Book V.
Title XIV.

Concerning agreements made relative to dowry as well as relative to prenuptial gift and concerning the separate property of women (paraphernia).[1]
(De pactis conventis tam super dote quam super donatione ante nuptias et paraphernis.)

Bas. 29.5.31; D. 23.4.

5.14.1. Emperors Severus and Antoninus to Nica.

The condition which you fixed when you gave a dowry to your foster-daughter must be observed; nor can the objection be raised against you that, as is customarily said, no action arises from a pact; for that is the law when there is a naked pact; but, on the other hand, when money is given and some agreement is made as to its return, condictio lies.[2]
Promulgated January 6 (206).

5.14.2. Emperor Antoninus to Theodota.

If the fruits of lands given as dowry have, according to an agreement, been used for the expenses of you and yours, you need not doubt that they cannot be demanded back.
Given March 22 (213).

5.14.3. Emperor Gordian to Torquata.

Although your father, when he placed you in marriage, had a pact made that if your husband should die during marriage, leaving surviving your common children, part of the dowry should be retained for the children, still an agreement of that kind could not limit your right to recover the whole dowry.
Given January 8 (239).

Note.

The father (or others) could, at the time of constituting a dowry, exact an enforceable agreement that all or part of it should be returned to the giver. C. 5.12.7 note. Such an agreement was on a somewhat different footing than others; for of these others, some were valid, some not. An agreement could not be exacted for the benefit of a third person. C. 5.12.26; law 4 h.t., modified by law 7 h.t.; and see C. 5.13.1.11. Other agreements were generally valid if the wife's condition was bettered, although even as to the husband, the whole purpose of the dowry could not be frustrated. The wife's rights upon the death of her husband could not be abridged, as shown by the instant rescript and by D. 23.4.2; D. 33.4.11.1. On the other hand, a contract that the husband should have all or part of the dowry if his wife was to die before him was valid. Law 6 h.t.; C. 5.13.1.6 and 16. So was a contract, in classical law, that the husband should have part or all thereof in case of divorce, not caused by his fault, provided that there was a child, or children, born of the marriage, and living at that time. Vat. fr. 120. But under the later law, the wife, if at fault in case of divorce, lost her dowry to her husband, to be preserved

[1] [Blume] All property of the wife not included in her dowry or prenuptial gift was called paraphernalia. MacKeldy §373.
[2] [Blume] See note C. 5.12.6.

for the children; and the husband at fault could not receive any part of the dowry, and no contract to the contrary was valid. C. 5.17.8. See C. 5.3 headnote. That law, however, did not affect property furnished by the father or either paternal ancestor with paternal power. C. 6.61.2.

5.14.4. The same Emperor to Agathus.

A dotal agreement, in which you say your mother agreed with your father that if she should die during marriage the dowry should be turned over to you and your brother, could not, after her death occurring during her marriage, give any right of action to you, unless a stipulation was entered into with you personally (ex personal vestra), while you were not in your father's power. But if a legal stipulation was entered into, you could acquire the right to claim the dowry; as (maximi si) you are no longer affected by the tie of paternal power, you are not forbidden to sue for the claim.
Promulgated January 9 (240).

Note.

A pact that the husband should turn the dowry over to a third person after the wife's death was invalid as to the children here, and as to the wife's mother in D. 23.4.26.4. See Bechmann, 2 Dotalrecht 438. This seems to represent the principle that a contract in favor of a third person was void. See C. 4.27.1 note. Unless, then, the children, being emancipated, exacted a stipulation for the dowry to be turned over to them, they could not sue for it. They could not enter into a stipulation if still under paternal power, since then the stipulation was merely one in favor of the father.

The "maxime si" clause, especially if translated literally as "especially if' seems out of place, since their stipulation was invalid if they are still under power. Heumann-Seckel, Handlexicon, under "maxime" states that "maxime si" has often been interpolated. The reason for it, however, is not perceived.

5.14.5. Emperors Diocletian and Maximian to Claudius.

An inheritance can be given to strangers only by a testament. Since, therefore, you state an agreement was inserted in the dotal document, as a sort of testament,[3] that after the woman's death, her goods, to which you have no claim as dowry property, should belong to you, you can see that you cannot sue her heirs or successors, to turn over to you what is in no way owing you.
Promulgated February 5 (290).

5.14.6. The same Emperors and Caesars to Rufus.

If it was agreed that if a wife should die during marriage, the dowry should belong to the husband, the law is clear that such an agreement forbids the right to reclaim a dowry given by the father, since it has often been stated by men learned in the law that in case the father alone has the right to reclaim it, the right of return of the dowry may be waived by agreement.[4]
Given May 3 (293).

5.14.7. The same Emperors and Caesars to Philetus.

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[3] [Blume] But not effective as such.
[4] [Blume] See note law 3 h.t.

If a father gives a dowry to his son in law for his daughter and has an agreement made that if she should be the first to die during marriage, the dowry should be restored to his grandsons, although he could not acquire a right of action for them, still an independent (analogous) action will by reason of equity be given them.
Given December 19 (294).

Note.

Ordinarily no contract could be made in favor of one not a party thereto. Law 4 h.t.; C. 4.27.1 note. A few exceptions were made from time to time, as in this case, the rescript being interpolated. See note to Bas. 29.5.37. See also C. 4.39.5 note and Bechmann, 2 Dotalrecht 153.

5.14.8. Emperors Theodosius and Valentinian to Hormisda, Praetorian Prefect.

By this law we decree that a husband shall, when the wife forbids, have no right in the property which a woman has outside of her dowry and which the Greeks call parapherna, nor shall he impose any lien upon it. For although it would be fine that the woman, who instructs her person to her husband should also permit her property to be managed at his discretion, still, since it is clear that the founders of the law are the authors of just principles, we do not want him, as has been said, to mix in her separate property when she forbids.
Subscribed January 9 (450).

5.14.9. Emperors Leo and Anthemius to Nicostratus, Praetorian Prefect.

We order that when either the husband or the wife dies, the same proportion, though not the same absolute amount of money, shall belong to the one as to the other—to the husband out of the dowry, to the wife but of a prenuptial gift.

1. For example, if the husband has made a prenuptial gift of a thousand solidi, the woman is permitted to give a dowry of either a greater or less amount, and the husband likewise may make a prenuptial gift of a greater or less amount than the dowry. But it must be observed that the proportion which a woman may cause to be stipulated as her proportion of the prenuptial gift, in case her husband should be the first to die, the husband must cause it to be stipulated that a like proportion, not a quantity of money, should be his, out of the dowry, if the woman should be the first to die during marriage.

2. And if an agreement is made contrary hereto, we direct that it shall be void and invalid, and no action can arise therefrom.

3. The same rules shall apply whether the prenuptial gift is made to the intended wife by the father or the mother for the son, or by the son who intends to marry the woman if he is sui juris, or by anybody else for him.

4. The same is true also if the father or mother for the daughter, or the daughter herself, if sui juris, or anybody else for her gives or promises a dowry to the man intending to marry the daughter, since when some one else brings a dowry for her, she seems to bring it herself.

5. This is true to the extent that she (in case of dissolution of marriage) may demand the dowry given on her behalf by another, unless such other, perchance, at the time the dowry is given, receives a stipulation or agreement for the return to him.[5]
Given August 18 (468).

[5] [Blume] See note to C. 5.3.20.

5.14.10. Emperor Justinian to Mena, Praetorian Prefect.

Since the law of Leo of blessed memory provided that agreements as to gain from dowry and prenuptial gift should be equal, but did not add what should be done if that rule is violated, we want to make it clear and direct that if the proportions are made unequal, the greater shall be reduced to the lesser so that each shall receive the smaller proportion.[6]

Given at Constantinople April 6 (529).

5.14.11. The same Emperor to Johannes, Praetorian Prefect.

If a woman gave her husband's accounts (that is, due bills drawing interest) which were not a part of her dowry, so that they might be in her husband's possession as her separate property (parapherna) and this was stated in the marriage contract, it was questioned whether the husband had any rights of action by reason of these due bills, direct or analogous, or whether they remained those of the wife, and for what purpose rights of action were to be given to the husband.

1. We, therefore, ordain that if any situation like that arises, all rights of action remain those of the wife, but permission is given to the husband to bring actions before proper judges without requiring him to show his authority from his wife; to expend the interest he receives therefrom for himself and his wife; to preserve the principal, which he may collect for his wife, or to pay it out according to her directions.

2. And if a lien is specially given therefor in the marriage contract, the wife shall be content with such security. But if no such lien is provided for, she shall (nevertheless) have one on the property of her husband pursuant to this law from the time that he has collected the money.

3. Before that time the woman herself shall have the right, if she wished, to bring such action through her husband or other persons and to receive the money, or to receive back the due bills themselves from her husband, giving him quittance therefor.

4. But while these due bills remain in the possession of her husband, the latter must exercise the same degree of care in connection with them as he exercises in connection with his own property,[7] lest the woman sustain loss by reason of villainy or sloth. If that happens, he must make the loss good from his own property.

Given November 1 (530).

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[6] [Blume] The principle of the present law was restated in Nov. 22, c. 20. See also note C. 5.3.20. In Nov. 97, cc. 1 and 2 further provisions were made for equality of a dowry and a prenuptial gift. See Collinet, Etudes 145-152. As to the liens for dowry, see note C. 5.12.9 and authorities cited.

[7] [Blume] See C. 4.34.1 note.