# The Price Factor in the Redemption of Land (*)

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## 1. Introduction

Redemption of land is the subject of detailed legal provisions in the Bible, but it is also attested in many other legal systems of the Ancient Near East. The purpose of this article is to examine a particular problem occasioned by the existence of such a right in these systems.

When land is sold in the normal course of trading, buyer and seller arrive at a price through a process of bargaining in which the most important factor is the law of supply and demand. Redemption, however, is an artificial transaction, a compulsory purchase in which the seller cannot exercise his ultimate bargaining counter of withdrawal from the negotiations. The task of determining the price must therefore fall not upon the parties but upon that same law which granted the right of redemption.

Upon what criterion, then, does the law of redemption fix the price? It is this question which our study seeks to answer.

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## 2. Biblical and Post-Biblical Sources

The right of a seller or his heirs (1) to redeem ancestral land is set out in detail in Chapter 25 of *Leviticus*. Various types of land are considered: agricultural land, urban houses, land belonging to Levites (2), but on the question of price, the law is remarkably reticent (3). *Lev.* 25:27 speaks of the redeemer paying the « balance » (*'odef*), but this relates only to the residue of years to the Jubilee; it is not explained what price is used as the basis for calculating the balance payable. The two narrative sources that touch upon redemption of land are no more forthcoming. In *Jeremiah* 32, the prophet exercises what is referred to as a right of redemption (*mišpaṭ ha-ge'ulah*) in buying a field from his cousin. The exact price payed — 17 shekels — is recorded, but no mention is made of how this figure is arrived at. Nor is there any indication as to whether this was a high or a low price, a fair market price, or other. In the second narrative in *Ruth* 4, the kinsman is informed by Boaz of his right to redeem a field and agrees to purchase without even inquiring as to the price.

The only express mention of a relative price for redemption of land comes in a passage far removed from the sphere of sale. *Lev.* 27: 14-15 reads:

> « When a man dedicates his house to be holy to the Lord, the priest shall value it as either good or bad; as the priest values it, so it shall stand. And if he who dedicates it wishes to redeem his house, he shall add a fifth of the valuation in money to it, and it shall be his ».

(1) This term is used advisedly. Persons other than the seller who are entitled to redeem his land are all relatives who stand in the line of succession. Cfr *Jer.* 32:8.

(2) Vv. 23-27, 29-34.

(3) The general aspects of the Biblical law of redemption of land were dealt with in an earlier study by the author. See R. WESTBROOK, « Redemption of Land » *Israel Law Review* 6 (1971) pp. 367-375. In that study the problem of price was not resolved.

A similar provision applies to farm-land, with due allowance for the proximity of the Jubilee (vv. 16-24). If this system is based on the analogy of redemption of land sold, then the priest's valuation (again, the criterion therefor is not stated) would represent the original selling price, and we could conclude that redemption was set in general practice at a fifth above the original price. The one-fifth rule, however, is not a feature drawn from the general law of redemption but rather from the system of penalties applied by the priests, as can be seen from the rules applying to guilt offerings in *Lev.* 5: 15-16 and 21-24.

A further conclusion could therefore be drawn, namely that the price of redemption in general practice was the original selling price as such, i.e. shorn of the priestly feature of an added one-fifth. Such a conclusion, however, being based upon an extended chain of presumptions, is untenable without other evidence.

Mishnaic law can often be relied upon to provide the practical details of the law — such as price — which are passed over in silence in the Bible. The Mishna does indeed contain a detailed discussion of the redemption of land, but touches hardly at all upon this point. A single passage (*Arakhin* 9: 2) is devoted to the question of price:

> « If one sold it (i.e. a field) to the first for one hundred (dinars), and the first sold it to the second for two hundred, then he need reckon only with the first, ...
>
> If he sold it to the first for two hundred and the first sold it to the second for one hundred, then he need reckon only with the second... »

The passage assumes that an earlier price will determine the price of redemption, but considers a complex case where the property has passed through several hands, and applies the principle that the redeemer is entitled to pay the lowest price obtained for the property since its original sale. In the case of a straightforward redemption from the original buyer, there is only the original selling price to go by. It might therefore be concluded that Mishnaic Law was adding a special measure

favouring the redeemer in certain limited circumstances to the generally assumed rule of redemption at the original price. But again, this conclusion must remain hypothetical in the absence of supporting evidence.

The silence of both Biblical and Mishnaic sources on this important question is at least evidence that the answer must have been self-evident to contemporaries. The criterion that we are seeking must therefore have been both simple and universal. Only where special circumstances called for a less obvious variant would it need to be formulated expressly. The original selling price does meet the requirement of simplicity, but there are other candidates, as will be seen from the discussion below.

## 3. Cuneiform and Biblical Sources

The cuneiform sources contain scattered references to redemption, mostly identifiable by the use of the verb *paṭāru* « to loosen, release » as a technical term in the purchase of land and slaves. These references are sufficient, however, and sufficiently widespread, to show that redemption was a common feature of the legal systems of the Ancient Near East (4). Furthermore, the cuneiform sources provide a great deal of evidence on the law of sale, which (since redemption is no more than a term imposed by law on the contract of sale, a limitation on the freedom of contract) forms the background necessary to an understanding of the functioning of redemption.

Seen in this context, the Biblical sources can also furnish a valuable contribution. It is not simply a case of the cuneiform sources explaining Biblical law; since redemption existed in both systems, the incomplete details provided by the different

(4) Regrettably, the law of Ancient Egypt has had to be excluded from this comparison. The reason is one of scholarly caution: the topic is one that requires detailed analysis of primary sources, whereas the author, not being an Egyptologist, would have no access to such sources in Egyptian law. But see E. Seidl, *Ägyptische Rechtsgeschichte der Saiten- und Perserzeit* 2nd ed. Glückstadt 1968, pp. 45-50.

types of sources can be combined to reconstruct an institution common to them all.

Our starting point is to examine the theories proposed as to the redemption price in various cuneiform legal systems.

(a) *The Buyer's Price*

For the cases of redemption recorded in Old Babylonian documents M. Schorr supports the view that the buyer, on being forced to sell to the redeemer, could name his own price (5). The documents in question consist of a small number of land-sale contracts (6) which differ from the standard form only in recording: (a) that the property in question had been purchased by the present seller (usually from a relative or ancestor of the present buyer), (b) that the present buyer has redeemed his family estate (é ad-da-ni in-du$_8$ / *bīt ābīšu iptur*).

Schorr points firstly to the high price recorded in one of these documents: one mina of silver for a house covering an area of half a *sar* in *BE* 6/1 37. To this it must be said that our knowledge of land values in the Old Babylonian period is still far from the point where we could state with confidence that a particular plot is over-priced or not (7). As it so happens, the house in *BE* 6/1 37 is situated in the cloister, and we know that such houses could command considerably higher prices than elsewhere (8). Schorr's second piece of evidence, however, is prima

(5) *Urkunden des Altbabylonischen Zivil- und Prozeßrechts*, Leipzig 1913 (= *VAB* 5) p. 119.

(6) *BE* 6/1 37 (Sippar), *BE* 6/2 45 and 64 (Nippur, = *VAB* 5, 104), *CT* 2 13 (Sippar, = *VAB* 5, 103), *Tell Sifr* 45 (Kútalla). Cfr *BE* 6/2 66 (Nippur, = *VAB* 5, 104A) and *PBS* 8/2 138 (Nippur) concerning the redemption of prebends which are dealt with in the same way as land.

(7) An attempt at proper valuation is made by D. Charpin, taking advantage of the existence of a single archive; see: *Archives familiales et Propriété privée en Babylonie Ancienne*, Paris 1980, pp. 165-167. Charpin remarks (p. 165): « L'histoire des prix comme partie intégrante d'une histoire économique quantitative n'est encore qu'un rêve pour l'historien de la Mésopotamie antique ».

(8) R. Harris, *Ancient Sippar*, Istanbul 1975, p. 24.

facie more clear-cut. In *BE* 6/2 64 a plot of land is redeemed for 6½ shekels. According to Schorr, that same plot was sold sixteen years earlier for only 3 shekels, in *BE* 6/2 38 (9). The redeemer thus had to pay more than double in order to recover part of his family estate. But the situation is more complicated than it appears. Following Schorr's hypothesis, the history of the land in question could have been as follows:

Stage I : A sells a part of his family estate to B.

Stage II : B's sons sell the land to C for 3 shekels.

Stage III: C's brother, son and widow sell the land to its redeemer, A's son, for 6½ shekels.

Stage II is evidenced by *BE* 6/2 38 (dated Samsu-iluna 12) and Stage III by *BE* 6/2 64 (Samsu-iluna 28). Stage I is reconstructed from the contents of the two documents, although it is possible that the land may have passed through other hands between leaving A and being acquired by B. The key point, however, is that the 3 shekels paid at Stage II did not represent the original price and may not have reflected the true value of the property (10). Only if we accept the Mishnaic rule discussed above would we expect the redeemer to be entitled to the lowest price hitherto fetched by the property (11).

(9) Ed. *VAB* 5,90. SCHORR is followed on this point by J.J. FINKELSTEIN, *AS* 16, 241-242.

(10) It appears to have been sold on B's death, a circumstance which may have occasioned a low price: see CHARPIN, *op. cit.* note 7 above, p. 179.

(11) It is not altogether certain that the two documents under discussion represent the same property. A number of small but notable discrepancies exist:

1) although the same dimensions are given, the description of the property in the earlier document is « a house » (é-dù-a), but in the later « an empty lot » (é-kislah). One might expect an empty lot to be turned into a house in the course of time but the opposite development is less likely. (Ruined houses are described as such in the sale contracts: é-šub-ba). It could of course be a scribal error, but the two types of property are usually strictly distinguished from one another: see *CAD* Vol. M/1 p. 370 *sub maškanu* mng. 1 (b).

2) the name of the neighbouring owner, used to locate the property,

The complications involved in this line of inquiry are illustrated by a further Old Babylonian contract from Kutalla:

*Tell Sifr* 45 ([12]). This document is part of an archive reconstructed by D. Charpin, and the reconstruction shows how complex transactions in land could be. According to Charpin the background to the present transaction is as follows ([13]):

I R (the present redeemer) purchased a licence to dwell in a house that he constructed on A's land.

II A sold the land from under him to B.

III In order to reacquire the land on which he had built R gives B in exchange two plots, one of which was part of his estate. The land that R acquires is worth less than the two plots given by him, but no compensation is mentioned.

VI R does receive compensation from A for the loss of his licence to dwell. At this point the two plots that R gave to B are valued at $5\frac{3}{4}$ shekels together.

V A year after the exchange R repurchases the two plots from B for 5 shekels. This is *Tell Sifr* 45, which contains the redemption clause. From the above it can be seen that it applies to only one of the two plots.

We have recounted this history in all its complexity (in fact, we have omitted a large number of details) in order to make a methodological point. The fact that the redemption price is slightly lower than the original exchange value could be taken

differs in the two documents. This cannot be explained by a change of ownership or the passage of time, since in the second document the neighbour is the redeemer himself — in other words, the neighbouring property is the family estate from which the property being redeemed was at some time split off. It could of course be assumed that, as only one neighbour is given in each case, a different side of the property is being described.

(12) Edited by CHARPIN, *op. cit.* note 7 above, pp. 232-233.

(13) The transactions involving Ipqu-Sin, analysed *op. cit.* note 7 above, pp. 96-106.

simply as evidence against the hypothesis that the buyer could charge the redeemer what price he saw fit. But the background revealed by Charpin's research shows that there is little point in weighing evidence of this nature. Behind the present redemption act may lie not a single prior transaction but a whole series involving numerous parties and plots of land. The absence of a single detail could therefore rob the figure recorded as the redemption price of a necessary point of reference.

Furthermore, the prices found in the documents, which fluctuate wildly, could as easily reflect the current market price as the buyer's arbitrary demands. Certainly, no consistent pattern of over-pricing can be discerned.

A final point is that the idea of the buyer being able to name his own price meets an obvious logical objection. It would enable the buyer to block redemption by the simple device of naming an impossibly high price and thus effectively removes any element of coercion in the law. It has been argued that redemption-clauses represent a purely consensual arrangement ([14]), but as Schorr himself points out ([15]), it is in the nature of redemption to be coercive, and there would seem little point in making special mention of the fact of redemption if the contract were an ordinary consensual sale. Accordingly, the buyer's price hypothesis should be rejected.

(b) *The Market Price*

In discussing redemption of land in Old Babylonian law, R. Yaron points out that rigid adherence to the original price might have some important drawbacks. It would fail to take into account possible changes in the value of the land and would discourage development of the property by the buyer ([16]). It would therefore make better sense to take the current market price of the property, as determined by some objective criterion e.g. the price of comparable plots or the value added by development.

(14) E. Cuq, *RA* 7 (1909) p. 133.
(15) *Op. cit.* note 5 above, p. 119.
(16) *The Laws of Eshnunna*, Jerusalem 1969, p. 153.

The redemption prices discussed above might well represent the market price.

We do not know how the contemporary land market functioned, and there is no empirical evidence of the use of any such criterion in the pricing of redemption transactions. It is therefore impossible to fashion Yaron's arguments into a market-price theory for redemption. Nevertheless, by introducing utilitarian considerations, they do raise the question of what the rationale was behind a law that represented in itself (whatever price was fixed) a severe restriction of the free market, a point to which we must return below.

(c) *The Original Price*

E. Szlechter cites two pieces of evidence in favour of the original price being also the redemption price (17). Firstly, there is the analogy of the redemption of slaves. According to § 119 of *Codex Hammurabi* (*CH*):

> « If a man has a debt fall due and sells his slave-girl who has borne him sons, the owner of the slave-girl shall pay the money which the merchant paid and redeem his slave-girl ».

In *CH* 281, if a merchant buys a man's foreign-born slave in another country (the slave having presumably run away or been abducted), the owner is again entitled to redeem his slave for the money that the merchant paid, the latter stating on oath what the sum was. Secondly, the verb *paṭāru* is used for redemption of a pledge by payment of the debt. Szlechter refers to a passage in *ana ittišu* (a Neo-Assyrian lexical text):

« When he brings the silver, he shall redeem his unweighed bar of metal that he left as a pledge » (18). The pledge in question is of a special type known as *šapartu*, which is common to Assyrian rather than Babylonian practice, and this redemption-clause is

(17) *Les Lois d'Ešnunna*, Paris 1954, p. 96.
(18) *MSL* I, 2, IV 49-53.

sometimes found in such contracts of pledge (19).

We therefore have two clear cases of reference to the original price. The question is how far they may be used as an analogy to sale of land. Besides the obvious fact that slavery is a complex institution with its own rules, the two paragraphs in *CH* may be special instances rather than application of a general principle. Certainly *CH* 281 arises out of an unusual set of circumstances that could occur only in the case of slaves. In the same way it may be asked how far pledge and sale — two entirely different types of contract — are to be compared. Nonetheless, it is strange that the term *paṭāru* is used to express the release of one particular type of pledge (20), and we should therefore seek some rationale to the right of redemption that links its use in pledge and sale, a link that is likewise indicated by *CH* 119, where the sale is stated to have arisen from particular circumstances of indebtedness. Before considering this question however, we must examine a final piece of evidence, this time of a direct nature.

A Middle-Babylonian document — a *Kudurru* (boundary-stone) from the reign of king Meli-shihu (21) — records the history of litigation that affected a family estate over several generations. The estate of A, we are told, was left without heirs, and was therefore given by the king to A's brother, B. This would seem to follow the normal rules of succession, but in fact it resulted in a good deal of litigation before B could consolidate his ownership of the estate. Our concern is not with the claims

(19) With the important difference that interest as well as capital must be paid to redeem the pledge. These contracts are analysed in detail below.

(20) There are various ways of expressing release of a pledge, several examples of which are given by *MSL* I, 2, IV 39-48. For the Old Babylonian period, cfr *VAB* 5, 63A. For Nuzi, cfr *AASOR* 16, No 65:15-18, 66:18-26.

(21) Published and edited by L.W. King, *Babylonian Boundary-Stones in the British Museum*, London 1912, No III (Plates V-XXII, = *BM* 90827). My thanks are due to Mr C.B.F. Walker for collating several lines of the text at my request and to the British Museum for kind permission subsequently to collate the whole text myself. Needless to say, I was unable to improve on the reading of the lines collated by Mr Walker.

of B's various rivals to the inheritance but the third case reported, which is one of redemption. Apparently at some point prior to B's inheritance of the estate, A had had a son (presumably since deceased) who had sold a part of the family estate to C (II 38 - III 5) ([22]). B now applies to the king, who vindicates (*ibqir*) the land and hands it over to B. The text continues:

III 3-14. And the king gave instructions to X, the governor of Nippur, and he caused D and E, the sons of C, to produce the sealed document of purchase of the field which was in C's house, and gave it to B.

15-18/ With his consent, B, *on the basis of the buyer's hand,* [...]

18/-22 (various measures of grain) the purchase-price, (i.e.) 2⅔ mina of gold in value,

23-29. [at the] Namgar-dur-Enlil Canal in the [presence of? / name of?] B, X, the governor, weighed out and gave to D and E the sons of C, and he ([23]) [red]-eemed that field.

The text is unfortunately broken in several places (in particular the key phrase at the beginning of line 18 is missing) and the syntax is in consequence somewhat obscure, but the following facts emerge:

(22) The apparent paradox of A being childless but having a son who sold part of the estate was resolved by KING (*ibid.* p. 8) with the suggestion that the son in question was not a legitimate heir. In that case, however, B could have vindicated the property without payment, since the son could not have passed good title to the buyer. The text does not in fact say that A had no heirs, but that the *house* of A lapsed for want of an heir. The opening lines read:

(1) é A $^{lú}$hal / 2 *i-na* lugal RN / 3) *mu-nu-tuku-ta il-lik-*[*ma*] / 4) lugal RN / 5) é B [$^{lú}$hal] / 6 *a-* [*na*] *B* / 7) šeš A *i*[*d* - ]*in.* «(When) the house of A lapsed for want of an heir in the time of King RN, King RN gave the house (i.e. estate) of A to B, brother of A». (See *CAD* Vol. A/1 p. 316 *sub alāku* mng. 4 and Vol. M/2 p. 208 *sub munutukâtu*).

(23) The subject is B (Ur-Nindinlugga). He is later expressly referred to as having redeemed the Field (III 46).

1. B is able to buy back the land from its present owners, the sons of the buyer C, quite clearly against their will.
2. B pays as the purchase-price of the land a quantity of grain equal to 2⅔ mina of gold.
3. *Prior to payment,* C's original purchase-document is demanded from the present owners and handed over to B.
4. B's payment is made « on the basis of the buyer's hand ». The meaning of this unusual phase is not altogether clear (24), but if our translation is correct it equates the present payment with the price originally paid by the buyer C. It is in order to ascertain that price that the original sealed document of purchase had to be produced prior to B's payment (i.e. not simply for B's archives).

The case thus provides direct, if not unambiguous, evidence of the original purchase price also being the price for the redemption of land. On this and the indirect evidence adduced by Szlechter, the original price hypothesis emerges as the most likely possibility in the cuneiform sources as in the Bible, but as in the latter, the very paucity of information on the point is its most striking feature, and the hypothesis is far from being proved in absolute terms.

We therefore wish to consider the question from a different point of view. If the redeemer was entitled to redeem at the original price, what motivation did the law have for granting him this privilege, and why was it universally regarded as so self-evident as to be passed over virtually in silence? The answer, we submit, lies in the conditions laid down by the law for the exercise of this right.

(24) *aš-šu qa-at ša-a-ma-a-ni.* Collation leaves no doubt as to the wording of the phrase, of which no other example is known to us. The literal meaning of *aššu* is « concerning, on account of, with regard to », which provides no enlightenment, but cfr « he claimed *aššum ṣimdat šarrim* on the basis of a royal decree » (Grant Bus. Doc. 23:3), *CAD* Vol. A/2 p. 468 *aššum, sub* mng. (a). Likewise the word *qātu* « hand » has numerous meanings, none of which seems appropriate here.

## 4. The Conditions for Redemption

The law of redemption in Chapter 25 of Leviticus opens with the conditional clause: « If your brother becomes impoverished and sells some of his estate... » (v 25). The same condition — of becoming impoverished — appears in the protasis to the redemption law for persons selling themselves into slavery in v 47. That this condition is not mere rhetoric is shown by its appearance in the only paragraph in the cuneiform law codes dealing explicitly with redemption of land.

§ 39 of Codex Eshnunna (*CE*) reads:

> If a man becomes impoverished and sells his estate (lit. « house »), the day the buyer sells, the owner of the estate may redeem.

The Akkadian verb used here for « to become impoverished » (*enēšu*, lit.: « to grow weak ») is the direct parallel of the Hebrew verb in Leviticus (*mwk* lit.: « to sink »). In both cases, therefore, it is not every sale that gives rise to the right of redemption, but only where the seller has become poor. Note that it is not existing poverty that the law is concerned with — it is not a social welfare measure for a particular stratum. The law protects persons whose position has changed for the worse. Such a change would seem at first sight impossible to determine objectively: what loss of wealth must be proved in order for the seller to claim this right? But there is one objective criterion, and therein, in our view, lies the point of this enigmatic phrase: the price at which the owner sold. If it was far below the normal price, it is a sure sign that the sale is made under pressing economic circumstances — in a word, debts.

Where land is sold to pay off debts fallen due, the sale will inevitably be at a discount. If the buyer is the creditor himself, it may in fact be a disguised form of distraint for debt. But whereas land distrained or at least pledged would in principle be returnable on payment of the debt, land sold is alienated forever, even though the « price » may be little more than the value of the debt, which will usually be far below the value of the land.

Such circumstances provide a clear rationale for the right of redemption at the original price. In our view, the purpose of *Lev.* 25: 25 and *CE* 39, as revealed by the common condition in their protasis, is to allow a person who has been forced to sell his ancestral (i.e. inherited, as opposed to purchased) land at undervalue (25) to buy it back at the same low price. The law is therefore no mere sop to sentimentalism, nor is it a fetter on ordinary commerce (since a sufficient price will overcome the right of redemption); it is rather an equitable measure to ensure that ancestral land is not lost forever due to temporary economic weakness.

The thinking of the law is revealed by a further condition in *CE* 39: the right is only exercisable to defeat re-sale by the buyer to a third party. If the owner must pay the same price as that paid (or offered) by the third party, his right of redemption is of little assistance to him. Why should the buyer refuse an offer from him at the market price, if the owner can find the means to pay it? It is more reasonable to suppose that the owner could force the first or second buyer to re-sell to him at the original price and thus defeat the first buyer's attempt to re-sell at a profit (26). The first buyer has acquired a bargain, but as long as he holds the land himself, he is safe. It is only when he attempts to make a speculative profit by re-selling at a higher price that the owner can intervene (27).

(25) According to V.A. Jakobson « ... in the Old Babylonian period we should probably surmise a debtor-versus-creditor (or, in general, « weak-versus-strong ») relationship behind nearly every deed of purchase of land ». *Beiträge zur sozialen Struktur des Alten Vorderasien* (ed. H. Klengel) 1971, p. 37. Charpin suggests that the equal division of land among heirs sometimes created plots of uneconomic size, which would force them to sell: *op. cit.* note 7 above, p. 179.

(26) If the owner redeemed from the second buyer (i.e. the third party) the latter could of course sue his vendor, the first buyer, for failure to pass good title.

(27) This condition is not universal, and it is possible that other cuneiform legal systems may have been more liberal as to when the owner could exercise his right. It is lacking in Biblical law, which does however contain other restrictions on the owner's power: see *Lev.* 25: 29-30.

Biblical law expressly allows redemption not only by the original vendor but also by his relatives ([28]), and as we have seen from the documents of practice, the same applies in cuneiform law. There is no reason to suppose that such redeemers could not also take advantage of the original low price of sale, especially since they were potential heirs to the property in question. Otherwise the speculator's profit would be assured by the mere circumstance of the original owner's death ([29]).

## 5. Redemption and the « Full Price »

If our thesis is correct, payment of the land's full value was both sufficient and necessary to defeat subsequent redemption of the land. There is a logical antithesis between full value and redemption price, and a contractual phrase in land-sales from Susa of the Old Babylonian period provides explicit confirmation of this point.

The following formula occurs frequently in Susa sale contracts: *ul iptiru ul manzazānu šīmu gamru* « not redemption, not pledge, full price ([30]) ». The legal meaning of the formula has been the subject of considerable debate, most recently summarized by B. Eichler ([31]).

We shall approach the problem of interpretation by looking first at the question of legal purpose. A transaction takes place in which A gives B a sum of money and B transfers to A a plot of land. From the point of view of an objective observer, these acts could represent any one of a number of legal transactions, in particular

(1) pledge, wherein the money given by A to B is a loan and the land transferred by B to A is security therefor,

(2) sale, wherein the money is the purchase-price and the land is alienated in consideration thereof.

(28) *Lev.* 25: 25 cfr vv. 48-9.

(29) Presumably, more direct heirs could in turn redeem from the redeemer. See Westbrook, *op. cit.* note 3 above, p. 375.

(30) E.g. *MDP* 22 44: 20-21, 45: 15-17 *et passim.*

(31) *Indenture at Nuzi*, Yale 1973, pp. 78-80.

It is important to distinguish between the two, because in the first case B can claim back the land from A by repaying the loan, whereas in the second there is no such facility. How is this possible from the objective circumstances, where the parties offer conflicting evidence as to the nature of the agreement? An obvious method is to look at the relative value of the land and the money, since as Eichler notes, a loan will normally represent far less than the selling price of the land (32). The point of the phrase « ... it is not (*manzazānu*) pledge, it is the full price » is therefore to identify the transaction as an outright sale and thus protect the buyer from subsequent claims of the seller (or his heirs) to reverse the transaction.

Since *iptiru* is parallel to *manzazānu* in the formula, it must represent another transaction where less than the full price is paid, and the seller (or his heirs) can therefore subsequently reverse the transaction and regain the land. These are exactly the circumstances in which we have postulated the operation of redemption. The seller must identify his transaction as involving payment of the land's full value if it is not to be subject to subsequent redemption at the original price (33).

Our interpretation faces an objection by Eichler (34), namely that it will only work if *iptiru* is taken to indicate a *redemptive transaction* i.e. sale with a power of redemption, whereas the term invariably designates a *redemption* transaction i.e. the act of redeeming property. One answer is that, if our theory as to the price of redemption is correct, it is important for the buyer — who is an outsider — to identify his payment as the full price

(32) *Op cit.* note 31 above, p. 80.

(33) It is even more important for the redeemer to distinguish his act from pledge, since the sums of money involved will be much closer in value. From an objective viewpoint it will be difficult to tell whether the redeemer is buying the property (at a low price) or giving a loan for which he receives the land as pledge. Hence one contract of redemption from Susa, unfortunately broken, contains the clause: 2' [*ú-*]*ul ma-an-za-za-nu* / 3' *ip-ṭe$_4$-ru ga-am-ru-tu* « it is not pledge, it is full redemption » (*MDP* 18 229).

(34) *Op. cit.* note 31 above, p. 79. But for this objection, it appears that Eichler would have accepted the line of reasoning outlined above.

simply because he has no right of redemption, i.e. to ward off a subsequent claim by the seller that he had bought cheap but acquired no title because it was not part of his family estate. We are not certain, however, that it is necessary to make such fine distinctions. Eichler's objection (like many of the interpretations proposed by scholars) is based on the assumption that the three members of the formula are in perfect parallelism. By their very nature however, these three concepts are incapable of being placed on the same plane. *iptiru* and *manzazānu* do not designate the *price* of redemption or of pledge (i.e. the loan) respectively, and are therefore not strictly comparable with *šīmu gamru* (35). An alternative is to take *šīmu gamru* as meaning « complete purchase », thus making it a transaction like *manzazānu* and *iptiru* (36). But then it faces Eichler's objection above, since pledge is a different type of transaction to redemption and purchase. Pledge creates a relationship between the two parties which requires a further transaction to dissolve it, whereas redemption terminates the relationship between the parties and passes ownership definitively, thus making it analogous to purchase and the antithesis of pledge — the opposite of the role assigned to it in the formula.

Accordingly, we suggest that the references in the formula are of a more general nature: the transaction is to be indentified as purchase at the full price and therefore to be disassociated from legal relations involving a lesser price, whether this means the original sale of the property or its redemption (37). Once the

(35) *CAD* (Vol. I/J p. 171) took *iptiru* to mean the redemption price, following P. KOSCHAKER (*Über einige griechische Rechtsurkunden aus den östlichen Randgebieten des Hellenismus*, Leipzig 1931, p. 106, but this possibility had already been refuted by B. LANDSBERGER in *MSL* I, p. 139 in analysing the lexical material. The idea of price is clearly inapplicable to *manzazānu*: the « price » of a pledge would, if anything, be the debt itself.

(36) LANDSBERGER, *loc. cit.* note 35 above.

(37) It is true that this interpretation, in setting aside EICHLER's objections, does open the door again to the argument that *šīmu gamru* is to be interpreted as purchase and not price. This in fact is YARON's interpretation: « not (subject to) redemption, not (given as a) pledge, complete sale » (*op. cit.* note 16 above, p. 153 n. 33). There are two objections: (1) as

buyer has paid less than full value his title is defeasible, whether it is expressed in terms of another having a right of redemption or he himself having none.

In our interpretation, the « full price » means the full value of the property determined by some objective criterion, whether it be the market, historical cost, or other. This is to be contrasted with Eichler's own interpretation which, starting from the same premises as we do, gives a relative meaning to the term. Eichler translates the phrase under discussion: « it is not a redemption transaction; it is not a *manzazānu* - pledge transaction; (therefore) it is the complete purchase price », and explains:

« With the assumption that the value of the pledge is usually greater than the value of the secured loan, this formula attests to the fact that the money paid constitutes the full value of the property being bought. Since the transaction is neither a redemption of property held as a pledge (i.e. the repayment of a loan on the part of the buyer), nor a pledging of property (i.e. the receiving of a loan on the part of the seller), the money constitutes the complete purchase price (i.e. the full value of the property in outright sale » ([38]). Eichler thus assumes that whatever is paid for the property automatically represents its full value, if the formula identifies it as the consideration for sale. Our objections to this relative view of full value are threefold:

(1) There is then no reason to distinguish between purchase and redemption. Both transfer ownership to the buyer. Why,

Yaron recognizes, the meaning of the formula would then be completely different, namely a waiver of the right of redemption. If a right designed to protect persons with weak bargaining power could simply be excluded by a contractual clause, it would stultify the law entirely, and for this reason we regard it as unlikely.

(2) if the point of the clause is not waiver, but to identify the transaction, what distinguishes complete sale from sale subject to redemption? The indication must lie in the formula itself, and it can only be the fact that the word *šīmu* is synonymous for « purchase » and « price ». In the same way *ipṭeru gamrūtu* in *MDP* 18 229 (see note 33 above) must indicate redemption at the appropriate price, i.e. the full redemption value, since a pledge cannot reasonably be conceived of as an incomplete redemption.

(38) *Op. cit.* note 31 above, p. 80.

therefore, should he wish to stress that the transaction is not redemption if the money paid would be sufficient for purchase and he has no right to redeem anyway?

(2) The formula is presented as a kind of syllogism: « this transaction is not X or Y, therefore it is Z ». This is against the nature of a contractual clause. Such clauses assert truths, they do not demonstrate them.

(3) Redemption is defined as release of a pledge by repayment of a loan. This is not the use of the term redemption in Babylonian practice, where it refers unambiguously to re-purchase of property sold. It does occur in Assyrian practice, but in special circumstances that require explanation and are discussed below. The presumption that *manzazānu* and *iptiru* at Susa (which lies in the Babylonian rather than the Assyrian sphere) are no more than correlative acts in a pledge-transaction is not tenable.

To summarize: the Susa formula, which we would translate « it is not (a case of) redemption, it is not (a case of) pledge, it is (a case of) the full purchase-price », shows that only payment of the property's full (objective) value was sufficient to give the buyer an indefeasible title which he could pass on to his own heirs. A lower payment would leave the seller or his heirs with the possibility of reversing the transaction at some future date. The point is further illustrated by looking at the continuation of the clause in which the Susa formula usually appears: « Like a father buys for his son, PN has bought under the *kidinnu* of Shushinak, in perpetuity (*ana darāti*) ».

Confirmation of our interpretation of the Susa formula comes from the Bible, where we find the term « full price » (*kesef male'*) (39) used in two narratives.

In *Genesis* 23 Abraham seeks to purchase the cave of Machpelah from Ephron the Hittite at the full price (v. 10). He resists

(39) The equivalent term in Akkadian, *kaspu gamru*, is occasionally found instead of *šīmu gamru*: see the examples given in *CAD* Vol. K p. 247 sub *kaspu* mng. 2.

Ephron's attempt to give it to him, insisting on paying « the price of the field » (*kesef ha-sadeh* - vv. 11, 13). The reason is that he wishes to acquire an inheritable estate (*'ahuzah*), which can only be achieved by paying its full value (40).

The second narrative is that of King David's purchase of the threshing-floor of Arauna which is reported in *II Sam* 24: 17-25 and *I Chr.* 21: 18-25. Again Arauna wishes to give the land free, but David, who intends to build an altar there, insists on purchasing it. According to the Chronicler, he asks Araunah to sell at the full price (vv. 22, 24), saying: « I will not bear that which is yours to the Lord ». Without the full price, there is no full transfer of ownership (41).

## 6. Sale, Pledge and Redemption

Our interpretation of the Susa formula also helps to elucidate the connection between pledge and sale in the matter of redemption. As we noted above in discussing Szlechter's arguments in favour of the original price, unlike Babylonian and Biblical practice, in which redemption is the repurchase of property sold, Assyrian sources also use the verb « to redeem » (*paṭāru*) to describe the release of a pledge by repayment of the loan plus interest (42). The reason, we suggest, lies in the mechanism of the Assyrian pledge (*šapartu*) (43). If the loan was not re-paid by the

(40) See R. WESTBROOK, « Purchase of the Cave of Machpelah » *Israel Law Review* 6 (1971) pp. 31-34.

(41) The Biblical passages, it should be noted, are not directly concerned with the question of redemption. They present two extremes: free gift, which gives no title, and full price, which gives full title. Pledge, lease, low price, etc. represent intermediate stages with a corresponding reduction in title.

(42) See P. KOSCHAKER, *Neue Keilschriftrechtliche Rechtsurkunden aus der El-Amarna-Zeit*, Leipzig 1928, pp. 106-108. The following remarks are based upon the Middle Assyrian documents and law-code. They appear to be equally valid for the Neo-Assyrian period: see J.N. POSTGATE, *Fifty Neo-Assyrian Legal Documents*, Warminster 1976, pp. 52-54.

(43) In one instance, *MAL* 48, the verb *paṭāru* is used with a *hubullu*-pledge, but the circumstances appear to be the same as those which, as

due date, there were two possible consequences, depending on the terms of the contract. In the type of contract that P. Koschaker termed 'Verfallspfand' (44), ownership in the field pledged passes automatically to the creditor. This forfeiture is expressed in terms of a sale, with the acquisition clause typical of sale (« acquired and taken » *uppu laqi*) and in some cases even a « payment clause »: « they have received the lead, the price of their field, they are paid, quit » (45). It looks very much, then, as if the creditor has obtained what the law of redemption is supposed to prevent: the outright purchase of the land for the mere price of the loan for which it was security. That the law was not so, however, is shown by a further tablet that was drawn up at the stage of forfeiture itself (46). The text relates that 10 iku of land were pledged as security for the relatively small sum of 30 mina of lead, the due date passed and the field was duly alienated to the creditor. Lines 8-13, however, contain the following additional information: « He (debtor) claimed (47) the price of his field, he received the balance of his lead: he received (1) talent 40 mina apart from the contents of his tablet ». In other words the creditor could indeed « purchase » the land by way of forfeiture, but he still had to pay the full price for it, by giving the debtor the difference between the value of the loan and the value of the field.

we shall see, apply to the *šapartu*-pledge, and most probably Assyrian law applied the same rules to both types of pledge. The verb is also found in one Old-Babylonian *manzazānu*-contract: *YBC* 11149 (*JCS* 14 (1960) No 54: 12-14, pp. 26-27). Its use may be connected with the enigmatic phrase in lines 10-11 of the document: « The silver and the field look at each other ». Another unusual feature is the fixed date given for redemption.

(44) *Op. cit.* note 42 above, pp. 102-105.

(45) *KAJ* 12: 15-16. Cited by KOSCHAKER, *op. cit.* note 42 above, p. 102. Edited, *ARU* No 29. Other examples are *KAJ* 27 and 35.

(46) *KAJ* 150, edited and discussed by KOSCHAKER, *op. cit.*, p. 103.

(47) The verb is *šasû* « to shout », which has the technical meaning « to claim performance » (KRAUS, *Edict* (*SDIOP* 5), pp. 54-59). KOSCHAKER, discussing this text before the technical meaning of *šasû* was known, speculated on the possibility of a public auction being indicated (*loc cit.* note 46 above).

An express statement of this rule is found in the Assyrian Laws (*AL*). C + G 7 reads ([48]) « [If ...] or anything taken as a pledge is dwelling in the house of an Assyrian and the due date passes, [after it has p]assed, if the money am[ounts] to as much as his price, he is [acqui]red and taken; if the money does not am[ount] to as much as his price, [the creditor] may acquire and take him but may not reduce [the price(?)] — he shall ded[uct] the capital of the money (i.e. the loan). There is no [interest(?)] ». In other words, the creditor must pay the debtor the difference between the loan and the pledge's full value if he is to gain full ownership of the pledge, unless the loan and the pledge are already equal in value. The same distinction is found in A 44 of the Assyrian Laws, where a creditor has certain disciplinary powers over a person taken as a pledge « for the value of his price » (*am-mar* šàm-*šu*) and (presumably after the due date has passed) then « taken for the full price » (*a-na* šàm *ga-me-er la-qí-ú-ni*). To return to our *Verfallspfand* contracts, we suspect that those containing a « payment clause » were ones where the loan equalled the value of the pledge as in A 44, but the figures given, in part broken, are as usual no sure indication.

The second type of contract, called « Lösungspfand » by Koschaker ([49]), actually contains a clause allowing the debtor to « redeem » his pledge (after the due date) on payment of the loan capital plus interest. The use of the term to redeem is, as we have said, unusual, but the reason becomes apparent in the light of our discussion of the Verfallspfand above. As we have seen, forfeiture of the pledge for non-payment of the loan by the due date did not give the creditor full ownership unless he paid the balance of its value. What if the creditor did not wish to acquire the property in perpetuity, i.e. make the extra capital expendi-

(48) Based on the edition of M. David, *Bi. Or.* 9 (1952) pp. 170-172. See also G. Cardascia, *Les Lois Assyriennes*, Paris 1969, pp. 307-309. The badly broken text appears to apply to human and animal pledges, but the Assyrian law of pledge did not, it would seem, distinguish between land and moveables. See Koschaker, *op. cit.* note 42 above, p. 102.

(49) *Op. cit.* note 42 above, pp. 106-108.

ture? The property was nonetheless his, but subject to redemption because « sold » at the « price » of the loan, i.e. at undervalue. The purpose of the redemption-clause is not to state this obvious fact, but to indicate the creditor's choice in the matter: he preferred not to acquire the land in perpetuity, and the debtor could not claim the balance of the land's value from him as in Verfallspfand (50). In both types of pledge-contract, therefore, ownership in the pledges passes to the creditor on expiration of the term for repayment. The difference is that Verfallspfand contains a mechanism for acquisition of the land in perpetuity by paying its full value, while in Lösungspfand the land is acquired at the price of the loan and therefore remains redeemable (51).

## 7. The Meaning of « Full Price »

There remains a fundamental objection to our distinction between redemption price and full price, namely the existence of a contractual formula so obviously in contradiction with it that the whole theory would appear to be stifled at the outset. We shall see, however, that further evidence leads to a re-inter-

(50) The purpose of the redemption-clause may also have been to protect the creditor's right to the punitive damages which applied after non-payment by the due date, by ensuring that they were calculated into the « price » at which the debtor could then redeem. But note that *KAJ* 17, involving the pledge of a person, does not include interest in the redemption clause.

(51) For the Neo-Assyrian period, note the following remarks by Postgate: « ... although the position is not altogether clear, the evidence seems to favour the idea that the object pledged would only become the property of the creditor once the debtor had failed to meet his repayment date. Thereafter, procedure seems to have varied, but in some cases at least an object which became the creditor's property by these means could be redeemed as of right by the debtor or previous owner. The few conveyances we have which release an object from pledge are phrased in most respects like an ordinary sale text, and bear the seal impression of the creditor, so that it is clear that the object had already become his property. Such pledge redemptions are characterized by the verb *paṭāru* « to release »... » (*op. cit.* note 42 above, p. 29).

pretation of this formula that not only explains the apparent contradiction but has wider implications for the understanding of Ancient Near Eastern contracts of sale.

The formula in question occurs in the payment clause of certain of the Old Babylonian redemption contracts. For example, the payment clause of *BE* 6/2 64 reads (lines 13-14): šám-til-la bi-šè / 6½ gin kù-babbar in-ne-en-lá « he (the redeemer) paid 6½ shekels of silver as its full price » (52). This is exactly the type of formula that we would expect *not* to find in a redemption contract if our hypothesis is correct.

This formula however, is standard in contracts of sale, from which the redemption contracts differ only in the additional mention of a previous sale of the property and of the fact that the present purchaser is redeeming his family estate. Its significance was long ago explained by M. San Nicolò in his classic work on Old Babylonian sale contracts (53). In Babylonia there was in theory only cash sale: ownership in the object sold did not pass until the buyer had paid the whole of the price (54). If sale on credit was desired, separate arrangements had to be made, such as a fictitious loan by the seller to the purchaser of all or part of the purchase price (55). The statement that the full price had been paid may therefore have been a legal fiction, but it was necessary to show that the buyer had the right to take possession of the property. Since the phrase « full price » is not confined to Old-Babylonian documents but is a universal component of the payment clauses of sales contracts in the whole cuneiform sphere and beyond (56), it must be presumed to have had the same function throughout Ancient Near Eastern

(52) The same clause appears in *BE* 6/2 66: 11-12; *CT* 45 62: 19-20; *Kh.* No. 82: 6-8 (*JCS* 9, No. 82, p. 96); MEISSNER, *BAP* 47: 20-21; PBS 8/2 138: 11-13. Cfr *ARU* 631: 4 (Neo-Assyrian).

(53) *Die Schlußklauseln der altbabylonischen Kauf- und Tauschverträge* 1921 (2nd ed. by H. PETSCHOW), Munich 1974.

(54) *Op. cit.* note 53 above, pp. 7-8, 15-16.

(55) *Op. cit.* note 53 above, pp. 76-83.

(56) For Elephantine see Y. MUFFS, *Studies in the Aramaic Legal Papyri from Elephantine*, Leiden 1969, p. 47.

Law (57). But this function, it is to be noted, is not the same as that proposed by us for the term « full price » in Susa, the Bible and the Assyrian Laws. In the latter, « full price » means the full value of the property as measured by some objective criterion, however it is paid, whereas in the former it means the whole of the price agreed by the parties, whatever its relation to the property's worth.

It is possible to argue that our interpretation of the term should be abandoned in favour of the cash payment interpretation in the sources considered earlier, but a glance at those sources shows this argument to be untenable. In the clause from Susa, « not redemption, not pledge, the whole of the price (agreed) » would make no sense. Pledge (to consider the more certain element) has nothing to do with part payment; it is security for a loan, which, even if equated with the price in sale, invariably has to be repaid in full before the security can be released. The same applies to the term in *AL* 44, also concerning pledge. As far as the Biblical passages are concerned, the contrast is between gift and outright sale, not between full payment and partial payment of the price. At the point when the term is used, the price has not yet been named by the seller. In any case, it strains credibility to suggest that either Abraham or King David would be seeking to purchase land on credit.

The opposite argument is equally possible, namely that the term should be interpreted as meaning full value in the payment clauses of sale contracts, but this we regard as unreasonable, if not altogether untenable. If value and not payment were the point at issue, there would be no need for fictional devices to overcome the fact that payment has not been made in full (58).

We therefore submit that the term « full price » does indeed have two meanings, according to whether it is used in the payment clause or another context. Normally, the two meanings

(57) See e.g. G. Cardascia, *RLA* 518-519 under the entry « KAUF » (on the Middle Assyrian law).

(58) Muffs, *loc. cit.* note 56 above, confirms the « cash sale » hypothesis for the Elephantine law.

will coincide, but occasionally it may be necessary to emphasize that full payment is not synonymous with full value — hence a separate formula, as in Susa.

If this view is correct, then there is no contradiction between the Susa formula and the appearance of the term « full price » in the payment clause of Old-Babylonian redemption contracts. In the latter case, the term merely serves to indicate that the whole of the price has been paid and ownership may therefore pass, although the price paid does not represent the full value (59). The hypothesis of a double meaning, however, cannot be sustained merely by its convenience for our theory; further evidence is required. To examine the whole of the cuneiform sales contracts for indications of a double usage is beyond the scope of our inquiry (and indeed practical possibility), but to look simply at the sources that we have examined so far, we may note firstly that the Susa sale contracts containing the « no redemption, no pledge, full price » clause, also mention the full price in the payment clause. For example, *MDP* 8 205: 8-9 (= *MDP* 22 45) reads: *a-na si-mi-šu ga-am-ru-ti* / 8 gín kù-babbar *iš-qu-ul* « he paid 8 shekels of silver for its full price » (this being the Akkadian equivalent of the Sumerian phrase in the Babylonian contracts) (60). Such a double formula is not at all com-

(59) Of particular interest in this context is *Kh.* No. 82 (see note 52 above). It records the purchase of a field, in which the buyer paid one mina of silver for its full price. Nevertheless, its redemption is contemplated since lines 18-21 read: « Whenever he (the seller) acquires money of his own, he may redeem the field. He cannot redeem the field with money belonging to another ». The editor, R. Harris, comments (*ad loc.* p. 97): « This clause is meant to exclude outsiders from acquiring the field cheaply. The field had obviously been undersold by (the seller) and the buyer wishes to protect himself against the possibility of a third party robbing him of his profit ». Commenting on another clause in the same contract, D.G. Evans states: « We need not doubt that the seller was in circumstances which made him anxious for completion of the sale. For this reason, he may have tried to make the transaction more tempting to the purchaser by an added inducement, that he would continue to perform the obligations which attached to the field ». (*JAOS* 83 (1963) p. 25).

(60) The peculiarity of the full price clause occurring twice in these contracts was noted already by E. Cuq, *RA* 28 (1931) p. 60.

mon in the Old Babylonian sale contracts, but it does occur in three early contracts, which all use the phrase é *a-na ga-me-er-tim i-ša-am a-na ši-mi-šu ga-am-ri-im* kù-babbar *iš-qú-ul* « he has bought the house for the totality, he has paid the silver for the full price » (61). The first phrase is translated « he bought the house in its totality » by the Chicago Assyrian Dictionary (62), but this cannot be correct, since one of the contracts concerns the sale of one room in a building (63). It is rather to be understood as an abbreviation of *ana šīmim gamrim* or *ana šīmū gamrūti* « for the full price ». The phrase *ana gamĕrtim šâmum* also occurs in *CT* 45 3, the report of a trial from the reign of Sabium involving redemption, which reads as follows:

1-3. « Concerning a [house] of 2 sar, next to the house of X and the house of Y,

4-6. which A son of B purchased *for the totality* from C son of [D] and

7-9. E daughter of G and her sister F redeemed:

10-16. H daughter of D, her daughter I and her father-in-law J sued E and her sister F over the house of 2 sar, and

17-18. the judges caused their case to be heard and

19-20/ rejected their vindication and claim.

20-24. H, I and her father-in-law J made out a no-claims tablet in favour of E and F.

(61) *BE* 6/1 8: 20-22 (Sumu-la-el); *CT* 4 48b: 11-13 (Sumu-la-el); Meissner, *BAP* 35: 9-11 (Immrum). See Muffs, *op. cit.* note 56 above, p. 72.

(62) Volume G, p. 33.

(63) Meissner, *BAP* 35: 2-3. A further contract (*YBS* 11175: 12-14 = Simmons, *JCS* 14 (1960) No 51, p. 25) has simply: « he has bought for the totality, he has paid the silver ». The circumstances are more complex than at first appear. We are told that A sold the land to B, but C and D are now buying from the children of A, who theoretically has nothing to sell. We consider any attempt to reconstruct the background too speculative. Likewise the text of *CT* 6 40b is too terse and obscure for meaningful analysis: 1. 3 gána ki A/2. dumu B / 3-4. C dumu D / 5. *i-ša-qá-lu* (??) / 6. *i-ša-am* / 7. *a-na ga-me-er-ti-šu* / 8. *bu-ka-na-am* / 9. *šu-tu-uq.*

25. In the future they shall not claim again » (64).

The curious situation revealed by this text is that the sellers of a house sue the persons who redeemed from their purchaser! The situation is explicable if we recall the terms of *CE* 39, that the owner may redeem if the buyer re-sells. Accordingly, the circumstances behind this litigation were, we suggest, as follows: D purchased G's house at a discount but his son C later sold it to A for its full value (*ana gamērtim*). This gave G's heirs the right to redeem from A at the original low price in accordance with *CE* 39, which they did. This in turn gave A the right to invoke the standard warranty of the seller to be responsible for claims against the title. Presumably C's relations are now claiming the land from the redeemer on behalf of A, in pursuance of their contractual obligation to him. What basis their claim had we could not guess, but an objective observer might be tempted to conclude from the identity of the plaintiffs (if our reconstruction is correct) that C had sold property intended for his sister's dowry.

The use of the phrase *ana gamērtim šâmum* in the Old Babylonian sources therefore confirms, in our view, the double meaning of the term « full price » and illustrates its relation to redemption.

Our final piece of evidence combines Biblical and cuneiform sources on the one hand, and redemption and sale on the other. In the Akkadian documents from Ugarit recording transfer of land, we often find a clause stating that the land is « alienated

(64) Transliteration: 1. *a-na* 2 s[ar é-dù-a] / 2. i-ta é *ru-ba-*[*tim*] / 3. ù i-ta é *i-bi-*[d] n[an]n[a] / 4. *ša* ki *ba-za-zi-ia* dumu *i-li-*[*ha-ma-at* (*?*)] / 5. p*a-mur-* dEN.ZU dumu *iš-me-* dEN.ZU / 6. *a-na ga-me-e-er-tim i-ša-mu-ma* / 7. p*ša-lu-ur-tum* dumu. SAL *eri*$_4$ *-ba-am*-dingir / 8. ù *na-mi-ia* nin$_9$ -a-ni / 9. é ki *a-mur-* dEN.ZU *ip-ṭú-ru-ú* / 10. p*ru-ba-tu* dumu. SAL *i-li-ha-ma-at* / 11. p*hu-du-ul-tum* dumu. SAL-a-ni / 12. ù *e-ri-ib-* dEN.ZU *e-mu-ša* / 13. *a-na* 2 sar é-dù-a / 14. *a-na ša-lu-ur-tum* / 15. ù *na-mi-ia* nin$_9$ -a-ni / 16. *ir-gu-mu-ú-ma* / 17. *da-ia-nu di-na-am* / 18. *ú-ša-hi-zu-šu-nu-ti-ma* / 19. *ba-aq-ru-šu-nu ù ru-gu-mu-šu-nu* / 20. *na-áš-hu-šu* dub *ša la ra-ga-mi-im* / 21. p*ru-ba-tum* p*hu-du-ul-tum* / 22. ù *e-ri-ib-* dEN.ZU *e-mu-ša* / 23. *a-na ša-lu-ur-tum* ù *na-mi-ia* / 24. *i-ze-bu-šu-nu-ši-im* / u$_4$-kúr-šè *la i-tu-ru-ma la i*[!?]*-ra-ga-mu.*

for ever » (*ṣamit adi/ana darīti*) to the person receiving it and to his children. The term *ṣamit* is a West Semitic one (65), and it is easy to recognize it in the Biblical redemption rule in *Lev.* 25: 29-30:

> « If a man sells a house in a walled city, its redemption shall be until the expiry of one full year following its sale. If he does not redeem within a full year the house in the walled city shall pass to its buyer *as alienated for ever* ». (*la-ṣemitut* -lit.: for alienation- *la-qoneh 'oto le-dorotav*).

The *ṣamit*-clause at Ugarit therefore refers to land that *inter alia* is no longer redeemable: the conveyance is in perpetuity (66). But the scribes at Ugarit give a further clue as to what is intended. For the most part, the word *ṣamit* is written syllabically, but occasionally a Sumerogram is substituted: šám-til-la (67). The totally ungrammatical use of this standard Sumerian term meaning « the full price » can only be explained by the inseparable association in the mind of the Ugaritic scribes of the irredeemability of land with payment of the full price. But the full price in which sense: full value or full payment? Again, the Ugaritic scribes are obligingly explicit. In one document, 16.147, the term šám-til-la-bi-šè « for its full price » (68) is found twice: once in the payment clause (« B(uyer) took the field of S(eller) for 2 talents of silver, its full price *i-na* 2 *me-at* kù-babbar šám-til-la-bi-šè) and again in the *ṣamit*-clause. In order to distinguish it from the earlier use the scribe uses the gloss-sign(:) and writes *an-nu-tù a-na pa-ni* lugal šám-til-la-bi-šè: *ṣa-ma-tu a-na* B *ù a-na* dumu-meš-*šu a-na da-ri-ti*... (69) (« These (lands), before the king,

(65) See J.J. Rabinowitz, *VT* 8 (1958) p. 95 and *CAD* Vol. Ṣ pp. 93-95, *sub. ṣamātu.*

(66) For an example of redemption at Ugarit, see *RS* 8.213, *Syria* 18 (1937) p. 247 and pp. 251-253.

(67) E.g. *PRU* III 15.123, 16.207.

(68) As Boyer points out, the ŠÈ and most probably the BI were meaningless to the Ugaritic scribes: *PRU* III pp. 225-226 *sub* « Résultats des Actes ».

(69) Another text, 16.174, has the Sumerian term glossed by *ṣu-um-mu-ta.* Neither the grammatical form nor the function of the clause is clear. See *CAD loc. cit.* note 65 above, esp. the discussion section, p. 94.

are alienated to B and his children for ever »).

## 8. Conclusions

In the legal systems of the Ancient Near East there are faint but unmistakable traces of a universal right to redeem family land. Although it cannot have been arrived at by a process of free bargaining, the price is everywhere taken as self-evident. It is nonetheless a vital factor in understanding the rationale of the law. For the right is to re-purchase at the original selling price when that price was below the full value of the land, in other words when the original sale was forced upon the owner by economic difficulties. By the same token, land that is sold at its full value is not subject to the right of redemption but passes into the hands of the buyer and his heirs forever. A secondary conclusion that arose from this is that the term « full price » can have a dual meaning: the whole of the particular price payable, which is its normal meaning in the payment clause of sale contracts, and the full value of the property, on the rarer occasions when that point requires emphasis.

Finally, these conclusions may be applied to improve our understanding of two narrative accounts of redemption in the Bible. In Chapter 4 of the Book of Ruth, Boaz informs Elimelech's nearest kinsman (and therefore his potential heir) that part of Elimelech's land had been sold by his wife Naomi ([70]), and offers him the opportunity to exercise his right of redemption, i.e. to buy it back from the present holder. The kinsman is eager to buy until Boaz informs him of the levirate duty that would accompany his purchase. Why is the kinsman so eager? Because the land was sold when Elimelech and his family emigrated to Moab ([71]) and that, as the opening verse of the book informs us, was at a time when there was famine in the land. Elimelech's land had therefore to be sold at a discount, and it is at that low price that the kinsman knows he can redeem.

(70) Vv. 3-5. The verb is in the past tense and should be interpreted as such. For the legal reasons, see WESTBROOK, *op. cit.* note 3 above, p. 373 and *RIDA* 24 (1977), p. 77 n. 42.

(71) WESTBROOK, *op. cit.* note 3 above, p. 374.

In Chapter 32 of Jeremiah, the prophet is prevailed upon by his cousin Hanamel to purchase his field at Anatot. This Jeremiah does, carefully noting the price (17 shekels) and then going through elaborate precautions to preserve a record of the transaction (vv. 11-15):

> I drew up the deed and sealed it, called in witnesses and weighed out the money on the scales. Then I took both the deed of purchase sealed in accordance with the law and the open copy, and gave the deed of purchase to Baruch son of Neriah, son of Mahseiah, in the presence of my cousin Hanamel, of the witnesses who had signed the deed of purchase, and of all the Jews who were in the Court of the Guard. In their presence I instructed Baruch: « Thus says the Lord of Hosts, God of Israel, take these deeds, the sealed deed of purchase and its open copy, and put them in an earthenware pot, so that they may be preserved for a long time. For thus says the Lord of Hosts, God of Israel: « Houses, fields and vineyards will again be bought in this land ».

Why is such care taken to preserve a record of the sale, and what has it to do with the possibility of future purchases? Jeremiah's action is taken at a time that is not propitious for investment in land: the Babylonian army is besieging Jerusalem and presumably laying waste the surrounding area. Hanamel's field could therefore only have fetched a pittance, and in coming to Jeremiah, he shows that he is acting out of dire necessity. Jeremiah buys the land — at its current value, not its hypothetical value — but keeps a careful record so that at some future date when the external danger is past, Hanamel or his heirs may exercise their right to redeem the field at Anatot for that same low price (72).

(72) We have throughout this study avoided suggesting how the full value was determined, since the task is impossible in our present state of knowledge, or rather complete lack of it, as to the functioning of the land market. These two Biblical narratives at least show that a simple market price criterion is not the answer, since in both cases the market itself had collapsed due to extreme circumstances.