Book V.
Title XI.

Concerning solemn and simple promises of dowry.
(De dotis promissione vel nuda pollicatione.)

Headnote.

While not absolutely essential to a valid marriage, it was customary for a wife to bring a dowry to the marriage to help defray the burdens thereof, and it was the father's duty to furnish it, if he could. The dowry might consist of any kind of property, tangible or intangible. It was not essential that it be given at once. It might be promised to be given in the future, and dotal (dowry) agreements were frequently made in writing. The husband had control of the dowry during the marriage, but generally speaking, he was required to return it after the marriage was dissolved, though there were a number of exceptions. C. 5.18 headnote. Aside from dowry, the wife could have other property which she was at liberty to control herself. C. 5.14.8.

5.11.1. Emperor Alexander to Claudius.

You are wrong in thinking that you have a right of action as though for dowry promised you but not delivered, since neither any specific thing, nor any specific amount was promised, but it was only stated in the marriage document that the woman who married you promised to give a dowry.
Promulgated August 1 (231).

Note.

If neither a specific thing, nor a definite quantity was promised, the promise was void. If, however, the promissory added that he would give a dowry according to his judgment, or discretion (arbitratu), he was compelled to give according to the judgment of an honorable man. Law 3 h.t. That was Justinian's law. Riccobono 34 Z.S.S. 180 believed law 1 h.t. interpolated, striking out the reference to a specific thing or quantity, believing that the rescript originally read that the promise was not good because not by stipulation, a requirement subsequently changed. See law 6 h.t. He relies on law 3 h.t. and on D. 23. 3. 69. 4, both of which are believed to be interpolated by Abertario, L'Arbitrium Boni Viri, etc. 6-7, whose opinion is supported by Schultz, 48 Z.S.S. 692. Albetrario believes that when a promise according to the judgment or discretion of the promissory was made, the promise was good only according to the Byzantine, but not according to the classical law. That is probably correct. There seems to be no doubt that, in classical law, gifts had to enumerate the specific thing given, because each had to be delivered. A delivery of a proportion was not capable of delivery. Vat. frag. §§263, 287;[1] Consullatio 6, 10-11. See C. 8.53.11 note; Riccobono, 34 Z.S.S. 191. There is no reason to think that dowry gifts were an exception, until delivery was made unnecessary in the 4th century. See C. 8.53.1 note. See further 47 Z.S.S. 485-486; 45 Z.S.S. 443.

5.11.2. Emperor Gordian to Herodotus.

[1] Blume placed a question mark in the margin next to this penciled addition.

If your father in law promised by stipulation that he would pay interest on the promised dowry, the proper judge will direct that the amount shown to be due be paid to you.
Promulgated August 21 (238).

5.11.3. The same Emperor to Claudius.

If, when you married your wife, the party whom you mention solemnly promised to give you a dowry in her behalf, the amount not fixed, to be according to his best judgment, but he has failed to perform the stipulation attached to his promise, you may compel him to do so, by suing him in the proper action, for the stipulation seems to contemplate that the amount to be paid is an amount according to the judgment of a just man.[2]
Promulgated January 1 (240).

5.11.4. Emperors Diocletian and Maximian and the Caesars to Rufus.

If, pursuant to the desire of the person giving the dowry, you acknowledged in the dotal contract the receipt of more property than was actually delivered to you, you know that the pact giving the dowry is to be performed (consecuturum) as to the portion which is lacking in the delivery.[3]
Subscribed April 5 (293).

Note.

A dowry contract usually recited that the future husband had received it. C. 5.15.3. But such statement was not binding, and according to the instant rescript, he could sue for what had not been in fact delivered. If he did not do so, he could not be compelled, after the dissolution of the marriage, to return more than he had received. C. 5.3.1; C. 5.15.1. But the later laws made such statements in writing binding after the expiration of a certain period of time. C. 5.15.3 and note. For marriage (dowry or dotal) contracts see C. 5.14.

5.11.5. The same Emperors and the Caesars to Dasumiana.

If your father promised by stipulation on your behalf to pay a dowry to your husband, the latter, but not you, has a right of action against the heirs of your father.
Given November 24 (293).

5.11.6. Emperors Theodosius and Valentinian to Hierus, Praetorian Prefect.

A promise in any sort of words shall suffice to enforce payment of a dowry, which has once been agreed to be paid, whether the promise is in writing or oral, and even though no stipulation accompanied the simple promise to pay.
Given at Constantinople February 20 (428).

5.11.7. Emperor Justinian to Johannes, Praetorian Prefect.

When a father, without further mention, gave a dowry for a daughter or a prenuptial gift for a son, while the child, unemancipated or emancipated, possessed

---

[2] [Blume] See note to law 1 h.t.
[3] [Blume] See C. 5.3.1; C. 5.15.1 and 3.

maternal or other property which the father did not won, but of which he had only the usufruct, or while the child had any demands of any kind against the father, it was doubted among the ancients whether the father should seem to be given or promised to give the dowry or prenuptial gift out of the amount which he owed, making payment thereof in that manner, or whether it should be considered that the debt remained as it was and that the father's liberality suggested to him the giving of the dowry or prenuptial gift.

1. And many of the jurists were divided in their opinion. The doubt was increased if the marriage document stated, perchance, that the dowry or prenuptial gift was given out of the paternal and maternal property, it being doubtful in such case whether the gift or promised gift was to me made out of both properties equally, or out of them in proportion to the amount of each.

2. Settling the doubt on both points, we ordain that if the father did not add any explanation to the gift, but simply gave or promised the dowry or prenuptial gift, he shall be understood to have done this through his own liberality, leaving the debt intact. For the laws are not unknown which provide that it is altogether a father's duty to give a dowry or a prenuptial gift for his offspring.

3. And hence such liberality shall be considered genuine, irrevocable and unconditional, and the debt mentioned shall remain such.

4. But if he stated that he made the gift out of the paternal and maternal property, or out of property which he had only the usufruct, or as payment of the debt owing by him to the child, then if he is poor, the dowry and prenuptial gift shall be considered to have been given and made out of the property belonging to the son or daughter.

5. But if he possesses ample property, the dowry or prenuptial gift shall be considered to have been made or given out of his own property. For he might have given a dowry for his daughter and made a prenuptial gift for his son, according to his ability, consenting at the same time that his children might add to his dowry or prenuptial gift as much of their own property as they might wish, or all of it, so that it might be clear how much he gave and how much came from the property of the children. Thus he will not be able to boast of his own liberality without incurring any risk.

Given November 1 (531).

Note.

Judging from this law, there was evidently some pride attached to giving a dowry or prenuptial gift.

A child under paternal power originally could own no property of his own. Whatever he had was his father's (or grandfather's, whoever had paternal power over him.) But gradually such child retained the title to the property which he or she received from sources other than the father. This included property derived from the mother's side. See full explanation headnote C. 6.60.