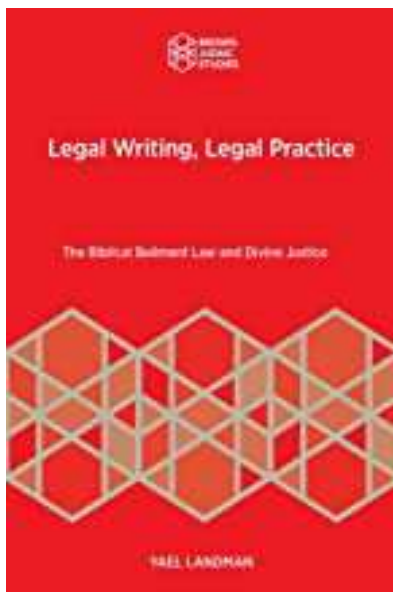


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Yael Landman

Legal Writing, Legal Practice: The Biblical Bailment Law and Divine Justice

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Yael Landman's *Legal Writing, Legal Practice* is a revised version of her 2017 PhD dissertation, completed at Yeshiva University under the supervision of Barry Eichler. This intellectually rigorous study explores what Landman labels the "biblical law of bailment" (Exod 22:6–14), which concerns property belonging to one person that lawfully and temporarily resides in another's possession (2, 99, 131). Landman derives the concept of bailment from Anglo-Saxon law, which encapsulates the disparate legal agreements of herding contracts, animal borrowing, the deposit of goods, and the rental of property. Only in biblical tradition were these diverse legal agreements grouped together into a discrete textual unit. Although Landman has several ambitions with her monograph, her primary aims are twofold: to identify and articulate the latent legal principle that inspired the authors of Exod 22:6–14 to organize the laws the way that they did; and to understand how the legal institution of bailment reveals the connections between "law on the books" and legal praxis.

The book consists of an introduction, five chapters, and a conclusion. Chapter 1 examines the formation of bailment agreements, chapter 2 explores when those agreements go awry, chapter 3 outlines the various judicial procedures that assign liability in bailment agreements, chapter 4 identifies the abstract legal principles at play in bailment law, and chapter 5 probes the unique continuities between cuneiform and rabbinic bailment laws.

In the introduction, Landman offers a clear and introspective look into her methodology, which is best described as a typologically comparative approach to ancient law. She compares cuneiform, biblical, and Tannaitic law not in monolithic terms but rather as heterogeneous pastiches of various local traditions that offer a sketch of bailment practices through history. Landman chooses not to engage with the redaction history of Exod 22: 6–14, adopting a “synchronic reading” that values the legal coherence of the pericope over internal contradictions. This decision has a dramatic impact on her interpretation of Exod 22:8 (68–72), discussed below. By circumventing questions about secondary redaction, Landman’s hermeneutical approach strives to uncover the inherent legal logic of the texts she analyzes.

In chapter 1, Landman examines the creation of bailment agreements through a close exegesis of Exod 22:6a, the Laws of Eshnunna (LE) §§36–37, and the Laws of Hammurabi (LH) §§120–125. She enumerates six reasons for the formation of a bailment agreement: deposit for storage, sequestration of disputed property, deposit in wartime, concealing illicitly obtained goods, service, and transport. A key insight in this chapter is the fundamental distinction in the LH between gratuitous (§§120–121) and nongratuitous deposits (§§122–125), where a payment for services rendered incurs a higher liability (double compensation) even in cases where there is no fraud (20). Although biblical law makes no such distinction, Tannaitic law identifies four types of bailees: the gratuitous bailee, the borrower, the nongratuitous bailee, and the renter (144).

Based on the law concerning “lost things” (אבדה) in Exod 22:8,¹ Landman argues for the existence of “involuntary bailments” (39–44). Some situations, like the discovery of a lost animal, made the finder an unwitting bailee, which meant that the mere possession of another’s property was sufficient basis for the creation of a bailment—without the need for a contract (126). This stands in contrast to other biblical and Mesopotamian references to animal borrowing and herding arrangements, which depict it as contractually negotiated (Exod 22:9a; Gen 29–31; 1 Kgs 20; LH §§261, 264). It seems, therefore, that biblical narratives and Near Eastern laws presume a contractual basis for herding agreements, which the Covenant Code laws on animal borrowing (Exod 22:9–14) abrogate or simply do not envision within their coverage.

Chapter 2 explores cases where bailment agreements go awry, either through theft (גנב), fraud (פשע), or what Landman labels “negligence” (שלח יד). Her contextual reading of שלח יד as a technical legal expression indicating “negligence” is convincing, which she further corroborates through the analogous Akkadian expression, *aḫa nadû* (= “to drop the arm, to be negligent”; CAD 11.1:92a). Landman’s proposal is novel in that it shifts the intent of verse 7 and verses 9–10 away from a question of the bailee’s potential theft of the goods to a question of failure to maintain due care. As commentators have observed, however, this means that verse 7 ends without an apodosis

1. Her identification of 1 Sam 25 as a case of involuntary bailment (pp. 44–45) is not particularly convincing, given that property neither exchanged hands nor was there any contract between David’s men and Nabal.

and verse 8, which concerns cases of fraud (כל־דבר־פשע), is flanked by two laws on negligence. Her solution is to find a “vertical relationship” between verses 7–8, which prescribes the bailee’s strict liability (compensation *in duplum*) in the event of loss (whether for theft, fraud, or negligence) and reflective justice against bailors who lodge false accusations (v. 10). Such a solution has been proposed before, and it still remains unsatisfying.² Even if one accepts that the negligent bailee suffers the same penalty as the thief or fraudster (compensation *in duplum*), swearing an exculpatory oath should exonerate him—just as it does in verse 11. Both redaction criticism and legal reasoning seem to point in the same direction here: verses 8–10a look like a secondary addition.³

Chapter 3 outlines the various judicial procedures that assign liability in cases where one party has violated the stipulations of a bailment agreement. Apparently, God alone was needed to determine negligence (שלח יד) through some kind of suprarational procedure (vv. 7, 10), which Landman identifies as an oath in both cases (74). She rightly rejects linguistic arguments that the roots קרב, בוא, and דבר indicate oracles, as these terms occur much more broadly in legal contexts than they do in oracular ones. She then proposes that the exculpatory oath in biblical tradition was not dispositive, given that the owner (בעל) in verse 11 must “accept” (לקח) the divine resolution of the case. At the chapter’s conclusion, Landman reaffirms that in contrast to all other Near Eastern law collections, only the Covenant Code exhibits a delimited textual unit of laws related to the lawful possession of another’s property (i.e., bailment) as a categorizing principle.⁴ She also claims that Exod 22 has a “victim-centered epistemological question” at heart, which tries to avoid any form of exploitation (99). But exactly who is vulnerable in a bailment agreement: the bailee or the bailor? A penalty of double compensation for fraud and for false accusation is no more or less protective than single compensation. The stakes are certainly higher, but if anything these rules discourage an overuse of judicial procedure to resolve private disputes.

In the fourth chapter, Landman extrapolates her findings on bailment to explore the potential for jurisprudential abstraction in the ancient Near Eastern and biblical law collections. She justifies her use of modern legal concepts and reflects on how to approach the phenomenon of “legal thinking” in antiquity. She first asserts that the biblical laws of bailment are not interested in uncovering the truth but rather in establishing justice. The rules on borrowing animals (Exod

2. In reading this pericope synchronically, Landman aligns herself with Raymond Westbrook (“The Deposit Law of Exodus 22,6-12,” *ZAW* 106 [1994]: 390–403). Cf Eckart Otto, “Diachronie und Synchronie im Depositenrecht des ‘Bundesbuches’: Zur jüngsten literatur- und rechthistorischen Diskussion von Ex 22,6-14” *ZABR* 2 (1996): 76–85.

3. The expression ידו במלאצת רעהו אס־לא שלח ידו strikes me as a *Wiederaufnahme* framing the interpolated text.

4. Two Old Babylonian copies of LH offer categorical rubrics for the laws examined by Landman (§§120–126), which are classified as “statutes on storage and deposit” (*šimdāt* [= DI.DAB5.BA] *našpakūtum u maššarūtum*). See the recent critical edition of the LH (Joachim Oelsner, *Der Kodex Hammu-rāpi: Textkritische Ausgabe und Übersetzung*, dubsar 4 [Münster: Zaphon, 2022], 85–87, 204–212). As Landman observed, these laws are kept separate from those on animal rentals (LH §§242–249, 268–271) and herding contracts (LH §§264–267).

22:13–14), for instance, accord the owner exclusionary rights over fact-finding: the borrower is liable no matter the circumstances unless the owner is present. Landman explains that these exclusionary rights protect those she deems “the vulnerable” (102) and “the disenfranchised” (120). However, these exclusionary rules may have nothing to do with the vulnerability of the parties or the threat of exploitation. It may be a question of *risk* and who assumes it. In a herding agreement, both parties stand to earn financial gains, but the owner assumes essentially all the risk in the event of animal death or injury. But this risk, and the shepherd’s need for a flock, can be leveraged for more favorable contract stipulations to create a more equitable partnership. In such a legal schema, lending an animal gives the bailee a great deal of discretion with another’s property; this comes with greater risk of loss for the owner, and the owner is therefore granted exclusionary rules of fact-finding to motivate them to lend their animals.⁵ This may explain the variety of liability rules that Landman rightly identifies in the bailment laws: fault liability in cases of deposit and strict liability in herding/animal borrowing.⁶ The only exception to the rule of strict liability is *force majeure*, realized as animal predation or disease (Exod 22:13; LH §§244, 249, 266).

In chapter 5 Landman illustrates continuities between ancient Near Eastern bailment law and postbiblical Jewish texts. Like the drafters of the LH, the Tannaim were aware of both gratuitous and nongratuitous forms of deposit, unknown in biblical, Roman, or Greek law. She notes that there are essentially three possibilities to explain such continuities: (1) the “oral law” of ancient Israel, which she considers plausible but unattested; (2) contact between exiled Judahites and Mesopotamian legal traditions in the fifth century BCE; and (3), contact between Mesopotamia intellectual movements of third and second centuries BCE and the emergence of early midrash. Landman’s cautious approach to the question of cultural diffusion is commendable here, as we simply do not know how or why Old Babylonian and rabbinic bailment laws are so similar. These scenarios are all equally likely, as is the possibility that the LH and the Mishnah contain independent and unrelated expressions of the same categories of bailment.

Without a doubt, Landman’s study represents an essential reference for Exod 22:6–14 and the legal history of bailment in the ancient world. The critiques raised in this review are divergences of opinion, which do not undermine Landman’s deep and wide-ranging knowledge of this legal institution across the breadth of Near Eastern antiquity. In my view, Landman convincingly demonstrates that the authors of Exod 22:6–14 relied on a latent legal principle analogous to the concept of bailment in their organization of rules on deposit and animal borrowing. Their legal thinking was grounded in the practice of bailment (as attested in practical documents and biblical narratives), though they were also capable of sophisticated abstraction on issues such as liability,

5. Shared liability appears in laws on the consignment of goods and commercial loans (LH §§100–107), a contractual relationship that is highly analogous to animal herding.

6. Whereas the bailee is not liable for theft in a case of deposit, the shepherd is under strict liability for stolen or injured animals (Exod 22:12; LH §§245–248, 264).

negligence, contract, and property. Landman's reflective engagement with the jurisprudential character of these texts is a welcome contribution to the study of the Bible as a component of ancient legal history.