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## Lehi's Last Will and Testament: A Legal Approach

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## **Lehi's Last Will and Testament: A Legal Approach**

**John W. Welch**

**T**he first four chapters of 2 Nephi contain the rich and eloquent blessings the prophet Lehi gave to his posterity. As he bestowed his father's blessings upon his sons, Lehi did many things. He prophesied about the promised land (2 Nephi 1); he taught about the eternal laws of opposition, probation and atonement (2 Nephi 2); he spoke about the seer who the ancient Joseph testified would be raised up in the latter days (2 Nephi 3). Sometimes he spoke of his posterity's spiritual standing before the Lord; at other times he was concerned about their temporal and physical prosperity and well-being. Thus, he addressed a range of religious, prophetic, family, and societal themes.

I shall not attempt in this short paper to cover all that Lehi said and did in that sacred text. Rather, my intent is limited to exploring Lehi's legacy from only one relatively narrow and perhaps overly technical angle, namely ancient Israelite family laws

and customs. This is one effort to bridge the gaps of time and culture that separate Lehi's world from ours, and to link this text to its likely background in the real world. My interest in this regard is impelled by my belief that Lehi was a real person, who lived in a real world. It is a testimony to me to see how aptly his words fit into the ancient legal setting as we understand it, and how the Lord speaks to all men in their own language (D&C 1:24). He speaks to us in ours; he spoke to Lehi in his. Based on information drawn from what we think was the family law of Lehi's day, I offer a possible interpretation of the words in 2 Nephi 1-4 as Lehi's last will and testament.

### Background: Family Law in General in the Ancient Near East

The family was a major concern in the laws of Near Eastern societies. Many well-established norms regarding family life prevailed in these civilizations, standardizing the treatment of problem situations which naturally arise in and around the family, marriage, children and inheritance. Several collections of ancient laws, such as the Code of Hammurabi, the Middle Assyrian Laws, the Hittite Laws, and the Cretan Laws of Gortyn expressly addressed such issues as the status of women and children, dowry rights, the formalities of marriage, the mechanics of adoption and inheritance, and the resolution of disputes and difficulties arising out of abortion, divorce, and widowhood, to mention only a few. The rules regarding family law manifested in these ancient law codes were remarkably consistent and stable. Indeed, it is not uncommon to find that laws and customs dealing with family affairs remained static for hundreds of years, and that a considerable degree of similarity existed throughout all known bodies of family law in that area.

The situation in neighboring Israel was apparently not significantly different. Many sections in the Pentateuch address and

regulate legal issues, such as the rights and duties of parents and children, husbands and wives.<sup>1</sup> These biblical and Jewish law provisions have been the subject of dozens of books and articles written by legal historians.

Although women, children, and family laws are mentioned far less frequently in the Book of Mormon than in the Bible, family matters had to have been a concern in Nephite law and society as well. The Nephites married and were given in marriage; they had wives and children to divide their property among when they died; they had need to organize and protect their family relationships. Therefore, we can assume that family law was a part of the Nephite world.

How then might they have answered questions about family law matters when they arose? Logically, there are three sources of law and custom. First, they probably would have followed the persistent and consistent customs and norms or common law which they knew from the world out of which they had come. Life went on for Lehi the husband and Sariah the wife, for Ishmael the father-in-law, and for the men who married Ishmael's daughters, even out in the desert.

Second, they would have followed the law of Moses. Lehi possessed the plates of brass containing the five books of Moses; he considered those books authoritative and essential to the life of his colony (1 Nephi 5:10-22). He loved and obeyed that law, which he considered sacred and binding. It is important to realize that the law of Moses did more than regulate the priestly ordinances or ritual aspects of ancient Israel. It embraced both religious and secular, cultic and civil law. For example, Jethro said to Moses, "Thou shalt teach them ordinances [*hoqim*] and laws [*torot*]" (Ex. 18:20), and accordingly Moses issued laws and judgments, and established rulers and judges—not only for their religious purification, but also for the government of his people.

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<sup>1</sup> For example, Gen. 2:18-24; Ex. 20:12; 21:7-11, 15, 17; 22:16; 34:12-16; Lev. 18:6-18, 23-24; 19:3; 20:9; Num. 5:25-30; 25:6-13; 30:3-15; Deut. 5:16; 7:1-4; 21:10-14, 18-21; 22:28-30; 24:4; 25:5-10; and 27:16-23.

Some of Moses' "ordinances" are ordinances in the sense of city ordinances; others are ordinances in the sense of priesthood ordinances. His judgments (the *mishpatim*) and his commandments (usually the *mitzvot*), found largely in Exodus and Deuteronomy, establish what we could consider to be the criminal, civil, family and administrative laws, as well as the constitutional fabric of ancient Israelite society. For example, the law of Moses defined the rules of culpable and non-culpable homicide; it established principles of torts, commerce, and property law; laws regarding perjury in a judicial proceeding, as well as limitations on the executive powers of the king, are set forth in Deuteronomy. To the extent the law of Moses addressed family law matters, it is hard to imagine that Lehi would not have given those laws tremendous weight and great respect. This seems to be the clear meaning of 2 Nephi 5:10, affirming that the earliest Nephites kept "the judgments [*mishpatim*], and the statutes [*hoqim?*], and the commandments [*mitzvot?*] of the Lord in all things, according to the law of Moses." Years later Alma 30:3 reaffirms that the Nephites were still strict in observing the commandments (*mitzvot?*) and the ordinances (*hoqim?*) of the law of Moses.

Third, Lehi and his righteous posterity relied on inspiration and revelation in deciding how to interpret and apply the law. Moses used revelation, for example, in Numbers 36 to settle an inheritance dispute arising out of a ruling regarding the daughters of Zelophehad. Jehoshaphat instructed his judges to judge with the fear of the Lord and to judge for the Lord in all matters of the Lord, of the king, of all "controversies" and "what cause soever shall come to you" (2 Chr. 19:5-11). Lehi quite probably did likewise. In resolving the problems of inheritance, or in trying to avert the disputes and controversies that existed among his sons, Lehi relied on inspiration and revelation to understand how to apply the law of Moses and to deal with his unique situation, as the following case studies illustrate.

## The Power of the Father over His Sons

Understanding the role of the father in the pre-Exilic Israelite family sheds light on Lehi's dealings with his sons. As the dominant figure in ancient family law, the father had broad and plenary powers (*Encyclopedia Judaica* 6:1164-73; hereafter *EJ*), apparently "even over his married sons if they lived with him, and over their wives" (de Vaux 1:20). Thus, Lehi would have continued to exercise legal control over all his sons, even after they married.

In the ancient Hebrew family, children were considered part of the father's "property" (Falk 161), especially unmarried children still living at home. The father had the right to do with them or to take them with him virtually as he willed, which would appear to explain Lehi's power to take his family with him out into the desert. Indeed, the idea that family members were legally part of the father's moveable property seems to be reflected in 1 Nephi 2:4, where Nephi lists the family together with Lehi's provisions and tents. Although his wife and grown sons might murmur and object, their legal and social duty was to follow. Accordingly, of all the things Laman and Lemuel complain about, they never object to Lehi's *right* to have taken them with him.

It is generally thought that the legal powers of Israelite fathers in some apostate periods even went so far as to allow the father to put a child to death as a sacrifice (Deut. 18:10; 2 Chr. 28:3). Indeed, in many ancient societies, fathers needed little excuse to kill their children, for their *patria potestas* was virtually absolute. In accord with this idea is Exodus 21:15, 17, pursuant to which "smiting" or "cursing" one's father or mother was a capital offense: the offending child "shall surely be put to death," but the rabbis later insisted that the penalty never was nor would be carried out (Elon 491-92; Priest 124). Specific procedures spelled out in Deuteronomy and applicable in Israel during Lehi's

day had come to restrict this paternal power somewhat, but even under this law the “stubborn and rebellious son” was to be chastened, seized, taken to the elders at the city gate, accused by the father and the mother, and stoned by all the men of his city (Deut. 21:18-21).

This last point reveals some interesting dimensions in Lehi’s relationship with his wicked sons: If Lehi had the paternal authority to kill his rebellious sons, why did he let them live? There can be little doubt about the fact that Laman and Lemuel were legally punishable by death under the law of Moses as “rebellious sons,” for at one point they even “sought” to kill their father Lehi (1 Nephi 17:44). Though a shrewd defense attorney might have raised some technicalities in Laman and Lemuel’s behalf, for example, Deuteronomy 21 requires city elders to handle the case of a rebellious son, but out in the desert there were no city elders, Lehi would not likely have been swayed by such technicalities had he wanted to be severe. It is far more likely that Lehi’s love, patience and long-suffering toward his recalcitrant sons spared their lives. Through the visions and revelations he had received, Lehi knew that Laman and Lemuel and their posterity had important long-term roles to play in the Lord’s plans. Instead of killing or even disinheriting these sons, Lehi “did exhort them then with all the feeling of a tender parent, that they would hearken to his words, that perhaps the Lord would be merciful to them, and not cast them off” (1 Nephi 8:37). Legally given this enormous parental power, Lehi’s restraint is strong evidence of the tender and completely forgiving attitude Lehi must have had.

### Ties That Bind

Lehi’s love for his sons and daughters-in-law would have been bonded in yet further ways through the prevailing rules and practices relating to marriage. An important power retained by

the father in ancient Israel was controlling whom his sons and daughters would marry. The parents “very often chose a wife for their son, although sometimes the son himself contracted the marriage” (Falk 162, citing Gen. 26:34; 37:46; Judges 14:2, 7). It was the duty of each person to take and be taken in marriage, and it was the obligation of parents to see that their children were married (*EJ* 11:1049; Clark 128). The importance of this parental duty is reflected in the prophet Jeremiah’s command to those leaving Jerusalem shortly after Lehi’s departure to “take ye wives, and beget sons and daughters; and *take wives for your sons*, and give your daughters to husbands” (Jer. 29:6; emphasis added).

Lehi acted in accordance with these general principles. He largely controlled whom his sons and daughters married. Through him came the commandments of the Lord that “his sons should take daughters to wife” and that they should return to Jerusalem to get Ishmael and his family for this very purpose (1 Nephi 7:1-2). As far as we know, no objections were raised by Lehi’s sons, nor were their preferences consulted. Furthermore, it is said that by seeing his sons married, Lehi “fulfilled all of the commandments of the Lord which had been given unto him” (1 Nephi 16:8). Thus, Lehi’s own obedience to the Lord included the duty of seeing that his sons were married. The fact that Lehi selected the family whose daughters his sons would marry gave an additional element to his relationship with all his posterity—bonded by the fact that Lehi was responsible for their marriages.

Under normal ancient circumstances, marriage contracts were made attractive and binding by means of a dowry paid by the husband or his father to the bride or her father. No dowry is mentioned in connection with the marriages of Lehi’s sons or daughters. Other factors here may have satisfied the customary functions of a legal dowry. First, instead of offering money, Lehi’s sons persuaded Ishmael to agree to these marriages by



“speak[ing] unto him the words of the Lord,” who “soften[ed] the heart of Ishmael” (1 Nephi 7:4-5). Second, Ishmael may have been favorably disposed toward these marriages because he and Lehi were somehow related, but the Book of Mormon is silent on this point. Beside prohibiting a man from marrying a woman that was too closely related to him (Lev. 18:6-18, 23-24; Deut. 22:30; 27:20-23), Hebrew custom favored marriages to women who were not too distantly removed. The preferred if not obligatory marriage was that of first cousins,<sup>2</sup> so perhaps a relationship of this sort facilitated the marriages of Ishmael’s daughters to Lehi’s sons. Third, these marriages were possibly reciprocal ones, since the two sons of Ishmael had apparently already married the daughters of Lehi. These marriages would have occurred before the time Lehi left Jerusalem, since the two sons of Ishmael were already married when they joined Lehi’s group (1 Nephi 7:6).<sup>3</sup> Thus, in several ways, Lehi was legally and personally bound in a complex set of relationships with all his sons and daughters and daughters-in-law, which underscores why Lehi included all of them in his last will and blessing.

### Family Organization

As mentioned above, Lehi was doing many things as he spoke officially to his posterity for the last time. One of the most enduring legacies of Lehi’s last will and testament appears to be the organization of his descendants into tribes. Just as the ancient patriarch Jacob left the House of Israel with a family structure

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2 Mace states, “the cousin . . . is the natural bride of the man” (164). Likewise, Hugh Nibley has surmised that Lehi and Ishmael were probably closely related (57, n. 6). This may not only have been the custom, but a right among the Bedouins. Burton said, “Every Bedawi has a right to marry his father’s brother’s daughter before she is given to a stranger” (2:84).

3 According to Erastus Snow, a statement attributed to Joseph Smith noted that the two sons of Ishmael had married two of Lehi’s daughters (23:184). If Lehi had no other daughters, these two women left their husbands and followed Nephi when he fled north for his life (2 Nephi 5:6; see Sperry 694), which would surely have aroused the animosities of the sons of Ismael towards the followers of Nephi. On the other hand, Lehi may have had other unmarried daughters who followed Nephi.

composed of twelve tribes, Lehi addressed his posterity in seven groups. This seems to be the precedent that established the legal order that lasted among these people for almost one thousand years. After speaking to several of his sons collectively (2 Nephi 1:1-29), Lehi spoke (1) to Zoram in 2 Nephi 1:30-32, (2) to Jacob in 2 Nephi 2, (3) to Joseph in 2 Nephi 3, (4) to the children of Laman in 2 Nephi 4:3-7, (5) to the children of Lemuel in 2 Nephi 4:8-9, (6) to the sons of Ishmael in 2 Nephi 4:10, and (7) to Sam together with Nephi in 2 Nephi 4:11. The seven groups recognizable here are exactly the same as the seven tribes mentioned three other times in the Book of Mormon, each time in the rigid order of “Nephites, Jacobites, Josephites, Zoramites, Lamanites, Lemuelites, and Ishmaelites” (Jacob 1:13; 4 Nephi 38; Mormon 1:8; see also D&C 3:17-18). Though kingships and judgeships might come and go in Nephite history, the underlying family fabric of Nephite society attributable to Lehi’s testament remained permanent (e.g. 3 Nephi 7:2-4). Even in the final days of the Nephite demise, Mormon still saw the general population divided along this precise seven-part line (Mormon 1:8). The fact that this exact organization persisted so long is evidence that Lehi’s last words to his sons in this regard were taken as constitutionally definitive—just as the organization of Israel into twelve tribes in the earlier age had been essential to the political, social, religious and legal structure there.

I see Lehi here acting like Jacob of old. Both Jacob and Lehi pronounced their blessings to “all [their] household” who were gathered around them shortly before they died to organize a household of God in a new land of promise (2 Nephi 4:12; cf. Gen. 49). Seeing Lehi in the patriarchal tradition is borne out by the fact that Lehi was remembered by Nephites from beginning to end as “father Lehi.” Just as Israelites have always known Abraham as “father Abraham,” so the Nephites including Enos, Benjamin, Alma the Younger, Helaman, the later Nephi and Mormon, consistently remembered Lehi as “our father Lehi”

(Enos 1:25; Mosiah 1:4; 2:34; Alma 9:9; 18:36, 36:22; 56:3; Hel. 8:22; 3 Nephi 10:17). Since Lehi is the only figure in the Book of Mormon called “our father,” this designation appears to be a unique reference to Lehi’s patriarchal position at the head of Nephite civilization, society, and religion.

### Is Lehi Dividing His Estate in 2 Nephi 1-4?

In Israel, the tribal structure served several purposes: religious, military, political, and legal. For example, the tribe of Levi was given priestly duties (Num. 3:6-9), the armies of Israel were numbered according to tribe (Num. 1), and the chiefs of the tribes assembled to act in the case of the Benjamites (Judges 20:1-2). Land law was also fundamentally interrelated with the tribal structure of Israelite society—the land of Israel being divided legally among the various tribes. Accordingly, tribal or paternal lands, for example, could not be permanently sold outside of a given tribe. Moses ruled: “So shall not the inheritance of the children of Israel remove from tribe to tribe: for every one of the children of Israel shall keep himself to the inheritance of the tribe of his fathers” (Num. 36:7). A “land of inheritance” is unthinkable under the law of Moses without a correlative family structure and a legal system that gave rights of family foreclosure, redemption and preemption to next of kin (Falk 87-89). It would be consistent with Nephi’s report that his people observed the law of Moses “in all things” (2 Nephi 5:10) to conclude that they followed the law of Moses regarding their land laws as well, and that Lehi divided his family into paternal tribal groups partly for the reason of establishing a system for recognizing property and territorial rights in the new land of promise.

The fact that land was on Lehi’s mind when he spoke in 2 Nephi is readily apparent. The land is mentioned over a dozen times in the first ten verses alone. While his main emphasis was

to speak of the land in general as a land of promise, Lehi's words were couched in legal terminology and probably would have been understood as defining some basic legal rights of tenancy and transferability.

First, Lehi acknowledged and thereby legitimated the group's right to possess the land. He qualified their right, however, making it contingent upon righteousness (2 Nephi 1:11). By speaking in terms of possessory interests in the land, Lehi seems to have been working within the Mosaic concept which held that God's people have only a right of possession in the land, not title in fee simple absolute as we speak of ownership, for the land itself belongs to God: "For the land is mine; for ye are strangers and sojourners with me" (Lev. 25:24).

Second, Lehi referred to the land as "a land of inheritance" (2 Nephi 1:5; 1:8; 3:2). In my opinion, he was doing more here than duplicating the idea in verse 9 that "this land" collectively was their "land of promise." The law of Moses required that "in all the land of your possession [and Lehi had clearly designated theirs a land of possession] ye shall grant a redemption for the land" (Lev. 25:23). This right of redemption was none other than the preemptive power held by the next of kin to prevent the sale of the paternal or tribal lands to people outside that lineage group. Making the land subject to such a perpetual inheritance right was a critical part of keeping the land a "land of inheritance" for that family in perpetuity. This seems a likely part of what Lehi was doing when he organized his posterity into paternal kinship groups. Implicitly, we may understand the existence of a right of redemption within that group with respect to the portion of the land each group was to possess. Apparently the importance of preserving this traditional right was a significant factor motivating the followers of Zeniff to repossess (Omni 27) and redeem (cf. Mosiah 12:22) the land of Nephi.

The idea that Lehi partitioned the land, the land of first inheritance, into tribal areas receives further support from the fact that Lehi called this area "the *lands* of their *possessions*"

(2 Nephi 1:11; emphasis added). His use of the plural terms “lands” and “possessions” provides considerable evidence that Lehi himself perceived the land as divided into several “lands” or territories.

Thus, for example, it appears that when he blessed Joseph with an interest in the land (2 Nephi 3:2), Lehi was creating in Joseph and in his posterity a durable right to possess some specific share of the land. By the same token, when he said to Sam, “Thou shalt inherit the land like unto thy brother Nephi. And thy seed shall be numbered with his seed . . . and [shall be even] like unto his seed” (2 Nephi 4:11), Lehi was saying that Sam would not have a separate tribal interest in a particular part of the land, but would merge legally and tribally with the seed of Nephi. Consequently, there are Josephites in the Book of Mormon, but never any Samites.

### Had Lehi Adopted Zoram and the Sons of Ishmael?

Lehi had six natural sons, each of whom he addressed in 2 Nephi 1-4; but in addition, he also spoke at that time to Zoram and to his two sons-in-law, the sons of Ishmael. Can anything be discerned about the legal status of these three men in Lehi’s family? If one of the things Lehi is doing in 2 Nephi 1-4 is dividing his estate among his sons, it is odd that Zoram and the sons of Ishmael should be included in the bequest, since usual custom dictated that the estate be divided only among a man’s sons (Mendelsohn 39); and yet Zoram and the sons of Ishmael were not his sons.

One possibility is that Lehi simply saw the wisdom of giving each person in the group a place of inheritance. Rules of inheritance may have been flexible enough that in-laws and loyal servants could be included in the bequest. Job 42:15 reports that Job gave his fair daughters “inheritance among their brethren,”

and Proverbs 17:2 sees prudence in allowing a wise servant to “have part of the inheritance among the brethren” over a “son that causeth shame,” but it is unclear to what extent these represent exceptional cases.

There may be more to it, however, than this alone. Since Lehi planned to include Zoram and the two sons of Ishmael in the tribal organization of his posterity, what reason would he have to stop short of giving these men full status as family members—as his legitimated or adopted sons? Indeed, he may have been obligated by Nephi’s promise to Zoram (1 Nephi 4:32-34) to give Zoram a full “place” within the family. In fact, adult adoption was legally permissible and normal enough in the ancient Near East, although concrete evidence of the practice is lacking in pre-Exilic Israel (perhaps attributable to the fact that the levirate marriage rules made adoption less common in that society, but not entirely unnecessary). One of the major uses of adoption was to clarify inheritance rights. Thus, Lehi may have adopted Zoram and the sons of Ishmael to strengthen their inheritance rights and status within the family.

This possibility receives some support from the fact that Lehi included his sons-in-law among those whom he called “my sons” (2 Nephi 1:28). When he spoke to the group, which apparently included Zoram and the sons of Ishmael, he called them “*my sons*” (2 Nephi 2:14; emphasis added), and in the end, he made his words binding “unto *you all* my sons” (vv. 28-30; emphasis added). It is possible, however, that these terms were used here only as terms of endearment, but the formal context in which they were memorably spoken would have given considerable legal significance—for generations to come—to the fact that Lehi openly and publicly acknowledged these three men as his sons.

### The "Firstborn of Inheritance"

Another function Lehi served as he formulated and pronounced his last will and testament was to make legitimate his successor. This must have been a delicate matter for him. Laman, whom Lehi acknowledged as his "firstborn son" (2 Nephi 4:3), was not the Lord's choice to succeed Lehi as the head of the clan. As a "firstborn of inheritance," however, Laman might be expected to assert certain legal rights, especially property rights. Lehi could not prudently ignore that risk, if he hoped to foreclose Laman from contesting his will after he had died.

Interwoven with the ancient Near Eastern principles of family law were fairly specific laws of inheritance and succession (de Vaux 1:53-55; Elon 434-35, 446-64; Falk 165-70). Preserving and transmitting the family estate from one generation to the next was a fundamental and essential aspect of ancient society and economy. Typically, upon the death of the father, the eldest son of the father's first wife was entitled to occupy the father's house and estate, and legal provisions were established in the early law codes to prevent the father from wrongfully favoring younger sons or the sons of wives with lesser status (Falk 165-70).

In early Israel several cases of succession ran contrary to the common custom. There, "a father was free to choose a younger son as his successor, if he found the eldest unworthy of the office" (Falk 165). In that community, more than property was at stake. The tribal structure of early Israelite society required that a leader be chosen to take the father's place as both the secular and spiritual leader of the clan. This power "did not pass automatically, but had to be conferred by the father in a special blessing" (Falk 165). This was accomplished by a formal public "acknowledgement" of that son by his father (Deut. 21:17), usually in the form of an oral blessing (*EJ* 6:1306-11). It is unclear what would happen if no such acknowledgement

was made. Thus Isaac blessed Jacob: "Be lord over thy brethren, and let thy mother's sons bow down to thee; cursed be every one that curseth thee, and blessed be he that blesseth thee" (Gen. 27:29). By this blessing Jacob became the successor of Isaac and the legal heir of his father's estate; all his brothers were thereby given to Jacob "for servants" (Gen. 27:37). The accounts in Genesis are remarkable in that younger sons are frequently preferred over their elder brothers (see the stories of Abel, Seth, Jacob, Ephraim, David and Solomon), and in that fathers sometimes separated the privileges of property inheritance from those of political and priestly rights (somewhat as Lehi also does in giving priestly duties to Jacob). Thus, Jacob of old blessed Judah with the rights of governance (Gen. 49:10), and Joseph with the double portion of the birthright through Ephraim and Manasseh (Gen. 48:22), and Levi eventually became entitled to certain inherited rights of the priesthood.

As time progressed, the laws in Israel changed, particularly to clarify and protect the property rights of the firstborn son. For example, he was virtually guaranteed a double share as compared with his brothers.<sup>4</sup> At the same time, the otherwise unlimited power of the father to prefer younger sons over the firstborn was somewhat restricted. Deuteronomy 21:15-17 applied these principles in the then common enough case of a man who has two wives and loves one but dislikes the other. The law prohibited the father from selecting among the firstborn sons of these two wives and giving the double portion to the younger firstborn son. The double portion had to go to the son who was actually born to him first.

The later rules were apparently the norm in Lehi's day. The right of the firstborn to inherit the double portion was solidly

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<sup>4</sup> Thus if a man had six sons, his estate would be divided into seven shares and the firstborn son would inherit two shares and the other five would each receive one share. This rule protected the younger sons from being disinherited entirely, but it also diminished the rights of the firstborn to whom the entire estate would otherwise have normally been bequeathed.



entrenched at that time. Likewise there was a second right, not as strong as the first, but a presumption and expectation that the privileges of primogeniture would entitle the firstborn to assume the rights and powers of the father upon his death (Cecil generally). But other than these legal restrictions in Deuteronomy 21, no other limitations on the father's creative testamentary discretion are known. Thus Lehi could have significantly arranged his final affairs creatively, as the spirit and circumstances dictated. In my estimation, this is precisely what he did.

Given the world in which Laman grew up, he probably had a relatively strong legal expectation that he would be entitled to succeed his father as the leader of the family. If the family had remained in Jerusalem, Laman would almost certainly have inherited the double portion of Lehi's wealth and most likely would have been entitled to possession of the family house, for in this regard the law left little room for discretion. This may help to explain, in part, why Laman rebelled and wanted to leave the family and return to Jerusalem (1 Nephi 7:7)—he had something to gain by returning there. It would also have added to any reluctance he may have had to use the family's wealth to acquire the plates of brass from Laban (1 Nephi 3:16, 21).

How was Lehi to deal with these expectations of Laman, and with the law of Deuteronomy 21, and at the same time leave Nephi in a secure position as the "ruler and teacher" (1 Nephi 2:22; 3:29) he was chosen by God to become? On the one hand, Lehi would not want to alienate Laman and those sympathetic to him by giving Nephi too much. Yet, he could ill afford to leave Nephi in a weak and vulnerable position. Lehi's solution was creative, flexible, patient and even-handed, though doomed to failure.

Concerning the rights of primogeniture and leadership, he said to Laman, Lemuel, Sam and the sons of Ishmael, "If ye will hearken unto the voice of Nephi . . . I leave unto you a blessing," including "my first blessing." But if they would not

hearken unto Nephi, Lehi provided that their disobedience would revoke the “first blessing” and also the general blessing, and all this should then rest upon Nephi (2 Nephi 1:28-29).<sup>5</sup> In other words, Lehi was willing to give Laman the titular blessing so long as the group in substance followed Nephi.

Lehi’s solution was sound: it placed responsibility squarely on the shoulders of his unrighteous sons. He would not cut them out of their rights; they would cut themselves out if they were not righteous. The choice was theirs (2 Nephi 2:28-30). By this alternative contingent blessing, Lehi both implemented the will of the Lord to put Nephi into leadership, and made his final attempt to bring peace among his sons. To the very end Lehi patiently left the door open for Laman to repent and maintain the first blessing, especially for the benefit of his posterity.

Lehi’s solution, however, was predictably impractical. It must have been very frustrating from Laman’s perspective: in order to obtain the first blessing and to preserve it for his posterity, he had to obey Nephi; but if he did not obey Nephi, his father’s blessing would go to Nephi. Either way, Nephi would win.

It was foreseeable, therefore, that Lehi’s blessing would prove problematic, especially since it left one critical question unanswered: Who would arbitrate between Laman and Nephi should disputes arise on whether Laman had done enough to satisfy the requirement that he “hearken unto the voice of Nephi,” or on whether Nephi had required only that which was appropriate? Such a dispute did soon arise, and to protect his

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<sup>5</sup> I read 2 Nephi 1:28-29 as distinguishing between (1) Lehi’s general blessing of peace and prosperity and (2) his first blessing which would normally belong to his firstborn son. The a-b-b-a structure (“a blessing, yea, even my first blessing . . . my first blessing, yea, even my blessing”) supports the idea that there are two different blessings present here. Moreover, if only one blessing were involved here, it is hard to understand how that one first blessing could be held by all five of these men concurrently, and then why Nephi would not have been equally included in it. Also, this reading gives meaning to each phrase in this text. On the other hand, the words “yea, even” may mean “in other words,” which would make “my blessing” and “first blessing” synonyms. Also the use of the word “it” instead of “them” at the end of this bequest gives the impression that only one blessing is involved here. These last two points, however, do not seem to outweigh the former three.

life Nephi fled (2 Nephi 5:4-6). According to the Lamanites, he left wrongfully (Mosiah 10:16), and the deadly and divisive animosity continued; one of the points of controversy was clearly over this “right to the government” (Alma 54:17).

Concerning the double portion, it seems likely that Lehi would have somehow acknowledged Laman’s property right under the law in Deuteronomy to receive a double portion of the estate, but it is unclear specifically how he might have doubled Laman’s land, since land was virtually unlimited anyway. Perhaps it is relevant here that Laman’s posterity later asserted an ownership interest in the plates of brass (Mosiah 10:16). Such a claim could have stemmed from the fact that the family’s wealth had been used to acquire those plates.<sup>6</sup> Perhaps Laman, as the firstborn, was entitled to possess the plates at first, but once Lehi’s first blessing had come to rest upon Nephi because of Laman’s disobedience, Nephi could well have concluded that he was entitled to possess and take them.

To whatever extent Lehi acknowledged Laman’s right to the double portion, he simultaneously did three things that appear to have been calculated to detract from Laman’s firstborn double portion rights.

First, he combined Sam’s inheritance and seed with Nephi’s (2 Nephi 4:11). As Jacob in the patriarchal period had effectively doubled the blessing of Joseph by granting equal blessings to Joseph’s two sons Ephraim and Manasseh (Gen. 48:22), so Lehi effectively doubled Nephi’s position by granting a share of the land to Sam and then merging it with Nephi’s. Second, he blessed his firstborn’s children to the effect that their sins and cursings would be answered upon the heads of their parents (2 Nephi 4:5-9). This could not have been flattering to Laman. Third, Lehi referred to Jacob three times as his “firstborn . . . in the wilderness” (2 Nephi 2:1, 2, 11), and singled him

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<sup>6</sup> This possibility is enhanced by the fact that Laman raises no complaint about Nephi’s taking the brass ball or the sword of Laban (the latter would certainly have been of interest to Laman). Neither of those items, however, were acquired with family assets.

out to spend his life “in the service of thy God” (2 Nephi 2:3)—a role often associated with position of a firstborn son. These steps diminish the uniqueness and importance of Laman as the eldest son.

Lehi’s de-emphasis of the rights of the firstborn son is understandable in light of his knowledge that Laman and Lemuel would not partake of the fruit of the tree of life (1 Nephi 8:35) and had remained violently opposed to both himself and to Nephi (1 Nephi 3:28; 7:16; 17:44; 18:11). This diminution in significance of primogeniture seems to have endured among the Nephites to the end of their history, as there is no further reference in the Book of Mormon to the rights of the firstborn. The word “firstborn” and its related legal concepts completely drop out of the subsequent Nephite record.

### The “Firstborn of Redemption”

Very different from the firstborn’s rights of inheritance were rules contained in the law of Moses regarding the redemption of firstborn sons. After Israel’s deliverance from Egypt, Moses commanded that the first male child born to each woman be redeemed or bought back from the Lord (Ex. 13:12-13; Num. 18:15). Each such male had to be redeemed by his parents for a price. Otherwise, he would belong to the Lord and be in his service. This practice was instituted and perpetuated to remind all Israel that “by strength of hand the Lord brought us out from Egypt,” passing over the firstborn son in the obedient houses of Israel (Ex. 13:14-15).

This background may give us added insights in two ways. First, as the eldest son in this family, Laman would have been redeemed as an infant before a temple priest in accordance with the requirements of Exodus 13. This makes it ironic, if not tragic, that he should be the one who turned most vehemently against God, since as a firstborn son he had belonged initially to

the Lord. Second, in blessing Jacob, Lehi gave his sons a fuller and richer understanding of the concept of redemption—one that points to redemption found in Christ, who himself “is the firstfruits unto God . . . for all the children of men” (2 Nephi 2:3-9, 26-29). Lehi taught that true redemption comes only through the righteousness and intercession of Christ the Redeemer whom Jacob had beheld (2 Nephi 2:3-4, 8). In other words, Lehi saw and explained that the Mosaic practice of firstborn redemption would be superceded through the sacrifice of Christ, the firstborn unto God.

### The Sins of the Children

In the final words of his testament, Lehi turned to his grandchildren. In particular, he was concerned about the children of Laman and Lemuel. In two interesting blessings, Lehi placed the liability for the wrongs of these children “upon the heads of the parents” (2 Nephi 4:6). This should be understood as a punishment for the parents’ failure to carry out their direct duty to teach their children, not as holding them liable for the sins of other people, for vicarious liability was strongly rejected both in the law of Moses (Deut. 24:16) and in the laws of the Nephites (e.g., Alma 30:25; 34:12).

Indeed, biblical law expressly imposed an obligation upon parents to teach the law to their children and tied this duty to the covenants of God regarding the promised land. The Lord had said of Abraham, “For I know him, that he will command his children and his household after him, that they shall keep the way of the Lord, to do justice and judgment” (Gen. 18:19). This requirement was expressed as a positive command in the law of Moses: “Teach them [to] thy sons, and thy sons’ sons” (Deut. 4:9; 6:7; see also 11:8-9; 32:46; Ex. 12:26-27; 13:8-15). Fulfilling this duty was crucially important in the land: “It is your life: and through this thing ye shall prolong your days in

the land” (Deut. 32:47). Neglecting this obligation would anger the Lord to destroy the people from off the earth.

Thus, by placing the sins of the children upon the heads of delinquent parents, especially in connection with the covenantal establishment of a promised land of inheritance, Lehi was acting consistent with the principles of law in his day.

### Conclusion

The legacy of father Lehi had a profound impact on his posterity in many ways. His last will and testament was not only the devout wish of a dying parent for family righteousness, obedience, love, and harmony, but also a carefully designed statement that took into account the rights and status of the various members of his family group. Lehi was faced with a very challenging and explosive family situation, and even though his most powerful statements could not stem the tide of conflict between Laman and Nephi, he was guided by the inspiration of the Lord, and spoke articulately, powerfully, and legally. His words laid a legal and constitutional basis for several future centuries of Nephite thought and life.

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