

Book II.
Title XL (XLI).

In which matters restitution of rights is not necessary.

2.40.1. Emperors Alexander to Mutatus.

That minors under twenty-five years of age, especially those who are not defended by guardians or curators, shall not be prejudiced by the fact that they do not avenge the death of the deceased whose property they inherit is contained in numerous rescripts of my divine parents as well as my own.
Given May 10 (229).

Note.

Where a man was murdered, his heirs could not enter upon the inheritance till the murder was avenged. C. 6.35 headnote. Minors, however, were excused. C. 6.35.6.

2.40.2. Emperors Valerian and Gallien and Caesar Valerian to Theodota.

We have heretofore plainly stated by rescript that the period of minority will not be counted against children as part of the five years' period, the bar of which is usually set up as a defense against those who raise a question too late against an undutiful testament. When legal age, therefore, has arrived, restitution of rights is unnecessary, because no restoration of a lost cause is given them, but the cause itself is preserved for them intact.

Promulgated August 12 (258)

Note.

An action to set aside a will as undutiful, because the proper proportion had not been left under it to parties entitled thereto, was required to be commenced within five years (C. 3.38.34), computed as stated in C. 3.28.36.2. But as stated in the instant law, the time did not commence to run during minority.

2.40.3. Emperors Diocletian and Maximian to Decimus Caplusius.

Under the accepted law, it is considered that as to minors, a default is created ipso facto and by the mere arrival of the time of delay in payment of the price of property sold; that is to say, in equitable (bona fide) contracts and in trusts and legacies.
Promulgated September 20 (290).

Note.

In case of default, interest was required to be paid. Ordinarily notice and warning was required to put one in default. But in case of minors, such notice was not required. Delay itself created the default. That is the meaning of the rescript, which originally was probably part of C. 4.49.5. See Heumann-Seckel, under "mora." Siber on default ipso facto (ex re) in 29 Z.S.S. 65 ff. It meant default without notice or warning. See also C. 4.48.4 note.

2.40.4. The same emperors and Caesars to Stratonica.

If your guardian, who gave no security on account of his official duty, was involved in a lawsuit, the decision given against him cannot prejudice you, nor have the transactions conducted by him any validity. Hence, you needlessly seek restitution of

your former rights, since the acts of a person who was unable to act as a legal representative are void by operation of law.¹
Written at Nicomedia December 15 (294).

2.40.5. Emperor Justinian to Johannes, Praetorian Prefect.

We ordain, on account of favor for immature age, that the limitation of time to set up the defense of money not delivered shall not begin to run immediately against minors, lest, during the time for which restitution of rights is given them,² some obstacle may arise by reason of which a minor is not able to receive the benefit of such restitution, (and) their property be ruined.³ 1. It is more humane to broaden the interpretation of the law in all cases in which the ancient laws permitted prescription, effected in a short time, to run against minors, but assist them by restitution of rights, and not let such prescription, by operation of law, run at all. For it is better to preserve their rights intact, rather than to seek a remedy for a cause already hurt. The defense of thirty and forty years' (prescription) shall, however, remain as formerly.⁴

¹ [Blume] Duplicated in C. 5.42.3.

² [Blume] Lit. "during the time in which we await restitution, etc."

³ [Blume] Clause "and...ruined" not in Basilica. A different reading from "lest" suggested by Mommsen from that here given.

⁴ [Blume] For the defense of money not paid—i.e., not paid over to a borrower when he executed a due bill—and the limitation of time during which that defense could be set up, see C. 4.30. For prescription of thirty and forty years, see C. 7.39.