THE CODE OF HAMMURABI

Translated by L. W. King

With commentary from
Charles F. Horne, Ph.D. (1915)
and
The Eleventh Edition of the Encyclopaedia Britannica, 1910-
by the Rev. Claude Hermann Walter Johns, M.A. Litt.D.

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(from an Introduction written in 1915 by Charles F. Horne, Ph.D.)

. . .[Hammurabi] was the ruler who chiefly established the greatness of Babylon, the world's first metropolis. Many relics of Hammurabi's reign ([1795-1750 BC]) have been preserved, and today we can study this remarkable King . . . as a wise law-giver in his celebrated code. . .

. . . [B]y far the most remarkable of the Hammurabi records is his code of laws, the earliest-known example of a ruler proclaiming publicly to his people an entire body of laws, arranged in orderly groups, so that all men might read and know what was required of them. The code was carved upon a black stone monument, eight feet high, and clearly intended to be reared in public view. This noted stone was found in the year 1901, not in Babylon, but in a city of the Persian mountains, to which some later conqueror must have carried it in triumph. It begins and ends with addresses to the gods. Even a law code was in those days regarded as a subject for prayer, though the prayers here are chiefly cursings of whoever shall neglect or destroy the law.

The code then regulates in clear and definite strokes the organization of society. The judge who blunders in a law case is to be expelled from his judgeship forever, and heavily fined. The witness who testifies falsely is to be slain. Indeed, all the heavier crimes are made punishable with death. Even if a man builds a house badly, and it falls and kills the owner, the builder is to be slain. If the owner's son was killed, then the builder's son is slain. We can see where the Hebrews learned their law of "an eye for an eye." These grim retaliatory punishments take no note of excuses or explanations, but only of the fact--with one striking exception. An accused person was allowed to cast himself into "the river," the Euphrates. Apparently the art of swimming was unknown; for if the current bore him to the shore alive he was declared innocent, if he drowned he was guilty. So we learn that faith in the justice of the ruling gods was already firmly, though somewhat childishly, established in the minds of men.

Yet even with this earliest set of laws, as with most things Babylonian, we find ourselves dealing with the end of things rather than the beginnings. Hammurabi's code was not really the earliest. The

preceding sets of laws have disappeared, but we have found several traces of them, and Hammurabi's own code clearly implies their existence. He is but reorganizing a legal system long established.
Charles F. Horne, Ph.D.

CLAUDE_JOHNS_MONOGRAPH

BABYLONIAN LAW--The Code of Hammurabi.
By the Rev. Claude Hermann Walter Johns, M.A. Litt.D.
from the Eleventh Edition of the Encyclopedia Britannica, 1910-1911
(The Rev. John's spelling has been changed from Khammurabi to Hammurabi throughout this article for clarity)

The material for the study of Babylonian law is singularly extensive without being exhaustive. The so-called "contracts," including a great variety of deeds, conveyances, bonds, receipts, accounts and, most important of all, the actual legal decisions given by the judges in the law courts, exist in thousands. Historical inscriptions, royal charters and rescripts, despatches, private letters and the general literature afford welcome supplementary information. Even grammatical and lexicographical works, intended solely to facilitate the study of ancient literature, contain many extracts or short sentences bearing on law and custom. The so-called "Sumerian Family Laws" are thus preserved. The discovery of the now celebrated Code of Hammurabi (hereinafter simply termed the Code) has, however, made a more systematic study possible than could have resulted from the classification and interpretation of the other material. Some fragments of a later code exist and have been published; but there still remain many points upon which we have no evidence.

This material dates from the earliest times down to the commencement of our era. The evidence upon a particular point may be very full at one period and almost entirely lacking at another. The Code forms the backbone of the skeleton sketch which is here reconstructed. The fragments of it which have been recovered from Assur-bani-pal's library at Nineveh and later Babylonian copies show that it was studied, divided into chapters entitled Ninu ilu sirum from its opening words, and recopied for fifteen hundred years or more. The greater part of It remained in force, even through the Persian, Greek and Parthian conquests, which affected private life in Babylonia very little, and it survived to influence Syro-Roman and later Mahommedan law in Mesopotamia. The law and custom which preceded the Code we shall call "early," that of the New Babylonian empire (as well as the Persian, Greek, &c.) "late." The law in Assyria was derived from Babylonia but conserved early features long after they had disappeared elsewhere.

When the Semitic tribes settled in the cities of Babylonia, their tribal custom passed over into city law. The early history of the country is the story of a struggle for supremacy between the cities. A metropolis demanded tribute and military support from its subject cities but left their local cults and customs unaffected. The city rights and usages were respected by kings and conquerors

alike.

As late as the accession of Assur-bani-pal and Samas-sum-yukin we find the Babylonians appealing to their city laws that groups of aliens to the number of twenty at a time were free to enter the city, that foreign women once married to Babylonian husbands could not be enslaved and that not even a dog that entered the city could be put to death untried.

The population of Babylonia was of many races from early times and intercommunication between the cities was incessant. Every city had a large number of resident aliens. This freedom of intercourse must have tended to assimilate custom. It was, however, reserved for the genius of Hammurabi to make Babylon his metropolis and weld together his vast empire by a uniform system of law.

Almost all trace of tribal custom has already disappeared from the law of the Code. It is state-law; - alike self-help, blood-feud, marriage by capture, are absent; though family solidarity, district responsibility, ordeal, the lex talionis, are primitive features that remain. The king is a benevolent autocrat, easily accessible to all his subjects, both able and willing to protect the weak against the highest-placed oppressor. The royal power, however, can only pardon when private resentment is appeased. The judges are strictly supervised and appeal is allowed. The whole land is covered with feudal holdings, masters of the levy, police, &c. There is a regular postal system. The pax Babylonica is so assured that private individuals do not hesitate to ride in their carriage from Babylon to the coast of the Mediterranean. The position of women is free and dignified.

The Code did not merely embody contemporary custom or conserve ancient law. It is true that centuries of law-abiding and litigious habitude had accumulated in the temple archives of each city vast stores of precedent in ancient deeds and the records of judicial decisions, and that intercourse had assimilated city custom. The universal habit of writing and perpetual recourse to written contract even more modified primitive custom and ancient precedent. Provided the parties could agree, the Code left them free to contract as a rule. Their deed of agreement was drawn up in the temple by a notary public, and confirmed by an oath "by god and the king." It was publicly sealed and witnessed by professional witnesses, as well as by collaterally interested parties. The manner in which it was thus executed may have been sufficient security that its stipulations were not impious or illegal. Custom or public opinion doubtless secured that the parties would not agree to wrong. In case of dispute the judges dealt first with the contract. They might not sustain it, but if the parties did not dispute it, they were free to observe it. The judges' decision might, however, be appealed against. Many contracts contain the proviso that in case of future dispute the parties would abide by "the decision of the king." The Code made known, in a vast number of cases, what that decision would be, and many cases of appeal to the king were sent back to the

judges with orders to decide in accordance with it. The Code itself was carefully and logically arranged and the order of its sections was conditioned by their subject-matter. Nevertheless the order is not that of modern scientific treatises, and a somewhat different order from both is most convenient for our purpose.

The Code contemplates the whole population as falling into three classes, the amelu, the muskinu and the ardu. The amelu was a patrician, the man of family, whose birth, marriage and death were registered, of ancestral estates and full civil rights. He had aristocratic privileges and responsibilities, the right to exact retaliation for corporal injuries, and liability to heavier punishment for crimes and misdemeanours, higher fees and fines to pay. To this class belonged the king and court, the higher officials, the professions and craftsmen. The term became in time a mere courtesy title but originally carried with it standing. Already in the Code, when status is not concerned, it is used to denote "any one." There was no property qualification nor does the term appear to be racial. It is most difficult to characterize the muskinu exactly. The term came in time to mean "a beggar" and with that meaning has passed through Aramaic and Hebrew into many modern languages; but though the Code does not regard him as necessarily poor, he may have been landless. He was free, but had to accept monetary compensation for corporal injuries, paid smaller fees and fines, even paid less offerings to the gods. He inhabited a separate quarter of the city. There is no reason to regard him as specially connected with the court, as a royal pensioner, nor as forming the bulk of the population. The rarity of any reference to him in contemporary documents makes further specification conjectural. The ardu was a slave, his master's chattel, and formed a very numerous class. He could acquire property and even hold other slaves. His master clothed and fed him, paid his doctor's fees, but took all compensation paid for injury done to him. His master usually found him a slave-girl as wife (the children were then born slaves), often set him up in a house (with farm or business) and simply took an annual rent of him. Otherwise he might marry a freewoman (the children were then free), who might bring him a dower which his master could not touch, and at his death one-half of his property passed to his master as his heir. He could acquire his freedom by purchase from his master, or might be freed and dedicated to a temple, or even adopted, when he became an amelu and not a muskinu. Slaves were recruited by purchase abroad, from captives taken in war and by freemen degraded for debt or crime. A slave often ran away; if caught, the captor was bound to restore him to his master, and the Code fixes a reward of two shekels which the owner must pay the captor. It was about one-tenth of the average value. To detain, harbour, &c., a slave was punished by death. So was an attempt to get him to leave the city. A slave bore an identification mark, which could only be removed by a surgical operation and which later consisted of his owner's name tattooed or branded on the arm. On the great estates in Assyria and its subject

provinces were many serfs, mostly of subject race, settled captives, or quondam slaves, tied to the soil they cultivated and sold with the estate but capable of possessing land and property of their own. There is little trace of serfs in Babylonia, unless the muskinu be really a serf.

The god of a city was originally owner of its land, which encircled it with an inner ring of irrigable arable land and an outer fringe of pasture, and the citizens were his tenants. The god and his viceregent, the king, had long ceased to disturb tenancy, and were content with fixed dues in naturalia, stock, money or service. One of the earliest monuments records the purchase by a king of a large estate for his son, paying a fair market price and adding a handsome honorarium to the many owners in costly garments, plate, and precious articles of furniture. The Code recognizes complete private ownership in land, but apparently extends the right to hold land to votaries, merchants (and resident aliens?). But all land was sold subject to its fixed charges. The king, however, could free land from these charges by charter, which was a frequent way of rewarding those who deserved well of the state. It is from these charters that we learn nearly all we know of the obligations that lay upon land. The state demanded men for the army and the corvee as well as dues in kind. A definite area was bound to find a bowman together with his linked pikeman (who bore the shield for both) and to furnish them with supplies for the campaign. This area was termed "a bow" as early as the 8th century B.C., but the usage was much earlier. Later, a horseman was due from certain areas. A man was only bound to serve so many (six?) times, but the land had to find a man annually. The service was usually discharged by slaves and serfs, but the amelu (and perhaps the muskenu) went to war. The "bows" were grouped in tens and hundreds. The corvee was less regular. The letters of Hammurabi often deal with claims to exemption. Religious officials and shepherds in charge of flocks were exempt. Special liabilities lay upon riparian owners to repair canals, bridges, quays, &c. The state claimed certain proportions of all crops, stock, &c. The king's messengers could commandeer any subject's property, giving a receipt. Further, every city had its own octroi duties, customs, ferry dues, highway and water rates. The king had long ceased to be, if he ever was, owner of the land. He had his own royal estates, his private property and dues from all his subjects. The higher officials had endowments and official residences. The Code regulates the feudal position of certain classes. They held an estate from the king consisting of house, garden, field, stock and a salary, on condition of personal service on the king's errand. They could not delegate the service on pain of death. When ordered abroad they could nominate a son, if capable, to hold the benefice and carry on the duty. If there was no son capable, the state put in a locum tenens, but granted one-third to the wife to maintain herself and children. The benefice was inalienable, could not be sold, pledged, exchanged, sublet, devised or diminished. Other land was held of the

state for rent. Ancestral estate was strictly tied to the family. If a holder would sell, the family had the right of redemption and there seems to have been no time-limit to its exercise.

The temple occupied a most important position. It received from its estates, from tithes and other fixed dues, as well as from the sacrifices (a customary share) and other offerings of the faithful, vast amounts of all sorts of naturalia; besides money and permanent gifts. The larger temples had many officials and servants. Originally, perhaps, each town clustered round one temple, and each head of a family had a right to minister there and share its receipts. As the city grew, the right to so many days a year at one or other shrine (or its "gate") descended in certain families and became a species of property which could be pledged, rented or shared within the family, but not alienated. In spite of all these demands, however, the temples became great granaries and store-houses; as they also were the city archives. The temple held its responsibilities. If a citizen was captured by the enemy and could not ransom himself the temple of his city must do so. To the temple came the poor farmer to borrow seed corn or supplies for harvesters, &c.--advances which he repaid without interest. The king's power over the temple was not proprietary but administrative. He might borrow from it but repaid like other borrowers. The tithe seems to have been the composition for the rent due to the god for his land. It is not clear that all lands paid tithe, perhaps only such as once had a special connexion with the temple.

The Code deals with a class of persons devoted to the service of a god, as vestals or hierodules. The vestals were vowed to chastity, lived together in a great nunnery, were forbidden to open or enter a tavern, and together with other votaries had many privileges.

The Code recognizes many ways of disposing of property--sale, lease, barter, gift, dedication, deposit, loan, pledge, all of which were matters of contract. Sale was the delivery of the purchase (in the case of real estate symbolized by a staff, a key, or deed of conveyance) in return for the purchase money, receipts being given for both. Credit, if given, was treated as a debt, and secured as a loan by the seller to be repaid by the buyer, fr which he gave a bond. The Code admits no claim unsubstantiated by documents or the oath of witnesses. A buyer had to convince himself of the seller's title. If he bought (or received on deposit) from a minor or a slave without power of attorney, he would be executed as a thief. If the goods were stolen and the rightful owner reclaimed them, he had to prove his purchase by producing the seller and the deed of sale or witnesses to it. Otherwise he would be adjudged a thief and die. If he proved his purchase, he had to give up the property but had his remedy against the seller or, if he had died, could reclaim five-fold from his estate. A man who bought a slave abroad, might find that he had been stolen or captured from Babylonia, and he had to restore him to his former owner without profit. If he bought property belonging to a feudal holding, or to a ward in chancery, he had to return it and

forfeit what he gave for it as well. He could repudiate the purchase of a slave attacked by the bennu sickness within the month (later, a hundred days), and had a female slave three days on approval. A defect of title or undisclosed liability would invalidate the sale at any time.

Landowners frequently cultivated their land themselves but might employ a husbandman or let it. The husbandman was bound to carry out the proper cultivation, raise an average crop and leave the field in good tilth. In case the crop failed the Code fixed a statutory return. Land might be let at a fixed rent when the Code enacted that accidental loss fell on the tenant. If let on share-profit, the landlord and tenant shared the loss proportionately to their stipulated share of profit. If the tenant paid his rent and left the land in good tilth, the landlord could not interfere nor forbid subletting. Waste land was let to reclaim, the tenant being rent-free for three years and paying a stipulated rent in the fourth year. If the tenant neglected to reclaim the land the Code enacted that he must hand it over in good tilth and fixed a statutory rent. Gardens or plantations were let in the same ways and under the same conditions; but for date-groves four years' free tenure was allowed. The metayer system was in vogue, especially on temple lands. The landlord found land, labour, oxen for ploughing and working the watering-machines, carting, threshing or other implements, seed corn, rations for the workmen and fodder for the cattle. The tenant, or steward, usually had other land of his own. If he stole the seed, rations or fodder, the Code enacted that his fingers should be cut off. If he appropriated or sold the implements, impoverished or sublet the cattle, he was heavily fined and in default of payment might be condemned to be torn to pieces by the cattle on the field. Rent was as contracted.

Irrigation was indispensable. If the irrigator neglected to repair his dyke, or left his runnel open and caused a flood, he had to make good the damage done to his neighbours' crops, or be sold with his family to pay the cost. The theft of a watering-machine, water-bucket or other agricultural implement was heavily fined.

Houses were let usually for the year, but also for longer terms, rent being paid in advance, half-yearly. The contract generally specified that the house was in good repair, and the tenant was bound to keep it so. The woodwork, including doors and door frames, was removable, and the tenant might bring and take away his own. The Code enacted that if the landlord would re-enter before the term was up, he must remit a fair proportion of the rent. Land was leased for houses or other buildings to be built upon it, the tenant being rent-free for eight or ten years; after which the building came into the landlord's possession.

Despite the multitude of slaves, hired labour was often needed, especially at harvest. This was matter of contract, and the hirer, who usually paid in advance, might demand a guarantee to fulfil the engagement. Cattle were hired for ploughing, working the

watering-machines, carting, threshing, etc. The Code fixed a statutory wage for sowers, ox-drivers, field-labourers, and hire for oxen, asses, &c.

There were many herds and flocks. The flocks were committed to a shepherd who gave receipt for them and took them out to pasture. The Code fixed him a wage. He was responsible for all care, must restore ox for ox, sheep for sheep, must breed them satisfactorily. Any dishonest use of the flock had to be repaid ten-fold, but loss by disease or wild beasts fell on the owner. The shepherd made good all loss due to his neglect. If he let the flock feed on a field of corn he had to pay damages four-fold; if he turned them into standing corn when they ought to have been folded he paid twelve-fold.

In commercial matters, payment in kind was still common, though the contracts usually stipulate for cash, naming the standard expected, that of Babylon, Larsa, Assyria, Carchemish, &c. The Code enacted, however, that a debtor must be allowed to pay in produce according to statutory scale. If a debtor had neither money nor crop, the creditor-must not refuse goods.

Debt was secured on the person of the debtor. Distraint on a debtor's corn was forbidden by the Code; not only must the creditor give it back, but his illegal action forfeited his claim altogether. An unwarranted seizure for debt was fined, as was the distraint of a working ox. The debtor being seized for debt could nominate as mancipium or hostage to work off the debt, his wife, a child, or slave. The creditor could only hold a wife or child three years as mancipium. If the mancipium died a natural death while in the creditor's possession no claim could lie against the latter; but if he was the cause of death by cruelty, he had to give son for son, or pay for a slave. He could sell a slave-hostage, unless she were a slave-girl who had borne her master children. She had to be redeemed by her owner.

The debtor could also pledge his property, and in contracts often pledged a field house or crop. The Code enacted, however, that the debtor should always take the crop himself and pay the creditor from it. If the crop failed, payment was deferred and no interest could be charged for that year. If the debtor did not cultivate the field himself he had to pay for the cultivation, but if the cultivation was already finished he must harvest it himself and pay his debt from the crop. If the cultivator did not get a crop this would not cancel his contract. Pledges were often made where the intrinsic value of the article was equivalent to the amount of the debt; but antichretic pledge was more common, where the profit of the pledge was a set-off against the interest of the debt. The whole property of the debtor might be pledged as security for the payment of the debt, without any of it coming into the enjoyment of the creditor. Personal guarantees were often given that the debtor would repay or the guarantor become liable himself.

Trade was very extensive. A common way of doing business was for a merchant to entrust goods or money to a travelling agent, who sought a

market for his goods. The caravans travelled far beyond the limits of the empire. The Code insisted that the agent should inventory and give a receipt for all that he received. No claim could be made for anything not so entered. Even if the agent made no profit he was bound to return double what he had received, if he made poor profit he had to make up the deficiency; but he was not responsible for loss by robbery or extortion on his travels. On his return, the principal must give a receipt for what was handed over to him. Any false entry or claim on the agent's part was penalised three-fold, on the principal's part six-fold. In normal cases profits were divided according to contract, usually equally.

A considerable amount of forwarding was done by the caravans. The carrier gave a receipt for the consignment, took all responsibility and exacted a receipt on delivery. If he defaulted he paid five-fold. He was usually paid in advance. Deposit, especially warehousing of grain, was charged for at one-sixtieth. The warehouseman took all risks, paid double for all shortage, but no claim could be made unless be had given a properly witnessed receipt. Water traffic on the Euphrates and canals was early very considerable. Ships, whose tonnage was estimated at the amount of grain they could carry, were continually hired for the a transport of all kinds of goods. The Code fixes the price for building and insists on the builder's giving a year's guarantee of seaworthiness. It fixes the hire of ship and of crew. The captain was responsible for the freight and the ship; he had to replace all loss. Even if he refloated the ship he had to pay a fine of half its value for sinking it. In the case of collision the boat under way was responsible for damages to the boat at anchor. The Code also regulated the liquor traffic, fixing a fair price for beer and forbidding the connivance of the tavern-keeper (a female!) at disorderly conduct or treasonable assembly, under pain of death. She was to hale the offenders to the palace, which implied an efficient and accessible police system.

Payment through a banker or by written draft against deposit was frequent. Bonds to pay were treated as negotiable. Interest a was rarely charged on advances by the temple or wealthy land-owners for pressing needs, but this may have been part of the metayer system. The borrowers may have been tenants. Interest was charged at very high rates for overdue loans of this kind. Merchants (and even temples in some cases) made ordinary business loans, charging from 20 to 30%.

Marriage retained the form of purchase, but was essentially a contract to be man and wife together. The marriage of young people was usually arranged between the relatives, the bride- groom's father providing the bride-price, which with other presents the suitor ceremonially presented to the bride's father. This bride-price was usually handed over by her father to the bride on her marriage, and so came back into the bridegroom's possession, along with her dowry, which was her portion as a daughter. The bride-price varied much, according to the position of the parties, but was in excess of that

paid for a slave. The Code enacted that if the father does not, after accepting a man's presents, give him his daughter, he, must return the presents doubled. Even if his decision was brought about by libel on the part of the suitor's friend this was done, and the Code enacted that the faithless friend should not marry the girl. If a suitor changed his mind, he forfeited the presents. The dowry might include real estate, but generally consisted of personal effects and household furniture. It remained the wife's for life, descending to her children, if any; otherwise returning to her family, when the husband could deduct the bride-price if it had not been given to her, or return it, if it had. The marriage ceremony included joining of hands and the utterance of some formula of acceptance on the part of the bridegroom, as "I am the son of nobles, silver and gold shall fill thy lap, thou shalt be my wife, I will be thy husband. Like the fruit of a garden I will give thee offspring." It must be performed by a freeman.

The marriage contract, without which the Code ruled that the woman was no wife, usually stated the consequences to which each party was liable for repudiating the other. These by no means necessarily agree with the Code. Many conditions might be inserted: as that the wife should act as maidservant to her mother-in-law, or to a first wife. The married couple formed a unit as to external responsibility, especially for debt. The man was responsible for debts contracted by his wife, even before her marriage, as well as for his own; but he could use her as a mancipium. Hence the Code allowed a proviso to be inserted in the marriage contract, that the wife should not be seized for her husband's prenuptial debts; but enacted that then he was not responsible for her prenuptial debts, and, in any case, that both together were responsible for all debts contracted after marriage. A man might make his wife a settlement by deed of gift, which gave her a life interest in part of his property, and he might reserve to her the right to bequeath it to a favourite child, but she could in no case leave it to her family. Although married she always remained a member of her father's house--she is rarely named wife of A, usually daughter of B, or mother of C.

Divorce was optional with the man, but he had to restore the dowry and, if the wife had borne him children, she had the custody of them. He had then to assign her the income of field, or garden, as well as goods, to maintain herself and children until they grew up. She then shared equally with them in the allowance (and apparently in his estate at his death) and was free to marry again. If she had no children, he returned her the dowry and paid her a sum equivalent to the bride-price, or a mina of silver, if there had been none. The latter is the forfeit usually named in the contract for his repudiation of her.

If she had been a bad wife, the Code allowed him to send her away, while he kept the children and her dowry; or he could degrade her to the position of a slave in his own house, where she would have food and clothing. She might bring an action against him for cruelty and

neglect and, if she proved her case, obtain a judicial separation, taking with her her dowry. No other punishment fell on the man. If she did not prove her case, but proved to be a bad wife, she was drowned. If she were left without maintenance during her husband's involuntary absence, she could cohabit with another man, but must return to her husband if he came back, the children of the second union remaining with their own father. If she had maintenance, a breach of the marriage tie was adultery. Wilful desertion by, or exile of, the husband dissolved the marriage, and if he came back he had no claim on her property; possibly not on his own.

As a widow, the wife took her husband's place in the family, living on in his house and bringing up the children. She could only remarry with judicial consent, when the judge was bound to inventory the deceased's estate and hand it over to her and her new husband in trust for the children. They could not alienate a single utensil. If she did not remarry, she lived on in her husband's house and took a child's share on the division of his estate, when the children had grown up. She still retained her dowry and any settlement deeded to her by her husband. This property came to her children. If she had remarried, all her children shared equally in her dowry, but the first husband's gift fell to his children or to her selection among them, if so empowered.

Monogamy was the rule, and a childless wife might give her husband a maid (who was no wife) to bear him children, who were reckoned hers. She remained mistress of her maid and might degrade her to slavery again for insolence, but could not sell her if she had borne her husband children. If the wife did this, the Code did not allow the husband to take a concubine. If she would not, he could do so. The concubine was a wife, though not of the same rank; the first wife had no power over her. A concubine was a free woman, was often dowered for marriage and her children were legitimate. She could only be divorced on the same conditions as a wife. If a wife became a chronic invalid, the husband was bound to maintain her in the home they bad made together, unless she preferred to take her dowry and go back to her father's house; but he was free to remarry. In all these cases the children were legitimate and legal heirs.

There was, of course, no hindrance to a man having children by a slave girl. These children were free, in any case, and their mother could not be sold, though she might be pledged, and she was free on her master's death. These children could be legitimized by their father's acknowledgment before witnesses, and were often adopted. They then ranked equally in sharing their father's estate, but if not adopted, the wife's children divided and took first choice.

Vestal virgins were not supposed to have children, yet they could and often did marry. The Code contemplated that such a wife would give a husband a maid as above. Free women might marry slaves and be dowered for the marriage. The children were free, and at the slave's death the wife took her dowry and half what she and her husband had acquired in wedlock for self and children; the master

taking the other half as his slave's heir.

A father had control over his children till their marriage. He had a right to their labour in return for their keep. He might hire them out and receive their wages, pledge them for debt, even sell them outright. Mothers had the same rights in the absence of the father; even elder brothers when both parents were dead. A father had no claim on his married children for support, but they retained a right to inherit on his death.

The daughter was not only in her father's power to be given in marriage, but he might dedicate her to the service of some god as a vestal or a hierodule; or give her as a concubine. She had no choice in these matters, which were often decided in her childhood. A grown-up daughter might wish to become a votary, perhaps in preference to an uncongenial marriage, and it seems that her father could not refuse her wish. In all these cases the father might dower her. If he did not, on his death the brothers were bound to do so, giving her a full child's share if a wife, a concubine or a vestal, but one-third of a child's share if she were a hierodule or a Marduk priestess. The latter had the privilege of exemption from state dues and absolute disposal of her property. All other daughters had only a life interest in their dowry, which reverted to their family, if childless, or went to their children if they had any. A father might, however, execute a deed granting a daughter power to leave her property to a favourite brother or sister. A daughter's estate was usually managed for her by her brothers, but if they did not satisfy her, she could appoint a steward. If she married, her husband managed it.

The son also appears to have received his share on marriage, but did not always then leave his father's house; he might bring his wife there. This was usual in child marriages.

Adoption was very common, especially where the father (or mother) was childless or had seen all his children grow up and marry away. The child was then adopted to care for the parents' old age. This was done by contract, which usually specified what the parent had to leave and what maintenance was expected. The real children, if any, were usually consenting parties to an arrangement which cut off their expectations. They even, in some cases, found the estate for the adopted child who was to relieve them of a care. If the adopted child failed to carry out the filial duty the contract was annulled in the law courts. Slaves were often adopted and if they proved unfilial were reduced to slavery again.

A craftsman often adopted a son to learn the craft. He profited by the son's labour. If he failed to teach his son the craft, that son could prosecute him and get the contract annulled. This was a form of apprenticeship, and it is not clear that the apprentice had any filial relation.

A man who adopted a son, and afterwards married and had a family of his own, could dissolve the contract but must give the adopted child one-third of a child's share in goods, but no real estate.

That could only descend in the family to which he had ceased to belong. Vestals frequently adopted daughters, usually other vestals, to care for their old age.

Adoption had to be with consent of the real parents, who usually executed a deed making over the child, who thus ceased to have any claim upon them. But vestals, hierodules, certain palace officials and slaves had no rights over their children and could raise no obstacle. Foundlings and illegitimate children had no parents to object. If the adopted child discovered his true parents and wanted to return to them, his eye or tongue was torn out. An adopted child was a full heir, the contract might even assign him the position of eldest son. Usually he was residuary legatee.

All legitimate children shared equally in the father's estate at his death, reservation being made of a bride-price for an unmarried son, dower for a daughter or property deeded to favourite children by the father. There was no birthright attaching to the position of eldest son, but he usually acted as executor and after considering what each had already received equalized the shares. He even made grants in excess to the others from his own share. When there were two mothers, the two families shared equally in the father's estate until later times when the first family took two-thirds. Daughters, in the absence of sons, had sons' rights. Children also shared their own mother's property, but had no share in that of a stepmother.

A father could disinherit a son in early times without restriction, but the Code insisted upon judicial consent and that only for repeated unfilial conduct. In early times the son who denied his father had his front hair shorn, a slave-mark put on him, and could be sold as a slave; while if he denied his mother he had his front hair shorn, was driven round the city as an example and expelled his home, but not degraded to slavery.

Adultery was punished with the death of both parties by drowning, but if the husband was willing to pardon his wife, the king might intervene to pardon the paramour. For incest with his own mother, both were burned to death; with a stepmother, the man was disinherited; with a daughter, the man was exiled; with a daughter-in-law, he was drowned; with a son's betrothed, he was fined. A wife who for her lover's sake procured her husband's death was gibbeted. A betrothed girl, seduced by her prospective father-in-law, took her dowry and returned to her family, and was free to marry as she chose.

In the criminal law the ruling principle was the lex talionis. Eye for eye, tooth for tooth, limb for limb was the penalty for assault upon an amelu. A sort of symbolic retaliation was the punishment of the offending member, seen in the cutting off the hand that struck a father or stole a trust; in cutting off the breast of a wet-nurse who substituted a changeling for the child entrusted to her; in the loss of the tongue that denied father or mother (in the Elamite contracts the same penalty was inflicted for perjury); in the loss of the eye that pried into forbidden secrets. The loss of the

surgeon's hand that caused loss of life or limb or the brander's hand that obliterated a slave's identification mark, are very similar. The slave, who struck a freeman or denied his master, lost an ear, the organ of hearing and symbol of obedience. To bring another into danger of death by false accusation was punished by death. To cause loss of liberty or property by false witness was punished by the penalty the perjurer sought to bring upon another.

The death penalty was freely awarded for theft and other crimes regarded as coming under that head, for theft involving entrance of palace or temple treasury, for illegal purchase from minor or slave, for selling stolen goods or receiving the same, for common theft in the open (in default of multiple restoration) or receiving the same, for false claim to goods, for kidnapping, for assisting or harbouring fugitive slaves, for detaining or appropriating same, for brigandage, for fraudulent sale of drink, for disorderly conduct of tavern, for delegation of personal service, for misappropriating the levy, for oppression of feudal holders, for causing death of a householder by bad building. The manner of death is not specified in these cases. This death penalty was also fixed for such conduct as placed another in danger of death. A specified form of death penalty occurs in the following cases:-gibbeting (on the spot where crime was committed) for burglary, later also for encroaching on the king's highway, for getting a slave-brand obliterated, for procuring husband's death; burning for incest with own mother, for vestal entering or opening tavern, for theft at fire (on the spot); drowning for adultery, rape of betrothed maiden, bigamy, bad conduct as wife, seduction of daughter-in-law.

A curious extension of the talio is the death of creditor's son for his father's having caused the death of debtor's son as mancipium; of builder's son for his father's causing the death of house-owner's son by building the house badly; the death of a man's daughter because her father caused the death of another man's daughter.

The contracts naturally do not concern such criminal cases as the above, as a rule, but marriage contracts do specify death by strangling, drowning, precipitation from a tower or pinnacle of the temple or by the iron sword for a wife's repudiation of her husband. We are quite without evidence as to the executive in all these cases.

Exile was inflicted for incest with a daughter; disinheritance for incest with a stepmother or for repeated unfilial conduct. Sixty strokes of an ox-hide scourge were awarded for a brutal assault on a superior, both being amelu. Branding (perhaps the equivalent of degradation to slavery) was the penalty for slander of a married woman or vestal. Deprivation of office in perpetuity fell upon the corrupt judge. Enslavement befell the extravagant wife and unfilial children. Imprisonment was common, but is not recognized by the Code.

The commonest of all penalties was a fine. This is awarded by the Code for corporal injuries to a muskinu or slave (paid to his master); for damages done to property, for breach of contract. The restoration of goods appropriated, illegally bought or damaged by

neglect, was usually accompanied by a fine, giving it the form of multiple restoration. This might be double, treble, fourfold, fivefold, sixfold, tenfold, twelvefold, even thirtyfold, according to the enormity of the offence.

The Code recognized the importance of intention. A man who killed another in a quarrel must swear he did not do so intentionally, and was then only fined according to the rank of the deceased. The Code does not say what would be the penalty of murder, but death is so often awarded where death is caused that we can hardly doubt that the murderer was put to death. If the assault only led to injury and was unintentional, the assailant in a quarrel had to pay the doctor's fees. A brander, induced to remove a slave's identification mark, could swear to his ignorance and was free. The owner of an ox which gored a man on the street was only responsible for damages if, the ox was known by him to be vicious, even if it caused death. If the mancipium died a natural death under the creditor's hand, the creditor was scot free. In ordinary cases responsibility was not demanded for accident or for more than proper care. Poverty excused bigamy on the part of a deserted wife.

On the other hand carelessness and neglect were severely punished, as in the case of the unskilful physician, if it led to loss of life or limb his hands were cut off, a slave had to be replaced, the loss of his eye paid for to half his value; a veterinary surgeon who caused the death of an ox or ass paid quarter value; a builder, whose careless workmanship caused death, lost his life or paid for it by the death of his child, replaced slave or goods, and in any case had to rebuild the house or make good any damages due to defective building and repair the defect as well. The boat-builder had to make good any defect of construction or damage due to it for a year's warranty.

Throughout the Code respect is paid to status.

Suspicion was not enough. The criminal must be taken in the act, e.g. the adulterer, ravisher, &c. A man could not be convicted of theft unless the goods were found in his possession.

In the case of a lawsuit the plaintiff preferred his own plea. There is no trace of professional advocates, but the plea had to be in writing and the notary doubtless assisted in the drafting of it. The judge saw the plea, called the other parties before him and sent for the witnesses. If these were not at hand he might adjourn the case for their production, specifying a time up to six months. Guarantees might be entered into to produce the witnesses on a fixed day. The more important cases, especially those involving life and death, were tried by a bench of judges. With the judges were associated a body of elders, who shared in the decision, but whose exact function is not yet clear. Agreements, declarations and non-contentious cases are usually witnessed by one judge and twelve elders.

Parties and witnesses were put on oath. The penalty for the false witness was usually that which would have been awarded the convicted criminal. In matters beyond the knowledge of men, as the guilt or innocence of an alleged wizard or a suspected wife, the

ordeal by water was used. The accused jumped into the sacred river, and the innocent swam while the guilty drowned. The accused could clear himself by oath where his own knowledge was alone available. The plaintiff could swear to his loss by brigands, as to goods claimed, the price paid for a slave purchased abroad or the sum due to him. But great stress was laid on the production of written evidence. It was a serious thing to lose a document. The judges might be satisfied of its existence and terms by the evidence of the witnesses to it, and then issue an order that whenever found it should be given up. Contracts annulled were ordered to be broken. The court might go a journey to view the property and even take with them the sacred symbols on which oath was made.

The decision given was embodied in writing, sealed and witnessed by the judges, the elders, witnesses and a scribe. Women might act in all these capacities. The parties swore an oath, embodied in the document, to observe its stipulations. Each took a copy and one was held by the scribe to be stored in the archives.

Appeal to the king was allowed and is well attested. The judges at Babylon seem to have formed a superior court to those of provincial towns, but a defendant might elect to answer the charge before the local court and refuse to plead at Babylon.

Finally, it may be noted that many immoral acts, such as the use of false weights, lying, &c., which could not be brought into court, are severely denounced in the Omen Tablets as likely to bring the offender into "the hand of God" as opposed to "the hand of the king."

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Rev. Claude Hermann Walter Johns, M.A. Litt.D.

Master of St. Catharine's College, Cambridge. Lecturer in Assyriology, Queens' College, Cambridge, and King's College, London. Author of Assyrian Deeds and Documents of the 7th Century B.C.; The Oldest Code of Laws; Babylonian and Assyrian Laws; Contracts and Letters; etc.