

Legal Documents of Ancient Mesopotamia

Andrew Lyons writes that clay tablets from the ancient Mesopotamia evidence that some legal concepts used by practitioners today are not new but have forebears in antiquity.



Some of the legal concepts and devices used by civil practitioners on a daily basis have a long provenance. Three examples from ancient Mesopotamia ^[1] evidence this. [2]

The antiquity of this provenance may be gauged by the fact that all of these examples are closer in time to the construction of Stonehenge (c. 3100 BC) and the pyramid of Khufu at Giza (c. 2560 BC) than our time. They precede the conventional dates of significant events at the beginning of the collective Western memory such as the Trojan War (c. 1250 BC), the foundation of Rome (753 BC), the Persian Wars (490 – 479 BC) and Alexander the Great (died 323 BC). In terms of Biblical history, they also may precede the Exodus, the date of which is uncertain but widely thought to be in the second millennium BC.

Photograph 1 shows a written instrument to transfer land. Such a written instrument would, in our terms, at least partially comply with the statute of frauds. It is a clay tablet with cuneiform script dated to 2650 – 2350 BC. It is from Sumer within an area later known as Babylonia. Today it is southern Iraq.

Photograph 2 is evidence of both partnerships as far back as 1900 - 1600 BC. The object on the right hand side of the photograph is a clay tablet containing an agreement recording the dissolution of a partnership between two persons. The object on the left is a clay envelope for the tablet. A seal has been impressed in the envelope exterior. It is from Kish, east of Babylon, in Sumer, Iraq.

Photograph 3 has the effect of what we would call a title deed. It is a letter from King Hammurabi of Babylon who reigned from 1792 BC to 1750 BC. It establishes ownership of a field and is written in a now extinct language that was for centuries a lingua franca, Akkadian. Akkad was in southern Iraq, north of Sumer. Hammurabi is notable for his laws recorded on a basalt stele now in the Louvre that was retrieved by French archaeologists from Susa in south western Iran. That stele was taken from Babylon (Iraq) to Susa (south western Iran) in about the 12th century BC at the high point of Elamite power.

These documents evidence a development of legal concepts that did not occur in isolation. Mesopotamia demonstrated many sophisticated developments. For example, they had a taxation system. The identification of who owned what land was

important for that system: hence documents such as documents 1 and 3 above. A system of land title rests on a definition of the land held. Elaborate surveying methods were developed to do this. Those methods were used regularly as flooding was prone to remove boundary markers. Boundaries had to be re-established annually before planting and the levying of taxation. Such needs may have contributed to their developments in mathematics. They had standard measures of distance, area, volume and mass. Those measures were standardised by 2330 – 2000 BC. They had writing as far back as at least 3,200 BC. The concept of currency was known to them by the 3rd millennium BC. They used silver as a measure of value: coils of silver were made so that silver of a desired weight could be cut off and used in trade.^[3]

These documents also offer, from the narrow perspective of the legal profession, some encouragement. They suggest that like death and taxes, legal concepts, and thus lawyers, will be with us always!

Andrew Lyons

Footnotes

- The name Mesopotamia is from the ancient Greek “meso” for middle and “potamos” for river and means between the rivers. (“Potamos” is also a root of “hippopotamus” which means river horse. The writer speculates that the Greek word also may have been an influence on the English language naming of the Potomac River in Washington DC. Some attribute that name to a local tribal language. The two explanations may not be incompatible in that a classically educated European may have corrupted a similar tribal word to bridge with the Greek.) The rivers to which reference is made are the Tigris and Euphrates rivers. Today Mesopotamia refers to more than the land between those 2 rivers. It lies mostly within contemporary Iraq.

- All examples are exhibited in the Ashmolean museum, Oxford. The captions to those items have been relied upon for the meaning of the documents.



Photo 1- Transfer Instrument



Photo 2- Partnership Dissolution



Photo 3- Title Deed

- The material in this paragraph is founded upon exhibits in the Oriental Institute, University of Chicago. That institute has contributed greatly to archaeological work in Mesopotamia.

From the Editor



Welcome to the November 2010 edition of Hearsay, which we are pleased to have managed to publish in the last week of October. You should find within its pages a variety of interesting content. There are several interesting articles on a variety of issues relevant to different areas of practice. Legal history is also featured heavily, and graphically, with photographs and brief commentary of Mesopotamian legal artefacts (with thanks to Andrew Lyons for this remarkable contribution) as well as a video recording of the paper presented by Professor Horst Lücke recently at the Supreme Court Library.

Speaking of the Supreme Court Library, we are particularly grateful to Aladin Rahemtula for his facilitating the recording and publication of Professor Lücke's presentation. The Supreme Court Library quite evidently has a rich array of resources of use and interest to barristers and may, by many of us, be underappreciated for its diversity and depth of collections. We here at Hearsay are looking forward to developing a mutually beneficial relationship with the library and in particular to bringing to the attention of the Bar the full gamut of the resources available through it.

There is an interesting range of articles on matters of law from several reader/contributors. Tony Williams' story of confronting the confronting should help you ensure a long career at the bar.

I do wish to make special mention and give special thanks to Martin Burns SC and his personal assistant Emma Macfarlane for their very substantial contribution, to the benefit of the Queensland Bar, during Martin's time as editor of Hearsay. The Profession owes much to them for that commitment. We wish them well in semi-retirement.

I publicly welcome the other members of the editorial committee of Hearsay and look forward to their contributions to the publication in the future.

I also wish to acknowledge and thank my personal assistant, Jennifer Hewson, for her diligence, initiative and hard work in successfully securing, on time, this first edition under my editorship.

Geoffrey Diehm SC

Editor