

1. Separation | Divorce
2. Name of the wives

## 1. SEPARATION | DIVORCE

Both in colloquial terms and in specialist language today the term **divorce** means the dissolving of a marriage, which also includes the right to remarry. However, this right to remarry pertains only to the civil marriage and not to the religious marriage if it was contracted according to Catholic marriage rituals. Until today a Catholic marriage remains to be bound by a sacramental marriage bond; a bond which can be dissolved only through the death of one of the marital parties. The annulment of the marriage by an ecclesiastical court declares the marriage as null and void.

Up until the implementation of obligatory civil marriage – in Austria this wasn't introduced until the “*Anschluss*” to National Socialist Germany and the therewith consequential **adoption of German matrimonial law** in July of 1938 – the term divorce had various meanings depending on religion, religious denomination and context.

When Catholic marriages, which were legally valid according to Catholic rites were annulled, the *Corpus iuris canonici* referred to this legal act as **divorce of the marital bond** (***divortium quoad vinculum***). In most cases annulment was connected with the right to remarry. However, the right to remarry was denied to spouses whose inability to consummate the marriage was declared to be due to absolute impotence.

**A divorce from bed and board** (*divortium quoad mensam et thorum*) allowed the marital spouses to live separately. Since the couple who was legally divorced was still connected through the marital bond, the Catholic Church prohibited, and still prohibits, the partners from remarrying as long as the other partner is alive. If the divorced parties remarried they were considered guilty of adultery and bigamy.

If the ecclesiastical court limited the amount of time in which the parties were allowed to live apart from each other, this was referred to as **separation from bed and board** (*separatio quoad mensam et thorum*) or, starting at the end of the 16th century, alternatively, as a

### **‘time of tolerance’.**

Up until and even into the 16th century, the term **‘tolerance’** was used for the ecclesiastical legitimization of specific partnerships. Married men and women whose partners were absent for years could request the toleration of an extra-marital partnership they had entered into without confirmation of the death of their spouse. If the ecclesiastical court granted this request, it issued a tolerance certificate. If the absent marital partner returned, they had to resume the first marriage.

The secular matrimonial laws issued after 1783 accepted the rules of the respective religions and denominations. For Catholics they adopted the terms used in canon law. The divorce from bed and board was still referred to as **divorce**, the annulment or nullification of the marriage was called annulment. The term **separation**, in contrast, was used for divorces with the option of remarriage involving non-Catholics.

In this web portal the terms **divorce** and **separation** are always to be understood in the context of the institution of divorce or separation from bed and board. If we are referring to a divorce in a Jewish or Protestant context we explicitly indicate this. For the annulment or nullification (*divortium quoad vinculum*) of the Catholic marriage we use the term **annulment**.

## **2. NAME OF THE WIVES**

Until well into the 18th century, it was not a matter of course for women to take the name of their husbands upon marriage (see also the explanations on linking the data in the menu item Sources Passau and Viennese Consistories). In order to identify people with different names as a married couple, we decided to use the husband’s surname, which remains the same, as the “married name”. Until well into the 19<sup>th</sup> century, it was also common – also in official documents – for the suffix “in” to be added not only to women’s occupational titles but also to their surnames. For example, the divorce decree of the Vienna magistrate of 20 June 1784 was introduced as follows:

“By the Magistrate of the Imperial and Royal Capital and Residence City of Vienna. In the

case of Theresia Auerin, civil hat maker, plaintiff on the one side, against her husband Franz Auer, defendant, on the other side..." (WStLA 1.2.3.2.A6 Sch. 1, 12/1784).

The practice of women being referred to with the masculine form began at the end of the 18<sup>th</sup> century and – at least in the official documents – only slowly gained acceptance after the General Civil Law Code of 1811. Thus, to give another example, Joseph Mayr's wife is sometimes called Barbara Mayr, and sometimes Barbara Mayrin in the 1820 proceedings. The wife herself signs the reunification settlement of 28 March 1820 with Barbara Mayrin (ASE K 16).

Despite the different handling of the suffix "in", we decided to write the wives' names without the suffix "in" starting from November 1783. The main reason for this decision is that we did not want to have both names in the personal database. At the same time, this decision makes it possible to decide on the wives' names whether the proceedings were conducted before the ecclesiastical courts before 1783 or before the secular courts. Theresia Auerin, née Holzapflin, is therefore listed in the personal database as Theresia Auer, Barbara Mayr and Mayrin as Barbara Mayr. When specifying the name of birth, however, we also use the suffix "in" if it is used exclusively or in the majority of the surviving documents. The same applies to the names of the deceased wives of the husband.

## **Husband's Name**

The spelling of all names often varied widely until well into the 19th century. For example, scribes did not differentiate between Dd and Tt, Bb and Pp, or between Gg and Kk. It also differs whether the scribe used a long ("ie") or short "i", and whether and where he inserted an "h". The spelling of the Mayr couple mentioned above varies between Maier, Mayer and Mayr. The spelling of the name differs not only between different documents, but often also within a document. To fix the name, we either used the most common spelling or – if we could research the marriage registers – the spelling in the marriage registers.

*Andrea Griesebner/Georg Tschannett, 2016, translation Jennifer Blaak, 2018*  
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**Next sub-item: Investigation period**

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