

Book VI.
Title XLV.

Concerning legacies and trusts which are left subject to a duty (sub modo).
(De his quae sub modo legata vel fideicommissa relinquuntur.)

Bas. 44.28; D. 35.1; 3 Savigny 226.

Headnote.

Legacies were frequently, and inheritances sometimes, left subject to a duty--that is to say direction were given the beneficiary to do certain things, as to erect a monument, to marry a certain person, to look after the poor, or deliver the property given, or part thereof to another. The direction had to be carried out, if possible. Law 1 h.t. C. 4.6.8. Where part of the property was to be delivered to another, the case was treated as though a trust was left.

6.45.1. Emperor Antoninus to Saturnina.

In legacies or trusts, a definite purpose is treated the same as a condition. But if it is not your fault that you do not comply with the testator's wish, but the fault of him whom you were directed to marry, you are not prevented from retaining the property left you.

Promulgated December 28 (211).

Note.

A legacy subject to a duty was not like a legacy subject to a condition (precedent), except in some respects. Compare C. 6.46.4 note. In the first case, the legacy vested in the legatee, though a bond was required for the fulfillment of the duty. A conditional legacy did not vest unless the condition (with some exceptions) was fulfilled. There was striking similarity, however, when the condition was a negative one, i.e. one not to do a certain thing. In such case, too, the conditional heir or legatee could acquire the property upon giving bond. C. 6.40 head note.

6.45.2. Emperor Gordian to Ammonius.

Though the words: "I leave to Titius ten thousand or a house, provided that he shall transfer to Mevius five thousand thereof or said house," formerly gave rise to a claim neither of a legacy nor a trust, still such claim was held valid by the divine Severus in case of manumission. 1. And in becoming matters, for the purpose of favoring a last will which disposes of property, it is not unjustly considered that such words, whether they fix a condition or state a purpose, whether they direct the giving or doing of something, should always give rise to an action on a trust, provided that in cases of condition, the fulfillment thereof has taken place. 2. And in case the testator, in leaving a legacy or trust, forbids the legatee or the beneficiary of a trust, or his heir or any other person, to claim a certain debt, the debtor has a defense against a suit of the legatee or cestui que trust, to the extent of the amount of the trust or the legacy bequeathed. Promulgated August 8 (240).

Note.

A legacy was given with a limitation. A legatee could not be charged with a legacy. H.t. C. 6.37. And it was evidently thought that the legatee here was not charged by the use of such technical words formerly required to create ... C.6.43.2. But the emperor held oth... not, however, an entirely new... Mitteis, P.R. 196 note.¹

¹ The ellipses indicate where this note, which was appended to a piece of paper pasted on the bottom of a page, was torn off.