

**Women's Life
in Greece and Rome**

A Source Book in Translation

Third Edition

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To our mothers, Mena Rosenthal and Nancy Brown

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'If the woman is in her own power ...'

Early Rome
'Romulus compelled the citizens'

107. *The laws of the kings. Rome, 8th/7th cent. BC (FIRA², vol. 1, p. 3. Tr. ARS, rev. L)*

Although the history of Rome's regal period is based in large part on legend, and was so in antiquity, tradition was strong, and many of Rome's laws and customs, committed to writing much later, have their roots in the distant past. The laws attributed to the kings of Rome and the Twelve Tables, which follow, have been reconstructed by modern editors from these later citations.

Laws attributed to Romulus, the founder; traditional dates, 753-716 BC

4. Romulus compelled the citizens to rear every male child and the first-born of the females, and he forbade them to put to death any child under three years of age, unless it was a cripple or a monster from birth. He did not prevent the parents from exposing such children, provided that they had displayed them first to the five nearest neighbours and had secured their approval. For those who disobeyed the law he prescribed the confiscation of half of their property as well as other penalties.

6. By the enactment of a single ... law ... Romulus brought the women to great prudence and orderly conduct ... The law was as follows: A woman united with her husband by a sacred marriage¹ shall share in all his possessions and in his sacred rites.

7. The cognates sitting in judgment with the husband ... were given power to pass sentence in cases of adultery and ... if any wife was found drinking wine Romulus allowed the death penalty for both crimes.

9. He also made certain laws, one of which is severe, namely that which does not permit a wife to divorce her husband, but gives him power to divorce her for the use of drugs or magic on account of children² or for counterfeiting the keys or for adultery. The law ordered that if he should divorce her for any other cause, part of his estate should go to the wife and that part should be dedicated to Ceres. Anyone who sold his wife was

sacrificed to the gods of the underworld.

10. It is strange ... when he established no penalty against patricides, that he called all homicide patricide.

11. If a daughter-in-law strikes her father-in-law she shall be dedicated as a sacrifice to his ancestral deities.

Laws attributed to Numa Pompilius; traditional dates, 716-673 BC

9. On the Vestal Virgins he conferred high honours, among which was the right of making a will while their fathers lived and of doing all other juristic acts without a guardian.

12. A royal law forbids the burial of a pregnant woman before the child is extracted from the womb. Whoever violates this law is deemed to have destroyed the child's expectancy of life along with the mother.

13. A concubine shall not touch the altar of Juno. If she touches it, she shall sacrifice, with her hair unbound, a ewe lamb to Juno.

108. *The Twelve Tables (excerpts). Rome, 450 BC (traditional date) (FIRA², vol. 1, p. 23. Tr. ARS. L)*

These laws, the basis of Roman civil law, have their origins in what the Romans called *mos maiorum*, the tradition of their ancestors. The codification and publication of the ancestral laws on twelve bronze tablets in the Roman Forum represented a victory for the plebeian class, which hitherto had been subject to prejudiced legal interpretations by the patricians. Though some of the laws became outdated, the code was never abolished.

Table IV. Paternal power

1. A notably deformed child shall be killed immediately.

3. To repudiate his wife, her husband shall order her ... to have her own property for herself, shall take the keys, shall expel her.³

4. A child born within ten months of the father's death shall enter into the inheritance ...

Table V. Inheritance and guardianship

1. ... Women, even though they are of full age, because of their levity of mind shall be under guardianship ... except Vestal Virgins, who ... shall be free from guardianship.⁴

2. The conveyable possessions of a woman under guardianship of male agnates⁵ shall not be acquired by prescriptive right unless they are transferred by the woman herself with the authorisation of her guardian ...

4. If anyone who has no direct heir dies intestate, the nearest male agnate shall have the estate.

5. If there is not a male agnate, the male clansmen shall have the estate.

6. The agnatic relatives are guardians of those who are not given a guardian by will.⁶

Table VI. Ownership and possession

5. ... If any woman is unwilling to be subjected in this manner to her husband's marital control, she shall absent herself for three successive nights in every year and by this means shall interrupt his prescriptive right of each year.⁷

Table X. Sacred law

4. Women shall not tear their cheeks or shall not make a sorrowful outcry on account of a funeral.

109. *Husbands' punishment of wives in early Rome (Valerius Maximus, Memorable Deeds and Sayings 6.3.9-12, 1st cent. AD. L)*

Egnatius Metellus⁸ ... took a cudgel and beat his wife to death because she had drunk some wine. Not only did no one charge him with a crime, but no one even blamed him. Everyone considered this an excellent example of one who had justly paid the penalty for violating the laws of sobriety. Indeed, any woman who immoderately seeks the use of wine closes the door on all virtues and opens it to vices.

There was also the harsh marital severity of Gaius Sulpicius Gallus.⁹ He divorced his wife because he had caught her outdoors with her head uncovered: a stiff penalty, but not without a certain logic. 'The law,' he said, 'prescribes for you my eyes alone to which you may prove your beauty. For these eyes you should provide the ornaments of beauty, for these be lovely: entrust yourself to their more certain knowledge. If you, with needless provocation, invite the look of anyone else, you must be suspected of wrongdoing.'

Quintus Antistius Vetus felt no differently when he divorced his wife because he had seen her in public having a private conversation with a common freedwoman. For, moved not by an actual crime but, so to speak, by the birth and nourishment of one, he punished her before the crime could be committed, so that he might prevent the deed's being done at all, rather than punish it afterwards.

To these we should add the case of Publius Sempronius Sophus¹⁰ who disgraced his wife with divorce merely because she dared attend the games without his knowledge. And so, long ago, when the misdeeds of women were thus forestalled, their minds stayed far from wrongdoing.

110. *The first divorce for sterility. Rome, 235 BC (Aulus Gellius, Attic Nights 17.21.44, 2nd cent. AD. L)*

In the 519th year after the founding of Rome,¹¹ Spurius Carvilius Ruga –

on the advice of his friends – became the first Roman to divorce his wife for sterility. He swore an oath before the censors that he had taken a wife in order to have children.

111. *Punishment for adultery. Rome, 2nd cent. BC (Aulus Gellius, Attic Nights 10.23, 2nd cent. AD L)*

An excerpt from a speech of Marcus Cato¹² on the life and customs of women of long ago and on the right of the husband to kill a wife caught committing adultery.

Those who have written about the life and culture of the Roman people say that women in Rome and Latium 'lived an abstemious life', which is to say that they abstained altogether from wine, called *temetum* in the early language, and that it was the custom for them to kiss their relatives so they could tell by the smell whether they had been drinking.¹³ Women, however, are said to have drunk the wine of the second press, raisin wine, myrrh-flavoured wine and that sort of sweet drink. These things are found in these books, as I said, but Marcus Cato reports that women were not only judged but also punished by a judge as severely for drinking wine as for committing adultery.

I have copied Cato's words from a speech called *On the Dowry*, in which it is stated that husbands who caught their wives in adultery could kill them: 'The husband,' he says, 'who divorces his wife is her judge, as though he were a censor;¹⁴ he has power if she has done something perverse and awful; if she has drunk wine she is punished; if she has done wrong with another man, she is condemned to death.' It is also written, regarding the right to kill: 'If you catch your wife in adultery, you can kill her with impunity; she, however, cannot dare to lay a finger on you if you commit adultery, nor is it the law.'

The Roman jurists¹⁵

'This woman does not seem to have a just defence'

The following texts derive from the writings of the Roman jurists, the legal specialists who emerged as the primary architects and interpreters of Roman private law during its classical period (50 BC-AD 250). The term 'Roman law' is used to refer to a system of legal norms which evolved from many different sources, including statutes (*leges*), such as the Twelve Tables (above, no. 108), edicts of magistrates, decrees of the senate, and pronouncements of the emperor. The most abundant and influential source for Roman law, however, is the body of jurisprudence developed in the writings of the Roman jurists.

The jurists have no counterparts in the Anglo-American system of law. They constituted an élite of legal professionals whose primary work was construing and refining the law Romans used in bringing lawsuits (*actiones*) against each other.

The legal literature produced by the jurists does not constitute 'the law' in

the sense of statute or legislation. Nor do their writings record judgments or opinions delivered in the courts to decide cases. Rather, the jurists functioned in an advisory capacity, consulting with those using and administering the legal system. Their opinions were applied directly to cases heard in the Roman courts. They drew upon both factual situations and hypothetical cases to discuss and develop points of law. Consequently, much of the interest of these texts is in the details of the situations presented. As the imperial bureaucracy grew, the jurists increasingly served the emperors as legal experts.

The jurists produced an enormous body of legal literature primarily intended to be read and studied by other jurists. The selections below draw from a number of different types of juristic works. The *Institutes* of Gaius (nos. 112, 113, 132) was a textbook in four books aimed at legal instruction. The *Rules (Regulae)* of Ulpian (nos. 117, 133, 137, 141) and the *Opinions (Sententiae)* of Paul (nos. 188, 135, 123, 146) are later epitomes, or collections, attributed to the works of these jurists. The remaining material excerpted here is from the *Corpus Iuris Civilis*, the compilation of Roman law ordered by the Emperor Justinian shortly after his accession at Constantinople in AD 527. This work consists of several parts, of which the *Digest* is the single largest surviving source for Roman private law (it is about one and a half times the length of the Bible). Promulgated late in AD 533, the *Digest* consists of excerpts from juristic literature, reorganised into 432 titles in fifty books. Each individual excerpt is cited by reference to book number, title number, and then the individual *lex* or opinion, including the name of the jurist and the particular legal work from which it is drawn (for example, no. 116, *Digest* 23.2.36, Paul, *Questions*, book 5). The other parts of the *Corpus* are the *Institutes*, a textbook modelled on that of Gaius, and the *Codex*, a compilation of imperial responses (*constitutiones*) to legal petitions, some from as early as the second century AD. Another portion of the *Corpus*, the *Novels (Novellae)*, preserves later pronouncements of Justinian and is not relevant here, but see no. 291.¹⁶

On women's status within the family
'The daughter still continues in guardianship'

112. *On guardianship (Gaius, Institutes 1.144-5, 190-1. Tr. Gordon and Robinson. L)*

The jurist Gaius (his family name and origin are unknown) was active as a teacher of law in the second century AD (150-180). Although he was apparently not one of the influential jurists of his own day, his work as a teacher and writer was much valued in the post-classical period. His *Institutes* is especially important since it has survived more or less in its original form and, as the basis for Justinian's *Institutes*, exerted a tremendous influence on later legal education in Europe.

By the time Gaius was writing, guardianship of women was a mere form, and by the reign of Constantine (306-337), it had vanished altogether.

(144) Where the head of a family has children in his power he is allowed to appoint guardians for them by will. That is, for males while under

puberty but for females however old they are, even when they are married. For it was the wish of the old lawyers that women, even those of full age, should be in guardianship as being scatterbrained.¹⁷ (145) And so if someone appoints a guardian in his will for his son and his daughter and both of them reach puberty, the son ceases to have a guardian but the daughter still continues in guardianship. It is only under the Julian and Papian-Poppaeian Acts that women are released from guardianship by the privilege of children. We speak, however, with the exception of the Vestal Virgins, whom even the old lawyers wished to be free of restraint in recognition of their priesthood; this is also provided in the Twelve Tables.

(190) There seems, on the other hand, to have been no very worthwhile reason why women who have reached the age of maturity should be in guardianship; for the argument which is commonly believed, that because they are scatterbrained they are frequently subject to deception and that it was proper for them to be under guardians' authority, seems to be specious rather than true. For women of full age deal with their own affairs for themselves, and while in certain instances that guardian interposes his authorisation for form's sake, he is often compelled by the praetor to give authorisation, even against his wishes. (191) For this reason, a woman is not granted any action against her guardian on account of the guardianship; but where guardians are dealing with the affairs of male or female children, when the wards grow up the action on guardianship calls the guardians to account.

113. *Patria potestas and adoption (Gaius, Institutes 1.97-8, 100-1, 103-4. Tr. Gordon and Robinson. L)*

The jurist Gaius gives later interpretations of the concept of *patria potestas*, the power of the father over his own family, which was a fundamental principle of Roman law. Compare the laws given in the Twelve Tables (above no. 108), some of which, since the original text is lost, have been reconstructed from Gaius' paraphrase.

(97) We have just set out the rules under which our real children fall into our power.¹⁸ This also happens with those whom we adopt. (98) Adoptions can be done in two ways, either by authority of the people or through the jurisdiction of a magistrate, for instance a praetor. ... (100) That form of adoption effected by the people takes place nowhere except Rome; but the latter form commonly takes place in the provinces before the provincial governors. (101) Women are not adopted by the authority of the people; this is the received opinion. On the other hand, women too are commonly adopted before the praetor or, in the provinces, before the proconsul or legate. ... (103) Another feature common to both kinds of adoption is that people unable to have children, eunuchs, can adopt. (104) But women

cannot adopt by any method, because they do not have power even over their real children.

114. *Patria potestas* (Justinian, *Institutes* 1.9 pr.-3; 1.11 pr., 10. L)

(1.9 pr.) Our children, the issue of a valid Roman marriage, are in our power. (1) Marriage or matrimony is the union of male and female, involving shared life together. (2) The power which we have over our children is a right peculiar to Roman citizens, for there are no other men who have such control over their children as we have. (3) Therefore whoever is born of you and your wife is in your power, just as he who is born of your son and his wife, that is to say, your grandson and granddaughter, are equally in your power, and your great-grandson and great-granddaughter, and so forth. But the child born of your daughter is not in your power, but in that of its own father.

(1.11 pr.) Not only are our natural children under our authority as we have already stated, but those whom we adopt as well ... (10) Women also cannot adopt because they have not even power over their own children, but by the indulgence of the emperor they can do so by way of consolation for the children they have lost.

115. *Guardianship* (Justinian, *Codex* 9.10.1. L)

This text records a pronouncement of the Emperor Constantine in AD 326.

When a guardian violates the chastity of his female ward, he shall be sentenced to deportation, and all his property shall be confiscated to the treasury, though he deserves to have suffered the penalty which the law imposes on rapists.

116. *Guardianship* (*Digest* 23.2.36; 48.5.7. L)

(23.2.36) (Paul,¹⁹ *Questions*, book 5) A guardian or a curator cannot marry an adult²⁰ who is committed to his care, unless she has been betrothed to, or intended for him by her father, or where the marriage takes place to comply with a condition in his will.

(48.5.7) (Marcianus,²¹ *Institutes*, book 10) A guardian who takes his female ward as a wife in violation of the decree of the senate is not legally married to her; and a guardian or curator can be prosecuted for adultery if he marries a ward under twenty-six years of age who has not been betrothed to him or intended for him, or named for this purpose in her father's will.

117. *Guardianship* (Ulpian, *Rules* 11.1. L)

The jurist Domitius Ulpianus, or Ulpian, was a native of Tyre but a Roman

citizen. Together with Paul (see no. 118), he served as clerk at the court of Papinian²² while the latter was praetorian prefect (AD 205-211). The last of his several posts was that of praetorian praefect, which he held from 222 until his assassination by the praetorian guard in 223. Ulpian was an enormously prolific writer, whose works account for forty per cent of the *Digest*. The *Rules* (*Regulae*) are a post-classical epitome of his work.

Guardians are appointed for males as well as for females, but only for males under puberty, on account of their infirmity of age; for females, however, both under and over puberty, on account of the weakness of their sex as well as their ignorance of legal matters.

118. *Pregnancy, status and paternity* (Paul, *Opinions* 2.24.1-9. L)

The jurist Julius Paulus, or Paul, was, along with his younger contemporary Ulpian, an extraordinarily prolific jurist of the late classical period. He served as a clerk to the praetorian prefect Papinian and on the imperial council of Septimius Severus (AD 193-211). It is possible that he also became praetorian prefect during the reign of Alexander Severus (AD 222-235). Although his exact dates are unknown, most of his writings date from the reign of Commodus (AD 180-192) to that of Alexander Severus. He wrote more than eighty-five works in more than three hundred books, perhaps the most important of which was the commentary on the Edict of the Urban Praetor, in 80 books. The *Opinions* (*Sententiae*) was an anthology of selections from the works of Paul (and possibly of other jurists) compiled towards the end of the third century AD. It would have served as a concise summary of the principles of law and is valuable for preserving many juristic texts in a pre-Justinianic form.

(1) If a female slave conceives, and has a child after she has been manumitted, the child will be free.

(2) If a free woman conceives and has a child after having become a slave, the child will be free; for this is demanded by the favour conceded to freedom.

(3) If a female slave conceives, and in the meantime is manumitted, but, having subsequently again become a slave, has a child, it will be free; for the intermediate time can benefit but not injure freedom.

(4) A child born to a woman who should have been manumitted under the terms of a trust is born free, if it comes into the world after the grant of freedom is in default.

(5) If, after a divorce has taken place, a woman finds herself to be pregnant, she should within thirty days notify either her husband or his father to send witnesses for the purpose of making an examination of her condition: and if this is not done, they shall in any event be compelled to recognise the child of the woman.

(6) If the woman does not announce that she is pregnant, or does not admit witnesses sent to make an examination of her, neither the father

nor the grandfather will be compelled to support the child, but the neglect of the mother will not offer any impediment to the child's being considered the proper heir of his father.

(7) Where a woman denies that she is pregnant by her husband, the latter is permitted to make an examination of her, and appoint persons to watch her.

(8) The physical examination of the woman is made by five midwives, and the decision of the majority shall be held to be true.

(9) It has been decided that a midwife who introduces the child of another in order that it may be substituted shall be punished with death.

119. Children of slaves (*Digest 5.3.27 pr.-1. L*)

(Ulpian, *Edict*, book 15) (pr.) The children of female slaves and their children are not considered to be profits,²³ because it is not customary for female slaves to be acquired for breeding purposes; their offspring are, nevertheless, an increase of the estate; and since all these form part of the estate, there is no doubt that the possessor ... should hand them over to the heir. (1) Moreover, rents which have been collected from leasing of urban property are included in the action; even though they may have been collected from a brothel, for brothels are kept on the premises of many respectable persons.

On the Julian marriage laws

'We must plan for our lasting preservation'

In 18 BC, 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.²⁴

The Augustan social laws were badly received and were modified in AD 9 by the *lex Papia Poppaea*, named after 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.

120. Men must marry. Rome, 131 BC (*Fr. 6 Malcovati. L*)

Speech of the censor Quintus Caecilius Metellus Macedonicus²⁵ about the law requiring men to marry in order to produce children. According to Livy (*Per.* 59), in 17 BC Augustus read out this speech, which seemed 'written for the hour', in the senate in support of his own legislation encouraging marriage and childbearing (see no. 121).

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,²⁶ we must plan for our lasting preservation rather than for our temporary pleasure.

121. Prizes for marriage and having children. Rome, 1st cent. AD (*Dio Cassius, History of Rome 54.16.1-2, early 3rd cent. AD. 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 BC (*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,²⁷ 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 girls²⁸ and frequent divorces, he put a time limit on engagement and clamped down on divorce.

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

(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.²⁹

(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 a 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 the 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 have deteri-

orated 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.

124. *Petitions to the emperor (Justinian, Codex 9.9.1, 8, 11, 17 pr.-1. L)*

A reply from the year AD 197 to a petition brought by a woman, Cassia, to the emperors Severus and Caracalla. What is interesting is not that it was denied but that Cassia evidently thought she had a fighting chance of winning.

(1) The *lex Julia* 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 ...

A reply from the Emperor Alexander Severus in AD 224.

(8) The *lex Julia* relating to chastity forbids the two parties guilty of adultery, that is to say, the man and the woman, from being defendants on a charge of adultery at the same time, and in the same case, but they can both be prosecuted in succession.

A reply from Alexander Severus in AD 226.

(11) No one doubts that a husband cannot accuse his wife of adultery if he continues to retain her in marriage.

A reply from the emperors Valerianus and Gallienus, AD 257.

(17 pr.) You can resume marital relations with your wife without fear of being liable to the penalty prescribed by the *lex Julia* for the suppression of adultery, as you did nothing more than file the written accusation, for the reason that you assert that you afterwards ascertained that you were impelled by groundless indignation to accuse her; (1) for he alone will be liable to the penalty specifically mentioned by the law who is aware that his wife has been publicly convicted of adultery, or that she is an adulteress, as he cannot pretend ignorance of the fact, and yet retain her as his wife.

125. *Adultery (Digest 48.5.1; 48.5.2.2, 8; 48.5.9; 48.5.11 pr.-2; 48.5.12.8-9, 12-13; 48.5.20.3. L)*

(48.5.1) (Ulpian, *On Adultery*, book 1) The Julian law on adultery was introduced by the divine Augustus ...

(48.5.2) (Ulpian, *Disputations*, book 8) (2) The crime of pimping is

included in the Julian law of adultery, as a penalty has been preserved against a husband who profits pecuniarily by the adultery of his wife, as well as against one who retains his wife after she has been taken in adultery.

(8) If the husband and the father of the woman appear at the same time for the purpose of accusing her, the question arises, which of them should be given the preference? The better opinion is that the husband should be entitled to the preference, for it may well be believed that he will prosecute the accusation with greater anger and vexation ...

(48.5.9) (Papinian³⁰) Anyone who knowingly lends his house to enable unlawful sexual intercourse or adultery to be committed there with a matron who is not his wife, or with a male, or who pecuniarily profits by the adultery of his wife, no matter what may be his status, is punished as an adulterer ...

(48.5.11) (Papinian, *On Adultery*, book 2) (pr.) A matron³¹ means not only a married woman but also a widow. (1) Women who lend their houses, or have received any compensation for (revealing) unlawful intercourse which they know, are also liable under this section of the law. (2) A woman who gratuitously acts as a procuress for the purpose of avoiding the penalty for adultery, or hires her services to appear in the theatre, can be accused and convicted of adultery under the decree of the senate.

(48.5.12) (Papinian, *Adultery*, sole book) (8) A woman, prosecuted for adultery after the death of her husband, (9) asks for delay on account of the youth of her son. I answered: This woman does not seem to have a just defence who offers the age of her son as a pretext for evading a legal accusation. For the charge of adultery brought against her does not necessarily prejudice the child, since she herself may be an adulteress, and the child still have the deceased for his father.

(12) A woman, having heard that her absent husband was dead, married another, and her first husband afterwards returned. I ask, what should be decided with reference to this woman? The answer was that the question is one of both law and of fact; for if a long time had elapsed without any proof of unlawful sexual intercourse having been made, and the woman, having been induced by false rumours, and, as it were, released from her former tie, married a second time in accordance with law, as it is probable that she was deceived, she can be held to have done nothing deserving of punishment. If, however, it is established that the supposed death of her husband furnished an inducement for her marrying a second time, as her chastity is affected by this fact, she should be punished in proportion to the character of the offence.

(13) I married a woman accused of adultery, and, as soon as she was convicted, I repudiated her. I ask whether I should be considered to have furnished the cause of the rupture. The answer was that, since by the Julian law you are prohibited from keeping a wife of this kind, it is clear

that you should not be considered to have furnished the cause for the divorce. Therefore, the law will be applied just as if a divorce had taken place through the fault of the woman.

(48.5.20) (Ulpian, *Lex Julia on Adultery*, book 2) (3) If the adulterer should be acquitted, a married woman cannot be accused, either by the person who prosecuted the adulterer and was defeated, or even by another. So also if the accuser agrees with the adulterer through collusion and the adulterer is acquitted, he has given to the married woman immunity against all other accusers. She can be accused if she should cease to be married, for the law only protects a woman as long as she is married.

126. *Concubinage* (*Digest* 25.7.1.2; 25.7.4; 32.49.4; 48.5.35(34) pr. Tr. T.A.J. McGinn; 48.5.14 pr., 3, 8. L)³²

(25.7.1.2) (Ulpian, *On the Lex Julia et Papia*, book 2) I do not think that a man who keeps as a concubine a woman convicted of adultery is liable under the *lex Julia* on adultery, although he would be if he married her.

(25.7.4) (Paul, *Responso*, book 19) A woman must be considered to be a concubine on the basis of intention alone.

(32.49.4) (Ulpian, *To Sabinus*, book 22) It makes little difference if it is to a wife or to a concubine that someone makes a legacy of things bought and acquired for her. The only real difference between them is that of social status.

(48.5.14) (Ulpian, *On Adultery*, book 2) (pr.) Where the woman who commits adultery is not a wife but a concubine, the partner cannot accuse her as a husband, because she is not his wife; still, he is not prohibited by law from bringing an accusation as a third party,³³ provided that she, in giving herself as a concubine, did not forfeit the name of a matron, for instance because she was the concubine of the patron. (3) The Divine Severus and Antoninus stated in a rescript that this offence could even be prosecuted in the case of a woman who was betrothed, because she is not permitted to violate any marriage whatever, nor even the expectation of matrimony.

(8) Where a girl less than twelve years old is taken into the house of a man, commits adultery, and afterwards remains with him until she has passed that age, and begins to be his wife, she cannot be accused of adultery by her husband, for the reason that she committed it before reaching the marriageable age; but, according to a rescript of the Divine Severus, which is mentioned above, she can be accused because she was betrothed at the time.³⁴

(48.5.35(34) pr.) (Modestinus, *Rules*, book 1) He who keeps a free woman for the sake of a sexual relationship, and not for marriage, commits unlawful intercourse,³⁵ unless to be sure, she is a concubine.

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 Pomponius³⁶ says that the man is killed when caught in the very performance of the sexual act. This is what Solon and Dracho 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,³⁷ *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), or 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.

128. *Social status and marriage (Digest 23.2.44 pr.-1, 6-8; 25.7.1 pr.-1, 4; 25.7.2. L)*

(23.2.44) (Paul, *Lex Julia et Papia*, book 1) (pr.) It is provided by the *lex*

Julia that: 'A senator, or his son, or his grandson or great-grandson by his son shall not knowingly or in bad faith become betrothed to or marry a freedwoman, or a woman who is or has been an actress or whose father or mother practises, or has practised the profession of an actor. Nor shall the daughter of a senator, or a granddaughter by his son, or a great-granddaughter by this grandson marry a freedman, or a man whose father or mother practises, or has practised the profession of an actor, whether they do so knowingly, or in bad faith. Nor can any one of these parties knowingly, or in bad faith become betrothed to or marry a woman of this type.'

(1) Under this head a senator is forbidden to marry a freedwoman, or a woman whose father or mother has exercised the profession of an actor. A freedman is also forbidden to marry the daughter of a senator.

(6) If the father or mother of a freeborn woman, after the marriage of the latter should begin to exercise the profession of the stage, it would be most unjust for the husband to have to repudiate her, as the marriage was honourably contracted, and children may already have been born. (7) It is evident that if the woman herself goes on the stage, she should be repudiated by her husband. (8) Senators cannot marry women whom other freeborn men are forbidden to take as wives.

(25.7.1) (Ulpian, *Lex Julia et Papia*, book 2) (pr.) Where a freedwoman is living in concubinage with her patron, can she leave him without his consent, and either marry someone else or become his concubine? I think that a concubine should not have the right to marry if she leaves her patron without his consent, since it is more respectable for a patron to have his freedwoman as a concubine than as a wife.³⁸

(1) I agree with Atilicinus,³⁹ that only those women with whom intercourse is not unlawful can be kept in concubinage without the fear of committing a crime ... (4) It is clear that anyone can keep a concubine of any age unless she is less than twelve years old.

(25.7.2) (Paul, *Lex Julia et Papia*, book 2) Where a patron, who has a freedwoman as his concubine, becomes insane, it is more humane to hold that she remains in concubinage.

129. *Social status* (Digest 23.2.34.3; 23.2.42 pr.-1. L)

(23.2.34) (Papinian, *Replies*, book 4) (3) Where the daughter of a senator marries a freedman, her father's lapse does not make her a lawful wife, for children should not be deprived of their rank on account of an offence of their parent.

(23.2.42) (Modestinus, *Formation of Marriage*, sole book) (pr.) In unions of the sexes, it should always be considered not only what is legal, but also what is decent. (1) If the daughter, granddaughter, or great-granddaughter of a senator should marry a freedman, or a man who practises the profession of an actor, or whose father or mother did so,

the marriage will be void.

On marriage

'The union of male and female'

130. *Consent as the basis of marriage*⁴⁰ (Digest 23.2.1; 23.2.24; 23.1.11; 23.2.22; 23.1.12 pr.-1; 23.1.7.1; 23.2.2. Tr. T. Honoré. L)

(23.2.1) (Modestinus,⁴¹ *Rules*, book 1). Marriage is the union of male and female and the sharing of life together, involving both divine and human law.

(23.2.24) (Modestinus, *Rules*, book 1). Cohabitation with a free woman is to be considered marriage not concubinage, unless she is a prostitute.

(23.1.11) (Julianus,⁴² *Digest*, book 16). Engagement like marriage comes about by the consent of the parties, and so a daughter-in-power's consent is needed for an engagement as it is for a marriage.

(23.2.22) (Celsus,⁴³ *Digest*, book 15). If under pressure from his father a man takes a wife, whom he would not have married if he had followed his own inclination, still, though there is no marriage without consent, he contracted a marriage; he is regarded as having preferred to do so.

(23.1.12) (Ulpian, *On Betrothal*, sole book) (pr.) A daughter who does not oppose her father's will [as regards her engagement] is taken to agree. (1) She is free to disagree⁴⁴ only if her father chooses her a fiancé who is unworthy or of bad character.

(23.1.7.1) (Paul, *Edict*, book 35) For an engagement the same people have to agree as for a marriage. Nevertheless, Julian writes that the father of a daughter-in-power is understood to consent unless he explicitly disagrees.

(23.2.2) (Paul, *Edict*, book 35) A marriage can only exist if all agree, that is the parties and those in whose power they are.

131. *Consent as the basis of marriage* (Justinian, *Codex* 5.1.1, 5.4.14, 8.38.2. Tr. T. Honoré. L)

Pronouncement (*constitutio*) of the emperors Diocletian and Maximian in the year AD 293.

(5.1.1) A fiancée is not forbidden to break off the engagement and marry another.

Pronouncement of the emperors Diocletian and Maximian (AD 284-291).

(5.4.14) No one can be compelled to marry in the first place or to be reconciled after parting. So you understand that freedom to contract and dissolve a marriage should not be converted into compulsion.⁴⁵

Pronouncement of the Emperor Alexander Severus in the year AD 223.

(8.38.2) It was decided of old that marriages should be free. Hence it is settled that an agreement not to divorce is not valid and neither is a promise to pay a penalty on divorce.

132. *Marital subordination (Gaius, Institutes 1.108-18, 136-37a. Tr. Gordon and Robinson. L)*

(108) Now let us examine persons who are subordinate to us in marriage.⁴⁶ This is also a right peculiar to Roman citizens. (109) While it is customary for both men and women to be in power, only women fall into marital subordination. (110) Formerly there used to be three methods by which they fell into subordination: by usage, by sharing of bread, and by contrived sale.⁴⁷ (111) A woman used to fall into marital subordination by usage if she remained in the married state for a continuous period of one year: for she was, as it were, usucaptured by a year's possession, and would pass into her husband's kin in the relationship of a daughter. The Twelve Tables therefore provided that if any woman did not wish to become subordinate to her husband in this way, she should each year absent herself for a period of three nights, and in this way interrupt the usage of each year.⁴⁸ But this whole legal state was in part repealed by statute, in part blotted out by simple disuse.

(112) Women fall into marital subordination through a certain kind of sacrifice made to Jupiter of the Grain,⁴⁹ in which bread of coarse grain⁵⁰ is employed, for which reason it is also called the sharing of bread. Many other things, furthermore, have to be done and carried out to create this right, together with the saying of specific and solemn words in the presence of ten witnesses. This legal state is still found in our own times; for the higher priests, that is the priests of Jupiter, of Mars, and of Quirinus, as also the Sacred Kings,⁵¹ are chosen only if they have been born in marriage made by the sharing of bread, and they themselves cannot hold priestly office without being married by the sharing of bread.

(113) Women fall into marital subordination through contrived sale, on the other hand, by means of mancipation, that is by a sort of imaginary sale; for in the presence of not less than five adult Roman citizens as witnesses, and also a scale-holder, the man to whom the woman becomes subordinate 'buys' her. (114) A woman, however, can make a contrived sale not only with her husband, but also with a third party. A contrived sale is indeed said to be made either for the purpose of marriage or of a formal trust. For when she makes a contrived sale with her husband, so as to take the status of a daughter, she is said to have made a contrived sale for the purpose of marriage. On the other hand, the woman who makes a contrived sale for some other purpose, whether with her husband or with a third party – for instance, for the purpose of evading a

guardianship – is said to have made a contrived sale for a fiduciary purpose. (115) This last is as follows: if a woman wishes to set aside the guardians she has and to get another, she makes a contrived sale of herself with their authorisation; then she is remancipated by the other party to the contrived sale to the person whom she wishes, and, when she has been formally manumitted by him, she comes to have this man as guardian. He is called the 'fiduciary guardian' as will appear below. (115a) Formerly a contrived sale used also to take place for the purpose of making a will; for at one time women, with certain exceptions, had no right to make a will unless they had made a contrived sale and been remancipated and manumitted. But, on the proposal of the late emperor Hadrian, the senate remitted this requirement of making a contrived sale. [A woman who makes a fiduciary contrived sale with an outsider does not stand as a daughter to him, but (115b) she who] makes a contrived sale with her husband for a fiduciary purpose nevertheless comes to stand as a daughter. For if for any reason at all a wife should become subordinate to her husband, the received opinion is that she acquires the rights of a daughter.

(116) It remains for us to describe what persons are in bondage.⁵² (117) All children, whether male or female, who are in the power of their father can be mancipated by him in the same way as slaves can. (118) The same rule applies to persons in marital subordination; for women can be mancipated by the other parties to the contrived sale in the same way as children by their father. This is so to the extent that, although she stands as a daughter to the other party only in that she is married to him, yet when she is not married and therefore does not stand as a daughter to the other party, she can nevertheless be mancipated by him. ...

(136) [Moreover, women who fall into marital subordination cease to be in the power of their father. But for those married by sharing of bread as the wife of a priest of Jupiter,] it is provided [by a resolution of the senate moved by] Maximus and Tubero that such a woman is regarded as being in marital subordination only so far as religious observances are concerned; in other matters, on the other hand, she is viewed just as if she had not fallen into marital subordination. However, women who have fallen into subordination by a contrived sale are freed from their parent's power; nor does it matter if they are subordinate to their husband or to some other person, although only those women who are subordinate to a husband are viewed as standing to him as a daughter.

(137) [Women cease to be in marital subordination in the same ways as daughters are freed from paternal power. Just as daughters emerge from power by one mancipation so, by one mancipation, do women] cease to be subordinate; if such women should be manumitted after that mancipation they are made independent.⁵³ (137a) [The difference between a woman who has made a contrived sale with a third party and her who has made one with her husband is that the former can compel

the other party to remancipate her to whomever she wishes, but] the latter can no more compel [her husband] [to do this] than can a daughter her father. A daughter certainly cannot in any matter compel her father, even if she is an adoptive daughter; but once a woman has sent notice of divorce, she can compel her husband just as if she had never been married to him.

133. *Social status and citizenship of children (Ulpian, Rules 5.8-10. L)*

(8) When legal marriage takes place, the children always follow the father, but if it does not take place, they follow the condition of the mother; except where a child is born of an alien father, and a mother who is a Roman citizen, as the *lex Minicia* directs that where a child is born of parents one of whom is an alien, it shall follow the condition of the inferior parent.

(9) A child born of a father who is a Roman citizen and a Latin mother is a Latin; one born of a free man and a female slave is a slave; since the child follows the mother as in cases where there is no legal marriage.

(10) In the case of children who are the issue of a legally contracted marriage, the time of conception is considered; in the case of those who were not legitimately conceived, the time of their birth is considered; for instance, if a female slave conceives and brings forth a child after having been manumitted, the child will be free; for while she did not lawfully conceive, as she was free at the time the child was born, the latter will also be free.

134. *Marriage after adultery (Digest 23.2.34.1. L)*

(Papinian, *Replies*, book 1) (1) Where a man has accused his wife of adultery in accordance with his right as a husband, he is not forbidden, after the annulment of the marriage, to marry her again, but even if he accused her when he was not her husband, the marriage which they later contract will be valid.

135. *Eligibility for marriage (Paul, Opinions 2.19.1-2, 6-9; 2.20.1; 4.10.1-2. L)*

2.19(1) Betrothal can take place between persons over or under the age of puberty. (2) Marriage cannot legally be contracted by persons who are subject to the power of their father, without his consent; such agreements, however, are not dissolved, for the consideration of the public welfare is preferred to the convenience of private individuals. (6) Marriage cannot be contracted, but cohabitation⁵⁴ can exist between slaves and persons who are free. (7) An insane person of either sex cannot contract marriage, but a valid marriage is not dissolved by madness. (8)

An absent man can marry a wife; an absent woman, however, cannot marry. (9) It has been decided that a freedman who claims to marry his patroness, or the wife and the daughter of his patron, shall be sentenced to the mines, or to labour on the public works, according to the dignity of the person in question.

2.20(1) A man cannot keep a concubine at the same time that he has a wife. Hence a concubine differs from a wife only in the regard in which she is held.⁵⁵

Property within marriage

4.10(1) Illegitimate children are not prevented from claiming the legal heirship of their mother, because, as their estates ought to pass to their mother, so the estate of their mother should pass to them.

(2) The estate of a mother who died intestate cannot pass to a daughter who is either a female slave, or a freedwoman by virtue of the Claudian decree of the senate; because neither slaves nor freedmen are understood to have mothers under the civil law.

136. *Conditions for the dissolution of marriage (Digest 24.2.1, 3. L)*

(Paul, *Edict*, book 35) (1) Marriage is dissolved by divorce, death, captivity, or by any other kind of servitude which may happen to be imposed upon either of the parties.

(3) It is not a true or actual divorce unless there is the intention to establish a perpetual parting of their ways. Therefore, whatever is done or said in the heat of anger is not valid, unless the determination becomes apparent by the parties persevering in their intention, and hence where a message of repudiation is sent in the heat of anger and the wife returns in a short time, she is not held to have divorced her husband.

137. *The dowry (Ulpian, Rules 6.1-2, 4, 6-7, 10, 12-13. L)*

(1) A dowry is either transferred, declared by the giver, or promised by agreement.⁵⁶

(2) 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.

(4) When a woman dies during 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 may be. If her father is not living, the dowry remains in the hands of the husband.

(6) 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 the recovery of the dowry ...

(7) 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.

(10) 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 ...

(12) A sixth of the dowry is also retained on the ground of a 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.

(13) 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 ...

On legal powers of women
'The woman has a right of action'

138. *How women could make use of their freedom to contract (Digest 45.1.121.1. Tr. T. Honoré. L)*

(Papinian) To protect herself effectively a woman who was about to marry a man stipulated from him that if he resumed relations with his concubine during the marriage, he would pay her two hundred. I replied that there was no reason why if that happened the woman could not sue on the stipulation, which was in accordance with sound morality.

139. *The wife's property (Justinian, Codex 9.12.1. L)*

A reply from the emperors Severus and Antoninus in the year AD 206.

Those who seize the property of a wife as a pledge on account of a debt of her husband, or because of some public civil liability which he has incurred, are considered to have been guilty of violence.

140. *Division of property between husband and wife (Digest 24.1.31 pr.-1; 12.4.9 pr. L)*

(24.1.31) (Pomponius, *On Sabinus*, book 4) (pr.) 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) Where a wife uses her own wool, but makes women's clothes for herself with the aid of female slaves belonging to her husband, the garments will be hers, and she will owe her husband nothing for the labour of his 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. ...

(12.4.9) (Paul, *On Plautius*, book 17) (pr.) If I intend to give money to a woman, and pay it to her betrothed as dowry by her direction but the marriage does not take place, the woman has a right of action for its recovery ...

141. *The husband's liability (Ulpian, Rules 7.2. L)*

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

On sexual mores
'The law brands with infamy ...'

142. *Adultery defined (Justinian, Codex 9.9.22, 23 pr., 24, 26, 28. L)*

The emperors Diocletian and Maximian

(22) If a woman whom you have carnally known indiscriminately sold herself for money, and prostituted herself everywhere as a harlot, you did not commit the crime of adultery with her. [AD 290]

(23 pr.) Slaves cannot make accusations of adultery for violation of cohabitation.⁵⁷ [AD 290]

(24) Although it is clear from the trial record that you are consumed with the lust of immoderate desire, still, as it has been ascertained that you had intercourse with a female slave, not a free woman, it is clear that by a sentence of this kind your reputation suffers, rather than that you become infamous. [AD 291]

(26) Adultery committed with a man whom a woman afterwards married is not extinguished by the fact of the marriage. [AD 294]

Constantius, AD 326

(28) It should be ascertained whether the woman who committed adultery was the owner of the inn, or only a servant; and if, by employing herself in servile duties (which frequently happens), she gave occasion for intemperance, since if she were the mistress of the inn, she would not be exempt from liability under the law. Where, however, she served liquor to the men who were drinking, she would not be liable to accusation as having committed the offence, on account of her inferior rank, and any freemen who have been accused shall be discharged, since chastity is expected only of those women who are in a lawful relationship and count

as matrons, while the rest are immune from the severity of the law, since their lowly way of life does not call for them to observe these requirements of the law. ...

143. *Prostitution (Digest 23.2.43 pr.-6; 23.2.41 pr.-1. L)*

(23.2.43) (Ulpian, *Lex Julia et Papia*, book 1) (pr.) We hold that a woman openly practises prostitution, not only where she does so in a brothel, but also if she is accustomed to do this in a tavern or inn or anywhere else where she manifests no regard for her modesty.

(1) We understand the word 'openly' to mean indiscriminately, that is to say, without choice, and not if she commits adultery or unlawful intercourse, but where she sustains the role of a prostitute. (2) Moreover, where a woman, having accepted money, has intercourse in return for payment with only one or two persons, she is not considered to have openly prostituted herself. (3) Octavenus,⁵⁸ however, says very properly that where a woman publicly prostitutes herself without doing so for money, she should be included in this category. (4) The law brands with infamy not only a woman who practises prostitution, but also one who has formerly done so, even though she has ceased to act in this manner; for the disgrace is not removed even if the practice is subsequently discontinued. (5) A woman is not to be excused who leads a shameful life under the pretext of poverty. (6) The occupation of a pimp is not less disgraceful than the practice of prostitution.

(23.2.41) (Marcellus,⁵⁹ *Formation of Marriage*, sole book) (pr.) It is understood that disgrace attaches to those women who live unchastely, and earn money by prostitution, even if they do not do so openly.

(1) If a woman became the concubine of someone other than her patron, I say that she does not preserve the honourable status of a matron.⁶⁰

144. *Punishments. AD 326 (Justinian, Codex 9.11.1 pr. L)*

An example of the exceptionally severe punishments for which the emperor Constantine is known.

When a woman is convicted of having secretly had sexual intercourse with her slave, she shall be sentenced to death, and the rascally slave shall perish by fire.

145. *Marriage with a freedman (Digest 23.2.13. L)*

(Ulpian, *On Sabinus*, book 34) Where a patroness is so degraded that she even thinks that marriage with her freedman is honourable, it should not be prohibited by a judge to whom application is made to prevent it.

146. *How a woman loses her social status (Paul, Opinions 2.21A.1-4. L)*

(1) If a freeborn woman, who is also a Roman citizen or a Latin, forms a union with the slave belonging to another, and continues to cohabit with him against the consent and protest of the owner of the slave, she becomes a female slave.

(2) If a freeborn woman forms a union with the slave of a ward, she becomes a female slave by the denunciation of the guardian.

(3) Although a woman cannot permit her freedwoman to cohabit with the slave of another without the permission of her guardian, still, by denouncing her who has formed such a union with her slave, she will acquire the woman as her slave.

(4) A general agent, a son under paternal power, and a slave, who denounces her by order of his father, master or principal, makes a woman a female slave under such circumstances ...

147. *Rape (Justinian, Codex 9.9.20. L)*

The laws punish the detestable wickedness of women who prostitute their chastity to the lusts of others, but do not hold those liable who are violated by force and against their will. And, moreover, it has very properly been decided that their reputations are not lost, and that their marriage with others should not be prohibited on this account.

Roman Egypt

'It is not permitted to Romans to marry their sisters or their aunts'

148. *Marriage and inheritance. Alexandria, 2nd cent. AD (Berlin papyrus 1210. Tr. J.G. Winter. G)*

The *idiologus*, the chief financial officer of Roman Egypt, administered the imperial account, which consisted of funds acquired from means other than taxation (fines and confiscations, for example). The papyrus from which these extracts are taken contains a summary of the rules by which the *idiologus* carried out his duties. This document reveals fiscal oppressions not only of women but of an entire province.

6. An Alexandrian, having no children by his wife, may not bequeath to her more than one quarter of his estate; if he does have children by her, her share may not exceed those of each son.

23. It is not permitted to Romans to marry their sisters or their aunts; it is permitted in the case of the daughter of brothers. [The *idiologus*] Pardalas, however, confiscated the property when brothers and sisters married.

24. After death, the *fiscus*⁶¹ takes the dowry given by a Roman woman over 50 to a Roman man under 60.

eyes of her people, and who knows when her like will be seen again.

What chastity, what sanctity, what dignity, what constancy! Twice she followed her husband into exile, and the third time she herself was exiled on his account. For when Senecio, on trial for writing the life of Helvidius, said in his own defence that Fannia had asked him to write it, Mettius Carus asked threateningly whether she had. 'I did ask him,' she replied; and to whether she had given him her husband's diaries – 'I did give them.' And to whether her mother knew about this, 'She does not.' In other words, she did not utter a single word to reduce the danger to herself. She even took into her exile its very cause – those books which the senate had through the compulsion and fear of the times ordered suppressed – for she had managed to save them when her goods were confiscated.

How pleasant she is, how kind, how respectable and amiable at once – two qualities rarely found in the same person. Indeed, she will be a woman whom later we can show our wives, from whose fortitude men too can draw an example, whom now while we can still see and hear her we admire as much as those women whom we read about. To me her very house seems to totter on the brink of collapse, shaken at its foundations, even though she leaves descendants. How great must be their virtues and their accomplishments for her not to die the last of her line!

My anguish is even greater because I feel I am reliving the death of her mother, that – I can find no higher praise – great mother of a great woman, who, as she is given back to us in her daughter, so will be taken from us yet again, and I must suffer the old wound reopened as well as the new one. I honoured and loved both – I do not know which the more, nor did they want me to decide. My services were theirs in good times and bad; I comforted them in exile and avenged them when they returned. But that was not enough to repay my debt to them, and I am all the more eager that she be saved, so that I will have time to do so. There are my worries as I write to you; if some god turns them into joy, I won't complain about my present fears.

Farewell.

Political life

'Statia asks you to vote for ...'

173. *Women demonstrate and obtain repeal of the Oppian law. Rome, 195 BC (Livy, History of Rome 34.1, excerpts. Late 1st cent. BC–early 1st cent. AD. L)*

In 215 BC, after its disastrous defeat by Hannibal at Cannae, Rome passed the Oppian law, an emergency measure which limited women's use of expensive goods. Twenty years later, the crisis having long since passed, the law was repealed against the objections of many conservatives, here

represented by the consul and champion of traditional values, Marcus Porcius Cato. Livy's reconstruction of the debate over the law's repeal devotes considerable space to ethical issues raised in legislation initiated in his own time by the emperor Augustus (see p. 103).

Among the troubles of great wars, either scarcely over or yet to come, something intervened which, while it can be told briefly, stirred up enough excitement to become a great battle. Marcus Fundanius and Lucius Valerius, the tribunes of the people, brought a motion to repeal the Oppian law before the people. Gaius Oppius had carried this law as tribune at the height of the Punic War, during the consulship of Quintus Fabius and Tiberius Sempronius. The law said that no woman might own more than half an ounce of gold nor wear a multicoloured¹⁷ dress nor ride in a carriage in the city or in a town within a mile of it, unless there was a religious festival. The tribunes, Marcus and Publius Junius Brutus, were in favour of the Oppian law and said that they would not allow its repeal. Many noble men came forward hoping to persuade or dissuade them; a crowd of men, both supporters and opponents, filled the Capitoline Hill. The matrons, whom neither counsel nor shame nor their husbands' orders could keep at home, blockaded every street in the city and every entrance to the Forum. As the men came down to the Forum, the matrons besought them to let them, too, have back the luxuries they had enjoyed before, giving as their reason that the republic was thriving and that everyone's private wealth was increasing with every day. This crowd of women was growing daily, for now they were even gathering from the towns and villages. Before long they dared go up and solicit the consuls, praetors, and other magistrates; but one of the consuls could not be moved in the least, Marcus Porcius Cato,¹⁸ who spoke in favour of the law:

'If each man of us, fellow citizens, had established that the right and authority of the husband should be held over the mother of his own family, we should have less difficulty with women in general; now, at home our freedom is conquered by female fury, here in the Forum it is bruised and trampled upon, and, because we have not contained the individuals, we fear the lot ...'

'Indeed, I blushed when, a short while ago, I walked through the midst of a band of women. Had not respect for the dignity and modesty of certain ones (not them all!) restrained me (so they would not be seen being scolded by a consul), I should have said, "What kind of behaviour is this? Running around in public, blocking streets, and speaking to other women's husbands! Could you not have asked your own husbands the same thing at home? Are you more charming in public with others' husbands than at home with your own? And yet, it is not fitting even at home (if modesty were to keep married women within the bounds of their rights) for you to concern yourselves with what laws are passed or

repealed here." Our ancestors did not want women to conduct any – not even private – business without a guardian; they wanted them to be under the authority of parents, brothers, or husbands; we (the gods help us!) even now let them snatch at the government and meddle in the Forum and our assemblies. What are they doing now on the streets and crossroads, if they are not persuading the tribunes to vote for repeal? Give the reins to their unbridled nature and this unmastered creature, and hope that they will put limits on their own freedom; unless you do something yourselves, this is the least of the things imposed upon them either by custom or by law which they endure with hurt feelings. They want freedom, nay licence (if we are to speak the truth), in all things.

'If they are victorious now, what will they not attempt? ... As soon as they begin to be your equals, they will have become your superiors ...

'What honest excuse is offered, pray, for this womanish rebellion? "That we might shine with gold and purple," says one of them, "that we might ride through the city in coaches on holidays and working-days, as though triumphant over the conquered law and the votes which we captured by tearing them from you; that there should be no limit to our expenses and our luxury." ...

'The woman who can spend her own money will do so; the one who cannot will ask her husband. Pity that husband – the one who gives in and the one who stands firm! What he refuses, he will see given by another man. Now they publicly solicit other women's husbands, and, what is worse, they ask for a law and votes, and certain men give them what they want. You there, you, are easily moved about things which concern yourself, your estate, and your children; once the law no longer limits your wife's spending, you will never do it by yourself. Fellow citizens, do not imagine that the state which existed before the law was passed will return. A dishonest man is safer never accused than acquitted, and luxury, left alone, would have been more acceptable than it will be now, as when wild animals are first chafed by their chains and then released. I vote that the Oppian law should not, in the smallest measure, be repealed; whatever course you take, may all the gods make you happy with it.'

After this, when the tribunes of the people, who had declared that they would oppose the motion to repeal, had added a few remarks along the same lines, Lucius Valerius spoke on behalf of the motion which he himself had brought:

'[Cato] used up more words castigating the women than he did opposing the motion, and he left in some uncertainty whether the women had done the deeds which he reproached on their own or at our instigation. I shall defend the motion, not ourselves, against whom the consul has hurled this charge, more for the words than for the reality of the accusation. He has called this assemblage "secession" and sometimes "womanish rebellion", because the matrons have publicly asked you, in

peacetime when the state is happy and prosperous, to repeal a law passed against them during the straits of war ...

'What, may I ask, are the women doing that is new, having gathered and come forth publicly in a case which concerns them directly? Have they never appeared in public before this? Allow me to unroll your own *Origines*¹⁹ before you. Listen to how often they have done so – always for the public good. From the very beginning – the reign of Romulus – when the Capitoline had been taken by the Sabines and there was fighting in the middle of the Forum, was not the battle halted by the women's intervention between the two lines? How about this? After the kings had been expelled, when the Volscian legions and their general, Marcius Coriolanus, had pitched camp at the fifth milestone, did not the matrons turn away the forces which would have buried the city? When Rome was in the hands of the Gauls, who ransomed it? Indeed the matrons agreed unanimously to turn their gold over to the public need. Not to go too far back in history, in the most recent war, when we needed funds, did not the widows' money assist the treasury? And when new gods were summoned to bring their power to our difficulties, was it not all the matrons who went to the sea to meet the Idaean Mother? You say these cases are different. I am not here to say they are the same; it is enough to prove that nothing new has been done. Indeed, as no one is amazed that they acted in situations affecting men and women alike, why should we wonder that they have taken action in a case which concerns themselves? What, after all, have they done? We have proud ears indeed, if, while masters do not scorn the appeals of slaves, we are angry when honourable women ask something of us ...

'Who then does not know that this is a recent law, passed twenty years ago? Since our matrons lived for so long by the highest standards of behaviour without any law, what risk is there that, once it is repealed, they will yield to luxury? For if the law were an old one, or if it had been passed to restrain feminine licence, there might be reason to fear that repeal would incite them. The times themselves will show you why the law was passed. Hannibal was in Italy, victorious at Cannae. Already he held Tarentum, Arpi and Capua. He seemed on the verge of moving against Rome. Our allies had gone over to him. We had no reserve troops, no allies at sea to protect the fleet, no funds in the treasury. Slaves were being bought and armed, on condition that the price be paid their owners when the war was over. The contractors had declared that they would provide, on that same day of payment (after the war), the grain and other supplies the needs of war demanded. We were giving our slaves as rowers at our own expense, in proportion to our property rating. We were giving all our gold and silver for public use, as the senators had done first. Widows and children were donating their funds to the treasury. We were ordered to keep at home no more than a certain amount of wrought and stamped gold and silver. At a time like that were the matrons so taken up

with luxury and fancy trappings that the Oppian law was needed to restrain them, when, since the rites of Ceres had been suspended because all the women were in mourning, the senate ordered mourning limited to thirty days? To whom is it not clear that poverty and misfortune were the authors of that law of yours, since all private wealth had to be turned over to public use, and that it was to remain in effect only as long as the reason for its writing did? ...

'Shall it be our wives alone to whom the fruits of peace and tranquillity of the state do not come? ... Shall we forbid only women to wear purple? When you, a man, may use purple on your clothes, will you not allow the mother of your family to have a purple cloak, and will your horse be more beautifully saddled than your wife is garbed? ...

'[Cato] has said that, if none of them had anything, there would be no rivalry among individual women. By Hercules! All are unhappy and indignant when they see the finery denied them permitted to the wives of the Latin allies, when they see them adorned with gold and purple, when those other women ride through the city and they follow on foot, as though the power belonged to the other women's cities, not to their own. This could wound the spirits of men; what do you think it could do the spirits of women, whom even little things disturb? They cannot partake of magistracies, priesthoods, triumphs, badges of office, gifts, or spoils of war; elegance, finery and beautiful clothes are women's badges, in these they find joy and take pride, this our forebears called the women's world. When they are in mourning, what, other than purple and gold, do they take off? What do they put on again when they have completed the period of mourning? What do they add for public prayer and thanksgiving other than still greater ornament? Of course, if you repeal the Oppian law, you will not have the power to prohibit that which the law now forbids; daughters, wives, even some men's sisters will be less under your authority – never, while her men are well, is a woman's slavery cast off; and even they hate the freedom created by widowhood and orphanage. They prefer their adornment to be subject to your judgment, not the law's; and you ought to hold them in marital power and guardianship, not slavery; you should prefer to be called fathers and husbands to masters. The consul just now used odious terms when he said "womanish rebellion" and "secession". For there is danger – he would have us believe – that they will seize the Sacred Hill as once the angry plebeians did, or the Aventine. It is for the weaker sex to submit to whatever you advise. The more power you possess, all the more moderately should you exercise your authority.'

When these speeches for and against the law had been made, a considerably larger crowd of women poured forth in public the next day; as a single body they besieged the doors of the Brutuses, who were vetoing their colleagues' motion, and they did not stop until the tribunes took back their veto. After that there was no doubt but that all the tribes

would repeal the law. Twenty years after it was passed, the law was repealed.

174. *Sempronia, a revolutionary. Rome, 1st cent. BC (Sallust, Conspiracy of Catiline 24.3-25. L)*

The historian Sallust regarded the conspiracy led by Catiline in 62 BC as a result of moral decline; in his account, Catiline's supporter Sempronia egregiously lacks the qualities for which virtuous Roman matrons are celebrated, but possesses others.

(24.3) At that time Catiline is said to have attracted many people of every sort, including some women. These had first sold their bodies to finance their luxuries, but later, when age set a limit to this activity – but not to their tastes – fell heavily into debt. Catiline believed he could use these women to win over the urban slaves, set fire to the city, and either enlist or kill their husbands.

(25) One of these women was Sempronia, whose masculine boldness had already led her to commit many crimes. This woman was favoured by fortune in birth and beauty as well as in her husband and children. She was well read in Greek and Latin literature; she played the lyre and danced with greater skill than propriety warrants; and she had a number of other accomplishments, all of the sort that promote dissipation. But to her nothing was more worthless than modesty and chastity. It is not easy to say which she threw away more wantonly, her money or her reputation. She was so oversexed that it was more often she who went after men than the other way around. She had often broken promises, disavowed her debts, and been an accessory to murder. Love of luxury combined with poverty had driven her headlong. And yet, she had real talents. She could write verse, make jokes, and converse with modesty, tenderness or wantonness. She was a woman of considerable wit and charm.

175. *A portrait of Cleopatra. Egypt, 1st cent. BC (Plutarch, Life of Mark Antony 25.5-28.1, 29. 2nd cent. AD. G)*

'For Rome, who had never condescended to fear any nation or people, did in her time fear two human beings; one was Hannibal, and the other was a woman.²⁰ In Roman literature during her lifetime and just after her death²¹ (e.g. Vergil's characterisation of Dido in the *Aeneid*; Horace, *Odes* 1.37), Cleopatra represented the dangerous appeal of decadence and corruption. A highly educated Greek, with the wealth of Egypt at her disposal, she was mistress first of Julius Caesar and then of Mark Antony. In Plutarch's account traditional anecdotes are related with considerable sympathy and admiration.

[Caesar and Pompey knew Cleopatra when she was] still a girl, and