»Gerechtigkeit und Recht zu üben«
(Gen 18,19)

Studien zur altorientalischen und biblischen Rechtsgeschichte, zur Religionsgeschichte Israels und zur Religionssoziologie

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Conditional Verdicts in Neo-Assyrian and Neo-Babylonian Legal Texts*

Bruce Wells

In two of his many articles on ancient Near Eastern law, Eckart Otto drew attention to a phenomenon that had not, as far as I know, been previously noticed. He described an apparent decline in the frequency with which trial courts in Mesopotamia resorted to cultic rituals — namely, the judicial oath and the judicial ordeal — to decide the cases brought before them. He specifically had in mind evidence from the Neo-Assyrian period as it compares with that of the Old Babylonian period. In some of my recent work, I have tried to pursue the idea that a development of this nature took place within ancient Near Eastern judicial procedure. Thus, it is with appreciation for how Professor Otto’s insights have stimulated my own thinking that I offer here further data and analysis related to this topic.

I. Introduction

The most supportive data for the notion that, at some point, Mesopotamian courts began to rely more heavily on ordinary evidence (e.g., witnesses, documents, physical evidence) and less so on cultic rituals come from the trial records of the Neo-Babylonian and early Persian periods. Three aspects in particular stand out. First, the judicial ordeal, used regularly in previous periods including the Neo-Assyrian period, disappears in the Neo-Babylonian and Persian periods. Not a single extant legal text attests to its use. Second, significant changes occur in how the judicial oath is used. The oath is no longer the decisive factor it once was, since it can now be contradicted by other types of evidence, such as testimonial and documentary evi-

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3 All of these records are written in the Neo-Babylonian dialect of Akkadian.

dence. Moreover, the oath is no longer court-imposed but can be taken voluntarily and even taken by both litigants in a trial. Third, when faced with difficult cases, the courts behind the Neo-Babylonian trial records typically resort not to a cultic ritual but to a demand for further evidence – almost always testimonial evidence. These demands come primarily in the form of conditional verdicts that require testimony from at least one additional witness before the case is decided. In sum, although the judicial oath was not abandoned in the Neo-Babylonian and Persian periods, the degree to which courts relied on cultic rituals was substantially diminished, while, at the same time, the extant documents show a significant increase in reliance on ordinary evidence.

Recently, several detailed examinations of these records have been published. What has not yet been investigated in depth is the relationship between these records and those from the Neo-Assyrian period. The latter are far fewer in number and, of course, come from a different region of Mesopotamia. Still, most of the extant Neo-Assyrian trial records come from the seventh century B.C.E., just prior to the rise of the Neo-Babylonian empire at the end of that century. They thus offer insight into Mesopotamian judicial practices shortly before the time period from which we have the most dramatic evidence for the kind of change under consideration, and they present a number of interesting points of comparison. While both the judicial oath and the judicial ordeal are amply attested within the Neo-Assyrian evidence, there are also documents that seem to portend the changes that appear in a more fully developed form in Neo-Babylonian texts.

This study will consider three Neo-Assyrian trial records and compare them with some of their Neo-Babylonian counterparts. These three contain conditional verdicts, stating that the verdict hinges on the future appearance and testimony of certain witnesses. This type of judicial document — that bases a verdict on the possibility of future testimonial evidence — becomes prevalent in the Neo-Babylonian and early Persian periods and is one of the hallmark features that signals the judicial developments within these periods discussed above. It is the purpose of this study, therefore, to demonstrate that this type of document and the judicial strategy that it represents were present, though less frequently used, in the Neo-Assyrian period as well. This is to say that aspects of the kind of development that finds its fullest expression in Neo-Babylonian trial records occur in Neo-Assyrian texts and may be indicative of a time of transition from a much heavier reliance on cultic rituals to the kind of reluctance one encounters in the Neo-Babylonian texts.


II. Neo-Assyrian Conditional Verdicts

1. One witness named who is to testify

It is clear that the first text (VAT 8656) presents a conditional verdict and that the verdict depends on the future testimony of a man by the name of Yadi'-iššu. What is not clear is how to understand the syntax of the conditional verdict and thus its overall significance for the matter at issue in the text. The main body of the text reads as follows:

\[ \text{de-e-nu ša } ^{md} \text{PA-NUMUN-SUM}^n \]
\[ \text{TA } ^{m} \text{NUMUN-u-tu-i ina UGU KU}^3 \text{BABBAR} \]
\[ ša ^{mr} \text{la-ši-i} \text{ DUG}_4 \text{DUG}_4 \text{u-ni} \]
\[ \text{ina IG}^3 \text{BAD}^3 \text{ha-za-nu de-e-nu} \]
\[ ^{(5)} \text{id-du-bu-bu šum-ma } ^{m} \text{ia-di-i} ' \text{-DINGIR} \]
\[ \text{it-tal-ka iq-ḫi-i bi KU}^3 \text{BABBAR ša-ar-pu-u-ni} \]
\[ ^{m} \text{NUMUN-ši-ni} i \]
\[ ū-šal-lam \]
\[ šum-ma ^{m} \text{ia-di-i} ' \text{iq-ti-bi} \]
\[ ^{(10)} \text{ma-a } ^{m} \text{NUMUN-u-tu-i KU}^3 \text{BABBAR SUM}^n \]
\[ \text{Di}^{mr} \text{ina ber-tu-šu-nu} \]

Before giving a translation of the text, it is necessary to consider the text’s syntax. Previous scholarship has assumed that the conditional verdict in lines 5-11 consists of a two-part protasis, with each part formed by its respective šumma-clause. The apodosis does not, according to this view, come until line 11. The most recent translation is that of K. Radner:


This is certainly a plausible reading, and the basic import that this translation ascribes to the text can hardly be argued with. The court, comprised by Sîn-dûri, a

7 The text is edited and discussed as no. 35 in K. Radner, Ein neusyrisches Privatarchiv der Tempelgoldschmiede von Assur, Studien zu den Assur-Texten 1, Saarbrücken 1999, 140-144. It is also referred to as N 33 (9), using the numbering system in O. Pedersen, Archives and Libraries in the City of Assur: A Survey of the Material from the German Excavations, Uppsala 1985-1986.
8 This transliteration follows that of K. Radner, Privatarchiv (see n. 7), 141.
9 K. Radner, Privatarchiv, 141.
10 K. Deller, Tammûtu-Kredite in neusaatischer Zeit, JESHO 30, 1987, [1-29] 25, and Jas, Procedures, 36, interpret the text in essentially the same way as Radner, though they disagree with her and between themselves regarding how to understand the last word in line 6.
"mayor" (hazanna) in the city of Assur at this time, is faced with an apparently difficult decision and delays the rendering of a final verdict until further testimonial evidence can be heard. The final outcome of the case thus hinges on the testimony of Yadi'-il. Where I would raise questions, albeit somewhat tentatively, is with how the first summa-clause is understood.

The interpretation represented by the translation above assumes that the case will end ("dann wird Friede zwischen ihnen sein") regardless of whether Yadi'-il testifies that Zērūtī will pay or that Zērūtī has already paid. This may make sense at first glance, but it would be rather unusual for a trial to end with a statement from a third-party witness that the defendant will eventually make the necessary payment. A durative verb form, such as usallam, typically comes in a court's verdict, when it decides who the guilty party is and thus who must pay. My understanding, therefore, is that the first summa-clause gives an indirect quotation of Yadi'-il’s potential future testimony (KU.BABBAR šarpūni “they have purified the silver”) and that the words Zērūtī usallam (“Zērūtī will pay”) form the apodosis for this first summa-clause. This means that, should Yadi'-il testify according to what this clause anticipates, the court’s verdict will be “Zērūtī will pay.” If, on the other hand, Yadi'-il should testify that Zērūtī has already paid, as the second summa-clause envisions, then the case will be resolved (šulg ina bertušunu “there will be peace between them”), for Nabû-zēru-iddina, the plaintiff, will no longer have any claim on Zērūtī, the defendant. I thus translate the text as follows.

Lawsuit that Nabû-zēru-iddina brought against Zērūtī regarding silver of the city of Laḫiru. They argued the suit before Šin-dūrī, the mayor. If Yadi'-il has come and has testified that they refined the silver, then Zērūtī shall pay. If Yadi'-il has testified, “Zērūtī paid the silver,” there shall be peace between them.

According to my understanding, the testimony anticipated by the first summa-clause must mean that Zērūtī has not yet made the necessary payment. The all-important witness, Yadi'-il, is known to us from another document, CT 33 17, which indicates that he may be a merchant and, more specifically, a moneylender. Furthermore, Nabû-zēru-iddina, the plaintiff in our case, is known to be a temple silversmith (ku-timmu) in Assur, who occasionally loaned out small amounts of silver. Let us suppose, then, that Zērūtī owes money to Nabû-zēru-iddina and that Nabû-zēru-iddina

11 While I follow Radner’s understanding (Privatarchiv, 142) of šarpūni as an active stative form (O-stem, third person, masculine, plural) of sarūpu in the subjunctive, I assume that it is in the subjunctive not because it forms a relative clause but because it is part of indirect speech. Direct quotations are typically preceded by mā in Neo-Assyrian legal documents. In addition, indirect speech is usually set in the subjunctive (see J. Hämmeen-Anttila, A Sketch of Neo-Assyrian Grammar, SAAS 13, Helsinki 2000, 133).
owes money to Yadi'-il. Let us further suppose that Nabû-zēru-iddina has instructed Zērūṭ to pay Yadi'-il, since Nabû-zēru-iddina would have to turn that money over to Yadi'-il anyway. This may be why Yadi'-il is in a position to state whether Zērūṭ has indeed paid or not and why the court is willing to postpone a final decision until it can hear his testimony. The statement that the silver has been refined could, then, mean that Yadi'-il knows that Zērūṭ is in possession of silver — namely, refined silver — and has the means to pay but has not yet done so. Another possibility is that the statement refers to a task that Nabû-zēru-iddina, the silversmith, has satisfactorily completed. Regardless of which scenario one chooses for understanding the background of this text, the decisive factor remains the testimonial evidence that the court expects Yadi'-il to provide.

2. Four witnesses named who are to testify

The second Neo-Assyrian document (SAAB 2 24) concerns a donkey for which the plaintiff sues the defendant, who currently has possession of the animal\(^{15}\). Although, the background remains unclear, it does not appear to be a matter of ownership that is under dispute but rather the right to possession. After introducing the parties to the trial and the subject of the dispute (lines 1–6), the document then records a conditional verdict, once again beginning with *summa*. It states that if four men — each of whom is mentioned by name — testify (*qabû*) that the defendant withdrew (*nasāḫu*) silver, then he (the defendant) will be required to give the donkey and its cart to the plaintiff. The term *nasāḫu* in this context most likely refers to the taking out of a loan\(^{16}\). The distinct possibility presents itself, then, that the plaintiff is claiming the donkey as a pledge\(^{17}\). That is, he has lent money to the defendant, an act that the four witnesses are to confirm, and the defendant has not yet provided a pledge as security for the debt. The four witnesses might well be those who were present to observe the creation of the original loan agreement, and the final outcome of the case now lies in their hands. We are not told what will happen if fewer than four testify or if the four disagree among themselves. It is clear, though, that if all four render the anticipated testimony, the plaintiff will win the case and be given the items in question. If no

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\(^{14}\) K. Deller assumes that the money is actually owed to the city of Laḫiru, which has the role of creditor in this text, as well as in CT 33 17 (Kredite, 24-25). Radner follows his view (Privatarchiv, 141). It also seems possible, though, that the text is referring to silver that comes from Laḫiru or that is weighed according to the standard at Laḫiru. For different types of silver and weights, cf. CT 48 11; and A. Ben-David, The Philistine Talent from Ashdod, the Ugaritic Talent from Ras Shamra, the "PYM" and the N-S-P, UF 11, 1979, 29-45.

\(^{15}\) The tablet is published and edited as no. 4 in V. Donbaz, Some Neo-Assyrian Contracts from Girmavaz and Vicinity, SAAB 2, 1988, 3-30.

\(^{16}\) See K. Deller, Kredite, 29. Jas suggests that the plaintiff may have lent the donkey and cart to the defendant free of charge, but then he "found out about [the defendant's] current credit and wanted his donkey and his donkey cart back" (R. Jas, Procedures, 49).

\(^{17}\) I owe this suggestion to Cornelia Wunsch (private communication, 18 March 2009).
testimony is forthcoming, it is safe to assume that the situation will remain as it is, with the defendant in possession of the items.

3. Litigant to bring his witnesses

The third text (ADD 101), though broken in a number of places, appears to be a dispute about the repayment of a loan: has the loan been repaid or not? The text begins with a date, presumably a deadline, and then indicates that the debtor, who is also the defendant in the case, “will bring his witnesses” (GI\textsuperscript{māt} šû ú-ba-la in line 4). They will testify (\textit{u-ka-nu} in line 5) that the defendant has paid (\textit{i-din-u-ni} in line 7) 37 shekels of silver to the plaintiff, presumably the creditor. Two \textit{summa}-clauses come next, but their meaning is not entirely clear, due largely to gaps in the text. The first says, “if ... they have testified” (\textit{u-kī-tī-nu} in line 8), but then the content of that testimony is illegible. The second \textit{summa}-clause, according to Jas who collated the tablet, reads (lines 10-12): \textit{sum-ma} GI\textsuperscript{māt} \textit{i-tu-[bîl]} KU₁, BABBAR a-dī rû-bi-šû [PN₁] a-na PN₁ i-[\textit{dan}](“if he has brought witnesses, PN₁ will pay to PN₂ the silver plus interest”)\textsuperscript{19}. This is rather odd. One would have expected the text to say that the defendant (PN₁) will have to pay if he has \textit{not} brought witnesses. It seems possible that the scribe simply omitted the \textit{sa}-sign before \textit{i-tu-bîl} in line 8. Should this be the case, then the text makes fairly good sense. The defendant must bring his witnesses by the given date for them to testify that he has already made the required payment. The first \textit{summa}-clause would then likely state that, if his witnesses have so testified, he is free of any further obligation to pay. The second would simply indicate that, if he failed to bring his witnesses by the required date, then he has lost the case and must pay. If, on the other hand, the scribe did not make a mistake, then we are left with a conundrum\textsuperscript{20}. In either case, the text clearly refers to future testimony, and once again it is this testimony that will be the determining factor in the trial.

III. Neo-Babylonian Conditional Verdicts

In comparison with the Neo-Assyrian period, many more conditional verdicts have survived from the Neo-Babylonian and Persian periods\textsuperscript{21}. All of them, as is the case with the Neo-Assyrian texts discussed above, contemplate the appearance of a future


\textsuperscript{19} R. Jas, Procedures, 82.

\textsuperscript{20} R. Jas, Procedures, 82-83, speculates that the first \textit{summa}-clause considers the possibility that the witnesses will actually testify \textit{against} the defendant. The second \textit{summa}-clause then refers to witnesses for the other party, the creditor. If he – the creditor – has brought witnesses, then that is when the debtor will have to pay. Should Jas be right, then the text has stated all this in extremely terse fashion and does not follow the pattern of other documents like it (see Nbk. 366 below).

\textsuperscript{21} There are at least 40 such texts. See the discussions in S.E. Holtz, Neo-Babylonian Court Procedure, 133-65; and B. Wells, The Law of Testimony in the Pentateuchal Codes, BZAR 4, Wiesbaden 2004, 108-26.
witness, whose testimony will help to decide the trial. Unlike the first two Neo-Assyrian texts, most do not specifically name the witness who is to come and testify. Their import is nevertheless clear: the verdict depends on the content of the anticipated testimony. The discussion below will examine five texts and then consider similarities that they share with the Neo-Assyrian documents discussed above.

1. Looking for any additional witness

The first text is TCL 12 106, a conditional verdict that was drawn up at the city of Uruk, in the 12th year of Nabonidus.22

\[
\begin{align*}
i-na & \text{ u₄-mu}^{10} \text{ mu-kin-nu lu-ú} \\
\text{ba-ti-gu} & \text{ it-tal-kât-ma a-na} \\
\text{na-din} & \text{ A-šù šà}^{10} \text{ mĕTU-MU-DU A}^{10} \text{ xITIM} \\
\text{tu-tin-nu} & \text{ šà} \text{ ŠE.BAR ina Šu}^{12} \text{ APIN lu-ú} \\
\text{in} & \text{ Šu}^{12} \text{ EN pî-qu-tu₄ šà} \text{ GAŠAN šà UNUG₃} \\
\text{im-hu-ru} & \text{ e-lat 1 GUR 2 (PI) 3 (BAN₃)} \text{ ŠE.BAR šà} \text{ "na-din} \\
\text{ig-bu-ù} & \text{ um-ma}^{10} \text{ mĕAG-MU-MU A-šù} \\
\text{šà}^{10} & \text{ "nad-na-a} \text{ APIN it-tan-nu} \\
mim-ma & \text{ ma-la}^{10} \text{ mu-kin-ni e-lat} \\
\text{1 GUR} & \text{ 2 (PI) 3 (BAN₃)} \text{ ŠE.BAR ú-kan-mu-úš} \\
<1> & \text{ 30 a-na} \text{ GAŠAN šà UNUG₃ i-nam-din} \\
\text{ina} & \text{ GUB-zu} \text{ šà} \text{ mĕAG-LUGAL-URU₃ ša₁₁-SAG-LUGAL} \\
\text{EN pî-qu-tu₄} & \text{ E₂,AN,NA mĕNUMUN-ia} \\
\text{SA₃,TAM} & \text{ E₂,AN,NA}
\end{align*}
\]

On the day when a witness or an accuser has come and has established (or, has testified) against Nadin, son of Šamaš-šumu-ukīn, of the Itinnu family, that he received grain from a farmer or an overseer of the Lady-of-Uruk – apart from the 1.2.3 Kur (270 liters) about which he (Nadin) said, “The farmer Nabû-šuma-iddin, son of Nadnaya, gave it (to me)” – as much as the witness establishes against him, apart from the 1.2.3 Kur (270 liters), he shall pay 30-fold to the Lady-of-Uruk. In the presence of Nabû-šarrī-ussur, the royal commissioner and overseer of Eanna, and Zēriya, chief administrator of Eanna.

The issue at stake in the text appears to be the illegal acquisition of temple grain by the defendant Nadin. The court, comprised of the two temple officials mentioned toward the end of the text, would not have bothered with Nadin, were he not suspected of said acquisition and thus the object of an initial accusation, perhaps by someone within the temple administration.23 The court now seeks for an additional

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22 Published as no. 106 in G. Contenau, Contrats néo-babyloniens I: Têglath-phalasar III à Nabonide, Textes cunéiformes du Louvre 12, Paris 1927.
23 For further details on the judicial functions of these and other temple officials, see S.E. Holtz, Neo-Babylonian Court Procedure (see n. 5), 47-62.
witness who can testify that Nādin did indeed receive temple grain, either from a
farmer in the temple’s employ or from a temple official. Should such a witness ap-
ppear, Nādin will be forced to pay to the temple 30 times the amount stolen — the
standard penalty for temple theft in this period.

Most of the Neo-Babylonian conditional verdicts follow the basic pattern found
in this document. They begin by anticipating that an additional witness (mukinnu) or
accuser (bāttu ūq) — that is, additional to the initial witness or accuser who forced the
defendant to appear before the court in the first place — will come (alāku) and offer
testimony (kunnu). The defendant who stands to be incriminated by such testimony
typically follows the preposition ana, while the specific subject matter of the testi-
mony comes after the verb kunnu. This particular text also includes an element that
many others do not — an elat-clause. In conditional verdicts, an elat-clause is used to
exclude items that the court has decided were legitimately acquired by the defend-

24 See its use in AnOr 8 39, GCCI 1 380, RA 14 158 (no. 152), YNER 1 2, YOS 6 179, YOS 6
191, YOS 6 193, YOS 6 203, YOS 7 26, and YOS 19 98. See also the discussion in B. Wells,
Law of Testimony (see n. 21), 114.
25 Published as no. 79 in R.H. Sack, Cuneiform Documents from the Chaldean and Persian Peri-

On the day when the witness, [PN1], son of Bāniti-ēreš, has come and has estab-
lished (or, has testified) against Erībšu, son of Na’id-Marduk, that Babunu,
the slave of [PN₂], gave him anything — apart from the 1 mina of wool — as much as he (PN₁) establishes against him (Eribšu), apart from the 1 mina of wool, he shall return 2-fold and give it to [PN₂].

Unfortunately, the actual name of the witness comes in a broken part of the tablet, but we do have his patronymic. We also have in this text, the same basic pattern that is found in most other Neo-Babylonian conditional verdicts, as represented by TCL 12 106. The text begins with the anticipation of a future witness, who may be able to offer incriminating testimony against the defendant, Eribšu, regarding wool that the slave-woman Babunu might have given to him. Apparently, Babunu, whose master’s name is also lost due to tablet damage, was not authorized to hand over this wool. The amount of wool that the witness, the son of Bāniti-ēreš, says was given to Eribšu will have to be paid back 2-fold to Babunu’s master.

The publisher and original editor of this tablet, R. Sack, interprets the text somewhat differently. He renders the phrase mimma elat 1 mani šipāti as “all that remains of one mina of wool.” In fact, based on the evidence from other conditional verdicts that use an elat-clause, the phrase is better understood as “anything, apart from one mina of wool.” Sack thus assumes that the stolen property is the very one mina of wool that the document is at pains to say is not stolen. Furthermore, his translation of the penalty clause states, “Eribšu [...] will return the one mina of wool and he will give (it) to [...]” This is based on lines 8-10, which he transliterates 1-er Min 1e-rib-šu [...] uit-ri-ma a-na i-š[...] i-nam-din. Sack must be speculating that MIN signifies the one mina of wool, which everywhere else in this document is represented by 1 MA NA SI₂. The sign MIN, however, is also the sign for 2. When temple property is involved, the penalty clause typically states 1-er 30 to indicate a 30-fold fine. The penalty here, then, is a two-fold fine, and whether or not it is imposed depends entirely on the testimony of a future witness.

3. Litigant to bring his witness

Three texts from the reign of Nebuchadnezzar round out this study. Nbk. 363 and Nbk. 366 come from Opis, Nbk. 361 from Akšak. All three refer to a defendant who has to “bring his witness” (mukinnišu ašāku). In addition, all three indicate a need for the witness to prove that the defendant has already fulfilled some obligation (e.g., repaying a loan) owed to the other party in the case. Finally, each of these situations involves a debt or payment that will be owed to the other party, should the defendant who is required to bring a witness fail to do so.

26 R.H. Sack, Cuneiform Documents (see n. 25), 115.
27 See n. 24.
28 The same type of two-fold fine is attested in Nbk. 361, line 13.
This latter point is stated similarly in all three texts. If the witness has not testified and thereby confirmed that the stated obligation has been satisfied, then the defendant in question will be forced to pay.

Nbk. 361, lines 11-13: *ki-i mu-kin-mu la uk-tin-mu-usPN*₁...PN₂ *i-nam-din* (“if the witness has not testified to it, PN₁ will pay back two-fold and give it to PN₂”).

Nbk. 363, lines 10-12: *ki-i la uk-tin-mu-us M A N A GIN₂ KU₅ BABBARPN₃...PN₁ *u-tar-ma a-na PN₂ i-nam-din* (“if he has not testified to it, PN₁ will pay back 31 shekels of silver and give it to PN₂”).

Nbk. 366 is somewhat more elaborate. It states that if the witness has testified in confirmation of the defendant’s position (or, if the defendant has established his position through the witness’ testimony), then the defendant is “free” (*zaqe*) – that is, free of any further claims upon him. The text goes on to say that if such testimony has not been given, then the defendant will be required to pay back (*nadānu*) the debt, which appears to be at the core of the dispute, plus interest to the other party.

Once again, these documents attest to cases where the courts presiding over them have decided to issue conditional rather than final verdicts. Moreover, the conditional verdicts are attached to potential future testimony – testimony that will ultimately be the deciding factor in each case. Unlike the two Neo-Babylonian texts previously discussed, these documents explicitly name the litigant who is required to produce the anticipated witness. In a sense, these litigants have their destinies in their own hands. Should they be able to bring the designated witnesses and convince them to testify in their favor, the court has already indicated that a favorable ruling will be forthcoming.

IV. Conclusions

This study has attempted to demonstrate that the same types of conditional verdicts that predominate in Neo-Babylonian trial records were also employed and recorded within the legal system that produced our extant corpus of Neo-Assyrian trial records. Of the documents specifically discussed above, several similarities stand out. First and foremost is that the outcome of the cases in question relies entirely on future testimonial evidence. While the courts of the Neo-Babylonian and Persian periods largely eschewed cultic rituals to decide cases and depended, for the most part, on additional testimonial evidence instead, Neo-Assyrian courts still made

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30 In Neo-Babylonian legal texts, the verb *kunnu* is typically used for testifying or presenting evidence before the court. In some texts like these, however, the subject of the verb *kunnu* is not always clear. Is it the witness, or is it the litigant who is bringing the witness? If the latter, then it is better to translate the verb *kunnu* as “to establish”: the litigant is establishing his position by means of the testimony that is given by the witness.

31 In line 7, the text makes clear that the amount of money at issue is 2/3 mina and 1 shekel of silver.
ready use of the judicial oath and ordeal. Why they were reluctant to have recourse to those rituals in the situations discussed here is not obvious. Their inclination, though, to rely on future witness statements at certain times, may point to a willingness to forego a cultically determined verdict if they believe that additional evidence is near at hand and can play a decisive role in the dispute.

Other correspondences are also apparent. The Neo-Assyrian texts, VAT 8656 and SAAB 2 24, frame their conditional clauses in ways similar to those in the Neo-Babylonian documents. If the anticipated witness(es) should testify that one of the litigants in the trial has taken a certain action (either already paid [VAT 8656] or withdrawn money [SAAB 2 24]), then that testimony will decide the final verdict in the case. It is likely that ADD 101 contains a similar element, though the tablet is too broken to be sure. One of the most noticeable similarities comes with ADD 101 and the three Neo-Babylonian texts from the time of Nebuchadnezzar. All four speak of a litigant bringing "his witness(es)," and all four (should I be right about the scribal error in ADD 101) end with conditional statements to the effect that this litigant will have to make a payment to the other party if he fails to produce the anticipated testimony. In fact, ADD 101, NbK. 361, and NbK. 363 all use the same verbal hendiadys with īāru and nadēmu to make this point. Even throughout previous periods of ancient Near Eastern history, the most favored form of ordinary evidence was testimonial evidence; yet, based on the growing prevalence of the types of conditional verdicts analyzed in this study, such evidence appears to have achieved in these later periods an even greater level of importance.

32 See, e.g., the texts discussed in R. Jas, Procedures, 41-42 (no. 24), and 73-76 (nos. 47-48).