FOLIA ORIENTALIA
VOL. LIII — 2016

History and Archaeology

Hossein Badamchi
University of Tehran

The Meaning of "Theft" in Ancient Near Eastern Law*

Abstract

The word *šarāqum* in cuneiform law is conveniently translated as "to steal", but its exact meaning is not very clear and only a few scholars have attempted to clarify this meaning. The present paper studies several available attestations of this legal term from a semantic point of view and attempts to discover the wide range of illegal activities described by this Akkadian term and its Sumerian equivalent. The word seems to have covered theft and what would be regarded as separate offences in modern law, in particular abuse of trust and fraud. They are considered "related" because they are crimes against the rightful ownership or possession of property. While one must not anachronistically impose modern categories to ancient sources, it is imperative to discuss and examine modern concepts that are, sometimes uncritically, used in translating and thus understanding our ancient sources.

Keywords

cuneiform, law, theft, property, crime.

1. Introduction

The subject of this paper is a semantic study of the word *šarāqum*. Hammurabi's law collection which is the most comprehensive and the most theoretical source of cuneiform law will be the main source of our study on the

* I like to thank Professors Jerrold S. Cooper, Sophie Démare-Lafont, and Paul Delnero who all read a previous draft of this paper and offered much insight. I also like to remember my late professor Raymond Westbrook who brought me into cuneiform law. The responsibility is, of course, with the author.

meaning of "theft" in Ancient Law[1] in this essay. Cuneiform sources other than the Laws of Hammurabi (LH) will also be taken into consideration wherever they contain new or supplementary information. In LH articles 6, 8, 14, 253, 255, 259, 260 and 265 one encounters the verb *šarāqum* which is translated "to steal". Scholars have noticed that this verb is used in part to indicate human wrongdoing that today we cannot describe as theft (Haase 2000: 54–60; Westbrook 2003: 419).

In modern criminal law there are three key crimes against property: theft, fraud, and embezzlement (also called abuse or breach of trust). Theft, in a basic definition, is the appropriation of the thing of another without the consent and knowledge of the owner. Fraud is when the owner voluntarily hands over his property, but his volition is obtained through deceitful maneuvers. The offence of abuse of trust occurs where property has been handed over to the defendant under a contract for a specific purpose, but the defendant has misappropriated or wrongfully diverted it to his own purposes.

In ancient Mesopotamia these distinctions do not apply without reservations. Westbrook (2003: 419), for example, observes that the Akkadian terminology for theft (vb. *šarāqum*) "is used not only for taking away but also for misappropriation of goods entrusted to one's care and for receiving goods that one knew or ought to have known were stolen". It is therefore of primary importance to determine what precisely the meaning of the Akkadian term *šarāqum* is.

The following table shows the corpus of texts that will be discussed in this essay:

Law collections	LH 6–8 LH 259–260 LH 14 LH 253–256 LH 265 LU 28
Trial documents	TLB 1, 231 (Old Baylonian) NG 84 (Neo-Sumerian) AlT 119 (Alalakh)
Letters	ARM 14, 51 (Mari) AbB 10, 192: 22–26
Literary texts:	Instructions of Šuruppak 39 (Alster 2005: 64)

[1] Ancient Law here refers to the Laws of the Ancient Near East (except Egypt) which are written in cuneiform script mainly in Akkadian; the attestation is approximately from mid third millennium to mid first millennium BCE.

2. Discussion of the texts

In the following study we will study a selective corpus of texts in which the verb *šarāqum* appears, and examine which one of the aforementioned definitions applies in each case.[2]

2.1. The cases that today we can easily classify under the concept of theft, include LH 6 and 8 (theft of sacred objects) as well as LH 259 and 260 (theft of plow and harrow). These are about the surreptitious misappropriation of things belong to others.

šum-ma a-wi-lum níg.ga dingir *ù* é.gal *iš-ri-iq a-wi-lum šu-ú id-da-ak ù ša šu-úr-qá-am i-na qá-ti-šu im-hu-ru id-da-ak*	6. If someone steals the property of a god or of the palace, he shall be put to death, and also the one who has received the stolen thing from him shall be put to death.
šum-ma a-wi-lum lu kù.babbar *lu* guškin *lu* ìr *lu* gemé *lu* gu_4 *lu* udu *lu* anše *ù lu mi-im-ma šum-šu i-na qá-at* dumu *a-wi-lim ù lu* ìr *a-wi-lim ba-lum ši-bi ù ri-ik-sa-tim iš-ta-am ù lu a-na ma-ṣa-ru-tim im-hu-ur a-wi-lum šu-ú šar-ra-aq id-da-ak*	7. If someone buys from the son of a man or the slave of a man, without witnesses or a contract, silver or gold, a male or female slave, an ox or a sheep, a donkey or anything, or if he receives for safekeeping: that man is a thief; he shall be put to death.

In LH 7 "witnesses and/or contract" means a witnessed contract, i.e., a valid contract. The Akkadian *riksātum* is no longer understood as 'written contract' as convincingly argued by Greengus (1969: 505–532). Koschaker (1917: 73–84) translated the "son of a man" as a free man (ein Freigeborener);[3] the expression "free man" or a "slave" for him means everyone from every stratum of the society. Koschaker (ibid) does not understand the "son of a man" as a minor, because he thinks that a minor cannot do a transaction and it is very clear that no one will buy from a minor. However, a minor in Mesopotamia is not necessarily a little child. Westbrook (2003: 379) notes that there is no specific age of legal majority in Ancient Law and concludes that legal capacity was "more a function of one's position in the household than of one's sex or age". In other words, every one under the patriarchal power could be regarded as a minor. Therefore, a grown man remained the son of a man in status as long as his father remained head of household, namely, until the father's death or division of his estate between the heirs (Westbrook 2003: 39). In our understanding, the purpose of

[2] This method was proposed by Haase (2000: 54–60) who has most recently studied the meaning of *šarāqum* in LH only.

[3] Followed by Finet 2002, p. 51: "homme libre".

the law from juxtaposing "the son of a man" and a "slave" is to formulate the concept of legal capacity; the transaction with a minor, i.e., the one who lacks legal capacity, is not valid from the civil law perspective if it is done without proper authorization. So the owner will take back his property. However, the point of the law is that if the buyer engages in transaction with a minor in secrecy he is culpable of theft. If he does that through a valid contract, he is not criminally responsible even though the transaction can be cancelled (from the civil law perspective one cannot say with certainty if such transaction is void or is revocable in Ancient Law). In Islamic law, for instance, a transaction with a minor is revocable by the minor's guardian, but it is not void.

In article 7 the receiver of stolen property is considered like a thief. From the perspective of criminal policy this is not unusual. There are legal systems in which handling the stolen property is punished twice more harshly than the theft itself. The other article that matches the modern understanding of theft is LH 8.

šum-ma a-wi-lum lu gu$_4$ *lu* udu *lu* anše *lu* šah *lu* giš.má *iš-ri-iq šum-ma ša i-lim šum-ma ša* é.gal a.rá 30-*šu i-na-ad-di-in šum-ma ša* maš.en.gag a.rá 10-*šu i-ri-a-ab šum-ma šar-ra-qá-nu-um ša na-da-nim la i-šu id-da-ak*	8. If someone steals an ox or sheep, or a donkey, or a pig or a boat, if it belongs to a god or to the palace, he (the thief) shall pay thirtyfold therefore; if it belongs to a commoner (*muškēnim*) he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death.

There appears to be a contradiction between articles 6 and 8. Scholars of Ancient Law have explained the difference between 6 and 8 in 3 ways:

1. Historical explanation finds the difference in either chronological order, i.e., old and new law or geographical reasons; this idea was specially developed in Westbrook and Wilcke 1974–77: 112ff.

2. The different punishment may have been due to the different categories of property: the theft of sacred property is penalized harsher than ordinary one. Driver and Miles 1952: 81, formulate this idea eloquently:

> In article 6 the property must be presumed to have been regarded as *sacra*, whether belonging to a god or the king, and to have been stolen from within the precincts of the temple or palace, whereas in article 8 it is described as various cattle or a ship, i.e. movable property kept without precincts, and so is only *profana* according to ancient opinion. Consequently the theft in article 6 involves, in article 8 it does not involve, the violation of the sanctity of the temple as the house of god to of the palace as the king's house.

This opinion was followed by Petschow 1965: 149 and 1966: 258.

3. The difference between LH 6 and 8 is considered to be one of *mens rea* (Westbrook 1988: 121f.). The property in article 8 is in the open country and may not be recognized as belonging to temple or palace. In other words, the ownership of the property in article 8 is not clear to culprit: therefore the thief cannot be said "to have had at the time of taking the intention to steal divine or royal property" (Westbrook, ibid). Westbrook 2003: 420 thinks of this solution when he writes that if "the thief took an animal or a boat, not knowing at the time that it belonged to the temple or palace, he pays thirtyfold. Only in the event that he cannot pay is the death penalty specified (LH 8)". Westbrook assumes that the thief in LH 8 intended to steal normal property but mistakenly stole palace or temple property. A mistake of fact is sometimes regarded as a valid defense because it does not allow the defendant to form the *mens rea* which is required to constitute the crime (LU 7). However, the mistake of fact is usually taken into consideration where it involves a legal vs. illegal act. There is no evidence to show that mistake of fact between two illegal acts is ever considered as a defense.

The main argument against the second view is a philological one, that níg. ga (*makkūrum*/ *namkūrum*) in LH 6 is in no way restricted to sacred property but means any property (Westbrook and Wilcke 1974–77: 113). We suggest that any type of property can be sacred if it is specified for a sacred purpose; for example, a sheep is sacred if it is specified for the cultic sacrifice (see our study of Durand 1977: 126 in Badamchi 2010 under Embezzlement). Therefore, we attribute the difference between LH 6 and 8 to the type of stolen property (i.e. *sacra* vs. *profana*), but we it must be observed that the sacredness of the property is not because of its location inside or outside the temple but for its function.

We observe that most of the attestations of šarāqum are in this sense and, therefore, there is no need to bring more evidence to demonstrate this usage.

2.2. A different legal problem (abduction) is described by the same verb in LH 14:

a) Article 14 says:

šum-ma a-wi-lum dumu *a-wi-lim ṣe-eh-ra-am* *iš-ta-ri-iq id-da-ak*	If a man steals a young son of (another) man, he will be killed.

It is difficult to explain why the seizure of a child is here described as "theft" while the technical term for abduction in Akkadian is *suppû* (CAD S, 395; S. Lafont 2002). In order to understand the logic, Haase (2000: 56) says:

> Wenn hier die Wegnahme eines Kindes als „Diebstahl“ bezeichnet und bewertet wird, dann gleicht das einer Ausdrucksweise, welche man noch heute „im Volk“ hoeren kann, wenn ein Betrogener beklagt, der Betrueger habe ihm „sein Geld gestohlen“, d.h. ihm durch betruegerische Machenschaften finanziellen Schaden zugefuegt. Der Verlust eines geldwerten Objekts wird als Diebstahl aufgefasst. So dachten wohl auch die Babylonier, als sie den in § 14 enthaltenen Tatbestand juristisch werten wollten.[4]

As we will argue here, it is more accurate to say that any crime against property is classified as theft and this probably explains the reasoning behind article 14. This policy has been suggested in the American Model Penal Code, article 223, where all property crimes have been merged into one single crime of theft. Many American legislators followed this suggestion including Maryland Criminal Code, article 7–102.

The motive of the culprit is not usually a component of the crime. People may have different motives to engage in criminal actions and criminal law cannot take into consideration an element that varies from person to another. It is, however, helpful to speculate on what the motive of the crime was. There are at least three possibilities: It could be human trafficking, i.e., slavery (ARM 14, 51) or to provide a male family member (heir). It can be also kidnapping to get ransom to release the child (AbB 2, 46).[5]

In modern law the taking away of a person against the person’s will is called abduction (or kidnapping if it involves a minor) because in abduction a human being and not a thing is involved. Szlechter (1977: 48) holds a different view about LH 14 and interprets LH 14 as a sanction against fraud. He thinks that the criminal takes the child in his care, and wants through deceit and presentation of false facts to prevent the child being returned, in that he pretends that it is no longer alive.[6] Haase (2000: 56) rightly observes that a fraudulent misappropriation is hardly imaginable in the terse formulation of the circumstances. Haase (ibid)

---

[4] Haase compares this usage to the modern (non-technical) expression that we can hear from people, when a defrauded person complains that a fraudster “has stolen his money”. It means that he has suffered financial loss because of someone’s fraudulent maneuvers. The loss of anything of value is understood as “theft”. Babylonians were thinking like this too, when they wanted to put the circumstances in article 14 into legal terms.

[5] According to AbB 2, 46: 6–12, two men write a letter to Ahatum, the wife of Sin-iddinam, the *rabi-amurrim*. In the letter the men inform Ahatum that they have been captured and request that she should contact their father so that he can make arrangements to buy their release.

[6] Il ne s’agit pas, en l’espèce, de l’enlèvement d’un enfant, soit pour le tenir en otage, soit pour demander une rançon. Aussi, la traduction, – ou même l’interprétation –, du verbe šarāqum, par “to kidnap”, ne correspond-elle pas à la véritable nature juridique du délit. L’élément constitutif de l’infraction consistait dans la soustraction frauduleuses d’un jeune enfant d’autrui, qui constituait, en droit babylonien, un vol. Ceci n’impliquait nullement qu’un jeune enfant était considéré comme un “objet” ou un “bien”.

also thinks that the death penalty would be too heavy a punishment for such fraud because after all, the child was surrendered to him and also his character as a reliable person could have been verified.

The fact that the Babylonians considered the facts in article 14 as the constituent of theft and described it with *šarāqum* requires special attention. According to Haase (2000: 57), it shows that for them a legal distinction between the concept of human being and thing was not common.[7] Here a distinction should be made between free people vs. slaves. In legal systems where slavery is a legal institution slaves are considered as property. The consequence of such conception can be seen in sale. According to modern understanding sale applies to things and rights and not to humans, but LH 278 and 279 talks of the sale of slaves and LH 7 shows the inclusive meaning of the verb *šâmum* "to buy" for every transaction of goods with a valuable consideration (Haase 2000: 57). Therefore, in criminal law we can expect to see that the ownership rights over slaves is protected by the law of theft. This idea can be seen clearly in a Mari letter (ARM 14, 51):

4 PN 5 *i-na ha-al-ṣí-ia i-ba-aš-ši* 6 *a-na ma-a-at I-da-ma-ra-az il-*[*li-ik-ma*] 7 8 sag.ìr.meš *ù* 2 anše.há *iš-ri-iq-ma* 8 *a-na* kù.babbar *it-ta-ad-di-in*	PN is in my district he went to the land of Idamaraz and stole 8 slaves and 2 donkeys and sold (them).

However, in Ancient Law not only slaves but also free people (dependents) could be sold and are by the same logic covered by the law of theft (LH 14).[8] The Akkadian expression *ana kaspim nadānum* is used in LH 117 referring to the sale of humans both free and slave (Westbrook 2003: 399–402). Therefore, one may argue that misappropriation of a subject (human being) was regarded as "theft" because the person had the status of a dependent. The consequence is that similar to the case of stealing a slave the consent of the kidnapped dependent would be irrelevant. We can safely assume that the father or the head of the family is the victim of the theft of his dependent. Nevertheless, two Old

[7] "Die Tatsache, dass die Babylonier die Verwirklichung des in § 14 geschilderten Tatbestandes als Diebstahl werten, zeigt, dass ihnen die juristische Unterscheidung zwischen den Begriffen "Mensch" und "Sache" nicht geläufig gewesen ist." Contrary to Haase (2000: 57), it must be observed that, in both civil and criminal law, it is impossible to ignore, absolutely, the human aspect of the slave. For example, the master of a slave was not allowed to kill his slave as he pleased (see the Mari letter published by S. Lafont 1997).

[8] It is worth comparing with Roman law where slaves could be stolen; free people too could be stolen, e.g., a child in *potestas*, or a wife in *manus* marriage (Borkowski and du Plessis 2005: 332). In Islamic law, it is not theft to take articles in which the Shari'a does not recognize private ownership like freeborn children.

Babylonian letters show that the verb *habātum* (to steal with violence, to rob) is used regarding the abduction of humans: in AbB 1 27 it is about a slave but in the other one the abduction of a free citizen is described by that verb (Sigrist 1990, no. 89: 1–9[9]):

1 *i-na* uru *Ja-ah-ru-ri-im*	They seized him in the city of Jahrurim
2 *iş-ba-tu-šu-ma*	and said: "you are a slave of Marduk-nāşir!"
3 *um-ma šu-nu-ma*	He said: "I have been abducted!
4 sag-ìr *ša* ^{d}*Marduk-na-şir at-ta*	I am a citizen of Larsa!"
5 *ha-ab-ta-ku i-si-ma*	Ili-turam, chief of the cooks,
6 *ma-ri Larsa*^{ki} *e-na-ku*	released him because he did not know him.
7 ^{1}*Ì-lí-tu-ra-am* ugula muhaldim.meš	
8 *ú-pa-ţe-ir-šu-ma*	
9 *aš-šum la i-du-šu*	

Therefore, we observe that theft terminology is used regarding the abduction of slaves, and dependent and independent citizens.

2.3. Another attestation of the verb *šarāqum* is in LH 253 which describes a case of embezzlement:

šum-ma a-wi-lum a-wi-lam a-na pa-ni	If someone hires a man to care for/ look
a.šà-*šu ú-zu-uz-zi-im i-gur-ma*	over his field and entrusts to him the
al.dù-*a-am i-qí-ip-šu* áb.gu$_4$-há *ip-qí-sum*	stored grain and cattle and contracts with
a-na a.šà *e-re-ši-im ú-ra-ak-ki-sú*	him to cultivate the field,
šum-ma a-wi-lum šu-ú	and that man steals either the seed or
še.numun *ù lu* šà.gal *iš-ri-iq-ma*	the fodder and it is found in his hand/
i-na qá-ti-šu it-ta-aş-ba-at	possession,
kišib.lá-*šu i-na-ak-ki-su*	they shall cut off his hand.

The aim of this contract is that someone employs another one to work on his field. According to Haase (2000: 57) this translation accords more with reality than those that talk of "supervision" (*Beaufsichtigung*). Haase (ibid) thinks that the one who supervises does not need to work, but he should keep his eyes open and keep guard. We suggest that work/ management/supervision should be compared to watching /guarding. Delivering seeds, etc., demonstrate that the law speaks of the first and not the second concept (Driver and Miles 1952: 445). For taking care of the field, work tools (seeds and cattle) are entrusted to the employee. The law speaks of a contract of hire and so it is clear that there is an employment relationship and the equipment is entrusted to the employee for a specific purpose.

[9] For lines 1–6, see also Wilcke 1992: 75–76.

Using the word "hire" is linguistically noteworthy. *Agāru* means both hiring men and things[10] (Westbrook 2003: 408f.). Haase (2000: 57) rightly notes that today it would be understood not as a contract of hire but as a labor contract, but it is clear that in Akkadian *agāru* (to hire) is also used in the sense of contractual obligation to do specific works. Westbrook (2003: 409) notes that "the same type of contract covered everyone from an unskilled laborer (LH 257) to a steward responsible for the running of a farm (LH 253–56)".

The work tools had been entrusted to the employee for the specific purpose of managing the field. By misappropriating the work tools the manager has committed a crime which is labeled by the verb *šarāqum*. According to the definitions that we described above the crime is embezzlement. The law seeks to make the punishment fit the crime (mirroring punishment): the hand that committed the offence is cut off (Driver and Miles 1952: 448; Haase 2000: 58[11]).

The phrase *ina qâti-šu ittaṣbat* "it is seized in his hand" can be interpreted either literally or idiomatically. Driver and Miles (1952: 446) think that in article 253 the culprit was caught *in flagrante delicto*: "The bailiff, caught red-handed stealing seed-corn or fodder, loses his hand". This is a literal interpretation. Haase (2000: 58) suggests that one does not face the punishment of cutting the hand because of a hand full of seed or fodder. The more important problem is that the manager is allowed to carry and handle the barley or the fodder. So it is difficult to interpret the phrase *ina qâti-šu ittaṣbat* as "taken in the act". There should be some stronger evidence than merely finding the items in his hands. Idiomatically, the clause indicates possession, meaning the actual control over the thing (Roth 1997: 128; Haase 2000: 58).

2.4. LH 255, that is related to LH 253, also deals with embezzlement (= a breach of trust).

šum-ma áb.gu$_4$-há *a-wi-lim a-na ig-ri-im* *it-ta-di-in ù lu* še.numun *iš-ri-iq-ma* *i-na* a.šà *la uš-tab-ši a-wi-lam šu-a-ti* *ú-ka-an-nu-šu-ma i-na* buru$_{14}$ bùr.iku.e (*ana* 1 *burum*) 60 še.gur *i-ma-ad-da-ad*	255. If he should hire out the man's cattle, or he steals the seed and there be no crop in the field, they shall convict that man, and at the harvest he shall pay 60 kur of grain per each bur of land.

[10] This is similar to Islamic law: there are two main types of *iḏjāra* (a contract to hire) in Islamic law: the hire of things and the hire of services. The latter category embraces two sub-divisions: the hire of services proper, i.e. a contract to work, and the hire of skill, (in the case of the craftsman).

[11] Die Verletzung der Pflichten aus dem Vertrag wird als Diebstahl bewertet, wie das Wort šarāqum zeigt. Folgerichtig ist die Strafe der Verlust der sündigenden Hand (spiegelnde Strafe). Ausweislich der unter I 2 angeführten Definitionen haben wir es aus heutiger Sicht mit einer *Unterschlagung* zu tun, da sich der Arbeiter die *instrumenta contractus* widerrechtlich aneignet, anstatt die ihm übertragene Arbeit auszuführen.

The culprit in LH 255 is the same person who was hired as field manager in LH 253. He gives the oxen to a third party in breach of the contract; furthermore he uses the seed for his personal benefit. Consequently he does not produce crops on the field of his contract partner. The law emphasizes on the last factor: the culprit must pay the amount of grain stipulated in the article. Haase (2000: 58) notes that there is no compensation imposed for giving the oxen (to a third party), although one could expect it: "the culprit could have enriched himself in the amount of the hiring fee, the word to hire (*agāru*) in article 255 and the tariffs in articles 242 and 243 that apply to hire suggest that this could happen". We may note that since the oxen were needed for plowing the field, if he hired them out to a third party instead, he couldn't plant the field entrusted to him, and therefore the penalty is covered by the amount of grain he has to supply to the owner, which will certainly cost him more than he could have gained from hiring out the oxen.

According to Haase (2000: 58), in contrast to the corporal punishment in article 253, the obligation of compensation in article 255, which is not considered as theft, is not very serious. The reason may be a feeling about the severity of the crime. Haase (ibid) notes that he is not able to say what it is based on. Haase (ibid) comments that bringing an accusation against the "employee" is apparently pursued in a court trial, where the victim following the practice of the ancient Near East acts as plaintiff and witness. Haase (ibid) rightly notes that the word *kânu* here is best translated as to "convict", because it vividly expresses the procedure; however, Haase cannot explain why the verb is attested in LH 256 and not in LH 253. In our opinion Haase (ibid) did not notice the relation between LH 253–255. We offer the following interpretation as solution:

In LH 253 the embezzler is caught with the stolen property either in his hand or in his possession. So there is no doubt about it. In LH 254 the crime is understood based on the assumption. But he was not caught in act or in possession. Double payment is based on what he received, because one cannot say how much he has stolen.

In LH 255 the harvest is less than usual. Harvest deficit can be attributed to many reasons like the rain and natural causes. It is upon the plaintiff to prove that the shortage is because of the fraud. That explains why we have the verb *kânu* in LH 255 and not in LH 253. In the next article (LH 256) we read:

šum-ma pí-ha-sú a-pa-lam la i-le-i i-na a.šà *šu-a-ti i-na* áb.gu$_4$-há *im-ta-na-aš-ša-ru-šu*	256. If he is not able to satisfy his obligation, they shall have him dragged around through that field by the cattle.

The exact nature of this punishment is not clear. Driver and Miles (1952: 448) compare it to Hittite laws 166 where a man is punished by being tied to two oxen driven in opposite directions.

There is no doubt that the punishment in Hittite Law (mentioned above) is death, but we cannot be certain about LH 256. Nevertheless, this article shows that there is no lenient criminal policy in dealing with embezzlement in LH 253–256 (contrary to Haase, ibid).

2.5. Another case of embezzlement is LH 265. It is about a shepherd who misappropriates what has been entrusted to him.

šum-ma sipa *ša* áb.gu$_4$.há *ù lu* usduha *a-na re-im in-na-ad-nu-šum* *ú-sa-ar-ri-ir-ma ši-im-tam ut-ta-ak-ki-ir* *ù a-na* kù.babbar *it-ta-di-in* *ú-ka-an-nu-šu-ma* a.rá 10-*šu ša iš-ri-qú* áb.gu$_4$.há *ù* usduha *a-na be-lí-šu-nu i-ri-a-ab*	265. If a shepherd, to whom cattle or sheep are given for shepherding, acts feloniously and alters the ownership mark and/or sells them, they shall prove it against him and he shall replace for their owner/ owners tenfold of the cattle and sheep that he stole.

The behavior of the shepherd is described by the verb *sarārum* which should be translated as "to act falsely or feloniously"; in legal context, the word refers to a criminal act in general and not to any specific crime. Therefore the reading of the article is this: "… he acts falsely/dishonestly, (by doing) …" Driver and Miles (1952: 458) correctly noted that the verb does not describe a separate act. We may ask what criminal title can be attributed to this act: embezzlement, forgery of ownership mark, and fraud are different possibilities. There is also a reference to "stolen" cattle. Haase (2000: 59) notes that "the Babylonian editor apparently classifies all of them under one title. What is at first embezzlement by forgery of ownership mark and later fraud against the one who buys the cattle, is presented as theft". The question is how to interpret the material element of this crime: is it simple or complex? The answer depends on the meaning of the conjunctive *ù* in line 68 which is not clear: the question is how should it be read: "and" or "or"? As will be explained below, this reading has important legal consequences:

If the conjunctive *ù* is understood as "and", then the material element of the crime constitutes of the alteration of the ownership-mark of the cattle and consequently selling it to a third party. Embezzlement and forgery of the ownership mark is a crime against the cattle owner and fraudulent sale of stolen cattle is another crime against the buyer. It is not clear why the two crimes should be connected to each other. According to this interpretation the penalty will be imposed only when both acts (forgery and sale) have been committed.

However, if we translate the conjunctive *ù* as 'or', then the crime will be complete and penalty can be imposed if only one of the acts is performed.[12] Driver and Miles (1952: 458) note that the conjunction "is equivocal but must be read as meaning 'and' (Bab. u) and not 'or' (Bab. û), so that the whole offence is that the pastor has wrongfully altered the marks with a view to selling the beasts, which he does". Haase (2000: 59) follows Driver and Miles and notes that "the editor had the first one in mind, because the law speaks of "stolen" cattle; the "theft" of cattle is penalized." We observe that the objective of the law is to protect the ownership right against misappropriation. The shepherd can misappropriate the cattle either through changing the ownership mark or by selling the cattle. The point of the law is that the sale and the personal profit of the shepherd is not the constituent of the crime. If the shepherd changes the ownership mark but keeps the cattle among his own cattle or donates it to another person he is still guilty of embezzlement because he has deprived the owner of his rightful property (see our interpretation of *ana dumqim šakānum* in TIM 4 36). There two verbs in this clause: *adi* 10-*šu ša išriqu… iriab*: "he will compensate tenfold of what he stole". It seems that the subject of both verbs is the shepherd and since the punishment is to the benefit of the cattle owner/owners, the verb *šarāqum* should be interpreted as describing the shepherd's crime against the cattle owners (Driver and Miles 1952: 458).

One other question is about the person who receives the compensation. The formulation of the law is unclear. The text reads: *ana belišunu iriab*; it can mean both owner and owners. Driver and Miles (1952: 458) say "the form of noun as written is ambiguous and may be either singular or plural". Haase (2000: 59) rightly leaves the question without answer because a shepherd can herd the cattle of one or more owners. However, it is important to note that 'owner or owners' refer to the cattle owner i.e., the person who employed the shepherd. The crime therefore is embezzlement. The person who purchased the cattle with forged ownership mark is a victim of fraud, but this article does not speak about him.

There is one legal text from Alalalkh (AlT 119) in which the act of embezzlement by a depositee is described by the verb *šarāqum*: the text describes that a woman commissioned a man regarding 50 *parīsu* (a measure of capacity, one-half of a gur) of barley. They (the woman and some other persons?) also entrusted to him the rest of the barley (an unspecified amount), but the man opened the storage (or sacks) during the night and stole from the barley. AlT 119 (Dietrich-Loretz 2005, UF 37: 286f.):

[12] So Borger 1982 (TUAT 1): translates LH 265: 66–69 as: "Betrug verübt, die Viehmark verändert, oder (das Vieh) für Geld verkauft."

8 *ši-ta-at še* 9 *ša ha-an-ṭù-ti* 10 *i-na qa-ti-šu-ma* 11 *ip-qí-du-nim* 12 *i-na mu-ši-im* 13 *ip-te-e-ma* 14 *iš-ri-iq-šu* Three witnesses	They entrusted to him the rest of the barley (of a certain quality). During the night, he opened (the storage or sacks) and stole the barley.

2.6. Haase 2000, 60 describes the crime in LH 265 as "Betrug" and therefore concludes that the semantic range of šarāqum includes fraud as well (see also San Nicolo in *RlA* s.v. Betrug). In fact, we witness two crimes in CH 265: the shepherd commits embezzlement against the cattle owner when he misappropriates the cattle and commits fraud against the person who purchases stolen cattle from him. Nevertheless, the context shows that LH 265 is only concerned with the embezzlement. There is, however, another legal text, a ditila document, in which a fraudster is convicted as thief (NG 69): a man who committed fraud by selling a slave twice "was declared[13] a thief (lú-im-zuh)".

2.7. Robbery in modern understanding is a type of theft. We read in a modern textbook of criminal law that "robbery is essentially an aggravated form of theft; and if there is no theft, or attempted theft, there can be no robbery or attempted robbery. All the elements of theft must be proved" (Smith and Hogan 2005: 711). Therefore, it is equally correct to speak in English of a "robber who stole sheep" (lú la-ga udu zuh-a, SNAT 210: 30); likewise, we can speak of the thieves (*ša-ru-qú*) who came into a house, killed the residents and "took silver and copper, tin, and textiles of great value" (Kt k/k 108[14]). The word *šarrāqūm* means thieves, but the context makes it clear that they were robbers: they used violence, not stealth. We do not need to explain why robbery is described by "theft" terminology. The question regarding robbery is of a different kind: we shall study whether or not robbery is recognized as a particular type of theft.

2.8. False testimony is also described with "theft" terminology. In LU 28 a man appeared in the court as a witness but it was established that he is a thief (lú ní-zuh); this means he was convicted for perjury (false testimony). As a penalty he has to pay 15 shekels of silver. A similar case regarding perjury is the subject of a Neo-Sumerian trial (NG 84) which clearly demonstrates that reason for such conviction is false testimony.

---

[13] The Sumerian verb is ku_4: *erēbu*: to enter. Literally: he became a thief.

[14] Hecker 1996, text no. 4, p. 151–153; see our study in Badamchi 2010, the chapter on robbery.

		1–8	fragmentary
		9–10	[X] and [Y]
11	l[ú-inim]-ma-šè šeš-na [mu-na]-ra-è-éš	11–	came forth as witnesses for his
12	lú-[inim]-ma-bé-ne		brother. These witnesses, because
13	m[u] ^{d}Šul-pa-è šeš		they declared that they had
14	igi-[ni] in-ne-sum bí-né-eš		seen Uršulpa'e, the brother, but
r. 1	^{d}Šul-pa-è šeš ki-ba nu-ù-gub-ba-šè		Uršulpa'e, the brother,was not
2	lú-[ní]-zuh ba-an-ku$_4$-re-eš		present, were declared thieves.

In this case the punishment is not recorded but ditila documents show that slavery was a usual punishment for theft (NG 203: 1–6); the culprit, however, could purchase his freedom by a penal payment (Westbrook 2003: 220).

The treatment of false testimony as theft is also attested in Akkadian sources. A trial document[15] records that in the process of a lawsuit, the parties are asked (or contractually accept) to take an oath and the sanction is that if someone (i.e. one of the parties) takes a false oath it will be treated like a theft of temple and palace property (TLB 1, 231: 20–24):

i-na mi-im-ma an-ni-im ša it-mu-ú *ú-ba-ar-ru-ši-i-ma* *šu-ru-uq* dingir *ù* lugal *in-na-ak-ka-al*	If someone is convicted regarding something about which he has taken the oath, then a theft of god and king will be eaten.*

* In other words: it is the same as stealing from god or king.

There are many cases of contractual punishments in ancient law (Roth 1988; Hackett-Huehnergard 1984). However, this case is of special significance for our study because false testimony is regarded as an aggravated form of theft. Wilcke (1992: 54) notes that idiomatically, the expression "to eat the theft/stolen property" (*šurqam akālum*) is analogous to "to eat the slander" = "to slander, calumniate" (*karṣī akālum*). The expression is also attested in both Sumerian and Akkadian forms in the Instructions of Šuruppak 39 (Alster 2005: 64):

lú-da níg-zuh-a nam-mu-da-gu$_7$-e *it-ti šar-ra-qa šur-qa la tak-kal*	Don't eat something stolen with a thief.

Therefore *šurqam akālum* clearly means to commit theft or to participate in a theft. The unusual clause in TLB 1, 231: 20–24 can be compared with LH 6 where the death penalty is imposed for the theft of temple and palace property (Leemans 1970: 65).

[15] TLB 1, 231 (Leemans 1970; Kraus 1971 [RA 65: 94]; Wilcke 1992: 54).

Likewise, in the following OB letter the one who is proven wrong in his statement will be treated like a thief (AbB 10, 192: 22–26):

šum-ma i-na la i-di-im ar-su-ub-ma el-qí *šu-ur-qá-am li-ku-la-an-ni* *šum-ma šu-ú ir-su-um-ma* *i-na la i-di-im iq-bi-i-ma* *šu-ur-qá-am lu-ku-ul-šu*	If I have erred* and taken unjustified, let him accuse me of theft. If he has erred and spoken unjustified, let me accuse him of theft.

* *rasābu*: to err (CAD R, 180).

The idea behind equation of false testimony and theft is probably the fact that the culprit tries to obtain unjust property by false testimony. In Modern law false testimony is not considered as a property crime but is a crime against the administration of justice, i.e., obstruction of justice.

3. When one looks at these sources regarding the "theft", the following conclusions can be made

3.1. According to the legal conception of the Babylonians all the criminal acts described with verb *šarāqum*, are considered as the crime of theft (after Haase 2000: 60 and Westbrook 2003: 419). However, Driver and Miles (1952: 80) think differently and in their standard commentary on the Laws of Hammurabi suggest that where the offence is a misappropriation by a bailee of goods in his possession, "although the verb generally used is one meaning 'to steal' (Bab. *šarāqum*), Babylonian law distinguishes between a common taking from another's possession and misappropriation by a bailee".[16]

Driver and Miles (ibid) assume that *šarāqum* has a technical and a non-technical meaning and that the word in LH 253 and 265 is used in the non-technical sense. It is difficult to follow this argument because LH is a technical work that uses the words in proper way and the criterion for this distinction between technical and non-technical meaning is unclear. Nevertheless, it is important to note that our generalization regarding the semantic range of *šarāqum* is based on limited evidence: it is only in the laws of Hammurabi and AlT 119 that misappropriation by a bailee (= embezzlement) is described by "theft" terminology, and regarding the fraud there is only one ditila document that describes the fraudster as thief (NG 69, 13). However, regarding the abduction and false testimony, the usage is attested in both law collections and documents from the practice of law.

[16] Driver and Miles 1952: 452 formulate a principle: "the thief is one who wrongfully takes property from the possession of another man without his knowledge or consent, and the bailee therefore is not a thief".

3.2. The modern understanding shows the following picture:

Crime	Source	Punishment
1. Theft	LH 6 LH 8 LH 259 LH 260	death compensation* or death compensation compensation
2. Robbery	Lambert 2007, p. 38f SNAT 210 Kt k/k 108	 - -
3. Embezzlement	LH 253 LH 265** AlT 119	cutting of the hand compensation -
4. Fraud	NG 69, 13	-
5. Abduction	LH 14*** ARM 14, 51	death -
6. False testimony	LU 28 (= LU a2) NG 84 TLB 1, 231: 20–24 AbB 10, 192: 22–26	compensation - - -

* The word "compensation" does not mean a simple "restitution of damages"; it has punitive character (because it exceeds the damage) and is paid to the victim.

** Haase (2000: 60) describes the crime in LH 265 as "Betrug".

*** It is difficult to see why Haase (2000, 60) describes the crime in LH 14 as "Raub". The ancient title is clearly theft and the modern title is certainly not "Raub!" The title in German Penal Code (article 234) is "Menschenraub" that Haase himself pointed out in p. 56.

In conclusion the word *šarāqum* in Ancient law, conveniently translated as "to steal", is a criminal title that includes what we recognize in modern law as 1) theft, 2) theft with violence (robbery), 3) fraud, 4) embezzlement, 5) kidnapping or abduction, and 6) false testimony.

The word therefore covers theft and what would be regarded as separate offences in modern law, in particular abuse of trust and fraud. They are considered "related" because they are crimes against the rightful ownership or possession of property. Abduction and false testimony, however, are not considered as property crimes in modern understanding. Today abduction is a crime against personal freedom and false testimony is a crime against the administration of justice (obstruction of justice).

In theory we believe that the existence of a general concept like *šarāqum* does not contradict the existence of more particular concepts like *habātum* and *sakālum*. Therefore, while one must not anachronistically impose modern categories to ancient sources, future research must study each type of theft in more details and examine the recognition of more particular concepts.

Abbreviations

AbB = Altbabylonische Briefe in Umschrift und Übersetzung
ARM = Archives royales de Mari
CAD = Chicago Assyrian Dictionary
LH = Laws of Hammurabi
LU = Laws of Ur-Namma
NG = see Falkenstein 1956
UF = Ugarit-Forschungen

Bibliography

Alster, B. 2005. *Wisdom of Ancient Sumer*, MD: Bethesda, CDL Press.
Badamchi, Hossein. 2010. *Theft and Related Offences in Early Mesopotamian Law*, PhD Dissertation, Johns Hopkins University.
Borkowski, Andrew and Paul Du. Plessis 2005. *Textbook on Roman Law*, 3rd edition, Oxford: Oxford University Press.
Driver, G.R. and J.C. Miles. 1952. *The Babylonian Laws: 1. Legal Commentary*, Oxford: Clarendon Press.
Durand, Jean-Marie. 1977. Une condamnation à mort à l'époque d'Ur III, *RA* 71: 125–136.
Falkenstein, Adam. 1956–57. *Die neusumerischen Gerichtsurkunden*, 3 vols. Munich.
Finet, A. 2002. *Le Code de Hammurabi*, Paris: Les Édition du CERF.
Haase, Richard. 2000. Šarāqu im Codex Hammurapi, *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte* 6: 54–60.
Hackett, Jo Ann and John Huehnergard. 1984. On Breaking Teeth, *the Harvard Theological Review*, 77: 259–75.
Hecker, K. 1996. Rechtlos in der Fremde?, in *Anadolu Medeniyetleri Mütesi Konferanslari*, 1995 Yili, (Ankara), 145–159.
Greengus, Samuel. 1969. The Old Babylonian Marriage Contract, *JAOS*, 89: 3, pp. 505–532.
Koschaker, Paul. 1917. *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis*. Leipzig: Viet.
Lafont, Sophie. 1997. La procédure par serment au Proche-Orient ancien, in Lafont, S. (ed.), *Jurer et maudire*, Méditerranées 10–11, Paris: L'Harmattan, 185–193.
— 2002. Enlèvement et séquestration à l'époque paléo-babylonienne, *Recueil d'études à la mémoire d'André Parrot*, Florilegium marianum VI, Mémoires de NABU 7, Paris, pp. 69–88.
Petschow, H.P.H. 1965. Sur Systematik und Gesetzestechnik im Codex. Hammurabi, *ZA* 57: 146–172.
Roth, Martha T. 1988. She Will Die by the Iron Dagger: Adultery and Neo-Babylonian Marriage, *JESHO* 31: 186–206.
— 1997, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., Atlanta, GA: Scholars Press.
Sigrist, M. 1990. *Old Babylonian Account Texts in the Horn Archaeology Museum*, Michigan: Andrews University Press.
Smith, J. and B. Hogan. 2005. *Criminal Law*, 11th edition by David Ormerod, Oxford: Oxford University Press.
Szlechter, Emile. 1977. *Codex Hammurapi*, Rome: Pontificia Universitas Lateranensis.
Westbrook, R. and C. Wilcke. 1974–77. The Liability of an Innocent Purchaser of Stolen Goods in Early Mesopotamian Law, *Archiv für Orientforschung* 25, 111–121.
Westbrook, Raymond. 1988. *Studies in Biblical and Cuneiform Law*, Cahiers de la Revue Biblique, No. 26. Paris: Gabalda.

Westbrook, Raymond. 2003. The Character of Ancient Near Eastern Law, in Westbrook, R. (ed.) *A History of Ancient Near Eastern Law*, 2 vols. Leiden: E.J. Brill, 1–92.

— 2003. Old Babylonian Period, in Westbrook, R. (ed.), *A History of Ancient Near Eastern Law*, 2 vol. Leiden: E.J Brill, 360–430.

— (ed.). 2003. *A History of Ancient Near Eastern Law*, 2 vols. Leiden: E.J. Brill.

Wilcke, Claus. 1992. Diebe, Räuber, Mörder, in Haas, V. (ed.), *Soziale Randgruppen im Alten Orient* (= Xenia 32) 53–78.

— 2015. Gesetze in sumerischer Sprache, in *Studies in Sumerian Language and Literature: Festschrift für Joachim Krecher*, Babel und Bibel 8, 455–616.