

# ІСТОРИЧНА ЦИВІЛІСТИКА

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## MEANING OF THE FAMILY IN ANCIENT ROME

**The actuality of researching** in statutes of the Roman family law is obvious, because the marriage law in most countries is primarily based on considerations of the legal relationship. The concept of marriage in Roman law is treated as a «Union of man and woman, the union of all life, the connection to the divine and human right» [10]. There is also another definition: «The union of husband and wife, based on a joint life» [10].

Both definitions are suited more to the ancient Roman marriage – «cum manu», that called «Marriage with a husband authority «when his wife passed all her property to husband; than to the new, when, in the disappearance of the «manu», the wife kept their property separate from her husband, and remained subservient to her father and member of her family.

**The purpose of this research** is to analyze the specific institution of Roman law; identification and reflection of his legal significance, correlation with other institutes, give the right place in the legal system. So we need to find out: the concept of the family; concept of the marriage; the conditions of the marriage; types of marriage in Roman law; circumstances, stopping the marriage; differences in family relationships depending on the type of marriage in Roman law.

The main features of the family system were expressed in Roman law with exceptional completeness and consistency, and marked a change in their profound changes in the conditions of the economic life of Rome and its ideology of the ruling classes. Family law in Rome begins with a family, which was based on the power of the head of family and the (householder) («paterfamilias»). All members in such family have to submit to the power of one person.

This is agnatic family, which structure except for the head of family were: his wife (in manumariti), she was submitted to husband authorities, his children (in patria pot estate), wife's sons in marriage»cum manu» and their subordinates power men who

were themselves subject to the head of family, and the authorities of the latter, and, finally, all the of spring subservient sons, grandchildren, great-grandchildren, and so on. All subordinated members of the family were called «sui» [1].

In such a family just house holder was quite legal capacity person (persona seizures), and the rest of the family did not have full legal capacity (personae alien inures). Hence the expression, that the wife towards her husband is «locofiliae», mother for children – «locosororis» and so on. The son and grandsons did not get freedom from subjection of his father's authority, even if they receive Magistrate. The age of subservient did not mean anything on power of the head of the family. His powers toted only with death rat the will of the householder [8].

There were two kinds of relationship in Roman law.

1. Agnatic relationship. Submission to power of the head of the family was determined agnatic relationship, on the basis of which was based Roman family. Daughter «pater familias», that get married, came under the authority of the new householder. She became agnatic relative of new family and ceased to be agnatic relative of her own father and ex-members of her family. «Agnates called those persons who were related by kinship. The legal kinship is one which was made by males» [12].

It could be close agnatic relationship and distant. Close relatives were persons under the authority of a certain householder. Distant agnatic relatives were persons who had once been under his authority. With the development of economy, the transformation of Rome from a manufacture society in the consumer society the power of the house holder began to take over certain limits; relations by blood (kognatic relationship) was becoming increasingly important.

Kognatic relatives were people who have at least one common ancestor. Blood relatives were:

- a) relatives in a straight line or side line: - Relatives in a straight line («linea recta») – persons

originating one from one another (grandfather, father, son). A straight line may be upward («lineaascendens») or descending («lineadescedens») depending on whether it is carried out by the offspring to an ancestor or from an ancestor to the offspring; Relatives in the lateral line («lineacollaterals») – persons having a common ancestor, but non-relative in a straight line (brothers, sisters, cousins, nephews, and others.);

b) marriage («legitimi») and illegitimate («spurn») relatives;

c) full- or half- relatives: – Full blood relatives («germani») descended from the same ancestors; half- relatives («consanguinei and uterine») come from the same father and different mothers («consanguinei»), or vice versa, the same mother and different fathers («uterine»).

Nepotism («affinitas») – is the relationship between husband and cognatic relatives of the spouse (for instance, nepotism was between husband and wife cognatic relatives). Degree of relationship was estimated by number of births, which compares a person separated one from another: in a straight line – the number of births directly between these persons ascending or descending, and on the sideline – the number of births from a common ancestor. Degree of nepotism calculated in the same way as the spouse relationship (for example, the husband is the father-in-laws 1st degree in a straight line). [3]

Roman history has passed through the development of agnatic families to cognatic kinship:

– Consortium («consortium») was the first species of the family – a family community based on agnatic kinship and after the collapse emerged on individual groups. At the head of the community was an elder adult men who decided the fate of the community in general meeting;

– The patriarchal family («familia») was replaced the consortium;

– cognatic family came later with the improvement of the legal status of persons who did not have full legal capacity («alieni iuris»). Cognatic family was the union of families, only blood relatives who living together. In cognatic family usually were the head of the family, his wife, children and other close relatives. The power of the householder was no longer unlimited, and was reduced to a wise punishment («ad modicum castigation»).

With the advent of cognatic family was recognized that the slaves may have family ties («cognatio servilis»); this situation was new to the Romans. With the development of the patriarchal family, when slaves were merely «talking instrument» slaves could only cohabit and their family ties were not recognized [4].

It was consistent limit of householder power in all its forms: in relation to his wife, children and their offspring and performed in parallel gradual replacement agnatic kinship by cognatic kinship constitute the main content of the development process of the Roman family law. This development was based on the profound changes in the economic life of Rome, influenced the course of his political history, together with the serial change of ownership release of contractual liability law from its original formalism.

Around the III century BC the first form of marriage in Rome was called marriage «cum manu» – marriage established by the authorities of the husband over the wife. Entering into a marriage, a woman falls under the authority of her husband or the householder. It is sometimes the women managed to escape the husband authorities. To do this, she had to marry without observing any formalities («sine manu») – marriage is not generated by the power of the husband over the wife. If within one year after the conclusion of such a marriage, a woman spent three nights in a row outside the home of her husband.

Marriage «sine manu» was marriage, that based on equality of spouses, independence of the wife from her husband. The wife was the mistress of the house and the mother of children. The remaining questions were administered by her husband. Presumably in the second period of the republic, this form of marriage became dominant [7]. Later there was a form of marriage, concubinage as permitted by law constant (not random) cohabitation of men and women, but does not meet the requirements of a lawful marriage. This is a permanent cohabitation of two persons, none of whom is married to create vital communities. Concubine's children were not legitimate, so they were limited in inheritance rights.

In marriage «cum manu» all the property of wife become in full ownership of her husband, merging inseparably with his property, which was huddled before marriage. Even in the case of termination of marriage -property, that brought by wife, didn't returned to her. Wife got certain share in the order of succession in the event of her husband's death [5].

In «sine manu» marriage property of the spouses was separate. Husband could manage of the wife's property only if wife gave this right herself; in this case, the relationship between husband and wife built on the grounds of agency contract. Acquisition wife during the marriage (sine manu) were also coming into her property; however, if any property dispute arises between spouses on the right of ownership, it was presumption that everything belongs to the husband while the wife does not prove that the ownership of this thing belongs to her [9].

Most marriages in wealthy families of ancient Rome consisted of convenience – for procreation (lat. *Matrimonium* – marriage, from lat. *Mater* – mother), to consolidate holdings, as well as to strengthen political alliances. Among the poor people also dominated the convenience, but did not exclude love-match. Actually authors have opinion that the republic was the heyday of the Roman marriage, because men are strictly followed the morals and behavior of their wives. Partnership spouses in the modern sense did not need to, it was not only unnecessary but also impossible, in ancient Rome, it was thought that his wife had to dedicate his life to support her husband and take care of him.

For the marriage did not exist special legal ceremonies. Antique lawyers regarded marriage as a mutual consent to marriage and cohabitation. So, Modestinus wrote: «The long-term bond free woman should be understood not as concubinage, but as marriage, unless she hunted with her body» [6]. It was necessary to present the tendency to marriage – Lat. *Affectiomaritalis*, which meant that the couple recognize each other as husband and wife, and behaves accordingly. Another important circumstance – the wife should be live in the house of her husband, and, according to the ancient lawyers from that moment began the marriage.

Wedding ceremony could be preceded by an engagement (lat. *Sponsalia*, from Lat. *Spondere* – «promise»), in which fathers agreed on the upcoming wedding. This custom is observed primarily in the upper-class families and in legal terms was the only holiday. Groom handed the bride along with the gifts as a sign of loyalty to an iron ring (lat. *Anulus pronubus*) without a stone, at a later time – a gold ring. The bride wore a ring on the ring finger of his left hand, because the Romans believed that there goes to the heart of vein. Engagement can be canceled at any time by words: «*condition etua non utor*» lat. – «Don't take your proposal».

In conclusion of marriage is often drafted marriage agreement (lat. *Tabula nuptiales*). This contract was not mandatory; it regulated the issues related to dowry and the formalities for its payment in case of divorce. During the wedding contract was read aloud, and then ten witnesses put their seals.

The marriage contract drawn upon the plates, none of which was saved. Marriage contracts that time is a sheet of papyrus on which are listed all the decorations and clothes of the bride, that formed her dowry.

Dowry-things or other part of the property provided by the wife to her husband, her house holder or a third party»*ad oneramatri m oni iferenda*», to facilitate financial difficulties family life [2].

In ancient republic times, when marriages were almost always»*cum manu*», it wasn't any special legal regulation of dowry. Therefore, if there was a special agreement on this issue, the dowry was not distinguished from the rest of the property of wife; all dowry was fully gave to husband.

When the marriage «*sine manu*» entered into the practice, it was established special legal regime of dowry. Approximately two centuries BC it was included the rule – in case of verbal agreement with her husband (the so-called *cautioreiuxoriae*), in which the husband accepted the obligation to return the dowry in case of termination of marriage (whether as a result of divorce or death of a spouse). In the absence of such an agreement the property of her stayed at husband forever, but because of domestic views husband leave his bequest in favor to his wife. In case if marriage was stopped by divorce, Praetor began to give to wife a claim for partial return of dowry as a penalty for the unjustified divorce.

About the circumstances of ceasing marriage – a marriage recognized void: between relatives in a straight line, as well as between the lateral relatives, of whom at least one is worth to a common ancestor in the first degree relatives. Similar rules apply to the relatives in-laws. In addition to the conditions set forth validity of the marriage were presented some more specific requirements. For example, a provincial magistrate could not marry a citizen of this province [7].

Legal marriage stopped only on legal grounds. Thus, except the death of one spouse, the marriage is terminated:

1. Handling of one spouse into slavery. However, the marriage was considered goes on all the time, if both spouses were together in captivity.

2. If civil rights were lost.

3. Changes in marital status of one of the spouses, which sets a degree agnatic relationship with another spouse in which the marriage would not be possible, for example, *paterfamilias* adopt daughter's husband without releasing her from the «*patria potestas*».

4. By the will of the husband or his *paterfamilias* in marriage «*cum manu*»; by the will of the husband or wife, or by their agreement in marriage «*sine manu*». There were no restrictions for second marriage after the first one in the period of the Republic, or in the period of the Principate. Divorce in the classical period was free and was admitted as a consenting spouse (*divortium*), and by unilateral statement one of spouse (*repudium*). Freedom of divorce was the start for Roman marriage law.

**Summarizing**, we can say that the family is the smallest social group. But from the harmony of family relationships depends the welfare of the whole

society and, consequently, of the state. Of course, the juridical science is interested in aspects of family life, which are regulated by a legal instrument.

The provisions of the Family Code, there is no immediate reception of Roman law, but traces its quite noticeable in the provisions of the Family as well as the Civil Code. It is not superfluous to note that in family relations rights and obligations are so closely intertwined that it is sometimes difficult to distinguish from the civilian family relationship. Therefore, a comprehensive study of Roman law plays an important role, rather, in the development of legal science and education, and, of course, practice, rather than in the development of legislation.

We can also note that the Roman family life was expressed primarily in the following features:

- 1) the primary role of agnatic kinship;
- 2) a comprehensive power of the householder;

3) the term «family» included not only agnates, but slaves, as well as inanimate objects.

Correct Roman marriage (in the classical period) could be in two specific forms of ritual (cum manu) and informal (sine manu). The differences in these two forms were essential for the property relations within the family and for the fate of women in the event of termination of the marriage. The marriage that was made with all the rights -stopped only on legal grounds. Wife followed by civil status of her husband. Her interfamilial status was subordinate: she was equal to daughter and her husband acquired a power over her like householder.

The importance of family law is obvious, because it is intended to protect the interests of the state. Thus, in ancient Rome, and in the modern world on the marital relationship is given particular attention by the lawyers – practitioners and theorists.

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##### MEANING OF THE FAMILY IN ANCIENT ROME

In Ancient Rome institute of the Roman family is one of the specific. The specificity of it lies in the fact that not every family and not all related nature of men and women recognized marriage, and generate legal consequences. The main role was at legal relationships, as for blood connection between persons – it was secondary.

**Key words:** family relationship, kinship, nepotism, marriage, Roman law.

#### Смілянecь Ірина Петрівна

##### ЗНАЧЕННЯ СІМ'Ї У СТАРОДАВНЬОМУ РИМІ

У стародавньому Римі інститут римської сім'ї відноситься до числа специфічних. Специфікація полягає в тому, що не кожна сім'я і не всякі спорідненого характеру відносини чоловіка і жінки визнавалися шлюбом, що породжує правові наслідки. Головну роль відігравало агнатичне споріднення, іншими словами – юридичне, а кровний (когнатичний) зв'язок вважався другорядним.

**Ключові слова:** сімейні правовідносини, спорідненість, свояцтво, шлюб, римське право.

#### Смилянecь Ирина Петровна

##### ЗНАЧЕНИЕ СЕМЬИ В ДРЕВНЕМ РИМЕ

В древнем Риме институт римской семьи относится к числу специфических. Специфика эта заключается в том, что не каждая семья и не всякие родственного характера отношения мужчины и женщины признавались браком, порождающим правовые последствия. Главную роль играло агнатическое родство, другими словами – юридическое, а кровная (когнатическая) связь считалась второстепенной.

**Ключевые слова:** семейные правоотношения, родство, своячество, брак, римское право.