

Book VII.  
Title IV.

Concerning indirect (fiduciary) manumissions.  
(De fide commissariis libertatibus.)

Bas. 48.13; D. 40.5.

7.4.1. Emperors Severus and Antoninus.

Since you state that the inheritance of the man who, as you say, left you fiduciary freedom, was not accepted, and that someone other than the one appointed heir is in possession on intestacy, then, unless it is claimed that the duty to give freedom was also imposed on the statutory heir, you ask without right that it should be granted by one who was not directed to give it. 1. Of course, if you prove that the appointed heir refrained from accepting the inheritance for money, he will be compelled to give you freedom. Promulgated Feb. 17 (197).

Note.

We have already seen that ordinarily an heir appointed under a testament need not accept and when the testament failed, all legacies and trusts failed with it. Headnote to 6.39. That principle applied to legacies and trusts of manumission the same as to any other legacies and trusts. D. 40.5.47 pr. We have pointed out certain exceptions, however; 1) in cases where a trust was charged upon all, including intestate heirs; see specifically D. 40.5.47.4; 2) in cases of fraud, as mentioned also in the first law of this title, and in C. 7.2.12; 3) in certain cases of lapse, dealt with in C. 6.51. And in this connection it should be mentioned that if a legacy that was burdened with a trust to manumit was invalid from the beginning, the heir was compelled to carry out the manumission. D. 40.5.26.6; D. 36.1.55.

We further noted in headnote (2) to 6. 49, that this principle that an heir was not compelled to accept did not, under the Pegasian and Trebellian law, apply where the heir was appointed upon trust to turn the whole or an undivided portion of an inheritance over to another - in other words, where a universal trust was left to someone. In such case the heir might be compelled to accept pro forma, all his responsibilities ceasing upon his compliance with the trust. This principle applied where slaves were involved. They might compel the heir to accept in all cases whenever there was left them, not alone liberty, but an inheritance in addition thereto. Thus where liberty was left to a slave, either directly or indirectly (by a trust), and in addition thereto the inheritance by way of trust, he could compel the heir to enter. D. 36.1.23.1. So where an heir was asked to free a slave and to turn the inheritance over to A, and A, in turn, was directed by the testator to give the inheritance to the slave, the latter could compel the heir to enter. D. 36.1.17.16. See also D. 36.1.17.17. This was held to apply even in a case where liberty was left to the slave, and the inheritance to his child. D. 36.1.11.2. From the illustrations, it may be seen that grants of manumission were favored. See generally on this subject Buckland, Roman Law of Slavery 519, 520, 523, 524.

7.4.2. Emperor Antoninus to Valerius.

Although the codicil, in which you appear to have been bequeathed to the uncle of the deceased, has been pronounced forged, still if you acquired just freedom from the legatee therein before investigation of such accusation was commenced, the subsequent event does not invalidate freedom thus given. But according to the constitution of the divine Hadrian, the heir has the right to recover twenty gold pieces (\$60 from the manumitter).

#### 7.4.3. Emperor Alexander to Lucius.

Since you state that conditional freedom was given to certain female slaves, can there be any doubt that the latter's offspring, born before the happening of the condition, are born slaves and belong to the heirs? Relief is granted only to those who give birth to offspring after delay in granting freedom, making such offspring free and freeborn. (222).

#### Note.

Until the condition was fulfilled, the slave manumitted conditionally remained in slavery, and the offspring of a female slave accordingly was a slave. If there was delay, however, in making the manumission beyond the time that it should have been made, the offspring was free. See the next law.

#### 7.4.4. The same to Arrianus.

If a female slave, to whom fiduciary liberty was granted, lived in freedom with the consent of the master, she became a Roman citizen, according to the senate decree and the constitutions pertaining thereto, and the children to which she gave birth were freeborn. But if she never claimed her liberty, it is her fault, that the offspring, born in the meantime, are slaves. (222).

#### 7.4.5. The same to Dionysius.

A minor under the age fixed by law cannot, in his will, bequeath fiduciary freedom, except to those as to whom a proper reason is shown.<sup>1</sup> (222).

#### 7.4.6. The same to Maximus.

It is agreed that fiduciary freedom may be (provided for) and is then owing even to the female slave of another. Nor does the right thereto lapse, if the mistress (who owns her) and who received nothing under the will of the testator who bequeathed the fiduciary liberty, refuses, in the meantime, to sell her, because the freedom may be given when, in the course of time, the occasion for redeeming the slave may arise.

#### Note.

Inst. 2.24.2, states that liberty can be left to a slave by a trust charging an heir, legatee, or other person already benefited by a trust of the testator's, with his manumission, and it makes no difference whether the slave is the property of the testator, of the heir, of the legatee or of a stranger; for a stranger's slave must be purchased and manumitted; and on his master's refusal to sell, which refusal is allowable only if the

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<sup>1</sup> [Blume] See headnote to C. 7.1.

master has taken nothing under he will, the trust to enfranchise the slave is not extinguished, as though its execution had become impossible, but its execution is merely postponed; because it may become possible to free him at some future time whenever an opportunity of purchasing him presents itself. Another's slave could not be manumitted directly. C. 7.2.9.

7.4.7. The same to Nicomedes.

Those to whom fiduciary freedom is bequeathed in a last will, become the freedmen of those by whom they are manumitted.  
Promulgated April 1 (225).

Note.

A direct bequest of liberty can be made only to a slave who belongs to the testator both at the time of making his will and at the time of his decease. In such case the slave was freed by virtue of the testament alone, and no one, as in fiduciary manumissions, was asked to free him. Such slave was technically known as *orcinus*. Inst. 2.24.2.

7.4.8. The same to Eutychetes.

Since you state that fiduciary freedom was granted you upon condition that this should meet the approval of the wife of the testator, you may claim your freedom if the wife does not object, though she does not accept her part of the inheritance, and it all falls to the son.

7.4.9. (10) The same to Mercuriales.

If fiduciary freedom was left you, to take effect when the testator's son (and heir) should arrive at the age of twenty-five years, such bequest did not fail, though you state that the son died before the time fixed. The ancient law provided that the hope for freedom should not be cut off during the time that, had he live, he would have arrived at the age fixed.

Promulgated April 1 (231).

7.4.10. (9) Emperors Valerian and Gallienus to Daphnus.

Although a grant of liberty was not added when the testator appointed his slave as guardian for his sons, it is the accepted opinion that, through partiality for liberty and for minors, the testator is considered as having granted fiduciary freedom. 1. And even if he appointed not his own but another's slave as such guardian, knowing his status, it was accepted that he equally granted fiduciary freedom in such case, unless the contrary intention would clearly appear.

Promulgated Feb. 27 (260).

7.4.11. Emperors Diocletian, Maximian and the Caesars to Flavianus.

If you were a slave, and freedom was bequeathed to you by way of a trust, you can see that you cannot become free without manumission. 1. Hence if, while you were a slave, liberty was granted you by precatory words<sup>2</sup>, you should go before the president of

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<sup>2</sup> [Blume] i.e. by way of trust. The words commonly used to create a trust were: I beg, I request, I wish, I commission, or I trust to your good faith. C. 6.43.2; Inst. 2.24.3.

the province, so that, if he finds, upon investigation, that freedom is due you, he may compel the party, whose duty it is, to grant it, or if he hides, look after your interests by issuing a decree against him.<sup>3</sup>

Without day or consul.

7.4.12. The same Emperors and the Caesars to Ireneus.

It is declared by the authority of law that no fiduciary manumission is bequeathed by the words "I commend" (commendo), contained in a testament or codicil.

Subscribed at Sirmium April 15 (294).

7.4.13. The same to Pythagorida.

If the testator made a gift of you to his wife before his marriage, and afterwards left a legacy to his wife and also expressed a desire by precatory words in his testament or codicil, that you should be manumitted by his successors, there is no doubt that such successors are bound to purchase and manumit you and the wife by accepting the legacy, thereby gave her consent to such wish of the deceased and cannot refuse you freedom (by not selling you).

Subscribed Dec. 7 (294).

7.4.14. Emperor Justinian to Julianus, Praetorian Prefect.

Since it was disputed among the ancients whether fiduciary liberty could be left to a slave still in the mother's womb and who was expected to be born, we, in deciding the ancient dispute, and moved by partiality for liberty, hereby decree that fiduciary and direct liberty granted to a male or female still in the mother's womb, shall be valid, so that the child may see the light of day as a free person, although its mother is still in bondage.

1. And in case birth is given to several children, then whether mention is made of one child or of more than one, all shall alike be free when entering their first cradle, since it is better in a doubtful case, especially when liberty is involved, and because of partiality for it, to adopt the most humane construction of the intention.

Given at Constantinople Oct. 1 (530).

7.4.15. The same to Julianus, Pretorian Prefect.

When fiduciary liberty is bequeathed to a male or female slave, and the grant of liberty is delayed, such slave shall be given liberty by the order of the president without waiting for any action or any desire of the heir (who was ordered to grant it), but such slave shall have freedom the same as though he or she received a direct grant thereof from the testator, since it is impious and absurd that heirs should delay to comply with the testator's wish, particularly in a case involving liberty.<sup>4</sup>

Given at Constantinople Oct. 1 (530).

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<sup>3</sup> [Blume] If the defendant failed to appear, the slave was adjudged to be free. D. 40.5.26.7; see law 15 of this title.

<sup>4</sup> [Blume] See law 11 of this title and note. Doubtless a judicial order declaring a slave free, as here mentioned, was not issued till the person directed to manumit had been summoned to appear. See also law 17 of this title.

7.4.16. The same to the same.

In case a testator in his testament asked his heir to liberate one of the children of a certain female slave, to be selected by the heir, and the female slave having given birth to one or more children, no liberty was given to any such child during the lifetime of the heir, or the latter died while deliberating which child to manumit, it was much disputed among the ancients whether all the children or one or none of them should receive freedom. 1. We, in order to keep any evil intention of the heir in check, ordain that if he fails to carry out the testator's wish, and fails as soon as possible, to choose one of the children of the female slave and to give him or her liberty, he, and his heirs and successors, shall be compelled to give freedom to all the children. 2. Nor is this contrary to the testator's intention. For since he provided, in a general way, that one of the children should be free, and he made no reference to a particular one but had them all in mind, then if his wish is not carried out, all, without a doubt, receive freedom in accordance with the testator's will. 3. The same rule shall apply if the testator asked freedom to be given, not by the heir, but by a legatee or trustee. 4. For thus the heirs, legatees or trustees will, induced by fear, cause the testator's wish to be carried out in order not to suffer loss through the manumission of all the slaves. If they disobey, they may blame themselves for the loss, brought about not by our law, but by their own fault. Given at Constantinople Nov. 17 (530).

7.4.17. The same to the same.

In case some one bequeathed his slave upon condition that the legatee should manumit him, and the heir acted dishonestly in connection with this legacy, and failed to give the slave to the legatee, so that he was sued and the judge gave judgment not for the slave himself, but for his value, it was disputed among interpreters of the ancient law whether any obstacle was thereby put in the way of freedom; and if [it] were determined that liberty should, nevertheless, be owing, doubted by whom that was to be done, whether by the heir or the legatee, and if by the heir, whether the legatee would retain all or part or none of the money he received through the judgment. 1. Settling such dispute, we wonder why a judge presiding in such a case, should give judgment for the value, instead of directly for the slave, since his blemish (by not being set free) gave rise to the dispute. 2. Hence if any such case arises, no judge will be so stupid, as to give a judgment of that kind, and if the legatee demands the slave to be delivered to him, and two months elapse after joinder of issue, the slave shall be immediately set free, and not alone that, but the heir, on account of his disrespect, shall in addition be condemned to pay fourfold the amount of the expenses incurred by the legatee in the litigation, and the latter shall have the right of patron unimpaired. Given at Constantinople Nov. 17 (530).