

Book III.
Title XXIX.

Concerning undutiful (unjust) gifts.
(De inofficiosis donationibus.)

Bas. 41.4.

3.29.1. Emperor Philip to Nicanor and Papiniana.

If, as you allege, your mother, in order to frustrate a complaint to have her will set aside as unjust, almost exhausted all her property during her lifetime, by making gifts either to her children or to strangers, and afterwards made you heirs to two-twelfths of her property, besides wanting to reduce that to nothing through legacies and trusts, you do not unjustly desire to be aided by the provisions of the constitutions made concerning unjust testaments, as not having received our legal portion.

Promulgated August 19 (245).

3.29.2. Emperors Valerian and Gallien to Aetia.

If our father, by some impulse of extravagant generosity, gave all his property to his son, the latter either remained in the power of his father, in which case it behooves the judge in a partition action to so divide the property that you fully receive the fourth of the portion due on intestacy, or the son is emancipated, in which case, since a gift needs no help, but is supported by its own strength, the governor of the province will, according to the constitutions, extend equitable aid in pattern of the complaint to set a will aside as unjust.

Promulgated July 27 (256).

Note.

The subject of gifts generally is treated in C. 8.53. A gift to an unemancipated son was invalid, unless confirmed either by emancipation in the lifetime of the donor or by testament or codicil. C. 8.53.11 and note. The reason lay in the fact that the property of the son under power was the property of the father, except as modified by laws from time to time. See headnote C. 6.60. Hence, a gift to such son would have been simply a gift to himself. When the father, accordingly, died, the property embraced in the gift was considered as part of his inheritance, and subject to partition among the heirs. See also C. 3.36.18.

A gift to an emancipated son, on the other hand, was valid. C. 8.53.17. So it did not need confirmation—no help, as stated in the foregoing law. But it might be rescinded by the court in an action to set it aside, in pattern of an action to set a will aside as unjust. See 9 Cujacius 651; also headnote C. 6.20.

3.29.3. The same Emperors to Aelianus.

The rescripts issued in answer to your petition contemplate only parents who, while making a testament, exhausted their property during their lifetime by large gifts, leaving to the children the meaningless name of heir. The same principle of equity extends also to parents who die intestate.

Promulgated October 23 (257).

3.29.4. Emperors Diocletian and Maximian to Calpurnia Aristaeneta.

If your son exhausted his property by an extravagant generosity, you may call the president of the province to your aid; and if he finds on investigation of the truth, that you, through your son, should have restitution of our rights as to the unreasonably large gifts, he will aid you by annulling the wrongful acts. Hence, you need no action similar to that of setting a will aside as unjust for the purpose of setting the immoderate gifts aside.

Promulgated at Milan February 10 (286).

Note.

The mother in this case was the heir of the deceased son, the son having squandered his property. He was a minor, and would have had the right to bring an action to be restored to his former rights. This right of action was transmitted to the mother, his heir. D. 4.1.6; D. 4.4.19. Hence, she did not need the action specified in the foregoing rescript.

3.29.5. The same Emperors to Cottabeus.

If you exhausted all your property by gifts, made to your emancipated sons, the part necessary to remove the right of children, not ungrateful, to set the will aside as unjust, will be withdrawn from the gifts made and returned as part of your property, so that your sons and grandsons, thereafter born in lawful marriage, may receive the amount legally due them from your property.

Given February 28 (286).

3.29.6. The same Emperors to Demetrianus.

When you say that the property of your father was exhausted by gifts made to your brother, and that the former divided the remainder between you in his codicil, then, if you have not recognized his will as valid, and are not able to avail your self of the right of minority, and the dowry given you and the trust provided for you in the codicil are not sufficiently large to remove your right of complaint of unjustness, the president of the province will grant you an action against such gift in pattern of the complaint for setting unjust testaments aside.

Promulgated April 26 (286).

3.29.7. The same Emperors to Ammianus.

If your mother dissipates her property by her extravagant generosity to your brother, so that the gifts made to you do not amount to half of the fourth (legal portion) which suffices, as to you, to exclude a complaint to set a will aside as unjust, then her unlawful acts will be annulled.

Promulgated May 10 (286).

3.29.8. The same Emperors to Anxano.

If it appears clearly that your mother, in order to frustrate a complaint to set her will aside as unjust, exhausted her property by making gifts to one son, then since justice demands the permission to complain against the plans of those who by intrigues hasten to anticipate a last will and testament and take rights of action away from sons, the gifts will be diminished as the legal portion may require, in pattern of a case in which a testament is shown to be unjust. 1. For the property which a wife, with the consent of the husband, gives to their common and emancipated son, out of the property given her by her husband as a gift during the time of the marriage, must be considered as property given by the

husband, since he could not, on account of the marriage, give the property to her.¹ If, however, the same (cunning) plan and result is discovered in connection with the property of the husband, the same law is applicable that applies to the property of the mother.

Promulgated September 11 (294).

3.29.9. Emperor Constantine to Olybrius.

There is no doubt that the action concerning immoderate gifts has been introduced into the laws in pattern of laws regarding unjust testaments, and in this respect both actions must be deemed as one or similar or the same, both as to time and conditions.

Given May 19 (361).

C. Th. 2.20.1.

¹ [Blume] See C. 5.16.