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## [J. A. Cook, Law and Life in Rome - suite]

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### Présentation de la fiche

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### Références éditoriales

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## MARRIAGE

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none of these was of the essence. Marriage was a matter of intention; if you lived together 'as' man and wife, man and wife you were. What, then, about more than one? The Romans were monogamous, and Gaius says:<sup>13</sup>

'The same woman cannot be married to two men, nor the same man have two wives.'

But bigamy was not an offence; the situation is similar to 'marriage below the legal age'. The law simply assumed that people could not have the necessary intention to live as man and wife with more than one partner, so only one would count as a *iustum matrimonium*. Cicero records the problem raised by a man who left his wife in Spain and married another in Rome; it turned, in the Republic, on whether there was an automatic divorce even though nothing had been said, and, if there was not, the second 'wife' was just a concubine.<sup>14</sup> Gellius says that *paelex* was the ancient name (implying disesteem) of a woman who cohabited with a man who had a wife *in manu*.<sup>15</sup> Under the Augustan marriage legislation, though bigamy as such was still not an offence, a married woman who cohabited with someone other than her husband would be committing the grave criminal offence of adultery (and so would the man who cohabited with her) and a man who had non-marital sexual relations with an unmarried woman of high class would be committing criminal fornication, *stuprum*.

If you did not intend (or the rules did not allow you) to live together as man and wife you could live together as something else. Concubinage was regular and accepted in the life of Rome, and was in no sense thought sinful. It did not carry the respect attendant upon marriage, but this was because one of the partners was usually socially inferior; as Ulpian said, 'the difference is only in dignity'.<sup>16</sup> Emperors sometimes had concubines. Vespasian, after his wife's death, lived faithfully with a freed-woman, but never counted her as a wife;<sup>17</sup> and Marcus Aurelius, when his wife died, refused to marry the woman (almost certainly freeborn) with whom he subsequently lived, 'so as not to

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