Finders Keepers?
Lost Property in Ancient Near Eastern and Biblical Law

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According to ancient Near Eastern law, it is a serious offense to be in possession of lost property, tantamount to stealing and punishable by death. A finder is expected to make every effort to return a lost animal or implement to its owner. The OT “Book of the Covenant” assumes the same principle and emphasizes that it applies even if the owner is one’s enemy (Exod 23:4). It is dealt with in greater detail by the Deuteronomic Laws, using the word “brother” instead of “enemy” and clarifying some of the ambiguities in the earlier law (Deut 22:1–3). In both texts, the returning of lost property is combined with a command to help another person in difficulty with his/her beast of burden (Exod 23:5, Deut 22:4). Although these biblical texts occur in legal sections of the OT, they are not so much laws as exhortations to take action for the welfare of fellow-Israelites. Members of the covenant community are expected to take the initiative in helping others, whether or not they deserve it, according to the principle of loving one’s neighbor as oneself.

Key Words: lost property, Hammurabi, Hittite Laws, Exod 23:4–5, Deut 22:1–4, love, law, enemy

The nineteenth-century saying “Finders keepers, losers weepers” reflects an attitude commonly found in society. Compilers of ancient Near Eastern laws, however, gave no approval to opportunism of this sort. Nor did biblical compilers offer theirs.

ANCIENT NEAR EAST

To be in possession of lost property is a serious offense, according to the Laws of Eshnunna, tantamount to stealing:

If a military governor, a governor of the canal system, or any person in a position of authority seizes a fugitive slave, fugitive slave woman, stray ox, or stray donkey belonging either to the palace or to a commoner, and does not lead it to Eshnunna but detains it in his house
and allows more than one month to elapse, the palace shall bring a charge of theft against him. (§50) 1

The same principle is found in the Laws of Hammurabi, which stipulate capital punishment for possession or sale of lost property and also for falsely accusing someone else of having lost property in his/her possession (§§9–13). The law elaborates in detail the procedure for establishing the truth of the matter in such cases, insisting on the calling of witnesses and formal identification of the property in a temple. 2

The Hittite Laws insist that lost property be returned to its owner and consider failure to do so the same as theft:

If anyone finds implements, [he shall bring] them back to their owner. He [the owner] will reward him. But if [the finder] does not give them [back], he shall be considered a thief. (§45)

If anyone finds a [stray] ox, a horse, [or] a mule, he shall drive it to the king’s gate. If he finds it in the country, they shall present it to the elders. [The finder] shall harness it [that is, use it while it is in his custody]. When its owner finds it, he shall take it according to the law in full, but he shall not have him [the finder] arrested as a thief. But if [the finder] does not present it to the elders, he shall be considered a thief. (§71)

If oxen enter [another man’s] field, and the field’s owner finds [them], he may hitch them up for one day until the stars come out. Then he shall drive them back to their owner. (§79) 3

There are several related rules. Sections 60–62 prescribe stiff penalties for someone who finds a bull, stallion, or ram and castrates it. In §86, a property owner is exonerated from responsibility if he kills a pig who wanders onto his property, though he must return the carcass to its owner. A rather different approach is taken in §66, however, which entitles an owner to retrieve his stray animal from someone else’s property, without accusing the other person of theft. In this law the property owner is not required to take the initiative in returning the animal. 4

3. Translated by Harry A. Hoffner in Context of Scripture, 2:19:106–19. A later version of the laws combines §§45 and 71 into one provision, omitting the mention of reward and adding a penalty of threefold compensation for unlawfully keeping lost property, which was standard for theft (§XXXV).
4. Section 72 stipulates that, if an ox is found dead on someone’s property, the property owner is to pay twofold compensation. It might be assumed from the context (following §71) that this stipulation refers to lost property, but such a punishment would be most unfair to the property owner unless he was responsible for the death. Even in the case of a rented ox that dies, the renter only gives simple restitution, so the double restitution required here suggests that this law is concerned with theft (cf. §73). On some of the Hittite Laws concerning lost
Turning to the OT, we may observe that the Book of the Covenant assumes the basic principle underlying the Babylonian and Hittite laws—that lost property should be returned to its owner. It goes significantly further, though, by stipulating that the principle applies even if the owner is one’s enemy: “When you come upon your enemy’s ox or donkey straying, be sure to take it back to him” (Exod 23:4). The word ולָעֵם can mean either a personal enemy, belonging to one’s own people, or an enemy nation. Clearly the former is intended here (cf. 1 Sam 18:29, 1 Kgs 21:20). In the context, it may refer to someone with whom one has a legal conflict, since the preceding and following verses deal with lawsuits.

In Deuteronomy the law is more detailed:

You shall not see your brother’s ox or his sheep going astray, and ignore them; be sure to take them back to your brother. And if your brother [does] not [live] near to you or you do not know him, then you shall bring it to your own house, and it shall be with you until your brother claims it, then you shall give it back to him. You shall do the same with his donkey, and you shall do the same with his clothing, and you shall do the same with any of your brother’s lost property which he loses and you find. You may not ignore them. (Deut 22:1–3)

5. I have made my own translation from the Hebrew for the biblical texts cited in this article.


7. As pointed out by Martin Noth, Exodus: A Commentary (OTL; London: SCM, 1962), 189. There has been extensive debate as to whether this text is a later insertion in the present context, since its form and content are different from the preceding and following laws: see Brevard S. Childs, Exodus: A Commentary (OTL; London: SCM, 1974), 480–81; John I. Durham, Exodus (WBC 3; Waco, TX: Word, 1987), 330–31; Alan Cooper, “The Plain Sense of Exodus 23:5,” HUCA 59 (1988): 1–22, esp. 2 n. 5; Jay W. Marshall, Israel and the Book of the Covenant: An Anthropological Approach to Biblical Law (SBLDS 140; Atlanta: Scholars Press, 1993), 154–55; Joe M. Sprinkle, “The Book of the Covenant”: A Literary Approach (JSOTSup 174; Sheffield: JSOT Press, 1994), 178–82. However, this question does not significantly affect the understanding of the text itself and will not be discussed here.


9. So the NIV, NRSV, TEV; but the REB translates “and.”

10. Literally, “inside.”
The word “brother,” as distinct from “enemy” in Exod 23:4, focuses the Deuteronomic version of the text on behavior toward fellow-Israelites, though it does not thereby permit taking advantage of others outside the covenant community. The word is clearly emphatic, being used five times in the three verses, reminding the hearer of the mutual responsibility that is part of being the people of God. Another distinctive feature is the phrase “You shall/may not ignore them” (vv. 1, 3; cf. v. 4). Literally, this means to “hide yourself [from] them,” so that you are not seen, in order to avoid having to take the action that would be expected of someone who has seen someone else’s need (v. 1; cf. v. 4; Isa 58:7). Similar anticipation of possible reactions is found elsewhere in Deuteronomy, with its sermonic approach to law (e.g., 15:9, 18).

The basic principle of returning lost property in Deut 22:1 is the same as the principle in Exodus, though the wording is quite different. In addition to the distinctive features already noted, the form is apodictic rather than casuistic, the animals specified are ox and sheep (instead of ox and donkey), and a different Hebrew word is used for “stray” (cf. Ezek 34:4, 16, which refers to the Deuteronomic version). Verses 2–3 elaborate on the basic principle, concerning cases of the owner being far away or unknown (v. 2) and extending it to all kinds of possessions (v. 3, the same range being specified as in Exod 22:9). In the case of the owner not being contactable, the finder is expected to bring the lost animal to his own house, where it would be kept on the ground floor with his own cattle (cf. Gen 24:31–32, Judg 19:21, 1 Sam 28:24).

At first sight, this seems to lay open a person to the charge of taking possession of lost property, a possibility that is foreseen in the Hittite Laws (§71) by instructing the finder to report the find to the local authorities before taking custody. However, in a closely-knit society such as Israel, a find of this sort would scarcely be a private matter, and if the finder made the situation known to his neighbors from the beginning then there would be no need for suspicion. This custody would last “until your brother claims it” (v. 2; cf. 1 Sam 9:3–20; Ezek 34:6, 8, 10, 11). Presumably, if no claim is made, the property would remain in the

11. In this context “brother” refers to a fellow-Israelite (TEV; cf. REB) rather than a neighbor (NRSV), as becomes clear in the next verse. Obviously it is not limited to blood-brothers, because the possibility is envisaged that the person may not be known. This is in fact the commonest use of the word in Deuteronomy (e.g., 15:3–12; 17:15; 18:15; 19:18; 23:19–20; 24:7, 14; 25:3). Compare Edward Neufeld, “The Prohibitions against Loans at Interest in Ancient Hebrew Laws,” HUCA 26 (1955): 355–412, esp. 402: “the whole of Israel comprises one family, one paternal house and therefore all its members are brothers.”

12. Compare Tigay, Deuteronomy, 199.

Baker: Finders Keepers? Lost Property in ANE and Biblical Law

house of the finder, but the rule stops short of giving the finder the right to consider unclaimed lost property as his own.\textsuperscript{14}

A Related Matter

In both Exodus and Deuteronomy, the law on lost property is supplemented by a clause requiring the faithful Israelite to help another person in difficulty with his/her beast of burden. This is distinctively biblical, and there is nothing comparable in the other ancient Near Eastern laws.

The Book of the Covenant formulates it as follows: “When you see the donkey of someone who hates you lying down under its burden, you shall not leave it [there],\textsuperscript{15} be sure you help him restore\textsuperscript{16} it” (Exod 23:5). It is not specified whether the enemy’s donkey has fallen and is unable to get up again (cf. Deut 22:4) or whether it is deliberately lying down and refusing to budge, even though it is capable of doing so (cf. Num 22:27). The meaning of the Hebrew is uncertain, but probably there is a play on words between two homonyms. The common verb בז means “leave,” as in the first part of this sentence, and it is suggested that a rare homonym is used in the second part of the sentence.\textsuperscript{17} The homonym is thought to mean “restore,


\textsuperscript{15} This is the probable meaning of the Hebrew, understanding the word ול to refer to the animal: so the NIV; cf. Durham, Exodus, 310, 314. It could also refer to the owner, as in the RSV (“you shall refrain from leaving him with it”) and Herbert B. Huffman, “Exodus 23:4–5: A Comparative Study,” in A Light unto My Path: Old Testament Studies in Honor of Jacob M. Myers (ed. H. N. Bream, R. D. Heim, and C. A. Moore; Gettysburg Theological Studies 4; Philadelphia: Temple University Press, 1974), 271–78, esp. 274 (“you shall desist from leaving [it] to him”). All these translations assume this difficult clause to be part of the apodosis (consequent clause of conditional sentence). Alternative interpretations, taking it to be part of the protasis (conditional clause), are found in the NRSV (“and you would hold back from setting it free”); Cornelis Houtman, Exodus, Volume 3: Chapters 20–40 (Historical Commentary on the Old Testament; Leuven: Peeters, 2000), 241 (“and you would be unwilling to help him”); and the REB (“however unwilling you may be to help”).

\textsuperscript{16} Some older scholars emended בז (here translated “restore,” for the reasons explained below) in the second part of the sentence to רז (“help”); see Cooper, “Plain Sense,” esp. p. 21. However, there is no manuscript evidence for this nor any insuperable difficulty about understanding the MT, so emendation has generally been considered unnecessary.

put in order” (cf. Neh 3:8, 34), “arrange,”18 or “strengthen.”19 This sense is supported by the Septuagint (συνεγερέει) and the parallel law in Deut 22:4 and followed by many modern translations (e.g., NIV, NRSV, REB).20

In Deuteronomy, the law is as follows: “You shall not see your brother’s donkey or his ox fallen on the road, and ignore it; be sure to help him lift it up” (Deut 22:4).21 Two differences from the Exodus version are the same as for the lost property laws, namely, the use of “brother” instead of “enemy” and the warning not to “ignore” the situation. There is a broadening of application, because Exodus specifies just one kind of animal, and Deuteronomy mentions two. And three further changes make the later version simpler and clearer:

- Exodus is ambiguous as to whether or not the donkey is in distress; Deuteronomy makes it clear that the animal has fallen;
- the first clause in Exodus is casuistic in form, while the second is syntactically ambiguous and could belong to either the protasis or apodosis (see n. 15); in Deuteronomy, the whole is transformed into apodictic form;22

20. H. G. M. Williamson (“A Reconsideration of בז II in Biblical Hebrew,” ZAW 97 [1985]: 74–85) disputes the existence of the homonym, arguing that there is only one verb בז but here it has an unusual meaning, namely, “release” (cf. Job 20:13). Thus he translates the sentence as in the KJV margin: “If thou see the ass of him that hateth thee lying under his burden, and wouldest forbear to release it for him, thou shalt surely release it with him.” Cf. M. Dietrich and O. Loretz, “DB und ‘DB im Ugaritischen,” UF 17 (1986): 105–16; Erhard S. Gerstenberger, “םז” in TDOT 10:584–92; Sprinkle, “Book of the Covenant,” 178, 180–81. Similarly BDB, while acknowledging the homonym in Neh 3:8, considers בז in Exod 23:5 (also Job 9:27; 10:1; 20:13) to be the common verb, with the meaning “let loose, set free, let go,” suggesting the translation: “thou shalt by all means free it [the beast] with him.” Cooper (“Plain Sense”) agrees with Williamson that the common verb בז is used in both parts of the sentence but believes that it has its ordinary meaning “leave”; cf. Tikva Frymer-Kensky, “Israel,” in A History of Ancient Near Eastern Law (ed. Raymond Westbrook; Handbook of Oriental Studies, Section One: The Near and Middle East 72; Leiden: Brill, 2003), 2:975–1046, esp. 1037. So Cooper translates as follows: “When you see your enemy’s ass crouching under its load, and you would refrain from leaving it, you must leave the animal alone.” If this is correct, there is a contrast between the cases of the wandering animal (which should be returned, v. 4) and the animal that is lying down (which must not be interfered with, v. 5). It follows that the second clause merely forbids taking advantage of an enemy when his animal is resting or in difficulty rather than encourages a positive act of love. While this translation is possible linguistically, it goes against a tradition of interpretation that goes back to Deuteronomy (22:4) and Philo (Virtues 116–17), and it has not been widely accepted by scholars. Differently again, the NJPS understands both occurrences of בז in this verse to be the rare homonym, with the meaning “raise,” translating: “When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him”; cf. Nahum M. Sarna, Exodus: The Traditional Hebrew Text with the New NJPS Translation (NJPS Torah Commentary; Philadelphia: Jewish Publication Society, 1991), 142.

21. Literally, “and ignore them; be sure to lift up with him.”
22. So the NRSV, though the NIV and REB incorrectly translate it as case law.
• the verb הבז ("lift up"), a word more appropriate for a fallen animal.

This law is combined with the law on lost property because it embodies a similar concern for the welfare of other members of the Israelite covenant community, particularly in relation to problems with their livestock. If someone loses an animal, his neighbor should help him recover it. If a beast of burden is in distress or refuses to work, the neighbor should help the owner to get it moving. Exodus emphasizes that these principles apply even in the case of an enemy. Deuteronomy elaborates the principle of returning a stray ox or donkey, making clear that it applies to all kinds of lost property, and also expands slightly the point about fallen animals.

**Conclusion**

"Am I my brother’s keeper?” Cain asks God (Gen 4:9). Of course, this is not a genuine question in the context, nor does the answer that Cain receives tell us much about care of siblings. Nevertheless, it is an implicit question in many other parts of the Bible, and the answer given is a resounding “Yes.” This is clear in the biblical texts discussed above. They are not primarily concerned with the welfare of animals, but the OT does show consideration for animals elsewhere (e.g., Deut 5:14; 22:6–7, 10; 25:4), here the concern is for the welfare of the owner of the lost property. (The animal itself may actually prefer wandering to being kept in a pen, and lying down to trudging along under a heavy load!) Though they occur in law collections—the Book of the Covenant and the Deuteronomic Laws—these texts are not so much laws as exhortations to positive action on behalf of one’s “brother,” that is, a fellow-member (male or female) of the covenant community. It is expected that a member of the community will take the initiative to help others, whether or not they deserve it, as expressed by the principle in the Holiness Code of loving one’s neighbor as oneself (Lev 19:17–18; cf. Job 31:29; Prov 24:17, 25:21; Jer 29:7; Matt 5:44; Luke 10:25–37).

Love is not legally enforceable, and if someone chooses to ignore this principle and let an animal continue to stray or lie under its burden, it is unlikely that he or she would be taken to court. This may be compared with Anglo-American common law, where there is no legal obligation to

rescue or give assistance to someone in danger or distress, unlike maritime law, which obliges a ship’s captain to help anyone found at sea and in danger.26 A passerby may have a legitimate reason for not stopping to help someone—for example, inability to help or unawareness that help is needed—and “to establish a law requiring such kindness would result in an avalanche of litigation between people who had troubles and those passers-by whom the people with troubles think should have stopped but, for reasons of their own, did not.”27

The problem, however, is not simply that people “pass by on the other side” when others suffer misfortune (cf. Luke 10:31–32) but that some actually take advantage of the circumstances to their own benefit. Cattle were of great value in the ancient world, and someone might well be tempted to take possession of a lost animal if its ownership was unknown. Finders keepers? Clearly not. To do this would be equivalent to stealing (cf. Exod 22:9, Lev 6:2–7). The ancient Near Eastern laws expect the finder of lost property to take reasonable steps to return it, if the owner is known, and otherwise to report the matter to the authorities. In the case of a lost animal, the finder is responsible for taking care of the animal until it can be returned. The parallel texts in Exodus and Deuteronomy agree with this principle and go beyond it. Far from acquiescing to opportunism, they encourage members of the covenant community to look for opportunities to help others, even enemies.28