

Book VI.  
Title XL.

Concerning enforced widowhood and repeal of the law Julia Miscella (Miscellaneous Julian law).  
(De indicta viduitate et de lege Julia Miscella tollenda.)

Bas. 44.29; 116-117.<sup>1</sup>

Headnote.

Under the law Julia Miscella, a wife, to whom a bequest was left upon condition not to remarry, could avoid the condition, and receive the bequest upon taking oath within a year after the husband's death the she was remarrying for the purpose of begetting children. If she did not claim the legacy within a year and had remarried, she could not get the legacy; if she had not remarried, she could receive it upon giving a promise - Mutiana cautio, which was applicable in all cases where a legacy was left upon condition not to do a certain thing; D. 31.76.7; D. 35.1.18; D. 35.1.79.2 - that if she remarried she would restore the legacy with all the profits derived from it. The same law also applied to a case where a wife left a bequest to the husband upon condition that he should not remarry. This law, with the promise, was repealed by this title, but was restored with some modification by Novel 22, cc. 43, 44. Hugo Don., Comm. 558.

6.40.1. Emperor Gordian to Bonus.

If a legacy was left to another upon condition that the wife (of the testator) should not, after the death of her husband, remarry, the condition is broken when the second marriage is celebrated, and the legacy cannot, therefore, be claimed.  
Promulgated July 20 (241).

6.40.2. Emperor Justinian to Julianus, Praetorian Prefect.

Dispelling all obscurities of the Miscellaneous Julian law, we permit no one to take an oath according to the aforesaid law, but this law, together with the provisions for the Mucianian promise in connection therewith, shall be utterly void. Women shall be permitted, despite the threat of their husbands by which widowhood is enjoined on them, to enter into another marriage without taking an oath that they do so for the purpose of procreating children. The penalty fixed for such case shall no longer be enforced, and she may have the property left her by her husband, whether she have children or not, lest perjury be committed through legal compulsion and a colorable oath. They will not, however, in such case, receive the ownership of the property left them, if there are children, but only the usufruct thereof. The proprietary right belongs to the children of the first marriage according to the provisions enacted concerning second marriages and the benefits accruing to women in connection therewith. 1. Since nature made women for the purpose of producing offspring, and that is their greatest desire, why should we knowingly and advisedly permit perjury to be committed? 2. The taking of such oath shall, therefore, cease; the miscellaneous Julian law, together with the Mucianian promise

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<sup>1</sup> This appears to be an incomplete citation, unrelated to the Basillica reference.

introduced in connection therewith, shall no longer exist and shall be banished from our empire. For we prefer to see our empire increased by the birth of many children rather than to be afflicted by impious perjuries, for it is cruel that laws, which punish perjury, should open up the opportunity for perjury.

Given at Constantinople February 20 (531).

6.40.3. The same Emperor to Johannes, Praetorian Prefect.

It is clear that, according to the intent of the enactment recently promulgated concerning the law Julia Miscella, not only is that law repealed as to women, but as to men as well. 1. Lest credulous men, however, continue to doubt, we expressly ordain that the law Julia Miscella and the senate decrees made concerning it, as well as the Mucianian promise introduced in connection with such marriages (contemplated by said law) shall be abolished not only as to women but also as to men. 2. But as we find certain cases mentioned in Ulpian's Sabinian books to which the law Julia Miscella does not apply, we ordain, in order that none many think that the law applicable to these cases is also repealed, that if anything is left to women in these words: "If she shall be a widow," or "while she shall be a widow," or "as long as she shall be a widow," or if, on the contrary, anything is left to husbands thus: "If they shall lose their wives," or "whenever they become widowers" - in all such cases they may claim and legally take what is left them. For the property is not in such cases left to women to remain widows or to men to remain widowers, so that the law Julia Miscella, which is already abolished, could not even previously have had any application. But as soon as the condition happens, the bequest in favor of such persons may be claimed immediately, since such bequest - left in a lump sum or as an annuity - seems to be left upon condition, so that it might be a solace in grief.

Given at Constantinople November 1 (531).