

Book V.
Title VI.

Concerning forbidden marriage between a ward and her guardian or curator or their children

(De interdicto matrimonio inter pupillam et tutorem seu curatorem liberosque eorum.)

Bas. 28.5.36.

5.6.1. Emperors Severus and Antoninus to Marius.

The authority of the decree of the senate, wholesomely forbidding a marriage between a female ward and the son of her guardian, cannot be circumvented by pretense of want of knowledge and ignorance.

Promulgated February 7 (215).

Note.

A guardian, curator, or a son of either could not marry a female ward of such guardian or curator, while the ward had a claim against such guardian or curator. This was based on public policy, so that no advantage could be taken of such minor. The rule had nothing to do with sons under guardianship or curatorship, since they were supposed to be in better position to demand an accounting. Law 5 of this title.

5.6.2. Emperor Alexander to Burrius.

The mother of a female ward is not forbidden to marry the guardian of her daughter or the son of the guardian.

Promulgated November 5 (223).

5.6.3. Emperor Gordian to Rogatianus.

Since you state that your father, who, you contend, had you no longer in his power, was appointed curator for your wife with whom you say you were joined in lawful wedlock and who bore you children, then since the marriage was legally contracted and cannot be vitiated by any subsequent event, you need not fear, interpreting the law properly that the children you have may seem not to have been born in lawful wedlock.

1. In order, however, to dispel every doubt, your father and your wife should insist that another curator be substituted; for she has the right to demand an accounting of the transactions carried on by the substituted curator.

Note.

The appointment of the son's father as curator in this case for the son's wife did not strictly fall within the prohibition of the law, but it did so in spirit, as far as the curatorship was concerned, as is also shown in C. 5.62.17, which states that such father should decline to serve as curator readily demandable in such case, but as stated in the present law, it was readily demandable from the person who would be substituted as curator for the father.

5.6.4. Emperor Philip to Hygia.

There can be no doubt that the action of a freedman, in joining his ward, the daughter of his patron in marriage to his natural son who was born to him in slavery but was afterwards manumitted, comes within the terms of the decree of the senate which prohibited marriage of this kind.

5.6.5. Emperor Philip and Caesar Philip to Apuleius.

You have been wrongly persuaded that a curator cannot unite his daughter in marriage to his adult male ward.

Promulgated August 18 (245).

5.6.6. Emperors Valerian and Gallien to Lucius.

If you married the female ward of your father before he rendered his account of his guardianship, or though he had rendered it, her 25th year and also the judicial year¹ had not elapsed, you can see that the marriage with her was void and the son whom she bore you was not legitimate. But if the father of the girl requested such marriage when he died, and the marriage was legally solemnized the son seems to be legitimate.²

Promulgated May 15 (260).

5.6.7. Emperors Diocletian and Maximian and the Caesars to Paregorius.

If a guardian or curator, without imperial permission, himself married, or caused his son to marry, his erstwhile female ward, he becomes infamous just as if he had confessed that he was unfaithful to his trust, because he sought by such alliance to cover up his fraud in the management of the property, and the dowry which was given by the woman may be recovered in a personal action (*condictio*).

5.6.8. Emperors Leo and Anthemius to Erythrius, Praetorian Prefect.

If anyone usurps the place of a guardian or curator, and administers the property of a minor as such usurping guardian or curator or as volunteer agent, and then marries her or causes his son to marry her, such marriages shall be valid, and shall not, as in case of a legal guardian, be void, lest, through cunning and evil-minded acts of that kind, such marriages, or the offspring thereof, or dowry given in connection therewith, or other promises, suffer some detriment or annoyance.³

Given July 1 (472).

¹ [Blume] The prohibition against marriage with a female ward mentioned in this title lasted until the guardian or ward had rendered an account and further during the time that the minor had a right to have restitution of her rights; that is, during the time when, though she might have given a receipt in full, she could have restitution of her rights. This time did not elapse till she had reached her 25th year and till a judicial year (*utilis annus*)—had passed, that is to say, a year composed of days during which she had access to the court. But this period was defined in C. 2.52.7 as four years. See also note to C. 2.50.1. No legal marriage could, accordingly, be celebrated between her and the forbidden persons until she became 29 years of age.

² [Blume] If the marriage was by the direction or request of the father of the female ward, made before his death, the marriage was valid. Cujacius on this title.

³ [Blume] I.e., proceedings in court which were necessary to nullify the marriage.