

Novel 87.

Concerning gifts made by curials in contemplation of death.
(De mortis causa donatione a curialibus facta.)

Emperor Justinian Augustus to Johannes, glorious Praetorian Prefect of the Orient
the second time, ex-consul ordinary and patrician.

Preface. It is our will that the frauds of curials not inflict any damage on the public, but that the law oppose all such plans.^a After we forbade curials from making gifts, in that we did not permit to give away immovable property or dispose of more than one-fourth thereof by testament and directed three-fourths thereof to be preserved for the curia,^b we learned that in circumventing the law they devised the following frauds against it. We found there was a doubt among the ancient jurists whether a gift in contemplation of death was a gift or a legacy, some considering it a gift, others a legacy. We decided in favor of the opinion of the most and the best jurists, declaring it to be a legacy^c and that it did not need to be registered, but that such gift might be made and any conditions [might be] attached thereto by the donor, and that if he had done this, he might waive the right to revoke the gift in case he should repent thereof, and that he might insert in the gift in anticipation of death any conditions that he wished, as was stated by the learned Julianus, which we have set forth in the 39th book of the Digests^d—for we have compiled the ancient laws and our laws in a compendium. When the curials knew of this, they thought that they might make gifts in anticipation of death in that manner, and insert therein an agreement waiving the right to revoke it in case of repentance, and insert some other conditions to these gifts, as they might please, so that they were at liberty to make gifts free from revocation and thus diminish their property.

Notes to Preface.

- a. See C. 6.62.4; C. 10.35.1.
- b. See Novel 38, c. 1; Novel 89, c. 6; Novel 101, c. 3.
- c. C. 8.57.4.
- d. D. 39.6.13-18.

c. 1. Although we already, by former laws, closed every avenue to them to leave more than one-fourth by testament or make a gift thereof, still in order to make an end of their frauds, we therefore also ordain now, that no curials shall be permitted to make any gift in anticipation of death, except only as a prenuptial gift for himself or his sons, or a dowry to the extent that is permitted by our constitution^a for daughters who marry. Nor can they give immovable property away in any other manner, but they shall always retain it subject to curial burdens. A sale only is permitted them according to the rule of our new constitution.^b (In other cases), however, gifts in anticipation of death shall remain valid, and other persons, except curials, may make such gifts to whomever they wish, and may insert therein, if they wish, a waiver of revocation thereof in case of repentance. But in such case, too, such gifts shall retain the status of gifts in anticipation of death—which we hereby further ordain—and such gifts shall remain valid and in force. We do not now ordain this for the first time, but we interpret and ratify by our voice a former enactment, in reference to all persons, except curials, as stated, and that because of our zeal for the benefit of the fisc.

a. See Novel 38, c. 1; Novel 101, c. 3.

b. This law is no longer extant.

Epilogue. Your Glory will take care to observe this our will, declared by this law, and devote the greatest care to the benefit of the fisc.

Given May 18, 539.