1 Law in the Ancient Near East

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It is a paradox that the people who invented and spread cuneiform writing belonged to an oral civilization. This is particularly noteworthy in the field of law: most of Mesopotamian legal life derives from customary rules that, in essence, were not written down and have left only residual traces in the tablets. Indeed, the number of legal sources at our disposal is relatively low in comparison to the three millennia of Mesopotamian history. Although most of the half-million available texts address topics of interest to jurists, some areas such as marriage and criminal prosecution are poorly documented. Putting legal transactions and procedures into writing was a practice that was widespread but not always required in the ancient Near East. Therefore, a large part of legal life – the exact proportion is difficult to assess – remains beyond our knowledge. This observation raises a massive methodological question regarding the tablets that have come down to us. Do they reflect ordinary legal situations or exceptional circumstances? If the former, the purpose for writing down what was already obvious is unclear; if the latter, the highly repetitive and standardized features of many legal documents stand in contradiction to the notion of derogation.

What makes the problem more complicated is the lack of any theory of law or legal science in the Roman sense of the word. In Mesopotamia, there was no critical way of addressing a legal topic. The legal reasoning, which is best reflected in the law collections, relied on a concrete and descriptive approach to the issues discussed in the provisions. The underlying concepts have to be reconstructed with the inherent risks of anachronism and misinterpretation. For instance, is it relevant to talk of marriage, purchase, will, or inheritance, when the Sumerian and Akkadian languages have no words that correspond directly to these English terms? A strict nominalist view would advocate for a negative answer, with the absurd result that there would be no name for the coherent sets of rules governing, for instance, the union of a "husband" (Sum. DAM; Akk. *mutu*) and a "wife" (Sum. DAM; Akk.

https://doi.org/10.1017/9781108636322.003 Published online by Cambridge University Press

aššatu) or the purchase of a house by a "buyer" (Akk. *šāyimānu*) from a "seller" (Akk. *nādinānu*) in exchange for a "price" (Sum. ŠÁM; Akk. *šīmu*). It seems rather that the existence of these institutions did not require specific terminology, in accordance with the pragmatic spirit of the Mesopotamian jurists, who were more interested in practical issues than in legal concepts. Despite the descriptive and concrete nature of the cuneiform laws, they are not devoid of general principles. The search for abstraction appears in the inner organization of the concrete data rather than in intellectual speculation. Therefore, a cautious and moderate use of modern notions should not be considered anachronistic as long as they fit the reality described in the texts.

The study of Mesopotamian law has developed over the years within the context of various debates, the most important of which regards the idea of a common legal system in the ancient Near East, including Egyptian and biblical cultures. The anteriority of the cuneiform laws and their similarities with the biblical laws have prompted various theories trying to isolate a possible cultural conductor from the former to the latter. Rejecting this pattern of transmission from one legal system to another, the late Raymond Westbrook advocated for a shared tradition rooted in the Sumero-Akkadian legal science, which spread throughout the whole Near Eastern area and influenced the laws of ancient Israel and Egypt (Westbrook 1989). On the other hand, some scholars emphasize the genuineness or original nature of the biblical provisions, regardless of any influence on the provisions' form (Jackson 2006). Others invoke a cultural exception to rule out any direct borrowing from cuneiform sources, especially in the realm of criminal law (Greenberg 1960). Another discussion concerns the possible dependence of the Covenant Collection upon the Laws of Hammurabi, with some arguing that the former is a "creative rewriting" of the latter and the result of a process that involved borrowing directly from Neo-Assyrian copies of the Babylonian code (Wright 2009). Others claim that the scribes behind the Covenant Collection were indirectly influenced through the reception of the Babylonian laws in the scribal schools (Otto 2010). This discussion remains a crucial component of the controversy as to the place of biblical law within ancient Near Eastern legal culture. Finally, there is a long-standing argument between supporters and opponents of the authoritative and even legal value of the Mesopotamian and biblical law collections (Wells 2019).

The various ancient Near Eastern legal sources can be categorized according to their style of writing. The provisions of the law collections were not drafted like the contracts, which themselves were different

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from judicial documents or administrative orders. Far from being mere presentation methods, these formal categories, each with its own necessary features, reflect specific legal contexts and goals. Generally speaking, the features were not optional but required for the scribes and functioned as common standards for writing cuneiform records. These requirements affected both the content of the texts and their external aspects, such as their size and shape, the imprint or mention of seals, or the use of a clay envelope.

The major division of the Mesopotamian legal texts, according to these formal criteria, is between those that were issued by public authorities (kings and royal judges, local administrations, temples) and those produced by more ordinary individuals (merchants, scribes, arbitrators); this amounts to the basic distinction between the law from the top and the law from the bottom. Because they originated in different settings, these two types of legal documents resorted to different speech registers and drew from different sources of inspiration. Formal provisions derived from a learned tradition that developed in the educated circles of the palace, whereas contracts reflected a popular tradition, rooted in local, customary rules.

This explains the variations of the vocabulary used to refer to the same notion. Lawgivers resorted to technical terms, while scribes often used a generic word instead. The dowry, for instance, was labeled *nudunnûm* in Old Babylonian contracts, whereas the Laws of Hammurabi preferred *šeriktum* as the term for any property given to a bride by her father. The code seems to have used the term *nudunnûm* in a more general way for bridal property, including any assets given by the husband to his wife. Both words have close but not identical semantic fields: *nudunnûm*, lit. "what is given" (from *nadānum* "to give"), referred to the property assigned to the wife, regardless of its origin; *šeriktum*, a feminine substantive (from *šarākum* "to make a gift"), included only the goods received by the woman from her own family, in other words, the dowry strictly speaking. The scribes behind the law code thus resorted to the *terminus technicus* in instances where scribes involved in day-to-day transactions employed the generic term (Westbrook 1988a: 24–28). Only an awareness of the nature of the sources helps to avoid misunderstandings.

NORMATIVE PRODUCTION

The various types of legal sources listed here derive from royal authority and aim at regulating relationships among individuals or with state

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power. They include law collections, debt-cancellation edicts, royal regulations, and international treaties.

Law Collections

Legislative rules are known from official documents as well as private collections and the scribal curriculum. Although the latter two had no intrinsic legislative value, they were certainly drawn from actual models and served as legal training for advanced students, thus allowing for comparisons at the level of substance. Indeed, educated scribes played a prominent, although not very visible, role in the crafting and reshaping of raw material (Wells 2019).

Four official law collections have been found so far. One comes from the Neo-Sumerian king, Ur-Namma of Ur, around 2100 BCE (Civil 2011; Wilcke 2014: 455–573), and two come from Old Babylonian kings: Lipit-Ištar of Isin, around 1930 BCE, and Hammurabi of Babylon, around 1750 BCE (Driver and Miles 1959–1960; Roth 1997: 23–35 and 71–142; Wilcke 2014: 573–605; Oelsner 2022). Only this last work has been recovered on a stele. The monument was found in Susa, where an Elamite king had brought it back as booty in the twelfth century BCE. Its original location was Sippar, but we know of other steles set up in public places during Old Babylonian times (Roth 1997: 73; Oelsner 2022: 41–44). Though similar monuments are still missing for Ur-Namma and Lipit-Ištar, it is highly probable that their law collections were also engraved on steles. These three works share a common tripartite structure: a prologue, a body of legal provisions, and an epilogue. The royal rhetoric developed in the prologues and epilogues relies on elements such as the defense of the widow and the orphan, which already featured in Old Sumerian edicts, especially the one issued by King Urukagina of Lagaš in the twenty-fourth century BCE (Frayne 2008: 248–75). The fourth collection is a set of laws from the city of Ešnunna around 1770 BCE (Roth 1997: 59–70) and lacks the mention of any royal name. It displays a more stripped-down structure with an opening date formula and no prologue or epilogue.

Whether or not they were inscribed on a stele, official law collections were copied on clay tablets that often exhibit textual variants, some of them orthographic or formal, others more substantial. These versions could reflect the multiplicity of original exemplars or the updating of former recensions (Civil 2011: 230). They were probably copied from memory rather than directly from a *Vorlage*, given the rarity of exact textual reproduction.

Two private compilations of legal provisions are attested. One, the Middle Assyrian Laws, seems to have been issued in Aššur under the

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reign of Tiglath-pileser I (1114–1076 BCE), on the basis of earlier fourteenth-century BCE originals. A unique feature of this collection is its organization by theme. Each of the thirteen tablets composing the whole work deals with a specific topic: women (tablet A), land ownership (tablet B), movable property (tablet C+G), and so forth. A collection known as the Hittite Laws (Hoffner 1997) was also composed by jurists, probably royal judges, who gathered the material in two series of provisions named after their opening words "if a man" (*takku* LÚ-*an*) and "if a vine" (*takku* gišGEŠTIN). In the course of time, compilers modernized the language and occasionally revised the content of the laws. Indeed, this collection is the only explicitly diachronic one, covering multiple time periods. The core of these rules goes back to king Telipinu (sixteenth century BCE) and was revised – already in Old Hittite times – as shown by the formulation "formerly (*karū*) ... but now (*kinuna*)," which occurs in about twenty provisions (Hoffner 1997: 5–6). A second stage occurred during the Neo-Hittite period (twelfth–seventh centuries BCE) with a new version of about forty paragraphs. The whole process points to updates intended to account for the evolution of legal practices.

Commonly added to this body of royal legal norms are several more or less fragmentary legislative documents that have reached us in the form of school exercises. Three of these date to the Old Babylonian period (eighteenth–seventeenth centuries BCE) and were written in Sumerian. One from Nippur is a variation on the theme of liability for injury to or loss of a rented ox (Roth 1997: 37–39); another, from Nippur or Ur, bears a colophon with the name of the scribe (Bēlšunu) and deals with various topics (Roth 1997: 43–45); the last is a compendium of contractual clauses and legal provisions of unknown provenience, drafted by an accomplished scribe (Roth 1997: 47–54). An Akkadian school tablet from the seventh century BCE, possibly from Sippar, gives the remains of Neo-Babylonian laws, consisting of fifteen provisions and a broken colophon (Roth 1997: 143–49). Finally, a series of Old Babylonian bilingual grammatical paradigms and legal formulae from Nippur is known thanks to first-millennium copies (Landsberger 1937; Veldhuis 2014: 328–30; Marchesi 2021). The intriguing and as yet mostly unsolved question is to figure out why, aside from linguistic reasons, first-millennium scribes would preserve obsolete clauses no longer in use.

Early twentieth-century European historians applied the term "code" to the newly discovered works from Babylonia, primarily the famous stele of Hammurabi excavated in Susa by a French

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archaeological team during the winter of 1901–1902. Vincent Scheil was so enthusiastic about this major artifact of Mesopotamian culture that he labeled it "code" to emphasize the solemnity of the object and the remarkable quality of its legal content. A possibly unconscious reference to the French Civil Code, issued a century earlier (in 1804) by Napoléon Bonaparte, cannot be excluded. Yet the stele of Hammurabi does not meet the basic criteria that define a code in the modern sense of the word – namely, exhaustiveness and systematization (Démare-Lafont 2017). Later scholars rightly dropped this designation but took things a step further by questioning the legal nature of the provisions.

The Role of Scribal Tradition

The style of the laws and that of the prologues and epilogues are completely different, pointing to separate sources of inspiration. The legal provisions are written in a casuistic or conditional form, which was employed to record phenomena in other "scientific" fields such as medicine, astronomy, and divination. The protasis describes the case or legal dilemma, and the apodosis gives the solution with the future tense. Also, the general organization of the law collections, like that of the medical or divination collections, reflects a sequencing of the cases that follows an association of ideas from one provision to the next. Both the style and structure of these works testify to the oral nature of Mesopotamian sciences, including law. The scribes who wrote these documents belonged to the same educated circle and received a common training, based on the memorization of long lists of examples. Those who specialized in law learned cases selected for their paradigmatic value such as abortion resulting from beating (Démare-Lafont 1999: 345–82) or damages caused by a goring ox (Finkelstein 1981; Wright 2009: 448 n. 12). These topics, which were common to all the cuneiform and biblical collections and for which no concrete example has been found so far in documents of practice, evidently belonged to the materials used in scribal training, and they feature in some Old Babylonian school exercises (Roth 1997: 40–45). They have been understood as a sign of the literary nature of the law collections, which are said to be merely products of the academic tradition and lacking any legal authority (Bottéro 1982: 199–200; Westbrook 1989). It would be more accurate to say that the royal lawgiver drew on the scholarly traditions of the scribes for rules concerning an array of legal issues, especially questions of liability and the matter of compensating victims according to an offender's intentions. The teaching of the scribal/legal

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experts thus proves to be an important source of legal inspiration for the larger purposes of the king. But the law collections were not a mere juxtaposition of cases coming from the scribal circles, and a good number of provisions derived from the activity of the king as a judge.

The Role of Royal Justice

The idea of a monarch being a "king of justice" is a central motif of the ancient Near Eastern political literature (Charpin 2012:145–60). It occurs in many apologetic texts, along with other royal qualities such as piety and bravery. But it was not a mere ideological slogan as shown by an Old Babylonian letter that reports to Zimri-Lim, king of Mari, a prophecy from the god Addu of Aleppo: "Listen to this word of mine. When someone on trial appeals to you, saying, 'I am being wronged,' hold a hearing and judge his case; answer him with rightness. This is what I want from you" (FM 7 38:6′–11′). Similarly, a quote in another Old Babylonian letter stated that the king would give justice to the one who would cry out to him (AbB 5 244:21–22). Any plaintiff who had been misjudged should thus turn to the king for a fair trial. A concrete illustration thereof is provided by a petition sent to Samsu-iluna, son and successor of Hammurabi, by an anonymous subject who denounced the irregularity of his trial conducted by a royal officer and asked the king to rule on his case (AbB 7 153). He ended his complaint by invoking the royal duty to protect the weak against the strong, a well-known theme since Urukagina in the twenty-fourth century BCE, mostly used in the context of debt cancellation (see below).

Echoing this pattern, the epilogue of the Laws of Hammurabi encourages "any wronged man who has a lawsuit" to come before the statue of the "king of justice" and to read on the stele the proper solution to his case (xlviii 3–19). Hammurabi thus offered his laws to any litigant alleging unfairness in a previous decision. This mechanism of subsidiarity gives precedence to the local level over the royal rules of law with the aim of complementarity and efficiency. Individuals came primarily under customary law and resorted to the royal level of justice if they felt aggrieved by a judgment at a lower level. Once proclaimed, then, the laws of the king could be brought to bear on a given case upon request (Démare-Lafont 2000). It has been suggested that, along with the monumental form of the stele, attested so far only for the Laws of Hammurabi, an oral proclamation of all or some of the provisions in a collection was performed (Wilcke 2002).

Examples of judgments rendered by the king in person are rare throughout ancient Near Eastern history. A handful of documents

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testify to his personal intervention in criminal cases, including the famous biblical judgment of Solomon (1 Kgs 3:16–28). As a sovereign, he could judge according to his view of what was equitable and was not bound by the applicable rules. Thus, David decided to protect the alleged murderous son of the woman of Tekoa against the customary blood revenge demanded by the family (2 Sam 14:1–11). But the king could also create new legal provisions by issuing a written declaration to solve difficult matters submitted to him by local judges. This process, the result of which is known as a rescript in the Roman Empire, is documented by one remarkable letter sent by king Samsu-iluna to various authorities of the city of Sippar, who asked two legal questions regarding the *nadītum*-priestesses of this town (Janssen 1991). The factual elements of the cases disappear in the king's response, which is drafted in general terms just as a legal provision or statute would be. This type of declaration, termed *ṣimdat šarrim* "decree of the king" in contracts and letters, was rooted in precedents issued by the king and aimed at adapting or complementing the law collections into which they were eventually incorporated (Veenhof 1997–2000). Although no similar rescript has been found for Hammurabi, it is likely that many provisions from his code derive from this process – hence the designation of his laws as "just judgments" (*dīnat mīšarim* xlvii 1) at the beginning of the epilogue. The same legislative technique is used in the Bible, identified in five cases that testify to the normative activity of God as lawgiver and legal sovereign (Johnson 2020).

A similar link between case law and legal regulations is also discernible in Achaemenid and Seleucid times. The ten or so occurrences of the expression *dātu ša šarri*, "law (Old Persian *dāta-*) of the king," point to a type of normative determination based on the judicial practice of the king, whose determinations (i.e., decisions) were regularly collected in order to form a body of authoritative rules, which appear to be referenced in contracts (Démare-Lafont 2006; Kleber 2010). To a lesser extent, the thematic grouping of court decisions on highly standardized summary-tablets (*Sammelurkunden*) in Neo-Sumerian times (Falkenstein 1956–1957: 2:263–393) could reflect an attempt to systematize case law and may have accompanied the codification movement inaugurated by Ur-Namma.

Debt-Cancellation Edicts

The *topos* of the royal protection granted to weak people, personified by the widow and the orphan, is attested from the mid-third down to the first millennium BCE and resulted mostly in debt cancellations decided

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by the king on specific occasions such as his accession, a military victory, or an economic crisis. The remission covered any balances from the crown's tenants that were in arrears and the noncommercial debts between private individuals, including ancillary enslavements and family estate sales. Therefore, human pledges were released and landed property sold under economic pressure was restored to the seller.

The general amnesty established by the Old Sumerian ruler Urukagina of Lagaš was a remedy for the alleged abuses of the administration (Wilcke 2007: 21–25). The Old Babylonian period has provided copies of several edicts, some of them very fragmentary (Kraus 1984; Charpin 2010), and letters describing the process of promulgation by means of symbolic gestures, such as raising a torch in reference to the light of Šamaš, god of the sun and justice (AbB 7 153). The Babylonian sources call them by the term *mīšarum* (lit. "straightening-act"), from the verb *ešēru* ("to straighten up), whereas Anatolian, Syrian, Assyrian, and Nuzi tablets prefer the label (*an*)*durāru*, meaning "return to the original status" according to its Sumerian equivalent AMA-AR-GI$_4$ ("return to mother"). It is no coincidence that the word *mīšaru*(*m*) occurs regularly in royal inscriptions and legal literature as an expression for "justice," along with *kittu*(*m*), which denotes stability and order.

These legal enactments, which recall the biblical jubilee (*dərôr*, the Hebrew cognate of Akkadian *andurāru*/*durāru*) as well as the Greek *seisachtheia* and modern amnesties, sought merely to redistribute certain financial resources rather than to reform the system in a significant way; they offered only precarious relief in an ocean of injustice. In Syria and Anatolia, parties to a transaction could even sometimes relinquish their right to benefit from a future edict; conversely, some Neo-Assyrian contracts accept in advance the effects of the edict. Such stipulations are not attested in Babylonian contexts.

These royal initiatives are generally understood as expressions of social justice when, in fact, they were policing measures intended to protect public authority from being undermined by endemic crises. Instead of controlling interest rates beforehand and punishing usury, the kings acted after the fact to cancel contracts that would probably not have been honored in any case. True social justice would rather have consisted in trying to prevent these situations from occurring.

Royal Regulations

Middle Assyrian kings developed the practice of issuing decrees as a means of governing, both in oral and written forms (Cancik-Kirschbaum 2020). The best-known example is a collection composed in Aššur under

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the reign of Tiglath-pileser I (1114–1076), gathering twenty-three previous decrees (*riksū*) about the internal organization of the palace and the harem (Roth 1997: 195–209). They deal with the duties of court attendants and retainers, especially eunuchs, and with the behavior and etiquette from and toward women living in the palace. References to quarrels, blasphemy, and curses give some indication of the vicious nature that could characterize interpersonal relations within this small and insulated community. Other administrative rules are attested in the form of instructions to various kinds of officers, especially in the Hittite kingdom of the second millennium.

International Alliances and Treaties

Any type of covenant or formal agreement between kingdoms or between kings and subjects was based on a solemn oath invoking the gods. Such political oaths are attested from the mid-third millennium BCE onward. The inscription of the famous Stele of the Vultures (twenty-fifth century BCE) quotes the mutual oaths ratifying the military victory of the king of Lagaš over his competitor from Umma in Southern Mesopotamia. The Old Syrian tablets from Ebla offer nearly contemporary examples of treaties regulating the commercial relationship with neighboring countries (Huddleston 2017). Abundant references to agreements between kings increase during the Old Babylonian period, although no treaty as such has been found so far – only tablets of unilateral oaths sworn by one ally. But the heyday of diplomacy was in the Late Bronze Age, when the kingdoms of Egypt and Hatti played a major role in framing nearly all political relations throughout Mesopotamia and the Levant. The famous letters from El Amarna and about forty treaties bring to light the various aspects of international relations during this period. Treaties were always bilateral and fell into two categories – namely, parity or vassal treaties, depending on whether the obligations were reciprocal or unilateral. They were usually renewed upon a new king's succession to the throne.

Pacts with portions of the population are mentioned in the sources from Ebla and persist in the Old Babylonian Mari kingdom (Charpin 2019). They became the basis for imperial governance under the Neo-Assyrian kings, probably because of recurrent palace intrigues surrounding accession to the throne. Duties and obligations contained in loyalty oaths for indigenous subjects were similar to those demanded from allied kings. These sworn agreements are called *adê*, an Aramaic loanword attested mainly in international treaties for political covenants with notables, vassals, and the entire population. Likewise, all Hittite

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officials and courtiers were bound by an oath to the king, sworn in front of the gods and securing the fulfilment of their duties.

The biblical notion of covenant is deeply rooted in this ancient Near Eastern tradition. In addition to the parallels with Hittite treaties, close similarities with the Neo-Assyrian *adê*-oaths reveal the writers of Deuteronomy drawing on those traditions or ones very much like them (Steymans 1995). But earlier influences from second-millennium Amorite traditions are also visible, such as the etymological link between Hebrew *bərît* ("covenant") and Akkadian *birît* ("between"), which refers to political alliances in the Mari tablets. Some enduring Mesopotamian practices were thus incorporated and adapted for new purposes in the Hebrew Bible (Charpin 2019: 263).

CONTRACTS AND LEGAL DEEDS

Contracts and other legal documents of practice make up by far the largest part of the Mesopotamian legal corpus and originate mainly from Babylonia in the second and first millennia. The most frequent documents are loan and sale contracts. Those having to do with family law (e.g., marriage, adoption) are comparatively fewer. The reason is that being a husband, a wife, or an adoptive child was a status to which it was simply necessary to agree without further formality. Only if the parties wished to adjust this status did they resort to a written contract, or when a transfer of property was contemplated, especially property from the dowry if it included valuable items. The same is true for inheritance documents (e.g., divisions of family assets, wills), which were drafted when specific arrangements were at stake regarding the status of the family members or the distribution of land shares among the heirs. The available sources therefore reflect the practices of the wealthy sectors of the population and provide but a partial picture of the social reality. Loan documents give a more accurate image of everyday life and the debt level of individuals. The cyclic impoverishment of households was a common societal scourge that often prompted kings to intervene through debt-cancellation edicts (see above).

Standardization

The drafting of contracts is structured according to a consistent pattern, with variations in vocabulary depending on the type of contract. The purpose of the agreement always comes first in the operative section, which contains the names of the parties and the key verb corresponding to the legal transaction (e.g., "to buy," "to receive/borrow," "to take as a

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wife," "to take as a son"). Optional clauses then follow in the complementary section, such as those indicating the rate of interest, the due date for the repayment of a loan, or the termination arrangements for a marriage or adoption. Finally, the witnesses are listed, sometimes preceded by an oath and followed by a date. Validation marks such as seals, fingernail impressions, or marks made by the hem of a garment can be mentioned or imprinted on the document.

The layout is also very regular. The names of the individuals and the key verb are preferably noted on a single line. Likewise, the object of the contract (e.g., sold property, loan amount, name of the wife or adoptee) is mentioned in the first line of the tablet. By exception, the Nuzi contracts (near Mossul, in the fourteenth century BCE) bear a title indicating the nature of the agreement – for instance, *ṭuppi mārūti* ("adoption tablet"). Babylonian letters and contracts from the first half of the second millennium are usually covered with a clay envelope (top to bottom for contracts) on which the seals were rolled.

The style of the contracts is sober, with short and descriptive sentences using several logograms for the sake of brevity. The clauses were built up from a stock of formulas learned by heart and supplemented with contextual information such as personal names, the amounts of silver or barley involved, or the cadastral boundaries of a property. Ancillary clauses were not always given in their entirety but sometimes only with their opening words; this did not affect the validity of the act provided that the operative section of the document was fully and properly noted. This feature underlines the secondary value of the written text: agreements were concluded orally and remained valid without being written down. This does not mean that they relied on the consensual principle. On the contrary, formalism played an important role in the creation of an obligation and required the performance of specific words or gestures and above all the presence of witnesses.

One of the primary aims of drafting a contract was to record the presence of those who attended and witnessed the transaction; their names would be listed at the end of the document. In case of litigation, the tablet functioned as prima facie evidence that needed to be complemented by the corroborating statements of the witnesses.[1] The written text was thus considered a kind of fixed word, to which the living words of the witnesses were added. This is apparent from some Old Babylonian letters where the sender asked the recipient to keep his tablet

[1] For the role of witnesses in the biblical tradition, see Chapter 7 (Czander) in this volume.

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"as testimony" (*ana šîbûtim*; Charpin 2013): the document was intended to speak in court as his substitute. Indeed, tablets produced in a trial had a "mouth," they were "listened to," and they could even be "killed" when they were invalid or "resurrected" when they were drafted anew after having been lost. Such a personification of legal writing underlines the triumph of orality in the realm of law, since the tablets were themselves assimilated into the category of witnesses.

Legal Innovations

The unifying effect of the formulas did not prevent the scribes from being inventive to meet the expectations of the families or individuals involved in what was being recorded. While modern societies will repeal an outdated rule of law or create new legal categories when the need arises, Mesopotamian culture created change by recycling the available formulas and patterns but deploying them for new, original purposes. The IOU, for instance, came to be used as the legal framework for purchasing items on credit, due to the lack of proper legal formulae for this type of transaction. Legal fictions sometimes helped to circumvent a prohibition. Old Babylonian creditors often resorted to seasonal labor contracts to cover up a short-term loan, thus avoiding the enforcement of an expected edict of debt cancellation (Charpin 1993). The salary, paid in advance, was actually the principal that the employee repaid with his work. Another example is provided by the numerous adoptions from Late Bronze Age Nuzi that mask permanent sales of family land made under pressure. At Emar and in Assyria, wills and adoptions could turn a daughter into a son or a widow into "father and mother" in order to ensure the proper worship of ancestors or the ongoing care of the widow in the deceased husband's house (Westbrook 2001; Justel 2008: 156–67). In the realm of property law, transfers of prebends in Achaemenid times took the legal form of gifts because of the increasing tax load attached to sales during the second half of Darius' reign.

OVERVIEW OF ANCIENT NEAR EASTERN LEGAL LIFE

Family Law

The household was the primary unit upon which the whole social system was built. It included parents, children, relatives, and slaves, as well as movable and immovable assets. Mesopotamian tablets document mainly the economic aspects of agreements. As part of family archives, they reveal the long-term strategies of lineages for maintaining the cohesion of family assets. When it came to marriage contracts,

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specific divorce conditions were often added that could impose heavy financial consequences on the husband for divorcing his wife; consequences for initiating a divorce on the part of the wife were typically harsher and could even include death. Polygamy is attested in royal circles as a sign of power, and it can be found among couples facing physiological or statutory (e.g., some priestesses were not allowed to bear children) infertility.

More than marriage, the decisive moment for a family was probably the birth of children, the results of which were crucial for the identification and sequence of heirs, the exchange of goods, and the future division of the estate. In second-millennium Assyrian, Syrian, and Nuzi sources, these arrangements were formalized in wills, appearing as programmatic records in which the testator listed all the dispositions he wished to make for his household. So far, the Babylonian and Sumerian cultures have left no such tablets; they may have used adoption contracts to deal with sensitive situations in which the ownership of parental property could be disputed. Familial property was at the center of these arrangements, as shown by the complicated strategies of wealthy families to ensure that property would remain in their own group, preferably undivided as long as possible.

Adoption was a widespread practice that served an array of purposes. It provided descendants to a childless couple, granted legitimation to the previous child of a remarried widow, and served as a strategy for the reunification of family wealth. It also facilitated the formation of apprenticeships and the accompanying transmission of skills to the younger adoptee, and it could be used as a means of supporting aging couples, who might adopt someone to take care of them. The adoption of young women from poorer families for the purpose of marrying them off, thereby gaining a bride-price for the adopter and, perhaps, raising the socioeconomic situation of the adoptee, is attested as well. Oblique uses of adoption are also attested to enable certain kinds of sales and partnerships that might otherwise have been prohibited.

Obligations

In Mesopotamia, the link by which one person owed something to another (or several others) was created by a contract or triggered by a tort entailing compensation for damage. Liability was involved in case of damages to persons or goods, mostly caused by negligence or incompetence. The rate of the compensation depended on the circumstances, especially the status of the protagonists and the voluntary or involuntary nature of the act. Law collections deal at length with the topic of damages, perhaps for the sake of developing more sustained reflection

https://doi.org/10.1017/9781108636322.003 Published online by Cambridge University Press

on a range of potentialities, including damages caused by an animal – especially the famous "goring ox" – or by a building, thereby illustrating the liability that should result when the immediate source of injury or damage is a nonhuman entity. Likewise, abortion resulting from one or more blows to the expectant mother was a classic case of unintended bodily damage throughout ancient Near Eastern law collections.

All categories of obligations are attested in contracts, with a clear predominance of loans. The basic formulary of the loan appears as a standard matrix for various kinds of legal operations, including administrative activities or the hiring of services. The most common forms were personal and commercial loans. The latter were concluded for short-term business ventures, whereas farmers and small tenants used the former as a means of keeping up until the next harvest. This type of loan often included personal or real security in the form of seizure of the debtors or of their assets. Only redemption by the family or a debt-cancellation edict – or, in some societies, a standard limitation on the length of debt-slavery – could release them.

Cuneiform sources provide an illuminating point of comparison with the Bible regarding antichretic pledge. This widespread institution, still in force nowadays, allowed the creditor to replace the interest on the loan with the labor of a person or the income from a land belonging to the debtor. Such a situation, abundantly documented in Mesopotamia, was the background of one Holiness Collection provision, namely Lev 25:35–38 (Wells 2011). Money and food given by the wealthier Israelite to the impoverished one constituted a loan and not a pure act of gracious generosity. The debtor was to live with his creditor and to repay the interest on the loan with his personal labor. This essentially forced the debtor to take on the status of a resident alien (Lev 25:35). As an antichretic pledge, he was "right at the edge of slavery" (Wells 2011:151), being deprived of his personal freedom and compelled to serve the creditor until full repayment of his debt.

Property and Ownership

Ownership was not an absolute power over a thing but rather a direct relationship between a subject and an object. A property could be sold, hired, or pledged. Legally speaking, all these acts were conceived as many variants of alienation: sale was a definitive alienation, hire a temporary one, and pledge a conditional one. Ownership of immovable goods was basically conceived as the extended and peacefully uninterrupted use of a property, creating or consolidating the rights of the occupant against third parties. Collective forms of ownership were widespread, within families or rural communities. Ownership of

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movable goods resulted in mere possession, unless otherwise stated by contract in cases of loan or deposit.

Transfer of ownership occurred through sale or inheritance. Sale is known with certainty from the mid-third millennium onward and usually involved real estate or slaves. The contract was drafted from the point of view of the buyer (except in Middle Assyrian times and in Neo-Babylonian sales of movable property) and was thus depicted as a purchase rather than a sale. The document included the description of the object, the names of the parties, and the payment of the price, often followed by the clause, "his (the seller's) heart is satisfied," which precluded any claim regarding the amount. Symbolic gestures were sometimes performed in order to formalize the transfer of possession or to preserve the memory of the transaction. Security against eviction for immovable property or against flight or hidden defects for slaves and animals was usually added, along with a non-contestation oath sworn by one or both parties. The breach of such oaths was liable to a financial penalty and/or corporal punishment. Sale on credit was common practice, as shown by numerous sources testifying to partial payments recorded in additional tablets formulated as loans.

Inheritance was governed by several general principles: devolution was primarily toward direct male heirs (sons), with secondary or reduced rights for daughters and collateral family members; husbands and wives had no mutual right to their respective estates; heirs usually tried to hold the property in common as long as possible and resorted to division of the estate by mutual agreement upon the request of one of them; revocable testamentary deeds are attested only in northern areas (Assyria, Syria, Nuzi), mostly during the Late Bronze Age, while irrevocable gifts, *inter vivos* or *mortis causa*, are widespread. The concept of a birthright, usually for the oldest son, existed even in areas where equal sharing was the rule. Daughters received a minor portion, if in the company of sons, or the whole estate if they were the sole direct heirs. The dowry that they often received worked as an anticipated inheritance share and was intended to be passed to her children or to return to her family in case of barrenness. Wives could also receive a gift from their husbands, usually after the birth of a child, in order to support her and the offspring in case of widowhood.

Criminal Law

Most of our information on criminal law comes from law collections, complemented by specific royal regulations, treaties, and penalty clauses occurring in various types of contracts. Trials dealing with

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crimes are rare, perhaps due to the predominance of private agreements that were reached to settle these sorts of disputes. Crimes can be divided in two categories. In the first one are offenses against gods and kings, such as blasphemy, desertion, theft of temple property, and witchcraft. They were perceived as dangerous for cosmic order and political stability but were also very difficult to prosecute and to punish by human means. The second type consists of crimes against individuals: homicide, assault and battery, sexual offenses, theft, and slander or malicious accusation. The punishments listed in the law collections are usually corporal, although they allow for the possibility that the king will pardon the perpetrator. The aggrieved party could also reduce or cancel the sanction or convert it into financial compensation.

Among all criminal offenses, adultery is probably the best documented in the legal and literary sources of the ancient Near East. Not only law collections, contracts, and judicial texts but also omen and wisdom literature as well as mythology, prayers, and incantations address the topic in greater or lesser length. Biblical provisions and narratives also refer to this crime. All of these sources share a common legal approach, both private and public. Adultery was conceived as a sexual relationship between a married woman and a man aware of her marital status. Because it could bring "foreign" blood into the family, it was considered an offense against the husband and his lineage. But it also affected the family as an institution, the very foundation of the society, and, in this respect, it was of interest to public authorities. Cuneiform and biblical laws consistently list death as the punishment for adultery. Mesopotamian law collections typically provide for drowning. Some contracts and several judgments also mention defenestration or impalement, along with more lenient sanctions such as divorce with heavy financial penalties. Even when a death sentence was imposed, however, the aggrieved husband could still forgive his wife; in Mesopotamia, this resulted in an automatic royal pardon for her lover. The treatment of adultery appears as one of the best examples of a shared legal tradition across Near Eastern societies and their textual sources, including ancient Israel and its literature as preserved in the Bible.

Litigation

Judicial authority was widespread among various groups. In addition to professional judges, the documentary evidence shows that heads of households, palace or temple dignitaries, military and administrative officers, local institutions (assemblies, elders), merchants, and most

https://doi.org/10.1017/9781108636322.003 Published online by Cambridge University Press

importantly kings were all entitled to dispense justice to some extent. There was no specific building dedicated to judicial activities, which often took place in public "at the gate" of the city. Most jurisdictions were secular, although temples are frequently mentioned in lawsuits, either because their economic interests were at issue or because they were to conduct oath-taking procedures and could preside over some trials if the subject matter and all of the parties fell under temple authority. Collegiality (having multiple individuals on the judicial panel) was the rule, except for royal justice. While no clear rules governed the choice of jurisdiction, commercial trials were preferably judged by peers. In addition, any case could be brought before the king, who typically had exclusive jurisdiction over crimes punishable by death. The Mesopotamian judicial system relied on an adversarial process, being oral, public, and contradictory. Initiating a lawsuit required the formal claim of an accuser who brought his adversary to court. Serious crimes, however, such as homicide were prosecuted by official authorities, at least during Old Babylonian times.

Evidence consisted mostly of witness testimony and/or oaths taken by litigants (and sometimes by witnesses), but other types of proof are also attested, whether material (e.g., physical items shown to the judicial authorities, deeds or other documents read to them) or supernatural (e.g., the river ordeal). The oath and ordeal were used to settle matters otherwise impossible to prove, such as witchcraft and adultery in the absence of *flagrante delicto*. Witnesses or litigants could also be instructed to make their statements under oath. When judges ordered a litigant to swear an oath or undergo an ordeal, this was sometimes done as a means of pressuring a party to confess to a crime or to settle the matter with the other litigant. Indeed, sending a party to face the gods was probably an incentive for negotiating a settlement. In a system without the presumption of innocence, fear of perjury and of divine judgment would keep those who had lied before the court from pressing their assertions before the gods (Cardascia 1993).

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