

A Matter of Life and Death

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Introduction

This study is in direct response to a recent article by Reuven Yaron.¹ It gives me particular pleasure to disagree with Professor Yaron in this instance, because if I succeed in refuting his argument I only succeed in proving him correct.

The phrase “shall die; shall not live” (*imât ul iballuť*) occurs three times in Codex Eshnunna as the punishment for a crime:

12. A man who is seized in the field of an ordinary citizen in the sheaves at midday shall pay 10 shekels of silver. He who is seized in the sheaves at night: he shall die, he shall not live.
13. A man who is seized in the house of an ordinary citizen in the house at midday shall pay 10 shekels of silver. He who is seized in the house at night: he shall die, he shall not live.
28. . . . If he makes the contract and libation with her father and mother and marries her, she is a wife. The day she is seized in the lap of a man she shall die, she shall not live.

Szlechter suggested a dual meaning: that the death penalty was mandatory and that the victim was entitled to kill the offender on the spot.² Ambiguity being incompatible with law, however, only one of the two is possible. Yaron originally opted for immediate retribution, on the grounds that it was legally the most appropriate solution,³ but subsequently revised his view because he could see no connection between the language of the phrase and the idea of immediate retribution by the aggrieved party.⁴ He concluded that the phrase was without special legal significance. The dual formulation was legally redundant, a rhetorical device serving merely as emphasis. His most recent article attempts to support that conclusion by examining use of the same phrase in non-legal contexts and demonstrating that it has the same function, or rather lack of one, as in the law code.

It is my opinion that Yaron’s original proposal is the correct one. His misgivings, however, were fully justified in that other commentators, including this author, had failed to pay sufficient attention to the connection between idiom and legal meaning. A legal idiom can only be understood if we can visualize the image of the law which it is intended to represent. The purpose of the present study is to address those misgivings by reviewing the relationship between legal and non-legal meaning and reexamining the legal function of this particular phrase both in its individual parts

1. “Stylistic Conceits: The Negated Antonym,” *JANES* 22 (1993), 141–48.

2. E. Szlechter, *Les Lois d’Ešnunna* (Paris, 1954), 110–11.

3. *The Laws of Eshnunna*, 1st ed. (Jerusalem 1969), 173.

4. *The Laws of Eshnunna*, 2nd ed. (Jerusalem, 1988), 259–62.

and in its duality. Our findings will then be applied to Codex Eshnunna, to demonstrate the connection between the phrase and our legal interpretation of the paragraphs in which it occurs.

Legal Evidence

Before entering into a discussion of the idiom, it is worth reviewing the evidence in favor of interpreting CE 12,13 and 28 as allowing the aggrieved party the right to kill the culprit on the spot. All three paragraphs concern cases of seizure *in flagranti delicto*, using the same terminology (*iṣṣabtu*). Furthermore, the two situations described therein are familiar from the many parallels in laws not only from the ancient Near East, but also from Greece and Rome. The first is the burglar caught at night, and the second is the wife caught in adultery. All the sources have the same common feature—the culprit is caught *in flagranti delicto*—and offer the same legal solution: the victim is entitled to kill the culprit on the spot without trial and is not liable for murder.

The case of the burglar is found in three sources. Exodus 22:1 reads: “If the thief is caught breaking in and is struck dead, he has no blood. If the sun has risen on him, he has blood. He shall surely pay. If he cannot, he shall be sold for his theft.” The laws of Solon are recorded as having had the following provision: “For a theft in day-time of more than 50 drachmas a man might be arrested summarily and put into custody of the Eleven. If he stole anything, however small, by night, the person aggrieved might lawfully pursue and kill or wound him, or else put him into the hands of the Eleven, at his own option.”⁵ Finally the Roman XII Tables include the provision (8.12–13): “If he commits theft by night, if he kills him, he is lawfully slain. By daylight . . . if he defends himself with a weapon . . . having called for help.”

In all three the distinction is made between seizure by day, when the victim is not entitled to kill the burglar, but only to claim the normal penalties for theft, and seizure by night, when he can kill with impunity.

The case of adultery is found in the Hittite Laws 197: “. . . if the husband finds them (the adulterers) and kills them, there is no liability upon him.” The same principle is possibly to be found in the Middle Assyrian Laws A 15, a difficult text which I would translate as follows: “If a man seizes a man with his wife (and if) it has been established and proved with respect to him: (on condition that) both are killed, there is no liability upon him.”⁶ The same right of the husband in early Roman law is described by Aulus Gellius, quoting M. Cato, as follows: “If you should take your wife in adultery, you may with impunity kill her without trial.”⁷

In my view, these parallels are no accident. The two cases are scholastic legal problems from Mesopotamian scribal schools, part of a body of learning that spread across the ancient Near East and even found its way into the Mediterranean coun-

5. Demosthenes, *Against Timocrates* 113.

6. See further Westbrook, “Adultery in Ancient Near Eastern Law,” *RB* 97 (1990), 551–54.

7. . . . sine iudicio impune necares: *Noc. Att.* 10.23.5.

tries.⁸ In a sense, it is the Eshnunna provisions that provide the connection between all the parallels. An outside observer may note that the parallels all happen to have the same special legal solution to two different cases; the Eshnunna laws self-consciously link those two different cases through use of the same special terminology for their legal solution.

On the other hand, as Yaron has shown, the alternative proposal of a mandatory death penalty makes little sense in terms of the severity of the offense, especially since adultery is assumed by other cuneiform codes to be pardonable.⁹

The starting point for any philological investigation should therefore be the presumption raised by legal logic, by their terminological connection and by strong external parallels that these three laws in their apodosis condone immediate, private retribution. Yaron's present solution, that they impose the death penalty pure and simple, is legally unobjectionable, but raises the far less attractive presumption that they are an anomaly among parallel provisions.

Legal Phrases

Technical legal phrases originate either within a legal system or as lay terms which acquire a special nuance in a legal context. The latter are especially common in ancient Near Eastern languages, and the relationship between lay and legal meaning can be complex. Although the search for the meaning of a legal term will always begin with its literal meaning, it will often end in a totally different semantic sphere. For a legal meaning may not only restrict or nuance the literal meaning of a term, as might be expected of any specialized use; it may subvert that meaning altogether. For example, the Akkadian term *ezēbu* means "to leave, abandon"; literally, it refers to physical motion by the subject away from the object, which would normally be stationary. As a technical legal term in the context of marriage, it means "to divorce." The connection between leaving and divorce might seem obvious, except that divorce was achieved in the legal systems that used this term not by physical motion but by the pronouncement of *verba solemnia*. Where a husband divorced his wife, at least, it was not he but the wife, the object of the verb *ezēbu*, who physically left the matrimonial home.¹⁰ The legal meaning of the term is thus the opposite of its literal meaning, a paradox expressed by MAL A 37: "If a man will divorce (lit.: 'leave') his wife. . . . she shall go out empty."

A legal context thus provides a new set of clothes, so to speak, for the naked phrase. Those clothes are invisible, insofar as there is no morphological change in the phrase, but they nonetheless make a very real difference in the way the phrase is read, because they allow it to have a different function, namely to describe not a physical phenomenon but the application of certain legal rules.

8. See Westbrook, "The Nature and Origins of the Twelve Tables," ZSS 105 (1988), 74–121.

9. *Laws of Eshnunna*, 1st ed., 173.

10. The *Chicago Assyrian Dictionary* under meaning 1a)1' ("to abandon, to desert . . . persons") in fact contains many passages where the term should be translated "divorce." Cf. the Hebrew term *šlh*, "send away," which is more faithful to reality.

The Parts of the Dual Formula

Yaron avers that the sum of “shall die; shall not live” expresses no more than its parts because the latter are synonymous.¹¹ In terms of the lay meaning of the phrase this is perfectly correct. “Shall die” is a prediction of a future change of physical state. “Shall not live” predicts exactly the same change. It adds no new information; it is superfluous.

The same is not true of the legal meaning. That meaning becomes evident once it is realized that the phrase under discussion is merely a variant of a much more common phrase using the same verbs. It was Yaron himself who established the connection over thirty years ago in a seminal article which curiously has not been cited in discussions of the Eshnunna provisions.¹²

Yaron pointed out that in the Latin phrase *vitae necisque potestas*, “power of life and putting to death,” the second part referred to a judicial death sentence and the first to a judge’s power of pardon. By way of evidence for this proposition, Yaron adduced sources from the ancient Near East. Thus in HL 187 a man found guilty of bestiality is brought to the gate of the palace and “the king may kill him; the king may cause him to live. . . .” In Dan. 5:19 Nebuchadnezzar’s power is described as follows: “Whom he wished, he would kill; whom he wished, he would make live; whom he wished, he would raise up; and whom he wished, he would bring down.” Finally, a letter to king Ashurbanipal makes explicit the judicial nature of the king’s actions: “He for whose crime death had been ordered, my lord the king has made live; they who have been prisoner for many years, you have redeemed. . . .”¹³

The dual formulation in these sources was explained by Yaron as follows:

The first part of the formula “power to put to death” implies a tendency to concentrate jurisdiction in the hands of the king, at least as far as capital cases are concerned. In this connection it ought to be noted that in texts like the Hittite laws, the vassal treaties of Esarhaddon and also in Daniel . . . the “power to put to death” is not arbitrary. The king decrees the death of him who has committed a capital crime; he is not given power to decree the death of a lawabiding subject. . . . The second part of the notion, “the power to keep alive,” means that the king, in his discretion, is entitled to prefer mercy to strict justice, to grant pardon if he so pleases.¹⁴

In the light of Yaron’s exposition, we may conclude that “to kill” ceases to be a physical act where the subject of the verb is a court or a sovereign acting in his judicial capacity. It refers rather to its imposition of the death sentence. In the same circumstances, the intransitive form “shall die” also refers to the death sentence, but from the condemned man’s point of view; it is a normative statement, asserting that a person ought to be put to death. It informs us that he is guilty of a crime, and of the sentence applicable to that crime.

The formula “shall not live,” however, does not contain the same information. It refers to a separate judicial process, that of pardon, which, although it may on oc-

11. “Negated Antonym,” 144ff.

12. “*Vitae Necisque Potestas*,” *Tijdschrift voor Rechtsgeschiedenis* 30 (1962), 243–51.

13. R. Harper, *ABL* 2:21–24, ed. L. Waterman, *Royal Correspondence of the Assyrian Empire I* (Ann Arbor, 1930), no. 2.

14. Yaron, “*Vitae Necisque Potestas*,” 248.

casation be coterminous with condemnation or sentencing, is in principle independent thereof. The formula negates the possibility of pardon where a sentence of death is applicable or has been imposed.

This interpretation was espoused by Yaron in his article on *vitae necisque potestas* with regard to a passage in a letter to king Esarhaddon: “. . . the writer, who committed a grave offense and had been pardoned, profusely thanks the king: ‘Great sins against the house of my lords I have committed . . . I (deserved) to be killed, not to be kept alive.’”¹⁵ In his most recent article, however, Yaron cites the same passage as attesting to the meaninglessness of the dual formulation: “The double phrase implies no addition to the substantive import, only a desire to impress, a wish to be taken seriously.”¹⁶ This may well have been the writer in question’s desire, but there remains a substantive difference between deserving justice and not deserving mercy.

Legal Death

Where a phrase functions as a legal idiom, it takes effect within the confines of a world created by legal rules. Unless the logic of that legal world is taken into consideration, it may be difficult to connect the phrase with its context; indeed, a literal translation may produce bizarre results. The dual formula that we are considering can only work outside the legal sphere in the hands of a divine ruler. According to 1 Sam. 2:6: “The Lord puts to death and makes live; he brings down to the Netherworld and he brings up.”

Mere mortals can achieve the same, but only within the world of their own creation: the artificial world of legal rules. Consider the following law in Deut. 17:6: “The dead man shall be put to death on the word of two or three witnesses; he shall not be put to death on the word of one witness.” The apparent absurdity of my literal translation disappears once we realize that it is legal death that is in issue.¹⁷ A man who has been found guilty of a capital offense is deemed dead in the eyes of the law; his physical death must await his execution, which is not a foregone conclusion. For, as the prophet Ezekiel puts it (18:32): “I do not desire the death of the dead,” says the Lord God, “so repent and live.”

A letter to king Ashurbanipal from one of his officers begins by reporting success in a minor skirmish, but it then emerges that the officer is in disgrace due to an earlier military disaster:¹⁸

Since Birat was sacked and its gods carried off, I am dead (*mītu anāku*). Had I but seen the golden ring of my lord the king, I would live (*abtalūt*). But behold, when I sent my messenger to my lord the king, I did not see the ring of my lord the king and I did not live (*ul abluūt*). I am dead (*mītu anāku*); let my lord the king not forsake me!

15. *Ibid.*, 246; *ABL* 620 = Waterman I 620.

16. “Negated Antonym,” 145.

17. Standard translations ignore the word “dead man” (*mt*) in the Hebrew text, even though the Septuagint tries to take account of it (*apothneskon*: “dying man”). E.g., “. . . the death sentence shall be executed . . .” (Oxford Bible); “. . . a person shall be put to death . . .” (JPS); “. . . on ne pourra être condamné à mort . . .” (Bible de Jerusalem). It should be noted that the Hebrew root *mt** meaning “man” is not attested in the singular.

18. Harper, *ABL* 259, ed. Pfeiffer, *State Letters*, 22: rev. 1–10.

Clearly, the death in question is figurative, referring to the officer's disgrace. The king has punished him in some way and the officer seeks a reversal of that order. There is hyperbole in the officer's statement in that he compares his punishment to a death sentence, but the principle is not affected. The sequence of events narrated is: 1) punishment, 2) petition for remission of punishment (messenger, see the king's ring), 3) rejection of petition (not see the king's ring). "Dead" refers to the original punishment, whereas "live" and "not live" refer to the petition and its failure. Of course, as a result of that failure, the officer remains in his previous status, hence repetition of the term "dead."

In Isa. 38:1 = 2 Kgs. 20:1 King Hezekiah falls seriously ill. God informs him through the prophet Isaiah: "Put your house in order, for you are dead and you shall not live." As in the letter of the Assyrian officer, "dead" refers to Hezekiah's status as a condemned man. Sickness was regarded in the ancient Near East as, *inter alia*, divine punishment for sin, and a mortal illness was therefore a death sentence.¹⁹ "You are dead" thus means that Hezekiah has been found guilty of a capital sin by the divine judge; "You shall not live" means that he can expect no mercy. Hezekiah, however, refuses to take God at his word and begs for mercy (vv. 2–3), with the result that God eventually relents somewhat and grants Hezekiah another fifteen years of life (vv. 4–5). The message is that prayer and repentance may soften even the harshest decision, at least where the divine king is concerned.

In the light of these examples, we see that within a legal framework the notion "make live" is a perfectly logical counterpart to "kill". The condemned man is legally speaking dead, and the effect of pardon is to bring him back to life again.²⁰

Ellipsis

So far we have been examining the dual phrase, but there is no reason why "live" or "make live" should not be used alone to indicate pardon, or even to indicate by ellipsis the whole process of condemnation and pardon, if the context is sufficiently suggestive. In the "Nippur Homicide Trial," an account from the early second millennium B.C.E. of a trial for murder before the Assembly of the city of Nippur, three men conspired to kill a fourth and when they had done the deed, informed the victim's wife.²¹ She kept her silence. All four were brought to trial. One group in the assembly argued as follows:

As men who have killed a man they are not live men (lú-lú-ù in-gaz-eš-àm/ lú-ti-la nu-me-eš).
Those three males and that female shall be killed before the chair (of the victim).

19. See, e.g., Šurpu (ed. E. Reiner, *Archiv für Orientforschung*, Beiheft 11, 1958), a series of incantations designed to remove sin from a sick man by means of confession and ritual purification. Cf. Num. 27:3 and 2 Kgs. 5:20–27.

20. This approach was already adumbrated by Yaron in his earlier article: "... by his god-like intervention [the sovereign] 'keeps alive', perhaps even 'restores to life', the offender who has been condemned to death"; "Vitae Necisque," 248.

21. Ed. T. Jacobsen, *Toward the Image of Tammuz* (Cambridge, Mass., 1970), 193–214.

Another group, however, argued for mercy for the wife:

Even if Nin-dada daughter of Lu-Ninurta may have killed her husband, a woman, what can she do, that she should be killed?

The Assembly then considered the wife's case and decided that she should be executed with the others. In this account, the facts had been proven; the only issue before the court was the possibility of clemency. It therefore seems to me appropriate that the culprits are referred to by the group arguing against mercy not as "dead" but as "not live," i.e., not worthy of mercy.

More than a thousand years later, a striking illustration of this elliptical usage is given in a report of a trial for high treason.²² King Nebuchadnezzar II, having discovered a plot against him by a certain Babu-ahha-iddina, "proved against him in the popular assembly the crimes that he had committed and looked upon him angrily and pronounced his not-living (*lā balassu iqbi*) and his throat was cut" (17–20). The narrative omits mention of the death sentence, which is self-evident in a case of treason, and focusses on the king's prerogative of pardon, which presupposes a death sentence. The death penalty for treason resulted from a conviction by a court (the popular assembly, not the king); "not-living" resulted from the king's decision to deny mercy.

Finally, the same metonymy explains an enigmatic Biblical law (Exod. 22:17): "You shall not make a witch live." This law, in my interpretation, is addressed to the local authorities.²³ It is understood that witchcraft is a capital offense. The purpose of the law is to forbid the local authorities to exercise a prerogative of mercy with regard to witches.

Summary Justice

The effect of elliptical usage of one part of the dual phrase is to cast emphasis on that aspect. In certain contexts, when used as a speech formula, that emphasis is such as to give the phrase a slightly different nuance. In 2 Kgs. 10:19, king Jehu issues an order summoning the priests of Baal, without exception, and adds: "Anyone who is missing shall not live." We understand from this that the penalty for disobedience is death, but it adds little to emphasize that the king will not pardon the offender. The emphasis lies rather in its focus on the final stage of judgment to the exclusion of the preceding stages. Truncation of the legal phrase enables it to become part of the peremptory order and thus to be symbolic of the truncation of the judicial process. The offender will be put to death summarily, without trial, without being able to offer an explanation or excuse. Failure to appear is proof of his guilt; there is no need for legal niceties and no question of pardon. The same is true in Gen. 31:32 when Jacob, accused by Laban of stealing his household gods, accepts a search, declaring: "He with whom your gods are found shall not live."

22. E. Weidner, "Hochverrat gegen Nebukadnezar II," *Afo* 17 (1954–56), 1–3.

23. Westbrook, "Lex Talionis and Exodus 21, 22–25," *RB* 93 (1986), 62–66.

The use of the truncated phrase as a peremptory order is not confined to the Bible. In a letter from Mari dating to the 18th century, an official reports:

I assembled the sheikhs of the cities of the Binu-Yamina and I gave them the following strict order:²⁴ “Whoever you are, if a single individual leaves your city and you do not seize him and bring him to me, in truth you shall not live.”²⁵

Finally, returning to the Bible, in Exod. 19:12–13, we find the full dual phrase, but separated in a way that changes its emphasis. Moses, about to ascend Mount Sinai, is instructed to warn the people:

Do not go up onto the mountain or touch its edge. Anyone who touches the mountain shall be killed. No hand shall touch him but he shall surely be stoned or shot. Whether beast or man, he shall not live.

There is to be no trial, but instant death for trespassers, as postponement of the element “shall not live” until after the mode of execution indicates. It is not clear who was to carry out the stoning or shooting. The order seems to allude to the posting of guards, but a further possibility, which we shall discuss in the next section, is that it entitled ordinary Israelites to take law into their own hands.

Private Justice

In all the examples that we have examined from the ancient Near East the power of life and death vests in the hands of the king or his delegates. There is, however, at least one example of the phrase being used in connection with private individuals. Zech. 13:3 states:

But if a man continues to prophesy, his father and mother who bore him shall say to him, “You shall not live, for you have spoken falsehood in the name of the Lord,” and his father and mother who bore him shall pierce him through because of his prophesying.

False prophesy was a form of apostasy, a serious public offense for which the death penalty is prescribed in the laws of Deuteronomy (18:20; cf. 13:6, 9–11; 17:2–5). According to those laws, execution was to be by the community and only after a public trial, with procedural safeguards for the defendants, or after a formal inquiry by the public authorities (13:13–16; 17:2–7). Where the culprit has sought to suborn a close relative or friend in secret, however, the procedure is less elaborate. It is the duty of the relative or friend to denounce the culprit and personally to initiate the public execution by stoning (13:7–11). His sole testimony is sufficient because it is contrary to interest, namely the natural ties of love and affection.²⁶

24. *ašpuššunūti*. CAD translates *šapātu* “to issue orders” (Š/1, 450b) but for no apparent reason creates a second lemma (451a) with three examples—one uncertain, one in broken context and this passage, which it translates, “I informed(?) them. . . .” In my opinion, the first meaning applies here also. Confirmation is provided by examples of the noun *šiptu*, “ruling, strict order, reprimand,” given in CAD Š/2, 93a.

25. ARM II, 92:122.

26. B. Levinson rightly points out that the procedural safeguard of two witnesses (17:6) should not be read into Deut. 13:7–12; “Recovering the Lost Original Meaning of *wl' tksh 'lyw* (Deuteronomy 13:9),” *JBL* 115 (1996), 601–20. In the nature of the case, there can be no other witnesses. Levinson’s conclusion

The prophetic passage goes a step further. The situation is considered so serious that the culprit's parents are given the right to execute summary justice themselves, without going through normal procedures. They assert that right by means of the speech formula "You shall not live," which, as we have just seen, is normally used by rulers when they order summary execution.²⁷ There is no preceding order, as there is in the case of rulers; instead, the parents arrogate to themselves legal authorization by naming the offense in their declaration. It is the grave, public nature of the offense that entitles them to act. For a brief moment, and in special circumstances, the parents are given the authority of a ruler or judge over a criminal: their own son.²⁸

With this final example we have reached a meaning of the phrase that fits exactly our interpretation of the legal solution in the paragraphs of Codex Eshnunna. Those paragraphs, it will be recalled, ruled that an intruder caught breaking in at night "shall die; he shall not live." Our interpretation, following Yaron's original proposal, was that the householder was being given authority to kill the intruder on the spot. The case of the false prophet killed by his parents shows that the phrase could bear that meaning. It is a sub-category of the formula's use in reference to summary justice: the right of an individual to take the law into his own hands in special circumstances. It is true that in most cases of summary justice the formula is truncated, whereas here it is whole. The reason, we suggest, is that in the Eshnunna paragraphs, the necessary context is lacking. The phrase does not follow upon a peremptory order, nor is it a speech formula. Nor does the context that is given in the protasis make the right self-evident. Theft and adultery are not public offenses that have to be stopped at all costs, in which action might be expected of a private person.²⁹ "Shall die" establishes that the culprit is liable to the death penalty—it plays the same role as the parents' naming of the offense in the case of false prophesy. The second part of the formula—"shall not live"—refers to the modalities of execution, as we have seen in Exod. 19:12–13. By emphasizing seizure *in flagranti delicto*, the protasis indicates that summary justice is in issue, and in the circumstances described, the only possible executioner is the very person by whom the culprit is seized.

that the addressee of the law must summarily execute the culprit should, however, be nuanced. The addressee of the apostasy still has to bring the case to the public, who participate in the execution; he could not justify the slaying of a close friend or relative *ex post facto* by citing his apostasy, as would one who took the law into his own hands.

27. The difficulty of this phrase for commentators, and the strained rationalizations that result, are illustrated by a recent example: ". . . the sentence here is expressed somewhat less directly, perhaps to ameliorate the harsh and extraordinary circumstances whereby parents are called upon to execute their own children"; C. and M. Meyers, *Zechariah 9–14*, Anchor Bible (New York, 1993), 374.

28. Another possible example of the phrase being used of an individual is a Mari letter, *ARM X 32*. Unfortunately the text is incomplete and the context too obscure to be certain. A daughter writes to her father that unless he sends someone quickly to take her away, "I shall die; I shall not live" (1.32'). Since her request appears to arise from an incident related earlier in the letter (ll.13'–14') in which a certain Haya-Sumu threatened her—" . . . since I will cause you to die, let your "star" (= father) come and take you away!"—it may be that Haya-Sumu was claiming (abusively?) the right to kill her summarily.

29. Compare the case of Pinhas in Num. 25:7–8, who brought to an end a plague by summarily killing apostates.

Conclusion

Seen through modern eyes, the second leg of the dual formula “he shall die; he shall not live” seems a redundant repetition, whose only effect is to heighten the dramatic impact of its first leg. We have attempted to show, however, that in its duality the formula functioned as a technical legal term. In this function, its second leg had an independent meaning of considerable importance. Depending on the context, it could refer to the power of pardon by a ruler, the exercise of summary justice by a ruler, or the right of a private person to execute summary justice. Accordingly, when the dual phrase occurs in the apodosis of three paragraphs of a law code, we are entitled to assume that its second leg is not redundant, but indicates one of those three legal solutions. Legal logic and comparative evidence constitute a compelling argument in favor of the third solution: private summary justice.