Book VI.
Title XX.

Concerning putting property brought into hotchpot-collation.
(De collationibus.)

D. 37.6; Bas. 41.7.19.[1]

Headnote.

Collation or bringing into hotchpot is the bringing of certain property of certain heirs into a common mass or fund for the purpose of equalization. When several descendants succeeded jointly to an inheritance, the circumstances might be such as to impose on them, or on some of them, a duty to bring property acquired by them into the common fund in order that the inheritance might be justly distributed. The principle was first applied in the case of an emancipated child who claimed to be admitted to the right of possession of the inheritance (bonorum possessio). The praetor required him to bring all of his property into hotchpot, on the ground that, if he had remained unemancipated, all his property would have belonged to his father and would have formed a part of the latter's estate. If he did not want any part of the inheritance, he was not required to collate. C. 3.36.25. On the same principle, the dowry of a daughter or granddaughter, too, was required to be brought into hotchpot. Later, unemancipated children became more and more able to acquire and hold property of their own, and under the later rule of hotchpot, all descendants who had received certain benefits from their ancestor in the lifetime of the latter, were compelled, when the state of the ancestor came to be distributed, to bring these benefits into hotchpot. The decedent, however, had the right to exempt descendants form this rule. And at one time this exemption existed in all cases where a descendant received a certain portion under the will of the decedent and no mention of collation was made. The exemption was presumed from that fact alone, as is shown by some of the laws in this title. But this rule was changed by Nov. 18, c. 6, by which an express provision giving exemption was necessary. The benefits above mentioned, which were required to be brought into hotchpot, included, in the absence of a contrary direction, dowry, prenuptial gifts, and under certain circumstances, gifts among the living. Sohm, Institutes 590-591; C. 3.29; Mackeldy §751; Buckland 322, 362. A special case in connection with such gifts is set forth in C. 3.36.12, which should be read in connection herewith. Unless, however, an unemancipated child would suffer thereby, an emancipated child was not compelled to make collation. D. 37.6.1.5. And if an emancipated child upset a will, and lost legacies as large as his share, there was no collation, as he had gained nothing. D. 37.6.1.4-7. Other facts in connection with this principle are found in the law of this title. As to the collation under modern civil law, see under the subject "collatio" in the modern C. J. 962.[2]

What has been said does not apply to property which might have been given to children, particularly sons, as a peculium, special property, by the father, just as a slave

[1] Blume penciled in here "See C. 3.28 about 34-37."
[2] This appears to be a reference to the *Collatio Bonorum* entry at volume 11 Corpus Juris 962 (1917).

generally had a peculium, special property, with which he might carry on trade or business. Such property did not really belong to the son, but was in fact the property of the father, and when the father died such property was considered as a part of his estate, and was required to be put into the common fund for the purpose of dividing up the inheritance. C. 3.36.13; law 12 ht. The term "collation" or bringing into hotchpot was not, however, applied in such case, although the principle is the same.

6.20.1. Emperor Alexander to Deuteria.

It is manifest law that emancipated children who are appointed as heirs in a testament and receive the inheritance thereunder, need not collate property which they received as a gift from their father for the benefit of a brother, if the father did not required that to be done by his last wishes.[3]
Promulgated July 13 (224).

6.20.2. The same Emperor to Primus.

If a father dies intestate, leaving two sons, and a daughter on whose account he had promised a dowry, the portions of the inheritance are equal, and the dowry must be brought into hotchpot, so that the portions of the brothers may not in any way be obligated for the dowry.
Promulgated September 10 (224).

Note.

The only way in which the portions of the sons could be released was, of course, only by the assumption of the indebtedness by the daughter. 9 Cujacius 639.

6.20.3. The same Emperor to Alexander.

An agreement contained in a dotal document that the woman should be content with the dowry given in connection with the marriage, and should have no further claim on her father's property, is not valid under the law, and the daughter is not on that account prohibited from inheriting from her intestate father. But she must bring the dowry which she received into hotchpot for the benefit of the unemancipated brothers.
Given June 18 (230).

Note.

The law gave the daughter certain rights of succession, and an agreement contrary thereto was void. D. 38.16.16.

6.20.4. Emperor Gordian to Marinus.

Daughters must bring dowry into hotchpot only if they inherit on intestacy or claim contrary to a will; nor is it doubtful that the dowry given or established by the father, either from or with his won or from or with another's property, must be brought into hotchpot for the benefit of unemancipated brothers. But the opinion prevailed, after varying opinions, that only the dowry coming from the father's property need be brought into hotchpot, as to persons not members of the family of the deceased.[4]
Promulgated March 12 (239).

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[3] [Blume] See headnote.
[4] [Blume] Including, of course, emancipated sons.

Note.

The rule announced in this law, that daughters were required to bring all dowry into collation for the benefit of unemancipated brothers, was changed by law 21 of this title and C. 6.61, under which dowry or other gifts to a child, which did not come from the father's property - called adventicia - were not required to be brought into hotchpot.

6.20.5. The same Emperor to Alexandra.

You had no right to reclaim dowry during continuance of the marriage. For although you must bring it into hotchpot for the benefit of your brother when your father has died intestate, still you could not on that account bring an action against your husband, but you will simply get from your father's inheritance that much less.
Given September 5 (239).

6.20.6. The same Emperor to Claudius.

Only property which emancipated sons had at the time of their father's death has been customarily put in hotchpot for the benefit of their unemancipated brothers, after debts owing by the former to others have been first paid.
Given April 25 (244).

Note.

Property that was lost by sons without their fault was not considered. D. 37.6.2.1 and 2. A similar rule was adopted as to the dowry given to daughters. Nov. 97, c. 6, appended to this title.

6.20.7. Emperor Philip to Tyrrania.

The law is clear that a daughter appointed as heir in her father's testament, need not bring her dowry into hotchpot for the benefit of her brothers and co-heir, unless the father specifically required that to be done.[5]
Promulgated April 26 (246).

6.20.8. Emperors Diocletian and Maximian to Callippus.

If your sister cheated you in the division of your father's property, by not bringing into hotchpot for your benefit the dowry which she had received from your intestate father, the president of the province, having examined the allegations of the parties, will order the dowry to be put in with the other property, and, after taking an account, he will order her to restore to you any excess amount which he finds her to have received. This is true though the division was made by an appointed arbitrator.
Subscribed July 10 (290).

6.20.9. The same Emperors and the Caesars to Onesimus.

If both of you were emancipated by your common father, the rule of hotchpot has no place. But if your brother was in his father's power at the time of the latter's death, you (alone) being emancipated, and it is not shown that your father left any testament or

[5] [Blume] Rule changed by Nov. 18, c. 6. See headnote.

last wish, the rule of the perpetual edict definitely requires that when you inherit your father's property on intestacy, you must bring (what you have) into hotchpot.[6]
Subscribed at Heraclia April 26 (293).

6.20.10. The same Emperors and the Caesars to Irenaea.

Since a daughter inherits property left to her by her father in a codicil by way of trust as an outsider (extero jure), she cannot be compelled to bring her dowry into hotchpot.
Subscribed Sirmium November 26 (293).

Note.

To the same effect is D. 37.7.4. A person not an heir need not bring any property into hotchpot. D. 37.7.9. A person merely receiving a legacy or trust was not considered an heir - a rule contrary to our conception of that term. An heir, under the Roman law was, generally speaking, a person who received, either on intestacy or under a testament, all or an undivided portion of an inheritance. However, a legatee or beneficiary of a trust might, in turn, receive such undivided portion from an heir.

6.20.11. The same Emperors and the Caesars to Artemia.

When a posthumous child, passed over in a testament, breaks it and succeeds on intestacy, an emancipated son must, as provided by the perpetual edict, bring his property into hotchpot when seeking the right of possession of the inheritance, since this would have to be done also if the child, who would have been a self-successor (suus), had been born in the lifetime of its father, and the law is not doubtful that rights of action will be denied emancipated children if they do not comply with the law providing for collation.
Promulgated December 28 (293).

6.20.12. The same Emperors and the Caesars to Nilanthia.

There is no doubt that actions for an inheritance are denied to a daughter who, tho she remained in her father's power, fails to bring into hotchpot the dowry which she received from her father, for the benefit of her unemancipated brothers. 1. It is, therefore, advisable and in accordance with law that you bring your dowry into hotchpot for the benefit of your brothers whom you state to have been in the power of your father at the time of the latter's death. 2. It is, moreover, absolute and clear law, that your brothers, while unemancipated, cannot keep as their own their special property (peculium), if it is not shown to be their special military-property, or that it has been left them, but is a part of the paternal inheritance to be divided, without reference as to who0 has possession of such property which has such source and is still a part thereof.
Given at Sirmium January 22 (294).

Note.

While an unemancipated child was compelled to collate his special property - pin money - (peculium) which he might have, the property which he acquired in connection with his service as a soldier remained his own. That was true also with property which might be given him in a testament of the decedent who left the inheritance, for such property was acquired by him after the death of the decedent. 9 Cujacius 642. See laws

[6] [Blume] See law 21 of this title.

14 and 15 of this title. Of course, if too great a proportion of the property was left him, so as not to leave other children their share to which they were entitled to under the law, such portion was subject to reduction.

6.20.13. The same Emperors and the Caesars to Antistia.

If you acquired a farm by gift after the death of your father, you sister cannot claim any portion of it. But if it was given to you by your father while you were unemancipated, and you inherit from you father in common with your sister, you ask to keep it as your special property contrary to law.[7]
Given at Sirmium February 8 (294).

6.20.14. The same Emperors and the Caesars to Stratonica.

If your former husband was heir to his intestate father, and a posthumous son in turn inherited from him, the president will not hesitate to deny an action for the inheritance to the aunt of your son, the right which she had at the time of the death of her father, if she fails to bring her dowry into hotchpot.
Promulgated at Trimontium February 23 (295).

Note.

The husband here mentioned, and the aunt, were brother and sister. This sister was required to bring the dowry which she received from her father into collation for the benefit of her brother, and the present law provides that she must do so also for the benefit of the son of her brother.

6.20.15. The same Emperors and the Caesars to Philippus.

Emancipated children are not compelled to bring into hotchpot what they acquired after the death of their father, but they may retain that, and have the property of the deceased divided in accordance with the inherited portions.[8]
Given December 13 (294).

6.20.16. The same Emperors and the Caesars to Socrates.

It has been the accepted opinion based on the best of reasons, that a daughter who inherits from her intestate father in common with her brothers, cannot receive anything in an action in partition except what has been left her in a codicil, if she fails to bring her dowry into hotchpot.[9]
Given December 28 (294).

6.20.17. Emperor Leo to Erythrius, Praetorian Prefect.

In order that children, male or female, emancipated or unemancipated, may be protected equitably and equally in their right in an intestate inheritance-succession, that is to say, in cases when either no testament was made, or when that is broken through a claim for the right of possession of an inheritance contrary to a will, or in an action against an unjust testament, we, in the desire to do justice, have deemed it best to insert in

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[7] [Blume] See C. 3.36.18.
[8] [Blume] See note to law 12 of this title and law 13.
[9] [Blume] See law 10 of this title.

this law that in dividing the property of an intestate decedent, the dowry as well as the prenuptial gift which the father, mother, grandfather or grandmother, great-grandfather, great-grandmother, paternal or maternal, has given or promised for a son or daughter, grandson or granddaughter or great-grandson or great-granddaughter, shall be brought into hotchpot, without reference to the fact, whether the aforesaid relatives made the gift direct to the brides on behalf of their children, or made it to the bridegroom, in order that he might make the gift to the bride; so that in dividing the property of an intestate parent, whose inheritance is in question, such dowry or prenuptial gift, derived from the property of the deceased, shall be brought into hotchpot. Emancipated children of either sex shall do the same, according to the tenor of the preceding laws, with the property which they received from their parents, as is usual, at the time of their emancipation, or which they received from them thereafter.[10]
Given February 25 (472).

6.20.18. Emperor Anastasius to Constantinus, Praetorian Prefect.

We order that children who shall [???] have become their own masters by the authority of our law,[11] upon petition and imperial rescript, shall, as in the case of those who are emancipated pursuant to ancient law, be compelled to bring property into hotchpot according to the provisions of law governing other emancipated children.
Given at Constantinople July 21 (502).

6.20.19. Emperor Justinian to Mena, Praetorian Prefect.

We have justly thought of settling the question, much discussed among certain persons, concerning bringing dowry or a prenuptial gift into hotchpot. 1. For if a man died intestate, leaving a son or sons or a daughter or daughters, or grandchildren of either sex and of any number of a deceased daughter, or again if a woman died, similarly leaving a son or sons, likewise grandchildren of either sex, born of a deceased son or daughter, there was no doubt as to the right of the inheritance-succession, but it was clear that these grandchildren received only two parts of their mother's or father's portion, and the third part went, according to a constitution, to the paternal or maternal uncle or paternal or maternal aunt. 2. Much doubt arose as to bringing into hotchpot a dowry or prenuptial gift which a decedent had given for a surviving son or daughter, or a deceased son or daughter, the surviving children of the decedent contending that they should not put dowry and prenuptial gifts into hotchpot for the benefit of children of a deceased brother or sister, because no constitution so provided, while the grandchildren of the decedent not only resisted such contention, but also claimed that the burden of bringing into hotchpot, imposed by the constitution of Arcadius and Honorius, of diving memory, on themselves, applied only as to their maternal uncles and not as to their paternal uncles or aunts or maternal aunts. 3. Settling such subtle disputation, we direct that sons or daughters of a decedent shall bring into hotchpot for the benefit of grandchildren of such decedent the dowry or prenuptial gift given them by the decedent, and that, similarly, the grandchildren of the decedent shall bring into hotchpot, for the benefit of their paternal and maternal uncles and aunts, any dowry and prenuptial gift conferred by the decedent

[10] [Blume] See modification by law 21 of this title.
[11] [Blume] C. 8.48.5. See also C. 6.58.11.

on the deceased son or daughter, so that, when such property is mingled with the property of the decedent, two parts of the portion, which their parent, if living, would have received, shall go to the grandchildren, the third part thereof, together with their own portions, shall go to the sons and daughters of the decedent whose inheritance is in question.
Given at Constantinople June 1 (528).

Note.

It will be noted here that grandchildren who were the offspring of a grandparent through a female, did not receive the full share to which their parent, if living, would have been entitled. This was provided by C. 6.55.9. This inequality was abolished by Nov. 18, c. 4, and Nov. 128. Not only were all grandchildren, whether related to the decedent through a female or male, placed on the same footing, but grandchildren were, as a group, given the property to which their parent, if living, would have been entitled. See fuller not at C. 6.55.9.

6.20.20. The same Emperor to Mena, Praetorian Prefect.

We hereby clear up, by a plain sanction, a point which, without reason has been brought into doubt by some persons. All property which is charged up as part of their legal fourth[12] to those who have the right to bring an action against an unjust testament, shall also be brought into hotchpot by heirs for the benefit of the co-heirs, if the person whose property they inherit has died intestate. 1. This shall apply not only to other things, but also to the gain made by one of the heirs who has a (purchasable) official position[13] pursuant to the purchase thereof for him out of the money of the decedent, so that the value thereof at the time of the death of the decedent, shall not only be computed as a part of this legal fourth when a testament is made, but shall also be brought into hotchpot in case of intestacy. 2. But the rule, that all property computed as a part of the legal fourth shall also be put into hotchpot in case of intestacy, is not true in the converse case, and no one can also say that the property that is to be put into hotchpot is to be computed as a part of the legal fourth in the case of those who have the right to bring an action against an unjust testament; for property which is to be put into hotchpot is to be computed as part of such legal fourth only when this is expressly stated.[14] 3. Besides, since a prenuptial gift or dowry, given by a father, mother or other ascendant for a son,

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[12] [Blume] The legal fourth, dealt with fully at C. 3.28, applied only to a case where a decedent made a testament. He was required to leave to descendants at least a fourth of the amount which they would have received had he died intestate. This portion was later increased. In case this portion was not left to the descendants, they had, generally speaking, the right to set the will aside as undutiful. The present provision provides that whatever could be reckoned for the purpose of this fourth, should be brought into hotchpot. Hunter 850. The provisions should, however, be construed in connection with other provisions to the effect that nothing received after the death of the testator need be collated.

[13] [Blume] As to salable public offices, see not C. 8.13.27.

[14] [Blume] There were definite provisions of law as to what should be counted as part of the legal fourth. These provisions governed without reference to what was required to be brought into hotchpot.

daughter, grandson, granddaughter and other descendants must be put into hotchpot, so when one of the children has or shall have received a prenuptial gift or dowry, but some other ordinary gift, we order, lest injustice be done by compelling a person who received a prenuptial gift or dowry to bring it into hotchpot, but not compelling a person to do so who received only an ordinary gift, that if a situation of that sort arises, the person who receives not prenuptial gift or dowry from his parents but only an ordinary gift, that if a situation of that sort arises, the person who receives not prenuptial gift or dory from his parents but only an ordinary gift, shall bring such it into hotchpot the same as the person who is compelled to do so with a prenuptial gift or dowry, and shall not refuse to do so on the ground that that should be done only in case the maker of the gift should make that a condition thereof.
Given at Constantinople August 6 (529).

6.20.21. The same Emperor to Hohannes, Praetorian Prefect.

That no one may in the future have any doubt as to the rule of hotchpot, we have deemed it necessary to add this to the constitution which we have already made in favor of children,[15] that the property of children in which parents acquire no interest, shall not, after the latters' death, be subject to the rule of hotchpot among the children. 1. For as children were not, according to the ancient law, compelled to put the special-military-property (castrense peculium) into a common fund in dividing the inheritance, so other property of a child, in which the parents acquire no interest, shall also remain his own.
Given October 18 (532).

[15] [Blume] See C. 6.61.