

Novel 22.

Concerning those who marry a second time.  
(De iis qui secundas nuptias contractent.)

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Emperor Justinian to Johannes, glorious Praetorian Prefect of the Orient the second time, ex-consul and patrician.

Preface. We have already enacted many different laws bettering in certain particulars previous provisions made by us but later found to be deficient—these laws directing our subjects how they should live. The present law, which regulates the most important condition of life, is a general law. For if marriage is a condition so holy as to bring immortality to the human race, perpetually renewing it through the birth of children, God, through his clemency, as far as possible thus granting immortality to our nature, it is proper that we should give much attention to the subject. Other laws do not apply either to all men, all things, or all times; but the attention we pay to marriage interests the whole human race, for the latter is renewed by marriage alone, and hence this subject deserved more consideration than others. No great distinction was made in ancient times between first and second marriages. Fathers and mothers were permitted to marry as often as they wished, without being deprived of any property thereby, and the matter was very simple. But commencing with the time of the elder Theodosius, and under subsequent emperors to Leo, the subject was treated with greater care, and the later, particularly, enacted many excellent laws in regard thereto. We, too, made many provisions on the subject in our Code, but after more careful consideration have deemed it best to make amendments not only to previous laws but also to those enacted by us. For we do not hesitate to enact into law what appears to be better than previous provisions and to make corrections in prior laws without waiting for some one else to make them.

c. 1. We shall precede this law by mentioning two points. The first point is, that the sanctions heretofore made by us or by our predecessors shall govern the conditions and times to which they applied; and these conditions shall not be affected by or

have anything in common with the present laws, but they and the results therefrom shall be controlled by the rules already enacted. The present law shall apply to the future and to all marriages hereafter contracted, first as well as second, and to all future marriage-gains and inheritances from children. We leave everything done in the past to the laws of the past, but protect future acts by the present law. Hence, past first or second marriages entered into, past succession of parents to the children of the first marriage, and past gains received through dowry or prenuptial gifts or from any other source, shall remain valid, whether there are children of the second marriage or not, and both men and women shall enjoy the benefit of preceding legislation, whether they entered into a second marriage or not, or whether they inherited from children or acquired anything else pursuant to such prior legislation. For it cannot be said that persons who entered into a marriage relying on the then existing laws, should also have anticipated the future, should not have relied on existing conditions, but should have been in fear of something not yet existing. These matters must be upheld according to the order of things heretofore existing, but all cases in the future will be governed by this law, which will be applied as stated in connection with all marriages not yet entered into. This is the first point preceding the present law.

c. 2. The second point is, that whatever provisions a man or woman may make in reference to these matters in his or her testament shall be valid. Let each person, therefore, direct what is proper, and his or her will shall be law, as already expressed in the oldest law that established the Roman Republic, namely, the Twelve Tables, in the ancient Roman language and in the following words: As each one directs as to his affairs, so shall be the law. And no one shall have the right, even though he may obtain an imperial rescript or other permission, to direct anything, contrary to such will, concerning another's property.

**1.** But if a testator has said nothing about these things or has given a direction which is not covered by the present laws in force or is not contrary thereto, then the present law shall apply, which in brief form embraces all situations as near as it is possible for men, and which relate to marriages, first and subsequent ones, to

inheritances, to dissolution of marriages by death or divorce, and to the situation before and after the time of mourning, and which amends and condones the law on the subject, putting into a perfect and harmonious whole legislation formerly commenced, frequently disturbed for 155 years, assembled bit by bit and gradually gathered together, but needing correction on account of many inconsistencies.

c. 3. Marriage is effected by mutual consent and needs no dotal instruments.<sup>a</sup>

Whether marriage is entered into either by mere matrimonial consent or by dowry and prenuptial gift, dissolution thereof may follow either with or without penalty, since every tie among men may be dissolved. We are the first who determined that a penalty might be payable in case of dissolution of marriage in connection with which no dowry was given.<sup>b</sup>

a. See note C. 5.4.9 and Nov. 117, c. 4 as to illustrious persons.

b. C. 5.17.11.

c. 4. Marriages are dissolved by the parties thereto, if living, either by common consent—and no legislation is necessary for such a case, since the agreement disposes of everything—or (by agreement) for some reasonable reason when the divorce is called *bona gratia*, or because of some guilt or no guilt at all.

Note.

As shown by c. 7 and c. 14 of this Novel, Justinian applied the term *bona gratia* to a divorce where the party divorced was not particularly at fault, as where he wanted to lead a solitary Christian life, where the other party was impotent or a captive. See Nov. 117, c. 12 and comments of Otto, Schilling and Sintenis. Justinian, however, in Novel 140 understood by the term divorce *bona gratia*, a divorce by mutual consent. Justinian also in C. 5.13.1.16b<sup>1</sup> uses the term in the same sense, referring as he does to C. 5.17.9.

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<sup>1</sup> Blume's manuscript gives this as C. 5.13.1.16c, but 16b clearly is the provision in question.

c. 5. A proper cause exists when one of the parties chooses to live a solitary life and in chastity, which leads to better things. Another law of ours also provides that a husband or wife who desires to lead a better life and retire, may dissolve the marriage, leaving the deserted party a solace by giving him a small portion of his or her property. And if the parties made a contract under which the survivor, in case of death, should receive certain property, this must be left to the deserted party, whether husband or wife, since the spouse that chooses such life is as good as dead to the other.

c. 6. A just cause for divorce is given when the husband is impotent, and shows himself to be so for a period of two years, as that period was defined by a former law, from the time of the marriage. For the wife, or her parents, may dissolve the marriage and send a bill of divorce against the consent of the husband. In such case, the dowry belongs to the wife and must be returned to her by the husband. But the prenuptial gift or the gift on account of marriage remains with the husband, and he shall suffer no loss in his property. We must, however, correct this law<sup>a</sup> by a small addition, and make the period of impotency from the time of marriage, three years instead of two. For we have learned in the meantime that men that were impotent for a longer period than two years, became subsequently able to procreate children.

a. C. 5.17.10.

c. 7. So also, captivity is one of the cases when a reasonable excuse exists for dissolving the marriage. And whether a calamity of that kind happens to a husband when the wife remains at home or to the wife when the husband remains at home, a clear and plain reason for the dissolution of the marriage exists. For when one of the parties is placed in servitude, the inequality of personal status destroys equality in marriage. But we consider the subject from a human standpoint, and so long as it is clear that the captive, husband or wife, survives, the marriage shall not be dissolved, nor shall either of them enter into another marriage, except under the penalty that the husband (if he dissolves the marriage) loses the prenuptial gift and the wife (if she dissolves it) her dowry. If it is uncertain whether such captive

survives, the husband or wife remaining at home must wait five years, at the end of which time another marriage may safely be entered into whether the death of the captive is known or uncertain. Our predecessors, too, considered such situation sufficient for a divorce *bona gratia*, and we concur, so that, since the parties are separated, no bill of divorce is necessary, and neither party shall suffer any loss, the husband not receiving the dowry, nor the wife the prenuptial gift, but each retaining his or her own.

c. 8. We humanely abolish a certain severity exercised under the former laws. If a man or woman was condemned to work in the mines, by a judicial sentence, as now to Prociennsus (in Propontis) and to what is called Gypsum, the sentence carried slavery along with it, and because of that fact the marriage was dissolved. We abolish this, and do not permit a free-born person to become a slave by reason of punishment. We do not want freedom to be changed to a servile condition, but rather strive to become the liberator of slaves. The marriage, therefore, since it exists between free persons, shall not be affected by such sentence.

c. 9. But if a freedman or a freedwoman or their children are sent into slavery by a judicial sentence, the marriage is valid in the beginning but is dissolved by the slavery just as in case of death, since even those who lived before us said that slavery did not differ much from death. In such case each of the married parties takes back his or her property; the agreement therein in reference to the case of death accrues to the benefit of the children alone, and the remainder belongs to the party who reduces the condemned person to slavery (i.e., his or her owner).

c. 10. If one marries another under the opinion that he or she is marrying a free person, but it turns out that such person is a slave, the marriage is not said to be dissolved, but that there was no marriage from the beginning, on account of the inequality of status previously mentioned. No gain accrues from such marriage, but restitution merely must be made and may be enforced in proper actions. This applies, and such union is declared to be no marriage, only if such union was formed

when the status was not known, and when no consent or fraud or negligence of the owner of the slave appears.

c. 11. For if an owner gives a female slave in marriage as if she were free, and the man who is free, marries her relying on the party giving her in marriage, and dotal instruments are perhaps executed, or if none are executed, the marriage, nevertheless, takes place with the owners consent, it would not be right that such marriage should not be valid. But if an owner of a slave does anything of that kind, the slave, whether man or woman shall be impliedly free, and the transaction shall be considered as entered into by free persons. If the owner does not counsel the marriage, but knows of it and purposely conceals it, so as to make trouble for the married couple, such malicious conduct, if clearly shown, will be punished, and such persons, entertaining such depraved purposes, will be deprived of their ownership. In such case, the marriage shall be as valid as though the owner had consented thereto in the beginning; the owner shall lose his right and the slave shall become free. The consent of the owner and his fraud, shall have the same effect. It is clear that children born of such marriage, are, according to this law, free and free-born.<sup>a</sup>

a. See C. 7.6.1.9. The slave was impliedly made a freedwoman by such conduct of the man who owned her.

c. 12. The foregoing provisions are much more true, if the owner dismisses male or female slaves who are sick and abandons them. Such slaves shall be considered as free, and as abandoned slaves, not be subject of any will but their own, and shall not subsequently be troubled by those who long spurned to possess them. <sup>a</sup>

a. C. 7.6.1.3.

c. 13. Deportation, which takes the place of the ancient interdiction from fire and water, and which at the present time goes by that term, does not dissolve marriage. This was formerly considered by the holy Constantine<sup>a</sup> as merciful, and we have adopted his opinion. But that subject is not treated in the present law, hence we say nothing as to the effects thereof, which is reserved for its proper place.

a. C.5.16.24.

c. 14. We also know that Constantine of divine memory, the founder of this fortunate city, enacted a law <sup>a</sup> providing that if a soldier was in camp and for a period of four years failed to communicate with his wife and sent her no sign of affection towards her, the wife and the right to enter into another marriage, provided that she should first communicate the matter to the commander of the army, and be able to prove that fact by witnesses; that on complying with those provisions the woman could re-marry with impunity, without loss of her dowry; but, also, without receiving the prenuptial gift. These provisions were made by the holy Constantine. But that constitution seems harsh to us. For to deprive a soldier engaged in affairs of war of his wife is no less a punishment than to be made captive by the enemy. Therefore, the woman referred to by said former law-giver, shall not enter into another marriage until after the expiration of ten years and until she, by letter or messenger, has asked the soldier to return, and he has either renounced the marriage or has kept silence, and notice of the matter is given by the woman to the glorious master of the soldiers, the worshipful duke or the honorable tribune, under whom the soldier is enlisted. Thereupon, the woman has permission to petition us for permission to remarry, which we shall then grant. If she violates any of these provisions, she will remarry under the penalty fixed by law. **1.** The foregoing are the dissolutions for reasonable reasons which come under the general designation of divorce called bona gratia.

<sup>a</sup> C. 5.17.7.

c. 15. In other cases in which there is some guilt either on the part of the husband or the wife, the guilty party is punished by the loss of what he or she has given, that is to say, by the loss of the dowry or gift on account of the marriage. The ancients specified many different kinds of guilt. But Theodosius the Younger enacted a constitution<sup>a</sup> on divorces, adopting only some of the former grounds and adding others of his own. We, too, have discovered other grounds deemed by us sufficient which involve some guilt on the part of one of the parties. **1.** So, if, according to the

constitution of Theodosius, of blessed memory, a woman can show that her husband has committed adultery, is guilty of murder, or has been engaged in poisoning and sorcery, or has participated in treason, the worst of crimes, since the empire itself is attached, or has been condemned for forgery, or has violated sepulchers, or has pilfered from sacred edifices, or has led the life of a robber, or conceals robbers, or is what is called a cattle-raider, who lays in wait for cattle or sheep, driving them off, or if she proves that he is a kidnapper, or that he lives so dissolutely that he in the presence of his wife associates with harlots—for it exasperates wives, especially those that are modest, to have their marriage-bed violated—or if she proves that he made attempts against the life of his wife either by poison or the sword or in some other manner—for the ways of crime are many—or has used the scourge upon her—if a woman can prove anything of that kind, she may send a bill of divorce, sever the marriage ties, and have her dowry as well as the prenuptial gift as her own. Nor shall it be necessary, in such case, to prove all of these grounds; the proof of one will be sufficient. **2.** And, on the other hand, the husband has permission to divorce his wife, if he has found her to be guilty of adultery, poisoning, murder, kidnapping, violation of sepulchers, or theft from churches; or if she has become an accomplice of robbers or a robber, or if she, without his knowledge or against his consent, attends the banquets of strangers; or if she against the wish of her husband, stays away from home during nights without excuse; or attends horse-races in the circus, or the theatre, where plays or things like that are put on or where fights with beasts are shown, or if she makes attempts against his life by poison or sword or in some other manner; or is an accomplice of a rebellion, or is guilty of forgery or lays violent hands upon him. In such case, the law permits the husband to divorce his wife, if he can prove one of these grounds, and will in such case have the dowry and prenuptial gift as his own. **3.** But if either of the parties sends a bill of divorce without just cause, he or she, will be penalized as above states by us, for the very fact of dissolving the marriage without cause. Further, the wife who is guilty of the foregoing crimes or sends a bill of divorce without cause shall not remarry for five years. Any such marriage entered into within that time shall be invalid and shall not



go unpunished, and anyone may institute an accusation against it, as against an unlawful act.

a. See C. 5.17.8. For amendment, see Nov. 117, c. 8.

c. 16. And even if the woman sends a bill of divorce for just cause, or if the man incurs the aforesaid penalties upon divorcing his wife for no just cause, and she receives the property mentioned, and prevails in a suit (in reference thereto), still she must not remarry until after the expiration of a year. That shall not apply to the husband; and he may immediately remarry, whether he receives the property mentioned, for just cause, or does not receive it, because in such case no confusion of offspring can result; but in the case of the woman such prohibition to remarry within the year is just, and is of such importance that even though the marriage is dissolved *bona gratia* (no fault existing as to either party), women are forbidden to remarry within a year under the constitution of Anastasius, of blessed memory.

**1.** The foregoing are the grounds for divorce stated by Theodosius. We add three others, taken from the ancient law. If a woman is so wicked as to purposely produce abortion, heaping grief upon her husband and taking from him the hope of children; or if she is frivolous, goes bathing with men, out of a spirit of wantonness; or if, during her marriage she negotiates with some other man as to her marriage with him—in such cases husbands may have permission to send a bill of divorce, and to keep the dowry and prenuptial gift. Offenses of that kind shall give just cause for divorce and shall belong to the class fixed by Theodosius of blessed memory, which entails a penalty.

c. 17. A male serf (*adscripticius*) shall not marry a free woman, either with or without the knowledge or the consent of the owner of the land. And if the serf should do so, the owner may personally or by order of the president of the province cause such serf to be chastised by the scourge and the woman thus unlawfully married to him shall be taken from him. Such union shall not be considered as a marriage, and there can be no question of any dowry or prenuptial gift, but merely punishment of an impermissible act. **1.** These marriages are dissolved during the

life-time of the parties who entered into the same, in the manner aforesaid, carrying with it almost as a matter of course, the pecuniary penalty as to the dowry and prenuptial gift.

c. 18. We have also considered another subject, namely, that a proper penalty be meted out if marriages, in connection with which no marriage gift was made, are dissolved without just cause. We have enacted a constitution<sup>a</sup> which applies to a case when parties have voluntarily entered into a union with intent to constitute such union a marriage, without dowry or prenuptial gift. In such cases it has frequently happened that the marriage had been thoughtlessly dissolved, since the person acting unjustly incurred no risk. So said constitution provides that if a man marries a woman, under paternal power, with the consent of the parents, or marries a woman sui juris, without a marriage gift being made or dotal-instruments executed, the marriage shall be valid, though no such dotal-instruments were executed, and the man shall not on that account expel his wife from his house—although we know that that has been done in many cases—without one of the just causes stated by Theodosius and by us. If anything of the kind is done, and the man either dismisses his wife from home or gives her a just cause for dissolving the marriage with him, he must pay her one-fourth of his property.<sup>b</sup> If the man has as much as 400 pounds of gold he shall be penalized by the payment of 100 pounds, that is, by a fourth of his property; if he has less, then by the fourth of that amount. If he has more than 400 pounds of gold, he shall not be penalized by the payment of more than 100 pounds of gold. For we take into consideration in enacting this law what is customarily the largest amount of dowry; and only the portion that remains after deducting the debts shall be treated as the man's property. The rule also applies to the other side, and if a woman, undowered, separates from her husband on account of some fault of her own, or sends him a bill of divorce without just cause, she shall undergo the same penalty. And if the marriage is dissolved on account of the woman's fault, she shall wait five years before contracting another marriage; if dissolved through her husband's fault, or it is bona gratia, <sup>c</sup> she shall wait a year, to avoid confusion of blood. Thus the law is made complete.

a. C. 5.17.11.

b. See Nov. 117, c. 5; also Nov. 53, c. 6, appended to C. 6.18 [not appended in this edition.

c. See note to c. 3.

c. 19. We have also provided for something else, benevolent and acceptable, at the same time, namely, that marriages shall remain in force (in certain cases) though a bill of divorce has been sent. For in order to prevent malicious conduct toward fathers on the part of those in his power, who, as we learned, purposely sought grounds for sending their wives a bill of divorce, or dissolved the marriage without any just ground, so that their parents might be compelled to return the dowry or pay over the prenuptial gift after a pretended dissolution of the marriage, the married parties at the same time, perchance, secretly maintaining their relation to each other, while the parents would in return for their love for their children be compensated by the damage inflicted on them, we enacted a law,<sup>a</sup> which forbids persons under power or emancipated children, male and female, to dissolve a marriage in fraud of their fathers or mothers who gave or received a dowry or a prenuptial gift, alone or together with the children. Just as the consent of a father is required to a marriage, so no marriage shall be dissolved in fraud of parents against their consent. Even if a bill of divorce is sent, no penalty shall be exacted from them, whether they have personally given or received the dowry and prenuptial gift or have received the same in conjunction with their children. It is not in consonance with reason that a father should be unable to dissolve a marriage contrary to the wish of a son, while at the same time children, perchance not of age and immature in judgment as to what is best, should have the right to dissolve a marriage and thus inflict injury upon their fathers. This was first provided by Marcus, the great philosopher. Diocletian followed him therein, and we also give it our approbation. Here end the provisions as to dissolution of marriage between living persons.

a. C.5.17.12.

c. 20. Next follows the other mode of dissolution of marriage—by death which terminates everything. If the marriage is dissolved by the death of the husband or that of the wife, the husband—in the latter case—receives, as his gain, the dowry, according to the marriage contract, and the wife, in the former case, receives the prenuptial gift, as may have been arranged in the first instance by the contracting parties. While contracts for unequal quantity are not [forbidden], unequal proportions (to the one or the other in case of death), are forbidden, as the noble-minded Leo provided in his law,<sup>a</sup> which was clarified by us.<sup>b</sup> For if it was agreed that one should receive a greater, the other a smaller, proportion, it was uncertain (under Leo's law) and doubtful which of the provisions should be in force, whether that providing for the greater proportion or that providing for the less. So we, opposed to all immoderation, determined to reduce the greater portion to that of the smaller; so that (e.g.) it would not be permitted to give a third to one and a fourth to the other, and if that were done, each should receive a fourth; and so the portion shall be equal, though the quantity is not. **1.** If the marriage is dissolved by either of the methods above mentioned, it would be well for either spouse not to remarry, so as not to prejudice their offspring by a subsequent marriage. And if they do not remarry, they shall each receive back his or her own, that is to say, the wife the dowry, the husband his prenuptial gift; since we need not then scrutinize the matter as would be necessary in a case of a subsequent marriage; and the husband shall receive his portion from the dowry (according to the marriage contract) and the wife hers from the prenuptial gift; and such property shall be theirs without any substantial distinction between that and their other property. While they survive they may alienate it as they would their other property, and when they are die they may transfer it to others as a legacy or trust. We permit such alienation by a constitution enacted by us.<sup>c</sup> **2.** But if they appoint their children as heirs to a portion of their estate and outsiders as heirs of another portion, such property (here specially dealt with), not (otherwise) alienated, shall remain the property of the children. And if the children are appointed as heirs, in unequal portions, they shall take such property not according to the proportionate parts which they receive as heirs, but all in equal portions; this shall be true also, if none of the children, but

only outsiders, are appointed as heirs, the children being provided for otherwise. For if the father did not alienate the property during his life time or expressly pledge any part of it, or if he did not expressly transfer it to another upon his death, it seems to us that it should be presumed that he wanted it to go, not to outsiders, but to his children, as though he, in a manner, received it for their benefit.<sup>d</sup> So this property shall go to the children as a special gift of honor, even though they are not the (appointed) heirs of the father or mother or of both of them, and whether some of them accept an inheritance from them, while others refuse it. This appears more just to us than former provisions. If, then, such property comes to them, it shall not be burdened or diminished in any way, unless they themselves give cause for such diminution.

a. C. 5.14.9.

b. C. 5.14.10.

c. C. 5.9.8. But that rule was changed by Nov. 98; see note c to C. 5.9.5.

d. See C. 5.9.8.1 and note c.

c. 21. For if one of them is guilty of ingratitude, his proportion of such property shall be given to others not so guilty, so that we may teach others to honor their parents and follow the example of their brothers (or sisters). If the misfortune is so great that all of the children are ungrateful, such property shall go to the heirs of the decedent as part of the remaining estate, for children cannot be rewarded with any gift of honor from a parent whom they injure, and we deprive them thereof for such a cause. **1.** If some of the children survive, while others have died, leaving offspring, we give to the offspring the share of the deceases, if they are his heirs, otherwise, such share shall go to the surviving children. And in order to make this law perfect, it shall apply not alone when dowry is given and prenuptial gifts are made, but also to the benefits introduced by our constitution in connection with undowried marriages.<sup>a</sup> And these benefits shall accrue to the children in the manner aforesaid if their parents do not enter into a subsequent marriage. Up to this point are treated first marriages and the benefits arising therefrom.

a. Nov. 53, c. 6, appended to C. 6.18 and Nov. 22, c. 18 and Nov. 117, c. 5 appended to C. 5.17 [neither of these appended in this edition].

c. 22. But if they are not content with one marriage and marry again, they are subjected to the provisions of this law according to whether they have children only by the second marriage, or only by the first, or have no children by either or have children at all. If they have no children by the former marriage, or by either, we need not trouble ourselves about the second marriage. In such case no restriction is put on men, and women must merely wait for a year before remarrying. If the latter remarry prematurely, they will be subjected to punishment, which will be more severe in case they have children than if they have none. If there are no children, the woman will immediately become infamous<sup>a</sup> on account of premature marriage, will receive neither the property left her by her former husband, nor the prenuptial gift, and she cannot give to her subsequent husband more than a third of her wealth. Not even will she be able to take anything left her by an outsider, either by way of inheritance, trust, legacy or gift in anticipation of death, but such property will become that of the heirs of such deceased, or (if she is an heir) that of her co-heirs, assuming that she could be called an heir at all in view of the fact that she cannot receive any such benefit. If other heirs are appointed, or they inherit by intestacy, they will receive what was left to the woman. The fisc shall not claim such property, so that we may not seem to be looking after its interests, while correcting such situations. The property left her by outsiders shall go to the other heirs; that left her by her former husband shall go to the ten cognate relatives of such husband mentioned in the edict, namely, to ascendants, descendants and collateral heirs to the second degree, observing the order of degree.<sup>b</sup> If no such cognate relatives exist, the property shall go to the fisc. **1.** The woman shall not be able to even inherit from her cognate relatives by intestacy except when she is related within the third degree; persons related to her by a remoter degree, will have other heirs. And the penalty of infamy, if she has no children by her former marriage, will be imposed on her by an imperial letter to that effect. If she has such children of either sex, she may supplicate the emperor as to such infamy, but will not be granted any exemption, by

rescript, unless she is willing to be the beneficiary of imperial benevolence and to be relieved of the other penalties, by giving to the children of her former marriage one-half of her property, absolutely and without condition, not even reserving a usufruct therein, but giving, as we have said, when she remarried, one-half of all of her property to the children of such former marriage. Such children shall have such property in equal parts, and if they have children, they may transmit it to them—for something should be added to the ancient laws; if they have no such children, the portions of the persons deceased shall belong equally to the survivors. If they all should die, the mother may receive such property back as a solace for her misfortune. This applies if the children die intestate; for they may leave such property which has become theirs, by testament, or may dispose of it as they wish while they are living. Such is the penalty imposed on women who marry before expiration of the period of mourning, and we have collected into one the three constitutions<sup>c</sup> previously enacted on this subject, making only one addition thereto.

a. C. 5.9.1.

b. C. 5.9 headnote.

c. C. 2.12.15; C. 5.9.1 and 2; C. 6.56.4.

c. 23. But if the woman waits the proper time and escapes the aforesaid penalties, but thereafter, unmindful of the first marriage, enters a second, then we repeat, if she has no children, she does so without any risk. But if there are children, whom the law regards as neglected by a subsequent marriage, then she will be deprived of the ownership of all the property received from the husband, and will retain only the usufruct therein, and this applies to the prenuptial gift and to every other gift from her husband, whether made among the living, or by testament or in anticipation of death, and whether consisting of a portion of the inheritance or of a legacy or trust. And in order to speak generally, she will be deprived of the ownership of all the property received by her from her husband, and the children shall become the owners thereof immediately from the time that she marries another man. The penalties apply to women and men alike. For if the latter has children and gives them a second mother, he shall not have the ownership of the

dowry or of any other property received from his (first) wife, and shall only have the right to use and enjoy the same during his life. And though the children are under his power, still they shall be owners of such property, and the ownership shall pass to them immediately upon the marriage with another woman. Nor do we make any distinction in connection with dowry or prenuptial gift, as to whether it was given by the spouse personally, or whether others, cognate relatives or outsiders gave or made it for him or her.<sup>a</sup>

a. By Nov. 98 such property went to the children whether the survivor remarried or not.

c. 24. Although the term dowry in a manner also embraces a prenuptial gift, (we add) that the provisions made as to the benefit derived by the spouses, from the former shall also be in force in such case. The law so firmly guards such property that it permits the parents neither to alienate nor put a lien upon it. If they do so, their own property is immediately pledged for it. Not that the law undertakes to forbid parents to do what they wish with it<sup>a</sup> for it is not becoming to make children the censors of their parents—but it shames them, at the same time threatening those that receive the dowry or prenuptial gift, that they will not be able to enjoy it; and they must know, by the terms of this law, that if they purchase any of it, receive any of it as a gift, or deal with it in any way, the transaction shall be as void as though not entered into. The children and their heirs and successors may recover such property from the heirs and successors of such receivers and will not be barred except by possession for thirty years, which makes such possessors the owners of such property. That period commences to run from the time that the children become or are made their own masters (*sin juris*) unless they are still minors.

a. The exact idea of the author is not apparent. It seems to be that the children cannot prohibit parents from doing what the latter wish to do, but are, nevertheless, protected by the lien given them.

c. 25. The gain from such property shall be equally divided among the children of the first marriage. We do not extend to parents the choice to give it to one child and



disregard another. Especially since parents become heirs to all of the children alike, and are not merely heirs of one but not of the other, why should they not themselves, in the respect mentioned, also treat all the children alike? Why should they select some and overlook others? So each of the children shall have an equal benefit from such property, transmitting his (or her) portion to his children, if he (or she) have any, the latter dividing such portion equally among themselves, altogether being limited to the portion of their parents.

c. 26. We have declared alienation of such property by parents to be void, but should make the provision in reference thereto more definite. If all of the children of a prior marriage survive, and the (surviving) parent dies before they do, the alienation shall be void, as heretofore stated. But if all of the children have died, leaving the surviving parent childless, then the alienation will, through such result, be valid. For why should it be void when there are no children for whom alone the property is to be preserved? And here careful thought has disclosed a third situation. Since when all the children survive and the (surviving) parent dies first, no benefit accrues to the purchasers from such alienation, and since the alienation is completely valid, when all of such children have died, we have thought out what should be done when of those situations are true; when there are several children, and one of them dies leaving surviving children, the inheritance goes to the latter, as we have often stated, but if one of them dies leaving no children surviving, the whole shall not go to the older brothers (and sisters), but the portion which according to the (marriage) agreement<sup>a</sup> would go to the (surviving) parents in such case shall go to such alienee, the remainder to the heirs of the deceased child, whether brothers (and sisters) or outsiders—which particularly benefits the mother—and whether testate or intestate heirs. We are the first who have considered this point and who have benevolently embodied it in this, our law. And so if a (surviving) parent has alienated such property before a second marriage, and then one of the children dies, the alienation is valid only to the extent that the parent would, according to such contract, inherit such property; but it is invalid as to the remainder which would go to the heirs of such deceased child. Thus such alienation will remain in suspense,

depending upon future contingencies, being either totally void from the beginning, or becoming wholly valid, or being void in part and remaining valid in part. **1.** In connection with the property received by children, when parents remarry, we do not inquire whether such children are heirs<sup>b</sup> of the parent who died first or of the parent that dies last, or whether some of them are such heirs and others not. But, as stated before, the survivors shall receive it (whether such heirs or not), in equal parts, and the children of a deceased child shall receive the portion of the latter. Ingratitude, however, as we have also stated prevents a child from receiving such property. We do not repeal laws enacted against ungrateful children, since through such laws parents are honored and children are held to their duty of respect. For as we forbid parents to make a choice among children (as to who shall receive the property), but give such property in equal portions to all, so we keep the laws relating to ingratitude, in force. A child will be considered ungrateful who acts ungrateful not only toward both parents but also toward the parent that dies last.

a. See Nov. 2, c. 2, note.

b. I.e., heirs under a will; for children were heirs on intestacy.

c. 27. Leo of blessed memory gave good consideration to the subject of gifts, made by those who enter a second marriage. For he says<sup>a</sup> that if a parent has children of a former marriage, and thereafter contracts a second or further marriage, a father cannot give to a stepmother or a mother to a stepmother, either as a gift among the living, or after death, more than what a child—if there is only one—receives from such parent. If there are several children and each receives an equal share, a stepmother or stepfather shall not receive more than one of the children receives. If unequal portions are left to the children, the stepmother or stepfather shall only receive as much as the child that receives the smallest portion either pursuant to a will or as a gift among the living, provided that instead of what was formerly the fourth, the third or half, must now, according to our law, be given or left to a child unless it is ungrateful.<sup>b</sup> These provisions apply also to a grandfather, grandmother, great-grandfather, great-grandmother, grandsons, granddaughters, and great-grandchildren, whether emancipated or not and whether they are descendants on

the paternal or maternal side. Having made these provisions, he (Leo) adds further, that the excess amount left or given to a stepmother or stepfather, shall be void as though not left or given, and shall be equally divided among the children and among them alone. For what is stated in some constitution<sup>c</sup> that the children of the second marriage shall share therein, does not please us; and it shall belong solely to the children of the first marriage, who were the cause of making such provisions, and no trickery, through the interposition of a third person or in some other manner, shall be of any avail. But such excess shall only be divided among the children that have been grateful to the exclusion of those that are shown to have been guilty of that degree of ingratitude contemplated by law. We deprive the latter of any benefit therefrom, in order that they may not, through the hope of gain, rise up against their parents, lose their self-control and violate the laws of nature. If one of the children who shares in such excess should die, leaving children, the latter shall receive the whole of the share of the deceased.

a. C. 5.9.6.

b. Nov. 18, c. 2, appended to C. 3.28 [not appended in this edition].

c. C. 5.9.9.

c. 28. The laws heretofore passed do not specify the point of time which shall govern in determining as to whether there is such excess, whether the time when the gift is made or when the marriage is dissolved. It appears most just to us that the time of the death of the parent that contracted a second marriage should govern. For some people make bequests for more than they have, others for less, but accidental circumstances often effect a change (in the amount of property). So, in order not to err, the time when the parent that remarried dies shall govern, and any excess which shall then appear (to have been given or left) shall be turned over to the children. The time of making the gift or when an instrument in reference thereto was executed shall not be considered, but the outcome mentioned shall be awaited.

c. 29. We must not pass by the provision properly made by Theodosius the Younger, of blessed memory,<sup>a</sup> to the effect, that if a woman who has children remarries, and has children of such marriage, and thereupon the second husband dies, the children of both marriages shall inherit the property of the mother, and in equal shares if she dies intestate. But the prenuptial gift will go to the children of the respective father, the children of the first marriage receiving all of that given by their father, and the children of the second marriage receiving that of theirs, although the mother does not marry a third time. For why should that fact (the mother not marrying the third time) be of advantage to the children of the first marriage? Why should they envy the children of the second marriage, because the latter are not injured by a third marriage? So each set of children shall receive the prenuptial gift of their respective father, and as the children of the first marriage, so the children of the second marriage that of their father, even though the mother who married the second time does not remarry the third time, so that the children may be on an equal footing in this respect. The same rule shall apply to fathers who marry a second time, the dowry (given at the time of the first marriage) belonging to the children of the first marriage, the dowry (given at the time of the second marriage) belonging to the children of the second marriage, though the father does not marry a third time. **1.** Property received by a father or mother from a second marriage by way of legacy or trust shall belong to them respectively absolutely as their own, if they do not marry a third time, and shall belong to their heirs (in case of their death), and they may dispose of it as they wish while living.

a. C. 5.9.4.

c. 30. Since we have, in regular order, dealt with the gain (made by the spouses) in case of dissolution of marriage by death, we should briefly add the following: Whatever parents gain by way of dowry or prenuptial gift when the marriage is dissolved by divorce, either *bona gratia*<sup>a</sup> or otherwise, shall be preserved for the children, as is true when death dissolves the marriage. This shall be true also in case of undowered wives, when they, by our constitution are punishable for their temerity. It shall make no difference through whose fault the divorce takes place;

the gain received shall in any case be preserved for the children of that marriage; this is true in case where the first or second marriage is dissolved, and although no third marriage is entered into.<sup>b</sup>

a. See note to C. 3.

b. The devolution of the property in case of the second marriage is provided for in C. 5.9, and Novels attached [not attached in this edition].

c. 31. Provisions were made in former laws as to increasing dowry or a prenuptial gift,<sup>a</sup> which provisions were perfected by us, so as to permit not only gifts on account of marriage to be increased, but also to be made in the first place, where none had been made before; and as we allowed increases to be made, so we also permitted decreases, if the spouses so desired. But we do not allow any decreases in case of a second marriage—so as not to offend the constitution of Leo, of blessed memory,<sup>b</sup> when there are children born of the first marriage. For if a parent has given a large dowry or prenuptial gift, or has given anything else, and then, noting the intent of the law, diminish the dowry or prenuptial gift, the property given would no longer accrue to the benefit of the children, but to that of the stepfather or stepmother, and the children would be injured thereby.

a. C. 5.3.19.

b. C. 5.9.6.

c. 32. A former law<sup>a</sup> provided that if a husband left to his wife by his last will, or a wife to a husband, only a usufruct, and the father or a mother should thereafter enter into a second marriage, he or she should immediately turn the usufruct—as under the ancient law the ownership of the property—over to the children, and if such children should be under the age of puberty, also the income thereof in the meantime. We do not approve of this, but desire that if a usufruct is given, or a gift thereof is made among the living, in so far as that is permitted, or is bequeathed (by one spouse to the other), and the spouse receiving it enters into a second marriage, he or she shall enjoy the usufruct during life, unless the person who gave, made or bequeathed it expressly provided that the usufruct should cease and be united to

the ownership of the property upon remarriage of the usufructuary. These provisions apply only in case of unconditional gifts.

a. C. 5.10.1. This was note c in Justice Blume's typewritten manuscript because it was added to notes a and b of c. 31, all of which were placed after c. 32.

c. 33. If, however, a usufruct is given as a dowry or prenuptial gift, we leave that as it is, the former laws shall govern, and the receiver thereof shall enjoy it during life, although the deceased may have a thousand wishes to the contrary. For again that [which] accrues to anyone under the law, cannot in any manner be taken away by any individual.

c. 34. Since we have come to mention laws concerning usufruct, it is proper that we should add to this law what was provided by some former laws, namely, that the father retains usufruct of property which children receive through maternal line, or by marriage or in some other manner, even though he enters into a second marriage. The laws formerly passed provide that he shall enjoy the usufruct of the children's property received from their mother or otherwise, and we approve of this.<sup>a</sup> But an exception exists in the case of special-military property (*castrensis*) or quasi-military property.

a. C. 6.60.4.

c. 35. A mother who has made a present of any property to her child, cannot revoke the gift, after entering into a second marriage, under the pretense of ingratitude of the child. It must be presumed in such case that she had no ground for her claim of ingratitude, but advanced such pretext in view of her second marriage, unless it is clearly proven that the child sought her life, laid impious hand upon her, or entered into a scheme to deprive her of all her property.

c. 36. Nor do we permit women who enter into a second marriage to use the title or privileges of their former husband, but they must be content with the position of the

subsequent husband. The woman who forgets her former husband cannot derive any further benefit from him.<sup>a</sup>

a. C. 5.4.10; C. 12.1.13.

c. 37. After many other lawgivers, Alexander, of blessed memory, made a provision<sup>a</sup> that is acceptable and not without justice, namely that if anyone manumits a female slave and afterwards marries her, and she, swelled up with pride and wantonness dissolves her marriage with her manumitter, she is not permitted, under the law, to remarry without the consent of her first husband, but such union (without consent), by which the manumitter will be unbecomingly insulted, will not be considered as a marriage, but as being meretricious and a debauchery.

a. C. 5.5.1.

c. 38. We also think it proper to make a part of our legislation the provision of the same emperor<sup>a</sup> that a mother, who is best adapted thereto, shall have the legal right to raise her children, so long as she does not remarry.

a. C. 5.49.1.

c. 39. A husband cannot return a dowry to his wife except as permitted by law. And a dowry returned in violation hereof will be considered as a gift, and if the wife dies, the husband and his heirs may demand back such dowry unreasonably returned to the wife, together with the income in the meantime, from the heirs of the wife, and shall enjoy the benefit thereof according to the marriage contract. If the husband remarries, such dowry shall be preserved for the children, as is provided generally. If the dowry is not turned over to the husband during the marriage, he may, according to law and as may be provided in the marriage contract, recover it from the heirs of the wife after the latter's death.<sup>a</sup>

a. See C. 5.12.10.

c. 40. If a mother, who took an oath not to remarry, manages the guardianship of her children under the age of puberty, and takes a second husband in disregard of

her former marriage bed and of the oath which she took, without asking for the appointment of another guardian or rendering an account of or paying what is due, not only have the children a lien on her property, but on that of the husband as well, and she is excluded from inheriting from her child if it should die before the age of puberty, even though the father substituted her in heirship (in case the child should die). These provisions were made by our predecessors. And we have wondered why a woman so impious as to remarry in disregard of her oath and in disregard to her three duties—to God, to the memory of her deceased husband, and to her children—was punished by them so lightly; when they punished so severely simply for the sake of decency, a woman who remarried before the end of the time of mourning, although she might have no children; and that a woman that remarries out of lust should not even be subjected to the same penalty as a woman who marries before the expiration of the time of mourning. So we ordain that women who hereafter so perjure themselves, shall, in addition to the penalty already provided, also suffer the penalty fixed against women who remarry before the expiration of the time of mourning, including infamy and other penalties, giving them also the right to be released therefrom the same as the other women by supplicating the emperor and by transferring one-half of their property to their children without reserving even the right of usufruct thereof. And we put the woman who remarries untimely (as mentioned) on the same footing as a woman who remarries before the expiration of the time of mourning. And so a woman who is guardian of her natural children—for we have also permitted her to be so—and who marries without doing what has been stated (supplicating the emperor and giving half of her property to her children) shall suffer the same penalties. It is the duty of presidents in the provinces and of the glorious prefect of this fortunate city, acting with the praetor who looks after such matters, to take care that if a woman who acts as guardian marries, (another) guardian shall be appointed for the minor—under 14 years of age—the mother shall make an accounting and shall restore what is due by reason of her guardianship.

Note.



See C. 5.35; C. 6.56.6. The oath here mentioned was remitted by Nov. 94, appended to C. 6.35 [not appended in this edition], and by Nov. 128, c. 5.

c. 41. We are pleased with the constitution of Zeno,<sup>a</sup> of blessed memory, which provides, that if a father has been ordered to pay a legacy to his own child, upon a certain condition or at a certain time, shall not be required to give the usual bond for payment of such legacies, unless he marries a second time. This (i.e. to give such bond) shall be the penalty for men who remarry.

a. C. 6.49.6.

c. 42. If a clergyman of a higher rank than reader or singer enters into a marriage, he shall, according to our constitution<sup>a</sup> be deprived of his position. If a reader is married, and through some inevitable necessity, subsequently marries a second time, he cannot rise higher in his priesthood, but shall remain in the rank he occupies, retaining the wife he preferred to advancement in rank. If a layman wants to be ordained as subdeacon or deacon, and it subsequently appears that he is married to a woman whom he did not marry as a virgin, but who separated from her husband, or lived with a man in unlawful union, or is such layman himself has married a second time, he will not receive the position, and if he receives it secretly, he will be deprived thereof.

a. Nov. 6.

c. 43. What follows herein is old, has often been corrected not only by others but also by us, yet has not been perfected, as we propose to do now. The ancient Miscellaneous Julian Law,<sup>a</sup> which favored the procreation of children, permitted women, although second marriage was forbidden by the (first) husband, who left them property on condition that they would not remarry, nevertheless, to remarry as well as to receive the property left them upon taking an oath that the remarriage was for the sake of procreation of children. This opportunity was given to women for a year; if that period elapsed, they were not permitted to receive what was left them (upon the foregoing condition) unless they first gave a promise (caution) not

to remarry. This addition was not first found in said Miscellaneous Julian Law, but O. Mucius Scaevola had stated that to be the rule, he, indeed having proposed such a bond in all cases in which anything had been prohibited. Now, since we have noticed that many women take said oath and marry and disregard the wishes of the decedent, not for the purpose of procreating children, but by reason of the impelling force of nature, we think that we should in the first place look after the holy portion of said law and curb perjury by not permitting women to take said oath, in which perjury is so easy. The law provided not only that the oath should be taken by women without children, but also by women with children; and such oath gave offense not only to God but also to the spirit of the decedent, for perjury was easy, and the procreation of children is dependent on the fortunes of fate. We have provided by this law that women may take property left them without taking such oath, which is abolished. But we have not considered one matter, namely, that the wish of the deceased should be carried out. We enact the present law for that reason; for we do not want the wishes of decedents, if they are not absurd, to come to naught. If we should provide that a woman should never be permitted to remarry, if the husband should forbid it, such law, perhaps, would be harsh. But since there is another remedy, namely, that the woman shall not receive the property left her if she wishes to remarry, it would be absurd to disregard the wish of the decedent by permitting her to remarry as well as to receive such property, and thus to do hurt to the former husband in everything.

a. C. 6.40.

c. 44. We accordingly ordain that if a man forbids his wife, or a wife forbids her husband—for the same rule applies to both—to remarry and bequeath some property (to the surviving spouse) on that account, such surviving spouse may elect to remarry and renounce the bequest, or to honor the decedent, abstain from another marriage and receive the bequest. **1.** In order that the matter may not be in suspense and the return of the property may not finally have to be exacted, it has seemed advisable to us to provide that the bequest should not be turned over (to the surviving spouse) within a year, unless by reason of priesthood conferred upon such

surviving spouse, there remains no hope of a second marriage. **2.** After the lapse of a year, the beneficiary may receive such bequest, but not unconditionally even then. If the property is immovable, he or she must give a pledge of property—one that is implied being also granted by this law—and must take an oath that he or she will, in case of a second marriage, return the property in like condition and will also return the income received therefrom in the meantime. **3.** If the bequest consists of movable property, and the beneficiary of such bequest has an abundance of other property, it shall be turned over to him or her under the same oath and pledge. Any fungible property must be returned in the condition in which it was received or the damages thereto made good. **4.** In case of money, it must be returned with such interest as he was able to receive thereon, which is to be determined by the oath of the party who must return such money. If he (or she) did not let it out at interest, but used it, four per cent per annum shall be paid. **5.** If the recipient of such bequest is poor, he must be asked to give a surety. If he cannot give such surety, he shall receive what was left him upon taking the oath and giving the pledge aforesaid. **6.** But as soon as he remarried, the property shall be reclaimed, no matter in whose possession it may be and shall be considered as never having been bequeathed at all. This shall apply to every case of restitution, whether the property is movable or immovable.<sup>2</sup> **7.** If it is gold that was bequeathed, and the beneficiary has no surety and does not have sufficient property, the principal amount will be retained by the party who was to pay it (upon order of the decedent), but he must pay four per cent interest thereon to such beneficiary, and shall do so until such beneficiary enters into a second marriage—in which case restitution of income must also be made—or until it becomes clear that the latter can no longer enter into another marriage, either by a priesthood being conferred upon him—in which event the bequest will be turned over to him—or by death. In the latter case the heirs of the beneficiary will receive the bequest and will not be compelled to restore any interest. **8.** The foregoing rules shall apply not only when one spouse leaves some property to the

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<sup>2</sup> Blume's typewritten manuscript omits a subchapter 6 but includes the contents of 6 as part of subchapter 5, making one sentence of what is given here as the last sentence of 5 and the first sentence of 6.

other under the above mentioned condition, but also when some one else wants to leave some property to the husband or wife upon such condition, and in such event, too, the various situation, shall, as to giving and restoring such bequests, be governed according to their nature and according to the laws relating thereto. We change the constitution already enacted by us in regard to the Miscellaneous Julian Law only this far; in all other respects they shall remain as we have enacted them.

**9.** The assurances (oath, pledge and surety) provided to be given by us, must be given, in case the property is left as a trust or legacy, to the heirs or their substitute or those, in a ward, by whom the property is to be delivered (to the beneficiary); in case of a gift in contemplation of death they must be given to the heirs. But if anyone is appointed as heir, upon the foregoing condition, for a whole inheritance, he must give such assurances to his substitutes, if any, or to the intestate heirs, so that the law may be perfect in every respect. If the testator, however, has provided that the party whom he appoints as heir, either for part or for all of his property, or to whom he leaves a legacy or trust or makes a gift in anticipation of death, then the wish of the decedent shall be followed; for it is our special desire to carry out the wishes of testators when not in conflict with law.

c. 45. Since we have just spoken of preserving property, and are aware of the constitution of Leo<sup>a</sup> of blessed memory concerning second marriages, wherein it is provided that if a woman cannot furnish a surety to return the property which she receives to the children (of the first marriage), she shall have interest thereon at the rate of four per cent per annum, we shall also amend the provision made in that regard by said constitution, making a distinction under certain conditions. **1.** And so we ordain (what we already have stated in a former constitution<sup>b</sup> that if a man makes a prenuptial gift of immovable property, the mother who remarries shall have the usufruct thereof. She has no right to refuse that and ask for payment to her, by the children, of the interest on the value thereof, and she must take care of the property according to the laws governing usufructs, and preserve it for her children surviving her, or if all of them are dead, then the mother shall receive the portion provided by law in such cases<sup>c</sup> the remainder belonging to the heirs of the

children. **2.** If the prenuptial gift consists wholly of money or other movable property, she may have the interest, together with the bond (relating thereto) already provided by law, from the children, but she cannot demand (possession of) the money (upon giving the bond) unless the property of her (second) husband is ample and he has goldware, silverware, vestments and other property, which is given her. In such case we give the mother the option to receive the property itself (constituting the prenuptial gift) upon giving security or the aforesaid interest, namely, four per cent, according to former [laws] and to our [own] laws. **3.** If the prenuptial gift consists of mixed property, part of money and part of immovable property, the mother shall have (possession of) the immovable property, for her support; as to the movable property, the same rules shall govern which we have previously enacted for cases where all of the property is movable.<sup>c</sup> But the woman must take care of the immovable property and must not lessen it in value but must restore it in the condition in which she received it.

a. C. 5.9.6.2.

b. Nov. 2, c. 4.

c. See Nov. 2, c. 2, note c. See note Nov. 2, c. 4.

c. 46. We now come to another point, namely, as to the rights of succession which women who remarry have in the property of their children. We have already heretofore enacted a law concerning this,<sup>a</sup> dated March 16, 535, in the consulship of the Glorious Belisarius, addressed to Hermogenes, of glorious memory, master of our imperial offices, repealing all inconsistent laws and providing that mothers should inherit the property of her deceased child, who left no children, and should not alone have the usufruct but the complete ownership of such inheritance, whether they should remarry before or after they become entitled thereto. That legislation shall remain in force as to those women only who have already remarried and who have succeeded to the property of their children, and they shall have the right of retaining such inheritance hereafter whether they received it before or after their second marriage. The present law relates only to those who enter into a second marriage hereafter. A child, male or female, who dies either

testate or intestate. We shall first deal with those who die testate, and later, in regular order with those who die intestate. **1.** If a child leaves all of his or her property, or a part thereof, to his or her mother by a legal testament, the latter shall have what is so left or given—for we specially want the wishes of decedents to be carried out—and shall have the ownership as well as the usufruct thereof. For as it is permissible to leave such property to a stranger, without prejudice to the latter by reason of any marriage, so an inheritance or legacy may be rightly left to a mother, including the ownership as well as the usufruct thereof, and the brothers and sisters of the decedent can raise no valid objection thereto. **2.** But if the child dies intestate, the mother, whether she has already remarried or remarries thereafter, becomes an heir along with the brothers and sisters of such child, each taking per capita, according to our constitution. She receives only a usufruct, however, in the property which such child had from his or her father, whether she has already remarried or remarries thereafter. But she receives the other property, not derived from the father according to the measure fixed by our law, which we shall mention directly and which, too, needs some correction. This applies only to property which is no part of the prenuptial gift, for our constitution, and the constitution of Leo of blessed memory, enacted concerning such prenuptial gift, remain in full force, and according to which the mother receives only a usufruct therein; but the present law, applying in the future, has reference only to all other property (aside from that embraced in the prenuptial gift), whether the children received it from the father or from other sources, and whether pursuant to a testament or on intestacy. The rule, however, as to ungrateful children, applies also in such case, if legal ingratitude is shown; and all other provisions made concerning succession of parents to the property of children, and succession of children to the property of parents, shall also remain in full force. The ingratitude here considered is not alone that toward the mother, of which we have already spoken, but also toward the deceased brother or sister.

a. C, 59.96.4.

c. 47. But as we know that there are frequent disputes among brothers and sisters, he or she shall be considered as ungrateful, and on that account debarred from any such benefit, only when he or she has made an attempt against the life of the decedent, or has brought a criminal accusation against him or her, or has endeavored to deprive the decedent of his or her property.<sup>a</sup> The portion of the one who has done so goes to the remaining brothers and sisters and the mother. And the present law is enacted in relation to the succession of mothers to the property of their children, and is confined to those mothers who enter into a second marriage in the future. Mothers who have already remarried will enjoy the benefit of our law already mentioned, and shall have the use, usufruct as well as ownership, of the property which they inherit from their children, either pursuant to testament or on intestacy, and may alienate it, dispose of it and transmit as they wish, and the present law will be no impediment thereto. **1.** The provision in the aforesaid legislation in favor of children of a prior marriage shall also remain in full force, so that if a prenuptial gift falls to the mother by reason of her husband's death, and then chances to come into possession of a son, who then dies, so that the mother participates in his inheritance, the mother shall not have the ownership even of such portion of the prenuptial gift but shall only have the usufruct thereof during her life. And this benefit shall be preserved in favor of children of the prior marriage, unless before the enactment of said law the matter was settled by judicial decision or compromise.<sup>b</sup> **2.** The mother was admitted to inherit along with daughters, but not with sons, according to the Tertullian Senate-decree; but, without too closely investigating the right of sons, we voluntarily give the mother her natural right, admit her to share in the inheritance of a deceased child along with the latter's brothers, so that she will receive the same share as each of the brothers. The rule is the same if the children consist of male and female. If there are daughters only, the senate-decree gives the mother a half, the other half to the sisters, however many there are. We have not corrected this situation previously, but do so now, so that in such case, too, the mother shall only receive the same amount as each of the daughters. In all such cases here considered the mother shall receive an equal share, whether the offspring consists only of males or only of females, or both.<sup>c</sup>

- a. See Nov. 18 as appended to C. 3.28 [not appended in this edition].
- b. This restates what is stated in Nov. 2.
- c. See C. 6.56.7.

c. 48. Finally we deem it proper to add the following provisions to this law. We have already provided what must be done with property given in connection with the marriage, when a man or woman have children by a first and second marriage, contracted after the enactment of this law—for we only deal with such marriages herein—and we have also specified the portions that must be left to legitimate and not ungrateful, children, by the parents. It would, however, not be just for them to favor the children of the second marriage and leave to those of the first marriage only the legal portion, but they should add something to the share of the latter. If they have a child of the second marriage, or of the first, who is so dear to them, that they want to give more property to it than to the others, they may do so, but they should not give merely a small portion to the children of the first marriage, while giving the larger portion to the children of the second marriage. They should not favor the latter too much, forgetting the former and thereby confirming what our predecessors said in relation thereto; they should, rather, care for those of the second, and care for those of the first, marriage, remembering that all of them are their children, and make the testamentary division of property accordingly. In case they die intestate, the children are entitled to equal portions under the law. Parents should imitate and respect the law, and not put children in a situation of need by cutting their portion short. In that way parents would show themselves to be good and worthy of our laws; they would be just in following the laws' example; they would be just and kind parents if they would leave something more than they are required to do under the law. Nor do we here speak of ungrateful and grateful children—for we have already often referred to matters relating to those that are ungrateful—but we speak of those that are loved more or less, since there is a vast difference between ingratitude and gratitude on the one hand, and equal favor on the other. But we made this statement, in reference to equal treatment of children of first and second marriages, in the nature of advice, rather than by way of enacting



a law, in as much as we have already increased the portion that must be left to children in any event, namely, a third of the property of these are not to exceed four children, and one-half of the property if there are more than four children<sup>a</sup> and by an increase not all insignificant, have given relief against injustice formerly possible.

**1.** The present law, accordingly, relates only to the future, not the past; it embraces in one collection nearly all the provisions as to the second marriages heretofore contracted, applies the present law only to future second marriages, and gives to those interested enough to inquire, new and sufficient information; but all such constitutions, enacted concerning such marriages in the past, do not apply to future marriages or to matters arising therefrom, since this constitution alone is applicable in the future, according to its provisions, in all cases covered thereby.

a. Nov. 18, c. 2.

Epilogue. Your Sublimity will make this constitution known in the usual manner to all under your jurisdiction, so that all may know, though the labors which we sustain are greater than should be borne by those who have imperial cares, that we hold nothing more important than to look after their welfare, so that they need not look in various places for the law, but that, while they see all the laws enacted on this subject collected together, they may know that the past, affected by former laws, is not disturbed, and that we have made just provision for the future. One copy of this law was sent to Patricius, glorious prefect of this fortunate city; another copy to Basilida, glorious Master of the Imperial Offices, ex-prefect, ex-counsel and patrician; another copy to Strategius, glorious Count of the Imperial Exchequer, excounsel and patrician; another copy to Tribonius, glorious quaestor the second time and ex-consul. Read.<sup>a</sup> Another copy was sent to Germanus, glorious duke at the imperial court, ex-consul and patrician. Read. Another copy was sent to Tzitta, glorious duke at the imperial court, ex-consul and patrician. Read. Another copy was sent to Maxentianus, glorious duke at the imperial court and ex-consul. Read. Another example was sent to Florus, glorious Count of the Crown Domain and exconsul. Read.

Your Sublimity, therefore, knowing this our will, must make it known in your court and to all advocates and all others under you, so that cases may be decided in accordance herewith. But you need not make this constitution public in other ways since our orders concerning it, given to the glorious praetorian prefects suffice. A copy of the law has been sent to Johannes, glorious Praetorian Prefect of the Orient the second time, ex-consul and patrician.

Given March 17, 536.

a. A notation probably made by the officials to whom the law was sent, and written as proof that they had read it.