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### "If a Man . . ." The Casuistic Law Form in the Book of Mormon

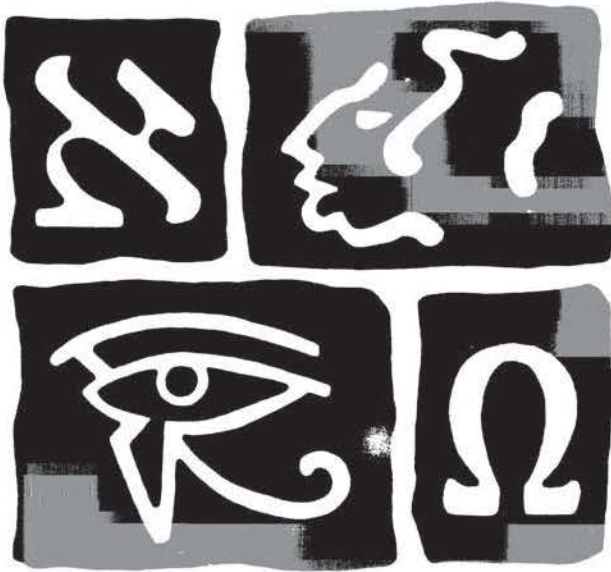
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Source: F.A.R.M.S. Preliminary Report, 1987

Published by: Foundation for Ancient Research and Mormon Studies

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**Abstract:** No abstract available.



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WEL-87a

**Preliminary  
Report**

FOUNDATION FOR  
ANCIENT RESEARCH AND  
MORMON STUDIES



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PROVO, UTAH 84602

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"IF A MAN . . . "  
THE CASUISTIC LAW FORM IN THE BOOK OF MORMON

By John W. Welch

In the middle of this century, several scholars studied the legal texts in the Hebrew Bible by classifying them according to linguistic form.<sup>1</sup> Some biblical laws are given in the form of negated imperatives, such as the Ten Commandments: "Thou shalt not . . . ." Laws appearing in this form are identified as apodictic laws. More often, however, legal materials from the ancient Near East and in the law codes of the Bible are written in what has been called the casuistic form. Casuistic laws begin with the expression, "If a man . . . ." Following this conditional phrase (called the protasis), the law then states the legal consequences, remedies or rights which arise in the

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<sup>1</sup> For a lengthy bibliography on studies dealing with the casuistic and apodictic law forms, see Hans J. Boecker, Law and the Administration of Justice in the Old Testament and Ancient Near East (Minneapolis: Augsburg, 1980), p. 191. Notable treatments of these law forms are Albrecht Alt, "The Origins of Israelite Law," in Essays on Old Testament History and Religion (Oxford: Blackwell, 1966), pp. 79-132; John Bright, "The Apodictic Prohibition: Some Observations," Journal of Biblical Literature 92 (1973): 185-204; F. Charles Fensham, "The Possibility of the Presence of Casuistic Legal Material in the Making of the Covenant at Sinai," Palestine Exploration Quarterly 93 (1961): 143-46; Erhard Gerstenberger, Wesen und Herkunft des "Apodiktischen Rechts," Wissenschaftliche Monographien zum alten und neuen Testament, vol. 20 (Neukirchen-Vluyn: Neukirchener, 1965); R. Kilian, "Apodiktisches and kasuistisches Recht im Licht aegyptischer Parallelen," Biblische Zeitschrift NS 7 (1963): 185-202; Gerhard Liedke, Gestalt und Bezeichnung alttestamentlicher Rechtssaetze, vol. 39 of Wissenschaftliche Monographien zum alten und neuen Testament (Neukirchen, 1971); Dale Patrick, "Casuistic Law Governing Primary Rights and Duties," Journal of Biblical Literature 92 (1973): 180-84; Moshe Weinfeld, "The Origin of the Apodictic Law," Vetus Testamentum 23 (1973): 63-75.

concluding clause (called the apodosis). For example, many of the laws in the Code of the Covenant in Exodus 21-23 begin this way. "And if a man smite the eye of his servant, or the eye of his maid, that it perish, he shall let him go free for his eye's sake" (Exodus 21:26). Similarly, almost all of the laws in the Laws of Eshnunna, the Code of Hammurabi, the Hittite Laws, and the Middle Assyrian Laws are written in this form. For example, "If a man has put out the eye of a free man, they shall put out his eye. If he puts out the eye of a free man's slave or breaks the bone of a free man's slave, he shall pay half his price." Code of Hammurabi 196, 199. Thus, one can conclude that this formal aspect of legal style had an established place in the legalese of the ancient Near East.

This expression, "If a man . . .," appears only a few times in the Book of Mormon. The purpose of this report is to examine those occurrences, to see if this phrase in the Book of Mormon has retained its principally legal connotations. From a simple look at a complete concordance of the Book of Mormon, it is obvious that Book of Mormon authors used many different grammatical constructions to form general conditional clauses in narrative and discourse, for example "if it be . . .," "if it so be . . .," "if it were . . .," "if ye shall . . .," and "behold if . . . ." On the other hand, the characteristically legal expression, "if a man . . .," was used by Book of Mormon authors mostly in legal contexts. In particular, the phrase "if a man . . ." was used in the Book of Mormon primarily by Alma the Younger. Since Alma was the Chief Judge and would have been



particularly familiar with legal texts jargon, it is not surprising that this phrase would enter his vocabulary.

The first occurrence in the Book of Mormon of the phrase "if a man . . ." is in Alma 11:2. This verse illustrates the operation of the new legal procedure established by the law reform known as "the Law of Mosiah" (11:1) by explaining how Nephite law regarding delinquent debtors should be enforced. The text reads:

Now if a man owed another, and he would not pay that which he did owe, he was complained of to the judge; and the judge executed authority, and sent forth officers that the man should be brought before him; and he judged the man according to the law and the evidences which were brought against him, and thus the man was compelled to pay that which he owed, or be stripped, or be cast out from among the people as a thief and a robber.

The casuistic form present here is appropriate. It appears in connection with a royal law code, just as the casuistic law form appears pervasively in the ancient Near Eastern royal law codes. Moreover, the casuistic form is typically used to spell out legal responsibilities, as distinguished from ethical or moral obligations. The casuistic form in this legal text likewise reflects the way in which legal responsibilities were defined and enforced in Nephite law.

Moreover, casuistic laws have been divided into two species.<sup>2</sup> The first is identified as remedial law, whereunder "a case is described in the protasis (if clause), and the legal remedy

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<sup>2</sup> Dale Patrick, Old Testament Law (Atlanta: John Knox, 1985), p. 23.

(usually a penalty for violation of rights) is prescribed in the apodosis." The second are provisions that establish primary law, i.e., rules that define legal relationships prior to any violations. The law contained in Alma 11:2 is a fine example of a remedial statute.

The casuistic formula appears three more times in a legal context in the book of Alma. First, Alma 30:9-10 provides:

Now if a man desired to serve God, it was his privilege; or rather, if he believed in God it was his privilege to serve him; but if he did not believe in him there was no law to punish him. But if he murdered he was punished unto death; and if he robbed he was also punished; and if he stole he was also punished; and if he committed adultery he was also punished; yea, for all this wickedness they were punished.

One can readily envision the existence and general nature of the Nephite legal text that stood behind the "if" clauses in these two verses. The repeated and consistent use of the casuistic form here indicates that the Nephite law code was cast in the casuistic mode. The Nephite law undoubtedly defined their laws with respect to murder, robbery, theft, adultery, and other violations, and it would appear that it did so along the lines found in Exodus 20-22; for example, Exodus 21:13-14 similarly defines the law of unintentional manslaughter in casuistic terms.

Second, in Alma 34:11-12, the words of Alma's companion Amulek also reflect the underlying Nephite law, as he draws an analogy to an important element in Nephite and Israelite jurisprudence in explaining an aspect of the atonement. He explains, rhetorically:

Now, if a man murdereth, behold will our law, which is just, take the life of his brother? I say unto you, Nay. But the law requireth the life of him who hath murdered.

Amulek is obviously paraphrasing or making explicit reference here to a specific Nephite law concerning culpable homicide.<sup>3</sup> From his words, one can conjecture that the Nephite law of murder read something like this: "If a man murders, the life of him who hath murdered shall be required." This reconstruction is reinforced, and the underlying Nephite law is even more clearly revealed by the next instance in which casuistic language appears.

Third, in Alma 42:19, Alma reasons: "Now, if there was no law given--if a man murdered he should die--would he be afraid he would die if he should murder?" Here we probably find language very close to the precise terminology of the Nephite statute: "If a man murders, he shall die." This Nephite legal provision, interestingly, reads much like the primary Mosaic law on homicide, found in Exodus 21:12: "He that smiteth a man so that he die, shall be surely put to death."

The phrase "if a man" is used on two other occasions by Alma, but both of these times the phrase appears in nonlegal

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<sup>3</sup> It is interesting that Amulek cites Nephite law to these Zoramites in Antionum. His audience here was the poor among the Zoramites who remain loyal enough to the Nephite regime to leave Antionum and relocate in Jerushon; see Alma 35:6. Apparently the poor in Antionum still considered themselves bound by Nephite law in this regard; otherwise Amulek's argument here to them would not have been very meaningful, let alone convincing.



contexts.<sup>4</sup> On these two occasions, however, the phrase is still a powerful phrase, used to express strong logical necessities. In Alma 5:41, after classifying as liars those who deny the proposition that if one is not of the fold of the Good Shepherd he must be of the fold of the devil, Alma states: "Therefore if a man bring forth good works, he hearkeneth unto the voice of the Good Shepherd." Also, in his discourse on faith, Alma utilizes this language when he says "for if a man knoweth a thing, he hath no cause to believe it, for he knoweth it" (Alma 32:18). Apparently this characteristically legal phrase had become a regular part of Alma's general working vocabulary, useful in exhortational and theological discourse. Possibly the phrase still had a "legal ring" to it in the ears of Alma's listeners, and if it did, it may have given Alma's theological points here the enhanced force of being dressed up in the language of a binding legal pronouncement, especially as these words came from the lips of the Nephite Chief Judge.

Later in the Book of Mormon the phrase "if a man" appears once again in connection with legal materials. In 3 Nephi 12:40, Jesus says: "If any man will sue thee at the law and

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<sup>4</sup> The phrase, "if a man . . . ," although characteristically appearing in legal texts, is not limited to legal usage. The form "if a man . . ." is used in nonlegal materials in the Bible, and arises in other ancient Near Eastern literary contexts as well. See, e.g., the use of this phrase by the King James translators in Eccl. 6:3; Song 8:7; Isa. 36:6; Ezek. 18:5; 20:11, 13, 21; Amos 5:19; Mic. 2:11; Matt. 18:12; Mk. 4:23; 7:11; 9:35; 10:12; 11:3; 12:19; 13:21; Lk. 9:23; John 7:23.

take away thy coat, let him have thy cloak also." Here Jesus is discussing the law and so it is natural for legal terminology to appear.

The phrase appears two other times in the Book of Mormon; both come in the book's closing moments. In Ether 14:1, Moroni speaks of the great curse that had come upon the land of the Jaredites because of their iniquity, such that "if a man should lay his tool or his sword upon his shelf, . . . behold upon the morrow he could not find it." Although the passage describes the judgment of God upon the people, the expression here is used in a nonlegal sense; apparently the phrase had lost some of its legal uniqueness by the time of Mormon and Moroni. Finally, in Moroni 7:44, Mormon uses the phrase, as Alma also had, to express a strong logical necessity: "If a man be meek and lowly in heart, and confesses by the power of the Holy Ghost that Jesus is the Christ, he must needs have charity."

In sum, it can be concluded that the casuistic law form appears in the Nephite texts predominantly in connection with legal materials, especially in the writings and at the time of the Chief Judge Alma the Younger. This usage probably reflects the form in which the underlying Nephite laws, like the ancient Near Eastern laws also for the most part, were written.

Several questions about the nature and use of the casuistic law form could be explored further, but that would exceed the scope of this brief report establishing the distinctive presence of this form in Nephite legal materials. For example, one could ask, what does the casuistic form mean? When was it used and

why? What sort of laws or legal prescriptions were usually expressed this way? Does that information help us in any way to understand the use of the phrase in the Book of Mormon?

Moreover, the "if" form may also play a traditional role in ancient Near Eastern covenant formulas,<sup>5</sup> and similar formulas may figure in the covenant-making speech of king Benjamin, e.g., in Mosiah 2:18, 19, 20, 21, 22, 33, 38; 4:5, 6, 11, 22, 25.<sup>6</sup>

Such further inquiries remain yet to be explored.

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<sup>5</sup> See, e.g., F. Charles Fensham, "The Possibility of the Presence of Casuistic Legal Material in the Making of the Covenant at Sinai," Palestine Exploration Quarterly 93 (1961): 143-46.

<sup>6</sup> cf. Stephen C. Ricks, "The Treaty/Covenant Pattern in King Benjamin's Address (Mosiah 1-6)," BYU Studies 24 (1984): 151-62.