



The Bail in The Old Babylonian Texts- Linguistic Study

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Abstract

There are procedures and regulations which the inhabitants of Mesopotamia have been writing down during their daily dealings whose purpose was to organize their social life and their economic dealings. Among the most outstanding of these dealings is what the researchers termed as bail which means that a person guarantees another person known as the debtor. And in order that the creditor might be able to recover his financial or in-kind rights, these contracts were codified to serve as a legal document to guarantee his right from being lost before the courts and judicial authorities in case of the first party (i. e. the debtor) was unable to pay what he owed of rights such as his death, his flight to an unknown destination or his disappearance from sight. In this case, the bailer will be the guarantor for the second party (the creditor), taking into consideration that these documents included strict penal conditions that required the party (the debtor) to sell his wife or sometimes one of his children or to mortgage his land which is his source of livelihood until he pays what he owes this commitment. Therefore, the contracts of the bail are one of the idealistic ways through which the legislator preserved the rights of individuals and avoided the economic and social problems among the general society at the time. In the present research, our study concentrates on the bail in linguistic dictionaries, starting with Arabic and ending with the Sumerian and Akkadian dictionaries, as well as the semantic terms that referred to it.

Keywords: Bail, Mortgage, Dictionaries, Semantics, Ancient Babylonian.

الكفالة في نصوص العصر البابلي القديم - دراسة لغوية

الباحثة: أرجوان لؤي غانم

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الملخص

ثمة إجراءات وتنظيمات دأب سكان بلاد الرافدين على تدوينها اثناء تعاملاتهم اليومية كان الغرض منها تنظيم حياتهم الاجتماعية وتعاملاتهم الاقتصادية ، ومن ابرز تلك التعاملات ما اصطلح عليه الباحثون بالكفالة والتي تعنى بأن يقوم شخص بضمان شخص آخر يعرف بالمدين، ومن أجل أن يتمكن الدائن من استعادة حقوقه المالية أو العينية دونت تلك العقود لتكون بمثابة وثيقة قانونية لتضمن حقه من الضياع أمام المحاكم والسلطات القضائية في حال تعذر على الطرف الأول(المدين) تسديد ما بذمته من حقوق كذهابه الى أجله، هروبه الى جهة غير معلومة، أو اختفاؤه عن الأنظار، وهنا سيكون الشخص الكفيل هو الضامن للطرف الثاني (الدائن) مع الأخذ بالحسبان أن تلك الوثائق قد تضمنت شروطاً جزائية صارمة حتمت على الطرف الأول(المدين) أن يبيع زوجته أو أحد أولاده احياناً أو يرهن أرضه التي هي مصدر عيشه لحين أن يسدد ما بذمته من التزام. وبذلك فكانت عقود الكفالة هي إحدى الطرق المثلى التي من خلالها حافظ المشرع على حقوق الأفراد ولينقضى المشاكل الاقتصادية والاجتماعية بين عموم المجتمع آنذاك، ارتكزت دراستنا في هذا البحث على الكفالة في المعاجم اللغوية بدءاً بالعربية وصولاً بالمعاجم السومرية والاكديية، فضلاً عن المصطلحات الدلالية التي أشارت إلى الكفالة.

الكلمات المفتاحية: كفالة، رهن، معاجم، دلالة، بابلي قديم.



Introduction

All the heavenly legislations and laws, ancient and modern, and the ideas that have emerged and that have been advocated by the jurists, legislators, lawgivers, Arabs and the whole world have agreed to respect the dignity of the individual and make him a prestigious and distinguished place and provide him with the means of a prosperous living. As a matter of fact, the human soul is well prepared when it sees that there are legislations and legal texts which guarantee its rights and provide some facilities in its dealings. The people are divided into wealthy and insolvent the latter does not need a bailer or guarantor. As for the former when he purchases his needs and does not have the financial ability to pay and purchase, he presents a guarantor to ensure that he meets the debt or the amount he owed. Thus, the interest in bail contracts and their money are of extreme importance in life. The bail has been differently mentioned from the point of view formulas and meanings. In the Arabic dictionaries, it is mentioned with one meaning, which is the guarantor. In this research, we present to the honorable reader what has been mentioned about it in the Glorious Qur'an and the noble Prophetic hadiths and in Arabic, Sumerian and Akkadian dictionaries.



The Bail in Arabic dictionaries

A-Bail in language:

The infinitive of the “kifl”, and it is called the “kifl”, and it has many meanings, including portion as it has been mentioned in the Glorious Qur’an Allah says: ”He will give you two portions of His mercy”⁽¹⁾ It means two portions.

The Bail

It is the bail, so it is said that I guarantee him with a bail , and I guarantee the money on his behalf to his debtor , that is, I guarantee him and I guarantee him the money, i.e. I guarantee him and he guarantees his debt as a guarantee⁽²⁾, and he guarantees the money with the money – the father of so and so, that is to say he guarantees him or you guarantee the money to so-and-so as a guarantee .Ibn Mandhur mentions in the Lexicon Lisan AL-Arab, as well as in other Arabic dictionaries, that the bailer, guarantees, and by implication and gives a guarantee of the debt⁽³⁾. The guarantee may have several meanings, including: containment, commitment, preservation, protection, care and guarantee. The bail takes the meaning of guarantee and commitment as it is mentioned by the hadith on the authority of Abu Hurairah, he said: The Messenger of God (peace be upon him) said: “God guarantees whoever goes out in His way, he will not bring him out except by jihad in my way and faith in me and believing in my messengers, so he is on me to guarantee that I will admit him to heaven,...)⁽⁴⁾ . As for the guarantor: he is the breadwinner, i.e. his bailer guarantees and his guarantor is guaranteed by him, and it means joining of a debt to a debt of claim and so-and-so guarantees a thing, i.e. commits himself to it⁽⁵⁾. And from the saying of Allah: “ And entrusted her to the care of Zakariya”⁽⁶⁾. And it came in the honorable hadith on the authority of the Prophet – (may God’s prayers and peace be upon him) - he said: “I and the one who looks after an orphan will be like this in Paradise”. He said with his index and middle fingers⁽⁷⁾. And the Almighty’s saying from Surah Taha: “When your sister walked forth and said ‘Shall I direct you to the one who will nurse him?’”⁽⁸⁾ And it came in the honorable hadith (RabKafeeli. e. the stepfather is a bailer)⁽⁹⁾. (And rab is the stepfather)⁽¹⁰⁾.

B-Thebail idiomatically:

The Iraqi legislator defined the bail as (the joining of a debtor to a debtor in the demand for the implementation of an obligation) ⁽¹¹⁾.

This definition shows us that the idiomatic meaning of the bail concentrates on the guarantee, that is to say, the guarantor commits himself to guaranteeing the debt alongside the debtor, or that the guarantor joins his liability to the debtor to guarantee the payment of a known debt. Therefore, the bail strengthens and enhances the guarantees provided to the creditors, i.e. the guarantee is not limited to the debtor's obligation, and the more guarantees there are, the greater the creditor's chance of recovering his debt ⁽¹²⁾.

The bail and the bailer in the Sumerian-Akkadian dictionaries

The term ŠU.DU₈.A. appears in the Sumerian dictionaries, consisting of two syllables, the first being (ŠU) whose equivalent in the Akkadian language (qātu) which means (hand). As for the second syllable, it is (DU₈), which in Akkadian corresponds to epēšu, meaning to make or work. The Compound verb (ŠU.DU₈) is usually affixed to the syllable "A", is Nominal case, The verb becomes a noun ⁽¹³⁾ to refer to a bail or guarantee. The first appearance of the term bail dates back at 2nd millennium BC in the bilingual dictionaries (HARA HUBULLU), which belong to the ancient Babylonian and Assyrian periods ⁽¹⁴⁾ and probably the term goes back further than that period and this is what we will try to do our best to show in this research. Those dictionaries refer to several grammatical forms in which the term bail (ŠU.DU₈.A) was attached to it (ŠE), which indicates the direction in the Sumerian language ⁽¹⁵⁾ to become the meaning of "for guarantee" or "for a guarantee. It may be attached with pronouns denoting the singular and plural⁽¹⁶⁾ (MI.NE.NE.NI) referring to the bailer or the guarantors. In addition to that, we may find compound phrases from the term (ŠU.DU₈.A), which means guarantee (as explained earlier) followed by verbs referring to the verb (ŠU.BI.IN.TI) which means "received" or "took" with the presence of a person's name that precedes this phrase or follows it, and the meaning is "so-so" and thus the translation will be consistent with the context of the text with the presence of the bailer and the guarantor. The

following is a table of the most important terms related to the bail and the guarantee, as follows:

	Sumerian	Akkadian	Arabic translated into English
1.	[ŠU]. DU ₈ . A ⁽¹⁷⁾	qa- tā- tu	Bailer-guarantor
2.	[ŠU. DU ₈]. A.ŠE	a- na qa- ta- ta	For warranty
3.	[ŠU.DU ₈ .A.ŠE IN] SUM	a- na id- din	To give him
4.	ŠU.DU ₈ .A. ŠÈ MI. NI IN. SU] M	a-na id- din-šu	To give him
5.	[ŠU.DU ₈ .A. ŠÉ A] [G] UB. BA	a-na uš- zi- iz	To stop/cease
6.	[ŠU. DU ₈ A] MI	qa- as- su	His sponsor
7.	ŠU. DU ₈ . A]. NISU. BI IN- TI	il- qé	Took
8.	[SU. DU ₈ . A]. NISU. BA.AB.TE. GA	i- laq- qé	Take/receive
9.	SU. DU ₈ .A.NI. SU. BI. IN. TI. E Š	il-qu- ú	They took
10.	SU. DU ₈ .A.NI SU. BA A B. TE.GA.<NE>	i-laq- qu- ú	They take
11.	ŠU.DU ₈ . A. NE.NE	qa- as- su- nu	Their bail
12.	ŠU.DU ₈ .A.NE. ŠU. BI. IN- TI- EŠ	i-laq-qu-ú	They took
13.	ŠU.DU ₈ .A. NE.NE ŠU.BA. AB. TE.GÀ. NE	i-laq- qu- ú	They take

14.	ŠU.DU ₈ . A.NE. SU.BI.IN-TI-ES	il-qu- ú	They took
15.	ŠU. DU ₈ . A. NE.NE ŠU.BA. AB.TE. GÀ.NE	i-laq-qu-ú	They take
16.	SU. DU ₈ . A. NE .NE IB.ZI-GI.ES	is-su-ḥu	Write
17.	ŠU.DU ₈ .A.NE.NE BA.AB.ZI.GI.NE	in-na-aš-ḥu	They write
18.	ŠU.DU ₈ .A.NE.NE ŠÈ	a-na qa-ta-te šu-nu	For their sponsors
19.	ŠU.DU ₈ .A.NE.NE ŠÈ AL.GUB.BA	uš-zi-iz	Leave their bail to their guarantor

As for the term bailer, it is mentioned in the dictionaries and cuneiform texts: qatatum, qātātum, or qātātum⁽¹⁸⁾. We can notice that the word qātātum is used when the guarantor is named and specified. The guarantor is a personal name and is always in debt notes ((You are my guarantor)). We come in the form of šaqātātīm, and the term mazazantum is the synonym of the term qātatum, also an expression for the guarantor or the guarantor⁽¹⁹⁾.

The bailer semantically

The bail is considered as one of the social, economic and legal practices in the society of the ancient Babylonian period. Several terms have come to us indicating its meaning, whether written in the Sumerian or Akkadian language, which are:

1- The hand

The dictionary of meanings gives the definitions of the bail as the guarantee in the mortgage and because the hand is the basic physical organ in the daily dealings of delivery, receiving, selling and buying. The early grammarians put the term hand within the composition of the Sumerian term that denotes the guarantee (ŠU.DU₈.A). If we translate the term literally, the meaning would have been (to work with a hand), in this



case it would be somewhat ambiguous, so the grammarians give its equivalent in the Akkadian language (qa-tā-tu)⁽²⁰⁾ to have a clear indication, on the guarantee. In addition, we have received other references to the receipt of the hand refers to the hand of the debtor through the following Sumerian phrase:

ŠU.DU8. A.NI...šu which in Akkadian corresponds to qātāti lequm meaning **((taking the hands of the debtor))**⁽²¹⁾.

We refer to the use of the hand as a symbol of the covenant and loyalty to the second party in the agreement, and the use of the hand was not limited to the bail in the guarantee contracts only, but went beyond that, let us read in the letters of the ancient Babylonian period a message that came to us from the records of Mary telling us that the King of Karana was afraid of hitting hands with his master Zimri– Lim:

“I have grasped the robe (hem) of the zimri-lim dress, and do not let my master hit the hands”⁽²²⁾

These gestures are still going on at the present time, where we notice the sellers who are trying to reach an agreement for the process of buying or selling they hold hands. If the agreement did not take place, the hands are hit as an evidence of disagreement, and probably the term hitting the hands may refer to the agreement. This may be explained by the power of greeting with hands, which may make a sound indicating the warmth of salutation and acceptance between the two parties. What concerns us from the matter is that the hand was the means by which an agreement was reached and an evidence for it, so it came within the structure of the main word (qa-ta-tu). We have talked about the use of the hand as an evidence to ensure the commitment of the two parties to the agreement concluded, whether it is in the bail contracts or other Babylonian contracts. There is another reference in its content to the use of the hand and speech or the mouth (by which we mean the speech that is uttered by the speaker’s mouth during the conclusion of the agreement), specifically when reaching the oath clause (in the name of the god or the king). We received from the texts of the city of Manana, a contract for the purchase of a slave, who included in his text an oath in the name of the king or what he referred to as the following:



MU LUGAL.BI IN.PAD3

In the name of the king swear ⁽²³⁾

This oath indicated the significance of that ancient Babylonian document. It seems that the legislator, in addition to social norms and traditions, adhered to the oath so that the debtor or borrower and debtor might be serious in dealing with the other party. And for god or king to be alongside a group of people as witnesses to that agreement, and to make the beneficiary party accountable at the time of repayment of that debt or loan, and to preserve the right of the other party. We may find references to the guarantee through the penal conditions, which state the following:

LUGAL i-ta-na-ap-pa-lu

They shall be accountable to the King ⁽²⁴⁾

It is understood from the phrase that the beneficiary party has taken the oath that refers to his pledge in the name of god or the king, so the penal conditions came to warn him that breaching any clause of the contract would expose him to the issue before the king.

2. The foot

The foot has been mentioned in the cuneiform texts whose equivalent in the Sumerian formula is GIR₃, which corresponds to šēpu to mean foot ⁽²⁵⁾, and this word is mentioned to denote in one of its meanings the guarantee and this is what has been stated in one of the texts of the ancient Babylonian distribution of barley, as follows:

GIR₃ iš- ma- ^(D.) EN. LÍL

“Bail Ashmi-Anlil” ⁽²⁶⁾

The translation refers to a bail made by Mr. Ashmi-Enlil and he took from the term (GIR₃) the semantic meaning which refers to the bail. Probably the reader will ask about the relation between the foot and the bail. The answer to such a question is that the foot and its movement with force on the ground indicate in its conception in the ancient secular society the pledge, bail and guarantee with evidence of its mention in the cuneiform texts. The remnants of this social phenomenon have remained in our actual society. When we hear some people talking about so-and-so who has set foot on the issue, this means that he has pledged his responsibility for it.



3. The Mouth or the saying

The Sumerian term KA is mentioned which corresponds to the Akkadian language pû, that means mouth ⁽²⁷⁾ The mouth is related to another term such as (epēšu) to refer to the bail, covenant and guarantee, as well as the saying that is uttered out of the mouth, both of them refer to the same connotation. This confirms the correctness and the validity of our saying and this is a message coming to us from the kingdom of Mari which some of its lines stated the following:

ha-al-ša-am ša-a-ti [xxxx] šapí-ka ù qa-bi-ka li-p[u-úš]

That castle [xxx] to act according to your mouth and your words"⁽²⁸⁾

This context is usually read in the letters of the Old Babylonian period, which indicates in its content the directives and the instructions sent by officials to their employees. This reflects to us the pledges and guarantees that the residents desire from their officials to make them fully obey the higher authorities after obtaining those guarantees. We can also read another example which indicates the importance of speech and its impact on the social custom of the residents of Mesopotamia such as:

a-na šu-zu-zi-šu qá-ba-am aš-ku-nu

Its production is a proven word," in other words, "a promise to produce it."⁽²⁹⁾

The text indicates the mention of the term qabu, which means saying ⁽³⁰⁾ related to the term (šakānu), which has the form of a verb preceded by a pronoun of the 1st person singular to mean (fixed) ⁽³¹⁾.

If both terms were combined, it would be proven (to him) to mean in its significance (I promised him), and we can confirm the spread of this signification or symbolism among the inhabitants of Mesopotamia, with the evidence that we received a message from Tell Harmal (one of the archaeological hills belonging to the kingdom of Ashnuna in the city of Diyala nowadays) telling us the following:

a-wi-lumšaqa-ba-am aš-ku-nu-šum

"The man whose saying has been proven"⁽³²⁾

This literal translation indicates the association of the term qabû with other verbs so that we might have another semantic meaning, including the verb aš-ku-nu, which has been mentioned in both examples to indicate the bail or the guarantee. Such saying may find its remnants in the Iraqi

society at the present time, as we hear about many people saying that I took words from him to indicate the meaning of his words which is the covenant, the guarantee and the honest saying that he will take his responsibility at the time of fulfillment. Or we hear some of the common sayings about the relation between the mouth and the covenant, and it is said from his mouth that he condemned him, referring to the responsibility placed on the other party.

4- The head

The word SAG is mentioned in the Sumerian language to mean the head and its equivalent in the Akkadian language is (qaqqadum) ⁽³³⁾.

Among its other meanings is understanding, agreement, and willingness to be a guarantor, and this is what we found in the dictionaries of the Akkadian language. When the term (qaqqadum) appears appended to the term (mahašum), it will give a literal meaning “hit the head,” while semantically it means “take the bail of so-and-so.” We can notice that sequence in the two vocabulary through the following text:

PN2 qa[-qa-di-ia] li-im-ha-aš-ma URU-ia li-i[l-qē]

So-and-so hits my head (to ensure my living expenses) my village to take⁽³⁴⁾.

From the translation of the text, it is understood that the first party had objected to the second party taking the village or town that the second party claimed, and the phrase “hitting the head” indicates the guarantee of the other party. This confirms his pledge to provide the living expenses of the first party, and perhaps both parties were brothers, and there was a dispute between them on the issue of inheritance, so one of the parties asked for guarantees to secure his dignified life. There are other terms indicating the bail which were associated with the term (qaqqadam) such as (kullum)⁽³⁵⁾ meaning holding the head of the debtor.

qa-qa-di-<šu>-nu lu ú-ka-[al] ù qa-qa-di lu ú-ka-[lu]

”Their heads may be caught, and perhaps my head may be caught.”⁽³⁶⁾.

From these words, it is understood that there is a person who has asked the third party to guarantee and undertake their position of the second party and that they are up to the responsibility until he does the same procedure and an agreement is reached between the two parties. Here in this point, it is worth noting that this tradition and symbolism is



still in circulation and among the public. The one who tightens his head is an evidence of assuming the responsibility or he is responsible for it at the time of the fulfillment, so we often hear what is said of the one who takes the responsibility of a second party in a specific case (blind your head, i.e. tie your head with a gang) as a sign of covenant, guarantee and bail). As for the Akkadian term Pūtu, it means a forehead or an front as part of the head⁽³⁷⁾, which was mentioned in the Sumerian (SAG), and it is mentioned in the Akkadian dictionaries within semantic terms to refer in its content to the bail and guarantee, so we read a text that indicates the following:

**PN in kīli PN2 bēlšu iklāšuma PN3 pu-us-su im-ha-aš-ma ušešišu⁽³⁸⁾
So-and-so is in prison, So-and-so 2 his master imprisoned him, So-and-so 3 hit his forehead (i. e. he will guarantee him and) will him”.**

It must be mentioned that this phenomenon is almost strange because it is not circulated in the current Iraqi society, unlike the rest of the gestures, symbols and connotations that we find its continuity among the general public. This makes us see other indications of bail or guarantee that our hands did not reach during the study period. The most important aspect in all the terms dealt with in our study in this research shows us obviously the authenticity of the social heritage in Mesopotamia and how to use the members of the human body as an indication to give us the meaning of the bail or the guarantee.

Conclusion

In conclusion, it is possible for the researcher in the field of social, economic and legal documents and contracts to infer that the Mesopotamian society was one of the first peoples in guaranteeing the rights of contracting individuals, whether for the creditor or the debtor, with the appearance of a third party named the guarantor. He is also responsible before the judicial and local authorities in the event of failure to fulfill that contract, and perhaps the term “guarantee” or “guarantor” came as a result of the emergence of social and economic problems among the general public. On the one hand, this prompted the society to rely upon a third party with a social and economic standing that allows the first party (the creditor) to have complete confidence in obtaining his money during the date of this payment of those funds. As for the second



party (the debtor) on the other hand, it is certain that he will find a solution for his economic crisis from which he suffered. In addition, there have been phrases and formulas indicating the guarantee and the guarantor, we can almost find their echo in daily dealings at the present time, which indicates the originality of the Mesopotamian society.

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