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FEATURES OF THE REGULATION OF MARRIAGE AND FAMILY RELATIONS IN ROMAN AND INTERNATIONAL PRIVATE LAW

The Roman lawyer, Modestin (III century AD), defined marriage as a union of husband and wife, the union of all life, the community of divine and human rights. This definition did not correspond to the actual state of things. The fact is that the first form of marriage in Rome was a marriage called *cum manu* – a marriage that established the power of a husband over his wife. In this marriage, the woman fell under the control of her husband or his master and became an *agnatka* (which is related to the legal affinity that is formed with the help of men) in the house of the husband. Marriage came into force with the fulfillment of a number of conditions and rituals, the most important part of which was the symbolic "put hand" on a woman (similar to the procedure of mantipation), that is why the oldest form of marriage was defined as marriage with the imposition of a hand [4].

The personal and property relations of spouses during the marriage of *cum manu* were distinguished by patriarchal severity. The wife did not have legal independence. Moreover, the power of her husband over her was almost unlimited. A person could subject her to any punishment, demand her (as a thing) back, if she left her house without permission, sell her into slavery. Just like slaves, the children and the wife were completely deprived of legal capacity. The breadth of the lawlessness of the husband to some extent limited to public opinion. The punishment for the offense of his wife was determined by the council, consisting of the relatives of the wife.

The property relations of the spouses also was formed the same way. All property that the wife had before marrying or acquired during the marriage (for example, inherited), automatically became the property of a man. In practice, the wife could not be the owner of the property, and therefore could not enter into transactions. Such a restriction of the rights of the wife to a certain extent was offset by the fact that she could be a successor to the death of her husband on a par with the children and shared the social situation of her husband: the honors that were revealed to him, spread to her.

However, in ancient times a woman could escape the power of her husband. To do this, she had to marry without complying with any formalities (*sine manu*).

Marriage *sine manu* – a form of marriage, based on the equality of spouses, the independence of his wife from her husband. The wife was the mistress of the house and mother of children. The rest of the questions were in the hands of a man. Probably in the second period of the republic, this form of marriage came to replace

cum manu and became predominant. Passed without solemn procedures, it was assumed that the bride expressed one or another way of consent [3].

Marriage sine mano differently determined the personal and property relations of the spouses. Men's power over his wife as such was gone. The wife kept the legal status that she had before marriage. If she was under the authority of her pater familias, that is, the person alienijuris, this position was maintained after the marriage, and if not under the authority of his pater familias, remained independent. Her husband's power did not apply to her. However, in some internal family relationships, the supremacy of the husband was maintained (for example, the decision of the choice of the place of residence of the family, methods and methods of raising children, etc.) [5].

Similarly, the property relations of the spouses were regulated, which was based on the principle of separation of property of husband and wife. Everything that was owned by a wife before marriage or acquired during marriage was her property if she was legally independent. The wife had the right to own, use and dispose of this property on her own.

However, it was somewhat limited to jus commercii couples with each other. In general, the husband and wife had the right to enter into a variety of types of contracts between themselves, however, one of them – a gift – was possible only with significant reservations.

In the first century B.C. there was a special form of marriage – coemptio. This is the constant coexistence of two people, none of whom were married in order to create a community of life. When coemptio, the rights of children and the concubine herself were limited. Thus, children born in a coemptive manner were not considered legal, therefore they were limited in hereditary rights.

Marriage is broken in case of death, loss of freedom or nationality by one of the spouses. Capitis deminutio minima (small capital losses) is not affected by marriage. Some texts, which are doubtful, are admitted to preservation of marriage in the event of expulsion (interdictio aqua et ignis) or the reference (deportation in insulam) when the citizenship was lost, so that the spouse retained affection maritalis. Marriage stopped in case of captivity of one or both spouses. Also, the marriage was terminated by the will of the spouse – by divorce. A formal declaration of divorce – repudium – could be sent through a messenger (nuntium mittere, remittere), letters (libellum) or declared to a spouse personally in the presence of seven witnesses. The latter requirement was introduced by the August Act of adultery (lex Iulia de adulteriis) and may have been intended only in cases where the marriage was terminated because of the unfaithfulness of the wife, since the continuation of such a marriage became punishable for the man. Often the marriage is dissolved only because the objective circumstances did not allow him to continue properly: the

construction of her husband in the priesthood, entering the military service, the disease. The natural cause of the divorce was considered infertility of the wife. At the same time, the principle of Roman law was the freedom of divorce [1].

Marriage and family relations in private international law are the solution to conflicts regarding: the conclusion and termination of a "marriage with a foreign element", that is, marriage between persons of different nationality or the implementation of the said actions abroad; regulation of marital relations in marriages with a foreign element; "international adoption", an adoption of a child by persons with other state affiliation; alimony obligations of parents and children, etc. In modern conditions, in the field of legal regulation of family relations, the problem of regulation of the so-called "new" relationships associated with scientific achievements and changes in value orientations in some societies (for example, relations in relation to "civil" marriages, same-sex marriages, surrogate motherhood, etc., also becomes acute).

The reason for conflicts in the field of marriage and family relations is the application in different countries of different legal regulation to identical factual circumstances. The legal system of each state establishes a family law institution, such as marriage.

Material requirements is the marriage age, sex, the presence and degree of kinship, the voluntary consent for the marriage of the parties, their parents or other persons, the absence of a previous uninterrupted marriage, health status, etc. Failure to comply with these requirements entails the invalidation of the marriage.

Thus, in Ukraine, according to the material requirements of the marriage, in accordance with Articles 21-26 of the Criminal Code of Ukraine, the achievements of marriage age (for women – 18 years, men – 18 years), voluntary consent, single-parentage, different sex parties, as well as the absence of circumstances hindering the conclusion of a marriage (for example, the presence of direct kinship with marriage contractors, etc.).

In the laws of different states, there are great differences regarding the marriage age of marriageable persons. For example, under French law, the marriage age for men is 18 years, women 15 years; in Japan 18 and 16 respectively; in Spain 14 years and 12; in different states of United States the marriage age can range from 15 to 21 for men and from 14 to 18 for women. In some states there is no age-setting standard for married people at all.

The diversity of the parties under the laws of individual states is not a prerequisite for marriage. Thus, under the legislation of Sweden, Holland, France, Italy, same-sex marriages are permitted.

Single-marriage is a prerequisite for marriage in Ukraine, the United States, Europe and Latin America. In Muslim countries, marriages remain polygamous (a

man can have up to four wives). The customary right of individual African tribes does not at all include any restrictions on polygamy regarding the number of women or men [2].

Another requirement for a marriage procedure, formal requirements, which are quite different according to the laws of different states:

a) only the civil registration form of marriage is recognized in the competent authorities of the state (Ukraine, Russia, France, Germany, Japan, etc.);

b) the civilian and religious forms of marriage are permitted in such states as England, Italy, Brazil, etc. ;

c) only the religious form of marriage is lawful and generates legal consequences in most Muslim states (Iraq, Iran) and Israel, Greece, Liechtenstein;

d) legalized marriages are permitted, that is, marriages of general or customary law, "common law marriage" (known in some US states, in several provinces of Canada). In this case, the voluntary will to become a husband and wife and the existence of actual marital relations are sufficient. As a comparison, under the law of the United Arab Emirates, the joint residence of a man and a woman without a marriage, as well as a kiss in front of people, is punishable by imprisonment.

Significant differences in the laws of different countries are also related to the termination of marriage. There are still states in which divorce is not allowed (Ireland, Andorra, some Latin American states, where there is a significant influence on Catholicism). The dissolution of marriage in Muslim countries is also not approved, but it is possible. For example, under the law of the United Arab Emirates, a woman may demand divorce if her husband provides her with less than her father. It is enough for a man to say the word "divorce" three times so that the marriage is terminated.

In some states, there is an exhaustive list of grounds for divorce, to which the spouses do not mutually agree (England, some US states); the laws of other states are more liberal and allow the dissolution of marriage on various grounds, including the mutual consent of the spouses. For example, under Swedish law, the possibility of an immediate dissolution of a marriage without any additional conditions, grounds, or evidence of a breakdown of marriage in the event of the mutual consent of the spouses is allowed. Exceptions are the cases when the spouses have children under 16 years of age. In this case, the dissolution of the marriage is possible only after the expiration of the 6-month period.

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