Comparative Analysis of Proprietary Rights of Spouses in Josephine Code of 1787 and Roman Law

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Abstract:
The study highlights the provisions of the third chapter "On the rights of spouses" of the first part "On personal law" of the Josephine Code of 1787, which regulated marital relations in the Habsburg monarchy. The author reveals the process of compiling the Josephine Code and presents its structure. The main focus of the study is based on the characteristics of the property relations of spouses according to the Josephine Code and the identification in them a reflection of the reception of provisions of Roman law. Therefore, the author researches the legal regime of various types of property of the spouses, including dowry (so-called marital property) and its security, own property, joint property, widow's maintenance, as well as the procedure for administrating the wife's property and the peculiarities of the right of usufruct. In conclusion, the author substantiates the historical and legal significance of the Josephine Code.

Keywords: Josephine Code; marital property; dowry; matrimonial property, widow's maintenance; usufruct; reception of Roman law

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1. Introduction

1.1 Formulation of the Problem

The Josephine Code of 1787, in the form of its first part "On personal law", the third chapter of which "On the rights of spouses" regulated marriage relations in the Habsburg monarchy. It was introduced after long codification work aimed at significantly revising the Draft of the Codex Theresianus of 1766. In fact, it became the first unified and codified

civil law act in the history of modern European private law that regulated marriage and family relations, that is, relations between spouses and parents and children, as well as the institution of guardianship. Later, in the period of the still ongoing codification process in the Austrian Empire, its norms of marriage and family law were refined, and soon most of the improved provisions of the Josephine Code became the basis of the Civil Code of Galicia of 1797 (which was valid in the Galician Crown Region[1] separately for Western Galicia and Eastern Galicia[2]; the introduction of this Code in fact constituted the approbation of the practical implementation of its provisions before the spread of its effect to the entire territory of the Austrian monarchy, and therefore, on the basis of its refinement the general imperial code was subsequently adopted) and, finally, the General Civil Code of the Austrian Empire of 1811.

At the same time, it should be noted that, despite the primacy of the Josephine Code in this area and even though it was in effect in the Habsburg Monarchy for a quarter of a century, relatively little attention was paid to it in the history of Austrian law. In my opinion, this Code requires a separate study, and above all, a detailed elucidation of the provisions on the peculiarities of the property relations of spouses, as well as tracing the continuity of the Roman tradition in the legal regime of various types of property of the spouses and, therefore, the justification of the reflection of the reception of some provisions of Roman law in the property relations of the spouses in the Habsburg Monarchy.

1.2 The Analysis of the State of Scientific Research on the Problem

It should be noted that the text of the Josephine Code, its first part approved of 1787, has been kept till my days in the form of an authentic edition made by the courtier printer of Joseph II, the book publisher Johann Thomas Edler von Trattner, which was digitized in 2017 by the National University Library of Slovenia in Liubliana.[3] In addition, the Josephine Code and the imperial patent for its implementation were published in the Collection of Legislative Acts (Justizgesetzsammlung) of 1786.[4] Later, in 1817, the Imperial-Royal Courtier and State Serial Printing House presented a facsimile of the specified edition of the Josephine Code, which has been digitized by the Austrian National Law Library as a historical-legal and legislative text.[5] The modernized reprint of this digitized facsimile

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1 This is the common name in historical science of the province of the Habsburg Monarchy – the Kingdom of Galicia and Lodomeria, which consisted of ethnic Western Ukrainian lands (including Bukovyna, which was its district from 1786 to 1849, and later it was separated into a separate crown region of the monarchy called the Duchy of Bukovyna) – as Eastern Galicia, and ethnic Polish lands – as Western Galicia.

2 This region of Ukraine still bears the historical name of Halychyna – from the time of the existence of one of the lands of Kyivska Rus Halychyna (the name comes from the city of Halych, which is located in the Ivano-Frankivsk region, which was first mentioned in Hungarian sources in 896 and in Ipatiivskyi chronicles of 1113), and later the foundation in 1141 on its territory of the Principality of Galicia with its capital in Halych, which stretched from the Sian River and the Vyslok River in the west to the Danube River in the southeast and covered, including, Bukovyna.

3 Allgemeines Bürgerliches Gesetzbuch. Erster Teil. Vienna: Johann Thomas Edlen von Trattnern, 1786, s. 156 [online]. Available at: <http://www.dlib.si/stream/URN:NBN:SI:DOC-IALWUBX5/d8ad5ff0-1d84-4f7a-ac54-7366255d8ade/PDF> [cit. 2025-05-05].

4 Josephinisches Gesetzbuch. [online]. Available at: <http://www.koeblergerhard.de/Fontes/JosephinischesGesetzbuch1787.pdf> [cit. 2025-05-05].

5 Josephinisches Gesetzbuch (JGS 591). Faksimile des. Joseph des Zweyten, Römischen Kaisers, Gesetze und Verfassungen im Justitz-Fache. Jahrgang von 1785 bis 1786. Zweyte Fortsetzung (1786). In:

of the Josephine Code was carried out by Gerhard Köbler, who is a professor of Innsbruck University of Leopold and Franz, a specialist in Austrian law and integrative European legislation.[6] The research of the Josephine Code content, in particular a thorough study of its provisions on property relations of spouses became possible due to the familiarization with mentioned above publication.

It is worth noting that European, above all Austrian, legal historians pays some attention to the study of the marriage and family law of the Austrian Empire as a whole, in particular the property rights of spouses, including the relevant provisions of the Josephine Code, namely: Adalbert Theodor Michel (back in 1870),[7] Wilhelm Brauneder,[8] Anna Margaretha Sturm.[9] However, they did not conduct a thorough and comprehensive study of the provisions of the Code about the property relations of spouses. Perhaps, this can be explained by the fact that they attached fundamental importance in their scientific research to the General Civil Code of the Austrian Empire of 1811.

On the other hand, in the Ukrainian historical and legal science, there are no separate studies aimed at studying the Josephine Code of 1787,[10] although the western Ukrainian lands were part of the Habsburg Monarchy during 1772–1918. However, it is advisable to emphasize that at the end of the 19th and the beginning of the 20th centuries the outstanding legal scholars, professors of Lviv University Oleksandr Ohonovskyi[11] and Stanislav

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Justizgesetzsammlung. ALEX – Historische Rechts- und Gesetzestexte Online. Wien: Kaiserlich-königliche Hof- und Staats-Serarial-Druckerei, 1817, pp. 71–130. [online]. Available at: <https://alex.onb.ac.at/cgi-content/alex?apm=0&aid=jgs&datum=10030003&zoom=2&seite=00000071&ues=on&x=16&y=9> [cit. 2025-05-05].

6 Josephinisches Gesetzbuch (1787). [online]. Available at: <http://www.koeblergerhard.de/Fontes/JGB20070429-rund18800woerter.htm> [cit. 2025-05-05].

7 MICHEL, A. Th. *Beiträge zur Geschichte des österreichischen Eherechtes. I. Heft. Maria Theresia – Franz I. (1740–1835)*. Graz: Universitätsbuch handlung von Leuschner & Lubensky, 1870, pp. 10–32. [online]. Available at: <https://books.googleusercontent.com/books/content?req=AKW5QadviBvs7Uegy9MRo_mcfawty_ykPZl1q89wsi0TpDvFQvXKsF6eQguGJnLpQDCEjASe5AKY542zPeYjnHa3hNsp6MMN4MtPg9Z1Gtvrzg1CGcSaAVPekM7gihQzn1jRymBm2gXtTv986TOZ4XxtW6Gx4YkfkXETOm8b0ocPLjqWEvKkH_7xbRM-Kj00UTI8pQBdVdCBI_E4meHSY7lWG_cS0vp14La3J4o6W2mw6AwlDOpxYGq3EWGRDMJ8pEk4AkfWHkKOp4A5zGnJj6_K3V5d6vUIQ7rStzqMMchPw9_f4k_azc0> [cit. 2025-05-05].

8 BRAUNEDER, W. *Die Entwicklung des Ehegüterrechts in Österreich. Ein Beitrag zu Dogmengeschichte und Rechtstatsachenforschung des Spätmittelalters und der Neuzeit*. Salzburg; München: W. Fink, 1973, 441 s. (zugleich: Habilitationsschrift. Universität Wien, 1971); Rechtseinheit durch elastisches vertragsrecht: das ehegüterrecht der österreichischen privatrechtskodifikationen. In: *Зборник радова Правног факултета у Новом Саду* [*Proceedings of the Faculty of Law in Novy Sad*], 2006, No 3, pp. 175–189. [online]. Available at: <https://zbornik.pf.uns.ac.rs/wp-content/uploads/2019/02/2006-3.pdf> [cit. 2025-05-05].

9 STURM, A. M. *Das josephinische Leitbild der Frau in Ehe und Familie*. Wien: VWGÖ, 1988, p. 155 [online]. Available at at: <https://books.google.com.ua/books/about/Das_josephinische_Leitbild_der_Frau_in_E.html?id=EQUpAAAAYAAJ&redir_esc=y> [cit. 2025-05-05].

10 Many modern Ukrainian legal historians, first of all prof. Volodymyr Kulchytskyi, prof. Borys Tyshchyk, prof. Ihor Boiko, prof. Yevhen Kharytonov, prof. Oksana Blazhivska, prof. Mykhailo Nykyforak, DPh. Mykhailo Pyrtko, associate prof. Hanna Fedushchak-Paslavska, associate prof. Halyna Sanahurska and others, in their works only briefly mention about the conclusion of this Code and its structure.

11 See: OHONOVSKYI, O. *Avstriiske mainove pravo podruzhzhia. Ch. 1.* [*Austrian matrimonial property law. Part 1*]. Lviv, 1880; *System avstryiskoho prava pryvatnoho* [*The system of Austrian private law*]. Vol. 1–2, Lviv: Z drukarni NTSh, 1897; etc. (In Ukrainian).

Dnistrianskyi[12] conducted an in-depth study of Austrian civil and marriage law, including the property law of spouses, within the framework of which the provisions of the Josephine Code were examined.

The fact that Ukrainian scientists have not studied the Josephine Code in detail, and moreover, have not paid attention to the study of the property relations of spouses according to this code and, even more so, to the reflection in them of the reception of the provisions of Roman law, can probably be explained that this Code was in effect on the territory of Western Ukrainian lands for only 10 years – until the introduction of the Civil Code of Galicia of 1797. At the same time, it should be noted that my scientific research is aimed, in particular, at the studying of the Josephine Code and the identification of the Roman law reception in it.[13] I will pay attention that in order to trace the historical continuity of

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12 See: DNISTRIAŃSKI, S. *Wykład prawa familijnego* [*Family law lecture*]. Lwów, 1901–1902, s. 428. (in Polish); DNISTRIANSKYI, S. *Pravo podruzhia* [*Marriage law*]. Lviv, 1900, 196 p.; *Rodynno-maietkove pravo* [*Family property law*]. Lviv, 1900, p. 164; *Opiky i kurateli* [*Guardians and trustees*]. Lviv, 1900, 104 p.; *Pravo rodynne pislia vykladiv profesora d-ra Dnistrianskoho* [*Family law after lectures by prof. Dr. Dnistrianskyi*]. Lviv, 1901, p. 648; *Pravne vidnoshenie rodychiv do ditei* [*Legal relations between relatives and children*]. Lviv, 1906, p. 184; *Tsyvilne pravo. Zahalna chastyna* [*Civil law. General part*]. Lviv, 1900; *Avstriiske pravo pryvatne* [*Austrian private law*]. Lviv, 1906, p. 308; Prychynky do reformy pryvatnoho prava v Avstrii [Supplement to the reform of private law in Austria]. In: *Chasopys Pravnycha i Ekonomichna* [*Law and Economic Journal*], Lviv, 1912, Is. 7, Vol. 10, pp. 1–111; Novelia do tsyvilnoho zakona [Amendment to the civil law]. In: *Pravnychyi visnyk* [*Legal Bulletin*], Lviv, 1913, Is. 3, pp. 114–173; *Tsyvilne pravo* [*Civil law*]. Vol. 1. Vienna, 1919, p. 1063 + XLIV (this work contained, in particular, a translation of the General Civil Code of the Austrian Empire of 1811); etc. (In Ukrainian).

13 SAVULIAK, R. Yozefinskyi kodeks 1787 r.: peredumovy ukladennia, kodyfikatsiini roboty, struktura, zahalna kharakterystyka ta znachennia [The Josephine Code of 1787: prerequisites for conclusion, codification works, structure, general characteristics and meaning]. In: *Zbirnyk naukovykh prats Scientia: za materialamy III Mizhnarodnoi naukovo-teoretychnoi konferentsii «Modernization of today's science: experience and trends» (m. Sinhapur (SGR), 24 liutoho 2023 roku)* [*Collection of scientific papers «Scientia»: with Proceedings of the III International Scientific and Theoretical Conference «Modernization of today's science: experience and trends» (Singapore, Republic of Singapore, February 24, 2023)*], pp. 92–96. [online]. Available at: <https://previous.scientia.report/index.php/archive/article/view/749> [cit. 2025-05-05]; Osoblyvosti kodyfikatsiinykh robit nad Yozefinskym kodeksom 1787 r. [Peculiarities of the codification works on the Josephine Code of 1787]. In: *Elektronne naukove vydannia «Analitychno-porivnialne pravoznavstvo»* [*Electronic scientific publication "Analytical and comparative jurisprudence"*], 2023, No. 4, pp. 41–49. [online]. Available at: <http://app-journal.in.ua/wp-content/uploads/2023/09/7.pdf> [cit. 2025-05-05]; Kodyfikatsii tsyvilnoho prava v Avstriiskii monarkhii u druhii polovyni XVIII st.: kodyfikatsiini roboty, zahalna kharakterystyka ta znachennia [Codifications of civil law in the Austrian monarchy in the second half of the 18th century: codification works, general characteristics and significance]. In: *Aktualni doslidzhennia pravovoi ta istorychnoi nauky (Vypusk 48): Mizhnarodna naukova konferentsiia (m. Kyiv, 9–10 bereznia 2023 r.)* [*Current research in legal and historical science (Issue 48): International Scientific Conference (Kyiv, March 9–10, 2023)*]. [online]. Available at: <http://www.lex-line.com.ua/?go=full_article&id=3527> [cit. 2025-05-05]; Prava batkiv i ditei za Yozefinskym kodeksom 1787 r. [Rights of parents and children according to the Josephine Code of 1787]. In: *Visnyk Lvivskoho universytetu. Seriia yurydychna* [*Bulletin of Lviv University. Legal series*], 2023, Is. 77, pp. 79–87. [online]. Available at: <https://law.lnu.edu.ua/wp-content/uploads/2023/12/Maket_77_176_250.pdf> [cit. 2025-05-05], <http://dx.doi.org/10.30970/vla.2023.77.079> [cit. 2025-05-05]; Opika za Yozefinskym kodeksom 1787 r. [Guardianship under the Josephine Code of 1787]. In: *Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy* [*Bulletin of the National Academy of Legal Sciences of Ukraine*], 2024, Vol. 31, No. 3, pp. 52–73. [online]. Available at: <https://jnals.com.ua/uk/journals/visnik-naprnu-3-2024-r/opika-za-yozefinskim-kodeksom-1787-r> [cit. 2025-05-05]. <https://doi.org/10.31359/1993090920243135 2> [cit. 2025-05-05]. (In Ukrainian); Marriage law according to the Josephine code of 1787 and the reception of Roman law

the formation of the civil law of the Habsburg Monarchy, my processing of the Josephine Code of 1787 was preceded by my analysis of the Draft of the Codex Theresianus of 1766, as a result of which this Code was concluded.[14]

Due to the lack of Ukrainian research and the availability of primary sources and certain foreign research material on the specified issue, we consider it to be of crucial necessity for the first time to pay attention to a comprehensive study of this issue in the Ukrainian historical and legal science. Therefore, the purpose of my research is to analyze the specifics of the property relations of spouses, namely, to consider the peculiarities of the legal regime of various types of property of the spouses, and to identify the reflection of the reception of individual provisions of Roman law in them.

2. The Characteristic of Conclusion and Structure of the Josephine Code of 1787

During the reign of Maria Theresa in 1766, a compilative civil code called "Codex Theresianus" ("The Theresian Code", named after Empress Maria Theresa) was concluded, but it was not approved due to a number of shortcomings.[15] Therefore, in 1772, a new codification Legislative Commission (Gesetzgebungskommission) was created,[16] which was headed by Johann Bernhard Horten,[17] for the revision the unapproved Draft of the Codex Theresianus in terms of its greater clarity, comprehensibility, accessibility and brevity,[18] which continued its work during the reign of Maria Theresa's son, Emperor Joseph II.

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in its provisions. In: *Journal on European History of Law*, 2024, Vol. 15, Is. 2, pp. 175–187. [online]. Available at: <http://www.historyoflaw.eu/czech/JHL_02_2024.pdf> [cit. 2025-05-05]; The dowry and its securing according to the Josephine Code of 1787. In: *Social Sciences*, 2024, Vol. 13, Is. 6, pp. 273–278. [online]. Available at: <https://www.sciencepublishinggroup.com/article/10.11648/j.ss.20241306.14> [cit. 2025-05-05]. <https://doi.org/10.11648/j.ss.20241306.14> [cit. 2025-05-05].

14 SAVULIAK, R. Codex Theresianus of 1766: Codification Works, Structure, main Content and Significance of Roman Law Reception during its Conclusion Process. In: *Journal on European History of Law*, 2023, Vol. 14, Is. 2, pp. 156–175. [online]. Available at: <http://www.historyoflaw.eu/english/JHL_02_2023.pdf> [cit. 2025-05-05].

15 HARRASOWSKY, H. R. (Hrsg. und mit anmerkungen versehen). Der Codex Theresianus und dem Entwurfe Gorten's. In: *Der Codex Theresianus und seine umarbeitungen*. Wien: C. Gerold's sohn, 1883–1886. Band IV, 1886, 557 p., pp. 8–13. [online]. Available at: <https://ia801608.us.archive.org/29/items/dercodextheresi02martgoog/dercodextheresi02martgoog.pdf> [cit. 2025-05-05]; NYKYFORAK, M. V. *Bukovyna v derzhavno-pravovii systemi Avstrii (1774–1918 rr.)* [*Bukovyna in the state-legal system of Austria (1774–1918)*]. Chernivtsi, 2004, p. 384, p. 277; Z istorii kodyfikatsii avstriiskoho tsyvilnoho ta tsyvilno-protsesualnoho prava [From the history of the codification of Austrian civil and civil procedural law]. In: *Naukovyi visnyk Chernivetskoho universytetu: Zbirnyk naukovykh prats* [*Scientific Bulletin of the University of Chernivtsi: Collection of scientific papers*], 2000, Is. 82: Jurisprudence, pp. 18–21, p. 18. [online]. Available at: <http://library.chnu.edu.ua/res//library/elib/visnyk_chnu/visnyk_chnu_2000_0082.pdf> [cit. 2025-05-05]. (In Ukrainian).

16 BRAUNEDER, W. Das Allgemeine Bürgerliche Gesetzbuch für die gesamten Deutschen Erbländer der österreichischen Monarchie von 1811. In: *Gutenberg-Jahrbuch*, 1987, B. 62, pp. 214–254, p. 218.

17 SZABO, F. *Kaunitz and Enlightened Absolutism 1753–1780*. New York: Cambridge University Press, 1994, p. 380, p. 182.

18 SAVULIAK, R. Codex Theresianus of 1766, p. 175.

Finally, by the decree of November 1, 1786, the first part of the new Civil Code, which was reduced from 1,500 paragraphs of the Codex Theresianus to almost 300, was approved and published.[19] This part was named "Allgemeines bürgerliches Gesetzbuch" ("General Civil Code"),[20] or "Josephine Code of Laws", or "Josephine Book of Laws" ("Josefinisches Gesetzbuch")[21] (since it was approved by Joseph II), which indicated that in fact it was considered by the legislator as a Code, however, it was only a part of it. Already from January 1, 1787, the Josephine Code (in history also called Josefiana) was put into effect in the German hereditary lands of the Austrian monarchy, where it was in effect until December 31, 1811,[22] that is before the introduction of the General Civil Code of the Austrian Empire of 1811; and from May 1, 1787, in the Galician Crown Region as well,[23] where it operated until the introduction of the Civil Code of Galicia of 1797, which was later replaced by the General Civil Code of the Austrian Empire of 1811.

The first part ("On personal law") of the Josephine Code, which provided the rights of individuals, consisted of a Preamble (stated the introduction of this unified civil law in all German hereditary lands since January 1, 1787) and five chapters, which contained in total 293 paragraphs: 1) on laws (27 paragraphs); 2) on the rights of subjects in general (9 paragraphs); 3) on the rights of spouses (126 paragraphs); 4) on the rights of parents and children (33 paragraphs); 5) on the rights of orphans and other people who are unable to manage their own affairs[24] (98 paragraphs).[25]

3. The Peculiarities of the Legal Regime of Various Types of Property of the Spouses According to the Josephine Code of 1787 and the Depiction of the Reception of the Provisions of Roman Law in Them

My study is devoted to the coverage of the property relations of spouses according to the Josephine Code, which were regulated by the norms set forth in the third chapter of the Code "On the rights of spouses". Note that this chapter covered both marriage law as such (namely, regulated the conditions and procedure of concluding a marriage, including the conditions and legal consequences of recognition of a marriage to be invalid; established the grounds, conditions, and procedure for dissolution of marriage, including the regime of separate residence of the spouses (the so-called separation from board and bed)), as well as property relations of spouses, namely: established the legal regime of various types of

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19 NYKYFORAK, M., V. *Bukovyna v derzhavno-pravovii systemi Avstrii*, p. 278; Z istorii kodyfikatsii avstriiskoho tsyvilnoho ta tsyvilno-protsesualnoho prava, p. 18.

20 Allgemeines Bürgerliches Gesetzbuch. Erster Teil; OHONOVSKYI, O. *System avstryiskoho prava pryvatnoho. T. 1. Nauky zahalni i pravo richeve* [*The system of Austrian private law. Vol. 1. General sciences and property law*]. Lviv, 1897, p. 4. (In Ukrainian).

21 Josephinisches Gesetzbuch; Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

22 OHONOVSKYI, O. *System avstryiskoho prava pryvatnoho. T. 1. Nauky zahalni i pravo richeve*, p. 4.

23 KULCHYTSKYI, V. – LEVYTSKA, I. Dzherela, struktura, osnovni polozhennia Avstriiskoho tsyvilnoho kodeksu 1811 r. [Sources, structure, basic provisions of the Austrian Civil Code of 1811]. In: *Visnyk Lvivskoho universytetu. Seriia yurydychna* [*Bulletin of Lviv University. Legal series*], 2009, Is. 48, pp. 46–51, p. 47. [online]. Available at: <https://library.nlu.edu.ua/POLN_TEXT/LVIV/visnyk_48.pdf> [cit. 2025-05-05]. (In Ukrainian).

24 That is, on guardianship.

25 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

property of the spouses[26] (dowry – so-called marital property[27] – and its securing, maintenance of the wife, own property, joint property, widow's maintenance), as well as the property rights of the widowed spouse, and in addition, the procedure for administrating the wife's property and the peculiarities of the right of usufruct. Let us examine these provisions of the Code on property relations of spouses in details.

It should be noted that during the explanation and analysis of the provisions of the Josephine Code, we mostly used its authentic style and terminology, and legal constructions, giving them a modern interpretation and sometimes providing in the author's notes clarifications or specifications regarding their understanding and interpretation in accordance with both the current legal terminology and the latest civil law doctrine.

3.1 The Marital Property (the Dowry) and Its Securing

The Code established the following conditions regarding matrimonial property. If the bride and groom owned their own property, they could use it freely, independently establishing its legal regime; in particular, it depended on their will whether the bridegroom would demand a dowry for the marriage contract and what kind, and what property the bride would define as her dowry. If the bride was under guardianship, then the guardian had to dispose of the estate in accordance with her fortune and the nature of the marriage. If the bride owned property under the control of her father/guardian and married with his will or with the consent of the court, then the father/guardian had to provide her with a decent marriage amount from this property[28] with the consent of the court (§ 51).[29] If the bride did not have her own property or such property was not enough, then the father/grandfather who supported her was obliged to assign her the marital property in the necessary amount (§ 52). It should be noted that parents were released from the maintenance of their children, and therefore from the obligation to provide them with property for marriage under the following circumstances: in the case of their own lack of funds if this reduced the maintenance they themselves needed or made it difficult to provide maintenance to other children; if the marital property was already given in case of a previous marriage, even if that dowry had already been lost, and not because of the fault of the daughter; in the case of a clear refusal of marital property in old age; in case children refuse to receive the inheritance of those testators who were obliged to provide marital property (§ 53). If the person who was obliged to provide marital property refused to do so, the court, at the request of the bride and groom or their guardians, initiated an amicable settlement of the parties to such court proceedings. In case of an unsuccessful attempt of mediation and the presence of sufficient reasons to satisfy the claim, the court determined the marital property officially and obliged the person responsible to provide it within a set period, after which, in case of failure to provide it, judicial coercion was applied to the person. However, such a person can file an appeal (§ 54).

The criteria for determining the amount of marital property were primarily the legal status of the person obliged to provide it and the size of her property, as well as the number

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26 That is, the matrimonial property.

27 So named because it is the part of the wife's property that she brought into the marriage for marital cohabitation, household management, joint life, etc.

28 As her dowry.

29 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

of children still dependent on her, and other circumstances related to expenses in the household (§ 55). In the case of out-of-court, voluntary determination of marital property, its larger or smaller size depended on the will of the father/grandfather. If they provided too little property, which the bridegroom/bride did not agree with, then the case was decided by the court in the manner described above (§ 56). The attention should be paid to the interesting provision of the Josephine Code that the amount of marital property could be determined or increased during the marriage, or what had already been determined could be increased. However, if the decision about this was not made or proposed by the husband before the marriage, then he did not have the right to file a lawsuit against the wife or her parents (§ 57).

Those who are obliged to provide marital property cannot put forward any conditions during the provision of it without the consent of the groom. However, even that what was established with the consent of the groom cannot infringe the rights of the bride when she had not reached the age of majority and had not directly accepted the marital property, especially if it was determined on such terms as deduction from her future inheritance or her complete rejection of it. Moreover, if the marital property was determined from the underage bride's own funds, she may find herself in a disadvantageous position as a result of such conditions. On the other hand, if it was about the bride's own priorities, which cannot be achieved without adding certain conditions that may seem disadvantageous, then the permission of the court should be obtained for them (§ 58). A third party who makes decisions about the marital property on their own decision, as well as a major fiancée or wife, were free to add conditions and ancillary agreements at their discretion. However, these conditions and agreements on marital property must be included in the determination of the inheritance mass (§ 59). Conditions that had already been added, which may cause harm to a third party, can no longer be changed in order to give them an advantage. However, if these conditions relate to the benefits of one or both of the spouses, they may waive this supposed benefit not only when the conditions were made by themselves, but also if they were established by parents, guardians, or a third party (§ 60).

The parties may set a certain deadline to settle the issue of marital property. If it was not stipulated, the party, obliged to provide such property, can be prosecuted in court within six weeks after the date of marriage. After the end of this period, the marital property can be confiscated on legal grounds, together with all the income received from its use for the period after the deadline for its provision or, if it was not stipulated, from the date of marriage (§ 61).

After the transfer of marital property, which consisted of money or things that were valued in commercial circulation by weight, quantity or a certain value, or from assigned debt claims, that was, in general, from any movable or immovable property, its recipient acquired full and irrevocable ownership of it, and therefore must bear all costs and damages from it, and can use it as freely as his own property. However, after the dissolution of the marriage, the marital property provided, and of the same quality and quantity or its estimated value, must be returned (§ 63). Movable property must be returned in the condition in which it was given, but if these things have already been worn or damaged by the husband, then the value they had at the time of transfer should be returned (§ 64).

If the granted marital property or the rights related to it were determined as a haymaker's property without an assessment of its value, then the husband received a simple

usufruct, that is, the right of ownership of it remained with the wife or with the one who allocated her dowry (§ 65). During the marriage, the usufruct of marital property granted the husband not only the right to administer it, but also the right to use to full extent all property derived from it (§ 66).[30] As we can see, this norm of the Josephine Code was in fact a reception of the general provisions of Roman law on usufruct, which understood it as the right of a person to use someone else's property, the use of which is possible without its destruction (that is, primarily a land plot), with the right to appropriate income from it (removal of fruits), but under the terms of integrity, value and economic belonging preservation. Such a limited property right combined two property interests: usus (from the Latin "use") is the right to use a thing in possession without changing it; and fructus (from the Latin "fruit", "income") is the right of a person to receive profit from a thing the person owns, for example, by selling a crop, renting out immovable or attached, ancillary movable property, etc.

At the same time, the Code emphasized that those which were inseparably combined with marital property by its nature or by law were also considered marital property, and the husband had the right to use only these appendages (§ 66). In the context of the § 66 stated provisions of the Josephine Code third chapter on derivative and ancillary property, we note that later in the Austrian General Civil Code of 1811 it was defined in detail (articles 293–297)[31] that the affiliation of an immovable thing is made up of movable things that are in constant connection with it, namely: 1) the increase of a thing – when things are grown on the surface of the earth until they are separated from it,[32] and 2) ancillary things, without which the main thing cannot be used or which the law or the owner has designated for permanent use with the main thing[33] (art. 293–294).[34] It should be noted that the analyzed norm of the Josephine Code on ancillary property, which is inseparably combined with marital property by its nature or by law, was not an innovation of the Austrian legislator, but was a reception of Roman private law,[35] which included everything created by labor on earth as immovable things, according to the principle: what is created on the surface follows the surface. Therefore, all objects related to the earth or functionally attached to its surface, such as crops and plantations, were considered to be its components.[36]

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30 That is, profits and gains from it.

31 Zahalne tsyvilne ulozhennia Avstriiskoi imperii 1811 roku, pp. 1052–1053.

32 In particular, fruits, trees.

33 For example, livestock, working tools, buildings, etc.

34 Zahalne tsyvilne ulozhennia Avstriiskoi imperii 1811 roku [The general civil constitution of the Austrian Empire in 1811]. In: *Kodyfikatsiia tsyvilnoho zakonodavstva na ukrainskykh zemliakh. T. 1 [Codification of civil legislation on Ukrainian lands. T. 1]*; comp. Yu, V. B. Kalaur, I. R. Hrynko, S. D. etc.; under the editorship R. O. Stefanchuk and M. O. Stefanchuk. Kyiv: Legal unity, 2009, pp. 1028–1051, p. 1052. (In Ukrainian).

35 SAVULIAK, R., V. Podil rechei za Avstriiskym zahalnym tsyvilnym ulozhenniam 1811 r. yak retseptsiia polozhen rymskoho pryvatnoho prava [Division of things according to the Austrian General Civil Code of 1811 as a reception of the provisions of Roman private law]. In: *Elektronne naukove vydannia «Analitychno-porivnialne pravoznavstvo»* [*Electronic scientific publication "Analytical and comparative jurisprudence"*], 2022, No 6, pp. 32–36, p. 35. [online]. Available at: <http://app-journal.in.ua/wp-content/uploads/2023/02/7.pdf> [cit. 2025-05-05]. (In Ukrainian).

36 ORACH, Y. M. – TYSHCHYK, B. Y. *Osnovy rymskoho pryvatnoho prava: kurs lektsii* [*Basics of Roman private law: a course of lectures*]. Kyiv: Yurinkom Inter, 2000, p. 272, pp. 116–117. (In Ukrainian).

The Josephine Code established that a man must exercise all diligence, care, and caution in the administration of the estate given to him for use; and in all matters related to its legal regime, to represent its interests in court and out of court with the consent of the owner. Moreover, a man must refrain from any alienation and all actions that may lead to deterioration or encumbrance of the property. A man is responsible if certain actions or inactions of the husband cause damage to the property, reduce it, or deteriorate its quality (§ 67).[37] However, the occurrence of such damage as a result of an accident does not bind the man to any responsibility. The expenses incurred by the man for the permanent maintenance and improvement of the use of the estate must be reimbursed to him after its return (§ 68).

It should be noted that the institution of dowry already existed in Roman law. Namely, not all of the wife's property was considered a dowry (in Latin – dos), but only what was specially designated for this purpose and was given to the husband by the wife herself, her pater familias[38] or others persons,[39] so, in fact, the Josephine Code established a similar provision. However, let us emphasize, that in the Roman law of the period of the Republic, the dowry immediately became the property of the husband and was not returned to the wife after the termination of the marriage. So since there was freedom of divorce, marriage became a way of enrichment for husbands. And therefore praetorian practice over time approved the general provision that upon termination of marriage due to the death of the wife, the dowry remained with the husband. But if it was given by the wife's father, who was alive at the time of the daughter's death, the dowry was returned to him. If the marriage ended due to the death of the husband, the dowry was always returned to the wife. In case of divorce due to the fault of the husband, the dowry was returned to the wife, and due to the fault of the wife, it remained to the husband. Subsequently, Justinian further limited the husband's rights to dowry, establishing that in the event of his wife's death, it was returned to her heirs. As noted in the Digests: "Although the dowry is in the husband's property, it belongs to the wife" (D.23.3.75).[40] Therefore, the Josephine Code, defining the legal regime of dowry, contained a prescribed provision of the Digests.[41]

It is worth mentioning that the Josephine Code provided the means of securing marital property, namely a pledge in the form of a mortgage or the so-called insurance. Thus, if the marital property was to be returned in the same amount or value, then the person who provided it could indicate its provision in the marriage letter[42] or in another way, in particular in the insurance certificate registered in the land cadaster, or if there are no land registers in the given region, then in another order (§ 69).[43] Moreover, if the marital property was not insured from the very beginning, then at any time it was possible to impose a pledge in the form of a mortgage, entered in the land register, on the property of the husband, which

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37 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

38 That is, homelord, heads of the family.

39 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk [Roman law: a textbook]*. Kyiv: Yurinkom Inter, 2009, 2nd ed., 528 p., pp. 292–293. (In Ukrainian).

40 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 293.

41 Iustiniani Digesta (Recognovit Theodorus Mommsen; Retractavit Paulus Krueger). In: *Corpus iuris civilis*. Vol. I. Berlin, 1908. 2 Auflage. [online]. Available at: <https://droitromain.univ-grenoble-alpes.fr/Corpus/digest.htm> [cit. 2025-05-05].

42 That is, in the marriage contract.

43 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

he already had at the time of giving him the marital property or acquired it later (§ 70). If the bride and groom were independent owners of their property, then the provision of marital property was at their discretion. In the case of the marriage of a minor-age woman, her guardian had to take care of securing her immovable marital property ex officio[44] and register it with the authorities within six weeks from the moment of the marriage. If he did not do this, then he was responsible when the marital property was in danger before the spouses reached the age of majority (§ 73). Such securing had to be imposed on the husband's own property by himself, if it was under his control, or by his father or guardian, who was responsible for the care of his property (§ 74). If the husband did not have his own or sufficient property, then the father/grandfather was obliged to provide security in accordance with the amount of the counterclaim, however, only to the extent that he would not cause significant damage to himself (§ 75). It should be noted that the securing of marital property established by the Josephine Code can be partially compared with the counter-dowry of the groom, provided by the Civil Code of Galicia of 1797 and the General Civil Code of the Austrian Empire of 1811 to guarantee the return or increase of the bride's dowry.

In the context of the above-mentioned norms of Austrian law, it should be emphasized that already in Roman law, for the purpose of providing a dowry, there was a gift from the husband (donatio propter nuptias), who allocated a certain (approximately equal to the dowry) part of his property as a guarantee to his wife in the event of a divorce due to his fault. Moreover, at first this provision was not legally established, but it was strictly observed due to the requirement of morality. Under Justinian, it was stipulated that a husband can make an appropriate gift not only before marriage, but also while married;[45] just as it was established by § 70 of the Josephine Code. However, the actual gift did not take place, since the husband remained the owner of this property, which he promised his wife in exchange for the dowry, and used it as before; yet, in the event of a divorce due to his fault, this property was transferred to his wife as a fine compensation. And therefore, it can be argued that such a gift from the husband actually constituted a pledge in case of divorce due to his fault, so the wife had the right not only to return her dowry, but also to transfer this conditional gift to her.[46] And so, the norms of the Josephine Code on the securing of marital property in general contained the prescribed provisions of Roman law.

The Josephine Code emphasized that marital property cannot be demanded during the marriage. However, in the case of significant waste of the husband or in another case, if there is a decrease in his property, as a result of which there is a threat to the uninsured marital property, it can be secured on the basis of § 70. If such securing is impossible due to the lack of his property, then other reliable securing may be required (§ 76).[47] Particular attention is drawn to the provision of the Code that the groom can also present a counterclaim to the bride regarding the securing of marital property. The fulfillment of the counterclaim can be demanded only if the marital property was spent by her. Instead,

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44 This term is of Latin origin, which literally means "from/through/from the position", i.e., "by right of the position", in accordance with the official powers, on the official's own initiative; it has been used since the times of the Roman Republic.

45 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 293.

46 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 294.

47 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

the bride's voluntary securing of marital property without a counterclaim by the groom can be made in the amount and value of the marital property or in a larger or smaller amount than the marital property (§ 77). A father/grandfather can also make a counterclaim to secure the marital property of their son/grandson's bride. If it was not possible to agree on the amount of securing, it was a subject to a judicial assessment, which must be based on taking into account the property of the obligated person[48] and other fair circumstances (§ 78). It should be noted that during marriage, a woman could neither demand the transfer of securing for her marital property, nor make claims regarding its use and claim income from it, because its administration and use belonged to the one who assigned it (§ 79).

It was established that, in addition to marital property and its security, spouses could give gifts each other; moreover, their legal regime was similar to other gifts (§ 81). However, if these gifts were given with the purpose of increasing the bride's marital property or securing it, then if the recipient died before the donor, they were returned to the donor (§ 82).

Moreover, the husband could assign maintenance to his wife. Such maintenance, unless it was judicially registered as collateral property, did not enjoy any privileges or advantages, and was to be considered as a gift of the second spouse as defined in § 81 (§ 119). However, if a minor-age bride was assigned to an annual sum for her use in the marriage letter in the form of maintenance of the widow or even during the life of the husband, then her guardian had to take care whether husband provided security for this sum, otherwise the guardian himself had to be responsible in case of its non-payment (§ 120). If the wife, who was assigned to an annual sum for her use in the marriage letter during the life of her husband, did not collect it for several years, then in case of a claim by creditors against her husband, she had priority over them in collecting this sum for the last three years. However, older debts were treated simply as gifts from the husband (§ 121).[49]

It is worth noting that Roman law, instead, set limits on gifts between spouses, regulating this in Title I of Book 24 of Justinian's Digests.[50] Namely, according to the general rule, gifts between husband and wife had no force (D.24.1.1-3), but the following types of gifts were allowed: for a funeral (D.24.1.5.8-10), in case of death (D. 24.1.9.2), gifts by the wife to the husband for promotion and necessary expenses for the position (D. 24.1.40-42), in case of exile (D.24.1.43), in case of divorce (D.24.1.60.1).[51]

We can summarize that dowry, securing of dowry and gifts of spouses were provided for even in Roman private law, and therefore, the provisions of the Josephine Code on such types of matrimonial property were to some extent a reception of its corresponding norms.

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48 That is the bride herself, if the property is in her possession, or her father/grandfather or guardian.

49 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

50 Liber vicesimus quartus. 24.1.0. De donationibus inter virum et uxorem. Domini nostri sacratissimi principis Iustiniani iuris enucleati ex omni vetere iure collecti Digestorum seu Pandectarum (Recognovit Theodorus Mommsen; Retractavit Paulus Krueger). In: *Corpus iuris civilis*. Vol. I. Berlin, 1908. 2 Auflage. [online]. Available at: <https://droitromain.univ-grenoble-alpes.fr/Corpus/d-24.htm#1> [cit. 2025-05-05].

51 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 292.

3.2 Spouse's Own Property. Administration of the Wife's Property and the Right of Usufruct

The Josephine Code established as a fundamental provision on matrimonial property that each spouse retains his or her property both before and after marriage; and another cannot claim it (§ 83).[52] Therefore, each of the spouses has the right to freely dispose of their property, without allowing the other to be misled (§ 84). It should be emphasized that already in Roman law, the principle of the separation of property of husband and wife was laid as the basis of property relations of spouses. Everything that was the property of the wife before the marriage or was acquired by her during the marriage, remained her property, if she was legally independent. Therefore, the wife had the right to independently own, use and dispose of this property.[53]

Along with that, the Josephine Code provided that the husband has the right to conduct his wife's affairs and administer her property, he has the so-called right of tacit approval and all powers regarding it in cases that do not require a special power of attorney. However, the wife always has the right to object to the husband's further administration of her property and to take these functions upon herself (§ 84).[54] However, if one of the spouses has expressly instructed the other to administer their property, then such a legally confirmed power of attorney must be irrevocable. Nevertheless, if the administration was appointed for an indefinite period, but not permanently, such a mandate can be revoked at a will at any time; but, if the power of attorney was issued for a certain period, then it is valid until the end of that period; and if it was granted permanently, it cannot be revoked during marriage (§ 85).

The administration of the wife's property, whether expressly or tacitly entrusted to the husband, binds him to everything as every guardian is bound. Therefore, if the wife can prove that her property has decreased or that her property is in immediate danger due to the bad administration of her husband, she has the right to revoke her power of attorney upon the term (§ 86). Note that in Roman law, a wife could also entrust her husband with the management of her property. Moreover, any legal relationship in this regard was subject to legal action.[55]

The Josephine Code established the provision that if the husband is not granted an usufruct along with the administration of the property, then he cannot claim the fruits (offspring). Moreover, if the husband did not expressly undertake to increase the property he administrates, then he or his heirs are responsible only for the accounting and reporting of those fruits that were collected from the day of revocation of the power of attorney for property administration or from the day of the husband's death. On the other hand, all claims made regarding previous administration or previously harvested fruits should be considered invalid. However, if the husband caused damage to his wife's property as a result of his administration, he will be responsible for it in all cases (§ 87). If the husband is granted only usufruct, but not administration, then he has no right to administer against the wife's will. If the right to use the fruits was granted to the husband, but they were collected by the wife, then the husband or his heirs can make claims only for those fruits

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52 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

53 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 292.

54 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

55 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, p. 292.

that will be collected after they present such a claim, similarly to what is provided in § 87 regarding the wife's claim for the fruits previously collected by her husband (§ 88).

The wife had the right to sell her property freely, regardless of whether the husband was entrusted with its administration or usufruct. However, if the usufruct of the property was assigned to the husband by a court decision, then the sale of this property should not harm him; and in case of its occurrence, he had the right to sue his wife for compensation (§ 89). We pay attention that in Roman law, the sale of the thing by the owner did not affect the rights of the usufructuary.

An interesting provision of the Josephine Code draws attention, stating that even if the wife administrated her own property, the husband had the right to supervise after her, especially if they had children, in order to prevent possible losses and damages. Moreover, not only the husband, but also relatives from both sides had the right to appeal to the court with a claim regarding improper disposal of her property. If the claim was recognized to be justified, the court should have first given the wife the opportunity to voluntarily perform her functions in property administration; if she refused, then the property administration was to be entrusted to the husband or, if he had serious doubts about his ability to administer this property, to a relative, and in case of his absence – to a third person ex officio. In other cases, the court had to act accordingly to the procedure established for those who are unable to administer their own property (§ 90). If a man administered of a woman's property without giving him the right of usufruct, then he was obliged to keep records and report on all fruits; at the same time, he had the right to be reimbursed for all the expenses incurred by him for this usufruct. Instead, if he was granted an usufruct, he could not report for the fruits; however, he had no right to claim compensation for his efforts to improve fertility, unless he proved that the necessary or useful efforts exceeded the yield obtained (§ 91).[56] Note that in Roman law, the usufructuary was also not entitled to claim compensation for improvements made by him in thing.

We can summarize that already Roman private law, despite its patriarchal character, provided for the separate property of the wife in marriage and established the procedure for administrating it. The right of usufruct in general was thoroughly regulated by Roman law, so the provisions of the Josephine Code on it mostly represented the reception of Roman law.

3.3 Joint Property of Spouses

The Josephine Code indicated that the spouses could enter into an agreement on joint matrimonial property and emphasized that in case of such agreement's absence, the property of the spouses is considered to be separate (§ 97). At the same time, if the spouses established joint matrimonial property, this did not affect the ownership of each party's property – each party retained unlimited power over it and therefore could sell it regardless of the other party's will. Therefore, each of the spouses had the right to his half (share) in the joint property after the death of the other spouse (§ 92). Moreover, if the joint ownership extended to immovable property and the deed drawn up on this was included in the land register, then one party, without the consent of the other one, could agree with half, but

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56 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

not all, of such property; and after the death of one of the spouses, the other immediately received full ownership of half of their joint property (§ 93).

The legal regime of joint matrimonial property could be applied either to the future property, or also to all the present and future property of the spouses. However, what was inherited in the future by one of the spouses did not belong to the joint property if the inheritance was not expressly notified. However, everything acquired in the future was to be considered joint until the contrary was proved (§ 94). The agreement of the spouses on the jointness of the present and future property, including inheritance or without it, could be concluded without further ceremonies. However, if the joint ownership extended only to the present property or only to that which will be acquired in the future, or to that which will be acquired and inherited in the future, then it had to be formalized by drawing up a reliable description of the property of both spouses. This description was to be a guide to distinguish what belonged to the joint property and what did not; and without it no other evidence shall be admissible, nor shall the widow/widower acquire any additional rights in respect of this joint ownership, nor shall a dispute regarding the common ownership of such property be admissible prior trial (§ 95).

The debts of the deceased and the widow/widower had to be calculated before dividing the joint property of the spouses. Moreover, all debts without exception had to be paid jointly regardless of the fact whether the common ownership was extended to all property. If only the present or only the future property belonged to the common ownership, then those debts incurred by one or the other party for the use and needs of such joint matrimonial property were to be paid from it. Instead, all other debts were subject to repayment from the personal property of the person who created them and from what is included in his share in the joint property (§ 96).[57]

3.4 Widow's Maintenance. Property Rights of a Widowed Spouse

In case of dissolution of marriage due to death, all her/his marital property was returned to the widow or widower. In addition, the widow received compensation assigned to her by her husband, and the widower irrevocably received the marital property transferred to him, except for cases when directly for one reason or another it was stipulated otherwise (§ 116).[58]

If the widow was assigned to the widow's maintenance, the following rules were applied. If something belonged to the life necessities or comforts and was intended for the widow in kind, and was established in the marriage contract or fixed by a court decision, then she had to be satisfied with payment in kind, without having the right to demand payment in money. If a certain amount was determined for some needs, then exactly that amount was paid, regardless of whether it was enough for the widow. If either things or a sum of money was assigned for the needs of the widow, then she had a choice, unless the contrary was clearly stated in the prescription (§ 117). Maintenance of the widow is about to start in six weeks after the death of the husband. Until then, the widow was to refrain from the inheritance, as she would continue to be during her lifetime, provided that this provision did not prejudice creditors. If a widow was pregnant, she was granted maintenance

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57 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

58 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

from her husband's inheritance in six weeks after giving a birth. All the expenses for the so-called children's weeks (child's bed) were to be covered without including them into the payments provided in the marriage contract; unless the widow voluntarily refused from this right and was satisfied only with the financial terms of the marriage contract (§ 118).

It is appropriate to note that Roman law did not provide for widow maintenance, however, Justinian, having carried out the reform of inheritance by law according to the 118 novella of 543 and 127 novella of 548, established that a poor widow, that is, one who did not have her own property that would allow her to live in accordance with her social status, had the right to a mandatory share in the amount of a quarter of the inheritance. True, the size of the mandatory share could vary depending on the number of heirs according to the law, but the testator did not have the right to completely deprive his wife of the mandatory share.[59] Therefore, we can partially consider the norms of the Josephine Code on the appointment of a widow's maintenance to meet the widow's living needs or comfort as a certain reception of the provision of Justinian's legislation on the obligatory share of a poor widow in the inheritance.

The widow's maintenance ceased when she entered into a new marriage, unless otherwise stated in the marriage certificate. In general, a spouse lost the property assigned to him/her by the deceased in the marriage letter or otherwise, for the same reasons that he/she lost the share in the inheritance that would have accrued to him/her under the law. In such a case, the property that she/he had given to the deceased spouse was returned to the widow/widower, and instead she/he was to be completely excluded from his/her inheritance (§ 124).[60] If the things passed to the widow/widower actually existed in the inheritance or were transferred to the deceased or registered by the court, then she/he immediately acquired full ownership of this property (§ 125). In addition, the widow/widower was provided with security of the deceased's inheritance in the form of his pledge. Moreover, such security belonged to the widow/widower, even if it would cause losses to the creditors of the deceased whose debt claims were insured earlier (§ 126).

If the widow inherited her husband's debts after his death, then in the presence of the children, those debts that were more than three years old should not be deducted from the inheritance until their mandatory share in it was determined, and only after that the debt was paid from the amount that the deceased had the right to arbitrarily dispose (§ 122).

All rights that arose in one of the spouses from the inheritance of the other were in full force if the other spouse died immediately before the actual joint living. Also, the recognition of a marriage to be invalid did not harm the acquired legal rights of the spouses, in case that this invalidity remained hidden until the death of the other party and the widow/widower considered the marriage to be valid (§ 123).[61]

We can draw a conclusion that the Josephine Code paid quite detailed attention to the maintenance of the widow and the peculiarities of the inheritance rights of the spouses. Summarizing the considered property relations of spouses under the Josephine Code, we can claim that it contained the reception of certain provisions of Roman private law, in

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59 PIDOPRYHORA, O. A. – KHARYTONOV, Y. O. *Rymske pravo: pidruchnyk*, pp. 443–444.

60 Josephinisches Gesetzbuch (1787); Josephinisches Gesetzbuch (JGS 591).

61 Ibid.

particular, on the dowry, securing of dowry, own property of the spouses, the procedure for administrating of the wife's property, ancillary property, usufruct, widow's maintenance, etc.

4. Conclusions

As far as the analyzed Code was in fact the result of the revision of the Draft of the Codex Theresianus of 1766 (by the way, these codification works lasted for 15 years), then in the chapter "On the rights of spouses" it reflected many preliminary developments carried out during the conclusion of the general plan and several editions of the Codex Theresianus. Thus, similarly to the Draft of the Codex Theresianus,[62] the Josephine Code also contained norms about dowry, securing of dowry, own property of the spouses, securing property rights of the spouses, joint property of the spouses, widow's maintenance, property rights of a widowed spouse, etc. However, unlike the Draft,[63] the Code we studied did not establish, in particular, such a type of matrimonial property as a morning-gift. At the same time, the Draft of the Codex Theresianus in the field of marital relations mostly regulated the property rights of spouses, since at that time, church jurisdiction was still preserved in marital affairs. However, during the discussions of the Draft, the Viennese Revision Commission tried to limit its influence, insisting on eliminating any of its interference in solving property issues.[64] Instead, for the first time in the Josephine Code, marriage was defined as a civil contract, which actually meant replacing church jurisdiction with state regulation on marital relations.

It is worth to be noted that the provisions of the Josephine Code on property relations of spouses, after a number of amendments, formed the basis of the corresponding norms of the following civil codes of the Habsburg Monarchy. Namely, most of them, with certain changes and additions, were enshrined in Chapter X "On marriage contracts" of the third part of the Civil Code of Galicia of 1797,[65] as well as in the 28th chapter "On Marriage Contracts" of the second part of the General Civil Code of the Austrian Empire of 1811.[66] In the last Code they were significantly expanded and improved.

It should be noted that, on the opinion of the Ukrainian researcher Mykhailo Pyrtko, given its limited content, the Josephine Code of 1787 did not immediately significantly affect legal, in particular judicial, practice.[67] However, as the Polish legal historian Stan-

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62 HARRASOWSKY, H. R. *Geschichte der Codification des österreichischen Civilrechtes*. Wien: G. J. Manz'schen Buchhandlung, 1868, XII, 167 p., pp. 52, 80–81. [online]. Available at: <https://babel.hathitrust.org/cgi/pt?id=hvd.32044056941719&view=1up&se> [cit. 2025-05-05]; HARRASOWSKY, H. R. (Hrsg. und mit anmerkungen versehen). *Der Codex Theresianus und seine Umarbeitungen. Band 1*. Wien: C. Gerold's sohn, 1883, 290 p., pp. 8–139 [online]. Available at: <https://babel.hathitrust.org/cgi/pt?id=hvd.32044056912082&view=1up&seq=6> [cit. 2025-05-05].

63 HARRASOWSKY, H. R. *Geschichte der Codification*, p. 52.

64 HARRASOWSKY, H. R. *Geschichte der Codification*, p. 80.

65 Tsyvilnyi kodeks Halychyny, 1797: (proekt Karla-Antona Martini; peredm. K. Neshvara; vstup V. A. Vasylieva; per. z nim.: M. Martyniuk, O. Pavlyshynets). [The Civil Code of Galicia, 1797: (project by Karl-Anton Martini; foreword by Ch. Neschvara; introduction by V. A. Vasyliev; trans. from German: M. Martyniuk, O. Pavlyshynets). Ivano-Frankivsk: Babylonian Library; Law Company "Moris Group", 2017, 271 p., pp. 219–224. (In Ukrainian).

66 Zahalne tsyvilne ulozhennia Avstriiskoi imperii 1811 roku, pp. 1127–1131.

67 PYRTKO, M. S. *Derzhavo-pravovi reformy v Avstrii u 40–90 rokakh XVIII st.: dys. ... d-ra filosofii: spets. 081 «Pravo» (haluz znan – 08 «Pravo»)* [*State and legal reforms in Austria in the 1840s–90s of the*

islav Plaza claims, even under these circumstances, Josefiana had no equal similar acts to it in Europe at the time, at least according to humanistic principles.[68]

Summarizing the historical and legal significance of the Josephine Code of 1787, both for the Habsburg Monarchy and for European private law in general, we can state the following. First of all, it was not in force for a very long period of time – only for 25 years, until the introduction of the General Civil Code of the Austrian Empire of 1811; and, secondly, it was only the first part of the planned (but finally uncompleted) integral code. Despite this, the provisions of this part, first of all, were a qualitative result of long-term (almost 35 years – starting with the initiation of the development of the Codex Theresianus in 1753) codification works. Secondly, soon they mostly formed the basis (both structurally and content-wise) of the first part of both the Civil Code of Galicia of 1797 and the General Civil Code of the Austrian Empire of 1811. Thirdly, the first part of the Josephine Code was concluded accordingly to the institutional system of the Roman private law, traditional for subsequent European civil codes of that era. Fourthly, the Josephine Code was the first active (as opposed to the Draft of the Codex Theresianus of 1766) and unified for the entire Habsburg Monarchy (as opposed to the Civil Code for Galicia of 1797) codified civil legal act. Fifthly, we can consider the Josephine Code of 1787, if not the primary nationwide code of private law in Europe in modern times (because, after all, it was only part of it), then at least the first model for subsequent European civil codifications. Finally, sixthly, various provisions of Roman private law were reflected in the Josephine Code in one way or another, which testifies to the durability of the Roman tradition of civil law institutions and the content of their separate norms. So, in general, we can claim the obvious connection between the doctrine of property relations of spouses of the Habsburg monarchy and Roman law.

So, let us conclude that the document of Austrian law analyzed by us has significant cognitive, theoretical-scientific and practical value, which calls for the need of its deeper research in order to update the significance of the Josephine Code for modern European historical-legal and civil sciences. Therefore, we believe that my research will make a certain contribution to the comprehensive knowledge and scientific understanding of the history of the formation of property relations of spouses in the Habsburg Monarchy and will also be an additional justification of the historical persistence of the reception of Roman law in the Austrian doctrine of property relations of spouses.

18th century: diss. ... DPh: special. 081 "Law" (field of knowledge – 08 "Law")]. LNU of Iv. Franko, Lviv, 2021, p. 258, p. 190. [online]. Available at: <https://lnu.edu.ua/wp-content/uploads/2021/08/dis_pyrtko.pdf> [cit. 2025-05-05]. (In Ukrainian).

68 PŁAZA, S. *Historia prawa w Polsce. Zarys wykładu. Część II. Polska pod zaborami* [*History of law in Poland. Lecture outline. Part II. Poland under partition*]. Kraków: Wydawnictwo Księgarnia Akademicka, 1993, p. 208, p. 23. (In Polish).