

《論 文》

# Morphological, Anatomical and Statistical Analyses on The Four Ancient Mesopotamian Law Codes Including The Hammurabi Law Code:

—— Part III Legal Litigation, Penal Law Code, and Civil Law Code ——

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## III -1 Introduction

In the previous papers(part I <sup>1</sup>, and part II <sup>2</sup>), the comprehensive analysis on the principal data base for the four ancient law codes( Ur-Nammu(UN), Lipit-Ishtar(LI), Eshnunna(E) and Hammurabi (H) law codes) were performed not only with contemporary view but also together with bird-eye view to determine their sizes, contents, transfers (correlations among them) (Part I ), and social classes and developments of professions (Part II ). The conclusions obtained are briefly summarized as follows:

- ( I -1) The Hammurabi law has overwhelming size; 2.6 times (=248/95) of the arithmetic summation of other three preceding laws (Table I -5) and the H law is not a simple accumulation of the preceding laws.
- ( I -2) About 30~50% of the article in the three preceding law codes is transferred to the H code (Table I -12). The transferred articles occupy only 13% (=32/248) (Table I -13) of the total articles of the H code : The degree of influence of the preceding codes to the H code is very restrictive (Table I -13).
- ( I -3) The main target of these laws is obviously awilum (Table I -5).
- ( I -4) All the legible articles of the four law codes are classified into 11 categories.
- ( I -5) Modern legal ideas emerged evidently first from , except category 2, the Hammurabi law (Table I -7).
- ( II -1) In the four law codes three~four social classes with different legal positions are found including king (Table II -1).
- ( II -2) Kings whose authority of king were entrusted by the gods, have the supreme judgement (E58,E56) and the right to give amnesty (H129).
- ( II -3) The object of the H law is the common people and the articles on awilum constitute the major part of the H law.
- ( II -4) The jobs of awilum cover almost whole range of jobs of the society at Old Babylonian period (Table II -6a and Table II -6b).
- ( II -5) Awilum seems to have been consisted of the citizens or the 'freeman', covering from the upper elite sub-class to the poor or ordinary sub-class, consisting the major of the society (Eq.(7)).
- ( II -6) The transfer of rather homogeneous awilum class to highly

heterogeneous and broad class occurred during the period  
(Table II -13a and Table II -13b).

- ( II -7) Any awilum had, irrespective of his job, property, social position,  
absolutely equal regal status (H1)(**3.4.4**).
- ( II -8) In the Sumer society muskenum was not existed as one of social  
classes with particular legal status (Table II -1). Muskenum  
seems a specific minority group in the Akkad period.
- ( II -9) Muskenum has the legal status, equivalent to awilum (property  
right, home and family right ), advantage to awilum (legal  
protection to muskenum, offence embezzlement,···,) and  
disadvantage with awilum (bodily injury, medical malpractice and  
compensation) (**3.4.2**).
- ( II -10) Very significant disparity is recognized between the muskenum  
and the waradu (slave).(**3.5.2**).
- ( II -11) The price of slave was estimated from the law codes (Table II -11).  
Average price is  $20 \pm 5$  siqlu.
- ( II -12) Slave has some legal right such as the property right to make  
his own immovable and movables, the right of marriage and  
inheritance. Slave can get marry formally to awilum girl (**3.5.6**).
- ( II -13) It was demonstrated that the high population density and the  
highly sophisticated system of the irrigation, together with the  
nation-wide great canal networks and the plow forming, did not  
fit to the simple monotonous labor work by the slaves.(**3.6.2**) .
- ( II -14) The job specialization progressed, with acceleration, with time ;  
Ur-Nammu → Lipit-Ishtar → Eshnunna → Hammurabi law codes  
(Table II -14).

The Hammurabi law code is widely known as the most complete, 'formerly oldest'(even now old) law code.

The questions to the law and answers (in parenthesis) obtained in this study are, for examples, as follows:

- Q 1 On what points except 'Justice' are the Hammurabi (H) law highly estimated? (Part I ).
- Q 2 How closely relates the Hammurabi law to the preceding (but excavated later than the Hammurabi law) three law codes; Ur-Nammu(UN), Lipit Ishtar(LI) and Eshnunna(E) laws? Is the H law code a simple collection of UN,LI and E codes?
- Q 3 Are traditions in the past made as statute law? (Part II ).
- Q 4 Is the H law sterner than the preceding three laws ? (Part II ).
- Q 5 What are the social classes at that time? (Part II ).

In this paper (Part III ) we intend to clarify the following items:

- ① Social environment until formation of the Hammurabi law code
- ② The Hammurabi law code ; the constitution of the H law and the correspondence to contemporary laws.
- ③ Legal processing
- ④ Crime and penalty
- ⑤ Marriage, family and inheritance

In this study some causal relations will be discussed between the law articles and the social and natural environments.

## **III -2 Methodology of the study**

We employ as the primary materials the legible articles translated, literally from Sumerian or Akkadian into Japanese in the Iijima's works<sup>3</sup>

for LI<sup>4</sup>, E<sup>5</sup>, and H<sup>6</sup> law codes and also the articles of the Ur-Nammu (UN) law code, translated by Kobayashi<sup>7</sup>.

### **III -3 Until the Hammurabi law code had been formed.**

#### **3.1 Emergence of the first written law : From customs to laws.**

The oldest written law code had been enacted the 21 century BC by Ur-Nammu (or probably Shulgi) of Ur III dynasty. Table III -1 summarizes the emergence of written laws (*leges scriptae*), and progress of production technology in ancient Mesopotamia.

(The table was constructed from ref.8~22).

Law is, generally speaking, a kind of social phenomena and then it may be heavily influenced by outer social environment. Now we consider the evolution of law concept in human history. Here, we assume a following hypothetical single route of progress, although a variety of other routes can also be possible to use :

Step(1) repetition of actions in daily life → Step(2)success experiences (wisdom attained from experience) → Step(3) convention → Step(4) custom → Step(5) verbal promise → Step(6) written document or Step(6)' customary law → Step(7) written law. As the society becomes complicate, laws change corresponding to complexity of society.

In Table III -1 the steps(1)~(4) are not covered, beyond its scope (end of hunting and gathering period (~8000BC)). Step (5) was observed in Karim in 8,000~7,500 BC. (see Figure III -1). Table III -1 shows the steps(1)~(4) emerged before Early Neolithic period, in which permanently settled peoples made permanent settlements, leading, at the end, to fully agriculture (grains cultivation and animal domestication) but still obtaining major parts of foods by hunting and gathering.

Table III-1 Emergence of the written laws

Production systems	Settlement	Period and remarks
1 Hunting & gathering	cave	8,000BC Karim
2 Rain-fed agriculture	hamlet	(6,800 BC~5,400 BC)
3 Preliminary ploughing & harrowing	<b>Verbal promise</b>	<b>Jarmo period</b>
4 Diffusion of rain-fed agriculture to arable land above 300mm isohyet	small village	(5,800 BC~5,100 BC) <b>Hassuna :Samarra period</b> ◎the foot of mountain→ low land plain
5 Primitive irrigation subsidized agriculture (simple gravity canal) [new production method]	network of villages	(5,100 BC~4,300 BC) <b>Halaf period</b>
6 Canal irrigation ; Rapid enlargement of the irrigated arable land	town ↓ scattered of small cities	◎accumulation and advance of irrigation technology (5,100 BC~3,500 BC) <b>Ubaid period</b>
7 Large scale irrigation		◎huge agricultural surplus ◎expansion to southern alluvial plain (3,400 BC ~3,100 BC) <b>Uruk period</b> ●Invention of letter (Uruk cuneiform script)
8 Network of canals	city-state	ED I ~ED III (2,900 BC ~ 2,350BC) ◎the earliest civilization in the world
9 Salination	<b>Written laws</b> (UN law)	Urban revolution (2,094 BC~2,017 BC) <b>Ur III dynasty:period of great prosperity</b> ◎full- urbanization
10 Great Canals	(Hammurabi law)	

Figure III -1 demonstrates a process of invention and evolution of cuneiform script. The table was constructed using ref. 23~32.

Then, how did we recognize the stone ages some tens years ago?  
As an illustration, a typical historian Sugi<sup>33</sup>, stated on the stone age in a general review chapter of the well-known, highly-reputed book of history that “ in the 600,000 years of whole human history 590,000 years were really the period ( Paleolithic period) of vagueness, being between dream and reality, and only in during 10,000 years the human culture progressed”. This is a typical idea on history of mankind and whole Paleolithic period was regarded as very primitive one.

Above idea is now corrected as The stone age is not undeveloped primitive age , but is the most advanced society, within the limitation of raw materials (stone)<sup>34</sup>.

For examples **(A)The technology of stone tool progressed** : (1) general use (multi- purpose) →specialized for single use, (2)large size → small size, (3) heavy→light, (4) single body type →assembly type → communization of parts, (5) rough finishing →fine polished surface, (6) tools for tool making, (7) chisel ,scraper.

**(B) The efficiency of production (productivity) was advanced** as follows :

The length(inch) of blade of sword manufactured from one pound of flint (stone) increased : 3(inch)(2,000,000 years) → 12 (inch) (300,000 years) →30 inch (100,000 years) → 360 inch (30,000 years).

From Figure III -1 it is clear that history of letters (writing) overlapped heavily with Neolithic period and that Uruk letter ( V in the figure) had not been abruptly invented, but had extremely long (about 4,000~5,000 years span) history ( II ~ V in the figure) of accumulated improvements



of primitive media ( I in the figure) , which had been originated from tokens enclosed in bullae (8,000~7,500 BC), and used first as an invoice of agricultural products and not for religious belief. This characteristics were thoroughly maintained in the Uruk letter( V ). Tokens ( I )had been widely employed as accounts book of agricultural products. Stage ( I ~ II ) (tokens → pictographs) was a results after natural selection of numerous trials born randomly at various places.

Pictographs( III ) expanded epoch-makingly the kind of objects in communication. Tokens and their descendants (cuneiform script) were formed from practical demand, mainly, in agriculture.

Shlugi set up scribal schools<sup>35</sup> (edubba)(‘tablet house’)<sup>35</sup>. The school became the prototype of the educational institutions of most of ancient world. Scribes first began to appear in considerable numbers about 2,500BC (Tablets from Fara and Abusalabikh), after centuries of cuneiform pioneering and experimenting<sup>35</sup>.

In the Ur III dynasty a large number of official documents (area of farms, amount of seeds, predicted yields···)were found as remains. Of course it is expected that the literary rate increased at the same times.

In Hammurabi laws contract documents beccae paramountly important<sup>6</sup> even for ordinary people to live in a social life. No body could live without knowledge of cuneiform scripts. Peoples were asked to keep the documents exemplified below, under safety. Otherwise, man cannot expect any equal protection of law<sup>6</sup>.

- |  |  |
|--|--|
| 1) Marriage document (Table III -22).      | 2) Debt (bond) (e.g. H 152).           |
| 3) Tenant contract (e.g. H 47).            | 4) Betrothal (7.1~7.3)(Table III -25). |
| 5) Dowry (7.1~7.3)(Table III -25).         | 6) Donation (e.g. H 150).              |
| 7) Divorce (Table III -24, Table III -25). | 8) Contract of gardening (e.g. H60).   |

- 9) Buying and selling contract (e.g. H 40). 10) Receipt in dealings (e.g. H 105).  
11) Court (evidence, testimony).

It is now clear that the emergence of written-law requites as preconditions (1) inventions and their improvements of writings and (2) their popularization of usage of the writings in the form of (mainly) official documents and others (in daily life) of highly sophisticated society such as that in the Ur III dynasty.(Table III -1). Scribes were not the monopolized owner of written papers. Sometimes it has been said that the scribes had authority by monopolization of the script techniques. This story may be right in the end of Uruk period ~ Early Ur period, but it is by far from the truth in Hammurabi dynasty. We cannot expect that an illiterate woman, who cannot read the documents, can lead happily her social life without ability of reading.

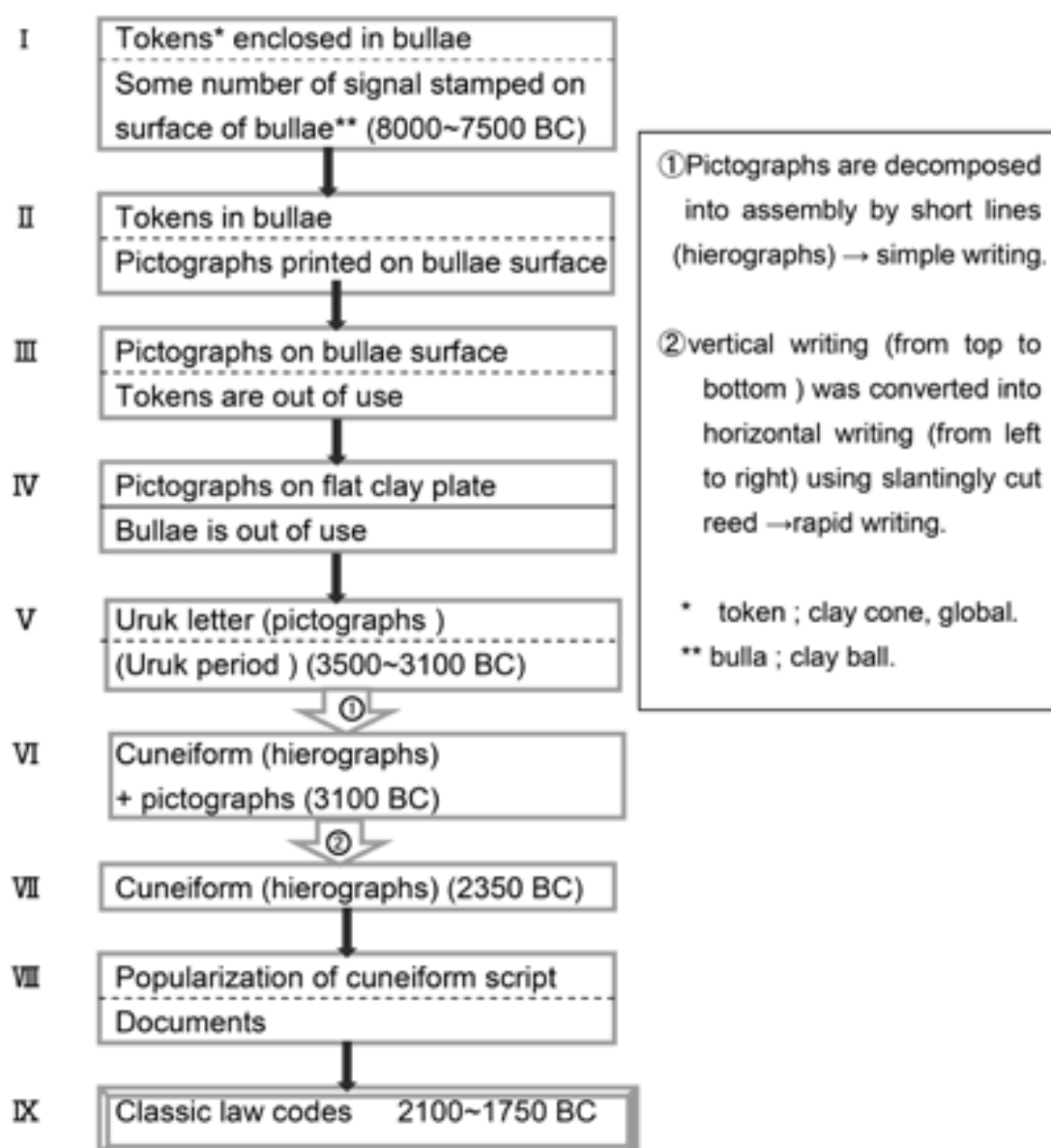


Figure III-1 Invention of cuneiform script and its evolution

### 3-2 Life –spun of the four ancient law codes and the area in which the laws had been effectively performed

Table III -2 collects the estimated life-spun of the four ancient law codes and the area in which the laws had been performed.

Table III-2 Life-spun of the four ancient law codes and the area in which the laws had been effectively performed

Time of enactment	Spun(year)	Time of the end	Area
1 Ur-Nammu [1]* (2112~2095 BC) or Shulgi [2]* (2094~2047 BC) (Ur III dynasty)	67~108  17~90	Ibi-Sin [5] (2028~2004 BC) 2004 BC	Ur,Lagash Umma, Nippur Uruk, Adab, Larsa (southern half of Babylonia)
2 Lipit-Ishtar [5]* (1934~1924 BC) (Ishin dynasty)	131~141	(1793 BC:Larsa conquers Ishin) (1763 BC; Babylon conquers Larsa)	Eridu, Uruk, Ishin Der, Ur, Babylonia Nippur, Marad, Maskan- Shapir 1990 BC~ 1880 BC
3 Eshnunna Dadusha [3] * (?~ 1780 BC)	14~	Ibal-pi'el II (1779~1765BC) 1766 BC ( conquest by Babylon, Mari and Elam)	Eshnunna
4 Hammurabi [6]* (Babylon I dynasty ) (1792~1750 BC)	160	Samusuditana (1625~1595 BC)	See TableIII-3

\* [1] the first king of Ur III dynasty.

\* [2] the second king of Ur III dynasty.

\* [3] the third king of Eshnunna dynasty.

\* [5] the fifth king of Ishin dynasty.

\* [6] the sixth king of Babylon I dynasty.

Accurate date of enactment for all the laws are obscure.

Ur-Nammu law code is evidently the first written code, which is said to be the oldest in existence. Kramer, an excavator and a translator of the clay tablets of UN law, stated in this autobiography that, [I edited in 1954 under title *The UR-Nammu Law code*<sup>36</sup>. At that time I assumed that author of the code was Ur-Nammu, since his was the only royal name mentioned in the text. The new tablet makes it evident that author of the code was certainly not Ur-Nammu, and while its author is still uncertain, the likelihood is that it is Ur-Nammu's son Shulgi<sup>37</sup>]. He used the paper entitled "*Who wrote the Ur-Nammu Law code?*".

Except the E law code which was the shortest life (14~? years) the lifespan of ancient law codes ranges in 90~160 years. At least three law codes had been enacted by super kings (Shulgi?, Lipit Ishtar, and Hammurabi). Life span of all the law codes can be approximated to be lifespans of each dynasties or less. Enforced area of three preceding laws (UN, LI and E)(TableⅢ -2) were since then (about 30~35 years after Hammurabi's enthronement) incorporated into the region of Babylonia control. Note Ishtar kingdom had been united with Larsa Kingdom (1793 BC) before Hammurabi's conquest (1763 BC).

To the newly conquered area (Larsa) the new Babylon's laws were without delay applied, then it is difficult to consider that new Babylon law(?) were even to small extent influenced by the LI law code. Hammurabi initiated his new rule in the region of Larsa.(1763.BC)<sup>38</sup>.

### 3.3 Formation of Hammurabi's law

#### a) Laws enforced by Hammurabi

For the first ~ sixth years of his reign (1792 ~1787 BC) Hammurabi

established state's law over his kingdom Babylon and its neighboring city-states including Borsippa, Kish and Sippar<sup>39</sup>.

In the letter of Hammurabi to Sin-iddinam<sup>40</sup> the highest official and Hammurabi's representative at Larsa, Hammurabi ordered Sin-iddinam to render justice according to the laws that are now in force in Yamutbal (entire former kingdom of Larsa, now a province), the new laws of Babylon<sup>41</sup>. Are the new laws the proto Hammurabi laws?

b) Political situation of Mesopotamia cities

Table III -3 shows political situation of Mesopotamia cities during

Table III-3 Political situations of ancient Mesopotamia cities during 1895~ 1760 BC

Group	City
( I ) 1894 BC; Babylon, Kish: Sumuabum[1]*(1894~81 BC) of Babylon I dynasty occupied Babylon and Kish.	
( II ) 1880 BC~1792 ; Dilbat, Sippar, Borsippa: Sumulael[2]*(1880~1845 BC) incorporated.	
<div>When Hammurabi[6]*was enthroned (1792 BC) Babylon, Kish, Dilbat, Sippar, Borsippa, and Marad consisted main cities of the kingdom of Babylon. Group I and Group II had been previously independent northern cities.</div>	
( III ) 1763 BC ; Hammurabi incorporated Larsa.	
1762 BC; Hammurabi sacked Eshnunna.	
( IV ) 1761 BC; Hammurabi conquered Mari.	
1759 BC ; Hammurabi destroyed the entire city of Mari.	
<div>Eshnunna and Mari were administrated by vasals and officials. Babylon and Sippar, and Larsa and Ur were under the same political control.</div>	
( V ) Outside of the Hammurabi's control ; Susa.	

1895~1760 BC, which are roughly classified into five groups. Hammurabi expanded his territory in the order : ( I ) → ( II ) → ( III ).

Now, it can be postulated that the Hammurabi's law, including any possible proto- Hammurabi law, were enacted in the order ; ( I ) → ( II ) → ( III ).

Treatments of Mesopotamia cities after occupation or amalgamation differed greatly depending on the time of occupation or amalgamation by Hammurabi and his ancestors.

To group I cities shown in Table III -3, where former kings of the cities became bureaucrats, traditional custom of autonomy had, on the whole, been approved. The cities in group II in Table III -3 were managed by mayor who were chosen by king among powerful merchants and judges were also appointed by king. Thus, the merchants in Sippar were given autonomy, although somewhat restrictive, by the King<sup>42</sup>.

Hammurabi stayed at Sippar and gave numerous orders to his subordinates in letters. The police, responsible for the security of the city was directly appointed by king. Soldiers were a special group of servants, making the internal police for the state. Larsa, belonging to group III in Table III -3, was unified to Babylon in 1763 BC as a province (called Yamutbal) of kingdom of Babylon<sup>43</sup>. Si-iddinam was the king's formal representative<sup>44</sup>. Now, it is supposed that first the law was regulated in the area ( I ), then the law-regulated area was expanded to the area ( II ) and to the area ( III ).

### **c) Hammurabi's three major civil engineerings: Canal, city-wall, and shrine**

In prologue of the law code Hammurabi promised people in his state to provide abundant food and to offer security, in other words, to make

people prosperous and safe. The above promise may be realized by civil engineering of canal [not only simple digging down of single waterway, but also construction of canal-network and it's maintenance and actual operations] and city-wall. To these ziggurat should be added as the third target.

Some detailed explanations seem necessary, based on a linear model, of canal-agriculture correlations. In Mesopotamia rain-fed agriculture first started in the northern area (ca.9000BC) with average annual rainfall, isohyet, 300~500mm which allows primitive agriculture. In contract, southern Mesopotamia had low isohyet, which does not enable to cultivate corns by rain-fed agriculture only. The arable land suitable for by rain-fed agriculture was soon exhausted due to rapid increase in population. Simple irrigation system was invented for sustainable cultivation in south Mesopotamia.

Then, scale-enlarged irrigation system, based on river water supplied through artificially constructed canal from the two great rivers (Tigris and Euphrates) was soon popularized in the deep south, where was not originally suitable to cultivation due to very little rainfall.

The canals supplied sufficient irrigation water to cultivate wheat and barley and in consequence, wild fields were converted into rich arable land, yielding the large amount of corns with unbelievably high yield/seed ratio. Along the canals people gathered forming settlements and villages. High yield resulted in a great surplus which leads to emergence of non agricultural professions<sup>45</sup>.

The great surplus in Mesopotamia agriculture cannot be interpreted by a single term, canal irrigation, which is of course the most important factor contributing to the surplus. In addition to this, the following other



factors should be also considered.

(1) Fertile soil

(2) Highly advanced agricultural technology beside water supply system.

(a) ploughs with a seeder funnel, driven by draught animals(cow).

(b) sowing on the holes opened on the ridges.

(c) stone (afterwards, copper) hoe for turning the soil.

(d) flint sickles and spades.

(3) Alumarac ; detailed know-how for barely cultivation<sup>46</sup>.

In ancient Mesopotamia agriculture was a predominantly important industry and it cannot be survived without irrigation water, which can be supplied by canal water ways only. Accordingly, many kings or leaders were engaged in digging down and maintaining irrigation canals to water the fields as the most important enterprise.

In the Hammurabi law code, farmer is responsible for maintenance, including repair, of the waterways leading from narrow canals to the end of former's private field.

The law code regulated farmer for example as follows :

(1) When intrusion of water into neighbor fields occurred through cracks, formed due to abandon of solidification of bank, the farmer compensates the crop of the neighbor's field lost by the water-invasion (H53).

(2) If he (the farmer in H53) cannot compensate (damages) he distributes the money, obtained by selling him (self) and his properties, to (all) his victims(H54).

(3) When abandon of drain, which is opened for irrigation, brought about water-intrusion into neighbor's field, the farmer compensates in similar way (to H53,H54) (H55)<sup>46</sup>.

(4) When water, which farmer induced, caused intrusion into agricultural products of neighbors, the farmer compensates 10 gin of barley/ 10 iku (area)(H56).

For example, in the Ur III period, Adab branch of the Euphrates was linked by canals with the Nippur/ Uru water way (Isin, Umma, Larsa, Adab, Nippur). New canals were formed.

Hammurabi was not an exception. In twelfth ~twenty ninth years of his reign he constructed canals.

After his thirty third years Great canals, including Hammurabi -is -the-abundance -of -the-people canal (Nippur, Isin, Uruk, Larsa, Ur and Eridu) some 160km<sup>48</sup>, was constructed<sup>47</sup> connecting various cities.

### **III -4 Hammurabi law code**

#### **4.1 Hammurabi's time and constitution of the Hammurabi law, and its correspondence to contemporary laws**

Table III -4 illustrates the correlations between the Hammurabi law code and the contemporary Japanese laws.

The table was constructed from Table I -6 in Part I . Surprisingly, the Hammurabi law covers almost entire fields of contemporary laws in spite of the time gap of about 3600years. Particular, categories of human right, protection of misfortune, woman, responsibility, and disease are the concepts leading evidently to the contemporary world, which will be discussed later (4.4.1 and 4.4.2) again.

#### **4.2 Is the Hammurabi law a genuine law code?**

Law code is a collection of written laws, systematically edited on the laws of similar homologue (field). In this study I used the word 'code' to

Table III-4 Correlations of between the Hammurabi law and contemporary Japanese laws

Hammurabi law codes*	Japan law codes
1 legal litigation Table I -6(1)	constitution law law of criminal procedure law of civil procedure
2 human right Table I -6(2)	constitution law
3 protection of misfortune Table I -6(3)	law of welfare law of child welfare
4 agriculture Table I -6(4)	law of agriculture law of farmland law of agricultural cooperative
5 woman and family Table I -6(5)	child code family law
6 penal Table I -6(6)	criminal law
7 commerce Table I -6(7)	commercial law company law
8 fees and pays Table I -6(8)	labor standards law
9 rental Table I -6(9)	civil law ; act on land and building leases ; agricultural land act
10 responsibility Table I -6(10)	product liability law
11 disease Table I -6(11)	medical care act

\* Table I -6 of Part I

the four ancient laws according to the traditions. Now, there are some different evaluations for usage of code to the ancient laws ;

### 1. Kishimoto (1968)<sup>49</sup>

In the Hammurabi law various field are regulated and in addition, the related articles are well arranged and grouped. Then it satisfies

sufficiently format of a single law code from view point of form and substance.

## **2. Tomimura(1973)<sup>50</sup>**

The Hammurabi law code , which Hammurabi established on the basis of his administration, is by far famous.

## **3. Hayashi (1985)<sup>51</sup>**

In the later judicial precedents any article in the Hammurabi code had never been cited and the regulation on the maximum price had not been obeyed.

## **4. Matsumoto ( 2000)**

These laws (codes) show the process of coping with the problems, which arose in the new times with obeying the Sumer's custom<sup>52</sup>. It is a collection of numerous judicial precedents handled in the past<sup>53</sup>.

## **5 Maekawa (2000)<sup>54</sup>**

There is no evidence indicating clearly that the trial had been carried out, referring to the Hammurabi law code.

## **6. Van de Mieroop (2004)<sup>55</sup>**

The H law is by far the best-known monument connected to king Hammurabi. Hammurabi law is not a code of law but a monument.

Note that Van de Mieroop used in his book the term Hammurabi's or his law code at least three times : p77, p83, and p142. This is evidently inconsistent with above his opinion.

## **7. Van de Mieroop(2005)<sup>56</sup>**

Hammurabi did not codify a new body of laws for his kingdom to guide legal processing and inform citizens of their rights and duties.

#### 4.2.2 Summarized common opinions and comments to them

Except Kishimoto and Tomimura all writers seem to be opposite to add 'code' to [the end of Hammurabi law] on the following ground :

##### **Opinion 1**

Hammurabi law has a good formula to be code (Kishimoto) or not (Ohnuki).

##### **Comment to Opinion 1 :**

Table III -4 shows that the Hammurabi law has the decent system appropriate to code.

##### **Opinion 2**

Hammurabi law is a collection of the past judicial precedents. Categories 2,3,10 and 11 in Table III -4 are not discovered.

##### **Comment to Opinion 2:**

See, Table III -4 and 4.5.2.

##### **Opinion 3**

In the later court any articles in Hammurabi laws had not been cited.

##### **Comment to opinion 3 :**

In a Hammurabi's letter, referred by van de Mierop<sup>40</sup>, Hammurabi ordered his highest official in the province of Yamutbal, Sin-iddinam, to render justice according to the law that are now in force in Yamutbal (see 3.3a). Van de Mierop described that Sin-iddinam had to thus to apply the new laws of Babylon in the province of the south<sup>57</sup>. This is direct evidence showing an example of the practical application of the law, if the new laws of Babylon is almost same as the Hammurabi law code.

##### **Opinion 4**

The Hammurabi law is the best-known monument

#### **Comment to Opinion 4 :**

It is not simple monument, but was an actually applied law code. This is readily confirmed from his two letters to Sin-iddinam<sup>58</sup> (the highest official representative) and to Shamash-hazir (an administration)<sup>59</sup>. These may be an answer to 'how the law was used in antiquity'. Hammurabi often wrote 'as soon as you read the letter' and 'send me a report on this matter' . He was hasty by nature (we can easily guess his character from his letters ordered to his officials).

The supreme king paid an attention to the slight for king, but serious for ordinary individuals. Many times people wrote to Hammurabi<sup>60</sup>.

Are and were any kings who quickly respond to dissolve an ordinary people's reasonable-looking complains?

#### **Opinion 5**

Lack of legal processing and no information on citizen's right (see **Evaluation7**).

#### **Comment to opinion 5 :**

Category (1) (legal litigation), Category (2) (human rights), both in Table I -6, and **5.1** and Table III -7, and **4.4.1** of this paper (all constructed by careful reading of all legible in the four law codes) will be sufficient for him to withdraw the above censure.

#### **4.2.3 Prologue of the four law codes are concisely shown below :**

##### **1. Ur-Nammu**

[I (=Ur-Nammu) will never extradite orphans to the rich (people) and will never make widow to the strong(people)] .<sup>61</sup>

##### **2. Lipit-Ishtar**

[I god Lipit-Ishtar released people who was in betters(?) as slave and

returned them to the former place.」.<sup>62</sup>

### **3. Eshnunna**

No prologue

### **4. Hammurabi**

Hammurabi promised to make people in his state prosperous and safe. All prologues are similar but it should be emphasized that only Hammurabi materialized the idea shown in the prologue into articles (this study 4.4).

### **Is the prologue simple slogan or propaganda?**

Comment to Opinion 5 (in particular, 4.4.1) may be a simple and straightforward answer to this question. The Hammurabi's idea expressed in his prologue was materialized in numerous articles of the law code. Additionally, many times people wrote to Hammurabi to complain that their field had been claimed to someone else, the king wrote to Shamash-hazir to investigate the matter<sup>63</sup>.

### **An additional comment :**

Van de Mieroop stated that 「The modern distinguish 'Code of Hammurabi' analogous the code Napoleon of early nine century, is not simple and inaccurate.」 'Code Napoleon' (is said) had been characterized (by European?) by (1) equality in front of law, (2) liberty of individuals, (3) a non aggressive property right, and (4) freedom of religions belief<sup>64</sup>. At first three ideas among them (1)~(3) had already been emerged, though they are yet just embryo state, in Hammurabi law code really 3,550 years before the enactment of 'Cod de Napoleon'. Therefore, the famous ideas recognized world wide had forerunner. The truth is that until the twentieth century we could not image the existence

of the four ancient law codes in Mesopotamia.

Now consider the difference between the two law codes :

1. Hypothesis : the law code should be a complicated multi-variables function of social and natural environments.
2. Historical fact : The above environment changes very significantly during these some thousand years, increasing complexity of the social and economic system.
3. Expectation : Then two law codes, for an example, one law and its descendant law, differ to some extent with each other.
4. Logic : then, it is meaningless and against the common sense of science to point out the difference between them in order to reject the recognition of the former as a family of member of the latter.
5. Reasonable conclusion : In short, even if the difference exists and if the former belongs to the criterion of the code, the former is a code.

Suppose the simple similar case of comparison of Australopithecines with Homosápience<sup>65,66</sup>, both belong to mankind, who is defined as a bipedal anthropoid (ape). It might be interesting to note that R.Leakey<sup>67</sup>, a famous anthropologist, stated in his book that [we do know, however, that all human species living prior to Homo erectus were although bipedal, distinctly apelike in many respects.] .

#### **4.3 God, divine judge, and oath**

##### **4.3.1 Had divine judge been existed in Old Babylonian period?**

Name of god appears very frequently in both prologue (27 times ) and epilogue(35 times) in the Hammurabi laws.

Table III -5 shows the frequency of terms such as shrine (bitu),



Table III-5 Frequency of the terms; shrine, palace and gods in the four law codes

Term (Akkadian)	Ur-Nammu	Lipit-Ishtar	Eshnunna	Hammurabi
shrine (bitu)	0	0	0	1(H32)
palace(ĕkallu)	0	0	0	3(H6*, H8*, H32)
god (ilu)	0	0	0	10(H20*, H8*, H20*, H23*, H103*, H105*, H107*, H120*, 131*, H249*)

\* property. ; + oath (in front of the god).

palace(ĕkallu) and god (ilu) discovered in the Ur-Nammu (UN), Lipit-Ishtar (LI), Eshnunna (E), and Hammurabi (H) law codes.

In the main texts of the three preceding laws there are no word of shrine (or temple), palace, and god. Even in the Ur-Nammu code, we cannot find name of god in all articles. Note that Ur-Nammu and Hammurabi repaired temple.

There is no article, except H2 and H132, on divine judge in the four codes.

H 2 : in the case when an awilum accused other awilum charging that he is a wizard, but the charger failed to prove him guilty. Then, divine judge is applied.

H 132 : Unproved adultery.

Divine judge in the Hammurabi law is carried out in form of river ordeal : a suspected man or wife is thrown in river. When the evidence to the court and the testimonies of witness, from the both sides (plaintiff and defendant) are evidently insufficient to judge, divine (river) god judge was utilized as the last choice H2). In the laws the phrase ‘oath to god ‘ appear often. Is the Oath of witness a vestige of earlier customary oral

laws?

Table III -5 leads us to the conclusion that priest in the Hammurabi laws did not play an important role in the court or were not allowed. During the Ur III ~ Old Babylonian period, priest did not seem to have enormous power. Did they lose the power or did they not have it from the beginning?

#### **4.3.2 Rise and transformation of shrine**

##### **A : Uruk period**

The temple seems to have been dominant institution<sup>68</sup>.

##### **B : Jemdat Nasr period**

This may reflect not only, ..., but also the growing power of ruler at the expense of the temple<sup>69</sup>.

##### **C : Late ED III period**

Temple economy, once supported oneself, was put under the control of ensi and was forced to serve and to be subordinate to ensi<sup>70</sup>.

##### **D : Agade period**

Sargon's grandson Naram-Sin (2254~18BC) of Akkad dynasty combined both sections of the state-palace and temple in his own person<sup>71</sup>.

##### **E : Ur III period**

- (i) the advent of the deified rulers of Ur III brought church and state together into one integrated system, administrated from one center and controlling all the Sumerian plain<sup>72</sup>.
- (ii) division into 'temple' and 'palace' was primarily an administrative convenience<sup>73</sup>.
- (iii) in Shulgi's reign one of the shrine's functions was judge. But this

does not mean that courts were held at shrine. No article is discovered on shrine in the three preceding laws (Table III -5).

The Hammurabi law has some articles on which the terms of shrine, palace and god are contained. It is interesting to note that all these articles are on thief of property and oath in front of god.

#### **F : Old Babylonian period**

Kuroda stated that the shrine in the Old Babylonian period were no longer the places, where all the national functions are involved in and converted into the places of individuals faith, judge, education, and finance of market banking system<sup>74</sup>.

#### **4.3.3 Place where trials had been opened**

**A :** The place of court was supposed to be palace when the articles contain the word god or the phrase [in front of god] .The court might be located in the temple or any public institution other than palace.

**B:** In the Hammurabi law code no article described on the system of court. There were a variety of courts differing the status<sup>75</sup>. In addition, assembly (ālum) had the right of judgement<sup>75</sup>.

**C:** Trial at citizens assembly<sup>76</sup>.

A clay document that was excavated by the second expedition, and was given by Kramer a tentative translation in 1956, seems strikingly interesting as an example of court decision<sup>72</sup>.

**Case study :** Some time in the nineteenth century BC a murder was committed in Sumer ; three men killed a temple official, but the victim's wife did not notify the authorities of her husband's death.

The king Ur-Ninurta<sup>77</sup> turned the case over the trial to the citizens

assembly in Nippur, which acted as a court of justice<sup>77</sup>. Two men in the assembly spoke up for the defense of the woman. The members of the assembly agreed with defense.

This tablet shows that ① Citizen's assembly acts as court, ② the members of the assembly can play as role of a pseudo-barrister, and ③ the decision is made by member's agreement.

King Ur-Ninnrta (1923~1896 BC)<sup>78</sup> is the sixth king of the first dynasty of Ishin<sup>78</sup> and king Lipit-Ishtar (1934~24 BC) is the fifth king. Then, the above document can be considered to represent Lipit-Ishtar reign.

#### 4.3.4 Oath in front of god

Table III -6 demonstrates the cases, where the oath was made in front of god, discovered in the Hammurabi law code. Here, oath is a formal promise to tell the truth in court. Even at present time, before giving evidence, witness in court to take oath.

Oath, appeared first in the Hammurabi law, continued for some thousands years to the present. For example, in Japan Code of Criminal Procedure (JCCP), Article 154 states that [The court shall, except otherwise provided in this code, have **a witness swear or on oath.**]

When a witness, who has sworn in accordance with law, gives false testimony, he committed perjury.

In the Hammurabi law perjury was the capital crime (H3 ; Table III -9). Perjury was not crime until 1631 in Common Law, when perjury was regulated as crime<sup>79</sup>.

According to Japan Penal Code (JPC) article 169, imprisonment with work for not less than 3 months but not more than 10 years is imposed to the man committed perjury.

Table III -6 suggests that god in the Hammurabi law is, to the end, never fearful god. So-called confession (admittance of defendant's conduct as illegal) should be evidently distinguished from [oath to the god] (insistence of defendant own innocence).

Table III-6 Cases of Oath in front of **god** in the Hammurabi law code

Article no.	Contents	Results
1. H20	Oath of innocence to <b>god</b>	released
2. H23	Proof of ....in front of <b>god</b>	public compensation
3. H103	Oath of .... to <b>god</b>	condone
4. H106	Confirmation of....in front of <b>god</b>	return of loan of retailer to merchant
5. H107	In front of <b>god</b> and a witness	pay community(money) to retailer
6.H120	Clarification of amount in front of <b>god</b>	deposit of corns
7.H126	After investigation of the case in front of <b>god</b>	finer
8. H131	Testifying on oath to <b>god</b>	allowed to come back home
9. H206	Oath to <b>god</b> , saying that beat him unconsciously	pay money of medical treatment
10. H207	In H206 when victim died caused by beating	pay silver 1/2 siglu
11. H227	Oath of....to <b>god</b>	permitted
12. H249	Oath of innocence to <b>god</b>	released
13. H266	Oath in front of <b>god</b>	innocence
14. H281	Reporting amount of money in front of <b>god</b>	redeed

#### 4.4 Characteristic features of the Hammurabi law code

##### 4.4.1 Legal support against social misfortune

###### A. Criminal victims

H23 If man(police) failed to catch robbery and in addition, if the stolen goods are certified in front of god, victim's town and town mayor compensate them.

H24 When the victim in H23 lost his life, the town and the town mayor

compensate the victim's family silver one mana as a one-time allowance.

Here, silver one mana is silver 10,800 še. An average fee of the workers at the Hammurabi period is about 5 še/day (H274) then, one mana is equivalent to  $10,800/5=2160$  day /work  $\approx 7$  years income.

The above two law articles (H23 and 24) are the world first law which aims to afford public support against criminal victims. The laws imply that mayor is responsible for keeping security of the towns. It is interesting that mayor pays personally compensation and at that age mayor had been nominated among rich merchants.

Japan Law Act no.36 of 1980, entitled 'Law concerning on support of benefits to criminal victims' is comparable to H23 and H24.

### **B Malpractice**

In Table III -18 the compensations for malpractice are summarized. The table is constructed from H 218, H 219, H 220 and H 225. The compensation depends on victim's social status. The law is unfortunately limited to awilum alone. In this case master receives the money to his damage if victim is slave.

### **C. Product liability**

The most important immovables and movables for ordinary people were house and ships. Then, illegal damages to the above misfortunes were recognized to be the object, which should be compensated (Table III -19).

The table was tabulated using H 229, H230, H231, H232, and H233 for houses and H235, H236, H237, H238, and H290 for ships (today's equivalence to houses and ships at Hammurabi period may be house

and car).

#### **D. Legal relief to support social misfortune**

(i) war prisoner's family.

H24, H27, H30, H32, H133, H134, H135.

(ii) war prisoner's child.

H28, H29.

(iii) flood-victim, and draught-victim.

H48.

(iv) wife.

disease (leprosy) H 148 ; inheritance ,H151, H171, H172.

remarriage, H172,H177; rejection of marriage H142, H149.

(v) miscellaneous .

Inheritance of young unmarried son H161; unsuccessful merchant H162.

(vi) desertion of child H168, H169 ; mistreat by father-in-law to child. H177.

#### **4.4.2 Embryonic idea of human right**

Following idea was emerged, more or less, the first in the Hammurabi law code

##### **A Right to live :**

**Marriage** (H128, H152, H172, H175, H176), **house** (H21, H22, H23, H24, H36, H37, H38, H39, H41, H46), child (H14)

##### **B Ownership and property right (buying and selling) :**

**valuables** : noble metals (gold, silver) (H7)

**domestic animals** : cow, sheep, donkey, pig (H8) : slave (H15~H20)

**Real estate** : house, farm, orchard(H36~H21), furniture (H26, H34)

##### **C Right of succession :**

H150, H162, H163, H165, H166, h167, H170, H171, H174,

H177~H183.

**D Right of access to court :**

H1, H2, H 3, H4.

**E Equal protection of the laws :**

Note 1: there are only few articles on religion belief except for the protection of palace and shrine (H6, H8)

Note 2 : If man has evidence and witness for his contracts and social contents (in its broadest sense) man should be largely protected.

**F Liberty of contract :**

contract of tenant(rent) (H47).

**4.5 Some questions to the Hammurabi law code**

**4.5.1 Is the Hammurabi law code, a code simply codified from the past customs and laws ?(Q 1A) or does the Hammurabi law code deny or improve the past customs (Q 1B)?**

Q 1A is no, but Q1B is yes.

Proof 1 ; Table III -22

Recognition of formal marriage changed as follows :

Cohabitation (before Eshnunna law) → introductory reception (E27) →written oath (formal registration)(H128).

Proof 2 ; Figure III -3 and Figure III -6.

Proof 3 ; **Escaped slave who rejected his owner ;**

Banishment of the slave (LI 14) → return of the slave to the owner (H18).



#### 4.5.2 Is the Hammurabi law code a compilation of articles of the Ur-Nammu law, Lipit-Ishtar law and Eshnunna law codes?

The following relations hold among the four law codes<sup>1</sup>.

$$H > U-N + LI + E \quad (1)$$

and

$$H = \text{some portion of } (UN + LI + E) + (\text{new}) \quad (2).$$

Here, H, UN, LI and E means the total legible number of articles.

Then answer is no. Note that some parts of (UN, LI and E) are adopted in the H law although constituting only a small part of the Hammurabi law code<sup>1</sup>.

#### 4.5.3 Are all the articles in the Hammurabi laws consistent with each other?

The Hammurabi law code is not completely consistent, but has three examples showing inconsistency.

Proof 1 : Table III -16

**Thief of the items of god, palace and Mushkenum** (H8 and H6).

H 8 : the fine of 30 times the value of goods stolen .

H 6 ; death for thief .

Proof 2 : Table III -25

**Rejection of marriage** (H142 and H149)(see, also, 5.3 case C).

H 142 ; rejection of sexual relations → return downy to her after investigation by summary court .

H 149 ; rejection of cohabitation → return downy to her.

Proof 3 : **Death penalty**

Table III -9 illustrates 34 cases of the criminal conducts, punished by the death penalty. But murder and rebellion are, curiously, not included in the table.

### III -5 Legal processing

#### 5.1 Accusation and adjudication

In the three preceding laws (UN, L.I, and E laws) no article on legal processing is discovered. It is difficult to presume that such articles on the legal processing might be existed among the lacked parts of the above laws.

Table III -7 collects the frequency of usage of the term for legal

Table III-7 Terms on the legal processings discovered in the Hammurabi law code

English	Akkadian (Hammurabi law code)	Frequency	Article no.
1 suit	daiānu	2	H3, H4
2 judge		7	H5, H9, H18, H58, H168, H172, H177
3 plaintiff	muubbiin	1	H1
4 testimony	uktiin, u <sub>2</sub> baar kunukam, kunuukkam	5	H1, H2, H23, H182, H183
5 evidence	šibi	1	H7
6 deed	rikistu	3	H7, H122, H123
7 witness	kattūm	6	H3, H4, H9, H10, H11, H123
8 clay plate	dub tuppa duppu	5	H171, H37, H177, H178, H179
9 fine	ruguum	2	H12, H13
(R1) contract		4	H46, H47, H52, (H48?)
(R2) contract of buying and selling	rakāsum  u <sub>2</sub> p <sub>2</sub> iīh	1	H41

processing in the Hammurabi law code. In the table the term contract is included for comparison.

Nine terms concerning to the legal processing are discovered in the Hammurabi law code. To our great surprise, these terms, such as suit, judge, plaintiff, testimony, evidence, deed, witness, clay plate(i.e., document) are even at the present, constituting major elements in the legal processing. It should be noted that the law-governing state was first realized after the innovation of letter (Uruk period) and its popularization (Ur III period). In the H law a term corresponding to a defendant (i.e., the accused) is lacking and ('He' (Šu) was used for a defendant (H1)).

Some features of the legal processing in the Hammurabi law code are repeatedly shown as :

- (1) Terms implying testimony, evidence and witness appear for the first time in the legal history.
- (2) Plaintiff's responsibility of proof and defendant's right of disproof are written clearly.
- (3) Some several kinds of courts were existed. Court of supreme, (district court), and summary court.
- (4) First appearance of Judge.

In addition, in the Hammurabi law code, accusation, complaint, criterion of judgement and prosecution, are quite detailed.

The Hammurabi law is evidently based on the principle of evidence, and is absolutely differed from divine judge (4.3). The Hammurabi law code can be considered as an embryo of the today's law system.

Figure III -2 shows step ① ~ ⑩ for accusation~ judgement in the Hammurabi law code.

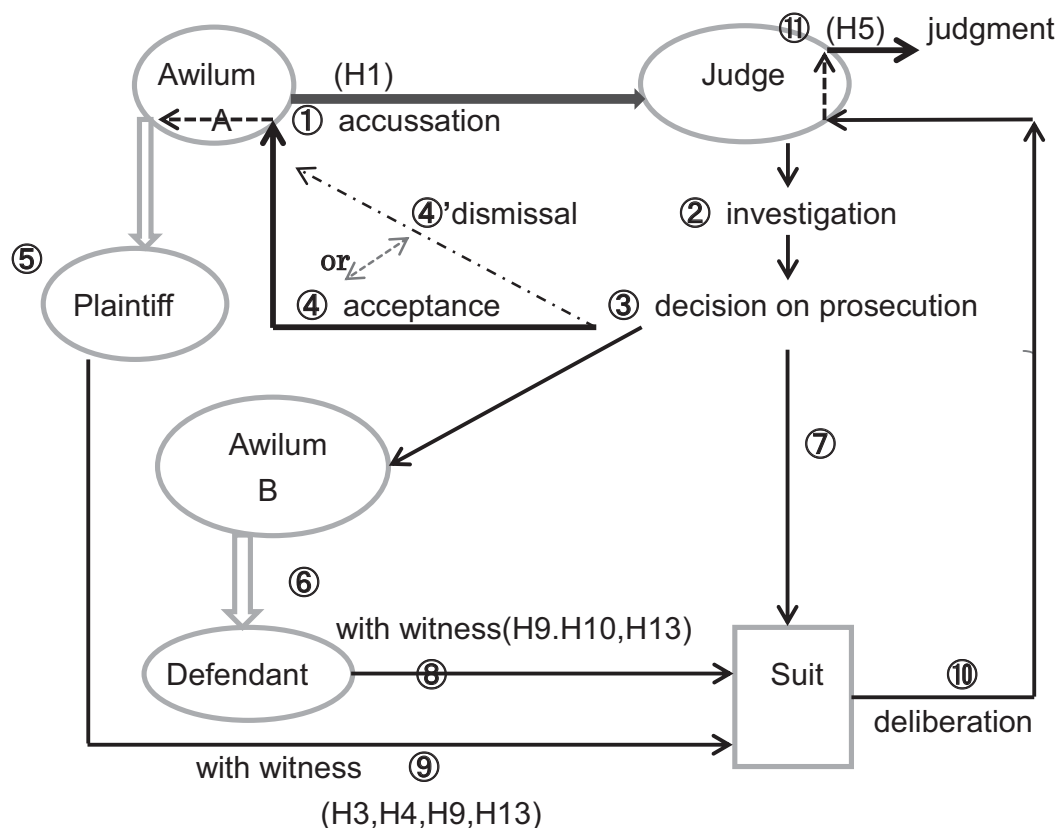


Figure III-2 Process of accusation~judgement in the Hammurabi law code

## 5.2 Judge : qualification and adjudication

### 5.2.1 qualification of judge as professional

In the Hammurabi law code, judge's qualification is not clearly indicated, but people as follows acted as judge in today's sense.

A : King's official representative (as the highest judge in the province)<sup>80</sup>.

B : persons appointed by king (for example, mayor).

C : members of assembly (see 4.3.3).

D : members of summary court (see 5.3).

### 5.2.2 Duty of judge

Judge's duties are :

A : to open trial court (H1).

B : to investigate (evidence) (H9, H18, H58, H172, H177).

C : to investigate ground (disown) (H 168).

D : to confirm something (H 106, H108).

to confirm, in front of god, the fact (H 112, H113, H124).

E : to make decision (H1, H3, H5, H172).

F : to give permission

of disown (H 168).

of remarriage (H 177).

G : to give adjudication without trial.

(E54~ E 57) ( H 251, H252).

Prohibition term :

H : prohibition of double jeopardy (H5) ;

H5: when after judge had made adjudication he changed the lawsuit (sentence), the judge pays the twelve times the value of the fine he ordered and he will be banished of the chair as a penalty.

The article is an original form of the prohibition of double jeopardy, which is now one of the fundamental principles in the present law system. For example.

**The Constitution of Japan (CJ)** (Not reactive of penalty law, prohibition of double jeopardy.) ;

**Article 39** (CJ39)

No person shall be held criminally liable for an act which was lawful at that time it is committed, or of which he has been acquitted, nor shall placed in double jeopardy<sup>81</sup>.

### 5.3 Summary court

In the Eshnunna code and Hammurabi law code, the name of Summary court (SC) and its function are shown in 5 articles each (E54, E55, E56, E57, and E58) and (H126, H124, H143, H251, H252).

The function of SC can be estimated from analysis of the above law articles.

**Case A** (E 54, E 55, H251, H252) :

A district resident informed summary court a gore cow (alpum) and SC gave alarm to the cow owner. He did not cover the cow's horn and did not tie it. An awilum (E 54, H251) or a slave (E55, H292) was gored by the cow to death.

When the victim is awilum ;

The cow owner pays silver  $\frac{2}{3}$  mana(= 40 siglu) (E54) or  $\frac{1}{2}$  mana (= 30 siglu)(H251).

When the victim is slave ;

The cow owner pays 15 siglu (E55) or  $\frac{1}{3}$  mana (= 20siglu )(H252)

**Case B** (E 56, E57) :

A district resident informed summary court a dog having a habit to bite man. SC gave attention to the dog-owner, but he neglected it. The dog killed awilum (E 56) or slave (E57).

When the victim is awilum; the dog owner pays silver  $\frac{1}{2}$  mana (=30 siglu) (E 56).

When the victim is slave ; the dog owner pays silver  $\frac{1}{3}$  mana (=20 siglu)(E57).

**Case C** (H142) :

Wife's rejection of cohabitation with her husband (Table III -25 )  $\Rightarrow$  appeal to SC  $\Rightarrow$  Investigation by SC  $\Rightarrow$  judgement  $\Rightarrow$  (wife is innocent)  $\Rightarrow$  allowed to return to her parents home with the betrothal

money, or ⇒ (wife is guilty) ⇒ thrown into river (penalty)

**Case D (H143) :**

Lost material ⇒ appeal to SC ⇒ through investigation ⇒ (false declaration) judgement ⇒ Fine : double the false declared damage

In the above two former cases (cases A and B) code information or appeal by a resent to SC is the necessity condition for SC to give attention or notice to the animal's owner in question. Summary court seems to take passive attitude for keeping the public peace. In Hammurabi law code Summary court investigates positively the matter in cases C and D , and makes a definite judgement. Therefore, the function of Summary court in the Hammurabi laws has at least in part, a kind of Judge's function( 5.2.2).

### Ⅲ -6 Crime and penalty

#### 6.1 Category of the penalty

The four categories of the penalty were applied in the Hammurabi law code.

1. Death (Table Ⅲ -8, Table Ⅲ -9, Table Ⅲ -17).
2. Bodily punishment (Table Ⅲ -16).
3. Fine (Table Ⅲ -12, Table Ⅲ -13, Table Ⅲ -14, Table Ⅲ -18).
4. Banishment (H5, H154).

For comparison, Japan Penalty Code (JPC) has seven categories as follows

(JPC Article 9)

1. Death penalty.

2. Imprisonment with work.
3. Imprisonment without work.
4. Fine.
5. Misdemeanor imprisonment.
6. Misdemeanor imprisonment without work.
7. Petty fine.

The Hammurabi law has bodily punishment, but it does not have imprisonment (with work and without work), misdemeanor (with work and without work), and petty fine.

## 6.2 Death penalty

Table III -8 summarizes the crimes serious enough to be punished by death in the Ur-Nammu (UN)(four articles), Lipit-Ishtar (LI)(zero article) and Eshnunna (E)(five articles) law codes.

Table III-8 Crimes serious enough to be punished by death in the Ur-Nammu (UN), Lipit-Ishtar (LI) and Eshnunna (E) law codes

Article no	contents
<b>I . Ur-Nammu (total 4 article)</b>	
1. UN.1	murder.
2. UN.2	robber.
3. UN.6	rape for virgin wife.
4. UN.7	adultery of wife.
<b>II . Lipit-Ishtar (total 0 article)</b>	
<b>II .Eshnunna (total 5 articles)</b>	
1. E12	thief at muskenum's field in night.
2. E13	trans passing into muskenum's house in night.
3. E24	death of muskenum's wife and children caused by irrelevant seizure.
4. E26	rape for virgin wife.
5. E28	adultery of wife formally married.



Table III-9 Crimes serious enough to be punished by death in the Hammurabi law code

Article no.	Contents
1 H1	a plaintiff who failed to present proof for prosecution.
2 H3	a witness who testified an unprovable testimony.
3 H6	a thief and a fence arrested at shrine and palace.
4 H7	a man who buys somethings from child and slave without bond and certificate.
5 H8	a man who stole away from shrine and palace, but cannot pay the compensation.
6 H9	a man who is a thief at the lost material and is also its seller.
7 H10	the seller who could not be accompanied with witness at trial where a looser could be accompanied with witness.
8 H11	a looser who failed to attend trial with witness who knows the loss.
9 H14	kidnapping.
10 H15	a man who sets slave free.
11 H16	a man who harbors escaped slaves.
12 H19	a man who lets slaves to stay in his house.
13 H21	a trespasser.
14 H22	a looter.
15 H25	a thief at a fire.
16 H26	a man who sets an employee go to war for substitute.
17 H33	a commander who abused his authority.
18 H34	a commander who committed injustice (5 examples).
19 H108	a bar madam who committed injustice (2 examples).
20 H109	a bar madam who did not arrest criminals gathered at her bar and not take them to palace.
21 H110	a nun who started bar business.
22 H116	when a hostage was died, caused by beating him or her, and the hostage was a child of awilum, child of the lender is killed. When the hostage was a slave, assailant (lender) pays 1/3 mana and loses all the lent materials.
23 H129	wife's adultery in the act.
24 H130	a father-in-law who raped his son's virgin in wife.
25 H133	if food is secured sufficiently during husband is war-prisoner, wife should be chaste and do not enter into other people's house.

Table III-9 (continued )

Article no.	Contents
26 H143	when wife, in the preceding article(H142), is not chaste, apt to go out, leaves the house untidy, and ignores her husband, she is thrown in water.
27 H153	a wife who killed her husband for sake of some man.
28 H155	a father-in law who raped his son's fiancée in act.
29 H157	incest between mother and son.
30 H210	case when mother suffered a miscarriage due to man's blow and died; the criminal's daughter is killed.
31 H227	a man who deceived a barber making his slave a sign of incapability of buying-selling.
32 H229	case when a house holder was killed by collapse of not solid enough, newly built house ; the carpenter who built the house is killed.
33 H230	case when son of a house holder was killed by collapse of not solid ; the son of the carpenter who built the house is killed.
34 H2	trial by ordeal

Table III -9 ~ Table III -9 (continued) show the articles on the death penalty in the Hammurabi law code (thirty four articles). It should be noted that in the Hammurabi law code there is neither an article on murder nor an article on rebellion.

Table III -10 shows a summary of the crimes serious enough to be punished by death in the four law codes. The articles, in the Hammurabi law code, enough to be punished by death contain the four articles about dishonesty in the legal process. Even if these articles are accounted, number of articles on death penalty is eleven %, of the total penalty code, and 4.4% of the total legible articles. These values are not very significantly different from the corresponding value (3.3%) of the Eshnunna code. If all for the legal process are excluded, portion of the

Table III-10 Summary of Tables III-8 and 9

Crimes	UN	LI	E	H
1 murder	UN 1			
2 robbery	UN 2			
3 trespasser				H21
4 kidnapping				H14
5 rape(for virgin wife)	UN 3		E26	H130, H155*
6 adultery	UN 7		E28	H129**
7 legal processing				H1 (no proof)
				H3 (witness)
				H10 (witness)
				H11 (witness)
8 escape of slave				H15, H16
(a) total no. of legible articles	28	16	59	248***
(b) total no. of articles on death penalty	4	0	2	11(7)***
(c) percent of (b)/(a)	14.2%	—	3.3%	4.4%(2.8%)****

\* : for his son's fiancée.

\*\* : in the act.

\*\*\* : from Table I -5.

\*\*\*\* ( ) means article no. except 7 (legal processing).

death penalty reduces to the 2.8%. From stand point of the above portion the UN law codes are the most closely connected to the death penalty.

Articles enough to be punished by death in Japan Penalty Code (JPC) are :

1. JPC 77 : Insurrection.
2. JPC 81 : Instigation of foreign aggression.
3. JPC 82 : Assistance to the enemy.
4. JPC 108 : Arson of inhabited buildings.
5. JPC 146 : Pollution of water supplied with poisonous materials and

causing death thereby.

6. JPC199 : Homicide.

7. JPC240 : Robbery causing death or injury.

8. JPC241 : Rape at scene of robbery causing death thereby.

Comparison of punishments in the Hammurabi law code can be made with the Japan Penalty Code (JPC).

#### **I . Breaking into residence**

JPC 130 : imprisonment with work for not more than 3 years.

H 21 : death penalty.

#### **II . Perjury**

JPC 169 : imprisonment with work for not less than 3 months but not more than 10 years.

H 3 : death penalty.

#### **III . Injury causing death**

JPC 204 : imprisonment with work for a definite term of not less than 3 years.

H ? : death penalty.

#### **IV . Robbery**

JPC 236 : imprisonment with work for a definite term of not less than 5 years.

H 22 : death penalty.

#### **V . Kidnapping of minors**

JPC 224 : imprisonment with work for a definite term of not less than 3 months but not more than 7 years.

H 14 : death penalty.

The criminal conducts, appropriate to capital punishment in the H laws,

are those imposed imprisonment with work for definite term of not less than 3~10 years in Japan.

Table III -11 summarizes the details of execution of the death penalty in the four law codes. Details(method) of execution are usually not indicated with some exceptions in the majority of articles on the death penalty. The methods of execution, exceptionally described in the laws, are (i) stake, (ii) crucifixion, (iii-a) downed with arms and legs tied up, (iii-b) downed with arms and legs free, and (iv) trial by ordeal. Note that it is not quite sure whether methods (iii-b) or (iv) are truly the death penalty or not, because when the defendant is lucky he could escape from death. Popular procedure at that time is probably hanging.

Table III-11 Execution of the death penalty

Law code	UN	LI	E	H
1 Number of the total articles on the death penalty	5	0	5	34
2 Number of the legible articles	28	16	59	248
3 Ratio (1)/(2) %	18%	0%	8%	7%
4 Number of the articles in which procedure of execution is not described.	4 (UN1, UN2, UN6, UN7)	0	5 (E12,E13, E24,E26 E28)	23 (H1,H3,H6,H7,H8,H9,H10, H11,H14,H15,H16,H19,H21, H22,H26,H33,H34,H109,H130.H210,H227,H229,H230)
5 procedure of execution	0	0	0	11
(i) stake	0	0	0	3 (H25,H110,H157)
(ii) crucifixion	0	0	0	1 (H153)
(iii) downed	0	0	0	6
(iii) <sub>a</sub> with arms and legs tied up	0	0	0	2 (H129, H155)
(iii) <sub>b</sub> with arms and legs free	0	0	0	4 (H108, H132, H133, H143)
(iv) trial by ordeal	0	0	0	1 (H2)

In present Japan the death penalty shall be executed by hanging at a penal institution (JPC article 11(1)).

### 6.3 Bodily injury

The compensations or fines for the bodily injuries are collected in Table III -12 for the Ur-Nammu (UN), Eshnunna (E) and Hammurabi (H) law codes. Here the articles corresponding to bodily injury are not

Table III-12 Compensations (or fines) by which bodily injuries could be settled, in the Ur-Nammu (UN), Eshnunna (E), and Hammurabi (H) law codes

Region	Compensations or fines		
	UN	E	H
	article no.; compensation	article no.; compensation	article no.; compensation
Nose	UN20 ; 2/3 mana		
Eye		E42 ; 1mana	H196(a→a)* ; eye** H198(a→m) ; 1 mana H199(a→s); half prices of slave
Tooth	UN 22 ; 2 gin (1/3 mana)*	E 42 ; 1/2 mana	H200(a→a) ; tooth** H201(a→m); 1/3 mana
Ear		E42 ; 1/2 mana	
Cheek			H203 (a→a) ; 1 mana H204(m→m) ; 10 siglu
Leg	UN 18 ; 10 gin		
Bone	UN 19 ; 1 mana		H197(a→a); bone** H198(a→m); 1mana H199(a→s); half price of slave

\* (assailant → victim) a: awilum, m; muskenum, s; slave

\*\* physical punishment based on 'law of retaliation'.

(supplement)

1 mana = 505gr = (3,0,0Še) = 3×3600 Še = 1,0 gin = 60 gin = 60 siglu ;

1 gin = 1 siglu = 0;1 mana = 1/60 mana = 3,0 Še = 180 Še.

detected in the Lipit-Ishtar (LI) law code and omitted in the table. Table III -12 exhibits compensation or fines for bodily injuries in the UN, E, and H law codes. In the table all possible combinations are  $(\text{assailant}) \times (\text{victim}) \times (\text{injury positions}) = 3 \times 3 \times 7 = 63$  in each laws. Here, three social classes for assailants and victims are considered. In the table 4 cases for UN , 3 cases for E, and 10 cases for H laws are observed. That is to say, the table covers only 6.3%, 4.8% and 19%, respectively. The penalty for the majority cases, not written in the laws, cannot be readily predicted.

It is evident that the Hammurabi laws illustrate numerous cases for single criminal conduct, but these cases are not enough to refer the article for judge at the actual trials. This may be one of reasons to explain why a posterity judge did not refer the articles in the Hammurabi law code.

Table III -13 demonstrates comparison of fine for bodily injuries in UN, E, and H laws. In the table  $=$  means the case where the laws of retaliation (*lex talionis*) is applied, and  $\rightarrow$  is the case where the direct comparison is possible between UN and E codes (three cases) and between E and H codes (one case ). It is clear that the Eshnunna law is sterner than the Ur-Nammu laws, and the Hammurabi law is sterner than the Eshnunna law. The law of retaliation is applied rigorously only to the case when both assailant and victim are awilum. In the forthcoming paper the law of retaliation (*lex talionis*) will be discussed in detail.

Table III-13 Comparison of fine for bodily injuries

Position of body	Fine (siglu)				
	UN	E	H		
			victim		
			a	m	s
bone fracture	60		—	60	30
hand		30			
foot	10	↔ 30			
finger		40			
eye		60	—	60	30
nose	40	↔ 60			
ear		30			
cheek			60	10	cut ear
				(m vs m)	(s vs a)
lip		10			
injury		10	↔ 30	20	
tooth	2	↔ 30	—	20	
beat			10	5	
↳ death			—	30	5

a ; awilum , m ; mushkenum , s ; slave ,  
— ; case when the law of retaliation is applied

Table III -14 illustrates the penalty in the cases of miscarriage of the pregnant woman, caused by the beating and finally leading to her death. Sex of assailant is not indicated in the laws, but is supposed to be male. In the table Case A is exceptional cases when the retaliation law is not applied and the assailant is permitted by paying the expense of medical care when victim awilum is alive, or paying fine (silver 1/2 mana (for awilum) when victim awilum is dead. Case B is an example when the retaliation is applied.



Table III-14 (A) Beating of someone, and (B) beating of pregnant woman and miscarriage, caused by the beating, and finally leading to her death (Hammurabi law code)

Bodily injury	Article no.	Social class		Penalty (fine)
		assailant	victim	
(A) Beating	H202	M*	A*	60 lashes
	H203	A(child)	A(child)	1 mana (silver)
	H204	M	M	10 siglu (silver)
	H205	S*	A	cut off ear
	H206(quarrel)	A	A	Oath with expence of medical care
	H207(quarrel)	A	A (death)	1/2 mana(silver)(oath)
	H208(quarrel)	A	M (death)	1/3mana(silver)(oath)
(B) Misscarriage caused by beating	H209	A	A(pregnant)	10 siglu(silver)
	H210	A	A(dead)	death of the daughter**
	H211	A	M(pregnant)	5 siglu (silver)
	H212	A	M(dead)	1/2 mana (silver)
	H213	A	W(pregnant)	2 siglu (silver)
	H214	A	W(dead)	1/3mana (silver)

\* : M ; Muskenum. A ; awilum. W ; women.

\*\* : assailant's daughter.

Table III -15 illustrates the fines for bodily injury referred from reference 82.

Table III-15 List of fines for bodily injury, by which the injury could be settled in the seventh century Kentish laws (Lex Salia?) promulgated by king Ethelbert (about 552~616)

Part of body	Compensation for injury(shillings)
1 murder	100
2 eye	50
3 toe-nail	6
4 loss of thumb	20
5 disabled shoulder	30
6 loss of ear	12
7 break of man's tooth	6
8 cut off of little finger	11
9 lacerate ear	6
10 lacerate penis	6
11 both collar bones	12

constructed from reference 82.

In medieval England murder was not a criminal act of the death penalty. Loss of life is roughly equivalent to loss of two eyes or to loss of five fingers. The amounts of compensation for injury as assessed by the laws of Ethelbert (and other early English kings) varied, depending on the social class at the accused and of his victim<sup>82</sup>.

#### 6.4 Theft and bodily punishment except injury

Table III -16 demonstrates some examples of penalties for theft. Penalty for thief varies between fine silver 5 siglu and the capital punishment.

Invasion of theft into temple or palace and selling of the stolen goods were looked upon as serious crime (grand larceny) and felonies were severely punished (capital punishment).

Table III-16 Some examples where the crime of theft leads to life punishment

Article no.	Offence	Penalty(death of fine)
E6 E40	boat man who bought slave (wardu amtu), cow and goods from unspecified person is regarded as theft	fine; 10 siglu
H6	fortune at temple or palace	death
H8	cow, sheep, and any fortune at temple or palace	30 times the value of goods stolen
	mushkenum's fortune at temple or palace	10 times the value of goods stolen
H11	case when seller of the stolen articles is thief	death
H12	case when seller (in H9) died purchaser of stolen articles should pay fine	5 times the value of goods stolen
H259	plow	silver 5 siglu
H260	spade harrow	silver 3 siglu silver 3 siglu

Table III -17 collects bodily punishment for outrage except injury.

The objects of the punishment were tongue, eye, breast and finger. The table shows that domestic violence by son to father and illegal exchange of babies, which we often experience and read in newspaper, were not also rare in Old Babylonian period.

Table III-17 Bodily punishment for outrage (except injury)

Bodily punishment	Examples	
	Article no.	Outrage
1 tongue cut ; off	H192	denial by stepson of a parent-child relation. against step-parent .
2 eye ; hollow	H193	return and without permission, of stepson from step father and mother's house to his father's house.
3 breast ; cut off	H194	exchange by a wet-nurse of a dead baby with other, looked after by her .
4 finger of hand ; cut	H195	domestic violence by son to father .
	H218	medical error.
	H226	false marking on slave by hairdresser (cf. death for client).
	H253	breach of contract on field cultivation.

## 6.5 Malpractice and product liability

Table III -18 collects the penalty for the malpractice, committed by medical doctors and veterinarians. Malpractice was considered as a crime in the H laws, suggesting that malpractice is not a contemporary crime in our modern society, where the human rights have been authorized in public. Penalty for malpractice shown in the table seems extremely sever. The punished doctor would not be able to continue his work any longer, if the law was rigorously put in practice. Then, it is realized that the medical doctor's work was, and even now is a job of high risk –high return.

In contrast, veterinarian's penalty is much small (1/4 of the animal price) as compared with that of medical doctor (dismemberment).

In the forthcoming paper (Part IV ) a more detailed discussion will be given.

Table III-18 Penalty for malpractice

Case	Patient		
	awilium	mushkenum	wardu
<b>1. Medical doctor</b>			
a. death of patient after surgical operation or crush eye	dismemberment of the doctor's finger (H218)	—	
b. death of mushkenum's slave		—	compensation of the slave (H219)
c. crash of eye of mushkenum's slave		—	restitution for half price of the slave (H220)
<b>2. Veterinarian</b>			
a. death of animal after operation	veterinarian pays to the animal's owner of the animal price (H225).		

Table III -19 exemplifies the product liability in the case of house and ship which were two major real estates of the ordinary people in Old Babylonian period. The law of retaliation was also applied to the product liability (H229 ~ H231).

**Table III-19 Product liability (house, ship)**

H article	Accident	Product liability
<b>1 House</b>		
H229	death of the house owner, caused by collapse of the house	death penalty.
H230	death of the child of the house, caused by collapse of the house	carpenter's child is killed.
H231	death of slave of the house, caused by collapse of the house	give slave equivalent to the death slave.
H232	damage to the property caused by collapse of the house	rebuild the house and compensate of the equivalent properties damaged.
H233	collapse of the house wall at the nearly	repair of the wall with carpenter's expense.
<b>2 Ship</b>		
H235	unconformities with sea-navigation	return the ship, after repaired and reinforced in expense of shipwright, to ship owner
H236	a rented ship went down due to boatman's negligence	boatman compensates ship
H237	rented ship with hired boatman sunk and cargo was lost caused by boatman negligence	boatman compensates ship and cargo of equivalent value to the lost.
H238	boatman sunk ship, but he salvaged the ship	boatman pays a half price of the ship.
H240	ship navigating a river going up and streams crashed a ferry boat	boatman of ferry reports, in the presence of god, lost of cargo and he compensates the ship (ferry boat) and the cargo

## 6.6 Comparison of Japan Penalty Code with the Hammurabi law code

In Table III -20 the Japan Penalty Code is compared with the Hammurabi law code. It seems tremendously important to notice here that the fifteen articles in Japan Penalty Code (JPC) inherited from one article in the Ur-Nammu, one article in the Lipit-Ishtar and twenty seven

articles in the Hammurabi law codes( in total, twenty nine articles). Thus, characteristics of the earliest law proceeding system, emerged in the Hammurabi law code, are discovered in the current legal system. The ultra-long term continuity of the law system is an important feature of the Hammurabi laws, indicating that the legal idea in the law is common to the human beings (see 4.4.2).

Table III-20 Comparison of Japan Penalty Code with Hammurabi law code

Crime	Japan Penalty Code		Hammurabi law code
	Article no.	Penalty	Article no.
1 crime of breaking into residence	130	<3 years or <10 <sup>5</sup> yen	H21
2 crime of perjury	169	3months~10 years	H3
3 crime of false complaints	172	3months~10 years	H1
4 rape	177	>3 years	H130
5 crimes resulted to places with religious service	188	<6months	H6
		<10 <sup>5</sup> yen	H8
6 abuse of authority by public officials	193	> 2 years	H33
			H34
7 crimes of homicide	199	life or >5 years	UN1 (no in H)
8 crimes of injury	204	<15years	H196~206
		or <5×10 <sup>5</sup> yen	
9 injury causing death	205	>3 years	H207, H208, H210
10 crime of injury through negligence	209	< 3×10 <sup>5</sup> yen	H206
11 unlawful capture and confinement	220	3months~7 years	H114
12 crime of kidnapping	224	3months~7 years	H14
13 crime of theft	235	<10 years	H6
		or 5×10 <sup>5</sup> yen	
14 crime of robbery	236	>5 years	H 22 (UN 2)
15 damaging of boundaries	262	< 5years	LI 11 (no in H)
		or 5×10 <sup>5</sup> yen	

## III -7 Civil Law Code

### 7.1 Marriage and divorce

Table III -21 demonstrates typical process of marriage arrangement, deduced from the articles in the H law code (see Table III -22).

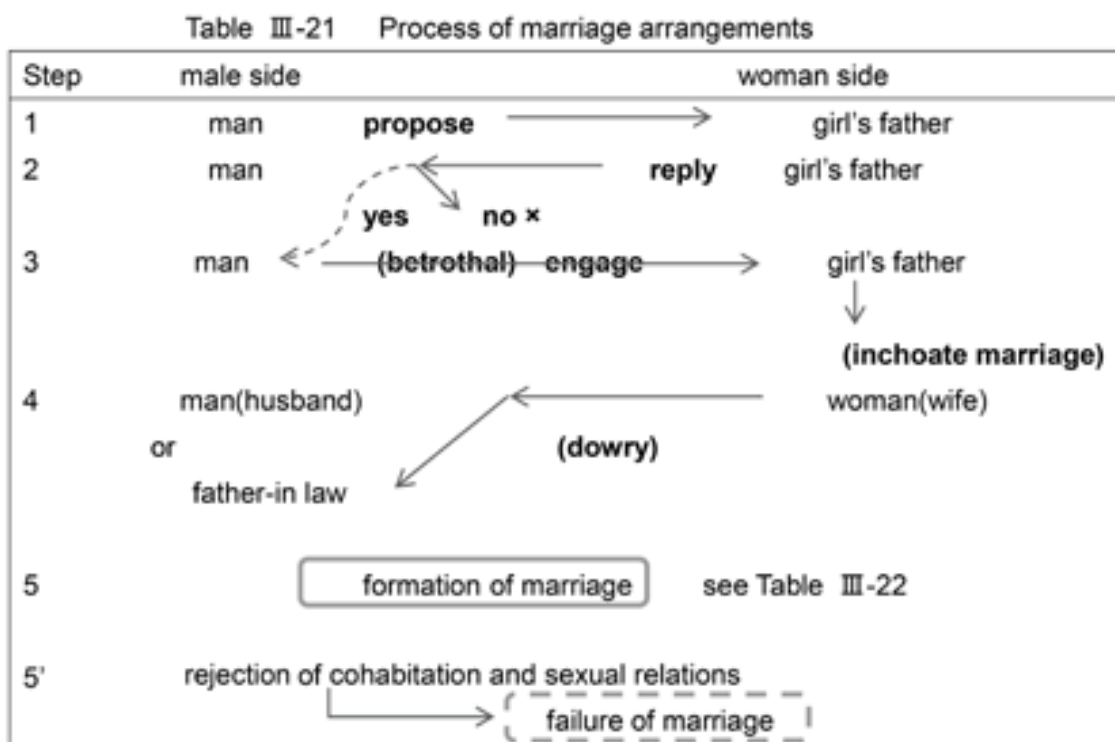


Table III -22 collects the requisites for formal marriage in the UN, LI, E and H law codes. In UN code the fact relations (cohabitation ) are customarily recognized as legal marriage (i. e., de fact marriage ). In LI code cohabitation for some period seems to be necessary. Note that the conditions in the UN and LI periods were no more approved as the conditions necessary for formal marriage in the E and H periods. Table III -22 shows that the prerequisite necessary conditions for formal marriage, progressed steadily from cohabitation (UN) → cohabitation (for some period )(LI) → wedding reception (E) → written oath (H). In the Old Babylonian period marriage was a kind of contract marriage.



Table III-22 Requisites for formal marriage

Law code	Articles	Essential conditions
UN	—	no description on fact (de facto) marriage* (no article on marriage processing)
LI	—	cohabitation for some period?
E	E27, 28	○ wedding reception, with mutual introduction × cohabitation for one year (H27)
H	H128	○ a written oath × wedding reception

\* the fact relations, which are recognized customarily as marriage, are 'de facto marriage' and such relations are immediately considered as legal marriage.

○ : admitted as formal marriage

× : not admitted as formal marriage

Table III -23 shows compensation money at divorce, which husband pays to wife in the UN law code. Compensation differs grossly depending on the marriage frequency of the wife . For the remarried wife with contract, compensation money is about half of that of her first marriage. If she remarried without contract she cannot receive compensation for divorce.

No article on divorce was discovered in the Lipit-Ishtar, and Eshnunna laws.

Table III-23 Divorce in the Ur-Nammu law code

Husband	Wife	Compensation	Article
(1) awilum (lu <sub>2</sub> )	awilum(lu <sub>2</sub> )	silver 1 mana	UN 9
(2) awilum (lu <sub>2</sub> )	awilum(lu <sub>2</sub> ) (remarriage) (with contract)	silver ½ mana	UN 10
(3) awilum(lu <sub>2</sub> )	widow (without contract)	nothing	UN 11

Table III -24 summarizes the recognition of divorce from his legal wife in the Hammurabi law code. To make divorce the permission by the summary court (5.3) was requisited..

Table III-24 Recognition of divorce from his legal wife in the Hammurabi law code

<p>The divorce becomes valid when husband declares the following reasons</p> <p><b>Reason1 : misbehavior (H141)</b></p> <p>(i) disgraceful behavior in public</p> <p>(ii) disorderly scattered rooms of house (do not keep house neat)</p> <p>(iii) insult to her husband</p> <p>(first of all, confirmation of reason 1 is needed to get permission)</p> <p><b>Reason 2 : sterility</b></p> <p>(i) return of betrothal and dowry (H138)</p> <p>(ii) case of betrothal only; silver 1 mana (H139)</p> <p>(iii) case of betrothal and wife is muskenum ; 1/3 mana (H140)</p> <p><b>Reason 3 : dislike (antipathy toward husband)*</b></p> <p>after examination by the local committee ; return of dowry (H142)</p> <p>( * rejection of the sexual relations with husband)(5.3 case C)</p> <p><b>Reason 4 : refusal of cohabitation with husband in the house husband built)</b></p> <p>(i) return of dowry (H148)</p>
--

It is clear that for the reasons 1 and 3, one-sided divorce by husband (the reason 1) or by wife (the reason 3) was not recognized. Note that the reasons 3 and 4 are not distinguishable (see 4.5.3 proof 2).

Table III -25 summarizes divorce money in the Hammurabi law code. In case (1) dowry of wife, who married with betrothal money and gave birth to husband and died (i), is probably given to her child. In case (2), significant difference between (i) and (ii) is unclear (see 4.5.3 proof 2).

Table III-25 Divorce money in Hammurabi law code

Companion's status(wife, mistress, slave)	compensation	article no.
<b>(1) Case when husband wishes to separate from</b>		
<b>(a) wife</b>		H162
(i) wife who married with betrothal money and gave birth to him and died.	father-in law does not ask betrothal money.	H138
(ii) wife who married with betrothal money, but did not give the birth to him.	betrothal + dowry.	H139
(iii) wife who married without betrothal money, and did not give the birth to him.	silver 1 mana.	H140
(iv) wife is mushkenum in (iii).	silver ½ mana.	
<b>(b) mistress</b>		H137
(i) mistress who gave birth to him, and husband wants to abandon openly her.	betrothal +some.	
<b>(c) slave</b>		H146
(i) slave who gave birth.	slave will not be sold.	H149
(ii) slave who did not give birth.	slave can be sold.	
<b>(2) case when wife wishes to separate from man</b>		
(i) wife has antipathy toward him.	return dowry to her.	H142
(ii) wife rejects cohabitation.	return dowry to her.	H149

## 7.2 Family

### 7.2.1 Types of family

Figure III -3~Figure III -6 illustrate some typical types of the family, all deduced from the Ur-Nammu, Lipit-Ishtar, Eshnunna, and Hammurbi law codes, respectively. Three types in the UN law, four types in the LI law, one family type in the E law, and five types in the H law are discovered.

In Figure III -3, the case of remarried wife is demonstrated (Type 3 a).

Figure III -4 demonstrates the case when the first wife was died.

Figure III -6 covers a wide variety of family in those days, reflecting well the complexity of the society.

**Type 1** shows simple monogamy. Three cases are shown : (1) awilum husband- awilum wife ; (2) slave husband-awilum wife ; (3) slave husband- slave wife.

The case (1) is a typical case.

**Type 2** is the cases when either husband or wife is died. In the case when wife is died, husband remarried (2a, 2b). In the case when husband died, wife remarried (2c).

**Type 3** is cases when husband has two wives (polygamy).

**Type 3a** is the case when the first wife died and husband remarried to the second wife.

**Type 3b** is the case when the first wife became serious disease and husband remarried to the second wife, while the first wife alive. Both the first and second wives live together in the same house with husband.

**Type 3c** is the case when the first wife showed miss-behavior (Table III -24), and if husband disagrees to divorce from her, she is disqualified from wife-status to slave-grade. Husband remarried to the second wife. They live together in the same house.

**Type 4** is the cases when wife was nun, who is prohibited to have a child, and so, husband has an acting wife of mistress(type 4a) or slave (type 4b).

**Type 5a** is the cases when the first husband died and widow remarried to the second husband.

**Type 5b** is case when wife and the second husband had child, and the wife died.

**Type 5c** is case when the wife and the second husband had no child and then, the wife died.



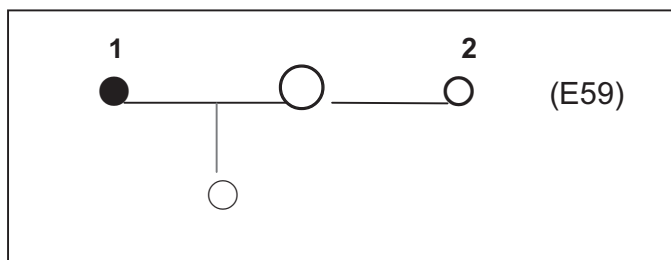


Figure III-5 Family types in Eshnunna law code

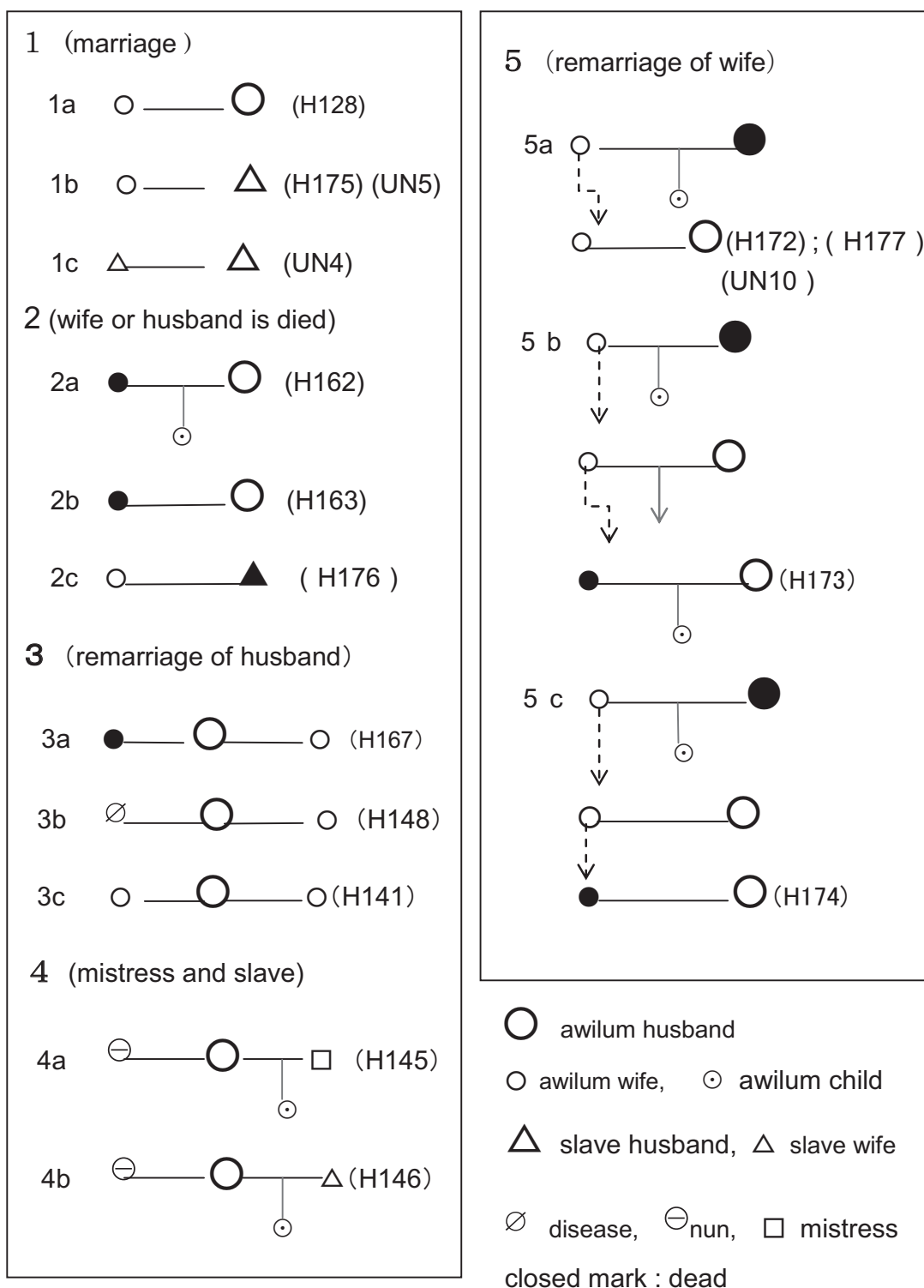


Figure III-6 Family types in Hammurabi law code

### 7.2.2 Constitution of family in Old Babylonian period

1. The smallest unit constituting ancient Mesopotamia society is monogamy, formed by a combination of husband and wife. A family was consisted of husband, wife and their children only. Difference of social class (awilum, muskenum, and slave in the Hammurabi dynasty) does not bring about any legal problem, and any combinations (theoretically, 9 types) of husband and wife are approved, regardless of their social class(see Fig. III -6). Types 3, 4, and 5 are derivatives of Types 1 and 2.
2. It's official stand is monogamy . But the special cases, when one husband can have two wives at the same time, are legally acknowledged (Types 3b and 3c). Then **the society is based on a monogamy, partly mixed with polygamy.**
3. Existence of the first and second wives in the family, even if not concurrently, makes the family complicate. But, their law of inheritance is extremely fair (see 7.3).
4. When child, to whom slave gave birth, is recognized by his father, he has equal share of inheritance to other formal wife's children (father consanguines)(see 7.3.).
5. If husband did not recognize the above-mentioned slave's child, the child and his mother are liberated from slavery.
6. Husband denotes a gift inter vivos with deed. Husband donation is a kind of settlement of the family fortune upon wife. After husband's death the above deed is materialized (Remember that English wives were not legally qualified to receive any gift from their husbands until late 19 th century)<sup>83</sup>. Widow could keep living at the house husband built. (7.3....).



7. Husband can have mistress besides the first wife (H145,H146).
8. Awilum girl became mistress with her will. She might choose mistress rather than poor house-wife (H183, H184).
9. To awilum girl who wants to become mistress, her father gives dowry (silver money ) and write deed, both to her husband. (H182).
10. Husband, whose wife was nun, can have openly mistress (H145).
11. Wife, ex-nun, gives husband slave to afford an opportunity of having child. Note that in this case wife buys slave, who is, now, a possession of wife (H146).

### 7.2.3 Family size and agriculture

In the period farmland is small size for family-run business<sup>84</sup>. Mainly they are landed farmers, tenant or sub-tenant farmers. The size of farm seems to be fitted to high level of irrigation and cultivation , at that time which needs extremely delicate and skillful attention to their own farms<sup>85</sup>. Therefore family size in the laws seems to be consistent with the agricultural characteristics at that time. Only by using these style of agriculture they could to attain high yield, resulting in large surplus.

## 7.3 Inheritance

### 7.3.1 General view of Inheritance in Old Babylonia period

#### 1. Right of inheritance

Personal (husband) property is succeed to his wife and children (see H172).

2. Distribution of the property is actually based on the two principles :  
**‘Equal share succession’ (H165) under the limit of ‘primogeniture’ (H165)**. This does not mean that the eldest son monopolizes by

himself, all the properties of father. The mixture of the two principles aims to avoid the excess subdivision, by repetition of inheritance over generations, into smaller parts, which might make the sustainability of family farming impossible. In addition, an eldest son's contribution to his farming job is highly evaluated, if we take into the consideration shorter average lifespan (i.e., probably, 30 years or less) at the above period. (we know, for example, the decay of Halifax agriculture in Medieval England, where 'equal share principle' was exceptionally and overwhelmingly adopted).

3. Wife receives often a gift *inter vivos* (gift of property from husband, while he is alive). This is a form of division of property, which were built by co-operation of husband and his wife (see H152). This seems an advanced idea on 'just evaluation of woman (wife)'s role in family life'.
4. Child cannot require mother's money, obtained as 'gift', after father's death (7.3.2 D). This was effective to prevent an accident that the widow are thrown out from the house.
5. Recognized slave's son (bastard) can receive an equal share to other brothers (legitimacy) (7.3.2 B). Note that legitimate children as heirs have precedence preference over bastard in selection of the father's property (H170).

### **7.3.2 Succession of Father's property by sons, daughters and wife**

Husband denoted, in his lifetime, property to wife as gift *inter vivos*.

#### **A. After husband's death**

- (i) Father's property is given to one's own sons, except disown child (H 168, H169), with equal share in succession.

- (ii) When primogeniture received the donation separately, while his father was alive, as advancement, the above portion is substituted from the father's original inheritance and the residue is equally divided among all one's children, excluding the eldest son (H165, H170).

#### **B. Child born from slave mother**

- (i) Child, who was born from his slave mother and was recognized in father's lifetime as one's son, receives equal amount of segmentation with other one's own children (H167)(7.2.2 ; 4).
- (ii) Child, who was born from his slave, but was not recognized as one's son, is emancipated (H171)(7.2.2 ;5).

#### **C. Daughter( mistress)**

- (i) For daughter, who was going to become mistress, and received dowry and bond from his father (in his lifetime), there is no more property for further succession from father (H183).
- (ii) When father, who did not give dowry to her (mistress) and did not give her to husband, died, her brothers give her dowry, amount of which depends on their economic conditions(H184) , (see, also, H178~H180, H182).
- (iii) When daughter, who is now nun, did not receive neither dowry nor bond from father when he was alive, she receives 1/3 of her share of inheritance (H181).

#### **D. Advancement to wife**

Child cannot request mother her share of inheritance when father, while alive, gave advancement (H150).

### **7.3.3 Succession of husband's property by wife**

#### **A. Case when wife is alive :**

##### **(1) wife don't have dowry**

She succeeds equal share to her children's (H172).

##### **(2) wife has dowry**

###### **(i) wife received gift inter vivos**

She gives money of dowry and gift inter vivos to her favorite child only (H150).


###### **(ii) Wife has not gift inter vivos**

She received dowry , and equal share (see, also, A (1) (H172)).

#### **B. Case when husband died after his wife's death :**

To children of her own equally (H167).

#### **C. Case when wife remarried :**

Her dowry  (i) children of first and second husbands (H173)  
(ii) children of the first husband (when no child for the second husband (H174)).

#### **D. Case when awilum woman married to slave man :**

Wife gives 1/2 of property, accumulated after marriage, to children, after her death. (another part to master of slave) (H176).

## **III -8 conclusion**

1. Tokens and their descendants (cuneiform script) were formed from practical demand, mainly, in agriculture.
2. the emergence of written-law requires as preconditions inventions and their improvements of writings and their popularization of the writings in daily.
3. Except the E law code which was the shortest life (14~years) the life-

span of ancient law codes ranges in 90~160 years.

4. To the newly conquered area (Larsa) new Babylon's laws were without delay applied.
5. Priest in the Hammurabi laws did not or were not allowed to play an important role in the court.
6. The place of court was supposed to be palace when the articles contain the word [god] or the phrase [in front of god] .
7. There were a variety of courts differing the status.
8. Citizen's assembly acts as court, and the members of the assembly can play as role of a pseudo-barrister, and the decision is made by member's agreement.
9. Oath, appeared first in the Hammurabi law, continued for some thousands years to the present.
10. In the Hammurabi law perjury was the capital crime.
11. Two law articles (H23 and H24) are the world first law which aims to afford public support against criminal victims.
12. The compensation for malpractice are legislated.
13. Illegal damages to the misfortunes, such as house and ship, were recognized to be the object, which should be compensated.
14. Legal relief was attempted to support social misfortune including (1) war prisoner's family ,(2) war prisoner's child and (3) food-victim, and draught-victim.
15. Embryonic idea of human right emerged in the H law :  
 (1) Right to live, (2) Ownership and property right (buying and selling), and (3) Right of succession, (4) Right of access to court ,  
 (5) Equal protection of the laws, and (6) Liberty of contract.
16. Some parts of (UN, LI and E) are adopted into the H law although

constituting only a small part.

17. The Hammurabi law code is not always perfectly consistent, but has three examples showing inconsistency.
18. In the H law code murder and rebellion are, curiously, not included in the death penalty.
19. In the three preceding laws (UN, L.I, and E laws) no article for legal processing is discovered.
20. Terms implying testimony, evidence and witness appeared for the first time in the world legal history.
21. Plaintiff's responsibility of proof and defendant's right of disproof are written clearly.
22. First appearance of judge is observed in the H law.
23. The Hammurabi law is evidently based on the principle of evidence, and is absolutely differed from divine judge.
24. Process of accusation~judgement is clearly in demonstrated in the Hammurabi law code.
25. One of judge's duties is the prohibition of double jeopardy.
26. The H law codes have a article with an original form of the prohibition of double jeopardy, which is now one of the fundamental principles.
27. The function of summary court has at least in part, a kind of judge's function.
28. The four categories of the penalty were found in the Hammurabi law code.  
(1). Death, (2). Bodily punishment, (3). Fine, (4). Banishment
29. The articles, in the Hammurabi law code, enough to be punished by death contain the four articles about dishonesty of the legal process.
30. Hammurabi laws illustrate numerous cases for single criminal

conduct, but these cases are not enough to refer the article for judge at the actual trials.

31. There was an exceptional case where the retaliation law was not applied. In this case, the assailant was permitted by paying fine.
32. Invasion of theft into temple or palace and selling of the stolen goods were regarded as serious crime (grand larceny).
33. The penalty for the malpractice, committed by medical doctors and veterinarians, were regulated first in the world history.
34. The product liability was recognized lawful in the case of house and ship which were the two major real estates.
35. The fifteen articles in Japan Penalty Code (JPC) inherited from one article in the Ur-Nammu, one article in the Lipit-Ishtar and twenty seven articles in the Hammurabi law codes.
36. The prerequisite necessary conditions for formal marriage, progressed steadily from cohabitation (UN) → cohabitation (for some period ) (LI) → written oath (H).
37. Compensation money at divorce was stipulated in the laws (UN and H laws).
38. The smallest unit constituting ancient Mesopotamia society is monogamy, formed by a combination of husband and wife.
39. Any combinations (theoretically, 9 types) of husband and wife are approved, regardless of their social class.
40. If husband did not recognize the slave's child, the child and his mother are liberated from slavery.
41. The size of farm seems to be fitted to the high level of irrigation and cultivation.
42. Personal (husband) property is succeeded to his wife and children

Distribution of the property is actually based on the two principles :

‘Equal share succession’ under the limit of ‘primogeniture’

43. Wife receives often a gift inter vivos (gift of property from husband, while he is alive). This is a form of division of property, which were built by co-operation of husband and his wife.
44. Recognized slave’s son (bastard) can receive an equal share to other brothers (legitimacy).
45. When wife don’t have dowry, she succeeds equal share to her children’s

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### Appendix :

Full sentence of articles, which inherited from the Hammurabi law code and were cited in TableⅢ-20, of Japan Penalty Code (translated by Ministry of Justice).

JPC No. Article	Content
1. 130	A person who, without justifiable grounds, opens a sealed letter shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 200,000 yen.
2. 169	When a witness who has sworn in accordance with law gives false testimony, imprisonment with work for not less than 3 months but not more than 10 years shall be imposed.
3. 172	A person who submits a false complaint, accusation or other denunciation for the purpose of having a punishment or disciplinary action imposed upon another shall be punished by imprisonment with work for not less than 3 months but not more than 10 years.
4. 177	A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.
5. 188	A person who in public profanes a shrine, temple, cemetery or any other place of worship shall be punished by imprisonment with or without work for not more than 6 months or a fine of not more than 100,000 yen.
6. 193.	When a public officer abuses his or her authority and causes another to perform an act which the person has no obligation to perform, or hinders another from exercising such person's right, imprisonment with work or imprisonment without work for not more than 2 years shall be imposed.

7. 199	A person who kills another shall be punished by the death penalty or imprisonment with work for life or for a definite term of not less than 5 years.
8. 204	A person who causes another to suffer injury shall be punished by imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen.
9. 205	A person who causes another to suffer injury resulting in death shall be punished by imprisonment with work for a definite term of not less than 3 years.
10. 209	A person who causes another to suffer injury through negligence shall be punished by a fine of not more than 300,000 yen or a petty fine.
11. 220	A person who unlawfully captures or confines another shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.
12. 224	A person who kidnaps a minor by force or enticement shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.
13. 235	A person who steals the property of another commits the crime of theft and shall be punished by imprisonment with work for not more than 10 years or a fine of not more than 500,000 yen.
14. 236	A person who robs the property of another through assault or intimidation commits the crime of robbery and shall be punished by imprisonment with work for a definite term of not less than 5 years.
15. 262	A person who damages, moves or removes a boundary mark or otherwise makes a boundary unrecognizable shall be punished by imprisonment with work for not more than 5 years or a fine of not more than 500,000 yen.

**Supplementary correction to Part I (This journal, vol. II , p113-145 (2014))**

Fig. 1 should be corrected as Fig.1 (revised).

Author regrets some turbulence occurred in Fig.1 at a computer-materialization step.

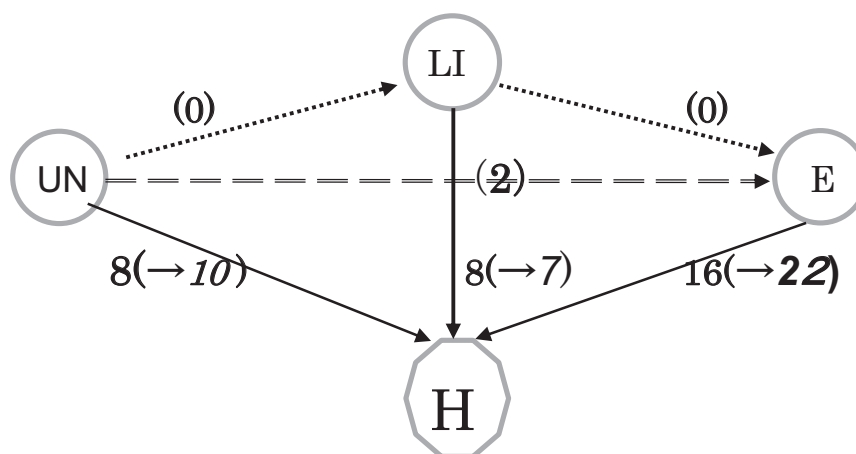


Fig. 1 Correlations among the four law codes (revised)