

**First Title Runaway Slaves and Runaway Freedmen and Slave Craftsmen of Cities, Both those Assigned to Various Jobs and Those Belonging to the Privy Purse or the Imperial Domain<sup>2</sup>**

[1] *Emperors Diocletian and Maximian Augusti to Aemilia.* It is manifest that a runaway slave (*servus fugitivus*) commits a theft of himself and that, therefore, usucapion and long time prescription do not apply, so that the flight of slaves does not cause loss to their masters for any reason.

*Posted December 9, in the consulship of Maximus, for the second time, and Aquilinus (286).*

[2] *The same Augusti and the Caesars to Pompeianus.*<sup>3</sup> It is the governor's duty to give masters the right to search for their runaway slaves.

*Posted April 29, in the consulship of the Caesars (294).*

[3] *Emperor Constantine Augustus and Licinius Caesar<sup>4</sup> to Probus.*<sup>5</sup> Whenever fugitive slaves are seized while going over to the barbarians, they are either to be mutilated by the amputation of a foot or condemned to the mines or inflicted with some other punishment at will.

*Without day or consul (310/324?).*

[4] *Emperor Constantine Augustus to Valerianus. pr.* Whoever, without knowledge of the master, receives a runaway slave into his house or land is to return him, together with another comparable slave or 20 solidi. **1.** But if he has taken him in a second or third time, he is, besides returning him, to give the master two or three others, or the aforesaid amount for any one of them. *Tutores* or *curatores*, on behalf of minors, are subject to the same punishment. **2.** If the property of the person who took the slave does not suffice for the payment of the aforesaid penalty, he is to be chastised at the discretion of the proper judge. **3.** But if the slave has falsely claimed that he is free-born and is hired by another, that person who had him cannot be incriminated. The slave must, of course, be subjected to torture, to find out whether or not he was craftily sent by his master to the house or land of the person, who took him in, for the purpose of gain. If it appears from interrogation of the slave that this was indeed done maliciously, he who did this is to be deprived of his slave and the slave is to pass to the Treasury.

*Given June 27 (December 28?), at Thessalonica, in the consulship of Gallicanus and Bassus (317).*<sup>6</sup>

[5] *The same Augustus to Januarius.*<sup>7</sup> It is decided that slaves skilled in various trades, who belong to a public authority, must remain in these same cities, on the basis that, if anyone entices away such a slave or supposes that he may be called away, he is to restore him together with another slave and pay the sum of 12 solidi to the public authority of that city, whose slave he abducted; freedmen craftsmen, too, if enticed away, must be restored to the city under the same rule; with the proviso regarding a runaway slave that if he is not demanded back or recalled through the care of the

defender (of the city), that defender is to be liable to provide two replacement slaves; in such a case from now onwards neither an imperial grant nor the sale (of the runaway slave) will any longer have any validity in his favor.<sup>8</sup>

*Given February 14, in the consulship of Constantine Augustus, for the fifth time, and Licinius Caesar (319).*

**[6]** *The same Augustus to Tiberianus, Count of the Spains.*<sup>9</sup> If anyone seeks to reclaim a runaway slave, and another opposes his ownership, for the purpose of evading the law which imposes a fixed penalty on those hiding slaves, or incites the slave to claim that he is free, the wicked whipping-fodder, whose status is in doubt, is to be immediately subjected to torture, so that there may be an end to the dispute upon the discovery of the truth. This will not only benefit the two in dispute, but will also deter the minds of slaves from flight.

*Given August 18 (or October 27), at Constantinople, in the consulship of Pacatianus and Hilarianus (332).*<sup>10</sup>

**[7]** *Emperors Valentinian, Valens and Gratian Augusti to Felix, the Consular.*<sup>11</sup> If anyone should think to hide a fiscal slave, he is not only to be compelled to restore him, but also to pay to the Treasury 12 pounds of silver by way of penalty.

*Given April 12, in the consulship of Gratian Augustus, for the second time, and Probus (371 [366]).*

**[8]**<sup>12</sup> *Emperors Valentinian, Theodosius and Arcadius Augusti to Albinus, City Prefect of Rome.* If any public slaves assigned to state factories or other public works, as though unmindful of their proper status, should go to the houses of others and join themselves in unions to the female slaves of private persons, both they and their wives and children are to be returned immediately to their former condition and work.

*Given July 25, in the consulship of Timasius and Promotus (389).*

## **Second Title Thefts and the Corruption of a Slave**<sup>13</sup>

**[1]** *Emperors Severus and Antoninus Augusti to Theogenes.* If certain persons have bought lands with your money upon the order of your slaves (who took your money), you must choose whether you prefer to bring an action for theft and claim for restitution or an action on the mandate. For equity does not permit you both to pursue an action for the crime and also to ask that a good faith contract be performed.

*Given April 21, in the consulship of Severus Augustus, for the second time, and Victorinus (200).*

[2] *The same Augusti to the men of business* (negotiatores). You demand something not in accordance with the civil law, when you do not want to return property acknowledged as stolen until the price has been paid by the owners. Take care, therefore, to conduct your business with more caution, lest you not only sustain a loss of this kind, but also fall under the suspicion of a crime.

*Posted November 29, in the consulship of Cilo and Libo (204).*

[3] *Emperor Antoninus Augustus to Secundus*. If your stepfather stole and carried away property not yet dedicated to a god's temple, you have an action for the theft against him.

*Posted September 8, in the consulship of Laetus, for the second time, and Cerealis (215).*

[4] <sup>14</sup> *Emperor Alexander Augustus to Aurelius Herodes*. You may sue the person, whom you say has enticed your slave, in an action for corruption of a slave, only if he made his character worse. But if he has hidden the slave so enticed, you may sue him also in an action for theft. You are not at all forbidden from exercising these rights of action even through a procurator.

*Posted September 13, in the consulship of Alexander Augustus (222).*

[5] *The same Augustus to Cornelius*. The demand of your adversary, that you produce the seller of the property which you acknowledge to have been in your possession, is in accordance with civil law. For it is not fitting for someone wishing to avoid the suspicion alien to an honest man to say that he has purchased from a person passing through, indeed unknown.

*Posted April 29, in the consulship of Maximus, for the second time, and Aelianus (223).*

[6] *The same Augustus to Pythodorus*. Whoever knowingly sells, gives away or in any other manner alienates the slave of another without the consent of the master, cannot diminish the latter's right; and if he seizes or detains him with him, he commits theft.

*Posted December 27, in the consulship of Maximus, for the second time, and Aelianus (223).*<sup>15</sup>

[7] *The same Augustus to Datus*. If the person to whom, as you state, you gave money, for the purpose of carrying it to your mother, delivers a smaller quantity, and converts the remainder to his own use, he commits theft.

*Posted June 12, in the consulship of Modestus and Probus (228).*

[8] *The same Augustus to Valens*. A tax collector is also liable to an action for theft, if, knowing that you were not in default in paying tax, because nothing was owing, he abducted or sold your female slave. The result is that the purchaser cannot become owner by usucapion and a suit for ownership of her is available to you.

*Posted February 20, in the consulship of Pompeianus and Paelignus (231).*

**[9]** *Emperors Diocletian and Maximian Augusti and the Caesars to Aedesius.* When a slave is taken by theft or abducted by force, although he left the mortal world before he was offered back, the risk will fall upon both the abductor and the thief, and each of them will be punished by the legal penalty.

*Subscribed February 7, at Sirmium, in the consulship of the Augusti (293).*

**[10]** *The same Augusti and Caesars to Valerius.* If the provincial governor learns that slaves stolen or kidnapped have been sold – since the right of usucapion cannot be enjoyed by the purchaser, because of the inherent defect, before the stolen slaves are returned to their master – and that you are the successor to him whose slaves they were, he will take care that they are restored to you.

*Without day and consuls (April 13, 293?).*<sup>16</sup>

**[11]** *The same Augusti and Caesars to Demosthenes.* As to the things which you indicate in your petition were carried off by the stepmother of your ward, go before the governor of the province, who, if he learns that she stole anything, after he for whom you bring your supplication became the owner of his property, will not overlook to formulate a condemnation in an action brought for theft, with a fourfold penalty for theft detected in the act, and twofold if not so detected.

*Given August 26, at Viminacium, in the consulship of the Augusti (293).*

**[12]** *The same Augusti and Caesars to Quintilla.* **pr.** The offspring of a stolen female slave, born at the home of the thief, cannot become the property of anyone by usucapion before coming into the possession of the master. It is the case that the thief of the mother is liable to an action for theft on account of the offspring as well. **1.** Therefore you are not prohibited from bringing an action for theft and a claim for restitution, or a suit for ownership of the slaves against the possessor, as the action which carries a penalty cannot be barred by the choice to bring the other. **2.** For the law is not in question that the property itself can be pursued separately from the penalty (i.e., the fine for theft), since even those who have bought the slaves of others may, if the facts were not unknown to them, be sued in an action for theft.

*Given October 15, at Sirmium, in the consulship of the Augusti (293).*

**[13]** *The same Augusti and Caesars to Domnus.* After a settlement as to theft, the laws forbid action in court. But if you made no compromise, but only received part of the stolen property, you may bring a suit for ownership of the remainder or claim restitution, or sue by an action for theft before the governor.

*Given December 1, at Sirmium, in the consulship of the Augusti (293).*

**[14]** *The same Augusti and Caesars to Dionysius.* You may sue those, who knowingly received things taken away in theft by a slave, not only for the things received, but also with a penal action for theft.

*Given December 25, at Sirmium, in the consulship of the Augusti (293).*

**[15]** *The same Augusti and Caesars to Socratia.* You ought not to have been unaware that heirs cannot be held liable in an action for theft. But you can sue the holder of stolen documents in an action *in rem* (i.e. for recovery).

*Given December 30, at Sirmium, in the consulship of the Augusti (293).*

**[16]** *The same Augusti and Caesars to Artemidorus and others.* If he, who took in your slave for the purpose of raising him, then sold him, he committed theft.

*Given October 1, at Viminacium, in the consulship of the Caesars (294).*

**[17]** *The same Augusti and Caesars to Conon.* Although common usage does not permit a wife to become a defendant for the crime of despoiling an inheritance, any more than in an action for theft, however the heirs, being also the children, are not forbidden to bring an action *in rem* against her to recover the property of their father, which she has in her possession.

*Given December 13, in the consulship of the Caesars (294).*

**[18]** *The same Augusti and Caesars to Dionysodorus.* The rule of the Perpetual Edict declares that an action for fourfold damages is available for a year to him, whose property is lost, against him, who is said to have taken or caused any loss to property from a shipwreck or fire, and after that time an action lies for the simple value, apart from the existing statutory penalty.

*Subscribed December 30, at Nicomedia, in the consulship of the Caesars (294).*

**[19]** *The same Augusti and Caesars to Mnesitheus.* A pretended procurator commits theft by receiving a deposit or collecting a debt without the consent of the owner, and, aside from the restitution of the property, may be sued for double its value in an action for non-manifest theft.

*Without day and consul.*

**[20]** <sup>17</sup> *Emperor Justinian Augustus to Julian, Praetorian Prefect. pr.* If someone has tried to persuade another's slave to steal and bring to him any property of the slave's master, and the slave made this known to the master and, with the master's consent, took his (the master's) property to the wicked author of this type of persuasion, and he was discovered holding the property, the ancients were in doubt under what action he, who received the property, was held liable, whether for the instance of the theft or in regard to the slave, because he wished to corrupt him, so that he was answerable not only for the theft, but also for the corruption of the slave. **1.** Therefore, it has pleased Us, making a decision about their dispute, to grant against him not only an action for theft, but also one for the corruption of the slave. For, although the slave was not made worse, still the plan of the corrupter intended to destroy the probity of the slave. And just as no theft was actually committed according

to the rules of law, since it is a person who handles the property of an owner against his will who is considered as committing a theft, nevertheless he is liable in an action for theft on account of his evil intention. So too on account of his depravity, an action is not unjustly given against him for corruption of a slave, so that he is to be subject to a penal action, as though the slave had in fact been corrupted, lest from impunity of this sort he should attempt to do this again to another slave, who could be corrupted.

*Given August 1, in the consulship of the viri clarissimi Lampadius and Orestes (530).*

**[21]**<sup>18</sup> *The same Augustus to Julian, Praetorian Prefect. pr.* It was questioned among the ancients, in the case of a slave, possessed by someone in good faith, who committed a theft of the property of another or of him, with whom he resided, whether he who held him (the slave) in good faith had a noxal action for theft against the true owner, or whether he himself might be sued under the aforesaid action by the party who suffered the theft. **1.** And since ancient jurisprudence adopted a general rule that anyone forced to submit to a noxal action for theft on account of a slave of this sort, was not allowed an action for theft against another, some therefore through conjecture interpreted this to mean that in no way was an action for theft extended against a possessor in good faith, but to him, if he suffered theft, was rightly granted a noxal action for theft against the true owner; but then the possessor in good faith, under the name of the theft he had suffered, could bring a noxal action against the owner, once the slave was settled in the possession of his (true) owner; and he could bring the action against the owner not only for those things, which the slave took while he was settled with him, but also for that which he stole, when he ran away indeed from the possessor in good faith and while he was still not yet settled under the power of his (true) owner.

**2.** The early law indeed brought in this interpretation through conjecture; but we, considering this general rule more deeply and truly, starting from scratch accept it as meaning this: **3.** since the possessor in good faith possesses the thief, thinking that he is the owner, he is justly liable to others in a noxal action, if outsiders should suffer theft by the slave, while he is settled with him; and he himself has no action against the true owner according to the rule which says: he who has an action for theft against another cannot himself be liable to such an action.<sup>19</sup> But if he ceases in his retention of the slave and the latter is found with the true owner, then he himself cannot at all be liable to a noxal action for theft; but has himself a noxal action for theft against the true owner: that is to say, for the property, which he (the slave) stole either now when he is with the true owner, or previously after he left the control of the possessor in good faith, though not yet placed with the true owner.

**4.** In this manner, the case becomes once again consistent with the general rule; for he, who has an action for theft against the owner, cannot himself be held liable to others in such an action. Thus, by making a distinction as to time, let the ancient doubt be stilled by our settlement, and during a defined period of time the possessor in good faith both has an action and is not liable to one, and during the rest of the time the owner himself is not liable to an action, but is allowed to bring an action against the other (i.e., the bona fide possessor).

**5.** But if a person who is free, although held as slave by another in good faith, commits a theft, it is held rightly and without any doubt, that he, who has been recognized as free, can be sued for theft even by him who kept him in good faith, and the latter cannot be sued, if the free man commits theft against an outsider, but he himself must answer for his theft; for the general rule was adopted

only as to slaves, and bringing a noxal action is impossible and unknown to our laws, where the thief is not a slave, but is free and his own master.

*Given on October 1, at Constantinople, in the consulship of the viri clarissimi Lampadius and Orestes (530).*

[22]<sup>20</sup> *The same Augustus to Julian, Praetorian Prefect. pr.* The law is very clear that, when a theft is perpetrated, an action for theft lies in favor of the party, in whose interest it is that the theft not be committed. **1.** But it used to be questioned among the ancient interpreters of the laws, in the case where anyone loaned an item of his property to another and the thing loaned was stolen, whether an action for theft against the thief might be instituted by the party who received the property for use, when indeed he was solvent, because he himself could be sued for the property by the owner in an action on the loan. **1a.** And this has virtually now been granted, so that he has an action, unless he is known to be struggling with insolvency; for then they held that the owner had an action for theft.

**1b.** But in the case when, at the time the theft was committed, the borrower of the property was solvent, but afterwards became impoverished before the commencement of the action, which was previously open to him, a considerable doubt arose as to whether a right of action, which he had once acquired, ought to remain firmly open to him or to revert to the owner; since it was also asked whether or not in this case the right of action could pass from the one to the other. **1c.** And there follows on another subdivision in the treatment of this subject: If the borrower of the property is only partially solvent, so that he cannot make a total but only partial payment to him (the owner), has he the right of action for theft or not? **1d.** So, We, deciding the differences of the ancients, or what we may better call their vagaries, have decreed a simpler rule in such a difficult situation; that is to say, it shall be in the discretion of the owner, whether he wishes to commence an action on the loan against the borrower of the property, or an action for theft against the party who stole it, and whichever course the owner chooses, he cannot change his mind and have recourse to the other. **1e.** But if he elects to pursue the thief, the person who received the property for use is to be entirely released; but if he proceeds as lender against him, who received the property for use, he indeed in no way can have a right of action for theft against the thief, but he, who is sued for the loan, can have a right of action for theft against the thief, provided that the owner sues the borrower in the knowledge that the property has been stolen.

**2.** But if he (the lender) has instituted an action on the loan, unaware or uncertain that the property is not with him (the borrower), but afterwards, discovering the facts, wanted to abandon the action on the loan and proceed to that for theft, then he is to be granted licence to proceed also against the thief, without any obstacle being put in his way, since he commenced the action on the loan against the receiver of the property, while in a position of uncertainty; unless that is the borrower has already compensated the owner; for then the thief is entirely free indeed from an action for theft by the owner, but he, who compensated the owner for the property loaned to him, is substituted (in the action against the thief). It is also very clear that if the owner initially instituted an action on the loan, without knowing the item had been taken, but afterwards, when this became known to him, changed to proceed against the thief, he who received the loan is entirely released, whatever outcome of the case the owner has against the thief. The same rule applies whether the person who received the loan is solvent in whole or in part.

**3.** But a second doubt arose as to what the rule should be in the case when a person had borrowed property which another had then taken by theft, and the thief, beaten in a suit (by the borrower), was condemned not only for the thing stolen but also for the fine for theft, and thereupon the owner of the property came wishing to take the whole amount of the condemnation by reason of the fact that it arose in connection with his property: so this other doubt arose among the ancients, whether he should get only his property or its value, or in addition the penal sum. **3a.** And although different ideas existed among the ancients, with Papinian himself changing between contradictory opinions, we however, in deciding the dispute, have chosen Papinian, despite his inconsistency, not for his first but his second decision, in which he ruled that the gain should not belong to the owner; for where the risk is located, there also the gain; and the person receiving the property as a loan should not be subject to loss only, but must also be permitted to hope for gain.

**4.** Since, moreover, in the same area of these doubts a third has arisen, why do we not decide that as well? For since the law is quite clear that a husband cannot sue his wife in an action for theft while the marriage continues, because the law blushed to give such an atrocious action between persons so joined to each other, a question of this type arose in the minds of the ancients: **4a.** For a man borrowed property, and suffered theft of this thing at the hands of his wife. And there was doubt whether the owner of the thing had an action for theft against the woman, or whether her husband, on account of the interrelation of the matter, since he was subject to an action on the loan, could bring an action for theft. **4b.** And the authorities of law greatly disputed among themselves as to the law in such case. And this situation can obviously be solved by the present law and our earlier decisions placed in this constitution. **4c.** For we gave a choice to the owner against whom he wished to proceed, whether against the party in receipt of the loan or the party who committed the theft. And, if the owner has chosen the husband, in this case the husband, on account of matrimonial delicacy, is not to have an action for theft, but one for the removal of property. The owner, however, is to have complete liberty to bring either an action on the loan against the husband or one for theft against the wife; provided that, if the husband who received the loan is solvent, in no way is an action for theft to be brought against the woman, lest from this sort of situation between husband and wife, who do not live happily together, some trickery should arise, through which perhaps the wife, with the consent of her husband, might both be dragged into court and suffer penal condemnation for theft.

*Given on November 17, in the consulship of the viri clarissimi Lampadius and Orestes (530).*

### **Third Title The Services (Operae) of Freedmen<sup>21</sup>**

[1] *Emperors Severus and Antoninus Augusti to Romanus.* If the performance of services was imposed on you at the time of manumission, you know that you must provide them. However, it is customary for patrons and freedmen to agree that instead of the services something else is to be provided, although this cannot be a monetary amount, except when necessity has persuaded that this be sought extraordinarily for sustenance on account of (the patron's) poverty; since, even if services were not imposed, when, however, your patron's means failed, you were compelled to maintain him.

*Posted December 30, in the consulship of Cilo and Libo (204).*

[2] *The same Augusti to Eutyches.* A slave delivered to another for the purpose of manumission cannot be led back into slavery by the manumitter, nor is he compelled to perform services imposed on him.

*Posted April 26, in the second consulship of Geta (205).*

[3] *The same Augusti to Quintianus.* If a man manumitted his slave upon receiving payment from an outsider and accepted money from him (the slave) in place of services, he is compelled to return the payment as not owing, whether services were or were not imposed.

*Posted November 1, in the consulship of Albinus and Aemilianus (206).*

[4] *Emperor Antoninus Augustus to Valerianus.* If you prove that money is owing you from your freedman, by virtue of the sale (to him) of his services, the governor will order it to be restored to you by your freedman, for as a result of this the freedman has freedom in making a will;<sup>22</sup> but only if it is proved that the promise was not issued for the sake of burdening his liberty.

*Posted April 18, in the consulship of the two Aspri (212).*

[5] *The same Augustus to Terentius.* Your mother cannot claim imposed services from him, whom she manumitted on the basis of a testamentary trust, except only for the period when she manumitted him before the date specified for freedom under the trust. But, unless he shows her the honor due to patrons, she may go before a suitable judge to have him punished according to the measure of his crime.

*Posted May 13, in the consulship of the two Aspri (212).*

[6] *Emperor Alexander Augustus to Caecilius.* Freedmen and freedwomen of deceased persons owe services neither to outside heirs of patrons nor to husbands of patronesses.

*Posted November 1, in the consulship of Alexander Augustus (222).*

[7] *The same Augustus to Minicius. pr.* Patrons are not permitted to receive money in place of services, although, if the specified services have not been provided, a valuation of the duty not performed is to be converted into a money payment. **1.** But if someone had two sons in his power, even at different times, he is released from the obligation of services under the *lex Iulia de Maritandis Ordinibus*.<sup>23</sup>

*Given May 21, in the consulship of Julianus and Crispinus (224).*

[8] *The same Augustus to Augustinus.* If you were bought with your own money by the person by whom you were manumitted, you neither owe him services nor can you be punished by him as ungrateful. However, it must not be denied that he is your patron.

*Given September 11, in the consulship of Julianus and Crispinus (224).*

[9] *The same Augustus to Laetorius.* You have increased the dignity of your freedwoman by marrying her and, therefore, she is not to be compelled to render you services, since you could be content with the benefit of the law, that she could not legally marry another man without your consent.

*Given February 20, in the consulship of Fuscus and Dexter (225).*

[10] *The same Augustus to Herculianus.* If Titius,<sup>24</sup> when he made his will, gave freedom to his slave with this condition: "I want Gaius, my slave, to be manumitted three years after the date of my death, provided he gives service to my heirs as he gave service to me while I lived," and, since the same slave used to perform some daily work for the testator and after his death also did this for his heirs up to the date for his freedom to be given, it is clear that, having acquired his liberty, he cannot be compelled to continue the same services.

*Given August 7, in the consulship of Fuscus and Dexter (225).*

[11] *Emperor Gordian Augustus to Africanus.* What is born of a freedwoman is free-born. But he, who granted consent to his freedwoman marrying, although he cannot exact services from her, does not lose his rights as a patron.

*Posted August 3, in the consulship of Pius and Pontianus (238).*

[12] *Emperors Diocletian and Maximian Augusti and the Caesars to Veneria.* Those who are manumitted have a free choice of where to live, nor can they be reduced back to the necessity of servitude by the sons of patrons, to whom they owe reverence alone, unless they are shown to be ungrateful, since the laws do not compel freedmen to live with a patron.

*Subscribed May 24, in the consulship of the Augusti themselves (293).*

[13] <sup>25</sup> *Emperors Valentinian, Valens and Gratian Augusti to Probus, Praetorian Prefect.* For him, who considered receiving a freedman belonging to another, there there should await the penalty of paying compensation for the (freedman's) services.

*Given July 13, in the consulship of Gratian Augustus, for the second time, and of Probus (371).<sup>26</sup>*

**Fourth Title The Property of Freedmen and the Right of Patronage<sup>27</sup>**

[1] *Emperors Severus and Antoninus Augusti to Secunda. pr.* There is a great deal of difference whether a slave is bought with his own money and manumitted by the purchaser, or whether he earned freedom from his master upon the payment of money. For in the first case the patron is not allowed to be admitted to the inheritance (of the freedman) contrary to a will; in the latter case he retains all the rights of patronage. **1.** And, therefore, since the property of Sabinianus, the patron's son who possessed the full rights of patronage, was confiscated to the Treasury, as that of a public enemy, our Treasury has succeeded to the rights in respect of his freedmen, according to the orders which pleased the divine Pertinax<sup>28</sup> and which we have followed.

*Posted July 2, in the consulship of Faustinus and Rufinus (210).*

[2] <sup>29</sup> *Emperors Valentinian and Valens Augusti to Florianus, Count of the Privy Purse.* If freedmen, with the connivance of their patrons, have chosen to have relationships with our female slaves or bound tenants (*colonae*), let them (the patrons) know that they will thereafter lose all the benefits of patronage.

*Given October 13, at Trier, in the consulship of Lupicinus and Jovinus (367).*

[3] *Emperor Justinian Augustus to Demosthenes, Praetorian Prefect. pr.* If any patron hereafter frames this sort of scenario, either in connection with manumissions enacted during life or those declared by will or by written or unwritten codicils, that his freedmen are to be released from the right of patronage, he need not doubt also that, the ancient interpretation being removed, the right of patronage is to be released to his freedmen by such a framing of the words alone; and the rights of succession, which arise on intestacy and which the ancients decided were preserved in regard to freedmen's property even after acts of this sort, are by our ruling not to be reserved intact to the patrons. **1.** But just as with the restoration of status of free-birth all right of patronage is removed; thus all are not to be ignorant that the same force must be given to statements of this kind also. **2.** The law is the same if a cession of patronage is made in a last will, manumission having been granted during life; provided, however, that restitutions of birth-rights, which are almost the only way for the pure condition of free birth to be bestowed on freedmen, are to have as full force as possible in our state, since we sincerely wish it to be inhabited by free-born men rather than by freedmen. **3.** Nevertheless, the duty of reverence, which is owed by freedmen, and the right, which patrons have against ungrateful freedmen, are to be kept intact, even though by the framing of the words the right of patronage is lost according to the limits introduced by us; for these also (reverence and action for ingratitude) are removed by the gift of free birth, which is brought in almost only by the restitution of birth-rights. **4.** However, these cases are to keep their validity, through which the right of patronage is as it were stripped from unworthy patrons in a penal manner.

*Recited at the seventh milestone in the New Consistory of the Palace of Justinian. Given October 30, in the consulship of the vir clarissimus Decius (529).*<sup>30</sup>

[4] <sup>31</sup> [*The same Emperor.*]<sup>32</sup> *pr.* This constitution, which is going to give a new form to the rights of patronage, first explains the old rights of patronage which existed according to the Twelve Tables, the Praetorian law and the Papian law, and commences its legislation thus: **1.** It first enumerates those not subject to patronal rights; this happens when the manumitter while alive or by his last will states that he cedes the right of patronage to the freedman; for then it is clear that in such cases the

right of patronage does not apply against him (the freedman) in favor of the patron himself, nor those descended from him, and much less so in favor of his external heirs. Likewise, if the master sees his slave perform state service or acquire a rank and does not object, not only does the slave become free by reason of this, but he is also released from every right of patronage.

**2.** Likewise, if anyone puts his female slave to prostitution, this again makes her free and the master is deprived of every right of patronage; just as a master, who overlooks a sick slave, and neither himself takes care of him nor sends him to a hospital, nor furnishes him with the victuals accustomed from an employer, loses every right in the slave's property. **3.** Likewise, if anyone, who both has a passion for his female slave and does not have a legal wife, should take her as his concubine and remain with that same decision till his death, saying nothing about her status, not only does she become free, both herself and the children which she bore to the master, but they are raised up to free birth, gaining in addition their own *peculium*; and naturally the heirs of the master, whether they are the children or external heirs, have no right of patronage against them.

**4.** Likewise, if anyone, bringing a suit involving the question of someone's freedom, is defeated by the master, and pays the estimate of the value of the slave, the slave, for whom the price is paid to the master, becomes free, nor has the master any rights of patronage over him, just as he does not have over one who, according to the ancient laws, was bought with his own money; for against him (i.e., the slave bought with his own money) the ancient laws also denied to the manumitter the rights of patronage given by the Praetor.

**5.** Likewise, if a patron has a freedman or freedwoman stipulate to pay him money instead of services, or binds them by an oath not to enter into matrimony or procreate children, he too loses all patronal rights, since even formerly he lost the rights of patronage both under the Twelve Tables and from the Praetor. **6.** Likewise, if a freedman proclaims himself free-born, and the patron, employing collusion, agrees that he be pronounced free-born, if the collusion with the freedman is proved, this patron also loses every right of patronage.

**7.** Likewise, if any one, honored with freedom from a testamentary trust, senselessly suffers delays from him who ought to give him his freedom, and goes before the governor and proves that the trustee is absent or hiding, under the senatorial decrees he also is brought to freedom; and he is not subject to any right of patronage. **8.** Likewise, if the son of a patron institutes a capital accusation against a freedman of his father or attempts to drag him back into slavery, this freedman also is released from every right of patronage, since formerly also he was released from the Praetorian rights of patronage.

**9.**<sup>33</sup> All these are exempt from the rights of patronage and after this exclusion it (the constitution) next lays down what sort of rights of patronage it wishes there to be over the other freedmen. **9a.** If a freedman or freedwoman has property of less than 100 solidi,<sup>34</sup> the constitution takes no account of such an amount, but permits them to leave this by will as they wish; but if those having property less than 100 solidi die intestate and without children, it gives the right of intestate succession to the patrons. **10.** For those leaving property of more than 100 solidi, if there are children or grandchildren or great-grandchildren or great-great-grandchildren, male or female, descending through the male or female line, of whatever number, whether manumitted before their parents, or manumitted with them or manumitted after them, or whether born after the manumission (of their parents), these are called to the succession of the freedmen, because it is by nature just that the children should succeed to the property of the parents. **10a.** For the Twelve Tables also, if they find children in the power of a freedman, give nothing to the patrons, while the Praetor, when children of a freedman are living, both those "in power" and those emancipated, does not permit the patron to oppose the

will. **10b.** The present constitution also, therefore, follows these examples, and whenever it finds children of a freedman or freedwoman, it grants no right to the rights under intestacy to the patrons or their children, but calls the children of freedmen to the succession to them, even if, born in slavery, they were manumitted along with them.

**11.** And, even more, not only does it then call the children when there exist only those who were born in slavery and were manumitted along with their father or even mother, but also, if the freedman or freedwoman has other children born after manumission whether from the same or another marriage, it calls them all jointly. **11a.** And even more incredible than this, the constitution wants these same children to be called to the inheritance from each other, and grants also to the freedman and freedwoman the succession to their own children, just as the fathers and mothers of the free-born are called to the inheritance of their children, and it wants the right of patronage to be ineffective in these cases, so that both freedmen and freedwomen are succeeded by their children, and these same children by each other and by their parents, and there is no place for patronal succession, while such persons survive.

**12.** Having laid down these rules concerning those who die intestate, it passes on to the freedmen who have made a will and orders that, if the freedmen or freedwomen should appoint their own children as heirs, the patronal right of succession is entirely void. **13.** If they have disinherited their children, and that unjustly, so that the will is overturned by the complaint of an undutiful will (for the constitution grants this also to freedmen's children of any sort), again it wants patronal succession to be void, as if the freedman had died intestate and the inheritance went to the children by intestate succession. **14.** But if the freedmen disinherited their children for just cause, the patrons may be called just as if they (the freedmen) had not left children. **14a.** Since, moreover, manumitters seem themselves to be cognate relatives of freedmen, for this reason also they are called under lawful succession;<sup>35</sup> just as those nearest in degree among the free-born are called (to the succession), so also in the case of freedmen. **14b.** Hence, if freedmen have children and the latter inherit from the former, they exclude the patron. **14c.** But if there are no children or they are disinherited, the patrons enter and are called according to degree to take the property of those freedmen possessing property exceeding 100 aurei, so that in the first place patrons and patronesses are called, then after them their children, and if their children do not survive, their grandsons in the male or female line. **14d.** For it is said as to free-born persons also, that all blood relatives are called to the inheritance according to degree, and when the first in degree fail, then those next in line enter and become heirs. **14e.** But if the patron or patroness has no descendants, then we also call their collateral relatives according to degree, so that the relatives of nearer degree have preference over those of remoter degree. **14f.** The collateral relatives of the patron and his descendants inherit from the freedman up to the fifth degree.

**15.** All these things are stated for cases when freedmen have children. If they do not have children at all, but make a will and appoint external heirs, then we do not agree with the Twelve Tables that, when a will has been made, the patrons are entirely excluded, nor do we accept according to the *lex Papia* that, when one child is appointed heir, they (the patrons) take half or, if two children are appointed heirs, they take a third, but we call them on the basis that they can take only a third of the freedman's inheritance; not all those are called to the patron's inheritance, but only the patron, patroness, their children, grandchildren, great-grandchildren, and great-great-grandchildren, that is to say, those who descend from the patron to the fifth degree and only those. **15a.** Therefore descendants of remoter degree and collateral relatives have no claim against the will to take a third of the estate, when external heirs are appointed. **16.** And just as with free-born men at the time of this Code a fourth part (lit. "3 ounces" out of 12)<sup>36</sup> was the minimum portion for those entitled to

bring a complaint about an (undutiful) will, so, if a freedman dies leaving a third part (lit. "4 ounces" out of 12) to his patron, free and clear of legacies and trusts, he excludes him (i.e., the patron, from the rest). **16a.** But if the freedman bequeathes a legacy to his own children due from the patron, the latter does not have his third unencumbered. For just as in cases of complaint (of undutiful will) we expect that the quarter part be free of all legacies, so we also require here that the patron's third part be free of all legacies. **16b.** But even the patron's third is subject to manumissions. For, of old, children, who instituted complaint concerning a will, granted manumissions, whereas patrons, who brought a testamentary challenge for one-half against the freedman's will, did not recognize manumissions. **16c.** But all legacies from which a patron is released must be paid by the heirs of a freedman, first retaining for themselves from the estate the Falcidian portion out of the two-thirds ("8 ounces") left to them, so that they no longer keep a quarter ("3 ounces"), but only a sixth ("2 ounces"). **17.** Therefore, if the patron has nothing at all (under the will), he takes a third ("4 ounces"), and if he is appointed as heir for less than a third, the third is made up free and clear of every condition and every delay; that is to say, that if the freedman should appoint him an heir upon a condition, we remove the terms of the condition. **17a.** But even if the condition is one of those which absolutely will happen, but entails a delay, for instance "if the time of the Kalends shall come," this condition too we remove, preserving the third for them, whether that goes to one or more.

**18.** But if they (the patrons) were appointed heirs for more than a third and are burdened with legacies, if they are sole heirs, they are to pay the legacies and trusts, except that their third is not to be touched; for the Falcidian portion relates to that third. **18a.** If they are appointed heirs not to the entire estate, but to more than a third, say to a half ("6 ounces") or two-thirds ("8 ounces"), and are burdened with legacies, then they are to pay to the legatees and trustees the amount in excess of the third, while the (other) heirs pay the remainder, they (the patrons) keeping for themselves the Falcidian portion from their own inheritance.

**19.** However many patrons there are, even if they were masters of the slave in unequal shares, after they become patrons, they inherit equally. **19a.** But if the patrons are dead, and one has children, but another grandchildren, the nearer in degree, that is to say the children of the first patron, exclude the grandchildren of the other patron. **19b.** And the succession is not to be *per stirpes* (by lines of agnatic descent), but *per capita* (by individuals); that is to say, the share is to be divided according to the number of the patron's children. And if it happen that two patrons die leaving children, one of them two, the other four, the inheritance is to be divided into six parts, no longer into two, because there are children of two patrons. **19c.** If one of the patrons repudiates his share, then the other patrons are to take his share. **20.** And if those of the degree that takes first repudiate (the inheritance), then again those of the next degree are to be called; for we accept cognate succession in relation to freedmen; that is, when the first degree refuses, the next degree succeeds in their place. **20a.** This is also true among the free-born, and while under the ancient rule there was no substitution in inheritance of those of remoter degrees, this was observed in tutorship, and if it happen that the first to be called excused himself, the next one was called.

**21.** Moreover, not only are already living descendants of patrons to be called, but also posthumous children and those given by them in adoption. And let the ancient pretence and rule be abolished, whereby we used to feign that a daughter of a patron was son of a patron; for today she herself also is called to the inheritance. **21a.** And they are to be called not only as claimants to the possession of an inheritance (*bonorum possessio*), but also as statutory heirs, and when appointed as heirs they are to have the right to possession according to the will (*secundum tabulas*). But let the other patronal rights of possession fall silent. **22.** If the freedmen or patrons have adopted children, even if

they have them in their power (*in potestate*), we do not treat them as being in the category of children, but in the category of external persons. And if the patrons die leaving external heirs, these are not called to the inheritance of the freedman; for the inheritance from freedmen is by virtue of the rights of relationship. **23.** And since the ancient right of possession also accrued (to the patron), when the son of a freedman, born after manumission, died without will and blood-relatives, and it (the right) called the manumitter of the father and his blood-relatives in the male line (agnates), whether they remained relatives or had suffered a change in status, and ordered that, if the patron of this freedman was himself the freedman of someone else, the patron of the patron and his relatives should be called, the constitution ordains that if the children of a freedman born after manumission die intestate and having no blood-relatives at all, the patron and patroness alone are to be called. Now this right relates only to the sons and daughters of the freedman, when the patron or patroness survive them, so that the latter no longer seem to inherit from a freedman – for how can a person born after manumission be a freedman? – but they receive gain (only) by virtue of this law.

[If the free-born children of a freedman] die<sup>37</sup> [intestate] and without any blood-relatives at all, only the patron and patroness (of the freedman patron) and their sons and daughters are called, and only this far does the same right of succession exist, not by their being called in relation to freedmen, but from being given by our present constitution.

**24.** We also think it becoming and necessary to add to this law, that if it happens that the manumitters have disinherited their own children and left them nothing of their property, and it cannot be shown that they have been mistreated without reason, neither do these (the children) have patronal rights against wills of freedmen. However, if such freedmen die intestate and childless, nevertheless out of humanity we call those (children), although probably not deserving, since most of all we have in every way tailored our law to nature. **25.** Now we rule indeed that, when someone, having a son or daughter in their power (*in potestate*), has emancipated him or her, the patronal right, which he also had previously, is preserved for him, so that if the emancipated child dies intestate and childless or appoints external heirs, the emancipator is to be called either to the whole estate on intestacy or to the third share (“4 ounces”) in complaint against the will, as if the emancipation (*emancipatio*) appeared to have been made *contracta fiducia* (under a fiduciary agreement).<sup>38</sup> **26.** However, we rule that these things have force for those granting freedom, and for them and them alone we agree the use of the name of patron. For regarding those who were considered patrons by some clever thinking in the old books, although they did not in fact manumit, such as one who proved (his claim) in collusion with the freedman, or who, while not being in truth the patron, attempted by swearing false oaths to gain patronal rights for himself, and if there is anyone else at all of this type in the books, him we bar absolutely from all profit from patronal rights, agreeing to keep for him only the *reverentia* due indeed from such freedmen, judging only those to be real patrons, who have granted real freedom. **27.** We give the same rights both to descendants and to the rest of the family of those who manumit in their wills or through any last wishes at all any persons in the category of those freedmen called *orcini*, as though they had been manumitted by themselves.

*Posted December 1, at Constantinople, in the post-consulate of the viri clarissimi Lampadius and Orestes (531).*

### **Fifth Title If an Alienation (of Property) Has Been Made in Fraud of a Patron**<sup>39</sup>

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Claudius.* If a freedman has alienated anything in fraud of a patron, it is proper that, in so far as the statutory portion (of the latter)<sup>40</sup> has been diminished, it is proper for the power to revoke (the alienation) to be granted.

*Subscribed October 17, at Sirmium, in the consulship of the Caesars (294 [293]).*<sup>41</sup>

[2] *The same Augusti and Caesars to Julia.* **pr.** When a freedman has died, the patron who inherits from him on intestacy may recover property fraudulently alienated by means of a Calvisian action. **1.** But since you allege that the patron, after the death of his freedman, ratified the gift of a farm conveyed by him (the freedman), the heirs of the manumitter can in no way invalidate the act.

*Subscribed December 25, at Sirmium, in the consulship of the Caesars (294 [293]).*<sup>42</sup>

### **Sixth Title Respectful Conduct (Obsequium) to be Shown to Patrons**<sup>43</sup>

[1]<sup>44</sup> *Emperor Alexander Augustus to Zoticus.* You cannot bring an action which involves infamy<sup>45</sup> against your patron.

*Posted May 14, in the consulship of Maximus, for the second time, and Aelianus (223).*

[2] *The same Augustus to Leontogonus.*<sup>46</sup> Freedwomen, who are with the patron's consent or otherwise<sup>47</sup> legally married, are not compelled to render service to their patrons.

*Posted July 16, in the consulship of Maximus, for the second time, and Aelianus (223).*

[3] *The same Augustus to Xanthus.* Even those who are manumitted by masters by means of an agreement<sup>48</sup> owe every respect to patrons according to basic law.

*Posted November 1, in the consulship of Maximus, for the second time, and Aelianus (223).*

[4] *The same Augustus to Victorinus.* **pr.** If you used force and insolence against your manumitter, who in liberating you from slavery by his kindness has made it possible that he should have you as an adversary (in court),<sup>49</sup> the governor of the province will weigh up to what extent to repress your unbridled temerity. **1.** For, if any money was due you, or you had a dispute with your patron concerning property, you should not have rushed straight to litigation; but especially, if you dared to do this, you might at least have submitted the equity of your claim to the judge without insulting words, maintaining all the honor due to a patron.

*Posted September 30, in the consulship of Crispinus and Julian (224).*

[5] *Emperor Gordian Augustus to Sulpicia*. Even towards the children of the condemned there is no doubt that the father's freedmen must show the accustomed respect. Therefore, if they do not acknowledge the duty of due reverence, they are not undeservedly seen to call a severe punishment upon themselves.

*Posted September 3, in the consulship of Sabinus, for the second time, and Venustus (240).*

[6] *The same Augustus to Cornelius*. There is no uncertainty of opinion that freedmen and freedwomen, especially those on whom no services (*operae*) have been imposed, ought rather to show the accustomed respect towards their manumitters than perform servile labor; nor ought they to endure being chained.

*Posted March 30, in the consulship of Atticus and Praetextatus (242).*

[7] *Emperors Diocletian and Maximian Augusti to Metrodorus*. **pr.** Freedmen of a stepmother should not be permitted the free right of inflicting harm (*iniuria*) on her stepsons; nor is it to be tolerated that freedmen of your father also should be causing you harm, as you state. **1.** The governor of the province, therefore, will not hesitate to grant you the retribution fitting these persons' status.

*Posted May 11, in the consulship of Maximus, for the second time, and Aquilinus (286).*

[8] *The same Augusti to Hermia*. It is not lawful for you to refuse respect towards your patroness.

*Posted January 21, in the consulship of Diocletian, for the third time, and Maximian, Augusti (287).*

## **Seventh Title Freedmen and Their Children**

[1] *Emperor Antoninus Augustus to Daphnus*.<sup>50</sup> It is not unknown that she, who manumitted a slave pursuant to a testamentary trust, cannot accuse a freedman as ungrateful, since that extraordinary procedure is only open to one who voluntarily extended gratuitous liberty to his slave, not to one who fulfilled what was due.

*Posted April 27, in the consulship of Messala and Sabinus (214).*

[2] <sup>51</sup> *Emperor Constantine Augustus to Maximus, City Prefect*. **pr.** If a manumitted slave acts as ungrateful to his patron and boastfully and contumaciously carries his head high in front of him, or becomes guilty of a slight offense, he is to be again subjected to the power and control of the patron,<sup>52</sup> if a complaint by the patron is brought and proves him ungrateful in court or before delegated judges; in addition the children born subsequently shall be slaves; but the wrongs of their parents do not prejudice those who, it is established, were born at the time during which they (the

parents) possessed freedom. **1.** And if a freedman who was liberated in our council<sup>53</sup> by the rod, shows himself through penitence after punishment (i.e., re-enslavement) worthy of having Roman citizenship restored to him, he is not to enjoy the grant of liberty until his patron obtains it by presenting a petition.<sup>54</sup>

*Posted April 13, at Rome, in the consulship of Constantine Augustus, for the seventh time, and Constantius Caesar (326? [320]).*<sup>55</sup>

**[3]** <sup>56</sup> *Emperors Honorius and Theodosius Augusti to the Senate.*<sup>57</sup> Freedmen will not only be refused a hearing against their patrons, but the same reverence shown by them to their patrons must also be shown to the patrons' heirs, to whom is granted the same action for ingratitude as the manumitters themselves, if they (the freedmen), unmindful of the liberty given them, revive the perverse disposition of a slave.

*Given August 6, at Ravenna, in the consulship of Marinianus and Asclepiodotos (423).*

**[4]** <sup>58</sup> *Emperors Theodosius and Valentinian Augusti to Bassus, Praetorian Prefect.* There is no question that men of freed status or their children, if they are shown to be ungrateful while in the imperial service, will be reduced to the bonds of slavery.

*Given March 30, at Ravenna, in the consulship of Theodosius, for the twelfth time, and Valentinian, for the second time, Augusti (426).*

#### **Eighth Title The Right of Gold Rings and the Restoration of Free Birth**<sup>59</sup>

**[1]** <sup>60</sup> *Emperors Diocletian and Maximian Augusti and the Caesars to Philadelphus.* The order of decurions could not grant ancient birth rights and the right of free birth, but this could only be sought from us.

*Given March 18, at Ravenna, in the consulship of the Augusti themselves (293?).*<sup>61</sup>

**[2]** *The same Augusti and Caesars to Eumenes.* The right to the use of gold rings given by imperial grant to freedmen bestows, while they live, the appearance but not the actual status of free-birth. But freedmen restored to their ancient birth rights (*natalibus antiquis restitutus*) are by our grant made free-born.

*Given at Sirmium, in the consulship of the Caesars (294).*<sup>62</sup>

#### **Ninth Title Who Can Be Admitted to the Possession of an Estate and Within What Time**

[1] *Emperors Severus and Antoninus Augusti to Macrina*. Since the possession of an estate granted to a son in his father's power can be claimed also without the father's knowledge, bringing a usufruct to the father as well, if the father should ratify the claim,<sup>63</sup> it is lost when the time (for claiming it) has elapsed.

*Without day or consul.*

[2] <sup>64</sup> *The same Augusti to Crispinus*. If you are entitled to the possession of the estate only on the basis of being close kin,<sup>65</sup> you had 100 available court days from the time you knew he had died, in which to take possession of the estate.

*Posted November 3, in the consulship of Geta <for the second time><sup>66</sup> (205).*

[3] *Emperors Diocletian and Maximian Augusti to Crescentinus*. There is no doubt that claim of possession of an estate in the name of an infant is legally effectual, even if it died before it could speak.

*Posted December 28, in the consulship of Maximus, for the second time, and Aquilinus (286).*

[4] *The same Augusti and the Caesars to Marcellus*. If an emancipated daughter did not claim the possession of an inheritance under *unde liberi*<sup>67</sup> within a year, she could not transmit to her heirs any claim to the succession.

*Given April 18, at Heraclea, in the consulship of the Caesars (294 [293]).<sup>68</sup>*

[5] *The same Augusti and Caesars to Maximus*. As long as the question of fact is undecided, upon which grounds the possession of an estate is due, whether according to a will or as a result of intestacy, you are needlessly anxious lest the time fixed for you to claim possession of the estate has passed.

*[undated; 293 or 294].*

[6] *The same Augusti and Caesars to Frontina*. It is clear that ignorance of the law cannot help even women as to the time fixed in the Perpetual Edict for accepting the possession of an estate.

*Given April 29 at Sirmium, in the consulship of the Caesars (294).*

[7] *Part of the letter of the Emperors Constantius and Maximianus<sup>69</sup> Augusti and of Severus and Maximinus, the most noble Caesars.<sup>70</sup> pr.* It is plainly declared that a *tutor* can claim possession of an estate in the name of a ward. **1.** The ward himself, moreover, cannot take possession of the estate without the *tutor's* consent, unless a proper judge in full knowledge of this gives possession of the estate to one under the age of puberty, who requests it without the *tutor's* consent; for then the profit from the succession is seen to have been sought under Praetorian law.

*September 8, in the consulship of Constantius and Maximianus (305?).*<sup>71</sup>

[8]<sup>72</sup> *Emperor Constantine Augustus to Dionysius.*<sup>73</sup> Whoever is confident in lawfully seeking for himself property on the grounds of succession from parents or relatives is to know that there is no impediment for him, if, through his rusticity or ignorance of the facts or absence or any other reason, he is known not to have claimed possession of the estate within the time-limit, since this ordinance has changed the compulsion of such a custom.

*Given (Posted?) March 14, at Heliopolis (Baalbek), in the consulship of Constantius Augustus and Constantius Caesar (329 or 339?).*<sup>74</sup>

[9]<sup>75</sup> *The same Augustus to the people.* In order to banish the sophistry of empty words, we order the following to be observed, that any sort of declaration accepting an inheritance may be made before any judge or even before duovirs (*duumviri*), but kept within the times fixed by the former law; with this added, that, even if exercised too hastily and during another's turn, that is of a nearer degree of relationship, it is nonetheless to have the same efficacy as if made within its proper time-schedule.

*Given February 1, at Laodicea, <in the consulship of Constantius, for the second time, and Constans, Augusti> (339).*<sup>76</sup>

#### **Tenth Title When the Shares of Non-Claimants Accrue to the Benefit of Claimants**

[1] *Emperor Gordian Augustus to Marciana.* There is no doubt that, whenever statutory succession does not apply and possession of the estate is available to several children, if some of them fail to claim the benefit of the Perpetual Edict, the portion of those not claiming accrues to those alone who have claimed possession of the estate.

*Given January 13, in the consulship of Peregrinus and Aemilianus (244).*

#### **Eleventh Title Possession of an Estate According to a Will**<sup>77</sup>

[1] <sup>78</sup> *Emperor Alexander Augustus to Vitalis.*<sup>79</sup> Pending an appeal from a verdict by which a will has been declared a forgery, and it being still uncertain whether the deceased died intestate, there is no room for the claim to the possession of an estate by reason of close-kin status.

*Given April 29, in the consulship of Maximus, for the second time, and Aelianus (223).*

[2] *Emperor Gordian Augustus to Cornelius. pr.* There is no doubt that the possession of an estate under the Praetor's Edict cannot be claimed according to a will unless it has been sealed by the seals of seven witnesses. 1. But if it can be shown that this same number was present when a will not in writing was made, it is the considered law that the will is seen to have been made according to the civil law and that the possession of the estate is granted according to the verbal declaration.

*Posted February 18, in the consulship of Atticus and Praetextatus (242).*

#### **Twelfth Title Possession of an Estate Contrary to a Will, Which the Praetor Promises to Children<sup>80</sup>**

[1] *Emperor Alexander Augustus to Rufus.* When children are admitted to the possession of an estate contrary to their parents' will, according to the Edict they are compelled to pay the legacies only to parents and children.

*Promulgated October 12, in the consulship of Maximus, for the second time, and Aelianus (223).*

[2] *The same Augustus to Hilara<sup>81</sup>* When a posthumous child is born, one who has neither been appointed an heir nor been expressly disinherited, the will is broken; and if possession of the estate contrary to the will has been sought by a *tutor* for the infant, possession in accordance with the will can have no place.

*Given March 1, in the consulship of Julian and Crispinus (224).*

#### **Thirteenth Title Possession of an Estate Contrary to the Will of a Freedman, Which Is Given to Patrons or Their Children<sup>82</sup>**

[1] *Emperor Gordian Augustus to Herculanus.* Although he, whom you state you with your sister manumitted in accordance with your father's will, was manumitted on the basis of a trust, however, if he has written (into his will) external heirs, you can within the time fixed in the Edict obtain your share, by claiming possession of the statutory portion of the estate contrary to the will, or contrary to the verbal declaration, if the will was made without writing.

*Posted November 26, in the consulship of Gordian Augustus and Aviola (239).*

[2] <sup>83</sup> *Emperor Theodosius Augustus to Asclepiodotus, Praetorian Prefect.* The patron of a freedman, by having chosen to have gifts and services, is excluded from the possession of the estate contrary to a will.

*Given February 17, at Constantinople, in the consulship of Victor (424).*

#### **Fourteenth Title “Whereby Children” (Unde Liberi)<sup>84</sup>**

[1] *Emperors Diocletian and Maximian Augusti to Sarpedon.* If your grandfather died leaving three emancipated children and they have taken possession of the estate under the rules of *unde liberi*, it is clear that they became heirs in equal portions.

*Posted March 4, in the consulship of Maximus, for the second time, and Aquilinus (286).*

[2] *The same Augusti and the Caesars to Zosimus.* If there survives a son or grandson as *suus heres* under a will or on intestacy, there can be no other heir on intestacy.

*Given May 9, in the consulship of the Augusti (293).*

[3] <sup>85</sup> *Emperor Constantius Augustus to Leontius, Count of the East.* He, who repudiates the inheritance of his father, who died after his grandfather had died intestate, cannot take over the property of his deceased paternal<sup>86</sup> grandfather, especially if emancipated, unless he comes to this benefit through the right of possession of the estate.

*Given April 6, in the consulship of Limenius and Catulinus (349).*

#### **Fifteenth Title “Whereby Statutory Heirs and Whereby Cognates” (Unde Legitimi et Unde Cognati)<sup>87</sup>**

[1] *Emperor Alexander Augustus to Ulpian.* You are not forbidden to acquire the property of your intestate maternal cousins,<sup>88</sup> if it does not legally belong to anyone of nearer relationship and if you have applied for possession of it.

*Given January 10, in the consulship of Julian and Crispinus (224).*

[2] *Emperors Diocletian and Maximian Augusti to Sozon.*<sup>89</sup> Since you state that your second cousin,<sup>90</sup> that is the son of your female maternal cousin, died intestate, you realize that you cannot claim to succeed him without the grant of possession of the estate.

*Given May 26, at Laodicea, in the consulship of the Augusti (290).*<sup>91</sup>

[3] *The same Augusti and the Caesars to Felix.* Succession to a maternal grandfather is granted also by Praetorian law to the grandchildren in equal portions.

*Given October 15, at Sirmium, in the consulship of the Augusti (293).*

[4] *The same Augusti and Caesars to Syrisca.* The question is not whether or not someone held the property of an inheritance without the intention of acquiring the inheritance, but whether he claimed the inheritance or possession of the estate.

*Given December 22, at Sirmium, in the consulship of the Augusti (293).*

[5] *The same Augusti and Caesars to Plato.* It is certain that no one can succeed by right of cognate relationship without claiming possession of the estate. Cognate relatives of someone deceased, who do not wish to succeed, are not compelled to seek possession of the estate.

*Given February 18, at Sirmium, in the consulship of the Caesars (294).*

### **Sixteenth Title The Edict Relating to the Order of Succession<sup>92</sup>**

[1] *Emperor Alexander Augustus to Julius.* If your mother failed, on account of her insanity, to take possession of the estate from her paternal uncle, you, as her son, are admitted to possession of the same estate of your great-uncle on the basis of the Edict, whereby this is allowed to those of remoter degree of relationship, when those of nearer degree make no claim.<sup>93</sup>

*Posted December 10, in the consulship of Maximus, for the second time, and Aelianus (223).*

[2] *Emperors Diocletian and Maximian Augusti and the Caesars to Firmus.* If the brother of the paternal grandmother of those, the succession to whom is in question, entered on the inheritance as if on the basis of a will, when you assert that they died intestate and a forged will was produced, and if he (the grandmother's brother) died without having claimed possession of the estate on intestacy, and you, although placed in the fifth degree of relationship, have sought possession of the estate under the clause relating to the order of succession, or seek it while not yet barred from so doing, you can legally take over the succession to them. But if he (the grandmother's brother), who, there is no doubt, is placed in the fourth degree, claimed under the Edict and this was not unknown to you, you have petitioned us to no purpose.

*Subscribed April 8, at Sirmium, in the consulship of the Caesars (294).*

### **Seventeenth Title The Carbonian Edict<sup>94</sup>**

[1] *Emperors Diocletian and Maximian Augusti and the Caesars to Flora.* If a question as to the status of yourself and your son is raised by those against whom you direct your petition,<sup>95</sup> you notice that the demand for the restitution (to them) of the property which your son claims as if as an

inheritance from his father is premature, since, if he is still of age to be a ward, under the rules of the Carbonian Edict, with possession of the estate granted and security supplied, it is then fitting for him to be established in possession, or, if this (security) is not provided, for the part, which he claims, to be in the possession of all (the claimants); but the question of his slavery is to be deferred to the time of his reaching puberty.

*Subscribed October 21, at Sirmium, in the consulship of the Augusti (293).*

**[2]** <sup>96</sup> *Emperors Valentinian, Theodosius and Arcadius Augusti to Rufinus, Praetorian Prefect.* The Carbonian Edict is granted in the case of legitimate persons, from an undoubted marriage, where childbirth was monitored<sup>97</sup> and a legal right to succession shown, so that the new (i.e. posthumous) heir, established in possession, may in the meantime have the use of property not his own without molestation until the age of puberty.

*Given September 28, at Constantinople, in the consulship of Theodosius Augustus, for the third time, and Abundantius (393).*

#### **Eighteenth Title “Whereby Husband and Wife” (Unde Vir et Uxor)<sup>98</sup>**

**[1]** <sup>99</sup> *Emperors Theodosius and Valentinian Augusti to Hierius, Praetorian Prefect.* A husband and wife inherit from each other the whole of the property on intestacy according to ancient law, whenever the entire statutory or natural succession of parents, children or relatives fails, with the Treasury excluded.

*Given February 20, at Constantinople, in the consulship of Felix and Taurus (428).<sup>100</sup>*

#### **Nineteenth Title The Repudiation of Possession of the Estate**

**[1]** <sup>101</sup> *Emperors Diocletian and Maximian Augusti and the Caesars to Theodotianus.* An emancipated son, who has repudiated the possession of an estate, tries in vain to use the absence of his legal representative (*patronus*) for a case as a basis to return again to the same question.

*Without day or consuls ([294]).*

**[2]** *The same Augusti and Caesars to Theodorus.* A father is not permitted, in fraud of his son, to decline possession of an estate available to his son.

*Subscribed November 26, at Nicomedia, in the consulship of the Caesars (294).*

#### **Twentieth Title Hotchpot (Collatio)<sup>102</sup>**

[1] *Emperor Alexander Augustus to Deuteria*. It is plainly the law that emancipated children, named as heirs in a will and from that obtaining the succession, need not bring into hotchpot with their brother gifts from their father, if the father did not require that to be done by his last wishes.

*Posted July 13, in the consulship of Julius and Crispinus (224).*

[2] *The same Augustus to Primus*. If a father has died intestate, leaving two sons and a daughter, in whose name he had promised a dowry, the portions of the inheritance are equal, and the dowry nonetheless must be brought into hotchpot, so that the portions of the brothers may be freed from the necessity of furnishing it (the dowry).

*Posted September 10, in the consulship of Julius and Crispinus (224).*

[3] *The same Augustus to Alexander*. The agreement contained in the dotal document, that the woman should be content with the dowry, which was given in connection with the marriage, and should have no further claim on her father's property, is not supported by the authority of the law, nor is the daughter on that basis prohibited from the succession to her intestate father. Obviously, she must bring the dowry, which she received, into hotchpot with her brothers, who had remained under their father's power.

*Given June 18, in the consulship of Agricola and Clemens (230).*

[4] *Emperor Gordian Augustus to Marinus*. Daughters must bring dowry into hotchpot only if they inherit on intestacy or claim contrary to a will; nor is it doubtful that the dowry given or set up by the father, either from his own or another's property, must be brought into hotchpot for the benefit of brothers who were in the power (of their father). And indeed, for those, who are not in the *familia* of the deceased, it was decided, after the varying opinions of the experts, that only the dowry coming from the father's property need be brought into hotchpot.

*Posted March 12,<sup>103</sup> in the consulship of Gordian Augustus and Aviola (239).*

[5] *The same Augustus to Alexandra*. You certainly had no right to reclaim dowry during continuance of the marriage. For, although you must bring it into hotchpot with your brother on the death of your intestate father, there could not on that basis, however, be an action for you against your husband, since you would simply take that much less in the portion of your father's inheritance given to you.

*Given September 5, in the consulship of Gordian Augustus and Aviola (239).*

[6] *The same Augustus to Claudius*. Only those things, which were part of their property at the time when their father fulfilled the duty of fate, have customarily been put into hotchpot by emancipated brothers with those who remained in the power (of their father), with the exception, that is, of what is owed by them (sc. the emancipated brothers) to others.

*Given April 25, in the consulship of Peregrinus and Aemilianus (244).*

[7] *Emperor Philip Augustus to Tyrannia*. The law is clear that a daughter appointed as heir in her father's will need not bring her dowry into hotchpot with her brothers also co-heirs, unless the father specifically required this very thing.

*Posted April 26, in the consulship of Praesens and Albinus (246).*

[8] *Emperors Diocletian and Maximian Augusti to Callippus*. If your sister cheated you in the division of your father's property, by not bringing into hotchpot the dowry, which she had received from your father who died intestate, the governor of the province, having examined the allegations of the parties, will order the dowry to be included in the property, and he will order her to restore to you the excess which he finds her to have, when he has made the appropriate deduction. This is the same even if the division was made by an appointed arbitrator.

*Subscribed July 10, in the consulship of these same Augusti (290).*

[9] *The same Augusti and the Caesars to Onesimus*. If both of you were emancipated by your father, hotchpot does not happen. But if your brother was in his father's power at the time of his death, and it is shown that the father you have in common left no will nor last wishes and that you were emancipated, the rule of the Perpetual Edict by clear law requires you to carry out hotchpot, when coming into the succession to your father under intestacy.

*Subscribed April 26, at Heraclea, in the consulship of the Augusti (293).*<sup>104</sup>

[10] *The same Augusti and Caesars to Irenaea*. Since a daughter takes property bequeathed by her father at his discretion in a codicil under the rules for outsiders, she cannot be compelled to bring her dowry into hotchpot.

*Subscribed November 26, at Sirmium, in the consulship of the Augusti (293).*<sup>105</sup>

[11] *The same Augusti and Caesars to Artemia*. When a posthumous child, passed over in a testament, breaks it and succeeds on intestacy, an emancipated son must, as provided by the Perpetual Edict, bring his property into hotchpot when seeking the possession of the estate, since it is clearly required to bring property into hotchpot also with those, who would be *sui heredes*, if they had been born while their father lived, and the law is not uncertain that rights of action are to be denied to emancipated children, if they do not comply with hotchpot as provided by the law.<sup>106</sup>

*Posted December 28, in the consulship of the Augusti (293).*

[12] *The same Augusti and Caesars to Nilanthia. pr.* There is no doubt that actions for an inheritance are to be denied to a daughter who, although she remained in her father's power, does not bring into hotchpot with her brothers, who were part of the same *familia*, the dowry, which she had at the time of their common father's death. **1.** It is, therefore, advisable and in accordance with the law that you participate in hotchpot with your brothers, whom you state to have been in the power of

your common father at the time of his death. **2.** It is, moreover, absolute and clear law that your brothers, as members of their father's *familia*, cannot keep as their own their *peculium*, if it is shown to be neither their military *peculium* nor bequeathed to them, but it must come into the division of the paternal inheritance. Nor does it make a difference with whom the property, which arose from this and has continued in the same condition, is found placed.

*Given January 22, at Sirmium, in the consulship of the Caesars (294).*

**[13]** *The same Augusti and Caesars to Antistia.* If you acquired a farm by gift after the death of your father, your sister cannot claim a portion of it. But if it was given to you by your father while you were a *filiafamilias*, and you are succeeding your father in common with your sister, you are asking contrary to law to keep it as your own property.

*Given February 8, at Sirmium, in the consulship of the same Caesars (294).*

**[14]** *The same Augusti and Caesars to Stratonica.* If your former husband was heir to his intestate father, and a posthumous son succeeded him, the governor will not hesitate to deny to the paternal aunt of your son the action for the inheritance, which she had at the time of her father's death, if she does not bring her dowry into hotchpot.

*Posted February 23, at Trimontium, in the consulship of Tuscus and Anullinus (295).<sup>107</sup>*

**[15]** *The same Augusti and Caesars to Philippus.* Emancipated children are not compelled to bring into hotchpot what they acquired after the death of their common father, but they retain that and divide his property in accordance with their hereditary shares.

*Given December 13, in the consulship of the Caesars (294).*

**[16]** <sup>108</sup> *The same Augusti and Caesars to Socrates.* It has been decided by the best reasoning that a daughter, who succeeds her intestate father together with her brothers as heirs, cannot receive anything in an action to divide the inheritance beyond that left by codicil, if she does not bring her dowry into hotchpot.

*Given December 28, in the consulship of the Caesars (294).*

**[17]** <sup>109</sup> *Emperor Leo Augustus to Erythrius, Praetorian Prefect.* In order that for children of the male or female sex, whether *sui iuris* or established in another's power, there may be protection by a fair balance and equal measure under any law of intestate succession, that is to say either where no will at all has been made, or, if it was made, where it is rescinded by a claim for possession of the estate contrary to a will or by a complaint of undutiful will, in the desire for equity we have deemed it best to insert in the present law this also, that, in dividing the property of deceased parents on intestacy, there is to be brought into hotchpot both the dowry and the prenuptial gift, which the father or mother, grandfather or grandmother, great-grandfather or great-grandmother whether paternal or maternal, has given or promised for a son or daughter, grandson or granddaughter or great-

grandson or great-granddaughter, with no distinction made as to whether the aforesaid relatives made the gift to the betrothed women as being their children, or made it to their fiancés, in order that the same gift be bestowed through them (the fiancés) on the betrothed women; so that in dividing the property of an intestate parent, whose inheritance is the subject of legal action, the dowry or prenuptial gift derived likewise from his (the deceased's) property is to be brought into hotchpot. Clearly emancipated children of either sex will bring into hotchpot, according to the tenor of the preceding laws, what they receive from their parents, as usually happens, at the time of their emancipation, or what they acquire from the same persons after emancipation.

*Given February 26, in the consulship of Marcianus (472).*

**[18]** <sup>110</sup> *Emperor Anastasius Augustus to Constantinus, Praetorian Prefect.* We order that children, who have been made *sui iuris* by the authority of our law<sup>111</sup> through the presentation of a petition and an imperial rescript, just as in the case of those, who are emancipated under the ancient law, be compelled to carry out hotchpot according to what has been laid down regarding other emancipated children.

*Given July 21, at Constantinople, in the consulship of Probus and Avienus the younger (502).*

**[19]** <sup>112</sup> *Emperor Justinian Augustus to Menas, Praetorian Prefect. pr.* We have justly thought of removing the doubts, much discussed among certain persons, concerning bringing dowry and prenuptial gifts into hotchpot. **1.** For if a man has died intestate, leaving a son or sons or a daughter or daughters, as well as any number of grandchildren, of either sex, from a deceased daughter, or if a woman has died, similarly leaving a son or sons, and likewise grandchildren of either sex born of a deceased son or daughter, there was indeed no doubt as to the manner of succession, but it was clear that these grandchildren would have only two parts of their mother's or father's portion, conceding the third part to their paternal or maternal uncles or paternal or maternal aunts in accordance with a constitution already laid down.<sup>113</sup>

**2.** Much doubt has arisen as to the bringing into hotchpot of a dowry or prenuptial gift, which a deceased person had given for a surviving son or daughter or a deceased son or daughter, with the surviving children of the deceased person contending that they should not put dowry and prenuptial gifts given for them by their father or mother into hotchpot for the children of their deceased brother or their deceased sister, for this reason, that no constitution had been issued about this sort of hotchpot. But the grandchildren of the deceased person not only resisted that, but also claimed this, that the burden of bringing into hotchpot, imposed on them by the constitution of Arcadius and Honorius, of divine memory,<sup>114</sup> only applied as to the persons of their maternal uncles and not of their paternal uncles or paternal or maternal aunts.

**3.** Removing such subtle doubts, we direct both that the sons or daughters of a deceased person are to bring into hotchpot with the grandsons or granddaughters of the dead person the dowry or prenuptial gift given to them by their parents, and also that the same grandsons or granddaughters are similarly to bring into hotchpot with their paternal or maternal uncles and also paternal and maternal aunts the dowry and prenuptial gift of their father or mother, which the dead person gave for him or her (the father or mother), so that, when what is brought into hotchpot is mingled with the property of the dead person, the grandsons or granddaughters are to have, indeed, two parts of that portion, which would have been passed to their father or mother, if they had survived, but the

sons or daughters of the deceased person, whose inheritance is the subject of legal action, are to take the third part of the same portion together with the portions proper to them.

*Given June 1, at Constantinople, in the consulship of Our Lord Justinian, Ever Augustus, for the second time (528).*

**[20]** *The same Augustus to Menas, Praetorian Prefect. pr.* We hereby clarify by a plain sanction a point which has without reason been brought into doubt by some persons; as a result everything, which is counted as part of the quarter portion on intestate succession, for those who are summoned to an action on an undutiful will, is to be brought into hotchpot with their co-heirs, even if the person, to whose property they succeed, has died intestate.<sup>115</sup> **1.** This will apply not only to other things, but also to those things, which he, who has purchased an office, gains by virtue of a post acquired for one of the heirs out of the deceased's resources, so that the gain, which could have come to him at the time of the deceased's death, is not only to be counted towards the quarter portion on intestate succession, when a will has been made, but is also to be brought into hotchpot in case of intestacy.

**2.** But the rule, that everything counting towards the quarter portion is also to be put into hotchpot in case of intestacy, does not hold in the converse case, that anyone could say that those things, which are brought into hotchpot, are in every way to be counted towards the quarter portion, for those who are summoned to a complaint of an undutiful will; for of the things, which are brought into hotchpot, those only, for which it is specifically stated in law that it be so, will be counted towards the abovementioned portion. **3.** Further, since a prenuptial gift or dowry, given by a father or mother or other ascendants for a son or daughter, grandson or granddaughter and other descendants comes into hotchpot, if one male or one female child has or shall have received only a prenuptial gift or dowry, but not a straight gift as well, but another male or female has or shall have taken from their parent not a dowry nor a prenuptial gift, but only a straight gift, lest some injustice arise from this, that indeed this person, who took a prenuptial gift or dowry, is compelled to bring it into hotchpot, while that person, who acquired only a straight gift, is not constrained to bring it into hotchpot, we order that, if anything of this sort has or will have arisen, on the model of him, who is compelled to bring a prenuptial gift or dowry into hotchpot, that person also, who has received no dowry or prenuptial gift from his parents, but only a straight gift, is to bring it into hotchpot and not to refuse hotchpot on the grounds that a straight gift is not otherwise brought into hotchpot, unless the donor should have imposed this sort of condition at the time of his grant of the gift.

*Given August 6 [April 6], at Constantinople, in the consulship of the vir clarissimus Decius (529).*<sup>116</sup>

**[21]** *The same Augustus to John, Praetorian Prefect. pr.* So that no doubt may in the future arise regarding hotchpot, we have deemed it necessary to add this to the constitution, which we have already made in favor of children,<sup>117</sup> so that property, which we forbade being acquired in the parents' name, is not to be subject to hotchpot between the children after their (the parents') death. **1.** For as they were not, according to the authority of ancient law, compelled to pool their military *peculium* in hotchpot in dividing an inheritance, so we decree that other property also, which is not acquired in the parents' name, remains the children's own.

*Given October 18, in the second post-consulate of the viri clarissimi Lampadius and Orestes (532).*<sup>118</sup>

## NOTES

1 Titles 1–20 were translated by Corcoran, Crawford, and Salway; the remainder by Frier, Kehoe, and McGinn.

2 See D. 11.4.

3 It is not clear if this is a private rescript or a letter to a governor (Corcoran, *Empire of the Tetrarchs* (2000), 141).

4 Since Licinius is never mentioned in Theodosian Code headings, the origin of this text is generally attributed to the Hermogenian Code. It is one of only four such texts in Justinian's Codex (with C. 3.1.8, 7.16.41, and 7.22.3). See Corcoran, "Hidden from History" (1993), 105–107; Corcoran, *Empire of the Tetrarchs* (2000), 280. Krüger followed the *Summa Perusina* in identifying in the heading Licinius *fi*ls as Caesar, rather than his father as Augustus, and so proposed the date range 317/323 (i.e., from Licinius junior becoming Caesar to the older date accepted for the fall of Licinius).

5 The issuer of the letter is often supposed to be Licinius, rather than Constantine, and the recipient identified as Licinius' Praetorian Prefect, Pompeius Probus (consul in 310). See *PLRE* i, p. 740, Probus 6. The recipient may (or may not) be the same as the Probus of C.Th. 4.12.1 (April 1, 314). See Corcoran, "Hidden from History" (1993), 114–115; Corcoran, *Empire of the Tetrarchs* (2000), 287–288. Seeck dates the constitution to April 1, 314.

6 Date as emended hesitantly (*Iun. to Ian.*) by Barnes, *New Empire* (1992), 73 n. 117. Seeck, *Regesten* (1919), 180 emended the consulship to that of Gallicanus and Symmachus (330), followed by *PLRE* i, p. 938, Valerianus 4. Seeck gives June 27, 330.

7 Generally identified as Ianuarinus, Vicar of the Moesias (*PLRE* i, p. 453, Ianuarinus 1; Barnes, *New Empire* (1992), 142–143; Corcoran, *Empire of the Tetrarchs* (2000), 309).

8 This last clause is not entirely clear, but the translation here reflects also the interpretation of the Basilika (60.7.10, Scheltema, A vol. viii, p. 2804), as well as of the Dutch Code version (Spruit *et al.*, *Corpus Iuris Civilis* viii (2005), 409).

9 See *PLRE* i, pp. 911–912, Tiberianus 4; Barnes, *New Empire* (1992), 145.

10 Haloander gives the August date, L the October date.

11 For the identification of Felix as *consularis* of Macedonia and the redating of the text to 366, see Seeck, *Regesten*, (1919), 228; *PLRE* i, p. 332, Felix 4; Schmidt-Hofner, "Regesten" (2008), 543–544, 574 and 591.

12 Part of the same law as C.Th. 11.30.49: Honoré, *Crisis of Empire* (1998), 59 n. 4 and *Palingenesia* 2, E280–1.

13 See D. 11.3, 47.2.

14 Part of the same rescript as C. 4.14.3: Honoré, *Emperors and Lawyers* (1994), 95 n. 285.

15 Haloander's edition gives the date very differently as May 1, 224.

16 This date is that of C. 7.32.6 (given at Byzantium), which should probably be combined with this rescript: Honoré, *Emperors and Lawyers* (1994), 140 n. 10.

17 Part of a series of constitutions issued on August 1, 530: Lounghis *et al.*, *Regesten* (2005), 200–202. The use of the term *decidentibus* in section 1 makes it likely that this is one of the Fifty Decisions, settling the disputes of the ancients.

18 Part of a series of constitutions issued on October 1, 530: Lounghis *et al.*, *Regesten* (2005), 203–205. Possibly also one of the Fifty Decisions.

19 This rule (i.e., that one able to bring a noxal action could not be subject to one) is logically different from that stated above (i.e., that one liable to a noxal action could not himself bring one). However, they can be regarded as having the same effect, since the basic rule is still that only one person at any time can be noxally liable for theft.

20 Part of a series of constitutions issued on November 17, 530: Lounghis *et al.*, *Regesten* (2005), 206–208. This law is one, in fact probably more than one, of the Fifty Decisions as indicated by Inst. 4.1.16 (= 1c–1d below).

21 See D. 38.1.

22 See also D. 38.2.37.

23 For this law (18 bce), which in the legal writers is usually subsumed under the consolidating rubric “lex Iulia et Papia,” along with the lex Papia Poppaea (9 ce), see *Acta Divi Augusti i*, pp. 166–98, esp. p. 177; Crawford, *Roman Statutes*, vol. ii (1996), 801–809; Treggiari, “Social Status” (1996), 887–889.

24 Titius is one of the John Does or Richard Rowses of Roman legal writing, so might have replaced the true name in this text.

25 This constitution is adapted from a clause in the fuller version at C. 11.53.1, which concerns *coloni* not freedmen. However, that constitution ends by saying that the same provisions are to apply to freedmen, which Justinian’s commissioners have used as their guide in editing. Seeck, *Regesten* (1919), 240, associates also with C.Th. 9.3.5 and C. 11.48.8; but against this, see Schmidt-Hofner, “Regesten” (2008), 577.

26 The date here is preserved by Haloander, but is otherwise missing at the parallel C. 11.53.1.

27 See D. 37.14, 38.2.

28 Aside from this allusion, only three legal rulings from the brief reign of Pertinax are known (C. 4.28.1, 6.27.1; D. 50.6.6.2).

29 Probably part of the same constitution as C. 11.68.4. See Seeck, *Regesten* (1919), 230; Schmidt-Hofner, “Regesten” (2008), 574 and 581.

30 This constitution formed part of a major and ceremonial promulgation of legislation, marking the new legal order with Tribonian in charge as quaestor: Bianchini, “La Subscriptio” (1999), 47–54.

31 The concluding part (from the middle of section 23) of this Greek constitution is preserved in the Verona palimpsest, but it is otherwise known mainly from a Greek summary in the Basilika (49.1.28, Scheltema A, vol. vi, pp. 2274–2281). There is also a partial Latin summary, known from marginalia to the medieval Institutes (Krüger *ad loc.*). Justinian states that this constitution was composed in Greek “to be accessible to all” (Inst. 3.7.3).

32 The heading is inferred from the context. The Latin version names Julian, Praetorian Prefect, as recipient, but this cannot be true, since he left office early in 531 (*PLRE* iii, pp. 729–30, Iulianus 4), thus at odds with the subscript date. Krüger suggested the addressees could be the Senate, the people of Constantinople, or the provincials more generally.

33 With 9–16, compare the summary in Inst. 3.7.3.

34 “Nomisma” in Greek, used to denote the standard gold coin, the solidus. See Avotins, *On the Greek of the Code* (1989), 113.

35 Reading διαδοχῆς (so Reitz, Scheltema), which makes better sense than the manuscript διακατοχῆς (= *bonorum possessio*) printed by Krüger.

36 For full exposition of Latin and Greek terms for the parts of an estate, see Theophilus, *Paraphrasis* 2.14.5 (Lokin *et al.*, *Paraphrasis Institutionum* (2010), 340–341); also Avotins, *On the Greek of the Code* (1989), 158 and 160–161.

37 The Verona palimpsest preserves the full text of the constitution from this point on. The words in brackets attempt to fill out the missing sense. It seems clear that this section is parallel to the end of section 23 in the Basilika and deals with the free-born children of freedmen, not with freedmen patrons of freedmen, as Blume thought.

38 See Inst. 1.12.6 and 3.2.8; C. 8.48.6.

39 See D. 38.5.

40 Under Justinianic law, probably the third share of the estate under a will as described under C. 6.4.4.

41 Based on Diocletian’s movements, Mommsen, *Gesammelte Schriften ii* (1905), 231 and 276, emended the consulship to that of the Augusti (293), which is reflected in Krüger’s chronological list, but not the text of his edition.

42 See the previous note (with Mommsen, *Gesammelte Schriften ii* (1905), 277).

43 *Obsequium* was the respect intrinsically owed to his patron and patron’s heirs by a freedman. See D. 37.15; Mouritsen, *Freedman* (2011), 53–58.

44 A fuller version of this rescript appears at C. 5.55.1; Honoré, *Emperors and Lawyers* (1994), 99. n. 327.

45 That is, bringing a case against the patron, which would brand the patron with *infamia* (involving a severe diminution of status and civil rights), if he lost.

46 This name is otherwise unattested and should perhaps be Leontogenes.

47 “or otherwise” translates *aut*; this is omitted in the Greek of the Basilika (49.2.11, Scheltema A, vol. vi, p. 2283), which perhaps gives more straightforward sense: “legally married with the patron’s consent.”

48 The Basilika (49.2.12, Scheltema A, vol. vi, p. 2283) reference to “money” makes the point clearer. While payment at manumission would usually preclude rendering of future services (*operae*), *obsequium* was invariable.

49 That is, a manumitting master, by creating a free person, also creates someone with the ability to go to court.

51 Combine also with C.Th. 2.22.1 and C. 7.1.4.

50 In the manuscripts, the name is either Daphus or something incomprehensibly reduplicated like Daphidaponus. Daphnus is the most likely emendation.

52 The constitution up to this point derives from C.Th. 4.10.1 (Constantine to the Council of the Byzaceni, given at Cologne, July 332), which must have been merged into the longer constitution to Maximus, whose Theodosian original is missing from the incomplete Theodosian Book 4. Krüger restores C. 6.7.2 to the same title at his C.Th. 4.11.1a.

53 This is one of two references (with the associated C. 7.1.4) to the continued existence of the imperial *consilium* under Constantine, which was superseded by the more formal and ceremony-bound consistory at the latest under Constantius II. Note that “in consistorio” (C. 9.47.12: Diocletian and Maximian) is most likely an anachronistic expansion of “in cons(ilio)”: Crook, *Consilium Principis* (1955), 96–97; Corcoran, *Empire of the Tetrarchs* (2000), 255–256.

54 Judging by the mention of Latin status in C.Th. 2.22.1, the original constitution may have given Latin status to re-freed freedmen, with special rules, as here, for “up-grade” to full citizenship. Justinian’s abolition of Latin status (C. 7.6.1) necessitated the excision of references to Latins from the second edition of his Code: Falchi, “Osservazioni” (1990); Corcoran, “*Softly and Suddenly*” (2011), 142.

55 On the basis of the other parts of this constitution, the year should be 320 (Constantine for the sixth time with Constantine II as Caesar), being issued by Constantine from Serdica (January 30), and posted at Rome (April 13). See Seeck, *Regesten* (1919), 169; Barnes, *New Empire* (1992), 74; Corcoran, *Empire of the Tetrarchs* (2000), 311.

56 Derived from C.Th. 4.10.2, as is C. 9.1.21. Part of a larger constitution reconstructed by Honoré, *Crisis of Empire* (1998), 247 n. 308 and *Palingenesia* 8, W560–564, as follows: C.Th. 9.1.19 (C. 9.2.17 and 9.46.10), C.Th. 2.1.12, 1.6.11, 4.10.2 (C. 6.7.3 and 9.1.21), C.Th. 9.6.4 (C. 4.20.12).

57 The parallel Theodosian texts have the fuller address “to the consuls, praetors, tribunes of the people and the Senate greeting.” See also Corcoran, “After Krüger” (2009), 439.

58 Derived from C.Th. 4.10.3. To be combined with C. 11.48.18: Honoré, *Crisis of Empire* (1998), 249; possibly to be associated also with C.Th. 4.6.7 and C. 5.4.21.

59 See D. 40.10–11.

60 Combine with C. 7.9.3: Honoré, *Emperors and Lawyers* (1994), 164 n. 317.

61 If the place of issue is correct (Mommson, *Gesammelte Schriften II* (1905), 279 preferred emendation to Heraclea), this is a rescript of Maximian rather than Diocletian: Barnes, *New Empire* (1992), 59; Corcoran, *Empire of the Tetrarchs* (2000), 79; Wieling, “Die Gesetze der Herculier” (1995), 623. The year is generally taken as 293, but 290 is possible.

62 The exact day is unknown as the month is not preserved by Haloander, the only source for the subscript.

63 The Basilika version (Bas. 40.1.17, Scheltema, A, vol. v, p.1787) is clearer, as it sets out two situations, the first with subsequent parental ratification, which gave the father a usufruct in the

property acquired, the second without ratification, which gave the father nothing. The legal point of the text is that the father's knowledge or actions were irrelevant to the time-limit that the son had to make a claim, since it was valid either way. This represents the Justinianic legal situation (cf. C. 7.61.8). This seems to have differed from the original text of the rescript, before Justinianic editing, according to which the father's ratification was essential (Bas. Schol. 40.1.17.2, Scheltema, B, vol. vi, p. 2361).

64 This is part of the same rescript as at C. 6.55.1, but there addressed to Crispina; Honoré, *Emperors and Lawyers* (1994), 81 n. 65.

65 According to C. 6.55.1, Crispinus (or Crispina) was sibling to the deceased, thus able to claim as an agnate (*proximus agnatus*) entitled under *unde legitimi*. A direct descendant would have had a year to claim (C. 6.9.4).

66 The consular iteration numeral is not preserved in the manuscripts, but the year is confirmed by C. 6.55.1.

67 That is, the Praetorian action which allowed all the children, in the first instance, to lay claim to the estate under intestacy (C. 6.14).

68 Diocletian's movements necessitate emending the consular year to 293. See Mommsen, *Gesammelte Schriften ii* (1905), 274; Barnes, *New Empire* (1992), 52.

69 Maximianus is more generally referred to in modern works as Galerius (Caesar 293–305; Augustus 305–311).

70 This letter, which lacks any addressee, is one of only three constitutions of the Second Tetrarchy present in the Code (with C. 3.12.1 and 5.42.5; perhaps also C. 7.16.40). They may have emanated from the court of the Caesar Maximinus, but this is not certain. See Corcoran, *Empire of the Tetrarchs* (2000), 142–143.

71 No consular iteration is given, so that the year could be 305 or 306, although the other Second Tetrarchy texts seem to belong to 305. See Corcoran, "The Tetrarchy: Policy and Image" (2006), 46.

72 Combine with *C.Th.* 8.18.4.

73 Identified as governor of Phoenice in 328–9: *PLRE i*, pp. 259–60, Dionysius 11; Barnes, *New Empire* (1992), 153.

74 The date translated is that of Haloander's Code edition (Krüger prints *Constantino* not *Constantio*). The associated Theodosian text gives the date as that of posting in the second consulship of Constantius and Constans (thus 339). Seeck, followed by Barnes (see previous note), attributed the text to Constantine in 329 (consuls: Constantine Aug. viii and Constantine Caes. iv), posted up at Heliopolis (*Regesten*, 179). Cuneo, *La Legislazione* (1997), 42–45, attributes it to Constantius ii as issued in 339 at Heliopolis, which could match that emperor's movements: Barnes, *Athanasius and Constantius* (1993), 219.

75 This is often taken as part of a long edict reforming the law of succession issued by Constantine at Serdica on January 31, 320, and posted at Rome on April 1 (thus, Seeck, *Regesten* (1919), 169; Corcoran, *Empire of the Tetrarchs* (2000), 194 n. 47), supported also by a reference to this ruling as a *lex Constantiniana* by Justinian himself (C. 5.70.7.3). Others, however, prefer to keep the date and place, and attribute this and two other Code texts (C. 6.23.15, 6.37.21) to a separate measure of

Constantius ii in 339: Cuneo, *La Legislazione* (1997), 31–36). The pertinent C.Th. texts are 3.2.1, 4.12.3. 8.16.1. 11.7.3

76 The subscript is partially preserved only by Haloander, with the consular year taken by Krüger from the associated C. 6.23.15 and 6.37.21. The place of issue is preserved in C. 6.23.15 as Serdica. If Haloander is correct, the city could be one of several Laodiceas. There were two in Syria alone. Constantius was based in Antioch and Syria in and around 339 (Barnes, *Athanasius and Constantius* (1993), 219).

77 See D. 37.11.

78 Combine with C. 6.24.3; Honoré, *Emperors and Lawyers* (1994), 99 n. 327.

79 According to C. 6.24.3, Vitalis was a soldier, named as substitute heir in the will of a cavalryman, Alexander. The question of forgery is not mentioned in that rescript.

80 See D. 37.4.

81 The name is given as Clara in the *Summa Perusina: Patetta, Adnotationes Codicum* (1900/2008) 177.

82 See D. 37.14.

83 This short text is an extract from the longer text at C.Th. 4.4.7, whence also C.Th. 2.19.7 and C. 6.36.8.

84 *Unde liberi* refers to the clause in the Praetor's Edict, which allowed children, in the first instance, to claim the inheritance under Praetorian rather than civil intestacy rules.

85 This derives from C.Th. 8.18.5, as does C. 6.30.15.

86 This is not stated explicitly in C.Th. 8.18.5, whose focus is on the maternal grandfather.

87 This title refers to two actions under the Praetor's Edict (cf. D. 38.7–8). Under the Praetorian rules of succession, next in line after the children, came the civil law heirs (agnates, those in the male line) and after them cognate relatives (through the female line). For the grades of relationship, see Inst. 3.5–6; D. 38.10.1.

88 Strictly “consobrinus/-a” means the child of a maternal aunt, but the term could be used loosely for all first cousins, who belonged to the “fourth grade” of relationship (D. 38.10.1.6; Inst. 3.6.4; Theophilus, *Paraphrasis* 3.6.4).

89 The name, variously transmitted, is printed by Krüger as Sozion, but this is an otherwise unattested name, in contrast to the fairly common Sozon; e.g., Osborne and Byrne, *LGPN* ii, pp. 411–412.

90 Correctly “propior sobrino,” succeeding in the “fifth grade” of relationship; so D. 38.10.1.7 (corrected in the Florentinus manuscript); Festus, *De Verborum Significatu*, s.v. propior sobrino (ed. Lindsay, 260.25F, 261.7P); Moreau, “Le lexique de Festus” (2007). Almost all manuscripts write this vulgarly as “proprior sobrinus”; e.g., Inst. 3.6.5 and also Theophilus, *Paraphrasis* 3.6.5 (so the manuscripts, but corrected at Lokin *et al.*, *Paraphrasis Institutionum* (2010), 548–549).

91 Diocletian's movements mean that the year is best identified as 290. See Barnes, *New Empire* (1992), 51.

92 See D. 38.9.

93 Julius' mother was an agnate (descendant in the male line) of her paternal uncle, but since she did not claim, Julius could, but only on the basis of belonging to the next category of claimants (cognates, in the female line).

94 Cf. D. 37.10.

95 Identified in the *Basilika* (40.5.17, Scheltema A, vol. v, p. 1808) as the father's brother, claiming that Flora and thus her son were slaves.

96 This derives from C.Th. 4.3.1. Part of a larger constitution, reconstructed by Honoré, *Crisis of Empire* (1998); *Palingenesia* 2, E420–3, in this order: C.Th. 11.30.52, 2.12.5, 4.3.1 (C. 6.17.2); C.Th. 4.8.9.

97 That is, to ensure that a child really was born (and born alive) without substitution.

98 Another action reflecting the form of the Praetor's Edict; cf. D. 38.11.

99 This derives from C.Th. 5.1.9. Part of a larger constitution, reconstructed by Honoré, *Crisis of Empire* (1998); *Palingenesia* 4, E854–9, in this order: C.Th. 3.7.3 (C. 5.4.22), C.Th. 3.5.13 (C. 5.3.17), C.Th. 4.6.8, C.Th. 5.1.9 (C. 6.18.1), C.Th. 2.3.1 (C. 2.57.2), C. 6.61.2.

100 The consulship is taken from the Theodosian Code. The Verona palimpsest reads "Hierio et Tauro," probably a contamination from the name of the recipient. Krüger (*ad loc.*) suggests that a similar erroneous subscript was incorrectly emended in Haloander's edition to read "Hierio et Ardaburio" (= 427).

101 For a slightly different version of this rescript (dated to December 294 at Nicomedia), see C. 2.6.4. Combine also with C. 6.31.3 (dated "sine die" 294) (cf. different version at 2.4.38, dated December 294) addressed to the same recipient. It appears that there were two divergent versions of the same rescript (this one perhaps deriving from the Gregorian, the other from the Hermogenian Code?).

102 Hotchpot or collation principally arose on intestacy, when emancipated children, technically excluded as outside the *familia* and, therefore, not being *sui heredes* in civil law, applied for their share under Praetorian law. They were required to bring their property into account for the purposes of equalization with the unemancipated children, who were unable to hold property in their own name. See also D. 37.6–7.

103 So Haloander's edition; May 10 in the manuscripts.

104 Haloander's edition, the only source for the subscript, gives the Caesars as consuls (294), but this is emended by Krüger, since it must come chronologically before the subsequent constitutions. Numerous others attest Diocletian's presence at Heraclea at this period (Mommsen, *Gesammelte Schriften ii* (1905), 274; Barnes, *New Empire* (1992), 52).

105 Haloander's edition is the only source for the consulate and records the Caesars, but this is emended by Krüger as with the previous constitution. See Mommsen, *Gesammelte Schriften ii* (1905), 276; Barnes, *New Empire* (1992), 53.

106 Taking "collationi" with "pareatur" and following the sense of the Greek *kata podas* translation (*Basilika scholia* 41.7.27, Scheltema B, vol. vi, p. 2489).

107 The subscript is only known from Haloander's edition, and the year is out of sequence. Trimontium, not a rare place-name, is most plausibly Philippopolis (Plovdiv). As Diocletian was still at

Nicomedia in March 295 (C. 5.72.3), emendation of the year would be required (thus Mommsen). Connolly suggests “Tricornium” near Sirmium in 294. For the possibilities of date and place, see Mommsen, *Gesammelte Schriften ii* (1905), 288; Barnes, *New Empire* (1992), 54 n. 33; Corcoran, *Empire of the Tetrarchs* (2000), 80; Connolly, *Lives Behind the Laws* (2010), 204.

108 Combine with C. 3.36.24.

109 Combine with C. 5.9.6, 6.24.12, 6.61.4; Seeck, *Regesten* (1919), 417. C. 5.9.6 and 6.61.4 include Anthemius as Emperor in the heading.

110 Associated with C. 6.58.11 and 8.48.5; Lounghis *et al.*, *Regesten* (2005), 105.

111 C. 8.48.5.

112 This is one of numerous constitutions addressed to Menas on June 1, 528: Lounghis *et al.*, *Regesten* (2005), 160–164.

113 C. 6.55.9 (deriving from C.Th. 5.1.4).

114 C.Th. 5.1.5.

115 A will could be broken, if the testator did not leave his *sui heredes* the legal minimum one-quarter of what they would have received on intestacy (see title C. 3.28). In this constitution, the same rules regarding which property to include in calculating that one-quarter are to be applied also to hotchpot, irrespective of whether there is a will.

116 The date should probably be April 6 (*viii id. Apr.*), the date of the last constitutions added to the first edition of the Code (Lounghis *et al.*, *Regesten* (2005), 176–178). There are no further Code constitutions until September 529, by which time Menas had been replaced as Praetorian Prefect by Demosthenes.

118 Adapting the consular formula to that of C. 6.21.18, which is probably to be associated with this constitution.