

Book V.
Title LII.

Concerning the division of guardianship and for what proportion each of the guardians may be sued.

(De dividenda tutela et pro qua parte quisque tutorum conveniatur.)¹

5.52.1. Emperor Gordian to Oplatus.

If your colleagues were solvent after finishing the administration (as guardians) so as to be able to make good any loss, and they became insolvent thereafter, without having been sued, the loss arising from such delay is not, by any rule of law, permitted to fall on you.²

Promulgated May 10 (241).

5.52.2. Emperors Carus, Carinus, and Numerian to Primigenitus.

If there was no division of administration among guardians or curators appointed in the same place or province, the minor who has reached the age of puberty may elect to sue and demand the whole debt from one of them, transferring to him, however, his rights or action against the other guardians or curators.

1. But if a division in administration has been made either by the president or by the last wish of the testator, he may sue either of them only as to his separate administration, the guardians or curators not being responsible for each other, unless they fail through fraud or neglect to remove one suspected (of misconduct)³ or unless, if one of them has become insolvent, they bring a suit of removal too tardily, or unless in conducting a suit for removal, they knowingly betray the rights of the ward.

2. Nor will it avail them to say that the (suspected) co-guardian did not manage the minor's property. But if guardians or curators divide the administration of the property among themselves, the minor who has reached the age of puberty is not forbidden to elect to sue one of them for the entire liability, but must transfer his rights of action against the others to the one whom he elects to sue.⁴

Promulgated March 18 (284).

5.52.3. Emperors Diocletian and Maximian and the Caesars to Ziticus.

Although the responsibility of guardians among themselves has not been defined by any agreement, still there is no doubt that the person who actively managed the property, and his heirs, must, if solvent, be sued first.

Subscribed September 29 (294).

¹ At the top of this page, Blume penciled in: "As to this [illegible] see Binder, Korreal. 343-345.

² [Blume] C. 5.36.5.

³ [Blume] C. 5.37.2 note; C. 5.55.1.

⁴ [Blume] C. 5.38.2; C. 5.40.2; C. 5.51.6 note; C. 5.55 2.