

MARRIAGE, DIVORCE, BETROTHAL, DOWRY – OUTLINE

(The primary sources referred to in this outline are attached, and cited in the outline as ‘Mats.’ with a hyperlinked number (easier to pull up with a right click) indicating where they appear. Clicking on the heading of the item in the Mats. will, in most cases, bring you back to where you were in the outline.)

1. Marriage and family temp XII. I’m going to take the topics in Watson’s order. *Manus*. The fullest account that we have is in GI.1.108–16: (Mats. [1](#)).
 - a. Many Roman authors wax eloquent about *manus* and the archaic family, none more so than Dionysius of Halicarnassus who was not a Roman, but a Greek, who wrote in Greek a book called *Roman Antiquities* 2.25 (Mats. [2](#)). This passage will be needed to support a number of points later on.
 - b. Acquisition of *manus*. *Usu, farre(o), coemptio*. Watson’s argument that this is a provision in the XII seems to me to be plausible. The argument for it is that the classical sources always mention it in this order and there’s no logic to the order. That the most recent edition of the XII rejects the argument on the ground that there is no evidence that *coemptio* had this technical meaning at this time does not seem to me to be very powerful.
 - c. *Confarreatio, coemptio, usus* – individually. Unless Watson is right that the three means of acquiring *manus* were in the XII Tables, the only provision about *manus* in the XII Tables is in tab. 5.5 (Mats. [3](#)), and our evidence for it is Gaius.
 - d. Requirements for marriage *sine manu*. Compare the man who fell into the Tiber (Digest 23.2.5–7, in Lecture 06). Watson takes the position that he takes elsewhere that this tab. 5.5 indicates a formless marriage – we may have our doubts.
2. Requirements for and consequences of marriage
 - a. *Conubium*. (Side note on the derivation (cum + nubo) and the gender-differentiated phrases “to marry.”) The prohibition on intermarriage between patrician and plebeian in tab. 12.1 (Mats. [4](#)), repealed by the *l. Canuleia* (445 BC). All of sources report this story. There must be something to it. Watson’s guess about an original unified town with a class development sounds a little too modern to me. At least in historical times the *plebs* were associated with *gentes*. His notion that the problem was *nouveaux riches* also sounds a bit modern. How about an ethnic distinction that grew into an economic one; then we can add changes in fortune as the thing that is producing the pressure.

Latins (Rape of the Sabines); how about the Etruscans?

Slaves.

Incest. Livy frag. bk. 20 “Publius Caelius, the patrician, was the first to take a wife within the seventh degree of relationship, contrary to the old custom.”¹ (?mid-3 c. BC, Mats. [5](#))

Age. No reason to believe that it was not as in classical times.

¹ Publius Caelius patricius primus adversus veterem morem intra septimum cognationis gradum duxit uxorem.

- b. Consents. W's assertion that no consent was necessary other than the father's for the girl in power may or may not be right. Some evidence of the complexity may be found in Livy's account (4.9) of the 'Maid of Ardea' (443 BC, Mats. 6):

I agree with Watson that the 'Maid of Ardea' is not an aetiological myth, nor is it a paradigm case. It does have some interesting legal points, and they are accurate for Livy's time. Whether they are accurate for the 5th century BC is more problematic, but there is no reason to doubt them. The remedy is a problem. Girl's consent. Boy's consent.

- c. *Potestas* over children is clearly a consequence of *iustae nuptiae*. Husband's obligation of support? We don't know; no evidence of it.
 - d. *Sui heredes* – we'll get to this more explicitly later, but we take up here a problem that Watson deals with here: Table IV.4 (Mats. 7) is derived from Aulus Gellius, *Attic Nights* 3.16.12 (Mats. 8) (Side note: Aulus Gellius died in 175; so he's an almost exact contemporary of Gaius.): What is frequently given as the text of tab.4.4 is misleading. Gellius is describing a judgment that Hadrian had rendered: What Gellius says that is taken as the text of tab. 4.4 is: "... a woman ... had given birth in the eleventh month after her husband's death, and a case was brought as if she had conceived after her husband's death, because the *decemviri* wrote that man (*homo*) is born in ten months, not in the eleventh." But if you read the whole passage, it's clear that Hadrian came out the other way. Some help as to what was in the original text and what was made of it later on is given in a passage from the Digest that Watson cites (p. 40 n. 2): Digest 38.26.3.9,11 (Mats. 9). Possibly relevant here is the required mourning period for widows (*tempus luctus*), 10 months = the old Roman year, extended in the classical period to one modern calendar year.
3. Betrothal. Our key text here is Aulus Gellius, *Attic Nights* 4.4 (Mats. 10). The Servius to which the passage refers is Servius Sulpicius Rufus, the jurist who was a contemporary of Cicero.

Clearly in classical Roman law a contract (*sponsio*) of betrothal was not actionable unless a penal bond was attached. How much of this can be traced back? That the *sponsio* was actionable is suggested both by Servius and by the provision of the XII dealing with the *sponsio*. That it was for a fixed sum (*certa*) seems to me to be unlikely. In addition to Watson's essentially negative argument, see the nature of the *iudicis postulatio*. The penal bond became a requirement with the growth in feeling about the immorality of the action for breach.

- 4. Divorce. The key text here is also Aulus Gellius, *Attic Nights* 4.3.1.–2 (Mats. 11; also Dionysius of Halicarnassus, *Roman Antiquities* 2.25 [Mats. 2]; the divorce of Carvilius Ruga.
 - a. Some points are reasonably clear:
 - i. In classical Roman law divorce was common, but the Romans remembered a time when it was not.
 - ii. In classical Roman law the wife who was not at fault was given an action to recover her dowry and a promise to indemnify (*cautio*) was common to secure it. If she was at fault – and this generally meant adultery – the husband retained the dowry.

- b. The question again is how much of this can be referred back to XII? Our key text, unfortunately, is a joke, Cicero making fun of Mark Antony's dismissal of his mistress:
 - i. Cicero, *Phillipics* 2.28.69: "He ordered her to have her things for herself in accordance with the XII Tables took back the keys drove her out."² (The absence of punctuation is deliberate; much hangs on where one puts the comma.) (Mats. 12) Tab. 4.3 may have contained a reference to keys, also found in the *leges regiae* (Plutarch, *Romulus* 22.3, Mats. 13). This suggests a role for women.
 - ii. Even if the specifics about the repudiation were not in the XII Tables, there clearly was a provision in them that said that there had to be a repudiation. Gaius, D.48.5.44 (Mats. 14); Gaius, D.24.2.2 (Mats. 15).
 - iii. As for "take your things for yourself" (*res tuas tibi habeto*) it must be old; how could a society thinking of *manus* develop it?
 - iv. If the story of the divorce of Carvilius is right in outline if not in detail how was the dowry handled? In the case of divorce for cause probably as in later times, i.e., the husband got it. But if the story of Lucretia is right, the woman's family may have had something to say about it (Mats. 16). The broad nature of the 'family court' is also suggested in Dionysius of Halicarnassus, *Roman Antiquities* 2.25 (Mats. 2): "Other offences, however, were judged by her relations together with her husband; among them was adultery, or where it was found she had drunk wine – a thing which the Greeks would look upon as the least of all faults."
- c. Legal actions on dowry are later, but the institution exists. *Roman Antiquities*, 2.10 (Mats. 17): Romulan laws, "It was the duty of clients to assist their patrons in providing dowries for their daughters upon their marriage if the fathers had not sufficient means." (We'll return to this passage when we take up patronage.)

² Illam suam res sibi habere iussit ex duodecim tabulis clavis ademit exegit.

MATERIALS ON MARRIAGE, BETROTHAL, DIVORCE, DOWRY

1. *Gaius, Institutes 1.108–116*:³

108. Let us proceed to consider persons who are in *manu* (hand, marital power), which is another right peculiar to Roman citizens. **109.** Now, while both males and females are found in *potestas*, only females can come under *manus*. **110.** Of old, women passed into *manus* in three ways, by *usus*, *confarreatio*, and *coemptio*. **111.** A woman used to pass into *manus* by *usus* if she cohabited with her husband for a year without interruption, being as it were acquired by a usucapion of one year and so passing into her husband's family and ranking as a daughter. Hence it was provided by the Twelve Tables that any woman wishing not to come under her husband's *manus* in this way should stay away from him for three nights in each year and thus interrupt the *usus* of each year. But the whole of this institution has been in part abolished by statutes and in part obliterated by simple disuse. **112.** Entry of a woman into *manus* by *confarreatio* is effected by a kind of sacrifice offered to Jupiter Farreus, in which a spelt cake is employed, whence the name *confarreatio*. In the performance of this ceremony a number of acts and things are done, accompanied by special formal words, in the presence of 10 witnesses. This institution still exists at the present day. For the higher flamens, that is those of Jupiter, Mars, and Quirinus, and also the *rex sacrorum*, can only be chosen from those born of parents married by *confarreatio*; indeed, no person can hold the priesthood without being himself so married. **113.** Entry of a woman into *manus* by *coemptio* takes the form of a mancipation, that is a sort of imaginary sale: in the presence of not less than 5 witnesses, being Roman citizens above puberty, and of a scale-holder, the woman is bought by him into whose *manus* she is passing. **114.** It is, however, possible for a woman to make *coemptio* not only with her husband, but also with a stranger; in other words, *coemptio* may be performed for either matrimonial or fiduciary purposes. A woman who makes a *coemptio* with her husband with the object of ranking as a daughter in his household is said to have made a *coemptio* for matrimonial purposes, whilst one who makes, whether with her husband or a stranger, a *coemptio* for some other object, such as that of evading a tutorship, is said to have done so for fiduciary purposes. [Gaius goes on to describe fiduciary *coemptio* in a passage that is, unfortunately, somewhat garbled.]

2. *Dionysius of Halicarnassus, Roman Antiquities 2.25*:⁴

XXV. But Romulus, without giving either to the husband an action against his wife for adultery or for leaving his home without cause, or to the wife an action against her husband on the ground of ill-usage⁵ or for leaving her without reason, and without making any laws for the returning or recovery of the dowry, or regulating anything of this nature, by a single law which effectually provides for all these things, as the results themselves have shown, led the women to behave themselves with modesty and great decorum. The law was to this effect, that a woman joined to her husband by a holy marriage should share in all his possessions and sacred rites. The ancient Romans designated holy and lawful marriages by the term “farreate,”⁶ from the sharing of far,

³ Materials, p. 138.

⁴ Dionysius of Halicarnassus. *Roman Antiquities, Volume I: Books 1-2*. Translated by Earnest Cary. Loeb Classical Library 319. Cambridge, MA: Harvard University Press, 1937, p. 381, 383, 385.
https://www.loebclassics.com/view/dionysius_halicarnassus-roman_antiquities/1937/pb_LCL319.385.xml.

⁵ Translator's note: The term can also mean the mismanagement of her property.

⁶ Translator's note: *Farracius* or *farraceus* is an adjective, “of spelt.” It is not used by any extant writer in connexion with marriages; but we do find the participles *farreatus* and *confarreatus* thus used, and especially the noun *confarreatio*. See note 2, p. 383.

which we call *zea*;⁷ for this was the ancient and, for a long time, the ordinary food of all the Romans, and their country produces an abundance of excellent spelt. And as we Greeks regard barley as the most ancient grain, and for that reason begin our sacrifices with barley-corns which we call *oulai*, so the Romans, in the belief that spelt is both the most valuable and the most ancient of grains, in all burnt offerings begin the sacrifice with that.⁸ For this custom still remains, not having deteriorated into first-offerings of greater expense. The participation of the wives with their husbands in this holiest and first food and their union with them founded on the sharing of all their fortunes took its name⁹ from this sharing of the spelt and forged the compelling bond of an indissoluble union, and there was nothing that could annul these marriages. This law obliged both the married women, as having no other refuge, to conform themselves entirely to the temper of their husbands, and the husbands to rule their wives as necessary and inseparable possessions. Accordingly, if a wife was virtuous and in all things obedient to her husband, she was mistress of the house to the same degree as her husband was master of it, and after the death of her husband she was heir to his property in the same manner as a daughter was to that of her father; that is, if he died without children and intestate, she was mistress of all that he left, and if he had children, she shared equally with them. But if she did any wrong, the injured party was her judge and determined the degree of her punishment. Other offences, however, were judged by her relations together with her husband; among them was adultery, or where it was found she had drunk wine – a thing which the Greeks would look upon as the least of all faults. For Romulus permitted them to punish both these acts with death, as being the gravest offences women could be guilty of, since he looked upon adultery as the source of reckless folly, and drunkenness as the source of adultery. And both these offences continued for a long time to be punished by the Romans with merciless severity. The wisdom of this law concerning wives is attested by the length of time it was in force; for it is agreed that during the space of five hundred and twenty years no marriage was ever dissolved at Rome. But it is said that in the one hundred and thirty-seventh Olympiad, in the consulship of Marcus Pomponius and Gaius Papirius,¹⁰ Spurius Carvilius, a man of distinction, was the first to divorce his wife,¹¹ and that he was obliged by the censors to swear that he had married for the purpose of having children (his wife, it seems, was barren); yet because of his action, though it was based on necessity, he was ever afterwards hated by the people.

3. XII tab. 5.5 (CD trans.):

Tab. 5.5. *Gaius* 1.111: By the law of the XII Tables it is provided that if a woman does not want to come into the *manus* (lit. ‘hand’) of her husband in that way (sc. by prescription), she absent herself for three nights every year and in this way break the [prescription] of each year.

4. XII tab. 12.1 (CD trans.):

⁷ Translator’s note: Both words mean “spelt,” a coarse variety of wheat.

⁸ Translator’s note: The *mola salsa*.

⁹ Translator’s note: *Confarreatio*.

¹⁰ Translator’s note: 231 b.c.

¹¹ Translator’s note: Gellius (iv. 3), Valerius Maximus (ii. 1, 4) and Plutarch (Thes. et Rom. 6) give this same tradition regarding Carvilius, but differ widely as to his date. Gellius is in virtual agreement with Dionysius, but Valerius gives 604 b.c. and Plutarch 524. Moreover, Valerius states elsewhere (ii. 9, 2) that L. Annius repudiated his wife in 307/6, a date confirmed by Livy (ix. 43, 25). It seems most probable that Dionysius and Gellius are wrong in their date. Scholars who accept this late date admit an earlier voluntary dissolution of marriage or assume that the ancient authors were thinking of different forms of marriage or of different grounds for divorce.

Tab. 12.1. *Cicero de rep.* 2.36: After the Ten had written ten tables of laws with the greatest fairness and foresight, they substituted another ten for the next year. *Ibid.* 37: who in a most inhumane law in two additional tables of wicked laws established that the *plebs* not have *connubia* (lawful marriage) with the patricians.

[For the lex Canuleia which repealed this provision, see Livy, 4.1 (445 BC).]

5. *Livy fragment from book 20 (CD trans.):*¹²

Publius Celius, the patrician, was the first to take a wife within the seventh degree of relationship, contrary to the old custom.

6. *Livy 4.9:*¹³

Whilst this was going on in Rome [444 BC], ambassadors came from Ardea, appealing, in the name of the ancient alliance and recently renewed treaty, for help for their city which was almost destroyed. They were not allowed, they said, to enjoy the peace which in pursuance of the soundest policy they had maintained with Rome, owing to internal disputes. The origin and occasion of these is said to have been party struggles, which have been and will be more ruinous to the majority of States than external wars or famine and pestilence or whatever else is ascribed to the wrath of the gods as the last evil which a State can suffer.

Two young men were courting a maiden of plebeian descent celebrated for her beauty. One of them, the girl's equal in point of birth, was encouraged by her guardians, who belonged to the same class; the other, a young noble captivated solely by her beauty, was supported by the sympathy and good-will of the nobility. Party feeling had even penetrated into the girl's home, for the mother, who wanted her daughter to make as splendid a match as possible, preferred the young noble, whilst the guardians, carrying their partisanship even into such a matter as this, were working for the man of their own class. As the matter could not be settled within the four walls of the house, they brought it into court. After hearing the appeals of the mother and of the guardians, the magistrates granted the disposal of the girl's hand in accordance with the mother's wishes. But violence won the day, for the guardians, after haranguing a number of their partisans in the Forum on the iniquity of the verdict, collected a body of men and carried off the maiden from her mother's house. They were met by a still more determined troop of nobles, assembled to follow their young comrade, who was furious at the outrage. A desperate fight ensued and the plebeians got the worst of it. In a very different spirit from the Roman plebs they marched, fully armed, out of the city and took possession of a hill from which they raided the lands of the nobles and laid them waste with fire and sword. A multitude of artisans who had previously taken no part in the conflict, excited by the hope of plunder, joined them, and preparations were made to besiege the city. All the horrors of war were present in the city, as though it had been infected with the madness of the two young men who were seeking fatal nuptials out of their country's ruin.

Both sides felt the need of an addition to their strength; the nobles prevailed on the Romans to come to the relief of their beleaguered city; the plebs induced the Volscians to join them in attacking Ardea. The Volscians, under the leadership of Cluilius, the Aequian, were the first to come, and drew lines of circumvallation round the enemy's walls.

¹² Quoted in Latin in Watson, p. 24 from what seems to be the only edition, Paul Krüger, in *Hermes* 4 (1870) 372.

¹³ <http://perseus.uchicago.edu/perseus-cgi/citequery3.pl?dbname=PerseusLatinTexts&getid=1&query=Liv.%204.10>. (Same translation as that in Perseus.)

[And so on. As most often happens in Livy, the Romans win. He concludes the discussion in 4.10 with:]

The consul settled the troubles in Ardea by beheading the ringleaders of the disturbance and confiscating their property to the treasury of the city. The citizens considered that the injustice of the recent decision was removed by the great service that Rome had rendered, but the senate thought that something ought still to be done to wipe out the record of national avarice.

7. *XII tab. 4.4 (CD trans.):*

Tab. 4.4. *Gellius* 3.16.12: . . . a woman . . . had given birth in the eleventh month after her husband's death, and a case was brought as if she had conceived after her husband's death, because the *decemviri* wrote that man is born in ten months, not in the eleventh.

8. *Aulus Gellius, Attic Nights 3.16.12 (source of Tab. 4.4.):*¹⁴

Furthermore, besides what I have read in books about human gestation,¹⁵ also heard of the following case, which occurred in Rome: A woman of good and honourable character, of undoubted chastity, gave birth to a child in the eleventh month after her husband's death, and because of the reckoning of the time the accusation was made that she had conceived after the death of her husband, since the decemvirs had written that a child is born in ten months and not in the eleventh month. The deified Hadrian, however, having heard the case, decided that birth might also occur in the eleventh month, and I myself have read the actual decree with regard to the matter. In that decree Hadrian declares that he makes his decision after looking up the views of the ancient philosophers and physicians.

9. *Digest 38.16.3.9, .11 (tit. 'Heirs at Law', Watson trans.):*

ULPIAN, *Sabinus, book 14*: 9. Likewise, it is also clear from the Law of the Twelve Tables that an unborn person is admitted in the case of intestacy, providing that he has been duly brought to birth. Hence, he usually stays the claims of the agnates who follow him to whom he is preferred, if he has been born; hence, he also shares with those who are of the same degree, as in the case where there is one brother and one unborn brother, or one nephew and one who is not yet born. . . . 11. A person born more than ten months after the death will not be admitted in the case of an intestacy.

10. *Aulus Gellius, Attic Nights 4.4:*¹⁶

IN the book to which he gave the title *On Dowries* Servius Sulpicius wrote¹⁷ that in the part of Italy known as Latium betrothals were regularly contracted according to the following customary and legal practice. "One who wished to take a wife," says he, "demanded of him from whom she was to be received a formal promise that she would be given in marriage. The man who was to take the woman to wife made a corresponding promise. That contract, based upon pledges given and received, was called *sponsalia*, or 'betrothal.' Thereafter, she who had been promised was

¹⁴ The *Attic Nights* of Aulus Gellius. With An English Translation. John C. Rolfe. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1927.

¹⁵ Translator's note: XII Tab. iv. 4, Schöll. The fragment is not extant, but it is cited also by Ulpian, *Dig.* xxxviii. 16. 3. 11: post decem menses mortis natus non admittetur ad legitimam hereditatem ('after ten months of the death one born is not admitted to lawful inheritance').

¹⁶ The *Attic Nights* of Aulus Gellius. With An English Translation. John C. Rolfe. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1927.

<http://www.perseus.tufts.edu/hopper/text?doc=Gel.+4.3&fromdoc=Perseus%3Atext%3A2007.01.0072>.

¹⁷ Translator's note: Fr. 2, Huschke; p. 226, Bremer.

called *sponsa*, and he who had asked her in marriage, *sponsus*. But if, after such [p. 327] an interchange of pledges, the bride to be was not given in marriage, or was not received, then he who had asked for her hand, or he who had promised her, brought suit on the ground of breach of contract. The court took cognizance of the case. The judge inquired why the woman was not given in marriage, or why she was not accepted. If no good and sufficient reason appeared, the judge then assigned a money value to the advantage to be derived from receiving or giving the woman in marriage, and condemned the one who had made the promise, or the one who had asked for it, to pay a fine of that amount.”

Servius Sulpicius says that this law of betrothal was observed up to the time when citizenship was given to all Latium by the Julian law.¹⁸ The same account as the above was given also by Neratius in the book which he wrote *On Marriage*.¹⁹

11. *Aulus Gellius, Attic Nights 4.3.1*:²⁰

IT is on record that for nearly five hundred years after the founding of Rome there were no lawsuits and no warranties [*cautiones*]²¹ in connection with a wife's dowry in the city of Rome or in Latium, since of course nothing of that kind was called for, inasmuch as no marriages were annulled [separated] during that period. Servius Sulpicius too, in the book which he compiled *On Dowries*, wrote²² that security for a wife's dower [sic, read 'dowry'] seemed to have become necessary for the first time when Spurius Carvilius, who was surnamed Ruga, a man of rank [*vir nobilis*], put away his wife because, owing to some physical defect, no children were born from her; and that this happened in the five hundred and twenty-third year after the founding of the city, in the consulship of Marcus Atilius and Publius Valerius [231 BC].²³ And it is reported that this Carvilius dearly loved the wife whom he divorced, and held her in strong affection because of her character, but that above his devotion and his love he set his regard for the oath which the censors had compelled him to take,²⁴ that he would marry a wife for the purpose of begetting children.

12. *XII tab. 4.3 (CD trans.)*:

Tab. 4.3. *Cicero phil. 2.28.69*: He ordered her to have her things for herself in accordance with the XII Tables took back the keys drove her out. (The absence of punctuation is deliberate.)²⁵

13. *Plutarch, Romulus 22.3*:²⁶

¹⁸ Translator's note: 90 B.C.

¹⁹ Translator's note: Fr. 1, Bremer. [Lucius Neratius Priscus was a well-known jurist of the late 1st and early 2d century AD. CD.]

²⁰ The Attic Nights of Aulus Gellius. With An English Translation. John C. Rolfe. Cambridge. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1927.
<http://www.perseus.tufts.edu/hopper/text?doc=Gel.+4.3&fromdoc=Perseus%3Atext%3A2007.01.0072>.

²¹ Translator's note: That is, the repayment of the dowry in case of a divorce was not secured. A *cautio* was a verbal or written promise, sometimes confirmed by an oath, as in Suet. *Aug.* xcvi. 2, *ius iurandum et cautionem exegit*.

²² Translator's note: Fr. 1, Huschke; p. 227, Bremer.

²³ Translator's note: 231 B.C.

²⁴ Translator's note: An oath was regularly required by the censors that a man married for the purpose of begetting legal heirs (*liberorum quacrendorum causa*); cf. Suet. *Jul.* lii. 3.

²⁵ The Crawford ed. and trans. on the basis of the Gaius' passages below opine that only the necessity of a repudiation was mentioned in the XII Tables, and neither the phrase 'have your things for yourself' nor anything about the keys. Watson, p. 33–34, disagrees.

²⁶ Plutarch. *Plutarch's Lives*. with an English Translation by. Bernadotte Perrin. Cambridge, MA. Harvard University Press. London. William Heinemann Ltd. 1914

[3] He [Romulus] also enacted certain laws, and among them one of severity, which forbids a wife to leave her husband, but permits a husband to put away his wife for using poisons, for substituting children [the better Greek texts read ‘keys’ here], and for adultery; but if a man for any other reason sends his wife away, the law prescribes that half his substance shall belong to his wife, and the other half be consecrate to Ceres; and whosoever puts away his wife, shall make a sacrifice to the gods of the lower world.

14. *Digest 48.5.44 (tit. ‘On adultery’, Watson trans.):*

GAIUS, *XII Tables, book 3*: If a repudiation was not sent in accordance with the statute and for that reason a woman should seem still to be married, yet if a man marries her [thereafter], he will not be an adulterer. And so Salvius Julian replied, because, he said, adultery is not committed without malicious intent; although it must be said that a man who knows that she has not been legally divorced must not break the law with malicious intent.

15. *Digest 24.2.2 (tit. ‘On divorces’, Watson trans.):*

GAIUS, *Provincial Edict, book 11*: The word “divorce” derives from either the diversity of views it involves or because people who dissolve their marriage go in different directions. 1. Where repudiation, that is, renunciation, is involved, these words are used: “Keep your things to yourself”; or “Look after your own things.” 2. It is agreed that in order to end betrothals a renunciation must be made. Here the established words are: “I do not accept your conditions.” 3. It makes no difference whether the repudiation is made in the presence of the other party or that in his absence a person in his power is used for this or someone who exercises power over the man or woman here.

16. *Livy 1.58:*²⁷

58. A few days afterwards Sextus Tarquin went, unknown to Collatinus, with one companion to Collatia. [2] He was hospitably received by the household, who suspected nothing, and after supper was conducted to the bedroom set apart for guests. When all around seemed safe and everybody fast asleep, he went in the frenzy of his passion with a naked sword to the sleeping Lucretia, and placing his left hand on her breast, said, ‘Silence, Lucretia! I am Sextus Tarquin, and I have a sword in my hand; if you utter a word, you shall die.’ [3] When the woman, terrified out of her sleep, saw that no help was near, and instant death threatening her, Tarquin began to confess his passion, pleaded, used threats as well as entreaties, and employed every argument likely to influence a female heart. [4] When he saw that she was inflexible and not moved even by the fear of death, he threatened to disgrace her, declaring that he would lay the naked corpse of the slave by her dead body, so that it might be said that she had been slain in foul adultery. [5] By this awful threat, his lust triumphed over her inflexible chastity, and Tarquin went off exulting in having successfully attacked her honour. Lucretia, overwhelmed with grief at such a frightful outrage, sent a messenger to her father at Rome and to her husband at Ardea, asking them to come to her, each accompanied by one faithful friend; it was necessary to act, and to act promptly; a horrible thing had happened. [6] Spurius Lucretius came with Publius Valerius, the son of Volesus; Collatinus with Lucius Junius Brutus, with whom he happened to be returning to

(<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2008.01.0061%3Achapter%3D22%3Asection%3D3>).

²⁷ Livy. *History of Rome*. English Translation by. Rev. Canon Roberts. New York, New York. E. P. Dutton and Co. 1912. 1. Livy. *History of Rome*. English Translation. Rev. Canon Roberts. New York, New York. E. P. Dutton and Co. 1912.

(<http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0026%3Abook%3D1%3Achapter%3D5>).

Rome when he was met by his wife's messenger. They found Lucretia sitting in her room prostrate with grief. [7] As they entered, she burst into tears, and to her husband's inquiry whether all was well, replied, 'No! what can be well with a woman when her honour is lost? The marks of a stranger Collatinus are in your bed. But it is only the body that has been violated the soul is pure; death shall bear witness to that. But pledge me your solemn word that the adulterer shall not go unpunished. [8] It is Sextus Tarquin, who, coming as an enemy instead of a guest forced from me last night by brutal violence a pleasure fatal to me, and, if you are men, fatal to him.' [9] They all successively pledged their word, and tried to console the distracted woman, by turning the guilt from the victim of the outrage to the perpetrator, and urging that it is the mind that sins not the body, and where there has been no consent there is no guilt 'It is for you,' she said, 'to see that he gets his deserts: [10] although I acquit myself of the sin, I do not free myself from the penalty; no unchaste woman shall henceforth live and plead Lucretia's example.' [11] She had a knife concealed in her dress which she plunged into her, heart, and fell dying on the floor. [12] Her father and husband raised the death-cry.²⁸

17. *Dionysius of Halcarnassus, Roman Antiquities 2.10:*

X. The regulations which he [Romulus] then instituted concerning patronage and which long continued in use among the Romans were as follows: It was the duty of the patricians to explain to their clients the laws, of which they were ignorant; to take the same care of them when absent as present, doing everything for them that fathers do for their sons with regard both to money and to the contracts that related to money; to bring suit on behalf of their clients when they were wronged in connexion with contracts, and to defend them against any who brought charges against them; and, to put the matter briefly, to secure for them both in private and in public affairs all that tranquillity of which they particularly stood in need. It was the duty of the clients to assist their patrons in providing dowries for their daughters upon their marriage if the fathers had not sufficient means; to pay their ransom to the enemy if any of them or of their children were taken prisoner; to discharge out of their own purses their patrons' losses in private suits and the pecuniary fines which they were condemned to pay to the State, making these contributions to them not as loans but as thank-offerings; and to share with their patrons the costs incurred in their magistracies and dignities²⁹ and other public expenditures, in the same manner as if they were their relations. For both patrons and clients alike it was impious and unlawful to accuse each other in law-suits or to bear witness or to give their votes against each other or to be found in the number of each other's enemies; and whoever was convicted of doing any of these things was guilty of treason by virtue of the law sanctioned by Romulus, and might lawfully be put to death by any man who so wished as a victim devoted to the Jupiter of the infernal regions.¹ For it was customary among the Romans, whenever they wished to put people to death without incurring any penalty, to devote their persons to some god or other, and particularly to the gods of the lower world; and this was the course which Romulus then adopted. Accordingly, the connexions between the clients and patrons continued for many generations, differing in no wise from the ties of blood-relationship and being handed down to their children's children. And it was a matter of great praise to men of illustrious families to have as many clients as possible and not only to preserve the succession of hereditary patronages but also by their own merit to acquire others. And it is incredible how great the contest of goodwill was between the patrons

²⁸ Translator's note: As soon as life was extinct, those round the death-bed raised a loud cry of woe and called out the name of the deceased. For a similar custom among the Hebrews, comp. 2 Sam. xviii. 33.

²⁹ Translator's note: The word *γενηφορία* should mean literally the "bearing, or enjoyment, of privileges," hence a "position of honour" or a "dignity." Presumably the reference is to priesthoods.

and clients, as each side strove not to be outdone by the other in kindness, the clients feeling that they should render all possible services to their patrons and the patrons wishing by all means not to occasion any trouble to their clients and accepting no gifts of money. So superior was their manner of life to all pleasure; for they measured their happiness by virtue, not by fortune.