

Book II.
Title XI.

For what reason infamy will be visited on a person.

Headnote.

Aside from those mentioned in this title, the Code mentions the following, among others, as becoming infamous: Persons who abandoned a criminal accusation without a judicial order (headnote C. 9.45), or who failed to prosecute such accusation (C. 9.44.1); guardians removed on account of fraud, and not for mere negligence (C. 5.43.9); guardians or curators who married their female wards or gave their sons in marriage to a female ward, within a certain time and without direction of the father of the ward (C. 5.6.7 and note); a judge failing to forward all the documents on appeal (C. 7.62.15); a judge who permitted jailers to treat prisoners cruelly (C. 4.1.5); a judge who subjected a chief or a decurions of a town to torture (C. 10.32.33); a judge who made certain forbidden persons enforcement officers in a case (C. 1.40.8); an appellant before the praetorian prefect who prosecuted an unjust appeal notwithstanding the fact that it was disallowed by the court from which the appeal was taken (C. 7.62.19); a person who failed to take the normal course in taking an appeal, but instead addressed a supplication to the emperor (C. 1.21.3); C. 1.16.1); a person who was summoned by an edict in a criminal case (C. 9.40.3); the sons of conspirators against the emperor and the imperial council (C. 9.8.5); freedmen who declared themselves freeborn and meddled with the curia—senate—of a municipality (C. 9.21.1); a person who concealed a fleeing decurions (C. 10.32.31); a person who gave a distorted interpretation or impugned the validity of an imperial rescript (C. 1.14.2); unauthorized professors who lectured in the public halls and lecture rooms (C. 11.19); heretics (C. 1.1.1); a woman who failed to observe the period of mourning (C. 5.9.1 and 2; C. 6.56.4).

Various disabilities followed infamy. Thus a person who was infamous as excluded from positions of honor. C. 10.32.8. He could not become a magistrate, nor act as a referee, judge, to decide a case. The sons of traitors were also forbidden to partake of the sacrament. C. 9.8.5. No infamous person could become an advocate. Headnote C. 2.6. And previous to Justinian, he could not act even as a simple procurator in presenting another in a suit. Just. 4.13.11. Infamous persons were more apt to be visited with severe punishment in criminal cases in which they were convicted than others. D. 48.19.28.16. They were limited in their right to bring public prosecutions (D. 48.2); their evidence was given limited credence and they were at times forbidden to give any testimony in court at all. (C. 4.20.3 note; Nov. 90, c. 1), and in some cases they were forbidden to make a testament or take under one. C. 6.22 headnote. See generally, Buckland, Textbook 92, 93; Greenidge, Infamia.

The question of infamy is to a more or less extent interwoven with the subject of classes which were recognized under the law. Persons of humble station, including those engaged in retail trade, were not given much consideration. Infamy could not affect them to any great extent. Their testimony was not given the same credence as that of persons of the upper classes and they were under distinct disadvantage in criminal cases. Headnote C. 9.47. Poverty was an unfortunate condition in the eyes of the Romans. Persons having less than fifty gold pieces could not even bring a public prosecution. D. 48.2.10. But the fear of infamy was doubtless a powerful deterrent so far as the upper classes were concerned.

2.11.1. Emperors Severus and Antoninus to Manilius.

You will not at all be visited with the disadvantage of infamy for the reason alone that you were thrown into jail or into chains by order of a lawful judge.
Promulgated without consul or day.

2.11.2. The same Emperors to Veenus.

A man can be understood to have been condemned neither for theft, robbery nor embezzlement of public funds, who, when he, on account of taxes, collected more than was due, was condemned by the president to pay double the excessive amount.
Promulgated January 9 (197).

Note.

This law refers to collectors of taxes, who, if they exacted more than was due, were bound to restore double the excess, and if they persisted in their conduct, were punished severely. C. 10. 20. 1.

2.11.3. The same emperors to Metrodorus.

Although a severer sentence should have been imposed, still, since the honorable proconsul, moved by certain reasons, imposed a milder one and ordered that you be excluded from the order of the decurions for two years, it is clear that at the expiration of that time you are not one of the infamous, but on the contrary, the judge seems to have released you from the order of exclusion from the decurionate after the expiration of two years.

Promulgated December 23 (197).

Note.

A judge might impose various sentences, and as an advocate might be prohibited from engaging in his profession, either temporarily or permanently, so another person might be sentenced, compelling him to abstain from a certain business, or preventing him from occupying a place of honor, on account of some criminal conduct. D. 48.19.9; headnote C. 9.47. In the instant case, a man had been sentenced for some criminal conduct and had been temporarily removed from his place as decurions, member of the municipal senate, a position which, at the time the instant rescript was issued, was a place of honor. The infamy attached to the sentence in the instant case lasted only as long as the party sentenced was debarred from this position. In some cases a sentence carried perpetual, in other, temporary, infamy.

2.11.4. Emperors Severus and Antoninus to Venustianus.

If you prove that Posidonius, relegated (banished) for a period of a year, did not leave according to the decision of the proconsul, (though) he is to be condemned to a temporary exile of five years, he should not be considered as infamous, since the severity of the sentence seems to compensate for the other disadvantages.¹

¹ [Blume] Literally, “seems to make a compromise with the other disadvantages.” It will be noticed that on account of the severe penalty, Posidonius was not to be considered infamous. It would seem that the ordinary penalty for not complying with the original order of the court was to duplicate the sentence. Bas. 21.3.4. Instead of that, a five years’ sentence was here to be imposed. Ordinarily a judge had no power to avert infamy, “but,” says Greenidge in his Infamia in Roman Law, page 182, “the curious

Promulgated February 24 (198).

2.11.5. The same emperors to Ambrosius.

It is indeed forbidden to chastise decurions and sons with the rod; but if the honorable proconsul has adjudged you guilty of an intentional wrong (*injuria*), you are marked with infamy.²

Promulgated July (198).

2.11.6. The same Emperors to Justus.

Persons sentenced to labor on public works for a certain time, forsooth retain their former (legal) status, but they will be subjected to the disability of infamy also after the expiration of the time (of punishment).

Given December 7 (203).

2.11.7. Emperor Antoninus to Demetrius.

No one is infamous because he refrains (from accepting) his paternal inheritance. Promulgated January 8 (205).

2.11.8. The same emperor to Ulpia.

If you were condemned for theft,³ (although) without (being subject to) the lashes of the rod, you suffered the detriment of infamy. But if the stolen property which someone else stole, was found on your property, without your knowledge (that it was stolen), the rather severe sentence does not hurt your good reputation.

Promulgated February 20 (205).

2.11.9. The same emperor to Laetus.

Infamy follows no one on account of having defended public lawsuits of his native city.

Promulgated February 18 (208).

2.11.10. The same emperor to Severus.

Also a person, condemned for intentional wrong (committed) against a slave will be branded with infamy.

Promulgated July 29 (208).

2.11.11. Emperor Alexander to Irenaeus.

principle was developed that the judge could remit the *infamia* which followed the ordinary sentence imposed in a given case, by pronouncing a heavier penalty than that recognized by custom or by law. (D. 3.2.13.7). The principle was recognized both in civil actions (at least where these were concerned with delicts) and in criminal cases. The procedure was spoken of as a *transactio* (compromise), and was regarded as an agreement between the judge and the offender, the latter choosing between the lighter sentence with *infamia* and the heavier sentence without it. Some modern writers have stood aghast at this very anomalous procedure.”

² [Blume] For the subject of intentional wrong (*injuria*) see C. 9.35.

³ [Blume] Condemnation for fraud also entailed infamy. D. 3.2.8.

Debtors who have assigned their property, though it is sold on that account, do not become infamous.⁴
Promulgated April 22 (223).

2.11.12. The same emperor to Donatus.

If it became certain, by the decision of the president, that you despoiled an inheritance, you did not escape the infamy of a disgraceful theft by the fact that no other punishment was inflicted on you.
Promulgated July 1 (224).

2.11.13. The same emperor to Juvenitus.

The things which the father, upbraiding his sons, wrote in his testament, do not, forsooth, in law make them infamous, but they lower the reputation of the person who displeases his father, in the estimation of the good and the respectable.
Promulgated October 20 (229).

2.11.14. Emperor Gordian to Javinus.

Let not your maternal uncle, subjected to lashes with the rod during an investigation, fear the disgrace of his good name, if a decision carrying the stain of infamy did not precede the lashes.
Promulgated August 27 (238).

Note.

D. 3.2.22 says: “The infliction of a beating does not entail infamy; what does so is the ground on which the party incurred the punishment, assuming that the ground in question is one which imposes infamy on a man who is condemned to it.” And further, the act had to be proven, and it was the sentence of the judge that carried infamy, which made him infamous. Greenidge, *Infamia* 40. See also 16 and 17 h.t.

2.11.15. The same emperor to Sulpicia.

The mourning of women has indeed been diminished by decree of the noble order (the Senate), and they have been excused from the use of mourning garments and other signs of that kind, but it is not also permitted for one of them to contract a marriage within the customary time of mourning for her husband, since, moreover, if she contracts another marriage within that time, she, as well as the man who marries her knowingly, even though he is a soldier, is under the perpetual edict stained by infamy.
Promulgated June 15 (239).

Note.

See C. 5.9.1; Novel 22, c. 22; Nov. 39, c. 2; C. 6.56.4.

2.11.16. The same emperor to Domitianus.

It is clear that a person who has been cudged and to whom a herald has said thus: “Do not so impudently bring an accusation without just cause,” is branded as a traducer and is therefore infamous.⁵
Promulgated July 30 (240).

⁴ [Blume] Headnote C. 7.71.

⁵ [Blume] C. 9.46.8.

2.11.17. The same emperor to Magnus.

The word inserted in the supplication seems rather to offend our self-respect than to besmirch your good name. For when without a trial being had the words “you accuse falsely” are pronounced, but (they) were in answer by interlocutory decision of the judge, to a demand of an advocate, this does not in any manner carry infamy. Promulgated September 24 (242).

2.11.18. The same emperor to Antiochus.

The perpetual edict, indeed, makes infamous not only those who are condemned for intentional wrong (*injuria*), but also those who have made a pact (concerning it). But it is agreed that only those are, in this matter, understood to have entered into a pact who, with a bad conscience, have paid any money to their adversaries pursuant to a compromise. Simple forgiveness⁶ leaves a good reputation unaffected and untouched. And if the contention is settled by an oath (of the defendant), no one doubts that absolution by the judge will follow the oath.⁷ Promulgated December 19 (260).

2.11.19. Emperors Carinus and Numerian to Aristocrates.

The interlocutory decision pronounced by the judge does not seem to make the person, concerning whom you ask, infamous, since he was not specially condemned for intentional wrong (*injuria*) or violence, but was upbraided and admonished by the words of the judge in order that he might turn to a better way of life. Promulgated January 16 (284),

2.11.20. Emperors Diocletian and Maximian to Fortunatus.

Shameless usurers and those who unlawfully demand interest on interest are to be branded by the stain of infamy. Promulgated February 14 (290).

2.11.21. The same emperors to Statius.

If your brothers, provided only they were still minors, gave the people an exhibition of themselves in displaying their talent on the stage, their good name remains unaffected. Given August 28 (290).

2.11.22. The same emperors and the Caesars to Domitianus.

A person who at the risk of infamy breaks the good faith due under a partnership will, when sued in his name in an action on partnership, be compelled to make satisfaction.⁸ Given December 8 (294).

⁶ [Blume] 5 Glück 163.

⁷ [Blume] For the decisory oath, see C. 4.1.

⁸ [Blume] i.e. if condemned, he became infamous.