DIRECT RECEPTION OF ROMAN LAW IN SERBIAN CIVIL CODE – *CONSORTIUM ERCTO NON CITO* AND SERBIAN *ZADRUGA*

Assoc. prof. Maša Kulauzov, Ph.D.
University of Novi Sad, Serbia

1. INTRODUCTION

Romanists have paid great attention to direct reception of Roman law in Serbian Civil Code (SCC) of 1844, both regarding certain legal concepts of law of obligations as well as systematization of provisions in Serbian codification.[1]

A parallel can also be drawn in determining the concept of legal person in *Corpus iuris civilis* and in Serbian code**.** Namely, Roman law does not have an abstract concept of legal entity whose personality is different from the personalities of its members; instead, it offers a possibility that a number of individuals act as a single entity for legal purposes. Hadžić also sees a legal entity, in the first place, as a group of individuals, rather than a juridical person that is completely separate from its individual members. "Legal person, according to Serbian law, is a simple and concrete notion, comprised of people who have teamed up. *Zadruga*, as a legal entity, is not defined in an abstract way. It is not a legal subject

[1] See DANILOVIĆ J. „Srpski građanski zakon i rimsko pravo" [Serbian Civil Code and Roman Law] – *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844-1994)* [Hundred and Fifty Years since the Enactment of Serbian Civil Code (1844–1994)], SANU, Vol. 18, Odeljenje društvenih nauka [Department of social sciences], Beograd 1996, 49–66; KNEŽIĆ-POPOVIĆ D. „Udeo izvornog rimskog prava u Srpskom građanskom zakoniku" [Share of the Original Roman Law in Serbian Civil Code] – *Sto pedeset godina od donošenja Srpskog građanskog zakonika (1844–1994)* [Hundred and Fifty Years since the Enactment of Serbian Civil Code (1844–1994)], SANU, Vol. 18, Odeljenje društvenih nauka [Department of social sciences], Beograd 1996, 67–78; MALENICA A. „Rimska pravna tradicija u srpskom pravu" [Roman Legal Tradition in Serbian Law] – *Zbornik radova Pravnog fakulteta u Novom Sadu* [Proceedings of Novi Sad Faculty of Law] 2/2004, Vol. I, 117–139; ALIČIĆ S. „Sistematika odredbi o obligacionim odnosima u Srpskom građanskom zakoniku u svetlu sistematike Justinijanovih Institucija" [Systematization of Provisions on Obligation Relations of Serbian Civil Code in Light of Systematization under Justinian's Institutiones] – *Zbornik radova Pravnog fakulteta u Novom Sadu* [Proceedings of Novi Sad Faculty of Law] 2/2004, Vol. I, 383–415; POLOJAC M. „Srpski građanski zakonik i odredbe o prisvajanju divljih životinja: recepcija izvornog rimskog prava [Serbian Civil Code and Occupation of Wild Animals: Reception of the Original Roman Law] – *Anali Pravnog fakulteta u Beogradu* [Annals of the Faculty of Law in Belgrade] 2/2012, 117–134.

separate from individuals comprising it, but a community of individuals, relatives." Members of *zadruga* also do not lose their legal subjectivity.[2] Considering the fact that by holding a share in ***zadruga's*** property they can freely resolve legal matters *inter vivos* and *mortis causa*, they do not blend in with family community, neither personally nor in terms of possessions (pars. 515, 521 and 522 SCC).[3]

2. LEGAL NATURE OF *CONSORTIUM ERCTO NON CITO* AND *ZADRUGA*

The influence of Roman law is also present in formulating provisions of SCC which define collective character of ***zadruga's*** property. ***Zadruga's*** property is designated as common property in par. 508 which reads: "All the possessions and goods in *zadruga* belong to all members, not an individual; and whatever is acquired in *zadruga* is not acquired for oneself but for all."[4] This property law regime concerning goods owned by a whole *zadruga* matches the customary law on patriarchal family, but also resembles an institution of Roman law – *consortium ercto non cito. Ercto non cito* means "undivided property" in Latin, and its name comes from the noun *erctum* – property and the verb *ciere* – to divide.[5] More light on this institution was thrown when in February 1933 a parchment, published in 1935, was discovered in an antiquarian bookshop in Cairo. It contained, inter alia, an entirely new fragment of Gaius' *Institutes* which had not been preserved in the Veronese manuscript.[6]

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2 MALENICA A. Op. cit., 135–137.

3 NIKETIĆ G. *Građanski zakonik Kraljevine Srbije protumačen odlukama odeljenja i opšte sednice Kasacionoga suda* [Civil Code of the Kingdom of Serbia Interpreted by Decisions of Department and General Session of the Court of Cassation], Beograd, Geca Kon, 1922, 317–319.

4 *Ibid*., 314.

5 Gaj, *Institucije* [Gaius, *Institutes*], preveo [transl.] Stanojević O. Beograd, Nolit, 1982, 219 nt. 53. In roman doctrine there was also an opinion, that *erctum non citum* would stand at first, not for "a familia not divided", but for one "not inherited", to which there was no head, and which therefore must operate as a *consortium* or *societas*, or disintegrate and disappear. See Noyes C. H. *The Institution of Property: A Study of the Development, Substance and Arrangement of the System of Property in Modern Anglo-American Law*, New Jersey, The Lawbook Exchange, 2007, 76 nt. 273.

6 OGEREAU J. M. *Paul's Koinonia with the Philippians – A Socio-Historical Investigation of a Pauline Economic Partnership*, Tübingen, Mohr Siebeck, 2014, 25 nt. 131; ZIMMERMANN R. *The Law of Obligations – Roman Foundations of the Civilian Tradition*, Oxford, Oxford University Press, 1996, 451. Zimmermann asks himself whether this passage has been omitted intentionally from the Veronese manuscript (which is from the late 5th century) because it dealt with an entirely outdated and obsolete institution, the discussion of which appeared to be unnecessary for elementary instruction purposes. – See *Ibid.*, 451 nt. 3.

Namely, in the old days, on the death of the paterfamilias, familia remained united in a community of co-heirs (or, as Gaius puts it: brothers, in fact, the *sui heredes* – the closest relatives of the paterfamilias, his children, his wife if she was married *cum manu* and anyone else in his potestas[7]), a *consortium* which was called *erctum non citum* and through which the old familia continued to exist, in both its legal and its sacral substance. The *consortium* led to a complete community of property and was characterised by the fact that the individual co-heirs did not have a specific share in the inheritance: all rights vested in the community of co-heirs. For this kind of continuum of joint heirs in a condition of undivided property no formal act or contract was required, but was, in general, simply generated by express or tacit consent.[8] Paulus in *Questions*, Book VI, states that if, in the time of death of paterfamilias brothers *consors* are minor, a guardianship must be established: "Brothers who are entitled to one estate should not be considered as being subject to several guardianships. On the other hand, when there are two distinct estates belonging to brothers, two guardianships must be established."[9]

As Gaius reports: "In this form of partnership there was this peculiarity, that even one of its members by manumitting a slave held in common made him free and acquired a freedman for all the members, and also that one member by mancipating a thing held in common made it the property of the person receiving in mancipation."[10] In this community of inheritance known as *consortium fratrum* or *consortium ercto non cito* all the inheritance of fathers was taken over without being shared among heirs. Therefore, according to the archaic legal logic, each

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7 With the death of paterfamilias, all individuals under his legal authority become *sui heredes*. Since persons who are under others' authority do not possess any property, *sui heredes* do not own anything until the death of the father, which is why *ercto non cito* is a partnership of all possessions, and not a contractual partnership, though later, by means of an archaic form of process called *legis actio*, other individuals could, before the praetor, also form that kind of a partnership. – WATSON A. *Roman Law & Comparative Law*, Georgia, University of Georgia Press, 1991, 133.

8 BERGER A. "Consortium", *Encyclopedic Dictionary of Roman Law*, Philadelphia, The American Philosophical Society, 1953, Vol. 43, part 2, 409; ZIMMERMANN R. Op. cit., 452; POLOJAC M. "Ortakluk kao zajednica imovine u Srpskom građanskom zakoniku – istorijski osvrt na čl. 727" [Partnership as a Communion of Property in the Serbian Civil Code – a Historical Overview of Paragraph 727] – *Srpski građanski zakonik – 170 godina* [Serbian Civil Code – 170 Years], Beograd, Publishing centre of University of Belgrade Faculty of Law, 2014, 255.

9 D. 27.1.31.4.

10 Gaj, *Op. cit*., 219 nt. 53.

heir was seen as the heir of the whole property, and every act of handling it obliged all co-heirs in the *consortium*.[11]

In other words, an important characteristic of this form of partnership was that each of the members owned and could legally dispose of the whole, and that individual interest coincided with the interest of the whole.[12] At the same time, it is the main difference between *consortium ercto non cito* and consensual *societas omnium bonorum*, where the interest of the partnership consists of the sum of individual interests, provided all worked to achieve the common agreed aim.[13] If absolute coincidence of private and communal interest had vanished, *Law of the Twelve Tables* provided the *actio familiae erciscundae*, a legal procedure for splitting up jointly held familial property.[14]

Of course, if the harmony between common and individual interest was just briefly broken by a single act of one member handling the common property by manumitting a slave or alienating things held in common by mancipation, it is assumed that others could veto that act and thus prevent the possibility of community disintegration.[15]

On the other hand, the right of alienation was not likely to lead to abuses because the members lived in a community and could easily control each other's acts. It is hardly probable that alienation could have been performed in secrecy. *Mancipatio* demanded the participation of eight men so it was impossible to conceal it.[16] SCC does not provide for an individual, even if it is the head of a family, to have complete control over *zadruga's* property, but allows for the possibility that a legal matter concerning alienation or indebting family property could re-

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11 LINKE B. *Von der Verwandtschaft zum Staat – Die Entstehung politischer Organisationsformen in der frührömischen Geschichte* [From Relatives to State – Genesis of Forms of Political Organization in the Early Roman History], Stuttgart, Franz Steiner Verlag, 1995, 36–37.

12 TONDO S. "Ancora sul consorzio domestico nella Roma antica" – *Studia et documenta historiae et iuris* LX (1994), 610.

13 ARENA V. *Libertas and the Practice of Politics in the Late Roman Republic*, Cambridge, Cambridge University Press, 2012, 164.

14 BANNON C. J. *The Brothers of Romulus: Fraternal Pietas in Roman Law, Literature and Society*, New Jersey, Princeton University Press, 1997, 16.

15 JOLOWICZ H. F. *Historical Introduction to the Study of Roman Law*, Cambridge, Cambridge University Press, 1952, 310.

16 DIÒSDI G. *Ownership in Ancient and Preclassical Roman Law*, Budapest, Akadémiai Kiadó, 1970, 45.

main active unless members of *zadruga* dismiss it within a year from the day they found out about it (par. 510).[17]

Consortium ercto non cito structure is in complete agreement with a modern legal science notion which denotes integral collective property. Each member of the community was entitled to the whole common property, up to the moment of disintegration of extended families by *actio familiae erciscundae* (a legal action for dividing family inheritance among heirs). In pars. 508 and 510 SCC joint property was also defined as integral collective property which belongs to patriarchal family that is legal entity and an entitled owner of all ***zadruga's*** possessions except family members personal assets (the so called *osobina* – par. 509). Since everything acquired by a member of *zadruga* becomes a common property (par. 508), the property of *zadruga* could be handled only with consent of all adult married male members (par. 510).[18]

Women′s consent for handling joint estate was not asked for, considering the fact that women, since subordinated to men, did not have equal rights in household. That is seen in the basic legal provision on *zadruga*, which reads: "The term *zadruga* or *zadruga* household applies to several adults, alone or with their descendants, living in a community. They are in a communal relationship. If there is no such living in a community, it is called nuclear family" (par. 57).[19] Women were not considered members of *zadruga* because they only temporarily lived in the joint family into which they were born, until they got married, when they left that family. As a result, recognizing their rights in *zadruga* would lead to dispersion of family property and weakening of ***zadruga's*** households.[20] In *consortium ercto non cito* women were also unequal to men, and as such they had restricted legal capacity and, subsequently, could never become a paterfamilias. Therefore, their consent was not necessary for disposing of joint assets in case

17 NIKETIĆ G. Op. cit., 315.

18 *Ibid*., 314–315.

19 *Ibid*., 32.

20 PERIĆ Ž. M. *Zadružno pravo po Građanskom zakoniku Kraljevine Srbije* [Joint Family Law According to Civil Code of the Kingdom of Serbia], deo prvi (Part one), Beograd, Izdavačka knjižarnica Gece Kona, 1924, 26–28.

of an ensuing questioning of authorization of mancipation or manumission done by one person, nor were they entitled to any doings of the kind.[21]

Subordinate position of women was not only a result of prevailing economic interests, but it is also a general characteristic of patriarchal family forms typical for more primitive phases of evolution of family relations. Both of these institutions were archaic, since *consortium* was predominant type of family at the time of the founding of Rome,[22] and that South Slavs were living in joint families while still in their homeland, i.e. before coming to the Balcan peninsula and before forming their states.[23] Hence, apart from the property aspect, what both institutions have in common is the quality of being family communities, an as such they were not profit-oriented, but based on equality of their members, who had equal rights to use family possessions regardless of their personal contribution of acquiring it.[24]

Although *consortium ercto non cito* is a good example of integral collective property, gradually, over time, individuals were allowed to acquire certain personal assets. Since they were their private property, *consors* could freely dispose of them.[25] *Zadruga* also had possessions in the same legal property regime. Private property in *zadruga* included items for personal usage of a household member (par. 506 SCC) and everything he obtained outside the house with an effort, luck or coincidence (par. 511). According to the first redaction of paragraph 511, family member had the right to keep those things only if he would give up his share of *zadruga's* property.[26] This paragraph was soon amended by Decree issued on February 7, 1847, which proclaimed that the right to a share of

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21 KASER M. *Römisches Privatrecht* [Roman Private Law], München u. Berlin, C. H. Beck′schen Verlagsbuchhandlung, 1966, 37–38.

22 MOUSOURAKIS G. *Roman Law and the Origins of the Civil Law Tradition*, Switzerland, Springer International Publishing, 2015, 139.

23 See KADLEC K. *Prvobitno slovensko pravo pre X veka* [Early Slavic Law before X Century], s poljskog preveo i dopunio (from polish translated and amended by) T. Taranovski, Beograd, Izdavačka knjižarnica Gece Kona, 1924, 70–74; JOVANOVIĆ A. S. *Istorijski razvitak srpske zadruge* [Historical Evolution of Serbian *Zadruga*], Beograd, Štamparija S. Nikolića, 1896, 17; Radosavljević M. *Evolucija srpske zadruge* [Evolution of Serbian Zadruga], Beograd, Državna štamparija, 1886, 8–9; Ivić M. *Die Haus-Kommunionen – eine Denkschrift* [Zadruga – a Memoir], Semlin, 1874, 17–19.

24 KASER M. Op. cit., 254–255; MILJKOVIĆ A. „Pogledi Živojina M. Perića na porodičnu zadrugu u Srbiji [Živojin M. Perić′s Observations on Zadruga in Serbia] – *Anali Pravnog fakulteta u Beogradu* [Annals of the Faculty of Law in Belgrade] 1/2005, 98–100.

25 KASER M. Op. cit., 172.

26 NIKETIĆ G. Op. cit., 315–316.

family property was the fundamental property right of each member of patriarchal family, which he could, under no circumstances, be deprived of. During his sojourn outside the household he would only lose his share of newly acquired goods gained while he was away.[27] Personal property of family members included their share of all those commodities, which were divided into equal parts among older than 15 years of age, male members of *zadruga*. Of course, if they took part in obtaining it (pars. 512, 513 and 517 SCC).[28]

Individual property in Roman consortium is similar in nature to *osobina* in *zadruga*. Papinianus in his *Opinions*, Book III, states: "When voluntary consortium was formed between two brothers, the salaries and other compensations should be brought into the common fund of the consortium; although a son who is emancipated would not be compelled to give what he obtained in this way to his brother who remained under the control of his father, because, even if he should remain under paternal control, these things would still be his private property."[29] The salaries and other compensations of a *consort* match the definition of individual's personal property in par. 511 SCC, which denotes "everything that is obtained by a member of a household with an effort, luck or coincidence, while living away from it."

Considering the archaic nature of *consortium* and *zadruga* it was only logical that they disappeared early. Rapid disintegration of *zadruga* started as early as 13th and 14th centuries during the rule of the Nemanjić dynasty, along with strengthening the state's power and economic development.[30] *Consortium ercto non cito* was in concordance with socio-economic circumstances in the Roman Kingdom and early Republic, when the economy was mixed agriculture and livestock breeding.[31]

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27 Указ од 7. фебруара 1847. [Decree from February 7, 1847.], *Сборник закона и уредба и уредбени указа изданих у Кнажествву Србском* [Collection of Laws, Bylaws and Decrees Issued in the Principality of Serbia], No. 4/1849.

28 NIKETIĆ G. Op. cit., 317–318.

29 D. 17.2.52.8.

30 NOVAKOVIĆ S. *Selo* [Village], s dopunama S. Ćirkovića (with amendments by S. Ćirković), Beograd, Srpska književna zadruga, 1965, 155–170; TARANOVSKI T. *Istorija srpskog prava u Nemanjićkoj državi* [History of Serbian Law in Nemanjić's State], Beograd, Službeni list SRJ, 2002, 449–451.

31 TALAMANCA M. "Dal consortium ercto non cito alla societas consensu contracta. La societas re contracta", *Enciclopedia del diritto*, Milano, Giuffrè editore, 1990, Vol. XLII, 817.

Consortium began disappearing gradually since the time of *Law of the Twelve Tables* which permitted its division.[32] By the end of the Roman Republic, *consortium* was completely out of use, and it did not exist anymore at the time of Gaius in the 2nd century AD.[33]

Still, some Romanists claimed, on the basis of a letter of Pliny the Jounger that *consortium ercto non cito* still occurred at the beginning of the second century. Pliny writes letter to a friend on the newest rumours in the city, that Curtilius Mancia′s property ended up after his death in the hands of two wealthy brothers, senators Domitius Lucanus and Domitius Tullus. Lucanus had married the daughter of Mancia, but at some point had brought upon himself the rage of his father-in-law. Hence, Mancia tried to evade Lucanus in his will by passing on his property to the daughter of Lucanus, Domitia Lucilla, but on the condition that she be emancipated, or released from her father′s *patria potestas*. But Lucanus and Tullus obtained control of Mancia′s property by resorting to a trick of their own. Lucanus dutifully manumitted Lucilla, but had his brother Tullus adopt her, and in this way the two brothers were able to operate Mancia′s property in common.

In this way the testament had been evaded: by the fraudulent act of adoption the brother and partner had brought the emancipated daughter back under the paternal authority of a brother, thereby acquiring a very considerable estate. Pliny uses the terms *consors* to describe the relationship of the Domitii brothers (*ep. 8.18.4*).[34]

Due to Pliny′s letter well-known and respectable professor of Roman law Wolfgang Kunkel claimed that in classical times the concept and the social function of the *consortium* was still very much alive. In his opinion, from this letter appears that the brothers Lucanus and Tullus shared the estate equally, in complete partnership, and that their lives were closely linked as well. He asserts that

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32 POLOJAC M. “Societas i consortium – poreklo klasičnog ortakluka” [Societas and Consortium – the Origin of Classic Partnership] – *Anali Pravnog fakulteta u Beogradu* [Annals of the Faculty of Law in Belgrade] 6/1992, 605.

33 LIMBACH F. *Gesamthand und Gesellschaft – Geschichte einer Begegnung* [Joint Hand and Society – A History of One Encounter], Tübingen, Mohr Siebeck, 2016, 18–19.

34 TELLEGEN J. W. “Was there a *consortium* in Pliny′s Letter VIII 18?” – *Revue internationale des droits de l′antiquité* XXVII (1980), 298–300.

in *consortium ercto non cito* there was not only joint control of the estate but also of the *patria potestas*.[35]

However, among Romanists prevailed standpoint that the *consortium* mentioned in Pliny's letter is possibly a *consortium* in the sociological sense, and that, from a juridical point of view, we are probably dealing with consensual *societas omnium bonorum* or some other kind of partnership and close collaboration between brothers. The views that the *consortium* was more than a joint estate and that is still persisted in Rome well into the second century are no longer tenable, and there is no support in the other sources for those views either.[36]

3. CRUCIAL DIFFERENCES BETWEEN *CONSORTIUM ERCTO NON CITO* AND *ZADRUGA*

Unlike *zadruga*, *consortium ercto non cito* gradually became, not only a type of family but also an contractual partnership similar to *societas*, also known in legal literature as *consortium ad exemplum fratrum suorum*.[37] Namely, persons who wished to set up such a partnership were allowed to do so before praetor by means of a *legis actio*, the archaic form of process.[38] They would pool their assets and artificially create a partnership on the model of the (natural) brothers of an undivided familia.[39] It is very probable that possibility to create artificial *consortium* coincided with the introduction of principle of free division of *consortium* between co-heirs,[40] which occurred in the mid-5th century BC.[41] *Za-*

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35 KUNKEL W. "Ein unbeachtetes Zeugnis über das römische Consortium" [An Unremarked Testimony on Roman Consortium] – *Annales de la Faculté de droit d'Istanbul* 4 (1854), 57–64.

36 TELLEGEN J. W. Op. cit., 311–312; BRETONE M. "*Consortium* e *communio" – Labeo – Rassegna di diritto Romano* 6 (1960), 211–215; KEHOE D. P. *The Economics of Agriculture on Roman Imperial Estates in North Africa*, Göttingen, Vandenhoeck und Ruprecht, 1988, 51 nt. 38.

37 This name alludes to resemblance between the artificial *consortium* and the one that is a family form, recognized in jurisprudence as *consortium fratrum suorum*. See GUARINO A. "Il consortium ercto non cito", *Enciclopedia del diritto*, Milano, Giuffrè editore, 1961, Vol. VIII, 236–237.

38 WATSON A. Op. cit., 133.

39 ZIMMERMANN R. Op. cit., 452.

40 FREZZA P. "Consortium", *Novissimo digesto italiano*, Torino, Unione tipografico – editrice torinese, 1957, Vol. IV, 246.

41 TALAMANCA M. Op. cit., 817.

druga, however, did not change its legal nature in the course of time. It remained, as it was in the beginning, only a type of family.

Regarding ownership of goods in *consortium*, with the exception of personal assets of some *consors*, all other possessions were an integral collective property of the whole joint family without any determined shares. In pars. 515, 521 and 522 SCC, however, *zadruga's* property was defined as a typical co-ownership. Each member of patriarchal family was the owner of his share – a quota of ***zadruga's*** property (par. 522), which he could indebt (par. 515) or dispose of it *mortis causa* (par. 521).[42]

Some Romanists think that the difference between *consortium ercto non cito* and co-ownership in the Classical Roman law (*condominium*, *communion*) is not as much in their nature as it is in legal regime. They are only different appearances and different historical positions of a legally unique phenomenon.[43] According to Mario Bretone, a distinguished professor of Roman law, Roman legal science during the Republican period transferred *consortium* into the sphere of co-ownership, which also remained in the Classical Roman law. This is evident in decisions made by jurists and imperial constitutions of the Classical period, which were always based on the criterion of a quota in proprietary relations among brothers.[44]

4. DIVISIONS OF *CONSORTIUMS ERCTO NON CITO* AND *ZADRUGAS*

Just as *Law of the Twelve Tables* enabled free divisions of consortiums,[45] so did *Serbian Civil Code* in par. 492 permit dividing of *zadrugas*.[46] *Consors* would usually, like *zadruga's* members, partition between themselves, on their own or before judges they choose themselves, whereas judicial divisions were very rare.[47] Collapse of such patriarchal families was a natural consequence of

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42 NIKETIĆ G. Op. cit., 317–319.

43 See BRETONE M. "Consortium e communio" – *Labeo – rassegna di diritto romano* 6 (1960), 164–165.

44 *Ibid*., 207.

45 D. 10.2.1.pr.

46 NIKETIĆ G. Op. cit., 303.

47 See BABUSIAUX U. *Wege zur Rechtsgeschichte: Römisches Erbrecht* [Approach to Legal History: Roman Inheritance Law], Köln ; Weimar ; Wien, Böhlau Verlag, 2015, 86; PETROVIĆ Đ. *Visočajše rešenje od 22. juna 1846. god. – Rečnik zakona, uredba, uredbeni*

economic and social development. Namely, such joint fraternal households are associated with the primarily agricultural economy in which cooperative economic and living arrangements could best insure survival and the distribution of scarce resources.

Economically, *consortium* and *zadruga* might be a disadvantageous practice in market economy. If all their property were tied up in an indivisible familial estate, members of family groups would not have been able to profit so successfully from the diverse and growing economy. That is a reason why at the end of the Roman Republic more flexible forms of partnerships such as *societas omnium bonorum* prevailed.[48] This is form of a general partnership where the entire property of the partners immediately belongs to them all in common.[49] Partnership stake consisted of all the property owned by a partner at the time of his joining a partnership, as well as everything he would obtain in any way later on. *Societas omnium bonorum* is similar to *consortium* because it represents a community of life and work, but property aspect is different. *Consortium* is a fine example of integral, collective property owned jointly by *consors*. On the other hand, in a partnership possessions are partner′s individual property whereby partners are co-owners.

Besides the fact that *societas omnium bonorum* was more suitable for money-and-good based economy, it was consensual contract of classical times created by mere consent and, as it was institute of *ius gentium*, open to all. Artificial *consortium* between persons who were not co-heirs, on the other hand, was created by very formal *legis actio*, an institution of *ius civile* and therefore open only to Roman citizens.[50]

5. CONCLUSION

There are many more similarities than differences between *consortium ercto non cito* and *zadruga*. They were both primarily blood-related communities, in which a large number of relatives lived and worked together on an undivided

propisa i pr. i pr. izdani u Knjažestvu Srbiji od 1827. do polovine 1854. god. [Decree from June 22, 1846. – Dictionary of Laws, Bylaws, Decrees etc. etc. Issued in the Principality of Serbia from 1827. until mid-1854.], Beograd, Praviteljstvena Knjigopečatnja, 1856, 84-86.

48 BANNON C. J. Op. cit., 17-19.

49 D. 17.2.1.1.

50 JOLOWICZ H. F. Op. cit., 310.

family estate in conditions of low productivity and closed house economy. *Consortium*, as well as *zadruga*, were patriarchal, archaic social groups in which women were in subordinated position, due to economically more important role of men. Family goods were collective property of all the family members, who had equal rights regardless of their particular share in acquiring it, because both *consortium* and *zadruga* were above all types of families and not profit-oriented communities, whose all members were equals. That was the reason why these family groups disintegrated with the expansion of market production and money-and-goods based economy, and *Serbian Civil Code* and *Law of the Twelve Tables* just had to provide legal mechanisms through which divisions would happen without too much disturbance and within a legal framework.