

Book II.
Title LII (LIII).

Concerning the time within which minors and other persons and their heirs may receive restitution of rights.

2.51.1. Emperor Gordian to Pudens, a soldier.

You may ask the aid of restitution of rights in connection with the matters in which you were harmed, while under twenty-five years of age, during all the time during which you are on a military expedition. For the time fixed by law (to bring an action) after reaching the age of majority, must be computed, according to the rule of law, from the day of dismissal (from service).¹

2.52.2. The same emperor to Secundinus, a soldier.

If your father died before he was of age, or thereafter, but within the time granted (him for restitution of rights), and if you are his heir, and you entered military service before you were twenty-five years of age, or after that age but within the time which remained to the deceased for restitution of rights, the president of the province will see to it, cause being shown, that you are aided by restitution of rights, by reason of the right of the deceased.

Given October 22 (238).

2.52.3. The same emperor to Mucianus, a soldier.

If you are within the age in which the aid of restitution of rights is extended, or you enlisted as a soldier within that time, and were engaged in an expedition, the continuing benefit of restitution of rights will not permit that you should be afflicted by loss of your property through usucaption (prescription), although completed before your military service.

Given October 24 (238).

Note.

The period of prescription was completed during the minority of the owner. He still had four years after reaching majority to recover the property, notwithstanding the prescription. Law 7. h.t. Now he enlisted during his minority, and after the period of prescription had run. In that case he had four years time to recover the property after his absence ceased. See Savigny, 7 System 261; L. 1 h.t.

2.52.4. Emperors Diocletian and Maximian and the Caesars to Dionysius.

If you are the heir of your brothers, you may, by reason of the right which they had, prosecute an action against the person against whom you direct your supplication, not unaware that if your brothers, less than twenty-five years of age, were engaged in military service and died therein, the time for restitution of rights did not begin to run, but they transmitted the whole thereof to their successor.

Written at Philippolis, December 25 (294).

2.52.5. Emperor Constantine to Bassus.²

¹ [Blume] See note C. 7.35.2; C. 2.50.3.

² [Blume] C. Th. 2.16.2.

The provisions made in the laws concerning the time for restitution of rights should be preserved. And if someone, perchance, has, through our favor, received the rights of majority (*veniam aetatis*), he shall have the legal time for bringing and finishing a case for restitution of rights, from the day on which permission granting the right of majority was registered in the proper tribunal, and he received the right of managing his own property; provided that in no event shall the aid or restitution of rights be denied to minors under twenty-five years of age as to transactions which they carried on before receiving the rights of majority.³

1. If a minor, at any time, forsooth, has succeeded to the rights of a minor, he shall not at all be prohibited, after he has passed the twenty-fifth year, from enjoying the benefit of the full time granted for restitution.⁴

2. But if a minor became seized of the rights of one of age, then, so far as appertains to rights of action which he acquired through such person, he shall only have such time for bringing and finishing cases of restitution of rights as remained to the decedent whose heir he will be shown to be, or the right of possession of those whose inheritance he will be shown to have been granted.

3. If, however, a person of age acquired the succession (inheritance) of a minor, the whole time, without diminution, which the minor had, shall be counted for examining the matter of restitution of rights, (commencing to run), if he inherits according to the civil law, either on intestacy or by testament, as soon as he shall enter upon the inheritance, or if he inherits under the praetorian law, when he has received the right of possession of the inheritance.⁵

Given at Rome October 7 (312).

2.52.6. The same emperor to Julianus, City Prefect.⁶

If, while observing the time granted for restitution of rights, a postponement is sought by the plaintiff, then, if the whole period can be crowded into the limits of the time for restitution, it should, upon cause shown,⁷ be granted, whoever may ask it. But if such period is asked which cannot be crowded into the accepted space of time fixed by law for finishing such causes—if, for instance, it is asked near the end of the legal time and would extend its limits—then the postponement should be denied; for it was in the plaintiff's power to commence the litigation when the delay of the postponement could be confined within the remaining space of time.⁸ 1. But if the defendant asks the help of postponement, it shall, we ordain, be granted, when a good cause is alleged, without reference to obstacle of time, because it was by no means within his power to determine when the litigation should be started. It should, therefore, be given, although the granted length of time would go beyond the limit of the term fixed by law for restitution of rights.

³ [Blume] At times, accordingly, the period might run for more than four years—e.g., if he was granted the right of majority at the age of twenty.

⁴ [Blume] i.e., four years from the time of majority. Law 7 h.t. Savigny, 7 System 264.

⁵ [Blume] See C. 6.9 between rights under the civil and the praetorian law.

⁶ [Blume] C. Th. 2.7.2. See discussion 34 Z.S.S. 284-289.

⁷ [Blume] i.e., whether or not the limits of the legal time would thereby be overstepped.

⁸ [Blume] i.e., could have been permitted in view of the remaining time.

If the postponement is obtained by the defendant, the plaintiff is not at all forbidden to use it for procuring his proof.⁹

Given July 19 (327); Promulgated at Rome.

2.52.7. Emperor Justinian to Johannes, Praetorian Prefect.

Abolishing in our state the needless difference of the judicial year for restitution of rights, we ordain that both in ancient Rome and in this eminent city, and in Italy and in the other provinces, the uninterrupted period of four years only shall be counted, commencing with the day on which the judicial year commenced to run, and this time shall be common to every place; for it has appeared absurd to us that a distinction should be introduced on account of the difference of locality.

1. This shall be observed not only in restitution of rights for minors—for whom the judicial year commences to run from the first day of their twenty-sixth year—but also in case of those who are of age, so that also here—instead of the judicial year—the uninterrupted period of time fixed above for commencing and finishing the suit, shall prevail.

2. And as all the time of minority is excluded in restitution for minors, so, too, the time in the case of those of age, during which they were absent on public business or were occupied in other proper matters which are enumerated in the ancient laws, shall be excluded,¹⁰ and in this respect restitution for minors and for persons of age shall not be dissimilar.

Given at Constantinople September 1 (531).

Note.

For judicial year, see C. 2.50.1 note. Previous to Justinian, Constantine, in 329 A.D., had fixed different periods of time for seeking restitution of rights for different localities. C. Th. 2.16.2. Justinian made the time uniform for all localities.

⁹ [Blume] i.e., the plaintiff was not prejudiced by reason of the fact that the ordinary time for restitution was exceeded by reason of the postponement granted the defendant. Restitution of rights could, in such case, be granted after the expiration of the otherwise legal period. Bas. 10.34.6.

¹⁰ Blume penciled into the margin next to this: “given advantage of beforehand (praecipitur)?”