

Tutor of law committed to the custody of the pupil - Curator - 3  
- Information given by the King - Curator ad litem - formerly  
named by the Eschequer

But not as to the Quality 28 January 1714 Watson contra Watson. Which  
doth not at all quadrate with the ordinary Case of approbating. But such a Qual-  
ity in the Service of a Tutor of Law, or in the gift of a Tutor Dative, would  
not profit him. *ibid. Infra. pag.*

The Custody of a Pupils person, after 7 years of age, belongs to a Tutor or Sec-  
-lamentary, or Dative; but not to a Tutor of Law. *Stat. lib. i. tit. 6. §. 15.* because  
he having an Expectation of the Pupils Fortune upon his Demise, might  
probably use <sup>ways</sup> means to hasten it.

A Woman may be Tutrix Nominata or Dative, but cannot be served as Tu-  
-trix of Law.

Tit. 2.

Of Curators and the several kinds of them.

A Curator (from cura) is one who has a Power or Faculty to manage the Affairs of  
others, who are held incapable to do for themselves.

Curators are either Extraordinary, or Ordinary.

Extraordinary Curators are so those given by the King to manage controverted  
Estates called Curatores bonis 29 July 1677 L. Melvil and his Son contra Sir  
2<sup>o</sup> Curators joined to the Tutors or Curators of Minors, who are negligent or unable to  
act, Balfour lit. Tutors 18 July 1594 or have some extrajudicial Business to be  
transacted with the Minors, or some Law Suit to be intended against them 7 Mar  
1623<sup>o</sup> Bargany contra his Sons. 3<sup>o</sup> By the Roman Law, when a Man died leaving  
his Wife pregnant, whose Child if born would succeed to his Estate; a Curator is  
given Tutori or to the big Belly, for administering the Widow and managing the  
-late of the deceased till the posthume Child is born, or his Mother miscarry *l. i. §.*  
17. 19. 27. *de ventre in pos. mill.* which also may be got done by our Constitution  
upon Application to the Lords of Session by the Parties concerned. 4<sup>o</sup> Curators given  
to such as cannot order their own Matters, upon the Account of some Infirmity of  
Mind or Body. All which Extraordinary Curators are bound in the same Manner as  
Ordinary Tutors and Curators, to make Inventory of the Goods committed to their  
Charge, and to take care of every thing belonging to their Administration.

Ordinary Curators are those appointed to Minors, for assisting them in the Man-  
-agement of their Affairs. Such are either Curators ad litem, or Curators ad negotia.

Sect. 1.

Curators ad litem.

A Curator ad litem is one appointed to authorize some civil Action or Suit at  
the Instance of or against a Pupil or Minor, having or wanting Tutors or Curators  
who is given by the Judge before whom the Action is pursued, at the Desire of either  
Party 17 January 1671 Drummond contra Fenart, Clothkennel represented by  
a Bill to the Judge. Usually Choice is made of the Minor's Advocate or Procura-  
-tor in the Cause. The Eschequer Court is also in Use to name Curators ad litem 21  
January 1663 Stewart contra Spruell.

Curators ad litem are assigned ~~pro re nata~~ pro re nata to such as have Tutors  
or

Curators ad litem - ordinary Curators - Father to the -  
Tutor & Curator to his Children -

or Curators, when these are either particularly concerned in a plea with the Minor  
7 March 1623 L. Bargany contra his Sons. Or when they are absent or incapable  
to act for a Time. I said Incapable to act for a Time. because if they be utterly dis-  
-qualified to officiate, or suspected of Mismanagement, they may be removed and  
other <sup>Tutors</sup> Curators put in their Room to all Intent and Purposes. A Pursuit for  
Delivery of Writs was sustained at a Minor's Instance against one of his Tu-  
-rators who was chosen sine quo non, without the Concurrence of any of the rest of his  
Curators to assist; the Pursuit being authorized by two Advocates, whom he then  
instantly at the Bar chose Curators ad hanc litem 23 July 1629 L. Glad's con-  
-tra L. Ludquiharn. A Curator ad litem is given to a Minor wanting Tutors and  
Curators, when a person who has Matters to settle and adjust with the Minor, pro-  
-cures a Curator to be assigned him, that he may prosecute against the Curator the  
Action which he has against the Minor. When a Minor is pursued as charged  
to enter Herit to his predecessor, a Curator ad litem may be authorized to give in  
for him a Renunciation to be Herit 5 January 1711 Piper supplicat. But  
such a Curator ad litem could not interpose his Authority to the Minor's entering  
Herit; that being an extrajudicial Act without his Province.

This Curator is not bound to find Caution for the Minor's Indemnity; because he  
doth not intromet with any of the Minor's Effects, and his Office extends only to  
Process for which he is authorized; the Event whereof mostly depends upon the  
Justice of the Minor's Claim, for which it were hard to make him answer

Sect. 2.

Curators ad negotia

Curators ad negotia, are so called, because they are mainly <sup>designed</sup> for administering  
the Minor's extrajudicial Affairs; not but that they may, and are obliged to autho-  
-rize the Minor in civil Actions; Curators ad litem being calculated only to serve  
a Suit, for want of other Curators or Tutors.

Curators do not act by themselves for the Minors, as Tutors do for their Pupils, but  
they act with them, and consent to their Deeds. Therefore a <sup>his</sup> charge subscribed  
only by a Curator and not by the Minor was found insufficient 9 January 1675  
Mintoff contra Fraser.

Curators ad negotia are either Curators of Law, or Curators elected, or Curators no-  
-minated.

Sir John Sibbet Chief 26 & 25 M'kenzie contra Fairholm was of Opinion that the a  
Father be Tutor of Law to his Children while Pupils, he is not litem Curatoris to them  
when puberes. Because these may choose other Curators to themselves, and if a Fa-  
-ther were negligent in the Administration of his Child's Estate, there could be  
no Action against him for ~~the~~ Omphions as contra prolatem et obsequium. But  
this Opinion is now overruled, and a Father is always found to be Curator of Law  
to his Children 7 December 1666 M'kenzie contra Fairholm 14 July 1681 Bar-  
-tholomew contra Bartholomew. So that a Father cannot after his Children's  
Pupillarity, act or discharge for them as Tutor, but only consent with them as a  
Curator *Stat. lib. i. tit. 5. §. 12.* yea a Daughter who had Lands not flowing  
from