing (*ipru u lubuštu*) and further state that when the adopter dies, the adoptee would mourn (*bakû*) him and bury (*qebēru*) him.[108] In the absence of any mention of wives, one wonders whether the same familial obligations—or at least the supply of food and clothing—also applied to the adopter's spouse, implicitly included as co-beneficiary under the name and authority of her husband as head of the family.

5.4.4.2 For his part, the adopter bequeaths an inheritance share to his adopted son. Depending on the circumstances, the adoptee could be assigned the entire estate or only part of it; the latter case occurs when there are already one or more natural sons in the adopter's family. On the other hand, many adoption contracts envisage the possible future birth of a natural son. Should this occur, adjustments are made to the inheritance shares, in accordance with the adopter's wishes expressly stated in the adoption contract.[109]

5.4.5 A number of agreements diverge from the more or less standardized schema of the adoptions. Note in particular JEN 572, which provides for the adopter to teach the adoptee the weaver's craft (ll. 7 and 16), and JEN 571, a disguised sale of a young boy who is adopted into sonship by a well-known Nuzi entrepreneur: he will raise his adoptive son and capitalizes in advance the cost of upbringing by paying one talent of copper to the natural father (!).[110] The adoptee's obligations are to serve the adopter, his son, and the latter's sons, for his entire life. The adoptee's inheritance share consists of the food and clothing allowances that he will receive from the adopter (and his descendants).

6. Property and Inheritance

6.1 *State and Private Ownership*

Publicly owned land at Nuzi is attested only sporadically. This surprising paucity may be explained by the distribution of sources so

[108] Cf. Stohlman, Real Adoption . . ., 107–50.
[109] For details, see ibid.
[110] One talent of copper corresponds to ca. 9 shekels of silver—an acceptable purchase price for a young slave.

far retrieved, which either belong to private family archives or deal with other sectors of the palace economy and administration.

6.1.1 There are some references to "fields of the palace."[111] A few texts mention plots of land subject to the *iškaru* corvée/service that are in the possession of various people, among whom are chariot drivers. To all appearances, these parcels of land, which belonged to the palace, were granted to palace officials in return for their services.[112]

6.1.2 Members of the royal family, among them an unnamed queen and the well-known Šilwa-Teššup, "son of the king," owned land. We know nothing about the former's estates; as regards the latter's, there appears to be no connection at all with palace land or administration.[113]

The sphere of private ownership is well documented by the family archives. An overall view of the rich textual evidence reveals that landed property was held by two interacting sectors of the Nuzi free population: the mass of peasant farmers, who were individual or joint title holders of their own family land, and a restricted number of absentee landlords, whose vast estates, scattered all over the Arraphean countryside, were created mainly by progressive acquisition from the (impoverished) peasantry.[114]

6.2 *Tenure and Fiscal Burdens*

Landed properties belonging to the free sector of the Nuzi population were subject to fiscal burdens imposed by the central administration. The great majority of real-estate transactions involving transfers (e.g., sale, exchange, mortgage, inheritance) include a statement that mentions the person(s) who "will bear (*našû*) the *ilku* of the field(s)."[115] Quite often the texts further specify that the other contracting party "will not bear the *ilku*."

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[111] Cf. Zaccagnini, "Proprietà fondiaria . . .," 701.
[112] Ibid., 702.
[113] Ibid., 702–3.
[114] Among the vast literature on this subject, cf. the detailed analysis of Maidman, A Socio-Economic Analysis . . .; Zaccagnini, "Land Tenure . . .," and "Proprietà fondiaria . . ."
[115] The Hurrian equivalent of Akkadian *ilku* is *irwiššu*; cf. Zaccagnini, "Proprietà fondiaria . . .," 717–18.

6.2.1 The specific legal nature of *ilku* at Nuzi has been the subject of intense debate. The basic issues are the content of the *ilku* obligation, who is liable to *ilku*, and the functional connection between *ilku* and ownership and tenure of real estate (primarily fields). Crucial to this last point are possible changes in personal liability to *ilku* following transfer of real-estate ownership. In the light of some seventy years of scholarly discussion,[116] it can reasonably be argued that *ilku* obligations did not consist of regular payments in kind. In contrast to the state administration in contemporary states (e.g., Ugarit), Nuzi documents never mention tithes or the like. Rather, it would seem that persons liable to *ilku* (the *ālik ilki*; cf. 4.2 above) were bound to perform personal services on demand by the central administration. These included non-specialized military activities (along with the highly qualified chariot drivers) and various kinds of agricultural work on the palace estates.

6.2.2 We do not know how frequent this corvée duty was or for how long. Seasonal terms set on an annual basis would apply to cereal production and stock-raising; military recruitment most often would depend on occasional (and unforeseen) military contingencies, rather than on routine training.

6.2.3 While *ilku* obligations were intrinsic to real estate of all kinds,[117] the textual evidence almost exclusively refers to fields, regardless of their size and location in the Arraphean territory. To all appearances, the entire sector of private landed property was liable to *ilku*, independently of the persons who were actually charged with performing corvée duty. In fact, the Nuzi archives do not provide evidence of exemptions of any kind granted to estates, nor do we know of fields that benefited from such exemptions. On the other hand, many deeds of transfer do not include the standard clause indicating the person who will bear the *ilku* of the field; there is no question, however, of these fields being exempt from fiscal burdens.

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[116] Cf. Maidman's review in A Socio-Economic Analysis . . ., 98–123; see further Zaccagnini, "Land Tenure . . .," esp. 85–91, and "Proprietà fondiaria . . .," esp. 714–23; Dosch, *Zur Struktur* . . ., 118–54.

[117] Cf. Zaccagnini, "Proprietà fondiaria . . .," 718.

6.2.4 Performance of the corvée that accompanied the land was incumbent upon its owners, whether they were single individuals or joint owners of an undivided estate. In the latter case, it is not known if and how the *ilku* obligations were shared among the co-owners. Needless to say, with land belonging to peasant families—however extended—the title holders were in actual possession of the land that they personally farmed.

6.2.5 In principle, one would expect that transfer of land automatically implied transfer of *ilku* duties to the new owners. This is not the case, however. A comprehensive examination of the documentation shows that purchasers were almost invariably engaged in expanding their holdings and consequently were not personally involved in the management of their scattered estates. Agricultural labor on the estates of absentee landlords was ensured by the former peasant owners, deprived of their title and now acting as tenants. It is therefore no surprise that in the great majority of cases, the *ilku* duties accompanying fields that had been sold remained with the former title holder and were not transferred to the purchaser.[118]

6.3 *Real-estate transfer*

Real estate was transferred either through inheritance mechanisms or by deeds of conveyance: as will be seen (6.5 below), the latters' legal form represents one of the foremost peculiarities of the Nuzi documentation. The two alternative sources of real estate ownership are mentioned at the end of a detailed list of fields belonging to Tehip-tilla: these fields had either been obtained "from outsiders" (*ša bābi*: lit., "(purchased with a deed of sale drafted) at the (city) gate") or "belong to the paternal estate" (*attaššiḫu*).[119]

The latter derived from inheritance, either through the customary lineage of intestate succession or in accordance with the testator's explicit instruction recorded in a will. Adoption of outsiders into sonship had the same legal effect as a testament insofar as it

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[118] Significant but isolated exceptions have been analyzed by Zaccagnini, "Proprietà fondiaria . . .," 720–22.

[119] JEN 641: 28–29; cf. Maidman, A Socio-Economic Analysis . . ., 174–80; cf. the adoption HSS 19 44 where the same opposition occurs, i.e. between "fields and houses which I [scil.: the adopter] received from the estate of my father" and "fields and houses which I bought" (ll. 5–7, 9–10).

conferred on the adoptee the right to the entire estate or portions of it (cf. 5.4 above).

6.4. Inheritance

6.4.1 *Sources*

As in the documentary evidence from northern Syrian private archives (Ugarit, Emar, and, most recently, Munbaqa/Ekalte), our knowledge of Nuzi inheritance institutions and practices comes entirely from testamentary documents (*ṭuppi šīmti*, "wills") and related (sections of) transfers *inter vivos*, mostly adoption as a son. Further information is provided by other kinds of documents, such as court cases, declarations and agreements over division of property, and marriage contracts.

6.4.2 *Intestate Succession*

Customary law governed the basic inheritance principles operating within the Nuzi family. On the death of the *paterfamilias*, the legitimate heirs (i.e., the deceased's natural sons) would divide the estate among them. As a rule, the first-born, as principal heir, received a double share, whereas other sons received either single equal shares or shares of decreasing amounts, according to their respective rank in the family lineage. This mechanism automatically ensured a standard hereditary transmission, without need for the *paterfamilias* to make a will.

6.4.3 *Testate Succession*

Unusual circumstances of various kinds could create obstacles to the traditional pattern of succession or offer an opportunity to deviate from it. In these cases, testators would make full use of their testamentary power and make a will. Relevant factors behind special testamentary dispositions include disinheritance of natural sons, presence of adopted sons, and inclusion of other male or female members of the family group among the legitimate heirs.

6.4.3.1 *Eligible Heirs*

In accordance with the patrilinear character of the Nuzi family structure, the eldest son (DUMU GAL) was "first-rank" or "principal" (GAL) heir, the second son was "secondary heir" (*tardennu*),[120] while

[120] Wilhelm, "ta/erdennu . . ."

younger brothers shared secondary rank in equal or decreasing order. The testator had the power to remove the first-born from his privileged position and assign the rank of "principal heir" to a younger son or an adopted outsider, or even to a future son born to him by a new wife, thus deviating from the normal rules of intestate succession.

Occasionally women—daughters and wives—could be included among the heirs and be assigned minor portions of the family estate. On the death of her husband, a wife was given (back) her private movable property, which had originally belonged to her father and had been assigned to her at the time of the marriage agreement.

In the absence of sons, a daughter could be made sole heir (see, e.g., HSS 19 2). Alternatively, a father without sons could adopt an outsider into sonship and marry him to his daughter (cf. 5.1.3 above). Failing sons or daughters, the testator could designate as heir one of his brothers, by adopting him into sonship (see, e.g., HSS 5 59). Some court cases (e.g., JEN 333, 666, 671) provide evidence of attempts to get possession of the estate of a deceased brother by invoking privileged inheritance rights against other possessors or claimants.

6.4.3.2 *The* ewuru

At times wills, but also other kinds of *inter vivos* agreements (e.g., adoption into brotherhood) explicitly designate one person as "heir" (Hurrian *ewuru*). From a comprehensive survey of the textual evidence, which also includes a number of court cases, it emerges that the term occurs whenever there might be uncertainty or dispute over the identity of the person given the legal power and duty to resolve inheritance disputes among other heirs or against third parties, independently of his hierarchical position among the potential heirs to the estate.[121]

6.4.3.3 *The Woman as Guardian*

A woman—in most cases, the testator's wife—could be appointed guardian (*abbūtu*; lit., "father's legal status and power") over the sons (cf. 5.3 above) and the family property that the heirs would later divide among them. A common feature of these provisions is a prohibition against dividing the property as long as the guardian lives.

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[121] Cf. Paradise, Nuzi Inheritance . . ., 242–48; Dosch, *Zur Struktur* . . ., 92–114.

The probable explanation for this provision is the testator's concern to grant adequate support to the guardian until the time of her death. In fact the texts include a standard clause stipulating that the sons—future heirs—must "serve, respect" (*palāḫu*) and/or "listen to, obey" (*šemû*) the guardian as long as she lives.

6.4.3.4 *Assignment of Shares*

The testator could either assign a preferential (i.e., double) share to the person designated as "first rank," "principal" heir and secondary (i.e., single) share(s) to the person(s) designed as "second rank," "secondary" heir(s) or assign equal shares to all heirs. In the latter case, which represents a deviation from the customary pattern of (intestate) succession, the texts explicitly state that "there is no 'great' or 'small'" among the testator's sons (see, e.g., HSS 19 18: 14; cf. HSS 19 17: 12–13), and consequently, they shall "divide equally" (*miṯḫāriš/malaḫāmiš zâzu*). Minor portions of the patrimony could be assigned to principal or secondary heirs in form of an (additional) gift (*kitru*).[122] The detailed description of the property and the explicit mention of the beneficiary patently aim at separating the object of the *kitru* from the rest of the estate that is divided among the heirs.

6.4.3.5 *Household Gods*

In the presence of multiple heirs, the testator could expressly indicate the person to whom the household gods (DINGIR.MEŠ = *ilānu*) are assigned. The transfer of family tutelary idols takes place upon division of the estate, after the testator's or guardian's death.

As a rule, the household gods were given to the principal heir, but possession of the idols did not imply any appointment of paternal authority over the other heirs.[123] Rather, it should be noted that the splitting of the original household into new, separate entities could give rise to different testamentary dispositions. On the one hand, the testator could prohibit the division of the household gods among brothers and forbid the fashioning of new idols (HSS 14 108: 23–30). On the other hand, at least in one case, we learn of a division of sacred idols: the first-born is assigned the gods "with a

[122] Cf. ibid., 249–53.
[123] Cf. ibid., 237–42.

big head," whereas the younger son receives those "with a small head" (HSS 19 5: 10–12, 21–22).[124]

6.4.3.6 *Revision*

Changes in family relationships often required modification of previous *post mortem* dispositions and the drafting of a new will. Significant events that could affect inheritance rights include adoption of outsiders and death of a previously designated heir or guardian (i.e., the testator's son and wife, respectively).[125]

6.4.3.7 *Disinheritance*

Disinheritance could be effected or threatened in a variety of situations. The corresponding legal terminology displays interesting variations: *lā summuḫu*, "not to include among heirs," *lā zâzu*, "not to divide/share," *lā qerēbu*, "not to lay claim" (lit., not to draw near), *šaššumma epēšu* "to forfeit," *kuššudu* "to disinherit" (lit., to chase away), *kirbāna ḫepû*, "to break the clod" (with regard to the disinherited person).

As a rule, the exclusion of a natural son from his father's property results from his adoption into sonship by someone else who will bequeath him an inheritance. Thus, adherence in law to a new family unit necessarily implies loss of inheritance rights by the adoptee with respect to his natural family.

Actual disinheritance (*kuššudu, kirbāna ḫepû*) was primarily imposed as a punishment for the heir's misconduct—failure to serve, respect, and obey the guardian (e.g., HSS 19 9: 10–14; 19: 25–31; 16: 32–34). A number of documents of various kinds attest to actual disinheritance but provide no clues as the motives behind it. An interesting case is that of HSS 5 21: a son who had been formerly disinherited (*kirbāna ḫepû*) is later restored to his legal position of son and (even) appointed as principal heir. He will receive a double share, and the testator's remaining sons will receive their (simple) shares, "after" that of their brother, according to their rank.

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[124] Deller, "Die Hausgötter . . .".

[125] Cf. Paradise, Nuzi Inheritance . . ., 228–32.

6.5 *Transfer* inter vivos

Transfer *inter vivos* did not take place through conveyance, as elsewhere in the Near East. Instead, real estate (plots of land, in most cases) was alienated typically by means of adoption. The seller would "adopt" the purchaser as a "son" (*ana mārūti*) and give him an "inheritance share" (*zittu*) of the family estate. For his part, the adoptee presented the adopter with a "gift" (*qīštu*), consisting of commodities: in most cases barley but also silver or other staples.

6.5.1 The origins, nature, and legal effects of these particular *mārūtu* adoptions have been the subject of considerable and still unresolved debate.[126] Whatever its origin, it is certain that this type of adoption, by means of which title to family land was transferred to an outsider in the form of an anticipated bequest, was nothing other than outright sale. In this regard, important clues are provided by an early deed of conveyance attesting to the use of the term *šīmu*, "purchase price," instead of the standard term *qīštu*, "gift," with reference to the valuables handed over to the adopter by the adoptee.[127] Equally revealing is the parallel use of *qīštu* and *šīmu* with reference to the same transaction, in JEN 582: 8–9 (tablet of *mārūtu* adoption) and JEN 528: 7 (list of barley payments), respectively.[128]

6.5.2 There are also a few records of real-estate transfers formally styled as gifts *inter vivos*. The key terms are either *magannūtu* ("present")[129] or *qīštu* ("gift"), which are used to qualify both the land conveyed and the commodities paid as its price.[130] While these transactions

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[126] Cf. Maidman, A Socio-Economic Analysis . . ., 92–123; Zaccagnini, "Land Tenure . . .," 81–91; Dosch, *Zur Struktur* . . ., 118–54.

[127] Fadhil, "Ein frühes *ṭuppi mārūti* . . ." For other occurrences of *šīmu* in connection with land transfers, cf. Zaccagnini, "Land Tenure . . .," 82.

[128] As an alternative to *šīmu* and *qīštu*, the Hurrian term *irana* (// Sum. IGI.DU$_8$ = Akk. *tāmartu*), "compulsory gift," is sporadically used. For a discussion of the semantic range of *irana* in the Nuzi texts, see Wilhelm, "Hurritisch *e/irana/i* . . .," with previous literature.

[129] The word is an Akkadian abstract formation from Indo-Iranian>Hurrian *magaunu*, "gift, present."

[130] JEN 492, 605, 493, 283, 556, 530. For an analysis of textual details, cf. Maidman, A Socio-Economic Analysis . . ., 130–31. Note that in JEN 493 (a *magannūtu* text) and JEN 530 (a *qīštu* text), the seller does not receive any payment; in JEN 605 (a *magannūtu* text), the movables handed over to the seller are qualified as NÍG.BA = *qīštu*.

do not adopt the format of the fictional adoptions,[131] the mention of gifts is consistent with the overall formal pattern of the Nuzi real-estate deeds of transfer.

7. Contracts

As elsewhere in Mesopotamia, the Nuzi texts attest only to a limited range of contracts which, for different reasons, were recorded on clay tablets for archival and legal documentation. The great majority of transactions concluded between private parties were undoubtedly oral agreements, the traces of which are mostly lost. The following are the most important categories of extant contracts.

7.1 *Sale*

7.1.1 As seen above, sale of real estate was effected by means of fictitious adoption. Sale of movable property, on the other hand, is frequently attested. The price could consist not only of the items commonly used as currency, namely, silver and barley, but also included all manner of commodities, such as copper, wool, and textiles.[132]

7.1.2 The documents explicitly mention the term *šīmu*, "(purchase) price," in the standard expressions "to give (*nadānu*) for a price" (i.e., to sell), and "to take (*leqû*) for a price" (i.e., to buy).[133] As a rule, transfer of the item sold and payment of the price took place at the same time.[134] Payment could be deferred, however, to judge from statements like: "PN bought a sheep (from me) but he did not pay its price; and indeed he did not return the sheep (to me)" (AASOR 16 8: 60–62).

7.1.3 Payment in advance is frequently attested in agreements between a purchaser and a third party, most often a merchant, who

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[131] Note that in all the above documents, the property is transferred to Tehiptilla, whose vast land acquisitions are always carried out through *mārūtu* adoption.

[132] Cf. Zaccagnini, "Transfers of Movable Property . . ."

[133] See the references assembled in CAD Š/3, 25b–26a.

[134] See, e.g., UCLMA 9–3023 (= JCS 46 (1994), 108): 1–7: "PN and PN_2 have taken 1 homer of barley, belonging to PN_3, as purchase price for a cow. They (scil. PN and PN_2) have given one cow to PN_3." Cf. Deller, "Eine Kaufurkunde . . .," and Müller, "Bemerkungen . . .," 315–316.

undertook to procure the items requested and deliver them within a fixed term. For example, in AASOR 16 95: 3–9, PN declares: "I have received 60 shekels of silver belonging to PN_2 as purchase price of one slave girl. And PN will deliver to PN_2 one fine and select slave girl from the country GN by the end of the month MN." Note the penalty for late delivery of the item purchased: "If (PN) does not deliver the slave-girl on the above-mentioned day, he shall pay (as penalty) one mina of copper for each day (beyond) the deadline" (ll. 10–13).[135]

7.1.4 A common feature of sale contracts of slaves is the clear title clause: if the person sold to the buyer becomes the object of an actionable claim, the seller will clear (*zakû*) him and put him at the seller's full disposal.[136] Another recurrent feature of sale documents is the breach of contract clause, which is also found in many other Nuzi transactions. Penalties for default consisted of given amounts of silver (and gold) payable by the party who failed to fulfill the terms of the agreement (*nabalkutu*).

7.2 *Exchange*

7.2.1 Contracts of exchange (*šupe''ultu*) are frequently attested.[137] Real property (fields, plots of land, orchards, houses, and buildings) was the main object of these transactions but exchange of movable goods, such as slaves and horses, is also attested in a few cases.[138] The standard elements of *šupe''ultu* contracts include a description of the property (e.g., quantity, kind, location) transferred, and clear title and breach of contract clauses.

7.2.2 In a number of contracts an additional payment in kind (*uti/utari*) by one of the parties is recorded.[139] A precise relationship

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[135] Cf. SCCNH 1 (1981), 411 and 383 (YBC 5143): 1–7: "PN, merchant, has taken 30 shekels of silver belonging to PN_2, and PN will deliver to PN_2 a young male or female slave (at least) 2 ½ forearms (= cubits) and 4 fingers tall, according to the forearm (= cubit) of PN, by the end of the month MN."

[136] The clear title clause is by no means limited to sale contracts. It often occurs in transactions of various kinds concerned with the transfer of real estate or of persons.

[137] Cf. Andrews, The *šupe''ultu* 'Exchange' . . .

[138] Ibid., 35 and 37 (tables 2 and 3).

[139] Ibid., 151–69.

between the value of the commodities given as *uti* and a possible difference in the value of the exchanged properties is not apparent. Various factors may have played a role, such as the extent, location, and quality of the land and the bargaining position of the parties.

7.3 *Loan*

7.3.1 There is an abundance of evidence at Nuzi concerning debt. Basically, two kinds of contracts are attested: loans with or without a surety, and loans secured by placing a person or real estate at the creditor's disposal as an antichretic pledge. The inclusion of both kinds of contracts under the heading of "loan" is somewhat conventional and basically derives from the use of Western juridical categories inherited from the Roman Law tradition. Sureties or pledges are never the subject of independent contracts but are always included in the body of the loan transaction. Nuzi loan contracts (*ḫubullu*)[140] almost exclusively concern the private sector of the economy.

7.3.2 The great majority of loans were concerned with cereals: primarily barley but also emmer and wheat. Other objects include metals (tin, copper, bronze, and—more rarely—silver), animals, and sundry items such as bricks, wood, or tools.

7.3.3 Loans could be with or without interest. In the former case, the documents state that the capital had to be returned at a given date; should the debtor fail to satisfy his creditor, interest starts to accrue. In the latter case, the documents state that at the due date, capital plus interest had to be repaid. On default, further interest would accrue.

With the exception of three barley loans recorded in one tablet from Arraphe (Jank. 1), which prescribe a 30 percent rate of interest, the standard rate at Nuzi was fixed at 50 percent, whatever the object of the loan. It is reasonable to suppose that the same 50 percent rate applied to the penalty clauses included in all kinds of loan contracts, with or without interest.

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[140] Cf. Owen, "The Loan Documents . . ."; Wilhelm, *Das Archiv . . .*, 4; Zaccagnini, "Debt . . ."

7.3.4 Whereas the documents never state the commencement date of the loan, in the great majority of cases, the repayment date is explicitly recorded: loans must be settled "after the harvest" (*ina arki ebūri*). At times, the month is also specified: most frequent are the month of *kurillu* (= mid-May–mid-June) and *šeḫali ša Teššup* (= mid-June–mid-July). These terms precisely correspond to the period following the Nuzi harvest season, which normally took place sometime between late April and late May. The above wording of the contracts strongly suggests that the Nuzi 50 percent rate of interest was an annual rate, although it could apply to loans of lesser duration.

7.3.5 A few tablets explicitly record the payment of debts.[141] Otherwise, the expected procedure would be simply for the tablet recording the debt to be destroyed. The survival of so many tablets in the creditors' archives is something of a mystery (shared with other Mesopotamian sites), if one is not to assume that they were all bad debts.

7.4 *Suretyship*

7.4.1 Individual or multiple loans, with or without interest, could be secured by one or more persons standing surety for discharge of the debtor's obligation.[142] Land and movable property are not attested as security in *ḫubullu* contracts; they occur in another kind of Nuzi contract (the *tidennūtu* contract: see 7.5 below).

7.4.2 One who stands surety for a debtor in a *ḫubullu* loan is called *māḫiṣ pūti* (lit.: "striker of the front"). With very few exceptions, sureties only occur in multiple loans, where each individual debtor is surety for his co-debtors. The standard clause of suretyship runs as follows: "One man is guarantee for another man (*awīlu ana awīli māḫiṣ pūti*). Whichever of them is present will pay x (= the total amount of the debt) in full" (*mannummê* (*ša*) *ina libbišunu ašbu* x *umalla*). In addition to this clause, many loan contracts add a further suretyship clause, whereby one or two co-debtors stand surety (*māḫiṣ pūti*; variant writing: MA.U) for the fulfillment of the obligation. Considering

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[141] See, e.g., EN 9/2 326, 348; EN 9/1 373; EN 9/3 465.

[142] See Zaccagnini, "Nuzi," with previous literature. Note that Nuzi documents attest to some sporadic occurrences of suretyship outside the sphere of loan contracts; cf., e.g., JEN 263 (exchange of fields) and 155 (lawsuit).

that these loans were already secured by the guarantee given by each and every co-debtor, it may be surmised that these additional guarantees served as individual augmentation of the common guarantee.[143]

7.5 *Pledge*

7.5.1 Loans contracted by single individuals, for a fixed or indefinite term, could be secured by pledge of a person or of a field that were put at the creditor's disposal. The mechanism of these arrangements resembles that of classical antichresis: in lieu of interest, the creditor would enjoy the labor of the person or the yield of the field pledged. In the terminology of the Nuzi documents these contracts are labeled *tidennūtu*—a word of uncertain origin, possibly Hurrian—and the item pledged is called *tidennu*.[144]

7.5.2 The commodities lent in *tidennūtu* contracts correspond by and large to those of *ḫubullu* loans, with some minor but significant differences.[145] Personal security consisted either of the debtor himself or of one of his sons. Exceptionally, the person pledged was some other relative or a slave of the debtor. Fields given as security were of various dimensions; in most cases, however, their surface area ranged from ca. one to four hectares.

7.5.3 The contracts were of indefinite or fixed duration. In the former case the documents state that whenever the debtor repays the amount of the loan, he will take back the person or field pledged. In the latter case, the documents explicitly state that repayment will take place after expiry of the term; in other words, the debtor cannot extinguish his debt before the due date.[146]

7.5.4 Typical of personal *tidennūtu* contracts is the delinquency clause, which imposes a pecuniary penalty on the creditor if the person pledged fails to work. The standard penalty is set at one mina of copper or one *sūtu* (ca. 6.7 liters) of barley for each day's absence

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[143] For an analysis of the few occurrences of suretyship appended to individual loans (e.g., HSS 9 68, 17; HSS 16 238) see Zaccagnini, "Nuzi," 226–27.

[144] Cf. Eichler, *Indenture* . . .; Zaccagnini, "Osservazioni . . ."; Jordan, "Usury . . ."; Zaccagnini, "Nuzi."

[145] For a general overview, see Zaccagnini, "Transfers . . .," 148–51.

[146] Cf. Eichler, *Indenture* . . ., 20–21; Zaccagnini, "Osservazioni . . .," 193–97.

from work. Typical of real-estate *tidennūtu* contracts is a clause forbidding any claims regarding the dimensions of the field pledged and a clause preventing the debtor from retrieving the field if it had already been ploughed (and was about to be sown). Common to both kinds of *tidennūtu* are the clear title and breach of contract clauses.

7.5.5 Some personal *tidennūtu* contracts include an additional surety (*māḫiṣ pūti*) to guarantee the primary obligation.[147] Noteworthy are two personal *tidennūtu* guaranteed by real estate; in these cases, too, the texts make use of the term *māḫiṣ pūti*, which normally applies only to sureties.[148]

7.5.6 Compared with the more than two hundred extant personal and real-estate contracts, we only have two records of cancellation of real-estate *tidennūtu*, after repayment of the debt.[149] Are we to suppose that all the other debts were never repaid? Note that the *tidennu* pledges produced a far higher yield for the creditor than the 50 percent annual rate of interest of *ḫubullu* loans.[150] Given the length of contractual terms, which in the case of personal pledges could be lifelong, it might well be that the real substance of these transactions was the de facto alienation of persons and landed property, albeit disguised under the legal format of a secured loan.

7.6 *Trading Venture*

7.6.1 Long-distance trade is well attested at Nuzi, conducted by both the palace and by private entrepreneurs.[151] As in other documents of the second millennium, the semantic range of the term for merchant (Akk. *tamkāru* = Sum. DAM.GÀR) includes both private individuals who provided capital for financing trade ventures and the actual traders.

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[147] E.g., TCL 9 10; JEN 306; EN 9/2 152; cf. AASOR 16 29. See Zaccagnini, "Nuzi," 229–31.

[148] EN 9/1 265; AASOR 16 60; commented on by Zaccagnini, "Nuzi," 232–33.

[149] EN 9/1 181; AASOR 16 67.

[150] Cf. Zaccagnini, "Osservazioni . . .," and Jordan, "Usury . . .," although the latter's calculations are questionable.

[151] Cf. Zaccagnini, "The Merchant . . ."

7.6.2 As regards the palace, the *tamkāru* acted as a traveling agent of the central administration. From time to time he was entrusted with capital in order to trade in foreign lands. Upon the return of the commercial expedition, his accounts would be settled with the palace accountants.[152] The same procedures applied to business enterprises financed by private persons, except that the contract between the financing party and the merchant often included sureties who guaranteed fulfillment of the merchant's obligations.[153]

7.6.3 At times, business ventures financed by private individuals were arranged through interest-bearing loans: the merchant received an amount of capital with a view to carrying out whatever commercial activities he deemed most opportune.[154] At the end of the business venture, which most often had to be concluded within one year, the merchant was obliged to pay back the capital plus interest. As in all other *ḫubullu* loans, interest was calculated at an annual rate of 50 percent. More complex arrangements provide for a share by the financier in the profit (Akk. *n/mēmelu* = Hurrian *tamkaraššī*) resulting from the trading venture.[155] In these agreements, too, the merchants' obligations were at times guaranteed by sureties.

8. Crime and Delict

Our sole source of information on criminal law is lawsuits brought by the injured parties.[156] Death and corporal punishment are attested, but not as punishments for criminal offences. Mutilation is sometimes mentioned as a special sanction for breach of contract or other misconduct, but always related to the sphere of civil law. The death penalty is threatened in some court cases in which the judges ordered an ordeal (cf. 3.6 above). All the sanctions in criminal cases involve compensation for loss and injury. In contrast to the practice attested in the Alalakh, Ugarit, and Emar archives, Nuzi trials, whether civil

[152] Ibid., 178–80, 184–85.
[153] Ibid., 181–83.
[154] Ibid., 185–88.
[155] Ibid., 179–80; 187–88; Maidman, "Some Late Bronze Age Legal Tablets . . .," 66–69 (= BM 17604).
[156] Cf. Hayden, Court Procedure . . ., 65–69, 136–47, 158–71.

or criminal, never end with the imposition of a fine to be paid to the king or the palace administration.[157]

8.1 *Homicide*

Indirect evidence is provided by a few records that inform us of killing by enemy troops on the occasion of incursions into Arraphean territory. In a royal order addressed to the mayor of a small town probably located on the border, the king confirms the mayor's personal responsibility for any plunder or murder committed by the enemy in the territory under the mayor's authority (HSS 15 1).[158]

8.2 *Assault and Battery*

Persons convicted of assault, fighting, or causing injury to different parts of another's body were condemned to pay the victim thirty shekels of silver in compensation, in the form of one ox, one ass and ten sheep.[159]

8.3 *Theft and Related Offences*

The documents attest to a great variety of cases, depending on the object and particular circumstances of the theft. Penalties varied accordingly.

8.3.1 *Theft of Small Animals (sheep and goats)*

Twelve-fold restitution seems to be the standard sanction, as in EN 9/1 403 (12 sheep for 1 stolen sheep) and JEN 343 (24 goats for 2 stolen goats). Aggravating circumstances—not always easy to identify—gave rise to twenty-fourfold restitution, as in JEN 672 (24 sheep for 1 stolen sheep) and HSS 9 143 (48 sheep for 2 stolen sheep).

8.3.2 *Theft of Large Animals (oxen and horses)*

Thieves were condemned to twofold restitution, as in JEN 391 (2 oxen for 1 stolen ox). If the theft was committed by two or more

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[157] The only exceptions are JEN 370 and 347.

[158] This difficult text has been the object of several different interpretations, among which see Zaccagnini, *The Rural Landscape . . .*, 17–20.

[159] HSS 5 43; AASOR 16 72. This particular kind of "ceremonial" payment has been already commented on (see 4.1 and 5.1.4 above). See further, Zaccagnini, "Transfers . . .," 155.

persons, the twofold penalty was imposed on each thief, as in JEN 334 (1 horse is stolen by a man and a woman; each of them is condemned to pay 2 horses) and EN 9/1 417 (three men steal 1 ox; each is fined 2 oxen).

8.3.3 *Theft of Wood*

Penalties for stealing wood were particularly severe: thirty-three yokes and one ox (see HSS 9 8 and 12). No doubt, good quality wood—such as that used for manufacturing yokes—was a highly valuable item.

8.3.4 *Burglary and Aggravated Theft*

Damages were set at one mina of silver, the equivalent of two oxen, two asses, and twenty sheep. Aggravating circumstances were of various kinds. A recurrent case is that of burglary at night; for example, the theft of wood from an orchard, dealt with in HSS 9 141. In EN 9/1 405, three men stole straw from the palace granary at night; each of them is condemned to pay two oxen, two asses, and twenty sheep. In EN 9/1 437, the theft at night of two trees from an orchard is punished with a double penalty: two minas of silver, the equivalent of four oxen, four asses, and forty sheep. The standard penalty is also imposed on an adopted son who burgled his adoptive father's house and took various personal items (HSS 5 47), a watchman on duty at the city gate who stole someone else's chariot equipment (JEN 358), and a person who stole from the granary barley that had been entrusted to his care (JEN 386).

8.3.5 *Breaking and Entering*

The penalty was ten oxen. In JEN 359, for example, a person is condemned for having entered someone else's house without the owner's knowledge and permission. Where the offence involved breaking the seals on the doors in order to enter a building, the thief had to return or refund the stolen property in addition to paying a penalty of one ox; see, for example, JEN 342 (theft of straw from a sealed barn) and JEN 381 (two men steal barley from a sealed granary; the additional penalty consists of a pair of oxen). Note that in JEN 347 the penalty for stealing a sheep after entering a sheepfold(?) consists of twelve sheep (the rule for theft of small animals) plus one ox.

8.4 *Misappropriation*

Misappropriation of animals was punished with simple repayment in kind, for example JEN 326, where a herdsman flayed three oxen of his master's cattle without the presence of a (professional) butcher, JEN 353, a similar case concerning the unauthorized flaying of two oxen, and JEN 360, where two people were found guilty of flaying a horse and eating its meat.

8.5 *Negligence*

This heading includes some cases of injury to oxen, either by a man or by another ox under the care of a herdsman. The penalty consisted in replacing the animal (JEN 335, 341; cf. JEN 349, which imposes an additional payment of two hundred sheep, in consideration of the fact that the injury to the ox had taken place eight years before).

8.6 *Slander*

The penalty for slander was one ox. JEN 332 concerns an incident that occurred during the arguing of a lawsuit before a bench of judges: one of the litigants openly accused the court's president of being prejudiced against him. The president of the court sued his accuser and a number of witnesses confirmed the disrespectful behavior of the litigant, who was condemned to pay one ox to the judge he had wrongfully insulted. In Gadd 28, a person is brought to court for having said to another person: "You are full of leprosy!" Three witnesses confirmed this: "PN said to PN_2: 'You are full of leprosy . . . do not approach me!'" Having refused the ordeal, the defendant lost the case and was condemned to pay one ox to the plaintiff.

Abbreviations

CHD The Hittite Dictionary of the Oriental Institute of the University of Chicago, Chicago 1980 ff.

Gadd C.J. Gadd, "Tablets from Kirkuk," *RA* 23 (1996) 49–61.

Jank. N.B. Jankovska, "Legal Documents from Arrapha in the Collections of the U.S.S.R. In Peredneaziatskij Sbernik, Moskva 1961, 424–580.

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ANATOLIA AND THE LEVANT

THE HITTITE KINGDOM

Richard Haase

1. Sources of Law

In comparison with Mesopotamia, the sources of Hittite law are somewhat meager:

1. The Constitution of King Telipinu. This was an edict regulating succession to the throne and also containing regulations on the royal granaries, homicide and witchcraft (see 2.1.3–4 below).[1]
2. The Autobiography of King Hattusili I.[2]
3. Treaties with rulers of equal rank and with vassal kings.[3]
4. Royal edicts.[4]
5. Instructions for royal officials.[5]
6. Royal land grants (see 6.3.2 below).[6]
7. Records of litigation.[7] They record only the statements of witnesses and accused, and contain no information on the outcome of the trial.
8. Funerary rituals.[8]
9. The Hittite Laws (HL).

1.1 *The Hittite Laws (HL)*[9]

1.1.1 The Hittite Laws are by far the most important source, a legal corpus for which the conventional term "laws" is something of

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[1] Hoffman, *Telipinu* . . .; Kümmel, "Telipinu . . ." Copies of the text were made in Akkadian as well as Hittite.
[2] Sommer and Falkenstein, *Hattusili I* . . .; Kümmel, "Telipinu . . .," 455.
[3] See International Law in the Second Millennium: Late Bronze Age.
[4] Schuler, "Königserlässe . . ."; Westbrook and Woodard, "Tuthaliya IV . . ."
[5] Schuler, *Dienstanweisungen*; Güterbock and van der Hout, *Royal Bodyguard* . . .
[6] Riemschneider, "Landschenkungsurkunden . . ."
[7] Werner, *Hethitische Gerichtsprotokolle*.
[8] Otten, *Totenrituale* . . .
[9] Editio princeps: Hrozný, *Code Hittite* . . . See also Friedrich, *Gesetze* . . .; Imparati, *Le legge* . . .; most recently, Hoffner, *Laws* . . .

a misnomer.[10] HL are not in the nature of a modern statute, in the sense of a juridical text issued by a sovereign body in accordance with the constitution. The "Laws" give no indication that they were issued by a ruler.[11] Nor do they accord systematic treatment to any of the matters that they regulate, although the treaties demonstrate that the Hittites were capable of dealing with specific topics in a comprehensive way.

1.1.2 Several paragraphs, notably HL 43, 54–56, 90, 171, and 172, which present the outcome of individual trials, suggest that the corpus is a collection of legal verdicts.[12] The tablets were found in the archives of the capital Hattusa at the site of the royal court of justice, the Hittites' supreme court. As comparison of the different manuscripts shows, the texts have been reworked over time, with older rules corrected not only with regard to individual circumstances but also as to the level of fines. Such a collection would logically have been binding on lower as well as higher courts and should therefore be characterized as a set of binding legal verdicts.

1.1.3 In his 1922 edition, Hrozný assembled the many fragmentary cuneiform sources in which the laws are found as two tablets of about one hundred paragraphs each, with continuous numbering. Friedrich's edition numbers each tablet separately, while adding Hrozný's numeration in brackets. The most recent edition by Hoffner numbers continuously, while adding Friedrich's numeration in the second tablet.

Hrozný's division into two tablets is justified by the fact that the Hittite scribes themselves speak of two tablets, which they designate "Tablet: If a man" and "Tablet: If a vine." A third tablet is not

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[10] Used by Friedrich and Zimmern, "Gesetze . . .," but Koschaker regarded them as "Aufzeichnungen über Recht, die wahrscheinlich beim Königsgericht in Hattuša lange Zeit in Gebrauch waren" ("Eheschliessung . . .," 252). Friedrich spoke of a "Niederschrift einmal gefällter Rechtsentscheidungen für den Gebrauch der Juristen" (*Gesetze* . . ., 1). See also Korošec, "Rechtssammlung . . ." ("Hethiter," 262), and San Nicolò, "Rechtsbuch . . ." (*Beiträge* . . ., 96). For a general discussion of the genre of "Law Codes" in the ancient Near East, see the introduction to this *History*.

[11] The actual ruler was in any case deemed to be the Storm God, not the king (Van den Hout, "Tuthalija . . .," 571f.); see further 2.1.5 below.

[12] Albeit not a "Rechtsbuch," i.e., private collection; see San Nicolò, "Rechtsbuch . . .," n. 10 above.

preserved but must have existed, since a label has been found with the words "Third tablet: If a man." According to Friedrich, this could mean that the first tablet was divided into three parts.[13] Finally, there is a further tablet, called KBo IV 4 after the designation of the published copy, whose paragraphs are numbered with Roman numerals. It represents a partially modified parallel to the first tablet.

1.1.4 The division into paragraphs derives from Hrozný, who followed the horizontal dividing lines visible on the tablets. The result is a series of short sections, which in his view represented paragraphs.[14] The result was, however, that he sometimes took two provisions as one. For example, in HL 195, there should have been a dividing line after 195a, as actually occurs in manuscripts d III, n, and s III, while 195a and 195c form a single provision, which should have been numbered HL 196. Similarly for HL 44a and 44b, where the latter should actually be HL 45. Even the Hittite scribes, however, were not always consistent: in manuscript q_8 there is a dividing line in HL 107 which has no place there.

1.1.5 The texts are preserved in copies that are often not easy to date. Relative dating of the provisions themselves is possible when earlier and later rules are juxtaposed with the words "formerly . . .; now . . ." For example (7):

> If someone blinds a free man or knocks out his tooth, formerly one used to give one mina (= 40 shekels) of silver; now he gives twenty shekels of silver and he shall look into his house.

In a textual variant the twenty shekels are reduced to ten. In the parallel text (KBo VI 4), V reads:

> If someone blinds a free man as the result of a quarrel, he gives one mina of silver. If the hand sins, he gives twenty shekels.

1.1.6 For the most part, the identity of the perpetrator is not specified. The provisions begin with the words "If someone (*takku kuiski*) . . .," followed by the circumstances. Both men and women may be intended, as in the rules concerning injury and theft, but

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[13] Friedrich, *Gesetze* . . ., 1.
[14] Possibly an edition of the earlier-discovered Hammurabi stele was his model.

there are cases in which the designation is simply "free man" (HL 93, 96, 121, 132, 191, 194), "unfree" (95, 97), or "man" (43, 195, 197, 200a).

1.1.7 The Laws cover the following topics:

Tablet 1
Homicide (1–6)
Injury (7–18)
Kidnapping (19–21)
Runaway slaves (22–24)
Pollution of a vessel (?) (25)
Family (26–36)
Justified killing (37, 38)
Feudal services and tenure (39–42)
Wrongful death (43–44b)
Lost property (45, 71)
Feudal services and tenure (46–56)
Offences concerning farm animals (57–92)
Burglary (93–97)
Arson (98–100)

Tablet 2
Offenses related to cultivation (101–9)
Theft of clay (products?) (110)
Witchcraft (111)
Awards to prisoners of war (?) (112)
Damage to vines (113)
(*gap*)
Theft (119–43)
Interference with sale by a third party (144–49)
Wage tariff (150–61)
Irrigation rights (162)
Damage by negligent disposal of the residue from a ritual act (163)
Sacral law (164–70)
Miscellaneous provisions (171–78a)
Price tariff (178b–88)
Sexual offenses (188–200a)
Apprenticeship (200b)

1.1.8 The organization of both tablets seems at first sight confused or at least not in harmony with modern principles of classification.[15]

[15] Hoffner, *Laws . . .*, 14f.

Nonetheless, it is possible to discern certain clusters of laws that suggest organization by subject, aided, as Hoffner rightly points out, by the principle of attraction.[16] Korošec identified the following categories: person, body, family, feudal services, theft.[17] He notes that the order of paragraphs follows a declining path from more important object to less important. The organization of Tablet 2 is harder to ascertain. The categories property of others, wages, sacral law, prices, and sexual offenses can be constructed, but intrusive provisions not belonging to any of these categories are more disruptive than in Tablet 1. Perhaps the scribes did not always know where to insert a new provision: wage and price tariffs are separated; sacral law could well have been placed next to sexual offenses by reason of its sanctions. Admittedly, in the absence of any juridical classification of individual paragraphs by the Hittites themselves (e.g., by headings, as in some editions of the Laws of Hammurabi), modern interpretation of the facts of a case may differ, leading to discrepancies in the presumed ancient classification. Nonetheless, no rationale is discernable for the location of certain laws. Thus 43–44 seem to have no connection with the surrounding context, and the same applies to 171 and 172.

1.1.9 The changes to the Laws in the various manuscripts show that the corpus is composite. Korošec identified four stages. The oldest has the death penalty and extremely high payments in cattle as sanctions. The second stage punishes sexual delicts and expands the definition of theft. The third stage prescribes heavy pecuniary penalties. The fourth is associated with a reform, identified by the statement "formerly . . .; now . . ."[18] A fifth stage, not mentioned by Korošec, would be the parallel text KBo VI 4, which also contains changes to the protasis and apodosis.

The measures of the fourth stage may be ascribable to King Telipinu (ca. 1500), whose constitution not only regulated succession to the throne but also dealt with homicide and witchcraft. Insofar as they affect HL, they are referred to as the Reform of Telipinu.

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[16] Ibid., 15.
[17] Korošec, "Sistematika . . ."
[18] Ibid.

1.1.10 Noteworthy is the existence of tariffs for wages and for prices of cattle, meat, and agricultural products in among a collection of legal verdicts. It is doubtful that these refer to fixed prices, since there are considerable variations with regard to the same object. To date, no documents of practice have been discovered that would allow a comparison between these prices and reality.

1.1.11 Sophisticated juridical parlance is not to be expected, but the Laws contain recognizable attempts at definition of terms. The term "bull" is carefully defined as neither a suckling nor a one-year-old calf (57). This accords with 176a, which states that a bull "breeds" (is mature) in the third year. The term "stallion" is defined in the same way (58). 176b explains what an artisan is by listing several crafts: potter, smith, carpenter, leather-worker, fuller, weaver, and breeches-maker (?).

2. Constitutional and Administrative Law

2.1 *The King*

2.1.1 In the early part of the so-called "Old Kingdom," the Hittite State was conceived of as the "body of the king," that is, a body politic[19] with the king as the head and the royal family, the "community" (*panku*), as the limbs.

2.1.2 The first king of the Hittite Empire, Hattusili I (ca. 1565–1540), whose title is Labarna, says in his "Political Testament" with regard to the order of succession among the royal family: "See, Mursili is my son, him you must place (on the throne)."[20] It has been argued from this passage that the monarchy was elective, as in Indo-European tradition.[21] But the tenor of the order, which involves an adoption ("M. is now my son"), does not imply a recommendation that Mursili be elected, rather a directive to the royal family to show allegiance to his successor. He demands that they support his son in time of war or insurrection.[22] Hattusili is well aware of his exclusive posi-

[19] Starke, "Regierung . . .," 172.
[20] Sommer and Falkenstein, *Bilingue* . . ., §7 II 37, 38.
[21] Gurney, "Anatolia . . .," 253.
[22] Sommer and Falkenstein, *Bilingue* . . ., §7 II 39–41.

tion as ruler: "The elders may not address (you); my son should not be approached for personal advantage (?). To you, my son, (even) the elders of Hattusa may not speak. All the less so may someone from the people say a word to you" (§11). So that his directive not be forgotten, the king orders: "This tablet should be read to you every month" (§22). In this way Hattusili emphasizes his demands upon the State. In §29 he stresses the necessity for unity and solidarity among the royal family: "May your family be united like those of the animals!"

2.1.3 Nonetheless, the following centuries saw bitter struggles for the throne, with repeated coups and assassinations within the palace. The situation changed only after 1500, when King Telipinu promulgated his constitutional edict. Section 28 lays down the following rule of succession:

> Only a son who is a king's son of the first rank may become king. If there is no son of the first rank, he who is a son of the second rank shall become king. If, however, there is no son of the king, an heir, available, they shall take an *antiyant-* for whoever is a daughter of the first rank and he shall become king.

Telipinu was thus contemplating a hereditary kingship through the male line. The word *antiyant-* is normally translated "son-in-law" following Balkan,[23] but against this interpretation is, inter alia, the fact that Telipinu turns to the *panku*, and neither this "community" nor any other could have a son-in-law.[24]

2.1.4 Like Hattusili in his political testament, Telipinu in sec. 29 of his constitution calls for unity from his family and the army, in the light of earlier struggles for the throne: "Do not kill one of the royal family; it is not good." More expressly, sec. 31 states: "If a prince sins, only he shall suffer the death penalty," thereby excluding collective punishment, which would fall upon the culprit's family. Telipinu ensures that his successors will not become despots by making them subject to the jurisdiction of the *panku*, the community of the royal family (30): "Whoever is king and plans evil against his

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[23] Balkan, "Schenkungsurkunde . . .," 148ff.; von Schuler, "Althethitische Schenkungsurkunde . . .," 208.

[24] Beckman, "Inheritance . . .," 17; Haase, "Der §36 . . .," 394f.

brothers or sisters—if you are his *panku*, tell him loud and clear: 'Learn this matter from the tablet!' "

Telipinu's Constitution was respected by his successors, bringing stability to a kingdom weakened by the power struggles of ambitious pretenders to the throne. Its legacy is all the greater if the reform of HL may also be ascribed to Telipinu.

2.1.5 The king is always representative of the Storm God, to whom—together with his consort, the Sun Goddess of Arinna—the land belongs. (Hattusili III addresses the goddess in a prayer as "My lady, queen of all the lands.") As such, the king has to present the gods with an account of his administration of the empire. Furthermore, he is also high priest (and as such inviolate), commander-in-chief, and supreme judge. In the latter capacity, he presides over the "royal court of justice" of the capital, Hattusa. Among his many duties that derive from the above functions is care for the land in general but also for the poor and suffering. This relationship to the gods does not, however, reduce the king's status in the secular realm. Thus, for example, in the preamble to the treaty between the Hittite king, Suppiluliuma I, and King Niqmadu of Ugarit it is stated: "Thus speaks his majesty, Suppiluliuma, Great King, king of Hatti, hero . . ." The term "hero" refers to a superhuman creature, resembling the gods to some extent. Accordingly, King Hattusili II (ca. 1265–1240) says of himself: ". . . since I was a man privileged by the gods and walked in the grace of the gods . . ." The consequence of this conception was that the king had to be protected from any contamination.

2.1.6 The reign of Suppiluliuma I (ca. 1353–1320) sees the development of Hattusa into the third great power alongside Babylonia and Egypt—the "New Empire." The position of the Hittite king changes: previously he was the "Great King"; now he is addressed as "My Sun." The royal symbol is the winged sun (similar to the Egyptian sun disk), as can be seen on many seals and on the rock carving of king Tuthaliya IV's likeness at the shrine of Yazilikaya. Upon the king's death, it is said that he "became a god."

2.1.7 Towards the end of the New Empire, the position of the king moved further towards deification. Tuthaliya IV demands that sacrifices be made to him, and he is depicted wearing the horned crown hitherto reserved for gods. Following the example of the Assyrian monarch

Tukulti-Ninurta I, he took the title "king of the universe."[25] Nonetheless, it is unlikely that this affected the king's role as steward of the Storm God.

2.2 *The Queen*

2.2.1 The Hittite queen reigned for life: initially as crown princess, called "wife of the king" (SAL.LUGAL); only after the death of her predecessor does she receive the title Tawananna, previously borne by the latter.[26]

2.2.2 The role of the Tawananna is disputed by scholars. Bin-Nun[27] has suggested that the Tawananna was a priestess, separate from the queen; others see in the office the remnant of a matriarchal regime or of sibling marriage.[28] None of these proposals is convincing.

2.2.3 Already in the Old Empire there were activities of the Tawananna that were displeasing to the monarch: Hattusili I tells his wife Hastayar: "You should not oppose me!"[29] It should not be said of her that she consults the "old women" (witches). The king demands: "Always consult *me*; I will tell you my opinion." In the New Empire, Mursili II (ca. 1318–1290) had difficulties with an unnamed Tawananna, who was a Babylonian princess and the widow of Suppiluliuma I. The king accused her of sorcery and dark intrigues, and she was deposed by the verdict of a court. The king was entitled to have her executed but commuted her sentence to banishment.

2.2.4 The life of Queen Puduhepa, the wife of Hattusili III (ca. 1240–1215) throws light on the political activity of a Tawananna.[30] She played an active role in foreign policy, corresponding with Ramses II, his principal wife, her daughter, and others, and had her own seal. She conducted a two-track correspondence, in that the same messenger brought letters from the Pharaoh with identical content

[25] Van den Hout, "Tuthalija . . .," 572.
[26] Starke, "Verfassung . . .," 317.
[27] Bin-Nun, *Tawananna* . . ., 103.
[28] MacQueen, *Hittites* . . ., 76.
[29] Sommer and Falkenstein, *Bilingue* . . ., §23 III 65–70.
[30] Cornelius, *Geschichte* . . ., 197.

to both Hattusili and Puduhepa, which Edel terms "parallel pairs of letters."[31] She acted independently in diplomatic matters and also appears in treaties as having equal standing with the king. She therefore had an important constitutional position, which she exploited to the full.

2.3 *The Administration*

The king is served by a hierarchically organized bureaucracy which performs the duties arising from his all-embracing role as head of state.

2.3.1 The "Great Ones" ($^{LÚ.MEŠ}$GAL) are a sort of council of state or king's council, from which the king seeks advice on important matters, including internal dynastic conflicts.[32] They act as an oversight body in a few areas of the administration, including court appointments. This is shown by the designations attributed to them: "Great Ones of the Bodyguards," "Great Ones of Wine Personnel," "Great Ones of the Charioteers." They are also members of the *panku*, the community of the royal family. In the New Empire, this body becomes obsolete, being incompatible with the dignity of the king.

2.3.2 The "Lords" (*BĒLŪ*$^{ḪI.A}$) are an extension of the circle of the "Great Ones." They belong, together with the "Princes" (close relatives of the king), to the governing elite of the State. The two terms are not mutually exclusive: a "Lord" can be a "Prince" and vice-versa. Rank depends on the individual's function.[33]

2.3.3 The "Heads" ($^{LÚ.MEŠ}$SAG), whom Starke calls a group of officials,[34] were low-level court officials, who in the thirteenth century were given higher status for administrative reasons. A consequence was that the rank of "Great Ones" became less important.

2.3.4 The duties of all three groups are revealed by two loyalty oaths drafted on the accession of Tuthaliya IV.[35] The first concerns

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[31] Edel, *Korrespondenz* . . ., 19.
[32] Imparati, "Organisation . . .," 334; Starke, "Regierung . . .," 141.
[33] Imparati, "Organisation . . .," 332; Starke, "Regierung . . .," 155.
[34] Starke, "Regierung . . .," 162.
[35] Ibid., 163 ("Treueid").

the Heads; the second, Princes, Lords, and Heads.[36] They contain a considerable number of prohibitions that are marked with the loyalty oath: "This must be placed under oath." Expressed positively, they are commands to the subject taking the oath.

The prohibitions are felony, betrayal of secrets, spreading false reports, unfulfilled plans to assassinate the king, defamation of the king's friends, concealing seditious words against the king, failure to report crimes, concealing plans for a coup among the populace, breach of confidentiality, failure to come to the aid of the king, and misdemeanors regarding women.

2.3.5 The "Lord of the Watchtower" (*BĒL MADGALTI*) is a border commander, whose duties are described in great detail.[37] They are first and foremost military: fortification of towns, maintenance of roads, annual cleaning of canals, stocking of supplies, renovation of public buildings such as temples, royal buildings, stables, warehouses, and guardhouses. In addition, the border commander is responsible for taking an inventory of cultic objects, keeping the prescribed festivals, and preventing excessive consumption of alcohol. Special attention is paid to upholding the law. The commander is ordered to resolve disputes diligently. If an abomination has been committed, he may impose the death penalty or banishment—whichever is customary in the town in question. The punishment must be made public. He must refer "extensive" cases to the king; it is unclear whether this means legally difficult cases. The commander must be impartial. In particular, he must not conduct or decide cases "in favor of his brother, his wife (?) or his friend." As another text puts it, he may not decide for the sake of bread or a present. In general, he is ordered: "Do what is just." He is also enjoined to protect widows and orphans: he must decide the case of a single woman for her and give her satisfaction.

2.3.6 The mayor (*ḪAZANNU*) is mostly designated in the texts by the sumerogram MAŠKIM. In the commander's absence, he is responsible for resolution of legal disputes. He was also responsible for public order: the *ḪAZANNU* of Hattusa had to see to the bar-

[36] von Schuler, *Dienstanweisungen* . . ., 22ff.

ring and sealing of the city gates at night, and it was to him that the discovery of a corpse in the city had to be reported.

2.3.7 The "Elders" ($^{LÚ.MEŠ}$ŠU.GI), who were presumably the representatives of local communities, that is, a sort of town council, are known in the law of the Old Kingdom from HL 71, where they are responsible for the receipt of lost property. Later they lose this function, since according to HL XXXV (of the parallel text KBo VI 4), it is sufficient for the finder to show the property to witnesses. In capital cases, they give judgment together with the border commander (*BĒL MADGALTI*; see 2.3.5 above).[38]

2.4 *The Courts*

2.4.1 The royal court of justice (DI.KUD LUGAL), as the highest court, is located in the capital, Hattusa. The king presides at its sessions and also has the prerogative of mercy (HL 188, 198, 199). The royal court has jurisdiction over the following offenses: theft (HL 102, 126), adultery (198), rejection of the king's decision (173), bestiality (187, 199), and sorcery (44b, 111).[39]

2.4.2 The court of the border commander (*BĒL MADGALTI*) has jurisdiction over capital offenses. There is also a court of the DUGUD of HL 173, a notable not further defined, whose jurisdiction replaces that of the elders.

2.4.3 In a case of murder, the "lords of the blood" have standing. Section 49 of the Constitution of Telipinu states: "And a matter of blood is as follows: whoever does blood (i.e. homicide)—(it shall be) as the lord of the blood decides. If he says: 'He shall die,' then he dies. If he says: 'He shall compensate,' then he shall compensate. But to the king, nothing." The jurisdiction of the family is thus preferred.

2.4.4 For certain offenses in HL, a part of the fine was originally payable to the palace, apparently as a court fee (9, 25). Later, the king relinquishes his share.[40]

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[37] Ibid., 35ff.; Korošec, "Bēl madgalti . . .," 30ff.
[38] Klengel, "Die Rolle . . .," 229.
[39] Haase, "Prozessrecht . . .," 249–57, and "Zur Zuständigkeit . . ."
[40] Korošec, "Hethiter," 183.

3. Litigation

3.1 *Procedure*

As the Instructions to the Border Commander attest, a prospective litigant must submit to the commander a sealed wood or clay tablet. It is not clear whether this applied to all types of cases or only, for example, to civil suits (a distinction in any case not expressly used by the Hittites).[41] It appears that the draft had to be submitted by the party making a demand and could also include punishment, that is, the equivalent of a private prosecution. The subsequent procedure is not known. The case must have been investigated, since evidence was taken and a record kept thereof. Fortunately, an example exists in texts dealing with a case of missing "implements" belonging to Queen Puduhepa.[42] The queen herself is the plaintiff and demands surrender of the "goods" in the manner of a modern civil claim. The records are remarkably detailed, but the outcome of the case is not known.

3.2 *Evidence*

Testimony may lead to not only the witness but also the defendant being required to take the oath, as HL 75 shows. The oath may be ordered by the plaintiff. It takes place "before the face of the god." Documents may also be used in evidence, as a king orders that gifts received by temple officials must be registered in writing before witnesses.[43] The river ordeal is also attested: in instructions to courtiers, because of the contamination of water in his basin, the king orders that the culprit "should go to the river . . . If he is unclean, let him die."[44] It is not known how the outcome of the ordeal was determined.

4. Personal Status

Güterbock's remark, "The social structure of the Hittite state is not clear,"[45] remains valid today. HL distinguish between a "free person"

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[41] Haase, "Körperliche Strafen . . .," 60.
[42] Werner, *Hethitische Gerichtsprotokolle*, 3–20.
[43] Sturtevant and Bechtel, *Chrestomathy* . . ., 255.
[44] Schuler, "Hethitische Rechtsbücher . . .," 125.
[45] "Authority . . .," 20.

(Hitt. *arawa-*; Akk. LÚ *ELLUM*), and that part of the population for which the Hittite term is not known; instead the Sumerian ÌR/ARAD or Akkadian *WARDU*, meaning "servant" and sometimes translated as "slave," is used. There are also several segments of the population with a special designation.

4.1 *Free Persons*

The example of kings shows that freedom was by no means unfettered. The king is steward (*maniyaḫḫatalla-*) of the Storm God.[46] King Muwatalli I addresses the Sun God with the words "My Lord (*išḫasmis*), just lord of judgment." In his Apology, Hattisili III reports that the goddess Ishtar has ordered him: "With your whole household enter my service (ÌR-*aḫḫut*)"[47] and that he, as high priest, was to observe strictly the calendar of festivals. The officials at court are "slaves of the king," and their subordinates "slaves of the slaves of the king." The freedom in question, therefore, is that which a person within a particular social class enjoys to a greater extent than others. Royal officials to whom land (together with its farmers, livestock, and equipment) is given as an appanage or to whom a mausoleum is given are said to receive their freedom thereby, as do farmers, merchants or guilds, and the persons named in HL 50 and 51 who are granted exemptions from feudal dues.

4.2 *"Slaves"*

Güterbock refers to "slaves in the strict sense,"[48] apparently referring to chattel slaves such as those of classical antiquity. This characterization may have been valid for house slaves whose master could treat them as he wished when they were at fault,[49] but it is less suitable when they were capable of owning property and could pay betrothal money (HL 34) or fines (95, 97). The meaning "servant" seems more appropriate, or perhaps the designation "semi-free." It comprises every person who is subject to orders or dependent on another but nonetheless has a certain independence within his own

[46] Ibid., 16.
[47] Ünal, "Hymnus . . .," 796; Otten, *Apologie* . . ., III 4.
[48] Güterbock, "Bemerkungen . . .," 93 ("Sklaven im eigentlichen Sinne").
[49] Götze, "Pestgebete . . .," 217.

sphere of activity. At the same time, it does not exclude the existence of "real" slaves.[50]

To the class of semi-free belong the agricultural workers of a mausoleum or of a large estate owner, the artisans working there, and property-owning "slaves," namely the "foreman" or "steward" (^{LÚ}AGRIG), or the shepherd (^{LÚ}SIPA.UDU).

4.3 *Other Classes*

4.3.1 $^{LÚ.MEŠ}$*ḫippares*

These "captives" were drafted for general service (*luzzi*, HL 48). They are engaged in public works, such as the maintenance of buildings or roads in the settlements. They have fields and vineyards but are not allowed to sell this property, which is apparently only for their personal use. It is doubtful whether they are connected with NAM.RA persons (see 4.3.3 below).[51]

4.3.2 LÚ ^{GIŠ}TUKUL

This much-discussed class was originally thought to be warriors.[52] Sommer suggested "craftsman" ("Handwerker") instead,[53] since the Sumerogram TUKUL can mean not only "weapon" but also "tool." He is followed by von Schuler,[54] while Hoffner speaks of a "man who has a tukul-obligation."[55]

According to HL 41, these craftsmen have to perform *saḫḫan* duty (service for the king). Their sphere of activity is the maintenance of public installations, such as shrines and fortresses.

4.3.3 NAM.RA

The Akkadian equivalent for this Sumerian term is *ŠALLATU*, "booty; deportee(s)." They are members of the deported and resettled population of defeated enemy countries.[56] The Hittite kings drafted them

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[50] Cf. Akk. *wardum* (see AHw 1464–65). The previously adopted term "Unfreier" will no longer be used.

[51] Haase, "Der ^{LU}*ḫipparaš* . . .," 36f.

[52] Hrozný, *Code Hittite* . . . sec. 40 passim: homme d'armes. Also D'jakonow, "Gesellschaft . . .," 331, albeit with the qualification of a conscript "welcher im Frieden Handwerker ist," as are all conscripts.

[53] Sommer and Falkenstein, *Bilingue* . . ., 120–24.

[54] *Dienstanweisungen* . . . sec. 40 passim.

[55] Hoffner, *Laws* . . ., sec. 40.

[56] Alp, "Klasse . . .," 115.

for military service or used them as workers in temples and in agriculture, where they could also be treated somewhat in the manner of medieval *glebae adscripti* (HL 112). From HL 40 it appears that at the king's directive they could also take the place of craftsmen who could not or would not fulfill their public service (*saḫḫan*).

4.3.4 The position of the semi-free was unenviable. For example, they were counted by "heads," as land-grant deeds attest.[57] According to HL 176b, craftsmen could be sold. A consequence was flight (22–24), as elsewhere in the ancient Near East.[58] They were also the victims of abduction, perhaps to maintain the stock of the semi-free (HL 19–21).

4.4 Social status was not immutable; it was possible for free persons to sink into the condition of semi-free. This was especially the case with a free woman who married a semi-free man. According to HL 34, she acquires his status at once or, if the man is a "steward,"[59] after two or three years (HL 175). If a shepherd or "steward" abducts a free woman and does not give the betrothal payment (see 5.1.2 below), she will become unfree after three years (HL 35, but note that there are two slightly differing versions). The son of a free man whom a semi-free man adopts in order to preserve his line (*antiyant-*) loses his free status (HL 36; see 5.6 below).

5. Family

5.1 *Marriage*

Hittite marriage is monogamous. Formation of marriage is in three stages.

5.1.1 The first stage, according to HL 28, is a promise (vb. *tar-*) by the parents of the bride to their future son-in-law, to give him their daughter in marriage. The latter gives the parents "something" not otherwise specified. Thus, the marriage is decided upon by the

[57] Riemschneider, "Landschenkungsurkunden . . .," passim.
[58] Renger, "Flucht . . ."
[59] Singer, "AGRIG . . .," 105.

parents, expressed by the hendiadys "father-mother" (*attas annas*)—contrary to the supposedly patriarchal character of the family in Hattusa. If the agreement fails because the parents marry the girl off to another, the groom receives back from them anything that he gave. If another abducts the girl and marries her, the abductor must indemnify the groom for his outlay. Hence the parents must pay compensation only when they themselves fail to keep the agreement.

5.1.2 The next stage is attested by HL 29. The parents now "bind" (vb. *ḫamenk-*) their daughter to the man. The latter brings a further payment, called *kusata*, which, according to an Akkadian-Hittite glossary, is the equivalent of Akkadian *TIRḪATUM*. It may be qualified as a betrothal payment, since the resulting arrangement is betrothal, but in a closer legal relationship than arose from the promise in HL 28, as can be seen from the consequences of withdrawal by one of the parties. If the parents of the bride "separate" the couple (note that the mother has an equal say in the matter), they must repay double the *kusata* (threefold according to HL XXII). The man may withdraw, as long as he has not yet "taken" the bride, that is, the marriage has not yet been consummated, but he loses the *kusata* that he paid (HL 30). In this way, breach of contract by either party is punished.

5.1.3 The process is concluded by the wedding and consummation, which makes the marriage complete in law. Withdrawal by the man is no longer possible; only divorce can dissolve the union. Completion of the marriage is made public by the wedding ceremonies, as is shown on a cultic vase discovered at Bitik. It depicts a standing man offering with one hand a cup to the woman sitting before him, while with the other he lifts her veil.[60] The formalities also include transfer of the dowry to the bride by her father (HL 27).

5.1.4 Marriage can lower the social status of a free woman, if she marries a semi-free man (cf. 4.4 above).

[60] Alp, *Song* . . ., 17.

5.2 *Marital and Gender Relations*

The family is organized on patriarchal lines. The wife does, however, have the right to participate in marrying off a daughter (see 5.1.1 above) and in the absence of her husband, may expel a disobedient son. Disinheritance is also a possibility. HL 1–4 and 19a–24 make no distinction between men and women. The tariff of wages pays women less than men, which may be connected with physical strength. On the one hand, in the realm of private law the position of women is close to equality with men. On the other hand, the husband may kill his adulterous wife on the spot without a trial (HL 197).

5.3 *Dissolution of Marriage*

5.3.1 Marriage ends with the natural death of a spouse. The husband can also end it by violence; according to HL 197 he may kill his wife if he catches her "in the house" in the act of sexual intercourse with another man. Otherwise it may be ended by divorce—by either spouse, as shown by the poorly preserved HL 26a (wife) and 26b (husband). There is no mention of the formalities required. If the wife divorces her husband, she receives financial compensation for those children born to her who remain with the father (26a). According to 26b, the husband appears to be able after the divorce to sell his former wife, but the text is very broken.[61]

5.3.2 The provisions are not consistent as regards assignment of children after divorce. According to HL 26a, the father keeps all the children, but according to 32a he keeps only one of several, the rest going to the mother.

5.4 Incestuous marriage was most probably prohibited. This is certainly so for the royal family. A treaty between Suppiluliuma I and the vassal king Hukkana provides: "A brother may not take his own sister; it is not right." Breach of this rule is punishable with death. The same rule applies to marriage with one's aunt. Whether these rules applied to the general populace is not clear.

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[61] Haase, "Zur Stellung der Frau . . .," 279; possibly it concerns disinheritance.

5.5 Levirate marriage, or marriage between the widow of a man who died childless and the deceased's brother, as in Deuteronomy 25:5–10, is found in a similar form in HL 193. Here the father or the brother of the deceased marries the widow. Some aspects of the provision remain obscure.[62]

5.6 *Adoption*

The possibility of adoption by an unfree person is mentioned once in HL, in 36. A semi-free man who has no son takes the son of a free man into his family as an *antiyant-* (see 4.4 above). In the royal family, adoption is frequently used to preserve the dynasty.[63]

5.7 Alongside formal marriage, an analogous arrangement by mutual consent is found among the semi-free. HL 32a and 33 speak of living together, a common household, and common children. The Hittite words for "promise" and "bind" (HL 28, 29) do not appear in these texts. Division of property after separation presumably followed HL 31.[64]

5.8 Abduction ("Raubehe") is not recognized as a valid basis for marriage. It is true that abduction is mentioned in HL 28 and 37, but it is an illegal act. If it were otherwise, the abductor or the parents who change their mind would not have to pay the existing groom compensation, and the abductor's accomplices could not be killed with impunity. Should the deed be legalized by subsequent consent, the usual formalities for conclusion of marriage are applicable.

6. Property and Inheritance

6.1 *Terminology*

The modern distinction between possession and ownership finds no expression in Hittite. The Hittites stressed rather the power of control over a person or object, expressed through the noun *isḫa-* "lord, master." The latter "has" something that he controls. Whether that

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[62] Koschaker, "Zum Levirat . . ."
[63] Bryce, *Kingdom* . . ., 94, passim.
[64] Haase, "Drei Kleinigkeiten . . .," 71.

control amounts to possession or ownership can only be understood from the circumstances of the case. There are also exceptions, as in HL 74, where someone injures another's ox and the "lord of the ox" says, "I will take my own ox." It is unclear whether the culprit was a possessor (through hire or lease) or a malicious neighbor.

6.2 *Tenure*

Officials were not remunerated by way of salary; instead, they were granted the exploitation of land as a means of providing an income. HL deal with this topic in 39, 40, 41, 46, 47a and b, XXXVI, XXXVII, and XXXIX. The services to be rendered in exchange are called *saḫḫan* and *luzzi*.

6.2.1 *saḫḫan* is personal service to the king through the supply of cattle, donkeys, cheese, rennet, butter or wool.[65] According to HL 51, the dependants and relatives of a weaver provide this service, which may be called royal service.

6.2.2 *luzzi* is provided by harvesters, coppersmiths, and gardeners in a fortress (HL 56) and a temple, and by servants of a mausoleum ("stone house") or of a prince.[66] This form of service may be called general service.

6.2.3 In HL 47a (manuscript A II 43) and 51, and in Maşat Letter no. 52,[67] the two terms appear together in hendiadys: *saḫḫan luzzi*. This is presumably a collective term for both services, meaning simply services of any kind that are owed in the public interest. It could be taken as rendering obsolete the somewhat obscure regulations of the above paragraphs, in which case the result would be that in the late period there was only a single undifferentiated service.

6.2.4 If a person owing *saḫḫan* gives a field in lease and the lessee is unwilling to bear the burden of the service owed, he may relinquish the lease. The lessor must then take it over himself or provide a substitute.[68]

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[65] Haase, "Anmerkungen zum . . . Lehensrecht . . .," 137.
[66] Ibid.
[67] Alp, *Hethitische Briefe* . . ., ad loc.
[68] Haase, "Anmerkungen zum . . . Lehensrecht . . .," 139.

6.2.5 Land may be granted free of service. HL 47 shows that exemption from *luzzi* required a formal act: the king gives the beneficiary a piece of bread from the royal table. According to the late version HL XXXVI, a simple exemption by the king may suffice in lieu of giving bread, and in XXXIXa, exemption may be given merely by "someone from the palace."

6.2.6 Total exemption from services is found in an edict of Queen Asmunikal, the wife of Tuthaliya I (ca. 1400). It concerns a "stone house" (mausoleum for a dead king). The exemption covers all places and all the staff (craftsmen, farmers, shepherds, villagers, and doorkeepers) and animals. An *eya* tree is planted[69] as a symbol of their exempt status (see HL 50).[70]

6.3 *Acquisition*

6.3.1 No documents concerning the acquisition of movables have been found to date.

6.3.2 Land-grant documents are found from the Middle Kingdom between 1480 and 1380. They record transfer by the ruler to a dignitary of a landed estate together with its personnel and chattels. The king thereby secures the loyalty of important dignitaries and fulfills his obligation to provide them with an income.

The structure of these documents is schematic. The preamble designates the king and his seal. There follows a description of the property granted. From the transfer formula used (Akk. *NAŠÛ-NADĀNU*), it may be learned from whom the king has expropriated the estate and to whom he has given it. A vindication clause protects the donee and his descendants from claims. The king then reaffirms the efficacy of the legal act: "The words of the king are of iron; they are not to be discarded . . ." The document closes with the place of issue and a list of the witnesses.[71]

6.3.3 A document found at Inandik in 1966 records the grant of a house by the steward (^{LÚ}AGRIG) of the town of Hanhana to his

[69] Otten, *Totenrituale* . . ., 107.
[70] Haase, "Rechtsformalismus . . .," 57.
[71] Riemschneider, "Landschenkungsurkunden . . .," 330.

son-in-law, after he had adopted him.[72] Its editor is inclined to regard it as a land-grant document "in the broad sense."[73] In favor of this interpretation is the royal seal that the document bears. On the other hand, the steward may have sought only to make his grant more secure by giving it the appearance of an official transaction. The *NAŠÛ-NADĀNU* clause is, of course, lacking.

6.4 *Inheritance*

HL contain three provisions concerning inheritance: 27, 171, and 192.

6.4.1 Upon marriage, a daughter receives a dowry from her father. HL 27 regulates the fate of this property after the wife's death. Two situations are distinguished: if the wife dies, as is normal, in her husband's house, the dowry passes to the husband. If she dies in her parents' house and there is a son, the widower receives nothing.[74]

6.4.2 HL 192 regulates the opposite case. The husband has, for unstated reasons, a "partner"[75]—possibly, the reference is to a business relationship. Following Hoffner's suggestion, the partner has to marry the widow.[76] The rationale for this rule may be for the partner to maintain the enterprise, in that by marrying the widow he receives her inheritance.

6.4.3 HL 171 is an obscure provision, apparently concerning the disinheritance of a son by his mother. The mother performs certain formal gestures to effect disinheritance or reinstatement.[77]

6.4.4 The land grants (6.3.2 above) contain an inheritance element. If claims of ownership may not be made against the donee and his descendants, then it amounts to transfer of the estate; the donee is the equivalent of an heir.

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[72] Haase, "76 (Pfandrecht)," 95.
[73] Balkan, "Eine Schenkungsurkunde . . .," 41.
[74] Haase, "Drei Kleinigkeiten . . .," 65–67.
[75] Ibid., 67.
[76] Hoffner, *Laws* . . ., 151, n. 539, 225.
[77] Ibid., 217.

7. Contracts

7.1 The study of Hittite law is hampered by the complete lack of private contractual documents. The reason is that the Hittites wrote not only on imperishable clay but also on perishable wood, as the profession of "scribe of wooden tablets" (^{LÚ}DUB.SAR.GIŠ) attests.[78] The importance of this profession is underlined by the fact that the scribes are subordinate to a dignitary with the title "Great One of the Scribes" (GAL.DUB.SAR^{MEŠ}). The only information on regular contracts is provided by HL, written on clay. The following topics are touched upon: workers (75, 150, 158, 161), doctors (10, IX), family (29), sale (177, 183, 186), hire (78, 151, 152, 157), and craftsmen (144, 145, 160, 161).

7.2 There is no information on the formation of private contracts. Some indication of the possible pattern may lie in loyalty oaths, which speak of a "binding" (*išḫiul*) between emperor and vassal.

7.3 *Labor Contract*

HL attests to four contracts for the hire of persons (= *locatio conductio operarum*), in which a person makes his own labor available for various services and receives a wage in return. The following work is mentioned: harnessing of various animals (75), binding of sheaves (158), harnessing a team of oxen (159). In one case (150), hire for wages is mentioned, without further specification. HL 144 mentions a barber's assistant who ruins his scissors.

7.4 *Physician*

It is known that there were senior and junior physicians in Hattusa, that the doctor received a fee for his services, and that he functioned as an exorcist.[79]

HL are concerned only with the doctor's fee. HL 10 mentions it in connection with illness due to injury; the culprit must pay the medical costs. The later version, IX, distinguishes between treatment of a free and a semi-free person. In the first case the doctor receives three shekels; in the second, only two.

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[78] Güterbock, "Das Siegeln . . .," 33–35.
[79] Burde, *Texte*, 10f.

7.5 Conclusion of a betrothal contract (HL 29) is indicated by the verb "bind" (*ḫamenk-*). The bride is bound to the groom, the agreement being between the latter and the bride's parents. The girl is not consulted; she is a contractual object. The parents may unilaterally rescind the contract but in that case that must restore double the betrothal payment that they received from groom. If the groom wishes to rescind, he may do so, provided the marriage is not yet consummated. The betrothal payment is then forfeit to the bride's parents.

7.6 *Sale*

7.6.1 Although no details of the contract are known, the practice is attested of interference by a third party, who undercuts the seller's price in order to win over the buyer (HL 146–48). These paragraphs mention as contractual objects skilled or unskilled (*dampupi-*) persons, oxen, horses, donkeys, houses, villages, orchards, or meadows. Elsewhere there is mention of potters, smiths, carpenters, leather-workers, fullers, weavers, bulls, sheep, goats, foals, clothing, spelt, orchards, and meat (176b–85).

7.6.2 A price tariff is given in HL 176b–85. It is said to apply to the "city" (URU), without making clear which city is meant.[80]

7.6.3 Sale of land was presumably accompanied by the drafting of a document, as is attested for land grants. Sealing was probably incumbent upon the seller, and witnesses would be recruited for publicity. For movables, simple transfer seems to have sufficed.

7.7 *Apprenticeship*

Whoever trains an apprentice as a carpenter, smith, weaver, leather-worker, or fuller receives a fee of six shekels of silver (HL 200b). The last clause of this provision is unclear.[81]

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[80] See Hoffner, *Laws . . .*, 222.
[81] Ibid., 227.

7.8 *Hire (of things)*

The few relevant provisions inform us of the object of hire, namely draft animals (HL 75, 151, 152) and various types of bronze axes (157), and the amount of the hiring fee.

7.9 *Hire (of persons)*

The same conditions prevail as for hire of things. As employers, there are mentioned a builder (HL 145) and a smith (160, 161). Payment for the various activities is called *kussan*, "wages." It is used equally for the physician and for laborers and craftsmen.

7.10 *Debt*

There are no provisions directly concerning debt, but HL 172 regulates the case of a man who saves another man's life in a year of famine. From parallels in documents of practice from Late Bronze Age Syria (see, e.g., Emar and Nuzi), this would have involved some form of servitude similar to debt servitude. The beneficiary must provide a substitute if he is a free man or pay ten shekels if semi-free.[82]

8. Crime and Delict

8.1.1 The modern categories of criminal and civil wrongs were not known to the Hittites. Nonetheless, they did make distinctions, and HL groups acts that are an "abomination" (*ḫurkel*) together with those offenses that carry the death penalty.

8.1.2 HL 1–4 distinguish between intentional acts ("in a quarrel") and negligence ("his hand alone sins"). Other provisions such as HL 7, regarding the knocking out of a tooth, make no mention of the mental element, leaving it unclear whether there could be liability for mere accident.

[82] Yaron, "On Section II, 57 . . ."

8.2 *Crimes*

8.2.1 *Homicide*

8.2.1.1 It is noteworthy that the most severe form of homicide, namely premeditated murder, is absent from HL. The explanation is to be found in the Constitution of Telipinu, section 49, which provides that in a "matter of blood," the "lord of the blood" decides what will happen to the perpetrator. The latter is the head of the family to which the victim belonged. Punishment is death or the provision of a substitute to the family. The king does not wish to interfere[83] and leaves punishment of the crime to the jurisdiction of the family. This rule remained unchanged: around two hundred years later, King Hattusili II (ca. 1265–1240) writes in a letter to the Babylonian king Kadashman-Enlil, who has complained about robbery and murder committed against Babylonian merchants in Hittite territory: "In Hittite territory no one is killed. If the king hears that someone has been killed, the murderer is . . . arrested and handed over to the brothers of the victim. In this case his brothers accept a payment . . . If his brothers do not wish to accept a payment, the murderer is made a slave (?). If it is a man, he is sold abroad. But it is not the practice to kill." There then follows a remarkable piece of logic: "Those who would not kill a criminal, how would they kill a merchant?"[84]

8.2.1.2 *Intentional Homicide*

HL opens with killing *sullanaz*, "in a quarrel" (1 and 2). The cause is not given, but it is to be noted that the mental element of the crime comes into consideration, namely, whether it was intentional or negligent. The same distinction is made by a witness in a trial on the disbursement of royal property, who says: "It was negligence on my part, but not malice."[85] The explanatory account of how the offense came about speaks for a deliberate blow struck in anger. The culprit must give four or two "heads," according to whether the victim was free or semi-free. In addition, he must *arnu-* the corpse.

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[83] Haase, "Anmerkungen zur Verfassung . . .," 70f.

[84] This letter, partly broken, has been much discussed. See Landsberger, *Sam'al*, 106, n. 251; Klengel, "Mord . . ."; Westbrook, *Studies* . . ., 51, n. 57; Liverani, *Prestige* . . ., 95–100.

[85] Werner, *Hethitische Gerichtsprotokolle*, 5.

The verb *arnu-* has long been a crux. Hoffner translates "bring (for burial)," while Haase suggests "production" of the body, so as to give the culprit the opportunity to refute any suspicion of ambush, by display of the corpse.[86]

8.2.1.3 *Negligent Homicide*

HL 3 and 4 deal with free and semi-free men and women who are struck so hard that they die. It is said of the culprit, however, that "his hand sins" (*kessarsis wastai*), the reference being to negligence, probably with a tool or weapon. The penalty is half of that imposed in HL 1 and 2.

8.2.1.4 *Robbery*

HL 5 and 3 punish the robbery and murder of a merchant from Hattusa (as one of the manuscripts is careful to stress). The provision raises three problems.

8.2.1.4.1 The fine is one hundred minas of silver. This enormous sum (according to HL 180, one can buy a mule for one mina) may have been intended as a deterrent. Alternatively, it could be a scribal error.[87] Nonetheless, the text must be taken as it stands.

8.2.1.4.2 After the fine, the formula *parnasseya suwaizzi* ("he shall look into his house") is added. Its meaning was long a matter of dispute, but is now recognized as a right to levy execution against the property of the culprit.[88] If the crime was committed in the territory of Luwia or of Pala, the culprit must restore the stolen items in addition to paying the fine.

8.2.1.4.3 The culprit must *arnu-* the body of the victim (see 8.2.1.2 above).

8.2.1.4.4 The later version in HL 3 includes robbery and murder, killing in a quarrel, and negligent homicide. The fine for mur-

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[86] Haase, "'Arnu' . . .," 475–78; Hoffner, *Laws* . . ., 167. Note that comparison with HL 76, adduced by Hoffner, supports Haase's interpretation.

[87] Haase, "Die Tötung eines Kaufmanns . . .," 213–19.

[88] Haase, "Gedanken zur Formel . . .," 93–98.

der is lost due to a break in the tablet. In the other two cases, it is six and two minas of silver, respectively.

8.2.1.4.5 HL 6 deals with a case where the perpetrator is not identified. The place where the body was found (presumably the scene of the crime) is in "another town." The landowner must cede to the victim's family twenty-five square meters of land. Following Hoffner, it is reasonable to suppose that this is intended as compensation for the heirs.[89] The later version (HL 4) changes the circumstances: the place where the body was found is now "another person's property" whose owner must pay a fixed sum. If no landowner is ascertainable, a settlement within thirty kilometers is made responsible, failing which the heirs receive nothing.

8.2.1.4.6 Death that results from blows given in an affray is punishable with payment of one "head" (HL 174). The low penalty reflects the contributory responsibility of the victim, who participated in a fight.[90]

8.2.1.5 *Miscellaneous Crimes*

8.2.1.5.1 HL 43 arises from the practice of fording a river with a herd by hanging onto the tail of one of the animals. The culprit pushes the victim off the tail of his animal, with the result that the latter is drowned. The victim's family receives the culprit himself (presumably as a slave).

8.2.1.5.2 In HL 44a, someone pushes a person into a fire, so that the latter dies. The culprit must deliver a son.[91]

8.2.1.5.3 HL 111 and 170 concern sorcery. Whoever makes a clay image is deemed to practice sorcery. It is a case for the royal court of justice and is a capital offense (111). If a semi-free person kills a

[89] Hoffner, *Laws* . . ., 172.
[90] Haase, "Über Noxalhaftung . . .," 225.
[91] Another possible interpretation is that it concerns sympathetic magic, whereby the culprit burns a likeness of the victim in the hope of causing his death. On this interpretation, a death has actually occurred and is attributed to such a practice by the parties concerned and the court (see next paragraph).

snake while pronouncing the name of his enemy, he is to be killed (170). Both cases accord with the Constitution of Telipinu, section 50, which provides that perpetrators of sorcery are to be brought to the palace gate.

8.2.1.6 *Justifiable Homicide*

8.2.1.6.1 HL 37 deals with the abduction of a woman—apparently a familiar practice, as HL 28 shows. The culprit must reckon with the vengeance of her family and therefore flees in the company of several friends. The family gives chase with its supporters, in order to free the woman. Should a fight ensue and one of the abductors be killed, there is no punishment if the killer calls out, "You have become a wolf."[92] This formula emphasizes that the conduct of the abductor and his friends is outside the law and therefore not protected by it.

8.2.1.6.2 Supporters also appear in a dispute between plaintiff and defendant before the court (HL 38). Apparently, in this case, they have engaged themselves too forcefully on their party's behalf, and one of the litigants becomes enraged and kills the trouble-maker. There are no legal consequences; disruption of court proceedings are not to be tolerated.[93]

8.2.1.7 *Sacral Offenses*

8.2.1.7.1 Someone who, without right, enters the house of a supposed debtor and tries to seize bread or wine, infringes sacred space, making the house ritually unclean. He must give a purification offering and may not enter the house for a year (HL 164–65).[94]

8.2.1.7.2 One who plows a sowed field and sows his own seed was, in earlier law, torn apart by oxen, who were then also put to death. In the reformed law, it is sufficient for the man to be ritually purified by bringing a sacrificial offering (HL 166–67).

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[92] Haase, "Zur Bedeutung . . .," 251–53; "Überlegungen zur unerlaubten . . .," 44; Weitenberg, "'To Become a Wolf' . . ."
[93] Haase, "Zur Bedeutung . . .," 251–53.
[94] Haase, "Eine Grenzstreitigkeit . . ."

8.2.1.7.3 HL 168 and 169 are concerned with the violation of boundaries, which were regarded as sacred, by over-plowing, whether intentional or negligent.[95] In either case, the land has been made impure, and ritual purification is therefore necessary. The violator must make a sacrifice to the Sun God, who is the god of justice.

8.2.1.7.4 If slaves commit indecent sexual acts with each other, their master must separate them geographically. He himself is obliged to make a sacrificial offering (HL 196).

8.2.1.7.5 If a bull sexually assaults a man, it is to be killed. The victim is, however, unclean and must bring a sacrificial offering (HL 199).[96]

8.2.1.8 *Sexual Offences*

8.2.1.8.1 Incest, rape, and bestiality are the principal sexual offenses dealt with by HL. Sometimes the death penalty is expressly stated, in others the word *ḫurkil* ("abomination") is used to express the gravity of the offense.

8.2.1.8.2 Incest includes sexual intercourse between (a) son and mother (HL 189), (b) son and stepmother during the father's lifetime (190), (c) a man and two free women who are mother and daughter (194), (d) a man and his sister-in-law during his brother's lifetime (195a), (e) a man and his stepdaughter (195b), (f) a man and his mother-in-law (195c).[97]

8.2.1.8.3 Rape is dealt with only in HL 197: a man seizes a woman "in the mountains," that is, somewhere in the open country. He is killed but the woman is blameless, the assumption being that she could not defend herself or cry for help (cf. Deut. 22:27).

8.2.1.8.4 In HL, bestiality is performed by a man with an ox (187), a sheep (188), a bitch or sow (199), or a mare or mule (200a). In all cases, the culprit becomes ritually impure. With the exception of

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[95] Imparati, *Le Leggi* . . ., 287–90.
[96] Haase, "Die Behandlung von Tierschäden . . .," 36–38.
[97] Haase, "Der Inzest . . ."

the latter two, the animals in question are sacrificial animals with whom the act is an abomination and is punishable with death. The king has the power to pardon, but the culprit may still not approach him thereafter. According to HL 200a he may not become a priest.

8.3 *Delicts*

The following are wrongs that lead to payment of compensation or a penalty.

8.3.1 *Injury*

8.3.1.1 The central provision is HL 10, which lays down the general rule: "If anyone injures a person and makes him ill . . ." The circumstances leading to the injury are not given, the injury not being permanent and being successfully treated. More specific provisions are arranged around HL 10 in what resembles a chiastic structure:[98] eye or tooth (7–8), head (9), person (10), arm or leg (11–12), nose, and ear (13–14; 15–16).

8.3.1.2 The individual provisions are as follows: blinding and knocking out of teeth, injury to the head, injury to a person in general, breaking a hand or leg, biting off the nose, and tearing off an ear. The victims are free or semi-free; the penalties are somewhat lower for the latter. In addition, there is causing a miscarriage, again with the severity of the penalty depending on whether the woman is free or semi-free (HL 17, 18).[99] The age of the fetus is also a factor in the assessment—whether the woman is in the fifth or tenth month of pregnancy (i.e., reckoning by lunar months).

8.3.2 *Property*

The interests in property that are affected under these laws relate in some degree to ownership in the broader sense of control (see 6.1 above).

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[98] Similarly Otto, "Körperverletzungen . . .," 399, who sees HL 9 as a general rule also. It would be curious, however, to find two *leges speciales* juxtaposed.

[99] Haase, "De fetu abito . . ."

8.3.2.1 Theft also includes kidnapping (HL 19–21), since persons may be owned or at least subject to the rights of one who has control over them, if semi-free.

8.3.2.2 Tablet 1 lists the theft of a series of animals (HL 57ff.), ranging from oxen, pigs, and dogs, to bees.[100] This takes up roughly half the provisions in the tablet. Tablet 2 contains only about thirty relevant provisions, mostly connected with agriculture. To these belong also provisions concerning arson (105 and 106) and diversion of irrigation water (162).

8.3.2.3 It is noteworthy that Tablet 2 contains five provisions concerning damage to vineyards (101, 105, 107, 108, and 113). Wine (*wiyana-*) was evidently an important commodity. In a royal directive to a border commander named Himmuili, it is stated: "The grapes should be harvested. No damage should be done to them."[101] A senior official at the royal court bears the title "Great One of the Wine" (GAL.GEŠTIN).

8.3.2.4 HL 162 punishes illicit tampering with the main canal in an area of irrigated fields.[102] The damage consists in illicit excavation or diversion of the water.

8.3.2.5 HL 25 imposes a fine for the contamination of some kind of water container.[103]

8.3.2.6 HL 149 deals with a fraudulent seller. After conclusion of the sale but before delivery, he falsely claims that the ox for which payment has been made (in a variant version, it is a man) has died, and he therefore is no longer under a duty to deliver. If the fraud is discovered, he must pay two "heads."[104]

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[100] Korošec, "Sistematika . . ."
[101] Alp, *Hethitische Briefe* . . ., no. 31.
[102] Haase, "Wasserrecht . . .," 224f.
[103] Hoffner, *Laws* . . ., 131.
[104] Haase, "Kaufrechtliche Bestimmungen . . .," 17–21.

8.4 *Punishment and Redress*

8.4.1 Hittite law applied collective punishment in certain circumstances. Thus, if a person rejects a judgment of the royal court of justice, his "house" (his whole family) is destroyed (HL 173).[105] The Constitution of Telipinu imposes the death penalty on the whole family of a sorcerer whom they have not denounced to the authorities (sec. 50).

8.4.2 *Death Penalty*

8.4.2.1 Apart from the cases listed in 2.4.1 above, the death penalty applies when the personal purity of the king has been compromised. Thus royal shoemakers may use only ox-hide from the royal kitchen, and leather-workers and coach-makers only ox-hide or goatskin from the same source. Anyone who disobeys is executed together with his wife and children. The death penalty applies also to a water carrier who does not filter water intended for the king through a sieve, so as to keep it free of hair.[106]

8.4.2.2 Outside of HL, the following forms of execution are found: beheading, hanging, and slitting of the throat. Torture leading to death is also known. It is noteworthy that these punishments are always connected with infringement of royal regulations or offenses against the person of the king.

8.4.3 Mutilation is rare in HL. A semi-free person convicted of theft has his nose and ears cut off (95), as does the arsonist (99). A slave (ÌR) who rebels against his master goes down "into the clay jar" (173). The meaning of this punishment is unclear, but the context suggests that it is a form of execution. Castration is found outside of HL.

8.4.4 *Fines*

One third of the provisions in HL impose payments that exceed mere indemnification of the loss suffered but are nonetheless not criminal punishment. These are fines, which at times may be extremely

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[105] Haase, "Überlegungen zu §173 . . .," 221–23.
[106] Friedrich, "Reinheitsvorschriften . . .," 56f.

high. Thus, a thief had originally to pay thirty bulls for a stolen bull, later reduced to fifteen (57).

8.4.5 *Compensation*

Compensation is paid in two forms: replacement of the object (HL 74: a "good" ox in place of an injured one), or pecuniary payment equal to the loss (77b). The first form is rare (approx. 5 percent of the provisions in HL), covering only reimbursement of a betrothal payment (28), restoration of stolen goods (95, 96, 97), and rebuilding of a house or barn destroyed by fire (98, 100).

8.4.6 An interesting mixture of compensation, fine and punishment is found in HL 95. A semi-free thief caught by the victim must replace as much as was stolen, pay a fine, and have his nose and ears cut off. He may return to his master, provided the latter makes the payments in question, that is, on the principle of noxal liability.[107]

8.4.7 *Enforcement*

8.4.7.1 If a penalty could not be paid, as was likely with multiple restitution, the victim was entitled to obtain satisfaction from the culprit by execution against his property. If the property were insufficient for this purpose, there remained as a last resort execution of the judgment debt against the person.

8.4.7.2 The formula for this type of execution is "and he shall look into his house," found in numerous provisions of HL.[108] It means that the judgment creditor can seize the property ("house") of the judgment debtor.[109]

8.4.7.3 Abuse of this right may be behind the provisions of HL concerning unjustified seizure of pledge or distraint (164–5; see 8.2.1.7.1 above). If an animal seized under these circumstances dies, then HL 76 applies, at least in cases of unjustified seizure.[110]

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[107] Haase, "Über Noxalhaftung . . .," 419–21; Westbrook and Woodard, "Tuthaliya IV . . .," 656.

[108] It is absent from the later version, KBo IV 4, with one exception (XII), which may be a scribal error.

[109] Haase, "Gedanken zur Formel . . ."

[110] Haase, "76 (Pfandrecht)."

8.4.7.4 Servitude for judgment debts arising from crimes may be the subject of a royal debt-release decree, leading to the liberation of the debtor.[111]

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ANATOLIA AND THE LEVANT

EMAR AND VICINITY

Raymond Westbrook

Emar, modern Meskene, is located on the great bend of the Euphrates River in northern Syria. Excavations under J. Margueron between 1972 and 1976 brought to light more than five hundred cuneiform tablets, of which nearly three hundred were legal documents written in Akkadian. More than two hundred additional legal documents have since been published, derived from illegal excavations at Emar and sites in the vicinity. All the texts date to the thirteenth and twelfth centuries.[1] Excavations at Ekalte (Tall Munbaqa, 23 km north of Meskene) have produced some eighty tablets of legal content.[2]

1. Sources of Law[3]

1.1 With the exception of a few royal orders, the texts are all records of private legal transactions, although many of them involve the king of Emar or the royal family. There are also a few records of litigation.

1.2 The texts from official excavations were found in archives. The palace archive contains documents of a public nature and transactions concerning the royal family. Some records appear to be duplicates (without seals), kept for the purpose of a land registry.[4] The archive of the Temple of ^{d}NIN.URTA contains several archives, including that of Prince Iṣṣur-Dagan, of the city council, and of a

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[1] Adamthwaite, *Late Hittite Emar*, 3–83; Pitard, "Archaeology of Emar . . ."; Skaist, "Chronology . . ."

[2] They pre-date the Emar tablets but probably by nothing as much as their editor claims (between 1530 and 1446!): Mayer, *Ekalte* . . ., pp. 14–19 (contra Wilcke, "AḪ . . .," 124–25).

[3] Pedersen, "Archives . . .," 61–68.

[4] Leemans, "Aperçu . . .," 218–19.

priestly family.[5] In view of the number of different individuals whose transactions were kept in its archives, it has been suggested that the temple functioned as a central record office.[6] Private archives include that of the female merchant Tattashe/Ra'indu and her husband, who conducted international trade (Emar 23–29), and of the family of the real-estate dealer Hima.

1.3 A special feature of the documentation is the existence of two scribal traditions. "Syrian" texts are written across the short side of the tablet; "Syro-Hittite" texts across the broad side. They embody numerous differences of style and drafting.[7] They are not, however, found in separate archives.

2. Constitutional and Administrative Law[8]

2.1 *Sovereignty*

Emar was at the time of the documentation a Hittite vassal, an important city in (or capital of) the land of Ashtata. Its kings, however, were not sovereign rulers even within their own realm. The Hittites maintained a parallel jurisdiction through their viceroy in Syria, the king of Carchemish, and Hittite officials.

The two lines of legal authority are graphically illustrated by the two different scribal traditions. "Syrian" tablets derive from the jurisdiction of the kings of Emar and local institutions; "Syro-Hittite" tablets from the Hittite/Carchemish administration. It should be noted, however, that the two jurisdictions do not appear to differ significantly in the principles of substantive law applied.

It is not possible to discern the spheres of authority of the two sovereigns. In one instance, both kings had sealed the same legal document (Emar 201). In SMEA 5, Ini-Teshub, king of Carchemish, sells land at Emar as a private person.[9] A reference to an "oath of

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[5] Temple M 1. The reading of the god's name is unknown. Arnaud proposes Ashtar: TBR, p. 15.

[6] Beckman, "Emar and Its Archives," 9.

[7] Wilcke, "AḪ . . ."

[8] Fleming, "Limited Kingship . . ."; Beckman, "Hittite Provincial Administration . . .," and "Hittite Administration . . ."

[9] See Adamthwaite, *Late Hittite Emar*, 128–31.

the city of Emar" by the same king might suggest a treaty limiting the overlord's powers over the citizens of Emar (Emar 18). At all events, it is clear that at least some Emarites had direct access to the Hittite administration.

Ekalte seems to have been a provincial town within the kingdom of Emar. The law reflected in its tablets, at all events, is with minor exceptions indistinguishable from that of Emar. There is, however, no mention of an imperial overlord and no tablets of the "Syro-Hittite" type.

2.2 *Emar Administration*

2.2.1 *The King*

The king of Emar sat as a court of first instance (RE 21; Westenholz 3). In return for services to the state, he had the power to free slaves (Emar 17) or grant land (ASJ 12:7) or a priesthood (Sigrist 6). He also granted irrigation rights (TBR 86). Fines for breach of land sale contracts were sometimes payable to the palace, which seems to have been recognized as a separate entity from the person of the king, at least for fiscal purposes.[10] In their private capacity, members of the royal family had extensive landholdings and bought and sold land.

2.2.2 *Local Authorities*[11]

The city was represented by the elders of Emar.[12] They could sit collectively as a court (ASJ 14:44). Their main recorded function related to the sale of confiscated property. Land could be confiscated from its owner because he had committed "a great sin against his master and the city" (e.g., Emar 1; RE 16, 34). The former probably referred to the king. Nonetheless, it was the god to whom the property was forfeit, and ^{d}NIN.URTA and the elders, as the new owners, who proceeded to sell the land. Fines for challenging the transaction were payable to ^{d}NIN.URTA and the city, or occasionally to the palace.

The implications for royal jurisdiction are unclear. On the one hand, the benefit of land forfeited for an offense against the king

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[10] Leemans, "Aperçu . . .," 223.

[11] Yamada, "Dynastic Seal . . ."

[12] lú.meš šu.gi uru *e-mar*. The "great ones" (lú.meš.gal.gal) of RE 34 and Emar 257 are probably synonymous. There was also a mayor (*ḫazannu*), whose functions are not specified.

does not seem to have accrued to him or the palace. In one instance, a royal prince actually purchased confiscated land from ^{d}NIN.URTA and the elders (Emar 139). On the other, members of the royal family were frequent witnesses to these sales, and one document records a second transaction in which the king granted (other) land to a diviner for his services to the state.[13] The powers of the city elders may therefore have limited those of the king or they may have been delegated from the king.[14]

The elders of Ekalte had the same function, selling confiscated property owned by the city and the god Ba'laka (e.g., Ekalte 2, 3). There was also an assembly of "the city, great and small" (uru gal.gal u tur.tur: Ekalte 1, 2) and a mayor (*ḫazannu*), who appears in the sources as a witness or an eponym.

2.2.3 Weights were standardized "by the stone of the city of Emar" (e.g., Emar 75).

2.3 *Hittite Administration*

2.3.1 The "overseer of the land" (lú.ugula.kalam.ma) was a peripatetic Hittite official responsible for the land of Ashtata. He sat as a court together with the city elders (ASJ 14:44, Emar 205, 252; Westenholz 2; possibly TBR 84) and acted as a witness to legal transactions (e.g., RE 56; Emar 90, 181) and to litigation before the king of Carchemish (Emar 212).

2.3.2 Carchemish was known as the "city of the king," before whom Emarites could litigate (AO 5:8; Emar 212, 257), as could foreigners having disputes with Emarites (Owen 1). The king also confirmed ownership of land in Emar (RE 54, 55) and witnessed legal transactions, especially testaments (Emar 31, 177, 201, 202; RE 85).

2.3.3 "Sons of the king" were high officials of the Carchemish administration, including but not confined to members of the royal

[13] ASJ 12:7. The grant of a priesthood noted above (Sigrist 6) was by "the king and the city".

[14] In ASJ 14:43, the elders of a town near Emar appear as litigants, possibly on behalf of a prince of Emar, who is noted as the owner of the disputed field.

family.[15] Their function at Emar seems confined mostly to witnessing transactions (taking precedence over the "overseer of the land," e.g., Emar 182, 211; Fales 66). One such official, however, judges a dispute between an Emarite and an outsider, possibly a nomadic shepherd (Westenholz 1). In ASJ 6, pp. 65–75, another transfers a feudal holding in the vicinity of Emar from an uncle to his nephew (see 6.1.1 below). In Emar 127, Tuwatziti, who was a high official either from Carchemish or the imperial court, presided over a dispute between an Emarite and a foreign merchant.[16]

2.3.4 In letters (in Hittite) to one of his officials, the Hittite emperor refers to a complaint by an Emarite that the official wrongfully sought to impose Hittite feudal dues on his land, which was previously exempt (Hagenbuchner 23; Westenholz 32). This implies that within the territory of Emar there existed feudal landholdings directly dependent on the Hittite crown and therefore subject to Hittite jurisdiction. In Emar 201, the king of Carchemish may be following instructions of the Hittite emperor with regard to the assignment of land.

3. Litigation

3.1 *Parties*

In the few records of litigation, female litigants figure prominently (Emar 28, 33, 252; TBR 5). In Owen 1, the queen mother of Carchemish intervenes on behalf of the defendant, a foreign debtor. In Emar 18, a slave contests his status (cf. Westenholz 2).

3.2 *Procedure*

3.2.1 In property or contract disputes, the parties began proceedings by jointly approaching the court (ASJ 14:44, Emar 19, 28; RE 21; Westenholz 1, 2, 3). In Owen 1, a creditor seized the debtor but released him before trial in return for a guarantee of his debt

[15] Westenholz, *Emar Tablets*, p. 1.

[16] Following the interpretation of Durand, "Hauts personnages . . ."; contra Bunnens "Le sufète . . ."

by the queen mother.[17] In Emar 257, the thief of a slave is seized with the stolen property, whereupon the owner brings him before the court.

In TBR 95, a woman begins an action to recover her home by petitioning the king, who orders an administrative inquiry. Should this reveal a property dispute requiring forensic procedure, the official is to send both parties to the king.

3.2.2 The court could decide the case on the basis of evidence adduced by the parties (Emar 33, 252), could investigate at its own initiative (Emar 212), and could impose the oath on one of the parties and/or his witnesses (Emar 28, 212; TBR 84; Westenholz 1). In a trial for theft, the court imposes an oath on local notables which may be based on their local knowledge rather than their connection to either of the parties (Emar 257).

3.2.3 Following its decision, the court could order payment of a debt (ASJ 14:44). A separate order from the king may have been necessary for the enslavement of a judgment debtor (Emar 19).[18] The court could annul an adoption (Westenholz 2).

3.3 *Evidence*

3.3.1 Although many contractual documents and even litigation records (Emar 28, 212; TBR 84), confidently state that the document will defeat any future claims, when a tablet was produced as evidence, the court still preferred the testimony of the witnesses to the document (Emar 212; cf. Emar 252; TBR 47).

3.3.2 The oath imposed by the court, whether on a party or on witnesses, was decisive (Emar 212; ASJ 12:11 and Westenholz 1—both). In many cases, its imposition led to a compromise, which in the extant documents is proposed by the party against whom the oath is to be taken (Emar 28, 212, 257; ASJ 14:43).[19] In ASJ 14:43, it appears to be taken in the temple of Nergal. In Emar 212, it

[17] See Beckman, "Emar Notes . . .," no. 122.
[18] See also Yamada, "Division of a Field . . ."
[19] In Westenholz 1:17–22 (broken); in our interpretation, the defendant refused to take the oath and accepted liability.

appears to be taken in reply to interrogation by the king, but this may be due to the summary nature of the report.

4. Personal Status

4.1 *Citizenship*

As elsewhere in the ancient Near East, the relative value of the term "slave" means that, paradoxically, it can designate a free citizen.

4.1.1 In the "Syrian" tablets, the terms "son of the city" (TBR 86) and "daughter of (the city of) Emar" (RE 61) are used to designate a free citizen of Emar.

4.1.2 In the "Syro-Hittite" tablets, "slave of the king" is used, probably for a free citizen of Carchemish (ASJ 14:46; Sigrist 2; Emar 117, 121). In ASJ 14:46, persons declared "slaves of the king" are also declared to be slaves of Kunti-Teshup, a prince of Carchemish, in the sense of being his feudal retainers. They owe him and his descendents the feudal duty known as "bearing the weapon," but at the same time their free status is emphasized. They are declared *arawannu*, a term coined from the Hittite word for free citizen, and "not purchasable" (*ša lā šīmi*).[20] In Emar 19, the distinction is made between a slave (= unfree) of a prince of Carchemish and his children, who have the status of free citizens (*arawannūtu*). Citizenship of Carchemish was most probably in addition to Emarite citizenship.

4.1.3 In RE 66, a manumitted slave is given the status of *maryannūtu*, a term known from neighboring states of the period and associated with an elite warrior class of charioteers.[21]

4.2 *Gender*

Women could own and dispose of property, including land, but testators often gave wives and daughters a "male" status so as to improve their position in law (see sec. 6 below). A female merchant is attested,

[20] See Yamada, "Hittite Social Concept . . ."
[21] See Heltzer, *Internal Organization . . .*, 111–15.

probably a widow continuing her husband's business.[22] Women did not usually witness documents, but there were exceptions (RE 82:29). The *qadištu* (Sum. nu.gig) class of priestess may have been more independent (RE 49).

4.3 *Slavery*

Nearly all the documents relating to slavery are of the Syro-Hittite type.

4.3.1 *Categories*

4.3.1.1 Slavery is to be distinguished from *amēlūtu*, a special form of antichresis at Emar (see 7.3.2 below) and similar servile conditions.

4.3.1.2 Many of the documents concern enslavement for debt and contain redemption clauses. There is no direct evidence of a category of irredeemable chattel slaves, although it may be the case with slaves that are the object of purchase, inheritance, or gift (e.g., Dalley 5; Emar 214; TBR 70, 75; Ekalte 24).

4.3.1.3 Many of those entering debt-slavery were citizens. Where a slave's family members were exempted from slavery, they were expressly referred to as citizens (Sigrist 2; ASJ 14:46). There is reference to a foreigner in TBR 79, where a female slave used as payment for services is called a "Sutaean" and may have been a chattel slave.

4.3.2 *Creation*

4.3.2.1 Most of the recorded cases of entry of free persons into slavery are by reason of debt or famine or both.[23] Some documents refer to a general calamity, for example, "in the year of famine when three seah of barley cost one shekel of silver" (ASJ 13:37: mu.kala.ga ki 3 sila še.meš *ana* 1 gín kubabbar *izzaz*), "in the year when enemy troops besieged the city and one seah of barley cost one shekel of silver" (TBR 25).[24] Others refer to personal disaster, e.g., that "her

[22] Tattaše/Ra'indu, Emar 23, 24, 25. See Durand, "Minima . . .," 37 sub (c).

[23] Adamthwaite, *Late Hittite Emar*, 133–54; Zaccagnini, "War and Famine . . .," 92–105.

[24] Cf. Emar 83, 121, 215; Sigrist 1; ASJ 13:36, 37; ASJ 10:E; TBR 25, 44, 52; Ekalte 28.

creditors seized her and she could not pay them" (ASJ 13:36). A common practice was for a financier to pay off the various creditors in return for the debtor becoming his slave (Emar 121, 215).

4.3.2.2 A person would either enter into slavery or be sold by a parent (e.g., Emar 217; ASJ 10:E) or relative. Persons sold their wives (ASJ 13:18), grandchildren (Emar 7), brother (with his wife and child—AO 5:11), sister (Ekalte 23), sister-in-law (Emar 118), daughter-in-law (AO 5:12), nephews (Emar 205), and niece (TBR 52).

4.3.2.3 Many of the documents emphasize that the transaction is voluntary (*ištu ramānišu*). This applies not only to self-sale but also to those who are the object of sale, although their consent must sometimes have been fictional, as in the case of a nursing infant (Emar 83).

4.3.2.4 In Emar 257, the court adjudged the thief of a slave as a slave to the owner of the stolen slave. The thief forestalled the sentence by giving his sister as a slave in his place. In Emar 19, after obtaining a judgment for debt, the plaintiff petitioned the king, who assigned the judgment debtor to him as a slave.

4.3.2.5 In AO 5:11, an express clause in the contact declares as slaves the future children of a family sold into slavery. It may be that the houseborn offspring of debt slaves did not automatically become slaves.

4.3.3 *Conditions*

4.3.3.1 In several cases, the status of children was separated from that of their slave parents. In ASJ 14:46, a prince of Carchemish declared the children of his slave free, while retaining the latter. In Emar 18, the king of Carchemish ruled that the children and father of a person enslaved for a judgment debt remained free.

4.3.3.2 Slaves could marry (RE 25; cf. Ekalte 66).[25] In ASJ 14:46 a slave was adopted by a woman who gave him her daughter in

[25] In Emar 91, it is not clear whether the slave woman's husband, "the blind man," is a slave or free.

marriage, while he remained the slave of his master. He was thus a slave, a son and a married man at the same time.

4.3.3.3 Paternity in the child of a slave concubine vested in her owner, as one of the incidents of ownership (Emar 177). In RE 82, the testator adopted a man and gave him her two sons in adoption. Clauses in the document suggest that the "sons" were in fact the children of her slave woman whom she married off to her adopted son (who may himself have been her freed slave and even the biological father).

4.3.3.4 In theory, a slave could not own property (although he could conduct legal transactions). In practice, a slave could have a *peculium*, which he administered for his own benefit. The slave in ASJ 14:46 received an inheritance from his adoptrix, which would devolve upon his free children. He was also expressly permitted to marry off his sons and daughters, which would have involved taking and receiving betrothal payments. In Emar 18, all the "household" that a slave made in the service of his owner was decreed by the king to belong to his children, who were free.[26] The estate of the slave's father (who was free) was to be inherited directly by the grandsons.

4.3.3.5 A slave could act as the agent of his owner in legal transactions. In Emar 21, a slave received a redemption payment on behalf of his owner.

4.3.3.6 Enigmatic clauses in two sale documents punish denial by a slave of his status (Emar 211; AO 5:12).

4.3.4 *Termination*

4.3.4.1 *Manumission*

4.3.4.1.1 A slave might be manumitted by his owner. Freedom was expressed in various ways: "released to (the god) Shamash" (Emar 177; RE 27; TBR 41), "released to *maryannu* status" (RE 66), "released to *arawannu* status" (TBR 32), or "may go where he pleases" (RE

[26] For a different interpretation, see Durand, Review . . ., 176.

26). Release could be unconditional (TBR 32) but was often linked to an obligation to serve the owner (and spouse) for the duration of their lives (Emar 177; RE 27, 66). Sometimes the owner would adopt the manumitted slave and even give a male slave the owner's slave woman or daughter in marriage (RE 26, 82). Manumission by adoption could also be accompanied by the obligation to serve; in TBR 41, this was the purpose behind the owner's giving his slave in adoption to his wife and son.

4.3.4.1.2 Indirect manumission is recorded in TBR 70, where the owner gave a slave woman to her daughter-in-law with the condition that she be given in marriage as a free woman.

4.3.4.2 *Redemption*

4.3.4.2.1 In many enslavement contracts an express clause sets out the right of redemption and the price. It could take the form either of the debt itself (Emar 205) or "its equivalent" (téš.bi/*mitḫariš*: ASJ 13:17; Emar 118; Sigrist 1), which Zaccagnini has argued meant in addition to the debt, that is, a payment of double,[27] or alternately be expressed in terms of furnishing a suitable substitute. Mostly one person is demanded (ASJ 13:18, 37; TBR 25), but sometimes more (TBR 52; Emar 83; AO 5:11—"four good quality women" for a man, his wife, and daughter; Emar 217—ten persons for four children).

4.3.4.2.2 Contracts usually do not specify the redeemer, except that it must have been a person who had this right in general law, expressed by the verbs "vindicate" (*baqāru*) or "redeem" (*paṭāru*; cf. Westenholz 2). In Emar 83, it is contemplated that the seller will say "Give me back my daughter." TBR 52 assumes that the slave's father or uncle have priority in redemption, failing which others must pay double. In Emar 205, the slaves' uncles are given first refusal. In Ekalte 28, the father who gave his son into slavery to save him from famine must wait ten years before redeeming him.

4.3.4.2.3 Slaves might redeem themselves out of their *peculium*. In Emar 121 it is contemplated that the slave pay from "silver at his

[27] Zaccagnini, "TÉŠ.BI . . ." This interpretation is contested by Dombradi, "Studien . . ."

disposal" (*ša qātišu*). A clause in TBR 25 allows the slave to redeem himself "if he makes one person from the house" (*ištu bīti 1 napišta ippaš*) but apparently precludes him from acquiring a substitute from another for this purpose (i.e., of indebting himself with a third person).

4.3.4.3 *Release*
The king of Emar gave as a "slave of the god [X]" (i.e., freed) a person who informed him of a treasonous conspiracy. It is not clear whose slave the person was previously or how the owner's rights were overridden.

5. Family[28]

5.1 *Marriage*

The law of marriage is attested in marriage contracts and in clauses forming part of more comprehensive arrangements, such as adoptions, wills, and pledges.

5.1.1 *Conditions*

5.1.1.1 *Polygamy*
Marriage could be polygamous (ASJ 14:46). The taking of a second wife might have been conditional on the barrenness of the first (Emar 216).

5.1.1.2 *Ethnicity*
An unusual clause in a will allows the widow to bring into the house a husband who is Hittite or Babylonian (Semitica 46, 12–14). By implication, he must not be Assyrian (the enemy?). A prince of Carchemish specifically refers to his Carchemish wife and his Emar wife (ASJ 14:46).

5.1.1.3 *Consanguinity*
It was common practice to adopt a son and to give him one's daughter as wife (AO 5:14; Emar 29, 69; RE 25, 88; TBR 39, 40, 43). The couple were usually obliged to support the adopter in his old

[28] Beckman, "Family Values . . .," 68–71; Arnaud, "Mariage et remariage . . ."

age (TBR 72, 73, 75). In some cases, the adopter is a woman (ASJ 14:46; TBR 75). The resulting consanguinity of husband and wife as maternal brother and sister did not seem to be a barrier. In ASJ 14:46, the adoptee was a brother, a husband, and the slave of a third party at the same time. In Ekalte 66, a man, having adopted his brother as his son, marries the latter's slave, with the provision that the offspring of the union are to be deemed the children of both men.

5.1.2 *Formation*

5.1.2.1 The preliminary to marriage was an agreement between the bride's guardian and the groom or his father. The former would normally be her father, but could be anyone who was the head of household at the time: her father and mother together (RE 67), her mother alone (a widow: Emar 213; RE 61), her brother (Semitica 46, 9–10; 12–14; RE 76; TBR 41), uncle (ASJ 14:45), or owner if a slave (RE 26; TBR 70). The power was sometimes delegated to an adopted brother, but this may have applied only after the adopter's death (RE 26, 88). The power of obtaining a wife for the groom could be delegated in the same way (RE 26).

5.1.2.2 The groom is said to take the bride as a wife (*ana aššati/aššūti*) or the guardian is said to give the bride to the house of a father-in-law (*ana bīt emi*: Emar 216; TBR 23). In RE 76, two brothers gave their sister to a man as his daughter-in-law (*ana kallati*, written é.gi$_4$.a; cf. RE 6: *a-na* é.gi$_4$.a-*ut-ti*). In all these cases the bride was the object of the transaction. A widow or divorcee, however, could act on her own behalf. In Emar 30, a widow (or divorcee) made a man her husband (*ana mutia altakanšu*).

5.1.2.3 The bride's guardian received a bridal payment (*terḫatu*, written ní.mí.ús.sá or an abbreviation thereof) from the groom or his father.[29] A perquisite of being a delegated guardian was the right to receive her *terḫatu* (RE 10, 88; Westenholz 3). Adoption of the groom

[29] Sometimes an outsider, a brother or patron, might pay the *terḫatu* on the groom's behalf (see Emar 117; RE 10). It is not clear whether they also chose the bride.

obviated the need for a *terḫatu*, but if the groom repudiated the adoption, he might be liable to pay it retroactively (RE 88; TBR 72).

5.1.3 *Divorce*

5.1.3.1 The documents assume that husbands and wives have equal capacity to initiate divorce.

5.1.3.2 *Form*

Marriage was dissolved by a unilateral declaration: "You are not my wife" or "You are not my husband," respectively (Emar 124; RE 82; SMEA 9). TBR 75 contemplates the husband saying to his mother-in-law/adoptive mother, "I divorce your daughter." In TBR 28, the wife declared of her husband that he could take his son's hand and "go where he pleases" (*ašar libbišu lillik*). The verbs used for divorce are *muššuru* (Emar 213; TBR 75) and *ezēbu* (RE 6, 61; Ekalte 40).

5.1.3.3 *Consequences*

5.1.3.3.1 The penalties for divorce imposed by contractual clauses were pecuniary only. A standard penalty seems to have been sixty shekels upon the party divorcing, whether husband (Emar 124; RE 82; TBR 75) or wife (Emar 124, but see sec. 9 below). In Emar 213, a financier who in return for paying a widow's debts had been adopted by her as her heir and had received her daughter in marriage would on divorce forfeit his expended capital and his inheritance. In SMEA 9, daughters who divorced their husbands were to forfeit their inheritance.

5.1.3.3.2 In RE 61, it is stated only that if he divorces her, the husband must divorce his wife "like a daughter of Emar." This may refer to a customary divorce payment. Similarly in TBR 28, a wife declared that on divorcing her husband she had given him various items of personal property, summarized as "these utensils" (*unūte annûti*), apparently the local term for a dowry (see 6.3.5.1.1 below). Most probably this refers to the forfeiture of her dowry.

5.1.3.3.3 A few contractual penalties deal with the question of which partner is to leave on divorce. It would seem to depend on whether the matrimonial home is located with the husband's family or the

wife's. In particular, adopted sons-in-law are expected to leave (RE 82; TBR 75; cf. SMEA 9). In two cases, custody of the children is granted to the husband who leaves, but it is not certain that they were children of that marriage.

5.1.4 *Remarriage*

The pithy maxim "she is a widow with the widows, a divorcee with the divorcees" was emblematic of independent status (Emar 16, 216; Semitica 46, 9–10; cf. SMEA 13 "she is a widow with the divorcees"). Nonetheless, contractual clauses imposed restrictions on remarrying, for men as well as women. The purpose was to keep the spouse (and their property) within the household.

5.1.4.1 A testator would allow his widow to remarry, as long as the husband fell within an acceptable category and entered the house. Offspring of the second marriage were then deemed to be the testator's (Semitica 46,12–14; ASJ 13:24). The corollary was a penalty clause dispossessing the widow if she went after a "stranger" (*sararu*), that is, left the matrimonial home to marry an outsider.[30]

5.1.4.2 Where the son-in-law was also adopted and therefore entered his father-in-law's house, provision was made for him marry another daughter if his first wife died (TBR 72, 73, 75; cf. Emar 124). It is not clear whether this was a right or a duty.

5.2 *Children*

Children were under the control of the head of household, who could pledge them or sell them into slavery. Emar 256 records the disinheritance of a son, with the declaration: "his staff is broken, he is not my son." The grounds are not stated. The effect was to disinherit the grandchildren also. Adult sons were expected to support their parents in their old age: the terms used are "support" (*abālu*) and "honor" (*palāḫu*). Failure to do so could lead to disinheritance (TBR 78).

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[30] ASJ 13:24; ASJ 16, pp. 231–38; Emar 176; RE 8; TBR 45; Westenholz 14; Huehnegard, "Biblical Notes . . .," 431. In TBR 22, the injunction by a husband, on the occasion of a marital gift to his wife, that no one may enter her bedroom, may refer to her widowhood and the conditionality of the gift.

5.3 *Adoption*[31]

5.3.1 *Formation*

Adoption was created by a formal declaration: "He is my son" (Emar 185; possibly Emar 32, 93).

5.3.2 *Capacity*

Men or women could adopt. Filiation was not created by marriage; a separate adoption was required. For example, in Emar 30 a woman married and gave her existing son to her new husband in adoption.

5.3.3 *Typology*

5.3.3.1 *Children*

Unilateral adoption occurs in Emar 256, where the adopter takes abandoned orphan children from the street. Their grandfather apparently has renounced all claims on them and the only other potential claimant, their uncle, is deterred by a redemption price set at a thousand shekels. Bilateral adoptions are recorded in a family setting but may have been to deal with the offspring of slaves. In TBR 77, a woman gives her son and daughter to her sister in adoption, but the possibility is envisaged of a claimant emerging who could take the children by providing slaves as substitutes. In Emar 91, a man gives children, probably by his slave concubine, in adoption to his wife.[32]

5.3.3.2 *Adults*

The rest of the recorded adoptions were contractual arrangements involving adults. They were basically intended to secure support in old age in return for various benefits—a wife immediately, release from debts, an inheritance, or manumission on the adopter's death.[33]

5.3.3.2.1 Support arrangements might be made in a family context, for example, a husband gives his wife a son in adoption for support during widowhood (ASJ 16, pp. 231–38).

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[31] Beckman, "Family Values . . .," 61–68, 76–79.

[32] Ibid., 67.

[33] In Ekalte 38, a man "establishes his mother as his father" (*ummašu abi iškunši*) for unknown reasons. Adoption as a father is known from Alalakh (AT 16).

5.3.3.2.2 The adoption of a son-in-law (5.1.1.3 above) usually involved the duty of support; sometimes the father-in-law granted an inheritance (Emar 213; AO 5:14; RE 25; TBR 46, 73, 75) and even paid off the son-in-law's debts (RE 25, 63; TBR 39, 40). In Emar 213, a widow adopted her son-in-law who paid off his mother-in-law's debts.

5.3.3.2.3 In most cases, the adoptee was an apparent stranger. He (or she—see Emar 181) often received an inheritance share among the adopter's other children.[34] The commercial nature of the transaction is clearest where the adoptee also pays the adopter's debts (TBR 78). Where a financier is involved, the adoption is reduced to the barest of fictions. In RE 10, adoption terminology is not used; there is a straight exchange between support and paying off debts on the one hand and acquisition of the debtor's estate on the other.[35]

5.3.3.2.4 Adoption was used in the manumission of slaves, so as to ensure their continuing obligation to support their owner. They were definitively freed on the owner's death (Emar 91; RE 26; TBR 41; possibly Emar 176; see also RE 82). In TBR 32, where there is no support clause, complete freedom appears to have been immediate.

5.3.3.2.5 The existence of matrimonial adoption is alluded to in the lawsuit Westenholz 3. The brother of four women receives their *terḫatu* when a man marries their (widowed) mother and adopts them. The man would thus acquire the right to marry them off.

5.3.4 *Dissolution*

5.3.4.1 *Form*

Adoption could be ended unilaterally by either party making a formal declaration: "You are not my son/daughter," or "You are not my father/mother." In Emar 30, the son's declaration adds: "I will not honor (you)." In RE 10 and 13, where the commercial character is barely disguised, the declaration is solely a refusal to support ("honor") or be supported.

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[34] See Abr. Nah.; Emar 5, 30, 32; Dalley 1; Fales 67; RE 28, 30; TBR 48.

[35] The creditor failed to provide the promised support and in RE 13, the debtor's brother paid off the creditor and took over the position of heir, with only the barest allusion to adoption (vb. *leqû*); he may have been the nearest heir, anyway.

5.3.4.2 *Consequences*

Most adoption contracts contained penalties for unilateral dissolution.

5.3.4.2.1 Where an inheritance was expressly assigned, the party dissolving was often penalized with its forfeiture (RE 28, 30; TBR 48; Ekalte 38, 75). Sometimes the adopter forfeited to the adoptee not only his due share but the whole of the estate (Emar 30; TBR 41, 42, 74, 78). Curiously, when the adoptee is also a son-in-law, forfeiture of the estate is not expressly mentioned.

5.3.4.2.2 An adopted son-in-law who dissolved forfeited his wife and children; if the adopter dissolved, the son-in-law could depart with his wife and children (AO 5:14). Usually there was an additional pecuniary penalty on the party in breach (RE 25; TBR 39, 40, 43, 46, 72, 75; cf. RE 88). The standard penalty appears to have been sixty shekels.[36]

5.3.4.2.3 Where the relationship between the parties was also creditor and debtor, forfeiture of the debt by the creditor is also a possible penalty (TBR 39; RE 63).[37]

5.3.4.2.4 Manumitted slaves are not treated uniformly. Two adoptees who terminate must pay sixty shekels, "their price," in order to leave, and are paid the same if the adopter terminates. In Emar 176, the adoptee must give a slave as her substitute. In RE 26, the adoption is dissolved by the adopter declaring "You are my slaves," in which case the adoptee is free to leave with his wife. Dissolution by the adoptee is achieved by an unclear action (vb. *i-da-in*), for which he forfeits his wife and must pay one hundred shekels before leaving.

5.3.4.2.5 ASJ 16, pp. 231–8 has a unique penalty on the adoptee, possibly a manumitted slave. The adoptress will "slap his face and sell (? vb. *kuššudu*) him at the gate."

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[36] A pecuniary penalty alone is imposed on the adoptee in TBR 40 and 46 and on both in RE 63 and TBR 73. In some of these cases at least, debt was a complicating factor.

[37] In RE 63, the debtor dissolving the adoption has to pay the "equivalent" of the debt (téš.bi = double?; see Zaccagnini, "TÉŠ.BI . . .," 100).

5.3.4.2.6 Normally, it is the adoptee who leaves on dissolution, whether he was responsible or not. He may "go where he pleases." Sometimes, however, where the adopter forfeits all his property, it is he who must leave (Emar 30; TBR 41, 74, 78). Where the party leaving is to take nothing with him, that fact is often underlined by the phrase "he shall place his garment on a stool and go where he pleases."

6. Property and Inheritance

6.1 *Tenure*

6.1.1 There is evidence of landholding in the vicinity of Emar directly from the Hittite king, to which Hittite feudal dues (*saḫḫan* and *luzzi*) applied (see 2.3.4 above). A decision from the court of Carchemish transferring land from an uncle to a nephew may refer to a feudal holding. The nephew has to "carry the weapon of" the uncle—meaning perhaps take over his feudal obligations.[38] In ASJ 12:7 the king of Emar granted land to a citizen in return for loyal services in war; this may have been a simple gift for past services rather than a tenure involving ongoing obligations to the crown. In Westenholz 2, *ilku* service seems to be an onerous burden inflicted on a free son.

6.1.2 In the extant documentation, at least, the bulk of land was privately owned and freely alienable. A shadowy group called the "brothers" are present at land sales (in "Syrian" tablets) and receive a nominal payment from the buyer. They appear to be representatives of an extended family or clan.[39] Some scholars see in their function the vestiges of an earlier system of communal clan-based landholding.[40] There is no other evidence, however, for communal ownership at Emar. It is more probable that the "brothers" represent

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[38] ASJ 6, pp.65–75; cf. ASJ 14:46 and Emar 17. Discussed by Adamthwaite, *Late Hittite Emar*, 99–114. Adamthwaite's discussion of *ilku* service at Emar (ibid., 87–114) should now be read in the light of Westenholz 2.

[39] Written with a pseudo-logogram LÚ.MEŠ AḪ.ḪI.A. See Wilcke, "AḪ . . ."; Bellotto "LÚ.MEŠ.aḫ-ḫi-a . . ."

[40] Arnaud, TBR p. 16; Leemans, "Droit d'Emar . . .," 19; Van der Toorn, "Domestic Cult . . .," 45–46.

the outer circle of potential heirs, who are paid a small bribe to relinquish any vestige of a claim to the land that might disturb the buyer's quiet possession.[41] At Ekalte, the "brothers" are more prominent. They are present at the settlement of property disputes, where each party apparently had their own "brothers" (Ekalte 20, 21), and they have their own heralds (*nāgiru*) and head (*rab aḫḫē*).[42]

6.1.3 Apparently, temples could be privately owned. ASJ 10:C records (in a broken context) the transfer of a temple of Ereshkigal by its priests to a private individual who supported them in a year of famine (cf. TBR 87).

6.2 *Servitudes*

In TBR 86, the king of Emar confirms the "irrigation rights" (*šiqītu*) belonging to a family.

6.3 *Inheritance*[43]

6.3.1 *Sources*

Our knowledge of inheritance law comes entirely from testamentary documents similar to the *ṭuppi šīmti* found at Nuzi and in Syria of the Late Bronze Age. They contain complex arrangements that involve not only transfer of property but adoption, marriage, support, and maintenance of the family cult.

6.3.2 *Intestate Succession*

Inheritance was governed by customary law (*kīma āli*, "according to (the custom of) the city") which can only be discerned by implication from the testamentary documents. The head of a patriarchal household theoretically owned all its property, which on his death was divided by his legitimate sons. Failing sons, grandsons could inherit (TBR 76), and failing direct descendants, the property passed to the deceased's brothers or their male descendants (see, e.g., Emar 30, 213; ASJ 13:23). More distant relatives may have been included in the term "brothers," beyond whom lay the *lim eqli*, pos-

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[41] Cf. Zaccagnini, "Ceremonial Transfers . . .," 37.
[42] See Mayer, *Ekalte* . . ., pp. 25–26.
[43] Beckman, "Family Values . . .," 71–75; Arnaud, "Vocabulaire de l'heritage . . ."

sibly members of the same clan.[44] Daughters received a dowry in lieu of inheritance.

6.3.3 *Testate Succession*

6.3.3.1 The traditional pattern could be considerably altered by the power of testamentary disposition. Although he could not bequeath property directly to outsiders, the testator could rearrange the shares of existing heirs, assign shares to potential heirs, in particular wives and daughters, create new heirs by adoption, and disinherit heirs.

6.3.3.2 The testamentary documents are records of an oral transaction before witnesses. The testator is said to "settle the fate of his house" (*šīmti bītišu išīm*) and its members. In the "Syrian" tablets and at Ekalte, the ceremony takes place before an assembly of his "brothers."[45] In the Syro-Hittite tablets, no witnesses are mentioned, but occasionally it is before the king of Carchemish or a royal official (Emar 31, 177, 202; RE 56, 85; Fales 66; cf. Emar 93: city elders). There is no substantive difference in the arrangements made in the two types of tablets. The extant documents represent unusual situations, where there was a problem with normal succession or provision had to be made for female members of the family.

6.3.4 *Male Inheritance*

6.3.4.1 *Peculium*

Although the head of household was theoretically the sole proprietor in an undivided household, he could allocate his son a fund (*sikiltum*) with which the son could trade and acquire property. It would ultimately be deemed part of the son's inheritance-share (Emar 91; TBR 9; cf. AO 5:8).

6.3.4.2 *Division*

A testator could divide the property in his lifetime (Emar 182; cf. RE 30), but usually he did no more than assign shares to be taken on his death, when the formal division was made (e.g., Emar 186).

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[44] E.g., Emar 180, 213; ASJ 13:24. See Malamat, "'Clan' . . .," and Beckman's discussion to RE 39.

[45] See 6.1.2. In one case, it is before his male and female slaves (Dalley 6).

In two Syrian tablets, the division is made before the "brothers" of the heirs' father (DM 1, 249–61; RE 94).

6.3.4.3 *Property*

Assets included land, slaves, livestock, silver, jewelry, debts collectible (RE 18—by whichever son survives the plague; RE 37; cf. AO 5:17), and household gods (TBR 72; Ekalte 21). Heirs were also liable for the deceased's debts (TBR 36).

6.3.4.4 *Shares*

Brothers divided equally, with the eldest son entitled to an extra share (RE 94: *kuburu*; Ekalte 94: *kubrūtu*).[46] The proportion was customary, possibly a double portion (Emar 176). Where assigned by testament, it often included the main house (é.gal), together with which went the household gods (Emar 201; RE 28; TBR 42). The ancestral cult was the particular duty of the eldest son.[47] Where, however, the elder and younger took shares in a single house, they jointly assumed responsibility for the cult (RE 94).

In SMEA 7, a father assigns his cultic office to his eldest son. If that son dies, however, there is to be "no elder or younger" (gal *u* tur *iānu*) among the remaining four sons, but another son will take over the office.[48]

Each brother was entitled to draw from the estate the payment for a bride (*terḫatu*) as part of his inheritance share.[49] This is sometimes expressed by the phrase "brother will make brother a house: brother will cause brother to marry a wife" (ASJ 13:23, 25). Litigation in TBR 83 over undivided "houses and wives" probably refers to such *terḫatu* payments.

6.3.4.5 *Disinheritance*

An adoptee could be disinherited at will by a unilateral declaration, subject to contractual penalties (see above). In Ekalte 36, an adop-

[46] Scurlock, "*ku-bu-ru* . . ."

[47] "He shall invoke my gods and my dead"—possibly the spirits of dead ancestors. See Van der Toorn, "Domestic Cult . . .," 36–39.

[48] Cf. Emar 93; RE 25. In Ekalte 36, two sons are designated as elder and younger but explicitly not as regards inheritance shares, which suggests that the designation was for the purposes of the cult.

[49] E.g., Emar 186. In Emar 91, one brother takes the daughter of a slave in lieu of the *terḫatu* owed him for his second wife.

tive father refers to a previous act of disinheritance, now rescinded, as a tablet "of anger" (*šamrūti*). A biological son could be disinherited in the same way, but probably only for cause. The form of declaration was: "His staff is broken; he is not my son."[50] In AO 5:17, the reason is given: the son "spoke an insult."[51] The most common reason would have been failure to support the parents in old age (e.g., ASJ 13:30; Emar 181). In Emar 202, the reason is not stated, but the procedure, disinheriting sons by the first wife, took place before the king of Carchemish (cf. TBR 21). Leaving home might be sufficient but not necessary cause (ASJ 13:30, 31). Disinheritance of a son also excluded the latter's children (Emar 202).

6.3.5 *Female Inheritance*

6.3.5.1 *Daughter*

6.3.5.1.1 Dowry

A dowry typically consisted of movables: female slaves, furniture, utensils, and jewelry, which at Emar were collectively referred to as "household items" (*unūte*) and were given by a father to his daughter on marriage.[52] It could include land: in ASJ 13:19, two brothers give their sister vineyards and three slaves as a "gift" (níg.ba), probably meaning a dowry. Two cases where a mother-in-law gives her daughter-in-law orchards and a female slave look like a dowry-to-dowry transfer (ASJ 13:20; TBR 70). In ASJ 13:24, the clause "one house is my inheritance share; the second house was given as my wife's *terḫatu*" may refer to the common custom of the bride's father returning the *terḫatu* to the groom as part of her dowry.

6.3.5.1.2 Inheritance

By testament, a daughter could be given an inheritance share exactly like a son. In Emar 31, two daughters are to divide their father's estate after the death of their adoptive mother. One of them is already married. TBR 80 records such a division (in equal shares).

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[50] AO 5:17; Emar 256. The declaration in these two Syrian tablets was before the "brothers."

[51] *megirta idbub*; see Van der Toorn, "Domestic Cult . . .," 40, n. 52.

[52] TBR 23, 69; cf. RE 57, where a father gives *unūte* to his daughter, a *qadištu* priestess, on an unspecified occasion. The term is also used of the movables that a wife gives to her husband on divorcing him: TBR 28.

The daughter could thus pass on the inheritance to her offspring or dispose of it like a son (Emar 32 and 128—sole heir; 185). A *qadištu* priestess, however, was required to bequeath her share to one of her brothers (ASJ 13:23).

6.3.5.1.3 Inheritance as Male[53]

Where a suitable male heir was lacking, the testator sometimes felt the need not only to give his daughter an inheritance but also the legal status of a male. He is said to establish her as "female and male" (munus u níta). In most cases, she is called upon to "invoke my gods and my dead."[54] Male status is therefore granted to enable a daughter to perform the ancestral cult—a task otherwise reserved for the eldest son, and one that is closely linked to his inheritance of the family estate. In most of these cases, the daughter is explicitly bequeathed the whole estate. In one case, the grant is made contingent on her brother not surviving; if he does, he is to marry her off.[55] In another, she is also made mother to her three brothers, who were evidently too young to take on these duties (ASJ 13:25).

A slightly different arrangement is the designation of a daughter as a "son" (Emar 181). It is linked to her duty to marry off her two (younger) brothers, among whom she receives an inheritance share as second son.

6.3.5.2 *Wife*

6.3.5.2.1 Marital Gift

The husband might give a gift to his wife, known as a *kubuddā'u* (AO 5:15; RE 8; TBR 22, 71; Westenholz 14). It usually consisted of movables but could include land. The term *tudittu* (a particular piece of jewelry) was also used (RE 37), even where the object given was a slave (RE 56). The gift would appear to have been a small part of the husband's property, intended for the wife's personal use during widowhood.[56] A number of innominate gifts may be assigned

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[53] Westbrook, "Emar Jurisprudence . . ."

[54] ASJ 13:25, 26; AO 5:13; Semitica 46, 12–14; Westenholz 3 (4 daughters); RE 85: "honor" (a *qadištu* priestess); Ekalte 65: "inherit" (sister). Note that in ASJ 13:26 she is already married. Fales 66 and RE 15 do not mention the cultic duty.

[55] Semitica 46, 12–14. In RE 23, the status is granted to the testator's wife, on the contingency that his son dies.

[56] Even though the gift is usually expressed as having been made, the reference

to this category (ASJ 16, pp. 231–38; Emar 176; Ekalte 75; possibly TBR 31).

6.3.5.2.2 Inheritance

In a few cases, the testator gives his wife the whole estate (ASJ 13:22; RE 15; in TBR 47, an indirect report, the relationship is unclear). They appear to be special circumstances, perhaps where there are no male heirs. In ASJ 13:31, it is predicated on the absence abroad of the testator's son. In TBR 50, atypically, the wife receives the main inheritance share alongside the sons.

6.3.5.2.3 Care

One of the most frequent provisions of the testaments is for support of the testator's widow. The duty is imposed on all of his children or on specific children, and inheritance of one's share is usually made contingent upon its realization. The testator might also give his widow the right to remain in the matrimonial home (or a substitute dwelling) for the rest of her life (Emar 15, 156; TBR 69).

6.3.5.2.4 "Father and Mother"[57]

In a large number of testaments, the testator makes his widow "father and mother of my house," sometimes adding that she is "head" (*qaqqadu*) of the house (e.g., Emar 15, 91, 181, 185; SMEA 7; ASJ 13:24, 26; 30; ASJ 16, p. 231; Dalley 6; RE 15, 28, 37; TBR 45, 50, 71; Ekalte 19, 65, 75). In ASJ 13:23, this status is given to her jointly with a daughter, in two documents to a daughter alone (Emar 31; RE 57), and in TBR 28, to the testator's mother. The effect is to preserve the paternal estate undivided during the widow's lifetime, or at least at her discretion.

6.3.5.2.5 Devolution

Six of the extant testaments are made by women. In all but one, she is obviously a widow.[58] The source of her property is not given;

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is to a vested future right. In TBR 22, the husband has (revealingly) "made known" (*umteddi*) the gift.

[57] Beckman, "Family Values . . .," 72; Kämmerer, "Stellung . . ."; Westbrook, "Emar Jurisprudence . . ."

[58] In Emar 30, the testatrix' husband is a legatee, although he may be her second husband. The other testaments are Emar 32, 128, 213; TBR 28, 29.

the beneficiaries are within the normal circle of heirs. Nonetheless, there appears to have been a wider discretion than with male inheritance, and in the case of marital gifts, the husband often placed conditions on that discretion, with the aim of keeping the property within the family.[59] The most restrictive was to name the widow's heir (AO 5:15). It was customary, however, to give her the discretion of bequeathing it to persons who provided her with support. The class could be restricted to her own children (TBR 69; Westenholz 14; Ekalte 75; cf. Emar 111) or to a relative from the testator's family (RE 15; TBR 50; cf. ASJ 16, pp. 231–38 and ASJ 13:23). In special circumstances, where the sole heir refused to support her, she might bequeath it to anyone who would. The general rule, however, was that laid down in RE 15: she may not bequeath it to an outsider (*nikari*).[60] Nonetheless, a remarkable clause states that she may "throw it in the water, give my estate wherever she pleases" (TBR 47; likewise ASJ 16, pp. 231–38).

7. Contracts

7.1 *Sale*

Sale was an oral transaction before witnesses, sometimes accompanied by ceremonies. The Emar tablets only record the sale of land and slaves, for which the tablet acted as a document of title. A record of litigation shows that, as elsewhere, payment of the whole price was necessary before ownership could pass (ASJ 12:11). Exchange of land is also attested (ASJ 12:6; Ekalte 18).

7.1.1 *Land*[61]

Most of the documents are stereotypically phrased, following earlier traditions from Mesopotamia, with Syrian variants already found at Alalakh.[62] The transaction is recorded from the purchaser's standpoint.[63] While they have similar operative clauses, the Syrian and

[59] The same rationale lay behind the dispossessing of a widow who remarried outside her husband's family; see 5.1.4.1 above.

[60] At Ekalte called *sarrāru* and defined as the opposite of "my seed" (Ekalte 19:26–27).

[61] Zaccagnini, "Ceremonial Transfers . . ."; Beckman, "Real Property Sales . . ."

[62] Skaist, "*Šīmu gamru* . . ."

[63] A few atypical documents are from the seller's standpoint and are more free

Syro-Hittite scribal traditions diverge in their recording of completion and contingency clauses.

7.1.1.1 Syro-Hittite records are very terse. There are no special completion clauses and only three contingency clauses:

1. barring later claims by the seller or other claimants and asserting that the present tablet will be conclusive evidence against ("defeat," *lē'u*) them. The same formula is found at Ugarit in cases involving the jurisdiction of the king of Carchemish.[64]
2. allowing a claim to redeem the property on payment of a specified sum (e.g., AO 5:9, ll. 11–13).
3. giving a warranty of title. The seller must pay off third-party claimants ensuring that the purchaser will be free of claims (*zaku*: ibid., ll. 14–17).

7.1.1.2 Syrian records include the following special clauses:

1. a note of receipt of the price by the seller and that "his heart is satisfied"—a phrase already attested in the third millennium.[65]
2. in purchases of urban land: "the dedicatory bread has been broken, the table has been anointed with oil, the *kupuru* of the [land] has been given; the 'brothers' have received one shekel."[66] The ceremony would appear to be a festive meal of the type already attested in third-millennium land sales, and the *kupuru* a nominal payment to the clan to extinguish any claims by distant relatives.[67]
3. a penalty for later claims payable not to the buyer but in equal shares to either the city and the "brothers" (most frequent), ^{d}NIN.URTA and the city (always the case with sales by the city authorities),[68] or to ^{d}NIN.URTA and the "brothers", or else to the palace alone.[69] The penalty has two

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in form. The reason seems to be that the sale was ancillary to a more important transaction, involving either intra-family arrangements (e.g., Emar 156; TBR 66, 81) or debt (e.g., Emar 82, 123).

[64] E.g., Emar 76:28–33. See Wilcke, "AḪ . . .," 125. The Syro-Hittite texts tend to use the verb *ragāmu* for claims, whereas the Syrian texts use *baqāru*, but neither exclusively.

[65] See Skaist, "*Šīmu gamru* . . ."

[66] E.g., Emar 109:17–21; RE 20:19–21. It is not usually found where the seller and buyer are closely related, nor at all in sales by city authorities (^{d}NIN.URTA and elders), except in RE 34, where the authorities are not the elders but the "great ones"(gal.gal), and in tablets from Ekalte (Ekalte 11, 73, 80), but without the *kupuru* payment.

[67] See Scurlock, "*ku-bu-ru* . . .,"; Van der Toorn, "Domestic Cult . . .," 43–44; Zaccagnini, "Ceremonial Transfers . . .," 39–41.

[68] Except for TBR 14, where payment is to ^{d}NIN.URTA, the city and the palace, probably due to the special circumstances of the confiscation of the property being sold. See Beckman, "Emar Notes," 121.

[69] RE 34 exceptionally is to the palace and the city. At Ekalte, the penalty in

levels—from one to four thousand shekels or (less frequently) from one to four hundred shekels. No rationale is evident for the lower rate, which does not necessarily reflect the value of the property. It is possible that these penalties reflect a guarantee of the buyer's title by the authorities to whom they are payable.

4. An atypical document, Emar 156, recording the sale of a house as between brothers, provides for the continued residence of a widow (probably their mother) for life and her support by the buyer.

7.1.1.3 Two special clauses found in tablets of both traditions are the statement that the purchaser bought "like a stranger" (*kī(ma) nikari*) and references to the fact that the purchase took place at a time of war and famine (see 7.5 below).

7.1.2 *Slaves*

Documents recording the purchase of slaves are styled from the seller's point of view.[70] Sale into slavery has been discussed above (4.3.2). The only special feature from the point of view of the law of sale is one instance of parents who sold their children, making an imprint in clay of the children's feet.[71] Documents recording the sale of existing slaves have, apart from the operative clause, only a warranty of title.[72]

7.2 *Loan*

7.2.1 *Terminology*

Two basic formats from earlier Mesopotamian practice are found: "A has received (Sum. šu ba.an.ti) silver/grain/etc. from B" (ASJ 13:33, 34; Ekalte 29; Emar 24—*maḫrati*) or an acknowledgement that the loan was owed (*ana muḫḫi*) by the debtor (Emar 75; RE 72, 75; Ekalte 69). A third form is known from the neo-Assyrian period: the borrower is said to have taken silver or barley "in exchange" (*ana pūḫi*—Emar 119, 120). From the neo-Assyrian parallels, it would

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sales by the city is to Ba'laka or to Ba'laka and the city, but once to Ba'laka and the palace (Ekalte 62) and once to the king, Ba'laka, and the city (Ekalte 7). In a private sale, the penalty is to the "brothers" (Ekalte 50).

[70] Except Emar 224, a brief memorandum.

[71] Emar 217–20. See Zaccagnini, "Feet of Clay . . ."

[72] Emar 214; Dalley 5. Emar 211 contains a penalty on the slaves for denying their status.

seem to be a generic term for loan.[73] The standard Babylonian term *ḫubullu* is also used (e.g., TBR 84; Emar 252), as is *ḫubuttātu* (written *ḫubettētu*), which may have designated a special type of loan (TBR 49).

7.2.2 It is sometimes specified that a loan bears interest, but not the rate.[74] Interest may be made payable only after the due date (ASJ 13:33). Ekalte 68 has the clause "it bears no interest and is not subject to debt-release" (*ul uṣṣab ul iddarrar*), frequently attested at Alalakh (level VII).

7.2.3 A due date for repayment is seldom mentioned.[75] In TBR 49, an arrangement is made for a third party to pay a debt if the debtors fall into arrears (? *uḫḫaruni*), in exchange for taking over claims that they in turn have for debts owing. In RE 96, the "brothers" assemble and confirm under oath that debts are owed to the creditor "because of his hardship" (*aššum dannūtišu*).[76] The creditor held the tablet of loan, which was to be broken on repayment (Emar 24, 75, 127).

7.3 *Pledge*[77]

7.3.1 The same term (*qātātu*) is used for both pledge and surety. It is sometimes difficult to distinguish between the two. Land may be pledged (TBR 53—as warranty of title in sale of land), or family members (TBR 27—wife; Emar 88—brother and family), or both (Emar 77; RE 58). In Emar 87, a quantity of alum is pledged to secure a loan of silver. The pledge may be hypothecary (e.g., TBR 53). The creditor/pledgee is sometimes called the "father" of the debtor/pledge (TBR 34; Emar 117).

7.3.2 Personal antichretic pledge is attested at Emar, where it is called *amēlūtu*. In its basic form, the debtor (and/or his family) enters

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[73] Postgate, *Fifty Neo-Assyrian Documents*, §3.2.4; see Kwasman & Parpola, *Legal Transactions* . . ., nos. 26, 263, 323.

[74] ASJ 13:34 may contain a reference to interest added "at the city rate" (*kīma āli*).

[75] In Sigrist 5, a loan for a trading venture (*ana ḫarrāni*) is payable on its completion.

[76] In RE 18, the creditor assigns his claim to whichever of his children survives the current plague.

[77] Hoftijzer and van Soldt, "Security . . .," 200–202; Skaist, "Emar . . ."

the house of the creditor and serves him in lieu of interest until such time as he repays the capital (ASJ 10:A). He may be required to pledge his land and family against his absconding (Emar 77; ASJ 13:35). There is, however, a variant form, under which the debtor becomes virtually a member of the creditor's family. In return for a minimum period of service, namely, the lifetime of the creditor and his spouse, the creditor either forgives part of the debt and gives the debtor a wife (Emar 16) or forgives the whole debt and adopts the debtor, giving him his own daughter as wife (TBR 39, 40).

7.4 *Distraint*

In TBR 26, creditors seize a debtor's wife (vb. *ṣabātu*), and the debtor responds by selling her as a slave to a third party "of her own free will" (*ana ramāniši*). This suggests that distraint was, as elsewhere, a method of putting pressure on the debtor, but not of enslavement in itself.

7.5 *Debt and Social Justice*[78]

7.5.1 The right of redemption (vb. *paṭāru*) is frequently mentioned in documents of loan with pledge but also in documents of land sale and sale into slavery of the seller himself and/or his family, where it is clear that the background is the seller's indebtedness. The price of redemption is sometimes equal to but, more frequently, double the selling price. It is more likely that the contract was modifying an inherent right to redeem than creating one, but the appropriate conditions for exercise of the right and the parameters of its modification are not ascertainable.

7.5.2 Where the buyer of land is a close relative of the seller, it is sometimes said that he bought "like a stranger" (*kī(ma) nikari*: Emar 20, 120; ASJ 12:11; RE 51; TBR 56). The implication is that the sale was not at a discount, as between family members, but at the full market price, like an outsider. The clause may have been designed to protect the buyer's title against future redemption by the seller or his heirs.

[78] Leemans, "Aperçu . . .," 229–32; Westbrook, "Emar Jurisprudence . . ."

7.5.3 In Westenholz 12, the brother of the debtor redeems land held in pledge (vb. *kullu*) for less than the value of the debt. He is said to redeem "like a stranger." Here the purpose of the clause is evidently to make the transaction the equivalent of purchase of the land and thus bar any future claim by the creditor to the balance of the debt.[79]

7.5.4 The clause "it bears no interest and is not subject to debt-release" in a loan contract (Ekalte 68; see 7.2.2 above) indicates the existence of royal debt-release decrees, as does the term *andurāru* "debt-release" (in broken context) in a contract for the purchase of land (Ekalte 2:10).

7.6 *Suretyship*

Apart from simple debt, sureties were provided to warranty title (Dalley 5) or against flight of a slave (Emar 209). In the latter case, the nervous creditor took a surety of the surety. In TBR 34, a husband releases his wives and children from pledge by standing surety for them. In Ekalte 31, five persons charged with raiding a herd (*išḫiṭū*) provide a surety, perhaps for the judgment debt. Sureties could be seized on default by the debtor (ASJ 13:A; cf. Emar 116).

7.7 *Partnership*

There are only isolated examples. In TBR 51, two partners jointly purchase a vineyard and take shares of one quarter and three quarters respectively, corresponding to their contribution to the purchase price. In TBR 85, the owner of a vineyard gives it for planting, in return for a half share of the developed land. This arrangement was considered until division a personal contract, not a sale of real estate, since it is expressly extended to the owner's sons if he dies.

8. Crime and Delict

Only two crimes are mentioned in the sources.

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[79] Note that it is the redeemer, not the creditor/transferor, who is responsible for claims against his title.

8.1 *Treason*

According to Emar 17, a plot against the king by "soldiers of Emar, *ḫupšu*, and brothers of the king" was uncovered. The king "killed half of them and put half in fetters." In several of the land sales by ^{d}NIN.URTA and the City, it is said that the land in question had been confiscated to ^{d}NIN.URTA by its owner because "he committed a great sin against his lord and the city of Emar" (RE 16; cf. ASJ 12:7; Emar 144; 197; RE 34). This may refer to treason, but it could cover a range of crimes against the state, including prosaic matters like failing to pay one's taxes.

8.2 *Theft*

In Emar 257, a man stole a slave and was caught with him in his possession. The judgment of the court is that he be handed over as a slave to the owner of the stolen slave. He avoids this sentence by handing over his sister as a substitute.

9. Special Institutions

Emar 124 contains an exceptional arrangement. A *qadištu* priestess establishes a man as her "husband" but then marries him off to the first of her four daughters in what looks like a typical adoption of a son-in-law. The penalty clauses for divorce, however, are as between the *qadištu* and the man, declaring "You are not my husband" and "You are not my wife," respectively. Even if we take the words "husband" and "wife" as referring also to son-in-law and mother-in-law at Emar,[80] it is a curious clause. Possibly the special status of a *qadištu*, who may have been prohibited from having natural issue, explains this unconventional use of terminology.

[80] Cf. Beckman, "Family Values," 69.

Abbreviations

The sigla used for publications of cuneiform sources in this chapter refer to the following entries in the bibliography:

Abr. Nah.	D. Snell, "The Cuneiform Tablet from El-Qitar"
ASJ	see A. Tsukimoto
AO	D. Arnaud, "La Syrie du moyen Euphrate"
Dalley	S. Dalley and B. Tessier, "Tablets from the Vicinity of Emar"
DM 1, 249–61	J. Meyer and G. Wilhelm, "Eine spätbronzezeitliche Keilschriftur-kunde"
Ekalte	W. Mayer, *Tall Munbaqa—Ekalte—II. Die Texte*
Emar	D. Arnaud, *Recherches au pays d'Aštata*
Fales	F.M. Fales, *Prima dell'Alfabeto*
Owen	D. Owen, "Pasuri-Dagan and Ini-Tessup's Mother"
RE	G. Beckman, *Texts from the Vicinity of Emar*
Semitica	D. Arnaud, "Mariage et remariage"
Sigrist	M. Sigrist, "Seven Emar Tablets"
SMEA	D. Arnaud, "Tablettes de genres divers"
TBR	D. Arnaud, *Textes Syriens de l'age du Bronze récent*
Westenholz	J. Westenholz, *The Emar Tablets*

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ALALAKH

Ignacio Márquez Rowe

Alalakh, modern Tell Atchana, lies on the direct road between Aleppo and the Mediterranean, in the Amuq plain, which today occupies the major part of the Turkish province of the Hatay.

The seven seasons of excavations at Tell Atchana that Sir Leonard Woolley conducted in 1937–39 and 1946–49 yielded over five hundred cuneiform tablets, most of them written in Akkadian.

The majority of the tablets come from two royal archives unearthed at two distinct levels and belong accordingly to two different historical periods. The older archive, which includes about 35 percent of the excavated texts, was discovered in the Level VII palace and is dated to the late Old Babylonian period. More than half of the Alalakh written material was found in the more recent archive, in the Level IV palace and fortress, which is dated to the fifteenth century.[1]

A. Alalakh Level VII

1. *Sources of Law*

1.1 The sources of the period under discussion (in historical terms, late Old Babylonian; in archaeological terms, late Middle Bronze Age) extend from the installation of Yarim-Lim as ruler of Alalakh by his elder brother Abban, Great King of Yamkhad (Aleppo), to the destruction of the town, presumably by the Hittite king Hattusili I.

1.2 The extant corpus of legal documents from Alalakh VII includes about ten documents that are concerned with litigation, one

[1] The basic edition of the texts remains Wiseman's *The Alalakh Tablets*. It should be noted that a few tablets are still unpublished or only partially published; see the provisional list in Hess, "A Preliminary List . . ."

deposition, twenty-seven loan documents, thirteen documents of sale and five of barter, and two deeds of gift.

1.3 The contracts are drafted in objective style, usually followed by a list of witnesses and the date. (Year names correspond to the Yamkhad date formulas.) Seals (and occasionally hems of garments) of the party under obligation as well as witnesses were as a rule impressed not on the tablets themselves but on their envelopes, of which only a few, mostly fragmentary examples, have been found.[2]

1.4 In addition to legal documents, several administrative records such as debt notes or ration lists shed important light on legal practice in late Middle Bronze Age Alalakh.

1.5 The parties to the transactions and in litigation are mostly drawn from the circle of the royal court: the rulers themselves, their family members, officials, and other influential persons.

2. *Constitutional and Administrative Law*

2.1 *Organs of Government*

2.1.1 *The King*[3]

In this period, Alalakh was part of the kingdom of Yamkhad. We know from AT 1 and AT 456 that Abban, king of Yamkhad, had assigned to his younger brother Yarim-Lim the province of Alalakh as his "share" (*zittum*; cf. AT 456:38, AT 95:obv. 18), transmitted by inheritance (AT 6), with the responsibility for governing it and the obligation to preserve the unity of and loyalty to the kingdom of Aleppo. As a result of this agreement, the question whether Yarim-Lim and his successors should be called governors rather than kings is of minor importance.

The authority of the rulers of Alalakh over their territory was clearly bounded by the sovereignty of Aleppo. Indeed, the overlord of Yamkhad (e.g., AT 7, AT 9, AT 95, or AT 455) or his officials (e.g., AT 8) are found presiding over transactions within the juris-

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[2] See Collon, *The Seal Impressions* . . ., 139ff.

[3] See Klengel, "Königtum und Palast . . .," and "Die Palastwirtschaft . . ."; Bunnens, "Pouvoirs locaux . . ."

diction of Alalakh; these may include lawsuits that involve the ruler himself (e.g., AT 8 or AT 9). Conveyances of landed property in Alalakh may also have required the consent of the king of Yamkhad (cf. AT 456:57–62 and AT 79).[4]

2.1.2 *The Legislature*

As a result of the political status described above, legal institutions and rules in Alalakh must reflect the judicial system of the Great Kingdom of Yamkhad. This is clearly shown by the application in Alalakh of the debt-release decrees (*andurārum*) issued by the kings of Aleppo,[5] probably promulgated at the beginning of their various reigns. (Note also the reference to an *andurārum* promulgated by King Hammurapi of Aleppo in one text from Mari.)[6]

2.1.3 *The Administration*

2.1.3.1 Apart from a possible reference in AT 98c, nothing is known of the judicial capacity of the rulers of Alalakh. The same holds true for their responsibility as provincial collectors of taxes and services.

2.1.3.2 The picture is not clearer as far as local government is concerned.[7] A few scattered references mention two institutions that, in principle, seem to be closely connected with the public administration of cities, namely the elders (šu.gi$_4$.a/*šībūtu*) and the mayor (*ḫazannu*). Only mentioned in two documents (AT 271:6, 8, 16 and AT 322:4), the elders appear in their role as representatives of their respective cities, especially in AT 322, where they are expressly described as responsible for their city's debt.

As for the role of the city mayors in Alalakh, two aspects can be deduced from the available information. First, their regular presence as witnesses of legal transactions points to their function in court, albeit not necessarily judicial. The second aspect may be revealed by AT 456, which describes a plot against Abban, the Great

[4] See also Collon, *The Seal Impressions* . . ., 139f.

[5] See Kraus, *Königliche Verfügungen* . . ., 105–8.

[6] See Charpin, "Les décrets royaux . . .," 41, where he refers to the forthcoming publication by Durand of a "dossier" on Alahtum, which the latter suggests is to be identified with Alalakh.

[7] See Bunnens, "Pouvoirs locaux . . .," 121f.

King of Yamkhad, and his younger brother Yarim-Lim, prior to his installation as ruler of Alalakh. Lines 19–22 describe the mayor of Irride, who allowed the enemy enter his town. This incident may indicate that the security of the city was basically the responsibility of the mayor (*ḫazannu*), as it was in later times.

2.1.4 *The Courts*

2.1.4.1 The supreme judicial authority was the Great King of Yamkhad. In four texts describing litigation over property, the parties involved "entered before the king," that is, the king of Aleppo, who tried the disputes and gave the final verdict. The usually heavy pecuniary sanctions in legal transactions are basically for the benefit of the "palace," no doubt the Great King of Yamkhad, and of Adad, the patron god of Aleppo.

2.1.4.2 One dispute (AT 8) is brought before three people and the "king's officials," possibly acting on behalf of the Great King himself. Another case (AT 10) seems to have been presided over by the officials of the ruler of Alalakh, although the name of the country is not preserved on the tablet. Of interest is the fact that the same matter was brought, presumably later, before the king of Aleppo (AT 9; cf. also AT 98f.). This may indeed prove that the Great King of Yamkhad was to confirm and validate those transactions that were previously (and perhaps provisionally) performed at the provincial court of Alalakh.

2.1.4.3 Some witnesses to the lawsuits regularly appear in different documents and can be identified as high court officials (such as mayors, sukkal ministers, or the sanga priest of Ishtar), as well as some of the creditors and buyers in the extant contracts. In the sale document AT 58, both Abban, the Great King of Yamkhad, and his brother Yarim-Lim, the ruler of Alalakh, appear side by side among the witnesses to the transaction. Women are not attested as witnesses. The number of witnesses ranges from two to fourteen, but between three and six is most common. Among the witnesses, we occasionally find individuals with the title of "judge" ($di.ku_5$) (e.g., AT 6:31 or AT 56:48).

2.2 *Functions*

2.2.1 *Compulsory Service*[8]

Two sale documents (AT 52 and AT 54) and one deed of gift (AT 96) state that the property which is the object of transfer is granted "immunity" (*zakûtu*).[9] The exempted duties that are implicit in this formulaic expression may possibly correspond to the services quoted in AT 55, namely the *ilkum, dikûtum*, and *šarrupabinnum*. In line 8, *dikûtum* is qualified as that of the "troops with bronze spears" (érin.meš giš.igi.dù.zabar) and may possibly refer to some kind of military service; *ilkum* is the standard service due to the state in the ancient Near East.[10]

3. *Litigation*

3.1 Almost all the extant litigation documents concern disputes over property and inheritance. In many cases, the defendant is the ruler of Alalakh himself. Although there is hardly any reference that would provide proper identification, litigants must clearly belong to the ruler's entourage. Women appear frequently among them (e.g., AT 7, AT 8, and AT 11).

The documents first record the subject matter and the declaration of the plaintiff's claim, occasionally followed by the statement of the defendant. Then both parties are said to come (lit., enter) before the king of Yamkhad (or other court), who has the final decision. Witnesses might be called upon to testify (e.g., in AT 7, AT 57, or AT 455) and documents could be produced as evidence (e.g., in AT 57).

3.2 In AT 11, where the plaintiff's claim was rejected, she was to suffer some kind of shaming before the court (lit., her head was struck by the accused).[11] As a rule, court decisions were secured by heavy penalties imposed on any of the parties who would claim again

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[8] See Zaccagnini, "Asiatic Mode of Production . . .," 80f.; Kienast, "Die altbabylonischen Kaufurkunden . . .," 37, 42.

[9] See also Kraus, "Ein mittelbabylonischer Rechtsterminus," 37f., and Ries, "Lastenfreiheit," 509.

[10] Cf. also the mention of the *ilkum* of Aleppo in AT 58. An attempt to understand the term *šarrupabinnu* was made by Gaal, "Alalahian Miscellanies I," 9f.

[11] See Malul, *Legal Symbolism*, 432ff.

on that very subject matter. AT 8 attests to the conveyance of a document of forbearance (*kanīk la ragāmim*) from the defendant to the plaintiff once the final verdict was decided.

3.3 The only reference to an oath in a litigation document comes from AT 8. Here, the payment of a considerable sum of silver is under dispute. The defendant, Ammitaqum, again the ruler of Alalakh, declares that he has already paid and that, as definite proof, he can swear an oath. Interestingly, the female plaintiff seems to dismiss such a solemn solution as irrelevant and replies: "Why should my lord take an oath? My lord should give back all (the money) that was entrusted (to him), and only then shall I pay heed."

4. *Personal Status*

4.1 The individuals involved in the available corpus of legal transactions in all likelihood belonged to the category of free citizens. Women were active participants in the legal life of Alalakh: not only are they found engaging in business transactions but they even had the capacity to sue their own lord. They do not, however, seem to have had the capacity to act as witnesses to transactions or litigation.

4.2 *Slavery*[12]

Two kinds of slaves can be distinguished: prisoners of war (lú.meš *asīrū*), who are listed among the palace's ration recipients (e.g., AT 243:2, 247:18, 253:4), and freeborn native debtors who failed to pay their debts. Indeed, the ultimate solution for defaulting debtors was to sell themselves and their family into the creditor's servitude. This practice is explicitly attested in AT 65, in which the female debtor sold is to serve the female creditor "as a menial" (*ana kinattūtim*). Antichretic services are regularly attested in loan documents. In one (AT 23), the word for "hostage" (*līṭu*) is used instead of the more common term for personal pledge (*mazzazānu*). In two other records (AT 32 and AT 38), the debtor-pledges are expressly designated as "slaves (ìr) of Yarim-Lim," the ruler of Alalakh and creditor in both cases. Note that in AT 38, it is the debtor with his family (*qadum nišīšu*) who are placed in servitude.

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[12] See Mendelsohn, "On Slavery in Alalakh"; Klengel, "Zur Sklaverei in Alalah."

The loan documents provide information as to two possible ways to end slavery for debts: by redemption through repayment of the debt, or by a royal debt-release decree (*andurārum*). AT 65, however, specifies that the debtor's condition as a menial at the service of her creditor is not to be altered through the promulgation of such a decree.[13]

5. *Family*

There are no sources relating to family law from this period.

6. *Property and Inheritance*

6.1 In AT 6, the testament of the ruler Ammitaqum, the property to be transmitted to his heir Hammurapi is described as consisting of "his house, his towns, his territories and everything else." Towns (sg. *ālum*), together with their borderlands (*qadum pāṭišu*) and territories (*eperu*), are also the object of transfer (characteristic of this archive) in many deeds of conveyance.[14]

The nature of the property rights enjoyed by their owners is not quite clear. That different degrees of ownership must have existed is shown by the litigation document AT 11, in which the accused, Yarim-Lim, proves that the plaintiff, his sister, did not have full ownership of the town under dispute. Some of the tenures involved may have been inherited shares directly (or indirectly) held from the Great King of Yamkhad.[15]

6.2 Disputes about succession are well attested (AT 7, AT 9, AT 11, AT 57, AT 95, or AT 455). These documents leave no doubt that sons as well as daughters were entitled to inherit the paternal estate.[16] Both AT 7 and AT 11 are lawsuits between brother and sister concerning property of their deceased father. In fact, in AT 7 the house under dispute is described as having belonged to their

[13] Likewise, in the five other examples in which reference is made of this decree, it is explicitly stated that the debts under consideration are not to be remitted.

[14] See Zaccagnini, "Asiatic Mode of Production . . .," 68–81.

[15] Note that the property under dispute in AT 95 is a royal share transmitted from Yarim-Lim to his son Ammitaqum and that in the deeds of gift AT 86 the ruler of Alalakh grants property to his son and daughter.

[16] See Ben-Barak, "Inheritance by Daughters . . .," 28ff., with a discussion of AT 7.

mother and it is probably after her death that the case was started. In AT 11, Tatteya, sister of Yarim-Lim, ruler of Alalakh, brings a lawsuit against her brother claiming (obviously wrongly) that her father had assigned the town under dispute as a share to her (and not to him). The verb used here is *wuddû*, and to judge also from AT 6 (and probably also AT 96), it seems to have been the technical term to define the disposition of one's property to take effect after death.

7. *Contracts*

7.1 *Sale*[17]

Among the documents that describe the transfer of ownership of property, sale documents are by far the best represented. They are styled from the point of view of the buyer (*ex latere emptoris*); the standard statement explicitly says that the buyer has purchased (*šâmum*) the object in question from the seller for a certain amount and that he has paid it in full (*ana šīm gamrim*).[18]

7.1.1 Towns with their borderlands and territories frequently constitute the object transferred. Also attested are houses and vineyards. AT 65, the only sale document concerning a person, actually describes a self-sale for debts.

7.1.2 The price of land consists of amounts of silver, sometimes supplemented by quantities of goods and animals. The completion clause declares that the payment is made (*apil*) and that "his heart—the seller's—is satisfied" (*libbašu ṭāb*). There is one example (AT 54) that testifies to the ritual of cutting the neck of a sheep as a symbol of conclusion of the agreement; in another text, (AT 60) the ritual consists of an oil libation.[19]

7.2 *Exchange*

Legally speaking, hardly any distinction is made between sale and exchange. In all cases, the object exchanged is a town, and the rulers

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[17] See Kienast, "Die altbabylonischen Kaufurkunden . . .," and "Kauf," 530ff.

[18] See Skaist, "*Šīmru gamru* . . .," with a discussion of the evidence from Alalakh VII.

[19] See Malul, *Legal Symbolism*, 346ff.

of Alalakh or Yamkhad regularly appear as contracting parties. The formulation is one-sided: the transferor conveys (*nadānum*) a town to the transferee in exchange for (*ana pūḫāt/pūḫ*) another town. Interestingly, the transfer is here also "paid in full" (*ana šīm gamrim*).

7.3 *Gift*

AT 86 and AT 96 are deeds of gift concerned with the transfer of "shares," that is, part of the paternal property. The donor is the ruler of Alalakh, and the donees are presumably to be identified as his son and his daughter.[20] In both documents the conveyed property is a town, and in AT 96 it is fully exempted from services.

7.4 *Loan*[21]

7.4.1 Loan documents represent more than a third of our legal corpus. Formally, they are of two types. A few (AT 27, AT 33, AT 39, and cf. the document without witnesses, AT 34) state that the borrower has received (*leqû*) the loan from the creditor. The rest use the formula "such and such belonging to the creditor is to the debit (*ana muḫḫi*/ugu) of the debtor." The provisions concerning interest, repayment, and eventual seizure of pledges are common to both types of documents. Additional information on the system of credit may be gleaned from administrative texts and especially debt notes (such as AT 45, AT 319, and AT 322).

7.4.2 Loans are almost always quantities of silver; amounts of grain are also attested (e.g., AT 36).

7.4.3 Interest is rarely prescribed explicitly. The few extant rates vary: in AT 40, for example, it is fixed at 25 percent; in AT 35 one half bears 33 1/3 percent interest and the other 25 percent, and in AT 39 one half bears a rate of 25 percent and the other 16 2/3 percent. The verb used to express the accrual of interest is *waṣābu*. Interest-free loans may be expressly stipulated with the clause "the principal (lit., the silver) bears no interest" (*kaspum ul uṣṣab*),

[20] These two texts must be connected with the testament AT 6 and the litigation document AT 95, in which reference is made to the hereditary transmission of royal inheritance shares.

[21] See Zeeb, "Studien . . . I–III."

followed by the words "and it cannot be remitted" (*ul iddarar*), which clearly refer to the legal inefficacy of the debt-release decrees concerning these particular loans (AT 29, AT 30, AT 31, AT 38, AT 42).

7.4.4 No reference to the duration of the loan is made in our texts; in fact, as provided in AT 20, it could be the whole lifetime of the debtor or his heirs.

7.4.5 Pledges were usually personal and included the debtor himself, his wife, and his children.[22] The provision states "for this money (lit., silver) the debtor (with his wife and children) will stay in the creditor's house as a pledge" (*kīma kaspim annîm ana mazzazānim ana bīt PN wašib/wašbū*). We already noted that the pledge is called "hostage" on one occasion and "slave" in two other texts. It is generally assumed that these pledges were antichretic in nature. Ultimate failure to pay back the debt could end in self-sale (as in AT 65 above; evidence for the implicit existence of fixed terms for loans?). In some cases of self-pledge, an additional surety (*qatātu*) was required, usually chosen from among the debtor's family. Only one text (AT 23) specifies what motivated such a measure, namely, the possible flight or disappearance of the pledge (probably including his death too).

7.4.6 Four texts attest to the redemption (*paṭārum*) of debtors from their creditors (*bēl ḫubullim*) by a third person. In all cases, the redeemer is Ammitaqum, the ruler of Alalakh, who pays back the debt and automatically becomes their new creditor.

7.5 *Deposit*

One reference may come from a litigation document (AT 8), where the plaintiff claims the return of a large amount of silver that had been deposited (*paqādum*) by the ruler of Alalakh. Another possible example can be found in what seems to be a written testimony (AT 119). The declaration apparently reports on a theft of grain that had been deposited (*paqādum*) by the alleged thief.

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[22] See Eichler, *Indenture* . . ., 63–75; Mendelsohn, "On Slavery in Alalakh," 66f.

B. Alalakh Level IV

1. *Sources of Law*

1.1 The sources of this period (which may be called Middle Babylonian or early Late Bronze Age) range from the reign of Idrimi to that of Ilimilimma, his grandson, thus covering three generations.

The excavations of the royal archives of Level IV have yielded five international legal documents and thirty-three domestic legal texts. The former include two treaties (AT 3, between Idrimi and Pilliya of Kizzuwatna, and AT 2, between Niqmepa and Irteshub of Tunip), two records of litigation presided over by the Mittanian overlord Shaushtatar (AT 13 and AT 14) and one receipt of runaways who fled from Aleppo (AT 101).[23]

1.2 The domestic legal documents are virtually all royal deeds. The royal seal is regularly impressed on the upper part of the obverse of these tablets, and the mention "before RN" (*ana/ina pāni RN*) introduces the operative part of over two thirds of the texts. The kings involved are mainly Niqmepa, Idrimi's son, who presides over almost half the extant transactions, and his son, Ilimilimma.

1.3 The content of these documents is relatively varied. There are ten contracts of sale, five of loan (two more with the king as party and no witnesses), four of surety, four marriage contracts, one deed of gift, and one adoption. One text concerns the promotion of an individual to the category of *maryannu*-ship decreed by the king, another deals with rights of succession, and a third concerns forfeited property following the execution of the owner. A few are too fragmentary for classification.

1.4 The schema of these texts follows a regular pattern. The seal is usually impressed at the head of the tablet.[24] The transaction is always phrased in objective style. The list of witnesses, usually

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[23] For the interpretation of this text, see Márquez Rowe "Halab in the XVIth and XVth Centuries BC . . .," 186ff.

[24] King Niqmepa used a dynastic seal, namely the seal of a predecessor named AbbaAN who may have ruled Aleppo in the course of the sixteenth century; see Márquez Rowe, "Halab in the XVIth and XVth Centuries BC . . .," 182ff.

including the name of the scribe, ends the text. Unlike their Old Babylonian counterparts, these documents are not dated, and no envelopes were used.

1.5 The international documents are of relevance because they contain provisions concerning disputes between ordinary citizens of Alalakh and those of the treaty partner. They cover matters such as theft, deposit, and the return of fugitive slaves.

1.6 Apart from legal documents, several administrative records and a few letters unearthed at Level IV, as well as a letter sent from Alalakh to Ugarit, where it was discovered (RS 4.449), throw further light on legal practice in early Late Bronze Age Alalakh.

2. *Constitutional and Administrative Law*

2.1 *Organs of Government*[25]

2.1.1 *The King*

In this period, Alalakh was a vassal kingdom of Mittani. Nonetheless, the king of Alalakh seems to have regulated most, if not all, affairs that concerned his subjects within his own kingdom.

2.1.2 *The Administration*

The king presides over most of the transactions available to date. He seems to have been assisted in court by a body of nobles or *maryannu*s.[26]

Likewise, the local authorities were composed of the mayor (*ḫazannu*), at the head of the city, and a body of five nobles (*damqūtu*; AT 3)[27] or elders (*šībūtu*; AT 2). In treaties, they appear as being responsible to their own king for returning foreign runaways.

2.1.3 *The Courts*

Most of the extant legal transactions are before the king. They are witnessed by a body of nobles who appear not only repeatedly as witnesses in different transactions but also as active participants in

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[25] See Liverani, "La royauté syrienne . . .," "Communautés de village et palais royal . . .," and "Communautés rurales . . ."

[26] See Márquez Rowe, "A Number or a Measure? . . .," 255.

[27] Cf. Márquez Rowe, "The Akkadian Word for aristoi?"

legal matters. The number of witnesses does not seem to have been systematically fixed; as few as three and as many as eleven are attested. However, four is by far the most common number, which roughly fits with the number of nobles required to compose local courts in the cases stipulated in the international treaties.

We have no documents from this period describing disputes between inhabitants of Alalakh. In one document (AT 17), mention is made of a crime (*arnu*) that carried the death penalty of the evildoer (*bēl masikti*), in all likelihood decided by King Niqmepa. The text only mentions the incident without specifying the nature of the crime, basically because its purpose is to record the accompanying confiscation of the property of the executed criminal by the palace and the ensuing claim of his daughter's groom, who asks for the return of what he had brought into his father-in-law's house, now in the king's possession. The only reference to the functioning of a tribunal comes from a diplomatic letter (AT 116). The addressor sends to the addressee (whose name is not well preserved but who must have been responsible for judicial affairs at Alalakh) his servant together with his case (di.ku$_5$/*dīnu*), namely, the seizure of his donkeys, so that the addressee can carefully evaluate the testimony and settle the affair.

3. *Litigation*

Although there are no records of litigation, certain clauses in international treaties are of interest in that they allow foreign litigants access to the Alalakh courts. The first concerns the ownership of a man, woman, ox, donkey, or horse.[28] The text, unfortunately damaged, states that if the defendant, namely the man in whose possession it was found, can produce the merchant who sold it to him then he can go free. If he cannot produce the merchant (or possibly other evidence to prove that he acquired it in good faith), then an oath will be imposed on him.

Another clause in the treaty places the responsibility on the local authorities to return a fugitive slave to his foreign owner.[29] The mayor and five elders must swear an oath that the slave is not concealed

[28] AT 2:32–37. For the most recent treatment of the treaty, see Dietrich-Loretz, "Der Vertrag zwischen Ir-Addu . . ."

[29] AT 2:21–31 and AT 3:36–39.

in their village. They are liable to punishment if the owner subsequently discovers his slave there.

4. *Personal Status*

4.1 *Citizenship*

Only one text, the inter-state record of litigation AT 13, provides information on citizenship. There a certain Iribhazi claims against King Niqmepa and before the Mittanian overlord Shaushtatar his status of what we may tentatively render "citizenship of Hanigalbat (or Mittani)" (*ḫanigalbatūtu*). This status is opposed to his condition as "servant (or subject) of Niqmepa"; the court finally decides in favor of the latter. It is interesting that the same word, *ḫanigalbatūtu*, is attested once more in a legal document from Tell Brak in a case presided over by the Mittanian king Tushratta.[30] The status of "citizenship of Hanigalbat" is there granted to the son of a concubine. To judge from this scarce evidence, it seems reasonable to assume that the term in question designates the status of a freeborn native of the Mittanian kingdom (similar to the well-known designation "son of GN" in other ancient Near Eastern contexts), which, as shown by the Tell Brak text could be acquired, presumably through manumission, by non-freeborn people.

4.2 *Class*

It is difficult to define the social classes of Alalakh. The extant texts, mainly the so-called "census lists," and the terminology in use, both varied and ambiguous, do not allow a clear interpretation. Nonetheless, several scholars tend to divide the population of Alalakh into three main categories: the *maryannu*, the *ėgelle*, and the *namê*.[31] It should be noted, however, that other categories, such as the *purre*, are attested. What seems easier, in any case, is the distinction between nobles and non-nobles. To the former, for example, belong without doubt the *maryannu*'s. They enjoyed a rather high political, economic, and probably also military status; they are attested, as already mentioned,

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[30] TB 8001, published by Illingworth, "Inscriptions from Tell Brak 1986."

[31] See, e.g., Liverani, "La royauté syrienne . . .," and "Communautés de village et palais royal . . ."; Serangeli, "Le liste di censo . . ."; Gaál, "The Social Structure of Alalah"; Von Dassow, "Social Stratification . . ."; Márquez Rowe, "The King's Men . . ."

as members of the royal court. They engaged in business transactions such as trade and loans and show a special tie to the king himself.[32] The king had the power to promote individuals to the *maryannu* category, as shown by AT 15. This and other documents (e.g., AT 91) make it clear that this status was transferred by inheritance.

4.3 *Gender and Age*

4.3.1 To judge from AT 91, women could also belong to the *maryannu* class, presumably as transmitted from the head of the household, to whom they always appear subordinate. Women were not competent to act as witnesses in legal transactions. They did, however, have the capacity to own property as well as to grant it (AT 88). Most of the information concerning the position of women comes from the marriage documents (see 5.1 below).

4.3.2 As for children, little can be deduced from our material. In one loan document (AT 48), the debtor's children (as well as the wife) are liable to seizure as pledges if the head of the family, who temporarily works for the creditor, runs away, disappears, or dies. A boy (*ṣuḫāru*) is sold in a sale document (AT 69) and another is given as security in a suretyship document (AT 89), together with three women. The age covered by such term(s), however, cannot be established.

4.4 *Slavery*[33]

It is clear from the treaty text AT 2 that a man or a woman could be treated as an item of property owned by a master, just like an ox, a donkey, or a horse. Slavery, in this strict sense, is well attested in early Late Bronze Age Alalakh. The same treaty informs us that slaves bore foot fetters (*kurṣû*) and a distinctive mark, a kind of hairstyle (well known from other ancient Near Eastern contexts) called *abbuttu*.[34] No doubt, this mark was meant to quickly identify a slave especially in case of flight, although as stated in this very text, it could simply be shaved off.

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[32] See Márquez Rowe, "A Number or a Measure? . . .," 254ff. For a recent review of the *maryannu* in the ancient Near East, see Wilhelm, "Maryannu . . ."

[33] See Mendelsohn, "On Slavery in Alalakh"; Klengel, "Zur Sklaverei in Alalah."

[34] AT 2:39–40.

The case of runaways is well documented in our material. AT 3 describes an inter-state agreement on the extradition of fugitives, AT 101 is a receipt of extradited runaways, and RS 4.449 is a letter sent to the king of Ugarit concerning the extradition of a fugitive. In the former two texts, however, the runaways are simply designated as "men" and "women." (The letter from Ugarit deals with a groom.) Although the words for male and female slave (usually written with the logograms ìr and géme) are not employed here, it is clear that the people involved are deprived of their personal freedom since they belong to a master. This different terminology may in fact imply a different measure of freedom. The same holds true for the boys, women or men who were sold to a new master (e.g., AT 66, AT 69). These designations are clearly distinct from the literal word for slave (ìr), which is significantly used in only one document of sale (AT 71) to designate the person sold. Nevertheless, in these examples of sale as well as the cases of suretyship,[35] the people sold or held as pledges automatically become their new master's property.

5. *Family*

Relevant material consists of four marriage contracts, most of them damaged, one adoption, and a few references from other documents.

5.1 *Marriage*[36]

5.1.1 The first step in the conclusion of marriage is attested in AT 17. There the groom addresses the father of the bride and asks for his daughter (*ana kallātišu išalšu*). Next comes the payment of the bride-price (*wadurannu*/níg.sal.ús.sá)[37] to the head of the bride's family. In AT 93 the bride-price consists of two (or three?) hundred shekels of silver and thirty shekels of gold. This large sum may be explained by the status of the bride, since she is the daughter of the noble *maryannu* Ilimilimma. In AT 17, the bride-price or part thereof (called *nidnu*), paid "in accordance with the custom of Aleppo," which

[35] See AT 47 and AT 49 (loan), AT 82 (suretyship), AT 344 (debt note), and cf. AT 89.

[36] See Mendelsohn, "On Marriage in Alalakh."

[37] For the meaning of *wadurannu*, see Márquez Rowe and van Soldt, "The Hurrian Word for 'Brideprice' . . ."

was probably the home of the groom, consists of six talents of copper and a bronze dagger. The reference to the custom of Aleppo seems to indicate that the amount of the bride-price was not fixed arbitrarily by the parties but was regulated by custom, which obviously varied from state to state. As indirectly shown by the claim in AT 17, the bride-price was kept by the bride's father. The Aleppan groom in AT 17 ultimately refused to marry his bride, justified by the execution of her father; the bride-price accordingly reverted to him.

5.1.2 In AT 91 the text explicitly declares that the groom has married the bride (lit., he took her as his wife, *ana aššatišu īḫuz*). The provisions on divorce in AT 92 and possibly also in the fragmentary document AT 94, reveal that the bride or wife is residing in her husband's household.

5.1.3 These divorce provisions contain the only reference to the dowry,[38] which is described as "all that was assigned to her belonging to her father's house" or "all that was assigned to her belonging to her father's house which was brought in." They indicate that the father of the bride could add the bride-price he had received to the dowry—a custom well known from other periods. The language of the provisions, namely, "she held back" (*ikla*) or "she will return" (*utār*) the bride-price, and "she will take" (*ileqqe*) the dowry upon divorce, as well as the feminine possessive suffixes referring to the dowry, suggests that ownership of both dowry and bride-price was retained by the wife.[39] This is further suggested in AT 92 by the reference to both bride-price and dowry in the clause regulating inheritance of the wife's property after her death.

5.1.4 We have already seen that the groom could refuse to marry his bride, justified by the particular situation described in AT 17, and could thus get the bride-price back. Once the marriage was concluded, it could also be dissolved at the initiative of either party, husband or wife (provided, of course, the Hurro-Akkadian language

[38] For the dowry, see Westbrook, "Mitgift," 279.
[39] For a different interpretation, see Zaccagnini, "On Late Bronze Age Marriages . . .," 598f.

of the texts, which often confuses genders, is not misleading). The husband could "hate and drive away" his wife (AT 92), and the wife, in turn, could "hate and leave" her husband (AT 94). As stated in AT 92, if the husband divorced his wife without grounds, she would have to leave taking with her both bride-price and dowry. But if he had good grounds (lit., "should she pull at his nose"),[40] then she would have to leave taking only the dowry, the bride-price being returned to the husband.

5.1.5 Marriage in Alalakh could be polygamous. This is shown by a provision attested in all four marriage contracts that places restrictions on the husband marrying another wife (in the case of AT 91, a third one), presumably meant to safeguard the status of the wife for whom the contract is drawn up. The provision states that he can only marry again if she fails (or they both fail, in AT 91) to give birth (*šumma ul ulid*). In AT 93 and AT 94, a period of seven years is stipulated before the husband can take a second wife.

AT 92 and AT 94 include a provision concerning the inheritance of the son born to the wife in question. It declares that even if the second wife gives birth earlier, the son of the first wife will retain the status of first-born.

5.2 *Children*

A father could not only disregard the rule of primogeniture (AT 92 and 94 above);[41] according to AT 87, he could determine the status of each of the free members of a household, including the order (arbitrary or not) of succession of the children. Apart from the children, the text also mentions the mother and the "elder daughter-in-law of the household," all of them under the authority of the father. His position as head of household also gave him the capacity to transfer his own status (e.g., as a *maryannu*) to his children.

As for the duties of a son towards his father, only one text, the adoption document AT 16, stipulates that as long as the father lives, the son "must support him" (*ittanabbalšu*).

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[40] For this expression, see Malul, *Legal Symbolism*, 111ff.

[41] See Mendelsohn, "On the Preferential Status . . ."

5.3 *Adoption*

The only adoption document (AT 16) is also quite unique in that the declaration of the creation of the legal relation between father and son is formulated from the point of view of the son: "he took PN as his father."[42] This formulation may actually disclose, quite openly, the purpose and nature of the contract, namely the acquisition of real property by the "son" through inheritance (a well-known strategy of adoption at Nuzi), which may in turn be supported by the identity of the adoptive son, the noble Ilimilimma.

Another kind of adoption, matrimonial adoption, may be implied by the marriage contract AT 91 where mention is made of the status of "daughter and daughter-in-lawship of the household."

Dissolution of adoption is provided in AT 16. The motive for breaking the new legal relation is in the case of the son the failure to fulfill his duty of support and in the case of the father maltreatment of his son in some way.[43] The penalty in either case is loss of the property in question, supporting the view that this is a sale-adoption on the Nuzi model.

6. *Property and Inheritance*

6.1 *Tenure*

Two documents describe transfer of real estate. AT 88 is a deed of gift from one lady to another; the property conveyed consists of two plots of land of equal extension, a vineyard, and an olive grove. In AT 87, two other plots, also a vineyard and an olive grove of exactly the same dimensions, are granted (*mortis causa*?) by the husband to his wife.

As to the composition of the estate belonging to a head of the family, AT 87 includes a house, fields, vineyards, and olive groves. In a loan document (AT 49), the estate of the borrower which is liable to seizure by the creditor is described as consisting of field, house, and vineyard.

AT 17, discussed above, attests to the confiscation of property by the palace following the execution of its owner.

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[42] See Yaron, "Varia on Adoption," 175ff.

[43] Note that the expression used, namely, "he would pull at his nose," is the same as in the divorce clause in AT 92 (see Malul, *Legal Symbolism*, 110f.).

6.2 *Inheritance*

6.2.1 On the death of the father, his heirs divided the paternal estate. The father could, however, allocate the shares by deed in his lifetime. In AT 87, for example, the father acknowledges a person as one of his sons with regard to his estate, presumably meaning that he established his share of inheritance. The text goes on to list the members of his family and their status, thus defining their entitlement to the inheritance. The recently incorporated son, for instance, is listed as the third son. The first-born was entitled to a preferential share (but he need not be the eldest son, as shown by the marriage contracts AT 92 and AT 94).

6.2.2 AT 87 also lists among the heirs of the family the "elder daughter-in-law." Indeed, the marriage documents attest to the fact that daughters or daughters-in-law could also receive a share of the estate of the head of the family, namely through dowry. A broken passage in AT 92 concerning inheritance of the wife's estate makes as a condition "there being no son and no daughter." This suggests a right of inheritance in daughters, perhaps in the absence of sons.

7. *Contracts*

7.1 *Sale*[44]

Records of sale constitute by far the largest group of legal texts so far discovered in Level IV of Alalakh. They are usually styled *ex latere emptoris*: the buyer receives (*leqû*) the object sold from the seller for a certain sum of silver or copper. (In AT 72, it also includes a quantity of emmer.) In one text, however, the description is drawn up from the point of view of the seller: he gives (*nadānu*) for a certain amount of copper (AT 75).

It is significant that only movables are sold in Alalakh. It is possible that, as at Nuzi, land could not be sold. (This would explain the recourse to the adoption strategy in AT 16.) Seven documents are sales of persons, and two (or three, if we include the broken tablet AT 73) are sales of oxen.

The buyers in these contracts are well-known members of the nobility. (Note that in AT 71 it is King Idrimi himself.) On several

[44] See Kienast, "Kauf . . .," 537ff.

occasions, more than one seller is involved (six in AT 70 and three in AT 72). As a rule, the completion clause follows. The text declares that the payment is made (*šīmšu apil*) and often that it is cleared from claims (*zaki*). It is interesting that one text (AT 67) paradoxically mentions after the formula "the price is paid" that the buyer makes sure "to have it paid within half a month" (iti 15.u$_4$ *ušašqal*). Finally, the sale contract stipulates the obligation undertaken by the seller or sellers to clear the object sold "should an owner arise," that is, if the title were contested.

7.2 *Gift*

AT 87 and AT 88 each record the grant of a vineyard and an olive grove. The text is styled *ex latere alienatoris*: the donor gives (*nadānu*) the property. In AT 87, the gift (in contemplation of death?) is from husband to wife. In AT 88, both donor and donee are female. This text includes a clause guaranteeing that no one will take the property granted from the new owner's hands.

7.3 *Loan*

7.3.1 Loans are relatively well documented at Alalakh. The formulation is simple: the borrower has received (*leqû*) some property from the lender, which obviously implies the obligation of repayment. The property consists of amounts of silver or copper. In some cases, at least, it seems reasonable to assume that the loan was meant for trade.[45] Out of the five loan documents, the *maryannu* Ilimilimma appears as lender in three and his father, Tutu, in another. The king himself also lends silver in two other records without witnesses. In one of them (AT 81), the loan is defined by the technical expression "to receive in exchange'" (*ana pūḫi leqû*). This same type of loan is attested in other Late Bronze Age archives from northern Mesopotamia and may be related to the later Neo-Assyrian loan characterized by the phrase *ina pūḫi našû*.[46] At Alalakh, it is further attested in several administrative texts that list loans or debts of grain (AT 300–308). The meaning is so far obscure. On the basis of the

[45] See Márquez Rowe, "A Number or a Measure? . . .," 255f.

[46] See the remarks of Durand in his "Compte rendu . . .," 56f. (To his attestations from Emar and Middle Assyrian documents should be added one text from Tell Brak (TB 8002) and the evidence from Alalakh.)

etymology of the expression, however, it may be tentatively suggested that they designate interest-free loans.[47]

7.3.2 Interest-bearing loans are attested. AT 46[48] contains a provision concerning the due date when the loan would begin to accrue interest (*uṣṣab*). The text, however, does not mention the rate, reflecting perhaps the fact that it was fixed by custom. AT 48 mentions that the interest of the loan is to be paid at the beginning of the year and that it amounts to two hundred birds. The curious nature of the interest may be explained on account of the profession of the borrower, who was a hunter (*bā'iru*).

7.3.3 Interest may be provided through antichretic pledge.[49] In AT 49, the borrower must stay in the house of the lender in lieu of interest. AT 47 also provides that the debtor together with his wife are to stay as pledges[50] and work in the creditor's household (see also the debt note AT 344). In such cases, the text declares that the antichretic pledges will receive no hire.

7.3.4 The duration of the loan seems to be undetermined. AT 47 and AT 50, for example, clearly provide that repayment must take place during the lifetime of the debtor (presumably prolonged to the lifetime of his heirs).

7.3.5 Penalties are provided in two documents. In AT 48, if the debtor cannot pay the interest, namely, the two hundred birds, he will be put in prison. In AT 49, the penalty for flight of the pledged debtor is payment of an additional amount of silver (one hundred shekels). The security, in turn, is not personal but consists of landed property.

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[47] See also ibid., 57.

[48] For the interpretation of this text, see Márquez Rowe, "A Number or a Measure? . . ."

[49] See Eichler, *Indenture* . . ., 75–78, and Mendelsohn, "On Slavery in Alalakh," 66f.

[50] It has been assumed that the term *ḫimudi* in l. 9 indicates this type of pledge on the basis of the context and the parallel to the *mazzazānu* of the Level VII texts. The Hurrian word *eġelle*, taken to designate one of the "social classes" of Level IV Alalakh, probably also had the meaning of some kind of pledge (Márquez Rowe, "The King's Men . . .").

7.4 *Suretyship*[51]

In the above two documents, members of the debtor's family and/or his landed property could be seized as security, if the debtor died or absented himself. The term used is "surety" (*qātātu*/šu.du$_8$.a).[52]

There are four documents that describe surety transactions proper, using the expression "A became surety (lit., entered as surety, *ana qātāti erēbu*) to B on behalf of C." In AT 82 and AT 83, the surety (A) is constituted by three or five (the text is not consistent) and three people, respectively. On the other hand, no reference is made (or preserved; note that the end of AT 84 and AT 85 is broken off) to the obligation that lies behind the contract, that is, between debtor (C) and creditor (B).

8. *Crime and Delict*

8.1 *Theft*

Several provisions concerning theft are dealt with in the treaty between Niqmepa and Irteshub. Despite the international character of the text (note, e.g., the stipulation "If a thief (*šarrāqu*) from your country commits theft (vb. *šarāqu*) in my country," in ll. 47f.), cases and penalties involved must reflect the rules and practice at Alalakh. The above-mentioned provision refers to the seizure of thieves and imprisonment; one administrative text (AT 228) also records the arrest of several *sūtu* people accused of theft (*ana šarraqūti*).

The same treaty regards as thieves the mayor and the five elders who take a false oath and keep a runaway slave in their town. Two penalties are imposed: cutting off the hands and a fine of six thousand shekels of copper to be paid to the palace. Of course, we do not know whether that was the general treatment of thieves; the fact that it is expressly described only for this provision might actually suggest the contrary.

People who could not prove their legal ownership of claimed property and who refused to take an oath were also regarded as thieves. And the same holds for people who would sell state booty abroad. In this case, the treaty provides for the arrest and extradition of the offender and no information is given as to the corresponding punishment.

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[51] See Hoftijzer and van Soldt, "Texts from Ugarit . . .," 202ff.

[52] Cf. also the administrative debt note (AT 344) and a broken reference in the sale document AT 70.

8.2 *Punishment*

AT 17 (discussed in 5.1.1 above) records the confiscation of property of a criminal (*bēl masikti*) who was put to death because of his crime (*arnu*). Unfortunately, the text does not give us any clue as to its nature, although some kind of political crime, perhaps treason, seems most likely. In this regard, it is possible that a broken passage of the treaty text AT 2 contained a provision on political conspiracy also associated with the death penalty. It seems clear that execution was supervised by the king.

Another kind of punishment consisted in being placed in prison (*bīt kili* in AT 48, discussed in 4.3.2, 7.3.2, and 7.3.5 above) or in the 'workhouse' (*bīt nupāri*), an institution which is also known at Nuzi. Unfortunately, our text (AT 90) only records the final confinement of two men and does not refer to the grounds for the penalty.

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UGARIT

Ignacio Márquez Rowe

Ugarit, modern Ras Shamra, lies about twenty-five miles south of the mouth of the Orontes and seven miles north of Latakia on the Mediterranean coast. It was the flourishing capital of a North Syrian kingdom that extended about 770 square miles in the second half of the second millennium. Excavations began in 1929 by a French Mission under the direction of C.F.-A. Schaeffer and are still continuing today. The ruins, which include a large palace, two temples and many private houses, have brought to light about three thousand cuneiform tablets dating from the second half of the fourteenth century down to the destruction of Ugarit around the beginning of the twelfth century.

1. Sources of Law

The extant corpus of legal texts[1] consists of two basic types: domestic documents (over 250 texts and fragments) and international documents, such as treaties and edicts (about 100 texts and fragments). All but a few are in Akkadian. (About ten are in Ugaritic and one is in Hittite.)

Over two thirds of the domestic legal texts are royal deeds and were found in the royal palace archives. The dynastic seal is regularly impressed at the top of the obverse of these tablets, and the king's name is mentioned either as presiding over or as main party of the transaction. Seven successive kings are attested, namely from Niqmaddu II down to ʿAmmurapi, although documents from ʿAmmiṯtamru II constitute by far the largest group. The transaction is phrased in objective style, and as a rule no witnesses (except sometimes for

[1] See Márquez Rowe, "The Legal Texts from Ugarit," with reference to publication and principal studies.

the scribe) are mentioned; the presence of the king presumably made it unnecessary. Legal documents are not dated and no envelopes were used. As for their contents, the great majority deals with the law of property.

The non-royal legal texts are mainly found at private houses. Each of these archives contains no more than ten documents. The physical characteristics and schema of the text are almost the same as the royal deeds. The basic difference is the absence of the king and the presence of a list of witnesses, the latter usually closing the document. Private documents deal with the law of property but more especially with the law of persons.

The international documents are of relevance because they contain provisions concerning the rights of the citizens of Ugarit. They include, for example, cases of debt, theft, and murder.

Apart from legal documents, administrative records and letters also provide much information of legal interest.

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

In this period, Ugarit was a vassal kingdom of the Hittite emperor. Nevertheless, the hereditary kings of Ugarit were rulers and supreme judges of their country. Theirs was the responsibility, for example, for taking the necessary steps against delicts and crimes committed by their subjects, such as the forgery of internal documents (RS 16.249) or the murder and robbery of foreign travelers.

2.1.2 *The Legislature*

It has been suggested that the law of land grants in Ugarit is an application of the Hittite law code.[2] This vertical relationship can also be seen in another legislative act. It is, in fact, the king of Ugarit, Niqmepa, who, as lord of his land and people, "makes" his overlord, Hattusili III, issue an order to forbid the men of Ura to acquire real estate in Ugarit (RS 17.130 and dupl.).

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[2] See Márquez Rowe, "Royal Land Grants . . ."

2.1.3 *The Administration*[3]

The royal palace at Ugarit was the seat of the central administration of the kingdom. From there the king, assisted by his high official (*sākinu*), would regulate both home and foreign affairs. Although the *sākinu* was primarily concerned with the latter, he once issued a royal deed in the king's name (RS 16.145) and on another occasion acted as supreme judge (RS 17.67). Indeed, the *sākinu*, seems occasionally to have exercised supreme political and juridical powers, presumably when the king was either too young (cf. RS 34.129), or was ill or absent from the country. The same is true, however, of the queen.[4]

Royal officials (*sākinu*s) are known to have been appointed as governors of several towns (e.g., Raqdu and Biru). Although very little can be deduced from the available evidence, it seems that they must have acted much in the same way as the king (cf., e.g., RS 17.61).

Local government was constituted by the mayor (*ḫazannu*) and/or a body of elders (*šībūtu*). We find them, albeit rarely, responsible for fiscal matters and for crimes committed in their territory.

2.1.4 *The Courts*

2.1.4.1 The king constituted the highest court at Ugarit. Letters sent by foreign rulers or officials to settle private judicial disputes at Ugarit are addressed to the king or also to his *sākinu*. So far, we only have four records of litigation. Three are tried by the king[5] and one by the *sākinu*,[6] probably with delegated royal authority. Crimes that carried the death penalty or exile seem to belong exclusively to the king's jurisdiction (RS 16.249; cf. also the case of divorce between ʿAmmiṯtamru II and the princess of Amurru).

2.1.4.2 The *sākinu* of Raqdu issues one deed of conveyance in the manner of the king (RS 17.61), and the mayor of Ugarit, together with witnesses, is found presiding over one transaction (RS 25.134). Otherwise, to date there is no evidence of the judicial function of local courts.

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[3] See Liverani, "Ras Shamra: Histoire," 1337f.; Bunnens, "Pouvoirs locaux . . .," 130f.

[4] Cf. RS 16.197, a deed written in the name of ʿAmmiṯtamru II but sealed by the queen(-mother), Aḫat-milku.

[5] RS 16.245, 16.254C, 16.356.

[6] RS 17.67.

2.1.4.3 Only once is a judge (di.ku$_5$) attested in legal texts (RS 16.156). There he appears as witness in one of the exceptional witnessed royal documents.

2.2 *Functions*

2.2.1 *Compulsory Service*

Free citizens were bound to perform certain services for the king, of both military and civil nature. These services are almost exclusively attested in deeds of conveyance of landed property. They are occasionally described in expressions such as "to perform work for the palace" (RS 16.386) or "to enter the king's field" (RS 16.348). But, most often, they are referred to with the standard Akkadian term *ilku* or, rather, *pilku*, the favored by-form at Ugarit (the Ugaritic equivalent being *unuṯṯu*).[7]

This *pilku* service was of two kinds. One was directly related to the estate (e.g., *pilkū bīti*) and the other was bound to a personal office or category, such as the *pilku* of the *maryannu*s or the *pilku* of the merchants (see also 4.2 below). The king could decree exemption from services (e.g., RS 15.125 = KTU 2.19).

2.2.2 *Confirmation*

A clause peculiar to the royal deeds of Ugarit refers to what has been called the king's involvement in private transactions. Indeed, several contracts of gift, sale, or exchange of property between two parties are qualified at the same time as royal grants. It has been suggested that these final royal transfers or confirmation of ownership, or also "fictive gifts," were meant to bestow on the new holder the privileged status of a royal grantee[8] (possibly related to the performance of or exemption from services).[9]

3. Litigation

3.1 The four extant records of litigation shed no light on procedural law at Ugarit. Their main purpose is to record the results of litigation. In three of them, the king decides the final verdict (*dīna*

[7] See Márquez Rowe, "Royal Land Grants . . .".
[8] Boyer, "La place des textes d'Ugarit . . .," 285.
[9] Cf. Márquez Rowe, "Royal Land Grants . . ."

parāsu), and in RS 17.67, the *sākinu* seems to act as a substitute for the king in his function as judge. Women, like men, appear as litigants. The disputes concern landed property and the manumission of a male slave.

3.2 In three texts, the final verdict is said to have been reached on the basis (*ana pī*) of the available evidence, namely witnesses or documents. Witnesses had priority: some of the international letters actually mention that the plaintiff together with his witnesses are on the way to the court.[10] Documents could be less decisive: as attested in RS 16.249, even royal documents, with the impression of the dynastic seal, could be forgeries.

3.3 Conclusive evidence was provided by the declaratory oath the court could impose on the defendant and his or her witnesses. This is clear from statements in various letters: "May they enter the temple!" (RS 20.239), or "May PN, together with his witnesses, swear!" (RS 20.22). The former example makes it clear that in some cases at least, the oath was taken in the name of the city god.

4. Personal Status

4.1 *Citizenship*

The subjects of our corpus of domestic legal texts presumably belonged to the category of free citizens. They were designated by the general expression "sons of Ugarit."

Resident aliens were members of the community. Although they possibly were not considered to be "sons of Ugarit," they did enjoy most of the rights and obligations of citizenship, such as owning land (in RS 16.136, an Egyptian is the beneficiary of a royal land grant) and being liable to the *pilku* service (again Egyptians in RS 18.118 = KTU 3.7).[11] Foreign visiting agents (*ubru*) and *ḫapiru*'s also enjoyed a protected status, namely, the hospitality of the king,[12] but were hardly subject to domestic law.

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[10] E.g., RS 20.21, 20.22.

[11] See the interpretation of this text in Márquez Rowe, "KTU 3.7 Reconsidered . . ."

[12] As deduced from the obligation clauses in royal deeds such as RS 15.109+,

4.2 *Class*

Among free persons, it is possible to discern a higher class constituted by nobles such as the *maryannu*s or the *mūdû*s of the king and queen. As the latter designations make clear, some of these categories (associated with the corresponding *pilku* services) belonged to the royal entourage. The king could promote individuals from one category to the other (cf., e.g., RS 16.348).

4.3 *Gender*

Women as citizens (cf. the designation "daughter of Ugarit" in RS 16.191+ = KTU 3.4:11) enjoyed the same basic rights and obligations as men.[13] They appeared in court as litigants, owned land and had rights of inheritance, being liable to service, and were debtors and parties to contracts of sale or exchange. They do not, however, seem to have had access to public office.

4.4 *Slavery*

The term for slave (Akk. *ardu*, Sum. ìr, and Ug. *ʿabdu*) can be used in our texts in the sense of "subject" and thus can sometimes designate free persons.

Slaves, in the strict sense, both male (*ardu*/ìr) and female (*amtu*/géme), are well attested in our Ugarit corpus. They appear listed as items of property along with oxen, sheep, goats, and immovables (e.g., RS 8.145, RS 15.120). As such, they could be sold (e.g., RS 11.856, RS 8.303), given away (RS 18.21), or bequeathed (e.g., RS 8.145, RS 16.148+). A female slave could be married to a free citizen (e.g., RS 16.250).

A free person could be sold into slavery. This was the case of debtors who could not repay their debts. For example, a family group of seven people ransomed from the Berutians become the ransomer's slaves until they can repay the amount of the ransom (RS 16.191+ = KTU 3.4).[14] On the other hand, in one suretyship contract, the creditor is allowed to sell the sureties to the Egyptians

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16.132, and 16.157. See Astour, "Les étrangers à Ugarit . . .," and Vargyas, "Immigration into Ugarit . . ."

[13] Cf. Klíma, "Die Stellung der ugaritischen Frau . . ."

[14] Cf. Yaron, "A Document of Redemption . . ."

should the debtors flee to another country (RS 19.66 = KTU 3.8).

Wrongful enslavement of a free person was probably punishable, as reflected in the rhetorical question addressed by the king of Ušnatu to the *sākinu* of Ugarit: "How can a man sell his fellow to the Egyptians?" (RS 34.158).

As seen in RS 16.191+, slaves could be redeemed through the payment of ransom money (see also the letter RS 8.333, a ransom from the Suteans, or RS 15.11, from the Egyptians).

The second way in which slavery could be ended in Ugarit was by manumission. The owner freed the slave by a symbolic act, namely anointing the slave's head with oil (RS 8.303). In two cases, the manumission of a female slave seems to have been a prerequisite to giving her in marriage (RS 8.303 and RS 16.267). In 16.250, a slave wife is manumitted by her master-husband, presumably in his old age, and is made head of the household.

5. Family

5.1 *Marriage*

Although no marriage contracts have been found so far at Ugarit, several references concerning marital rules and the Ugaritic myth that narrates the divine marriage of Yarhu and Nikkal shed some light on this aspect of legal life.

The Ugaritic poem RS 5.194 (= KTU 1.24) provides us with a vivid picture of the formation of marriage, namely, its two necessary steps: (1) the bridegroom's request to the bride's father that the bride be given to him or, in other words, that she enter his house; and (2) his payment of the bride-price (Ug. *mhr*) to the head of the bride's family. The final scene of the bride's family making ready the scales shows that this very payment represented the conclusion of the contract. (Note that nothing is said of a written document.)

As shown now by the legal evidence,[15] the bride-price (*terḫatu*) was returned to the bride by her father (cf. RS 15.92), presumably included with her dowry.[16] In one text (RS 16.200), it is designated as "her

[15] Cf. Boyer, "La place des textes d'Ugarit . . .," 300ff.; Rainey, "Family Relationships in Ugarit," 16ff.

[16] Gifts could probably be added, e.g., the *nidnu* from the father-in-law in RS 15.85.

(i.e., the bride's) gift that was given by her husband." After the death of her husband, the wife could take the *terḫatu* with her if she had to leave the matrimonial home (RS 15.92 and RS 16.200). In another text (RS 16.141), the daughter-in-law (a king's relative?) would also leave together with her bride-price if she were to refuse to complete the marriage. In both cases it seems to be self-evident that she also took her dowry.

The (silver of the) *terḫatu* (in RS 15.92, it consists of 80 shekels) could be used as an exchange commodity to acquire real estate (her father's house, in RS 16.158).[17]

Marriage could be polygamous. In RS 94.2168, three categories of wives are attested for ʿAbdimilku: slaves (*amht*), *ṣrdt* (perhaps concubines), and a noblewoman, namely the king's daughter.[18] Marriage with a female slave is also attested in RS 16.250. As already mentioned, female slaves were sometimes manumitted by their master before being given in marriage (cf., e.g., RS 8.303).

Evidence of "domestic" divorce only comes from a reference in RS 16.143, in which a noble states that the mother of one of his sons "took everything (of hers, i.e., silver and chattels) and left." On the other hand, two "dynastic" divorces are attested, namely the one between king ʿAmmiṯtamru II and the Amurrite princess, and the one between another king of Ugarit ('Ammurapi' or Niqmaddu III) and the Hittite princess. Despite their obvious international and diplomatic aspects, in legal terms they display hardly any difference from a private divorce. In the former case, the reason for divorce is adultery.[19] As a result, as stated in RS 17.159, the king divorced her (*ētezibši*). The divorced queen then could take the dowry with her, namely everything that she had brought into his house (ll. 12–16). A provision is made that, should the husband contest anything belonging to her dowry, the sons of Amurru shall take an oath, so that he will reimburse them in full (ll. 18–21). According now to another text of the same "dossier" (RS 17.396), all possessions the

[17] Zaccagnini has suggested that this contract be interpreted as a "counter-dowry payment" typical of the Nuzi documents ("On Late Bronze Age Marriages," 599f.).

[18] I wish to express my sincere thanks to Pierre Bordreuil and Dennis Pardee, epigraphers of the Mission de Ras Shamra, who kindly made available to me their transliteration and copy of this unpublished Ugaritic text.

[19] See, most recently, Márquez Rowe, "The King of Ugarit, His Wife . . .," in which the full dossier is studied.

divorced queen had acquired in Ugarit since her marriage would remain there.[20]

As for the latter case of royal divorce, the identity of the king is not beyond doubt,[21] and nothing is known about the reason. The divorce provisions, however, are very similar. The divorcee was allowed to take everything that she had brought into his house (RS 17.335:2–6),[22] but not every item of her property, such as the manor she had acquired in Ugarit (RS 17.226), perhaps (part of) her bride-price.

Widows could remarry, as attested in RS 17.21/33.

5.2 *Children*

The father, as head of the family, appears as owner of his estate, having authority over his wife (or wives), his children, and his daughter(s)-in-law, if any, as members of his household. This is clearly shown in the provisions concerning rights of inheritance contained, for example, in records of emancipation or adoption (see below). The sale of a son by his father was permitted (as attested in RS 20.236), although we do not know the precise circumstances.

5.3 *Adoption*

5.3.1 A free man or woman could adopt a son during his or her lifetime.[23] Out of the seven more or less well preserved extant records of adoption,[24] four state that the adoption is in "*ammati* sonship" (*mārūt ammati*).[25] In one case (RS 17.88), the adoptive father had previously purchased the adoptee-to-be. Adoptees regularly appear as independent adults, being themselves parties to the transaction. Once the contract was concluded, they entered the adoptive father's

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[20] See Westbrook, "Mitgift," 279.

[21] See most recently Singer, "A Political History of Ugarit," 701ff.

[22] See also Westbrook, "Mitgift," 279.

[23] Cf. Boyer, "La place des textes d'Ugarit . . .," 302ff.; Rainey, "Family Relationships in Ugarit," 15f. Note that the verb used in these contracts differs according to whether the adopter is a man (*rakāsu*) or a woman (*leqû*) (as remarked by Nougayrol, *Ugaritica 5*, 173, n. 2, and van Soldt, *Studies* . . ., 426f., n. 52).

[24] RS 15.92, 16.200, 16.295, 17.21, 17.88, 20.226, and 29.100 (see the list provided by van Soldt in his *Studies* . . ., 90, n. 80).

[25] RS 15.92, 17.21, 20.226, and 29.100 (as noted below, one adoption in brotherhood is also qualified as an *ammati* sonship adoption). "Despite various proposals the word remains obscure" (van Soldt, *Studies* . . ., 500, n. 68).

household. The adopter was not necessarily without sons (RS 29.100), or he could envisage such a possibility (RS 17.21/33), in which case stipulations concerning inheritance rights were included.

5.3.2 Adoption could be terminated on the initiative of either adopter or adoptee. In the former case, the adopted son would leave with a sum of silver (100 shekels in RS 15.92) handed over by the adoptive father; in the latter, with empty hands. (Note the symbolic expression "he will wash his hands and leave" in RS 15.92.)[26] Upon the death of the adoptive father, the adoptee could repudiate his "adoptive mother," in which case she would take her marital property and leave the matrimonial home (cf. 5.1 above).

Examples of special or fictional adoption are also attested. In RS 16.295, it masks a gift or an otherwise irregular succession (the donor/adopter is the adopted son's maternal grandfather) and, in RS 16.200, an estate sale (the adopted son is said to acquire the adoptive mother's estate after contributing 500 shekels of silver to the household).

5.3.3 The example of a gift *ana kallūti* in RS 16.141 is not conclusive for the existence of matrimonial adoption.[27]

5.3.4 Adoption in brotherhood (*ana aḫḫūti*) is attested in three documents.[28] In one (RS 21.230), the adoption is said to be *ina mārūti ammati* (see 5.3.1 above). But it is clear from the content that we are dealing here with a contract of undivided ownership[29] in which both parties, the adopting sister and the adopted brother, enjoy equal status ("there is no elder and no younger among them both").[30] The adopted brother brought with him a large quantity of goods to the adopter's household.

5.3.5 As in adoption in sonship, dissolution could be the unilateral act of either party. If the adoptive brother or sister dissolved the

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[26] Cf. Yaron, "Varia on Adoption," 182; Malul, *Legal Symbolism* . . ., 97ff.
[27] See Cardascia, "Adoption matrimoniale . . .," 120f.
[28] Cf. Rainey, "Family Relationships in Ugarit," 20f. (RS 25.134 was not then published.)
[29] Cf. the clause on survivorship, also in RS 25.134.
[30] For the interpretation of this text, see Westbrook, *Property* . . ., 130ff.

adoption, the adoptee would receive a certain amount of silver, presumably his own contribution to the household (cf. RS 25.134) and his share of common property (RS 21.230; cf. also RS 25.134) from the adopter and leave. If it was the adoptee's initiative, he would leave only with his contribution (RS 25.134).[31]

6. Property and Inheritance

6.1 *Tenure*

Conveyances of landed property are by far the best documented. Royal land grants, for example, constitute about one third of the domestic legal evidence. These personal landholdings from the palace are basically described as "house" and "fields" but often also include olive groves and vineyards, typical of this Mediterranean area, as well as agricultural estates (Sumerogram [é.]an.za.gàr; Ug. *gt*).

This tenure was linked to the performance of (or exemption from) certain taxes and services (cf. *pilku* service above).

6.2 *Inheritance*[32]

6.2.1 On the death of the head of the household, his legitimate son(s) (either natural or adopted) would inherit the paternal estate (viz. "the house of the father") as well as the obligations or service associated therewith. If a legitimate son had predeceased his father but had legitimate sons of his own, the latter would be entitled to his share. This sequence is evidenced by the usual phrase "and to his (i.e., the alienee's) sons," sometimes followed by "and the sons of his sons" in deeds of conveyance, referring to the transfer of property and services.

6.2.2 The eldest son was entitled to an additional share in the inheritance of the paternal estate (see, e.g., RS 17.36 and RS 17.38, and cf. the explicit equal-status clause in the adoption in brother-

[31] Note the symbolic expression of uncertain meaning, "he will hold his ears," in RS 16.344 (see Yaron, "Varia on Adoption," 182f., and Malul, *Legal Symbolism . . .*, 100ff.).

[32] See Boyer, "La place des textes d'Ugarit . . .," 304f.; Klíma, "Untersuchungen zum ugaritischen Erbrecht."

hood RS 21.230 above). However, the father—or the widow, with due authorization—could disregard the law of primogeniture. In RS 8.145, not only loss of the first-born privilege but also loss of his inheritance share was provided as the penalty for a son mistreating his mother.[33] On the other hand, good conduct (RS 8.145, RS 15.89) or simple favoritism (RS 94.2168) could entitle the father or mother to transfer the right of the first-born or full inheritance to any of their sons.

6.2.3 Division of shares among the heirs could be predetermined by the father during his lifetime. At least two documents (RS 15.120 and RS 17.36) record shares allocated *mortis causa*. Also attested are gifts of shares with immediate effect, that is, emancipation, whereby the son(s) would automatically become free (*zakû*) of the obligations of the paternal estate (cf., e.g., RS 16.129 and the stipulations in RS 94.2168).[34]

6.2.4 If no arrangement was made by the head of the family, on his death the legitimate co-heirs could choose either to remain joint owners or to divide the paternal estate (e.g., RS 8.279bis or RS 15.90, see also the provisions in adoptions in brotherhood above).

6.2.5 Daughters are not mentioned as co-heirs in divisions of paternal estates (but cf. the joint co-ownership of sister and adopted brother in RS 21.230). They possibly could have rights on intestacy in the absence of brothers (cf. the provision in the gift of paternal property RS 15.138+/109+). In any case, it seems clear that the dowry (transferred with the returned bride-price) constituted the daughter's share from the house of the father.

6.2.6 The widow could apparently acquire inheritance rights only by express grant. In RS 8.145 the husband, in contemplation of death, gives his wife all his property and all that was acquired by

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[33] Cf. Mendelsohn, "On the Preferential Status . . .," 39; Klíma, "Sulla diseredazione . . ."; and Greenfield, "Care for the Elderly . . .," 312. With regard to the duties that a son was expected to fulfill in his future responsibility as head of the household, one should mention the passage from the Epic of Aqhatu, KTU 1.17 i 26–33 *et par.* (cf. van der Toorn, *Family Religion* . . ., 154f.).

[34] See Boyer, "La place des textes d'Ugarit . . .," 305.

her together with him, preferring her over their two sons (who actually had the right of succession). In another text (RS 16.250), the husband provides that his wife is to be "the owner of the house over her son." These were means designed by the husband to protect the otherwise secondary status of the widow, clearly evidenced in adoption contracts (see 5.3.2 above). On the other hand, the widower in RS 16.267 is said to have full rights over the property of his wife.

6.2.7 If a man died without legitimate descendants,[35] the estate would pass (often by the act of the king) to the nearest relative. In RS 15.89, the property passes to the paternal niece; in RS 16.242, to the paternal nephew; and in RS 16.295, from maternal grandfather to grandson, with subsequent adoption (see 5.3.2 above).

7. Contracts

7.1 *Gift*

Royal grants of real estate are by far the largest group of texts. The transfer of ownership is expressed, as in other deeds of conveyance, by the verb "to give" (*nadānu*) or, more commonly, by the hendiadys "to take and give" (*našû-nadānu*). The property is very briefly described, by the name of the former owner and sometimes its geographical location, but no measurements or boundaries are given. In a few examples, the gift consists of towns (e.g., RS 15.114) and/or their taxes (e.g., RS 16.153).

In some cases where the king is the donor, he receives a countergift (*kubbudātu*), namely an amount of silver or gold, from the other party (suggesting that these acts could be interpreted as sales). More often than not, gifts are explicitly heritable, as are also the rights and duties of the recipient with regard to the property (i.e., *pilku* service).[36]

As for non-royal gifts, women appear relatively regularly as recipients: from the husband (e.g., RS 16.253) or from the father-in-law

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[35] Possibly designated by the term *nayyālu* (cf. Nougayrol, "Textes de Ras-Shamra . . .," 185, who preferred later the generally accepted interpretation of "défaillant" in PRU 3, p. 29).

[36] See Márquez Rowe, "Royal Land Grants . . ."

(RS 15.85), perhaps as a means to compensate them for their secondary status in intestate succession.

7.2 *Sale*[37]

7.2.1 Sale documents can be styled either *ex latere venditoris*, using the expression "to give for silver" or also often "to release for silver" (*pašāru ina kaspi*), or *ex latere emptoris*, expressed by the phrase "to receive for silver" (*leqû ina kaspi*). Where land is concerned, surface measurements are sometimes given. Most of them belong to the category of royal deeds (in which the king presides over the transaction), and they accordingly have the same format as gifts (e.g., the legal rights and duties of the transferee). Indeed, the king may also appear as transferring the property after the transaction between the two parties has been completed (see 2.2.2 above).

7.2.2 In some cases, the sale actually deals with the practice of redemption. This repurchase is expressed by the phrase "to redeem for money" (*paṭāru ina kaspi*, e.g., RS 8.213bis). It has been suggested that the verb *ṣamād/tu* (often rendered by the logogram šám.til.la, lit. "in full payment"), used in sale documents to denote definitive transfer of the property to the buyer, means precisely definitive alienation of the property—that it is no longer redeemable.[38]

7.2.3 The few examples of sale of movables concern sales of persons (cf. the international sale of a horse in RS 16.180). Redemption of people from foreign hands, probably enslaved for debts, is also attested (e.g., RS 16.191+ = KTU 3.4).

7.3 *Exchange*

Exchange documents can be formulated as mutual conveyances (*ex latere alienatoris*, with the verb "to give") or acquisitions (*ex latere emptoris*, with the verb "to receive" in RS 16.158). The nature of the transaction can also be recorded at the beginning of the text with the expression "to make an exchange" (*pūḫata epēšu*, e.g., RS 16.140; cf. the Hurrian version *pūġugar* in RS 15.86).

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[37] See Kienast, "Kauf," 532–37.
[38] Westbrook, *Property . . .*, 114f.

All of the documents are royal deeds and concern real estate, so that we find again the same clauses of guarantee and service attested in royal gifts and sales. (Note in RS 16.158 the transfer of a bride-price in exchange (*kīmū*) for the paternal house.) As in sale documents, the king sometimes appears as definitively transferring ownership in the property to the new holders. One should finally note here that recipients of royal grants are often found as contracting parties to "royal" sales and barters.

7.4 *Suretyship*[39]

Seven records are concerned with suretyship. The sureties (Ug. *ʿrbnm* in RS 15.128 = KTU 3.3, spelled lú.meš *ú-ru-ba-nu* in RS 16.287) are said to undertake to be answerable for the obligation (presumably a debt) of another. (The verbal expression in Ug. is *ʿrb b*, and in Akk. *qātāti ṣabātu*.) Only in one text is there mention of the loan and the creditor (RS 16.287); in the others, it is reasonable to assume that the king was the creditor.[40] As for the sureties, they appear to be related either by family or place of origin with the debtors, thus showing the principle of collective responsibility present in this kind of contracts.

The usual contingency provided for is the flight of the debtor(s) to a foreign country, in which case the surety (or sureties) is liable to pay a sum of silver. Note that in one case (RS 19.66 = KTU 3.8), the sureties are also liable to be sold into Egypt (cf. 7.2.3 above: redemption of people from abroad).

8. Crime and Delict

Both Akkadian terms designating "crime" or "delict," *arnu* and *ḫīṭu*, are attested in our sources. The former appears only once in the expression *bēl arni*, "criminal," to qualify the man whose estate the

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[39] See Boyer, "La place des textes d'Ugarit . . .," 305ff.; Milano, "Osservazioni . . .," 186–90; and Hoftijzer and van Soldt, "Texts from Ugarit . . .," 189–99. The Ugaritic expression *bunušu malki*, taken to designate one of the "social classes" of Ugarit, probably referred to "antichretic pledges"; see Márquez Rowe, "The King's Men . . ."

[40] On the basis of the find-spot of the texts, viz. the royal archives, and the recipient of the fine, viz. the king himself. See Hoftijzer and van Soldt, "Texts from Ugarit . . .," 199, who also refer to the absence of witnesses in most of these contracts as a possible further argument in favor thereof.

king has "taken (perhaps, in this case, confiscated) and given" to a new holder (RS 16.145).

Under the category of *ḫīṭu*, qualified as *ḫīṭu rabû* "great crime," we find the forgery of the dynastic seal and the subsequent forgery of royal legal documents (viz., titles to property). Another "great crime" is the ground for the dynastic divorce of ʿAmmiṯtamru II and the Amurrite princess (see above), and *ḫīṭu* is again used to describe the plot against King ʿAmmiṯtamru II by his two sons.

The forgery was punishable with death, although the king, perhaps in an act of clemency, decided to send the culprits into exile (RS 16.249). Exile, too, was the punishment for the crimes committed by ʿAmmiṯtamru's sons and wife, though in this case, he later changed his mind and executed her in spite of the possible diplomatic consequences.

Finally, one should also mention here the plot against the king by a scribe who took over one of the towns of the kingdom. He was put to death by a certain Gabānu, who was rewarded by the king with a gift of real estate and exemption from service (RS 16.269).

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ANATOLIA AND THE LEVANT

CANAAN

Ignacio Márquez Rowe

Sources of Law

To date, the whole of the second millennium is represented by two isolated legal texts found at two Canaanite sites, Hazor and Shechem. Of these, the latter preserves no more than the names of some witnesses to a lost transaction.[1] The two documents belong to the end of the Middle Bronze Age or, in other words, to the late Old Babylonian period. The number of Old Babylonian inscriptions found in the region is altogether very small.

Evidence from the Late Bronze Age consists almost exclusively of letters. In Canaan proper, only a handful of texts have been discovered. To these belong the few Akkadian letters unearthed at Taanach dating to the middle of the fifteenth century and at Kāmid el-Lōz dating to the following century. The latter are related to the undoubtedly more important collection of Akkadian letters from Canaan, namely those found at Akhetaten, modern Amarna, the capital of ancient Egypt founded by Amenophis IV/Akhenaten.

These texts or groups of texts will be dealt with separately according to their historical context. The Hazor tablet will be treated individually.

The Hazor Tablet[2]

The tablet found out of context at Hazor is not fully preserved and records in Akkadian a dispute between three men and a woman. The document is not sealed; the text is phrased in objective style and in the past. The editors of the text observed certain affinities with the Old Babylonian litigation documents from Alalakh. Indeed, the structure and vocabulary are similar. First, the claim and subject matter

[1] Böhl, "Keilschrifttafeln," 322ff. A similar fragment is also all the legal material we have from neighboring Qatna; see Virolleaud, "L'ancienne Qatna," 293f.

[2] Hallo and Tadmor, "A Lawsuit from Hazor."

is recorded, namely, property rights to two orchards and a house. Then both parties are said to "enter before the king" (*ana pāni šarri erēbu*), presumably the ruler of Hazor, who finally decides in favor of the female defendant. Before the break in the tablet, the text stipulates the pecuniary penalty imposed on any of the parties who should raise claims again.

The text, though brief and isolated, thus provides some information on the law of late Old Babylonian Hazor. The king, sitting alone, functions as a court of first instance. There is private ownership of property, and women have the capacity not only to own property but also to appear in court as litigants on their own behalf.

The Taanach Letters

Only two terse indirect references of a legal nature can be found in this small corpus.[3] Letter no. 2 mentions laconically what seems to be a diplomatic arrangement for a marriage (*hatnūtu*).[4] The author of letter no. 1 is concerned, among other matters, with the redemption of a slave girl. The means of redemption explicitly consists of the payment of ransom money (*kasap ipṭeri*).

The Amarna Letters

The bulk of the correspondence in the archive was written by the Egyptian vassal rulers in Syria and Palestine. These letters are mostly concerned with the local and international political situation. Limited information may be gleaned on the Egyptian administration of this Asiatic territory as well as some aspects of legal practice.

The Administration[5]

The Egyptian provinces in Western Asia amounted to two or perhaps three, with capitals in Gaza and Kumidu and possibly also Ṣumur. At the head of each province, the pharaoh had appointed a high official or governor (Akk. *rābiṣu*; WSem. *sākinu*) who presumably had responsibility for tax collection, public works, and the administration

[3] Hrozny, "Keilschrifttexte aus Ta'annek," nos. 1 and 2.
[4] Cf. Na'aman, "Pharaonic Lands . . .," 180.
[5] Cf. Moran, *The Amarna Letters*, xxviff. (with the most relevant literature).

of justice. Beneath them were the native local rulers, more often called mayors (*ḫazannu*), who as representatives of their own vassal city states were responsible of those same obligations, especially paying tribute and taxes, and also, for example, for supplying provisions for Egyptian troops passing through their territory. Mayors also had to be appointed or officially recognized by the pharaoh.

The Courts

Two different courts are mentioned in the Amarna correspondence. One was the pharaoh himself who constituted the highest court. He only appears as judge in cases of high crimes or treason by vassals, such as those allegedly committed by the rulers of Amurru. The pharaoh would summon the accused vassal to his presence to answer the accusations. In case of refusal (cf. the ultimatum in EA 162), he could send a task force to seize the offender. Such crimes carried the death penalty, and in all likelihood execution was within the exclusive competence of the king.

If the litigation did not concern grave capital offenses, then the pharaoh would dispatch one (or more) official or governor (*rābiṣu*) to decide *in situ* on his behalf. That is, for example, what Rib-Hadda of Byblos, as a party to a dispute, requests from his lord (EA 116:30, 118:15, and perhaps also 117:66).

Functions

Compulsory Service

Aside from the obligations mentioned above, vassals were required to provide their overlord with certain special services. Local rulers furnished personnel to carry out works for the pharaoh, such as cultivating his lands (e.g., in EA 365, in which the term spelled lú.meš *ma-as-sà*.meš is generally translated "corvée workers"),[6] or to serve (cf. the locally coined verb *arādu* < *ardu*) in other military duties, such as protecting or guarding places and caravans or joining the pharaoh's troops.

Petitions

The Amarna letters contain without doubt the longest and most repeated set of petitions from a subject to his lord known to us from

[6] See Mendelsohn, "On Corvée Labor . . .," 32f.; Rainey, "Compulsory Labor Gangs . . .," 194f.

the ancient Near East. Indeed, the correspondence of Rib-Hadda of Byblos, by far the largest in the corpus, basically consists of complaints and accusations of the crimes and abuses committed against him and the pharaoh, especially by the rulers of Amurru, namely Abdi-Ashirta and, later, his son Aziru.

Rib-Hadda and other rulers, for example, Abdi-Heba of Jerusalem, demanded from the pharaoh immediate justice and punishment. "Is there no judgment on their lives?" Rib-Hadda would ask the pharaoh rhetorically in EA 89:14 (following Na'aman's reading), with reference to the criminals who had usurped the throne of Tyre.[7]

Litigation

Following the accusations of some of his Canaanite vassals, the pharaoh as highest court would take various measures. First, he would interrogate the accused party, as expressly demanded, for example by the plaintiff Abdi-Heba in EA 289:10 against his rival Milkilu: "Why does the king not interrogate him (*išalšu*)?" The declarations of the accused would presumably be spoken in the presence of the dispatched or resident Egyptian governor(s) and would probably be accompanied by the taking of an oath (cf. EA 286). So, for example, Aziru's sworn statement in EA 261: "May your gods and the Sun be witnesses: I was residing in Tunip."

Faced with such accusations, the alleged offenders would generally reply that they are being slandered (*ikkalū karṣiya*) in the presence of the king (EA 286:6f.; cf. also EA 252:14).

In some cases, however, especially if the accusations did not cease (like Rib-Hadda's) and the pharaoh did not find the answers satisfactory, he could summon the accused to his court in Egypt. That is what is required of Aziru, as deduced from several letters (cf. especially EA 162). As a matter of fact, Aziru had already once been summoned and personally interrogated: "On my arrival in the presence of the king, my lord,"—he declares in EA 261—"I spoke of all my affairs (*amātē*) in the presence of the king, my lord." The same Rib-Hadda, this time accusing one of the pharaoh's commissioners, advises his king to fetch him, examine him (*dagālu*), and find out about his affairs (*awātē lamādu*).

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[7] See Na'aman, "Looking for the Pharaoh's Judgment," 145ff.

Rib-Hadda once more appears as a litigant against another mayor in a case of a different nature. His lawsuit (*dīnu*), quoted in EA 116, EA 117, and EA 118 (cf. also EA 119 and EA 120), seems to be concerned with some property he had shipped to the king, which had been illicitly seized or confiscated by his rival Yapah-Haddu.[8] The trial had to be expressly presided over by one Egyptian governor (or more) duly sent by the king himself. The governor or governors would then hear (*šemû*) his case (*awātu*) and decide (*parāsu*).

Personal Status

1. *Free persons*

A class that is sometimes mentioned in the texts is called *hupšu*, an ambiguous term which is generally translated as "peasantry." The nobles are referred to by Rib-Hadda as the "lords of the city" (*bēlū āli*) in EA 102:22 and EA 138:49.

2. *Slaves*

The same logographically written term (ìr) was used by the vassal rulers to designate themselves vis-à-vis their lord and for real slaves dealt with as property, as in EA 99, where they are qualified as "of good quality" and are sent among other items to the pharaoh as part of a dowry (cf. EA 120). The slaves supplied in Amarna are of two kinds. On the one hand, we find prisoners of war, or people seized by the enemy, as reported by some vassals. On the other hand, mention is made of free people who are sold into slavery as a result of the famine conditions and the critical economic situation of the population. Sons and daughters are sold for provisions, as Rib-Hadda insistently reports (cf., e.g., EA 74, EA 75, EA 81), as well as soldiers, according to EA 108 and EA 109. Both prisoners and debt slaves could be redeemed by payment of ransom money (cf., e.g., EA 109, EA 116, and EA 292).

Sale

Sale of persons and personal property, usually to obtain provisions, is simply described with the verb *nadānu*, "to give."[9] The ransom

[8] See the interpretation of Na'aman, "Looking for the Pharaoh's Judgment," 150–57.

[9] Note in EA 108 and EA 109 the expression *nadānu ina luqi* used for the sale of soldiers, tentatively translated by Moran as "to sell into captivity."

price (*kasap ipṭeri*) seems to be fixed at fifty shekels per person (cf., e.g., EA 109 and EA 114), although other prices are attested (e.g., 30 shekels and the abusive, and accordingly protested, 100 shekels in EA 292).

Pledge[10]

In EA 270, Yanhamu, one of the Egyptian governors, demands from Milkilu, ruler of Gezer, his wife and children as pledges for a debt of two thousand shekels of silver. Under the famine conditions provoked by war, the distressed heads of household among the population had to sell their children into servitude, called "our sureties" (*qātātūnu*) by Rib-Hadda in EA 74 (following Liverani's restoration *qa-<ta>-tù-nu*), as well as their household furnishings.

With regard to pledge, mention should be made of one of the figurative expressions found in the Amarna vassal correspondence, namely "like a cauldron (held) in pledge," or literally "like a cauldron of debt (*ḫubulli*)." The expression occurs in two letters from Gezer (EA 292 and EA 297) and is obviously meant to illustrate the distressing conditions endured by the ruler and his population.

Hire

EA 112:43–47 relates how Rib-Hadda paid thirteen shekels of silver and a pair of cloaks as "the hire" (*agrūtu*) of one ʿApiru man to bring his tablet to Ṣumur. Apparently, the hire of a man to send messages was a common practice (see ll. 52ff.).

Crime and Delict

The word for "crime," *arnu*, which is often found in the Amarna vassal correspondence without further qualification, seems in this context to refer to political treason.

In all likelihood, political treason was punished by death (see, e.g., the clear rhetorical question of Rib-Hadda to his lord in EA 85:14 discussed above). This seems to have been the fate of the rebel Abdi-Ashirta of Amurru, after the pharaoh had sent his troops to seize him.[11] And, indeed, this seems to be the fear of Aziru (and the rea-

[10] See Liverani, "The Wife of Milki-ilu . . ."
[11] See Na'aman, "Praises to the Pharaoh . . .," 404f.

son for his delay) when he is given an ultimatum to appear before the pharaoh to respond to the accusations of Rib-Hadda. No doubt, execution was supervised by the king himself and consisted in cutting off the head, as may be deduced from the eloquent passage of the pharaoh's ultimatum to Aziru in EA 162:35–38: "If for any reason whatsoever you prefer to do evil (*lemuttu*), and if you plot evil (and) treacherous plans (*awātu sarrūtu*), then you, together with all your family, will die by the king's axe (*haṣṣinnu ša šarri*)."[12]

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[12] Note that in EA 367, the pharaoh explicitly states that his planned military expedition against Canaan is meant to cut off the heads of the enemies of the king.

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INTERNATIONAL LAW IN THE SECOND MILLENNIUM: MIDDLE BRONZE AGE

Jesper Eidem

1. Sources of International Law

Material for the early second millennium is particularly rich. Abundant evidence for international relations is provided by archives of diplomatic correspondence and some international treaties, excavated particularly in northern Syria and Iraq (at Mari, Rimah, and Leilan).[1] Earlier evidence of a similar kind is much sparser but seems likely to parallel later patterns.[2]

2. The International System

2.1 The international horizon for early second millennium Mesopotamia included Palestine,[3] Syria, Iraq, central and eastern Anatolia, western Iran, and areas bordering the Arabo-Persian Gulf.[4] Official contacts with areas outside this horizon, most prominently Egypt, are not attested.

2.2 The political landscape within this region was characterized by complex interrelations between different levels of organization, which may be summarized as traditional, geographical, and contemporaneous variables. The political inheritance from earlier periods was a strong regionalism with individual city states as basic entities but with episodes of territorial and imperial formations, providing ready inspiration for ambitious kings. In the mountainous periphery, urban

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[1] For Mari, see the series Archives Royales de Mari (ARM); for Rimah, see Dalley et al., *Tell al Rimah* . . .; for Leilan, see the publications of Eidem below.
[2] Biga, "Rapporti diplomatici . . ."
[3] See Bonechi, "Relations . . ."
[4] Eidem and Højlund, "Assyria and Dilmun . . ."

centers were fewer and smaller than in the lowland, and political formations devolved primarily on ethno-linguistic divisions and their aristocratic elites.[5] On a contemporaneous level, a peculiar situation obtained in lowland Mesopotamia and Syria, where an as yet poorly understood process of conquest had introduced Amorite dynasties in most city states. The newcomers belonged to different ethnic groups, often referred to as "tribes" in the modern literature, and these divisions clearly had some influence on international alliances and conflicts.[6] Similarly, the Amorites may have introduced particular standards and procedures in international relations, like the much-discussed rituals attending conclusion of treaties (see 3.2 below). It must be stressed, however, that the impact of these contemporaneous influences vis-à-vis traditional standards is difficult to define, due to the uneven nature of our documentation.

2.3 *Outline of International Relations*

Although the power of Mesopotamian kings was balanced in varying degrees by local elites, assemblies, and public opinion, the kings were usually the main agents in international relations, and for purposes of this brief survey we must treat them as supreme agents of their states. Relations between rulers were described with kinship terms. Thus, the most important kings were "fathers" in relation to their vassal "sons" and addressed each other as "brothers." The sources provide interesting examples of how political changes were paralleled on this level and could give rise to fierce disputes.[7] In the early eighteenth century, the most powerful states were those centered on Halab (Aleppo), Qatna (Tell Meshrife), Mari, Babylon, Eshnunna (Tell Asmar), and Ekallatum (near Assur). The kings of these states would have a large following of vassal kings, bound to them by treaty. The major powers could form alliances, and vassals could contract alliances with other kingdoms and their own vassals, provided that the agreement did not run counter to stipulations in their treaty of vassalage. Treaties were concluded both as general alliances and for distinct ad hoc purposes. General alliances were often affirmed by establishment of affinal kinship ties in the shape of royal marriages, the more powerful king normally assuming the

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[5] Eidem and Læssøe, *Shemshāra I.*
[6] See Charpin and Durand, "Fils de Sim'al . . ."
[7] Lafont, "L'admonestation . . ."

role of bride-giver. Thus two successive kings of Mari married daughters of the kings of Qatna and Halab, respectively, while Zimri-Lim of Mari married off a nestful of daughters to his vassals in northern Syria.[8] More specific treaties could be concluded to establish peace, settle border disputes, or regulate grazing rights. A particular type of international agreement could be concluded to regulate long-distance trade (see 3.5 below).

A king would then, at any given moment, be bound by a whole set of formal non-domestic obligations.[9] Given the hectic political milieu with rapidly changing alliances and brisk succession of kings in many of the city states, it follows that such obligations were violated from time to time. To what extent the threat of human retribution or the divine sanctions invoked when formal agreements were concluded would deter would-be violators depended on circumstances and on individual integrity and temperament. No independent human agency monitored such matters, but inveterate turncoats would obviously risk severe and universal censure. A particularly infamous example is provided by King Jashub-Addu of Ahazum (in northeastern Iraq), who changed sides five times within three years: he was described as "a mental case" and a man "who concludes alliances as if in his sleep."[10]

3. Treaties

3.1 *Procedure*

Our sources provide many concrete examples of conclusion of treaties, but often the procedures are described in tantalizing *pars pro toto* fashion, which has made elucidation of comprehensive patterns difficult. Recently, however, new materials have provided a firmer basis for the study of these problems.[11] Just as power relations were described as family relations writ large, so the conclusion of international agreements was basically a grander version of any formal agreement concluded by oath. As such, the basic and traditional procedure was oral. The few surviving treaty texts provide no clear pattern for the use or non-use of written documents in the proceedings. Although

[8] Lafont, "Les filles . . ."
[9] Joannès, "Le traité . . ."
[10] Læssøe, "Aspect . . ."; Eidem and Læssøe, *Shemshāra Archives*, nos. 1–4.
[11] Eidem, *Leilan*, pt. II.1, contains a detailed discussion of these problems.

different sets of procedures may be envisaged for different kinds of treaties, our evidence again does not provide clear patterns, but we can, with all due reservation, outline some standard procedures.

3.2 *The Standard Procedure*

The most complete description of treaty procedure comes from a Mari letter (ARM 26/2 404), where an official describes a treaty concluded between kings in the Sinjar region of northeastern Iraq (Atamrum of Andarig and Ashkur-Addu of Karana). The procedure included the following stages:

(a) Atamrum sent an envoy to invite Ashkur-Addu to a summit in a border town.
(b) Ashkur-Addu sent back his own envoy to accompany Atamrum and his vassals to the summit. Numerous representatives of both city states and envoys from major powers, like Babylon and Eshnunna, were present.
(c) Discussion of the treaty and its terms took place.
(d) Each party then stated his formal terms as demands to the other party.
(e) A sacrificial animal, (usually) a "donkey" (*ḫaǧǧārum*), was slaughtered (*qatālum*). This provided blood for a ritual intended to symbolize the new bond between the parties and to stress its seriousness.
(f) Exchange of oaths by the god(s) (*nīš ilim/ilāni*), which involved reference to the terms exchanged under (d), and in presence of divine statues or symbols brought for this purpose. The deities invoked were usually subsumed under the general description "god/gods," but from treaty texts it is known that they included international gods, regional deities, and deities specific to the states of the treaty partners.
(g) Festive conclusion, which included a drinking ceremony, and exchange of gifts.

3.3 *The Long-distance Procedure*

This was used when practical circumstances prevented summits like the one described above, or in the case of more restricted or confidential agreements. In particular, it was used by the major powers, whose kings rarely met face to face, due to accompanying problems of etiquette and security.[12] In general, this procedure involved the same structural elements as the standard procedure. The kings would exchange divine symbols and send envoys to act as their representatives. Instead of the ritual slaughter of a sacrificial animal, a ceremony

[12] For an exception see Villard, "Un roi de Mari . . ."

referred to as "touching the throat" (*napištam lapātum*) had to be performed by each king. This ceremony has hitherto been understood as a purely symbolic gesture of pledge but new evidence from Tell Leilan shows that actual blood samples of kings could be transported and exchanged and, most likely, played a role in the ceremony.[13]

3.4 *Terms*

Most references to treaties in letters are not specific as to the exact terms of the agreement but concern general forms of military and political alliances. Specific ad hoc agreements include a defensive treaty between Mari and Babylon against Elam.[14] The best evidence for the contents of political treaties comes from actual treaty documents. A few fragments of such material have been found in southern Mesopotamia, but the only substantial pieces are from Mari[15] and Leilan.[16] The material from the latter site includes major portions of five different treaty tablets, which originally contained several hundred lines of text. Four of these compositions relate to political alliances between kings of Leilan and neighboring kings and have the same basic format and contents. Prefixed by a lengthy adjuration formula that lists the gods to be sworn to are stipulations about general cooperation, followed by long sections with curses. The preserved clauses mainly concern six themes: (1) purpose of the treaty, (2) non-annulment clauses, (3) auxiliaries and military matters, (4) political loyalty, (5) vassals, and (6) treatment of citizens from the other city state.

3.5 *Old Assyrian Commercial Treaties*

The important activities of Assyrian merchant firms trading with Anatolian kingdoms occasioned the city of Assur to conclude treaties with these kingdoms, specifying mutual obligations, including the tariffs and tolls applying to imported goods, and security for the traders. Evidence for this is found in Old Assyrian letters and now also in two examples of treaty texts, from Kanesh itself, and from Leilan.[17]

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[13] Eidem, *Leilan*, pt. II.1.2.2.

[14] Charpin, "Alliance contre l'Elam . . ."

[15] Durand, "Fragments . . ."; Charpin, "Une traité entre Zimri-Lim . . ."; Joannès, "Le traité de vassalité . . ."

[16] Eidem, *Leilan*, Part II. See, provisionally, Eidem, "Archives . . . de Tell Leilan," "Leilan Tablets . . .," "Old Assyrian Treaty . . .," and "Leilan Archives . . ."

[17] See respectively Bilgiç, "Ebla . . .," and Eidem, "Old Assyrian Treaty . . ."

3.6 *The Role of Treaty Documents*

The use of written documents is attested in several examples of the long-distance procedure (cf. 3.3 above). All extant treaty tablets from this period contain only undertakings made by one party to the treaty and drafted by the other party. In principle we must therefore assume a system with two parallel documents. Letters refer to first "small" and then "large" tablets being exchanged between kings concluding a treaty, which has been interpreted as drafts and final documents, respectively.[18] It must be emphasized, however, that extant evidence does not support entirely clear patterns for the use of treaty documents. No parallel set of documents relating to the same treaty has yet been found. One treaty tablet from Leilan relates to a treaty concluded at a meeting similar to the standard procedure (cf. 3.2 above), showing that tablets were not used exclusively with the long-distance procedure. Similarly, the exact nature of the "small" tablet, used in the *lipit napištim* ceremony (cf. 3.3 above), remains to be elucidated. The known treaty tablets are not supplied with seals, and must be considered drafts or scripts for oral performances rather than actual legal documents. Apparently, written documents were not systematically used in treaty proceedings, but occasionally circumstances, such as the relative complexity of a specific situation, made them practical tools.

4. Customary International Law

4.1 *Citizenship*

All individuals enjoyed certain rights of citizenship, and except in times of war, these included protection abroad. This was a main theme in political treaties, where the partners promised to liberate and extradite citizens illegally detained or abducted on their territory. No clauses concerning rights of asylum are preserved. Especially in northern Mesopotamia we find groups of "outlaws" (*sarrārum*), who had forfeited the right to citizenship and often lived as marauders. Evidence shows that such people could reenter society and also that it was possible to change citizenship.[19] Among the many special cat-

[18] Charpin, ARM 26/2, pp. 144f.
[19] Durand, "Unité et Diversité . . .," 117f.

egories of people in the sources, mention may also be made of "emigrants" (*ḫābirū*) and professional mercenaries (*ḫabbātum*).[20]

4.2 Embassies and envoys traveled constantly between the major and minor courts of the time, and such regular diplomatic contact was an important component in international relations.[21] Often the envoy (*mār šiprim*) was not a mere messenger but a real ambassador or "plenipotentiary" who had negotiating powers. He usually carried rich gifts and was often accompanied by an armed escort. Envoys needed permission to proceed when passing border points in transit. Arriving at their destination, they would present themselves at the palace, receive quarters in a special area (the *bīt napṭarim*), and be supplied with all their material needs. Accorded a formal interview with the king, gifts would be exchanged and the message delivered, read aloud from the letter(s) brought. Envoys would be invited to royal banquets, and be accorded honorary "seats" (among the *wāšib kussîm*). Where difficult matters were at issue, interviews could be multi-staged, and several sources provide examples of animated or stormy negotiations. Varying levels of courtesy or hospitality offered to envoys could create scandalous incidents and complaints. Allowed to depart with a brief from his host, the envoy would be accompanied by a guide (the *ālik idim*), who was to travel with him back to his capital and witness the correct delivery of his message. Our sources are full of incidents where envoys also engage in secret or spying activities. During times of trouble, envoys might not be able to move freely, and kings might avail themselves of merchants, who enjoyed rights of neutrality, to carry messages and collect information.[22]

4.3 The lingua franca of the period, Akkadian, was understood and used in the whole region, by members of many ethno-linguistic groups. Warfare was endemic, and accompanied by harsh measures and the enslavement of captives, if not ransomed. Mistrust and treason were rampant, but at the same time, the traditions and standards of international conduct were a strong stabilizing factor.

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[20] See Eidem, "North Syrian Social Structure . . ."
[21] Lafont, "Messagers . . ."
[22] Charpin and Durand, "Aššur . . ."

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INTERNATIONAL LAW IN THE SECOND MILLENNIUM: LATE BRONZE AGE

Gary Beckman

1. Sources of International Law

1.1 Texts of more than thirty treaties concluded during the fifteenth through thirteenth centuries have been preserved on cuneiform tablets from the archives of the Hittite kings at their capital Ḫattuša (modern Boğazköy).[1] Almost all of these copies are on clay tablets and are more or less fragmentary; one, however, was engraved on a tablet of bronze and is intact. From Alalakh/Atchana have come two treaty tablets, one extremely damaged, dating to the fifteenth century.[2] The only other text of a treaty available to us was incorporated in a royal inscription of Ramesses II (thirteenth century) written in Egyptian hieroglyphs on stelae recovered at Karnak and in the pharaoh's funerary temple (the Ramesseum) at Thebes.[3] Treaty relationships whose written documentation has been lost to posterity are also alluded to in texts of other genres.[4]

1.2 Codicils elaborating on the terms of treaties have come to light among the cuneiform records of Ḫattuša and those found at the north Syrian port of Ugarit/Ras Shamra.[5]

1.3 Edicts issued by the Hittite Great King to regulate the affairs of vassals and similar decrees emanating from the king of Carchemish,

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[1] For a convenient list of these sources, see Beckman, *Hittite Diplomatic Texts*, 6–8, hereafter cited by title.

[2] Wiseman, *Alalakh Tablets*, nos. 3 and 4.

[3] The Egyptian-language treaty has been edited most recently by Edel, *Vertrag* . . .

[4] Diplomatic correspondence is particularly rich in references of this sort. For instance, note the mention of formal relations between Ḫatti and Babylonia in *Hittite Diplomatic Texts*, no. 23, §4. In EA 24 iii 109–19 (transl. Moran, *Amarna Letters*, 69, §26) the sender seems to quote from a treaty currently in force.

[5] See, for example, *Hittite Diplomatic Texts*, nos. 18A and 28A.

who functioned as Ḫatti's viceroy for Syrian affairs, are known from Ḫattuša and Ugarit.[6]

1.4 Various compositions of Hittite monarchs, particularly the "annals" of several kings,[7] and Egyptian royal inscriptions[8] provide information on international relations: on hostile and peaceful interaction with subordinate and independent foreign polities, on trade, on the treatment of fugitives, messengers, and other foreigners. The inscription on the statue of King Idrimi of Alalakh describes the conclusion of a written peace treaty with his suzerain, the king of Mittanni.[9]

1.5 Diplomatic correspondence, which has been recovered in significant quantities at Ḫattuša,[10] Ugarit,[11] and Akhetaten/Amarna,[12] and as stray finds elsewhere,[13] presents us with primary documentation of international communication, negotiation, and conflict resolution.

1.6 Miscellaneous texts from Ugarit,[14] Egypt, and especially Ḫattuša also present scraps of information relevant to the conduct of international relations.[15]

2. The International System

During the Late Bronze Age in western Asia, the state was conceived of as a household on a grand scale. Within every family, the senior male exercised full authority over the social and economic activities

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[6] *Hittite Diplomatic Texts*, nos. 29ff.

[7] The materials from the Hittite archives have been ordered by Laroche, *Catalogue* . . . Texts particularly useful for the present discussion are "The Deeds of Šuppiluliuma I" (transl. H.A. Hoffner in Hallo and Younger, eds., *Context* . . . I, 185–92) and "The Ten-Year Annals of Muršili II" (transl. R. Beal, in Hallo and Younger, eds., *Context* . . . II, 82–90).

[8] See Redford, *Egypt, Canaan, and Israel* . . ., chaps. 6–8.

[9] Smith, *Idri-mi* . . ., 16, ll. 42–58.

[10] See *Hittite Diplomatic Texts*, pt. 2.

[11] See the sources listed by Klengel, *Syria* . . ., 100–102.

[12] All of these texts have been translated and commented upon by Moran, *Amarna Letters* (texts cited by EA number).

[13] Owen, "Akkadian Letter . . .," and "Pasūri-Dagan . . ."; Singer, "New Hittite Letter . . ."

[14] See Freu, "Ugarit et les puissances . . ."

[15] Sections 5, 19–21, and 23 of the Hittite Laws seem to imply the existence of some sort of formal relationship between Ḫatti and the western Anatolian land of Luwiya/Arzawa, already in the Old Hittite period (sixteenth century)—see Hoffner, *Laws* . . ., 171.

of all members, including those of his wife or wives, his children and their spouses and offspring, and non-free dependents ("slaves"). In principle, the monarch of each polity likewise controlled the lives of all men and women in his population in the interest of the deity or deities who had entrusted him with his office. This patrimonial ideology[16] was further applied to the relations among states. The ruler of a small city-state or country subordinate to the king of a major political formation functioned as the "slave" of his "lord." On the other hand, the proprietors of mutually independent realms addressed one another as "brother,"[17] and presented their dealings as a discourse of "brotherhood." The primary functional aspect of this metaphor was that of equality; goodwill was not necessarily implied. Brothers can and do quarrel.[18]

2.1 *The General Situation*

Several major powers dominated the world of the eastern Mediterranean and the Fertile Crescent at the close of the Bronze Age. At various times during this period these states included Egypt, Mittanni, Ḫatti, Babylonia, Assyria, and perhaps Aḫḫiyawa (the realm of Mycenaean Greeks).

2.2 *The Great Powers*

Only the rulers of states that exercised hegemony over others while for their part recognizing no overlord were entitled to call themselves "Great Kings"[19] and to refer to their lands as "Great Kingdoms." Acceptance into the "Great Powers Club"[20] was achieved through practical recognition on the part of the rulers of current members that a polity had attained the requisite status. On some occasions, such recognition was hotly contested.[21]

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[16] On the application of this ideal type to the ancient Near East, see Schloen, *House of the Father* . . ., 49ff. On its application to international law, see Westbrook, "International Law . . ."

[17] In practice, most instances of this usage are found in records of dealings between the major powers, since in principle relations among vassals were to be carried out through the agency of the imperial governing structures rather than conducted directly by the parties themselves.

[18] Liverani, *International Relations* . . ., 136.

[19] See Artzi and Malamat, "Great King . . ."

[20] See Liverani, "Great Powers' Club," 15–27.

[21] Note *Hittite Diplomatic Texts*, no. 24A, in which a Hittite king rebukes an Assyrian monarch for having the temerity to address him as an equal. In EA 9, a Babylonian

2.2.1 *The Hittite Empire*

Although it secured its rank among the major realms only with the demise of Mittanni in the mid-fourteenth century, the Hittite empire is the most important state for consideration of international relations during the Late Bronze Age as a whole because of the wealth of information contained in its archives.

2.2.1.1 *Ḫatti Proper*

The Hittite homeland in central Anatolia was composed of a number of "lands"—the "Upper Land," the "Lower Land," Ḫakpiš, and so forth—each governed by a member of the royal family. Since these "small kings" were every bit as much a part of the Hittite royal bureaucracy as provincial governors and military officers, their interactions with the Great King must be categorized as domestic rather than international affairs.

2.2.1.2 *Appanage Kingdoms*

Several important areas, including at different times Kizzuwatna (Cilicia), Aleppo, Carchemish, and Tarḫuntašša in south central Anatolia, were placed in the hands of collateral lines of the Hittite royal house. Because rule in these secondary kingdoms was passed down from generation to generation without interference from the Great King in Ḫattuša and treaties could be concluded with them,[22] they may be considered quasi-foreign states.

2.2.1.3 *Vassals*

When the Hittites subjugated an area, their usual practice was to install a scion of the native ruling family as monarch and to bind this man and his successors by treaty to their Great King. These vassal kingdoms were thus not directly incorporated into the Hittite state, but their kings did assume significant political, financial, and military obligations toward Ḫatti. They were forbidden to have independent contact with outside powers, so the scope of their legitimate diplomatic activity was quite limited.

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king chides the pharaoh for receiving a delegation from Assyria, an act implying acknowledgment of Assyria's independence from Babylonia.

[22] For example, *Hittite Diplomatic Texts*, nos. 14, 18A–C.

2.2.2 *The Egyptian Empire*

The realm of Egypt was structured quite differently from that of the Hittites. In the Egyptian conception, the pharaoh ruled as a god-king over the entire world, supported in this work by an elaborate bureaucracy. By the Late Bronze Age, this administrative apparatus directly governed not only Upper and Lower Egypt but also northern Nubia and parts of the Sinai and southernmost Palestine. In theory, the minor princes of the remainder of Egyptian-controlled Syro-Palestine were mere appointees of the pharaoh, subject to supervision by Egyptian "commissioners" (Akk. *rābiṣu*).[23] In practice, however, these petty kings were succeeded on their thrones by their sons and seized every opportunity to further the interests of their own dynasties to the neglect of those of Egypt.[24] It is probable that the vassals of Syro-Palestine normally communicated only indirectly with the pharaoh, through Egyptian officials stationed among them. These exchanges were seemingly carried out orally;[25] at any rate, no written record of them survives. The letters from a few Asiatic vassals found at Amarna are therefore all the more valuable for our assessment of Egyptian imperial rule.

2.2.3 *Mittanni*

During the fifteenth century, the Hurrian state of Mittanni dominated a swath of territory stretching across northern Mesopotamia and Syria from the northern Zagros foothills in the east to the region of Aleppo in the west.[26] Its dissolution at the hands of Hittite Great King Šuppiluliuma I in the middle of the fourteenth century was the precondition for the rise of both Ḫatti and Assyria to the status of Great Power. Since the archives of its rulers still await discovery, we can say relatively little about Mittanni's external relations and even less about its internal governance.

2.2.4 *Assyria*

Freed from dependence on Mittanni by Ḫatti's defeat of the latter kingdom, Assyria proceeded to turn the tables on its former masters

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[23] See Weinstein, "Egyptian Empire . . ."

[24] Witness the treachery of the rulers of Amurru; see Singer, "Concise History . . .," 141–58.

[25] Liverani, *International Relations* . . ., 125.

[26] Wilhelm, *Hurrians* . . ., 22–41.

and gradually absorbed most Mittannian territory into its own expanding realm. By the late thirteenth century an aggressive Assyria posed a serious threat to Hittite territories in Syria.

2.2.5 *Babylonia*
Always recognized as a major state because of its role as the birthplace of cuneiform civilization, Babylonia under the Kassite kings seems to have been too weak militarily to play an influential role in the international politics of the Late Bronze Age. Nonetheless, its monarch counted among the Great Kings.

2.2.6 *Aḫḫiyawa*
A single Hittite document tentatively places the territory of the Mycenaean Greeks on a par with the Great Powers, but this ranking seems to have been mistaken or perhaps a temporary diplomatic expedient.[27] Since no political or military contacts are attested between Aḫḫiyawa and any state other than Ḫatti, this polity may safely be left out of the present discussion.

2.3 *Smaller States*

For the minor principalities of Syro-Palestine squeezed between the empires, neither independence nor political and military neutrality was possible. An expanding Great Power absorbed every small land or city-state in its path until it ran up against the hegemonic sphere of a rival. The only freedom a small king might enjoy was to shift his allegiance among masters.[28]

2.3.1 Significant smaller polities in Anatolia included Išuwa in the east, the Arzawa lands (Arzawa minor, Mira-Kuwaliya, the Šeḫa-River Land, Ḫapalla, and Wilušiya) in the west, and Kizzuwatna in the south. Although Arzawa and Kizzuwatna had earlier each challenged Ḫatti's dominion, by the end of the fourteenth century both countries had definitively become Hittite vassals.

2.3.2 Important Hittite dependencies in Syro-Palestine were Ugarit, Niya, Nuḫašše, Aleppo, Carchemish, Kinza (Qadesh), Amurru, and

[27] See Bryce, "Hatti and Ahhiyawa . . ."
[28] Note the maneuvering of Amurru among Mittanni, Ḫatti, and Egypt: *Hittite Diplomatic Texts*, no. 17, §§3–5.

Aštata on the middle course of the Euphrates. Ḫatti took over most of these vassals from Mittanni and for some time also maintained a protectorate over a portion of her defeated adversary. Ultimately, however, Assyria swallowed up almost the entirety of the former Hurrian kingdom. At times, Egypt dominated Ugarit, Amurru, and Qadesh in the north, but the heart of its Asiatic realm lay further to the south on the coast—including the cities of later Phoenicia—and inland as far as the neighborhood of Damascus. The great majority of Egypt's subordinates were rather small-scale polities.[29]

2.4 *Other Social Formations*

The empires were also confronted with peoples living at a pre-state level of social organization. In Anatolia, the Hittite heartland was under constant threat from semi-nomadic Kaška tribesmen,[30] while in Syria the Semitic Arameans[31] and Sutaeans[32] posed problems for Ḫatti, Assyria, and Babylonia alike.

3. Treaties

Since such a preponderance of the relevant texts comes from the archives of Ḫatti, discussion of written diplomatic instruments will necessarily focus on Hittite practice. There is little doubt, however, that all Great Powers of the Late Bronze Age followed similar procedures.

3.1 *Terminology*

In their own language, the Hittites referred to a treaty as *išḫiul* and *lingais*, literally a "binding" and an "oath." In the Akkadian in use at Ḫattuša, the equivalent terms were *rikiltu* (or *riksu*)[33] and *mamītu*.[34] Significantly, similar language was employed to denote the obligations of royal officials to the Hittite monarch; that is, there was no essential difference between the duties of his domestic and foreign

[29] See the map in Moran, *Amarna Letters*, 123.
[30] See von Schuler, *Die Kaškäer*.
[31] *Hittite Diplomatic Texts*, no. 23, §6.
[32] EA 16, ll. 37–42.
[33] This word was also in use at Alalakh. Note *Alalakh Tablets*, no. 3, l. 1: [*tu*]*p-pí ri-ik-ši*, "[t]ablet of the treaty."
[34] Idrimi refers to his agreement with Pilliya as NAM.ÉRIM/*ma-mi-ti*, "oath" (ll. 52–53).

subordinates. The Egyptian translator of the treaty between Ḫattušili II and Ramesses II rendered *rikiltu* as *nt-ʿ*, "customary agreement."[35]

3.2 Although they bear the same designation, a basic distinction must be made between treaties imposed by a powerful state upon vassals and those concluded with parties of equal standing.[36] In the case of the former, only the vassal swears an oath.[37] While the overlord may make promises, he does not obligate himself to their fulfillment. Hence the agreement is the "binding" of the subordinate but the "oath" of the lord. In a parity treaty, neither partner imposes anything upon the other. Each party commits himself to reciprocal obligations and takes an oath of his own volition.

3.3 *Structure*

Treaties dating to the Hittite Empire period (fourteenth and thirteenth centuries) tend to follow a similar pattern,[38] presumably because all were composed by a limited number of scribes active in the royal chancellery. With exceptions arising due to special circumstances, the usual construction of a Hittite vassal treaty is: (1) preamble styling the document as an address by the senior partner to the junior; (2) historical prologue recounting the course of previous relations and justifying future loyalty as due in gratitude for the Hittite Great King's generous treatment of the vassal and his land; (3) specific obligations of the subordinate; (4) details of the deposition of the treaty document; (5) invocation and list of divine witnesses; (6) curses upon the vassal who would break the treaty and blessings upon the subordinate who honors it. The parity treaty with Egypt may be seen as a variation of this configuration, while the only well-preserved agreement from Alalakh is very simple,[39] consisting only of a heading, an accord on a single topic, a short list of deities, and a curse.

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[35] Spalinger, "Considerations . . .," 303.

[36] The sole text of this type to be preserved is the agreement concluded by Ramesses II of Egypt with Ḫattušili III of Ḫatti (*Hittite Diplomatic Texts*, no. 15).

[37] Some idea of the actual ceremony by which the underling placed himself under oath may perhaps be seen in the "induction ceremonies" for Hittite troops edited by Oettinger, *Militärischen Eide . . .*

[38] See Korošec, *Staatsverträge.*

[39] Wiseman, *Alalakh Tablets*, 32, suggests that this text presents only an excerpt from a longer document.

3.4 *Procedure*

Analysis of correspondence between the courts of the Great Kings[40] and comparison of multiple copies of a single document[41] allow the reconstruction of the process of treaty negotiation between equals. Following the repeated exchange of envoys carrying letters and provisional drafts of the agreement, each party presented the other with a final copy engraved on a tablet of metal (silver or bronze). The recipient then spoke the relevant oaths. In the case of vassal treaties, the subordinate was in no position to bargain; he simply accepted the tablet setting forth his obligations and bound himself by oath.

3.5 *Provisions*

Stipulations vary greatly among the preserved agreements, but several concerns appear in most, if not all, Hittite treaties: allegiance to Ḫatti and to its Great King, mutual protection of dynastic lines, extradition of fugitives, and payment of tribute.[42] Of course, this last item is not present in parity treaties.

3.5.1 *Loyalty to Ḫatti*

The subordinate is forbidden to transfer his allegiance to another master. He may maintain no independent foreign relations and must send on to the Great King any foreign envoy arriving at his court. He himself is required to make periodic visits to reaffirm his devotion to the Hittite ruler at a personal audience. Should he learn that Ḫatti is under attack, the vassal must rush to its aid without waiting to be summoned. It is his further obligation to provide logistical support and military contingents to Hittite armies on campaign in his vicinity. Naturally, the Hittite ruler will also commit his military forces to safeguard the life and territory of the vassal.

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[40] *Hittite Diplomatic Texts*, no. 22E, deals with plans for a marriage alliance, but the process of haggling on view here is no doubt similar to that involved in concluding a treaty.

[41] See Beckman, "Some Observations . . .," 55–66; Edel, *Vertrag . . .*, 85–86.

[42] For references, see the index to topics, *Hittite Diplomatic Texts*, 205–6. Egyptian vassals bore many of the same burdens, including delivery of tribute, supply of the overlord's armies, and the performance of corvée. Interference of the vassal in the succession to the Egyptian throne is not envisioned. See Moran, *Amarna Letters*, xxvii.

3.5.2 *Loyalty to the Overlord and His Descendants*

The vassal is adjured to "protect" (Hitt. *paḫs-*; Akk. *naṣāru*) the Great King, his son, and grandson, "to the first and second generation." He may not divulge information imparted to him in confidence by his lord. Conversely, he must report rumors of rebellion or dissatisfaction among the Hittite notables and intervene in dynastic crises in favor of the legitimate offspring of his master. In turn, the Hittite monarch promises to secure the succession of the designated heir of his partner.[43]

3.5.3 *Fugitives*

Any person who flees from Ḫatti, whether nobleman implicated in palace intrigue or humble artisan or peasant escaping taxes and corvée, must be extradited upon demand. Repatriated refugees must not be mistreated. It was obviously important that influential persons be denied a platform from which to plot against the Great King, and the general manpower shortage characteristic of the Late Bronze Age led to a concern for maintaining a stable labor force. While the Hittite monarch in turn pledges to send fugitives back to Egypt, Ḫatti is not obligated to return runaways to vassals. Note also that the sole topic of the treaty between Alalakh and Kizzuwatna is the return of fugitives.

3.5.4 *Tribute*

Although mentioned explicitly in only a few treaties,[44] there can be little doubt that yearly payments of silver, gold, and products of local industry were required of most vassals. Sometimes the amounts due are set down in a separate document.[45]

3.5.5 *Borders*

Boundaries between political entities are only occasionally described in the Hittite treaties,[46] presumably because they were well known to the participants. However, several texts are preserved in which the Great King realigns the frontiers between vassal states.[47]

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[43] See *Hittite Diplomatic Texts*, no. 23, §4.
[44] *Hittite Diplomatic Texts*, no. 8, §5.
[45] *Hittite Diplomatic Texts*, nos. 28A–B, 31B.
[46] *Hittite Diplomatic Texts*, nos. 2, §§60–64; 18B, §§2–4; 18C, §§3–11.
[47] *Hittite Diplomatic Texts*, nos. 30, 31A.

3.5.6 *Miscellaneous Provisions*

Special circumstances sometimes led to the inclusion in an agreement of unusual demands upon the vassal. For example, a local prince who has married into the Hittite royal family is required to adapt his sexual conduct to Hittite norms.[48]

3.6 *Special Types of Treaty*

A third variety of treaty (*kuirwana, kuriwana*), intermediate between those of equality and vassalage, is also attested in Ḫatti.[49] Although such agreements grant the partner a few special privileges, such as the honor that the Great King's entourage will rise upon his entrance,[50] in all essential matters they place him under Hittite domination. The *kuirwana* treaty presents a façade allowing a previously powerful polity to retain a modicum of (self-)respect while surrendering most of its independence.[51]

Of necessity, agreements concluded with polities that had not yet attained a state level of development—and that consequently recognized no monarch—display a special form. In such treaties, the oaths are administered not to an individual but rather to large numbers of men, who were presumably the chiefs of tribes or clans.[52]

3.7 *Deposition*

Copies of each treaty were placed in the temple of the Sun Goddess of Arinna, chief deity of Ḫatti, and in the sanctuary of the primary god of the vassal.[53] The text of the document was to be read aloud to the vassal at regular intervals throughout the year.[54]

3.8 *Sanctions*

The deities invoked as witnesses to treaties were also the enforcers of the attendant oaths and guarantors of their provisions. But in addition the rulers of the Great Powers made use of more direct measures to secure the obedience of their underlings.

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[48] *Hittite Diplomatic Texts*, no. 3, §§25–28.
[49] Del Monte, *Il trattato . . .*, 59.
[50] *Hittite Diplomatic Texts*, no. 2, §9.
[51] See Goetze, *Kleinasien*, 98–99; and Beckman, "Some Observations . . .," 56, with n. 20.
[52] E.g., *Hittite Diplomatic Texts*, no. 1A; see von Schuler, "Sonderformen . . ."
[53] *Hittite Diplomatic Texts*, nos. 18B, §5; 18C, §28.
[54] *Hittite Diplomatic Texts*, nos. 11, §28; 13, §16.

3.8.1 *Divine Sanctions*

Within the context of a treaty, the vassal or the participant in a parity agreement voluntarily assumes his obligations by speaking the oaths included therein. In contrast to later Assyrian practice, which relied exclusively upon the deities of Assyria for enforcement, the Hittites summoned the gods of the vassal as well as the pantheon of Ḫatti as witnesses to their treaties. The lists of divinities invoked in this connection are important sources for the reconstruction of the religious history of Ḫatti and Syria in the Late Bronze Age. The gods are exhorted to destroy the transgressor of the oaths, together with his entire family and progeny far into the future. Conversely, they are called upon to ensure indefinitely the prosperity of the party observant of his vows and obligations.

3.8.2 *Mundane Sanctions*

3.8.2.1 *Hostages*

In the Egyptian realm, it was usual to remove members of the younger generation of the families of vassals to the Nile Valley. There they would be educated and inculcated with respect for Egyptian power, religion, and culture and taught to revere the person of the pharaoh. Upon the death or revolt of their progenitors, they could be installed as loyal minions of Egypt. In Ḫatti, guests entertained under similar circumstances might even marry into the royal family and produce offspring entitled to the designation "prince" of Ḫatti, even as rulers of their vassal kingdoms.[55]

3.8.2.2 *Garrisons*

Hittite treaties occasionally provide for contingents of troops from the armies of the overlord to be stationed in the land of the vassal,[56] and small military units are often mentioned in the Amarna correspondence.[57] Undoubtedly, the purpose of these contingents was as much to keep the vassal under surveillance as to protect him from compatriots unhappy with his submission to the imperial master.

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[55] Such was the situation of Šaušgamuwa of Amurru; see Singer, "Concise History . . .," 172, with n. 57.

[56] *Hittite Diplomatic Texts*, no. 10, §4.

[57] Weinstein, "Egyptian Empire . . .," 15.

4. Customary International Law

Certain practices routinely followed in the relations between states were not established by special agreement among the parties but were sanctified by tradition.

4.1 *Peaceful Relations*

4.1.1 *Correspondence*

Kings communicated with one another through the medium of tablets inscribed in cuneiform script. Since the rulers were almost invariably illiterate, it was necessary that the missives be read aloud to them. In practice, a letter merely served as confirmation of the information conveyed orally by the messenger who delivered it.[58]

Correspondence between lord and vassal was concerned primarily with demands made by the former on the latter. In letters moving in the other direction, the subordinate might appeal for relief from a burden or for military assistance against a neighbor. Epistolary traffic between the Great Powers dealt chiefly with matters of trade and not often with the settlement of disputes, since such larger states seldom interacted directly. Indeed, it has been observed that the purpose of correspondence on this level was phatic, that is, simply to keep open the lines of communication between the powers.[59]

There was no regular contact between hostile states, although a king might send an ultimatum to his enemy.[60]

4.1.1.1 *Language*

During the Late Bronze Age, the Middle Babylonian dialect of Akkadian and its peripheral varieties served as a lingua franca among the Great Powers. When dealing with their vassals in Anatolia, however, the Hittites employed their own language, and the rulers of Arzawa in western Anatolia also corresponded with the Egyptian king in Hittite.[61] Since the bulk of communication within the Egyptian sphere of influence was probably oral and facilitated by the Egyptian commissioners, it was doubtlessly carried out in Egyptian.

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[58] See *Hittite Diplomatic Texts*, no. 2, §59.
[59] Liverani, *International Relations* . . ., 76.
[60] Lachenbacher, "Nouveaux documents . . .," obv. 12–18.
[61] EA 31–32.

The use of Akkadian for diplomatic purposes necessitated instruction in the Mesopotamian tongue for at least some of the scribes active in the Hittite and Egyptian chancelleries, as well as for the clerks of the latter's vassals.[62] The texts produced by these non-natives display various degrees of interference from the native languages of their authors and very likely gave rise to occasional misunderstandings between correspondents.

4.1.1.2 *Salutation*

Epistolary etiquette called for the dominant party to be listed first in a letter's heading. If the participants in the correspondence were of equal rank, it was usual for the sender to give precedence to his own name.[63]

4.1.1.2.1 Gifts

Greeting gifts (Akk. *šulmānu*) normally accompanied diplomatic dispatches.[64] This exchange of presents was not only a disguised form of trade but also served to establish and maintain the prestige of a ruler in the eyes of his domestic constituency.[65] The congratulatory messages that every Great King had a right to expect from his peers upon his accession were customarily accompanied by fine oil for his anointing and garments befitting his new status.[66]

4.1.1.3 *The Messenger*

Some envoys (Hitt. *ḫalugatalla-*, Akk. *mār šipri*)[67] were specialists in useful crafts, such as medicine,[68] magic,[69] or scholarship.[70] Their missions might thus involve a sort of foreign development aid as well as the transmission of messages. Sometimes a diplomat enjoyed special favor at a foreign court, so that its king requested his participation in a particular embassy.[71]

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[62] Beckman, "Mesopotamians . . ."
[63] Hagenbuchner, *Korrespondenz . . .*, II, 46.
[64] Cochavy-Rainey, *Royal Gifts . . .*
[65] Liverani, *Prestige and Interest*, 211–17.
[66] See *Hittite Diplomatic Texts*, no. 24B, §4.
[67] Hagenbuchner, *Korrespondenz . . .*, II, 15–23.
[68] Edel, *Ägyptische Ärzte . . .*
[69] *Hittite Diplomatic Texts*, no. 22F, §13.
[70] Beckman, "Mesopotamians . . ."
[71] EA 21, ll. 21–32; 24, §31.

4.1.1.3.1 Divine Ambassadors

In exceptional cases, a deity might be sent abroad as a goodwill envoy. It is uncertain whether the goddess Šaušga of Nineveh was dispatched by the king of Mittanni to Egypt to minister to the ailments of the pharaoh or to lend dignity to the negotiations over a marriage alliance.[72]

4.1.1.3.2 Role of the Messenger

The messenger was more than a simple dispatch carrier, for he often made repeated visits to the same foreign court and on occasion remained abroad for an extended period. Consulted by his host concerning his master's plans and views,[73] and enjoying a certain freedom of action,[74] he might well better be described as a minister or ambassador. Nonetheless, his oral communications were always subject to verification through examination of the tablets he conveyed.[75] Ideally, when Great Kings were on good terms, the exchange of envoys between them was uninterrupted.[76]

4.1.1.3.3 Reception of the Messenger

Diplomatic travelers were not to be mistreated,[77] either by those through whose territory they passed[78] or by their hosts. It was a breach of etiquette to detain an envoy after the completion of his business,[79] but on occasion a king might do exactly that as a negotiating tactic.[80] On the other hand, some ambassadors perceived such advantages for themselves abroad that they voluntarily settled at a foreign capital.[81]

4.1.2 *Trade*

As mentioned above, trade was largely disguised as the exchange of gifts among monarchs, but it certainly proceeded at other levels in addition, as attested by the frequent mention of merchants in diplomatic

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[72] EA 23. See Moran, *Amarna Letters*, 62, n. 2.
[73] EA 7, ll. 26–32.
[74] See Lachenbacher, "Nouveaux documents . . .," obv. 21–29, where an envoy uses his own judgment as to whether he should present his host with a hostile or conciliatory message. Given the length of time it would take an envoy to return home for consultations or to request and receive instructions from his master, such flexibility was often a practical necessity.
[75] *Hittite Diplomatic Texts*, nos. 2, §59; 23, §12.
[76] EA 26, ll. 19–29; *Hittite Diplomatic Texts*, no. 23, §6.
[77] *Hittite Diplomatic Texts*, no. 1, §3.
[78] EA 7, ll. 73–82.
[79] EA 2, ll. 13–14; 8, ll. 46–47; etc.
[80] EA 20, ll. 18–27; 28, ll. 20–41; 29, ll. 155–61, etc.
[81] *Hittite Diplomatic Texts*, no. 23, §13.

correspondence. Business documents from numerous sites attest to international trade carried out at a less exalted level.[82] It would have been such ordinary commerce that the Hittites sought to restrict if they indeed instituted a trade embargo against Assyria.[83]

4.1.2.1 *Protection of Traders*

In theory, merchants were to be allowed to travel unmolested, but in practice robbers lay in wait for them everywhere. Custom dictated that a Great King assure that restitution be made for lost goods and compensation paid for murdered merchants if the crime was committed in his own territory or in that of a vassal.[84]

4.1.3 *Diplomatic Marriage*[85]

Marital bonds were often employed to seal alliances. Such ties could be established between equals or between the families of a vassal and a lord. Significantly, the rulers of Egypt and those of western Asia followed inverse customs in this regard. While pharaohs added innumerable daughters of their vassals—and of their "brothers"—to their harems, they refused to allow their own girls to marry foreign rulers.[86] In contrast, Hittite kings frequently gave princesses in marriage to their subordinates, with the stipulation that the offspring of these unions succeed to the thrones of their fathers.[87] Several Hittite kings also took wives from the ruling family of Babylon.

Long and difficult negotiations preceded marriages between rulers of the Great Powers. Particular attention was given to the size of the dowry,[88] which was always composed of movable goods and never included vassal kingdoms or territories.

4.2 *Hostile Relations*

If a state was not an ally or a vassal, it was perforce an enemy. Indeed, the same Akkadian word (*nakru*) means both "foreign" and "hostile." The object of Hittite foreign policy was to reduce the number of

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[82] See Faist, *Fernhandel* . . .
[83] See Cline, "Possible Hittite Embargo . . ."
[84] EA 8; *Hittite Diplomatic Texts*, no. 23, §§9–11.
[85] See Pintore, *Matrimonio interdinastico* . . .
[86] EA 4, ll. 4–22.
[87] *Hittite Diplomatic Texts*, no. 6A, §7.
[88] EA 24, §§20–23; *Hittite Diplomatic Texts*, no. 22E, §4.

hostile states by concluding treaties—of equality or subordination—with all former enemies.[89] Warfare was often a necessary instrument in this policy.

4.2.1 *Nature of War*

While the later Assyrians felt that their god Assur always favored his own people and state, the Hittites conceived of combat as a divine judgment, which could go against Hittites if they had offended one or more deities.

4.2.2 *Declaration of War*

The proper way to begin a war was seemingly for one party to issue to the other a challenge to combat that would reveal by its outcome the verdict of the gods in the dispute between them.[90]

Abbreviations

EA El Amarna Texts; for translation, see Moran, *The Amarna Letters*

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[89] Otten, *Apologie* . . ., 26–29.

[90] See Goetze, *Annalen* . . ., 91; Otten, *Apologie* . . ., 23; van den Hout, "Der Falke und das Kücken . . .," 69–70.

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PART THREE

FIRST MILLENNIUM

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EGYPT

THIRD INTERMEDIATE PERIOD[1]

Richard Jasnow

1. Sources of Law

Relatively few legal texts are preserved from the historically complicated and obscure Third Intermediate period proper. This is particularly the case for the Libyan Dynasties (Twenty-second through Twenty-fourth);[2] the Nubian Dynasty (Twenty-fifth) is more productive of juridical documents and economic contracts.[3] The surviving sources for law from the Third Intermediate period and especially the Late period (Saite Dynasty onwards) do tend, however, to be more explicit than their predecessors.[4] A distinguishing feature of the later New Kingdom and earlier Third Intermediate period is the prominence given to oracular or divine decrees. One has recourse to the divine for confirmation of legal, economic, and political decisions.

Malinine suggested that the relative scarcity of legal texts, specifically contracts, until about the time of Shabako (ca. 700) may reflect an actual change in Egyptian legal practice.[5] The popular tradition reflected in Diodorus Siculus held that there was a legislative reform instituted by King Bocchoris (Twenty-fourth Dynasty: ca. 720–715).[6]

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[1] Ca. 1000–650. The temporal boundaries covered by this designation are disputed. Some would not include the Nubian Dynasty as part of the Third Intermediate period, e.g., Strudwick and Strudwick, *Thebes in Egypt* . . ., 40. The basic work is still Kitchen, *Third Intermediate Period* . . .

[2] Cf. Vleeming, *Papyrus Reinhardt* . . ., 1. See also Menu, "Women and Business Life . . .," 193–95, and "Questions relatives à la détention des terres . . .," 135.

[3] Malinine, "Jugement . . .," 171. Private individuals seem to employ documents more widely. In Louvre C 258 = E 3336, for example, a priest cites a certificate (*h*) apparently confirming his right to enter the temple of Amun as a priest (Jansen-Winkeln, "Zu einigen religiösen . . .," 252–53).

[4] But see Johnson, "Legal Status . . .," 182. See further Menu, "Business . . .," 197, and "Un document juridique 'Kouchite' . . .," 332.

[5] *Choix* . . ., v–vi. On the law-giving activity of Shabako, see Leclant, "Kuschitenherrschaft," col. 894 [= Herodotus II, 137, 139; Diodorus Siculus I, 65].

[6] Malinine, *Choix* . . ., vi.

However, the precise nature of the reform and its actual impact on the use of legal documents cannot be determined.

From the later New Kingdom through the Saite period, Egypt was subject to massive foreign pressure. Given the long tradition of private contracts in the Mesopotamian world, some have proposed foreign influence on the development of Egyptian legal practice.[7] This problem is still to be explored.[8] The geographical distribution of the legal sources is uneven. Most of the economic documents, for example, come from Thebes, whence derive almost all of the especially important abnormal hieratic texts.[9] That is the designation generally applied to a form of hieratic derived from the New Kingdom hieratic business script. Used in the Third Intermediate period, abnormal hieratic gradually gave way to Demotic in the Saite period.

1.1 *Law Code*

In his Chronicle, Prince Osorkon (Twenty-second Dynasty—end of the ninth and beginning of the eighth centuries) describes the laws (*hp.w*) as having "perished in the hands of those who rebelled against their lord."[10] It has been suggested that sections of the Demotic Legal Code of Hermopolis (P. Mattha) may derive in part from the Third Intermediate period.[11]

1.2 *Edicts*

The major historical texts of the Third Intermediate period contain a certain amount of legal information. The very important Banishment Stela[12] (Twenty-first Dynasty) is an oracular decree, dealing with the appointment of a High Priest of Amun; the basic question is whether

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[7] Ibid., vi.

[8] See the remarks of Eyre, "Adoption Papyrus . . .," 213. In a paper ("Third Intermediate Period Antecedents of Demotic Legal Terminology") read at the Demotic Conference in Copenhagen (August, 1999), Ritner countered the claim that Aramaic had a significant impact on the Demotic tradition, presenting earlier Egyptian antecedents for many of the phrases and terms used to make the argument for Aramaic influence.

[9] Malinine, *Choix* . . ., 8–9; on the distinction between abnormal hieratic and Demotic, see Vleeming, "Phase initiale . . .," 38–41.

[10] Caminos, *Osorkon* . . ., 42.

[11] Johnson, "Annuity Contracts . . .," 114, and "The Persians . . .," 157; Allam, "Traces . . .," 15; Eyre, "Crime . . .," 92, and "Adoption Papyrus . . .," 216.

[12] von Beckerath, "Stele der Verbannten . . ."; Kitchen, *Third Intermediate Period* . . ., 255, 260.

to allow the return to Thebes of persons banished (by the god Amun[13]) during the turmoil preceding his installation. A Jubilee Inscription of Osorkon II treats the exemption or protection of Thebes from inspection by royal officers.[14] The Osorkon Chronicle recounts the activities of the eldest son of King Takelot II, focusing on revolts and disturbances in the Theban region.[15] The great Piye Victory Stela (ca. 714) illuminates that king's perception of rebellion and clemency towards rebels.[16] The retention of New Kingdom legal vocabulary is demonstrated by the "Dream" Stela of Tanutamon (664).[17]

Among the significant legal texts issued by powerful individuals who, if not necessarily "kings," display royal attributes or authority, may be mentioned the following.

1.2.1 Menkheperre, the High Priest of Amun (time of Psusennes I, ca. 1000), inscribed a complex juridical oracular text in the Temple of Khonsu at Thebes.[18]

1.2.2 A recently published Elephantine stele (reign of Osorkon II) records an inspection of the Temple of Khnum by the viceroy of Kush and oracular confirmation of the consequent reorganization of the temple.[19] It contains indeed the latest mention of the important New Kingdom title "King's son of Kush."

1.2.3 A very significant group of texts are the so-called donation stelai, especially from the Twenty-second to Twenty-third dynasties (945–715).[20] The king provides the temples thereby with the economic means (chiefly in the form of land) to maintain themselves. These donations are sometimes given by the king through the agency of a high official, for example, the "Great Chief of the Ma."[21]

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[13] von Beckerath, "Stele der Verbannten . . .," 12–13.
[14] Breasted, *Ancient Records* . . ., vol. 4, 373; Edwards, "Egypt . . .," 556–57.
[15] Caminos, *Osorkon* . . .; Edwards, "Egypt . . .," 560–61.
[16] Lichtheim, *AEL* 3, 74, 79; Grimal, *Stèle triomphale* . . ., 241.
[17] Breasted, *Ancient Records* . . ., vol. 4, 473. See also Redford, "Studies in Relations . . .," 149; Onasch, *Die assyrischen Eroberungen Ägyptens*, 129–45.
[18] Epigraphic Survey, 17–20.
[19] Seidlmayer, "Elephantine . . .," 329–34.
[20] Meeks, "Donations . . .," 607.
[21] Ibid., 633, 639; Eyre, "Feudal Tenure . . .," 119.

1.2.4 In another inscription issued by a very high personage, the "Will" of Yewelot (reign of Osorkon III, ca. 787–759), also known as the *Stèle de l'apanage*, the High Priest of Amun confirms that he gives his estate to his son (to the exclusion of his other children).[22] This text is important because it precisely describes the various categories of land and prices given for them:

> Against payment he purchased (the fields) from every sort of private-person (*nmḥ*) to their satisfaction (and) without fraud against them. He let the land-registers (*dnyw n n3 3ḫ.t*) of the Amun Temple, which are with the grain-account scribes of the Amun Temple . . . be brought. He caused that they (the scribes) demarcate the fields purchased by him from the fields of the Amun Temple.[23]

The text then recounts that the information about the former owners and the prices was properly set down in writing. The will may be a stone version of a papyrus document.[24]

1.2.5 An elaborate inscription (Twenty-first Dynasty) contains a text supposed to be a foundation document of the funerary temple of the divinized Amenhotep, son of Hapu.[25]

1.3 *Administrative Orders*

Of special significance is the land register (?), P. Reinhardt (tenth century).[26] This document seems to be concerned with the assessment of grain production in individual plots.[27] It deals in part with corvée labor and the administration of such labor, particularly under the aegis of the temples.[28] The abnormal hieratic T. Leiden I 431 (period of Taharqa to Psamtik I) indicates a complex administrative structure, mentioning town administrators, and grain taxes (for the area from Elephantine to Dendera).[29]

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[22] Breasted, *Ancient Records* . . ., vol. 4, 405; Kitchen, *Third Intermediate Period* . . ., 311; Edwards, "Egypt . . .," 552–53. See also Menu, "Questions . . .," 143, and "La stèle dite de l'apanage."

[23] Allam, "Publizität . . .," 35–36 (following his translation). See also Jansen-Winkeln, "Zu einigen religiösen . . .," 254–59, for partial translation and commentary.

[24] Menu, "La stèle dite de l'apanage," 188.

[25] Assmann, "When Justice Fails . . .," 156. See Wildung, *Imhotep und Amenhotep*, 281–82.

[26] Vleeming, *Papyrus Reinhardt*. See also Haring, *Divine Households* . . ., 282, 333.

[27] Vleeming, *Papyrus Reinhardt*, 73.

[28] Ibid., 52–55.

[29] Černý, "Leiden I 431 . . ."

1.4 *Private Legal Documents*

1.4.1 The corpus of texts in so-called abnormal hieratic is almost entirely legal and economic in character.[30] These often deal with the sale of slaves or servants, and a few seem to form true archives of related material.[31] The recently discovered lengthy abnormal hieratic P. Queen's College is dated to the Twenty-fifth dynasty (between 730–670). Apparently describing a legal case to be settled in the Temple of Pre at Heliopolis, it may be a literary treatment of a judicial matter in the style of P. Rylands 9 and Wenamun.[32]

1.4.2 The earliest clear documentation for loans with interest comes from the Twenty-second Dynasty (P. Berlin 3048).[33] Preserved from this same papyrus are also (excerpts from) the earliest Egyptian marriage "contracts."[34]

1.4.3 The oracular text of Djehutymose (reign of Pinudjem II, 990–970)[35] is an investigation of various accusations against an official ("acts of fraud") in connection with a mortuary cult.[36] The charges were ultimately dismissed at the instigation of the god, Amun. The text includes an oracular decision reached through divine selection of two alternative written formulations of the matter.

1.4.4 Oracular decrees sometimes concern private judicial matters. A fine example is P. Brooklyn 16.205 (reign of Sheshonq III?). Three of the four memoranda in this papyrus preserve oracular judgments

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[30] On the importance of abnormal hieratic, Janssen, "Economic History . . .," 150. There are differences in the formulation of abnormal hieratic and Demotic contracts (Vleeming, "Phase initiale . . .," 40, and see 7.1.1.2 below). For the transition from abnormal hieratic to Demotic during the Saite period, and the differences in legal formulae, see Johnson, "The Persians . . .," 154–55.

[31] Seidl, *Ägyptische Rechtsgeschichte* . . ., 5.

[32] Baines, Donker van Heel, and Fischer-Elfert, "Abnormal Hieratic in Oxford . . ."

[33] Möller, "Schuldschein . . ."

[34] Lüddeckens, *Eheverträge* . . ., 184.

[35] Elaborately reedited in Kruchten, *Grand texte* . . . See also Breasted, *Ancient Records* . . ., vol. 4, 325–28. It has been dated to years 2–5 of Amenemope, Osorchor, or Siamun, see Kitchen, "Pinodjem II," ed. 1053; see further Kitchen, *Third Intermediate Period* . . ., 277. A recent translation of this inscription is in Kuhrt, *Ancient Near East* . . ., vol. 2, 626.

[36] On the establishment or regulation of mortuary and temple endowments; see, e.g., Vernus, "Décret de Chéchanq . . .," 107–8; Redford, "Studies in Relations . . .," 153; Loprieno, *Egyptians* . . ., 213; Menu, "La fondation cultuelle . . ."

in the favor of one individual, while the fourth is a list of payments made to the same man.[37]

1.4.5 The very significant Dakhla Stela (year 5 of a King Sheshonq) deals with the ownership rights to a well in that western oasis.[38] The dispute takes place before the local deity, *Setekh*.

1.4.6 On Statuette Cairo 42.208 (reign of Osorkon II, 874–850),[39] a man prays to Amun that he protect and confirm the transfer document (*imyet-per*) which he had made in favor of his daughter. Oft-quoted from this text is the statement: "Like the Great God (= the pharaoh) said: 'Let every man make the determination of his (own) property.'" The man specifically describes the nature of his property: "I am the possessor of property from my father and my mother and what I [acquired with my own] hands. The rest is as a favor of the king for my service in my time."[40]

1.4.7 Documents demonstrate that private persons may make donations to temples. Donations might include a chapel, various slaves, fields, and considerable property and smaller objects.[41]

1.4.8 As in earlier times, the biographies of officials, which provide some insight into legal titles and administration, are an important source for the Third Intermediate period.[42]

1.4.9 P. Louvre 3228c (Twenty-fifth Dynasty) is a "writ of execution of title" ("titres exécutoires") following a judge's decision regarding the ownership of a slave or servant.[43] Several texts from the Nubian period deal with leasing of land, a class of document which becomes quite well attested in the following Saite and Persian periods.[44]

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[37] Parker, *Saite Oracle Papyrus* . . ., 49; but note von Beckerath, "Zur Datierung des Papyrus Brooklyn 16.205." See also Menu, "Questions . . .," 144.

[38] Breasted, *Ancient Records* . . ., vol. 4, 359–61. See also Menu, "Questions . . .," 143–44; Théodoridès, "Concept of Law . . .," 318–19.

[39] Théodoridès, "Amarah . . .," 581–82; translation in Johnson, "Legal Status . . .," 182; Jansen-Winkeln, *Ägyptische Biographien* . . ., 44–62.

[40] Johnson, "Legal Status . . .," 182.

[41] Graefe and Wassef, "Eine fromme Stiftung . . ."

[42] See Jansen-Winkeln, *Ägyptische Biographien* . . .

[43] Malinine, "Jugement . . .," 158.

[44] Donker van Heel, "Papyrus Louvre E 7852 . . .," 83, "Land Leases . . .," and Hieratic and Early Demotic Texts . . ., 3–4 (leasing of land of choachytes in Thebes).

1.4.10 A few "private" letters from this period (El Hiba letters—actually from the Twenty-first Dynasty, the transitional period from the late New Kingdom) concern legal matters and oracular inquiries.[45]

1.5 *Scholastic Documents*

Very few literary works are preserved from the Third Intermediate period. The Tale of Woe (papyrus inscribed in the ninth century but probably originally a late New Kingdom composition) contains an elaborate description of various crimes committed against the hero:

> I was unjustly removed; I was defrauded before anything could be said, and dispossessed, though there was no crime on my part. I was thrown out from my city, and my property was seized . . . They robbed me, and also killed the women that came near them.[46]

The Oracular Amuletic Decrees, composed for the divine protection of individuals, very occasionally refer to legal matters; one may wish, for example, to be preserved or kept safe from "prison" (*ḏṯ*).[47]

2. Constitutional and Administrative Law

The Third Intermediate period, distinctly multi-cultural in character, comprises basically the Libyan Dynasties (Twenty-second through Twenty-fourth) and the Nubian Dynasty (Twenty-fifth).[48] With a few exceptions,[49] throughout this period Egypt is no longer a very effective force in Asia, Libya, or Nubia. Particularly in the later Twenty-third dynasty, there is a breakdown in unity and small kingdoms or spheres of influence emerge, the political situation being well reflected in the great Victory Stela of king Piye (Twenty-fifth). In that text, Piye significantly refers to several individuals as a *nswt*, "king"—an unusual state of affairs in Egypt.[50] The centralizing forces effectively assert themselves again in the Saite (Twenty-sixth) Dynasty.[51]

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[45] See Wente, *Letters* . . ., 205, 207. See also Posener, "Un papyrus d'El-Hibeh."
[46] Caminos, *Woe* . . ., 70–71. The *qenbet* also appears ibid., 57.
[47] Edwards, *Oracular Amuletic Decrees* . . ., 43.
[48] See Leahy, "The Libyan Period in Egypt . . .," noting esp. 59. See also Ritner, "Libyan Anarchy . . ."
[49] One thinks naturally of Shoshenq I's invasion of Israel.
[50] On the inflated usage of *nswt* ("king"), see Grimal, *Stèle triomphale* . . ., 250.
[51] Trigger et al., *Social History* . . ., 232.

The northern Tanite monarchy and a southern (Theban) priestly ruler seem to coordinate their authority in the late New Kingdom.[52] Beginning about that time, the High Priest of Amun at Thebes becomes a much more influential figure, in some cases usurping royal prerogatives.[53] He is effectively in charge of a "military dictatorship," although many decisions, including legal ones, are officially proclaimed by the god Amun, and not by mortal man.[54] A policy begun under Sheshonq I was to change the Theban high priesthood from a hereditary position into one to which the king, based in the north, appointed his sons.[55] In the later part of the Third Intermediate period, other offices become more important than that of the High Priest of Amun, such as the God's Wives of Amun (and the bureaucracy surrounding them).[56]

2.1 *The King*

While much of the traditional royal vocabulary and iconography remains,[57] the Third Intermediate period kings are often shadowy and, presumably, insubstantial figures. Their role in legal matters is correspondingly minimal.[58]

2.2 *The Administration*

2.2.1 A detailed picture of the administration in the Third Intermediate period is not possible. There are significant differences from the social and political situation of the New Kingdom. Especially noteworthy is the development of walled cities and the concentration of the population in towns and cities, perhaps in response to the uncertainties of the time.[59] Despite such differences, scholars emphasize administrative continuity under the "foreign" kings of this time.[60] Hereditary offices become increasingly important in the late

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[52] Hornung, *Geschichte* . . ., 115.
[53] Trigger et al., *Social History* . . ., 231.
[54] Hornung, *Geschichte* . . ., 115.
[55] Edwards, "Egypt . . .," 543, 554.
[56] Bryan, "In Women . . .," 44.
[57] Bonheme, *Les Noms* . . ., vol. 1, 254. See also the remarks of Gnirs, *Militär und Gesellschaft* . . ., 207.
[58] Trigger et al., *Social History* . . ., 231–32; Edwards, "Egypt . . .," 572; Menu, "Questions . . .," 139; but see also Meeks, "Donations . . .," 635.
[59] Trigger et al., *Social History* . . ., 248; Graefe, "Zwischenzeit, Dritte," col. 1448.
[60] Leclant, "Kuschitenherrschaft," cols. 894–95; Pressl, *Beamte* . . ., 2.

New Kingdom and Third Intermediate period.[61] It has been suggested that the appointment by the kings of close relatives to important positions weakened the "principle of official-bureaucracy" (*Beamtenbürokratie*) in the Twenty-second to Twenty-third Dynasties, a process which led also to the creation of collateral dynasties.[62] The dominant figure in the Theban area is the High Priest of Amun. In the Twenty-second dynasty, sons of the kings may be installed as "military governors" in important cities or districts.[63] The Libyan chieftains who supported Sheshonq I have been characterized as "feudal lords."[64] There is also very close interaction between the various chief temples and the royal houses.[65] The fiscal status of the temples from the Third Intermediate period is hardly known from contemporary documents.[66]

2.2.1.1 Local dynasts and authorities, sometimes royal in origin, sometimes not, play a great role in the Third Intermediate period.[67] Marriage ties are created between the important Theban families and the Libyan royal families based in the North (Twenty-second Dynasty).[68]

2.2.1.2 The authority of such traditionally powerful officials as the vizier becomes much more limited in geographical range during the Third Intermediate period.[69] There seems to have been a division between a Northern Vizier and a Southern Vizier in the Late period (Twenty-fifth to Twenty-seventh Dynasties).[70] There may have also been honorary bearers of this title, obscuring its true significance in individual cases.[71] In the Twenty-second Dynasty, the "royal son of Ramses" may have played the role of the vizier.[72]

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[61] Trigger et al., *Social History* . . ., 229. See also James, "Egypt . . .," 705.
[62] Graefe, "Zwischenzeit, Dritte," col. 1448; but cf. Edwards, "Egypt . . .," 555.
[63] Sheshonq I, for example, appoints his son Nimlot as military governor of Herakleopolis (Edwards, "Egypt . . .," 539).
[64] Ibid., 541.
[65] Ibid., 542.
[66] Meeks, "Donations . . .," 644.
[67] Trigger et al., *Social History* . . ., 236; Grimal, *Stèle triomphale* . . ., 209–16.
[68] Kuhrt, *Ancient Near East* . . ., vol. 2, 625. There is considerable continuity with regard to these great Theban families between the Nubian Dynasty 25 and the Saite Dynasty 26; see e.g., Vittmann, *Priester und Beamte* . . ., 3.
[69] Trigger et al., *Social History* . . ., 238. See also Martin-Pardey, "Wesir . . .," col. 1228; Meeks, "Donation . . .," 632; Pressl, *Beamte* . . ., 97–127. The vizier is still mentioned in P. Berlin 3048 vs. (dated 879); see Lüddeckens, *Eheverträge* . . ., 10–11.
[70] Vittmann, *Priester und Beamte* . . ., 143.
[71] Ibid., 144–45.
[72] Meeks, "Donation . . .," 631–32.

2.2.1.3 Several titles are closely identified with the Third Intermediate period. In the Libyan period, "Great Chief of the *Ma* (or Meshwesh)" occurs, an office approaching, if not quite reaching, the status of king.[73] This Libyan title apparently survives, much weakened, into the reign of Psamtik I of the Saite Dynasty.[74]

2.2.1.4 Powerful temple officials, such as the Steward (of Amun) (*mr-pr*), were responsible for the administration of temple fields, and doubtless also exercised legal functions or influence on occasion.[75] As in earlier Egyptian history, it can be difficult to distinguish between "temple" and "state" officials.[76]

2.2.1.5 Ancient titles, originally of juristic significance, continue to be employed in the Third Intermediate period. Thus, an official in the Twenty-second Dynasty holds the position of "chief judge, governor of the city, and vizier," a string of titles found in the Old Kingdom.[77] An oracular text mentions the archaic title "great one of the tens of Upper Egypt" (*wr md Šm ʿw*).[78] Worthies bear epithets emphasizing legal functions; Osorkon declares that he is "foremost in judging the pleas that reach his ears."[79] A high official under Petubastis I describes himself as "skilled in the laws of the royal palace."[80] The Piye Victory inscription is a rich source of titles and ranks.[81]

2.2.1.6 The nomes still evidently play a role, but their administrative significance and structure are unclear.[82] The Delta was divided into various provinces under the control of the reigning kings or Libyan

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[73] Leahy, "Libyan Period . . .," 59. See also Ritner, "Libyan Anarchy . . .," 101.
[74] Ritner, "Libyan Anarchy . . .," 107.
[75] Vleeming, *Papyrus Reinhardt* . . ., 55–56.
[76] This is the case, for example, of the "Overseer of the Granary," discussed in Vleeming, *Papyrus Reinhardt* . . ., 56.
[77] Breasted, *Ancient Records* . . ., vol. 4, 389. See also Vittmann, "Wesir . . ."
[78] Vernus, "Inscriptions . . .," 222.
[79] Caminos, *Osorkon* . . ., 78.
[80] Jansen-Winkeln, *Ägyptische Biographien* . . ., 140. Compare also "one who embellishes Thebes with good laws," Jansen-Winkeln, *Ägyptische Biographien* . . ., 155.
[81] Grimal, *Stèle triomphale* . . ., 247–49.
[82] A ruler's sphere of influence may be described in terms of nomes, e.g., Grimal, *Stèle triomphale* . . ., 211. Other geographical designations also possess administrative significance, such as "the southern land" (Vittmann, *Papyrus Rylands 9* . . ., 287–90). See also Kuhrt, *Ancient Near East* . . ., vol. 2, 627.

chiefs.[83] The boundaries of these administrative or military areas shift throughout the Third Intermediate period.[84]

2.2.1.7 Little is known of the administration under the Nubians.[85] On the highest level, Tefnakhte, the Delta potentate, swears an oath of loyalty to the invading Nubian king, Piye.[86] The High Priest of Amun gradually loses political and economic significance.[87] In the later Third Intermediate period, the "God's Wives of Amun" become correspondingly very important in the Theban area.[88] The Nubian kings appoint their sisters to this distinguished post, although the actual authority of the office is uncertain.[89] The transition to the Saite Twenty-sixth Dynasty is marked by the adoption of Nitocris, the daughter of Psamtik I, by the God's Wife of Amun, Shepenwepet II, a daughter of Piye.[90] The transition from the Nubian to the Saite period is also marked by the virtual elimination of the viziership at Thebes and the appropriation of the powers of that office by the steward of the God's Wife of Amun.[91]

2.2.1.8 It appears that, apart from a few Assyrian military and officials, native Egyptians still performed administrative functions under the Assyrian occupation (ca. 671–664).[92]

2.2.1.9 As in the New Kingdom, land registers (*dny.w*) or official records seem to be maintained.[93] In the Dakhla Stela, for example, the god declares: "only one well was found on that cadastral register of the wells and orchards of Pire, which the controller, PN, issued as a copy of the register of Pharaoh Psusennes, the great god, in year 19."[94]

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[83] Edwards, "Egypt . . .," 571.
[84] Ibid., 553, 555.
[85] Leclant, "Kuschitenherrschaft," col. 894. See also Edwards, "Egypt . . .," 570; James, "Egypt . . .," 687–88, 702.
[86] Edwards, "Egypt . . .," 573.
[87] James, "Egypt . . .," 692.
[88] Trigger et al., *Social History* . . ., 241.
[89] Leclant, "Kuschitenherrschaft," col. 894.
[90] Graefe, "Schepenupet I./III.," cols. 581–82.
[91] Ritner, "Libyan Anarchy . . .," 103–4. See also Meeks, "Donations . . .," 632.
[92] See O'Connor in Trigger et al., *Social History* . . ., 245–46; Spalinger, "Esarhaddon and Egypt . . ."; Onasch, *Die assyrischen Eroberungen Ägyptens*, 158.
[93] Allam, "Publizität . . .," 36.
[94] Gardiner, "Dakhleh Stela . . .," 22.

Other sources also attest to legal records and archives. In his Chronicle, for example, Osorkon states: "Go and bring to me every (case of) transgression against him and the records (ʿ) of the ancestors."[95]

2.2.1.10 The series of extracts from marriage contracts in P. Berlin 3048 (verso) implies a "register of deeds given in custody to the temple of Amon at Thebes."[96] Texts from the time of Shabako (707) mention a "hall of writings" (*ḥ3 n sḫ*) in the declaration: "His statement will not be heard in the hall of writings."[97] In the Stela of Sheshonq, it is recounted that a "contract" or "document of endowment" was "recorded in the hall of writings."[98]

2.2.1.11 Johnson suggests that there may have been "increased professionalization" of legal scribes in the late period; people began to go to those familiar with the proper legal vocabulary and format.[99] The scribal titles indicate an organized administrative structure, even if details are lacking. A scribe of the royal letters (*šʿt*) appears in P. Louvre E 3228 b, 2.[100] In the Smaller Dakhla Stela, there is mention of a "scribe of leases" or "scribe of the deeds."[101] The same text also contains the enigmatic title "scribe of the seal" or "scribe of the contract" (*sš ḫtm*).[102] "Witness scribes" are generally found in abnormal hieratic documents.[103]

2.2.2 *Central Administration*

While the suzerainty of certain kings, such as Taharqa, during the Third Intermediate period was generally acknowledged throughout Egypt, the sources are too sparse to reconstruct the details of any

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[95] Caminos, *Osorkon* . . ., 48.

[96] Pestman, *Marriage* . . ., 189.

[97] Malinine, *Choix* . . ., 37; see also Malinine, "Jugement . . .," 168. Vleeming, "Sale of a Slave . . .," 15, remarks: "this alternation [of phrasing] suggests to me that a building rather than a special institution is referred to."

[98] So Breasted, *Ancient Records* . . ., vol. 4, 330. See also Théodoridès, "Testament . . .," 452.

[99] Johnson, "Legal Status . . .," 181.

[100] Malinine, *Choix* . . ., 5.

[101] Janssen, "The Smaller Dakhla Stela . . .," 167.

[102] Ibid., 169. The interpretation of such titles is treacherous. As Vittmann, "Genealogische Inschrift . . .," 327, points out, the title *sš sḏ3.t -nṯr* has been taken to be either a "sort of private-secretary to the high priest" or the scribe responsible for the recording and registration of contracts between the temple and private individuals.

[103] Vleeming, "Sale of a Slave . . .," 15.

efficiently organized central administration.[104] It is difficult even to distinguish between central, provincial, and local titles. Scholars have often emphasized the "feudal" aspects of the Libyan Dynasties, wherein locally based rulers dealt with matters in the territories under their influence. Nevertheless, these rulers do on occasion defer to more nationally recognized kings, and may not usurp all of the prerogatives of kingship.

Scarcely anything can be said about the tax system under the Third Intermediate period kings, although texts do occasionally employ the traditional fiscal terminology. The tenth-century P. Reinhardt records a "tax" (*ḫtr*) on those of "the Domain of Amun under the authority of the Steward."[105] Other types of imposts or taxes appear in the documentation. "Sailing dues" (duties) are mentioned, for example, in the Osorkon Chronicle.[106] A harvest tax of about 10 per cent was assessed against the cultivators.[107] One official (reign of Osorkon II) claims to have "reduced" or "eased" (*sn<u>d</u>m*) taxes.[108] Despite such isolated bits of information, the evidence hardly suffices to reconstruct the mechanism of taxation for the Third Intermediate period.

2.2.3 *Provincial Administration*

Similarly, few sources reveal details of the bureaucracy of the individual Libyan princedoms.[109] At Thebes, "the descendants of the agents of centralized government and of the Amen establishment continued to hold the appropriate titles but became themselves a very powerful provincial nobility."[110]

In the Dakhla Stela, a highly placed official, the "governor of the region," who is a son of the king and appointed by him, decides the issue of well ownership. His judgment is confirmed by the local god.[111] Such Delta-based pharaohs as Osorkon II could occasionally project their influence into the provinces. A recently discovered stela

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[104] Cf. Leclant, "Taharqa," col. 166.
[105] Vleeming, *Papyrus Reinhardt* . . ., 25, 57.
[106] Caminos, *Osorkon* . . ., 70.
[107] Donker Van Heel, "Papyrus Louvre E 7856 Verso and Recto . . .," 98, and "Land Leases . . .," 341. For a discussion of taxes and tax terminology in the First Millennium, see Redford, "Studies in Relations . . ."; Meeks, "Une Fondation Memphite de Taharqa," 248–49.
[108] Jansen-Winkeln, *Ägyptische Biographien* . . ., 272.
[109] Edwards, "Egypt . . .," 548. Cf. also Helck, "Landesverwaltung," col. 921.
[110] O'Connor, in Trigger et al., *Social History* . . ., 238.
[111] Théodoridès, "Concept of Law . . .," 318.

in Elephantine (reign of Osorkon II) records an inspection of problematic conditions in the condition of the temple domain of Khnum.[112] The god is asked concerning the steps to be taken. The officials of the temple take an oath to maintain proper practices.

The "herald," (*wḥm.w*), an official often associated with legal matters in the New Kingdom and earlier, is less apparent in the Third Intermediate period.[113]

2.2.4 *Local Government*

The local officials become increasingly independent during such times of central weakness.[114] The ancient title *ḥ3ty-ʿ*, "local prince, nomarch, mayor," still appears in Third Intermediate and Saite period texts.[115] Very influential are such individuals as the Fourth Prophet of Amun, Montuemhet, the "mayor of the town (= Thebes)" and "Governor of Upper Egypt" during the Nubian and Assyrian periods.[116] He is called the "King of Thebes" in the Annals of Assurbanipal.[117] These "mayors of the city" and the fourth prophets of Amun in the Nubian period seem to usurp the power formerly held by the High Priest of Amun.[118] One could apparently be the "mayor" of several cities or towns at the same time.[119] There are other powerful "local" officials in this period, such as the "Shipmaster of Herakleopolis." This title, only attested at the very beginning of the Saite period, may have come into existence under the Nubian Dynasty (Twenty-fifth).[120]

Given the fragmented nature of the Egypt at this time, it is not possible to generalize about local administration in the Third Intermediate period. The bureaucratic mechanism by means of which the above-mentioned "mayors" enacted their decisions is obscure.

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[112] Seidlmayer, "Elephantine . . .," 331; Zibelius-Chen, "Nubienpolitik . . .," 338.

[113] Redford, "Studies in Relations . . .," 144; Jansen-Winkeln, *Ägyptische Biographien . . .*, 92.

[114] James, "Egypt . . .," 707.

[115] Trigger et al., *Social History . . .*, 251 (mention in text of Psamtik I). On the office of *ḥ3ty-ʿ* in the Late period, see Meeks, "Donations . . .," 636–37.

[116] Kitchen, *Third International Period . . .*, 390; Assmann, *Das Grab des Basa . . .*, 21. See also Breasted, *Ancient Records . . .*, vol. 4, 458–65; Bierbrier, "Montuemhet," col. 204.

[117] Vittmann, *Priester und Beamte . . .*, 172. Cf. also Onasch, *Die assyrischen Eroberungen Ägyptens*, 119.

[118] Strudwick and Strudwick, *Thebes in Egypt*, 41. See also James, "Egypt . . .," 705.

[119] Vittmann, *Priester und Beamte . . .*, 179.

[120] Kitchen, *Third International Period . . .*, 234. See Vittmann, *Papyrus Rylands 9 . . .*, 131, and his commentary on the relevant lines.

2.2.4.1 Naturally "scribes" of various descriptions remain an essential element of the administration.[121] A "chief scribe of the documents (or the 'mat?')" occurs in P. Louvre 3228c in association with the *qenbet* court[122] There is also, for example, a "scribe of commissions, leases" (*sš sḥn.w*) and a mention of the "leases, commissions," (*sḥn.w*) of the House of Amun," in the *Stèle de l'apanage*.[123]

2.2.4.2 The archaic title *iry-ʿ*, "door-keeper," which plays such an important role in New Kingdom texts, especially from Deir el-Medina, still appears in Third Intermediate period.[124] Similarly, the *smsw h3y.t*, "elder of the gate," another possibly judicial title dating back to the Old Kingdom, occurs in a few Third Intermediate period texts.[125]

2.2.4.3 Little can be said concerning an organized police force, although the ancient term for "police, marshal," *imy-r šnʿ*, is mentioned in the Nitokris Stela (Saite period).[126]

2.3 *The Courts*[127]

There are almost no records of actual court cases in the Third Intermediate period.[128] The title, "official/member of the Great *Qenbet* [court] of the capital," appears five times from the end of the New Kingdom through ca. 600.[129] This court may no longer be under the control of a vizier,[130] an office poorly documented in the Third Intermediate period. Allam believes that the "chief scribe" was now responsible for the functioning of the court.[131] He emphasizes, however, that

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[121] See Graefe, *Gottesgemahlin* . . ., vol. 2, 79–80: cf. Breasted, *Ancient Records* . . ., vol. 4, 393.

[122] Malinine, "Jugement . . .," 164. Compare also Vittmann, "Genealogische Inschrift . . .," 330.

[123] Eyre, "Feudal Tenure . . .," 129–30.

[124] Meeks, "Donations . . .," 647–48. See Graefe and Wassef, "Eine fromme Stiftung . . .," 114.

[125] Meeks, "Donations . . .," 648.

[126] Andreu, "Polizei," col. 1069.

[127] Allam discusses in some detail the judicial apparatus of the Late Dynastic period, but concentrates on the Saite period ("Egyptian Law Courts . . .," 115–19).

[128] Malinine, "Jugement . . .," 157.

[129] *sr n t3 qnb.t ʿ3.t n.t niw.t* (Allam, "Egyptian Law Courts . . .," 115). The ancient title "chief of the 6 courts" still appears in Libyan period biographies; see Jansen-Winkeln, *Ägyptische Biographien* . . ., 85, and cf. 212, 269.

[130] See also Malinine, "Jugement . . .," 175.

[131] Allam, "Egyptian Law Courts . . .," 115.

despite apparent changes, the Great *Qenbet* persisted and so did probably the smaller local *qenbet* courts.[132] We know little about the social status of the judges comprising the Great *Qenbet* court.[133] Allam tentatively suggests that these later judges are true judges with no administrative powers, unlike the New Kingdom judges, who were administrative officials as well.[134] Malinine suggests that the court had become priestly in composition.[135] This Great *Qenbet* was a continuation of the New Kingdom institution, which finally disappeared during the reorganization of the country under the Saite rulers.[136]

2.3.1 One of the few substantial texts referring to the court system is P. Louvre E 3228c, written in year 6 of Taharqa (685).[137] The abnormal hieratic document is composed at the order of the Great *Qenbet*. A man has lost a case concerning some money, and must renounce his own claim, while acknowledging that of his opponent. He declares, for example, "(I went) with you (the opponent) to law before the superiors of the Great *Qenbet* of the Town (= Thebes) and (before) the chief scribe."[138]

2.3.2 Private contracts may contain a declaration that the agreement reached may not be contested, presumably in a court setting.[139] Some documents from the Nubian period (reign of Shabako, ca. 707) mention a "hall of writings" (*ḥ3 n sḫ*) in the declaration by one party: "His statement will not be heard in the hall of writings."[140] This may be an official archive or record office, although the phrase also evokes a court room situation.

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[132] Ibid.
[133] Malinine, "Jugement . . .," 176.
[134] Allam, "Egyptian Law Courts . . .," 119.
[135] Malinine, "Jugement . . .," 176.
[136] Malinine, "Une Affaire . . .," 193; see also Seidl, *Ägyptische Rechtsgeschichte* . . ., 32; Allam, "Egyptian Law Courts . . .," 119.
[137] Malinine, "Jugement . . ."
[138] Allam, "Egyptian Law Courts . . .," 115. On the expression *ḏd qnb.t ỉrm*, "to go to court with," which is standard in Demotic and is attested also in the abnormal hieratic documents of the reign of Taharqa, see Allam, "*Quenebete* . . .," 15; see also Malinine, "Jugement . . .," 164.
[139] E.g. Malinine, *Choix* . . ., 37.
[140] Ibid. See also Malinine, "Jugement . . .," 168; Vleeming, "Sale of a Slave . . .," 15.

3. Litigation

3.1 *Parties*

The scarce court records hardly permit generalization. Menu has observed that the parties involved in several texts concerning a slave are of "modest" social and economic status: choachyte priests,[141] singers of Amun, soldiers, and farmers.[142] The inscriptions of Henuttawy and Maatkare imply that lower status individuals might conceivably dispute ownership rights with those two distinguished ladies.[143] Women can transact legal matters and initiate court cases. In P. Vatican 10574 two women conduct a sales transaction with the great steward of Amun.[144] In a few cases (e.g., P. Brooklyn 16.205), one party is apparently represented by another man (a *rwḏ*, "agent," or relative?).[145] In contracts wherein one party comprises several persons, their unanimity is expressed by the phrase "while they speak with one mouth."[146]

3.2 *Procedure*

3.2.1 Malinine suggests that the case of P. Louvre 3228c was first judged in a local court and only afterwards entered the "Great *Qenbet* Court." He believes that the entire case lasted more than four years.[147] The defendant having lost, the judges decided that the loser should swear an oath along with seven other persons who had come before the court, confirming that the disputed payment for the slave had in fact been made, and to renounce any future raising of the issue concerning the slave and the payment for the slave.[148] Such a public disavowal of claim resembles the later Demotic acts of cession.[149]

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[141] Choachyte priests (involved in the funerary cult) appear frequently as parties in contracts from the Theban area; see, e.g., Vleeming, "Sale of a Slave . . .," 13; Menu, "Cessions . . .," 76; Donker van Heel, "Land Leases . . .," 339.

[142] Menu, "Cessions . . .," 81.

[143] Gardiner, "Gods of Thebes . . .," 60–61, 66–67.

[144] Menu, "Cessions . . .," 75.

[145] See Parker, *Saite Oracle Papyrus* . . ., 51; cf. Gardiner, "Gods of Thebes . . .," 62. A *rwḏ* ("agent, representative") appears in Vernus, "Inscriptions . . .," 224–25.

[146] Malinine, *Choix* . . ., 49.

[147] Malinine, "Jugement . . .," 175.

[148] Ibid., 177.

[149] Ibid., 178. See also Seidl, *Ägyptische Rechtsgeschichte* . . ., 24.

3.2.2 Legal disputes were also taken before the god for oracular judgments. The two parties appear before the god, and each makes a statement, the one contradicting the other. These declarations are written out and placed before the god. The divinity makes a choice and judges one to be in the right. The witnesses to the procedure are then listed. P. Brooklyn 16.205 refers to a land dispute conducted in this manner: "they disputed again today about payment for the sections of field of citizeness X, which A, her male kinsman, sold to B. They went before (the god) Hemen of Hefat (a falcon-deity) and Hemen said to the two written claims: 'Right is B. He paid her (X's) money to A in the bad time. It is closed.' So Hemen said before all the witnesses."[150] The formulation of the verdict, "right (*m3ʿ*) is PN," is similar to those found in the New Kingdom. Significantly, the deity explains the rationale behind his judgment, declaring, "He (the victorious party) paid her money to PN in the bad time."

3.3 *Evidence*

There is very little information regarding proof in litigation.[151] Clearly, documentation, oaths, and witnesses remain the principal modes.

3.3.1 *Witnesses*

Witnesses, both male and female, play an important role in Third Intermediate period legal documents and cases. Individuals act as witnesses to economic[152] or legal transactions[153] and court-related documents.[154] The number of witnesses required on a legal document varies considerably.[155]

3.3.1.1 There are distinctions between abnormal hieratic and Demotic regarding the role of witnesses.[156] Abnormal hieratic contracts include subscriptions in the hand of the witnesses. These witnesses confirm that they acknowledge the contract and also copy an extract from

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[150] Parker, *Saite Oracle Papyrus* . . ., 50.
[151] Pirenne, "Preuve . . .," 36–37.
[152] In the loan agreement Tablet MMA 35.3.318 verso, there appears the witness scribe (precise translation uncertain); see Černý and Parker, "Abnormal Hieratic Tablet . . .," 127–28. The same office is also attested in Janssen, "The Smaller Dakhla Stela . . .," 167.
[153] Gardiner, "Dakhleh Stela . . .," 22.
[154] Malinine, "Jugement . . ."
[155] Seidl, *Ägyptische Rechtsgeschichte* . . ., 21.
[156] Following Vleeming, "Phase initiale . . .," 39.

the content of the contract. Witnesses to early Demotic contracts either generally write out the entire contract on the recto of the papyrus or sign their name alone on either the recto (beneath the body of the text) or on the verso of the papyrus. Signatures only become a common practice in the Third Intermediate abnormal hieratic documents.[157]

3.3.2 *Oath*

As throughout Egyptian history, oaths play an important role in the Third Intermediate period.[158] An oath of satisfaction is sworn by the seller in P. BM 10800,[159] while one party takes an oath in connection with the slave transaction of P. Louvre 3228c.[160]

4. Personal Status

4.1 *Citizenship*

4.1.1 The multi-ethnic character of the Third Intermediate period is quite marked, the dynastic rulers themselves being often Libyans and Nubians. Nevertheless, it is difficult to discern the practical significance attributed by the ancient Egyptians to such ethnic differences, especially since Libyans and Nubians readily accept Egyptian cultural and social norms. As in earlier periods, people in documents are generally identified by their occupations, genealogy, or geographical connections. While ethnicity may be acknowledged or mentioned, the few legal texts, to my knowledge, do not treat ethnicity as a factor on any level.[161]

4.1.2 The standard New Kingdom designation *nmḥ*, "free person, citizen," appears also in Third Intermediate texts. In the Dakhla Stela, "waters of a *nmḥ*" are contrasted with "waters of pharaoh."[162]

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[157] Eyre, "Employment . . .," 15.

[158] Overview in Menu, "Le serment . . ." Seidl discerns both assertory and promissory oaths in the abnormal hieratic documents (*Ägyptische Rechtsgeschichte* . . ., 53–54).

[159] Edwards, "Bill of Sale . . .," 122.

[160] Malinine, "Jugement . . .," 159; cf. also Seidl, *Ägyptische Rechtsgeschichte* . . ., 34–35; Bakir, *Slavery* . . ., 63–64.

[161] The subjects of "slave sales" are sometimes designated "men of the North," these being presumably northerners captured during the Nubian campaigns.

[162] Gardiner, "Dakhleh Stela . . .," 21. *Nmḥ* ("private owner") also appears in the Inscription of Maatkare (Gardiner, "Gods of Thebes . . .," 66). Niwinski, "Some

The New Kingdom designation *ʿnḫ-n-nỉ.wt*, "citizeness," still occurs ca. 770.[163]

4.2 *Class*

The old designations *sr* ("noble")[164] and *nmḥ* ("free person") perhaps possessing "legal" significance, still occur in this period. While there may have been some social mobility or movement between social classes, inheritance of offices was probably the rule.[165] Osorkon, for example, declares that he appointed "the children of the magnates [who were learned]" to the positions of their fathers.[166]

4.3 *Gender*

Women figure prominently in the legal and economic sources of the Third Intermediate period,[167] playing an important role in the transmission of ownership and property rights.[168] A woman, for example, leases out land in P. Louvre 7851 (Nubian period).[169] A man states of a well in Dakhla that "it belongs to my mother Tewḥenut, whose mother was Ḥententere."[170] Several large tombs in Thebes belong to female "officials who adminstered the possessions of the Divine Spouse . . . They prove that these women held high offices like their male colleagues and received the corresponding income."[171] They can also act as witnesses.[172] Menu believes that widows might still utilize the land given to their husbands as payment for their mili-

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Remarks on Rank and Titles," 79, emphasizes (speaking of the Twenty-first Dynasty), "(in Thebes) *everybody* was somehow connected with the great temple at Karnak or its dependants in Luxor and in western Thebes. Thus, the commonly used term "priest" should rather be understood as a synonym for 'citizen,' all the more because most of the priests were engaged in the holy service only temporarily, more or less three times a year."

[163] Parker, *Saite Oracle Papyrus* . . ., 50; see Menu, "Business . . .," 197.

[164] E.g., Caminos, *Osorkon* . . ., 44.

[165] Allam, "Bevölkerungsklassen," col. 774. Cf. also Gardiner, "Dakhleh Stela . . .," 27; Menu, "Business . . .," 197.

[166] Caminos, *Osorkon* . . ., 51.

[167] See Menu, "Business . . .,"and "La condition de la femme . . ." In general, see also Johnson, "Legal Status . . ."

[168] Menu, "Business . . .," 198.

[169] Donker van Heel, "Land Leases . . .," 341.

[170] Gardiner, "Dakhleh Stela . . .," 22.

[171] Feucht, *Egyptians* . . ., 339.

[172] Menu, "Cessions . . .," 79.

tary services.[173] Sometimes, relatives or trustees do apparently undertake economic transactions on behalf of females.[174] Menu concludes: "It seems that women had a full *capacity* of rights, but that in daily life they often left to their husbands the *exercise* of those rights."[175]

The God's Wives of Amun may have been required to remain virgins, but this is still an undecided point.[176]

4.4 *Slavery*

Numerous texts seem to deal with the sale of slaves, although the interpretation of these "slave-sale" transactions is still disputed. Menu proposes that they are not actually slave sales but "are in fact work contracts of short term to repay a debt or to engage in work."[177] Slaves are included in the endowments (in the *Stèle de l'apanage* and the stela of Sheshonq), perhaps to cultivate in the fields.[178] In the Nubian period, slaves are sometimes called "men of the North."[179]

In P. Louvre 3228d (dated 688) a man and his sister cede to a woman their slave for the sum of two *deben* and four *kite*. It seems that the two are selling the slave in order to cover the costs of the burial of their parents.[180]

The dispute in P. Louvre 3228c (703) also revolves around a slave/servant called "a man of the North."[181] In that document, it is interesting to note that the father's name is omitted after the slave's own name.[182]

On the religious level, the sale of the shawabti servants/slaves in P. BM 10800 is represented as a sale of *ḥm.w*, "slaves/servants."[183]

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[173] Menu, "Business . . .," 199.
[174] Ibid. See also Parker, *Saite Oracle Papyrus* . . ., 50.
[175] Menu, "Business . . .," 205.
[176] Bryan, "In Women . . .," 43.
[177] See Manning, "Land and Status . . .," 157. See also Menu, *Recherches I* . . ., 184–99; Seidl, *Ägyptische Rechtsgeschichte* . . ., 45–46.
[178] Eyre, "Feudal Tenure . . .," 125–26. See also Eyre, "Work . . .," 208; Vernus, *Tanis* . . ., 106–07.
[179] Malinine, *Choix* . . ., 45.
[180] Ibid., 47. Cf. also P. Louvre E 3228 F (old B), in which a man declares to a colleague that three female slaves and one male slave have been sold in order to provide funerary expenses of two persons (Griffith, *Papyri* . . ., vol. 3, 15).
[181] Malinine, "Jugement . . .," 165. On this term, see also Vleeming, "Sale of a Slave . . .," 14.
[182] Malinine, "Jugement . . .," 170.
[183] Seidl and Wildung, "Uschebtikauf . . .," 292.

4.4.1 *Terminology*

ḫm,[184] and more frequently, *b3k* are the usual terms for "slaves/servants" in the Third Intermediate period.[185]

4.4.2 *Categories*

Menu suggests that three types of dependents (i.e., servants or slaves) may be distinguished: (1) peasants working state or temple lands, (2) prisoners of war or captive foreigners redistributed by pharaoh to his officials, and (3) domestic servants.[186]

4.4.3 *Creation*

According to Bakir, contracts between two persons in which one becomes a servant/slave to the other are known from the Twenty-fifth to Twenty-seventh Dynasties. In these contracts, a man also "gives the buyer indefinite rights over the vendor as well as his present and future children and earnings in perpetuity."[187]

4.4.4 *Treatment*

It is possible that "prisoners of war" or slaves were branded.[188] P. Strassburg 39 (Twenty-first Dynasty) mentions the flight and pursuit of a servant.[189]

5. Family

Given the political instability of the Third Intermediate period, it may be supposed that one's dependence on family support, ties, and contacts became ever more pronounced. Several legal texts preserve particularly illuminating statements regarding family relationships. In the

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[184] Bakir, *Slavery* . . ., 32 (tends to be used for "slave" until the Twenty-second Dynasty, then "servant," and even "priest," thereafter). See also Loprieno, *Egyptians* . . ., 213, on the disappearance of the term *ḫm*, "slave" in "administrative documents" after the Twenty-second Dynasty.

[185] See Jasnow and Vittmann, "Abnormal Hieratic Letter . . .," 37, and Cruz-Uribe, "Slavery . . .," 47.

[186] Menu, *Recherches* . . ., 185.

[187] Bakir, *Slavery* . . ., 9, but I believe that such "self-sale" documents actually only begin in the Twenty-sixth Dynasty; cf. also Bakir, *Slavery* . . ., 56–57; Menu, "Cessions de services . . .," 82.

[188] Graefe and Wassef, "Eine fromme Stiftung . . .," 109.

[189] Wente, *Letters* . . ., 206; so too P. Strassburg 26 (ibid.).

statue of Nakht-Mut (S. Cairo 42.208), for example, the daughter exclaims: "What is the God of a person except his father and mother?"[190]

5.1 *Marriage*[191]

5.1.1 *Sources*

The earliest marriage "contracts" or documents are from the Third Intermediate period.[192] P. Berlin 3048 (verso—Twenty-second/Twenty-third Dynasties, year 14 of a Takelot [ca. 879]), contains three quotes from various marriage contracts.[193] The formula thrice repeated is: "Entering into the house of PN which (the groom) PN made in order to make his *ʿ.wy n ḥm.t* ("document of responsibility of a wife"; "*Ehefrauenobligation*") for the lady, PN, his daughter, as wife today."[194] P. Berlin 3048 already seems to mention the "gift of a woman," given first to the father-in-law and, in later periods, to the woman herself at the time of marriage.[195] According to Johnson, "In examples of such "marriage documents" dated from the ninth through the mid-sixth centuries, the bridegroom dealt with the father of the bride and pledges his property to his (future) father-in-law as security for the *šp n sḥm.t*, gift of/for/to a woman."[196] The text raises the possibility of divorce and adultery ("the heavy reproach," *ḫn dns*, and "the great crime which they have found in a woman," *bt3 ʿ3 nt gm=w n s-ḥm.t*).

P. Cairo 30907/9 is another marriage "contract," dated to 676 (?),[197] which contains the same opening formula as found in P. Berlin 3048, verso: "On this day the entering into the house of PN by PN." The groom lists his property which he gives his wife as a "gift of a woman." He then swears an oath, affirming that if he leaves his wife and loves another woman, unless the cause of his leaving is adultery on the part of his wife ("the great crime"), he will give to her the above-mentioned property (the "gift of a woman"). The

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[190] Johnson, "Legal Status . . .," 182.

[191] The scarcity of the source material must be emphasized (Johnson, "Legal Status . . .," 216).

[192] Lüddeckens, *Eheverträge* . . ., 10–15; cf. Allam, "Obligations . . .," 96.

[193] Lüddeckens, *Eheverträge* . . ., 10–11, 184.

[194] Pestman, *Marriage* . . ., 12; Lüddeckens, *Eheverträge* . . ., 8.

[195] Lüddeckens, *Eheverträge* . . ., 11.

[196] Johnson, "Annuity Contracts . . .," 114. See also Johnson, "The Persians . . .," 156, and "Legal Status . . .," 216.

[197] Lüddeckens, *Eheverträge* . . ., 12–13.

preserved text concludes with remarks (broken) concerning the children which his wife will bear him.

5.1.2 *Terminology*

The standard term for wife is *ḥm.t*, but the designation "mistress of the house" (*nb.t-pr*), already attested since the Middle Kingdom, is perhaps an indication of marriage.[198]

5.1.3 *Conditions*

The groom seems to have entered into communication with the father of the bride and presents him with the "gift of a woman."[199] Černý cites one possible example of brother-sister marriage from the Twenty-second Dynasty (both children of a great chief of *Ma*).[200]

5.1.4 *Divorce*

Divorce is mentioned in P. Berlin 3048, verso.[201] The two early marriage documents both stipulate that the husband on divorcing his wife must pay her the amount of her "gift of a woman," unless justified by her adultery. True divorce documents are not attested in the Third Intermediate period, but only since the sixth century.[202]

5.1.5 *Remarriage*

There are references to "the first" and the "second" wives of a soldier in P. Louvre E 3228c, but they may well have been consecutive marriages.[203]

5.1.6 *Polygamy*

As in other stages of Egyptian history, monogamy seems to have been the rule.[204] Concubines are mentioned occasionally in the documents. The Oracular Amuletic Decrees, for example, contain the wish that the protectee's "concubines (*ḫbs.w*) be fruitful."[205]

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198 Niwinski, "Some Remarks on Rank and Titles . . .," 80.
199 Johnson, "Annuity Contracts . . .," 114.
200 Černý, "Consanguineous Marriages . . .," 23.
201 Lüddeckens, *Eheverträge* . . ., 11.
202 Allam, "Mariage . . .," 122.
203 Menu, "Cessions . . .," 79.
204 See Allam, "Mariage . . .," 123, for remarks on polygamy.
205 As rendered by Edwards, *Oracular Amuletic Decrees* . . ., 48. On this passage, see Eyre, "Adoption Papyrus . . .," 212.

5.2 *Children*

Traditional attitudes toward children continue into the Third Intermediate period. In his tomb biography, Harwa, the great High Steward of Amenirdais, the God's Wife, describes himself as "a shade for the child, a helper for the widow, one who gave rank to an infant."[206] Similarly, as in older periods, the importance of sons who might inherit is emphasized in the biographical inscriptions: "He (i.e., the god) provided me with a son to take office, on my entering the land of my permanence."[207] An awareness of the obligations to bury one's parents appears in P. Louvre E 3228 d (688), wherein a brother and sister sell a slave (?) in order to cover the funerary costs of their mother and father.[208] While her position as a princess was certainly atypical, it is interesting that the divine guarantee of the property ownership of Maatkare refers to land which she acquired while yet a child.[209]

5.3 *Adoption*

There are no clear examples of legal adoption by ordinary persons. Adoption does, however, play a significant role in the institution of the God's Wives, where succession to the post was through adoption.[210] The institution of adoption was apparently important in the Nubian royal house in Napata.[211]

6. Property and Inheritance

As in earlier periods, property, both "private" and "royal," is well documented. The same ambiguity exists as to the nature and extent of "private property" as in earlier periods.[212] But distinctions in property ownership were certainly made. The Dakhla Stela, for example, deals with the question of whether a well belongs to the king or to private persons.[213] In Statue Cairo 42.208 (Osorkon II), the speaker

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[206] Lichtheim, *AEL* 3, 27.
[207] Ibid., 19 (reign of Osorkon II).
[208] Menu, "Cessions . . .," 77.
[209] Menu, "Business . . .," 197; cf. Edwards, "Egypt . . .," 552.
[210] Edwards, "Egypt . . .," 568. On this problem of the role of adoption, see Vittmann, "Kursivhieratische . . .," 116–17.
[211] Allam, "Zur Adoption . . .," 14.
[212] In Libyan period biographies officials proclaim an abhorrence of excessive greed: "I hated to pile up possessions" (Jansen-Winkeln, *Ägyptische Biographien* . . ., 11).
[213] Gardiner, "Dakhleh Stela . . ."

distinguishes his own property inherited from his parents, property acquired by himself, from the property given to him by the king.[214] Inscriptions confirm the ownership rights of two important women of the Twenty-first Dynasty: Henuttawy and Maatkarre (daughter of Psusennes II).[215] Amun is apparently requested to kill those attempting to dispute the ownership rights of these prominent women.[216]

In the Late period, the increased number of private donations to the temples resulted in the creation of many small sources of income (fields and the like) which would then be given to individual priests as prebends ("sinecures, benefices"; "*Pfründen*"). These sources of income become much coveted and the cause of legal battles.[217]

6.1 *Tenure*[218]

6.1.1 As in other periods of Egyptian history, the king(s), upper classes, temples, and private individuals of modest status all apparently possessed landholdings. Naturally, the king or some other high authority may present fields to his officials or subordinates.[219] Temple land is sometimes granted to high officials.[220] Determining ultimate ownership is a complicated matter.[221] The royal land may be explicitly called "the land of Pharaoh."[222] The term *3ḫ-nmḥ* (ca. 670), "free land," may refer to private ownership or the usufructary right to cultivate the field.[223]

6.1.2 Purchases and sales of land appear, as, for example, in the Inscription of Henuttawy[224] and the Inscription of Maatkare.[225] The price of land seems to have been low in the Third Intermediate period.[226]

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[214] Johnson, Legal Status . . .," 215; Jansen-Winkeln, *Ägyptische Biographien* . . ., 48.
[215] Gardiner, "Gods of Thebes . . ."
[216] Ibid., 66.
[217] Helck, "Tempelwirtschaft," col. 419.
[218] See also Menu, "La Détention . . ."
[219] Redford, "Studies in Relations . . .," 154.
[220] Eyre, "Feudal Tenure . . .," 119. The princess Karomama (reign of Takelot II) receives a gift of land (Breasted, *Ancient Records* . . ., vol. 4, 375–76).
[221] Menu, "Questions . . .," 136. In the *Stèle de l'apanage*, an endowment consists of land bought from private persons, generally in the form of small plots belonging to *nmḥ.w* (Eyre, "Feudal Tenure . . .," 125).
[222] Meeks, "Donations . . .," 641. There is some evidence for "military" colonies (of foreign mercenaries?) in the Twenty-second Dynasty (Helck, "Militärkolonie," col. 135).
[223] Alternatively, it may have originally been employed for fields owned by people of low status; see Donker van Heel, "Papyrus Louvre E 7852 . . .," 92, and Vleeming, *Papyrus Reinhardt* . . ., 51–52.
[224] Gardiner, "Gods of Thebes . . .," 60.
[225] Kitchen, *Third Intermediate Period* . . ., 284; Gardiner, "Gods of Thebes . . .," 64–69.
[226] Warburton, *Economy* . . ., 334; Parker, *Saite Oracle Papyrus* . . ., 49.

6.1.3 A very significant group of texts are the Donation Stelai (esp. the Twenty-second to Twenty-third Dynasties; 945–715).[227] The king gives to the temples thereby the economic means to maintain themselves, generally in the form of land. These donations are sometimes given by the king through the agency of a high official, for example, the "Great Chief of the May."[228] The status of these lands before being donated is seldom known;[229] in some cases, they may have been given to the donor in return for military service.[230] It is often difficult to determine the motives behind such donations.[231]

6.1.4 The Great Dakhla Stela records a dispute concerning the ownership of a well in the oasis.[232] This text is important because the "court" is presented with the copy from the royal registry (*dny.w pr-ʿ3*). The ancestors of the plaintiff are shown to have had a claim to the well more than a hundred years earlier, and consequently ownership rights for him are validated. This verdict is confirmed by an oracular divine statement.[233]

6.1.5 Boundary stelae are erected, inscribed with texts placing the land under the protection of a god.[234]

6.2 *Inheritance*

6.2.1 Some texts, phrased in religious terms, provide for the dispersal of property after a person's death. The "will" of Iuwelot (Osorkon III) is a conveyance by a High Priest of his estate to his son.[235] This "will" may in fact be a *donatio inter vivos*, but this is not certain.[236] In Statue Cairo 42.208 (Twenty-second Dynasty) a man asserts that one daughter, to the exclusion of her siblings, will inherit his property

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[227] Meeks, "Donations . . .," 607.

[228] Ibid., 633. Meeks points out that the local chiefs thus had considerable administrative, military, and economic power (639).

[229] Ibid., 640.

[230] Ibid., 641.

[231] Ibid., 649. He further remarks that the private donations may have been connected with the funerary cult (651). See also Helck, "Tempelwirtschaft," col. 419.

[232] Gardiner, "Dakhleh Stela . . ."

[233] The procedure is reminiscent of the Mes court case several hundred years earlier.

[234] Meeks, "Une borne . . ."

[235] Breasted, *Ancient Records* . . ., vol. 4, 405.

[236] Menu, "La stèle dite de l'apanage," 189. Donation documents are not attested in abnormal hieratic (Donker van Heel, "Land Leases . . .," 342).

after his death.[237] The expectation that a son would inherit the office of his father is characteristic of this period. Not unexpectedly, therefore, a curse may include the statement: "I do not permit his son to come to the place of his father."[238]

6.2.2 The god declares in the Great Dakhla Stela, with regard to the successful plaintiff and the well which has been judged to belong to him: "As for the flowing wells . . . Confirm them unto him, they being confirmed to son of his son, heir of this heir, to his wife and to his children, there being no other son of private status belonging to PN who shall have a share in them except PN, the son of PN."[239]

6.2.3 Menu suggests that widows might still cultivate the land "given to their husbands as payment for their military services."[240]

6.2.4 In the statue inscription of Nakhtmut, a man disinherits or excludes certain daughters and sons, declaring: "No other son or daughter shall say: 'Give me the like!' since like the Great God (= the pharaoh) said: 'Let every man make the determination (*sḫr*) of his own property!' "[241]

7. Contracts

As for the earlier periods, little is known about the economy of the Third Intermediate period.[242] There is, in any case, ever-increasing evidence for the drawing up of contracts between private individuals beginning in the Twenty-fifth Dynasty. While the ancient term for "contract, will, transfer-document," *imyet-per*, still occasionally appears, other designations such as *sḫn* or *ḥr* also begin to be employed.[243]

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[237] Théodoridès, "Testament . . .," 442, 469.
[238] E.g., Jacquet, "Deux Graffiti . . .," 170–71.
[239] Gardiner, "Dakhleh Stela . . .," 22; see also Théodoridès, "Concept of Law . . .," 318–19.
[240] Menu, "Business . . .," 199.
[241] Johnson, "Legal Status . . .," 182.
[242] Warburton, *Economy* . . ., 332.
[243] E.g., Statuette Cairo 42.208; see Jansen-Winkeln, *Ägyptische Biographien* . . ., 48. Menu discusses the evolution of contract form between the eleventh and fourth centuries ("Questions . . .," 140–41).

The role and function of merchants, who might especially be expected to employ written contracts, remain rather shadowy.[244]

Titles and references in documents suggest that a bureaucracy responsible for the recording, registering, and archiving of contracts existed in the Third Intermediate period. The title "scribe of the seal/contract of the god" has been understood, for example, to refer to a scribal official who draws up and registers contracts between private persons and temples.[245]

The parties to abnormal hieratic contracts explicitly forbid family members—son, daughter, brother, sister—from disputing a legal transaction.[246] In a Twenty-first Dynasty oath concerning a "work contract(?)," a woman swears before witnesses that if she "speaks (again)" (i.e., goes to court) concerning the matter, "her tongue will be cut off."[247]

7.1 *Sale*[248]

7.1.1 In his oracular inscription, Menkheperre (ca. 1000) states: "Look after these people, citizens of Thebes. Let them be given payment in exchange for the plot of land . . . Let the payment be large [from] the (treasury) of Amun-Re."[249] In the same text, the proper fashion of the sale of land is emphasized: "They (the sellers) were given payment in exchange for the plot of land, saying in the presence of the Great God: 'We have received the [payment from the ki]ng's s[on.] We are paid in full thereby.' "[250]

7.1.1.1 In P. Brooklyn 16.205 (ca. Sheshonq III; 825–773)[251] the details of a land sale are described: "Account of the money which PN paid in exchange for 1/2 1/8 (aroura) of field which he bought from the Outline-draftsman PN."[252] P. BM 10800 is a particularly

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[244] Meeks, "Fondation . . .," 249–50. See also Meeks, "Borne . . .," 77; Caminos, *Osorkon* . . ., 58.

[245] Vittmann, "Eine genealogische Inschrift . . .," 327.

[246] Allam, "Obligations . . .," 95.

[247] Černý, "Parchemin du Louvre N° AF 1577," 234. See also Jansen-Winkeln, *Text und Sprache* . . ., 284.

[248] On sales in the abnormal hieratic documents, see Seidl, *Ägyptische Rechtsgeschichte* . . ., 42. *swḏ* ("transfer") is one common word employed for a legal transfer; see Malinine, "Jugement . . ." 165 ("transmission légale").

[249] Epigraphic Survey, *Scenes*, vol. 2, 17.

[250] Ibid., vol. 2, 18.

[251] Edwards, "Egypt . . .," 563.

[252] See also Parker, *Saite Oracle Papyrus* . . ., 51.

important bill of sale or receipt for a set of shawabtis, dated to the Twenty-second Dynasty.[253] The seller confirms receipt of the money before several witnesses. It has been suggested that this text represents an ancestor of the standard Demotic document type, the *sš db3 ḥd*, "deed for silver" (*Geldbezahlungsurkunde*).[254] To my knowledge, the two commonly associated Demotic document types, "deed for silver," or "writing concerning silver" (*sš db3 ḥd*) and the "writing of being far" (*sš n wy*), that is, the sale and cession documents, both necessary to complete a transfer of ownership in the Late period, are not paralleled in the Third Intermediate period.[255]

7.1.1.2 The typical Demotic *sš db3 ḥd* begins, "You have caused my heart to be satisfied with the money of X." The abnormal hieratic documents do not contain this phrase, although the expression "in contentment of heart," appears also in the abnormal hieratic legal documents.[256]

7.1.2 Numerous apparent sales of slaves are attested from the Third Intermediate period.[257] After the usual dating formula, one such sale of a slave (P. Leiden F 1942/5.15) begins with the statement of the seller, who affirms that he has received a certain amount of silver from the buyer, this document being the receipt. The statement is followed by an oath, again a common feature of legal documents in this period. The witnesses to the slave-sale transaction of P. Leiden F 1942/5.15 confirm that the seller received the money, and that this money was to serve as payment for the slave.[258]

7.1.2.1 P. Louvre E 3228e is another sale of a slave, dating to 707.[259] The seller speaks, declaring that she has given the slave to the purchaser and received a specific amount of money from him. The seller swears an oath that she has no relative who can contest the sale. She further affirms that the person who will in fact dispute the sale

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[253] Edwards, "Bill of Sale . . ." On the sale of shawabtis, see Warburton, "Sale . . ."; Seidl and Wildung, "Uschebtikauf . . ."
[254] Warburton, "Sale . . .," 345, 351.
[255] See Allam, "Abstandsurkunde . . .," 49.
[256] Edwards, "Bill of Sale . . .," 123.
[257] E.g., P. Leiden F1942/5.15, from the time of Piye (ca. 720); see Vleeming, "Sale of a Slave . . ." Contra, Menu, "Cessions de services . . .," 74.
[258] Vleeming, "Sale of a Slave . . .," 8.
[259] Malinine, *Choix . . .*, 35.

will not be heard in the "hall of writings."[260] There then follow four witnesses attesting to the statement of the seller.

7.1.3 Donker van Heel remarks that an abnormal hieratic sale "should contain a statement by the declaring party that he (or she) has received a *specific amount of money* in return for the object of sale."[261] The amounts of money are often said to be of the "silver of the treasury of X temple," for example, "the silver of the treasury of (the deity) Heryshef."[262]

7.1.4 In the sale document P. Louvre 3168 (dated 675), a woman conducts a transaction concerning thread. She sells both the thread and is reimbursed for the cost of weaving.[263]

7.1.5 P. Louvre 3228c seems to be a contract drawn up following a court case.[264] The subject of the suit was a slave (either Egyptian or foreign). He is probably a prisoner of war. This slave seems to have been the subject of three distinct and successive transactions.[265] He may have been mortgaged at some point.[266]

7.1.6 A man may swear that he will not rescind the document recording a sale of a slave.[267]

7.2 *Loan*

7.2.1 Explicitly formulated loan agreements with interest are first really well attested in the Third Intermediate period. The oldest Egyptian debt note ("Schuldschein") is P. Berlin 3048 from the Twenty-second Dynasty.[268] It is a relatively straightforward document in which a man promises to pay back with 100 percent interest a

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[260] Ibid., 37.
[261] "Land Leases . . .," 342.
[262] Vleeming, "Sale of a Slave . . .," 14.
[263] Menu, "Business . . .," 202. See also Seidl, *Ägyptische Rechtsgeschichte* . . ., 24.
[264] On P. Louvre E 3228 c, d, e, and f, see Menu, "Cessions de services . . .," 73.
[265] Malinine, "Jugement . . .," 171.
[266] Ibid., 174.
[267] Malinine, *Choix* . . ., 45: "I will not be able to withdraw the legal document which is above" (*bn iw=y rḏ sṯ3 t3 hr nti- ḥry*). Note also the expression *sṯ3 p3 mḏ*, "to withdraw a document" (13).
[268] Möller, "Schuldschein . . ." See also Menu, "Questions . . .," 141. On loans, see now Menu, "Modalités . . ."

loan of five deben (of the Treasury of Heryshef) within one year. There are six witnesses, all apparently priests.

7.2.2 Another loan (of grain) is P. Louvre E 3228b (700—reign of Shabaka).[269] This text mentions interest (of unspecified amount) if the original debt is not repaid by a certain time. One party declares that he will pay back the debt, "without any contesting the matter with you." This transaction is witnessed by eight persons. The statement of the debtor is repeated in connection with each of the witnesses. An interesting feature of this document is that it has been annulled, if that is the correct interpretation of the twelve vertical lines which have been drawn through the text.[270]

7.2.3 Tablet MMA 35.3.318, recto and verso, preserves two loans from the time of Taharqa. The first is a grain loan in which interest (*ms.t*) of some 75 percent per annum is charged. In the second money loan, the interest seems to be 40 percent yearly.[271]

7.2.4 In the block statue Cairo CG 559, the official declares that he never compelled a man in difficulties to pay back his (grain) debts: "I did not compel him to give his property to another in order to pay the debts of that which he had received. I satisfied him, by buying from him what he had, giving double or triple for it."[272]

7.2.5 Menu suggests that in the Late period there is a tendency to strengthen the rights of the creditor, in that the debtor more precisely delineates how he is to repay the debt and the conditions under which penalties are imposed.[273] Whereas in the New Kingdom, the oath was the chief guarantee for the repayment of the loan, in the Third Intermediate period and then, more developed, in the Demotic material, there comes into being a true pledge or surety, which forms a security for the loan.[274]

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[269] Malinine, *Choix* . . ., 5. See also Seidl, *Ägyptische Rechtsgeschichte* . . ., 57.
[270] Malinine, *Choix* . . ., 5.
[271] Černý and Parker, "Abnormal Hieratic Tablet . . ."
[272] Jansen-Winkeln, *Ägyptische Biographien* . . ., 13. See also Théodoridès, "Papyrus des adoptions . . .," 652.
[273] Menu, "Prêt . . .," 117.
[274] Ibid., 118.

7.3 *Pledge*

An early example of the common word for "pledge, security," *iwy.t*, is possibly found in the still-unpublished P. Berlin 3048, verso B.[275] Within the context of marriage arrangements, Johnson believes that the groom pledges his property to his father-in-law, as a guarantee for the "gift of a woman," given to the bride's father on her behalf.[276] Some sale documents may refer to a creditor still having a claim on an object sold, which had served as a guarantee or pledge for the loan to the seller made by the creditor.[277]

7.4 *Debt and Social Justice*

Later traditions credit the Twenty-fourth Dynasty pharaoh Bocchoris with the abolishment of debt imprisonment.[278]

7.5 *Suretyship*

Menu emphasizes that no real surety appears in P. Berlin 3048 or Metropolitan Museum Tablet 35.3.318 and that true sureties only appear from the time of Apries in the Saite period.[279]

7.6 *Hire*

According to Menu, the still unpublished P. Berlin 3048 verso B (9th century), may deal with the hiring of services between individuals.[280]

The Twenty-first through Twenty-third Dynasties do not preserve any explicit short-term leases of land,[281] but sharecropping leases are attested in the Twenty-fifth Dynasty.[282] The lessee of fields generally paid the lessor a rent of about 25 percent of the harvest.[283] The term *wḏ3.t* seems to mean the amount of "corn the lessees expect to receive after the subtraction of the lessor's share (usually between a quarter and a third of the harvest) and the harvest tax of the

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[275] Menu, "Les Rapports . . .," 194.
[276] "The Persians . . .," 156.
[277] Pestman, *Tsenhor* . . ., 62.
[278] Oldfather, *Diodorus* . . ., 271–73; Théodoridès, "Concept of Law . . .," 319.
[279] Menu, "Prêt . . .," 127.
[280] Menu, "Les Rapports . . .," 194.
[281] Menu, "Questions . . .," 139. This is in contrast to the rather numerous leases preserved from the Saite period.
[282] Donker van Heel, "Land Leases . . . ."
[283] Ibid., 341.

domain of Amun (estimated at 10 percent)."[284] Parties to lease agreements state in Twenty-fifth Dynasty documents that they cannot withdraw without penalty from a land-lease agreement.[285]

7.7 *Partnership*

Several persons may own or lease property in common. In one collection of texts a group of choachytes lease and sub-lease land together.[286] The time period and purpose are not stated. The format of these texts, with some variations, is:

1. Date
2. Parties
3. Statement: "It is we who have said to you."[287]
4. Oath
5. Witnesses

In P. Louvre E 7856, a choachyte speaks to five men, some his peers, concerning a plot of endowment field allotted to the six of them to cultivate. The lessor of the field is not known. Donker van Heel notes that "it appears to be the written agreement between six co-lessors following the oral conclusion of a land lease."[288] The document concludes with an assurance or guarantee that the terms of the arrangement will not be disputed.[289]

8. Crime and Delict

8.1 *Homicide*

Little can be said about homicide, premeditated or otherwise, in the Third Intermediate period. According to the Twenty-first Dynasty Banishment Stela, the murderer is punished by death.[290] In the Ora-

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[284] Donker Van Heel, "Papyrus Louvre E 7856 Verso and Recto," 97.
[285] Donker van Heel, "Papyrus Louvre E 7852 . . .," 93.
[286] Ibid., 82.
[287] On the variety of forms of the statements, see ibid., 92.
[288] Donker van Heel, "Papyrus Louvre E 7856 Verso and Recto," 92.
[289] Ibid., 102.
[290] Hoch and Orel, "Murder . . .," 91, 113; but the passage is problematic (von Beckerath, "Stele . . .," 35). They also quote the "Piankhy Prohibition Stela . . .," in which "certain individuals are banned from the local temple, apparently for having plotted murder [of an innocent man]," ("Murder . . .," 114). See also Leahy, "Death by Fire . . ."

cular Amuletic Decrees, one may receive divine protection from "murder."[291]

8.2 *Injury*

Few legal texts refer to injury. An oracular text from Karnak contains the complaint of persons before Amun regarding violence done against them.[292]

8.3 *Sexual Offenses*

8.3.1 *Adultery*

Adultery is mentioned in the "marriage contracts" as the "great crime."[293] If a woman is found guilty of adultery and her husband leaves her, he is apparently not obligated to give to her the "gift of a woman," to which he had agreed in the marriage "contract."

8.3.2 *Rape*

No legal text from the Third Intermediate period deals with rape. In a boundary stela, the wife and children of the man damaging the text will be "raped" by a donkey.[294] The rape and enslavement of an evildoer's wife and children also are threatened in the curse of the *Stèle de l'apanage*.[295]

8.4 *Theft*

While there are traditional affirmations of probity—"(I) stole no offering-share in the temple, but rather I shared it with the priests"[296]—no actual private legal texts have to do with theft. In Stela Cairo JE 66285 (ca. 950), Amun is asked to punish with death all of those misappropriating the statue endowment of Nemlot at Abydos.[297] A boundary stela (Twenty-second Dynasty?) contains the statement: "Amun is the one who knows that I have not taken the least stalk of grain or the smallest bundle of vegetables."[298]

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[291] As translated by Edwards, *Oracular Amuletic Decrees* . . ., 75.
[292] Vernus, "Inscriptions . . .," 215 and ff.
[293] In P. Berlin 3048, verso (partly restored), see Lüddeckens, *Eheverträge* . . ., 11; Rabinowicz, "'Great Sin' . . ."
[294] Meeks, "Borne . . .," 72.
[295] Jansen-Winkeln, "Zu einigen religiösen . . .," 255.
[296] Jansen-Winkeln, *Ägyptische Biographien* . . ., 218.
[297] Blackman, "Stela of Sheshonk . . .," 92.
[298] So Meeks, "Borne . . .," 73.

One stela concerns the misappropriation of a mortuary endowment ("acts of fraud"). The text includes an oracular decision, in which two writings are placed before the god, who is to select one of the alternative formulations.[299]

9. Special Institutions

9.1 *Oracles*

The oracular inquiry and decision are characteristic of the later New Kingdom and the Third Intermediate period.[300] The questions may revolve around legal, economic, or administrative matters.[301] The god may be asked a question during a festival procession. In such cases, the deity responds by nodding or withdrawing, this meaning assent or dissent respectively (e.g., in the Banishment Stela). In the Dakhla Stela, the prince in charge of the case orders the man claiming that the well belongs to him: "Stand in the presence of (the god) *Setekh* and [claim] it."[302] The verdict of the god is expressed in the traditional form also used by "secular" judges: "PN is in the right."[303] It can also be that two written texts dealing with the same case, one expressed in a positive fashion, the other negatively, are placed before the god, who indicates approval of one of the two alternatives.[304]

9.2 *Letters to the Dead*

P. Brooklyn 37.1799 E is a very late example of the genre of letters to the dead.[305] A woman complains to a man, possibly her husband, about wrongs committed against her by another individual. This text is undated and may possibly be Saite period in date, and not Twenty-fifth Dynasty.

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[299] Breasted, *Ancient Records* . . ., vol. 4, 325–33.

[300] See Kruchten, *Grand texte* . . ., 22–35. Still excellent is Černý's chapter on oracles in Parker, *Saite Oracle Papyrus* . . ., 35–48.

[301] Thus in the late New Kingdom, the god, Amun-Re, may confirm the appointment of a man to a significant office; a good example is Nims, "Oracle Dated . . ."

[302] Gardiner, "Dakhleh Stela . . .," 22.

[303] Ibid.

[304] E.g., Stela of Sheshonq (Breasted, *Ancient Records* . . ., vol. 4, 328).

[305] Jasnow and Vittmann, "An Abnormal Hieratic Letter . . ."

9.3 *Curses*

Curses are common in Third Intermediate period texts.[306] A powerful curse concludes, for example, the "will" of Iuwlot (*Stèle de l'apanage*), which proclaims, among other things, that the wife of the wrongdoer will be raped in his presence and his sons will become the slaves of his enemy.[307]

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[306] Assmann, "When Justice Fails . . .," 156. See Morschauser, *Threat-Formulae . . .*, and Nordh, *Curses . . . .*

[307] Jansen-Winkeln, "Zu einigen religiösen . . .," 255; see also, e.g., Meeks, "Borne . . .," 72.

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EGYPT

DEMOTIC LAW

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1. Sources of Law

1.1 *Demotic*

1.1.1 Demotic represents a distinct phase in the Egyptian language and script, and we are justified in speaking in terms of Demotic law,[1] representing as it does a new episode in Egyptian legal history.[2] There are, however, for the period covered by the term "Demotic law," other scripts and languages, hieroglyphic and the so-called "abnormal (better: "cursive") hieratic" for the early Demotic period, and Greek, which became increasingly important, for the Middle period of Demotic law. The use of Demotic as an independent language of legal texts was in decline by the late Ptolemaic period, although the last Demotic contract is dated 175/176 C.E.[3] Demotic continued to be used for tax receipts into the first century C.E. (and for temple accounts and literary texts well into the second century

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[1] Previous general surveys of Demotic law were written by El-Amir, "Introduction . . .," and Edgerton, "Demotica . . ." Taubenschlag, *Law* . . ., incorporates Demotic material into his large survey of the law of the papyri, as does Seidl, *Ptolemäische Rechtsgeschichte*, 19. For Demotic texts, see Zauzich, "Die demotischen Dokumente," and DePauw, *Companion* . . ., 123–48. Articles concerned with Demotic and Greek law in the papyri are reviewed by Hengstl in the *Archiv für Papyrusforschung*, "Juristische Literaturübersicht," now continued by the same author in the *Journal of Juristic Papyrology*, and by Mélèze-Modrzejewski in the *Revue historique de droit français et étranger*. Because of the limits of space and the overlap between early Demotic and abnormal hieratic at the beginning of the period of coverage here, and of Demotic and Greek texts at the end, this survey can in no way make a claim to complete coverage of the law of Egypt from 650–30 B.C.E.

[2] Malinine, *Choix de textes* . . ., xv–xxvi; Pestman, "L'origine . . ." There are certainly strong connections between Demotic law and earlier Egyptian legal traditions, clearly seen in the legal language and in conception.

[3] P. Tebt Botti 3. On the decline of Demotic as a legal language, see Lewis, "Demise . . ."

C.E.). Demotic was a local script from the Delta and gradually replaced the hieratic tradition in the Nile valley as the Saite dynasty gained control of Egypt.[4] It was, at first, a legal and business language.[5]

1.1.2 Scholars usually distinguish between phases of Demotic texts based on paleography and on the format of legal texts: Early, Middle and Late Demotic. Early Demotic includes the Saite and Persian periods (650–332 B.C.E.); Middle Demotic describes texts from the Ptolemaic period (332–30 B.C.E.) and Late Demotic covers the Roman period (30 B.C.E.–ca. 250 C.E.). Throughout most of this period, Egypt was ruled by foreigners, and although Egyptian law continued in force with only minor alterations, there was no doubt some influence of foreign law upon Egyptian; under the Persians, Egypt was a province (satrapy) of the Persian empire (Aramaic loan words came into Demotic at this time); in the Ptolemaic period, Egypt was ruled by a general of Alexander, Ptolemy, and his descendants.[6]

1.1.3 With new populations came new legal systems. Thus Aramaic legal papyri in the Persian period and the abundant Greek evidence, which reflects a kind of Greek common law under the Ptolemies and Romans, certainly influenced Egyptian law, although it is not always easy to assess.[7] During the Ptolemaic regime, Greek and Egyptian law existed side by side with parallel court systems.[8] A thorough study of the legal system in this period must include both Egyptian and Greek evidence.[9] This need is most keenly felt in the study of bilingual family archival material, in state administration and in legal procedure, since for most of the period under discussion Aramaic or Greek was the administrative language of Egypt. It

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[4] Donker van Heel, *Abnormal Hieratic* . . ., 48–49.

[5] Vleeming, "Phase initiale . . ."; Pestman, "Démotique comme langue juridique . . ."; Ray, "Literacy and Language . . ."

[6] For possible Aramaic influence, see Muffs, *Studies* . . ., and Porten, "Aramaic-Demotic Equivalents . . ."

[7] On the supposed "Jewish" law in Ptolemaic Egypt, see Mélèze-Modrzejewski, "Jewish Law . . ." The acknowledgment of the receipt of a satisfactory price in Demotic sale contracts may have been inserted into the contractual language under the influence of the Greek law of sale. See Pierce, *Three Demotic Papyri* . . ., 99–100.

[8] See Mélèze-Modrzejewski, "Chrématistes et laocrites . . ."

[9] For an overview, see Rupprecht, *Einführung* . . ., 94–135, and Seidl, *Ptolemäische Rechtsgeschichte*, 8–9. Hecataeus, preserved in Diod. Sic. I, 77–80, provides an interesting Greek perspective on the Egyptian legal system. See the brief description by Welles, "Ptolemaic Administration . . .," 40–44.

is mainly private law that is documented by the Demotic material. There are very few Demotic legal texts from the Roman period, by which time Greek became the universal language in Egypt.[10]

1.2 *Law Codes*

Whether Egyptian law was ever codified remains uncertain. Unlike Near Eastern societies, there is no preserved law code in Egyptian, although we know of several royal reforms and/or compilations of the legal system—those of Bocchoris, Amasis, and Darius being the most important for our period.[11] There are several collections of legal rules that stem from the Middle Demotic or Ptolemaic period. The so-called "Legal Code of Hermopolis" (= P. Mattha; and now new variants from other sites) is in fact a collection or manual which preserves guidance in legal solutions for difficult or unusual cases.[12] It would appear that this "code" is in fact a kind of handbook used by the priest-judges in a local temple to resolve disputes over property and served as a guide to the writing of certain legal instruments. Also from this period is a text known as the "Zivilprozeßordnung," which treats the use of documents as evidence and standards of legal proof and may have served, like P. Mattha, as a guide for priest-judges in Thebes.[13]

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[10] Zauzich, "Demotische Texte . . ."; Lewis, "Demise . . ."; Bagnall, *Egypt in Late Antiquity*, 235–40.

[11] Diod. Sic. 1 94–5. For an early study of the codification of Egyptian law under Darius, see Reich, "Codification . . ." Darius' action was almost certainly a compilation of pre-existing law rather than a reform of the legal system itself. See the important remarks by Bresciani, "Persian Occupation . . .," 508–9. An overview of the problems of codification in Egypt may be found in Mélèze-Modrzejewski, "Law and Justice . . .," 2–6, and Pestman. "L'origine . . ."

[12] P. Cairo Jd'E 80127–89130 and 89137–89143 (written probably in the first half of the third century B.C.E., Tuna el-Gebel. Pestman, "L'origine . . .," believes that internal references suggest an origin in the eight century). See Mattha and Hughes, *Hermopolis* . . . A new edition with corrections has been made by Donker van Heel, *Legal Manual* . . . A second century C.E. Greek copy of the manual survives, for which see Rea, *Oxy*. xlvi (= P. Oxy. 3285), 30–38. See the remarks by Tait, "Carlsberg 236 . . .," 94–95. For other law books, see Depauw, *Companion* . . ., 114. In addition to the texts cited there, at the Fourteenth Congress of Papyrology, Oxford, a fragment of a law book found during excavations at Saqqara was announced. See briefly Pierce, "Demotic Legal Instruments . . .," 261. See also Zauzich, "Weitere Fragmente . . ."

[13] P. Berlin 13621 and P. Cairo 50108 recto (Ptolemaic period, Thebes). Depauw, *Companion* . . ., 114–15; Mrsich, "Zwischenbilanz . . ." There is good evidence to suggest that written laws were cited in trials. See, e.g., Thissen, "Zwei demotische Prozeßprotokolle . . ."

1.3 *Decrees*

Decrees emanated from various authoritative bodies—the king or his officials. Such decrees were made known very often by being engraved on temple walls or upon free-standing stelae erected in temple precincts.

1.3.1 *Royal Decrees*[14]

Royal decrees from the Ptolemaic period were written in Greek, were termed "regulations" (*prostagmata*) and "orders" (*diagrammata*), and had legislative force.[15] At the beginning of reigns and in order to restore peace, the king could issue general amnesty decrees forgiving debt, among other things.[16] Such decrees were common under the Ptolemies, especially during the troubles of the second century B.C.E. The so-called "Karnak Ostracon" dating to the mid-third century B.C.E. is a Demotic copy of a royal decree issued in Greek ordering a survey of the entirety of Egypt.[17]

1.3.2 *Priestly Decrees*[18]

In the Ptolemaic period, a national meeting or synod of priests occasionally gathered at the temple of Ptah in Memphis or in Alexandria and issued pronouncements stressing the close relationship between the king and the Egyptian gods (and priesthoods). These decrees emanating from a national gathering of priests were exclusively a Ptolemaic period phenomenon and were issued within a limited period of time. Many of these had the form of bi- and tri-lingual decrees and were erected in front of temple precincts. There were also local decrees issued by particular priesthoods.

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[14] For the Ptolemaic period, see the survey by Seidl, *Ptolemäische Rechtsgeschichte*, 10–15.

[15] Collected by Lenger, *Corpus* . . .; cf. Bingen, "Les ordonnances royales . . ."

[16] The most famous of these is perhaps P. Tebt I 5 (118 B.C.E.) issued after the civil war between Ptolemy VIII Euergetes II, and the queens Cleopatra II and III. For an English translation, see Austin, *The Hellenistic World* . . ., 382–88.

[17] The official designation of the text is O. dem. L.S. 462.4. For the text, see Bresciani, "Registrazione catastal . . .," and "La spedizione di Tolomeo . . ."; Zauzich, "Von Elephantine bis Sambehdet . . ." An English translation from the original Italian translation of Bresciani is given by Burstein, *The Hellenistic Age* . . ., 122–23. The historical context of the document is treated by Manning, *Land and Power* . . .

[18] Huß, *Synodel-Dekrete* . . .; Simpson, *Sacerdotal Decrees* . . ., 1–24.

1.4 *Administrative Orders*

An old feature of the legal system, these were contained in letters from the king to officials. These were issued in our period either in Aramaic or in Greek and then probably translated into Demotic.[19]

1.5 *Petitions*

Another old feature of the Egyptian legal system is the right of private persons to petition high officials and even the king himself. Such petitions (*mkmk*) were addressed to an official in letter form and were often a first resort in resolving disputes.[20] The tradition continued under Ptolemaic and Roman rule, when the use of *enteuxeis* written in Greek were common. The collection of ostraca known as the Ḥor archive[21] and P. Rylands 9[22] may have been composed in preparation for petitions that would initiate a legal dispute.

1.6 *Transcripts of Trials*

A copy of an official court record of a family probate dispute tried before a local tribunal of priests has come down to us from second century B.C.E. Asyut (Upper Egypt).[23] Along with contracts used as evidence in the case, the document recording the verbatim exchange between the judges and both parties to the dispute (over inherited land) gives the outlines of administrative procedure, oral argument, and the use of evidence in civil cases in Ptolemaic Egypt.

1.7 *Private Legal Documents*

There were two distinct forms of legal agreements in Demotic: (1) a so-called *sḫ*-text (derived from the Demotic word for "writing"); and (2) the *šʿt*, derived from the Demotic term for "letter," called therefore the epistolary form.[24] These come in the main from two separate

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[19] The so-called Karnak Ostracon is one such example.

[20] Zauzich, "Die demotischen Dokumente," 96; Hughes, "Memoranda . . ."

[21] Ray, *Archive of Ḥor*.

[22] Vittmann, *Papyrus Rylands 9* . . ., esp. 678–93.

[23] P. BM Siut 10591. Other accounts of trials are discussed by El-Aguizy, "Judicial Document . . .," Thissen, "Prozeßprotokolle . . .," and Johnson, "Ptolemaic Bureaucracy . . ."

[24] The *sḫ* document was usually long, narrow, and took the following form: regnal year of the king, and names of eponymous priests during the Ptolemaic period,

sources, family archives and official archives.[25] Most of these documents record settled agreements[26] for (1) the conveyance (sale, exchange, lease, agreements for division of property, cessions) of private property, real and movable; and (2) marriage arrangements, which were recorded in order to establish the line of inheritance through the wife to any children from the marriage and loans. Contracts involving the conveyance of property were important proof for legal title and all documents made concerning a piece of property were conveyed to the new owners at the time of sale.[27] Other instruments recording debt or other obligations were valid as long as they were in possession of the creditor, extinction of the obligation being achieved by the returning of the instrument to the borrower.[28] In early Demotic texts, witnesses, usually four in number, write their names on the recto of the papyrus. The standard form in Ptolemaic Demotic texts is for the names of witnesses—sixteen witnesses being the typical number for contracts—to be written on the verso. A special sign marking the head of the witness list written on the verso of a contract was placed exactly behind the verb *ḏd*, "to say," on the recto.[29] After 264 B.C.E., Demotic sales were required to have a receipt recording the payment of the sale tax; after 146 B.C.E., it became a requirement that Demotic contracts be registered at the local registration office.[30] The tax on

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ḏd A n B ("party A declared to party B"), body of contract in subjective style, signature of scribe, witness names written on the verso. The *š‘.t* form was more informal, being written as a letter, with an abbreviated dating formula and then: *A p3 nt ḏd n B* ("party A is the one who declares to party B"), contract in subjective style, signature of scribe. Sales and marriage agreements were *sḫ*-documents; leases could be either of these. See further Felber, *Demotische Ackerpachtverträge* . . ., 86–88; Seidl, *Ptolemäische Rechtsgeschichte*, 11–16; Pestman, *Pap. Tsenhor* . . .; Vleeming, *Gooseherds of Hou*, 255–60.

[25] On the distinction made between an "archive," a collection of papers gathered by an ancient person, and a "dossier," a collection of texts relating to a person but collected together by a modern scholar, see Pestman, "A Family Archive . . .," 91.

[26] The essentially verbal nature of the texts is highlighted by the opening verb "so-and-so has *said* to so-and-so . . ."

[27] The importance of an "old document," or "title deed," is stressed in P. Greek Amherst 30, (Wilcken in Mitteis and Wilcken, *Chrestomathie* . . ., 9). One such "old document" is P. Berlin 3114 (= P. Survey 1, 182 B.C.E., Thebes), for which see Pestman, *Archive of the Theban Choachytes* . . ., 46–47. In partial transfers of property, the title deeds were kept by the original owner, hence the formula in contracts "to you belongs its legal documents in every house where they are." The first example of the clause is found in a document dated to 510 B.C.E. (P. Louvre 7128). See further Pestman, "Some Aspects . . .," 291.

[28] P. dem. Adler 22; Taubenschlag, *Law* . . ., 419; Vleeming, *Gooseherds of Hou*, 177.

[29] See Nur el-Din, "Checking . . ."

[30] Pestman, "Registration . . .," and *Archive of the Theban Choachytes* . . ., 337–41.

sales is known from abnormal hieratic and early Demotic texts beginning in the seventh century B.C.E. and through the third century B.C.E. was at the rate of 10 percent.[31] Only a tax on land conveyance is known before the Ptolemies, when a general expansion of taxes is recorded.

1.8 *Oaths on Ostraca*[32]

There were two classes of oaths usually recorded on ostraca, royal and temple oaths. These are further divided into two types of oath: promissory oaths and declaratory oaths (Prozeßeid).[33] The first type was taken by a party to promise to do a certain thing. The second class of oath was taken by an accused party at the temple of a local god (hence the term "Tempeleid"), stating that he/she had not committed the wrong asserted by the plaintiff. The oath before the image of the local god was an important psycho-religious aspect of Demotic law, reinforcing the notion of divine justice as the ultimate authority in Egyptian law and sanctioning dispute resolutions.[34] The temple oath recorded on ostraca is a tradition found in Ptolemaic and early Roman texts, and the texts themselves were kept by third parties. The royal oaths were taken in the name of the king in undertaking official duties such as tax collection.

1.9 *Literary Sources*

Literary texts occasionally provide a window into the attitudes and mores of Egyptian society that have some bearing on the functioning of the legal system. The Instructions of ʿOnchsheshonqy, for example, mentions attitudes toward women and adultery.[35] The first Setne Story, the single manuscript of which dates to the mid-Ptolemaic period, is an important source for the study of the rights of children

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[31] On this circulation tax, also known as the *enkuklion* in Greek texts, see the survey by Vleeming, "Tithe of the Scribes . . ."

[32] Kaplony-Heckel, "Eid . . ."; Depauw, *Companion* . . ., 138–39, with further bibliography.

[33] Connections to the earlier tradition of oath-taking in legal processes are discussed by Donker van Heel, *Abnormal Hieratic* . . ., 80–81.

[34] Martin, *Acta Demotica* . . ., 211; Vleeming, *Ostraka Varia*, 129–35; Devauchelle, "Les serments . . ."

[35] P. BM 10508. The text is dated to the first century B.C.E. on the basis of paleography, although the historical milieu is probably earlier. See Smith, "Story . . ."; Eyre, "Adultery . . .," 98. English translation in Lichtheim, *Literature* . . ., 159–84.

to the inheritance of their father and of marriage practice.[36] Aggrieved parties could seek justice before divine tribunals as well as earthly ones. In one such "letter to the gods," the children of an abusive father seek justice from the gods (see 5.2.1 below). Although such letters may well be classified as "religious," they do point out that, despite the legal system, justice for the vulnerable (peasants, children) was neither easily obtained nor always enforced.[37]

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

In the Saite period, Egypt was reformed on a national scale, including the important imposition of the Demotic script throughout Egypt as the standard documentary language. The king ruled by divine right, as the embodiment of the living Horus, and he was required to govern Egypt with justice (*Maat*) and to maintain proper religious ritual. Therefore the ultimate source for justice was the gods and, by extension, their representative on earth, namely, the king himself. The right to petition the king directly was maintained throughout Egyptian history. Failing to rule Egypt by *Maat* would bring the wrath of the gods down on Egypt. The Demotic Chronicle, a text from the Ptolemaic period which is viewed by some scholars as a treatise on good kingship, describes the consequences of good and bad behavior by the king.[38]

2.1.2 *Legislature*

There was no legislative body in Egypt before the Roman period. The king issued decrees and decisions that became established principles of law (*hp*), quoted in legal cases. Temples were left to form and administer their own rules, but in our period the central government monitored priests and temple finances through correspondence or by new officials, not always without tension.[39]

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[36] P. Cairo 306–46; Lichtheim, *Literature* . . ., 127–38; Pestman, "Law of Succession . . .," 60.

[37] Depauw, *Companion* . . ., 149.

[38] See Spiegelberg, *Demotische Chronik* . . .; Johnson, "Historical Source . . .," and "Theory of Kingship . . ."

[39] The so-called Pherendates correspondence between the satrap and priests of the Khnum temple at Elephantine are suggestive. See Martin, "The Demotic Texts . . .," 289–95, with additional bibliography.

2.1.3 *The Administration*

During the period in which Demotic was used, Egypt was administered in different ways, first as a re-unified state under the Saites, then as a satrapy of the Persian Empire, then as an independent Hellenistic kingdom and, finally, as an imperial province of the Roman Empire. In all of these periods, the basic structure of administration, as far as can be known, remained the same.[40] There was technically no divine king, however, under the Persian or Roman administration, although such pretense continued to be followed in Egyptian temple contexts.

We have few sources for the administration of Egypt in the Early Demotic period. For the Ptolemaic period, the administration of the country at all levels is very well documented. The administration of Egypt was divided between the central government (in Sais, under the Saite dynasty, in Memphis, under the Persians; in Alexandria, under the Ptolemies and Romans), the individual nomes or districts, and the village or local administration. The administration of temples was in the hands of the local priesthood, but there were attempts to control appointments at the highest level. The finances of temples, always technically part of the state, were also monitored by the central government.

2.1.3.1 *Central*

The central administration consisted of the king, or the Satrap, in the case of the Persian period. Some of the Ptolemies ruled with coregents. Under the Ptolemies, the office of *dioiketes*, in charge of the country's finances, continued earlier practice. Officials in charge of correspondence and royal edicts, the military and governors of special provinces probably rounded out the court in Alexandria. There may in fact have been more than one *dioiketes* under the Ptolemies, and his position at court, once thought to be the highest, may have been as low as tenth highest.[41]

2.1.3.2 *Provincial*

The provincial government was based on the ancient nome divisions, traditionally forty-two in number, although there is some fluctuation in our period. These were further divided into toparchies

[40] Pestman, *Primer* . . ., 24–25.

[41] Thomas, *Epistrategos* . . ., 189. See the comments by Turner, "Ptolemaic Egypt . . .," 143, and Samuel, *Shifting Sands* . . ., 55.

and into villages. Each of these divisions had a "governor" and a "royal" scribe. As a result of the reclamation project in the Fayyum, the Ptolemies divided this region into three sectors or *merides*.

2.1.3.3 *Local*

At the local level, villages were in the charge of mayors and increasingly in the control of a village scribe (*komogrammateus*) under the Ptolemies. Local temples had their own administration in charge of the cult and of their land and other businesses.

2.1.3.4 *Census*

A census of some kind had occurred in Egypt in periods of central control since the Old Kingdom biennial cattle count. The Karnak Ostracon (see 1.3.1 above) from the third century B.C.E. suggests at least the attempt to have knowledge of the agricultural conditions of Egypt *in toto*. Household lists exist both in Greek and in Demotic from the Ptolemaic period. The salt tax introduced by the Ptolemy II Philadelphus functioned as a kind of poll tax.[42]

2.1.4 *The Courts*[43]

2.1.4.1 The power to judge was first in the hands of the gods. The king, as earthly guarantor of justice (*Maat*), was the final arbitrator of legal disputes, although he was rarely involved in practice. In theory, one could petition the king directly, as always.[44]

2.1.4.2 The administration of justice in Egyptian law was, in the first instance, in the hands of priest-judges who presided over local courts (*ʿ.wy n wpy*, lit., "place of judgment," Greek *laokritai*), which met in front of the local temple gate.[45] Divine oracles remained an important method of arbitration.[46] In the Ptolemaic period, there

[42] The salt tax is, in the main, documented for the third century B.C.E.

[43] Taubenschlag, *Law* . . ., 479–524; briefly treated by Diod. Sic. I, 75–76.

[44] Taubenschlag, *Law* . . ., 495.

[45] Mélèze-Modrzejewski, "Chrématistes et Laocrites . . ."; Quaegebeur, "La justice . . ." On the title "priest-judges," see Quaegebeur, "La justice . . .," 207, n. 40. These judges may have been selected from among the "elders" in the temple (Allam, "Egyptian Law Courts . . .," 120). These courts were not the same as the court of thirty mentioned by Diod. Sic. 1.75. In the Fayyum, a *laokrision* appears to have been a separate building (Allam, "Egyptian Law Courts . . .," 123).

[46] Erichsen, *Demotische Orakelfragen* . . .; Menu, "Les juges égyptiens . . ."; Martin, "The Child . . ."; Zauzich, "Orakelfragen . . ."

were several other officials who had competence to hear complaints. Interestingly, they too appear to dispense justice at the temple gate.[47] Under the Ptolemies, the *strategos* supervised local courts, and after the second century B.C.E., an *eisagogeus* represented the crown in the local courts. There were separate courts that had jurisdiction over Demotic and Greek contract law, respectively.[48]

2.2 *Functions*

2.2.1 *Compulsory Service*

Free Egyptians were required at certain times of the year to perform corvée labor on the local dyke and canal network. Certain classes of Egyptians (especially the priestly classes) were exempt, as were those with "Hellene" status later. Receipts were issued as proof of service in the Ptolemaic period.[49]

3. Litigation

3.1 *Parties*

Under Demotic law, both men and women were competent to bring litigation in their own right.

3.2 *Procedure*

We are not well informed on Demotic legal procedure before the Ptolemaic period. Priests, as always, were the primary judges at the local level.[50] The process of litigation began, in most cases, with a petition in the form of a letter to an official claiming wrong done to the plaintiff.[51] The legal system was informal, and it was preferable for disputes to be settled outside of the legal process, often through mediation by the *strategos* or some other local official.[52] It may have been the case that families and local officials tried to resolve legal

[47] Quaegebeur, "La justice . . .," esp. 214–20.

[48] Taubenschlag, *Law* . . ., 479–84; Mélèze-Modrzejewski, "Chrématistes et Laocrites . . ."

[49] See Vleeming, *Ostraka Varia* 3 (Elephantine?, 234 B.C.E.); Devauchelle, *Ostraca Louvre*, 31–37.

[50] See the general survey by Menu, "Les juges égyptiens . . ."

[51] See, e.g., Ray, "Complaint of Herieu . . ."

[52] P. Berlin 13544 (Ptolemaic period). See Martin, *Elephantine Papyri* . . ., 324–25; Taubenschlag, *Law* . . ., 496.

disputes before the local court was petitioned. P. Mattha often specifies the "chief of police"? (*tb-n-mš*ʿ[?]) as the starting point of complaint before a trial. Under the Ptolemies, in drawing up a complaint a petitioner notified the local *strategos*, who could judge the case himself or turn the complaint over to the *epistates* or back to a local court for judgment. A summons to appear before the local court was issued, and a failure to appear could result in preemptory judgment against the defendant.[53] If a party claimed a right established in writing, the defendant either had to acknowledge this right, and lose the case, or swear an oath that no such right had been established. If proof of wrongdoing was lacking, the burden of proof lay with the plaintiff, who was required to have a defendant swear an oath in the local temple that he had committed no wrong. The defendant was required to take an oath before the local god in front of the temple in response.

3.2.1 *Litigation over Title*

In disputes concerning the ownership of real property, there was a well-defined procedure by which a plaintiff made a "public protest" (*šʿr*).[54] One made a "public protest" (*ir šʿr*) in each of three successive years "in the face of" the accused party or *in absentia*. If the defendant did not respond within three years, the plaintiff was judged to have a legitimate claim to the property in question. By such a process, as opposed to a regular lawsuit, the burden lay with the defendant, who was forced to answer the charge or lose legal claim to the property in dispute. These protests were written complaints drawn up by a notary and witnessed. By some unknown process, they were made public.

3.2.1.1 Formal legal proceedings, for example, the swearing of oaths or the witnessing of contracts, often took place in front of a temple gate in the presence of priest-judges.[55] The losing party in a lawsuit was bound by contract to the decision.[56] Under the Ptolemaic regime, a representative of the government was present.[57]

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[53] Taubenschlag, *Law* . . ., 495.

[54] Depauw, *Companion* . . ., 148; Pestman, "Public Protests . . ."; P. Mattha 2:12–13; 16–22; 3:23, 29; 9:27.

[55] Kaplony-Heckel, *Tempeleide* . . ., 11–12; Sauneron, "La justice . . ."; Van den Boorn, "Justice . . ."; Quaegebeur, "La justice . . ."; Vleeming, *Ostraka Varia*, 132–33. Cf. Devauchelle, "Les serments . . ."

[56] Allam, "Agreement . . ."

[57] In the Asyut family dispute, the official called the *eisagogeus* (dem. *3ysws*) was present. P. BM siut 10591, 1, 6.

3.2.1.2 A declaratory oath was taken "before the god" by an accused party if a dispute was unresolved on the facts. If the accused did not take the oath, he was required to pay a fine.[58]

3.3 *The Trial*[59]

The trial itself began with a statement by the plaintiff in the case, followed by a response from the defendant. Another round of response and counter response followed. The judges (often members of the local priesthood) verified testimony by asking questions and also had authority to send out investigators through the chief of police to verify facts.[60] Both parties were responsible for marshalling and presenting their own evidence, documents, and witnesses.

3.4 *The Decision of the Court*[61]

After considering the evidence provided by the parties to the case, the judges reached a decision (lit. "gave truth") based on written and oral testimony and read it out. In the Asyut trial, the case turned on a written "law of year 21" (a royal decree or part of a corpus written in chronological order?).[62] Prior to the decision, the parties could either consent to settle by agreement of oath or one of the parties could confess. The decision was binding on both parties and was, in theory, enforced by the bailiff, but a lack of legal force in the judgment made justice by means of a trial uncertain. The judges wrote out the decision and signed the court transcript.

3.5 *Withdrawal after a Lawsuit*

The losing party in a lawsuit regarding property was required to draw up a withdrawal document (*sḫ [n] wy*, *sungraphē apostasiou*), which ceded

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[58] The available evidence for these oaths comes exclusively from Upper Egypt. See Kaplony-Heckel, *Tempeleide* . . .; Vleeming, *Ostraka Varia*, 129–35, with the remarks of Devauchelle, "Les Serments." For an oath sworn before the statue of a local divinity, see Donker van Heel, *Abnormal Hieratic* . . ., 163–64.

[59] Allam, "Egyptian Law Courts . . ." There are two main sources for court procedure, both dating to the second century B.C.E. One, in Demotic, P. BM Siut 10591, is a transcript of a trial over a family dispute concerning land from Asyut in Middle Egypt. The other, P. Tor. 1, comes from the Hermias lawsuit in Thebes concerning the ownership of a house. This account is recorded in Greek, since it involved both Greeks and Egyptians, and the proceeding was held before the local *strategos*.

[60] P. Mattha 8:28.

[61] Taubenschlag, *Law* . . ., 508–10.

[62] See Chauveau, "P. Carlsberg 301 . . .," 119–20.

all rights to the disputed property and any future claim to the said property.[63] A rare type of text exists which records the end result of litigation, beginning *ḏd=y qnb.t ỉrm=k*, "I have disputed with you."[64]

4. Personal Status

4.1 *Citizenship*

Although there was no formal category of "citizen" in the Egyptian tradition, individual men were generally distinguished in legal texts by occupation and/or ethnicity. Greeks living in the Greek cities (Alexandria, Naucratis, Ptolemais) had the status of citizen. Some ethnic groups under the Ptolemies were organized into *politeumata*.[65] At times individuals were named as being from a specific town. It is uncertain if this reflects an occupation (i.e., that the town was a military garrison) or was used for tax registration purposes. It is presumed that in Demotic sources, Egyptians were meant when not singled out, although this did not matter in the eyes of the law. What mattered, in terms of what court in which a case was heard, at least by the second century B.C.E., was the language of the document.[66]

4.2 *Class*

Herodotus distinguished seven classes (*genos*) within the social structure of fifth-century Egypt: priests, warriors, cowherds, swineherds, tradesmen, interpreters, and boatmen.[67] Four centuries later Diodorus Siculus described five classes: farmers, herdsmen, artisans, priests, and warriors.[68] The classes of men listed by both classical authors do in fact often appear as the titles of parties in Demotic contracts.[69]

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[63] P. Berlin 13554 (245 B.C.E.), discussed by Martin, *Elephantine Papyri* . . ., 360–62, esp. 361, n. 6. Cf. P. Mattha 6:3.

[64] Zauzich, "Die demotischen Dokumente," 101; Kaplony-Heckel, *Tempeleide* . . ., 11. At the conclusion of the so-called "Erbstreit archive," the losing party entered into an agreement before the *strategos* (P. dem. wiss. Strasb., 16).

[65] Thompson, *Memphis*, 101–2.

[66] P. Tebt. 5 (118 B.C.E.).

[67] *Histories*, 2.164.

[68] Diod. Sic. I, 73–74 specified five "classes": priests, warriors, herdsmen, husbandmen, and artisans. See the discussion in Lloyd, *Herodotus*.

[69] Hence the connection would be that there were property-owning classes. In all classical authors, the two groups identified by all were priests and soldiers, the two large land-owning classes beside the king.

Women rarely, if ever, bear specific status titles in the legal documents but merely the generic term *sḫm.t*, "woman."[70]

4.2.1 *Ethnicity*

Under the Ptolemies and the Romans, ethnic status was important for specifying occupation and tax status. Ethnic designations of persons in official texts are common, especially from the Saite/Persian through the Ptolemaic periods.[71] The extent to which the titles reflected real ethnicity is debated.

4.2.2 *Temple status*

Egyptian society was rigidly hierarchical. Having status within a temple estate was normally the highest one could have. A member of the priesthood in a temple enjoyed the most desirable status. Other staff in the temple, such as craftsmen or herdsmen, indicated their status by naming their title in contracts. The problematic term "Occupation title, servant (*b3k*) of DN" may indicate such status within a temple estate.[72] However, the term "servant of DN" also bore religious significance. In the so-called "self-dedication" texts, individuals pledged themselves to a god in return for protection from that god.

4.3 *Gender and Age*

4.3.1 It has been usually assumed that women in Egypt at all periods had an independent legal status, held property in their own name, and could make contracts and engage in business transactions independently from their husbands.[73] This independence in Demotic legal texts contrasts with the Greek institution of guardianship. Pestman, however, has recently argued that caution is in order in interpreting Demotic legal texts which prima facie look like they document the complete legal independence of women but upon closer examination reveal that men may have acted on behalf of women in contracts.[74]

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[70] P. Leiden I 379 mentions a *sḫm.t w3ḥ-mw*, perhaps to be translated "the female Chaochyte priest," but the title is disputed. I thank Koen Donker van Heel for bringing the citation to my attention.

[71] Mélèze-Modrzejewski, "Statut des Hellènes . . ."; La'da, "Ethnicity . . ."

[72] Manning, "Land and Status . . . ." A different opinion is expressed by Kessler, "Gottes-Diener . . ."

[73] Allam, "Women as Holders of Rights . . ."; Johnson, "Legal Status . . .," 177.

[74] Pestman, "Appearance and Reality . . .," 83–85.

4.3.2 Those who acted as witnesses to legal agreements were almost exclusively men, many of whom were probably scribes in training.

4.3.3 There were no age restrictions and no evidence of the guardianship of children in Demotic contracts, but there does appear to have been a concept of minority, which dictated that the child needed a guardian or caretaker.[75] Very young children were accompanied to the notary office by an adult.[76]

4.4 *Slavery*

4.4.1 *Terminology*

As in Mesopotamia, the terminology of slavery clouds the issue. The same word for "slave," *b3k*, is used of "servants" who had been dedicated to a local god in exchange for protection as well as those who had status within the temple estate. *B3k* is also a general term of respect in letters.[77] The term *b3k*, used of slaves, is not to be confused with the same word used in the title string "occupation title + servant of god DN (*b3k* DN)," found in texts from the fourth century B.C.E. to the early Roman period, or "occupation + servant of pharaoh" (*b3k pr-ʿ3*), found in Early Demotic texts. There the term signifies a status or service to the god or the pharaoh, technically a subordination to a superior and, as such, is honorific.

4.4.2 Self-sales (*sḫ b3k*) into servitude appear only in Early Demotic texts and only in a few examples which are subject to various interpretations.[78] The texts specify that the indentured party must remain an "encumbered one" (i.e., his labor is purchased) in exchange for payment of subsistence. The making of these debt-slavery contracts—and in some cases that is what appears to be going on—may have been banned by a decree of Amasis.[79]

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[75] Hughes, "Cruel Father . . .," published a Demotic "letter to the gods" which records the petition of two minor children, *ḫm-ḫl swky* who had been maltreated and denied their inheritance by their father.

[76] Pestman, "Appearance and Reality . . .," 86.

[77] Above, n. 72.

[78] The so-called "Rylands group." See Seidl, *Ägyptische Rechtsgeschichte*, 46–48; Menu, "Cessions de Service . . .," 83–86; Depauw, *Companion . . .*, 136–37.

[79] Menu, "Cessions de service . . ."; Donker van Heel, *Abnormal Hieratic . . .*, 181.

5. Family

5.1 *Marriage*

5.1.1 *Conditions*

5.1.1.1 There were, as far as we know, no prior legal conditions to marriage between a man and woman, although we may presume that a woman's father had to approve of the arrangement. The institution of marriage was formal only insofar as property was concerned, and either party could obtain a divorce simply by leaving. There is no documentary evidence to suggest that a marriage was publicly celebrated.[80] The so-called "marriage contracts" in Demotic are actually post-nuptial agreements which established for the woman the line of inheritance from the property of the father to any children produced by the union. Property in a marriage was divided into three categories: (1) property of the wife, (2) property of the husband, and (3) joint property acquired during the marriage. There were restrictions on the use of joint property.[81]

5.1.1.2 Marriage was usually monogamous in Egypt. Instances which appear to show men with more than one wife are probably artistic representations of a man's marriage history and should be used with the greatest caution in arguing for polygamy.[82] Although consanguineous marriage is attested frequently in the Roman period, the closest marriage documented from any period in the Demotic marriage "contracts" is one between half-brother and -sister.[83]

5.1.2 *Formation*

There were two stages in the formation of marriage according to Demotic contracts. In stage one, the bride's father enters the house of the bridegroom with a dowry, and at the same time, a document

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[80] But see Smith, "Marriage and Family . . .," 48. Cf. Johnson, "Legal Status . . .," 179.

[81] Eyre, "Adultery . . .," 101 and n. 83, citing Kaplony-Heckel, *Tempeleide* . . ., texts 5–13, 15–17, 19, 21.

[82] Smith, "Marriage and the Family . . .," 47.

[83] P. Chicago Hawara I (Hughes and Jasnow, *Hawara Papyri* . . ., text 1, 365/64 B.C.E., Hawara). On the issue of consanguineous marriages in Egypt, see, inter alia, Scheidel, "Brother-Sister Marriage . . ."; Shaw, "Explaining Incest . . ."

concerning the "gift to a wife" (*šp n ḥm.t*) is drawn up.[84] Stage two was the entrance of the woman into the house of the husband.

5.1.2.1 *Contractual Relationship*

The basic concept in marriage law, as in every other area of the law, is that acknowledgement of receipt of a purchase price, whether nominal or real, had to occur before legal ownership passed to the purchaser.[85] The Demotic marriage "contracts" specify two basic types of arrangement between the man and woman.[86] These were very often drawn up some time after the marriage and served to confirm the wife's future interest on behalf of the children produced by the union. In type 1, a man provides, nominally, a gift to the woman and promises to her an annual maintenance.[87] In the second type of marriage arrangement, the woman provides a "gift" to the husband in exchange for his promise to provide an annual maintenance.[88] In this arrangement, two types of texts are needed: the first is a "document concerning money" (*sẖ [n] ḏb3 ḥḏ*) in which the woman's gift to the husband is recorded, and the second is an "endowment deed" (*sẖ n sʿnḫ*) which records the annuity guaranteed by the husband. In most cases, it is the husband who makes the declaration to the wife.[89]

5.1.3 *Divorce*[90]

5.1.3.1 *Form*

In theory, either party to a marriage could dissolve the marriage by simple declaration or by leaving. In practice, it was the woman who normally left. The terms used were "expulsion" or "repudiation"

[84] It is likely that by the Ptolemaic period this "gift" was a legal fiction, and no actual sum of money changed hands.

[85] The term used is "notwendige Entgeltlichkeit." For the literature, see Mélèze-Modrzejewski, "Bibliographie . . .," 107.

[86] The distinctions between these types of agreements may be based solely on regional traditions in Egypt, that is, between the Fayyum and the Nile Valley. Demotic texts from the Delta have only recently been discovered. See Chauveau and Devauchelle, "Rapport . . ."

[87] The "gift" is referred to as the "wife's gift," *šp n ḥm.t* and the document which records this type of arrangement is known as the "woman's document," *sẖ n sḥm.t*.

[88] This "gift" was the dowry provided by the father of the bride and was termed the "money to become a wife" (*ḥḏ n ỉr ḥm.t*). In one unusual case from Early Demotic (Persian period) described by Martin, "'Marriage Contract' from Saqqara," this phrase was used to describe the gift from husband to wife.

[89] For the three exceptions, see Martin, "'Marriage Contract' from Saqqara," 197, n. g.

[90] Pestman, *Marriage . . .*, 58–79.

(*ḥ3ʿ*) or, employed of the wife alone, "departure" (*šm*).[91] The divorce document formula usually begins: "I have divorced you as wife today." The divorce decree stated that the woman was free again to marry.[92] Property arrangements for the woman and any children were followed according to the type of agreement.

5.1.3.2 *Consequences*

No grounds were necessary for either party desiring a divorce. The standard formula of the marriage "contract" runs: "If I divorce you, whether because I hate you or because I desire another . . ."[93] Presumably, the woman had a similar capacity to make such a declaration, although the "contracts" were always written with the husband making the declarations. If the wife sought divorce, she had to return half of the capital given to her. If the husband sought divorce, he was required to pay a fine. If only the woman's personal possessions were used as collateral for maintenance, they had to be returned. In rare cases, there are divorce documents which specify a specific sum payable by the party responsible for the divorce. Such divorce documents served to protect the woman from any future claim by the ex-husband.

5.2 *Children*

5.2.1 The husband promised in the marriage "contract" that any children born to the woman would receive his property. During his lifetime, however, he retained authority over both his property and his children. Minors were of course vulnerable, especially in regard to the transmission of family property. In one case, no doubt a common one, a father had disowned his two children after the death of their mother and his subsequent remarriage.[94] The children, in response, made a written appeal to the local gods for justice. Whether they also had a claim in the courts or not, this kind of text highlights the deeply embedded role of religion in seeking justice.[95]

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[91] Ibid., 60.

[92] These divorce deeds are rare. Twelve have been published, deriving from Thebaid, Thebes and Aswan, and involving a limited number of families. See the comments of Pestman, *Marriage* . . ., 73. Two early (one Saite, the other Persian period) divorce decrees were discussed by Cruz-Uribe, "A Look at Two Early . . ." An early divorce document with an oath confirming a division of property is discussed by Vleeming, "Demotic Doppelurkunde," 155–70.

[93] This clause is attested already in the cursive hieratic documents.

[94] P. BM 10845; see Hughes, "Cruel Father . . ."

[95] Assmann, "When Justice Fails . . ."

5.3 *Adoption*

Adoption of children is attested, as is the self-sale "to act as eldest son," on the model of self-sales into slavery.[96] It is presumed that in both cases the practice fulfilled the need to establish a line of succession to property, as well as to secure burial and maintain a private mortuary endowment.

6. Property and Inheritance

6.1 *Types of Property*

Demotic law made the distinction between real and movable property. Real property consisted of land, houses, and gardens/orchards; movable property consisted of priestly offices, income from endowments/mummies[97] (choachytes), and animals. Both movable and immovable property could be divided into shares. In both cases, it was often the division of income rather than a physical division which was effected.

6.2 *Land Tenure*

The private holding of land, the extent of which is still debated, existed in all periods of ancient Egyptian history. The king may have retained nominal control of all land, but this is never explicitly expressed in the land-sale documents and is mentioned only in the context of state harvest tax in leases. Arguments about ownership and amount of land based on the written evidence are misleading since many of the conveyance records within a family tend to record special cases rather than the norm. The general assumption of the private ownership of real property is indicated in the general phrase in marriage agreements.[98] Most plots in conveyances were small.

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[96] Self sale as eldest son: P. Louvre 7832 (Thebes, 539 B.C.E.), published by Donker van Heel, *Abnormal Hieratic* . . ., text 13. For adoption, see Allam, "Papyrus Turin 2021."

[97] The mummification of animals and humans formed an important source of income for priests in charge of funerary rituals. See Pestman, *Archive of the Theban Choachytes* . . .

[98] The husband pledges the security of all of his property to his wife in order to guarantee the eldest son as heir. He promises "everything I possess and shall acquire (*nty nb nty mtw=y ḥnʿ n3 nty i̯w=y r di̯ .t ḫpr.w*), or "everything that I possess and that I shall acquire in the field, in the temple domain and in the town: house, waste land, arable land, wall?, garden, male and female slave, every [office],

Certain classes, particularly military, were given plots of land under fixed tenure conditions in exchange for service.[99] Priests had access to land privately and to income derived from temple land. Some land was tied to an office and was therefore inalienable.

6.2.1 *Servitudes*[100]

Servitudes on land existed, the clearest example being the right of exit and entry from a "royal" (public) road to private property.[101] A text from the third century B.C.E. acknowledges a right to an "ancient light" and prohibited any new building which would block light into the pre-existing house.[102] Personal servitudes also existed in Demotic law. In one case, a son was given rights to the use of furniture and appurtenances in a house.[103]

6.3 *Inheritance*[104]

Since a complete law code has not come down to us, the rules of inheritance are reconstructed in part using P. Mattha, and in part from the surviving family archives. There are, as a result, many exceptions to the following outline. The anxiety of dying without an heir is attested even in mortuary literature.[105] During the lifetime of their parents, children had a right to expect (*Anwartschaftsrecht*) that the inheritance from both of their parents would "reach" (*ph*) them, although they could be disinherited for a variety of reasons and would usually assume ownership after the death of the testator.[106] In theory, males and females inherited property equally from both parents. Future children were endowed with their father's property through the marriage agreement between husband and wife. The eldest son, who acted as trustee for the other children, was entitled to receive an extra share because he was responsible for the burial of his parents. The rights

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every [title of property] and every matter of a free one of mine." See Pestman, *Marriage . . .*, 117–20.

[99] Under the Ptolemies, the land was termed "cleruchic" land and, while originally a life tenure in exchange for the promise of military service when called, by the end of the Ptolemaic period, the land was fully heritable.

[100] Taubenschlag, *Law . . .*, 256–63.

[101] P. Mattha 8:1–2; P. BM Glanville, 10522 (297 B.C.E., Thebes).

[102] P. BM Glanville 10524 (290 B.C.E., Thebes).

[103] Taubenschlag, *Law . . .*, 261; Glanville, "Notes . . ."

[104] Pestman, "Law of Succession . . .," and " 'Inheriting . . .' "

[105] Smith, *BM 10507*, 64, with further literature. Cf. Leahy, "Two Donation Stelae . . .," 89.

[106] P. BM 10079A, and Reich, *Pap. Jur. Inhalts . . .*, 68–73.

and duties were specified in P. Mattha.[107] Daughters often received their share of the parental inheritance at the time of their marriage in the form of a dowry.[108] Half-siblings were required to share the inheritance with their half-brothers and -sisters.[109] Joint property of husband and wife was split—two thirds to the husband's heirs, one third to the wife's. Occasionally, penalty clauses are found that discourage interference from other siblings or conveyance of property outside of the family without permission from the rightful heirs.[110]

6.3.1 *Wills*

Wills or testaments as a distinct type of legal instrument were not a regular feature of Demotic law. There are a few exceptions to this, dating from the Ptolemaic period, but the legal practice of these is quite outside the realm of Egyptian law.[111] Children were endowed with the property of their father through the marriage agreement made by a husband to his wife. Occasionally, a sale document (*sẖ [n] ḏb3 ḥḏ*) was used as a pledge to an heir or as an annuity for the wife, in exchange for being taken care of in old age and for burial, or as a means of specifying heirs.[112] Occasionally the specification of a real division of property to an heir was effected by the drawing up of a deed of gift in which a testator records the giving of property to his or her heir. Deeds of division (*sẖ n dny.t pš*, *sẖ n pš*) record an agreement between co-heirs or between a parent and child as to the amount and the type of the inheritance.[113] This type of text was designed to preempt disputes.[114] If a man died intestate, his eldest son took the whole of the property in trust for his co-heirs.[115]

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[107] P. Mattha 8:30–9:26; Mattha, "Rights and Duties . . ."

[108] Pestman, "Inheriting . . .," 59. Since we do not have codified law on these points, we must rely on primary documentary evidence from which the "rules" are reconstructed. One problem here is that the preserved evidence often concerns unusual lines of inheritance rather than the normative pattern of parents to offspring.

[109] Pestman, "Law of Succession . . .," 60–61. For a family dispute arising from such a situation, see Thompson, *Family Archive* . . .

[110] P. Hauswaldt 13 (243–222 B.C.E., Edfu).

[111] Clarysse, "Ptolemaic Wills . . .," 96–98.

[112] Pestman, "Inheriting . . .," 59; P. BM 10026 (265/4 B.C.E., Thebes); Andrews, *Catalogue*, text 1; Clarysse, Review . . ., 592.

[113] Seidl, "Teilungsschrift . . ."; Donker van Heel, "Papyrus Leiden I 379."

[114] P. Wien D 10150 (510 B.C.E.). See Martin, *Elephantine Papyri* . . ., 348–50.

[115] Pestman, "Law of Succession . . ."

6.3.2 *Male Inheritance*

6.3.2.1 Inheritance patterns were complex and subject to change stipulated by the testator. The eldest son had a privileged position in the family, received from his parents' estate an extra share ("share of eldest brother," *dny.t sn ʿ3*; "extra share," *ḥw dny.t*), in part at least to cover the burial expenses for the parents, and was responsible for administering the family inheritance on behalf of his siblings. Disputes could arise, and younger siblings had to sue to obtain a division of the property. If a man died and left no children, his siblings would inherit his property; in the absence of siblings, other members of his family may have inherited.[116] In the case of the death of a sibling, his or her share passed to the eldest son.[117]

6.3.2.2 The Egyptian system of inheritance was characterized by partible inheritance, in which all heirs received a share from their parents. Therefore both real and movable property was divided into fractional "shares" of interest in property which could become quite small. Sons may have had preferential treatment regarding inheritance of land.

6.3.2.3 The estate included all assets of the father, movable and immovable. The sum total of the man's property was summarized in the marriage agreements (see 5.1.1.1 and 5.1.2.1 above). Under the Ptolemies, the sale of priestly office was regulated by the state.

6.3.2.4 A father had the power to disinherit any of his children at will. He could not, however, disinherit all of his children. At least one of the children, or someone acting as a "son," had to inherit the property.[118]

6.3.2.5 Property which passed down may have remained undivided (*wš pš*; lit., "without division") for an extended period of time. Land in particular might remain undivided.[119] On the day of division (*p3 hrw pš*), P. Mattha specifies that males in descending birth order and then females of descending birth order "choose" from the property of their parents.[120]

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[116] Ibid., 68–71.
[117] Pestman, "Inheriting . . .," 62.
[118] Pestman, "Law of Succession . . .," 68.
[119] Ibid., 64.
[120] Pestman, "Inheriting . . .," 62, and "La succession . . ."; P. Mattha 8:30–9:26.

6.3.2.6 In the case of a lack of heirs, adoption was used (see 5.3 above).

6.3.3 *Female Inheritance*

Women had the right to inherit a share of all property, including land.[121] In practice, this inheritance was given in the form of a dowry before marriage. If there was no eldest son, the eldest daughter received an extra share.[122]

6.3.4 *Marital Gifts*

We do not know of a separate term that distinguished a dowry from the property brought by the woman into the house of her husband. They may have been one and the same. Such property was termed the "things of a woman" (*nkt.w n s.ḥm.t*).

6.3.4.1 We hear about four categories of property exchanged at the time of marriage: the "things of a woman," the "money for becoming a wife" (*ḥḏ n ỉr ḥm.t*), the "annuity" (*sʿnḫ*), and the "gift to a wife" (*šfn ḥm.t*). No Demotic contract mentions all four of these, and it is clear from the texts that what we have is the preservation of local traditions as well as changes over time in the practice of marriage agreements.

6.3.4.2 The "things of a woman" are goods brought into the marital household. They were listed and given valuation in money terms in certain types of marriage agreement. The husband acknowledged that these goods have come into his house, as well as their present value and the total value of the items. The items consist of vessels of various types—furniture, clothing, jewelry, and the like. During the marriage, the husband claimed a right of use, while the woman retained the right of disposal. Upon divorce, the husband was required to return the items, a monetary equivalent, or a substitute.

6.3.4.3 The "money for becoming a wife" was a gift of the bride to the husband, normally in money. The husband acknowledged receipt of it and promised to return it if asked to do so. It may have functioned similarly to an annuity.

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[121] For an overview of the status of women in ancient Egypt, see Johnson, "Legal Status . . ."

[122] Pestman, "Inheriting . . .," 61.

6.3.4.4 The "annuity" was paid to the husband. He acknowledged receipt and paid the wife an annual maintenance. The wife could claim back the principal sum upon divorce. In all of these payments, we are not informed about the fate of these gifts if either party died.

6.3.4.5 The "gift to a wife" consisted of money or a token amount of grain. Pestman has proposed that the history of this gift be divided into three stages. In the first stage, for which there is no documentary evidence, the gift was given by the groom to the father of the bride, to mark the separation of the bride from the household of her father to the husband's household.[123] In the second stage of its development, this gift was given by the bridegroom to the wife. Later, in stage three under the Ptolemies, this gift became entirely fictional, payable only on divorce. The party seeking the divorce was required to pay a penalty—the husband, an additional amount above this "gift"; the wife; a sum equaling half of the stated value of the "gift."

7. Contracts

Egyptian legal "contracts" were records of oral transactions established in writing before witnesses.[124] We follow Pierce in drawing a distinction between "contracts" which established a legal relationship between two parties and the legal instrument which formalized it and which established rights that could be enforced in law.[125] The latter were either unilateral (sales, loans) or bilateral (leases), and could take the form of informal agreements in "letter style" as well as the more typical formal contract drawn up by a professional scribe. As in other Near Eastern systems, the preserved documentation reflects only part of the full picture of legal agreements between private parties. We may surmise that many transactions occurred without any written documentation, since oral agreements also had the force of law.[126] Private contracts had positive force as proof of clear title and could be used as evidence in litigation.[127]

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[123] Pestman, *Marriage . . .*, 13–20.

[124] The Demotic term for this group of texts was simply *sẖ*, "writing," or "text." The oral nature of the contract is highlighted by the use of "to say/speak" (*ḏd*) that begins contracts.

[125] Pierce, *Three Demotic Papyri . . .*, 83.

[126] Smith, Review . . ., 175.

[127] Martin, "Demotic Contracts . . ."; Pestman, "Démotique comme langue juridique

7.1 *Parties*

In contrast to Greek law, both men and woman could form contractual relationships independently under Egyptian law.[128] Children named as parties to contracts were normally aided by an adult.

7.2 *Sale*

Conveyance by sale was an oral agreement between two parties or groups of parties. It was completed by "satisfying the heart" (the verb used is *ty mtr*) of the vendor with the "purchase price" (*ḥḏ*, lit., "silver"). The phrase "to sell" in Demotic is rendered by "to give in exchange for silver" (*ty ḏb3 ḥḏ*). Despite this phraseology, money did not always change hands in Demotic "sales."

7.2.1 Objects of sale were land of various categories[129]—although usually small plots—houses, tombs, priestly stipends, oxen, cows, donkeys, and slaves (Early Demotic only). Sales of animals are exceedingly rare in Middle and Late Demotic, although this is probably because this type of text did not survive within family archives.[130] Animal sales were less formal instruments whereas sales of important items such as land were almost always drawn up as formal notarial documents. The text was recorded by a professional notary and was written from the point of view of the seller. The contracts themselves were used as proof of clear title, and all such records pertinent to the conveyance of a piece of property were handed over to the buyer at the time of the sale. In the case of a split sale of property, the documentation remained with the vendor. At least some of the contractual boilerplate may have been borrowed from Near Eastern (through the medium of Aramaic, or by Demotic's contact with the Near Eastern tradition in the Delta?) law.[131] There was regional variation in the wording of the legal formula.

. . .," 198–200. Documents used in evidence were required to have been witnessed. Some guidance on their use as evidence is treated in the "Zivilprozeßordnung"; see 1.2 above.

[128] For doubts on the independence of women in Egyptian law, see Pestman, "Appearance and Reality . . .," 83–85.

[129] Manning, Conveyance . . .; Menu, "Questions rélatives . . ."

[130] Menu has argued that sales of animals were restricted by the Ptolemies. It is true that in both Demotic and Greek texts from the Ptolemaic period, there is a paucity of animal sales, a fact which has been noted but barely commented on. For Early Demotic animal sales, see Cruz-Uribe, *Saite and Persian* . . .; Vleeming, *Gooseherds of Hou*, texts 6, 8, and 9.

[131] Muffs, *Studies* . . .; Porten, "Aramaic-Demotic Equivalents . . ."

7.2.1.1 *Contractual Clauses*[132]

The essential elements of the sale contract were a statement of a satisfactory price, a statement of transfer of the property, a statement of the possession of the property by the new owner, an acknowledgment of receipt of the money, a clause about the expulsion of third parties, a guarantee of security against illegal claims, a clause about all pertinent documents conveyed to the new owner, and an oath promising execution of the contract by the vendor. The terms of the clauses in cession documents considerably overlap with those of sale documents. The essential difference in the wording comes at the beginning, where the vendor states that he or she is "far" from the buyer concerning the property being sold.

7.2.1.2 The sale price is rarely mentioned in these texts, in contrast to cursive hieratic sales, which suggests that the purpose of these texts was not to record the actual sale but to document the legal transfer of property from one party to another and to guarantee the rights of the buyer.[133] In the case of real property, the location of the plot was given relative to four other parties bordering the plot.

7.2.1.3 The sale document masked many different types of transaction, from a real sale to a pledge or a testament. In a real sale transaction in Middle Demotic (Ptolemaic), the title to property was permanently and legally conveyed by a seller to a buyer, involved the writing of two documents simultaneously, a *sẖ (n) ḏb3 ḥḏ* (lit. "writing concerning money") and a *sẖ n wy* ("writing of being far").[134] In Early Demotic texts, a real sale transaction was effected by means of a single instrument with clauses that functioned as acknowledgment of sale and conveyance at once. There are examples in Early and Middle Demotic sale texts of the entire notarial copy being written out in full by some of the witnesses in multiple copies (a "witness-copy" text). The contract had to be witnessed, which could involve the witnesses copying out the notarial text verbatim, thus confirming the words of the agreement.[135]

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[132] Zauzich, *Ägyptische Schreibertradition* . . ., 113–24, esp. 114; Menu, "Actes de vente . . ."

[133] The normal clause of sale states that the vendor "is satisfied with the purchase price" for the object of conveyance. For cursive hieratic sales and the specification of a sale price, see Menu, "Actes de vente . . .," 173.

[134] The two texts could be written on the same sheet of papyrus, side by side, or on separate sheets.

[135] These "witness-copy" texts were more common in Early Demotic texts. The

7.2.1.4 Contingent interest clauses ("Beitrittserklärung") were recorded at the end of certain sale contracts.[136] Here the vendor acknowledges that those parties with a contingent interest in the property, usually co-heirs, have assented to the conveyance. The party with contingent interest declared to the buyer that the buyer was allowed to "accept" the object of sale, since they have no claim to it whatsoever.

7.2.2 *Special Sales*

7.2.2.1 *Sale in Advance of Delivery*

A unique group of texts published by Pierce shows that in the Ptolemaic period, a sale could be effected in advance of delivery in cases involving grain. This kind of transaction reflects either a speculation in the grain market by the second party, who paid a "price" to the first party in exchange for the promise of delivery of grain after harvest, or it masks a type of loan to the first party by the second party, who would be repaid in kind.[137]

7.2.2.2 Another type of sale known as a "service contract" ("Hierodulie-Urkunde," *sḫ b3k*) involved an individual who dedicated himself or her-self to a god "forever" or for a period of ninety-nine years, becoming a "servant" (*b3k*) in exchange for divine protection.[138] In

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earliest examples of this type of text date from 644 B.C.E. and come from El-Hibeh in Middle Egypt. The practice of making witness copies died out in the third century B.C.E.. Almost all examples come from Upper Egypt, the last such text, however, dated 213 B.C.E., comes from Philadelphia in the Fayyum (see Depauw, "Demotic witness-copy contracts"). For an example with ten witness copies, see P. O(riental) I(nstitute) 17481 (time of Nectanebo I = P. Chicago Hawara 1), published by Nims, *MDAIK* 16 (1958), re-edited by Hughes and Jasnow, *Hawara Papyri* . . ., text 1, which has a list of thirty-six witnesses. Other texts might simply list the names who witnessed the agreement. In early Demotic, legal texts could be either of an older, "narrow format" and have four witnesses or of a newer, broad format with sixteen witnesses. For the distinction, see Pestman, *Pap. Tsenhor* . . ., 26–27; Vleeming, "Demotic Doppelurkunde," 169, n. qq. By the Ptolemaic period, this number had become fixed, at sixteen for contracts. The normative number sixteen for the number of witnesses to a valid agreement is confirmed in a text from the Siut family dispute (P. BM Siut 10591, rto. iii, 5) which states that the document in dispute was valid, "it being complete with sixteen witnesses." On the location of the witness list, see Donker van Heel, *Abnormal Hieratic* . . ., 57.

[136] E.g., P. Hauswaldt 9 (240 B.C.E., Edfu). See the discussion by Partsch in Sethe and Partsch, *Demotische Urkunden* . . ., 683–763.

[137] Pierce, *Three Demotic Papyri* . . ., esp, 83–93, Pestman, *Recueil* . . ., texts 4–6. Other loans of money repayable in kind may be these. See Devauchelle, "Pap. dém. Amiens . . ."

[138] Chauveau, "Un contrat . . ."; Thissen, *Griechische* . . . A new study of these "self-dedications" has been announced by John Tait and Kim Ryholt.

so pledging, the dedicatee was obligated to pay a monthly fee. In many of these self-dedications, the father of the dedicant is "anonymous," giving rise to speculation that what underlines these transactions is temple prostitution or abandoned children. In Early Demotic, self-sale to be a slave or to be the "son" of the buyer may be a kind of adoption or an attempt to get around the ban by Amasis on debt slavery.[139]

7.3 The sale document was utilized for transactions other than real sales. Property could be pledged in exchange for a loan. In these cases, a "writing for silver" was handed over to a trustee or mortgagor. In the case of default upon an agreement, the mortgagee was obliged to write a "writing of being far" in order to cede title to the pledged property. The transfer of property in advance of death could also be effected by the writing of a sale document (*sḫ [n] ḏb3 ḥḏ*). Such "sales" have been termed a "sale *propter mortem*" and are exceptional in Demotic law.[140]

7.4 *Hire*

7.4.1 *Animals*

If livestock was commonly leased out for agricultural work, the Demotic evidence for such activity is exceedingly rare.[141] Some of the early Demotic leases were probably transacted between two groups, those who held land and those who owned draught animals.[142] Most of our evidence comes from the public sphere, where royal farmers were provided with public (or commandeered) animals for plowing (oxen) and hauling (donkeys or camels).[143]

7.4.2 *Real Property*

7.4.2.1 *Fields and Orchards*[144]

The first written Egyptian leases in Demotic appear in Early Demotic (Saite period). These are simpler in format and in the number of

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[139] Seidl, *Ägyptische Rechtsgechichte*, 45–48. For Hierodule texts, see Thissen, *Griechische . . .*, 80–87; Donker van Heel, *Abnormal Hieratic . . .*, 177–82.

[140] Pestman, "Appearance and Reality . . .," 80–81.

[141] P. dem. Reinach 4 (108 B.C.E., Hermopolis).

[142] See the remarks by Donker van Heel, *Abnormal Hieratic . . .*, 36.

[143] Taubenschlag, *Law . . .*, 368–70.

[144] For the Ptolemaic period, see Felber, *Demotische Ackerpachtverträge . . .* Importantly, the earliest known Ptolemaic lease dates to 190 B.C.E. from the Fayyum, and 178 B.C.E. for Upper Egypt. Much leasing of land in this period would have been done

clauses than later Demotic leases. Leases of farm land were normally for one agricultural year ("from the water of year x to the water of year x + 1"). The plots were usually quite small. We know from Greek sources that leases of land for growing fruit trees were for longer terms because of the nature and the risks inherent in fruit production. They may have been renewable, but Ptolemaic leases have a clause that prohibits extension of the lease. It is generally agreed that in most cases the lessor kept the written lease contract until the termination of the lease, when it was returned to the lessee.[145] Third parties may also have kept the contract until all conditions were satisfied.[146] In Early Demotic leases, the size of the leased plot is not indicated, and the rent was always a share of the harvest.[147] In later leases, rent was either a fixed share or a percentage of the harvest.[148] There was generally a regional variance in the form of the Ptolemaic lease. In the Fayyum, lease contracts required rent to be paid in advance (prodomatic).[149] In Upper Egypt, the lessee declared, "You have leased to me . . ." In the Fayyum, it was the lessor who declared, "I have leased to you . . ." The rule of Hughes that it was the weaker legal party who drew up the lease in general holds.[150] Legal "weakness" was determined by who paid the harvest tax. In Ptolemaic Upper Egyptian leases, the lessee paid the harvest tax and the rent, after the harvest. In Fayyumic leases, it was the lessor who was responsible for the harvest tax, since normally at least part of the rent was delivered in advance.[151] The start and termination of the

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without formal written leases. The survey of land each year and the recording of tenants obviated the need for written lease contracts. See Shelton and Keenan, *Tebtunis IV*, 7. For leasing practice, P. Mattha is of great importance.

[145] Martin, "Land Lease . . .," 172.

[146] Vleeming, *Gooseherds of Hou*, 87.

[147] Hughes, *Saite Demotic Leases* . . . The early Demotic leases date from the reign of Amasis (Saite period) and derive from Thebes. The earliest written leases now date to the reign of Taharka and are written in cursive hieratic, published by Donker van Heel in *RdE* 48, 49, and 50. New editions of the Saite leases are published by Donker van Heel, *Abnormal Hieratic* . . . Hughes, text 1 = Donker van Heel suppl. 24; Hughes text 2 = Donker van Heel text 5; Hughes, text 3 = Donker van Heel, text 6; Hughes, text 4 = Donker van Heel, text 17; Hughes, text 5 = Donker van Heel, text 19; Hughes, text 6 = Donker van Heel, text 20; Hughes, text 7 = Donker van Heel, text 21.

[148] Felber, *Demotische Ackerpachtverträge* . . ., 151–58. On the so-called "Teilpacht" type of lease, see ibid., 155; Herrmann, *Bodenpacht* . . ., 204–13. For the harvest share in earlier Demotic texts, see Donker van Heel, *Abnormal Hieratic* . . ., 43–44.

[149] Hughes, *Saite Demotic Leases* . . ., 31–34.

[150] Hughes, "Notes . . .," 152.

[151] Felber, *Demotische Ackerpachtverträge* . . ., 118.

lease were normally determined by the beginning of the flood.[152] A description of the leased land, as well as the guarantee to farm the land, was included in the normal formula of Ptolemaic Demotic leases. The lessee was responsible for returning the land in good condition and was liable for damage. The usual share of the crop between lessor and lessee was one third to two thirds. The harvest tax (*šmw, mt.t pr-ʿ3*) is estimated to have been normally 10 percent in the early leases and fluctuated in Ptolemaic leases, depending on the class of land.[153] Land could also be sub-leased.

7.5 *Exchange*[154]

Property could be exchanged. This kind of transaction was effected in an unusual text from the Ptolemaic period, in which a party subordinates the sale of an empty plot suitable for building (*wrḥ*) to an agreement of not hindering.[155] A variant may have occurred when two simultaneous sets of sale and cession documents were made by two parties.[156] While not many of this kind of transaction are documented, such an arrangement may have been common in the absence of money. The exchange of animals, perhaps for breeding purposes, is known from early Demotic sources.[157]

7.6 *Loan*[158]

Loans of money and specie took many forms in Demotic instruments, from loan documents ("document of claim," *sḫ n rʿ-wḥ3*) to letters, mortgages, and sale with deferred delivery.[159]

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[152] The clause in the Ptolemaic leases runs "from the water of year X to year X + 1." Effectively, however, the work on the land began some months later, in September, after "the water" (i.e., the annual flood), had receded (see Felber, *Demotische Ackerpachtverträge* . . ., 125–29).

[153] Donker van Heel, *Abnormal Hieratic* . . ., 88–91, based on estimates of Baer, "Low Price . . .," 33. Under the Ptolemies, the harvest share (rent + tax) could reach as high as 50% of the harvest. There was a flat tax on all land exacted at the rate of one artaba per aroura, called the *eparourion*, in addition to the harvest tax.

[154] Depauw, *Companion* . . ., 143–44.

[155] P. BM 10589 (175 B.C.E.), Shore and Smith, "Two Unpublished Documents . . ."

[156] The two texts, P. BM 10726 (Andrews, *Catalogue*, text 42), and P. EgSocPap. (El-Amir, *Études de papyrologie*), are dated the same day, September 14, 176 B.C.E., and are written by the same scribe.

[157] Shore, "Swapping Property . . ." Additional Early texts are discussed by Cruz-Uribe, *Saite and Persian* . . ., 95–96; Pestman, *Pap. Tsenhor* . . ., texts 11 and 17.

[158] Depauw, *Companion* . . ., 146–47; Pestman, "Loans Bearing No Interest?"; Pierce, *Three Demotic Papyri* . . ., 44–50.

[159] Pierce, *Three Demotic Papyri* . . ., 92–92.

7.6.1 *Terms*

Loans of money have the format of an acknowledgment of the debt by the borrower.[160] Another type of loan of money comes in the form of a mortgage, in which the borrower pledges (by means of a *sḫ [n] db3 ḥd* instrument) real property in exchange for a loan of money.[161] If the borrower defaults he is forced to convey the pledged property by means of a cession document (*sḫ n wy*), thus effecting a true sale. Loans of specie do not specify the rate of interest. The debt was repayable in grain or wine, the latter being more common in the Ptolemaic period.

7.6.2 *Interest*

Loans of money do not separate principal and interest. One sum is mentioned in the acknowledgement, and it is presumed that the interest is included in the sum. When the interest is occasionally specified, it is high: 50–100 percent interest on money,[162] 50 percent on loans in kind. The Ptolemaic administration limited the interest rate on money loans to 2 percent per month, 24 percent per annum.[163]

7.6.3 *Repayment*

7.6.3.1 Loan contracts could specify the due date of repayment or leave it open-ended.[164] The borrower had the option of repaying the loan early. If the borrower was unable to repay the loan at a specified time, the creditor had a new instrument drawn up fixing new terms at a higher rate of interest. If the terms were still not met, the creditor could select security from the borrower's property.[165] In such cases, children of the debtor could not interfere with this use of the parent's property.[166] The borrower could repay either the creditor or his agents.[167]

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[160] Vleeming, *Gooseherds of Hou*, 160–66.

[161] Pierce, *Three Demotic Papyri* . . ., 119–20; Pestman, "Ventes provisoires . . ."

[162] Vleeming, *Gooseherds of Hou*, 161.

[163] P. Col. Zenon II 83 (245/244 B.C.E.), a petition (*enteuxis*) in Greek concerning usury.

[164] ". . . till (sic) your (scil. the creditor) time of wishing them from me that you [will make] (scil. the grain to be repaid)" (Vleeming, *Gooseherds of Hou*, 187).

[165] Ibid., 156–77.

[166] Ibid., 171.

[167] Taubenschlag, *Law* . . ., 393–94.

7.6.3.2 If performance of the loan was delinquent, some contracts specified a 50 percent penalty.[168] In grain loans, late-payment fines were either a fixed sum or an amount of grain at the going market rate at the time of repayment.

7.7 *Pledge*[169]

In certain cases, the totality of the borrower's property was pledged as security for a loan in money. In other cases, the loan only specifies that the creditor could select from the borrower's property.[170] Antichretic pledges of land and houses are occasionally documented.

Normally in loan contracts, the borrower pledged part of his or her property with the proviso that if the loan was not repaid by a specified date, the property pledged was automatically forfeited as if the borrower had sold the property to the creditor.

7.8 *Debt and Social Justice*

The pledge of children occurs in Early Demotic texts.

7.9 *Partnership*

Partnerships were often formed among family members over business arrangements and family property. The most common type of partnership arose from the joint ownership of land within a family. Land was often farmed together among siblings, with profits being split. Formal contracts in which one or more parties acknowledge each other as partners (*ḫbr*) to a business arrangement exist from the Early Demotic period.[171] Other ventures, such as an agreement to collect a certain tax or to acquire land, were undertaken in groups who speak "in one voice." The parties all agreed to pay a certain percentage of the price, and any violator of the contract was subject to a fine.[172]

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[168] P. BM Glanville 10523 (296 B.C.E., Thebes).

[169] Pierce, *Three Demotic Papyri* . . ., 110–32.

[170] Vleeming, *Gooseherds of Hou*, 173–74.

[171] Kaplony-Heckel, *Gebelen-Urkunden* . . ., no. 11; Vleeming, *Gooseherds of Hou*, nos. 1 and 7, agreement for collective ownership of ten geese and a cow, respectively. Cf. Donker van Heel, *Abnormal Hieratic* . . ., 15 and passim. On the semitic loan word *ḫbr*, see Vleeming, *Gooseherds of Hou*, 22, n. ff.

[172] A joint venture to collect tax: P. Berlin 13535+23677 (236 B.C.E., Elephantine) in Martin, *Elephantine Papyri* . . ., 363–65. A joint acquisition of land: P. Hauswaldt 16 (221/20 B.C.E., Edfu).

7.10 *Suretyship*[173]

A surety guaranteed the payment of the appearance of a third party. In so doing, he was said to "accept the hand" (*šp dr.t*) of the third party.[174] As a separate document, this kind of third-party guarantee is limited to the early Ptolemaic period. It appears to take the place of a promissory oath made by the contracting party. As such, there are three types: (1) guarantee of payment, (2) guarantee of appearance of a person to remain in a specified place, and (3) guarantee of a person to remain in a place and perform certain work (a "performance bond").

7.11 *Temporary Transfer*[175]

Some transactions record the temporary conveyance of property, using the same term as that for lease, *ḥn*. The language of the contract and most of the terms of the conveyance resemble a sale, not a lease contract. In a document from the later second century B.C.E., a priest conveyed a vacant building plot in the temple estate on which he could build a house to a *pastophoros* priest for a period of ninety-nine years.[176] This kind of conveyance was similar to the conveyance of heritable building rights for the same length of time.[177]

7.12 Certain pledges of performance or forbearance were formalized in specific contracts ("Verpflichtungsurkunden," *sḫ n tm šḫy*, lit., "document of not hindering") in which a party promises to perform work or to refrain from interference with another party.[178] One such document from the Middle Demotic period is found in the family probate dispute from Asyut in the second century B.C.E. in which the husband of the appellant agreed not to approach the disputed family land.[179]

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[173] Sethe and Partsch, *Demotische Urkunden* . . .; De Cenival, *Cautionnements* . . .

[174] The first occurrence of the term is found in P. Rylands 9 (512 B.C.E., El-Hibeh).

[175] Pestman, *Recueil* . . ., vol. 1, 94–101; vol. 2, 100–10; Manning, Conveyance . . ., 204–06.

[176] P. Warsaw 148.288 (119 B.C.E., Thebes).

[177] Taubenschlag, *Law* . . ., 270. Pestman, *Recueil* . . ., vol. 2, 103, tentatively argued that the transaction masked an illegal conveyance since the priest appeared to be acting as a private person conveying temple property.

[178] Zauzich, *Die demotischen Dokumente*, 102–3; El-Aguizy, "Demotic Deed."

[179] P. BM 10589 (175 B.C.E.), Shore and Smith, "Two Unpublished Documents . . ." Cf. P. Mattha 6:3–11.

8. Crime and Delict[180]

Our knowledge of the criminal law is imperfect and indirect. Since there does not exist any codified Demotic law, our information about crime derives from records of disputes, mainly from oaths written on ostraca on which is recorded the denial of wrongdoing by a party before witnesses with an invocation of the names of the local god. A central issue here is the degree to which the state and state institutions intervened in private disputes by defining specific areas of criminal law, including tort law.[181] As far as we know, there was no legislation in this area. On the whole, crime was considered a private wrong and was resolved within the village or within a family, without state intervention; hence there is little documentation. The mention of murder is relatively rare, even in the Greek papyri.[182] To be sure, violence was an everyday feature of village life, but the degree to which the state was involved in preventing or in punishing is debatable. In criminal cases, petitions were addressed to a variety of local police officials.[183] The police force was largely responsible for maintaining order in the countryside as it related to royal business—the collection of taxes, guarding of dykes, the transportation of grain, and the like.[184]

8.1 *Theft*

Theft was one of the concerns of the Ptolemaic rural police force, but we hear about this in the main from Greek papyri and in Demotic literary texts.

8.1.1 *Theft of Animals*

The apparent theft of a bull by farmers on a temple estate in the reign of Amasis was resolved by the son of the owner suing the farmers. He was paid compensation for the bull.[185]

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[180] Taubenschlag, *Law* . . ., 429–78. Studies based on the Greek material are Baldwin, "Crime and Criminals . . .," and Davies, "Investigation . . ."

[181] See Eyre, "Adultery . . .," 92–93.

[182] Hobson, "Impact . . .," 205, n. 2. In the Greek papyrus P. Tebt I 14, the village scribe was responsible for the investigation of a murder. Murder does, of course, lurk in the background and is implied in texts such as P. Rylands 9 as a motive to grab priestly office, or as in the Setne romance from the Ptolemaic period as a means of getting rid of heirs.

[183] Taubenschlag, *Law* . . ., 537.

[184] Thompson, "Policing . . ."

[185] P. dem. Michigan 3523; Cruz-Uribe, *Saite and Persian* . . ., text 4.

8.2 *Sexual Offenses*

8.2.1 *Adultery*

We may presume, on the basis of earlier Egyptian evidence, that adultery was a serious wrong and that women adulterers suffered more than men. In some early Demotic agreements, women lose their right to reclaim their dowry if found guilty of adultery.[186] In the Ptolemaic period, the rules of religious associations provided that a member who committed adultery with another member's wife be expelled from the association.[187] From the Instructions of 'Onchsheshonqy, we learn that if a woman committed adultery the blame lay with the husband.

8.2.2 Temple precincts were ritually clean places and it was therefore a violation of the rules of ritual purity for anyone to have sex within a temple precinct. There were also food restrictions within at least some temple sanctuaries.[188]

9. Special Institutions

9.1 *Religious and Professional Associations*[189]

Certain classes of priests formed professional associations, or "cult guilds" (*snt*), and drew up agreements of mutual assistance, fines for noncompliance, and regulations, including in some cases, specifying days on which the association would drink. Such associations are known earlier, but the agreements all date from the Ptolemaic period. These agreements were drawn up annually, and the priests paid a monthly fee for membership in the association. These religious associations were centered on local manifestations of a god rather than on national cults and may have sprung up in response to a specific need in popular religion.[190] Indeed, their proliferation was in part at least an Egyptian reaction to the influx of foreign populations into Egypt and

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[186] Pestman, *Marriage . . .*, 56.
[187] De Cenival, *Associations . . .*, 193.
[188] We learn from P. Dodgson that the sanctuary of Osiris on the island of Abaton, adjacent to Elephantine, had strict rules of behavior.
[189] de Cenival, *Associations . . .*; Muszynski, "Associations religieuses . . ."
[190] Muszynski, "Associations religieuses . . .," 159.

may be interpreted as a means to retain cultural identity.[191] By the second century B.C.E., agreements were recorded in Greek as well as Demotic. Other groups organized themselves into professional associations for the payment of professional taxes and for social life.

9.2 *Oracles and Oracular Questions*[192]

Divine oracles were a standard medium through which disputes were resolved and in front of which oaths were sworn. Most of the evidence for the institution, written in Demotic, comes from the Ptolemaic period. In this process, a petitioner wrote out a question or a declarative statement in the negative and in the affirmative. The question was then split in two and submitted to the oracle. The statue of the oracle would either nod in reply, or one of the questions was handed back, providing the answer to the query. Children appear to have been important as media of oracular questions, as P. Dodgson from the Ptolemaic period shows.[193]

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[191] Ibid., 161.

[192] See 2.1.4.2 above for the bibliography on oracles.

[193] The text comes from Elephantine. See further Martin, *The Child* . . ., esp. 206–9; Martin, "Demotic Texts . . .," text c18.

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EGYPT

ELEPHANTINE

Bezalel Porten

1. Sources of Law

Persian period Elephantine merits special treatment because it has yielded a rich crop of Aramaic papyri and ostraca. An even larger amount of material has emerged from Saqqarah, but while a respectable amount of the Elephantine material is intact, virtually all of the Saqqarah pieces are fragmentary. Aramaic was the lingua franca of the Persian Empire and while almost all the Elephantine material stems from a Jewish military colony, that from Saqqarah is free of Jewish reference. There are no law codes or royal edicts, but private contracts, court records (Saqqarah only), letters private and official, fragments of the Bisitun inscription, and the Words of Aḥiqar.

1.1 *Private Legal Documents*

The best preserved documents were two family archives acquired on the antiquities market, the Anani archive (*EPE* B34–46; with the exception of B34) by Charles Edwin Wilbour in 1893 and the Mibtahiah archive by Lady William Cecil and Sir Robert Mond (*EPE* B23–33) in 1904. These documents deal with sale and bequest, marriage, manumission, slavery, and litigation. Texts subsequently discovered in excavation by Otto Rubensohn in 1906–8 added deeds of obligation (*EPE* B48, 51; *TAD* B4.1, 3–5) and judicial oaths (*EPE* B49, 52; *TAD* B7.1, 4). The average legal contract was a narrative document, opening in objective style with date and identity of the parties and concluding similarly with mention of scribe (and sometimes place) and witnesses. The operative part of the document was a subjective statement made by the party on whom lay the obligation. This would be the seller who warrants the buyer's title (*EPE* B37, 45), the donor who spells out the beneficiary's rights (*EPE* B25, 38, 40, 43–44), the borrower who lays down terms of repayment (*EPE* B46, 48), or the defeated litigant who guarantees his opponent's

rights (*EPE* B24, 31). The parties regularly (except for Egyptians), and witnesses and neighbors occasionally, were identified by ethnicon (Aramean, Babylonian, Bactrian, Caspian, Jew, Khwarezmian), occupation ([member] of a [military] detachment, builder, boatman, [Temple] servitor), and usually by residence (Elephantine, Syene) as well. The numerous witness signatures attest a high degree of literacy among the colonists. Upon completion, the papyrus was rolled up to the top, folded to the right and to the left in thirds, tied, and sealed.

1.2 *Court Records*

On a court log there appear successive accounts of individual court proceedings, along the line of "he said," then "he said," then "the judge said." Such records survived only among the Saqqarah fragments (*TAD* B8.1–12), but we may assume that similar records were kept at Elephantine.

1.3 *Letters*

The Elephantine papyri yielded some five official or semi-official letters (*TAD* A5.1–5), and an additional sixteen letters stem from the archive of the satrap Arsham (*EPE* B10–11; *TAD* A6.3–16). The one reasonably intact in the first group is a petition for redress of grievances (*TAD* A5.2). Most of the Arsham letters are addressed from abroad to his deputies in Egypt in response to complaints or appeals. They show the satrap intimately involved in matters large and small, civil and criminal.

1.4 *Scholastic Document*

The Words of Aḥiqar contains some 110 sayings (*TAD* C1.1). While none has explicit judicial import, eight sayings counsel obedience to the king (nos. 6–10, 12, 14–15).

1.5 *Historical Document*

The Bisitun Inscription recounts Darius' victories over nineteen rebels in one year. Seventy-nine lines in Aramaic survive from a copy of the inscription dispatched to the Elephantine garrison (*TAD* C2.1). There emerges a clear picture of the king as commander-in-chief of the army.

2. Constitutional and Administrative Law

2.1 *The King*

2.1.1 The opening chapters in the biblical Book of Esther convey a not inaccurate representation of the Persian emperor. Enormously wealthy and sensuously insatiable, he rules a vast empire extending from India to Nubia, but must consult a seven-member entourage as to what law to apply to the queen who defied his request to display her beauty before the assembled banquet guests. Collegiality pervaded all levels of the Persian bureaucracy. In the Bisitun inscription, Darius asserts that he prevailed through the "protection of Ahuramazda," but he gives proper credit to all the generals who defeated the rebels in the enumerated battles. At the end of the inscription is incorporated a text from his tomb inscription, in which he advises his successors to beware of the lie and tell the truth, ignore what is whispered in his ear and regard what is said openly, favor not the nobleman but consider the poor man.

2.1.2 The king's presence was perforce in the minds of the Aramaic scribes because they regularly dated their documents according to his regnal year, and a private letter written on 5 Epiph, 399 reports the recent accession of King Nepherites. In a more general sense, the adjective "of the king" graced matters financial (treasury, house, stone weights), topographical (road, street), architectural (builder), and judicial (judges). The Jewish communal leader was aware that their Temple was destroyed when Arsham left Egypt to report to the king (*EPE* B19:4–5; 20:4). The Book of Ezra records correspondence between local officials and Darius I and Artaxerxes I (Ezra 4:8–23, 6:6–6:12). The Passover Letter at Elephantine, sent by one Hananiah to the communal leader Jedaniah "and his colleagues the Jewish Troop," opens with a statement that in year 5 of his reign a message of Darius [II] was sent to Arsham (*EPE* B13:2). Unfortunately, that message is missing and much conjecture has filled the lacuna. Minimally, we may say that Darius concerned himself with the Jewish Passover at Elephantine in 419/18 B.C.E.

2.1.3 Revocable land grants were made by the king, acting through the satrap Arsham, to favored Egyptian officials (*TAD* A6.4).[1]

[1] Szubin and Porten, "Royal Grants in Egypt . . ."

2.2 *The Administration*

The administration of government in Egypt was divided between three spheres: satrapal administration, provincial administration, and local government.

2.2.1 Satrapal administration consisted of the satrap and his officials, stationed in Memphis. Two figures appear in the Elephantine documents: Pherendates in two demotic letters of 492 (*EPE* C1, 3), and Arsham (Arsames) in several Aramaic texts at the end of the century. The former indicate the satrap actively involved in the appointment of the *lesonis* priest in the Khnum Temple, while the latter show the satrap to be the ultimate arbiter as to whether the Jewish Temple, destroyed by the Khnum priests, was to be rebuilt (*EPE* B21–22). It is Arsham who is the recipient of the unknown instruction of Darius II regarding the Passover (*EPE* B13), and in a fragmentary letter he appears to side with the Egyptians against the Jews in the confrontation leading up to the Temple destruction (*EPE* B14). Reference in that letter was made to complaints tendered before the *patifrāsa*, the investigators. Two letters of Arsham found at Elephantine, one sent to him and one from him, illustrate the central and provincial bureaucracy at work. In early 411, a twenty-six-line letter was drawn up by Arsham's Chancellor, the Jew Anani, and the Aramean Scribe Nabuakab and sent to a certain Waḥpremakhi at Elephantine (*EPE* B11). The letter indicates the tight control at the top on expenditures and procedures to repair a boat at the southern border of Elephantine. Instructions were issued for the treasury accountants and foremen to inspect the boat and estimate the cost of repair, for the storehouse authorities to disburse the necessary materials, and for the workers to embark upon the repairs immediately. The accountants issued a long, three-part report in which they stated that they had inspected the boat and showed it to the foremen and to the chief carpenter. These two acknowledged the need for repairs and drew up a detailed requisition account, which included a dozen items (of obscure meaning) made from four kinds of wood, measured in cubits with a slight cutting allowance. On the basis of this list, the accountants asked Arsames to authorize disbursement of the materials in their presence to the chief carpenter, who should immediately make the repairs. Arsames accordingly wrote to Waḥpremakhi, who was probably in charge of the stores, to do as the accountants said.

The other letter, also found at Elephantine, was sent to Arsham by four groups of officials, each group consisting of a named individual and his colleagues, altogether heralds and judges, both Persians, and two groups of Egyptian-named provincial scribes. The matter at hand in the fragmentary letter was "the share which was given in the province" (*EPE* B10). Was this a piece of land allotted or taxes collected? In addition to these scribes and the chancellery scribe mentioned above there were the "scribes of the treasury," who supervised the disbursement and collection of supplies. This was a serious activity which required the redaction of a contract between the supplier and the agents of the garrison (*TAD* B3–4).

2.2.2 The twin forts of Elephantine and Syene were situated in the province of Tshetres. At the head stood one bearing the title *frataraka*, "Chief," whose seat was on the island. Under him was the Troop Commander, stationed at Syene.[2] Both officials exercised authority in the judicial as well as the military sphere. They dealt with matters of personal status (adoption [*EPE* B42]), land cultivation, litigation, and cases that appear to be probate. Two fall into the latter category: (1) the very earliest Elephantine contract (495 B.C.E.) noted that Rauk the Troop Commander and the judges of the king gave a share to two sisters (*EPE* B47); (2) in 416, a descendant of deceased Mibtahiah's first husband declared before Vidranga the Troop Commander that he was withdrawing from the house of that husband (*EPE* B32). Shortly after 434/33, the Troop Commander Nafaina, probably father of Vidranga, appeared alongside another Persian official and "the judges of the province" in a petition claiming injustice in a matter of land tenure (*TAD* A5.2). As for litigation, in 420, Ramnadaina, Chief, and Vidranga, Troop Commander, heard a suit concerning goods that were deposited and allegedly not returned (*EPE* B31). Vidranga's authority over the men of the Jewish garrison extended beyond the border of the province. On one occasion, he came to Abydos and arrested Mauziah, one of the Jewish leaders, "on account of a dyer's stone which they found stolen in the hands of the merchants" (*EPE* B15:3–4). Promoted to Chief, Vidranga

[2] A demotic receipt of 487 indicates that Parnu was "[he of Tshet]res, to whom the fortress of Syene is entrusted" (*EPE* C35:3; cf. C11:1). Does this mean that both top positions were at the time combined in one person?

appointed his son Nafaina Troop Commander. The father authorized, and the son executed, the destruction of the Jewish Temple during Arsham's absence on home leave with the king (*EPE* B19–20).

The destruction of the Temple opens a window on the activity of two sets of provincial officials unattested elsewhere. A petition of an unknown addressor urges the unknown addressee to have an investigation undertaken by "the judges, overseers (*tiftaye*), and hearers who are appointed in the province of Tshetres" and verify the truth of their version of events (*EPE* B17:8–10). The *tiftaye* appear last in a biblical list of seven sets of officials, beginning with the satrap (Dan. 3:2–3), while the "hearers" are better known in classical sources as the "king's ears," that is, intelligence agents.[3] The judges, on the other hand, are widely attested in the Elephantine documents, and several instances have already been mentioned above. It is likely that the provincial judges and the royal judges were the same, all appointed by the king or his deputy, the satrap. Like the other officials, they, too, functioned as a group. A suit against Mahseiah's ownership of a piece of land was brought before "Damidata and his colleagues the judges" (*EPE* B24:6). In a formulaic waiver-of-suit clause, the judge sometimes appears alongside "lord" and regularly alongside *sĕgan* (*TAD* B2.3:13; 3.1:13, 19, 3.12:28; 4.6:14). The latter title, rendered "prefect," appears frequently in contemporary Judah, following "nobles" (Neh. 2:16, 4:8, 13, 5:7, 7:5); it follows "governors" in other biblical accounts (Jer. 51:23, 28, 57; Ezek. 23:6, 12, 23) but follows "satrap" and precedes "governors" in the above-cited list from Daniel (3:2–3) and is not found elsewhere in the Elephantine documents.

2.2.3 On the local level were two organizations, perhaps intertwined and overlapping, a military and a civilian one. The former was the Troop, headed by the Troop Commander, and it was divided into "detachments," headed by a person with a Babylonian or Persian name. There was a "Jewish Troop" and a "Syenian Troop." The latter term designates a group primarily of non-Jews that receives rations (*TAD* C3.14, esp. line 32). The former appears twice, as the addressee along with Jedaniah son of Gemariah, of the Passover Letter (*EPE* B13)

[3] Porten, *Archives from Elephantine*, 50–51. For the meaning of *tiftaye*, see Muraoka and Porten, *Grammar* . . ., 373, and the reference there to discussion in W. Hinz. This interpretation, rather than "police," is the one preferred by Iranologist Shaul Shaked.

and in the title of a list of contributors to YHW, also drawn up by Jedaniah (*TAD* C3.15). So while the term "Jewish Troop" was a catch-all designation, no Jew headed a detachment; but the Jews did have a collegium of five to deal with internal affairs (*EPE* B22:5–6).

2.3 *The Courts*

Cases at Elephantine requiring judicial resolution included probate, property dispute, land tenure, theft, and destruction of the Jewish Temple. Sometimes the judges appeared alone ("Damidata and his colleagues the judges" [*EPE* B24:6]); sometimes in conjunction with the Troop Commander and designated "judges of the king" (*EPE* B47); and then again alongside the Troop Commander and other officials, where they were called "the judges of the province" (*TAD* A5.2:6–7); or together with the "hearers and overseers," all of whom were "appointed in the province of Tshetres" (*EPE* B17:9); or even alongside heralds and two groups of provincial scribes (*EPE* B10). In a case we may call probate, they assigned a share to two sisters (*EPE* B47), and in a letter to Arsham, reference is made to "the share given in the province" (*EPE* B10).

3. Litigation

3.1 *Evidence*

3.1.1 In the property dispute between Mahseiah and the Caspian Dargamana, the court ordered Mahseiah to take an oath by YHW that the property did not belong to Dargamana (*EPE* B24:4–7). Four other cases, two criminal and two civil, likewise involved judicial oaths, probably taken in a temple. PN was to swear by YHW that he had not stolen fish from Mahseiah son of Shibah (*TAD* B7.1), and Malchiah was to declare before the god Ḫerembethel that he had not assaulted the complainant's wife and stolen his property (*EPE* B50). The records of these cases are two fragmentary contracts setting forth the consequences in case the defendant refused to take the oath. The third document is a record of such an oath involving denial of receipt of an animal (*EPE* B52). A fourth document is an intact contract recording an oath of Mibtahiah by the Egyptian goddess Sati about goods (*EPE* B30:4–6).

3.1.2 The Saqqarah finds have yielded several fragmentary court records. One fragment is a summary of some three cases, four lines each. The formula seems to be "PN spoke against PN as follows . . . Afterwards, it was given to PN and his colleagues" (*TAD* B8.6). The other records the court proceedings, "PN_1 was interrogated in light of the words of PN_2 and he said. . . ." Two horizontal lines enclose this statement. There follows the cross-examination: "PN_2 was interrogated in light of the words of PN_1 and he said . . ." (*TAD* B8.7; cf. B8.8).

3.2 *Orders*

At the conclusion of the court case, one of the parties, usually the complainant, drew up a "document of withdrawal" mentioning his original complaint, the action of the defendant in response, the satisfaction of the plaintiff, and his consequent withdrawal from the defendant and/or the object of the complaint. The objects in dispute were funds and assorted goods, including a marriage contract (*EPE* B30), assorted goods left on deposit (*EPE* B31), a plot of land (*EPE* B24), and an unidentified *hyr'*, probably realty of sorts. This latter object was involved in an unusual case of suit and countersuit and was settled by a five-shekel payment (*EPE* B35).[4]

3.3 *Petition and Appeal*

3.3.1 The Elephantine documents have yielded one fragmentary petition which involved the use of a field held in a seven-year hereditary lease. The petitioner had been "interrogated before Taruḥ and the judge" and was now claiming that an "injustice" had been done to him. In broken context, further reference is made to the Troop Commander, various officials, and "the judges of the province." The petition ends with the plea "Let an injustice not be done to me . . ." (*TAD* A5.2).

3.3.2 In a formulaic waiver-of-suit clause, the judge sometimes appears alongside "lord" and regularly alongside *sĕgan* (*TAD* B2.3:13; 3.1:13, 19, 3.12:28; 4.6:14), but it is not clear if there was any hierarchy of appeal.

[4] See Szubin and Porten, "Litigation . . ."

4. Personal Status

4.1 *Citizenship*

4.1.1 In his petition to Bagavahya, Jedaniah referred to his compatriots as "citizens of Elephantine," using a term well-established in Hebrew, Aramaic, and Phoenician in the expression "citizen of GN" (*EPE* B19:22, with references). A follow-up petition by Jedaniah lists in columnar form four additional leaders, all five of whom are designated "Syenians who in Elephantine the fortress are heredi[tary-property-hold]ers" (*EPE* B22:5–6). With a different meaning, this same term (*bʿl*) was used to distinguish between a "member of a town" and a "member of a detachment" (*EPE* B23:9, 29:10, 31:10).

4.1.2 All the Jews and Arameans in the contracts were identified by their detachment, with the exception of Ananiah son of Azariah, called "servitor of the God YHW" or variations thereof (see on *EPE* B35:2). In three instances, we also find a woman affiliated with a detachment: Mibtahiah with the detachment of her father Mahseiah (*EPE* B30:2–3, with note), *ʾwbyl* with that of her husband Bagazushta (*EPE* B37:2), and the sisters Miptahiah and Eswere daughters of Gemariah (*EPE* B49:1–2).

4.1.3 Every member of a detachment was also identified by his or her ethnicon—Jew, Aramean, Bactrian, Caspian, or Khwarezmian. Once or twice an ethnicon was attached to the name of a witness—Babylonian (*EPE* B24:19) and Mede (*EPE* B39:17). Egyptians were never identified by ethnicon, only by occupation—builder of the king (*EPE* B28:2), builder of Syene the fortress (*EPE* B30:2), or boatman of the rough waters (*TAD* D2.11:1; cf. *EPE* B23:13, 24:11, 25:8, 45:20).

4.2 *Class*

A fragmentary register lists family units according to the following formula: "PN son of PN, *ywʿd*; PN daughter of PN, great lady; PN his son, under *mstʾ*; PN his daughter . . .; all (told) 4 souls" (*TAD* C9–10). While "great lady" suggests a woman of means (cf. 2 Kings 4:8), the designation *ywʿd* is apparently attached to a slave (*EPE* B33:4–5). A succession clause in a bequest spells out a three-generation family unit: "my mother or my father, brother or sister . . . my children whom you bore me" (*EPE* B38:19–20).

4.3 *Gender and Age*

4.3.1 Women figured prominently in the Elephantine documents. They mourned the destruction of the Temple together with their menfolk ("our wives are made as widows") and along with the males and the children promised to utter daily prayer on behalf of the Governor of Judah if he successfully intervened on their behalf (*EPE* B19:15, 20, 26–27). Almost one third of the contributors of two shekels each to YHW, recorded on June 1, 400, were women (*TAD* C3.15). Both the earliest and the latest dated contracts concerned women. The first, of October 22, 495, testifies to the right of women to inherit, hold, and exchange property solely in their own name (*EPE* B47). The second, of June 21, 400, is a promissory note to a woman for a two-shekel balance from her document of wifehood. Failure to pay within five weeks rendered all the man's property subject to seizure to secure payment (*EPE* B51). By contrast, if a woman defaulted on a four-shekel loan, taken out at 60 percent interest, the creditor or his heirs were entitled to seize any security of hers, specifically "a brick house, silver or gold, bronze or iron, slave or handmaiden, barley, emmer, or any other food which you will find," to effect repayment (*EPE* B34). Thus, a woman creditor had the same guarantees as a male creditor, while a woman debtor was expected to be in possession of realty and chattel subject to seizure in the event of non-payment. In fact, the two family archives show women at both ends of the socio-economic scale holding property. Wealthy Mibtahiah owned several houses, two received from her father and one from a former husband (*EPE* B25, 29, 32). She engaged in litigation on her own (*EPE* B30) and upon her death passed on four slaves to her sons (*EPE* B33). Handmaiden Tapmet possessed title to a room in her husband's apartment (*EPE* B38), while her daughter, emancipated and adopted, brought in a dowry of greater value than that of the slave owner (78.125 shekels [*EPE* B41:17] vis-à-vis 65.5 shekels [*EPE* B28:15]), and likewise received a room from her father, whom she later supported in his old age (*EPE* B40, 43 [especially lines 16–18]–45). Strikingly, the term "lady" (*nšn*), used to designate a female party to a contract, applied equally to a free person (*EPE* B34:2, 37:2–3), a handmaiden (*EPE* B38: 2, 39:2), and a freedwoman (*EPE* B41:3, 43:2, 45:1). On the other hand, a woman never appears as witness to a contract.

4.3.2 The wifehood document between the groom Anani and Meshullam, master of his bride, allowed the master to reclaim the couple's already existing child Pilti should Anani divorce his wife. A supralinear addition, moreover, fined Meshullam fifty shekels for unwarranted reclamation (*EPE* B36:13–14). Even a slave child was shown concern. When the two sons of Mibtahiah divided up her slaves, a mother and three sons, each took one slave, but the mother and the third child (presumably little) were not separated and remained in joint possession (*EPE* B33). In transfers of property, children were regularly included in the Investiture and Waiver clauses. The property belonged to the new owner and his children and it was assumed that any suit contesting ownership might be entered by the alienor's siblings or children against the alienee or his children (see, e.g., *EPE* B37:11–19).

4.3.3 Children and old folk were regularly the object of concern. The papyrus and ostraca letters reverberate with such statements as "It is well for Ḥarwodj here. Do not worry about him; as you could do for him, I am doing for him. Both Tapmet and Aḥatsin are supporting him. As much as I am doing for Ḥarwodj may (the goddess) Banit do for me" (EPE B3:3–5; cf. B43:17, B49) or "(you) alone look after the children until Aḥutab comes. Do not entrust them to others" (TAD D7.6:2–5; cf. 7.17:10, 7.43:7).

4.3.4 The age of majority is unknown. The only age cited in the papyri is that of death: "But if you die at the age of 100 years . . . and moreover, if I, Anani, die at the age of 100 years," our respective shares go to our mutual children (*EPE* B38:16–20).

4.4 *Slaves*

4.4.1 A slave was chattel, seizable as security for unpaid debt, just like realty and movables (*EPE* B34:7–10, 46:9–11). The tag "his/her name" (*šmh*) was regularly added to the name of a subordinate, whether chattel slave or servant of the king, while a slave bore a brand on his/her right hand: "(Belonging) to PN" (*EPE* B33:4–7, 39:3; *TAD* D7.9:3–8). Jews held Egyptian slaves, traded in them, married them, bequeathed them, and emancipated them. After the death of the woman Mibtahiah, her sons divided up between themselves two

of her four slaves and kept the remaining mother and minor child in joint ownership till a future time (*EPE* B33). A slave was usually filiated to his mother, and if houseborn would have a Hebrew name. Under unknown circumstances, Zaccur son of Meshullam gave to Uriah son of Mahseiah the child Jedaniah son of Takhoi, and in the document before us, Uriah promised in the presence of the Troop Commander, under a three hundred shekel penalty, not to enslave him or otherwise brand him but to consider him his son (*EPE* B42).

4.4.2 The most striking case is that of Ta(p)met. Since she was known by the name of her father Patou, the suggestion lies to hand that she was originally freeborn.[5] At some point she was acquired by Meshullam son of Zaccur, father of the Zaccur (above) who transferred the slave Jedaniah to Uriah. Meshullam gave Tamet in marriage to the Temple official Ananiah son of Azariah (449 B.C.E.), but not before the birth to the couple of the child Pilti (*EPE* B36). Infrared photography aids in exposing the haggling between master and groom that underlay the erasures and additions in the document (see below).[6] Though not emancipated by her marriage, as wife she attained equal rights in case of repudiation and upgraded status in case of widowhood.[7] Three years after Anani acquired a piece of abandoned property, he bestowed (434 B.C.E.) a room therein to Tamet, designated "lady" (*EPE* B38:2) without the tag "her name." Perhaps this bequest was made on the occasion of the birth of a second child, the daughter Jehoishma. In 427, Meshullam drew up a deed of manumission ("document of withdrawal") for Tapmet and her daughter Jehoishma: "I thought of you in my lifetime." Employing an Old Persian loanword, he continued "(To be) free (*azāta*) I released you at my death" along with Jehoishma "whom you bore me," that is, in the legal sense. Further expressions included the metaphor "you are released from the shade to the sun" and the symbolic "you are released to God/the god." The release was conditional and partial. Mother and daughter obligated themselves to serve Meshullam and his son Zaccur after his death, "as a son or daughter supports his father"

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[5] See Porten, *Archives from Elephantine*, 205.

[6] Porten, "Aramaic Marriage Contract . . ."

[7] For full discussion of this document, see Porten and H.Z. Szubin, "Status . . ."; for reservations, see Westbrook, "The Female Slave," 226–27, nn. 29–30.

(*EPE* B39).[8] Thus, Jehoishma became "sister" to Zaccur, and it was he who married her off to Ananiah son of Haggai, providing her with a handsome dowry (*EPE* B41). In her old age (402 B.C.E.), when she and her husband sold their remaining property to that Ananiah, both her present title and past status were elevated. She was called, like her husband, "servitor (*lḥnh*) of YHW the God dwelling (in) Elephantine the fortress" and, harking back to the past, first in Persian "chief of the beloved (**friya-pati*) of Meshullam son of Zaccur," and then in Aramaic "THE INNER ONE (*gw'*) of Meshullam son of Zaccur" (*EPE* B45:2, 11, 24). Her present title may not have meant that she was a Temple functionary but rather the wife of one with that title (cf. Isa. 8:3). Yet the belated recollection of her past special status is not only informative of relations between master and female slaves but of significance for the sale transaction (see on *EPE* B45:2).

5. Family

5.1 *Marriage*

5.1.1 The marriage contract was designated "document of wifehood" (*EPE* B36:17, B44:7sl) and was drawn up between the groom and the party responsible for the bride, be it father of a widow (*EPE* B28), mother (*TAD* B6.4), adoptive brother (*EPE* B41), or master (*EPE* B36). In language similar to that of a supplicant borrower for a loan (*TAD* C13:2–3), the groom asked for the hand of the bride in wifehood. Though it was not constitutive of the marriage and dealt primarily with pecuniary rights, the document cited a declaration that may have been part of a marriage ceremony: "She is my wife and I am her husband from this day (and) forever" (*EPE* B28:4, 36:3–4, 41:4; *TAD* B6.1:3–4; cf. Hos. 2:4).[9] The groom made over to the bride's representative a *mohar*, ten shekels in the case of a first marriage (*EPE* B41:4–5), five shekels in the case of a subsequent marriage (*EPE* B28:4–5), and nothing for a handmaiden (*EPE* B36:3–4). This *mohar* became part of the dowry which the bride brought into the groom's house and under certain circumstances became forfeit in case of repudiation by either bride or groom (*EPE* B28:27 and n. 17, 41:15, 25).

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[8] See Porten, *Archives from Elephantine*, 219–21.
[9] See Porten and Szubin, "Status . . .," 43–50.

5.1.2 The dowry consisted of cash; woolen and linen garments and bronze utensils, each one priced; and a long list of perishable items and oils (*EPE* B28:6–16, 41:5–21; *TAD* D3.16 for a fragmentary dowry list). Almost eighteen years after his daughter's marriage, Anani labeled his bequest to her "an after-gift since it is not written on your document of marriage" (*EPE* B44:8–9). Yet such documents did not include realty. The husband was responsible for the dowry.

5.1.3 In case of repudiation by either party, the dowry reverted to the wife. All three marriage documents contained mutual provisions to the effect that should (s)he stand up in a congregation and say "I hated PN my husband/wife," that party was obligated to pay the other one "money of hatred," and the wife was entitled to go away wherever she desired, or return to her father's house, as the case might be (*EPE* B28:22–31, 36:7–10, 41:21–28). Considering that the dowries for the free woman ran between 65.5+ and 78.125+ shekels, "hatred money" of 7 1/2 shekels was not much. For the handmaiden Ta(p)met, whose dowry amounted to 22.19+ shekels (*EPE* B36:6–7, 16), it was not such a small sum.[10] If pronounced by the woman, it would mean denial of conjugal rights.[11] The term for divorce in the documents is *trk*, "expel" (*EPE* B36:14 and n. 24), the same term used to designate the expulsion of a widow from her former husband's house (*EPE* B28:29–31, 41:32). All three marriage documents also contained mutual provisions of succession. Upon the death of either spouse, the couple being childless, the survivor took over all the property of the deceased, there being distinct differences between his right to "inherit" her and her right merely to "control" or "HOLD ON TO" (*EPE* B28:17–22, 41:28–30, 34–36; cf. B36:10–13).

5.1.4 Since a man might have more than one wife, either at the same time or in succession, special protection was offered the woman. Thus Eshor assured the widowed Mibtahiah that he had no other wife or children besides Mibtahiah (*EPE* B28:32–35) and Ananiah assured Jehoishma that he would not take another woman besides

[10] The accepted explanation for "hate" (*śn'*) in the Elephantine documents has been "divorce," yet there are cogent arguments to prefer "repudiation," i.e., demotion of the woman as a "beloved," primary wife (cf. the situation of Rachel and Leah [Gen. 29:31–33] and the Deuteronomic law on the rights of the first-born [21:15–17]). See Szubin and Porten, "Repudiated Spouse . . ."

[11] Porten and Szubin, "Status . . .," 55–56; *EPE* p. 181, n. 42.

Tamet (*EPE* B41:36–37). Violation by either of their pledge resulted in appropriate penalty or compensation. Unique is the prohibition upon Jehoishma to ACQUIRE another husband. We assume this would occur in case of Anani's extended absence (*EPE* B41:33–34 and n. 47). Finally, there is the prohibition against either party denying the other "the law of one or two of his/her colleagues' wives/(husbands)," a euphemism for conjugal rights (*EPE* B41:37–40). Violation of these provisions resulted in invocation of the "law of hatred."

6. Property and Inheritance

An archival approach to the study of legal documents allows a three-dimensional view, enabling us to understand a particular transaction as part of an ongoing development. This is particularly true with regards to the disposition of a house. When a house was sold, the external endorsement read, "Document of a house which PN sold (to PN)" (*EPE* B37:25, 45:35); when any part of it was bequeathed, the endorsement read, "Document of a house which PN wrote for PN" (*EPE* B38:25, 43:27, 44:21). Thus we may consider sales and bequests as two aspects of conveyance.

6.1 Considered archivally, the house of one *'pwly* was sold by Bagazushta and his wife *Ybl* to the Temple official Ananiah in 437 (*EPE* B37). Three years later, in 434, a room in that house was bequeathed by Ananiah to his Egyptian wife Tamet (*EPE* B38). Three months prior to the marriage of his daughter Jehoishma in 420, Anani gave her a room as a life estate of usufruct (*EPE* B40). In 404, he converted his gift to a bequest in contemplation of death (*EPE* B43). Less than two years later, in 402, he further modified it so that it figured as a dowry addendum and took effect immediately (*EPE* B44). Before year's end, Anani and Tamet sold the remaining portion of their house to their son-in-law, also named Anani (*EPE* B45).

6.2 Sales were consummated in exchange for consideration. Anani paid Bagazushta fourteen shekels (*EPE* B37:5–6), and son-in-law Anani paid his in-laws thirteen shekels (*EPE* B45:5). Whether this was true value is uncertain, because the house was probably held by the sellers in adverse condition (*EPE* B37, n. 1). Moreover, in 446, Mahseiah gave his daughter Mibtahiah a house in exchange for fifty shekels' worth of goods she had given him earlier (*EPE*

B29:2–6). That houses were freely bought and sold is evident from a private letter of the last quarter of the fifth century, wherein Hosea advises Ḥaggus to sell two houses, apparently to pay off a fifty-shekel debt (*EPE* B9:4–6). A recurrent feature in the transfer clauses of the house of Anani was a brief description of the property, showing how it was rundown when bought and built up over the years, with courtyard, windows, beams, and doors (*EPE* B37:4–5, 40:3–4, 43:12–13, 44:2–3). When available, pedigree was also cited: "the house of *'pwly*" (*EPE* B37:4), "which I bought from *'wbyl* . . . and Bagazushta" (*EPE* B38:3), "which I bought for money and its value I gave" (*EPE* B43:3), "which we bought for silver from Bagazushta . . . that is the house of *Ynbwly*" (*EPE* 45:4–5); and from one of the house documents of Mahseiah: "which Meshullam . . . gave me for its value and a document he wrote for me about it" (*EPE* B29:3). Failure to cite pedigree in another of Mahseiah's documents (*EPE* B25) was tantamount to a confession of adverse possession. A regular feature in the "house documents," as they were labeled in the external endorsements, was identification of the house by its four neighbors. Unlike the demotic documents, which regularly cited the southern boundary (upstream) first, the order in the Aramaic documents varied according to circumstances.[12] Some documents also cited the measurements of the conveyed property (*EPE* B25:4–5, 38:5–8, 40:4, 45:6–8).

6.3 Several clauses or sub-clauses were part of the transaction section, namely, Satisfaction, Withdrawal, and Investiture. Upon receipt of payment the seller stated, "our heart was satisfied herein that there did not remain to us (incumbent) upon you (any) of the price" (*EPE* B45:6), or simply, "our heart was satisfied with the payment you gave us" (*EPE* B37:6–7). There was to be no more quibbling over price; payment was final and in full.[13] Satisfaction led to withdrawal from the property in favor of the new owner (lit., "we are far from it from this day and forever": *EPE* B37:11).[14] The seller then affirmed the buyer's complete rights to the property, his rights and those of his children, his right to give it away, and his right to sell it (*EPE* B45:22–24). In other words, he passed on to him com-

[12] *TAD* B, p. 177.

[13] See the major work on this clause, with its origins in Sumerian and its continuation in the demotic documents, by Muffs, *Studies* . . .; and the strictures of Yaron, Review of Muffs, *Studies* . . ., and Westbrook, "His Heart is Satisfied . . ."

[14] See Botta, Interrelationships . . .

plete right of alienation. If the prior clauses were formulated in the past tense ("we gave you::you gave us, you were satisfied, we withdraw"), the Investiture clause was a present participle ("you have right"), while the following waiver-penalty clauses and possible defension clause were in future tense.

6.4 The transaction was not complete until the seller provided the buyer with firm title insurance. In clauses that were meant to be self-enforcing, backed up by prohibitive penalties in the range of two hundred shekels, the seller guaranteed the buyer, his heirs, and potential recipients, against suit by himself, his children, siblings, partners, and guarantors with regard to the property (*EPE* B45:24–30). A significant feature of these clauses was the reaffirmation statement: even though the complainant paid the penalty, the house remained the property of the buyer. Such suits were brought in the name of the seller. Were a third-party suit to arise, the sellers provided the buyer with a limited three-phase warranty, promising in succession to cleanse the property of all challenge, to replace it in case of failure to cleanse, and to refund the purchase price in case of failure to cleanse because the challenge came from an heir of the original owners (*EPE* B37:19–23). Such a defension clause was not a standard feature but appeared when the house in question was a piece of abandoned property held by the seller in adverse possession.[15] If a prior document regarding the house were available, the seller would transfer it to the buyer and state such in the contract (*EPE* B25:23–27, 45:31–32). Furthermore, he guaranteed the recipient of the property that there existed no other document, "new [recent] or old," that superseded the present one (*EPE* B29:11–12, 45:29). The number of witnesses in sales contracts was four (*EPE* B37:23–25, B45:33–34), and six (including the transferror) in an exchange document (*EPE* B29:17–20).

6.5 Among the other deeds of conveyance were bequests and withdrawals. The transfer statement at the beginning of the bequest was something like "I gave you [daughter] in my lifetime and at my death" (*EPE* B25:3), "I gave you [wife] in affection" (*EPE* B38:4), "I thought of you [daughter] in my lifetime . . . I gave it to my daughter at my death in affection" (*EPE* B43:2, 16–17). Bequests made in affection were potentially revocable ("I gave it to you in affection . . .

[15] Porten and Szubin, "'Abandoned Property . . .'"

until later" [*EPE* B44:11]), and so the father donor was obliged to add a waiver of reclamation (*EPE* B25:18–19 with n. 52, 44:9–11) and, like in sales, a renunciation of any "new [i.e., recent] or old document" that might supersede the present one (*EPE* B25:15–18, 43:21–22, 44:15–17). In most cases, these bequests were meant to remain within the family and not be alienated by the recipients to outsiders. The investiture clause stated, "To whomever you love you may give it" (*EPE* B25:9–10 with n. 33, 43:21), that is, whichever heir or beneficiary you prefer. The various deeds of withdrawal have been discussed above.

7. Contracts

7.1 *Sale (see under Property above)*

7.2 *Loan*

Money and grain were borrowed, lent, and owed, and promissory notes were drawn up by the debtors laying down the amounts and terms of payment. No two contracts are alike, but the amounts at hand are no more than a few shekels. We may distinguish between actual loan contracts, where the debtor stated something like "I came to your house in Syene and borrowed from you and you gave me emmer" (*EPE* B46:2–4) or simply "You gave me (a loan of) silver" (*EPE* B34:3 [4 shekels], 48:1 [3 1/2 shekels]), and deeds of obligation, which began, "You have (a claim) on me (for) silver" (*EPE* B51:3 [2 shekels]; *TAD* B4.5:2–3 [4 shekels]). The cash loans were for a year at 5 percent monthly interest. In one case, failure to pay at the end of the year allowed the creditor to seize any of the debtor's property as security until payment was made, while his heirs inherited the debt (*EPE* B34). In the other case, the debt was to be repaid from the debtor's monthly government allowance and failure to pay by year's end meant that the outstanding balance was doubled and continued to bear interest (*EPE* B48). In contrast to these stringent terms are the conditions for the grain loan. The grain was to be repaid out of the monthly ration, apparently without interest. Failure to do so within a grace period of twenty days entailed a ten-shekel penalty, which was likewise inherited by the heirs, whose property could be seized as security (*EPE* B46).

Abbreviations

EPE	B. Porten, *The Elephantine Papyri in English*
TAD A-D	B. Porten and A. Yardeni, *Textbook of Aramaic Documents*

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MESOPOTAMIA

NEO-ASSYRIAN PERIOD

Karen Radner

1. Sources of Law[1]

1.1 *Law Codes*

No collection of laws from the Neo-Assyrian period is known to us. If a text of this kind had ever existed, it seems highly likely that it would have been part of Assurbanipal's famous library in Nineveh. But neither in Nineveh nor in twenty-three excavated sites located in different parts of the empire have archaeologists have succeeded in unearthing so much as a fragment of such a text. In addition, in none of the numerous Neo-Assyrian texts is the existence of a collection of laws hinted at, making it implausible to argue that such a text had existed, written on perishable material such as wooden writing tablets or scrolls of leather or papyrus.

1.1.1 Whatever the reason for the lack of a Neo-Assyrian collection of laws, it is certainly not the result of unfamiliarity with the subject, as the concept of a compilation of laws was well known in the Neo-Assyrian period. Copies of collections of laws from earlier periods of Mesopotamian history have been found in Neo-Assyrian libraries, in particular, tablets with Neo-Assyrian copies of Hammurabi's Laws.[2] Furthermore, the Middle Assyrian Laws were handed down by tradition, as is shown by a tablet that was found in Neo-Assyrian context in Assur.[3] However, it is not known whether the ancient

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[1] The last attempt at a systematic survey of Neo-Assyrian law was J. Kohler's "Rechtserläuterungen," in Kohler and Ungnad, *Rechtsurkunden* . . ., 441–67. Although outdated in many respects, this is still a useful summary.

[2] See, e.g., a copy from the Library of Assurbanipal, K 4223+ (photograph in Parpola, *Scholars* . . ., 116 fig. 17) and note a catalogue of tablets for Assurbanipal's Nineveh library listing, inter alia, Hammurabi's Laws (*di-na-a-ni šá ḫa-am-m*[*u-ra-bi*]) and the "Advice to a Prince" (see n. 11 below).

[3] VAT 10093+10266 = KAV 6+143; see Pedersén, *Archives* . . ., 22:N 1 (47).

collections of laws were consulted or not—the possibility has certainly to be considered, especially in the case of the Middle Assyrian Laws.

1.2 *Private Legal Documents*[4]

These are the richest source, both in quantity and in the sort of information they offer. More than two thousand legal documents are known, all of which are sealed, dated, and witnessed in order to be legally valid.[5] The earliest texts date to the late ninth century, but the majority stem from the seventh century.

1.3 *Royal Decrees*

Recorded are grants of land and tax exemption to individuals (usually high officials) or temples, royal decrees for the maintenance of temples, and appointments of officials.[6] These texts date from the ninth to the late seventh century.

1.4 *Letters*

Letters, both official and private, can offer important information on legal practice in the Neo-Assyrian period. The texts come mainly from the state archives in Nineveh and Kalhu but also from the archives of the provincial governors in Kalhu and Guzana (Tell Halaf) and the private archives from Assur. They cover the period from the eighth to the late seventh centuries, albeit concentrated in the reigns of certain kings, while virtually no letters from the reigns of some kings, most notably Sennacherib, are known.[7]

1.5 Administrative texts, usually in the form of lists, record data on a wide rage of subjects. Since they rarely ever explicitly specify their purpose, their interpretation is often difficult.[8]

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[4] Radner, *Privatrechtsurkunden* . . ., 8–18 on the provenance and editions of the legal documents.

[5] Ibid., 20.

[6] Recently re-edited in Kataja and Whiting, *Grants* . . .

[7] Parpola, "Royal Inscriptions . . .," esp. 117–24 on the provenance and dating of the letter corpora.

[8] The administrative texts from Nineveh have been recently edited in Fales and Postgate, *Administrative Records* . . . I, and *Administrative Records* . . . II. Similar texts have been excavated in many other sites; the most important are Kalhu, Assur and Guzana.

1.6 *Realia*

The reliefs of the Neo-Assyrian royal palaces illustrate certain aspects important in the present context, although not in a straightforward way. There is, for example, no display of a "court room scene", but valuable insight can be gained on how the Assyrians saw themselves, some officials can be identified, and in particular the work of the scribes is well illustrated. Another important source for the mechanisms of administrative and legal practice are the sealings[9] of the texts described in 1.2–1.5.

2. Constitutional and Administrative Law

2.1 *Imperial Structure*

The Neo-Assyrian state was the first true world empire. Its territory, at the peak of Assyrian power in the late eighth and in the seventh century, stretched from Anatolia to Egypt and from Cyprus to Iran.

2.1.1 Although Babylonia was dominated by Assyria for most of the eighth and the seventh century, it was never seen as a part of Assyria, neither by the Assyrians nor by the Babylonians. This is shown especially by the fact that the Assyrian kings were crowned as kings of Babylonia, sometimes even bearing another throne name. Although an attempt was made to superimpose the Assyrian administrative structure, the Babylonian cities[10] especially kept most of their independence in legal matters: documents were phrased and dated in the Babylonian way and municipal officials kept their traditional titles.[11] The situation in Babylonia is excluded from the present study.

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[9] The sealings are studied in Herbordt, *Glyptik* . . .

[10] For the Babylonian cities' status under Assyrian control, see Larsen, "City-States . . ."

[11] Note also the *kidinnu* status (see Reviv, "*kidinnu* . . .") and cf. the Babylonian text known as "Advice to a Prince" or "Fürstenspiegel" listing the privileges of Babylon, Sippar, and Nippur. Interestingly enough, a copy of this text was found in Assurbanipal's library (DT 1; see Lambert, *Babylonian Wisdom Literature*, 110–45); another copy was found in the early Neo-Babylonian archive of the governor of Nippur (see OIP 114 128). See Reiner, "Fürstenspiegel . . .," 321f., on the quotation of a passage of this text in a Babylonian letter to Esarhaddon (CT 54 212 r. 4f.).

2.1.2 For the rest of the empire, however, a high level of cultural homogeneity was achieved. With the help of a massive deportation policy,[12] a multi-racial and multi-ethnic state was created[13] and nationalistic tendencies successfully avoided. With the help of a closely-knit web of traffic routes[14] and a well-organized communications network,[15] the empire's center was linked to the provinces' administrative capitals. The provincial capitals were modeled after the cities of the Assyrian heartland. The top officials in the provinces came from the empire's center, but collaborated closely with the local gentry. Neo-Assyrian was the official language within the empire,[16] although other languages were widely used, the most important of which was Aramaic.

2.2 *Organs of Government*

There was no legislative body and no division between executive and judiciary: administrative officials of all levels also held judicial authority. That the profession of a judge did not exist—in contrast to contemporary Babylonia—is also shown by the fact that the word *dayānu*, "judge," was not used for human beings in Neo-Assyrian.

2.2.1 *The King*

2.2.1.1 The king, as the chosen representative of the gods, was the head of the state and thus the head of the administration. His power was absolute, restricted only by his being answerable to the gods as the ideal king who was supposed to exercise a just rule.[17] The attributes expected of a king are well illustrated by a passage from Assurbanipal's Coronation Hymn:[18]

> May eloquence, understanding, truth and justice be given to him (i.e. Assurbanipal) as a gift! May the people of Assur buy thirty kor of grain

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[12] Oded, *Mass Deportation* . . .
[13] Postgate, "Multi-Racial State . . ."
[14] Kessler, "Royal Roads . . ."
[15] SAA 1, xiii–xx.
[16] SAA 1, xvf., esp. on the evidence of the letter CT 54 10.
[17] See Maul, "Der assyrische König . . ." Note that the title *šar mīšari* "King of Justice", well attested in Babylonia since Hammurabi of Babylon, is only attested in the titular of Assurbanipal (in three land grants: SAA 12 25:6, 26:6, 29:6; he is appointed as the "shepherd of justice" by Aššūr: CT 35 13ff. = SAA 3 44:12: *re-'u-u-ti mi-šá-ri ba-'u-ú-lat* ^{d}EN.LÍL *ap-q*[*id-da qa-tuk-ka*]). But the earlier Assyrian kings held similar titles, such as "Lover of Justice", "Lover of Truth" and "Protector of Truth"; see Seux, "Königtum . . .," 164f.
[18] LKA 31 = SAA 3 11, transl. by A. Livingstone.

> for one shekel of silver! May the people of Assur buy three seah of oil for one shekel of silver! May the people of Assur buy thirty minas of wool for one shekel of silver! May the lesser speak, and the greater listen! May the greater speak, and the lesser listen! May concord and peace be established in Assyria! Aššūr is king—indeed Aššūr is king! Assurbanipal is the [representative] of Aššūr, the creation of his hand.

2.2.1.2 Being the highest administrative official, the king was also the supreme judge. Although he is not attested as the official exercising judicial authority in legal documents, ample evidence for this function of the king is found in letters. The "King's Word" (*abat šarri*)[19] overruled any earlier decision, and thus many individuals who felt unfairly treated appealed directly to the king. The officials concerned were sometimes less than happy to hear that the king's help had been asked for: a provincial official complained bitterly to Sargon II that he had not been consulted before a certain man pleaded to the king.[20] There were two ways to appeal to the king: either a written petition was addressed to the king or an audience was requested. In the latter case, the petitioner was led veiled into the king's presence, where he would plead his cause.[21] The king was not only approached in matters of life or death, but also for more trivial reasons. The case of a man is documented who twice appealed to the king because one of his debtors had failed for six years to repay a debt, and the Chief Cupbearer would not solve the matter.[22] The king's dilatory reaction to this request may reflect a certain wariness with the case rather than overwork.

2.2.2 *The Administration*

The entire administration relied heavily on the service of scribes. The highest-ranking scribe in the empire was the Palace Scribe (*tupšar ekalli*). Although literacy seems to have been more widespread than previously supposed,[23] many officials could not write and read themselves. Officials of every rank can be shown to have had their personal scribe.[24]

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[19] Postgate, "Royal Exercise . . .," and "Princeps Iudex . . ."; Garelli, "L'appel . . ."
[20] CT 53 72 = SAA 1 237.
[21] Parpola, "Murderer . . .," 172, 176, n. 12.
[22] CT 53 173 = SAA 11 145:1'–8'.
[23] Parpola, "Man without a Scribe . . .," 320–22.
[24] Radner, *Privatrechtsurkunden* . . ., 86.

2.2.2.1 The king personally selected and appointed every official, be it a state, provincial, municipal, or temple official.[25] Sometimes, at least, he asked the gods to guide his decisions: the chief eunuch Nabû-šarru-uṣur was only chosen for this office after a query to the Sun-God, Šamaš, gave a favorable result.[26] Whereas the king certainly made his own decisions in the case of all high-ranking officials, for the filling of lower ranks he relied on the proposals of his bureaucrats. The latter, however, always had to keep the king informed about their proceedings and ask for his approval, as is illustrated, for example, by a letter from Bel-liqbi, probably the governor of Ṣūpat, to Sargon II inquiring whether two men were acceptable as overseers of two post stations.[27]

2.2.2.2 The highest level of the administration was represented by a group of top officials, the magnates (lit., "the great ones," *rabûte* = LÚ.GAL.MEŠ).[28] As is shown by their titles, these officials were historically the highest members of the palace staff:[29] the *masennu* (Treasurer), the *nāgir ekalli* (Palace Herald), the *rab šāqê* (Chief Cupbearer) and the *turtānu* (Commander-in-Chief), who all held their own provinces, and the *rab ša rēši* (Chief Eunuch), the *sukkallu* (Vizier) and the *sartennu* (Chief Bailiff). These officials were the king's close advisers and may have formed a kind of state cabinet.[30] Those officials who were in charge of a province, at least, could not have remained permanently at the royal court.

2.2.2.3 The authority in all other provinces was exercised by the governors (*bēl pāḫāte*) and their deputies (*šaniu*). The magnates clearly had a higher status in the Assyrian bureaucracy than the provincial

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[25] E.g., ABL 150 = SAA 13 25:1–4, l.h.e. 2, on the appointment of the mayor (*ḫazannu*) and the city overseer (*ša muḫḫi āli*) of Assur, and ABL 577 = SAA 1 75, on the appointment of a household manager for the temple of Assur.

[26] K 8888 = SAA 4 299.

[27] ABL 414 = SAA 1 177.

[28] They are studied by Mattila, *Magnates* . . .

[29] The titles of the magnates are conventionally and quite appropriately translated with terms familiar from the European and Islamic medieval period. Note that the title *sartennu* is usually, e.g., in CAD, translated as "Chief Judge." However, although it is clear that this official had judicial power, this translation is misleading, as judges do not exist and the highest judicial authority rests with the king alone. The translation "Chief Bailiff" ("Generalvogt") seems more appropriate.

[30] Parpola, "Cabinet . . .," 379, with earlier literature in n. 3; see also Mattila, *Magnates* . . ., 167.

governors.[31] The governors were responsible for the collection of taxes and other payments from their province, and for the conscription and supply of soldiers and civil laborers.[32]

Many of the magnates and provincial governors were eunuchs.[33]

2.2.2.4 On the municipal level, the mayor (*ḫazannu*) and the city overseer (*ša muḫḫi āli*) were the highest officials. It is important to note that in contrast to provincial officials sent there by the king, municipal officials were chosen from among the local residents. It is quite possible that the mayors and city overseers were, at least in Assur, selected from among the elders (*paršumu* = LÚ.AB.BA). The elders were a body with an unknown number of members that is not attested at all in the legal documents but is known from the royal correspondence.[34]

Traditionally, the *ša muḫḫi āli* was the more influential municipal official, but at some point in the second quarter of the seventh century, either at the end of Esarhaddon's or at the beginning of Assurbanipal's reign, the rank of *ḫazannu* was raised above that of *ša muḫḫi āli*. Usually, a city was ruled by one mayor and one city overseer. However, in Assur, at least from the reign of Sennacherib, three mayors called "Mayor of the Aššūr Gate," "Mayor of the Šamaš Gate" and "Mayor of the Tigris Gate" headed the city administration together with the city overseer. Possibly, the mayor of Nineveh had a deputy. Since a high number of mayors is attested in the documentation for the second half of the seventh century in the city of Assur, it is clear that a Neo-Assyrian mayor was not chosen for life, but served only for a limited term.[35]

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[31] This is not only illustrated by the sequence in which these officials served as the year's eponym (see Millard, *Eponyms* . . ., 11 table 3) but can be proven by letter formulation: whenever a provincial governor wrote to a magnate, he addressed him as "my lord" (see Mattila, *Magnates* . . ., 165f.).

[32] Postgate, "Economic Structure . . .," 202f.

[33] Grayson, "Eunuchs . . .," 93f., and Mattila, *Magnates* . . ., 131–33, but cf. 4.4 below.

[34] Note the letter ABL 442, written jointly by the mayors and the elders of Assur to the king.

[35] Klengel-Brandt and Radner, "Stadtbeamten . . .," 152–55, for a discussion of the mayor and the city overseer.

3. Litigation

3.1 *Procedure*

3.1.1 As there was no separate office of judge, the judicial function rested with officials of various ranks belonging to the state, provincial, municipal and temple administration.[36] As a consequence, there was no court building.[37] Court was apparently held wherever the official in charge was active. A document found in Dur-Katlimmu/Magdalu, modern Tell Sheikh Hamad in Syria, provides evidence that the two state officials most often attested in the function of judges, the *sukkallu* (Vizier) and the *sartennu* (Chief Bailiff), traveled through the empire, trying cases.[38] Although it is more common for a case to be tried by one official, several can be attested together in the role of judges. The exact function of the official called *ša pān denāni/denāti* (lit., "overseer of law cases") remains unclear. He is only once attested as trying a case but occasionally served as a witness to legal texts documenting court proceedings.[39]

3.1.2 Issār-šumu-ēreš, Esarhaddon's chief scribe, quoted a Babylonian proverb in a letter to his king: "An incompetent man can frustrate the judge; an uneducated one can make the mighty worry."[40] Unfortunately, the context in which this saying seemed appropriate is lost to us. However, it illustrates a fact that is also clear from the judicial documents: parties in court had to speak for themselves. Lawyers were unknown.

3.1.3 While the administration saw to it that those who had harmed the state were prosecuted, individuals had to initiate lawsuits on their own behalf. In spite of the fact that about one hundred legal documents directly referring to lawsuits are preserved,[41] we know little about court procedure in general due to the succinct phrasing of these texts. It is clear, however, that there was no distinction between civil and criminal matters.

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[36] Radner, Review of Jas . . ., and Deller, "Rolle . . .," 649.

[37] Cf. Jas, *Judicial Procedures* . . ., 2 (contra Deller, "Rolle . . .," 649f., KAV 115:7 is to be read É-*ku-nu*, not É *de-nu*).

[38] Radner, *Dūr-Katlimmu* . . ., no. 110.

[39] Jas, 101 s.v., and Deller, "Rolle . . .," 652f., for attestations.

[40] ABL 37 = SAA 10 23 r. 3–6.

[41] Jas, *Judicial Procedures* . . ., for an edition of 62 texts, and Radner, Review of Jas . . ., for references to additional unpublished texts.

3.1.4 To try a case, the presence of the opposing parties before the court was necessary. It seems that the plaintiff who initiated the trial had to produce the defendant physically in court. Men, women, and eunuchs could appear in court. Only statements made directly in the presence of the official acting as judge were acceptable.

3.2 *Evidence*

3.2.1 Suprarational methods were frequently employed to decide a trial. Well attested as a means to test the credibility of a person is the river ordeal (*ḫuršānu*).[42] It is likely that also references to gods in the role of judges[43] relate to comparable procedures; the texts offer no clues, however, about how exactly a god tried a case.

3.2.2 Taking an oath (which may be described as a semi-rational means of evidence) is also attested.[44] In the case of all known attestations, taking the oath is connected with an ordeal. Note that it is always the parties who take the oath, never witnesses. It seems that the parties were not under oath when they made their statements, unless this is stated explicitly.

3.2.3 The most important of the rational means to establish evidence were witnesses. Decisions could be adjourned in order to wait for an important witness to testify.[45]

3.2.4 It may be assumed that legal documents could also be presented as evidence. However, we lack explicit evidence about this from the texts. Moreover, the case of Urdu-Nanāia of Assur who, in spite of having a sale text documenting that he had paid the price for two slaves, still had to undergo an ordeal to prove this as a fact,[46] casts considerable doubt on the efficacy of this method. Two witnesses to the sale transaction were also present at the ordeal. There

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[42] Frymer-Kensky, Ordeal . . . II, 394–423, Jas, *Judicial Procedures* . . ., 73–76, Kataja, "River Ordeal . . ." and Radner, "Vier neuassyrische . . .," 124.

[43] Fales, "Dieu . . .," 177f., for attestations.

[44] The only texts known to use the verb *tamû*, "to swear an oath," are VAT 5604 and CTN 3 70; see Radner, "Vier neuassyrische . . .," 121–25. In VAT 20361 (formerly VAT 16507) = Deller et al., *Texts from Assur* . . ., no. 111 and in A 2014 = StAT 2 311, the phrase "to speak to (a god)" introduces the oath.

[45] Note esp. VAT 8656 = Radner, *Tempelgoldschmiede* . . ., 140f.

[46] Radner, "Vier neuassyrische . . .," 118–25, on VAT 5602 (sale) and VAT 4604 (ordeal).

is no indication that physical evidence as derived from the actual inspection of objects was ever used.

4. Personal Status

4.1 *Citizenship*

An essential factor in the stability and success of the Neo-Assyrian empire was that everyone within the empire was an Assyrian (*mār Aššūr; aššūrāyu*).[47] Subdued peoples are said to have been "counted among the Assyrians."[48] Newly Assyrianized individuals seem to have had the same obligations, usually summarized as the duty to serve (*palāḫu*, lit., "to fear") the king, like Assyrians by birth. In return, all the inhabitants of Assyria enjoyed the privilege of the protection of the king.

4.2 *Class*

4.2.1 Although the Assyrian themselves divided society in "Greater ones" and "Lesser ones,"[49] social classes in the modern sense did not exist. In contrast to other periods of Mesopotamian history, there were no general terms to designate social status. The term *amēlu* means "man" in the widest sense; the little-attested term *muškēnu* is only known from more literary contexts, where it is contrasted with *mār damqi* "nobleman".[50]

4.2.2 The only persons who could act independently—within the borders defined by the administrative system—were the heads of households, who had absolute authority over the persons in their households. The latters' status in society was determined by two factors: their position in relation to the head of the household and the position of that head of household within the bureaucracy.[51] Members of the king's household constituted a special case. They included not only individuals actually living in the palace but also those that lived on land owned by the state.

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[47] There is no difference between these terms; see Radner, *Privatrechtsurkunden* . . ., 199, with n. 1044.

[48] Oded, *Mass Deportation* . . ., 81–86.

[49] E.g., in Assurbanipal's Coronation Hymn (see n. 18).

[50] Radner, *Privatrechtsurkunden* . . ., 198f.

[51] Ibid., 200. For a sketch of the bureaucracy "pyramid," see Grayson, "Assyrian Civilization," 199–202.

4.2.2.1 Whether a head of household belonged to the "Greater ones" or the "Lesser ones" probably depended upon the existence and extent of landed property in his possession. This was linked to two factors. Firstly, landowners had to pay taxes—a major source of income for the state. Secondly, land tenure was closely connected to an individual's position within the Assyrian bureaucracy, as wealthy individuals had access to high positions at court and in the army and, holding such positions, could more easily accumulate more wealth and land. One means of upward social mobility was certainly a successful career in the army, as the king bestowed state land on his soldiers.[52]

4.3 *Slavery*

Freeborn persons could either become slaves as the result of a debt incurred by themselves or by a family member or could simply be sold into slavery by the head of household. Debt slaves could usually be redeemed if somebody paid off the debt on their behalf.[53]

Although a slave was in principle a human chattel that could be owned and dealt with like other property, in practice slaves had much the same rights and duties as other household members who were also under the absolute authority of the head of household. With the consent of the head of household, against whom commitments could be enforced, all household members, including slaves, could be given property.[54]

4.4 *Gender*

There were three genders: men, women, and eunuchs.[55]

4.4.1 The sources clearly illustrate that eunuchs were common at all levels of society and that they could be high state officials as well as slaves.[56] Although eunuchs were clearly seen as being different from

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[52] Radner, "Land and its Resources . . .," 244, on the single reference to a "bow field" (A.ŠÀ GIŠ.BAN-*šu*) in ABL 201 = SAA 5 16:6.

[53] Radner, *Privatrechtsurkunden* . . ., 229f. and Radner, "The Neo-Assyrian Period . . .," 280–84.

[54] See Radner, *Privatrechtsurkunden* . . ., 202, 219–30, for a detailed discussion; cf. Kohler and Ungnad, *Rechtsurkunden* . . ., 452f.

[55] See Grayson, "Eunuchs . . .," 91–93, for a survey of the debate on the meaning of *ša rēši*. At least for the Neo-Assyrian period, it seems certain that this term denotes a eunuch, but note the arguments of Dalley, Review of Mattila . . ., 198–206.

[56] Radner, *Privatrechtsurkunden* . . ., 156, for a eunuch slave, and Grayson, "Eunuchs . . .," 93f., for eunuchs as high officials.

men, their grammatical gender was still masculine and, as the depiction on reliefs and seals show, they dressed like men (but were of course beardless).[57] Apparently, men and eunuchs held the same legal status.

4.4.2 Typically, a head of household was male (or a eunuch). Households headed by women are attested as well, however, especially at court, where the female members of the royal family were very powerful and the female official called *šakintu* held an influential post.[58] Although women could buy and sell property, incur debts, act as creditors, and appear in court, they are never attested as witnesses in legal documents, not even when the principal parties are female.

4.5 *Age*

A person's age was not counted in years ("chronological age"), but defined by physical appearance ("physiological age").[59] As the most important asset of any person was his or her ability to work and as this is only insufficiently reflected by chronological age, this method is clearly functional. We have no information as to when a person legally "came of age." It is almost certain, however, that this was connected to maturity, not a certain chronological age.

5. Family

5.1 *Marriage*

5.1.1 Only in extraordinary cases, for example, when the bride's dowry was substantial, when the bride was given the right to demand a divorce, or when the bride was a temple devotee, was a marriage document drawn up. Hence, only sixteen such texts are known to us.[60] Apparently, an oral agreement was usually sufficient.

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[57] Reade, "Court and Army . . .," 91f., 95f., for the reliefs, and Watanabe, "Siegellegenden . . .," pls. 3–4 (5.2., 5.5., 6.1.–6.10.), for the seals.

[58] The exact nature of the *šakintu*'s office needs further study. She is attested in Nineveh, Kalhu, Assur, and Til-Barsip (see Dalley, "Til Barsib . . .," 82f. and pl. 3: no. 13).

[59] See Radner, *Privatrechtsurkunden* . . ., 125–34, 147–55, 171–73, for a discussion of the terms to describe the physiological age of a person.

[60] Ibid., 157f. and see the detailed discussion of these texts, 165–71.

5.1.2 Marriage was normally arranged between the father of the bride and the bridegroom. Theoretically, every bride received a dowry (*nundunû*, see also 6.2.5 below) at the time of her wedding. Only three of the known wedding documents enumerate the dowry, probably because it was unusually rich.[61] From these texts it is clear, however, that the bride received money, furniture and household goods as her dowry. The bridegroom probably always paid a bride-price to his future father-in-law. As the term *terḫatu(m)* is not attested in Neo-Assyrian, it is likely that the word used in this context is the usual word for price, *kaspu*.[62] The sale of women into marriage is also attested in nine texts from Nineveh, Kalhu, and Assur.[63]

5.1.3 By marrying, the woman left the paternal household and entered the household of her husband, who gained total control over her. Should the husband incur debts, he could pledge or even sell his wife; after his death, the wife was still liable to pay back the debts.[64] Therefore, clauses in four marriage documents explicitly protected the wife from the consequences of her husband's business dealings.[65]

5.1.4 Polygamy (or rather polygyny) was possible but is rarely attested. According to our sources, monogamy seems to have been predominant but by no means a matter of course, as, for example, the sale of a man with his two wives is documented in two legal texts, respectively.[66] Polygamy was certainly standard in the case of the members of the royal family. Sennacherib, for example, had at least three legitimate wives.[67] Thus, a woman of high social rank from Kalhu

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[61] Ibid., 164 on CTN 2 1 and ND 2307 from Kalhu and A 2527 = StAT 2 164 from Assur.

[62] See especially IM 64137 = NL 26:4–16: "As for the Arameans about whom the king said: 'Let wives be found for them,' we have found plenty of women, but their fathers will not agree to hand them over until they pay the price (*k*[*as-p*]*u*) for them. Let them pay the price (*kas-pu*), and then can get married (*li-ḫu-zu*)" (cf. Saggs, "Nimrud Letters . . .," 92 and pl. 6, and Postgate, "Multi-Racial State . . .," 9).

[63] Radner, *Privatrechtsurkunden* . . ., 167–70.

[64] Ibid., 162 and note esp. the evidence on badly abused widows in the letter KAV 197:25–37 from Assur; see Postgate, *Taxation* . . ., 363–67 and Fales, "People . . .," 39f., for a translation.

[65] Radner, *Privatrechtsurkunden* . . ., 158f on CTN 2 247 and ND 2316 from Kalhu, TIM 11 14 from Nineveh, and A 2527 = StAT 2 164 from Assur, and Radner, 170f. on ND 2316 from Kalhu.

[66] Radner, *Privatrechtsurkunden* . . ., 126, with n. 620 with references.

[67] Frahm, *Sanherib-Inschriften* . . ., 3f.

felt the need to have a clause in her marriage document explicitly stipulating that her husband could not have another wife.[68]

5.2 *Concubinage*

It seems that only kings could have legitimate concubines. These were designated as MÍ.ERIM.É.GAL. As no syllabic spellings for this term are attested so far, the reading as **sakrutu* is hypothetical.[69]

5.3 *Divorce*

Three marriage contracts contain provisions regulating the consequences of divorce. They show that divorce was possible, apparently at the initiative of either spouse. The main reason for divorce is expressed by the verb *ziāru* "to hate."

5.3.1 According to a text from Kalhu, if the wife divorced her husband because she hated him, she would forfeit her dowry to him; if he divorced her for the same reason, he would have to pay her double her dowry.[70] A second text from Kalhu stipulates that if the husband took another wife, his wife could leave him, taking with her everything she owned.[71] The third document, from Nineveh, concerns the marriage of a female Egyptian devotee of the goddess Ištar of Arbela to another Egyptian.[72] If the husband hates his wife, it is she who is to pay him ten shekels of silver as "departure money" and she can leave; due to the fragmentary preservation of the text, it is clear only that she too could divorce him.

5.3.2 In contrast to these provisions for a potential divorce, only one text is known that documents an actual divorce.[73] A text from Assur documents the settlement of a lawsuit between two men who used to be father-in-law and son-in-law, focusing on the question of remarriage. The former husband would be able to marry again without his ex-father-in-law's involvement and the former wife could be mar-

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[68] CTN 2 247, see Radner, *Privatrechtsurkunden* . . ., 160, 166.
[69] Fadhil, "Grabinschrift . . .," 467.
[70] ND 2307, see Radner, *Privatrechtsurkunden* . . ., 159, 165f.
[71] CTN 2 247, see Radner, *Privatrechtsurkunden* . . ., 160, 166.
[72] TIM 11 14, see Radner, *Privatrechtsurkunden* . . ., 159, 167f., 209.
[73] VAT 9745, see Radner, *Privatrechtsurkunden* . . ., 160f., for an edition.

ried again by her father without her ex-husband being involved. It is noteworthy that the ex-wife is referred to only as the daughter of her father, without ever mentioning her name.

5.4 *Children, Childlessness, and Adoption*

5.4.1 A marriage document from Kalhu makes provisions for the contingency of childlessness. A slave woman would be used as a surrogate mother, the child she would have with the husband legally being the married couple's. Depending on the relationship between the wife and the slave woman, the latter would either stay in the household or be sold.[74]

5.4.2 The alternative for a childless couple is to adopt a child. Adoptions are well attested, both of boys and girls.[75] Whereas a boy's adoption is always linked to the fact that he is to be the future heir,[76] it is still largely unclear why—other than for humanitarian reasons—girls were adopted.[77] The adoptees are always children. They are given away by their fathers or, if the father is dead or unknown, by the head of household.[78] All adoptions of girls and most adoptions of boys are straightforward sale transactions, and the adopting parents pay a sum of money for the child. In the case of two adoptions of boys from Assur, however, no price was paid to the fathers,[79] and in another boy's adoption from Assur, a payment euphemistically called a "gift" (*nāmurtu*) was given to the father.[80] Note that in these three texts, the usual sales formulae which are employed for all other adoptions are not used.

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[74] ND 2307, see Radner, *Privatrechtsurkunden* . . ., 165f., and Grayson and Van Seters, "Childless Wife . . .," 485f.

[75] Radner, *Privatrechtsurkunden* . . ., 137–43.

[76] Ibid., 138f. The three texts from Assur stipulate that even if the couple should eventually have seven sons, the adopted son will still be the principal heir, whereas a text from Kalhu and a text from Nineveh speak of ten sons.

[77] Radner, *Privatrechtsurkunden* . . ., 142.

[78] By the father of the mother, a temple prostitute, in TIM 11 15 (see Radner, *Privatrechtsurkunden* . . ., 140:d) and by the brother in VAT 9930 (see Radner, *Privatrechtsurkunden* . . ., 142:a).

[79] AO 2221 (see Radner, *Privatrechtsurkunden* . . ., 140:a) and Assur 12 (see Radner, *Privatrechtsurkunden* . . ., 140:b).

[80] VAT 15500 (see Radner, *Privatrechtsurkunden* . . ., 140:c).

6. Property and Inheritance

6.1 *Tenure*

The character of land tenure in the Neo-Assyrian period is the direct result of developments in the Middle Assyrian period, although the expansion of Assyrian territory in the first millennium certainly resulted in a change in its conditions.[81]

6.1.1 Generally speaking, landed property might be owned by private individuals individually or jointly, or by the state. At present, there is no evidence that cities and villages owned land, although it seems that their consent was needed for the transfer of ownership within their jurisdiction.[82] However, as the organization of concerted use of agricultural land was certainly among the major responsibilities of the municipal government, the community's importance in respect to landed property should not be underestimated.[83] Barren land, notably desert land,[84] and newly conquered land belonged to the state.

6.1.2 A special case of state property is the prebendary lands, called *ma'uttu*,[85] accompanying an office, for example, a governorship. It seems that in contrast to privately owned land, prebends were always described as the land of a certain official, without giving his proper name.[86] While a fixed share of these estates' yield had to be handed over to the state authorities,[87] the remaining share was to sustain the

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[81] Pečírková, "Land Tenure . . ." summarizes the different opinions of various scholars, notably Diakonoff, Garelli, Jankowska and Postgate, on Assyrian land tenure and its evolution. See further Fales, "Survey . . .," and "The Neo-Assyrian Period"; Postgate, "Economic Structure . . .," "*ilku* . . .," and "Ownership . . ."

[82] Sale documents for landed property within the city of Assur must be sealed not only by the seller but also by city officials; see Klengel-Brandt and Radner, "Stadtbeamten . . .," 137–43. CTN 2 44 is a similar example from Kalhu, see ibid., 138.

[83] Cf. Postgate, "Ownership . . .," 144.

[84] Cultivating this land was a state matter, usually achieved with the help of the local population or deportees who were settled in the area at the same time; see Radner, "Land and its Resources . . .," 237f.

[85] For the evidence for *ma'uttu ša šarri* ("prebend of the king") and *ma'uttu ša ekalli* ("prebend of the palace"), see Radner, Land and its Resources . . ., 243.

[86] Postgate, "Ownership . . .," 146f. The problem of distinguishing prebends from privately held estates is not restricted to officials but also arises in the case of the king and his family.

[87] E.g., the letter CT 53 79 = SAA 5 225, in which the official Adad-issē'a complains that it is virtually impossible to deliver the scheduled amount of one thousand homers of grain.

holder's office. Temples could own land as well, most importantly to provide offerings for the gods. A part of the land came into the possession of the temples as a result of donations by private individuals or the king.[88] Also attested are prebendary fields for such institutions as the royal tombs in Assur.[89]

6.1.3 As in the Middle Assyrian period, the tenure of land is linked to the duty to pay taxes, specifically the *šibšu* tax on corn and the *nusāḫē* tax on straw. If the land was owned by the state, its proprietor, often an official holding it as a prebend, had to perform state service (*ilku*).[90] The king might sometimes grant tax exemption on certain property.[91] A reference to "bow land" in a letter to Sargon II suggests that soldiers received state land as "fiefs."[92]

6.1.4 Land could be leased.[93] Lease of land is closely connected to pledge of land (see 7.5.2 below); indeed, the land serves as an antichretic pledge for the rent, which is really a debt.[94] In many cases, the land was leased as long as the debt remained unpaid. In other cases, a fixed period of time was agreed on. The minimum attested is six years (three fallow and three crop years); the maximum, thirty years (fifteen fallow and fifteen crop years).[95] After the fixed term had elapsed, the land could be redeemed by repaying the debt.

6.2 *Inheritance and Transfer* inter vivos

6.2.1 Inheritance matters were controlled by the bureaucracy, as illustrated, for example, by a letter from one Amar-ilu to Sargon II, reacting to the king's order that he and the governor of Arbela were to divide the inheritance of the sons of Mardû and give each of them

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[88] Postgate, "Ownership . . .," 145f.

[89] TIM 11 33:5': *ma-ʾu-u-te ša* É LUGAL-*n*[*i*], "prebendary field of the royal tombs (lit., "House of Kings," the Old Palace in Assur).

[90] On *šibšu* and *nusāḫē*, see Postgate, *Taxation* . . ., 174–18, and Garelli, "Système fiscal . . .," 11f. On *ilku*, see Postgate, *Taxation* . . ., 63–79, "Economic Structure . . .," 203–5, and "*ilku* . . ."; also Garelli, "Système fiscal . . .," 8–11. On the link between *ilku* and land tenure, see also Postgate, *Fifty Documents* . . ., 24f., and cf. Grayson, "Assyrian Civilization," 213f.

[91] Postgate, "Ownership . . .," 149f.

[92] Radner, "Land and its Resources . . .," 244.

[93] Postgate, *Fifty Documents* . . ., 29–32 and Radner, *Privatrechtsurkunden* . . ., 384–89.

[94] Radner, *Privatrechtsurkunden* . . ., 385.

[95] For attestations see Radner, *Privatrechtsurkunden* . . ., 388f.

his share.[96] That the administrative officials were involved in the division of inheritance is also clear from various inheritance documents.[97]

6.2.2 In contrast to the Middle Assyrian period, each son, independent of his age, received an equally large share of the inheritance. While real estate usually forms the most important part of the inheritance, the texts also mention slaves, money, and legal documents.[98]

6.2.3 Usually, men received their inheritance after the father's death. The heir was the universal successor of the deceased, whose rights and obligations he took over as a whole. This is especially clear from a Kalhu adoption document, which specifies the adoptee's status as the principal heir should there ever be additional sons: "He (the heir) will enjoy his inheritance share with them (his brothers); he will go to (perform) the *ilku* duty with them; he will settle his (the father's) debts and he will claim payment for the debts due to him (his father)."[99]

6.2.4 A text from Assur documents the division of an estate during the father's lifetime. It is split between the sons while a part of it was kept by the father, to be divided upon his death, and even the mother received a slave.[100] This last case should be described as a gift rather than an inheritance and can be compared with a document of unknown provenance, which documents a gift of landed property, slaves, and livestock from a father to his son.[101]

6.2.5 Women could receive gifts both from their fathers[102] and husbands. The latter was called *nundunû*, the same term that denotes the dowry.[103]

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[96] ABL 179 = SAA 1 135.

[97] Note, e.g., that the three mayors and the goldsmiths' guild oversaw the distribution of the inheritance in BM 122698 = Deller and Millard, "Zwei Rechtsurkunden . . .," 42f. (a list of inheritance texts is given l.c. 44) and that Assur 27 = Ahmad, "Archive . . .," no. 31 was sealed by a mayor.

[98] Radner, *Privatrechtsurkunden . . .*, 72.

[99] ND 5480 (unpublished, see the quotes in Postgate, "*ilku* . . .," 307).

[100] VAT 9330 = Deller et al., *Texts from Assur . . .*, no. 71; see Radner, *Privatrechtsurkunden . . .*, 163.

[101] ADD 779 = Kohler and Ungnad, *Rechtsurkunden . . .*, no. 46. The remainder of the father's property was to be divided between the brothers.

[102] ADD 619 = Kwasman, *Kouyunjik Collection . . .*, no. 69, records the gift of a house in Nineveh and some slaves from a father to his daughter.

[103] Radner, *Privatrechtsurkunden . . .*, 163 and 164 for the Assur text A 310 = StAT 2 184, recording a husband's *nundunû* gift of two minas of silver, furniture, and household goods to his wife.

6.2.6 Much better attested than gifts in private circles are gifts by the king, called *tidintu* or *qinītu* and consisting of land, persons, and livestock.[104] The king also bestowed honorary gifts such as rings and luxurious garments on those he favored.[105]

7. Contracts

Two main types of legal documents can be distinguished because of their strictly standardized formulation and format. A third group of texts' appearance is much less standardized: receipts, various mutual agreements and texts recording court proceedings are phrased and formatted according to ad hoc necessities.

The first group of legal texts are those of the so-called conveyance type ("Erwerbsvertrag"), which document all possible kinds of transfers of ownership of real estate and persons, such as sales or exchanges, land leases, adoptions, marriages, dedications to temples, or divisions of inheritance.

The second group are the legal texts of the so-called contract type ("Obligationsurkunde"), which record an obligation between two parties, for example, loans of money, grain, or animals and debts of all kind, as well as delivery and working contracts.

7.1 *Sale*

Only the transfer of ownership of real estate (fields, houses, building plots, gardens, vineyards, occasionally whole villages) and people is documented.[106]

7.1.1 A sale document was sealed by the seller and witnessed by a number of men who can frequently be demonstrated to have close connections with the buyer.[107] In the case of real estate sales from Assur, the text was also sealed by the municipal officials.[108] The

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[104] Deller, "Neuassyrisch *qanû* . . .," 345–55 for a discussion of these terms and of the verb *qanû*.

[105] Postgate, "Rings . . .," 235–37.

[106] Occasionally, the transfer of cattle is mentioned in connection with land sales; see Radner, *Privatrechtsurkunden* . . ., 294f.

[107] Compare Fales, "Remanni-Adad . . .," 1987:94, 109–13 for the circle of Rēmanni-Adad.

[108] See n. 82.

document was written on a rectangular tablet with a ratio of 2:3 of vertical format.[109]

7.1.2 According to the phrasing of the sale documents,[110] the transaction was a cash purchase. The price was paid on the spot, usually in a metal currency, and the commodity was handed over to the buyer. Until the reign of Sargon II, copper (or occasionally bronze) was the predominant currency, later on more and more supplanted by silver.[111] It seems, however, that the impression of a cash purchase is sometimes created by the highly standardized phrasing of the texts, without this actually being the case.[112]

7.1.3 The sale document served to protect the rights of the buyer. Litigation is excluded,[113] and a number of the clauses stipulate the penalties should the seller or his legal representatives or successors try to reclaim the item sold.[114]

7.2 *Exchange*

Exchange is attested relatively rarely. The transaction was documented using slightly modified sale contract formulae, usually mentioning the term *šapûssu*, "exchange".[115] Generally, commodities of a comparable nature were exchanged, such as a field for a field or a person for a person. There is, however, a case of three slaves being exchanged for a horse.[116]

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[109] Radner, "Relation . . .," 67, and *Privatrechtsurkunden* . . ., 24f.; Postgate, "Nature of the Shift . . .," 160, 167.

[110] Postgate, *Fifty Documents* . . ., 12–17, and "Nature of the Shift . . .," 168; Radner, *Privatrechtsurkunden* . . ., 21f., 316–56.

[111] See Radner, "Money . . .," on currency in the Neo-Assyrian period.

[112] Evidence for this is quoted by Radner, *Privatrechtsurkunden* . . ., 91f., n. 504.

[113] With the clause *tuāru dēnu dabābu laššu* ("There is no going back, lawsuit or litigation"); see Radner, *Privatrechtsurkunden* . . ., 353–56.

[114] Postgate, *Fifty Documents* . . ., 18–20; see Radner, *Privatrechtsurkunden* . . ., 189–95, 211–19, 306–11 for a detailed discussion of various groups of penalty clauses.

[115] See Postgate, *Fifty Documents* . . ., 100f., Kwasman, *Kouyunjik Collection* . . ., 61, and Radner, *Privatrechtsurkunden* . . ., 349 (with references).

[116] ADD 252 = Kwasman, Kouyunjik Collection . . ., 40; see Radner, *Privatrechtsurkunden* . . ., 305.

7.3 *Obligations*

7.3.1 Obligation documents[117] are abstract and describe a certain sum, never a concrete object, as owned by the creditor (*ša* PN) and held by the debtor(s) (*ina pān* PN). The origin of the obligation is not important and hence rarely ever mentioned. The presence of the enigmatic phrase *ina pūḫi našū* would appear to indicate that the obligation arose from a true loan.[118] Obligations could also originate from fines, overdue taxes, and temple offerings or from contracts to supply work or to manufacture and deliver goods.[119]

7.3.2 Interest rates could vary considerably, and several different phrases were used to set the rate.[120] Although the most common rate is 25 percent, it was also possible to charge no interest at all or, at the other extreme, to stipulate that the sum be repaid double (usually only as a penalty).

7.3.3 Often, but not always, a repayment date[121] was set. Debts of grain frequently had to be paid after the harvest (*ina adri*, "at the threshing floor"). If the debtor failed to pay by the due date, penal interest was imposed at a much higher rate than the original one. Some documents stipulate that the debtor had to pay "whenever the creditor wishes" (*ūmu ša errešūni*). It is probable that this was also true in those cases when no date of repayment was fixed.

7.3.4 Obligations were either documented on tablets enclosed in sealed envelopes or, more rarely and mostly in the case of debts of grain, on a sealed triangular lump of clay formed round a knotted string.[122] The documents had to be sealed by the debtor.

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[117] On the formulation, see Postgate, *Fifty Documents* . . ., 35 and Postgate, "Nature of the Shift . . .," 168.
[118] Postgate, *Fifty Documents* . . ., 37.
[119] Ibid., 33f.
[120] Ibid., 39–43.
[121] Ibid., 38.
[122] Radner, "Relation . . .," 68–70, and *Privatrechtsurkunden* . . ., 25–32; Postgate, "Nature of the Shift . . .," 160f, 167.

7.4 *Remission of Debts*

7.4.1 The Assyrian kings could proclaim a debt remission, (*an*)*durāru*. It seems that this sometimes happened at the beginning of a king's reign, as can be deduced from the dates of eight contracts from seventh-century Nineveh, Assur, and Kalhu that are said to have been set up after a debt remission.[123] Debt remissions were proclaimed not for the whole country but for specific cities.[124]

7.4.2 Three texts, two from eighth-century Kalhu and one from seventh-century Nineveh, contain clauses that, in the case of a debt remission, protect the claims of the creditor or the buyer of what must be debt slaves who would be freed by a debt remission.[125] In these cases, the contractual right was given priority over the debt remission.[126]

7.5 *Security*

Two means could be used to secure a debt—suretyship and pledge.[127] Both are well attested, and in three cases, a debt was secured by both these methods.[128]

7.5.1 The surety was called *bēl qātāte* (EN ŠU.2.MEŠ). Usually, a single surety was agreed on, but up to three men are attested in that function. In the case of obligations with several debtors, suretyship was quite common, and usually one of the debtors acted as surety for the others.[129] When the surety assumed responsibility, the phrase *qātāte maḫāṣu* (lit., "to strike the hands")[130] was used.

7.5.2 The Neo-Assyrian term for pledge is *šapartu*. Although normally persons or real estate were pledged, legal documents, a donkey, and

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[123] Radner, "The Neo-Assyrian Period," 285f.
[124] Ibid., 286.
[125] Ibid., 284f.
[126] Otto, "Programme . . .," 50, and Radner, "The Neo-Assyrian Period," 284f.
[127] See Radner, *Privatrechtsurkunden . . .*, 357–90, for a detailed discussion, and Radner, "The Neo-Assyrian Period," 265–88, for a summary.
[128] From Assur: VAT 20341 = Fales and Jakob-Rost, *Texts from Assur . . .*, no. 31; SÉ 104 = Jursa and Radner, "Jerusalem . . .," 92f. From Kalhu: ND 2078 (unpublished, cf. Radner, *Privatrechtsurkunden . . .*, 359, 379).
[129] Radner, *Privatrechtsurkunden . . .*, 361.
[130] Radner, *Privatrechtsurkunden . . .*, 362–67 for references and discussion.

a piece of furniture[131] are also attested in this function. Usually, the creditor took the pledge into his possession, and it was redeemed by the debtor upon payment of the debt. If he failed to satisfy the creditor, the latter kept the pledge in his possession. The creditor had the right to use and take the fruits, such as crops in the case of the pledge of a field.[132] In the case of pledged persons, the debtor bore responsibility for their death or escape.[133] Frequently, the pledge was explicitly stated to be antichretic in nature (*kūm rūbê*, "instead of interest").[134]

8. Crime and Delict

8.1 The legal documents of this period attest the prosecution of homicide, robbery, theft and damage to property.[135] In all theses cases, the offender had to pay a financial penalty to the wronged person or, if found financially unable to do so, serve as a debt slave. In the case of homicide, the traditional right to take blood vengeance could be reasserted if the financial penalty was not settled.[136] Embezzlement and abuse of power by officials were prosecuted as well.[137]

8.2 Penalties served a threefold purpose: to punish the offender, recompense the victim, and serve as a means to deter potential criminals. The latter purpose is documented by a letter of Mār-Issār, Esarhaddon's agent in Babylonia, to the king, suggesting that a criminal be punished in order to frighten off others who might do the same.[138]

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[131] Radner, *Privatrechtsurkunden* . . ., 390.
[132] Ibid., 368f for a detailed discussion.
[133] Ibid., 373–75.
[134] Ibid., 370f.
[135] Homicide: ADD 160 = Jas, *Judicial Procedures* . . ., no. 14; ADD 321 = Jas, no. 42; ADD 618 = Jas, no. 41; CTN 2 95 = Jas, no. 43; VAT 20361 (formerly VAT 16507) = Deller et al., *Texts from Assur* . . ., no. 111. Robbery: ADD 164 = Jas, no. 1; Tell Halaf γ = Jas, no. 48. Theft: ADD 161 = Jas, no. 44; BM 123360 = Jas, no. 32; CTN 2 92 = Jas, no. 39; VAT 20339 = Fales and Jakob-Rost, *Texts from Assur* . . ., no. 11 = Jas, no. 33; BT 140 = Jas, no. 45; VAT 8737 = Deller et al., no. 97. Damage to property: Tell Halaf γ = Jas, no. 48; cf. Kohler and Ungnad, *Rechtsurkunden* . . ., 466.
[136] ADD 321 = SAA 14 125. See Roth, "Homicide . . .," 362f.
[137] See, e.g., ABL 339 = SAA 10 369 for the prosecution of the corrupt governor of Dūr-Šarruku, and ABL 429 = SAA 10 107 for the prosecution of corrupt officials at the Aššur temple.
[138] ABL 339 = SAA 10 369 r. 15–17.

8.3 Although there is no evidence from the legal texts for judgments imposing physical punishment on the offender, the case of a cook who stole temple property shows that not only political offenders such as traitors or rebels were tortured, maimed, and/or killed, practices well known from the royal inscriptions. In a letter to the king,[139] the cook is reported to have died as a consequence of the beating he received as punishment for his crime. The context of a memorandum from Nineveh recording the names of persons who were tried and subjected to severe physical punishment is unknown.[140]

Abbreviations

OIP 114	S. Cole, *The Early Neo-Babylonian Governor's Archive from Nippur*, OIP 114 (Chicago: Oriental Institute, University of Chicago, 1996)
SAA	State Archives of Assyria
SAA 1	S. Parpola, *Sargon II . . .*
SAA 3	A. Livingstone, *Court Poetry and Literary Miscellanea*, SAA 3 (Helsinki: Helsinki University Press, 1989)
SAA 4	I. Starr, *Queries to the Sungod: Divination and Politics in Sargonid Assyria*, SAA 4 (Helsinki: Helsinki University Press, 1990)
SAA 5	G. Lanfranchi and S. Parpola, *The Correspondence of Sargon II, Pt. 2: Letters from the Northern and Northeastern Provinces*, SAA 5 (Helsinki: Helsinki University Press, 1990)
SAA 6	T. Kwasman and S. Parpola, *Legal Transactions of the Royal Court of Niniveh, Pt. 1: Tiglath-Pileser III through Esarhaddon*, SAA 6 (Helsinki: Helsinki University Press, 1991)
SAA 7	F. Fales and J. Postgate, *Administrative Records . . . Pt. 1*
SAA 10	S. Parpola, *Scholars. . . .*
SAA 11	F. Fales and J. Postgate, *Administrative Records . . . Pt. 2*
SAA 12	L. Kataja and R. Whiting, *Grants. . . .*
SAA 13	S. Cole and P. Machinist, *Letters from Priests to the Kings Esarhaddon and Assurbanipal*, SAA 13 (Helsinki: Helsinki University Press, 1998)
SAA 14	R. Mattila, *Legal Transactions of the Royal Court of Nineveh, Pt. 2: Assurbanipal through Sin-šarru-iškun*, SAA 14 (Helsinki: Helsinki University Press, 2002)
SAAB	State Archives of Assyria Bulletin
SAAS	State Archives of Assyria Studies
StAT 2	V. Donbaz and S. Parpola, *Neo-Assyrian Legal Texts in Istanbul*, Studien zu der Assur-Texten 2 (Saarbrücken: SDV, 2001)
TIM 11	B. Kh. Ismail and J. Postgate, *Texts from Niniveh*, TIM 11 (Baghdad: Republic of Iraq; Ministry of Culture and Information, Directorate-General of Antiquities and Heritage, n.d.)

[139] ABL 1372 = SAA 13 157 24'–r. 8.
[140] ADD 880 = SAA 11 144.

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MESOPOTAMIA

NEO-BABYLONIAN PERIOD

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While named after the Neo-Babylonian Empire, this survey covers the law of Babylonia during the entire first millennium. Politically, the millennium may be divided as follows:

1. The early part of the millennium was characterized by weak kings of Babylon struggling with Aramean and Chaldean groups settling for the most part outside the cities. On several occasions, members of these groups succeeded in gaining the kingship in Babylon.
2. For most of the late eighth and the seventh centuries Babylonia was under Assyrian control.
3. During the Neo-Babylonian Empire, the so-called "Chaldaean dynasty" (626–539) brought about a final period of political independence.
4. Inclusion of the territory in the Achaemenid Empire (539–331) brought about only minor socio-economic and legal changes. The legal institutions as reflected in the documents remain more or less the same as before.
5. After the conquest of Alexander (331) as well as under Hellenistic rule (Seleucid, 331–141) and even well into the Parthian period (Arsacid, 141 B.C.E.–ca. 225 C.E.), cuneiform traditions, including the traditional law, remained alive. The latest administrative and legal documents (contracts) date to the early first century B.C.E.[2]

1. Sources of Law

Only a few documentary sources are known for Babylonia from the first quarter of the first millennium. Texts of legal relevance are isolated stone monuments (formerly known as *kudurrus* (see 1.3 below). From the eighth century[3] onwards, however, to the end of the millennium

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[1] Sections 1, 2, 4.2.1.1, 6.1, 7: Oelsner; sections 2.1.4.6, 3, 4, 5, 6: Wunsch (with editor); section 8: Wells.

[2] According to recent research, cuneiform script (and the Akkadian language) was still being used in the first centuries C.E.: see Geller, "The Last Wedge."

[3] Sources from ca. 1000 to 700 surveyed in Oelsner, "Frühneubabylonische . . ."

thousands of clay tablets are extant, both legal and administrative documents. The documentation is especially rich in the sixth and the early fifth centuries, making that period one of the best known in Mesopotamian history. Thereafter (beginning with the reign of the Achaemenid king Xerxes), the number of cuneiform tablets diminishes, but the corpus has recently increased thanks to new discoveries, often in museums. By the time the documentation becomes widespread, in the late eighth century, a number of phenomena characteristic for cuneiform law in the first millennium seem to be fully developed.[4]

Besides cuneiform writing, Aramaic script and language were in use in first millennium Babylonia. As these were written mostly on parchment or papyrus, which has vanished into the soil of southern Mesopotamia, practically no documents of this kind are preserved. Sometimes Aramaic dockets were added to clay tablets written in Akkadian. A number of clay bullae with seal impressions, mostly from Hellenistic Uruk and from the contemporary settlement of Seleucia on the Tigris, have come down to us as what remains of Aramaic (and later Greek) deeds and letters.

1.1 *Law Codes*

There is one tablet, probably a school tablet containing an excerpt from a larger text,[5] with a number of regulations regarding claims for compensation (in the wider sense) as well as provisions regarding marriage and inheritance. In Achaemenid and Seleucid times documents sometimes mention a *dātu ša šarri* "law (of the king)" (Persian loan word), but nothing thereof is preserved (see 2.1.2 below). In the Achaemenid period there was also a judicial official called *dātabarru* or *ša muḫḫi dāti*.

1.2 *Edicts and Administrative Orders*

It is possible that the above-mentioned *dātu* was not legislation in the strict sense but a kind of "decree" or "royal command." In the

[4] According to Koschaker ("Law: Cuneiform," 212), nothing is known of the origin of the Neo-Babylonian model of legal documents. Some characteristics, however, may now be traced back to the late Kassite period, although many questions remain unanswered due to the chronological gap in the documentation.

[5] See Oelsner, "Erwägungen . . ."; Petschow, ". . . Gesetzesfragment"; Szlechter, "Les lois néo-babyloniennes." Recent translations: R. Borger, "Die neubabylonische Gesetze"; Roth, *Law Collections* . . ., 143–49.

Chaldaean period some official or semi-official "charters" were written, in which the king regulates the affairs of the temples.[6]

1.3 *Kudurrus*

Until the end of the seventh century, in addition to the original (sealed) clay document, copies of important legal transactions were engraved on stelae or tablet-shaped stones (known as *kudurru* in the Kassite period), often adorned with reliefs, which were displayed publicly, presumably in temples. Most of them relate to acts of the king (or high officials and temples), often donations or tax exemptions, but some private transactions between individuals are also documented in this way.[7]

1.4 *Private Legal Documents*

1.4.1 The bulk of the extant documents consists of many thousands of clay tablets containing contracts of a private character (so far only partly published). The legal transactions recorded are in general comparable to those of the Old Babylonian period, although often the legal formulae have changed.[8] As in earlier periods they are objectively formulated. Another type is found, however, the so-called "dialogue document" (one party speaking to the other), which was mostly used if there existed no standard formulary.[9] The documents end with a list of witnesses, name of the scribe, place of origin and date. The sealing practice changed in the course of time.[10] Tablets were no longer enclosed in clay envelopes. Instead, duplicates were often written for each of the contracting parties.

1.4.2 A large part of the material preserved originates from family archives, containing the business documents of economically powerful families. The largest available to date are those of the Ea-ilūta-bani

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[6] E.g., the term was used for YOS 6 103; see Cocquerillat, *Palmeraies* . . ., 108 (so-called "edict" of Bēl-šar-uṣur, 549 B.C.E.).

[7] Slanski (Kudurrus . . .) suggests "entitlement *narû*" in preference to the customary term *kudurru*.

[8] Cf. the general remarks of San Nicolò, "Zur Entwicklung . . ."

[9] Petschow, "Zwiegesprächsurkunde . . .," and "Hilprecht-Sammlung Jena," 38f. E.g., BR 8/7 37:1–5: "PN came to PN_2 and said as follows: 'Give me $^{f}PN_3$, the female slave of PN_4, who is at your disposal.' PN and PN_2 agreed, and PN_2 paid . . ., etc."

[10] Oelsner, ". . . Siegelpraxis."

(Borsippa, seventh to early fifth century), the Egibi (Babylon, end of seventh to early fifth century), and the Murašû (Nippur, second half of fifth century) families. Documents of a private character are sometimes also found in temple archives, especially if one of the contracting parties is a temple, represented by its officials. In addition to archives, there are many isolated texts of this nature.

1.4.3 Records of litigation are normally protocols mentioning the parties, the object of the case, and the decision. Another characteristic type is declarations before witnesses.

1.5 *Scholastic Documents*

Tablets I and II of the lexical series ḪAR(UR_5).RA = *ḫubullu* consist of contractual formulae, comparable to the series *ana ittišu* and the legal material used in Old Babylonian scribal training.[11] It continued to be copied until the end of the cuneiform tradition (fragments of transliteration into Greek letters). There also exist model contracts written on school tablets.

1.6 *Administrative documents, Letters, and Other Sources*

More than half of the extant Neo-Babylonian clay tablets are of an economic and/or administrative character, for the most part originating from two large archives: that of the Ebabbar temple in Sippar and that of the Eanna temple in Uruk. Of the archives of other Babylonian temples, only small groups or isolated texts are known. Information on legal matters can sometimes be derived from such documents. It is not always possible to differentiate exactly between a legal document, characterized by the naming of witnesses on the tablet, and an administrative document, especially if temple officials and temple personnel are involved. Virtually no royal archives have been discovered to date.[12] Legal information is also to be found in a number of letters (partly of administrative character) and sometimes in texts of other kinds, such as literary works (see 2.1.1 below).

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[11] Edited in MSL V. For *Ana ittišu* see MSL I.

[12] The remains of a royal archive, found at Babylon, are unpublished: see Perdersén, *Archives* . . ., 184 and n. 65 (Babylon 7).

2. Constitutional and Administrative Law

2.1 *Organs of Government*

2.1.1 *The King*

As in earlier periods the Babylonian state was a monarchy. The Babylonian king had to respect the property rights of his subjects. By donations of land and tax exemptions he could give such rights to single persons or groups including towns and temples (at least to the end of the period of Assyrian supremacy). As supreme judicial authority he acted on behalf of the gods and was therefore responsible for establishing justice. The title "king of justice" (*šar mīšari*) is the epithet of Chaldaean kings who also state that they are ones who "love" (*rā'im*) or "establish" (*mukīn*) truth and justice (*kitti u mīšari*).[13] Otherwise it is stated that the king gives "a just sentence" (*dīn mīšari dânu*) and "speaks the truth" (*kitta/kinātu dabābu*).[14] The same concept can seen in literary compositions like the one entitled "If a king does not heed justice" (the so-called "Advice to a Prince")[15] or a text called "Nebuchadnezzar, King of Justice," where the king is made responsible for just government, as exemplified by his actions.[16] After the end of political independence, when Babylonia became in succession part of the Achaemenid, Seleucid, and Arsacid empires, the concept of kingship retained by those empires became constitutive also for Babylonia. As regards the law, the traditional concept of ancient Near Eastern kingship embraced by Babylonian kings not only continued into these later empires but also held true for the Hellenistic kings.[17] The Seleucid King Antiochus I, acting exactly like a Babylonian king, prays in an inscription for a "government of justice" (*šarrūt mīšari*, VAB 3 132 s. col. I 28, dated 262).

2.1.2 *Legislature*

2.1.2.1 It is not known how the so-called "Neo-Babylonian law fragment" came into existence: it is a matter of controversy whether

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[13] AfO 17, 1 obv. 12, and *Iraq* 27 (1965) 1ff. col. II 26. See also VAB 3 100 col. I 5s.; 216 col. II 2.
[14] Seux, "Königtum B," 164–165, §§80–83.
[15] See Cole, *Nippur 4*, 268–74.
[16] Lambert, "Nebuchadnezzar . . ."; for the date, see Beaulieu, *Nabonidus . . .*, 4–5.
[17] Bikerman, . . . *Séleucides*, 186.

it is of an official or more or less "private" character. The fact that the preserved copy probably is a school tablet is irrelevant to that question. Likewise the characteristics of the *dātu ša šarri* of Achaemenid and Seleucid times are interpreted in different ways.[18] Nonetheless, the very fact that parties refer to them in contracts speaks in favor of some official significance. It should be noted that in the trilingual inscriptions of Darius I, Old Persian *dātu* corresponds to *dīntu* in the Akkadian version. It is to the latter term that the authorities refer in a litigation tablet (VAS 6 99 = NRVU 700:10: *a-ki-i di-ni-a-ti šá šarri* "according to the 'laws'(?) of the king"). As this document is dated shortly after the Achaemenid conquest (Cyrus year 3 = 536), it is perhaps a reference to a legal institution that already existed in the Neo-Babylonian Empire.

2.1.2.2 In the latter period, especially during the reign of Nabonidus, the king more than once interfered in the affairs of the temples through orders to the temple administration.[19]

2.1.3 *The Administration*

The situation in first millennium Babylonia did not differ greatly from earlier periods. The bureaucratic system was highly developed and sophisticated. Beside the central government headed by the king there were the provincial and local administrative institutions. The temples as economically important entities each had their own administration (discussed separately below). Incorporated into the temple administration were royal officials, especially in the time of Nabonidus, when the crown interfered a great deal in temple affairs. Detailed studies of the administrative systems of first millennium Babylonia are still lacking; to date only certain specific aspects have been treated.

2.1.3.1 *Central Administration*

The royal administration consisted of a number of officials whose area of authority cannot always be determined. A long, partly broken list of officials from the time of Nebuchadnezzar II, the so-called "Hof- und Staatskalender,"[20] provides insight into the administrative structure of that period. After the conquest of the Neo-Babylonian

[18] Petschow, "Gesetze," 278–279, A §4.2, and see 1.1 above.
[19] 1.2 above, see also Dandamaev, "State and Temple . . .," 591–92.
[20] See Unger, *Babylon* . . ., 282–94, pls. 52–56, cols. III–V.

empire by Cyrus II, the former empire (including Syria and Palestine) was made into a satrapy called "Babylon and Beyond the River" (*Bābilu u ebir nāri*); later the territory was divided into sub-units. Henceforth, Babylonia was no longer the seat of the central administration but only an administrative unit (satrapy) of larger empires. Within Babylonia a satrap acted as representative of the king.

2.1.3.2 *Provincial Administration*

The Babylonian kingdom was divided into provinces (*pīḫātu*), named according to a previously existing country or tribe, or the principal city of the region. That term continued into later practice. For the title of its chief official, different terms were used (*bēl pīḫāti* or later *pī/āḫāti*, *šaknu*, *šakin ṭēmi* and others; the governor of Nippur was called *šandabakku*).[21] By order of the king the governors could perform legal acts such as making land grants. Tribes are headed by sheikhs (Aramean *nasīku*, Chaldean *ra'su/rāšu*, Kassite *bēl bīti*). In the Achaemenid and Hellenistic periods, beside the Akkadian titles, Persian[22] and Greek ones were sometimes used.[23]

2.1.3.3 *Local Government*

As many of the provinces are named after the central settlement of the region, a strict differentiation between provincial and local administration is not always possible. The "governors" (see above) are often responsible for local affairs too. Persons called *qīpi āli*, "(royal) commissioner," are attested as the administrators of regions or cities, but also of temples. The *ḫazannu* ("mayor, headman") acted on behalf of the local administration also in the villages surrounding the cities and towns. The *bābtu* ("ward") of Old Babylonian times occurs only in the phrase *dekû ša bābti*, a kind of tax. Mention is made in the texts of numerous minor settlements (villages and hamlets), principally as places of agricultural production.

There was an assembly of the freeborn persons (*puḫru*), acting mainly as a legal institution (see 2.1.4.3 below).[24] Close connections

[21] Attested up until the first century: Sachs-Hunger Diaries 3 72:10? (see also Zadok, "Notes . . .").

[22] E.g., "satrap"; see Dandamaev, "*aḫšadrapānu* . . .," (at Nippur; also attested once in Hellenistic Uruk: BRM 2 56:19), and Stolper, "Bēlšunu . . ." For further Persian titles, see Eilers, *Iranische Beamtennamen* . . .

[23] E.g., *dioiketes* ("major-domo"): BRM 2 31:8.

[24] In the Hellenistic period, the determinative LÚ is added to the logogram

existed between the late Babylonian cities and their central sanctuaries, as is evident from many texts, especially those from Hellenistic Uruk, where they can be seen in the titles of officials.[25]

2.1.3.4 *Temple Administration*

Babylonian temples of the first millennium were highly sophisticated economic and social institutions. Their administration cannot be strictly separated from the civil administration. On the other hand, the Neo-Babylonian kings (especially Nabonidus) installed royal representatives in the temples and controlled them in that way. Within the different temples there existed minor differences in respect to their administrative structure. To mention only the most important officials, it can be said that generally there were chief administrators (*šatummu*), "(high) priests" (*šangû*, also with administrative duties), royal comptrollers (*qīpu*) or supervisors (*bēl piqitti*), and royal tax collectors (*ša muḫḫi quppi*). Temple oblates (*širku*, 4.2.1 below) could act as minor officials.[26]

2.1.4 *The Courts*

2.1.4.1 As supreme judge, the king personally decided very important lawsuits (e.g., BBSt no. 9, top ll. 1ss., col. IVA 2ss.; BBSt no. 10, rev. 10ss.) and citizens had the right of appeal to the king or the royal courts.[27] The king could not deprive his subjects arbitrarily of their lives, but if someone committed a serious crime, he would sentence him to death.[28]

2.1.4.2 *Royal Courts*

Lawsuits were conducted in the "house of decision" (*bīt dīni*),[29] a term which refers not only to royal courts (e.g., CT 22 105:26), but to all kinds of courts. A number of lawsuits regarding citizens (mostly

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UKKIN (often used for *puḫru*). In this case it is to be read *kiništu* "college (priests), colleagues," i.e., a type of temple personnel (also acting in judicial matters; see AHw 877 *puḫru* A4).

[25] Sarkisjan, "Zum Problem . . ."

[26] For one of the temples see now Bongenaar, *The Neo-Babylonian Ebabbar Temple* . . . . Cf. also San Nicolò, *Beiträge* . . .; Kümmel, *Familie* . . .

[27] Examples (seventh century) given by Postgate, "Royal Exercise . . ."

[28] See e.g., Weidner, "Hochverrat . . ."

[29] E.g., *Iraq* 27 (1965) 1ff. col. II 26: *bīt dīni eššiš ibnu* "he built anew the court house(s)," and passim in documents.

dated to the period of the Neo-Babylonian Empire) were tried before royal judges (*dayyānē ša* K(ing's)N(ame)).[30] Courts—not only the royal courts—were headed by officials called *sartennu* or *šukallu*, sometimes both being present (Cyr. 128:15). The royal court sat as a college of between three and five judges, with two or more scribes attending.

2.1.4.3 *Local Courts*

Other cases were tried by courts consisting of provincial officials, judges and the elders of cities[31] or before a local official (*ḫazannu*, VAS 4 32 = NRVU 640; year 559) and judges, including *sartennu* or *šukallu*.

Those sitting as members of the court were normally the free citizens (*mār banê*) or local elders (*šībūt āli*) who made up the assembly (*puḫru*).[32] This is the most important activity of the Neo- and Late Babylonian "assembly," a body consisting of free male citizens with full legal rights but excluding foreigners. If the elders are named they are representatives of the entire assembly. In declarations made before witnesses (see 3.2.2 below), the terms *mār banê* and *mukinnu* ("witness") are used interchangeably. The size of the assembly and the number of persons engaged in a trial are not known, nor is the way in which laymen were chosen to try a case.

2.1.4.4 *Temple Courts*

Temple courts are attested in the archive of the Eanna temple at Uruk in particular, but also elsewhere. According to the litigation documents, they consisted of the higher officials of the temple administration, including the royal officials, and members of the city assembly.[33] In Hellenistic Babylon a number of documents are still found in which cases are decided before "the temple administrator (*šatammu*) and the college of Esangila (or another temple)."[34]

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[30] Wunsch, "Und die Richter . . .," and "Die Richter des Nabonid"; see also San Nicolò, "Ein Urteil . . ."

[31] E.g., in a lawsuit dated to the year 559: Dalley Edinburgh 69. Transliteration, translation, and commentary: Ries, "Ein babylonischer Mitgiftprozeß . . ."

[32] For details see Dandameyev, ". . . Citizens," ". . . Elders," "Neo-Babylonian Popular Assembly," and "Babylonian Popular Assemblies . . ."

[33] In this regard it is to be noted that an "assembly" is sometimes spoken of as being of more than one place, e.g., TCL 13 147 (Babylon and Uruk), see also San Nicolò, "Parerga Babyloniaca VI–VIII," 343.

[34] Oelsner, Review . . ., 164–65 sub 7; McEwan, *Priest and Temple* . . ., 17–23, 25–26.

2.1.4.5 *Judges*

The judges of the higher courts came from the leading families of Babylon, although no more than one member of the family appears to have been a royal judge at any one time. Requirements were scribal training and a certain amount of experience in the local courts. Promotion to royal judge appears to have come only with advanced age. Within the court, the colleges of judges were organized hierarchically by seniority. The office of judge was permanent, being terminated only by sickness or death. The fact that a number of royal judges continued in office notwithstanding more than one change of regime due to usurpation of the throne points to a certain degree of judicial independence. Nonetheless, it was not a profession. When appointed a judge, Nabû-aḫḫe-iddin, a businessman of the Egibi family, handed over most of the day-to-day conduct of his business to his son, but did not withdraw from it entirely.

2.2 *Functions*

2.2.1 *Compulsory Service*

Temples were obliged to recruit persons (farmers, orchard-keepers, herdsmen) for the service of the king. According to the inscriptions of the Neo-Babylonian kings persons also could be recruited to do (corvée) work for royal building projects (figuratively called *tupšikka emēdu/šuṣbutu*, "to load/to cause to seize the brick mould").[35] Most important was the service called *ilku*, originally a duty to be performed in return for land and paid in kind with part of the yield of the land. In Neo-Babylonian and particularly in Achaemenid times, it was to be paid in silver; in other words, it had developed into a kind of tax.[36]

2.2.2 *Military*

Typical for the Achaemenid period but already attested occasionally during the Neo-Babylonian empire,[37] were military services to be performed in return for land. There were different types named according to the kind of service commanded (see 6.1.1 below).

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[35] E.g., YOS 9 84 (= BRM 4 51) col. I 15; cf. VAB 4 68:26; 148a:24 (parallel *dullu*, "corvée work"); Unger, *Babylon* . . ., 284, l. 32.

[36] Cardascia, *Les archives* . . ., 98–106 (100–102); Kienast, "*ilku*," 58 §18; Stolper, *Entrepreneurs* . . ., 149–50.

[37] According to Jursa, first attested in the time of Nebuchadnezzar II ("Bogenland . . .").

2.2.3 *Petitions*

At least under Assyrian rule Babylonians could appeal to the king by "uttering the word of the king" (*amāt šarri qabû*). In that case the person would be sent by officials to the king, who would hear his case.[38]

3. Litigation

3.1 *Parties*

3.1.1 The parties to litigation were normally men in the role of head of household, who represented the interests of members of their family. Women appear in inner-family disputes when their rights in property are affected, for example, the whereabouts of dowry assets or the validity of property settlements, or in disputes with third parties over the same.[39]

3.1.2 Slaves and freedmen could appear before the court in person on the question of their status. A slave could, for example, claim to be a free citizen, in which case the burden of proving his slave status lay with the owner.[40]

3.1.3 A temple could also appear as a litigant in a property dispute with a private person. The temple would be represented by senior officials (BIN 2 134 = Joannès, "Textes judiciaires . . .," no. 170).

3.2 *Procedure*

3.2.1 There was no division between civil and criminal procedure. Most of the documented litigation comes from private archives and involves disputes over debts or inheritance, but a few criminal trials are recorded, in particular in the temple archives, when the temple was the victim of theft or corruption by its employees. Matters within the internal jurisdiction of a temple could be dealt with by an administrative procedure.[41] An investigative committee would report its findings to senior officials.[42]

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[38] As in the examples given in Postgate, "Royal Excercise . . ."

[39] Roth, "[Tašmētu-damqat . . ."

[40] Nbn. 1113, the case of Lā-tubāšinni, discussed by Wunsch, "Und die Richter . . .," 62–67.

[41] Bongenaar, *Ebabbar Temple* . . ., 22–23.

[42] Spar, "Trial Depositions . . .," 163–68.

3.2.2 In preparation for trial by a higher court, a deposition could be taken before a local tribunal, such as the *mār banê* (4.1 below). It was recorded under the format: "These are the witnesses before whom (PN stated . . .)" (*annūti mukinnū ša ina pānīšunu . . .*).

3.2.3 A number of litigation records begin with the statement that one party has approached (*maḫāru/kašādu*) the judges with regard to a particular matter. The judges, having heard the plaintiff's claim, had the power to summon the defendant (*ibukūnim-ma ina maḫaršunu ušzizzū: RA* 12 (1915) 6). In order to get a powerful opponent to appear in court, a plaintiff might apply first to a senior official such as the provincial governor (*šākin māti*), who would send both parties to the appropriate court (BIN 2 134).

3.2.4 The court would first hear the statements of the plaintiff and defendant, before proceeding to an inquiry. Documents were read aloud (*šasû*) in court. The judges had the power to interrogate parties and witnesses. They could also summon evidence of their own initiative, dispatching a court officer (*kizû*) for this purpose.

3.2.4.1 In criminal trials involving theft or misappropriation of temple property, a procedure known as "interrogation" (*maš'altu*) was used.[43] It is to be distinguished from the questioning of witnesses in court; it took place prior to the hearing, under the supervision of one or more officials, and involved torture by an instrument known as the "interrogation ladder" (*simmiltu ša maš'alti*).[44] This would account for the fact that persons accused of misappropriating temple property are almost invariably recorded as having confessed (*eli ram(a)nišu ukīn*).[45] The procedure is recorded only with accused, not witnesses, but there are a few references to persons making a statement "without interrogation" (*ša lā maš'altu*), including a slave with regard to a theft by his owner's son (YOS 7 10).

3.2.5 There are a number of records attesting to the use of a conditional verdict.[46] The condition was almost always that another wit-

[43] San Nicolò, "*maš'altu . . .*"

[44] Jursa, "Akkad . . .," 199, 210. See CAD S 275 mng. 3: "rack of inquisition." Already surmised by San Nicolò, "*maš'altu . . .*," 301–2.

[45] San Nicolò, ibid.

[46] The following summary is based on the analysis of Wells, Law of Testimony . . ., 148–75.

ness appear before the court and offer testimony in support of a particular party's version of the facts. That party then had the responsibility for meeting the condition by producing the additional witness. The verdict states that if the condition is fulfilled, that party wins the case; if not, victory would be for the opposing party. If the accuser had established a prima facie case, then the court would place the burden on the accused to produce an exculpatory witness, often with a deadline for appearance (e.g., Nbk. 366: one week). If a prima facie case had not been established in the court's opinion, as in the case of a thief who identifies the accused as receiver of the stolen goods, the burden is on the accuser, with no deadline (cf. YOS 6 191, 214, and 235).

3.2.6 The judges are said to have deliberated (*malāku* Gt) before reaching their decision. It is frequently stated after the verdict that in order that there be no further claims, the judges have drafted a document, sealed it with their seals, and given it to the successful litigant. The document in question would vary according to the nature of the verdict, for example, a debt note for payment of a fine or a deed to property.

3.2.7 Parties occasionally turned to the courts to have extra-judicial settlements endorsed, for example, in complicated inheritance disputes. The judges would examine the facts of the case, and if the agreement was in accord with the principles of the law, the court would confirm it and have an official document drafted to that effect.[47]

3.3 *Evidence*

In contrast to other periods, use of the oath and the ordeal seems to decline in favor of rational methods of proof and documentary evidence seems to rank above the testimony of witnesses. Even the temples preferred to give conditional judgments, pending the testimony of witnesses, than to rely on a party's oath.

3.3.1 *Documents*

Reliance on documents is greater in property and business disputes. A document could take precedence over an oath, as in YOS 6 169, when the defendant, accused of misappropriating animals, claims that

[47] See Wunsch, "Und die Richter . . .," 67–68.

he was entrusted with them by their owner's shepherd. The latter swears an oath to the contrary, but the court bases its conviction of the defendant on the fact that he failed to show itemized, written proof (*bābu u idātu*) of the alleged transaction.

3.3.2 *Witnesses*

3.3.2.1 Women and slaves appear as witnesses in litigation. Hearsay evidence was accepted, as where a woman testifies to an admission of theft that she overheard (*JCS* 28, 45, no. 39 = Joannès, "Textes judiciaires . . .," no. 158). The court could also call upon expert evidence, as where it summoned a parchment scribe (*sepīru*) to examine the tattoos on a slave's wrist.[48] A dagger that had been brandished in court was wrapped and sealed as material evidence (TCL 12 117 = San Nicolò, "Gimillu . . .," 77).

3.3.2.2 Testimony could take precedence over the oath, as where an accused swears that he has not misappropriated dates, but the temple still gives a conditional judgment imposing punishment upon him in the event that a witness should prove it against him (YNER 1 2).

3.3.3 *Oath*[49]

3.3.3.1 The declaratory oath is found in cases where there was no written record of the transaction (Dar. 53), or where the document has been lost or destroyed (TCL 13 179). In CM 20 166 a slave, the business manager of the creditor, had to swear that he had not hidden written evidence nor misrepresented its contents, in the absence of a record of repayment by the deceased debtor. In BM 77425 (discussed at 5.2.1 below), the holders of the relevant document were unable or unwilling to produce a document on which the opposing party was relying. The court therefore summoned the scribe and witnesses to the document and had them affirm its contents under oath.

3.3.3.2 In BM 77425 the court makes clear that the oath is decisive proof. It may differ from the earlier two examples not only in the absence of competing evidence but also in the circumstance that

[48] TBER 60–61, edited and discussed by Arnaud, "Un document juridique . . ."
[49] Joannès, "La pratique du serment . . ."

it was imposed by the court, not volunteered by a party. In AOAT 203, 158–9, no. 1, the court also imposes the oath, in response to which the witness seeks to avoid the issue.

3.3.3.3 In PBS 2/1 140 both parties swear contradictory oaths, apparently voluntarily. One party nonetheless loses, paying forthwith the disputed sum. Joannès suggests that these oaths may have been preliminary to an ordeal procedure.[50]

3.3.3.4 The oath was taken before a divine symbol, such as the divinized weapon of Marduk (UET 4 171) or the iron dagger (TBER 6). In BM 77425, a scribe is to swear by the god Shamash and by the stylus, the symbol of the scribal god Nabû. In CM 20 166, it is to take place in a magic circle at sunrise (weather permitting).[51] UET 4 171 reveals the curse component of such an oath, which invokes sickness upon the protagonist and death for his wife and children.[52]

3.3.4 *Ordeal*

There is no mention of the ordeal in legal sources, but a literary text attributed to the reign of Nebuchadnezzar II relates in detail how the king sent an accused murderer and his accuser to the Euphrates for the ordeal, since the accusation was not proven. One (the accused?) plunged and disappeared, to the great vexation of the king, but his body emerged some hours later as if consumed by fire.[53] It has been suggested that the text reflects the view that the guilty were burned by a sub-aquatic fire.[54] It has also been suggested that the text reflects a real occurrence, due to the hot bitumen springs at Hit, a traditional location for the ordeal.[55] At all events, the text raises the possibility that the ordeal was still practiced in this period.

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[50] "La pratique du serment . . .," 172–73.
[51] The magic circle (*gišḫuru*) is also mentioned in connection with the oath in a contemporary literary text: Lambert, "Nebuchadnezzar . . .," IV 25.
[52] See Streck, "Kudurrus Schwur . . ."
[53] Lambert, "Nebuchadnezzar . . .," III 21–IV 23.
[54] Beaulieu, "A Note on the River Ordeal . . ."
[55] Heimpel, "River Ordeal . . .,"

4. Personal Status

4.1 *Citizenship*[56]

A free citizen was referred to as *mār banê* (lit., "son of an excellent (person)"), approximately the functional equivalent of the Old Babylonian *awīlum*. On manumission, a slave would receive a tablet of free status (*ṭuppi mār banûti*).[57] The guarantees given by the seller of a slave included a warranty that the slave did not have free status. The *mār banê*, in the sense of the leading citizens, could also constitute a tribunal. Citizenship of particular towns is attested, but only as a group (e.g., sons of Babylon) constituting one of the elements of a court.[58]

4.2 *Class*

4.2.1 *Oblates (širkūtu)*[59]

4.2.1.1 A considerable number of persons were given to the temples, often by their parents. As *širku* "oblate" (the term is derived from *šarāku* "to donate"), they formed a separate socio-legal class, often referred to by scholars as temple slaves but to be distinguished from slaves in the strict sense. (Slaves are also attested in the temples, to which they could be donated as property.) The term is found in slave sale contracts, as a status the absence of which the seller warranties (alongside royal slaves and other categories of status that would remove the person purchased from the buyer's ownership). Such dedications are attested until the second century.[60]

4.2.1.2 Oblates belonged to a particular temple, for which they were obliged to work. The temple also had a claim upon their children, who could not be given in adoption or sold as slaves without permission.[61]

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[56] Dandamaev, "Citizens . . .," and "Composition . . ."; but see the reservations of Roth, "Contested Status . . .," 486–87.

[57] As in the case of Lā-tubāšinni (Nbn. 1113), discussed by Wunsch, "Und die Richter . . .," 62–67. Cf. also Weisberg, "*Mār Banūtu* Text . . ."

[58] BM 35508(+)38259:5: *šībūt āli mārē Bābili* (5 AB.BA URU DUMU^{meš} TIN.TIR^{ki}). LÚ GN and LÚ DUMU URU GN, on the other hand, are merely designations of geographical origin.

[59] See Dougherty, *The shirkûtu . . .*: Dandamaev, *Slavery . . .*, 469–557 (II. Temple Slavery).

[60] Oelsner, "Griechen in Babylonien . . ."

[61] In attested cases of adoption of an oblate's children, the adopter himself most probably belongs to the temple (Nbk. 439, collated), or senior temple officials give the child in adoption (Revillout, PSBA 9).

Oblates were marked with a brand or tattoo, for example, the star of Ishtar for oblates of the Eanna temple at Uruk.

4.2.1.3 Oblates generally served as craftsmen or farm laborers and received rations. They could act as minor temple functionaries and even rise to positions of economic importance within the temple administration, for example, "tenant-in-chief" (*rab širkāti*), but had no access to prebendary offices, which were reserved for certain old-established families of *mār banê*. They were able to acquire property, which they could dispose of freely by will or *inter vivos*. Unlike slaves, they were able to marry without permission of the temple authorities.[62] A spectacular case of fraud and corruption involved a high-ranking *širku*.[63]

4.2.1.4 Slaves might be manumitted and dedicated to a temple as *širku*. This was in one respect a charitable donation to the temple but often was to take place only on the donor's death, so that the donor retained the slave's services during his lifetime. In such cases, the temple served as an asylum for the former slave.[64] In times of famine, free persons might also dedicate their children to the temple in order to keep them alive (YOS 6 154).

4.2.2 *šušānū*[65]

A clause in slave sales also guarantees that the slave purchased does not have *šušānūtu* status. As it is named alongside free person, royal slave and oblate, this must refer to a dependent status. The *šušānū* owned no land and appear in the service of the palace and of temples, where they could rise in the administrative hierarchy. They could be foreigners as well as natives, and the status was undoubtedly inheritable.

4.2.3 *muškēnu*[66]

This much-discussed term from the Old Babylonian period is attested, albeit rarely. In Achaemenid royal inscriptions, it stands for the "weak," as opposed to the "mighty," but no longer represents a distinct class.

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[62] There is one attested contract to date, between a *širku* and the daughter of a *širku*, with a dowry of 10 shekels: BM 42470, to be published in Wunsch, *Urkunden* . . .
[63] San Nicolo, "Gimillu . . ."
[64] Van Driel, "Care . . .," 165, 174–83.
[65] Dandamaev, *Slavery* . . ., 626–42.
[66] Dandamaev, *Slavery* . . ., 643–46.

4.3 *Gender and Age*

4.3.1 Women were able to conduct legal transactions: they could own and acquire property, conclude contracts, and enter into obligations even in the absence of their husbands.[67] They do not, however, appear as witnesses to contracts. If a contract affected their interests and their presence was necessary in order to forestall future claims, a special phrase is used: *ina ašābi ša* "in the presence of . . ."[68]

4.3.2 There was no age of majority, but the term *itbari*, "able-bodied," is used for persons aged six and over who are able to work. Rosters for farm work, military service, and corvée name children between three and five years of age alongside the head of family and other working members of the family.[69] A son became independent only on his father's death, when he inherited the estate. He could only marry with the permission of his father, who could otherwise have the marriage annulled (Cyr. 312).[70]

4.4 *Slaves*[71]

4.4.1 *Terminology*

Slaves were designated by the same terms as in earlier periods, namely *ardu* (ÌR) for male and *amtu* (GÉME) for female (status: *ardūtu/amtūtu*). In addition, other terms were used: *qallu/qallatu* (lit., "little one") and the collectives *amēlūtu*, "people," *lamūtānu*, "servants," and *nišī bīti*, "household." All these terms are interchangeable, the same person being described in a single document as *qallu* and *ardu* and being included under the *amēlūtu*. All these terms could be used to designate slaves as the object of a transaction by their owner (sale, transfer of ownership, pledge, or hire).

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[67] For example, Ina-Esagil-ramat, wife of Iddin-Marduk, appears in a series of documents drafted during her husband's lifetime. She is not identified as his wife except on the rare occasions when she acts on her husband's behalf. Cf. Wunsch, *Iddin-Marduk* . . ., vol. 1, 68.

[68] See Lewenton, Rechtspraxis . . ., 87–88.

[69] Jursa, *Die Landwirtschaft* . . ., 8f.

[70] Edited by Joannès, "Les textes judiciaires . . .," 206–8.

[71] The most comprehensive survey of slavery in this period is by Dandamaev, *Slavery* . . .

4.4.2 *Creation*

4.4.2.1 Debt slavery does not seem to be the widespread phenomenon known from earlier periods (see 7.6 below). The sale or transfer of children or other family members into slavery was extremely rare, generally due to famine. Most cases are of foundlings or foster children.[72] The long-term indenture of family members, however, was possible in the form of antichretic pledge. The discussion of slaves below relates only to chattel slaves.

4.4.2.2 *Penalty*
In Cyr. 312 mentioned above (4.3.2), a father obtains a court order annulling his son's marriage concluded without his consent. The bride is threatened with slavery should she make contact with the groom again.

4.4.2.3 *Houseborn*
The offspring of slaves automatically belonged to the owner, even when they were born in the house of the owner's creditor to a slave given in antichretic pledge.[73] Children of a freed slave woman were themselves free only if born after her manumission.[74] A free woman who was married to a slave had to leave at least one child with the slave's owner (BM 94589).

4.4.2.4 Foreign slaves might be acquired by war or by trade. In Camb. 334, a man sells a slave woman whom he acquired as booty in a campaign in Egypt. In Camb. 143, a Babylonian merchant purchases a slave woman in Persia.[75]

4.4.3 *Families*
Slaves could live as families, and the terms "spouse" (DAM) and "husband" (*mutu*) or "wife" (*aššatu*) are used as with free persons.

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[72] E.g., BM 94589: a woman offers a foundling in exchange for the release of her own child; TBER 71 (= TEBR 69): a man pledges his parents' foster child.

[73] In Moldenke I 11 (new copy and ed. CTMMA 3 47), a man sells a slave woman whom he had pledged to another, together with her child that she had borne "in the meanwhile" (*ina libbi*), i.e., while she was pledged . . . .

[74] Cf. the lawsuit concerning the status of the children of Lā-tubāšinni; Wunsch, "Und die Richter . . .," 62–67.

[75] Dandamaev, *Slavery* . . ., 107–11.

Marriage between slaves and free persons is also attested (e.g., free woman and slave: VAS 6 184; BM 94589). Infant children of slave women, although automatically slaves, were not generally separated from them, but were sold together with the mother. The sale and pledge of complete families is attested, in which case either all members are named separately or the number of persons is given, designated as "PN, his wife, and his child(ren)".

4.4.4 *Names*[76]

Slaves bore names that mostly followed common Babylonian practice. In addition to foreign names that reveal their origin, there were special slave names expressing devotion to their owner. Some slaves received a second name that is specially mentioned in documents. In order to avoid confusion, a matronymic or the owner's name was sometimes added to the slave's own name. Infants were not always identified by name. Slaves who were engaged in independent business (see 4.4.5.5 below) were given a pseudo-filiation to their owner: instead of the patronymic and ancestral name customary with free Babylonians, the name of the owner and his ancestor were used (PN *ardu/qallu ša* PN_2 *mār* AN).

4.4.5 *Capacity*

4.4.5.1 Like women, slaves did not appear as witnesses to transactions, with the exception of slaves of certain high-ranking persons.[77]

4.4.5.2 Dowries frequently included slave women who were to assist the wife in household tasks or in looking after the children. Their presence emerges only when they are listed in divisions of inheritance, dowry documents, or sales. Owners had their slaves trained as craftsmen (e.g., cook, tailor, seal-cutter), in order then to employ them personally or hire them out.

4.4.5.3 Slaves were frequently hired out. The owner received their hire, and the two parties agreed in advance who should bear the cost of feeding and clothing the slave. The arrangement was often

[76] Stamm, *Namengebung* . . ., 307–14.

[77] E.g., Nbk. 31: two slaves of the future king Neriglissar witness a slave sale contract. See Dandamaev, *Slavery* . . ., 398–400.

linked with antichretic pledge, that is, the hirer was also a creditor of the owner and hire and interest were set off against each other. Should the slave then run away, the owner had to pay the hirer the slave's fee (*mandattu*) or the wages lost.

4.4.5.4 *Agency*

Slaves frequently carried out assignments for their masters, in which capacity they were known as "messenger" (*mār šipri*).[78] Thus a slave might purchase another slave on his owner's behalf or receive payment of a debt on the orders (*ina qibî*) of his owner. Often, business transactions would be conducted entirely through slaves acting as agents, as where A, the slave of B, received a payment of rent for land from C, the slave of D, "in accordance with the sealed, written order" (*šipirtu ū kunukku*) of his master.[79]

4.4.5.5 Slaves engaged in the same transactions as free persons. They themselves bought and sold slaves and other property. They leased fields and date-palm orchards for cultivation, in return either for a fixed rent or one-third of the harvest, and in turn hired laborers, free or slave. Slaves who earned money from third parties were obliged to pay their owners an annual fee (*mandattu*).[80] Slaves could even enter into contracts with their owners; they borrowed money from their owners and leased land from them.[81] In the latter case, the slave would have to pay his owner the slave's fee (*mandattu*) addition to the rent.

4.4.6 *Peculium*[82]

In all the above transactions, property held by the slave was regarded as entirely separate from the owner's. Thus a landowner warns two of his slaves to repair a canal which they had rented from him, because water from it is causing damage to his field. The slaves agree that if they do not repair the canal, "we will pay compensation from our own assets."[83] On the other hand, there is no doubt that ultimately the property belonged to the owner and not the slave.

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[78] Dandamaev, *Slavery* . . ., 308–19.
[79] BE 9 66a, discussed by Dandamaev, *Slavery* . . ., 316.
[80] "Quitrent": Dandamaev, *Slavery* . . ., 379–83.
[81] Dandamaev, *Slavery* . . ., 345–78 (esp. the career of Madanu-bēl-uṣur, a slave of the Egibi family), 387–88.
[82] Dandamaev, *Slavery* . . ., 320–97.
[83] BE 9 55: *ultu ramānīni nittirma*. Discussed by Dandamaev, *Slavery* . . ., 387.

In a court case, an owner reveals his interest in seeking to recover a debt owed to his slave.[84] In the same way, assets accumulated by the slave remained the property of their owner and did not pass to the slave's heirs, at least upon intestacy. Nonetheless, in one testament a man described as the slave (*ardu*) of another disposes of his property, including houses and slaves, by testament to his wife and children.[85]

4.4.7 *Slave-mark*[86]

From sale documents it emerges that many slaves were marked with a tattoo or brand (*šindu*).[87] Normally the name of the owner (or a former owner) was placed on the wrist (*rittu*), occasionally both in cuneiform and Aramaic script. Reference to this mark in the sale document was important for the buyer in order to prevent the slave being reclaimed by earlier owners. Oblates (*širku*) could also be branded, mostly with symbols of the appropriate deity.

4.4.8 *Flight*[88]

Flight by slaves was a perennial problem. In business documents and divisions of inheritance, runaway slaves were registered as common property. Whoever hid a runaway slave had to recompense the owner for the labor lost or face a more severe penalty.[89] The slaves themselves were punished by disfigurement—slitting the ears and branding are attested.

4.4.9 *Manumission*

The owner could free a slave (vb. *zukkû*) on condition that the slave continue to provide services for the owner for the rest of the latter's life (e.g., BE 8 106). This condition has been compared to Hellenistic *paramonē*, but its legal character is unclear.[90] If the former slave failed to meet his obligations, the owner could annul the manumission (Nbn. 697).

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[84] Dar. 509, discussed by Dandamaev, *Slavery* . . ., 390–91.
[85] Stolper, "The Testament . . ."
[86] Dandamaev, *Slavery* . . ., 229–34.
[87] On the branding tool, see Pearce, "Iron 'Stars' . . ."
[88] Dandamaev, *Slavery* . . ., 220–28.
[89] Nbn. 679, collated Wunsch, "Und die Richter . . .," no. 17.
[90] Koschaker, *Griechische Rechtsurkunden* . . ., 78–81, but cf. Samuel, "Paramone Clauses . . ."

4.4.10 *Royal Slaves*[91]

In slave sales, the seller warranted that the slave sold did not have, inter alia, the status of royal slave (*arad/amat šarrūti*). They therefore formed a special category, but little is known about them, not least because of the absence of a royal archive. The slaves of members of the royal family occasionally appear in private legal documents as contracting parties (e.g., as instructors of a craft) or as witnesses. The latter is a measure of their special status, as ordinary slaves did not appear in this capacity.[92]

5. Family

5.1 *Marriage*

Our knowledge of marriage law comes mostly from some fifty marriage contracts, dating from the seventh to the third centuries.[93]

5.1.1 *Conditions*

5.1.1.1 Marriage could be polygamous, but the marriage contracts attach conditions to taking a second wife. It could be treated as divorce by conduct, or allowed on condition that the first wife retain the status of primary wife (DAM *rabīti*: BM 33795). In BM 59721, a bride sues the groom after discovering that he was already married. The case is settled by an agreement to annul the betrothal (or marriage?).

5.1.1.2 Two terms are used in the marriage contracts to describe a bride still under the authority of her guardian: *batultu* or *nu'artu* (SAL.NAR). According to Roth, they designate an age group rather than virginity.[94] The terms may simply refer to the fact that the bride was not previously married.[95]

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[91] Dandamaev, *Slavery* . . ., 558–84.

[92] The term *arad ekalli*, which in earlier periods stands for a palace slave, has no such meaning in the Neo-Babylonian period, when it indicates a construction worker: Oppenheim, "Akk. *arad ekalli* . . ."

[93] Most have been edited by Roth, *Marriage Agreements* . . . (cited here as Roth, no . . . .), which also reviews the earlier literature.

[94] Discussed by Roth, *Marriage Agreements* . . ., 6–7.

[95] According to Van Driel ("Care . . .," 192–94), they represent women of a low moral status. This seems doubtful; see 5.1.4 below.

5.1.2 *Formation*

5.1.2.1 The majority of the marriage contracts are formulated as dialogue documents, in which the groom approaches the bride's father and asks for the bride in marriage, to which the latter agrees. If the bride's father were deceased, her mother and brothers acted in his stead. The groom's father could also act on his behalf, as in Roth no. 5. In three cases (Roth nos. 2, 25, 9), the groom directly approaches the bride (most probably a widow or divorcee), who accepts on her own behalf.[96]

5.1.2.2 There could be gap in time between this agreement and completion of the marriage. In some cases, it is explicitly stated that the groom "will take" (*iḫḫaz*) the bride (Roth nos. 9, 22). A due date could be set for the bride's guardian to deliver her to the groom (Roth no. 9). Failure to deliver could lead to contractual penalties—five minas of silver from the mother's own dowry in Roth no. 8. Completion thus seems to have been regarded as the groom taking or receiving the bride into his possession.

5.1.2.3 The marriage documents of the Neo-Babylonian period are notable for the absence of a payment by the groom to the bride's family. In earlier periods in Babylonia, the receipt for such a payment (*terḫatu*) was a central element of the document; in this period the document is primarily a record of the dowry. Roth nos. 34 and 35 both mention such a payment, called *biblu*, but it has been pointed out that most of the names in these two documents are foreign, suggesting that they represented Egyptian or Persian practice rather than native Babylonian tradition.[97] Roth no. 4, however, also has such a payment, albeit not designated by a special term—neither the parties nor the witnesses have foreign names. Moreover, a more recently published tablet definitely concerns a Babylonian family and adds a further complication. The mother of the groom gives the bride a valuable jewel as *biblu*; she entrusts it to her father, who later gives it to the couple together with the dowry.[98]

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[96] Cf. Joannès, "Un cas de remarriage . . ."
[97] Roth, *Marriage Agreements* . . ., 11–12.
[98] Waerzeggers, "A Note on the Marriage Gift . . ."

5.1.3 *Divorce*

5.1.3.1 The technical term used for divorce is *muššuru* (lit., "to release"). According to the penalty clauses of marriage contracts, it was effected by the pronouncement of *verba solemnia*: "You are not (my) wife" (BM 42470); "PN is not (my) wife" (Roth no. 5). In BM 64195 (+) BM 36799, the husband declares: "Go wherever you please!" (l. 12': *ašar pānika maḫri alki*).

5.1.3.2 In some marriage contracts, divorce is associated with remarriage, the contingency in the penalty clause being that the husband divorces his wife and marries another (Roth nos. 6, 8, 19, 26, 34; BM 46618). The reason for this apparent redundancy is unclear: it may be a way of indicating that the divorce is motivated by personal preference rather than based on justifiable grounds. There are, however, a few cases where the penalty clause mentions remarriage alone (Roth nos. 2, 4, 15). It could be an elliptical formulation of the full clause but may well have been intended to apply the penalty for divorce to taking another spouse. In Roth no. 17, the contingencies of divorce and remarriage are in separate clauses (ll. 13–18 and 22–26 respectively), albeit with the same penalty.

5.1.3.3 Only one contract (Roth no. 34) considers the possibility of the wife divorcing her husband. The wife is penalized with the loss of her dowry and possibly other means of support. In all other cases, the husband is the protagonist and the parallel penalty clause for the wife concerns adultery, not divorce (see 5.1.4 below).

5.1.3.4 The contractual clauses impose upon the husband a severe financial penalty for divorce (called *uzubbû* in Roth no. 5), usually set at six minas. Sometimes the return of the dowry is mentioned (Roth no. 15; with an additional payment of five minas in Roth no. 34); it may well have been understood in the other cases. In a marriage of temple oblates, the penalty is only one mina (BM 42470). The other consequence is that the wife is free: she may go "wherever she pleases" (*ašar ṣebāt/maḫri*),[99] or sometimes it is said that she may go to her father's house.[100] In BM 31425 (+) BM 36799, where

[99] See Holz, "To Go and Marry . . .," 248–49.

[100] Roth nos. 5, 26, 30. In Roth 17, she goes to the house of a *mār banê*; see Roth, "Women in Transition . . .," 135–36.

the husband had spent the wife's dowry and was insolvent, his only reply to her claim for maintenance is to let her go where she pleases.

5.1.4 *Misconduct*

A standard clause stipulates that if the wife "is seen/found with another man, she shall die by the iron dagger." The import of this clause is not fully understood.[101]

5.2 *Adoption*

Adoption documents are not plentiful, but there are sufficient references to adoption to show that it was an important and flexible juridical tool, as in earlier periods.

5.2.1 *Capacity*

Men and women could adopt, and adoption by one spouse did not create filiation with the other. Likewise, a step-child was not regarded as the step-parent's child unless adopted. In BM 77425, the claim that a man "entered the house of PN with his mother" is raised to deny that he was PN's son.[102] In VAS 5 129 (= NRV 17), a man gives his son in adoption to his current wife, and in CTMMA 3 102, a childless man wishes to adopt his wife's son by a previous marriage but is denied permission by his own father. He is ordered instead to adopt his brother.

5.2.2 *Purpose*

5.2.2.1 Most attested adoptions were of relatives, the purpose being to ensure orderly succession of family property, especially where prebends were concerned. Attested examples are of a nephew (AnOr 8 14; CTMMA 3 53; ROMCT 2 37 = van Driel, "Care . . .," 190), a grandson (BRL 1 10), a brother (instead of a step-son: CTMMA 3 102 above), and an unspecified relative (VAS 5 57/58, with 47). Similar considerations lay behind a couple adopting a son and marrying him off to their daughter (Nbn. 356). In VAS 6 184, a woman adopts the son of her husband's slave and his free wife, possibly because

[101] Roth, "She Will Die . . ." Van Driel suggests that it applies to "flawed" brides—without a dowry and with a dubious past ("Care . . .," 192–94). It would be curious, however, if "flawed" brides in the sources outnumbered the others.

[102] Reading lines 14'–15' (collated) . . . *it-ti* AMA-*šú a-na* É PN *i-ter-bi* . . ., contrary to the earlier interpretation of BRL 2 16 and Joannès, *N.A.B.U.* 1996/72.

of childlessness. Van Driel suggests that the manumission and adoption of a slave in BM 78543 was to legitimize a son by a slave girl.[103]

5.2.2.2 Adoption of strangers was a more commercial arrangement, in return for services. The most important of these was care and support of the elderly.[104] In YOS 17 1, a brother and sister are adopted; the brother receives an inheritance share while the sister is obliged to support the adopters. Such arrangements led to unconventional forms of adoption—in two instances, a man adopts a father and son together (VAS 6 188 = NRV 10, for performance of feudal services; *OLZ* 7 (1904), 39, in return for support). A unique arrangement is recorded in YOS 6 2 (= BR 6 5), where a man gives two-thirds of his Egyptian slave in adoption to his own slave (who is also an oblate). The share apparently refers to profit from the adoptee's earnings.

5.2.2.3 Revillout PSBA 9 attests to the adoption of a foundling, since the adoptee's name is Ša-pî-kalbi, "from the mouth of a dog"—the technical term for an abandoned child. Throwing a child to the dog can even be a symbolic act to create the legal status of abandonment.[105]

5.2.3 *Inheritance*

5.2.3.1 Adoption made the subject eligible to inherit from the adopter but not automatically entitled, at least where heirs already existed. In adoption documents, the adopter assigns an inheritance share as a separate act and the presence of siblings in the witness lists attests to their acquiescence, suggesting that they would otherwise be able to challenge the adoptee's share (e.g., OLZ 7 (1904), 39).

5.2.3.2 Specific property might be transferred *inter vivos*, but sometimes the adopter would expressly retain the usufruct for his lifetime (VAS 5 47; 6 184 = NRV 27). A different form of assignment was

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[103] "Care . . .," 184.

[104] E.g., VAS 5 47; BM 61737 = Roth, "Women in Transition . . .," 134. See van Driel, "Care . . .," 183–91.

[105] In Nbk. 439, a woman casts her infant son "at the dog's mouth" in order that another may take him up from the dog's mouth. Malul ("Adoption . . .," 104–5) assumes that the latter adopts the child, but it is not a necessary outcome. In BM 94589 a child taken "from the dog's mouth" is explicitly called a foster-child (*tarbû*) and is ultimately given (in exchange) as a slave.

to adopt the subject as a younger son (*ana tardennu*: AnOr 8 14),[106] thus denying him the extra share due to the first-born. In BR 8/7 1 a man agrees to adopt another's son only on condition that the latter assign and transfer the son's inheritance share with him.

6. Property and Inheritance

6.1 *Tenure*

6.1.1 Already under the Neo-Babylonian kings[107] but primarily in the Achaemenid period, a number of persons who received land from the king had to fulfill military services.[108] In the texts the corresponding allotments of land are called bow-land (*bīt* ^{giš}*qašti*), horse-land (*bīt sīsê*), and chariot-land (*bīt* ^{giš}*narkabti*), according to the incumbent's duties.[109] There is also sometimes mention of a "throne house" (*bīt* ^{giš}*kussî*), the exact nature of which is not clear. It was evidently possible to equip the corresponding military personnel in substitution for personal service. Besides military service, there was a tax (*ilku*) payable to the king.

6.1.2 Land granted on this basis was called *ḫaṭru* and its holders designated by an added ethnicon, profession, or function. The operation of the system can be best be seen in the archive of the Murašû family (1.4.2 above), a firm managing such fiefs when given as security for a loan.[110]

6.2 *Inheritance*

6.2.1 The basic system from previous periods prevailed, in which on the death of the paterfamilias, his sons divided his estate in equal shares, with the eldest son taking a double portion as his preferential share. The sons of deceased sons inherited *per stirpes*. Wives and

[106] Edited BR 6 4; see also Roth, "Women in Transition . . .," 132–33. Other examples are OLZ 7 (1904), 39; YOS 17 1 (the brother's inheritance, cited above); and BM 78543 and ROMCT 2 37 (cited by Van Driel, "Care . . .," 184 and 190, respectively).

[107] Jursa, *Der Tempelzehnt . . .*, 13–18.

[108] See the discussion by Joannès in TEBR, 19–45.

[109] "Bow-land" could be leased out; leasing is not attested for the other types of land.

[110] Stolper, *Entrepreneurs . . .*; see also Cardascia, "Lehenswesen," and Oelsner, "Grundbesitz . . ."

daughters had no right to inherit, but usually received a share of the paternal estate in the form of a dowry or marital gift. They could also be made testamentary heirs. If the testator had adopted sons without allowing them a right of inheritance, they were not included in the division. They could, however, be the beneficiaries of gifts at the testator's discretion, either in his lifetime or *post mortem*. If there were sons from more than one marriage, the issue of the first marriage received two-thirds, that of the second, one-third.[111] In the absence of male heirs and testamentary bequests, the estate passed to the deceased's brothers.

6.2.2 Heirs often postponed division of the estate, holding the property in common. During this period it was usually managed by the eldest son. Postponement gave rise to litigation when the estate was eventually divided, since the heirs' other property (e.g., dowries, business assets) had by then become entangled with the common holdings. In one case, an uncle and his nephews had physically come to blows over their respective shares before resorting to the courts (BM 35508 (+) BM 38259). Division could be partial, for example, of houses and slaves, with agricultural land remaining in common (Dar. 379). Where the shares were equal, division could be carried out by lot. A few documents from the Seleucid period record a division by the heirs "on the advice" (*ina milki ša*) their father (and mother). Although the procedure thus took place in the parents' lifetime, it was still only a theoretical division, occurring in practice only after their death.[112]

6.2.3 Intestate succession was the norm; a testament was drafted only in special circumstances, for example, to provide for old age, to protect a non-standard heir, or to make a non-standard allocation of property.[113] Illness or danger might prompt the testator to act, as in the case of Mannu-kâ-Attar, who "contracted an illness in Babylon and did not believe that he would recover."[114] Likewise, Itti-Marduk-balāṭu made his dispositions in anticipation of a long journey (see 6.2.6.2 below).

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[111] NBL 15. Cf. Roth no. 3, in which the husband settles two-thirds on the children of his first wife and one-third on the children of his second wife, should they both have offspring.

[112] McEwan, "Inheritance . . ."

[113] Van Driel, "Care . . .," 168–70.

[114] Stolper, "The Testament . . ."

6.2.3.1 The testator could give his eldest or other sons an inheritance share in advance, or at least determine its size in advance. He could also make a special settlement of property upon a son in contemplation of marriage. Called *nungurtu* in marriage documents, it appears to have been in addition to the son's normal inheritance share.[115] If the settlement had been part of dowry negotiations for the son's marriage and thus had been contractually guaranteed to the bride's family, it could not later be reduced in size, even in the event that the testator's property had substantially diminished and the other sons would be disadvantaged thereby (NBL 8). The testator could designate contingent heirs, should one of his sons die without issue.

6.2.4 *Dowry*[116]

6.2.4.1 As far as family circumstances permitted, daughters were provided with a dowry (*nudunnû*), which was transferred "with her" to the family of the groom. The size of the dowry was at the discretion of the father or head of household, and bore no relation to the sons' anticipated inheritance shares. Occasionally women were given an extra dowry by other relatives (mother, grandmother, brother). The father often fixed the dowry in advance in a marriage agreement with the groom's family. According to NBL 9, if the father's assets later diminish, he is entitled to reduce the size of the dowry proportionately but cannot otherwise alter the terms of the agreement in concert with his son-in-law. In practice, full payment of the dowry might be extended over a considerable period of time after the marriage. One reason was that the dowry was intended as an inheritance for eventual children of the marriage.[117]

6.2.4.2 The husband (or his father, if the husband was still under his authority) had control and usufruct of the dowry during the marriage. Certain parts of the dowry, however, could be assigned by the bride's father to the bride for her personal use. It could be personal servants, designated as *mulūgu*, or a sum of silver, which was said to be *ina quppi*, "in the cash-box." The sums in question rep-

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[115] Roth, *Marriage Agreements* . . ., 9–11.

[116] Abraham, "Dowry Clause . . ."; Roth, "Widow . . .; "Material Composition . . ."; Westbrook, "Mitgift," 280–83.

[117] See esp. Roth no. 10.

resented only a small proportion of the dowry, but could still be considerable if the dowry were large enough.

6.2.4.3 The husband was subject to certain restrictions on alienating dowry property, especially as far as his creditors were concerned.[118] The husband had no right to sell dowry property without his wife's consent, but in practice this was easily circumvented, for example, by proxy contracts. The husband is sometimes said to have sold dowry slaves "at the wish" of his wife, but there are also instances of the wife canceling the contract at a later point.[119] The husband might sell or pledge items of the dowry jointly with the wife (YOS 17 322; Cyr. 332). He could also give the wife specific items to replace assets drawn upon (CT 55 126; Cyr. 332, and see 6.2.5.1 below). In Nbk. 265, faced with a complaint that creditors were reducing the dowry, the husband assigns his wife "all his property in town and country." In a remarkable judgment, the court transfers the last of an insolvent husband's assets to his wife by way of restoration of her dowry, ordering her to provide him with maintenance instead.[120] Both dowry and maintenance are declared beyond the reach of his creditors, which may have been the point of this unique arrangement.

6.2.4.4 The husband and his family had no right to inherit the dowry, which was reserved for the children of the marriage, daughters and sons alike. No clear principles for division of the dowry among them can be deduced from either the laws or the documents of practice. It would appear that there was a certain flexibility—on the one hand, sons divide a mother's estate; on the other, mothers provide their daughters with generous portions even though there are male heirs. It could also happen that a mother changed her mind and withdrew a portion that she had previously allocated (VAS 5 45/46 = NRV 20). The preferential treatment of a particular child was legitimate, if that child alone had fulfilled the duty of maintenance. The dowry could not, however, be assigned to an outsider as long as the children were alive. If the wife died childless, the dowry reverted to her paternal family (NBL 10).

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[118] Dalley Edinburgh 69:39f. shows that the creditors did not have automatic recourse to the wife's dowry in order to satisfy debts owed by the husband (see below).

[119] Waerzeggers, "Records . . .," 194–96.

[120] Dalley Edinburgh 69. See Ries, "Mitgiftprozeß . . ." Joannès ("Textes judiciaires . . .," 234–37) interprets the order as restoring to the husband sums expended by him on his wife's maintenance.

6.2.4.5 If she survived her husband and had no children, the wife was entitled to reimbursement of her dowry from her husband's estate.[121] Should there be no dowry, the court would assign her "something" in proportion with her husband's assets (NBL 12).[122] If the widow remarried, she could take her dowry into the new marriage. The second husband had the usufruct, but the capital had to remain intact, since the children of the first marriage were heirs in equal shares with the children of the second marriage (NBL 13).[123]

6.2.5 *Marital Gifts*[124]

Gifts of property from husband to wife followed the pattern *pān* X *šudgulu* "to transfer to someone (as property)." Frequently the donor retained the usufruct for life. In NBL this type of gift is termed a *šeriktu*, which according to NBL 12 she is entitled to receive on widowhood even if the marriage was childless.

6.2.5.1 *Dispositions kūm nudunnê*[125]

Transfers *kūm nudunnê* "(as equivalent) for the dowry" were not true gifts but compensation to the wife for dowry goods that the husband or his father had subsumed into the family property and invested, so that it was no longer separately identifiable. Dowry compensation often occurred at the insistence of the wife or her family with the aim of putting property equivalent in value to the dowry beyond the reach of the husband's creditors. Even where it looks as if the husband is making his wife a gift, it is not the husband's property that is involved but assets deriving from the wife's family, which at no point actually belonged to the husband. Usually the husband retained a usufruct for life and named the children as heirs.

6.2.5.2 *True Gifts to the Wife*

Such gifts are quite frequently documented. They are referred to as transfers *elat nudunnê*, "apart from the dowry," or *adi nudunnê*, "in addition to the dowry," or without any special qualification. The provision still needed to be in writing, as it ran counter to the claims of the legitimate heirs. Often the property involved was land, houses,

[121] Roth, "Widow . . .," 14–20.
[122] Ibid., 22–24.
[123] See also Cyr. 168 (coll. 1.8: read 3' GI.MEŠ).
[124] Roth, "Widow . . .," 7–14.
[125] Roth, "Material Composition . . .," 3–6.

or slaves. The wife had unrestricted access to income from lease and hire of the property, either immediately or after the death of the donor, and could thus use it to pursue independent business activities. Occasionally, a clause is inserted stating that the wife may give a particular item "to whomsoever she wishes," thus guaranteeing her free right of disposition in addition to usufruct.[126] Otherwise, the unstated assumption was that her children would inherit the contents of the gift.

6.2.6 *Special arrangements*

6.2.6.1 Inheritance Share for Daughter alongside Son

To date a single example is attested where a father assigns his daughter an inheritance share of one third, expressly in addition to the dowry.[127] The background can be reconstructed from the archival context. The father, a successful businessman, had one son and one daughter. He married his daughter to the eldest son of an influential businessman and royal judge with excellent connections to the ruling circles. A substantial sum of dowry silver was given to the father-in-law shortly after the betrothal, but a large part of the daughter's inheritance share (far exceeding the value of the dowry) was transferred to her husband's family in advance, during her father's lifetime, albeit dressed up as an interest-free loan. Her father accordingly transferred business capital from his estate to his son-in-law, but formally remained the latter's creditor. When the daughter died, he made her children heirs to his claim on the debt—thus they inherited property of their maternal grandfather at the expense of their father.

6.2.6.2 *Assignment of Whole Estate to Wife, Male Heirs Notwithstanding*

Before going on a long journey, the businessman Itti-Marduk-balāṭu from the Egibi family bequeathed the whole of his property to his wife, notwithstanding the existence of a son, albeit still a young child.[128] Once again, the special circumstances are to be reconstructed from the archival context. Itti-Marduk-balāṭu was still an undivided heir of the family business, together with his brothers. In the event of his death, his brothers could have insisted on taking over the business,

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[126] VAS 5 129 (= NRV 17):27 *ašar tarâm t*[*anamdin*]; AfO 42/43, 48–53, no. 2:10, 36 *ašar pānīšu maḫra tanamdin*.

[127] Wunsch, *Iddin-Marduk* . . ., nos. 137, 209, discussed in vol. 1, 78–82.

[128] Wunsch, *Iddin-Marduk* . . ., no. 260, discussed in "Die Frauen . . ."

as his son was not yet old enough. That was exactly what he sought to avoid—by making his wife the heiress, he gave her father (a close business associate) a chance to intervene on her behalf (and on behalf of her children) and to run the business until the grandchild was old enough for division of the inheritance with the brothers.

7. Contracts

Whereas only a very small number of cuneiform texts is known from the first quarter of the first millennium, from the second half of the eighth to the beginning of the first century thousands of administrative and contractual documents are preserved, many of which are still unpublished. The texts of legal relevance from the tenth and ninth centuries (as well as some of later date) are the so-called *kudurru*s or "entitlement *narû*s," which are found as copies on stone.[129] The best documented period is between Nebuchadnezzar II (604–562) and Darius I (521–486).[130] It is generally thought that written contracts became more important during this period, the drafting and transfer of the contract establishing a legally binding obligation.[131] There are many types of contracts, with standard clauses that differ in part from those of earlier periods. In addition to the traditional objectively formulated contract (i.e., in the third person), from the late second millennium onwards we see the appearance of a new form, the so-called "dialogue document." This type is used mostly in unusual circumstances which do not fit the standard formulary for a given legal transaction.[132]

7.1 *Sale*

It is a characteristic of first millennium sale contracts that sales of immoveable property (houses, fields, orchards, and prebends) differ in their formulation from sales of movables (slaves, animals, boats, household utensils, etc.). A major difference is that the former are

[129] Slanski, "Classification . . ."

[130] Surveys of published texts (mostly including administrative documents): *1000–700*: Oelsner, "Frühneubabylonische . . .; *799–626*: Brinkman and Kennedy "Documentary Evidence . . ."; Beaulieu, "The Fourth Year . . ."; *Nabopolassar to Darius III*: Dandamaev, *Slavery* . . ., 7–18; *Xerxes to Darius III*: Oelsner, "Zwischen Xerxes und Alexander . . .," 312–14, n. 10; *Hellenistic and Arsacid periods*: Oelsner, *Materialen* . . ., chap. 3.

[131] Korošec, *Keilschriftrecht,* 192.

[132] Petschow, "Zwiegesprächsurkunde . . .," and *Mittelbabylonische* . . ., 38–39.

formulated from the buyer's point of view (*ex latere emptoris*), as in the Old Babylonian period, and the latter from the seller's (*ex latere venditoris*), as in the Old and Middle Assyrian periods. The formulary for immoveable property is fully developed by the late eighth century (TuM 2/3 8 = BR 8/7 3; VAS 1 70 = Peiser KB 4 158–65); for movables, from the time of Nabopolassar (625–605; TuM 2/3 28 = BR 8/7 38). Earlier sale contracts are closer in form to Middle Babylonian documents. In Hellenistic Uruk both types then merge into a uniform formulary, although occasional variants are attested.[133]

7.1.1 *Form*

7.1.1.1 *Operative Section*

The formulary for immoveable property begins with a description of the object, followed by the clause "the seller has named an amount of silver to the buyer as equivalent (of the object) and bought it at its full purchase price" (*itti* seller, buyer *kî x kaspu maḫīra imbēma išām (ana) šīmīšu gamrūti*). In contrast, a sale of movables starts by naming the seller who "of his own free will (*ina ḫūd libbišu*)[134] has given the object for its full purchase price to the buyer" (*ana x kaspu ana šīmī gamrūti/ḫariṣ ana* buyer *iddin*).

7.1.1.2 *Payment Clause*

The operative section is followed by the payment and receipt clause, which likewise has two versions. The immoveable property clause reads: "the seller has received all the silver from the buyer as purchase price of the object as the full amount of silver; he is satisfied (and) free (of further claims)" (*naphar x kaspa ina qātē* of the buyer the seller *šīm* of the object *kî kasap gamirti maḫir apil zaki*, with variants). There is also a supplementary payment (*atru*), often amounting to about 10 percent of the purchase price. The movables clause reads: "the seller has received that silver, the purchase price of the object, from the buyer; he is paid" (*kaspa* a_4 amount of silver *šīm* of the object the seller *ina qātē* of the buyer *maḫir eṭir*).

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[133] Petschow, *Kaufformulare* . . .; Lewenton, Rechtspraxis . . . From texts published since these studies it is now possible to trace the development more exactly.

[134] This clause is already attested in other contexts in the eighth century: see Leichty, "A Legal Text . . .," 227–29 (l. 7, record of litigation).

7.1.1.3 *Final Clauses*
The same distinction is found in the clauses protecting the contract from future claims. The immoveable property contract uses a no-claims clause that goes back to the Middle Babylonian period, whereas the movables contract contains a warranty against eviction.[135]

7.1.1.4 An optional clause occurs in some field sale contracts, allowing for a price adjustment if after measurement the field turns out to be larger or smaller than initially stated.

7.1.1.5 Clauses containing an oath or curses are rare. The latter are attested at Nippur and Dēr (Dūr-ili) until the seventh century; the former in Babylon and Nippur until Cyrus (538–530).[136]

7.1.1.6 In sales of prebends from Uruk in the late fourth and early third centuries, the previous formulary is replaced by one modeled on the movables formulary. After the operative section and receipt for the price, there follow a warranty against eviction, a joint liability clause, and finally a new confirmation clause ("the object purchased belongs to the buyer").[137] Slave sale documents are attested in Uruk only until ca. 275; there are none from Hellenistic Uruk.

7.1.1.7 As in the Middle Babylonian period, the seller of land frequently appends "his fingernail instead of his seal" (*ṣupur kīma kunukkišu*). From the fifth century on, actual seals are customary—those of the witnesses in addition to that of the contracting party, and in Hellenistic Uruk, those of the guarantors.

7.1.1.8 There are many variants in the formulary, especially in the few texts dating from before the end of the eighth century, which are mostly on stone. Outside of Uruk, the formulary for immoveable property is still attested in the late Seleucid period (CT 49 137; CT 49 178; and CT 51 65 [parts of the same tablet]).[138]

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[135] For the formulation of the clauses, see Petschow, *Kaufformulare* . . ., 28–36, 55–68.
[136] Ibid., 39–40.
[137] Ibid., 69–72; Krückman, *Babylonische* . . ., 24–38.
[138] Spek, "Land Ownership . . .," 201–4.

7.1.2 *Nature*

7.1.2.1 As in earlier periods, sale is normally on a cash basis and of specific goods.[139] That sale on credit was also possible is generally regarded as doubtful. In Uruk in the fourth and early third centuries a few sale documents are drafted in the form of a receipt for the price (e.g., BaM 21, no. 13; TCL 13 234; VAS 15 51—in the last two examples, the receipt is followed by warranty and joint liability clauses, as in a normal sale contract).[140] In these cases, completion of the sale and payment of the price presumably had become separate transactions. Given the small number of examples, they could be simply a deviation from the norm.

7.1.2.2 The formula "the buyer has named the price with the seller as x shekels" (*itti* seller, buyer *kî x kaspu maḫīra imbēma*) in the statement of sale of immoveable property has been interpreted as referring to a public declaration made upon transfer of land and prebends. It must have taken place before conclusion of the sale.[141] The change in the formulary in the Seleucid period is connected with the abandonment of this procedure at that time.[142]

7.1.2.3 The final clauses protect the buyer from vindication and other third party claims, and in addition give a warranty against hidden defects, insofar as these can be substantiated.[143] Comparison with earlier periods shows an expansion of the range of possible cases. At the same time, oath and curse formulae decline in importance and are ultimately abandoned.

7.1.2.4 A number of quit-claim clauses are attested, mostly from Hellenistic Uruk. In contrast to earlier periods, the promise not to raise claims, which in the first millennium is also added to other types of contract, is no longer supported by an oath.[144]

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[139] Korošec, *Keilschriftrecht*, 192–93.
[140] Doty, Cuneiform Archives . . ., 81.
[141] Petschow, *Kaufformulare* . . ., 12–13.
[142] Ibid., 69. It should be noted, however, that a few texts use composite formulae: see Doty, Cuneiform Archives . . ., 69.
[143] Petschow, *Kaufformulare* . . ., 28–38, 55–68.
[144] Oelsner, "Klageverzicht(sklausel)," 13 §13; and see Lewenton, Rechtspraxis . . ., 33–39; Krückman, Babylonische . . ., 47–53.

7.2 *Exchange*

Records of exchange, often called "tablets of exchange" (*tuppi šupêlti*) are attested from the late eighth century (VAS 1 70 col. 2:1–28, dialogue document) until the Seleucid period.[145] Their objects are fields, houses, prebends (e.g., VAS 5 108 = NRVU 112: field in exchange for a prebend), and slaves (Camb. 349 = CM 20 209: house for a field and three slave women). The difference in value is usually adjusted by a supplementary payment (*takpuštu*), which is sometimes formulated as a sale, in which case the contract is secured by a no-claims clause (VAS 5 38 = NRVU 110). The formulary is not uniform; in particular, the quit-claim clauses differ from contract to contract. Sometimes a penalty is imposed for breach of contract (e.g., UET 4 32 = BR 8/7 31; BIN 2 135). With a few exceptions (e.g., VAS 5 18 = NRVU 109) the parties both stand surety.

7.3 *Gift*

Unilateral transfer of property without a quid pro quo can occur for various reasons: in contemplation of death (see 6.2.6.2 above), by way of dowry (see 6.2.4 above), or simply "as a gift" (*ana rē/īmūti*).[146] The first two derive from relations based on family law; the basis for the third is unknown. Apart from houses, fields, orchards, prebends, and slaves, household objects are also transferred on this basis. The formula is usually: "PN_1 has drafted a sealed document concerning the object and passed (it) to PN_2" (PN_1 object *iknuk-ma pāni* PN_2 *ušadgil*),[147] whereas the terms *qâšu*, "to give as a gift," and the corresponding noun *qīštu* are rarely used.[148] The verb *nadānu*, "to give," is used often (in the earlier period: VAS 6 117 = NRVU 25; late Achaemenid: BaM 21, no. 1; in Seleucid Uruk: BRM 2 5; 6 = 7). From the Kassite period to the seventh century, the verb *râmu* "to grant" (also in the phrase *ana rīmūti râmu*) is the standard term in

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[145] NRVU, p. 144; Krückman, Babylonische . . ., 58–61; Lewenton, Rechtspraxis . . ., 22–24, 68. The verb is also used for payment in kind, e.g., rent (see CAD Š/3 319–20, sub *šupêltu*).

[146] NRVU, pp. 17–18; Krückman, Babylonische . . ., 44–47; Petschow, *Pfandrecht* . . ., 139–42. The terminology in the scholarly literature is not uniform: "transfer of property," "donation," and "gift" are all used.

[147] Typical examples: NRVU 11–27.

[148] E.g., VAS 5 37 = NRVU 16. The transfer by an official of an area of arable land to the goddess Amar-uṣuršu, i.e., a religious endowment, is called a "gift" (written logographically NÍG.BA) on one occasion (RIMB 2 B4.0.2001, pp. 84–85).

transfers of land and prebends recorded on stone in the form of entitlement *narû*s by rulers and sometimes by temples, in the formula "the king has granted" (*irīm*). There is no formal or legal difference between the Middle Babylonian and the later examples.[149]

7.3.1 In a few cases, the "gift" formula is used although there is a quid pro quo, mostly in silver: "for . . . PN_2 (recipient), PN_1 (donor) has given x silver" or the like (*kūm* object PN_2 PN_1 x *kaspa iddin*).[150] The affinity to sale documents is even closer in two late texts from the vicinity of Babylon.[151]

7.3.2 It is often emphasized that the gift is voluntary (*ina ḫūd libbišu*) and in perpetuity (*ana ūmi ṣâti*). In the earlier period, breach of contract is either penalized with a curse (VAS 5 21 = NRVU 12) or made subject to the oath of the parties (VAS 5 52 = NRVU 22). In later examples the no-claims clause can be used for this purpose (BaM 21, 563 no. 1), or a prohibition on alienation of the property can be expressed through the verb *šalāṭu* in the quit-claim clause.[152]

7.4 *Loan*[153]

Loans represent the largest group among the documents of the first millennium. They are attested from 700 until the Hellenistic period (third/second centuries), and until ca. 300 at Uruk. The objects of loan are predominantly silver, barley, and dates, but may be other fungibles or wool, tiles, and other products, which are repayable with their equivalent value, as in earlier periods.

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[149] See also OIP 114 97:27; Jursa, *Archiv* . . ., p. 148 (BM 42348:7).

[150] E.g., VAS 5 37 = NRVU 16. See also documents from Seleucid Uruk, e.g., TCL 13 239 = Spek, "Land Ownership . . .," 213–18, concerning which Petschow's conclusions (*Pfandrecht* . . ., 135–37) must be reconsidered in the light of the realization that ^{lú}SIPA-[*ú*]-*tú* does not mean "partnership" but *rē'ūtu/rēmūtu* "gift". See further CM 12 45–51 = Oelsner, "Recht im hellenistischen Babylonien . . .," 140–42 ("Schenkungskauf").

[151] Thus the typical gift formula cited above ("PN_1 has drafted a sealed document concerning the object and passed (it) to PN_2" = PN_1 object *iknuk-ma pāni* PN_2 *ušadgil*) is used in sale of land: CT 49 131 and 169 (Hellenistic period, see Spek, "Land Ownership . . .," 215–225; Oelsner, "Recht im hellenistischen Babylonien . . .," 137). The no-claims clause and warranty against eviction are used to secure the contract.

[152] Krückman, Babylonische . . ., 42–43, 48–49 ("Wehrformel").

[153] San Nicolò, "Darlehen" 126, §3; NRVU 192–95; Petschow, *Pfandrecht* . . ., 9–51; BR 6, p. 58. See also Oelsner, "The Neo-Babylonian Period," 289–305.

7.4.1 *Terms*

The most common documentary form in this period is the debt note (*u'iltu*; Germ. *Verpflichtungsschein*), which in the overwhelming majority of cases is formulated in the abstract, without mention of the grounds for the debt. Many scholars regard it as a literal contract in the Roman sense[154]—the debt is created by the document, not by transfer of the object—but the arguments for this interpretation are not compelling. Moreover, there are occasional references to debts being created "without a debt note" (*ša lā u'ilti*).[155] It should also be noted that this type of document can be used for any kind of obligation.

7.4.1.1 The standard formula reads: "object belonging to PN_1 (creditor) is to the debit of PN_2 (debtor)" (. . . *ša* PN_1 *ina muḫḫi* PN_2). The standard loan is interest-bearing (*ḫubullu*), but the *ḫubuttātu* (/*ḫubuttūtu*/*ḫubuttu*) loan, in which no interest is recorded, is also attested. The term for interest (*ṣibtu*) is seldom used (e.g., TCL 13 86:18; TuM 2/3 35:26).

7.4.1.2 Less frequent is a document formulated as a real contract, as is usual in the Neo-Assyrian sphere. Whether it actually reflects Assyrian influence is a matter of dispute.[156] It is attested sporadically from the seventh century to the Achaemenid period. In substance, it is also to be understood as being a literal contract. The formula reads: "object belonging to PN_1 (creditor) is in the hands of PN_2 (debtor)" (. . . *ša* PN_1 *ina pāni* PN_2).

7.4.2 *Interest*[157]

The interest clause comprises the second part of the document. When mentioned, the rate is generally 20 percent for loans of silver, but there are considerable fluctuations, especially in commodity loans. Frequently, interest is charged only if the debtor fails to repay the loan on the due date.

7.4.3 *Repayment*

The due date for repayment is stipulated in the third part of the document and often (for commodities, regularly) the place as well

[154] See Ries, "Literalvertrag," 35, §3.
[155] VAS 3 217; 221; Cyr. 223: Petschow, "Kreditverträge . . ."
[156] Petschow, *Pfandrecht* . . ., 50–51.
[157] Ibid., 20–21, n. 43a.

(locality, creditor's house, door of the warehouse (*bāb kalakki*), threshing floor (*maškanu*), etc.). For bulk goods, the measure (*mašīḫu*) to be used is also set down, usually that of the creditor. Short-term loans are common—a few months or even days, until the harvest, for example. If the debtor died, the debts passed to his heirs. Indicative of the variety of debt-based relations in this period are the frequent novations of debt notes[158] and equally the frequency of assignment of claims.[159] Subrogation of claims is also known in this period.[160]

7.4.3.1 In connection with repayment of loans, a number of receipts are found, with a basic formula of "PN_1 has received (*maḫir*) . . . from PN_2," which may then be supplemented with further information.[161] Their number is small in comparison with that of the debt notes. As they relate to private law, they are drafted before witnesses, whereas receipts from the domain of public administration (palace or temple) are unwitnessed.

7.4.3.2 Where there are multiple debtors, each is liable for the total debt and can be called upon at the creditor's discretion, as the clause "whoever is available, will pay" (*ša qerbi iṭṭir*) attests (see 7.7 below).

7.4.3.3 Upon repayment, the debt note (*u'iltu*) is returned or broken (*ḫepû*).[162] Of the thousands of extant examples, the question of which belong to debtors' and which to creditors' archives has not yet been thoroughly investigated.[163]

7.5 *Pledge*[164]

7.5.1 Objects of pledge are land, houses, prebends, slaves, and members of the debtor's family.[165] Animals and other movables are more rarely attested, presumably because they were mostly pawned without

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[158] Examples in Petschow, *Pfandrecht* . . ., 156, sub "Novation."
[159] See Petschow, *Pfandrecht* . . ., 162, sub "Abtretung"; 165, sub "Rechtsnachfolge."
[160] Petschow, "Surrogationsgedanke . . ."
[161] E.g., NRVN 344–372; BR 6 107–111.
[162] Petschow, *Pfandrecht* . . ., 48–50.
[163] It is now known that various types of documents were used as exercises in the scribal schools: see Jursa, *Archiv* . . .
[164] See the comprehensive study by Petschow, *Pfandrecht* . . ., 52ff. (II Abschnitt. Das Pfandrecht), 146–48. See also Oelsner, "Neo-Babylonian Period," esp. 301–2.
[165] Petschow, *Pfandrecht* . . ., 57–58, 60–71; on pledging a wife, 62–63.

a written record.[166] With a few exceptions (e.g., VAS 5 9 = NRVU 296), the pledge is established in the debt note. A dialogue document (OECT 9 2, dated 301) contains an interesting case of self-pledge: a debtor and his family undertake to work for fifty years in the household of the creditor.[167] There are also many examples of a general charge on assets, in the form of a hypothecary pledge ("whatever property (there is) in the city and the country" *mimmû ša āli u ṣēri*).[168]

7.5.2 In spite of the terminology used (*maškanu šakānu/ṣabātu*, "to place/seize a pledge"), it cannot be presumed in this period that an individual pledge was always possessory. This is particularly so in the case of hypothecary pledge of immoveable property and a general charge on assets.[169] In the case of antichretic pledges, on the other hand, possession was a necessary condition.[170]

7.5.3 The pledge served as security for the debt, but not as a substitute for the capital loaned, as has been argued for earlier periods.[171] The debtor remained personally liable notwithstanding provision of a pledge. The so-called "*rāšû* clause" found in many documents of this period (*rāšû šanamma ina muḫḫi* object *ul išallaṭ adi muḫḫi ša* creditor *išallimu*: "another creditor has no right to the pledge until the creditor is satisfied") has been understood as prohibiting other creditors of the same debtor from executing their claims against him.[172] Rights over the pledge passed to heirs in the same way as the debt itself.

7.5.4 A pledge in this period did not automatically become the creditor's property on default, but express agreements could be made for that purpose.[173] It is frequently stated in the contract that antichretic use of the pledge shall be in lieu of interest. The creditor had the right not only to use the pledge, but to satisfy his claim from it on default.[174] The details, however, are unclear. The owner of the object

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[166] Ibid., 58, n. 169.
[167] McEwan, "A Babylonian *leitourgia*"; Oelsner, "Recht im hellenistischen Babylonien . . .," 130–33. Petschow, *Pfandrecht* . . ., 66, had no examples at the time.
[168] Petschow, *Pfandrecht* . . ., 99–103.
[169] Petschow, *Pfandrecht* . . ., 53–57.
[170] Petschow, *Pfandrecht* . . ., 103–19.
[171] Petschow, *Pfandrecht* . . ., 75–91, 146–47.
[172] Petschow, *Pfandrecht* . . ., 98–99.
[173] Petschow, *Pfandrecht* . . ., 119–24.
[174] Petschow, *Pfandrecht* . . ., 124–32.

pledged could only re-pledge it to the creditor and if he alienated it, the acquirer of the object assumed the obligations with which it was burdened.[175]

7.6 *Distraint*

A defaulting debtor could be arrested and held by the creditor or in prison.[176] Debt slavery, however, is hardly found in this period.[177]

7.7 *Suretyship*[178]

Obligations could be secured by the widely attested institution of suretyship (*pūt našû*). It is found not only in debt notes (e.g., NRVU 290–343; BR 6 93–106) but also in separate suretyship documents (e.g., BR 8/7 81). The surety was not deemed an accessory debtor. The surety either guaranteed that the debtor would be available to the creditor at the due date ("Stillesitzbürgschaft") or undertook to deliver the debtor to the creditor ("Gestellungbürgschaft").[179] Cases are also attested of substitution, where the surety takes the place of the debtor and personally promises payment.[180] Often the surety guarantees payment by the debtor (*pūt eṭēri naši*); if the debtor should then default, the creditor will have recourse to the surety—which presumes that the surety's obligation is of a secondary nature.[181] Where there are multiple debtors, they assume mutual suretyship (*ištēn pūt šanî naši/pūt aḫameš našû*), as well as each being liable for the whole sum ("whoever is available, shall pay," *ša qerbi iṭṭir*).

7.8 *Social Justice*

It is notable that no debt release decrees or other measures of social justice are attested from this period.

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[175] Petschow, *Pfandrecht* . . ., 94, 96.
[176] Petschow, *Pfandrecht* . . ., 35–44.
[177] Dandamaev, *Slavery* . . ., 157–80; see also Petschow, *Pfandrecht* . . ., 33–35.
[178] Koschaker, *Bürgschaftsrecht* . . ., 32–236; San Nicolò, "Bürgschaft," 77–79, and *Zur Nachbürgschaft* . . .
[179] Koschaker, *Bürgschaftsrecht* . . ., 50–57.
[180] On the difficulties of this form, see Petschow, *Pfandrecht* . . ., 86, n. 247, and the literature cited therein.
[181] Koschaker, *Bürgschaftsrecht* . . ., 57; Petschow, "Bürgschaftsregreß . . .," and "Zum neubabylonischen Bürgschaftsrecht."

7.9 *Hire*

The terminology distinguishes between contracts *ana idī* and *ana sūti*, conventionally translated as "hire" ("Miete") and "lease" ("Pacht") respectively. The distinction is according to the object hired, *ana idi* being used for houses, persons, and inanimate movables, and *ana sūti* for agricultural land, prebends, and animals, although there is some overlap. It is not clear what, if any, legal implications lay behind the terminology. Other formulae are also attested.

7.9.1 *Hire* (*ana idī*)[182]

7.9.1.1 *Houses*

The most frequent contract is for the renting of houses (or part of a house), often with the purpose of the rental stated (*ana ašābi* "for dwelling"; *bītu ša* PN_1—PN_2 *ina libbi ašīb* "(regarding) the house of PN_1 [= landlord], PN_2 [= tenant] dwells therein"). In many cases the date is stated from when the house is "available" (*ina pān*) to the tenant. The period of tenancy is several months or years. In general, the rent is payable in silver in equal installments at the beginning and middle of the year, but many other arrangements were possible, for example, monthly (BR 6 30). Daily payments in produce are also attested (VAS 5 145 = NRVU 143). A large number of receipts for rent are preserved. In addition to the rent, extra payments are often mentioned, due three times per year. There are occasional penalty clauses for breach (e.g., BR 6 29); repossession by the landlord was presumably on this basis.[183]

The tenant generally had to pay compensation for damage. Maintenance or refurbishment of the property is often expressly stated as one of the tenant's duties. Alterations to the building by the tenant could also be agreed (combination of rental with a construction contract).

A debtor could rent a house to the creditor by way of pledge, with the rent being discounted as interest.

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[182] Ries, "Miete . . ." For additional literature, see BR 6, pp. 43, 48–49, 55.

[183] See Ries, "Miete . . .," 176 (and see 175 on *paqāru*, "confiscation of the object of hire": BE 10 1).

7.9.1.2 *Movables*

7.9.1.2.1 Boats

The most common example, although far less frequent than houses, is hire of boats. The size of the boat and the period of hire are not normally mentioned. The hire is payable in silver. Sometimes the boat is hired together with its crew. Frequently, the boat is hired by persons to whom the boat has been made available by the owner, while the persons hiring out the boat may be referred to as "boatmen" (*malāḫu*). These persons must therefore have sub-let boats in the pursuance of their profession. Boats were generally given for hire by private persons, while the hirer in the extant contracts is often the Eanna Temple at Uruk—a circumstance to be ascribed to the large proportion of documents stemming from that archive. The hirer was liable for damage to the boat and was responsible for repairs, although this is not stated expressly. The route and purpose for which the boat was to be used could also be stipulated.

7.9.1.2.2 Hire of other movables is rarely attested, for example, barrels (*dannūtu*: VAS 6 40 = NRVU 144; VAS 6 87 = NRVU 145, with irregular formula) and other containers.[184]

7.9.1.2.3 The term *ana idī* is attested only occasionally in connection with animals[185] and never in contracts for the hire of animals (see 7.9.2.3 below).[186]

7.9.1.3 *Services*[187]

The term *ana idī* is found in connection with contracts for "carrying out" (*ana ēpišānūti*) work, as the payment for such works. It is not possible to make a sharp distinction between the terminology of "hire" and "lease" in these contracts (see 7.9.2.2 and 7.11 below).

7.9.1.4 *Persons*[188]

In form, hire of persons is like the hire of other movables. Both the hirer and the person hired might be slave or free, although pre-

[184] For examples, see CAD I/J 20 sub *idū* e) in fin.
[185] E.g., donkeys: see CAD I/J 20 sub *idū* b) in fin.
[186] Ries, "Miete . . .," 178; Bolla, *Untersuchungen* . . ., 139–49.
[187] Ries, "Miete . . .," 180 §3.
[188] Ibid., 180 §4 "Dienstmiete"; see also San Nicolò, "Dienstvertrag," §2. Regarding slaves, see Dandamaev, *Slavery* . . ., 112–31 (cf. also 132–36: slave women in brothels).

dominantly free persons are attested in both cases. Persons could hire out themselves or their dependants. The standard formula is that the hired person "is available to the hirer for (the price of) his hire" (*ana idīšu ina pān* PN *ušuz*), or "is made available to the hirer, etc." (*šuzuzzu*). Another formula used is: "PN_1 will perform the service of PN_2" (PN_1 *našparta ša* PN_2 *illak*). The nature of the services to be performed is not normally specified.

Contracts were usually for one month or one year; only occasionally for other periods (from several months to two years).[189] Payments varied considerably, depending on the nature of the work and the age of the worker. The average wage for an adult was twelve shekels per year. Services connected with boats were very highly paid. Payment was normally in silver, but could be in produce, and might be made in advance, in installments, or at the end of the period of hire.

7.9.2 *Lease* (*ana sūti*)

7.9.2.1 *Land*[190]

An exceptionally large proportion of the extant contracts, which extend from the seventh century to the Hellenistic period, date from the Achaemenid period. There are two forms of the leasing clause for fields and orchards. One is from the lessor's point of view: "the land belonging to PN_1 (lessor), he (PN_1) has given for x years for . . . (type of lease) to PN_2 (lessee)" (*ša* PN_1 *adi* x *šanāti ana . . . ana* PN_2 *iddin*). The other (less common) form is from the lessee's point of view: "(concerning) the land of PN_1: for x years PN_2 has taken (it) for orchard-keeping" (*ša* PN_1 *adi* x *šanāti* PN_2 *ana nukarribūti iṣbat*) or: ". . . is available to PN_2" (*ina pān* PN_2). The contract can include the lease of canals.[191]

Leases may differ in mode of payment (normally *ana sūti*, "for rent"; less commonly *ana mandatti/maddatti*, "for a *mandattu* charge")[192] or by type of agricultural work.[193]

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[189] In the sole wet-nursing contract from the first millennium (BE 8 47: see San Nicolò, *ArOr* 7 (1935) 22–23), in which a father hires out his daughter, the length of the contract is one year ("until weaning").

[190] Ries, *Bodenpachtformulare . . .*

[191] Ries, *Bodenpachtformulare . . .*, 31 (examples from the Murašû archive).

[192] Ibid., 58, 72–76. The latter form seems to be confined to Achaemenid Ur (77, n. 525).

[193] Listed in Ries, *Bodenpachtformulare . . .*, 58, 65–72.

The lessors in the documents are mostly free persons or, in the case of temple property, officials representing the temple. Occasionally slaves are attested and, more rarely, the palace. In many cases the lessor was not the owner but was letting land that he himself held from an institution (temple, ruler), often designated as a feudal tenure.[194] This is particularly true for the Achaemenid period and for the Murašû archive, in which a great number of the documents are leases.[195] Lessees evidently had the right to sub-let.[196]

The attested lessees are free and slaves, individuals and groups. In the latter case, the lessees stand surety for each other. Leases range from a year to sixty years (the long leases mainly in the Persian and Hellenistic periods) and in one case (Nbk. 115, royal land), indefinitely (*ana ūmi ṣâti*). The length of term is not always stated.

Various arrangements were possible with regard to the rent, for example, a fixed sum (in *ana sūti* contracts) or share-cropping.[197] A special form of share-cropping in Achaemenid Nippur and Ur was a "cultivation tenancy and partnership" (*ana errēšūti u šutāpūti*), which evidently involved equal shares.[198] A widespread form of payment of rent was for it to be fixed before the harvest by a special commission (mostly for date orchards, but also for arable land). A debt note was then issued for the amount of estimated yield (*imittu*).[199]

7.9.2.2 *Prebends*

The holders of prebends did not always carry out the associated duties themselves. They could transfer them to other persons, as expressed in a variety of formulas. The most important forms are *ana idī* ("for rent": VAS 5 124 = NRVU 593; 138 = 605), *ana sūti* ("by way of lease": VAS 5 107 = NRVU 607), *ana rā/ēsinūti* ("for carrying out prebend duties": passim in Uruk, mainly in the Hellenistic period),[200] or *ana ēpišānūti* ("for carrying out work": VAS 6 104 = NRVU 586; 169 = NRVU 611; 182 = NRVU 616). Often the duties are set out in detail, in which case the documents formally resemble work contracts (7.11 below).

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[194] The various types are listed in ibid., 38–43.
[195] On the archive, see Cardascia, *Les Archives . . .*; Stolper, *Entrepreneurs . . .*
[196] Ries, *Bodenpachtformulare . . .*, 47–50.
[197] Ibid., 78–85.
[198] Ibid., 85–90.
[199] Petschow, "imittu"; Ries, *Bodenpachtformulare . . .*, 90–110 (also with regard to other rental payments).
[200] Discussed by Kessler, *Uruk*, 79–82.

7.9.2.3 *Animals*[201]

Individual animals were mostly hired at a fixed rent *ana sūti*, not *ana idī* (see above 7.9.1.2.3). Another form was "in shares" (*ana zitti*), for division of the benefit by the participants, or in a partnership lease (*ana ḫarrāni*).[202] In both the latter cases, the participants divided the offspring of a herd in fixed proportions.

7.10 *Apprenticeship*

Apprenticeship contracts were a form of contract for services[203] that is attested from the late seventh to the end of the fifth century.[204] The apprentice was entrusted (*nadānu*) to a master for a fixed period—slaves to learn various trades, free persons to be instructed in various cultic activities.[205] The apprenticeship period varied with the profession, ranging from eighteen months to eight years. The master, who could be a slave himself, undertook to provide full and proper training (*lummudu*) and to feed and clothe the apprentice, for which he received a fee. Contractual penalties applied if he failed to fulfill these duties properly.

7.11 *Services and Supplies* (Werkverträge)[206]

7.11.1 This was a flexible type of contract, strictly speaking for the performance of specific works (*dulla epēšu*), the manufacture of specified products, or the carrying out of certain tasks (*ana ēpišānūti nadānu*, "to give for carrying out/making"). It most frequently had as its object building and construction, manufacture of tiles,[207] milling of flour, herding of animals, harvesting, and guarding.

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[201] Bolla, Untersuchungen . . ., 116–73. See also Ries, "Miete . . .," 178.

[202] Bolla, Untersuchungen . . ., 129–39. See also Lanz, *ḫarrānu* . . ., 89–90.

[203] For another form, the wet-nursing contract, see note 203 above.

[204] San Nicolò, *Lehrvertrag* . . .; Petschow, "Lehrverträge." See also Weisberg, *Guild Structure*, 90–91.

[205] Petschow, "Lehrverträge," 557–58. Cultic: Pinches Berens Collection, no. 103 (*kurgarrūtu u ḫuppūtu*); BRM 1 98 (*nārūtu*, see Petschow, "Lehrverträge," 570: from the nature of the activity it may be presumed that the son is to be trained). Cf. from the Hellenistic period the (unpubl.) letter NCBT 1969 (training for *kalûtu u āšipūtu*: ibid., 558).

[206] NRVU 621–39, and pp. 531–32; San Nicolò, *Beiträge* . . ., 248–51. See also Korošec, *Keilschriftrecht,* 195. On the distinction between hire, lease, and contracts for services and supplies, see Ries, "Miete," 174, 180.

[207] These could be a major part of a family's business activities: see Joannès, *Archives de Borsippa* . . ., 127–37.

7.11.2 The terminology is not uniform. It is not always possible to distinguish between this contract and certain types of lease.[208] Contracts of hire could be linked with contracts for supplies through the duty to carry out construction work. The payment for goods or services is often referred as a fee for hire (*idū*). It has been noted that in contrast to the hire of persons, in which the employee is made available to (*ina pān*) the employer (= hirer), in a contract for services, the work is "made available to" the worker.[209]

7.11.3 The contractor's duty to deliver could be formulated as a real contract, that is, the quid pro quo for raw materials made available (*ina pān*) to him. In debt notes, the client's claim to delivery is based on a (possibly fictional) prepayment. Measures to ensure performance included sureties, contractual penalties, and oaths. As befits such a heterogeneous contract, from the Achaemenid period on, the dialogue document form is often found.

7.12 *Partnership*

7.12.1 *Types of Partnership*

7.12.1.1 The most important form, attested from the seventh century until the Achaemenid period, is designated by the term *ana ḫarrāni*—literally, "for a business journey." Normally it is to be understood as any common business enterprise, although the term must originally have been coined for trading journeys.[210] There are two types:

1. Unilateral investment: associations of multiple partners with the capital provided by one partner or group of partners.
2. Mutual investment: associations of two persons, each providing capital.

For the establishment of the partnership, debt notes were issued, in which the purpose of the contract is stated.

In the first type, the establishing clause reads: "x silver, belonging to PN_1 (creditor, investor) is to the debit of PN_2 (debtor) for a business enterprise" (x *kaspu ša* PN_1 *ina muḫḫi* PN_2 *ana ḫarrāni*). There follows a profit-sharing clause: "in everything that he earns in the city and in the country, the debtor will enjoy an equal share of the

[208] See e.g., Jursa, *Archiv* . . ., 44–51.
[209] NRVU, p. 531.
[210] Lanz, *ḫarrānu* . . .

profits with the creditor" (*mimma mala ina āli u ṣēri ina muḫḫi ippuš ina utur aḫi zitti* PN_2 *itti* PN_1 *ikkal*).

In the second type, involving only two partners, the partnership is established with the words "x silver belonging to PN_1 and y silver belonging to PN_2, they have mutually placed in a business enterprise" (x *kaspa ša* PN_1 *u* y *kaspa ša* PN_2 *itti aḫameš ana ḫarrāni iškunū*). There follows a similar profit-sharing clause.

The *ḫarrānu* enterprise was thus a partnership either between an investor and an entrepreneur, who traded with the capital provided, or between two investors who exploited their capital in common.[211] Its purpose was to make a profit. In the first type, the liability of the debtor (= recipient of the capital) to the creditor for the sum owed is often formulated as suretyship. In principle, it may be assumed that losses normally fell upon the debtor.[212]

ḫarrānu enterprises are found in various areas of economic life in the first millennium, not only in trade.[213] There is no evidence of their use in the temple economy.[214]

7.12.1.2 Animals could not only be hired out to several persons *ana ḫarrāni*, but could also be made available for common exploitation in contracts containing no special terminology.[215] For land leased in common, see 7.9.2.1.[216]

7.12.1.3 Upon inheritance, landed property was often not divided immediately by the heirs, but held for some time at least in common ownership. Division of the estate might then follow at a later point to the exclusion of the land.[217]

7.12.2 *Dissolution*

The documents establishing a *ḫarrānu* enterprise contain no mention of the duration of the partnership. They must, however, have fre-

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[211] Lanz, *ḫarrānu* . . ., 68–88. Following other authors, Lanz uses the modern Civil Law term "Kommenda" derived from Roman law. (For a definition, see ibid., 68).

[212] Ibid., 28–35. In one case of a mutual investment partnership it is provided that profit and loss shall be borne equally: see ibid., 59 (VAS 4 11 = NRVU 644).

[213] Ibid., 139–44. For trading activities, see Oppenheim, "Overland Trade . . ."

[214] Ibid., 144.

[215] E.g., YOS 19 62: see Joannès, *Archives de Borsippa* . . ., 40, 331–32.

[216] See also Ries, *Bodenpachtformulare* . . ., 24–25; Lanz, *ḫarrānu* . . ., 143.

[217] Oelsner, "Nachlaß . . .," 42 §1. E.g., landed property is not included in the division in Dar. 379.

quently been intended to last a number of years.[218] From time to time there were interim settlements of accounts; a separate contract was drafted for dissolution of the partnership.[219]

7.13 *Deposit*[220]

Deposit documents (*paqdu*, as in the expressions *ana paqdi manê*, "to reckon as a deposit" and *ina pān* PN *paqādu*, "to deposit with a person") are attested from the Neo-Babylonian kingdom to Hellenistic times. A large percentage of the documents come from the late Achaemenid and Hellenistic periods, written in the city of Babylon. According to a third century document, there were royal regulations regarding deposits (*dātu ša šarri ša ana muḫḫi paqdi šaṭri*), but their content is unknown.[221]

The deposits recorded are of silver, animals, and agricultural produce (barley, dates).[222] Silver was often deposited in "a sealed purse,"[223] but there were probably also deposits repayable in the same quantity and quality. The deposit was repayable on demand to the person who could produce the document, and receipts are therefore attested.

7.14 Contracts ancillary to status, such as marriage, adoption, and slavery, are discussed under those headings.

8. Crime and Delict

8.1 *Homicide*

There is no clear evidence on how homicide was punished, though it may be reasonable to assume that it received a treatment similar to that of earlier periods. The few reports of murder from this period have mostly to do with political assassinations (*Iraq* 16 203–205;

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[218] Lanz, *ḫarrānu* . . ., 96–97.

[219] Ibid., 102–11.

[220] NRVU, p. 549 ("Verwahrungsverträge"); Stolper, *Records of Deposit* . . . (text edition and analysis). There is to date no comprehensive study of the first millennium Babylonian material.

[221] Ed. Stolper, *Records of Deposit* . . ., 28–29, no. 9.

[222] *paqdu* and *paqādu* serve as technical administrative terms for the transfer of responsibility or the cession of certain products, until the Arsacid period: see Spek, "Cuneiform Documents . . .," 205–56.

[223] E.g., TCL 12 120; Jursa, "Neues . . ."

LBAT 1419; VAB 3 29 §23) and do not shed light on the substantive law of the time. Only one published text appears to refer to prosecution for murder.[224] The document seems to record a preliminary hearing at which the victim's father accuses another man of the crime. The reappearance of the defendant at a subsequent trial is then guaranteed by the defendant's father and sister.

8.2 *Assault*

Instances of assault, both actual (YOS 7 97) and attempted (TCL 12 117), were prosecuted, but it is not clear what penalties were imposed, since the verdicts in these cases are not recorded.

8.3 *Sexual Offenses*

The only sexual offense to which explicit reference is made is adultery on the part of a wife. Several marriage contracts indicate that an adulterous wife was subject to the death penalty (see 5.1.4 above). The occurrence of this statement in contracts is striking. It had always been a husband's right to punish his adulterous wife with death. It is not clear why such a right becomes contractually stipulated.

8.4 *Theft and Related Offenses*

8.4.1 *Theft*

In addition to ordinary larceny, the concept of theft includes misappropriation and embezzlement—situations where a person has legal possession of another's property and then removes or sells it for personal profit (YNER 1 2; YOS 6 208). Misappropriation is to be distinguished from misuse, which involves unauthorized use of goods but not for personal profit (BIN 1 113; YOS 6 225). Misuse was not treated as theft. Numerous documents deal with theft of private property and of temple property. Penalties for the latter were much stiffer than those for the former.

8.4.1.1 Theft of temple property was typically met with a fine equal to thirty times the amount stolen.[225] This was true for theft of all

[224] See Wunsch, "'Du hast meinen Sohn geschlagen!'"

[225] One possible exception is BIN 1 120. The issue in this document, however, may not be theft but the failure on the part of a seller to deliver goods (twelve slaves in this case) that he had previously sold to the Eanna temple; see Joannès, "Un administrateur . . .".

temple goods, including agricultural products (AnOr 8 39; GCCI 1 380; YOS 7 115), livestock (Sack 80; YOS 7 7; YOS 17 32), and precious metals (Nbk. 104; YOS 6 152; YOS 19 97).[226] The imposition of a thirty-fold fine has led to speculation that the provision in the Laws of Hammurabi that deals with temple theft (8) was being enforced during this period.[227] Later records reveal even harsher penalties for temple thieves. Third-century records from Babylon refer to several persons who were imprisoned and then executed by burning for stealing temple property.[228]

8.4.1.2 Penalties for theft of private property varied. Some documents indicate that only simple compensation was required (BE 9 24; Nbk. 419; cf. PBS 2/1 85). At least one document sets forth a fine equal to twice the amount stolen (Sack 79).[229] Yet another document reveals that the stolen goods were retrieved, the defendant was put in prison, and his assets were about to be seized and sold, with the proceeds going to the plaintiff (CT 22 230). Other cases involving theft of private property were settled out of court, usually with the settlement payment equaling the amount of the alleged theft (BE 9 69; PBS 2/1 140).

8.4.2 *Burglary*

Several documents show defendants on trial for entering another person's house, either by force or with help from an accomplice, and removing property (AnOr 8 27; Cyr 329; *JCS* 28 45 [no. 39]; YOS 6 108). In these cases, the court heard testimony and examined physical evidence, but no verdicts are recorded. Thus, it is not clear whether trespass was an aggravating factor. Those guilty of burglary

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[226] Whether the courts actually expected such a large fine to be paid or whether the fine was imposed simply to force the criminals to pay as much as they could is unclear. Prisons were in use during this period, and it may have been that thieves were kept in prison (perhaps this meant a type of servitude) until they or their family members were able to pay the fine or, at least, a satisfactory amount. Both the Eanna temple in Uruk (YOS 7 97) and the Ebabbar temple in Sippar (CT 22 230) had their own prisons, and there are references to the holding of convicted criminals there (San Nicolò, "Eine kleine Gefängnismeuterei . . ."; see also 8.10.3 below).

[227] San Nicolò, "Parerga Babylonica VII . . .," 327–28; and Figulla, "Lawsuit Concerning . . .," 100. LH 8 prescribes a thirtyfold fine for theft of an ox, sheep, donkey, pig, or boat belonging to a temple or the palace.

[228] Joannès, "Une chronique judiciaire . . ."

[229] The subject matter of this document is actually the receiving of stolen goods. But, since receivers are treated in the same manner as thieves (see 8.4.5 below), it may be presumed that the thief in this case was also subject to a twofold fine.

may have been treated in the same manner as those who committed ordinary theft.

8.4.3 *Robbery and Kidnapping*

References to the taking of goods or persons by force occur mostly in the letters from the so-called governor's archive at Nippur.[230] These letters reveal that the most common solution was either compensation or return of the stolen items (OIP 114 8, 24).[231] This appears to include the kidnapping of slaves (OIP 114 6). As for the kidnapping of free persons, there is very little evidence. One text contains sworn testimony regarding the forceful abduction of a woman, but the outcome of the case is not revealed.[232]

8.4.4 *Fraud*

In a trial of two men for attempted fraud, they were found guilty and punished with what the text refers to as a tenfold fine (TCL 13 219).[233] They had tried to swindle another man of two separate amounts of money, but the penalty was determined in relation only to the larger of the two amounts. Due to a lack of other evidence, it is not clear if such a stiff fine was typical. Their use of a forged tablet and their false statements to the judges probably served as aggravating factors. In another case, a man went on trial for renting the same slave to two different men for the same time period (YOS 7 102). The one who was defrauded seems to have brought the case, but no verdict is recorded.

8.4.5 *Receiving*

Receiving stolen goods from a thief was considered an offense as serious as theft (YOS 19 98). To be convicted, however, a person had to know the goods were stolen. Several documents indicate that defendants were not convicted if they had received goods from a thief in what appeared to them to be a legitimate transaction (Sack

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[230] Cole, *Nippur IV* . . .

[231] There may have been additional penalties in some instances. In one letter, the writer ordered that a certain robber be expelled from a particular area and that restrictions be placed on where he could settle (OIP 114 19). At least one other document (OIP 114 6) may refer to an additional penalty, but the relevant portions of the tablet are too damaged to be sure.

[232] Jursa, "*ṭerdu* . . .," 498–99, 511 (BM 64153).

[233] See Joannès, "Les textes judiciaires . . .," 227–29.

79; YOS 6 179; YOS 6 191).[234] Knowing receipt resulted in the same punishment as theft. Thus, receiving stolen temple property was punished with a fine equal to thirty times the amount received (*RA* 14 158 [no. 152]; YOS 6 175; YOS 6 193; YOS 6 214). In a case involving receipt of stolen private property, the defendant was threatened with a twofold fine (Sack 79).

8.5 *Damage to Property*

Those who damaged private or temple property could be taken to court. The standard penalty appears to have been compensation for damage. Relevant records include damage to another's field (NBL 2–3), the destruction of a temple date-palm (TCL 12 89), and the killing of a private slave (Nbk. 365).

8.6 *Perjury*

Accusations in court that are clearly proven to be false were punished in a talionic manner (Cyr. 332, Nbn. 13; cf. the literary text CT 46 45).[235] That is, the penalty that the false accuser was trying to inflict on the defendant was imposed on the false accuser. There is no evidence to show that accusers whose claims simply lacked substantiation or that non-party witnesses (those who were not the accuser/plaintiff or the defendant) who made false statements were punished in this way.

8.7 *Treason*

Treason was a capital offense. One man who committed treason against Nebuchadnezzar II was sentenced by the latter to death and executed (AfO 17 2). His property was confiscated and donated to the Ezida temple in Borsippa. A letter to the governor at Nippur refers to a conspiracy among certain Aramean, Chaldean, and Arabian tribes (OIP 114 14).[236] The writer demanded that the conspiracy be deemed a "judgment of life," that is, a capital crime.

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[234] These documents state that the defendants will not be convicted for legitimately received goods but will be punished for receiving other goods.

[235] On CT 46 45, see Lambert, "Nebuchadnezzar . . ."

[236] Cole, *Nippur IV* . . ., 7, 64–65.

8.8 *Witchcraft*

NBL 7 is the lone record on this issue and its meaning is obscure at points. It seems to contain three basic stipulations concerning a woman who casts or attempts to cast a spell. First, if she casts the spell on a field, she must pay the owner of the field three times the value of its yield. Second, if she casts a spell on an item other than a house, she must pay three times the amount of any damage caused. Third, if the woman is caught casting the spell on a person's house, she must receive the death penalty.

8.9 *Offenses Related to Runaway Slaves*

Those who harbored, exploited, or simply did not return runaway slaves could be put on trial (Dar. 53; Nbn. 679; YOS 7 146; YOS 7 152). There is no indication, however, what punishment was imposed for these acts.

8.10 *Punishment*

8.10.1 *Corporal Punishment*

Apart from references to the death penalty for adultery (see 8.3 above) and for treason (see 8.7 above), there is little mention of corporal punishment. One text mentions flogging and the pulling out of men's beards and hair.[237] The offense in this case—the failure to complete the plowing of a field by a certain day—may be, however, more civil than criminal. Another text refers to the cutting off of a man's hand (*ZA* 3 224 [no. 2]). It states that a payment of silver (140 shekels) was made in lieu of the physical punishment, but it does not state what the offense was.

8.10.2 *Payments*

Fines and payments in varying multiples of the amount at issue have already been described above. They include multiples of thirty for theft of temple property (8.4.1.1), one and two for theft of private property (8.4.1.2), one for damage to property (8.5), and three for certain acts of witchcraft (8.8). One text mentions payments that were made as substitutes for the cutting off of a man's hand and for the imprisonment of another (*ZA* 3 224 [no. 2]), but the text does not disclose the offenses involved.

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[237] Stolper, *Entrepreneurs and Empire* . . ., no. 91.

8.10.3 *Imprisonment*

There is ample evidence that prisons were in use, but their exact nature and purpose remain unclear. They were used for those guilty of theft (TBER 6), fraud (TCL 13 219), and, presumably, other offenses (cf. YOS 7 137). The prisons mentioned are those of cities (ABL 344; TBER 6), temples (CT 22 230; YOS 7 106), and even individuals (ABL 774; TCL 13 219). Also, there is at least one reference to house arrest (TCL 13 215). Women (TCL 9 107) and slaves (YOS 3 165; YOS 7 137), as well as free men (TBER 6), were imprisoned. Escape from prison is referred to (ABL 736; OIP 114 23) and could be prosecuted (YOS 7 97).[238] It is not clear if prisons were used primarily for punishment, or if suspects and criminals were detained under guard only while the authorities awaited the payment of a fine or the conclusion of an on-going investigation (TCL 13 219).

Abbreviations

BaM 21	M. Stolper, "Late Achaemenid Legal Texts from Uruk and Larsa" (*Baghdader Mitteilungen* 21 (1990) 559–622)
BR 6	M. San Nicolò and H. Petschow, *Babylonische Rechtsurkunden aus dem 6. Jahrhundert v.Chr.* (Abhandlungen der Bayerische Akademie der Wissenschaften, Philosophisch-historische Klasse, Neue Folge, Heft 51. München: Verlag der Bayerischen Akademie der Wissenschaften, 1960)
BR 8/7	M. San Nicolò, *Babylonische Rechtsurkunden des ausgehenden 8. und des 7. Jahrhunderts v.Chr.* (Abhandlungen der Bayerische Akademie der Wissenschaften, Philosophisch-historische Klasse, Neue Folge, Heft 34. München: Verlag der Bayerischen Akademie der Wissenschaften, 1951)
BRL	J. Kohler and F. Peiser, *Aus dem Babylonischen Rechtsleben*, I and II (Leipzig: Pfeiffer, 1890)
CM 20	C. Wunsch, *Das Egibi-Archiv I. Die Felder und Gärten* (Cuneiform Monographs 20A–B. Groningen: Styx, 2000)
LH	Laws of Hammurabi
NBL	Neo-Babylonian Laws
NRVU	M. San Nicolò and A. Ungnad, *Neubabylonische Rechts- und Verwaltungsurkunden. Übersetzt und erläutert. Band 1: Rechts- und wirtschaftsurkunden der Berliner Museen aus vorhellenistischer Zeit* (Leipzig: Hinrichs'sche Buchhandlung, 1935, repr. Leipzig, 1974)
Roth	M. Roth, *Babylonian Marriage Agreements*
Sack	R.H. Sack, *Cuneiform Documents from the Chaldean and Persian Periods*
TBER	J.-M. Durand, *Textes babyloniens d'époque récente* (Paris: Éditions A.D.P.F., 1981)
TEBR	F. Joannès, *Textes économiques* . . .

[238] See San Nicolò, "Eine kleine Gefängnismeuterei . . ."

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ANATOLIA AND THE LEVANT

ISRAEL

Tikva Frymer-Kenski

1. Sources of Law

Almost all our information about law in ancient Israel comes from the Bible itself; practical documents would have been written on perishable material and have long since disintegrated. Two documents survive, written on ostraca because of the difficult situation in which they were composed. Most of the overtly legal material is in the Pentateuch (Torah), with occasional mention in narratives, prophets, psalms, and proverbs. Much legal information can also be gleaned from narratives, both the Pentateuchal narratives in which the legal sections are embedded and the historical narratives.[1]

1.1 *Pentateuch*

1.1.1 *Essential Prescriptions*

1.1.1.1 *The Ten Commandments*[2]

The most famous set of instructions in the Bible and perhaps all of Western literature is the Ten Commandments, recorded in Exodus 20:2–17 and Deuteronomy 5:6–21.[3] These commandments are absolute imperatives whose regulations appear often in the Pentateuch, with the exception of the tenth commandment ("Thou shalt not covet"). The commandments are in the second person masculine singular, they contain no penalties, and are presented as the conditions for being part of the community established at Sinai. Scholars believe that the original form of the commandments was very terse and has been expanded with explanatory phrases: these are notably different

[1] See Weinfeld, "Ancient Israelite Religion," 487–490; Phillips, *Ancient Israel's Criminal Law*.

[2] Weinfeld, "The Decalogue . . ."

[3] See Segal, ed., *The Ten Commandments* . . .

for the Sabbath in the Exodus version, which relates the Sabbath to creation, and the Deuteronomic, which stresses rest and relates it to redemption from Egypt. The original formulation may be very old, and commandments are alluded to by Hosea (Hos. 4:2) and Jeremiah (Jer. 7:9), and two Psalms (Ps. 50:7, 18–19; Ps. 81:9–10).

1.1.1.2 *Levitical Commands*

Leviticus 19:1–18 are the basic outlines of being "Holy" established by the Holiness code. They include provisions of the Ten Commandments (19:3–4, 11–12) together with ritual requirements, such as eating the communion sacrifice in two days and burning the rest (5–8), and social rules, such as gleaning (9–10), paying wages on the day earned (13), not exploiting the blind and deaf (14), not perverting justice (15), not standing by at injury (16), and not bearing vengeance (18). Most of the provisions are in the form of commands, but one participial case is included.[4]

1.1.1.3 *Deuteronomic Curses*

Deuteronomy also contains a list of communal curses (Deut. 27:15–26) upon those who perform a select group of misdeeds, which must have been considered fundamentally wrong. They contain rules of the Ten Commandments: cursing those who make images, dishonor parents, commit adultery or murder. They also include those who remove boundary stones; take advantage of the blind; pervert justice; sleep with a father's wife, daughter-in-law, sister, or beast; or take a bribe to kill the innocent. They conclude with a blanket curse of those who do not uphold the law.

1.1.2 *Legal Collections*

The Pentateuch contains three distinct legal corpora: the Book of the Covenant (Exod. 20:22–23:19), the laws of Leviticus-Numbers 11, and the Deuteronomic laws (Deut. 12–26)[5] These collections have a long antecedent tradition in the ancient Near East, a tradition that goes back to the southern Mesopotamian law "codes" from Sumer and Babylon. Like those collections, the biblical ones are not "codes" in the sense of legislation but rather represent the jurisprudence of

[4] See Carmichael, "Laws of Leviticus 19." Carmichael suggests that the laws are composed with the Joseph story in mind.

[5] A detailed outline of each collection can be found in Patrick, *Old Testament Law*.

the day: the best possible legal scenarios presented as a combination of pronouncements and case law.[6]

1.1.2.1 *The Book of the Covenant*

This is generally considered the earliest of the biblical law collections. There is considerable agreement that it was originally an independent collection, which was later inserted into the book of Exodus as one of the sources with which the book was composed. There is, however, disagreement as to whether the text of the collection is itself the result of the modification of earlier collections.[7] The collection itself contains a section of regulations with human sanctions (Exod. 21:1–22:16) and others under divine jurisdiction; significantly, the laws under human jurisdiction include those that we would consider "religious" law. The similarity of many of the cases to the Mesopotamian legal collections in both form and content indicate that the Book of the Covenant is part of the same legal tradition and that it built upon the same corpus of cases that were studied in Mesopotamian law.[8] The Book of the Covenant, like other biblical law corpora, often provides legal remedies for the cases that are distinctively biblical.[9]

1.1.2.2 *The Priestly Codes*

These are actually two separate groups. The regulations found in Leviticus 1–15 and Numbers 1–9 (often called P) concern primarily ritual regulations and matters of purity and impurity. The Holiness code of Leviticus 17–27 (H) includes social legislation along with ritual prescriptions. The date and development of these collections are a matter of enormous dispute. Some of the laws in P and H may be very ancient; others are considered post-exilic. The relation between these two groups of priestly regulations is also a matter of discussion.[10]

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[6] See Westbrook, "Biblical and Cuneiform Law Codes."

[7] See Westbrook, "What is the Covenant Code?" and the various responses to him in Levinson, ed., *Theory and Method* . . .

[8] The earliest such study was Paul, *Book of the Covenant* . . . See, most recently, Malul, *The Comparative Method* . . .; Lafont, "Ancient Near Eastern Laws . . ."; Greengus "Legal Tradition," and "Biblical Law."

[9] This issue was first discussed by Greenberg, "Some Postulates . . ." It has occasioned numerous reactions, notably by Jackson, "Reflections . . .," and was revisited by Greenberg in "More Reflections . . ."

[10] The general consensus of scholarship has been that H is ancient and P either

1.1.2.3 *The Deuteronomic Code*[11]

The laws in the Book of Deuteronomy are intimately bound up with the narrative, an indication that the book was produced as a unit, a product of a nativist revival movement which sought to purify Israel's cult, to rid it of all elements it considered idolatrous or polytheistic, to centralize all worship in one place and to minimize contact with other peoples. The laws themselves often have the character of legislation, binding the hearers to observe the law.[12] The laws include more family regulations than does the Covenant Code; they also show evidence of change from the common law reflected in the narratives and the few family laws of Exodus in the direction of less authority for the individual head of household.[13] On the other hand, the laws have a minimalist view of monarchy and do not invest the king with major areas of authority. A more collective view of authority is established through the persons of elders and judges. Deuteronomy is structured as a treaty agreement between God the overlord and Israel, and the laws are presented as the stipulations of this treaty. In this way, breaking the law also involves breaking the oath of treaty and faithlessness to God, and the community must rectify the situation in order not to be itself considered faithless to God.

1.1.2.4 *Forms of the Laws*[14]

The laws are generally described as "casuistic" (case law), which provide legal remedies for the situations envisioned by the composers of the law, and "apodictic" statements: prescriptions and proscriptions directly addressed to the hearer/reader that do not detail the punishment for transgressions. A third type, "participial" ("the one who does . . ."), should be seen as a subset of case law, since it too provides for sanctions. Theories about different origins or times for the different forms of law have not been borne out.[15]

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very early or late; most recently, Knohl has argued that H results from an eighth-century movement in which the priests became more socially conscious than they had been before (*The Sanctuary of Silence* . . .).

[11] The classic work on Deuteronomy is Weinfeld, *Deuteronomy and the Deuteronomic School*. Most recently, see the articles in Braulik, ed., *Bundesdokument und Gesetz*, and Levinson, *Legal Innovation*.

[12] This characteristic is stressed by Westbrook, "Cuneiform Law Codes . . .," who believes this not to be true of the cuneiform codes.

[13] On this point, see Frymer-Kensky, "Deuteronomy." See also Rofé, "Family and Sex Laws . . ."

[14] The classic study is Alt, "Ursprünge . . ."

[15] See Sonsino, "Forms of Biblical Law."

1.1.2.5 *Motive Clauses*

Fifty percent of biblical laws have a clause attached that may underline the origin of the law, make a promise for keeping it, explain the reason for it, hold out threats, and give purpose for the laws. These clauses seek to persuade and thus indicate that the law collections are being read and proclaimed to the people, rather than confined to the reading of the literate. The need to persuade also hints that the laws do not carry the legislative weight of being backed by officially mandated violent acts. The law educates the public about what to do and encourages it to follow by both promises and threats and by explanations.[16]

1.1.3 *Legal Storyettes*

The Pentateuch contains a set of little stories that record the breaking of a norm, the detention of the miscreant while Moses went for a decision, and a decision. These might be considered case law fleshed out into stories that served as precedent or, indeed, stories that actually established the precedent. The stories declare the laws ancient and provide divine authority. Two stories, "the man who cursed with God's name during a fight" (Lev. 24:10–23), and "the man who gathered wood on the Sabbath" (Num. 15:32–36), describe a case of what we would call a "religious" infraction and impose the death penalty for it. Three stories, "the daughters of Zelophehad" (Num. 27:1–11) and "the clan response to the daughters" (Num. 36) and "those impure at Passover" (Num. 9:6–12), involve pleas from parties to remedy their situation and establish social institutions: the epiklarate and its contours and the second Passover. The "man who cursed God's name" ends with a whole set of provisions about penalties for homicide and injury—an indication that the recitation of these stories is part of the retelling and proclamation of law collections. The Book of Samuel includes one legal storyette, "the division of spoils," in which David's men who went with him in battle petition to keep all the spoils, and David declares that the spoils must be divided equally. As in the "man who cursed," the story ends with a declaration of law, but here the authority is David's and he does not consult God (1 Sam. 30:22–25).[17]

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[16] See Greenberg, "Biblical Law . . ."; Welch, "Reflections on Postulates . . ."; Sonsino, *Motive Clauses* . . .

[17] The Pentateuch also contains such a regulation, in Num. 31:25–28, which is given by God to Moses without a storyette and without a general regulation attached.

1.1.4 *Narratives*

In addition to the legal storyette, the Pentateuchal narratives, particularly those of Genesis, often demonstrate the legal customs and family arrangements that existed throughout the ancient Near East. These do not always conform to Pentateuchal legislation, since Deuteronomy and the Priestly documents represent classical Israel's norms, which are often innovations or other changes.[18]

1.2 *"The Prophets"*

1.2.1 *The Historical Narratives*

The Books of Joshua, Judges, Samuel, and Kings, edited by the Deuteronomistic historian, often contain narratives with legal information. Like the Genesis narratives, Judges and Samuel reflect the old law of Israel—Near Eastern customary law that is sometimes at variance with the particular rules envisioned in Pentateuchal law. There are fewer narratives in the Book of Kings, but some illuminate classical Israelite law.

1.2.2 *The Classical Prophets*

In their indictments of Israel, the prophets reveal both what laws were not being followed and what the legal situation was.

1.3 *The Writings*

1.3.1 Proverbs gives advice on legal matters. Occasionally, petitions or thanksgiving in Psalms reveal legal information.

1.3.2 Chronicles presents another account of Israel's history, with a different editorial agenda. It thus represents a different reflection of such issues as marriage with gentiles. Moreover, Chronicles, Nehemiah, and Ezra were written in the light of the composed Torah, and use various exegetical techniques to harmonize variations in Pentateuchal Law.[19]

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[18] See Daube, *Biblical Law*, 1–73. The relationship of these narratives to the laws has often been explored by Carmichael, who holds that the laws result from consideration of historical events (*Origins of Biblical Law* and *Law and Narrative in the Bible*).

[19] See Fishbane, *Biblical Interpretation in Ancient Israel*.

1.4 *Legal Ostraca*

Two such documents have survived dealing with legal matters. One, the Meṣad Hashavyahu letter, is a plea from a worker to an official asking for his cloak back. The other is a plea from a childless widow for possession of her husband's field.[20]

2. Constitutional and Administrative Law[21]

2.1 *The King*

The law collections are not royal documents: The Book of the Covenant probably dates from the pre-monarchic period and has no mention of a king; Deuteronomy, from late in the monarchy, wants a very minimalist kingship The Deuteronomistic history of Judges-Kings is not happy with Israel's monarchy. Judges, which shows the desperate need for a king, nevertheless records anti-monarchic statements as a foreshadowing of things to come. The Book of Samuel, which describes the establishment of monarchy, also includes Samuel's warning about kings: 2 Samuel, about David, demonstrates that monarchy will not solve the problems of exploitation that Judges revealed, and Kings is openly censorious of the kings of Israel. Nevertheless, the importance of the king in the judicial system comes through.

2.1.1 *The Deuteronomic Ideal (Deut. 17:14–20)*

The people are to choose a king from Israel, excluding foreigners (Deut. 17:14–15). He is not to keep many horses or trade with Egypt for horses (Deut. 17:16) and is admonished not to have many wives "so that his heart turn not astray" (Deut. 17:17) This is a critique of the Solomonic kingship, for Solomon is remembered as keeping fourteen hundred horses (1 Kings 10:26f.), and as having many wives, who (according to 1 Kings 11) turned his heart astray. The king is also to have a copy of "this teaching" (the Book of Deuteronomy)

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[20] See Bordreuil et al., "King's Command and Widow's Plea." This article also has a translation of the much-discussed Mesad Hashavyahu letter, which is studied most recently by Pardee, "Meṣad Hashavyahu Texts." For commentary, see Lemaire, "Veuve sans enfants . . ."; Wagenaar, "'Give in the Hand . . .'"

[21] See Frymer-Kensky, "Israelite Law"; Boecker, *Law and the Administration* . . .; Rüterswörden, *Die Beamten* . . .; Westbrook, "Biblical Law"; Avishur and Heltzer, *Royal Administration* . . .; and Miller, "J as Constitutionalist . . ."

written on a scroll so that he can study it and act properly (Deut. 17:18–20).

2.1.2 *The Figure of Moses*

Moses is the paradigm of both leader and prophet. As leader, he is both the chief judge and the lawgiver. The Pentateuch does not prescribe these roles for kings, but kings may have played these roles in the First Temple period.

2.1.2.1 *Moses the Judge*

Exodus 18 is a foundational story of the justice system. When Jethro sees the people lining up and waiting all day for Moses to settle their disputes, he convinces Moses that he should reserve the most difficult disputes for himself but set up a pyramid of leaders, *śarim*, leaders of tens, of fifties, of hundreds, and of thousands, to judge lesser disputes.

2.1.2.2 *Moses the Lawgiver*

The Pentateuch and post-exilic biblical writings present Moses as the great foundational lawgiver, who published Israel's laws at Sinai and then in the plains of Moab (Deuteronomy). However, Amos speaks of God sending prophets to make known God's laws and does not mention either Moses or Sinai. It is only in the exilic period that the laws are consistently referred to as the torah or laws of Moses.

2.1.3 *Narratives of the Role of the King in Law*

The historical narratives about the founders of the monarchy (Saul, David, and Solomon) show the development of the king's role in law.

2.1.3.1 *Saul*

The Saul stories justify David's usurpation and lay down the requirements for kingship, demonstrating that the king must not be too responsive to the people's desires (1 Sam. 13:2–14; 14:24–46; 15:1–34). Despite this polemic, they record Saul's contributions to the legal system:

1. *Oaths.* Saul proclaimed a fast in anticipation of battle, swearing to kill whoever ate. Jonathan did not hear the oath, ate, and won a great victory. When divination revealed Jonathan's misdeed, the people demanded that Jonathan be spared. In listening to them, Saul established the principle that the king can override oaths, thus

freeing the monarchs from the tragic dilemmas that plagued Israel in Judges 11 and 21 (1 Sam. 14).
2. *Outlawing necromancy*. This act is recorded (1 Sam. 28:9–10) as an introduction to Saul's séance.

2.1.3.2 *David*

While he was an outlaw and would-be king, David decreed that the share of soldiers who stayed behind should be equal to those who stay and fight, and it "made a statute and custom to this day" (1 Sam. 30:23–5). He also established the principle that the monarch was sacrosanct. Saul twice fell asleep while David was near. The first time (1 Sam. 24), David cut a piece of Saul's robe as proof that he could have killed Saul, but did not because God's anointed must be sacrosanct (1 Sam. 24:11), a sentiment he repeated on the second occasion (1 Sam. 26:9–11). As king, David established basic contours of monarchy:

1. The people will accept what ever David chooses to do (2 Sam. 6:21–22).
2. The king must be subordinate to divine rules and to the prophets who declare them (2 Sam. 12). Thus the king is not above the law.
3. The king does not have an absolute right to kill. Abigail convinced the outlaw David not to slaughter her husband's household, as God would not allow a man guilty of bloodguilt to become king (1 Sam. 25). The prophet Nathan told King David that killing Uriah with the "sword of Ammon" was an offense, for which the child of Uriah's wife died and David's other children suffered turmoil and death in the following stories (2 Sam. 12). Thereafter, David made sure that he had justification for execution, first adjuring people not to do something on pain of death, and executing them when they did it.
4. The king is judge. David gave judgment to his people (2 Sam. 8:15). Nathan presented a legal case, which David judged before knowing it was a parable. The wise woman of Tekoa, disguised as a poor woman, said "Save O King!" and asked not to give over to the family's blood avenger her son, who had killed his only brother. Weighing execution of murderers against continuing a man's lineage, David spared the surviving son (2 Sam. 14). The king's ability to solve cases made him like an "angel of god" to know what is right, a term of flattery used by those petitioning the king (2 Sam. 14:17, 20; 19:27). The technical term "Crying out to the king," *lizʿoq ʾel hammelek* first appeared when Mephibosheth told David that he had no reason to petition the king (2 Sam. 19:29).
5. Absalom built support for a coup d'état by telling people on their way for judgment that they would not get a hearing from David,

declaring, "Would that they made me the judge in the land and everyone who had a legal dispute would come before me and I would declare his judgment" (2 Sam. 15:4). In this way, "Absalom stole the hearts of the men of Israel" (2 Sam. 15:6).

2.1.3.4 *Solomon*

In Israel's memory, Solomon was the perfect judge. During a dream theophany, Solomon asked for a "hearing heart" to judge (1 Kings 3:2–15). The gift was tested when two harlots came before the king with their tale of one dead and one living baby. Solomon held a trial, hearing both sides, and then rendered his famous "solomonic judgment," ordering the living child cut in two to test the two alleged mothers. The decision made Solomon's reputation, "For they saw that the wisdom of God was in him to do justice" (1 Kings 3:16–28).

2.1.3.5 *The Later Kings of Israel*

Only the "reforms" of Hezekiah and Josiah, which changed the religious infrastructure and centralized religion, are recorded. Micah's reference to "rules of Omri" (Mic. 6:16) indicates that the kings did issue various decrees, as we would expect from rulers. The role of the king as judge appears in several episodes from the Northern Kingdom at the time of the Omrides. They are summarized below in 2.9.1.

2.1.3.6 The king's role in justice is remembered in Proverbs: "Magic is on the lips of the king, he cannot err in judgment" (Prov. 16:10). In the Northern Kingdom, Hosea is very angry at the kings and denounces the whole concept (Hos. 8:4; 13:10–11). In Judah, the prophets are not as antagonistic to monarchy, and both the pro-monarchic prophet Isaiah (Isa. 11:4; 32:1) and the less pro-monarchic prophet Jeremiah (Jer. 21:11–12; 22:2–3, 13–17) recall the role of the king in justice. Josiah in particular is noted for having judged the cases of the poor (Jer. 22:15–16). After the Exile, the monarchy was not restored.

2.1.3.7 The king did not necessarily try cases that concerned the king. The trumped-up trial of Naboth for blasphemy against both God and king is tried before the elders as an ordinary trial; the king was not present and did not even know about it (1 Kings 21:11–16). Jehoshaphat of Judah appointed Zebadiah chief of Judah to be in charge of all matters relating to the king (2 Chron. 19:11).

2.1.3.8 Kings are not above the law. Jonathan tries to convince Saul not to "commit innocent blood" by killing David without cause (1 Sam. 19:5); Abigail convinces David that spilling blood without reason (*ḥinnam*) would be a stumbling block to his kingship (1 Sam. 25:31). Nathan declared that the sword would never depart from David's house because he committed adultery with the wife of Uriah, one of his subjects, and arranged for Uriah to be killed in battle (2 Sam. 12:9–10).

2.2 *Prophets*

The close connection of prophets and leaders is already indicated by the Pentateuch, which unites both leaders in the figure of Moses. The two roles were united once again in Samuel, the grand transitional figure to monarchy who ordained Saul as the first king of Israel, and in Saul, who had episodes of prophecy (1 Sam. 10:9–11; 19:19–23). Samuel also anointed David during Saul's lifetime. Samuel established three prophetic roles. As adviser to the king, he is followed by Gad and Nathan, David's advisers, and by Isaiah, adviser to king Hezekiah. As opponent to the king he is followed by later prophets who committed treason by ordaining rebels to the king, culminating in Elisha, who sent his disciple to ordain Jehu to destroy the Omrides (2 Kings 9:1–10).

2.2.1 A true prophet must be obeyed (Deut. 18:15–19). The difficulties of determining who is a true prophet are vividly described in the story of Ahab, Micaiah, and the four hundred prophets (1 Kings 22). False prophets are an object of considerable invective (e.g., Jer. 14:14–16 and throughout Jeremiah; Ezek. 22:38), and Deuteronomy calls for their death (Deut. 18:20). Deuteronomy rejected "signs and portents" as proofs of true prophesy, calling for the death of a sign-maker who advocated other gods (Deut. 13:2–6).

2.2.2 Prophets might run into trouble when their negative prophecies were perceived as a sign that they wished the king or the people ill, or that they were actually cursing the city or temple. Micaiah, who prophesied that Ahab would die if he went to war, was put in prison to await the result (1 Kings 22). Jeremiah was put on trial for "cursing" the temple and court (Jer. 26:16–24). At his trial, the elders recalled two prophets—Micah, who was not punished, and who brought Hezekiah to repent so that Micah's words did not come

true (Jer. 26:18–20), and Uriah, who had prophesied against the city in the days of Jehoiaqim, who pursued him and brought him out of Egypt in order to execute him (vv. 20–25). The *śarim* in charge of Jeremiah's trial decided that a prophet who was speaking in good faith that God had sent him should not be punished (Jer. 26:16).

2.2.3 The prophets also had a role as intercessors, as Israel's advocate before God when God was angry (Jer. 15:1; 18:20).[22] The prophet was supposed to "stand in the breech" to protect God from destroying Israel (Ezek. 22:30). Eventually, they failed in the task. Prophecy continued after the Exile, but ended after the Persian period.

2.3 *śarim*

These officials (literally, "princes") are first heard of in the story of their appointment in Exodus 18, when Jethro convinced Moses to appoint "princes of thousands, princes of hundreds, princes of fifties, and princes of tens" (Exod. 18:21) to judge the ordinary cases and bring the difficult cases to Moses. Samuel's "rule of the king" warned that kings would appoint *śarim* of "thousands and of fifties" to oversee the people doing the king's harvesting and plowing (1 Sam. 8:12). 1 Kings 4 preserves a list of Solomon's *śarim*; these royal appointees are primarily administrators, but administrators (from the king on down) had judicial functions.

2.3.1 The term *śar* appears together with "judge" in the hendiadys "Prince and judge" (Exod. 2:14; Ps. 148:11) and in parallelism (Mic. 7:3). Micah indicts both the *ro'š* (Mic. 3:9) and the *śar* (Mic. 7:3) for taking fees for rendering judgment. The term *śar* may indicate a royal appointee, but one function is to judge cases. In this capacity, they preside at the trial of Jeremiah (Jer. 26). The *śar* also appears as part of the trio of the failed legal system: rapacious princes, reckless prophets, and priests who profane the holy (Zeph. 3:3–4)

2.3.2 *The "śar of the Town"*
This title appears for town leader in premonarchic times (Judg. 9:30) and continues for a city official in the monarchic capitals of both the North (1 Kings 22:26) and the South (2 Kings 23:8). The reform of Josiah mentions a "city *śar*" (2 Chron. 34:8), and two bullae have

[22] See Muffs, "The Prophet as Intercessor."

been found for such officials, possibly impressed with the same seal.[23] In addition, there were local "town *śar*s" during the monarchy (2 Kings 10:1; Isa. 1:23; Jer. 26:10–12, 16; 2 Chron. 29:20).[24] Four *lśrʿr* inscriptions on jars at Kunṭillet Ajrud may belong to such local authorities.[25] The *śarim* of Judah were exiled with Jekoniah (Jer. 29:2; Ezek. 17:2), but new *śarim* may have been appointed, for *śarim* are again mentioned during the reign of Zedekiah (Jer. 34:10, 19). Probably both groups are included in the indictments of Ezekiel, who compares them to rapacious wolves (Ezek. 17:12; 22:27) and Zephaniah, who sees them as roaring lions (Zeph. 3:3).

2.3.3 The Meṣad Hashavyahu letter is a petition from a poor worker to a *śar* (written *šar*) asking for him to make his overseer return his cloak to him. The second extant petition, from a widow asking for her husband's field, is probably also to *ha[šśar]*.

2.4 *šopeṭim ("Judges")*

The judge could be a *śar*, or an elder, or anyone else who sat to hear petitions and cases. In the premonarchic period, the leaders of Israel were "Judges" who began their careers as redeemers, rescued Israel, and judged it until death. A different model, the prophet-judge, served as a central judicial authority, like Moses or Deborah the prophet, who judged Israel, sitting under a palm tree, to which Israel came up for judgment (Judg. 4:4–5). Another such judge was Samuel, who was based at Ramah but visited four other towns to judge every year (1 Sam. 7:15–17).

2.4.1 Deuteronomy 17 calls for a similar system in which cases would be tried in local courts and the difficult cases would be brought to the place God chose, to the "the priests, the Levites and the judge who will be at that time" (Deut. 17:1–11).

2.4.2 The judge might also oversee the sentence. If the sentence was flogging, he would take him down and someone would strike the convicted man in front of him (Deut. 25:2).

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[23] Avigad, "The 'Governor of the City' Bulla," and Barkay, "A Second 'Governor of the City' Bulla."

[24] On this, see also Cogan and Tadmor, *Kings*, on 2 Kings 23:8.

[25] See Avishur and Heltzer, *Royal Administration* . . .

2.4.3 Jehoshaphat established a system of judges throughout the land, perhaps to break the close connection between administrative and judicial authority and to undercut the power of the local *śarim*. He entrusted them with jurisdiction over all disputes, whether involving blood or various regulations. At the head, he appointed Amariah the priest as chief judge for religious affairs and Zebadiah for royal matters (2 Chron. 19:5–11).

2.5 *šoṭerim ("officers")*

The *šoṭerim* first appear as leaders of the people during slavery in Egypt (Exod. 5). After the Exodus, Moses appointed the *šoṭerim* (Deut. 1:15). Officers also appear in close connection with judges, perhaps in hendiadys. Deuteronomy calls for the establishing of officers and judges in every town (Deut. 16:18), and Chronicles recalls that at the time of Solomon's accession there were six thousand "officers and judges" (1 Chron. 23:4).

2.5.1 The *šoṭerim* addressed the troops at the beginning of a military campaign, to release those who had not yet completed acquisitions they had made (house, vineyard, wife) and those who were afraid to go (Deut. 20:5–8). They also went with the elders to measure the distance between a corpse and the nearest town (Deut. 21:2).

2.5.2 *šoṭerim* and elders were the seventy assembled to receive the gift of prophecy (Num. 11:16–19). They were also the people that Moses gathered to hear the book of the law (Deut. 31:28). The leadership of the people at the time of the covenant and the conquest is described as "heads, elders and officers" (Deut. 29:9; Josh. 8:33) and as "elders, judges and officers" (Deut. 31:28; Josh. 23:2; 24:1).

2.6 *Elders*

The elders, always a component of the leadership of the people came to particular legal prominence in Deuteronomy. Elders of nearby cities and *šoṭerim* measured which town was nearest a corpse. The elders of the nearest town then performed the ritual of the *ʿeglah ʿarupah*, the decapitated heifer, breaking a heifer's neck over a permanently flowing creek, declaring (with priests and Levites in attendance) that they neither killed the man nor saw the deed, and praying to God not to let the land become polluted with bloodguilt (Deut. 21:1–9).

2.6.1 The elders of the cities of refuge meet the fleeing killer at the gates and, having heard his story, settle him in the city until he can have a trial by the assembly and send the avenger away. The elders of the city in which a homicide occurred also go to the city of refuge to get murderers and deliver them to the blood avengers (Deut. 19:12).

2.6.2 The family laws of the Book of Deuteronomy vest the authority to kill children in the elders. If the parents denounce a wayward son to the elders, the boy is stoned. No investigation is mentioned: the denunciation is enough, thus leaving real power with the parents and giving the elders the authority to hand the child over for stoning (Deut. 21:18–21). Similarly, the father of a daughter whose bridegroom claims she was not a virgin brings the sheet before the elders, who flog the accusing bridegroom if the sheet shows blood and hand the girl over to be stoned if it does not (Deut. 22:13–21).

2.6.3 As overseers of family affairs, local elders also witness the ceremony for dissolving the levirate responsibility (Deut. 25:9–10).

2.6.4 The "elders of the land" formed a tribunal of sorts which kings might consult before proclaiming war (1 Kings 20:7–8), or which might cooperate with a prophet against the king (2 Kings 6:32). Elders of the land also intervened in the trial of Jeremiah (Jer. 26:17).[26]

2.7 *roʾš ("Head") and qaṣin ("Captain")*

In the desert at Baʿal Peʾor, God suggests impaling the "heads" in punishment for apostasy, but instead Moses has the leaders find and execute the guilty parties (Num. 25:4–5). Micah refers to the *roʾš*, who should know justice but instead abhors it and oppresses the poor (Mic. 3:1–9), and he indicts the heads who give judgments for a fee (3:11). Jehoshaphat appointed Priests, Levites, and heads of households to be the central judges in Jerusalem (2 Chron. 19:8). The *qaṣin* is an officer of unspecified functions, possibly military (e.g., Josh. 10:24).

2.8 *The Priesthood*

The priests were a hereditary group that claimed descent from Aaron (Num. 10:8).

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[26] Weinfeld, "Elder."

2.8.1 The specific judicial role of Priests and Levites was to supervise legal disputes and sentencing (Deut. 21:5). They, together with the judges, tried cases in which one litigant accused a witness of false testimony (Deut. 19:16–20), and priests were part of the central set of judicial authorities that Jehoshaphat set up in Jerusalem (2 Chron. 19:8), with one chief supreme over religious affairs (2 Chron. 19:11). The priests attended at the decapitated heifer ritual when a corpse was discovered (Deut. 21:5), and a priest officiated at the trial of the suspected adulteress (Num. 5:11–31). Priests also collected fines: if a wronged party had no kin to receive a 120 percent restitution, it was given to the priest. (Num. 5:8).

2.8.2 The role of the priests in maintaining Israel's purity gave them considerable authority. They could destroy any houses they considered diseased (Lev. 14:43–45). Supreme within the Temple, they could expel kings who tried to usurp their functions or authority (2 Chron. 26:16–20). Needless to say, this right depended on the goodwill of the king; Manasseh overran priestly authority and built altars in the temple (2 Kings 21:4).

2.9 *Levites*

Together with the priests, Levites oversaw legal disputes and sentencing (Deut. 21:5). They were part of the central judicial array established by Jehoshaphat (2 Chron. 19:8) and were specified to be the *šoṭerim* there. They attended at the ritual of the decapitated heifer (Deut. 21:5) and were in charge of determining skin afflictions (Deut. 24:8).

2.10 *Legislation*

The Pentateuch is a collection of written laws that theoretically had been promulgated by God through Moses during Israel's wanderings in the desert prior to their entry into the Promised Land.

2.10.1 *Reading the Written Law*

Reading written books is first mentioned in Sinai, when Moses read the Book of the Covenant to the people at the first covenantal ceremony (Exod. 24:7). Later, in Deuteronomy, Moses reads to the elders from the book of regulations that he deposits in the ark (Deut. 31:24–28). In similar fashion, Joshua inscribed a copy of the "instructions of Moses" on the stone altar he built on Mount Ebal (Josh.

8:32), assembled the whole people and read the book with its blessings and curses (Josh. 8:33–35). Samuel wrote a "book of kingship" giving his regulations for kingship, read them aloud and then deposited them (1 Sam. 10:25). Such readings are not recorded for the days of the monarchy, but late in the monarchy a book of laws discovered in the temple and validated by the prophet Huldah; it was read and then served as authorization for new observances of Passover (2 Kings 22). The Book of law read by Ezra validated Sukkot observance (Neh. 8) and served as the basis of communal study.

2.10.2 *Covenant Renewal*
Since the laws were considered stipulations of the covenant between Israel and God (at least in Deuteronomy and the prophets), reading the law may have been part of covenant renewal ceremonies such as those attested in Joshua 24. Since such ceremonies are not attested for the monarchic period, it is not known how late they lasted.

2.10.3 The practice of kings of issuing decrees has already been mentioned, for example, Saul's decree banning necromancy (1 Sam. 28:9–10).

2.11 *The Courts*

2.11.1 *Central Courts*

2.11.1.1 *The King*
The king had jurisdiction over any matter that a citizen might bring. People (including women) came directly to the king with petitions on any matter, including overriding the abuse of local authorities (Jer. 21:11–12). David's petitions are summarized above in 2.1.3. Other stories present petitions to the Omride dynasty:

1. A disguised prophet "cried out to the king" as he passed by. He was to guard a man or forfeit his life, and the man disappeared. The king refused his (unrecorded) request for pardon, and the prophet then revealed that the king would lose his life because he let Ben Hadad go (1 Kings 20:39–43).
2. During a siege and famine, as the king walked on the wall, a woman "cried out, saying, 'Save me, my lord the king!' " She told a horrendous story about a pact with another woman to eat each other's babies. The king declined to intervene (2 Kings 6:25–31).
3. The king sat at court, listening to Gehazi relate how Elisha brought the Shunnemite's son back to life, when she appeared, "crying out

to the king" to reclaim the land she left because of famine. The king sent a man to help her get back what belonged to her. He went beyond the customary law known from the ancient world, giving her also all the usufruct of the land for the years she was gone. He may have considered her special or have been trying to stay in Elisha's graces, but it was his royal prerogative to grant her the usufruct as well as her field (2 Kings 8:1–6).

2.11.1.2 *Wise Woman*

In early Israel there were other centers to which people could apply for judgment. During the siege of her city, the Wise Woman appeared on the wall for a parley to ask that the city be spared because it was a "city and mother" in Israel, about which they say, "Let them inquire at Abel and thus it will be concluded" (2 Sam. 20:16–19).

2.11.1.3 *"The Judge at That Time"*

According to Deuteronomy, difficult cases should be brought to "the place God chose," to the "the priests, the Levites and the judge who will be at that time" (Deut. 17:8–11). Such Levites and Priests and heads of clans were appointed in Jerusalem by King Jehoshaphat, who named Amariah the chief priest on matters related to religious affairs, Zebadiah the *nagid* of Judah in charge of matters related to the king, and the Levites as *šoṭerim*. He charged them that when disputes came to them from other towns, they were to be careful to instruct them so that they would not incur sin (2 Chron. 19:10–11).

2.11.2 *Local Courts*

Most cases were settled locally. Some judges may have been appointed by the kings. Moses established a pyramid of judges (Exod. 18); Samuel appointed his two sons as judges in Beersheba (1 Sam. 8:1–3); and King Jehoshaphat appointed judges throughout the land (2 Chron. 19:5–11). The *śar* who sat in judgment may also have been a royal appointee; the position was administrative as well as judicial. But the *ro'š* is the local head of the clan or tribe, and the elders are local elders, and it seems they were appointed locally (Deut. 16:18).

2.11.3 More than one judge would hear a case; the number may have varied.

2.11.4 The Bible contains a consistent polemic against judges taking fees. *Šoḥad* is often translated "bribe," but it refers to any kind

of fee. The first problem with fees is that if there are court fees, then no one will judge the case of the orphan or give a hearing to the case of the needy (Jer. 5:28), and the case of the widow does not come before them (Isa. 1:23). Once the case is being heard, giving a fee can cause the judge to pervert justice (Prov. 17:23). Samuel appointed his two sons as judges in Beersheba, but they lost the right to succeed him as ruler when they took bribes to subvert justice (1 Sam. 8:1–3). Isaiah indicts "those who vindicate the wrong after a gift and strip off the vindication of those who are right" (Isa. 5:23). A wicked man might offer a bribe (Prov. 17:23), but the righteous judge is to wave away a bribe instead of grasping it (Isa. 33:15), and never accept a fee against the innocent (Ps. 15:5). The man who takes a bribe to punish and execute an innocent man incurs the communal curse of Deut. 27:25.

2.11.5 *Written Petitions*

Two of the very few extra-biblical documents that have survived are pleas from a worker and a widow. They follow the same format, indicating that there was a formal protocol for writing such a letter (see 1.4 above).

2.12 *Services*

2.12.1 *Military Service*

At the beginning of a campaign, *šoṭerim* officials offered exemptions to anyone who had built but not yet dedicated his house, planted a vineyard and not yet harvested (four years after planting), or become engaged but not yet married (Deut. 20:5–7). They offered release to anyone who was afraid to go on campaign (Deut. 20:8). A new bridegroom was also exempt for the first year of his marriage, so that he would "give happiness to his wife" (Deut. 24:5).

2.12.2 *Corvée*

The laws say nothing about enforced employment on public works projects, but in the "Rule of the King," Samuel warned that the king would appoint *śarim* to oversee the people doing the king's harvesting and plowing and would take slaves, young men and mules (2 Sam. 8:11–18). Solomon conscripted thirty thousand workers to build the temple in Jerusalem (1 Kings 5:13).

3. Litigation

3.1 *Parties*

The scant information we have suggests that any adult could be a party to a dispute. Women are represented as petitioners and do not have to be represented by men.

3.2 *Procedure*

3.2.1 *Initiation of Procedure*

3.2.1.1 When a crime was discovered, legal process began with the pronouncement of an *'alah*, a general imprecation that demanded that anyone with knowledge step forward. Divine punishment would follow the person who knows something but keeps quiet, though confession and a ritual of expiation might avert the divine sanction (Lev. 5:1–10). Ignoring the curse is considered abetting criminals (Prov. 29:24). The Book of Judges records that the mother of Micah pronounced such a curse (with the rare verbal *'alit*) over her missing eleven hundred pieces of silver, whereupon her son confessed and gave her the money, and she blessed him (Judg. 17:1–3).

3.2.1.2 The Book of Joshua relates a divinatory procedure, lots, to discover the perpetrator of a crime—taking booty from the conquest of Jericho. Joshua used lots to identify a suspect, narrowing the choice to one tribe, then one family, then one household, then one man, Achan. Divination was not enough to convict him nor was Achan's confession, but they established reason to search Achan's quarters, and when the stolen items were discovered, he and his household were stoned and burned (Josh. 7:16–26).

3.2.1.3 A procedure could also be initiated by an accusation brought by a witness (1 Kings 21:11–13). The accusation can take the form of a *rib*, a formal legal indictment, a bill of particulars detailing the problem. On a metaphorical level, the prophets declare that God has a *rib* against Israel (Hos. 4:1; 12:3; Mic. 6:2; Jer. 25:31).

3.2.1.4 *Private Suits*

The ostraca show written petitions to the local authority. Otherwise, a claimant had to find local authorities to hear the case. The prophets

indict those who, demanding fees for judgment, were not willing to hear the cases of those who could not pay the fee (Amos 5:12; Isa. 1:23; Jer. 5:28). Isaiah urges Israel to judge the orphans and widows (Isa. 1:17–18).

3.2.2 *The Court in Session*[27]

The judges sat for the judgment. The number of judges is not specified, and it may be that in simple cases one judge would have sufficed. Family law procedures may have anticipated all the men of the town sitting together.

The actual procedure in a lawsuit has to be gleaned from statements in the prophets and proverbs, some of which use lawsuits as a metaphor for God's relationship with Israel. The parties would stand and the accuser might approach the accused (Isa. 50:8), but in Naboth's trial, he was seated at the head of the people, and the witness sat facing him and testified against him (1 Kings 21:13). The accuser would declare the particulars of his case, and the other party would then examine his statement (Prov. 18:17). The accused might have a representative (vindicator) to assist him to help him examine the witness (Isa. 50:8 and Job, throughout). Judgment would be given in the morning (Jer. 21:11–12; Zeph. 3:5).

3.3 *Evidence*

3.3.1 *Witnesses*

3.3.1.1 Conviction requires two or more witnesses (Deut. 17:6; 19:15).

3.3.1.2 *False Witness*

Prohibition of false witness is included in the Ten Commandments and the Book of the Covenant, which enjoins Israel not to enter conspiracies to be an *ʿed ḥamas* (Exod. 23:1). According to Deuteronomy 19:16–20, a witness who proved false was to suffer the same penalty that the accused would have suffered if convicted.

3.3.1.3 Where the penalty is stoning, the witness must throw first (Deut. 17:7), accepting the responsibility for the sentence and its execution.

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[27] See Mackenzie, "Judicial Procedure . . ."

3.3.1.4 Testimony against oneself is not presented in the law collections, but Achan confessed after divination identified him as the culprit. The confession provided grounds to search his tent, where the stolen items were found (Josh. 7:20–23).

3.3.2 *Documents*
Since we do not have actual legal trials, we do not know what weight legal documents carried, but both divorce and sale documents are mentioned. One hint may be in Jeremiah's purchase of his cousin's field, which he has written in two copies and sealed (Jer. 32:9–11). He himself does not expect to use the field until after the Exile; the sale documents might have established his ownership at that time.

3.3.3 *Material Evidence*
In the case of Achan, the stolen items were found in his tent. In the case of the bride accused of not being virginal, the father brings the wedding sheets before the tribunal to show that they are or are not bloody (Deut. 22:13–21). A shepherd may bring the remains of an animal in his care to show that it had been devoured by a wild beast (Exod. 22:12).

3.4 *Supranatural Procedures*

God, the cosmic judge, decides the fate of nations by their actions. On a human scale, God is a witness to oaths and to a Hebrew slave's decision not to go free, and God is judge in circumstances in which a human court could not expect to reach a conclusion.

3.4.1 The third commandment prohibits using God's name for wrongful purposes. Since false witness is a separate commandment, this refers to lightly taking and breaking promissory, asseverative, and exculpatory oaths.[28]

3.4.2 *"Approaching God"*
A householder from whose house deposited goods have been taken must "approach God" to declare his lack of complicity (Exod. 22:6–7); two people who contest ownership of any animal, cloth or other lost property are to "approach God," and the one declared guilty pays double (Exod. 22:8).

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[28] Huffmon, "The Third Commandment . . ."

3.4.3 "The oath of God" is prescribed "between" the owner and guardian of an animal that dies or is broken or wanders off in the guardian's custody (Exod. 22:9–10). The language indicates that both take an oath—the owner that the animals were his, and the guardian that he was not culpable in the disappearance.

3.4.4 *Standing before God*

Deuteronomy provides that when a witness is accused of being *ʿed ḥamas*, the two parties to the dispute (the witness and the one against whom he is testifying and who accuses him of being a false witness) are to stand before YHWH, the priests or judges at that time. The judges are to investigate (*daraš*) carefully. *Daraš* is also the term for oracular inquiry, and "standing before YHWH" may involve submitting parts of the question to God in an ordeal-like or oracular procedure, in which one party is immediately designated the perjurer (Deut. 19:16–20).

3.4.5 *Exculpatory Oath*

The elders of the town nearest a corpse decapitate a heifer over a wadi and take an oath that they neither did nor saw the murder (Deut. 21:1–9).

3.4.6 *The Wife's Potion Trial*

A man who accused his wife of committing adultery would bring her to the temple for a special trial (Num. 5:11–21). The priest would prepare a potion by taking pure water from a laver, mixing it with dust from the floor of the sanctuary, and dissolving into it words from a scroll; these words may be this passage from Numbers or perhaps just the curse that the priest pronounced. As the wife stood, hair unbound, holding a grain offering in her hand, the priest would pronounce a conditional curse, declaring that if she was innocent of wrongdoing she would be unharmed and able to bear a child, but if she was guilty, the waters would cause her "thigh to drop and her belly to swell." The woman would say "Amen, amen" and drink, after which she would go home with her husband and resume normal marital life under the presumption that no guilty woman would risk her fertility and her life. Drinking ended the trial, with final sentencing left to God. There was no provision for pursuit of her paramour.[29]

[29] See Frymer-Kensky, "Suspected Sotah . . .," who suggests that the curse referred to a prolapsed uterus.

3.5 *Judgment*

In the case of petitions to authority, the authority (king or *śar*) heard or read the petition and decided accordingly. In other procedures, the judges investigated the case, but how they did so is not known.

3.5.1 Judges are urged to judge truly (Exod. 23:7–8), but Psalm 82 envisions a court for social justice, in which special consideration is given to the poor, and all the law corpora demand "blind justice" (Exod. 23:3, 6; Lev. 19:15; Deut. 16:19). There is unanimity that one should not allow fees to subvert justice (see 2.11.4 above).

3.5.2 Since judges came from the ruling administrators or the relatively wealthier classes, perverting justice was a form of exploitation of the disadvantaged (*ʿšq*). The remedy is an appeal to the superior: to the *śar*, as in the legal ostraca, or to his superior on up through the king. However, Hosea indicts the higher lords for such abuse (Hos. 5:11), and Ecclesiastes advises that one not be shocked if the abuse continues on up the line (Eccles. 4:1). The ultimate appeal is to God.[30]

3.5.3 Samuel's farewell speech highlights abuse by judges: "whose ox or ass have I taken, whom did I oppress and exploit, from whom did I take a price to turn away—tell me, and I will answer." The people respond that he has not oppressed or exploited them, for he has never taken anything from them (1 Sam. 12:3–4).

3.6 *Execution*

At the end of a criminal trial, the judges delivered the convicted parties over to those responsible for the execution of the sentence. In the case of stoning, the whole community was to participate, with the witness casting the first stone (Deut. 17:7). Stoning took place outside the camp or the town (1 Kings 21:13). In Deuteronomy, the elders would also oversee the flogging of a man who falsely accused his bride of not being a virgin (Deut. 21:18). In other disputes, the judge would take the convicted man down and he would be flogged before him (Deut. 25:2).

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[30] Westbrook, *Studies* . . ., 9–38.

3.6.1 *Blood Avenger*

The victim's nearest kin was to kill a murderer. He operated as the community's representative and incurred no bloodguilt even if he killed the murderer without trial while the latter was on his way to a city of refuge. After trial, the blood avenger would kill a convicted murderer or an accidental homicide who left the city of refuge. In the Deuteronomic system, in which the elders are prominent, the elders would bring the guilty party back from the city of refuge and give him to the blood avenger (Deut. 19:12).

Narratives illustrate some of the rules. Deaths in combat were not to be avenged. Joab's killing of Absalom in combat invites no retribution, but when Joab killed Abner to avenge Joab's brother's death in battle (2 Sam. 3:27, 30) the king punished him for murder (1 Kings 2:5). The blood avenger does not kill the murderer's family. The narrator cites this rule in the story of King Amaziah killing his father's assassins but not their sons (2 Kings 14:5–6).

4. Personal Status

All Israelites were citizens, and there were no official class distinctions between them. Nevertheless, there were distinctions. The priests and Levites represented hereditary castes, women were legally disadvantaged, and the poor and resident aliens were subjects of particular concern.

4.1 *Israelites*

The Torah considers Israelites members of the congregation, bound to each other and to God by a covenant that establishes their responsibilities to God and each other. The ideal is a social order in which each person lives on his own land. The narratives and the prophets reveal a considerable distinction between rich and poor, and women were addressed primarily as wives and mothers.

Israelites in hard straits could lose their land and become debt slaves. If their kin did not redeem them, they would be released after six years (see 4.5 below). Slaves, whether Israelite or foreign, were obligated to all the responsibilities of Israelites.

4.1.1 The same text in Deuteronomy that promises that God will bless an obedient Israel so that there will be no poor also declares

that there will never cease to be poor people in the land (Deut. 15:4, 11). Concerned about the condition of the poor (Deut. 14:17), Israel has special regulations to provide for their food and proper treatment (Deut. 15:7–10).

4.1.2 During the Sabbatical year, the poor were allowed to gather freely from fields, orchards, and vineyards (Exod. 23:11). Israelites were not to refrain from lending to the poor in anticipation of the Sabbatical year, when debts were remitted (Deut. 15:8–9). During harvest, the edges of the field were to be left for the poor to harvest, as were any dropped produce or fallen fruit (Lev. 19:9). Leviticus 23:22 gives them to the poor and the *ger*; Deuteronomy 24:19 to the *ger*, the fatherless, and the widow. Similarly, one should not beat olive trees a second time or pick over the grapevines a second time, in order to leave the food for the *ger*, the fatherless, and the widow (Deut. 24:20–21). Deuteronomy calls for a tithe each third year, eaten in one's own home town and shared freely with the *ger*, the orphan, the widow, and the Levite (Deut. 14:28–29).

4.1.3 The blind and deaf are also to be awarded consideration and their disadvantages not exploited (Lev. 19:14). The one who misdirects a blind person receives a communal curse in (Deut. 27:18).

4.1.4 One must show deference to the elders (Lev. 19:32) and respect the leaders of the people (Exod. 22:28).

4.2 *Castes: Priests and Levites*

4.2.1 *Priests*

Priests, a hereditary caste, could not drink intoxicants while on duty (Lev. 10:9) and were subject to special purity regulations. They could not marry a prostitute or divorcée (Lev. 21:7), and a priest's daughter who was not chaste was to be burned for degrading her father (Lev. 21:9).

4.2.1.1 Not all members of the priestly clan could be priests, as certain physical disabilities or abnormalities disqualified them. The afflicted could partake of the rations of priests but not offer sacrifices or enter restricted areas of the temple (Lev. 21:16–23).

4.2.1.2 Priests, who did not own territory, were paid with a portion of the sacrifice. Each priest kept gifts given to him (Num. 5:9–10). Yet another source of income was fines: if a wronged party had no kin to whom to pay 120 percent, it was given to the priest. (Num. 5:8).

4.2.1.3 Only male priests could eat gifts given to God (Num. 18:8–10). The narrative of Eli's sons illustrates the early period's protocol: putting a trident into stewing meat, priests ate what came up; the sons of Eli wrongfully asked for meat even before the fat was burned (1 Sam. 2:13–16)

4.2.2 *Levites*

Like priests, Levites had no territorial share and were involved in religious ritual. The Bible presents three different stages of Levites in Israel's social system.

4.2.2.1 The Book of Judges reflects a time when "Levite" was a professional title rather than a hereditary caste. It relates the adventure of a young man from Bethlehem in Judah, a Levite who hired on in Mount Ephraim as "father-priest" to Micah for ten silvers a year, clothing, and food, serving as priest in Micah's chapel (Judg. 17). In the classical system of Leviticus and Numbers, Levites performed the work of the sanctuary and were assigned to the Aaronid priests (Num. 18:21, 23).

4.2.2.2 Levites were supported by tithes (Num. 18:24), and tithed their tithes for the priests (Num. 18:25–28). They were given forty-eight cities with pastureland of two thousand cubits all around (Num. 35:1–5.). They could receive other donations (Num. 18:25–31; Deut. 18:1–4).

4.2.2.3 When Deuteronomy eliminated the local shrines, it called for Israel to take care of the Levites outside Jerusalem who had lost their jobs (Deut. 12:17–19). In order to do so, Deuteronomy assigned the tithe offering on the third year (consumed in the settlements) to Levites as well as *ger*, orphan, and widow (Deut. 14:27–29; 26:12). Deuteronomy also allows Levites to leave their local cities, come to the central sanctuary and share in the offerings there (Deut. 18:6–8). They and the *ger* were to join in the festive meal at the offering of the first fruits (Deut. 26:11).

4.3 *Foreigners*[31]

4.3.1 The resident alien of Israel, the *ger*, was subject to the laws of Israel and was not to be abused (Exod. 23:9; Lev. 19:33). The one who subverts the rights of the *ger*, the fatherless, and the widow receives the communal curse in Deut. 27:19. The *ger* was subject to the legal restrictions of Israelites. They were not to curse with God's name on penalty of death (Lev. 24:16); they were subject to the same penalties for homicide, battery, or damage to animals (Lev. 24:18–22).

4.3.2 The *ger* was considered disadvantaged, along with the orphan and widow (Exod. 22:21–22). Their judgment was not to be subverted (Deut. 24:17); they could glean in the fields and vineyards and join in eating first fruits (Deut. 26:11).

4.3.3 Leviticus 25 considers the situation in which the resident *ger* becomes rich enough to have Hebrew debt slaves and calls upon the relatives to redeem the slaves by considering the number of years left until the Jubilee and paying him the wages of a hired hand for that number of years (Lev. 25:47–54).

4.3.4 Unlike the *ger*, the *nokri* ("foreigner") did not have to observe dietary rules, could buy the carcasses of animals found dead (Deut. 14:21), and pay back debts in the sabbatical year (Deut. 15:3).

4.4 *Gender and Age*

4.4.1 The legal system envisions Israelites as male heads of households, while women are defined in relationship to the household. According to the Pentateuch's grand narrative, this system was instituted by Moses, who addressed only the men of the congregation, saying "do not approach a woman," when he told Israel to remain sexually chaste in anticipation of the encounter with God (Exod. 19:15). Women were normally attached to a household as wives, daughters and daughter-in-laws, and their status depended both on the household and their position in it. Unattached women such as divorcées and widows would normally be expected to marry again.

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[31] See Van Houten, *The Alien in Israelite Law*.

4.4.2 The narratives show that before the monarchy, women could rise to public authority within the household. On the other hand, there were no controls on heads of household, who could abuse women at will. With the consolidation of the monarchy, women were shut out of the hierarchies of political power, but their husbands and fathers could no longer kill them.[32]

4.4.3 Full adulthood was reached at twenty, when one was counted in the census (Num. 1:2–3,18; 1 Chron. 27:23; 2 Chron. 25:5), went into the army (Num. 1:22) and paid the head tax of one-half shekel (Exod. 30:13–14), and Levites began to work in the sanctuary (1 Chron. 23:24, 27; Num. 4:3 has 30, and Num. 8:24 has 25).[33]

4.5 *Slavery*[34]

4.5.1 *Terminology*

The ordinary term for a male slave, *ʿebed*, is qualified as *ʿebed ʿibri*, "Hebrew Slave," with release in the seventh year. Female slaves have two terms, *ʾamah* and *šiṗhah*, which most texts use interchangeably. The term *mas*, "tribute," describes war captives taken for state labor.

4.5.2 *Acquisition*

4.5.2.1 Hebrew slaves are usually acquired as a result of their poverty. Some are debt slaves,[35] like the sons of the widow of Zarephath, whose creditor is about to come and acquire them until Elisha creates an unending supply of oil and directs her to pay off the debt. (2 Kings 4:1). The community returned from Babylonian exile was in such dire economic straits that their sons and daughters became slaves (Neh. 5:5). A second mode of acquisition may be purchase, as by buying the thief who is sold into slavery because he cannot make appropriate restitution (Exod. 22:2). Yet a third mode is by birth: should a master give a Hebrew slave a wife, the children remain the master's after the slave goes free.

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[32] For an examination of this issue, see Frymer-Kensky, *Victors, Victims* . . .

[33] Fleishman ("Age of Legal Maturity . . .") suggests that there is an intermediate stage, from the age of ten, in which young men had partial maturity, making them responsible for their actions and possibly enabling them to marry before twenty.

[34] In general, on slavery see Matthews, "Anthropology of Slavery . . ."

[35] Chirichigno, *Debt Slavery* . . .

4.5.2.2 Foreign slaves could be acquired by war, purchase, or birth. If a besieged city accepts the offer to allow their surrender, the people serve as tribute-labor (Deut. 20:11). Should the city not surrender, men should be killed at capture rather than turned into slaves; women and children can be taken as booty (Deut. 20:12–14).

4.5.2.3 A special case is a woman taken in war for the specific purpose of becoming a wife (see 5.1.1.6 below).

4.5.3 *Treatment*

4.5.3.1 The welfare laws of Leviticus call for treating an impoverished Israelite who becomes a slave like a hired laborer (Lev. 25:39–40) and not to be ruthless (Lev. 25:43); the Israelite who becomes slave to a *ger* should be given the same consideration (Lev. 25:53).

4.5.3.2 Slaves may not be told to work on the Sabbath (Exod. 20:10; 23:12; Deut. 5:14); they are to be circumcised and participate in the Passover and other festivals.

4.5.3.3 The slave is a man's property, and a man has a right to punish his slave, even severely enough to leave him or her bedridden for a day or two, but if the slave dies, the death will be avenged (Exod. 21:20–21).[36] If he destroys the eye or tooth of his slave, male or female, the slave goes free (Exod. 21:26–27).

4.5.3.4 *Wife Slaves*

The *'amah* in Exodus 21:7–9 and the captive bride in Deuteronomy 21:10–14 have a right to be wives. A man who acquires and then rejects them is considered to have abused or betrayed them, and they go free. The *'amah* goes free if her master, taking another wife, does not provide her with food, clothing, and *'onah* (Exod. 21:10–11). Interpreters beginning with the Septuagint and the Targums understood *'onah* to mean "conjugal rights," taking *'onah* as the word for

[36] Westbrook, *Studies* . . ., 89–109. Westbrook argues that "avenged" implies vicarious punishment, that is, the death of the slave owner's child or its ransom, since the slave can be a minor taken for debt. My own sense is that even here, the owner himself bears the punishment. Either way, the law deals with all slaves, not just foreigners without blood avengers.

"season, time." Comparison with Near Eastern laws suggests that *ʿonah* must have been a provision for oil.[37]

4.5.3.5 If a female slave has not been redeemed or emancipated but has been "designated" (*neḥrepet*) to a man, and a man has sexual relations with her, there is a claim (*biqqoret*) and he must bring an expiatory ram. Since she was not free, he is not put to death (Lev. 19:20–22). The term "designated" is unclear; it may refer either to being a pledge for a debt or being assigned for marriage. The law also is ambiguous as to who slept with the slave, the owner or another, and may include all circumstances. The point of the law, in any case, is to protect and control the body of a female slave but not as much as betrothed or free women, sleeping with whom is adultery.[38]

4.5.3.6 If an ox gores a male or female slave, the owner must give thirty shekels of silver, and the ox is stoned (Exod. 21:32).

4.5.4 *Termination*

4.5.4.1 A Hebrew slave can free himself with money or should be redeemed by his close family. The amount that is required to redeem him depends on the years between the time he was bought and the next Jubilee (and not on the debt for which he may have become a slave): the amount per year is computed on the basis of the hire of laborers. If he has not been redeemed, he goes out at the Jubilee (Lev. 25:47–55).

4.5.4.2 A Hebrew slave is supposed to work only six years and go free (*laḥopši*) without payment of the amount for which he was enslaved (Exod. 21:2; Deut. 15:12). The six years of service are considered worth twice the amount that a hired man would have cost (Deut. 15:18). Deuteronomy calls upon the owner to give the freed slave animals, grain, oil, or other foods (Deut. 15:13–15).

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[37] Originally suggested by Paul, *Book of the Covenant* . . . For a full discussion, see Levine, "On Exodus 21,10 . . ." Levine sides with the early interpreters.

[38] For different interpretations, see Loewenstamm, "*bqrt thyh* . . ."; Milgrom, "Betrothed Slave-Girl . . ."; Westbrook, *Studies* . . ., 101–9.

4.5.4.3 According to the Book of the Covenant, if a man sells his daughter as an *'amah*, she goes out if the master, acquiring another wife, does not provide her with her wifely allotment. But she does not go out as slaves do, after six years (Exod. 21:7). Deuteronomy calls for the parallel release of male or female Hebrew slaves (Deut. 15:12). The difference may be the disappearance of sale-marriage, in which the *'amah* would want a permanent arrangement.[39]

4.5.4.4 A slave who entered into slavery single leaves single. If he entered as a married man, his wife goes out with him (Exod. 21:3). If the master gave him a wife and she gave birth to sons or daughters, the woman and the children belong to the master and the man goes out alone (Exod. 21:4). At the Jubilee, both a slave and his children go free (Lev. 25:40–42).

If the slave chooses not to go free because of love of his master or his children, he can become his permanent slave ([*wa*]*'abado le'olam*) by undergoing a public ritual in which he stands before the door or doorposts "before God" (probably a divine symbol) and his master pierces his ears with an awl. (Exod. 21:5–6; Deut. 15:16). Deuteronomy, which restricts ritual to a central sanctuary, simply calls for piercing the ear into the door.

4.5.4.5 Leviticus calls for Hebrew slaves to go out at the Jubilee and return to their own families (Lev. 25:10). At that time, the slave and his children are also freed. The relationship of this release to the seventh year is not clear. It may be that slaves went out in the seventh year of their slavery, but if a Jubilee should arrive in the meantime, it would also release them.

4.5.4.6 Foreign slaves bought from the surrounding nations or from foreigners living in Israel do not go out: they are inherited as property (Lev. 25:44–46).

4.5.4.7 A slave goes free if the owner injures his eye or tooth and probably by extension, any loss of limb (Exod. 21:26–27).

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[39] For female slaves, see most recently Turnham, "Male and Female Slaves . . ."; Carolyn Pressler, "Wives and Daughters . . ."; and Westbrook, "Female Slave."

4.5.4.8 A slave could also be freed by running away. According to Deuteronomy, a runaway slave is not to be returned to its master. He should be sheltered if he wishes or allowed to go free, and he must not be taken advantage of (Deut. 23:16–17). This provision is strikingly different from the laws of slavery in the surrounding nations and is explained as due to Israel's own history as slaves. It would have the effect of turning slavery into a voluntary institution.

5. Family[40]

5.1 *Marriage*

5.1.1 The man "takes" a wife. The father of the man may negotiate the marriage, as with Shechem (Gen. 34). Judah left home and arranged his own marriage; later, he arranged his sons' marriages (Gen. 38). The girl's father had the right to give his daughter to whomever he chose.

5.1.1.1 The father of the girl negotiated a bride-price with the groom or groom's father, with an expected amount the baseline, the *mohar habbetulot*, set at fifty shekels, but with no upper limit. Normally, the bride-price consisted of silver or goods, but it could be services. Othniel acquired Achsah by conquering Kiryath-Sefer (Judg. 1:11–13); David refused Saul's offer of Merob for his fighting the Philistines (1 Sam. 18:17–19), but accepted Saul's offer of Michal for a bride-price of a hundred Philistine foreskins (1 Sam. 18:25), giving him one hundred (2 Sam. 3:14 and the Septuagint of 1 Sam. 18:27) or two hundred (1 Sam. 18:27). Jacob worked seven years for Rachel and Leah respectively (Gen. 29:16–28).

5.1.1.2 The payment of the bride-price might be marked by a banquet (Judg. 14); after the payment, the girl is "betrothed." She owes fidelity and is subject to rules of adultery (Deut. 22:25–26).

5.1.1.3 The actual marriage began when the groom claimed his bride (Gen. 29:21), an occasion that may also have been marked by

[40] See Frymer-Kensky, "The Family in the Hebrew Bible"; Pressler, *Deuteronomic Family Laws . . .*; Rofé, "Family and Sex Laws . . ."; Westbrook, *Property and the Family . . .*

a banquet, given by the girl's father (Gen. 29:22). The groom took the bride home to his tent (Gen. 24:67), room (Judg. 15:1) or *ḥuppah* (Josh. 2:16; Ps. 19:6). In the early days, in extraordinary circumstances, the bridegroom might live in his father-in-law's household, like Jacob with Laban. Much more commonly, the woman came to her husband's house within his father's household cluster.

5.1.1.4 The Near Eastern custom of giving the bride-price to the married daughter is the background of Rachel and Leah's complaint that their father ate up their bride-price (Gen. 31:14–16). Achsah complains that her father gave her away as dry land. He then gave her a field with springs as a marital gift (Judg. 1:14–15).

5.1.1.5 Much more rarely, texts mention a dowry, *šilluḥim*. Pharaoh conquered Gezer and gave it to Solomon for his daughter (1 Kings 9:16); Micah tells Lachish to do the same for the king of Israel (Mic. 1:14). Laban gave his daughters maidservants as their dowry (Gen. 29:24, 29); Hagar, Sarai's maid, may have come to her in the same way. Comparison with Near Eastern texts indicates that dowries would often contain ordinary household goods with which to set up a household.[41]

5.1.1.6 Two laws discuss the treatment of unfree women acquired as wives in divergent ways.[42]

a) The *'amah* of the Book of the Covenant (Exod. 21:7–10) is an Israelite woman sold for this status by her father. If the buyer has designated her for his son, she is treated like any other daughter-in-law, becomes a wife, and is not freed in the seventh year. If the man for whom she was acquired as a wife did not want her, he could "redeem her" to another family but he could not sell her, for his not marrying her was considered a betrayal. If he married another woman, he had to keep providing for his *'amah*; if not, she would go free. The debt for which her father may have sold her is cancelled, but she would not get back any monetary payment to her father, for it was not considered a bride-price. Deuteronomy explicitly frees both male and female Hebrew slaves in the seventh

[41] See Westbrook, *Property and the Family* . . ., 142–64. Westbrook points to second millennium parallels to the sovereign king or group being the party to whom the land is transferred and then given to the purchaser.

[42] For female slaves and the captive bride, see most recently Pressler, "Wives and Daughters . . ."; Washington, " 'Lest he die in Battle . . .' "; Westbrook, "Female Slave."

year, an indication that there were no more *'amah* arrangements for acquiring wives.

b) Deuteronomy provides for capturing a wife in war (Deut. 21:10–14). Brought home, she was to perform transition rituals—shaving her head, cutting her fingernails, and changing her clothes. She was also to "mourn her father and her mother" for a month, after which her captor could consummate the marriage. As with the *'amah* of Exodus, the captive bride could not be treated as an ordinary slave and sold. Changing his mind was considered abuse, and if he did not want her, she would go free.

5.1.1.7 A man might try to bypass the father and acquire a wife by sleeping with her. When Shechem did this, he tried to make amends by offering a very high bride-price, but her brothers killed him and his town (Gen. 34). The Book of the Covenant demands that the seducer pay the regular virgin's bride-price. It allows the father to take it and not give him the girl (Exod. 22:16–17), whereas Deuteronomy makes the father give him the girl (Deut. 22:28–29). In effect, it allows couples to "elope." The man still has to pay the full bride-price, and he is never allowed to divorce.

5.1.2 *Polygyny*

Most men would have only one wife. However, Jacob married the sisters Leah and Rachel, and Elkanah was married to two women (1 Sam. 1:1–8). Classical biblical law does not permit marriage to sisters (Lev. 18:18) but allows polygyny. Deuteronomy considers the man who was married to one woman whom he favored and one whom he did not, but the law is only about the first-born, not about why he married more than one wife. There is no way of knowing how common polygyny might have been.

5.1.3 The wife owed her husband exclusive fidelity. She also owed him her presence. When the *pilegeš* (a secondary form of wife that we normally translate "concubine") left her husband to go back to her father's house, she was considered faithless (*wattizneh ʿalaw*). When he went to get her back after four months, however, it is not in a punitive mode, and he "speaks to her heart" to have her come back (Judg. 19:2–4).

Israel remembers the earlier pre-state period as a time when husbands had enormous powers over wives and fathers over sons (see 5.2.2 below). The husband could "share his wife to spare his life":

Abraham and Isaac passed their wives off as their sisters (Gen. 12, 20, 26); Lot and the Ephraimite host offered daughters to the mob; and the Levite gave them his *pilegeš* (Judg. 19:25). Ordinary adultery rules were suspended when the husband "shared" his wife in an emergency: the Levite was ready to take his *pilegeš* and go the next morning. He did not consider the event the end of his marriage until he realized that she was dead (Judg. 19:28).

5.1.4 *Divorce*

Divorce is not mentioned in the Book of the Covenant, which has almost no marital law. Deuteronomy assumes divorce and a bill of divorce (*seper keritût*). Jeremiah predicts that adulteress Israel will get a bill of divorce (Jer. 3:8) and Deutero-Isaiah points to its absence as a sign that Israel has not really been divorced (Isa. 50:1–2).

5.1.4.1 Deuteronomy mentions two reasons for divorce: the husband may find something wrong (*ʿerwat dabar*) with his wife or he might "hate" her. The law, which is about remarriage, provides no details, but it would seem that in divorce for cause, the husband would keep her dowry and her bride-price; if he divorced her without cause, because he simply "hated" her, she would leave with her dowry and bride-price (Deut. 24:1–3).

5.1.4.2 Deuteronomy denies men the right to divorce their wives in certain circumstances:

(a) A man who falsely accused his bride of not being a virgin (Deut. 22:19).
(b) A man who seduces an unbetrothed virgin pays the bride-price and cannot divorce her (Deut. 22:29). He abused her (*ʿinnah*) by not marrying her properly.[43]

5.1.5 *Remarriage*

A man may not remarry a wife whom he divorced after she was divorced or widowed by a second husband.[44] Deuteronomy does not allow a man to remarry his wife after he divorced her for cause

[43] The action of the man is often translated as "rape", but the law lacks the word "overpower" that the rape law just before it uses (Deut. 22:25).

[44] For different interpretations, see Otto, "Wiederherstellung . . ."; Pressler, *Deuteronomic Family Laws . . .*, 44–62; Westbrook, "Restoration of Marriage . . ."

(*ʿerwat dabar*), she married another man, and she became free again when the second husband died or divorced her without cause ("he hated her"): she has been defiled (*huṭṭammaʾah*) and it would be an abomination (*toʿebah*: Deut. 24:1–4). The reason for this particular prohibition may be economic—a husband, having kept her first dowry and bride-price when he divorced her for cause, should not be allowed to then acquire her second dowry and bride-price, which she kept when widowed or divorced without cause. The abomination and defilement language point to a prohibition of all such cases of remarriage, a view expressed by Jeremiah, who asks whether a first husband can remarry his ex-wife after an intervening marriage to another husband and answers that such action would pollute the land (Jer. 3:1).

5.1.6 *Levirate*[45]

If brothers were still living together and one of them died without children, his brother would sleep with his brother's widow in order to engender a child who would carry on the dead man's name and claim his inheritance (Deut. 25:5–6). Even though sleeping with one's sister-in-law is a forbidden relationship, incest rules were suspended for the levirate.

5.1.6.1 The levirate is an important plot element in the story of Tamar and Judah (Gen. 38). When Tamar's husband Er died, her father-in-law commanded his second son, Onan, to perform the levirate. This involved considerable economic sacrifice by Onan. If only two sons remained at the time of Jacob's death, his estate would be divided into three portions, and as eldest, he would get a double share, or two thirds of his father's estate. However, if he engendered an heir for Er, that boy would inherit his father's double share, or one half of Jacob's estate, and Onan would receive only one quarter. Onan was not willing to damage his economic future and would withdraw his semen at ejaculation (*coitus interruptus*) to prevent conception. For this, God killed him. Judah should then have given his third son, Shelah, to Tamar, or, since his son was young, should have performed the levirate himself. He, however, was afraid that Tamar was a fatal bride, and so he lied when he told her to wait

[45] See Pressler, *Deuteronomic Family Laws . . .*, 63–74; Westbrook, *Property and the Family . . .*, 69–89.

in her father's house until Shelah would grow up. When Tamar realized what had happened, she disguised herself as a prostitute in order to trick Judah into performing the levirate. Judah was ready to execute the pregnant Tamar for faithlessness, but realizing that the child was his, he declared her more in the right than he and brought her into his house. He never slept with her again, as the levirate is copulation until conception, not marriage. As may have happened in other levirates, the children may have inherited their father's share, but they were (also) considered Judah's children.

5.1.6.2 Deuteronomy provides for a ritual of release in which a widow and her brother-in-law declared that he did not want to marry her in front of the elders at the gate. She would take his sandal off his foot, spit in his face, and declare, "Thus shall be done to the man who will not build up his brother's house." He then became known as the "house of the removed sandal" (Deut. 25:7–10). The humiliating nature of this ritual indicates that it was intended to shame men into performing the levirate rather than undergo the ritual.[46]

5.2 *Children*[47]

In the biblical family, generation prevails over gender. Both parents have authority over their children.

5.2.1 Honor father and mother is one of the Ten Commandments. Treating the father or mother without honor earns a communal curse (Deut. 27:16). A child who struck either father or mother incurred bloodguilt and was to be executed (Exod. 21:15), as was a child who cursed a parent (Exod. 21:17; Lev. 20:9).

5.2.1.1 A son was not to humiliate his father by sleeping with his wife (Deut. 23:1). Translators often state "former wife," but the law refers to any wife other than the mother. The man who lies with his father's wife, thus stripping him bare, earns the communal curse in Deuteronomy 27:20. Several stories indicate that sons could convey the message that their father's authority was superseded by asking for or taking his wives. Jacob's son Reuben slept with Jacob's

[46] In post-biblical times, however, the humiliating aspect was lost and men were encouraged by law to perform the ritual, known as *ḥalişah*, in order to release the women to marry again.

[47] Fleishman, *Parent and Child* . . .

consort Bilhah (Gen. 35:22), and the story of Absalom's revolt includes an incident in which David left ten concubines to guard the harem when he fled the city (2 Sam. 15:16). Absalom's counselor Ahitophel suggested that he sleep with the concubines "so that Israel will hear that you have contempt for your father," and Absalom did so publicly (2 Sam. 16:21–22). When David reconquered Jerusalem, he supported the concubines in detention but did not sleep with them, making them virtual widows until their death (1 Sam. 20:3). The concubine ploy was tried again by David's son Adonijah, who asked Bathsheba to ask Solomon for Abishag for wife (1 Kings 2:17). When she did, Solomon took an oath to kill Adonijah and did (1 Kings 2:17–25).

5.2.1.2 A son could dishonor his father by being a *nabal*, one who willfully ignored Israel's rules of propriety (Prov. 15:20), and by being a glutton and drunkard (Deut. 21:18–23).[48] A daughter could dishonor her father by not being chaste.[49] A girl accused and convicted of not being a virgin at marriage is stoned at her father's door because "she committed an abomination by being faithless to her father's house" (Deut. 22:20–21).

5.2.2 Israel remembers a time in which parental rights over children were absolute, even including the right to kill one's child, as with the Binding of Isaac (Gen. 22) or the sacrifice of Jepthah's daughter (Judg. 11), or Judah's decree of execution of his daughter-in-law Tamar (Gen. 38:24). The father in the old days might also make his daughter a prostitute (Lev. 19:29).

5.2.2.1 *Father's Rights*

Israel's classical law regulates and limits the rights of the father. Leviticus decrees that a father cannot turn his daughter into a prostitute (Lev. 19:29), and Deuteronomy limits the father's ability to control his children, limiting choice by legal decree and transferring the authority to execute to a council of elders.

(a) First-born son. Genesis reflects Near Eastern law in which fathers could designate a son as first-born. Isaac on his deathbed had a favored blessing to give a son (Gen. 27); Joseph dreamed that he would be the dominant son; his father's gift of a special robe indicated the same (Gen. 27). Deuteronomy prohibits a man from

[48] Bellefontaine, "Rebellious Son . . ."
[49] Frymer-Kensky, "Virginity in the Bible."

making the first-born of his favored wife his first-born; instead, it demands that the first to be born be made the first-born (Deut. 21:15–17).

(b) Giving the daughter in marriage. Deuteronomy requires a man to allow his daughter's seducer to pay the bride-price and marry her (Deut. 22:28–29). By contrast, Exodus allowed a father to accept the bride-price and refuse the girl (Exod. 22:16; see 8.3.2–8.3.3 below).

(c) Life or death of son. Parents could no longer decree death for the child. Parents could denounce a totally recalcitrant, uncontrollable and disgraceful son before the elders and the elders would have the son stoned (Deut. 21:18–21).

5.2.3 Parents and children were not to be executed for each other's misdeeds (Deut. 24:16). The rule is cited by the Deuteronomic historian when King Amaziah slew the men who had killed his father but not their sons, "as it is written in the book of the law of Moses" (2 Kings 14:6).

5.2.3.1 The Book of Joshua records an early exception to this rule: Achan, convicted of violating the *ḥerem* at Jericho, was stoned and then burnt together with his sons and daughters and his oxen and asses (Josh. 7:24–25). The reason is the nature of *ḥerem*: the presence of a *ḥerem* object turned the whole household into a *ḥerem*. They were stoned for violation of the *ḥerem* and were then burned to get rid of all traces of *ḥerem* contamination.

5.2.3.2 The right to kill children for parental misdeeds is reserved to God, who is said to punish till the third or fourth generation (Exod. 20:5).

5.2.4 *Birth*

5.2.4.1 *Surrogacy*

As elsewhere in the ancient Near East, Israel knew of a custom in which a childless woman gave her husband a slave to conceive a child. One case, Hagar, did not work well, and the child was considered Hagar's rather than Sarai's (Gen. 16). In the other two cases, Bilhah the slave of Rachel and Zilpah the slave of Leah (Gen. 30:5, 8, 13) the child was both the slave's and the slave owner's.[50]

[50] Frymer-Kensky, "Patriarchal Family Relationships . . ."

5.2.4.2 Having a child with a prostitute, a custom known from elsewhere in the ancient Near East, is recorded as the parentage of Jepthah (Judg. 11).

5.2.4.3 In both surrogacy and prostitute maternity, the child was considered legitimate if the father brought him home. Nevertheless, at Sarai's request (backed up by God), Abraham sent Hagar and Ishmael away, freeing them from slavery in the process, and Jephthah's brothers expelled him (Judg. 11:1–2).

5.2.4.4 Yet another rare way of acquiring children was adoption.[51] No laws or narratives about adoption exist, but it served as the basis for the metaphorical relationship of God and Israel in Jeremiah (3:19) and of the relationship between God and David in Psalm 2. God's statement to David, "You are my son, today I give birth to you" (Ps. 2:7), and God's statement to foundling Jerusalem (Ezek. 16:6), "In your blood, live! In your blood, live!" may be ritual adoption formulae.[52]

6. Property and Inheritance

6.1 *Tenure*

The land of Israel belonged to God (Lev. 25:23), who transferred it to Israel in the time of Moses and Joshua. Each family received its portion when the land was divided by lots (Num. 26:52–54; 33:54; Josh. 13–22). Legal restrictions were imposed on the alienation of ancestral land outside the family and on exploitation of the land by its owner. During the monarchy, kings could grant land to their retainers (1 Sam. 8:14) but could reassign it if the donee was guilty of disloyalty (2 Sam. 9:9–10; 16:1–4; 19:25–30).[53]

6.1.1 *Restrictions on Alienation: Redemption and Jubilee*[54]

Leviticus 25 deals with successive stages of impoverishment. If a person was forced to sell his plot, the buyer had to allow for "redemption"

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[51] Bord, "L'adoption dans la bible . . ."
[52] According to Malul, "Adoption . . ."
[53] See Ben-Barak, "Meribaal . . ."
[54] For an earlier comprehensive study, see North, *Jubilee* . . .; more recently, Westbrook, *Property and the Family* . . ., 36–68.

or buy-back (Lev. 25:23–24); and the "redeemer," the nearest kin, was encouraged to buy the land back (Lev. 25:25). It would be best if the redeemer returned it to the original seller, but even if the redeemer kept the land, it would at least stay within the family.

6.1.1.1 Sales were not eternal, for the land would return to its original owners at the Jubilee, which was to be proclaimed every fifty years (Lev. 25). Sale prices were to reflect the number of years in which produce could be gathered before the Jubilee: the more remaining, the higher the price (Lev. 25:12–17).

6.1.1.2 The original seller had the right to buy the land back. Since the buy-back was closer to the Jubilee, and the buyer enjoyed harvests, the price would be less (Lev. 25:28).

6.1.1.3 Houses in walled cities could be sold forever and became the permanent possession of the buyer unless redeemed in the first year (Lev. 25:29–30). Houses in open villages and in Levitical cities were released at the Jubilee, but the unenclosed land around Levitical cities could not be sold (Lev. 25:31–34).

6.1.1.4 None of the narratives record a Jubilee. Redemption is known: Jeremiah's cousin Hanamel asks him to buy his field in Anatot, "because yours is the rule of redemption to buy" (Jer. 32:7), adding "for yours is the rule of inheritance and yours is the redemption" (32:8). The closest relative, the one who would inherit the land in the absence of sons, is the one with the first responsibility to redeem land and is also given the right of first purchase. Little evidence for the Jubilee exists, but Mesopotamian evidence suggests that perhaps some sort of land restitution may have happened sporadically, at a royal decree. The Jubilee laws, like other Pentateuchal legislation, regularize the practice and remove it from royal control.

6.1.2 *Restitution of Abandoned Land*

6.1.2.1 Israel's famines caused people to leave the land. Others worked their fields until they reclaimed them on return. Elisha warned the great woman of Shunem (2 Kings 8:1–6) to leave in anticipation of famine. When she returned seven years later, she came before the king "to cry for her house and for her land" (2 Kings 8:3). Her

case was not quite typical, for she came as the king was listening to Gehazi (Elisha's servant) tell the story of Elisha's bringing a dead boy back to life. Gehazi pointed her out as the mother of the boy, and the king sent an officer to restore to her both her land and the harvests harvested during her absence.

6.1.2.2 Returning after exile underlies the book of Ruth. Naomi came back when there was food, and during that harvest, she and Ruth survived by gleaning. After the harvest, Naomi wanted to sell her husband's fields. Ruth offers herself to Naomi's near kinsman, Boaz, who betroths her. He cannot purchase Naomi's land until it is relinquished by the closest kinsman, who had the triple right of inheritance, redemption, and first purchase. Boaz convinces the kinsman to relinquish his right by proclaiming his own intention to beget an heir to that land with Ruth (reading with the Kethib).[55]

6.1.3 *Restrictions on Exploitation*

6.1.3.1 *The Sabbatical Rules*

The land was to be fallow every seventh year (Exod. 23:11), both fields and vineyards (Lev. 25:2–4). During that year, one could gather from uncultivated land but not the incidental growth of fallow fields (Lev. 25:5–6); there, one should let the animals graze (Lev. 25:6). The harvest of the sixth year had to last until the harvest of the eighth year (Lev. 25:19–22). The rules of the Sabbatical year also applied to the Jubilee year (Lev. 25:11).

6.1.3.2 *Gleaning*

The edges of fields were not to be harvested, nor vineyards fully picked. Dropped fruit and produce was left for the poor and the resident alien (Lev. 19:9–10).

6.1.3.3 *ʿorlah*

The first three years' crop of a tree were not to be eaten. The fourth year's fruit was for God, and only in the fifth year could the owner eat the yield (Lev. 19:23–24).

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[55] There have been many different interpretations of the law in Ruth 4. See, e.g., Beattie, "Israelite Legal Practice"; Thompson, "Some Legal Problems . . ."; Westbrook, *Property and the Family . . .*, 69–89.

6.2 *Inheritance*

Sons inherit from their father. If there are no sons, then the man's brother inherits; if no brothers, an uncle, and if no uncles, another kinsman (Num. 27:11). In certain circumstances, daughters could inherit (see 6.3.3 below). The heirs divided the estate among themselves, until which point they held it in common ownership.[56]

6.2.1 Several passages refer to a man's giving directions to his household in anticipation of his death (2 Sam. 17:23; 2 Kings 20:1; Isa. 38:1). This was an opportunity for a man to give gifts in anticipation of death (such as to his wife), to issue orders about the usufruct of his property, and, in the early days, to designate his *bekor*, his "first-born." Later, it was an opportunity to dictate inheritance (Ben Sira 3:24).

6.2.2 The *bekor*, the chief heir or "first-born," received a double share in the paternal inheritance (Deut. 21:17).[57] The first-born son was presumed to be the *bekor*, the chief heir, but the stories of Isaac's blessing (Gen. 27), and of Jacob blessing his grandchildren (Gen. 48:12–22) show that in the ancestral period, Israel shared the Near Eastern custom of giving a man discretion to choose who would be the "first-born."

Jacob's preferential treatment of Joseph and Joseph's dreams indicate that a man could prefer the first-born of his favorite wife over the first-born of any other wife. Deuteronomy takes away the discretion of the father to do so, demanding that the first to be born be appointed the first-born (Deut. 21:15–16).

6.2.3 *Epiklarate*

Daughters inherit from their sonless father. A legal storyette relates that the five daughters of Zelophehad appeared before the congregation to ask to inherit from their father, maintaining that their father's name should not be lost since he had not participated in the Korah rebellion. God then creates the law of inheritance: sons inherit; if there are no sons, daughters; if no daughters, a brother;

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[56] See Kitz, "Undivided Inheritance . . ."

[57] This is by far the most likely meaning of *pi šenayim*. However, two-thirds has also been suggested. See Davies, "The Meaning of *pi šᵉnayim* . . ."

if no brothers, an uncle (Num. 27:1–11). A separate storyette relates that the clan heads of the tribe to which the daughters of Zelophehad belonged were concerned that the women might marry members of other tribes, with the result that the land that they inherited would pass to those tribes. At the Lord's bidding, Moses decreed that any daughter who inherits land must marry a man from her father's tribe (Num. 36:1–9).

6.3 *Widows*

The degree to which a widow had a claim to her dead husband's land is a matter of some dispute.[58] Sons, or daughters in the absence of sons, may have taken possession after their father's death and supported their mother with the proceeds, or they may not have taken possession until after their mother's death. No statements suggest that widows inherit. If there were no children, and she was still young enough to bear, she might be reattached by the levirate. In the absence of a levirate, a male relative was expected to inherit, but a widow may have retained rights to the harvests (usufruct) without the right to alienate the land. In the Book of Ruth, Naomi had the right to sell her husband's land (or the rights to its harvests), with the nearest kin having the right of first purchase. One way this could happen would be if the husband gave his wife the land before he died, but the Book of Ruth gives no hint that this was the case.

6.3.1 One of the two surviving legal ostraca from ancient Israel is a petition written by a childless widow to the local authority pleading for him to give her a field "about which he spoke to Amasyahu." The text mentions "my husband," Amasyahu, and "his brother," with no indication whether two or three men are involved or whether the field the official gave to "his brother" is the same as the patrimony (*naḥalah*) that she is requesting. The original editors of the ostracon suggest that she is asking him to disregard the law, but commentators have argued that widows may have been given the use (if not the title) of some of their dead husbands' property.[59]

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[58] Osgood, "Women and the Inheritance of Land . . ."

[59] For this issue, see Bons, "Konnte eine Witwe . . .?"; Wagenaar, " 'Give in the Hand . . .' " Wagenaar suggests that the ostracon refers to one field: the official had promised her husband land which he gave to her husband's brother. In this case, the land had not even been the husband's, and there is no real case of inheritance.

7. Contract

No contractual documents survive from ancient Israel, but Jeremiah refers to sales documents: "fields will be bought with silver with writing in a scroll and sealing and witnessing" (Jer. 32:44). By its nature, the Bible does not contain contractual records, but several laws deal with contractual obligations, and there are references to contracts in the narratives.

7.1 *Sale*

Sale of land is recorded in several narratives: Abraham's purchase of the Cave of Machpelah as a burial ground (Gen. 23:3–10); Jacob's purchase of land at Shechem (Gen. 33:18–20); David's purchase of the threshing floor from Araunah (2 Sam. 24:24); Omri's purchase of the hill of Samaria (1 Kings 16:24); Jeremiah's purchase of his kinsman Hanamel's land (Jer. 32:6–15); and Boaz' purchase of Elimelech's field (Ruth 4:9). These enable us to construct the essential features of a land sale. It took place in public, before witnesses (Gen. 23:10; 13; Ruth 4:1; Jer. 32:12). The buyer weighed out the silver (Gen. 23:16; Jer. 32:9), wrote out a bill of sale, and had it sealed and witnessed, checking the weight of the silver on a scale (Jer. 32:10). Jeremiah wrote two documents, one sealed "by law and command" (32:11) and one open, gave them to his secretary Baruch in front of witnesses, and ordered them to be placed in a clay pot so that they would last a long time (Jer. 32:11–14). Ruth records an old custom in which the land was then transferred symbolically by the handing over of a sandal (Ruth 4:7).

7.1.1 Jeremiah indicates the essence of sale: "fields will be bought with silver with writing in a scroll and sealing and witnessing" (Jer. 32:44). Payment of the price is necessary to transfer permanent ownership. In acquiring the Cave of Machpelah, Abraham takes care to make the transfer a sale, which presumably would be forever, and not a gift, which might have to be returned on demand or after the death of the donor. Abraham therefore insists on paying at full price (Gen. 23:10). The form of this transaction is reminiscent of the "dialogue documents" prominent in the Mesopotamian periphery in the first millennium,[60] but features of the sale, particularly the promi-

[60] Petschow, "Zwiegesprächsurkunde . . ."

nence of the Hittites as agents in the transaction, point to an ancient biblical tradition.

7.1.2 Sale of persons arose through debt (see 7.4 below).

7.2 *Loan*[61]

Loans in the Bible are poverty loans; commercial arrangements between merchants are not dealt with. Loans enable the poor to stave off disaster (Deut. 15:7–8; Prov. 3:27–28). One is to lend money freely even when the Sabbatical year is approaching and debts will be canceled (Deut. 15:7–11).

7.2.1 *Terminology*

The terminology of loans is complicated. The creditor himself is a *nošeh*. Two words describe the loans, *ḥabol* and *ʿaboṭ*. The verb from *ʿaboṭ* means "to lend," the verb from *ḥabol* "to seize," but the two words do not indicate different pledges.

7.2.2 *Interest*[62]

Loans to Israelites were never to be made at interest (Exod. 22:24). This included loans of silver or food (Lev. 25:35–38), interest taken in silver or anything else, and interest deducted in advance (*nešek*) or collected at repayment (*tarbit*) (Deut. 23:20). Deuteronomy does allow *nešek* to be collected from a foreigner (*nokri*: Deut. 23:21).

7.2.3 *Repayment*

Loans are repaid at harvest. Amos is angry that loans are collected in grain (Amos 5:11): payment should only be collected if the borrower has enough surplus to be able to convert some into silver to repay the debt. Someone who has to pay in grain suffers hardship through repayment.

7.2.4 Loan of an animal for use is regulated by Exodus 22:13–14. If the animal is injured or died, the borrower must make full restitution to the owner, unless the owner was also with the animal.

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[61] Frymer-Kensky, "Israel."

[62] Gamoran, "Loans on Interest"; Neufeld, "Prohibitions against Loans . . ."; Seeligman, "Lending, Pledge and Interest . . ."

7.3 *Pledge*

The two possible forms of security for loans are the possessory pledge, which the borrower gives the lender at the time of the loan, and the hypothecary pledge, which remains in the borrower's possession unless he defaults on the loan. The term *ḥabol*, "pledge," refers to the object seized at default; *ʿaboṭ* refers to the loan equivalent. Neither term designates a possessory pledge.

7.3.1 Judah offers the disguised Tamar an *ʿerabon* that he will pay her for her sexual services (Gen. 38:17–18). *ʿerabon* (which passes into Greek as *arrabōn*) is a technical term for security given by the purchaser on credit and forfeitable if payment is not made.

7.3.2 Almost anything could be used as a pledge. Very poor people might pledge the cloak on their backs. The laws try to protect debtors from extreme consequences. Creditors could not come into a man's house to collect a pledge (as in default of the loan); they had to stand outside and wait for the debtor to bring the pledge out (Deut. 14:10). Milling equipment, which provided life's basic necessities, could not be pledged (Deut. 24:6).

7.3.3 A widow's garment could not be taken in pledge (Deut. 24:17). A man's could, but his (the poor man's only garment) was to be returned at sunset (Exod. 22:25; Deut. 24:12). The creditor was not to lie down on the cloak at night (Deut. 24:12), even though the creditor himself might not be rich and might have use for a second cloak. The sanctions are divine (Exod. 22:27; Deut. 24:12–13). Amos complains that people "stretch themselves out at every altar on garments taken in pledge" (Amos 2:8). The writer in the letter from Meṣad Hašavyahu pleads to a local authority to return his cloak, for his supervisor came at harvest and took his garment and has not returned it, even though the writer was entirely innocent and free of any claim (*niqqiti*). He asks the local authority to make him give it back.

7.3.4 *Foreclosure*

Ultimately, should the debt remain, the creditor could seize all the debtor's property (Ps. 109:11–12). The prophets decry the formation of large estates through foreclosure of debts or forcing of distress sales to pay the debts. This process may have begun early, for Judges

11:13 relates that Jephthah's army was composed of "empty ones," a term that probably means those emptied of their property. David's army was similarly composed of "everyone who has a creditor" (1 Sam. 22:2), that is, people who had already lost their lands and were fugitives.

It is not clear whether the person of debtors could be seized, but certainly their children could. Elisha encounters a desperate woman who cries out that "the creditor is coming to take my two children as slaves" (2 Kings 4:1–7). Much later, after the return from Babylon, the people cry out how bad matters have become: "some have eaten their produce; others have set their fields and houses as security in order to eat in the famine, some have borrowed money." As a result, "we now 'conquer' our sons and daughters to be slaves and some of our daughters have been captured" (Neh. 5:1–5).

7.3.5 Deutero-Isaiah uses this familiar situation as a metaphor for Israel's exile in Babylon, reminding Israel that they were not sold off for debt and will not need silver to be redeemed (Isa. 50:1–2).

7.3.6 *Remediation*

The old woman "cries out" to Elisha; the group in Nehemiah "cries out" to the people. The debtor who does not get his cloak back will "cry out" to God (Exod. 22:26). Deuteronomy 15:9 gives the same warning to one who refuses to lend money near the Sabbatical year. Crying out is a demand for remediation. Personal remediation takes the form of *ge'ûlah*, "redemption," the right of a kinsman to buy back land when the original seller sells it. The law may not have required the redeemer to return the land to the original seller. Leviticus 25:50–52 prescribes that should one become the debt slave of a *ger*, the nearest kinsman is to reckon the amount of labor the slave has performed and pay back the amount left until the purchase price or amount of debt is reached.

7.4 *Debt and Social Justice*[63]

Many of the rules of social justice concern debts and the resultant debt slavery. Israelites should lend money to the poor even when the Sabbatical year is approaching and they cannot collect (Deut. 15:7–11).

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[63] Weinfeld, *Social Justice* . . .

Should the debt result in debt slavery, the debt slave must be treated like a hired laborer (Lev. 25:39–40). The Hebrew slave becomes free in the seventh year, even though the debt has not been repaid. In addition, Deuteronomy calls for the cancellation of debts every seventh year, though debts can be collected from foreigners (*nokri*).

7.4.1 *General Remission of Debts and Release of Slaves*

Edicts effecting release of debts and slaves are well known the ancient world,[64] and one such edict is recorded in the Bible. In Jeremiah 34:12–16, King Zedekiah made a pact with the people to release their Hebrew slaves. Jeremiah reports that this was in accord with the rule of the seventh year, which had been in effect since the Exodus from Egypt but had not been followed. The people released their slaves, but they promptly re-enslaved them. Their actions may have been venal, or they may have been recognition that destitute people have no choice other than slavery.

7.4.1.1 Another such release comes from the restoration period. After hearing the outcry of the impoverished and enslaved Israelites, Nehemiah censured the creditors and demanded that the slaves be released. In addition, Nehemiah demanded that the debtors' fields be returned and that the debts be canceled. The creditors agreed under oath and did so (Neh. 5:6–13).

7.4.1.2 *Jubilee Year*[65]

Leviticus calls for a jubilee every fifty years, marked by the blowing of trumpets on the Day of Atonement. During this year, "liberty" is proclaimed for all the inhabitants. Slaves are released and return to their landholdings, which revert to their original owners. The Jubilee is also observed as a Sabbatical year, without agricultural activity (Lev. 25:8–13). The dating of this regulation has been the subject of considerable dispute. The Mesopotamian kings issued edicts of release, and it is unlikely that kings would give up their prerogative to do so. Like Deuteronomy's rules of minimal kingship, the Levitical concept of the fifty-year Jubilee restricts the role of the monarch,

[64] Chaney, "Debt Easement . . ."

[65] North, *Sociology* . . .; Westbrook, *Property and the Family* . . ., 36–57; Amit, "The Jubilee Law . . ."

limiting his economic power by making the release periodic, not dependent on the initiative of governing authorities. This rule may reflect a very early agrarian relief that was superseded by royal-initiated *deror* ("liberty"); it may be the idea of someone disillusioned with monarchy; or it may come from the post-monarchic periods.

7.5 *Suretyship*

Guarantors are not mentioned in the laws. Proverbs, on the other hand, advise people strongly not to "strike the palm" (*toqeʿa kap*), that is, to stand surety (*ʿoreb*) for someone not in the family, and the many proverbs about this matter indicate that this was a fairly widespread practice. Only a fool "strikes the palm" (Prov. 17:18), because it is likely to go ill for the guarantor (Prov. 11:15). Should the guarantor not have the wherewithal to pay off the debt, his own goods will be taken, even "your bed from under you" (Prov. 22:26–7), even his garment (Prov. 20:16). Proverbs therefore advises that if one has given surety, one should not wait until the debt is due but go immediately to his fellow to beg to be released from the arrangement (Prov. 6:1–3).

7.5.1 The narrative in Genesis 44 refers to a similar practice within the family, though not in the context of loans. Judah is guarantor that he will bring his brother home. When Joseph wants to detain Benjamin, Judah offers to stay or be taken into slavery instead of Benjamin.

7.6 *Hire*

The technical term for hire is *śakar*, which is used to describe both the action of hiring and the hiring fee.

7.6.1 Hire of persons is for a period of time, during which they are under the command of the hirer. Thus kings hire mercenaries (2 Kings 7:6), Micah hires a Levite as his priest for an annual wage plus food and clothing (Judg. 17:7–12; 18:4), and Leah "hires" Jacob for a night from Rachel for the price of her son's mandrakes (Gen. 30:14–16). Workers were hired on a daily basis; the law stipulates that his wages are to be paid on the same day (Lev. 19:13; Deut. 24:15).

7.6.2 Injury to hired animals is mentioned by Exodus 22:14, but the provision is obscure.

7.6.3 Judah contracts for the services of what he thinks is a prostitute, promising as payment a kid goat from his flock (Gen. 38:15–17). The technical term for a prostitute's fee was *'etnan zonah* (Deut. 23:19).

7.7 *Deposit*

7.7.1 Exodus 22:6–8 discusses loss of an item deposited through theft. It lays down a procedure for determining whether the depositee's claim of theft by a third party was fraudulent; the exact nature of the procedure, whether by oath, oracle or other means, is unclear.[66]

7.7.2 A specialized form of deposit is the herding contract, known also from Mesopotamia, whereby a shepherd is entrusted with the owner's animals in return for a share of the herd's increase. Exodus 22:9–12 holds the shepherd liable for theft of individual animals but not for losses through death or injury, provided that he swears an oath denying fraud, nor by wild beasts, provided that the shepherd brings the remains of the devoured animal as evidence. Jacob negotiates a herding contract with Laban based on the same principles, albeit on apparently disadvantageous terms (Gen. 30:27–43). Jacob later points out that he did not bring carcasses to Laban in order to take advantage of the exemption for wild beasts (Gen. 31:39).[67] Joseph's brothers, on the other hand, bring his bloody cloak to Jacob to "prove" that he was killed by a wild animal (Gen. 37:32–33).

7.7.3 An unusual contract of deposit occurs where a soldier agrees to guard a prisoner of war for another soldier. He also agrees to a special penalty if the prisoner escapes: death or the payment of a talent of silver (an impossibly high sum). When he in fact defaults, he unsuccessfully appeals to the king, who regards his contract as valid and binding (1 Kings 20:39–43).

7.8 Terms are recorded for two marriage contracts between groom and father-in-law: Laban agrees to give Jacob his daughters in return for service as a shepherd (Gen. 29:15–28); Saul agrees to give David his daughter in return for military exploits (1 Sam. 18:25–27; 2 Sam. 3:14).

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[66] Cf. Otto, "Depositenrecht . . .," and Westbrook, "Deposit Law . . ."
[67] Finkelstein, "Herding Contract . . ."

7.9 The most extraordinary contract recorded in the Bible is between two mothers, who agree to eat each other's babies during a siege (2 Kings 6:25–31). It was considered sufficiently valid for one of the parties to petition the king to enforce the contract, although the king refuses to do so.

7.10 Promissory oaths are an important source of unilateral obligation. Abraham adjures his servant to follow his instructions for finding a bride for his son (Gen. 24:2–9). Saul takes oaths (1 Sam. 19:6) and has David swear them (1 Sam. 24:21–22). David spared Mephibosheth because of his oath to Jonathan (2 Sam. 21:7–8).

7.10.1 Oaths give rise to strict liability. Once the Israelite spies took an oath to preserve Rahab and her family from the *ḥerem*, all of Israel was obligated to spare them (Josh. 2:12–14). Likewise, once Israel had sworn a treaty with the Gibeonites, under the deception that they had come from far away, they could not break their oath (Josh. 9:1–21). Saul, however, established the principle that kings could override promissory oaths (1 Sam. 14).

7.10.2 Breach of oath can lead to human as well as divine sanctions. Solomon has Shimei swear an oath to stay in Jerusalem on pain of death; when he breaks it, Saul has him killed (1 Kings 2:36–46). Retribution can be both human and divine: famine came because Saul killed Gibeonites despite his oath to them; it ended when the Gibeonites executed people from Saul's house ("the house of bloodguilt") that David handed over (2 Sam. 21:1–10).

8. Crime and Delict

8.1 *Overview of Penalties*

Penalties included both human sanctions, overseen by the community, and divine sanctions, which were left to the hand of God.[68]

8.1.1 Human sanctions could be capital, corporal, talionic, or pecuniary. A distinctive feature of biblical law is that property offenses entail loss of property: the punishment is always pecuniary. Capital

[68] For an overview, see Greenberg, "Crimes and Punishments."

punishment is never imposed for property offenses, but is reserved for homicide, adultery, and (other) religious infractions. Pecuniary sanctions range from equal restitution to fivefold damages. Slavery is prescribed only for a thief who cannot pay the pecuniary penalty (Exod. 22:2). Corporal punishments are very limited. Where flogging was prescribed, the number of lashes could vary "according to his wickedness" but could not exceed forty lashes, for the sake of the culprit's dignity (Deut. 25:3).

8.1.2 Execution could be followed by further indignities to the corpse. A murderer can be impaled after execution, but only until nightfall (Deut. 21:22–23). Joshua impaled the king of Ai in this way, but also only until evening (Josh. 8:29). David treated the murderers of Ishbosheth even worse, first cutting off their hands and feet and then impaling them (2 Sam. 4:12). After Achan and his family were stoned, their bodies and their booty were burned (Josh. 7:24–25). But burning bodies was regarded as a horrific act (Amos 2:1–2; cf. 2 Kings 3:27).

8.1.3 The most serious divine sanction is *karet*, extirpation of lineage, reserved for direct offenses against God, such as apostasy, necromancy, and incest.[69] It may be cumulative with human sanctions.

8.1.4 "Bloodguilt" (*damim*) is incurred by certain offenses. The perpetrators have to die, but the text does not always indicate whether execution is by people or God.

8.1.5 *Pollution*

Certain crimes were seen as polluting the land, with important consequences for the nature and execution of penalties. The land had to be kept pure, for God dwelled in it in the midst of Israel (Num. 35:34). The polluted land "vomited out" the earlier inhabitants; if Israel pollutes the land, they will lose it (Lev. 18:24–30).

8.1.5.1 Sexual offenses were a major pollutant. A father should not make his daughter a harlot so that the land will not become full of depravity (Lev. 19:29). The sexual relationships forbidden in Leviticus 18, such as incest and bestiality, would pollute the land, which would

[69] Frymer-Kensky, "Pollution, Purification and Purgation . . ."; Wold, "The Kareth Penalty in P . . ."

also happen if a man divorced his wife and remarried her after she was divorced or widowed by a second husband (Jer. 3:1).

8.1.5.2 *Bloodguilt*
The greatest contaminant was the blood of murder victims. To prevent this contamination, Israel had to execute murderers (Num. 35:33). Cities of refuge isolated the contamination. A murderer was not allowed to stay there, but an accidental homicide had to stay to quarantine the miasma of blood pollution attached to the killer. Should a corpse be discovered and the killer not be detected, the elders of the nearest city were to decapitate a heifer over an eternally flowing stream, avow their innocence, and pray that God not let the bloodguilt settle on the land (Deut. 21:1–9).

8.1.5.3 A man's body, hung or impaled after execution, must be cut down at nightfall, "so that you will not pollute your land" (Deut. 21:22–23).

8.2 *Homicide*[70]

The one who strikes another in secret incurs the communal curse in Deut. 27:24. A murderer must be put to death (Exod. 21:12; Lev. 24:18), a rule that extends also to animals (Gen. 9:5), so that an ox that gores someone to death is stoned and its flesh may not be eaten (Exod. 21:28). The explicit reason is that humans are the divine image (Gen. 9:6). The civil war that almost destroyed the tribe of Benjamin began when Benjamin refused to hand over the men of Gibeah for execution for their rape-murder of the concubine (Judg. 20:12–14). David killed and impaled the men who killed Ishboshet in order (he said) to requite Ish-Bosheth's blood and eliminate it from the land (2 Sam. 4:5–12).

8.2.1 Anyone who kills with an iron, stone, or wooden implement is a murderer (Num. 35:16–19). Homicide without weapons (pushing, throwing something, or hitting with the fist) is also murder if it is intentional or arises out of enmity (Num. 35:20–21) or the murderer lay in ambush (Exod. 21:13; Num. 35:20, 22; Deut. 19:11). Homicide without malice is not murder. Deuteronomy gives examples

[70] Haas, "'Die He Shall Surely Die . . .'"

of totally accidental homicide, such as cutting down trees and having the ax fly off and hit someone (Deut. 19:5). In all such cases, the community has to decide whether the homicide is culpable and should be given to the blood avenger (Num. 35:22–24).

8.2.2 "Giving one's child to Molech," that is, child sacrifice, is a special form of homicide. It is stringently forbidden, punishable both by death by stoning and by the divine sanction of *karet* (extirpation of lineage) (Lev. 20:1–5).

8.2.3 Brawling is a special case. Cain, who planned a brawl with his brother Abel and killed him, is treated as a murderer in the days before the Flood, when homicide was not yet expiated by the killing of the murderer (Gen. 4). The wise woman of Tekoa comes before David as the mother of a man who killed his only brother in a brawl. She does not want to hand him to the family for blood avenging and leave herself and her dead husband without posterity, and David spares him. The fact that the killing was not planned and happened in a brawl gives David some room for maneuver, and he decides that extirpation of the lineage was not warranted (2 Sam. 14).

8.2.4 Homicide by an ox is another special case, one that demonstrates the responsibilities of holding an economically necessary but intrinsically dangerous animal, the sacrosanct nature of human life, and the issues of indirect homicide. The ox who kills must be stoned as a murderer (and its flesh cannot be eaten), but the owner of the ox is free of all other claims, since he could not have foreseen or prevented the death (Exod. 21:28). If, however, the ox had already gored and the owner had been warned but failed to guard it and it then killed a man or woman, the ox is to be stoned and the owner executed. This rule covers both a criminally negligent owner who did not try to guard the ox and the one who tried but failed. Nevertheless, the owner, who did not personally kill anyone, is allowed to ransom his life, paying whatever is set: Exodus does not indicate who sets the amount of the ransom (Exod. 21:29–30).

8.2.4.1 The goring ox passage states that the same rule applies if the ox killed a minor son or daughter (Exod. 21:31). Comparison with Mesopotamian law reveals the significance of this phrase, as LH 229–30 provides that if a builder did not build a house sufficiently

carefully and it collapsed, killing a minor child of the dweller, the child of the builder is to be put to death. Biblical law does not allow the law to execute children for their parents' offenses, or parents for a child's offenses (Deut. 24:16). That right is reserved to God, who punishes till the third or fourth generation (Exod. 20:5). Ultimately, by the time of Jeremiah and Ezekiel, even God was not given the right to intergenerational punishment.

8.2.5 A householder who kills a burglar in the act of tunneling does not incur bloodguilt. If the sun has risen (the next day, and possibly theft in daylight), it is murder (Exod. 22:2, see 8.5.6 below). Jeremiah refers to this rule: "on your garments is found the lifeblood of the innocent poor; you did not catch them breaking in" (Jer. 2:34).

8.2.6 When a murder occurs, it is the duty of the blood avenger to pursue the murderer. The blood avenger is a near kinsman (Num. 35:19; Deut. 19:12). If he does not act, it may be that others could do so to rid the land of murder (2 Sam. 4:11–12). The avenger can kill him on sight (Deut. 19:6).

8.2.7 If a man beat his slave so hard that he died, the slave's death is avenged (*naqom yinnaqem*). The law does not specify who will be delegated to do it (Exod. 21:20). The law may refer to a non-Hebrew slave, who has no blood avenger. It may also refer to a Hebrew slave: since the blood avenger has not redeemed the slave (also a duty of the near kinsman), he might also not avenge him, and therefore the law specifies that someone will do it.

8.2.8 An intentional murderer can find no sanctuary: he must be taken from the altar to be executed (Exod. 21:14). Both Adonijah and Joab fled to hold the horns of the altar once they realized that Solomon was king. Adonijah was removed and promised safety for good behavior. Joab refused to come out, but Solomon had Benayahu take him from the sanctuary and kill him, declaring "let their (Abner and Amasa's) blood come back to Joab" (1 Kings 2:28–35). Jeremiah nevertheless indicts the temple for providing sanctuary to the guilty: "Will you steal, murder, commit adultery, swear falsely, sacrifice to Baal and follow other gods and then come and stand before me in this house and say 'we are saved?' " (Jer. 7:9–10).

8.2.8.1 An accidental homicide is provided with a place to flee (Exod. 21:13). Joshua set up six Cities of Refuge "as I instructed you by the hand of Moses." The fleeing killer was to stand at the opening of the gate of the city, and the elders of that city would bring him in. He would stay until he stood trial and thereafter until the death of the high priest (Josh. 20).

8.2.8.2 As a killer flees to a city of refuge,[71] a blood avenger can catch him and kill him without incurring bloodguilt. For this reason, explains Deuteronomy, there should be three cities (Deut. 19:2–3), and if Israel becomes enlarged, three more should be added (Deut. 19:8–9). Numbers calls for six cities of refuge, all from Levitical towns, three in Transjordan and three in Canaan (Num. 35). Once the killer reaches the city, the case is tried by "the community," possibly the one in which the manslaughter occurred. If the judgment is unintentional homicide, the community protects the unintentional killer, putting him back in the city of refuge to which he fled (Num. 35:25–29). The homicide is either present at his trial and returned to the city of refuge if judged an accidental killer (Num.) or stays in the city while his trial is heard back home (Deut.).

8.2.8.3 The elders of the town take the convicted murderer back from the city of refuge and give him to the blood avenger. There is to be no pity, because the issue is to purge bloodguilt from Israel (Deut. 19:11–13). The accidental killer must stay in the city of refuge, and the city serves as a kind of quarantine, keeping the blood pollution that adheres to the homicide from settling in the land (Num. 35:25–27). The law warns Israel not to pollute the land (Num. 35:33), and a blood avenger can kill an accidental homicide who leaves the city. At the death of the high priest, the homicide can go home. The passage does not say if the high priest of the town is meant or only in the Temple (Num. 35:28).

8.2.8.4 No ransom can be accepted for the life of a murderer (Num. 35:31), nor can ransom be taken to allow a murderer to flee to the city of refuge (Num. 35:32). The reason given is that murder pollutes the land, and only the death of the killer can expiate the blood off the land (Num. 35:33).

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[71] Greenberg, "Asylum"; Rofé, "History of the Cities . . ."

8.2.9 Negligent homicide incurs bloodguilt: the man who builds his house without a parapet around the roof so that another falls to his death incurs bloodguilt (Deut. 22:8).

8.2.10 Murder must be proved by at least two witnesses (Num. 35:30).

8.3 *Injury*[72]

The communal curse in Deuteronomy 27:24 of one who strikes his neighbor in secret may refer to all assault and battery as well as murder.

8.3.1 The penalty for injury is talionic retribution (Lev. 24:19–20). The exception is the woman who protects her brawling husband by grabbing the other man's testicles with force (*heḥeziqah*). Her hand is to be cut off (Deut. 25:11–12). Intention does not count, even though she tried to save her husband rather than injure the victim.

8.3.2 Unintentional injury, as in a brawl, does not incur talion. Even if the injured party is bed-ridden, if he recovers, then the man who inflicted the injury need only pay medical expenses and income lost (Exod. 21:18).

8.3.3 Exodus 21:22–25 deals with the case of brawling men who accidentally strike a pregnant woman who miscarries. If there is no *'ason*, the man who struck her will be punished according to the desires of the woman's husband and will render account. It is possible that *'ason* means injury to the fetus, but it is hard to tell why the early birth of a perfect baby would be considered a punishable injury. More likely, the baby is lost in any case, and no *'ason* would mean that the mother is unhurt. Yet another possibility is that *'ason* refers to the injurer rather than the injury, and no *'ason* would mean that the perpetrator cannot be found (and the community must take responsibility).[73] If, however, there is an *'ason*, then the man must pay according to the full recital of the rule of talion used for injuries: a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a stripe for a stripe, a welt for a welt, a burn for a burn.[74]

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[72] Otto, *Körperverletzungen* . . .
[73] Westbrook, "Lex Talionis . . ."
[74] Houtman, "Eine schwangere Frau . . ."

8.4 *Sexual Offenses*

8.4.1 *Adultery*[75]

In a culture that allows both prostitution and polygyny, the adulterer is a man who sleeps with a married woman. Both he and the woman are to be executed (Lev. 20:11; Deut. 22:22; see Ezek. 16:40). Proverbs, while warning against adultery, suggests that a cuckolded husband will be too furious "on the day of vengeance" to accept any bribes to let the adulterer go free. This does not mean that the husband had the legal right to spare an adulterer but rather that a husband who finds his wife with another man will not be dissuaded from testifying against them (Prov. 6:34–35).[76] Once he did, execution was assured. Adultery is prohibited in the Ten Commandments and is one of the sexual misdeeds that pollute the land (Lev. 18:20, 25).

8.4.1.1 Intercourse with an engaged woman is adultery, punishable by stoning (Deut. 22:23–24). A wife proven to be a non-virgin bride is also to be stoned (Deut. 22:20–21).

8.4.1.2 A woman awaiting the levirate may not have intercourse. In the story of Judah and Tamar (Gen. 38), Tamar's apparent intercourse with an unknown man is labeled a faithless act (*zinnunim*), and she is to be executed.

8.4.1.3 A man who has sex with a slave not yet redeemed or freed, but *neḥerepet* to a man must pay a claim (*biqqoret*) and bring a ram for expiation; the man and woman are not executed for adultery (Lev. 19:20–22). The term *neḥerepet* is commonly translated "designated," as a form of slave betrothal, but there is no evidence for this meaning; Exodus 21:8 uses *yʿd*. An alternative suggestion is "pledged" (like *ʿrb*), so that the law protects girls distrained for their parents' debt. The law is also unclear as to who sleeps with the slave girl—her owner or some third party.

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[75] Anderson, "Law in Old Israel . . ." (with review of earlier literature).

[76] Near Eastern texts that describe the husband tying up the adulterous couple to demonstrate their adultery suggests that in Israel too the husband played a role in their public condemnation.

8.4.2 *Rape*

Deuteronomy recognizes that rape is a crime of violence: "the matter is as when a man rises up and murders another" (Deut. 22:26). The difficulty is establishing whether the sex is rape or consensual.

8.4.2.1 Deuteronomy considers a case where a man overpowers and sleeps with an engaged woman in a field, where a girl's cries could not be heard: the man is executed but the girl is not punished (Deut. 22:25–27). The law assumes that sex in town was consensual, since she would have been heard if she had cried out (Deut. 22:23–24). The third law involves sex with an unengaged girl but does not state that she was overpowered (Deut. 22:28).

8.4.2.2 The issue of the girl "crying out" may refer to her cries for help during the rape or her complaining immediately after the rape (cf. 2 Sam. 13:19 and MAL A 23). On the second interpretation, the girl could vindicate herself and avoid punishment by crying rape immediately after the event.

8.4.3 *Seduction*

Exodus provides that a seducer must pay the bride-price, but the father can take it without giving her as his wife (Exod. 22:16). In Deuteronomy, a man who "catches" (*tapsah*) a virgin and sleeps with her pays the bride-price and marries her without right of divorce (Deut. 22:28–29). Since he did not approach her parents first, his seduction was abuse (*ʿinnah*). However, the key word for rape, "overpower" (*heḥeziq*), is not present. As with so many family laws in Deuteronomy, the law limits the authority of parents: the father must give the girl to her seducer. In effect, the law allows a couple to marry even when they know the father will not approve: they can force his hand by eloping.

8.4.4 *Forbidden Sexual Partners*

In Leviticus 18 and 20, the practice of forbidden sexual relationships by the pre-Israelite inhabitants of the land polluted the land so that it "vomited them out" (Lev. 18:25). If Israel does the same, the land will also vomit them out (Lev. 18:28).

8.4.4.1 *Incest*
The rules regarding incest are formulated in terms of forbidden women (Lev. 18; 20:11–12). A man cannot sleep with his mother or his father's wife, his sister (uterine or not), granddaughter, stepmother's daughter born in the household, aunt, uncle's wife, daughter-in-law, or brother's wife. The daughter's absence is conspicuous but sleeping with her was forbidden by the prohibition of sleeping with one's own flesh. No equivalent list details whom a woman cannot sleep with; the law, addressed to males, does not consider women the initiators of sexual relations (Lev. 18:6–16).

8.4.4.2 Sleeping with certain pairs is prohibited: a woman and her daughter or granddaughter, or two sisters (Lev. 18:17–18). The one who lies with sister or mother-in-law incurs the communal curse in Deuteronomy 27:22–23. Amos' indictment of the father and son sleeping with the same girl indicates that this is a parallel forbidden pair (Amos 2:7).

8.4.4.3 Deuteronomy forbids a man to sleep with his father's wife, which strips his father naked (Deut. 23:1). The man who does so incurs the communal curse in Deuteronomy 27:20. The narratives indicate that this act is seen as dishonoring the father.

8.4.4.4 One cannot sleep with a menstruating woman (Lev. 18:19; cf. Ezek. 18:6).

8.4.4.5 Bestiality is forbidden (Lev. 18:23), punishable by death (Exod. 22:18). Whoever lies with a beast incurs the communal curse in Deuteronomy 27:21. This is the only act that names women as subjects: they cannot sleep with male animals (Lev. 18:23). Both man and beast and woman and beast have bloodguilt and are to be killed (Lev. 20:15–16).

8.4.4.6 One cannot sleep with a male as "the lying with a woman" (Lev. 18:22). In context, it almost certainly prohibits anal intercourse between men. They have incurred bloodguilt and should be put to death (Lev. 20:13).[77]

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[77] Olyan, "'And with a Male You Shall Not Lie . . .'"

8.4.4.7 Certain forbidden relationships call for the death penalty. The father's wife and the man who sleeps with her and the man and his daughter-in-law have incurred bloodguilt (Lev. 20:11–12). A man who sleeps with a woman and her daughter to be burned, as are the women, "for depravity" (Lev. 20:14). Others are subject only to divine sanctions: should a man sleep with his brother's wife or his uncle's wife, he and the woman will die childless (Lev. 20:20–21).

8.5 *Theft*[78]

The Ten Commandments and Leviticus 19:11 both prohibit theft. A man who steals livestock pays double if the animals are still alive and with him (Exod. 22:3). If he has slaughtered or sold it, he must pay fivefold for large cattle and fourfold for small herds (Exod. 21:37). David, hearing Nathan's case of a rich man who stole a poor man's lamb to feed to his guest, condemns him as worthy of death and requires him to pay back four lambs to the poor man (2 Sam. 12:1–6).

8.5.1 Exodus 23:4 presents the special case of a man who finds his enemy's animal sleeping with a full pack. He is to leave it alone, avoiding any temptation to capture the animal and/or steal the contents of the pack.[79]

8.5.2 One must return all lost property. If the owner is unknown or is far away, one is to keep it until the owner comes (Deut. 22:1–3). The owner might accuse the finder of theft; the finder might accuse the claimant of fraud: in such a dispute, one could "approach God"—the procedure when two parties lay claim to animals or lost articles. The one convicted pays double (Exod. 22:8).

8.5.3 Kidnapping for sale into slavery entails execution if the kidnapper is caught with his victim (Exod. 21:16; Deut. 24:7). Deuteronomy is sometimes translated "enslaving or selling," but the verb *hit'amer* refers to sale.

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[78] Jackson, *Theft* . . .

[79] Cooper, "Plain Sense . . ." The law is often interpreted as a command to help a fallen pack animal and reload his pack, but *robeṣ* does not mean "fallen," for which see Huffmon, "Exodus 23:4–5 . . ."

8.5.4 Moving land boundary markers (thereby stealing land) is forbidden (Deut. 19:14). The one who moved a landmark incurs the communal curse of Deuteronomy 27:17.

8.5.5 Eating from another's field or orchard is not considered theft, but one must not bring a basket to carry away produce or a sickle to cut down grain (Deut. 23:25–26).

8.5.6 *Burglary*
A householder who kills a thief caught in the process of breaking in does not incur bloodguilt. If, however, "the sun has risen," the thief must pay the appropriate restitution, and if he does not have it, he can be sold as a slave (Exod. 22:1–2). This law has been understood to mean that theft at night entitles the owner to kill to protect his property, but in the daytime, when the danger is not so great, the householder may not kill.

8.5.7 *Fraud*
Weights and measures must be true (Lev. 19:35; Deut. 25:13–16). The laws provide no specific sanctions; Deuteronomy labels the one who uses false measures an abomination (*to'ebah*), and Leviticus requires the doers of all prohibited acts to present an appropriate expiatory sacrifice, a sort of fine to the temple (cf. Amos 8:5).

8.6 *Damage to Property*

8.6.1 One who digs or opens a pit without covering it must pay for the ox or ass that falls in, paying the owners for the animal and taking the carcass (Exod. 21:33–34).

8.6.2 A man who sets a fire on his own property which spreads to another field must pay restitution from the best of his field. He must pay even if the other field had thorns, stalks or standing sheaves which contributed to the spread of the fire (Exod. 22:4–5).

8.6.3 *Injury to slaves*
The owner of a slave was penalized for excessive punishment resulting in the slave's injury or death (see 4.5.3.3 above). The laws do not discuss injury to slaves by outsiders.

8.6.4 *Injury to Animals*

8.6.4.1 One who kills another's animal must replace it (Lev. 24:18), but whoever borrows an animal does not pay for its death or injury if its owner is with it (Exod. 22:13–14).

8.6.4.2 If someone's ox gores another ox to death, the owners divide the money from the sale of the living ox and divide the carcass of the dead ox. If the ox that gored was a known gorer, its owner replaces the dead ox and takes its carcass (Exod. 21:35–6).

8.6.4.3 One must help someone else's animal that is in distress and has fallen under its load (Deut. 22:4).

8.6.4.4 Special demands ensure the proper treatment of animals:

(a) One must not muzzle an ox while he threshes (Deut. 25:4).
(b) One must allow animals to rest on Sabbath (Exod. 20:10).
(c) Animals may graze on fallow fields (Lev. 25:6–7).
(d) An ox and ass may not be yoked together (Deut. 22:10). This is also a mixing.
(e) Acts which violate the maternal rights or instincts of animals are prohibited: one cannot slaughter an animal and its young on the same day (Lev. 22:28), and one who takes young birds or eggs from a nest must let the mother go (Deut. 22:6–7).

8.7 Falsehood at law (and perjury) are serious offenses, part of the Ten Commandments.

8.7.1 False oath is an offense against the other and a trespass against God. One who takes a false oath concerning deposit, robbery, fraud, or ownership of a found article must return the object, plus a fifth of its value, and give an ox for expiation (Lev. 5:20–26).

8.7.2 False witness is a prohibition in the Ten Commandments, and false witnesses are punished with the same punishment that the person they are testifying against would have had to bear (Deut. 19:18–19).

8.7.3 A husband who accuses his wife of adultery is not subject to penalties for false accusation (Num. 5:31).

8.7.4 Perversion of justice is serious offense, and the one who takes money to punish or execute an innocent man incurs the communal curse of Deuteronomy 27:25.

8.8 *Slander*

8.8.1 Spreading malicious rumors is forbidden (Lev. 19:16).

8.8.2 One may accuse one's wife of adultery. However, a man who falsely accused his wife of not being a virgin bride is flogged, pays one hundred shekels to his wife's father, and can never divorce her (Deut. 22:19).

8.9 *Witchcraft*

8.9.1 A witch is to be put to death (Exod. 22:17).

8.9.2 Divination procedures are forbidden (Lev. 19:26). The verse, which also mentions not eating blood, refers to divination in which blood is libated, such as the summoning of ghosts.

8.9.3 Necromancy and mediums pollute Israel (Lev. 19:31). The sanction is extirpation of lineage (Lev. 20:6). They were outlawed by Saul (1 Sam. 28:9–10).

8.10 *Blasphemy and Other Misuse of the Divine Name*

8.10.1 In a legal "storyette," the son of an Israelite woman and an Egyptian man cursed someone during a fight and used the divine name. He was detained until God decreed that he should be taken out of the camp, where all who heard the curse laid their hands on his head and stoned him. The law declares that all, Israelite or *ger*, who curse God bear divine sanction, but one who adjures with the name of God is to be stoned. The passage then provides key Israelite legal provisions: talionic punishment for battery, execution for homicide, and restitution for damage to animals (Lev. 24:10–23).

8.10.2 The danger of cursing prompted Jeremiah's trial, which considered whether a prophet who believed he was speaking God's word was cursing when he pronounced destruction of the temple (Jer. 26).

8.10.3 Naboth was found guilty of cursing god and king. He was executed and his land forfeited to the king (1 Kings 21:10–16). Apparently, his sons were also executed (2 Kings 9:26).

8.11 Apostasy (worshipping other gods) is strictly forbidden, an essential element of Israel's covenant with God and forbidden by the First Commandment. Deuteronomy provides for human sanctions: anyone known to worship other gods or the heavenly host will stand trial and if convicted, is stoned to death (Deut. 17:1–5). Prophets or diviners who advocate it are to be put to death; one's own family member is to be stoned (Deut. 13:2–12).

8.11.1 A town that commits apostasy is to be put to the sword. The cattle are to be killed; all the town and spoil are to be burned with nothing spared and the town is not to be rebuilt (Deut. 13:13–19).

8.11.2 One cannot be a *qedeša* or a *qadeš* (Deut. 23:18). These are often translated as "cult prostitutes," but there is no evidence of cult prostitution in Israel. They are a kind of priest and priestess associated with Canaanite worship.[80]

8.12 Idolatry was also strictly forbidden, both molten images (Lev. 19:4) and worked stone worship items (*'eben maskit*) (Lev. 26:1). The making of the Golden Calf was the great sin of Israel at Sinai, even though the calf and the festival were for YHWH (Exod. 32). An image is an abomination (*to'ebah*), and the maker is subject to the communal curse (Deut. 27:15). Deuteronomy also prohibits planting an asherah or any other tree next to the altar of God or setting up stone pillars (*maṣṣebah*: Deut. 16:21).

8.13 *Rebellion against Authority*

8.13.1 Leaders of the people are to be respected and may not be cursed (Exod. 22:27); one must rise before elders (Lev. 19:32). Refusal to accept the decision of the priest or judge at the central shrine is *zadon*; the penalty is death (Deut. 17:9–13).

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[80] Westenholz, "Tamar, *qĕdēšā, qadištu* . . ."

8.13.2 Parents may not be struck, cursed, or treated with contempt, on penalty of death (Exod. 21:15, 17). The son denounced by parents as totally recalcitrant is stoned (Deut. 21:18–21).

9. Special Institutions

The Pentateuchal codes have special regulations governing how war is to be waged.

9.1 Deuteronomy provides that an attacked city must be offered the chance to surrender. If they surrender, they become tribute slaves (*mas*) working for the state. If the city refuses to surrender, the men are to be killed and the women, children, and cattle taken as booty (Deut. 20:10–15). If, however, the city is local, it must be *ḥerem*, "anathema," destroyed in dedication to God (Deut. 20:16–18). It should be noted that by the time Deuteronomy records this requirement, there are no local towns left to be conquered; this is a retrojection (cf. Josh. 2:12–14; 6:17–25).

9.2 During a siege, the fruit from fruit trees should be eaten and the trees are not to be destroyed. Non-food trees may be cut down to make siege works (Deut. 20:19–20).

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INTERNATIONAL LAW IN THE FIRST MILLENNIUM

Simo Parpola

1. Sources of International Law

Even though the cuneiform writing system continued to be used in the Near East through the first millennium, cuneiform documentation becomes progressively scantier and more one-sided towards the end of the millennium as a result of the establishment of Aramaic as an imperial lingua franca under the Neo-Assyrian Empire (see 2.1.2 below).[1] Being written on perishable materials, the only relevant Aramaic sources extant are three eighth-century treaties. Thus most types of source relevant to the study of international law, while abundantly available earlier, are entirely missing from the latter half of the millennium.

1.1 *Treaties*

Original treaties in cuneiform have been preserved only from the Neo-Assyrian period, from which twenty-two texts are extant, dating between ca. 825 and 625.[2] The individual texts vary greatly in type, content, length, and quality.[3]

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[1] See Tadmor, "Aramaization . . .," and the discussion of the letter CT 54 10 in Parpola, "Neo-Assyrian Letters . . .," 123, n. 9, and SAA 1, introduction.

[2] Edited by Parpola and Watanabe in SAA 2. The total of twenty-two includes ten exemplars of Esarhaddon's succession treaty (no. 6), treated in the edition as a single text but actually representing ten identically worded treaties imposed on at least ten different political parties (mostly vassal nations). On the number of the extant exemplars of SAA 2 6, see ibid., xxix–xxx, and Farber, Review . . ., 163.

[3] The corpus includes several short one-column tablets, two of which (nos. 8 and 10) are probably drafts and two (nos. 3 and 12), excerpt tablets. Contrast these with the elaborate 670–line succession treaty of Esarhaddon and the multi-column treaties with Arpad (no. 2), Tyre (no. 5), and an unidentified country (Arabs[?], no. 11).

1.2 *Royal Inscriptions*

Royal inscriptions, particularly those of Sargonid Assyria, contain a wealth of information on international relations, warfare, diplomacy and treatment of foreign nationals, as well as many references to treaties.[4] Unfortunately, inscriptions containing political and historical information are very scantily available from later periods.[5]

1.3 *Royal Correspondence*

An extensive corpus of approximately 3,500 letters exchanged between Assyrian kings and various members of the Assyrian ruling class survives from the last two centuries of the Empire (ca. 740–615). This corpus is an extremely rich source on virtually any aspect of contemporary life, including international law.[6] Many treaties are referred to, paraphrased, or quoted verbatim in these texts.[7] Unfortunately again, very few letters of this type exist from later periods.[8]

1.4 *Letters to Gods*

A genre closely related to royal inscriptions, such texts provide invaluable first-hand evidence on the king's position as the earthly representative of god (see 4.1.1 below). Examples are available only from the Neo-Assyrian period.[9]

1.5 *Legal Documents*

Legal documents are available in abundance throughout the millennium but their relevance to international law is largely limited to occasional references to royal treaties in the penalty clauses included in them.[10]

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[4] See the summary in Parpola, "Neo-Assyrian Treaties . . .," 184–85.

[5] Events of political history were not normally recorded in Babylonian royal inscriptions; those of Nabonidus (555–539), which constitute an exception, follow the Assyrian tradition. Achaemenid royal inscriptions in Old Persian and Babylonian cuneiform do contain historical material but are relatively few and stereotypical.

[6] See Parpola, "Assyrian . . ."

[7] See, e.g., Parpola, "Letter . . .," and *Letters* . . ., II, 280–81; SAA 2, xxxii.

[8] E.g., a letter from the crown prince Nebuchadnezzar published by F. Thureau-Dangin, [*RA* 22 (1925) 27–29], dating to 609. Private letters, which are plentiful also from later periods, rarely contain information relevant to international law.

[9] The Neo-Assyrian corpus has been discussed by Pongratz-Leisten, *Herrschaftswissen* . . ., 210–65.

[10] See the evidence collected in Watanabe, *Adê* . . ., 9–23, under 1.20.129–30, 4.4.179 and 5–9.

1.6 *Administrative Documents*

Administrative documents from Assyrian, Babylonian and Achaemenid imperial archives contain much useful information on the treatment of foreign nationals (exiles, deportees, ambassadors). Such texts are available from the whole span of the millennium.

1.7 *Historiographic Texts*

Chronicles, king lists, diaries, and the like, though available from all sub-periods of the millennium, are generally of limited value to the study of international law. An exception is the so-called Synchronistic History, which surveys the relations between Assyria and Babylonia from the fifteenth through the early eighth century and contains many references to treaties concluded between the two states.[11]

1.8 *Political Declarations*

The only available example is a declaration of war styled like a literary letter, dating to the fall of the Assyrian Empire.[12]

1.9 *Oracle Queries*

Queries addressed to the sun god, available from the Neo-Assyrian period only, contain many references to plans of war and treaties in the making,[13] as well as miscellaneous information relating to foreigners at the Assyrian court.

1.10 *Miscellanea*

Valuable information is occasionally provided by sundry texts not falling into any of the above categories, such as the so-called Sin of Sargon, which illustrates aspects of Assyria's controversial policy towards Babylonia,[14] and a mid-eighth-century text referring to a pact between the Neo-Babylonian king Nabu-shuma-ishkun (ca.

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[11] Edited and discussed by Grayson, *Chronicles*, no. 21 (pp. 51–56 and 157–70).

[12] See Gerardi, "Declaring War . . ." Note that although the text is not dated, the ductus indicates that it is not the original but a copy made in the late Achaemenid/Seleucid period.

[13] See SAA 4 nos. 12, 20, 21, 43, and 56.

[14] Tadmor, Parpola, and Landsberger, "Sin of Sargon . . ."

760–748) and two governors of his.[15] Again, such texts are typically available only from the first half of the millennium.

1.11 Inscriptions from Sfire in northern Syria preserve in part the terms of three treaties between Mati'-il of Arpad and an otherwise unknown Bar-ga'yah of KTK.[16] It has been suggested that the latter was a pseudonym for Aššur-nerari of Assyria and that these treaties are the Aramaic counterpart of a documented cuneiform treaty between the same parties. Their terms are closely parallel to those of the cuneiform treaty.[17]

1.12 The Hebrew Bible contains scattered references to treaties and to practices of international law, mostly from the periods of early settlement and of the monarchy. It is also generally accepted by scholars that the covenant between God and Israel, especially as represented in Deuteronomy, is modeled on ancient Near Eastern vassal treaties. The metaphor is, however, used solely with respect to internal law. It does not provide independent information on international treaties; rather, it relies on our knowledge of the cuneiform treaties.[18]

The total lack or scantiness of information from the second half of the millennium makes it impossible to present a balanced picture of international law of the whole period on the basis of cuneiform sources alone. Accordingly, this chapter will concentrate on the time of the Assyrian Empire only, a period that is both well documented and laid the foundations of the political order of subsequent periods. Evidence from later periods, to be cited occasionally below, indicates that the picture presented by and large also applies to the latter half of the millennium.

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[15] von Weiher, "Marduk-apla-uṣur . . ."; Brinkman, "Political Covenants . . .," 95 and 99–101.

[16] Ed. Fitzmyer, *Aramaic Inscriptions* . . .

[17] See the discussion in SAA 2, xxvii–xxviii.

[18] See McCarthy, *Treaty and Covenant*, for a general review of the theories. See also Levinson, "Deuteronomy 13:10 . . ."; Steymans, *Deuteronomium 28* . . .; Steymans, "Eine assyrische Vorlage . . ."; Veijola, "Davidverheissung . . ." Gen. 31:44–54 recounts the conclusion of an agreement between Jacob and his father-in-law Laban that could be interpreted as a treaty delimiting the border between two political entities.

2. The International System

2.1 *The Assyrian Empire and Its Successors*

2.1.1 The expansion of the Assyrian Empire in the ninth century profoundly altered the traditional political map of the ancient Near East. For the first time in history, practically the whole of the Near East was permanently brought under the control a single imperial power. This situation was to prevail until the end of the millennium despite the fall of Nineveh in 612 and the subsequent dissolution of the Assyrian supremacy. The multinational Empire created by the Assyrians was re-established with few modifications by the Achaemenid Persians, after a brief interlude during which it had been split between the Babylonians and the Medes, and was continued, again with few modifications only, by the Seleucid Empire until the advent of the Romans in the first century.

2.1.2 *Administrative Structure*

The Assyrian Empire was a union of states consisting of a core area under direct Assyrian rule (the Assyrian heartland with its provinces) and of semi-independent (vassal and allied) states bound to it by written treaties. While the latter were allowed to retain their local infrastructure and native culture as long as they kept the treaty terms, the core area tended to expand and homogenize continually. Broken treaties resulted in the incorporation of the rebel country into the Assyrian provincial system, with the imposition of regular taxation, military service and corvée, a single imperial language (Aramaic), and in the long run, a uniform imperial culture. From the middle of the eighth century, the provincial system comprised virtually all of Mesopotamia and the Levant and large areas of Anatolia and Iran.

2.1.3 *Political Structure*

All power was concentrated in the hands of a hereditary monarch (the Great King), whose claim to universal rule was backed up by sophisticated royal ideology, religious doctrines, and powerful visual and verbal propaganda presenting the monarch as the sole, omnipotent, and omniscient representative of god upon earth.[19] The Great

[19] See Seux, *Epithètes* . . .; Garelli, "Conception . . .," and "Propagande royale . . ."; Oded, *War* . . .; Parpola, "Cabinet . . ."

King ruled with the support of a powerful aristocracy composed of both ethnic Assyrians and Assyrianized nobility from the subordinate states (see 4.2.1 below).

2.2 *Other Types of State*

The following types of polity within and without the Empire may be distinguished.

2.2.1 *Territorial States*

These were states ruled by hereditary kings (e.g., Babylonia, Egypt, Elam, Ellipi, Israel, Judah, Lydia, Mannea, Shubria, Urartu, Phrygia). While some of these states had earlier developed into extensive empires successfully contesting with Assyria, all of them declined in power after the eighth century and eventually became mere dependencies or provinces of the Empire, for at least some time during the latter part of the millennium.

2.2.2 *Dynastic Houses*

Dynastic houses mostly corresponded to former provinces of disintegrated empires, ruled by local dynasts. They were named after the founder of the dynastic line, for example, the House of Omri in Israel, the House of Purutash in Cappadocia, the House of Yakin and other Chaldean "houses" in Babylonia, and the House of Dalta in Ellipi.

2.2.3 *City States*

City states were polities ruled by hereditary kings or elected "city-lords," often vying with other cities for the control of larger territories. This was by far the most common type of polity in the first-millennium Near East and, apart from Greece and Ionia, predominant in the Iranian plateau, Kurdistan and the Zagros mountains, Phoenicia, the Levant, and former areas of the Babylonian, Egyptian, and Hittite empires.

2.2.4 The Cimmerians, the Scythians, and the numerous Arab and Aramean tribes settled in Syria, the Jezirah, and Babylonia were examples of nomad or semi-sedentary nations and tribes ruled by kings, kinglets, and sheikhs.

2.3 *Political Relations*

2.3.1 *The International Order*

Practically all international relations during the period were in one way or another affected by the dominant status of the Empire, whose openly proclaimed goal was world domination. Since international treaties in the long run worked towards the expansion and homogenization of the Empire (see 2.1.2 above), seeking new treaty partners outside the imperial territory was a natural objective of the imperial foreign policy. On the other hand, many foreign rulers actively sought contact with the Empire for their own reasons.[20] Both factors contributed to the emergence of an international order in which the political status of a nation or state was defined in terms of its relationship to the Empire rather than to its neighbors. In his capacity as the maintainer of the imperial world order, the Great King functioned as the supreme arbiter of political and legal disputes between states integrated into the Empire and even outside it.[21]

2.3.2 Naturally, direct contacts and alliances between individual regents and nations also existed outside the imperial world order, but such contacts were explicitly forbidden in imperial treaties (see 3.4 below) and (if established without the sanction of the Great King) considered treacherous.

2.3.3 International political contacts were maintained through letters exchanged between rulers and delivered by royal messengers (*mār šipri*), as well as by regular visits of vassal rulers or their emissaries (*ṣīrāni*) to the imperial court, usually twice a year at the time of the New Year's celebrations in Nisan and Tishri (the first and sixth months).[22] Such visits were obligatory; failure to show up at court with tribute and audience gifts to "ask the king's health" was interpreted as an act of disobedience that could result in war (see 4.1.2 below). Messengers carrying royal mail enjoyed diplomatic immunity but could be detained at foreign courts for considerable periods of time.[23]

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[20] See SAA 2, xvi.

[21] E.g., SAA 1 29: 12–17; SAA 9 7: 12–13.

[22] On the royal New Year's reception, see provisionally Parpola, "Cabinet . . .," 393, nn. 42–43. For letters reporting on the visits of foreign emissaries to the capital, see, e.g., SAA 1 32–33, 76, 100, 186–87; NL 16, 21, 40, 50, and 59.

[23] See, e.g., ABL 1380: 20 and r. 6–8.

3. Treaties

In addition to twenty-two original treaties preserved in whole or in part, more than fifty treaties are known from early first-millennium cuneiform sources by reference or direct quotation.[24] The majority of such references come from the Neo-Assyrian period, and it is likely that in these cases cuneiform treaties are in question. Three Aramaic treaties from the same period are preserved in the Sfire inscriptions (see 1.11 above). References to treaties are also found in Neo-Babylonian and Achaemenid sources,[25] but owing to the increased use of Aramaic script in this period it is uncertain whether (and, indeed, unlikely that) these treaties were drawn up in cuneiform.

3.1 *Types of Treaty and Relevant Terminology*

Practically all the treaties directly or indirectly known from Assyrian sources were imperial, that is, they involved the Assyrian Empire as a concluding party; the other party was always a state, nation, or tribe. Both parties were represented by their kings, insofar as possible.[26] Other types of treaties are known to have existed, but no originals are extant.[27] By the degree of independence enjoyed by the other party, imperial treaties can be broadly divided into four main types.

3.1.1 *Mutual Assistance and Non-aggression Pacts ("Friendship and Peace Treaties")*

Examples are the treaties between Assyria and Babylonia recorded in the Synchronistic History,[28] Shamshi-Adad V's treaty with Marduk-

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[24] See Parpola, "Neo-Assyrian Treaties . . .," 184–86, and Watanabe, *Adê* . . ., 9–23.

[25] Watanabe, *Adê* . . ., 21–23, lists more than 40 references to royal treaties in documents dated in the reigns of Nebuchadnezzar, Neriglissar, Nabonidus, Cyrus, Cambyses, Darius, and Artaxerxes.

[26] In SAA 2 8, a treaty securing the succession of Assurbanipal after the unexpected death of his father, the queen mother represents the Empire. In this treaty, as basically in all Assyrian succession/accession treaties (SAA 2 3, 4, 6, and 7), the other party consists of the entire Assyrian nation, including the princes next in order of succession, the power elite, and the Assyrian rank and file (cf. Borger Esarh., 40, and Streck Asb., 2–3). The individuals listed as the other party in SAA 2 11 were probably rulers of Babylonian dynastic houses or city-states (cf. SAA 2 9, and ABL 521 and 539) whose titles have been lost in breaks.

[27] E.g., Streck Asb., 13 i 123–27 (treaties of Egyptian kinglets with the Kushite king). Note also Brinkman, "Political Covenants . . .," 95, and 99–101, and the "treaty of rebellion" referred to in ABL 1091, on which see Parpola, "Murderer . . .," and "Neo-Assyrian Treaties . . .," 181.

[28] Grayson, *Chronicles*, 158, and 166–70.

zakir-shumi I of Babylon,[29] and Esarhaddon's treaty with Urtaku of Elam.[30] The available evidence suggests that such treaties, which apparently were only concluded between major powers, involved full parity of both parties, with no economic obligations on either one.

3.1.2 *Alliance Pacts*

Examples of alliance pacts are Assurbanipal's treaties with Gyges of Lydia and his son Ardys,[31] Esarhaddon's treaty with the Scythian king, Protothyes,[32] and Sargon's and Esarhaddon's treaties with Median city rulers.[33] All known treaties of this type were concluded at the initiative of the non-Assyrian party, mostly in the hope of short-term military or political gains. In essence, such treaties were tantamount to vassal treaties, for the "beneficiary" was obligated to pay an annual tribute and visit the imperial court regularly.

3.1.3 *Vassal Treaties*

Vassal treaties proper involved annual payment of tribute and regular visits to the imperial court. They were imposed, always at Assyrian initiative, on Assyrianized foreign nobility to be returned, at a suitable opportunity, as Assyrian puppets to their home countries not yet incorporated into the provincial system (see 4.2.1.3 below).

3.1.4 *Allegiance Pacts*

Allegiance pacts concerned royal succession and were imposed on both Assyrian citizenry and vassal nations. Such pacts did not differ formally from other treaty types and are therefore to be taken as political agreements rather than simply as loyalty oaths.[34] There is reason to believe that the eight specimens of allegiance pacts imposed on Median vassals at the same time functioned as vassal treaties proper.[35]

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[29] SAA 2, no. 1.

[30] SAA 2, xvii–xviii (not extant, but referred to in numerous contemporary sources).

[31] Streck Asb., 20–22.

[32] SAA 4, no. 20, discussed in SAA 2, xix.

[33] SAA 2, xxx–xxxi; ABL 129 and 1008.

[34] See the discussion in SAA 2, xv, xxiv, and xxix–xxxi. Since all Assyrian treaties, though meant to remain valid in perpetuity, were phrased as bilateral agreements between parties specified by name, succession treaties were needed to extend the validity of the treaties to the next generation.

[35] See SAA 2, xxxi. Liverani's proposal ("The Medes . . .") to take these texts as loyalty oaths imposed on Median bodyguards at the Assyrian court is contradicted by the preambles to the texts, which explicitly define them as agreements with the relevant city-states. Note also that these agreements were to remain valid in all perpetuity (SAA 2 6: 10, 382–84, and 393–96).

3.1.5 As the case of allegiance pacts exemplifies, it is not always possible to assign Assyrian treaties neatly to a specific category. Terminologically, there was no difference between the four types of treaty distinguished above: all of them were called *adê*, a loan word from Aramaic which could denote any kind of binding political agreement.[36] The fact that alliance pacts could be referred to as "treaties of peace and vassalage"[37] illustrates the fluid borderline between the different categories. (Cf. the usual designation of non-aggression pacts in the royal inscriptions, "treaty of friendship and peace.") To the Empire, which mostly dictated the terms of the treaties, all treaties ultimately served the same purpose, namely, the expansion of the Empire, and thus did not call for more nuanced terminological distinctions.

3.2 *General Structure of a Treaty Document*

While all extant Assyrian treaties differ somewhat from one another, they also display structural and formal similarities implying a long tradition in the drafting of such documents.[38] Every treaty opened with a *preamble* specifying the parties ("Treaty of A with B"), which was usually followed by an *adjuration formula* and/or a list of gods presented as witnesses of the treaty. A short *historical introduction* sometimes, but by no means always, then introduced the actual treaty *terms*, which were followed by a long *curse section* detailing the punishments resulting from broken treaties. The texts appear to have been normally closed by a *colophon* specifying the purpose and date of the treaty. Some of the extant treaty tablets, though not all of them, bear impressions of royal seals (see 3.3.2).

3.3 *Formulation and Phrasing*

3.3.1 *General*

In most texts, individual treaty sections are divided by rulings into separate units corresponding to modern treaty articles. The phrasing is legally accurate and the order of the individual sections generally yields a well-thought-out logical scheme. For example, the

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[36] See Tadmor, "Assyria and the West," 42–43, and the discussion in Parpola, "Neo-Assyrian Treaties . . .," 180–83.

[37] Piepkorn Asb., 85, referring to an alliance sought for by Natnu, king of "distant Nabatea."

[38] For details, see SAA 2, xxxv–xlii.

individual treaty provisions in SAA 2 6 systematically cover all possible forms of threat against the ruling house, starting from the definition of loyal conduct and gradually proceeding to the eventuality of open rebellion and murder of the king.

3.3.2 *Relative Status of the Parties*

With the possible exception of treaties with major powers, of which only one fragmentary example is available, all extant Assyrian treaties were formulated exclusively from the Assyrian point of view and to the advantage of the Empire. Throughout the treaties, first person forms and suffixes refer to the Assyrian king, while second person forms refer to the other party. In the list of divine witnesses, Assyrian gods precede those of the other party; in the preamble, the name of the Assyrian king precedes that of the other party. The oath to keep the treaty terms was taken by the other party only, while the punishments resulting from broken treaties were to be effected by the Assyrian "great gods."[39] The actual treaty terms were formulated as oath-bound pledges and complemented by a solemn vow, again to be made by the other party only. The seals impressed on the treaty documents turned them into "tablets of destinies" sealed by the Assyrian king as the earthly representative of the imperial god, Ashur.[40]

3.3.3 In practice, this kind of formulation shifted the responsibility for keeping the treaty totally to the other party, while it gave the Assyrian king (acting as the representative of the gods witnessing the treaty) the unconditional right to punish the other party in the event of a broken treaty.[41]

3.4 *Terms*

While the actual treaty terms naturally varied from case to case, certain provisions evidently of crucial interest to the Empire recur in several treaties of the corpus:

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[39] Interestingly, both the adjuration and pledge/vow formulae recur in Assyrian exorcistic texts, there applied to evil demons. This suggests that the other treaty party was (subconsciously?) envisaged as a demonical force to be "bound" by magical means. See SAA 2, xxxvii, and Haas, "Dämonisierung . . ."

[40] See George, "Sennacherib . . .," 140–41.

[41] The responsibility of the other party to abide by the treaty terms is explicitly pointed out in SAA 2 6: 292.

1. Unconditional devotion to the Assyrian king:[42] "loving" him "like oneself"[43] and "falling and dying" for him.[44] This provision is well attested in contemporary royal letters as well.[45]
2. Obligation to report any developments threatening the safety of the Empire or the monarchy to the central government.[46] That this provision was included in every vassal treaty is implied by the numerous reports from vassal rulers extant in the Assyrian royal correspondence.
3. Harmonizing one's foreign policy with that of Assyria. This provision involved "hating" the enemies of the Assyrian king[47] and refraining from any communication[48] or from any alliance with them.[49]
4. Military cooperation with Assyria.[50] The obligation of the vassals to go to war with Assyria is very well attested in royal inscriptions and also in letters to the king.[51]
5. Extradition of fugitives from Assyria seeking asylum in a vassal or allied countries (see 4.2.2).[52] This obligation is also well attested in Assyrian royal correspondence and letters to god.[53]
6. Accepting a royal deputy (*qēpu*). This provision, which effectively curtailed the sovereignty of the vassal state, is attested only in two treaties of the corpus,[54] but other contemporary evidence implies that it must have been included in many other treaties as well.[55]
7. Accepting Ashur as the supreme god. This provision is attested only in the succession treaty of Esarhaddon, where it parallels the obligation to accept the future king, Assurbanipal, as the supreme ruler of the Empire.[56] Since this treaty was certainly imposed on at least eight vassal rulers, it is not unlikely that a similar provision was included in many other treaties as well.
8. Commercial regulations. Detailed provisions related to trade are attested only in a treaty with Tyre (SAA 2 5), but it is clear that corresponding terms must have been included in many other treaties as well.

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[42] SAA 2 2 iii 23–25; 3: 4; 4 r. 9; 6: 53, 152, 169, and 266; 7 r. 5; 9: 5 and 32; see also the letter ABL 539 quoting a treaty, cited ibid., xxxii.
[43] SAA 2 6: 266; 9:32. Cf. Levinson, "Deuteronomy 13: 10 . . ."
[44] SAA 2 6: 55 and 230–31.
[45] See, e.g., ABL 539.
[46] SAA 2 3: 3; 4: 7; 6: 83, 122, 152, 158, 349, 507; 8: 12, 17; 9:6–16; 13 iii 16–17.
[47] SAA 2 9: 32 (restored); cf. ABL 998 r. 5–9.
[48] SAA 2 9: 6–9 and r. 32; 10 r. 3–4; 13 iii 3–9.
[49] SAA 2 6: 173–76, 498–89; 9: 20–21; 13 ii 3–4; also ABL 539: 24–25.
[50] SAA 2 1: 2–3; 2 iv 1–3; 9: 23–25.
[51] E.g., SAA 5 199 r. 9–15, and 200 r. 5–16.
[52] SAA 2 1: 13; 2 iii 21–23; cf. 6: 136–38, 8 r. 24, 9: 12–16.
[53] E.g., Borger Esarh., 103–4; SAA 5 35: 18.
[54] SAA 2 5 iii 6–14 and 9: 11–12 (partially restored).
[55] Cf., e.g., SAA 5 106 and 107.
[56] SAA 2 6: 393–94.

9. Surprisingly, the obligation to pay tribute and audience gifts during visits to the court (see 2.3.3, 3.1.2–3, and 4.2.3) is not recorded in any of the extant treaties.

3.5 *Procedure*

The conclusion of ("entering into") a treaty involved a ceremonial banquet, during which the adjuration of the oath-taking party took place.[57] Vassal treaties seem to have been concluded in the temple of Ashur in Assur,[58] while the primary scene for "entering into" pacts concerning royal succession seems to have been the temple of Ninurta in Calah.[59] It seems that vassal treaties were normally prepared in at least two copies, a master copy preserved in the imperial archives and one deposited with the other treaty party.[60] Important treaties were secured by an exchange of children (as hostages) or by marriage arrangements between the respective rulers.[61]

3.6 *Sanctions*

In the event of a violation of the treaty terms, the sanctions prescribed in the curse section of the treaty applied as divine punishments to be literally implemented by the Assyrian party (see 3.2–3 and 4.1.4).

4. Customary International Law

4.1 *Law of War*

4.1.1 *Nature of War*

As god's representative upon earth, the king was responsible for defending his realm against any possible threat and was accountable for his performance to both god and man.[62] War was conceived of dualistically as the fight of forces of light and order (Assyria) against those of darkness and chaos (the rest of the world), the king playing the role of the gods of victory (Ninurta), thunder (Adad), and

[57] Cf. SAA 2 6: 153–56; 2 i 10–21.
[58] See SAA 1 76.
[59] See SAA 10 5–7 and the relevant discussion in Parpola, *Letters* . . ., II.
[60] See Parpola, "Neo-Assyrian Treaties . . .," 161, and the discussion of the Sfire treaties in SAA 2, xxvii–xxviii.
[61] Cf. ABL 918 and the discussion in SAA 2, xvii and xix.
[62] See Tadmor, "Monarchy . . ."

destruction (Nergal) confronting evil demons. Successful wars were reported and accounted for in royal letters addressed to the supreme god,[63] as well as in royal inscriptions addressed to the contemporary political elite, often in terms closely recalling mythological battles fought by the gods.

4.1.2 *Justification of War*: causa belli

Since by definition every war fought by the king as the representative of god had to be just,[64] the Empire never began a war without a valid justification. Legitimate causes of war presented in Assyrian sources include, besides enemy aggression and armed rebellion, breach of a treaty,[65] insolence towards the emperor—conceived as an offense against god himself[66]—and requests for military help by foreign regimes.[67]

4.1.3 *Declaration of War*

Wars started without outside provocation were planned carefully[68] and were probably routinely preceded by a formal declaration of war.[69]

4.1.4 *Treatment of the Enemy*

The alleged cruelty of Assyrians is a modern myth exaggerated beyond all proportion. It is true that Assyrians, like their contemporaries and successors,[70] did commit terrible atrocities in war and that they did cause civilian populations considerable sufferings both during and after war. However, such atrocities were not inflicted summarily but as just punishments for perjury prescribed in the curse

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[63] See Pongratz-Leisten, *Herrschaftswissen* . . .

[64] See Weippert, "Heiliger Krieg . . .," and Oded, *War* . . ., 13–18, and passim.

[65] Failure to pay tribute and/or regularly send a messenger with a gift to the royal court for audience counted as breach of the treaty.

[66] E.g., the insolent words of Teumman, king of Elam, quoted in SAA 3 31: 12–13. This insolence (*mereḫtu*) is explicitly given as the cause of the subsequent war in Assurbanipal's inscriptions.

[67] See SAA 2, xviii–xxx. Military aid (granted in return for an "assistance and friendship" treaty) was regarded as a way of promoting the "word" of Ashur and thus compatible with the concept of "holy war."

[68] See, e.g., SAA 4, under "Military Queries" and "Queries concerning Written Plans."

[69] See Gerardi, "Declaring War . . .," and, for another example, Borger Esarh., 103f. The indignation expressed by Assurbanipal over a surprise attack by the Elamite king Urtaku (Streck Asb., 105) suggests that submitting a written declaration of war prior to the beginning of hostilities was the standard procedure.

[70] Cf., e.g., Josephus, The Jewish Wars Book VI, on the atrocities committed by the Romans in quelling the uprising of the Jews.

sections of broken treaties.[71] There is good evidence that the Assyrian government was concerned to reduce civilian suffering even in military actions against rebels[72] and that the Assyrian army carefully refrained from atrocities in military operations rendered as aid to friendly regimes.[73]

4.2 *Treatment of Foreign Nationals*

4.2.1 *Annexed territories*

Inhabitants of territories annexed to the Empire as new provinces became Assyrian citizens with full civil rights, subject to taxation, military service (*ilku*) and labor duty (*tupšikku*).[74] There is no evidence that citizens of newly acquired territories were subject to any form of racial, social, or religious discrimination vis-à-vis ethnic Assyrians.[75] The Assyrian political elite certainly constituted a privileged class, but acculturized non-ethnic Assyrians were readily and routinely incorporated into this power elite.[76]

4.2.1.1 *Deportees* (*galītu, šaglû*)

The reorganization of annexed territories usually involved large-scale deportations, whereby large segments of population were moved to another part of the Empire and resettled there, while people from other parts of the Empire were moved in their place.[77] These measures had their justification in treaties previously concluded by the

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[71] Cf. SAA 2 6: 292–95 and see the discussion in SAA 2, xxii–xxiii and xli; Vargyas, "Le cylindre Rassam . . ."; Oded, *War* . . ., 41–43.

[72] See, e.g., ABL 301 and 571 (letters of Assurbanipal to Babylonians before and at the final phase of the Shamash-shum-ukin rebellion).

[73] Cf., e.g., BM 132980 (unpub. letter of Assurbanipal to the elders of Elam), 10–17: "When Ummanigash came to grasp my feet and I sent my army with him, and (when) they went and defeated Teumman, did we lay our hands on the temples, cities or anything? Did we take spoils of war? Did we not pour oil on blood and become (your) benefactors?"

[74] See e.g. Tadmor *Tigl. III*, Ann. 10:3–4 and 13:9–10; Lie Sar., Ann. 10, 17, 204, and 329; Postgate, *Taxation* . . .

[75] The imposition of Ashur as the imperial god (see 3.4.7 above) did not exclude the worship of other deities, which were regarded as names and attributes of the supreme god.

[76] People with foreign names are found in high offices of state from the ninth century on, e.g., Yahalu, the state treasurer and eponym of years 833, 824, and 821, and commander-in-chief in 820–807; for further examples see Mattila, *Magnates* . . . Many more individuals of foreign origin certainly held important state office under assumed Assyrian names.

[77] See Oded, *Mass Deportations* . . .

conquered country (see 4.1.4 above). The officials in charge of the deportation, which proceeded in stages from one provincial center to another, were required to provide the deportees with standard rations of food and oil and to attend to their physical well-being.[78] At their destination, legal responsibility for the deportees shifted to the respective provincial governor, who was to provide them with arable land where they could settle.

4.2.1.2 *Prisoners of War, Captives* (*ḫubtu, šallutu*)
People with special skills and training (soldiers, scribes, scholars, artists and artisans, cooks, etc.) were singled out from other deportees and incorporated as separate ethnic contingents (*kalzu*) into the imperial army, administration, and economy.[79] Such people were legally royal property but could be assigned to the service of royal magnates as well; it was the duty of new owner, whoever he was, to provide them with the basic necessities of life (house, field, furniture, agricultural implements, and domestic animals).[80] Several petitions from foreign experts attached to the royal court show that there were many abuses in this respect, but it should be noted that such petitions are extant from native Assyrians as well.[81]

4.2.1.3 Deported foreign rulers and nobility were kept in confinement at the royal court, where many princes and youths of noble descent received instruction in Assyrian culture and were later integrated into the Assyrian power elite, usually as vassal rulers or administrators in their native countries.[82] Foreign princes in the royal entourage received significant favors from the king (e.g., the command of an imperial army), which they were expected to pay back later, when installed in a position of power in their own countries.

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[78] See, e.g., SAA 1 nos. 219 and 257; SAA 5 156.

[79] For *kalzu* as a term for specialized ethnic contingents or groups, cf. SAA 1 171 and 236; SAA 2 6: 217–18; and CT 53 869 ("they have [not] been organized [into] royal contingents [l]ike the deportees"). Examples are the Aramean Itu'eans serving as an elite force in the imperial army, and the Iranian Hundureans settled as a specialized professional group in Assur.

[80] See Oded, *Mass Deportations* . . ., 38–39, and cf., e.g., ABL 556: 8–10.

[81] See Parpola, "Forlorn Scholar." On petitions from Babylonian scholars, see Oppenheim, "Celestial Divination . . ."

[82] See SAA 2, xx–xxi, and the discussion in Parpola, "Letter . . .," 34–35.

4.2.2 *Refugees, Runaways, and Deserters* (*ḫalqu, maqtu*)
While Assyrian political refugees fleeing to vassal states, as well as runaways and deserters escaping military duty and corvée, had to be returned to Assyria by treaty provisions (see 3.4.5),[83] refugees seeking asylum in Assyria, especially important ones, were not extradited but were well received at the imperial court, where they received the same treatment as the youths of deported foreign aristocrats.

4.2.3 *Immunity*
Foreign messengers, ambassadors, and emissaries enjoyed diplomatic immunity while visiting the court, in the sense that their persons were inviolate (see 2.3.3 above). A letter from the crown prince Sennacherib (SAA 1 33) points to the existence of special "embassies" of subject nations in the capital. Important foreign guests, especially ones who had distinguished themselves as loyal servants of the king, received special badges and honors (golden torcs, robing in purple, seating at the royal table) in recognition of their services.[84]

4.2.4 *Humanitarian Aid*
Foreign countries with which Assyria maintained peaceful relations could receive shipments of grain in times of famine.[85]

Abbreviations

SAA	State Archives of Assyria
SAA 2	S. Parpola and K. Watanabe, *Neo-Assyrian Treaties and Loyalty Oaths*
SAAB	State Archives of Assyria Bulletin
SAAS	State Archives of Assyria Studies
NL	H.W.F. Saggs, "The Nimrud Letters," *Iraq* 17 (1955) 21ff. (cited by text numbers)

[83] For letters referring to the retrieval of runaways and deserters from vassal rulers see, e.g., SAA 5 nos. 32, 35, 52–54, and 245.
[84] See, e.g., ABL 129: 25–27, 1454 r. 1–2 (referring to Median vassals); SAA 7 58, 73, 127; Postgate, "Rings . . ."
[85] See Streck Asb., 105, and ABL 1385 for corn shipped from Assyria to Elam in time of famine.

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