European Legal Culture: Personal and Family Law
Caput -
the system of three status
In roman law the legal position of a person in society was defined by the system of three status:
I. status libertatis - which define personal status due to freedom or enslavement
II. status civitatis - which define citizenship of each person
III. status familae - which define place of person in the structure of a roman family
Three elements of power

- manus (Those in manus are wives bound to their husbands by the old formal modes of marriage.)

- mancipium (the original Roman term for slavery)

- potestas (both the father’s power over his children and the master’s power over his slaves)
Capitis deminutio -
the changes in personal status

The form of a status wasn’t permanent - it changed due to specific situations:

I. capitis deminutio maxima - enslavement

II. capitis deminutio media - deprivation of roman citizenship

III. capitis deminutio minima - change that took place in the structure of family
The beginning of legal personality

Nasciturus pro iam nato habetur, quotiens de commodis eius agitur („The unborn is deemed to have been born to the extent that its own benefits are concerned”)

This principle only worked in the situation of birth of living child which was manifested by every kind of action (due to Sabinians) or loud cry (due to Proculeians)
The end of legal personality

This situation was an effect of various reasons:
- death
- enslavement
- captivity of roman soldier during war campaign (see: ius postlimi and fictio legis Corneliae)
Origins of slavery

* in archaic law: debts and desertion as a reason to sell a citizen abroad - In the early Republic it was possible for a Roman citizen to be reduced to slavery as a punishment for manifest theft, although it also appears that they were sold to foreigners out of Rome, across the Tiber (trans Tiberim).
Origins of slavery

* capture in war - Romans acknowledged as a general principle that prisoners of war lost their previous status, making provision for the case where a Roman was captured by the enemy. Such a prisoner lost his Roman citizenship until such time as he was able to regain it on returning to Roman territory, a process known as postliminium. Slaves captured by the Romans in war were the property of their captors.
Origins of slavery

* as a punishment (mines and fighting on the arena): Later, those condemned to death or to work in the mines became slaves from the moment of condemnation, their property forfeited to the state. These were not the property of individual masters but rather of the state, and are sometimes referred to as public slaves.
Origins of slavery

* inheriting status libertatis: children of female slaves
* as a consequences of intimate relations between free women and slave - S.C. Claudianum - the offspring of a freewoman who was living with a slave without the slave owner’s permission were born slaves, and the woman herself reduced into slavery.
Origins of slavery

In some cases apparent free persons could be reduced to slavery:

a) Those who gained their freedom from their masters, as a result of processes to be discussed shortly, might in certain circumstances have this freedom revoked for ingratitude.

b) A free person who arranged to have himself sold into slavery fraudulently, hoping subsequently to recover his freedom and to share in the profits, was held to have become a slave: Hadrian held that if the purchase price were returned he might recover his freedom without express manumission.

c) Free children were sold into slavery the general principle was that this could not change their status, but it was later ruled that in the case of the newborn the purchaser was entitled to have the child redeemed for whatever he was worth as a slave.
Legal status of slaves

* slave as a instrumentum vocale ("talking thing")
* lack of legal capacity
* capacity to act as master’s proxy
* ius vitae necisque - power of master to punish the slave the form of capital punishment
  - lack of personal liability - noxal liability instead
Emancipation

A slave could be released from slavery by his master - this almost miraculous transition from the least of beings to the most important of citizens was curious. From an early date, however, devices existed whereby a slave might acquire independence: a striking characteristic of these legal devices is that the slave thereby acquired full Roman citizenship.
Forms of emancipation

* Formal, e.g. - in the form of bequest in testament or as the consequence of master decision to write in slave’s name into the register of roman citizens

* Informal, e.g. - when the master allow slave to sit with him and his friends at the table or in the letter
Forms of emancipation

The earliest method for releasing a slave seems to have been incorporation in the census list. This list (or, rather, lists), created every five years or so, determined those entitled as Roman citizens to exercise their vote in one of the various voting categories of the Republican assemblies. By directing his slave to present himself before the censors, the enrolling magistrates, the master offered the slave his freedom, which was confirmed by the magistrates’ action of enrolment. There must always have been an element of fiction in this device as one must suppose that the magistrates were normally concerned only to enrol those already entitled to vote.
Forms of emancipation

A less public but still formal mechanism existed in the form of manumission vindicta. This takes the form of a compromised lawsuit, bearing its fictive character on its face. The master wishing to release his slave procures a friend to litigate the question of the slave’s status with him. Such a procedure might fairly be used in a case, say, where the slave’s status – perhaps a child sold into slavery – was genuinely in doubt.

The litigants appeared before the praetor as if for the preliminary stage of the lawsuit, the claimant (assertor libertatis) made his claim, the defendant master remained silent, and, consequently, the praetor declared the slave to be free.
Forms of emancipation

A third means existed for formally freeing slaves. A master might, in his will, grant his slaves their freedom as a legacy. Such slaves could be expected to show their gratitude by appropriate displays of grief at the funeral, but the master’s generosity was exercised at the expense of the heir and, in the case of large estates, the public good. Legislation at the turn of the eras restricted both the number of slaves who could be released in this way, proportional to the size of the estate, and the status into which they would come on release. Those who were under the age of 30 acquired their freedom only as Latins, not as Roman citizens.
Legal status of freedmen

*Formally emancipated archive status of roman citizens, meanwhile informally emancipated archive specific status of Iuniani’s peregrines (Lex Iunia Norbana
* They were limited in access to hold a public office or to become a priest
* They were limited by the law of patronage: a system of moral duties and actual obligations towards former master
* Those limitations applied only to freedmen - their children possessed all of the advantages of being born free.
* Freedmen could archive status of a person born in freedom only by a special imperial honour: restitutio natalium
Cives Romani
(roman citizens)

Public rights:
• *ius sufragii* – right to take part and vote on the citizen’s assemblies
• *ius honorum* – right to hold a public office
• right to posses a roman surname
• *ius militiae* – right and a duty to serve in the army in the time of war
• *ius provocationis* – right to question capital punishments sentence in the front of citizen’s assembly
Personal rights:

- *ius conubii* – right to enter into marriage valid from the roman law point of view
- *ius commercii* – right to contract
- *legis actio* – right to become a party in civil court proceedings
- *patria potestas* – right of father to exercise paternal power
- *testamenti factio activa and passiva* - right to create a testament and to become a heir from it
Latins

- *Latini veteres (prisci)* – Latins that lived close to the City

- *Latini coloniarii* – settlers that lived in the colony located on the latin law

- *Latini Iuniani* – informally emancipated slaves
Peregrins

I. peregrines certae civitatis - they became subordinates of Rome. They retained some level of independence (local government and law), but they had no political rights in Rome.

II. peregrines dedicati - they were conquered by Rome and their land became public roman property. Their rights in Imperium Romanum was limited even in comparison to other peregrines.
Status familae

I. persona sui iuris - without superior in family structure

II. persona alien iuris - person under paternal power (limited legal capacity, whatever they acquire was part of family estate)
Legal entity

Group of people (e.g. corporation) or estate (e.g. foundation) that possesses legal capacity and capacity to act in its own name.

The assets of legal entity didn’t belong to its members, but they also weren’t responsible for obligations of such entity.
Examples of legal entities in roman law

* Res public - roman state was legal person
* Civitates, municipia and coloniae - local settlements
* Collegia and sodalitates - guilds of person which perform the same profession or associations of people form some common goal
Family Law
Sponsalia (betrothal)

* promise of future marriage
* strengthen by promise of monetary penalty paid by the party which broke the promise
* it created affinity between parties and their families
* no second promise of marriage could be made without breaking the betrothal
Nuptiae (marriage)

* monogamous and heterosexual relationship
* dominance of secular elements
* relationship based more on factual rather than legal basis
* conclusion of marriage was based on consensus between the parties - not on the formal ceremony
Legal effect of marriage

- heirdom
- husband right to dowry
- prohibition of mutual donations
- affinity
- rights of children born in marriage
Requirements of valid marriage

* physical maturity
* both parties must have ius conubi
* both parties must express their will to enter into marriage (consensus)
* parties that possessed status of persona alieni iuris was required to receive consent of their pater familias
Legal obstacles for marriage
* until 445 B.C. marriage between patrician and plebeian was void
* until end of republic marriage between citizen and freedmen was void
* men from senatorial families couldn’t marry some type of women
* soldiers couldn’t marry women that descend from province where they were stationed
Wife under power of husband (conventio in manum)

Three ways:

* confarreatio - special sacral ceremony
* coemptio - formal purchase of rights to women from her family superior
* usus - living with her husband for a year gave him rights to her as her new family superior
Personal relations between spouses

* creation of affinity bond
* children born in legal marriage had full rights (especially to inheritance)
* spouses couldn’t sue each other with actiones famosae (which could bring infamy to respondent)
* both parties should be faithfull to each other
* still lack of equality (privileged position of men)
Matrimonial property regime

* coverture system in cases of marriage in manu
* separate property system in cases of marriage sine manu (husband could administrate her estate but he was obliged to give an account upon dissolution of marriage)
* prohibition of donations in marriage
Dissolution of marriage

* two modes: divorce (mutual) or repudium - decision of one party, in marriage in manu sole right of husband

Reasons:
- death
- deprivation of conubium or freedom
- emergence of legal obstacle
Agnatic family

* group of people who had the same family superior (pater familias)
* all power was gathered in the hand of pater familias (only he was a sui irris person)
* entering family: birth from iustum matrimonium or formal act of adoption
* end of the bond: death of pater familias or emancipation
* importance: inheritance system (L. XII T.)
Cognatic family

* bonds of blood rather than from law
* cognatic family system suppressed archaic agnatic system in pretorian and postclassic law
* emancipated family member was still part of cognatic family
* daughter-in-law in marriage cum manu was part of agnatic, but not cognatic family
Two types of adoption

* Adrogatio - adoption of person sui iuris (descend to level of alien iuris)
* Adoptio - adoption of person alieni iuris
* problem of gender and age of adopter
* adopt plena and adoptio minus plena - differences of effects
End of paternal power

* death
* capitis deminutio media of the father
* archiving higher state honours by aliens iuris son or status of Vestal priestess for daughter
* adoption
* emancipation
Essence of paternal power

* power of father was compared to power that magistrates have in respect to citizens
* ius vitae et necisque - law of life and death
* ius exponendi - right to abandon child
* is vendendi - right to sell a child
* right to decide about marriages of his children
* right to broke marriage of his daughter
* right to restore paternal power from person that usurped it
* in classical times: limitations to certain right of father and emphasis on the duties of father
Peculium as a „peculiar” type of alieni iuris person estate
* separate part of estate in administration of slave or alieni iuris person
* later: estate that son archive during military or state service and estate donated to son by his mother or other persons
Tutelage (tutela)

Form of help for sui iuris persons with limitation to their legal capacity to act in their own name

Subjects:
- immature men and women
- mature women without family superior
Guardianship (cura)

* guardianship over estate of sui iuris person

Subjects:

* mentally ill persons
* spendthrifts
* unborn child
* hereditary estate not acquired by heir
* old or handicapped persons
* persons absent in official state business