

Readings from the *Code of Justinian*

From Blume's translation, with minor changes/corrections.

8.37.5 Emperors Diocletian, Maximian, and the Caesars to Isidora.

As has often been decided, the laws do not always permit a person who made a naked promise be compelled to fulfill it. 1. But since your opponent, as you state, also entered into a stipulation with you that, if he should do anything contrary to the agreement, he would give you an amount equal to that involved in the transaction, and that after the commencement of the suit this condition was fulfilled, it is agreed that the right to claim the amount mentioned in this stipulation became effective. Subscribed November 27 (293).

8.53.6 Emperors Diocletian and Maximian to Calpurnia Aristaeneta.

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

8.53.35 [The Emperor Justinian] to Julianus, the Praetorian Prefect. . . .

5. If in any of the aforesaid cases the usufruct has been retained by the donor, delivery shall (thereby) be considered as legally made. 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 hastened to do it, he should not resort to trickeries to circumvent his decision or hide his want of principles behind legal pretexts. . . . 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).