

Novel 12.

Concerning incestuous marriages.

Note: The following Novel was enacted by Justinian on the subject of incestuous marriages, referred to in the headnote to this title. [The reference to “this title” is obscure, as no headnote was attached to this novel. The present novel may have been attached to a related Code title, but the most relevant, C. 5.5, “Concerning Incestuous and Void Marriages,” has no headnote.]

Emperor Justinian to Florus, glorious Count of the Crown Domain.

Preface. We do not consider the laws previously enacted by emperors on incestuous marriages to be complete, since they left the parties who contracted such marriages unpunished, but deprived the children, though innocent, of their father’s property; as though the guilty should be free and the innocent suffer punishment as sinners.

c. 1. We, therefore, ordain that if anyone hereafter enters into an unlawful and unnatural marriage, which the law calls incestuous, sinful and punishable, and has no children of a former, legal and unblamable marriage, all of his property, including what has been given him as a dowry, shall be immediately confiscated to the fisc. For why should a man who may enter into a lawful marriage, contract one that is unlawful, spoil the blood of the offspring, insult his family, violate the laws of God and man and wish for something from which even brute animals refrain? Such man shall be punished not only by confiscation of his property, but he shall also be deprived of the girdle of his office and sent into exile, and if he belongs to the meaner class, he shall (also) be chastised bodily, so that he may learn to live chastely and according to nature, and refrain from living licentiously, from seeking forbidden bounds and from violating laws dictated by nature. A woman, too, who knowingly fails to live up to the law and enters into an incestuous marriage, shall suffer the same penalty.

c. 2. If there are children, grandchildren or other descendants from a prior, unblamable marriage, they shall have the father's property and be released from the father's control by reason of the penalty inflicted on him; but they shall support the father and furnish him with all necessary things, for though he violates the law of God and man, he is nevertheless their father.

c. 3. This then shall be in force in the future and will give no one, who lives chastely, any trouble. Innocent parties will not suffer through this law. Parties that have been guilty in the past shall go neither wholly free nor be dealt with too severely. Incestuous marriages heretofore contracted, but already in any manner dissolved, shall remain unpunished. But if a man lives with a woman under any such marriage at the time of the enactment of this law, he may within two years after its publication divorce his wife; and if he does so in a manner that she will not return to him, and the separation is not merely in appearance, and he does not in fact further associate with her—for he might, perchance, keep the former marriage in force in this manner—only a fourth of his property shall be paid into the fisc. And the children whom we pardon as persons who are innocent will be permitted to inherit from their father, provided that they are the only children and the father has none from another, lawful marriage and provided that the latter does not exclude them from the inheritance upon some lawful ground. **1.** But if there was another marriage not repugnant to law, from which the children were born, three-fourths of the inheritance shall belong to these children not involved in any crime or fault, unless they are guilty of conduct which, according to law makes them unworthy of their father's succession; and one-fourth thereof shall belong to the children, who, while themselves innocent, are involved in guilt, provided that their conduct toward their father is without fault, and excepting in either case the fourth of the paternal property which we have ordered to be turned over to the fisc. And we permit such children to inherit from their progenitor both pursuant to a testament and on intestacy, according to the measure previously stated. And all this shall apply also if, after the man has divorced his wife allied to him by an incestuous marriage, he

marries another woman, and children are born to him of the first and subsequent, lawful marriage. And we temper the time that is past with clemency and the woman shall receive her dowry back. But if the man does not divorce his wife (to whom he is unlawfully joined) within two years after publication of this law, he shall be deprived of his property, and the woman of her dowry, and the penalty aforesaid shall apply. The children of such marriage shall then have none of the paternal property nor anything out of the mother's dowry. If there are children, however, of a prior, lawful marriage, they shall have the father's property except the fourth that goes to the fisc, and they shall become their own masters (*sui juris*), but shall nourish their father and extend the help to him previously mentioned. The dowry of the incestuous marriage shall go to the fisc. If the man has no children of such prior, lawful marriage, all of his property shall go to the fisc. These provisions also apply to a man who contracts an incestuous marriage hereafter, for he is on the same footing as the man who does not divorce his wife, to whom he is joined in such marriage, within the time specified by us.

c. 3. Since, moreover, a doubt has been raised in some of the provinces as to the status of children legitimized by our law^a we think it proper, as becomes a law maker, to add something to it and to settle the doubt. That was our intention when we enacted the law. For there are some who think that if a man is father of legitimate children and his marriage is dissolved by the death of his wife or a lawful divorce, and he thereafter lives with another woman to whom he may be lawfully married, and he has children by her before or after a marriage contract is entered into with her—(at some time) assuming that one is executed that the children (by the second woman) born before the execution of the marriage contract, when no later children were born, or if born, have died, could not be legitimate children, because there are legitimate children of the prior marriage. But that does not at all follow. For if, as we have declared, children are legitimate if a marriage contract is executed, those born prior thereto are also legitimate, and the children which a father leaves, including those that were born of the first wife as well as those born of the second wife, are all legitimate, although born before the execution of a marriage

contract and though after such execution none are born, [or] if born, have died. The law permits the father to make a testament in favor of his offspring in any manner he wishes, provided that he does not violate the law which provides that all the children must be left a certain amount of the inheritance. All these children, therefore, are legitimate and may inherit from the father on intestacy or pursuant to his testament made by him at his pleasure within the limits permitted by law, and they may inherit from each other. Why should we say more, when to call them legitimate implies that they are under paternal power, and are entitled to everything embraced within the meaning of that term, including rights, granted by law, contrary to the father's testament?^b

a. As to such right, see C. 6.12.

b. C. 5.27.11.

Epilogue. Your Sublimity, knowing this our will, declared by this imperial law, will hasten to carry it into force and effect by edicts issued to the presidents of the provinces, so that people also who live at a distance may know that we look after the interests of innocent offspring and that we abhor unnatural and unlawful alliances. Given May 16, 535.