

CHAPTER 11

ORDER IN THE COURT!

THE JUSTICE SYSTEM IN MESOPOTAMIA

66 ADOPTION CONTRACTS AND AN INHERITANCE CLAIM

A Mesopotamian farmer named Ninshubur-tayar lived near the city of Nippur during the reign of Hammurabi, the great lawmaker-king. Ninshubur-tayar owned a house, a field, and an orchard.

After King Hammurabi's death, his son King Samsuiluna came to the throne. But life on Ninshubur-tayar's farm must have gone on as before, governed by the seasons and the cycles of planting, growing, and harvesting. Ninshubur-tayar's wife, if he ever had one, was no longer alive and he had no living children. Still, he probably ate well. Perhaps he was able to trade his extra crops for a few luxuries—some spices, a wooden chest for his clothes, or a bronze bowl. He seems to have avoided the illnesses and injuries that shortened the lives of so many people of his day.

As Ninshubur-tayar grew old, farm work became more and more difficult for him. He no longer had the energy to work his land the way he once had, but he had no sons who could take over. Hired workmen would be expensive. And what would happen to his farm after he died?

In the 13th year of Samsuiluna's reign, Ninshubur-tayar adopted a son—not a baby or a little boy. He was too old to raise a child. He needed a strong young man who could farm the land and take care of *him*. The person he chose was Patiya, who may have been a neighbor or a young workman whom Ninshubur-tayar particularly liked.

We can imagine the old man talking to Patiya, explaining his hopes. And we know that Patiya agreed to become Ninshubur-tayar's son because the adoption contract



This legal contract (right) was sealed inside a clay envelope (left), with the text of the contract repeated on the envelope. The inside text could not be changed, so it was the one that counted.

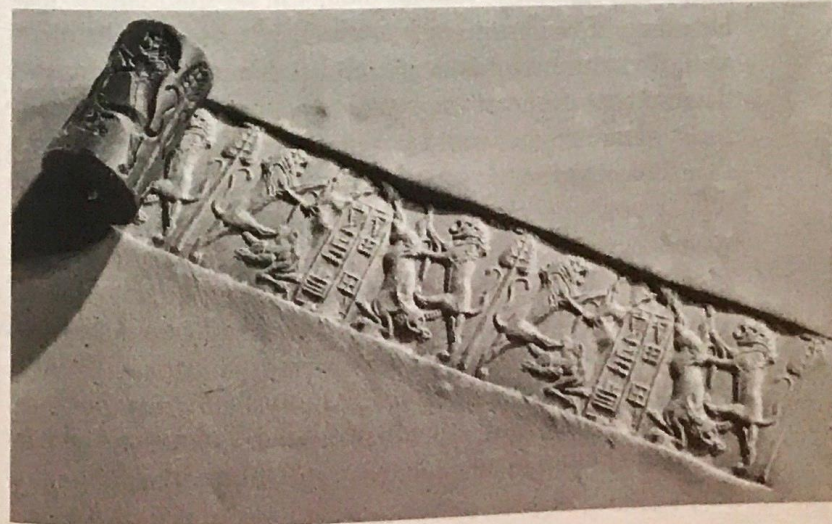
between them has survived. Ninshubur-tayar probably trusted Patiya, but he hired a scribe to draw up a contract—to be on the safe side. The terms of the contract—written in cuneiform script on a rectangular tablet—read:

Ninshubur-tayar has adopted Patiya as his son. Ninshubur-tayar has given [his] house, field, and orchard to Patiya his son. If Patiya should say to Ninshubur-tayar, . . . “You are not my father,” he shall pay one third **mina** of silver. And if Ninshubur-tayar should say to Patiya, . . . “You are not my son,” he shall pay one third mina of silver and forfeit his house and possessions. Patiya shall sustain Ninshubur-tayar by a monthly payment of flour and a yearly payment . . . of barley, . . . wool and . . . oil.

According to the contract, Patiya would take over Ninshubur-tayar's property and provide his new father with flour for bread, barley for beer, wool for his clothes, and oil for lighting and cooking. The old man would have everything he needed. His new son would care for him for the rest of his life and pray for his soul after he died. Four witnesses, including the scribe, were listed on the contract. The scribe then wrote the date—day, month, and year—and the contract was complete.

66 Adoption contract, Iraq, 1733 BCE

{ A *mina* weighs approximately one pound.



Instead of signing their names on a contract, the witnesses would roll their cylinder seals over the soft clay. Sometimes the text of the contract was written on top of the designs created there.

**STICKY FINGERS.
BEWARE!**

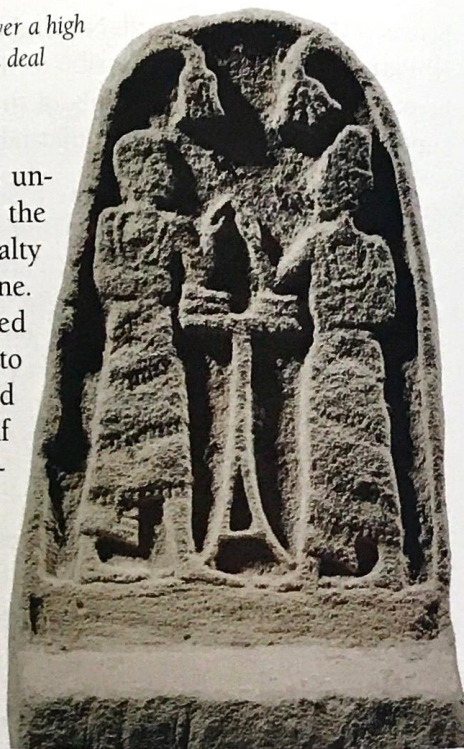
Hammurabi's laws don't include a general rule against stealing. Instead of saying, "You must not steal," as the ancient Hebrew law commands, Hammurabi's laws say, for example, "If a man steals an ox, a sheep, a donkey, a pig, or a boat if it belongs either to the god or the palace, he shall give" 30 times the amount he stole. If the animal or object belonged to a common person, the thief must pay back 10 times the amount. And if the thief "does not have anything to give, he shall be killed."

Two men face one another over a high table. They have just made a deal between them.

This contract was unusual: if Patiya broke the bargain, his only penalty would be paying a fine. (Usually an adopted son would be sold into slavery if he abandoned his new family.) But if Ninshubur-tayar cancelled the contract, he would not only have to pay a fine, he would also have to give up everything he owned.

Some adoption contracts, especially those that covered the adoption of a young child, included even more protections for the adopted son or daughter. One typical contract from the 18th century BCE, ruled that the adopted child "is the primary heir, and he shall take a double share of the estate of his father. His younger brothers shall divide the remainder in equal shares." This contract decreed that if one of the brothers later went to court over the inheritance, he would have to pay a fine. The terms in this contract gave the adopted son iron-clad protection. No matter how many children eventually joined the family, he would never lose his position and, like all eldest sons in Mesopotamia, would inherit the greatest wealth.

As far as we know, Ninshubur-tayar and Patiya never had any problems. But sometimes adoptions did run into trouble, especially if the parents later had some biological children. Often the children fought over their inheritance after the parents died. When this happened, they usually went to court. Fortunately, the Mesopotamians kept records of some court



44 Adoption contract, Syria, 18th century BCE

cases, so we know how their legal system worked.

One of these cases is about a man named Shamash-nasir, whose adoptive father had recently died. Shamash-nasir must have inherited a lot of property or money, and one of his brothers wasn't happy. This brother decided to try his luck in court. According to the record, the brother declared, "Shamash-nasir is not my brother;... my father did not adopt him." The Mesopotamians had no jury system, so a panel of six or seven judges had to decide whether or not the adoption had been legal. The Mesopotamians had no lawyers either, so Shamash-nasir defended himself. When one of the judges asked for his statement, "Shamash-nasir answered him, saying: 'Awil-Nabium, my father, while I was a small child, took me in adoption and reared me, I can produce witnesses...' thus he spoke."

Just as in court cases today, the judges called for witnesses and "then listened carefully to their testimony." They "sent them to the temple of Shamash in order to declare their testimony under oath" in the presence of the gods. The witnesses swore that Shamash-nasir had been adopted legally, and their evidence closed the case. The jealous brother didn't seem to have any witnesses, so he lost the case *and* his share of papa's money.

Contracts weren't just for adoptions. The Mesopotamians also used them for sales and rentals of houses and fields, marriages, purchases of slaves, even the hire of workmen. And always, at the end, came a list of witnesses. Without witnesses, a Mesopotamian contract wasn't worth the clay it was written on. The judges in a court case often consulted the contracts, if there were any. And they also would have considered the laws proclaimed by the king.

Hammurabi's laws aren't general rules. They never say that people should "never" or "always" do something. Instead, they cover particular situations—if *this*, then *that*. So the written laws don't cover even a fraction of the possible cases that might wind up in court. They couldn't have, and no one knows how carefully the judges tried to follow them. Did they use the written laws as their guides or did they act on their best *judgment*? Probably both.

44 Inheritance claim, Iraq, 18th to 17th century BCE

**LIAR, LIAR,
PANTS ON FIRE!**

A witness could make or break a Mesopotamian court case. Everyone knew that lying under oath brought a huge fine. And a witness who lied in a murder case could be put to death. Lying was especially scary because if the judge didn't catch the dishonest witness, the gods would. Like witnesses in modern courtrooms who swear "to tell the truth and nothing but the truth," ancient witnesses promised to tell the truth in the presence of Shamash, the all-seeing god of the sun. The Mesopotamians believed that Shamash especially hated lying and might strike a person dead on the spot for swearing falsely in his name. No wonder the Mesopotamians took their oaths so seriously!