

Politics and Social Needs in 2nd Millennium Syrian Sale Formularies: the Case of Emar*

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In the 13th and 12th centuries B.C. Emar, a Syrian city situated on middle Euphrates, was a vassal of the Hittite empire, subjugated to the viceroy of Karkemish. It is probable that in the previous century, Emar bowed to the authority of Mitanni, and only after its demise it fell under Hittite rule.¹ What remains today of the once thriving trading center are numerous cuneiform documents, mostly cultic and literary. But among them, also ca. 500 legal texts may be found, mostly from the 13th century, though there is also a relatively small

* The following abbreviations are used for the Emar texts: ASJ 12=TSUKIMOTO 1990, 177-259. AuOr 5=ARNAUD 1987, 211-241. Westenholz=WESTENHOLZ 2000. Emar=ARNAUD 1986. Dalley=DALLEY 1992, 83-111. RE=BECKMAN 1996. Sigrist=SIGRIST 1993, 165-184. TBR=ARNAUD 1991. The other abbreviations follow the *AfO Abkürzungen Liste*, accessible online: http://orientalistik.univie.ac.at/fileadmin/documents/Abk%C3%BCrzungen_gesamt_ONLINE_Liste_1x.pdf; http://orientalistik.univie.ac.at/fileadmin/documents/Abk%C3%BCrzungen_gesamt_ONLINE_Liste_2x.pdf (accessed 30.05.2013).

¹ For the history of Emar see in general essays collected in: CHAVALAS 1996; also ADAMTHWAITE 2001; more recently, see the proceedings of the Emar conference in Konstanz: D'ALFONSO – COHEN – SÜRENHAGEN 2008. For Hittite administration in Emar, see for instance ARNAUD 1987, 9-27; IMPARATI 1987, 187-207; BECKMAN, 1992, 41-49; BUNNENS 1989, 23-36; YAMADA 1998, 323-334. For the political system of the city and the role of the rulers and the diviners: FLEMING 2008, 207-217; DEMARE – LAFONT 2008; COHEN 2009.

amount of earlier (14th century) and later (12th century) documents, the latest thereof written probably in the 1180s B.C.²

Sale contracts are by far the most numerous legal texts originating from Emar; there are 179 real estate sales and 22 sales of persons. Just for the sake of comparison, the number of testaments, the second most abundant category, does not even reach a hundred. Those documents give us insight into the legal system of the city, making it possible to follow, at least partially, the development of civil law under the Hittite rule, and especially to observe the way law would adjust to the changing reality in order to meet new needs of the community it served.³

One of the most striking features of Emar sales, as well as of other legal texts, is the existence of two various scribal styles, in the scholarship referred to as “Syrian” and “Syro-Hittite”.⁴ Differences between them are both formal and material. The first and most obvious one is the shape of the tablet – in Syrian tablets, which are narrow and longish, the text runs parallel to their shorter side, whereas the Syro-Hittite ones, much wider and shorter, are inscribed parallel to the longer side. Other differences lie in the way of sealing and the location of seals,⁵ in the paleography (similar to Old Babylonian in Syrian documents, reminding of Middle Babylonian in Syro-Hittite) and language (again, similar respectively to Old and Middle Babylonian). Last but not least, the content of the sale contracts of both styles differs significantly, and also changes with time. Therefore, before analyzing the content itself, a few words on the chronology of both scribal formats are necessary.

Since most of Emarite documents do not contain dates, it is very difficult to establish their chronology, either relative or absolute, and the scholarly discussion thereof is ongoing.⁶ However, it is reasonably certain that the Syrian style is the older one, its first texts probably going back as far as the beginning of the 14th century (or even the end of the 15th), the last ones originating from the end of the 2nd dynasty of Emar rulers,⁷ well before the fall of the

² For the Akkadian texts from Emar in general see: DIETRICH 1990, 35-48. For the Hurrian and Hittite documents see LAROCHE 1982, 53-60.

³ For a complete online edition of Emar texts see <http://virgo.unive.it/emaronline/cgi-bin/index.cgi> (last accessed 30.05.2013). For a presentation of the legal documents see LEEMANS 1988, 207-242; DÉMARE – LAFONT 2010, 43-85.

⁴ See WILCKE 1992, 115-150; SEMINARA 1998, 1-27; DÉMARE – LAFONT 2010, *passim*.

⁵ For the analysis of seals, see BEYER 1982, 62-63; BEYER 2001.

⁶ See notably SKAIST 1998, 45-71; COHEN – D’ALFONSO 2008, 3-25; DI FILIPPO 2008, 45-64.

⁷ Emar, the capital of a strategically important border province, was probably ruled by two consecutive dynasties. The first one, reigning before the Hittite conquest, was founded by Ir’ib-Ba’al. The second one, installed by the conquerors themselves, started with Iaši-Dagan, and probably (the

city (which still existed, although not for long anymore, in the year 1185), i.e. from the end of the 13th century. In turn, the Syro-Hittite format emerged sometime during the 13th century, coexisting for a while with the Syrian one, and continuing after its disappearance, till the end of the archives due to the destruction of the town.

As the Syrian style was used for a longer time, its documents are much more numerous. There are 134 Syrian real estate sales and only 45 Syro-Hittite ones. Most of the Syrian texts date from the reigns of two 13th century kings – Pilsu-Dagan and Elli, and most of the Syro-Hittite ones – from the reign of Elli alone. Only 17 Syrian contracts, 14 of them featuring city authorities as sellers, are as old as the 14th century.⁸ Furthermore, Syro-Hittite documents from the last period of the site, after the end of the ruling dynasty and direct power takeover by Hittite magistrates, are not at all in abundance; only 7 out of 45 may be with some certainty ascribed to this period.⁹ On the other hand, all but one (i.e. 21) sales of persons are Syro-Hittite; however, they also come mostly from the time of Elli.¹⁰

Differences between the legal content of sale contracts of both styles are numerous and striking.¹¹ The first one is the apparent rigidity and inflexibility of the Syrian formulary, contrasting with the high variability of the Syro-Hittite one. It is well shown by the number of possible schemas (and variations thereof) of texts of both styles as well as of documents that might be called “atypical”. In fact, there is just one main schema of Syrian real property sales,¹² with little diversity, mainly due to the number of objects sold and of

sequence of rulers is not certain) went on with Ba'al-kabar, Abbānu, Pilsu-Dagan, Elli, Zū-Aštarti and Ba'al-kabar II. Afterwards the dynasty ended for unknown reasons, and during a troubled period that followed the control of the city was taken over by Hittite magistrates, the so-called “supervisors of the land”, first Mutri-Tešub, then Ahī-malik. Finally, sometime in the first half of the 12th century, Emar fell victim to a wave of migrations, hunger and plague, that is to the same disaster that wiped out the Hittite empire and changed forever the political map of the whole Near East. For the order of rulers see among others: SKAIST 2005, 568-574; SKAIST 2005, 609-619; on the end of the city see COHEN – D'ALFONSO 2008, 3-25; DI FILIPPO 2008, 45-64.

⁸ AuOr 5 3, AuOr 5 4 (=ASJ 12 12), TBR 14; TBR 16, TBR 17, TBR 18, TBR 19, TBR 63, RE 91, ASJ 12 2, Emar 12, Emar 148, Emar 149, Emar 150, Emar 153, Emar 171, ASJ 12 14 (=AuOr 5 5). Sales by private persons are AuOr 5 4, Emar 171, TBR 63.

⁹ TBR 33, RE 12, RE 51, RE 68, ASJ 12 9, Emar 225, Sigrist 3.

¹⁰ Dalley 5.

¹¹ For an analysis of sale documents see DI FILIPPO 2008a, 419-456; FIJAŁKOWSKA 2014.

¹² 1. Object of sale (situation, measurements). 2. Object belongs to PN. 3. From PN, owner (*bēlu*, litt. lord) of the object PN₂ for x shekels silver, full price bought the object. 4. The silver was received, his heart is satisfied. 5. Whoever claims the object, will pay 1000 shekels of silver to (institution), 1000 shekels of silver to (institution). 6. Clauses of the tablet (optional, see below). 7. Witnesses, scribe included.

transactions registered in one document. There are also two clearly atypical texts, written *ex latere venditoris* instead of *ex latere emptoris* like all the other ones.¹³ On the other hand, among the three times less numerous Syro-Hittite texts at least 4 schemas with a lot of variation can be distinguished,¹⁴ and, added to that, at least four very atypical documents exist.¹⁵ Clearly, contrarily to the Syrian texts, very few elements were mandatory in a Syro-Hittite sale – probably only the names of the parties, the object of sale and its price, the verb for “buy” or “sell” and names of witnesses. Even the description of the object is left out in circa half of the texts.

Another important difference concerns the final clauses, and especially the ways of securing the irrevocability of the contract.¹⁶ In Syrian texts, there is just one tool used to that end – a penal clause stating that if someone raises claims (*baqāru*) to the object of sale, they will pay 1000 shekel (in rare cases 100 or 500) mostly to either the city god Ninurta and the City each, to the City and the Palace, or to the Palace alone. In Syro-Hittite contracts the clauses are more numerous, and more varied too. The main formula used not only in sales, but in most types of legal documents simply states that “if someone/the parties/one of the parties raise claim, this tablet (the one on which the contract is written) will defeat (*le’û*) the claimant”. It is beyond the scope of this paper to analyze the legal meaning of both clauses. However, two main points should be emphasized. First, the Syrian clause may be interpreted either as creating a contractual obligation for any claimant to pay a fine, or simply as stating the existence of such a legal obligation resulting from customary or statutory law. Be it as it may, it is clear that the Syrian philosophy of preventing claims weighs heavily towards severe financial penalties, in accordance with earlier, local legal tradition. Conversely, the Syro-Hittite formula does not mention

For the meaning of the clause “His heart is satisfied” see WESTBROOK 1991, 219-224; for the “full price” clause: SKAIST 1995, 619-626.

¹³ Emar 156, Emar 163.

¹⁴ *Ex latere venditoris* with and without description of the object, *ex latere emptoris* with and without description of the object. The Syrian clauses “Silver was received” and “His heart is satisfied” are not used. The “full price” clause is used very inconsistently. The order of the clauses is generally as follows: 1. Object, with or without cadastral description 2. Operative section (“the object for x shekels silver PN sold to PN₂” or “the object for x shekels of silver PN₂ bought from PN”) 3. Clause “Whoever claims, this tablet will defeat him” 4. Warranty against eviction/ redemption clause (see below) 5. Clauses of the tablet (see below) 6. Witnesses, sometimes including the scribe.

¹⁵ The atypical texts include: RE 7 (sale of a *haba’u* building; the meaning of this term is unknown as yet), Emar 225 (a sale between two brothers, who sell to each other their inheritance parts), Westenholz 12 (redemption of a mortgaged property by the brother of the debtor), ASJ 12 5 (=AuOr 5 8, sale of a kiln).

¹⁶ For the law of Emar, including the law of sale, see LEEMANS 1992, 3-33; WESTBROOK 2003, 657-691.

punishment at all, and its character is obviously declaratory, pointing to the tablet as means of proof in case of litigation. As it seems, this was not always deemed sufficient, and some documents contain a warranty against eviction, obligating the seller to answer any claim arising in future (i.e. to substitute for the buyer in the trial) and, in case of successful eviction, to pay twice the price of the object of sale as damages.¹⁷

Moreover, some Syro-Hittite sales are not irrevocable at all, since they contain a redemption clause, allowing either family members of the seller, or simply “anybody”, to pay twice the price of the real estate and take it back; no time limit is ever set. The same goes for slave sales, although there the redemption price varies from 1 to nearly 3 times the price of the object sold.¹⁸

Another feature of the Syro-Hittite sales, as well as of the whole Syro-Hittite style, is the importance seemingly attached to the role of the tablet. One proof thereof is the widespread use of the aforementioned clause “the tablet will defeat him”, ubiquitous in all kinds of contracts. Another one may be a double clause concerning the transmission of the tablet – “the old/whole tablet of the object of sale is in the basket of its owner/is lost. If it turns up, this tablet will defeat it/it will be broken”. One of these clauses may be found in 8 Syro-Hittite texts (17%)¹⁹ and both – in 7 (15%). The numbers for Syrian texts are, respectively, 1 for the first formula alone,²⁰ 9 for the second (6%)²¹ and 3 texts for both together (2%).²²

The data resumed above seem to suggest, at first sight at least, that under the Hittite rule, two scribal formats mirroring two sets of rules of customary law were in use. The Syrian style, older and deeply anchored in the local legal tradition, inflexible or even “fossilized” in a way, did not respond anymore to the needs of the developing society. Therefore another set of customary rules, and hence another scribal style emerged, the so-called Syro-Hittite one, much more flexible and easier to adjust to the needs of a concrete transaction. How-

¹⁷ For instance real property sales ASJ 12 9, ASJ 12 11, AuOr 5 9, TBR 20, and sales of persons such as Emar 83, Emar 84.

¹⁸ For instance real property sales TBR 33, TBR 68; sales of persons ASJ 13 18 (sale of wife, the redemption price is “one pretty woman”; Emar 217 (sale of four children, redemption price: “four souls”).

¹⁹ First clause: RE 11, TBR 24, TBR 38, ASJ 12 13, Emar 90; second clause: TBR 24, TBR 33, ASJ 12 9; both together: Emar 76, Emar 85, Emar 206, Emar 207, ASJ 12 11, AuOr 5 9, TBR 37 (only real property sales are taken into account, although the clause may be found also for instance in a document concerning debts).

²⁰ AuOr 5 5(=ASJ 12 14; again, only real property sales are included).

²¹ Emar 137, Emar 141, Emar 158, TBR 10, TBR 62, RE 9, Westenholz 5 et 6, ASJ 12 7.

²² TBR 55, TBR 57, RE 3.

ever, a closer analysis of the textual material shows that such a picture would be too simplified.

First of all, the Syrian style certainly does seem rigid when compared to the Syro-Hittite one, but it is neither inflexible nor “fossilized”. All the clauses are standardized only to a certain degree and could be rephrased if necessary. The penal clause is a case in point. Not only may the fine have various beneficiaries, established according to rules so far unknown (but for the fact that if city authorities are sellers, they also receive the fine, and that the so called “Brothers”,²³ a rather shadowy group of highly respected citizens, appear as fine beneficiaries rarely and only in transactions between private individuals), but those beneficiaries also change with time. The Palace, a new and important recipient of the fine turns up (in transactions between private persons or the ones with a member of royal family as a party) only as late as the times of king Pilsu-Dagan. This development has been interpreted by D. Fleming as a sign of growing royal power and of weakening of the collective municipal authorities.²⁴ In any case, if the penal clause was really only a “fossilized” relic of the past, there would be no need at all to change its phrasing.

Similarly, the “clause of the broken tablet” (“if another tablet turns up, it will be broken”) is mostly formulated with no variation whatsoever, but in two cases, where obviously the parties deeply distrusted each other, a tablet turning up “in the basket (i.e. in hands) of the sellers”, named by names, is specifically mentioned.²⁵ It seems therefore valid to suggest that the Syrian style was not as rigid as it seems to be, and that also the Syrian scribes tried to adjust to the changing reality while keeping up the main features of the local tradition.²⁶

An important question to ask would be how the Syro-Hittite style, and especially the customary law of sale it reflects were created. Of course, one can only speculate, but it is interesting to notice that each particular clause of the Syro-Hittite sales has a predecessor in the local legal tradition. Thus, the description of the property sold, mostly identical to the one in Syrian documents, is closest (in fact, mostly identical) to the formulary of Middle Baby-

²³ See BELLOTTO 1995, 210-228; DÉMARE – LAFONT 2012, 129-142.

²⁴ FLEMING 1992, *passim*.

²⁵ TBR 62, Emar 158. In other words, the buyers suspected that the sellers might one day produce an old tablet, using it as a title deed in order to unlawfully claim ownership of the object sold; hence the need to specifically mention this possibility in the written contract.

²⁶ On the changes in the content of the tablets due to the transition of power see FIJAŁKOWSKA 2012, 543-550.

lonian texts from Terqa on the Middle Euphrates.²⁷ The operative section²⁸ was probably taken from the Syrian style and often cut short; perhaps the scribes did not understand the full meaning of all its clauses.²⁹ As for the final formulae, the warranty against eviction is known from Old Babylonian and Middle Babylonian texts, but also from Old Assyrian documents from Kanesh and, more importantly, from the Syrian town of Alalakh. The redemption clause can be found in Alalakh as well, and the clause “this tablet will defeat the claimant” obviously originates from Ugarit, where it appears mainly in trial protocols. To sum up, it would seem that what is called the Syro-Hittite scribal (and legal) tradition is in fact a mix of local tradition and foreign (but never from too far away) borrowings, ingeniously put together in order to create a new set of legal rules, responding to the needs of the changing society and of the legal turnover.³⁰

Now, another problem is why this new set of rules and hence a new formula had to emerge. Why not simply further adjust the Syrian style? To find the answer, it is necessary to analyze the sale documents of both styles with respect to the parties involved and to the objects sold.

As far as the former are concerned, two things become immediately obvious. First, only the Syrian texts feature the city authorities as sellers (described as “Ninurta and the Elders of Emar”). Second, members of Emarite royal families appear exclusively in the texts of this format, either as sellers (kings or crown princes), or as buyers (other royals, especially Pilsu-Dagan’s brother Iṣṣur-Dagan), and finally also as witnesses (the king with or without the crown prince and other royals).³¹ On the other hand, the new elite, connected with the Hittite rulers, seem to have taken a liking to the other style, as proven by numerous Syro-Hittite documents featuring the diviner Zu-Ba’la, a powerful man protected by the Great King himself,³² and his male progeny. Prosopography also shows that usually people who were parties to contracts of one

²⁷ For Terqa see PODANY 2002, esp. 155-170.

²⁸ Part of the document registering the act of relinquishment of rights by the seller and of paying the price by the buyer. In Syrian texts usually: „Buyer from seller the object for x silver, full price, bought. The silver was received. His heart is satisfied”.

²⁹ This might be suggested by the way they used the clause of the “full price” (“For x shekel of silver, full price, he bought it”) nearly always present in the second part of the operative section of Syrian sales. In Syro-Hittite documents, its use seems erratic to say the least. As many as 10 real estates sales are devoid of it, and the same goes for most slave sales. Moreover, the decision whether to use it or not seems to have been an arbitral choice of the scribe, with no legal significance.

³⁰ On the origins of the operative section of both styles see SKAIST 2008, 219-229.

³¹ For a detailed analysis of this phenomenon, see DÉMARE – LAFONT 2008, *passim*.

³² To whom he successfully appealed after being unjustly (in his opinion) burdened with a tax he did not wish to pay. See SINGER 2000, 65-71.

style did not participate in contracts drafted according to the other one, nor were they witnesses thereto, although they are sometimes enumerated among neighbors of the sold property.

From the above it becomes clear that on the one hand there was some connection between political allegiance and the preferred type of sale contract and that on the other hand people preferring one style apparently did not mix much with their fellow citizens who chose to use the other one. Still, the reasons for such situation remain to be elucidated.

As for objects of sale, the first difference has been already stated – with one exception, all sales of persons are Syro-Hittite, and so are all contracts of personal antichresis (*amelūtu*).³³ But there are also discrepancies in the proportions, if not the types, of immovables. The most popular kind of real estate sold by private persons in the Syrian texts are houses (25, i.e. 35%) and fields (19, i.e. 27%), then *kiršitu* buildings (14, 20%; probably a kind of ruined or old house³⁴). By contrast, Syro-Hittite sale contracts feature mostly houses (18, 35%), then come the *kiršitu* (12, 23%) and only 6 fields (11%).

Moreover, significant differences may be observed in the cadastral descriptions of houses in documents of both styles. In Syrian texts, houses are often irregularly shaped (10 out of 40, i.e. 25%), whereas there is just one example of such house in the Syro-Hittite ones.³⁵ This corresponds well with archeological finds, according to which there were two types of houses in Emar – rectangle- and trapezium-shaped, the particular shape being chosen according to the terrain configuration.³⁶

Another interesting “geographical” point is connected with the location of *kiršitu* buildings. In the Syro-Hittite texts, out of 8 buildings whose situation is described, 7 give on a road (*kaskal*); out of this number, 5 roads are named with theophoric names. On the other hand, *kiršitus* in Syrian contracts mostly face *huhinnu* passages; only 3 front a *kaskal* road, and only one of those roads bears a divine name. Therefore, it might be supposed that adherents of both styles lived, at least partly, in different districts of the city.

³³ Contracts whereby the debtor (often together with his family) entered the service of the creditor, who cancelled his debt in exchange. The minimum service period was life (of the debtor or of the creditor). Such a contract could be advantageous for both sides: the creditor acquired servants, and the debtor had at least his survival assured (since he lived at the creditor’s home), while keeping the status of free citizen. See SKAIST 2001, 237-250.

³⁴ The term is not clear and the discussion thereof – still ongoing. See for instance MAYER 1989, 269-270; HUEHNERGARD 1991, 2, n. 58, 39; ZACCAGNINI 1992, 42-48; SEMINARA 1995, 468-480; MORI 2003, 48-53; PENTIUC 2001, 99-102; FAIST 2006, 471-477.

³⁵ RE 55, a confirmation of ownership rights.

³⁶ See MARGUERON 1976, 193-232; MCCLELLAN 1997, 29-59.

On the basis of the material presented above, it seems reasonable to assume that the two styles were used by different groups of Emar population. Since the royal family and the city authorities obviously chose the Syrian tradition, the same might have been true for the local aristocracy. This would also explain why there are no Syrian sales into slavery – those people simply did not need to resort to such drastic means in order to survive. The same explication would be valid for the small number of Syrian real estate sales caused by indebtedness and a much larger amount of the Syro-Hittite ones brought about by the same reason.

On the other hand, the meager quantity of fields sold in Syro-Hittite texts could be interpreted as the result of the Syro-Hittite style being used either by people too poor to own fields, or by “nouveaux riches” whose main areas of activity did not lie in agriculture, but for instance in slave trade (most buyers in sales into slavery belong to a few rich families) or divination and teaching, as it was the case of the Zu-Ba’la family. This would also correspond well with the hypothesis of S. Démare-Lafont, that the “Brothers” appearing as witnesses in Syrian sales and testaments were in fact rich real estate owners, guarding, and by the same token limiting, the possibility to join their privileged circle. Therefore, the Syrian style would be open mostly, or even exclusively to them and their families, whereas the Syro-Hittite format would be the one of the “ordinary people”.³⁷ As mentioned above, political allegiance also might have played a role in the development of the latter format, perhaps even created with the cooperation of foreign scribes coming to Emar with Hittite magistrates and their entourage.

To conclude, it can be said that Late Bronze Age Emar is a very good example of how political environment provoked and influenced changes in the legal system without forcing them. The Hittites did not intervene in civil law, but their mere presence and social transformations that followed (for instance emerging of new privileged groups or pauperization due to wars and duress) were sufficient for such changes to occur. Not only did it force the existent customary law to adjust, it also inspired the creation of a whole new set of customary rules, parallel to those already in use.

³⁷ DÉMARE – LAFONT 2012, *passim*.

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