

Book VIII.
Title LIV.¹

Concerning gifts made subject to a duty, or upon condition or for a definite time.
(De donationibus quae sub modo vel condicione vel ex certo tempore conficuntur.)

Headnote.

As stated at C. 6.45, a gift sub modo was one subject to certain requirements. The property vested in the donee subject to a duty to be performed by him, whereas in a condition precedent, the property did not vest until the condition was performed. If the duty could not be fulfilled, without fault of the donee, he was not held responsible. C. 4.6.8; C. 6.45.1. Originally it was transferred to the donee by a formal conveyance (mancipation) upon trust. Later, formless agreements or limitations annexed to delivery of property became recognized. C. 2.3 h.n. A duty, however, gave rise only to an obligation, hence only a personal action. That action at first was condiction, the unjust enrichment action, for cases here considered were part of the larger class mentioned in C. 4. 6, that where property was given for a purpose and the purpose failed, condiction lay. Even that action was apparently at first limited to the class of cases mentioned in law 3 h.t., for Justinian by C. 8.55.10, made gifts revocable in case of non-fulfillment of duty, indicating, perhaps, that previously no general right to condiction existed. Mitteis, R.P.R. 201, and C. 4.38.3. But a return of property or its value - for that was all that was possible by condiction - might not be adequate, and so in Justinian's time, if not earlier, a further right of action (by pre-written words - C. 4.64) was given to enforce the duty. C. 4.64.8; C. 8.53.9 and 22. If the duty was to deliver the gift, or part thereof, to a third party, the latter had, in later law--contrary to the general rule that an obligation could not be created in favor of a third person--an action analogous to that of the donor. Law 3 h.t. In exceptional cases, like in law 1 h.t., an analogous action in rem, also, was given by the emperors. See Beseler, 4 Beit. 311-314.

8.54.1. Emperors Valerian and Gallienus to Gamica.

If you show, as you allege, that you made a gift to your granddaughter, subject to the duty that she should furnish you certain support, you have in such case an analogous action in rem (for the recovery of the property), upon the ground that she has refused to comply with the condition; that is to say, you have an action in which the former ownership may be restored to you. Indeed condiction, that is to say, an action in personam lies in such case, but former divine emperors ordained that in that event an action in rem also, for the recovery of the property, should lie. Promulgated November 26 (258).

Note.

There has been much controversy whether the analogous action in rem here given was good against the world, and as to its limitations generally. See 26 Z.S.S. 119, and C. 3.32 h.n.

¹ [Blume] Revised 10/3/31.

8.54.2. Emperors Diocletian and Maximian to Aurelius Zeno.

If you made a gift of lands subject to the limitation that upon the death of the recipient it should revert to you, the gift is valid, since it may be made for a time, certain or uncertain, the limitation, of course, which is annexed, to be observed.
Promulgated March 11 (286).

Note.

The principle that a gift for a time was valid, was an innovation. The contrary thereof is stated in Vat. Fr. §283, of the year 286 A.D., which was the original of this rescript.

8.54.3. The same to Julia Marcella.

In case a gift is made subject to the duty that after a certain time the property given should be turned over to another, it was provided by the authority of the ancient law that in case that he to whom the benefit of such bounty was given² had no stipulation, and the agreement was not carried out, the author of the bounty of his heirs should have a right of an action in personam (condictio). 1. But since, by the benign interpretation of the law thereafter, the divine emperors permitted him/such other who exacted no stipulation to bring an (analogous) action according to the donor's wishes, you will have the right of action which your sister had, while living.
Promulgated at Sirmium September 21 (290).

Note.

A contract in favor of a third person was ordinarily void. C. 4.27.1 note. Here an exception was made, as there was in a few cases. See C. 4.39.5 n.

8.54.4. The same Emperors.

A completed gift does not admit of subsequent conditions. Hence, if your father added conditions some time after making a gift, there is no doubt that this could not prejudice his grandsons, the sons of your brothers.
Given October 1 (291).

8.54.5. The same and the Caesars to Dexippus.

If a mother made a gift to her daughter in her father's power, upon condition that she should be emancipated within two years, (then) though she, having become sui juris, did not hold it (the gift) (strictly) under the wish of her mother, still having become sui juris in some manner, namely by the death of the husband (of the mother) and father (of the daughter), she can firmly hold and claim the gift left in pattern of a legacy.³
Subscribed at Nicomedia December 13 (294).

² [Blume] The person to whom the property was to revert.

³ [Blume] C. 6.25.3.