

VII Diverse transactions

In this chapter, I collect diverse sorts and aspects of relationships between private agents that have a bearing on wealth and the redistribution thereof:

- women's entitlement to own or acquire wealth
- services
- problematic exchanges
- inheritance
- debts
- void and voidable givings

A Women as economic actors

If one were to take Manu at face value, one might arrive at the conclusion that women were not allowed to deal independently of male family members or to keep their own earnings:

⟨121⟩ *bālye pitur vaše tiṣṭhet pāṇigrāhasya yauvane |
putrāṇām bhartari prete na bhajeta svatantratām* ||³⁸⁴

[...]

*bhāryā putraś ca dāsaś ca traya evādhanāḥ smṛtāḥ |
yat te samadhigacchanti yasya te tasya tad dhanam* ||³⁸⁵

As a child, she must remain under her father's control; as a young woman, under her husband's; and when her husband is dead, under her sons'. She must never seek to live independently.

[...]

Wife, son, and slave—all these three, tradition tells us, are without property. Whatever they may earn becomes the property of the man to whom they belong.³⁸⁶

384 MDh 5.148

385 MDh 8.416 and, similarly, NSmV 5.39

386 Olivelle (2005)

Apparently, however, reality often did not conform to these quotations. Olivelle (2011, pp. 249–254) convincingly argues that women

- were holders of six kinds of property (*strīdhana*), even according to Manu,³⁸⁷
- often made donations to temples³⁸⁸ or to Buddhist monasteries³⁸⁹,
- might have had to pay fines,³⁹⁰
- owned property separate from that of a husband,³⁹¹
- could make a repayable loan to a husband,³⁹² and
- could be the recipient of property after her husband’s death.³⁹³

B Services (*śúśrūṣā*)

The connection between the services listed in this section and the “ungrudging service” to be performed by *śūdras* (section III.E, <16>) is not clear.

(1) Five kinds of *karmakaras*

Services are performed by five different kinds of people according to Nārada:

<122> *śiṣyāntevāsibhṛtakāś caturthas tv adhikarmakṛt |
ete karmakarāḥ proktā dāsās tu gṛhajādayaḥ ||*³⁹⁴

The laborers are: a student, an apprentice, a hired man, and an overseer. The slaves are those born in the house, and the like.³⁹⁵

Excepting the *adhikarmakṛt* (overseer)³⁹⁶ and the *śiṣya* (pupil) the other three kinds of labourer are dealt with in the following subsections. Against Nārada’s list, one might add partnerships, especially those of officiating priests, and the remuneration of officials (subsections VII.B(5) and (6)). NSmV 5.5 explains that pure (*śubha*) work (*karman*) is done by labourers (*karmakṛt*) and impure work by slaves (*dāsa*).

387 MDh 9.194 and, somewhat similarly, YSm 2.147

388 Orr (2000)

389 Schopen (1997)

390 YSm 2.289–290, KātSm 487

391 NSmV 13.7

392 YSm 2.151

393 YSm 2.139–140; KātSm 921, 927

394 NSmV 5.3

395 Lariviere (2003)

396 *artheṣv adhikṛto yaḥ syāt kuṭumbasya tathopari* (“one who has been charged with responsibilities pertaining to family matters”) in NSmV 5.22, translation by Lariviere (2003).

(2) Hired man

The hired man (*bhṛtaka*) is a legal institution clearly falling into the category of *dānagrahaṇa*. See Nārada:

⟨123⟩ *bhṛtakas trividho jñeya uttamo madhyamo 'dhamaḥ |*
śaktibhaktyanurūpā syād eṣāṃ karmāśrayā bhṛtiḥ ||
uttamas tv āyudhīyo 'tra madhyamas tu kṛṣīvalaḥ |
*adhamo bhāravāhaḥ syād ity evaṃ trividho bhṛtaḥ ||*³⁹⁷

There are three kinds of hired men: highest, middle, and lowest. Their wages depend on what they do, how well they do it, and their loyalty. This is the threefold division of hired men: soldiers are the highest, farmers are the middle, and bearers are the lowest.³⁹⁸

In return for services, the hired man can expect wages, either by agreement or by default:

⟨124⟩ *bhṛtānāṃ vetanasyokto dānādānavidhikramaḥ |*
vetanasyānapākarma tad vivādapadaṃ smṛtam ||
bhṛtāya vetanaṃ dadyāt karmasvāmī yathākramam |
ādau madhye 'vasāne vā karmaṇo yad viniścitam ||
bhṛtāv aniścītāyāṃ tu daśabhāgaṃ samāpnuyuḥ |
*lābhagobījasasyānāṃ vaṇiggopakṛśībalāḥ ||*³⁹⁹

There is a series of rules about payment and non-payment of wages for hired men. This title of law is called Non-payment of Wages. The employer should regularly pay the wages to the hired man as agreed: in advance of the work, during the work, or at the end. Unless there has been a special agreement with the hired man, a merchant, herdsman, or farm worker should receive one-tenth of the profit, cows, or produce respectively.⁴⁰⁰

Detailed rules about the mutual obligations of master and servant are given by Kauṭilya (KAŚ 3.14.1–17) and in the Buddhist Upāsakālaṅkāra (ĀUJA 4.75, 94–97).

(3) Apprentice

Consider, next, apprenticeship. An apprentice (*antevāsin*) resides in his teacher's house and learns a craft (*śilpa*) from him. The *dāna* offered by the *ācārya* is described by Nārada as follows:

397 NSmV 5.20–21

398 Lariviere (2003)

399 NSmV 6.1–3

400 Lariviere (2003)

⟨125⟩ *svaśilpam icchann āhartuṃ bāndhavānām anujñayā |*
ācāryasya vased ante kālaṃ kṛtvā suniścitam ||
ācāryaḥ śikṣayed enaṃ svagrḥād dattabhojanam |
*na cānyat kārayet karma putravac cainam ācaret ||*⁴⁰¹

One who wishes to learn his own craft should, with the permission of his relatives, reside with a master for a well-defined period of time. The master should instruct him and feed him from his own household; he should not make him do any other work, and he should treat him like a son.⁴⁰²

The *ācārya*'s *grahaṇa* is described in these two verses:

⟨126⟩ *śikṣito 'pi kṛtaṃ kālam antevāsī samāpnuyāt |*
tatra karma ca yat kuryād ācāryasyaiva tatphalam ||
grḥitāśilpaḥ samaye kṛtvācāryaṃ pradakṣiṇam |
*śaktitaś cānumānyainam antevāsī⁴⁰³ nivartayet ||*⁴⁰⁴

Even if he has been fully instructed, the apprentice must stay for the entire duration, and the profit from the work he does during this time belongs to his master. When the time comes, the apprentice who has learned his craft should pay every respect to his master, take his leave, and go home.⁴⁰⁵

It is instructive to compare an apprentice (*antevāsin*) with a student (*śiṣya*). Both reside in the teacher's house and both learn from the teacher: the former a craft (*śilpa*), the latter the *Vedas*.

(4) Slaves

Slavery could come about by different avenues, some of which belong to the *dānagrahaṇa* category:

⟨127⟩ *grhajātas tathā krīto labdho dāyād upāgataḥ |*
anākālabhṛtas tadvad ādhataḥ svāminā ca yaḥ ||
mokṣito mahataś carṇāt prāpto yuddhāt⁴⁰⁶ paṇe jitaḥ |
tavāham ity upagataḥ pravrajyāvasitaḥ kṛtaḥ ||
bhaktadāsaś ca vijñeyas tathaiva vaḍavābhṛtaḥ |
*vikretā cātmanaḥ śāstre dāsāḥ pañcadaśā smṛtāḥ ||*⁴⁰⁷

401 NSmV 5.15–16

402 Lariviere (2003)

403 For typo *antevāsī*

404 NSmV 5.18–19

405 Lariviere (2003)

406 *yaddh°* in NSmV 5.25b is a typo.

407 NSmV 5.24–26

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- <a> One born into a household,
- one who was purchased,
- <c> one who was acquired,
- <d> one who was inherited,
- <e> one who was supported in time of famine,
- <f> one who was pledged by his master,
- <g> one freed from a large debt,
- <h> one who was obtained by battle,
- <i> one who was won in a wager,
- <j> one who came forward and said, “I am yours,”
- <k> one who gave up world renunciation,
- <l> a bonded laborer,
- <m> one who becomes a slave for maintenance,
- <n> one who takes up with a female slave, and
- <o> one who sells himself

—these are the fifteen slaves mentioned in the texts.⁴⁰⁸

Slavery may come about by a “voluntary” decision. Probably in relation to a slave in the sense of <j>, Kātyāyana (citing Bṛgu) compares a slave to a wife:

⟨128⟩ *svatantrasyātmano dānād dāsatvaṃ dāravat bṛguḥ* |⁴⁰⁹

Bṛgu holds that (a man) becomes a slave as he surrenders himself when free (to another’s will) just as the wife (surrenders her person to the husband).⁴¹⁰

The Smṛticandrikā confirms Kane’s translation:

⟨129⟩ *yathā bhartus sambhogārthaṃ svaśarīradānād dāratvaṃ tathā svatantrasyātmanaḥ parārthatvena dānād dāsatvaṃ* |⁴¹¹

As wifeness comes about by giving one’s [the wife’s] own body for the husband’s enjoyment, in that manner slavery arises by giving one’s [the future slave’s] independent self as a benefit to another

Not by way of comparison, but in a direct manner, the instances <e> and <j> in ⟨127⟩ seem to come together in another section of the Nārada Smṛti, where a woman offers herself as a slave in order to escape hunger. Such a woman would be classified as a *svairiṇī* (a loose woman), here of the third type:

⟨130⟩ *prāptā deśād dhanakṛitā kṣutpipāsāturā ca yā |
tavāham ity upagatā sā tṛṭīyā prakīrtitā* ||⁴¹²

408 Lariviere (2003), where the markers <a> etc. are added by the current author

409 KātSm 715ab

410 Kane (1933)

411 DSmCV 460, seventh and sixth line from bottom

412 NSmV 12.51

A foreigner, one who was purchased as a slave, or one suffering from hunger and thirst and who comes forward, saying, “I am yours”—this is the third type. In <127>, this specific formula *tavāham ity upagataḥ* (for a man) is also present.

(5) Partnerships

Partnerships (*sambhūyasamutthāna*) can be undertaken by a variety of men. The *Smṛticandrikā* explicitly mentions six fields of collaboration: *vanījyakṛṣīśilpakratusaṅgītastainya*⁴¹³ (“[activity that consists of] trade, agriculture, craft, sacrifice, singing, or stealing”). With respect to stealing, it recommends to join forces with “brave people”: *stainyakriyā śūraiḥ*⁴¹⁴. Now, stealing here refers to *svāmyājñayā* [...] *paradeśāt samāhṛtam*⁴¹⁵ (“something heaped up from abroad with the consent of the king”). The rules for dividing the loot are also given, with the king collecting a sixth portion (*rājñe dattvā tu ṣaḍbhāgam*)⁴¹⁶.

Kratukriyā (“sacrificial activity”) should be performed by *kulīnaiḥ prājñais śucibhiḥ*⁴¹⁷ (“by men who are from good families, wise, and pure”). Usually, sacrifices would be performed by priests and partnerships of priests. Immediately following the chapter on slaves and labourers, Kautilya covers some specific rules for employees (*bhṛtaka*) and partnerships in KAŚ 3.14. The latter topic is concerned with how to divide the wage (*vetana*) among several “[e]mployees from an association or associates in a partnership” (*saṃghabhṛtāḥ sambhūyasamutthātāraḥ*)⁴¹⁸. Both in the general case and in the special subcase of “priests officiating at a sacrifice” (*yājaka*), the payment follows the rule:

<131> *yathāsaṃbhāṣitaṃ vetanaṃ samaṃ vā*⁴¹⁹
the wages either as agreed upon or in equal shares⁴²⁰

If “capital” has been put at risk by the contracting parties, the *dharma* texts envision dividing gains and losses in a proportional fashion⁴²¹ or, again, by special agreement:

<132> *samavāyena vanījāṃ lābhārthaṃ karma kurvatām |*
lābhālābhau yathādravyaṃ yathā vā saṃvidākṛtā ||⁴²²

413 DSmCV 429, fourth line from bottom

414 DSmCV 429, first line from bottom

415 DSmCV 440, tenth line from bottom

416 DSmCV 440, ninth line from bottom

417 DSmCV 429, first line from bottom, has *prājñāśucibhiḥ* (in devanāgarī), which I take to be a typo.

418 KAŚ 3.14.18, Olivelle (2013)

419 KAŚ 3.14.18 and, with the very same wording, KAŚ 3.14.28

420 Olivelle (2013)

421 For example, NSmV 3.2 with a concrete example in BNMS 161.6–8

422 YSm 2.264

When, for the sake of profits, traders carry on their work under an agreement, any gain or loss is calculated according to either the proportion of the material each has contributed or the provisions of the contract they have entered into.⁴²³

Apart from agreement and proportionality, a third criterion refers to the skill or importance of the agents involved. With respect to artisans, Kātyāyana determines:

⟨133⟩ *śikṣakābhijñakuśalā ācāryas ceti śilpinaḥ |
ekadvitricaturbhāgān hareyus te yathottaram* ||⁴²⁴

If artisans (of four grades of skill) viz. apprentices, more advanced students, experts (in that craft) and teachers (are employed together in one undertaking) they shall receive one after another in order one, two, three and four shares (of the profit of that undertaking).⁴²⁵

In subsection XX.A(3), I explain the concrete formula to be employed for calculating the respective shares.

(6) Remuneration for officials

Kauṭilya suggests generous payments for officials:

⟨134⟩ *ṛtvigācāryamantripurohitasenāpatiyuvarājarājamātrrājamāhiṣyo 'ṣṭacatvāriṃ-
śatsāhasrāḥ | etāvatā bharaṇenānāspadyatvam akopakam caīṣam bhavati |
dauvārikāntarvaṃ śikaprasāstrsamāhartṣamnidhātāras caturviṃśatisāhasrāḥ |
etāvatā karmaṇyā bhavanti* |⁴²⁶

Officiating priest, teacher, Counselor-Chaplain, Chief of the Armed Forces, Crown Prince, queen mother, and chief wife of the king—these receive 48,000 Paṇas. With this level of remuneration, they would not become susceptible to instigation or liable to revolt. Chief Gate Guard, Head of the Palace Guard, Administrator, Collector, and Treasurer—these receive 24,000 Paṇas. With this level of remuneration, they become upright in their work.⁴²⁷

The king's motivation for generous payments is expounded in section XVI.E.

423 Olivelle (2019b)

424 KātSm 632

425 Kane (1933)

426 KAS 5.3.3–6

427 Olivelle (2013)

C Unsuccessful transactions⁴²⁸

(1) A list

It was very clear to the Indian authors on *vyavahāra* that transactions may go wrong in a number of ways:

- The seller may not be the owner.⁴²⁹
- The seller may not deliver after agreeing to a contract.⁴³⁰
- The buyer may refuse to accept the item after agreeing to a contract.⁴³¹
- The seller may not have informed the buyer about a defect.⁴³²
- The item (including a bride or groom) may be defective.⁴³³
- The item can be returned by the buyer after a trial period if defects become apparent.⁴³⁴

(2) Rescission for merchandise

Addressing the second and third bullet points in the above list, we now turn to legal (accepted) cancellation (rescission) of buying/selling contracts irrespective of whether a defect has been observed. For the special case of revoking *kanyādāna*, see subsection VI.H(1). In Manu and in Kautīlya, the technical term *anuśaya* means “rescission” ← “wish to rescind” ← “regret”.

Turning to the specific reason for abortive transactions, see Manu on the topic of rescission:

⟨135⟩ *krītvā vikriya vā kiṃcid yasyehānuśayo bhavet |*
*so 'ntar daśāhāt tad dravyaṃ dadyāc caivādādīta ca ||*⁴³⁵

After buying and selling anything, if someone here regrets his decision, he may return or take back that article within ten days.⁴³⁶

In contrast to Manu, Nārada has an asymmetric rule: If the seller cancels a contract, the buyer can claim damages, whereas the buyer can cancel it on the day of purchase:

428 The first three subsections borrow freely from Wiese (2017).

429 See ViDh 5.165–167, YSm 2.172, NSmV 7, MDh 8.197–205, or KAŚ 3.16.10–28. For additional material on *asvāmivikraya*, see Kane (1973, pp. 462–465).

430 See ViDh 5.127–128, YSm 2.259, NSmV 8, possibly MDh 8.219–221, or KAŚ 3.15.1–4. Additional material on *krayavikrayānuśaya* can be traced with Kane (1973, pp. 489–495). See Wiese (2017).

431 See ViDh 5.129, YSm 2.263, NSmV 9.3, 16, possibly MDh 8.219–221, or KAŚ 3.15.9.

432 See MDh 8.219–224 or KAŚ 3.15.14–16.

433 See KAŚ 3.15.12–18.

434 See YSm 2.181, NSmV 9.5–6, or KAŚ III.15.17–18.

435 MDh 8.222

436 Olivelle (2005)

⟨136⟩ *vikrīya paṇyaṃ mūlyena kretur yo na prayacchati | sthāvarasya kṣayaṃ dāpyo jaṅgamasya kriyāphalam* ||⁴³⁷
[...]

kṛtvā mūlyena yat paṇyaṃ duṣkṛitaṃ manyate krayī | vikretuḥ pratideyaṃ tat tasminn evāhny avikṣatam ||⁴³⁸

One who sells something for a certain price and fails to deliver it to the purchaser must be made to compensate him for any loss pertaining to immovables and for the lost profits from movables. [...] When someone has purchased something and paid for it, and then decides that it was wrong to have done so, he may return it, undamaged to the seller on the same day.⁴³⁹

The most intricate rules on rescission are offered by Kauṭilya:⁴⁴⁰

⟨137⟩ *vikrīya paṇyaṃ aprayacchato dvādaśapaṇo daṇḍaḥ, anyatra doṣopaniṣāpātāviśa-
hyebhyaḥ | [...] vaidehakānām ekarātram anuśayaḥ, karṣakānām trirātram,
gorakṣakānām pañcarātram | [...] tasyātikrame caturviṃśatipaṇo daṇḍaḥ, paṇ-
yadaśabhāgo vā | kṛtvā paṇyam apratigrhṇato dvādaśapaṇo daṇḍaḥ, anyatra
doṣopaniṣāpātāviśahyebhyaḥ | samānaś cānuśayo vikretur anuśayena* ||⁴⁴¹

For someone who has entered into a contract as a seller of a merchandise and who does not deliver it, the fine is 12 *Paṇas*, except in the case of unexecutable transactions due to defect [of the product] or due to force majeure. [...] For traders [as sellers], [the period for] cancellation [to be granted by the buyers] is one day; for agriculturists, three days; for cattle herders, five days. [...] For its (*tasya* referring to cancellation = *anuśaya*) violation, the fine [to be paid by the buyers] is 24 *Paṇas* or one tenth of the value of the merchandise. For someone who has entered into a contract as a buyer of a merchandise and who does not accept it, the fine is 12 *Paṇas*, except in the case of unexecutable transactions due to a defect [of the product] or due to force majeure. Cancellation [as an option to be exercised by the buyer], moreover, is identical to cancellation [as an option to be exercised] by the seller.⁴⁴²

I think that *kṛī* does not only have the usual meaning of “to buy”, where the buying process is finalised and irrevocable.⁴⁴³ Instead, it could also mean “to enter into a

437 NSmV 8.4

438 NSmV 9.2

439 Lariviere (2003)

440 Olivelle (2005), Olivelle (2013, pp. 6–25), and McClish (2019) propose the distinction between “Kauṭilya Recension” and “Śāstric Redaction”, where the current Arthaśāstra version is mainly the result of the “Śāstric Redaction”, carried out by a *dharmasāstra paṇḍita*. This scholar tried to bring the Arthaśāstra into line with the standard dharmasāstric ideology. He may also have been responsible for commentarial interventions, marginal glosses that were added to the text later on. Wiese (2017) argues for an even more reduced Kauṭilya Recension.

441 KĀŚ 3.15.1, 5, 8–10

442 Wiese (2017)

443 See also Kane (1973, p. 495) on this point.

contract as a buyer”, where the buying process may still meet obstacles. Similarly, *vi-krī* may also mean “to enter into a contract as a seller”.

The sensible regulation for perishable goods reads:⁴⁴⁴

⟨138⟩ *ātīpātīkānām paṇyānām ‘anyatrāvīkreyam’ ity avarodhe*⁴⁴⁵ *nānūśayo deyaḥ* |⁴⁴⁶

Cancellation is not to be granted [by sellers] for perishable merchandise if there is the hindrance that they could not be sold elsewhere/otherwise.⁴⁴⁷

Note the contrast between

- KĀŚ 3.14.2 with *anuśayaṃ labhate* (“he obtains rescission”) and
- KĀŚ 3.15.7 with *anuśayaṃ dadāti* meaning “he grants rescission”

Closely related to these regulations on rescission are (i) those that focus on the duties of transactors to inform about defects (of a bride or a groom, of slaves or animals) and (ii) those on trial⁴⁴⁸ periods.

(3) Rescission for immovable property

Consider now rescission for immovable property. It seems that immovable property was often auctioned off (see subsection V.H(3), pp. 62). Immediately following the corresponding rules, Kauṭilya continues:

⟨139⟩ *vikrayapratikroṣṭā śulkaṃ dadyāt* (6) *asvāmīpratikroṣe caturviṃśatipaṇo daṇḍaḥ* (7) *saptarātrād ūrdhvam anabhisarataḥ pratikruṣṭo vikrīṇīta* (8) *pratikruṣṭātīkrame vastuni*⁴⁴⁹ *dviśato daṇḍaḥ, anyatra caturviṃśatipaṇo daṇḍaḥ* (9) |⁴⁵⁰

The [successful] bidder at the sale should pay the duty. (6) For bidding by one who [after successful bidding] does not become the owner [i.e., cancels the deal], the fine is 24 Paṇas. (7) The auctioneer [identical with the owner] may sell [the house = *veśman* in KĀŚ 3.9.3] of [the successful bidder] who does not turn up after seven nights. (8) If he sells in case of a transgression [perpetrated] by the auctioneer, involving immovable property, the fine is 200 Paṇas, otherwise [if no transgression is involved] 24 Paṇas. (9)⁴⁵¹

According to this translation,⁴⁵² [only] the successful bidder pays the duty (KĀŚ 3.9.6). This bidder is obliged to honor his part of the deal and become an owner by paying for the immobile property (7). If, however, the buyer does not turn up within a few days

444 KĀŚ 3.15.7 might well have been added later on, as part of the “Śāstric Redaction”.

445 Wiese (2017) discusses the less-preferred readings, in particular as an instrumental *avarodhena*.

446 KĀŚ 3.15.7

447 Wiese (2017)

448 The topic of experience goods has been introduced into the economic literature by Nelson (1970).

449 In the presence of two variants, I opt for *vastu* rather than *vāstu*, unlike Kangle (1969a, p. 109).

450 KĀŚ 3.9.6–9

451 Wiese (2017), with minute changes after Olivelle (2013)

452 Both Kangle (1969b) and Olivelle (2013) understand *asvāmin* (KĀŚ 3.9.7) in the usual manner as “one who is not an owner”.

(he may need time to collect the money needed), the auctioneer is free to look for an alternative buyer (8). However, the auctioneer should also honor his part of the deal. He is punished if he sells prematurely to an alternative buyer (9), even if the latter pays more.

(4) Contracts with “bad” people

Generally, contracts are to be kept (section III.G). Contracts with “bad” people, however, do not enjoy the protection of the legal order, as these contracts “defile the rite”:

⟨140⟩ *anāhitāgniḥ śatagur ayajvā ca sahasraguḥ |*
surāpo vṛṣalībhartā brahmahā gurutalpagaḥ ||
asatpratigrahe yuktaḥ stenaḥ kutsitayājakaḥ |
*adoṣas tyaktum anyonyam karmasaṃkaraniścayāt ||*⁴⁵³

An owner of 100 cows who has not established the three sacred fires, an owner of 1,000 cows who has not offered a sacrifice, one who drinks liquor, a husband of a Śūdra woman, a murderer of a Brāhmaṇa, a man who has sex with his elder’s wife, one addicted to receiving gifts from evil persons, a thief, and someone who officiates at the sacrifices of degraded persons—in such cases it is not a fault to abandon each other, because of the certainty of defiling the rite.⁴⁵⁴

(5) Rescission of gifts (*dattāpradānikam*)

As well as with economic transactions, the problem of rescission may also arise for gifts. In general, gifts promised are to be delivered:

⟨141⟩ *yac ca vācā pratiśrutya karmaṇā nopapāditam |*
tad dhanam ṛnasaṃyuktam iha loke paratra ca ||
 [...] *pratiśrutāpradānena dattasya haraṇena ca |*
*janmaprabhṛti yat puṇyam tat puṇyam vipraṇaśyati ||*⁴⁵⁵

Wealth that has been promised in words, but not delivered in action entails debt in both this world and the next. [...] By not giving what has been promised or snatching away what has been given, whatever merit a person has accumulated since birth perishes.⁴⁵⁶

However, some gifts are *adeya* (“not to be given”), while others are *adatta* (“illegitimate”). See the discussion in section F. Hence, a tension may arise between promise-

453 KĀŚ 3.14.37–38

454 Olivelle (2013)

455 LDK 1.49, 51

456 Brick (2015)

keeping on the one hand and *adeya/adatta* giving on the other. This conflict is sometimes resolved by violating the promise:

⟨142⟩ *pratiśrutyaḥ adharmasamyuktāya na dadyāt* ||⁴⁵⁷

Even if one promises it, one should not give a gift to an unrighteous person.⁴⁵⁸

D Partition of inheritance (*dāyavibhāga*)

Generally speaking, sons are the primary heirs of a man's possessions upon death. If sons are not present, male relatives would inherit instead, this being the case in both the Dharmasūtras (excepting the Gautama Dharmasūtra, see GDh 28.21–22) and the Mānava Dharmaśāstra (MDh 9.185–188). As Brick (2023, chapter 2) expounds very carefully, Yājñavalkya 2.139–140 is one of the first to attribute far-reaching inheritance rights to the wife of a man who has died sonless. Among the many rules for the partition of inheritance, let the following four verses by Yājñavalkya suffice:

⟨143⟩ *vibhāgaṃ cet pitā kuryād icchayā vibhajet sutān |*
jyesthaṃ vā śreṣṭhabhāgena sarve vā syuḥ samāṃśinaḥ ||
 [...]
 *catustridvyekabhāgīnā*⁴⁵⁹ *varṇaśo brāhmaṇātmaajāḥ |*
kṣatrajās tridvyekabhāgā vaiśyajau dvyekabhāginau ||
 [...]
 patnī duhitaraś caiva pitarau bhrātaraś tathā |
tatsutā gotrajo bandhuḥ śiṣyaḥ sabrahmacāriṇaḥ ||
eṣāṃ abhāve pūrvasya dhanabhāg uttarottaraḥ |
svaryātasya hy aputrasya sarvavarṇeṣv ayaṃ vidhiḥ ||⁴⁶⁰

If the father carries out the partition, he may partition shares among his sons as he pleases. He may either present to the eldest son the preeminent share or make all his sons have equal shares.

[...]

Shares of sons born to a Brahman are four, three, two, and one, according to their class; to a Kshatriya, three, two, or one; and to a Vaishya, two or one.

[...]

Wife, daughters, parents, brothers, their sons, a person of the same lineage, maternal relative, pupil, and fellow student—among these, in the absence of each listed earlier, each listed later inherits the estate of someone who has died sonless. This is the rule for all social classes.⁴⁶¹

457 LDK 1.55

458 Brick (2015)

459 difficult

460 YSm 2.118, 2.129, 2.139–140

461 Olivelle (2019b)

Apparently, a degree of tension exists between YSm 2.118 (“as he pleases”, “to the eldest son”) and YSm 2.129 (“according to their class”). The mathematics of the inheritance shares is addressed in subsection XX.A(2).

In contrast to the above quotation, a boy’s (surely limited) right to his father’s assets was discussed in some juridical quarters. In the beginning of the *dāyavibhāgaprakaraṇam*, the Mitākṣarā commentary (YSmM) on the Yājñavalkya Smṛti (YSm) contains this discussion:

⟨144⟩ *idānīm idaṃ saṃdihyate: kiṃ vibhāgāt svatvam uta svasya sato vibhāga iti | tatra vibhāgāt svatvam iti tāvad yuktam, jātaputrasyādhānavidhānāt | yadi janmanaiva svatvam syāt tadotpannasya putrasyāpi tat svaṃ sādharmaṇam iti dravyasādhyeṣv ādhānādiṣu pitur anadhikāraḥ syāt*⁴⁶²

Next, it is doubted whether the right to property arises from partition or the division of a proprietary interest which already was existing? Of these (positions), that of property arising from partition is right; since a man to whom a son is born, is enjoined to maintain a holy fire: for, if property were vested by birth alone, the estate would be common to the son as soon as born, and the father would not be competent to maintain a sacrificial fire and perform other religious duties which are accomplished by the use of wealth.⁴⁶³

Thus, in order to avoid the unwanted conclusion of the father not being competent of performing his religious duties, ownership cannot come about by birth, but only by the partition upon the father’s death.⁴⁶⁴

E Debts (ṛṇa)

(1) Interest rates (vṛddhi)

Money lending is a social exchange that is deferred and specified (see Table 1, p. 13). It is one of the occupations sometimes prescribed for the *vaiśya* class (see section III.E). The law texts by Manu⁴⁶⁵ and Yājñavalkya prescribe differing interest rates according to class. Consider the latter:

⟨145⟩ *aśītibhāgo vṛddhiḥ syān māsi māsi sabandhake | varṇakramāc chataṃ dvitricatuṣpañcakam anyathā ||*
[...]

462 Before YSmM 2.114 = YSm 2.118

463 Gharpure (1939, p. 988)

464 See Fleming (2020, p. 37). Fleming’s (2020) monograph traces the development of major Old Indian schools of legal thinking on ownership and inheritance, up to Anglo-Hindu law. He contrasts two competing property and inheritance concepts. In the first, “family patriarchs exercised nearly unfettered control over ancestral assets”. According to the second concept, “families held assets in joint trusts” (p. 1).

465 MDh 8.140–142. Kauṭilya (KĀŚ 3.11.1) suggests similar interest rates, but does not propose interest rates that depend on social class.

*kāntāragās tu daśakaṃ sāmudrā viṃśakaṃ śatam |
dadyur vā svakṛtāṃ vṛddhiṃ sarve sarvāsu jātiṣu ||*⁴⁶⁶

One-eightieth part per month is the interest rate for a secured loan; otherwise, it is 2, 3, 4, and 5 percent, respectively, according to the direct order of social class. [...] Persons traveling through forests, on the other hand, should pay 10 percent, and those traveling by sea, 20 percent. Alternatively, all persons of all castes should pay the rate of interest they themselves have set.⁴⁶⁷

Four comments are in order. (i) Since 1/80 equals 1.25 percent, the interest rates for unsecured loans are higher than for secured ones, for all classes. (ii) One reason for making the interest rates dependent on social class is expounded in section XIII.D. (iii) As in <124> and <131>, economic terms (here: the interest rates) are set by agreement or by default. (iv) MDh 8.151–152 stipulates that the interest payments should not exceed twice the loan. Similar provisions depend on the material nature of the loan (grains, fruit, etc.), i.e., these rules prohibit usury.⁴⁶⁸

(2) Non-payment of debts (*ṛṇādāna*)

Among the 18 grounds for litigation enumerated by Manu, non-payment of debts (*ṛṇādāna*) is the first. See <24><a>, p. 33. This primary position of non-payment of debt is also present in the lawbooks of Yājñavalkya and Nārada.⁴⁶⁹ Judging by the importance attributed to this topic, legal disputes on this matter seem to have occurred quite often. For example, see Manu on the court proceeding:

<146> *adhamarṇārthasiddhyartham uttamarṇena coditaḥ |
dāpayed dhanikasyārtham adhamarṇād vibhāvitam ||
[...]
apahnave 'dhamarṇasya dehīty uktasya saṃsadi |
abhiyoktā diśed deśaṃ karaṇaṃ vānyad uddiśet ||*⁴⁷⁰

When a creditor petitions for the recovery of money from a debtor and the facts are established, the king should compel the debtor to return the money to the creditor. [...] When the debtor, told in court to pay up, denies the charge, the plaintiff should produce a document or offer some other evidence.⁴⁷¹

466 YSm 2.39, 2.41

467 Olivelle (2019b)

468 The provision is difficult, see Olivelle (2005, p. 313). It seems to hold only for a given loan contract, but not for a series of such contracts. This, in any case, is my understanding of *kusīdavrddhir dvaiguṇyaṃ nātyeti sakṛd āhitā* ("Interest on a loan shall never exceed twice the principle when fixed at one time", Olivelle (2005)).

469 See the table in Olivelle (2005, p. 14).

470 MDh 8.47, 52

471 Olivelle (2005)

The topic of witnesses is covered in the context of non-payment of debt in several *mūla* texts. This is understandable given the importance of the topic of non-payment of debts and the importance of witnesses in such a context. However, quite naturally, the *nibandhas* arrange the topic of witnesses alongside other discussions of legal procedure.⁴⁷²

NSmV 1.2–21 contains detailed rules about whether the debt incurred by a dead person is to be cleared by sons, grandsons, etc.; whether a father or husband is responsible for the debt incurred by his son or wife; whether a wife has to pay a debt made by her husband or her sons, etc.

(3) Triple-debt

The monetary topic of debts apparently had philosophical relevance beyond the economic sphere. Davis, Jr. (2010, p. 71) observes: “Debt or obligation becomes in Hindu legal texts a paradigmatic metaphor for describing all human relationships. Human life in the view of the texts is positioned between two kinds of debt or obligation: debts given by birth, the so-called triple-debt, and debts voluntarily taken on.” Thus, with a view to the *āśrama* system (section III.F), a man has to fulfil his obligations of studentship and marriage before he might consider becoming a renouncer (<23>). Significantly, the three obligations are expressed in language that involves debt. “Repayment” occurs by studying the Vedas (and thus discharging the debt towards the seers), fathering a son (discharging debt towards a man’s forefathers), and offering sacrifices (discharging debt towards the gods). That is, we have an ethics of debt, rather than a “theology of debt”⁴⁷³. In the Śatapatha Brāhmaṇa, a fourth obligation is added, namely hospitality as a debt owed to men.⁴⁷⁴

Applying the model of commercial debts to the system of three or four congenital debts is surely ingenious. In particular, it allows a discussion of why there is a “time interval between the moment at which a man’s debtor state begins—immediately—and the moment at which he is allowed to divest himself of it. It is not, of course, a matter of physical or intellectual maturity, but of ritual qualification.”⁴⁷⁵

At the same time, the model is far from perfect. First, there is no interest accruing on congenital debt. Second, the obligation structure does not seem to match. After all, if person B borrows from another person A, then B does not discharge his obligation towards A by lending to a third person C.⁴⁷⁶ This latter pattern is what congenital debts seem to be about: Person B repays his debts to his ancestors A by fathering a son C himself. However, from a premodern Indian point of view, the analogy may be

472 See Davis, Jr. (2010, p. 75).

473 See the title of the paper in Malamoud (1996, pp. 92–108).

474 See Malamoud (1996, pp. 97–98).

475 Malamoud (1996, p. 99)

476 See Graeber (2011, p. 68).

more or less intact. B repays to his set of ancestors A by fathering a son C who will again repay to his own set of ancestors, the union of A and B so to speak. Matters are even more straightforward for the debt owed to seers or to gods. Here, studying the Vedas or offering sacrifices has to be done again and again by each new generation. The Vedas and the gods remain unchanged in the process.

From the point of view of philosophy of the law, the ethics of the triple debt is striking in that it focuses on obligations and duties, rather than rights. One might consider these two perspectives as essentially equivalent. After all, if a person A has a right against person B, then B has an obligation towards A.⁴⁷⁷ However, it seems that these two formulations are not merely a matter of framing. Davis, Jr. (2012, pp. 86–87) offers the following observation: Legal systems based on rights tend to focus on dispute and conflict (my right against your right). In contrast, from a duty perspective, an agent may be in doubt as to how to live up to his duties (dilemma between duty x and duty y). Such contrasting duties are the subject-matter of the Bhagavad Gītā.

F Void and voidable givings (*adatta* versus *adeya*)

(1) *Datta* versus *adatta*

Consider these examples by Nārada of gifts that are “legitimate” or “illegitimate”, respectively:

⟨147⟩ *puṇyamūlyam bhṛtis tuṣṭyā snehāt pratyupakārataḥ |*
*strīśulkānugrahārthaṃ ca dattaṃ dānavido viduḥ ||*⁴⁷⁸

Those who know about gifts say that the following are legitimate gifts: proceeds of commerce, wages, something given out of gratification or out of affection or gratitude, bride price, and a gift given for a favor.⁴⁷⁹

⟨148⟩ *adattaṃ tu bhayakrodhaśokavegarujānvitaiḥ |*
*tathokocaparīhāsavyatyāsacchalayogataḥ*⁴⁸⁰ ||
bālamūḍhāsvantrārtaṃ mattāpavarjitam |
kartā mamāyaṃ karmeti pratilābhecchayā ca yat ||
apātre pātram ity ukte kārye cādharmasamhite |
*yad dattaṃ syād avijñānād adattaṃ tad api smṛtam ||*⁴⁸¹

An illegitimate gift is one which is given by someone out of fear, anger, sorrow, impulse, or infatuation, as a bribe, as a joke, through a switch or deceit; one

⁴⁷⁷ Within the field of analytical jurisprudence, correlatives and opposites—such as claim, duty, privilege, power, immunity, etc.—are analysed. Twining (2009, pp. 49–54) presents a clear exposition.

⁴⁷⁸ NSmV 4.7

⁴⁷⁹ Lariviere (2003)

⁴⁸⁰ With typo *tathoktoca* corrected

⁴⁸¹ NSmV 4.8–10

which is given by a child or an idiot, one who is not independent, one who is distressed, one who is intoxicated or insane, or who wishes to get something in return thinking, “He will do such and such for me.” So, too, is a gift illegitimate when it is given out of ignorance thinking that an unworthy recipient is worthy, or that it will be used for a worthy purpose and it turns out not to be the case.⁴⁸²

The commentator Bhavasvāmin explains the first example, the gift out of fear, in these words:

⟨149⟩ *duṣṭena sādhuḥ aṭavyāṃ prāpto ’abhihitah | drammanāṇaṃ śataṃ dadāsi tato jīvasy anyathā mriyase | so ’pi bhayād dadāti | dāsyāmīty evaṃ bhayapratiśrutam adattam iti vijñeyam*⁴⁸³

A wicked man gets hold of an honourable man in a forest and says to him: “You give me 100 *drammas*. Then you will live, otherwise you will die.” And this one [the honourable man] gives out of fear. [This transaction] is understood as an illegitimate gift, assented because of fear with the words “I will give to you”.⁴⁸⁴

Such robbery at gunpoint is an example of extortion that we will turn to in the subsection after next.

(2) *Deya versus datta*

Now we turn to the question of what the difference between (*a*)*deya* and (*a*)*datta* might be. NSmV 4.2 leaves no doubt that the four terms *deya*, *adeya*, *datta*, and *adatta* are *vyavahāra* terms. The question of how to distinguish *deya* (and *adeya*) from *datta* (and *adatta*) has perplexed scholars for some time. See Table 4. Apparently, Kane (1973, p. 472) understands the terms quite differently from Lariviere (2003, p. 341).

Table 4: How to understand *adeya* and *adatta*

	Kane	Lariviere
<i>adeya</i>	<ul style="list-style-type: none"> • forbidden • null and void 	<ul style="list-style-type: none"> • gift took place • voidable
<i>adatta</i>	<ul style="list-style-type: none"> • voidable • may be set aside by the court on the application of the donor himself • HW: (ultimately) not given 	<ul style="list-style-type: none"> • null and void • no gift ever took place • HW: not given (in the first place)

482 Lariviere (2003)

483 BNMS 167.1–2

484 Lariviere (2003)

The difference may not be vital, as “under normal circumstances, neither *datta* nor *deya* gifts are voidable once the gift has been accepted”.⁴⁸⁵ If the current author were forced to take sides, he would support Lariviere’s usage against Kane’s. *Adeya* would then mean “ungivable” or “without permission to give”, or, in Lariviere’s words, voidable. In contrast, *adatta* means “not given in the first place”, i.e., “no gift ever took place”. A comparison of (voidable) gifts in <92> and <93> with (void) gifts in <148> suggests the following difference: With respect to voidable gifts, third parties (deposit givers, family members, ...) are negatively affected. The gift took place, but the donor himself or the negatively affected parties could nullify the gift in court. Void gifts occur when the givers are considered unfit (for reasons of intoxication, age, etc.).

To the current author, this still does not go all the way towards understanding the practical differences. Note that *vyavahāra* “prohibitions [...] were devised in an atmosphere which assumed the King’s ability to ‘put things right’”, as Derrett (1976b, p. 214) points out. Thus, *adeya* (voidable) and *adatta* (void) refer to gifts that do not benefit from the support of the king or his court. One may speculate that voidable gifts are those where the third party (or perhaps the donor himself) could turn to the court to undo the gift. In contrast, void gifts may be rectified by the king on his own initiative. The king-initiative aspect is also present in *aparādha* and *chala* as “crimes with regard to which the king himself can initiate a lawsuit”.⁴⁸⁶

Nārada suggests that both the receivers of *adatta* gifts and the givers of *adeya* ones be punished:

<150> *gr̥hṇāt yad adattaṃ yo lobhād yaś cādeyaṃ prayacchati |*
*adattādāyako daṇḍyas tathādeyasya dāyakaḥ ||*⁴⁸⁷

One who, out of greed, accepts an illegitimate gift, and one who offers something that should not be given, should be punished as the recipient of an illegitimate gift and as the giver of what should not be given.⁴⁸⁸

(3) Bribery or extortion (*utkoca*)

I now focus on the specific *adatta* instance of *utkoca* (<148>). This term can be translated as either bribery or extortion. *Utkoca* in the sense of bribery is obviously the concern of the following passage from the Kātyāyana Smṛti:

<151> *niyukto yas tu kāryeṣu sa ced utkocam āpnuyāt |*
*sa dāpyas tad dhanam kṛtsnam damas caikādaśādhikam ||*⁴⁸⁹

485 See Lariviere (2003, p. 341).

486 See LaS and compare Wiese & Das (2019, pp. 54–55).

487 NSmV 4.11

488 Lariviere (2003)

489 KātSm 652

If a man who is appointed to (do) certain duties (by the king) obtains a bribe, he should be made to return the whole of the money (given as bribe) and to pay a fine eleven times as much (to the king).⁴⁹⁰

Here, the briber gives money to an official for a task which the official is obliged to carry out even without any monetary compensation from the briber. A second type of bribe occurs when the official bestows an unwarranted favour on the briber.⁴⁹¹

Extortion could be subsumed under the heading of a Gift Based On Fear (*bhayadāna*, <94>, <149>). Without making this connection, Kātyāyana stipulates:

<152> *stenasāhasikodvṛttapārajāyikaśaṃsanāt |
darśanād vṛttanaṣṭasya tathāsatyappravartanāt ||
prāptam etais tu yat kiñcit tad utkocākhyam ucyate |
na dātā tatra daṇḍyaḥ syān madhyasthaś caiva doṣabhāk ||*⁴⁹²

That is said to be *utkoca* which is obtained by these, viz. by giving information about a thief, about a felon, about one who breaks the rules of decent conduct, about an adulterer, by pointing out those who are of bad character [the preceding examples refer to *utkoca* in the sense of bribery, HW] or by spreading false reports about a person [here *utkoca* is perhaps meant in the sense of extortion, HW]. In these cases, the person offering the bribe or extortion is not to be fined, but the intermediary deserves blame.⁴⁹³

Compare this with <150>, where both receiver and giver might be punishable. For the difficult distinction between bribery and extortion, see subsection XII.A(5). A long explanation of what is involved in the above Kātyāyana quote is given in Devaṇabhaṭṭa's *Smṛticandrikā*:

<153> (1) *yadi mahyaṃ na prayacchasi tadā tvatkṛtaṃ kathayāmīti bhītim utpādya stenādisakāśād yat kiñcid dhanam ādatte*
(2) *tathā yadi mahyaṃ na prayacchasi tadā tvām vārakasya darśayāmīti bhītim utpādya palāyitasakāśād yat kiñcid ādatte*
(3) *tathā yadi mahyaṃ prayacchasi tadā satyaṃ kṛtam iti svāmīnaḥ purastād asatyatayā vacmīty anukūlam uktvā dāsādisakāśād yat kiñcid ādatte tat sarvaṃ utkocākhyam tad rājñā dātre dāpyaṃ, utkocāpadakagrāhakau ca daṇḍanīyau||*⁴⁹⁴

Any wealth or money that he [the briber] hands over [to the person requesting a bribe] is called a bribe (*utkocā*)⁴⁹⁵ in these [three] cases:

490 Kane (1933)

491 KAŚ 4.4.6–7 seems to deal with bribery (*upadā* in KAŚ 4.4.7) of the second type. ViDh 5.181 and MDh 9.258–259 may refer to bribery, extortion, or even both forms of taking. In some texts, it is not exactly clear whether *utkoca* is meant in the sense of bribery or extortion. YSm 1.335 probably deals with bribery, on the strength of the preceding YSm 1.334.

492 KātSm 650–651

493 After Kane (1933), who exclusively uses the word “bribery”

494 DSsmCV 452.12–19 with numbers added by HW

495 *utkocā* (!) is evident from DSsmCV 452.7

- (1) “if you do not give me money, I shall declare what you have done,” thus instilling fear in a thief and the like,
- (2) “if you do not give me money, I shall point you out to the official responsible for crime prevention,” thus instilling fear in a fugitive,
- (3) “if you give me money, I will lie to [your] master with the words ‘it was truly performed’ [as falsely claimed by the slave],” thus favouring a slave or the like.

The king should cause to give [i.e., return] that money to the giver. And he should punish the person who brings about the extortion or who takes the extortion money.

To my mind, all three examples in the commentary refer to requests for bribes from people who presumably have done ill before: from a thief, a fugitive, or a duty-neglecting slave, respectively. The prospective receiver’s duty would be to tell officials or masters about these three sorts of ill-doers. However, he hopes to get money from the ill-doers by refraining from passing on this information. In the examples (1) and (2), the bribe is expressed in the form: “if you do not give me money, I shall do my duty and point you out”. In contrast, the bribe in (3) is expressed as “if you give me money, I will lie about your transgression”. Substantially, there is no difference between (1) and (2) on the one hand and (3) on the other hand.

Definitionally, there are two kinds of problem. First, since the prospective receiver tries to initiate the “deal”, one may alternatively argue that we are dealing with extortion, rather than bribery. Second, one might lean more strongly in the direction of “bribery” if the person proposing the three offers does not have a clear legal or moral duty to point out the wrongdoer.

It seems unclear to me whether Devaṇabhaṭṭa had a correct understanding of what Kātyāyana had in mind with respect to (3). That is, “spreading false reports about a person” might refer to lying to the master in favour of a slave who did not do his duty. This is Devaṇabhaṭṭa’s understanding and would be an example of *utkoca* in the sense of bribery. Alternatively, “spreading false reports about a person” could be referring to the opposite lie. Then, it would be referring to the following extortion: “only if you give me money, will I not lie to [your] master with the words ‘it was not truly performed’”, although the slave actually did perform his duty.