

Book V.
Title LIV.

Concerning heirs of guardians.
(De heredisbus tutorum).

Bas. 38.7; D. 27.7.

5.54.1. Emperors Severus and Antoninus to Fuscianus.

The heirs of a guardian should not be condemned on account of negligence, which cannot be said to be gross neglect, unless suit had already been commenced against the guardian,¹ and unless a profit had been taken (by the guardian) or given (to another) out of favoritism, to the damage of the minor.
Promulgated March 10 (197).

Note.

While a guardian was, during his lifetime, responsible for negligence, as well as intentional wrong (dolus), the liability of his heirs for his conduct was more limited. D. 27.8.4. See 39 Z.S. 183; 38 S.Z. 270. Originally heirs were not liable for any tortuous actions of the decedent. A tort action died with him. The emperors modified the rule. Inst. 1.24.2.

5.54.2. Emperor Antoninus to Valentinianus and Maternus.

If your father was appointed as guardian or curator and failed to excuse himself, you as his heir may not any the less by sued in an action on the guardianship or in an action analogous to that, because you say that he did not manage the guardianship or curatorship; for an accounting must be rendered and responsibility exists also for failure to manage. 1. It has, however, often been stated in rescripta that the persons who had the active management must be sued first.²
Promulgated February 19 (213).

5.54.3. The same Emperor to Avita.

Bring an action against the heirs of your former guardian. The amount which the guardian owed you as surety may also be adjudicated in that suit.
Promulgated July 5 (213).

5.54.4. Emperor Alexander to Frantinus.

If the heirs of those who managed a guardianship or curatorship received any property of the minor, under or over the age of puberty, they are compelled to restore it, and it is not to be doubted that they must also render an account for what the guardian or curator should have managed but failed to do so.³
Promulgated October 25 (229).

¹ [Blume] I.e. issue has been joined.

² [Blume] C. 5.51.6 note.

³ [Blume] Law 2 of this title.