

Research Paper Questions

1. "After the first century of the Empire there are few evidences of marriage with *"marius;"* in fact, by the time Roman Law reached its maturity adult women were completely emancipated and were freed from the control of their husbands or fathers. The status of *feme covert* was wholly foreign to Roman ideas of this age. A married woman, in contemplation of law, remained as though she had never married; she did not become a member of her husband's family. Generally the husband had no remedy for injuries to the marital relation or to the person of his wife. Marriage produced little effect on a wife's property and whatever she acquired during the marriage belonged to her alone. She was the equal of her husband in the capacity to control, manage, or dispose of her own property, and the principle of separation of property was applied to such an extent that neither had any right to succeed to the property of the other on death. The husband was not liable for her debts of any kind. The only restriction on the capacity of married women was that imposed by a statute enacted during the reign of Claudius and prohibiting them from acting as sureties.¹⁷ **This independent position of married women in the matured Roman law was never attained under the common law of England. In a general way it was approached, however, as the result of the modification of the common law by the equity Chancellors during the eighteenth century and by the Married Women's Property Acts of the nineteenth.**"
(emphasis added)

Joseph F English, "Married Women and Their Property Rights: A Comparative View" (1961)
10(2) *Catholic University Law Review* 74 – 86, 81.

With respect to the quote above, particularly the part emphasised in bold, address the following questions:

- Why did the common law never attain the independent position of married women with respect to property, referred to above?
 - In what ways might the common law be different – as far as it concerns married women and property – had such a position been attained?
 - In what ways do you think society might be different if the common law had developed in this way?
2. With reference to decisions of the High Court of Australia concerning the construction of contracts address the following questions:
 - What theory of contract law has the High Court applied in construing contracts?
 - Has the High Court ever applied either the theory or relational contracts or feminist contract theory in construing contracts?

- Would the outcome have been different in any or all of the cases you are examining, if the High Court had used either of these theoretical approaches?
3. The common law developed doctrines in equity to protect the property interests of married women. This development is embedded in a particular faith tradition. Do women need such protection under law developed in other faith traditions and if so, does that law provide such protection?
 4. You may write on a topic of your own choosing. However, you will need to advise me of this by **Friday 2 September, 2022** and provide me with a complete research paper question for my approval. You need to have your topic approved by **Friday 23 September 2022**.