

# **T**HE WOMAN IN THE ROMAN SOCIETY

## **Ideals – Law – Practice**

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Meeting 6-7 Financial side of marriage: dowry, matrimonial property. Everyday life of a couple: children. Augustean Laws on family relations, *ius trium liberorum*. Adulterous wives & Adulterous husbands

### **E. OBLIGATION TO MARRY: THE JULIAN MARRIAGE LAWS**

In 18 B.C., the Emperor Augustus turned his attention to social problems at Rome. Extravagance and adultery were widespread. Among the upper classes, marriage was increasingly infrequent and, many couples who did marry failed to produce offspring. Augustus, who hoped thereby to elevate both the morals and the numbers of the upper classes in Rome, and to increase the population of native Italians in Italy, enacted laws to encourage marriage and having children (*lex Julia de maritandis ordinibus*), including provisions establishing adultery as a crime. The law against adultery made the offence a crime punishable by exile and confiscation of property. Fathers were permitted to kill daughters and their partners in adultery. Husbands could kill the partners under certain circumstances and were required to divorce adulterous wives. Augustus himself was obliged to invoke the law against his own daughter, Julia, and relegated her to the island of Pandateria. The Augustan social laws were badly received and were modified in A.D. 9 by the *lex Papia Poppaea*, named for the two bachelor consuls of that year. The earlier and later laws are often referred to in juristic sources as the *lex Julia et Papia*. In part as a result of Christian opposition to such policies, the laws were eventually nearly all repealed or fell into disuse under Constantine and later emperors, including the emperor Justinian. Only the prohibitions against intermarriage, as that between senators and actresses, remained. The first three of the texts that follow do not come from the Roman jurists but give background for the passing of the laws. The remaining texts in this section are from legal works interpreting the provisions of this legislation by a number of jurists. The juristic sources are also our best source for the actual provisions of the laws.

#### **Men must marry. Rome, 131 B.C. (fr. 6 Malcovati. L)**

Speech of the censor Quintus Caecilius Metellus Macedonicus about the law requiring men to marry in order to produce children. According to Livy (Per. 59), in 17 B.C. Augustus read out this speech, which seemed "written for the hour", in the Senate in support of his own legislation encouraging marriage and childbearing

If we could survive without a wife, citizens of Rome, all of us would do without that nuisance; but since nature has so decreed that we cannot manage comfortably with them, nor live in any way without them, we must plan for our lasting preservation rather than for our temporary pleasure.

#### **121. Prizes for marriage and having children. Rome, 1st cent. A.D. (Dio Cassius, *History of Rome* 54.16.1-1. Early 3rd cent. A.D. G)**

[Augustus] assessed heavier taxes on unmarried men and women without husbands, and by contrast offered awards for marriage and childbearing. And since there were more males than females among the nobility, he permitted anyone who wished (except for senators) to marry freedwomen, and decreed that children of such marriages be legitimate.

#### **122. Augustus' law. Rome, 18 B.C. (Suetonius, *Life of Augustus* 34. L)**

He reformed the laws and completely overhauled some of them, such as the sumptuary law, that on adultery and chastity, that on bribery, and marriage of the various classes. Having shown greater severity in the emendation of this last than the others, as a result of the agitation of its opponents he was unable to get it approved except by abolishing or mitigating part of the penalty, conceding a three-year grace-period (before remarriage) and increasing the rewards (for having children). Nevertheless, when, during a public show the order of knights asked him with insistence to revoke it, he summoned the children of Germanicus, [18] holding some of them near him and setting others on their father's knee; and in so doing he gave the demonstrators to understand through his affectionate gestures and expressions that they should not object to imitating that young man's example. Moreover, when he found out that the law was being sidestepped through engagements to young girls and frequent divorces, he put a time limit on engagement and clamped down on divorce.

### Res gestae divi Augusti

8. When I was consul the fifth time (29 B.C.E.), I increased the number of patricians by order of the people and senate. I read the roll of the senate three times, and in my sixth consulate (28 B.C.E.) I made a census of the people with Marcus Agrippa as my colleague. I conducted a lustrum, after a forty-one year gap, in which lustrum were counted 4,063,000 heads of Roman citizens. Then again, with consular imperium I conducted a lustrum alone when Gaius Censorinus and Gaius Asinius were consuls (8 B.C.E.), in which lustrum were counted 4,233,000 heads of Roman citizens. And the third time, with consular imperium, I conducted a lustrum with my son Tiberius Caesar as colleague, when Sextus Pompeius and Sextus Appuleius were consuls (14 A.C.E.), in which lustrum were counted 4,937,000 of the heads of Roman citizens. By new laws passed with my sponsorship, I restored many traditions of the ancestors, which were falling into disuse in our age, and myself I handed on precedents of many things to be imitated in later generations.

### 123. The consequences of adultery (Paul, *Opinions* 2.26.1-8, 10-12, 14-17. L)

2.26 (1) In the second chapter of the *lex Julia* concerning adultery, either an adoptive or a natural father is permitted to kill with his own hands an adulterer caught in the act with his daughter in his own house or in that of his son-in-law, no matter what his rank may be.

(2) If a son under paternal power, who is the father, should surprise his daughter in the act of adultery, while it is inferred from the words of the law that he cannot kill her, still, he ought to be permitted to do so.

(3) Again, it is provided in the fifth chapter of the *lex Julia* that it is permitted to detain an adulterer who has been caught in the act for twenty hours, calling neighbours to witness.

(4) A husband cannot kill anyone taken in adultery except persons who are infamous, and those who sell their bodies for gain, as well as slaves. His wife, however, is excepted, and he is forbidden to kill her.

(5) It has been decided that a husband who kills his wife when caught with an adulterer should be punished more leniently, for the reason that he committed the act through impatience caused by just suffering.

(6) After having killed the adulterer, the husband should at once dismiss his wife, and publicly declare within the next three days with what adulterer, and in what place he found his wife.

(7) A husband who surprises his wife in adultery can only kill the adulterer when he catches him in his own house.

(8) It has been decided that a husband who does not at once dismiss his wife whom he has taken in adultery can be prosecuted as a pimp.

(10) It should be noted that two adulterers can be accused at the same time with the wife, but more than that number cannot be.

(11) It has been decided that adultery cannot be committed with women who have charge of any business or shop. [20]

(12) Anyone who has sexual relations with a free male without his consent shall be punished with death.

(14) It has been held that women convicted of adultery shall be punished with the loss of half of their dowry and the third of their goods, and by relegation to an island. The adulterer, however, shall be deprived of half his property, and shall also be punished by relegation to an island; provided the parties are exiled to different islands.

(15) It has been decided that the penalty for incest, which in case of a man is deportation to an island, shall not be inflicted upon the woman; that is to say when she has not been convicted under the *lex Julia* concerning adultery.

(16) Sexual intercourse with female slaves, unless they are deteriorated in value or an attempt is made against their mistress through them, is not considered an injury.

(17) In a case of adultery a postponement cannot be granted.

**127. The right of life and death (*Digest* 48.5.21; 48.5.22; 48.5.23 pr.-2, 4; 48.5.24 pr.-4; 48.5.25 pr.-3; 48.5.26 pr.; 48.5.27 pr.-1. L)**

48.5.21 (Papinian, *On Adultery*, book 1) The right is granted to the father to kill an adulterer with a daughter while she is under his power. Therefore no other relative can legally do this, nor can a son in paternal power, who is a father.

48.5.22 (Ulpian, *On Adultery*, book 1) (pr.) Hence it can happen that neither the father nor the grandfather can kill the adulterer. This is not unreasonable, for he cannot be considered to have anyone in his power who is not subject to his power.

48.5.23 (Papinian, *On Adultery*, book 1) (pr.) In this law, the natural father is not distinguished from the adoptive father. (1) In the accusation of his daughter, who is a widow, the father is not entitled to the preference. (2) The right to kill the adulterer is granted to the father in his own house, even though his daughter does not live there, or in the house of his son-in-law ... (4) Hence the father, and not the husband, has the right to kill the woman and any adulterer; for the reason that, in general, paternal affection is solicitous for the interests of the children, but the heat and impetuosity of the husband, who decides too quickly, had to be restrained.

48.5.24 (Ulpian, *On Adultery*, book 1) (pr.) What the law says, that is, 'if he finds the adulterer in his daughter,' does not seem to be superfluous; for it signifies that the father shall have this power only if he surprises his daughter in the very act of adultery. Labeo also adopts this opinion; and Pomponius [23] says that the man is killed when caught in the very performance of the sexual act. This is what Solon and Draco mean by "in the act" (*en ergôî*).

(1) It is sufficient for the father for his daughter to be subject to his power at the time when he kills her, although she may not have been at the time when he gave her in marriage; for suppose that she had afterwards come under his power.

(2) Therefore the father shall not be permitted to kill the parties wherever he surprises them, but only in his own house, or in that of his son-in-law. The reason for this is, that the legislator thought that the injury was greater where the daughter caused the adulterer to be introduced into the house of her father or her husband.

(3) If, however, her father lives elsewhere, and has another house in which he does not reside, and his daughter is caught there, he cannot kill her.

(4) Where the law says, 'He may kill his daughter at once,' this must be understood to mean that having today killed the adulterer he cannot reserve his daughter to be killed some days later; and vice versa; for he should kill both of them with one blow and one attack, being inflamed by the same resentment against both. But if, without any connivance on his part, his daughter should take to flight, while he is killing the adulterer, and she should be caught and put to death some hours afterwards by her father, who pursued her, he will be considered to have killed her immediately.

48.5.25 (Macer, [24] *Criminal Proceedings*, book 1) (pr.) A husband is also permitted to kill a man who commits adultery with his wife, but not everyone without distinction, as the father is; for it is provided by this law that the husband can kill the adulterer if he surprises him in his own house (but not in the house of his father-in-law), nor if the adulterer was formerly a pimp; or formerly exercised the profession of an actor or appeared on the stage to dance or sing; or had been convicted in a criminal prosecution and not been restored to his civil rights; or if he is the freedman of the husband or the wife, or of the father or mother, or of

the son or the daughter of either of them (nor does it make any difference whether he belonged exclusively to one of the persons above mentioned, or was held in common with another), or if he is a slave.

(1) It is also provided that a husband who has killed any one of these must dismiss his wife without delay.

(2) It is held by many authorities to make no difference whether the husband is his own master, or a son in paternal power.

(3) With reference to both parties, the question arises, in accordance with the spirit of the law, whether the father can kill a magistrate, and also where his daughter is of bad reputation, or a wife has been illegally married, whether the father or the husband will still retain his right; and what should be done if the father or husband is a pimp, or is branded with ignominy for some reason or other. It may properly be held that those have a right to kill who can bring an accusation as a father or a husband.

48.5.26 (Ulpian, *Lex Julia on Adultery*, book 2) (pr.) It is provided as follows in the fifth section of the Julian law: 'That where a husband has caught an adulterer in the act of sexual intercourse with his wife, and is either unwilling or not allowed to kill him, he can hold him lawfully and without deceit for not more than twenty consecutive hours of the day and night, in order to obtain evidence of the crime.'

48.5.27 (Ulpian, *Disputations*, book 3) (pr.) A woman cannot be accused of adultery during marriage by anyone who, in addition to the husband, is permitted to bring the accusation; for a third party should not annoy a wife who is approved by her husband, and disturb a quiet marriage, unless he has previously accused the husband of pimping (for his wife). (1) When, however, the charge has been abandoned by the husband, it is proper for it to be prosecuted by another.

## Notes

23. Primarily a teacher and writer (no mention is made of his holding an imperial post), Sextus Pomponius lived in the mid-second century A.D. and wrote influential commentaries on Q. Mucius, Sabinus, and the Praetor's Edict.

24. Little is known of Aemilius Macer other than that he was active in the early third century A.D. and was a member of a senatorial family.

C. 9.9.1

Severus/Caracalla to Cassia (197 AD): The Julian Law declares that wives have no right to bring criminal accusations for adultery, even as regards their own marriage, for while the law grants this privilege to men it does not concede it to women....

## F. FINANCIAL SIDE OF A MARRIAGE

DOWRY/FINANCIAL SEPARATION/GIFTS BETWEEN HUSBANDS AND WIVES

THE DOWRY

Tituli ex corpore Ulpiani, 6.1-2; 6.4; 6.6-7; 6.10; 6.12-13

A dowry is either transferred, (*dotis datio*), declared by the giver (*dotis dictio*) or promised (*dotis promissio*). A woman who is about to be married can declare her dowry, and her debtor can do so, at her direction, a male ascendant of the woman related to her through the male sex, such as her father or paternal grandfather, can likewise so do. Any person can give or promise a dowry.

When a woman dies during the marriage, her dowry given by her father reverts to him, a fifth of the same for each child she leaves being retained by the husband, no matter what the number maybe. If her father is not living, the dowry remains in the hands of the husband. When a divorce takes place, if the woman is in her own power, she herself has the right to sue for the recovery of the dowry. If, however, she is under the power of her father, he having been joined with his daughter can bring the action for recovery of the dowry ...

If the woman dies after the divorce, no right of action will be granted to her heir, unless her husband has been in default in restoring her dowry.

A portion is retained on account of children, when the divorce took place either through the fault of the wife, or her father, if she is in his power. For then a sixth part of the dowry is retained in the name of each child, but not more than three-sixths altogether...

A sixth of the dowry is also retained on the ground of flagrant breach of morals; an eighth, where the offence is not so serious. Adultery alone comes under the head of a flagrant breach of morals all other improper acts are classed as less serious.

The adultery of a husband if he is of age, is punished by requiring him to return the dowry at once, if it was to have been returned after a certain time; if his offence is less grave, it must be returned within six months.

QUOD AULA AGERIA NUMERIO NEGIDIO MARITO DOTEM DEDIT, QUIDQUID OB EAM REM MELIUS AEQUIUS ERIT NUMERIUM NEGIDIUM AULIAE AGERIAE REDDI OPORTET, EIUS IUDEX NUMERIUM NEGIDIUM AULIAE AGERIAE CONDEMNATO, SI NON PARET ABSOLVITO.

DOWRY: THE LEGAL PRACTICE:

P. Mich. VII 434 (SECOND HALF OF SECOND CENT.)

(P.Mich. inv. 508 + 2217, recto: scriptura exterior);[- - -] Nomissianus [in accordance with the Julian law], which has enacted concerning marriage arrangements, has given his maiden daughter [Zenarion] in marriage for the sake [of begetting children] and M. Petronius Servillius [has taken her as his wife]; and to him [he has promised and has given (by way) of dowry everything that is written below for] the same, above-mentioned (daughter): of land inherited from his father near the village of Philadelphia, [two and one-half] and one-quarter iugera of catoecic land in the place Cor[- - -], and in] the same village, [three and a half (iugera)] of sandy land inherited from his father, [for the half . . . ] used as vine land; and in gold objects a very long earring [(of the weight) of two and one-half quarters and some necklaces (of the weight) of one and one-half quarters, total 4 quarters, and one pair of [silver] . . . 7 staters in weight, and in clothing by valuation a tunic and a light mantle and a Scyrian cloak for the value of 430 Augustan drachmai, and a Heratianon, and a striped garment(?), and a bronze Venus and a bronze flask (of the value) of 48 Augustan drachmai, and a mirror and a chest . . . and two oil flasks and another flask in weight 7(?) 1/4 minae, and a small wooden box, an easy chair, a perfume box, a basket, and the paternal slave Heraida, and as additional gifts, a tunic and old light mantle. Likewise M. Petronius Servillius also said that he himself had contributed as dowry gifts of his own two paternal iugera of grain land located near the village [of Philadelphia] in the place [- - -];(P.Ryl. IV, 612: scriptura interior);[- - - Nomissianus] in accordance with the Julian law, [which has enacted concerning marriage arrangements, has given his] maiden [daughter] Zenarion in marriage for the sake of begetting [children and M. Petronius Servillius has taken her as his wife]; and to him he has promised and has given (by way) of dowry everything [that is written below for the same, above-mentioned (daughter)]: of land inherited from his father [near the village of Philadelphia], two and one-half and one-half <read: one-quarter>; iugera [of catoecic land in the place Cor- - -, and in the same village], three and a half (iugera) [of sandy land inherited from his father], for the half [. . . used as vine land; and in gold objects a very long earring] (of the weight) of two and one-half quarters and some necklaces [(of the weight) of one and one-

half quarters, total 4 quarters, and one pair of silver . . . ]7 staters in weight, and in clothing by valuation [a tunic and a light mantle and a Scyrian cloak for the value of 430 Augustan drachmai], and as additional gifts, a tunic and an [old] light mantle, [and a Heratianon, and a striped garment(?), and a bronze Venus] and a bronze flask (of the value) of 48 drachmai, [and a mirror and a chest . . . and two oil flasks and another flask] in weight 7 1/4 minae, [and a small wooden box, an easy chair, a perfume box, a basket, and] the paternal [slave] Heraida. [Likewise M. Petronius Servillius also said that he himself had contributed as dowry gifts of his own two paternal iugera of grain land located] near the village of Philadelphia [in the place - - -];(P.Mich. inv. 508 + 2217, verso);(2nd hand) [- - -];(3rd hand, in Greek) I, Marcus [- - -] . . . , have sealed.:(4th hand, in Greek) I, Marcus Varius(?) [- - -], have sealed.:(5th hand, in Greek) I, Titus Flavius Iulianus, have sealed.:(6th hand, in Greek) I, Lucius Valerius Lucretanus, have sealed.:(7th hand, in Greek) I, Publius M[- - -] [- - -]thinus, have sealed.:(8th hand, in Latin) [I, - - -], have sealed.

## T. Maccius Plautus, *Asinaria*, or *The Ass-Dealer* (ed. Henry Thomas Riley)

### THE SUBJECT

**ARGYRIPPUS**, the son of **Demænetus**, is violently in love with Philenium, a young woman, who is living with her mother, Cleæreta, a procuress. The latter has made an agreement with a Captain, of the name of Diabolus, to transfer Philenium to him for twenty minæ, on condition, however, that if Argyrippus shall first pay that sum, he shall have her. Argyrippus, having exhausted all his own resources, applies to his father, **Demænetus**, an over-indulgent and immoral old man, and requests him to furnish him with twenty minæ. **Demænetus** is married to Artemona, a rich woman, and is totally dependant on the will of herself and her favourite slave, the chamberlain Saurea. Being destitute of money, **Demænetus** orders his servant, **Libanus**, by some means or other to cheat his mistress or the chamberlain out of that sum. Just then an ass-dealer arrives, to pay to Saurea twenty minæ, the price of some asses which he has previously purchased. **Libanus** then arranges with his fellow-servant, Leonida, that the latter shall personate Saurea, and so receive the money from the ass-dealer. This is done, and the money is paid to Leonida, in the presence of **Demænetus**, who assures the dealer that Leonida really is the person to whom the money is payable. This sum is then given to Argyrippus, but with the disgraceful stipulation that for one day his father shall enjoy the company of Philenium. This he submits to, and the three sit down to a banquet. The Captain discovers this, and sends his Parasite to inform Artemona of her husband's conduct. She accordingly accompanies the Parasite, and discovers her husband in the company of his son and the young woman; after soundly rating him, she leads him off; while Argyrippus remains in possession of Philenium.

Verse 752:

*([1] Enter DIABOLUS and a PARASITE, with a scroll in his hand.)*

**DIABOLUS** Come now, show me this agreement that you've written out between myself and the procuress. Read over the conditions; for you are a quite unique composer<sup>1</sup> in such matters.

**A PARASITE** I'll make the procuress be terrified when she hears the conditions.

**DIABOLUS** Troth now, prithee, proceed and read them over to me.

**A PARASITE** Are you attending?

**DIABOLUS** I'm all attention.

**A PARASITE** *(reads the agreement)* . "Diabolus, the son of **Glaucus**, has made a present to Cleæreta, the procuress, of twenty silver minæ, that Philenium may be with him night and day for this whole year."

**DIABOLUS** Yes, and not with any other person.

**A PARASITE** Am I to add that?

**DIABOLUS** Add it, and take care and write it plainly and distinctly.

**A PARASITE** *(writes it down, and then reads)* . "And not admit any other man whatever, because either her friend or her patron, she may choose to call him----"

**DIABOLUS** Not any one!

**A PARASITE** "Or because she may say that he is the lover of a female friend of hers. The door must be closed to all men except to yourself. On the door she must write that she is engaged. Or, because she may affirm that the letter has been brought from abroad, there is not to be even any letter in the house, nor so much as a waxed tablet; and if there is any

useless picture<sup>2</sup>, let her sell it; if she does not part with it, within four days from the time when she has received the money of you, let it be considered as your own; you to burn it if you like; so that she may have no wax, with which she may be able to make a letter. She is to invite no guest; you are to invite them. On no one of them is she to cast her eyes: if she looks upon any other person, she must be blind forthwith<sup>3</sup>. Then she is to drink cup by cup equally with yourself. She is to receive it from you; she is to hand it to you for you to drink. She is not to have a relish for less or for more than yourself."

**DIABOLUS** That's quite to my taste.

**A PARASITE** (*reading*). "She is to remove all causes of suspicion from her, nor is she to tread on any man's foot<sup>4</sup> with her foot; when she rises she is neither to step upon the next couch, nor when she gets down from the couch is she thence to extend her hand to any one; she is not to give to nor ask of any one a ring for her to look at; she is not to present dice to any man whatever except to yourself; when she throws<sup>5</sup> them, she is not to say, 'You I call upon,' she is to mention your name. She may call on any Goddess that she pleases as propitious to her, but on no God: if she should chance to be very full of devotion, she is to tell you, and you are to pray to him that he may be propitious. She is neither to nod at any man, wink, or make a sign. In fine, if the lamp goes out, she is not to move a single joint of herself in the dark."

**DIABOLUS** That's very good; so, in fact, she must do: but expunge that about the chamber; for my part, I prefer that she should move. I don't wish her to have an excuse, and to say that it is forbidden her by her vow.

**A PARASITE** I understand, you fear some quibble.

**DIABOLUS** Just so.

**A PARASITE** Then as you bid me, I'll strike it out. (*Erases it.*)

**DIABOLUS** And why not?

**A PARASITE** Hear the rest.

**DIABOLUS** Say on, I'm listening.

**A PARASITE** (*goes on reading*). "And she is not to use any shuffling words, nor is she to know how to speak in any tongue but the Attic. If perchance she should begin to cough, she is not to cough so as to expose her tongue to any one in coughing. But if she should pretend as though she had a running at the nose<sup>6</sup>, even then she is not to do so; you yourself must wipe her lips rather than that she should open her mouth before another person. And her mother, the procuress, is not to come in in the middle of the wine, nor is she to utter a word of abuse to any one; if she does so speak, let this be her fine, to go for twenty days without wine."

**DIABOLUS** You have written it nicely; a clever agreement.

**A PARASITE** "Then, if she bids her maid-servant carry chaplets, garlands, or unguents, to [Venus](#) or to [Cupid](#), your servant is to watch whether she gives them to [Venus](#) or to a man. If perchance she should say she wishes to keep herself in purity<sup>7</sup>, let her account for as many nights as she has kept herself in purity. These are no trifles; for they are no funeral dirge<sup>8</sup>."

**DIABOLUS** The conditions please me entirely; follow me indoors.

**A PARASITE** I follow. (*(They go into the house of CLEÆRETA.)*) \* \* \* \* \*

<sup>1</sup> **A quite unique composer:** "Poeta" is here used in the primary sense of the word, from the [Greek ποιητής](#), "a maker," "artist," or "contriver."

<sup>2</sup> **Any useless picture:** Some of the Commentators have supposed that indecent or immodest pictures are here meant. Such is not the fact. Portraits were taken among the [Romans](#) in profile, in wax, which was laid on a plane surface; and probably other pictures were similarly constructed. In his jealousy, Diabolus will not allow Philenium to keep any useless or valueless picture, for fear lest she may melt it, to use the wax for tablets, as a medium of correspondence with a paramour. To a portrait of this kind, [Laodamia](#) probably refers in her Epistle to [Protesilaüs](#), in the *Heroides* of Ovid, l. 133: "But while as a warrior thou shalt be wielding arms in a distant region, I have a waxen figure which represents thy features."

<sup>3</sup> **Must be blind forthwith:** This is probably a polite way of saying, "Let her leave the room forthwith."

<sup>4</sup> **Tread on any man's foot:** From passages in Ovid's *Amours* and *Art of Love*, we learn that this was a favourite method of communication by intriguing parties.

<sup>5</sup> **When she throws:** When throwing the dice, it was the custom to invoke some favourite object, which was thought to bring good luck to the thrower. See the Notes to the [Captivi](#), Act I., Sc. 1. She is not to say, "You I invoke," lest, by the ambiguity, it should be intended to apply to another man and not to her protector

<sup>6</sup> **A running at the nose:** The meaning seems to be, that if her nose runs by reason of a catarrh, she is not to open her mouth to put her tongue out, but that Diabolus is, in common parlance, to wipe her nose for her.

<sup>7</sup> **Keep herself in purity:** He probably alludes to the festival of [Isis](#) or [Ceres](#), on which occasion it was usual for the female votaries rigidly to separate themselves from the society of men. The translation of the next line is

somewhat modified.

<sup>8</sup> **No funeral dirge:** "Mortualia" were the songs which hired female mourners sang at funerals; and which, as being especially worthless, were pre-eminently called "nugæ," or "trifles."

#### GIFTS BETWEEN THE HUSBAND AND WIFE:

D. 24.1.1 (Ulpian): It has been accepted among us by custom that gifts between husband and wife are not valid. Moreover it has been accepted for this reason, that they not be reciprocally despoiled from love for each other, by not acting with restraint in their gifts, but by acting with immoderate good-nature towards each other.

D. 24.1.2 (Paulus) and so that they not be remiss in their zeal for bringing up children. Sextus Caecilius added another reason as well, because it would often occur, that marriages would be torn apart, if the one who was able to give did not, and so in this way it would come about that marriages would be up for sale.

D. 24.1.3 pr. (Ulpian) The Reason has been taken from the speech of our emperor Antoninus (Caracalla) Augustus, for he spoke thus „Our ancestors prohibited gifts between husband and wife, valuing honourable love by feelings alone, and also considering the reputation of the couples, so that they not appear to be united in marital harmony for a price, nor should the better partner fall into poverty and the worse partner become richer’.

D. 24.1.18 (Pomponius) If a husband has used the slaves or clothing of his wife or a wife has used the slaves or clothing of her husband, or has lived for free in the other’s house, the gift is valid.

D. 24.1.21 pr. (Ulpian) If someone had paid out on his wife’s behalf the tolls which is usual to pay on a journey, would there be a demand for repayment by her as if she had been made richer by this, or would this be a gift? And I rather think that this is not forbidden, especially if she set out on the journey for his sake.

D. 24.1.31.8 (Pomponius) If a man had given his wife an extravagant gift on Kalends of March or on her birthday, it is a gift. 9. But if he covered expenses which she had made in order to maintain herself in a more honourable way, the opposite is the case. For a woman does not seem to have been made richer, if she has spent money given to her on victuals or perfumes or on food for her slave-household.

D. 24.1.40 (Ulpian): That which was brought by a wife to her husband for the purpose of acquiring office is validated to the extent that it was necessary for fulfilling the office;

D. 24.1.41 (Licinnius Rufus): for the emperor Antoninus also decided that a wife could give a gift for her husband’s advancement.

D. 24.1.42 (Gaius) Recently from the indulgence of the emperor Antoninus another reason for a gift has been accepted, which we call“for the sake of honour“ as for instance, if a wife makes a gift to her husband who is seeking the senatorial stripe or in order that he become a member of the equestrian order or for the sake of giving games.

#### PROPERTY:

C. 9.12.1

Severus/Antoninus to Pelia (206)

Those to seize the property of the wife as a pledge on account of a debt of her husband or because of some public civic burden which he has incurred, are considered to have done it with violence.

D. 24.1.31 pr.-1 (Pomponius, on Sabinus, book 4): Where a husband makes clothing for his wife out of his own wool, although this is done for his wife and through solicitude for her, the clothing, nevertheless, will belong to the husband; nor does it make any difference whether the wife assisted in preparing the wool and attended to the matter for her husband. 1. When a wife used her own wool but makes women's clothes for herself with the aid of female slaves belonging to the husband, the garments will be her, and she will owe her husband nothing for the labour of the slaves; but where the clothing is made for her husband, it will belong to him, if he paid his wife the value of the wool.

Tituli ex corpore Ulpiani 7.2

If a husband in anticipation of divorce takes away anything belonging to his wife, he will be liable to an action for the removal of property.

*P. Oxy 3994* (3rd century AD)

Kalokairos to Euphrosyne his sister, greetings. Please sister, if you want to do me a favour, enquire what my wife Aleis is doing. Even if I had not written to you, you ought of your own accord to have written to me, as I am your brother. Not that I care about her, but all that I possess is under her control. And the fact that she doesn't write to me – from that I have a presentiment of trouble about her. Salut Thaisos my sister and tell her, if she needs anything here, to write to me. I pray for your health.

Verso: give it to Euphrosyne

*Laudatio Turiae*, I.37-39

We preserved all your patrimony received from your parents with shared diligence, for you had no concern for acquiring that which you handed over completely to me. We divided our duties so that I bore the guardianship of your fortune and you sustained the care of mine.

D. 23.3.9.3 (Ulpian) Again where property is given as what the Greeks call *parapherna* and the Gauls *peculium*, let us see whether the right to it at once vests in the husband. I think that if it is given to become his, it at once passes to the husband; and if the marriage should be dissolved, the woman cannot claim it as hers, but should bring a personal action for its recovery, and not institute proceedings by an action on dowry as the Divine Marcus, our Emperor, and his father, stated in a Rescript. It is evident that if a schedule of the property of the wife is given to her husband, as is generally done at Rome, for a wife is accustomed to place in a schedule the property which she is to make use of in the house of her husband, and which she does not give as a dowry, in order that he may sign it, as having received said property, and that she may retain possession of the document which contains a description of what she brought into his house.

Let us consider whether this belongs to the husband. I do not think that it does, not for the reason that it is not delivered to him, for what difference will it make whether it is delivered to him or not, if it is brought into his house with his consent; but because I do not believe that it was agreed between husband and wife that the ownership of said property would be transferred to him, but rather as it is certain that, in case of a separation, this cannot be denied; and because frequently the husband assumes responsibility for such articles unless they are left in charge of his wife.

Let us see whether, if such articles should not be returned, the woman can bring an action on the ground of property removed, or on deposit, or on mandate. Where the safe-keeping of the effects was entrusted to the husband, she can bring an action on deposit, or mandate; otherwise, an action for property removed will lie, if the husband retains it with the intention of appropriating it, or suit for production can be brought, if he has not attempted to remove the property.

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