

# LAW IN ANCIENT EGYPTIAN FICTION

*Russ VerSteeg\**

## INTRODUCTION

The spirit of ancient Egypt has captivated most of us at some time. Pyramids, mummies, pharaohs, hieroglyphs, and the romance of archaeology mesmerize us and kindle our imaginations. Egypt seizes us with its powerful magic and mystery. Even before Jean Francois Champollion achieved his first major philological breakthroughs in deciphering Egyptian hieroglyphs in the 1820s, people were fascinated by the physical vestiges of ancient Egyptian culture and civilization: its art, artifacts, and architecture. However, once Champollion's work began to bear fruit, a new world of Egyptology burst onto the scene. Prior to Champollion, almost all Egyptologists had been anthropologists and/or archaeologists. Now philology provides access to the writing of the ancient Egyptians; and, a variety of types of writing have survived.<sup>1</sup> One important genre of ancient Egyptian

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\* Associate Professor of Law, New England School of Law, Boston, Massachusetts; A.B. 1979, University of North Carolina at Chapel Hill; J.D. 1987, University of Connecticut School of Law. I would like to thank Dr. Robert Bianchi, Dr. Janet Johnson, Professor Ronald Chester, and Professor George Dargo, who read and commented on an earlier draft. All errors and misconceptions are mine and not theirs. Special thanks to Professor Paul Teich who has made numerous suggestions that were both insightful and valuable. Thanks also to John F. O'Brien, Dean, New England School of Law and to the Board of Trustees who supported this project with funds from the Summer Research Stipend Program. I would also like to thank my colleagues at New England School of Law who offered useful advice and criticism at the "Works-in-Progress" lunch. Lastly, I would like to thank Julia Frost Davies and Jürgen Ostertag, my research assistants.

<sup>1</sup> THE LITERATURE OF ANCIENT EGYPT 2 (William K. Simpson ed. 1972). Simpson mentions, for example, ledgers, inventories, payrolls, distribution lists of foodstuffs and equipment, letters, religious inscriptions, lawsuits, trials of thieves, medical and veterinary manuals.

Most of the translations cited herein are from Simpson's text. I have preserved his textual conventions (many of which are used by other translators as well). Simpson describes his conventions as follows:

Brackets are employed for text which has been restored when there is a gap in the manuscript, and half brackets when the word or phrase is uncertain or imperfectly understood; three dots are used when the gap cannot be filled with any degree of certainty and represent an omission

writing that we possess is literature. Regarding literature, Professor Simpson remarks:

Within the mass of material studied by several generations of Egyptologists there has emerged a series of compositions which can unquestionably be regarded as literature in our sense. The closest parallels are to be found in other parts of the ancient Near East in the literatures of Mesopotamia and the people of the Old Testament. These compositions are narratives and tales, teachings (instructions), and poetry.<sup>2</sup>

Egyptologists have long complained that, although the ancient Egyptians evidently had law codes or statutes, none is extant.<sup>3</sup> Since there are no

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of indeterminate length. . . . Parentheses are used for phrases not in the original added as an aid to the reader; angle brackets are used for words which the copiest [sic] erroneously omitted. . . . For convenience in reference the line or column numbers for many of the texts are provided in the margin. When the passage is set in prose a slash is used to indicate the change of line. . . .

*Id.* at 11.

<sup>2</sup> *Id.* at 3 (footnote omitted).

<sup>3</sup> See e.g., JAMES H. BREASTED, A HISTORY OF EGYPT 81 (1905) [hereinafter BREASTED, HISTORY] ("There was a body of highly elaborate law, which has unfortunately perished entirely."); 165 ("The law . . . has not survived. . . ."); 242 ("Unfortunately the code . . . has perished."). See also ADOLF ERMANN, LIFE IN ANCIENT EGYPT 141 (original English trans. 1894 by H.M. Tirard, 1971) ("The laws which guided the king and courts in their decisions are unfortunately unknown to us. . . . Diodorus informs us expressly of laws made by certain wise kings, and in fact the old chief judge Mentuhotep boasts that he had 'given laws.' Under the 12th dynasty the canon of the old laws was not considered finally closed, and the same is probably true of later times.") (footnotes omitted); Aristide Theodorides, *The Concept of Law in Ancient Egypt*, in THE LEGACY OF EGYPT 290 (J.R. Harris ed., 2d ed. 1971) ("We have, after all, collections of Sumerian, Akkadian, Hittite, and Neo-Babylonian laws—but nothing of the kind from Egypt."). ("The Nile valley has given us no code, nor any copious theoretical treatises, but the application of law is coherent, despite peculiar features of procedure—the important point being that there was a procedure, with laws to organize it.) *Id.* at 320 (footnote omitted); Nili Shupak, *A New Source For the Study of the Judiciary and Law of Ancient Egypt: "The Tale of the Eloquent Peasant"*, 51 J. NEAR E. STUD. 1, 9 (1992) ("No codex has so far been found even though the classical writers mention the existence of one; it is also alluded to in Egyptian writings." (footnote omitted)), ("Was there a codex similar to those of Egypt's neighbors Mesopotamia, Israel, and the Hittites? This question is as yet unanswerable, although the possibility must be given serious consideration." (citing myriad references in footnote 34 for the existence of a law code)); David Taylor, *Law under*

written laws that survive, scholars have turned to contracts, wills, deeds, and accounts of criminal trials as sources for ancient Egyptian law.<sup>4</sup> From these sources we know that the ancient Egyptians had a functional legal system<sup>5</sup> and, apparently, followed legal precedent using a principle similar to our

*the Pharaohs* 6 POL'Y REV. 66 (1980) ("Although no actual code of ancient Egyptian law has been preserved there can be no doubt that there was a highly elaborate body of law and it is very probable that some sort of code was in existence as early as the 12th dynasty (c. 2,000 BC) if not before. There were certainly statutes as long ago as 3,000 BC but it is not known precisely what those statutes enacted."). See also LEXICON DER AGYPTOLOGIE, Vol. 5 (1984), "Recht" 185 [hereinafter LEXICON].

<sup>4</sup> "Most of the material available regarding the legal aspects of life in ancient Egypt pertains to contracts and other legal documents, as well as to literary works not directly connected with the legal system." Shupak, *supra* note 3, at 1; "The legal documents which have been preserved are less numerous than one might have expected. Some wills were discovered . . . , as well as deeds of sale, census-lists, &c." SIR ALAN GARDINER, *EGYPTIAN GRAMMAR* 23 (3d ed. 1978) (footnote omitted). See also Taylor, *supra* note 3, at 66 ("Most often the nature of the law has to be deduced from the legal documents of which a small number has survived from the Old Kingdom (2686-2160 BC).").

<sup>5</sup> "In the light of the available sources, it is possible to reconstruct the judiciary and law of the land of the Pharaohs [*sic*]. What emerges is a highly developed legal system evolving steadily over many generations." Shupak, *supra* note 3 at 1. Compare *The Admonitions of an Egyptian Sage* where the protagonist describes the disorderly nature of Egypt when the judicial system was not functioning as it should:

Indeed, the laws / of the council chamber are thrown out; indeed, men walk on them in public places, and poor men break them up in the streets.

Indeed, the poor man has attained to the state of the Nine Gods, and the erstwhile procedure of the House of the Thirty is divulged.

Indeed, the great council-chamber is a popular resort, and poor men come and go in the Great Mansions.

SIMPSON, *supra* note 1, at 218 (footnotes omitted). Breasted translates the same passage as follows:

the laws of the judgment-hall are cast forth, men walk upon [them] in the public places, the poor break them open in the midst of the streets. Indeed, the poor man (thus) attains to the power of the Divine Ennead; that (old and respected) procedure of the Houses of the Thirty (Judges) is divulged. Indeed, the great judgment-hall is [thronged], poor men go and come in the Great Houses (law-courts). . . .

JAMES H. BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT IN ANCIENT EGYPT* 205 (1912) [hereinafter BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT*].

"The term for law in Egyptian is *hp*. The application of the law is in the hands of a judge who, should 'guide' (*ssm*) 'according to the law (*r hpw*).'" Shupak, *supra* note 3, at 8.

*stare decisis*.<sup>6</sup> This article takes a different approach: a law and literature approach to the study of ancient Egyptian law.<sup>7</sup> Specifically, I have chosen

<sup>6</sup> See LEXICON, *supra* note 3, at 186. Theodorides quotes an "Instruction" which "must go back to the Thirteenth Dynasty":

As for the office in which you hold audience, it includes a large room which contains [the records] of [all] the judgements, for he who must practice justice before all men is the vizier . . . Do not act as you please in cases where the law to be applied is known. . . .

Theodorides, *supra* note 3, at 309.

According to Taylor, "The principle of *stare decisis* is not a western notion. The Egyptian courts based much of their law on precedent and there are examples of judgements based on decisions many hundreds of years old." Taylor, *supra* note 3, at 67. In the *Installation of the Vizier*, the vizier learns that "when a petitioner comes from Upper or Lower Egypt (even) the whole land, [he should] see to it that . . . everything is done according to the custom thereof, [giving] to [every man] his right." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 241.

The ancient Egyptians revered the *status quo* as much as, or perhaps more than, any civilization ever has.

[O]ne of the most characteristic traits of the Egyptian habit of mind . . . [was] the extraordinary attachment to the traditional as opposed to the actual, in fact a conservatism of expression without parallel elsewhere in the world. No other people has ever shown a greater reverence for what was by them termed "the time of the ancestors", "the time of the god" or "the first occasion". Occasionally this love of the time-honoured and the typical led to downright falsification.

SIR ALAN GARDINER, EGYPT OF THE PHARAOHS 56 (1961) [hereinafter GARDINER, PHARAOHS]. The changes in Amenhotep IV's religious practice and artistic convention were short-lived. Also, the violent reaction to those changes after his death illustrates the ancient Egyptian veneration for the traditional and the *status quo*.

<sup>7</sup> Edmund Meltzer (who taught the author Middle Egyptian at the University of North Carolina) has questioned the legitimacy of extrapolating ancient Egyptian law by studying literary texts. See Edmund S. Meltzer, Book Review, 104.2 J. AM. ORIENTAL SOC'Y 363 (reviewing ROBERT PARANT, L'AFFAIRE SINOUHE. TENTATIVE D'APPROACHE DE LA JUSTICE REPRESSIVE ÉGYPTIENNE AU DEBUT DU II MILLENAIRE AV. J.C. (1982)). "The argument by which he [*i.e.*, Parant] justifies his approach is simply that the narrative 'reflects the society, the beliefs, the philosophy and the justice of its times,' and that it 'contains elements sufficient to characterize a judicial affair.'" *Id.* at 363. Meltzer notes that he has reservations about "this methodological level." *Id.* "The use of literary or non-legal texts as sources for legal concepts and procedures involves several caveats, including (1) the author's level of legal knowledge, (2) the degree of legal verisimilitude expected or demanded by the audience, and (3) the degree to which legal realism is subordinated to dramatic action or narrative conventions." *Id.* Nevertheless, many scholars have argued rather convincingly that such a law and literature approach is sound. See *e.g.*, RICHARD POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 1-17 (1988) (discussing and citing numerous

two works of Middle Egyptian<sup>8</sup> fiction: *King Cheops and the Magicians* and *The Tale of the Eloquent Peasant*.<sup>9</sup> My focus is on the way that the

works validating literature as an appropriate field from which to mine legal insight); JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (1973); Sanford Levinson, *Law as Literature*, 60 TEX. L. REV. 373 (1982); Richard Weisberg, *Coming of Age Some More: "Law and Literature" Beyond the Cradle*, 13 NOVA L. REV. 107 (1988); Robert H. Weisberg, *The Law-Literature Enterprise*, 1 YALE J.L. & HUMAN. 1 (1988); Richard Weisberg, *Family Feud: A Response to Robert Weisberg on Law and Literature* 1 YALE J.L. & HUMAN. 69 (1988); Marijane Camilleri, Comment, *Lessons in Law From Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATH. U. L. REV. 557 (1990).

Furthermore, Gardiner, in discussing the reliability of sources for the Middle Kingdom, states:

If it be asked where our best historical material is to be found, our answer may seem to be almost a contradiction in terms; it is to be found in Egyptian fiction, where the authors were able to depict existing conditions and to vent their feelings with a freedom impossible when the predominant intention was that of boasting.

GARDINER, PHARAOHS, *supra* note 6, at 61.

Moreover, "Egyptian literature was . . . essentially secular in its *raison d'être*. It had an independent existence and was cultivated for its own sake, for the mere pleasure it gave, and for the benefit of society and mankind." Georges Posener, *Literature*, in *THE LEGACY OF EGYPT* 220, 251 (J.R. Harris ed., 2d ed. 1971) [hereinafter Posener, *Literature*]. See also *Id.* at 252.

Nevertheless, any reconstruction of this type is admittedly tentative. Gardiner reminds us that even with respect to what we might call Egyptian History: "It must never be forgotten that we are dealing with a civilization thousands of years old and one of which only tiny remnants have survived. What is proudly advertized as Egyptian history is merely a collection of rags and tatters." GARDINER, PHARAOHS, *supra* note 6, at 53.

<sup>8</sup> "Middle Egyptian, as here understood, is the idiom employed in the stories and other literary compositions of the Middle Kingdom (Dynasties IX-XIII, roughly from 2240 to 1740 B.C.), as well as in the public and private monumental inscriptions of that period and also far down into the Eighteenth Dynasty (1573-1314 B.C.)." GARDINER, *EGYPTIAN GRAMMAR*, *supra* note 4, at 1. "[T]he period covered by Middle Egyptian may be considered the classical age of Egyptian literature." *Id.* at 2.

<sup>9</sup> In a recent article, Nili Shupak persuasively argues that

[a]n analysis of [*The Tale of the Eloquent Peasant*] from the point of view of content, form, and terminology, on the one hand, and a comparison with other works involved with the judiciary, on the other, will demonstrate that this work should be added to the body of sources which, although already far from meager, can benefit from additional information about the law of ancient Egypt.

Shupak, *A New Source*, *supra* note 3, at 1-2 (footnote omitted). According to Shupak, this tale is especially useful for legal study because it "has a well-founded juridical background."

characters treat each other, their property and the property of others, and the ways that the characters resolve disputes.<sup>10</sup> Part I of this Article summarizes these two works of fiction. Part II analyzes the stories from a legal perspective, examining the texts for legal doctrine and principles in several fundamental areas of law: civil procedure; tort; contract; property; persons & family; and crime. Clearly, the ancient Egyptians did not recognize these discrete legal categories. Admittedly, they are modern constructs. Egyptian law was imbued with custom, religion, magic, and complex power hierarchies more than independent areas of law such as property, torts, or contracts. Nevertheless, I use modern American law and its separate substantive classifications merely as a point of comparison. I hope that the references to modern American law will provide a "peg" on which to hang the correspondence between the familiar and the unfamiliar. In this section, my goal is not to create a definitive work on Egyptian substantive law nor even to provide a comprehensive analysis of *all* law that can be deduced from these two stories. Rather my aim merely is to dig a little more deeply into the mode of inquiry whose surface Shupak scratched.<sup>11</sup> This Part also considers what the tales tell us about broader legal concepts: ancient Egyptian attitudes towards justice and jurisprudence. The Article concludes in Part III by acknowledging the fledgling nature of this investigation and by suggesting other possible ways to expand the exploration of ancient Egyptian law.

In many respects, this Article may be considered a work of legal history more than one of "Law & Literature." I am using fiction as evidence of law and legal philosophy. But the evidence is flawed. It is flawed for a number of reasons. Although Egyptologists have posited approximate dates for the writing of these works of fiction (based on style, grammar, orthography, and

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*Id.* at 1. *See also id.* at 18. Furthermore, since the Middle Kingdom was a period of significant change, the fiction of this age seems especially appropriate for legal analysis. Breasted remarked that the writers of this era "were perfectly conscious that they were thinking upon new lines, and that they had departed far from the wisdom of their fathers." BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT* *supra* note 5, at 199-200. Posener relates that the "conflicts and upheavals" of the First Intermediate Period (c. 2181-2052)—the period that immediately preceded the Middle Kingdom—were reflected in the literature. Posener, *Literature*, *supra* note 7, at 227.

<sup>10</sup> In this regard, this Article is in the tradition of William Ian Miller, *Beating Up on Women and Old Men and Other Enormities: A Social Historical Inquiry into Literary Sources*, 39 MERCER L. REV. 753 (1988).

<sup>11</sup> *See generally* Shupak, *supra* note 3.

the like), they are still, nevertheless, only approximations. Furthermore, the works describe events that occurred in the past—even relative to the time of their writing. Thus, one is left to wonder whether the social and legal landscape that they depict reflects the social and legal landscape that existed at the time in which the stories are supposed to have taken place or at the time that the works were written. This problem is perhaps inherent in any study of law that relies on historical literature. Nevertheless, it is a problem that must be acknowledged. Therefore, it is difficult, if not impossible, at this juncture, to say what law is reflected in *The Eloquent Peasant* and *Cheops and the Magicians*. Some of the information may be a vestige from the times portrayed in the stories themselves but much also must be a reflection of the law in place at the time when they were written.<sup>12</sup>

## I. THE TALES

### A. *Cheops & The Magicians*

Papyrus Westcar “contains a series of tales woven together by a narrative frame.”<sup>13</sup> Lichtheim translates the third, fourth, and fifth tales of Papyrus Westcar, and calls this section “Three Tales Of Wonder.”<sup>14</sup> According to Lichtheim, the first two tales are fragmentary, but these three tales are, for the most part, complete.<sup>15</sup> King Khufu’s<sup>16</sup> sons take turns telling tales.

<sup>12</sup> MIRIAM LICHTHEIM, *ANCIENT EGYPTIAN LITERATURE VOLUME I: THE OLD AND MIDDLE KINGDOMS* 215 (1975).

<sup>13</sup> For an additional summary see, e.g., Posener, *Literature*, *supra* note 7, at 236-37.

<sup>14</sup> LICHTHEIM, *supra* note 12, at 215-22.

<sup>15</sup> *Id.* at 215.

<sup>16</sup> Khufu, or Cheops, as the Herodotus called him, is best known as the builder of the Great Pyramid at Giza. Breasted recognized him as the first king of the Fourth Dynasty, and dates him roughly from 2900 to 2877 B.C. BREASTED, *HISTORY*, *supra* note 3, at 597. Gardiner lists Khufu as the second king of the Fourth Dynasty (making Snofru the first) and posits that Khufu reigned for 23 years from approximately 2596-2573 B.C. GARDINER, *PHARAOHS*, *supra* note 6, at 434. Grimal places him as the second king of the Fourth Dynasty, after Snofru, and assigns 2625-2510 B.C. as the dates for the entire dynasty. NICOLAS GRIMAL, *A HISTORY OF ANCIENT EGYPT* 390 (Ian Shaw trans. 1992). “It is not even known whether Cheops’ reign lasted for twenty-three years, as the Turin Canon suggests, or sixty-three years, which is the length ascribed to him by Manetho.” *Id.* at 71.

Even early in the Old Kingdom the ancient Egyptians had developed a centralized state with a complex bureaucracy, tax system, and judiciary. See LEXICON, *supra* note 3, at 182-83.

Simpson notes that "[t]he papyrus was inscribed in the Hyksos period before Dynasty 18, but the composition appears to belong to Dynasty 12; the events are set in the Old Kingdom."<sup>17</sup> In addition to the three complete tales translated by Lichtheim, Simpson translates the first two fragmentary tales. Simpson gives the piece the title "King Cheops and the Magicians."<sup>18</sup> The first tale contains nothing more than King Khufu's command that provisions be offered to the memory of King Djoser<sup>19</sup> (since the tale that was told was supposed to have taken place during the reign of Djoser).

The second tale, which is supposed to have taken place during the time of King Nebka,<sup>20</sup> is about a man named Webaoer whose wife commits adultery with a townsman. Webaoer uses some self help. He fashions a voodooesque crocodile doll out of wax. The crocodile grows into the genuine

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<sup>17</sup> SIMPSON, *supra* note 1, at 15. Lichtheim states that "the works are written in classical Middle Egyptian; [and] the papyrus dates from the Hyksos period." LICHTHEIM, *LITERATURE*, *supra* note 12, at 9. Classical Middle Egyptian was the writing of the Middle Kingdom. In *Egypt of the Pharaohs*, Sir Alan Gardiner placed both the 11th and 12th Dynasties in the Middle Kingdom. See GARDINER, *PHARAOHS*, *supra* note 6, at 107-46; 428-30. Gardiner calculated that the 11th Dynasty began in 2134 B.C. and that the 12th Dynasty probably ended in 1786 B.C. In his time-honored *A History Of Egypt*, James Henry Breasted ascribed the 11th and 12th Dynasties the dates 2160-1788 B.C. BREASTED, *HISTORY*, *supra* note 3, at 598. Gardiner placed the Hyksos in Egypt roughly from 1785-1575 B.C. See GARDINER, *PHARAOHS*, *supra* note 6, at 147-76, 439-43. Breasted suggested 1788-1580 B.C. as dates for the 13th-17th Dynasties, "Including the Hyksos, 208 years." BREASTED, *HISTORY*, *supra* note 3, at 599. Grimal places the 11th and 12th Dynasties in the Middle Kingdom, dating the 11th Dynasty from 2040-1991 B.C. and the 12th Dynasty from 1991-1785 B.C. GRIMAL, *supra* note 16, at 391. He gives the Hyksos tenure in Egypt from 1674-1578 B.C. *Id.* at 392. See also Posener, *Literature*, *supra* note 7, at 236-37 ("The Westcar papyrus dates from the Hyksos period (1652-1554 B.C.) and, to judge from the language, the text which it reproduces is not much older, though the stories which it contains take place during the old kingdom, some thousand years earlier.").

<sup>18</sup> SIMPSON, *supra* note 1, at 15-30.

<sup>19</sup> Many Egyptologists state that Djoser was the first king of the Third Dynasty. It was under Djoser that the so-called "step pyramid" was built. See generally GARDINER, *PHARAOHS*, *supra* note 6, at 72-76. Gardiner gives a conjectural date of 2700 B.C. *Id.* at 433. Breasted gives 2980 B.C. BREASTED, *HISTORY*, *supra* note 6, at 597. Grimal places Djoser as the second king of the Third Dynasty (after Nebka) and suggests that the Third Dynasty began about 2700 B.C. GRIMAL, *HISTORY*, *supra* note 16, at 389.

<sup>20</sup> Simpson relates that "Nebka of Dynasty 3 is a predecessor of Cheops." SIMPSON, *supra* note 1, at 16 n.2. Gardiner notes that the Turin Canon grants King Nebkarē 6 years and designates him as the third king of the Third Dynasty. GARDINER, *PHARAOHS*, *supra* note 6, at 433. Grimal states that Nebka was the first king of the Third Dynasty and places him around 2700 B.C. GRIMAL, *HISTORY*, *supra* note 16, at 63, 389.



article—a full fledged amphibian—when the adulterer returns on the next day to swim in Webaoner's lake. The crocodile attacks the townsman and takes him underwater for seven days. Meanwhile, Webaoner is visiting King Nebka. Webaoner then brings Nebka back home with him. Nebka witnesses first hand the townsman's punishment and expressly approves, telling the crocodile: "Take what belongs to you!"<sup>21</sup> Whereupon, the crocodile once again drags the townsman back under the water, never to be seen again.<sup>22</sup>

The third tale is supposed to have taken place during the reign of King Snefru.<sup>23</sup> King Snefru is unhappy and bored. Upon the advice of his lector priest and scribe, Djadjaemonkh, Snefru decides to amuse himself by having twenty young, scantily-clad<sup>24</sup> women row a boat on his lake.<sup>25</sup> When one of the young women drops her "fish-shaped charm of new [turquoise]"<sup>26</sup> into the lake, she becomes so upset that she is unable to continue rowing and, consequently, the other rowers on her side of the boat stop rowing also. Snefru asks her why she has stopped: "Then [His] Majesty said to her: [Why] do [you] not row? She said: A fish-shaped charm of new [turquoise] fell into the water. And [His Majesty said to her]: Would you like one to replace [it]? But [she said]: I [prefer] my own [to a look-alike]."<sup>27</sup> Snefru then again calls his lector priest, Djadjaemonkh. Djadjaemonkh parts the water and retrieves the charm.<sup>28</sup> Thereafter, Djadjaemonkh puts the lake

<sup>21</sup> SIMPSON, *supra* note 1, at 18.

<sup>22</sup> *Id.* ("The crocodile then went down to the [depths] of the lake, and no one knew the place where he went with him.")

<sup>23</sup> Breasted places Snefru at the end of the Third Dynasty and ascribes the dates 2980-2900 B.C. for the Third Dynasty. BREASTED, *HISTORY*, *supra* note 3, at 597. Gardiner puts Snefru at the beginning of the Fourth Dynasty and gives him a reign of 24 years, with the Fourth Dynasty beginning at 2620 B.C. GARDINER, *PHARAOHS*, *supra* note 6, at 434. Grimal assigns Snefru as the first king of the Fourth Dynasty. GRIMAL, *supra* note 16, at 390.

<sup>24</sup> That they were young is clear: "Let there be brought to me twenty women, / the most beautiful in form, with hair well braided, with [firm] breasts, not yet having opened up to give birth." SIMPSON, *supra* note 1, at 20. That they were scantily-clad is equally clear: "Let there be brought to me twenty nets, and let these nets be given to these women when they have taken off their clothes." *Id.*

<sup>25</sup> This is probably some evidence of the extreme authority of the Old Kingdom monarchs. Snefru does not need a legitimate purpose to use government property and to spend state resources. Indeed, this seems to be a rather frivolous way for a king to be spending his time.

<sup>26</sup> SIMPSON, *supra* note 1, at 20.

<sup>27</sup> SIMPSON, *supra* note 1, at 20-21 (footnote omitted).

<sup>28</sup> "Then said the chief lector Djadjaemonkh his magic sayings. He placed one side of the water of the lake upon the other, and lying upon a potsherd he found the fish-shaped charm. Then he brought it back and gave it to its owner." SIMPSON, at 21.

water back in its normal state and the rowing extravaganza resumes: "His Majesty passed a holiday with the entire palace. . . ."<sup>29</sup>

King Khufu's son, Hardedef, tells the fourth tale about a 110 year old man named Dedi. Unlike the tales told by his brothers, Hardedef's story is about contemporary events.<sup>30</sup> According to Hardedef, Dedi can "reattach a head which has been cut off. . . ."<sup>31</sup> Khufu is intrigued and bids Hardedef fetch Dedi. When Hardedef returns with Dedi, Khufu is anxious to witness the reuniting of head and body trick.

His Majesty said: Let there be brought to me the prisoner who is in confinement, that his punishment may be inflicted. And Dedi said: But not indeed to a man, Sovereign, l.p.h.,<sup>32</sup> my lord. For the doing of the like is not commanded unto the august cattle. So there was brought to him a goose, and its head was severed.<sup>33</sup>

Dedi then successfully performs the trick on the goose, then a waterfowl, and lastly an ox.<sup>34</sup>

<sup>29</sup> *Id.*

<sup>30</sup> "The king's son Hardedef arose to speak, and he said: [You have heard examples] of the skill of those who have passed away, but there one cannot know truth [from falsehood]. [But there is with] Your Majesty, in your own time. . . ." SIMPSON, at 22.

<sup>31</sup> *Id.* According to Hardedef, Dedi also "knows the number of the secret chambers of the sanctuary of Thoth." LICHTHEIM, *supra* note 12, at 218. Khufu finds this fact very interesting because he "had been spending time searching for the secret chambers of the sanctuary of Thoth in order to copy them for his temple." *Id.* (emphasis added). This passage suggests that acquiring and copying such secret architectural details was not prohibited. Modern American copyright and trade secret laws might treat this type of copying differently. We would, however, need to know much more about the nature of the secret chambers in order to determine whether American trade secret or copyright laws would be, theoretically (and anachronistically), applicable.

<sup>32</sup> In his introduction, Professor Simpson explains: "The tag, 'may he live, prosper, and be in health,' frequently follows a royal name; following the usual custom, it is rendered in our texts as 'l.p.h.'" SIMPSON, *supra* note 1, at 11.

<sup>33</sup> SIMPSON, *supra* note 1, at 24. Lichtheim translates the passage as follows: "'Have brought to me a prisoner from the prison, that he may be executed.' Said Djedi: 'But not to a human being, O King, my lord! Surely, it is not permitted to do such a thing to the noble cattle!'" LICHTHEIM, *supra* note 12, at 219. Lichtheim also notes that "noble cattle" refers to mankind. *Id.* at 222 n.4.

<sup>34</sup> SIMPSON, *supra* note 1, at 24-25.

Khufu presently asks Dedi about the chest containing the secret chambers of Thoth.<sup>35</sup> Dedi answers that he does not know the number of secret chambers but tells Khufu where the chest is. Thereupon, Khufu orders Dedi to bring the chest to him. Dedi, nevertheless, explains that the eldest of the three children of Reddedet will eventually bring it to him.<sup>36</sup>

Next the yarn shifts to the fifth tale: an account of the birth of three children, the triplet kings. Re, the principal sun god, instructs Isis, Nephthys, Meskhenet, Heket, and Khnum to go and assist Reddedet<sup>37</sup> in childbirth. Re assures the deities that "they shall build the shrines in your towns, they shall provision your altars, they shall renew your offering tables, and they shall increase your divine offerings."<sup>38</sup> The goddesses disguise themselves as musicians "with Khnum accompanying them carrying the birthing-stool,"<sup>39</sup> and go to Reddedet's house. There Rewosre, Reddedet's husband,

<sup>35</sup> *Id.* at 25. Thoth, usually depicted in Egyptian mythology as either an ibis or a baboon, was the deity who invented writing, protected scribes, and was known as both the "lord of time" and "reckoner of years." MANFRED LURKER, *THE GODS AND SYMBOLS OF ANCIENT EGYPT* 121 (Barbara Cummings trans., 1980) (1974).

<sup>36</sup> "The triplets . . . are the kings Userkaf, Sahure, and Neferirkare, the first three kings of the Fifth Dynasty." LICHTHEIM, *supra* note 12, at 222 n.7. This tale bespeaks the true propagandistic nature of Papyrus Westcar. "The real substance of the composition is certainly the prophecy of the birth of the kings, and the other tales merely lead up to it." SIMPSON, *supra* note 1, at 15. Breasted dates the Fifth Dynasty from 2750-2625 B.C. and gives Userkaf 7 years' reign, Sahure 12, and Neferirkare an undetermined length of time as monarch ("x"). BREASTED, *HISTORY*, *supra* note 3, at 597. Grimal dates the Fifth Dynasty from 2510-2460 B.C. and states that "[h]is reign was probably brief, nearer to the Turin Canon's seven years than Manetho's twenty-eight. . . ." GRIMAL, *supra* note 16, at 390, n.76.

<sup>37</sup> This story provides the literary tradition for the beginning of the Fifth Dynasty. There is, however, evidence that some believe is contradictory in the archaeological record. According to Gardiner, a woman named Khantkawes was the "owner" of what is called "the Unfinished or Fourth Pyramid" and was, perhaps, the

ancestress of Dyn. V, though that opinion is in conflict with the tradition preserved in a story of the late Middle Kingdom, according to which the first three kings of Dyn. V were triplet sons of the wife of a simple priest of Re in the Delta town of Sakhebu.

GARDINER, *PHARAOHS*, *supra* note 6, at 83-84 (footnote omitted).

<sup>38</sup> SIMPSON, *supra* note 1, at 26-27. Simpson adds a footnote explaining that this is "[a] graphic list of the usefulness of the kings to the gods." *Id.* at 27 n.17. Apparently Re's statement is merely a reminder to the gods of what kings do for them as a matter of course rather than any type of *quid pro quo* contractual arrangement (*i.e.*, There is nothing to suggest that these Fifth Dynasty kings will perform these sacred rights as their part of a contractual bargain only if the childbirth gods assist Reddedet).

<sup>39</sup> SIMPSON, *supra* note 1, at 27.

tells them: "My ladies, see, there is a woman in labor, and her bearing is difficult."<sup>40</sup> They, in turn, reply: "Let [us] see her, for we are knowledgeable about childbirth."<sup>41</sup> He responds: "Proceed!"<sup>42</sup> Thereupon they go to Reddedet's room, and "[t]hen they locked the room on her and on themselves."<sup>43</sup>

After Reddedet has given birth to the three kings, Rewosre thanks the divinities for their midwifery and says: "My ladies, what can I do for you? Please give this corn to your birthing-stool bearer, and take it as payment for [making beer]."<sup>44</sup> Then "Khnum placed the sack on his back . . . [and] . . . they proceeded to the place / from which they came."<sup>45</sup>

Immediately upon their return, Isis exhorts the other goddesses to go back again to Rewosre and Reddedet so that they can "perform[] a marvel for these children. . . ."<sup>46</sup>

So they fashioned three royal crowns, l.p.h., and they placed them in the corn. Then they caused the heavens to turn into a storm and rain, and they turned back to the house and said: *Would you please put the corn here in a locked room until we can come back on our northward journey? So they placed the corn in a locked room.*<sup>47</sup>

About two weeks later, Reddedet asks her maid whether the house has been prepared. The maid replies that everything is in order except that the beer-making jars have not been brought. The maid explains that the jars have not been brought because they did not have "anything here for [(beer-) making], except for some corn of these musicians, which is in the room with their seal."<sup>48</sup> Without hesitating, Reddedet instructs the maid: "Go and bring some of it, for Rewosre will give them its equivalent when he returns."<sup>49</sup>

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 28.

<sup>45</sup> *Id.* at 29.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* (emphasis added) (footnote omitted).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

The tale, however fails to disclose whether Reddedet ever actually took and used the corn to make beer. Probably she did not, for when the maid and Reddedet "heard the sound of singing, music, dancing, and exaltations—everything which is done for a king—in the room," and after Reddedet realized that the sounds were coming from the corn sack, "(Then she placed it) in a chest which was (in turn) placed in another sealed box tied with leather thongs, and she put it in a room with her stores and she sealed it off."<sup>50</sup> Then, when Rewosre returns, they celebrate their good fortune.

The story abruptly changes at this point in the text.

After some days had passed, Reddedet had an argument with the maidservant, and she had her punished with a beating. So the / maidservant said to the people who were in the house: [Shall this be tolerated?] She has given birth to three kings, and I am going and I will tell it to His Majesty the King of Upper and Lower Egypt, Khufu, the vindicated!<sup>51</sup>

So the maid sets out to travel to King Khufu. The maid, however, never makes it to Khufu. On her way she stops to see her half-brother to ask him to accompany her. He disapproves of her plan, chastises her, then gives "her a sound beating."<sup>52</sup> A crocodile then catches her when she attempts to get a drink of water. The papyrus, unfortunately, breaks off as the brother relates her sad fate to Reddedet.<sup>53</sup>

### B. *The Eloquent Peasant*

*The Tale of the Eloquent Peasant* is a "long work preserved in four papyrus copies, all dating from the Middle Kingdom."<sup>54</sup> According to

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<sup>50</sup> *Id.* at 29-30.

<sup>51</sup> *Id.* at 30. Dr. Robert Bianchi pointed out to me that the fact that Khufu is referred to here as "the vindicated" and not "l.p.h." may indicate that he was deceased.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> LICHTHEIM, *supra* note 12, at 169. Lichtheim notes that "[t]he individual copies are incomplete, but together they yield the full text, which comprises 430 lines." *Id.* See also Shupak, *supra* note 3, at 2 ("This work was written at the beginning of the Middle Kingdom and was preserved on four papyri of that time." (footnote omitted)). See also *supra* note 17

Lichtheim:

The text consists of a narrative frame and nine poetic speeches. It is both a serious disquisition on the need for justice, and a parable on the utility of fine speech. The connection between the two themes is achieved by means of an ironic device in the narrative frame: after the peasant has been robbed and has laid his complaint before the magistrate in a stirring plea, the latter is so delighted with this unlearned man's eloquence that he reports it to the king; and on the king's orders the magistrate goads the peasant to continue pleading until the poor man is completely exhausted. Only then does he receive justice and ample rewards.<sup>55</sup>

Khunanup, the peasant protagonist finds trouble waiting for him on the road. Khunanup leaves his wife at home in the Wadi Natrun and heads for

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regarding dates for the Middle Kingdom in Egypt.

<sup>55</sup> LICHTHEIM, *supra* note 12, at 169. Gardiner summarized the tale as being a story of a peasant from the outlying oasis of the Wādy Nātrun who was robbed of his donkey and his merchandise on the way to Hēracleopolis, but poured out his complaints to the thief's liege-lord with such eloquence that he was detained in order that his supplications, reproaches, and invective might be written down for the sovereign's delectation.

GARDINER, PHARAOHS, *supra* note 6, at 112. Nili Shupak condenses the tale in this way:

It is the tale of a peasant who is tricked out of his goods by a low-ranking official named Nemty-nakht. The peasant turns to the high steward (*imy-r-pr*), Rensi son of Meru, the acting judge, and demands justice. After consulting with his advisers (*srw*), the high steward takes the story to the king, who orders him to have the peasant persist in his complaints and write his words down so that the king might enjoy the peasant's rhetoric. Thus, in a series of nine complaints, the peasant presents his case to the high steward after which the king orders Rensi to pronounce the verdict, and the peasant's goods are returned to him.

Shupak, *A New Source*, *supra* note 3, at 3. For another perceptive summary of this tale see BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 216-26. Breasted interprets the story in macroscopic terms as evidence that Egypt was evolving towards attaining social justice for the lower classes. *Id.* See also *Id.* at 353. See also Posener, *Literature*, *supra* note 7, at 228-29; 254-55, and GARDINER, EGYPTIAN GRAMMAR, *supra* note 4, at 24a.

Ninsu in Egypt<sup>56</sup> taking with him his asses and a variety of goods to trade.<sup>57</sup> As Khunanup approaches the house of Nemtynakhte (a tenant of Rensi, "the High Steward"<sup>58</sup>), Nemtynakhte spies Khunanup and immediately covets his possessions. "O that I had some potent idol, that I might steal the peasant's goods from him!"<sup>59</sup> exclaims Nemtynakhte.<sup>60</sup> So, Nemtynakhte devises a plan. He spreads a piece of cloth on the narrow road so that it overlaps the river on one side and his field of barley on the other. Thus, when Khunanup reaches the cloth with his asses, he is forced to go into the river, onto the cloth, or into Nemtynakhte's barley. Confronted by this predicament, Khunanup appeals to his adversary's sense of reason: "the bank is high and the (only other) way is under barley, and you are obstructing our road with your clothes. Will you not let us pass upon the road?"<sup>61</sup> However, it is too late. No sooner does Khunanup ask Nemtynakhte to clear the road than one of his asses, obviously tempted by the grain, takes a bite of barley.<sup>62</sup> Immediately, the two argue over the appropriate remedy. Nemtynakhte threatens to take the ass "because of its eating my barley. . . ."<sup>63</sup> The peasant counters: "My way is good,<sup>64</sup> and one (wisp only)

<sup>56</sup> Simpson relates that Ninsu is Herakleopolis in Middle Egypt. SIMPSON, *supra* note 1, at 32 n. 3. The trip from Wadi Natrun to Herakleopolis is about 100 miles.

<sup>57</sup> So the peasant went down to Egypt, and he loaded his asses with reeds, *redemet*-plants./ natron, salt, wood from the [Hes]-tiu country, wands of *awent*-wood from the Farafra Oasis./ panther skins, jackal hides, *nesha*-plants, *kheperur*-plants./ *sahut*, *saksut*-pellets, *misut*-plants, *senet*-stones, *aba*-stones./ *ibsa*-plants, *inbi*-plants, pigeons, *naru*-birds (ostriches?), *weges*-birds./ *weben*-plants, *tebes*-plants, *gengen*-pellets, hair fruit, and *inset*-pellets./ being full measure of all goodly products of the Wadi Natrun.

SIMPSON, *supra* note 1, at 31-32. (footnote omitted).

<sup>58</sup> *Id.* at 32. (footnote omitted).

<sup>59</sup> *Id.*

<sup>60</sup> Apparently, such an idol would give him only the physical strength to take Khunanup's goods, not the legal right.

<sup>61</sup> SIMPSON, *supra* note 1, at 33.

<sup>62</sup> "Now when he had finished uttering [this] speech, one of these asses filled/ his mouth with a wisp of barley." *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Simpson footnotes this phrase as follows: "I.e. I am ready to oblige you." SIMPSON, *supra* note 1, at 33 n. 5. Nevertheless, the sense of the phrase seems almost legal. The peasant uses it on a number of occasions as if to say: "I intend no wrongdoing." Shupak interprets this line, " 'My way is good' (*nfr mtn.i*)" as "meaning, my intentions are pure, I am an honest person." Shupak, *supra* note 3, at 10 (footnote omitted).

has been damaged. It is for its (the wisp's) price that I will buy back my ass if you take possession of it/ for a (mere) filling of its mouth with a wisp of barley."<sup>65</sup> At this point, Nemtynakhte invokes the imprimatur of his landlord (the High Steward), beats Khunanup with a stick, and, finally, takes "away his asses and dr[ives] them to his estate."<sup>66</sup>

Khunanup first argues with Nemtynakhte for ten days, trying to persuade him to listen to reason. After getting nowhere with Nemtynakhte, Khunanup next takes his case to the High Steward, Rensi. Rensi confers with the king, who tells him to have scribes transcribe Khunanup's arguments. The central portion of the story, then, is comprised of Khunanup's nine petitions. At the tale's end, when the High Steward, Rensi, finally delivers his judgment in the case, he grants all of Nemtynakhte's possessions to Khunanup, including his house, as damages.

Then [the High Steward] Rensi, son of Meru, caused two apparitors to go to [fetch Nemtynakhte], / and he was brought in. An inventory was made of [all his goods . . .], his [servants], six persons, apart from [. . .] his barley, his emmer, [his] asses, his pigs, and [his flocks,] and Nemtynakhte's [house was given to the] peasant, / [together with] all his [goods].<sup>67</sup>

Although Nemtynakhte was apprehended, the last few words of the text are lost. Thus, we never learn the ultimate fate of Nemtynakhte.<sup>68</sup>

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<sup>65</sup> SIMPSON, *supra* note 1, at 33.

<sup>66</sup> *Id.* Presumably, he also took all of the peasant's goods that the asses were carrying. In *The Admonitions of an Egyptian Sage*, we find conduct that is nearly identical described: "Indeed, the ways are [. . .], the roads are watched; men sit in the bushes until the benighted traveler comes in order to plunder his burden, and what is upon him is taken away. He is belabored with blows of a stick and murdered." SIMPSON, *supra* note 1, at 217 (footnote omitted).

<sup>67</sup> SIMPSON, *supra* note 1, at 49.

<sup>68</sup> Faulkner's translation closes as follows: "[Then . . .] said [. . .] to Nemtynakhte [. . .] which is in [. . .] (*Last word or words of story lost.*) It has come to an end." SIMPSON, *supra* note 1, at 49. In the reign of the Pharaoh Haremhab (1335-1308 B.C.), there is evidence that he punished this type of behavior severely. In circumstances where "ordinary citizens . . . [were] . . . deprived of their boats and their cargoes, or again . . . [were] beaten and robbed of the valuable hides of their cattle . . . the malefactors in the worst cases . . . [were] . . . docked of their noses and banished to the fortress town of Tjel on the Asiatic border, and the lesser cases punished with a hundred strokes and five open wounds." GARDINER, PHARAOHS,



## II. SUBSTANTIVE LAW

A. *Civil Procedure*

Taylor states that even as early as the Old Kingdom “there existed a system of submitting cases in the form of written briefs.”<sup>69</sup> Taylor outlines procedure during the Old and Middle Kingdoms as follows:

[A]ll kinds of evidence became admissible for consideration by the judges; any and every means were allowed which might assist the court to ascertain truth. On occasions parties had to swear to the truth of their statements and agree to a specific penalty should the statements prove false. The opposing witnesses swore similarly, so that it became a matter of Oath v. Oath. Documentary evidence was regarded as extremely important; following the speeches of both parties or their counsel, documents were presented, further speeches followed and the final decision was taken on the documents. If this were not possible, judgement was invariably based on precedent.<sup>70</sup>

Theodorides cites one 18th Dynasty papyrus that presents a glimpse of the civil procedure in existence at that time:

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*supra* note 6, at 244-245.

This tale offers at least three types of lessons about ancient Egyptian law. First, the procedure for resolving the dispute—the order and manner of pleading and appeal—sheds light on ancient Egyptian civil procedure. Secondly, the tale primarily concerns a dispute between two characters: Khunanup, the peasant, and Nemtynakhte, a well-to-do tenant of Rensi, “the High Steward.” SIMPSON, *supra* note 1, at 32 (footnote omitted). Therefore, the parties’ conduct and their statements about their dispute reflect certain details of substantive Egyptian laws. Likewise, the decision of the judge (Rensi in this case) also sheds light on a number of other legal principles. Lastly, the peasant’s petitions contain material that appertains to ancient Egyptian attitudes towards justice and jurisprudence. Through a variety of literary devices, these petitions illuminate an ideal of justice in ancient Egypt; what law and justice ought to do and how judges should accomplish their tasks justly.

<sup>69</sup> Taylor, *supra* note 3, at 66.

<sup>70</sup> *Id.* at 68.

The statement given as to the grounds of the decision embraces the factors taken into consideration, followed by the legal basis of the sentence and enacting terms, in which we find the time-honoured formula: A is right, B is wrong. It is apparent from this report that the law invoked envisaged respect for the *res judicata*. It made provision for a "hundred strokes" for any reckless litigant.<sup>71</sup>

The Book of the Dead represents a judgment scene wherein "[t]he judge Osiris is assisted by forty-two gods who sit with him in judgment on the dead."<sup>72</sup>

Theodorides cites a 19th Dynasty text wherein he states that the plaintiff,

in asserting his claims, had to begin by lodging a petition with the vizier, in which he set out the grounds for them. When this petition had been declared admissible and notified to the defendant, who in turn made known his own case, and after each had replied, the vizier opened the hearing. He directed the proceedings, beginning in all probability by making known the arguments of the two parties, questioning them, referring to the evidence, and reserving the right to require fuller information. The vizier presided over the court (there was not normally only one judge in Egypt), but was not acting simply as arbiter; he was the defender of the pharonic order.

There were no professional lawyers pleading instead and in place of their clients, but legal representation was known, and there must, moreover, have been specialized scribes who placed themselves at the disposal of the interested parties.

At the close of his plea . . . [the plaintiff] marshalls his arguments very methodically, demanding that his rights to the property in dispute be recognized. . . . From this it may be inferred that in Egypt legal decisions were made on the basis of documentary proof, supported by witnesses' evidence.<sup>73</sup>

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<sup>71</sup> Theodorides, *The Concept of Law*, *supra* note 3, at 310 (footnote omitted).

<sup>72</sup> BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT*, *supra* note 5, at 300-01.

<sup>73</sup> Theodorides, *supra* note 3, at 311.

*The Tale of the Eloquent Peasant* sheds considerable light on ancient Egyptian civil procedure. After Nemtynakhte had taken Khunanup's asses, beaten him, and had threatened to kill him, Khunanup still tried to convince Nemtynakhte to return his goods to him: "And the peasant spent a period of ten days appealing to Nemtynakhte, but he paid no attention to it."<sup>74</sup> Consequently, Khunanup decided to appeal to Rensi.<sup>75</sup> Throughout, the peasant represents himself and does not hire a litigator on his behalf.<sup>76</sup> Rensi was on his way out of his house when Khunanup arrived. He was

<sup>74</sup> SIMPSON, *supra* note 1, at 34.

<sup>75</sup> "So the peasant went to Ninsu to appeal to the High Steward Rensi, son of Meru. . . ." SIMPSON, *supra* note 1, at 34.

Shupak offers numerous reasons why Rensi could have been the vizier. Shupak, *supra* note 3, at 5-6. It should also be noted that we know a little about the administrative judicial superstructure in ancient Egypt.

That the vizier was the supreme judge was seen from the inscription of Weni, and is reflected in his frequent epithet "prophet of Mā'e, i.e. the goddess of Truth. He prided himself on being accessible to all petitioners, who it was recognized cared more about being allowed to vent their grievances than about having them redressed."

GARDINER, PHARAOHS, *supra* note 6, at 104. Shupak notes that "[t]hree representatives of the judicial hierarchy appear in the story [of *The Eloquent Peasant*]: the king, the high steward (*imy-r-pr*), and the *srw*." Shupak, *supra* note 3, at 5. For a more detailed account of the administrative organization of the judiciary see ERMAN, *supra* note 3, at 87-88 (describing and identifying several different types of judges and their respective jurisdictions). See also Taylor, *supra* note 3, at 67-68 (discussing the various judicial officials and their hierarchy).

<sup>76</sup> Breasted mentions that the ancient Egyptian deceased was expected to "personally represent himself and thus ensure himself the favor of the god in the hereafter." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 287. Perhaps the expectation that the dead would plead their own cases merely mirrors the expectation that the living should plead their own cases. However, in one sense, The Book of the Dead itself functioned like a boilerplate brief for the deceased to present to Osiris. This brief was intended to persuade Osiris and his fellow judges to permit the deceased to enter the Netherworld. Thus, the scribes that produced the scrolls containing The Book of the Dead were like lawyers who represented their clients *via* a written brief before the ultimate judge, Osiris. Breasted notes: "The general reliance upon such devices [*i.e.*, The Book of the Dead] for escaping ultimate responsibility for an unworthy life must have seriously poisoned the life of the people." *Id.* at 309. "In so far as the Book of the Dead had become a magical agency for securing moral vindication in the hereafter, irrespective of character, it had become a positive force for evil." *Id.* Much the same could be said regarding clever lawyers who are able to free the guilty on technicalities or with persuasive rhetoric.

go[ing] down to his courthouse barge."<sup>77</sup> Thus, Khunanup asked:

"May I be allowed to acquaint you with this complaint? Might a servant of your choice be sent to me, through whom I could inform you of it?" So the high steward Rensi, the son of Meru, sent a servant of his choice ahead of him, and this peasant informed him of the matter in all its aspects.<sup>78</sup>

Procedurally, then, a plaintiff initially could take his case directly to the High Steward.<sup>79</sup> In this case, however, the High Steward was too busy. So, it was possible for a plaintiff to request that a subordinate ("a servant of his choice") be sent to the plaintiff.<sup>80</sup> The plaintiff then pleaded his case to the "servant of choice" ("informed him of the matter in all its aspects").

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<sup>77</sup> LICHTHEIM, *supra* note 12, at 171. Certainly, this phrase could be a metaphor for the "ship of state." Shupak interprets the phrase *k3kw n 'rryt* as "boat of the court." Shupak, *A New Source*, *supra* note 3, at 17. He explains: "This object is explained by the custom of Egyptian judges of wandering throughout the kingdom to make themselves available to anyone wishing to approach them on legal matters." *Id.* (footnote omitted). "We may therefore assume that the efficient judicial system of Egypt also included mobile law courts located on boats. . . ." *Id.* at 17-18.

<sup>78</sup> LICHTHEIM, *supra* note 12, at 171. The Federal Rules of Civil Procedure establish the requirements for bringing such a complaint in contemporary American federal courts. A pleading must include:

(1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgement for the relief the pleader seeks.

FED. R. CIV. P. 8(a) (1991).

Khunanup's complaint appears to have included an assumption of Rensi's authority (or jurisdiction) to hear his case. The peasant's pleading may have included his specific complaint as well as a demand for the relief sought, since he described the complaint "in all its aspects."

<sup>79</sup> The peasant apparently assumed that Rensi had plenary authority to hear and determine his complaint. In American civil procedure, it is necessary that a court have jurisdiction over both the parties involved (personal jurisdiction) as well as the type of claim asserted (subject matter jurisdiction); this jurisdiction must be asserted in the initial pleading. See *supra* note 78.

<sup>80</sup> It is possible that the phrase "servant of his choice" has legal significance. See Theodorides, *supra* note 3, at 315 (noting that "[e]veryday vocabulary could . . . embrace legal notions, with the result that one must be aware of concluding from the apparent absence of technical terms that there were no juridical concepts.").

Apparently, it was at this stage of pleading that Khunanup explained the facts of his dispute with Nemtynakhte and argued points of law.<sup>81</sup> We next discover that Rensi takes up the matter with "the magistrates who were with him."<sup>82</sup> Presumably, then, between the time that Khunanup pled his case to Rensi's servant of choice and the time that he (Rensi) began discussing the case with other magistrates, the "servant of choice" must have related the affair to Rensi. There is an additional procedural lacuna. The author fails to recount at what point Rensi formed his opinion that Khunanup was telling the truth and that Nemtynakhte had acted wrongfully. Perhaps the servant of choice made some findings of fact and reported them along with his legal conclusions to Rensi?<sup>83</sup> Perhaps Rensi discussed the matter with his servant of choice and then, based on that discussion, reached his conclusion? Perhaps the servant of choice merely transcribed or listened to Khunanup's arguments and then reported them to Rensi, who, in turn, decided the matter alone? Rensi, nevertheless, believed that Nemtynakhte had acted improperly and, upon discussing this case with other magistrates (*srw*), "denounced this Nemtynakht. . . ."<sup>84</sup>

The text, unfortunately, fails to disclose the relationship between Rensi and "the magistrates who were with him."<sup>85</sup> We do not know whether he

<sup>81</sup> Shupak recognizes that Khunanup's later arguments to Rensi have nothing to do with either the facts or law pertaining to the merits of the case: "The complaint is not directed at the rapacious official but at the entire corrupt bureaucracy of Egypt. The personal injustice suffered by the peasant serves as an excuse for attacking the administrative establishment headed by Judge Rensi as a whole." Shupak, *supra* note 3, at 4.

<sup>82</sup> LICHTHEIM, *supra* note 12, at 171.

<sup>83</sup> In modern American civil procedure, authority to make legal determinations is allocated to the court; however, findings of fact are often made by a jury. See FED. R. CIV. P. 38 (1991) (reiterating the Seventh Amendment preservation of right to trial by jury); see also FED. R. CIV. P. 39 (Trial by Jury or by the Court).

<sup>84</sup> Lichtheim, *supra* note 12, at 171.

<sup>85</sup> SIMPSON, *supra* note 1, at 34. Shupak states that "[t]he *srw* were officials in the king's service, and they enjoyed legal autonomy. They acted as advisers to the regional governor in the local courts and were considered authorities on matters involving private property." Shupak, *supra* note 3, at 6.

It is perhaps instructive to consider a parallel in ancient Egyptian religion. In one version of the *Book of the Dead* (the papyrus of Ani) the judge, Osiris, sits "enthroned at one end of the judgment hall, with Isis and Nephthys standing behind him. Along one side of the hall are arranged the nine gods of the Heliopolitan Ennead, headed by the Sun-god. They afterward announce the verdict. . . ." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 304. (footnote omitted, emphasis original). Thus, the judge in the underworld was also accompanied by numerous other judges too. However, unlike Rensi's magistrates,

was obligated to ask their advice. Perhaps he was supposed to reach a consensus with them as part of a formal procedural process? Perhaps his discussions with them were purely informal conversations with other judicial officials? Later, we discover that he "did not answer these magistrates. . . ."<sup>86</sup> In due course, Rensi consulted the king who told Rensi to have the peasant's speeches transcribed.<sup>87</sup> This is consistent with other evidence from ancient Egypt that complaints of this nature were required to be in writing.<sup>88</sup> Additionally, by transcribing Khunanup's speeches, the king may have been preserving a valuable source for legal precedent. Khunanup's declarations yield an abundance of legal wisdom.<sup>89</sup> The king may have been trying to ensure that the peasant's oral law was written down for posterity. Ultimately we learn that the king told Rensi to render the final judgment.<sup>90</sup>

Based upon this case, we can deduce several hypotheses about ancient Egyptian legal procedure. A plaintiff could plead his case (both presenting facts and arguments of law) directly to the High Steward himself. In certain instances, the High Steward could designate a "servant of his choice" to listen to the case in his stead. After the "servant of his choice" presented the case to the High Steward (with or without offering his own impressions, interpretations, and initial conclusions—we simply cannot tell), the High Steward could consult (either formally or informally—again we cannot be certain which) other magistrates (*srw*) and seek their advice. The High Steward was not compelled to follow the magistrates' advice. When in doubt, a High Steward could appeal directly to the king. Lastly, the king

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it was the assisting Heliopolitan judges themselves who announced the verdict. Whether it was they who actually made the decision is unclear. Perhaps they were merely the mouthpiece for Osiris, who decided the case of the deceased.

<sup>86</sup> SIMPSON, *supra* note 1, at 34.

<sup>87</sup> *Id.* at 35. See text accompanying notes 66-67, *supra*. According to Shupak, "[i]n general . . . the king delegated this right [*i.e.*, the right to make legal decisions] to a lower authority." Shupak, *supra* note 3, at 5.

<sup>88</sup> See, e.g., Shupak, *supra* note 3, at 5 ("The erudition in legal matters shown by the author of 'The Tale of the Eloquent Peasant' is further evident from his noting the fact that the peasant's complaints were written down, a required procedure in the law of ancient Egypt. . . ." (emphasis added)). For a more elaborate discussion of the requirement that complaints be in writing in ancient Egypt, see *id.* at 10.

<sup>89</sup> See *infra* Part III. B.

<sup>90</sup> "And [His Majesty] said: You yourself give judgment, son of Meru." SIMPSON, *supra* note 1, at 49.

could defer and allow the High Steward to decide the case.<sup>91</sup>

Khunanup's petitions also reflect some procedural information. In his eighth petition, Khunanup tells Rensi: "No fear of you makes me appeal to you. . . ."<sup>92</sup> This statement is ambiguous but it may, nevertheless, have procedural import. Apparently, it means that he is not intimidated by Rensi. Or, it could mean that, had Khunanup not come to Rensi with his case, he would not have feared retribution from Rensi.

One final remark from the end of his ninth petition also may relate to civil procedure. Khunanup complains that Rensi is not going to redress his wrongs and that he will be forced to appeal to a higher authority, namely, Anubis: "See, I appeal to you, but you do not hear it; I will go, that I may appeal / about you to Anubis!"<sup>93</sup> Why would Anubis be the next logical step in the appeals process? Shupak recommends:

It may be assumed that the last sentence refers to our protagonist's desire to consult the oracle, one of the means

<sup>91</sup> For discussion of another potential historical source for a description of civil procedure—but during the 16th or 17th Dynasty, see GARDINER, PHARAOHS, *supra* note 6, at 161. In discussing a stela from the reign of King Nebirierau, Gardiner states:

The main narrative explains . . . all manner of details concerning the judicial proceedings involved, the court of the vizier, and the final oath sworn by the two parties. Certain obscurities remain, but do not prevent this document from being as illuminating a specimen of Egyptian administrative procedure as any that has survived from Pharonic times.

*Id.*

For a somewhat fanciful account of a vizier holding court, see JON MANCHIP WHITE, EVERYDAY LIFE IN ANCIENT EGYPT 123-25 (1963).

<sup>92</sup> SIMPSON, *supra* note 1, at 46. This statement conflicts with an "Instruction" called the *Installation of the Vizier* dating from the 13th Dynasty quoted by Theodorides: "Inspire fear of yourself, so that you are feared, for he is (truly) magistrate, the magistrate who is feared." Theodorides, *supra* note 3, at 309. See also BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 242 ("Cause thyself to be feared. Let men be afraid of thee. A prince is a prince of whom one is afraid. . . . Behold, the [fear] of a prince [deters] the liar, when he (the prince) proceeds according to the dread of him.").

<sup>93</sup> SIMPSON, *supra* note 1, at 48. Khunanup's desire to appeal is here directed to a spiritual rather than mortal authority. It is unclear whether the peasant would be permitted to petition the king for relief were he unhappy with Rensi's decision and, if he could make such an appeal, at what stage it would be allowed. American civil procedure generally requires that a final judgment be entered before an appeal may be brought. 28 U.S.C. § 1291 (1989). However, certain judicial determinations provide grounds for an interlocutory appeal. 28 U.S.C. § 1292 (1989).

of passing a verdict in ancient Egypt. The verb *spr* in this context denotes the approach to the statue of the god in the expectation of an oracle. The peasant, disenchanted with the corrupt legal system of mere mortals, asks in his final appeal for the help of the gods, of which Anubis is one.<sup>94</sup>

### B. Torts

There is no compelling evidence to indicate that the ancient Egyptians recognized any theory of legal recovery even remotely similar to our modern tort law. Rather, it appears that criminal laws, perhaps, fulfilled some of the functions of modern tort.

In the second tale in *Cheops and the Magicians*, the husband, Webaoner, is actually responsible for the adulterous townsman's death. Clearly, he intends the magical crocodile to do the townsman in—and that is precisely what it does.<sup>95</sup> His conduct is analogous to unleashing an attack dog on an unsuspecting victim. Modern American civil law would consider this conduct battery.<sup>96</sup> Furthermore, if the townsman saw or heard the crocodile as it approached, it is likely that Webaoner's conduct also constituted the ancient Egyptian equivalent of assault.<sup>97</sup>

If one were to analyze the dispute between Khunanup and Nemtynakhte in *The Tale of the Eloquent Peasant* using modern American tort law principles, several issues emerge. 1) Does Nemtynakhte's barrier of cloth constitute a public nuisance or some other tort?<sup>98</sup> 2) Does Nemtynakhte's

<sup>94</sup> Shupak, *supra* note 3, at 11. Shupak remarks in a footnote that his "interpretation differs from that of Perry, who thinks that the peasant is threatening suicide here, as the god Anubis, who is mentioned, is involved with death." *Id.* at n.40.

<sup>95</sup> Perhaps the wax crocodile is like the "potent idol" that Nemtynakhte desired. In any case, the voodoo idol may offer *perceived* justice.

<sup>96</sup> The tort of battery occurs when a person intentionally makes unprivileged harmful or offensive contact with another. RESTATEMENT (SECOND) OF TORTS §§ 13, 18 (1979).

<sup>97</sup> See generally RESTATEMENT (SECOND) OF TORTS § 21 (1979).

<sup>98</sup> A public nuisance is an unreasonable interference with a right common to the general public. See generally RESTATEMENT (SECOND) OF TORTS § 821B (1979). That a property owner is not privileged to obstruct a public way adjacent to his property has been recognized for a long time. In ancient Roman law, the action *actio de posito et suspenso* (literally "an action concerning that which has been placed and that which has been hung) made property owners strictly liable for damage caused by objects, such as signs, that endangered travellers. See J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW 378-379 (1976).



beating of Khunanup give rise to a cause of action for battery?<sup>99</sup> 3) Does Nemtynakhte's taking of Khunanup's asses constitute either trespass to chattels or conversion?<sup>100</sup> 4) Does Nemtynakhte's threat to kill the peasant (after he complained about the beating and the theft) give rise to either assault or intentional infliction of emotional harm?<sup>101</sup> Another issue is

<sup>99</sup> An actor is subject to liability to another for battery if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results.

RESTATEMENT (SECOND) OF TORTS § 13 (1979). *See also* W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 9 at 39-42 (5th ed. 1984).

<sup>100</sup> The difference between the torts of trespass to chattels and conversion is basically one of degree. A person converts another's property when she intentionally interferes with the property of another in such a manner that the property is rendered useless or valueless to the owner. Simple theft is usually deemed conversion. When a defendant exercises substantial dominion and control over another's property, she converts it. If the defendant's interference with the plaintiff's property is not especially serious (or falls short of substantial dominion and control), that interference is considered trespass to chattels. Generally, damages for conversion are the value of the chattel at the time of conversion (plus interest). Damages for trespass to chattel are actual damage to the property. *See generally* RESTATEMENT (SECOND) OF TORTS §§ 216-244 (1979). Nemtynakhte's intent is quite plain from the text: "Now this Nemtynakhte said, when he saw the asses of this peasant, which were pleasing to his heart: O that I had some potent idol, that I might steal this peasant's goods from him!" SIMPSON, *supra* note 1, at 32. As regards the degree of dominion and control that Nemtynakhte exercised, we note that he took Khunanup's asses and apparently had no intention of returning them to Khunanup: "Thereupon, he took a rod of green tamarisk-wood to him and belabored all his limbs with it; he took away his asses and drove them to his estate." *Id.* at 33.

<sup>101</sup> (1) An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension. (2) An action which is not done with the intention stated in Subsection (1, a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

RESTATEMENT (SECOND) OF TORTS § 21 (1979). *See also* KEETON *supra* note 99, § 10, at 43-46.

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm. (2) Where such conduct is directed at a third

whether Khunanup would be liable for either conversion or trespass to chattels<sup>102</sup> for the damage that his ass did to the Nemtynakhte's barley and, if so, what the appropriate remedy should be.<sup>103</sup>

Undoubtedly, however, Nemtynakhte did not analyze his conflict with Khunanup in terms like these. Rather, Nemtynakhte apparently assumed that he, as the one in possession of realty, had the right to block the "public road" adjacent to the land that he possessed with his garment, and, thereby, to force the peasant to choose among driving his herd into the river, trespassing upon the barley field, or damaging the garment.<sup>104</sup> Furthermore, in addition to believing that he could force the peasant into such a decision, Nemtynakhte evidently believed that *he* was the party wronged when Khunanup's ass took a bite of barley, and he argued that the appropriate measure of damages was payment of the ass.<sup>105</sup>

Modern American tort law would provide Khunanup with a defense of "necessity."<sup>106</sup> Prosser cites necessity as a defense in cases "permitt[ing] a traveler on a public highway to turn out to avoid a temporary obstruction, and pass over the adjoining land."<sup>107</sup> If the necessity were deemed "public" (and arguably since the road was public it could be considered a "public necessity"), necessity would be a complete defense for Khunanup.

person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress.

RESTATEMENT (SECOND) OF TORTS § 46 (1979). *See also* KEETON *supra* note 99, § 12, at 54-66. "The peasant/ wept very much at the pain of what had been done to him, and Nemtynakhte said: Do not raise your voice, peasant; look you are on your way to the city of the Lord of Silence!" SIMPSON, *supra* note 1, at 33. (footnote omitted).

<sup>102</sup> *See supra* note 100.

<sup>103</sup> *See id.*

<sup>104</sup> Such damage would either be trespass to chattel or conversion under modern American tort principles. *See supra* note 100. Assuming that the entire herd would have trampled the garment, perhaps the damage to the garment would have been sufficiently extensive to constitute conversion. *See also* Shupak, *supra* note 3, at 6-8 (discussing the magical significance of Nemtynakhte's conduct with his garment). Shupak says, in addition: "By spreading his garment on the public way, Nemty-nakht was indicating to the peasant that this section of the road was his private property, and no one could trespass. He was indeed wrong in trying to appropriate a public road, but the peasant, realizing the significance of the official's act, neither touched nor trod on the garment." *Id.* at 8.

<sup>105</sup> Shupak suggests that Nemtynakhte confiscation of Khunanup's ass was as "surety for payment of a debt." Shupak, *supra* note 3, at 8.

<sup>106</sup> *See* KEETON, *supra* note 99, § 24, at 146.

<sup>107</sup> *Id.*

If the necessity were deemed private, Khunanup would only be liable for—as he argues—actual damages but not for the trespass.<sup>108</sup>

On the other hand, under American tort principles, Nemtynakhte might argue that Khunanup should be liable for his donkey's damage on a theory of strict liability for damage caused by domesticated animals.<sup>109</sup> However, strict liability of this nature is generally excused when damage is "done by animals straying onto abutting land while driven on the highway; or . . . brought about by the . . . intentional, reckless or negligent conduct of a third person."<sup>110</sup>

Indeed, Khunanup's argument certainly sounds more appealing to the modern American sense of remedies. He contended that he owed Nemtynakhte only the value of barley eaten.<sup>111</sup> Khunanup seems not to have intended any harm whatsoever. Thus, this is hardly a situation that would justify anything beyond the actual diminution in value to Nemtynakhte's wisp of barley, like punitive damages.<sup>112</sup>

When Rensi first contacts the king to relate to him the account of Khunanup's pleas, he already believes the truth of Khunanup's allegations. He comes right out and says: "I have found one of these peasants who is really eloquent; *his goods have been stolen*, and see, he has come to appeal to me about it."<sup>113</sup>

<sup>108</sup> *Id.* § 24, at 146-148.

<sup>109</sup> See RESTATEMENT (SECOND) TORTS § 504 (1979), "Liability for Trespass by Livestock."

<sup>110</sup> *Id.* Quite plainly, Nemtynakhte's conduct caused Khunanup's donkey to enter the barley field.

<sup>111</sup> The peasant argues: "one (wisp only) has been damaged. It is for its (the wisp's) price that I will buy back my ass if you take possession of it/ for a (mere) filling of its mouth with a wisp of barley." SIMPSON, *supra* note 1, at 33.

Khunanup immediately recognized that Nemtynakhte might carry out his threat to take away the ass in retaliation for its having taken a bite of barley. Nevertheless, he believed that he would have the right to buy back the ass for the value of one bite of barley. Although the mechanics of such a remedy may sound strange and cumbersome (Defendant's animal damages Plaintiff's crop; Plaintiff seizes Defendant's animal; Defendant buys back his animal at a price equal to the value of damage done to Plaintiff's crop), the outcome would simply be that the defendant would end up paying the plaintiff the value of the damage to the plaintiff's crop.

<sup>112</sup> See generally KEETON, *supra* note 99, § 2, at 9-15.

<sup>113</sup> SIMPSON, *supra* note 1, at 35 (emphasis added). Even in the Old Kingdom, theft of this nature was clearly illegal. A judge named Weni stated that he was sent "to prevent any one of them from taking bread or sandals from a wayfarer, to prevent any one of them from taking a loin-cloth from any village, to prevent any one of them from taking any goat from

The remedy for all of Nemtynakhte's wrongs is payment of everything he owns. Although this may seem severe, in one respect, this may not be very far out of line with many damage awards given in tort litigation today. For indeed, if he were liable for public nuisance, conversion, assault, battery, and intentional infliction of emotional harm, damages could run in the millions of dollars. It is unfortunate for legal scholars that Rensi fails to relate any legal analysis to explain how he reached his decision that Nemtynakhte was liable to Khunanup. It is equally unfortunate that he fails to reveal how he arrived at the measure of damages.<sup>114</sup>

The text does, however, suggest a defense for Nemtynakhte. When Rensi, the High Steward confers with the *srw*, the other magistrates, regarding this case, they submit to him that Nemtynakhte was probably privileged to act as he did: "Surely it is a peasant of his who has gone to someone else beside him. That is what they do to peasants of theirs who go to others beside them. That is what they do."<sup>115</sup> Lichtheim comments that "[t]he magistrates exculpate Nemtynakht by surmising that the peasant was a serf of his who had tried to do business with another landlord and was being punished for it."<sup>116</sup> The magistrates make it sound as though it is customary for landlords to beat serfs and take their possessions when the serfs attempt to "go to others besides themselves."<sup>117</sup> Therefore, the legal analysis which explains why Nemtynakhte's conduct is justifiable and why Khunanup should be denied recovery is rather simple. If such pummelings and confiscations were both customary and legal in the Middle Kingdom, then Nemtynakhte apparently would have been privileged to do just what he did, *if Khunanup had been his serf*.<sup>118</sup> The facts, nonetheless, make it highly unlikely that Khunanup was a serf of Nemtynakhte. Khunanup and Nemtynakhte lived very far apart from each other—too far for a master/serf relationship to have been feasible. The first sentence of the tale indicates

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any people." GARDINER, PHARAOHS, *supra* note 6, at 96.

<sup>114</sup> Shupak, however, does explain that the verb *db3* ("recompense" or "compensation") is an ancient Egyptian technical legal term. He notes that "Rensi's advisors thought that the avaricious official should give compensation (*db3*) to the peasant for his property." Shupak, *supra* note 3, at 13.

<sup>115</sup> LICHTHEIM, *supra* note 12, at 171.

<sup>116</sup> *Id.* at 183 n.9.

<sup>117</sup> SIMPSON, *supra* note 1, at 34.

<sup>118</sup> This concept is analogous to the modern American tort defense of the privilege of "discipline." See PROSSER & KEETON, *supra* note 99, § 27, at 157-159.

that Khunanup lived with his wife in the Wadi Natrun.<sup>119</sup> Furthermore, the facts of the story also tell us that "the peasant traveled south to Ninsu," a distance of approximately 100 miles.<sup>120</sup> Thus, factually, the magistrates' attempt at ratiocination does not hold up under scrutiny. Nevertheless, the magistrates continue their counsel and advise Rensi that, under these circumstances (*i.e.*, assuming that Khunanup is Nemtynakhte's serf who has tried to cavort with another landlord), Nemtynakhte should not be punished: "Is it a case for punishing Nemtynakhte on account of a trifle of natron and a trifle of salt?"<sup>121</sup> Rather, they suggest that he simply be ordered to return the goods: "If he be commanded to replace them, he will replace them."<sup>122</sup> Their suggested remedy, that is, to exact no punishment but merely order Nemtynakhte to return the goods, tells us something about ancient Egyptian remedies and punishments. To the extent that Nemtynakhte's transgressions are tortious, the magistrates' suggestion recommends incomplete compensatory damages—merely returning the property taken. This remedy, however, does not contemplate any compensation for Khunanup's physical or mental pain and suffering. Their recommendation that Nemtynakhte not be punished also suggests that he not be assessed punitive damages.<sup>123</sup>

One also suspects that both Rensi and the king may be liable to Khunanup for their actions. First, the king commands Rensi to detain Khunanup without any valid reason.<sup>124</sup> Second, in the middle of Khunanup's second appeal, Rensi interrupts and threatens to arrest the peasant: "Are your possessions more important to you than that my retainer should arrest you?"<sup>125</sup> Given that Rensi had already admitted to the king that "his goods have been stolen,"<sup>126</sup> both of these actions seem inappropriate. Finally,

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<sup>119</sup> "There once was a man called Khunanup, who was a peasant of the Wadi Natrun, and he had a wife named [Maryet]." SIMPSON, *supra* note 1, at 31.

<sup>120</sup> *Id.* at 32. In a footnote, Faulkner, the translator of this story in Simpson's anthology, explains that Ninsu was "Herakleopolis in Middle Egypt." *Id.* at n.3. For a measure of the distance from the Wadi Natrun to Herakleopolis, see GARDINER, PHARAOHS, *supra* note 6, at 29 (map and scale of miles).

<sup>121</sup> SIMPSON, *supra* note 1, at 34. Evidently, the "trifle of natron" and "trifle of salt" refer to Khunanup's goods that Nemtynakhte took away.

<sup>122</sup> SIMPSON, *supra* note 1, at 34.

<sup>123</sup> See *supra* note 112 and accompanying text.

<sup>124</sup> Clearly, however, in a totalitarian state such as ancient Egypt, no one would have sued the king.

<sup>125</sup> SIMPSON, *supra* note 1, at 37.

<sup>126</sup> *Id.* at 35. See also *supra* note 113 and accompanying text.

Rensi actually has Khunanup beaten after his third petition.<sup>127</sup> It is doubtful that governmental immunity today would shield an official in such circumstances.<sup>128</sup>

### C. Contracts

The historical record has preserved "a number of contracts ('the *sealed*,' as the Egyptians called them), such as were frequently concluded by people of rank in order to ensure certain revenues for religious services after death."<sup>129</sup> The contracts described by Erman "are all couched in the same strictly regular form:

'Contract concluded between A and B,  
that B should give x to A,  
whilst A should give y to B.  
Behold, B was therewith content.'<sup>130</sup>

"We see from these instances that there existed a complete system of drawing up contracts. . . ."<sup>131</sup>

In the fourth tale in *Cheops & the Magicians*, Rewosre refers to the sack of corn that he gives to Khnum as *swnt*, which Simpson translates as "payment."<sup>132</sup> The Egyptian text reads *r swnt tnmw* (literally "in exchange

<sup>127</sup> "And he caused two apparitors to attend him with whips, and they belabored all his limbs therewith." SIMPSON, *supra* note 1, at 41. Some Middle Kingdom tomb paintings depict delinquent tax payers being beaten.

<sup>128</sup> The United States Government and all United States jurisdictions recognize some form of governmental immunity for judicial officials acting in their judicial capacity. *See generally* RESTATEMENT (SECOND) OF TORTS §§ 895A-C and PROSSER & KEETON, *supra* note 99, §§ 131-132, at 1032-1069.

<sup>129</sup> ERMAN, *supra* note 3, at 145.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 147. *See also* Taylor, *supra* note 3, at 69 ("Simplicity governed the law of contract and it was invariably documented in terms such as, 'A will give this to B; B will give that to A: behold, A and B are therewith content.'"). *See also* Theodorides, *supra* note 3, at 303, 313. Theodorides notes that the word *snh*, originally meaning "tie, bind," had come to mean "legal obligation" by the 20th Dynasty. *Id.* at 315. *See also* BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 67 (discussing "ten elaborate contracts on the inner wall of . . . [a] . . . tomb-chapel. . . ."), 260-61, 268-69; GARDINER, EGYPTIAN GRAMMAR, *supra* note 4, at 23.

<sup>132</sup> SIMPSON, *supra* note 1, at 28.

for beer").<sup>133</sup> Both the word *swnt* and the phrase *r swnt* imply the existence of a contract.<sup>134</sup> At least three possible explanations exist for Rewosre's "payment" of corn. First, perhaps the sack of corn was not really a contractual "payment" *per se*, but rather was merely a "thank you" gift.<sup>135</sup> The word *swnt* and the phrase *r swnt*, however, make such a non-contractual interpretation unlikely. The next two possibilities are far more logical. It is possible (although there is no direct evidence of this in the text) that Khnum actually made beer for the household while he was there. The remaining possibility is that, Rewosre's "payment" may have been intended as compensation for the goddesses' midwifery services. Both the second and third explanations would require that Rewosre's "payment" was necessary under a theory similar to modern notions of quasi-contract.

"Payment" is a purchaser's recompense to a seller either for goods or services. In modern American law, in order to be enforceable, contracts generally require consideration; that is, a *quid pro quo*.<sup>136</sup> It is possible that Rewosre's "payment" either for beer or for midwifery services would not be considered a contractual obligation under American contract principles. His payment might be deemed "past consideration." One well known case that illustrates the doctrine of "past consideration" is *Mills v. Wyman*.<sup>137</sup> In *Mills v. Wyman*, Mills paid expenses for and nursed Wyman's son, who was very ill, for a little over two weeks. Shortly thereafter, Wyman wrote Mills, thanking him and promising to pay for his expenses. The court held that Wyman's promise to pay was unenforceable because Mills had performed his services before Wyman had promised to

<sup>133</sup> See RAYMOND O. FAULKNER, A CONCISE DICTIONARY OF MIDDLE EGYPTIAN 217 (1981).

<sup>134</sup> One should remember, however, that the ancient Egyptian economy was very different from our modern economies. "[E]xchanges were made during most of the dynastic period by means of simple barter or haggling, one object being swapped for another." WHITE, *supra* note 91, at 179-80. "The Egyptian economy was predominantly pastoral and agricultural, not mercantile, and there was no well-defined middle class. The peasant or priest was his own shopkeeper. Coined money was not adopted in Egypt until the advent of Darius the Persian, at the very end of the Late Period." *Id.* at 180. Darius I was king of the Persian Empire from 521-486 B.C. OXFORD CLASSICAL DICTIONARY 313 (1970).

<sup>135</sup> Theodorides notes that during the Old Kingdom a specific form of gift transfer existed; namely the *imy-pr*. Theodorides, *supra* note 3, at 304.

<sup>136</sup> See generally E. ALLAN FARNSWORTH, CONTRACTS § 1.6, at 20, §§ 2.2-2.4, at 43-49 (2d ed. 1990); RESTATEMENT (SECOND) OF CONTRACTS § 71 (1981).

<sup>137</sup> 3 Pick (20 Mass.) 207 (1825).

pay.<sup>138</sup> Simply stated, there was no consideration for Wyman's promise because the parties had not exchanged one promise for another.<sup>139</sup> Similarly, either Khnum had already made the beer or the goddesses had already assisted Reddedet's birthing prior to Rewosre's offer to give them a sack of corn. Consequently, if this is really an example of "past consideration," the transaction whereby Rewosre gave the corn to Khnum was, in one sense, a mere gift, not a contractual "payment."<sup>140</sup>

On the other hand, to the extent that the *swnt* was made in exchange for midwifery services, it is also possible that Rewosre was, in fact, obligated to render "payment" to the goddesses even though there was no actual contract supported by consideration. Their statement—"Let [us] see her, for we are knowledgeable about childbirth"—coupled with Rewosre's reply, bidding them to "proceed!" implies that Rewosre tacitly understood that he would be obliged to pay these midwives a reasonable fee for their services. An understanding of this nature under these circumstances would suggest that the ancient Egyptians recognized something akin to our modern notion of restitution in quasi-contract, or *quantum meruit*.<sup>141</sup> This concept prohibits unjust enrichment by requiring a person who has benefitted from another's services, under circumstances where payment is ordinarily expected, to pay for the value of those services.<sup>142</sup> Modern courts often grant restitution to a person who provides services to another in cases where the service provider is a health care professional. Consequently, it would be

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<sup>138</sup> *Id.* at 211.

<sup>139</sup> See RESTATEMENT (SECOND) OF CONTRACTS § 75 (1981).

<sup>140</sup> This transfer could easily qualify as a valid gift under modern American common law. See, e.g., *Titusville Trust Co. v. Johnson*, 100 A.2d 93, 96-97 (Pa. 1953) (where the court stated that in order to establish that gift was valid, "two essential elements must be made to appear: an intention to make the donation then and there, and an actual or constructive delivery at the same time, of a nature sufficient to divest the giver of all dominion, and invest the recipient therewith."). Rewosre told the goddesses to give the corn to Khnum ("intention to make the donation then and there"), Khnum put the sack on his back, and they departed ("an actual . . . delivery at the same time, of a nature sufficient to divest the giver of all dominion, and invest the recipient therewith."). See also JOHN E. CRIBBET, *PRINCIPLES OF THE LAW OF PROPERTY* 152-58 (1989).

<sup>141</sup> See generally FARNSWORTH, *supra* note 136, § 2.20, at 102-110.

<sup>142</sup> See, e.g., *Cotnam v. Wisdom*, 104 S.W. 164 (Ark. 1907). Contracts which are implied in law include "a class of obligations which are imposed or created by law *without regard to the assent of the party bound*, on the ground that they are dictated by reason and justice." *Callano v. Oakwood Park Homes Corp.*, 219 A. 2d 332, 334 (N.J. Super. 1966) (emphasis added).



consistent with the contemporary philosophy of restitution and quasi-contract for Rewosre to incur a legal obligation to pay compensation for the midwifery services of the goddesses.

There is also support for the contention that the exchange between the goddesses and Rewosre constituted either an express contract or one implied in fact.<sup>143</sup> One could interpret the dialogue as containing an offer ("Let [us] see her, for we are knowledgeable about childbirth"), followed by an acceptance ("Proceed"). Although there is no obvious consideration, there is a manifestation of assent; the intentions of the parties to contract for childbirth assistance may be implicit.<sup>144</sup>

#### D. Property

Gardiner specifically mentions a Middle Kingdom tomb inscription as evidence that the Egyptians during the Middle Kingdom had already developed "strict rules of property."<sup>145</sup> Theodorides states, in similar fashion: "From the evidence of documents of legal practice, so often handed down in incomplete form in funerary inscriptions, it thus appears that private property did indeed exist, [and] that it was transferable. . . ."<sup>146</sup> Taylor relates that "[t]he transfer of ownership of property, whether real or personal, required a written deed proving ownership and a further deed granting the right to quiet enjoyment."<sup>147</sup>

The sack of grain in the fourth tale of *Cheops & the Magicians* also provides a useful starting point for examining the law of personal property as reflected in these works. Whether by virtue of contract, quasi-contract, or gift,<sup>148</sup> it is clear that Rewosre transferred ownership of the sack of corn and that the sack and its contents no longer belonged to either Rewosre or Reddedet but, rather, became the property of the divinities. This is significant because of the way that Reddedet treats the corn later in the story. Since the goddesses owned the corn (at least ostensibly) when they placed it in the locked room at Rewosre's house, a relationship was created that

<sup>143</sup> See, e.g., *Hill v. Waxberg*, 237 F.2d 936 (9th Cir. 1956).

<sup>144</sup> See generally RESTATEMENT (SECOND) OF CONTRACTS § 371(a) (1981).

<sup>145</sup> GARDINER, PHARAOHS, *supra* note 6, at 142 ("for instance, a distinction between what the prince owned by way of inheritance and what he owned by virtue of his office.").

<sup>146</sup> Theodorides, *supra* note 3, at 292.

<sup>147</sup> Taylor, *supra* note 3, at 68.

<sup>148</sup> See *supra* notes 140-144 and accompanying text.

modern American property law would characterize as a bailment. A bailment occurs when the owner of an item of personal property entrusts it to the possession of another.<sup>149</sup> In this case, the bailment appears to have been for the benefit of the goddesses, who purportedly wanted a safe place for their grain until they should return.<sup>150</sup> In fact, however, the goddesses were not concerned with the corn but rather hoped that the kings would soon have access to their "marvel" (the gift of the three crowns) if they furtively left these treasures in the sack of corn for Rewosre and Reddedet to discover. And, indeed, Reddedet does eventually discover them.

Several legal principles are at issue here. First, Reddedet surely must think that the corn rightfully belongs to the "musicians" and not to her. Thus, her decision to take a portion to make beer constitutes an intent to commit the ancient equivalent of conversion—a complete appropriation of another's personalty.<sup>151</sup> She does, however, appreciate that she must repay them with "its equivalent."<sup>152</sup> Modern tort law generally permits an aggrieved party to recover the full value of the converted property at the

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<sup>149</sup> A bailment is a contractual obligation, requiring mutual assent (express or implied), which is created when one party delivers and entrusts identified chattel to another party, who accepts it for safekeeping. *See, e.g.,* *Peet v. The Roth Hotel Co.*, 253 N.W. 546, 548, (Minn. 1934). The contractual relationship necessary for the formation of a bailment may arise by implication, as evidenced by the creation of an involuntary (or constructive) bailment. *See, e.g.,* *Shamrock Hilton Hotel v. Caranas*, 488 S.W. 2d 151 (Tex. App. 1972). *See generally* CRIBBET, *supra* note 140, at 83.

<sup>150</sup> Historically, the standard of care required of a bailee varied depending upon who benefitted from the creation of the bailment. A mutually beneficial bailment required the exercise of ordinary care, but a bailment created for the sole benefit of the owner of chattel required only slight care. In *Peet*, the court explicitly rejected any such differentiation in the requisite standard of care and instead adopted the standard of "ordinary care" as applicable to all bailments. *Peet* 253 N.W. at 155 (citing *Elon College v. Elon B. & T. Co.*, 109 S.E. 6, (N.C. 1921)).

Interestingly, the goddesses did not reveal the true nature of the chattel when they left it upon their departure, preferring to let it be assumed that the bag contained only ordinary corn. Courts have held that, when a bailor conceals the true nature of the chattel from the bailee, there can be no mutual assent; thus, a bailment is not formed. *Id.* at 153 (citing *Samples v. Geary*, 292 S.W. 2d 1066 (Mo. App. 1927); *United States v. Atlantic C.L.R. Co.*, 206 F. 190 (E.D.N.C. 1913); *Riggs v. Bank of Camas Prairie*, 200 P. 118 (Idaho 1921)). Were something to have happened to the goddesses' gift, it is likely that Reddedet could have argued that no bailment in fact existed because she reasonably believed the parcel to contain corn.

<sup>151</sup> *See generally* RESTATEMENT (SECOND) OF TORTS § 222A. *See also supra* note 100 and accompanying text.

<sup>152</sup> SIMPSON, *supra* note 1, at 29.

time of the conversion plus interest.<sup>153</sup> Reddedet's plan to give an equivalent amount certainly sounds reasonable and practical since corn is a fungible good.<sup>154</sup>

Perhaps boxing and binding the corn sack was Reddedet's way of guarding the property for the "musicians." Probably, however, it was not. It was quite probably her way of securing the sack for herself. Presumably, then, this conduct has the appearance of conversion. It is curious that Reddedet decides to exercise such complete dominion and control over the sack after she has discovered that the sack is no ordinary bag of corn but, rather, that it is unique. It is also interesting that when she thought that the sack was merely a fungible commodity, she knew that by converting it to her own purposes she would be obliged to repay the owners with an equivalent amount of grain. When, however, she discovers that the sack is extremely unique, she completely appropriates it and never mentions how she might reimburse the goddesses whom she has deprived. Arguably, however, Reddedet accurately interprets the uncommon sounds emanating from the bag as a gift from the goddesses to her. The text itself supports this position, for when Rewosse returns and learns their good fortune, "[t]hey sat down and celebrated."<sup>155</sup> Their celebration arguably results as a consequence of their awareness that the contents of the sack are a gift and that their sons are destined to be kings. Thus, although the external appearances suggest that the sack was still bailed property awaiting the return of its owners, the elements necessary for a valid gift from the divinities to Reddedet are probably present. The goddesses intended to make a gift, they physically transferred the property to Reddedet, and Reddedet ultimately accepted the gift.<sup>156</sup>

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<sup>153</sup> See RESTATEMENT (SECOND) OF TORTS §§ 216-44.

<sup>154</sup> It is interesting to note that the author of Westcar portrays one woman in a leading role, Reddedet, as willing to exchange an equal measure of corn for corn, but also depicts another key woman, the stroke in the Cheops story, as unwilling to exchange her turquoise charm for a "look-alike." Perhaps the unique nature of the turquoise charm versus the fungible nature of the corn makes the difference.

<sup>155</sup> SIMPSON, *supra* note 1, at 30.

<sup>156</sup> See *supra* note 140 and accompanying text.

### *E. Persons & Family*

According to Taylor,

Egyptian law stressed the importance of the individual. Everyone, women as well as men, had full legal rights. It was permitted to women also to own and alienate property and make wills, to enter into contractual relations, initiate legal action and witness documents. Women had equal rights with men in every respect, including inheritance when applicable, and were entitled to complete charge of their own affairs.<sup>157</sup>

Theodorides claims "that there was real equality between man and wife in the eyes of the law."<sup>158</sup>

The rowing episode in the third tale of *Cheops & the Magicians* offers some preliminary insight regarding conflict resolution between an Egyptian king and his underlings. The young woman who loses her "fish-shaped charm" first explains to Khufu that she wants to get back her very own charm—not merely a replacement.

When recounting this verbal exchange a moment later, Khufu tells his lector priest that he "said to her: Row! I will replace it!"<sup>159</sup> In fact, Lichtheim restores the passage as a direct command from the sovereign: "Then his majesty said to her: 'Row! I shall replace it for you!'"<sup>160</sup> Her response, "I prefer my thing to one like it," looks like deliberate disobedience—insubordination. What seems significant here is that the king does not punish the young woman who is distraught over having lost her charm. He does not discipline her for displaying such a childish attitude and disobeying his directive. This seems inconsistent with the notion of an all powerful monarch and flies in the face of our concept of the ancient Egyptian king as sole, unquestioned authority.<sup>161</sup> Later, in the fourth tale, we again see a

<sup>157</sup> Taylor, *supra* note 3, at 68.

<sup>158</sup> Theodorides, *supra* note 3, at 292, 303.

<sup>159</sup> SIMPSON, *supra* note 1, at 21.

<sup>160</sup> LICHTHEIM, *supra* note 12, at 217.

<sup>161</sup> The tremendous power and unquestioned authority of the Old Kingdom monarchs is legendary:

Evidently the power of the Pharaoh was paramount in every province of Old Kingdom life. The reverence shown to his person was abject in the

subject refusing to obey the king. First, Dedi refuses Khufu's request to have a prisoner's head cut off.<sup>162</sup> Next, when King Khufu directs Dedi to fetch the chest containing the secret chambers of Thoth for him, Dedi again refuses, saying that someone else will bring it.<sup>163</sup> Now a young woman, once, and an old man, twice, have defied the command of the king. Perhaps, however, the incident reflects the anachronistic nature of the entire story. Although the story is set in the heart of the Old Kingdom, it was written during the Middle Kingdom.<sup>164</sup> In contrast to the absolute authority of the Old Kingdom monarchs, kings during the Middle Kingdom were viewed as possessing qualities more befitting mortals.<sup>165</sup>

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extreme. . . .

The absolute power of the pharaoh is unmistakable. The size of the pyramids tells its own tale of ostentation. In death as in life the king liked to gather his nobles around him, and the widespread streets of mastabas surrounding the royal sepulchers bear witness to the high degree of centralization in those times.

GARDINER, PHARAOHS, *supra* note 6, at 59-60. Shupak states: "The king was the highest legal authority in ancient Egypt, having the right to make legal decisions, a right that he often applied in cases involving himself." Shupak, *supra* note 3, at 5. Taylor declares:

There was absolute and unquestioning belief in the divinity of the king and it was a matter of religious obligation to obey the law, since the law emanated from the god-king. Pharaoh was the law and his will supreme. He was lord over life and death and personally guaranteed all public order. He was the highest judge. It was a firmly established principle that "the king is wise already when he cometh forth from the womb".

Taylor, *supra* note 3, at 66. Furthermore, upon his demise, "[t]he king ascends to the sky among the gods dwelling in the sky. He stands on the great [dais,] he hears (in judicial session) the (legal) affairs of men." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 136. See also WHITE, *supra* note 85, at 117.

Snefru himself appears to have been quite an aggressive king. He conducted "a campaign against a Nubian land whence he is asserted to have brought back 7,000 captives and 200,000 head of cattle, and another campaign against the Tjehnyu Libyans which yielded very substantial, although smaller booty." GARDINER, PHARAOHS, *supra* note 6, at 78.

<sup>162</sup> This episode may simply be a revisionist attempt to discredit the character of Khufu.

<sup>163</sup> See *supra* text accompanying note 36.

<sup>164</sup> See *supra* note 17.

<sup>165</sup> See e.g., CYRIL ALDRED, EGYPTIAN ART 113 (1980) (noting that in the Middle Kingdom "[t]he king now found himself in a feudal state in which he was little more than the first among equals. He had to share his authority with provincial lords who dated events to their own years of rule, maintained their own armed forces and fleets of ships, and quarried stone for their own monuments, some of which were of considerable size.").

The final segment in the Reddedet story reveals glimpses into the Egyptian laws and expectations dealing with slavery and families. First, it raises questions about a master's authority to punish slaves by beating. After Reddedet and her maid argue, Reddedet "had her [the maid] punished with a beating."<sup>166</sup> Although Reddedet does not hesitate to exact punishment, the maid takes great offense and appeals to others in the house, implying that she believed that she had been treated unfairly. There is an interesting ambiguity in the passage when the maid says: "She has given birth to three kings, and I am going and I will tell *it* to His Majesty the King of Upper and Lower Egypt, Khufu, the Vindicated."<sup>167</sup> At first blush, one may presume that the maid plans to tell Khufu about the births of the three baby kings. Presumably, she anticipated that Khufu would feel threatened by the birth of successors—since they were from another family—and that he would try to kill them or send them away somewhere. There is, however, an alternative interpretation. When the maid says "I am going and I will tell *it* to His Majesty . . .," it is possible that the word "*it*" refers to the beating not to the births.<sup>168</sup> She did express extreme anger about the beating; therefore, the context makes this a plausible interpretation. For her part, the maid seeks revenge. "I'll teach you to beat me unjustifiedly!" we can imagine her muttering under her breath as she sets off to tell Khufu. Furthermore, if it is the beating about which she intends to complain to Khufu, that would suggest that the legal question was clear enough to warrant an appeal to the king himself. Thus, we must wonder whether Egyptian law permitted slave owners to beat their slaves at will (here there appears to have been relatively little provocation—we are merely told that "Reddedet had an argument with the maidservant"—), for we do not know what the argument was about, or whether slave owners were required to have greater justification as an antecedent to inflicting corporal punishment on their slaves.<sup>169</sup>

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<sup>166</sup> See *supra* text accompanying note 51.

<sup>167</sup> See *supra* note 51 (emphasis added).

<sup>168</sup> Lichtheim's translation is similarly ambiguous. "Then the maid said to the people in the house: 'How could she do this? She has born three kings! I will go and tell it to the majesty of King Khufu.'" LICHTHEIM, *supra* note 12, at 221.

<sup>169</sup> Theodorides remarks that slaves "enjoyed legal status which made them more like serfs. They could acquire property and bear witness at law, even against their masters . . .; they seem also to have been able to marry easily with free individuals or to be adopted by them, so becoming free themselves. . . ." Theodorides, *supra* note 3, at 307 (citing A. BAKIR, *SLAVERY IN PHARONIC EGYPT* 84 (1952)).

*The Eloquent Peasant* raises the same legal issue. The magistrates whom Rensi consults propose that Khunanup is Nemtynakhte's serf and posit that the landlord-serf relationship entitles Nemtynakhte to beat Khunanup for doing business with another principal.<sup>170</sup> I have argued earlier that Rensi was correct in subjecting Nemtynakhte to liability for battery.<sup>171</sup> There is, however, another possible explanation. One common judicial tactic is to assume the validity of one party's version of the facts (often facts that appear extremely compelling) and still rule against that party. In this case, suppose that Rensi assumed that the magistrates were correct. Suppose he assumed that Khunanup was Nemtynakhte's serf, and that he (Khanunup) had tried to do business with another landlord. If Rensi actually made that assumption, even if merely for the sake of argument, then his final decision tells us even more about Middle Egyptian attitudes toward class hierarchies and the changing role of the legal system relating to those hierarchies. The magistrates say that landlords are accustomed to beating their serfs and taking their possessions as punishment for conducting business with another landlord.<sup>172</sup> That which is customary has, historically, often been considered legal.<sup>173</sup> Consequently, if Rensi assumed the truth of the magistrates'

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<sup>170</sup> See *supra* text accompanying notes 115-117.

<sup>171</sup> I have advocated that Nemtynakhte was not privileged to beat Khunanup since Khunanup lived too far away from Nemtynakhte to have been his serf. See *supra* text accompanying notes 118-120.

<sup>172</sup> See *supra* notes 115-117 and accompanying text. White states that an Egyptian peasant's life was generally pretty predictable:

The native-born Egyptian peasant, without being a slave, was a serf or bond-man. He was bound to the service of his master and his master's land. At the same time he could possess land and property of his own, and in the manner of peasants could become prosperous. He could own donkeys and cattle . . . , and buy jewellery and fine linen for his wife.

WHITE, *supra* note 91, at 163. White also makes one general statement that, if Khunanup were, indeed, Nemtynakhte's serf, would certainly make Nemtynakhte's conduct appear to be the exception to the rule: "Since masters of Egypt appear to have lacked any pronounced taste for tyranny, and to have cared deeply for the concepts of right and justice, it was possible for peasants and masters to function together in an atmosphere of mutual respect and esteem." *Id.*

<sup>173</sup> See S.F.C. MILSOM, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* (2d ed. 1981) (noting that "customs of European peoples were worked into intellectual systems of law"); THEODORE F.T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 307-14 (2d ed. 1936) (discussing the importance of custom and precedent in decision making); A.W.B. SIMPSON, *The Common Law and Legal Theory*, in *LEGAL THEORY AND LEGAL HISTORY: ESSAYS ON THE COMMON LAW* 361-62 (1987) (stating that the common law is a system of

suggested facts, then Rensi's final judgment rejects that custom and, in essence, sets a new precedent. His decision sends a message to the landlords that such beatings and seizures of their serfs' property will no longer be sanctioned by law. If Rensi did, in fact, assume (even for the sake of argument) that Khunanup was Nemtynakhte's serf, then this case takes away a landlord's privilege to beat his serf and impound his property as retribution for the serf's having either attempted to or having actually transacted business with another landlord. Breaking down a class barrier like this would be significant.<sup>174</sup> These vignettes from *Cheops & the Magicians* and *The Eloquent Peasant* may, therefore, demonstrate a changing societal attitude and growing awareness in the Middle Kingdom that the traditional, unfettered *carte blanche* of the upper classes to beat their underlings and seize their property was inappropriate and ought not be tolerated.<sup>175</sup>

The final scene in the third story of *Cheops & the Magicians* also sparks our curiosity about legal relationships among family members. The author does not so much as hint that there is anything irregular or inappropriate when the maid's half brother beats her. In fact, the half brother appears not to be ashamed at all, and freely tells Reddedet that he "gave her a sound beating."<sup>176</sup> Perhaps as "the eldest brother" he was, in fact, entitled under ancient Egyptian law (or at the very least family custom) to inflict corporal punishment on a younger sister.

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customary law).

<sup>174</sup> Without a privilege provided by a master-servant relationship, these beatings (*i.e.*, of Reddedet's maid and Khunanup) would constitute assault and battery under modern tort law doctrine. See *supra* notes 96-97, 99, 101 and accompanying text.

<sup>175</sup> Theodorides asserts that ancient Egyptian law changed as ancient Egyptian society changed: "Human aspirations conditioned by new circumstances caused it to change, and it evolved between the pole of equality and liberty and that of inequality, the latter being determined above all by the system of land tenure." Theodorides, *supra* note 3, at 320. Taylor says that "[t]he people of Egypt were not at the mercy of arbitrary decisions nor subject to the whim of authority, but were well governed by an enormous body of law which contained the highest principles of justice and humanity according to their tenets. Indeed, it seems clear that the main objective of the law was the safeguarding of human rights." Taylor, *supra* note 3, at 67.

<sup>176</sup> SIMPSON, *supra* note 1, at 30.



### F. Criminal Law

In the first address of the *Book of the Dead*, the speaker—the deceased—professes not to have done many, many different acts. Presumably, each type of conduct that the speaker claims not to have done represents either a criminal or civil wrong (or both). Among those acts listed that may well have constituted criminal offenses are the following: murder; conspiracy to commit murder; diminishing food in the temples; stealing the food offerings of the dead; adultery; “self-pollution in the pure precinct of . . . [the] city god;” misrepresenting the grain measure; misrepresenting measurements of length in commercial transactions; misrepresenting measurements of land in real estate transactions; misrepresenting weights in commercial transactions; stealing cattle; snaring sacred birds; catching fish in pools (*i.e.*, instead of from the river?); diverting water from a neighbor’s property to one’s own; withholding herds of the temple endowments; “interfer[ing] with god in his payments. . . .” The declarations in the second address “cover much the same ground as those we have already rendered in the first address.” Breasted presents those declarations, which read like a list of crimes as follows:

The crimes which may be called those of violence are these: “I did not slay men (5), I did not rob (2), I did not steal (4), I did not rob one crying for his possessions (18), my fortune was not great but by my (own) property (41), I did not take away food (10), I did not stir up fear (21), I did not stir up strife (25).” Deceitfulness and other undesirable qualities of character are also disavowed: “I did not speak lies (9), I did not make falsehood in the place of truth (40), I was not deaf to truthful words (24), I did not diminish the grain-measure (6), I was not avaricious (3), my heart devoured not (coveted not?) (28), my heart was not hasty (31), I did not multiply words in speaking (33), my voice was not over loud (37), my mouth did not wag (lit. go) (17), I did not wax hot (in temper) (23), I did not revile (29), I was not an eavesdropper (16), I was not puffed up (39).” The dead man is free from sexual immorality: “I did not commit adultery with a woman (19), I did not commit self-pollution (20,27);” and ceremonial transgressions are also denied: “I did not revile the kind (35), I did not blaspheme the god (38), I did not

slay the divine bull (13), I did not steal temple endowment (8), I did not diminish food in the temple (15), I did not do an abomination of the gods (42)."<sup>177</sup>

Webaoner's act of turning the wax crocodile against the adulterous townsman in the second tale from *Cheops & the Magicians* would probably be considered murder in most American jurisdictions today.<sup>178</sup> Nevertheless, the king approves Webaoner's conduct after Webaoner tells him "about this affair which the townsman had in his house with his wife," and the king, furthermore, instructs the crocodile to take the body of the townsman away.<sup>179</sup> Arguably, then, under the applicable ancient Egyptian law, the townsman's adultery excused Webaoner's behavior, which otherwise would have been tortious and criminal.

As for Webaoner's adulteress wife, the king ordered that she be burned alive. In fact, the king, himself, apparently acted as the executioner: "His [Majesty the King of Upper] and Lower Egypt, Nebka, the vindicated, had the wife of Webaoner taken to a plot north of the capital, and he set / fire to her [. . . in] the river."<sup>180</sup> This passage indicates that ancient Egyptian law used capital punishment—in this case death by burning—for a woman

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<sup>177</sup> BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 302-03. For a general discussion of ancient Egyptian criminal law, see generally Taylor, *supra* note 3, at 70. One of the most ancient criminal trials is described in the Pyramid Texts of the Old Kingdom: the mythological trial of Set for the murder of Osiris. See BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 33-36; 175-76. For a more detailed account of criminal law and procedure in the New Kingdom, see ERMAN, LIFE, *supra* note 3, at 130-38.

<sup>178</sup> See generally WAYNE R. LAFAYE & AUSTIN W. SCOTT, CRIMINAL LAW § 7.1, at 605-11 (2d ed. 1986).

<sup>179</sup> SIMPSON, *supra* note 1, at 18. It is unlikely that the townsman was still alive after the crocodile had had its way with him for seven days "in the [lake without] breathing." *Id.* This is, however, consistent with what Erman says about the role of the king in criminal law: "In these cases also the sentence was not always pronounced by the court. It sufficed for the court to declare the guilt of the prisoner, to 'find him guilty'; the deed was then sent to the Pharaoh, and it was left for him to decide what punishment should be inflicted." ERMAN, *supra* note 3, at 141 (footnotes omitted).

<sup>180</sup> SIMPSON, *supra* note 1 at 18. The *Book of the Dead* specifically states: "I did not commit adultery." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 300.

who had committed adultery.<sup>181</sup> Nevertheless, one Egyptologist maintains that “[c]apital punishment was not a prominent feature of the Egyptian administration of justice, in spite of the fact that it existed in theory. It was such a rare event that pharaoh himself was required to review the case and confirm the sentence.”<sup>182</sup>

In the closing segment of the story of Reddedet, a crocodile snatches the maid, presumably eating her. This is the second time in Papyrus Westcar that a crocodile acts as the instrument of death. In the second tale, as was noted,<sup>183</sup> a crocodile kills the adulterous townsman. Although, in that story, the crocodile does not actually disappear with the townsman for good until Nebka, the king, tells him “Take what belongs to you,” it is likely that the townsman was already quite dead when the king gave his royal sanction to the execution. Indeed, “the townsman was in the [lake without] breathing” for seven days<sup>184</sup> before the king arrived. Therefore, death by crocodile is twice employed as the method of execution of alleged wrongdoers. However, while it is clear that the townsman has committed the crime of adultery, it is not clear that Reddedet’s maid has done anything criminally wrong. She was attempting to visit the king either to complain about being beaten or else to warn the king about the birth of future kings who were not his descendants.<sup>185</sup> If death by crocodile is, as it appears to be, a literary device to denote either state sanctioned or divinely sanctioned capital

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<sup>181</sup> In discussing criminal punishments, White, quite obviously referring to these punishments from the story, *Cheops and the Magicians*, remarks: “There is little evidence that the more startling punishments—burning women for adultery, or throwing traitors to the crocodiles—were often carried out.” WHITE, *supra* note 91, at 167 (emphasis added).

In *The Maxims of Ptahhotpe*, Ptahhotpe advises his son:

If you desire to preserve friendship in a home into which you enter, whether as lord or as brother or as friend, at any place into which you enter, beware of approaching the women, / for no good comes to a place where this is done, nor is it clever to reveal them; a thousand men are turned aside from what is good for them. A little moment, the semblance of a dream, and death reaches you because of knowing them.

SIMPSON, *supra* note 1, at 166 (footnote omitted). For a good general discussion of *The Maxims of Ptahhotpe*, see Posener, *supra* note 7, at 226-27.

<sup>182</sup> WHITE, *supra* note 91, at 167. Indeed, in this tale, the king does, in fact, “review that case and confirm the sentence” for both the townsman and the wife. *Id.*

<sup>183</sup> See *supra* text accompanying notes 20-22.

<sup>184</sup> SIMPSON, *supra* note 1, at 18.

<sup>185</sup> See *supra* notes 167-168 and accompanying text.

punishment,<sup>186</sup> we are left to wonder what crime the maid committed that was punishable by death.

To the extent that Rensi considers the case of Khunanup and Nemtynakhte as a criminal case, the magistrates clearly recommend extreme clemency: merely a return of stolen property but no fines or incarceration.<sup>187</sup>

The list of Nemtynakhte's crimes is at least as long as the list of his torts.<sup>188</sup> The physical abuse that he inflicts upon Khunanup would be considered criminal assault and battery in most American jurisdictions,<sup>189</sup> and his confiscation of Khunanup's property would be robbery.<sup>190</sup>

Given the numerous crimes that he committed, Nemtynakhte's punishment does not necessarily seem excessive when compared to other accounts of criminal penalties in ancient Egypt. Taylor, for example, states:

In most criminal cases, torture and mutilation were practiced. Torture was used not only as a form of punishment, but also in later times as a means of encouraging witnesses to tell the truth. Criminals who had been punished by mutilation were often sent for varying periods of exile and forced labour in the frontier camps to assist in national defence. It should be mentioned that punishment was

<sup>186</sup> In the *Book of the Dead*, a beast roughly analogous to a crocodile inflicts capital punishment upon those whose hearts are heavier than the symbol of Ma'at: "a grotesque monster called the 'Devouress,' with the head of a crocodile, fore quarters of a lion and hind quarters of a hippopotamus, wait[s] to devour the unjust soul." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 305 (emphasis added); see also WHITE, *supra* note 91, at 75-76 (discussing the trial in the underworld and the fate of those whose hearts are heavier than the ostrich feather of Ma'at).

<sup>187</sup> See *supra* notes 121-123 and accompanying text. Such clemency conflicts with the harsh punishments inflicted upon other criminals in the New Kingdom; such as death, cutting off of the tongue or hands. See ERMAN, *supra* note 3, at 141. Lenience is also inconsistent with the ideal expressed in *The Dialogue of a Misanthrope with his Own Soul* where it is hoped that the future king will "inflict the punishment of wickedness on the doer of it. . . ." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 196.

<sup>188</sup> See *supra* text accompanying notes 98-102.

<sup>189</sup> See generally LAFAYE & SCOTT, *supra* note 178, at §§ 7.15-7.16.

<sup>190</sup> See generally *id.* at § 8.11. Clearly, robbery displeased the ancient Egyptians. In another Middle Kingdom story, *The Dialogue of a Misanthrope with his Own Soul*, the protagonist laments the sad state of affairs in Egypt: "Robbery is practised, every man seizes his neighbor's (goods)." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 193.

regarded—and accepted—as a necessary consequence of crime. Nobody questioned it; nobody sought to change it. A thief, in addition to his punishment, was obliged to pay a multiple of the value of the stolen article.<sup>191</sup>

Perhaps Nemtynakhte's loss of possessions was just such a multiple payment to Khunanup.

It is worthwhile to note that neither *The Eloquent Peasant* nor *Cheops & the Magicians* involves a case where a defendant is given a right of confrontation. The adulterers are executed solely upon evidence and testimony from the accuser. Nemtynakhte also is punished without the opportunity to be heard. Modern American criminal procedure does not permit such *ex parte* actions.<sup>192</sup>

One final note regarding criminal law in *The Eloquent Peasant* comes from the middle of Khunanup's third petition to Rensi. At this juncture in the tale, Rensi was obviously a little fed up with Khunanup's railings: "And he caused two apparitors to attend him with whips, and they belabored all his limbs therewith."<sup>193</sup> One must wonder whether this punishment was justified. But apparently, the ancient Egyptians were not overly concerned with state-sanctioned battery for obnoxious litigants.

### III. JUSTICE<sup>194</sup> & JURISPRUDENCE

#### A. *Ma'at*

To the ancient Egyptians, *Ma'at* (translated roughly, "truth" or "justice")

<sup>191</sup> Taylor, *supra* note 3, at 70.

<sup>192</sup> See generally U.S. CONST. amend. VI. ("In all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation; to be confronted with the witnesses against him. . . .").

<sup>193</sup> SIMPSON, *supra* note 1, at 41. Erman tells of suspects (accused of robbing royal tombs) in a criminal trial of the New Kingdom being beaten during the investigation: "They 'were examined,' that is, 'they were beaten with sticks both on their hands and feet,' under the influence of this cruel bastinado they confessed. . . ." ERMAN, *supra* note 3, at 132.

<sup>194</sup> When the tribunal of gods at Heliopolis restored Osiris' throne "to him against the claims of Set," Osiris was given the epithet "justified." BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT*, *supra* note 5, at 35. Breasted asserts that the term "justified" "must have been a legal term already in use when this episode in the myth took form." *Id.*, see also *id.* at 147.

was a central overriding principle in law. *Ma'at*, personified by the goddess, *Ma'at*, represented a universal harmony and order—the way that things are supposed to be.<sup>195</sup>

The religious term "maat" stood in the center of this legal system; the term encompasses not only the cosmic order but also the order of life in which boundaries human life revolves and which is based on origin and therefore thought to be of divine nature and also the area of law which is not separated from the order of life; the meaning of the term apparently touches the area of morals and ethics. This abstract term becomes a figure to fulfill the religious need to be addressable: it is personified and anthropomorphously described as "Ma'at," Goddess of order, truth, and justice. The whole legal system was restricted by her. Therefore, everyone, even the King, is obligated to acknowledge and realize "Ma'at" all the time; for state agencies "Ma'at" was the guiding principle and goal whilst administration and judiciary must promote the enforcement of "Ma'at." Consequently, "Ma'at" appears to be the allegory of the ideal law for which all humans must strive; she comprehends the norms of just conduct.<sup>196</sup>

According to Shupak,

*Ma'at* is a central conception of the legal world of ancient Egypt, denoting order, honesty, and justice. It relates not simply to the activities of human life but to the cosmos in general. *Ma'at* was the order of the universe ever since its creation by the god Ra'; and the Egyptian king, as Ra''s representative on earth, was responsible for the preservation of *ma'at*.<sup>197</sup>

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<sup>195</sup> See LEXICON, *supra* note 3, at 183; ERMAN, *supra* note 3, at 139; BREASTED, DEVELOPMENT OF RELIGION & THOUGHT, *supra* note 5, at 166.

<sup>196</sup> LEXICON, *supra* note 3, at 183.

<sup>197</sup> Shupak, *supra* note 3, at 15.

Ma'at was the daughter of Re. When a deceased Egyptian was judged after death it was Ma'at's symbol, the ostrich feather of truth, that was weighed against the deceased's heart.<sup>198</sup> Ma'at was also important to judges and to their sense of duty. "The judges were called 'Priests of *Ma'at*,' and they wore a medallion in the form of *ma'at* on their necks as a symbol of their position."<sup>199</sup>

In the fourth tale in *Cheops & the Magicians*, it is the wondrous Dedi, not King Khufu, who appeals to an abstract sense of human justice—like Ma'at. When Khufu first asks to see Dedi sever a head and rejoin the head with its body, he demands that a prisoner be brought.<sup>200</sup> Khufu was willing to inflict both death as well as what we would characterize as cruel and unusual punishment on the prisoner. Dedi, the voice of aged wisdom, however, spoke of a higher sense of justice and morality. Dedi was unwilling to visit such pain and suffering on a human being.<sup>201</sup>

## B. *The Eloquent Peasant*

### 1. Overview

*The Eloquent Peasant* offers a wealth of material relating to ancient Egyptian notions of justice and jurisprudence. In an attempt to recover his

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<sup>198</sup> Breasted recognized the "legal form and legal process" by which the deceased was judged. BREASTED, *DEVELOPMENT OF RELIGION AND THOUGHT*, *supra* note 5, at 173. Furthermore, "[w]hereas the judgment hereafter is mentioned as far back as the Pyramid Age, we now [in the New Kingdom] find a full account and description of it in the Book of the Dead." *Id.* at 299. This curious admixture of myth and reality in the form of Ma'at may be, in part, explained by "the particular 'pre-Aristotelian' logic of the Egyptians, based on an indomitable faith and belief in the magical nature of things and the aetiological reality of myths." Erik Iversen, *The Hieroglyphic Tradition*, in *THE LEGACY OF EGYPT* 170 (J.R. Harris ed., 2d ed. 1971).

Furthermore, the Egyptian habit of concretizing that which we today would consider abstract is not surprising: "The most striking feature of Egyptian [*i.e.*, the Egyptian language] in all its stages is its concrete *realism*, its preoccupation with exterior objects and occurrences to the neglect of those more subjective distinctions which play so prominent a part in modern, and even in the classical, languages." GARDINER, *EGYPTIAN GRAMMAR*, *supra* note 4, at 4.

<sup>199</sup> Shupak, *supra* note 3, at 15 (footnote omitted).

<sup>200</sup> See *supra* notes 32-34 and accompanying text.

<sup>201</sup> *Id.*

asses, Khunanup first pleaded with Nemtynakhte for ten days in vain.<sup>202</sup> He then took his case to Nemtynakhte's landlord, Rensi, the High Steward of Ninsu.<sup>203</sup> The majority of the story is actually Khunanup's nine speeches wherein he appeals to Rensi. After Khunanup's first speech, Rensi tells the King, Nebkaure, about Khunanup's appeal.<sup>204</sup> Nebkaure, in turn, commands that Rensi pretend to ignore Khunanup, thereby causing him to return on a daily basis to plead his case. Meanwhile, Nebkaure also tells Rensi to enlist scribes to transcribe Khunanup's arguments for posterity and also makes sure that Khunanup's family is cared for while he remains in Ninsu to plead his case.<sup>205</sup>

Khunanup's speeches employ multiple arguments and pleas asking the judge, Rensi, to act justly. As such, his entreaties exemplify ancient Egyptian attitudes toward legal philosophy. These arguments, however, have nothing to do with the merits of Khunanup's case against Nemtynakhte.<sup>206</sup> Mostly they are plain and simple appeals to the judge to act justly and in accordance with law. Frequently he implores Rensi not to be tempted by bribes and not to be influenced by the fact that he is a poor man. Thus, macroscopically, this tale is an exhortation to the judiciary to ignore class distinctions in decision-making and to concentrate, rather, on what is right. Indeed, in the Middle Kingdom "[i]t was . . . not only religious belief and social axiom, but also formally announced royal policy, that before the bar of justice the great and the powerful must expect the same treatment and the same verdict accorded to the poor and the friendless."<sup>207</sup>

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<sup>202</sup> "And the peasant spent a period of ten days appealing to Nemtynakhte, but he paid no attention to it." SIMPSON, *supra* note 1, at 34.

<sup>203</sup> See *supra* note 75 and accompanying text.

<sup>204</sup> *Id.*

<sup>205</sup> At the story's end, Rensi has someone read aloud all nine entreaties for Khunanup to hear: "Well, stay here that you may hear your petitions. And he had [them] read out from a new papyrus-roll, each petition according to [its] contents." SIMPSON, *supra* note 1, at 48-49.

<sup>206</sup> Apparently, as a matter of procedure, Khunanup had already argued the facts and relevant points of law when he presented the case to Rensi's "servant of choice." See *supra* note 81 and accompanying text. Nevertheless, Shupak argues that "[t]he work is written in the form of a complaint made before a judge. . . ." Shupak, *supra* note 3, at 4. As was noted, Shupak also recognizes that the peasant's arguments have nothing to do with the merits of the case. See *supra* note 81.

<sup>207</sup> BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 252; cf. WHITE, *supra* note 91, at 131 (White makes the dubious claim that "questions of right and wrong were civil questions, not religious ones. Morality was a social and legal matter,



In terms of what the speeches teach us about the ways that the ancient Egyptians viewed justice and jurisprudence, it is beneficial to categorize a number of principal themes or motifs in Khunanup's speeches. For the sake of convenience, I have classified these themes or motifs into nine categories:<sup>208</sup> 1) General advice for the judge; 2) Human metaphors; 3) Metaphors of man-made objects used to control or measure nature; 4) Sailing/boating metaphors; 5) Divine metaphors; 6) The plasticity of rhetoric; 7) Natural phenomena; 8) Lamentations of despair; and 9) Miscellaneous. Several themes or motifs stand out as more prominent than others, such as the human metaphors and sailing/boating metaphors. Nevertheless, each offers a distinct variation on ancient Egyptian perspectives of justice and jurisprudence. In sum, the dominant, recurring principle in all of these categories is that law is a natural force—like the sun, wind, wild animals, or the current in the Nile—and the role of the judge is to direct or control that force.

## 2. *Major Themes*

### a. *General Advice for the Judge*

In his first speech, Khunanup bluntly tells Rensi that he will enjoy good fortune if he renders a just judgment:

if you go down to the Lake of / Truth, you shall sail on it with a fair breeze; the [bunt] of your sail shall not strip away, your ship shall not lag, no mishap shall befall your mast, your [yards], shall not break, you shall not [founder nor run aground], the current shall not carry you off, you shall not taste the evils / of the river, you shall not see the face of fear, the darting fish shall come to you, and you shall end with fat fowl. . . .<sup>209</sup>

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whereas religion was mainly concerned with magic.”).

<sup>208</sup> Clearly many other divisions could be proposed. The categories are not necessarily mutually exclusive. Several overlap. Nevertheless, despite the shortcomings inherent in any classification scheme, I believe that the benefits of the proposed approach outweigh its detriments; and it is certainly more useful for the present inquiry than merely reviewing the nine speeches one by one in chronological order.

<sup>209</sup> SIMPSON, *supra* note 1, at 34-35.

As he is about to end his first appeal, Khunanup exhorts Rensi to use the peasant's case as an example to make a good name for himself:

let me make your name / in this land [in accord with]  
every good law—a leader devoid of rapacity, a magnate  
devoid of baseness, who destroys all falsehood and fosters  
truth, and who comes at the voice of the caller.<sup>210</sup>

The peasant's charge in the second petition, "Do to the doer / so as to cause him to do"<sup>211</sup> demonstrates an understanding of the human condition (i.e., "fair dealing to another anticipates benefits to yourself; if you are just you will get your reward"<sup>212</sup>) and is language that sounds like the language of consideration in contract law.<sup>213</sup> Also in this second petition, Khunanup reminds Rensi that it is wrong for judges to accept bribes: "Do not speak falsehood, watch over the magistrates; what [fattens] the judges is a basket . . ."<sup>214</sup> Here, Faulkner notes "A basket of good things is a bribe."<sup>215</sup> In his fourth petition, Khunanup advises Rensi that justice comes through patience: "be / patient, that you may learn justice. . . ."<sup>216</sup> Indeed, this is somewhat humorous since Rensi surely must be patient to listen to Khunanup's multiple petitions. Also in the fourth petition, Khunanup offers yet another tidbit of wisdom regarding management of his caseload. "Pass over a case, and it will become two."<sup>217</sup> In addition, a judge who fails to do his job sets a bad example: "As for the judge who ought to be punished, he is a pattern for the wrongdoer."<sup>218</sup>

The sixth petition begins with several positive images of the good judge. Good judges "lighten (the weight of) falsehood, foster truth, foster all good and destroy evil. . . ."<sup>219</sup> Khunanup also generalizes about justice: "The purloiner diminishes justice, so render good and full account; then justice

<sup>210</sup> *Id.* at 35.

<sup>211</sup> *Id.* at 37.

<sup>212</sup> *Id.* at 37 n.23.

<sup>213</sup> See generally FARNSWORTH, *supra* note 136, at §§ 2.2-2.15.

<sup>214</sup> SIMPSON, *supra* note 1, at 38-39.

<sup>215</sup> *Id.* at 39 n.32.

<sup>216</sup> *Id.* at 42.

<sup>217</sup> *Id.* Faulkner footnotes this sentence explaining that "a problem shelved becomes doubly difficult." *Id.* at 42 n.54. Perhaps we would say "a stitch in time saves nine."

<sup>218</sup> *Id.* at 43.

<sup>219</sup> *Id.*

will be neither filched from nor excessive."<sup>220</sup> The peasant concludes his seventh petition by, once again, illustrating for Rensi what a judge ought to do: "Yet magistrates should be expellers of evil, lords of good, craftsman in creating that which is, and joiners up of the head which is cut off."<sup>221</sup>

In the eighth petition, Khunanup complains that Rensi is someone "who should arrest the robber" but that instead he "takes away the magistrates who were appointed to contend against trouble. . . ."<sup>222</sup> This is ironic. If the magistrates whom Rensi consulted earlier in the tale are the magistrates to whom Khunanup refers here, Khunanup is dead wrong. Rensi had the good sense to ignore the magistrates who were bending over backwards to think up excuses for Nemtynakhte's vile behavior.<sup>223</sup> Khunanup offers this enigmatic declaration concerning justice also in the eighth petition: "Do justice for the Lord of Justice, the justice of whose justice exists."<sup>224</sup> Khunanup also characterizes justice as a universal concept, not confined to life on earth: "But justice is for eternity, and it goes down with him who does it into the realm of the dead . . . his name is not obliterated on earth and he is remembered for goodness. . . ."<sup>225</sup> When Khunanup says "his name," he arguably refers to the name of a conscientious judge.

As his arguments draw to a close in the ninth petition, Khunanup bluntly asserts that punishment is an appropriate remedy in particular situations: "Deal punishment to him who ought to be punished, and none shall resemble your rectitude."<sup>226</sup> This suggests that meting out punishment is precisely what judges are supposed to do.

### *b. Human Metaphors*

In his first petition, Khunanup addresses Rensi with a series of human metaphors. In one sense, it is plain that the peasant merely intends to flatter Rensi. Nevertheless, to the extent that a judge personifies justice, these metaphors also reflect what the author thought about law and justice. Khunanup calls Rensi "a father to the orphan, a husband to the widow, a

<sup>220</sup> *Id.* at 44.

<sup>221</sup> *Id.* at 45-46. The reference to rejoining a decapitated head reminds one of the tale of Dedi in *Cheops and the Magicians*. See *supra* notes 31-34 and accompanying text.

<sup>222</sup> SIMPSON, *supra* note 1, at 46.

<sup>223</sup> See *supra* text accompanying notes 115-118.

<sup>224</sup> SIMPSON, *supra* note 1, at 46.

<sup>225</sup> *Id.* at 46-47.

<sup>226</sup> *Id.* at 47.

brother to her who is divorced, a garment to the motherless."<sup>227</sup> The father, husband, and brother in these examples are people<sup>228</sup> who render assistance to a dependent who has had something taken away from them: the orphan has lost his parents and both the widow and divorcee have lost their husbands. Similarly, the garment serves as a substitute for the warmth and protection of a child's mother. In like fashion, although Khunanup has not lost a parent or spouse, he has lost his possessions—the very possessions which he had intended to use to support himself. Khunanup sees justice, then, as an instrument that fills gaps for those who have been deprived of their means of support. At the close of this first petition, Khunanup makes his earlier analogy (*i.e.*, to a father, husband, brother, and garment) explicit when he emphasizes to Rensi that he too has suffered a loss—obviously correlating his misfortune to that of the orphan, widow, divorcee, and motherless child: "I speak that you may hear: Do justice, O praised one whom the praised ones praise; *do away with / my needs, for see, I am heavy-laden; examine me, for see, I am in a loss.*"<sup>229</sup>

In the third petition, the peasant stops flattering Rensi with how a judge ought to act and with what justice should be. Instead, he shifts his strategy and begins taunting Rensi in a sarcastic tone, accusing him of acting like unjust people. Khunanup calls Rensi names. He denounces Rensi as behaving like five different kinds of corrupt people<sup>230</sup>: 1) a washerman who accepts bribes and forsakes his patrons; 2) a ferryman who only assists the rich, not the poor; 3) a storekeeper who gives no credit to the poor; 4) a butcher who enjoys the slaughter—one who revels in the animal aspects of death—; and 5) a herdsman who fails to pay others.<sup>231</sup> Also in the third petition, Khunanup says: "See you are a sheriff who steals, a town governor who accepts (bribes), a district overseer who should repress plundering (but) who has become a pattern for the wrongdoer."<sup>232</sup> The Peasant continues his harangue in his fourth petition. He persists in creating new "bad judge" metaphors for Rensi: "See, you are a hunter who slakes his ardor, one bent on doing what he desires, who harpoons hippopotamuses, shoots wild bulls,

<sup>227</sup> *Id.* at 35.

<sup>228</sup> It is unclear whether the fact that these persons are all male has great significance here.

<sup>229</sup> SIMPSON, *supra* note 1, at 35. (emphasis added).

<sup>230</sup> He also accuses him of behaving like one animal; namely, a hawk. *See infra* text accompanying note 278.

<sup>231</sup> SIMPSON, *supra* note 1, at 40-41; LICHTHEIM, *supra* note 12, at 176.

<sup>232</sup> SIMPSON, *supra* note 1, at 41.

spears fish, and snares birds."<sup>233</sup>

At the end of the fourth petition, Khunanup returns to positive human metaphors and implores Rensi to avoid acting in a manner antithetical to his position. He addresses Rensi as a "Bailer-out of water. . . ." and then continues, "Helmsman, do not steer your ship awry; Lifegiver, do not let men die; Destroyer, do not let men be destroyed. . . ."<sup>234</sup>

*c. Metaphors of Man-Made Objects Used to Control or Measure Nature*

In his second speech, Khunanup addresses Rensi. He calls him the "Steering Oar of heaven, beam of earth, plumbline which carries the weight! O Steering oar, do not diverge; O Beam, do not tilt; O Plumbline, do not swing awry"<sup>235</sup> These metaphors are illuminating. Each—an oar, a beam, and a plumbline—is a man-made, physical device used by humans to control or measure natural forces. An oar makes it possible for people to direct their path in the water and temporarily to subvert the current and the wind. A wooden architectural beam contains the force of gravity.<sup>236</sup> A plumbline uses gravity as a means to achieve or test verticality. Similarly, a judge is one who controls the law. Thus, these metaphors suggest that Rensi, like the oar, beam, and plumbline, is in a position to control a natural force too: namely, law. Perhaps the ancient Egyptians viewed justice as being something like the forces of nature; a river's current, wind, or gravity. These images imply that Khunanup views law as a universal constant: a natural law.<sup>237</sup> It would be understandable if the ancient Egyptians perceived law as a natural phenomenon. The regularity of the Nile's annual inundation must have instilled a confidence in the natural order of the universe.<sup>238</sup>

Again in the third petition, Khunanup portrays justice as a physical device used to control or measure the natural order, like scales which are controlled by the force of gravity: "Will the balance deflect? Will the stand-balance

<sup>233</sup> *Id.* at 42.

<sup>234</sup> *Id.* at 43.

<sup>235</sup> *Id.* at 36.

<sup>236</sup> It is also possible that the "beam" is the central piece of a scale. See *infra* note 239 and accompanying text.

<sup>237</sup> See generally JEROME HALL, FOUNDATIONS OF JURISPRUDENCE 21-53 (1973).

<sup>238</sup> See generally GARDINER, PHARAOHS, *supra* note 6, at 27-44.

incline to one side?"<sup>239</sup> Similarly, in the third petition, the peasant states:

The true balancing of the land is the doing of justice; do not speak falsehood, for you are great; / do not be light, for you are weighty; do not speak falsehood, for you are the balance; do not swerve, for you are rectitude. See, you are on one level with the balance; if it tilt, then you may tilt.<sup>240</sup>

Also, in the third petition, he tells Rensi: "Your tongue is the plummet, your heart is the weight,<sup>241</sup> your lips are its arm."<sup>242</sup> In the sixth petition, he continues this motif, describing a good judge as clothing for nakedness and a fire to cook raw food.<sup>243</sup>

Khunanup persists in using scale imagery to describe the judiciary: "Is he a balance? It does not tilt. Is he a stand-balance? It does not incline to one side." "Does a balance tilt? It is its scalepans which weigh things . . ."<sup>244</sup> Finally, he continues with scale images in the ninth petition: "Their tongue is men's stand-balance, and it is the balance which searches out deficien-

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<sup>239</sup> *Id.* Scales are a symbol of impartiality. See Shupak, *supra* note 3, at 16 n.57 ("As in the case of the scales, which record an incorrect weight as a result of being unbalanced, so does the liar harm the norm of justice. For this reason, the judge overseeing justice is compared to a pair of scales and to a plummet and parts of his body to parts of the scales."). In his discussion of *The Eloquent Peasant*, Breasted noted that the scales "form a symbol which became widely current in Egyptian life, till the scales appear as the graphic means of depicting the judgment of each soul in the hereafter." BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 221-222. Breasted also related a story of a vizier who perhaps went too far in his attempt to appear impartial:

In the Feudal Age [*i.e.*, the Middle Kingdom], a thousand years after the rise of the Old Kingdom, at the installation of the vizier, that official used to be referred to the example of an ancient vizier who had already become proverbial in the Pyramid Age. The cause of his enduring reputation was that he had decided a case, in which his relatives were involved, against his own kin, no matter what the merits of the case might be, lest he should be accused of partial judgment in favor of his own family.

*Id.* at 167 (footnote omitted). See also *id.* at 243-244.

<sup>240</sup> Simpson, *supra* note 1, at 40.

<sup>241</sup> Perhaps this is *Ma'at* personified.

<sup>242</sup> Simpson, *supra* note 1, at 40.

<sup>243</sup> *Id.* at 44.

<sup>244</sup> *Id.* at 47.

cies.”<sup>245</sup> The prevalence of imagery representing man-made objects that are used to control and harness nature is striking. Such images plainly suggest that the ancient Egyptians considered law a natural force and considered that a judge’s task was to manage and direct that natural force.

#### *d. Sailing/Boating Metaphors*

In the second petition, the peasant employs a great deal of piloting and boating imagery to describe the proper role of a judge. “The face of the helmsman should look forward, but the ship diverges as it will; the king is indoors and the steering oar is [in] your hand. . . .”<sup>246</sup> Next the judge is likened to a safe harbor for boats: “Act as a shelter, that your coast may be clear; see, your abode is infested with crocodiles.”<sup>247</sup> “Bringer to shore of all who are drowning, save one who is shipwrecked; rescue me from. . . .”<sup>248</sup>

Khunanup continues to exploit this metaphor in subsequent petitions to Rensi: “Steer according to the bunt (of the sail); [stave off] the inundation so as to do justice; beware lest you run aground because of the tiller rope.” “Do not diverge, but steer (aright), pull upon the tiller rope.”<sup>249</sup> A judge who neglects his duty is “like a ship in which there is no captain.”<sup>250</sup> He then adds more boating imagery in his sixth and seventh petitions: “The sounding pole is in your hand like a [free] pole when [deep water has been found.]”<sup>251</sup> “You are the steering oar of the entire land, and the land sails in accordance with your command. . . .”<sup>252</sup> Given the importance of boat travel on the Nile, it is only logical that the ancient Egyptians would have used imagery such as this to convey ideals of law.

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<sup>245</sup> *Id.*

<sup>246</sup> *Id.* at 38 (footnote omitted).

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at 39 (ellipses in original).

<sup>249</sup> *Id.* at 40.

<sup>250</sup> *Id.* at 41 (third petition).

<sup>251</sup> *Id.* at 44. Faulkner translates this passage in the footnote literally and provides an explanatory note: “‘like an open stick, an occasion of water having happened’; the metaphor seems to be that Rensi is in safe waters because his pole cannot touch bottom.” *Id.* at 44 n.61.

<sup>252</sup> *Id.* at 44-45.

*e. Divine Metaphors*

Khunanup opens his third petition by invoking Rensi as both the sun god, Re, and as the Nile god, Hapy.<sup>253</sup> The Pyramid Texts of the Old Kingdom indicate that there was a strong connection between the sun god, Re, and justice.<sup>254</sup> Indeed, "it was the Sun-god . . . who was the earliest champion of moral worthiness and the great judge in the hereafter."<sup>255</sup> Breasted specifically notes that the Pyramid Texts make clear the nexus between a person's moral conduct on earth and prosperity in the hereafter.<sup>256</sup> The god Hapy represented the river Nile during its inundation phase.<sup>257</sup> Consequently, Khunanup here equates the judge with two gods who represent tremendous natural forces: the sun which brings light; and the Nile at the time that it brings rich soil to fertilize the valley.

He then, in the seventh and eighth petitions, evokes the god Thoth, telling Rensi: "you are the companion of Thoth, who judges without showing partiality."<sup>258</sup> "You pen, papyrus, and palette of Thoth, beware of making trouble. . . ."<sup>259</sup> The reference to Thoth is interesting. Breasted notes that, in the judgment scene of the Coffin Texts of the Middle Kingdom, Thoth appears "as an advocate of the accused" "before the Sun-god . . ."<sup>260</sup> "Thoth having been, according to the Solar myth, the vizier of the Sun-god."<sup>261</sup>

<sup>253</sup> "O High Steward my lord! You are Re, lord of heaven, with your entourage, and the sustenance of all men is you, even like the flood; you are Hapy, who makes green the meadows and furnishes the wasted tracts." *Id.* at 39.

<sup>254</sup> See BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 172.

<sup>255</sup> *Id.* at 176.

<sup>256</sup> *Id.* at 176-98.

<sup>257</sup> LURKER, *supra* note 35, at 57.

<sup>258</sup> *Id.* Shupak cites this line and remarks that "one of the principles of justice is the judge's objectivity. For this reason, Thoth, the Egyptian god of justice, and the ideal judge, 'never inclines sideways.'" Shupak, *supra* note 3, at 16.

<sup>259</sup> SIMPSON, *supra* note 1, at 46.

<sup>260</sup> BREASTED, DEVELOPMENT OF RELIGION AND THOUGHT, *supra* note 5, at 254-55.

<sup>261</sup> *Id.* at 255. Iversen, citing Plato, comments that

Thoth, the Egyptian god of learning and writing, had been the first to observe that 'the infinity of sound' could be divided up into distinctive elements such as vowels and consonants, and was therefore considered not merely the discoverer of the concept of letters, but also the inventor of writing as such. And a further passage in Cicero . . . stated that . . . 'Thoth . . . was said to have provided the Egyptians with laws and letters'



*f. The Plasticity of Rhetoric*

In the second petition, Khunanup makes an interesting observation about the plasticity of rhetoric. He says: "It means that a twister of speech from its exact sense / makes a travesty of it. . . ." <sup>262</sup> The importance of oral advocacy for Khunanup is paramount. His rhetoric is, after all, the skill that has caused Rensi and the King to treat him with special care and respect. The significance of Khunanup's rhetorical ability calls to mind references to speech and its importance in other Middle Egyptian texts. The Egyptians of the Middle Kingdom apparently recognized that one's ability to speak could make or break a case. For example, in *The Teaching for Merikare*, "[s]tress is laid on the ability to speak well and persuasively, and imitation of the ancient models is strongly recommended. . . ." <sup>263</sup> "Be skillful in speech, that you may be strong; [ . . . ] it is the strength of [ . . . ] the tongue, and words are braver than all fighting. . . ." <sup>264</sup> However, in the same text, Merikare is counseled: "A talker is a mischief-maker; suppress him, kill [him], erase his name, [destroy] his kinfolk, suppress the remembrance of him and his partisans who love him." <sup>265</sup> In another Middle Kingdom work of fiction, *The Shipwrecked Sailor*, the sailor says: "For the speech of a man saves him, and his words gain him indulgence." <sup>266</sup> The sailor's statement, however, could also be translated, "It is the speech of a man which takes him away" (i.e., a man's speech can get him carted off to jail!). The verb *nhm* can mean both "save, rescue" as well as "take away, carry off." <sup>267</sup> Thus, assuming that the sailor's use of *nhm* is intended as a *double entendre* for both "save" and "take away," the sailor's assertion recognizes that a rhetorician can win his case with persuasive advocacy but that he can also lose his case without it. <sup>268</sup>

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. . . [and that he] came to be considered in Roman times . . . the primordial legislator—in Christian circles the Egyptian Moses. . .

Iversen, *supra* note 198, at 172.

<sup>262</sup> *Id.* at 37.

<sup>263</sup> GARDINER, PHARAOHS, *supra* note 6, at 115.

<sup>264</sup> SIMPSON, *supra* note 1, at 181.

<sup>265</sup> *Id.*

<sup>266</sup> *Id.* at 51.

<sup>267</sup> R.O. FAULKNER, A CONCISE DICTIONARY OF MIDDLE EGYPTIAN 136 (1981).

<sup>268</sup> In many respects a *double entendre* seems entirely consistent with the clever personality of the sailor. There is something in his wry character that gives us the impression that he is often speaking with tongue-in-cheek. At one moment, he tells us that the sailors

*g. Natural Phenomena*

Khunanup perceives justice as a natural function, like breathing, shade, shelter, food, warmth, water, and a flooding river. "The doing of justice is breath to the nose."<sup>269</sup> "Shade, do not act as the sun-heat; Shelter, do not let the crocodile take." The statement, "his possessions are (the very) breath to a poor man, and to take them away is to stop up his nose,"<sup>270</sup> echoes the earlier references to parents, husbands, etc. who provide support for children, wives, and other dependents.<sup>271</sup> A good judge is satiety for hunger, the sky's warmth for the cold, and water for thirst.<sup>272</sup> In the eighth petition, Khunanup characterizes good judges as "shelter from the aggressive."<sup>273</sup> The petitions also, not surprisingly, contain references to the inundation of the Nile. In the third petition, Khunanup argues that Rensi must "[r]estrain the robber, take counsel for the poor man . . . [and that he

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aboard his ship could predict a storm even before the clouds had gathered. Yet, immediately we discover that a storm overtakes the ship before they are able to make port.

From a linguistic standpoint, it is entirely possible that the sailor's use of *nhm* here was meant to be and was understood as a *double entendre*. In his *A CONCISE DICTIONARY OF MIDDLE EGYPTIAN*, Faulkner cites several examples of *nhm* from *The Admonitions of an Egyptian Sage*, *The Eloquent Peasant*, and *Sinuhe* (all of which are most certainly of Middle Kingdom origin, and, therefore, roughly contemporary with *The Shipwrecked Sailor*). R.O. FAULKNER, *supra* note 267, at 136. In these examples, there are some in which *nhm* is used to mean "save, rescue" (clearly with positive overtones) and others in which it means "take away, carry off" (with decidedly negative or pejorative connotations). In *The Admonitions of an Egyptian Sage*, *nhm* occurs once. In that instance it means "save, rescue": "Is he brave and does he save himself?" (in *kni-f nhm-f sw*) (*Admonitions of an Egyptian Sage* 13,3). In *The Eloquent Peasant* *nhm* twice means "take away, carry off": "Behold, Peasant, I am going to take away your donkey!" (*mk wi r nhm '3-k shty*) (*Eloquent Peasant* B1,11); and "You take away the very complaint from my mouth." (*nhm-k rf nhwt m r-i*) (*Eloquent Peasant* B1,28). The author of *Sinuhe* uses *nhm* three times. Twice it means "save, rescue": "I saved the man who was robbed." (*nhm-n-i 'w3y*) (*Sinuhe*. B97); and "You who have saved me from death." (*nhm wi m mt*) (*Sinuhe* B203). Once it has the meaning "take away, carry off": "Their food was taken" (*nhm wnm-t-sn*) (*Sinuhe* B104). These examples clearly show that both meanings were well understood in the Middle Kingdom. That the literate audience of that period was aware of both possible meanings for *nhm* is best illustrated in *Sinuhe* where the author uses the same word but in both contexts (i.e., to mean "save" and "take away").

<sup>269</sup> SIMPSON, *supra* note 1, at 39.

<sup>270</sup> *Id.* at 43.

<sup>271</sup> See *supra* notes 227-229 and accompanying text.

<sup>272</sup> SIMPSON, *supra* note 1, at 43-44.

<sup>273</sup> *Id.* at 46.

must] . . . not become an inundation against the petitioner."<sup>274</sup> The end of the fifth petition returns to the theme that Rensi is failing to do his duty as judge. In doing so, Khunanup defines what he perceives the judge's role should be (and uses yet one more image of the river):

You were appointed to hear pleas, / to judge between suitors  
and to repress the robber, but see, what you do is to support  
the thief! Men trust in you, and you have become a  
transgressor. You were appointed to be a dam for the poor  
man; beware lest he drown, for see, you are a swift current  
to him.<sup>275</sup>

#### *h. Lamentations of Despair*

Khunanup contends that good judges and adequate justice are crucial if society is to avoid catastrophe. In the midst of his second petition, Khunanup bemoans the sad state of affairs that would result if the judge were to fail to redress his wrongs. Khunanup argues that, if Rensi fails to rectify Khunanup's wrongs, the situation will be one where

justice has fled from you, having been ousted from its place;  
the magistrates make trouble, the norm of speech becomes  
one-sided, the judges snatch what has been [taken].<sup>276</sup>

Also in the second petition, Khunanup states that the circumstances of society are to blame for a criminal's conduct. He comments on the difficult plight of criminals and asserts that forgiveness and sympathy, not merely punishment, are essential in dealing with them.

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<sup>274</sup> *Id.* at 39. Apparently, the judge and not the flood itself should be the one who controls the flooding.

<sup>275</sup> *Id.* at 43.

<sup>276</sup> SIMPSON, *supra* note 1, at 36-37 (footnote omitted).

The possessor of [bread] should be merciful, (even though) the criminal is hard; thefts are natural to him who has no possessions, and possessions are snatched by the criminal; a bad state of affairs, but [inevitable]. One should not be angry with him; he is but seeking for himself.<sup>277</sup>

Moreover, in the seventh petition, Khunanup argues that one of law's goals must be to assuage the problems of the poor when lawbreakers attempt to take advantage of them: "([a]s for) the subverter of law and the destroyer of rectitude, there is no poor man / who can live when he pillages, for justice has not addressed him."<sup>278</sup>

### *i. Miscellaneous*

Khunanup uses many other metaphors to explain his perceptions of justice. A judge who neglects his duty is like "a town / which has no governor, like an assembly which has no chief, . . . a confederacy which has no leader."<sup>279</sup> A bad judge acts like a hawk<sup>280</sup> who preys on the poor.<sup>281</sup>

Also, in the fifth petition, Khunanup shifts his direction somewhat. Instead of concocting metaphors to describe Rensi, he uses fishing imagery to describe what Nemtynakhte has done. Here he portrays Nemtynakhte as the skillful fisherman taking advantage of a helpless fish: "The [angler] [. . .] kills the chance-come fish, the fish-spearer stabs the . . . -fish, the / . . ., and the fish-netter ravages the river; see, you are in like case."<sup>282</sup>

## IV. CONCLUSION

It is clear that a great deal of information about ancient Egyptian law can be garnered from a close reading of works of Middle Egyptian fiction. The texts elucidate both substantive and procedural laws as well as a glimpse into

<sup>277</sup> *Id.* at 38. Faulkner's footnote suggests that the reason for the peasant's enlightened attitude towards criminals is not a display of understanding for Nemtynakhte but rather self-interest: "The peasant is excusing himself in advance if he should have to take to theft because of the loss of his goods." *Id.* at n.26 (emphasis added).

<sup>278</sup> *Id.* at 45.

<sup>279</sup> *Id.* at 41.

<sup>280</sup> The hawk is the only non-human in this group in the third petition.

<sup>281</sup> See also *supra* notes 227-228 and accompanying text.

<sup>282</sup> SIMPSON, *supra* note 1, at 43 (footnotes omitted).

an ancient jurisprudential prism. Many other interdisciplinary approaches, such as an investigation of Egyptian sports and games<sup>283</sup> or art, can surely prove fruitful as well. This article's modest goal, however, has been merely to advance our understanding of ancient Egyptian law by examining and analyzing the legal implications derived from two major works of Middle Egyptian fiction.

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<sup>283</sup> For example, the rules and procedures of sports and games arguably reflect a society's attitudes towards conflict resolution and notions of justice.

