

Book VII.
Title XV.

General rules concerning manumissions.
(Communia de manumissionibus.)

Bas. 48.19; Dig. 40.1.

7.15.1. Emperor Justinian to Julianus, Praetorian Prefect.

We ordain, that if a proprietor gives liberty to a slave, the usufruct in whom belongs to another, the grant shall not be void as formerly, nor shall such slave be considered to be without a master,¹ so that there would be no one for whose benefit he may acquire property which he receives. If both the proprietor as well as the usufructuary jointly give him liberty, he will become completely free and any property acquired by him thereafter shall be his own. 1. But if the proprietor alone gives liberty, without the consent of the usufructuary, the slave so given his liberty will be the proprietor's freedman, and any property acquired by him thereafter shall be his own, which he may transmit to his posterity, preserving the right of patron intact, unless the freedman is also, according to law, released from that. Such freedman shall, however, remain the slave of the usufructuary while the latter lives or until the usufruct is lost in some lawful manner (*non legitimo modo*)². For if an end is in any manner put to the usufruct, such freedman may live in whatever manner he wishes. If the latter dies during the life of the usufructuary, his property goes the path provided for it by law. 2. If, on the other hand, only the usufructuary gives liberty, and in a manner merely to yield the usufruct to the proprietor, the latter acquires complete right over the slave and any property acquired by the slave is acquired for the proprietor, according to the general provisions made for slaves and masters. 2a. If the usufructuary, however, frees the slave from the usufruct through gratitude, and gives him liberty, the proprietor does not lose his rights, but the slave need not attend on or minister to him during the life of the usufructuary or during the time that the right to the usufruct is in force, and our judges shall protect the slave from being disturbed. But after the death of the usufructuary or after the usufruct ceases in any manner, he must serve his master, and all property which he acquire during that time is acquired for the benefit of his master. 2b. This then shall be a distinction, according to our constitution, between slaves and freedman, and the slave shall not, as formerly, at the same time be slave and have no master. 3. We also make the following addition to this law, namely in abolishing ancient differences between person, we permit parents, male or female, to order sons and daughters, of all degrees, whether still in the household or emancipate, to give liberty to slaves, whether before a judge, in sacred churches, or in any other legal mode, as the author of the order wishes. For since no distinction exists between children in connection with succession s and in almost all other things, that should be true also in the present instance, especially

¹ [Blume] "A slave in whom a usufruct exists, if freed by the proprietor, does not become free, but is a slave without a master." Ulpian 1.19. It is this rule that Justinian corrects.

² [Blume] The "non" is here out of place - so recognized by Heimbach in his text of the Basilica 48.19.1.

when liberty is involved, to favor and protect which is the province of Roman laws and especially of Our Majesty.
Given March 18 (530).

Note.

The duties of a freedman and the rights of a patron are considered in C. 6, titles 3 and 4.

It was a general rule that a man could not manumit a slave through someone else, not even an agent. A father, however, could manumit through a son in his power, since in that case the manumission by such son was the same as though it had been done by the father himself. But the latter could not manumit through an emancipated son, since the latter was no longer a member of his family. And since a mother did not have her children in her "power," she could not manumit through them. The present law changes these rules entirely; either parent is permitted to manumit through children emancipated or unemancipated. 9 Cujacius 913.

7.15.2. The same to the same.

If a man manumits his slave in church, before any tribunal, before a magistrate who has power to grant liberty, or by testament or other last will, directly or indirectly (by way of trust), shall in no manner be limited in doing so by reason of the age of those who are manumitted. For we want not only a slave who is more than thirty years of age to become a Roman citizen. As no difference as to age exists in ecclesiastical manumissions, so no difference as to age shall exist in any manumissions made by owners, whether by last will or by judges, or in a another legal manner, and all like shall become Roman citizens. For we think that we should increase rather than diminish (the citizens of) our state.

Given August 1 (530).

Note.

Under the Aelian Sentian law, a slave could not generally become a Roman citizen until he was thirty years of age, unless on legal grounds shown to the council, but he might become a Latin. Gaius 1.17.18. Justinian abolished the status of Latinity as we saw in C. 7.6, and made all manumitted persons of whatever age full Roman citizens.

7.15.3. The same to Johannes, Praetorian Prefect.

If a man without a wife, keeps his female slave as a concubine and persists therein to his death, and perchance has children by her, we ordain that the heirs of the deceased shall have no right to reduce her or her children, if she has any, to slavery, but she and her offspring, if she have any, shall, under certain conditions, be free after the master's death. 1. The master, while living, may put both his female slave as well as her offspring to any employment he wishes and may dispose of them in his last will as he desires, that is to say, he may bequeath them as slaves to others or leave them specially, in the same condition, to the heirs. But if he has passed them over in silence, they shall be free after he dies; so that the death of the master be the beginning of their liberty. 2. Men, however, who have wives, are not permitted, either by the ancient or the present laws, to have concubines, free or slave.

Given at Constantinople November 1 (531).