

Book V.
Title LIX.

Concerning authorization given (by a guardian).
(De auctoritate praestanda.)

Bas. 37.8.23; D. 26.7; Inst. 1.21.

5.59.1. Emperor Eiocletian and Maximian and the Caesars to Antonianus.

The absence of a guardian or curator does not make a stipulation given for the minor's benefit ineffective.

Without day and consul.

Note.

The presence of a guardian or curator was not necessary in order to make a stipulation exacted by a minor effective, provided the minor was over seven years of age. C. 8.37.7 and note. But a minor under the age of puberty could not bind himself without consent of the guardian. C. 8.38.1.

5.59.2. The same Emperors and Caesars to Serena.

You cannot lose anything by neglecting to bring actions, without the guardian's authority, while you are under the age of puberty.

Subscribed April 17 (294).

5.59.3. The same Emperors and Caesars to Gaius.

Whoever has bought anything of a minor ward, under the age of puberty, the latter making the sale without the guardian's authority, is not protected by the lapse of a long time¹ (10 or 20 years).

Subscribed December 6 (294).

5.59.4. Emperor Justinian to Julianus, Praetorian Prefect.

To make it clear to posterity, we ordain that curators or guardians must render assistance to the minors under 25 years of age who sue or are sued in criminal cases in which the laws permit minors (pupillas) to be accused, since it is more prudent and better that minors should make answer to, or bring, suits, after most careful advice, lest through their inexperience and through youthful ardor they say something or are silent as to something, which if it had been stated or suppressed might have been to their advantage and might have prevented a detrimental judgment against them.

Given at Constantinople February 20 (531).

5.59.5. The same Emperor to Johannes.

It was thought by the ancients that the authorization of one guardian was sufficient to create an obligation for the minor, if appointed by testament or by the court after investigation, even though there might be several guardians, provided they were not appointed to act in different localities, but that in case of statutory guardians and of those appointed without investigation all must give consent. Settling the doubt on this question, we ordain that if there are several guardians, whether appointed by testament or

¹ [Blume] C. 7.33.

whether they are statutory guardians, and whether appointed by the judge with or without investigation, the authorization of one shall suffice on behalf of all, in case the administration is not divided either as to place or property; for in the latter instance it is necessary for each to give his individual authorization to the ward as to the property in his locality. We order that in such case statutory guardians and those appointed without investigation shall be on the same footing as testamentary guardians and those appointed with investigation because they have given security, and because a subsidiary action exists in such case.²

1. But all those provisions must be understood as applying only if the act done does not itself dissolve the guardianship, as for instance if the ward desires to give himself in arrogation (adoption). For it would be absurd that the guardianship should be dissolved without the consent, or perhaps even without the knowledge of a guardian.

2. For in such case the guardians whether testamentary, statutory, or appointed with or without inquiry, must all give their consent, so that, what touches all must be approved by all.

3. All these provisions apply in like manner to curators.

Given at Constantinople September 1 (531).

² [Blume] An action by the minor against municipal magistrates for having appointed a guardian with insufficient property. The action did not involve the Senate; only the magistrates, unless the Senate nominated, in which event only those present were responsible. D. 27.8; see C. 5.75.1; C. 5.33.1; headnote to C. 5.42.