

Book III.
Title XLIV.

Concerning sacred places and expenses of funerals.
(De religiosis et sumptibus funerum.)

Bas. 59.3; D. 11.7.

3.44.1. Emperor Antonius to Dionysia.

If the remains of your son are disturbed by the force of the river or if another proper and necessary reason arises, you may, upon order of the rector of the province, transfer them to another place.

Promulgated October 25 (213).

3.44.2. The same Emperor to Hilarianus.

If another has brought a dead body onto your place, not consecrated to the dead (*pura*),¹ or into your stone sepulcher, against your will or without your knowledge, he cannot thereby make it a place devoted to the dead (*religiosum*). But if someone has brought a dead body onto your place with your consent, it thereby becomes devoted to the dead. If this happens, then there is no doubt that the sepulcher (*monumentum*) is, by the sanctity of law, forbidden to be sold or hypothecated.

Promulgated May 1 (216).

Note.

D. 11.7.42 says: “A monument is, speaking in general terms, a thing handed down to posterity as a memorial; and if a body or remains should be laid inside it, it becomes a sepulcher, but if nothing of the kind is laid in it, it is simply a monument which is made by way of memorial, such as the Greeks call a cenotaph.” Again in D. 11.7.26, it is said: “A monument is anything that has been set up in order to preserve memory.” And in D. 11.7.6.1, it is said: “So long as there is a mere monument, it may be sold or given away; if it becomes a cenotaph—(a monument in memory of one who is not to be buried on the spot)—the proper rule is that it may be sold.” A place could not become consecrated to the dead (*religiosus*), unless by consent of the owner, except a place belonging to the decedent. D. 10.7.4. Only a moderate amount of ground adjacent to the sepulcher became so consecrated. D. 18.1.22; 10 *Cujacius* 902; see Law 4 of this title. A burial place of the enemy was not considered sacred. D. 47.12.5. If a stranger buried a dead body on another man’s place, public authorization was required to remove the dead body. D. 10.7.8.

3.44.3. Emperor Alexander to Primus.

The president of the province will order to be paid to you the legacy left you by the decedent, and the amount—according to the judgment of a good man, which you have shown to have paid out for his funeral and sickness.

Promulgated July 3 (223).

Note.

¹ [Blume] It became impure by being made a burial place.

Funeral expenses were a part of the debts of the decedent's estate, and ranked before all other debts, if the estate was insolvent. D. 10.7.45; C. 6.30.22.

3.44.4. The same Emperor to Licinius.

If you designate a burial place by the name of monument, you may know that it cannot be claimed by anyone as his own property, and if it was a household burial place, the right thereto belongs to all the heirs, and it cannot belong to one of them by any division. 1. Profane places, however, surrounding it, which have always belonged to the buildings in the neighborhood devoted to the use of men, belong to the person to whom these buildings, to which these profane places are attached, have fallen by partition. Promulgated November 2 (223).

Note.

“Household burial places is the expression used of a burial place which a man appoints for himself and his household; a burial place is called ‘hereditary’ where he appoints it for himself and his heirs.” D. 10.7.5. Slaves and children belonged to a man's household. Slaves, however, were not ordinarily heirs of a man, and children frequently were not heirs, particularly in view of the fact that the term “heir” did not, in Roman law, embrace legatees, but only parties who became the decedent's successor of the property or an undivided portion of it, and an “heir” was frequently but an executor of an estate. It will be noted by the foregoing law that “heirs” were included in the household, while members of the household would not be entitled to be buried in the “hereditary” burying place, unless they were also “heirs.” See 2 Karlowa 1048.

3.44.5. The same Emperor to Cassius, soldier.

The last wish of a soldier, expressed in his testament as to the construction of a monument for him, must not be neglected by his mother or father, or heirs. For although the right to inform against a person on that account has been taken away by former constitutions, still they cannot escape the odium and accusing conscience for leaving these last offices unperformed and neglecting the direction of the decedent. Promulgated April 24 (224).

Note.

An inheritance could be taken from an heir if he did not comply with the decedent's wishes as to burial. Paul. 3.5.13. But that law was abolished in A.D. 224. C. 6.35.5.

3.44.6. The same Emperor to Primitivus and others.

Inscriptions on monuments transfer to freedmen neither the rights of sepulcher nor ownership of a pure place. But, a prescription of a long time (ten or twenty years), if the beginning thereof was founded on proper grounds, will be of benefit to you. Promulgated June 24 (224).

Note.

Freedmen could not be buried in the burial place of their former master, unless they were the latter's heirs. D. 11.7.6. The mere fact that a patron of the freedman had some inscriptions on a monument connecting the freedman with a place, could not give the latter any rights. A “pure” place was one not consecrated to the dead.

3.44.7. Emperor Gordian to Claudius.

You are not forbidden to superimpose statues on a sepulcher or to add ornaments to a monument which you say you are about to erect. For anyone has the right to do what he wants in connection with his property if it is not forbidden by law.
Promulgated July 30 (241).

3.44.8. Emperor Philip to Julia.

The right of a household burial-place does not extend to these allied by marriage, or to near blood relatives who are not designated as heirs.²
Promulgated June 16 (244).

3.44.9. The same Emperor and Philip, Caesar, to Faustina.

That a place devoted to the dead cannot be sold is clear. Nor is it doubtful, on the other hand, that a field not so consecrated (*purum*) which is close to a monument, is governed by the rules pertaining to the profane, and may, therefore, be sold without hindrance.
Promulgated November 26 (245).

3.44.10. Emperors Diocletian and Maximian to Acquilina.

If the dead body has not yet been buried in a permanent sepulcher, you are not forbidden to transfer it.
Promulgated December 6 (287).

3.44.11. The same Emperors to Gaudentius.

We do not forbid persons guilty of a crime and subjected to deserved punishments to be buried.
Promulgated April 6 (290).

3.44.12. The same Emperors to Victorinus.

In order that the right of a municipality may be kept sacred, it has long been forbidden to bury the remains of dead persons within its limits.
Promulgated September 29 (290).

3.44.13. The same Emperors and the Caesars to Dionysius.

The right of sepulcher in a household or hereditary burial place, belongs also to outside heirs,³ but a household burial place belongs to the household, even though none therefrom are designated as heirs, but cannot belong to anyone else who is not designated as heir.
Subscribed November 11 (294) at Sirmium.

3.44.14. Emperors Gratian, Valentinian and Theodosius to Cynegius, Praetorian Prefect.

No one shall transfer a dead body to another place without a rescript of the emperor.
Given at Constantinople February 26 (386).

3.44.15.

² [Blume] 2 Karlowa 1049.

³ [Blume] See headnote C. 6.9 (5). See also 2 Karlowa 1049.

To no one shall be paid any tax for transferring dead bodies.