Book VI.
Title XLIV.

If a wrong reason is stated in leaving a legacy or trust.
(De falsa causa adjecta legato vel fideicommisso.)

Bas. 44.16.31; D. 35.1.

Headnote.

The three following titles deal with the reason, purpose or conditions expressed in a legacy or trust. A wrong reason assigned did not invalidate the bequest. A gift sub modo was an absolute gift with a direction as to its application; if the direction was positive, the legatee could not compel delivery till he had given security for its application. D. 32.19. Bequests might be conditional or unconditional. Every lawful condition was valid, but a legacy-hunting gift was not permitted in this connection any more than in connection with the appointment of heirs. D. 30.64. As noted in title 41 of this book, Justinian allowed the imposition of a legacy or trust on the heir or on a beneficiary as a penalty for the non-performance of a certain legal act, or the performance of a certain illegal act. In a case of a negative condition, for instance, that the legatee should not remarry, or should not do any other thing, the legatee took the gift at once, giving security for return if he broke the condition. D. 35.1.7. This has already been mentioned at headnote C. 6.40, Justinian for a time modifying this rule as to a legacy or trust given to a wife upon condition not to remarry. A bequest might be made dependent also on time, whether the time was certain or uncertain; it might thus be left from a certain day or to a certain day, which was not permissible in the appointment of heirs. Mackeldy §766; Buckland 336.

6.44.1. Emperor Antoninus to Septimus.

The words of the testament, which you have enclosed, either declare the debt owing to the testator to be paid or they clearly show the wish of the testator that the debtor shall be released. And hence, either the debt which has been paid, cannot be sued for, or a right of action for the release of the debtor arises out of the testament, unless it can be clearly proven that the testator did not wish to release the debtor, but had fallen into an error in thinking that the debt had been paid.
Promulgated February 23 (213).

6.44.2. Emperor Alexander to Faustina.

Even if a debt does not in fact exist, a false statement (by the testator) that it does, does not destroy the legacy (in the amount of the stated debt) and a right of action for it arises out of the testament.
Promulgated November 7 (222).

Note.

This seems to present a wrong description (demonstratio), as much so as a wrong reason (causa). A wrong description was present for instance in this: "I give the estate which I have bought from Titius," when the estate given was not in fact so bought. A wrong reason was present e.g. in this: "I give so and so to Titius, because he looked after

my affairs," when Titius did not in fact do so. Generally, neither a wrong description nor a wrong reason assigned avoided a legacy. Inst. 2.20.30 and 31; Ulp. 24.19. There were exceptions. Thus a legacy was void, if left to someone as testator's child, who was not such. C. 6.23.5. So a legacy to one as a brother was void, if the legatee was not a brother in fact. C. 6.24.7. Similarly a gift promised to one as betrothed could not be recovered, if no actual betrothal existed. C. 5.3.5.

6.44.3. The same Emperor to Verina.

If your husband bequeathed your dowry to you, without stating the amount, but simply stating that you should have whatever he received or would receive as dowry, and you make a claim for it under the testament, the amount paid to him must be shown. 1. But if he stated a definite amount, that amount is due you, even though not given as dowry, just as any other legacy, but not with the same right attached to dowry.[1]
Promulgated May 7 (223).

6.44.4. Emperor Gordian to Alexander.

If, as you say, your wife died during marriage and you returned her dowry to her father, or if, not having returned it, you are, as you allege, protected by a provision of the testament, in which your former father-in-law stated that he had received all of the dowry back, you should not worry that you might be sued on that account, since, if the dowry has been repaid, no right of action remains; if it has not been repaid, you have a defense against the claimant, arising out of the will of the decedent.
Promulgated May 18 (240).

6.44.5. Emperors Diocletian and Maximian and the Caesars to Severa.

It makes a great deal of difference whether your husband left you, as a legacy or trust, the amount of the dowry received or the amount of dowry stated in the marriage agreement, for in the former case you may only claim what is shown to have been delivered, while in the latter case you may claim the amount specified in the marriage-contract; and no erroneous statement of the amount will be a defense.
Subscribed November 18 (294).

[1] [Blume] A legacy would not, for example, be paid at all, if the estate was insolvent.