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THE LEGAL NATURE OF MARRIAGE IN ANCIENT ROME

The article is devoted to the study of the legal nature of Roman marriage. It defines the concept of marriage as a socially significant union of a man and a woman, which determined the legal status of the wife and children born in this union, as well as property relations between the spouses. On the basis of Roman legal sources and scientific works of Roman lawyers, the classification of Roman marriages is defined, the grounds and conditions for entering the marriage and its dissolution are identified, and the differences between legal and illegal Roman marriages are outlined.

The article focuses on the definition of the concubinate as a special form of regulation of actual marriage relations. It is determined that the concubinate occupied a more important place in Roman social and legal life, since it had almost all the features of marriage and significant differences from amica.

The peculiarities and significance of dowry in Roman family law are highlighted. It is noted that in Roman law, the latter was not always mandatory as in Ukrainian traditions, in particular, the obligation to transfer dowry was provided only in marriages without male authority (sine manu).

The grounds and procedure for divorce are analyzed. It is established that the attitude to divorce varied depending on the period of the Roman Empire development. A divorce by mutual consent was prohibited, and a divorce initiated by one of the spouses was allowed in clearly defined cases: violation of marital fidelity by one of the spouses, attempted murder of one of them, inability to have sexual intercourse or desire to go to a monastery. Accordingly, if these reasons were absent, the initiator of the divorce had to pay a fine.

Key words: *Roman marriage, classification of Roman marriages, concubinate, dissolution of marriage, marriageable age, dowry.*

Formulation of the problem. The fundamental principles of building family relations became a support for the development of national legal systems of many Western European countries, which to this day remains the primary source for the development of family codes and other legislative acts in the field of family law. And despite the fact that the application of the foundations of the Roman Empire family law is observed not only in the countries of the Romano-Germanic legal system, but also in countries that have not undergone the reception of Roman law. Today, there is considerable scientific interest in the topic of the peculiarities of marital relations settlement in Ancient Rome. This is due to the preservation in the modern family law of Ukraine of some prescribed unofficial marriage forms, or the so-called "de facto spouse", "civil" marriage.

Analysis of recent research and publications. The theoretical basis of research was the works of such well-known domestic and foreign scientists as L. V. Dyachuk, I. B. Novytskyi, A. O. Ovchatova-Redko, O. A. Omelchenko, O. A. Podopryhora, I. A. Pokrovsky, I. Pukhan, C. Sanfilippo, J. Franchosi, Y. O. Kharitonov, V. M. Khvostov, Z. M. Chernilovskyi, H. I. Trofanchuk and others.

The purpose of the article is to clarify the legal nature of Roman marriage, to define its main types, forms of conclusion, as well as the grounds and procedure for dissolution of marriage.

Presentation of main material. It should be noted that the understanding of the legal nature of marriage in Roman law was complicated and ambiguous, which was due to the lack of legislative consolidation of the concept and features of marriage in the legal sources of the Roman Empire. However, analyzing the provisions of the Law of the Twelve Tables, it is possible to define Roman marriage as "a union of a man and a woman, a union of life, communication, based on God and human rights" [1]. Marriage was concluded exclusively between citizens of Rome and was based on certain principles, legislative acts and traditions. However, despite the lack of legal consolidation of this type of union between a man and a woman, Roman lawyers paid considerable attention to the legal issues of marital relations, after studying and analyzing them, they created a certain classification and features.

It should be noted that Roman lawyers and philosophers idealized marriage. Thus, the outstanding ancient Roman jurist and statesman Modestin wrote: "Marriage is the union of a man and a woman, a union for life, a union of divine and human rights" [1]. At the same time, it was not possible to call such a union equal, since inequality was assumed not only in moral and material dependence, but also in legal terms. Despite the fact that "the Romans did not hide that the wife never occupied an equal position with the husband, always being dependent on the father, husband or grandson" [2, p. 114].

There are different approaches to classifying marriages according to legal doctrine. For example, some scholars note that the following types of marriages were known to Roman law: proper Roman marriage (matrimonium justum) and improper marriage [3, p. 49]. There is another approach to the classification of marriages under Roman law: a legal Roman marriage and a marriage concluded between other free persons who did not have Roman citizenship and who did not have the right to enter into a Roman legal marriage [2, p. 115].

1. "Legal Roman marriage" ("matrimonium iustum") – for those who have jus conubii – the right to enter into a full-fledged, legally recognized marriage, which gives rise to all family members equal benefits and consequences provided for by law. Such a marriage was concluded exclusively between Roman citizens who had the appropriate amount of legal capacity, in compliance with all the requirements of the law. Children born in such a marriage acquired the status of a Roman citizen [4, p. 287].

2. "Illegal Roman marriage" ("matrimonium non justum") – that is, one that was concluded between persons who did not have Roman citizenship (between peregrins and other free people who did not have the right to legal marriage). Such a marriage did not give the husband patria potestas (parental authority) and other civil rights associated with being in a Roman legal marriage (for example, the right to emancipation) [4, p. 287; 5, p. 59]. Common to these two classifications, the dependence of the opportunity to enter into one or another type of Roman marriage depended on the presence or absence of Roman citizenship.

In its turn, legal Roman marriage was divided into marriage with male authority (sum manu) and marriage without male authority (sine manu). Sum manu is considered to be the most

ancient form of marriage, which presupposed a woman's complete dependence on her husband (the head of the household) and patriarchal strictness. The wife did not have legal independence. Moreover, the husband's power over her was practically unlimited. A man could subject her to any punishment, demand her back if she voluntarily left his home, sell her into slavery. Just like slaves, children and wife were completely deprived of legal capacity. The legal arbitrariness of the man was to some extent limited by public opinion. The measure of punishment for the wife's guilt was determined by a council consisting of the wife's male relatives [5, p. 151]. However, unlike Athenian women, Roman women were much more independent and enjoyed great respect. They could participate in festive dinners, go to the theater and games, had access to art, education and science [7].

Although it is believed that a legal Roman marriage could only be concluded between patricians, there is an opinion that plebeians could also conclude it. It is possible to allow such an option taking into account the methods of concluding a legal marriage existing at that time. In particular, along with the solemn ritual of confarreation, which was carried out mainly in patrician families, when a woman, as a result of continuous residence in the house of her de facto husband for one year, was recognized as his legal wife, there existed such a method as coemptio ("purchase"). The very conduct of the "coemptio" ritual was allowed for simpler citizens and plebeians, so the girl was symbolically "bought" by the bridegroom from her father in the presence of five witnesses, while the woman became, as it were, the property of the man.

A rather controversial definition of the legal status of marriage without male authority is sine manu. Such a marriage was reflected in the Laws of the XII Tables, but the conditions and procedure for its conclusion are not known for sure. It is believed that in marriage sine manu, the principle of subordination gave way to the principle of equality. Thus, R. A. Kalyuzhny notes that in such a marriage, the woman retained the legal status she had before marriage. Her husband's authority did not extend to her. Therefore, the marriage sine manu itself did not affect her legal capacity [4, p. 48]. And this was despite the fact that the property of the spouses continued to remain in separate ownership. The wife had the right to

independently own, use and dispose of her property, but she could transfer the right to manage her property to her husband [4, p. 48]. H. I. Trofanchuk notes that in a sine manu marriage, a woman did not fall under the authority of her husband under the condition that she had to stay outside her home for three days every year of marriage. That is, every year there was a kind of actual fixation of a certain degree of freedom of a woman in such a marriage [2, p. 116].

A marriage without male authority is quite similar in its legal nature to a de facto marriage, the so-called concubinage. Concubinage (lat. concubinatus from com – 'together' and cubare – 'to lie') was an actual marriage relationship, a stable cohabitation of a man and a woman with the intention of forming a family. Concubinage was significantly different from such an institution as "amica" – permanent cohabitation of an unmarried man with an unmarried woman permitted by law. However, concubinage occupied a more important place in Roman social and legal life, as it had practically all features of marriage. It was distinguished from amica only by the fact that it was concluded without observing formalities, but not due to a lack of desire to establish family relationships [6, p. 261]. R. A. Kalyuzhny notes that concubinage took place in those cases when there was a permanent union between a man and a woman, but they did not possess the necessary personal qualities to recognize their family union as a law, the Romans believed that such a union was a kind of "natural marriage" [6, p. 43]. H. I. Trofanchuk claims that the presence of concubinage in Roman law was due to the impossibility of entering into a legal marriage (different citizenships) [2, p. 114]. The Romans had a positive attitude towards this, but concubinage, unlike marriage without male authority, was actually not accompanied by legal consequences. In particular, children did not acquire the name and status of their father, did not have the right to maintenance, did not inherit property and did not have the status of children of marriage, a woman did not share the social and public status of her husband (concubine). So, despite the fairly loyal attitude of the Romans to natural marriage, from a legal point of view, the latter is not appropriate, as it significantly limits the list of rights of spouses, which was provided by legal marriage. In addition, it should be noted that, despite the monogamous nature of the Roman family, it was permissible for a man to be in concubinage with a man, but the

cohabitation of a married woman with a foreign man was the basis for applying severe punishment to her. Therefore, the moral and ethical norms that prevailed at that time in the Roman Empire clearly did not give grounds for equating concubinage with other types of marriage.

The existing legislation of the Roman Empire defined the conditions for concluding a marriage:

1. Consent of those getting married and consent to the marriage of the householder - paterfamilias. The obligation to obtain consent from the householder once again testifies to the dominance of the patriarchal system in the Roman Empire. However, the authority and power of the "father of the family" was absolute: according to the Law of Julius (4 AD), if the householder did not agree to the marriage without reasonable grounds, he could be forced to give his consent through a magistrate.

2. Necessity of observing the marriageable age. The availability of the right to enter into a legal Roman marriage was directly related to the acquisition of full civil legal capacity, so at that time there were no "privileged" grounds for concluding a marriage before reaching the age of majority.

3. The bride and groom are not married to other persons at the time of the marriage.

4. Absence of blood relations between relatives. Marriage between direct and collateral relatives, between brothers-in-law, between a guardian and a ward was not allowed.

The specified list of conditions for concluding a marriage was not considered exhaustive. In particular, a marriage could not be concluded between a provincial magistrate and a resident of a given province, between a married woman who entered into an adulterous marriage and her lover. Roman law also allowed widows and widowers to marry. However, the widow had to observe 10 months of mourning. Such a requirement was determined not so much by the moral and ethical principles that existed at that time, but purely by the elimination of doubts regarding the determination of paternity in relation to a child that could have been conceived during the life of the deceased husband.

The approach of Roman lawyers regarding the definition of the meaning and grounds of giving a dowry (dowry) is quite interesting. The dowry was a part of the family property that was given to the

daughter when she got married, a property or monetary contribution of the bride's family to the new family. The obligation to provide a dowry to the groom's family is typical for the customary law of many nations. However, in Roman law, the latter was not always mandatory. In particular, the obligation to transfer dowry was assumed only in marriages without male authority (sine manu). In an earlier period, a man received a dowry in his property, but it is not possible to consider such property as absolute. The husband could only use the property that was part of the dowry, but could not dispose of it freely, and in case of divorce he had to return it [2, p. 117]. In a later period (the first 3 centuries AD), the procedure for the transfer of dowry received, as it were, a special legal regulation, at the same time, the husband was considered the owner of things that were part of the dowry also conditionally. Thus, it was not allowed to conclude any transactions regarding the alienation of land plots without the consent of the wife, and in case of termination of the marriage, the dowry was returned. Therefore, it can be argued that the dowry was a kind of guarantor of financial security and independence for a woman in a marriage without male authority, and it is clear that the possibility of providing a dowry directly depended on the level of wealth of the bride's family.

The legal basis for the termination of marriage was the death of one of the spouses. However, taking into account that the possibility of marriage was a privilege of free citizens of Rome, accordingly, the loss of citizenship or freedom by one of the spouses was also grounds for terminating the marriage. As stated by Paul: "Marriage is terminated by divorce, death, capture or other case of slavery of one of them (spouses)" (D.24.2.1) [9, p. 39].

The attitude to divorce in the classical era was quite loyal, as it was allowed on the initiative of both spouses and on the initiative of one of the parties. However, during the period of the monarchy, divorce by mutual consent was prohibited, and divorce was allowed at the initiative of one of the spouses in clearly defined cases: violation of marital fidelity by one of the spouses, an attempt on the life of one of them, inability to have sex or a desire to go to a monastery. Accordingly, if the specified reasons were absent, the initiator of the divorce had to pay a fine. "Unfounded divorce was

considered a dishonorable act, priests excommunicated the husband, and he sacrificed part of his property to propitiate the gods under whose patronage the marriage was concluded" [9, p. 40].

Also, in Rome there was a special ceremony of marriage dissolution, which was not characteristic of other legal systems. In particular, the divorce ceremony was a religious act that annulled the religious unity of the spouses and, accordingly, annulled the marriage union, which was based on conferration, and therefore was considered a form of divorce.

Also, in Rome there was a special ceremony of dissolution of marriage, which was not characteristic of other legal systems. In particular, the divorce ceremony was a religious act that annulled the religious unity of the spouses and, accordingly, annulled the marriage union, which was based on conferration, and therefore was considered a form of divorce.

Conclusions. Thus, Roman lawyers considered marriage as a socially significant union of a man and a woman, which determined the legal status of the wife and children born in this union, as well as property relations between the spouses. Roman private law knows several legal forms of marriage and de facto marriage – these are "cum manu" and "sine manu". One cannot fail to notice that along with marriages concluded in accordance with the law, there were always actual marriage relationships – cocubinage, which occupied a special place in the family law of Rome.

Divorce in Ancient Rome was possible and involved a special ceremony, which was not and is not characteristic of any legal system in the world. The attitude to divorce in the classical era was quite loyal, as it was allowed at the initiative of both spouses and at the initiative of one of the parties. However, during the period of the monarchy, divorce by mutual consent was prohibited, and divorce without grounds was considered a dishonorable act.

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ПРАВОВА ПРИРОДА ШЛЮБУ В ДАВНЬОМУ РИМІ

Статтю присвячено дослідженню правової природи римського шлюбу. На підставі римських правових джерел, наукових праць римських юристів визначено класифікацію римських шлюбів, підстави та умови їх укладення і розірвання, окреслено відмінності між законними римським шлюбом і незаконним. У роботі акцентується увага на визначенні конкубінату як особливої форми регулювання фактичних шлюбних стосунків, на особливостях та значенні посагу в римському сімейному праві.

Ключові слова: *римський шлюб, класифікація римських шлюбів, конкубінат, розірвання шлюбу, припинення шлюбу, шлюбний вік, посаг.*