

Book V.
Title LXII.

Concerning excuses and the time that it should be made.
(De excusationibus et temporibus earum.)

Bas. 38.1.52; D.27.1; Inst. 1.25.

Headnote.

The following persons, among others, had an excuse from acting as guardians or curators:

1. Everyone who had three, and in some cases five, children living. C. 5.66.1.
2. Those who were more than 70 years of age. Inst. 1.25.13; C. 5.67.1.
3. Persons who were absent on state affairs. Those already acting were excused for the time of their absence. Inst. 1. 25.2; C. 5.64.
4. Persons filling governmental offices. Inst. 1.25.3.
5. Public teachers of the liberal arts and sciences and practicing physicians. C. 10.53.6; Inst. 1.25.15.
6. Persons not domiciled at the place. D. 27.1.46.2.
7. Persons named merely out of hatred of the father. Inst. 1.25.9.
8. Persons already administering three guardianships or curatorships. C. 5.69.1.

5.62.1. Emperors Severus and Antoninus to Aviola.

You are wrong in thinking that you are exempt from acting as guardian because you are a eunuch.

Promulgated May 1 (204).

5.62.2. The same Emperors to Aventianus and Cosconius.

If you were appointed as curators generally and the order does not specify that you were to look only after property in Italy, you should go before a competent judge to release you from the administration of the property in the province. If this is done, the adolescents¹ may personally ask for curators for the (property in the) province.

Promulgated August 25 (204).

5.62.3. The same Emperors to Crispianus.

If you were appointed as guardian for a freedman, but you are a free born person, you have a good excuse (for not acting). But since the president of the province thought that he should refuse to listen to you because the time for giving an excuse had expired when you went before him, and you did not appeal from that order, you know that the decision must be obeyed.

Promulgated March 15 (206).

5.62.4. Emperor Antoninus to Agothodaemon.

¹ [Blume] Adolescents always refers to youths over the age of puberty.

Pursuant to a resolution of the powerful senate, a person who takes his female ward as a wife is not considered as having contracted a marriage, and yet becomes infamous.² 1. But if, while you were absent and without your knowledge you were appointed curator for Demetria, when you had married her, you are protected, but someone else must be substituted for you. For the want of knowledge on the part of husbands should not be treated as fraud under the resolution of the senate. Promulgated June 21 (216).

5.62.5. Emperor Alexander to Bassia.

The powerful senate, upon motion of the divine Marcus, decreed that freedmen should not be excused from acting as guardians or curators of the children of their patron or patroness. Hence they cannot excuse themselves from acting as curators for the children of their patron or patroness, against their desire, by the fact that they acted as guardians of such children.³

5.62.6. The same Emperor to Maximus.

That the period of fifty days fixed for giving an excuse by those who are appointed as guardians or curators commences to run from the time that the order of the praetor or the testament of the parent will be made known to the persons called to perform that duty, is stated by the same constitution which fixed the time of fifty days. 1. And if anyone injured by the decree of the praetor who had jurisdiction in the matter does not appeal from him within that time, the decree must be obeyed. Promulgated May 5 (224).

5.62.7. The same Emperor to Antoninus.

No one is excused from managing a guardianship or a curatorship because of the fact that he is a creditor or debtor of the person for whom he was appointed guardian or curator, but he should have someone associated with him in his duty, so that the minor who need someone else's help may be protected in case the matter should require it. Promulgated July 13 (224).

Note.

This law was modified by Novel 72 cc. 1-5. See headnote C. 5.34.

5.62.8. The same Emperor to Maximus.

Colonists, that is to say, tenants (conductors) of fiscal estates are not on that account exempt from civic duties, and they must, accordingly, perform the duty of managing a guardianship to which they may be called. Promulgated January 29 (225).

5.62.9. The same Emperor to Romanus.

² [Blume] C. 5.6.

³ Blume added a question mark here. Scott's version reads: "...therefore, it would be of no advantage to them to allege that they have been appointed curators for said children, against the consent of their patron or patroness, in order to avoid administering the guardianship of said children." 6 [13] Scott 269.

Your brother will not be excused from managing a guardianship or curatorship because he lost an eye. Hence you know that he cannot abandon the office (of guardian or curator) which he has undertaken.
Promulgated February 1 (228).

5.62.10. The same Emperor to Crispinus.

You should not doubt that collectors of tribute are exempt during the time that they handled fiscal accounts, not only from (civic) burdens but also from managing guardianship.
Given August 13 (229).

5.62.11. The same Emperor to Hyla.

When you were appointed as guardian you should, in order to be excused from managing property of your wards in a province other than the one in which you are and live, have demanded such excuse within 50 days. 1. But if you failed to do so, the right to be excused is barred through the lapse of time, but whether other curators should be associated with you on account of the widely scattered patrimony, will be decided by the president, in case he should learn you to be unable to handle it all.⁴
Promulgated December 8 (231).

5.62.12. Emperor Gordian to Valentinus.

A voluntary management of a guardianship does not abrogate any privileges.⁵
Promulgated October 22 (238).

5.62.13. The same Emperor to Apollinar.

Not even freedmen of senators, let alone those of others, are exempt from civic duties because they manage the affairs of their patrons. Only one freedman of a senator who manages the affairs of his patron is exempt from management of a guardianship or curatorship.
Promulgated January 23 (239).

5.62.14. The same Emperor to Heraclida.

The president of the province will adopt severe measures if he shall learn that your maternal uncle was nominated for guardian in order that he might, in fear of such appointment, purchase his release from the magistrates. And if he has an excuse and he was nominated for no other reason than to involve him in litigation, the person who nominated him will, according to the rule of the constitution, be compelled to reimburse him for what he expended by reason thereof.
Promulgated September 13 (239).

5.62.15. The same Emperor to Taurus.

If you were detained to perform the duty of guardian, because the excuse which you offered was not accepted, but you demanded the right of an appeal, then though the

⁴ [Blume] See C. 5.36.3.

⁵ [Blume] I.e., if anyone was privileged to decline a guardianship his right to do so was not abridged because of having consented in a case in the past.

persons mentioned became of age in the meantime, the appeal, on account of the risk connected with the administration during that time, nevertheless, is to be heard.
Promulgated October 25 (243).

5.62.16. Emperor Philip to Theodotus.

If as you assert you were appointed guardian for those with whom you say you had a dispute about an inheritance, and the time anciently fixed for excuses is still available for help, you may go before the president of the province who will direct the rule of imperial decisions on this point to be obeyed, in accordance with his duty.
Promulgated July 23 (244).

5.62.17. Emperors Valerian and Gallien to Epagathus.

Although the words of the oration of the divine Marcus are wanting, still a person who is appointed as guardian for his daughter-in-law after she and his son were married should excuse himself, lest he run counter to the manifest intention of that oration, and draw on himself the stain of infamy (*labem pudoris*).⁶
Given January 8 (265).

5.62.18. Emperors Diocletian and Maximian and the Caesars to Sabinus.

The law is certain that persons appointed as guardians need not take an appeal.⁷ 1. Hence though you did not appeal, if you are confident of an excuse, you are not forbidden to say it before the president of the province within the time fixed by the constitution of the divine Marcus. But when you say that the father of the minor left the usufruct of all his property to his former wife, this is not sufficient to excuse you from the management of the guardianship.
Given April 5 (294).

5.62.19. The same Emperors and Caesars to Dionysius.

You ask an unusual thing, demanding to be excused from the management of the guardianship of a son, because you contend that you can sue his mother in a contrary action of guardianship.
Without day and consul. (294).

Note.

In this case the man had been the guardian of the mother and had a contrary action on the guardianship against her; that is to say, he had a right of action against her for expenses, etc., justly incurred while he was her guardian. He was subsequently appointed as guardian for the son of the mother, and he gave as his excuse for not wanting to act because he had the action mentioned against the mother. The excuse was held not to be good.

⁶ [Blume] C. 5.6.3.

⁷ [Blume] The appeal would be from the refusal to grant an excuse.

5.62.20. The same Emperors and Caesars to Charitinus.

You cannot be appointed against your will as curator to manage the property of those whose guardian you previously were.⁸ Hence if the time fixed for excuses has not elapsed, you can use a legal excuse.

Subscribed at Nicomedia November 22 (294).

5.62.21. The same Emperors and Caesars to Paramonus.

That you acknowledge that you hold property jointly with your uterine brothers is not sufficient for an excuse from the management of a guardianship, since partition thereof may be made upon the appointment of a curator (for your brother).

Subscribed at Nicomedia December 15 (294).

5.62.22. The same Emperors and Caesars to Hermodorus.

If you were appointed as guardian by decree of the president and, having an excuse, you were released, it is clear that the risk of administration does not fall on you.

Given at Nicomedia December 20 (294).

5.62.23. The same Emperors and Caesars to Neophytus.

Humane feelings and brotherly love does not permit that you, by reason of a guardianship, should undertake to bring actions against your sister, since the advantage of the ward himself, for whom you were appointed, seems to demand something else, namely that he should rather have as guardian a person who is not, by feelings of affection, prevented from protecting him. Hence you should, according to the rule which we have advisedly laid down, go before the praetor so that both your desires as well as the advantage of the ward himself be consulted.

Subscribed at Sirmium January 27 (294).

Note.

In this case a man was appointed as guardian. As such guardian he would have been required to bring an action against his own sister of the children of the sister. On that account he asked to be excused from acting as guardian. The emperor replied that the excuse should be granted.

5.62.24. Emperors Arcadius and Honorius to Florianus, Praetorian Prefect.

We excuse shipmasters from guardianship and curatorship in so far that they can be compelled to perform such duty only for minors of their guild.

Given at Milan March 5 (400).

5.62.25. Emperor Anastasius to Antiochus, Provost of the Sacred Bed Chamber.

We ordain that the honorable life-guards (silentarii,) who perform the duty of their office by our side, shall be excused from guardianships and curatorships.

Given January 1 (499).

⁸ [Blume] See constitution 5, supra, where it is shown that in cases of freedman the rule was otherwise.