Book VIII.
Title LIII.

Concerning gifts.
(De donationibus.)

Dig. 39.5; Bas. 47.1.35, et seq.

Headnote.

Gifts.

The subject of gifts received considerable attention at the hands of the Christian emperors. The subject of religious and charitable gifts, while touched upon in the present title, is more particularly considered in the first book of the Code, including title 2. The subject of prenuptial and post-nuptial gifts is considered in detail in Headnote to C. 5.3, and the laws in that title, and other laws there mentioned. The subjecdt of gifts between husband and wife, during marriage, and of gifts between other persons related to the married people, is treated in C. 5.16. Gifts to natural children and concubines are considered in C. 5.27. For immoderate gifts to other children, see C. 3.29.

The Cincian statute, passed about 204 B.C., which had fallen into desuetude before Justinian's time, prohibited gifts beyond a certain amount (which is not stated), except between certain, near relatives. Gifts to the extent that they exceeded the lawful limit, but no further, were void. Vat. Fr. 266; Ulp., Fr. 1. It seems, however, that if the donor did not revoke the gift during his lifetime, or by will, it was confirmed. Vat. Fr. 294.

Valid gifts, once made, might not be easily revoked. Inst. 2.7.2. Certain gifts were not effective, such as gifts from a father to a son in his power. It might, however, be confirmed by conduct. A gift might be made upon condition, and if the conditions attached were not complied with, it might be cancelled. So ingratitude on the part of freedmen and children was good cause, as hereinafter shown, for revocation of gifts. During Justinian's time gifts up to 500 solidi did not need to be registered; but gifts above that amount were invalid as to the excess, unless registered, that is to say, enrolled on the public records - apparently copied at length. Other points are mentioned in the following laws and notes thereto.[1]

8.53.1. Emperors Severus and Antoninus to Lucius.[2]

You understand that when documents evidencing the purchase of slaves are made as a gift, and delivered, such act is equivalent to a delivery of the slaves themselves. And, therefore, you can bring an action in rem against the donor.
Promulgated June 27 (210).

Note.

[1] Blume penciled a question mark into the margin here.
[2] Blume penciled in here: "See Lange 35 n 4 [barely legible] itp."

Under this law, a delivery of the title-deeds of a purchased slave transferred ownership. The rule was confined to gifts. Generally actual delivery of property seems still to have been necessary in Justinian to transfer ownership. C. 2.3.20 n.

Delivery of a gift was originally necessary in order to make it valid. And if it consisted of property which required a formal conveyance - mancipation (C. 7.31.1), that, too was required. Vat. Fr. 293, 313. That was the law in 210 A.D. and this rescript is interpolated. Antoninus Pius dispensed with the necessity of mancipation and delivery in the case of gifts between parents and children (C. Th. 8.12.4), but a gift to a child under paternal power was invalid, if made by the person having him under power. The requirement of mancipation and delivery of a gift among other persons can be traced in laws up to about 417 A.D. C. Th. 8.12. Some of these laws are in the Justinian Code, but the requirements as to mancipation and delivery have been eliminated. It would seem that by 428 A.D. mancipation and delivery were no longer necessary. Law 29 h.t. and note. Instead of that, gifts were required to be registered - a system that had its commencement in the beginning of the fourth century. In 428 A.D. gifts of not more than 200 gold pieces were exempted from this requirement, which amount was raised by Justinian to 300 and finally to 500 gold pieces. See note to law 4 h.t. Thus a gift, or rather a promise of a gift became in the nature of a consensual, enforceable contract. "Gifts, like sales, should in themselves involve the necessity of delivery." Law 3.5. h.t; Inst. 2.7.2. See Riccabono in 33 Z.S.S. 377, et seq; C. 4.19.18 note.

8.53.2. Emperor Gordian to Leonides.

If you were emancipated and your father transferred an action on a debt to you as a gift, the heir of your debtor uselessly pretends that consent of the debtor was necessary for the transfer, since it was sufficient if the rights of action on that debt were set over to you by mandate.[3]
Promulgated March 12 (241).

8.53.3. Emperor Decius to Marcellinus.

It has justly been held that a right of a future action may be transferred with the full consent of the donor.
Promulgated March 7 (250).

8.53.4. Emperor Probus to Massicia.

The fact that a man to whom your property had not been given or his manager in his name, paid the public tribute (due from such property), that cannot prejudice you.
Promulgated December 28 (280).

Note.

For similar provisions, see C. 3.32.25; C. 4.49.8; Vat. Fr. 288. The rescript implies that title would have passed, if the property was given. A simple gift was sufficient under Justinian, though not delivered. See Riccobono, 33 Z.S.S. 290.

8.53.5. Emperors Carus, Carinus and Numerian to Falconilla.

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[3] [Blume] See C. 8.41.1 and note.

Even though a gift does not appear to be made by letter, still it is not doubtful that the words of the testament by which the bounty of the testatrix is confirmed, create a trust.
Promulgated at Rome January 27 (284).

Note.

In this case the testator stated in the testament that he made a certain gift by a letter, and that he wanted it to be valid. This rescript says that although it does not appear, or cannot be shown, that the gift was actually made by letter, still it is valid, since the testament itself is sufficient proof thereof. It must, of course, be understood, that the testament sufficiently indicated what the gift was. Bas. 47.1.39, states this law as follows: "If the gift does not appear (in the letter), but it is stated in the testament 'I want the gift to be valid,' a legacy is made and it is valid. For a wrong statement does not hurt the owner." Here, power to make a gift by letter (without delivery of the property) is implied. That was not the law at the date of the rescript. It is interpolated. Riccobono, 33 Z.S.S. 288-289.

8.53.6. Emperors Diocletian and Maximian to Calpulnia Aristaeneta.

There is no doubt that gifts between absent person may be valid, especially[4] if possession is given to the donees with the consent of the donors.
Promulgated at Milan February 11 (286).

8.53.7. The same to Julius.

Listing (another's) property for taxation does not usually prejudice an owner. But if you consented to your step-son listing slaves for taxation as his own, you will be considered to have made him a gift.
Promulgated July 15 (290).

Note.

Under this rescript, the intention to give manifested by consent to have the property put on the tax books as the property of another, was sufficient to constitute a gift. See h.t. The rescript was changed by the compilers. At its date, no declaration on the records without delivery (or mancipation) of the property, sufficed. Vat. Fr. 266, 268, 285. Nor did declarations on the records, contrary to the facts, confer other rights. C. 4.19.14; C. 4.21.6; C. 7.16.15; Paul., Sent. 1.2.3. See Riccobono 292-295.

8.53.8. The same to Flora.

If the president of the province learns from clear proof that you listed lands for taxation (in the name of your sons) with no intention to make a gift, he will give his decision in accordance with what truth demands.[5]
Promulgated September 6 (290).

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[4] [Blume] Especially was inserted by the compilers. Delivery (or mancipation) was necessary in 286 A.D. Vat. fr. 282, from which this rescript is taken. Riccobono 33 Z.S.S. 286.

[5] [Blume] "With no intention to make a gift," interpolated. See C. 2.18.11 n. 42 Z.S.S. 324.

8.53.9. The same and the Caesars to Augustina.

In order that a condition which you affixed to a gift of your property may be enforced by the president of the province, you should sue before him either in an action on the stipulation, if you exacted one, or in an action[6] with special terms (praescriptis verbis).

Promulgated April 16 (293).

8.53.10. The same to Hermona.

No one makes a gift unknowingly or unwillingly. Hence, if you were not thinking of the farm which is mentioned in the document as though you had consented to make a gift thereof, you know that the truth has greater force than a writing and you have not lost what you did not have in mind or which you did not specially mention in the writing.

Subscribed April 27 (293).

Note.

The latter part implies that a gift could be completed by a written instrument. In that respect the rescript was changed. It is similar to law 1 h.t., delivery of the writing doubtless being implied. See Riccobono, 33 Z.S.S. 295-296. That author construes 'specialiter subscripisti - specifically mention in the writing' - to the special signature mentioned in C. 4.21.17. That is not likely.

8.53.11. The same to Septimius Sabinianus.

Since you state that you retained a part of your property within your control, but that you made a gift of another part to a son in your power, the law is clear that you indicated you paternal intention toward him who remains in your household, rather than that you made a completed gift to him. An assignment of a debt, however, made to an emancipated descendant, constitutes a completed gift.

Subscribed at Heraclea April 30 (293).

Note.

A gift to a person in the power of the donor was invalid. This is attested by several authorities. Vat. frag. 294, 295, and 296; C. 5.16.14; C. 6.20.13. If, after the gift was made, the person in power was emancipated, and the gift was not expressly revoked, it thereupon became ratified. This appears from law 17 of this title, and from D. 39.5.31.2. See C. 5.16.25. Consult 6.10, from which this rescript is taken, also states that a gift to an emancipated child of a proportion of property was invalid. That was suppressed in the compilation on account of C. 8.53.35.4, which made such gift of a proportion valid. It was not valid in classical law, and up to the time that delivery was dispensed with, since a proportion of property was not capable of delivery. See Riccobono 34 Z.S.S. 191-193. See also C. 5.11.1 note.

8.53.12. The same to Aurelius.

No one is forbidden to transfer his undivided interest in property to another as a gift.

Given May 16 (293).

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[6] [Blume] Other laws relating to conditions of gifts are C. 8.53.22; C. 8.54.1 and 3; C. 8.55.10; C. 4.6.3; C. 4.6.8.

8.53.13. The same to Urania.

If it is shown that something was given you by letter, the brevity of the document does not prejudice the gift, if it is shown to have been properly made.
Given at Sirmium May 18 (293).

Note.

The rescript probably originally read: If anything was given and delivered to you by letter, the brevity etc. The delivery was suppressed by the compilers, in accordance with the rule then prevailing. Bas. 47.1.46; Riccobono 33 Z.S.S. 287. As it read it shows that a document in writing sufficed for a gift.

8.53.14. The same to Idaea.

If your son made a present of property belonging to you to his bride, without your consent, he could not give her title to what he did not own.
Subscribed September 17 (293).

8.53.15. The same to Severa.

The burden of a debt against an inheritance does not fall on a man who receives something as a gift (legacy or trust), but on the man who is successor of the inheritance as a whole. 1. If you, accordingly, were given land on which no one had a lien, you are needlessly solicitous lest the heirs of the female donor or her creditors may lawfully sue you.
Subscribed November 17 (293).

Note.

A legatee could not be sued for any debts due from the inheritance. But the foregoing rescript does not mean that the legatee necessarily took the legacy without reference to such debts. The debts against the inheritance had the preference, and the heir, while charged with the payment of legacies, was only charged therewith to the extent that the property, after payment of debts, came to him. Hunter 749, 952; D. 43.3.2.1; Inst. 2.22.3.

8.53.16. The same to Theodorus.

Old age alone constitutes no impediment to the making of a gift.
Given November 27 (293).

8.53.17. The same to Hermia.

Whether you made a gift of property to your emancipated sons or whether you failed to take it away from your sons under paternal power when they were emancipated, and who were in possession of it at that time - (in either event), you need not flatter yourself that you may repent and retake the property of which you made them a gift. 1. Of course, if they, after their emancipation, detain property, which you gave them while in your power, against your consent, you still remain the owner thereof, inasmuch as they could not acquire any of your property while they were in you power, even with your consent, and they cannot thereafter acquire it against your consent.
Subscribed December 27 (293).

Note.

Basilica 47.1.50 states this law as follows: "Whatever you give your emancipated children, or those previously in your power, you cannot take away. But if you emancipate them upon condition that they must return what you had given them, the property remains yours and they cannot retain any of it against your wish." See law 11 of this title and note.

8.53.18. The same to Aulianus.

If an action for the penalty of theft (against you) was forgiven you by way of a gift, your worry is needless.
Subscribed December 28 (293).

8.53.19. The same to Alexandria.

If your grandmother made a gift of her own property, which she acquired in any manner, to the man against whom you direct your petition, the fact that it formerly belonged to your father or grandfather can be of no avail for the purpose of invalidating the gift.
Subscribed at Sirmium January 17 (294).

8.53.20. The same to Helvius.

A gift, (otherwise) legally made, will not be considered invalid because the name of the (female) donor is subscribed by someone else, with her consent.
Subscribed January 26 (294).

Note.

Here, too, is implied that a gift in writing is valid without delivery, which was not true in 294 A.D. See Riccobono 33 Z.S.S. 299.

8.53.21. The same to Antonia.

Your grandmother could not give you her dowry, in control of her husband, while her marriage subsisted.
Subscribed March 11 (294).

8.53.22. The same to Diomedes.

You state that you gave property to you emancipated son upon condition that he should pay your creditors, and that you made provision for that by stipulation or in an accompanying (continente) pact. The creditors, however, have no right of action against him pursuant to your agreement, but against you. 1. Nevertheless you may sue the man to whom you gave land upon a definite condition, in an action on the special facts (incerta civile actione), to compel him to comply with his agreement annexed to the gift.[7]
Subscribed at Sirmium March 26 (294).

[7] [Blume] Obligations were personal to the parties and could not be shifted directly. See C. 4.39.2.

8.53.23. The same to Olympiades.

If the donee returned your gift to him to you, pursuant to a later agreement, the document which evidence the gift previously made cannot prejudice the subsequent transaction.

Subscribed September 27 (294).

8.53.24. The same to Macarius.

The law is clear that if you did not become your father's heir, your rights could not be injured by his acts in making a gift (of your property).[8]

Promulgated at Antioch February 5 (299).

8.53.25. Emperor Constantine to Maximus, City Prefect.

A gift, direct and immediate, or in contemplation of death, or conditional upon the doing or not doing something, or given for a limited time, or clothed in any form of contract[9] between the donor and donee, in so far as lawful, must state such acts, conditions and agreements as are permitted by law, and when these are examined, they must be accepted, if agreeable, or rejected, if too burdensome. 1. Moreover, the document evidencing the gift should state the name of the donor, the property given and the donor's title thereto; nor shall the gift be made secretly or privately, but it shall be written on a tablet of wax or on any other writing material which the occasion affords, either by the donor himself or by one whom the occasion furnishes.[10] A record there of, too, must be made which must be done by a judge or magistrate, wherever the law requires it.[11]

Given at Rome February 3 (316).

C. Th. 8.12.1; Vat. 249.

8.53.26. The same to Aconius Catullinus, Proconsul of Africa.

If anyone wants to give a farm to an emancipated minor before the latter is able to speak[12], or has capacity of will to receive the property given him, he must complete the

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[8] [Blume] See C. 8.44.11 and 14 and citations.

[9] Blume penciled in above this typed phrase, without striking it, “named in any manner” and also put a question mark in the adjacent margin.

[10] [Blume] C. Th. 8.12.1 contained the further clause: "And corporal delivery shall follow, to exclude (all claim of the use of) force or invasion; the neighborhood and all witnesses (arbitris) shall be called in, whose credibility will thereafter be approved (to the effect) that the thing given, if movable, was delivered by the wish of the giver, or if immovable, that free possession was given to the new owner by the departure of the giver." It may be noted that delivery of the property was dispensed with under Justinian. Further calling in the neighborhood and witnesses was dispensed with under law 31 h.t. Further writing was not required for gifts of a small amount, since 428 A.D. Law 29 h.t. note.

[11] [Blume] The "whenever" clause not in Theodosian Code. All gifts were then required to be registered; modified in 428 A.D; see law 29 h.t. note.

[12] [Blume] i.e. under seven years of age. C. 6.30.18; Bas. 47.1.59.

transaction by executing a document evidencing the gift.[13] This, it has been agreed, may be done through a suitable and devoted slave, so that the infant may acquire ownership through him.
Given at Serdica April 20 (316).
C. Th. 8. 12. 2.

Note.

Basilica 47.1.59 states this law as follows: "If a man wants to complete a gift to his emancipated minor son under seven years of age, he should make the instrument of the gift to a devoted slave worthy of his trust who will acquire the property for the minor." Isodorus says in a note to this law that the document should be made in the name of the slave. The law, as originally enacted, also required corporeal delivery of the property, but this was dispensed with, as in the preceding law. The method of having a slave accept a gift on behalf of a minor not capable of giving assent, seems strange to us. But the Roman law required consent to a contract on the part of both contracting parties, and an infant incapable of acting, acted at times through a slave. So the stipulation made by guardians and their sureties in favor of minors under the age of puberty was exacted on behalf of minors by the latter's slave, or if he had none, by a public slave, in case the minor was absent or could not speak for himself (was under the age of seven years). D. 27.8.1.15; D. 46.6.2. The rescript is sometimes cited as showing that an infant could acquire property only through a slave. But that was only one of the methods. See C. 7.32.3, note, and authorities there cited.

8.53.27. The same to Severus, Count of the Two Spains.

We provided in a previous law that gifts should be made by registration on the public records. This shall apply especially to persons closely related, inasmuch as the opportunity is open to pretence, by secret frauds conceived in the home, that a certain act was done, or to conceal something that has actually been done. 1. Since, therefore, our law does not exempt even children or parents from complying with registration laws, the provisions which we formerly made as to the necessity of causing gifts to be entered of record, shall apply to all. When such record is made, it shall be sufficient as to any property wherever located.
Given at Constantinople May 4 (333).

Note.

Law 25 h.t. (316 A.D.) sufficiently provided for registration of all gifts. However in 319, the emperors confirmed a provision of Antoninus Pius that gifts between parents and (emancipated) children should be valid though not made by mancipation and though not delivered. The law further made mancipation in gifts among other near relatives (but not delivery) unnecessary. This seemingly gave rise to a doubt whether registration was necessary. The instant law dispelled that doubt. It was modified, of course, by later laws, infra, requiring registration only, if the gift was above a certain amount.

8.53.28. Emperors Honorius and Theodosius to Monaxius, Praetorian Prefect.

Whoever makes a gift of any property or gives it as dowry or makes a sale thereof, but has retained the usufruct therein, he shall, tho he exacts no stipulation, be

[13] [Blume] And delivering it to him corporally - in C. Th. 8.12.2.

considered as having delivered it immediately, and nothing more shall be required to have delivery appear more plainly, but the retention of the usufruct shall, in such case, itself be the equivalent of delivery.
Given at Constantinople March 14 (417).
C. Th. 8. 12. 9.

Note.

That reservation of usufruct should take the place, or be the equivalent, of delivery applied, when the rescript was written only to cases of gift. Justinian extended it, by interpolation to cases of sale. Evidently considerable use was made of that right, and actual delivery, to perfect a slave, could, accordingly be dispensed with in all cases. So that a writing, with such reservation, became a conveyance within the meaning of our law. See Riccobono in 33 Z.S.S. 301; 34 Z.S.S. 219, 220; Steinacker, Die Antiken Grundlagen d. Frualt. Privaturkunde 88 (1927).

8.53.29. Emperors Theodosius and Valentinian to Hierius, Praetorian Prefect.

It is agreed that a gift made to outsiders who are frequently unknown (to the donor), is valid, though it was not made in writing, if it is clearly shown by other proof.
Given April 21 (428).

Note.

This shows that a mere promise, though not in writing, to make a gift, was valid. The rescript was changed by Justinian's compilers, who suppressed the necessity of delivery. The gifts which required registration were, of course, in writing, so the gifts here contemplated were those of smaller amounts. C. 1.2.23 shows that a legacy, trust, or part of an inheritance left, or a sale made, or a gift made (by promise) to a church, charitable institution of city, operated to transfer complete ownership, and gave rise to personal as well as real actions. Justinian doubtless meant that to be the rule in all cases. Riccobono, 34 Z.S.S. 196. See 13 Z.S.S. 155.

8.53.30. Emperor Leo to Constantinus, Praetorian Prefect.

Gifts in writing, made in this imperial city, of property located anywhere, shall be registered with the master of the census. 1. In other cities, whether the rector of the province is there or not, and whether the city has a magistrate or not and has only a defender, the donor has the right to register his gifts of any of his property, wherever, located, before the moderator of the province, or the magistrates or the defenders of any city, as he prefers. And as a gift itself depends on the will of the giver, so he has the right to make his gift public before either of the aforesaid persons, as he wishes. 2. And these gifts which have been made public in any province or city, before either of the aforesaid persons, shall be unshakably and perpetually valid.[14]
Given at Constantinople March 2 (459).

8.53.31. Emperor Zeno to Sebastianus, Praetorian Prefect.

We do not deem it necessary for neighbors or other persons to be witnesses to gifts which are enrolled on the public records; for testimony of private individuals is not necessary where public records suffice. 1. And other gifts, too, which are not necessary

[14] [Blume] See law 32 below.

to be registered, shall be valid without being signed by a witness, if written by a notary or some other person and subscribed by the donor himself or someone else for him at his request according to the usual rule. Gifts not in writing shall be valid if made in accordance with the constitution of Theodosius and Valentinian publicly issued to Hierius, Praetorian Prefect.
Given at Constantinople March 1 (478).

Note.

While witnesses to gifts which were registered and in writing, were dispensed with, under this law, they were necessary in gifts not in writing, and not registered. Where no documentary evidence existed, five witnesses were required; in other cases not less than three. C. 4.20.15.6; cc. 1 and 2, Nov. 73. Gifts in contemplation of death might be made as codicils, requiring, therefore, five witnesses, and were not necessary to be registered. Nov. 52, c. 2, specifically provides that gifts to the emperor need not be registered, but that witnesses to the gift are required. See as to verbal gifts, law 29 of this title, and see note C. 1.56.2.

8.53.32. Emperor Anastasius to Euphemius, Praetorian Prefect.

In accordance with the constitution of the Divine Leo, we direct that gifts (in this city) shall be registered only before the Honorable Master of the Census - this rule to apply in connection with the documents made or made public in this imperial city. Nor shall anyone be permitted to register such gifts (in this city) before the defenders or magistrates of other cities. And all may know that those who have offered such gift for registration (in violation hereof) and those who have accepted it, and notaries who have not furnished their testimony in the proper place, or court[15], as stated, will be visited with a fine of twenty pounds of gold, and with other severe penalty.
Given April 30 (496).

Note.

Gifts made in the imperial city must, if requiring registration, be registered with the master of the census, no matter where the property covered by the gift might be located. Bas. 47.1.64, notes; C. 8.53.30. A similar provision is contained as to a will in C. 6.23.18 and 23, and C. 1.3.40. Gifts made outside of the imperial city might be registered before the person specified, wherever the property might be located. Bas. supra.

8.53.33. Emperor Justinian to Mena, Praetorian Prefect.

We correct the technical rule, by which those who receive assignments of rights of action by gift cannot transmit them to their heirs unless issue has been joined on them, or the right of joinder of issues has been granted them by an imperial rescript. For as actions which are assigned pursuant to purchase are transmissible to heirs before joinder of issue, so in similar manner we want gifts thereof to be transmissible, although no joinder of issue was made or sought. 1. This shall apply also in connection with the appointment of a procurator to bring suit on rights of action so assigned, so that, no one may be prevented to appoint a procurator for rights of action assigned to him as a gift, tho

[15] [Blume] In connection with such registration - to show the genuineness of the document.

no joinder of issue has taken place, or was sought. 2. These provisions shall apply only to assignees of such rights as to a gift, who are still living; and the ancient laws shall apply as to assignees of that kind who are already dead.
Given at Constantinople June 1 (528).

Note.

The effect of this law was that a gift of a debt might be made effectual as of the time of the gift. That had long been the rule as to sales of debts. This law was the last of the series of laws mentioned in note C. 4 39.5. The transferee acquired an independent action in his own name, whereas previously he was required to sue in the name of the grantor, and in such case the transfer did not become complete till a new relation was created between the grantee and the debtor by joinder of issue in a suit. See also C. 4.10.1 note.

8.53.34. The same to Demosthenes.

We ordain that every gift, whether an ordinary or prenuptial gift, up to 300 solidi, need not be registered on the public records, both standing on the same footing, so that such gift is not merely valid up to 200 solidi (as was formerly true), and the ordinary gift and the prenuptial gift shall be governed by the same rule.[16] 1. If anything, however, has been given beyond the (above) legal limit, the excess-amount only shall be invalid, and the remainder, within the legal limit, shall remain in force, as though no additional amount had been added, and this (such excess-amount) shall be considered as though not mentioned or intended (to be given). 1a. Excepted herefrom are imperial gifts as well as gifts made on religious grounds.[17] That it is undignified to require imperial gifts to be registered, was stated by former emperors as well as ourselves,[18] and such gifts are valid by and through their own force. But we direct that the others, (namely) those made on religious grounds, shall be valid to the amount of 500 solidi without any registration. 1b. Besides that, prenuptial gifts made to young women over the age of puberty but still minors, and not under paternal power (sui juris), shall, according to an ancient law[19], be valid to any amount, even though not (nisi) registered. 1c. But if such gift does not consist of gold, but of (other) movable, or of immovable or self-moving property, the amount thereof shall be appraised, and if its value, in money, is within the legal limit, it shall be considered valid without (registration); but if its value is greater, and the gift is not registered, the excess only shall be invalid. 2. Lest, however, through the community

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[16] [Blume] C. Th. 3.5.8 (428 A.D.) limited a prenuptial gift, not registered, to 200 solidi. Inst. 2.7.2 indicates that that limit applied also in ordinary gifts. But the language of the instant law suggests a former difference. The next law of this title raised the limit to 500 solidi.

[17] [Blume] The legal limit for gifts for pious purposes, without registration, was fixed in 528 A.D. at 500 solidi. C. 1.2.19. This was fixed for gifts in general in 531. C. 8.53.36 and see C. 1.3.38.

[18] [Blume] C. 1.2.19.

[19] [Blume] C. 5.3.17, to the same effect. The requirement of registration in case of prenuptial gifts over a certain limit was removed by Nov. 119, c. 1, and see Nov. 127, c. 2, both appended to C. 5.3. The requirement of registration of charitable gifts over a certain limit was profoundly modified by law 36 of this title.

of property rights (brought about by such excessive gift), between the donor and the recipient of the bounty, some contentions arise, we give to the party who has the larger share in such property, the option to pay the value of the smaller share to the owner thereof and possess the whole. 2a. But if he does not want to do this, the property shall be divided between the parties in proportion to their ownership, if division may be made without detriment. 2b. In cases in which partition cannot be advantageously made, and the owner of the larger share does not choose to pay the value (of the lesser share to the owner thereof), the owner of the smaller share shall have the right to pay the value (of the larger share) and claim the whole. 3. If anyone, moreover, bestows many bounties at various times on the same person, neither of which alone exceeds the legal limit, but if added and heaped together in the manner aforesaid is larger than the legal amount, it would seem not to be right to add them together and so find a method by which to render them void and of no effect; they should, on the contrary, be considered as separate gifts, each treated according to its own nature and as not requiring registration. 3a. Since the opinion of the ancients differed on this subject, some of them considering such gifts as many separate gifts, other considered them as one, it has pleased us to adopt the humaner view, so that they will be considered as so many (separate) gifts and all of them as valid, and they who receive such bounties may recognize their donors to be actual givers and not pretenders. 4. In case anyone, moreover, received a gift, upon the stipulated condition to pay to someone else an annuity of a sum, which did not exceed the legal limit of a gift, it was doubted whether the annual payments should be considered as separate gifts, not requiring registration, or all of them as one gift, arising out of the whole stipulation and the basis thereof which produced such annual sums, and hence, without a doubt, requiring observance as to registration. 4a. The ancients differed much in their opinions. But we have made a distinction, so that if a gift of that kind was limited to the life of persons, either of the giver or of recipient, the gifts shall be considered as many (separate) gifts, free from the requirement of registration. For the uncertainty of fate suggests to us the possibility that the giver or recipient may live only a year, or a shorter or a longer time, and by reason thereof the total sum of the gift might not exceed the legal limit. 4b. If mention, however, is made of the heirs of either party, or if the lifetime of the giver or recipient is not[20] referred to, it is, as it were, a perpetual gift, the continuation of which makes it bigger and larger, and shall be considered one gift out of the successive payments which exceed the legal limit, and requires registration, or is otherwise invalid.
Recited at the Septimium (palace).
Given October 30 (529).

8.53.35. The same to Julianus, Praetorian Prefect.

If anyone has made a gift of silver and names a certain weight, but does not, generally or specifically, mention dishes, it will be necessary for him to give the weight above mentioned, either in such dishes as he wishes, in value not below the crude bullion, or the price of such weight according to the market value of the crude bullion in these places. 1. If he has given a certain income from his possessions, without mentioning the names of the possessions, it will be necessary for him to deliver, out of his property,

[20] [Blume] Non- inserted; i.e. if it is not stated that it is limited to such time.

farms which are sufficient to bring a return in the amount specified in the gift, not consisting, however, of fields which are better than all others which he has, nor of fields which are worse than all his others, but of fields which are of medium condition. 2. So, if anyone has made a gift of a certain number of slaves, without, however, mentioning any by name, in such case, too, he must deliver slaves of medium condition, not such as are worthless, nor such as are better than all others which the donor has; but slaves of medium condition are required. 3. But if the donor has neither the silver nor the slaves, or not as much or as many as he gave, the donor shall pay the value of such as is or are lacking, paying for the silver which is lacking, according to the valuation above mentioned, and for slaves that are lacking, not more nor less than fifteen solidi for each; in case of a gift of income, he shall pay the value of fifteen years' income. 3a. If, in these cases, the gifts come within the legal limit, no registration is required; but if they exceed that limit, they must be made a matter of record, provided that if they exceed the legal limit (and are not registered), they shall not be invalid as a whole, but only as to the excess, as provided by law. 4. So, if anyone makes a gift of an entire property, or of two-thirds, a half, a third, a fourth, or any other proportion, or the whole thereof, the donor must, pursuant to this law, if the rule against unjust gifts does not cry out against it, deliver as much as is comprised in his gift, under observance, however, of the requirements of registration, as already provided. 5. If in any of the aforesaid cases the usufruct has been retained by the donor, delivery shall (thereby) be considered as legally made.[21] 5a. If the donor said nothing about delivery, but a stipulation is attached to the gift, such delivery may be enforced under it. 5b. But if this, too, was omitted and the donor did not reserve the usufruct, he will, nevertheless, be compelled, by force of our law, to deliver what he intended to give, so that a gift may not be rendered void because the property was not delivered. A gift is not made effectual by delivery, but delivery is the necessary consequence of a completed gift, made according to our law, and the donor must deliver the things or the share or the whole of his substance which he named. 5c. For since everyone is free to do what he undertook, he should either not jump to do this, or if he hastened to do it, he should not resort to trickeries to circumvent his decision or hide his want of principles behind legal pretexts. 5d. Much more is a gift valid, if given for pious purposes or to religious persons - in connection with which the rule as to registration specially made by us for such cases[22], must be observed - so that the donor may not, in these cases, through some trickery, be known not merely as an irreligious, but also as an impious giver, and await not merely legal, but also heavenly punishments. 5e. Not only will in all of the aforesaid cases, the donor be compelled to deliver such gift, if he is living, but (after his death) his heir, too, is under the same compulsion; and not only is the gift to be delivered to the donee, but (if he is dead) his heir is entitled thereto. Given at Constantinople March 18 (530).[23]

8.53.36. The same to Johannes, Praetorian Prefect.

If anyone has made a gift of money for the redemption of captives, or has promised by a duebill of any amount to give it, he can neither recover the money or

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[21] [Blume] See law 28 of this title.
[22] [Blume] C. 1.2.19.
[23] Blume penciled at this point: "Quote Inst. 2.7.2 here."

decline to pay the duebill, under the pretext that no record was made thereof as in cases of gifts of that amount. The person who has received the money, either in the first place or through the duebill, shall proceed to carry out the pious purpose, and he shall not be molested or disturbed either by the person who furnished the money, or by those, permitted by the authority of law to inquire into the matter, but he shall only be required to take an oath that he faithfully gave the whole sum, without fraud or diminution, for the redemption of captives. 1. We, in like manner, dispense with registration of gifts of movable or self-moving property, made by the glorious masters of the soldiery to our brave soldiers, either out of their own property or out of the spoils of the enemy, whether when they are occupied in war or whether they live in any other place. 2. The same privilege under our law is extended to persons whose house have been destroyed by fire or by falling down, when some persons have, perchance paid them money, no matter of what amount, or have given them duebills, so that they need not fear that suit may be brought for the return of such money; but (on the contrary) they may enforce the payment of the amount stated in the duebill, although the gift has not been registered. (On the other hand) they must not expend the money for any purpose other than the restoration of the houses. If any question arises whether the whole amount or only a part has been so expended, it shall be determined by an oath of the owners of the houses. 3. Other gifts too, without any distinction, shall, although not enrolled on the public records, be valid to the extent of 500 solidi. We direct that this addition shall apply only in the future in order to encourage the making of gifts of that kind. Prior gifts shall be governed by the former law, in which gifts to the extent of 300 solidi were ordered to be valid without registration.
Given at Constantinople October 18 (531).

8.53.37. The same to Johannes, Praetorian Prefect.

The use of superfluous words which are usually employed in gifts, such as "money of the value of a sertius," or "of four asses," is, we think, to be entirely rejected. For of what use is it to employ words which have no effect on matters? We, therefore, ordain that no mention thereof shall hereafter be made, either in imperial or in any other gifts, but it shall make no difference whether a man, through verbosity, has inserted anything of the kind, or has omitted to do so.

Note.

Just as our instruments sometimes state 'for and in consideration of one dollar,' so instruments of the Romans at times recited the consideration to be one sertertius or four asses. Justinian here states that to be useless and unnecessary.