

---

# Hammurabi Code *versus* NY Penal Code

---

**Philosophy of Law, Spring 2016**

CUNY, Lehman College

Marcello Di Bello

---

# The Code of Hammurabi

---

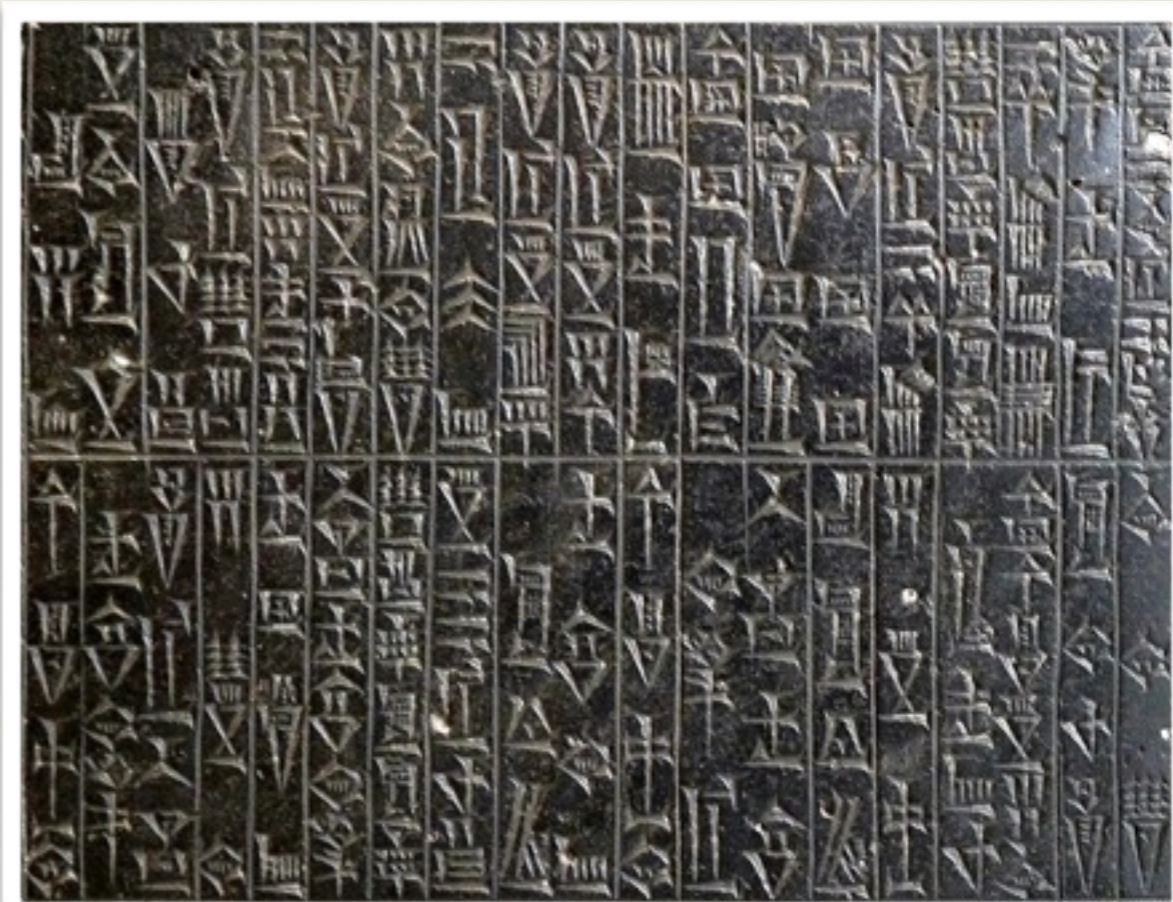
Hammurabi, king of Babylon, ruled from 1792 to 1750 BC.

(see e.g. Marc Van De Mieroop, *King Hammurabi of Babylon*, Blackwell 2005)



*Louvre, Paris*







---

# HC – Humane?

---

- ❖ [48] If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year.

---

# HC – *Lex Talionis* (an eye for an eye)

---

[195] If a son strike his father, his hands shall be hewn off.

[196] If a man put out the eye of another man, his eye shall be put out.

[197] If he break another man's bone, his bone shall be broken.

[198] If he put out the eye of a freed man, or break the bone of a freed man, he shall pay one gold mina.

[199] If he put out the eye of a man's slave, or break the bone of a man's slave, he shall pay one-half of its value.

[200] If a man knock out the teeth of his equal, his teeth shall be knocked out.

**QUESTION:**

**What Happens When You Are Found in  
Possession of Stolen Goods?**



---

# Hammurabi's Code [9, 10]

---

[9] If any one lose an article, and find it in the possession of another: if the person in whose possession the thing is found say "A merchant sold it to me, I paid for it before witnesses," and if the owner of the thing say, "I will bring witnesses who know my property," then shall the purchaser bring the merchant who sold it to him, and the witnesses before whom he bought it, and the owner shall bring witnesses who can identify his property. The judge shall examine their testimony--both of the witnesses before whom the price was paid, and of the witnesses who identify the lost article on oath. The merchant is then proved to be a thief and shall be put to death. The owner of the lost article receives his property, and he who bought it receives the money he paid from the estate of the merchant.

[10] If the purchaser does not bring the merchant and the witnesses before whom he bought the article, but its owner bring witnesses who identify it, then the buyer is the thief and shall be put to death, and the owner receives the lost article.

---

# Possessing a Stolen Donkey

---

You bought a donkey from a dealer and paid a large amount of money, but an alleged owner claims the donkey as his own. You are brought to court and charged with possession of a stolen good. **What happens to you?**

According to HC:

If you bring to court both the witness before whom you bought the donkey and the dealer, you shall be reimbursed for the money you spent on the donkey (HC, 9).

But if you cannot bring the witness and the dealer to court, while the owner can bring a witness who identifies the donkey as his property, you'll be considered a thief and be put to death (HC, 10).

*Is this outcome just? If not, how would you handle this situation?*



From the Owner's Perspective...

---

# Hammurabi's Code [9, 11, 12]

---

[9] if ...the owner shall bring witnesses who can identify his property.

...

The owner of the lost article receives his property...

[11] If the owner do not bring witnesses to identify the lost article, he is an evil-doer, he has traduced, and shall be put to death.

[12] If the witnesses be not at hand, then shall the judge set a limit, at the expiration of six months. If his witnesses have not appeared within the six months, he is an evil-doer, and shall bear the fine of the pending case.



---

# What Happens to the Owner?

---

According to HC:

If the owner brings a witness who can identify his property, the stolen property is returned to him (HC, 9).

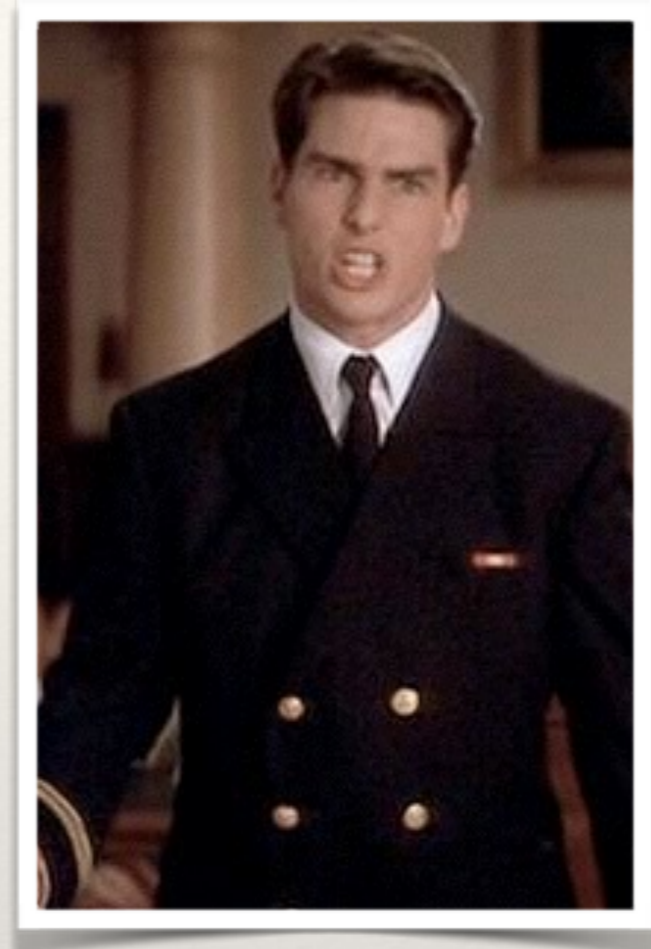
But if the owner cannot bring the witness to court, he'll be considered an evil-doer and be put to death (HC, 10).

*Is this outcome just? If not, how would you handle this situation?*

---

# Being Able to Establish Your Claims is Crucial to Get Justice

---



“It does not matter what I believe,  
it only matters what I can prove”  
(From *A Few Good Men*, 1992)



What does NY Law say?

---

# NY Penal Code

---

165.40 Criminal possession of stolen property in the fifth degree. A MISD

165.45 Criminal possession of stolen property in the fourth degree. E FELONY

165.50 Criminal possession of stolen property in the third degree. D FELONY

165.52 Criminal possession of stolen property in the second degree. C FELONY

165.54 Criminal possession of stolen property in the first degree. B FELONY

165.55 Criminal possession of stolen property; presumptions.

165.60 Criminal possession of stolen property; no defense.

165.65 Criminal possession of stolen property; corroboration.



---

# NY Penal Code

---

165.40 A person is guilty of criminal possession of stolen property in the **fifth degree** when he *knowingly* possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof. *Class A misdemeanor.*

...

165.50 A person is guilty of criminal possession of stolen property in the **third degree** when he *knowingly* possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the value of the property exceeds three thousand dollars. Class D felony.

...

165.54 Criminal possession of stolen property in the **first degree**. A person is guilty of criminal possession of stolen property in the first degree when he *knowingly* possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner, and when the value of the property exceeds one million dollars.

---

# Possessing a Stolen Laptop

---

You bought a laptop from a dealer and paid a large amount of money, but an alleged owner claims the laptop as his own. You are brought to court and charged with possession of a stolen good. **What happens to you?**

According to NY Penal Code:

If you are shown to be guilty — beyond a reasonable doubt — of knowingly possessing the stolen laptop, you shall be convicted of a class A misdemeanor (NY Penal Code 165, 40)

If you are NOT shown to be guilty — beyond a reasonable doubt — of knowingly possessing the stolen laptop, you shall NOT be convicted of a class A misdemeanor (NY Penal Code 165, 40)

*What to make of this? Are your interests protected by NY Penal Code?*



---

# The Owner's Perspective

---

You bought a laptop from a dealer and paid a large amount of money, but an alleged owner claims the laptop as his own. You are brought to court and charged with possession of a stolen good. **What happens to the owner?**

According to NY Penal Code:

*nothing happens...*

*The owner should bring suit in civil court to reclaim the stolen good within a reasonable period of time (for example, 3 years). If the owner wins the law suit, he can recover the stolen good.*

---

# Comparing HC and NY Law

---

- ❖ The underlying principle is the same for both: one's property should not be stolen and stolen property should not be sold to third parties
- ❖ HC and NY Law differ in how the facts are established and how the dispute is adjudicated
- ❖ NY Law distinguishes between criminal and civil proceedings, while HC does not.
- ❖ NY is much more specific and detailed than HC, e.g. criminal offense under NY Law has a *mens rea* requirement (recall the expression "knowingly" in NY Penal Code)