

Book V.  
Title I.

Concerning betrothal, betrothal pledges and betrothal negotiations.  
(De sponsalibus et arris sponsaliciis et proxeneticis.

Bas. 28.1.15; Dig. 23.1.

Headnote.

Marriage was usually preceded by betrothal. There seems to have been no action for a naked promise of marriage under the Roman law. But earnest money (arrha) of a substantial kind was often given at the time of the betrothal on one side or both and was forfeited, in case of failure, without good grounds, to carry out the promise. Earnest money, or betrothal-money, consisted of a present by one side or both to the other, made upon condition that if the marriage was for a good reason broken off, it should be returned; if without a good reason, forfeited to the innocent party. If the marriage was broken off through the fault of the woman, she was, according to C. Th. 3.5.6 referred to in law 3 infra, bound to restore the betrothal gift, along with a penalty of fourfold its value; this penalty was, as noted in law 3 infra, reduced to an amount equal to that received. Under certain conditions, as will appear, the betrothal might be broken off without penalty. The consent of the betrothed persons was presumed, if no active opposition was made manifest to the head of the house. D. 23.1.12 and 13. A daughter, however, was not allowed to oppose her father unless the person to whom he wanted to betroth her, was of immoral condition or low position. D. 23.1.12.1. See on this subject generally Hunter at 695, 696. Buckland at 112 note. It must constantly be borne in mind in reading this book that the head of a family had what was called paternal power.

5.1.1. Emperors Diocletian and Maximian and the Caesars to Bianor.

A woman betrothed to a man may renounce the betrothal and marry another.  
Given April 14 (293).

Note.

In early Roman law marriage engagements were entered into by stipulation, and damages were probably recoverable if the engagement was broken. But in later law the stipulation in such case lost its force, and a contract to marry was neither enforceable, nor were damages recoverable. In fact an agreement not to separate after marriage was invalid. C. 8.38.2. This freedom to break an engagement was, however, curbed to some extent under Byzantine law, if earnest money had been given. Law 5 h.t. Arrangements for the marriage of children were generally made by the heads of the respective houses.

5.1.2. Emperor Constantine and Caesar Constantius to Pacatianus, Praetorian Prefect.

If a man betrothed to a girl neglects to marry her within 2 years while living in the same province in which she lives, and she marries another after that time has elapsed, she shall not be prejudiced by hastening her marriage and not permitting her vows to be longer trifled with.

Given at Marcionapolis April 12 (332).

Note.

While an engagement to marry might be repudiated, that was required to be done expressly. While the engagement existed, it had certain legal consequences not known among us. Thus two simultaneous engagements made the person infamous. D. 3.2.1. A woman so engaged might be prosecuted for infidelity, if guilty, by her betrothed. D. 48.5.14.3 and 8. The man could not be compelled to give evidence against the father of his betrothed, and vice versa. D. 22.5.4 and 5. See C. 5.17.2.

5.1.3. Emperors Gratian, Valentinian and Theodosius to Eutropius, Praetorian Prefect.

If, after earnest money for betrothals are given, either of the betrothed should die, the money shall be restored, unless the person deceased gave cause for the non-performance of the marriage rites.

Given June 18 (380).

Note.

In the Orient, a custom existed, dating back at least as far as the Code of Hammurabi, for a man to give earnest money to or for his intended bride at the time of the marriage-engagement. That made the contract binding. At Rome, the agreement was long consummated by a stipulation (law 1 h.t.), which was later displaced by a formless agreement. But in the Byzantine period, the oriental custom came to be recognized by law. How far it took root in the empire located in Europe is unknown.

What was the relation of earnest money to prenuptial gifts mentioned in title 3 h.t.? If the former was inconsiderable, as it was in some countries, doubtless a prenuptial gift was frequently added after the engagement, a fact mentioned in the Syrian law book. 23 Z.S.S. 129. If the earnest money was of considerable amount, it doubtless took the place of a prenuptial gift made in other cases, or in any event, the latter would be small. Earnest money was not compelled to be given under the law, and the parties could choose the manner and in what form to make property over to or for the intended wife. 48 Z.S.S. 62. The penalty for breaking an engagement was different when earnest money was given than when a prenuptial gift was made. Compare law 5 h.t. with C. 5.3.15. See generally 33 Z.S.S. 383 and 48 Z.S.S. 51 ff.

5.1.4. Emperors Honorius and Theodosius to Marinianus, Praetorian Prefect.

If a father entered into an agreement concerning the nuptials of his daughter, and he, taken from this world, was unable to see the agreement fulfilled, the decisions made by the father shall continue to govern the betrothed and a compromise made with the representative of the minor, who looked after interests of the minor (daughter) shall have no force. 1. For it would be iniquitous to let the action of a guardian or curator, perhaps corrupted, nullify the father's wish, when it is frequently true that even the determination of the woman herself runs counter to her own interests.

Given at Ravenna November (422).

C. Th. 3.5.12.

5.1.5. Emperors Leo and Anthemius to Erythrius, Praetorian Prefect.

A woman who is mistress of herself shall be liable for twice betrothal-money given,<sup>1</sup> that is to say, for twice the amount which she received and for no more, provided she received such betrothal-money after the completion of her 25<sup>th</sup> year or after she was granted the power of a person of full age before a competent judge. She shall be liable only for the simple return of the money which she received if she is under age, whether a virgin or widow, and whether she received the betrothal-money personally or through a guardian curator or other person.

1. A father or a mother shall be liable for twice the amount of betrothal-money received by them for a daughter of age whether they received the earnest money jointly or separately, and that shall be true also in case of a grandfather or great-grandfather receiving earnest money for a granddaughter or great-granddaughter.

2. The provision shall apply if matrimony between the betrothed is not forbidden by the laws or general constitutions on account of the person, condition, or other cause; for in that case the gift shall be considered void and must simply be returned.

3. We add also that if the hoped-for nuptials were not forbidden by the laws and the woman refuses to marry the man after betrothal-money is given on account of his unseemly or immoral conduct or on account of diversity of religious belief, or because the man is incapable of cohabitation from which the hope of offspring arises, or because of other just excuses, but it is proven that the woman or her parents knew this before betrothal-money was given, they have no one but themselves to blame.

4. If, however, they received the betrothal-money without knowledge of the fact or a just cause for rescinding the betrothals arose thereafter, they need to return only what they received and are released from paying twice the amount thereof.

5. These provisions shall, in a similar manner apply to the betrothed man as to whether he shall receive the betrothal-money back or not, and the fourfold penalty fixed in former laws shall cease, unless by common consent between the contracting parties a fourfold penalty was specially contracted.

6. If a bond fixing a penalty beyond the terms of this law shall be given, with a stipulation attached, it shall have no force as to either party, since complete liberty to contract marriage should exist.

Given at Constantinople July 1 (472).

Note.

See also C. 1.3.54.3; C. 1.4.16.

#### 5.1.6. Synopsis in Greek.

The constitution provides that a negotiator of marriages should preferably receive no compensation. If no agreement was made, he shall receive nothing; if an agreement was made, he shall not receive more than a twentieth part of the dowry of pre-nuptial gift, when the dowry does not exceed 200 pounds of gold; he may, however, take less if he will.

1. But whatever the amount of the dowry may be, the negotiator must not receive more than 10 pounds of gold, although the dowry or prenuptial gift has been paid.

2. Whatever anyone should have agreed to pay over and above this cannot be collected, and if paid, it shall be returned, whether received in money, cancellation of a debt, or movable, immovable or self-moving property, and actions may be instituted by the giver and his heirs, not only against the receiver of such money or property, but also

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<sup>1</sup> [Blume] In case the contract is broken without good cause.

against his heirs. A penalty of 10 pounds of gold is provided against those who shall attempt anything contrary to these provisions.