"Written and unwritten marriages in Hellenistic and Postclassical Roman law", H. J. Wolff, Haverford 1939 : [recenzja]

The Journal of Juristic Papyrology 1, 92

1946

Artykuł został zdigitalizowany i opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.
separation of the spouses; the voluntary separation of the spouses; hereditary provisions in matrimonial contracts:  ἀξῶν καὶ ἀποσφείρων; δημοφαίρων καὶ ἐγγύτων γάμων; the term ἀνοικείον. Some remarks on ἐγγύτη-γγυναίκα are added.


The author rejects the original interpretation of P. Mich. Inv. 4703 as a soldier's marriage contract. Instead it should probably be regarded as a contract of betrothal, in this case substituted for a marriage which had been annulled by the husband's enlistment. (Cf. supra Berger, p. 13ff.)

H. J. WOLFF, 'Written and unwritten marriages in Hellenistic and Postclassical Roman law. Published by the American Philological Association, Haverford, Penn. 1939.

There were not two types of marriage in the Chora, but two types of marriage contract, the συνοικεσίου συγγραφή and the συγγραφή ἐρμολαγία, both of which brought about a perfectly lawful marriage. The συνοικεσίου συγγραφή and perhaps also the συγγραφή ἐρμολαγία were already effective before the couple actually joined. The dual form of marriage met within Alexandria, the marriage contracted through συνόντησις and the marriage contracted before the hierothytai were entirely lawful as to private law; the latter procured only a better political status of the sons. Αγράφος σύνων, attested by Dura Perg. 22 as a common Hellenistic custom, was not different from the Ptolemaic homologia marriage, except for the fact that no written agreement was executed. The third chapter links the Greek marriage law of Egypt with the classic Greek law. In the fourth chapter the author explains that the requirement of a written contract as a condition of lawful marriage, which in some cases passed into law by the legislation of Justinian, cannot be due to adoption of provincial legal ideas but developed directly from ideas springing naturally from the latest classic Roman law under Christian influence.


Divorce is accomplished either by mutual agreement or unilaterally by actual separation. In the former case a public document, since Augustus, one before the agoranomos used to be drawn up, in which the financial effects of the divorce were described. Especially the parties to the agreement issued a receipt that the dos and other gifts were returned, and discharged their claims. This document has, at the beginning, only a declaratory character which proves that the marriage was in fact dissolved. Whether Grenet. 11 76 = M. Chr. 295 reflects the new point of view according to which the deed of divorce has not to prove but establish divorce, is doubtful. As far as the unilateral dissolution of marriage is concerned, the unilateral statement was replaced by a formal declaration (repudium) from the beginning of the IV cent. A.D.


'Αγράφος γάμος is like the Egyptian συγγραφή ἐρμολαγία a financially secured concubinate. The characteristic of the δημοφαίρων γάμος is that in this γάμος provisions on dowry are missing. The dissolution of such a marriage used to be attested by a deed in order to avoid any claims. The Dura-Europos deed of divorce confirms this idea. The acknowledgment of the concubinate as legitimate conubium sine honesta celebratione of the later times may have been influenced by the δημοφαίρων γάμος of the Graeco-Egyptian papyri.


The article deals with reference to Mich. Inv. 508 with the question whether or not the consent of the filia familii was required for her marriage. The author asserts that Mich. Inv. 508 confirms his theory that her consent was not a prerequisite of the validity of her marriage.


Not available.