

July 2021

The Code of Hammurapi - The Oldest Known Legal Code

Frank L. Fetzer

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Frank L. Fetzer, The Code of Hammurapi - The Oldest Known Legal Code, 7 Dicta 3 (1929-1930).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

DICTA

Vol. VII

APRIL, 1930

No. 6

THE CODE OF HAMMURAPI—THE OLDEST KNOWN LEGAL CODE

By Frank L. Fetzner of the Denver Bar

HAMMURAPI, the powerful King of Babylon, the sixteenth king of Larsa, the sixth of his dynasty in Babylon (the date of his rule being variously given by authorities as a period of about fifty years sometime between 2250 B. C. to 2050 B. C., the period nearer the former date being considered more accurate), came to the throne following a century of warfare. During the first years of his reign he was engaged as a great soldier in reducing the country surrounding Babylon to submission, destroying all of his enemies to the north and to the south. He made the little town of Babylon supreme throughout the land, and due to its power and influence the land was known as "Babylonia". When his sovereignty was generally acknowledged through a wide dominion, he was free during the last twelve years of his life to cement together the various parts of his kingdom. He was the first great organizer to appear in the Euphrates Valley and was the ablest of his line. He accomplished a great deal in regard to internal development, such as improving the water supply and constructing and regulating irrigation systems. He left to ancient centers their religious importance, while divesting them of political prerogatives. He consolidated the warring factions of the valley and welded them into a kingdom.

Hammurapi became the great law giver of Babylonia and his promulgation of laws and of the Hammurapi Code is his greatest achievement. His reign reduced the inherited kingdom to order by instituting laws regulating the conduct of his people. As conquered towns and their adjacent districts were brought into his realm, his laws were set over them and they

aided vitally in welding the whole into a unit. He made his people dwell in peace and security. With full understanding of every part of his dominion, alert, vigorous, full of decision and with a profound sense of justice, the great king saw the necessity of making uniform all the various and sometimes conflicting laws and customs of the land. He collected all the older written laws and usages of business and social life and arranged them systematically. Many of the laws in the code were taken directly from an older Sumerian code. The code not only reflects the laws and customs of his generation but the time-sanctioned customs of a thousand years before. Some of them he improved and he added some new laws where his own judgment deemed it wise and then combined them into the code known as the Code of Hammurapi comprising 282 sections, which have been translated. It was written not in Sumerian, as some of the old laws were, but in the Semitic speech of the Akadians and Amorites. He then had it engraved upon a stone shaft of black diorite, which is a very hard stone, and set up in the temple of the great god, Marduc, in Babylon. The code was copied in clay tablets and engraved on other stones and used by the judges throughout the empire. The code was copied and studied for 1500 years and 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 Mohammedan law in Mesopotamia.

The monument on which the code is engraved, was found in December, 1901, on the acropolis of Susa by an expedition sent out by the French Government under Director General, M. de Morgan. This black diorite shaft is nearly eight feet high and broken into three pieces, which were easily rejoined. It stands on a stone pedestal in one of the side rooms in The Louvre at Paris. The characters are deeply cut and plainly visible. Impressions are easily made and copies have been sent to scholars over the world. Some minor changes have been made, but the translations by various scholars, for the most part agree. On the obverse side there is a bas relief exhibiting King Hammurapi receiving the laws from the sun god. Under this relief are engraved sixteen columns of text, four and one-half of which form a prologue. There were

originally five more columns on the obverse side but these have been cut off by the Elamitic conqueror. On the reverse side there are twenty-eight columns, the last five of which form the epilogue.

The code of Hammurapi is the earliest known code of laws. What the laws of Moses were to the Hebrews, the laws of Lycurgus to Sparta, the laws of Solon to Attica, the Laws of the Twelve Tables (451 and 450 B. C.) were to the early Romans, the Code of Hammurapi was to the Babylonian Empire. The code insists on justice to the widow, the orphan and the poor, that the strong might not oppress the weak, the righting of wrong, and uplifts woman in her social and legal position. It gives her separate rights in property, rights of inheritance to her children, recognizes marriage only by ceremony and contract, and protects her in respect to divorce and maintenance. Indeed, the position of women in this early Babylonian world, as in Egypt, was high, free and dignified.

The code reveals society marching from the primitive stage of retaliation to one more advanced where money can be substituted for damage or injury. Where the injury befell one of noble or exalted position, retaliation was the method of redress, but where one in humble station was involved, money could be paid as compensation for the loss inflicted. The laws show a strong disposition towards protection of women both as regards divorce and business rights.

The laws promulgated in the code fall generally into classifications as the laws of other codes and of laws in general, such as sovereignty, crimes, private wrongs, property, domestic relations, including master and servant and divorce, personal injuries, with contracts, bailments, agency and procedure.

The code recognized legally the three existing classes of society:

- (1) Amelu, or householders, property owners, the wealthy professions, craftsmen and upper classes, the patrician class;
- (2) The muskinu, or possibly plebeian class, poor men, serfs, (difficult to exactly define).
- (3) The ardu, male and female slaves, and their rights and privileges, were clearly defined.

The king is a benevolent autocrat, easily accessible to all of his subjects, both able and willing to protect the weak against the high-placed oppressor. The royal power, however, can only pardon when private resentment is appeased.

Injustice too often resulted, for some of the laws exacted the life of a man's son for his causing the death of another's son.

The temple occupied a most important position. It received vast amounts of all sorts of naturalia besides money and gifts. The larger temples had many officials and servants. Originally each town clustered around one temple. The temple had numerous responsibilities, among which were to ransom one of its citizens if he were unable to do so, to lend seed or supplies without interest. Stress was laid upon the universal habit of writing and perpetual recourse was had to written contracts, deeds, receipts and bonds. Great freedom was allowed in making contracts. Every transaction from betrothal to the purchase of sheep had to be recorded in writing and duly witnessed. In many cases unless this preliminary had been regularly made, no claim for justice would be entertained. In the absence of writing great weight was attached to oaths and the penalties for false oaths and dishonesty were severe.

To falsely swear as a witness in a trial or fail to establish the statement one has made, was punishable by death if the case were a capital offense trial. To bear false witness in a civil case was punishable by the same damages as would result in that suit. *Crimes* punishable by death were numerous and included the following: to steal goods from a temple or house; to purchase or receive on deposit from a minor or slave, silver, gold, male or female slave or domestic animals, except by consent of elders; kidnapping; inducing a male or female slave from the house of another or to leave the city; detaining a slave; breaking into a house, in which event he should be killed before the breach made in the house and there buried; highway robbery; taking the property of one whose house is burning, the thief to be cast into the self-same fire; a builder whose house fell and caused the death of the owner, should be put to death and if the owner's son was killed, the builder's son should be put to death; bringing about the death of her

husband for the sake of another man; falsely claiming property to be lost; to hire another to perform the errand when ordered on an errand of the king; to cause the death by neglect or abuse of one seized for debt; adultery was punishable by the death of both parties; forcing cohabitation with a virgin fiancée of another living in her father's house.

The state assumed the responsibility for the protection of its people and in the event a highwayman was not caught, the man robbed stated on oath what he had lost and the city or district governor was required to restore to him what he had lost. Travel was safe. One returning to the owner a runaway slave in the open field—the owner was required to pay him two shekels of silver.

The god of a city originally was owner of its land, which encircled it with an inner ring of irrigable land and an outer ring of pasture, and the citizens were his tenants. The code recognizes complete private ownership of land, but all land was sold subject to its fixed charges, such as men for the army, dues in kind. The land could be freed from its fixed charges by charter from the king. Ancestral estate was strictly tied to the family. The code recognizes many ways of dealing with property—sale, lease, barter, gift, dedication, deposit, loan, pledge, all of which were matters of contract. Land-owners frequently cultivated their land themselves, but might employ husbandmen or let it. One renting a field and failing to cultivate it, was held responsible for not doing the work and should pay the average rent, but one unable to tend his own field, had the privilege of having another attend to the field. If one's field was flooded by storm or affected by drought, he was relieved from paying his creditor and relieved from interest during that year. Houses were let usually for the year, but also for longer terms, rent being paid semi-annually in advance, but subject to terms of the contract.

Irrigation was indispensable. One not keeping his dike of sufficient strength to withhold the impounded waters, was liable for the overflow of neighbor's land caused by a breach in the dike, and if he was not able to restore his neighbor's crops, his property should be sold and the one injured should share in the money or he be sold with his family to pay the

cost. He was also liable if he allowed his irrigating water to flood his neighbor's field.

Two-thirds of the produce of the garden went to the landlord, but the landlord furnished all equipment and materials, fodder for the cattle and rations for the workmen. A gardener failing to till the garden should pay the average rent.

An agent receiving money as a speculation from a merchant and losing it in his travels, was obliged to return the full sum to the merchant. If the agent in his travels on caravan was forced to give up some of the goods he was carrying, by stating under oath the amount so lost, he was acquitted to that extent. The agent was required to give the merchant a statement in writing sealed as a receipt for what he received from the merchant. Regulations in respect to deposit of grain in granaries between the warehouseman and depositor, were strict and penalties attached by losing all of the deposit or being compelled to return double the amount should any of the goods be mishandled.

A woman was not a man's wife unless the marriage contract was executed. The contract usually stated the consequences to which each party was liable for repudiating the other. Monogamy was the rule, but a childless wife might give her husband a maid who was not a wife to bear him children in which event the husband was not permitted to take a concubine. A concubine was a wife, but not of the same rank, and her children were legitimate. If a man divorced his wife who had not borne him children, he should pay to her as much as was given her as her bride price and the marriage portion which she brought from her father's house, and could then divorce her. If the man's wife became diseased while married, he was permitted to take a second wife but was required to maintain the first wife in their home as long as she lived. If the first wife was not willing to stay in the same house, the husband was required to pay her the marriage portion which she brought from her father's house and then she could go. A father had no claim to the marriage portion of a deceased wife who had borne children, and the marriage portion passed to her children. If the wife were at fault, the husband could 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 household. The wife could bring an action for cruelty and neglect and secure a separation, taking with her her dowry, but no other punishment fell upon the husband. If she did not prove her case and was proved to be a bad wife, she was drowned. If she were left without maintenance during her husband's involuntary absence (such as in military service) 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. As a widow, she took her husband's place in the family, living in his household and bringing up the children. A widow could only remarry with judicial consent, in which event the estate was inventoried by the judge and given to her and her new husband in trust for the children.

A father had control over his children until they were married. Advancements to children were not deducted from the children's share of an inheritance but each child should inherit in addition to the gifts made by the father. Apprenticeship and adoption of children were dealt with quite similarly to our own common law. No claim was made against a foster child of the father whom the father had brought up. A child brought up as an apprentice could not be reclaimed. Disinheritance of children was prohibited except by judicial consent and then only for repeated unfilial conduct.

Retaliation in part of the criminal law remained as a ruling principle, as will be seen in the following illustrations: one knocking out the eye of a patrician should lose an eye; a broken limb was the penalty for breaking the limb of a patrician; a tooth for a tooth; cutting off the hand that struck a father or stole a trust; cutting off the breast of a wet nurse who substituted a child for the one entrusted to her; the loss of tongue that denied father or mother; the loss of a surgeon's hand which caused loss of life or limb or the brander's hand which obliterated a slave's identification mark, which was generally tattooed or branded; loss of a slave's ear for striking a free man or denying his master; branding on the forehead for falsely pointing the finger at a priestess or the wife of another.

The tooth of a plebeian was paid for by one-third of a

mina of silver (which we notice in comparison to one-half of a mina of silver for wrongfully cutting down a tree in a neighbor's orchard). The surgeon operating with a bronze lancet on a patrician for a serious injury resulting in a cure, was paid ten shekels of silver by the patrician, whereas a plebeian paid five shekels.

A builder must make his boat sound and if it is found during the first year not to be sound, the boatman must repair the boat or give a strong boat to the owner.

One who hired a domestic animal which was killed by a lion or lightning in an open field, was not responsible for the loss and the loss fell upon the owner. If a herdsman was careless, he was required to make good the loss to the owner.

Frequent disputes seem to have prompted a fixed amount of damages in many instances. To cut down a neighbor's tree without his consent required the payment of half a mina of silver. Debt was secured on the person of the debtor, but he could by contract pledge his field, crop, house or other property. Distraint on the debtor's corn was prohibited. Personal guarantees for others were often given. Pay through a banker or by written draft against deposit was frequent. Bonds to pay were treated as negotiable. The code regulated the liquor traffic and fixed a fair price for beer.

There is no trace of professional advocates and the plaintiff preferred his own plea in writing. The judge examined the plea, called the other parties and sent for witnesses. Postponements were allowed. Important cases, especially those involving life and death, were tried by a bench of judges. The code recognized the importance of intention. Associated with the judges were elders who shared in the decisions. Less important cases were heard by one judge and twelve elders. Parties and witnesses were put on oath but great stress was put on written evidence. The loss of writing was serious. Decisions were in writing, sealed and witnessed, a copy for each party and one for the archives. Parties swore to observe the stipulations in the decree. The judges were strictly supervised. Appeal to the king was allowed, but if the code gave the rule in the case, the action was remanded with instructions to enter judgment according to the code.