

Lex Aquilia

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According to tradition, in the third century BCE, an otherwise unknown Aquilius, *tribunus plebis* ("tribune of the plebs"), let the Roman people vote a plebiscite on damage that has come to be the basis of modern civil liability (Gai. *Inst.* 3.210–19 and Ulp. 18 *ad edictum*). The *lex Aquilia* was probably the outcome of a combination of previous laws about damage (Dig. 9.2.1 pr.), and consisted of three chapters.

The first chapter governed cases of killing of a slave, or of beasts of burden, or of a herd (Gai. *Inst.* 3.210; Dig. 9.2.2 pr.; 9.2.3). The killing had to be committed with *dolus* ("malice") or *CULPA* ("negligence," even if only *levissima*, "very light": Dig. 9.2.44pr.), and without justifications such as self-defense, necessity, the exercising of a right, or the fulfilment of a duty (Dig. 9.2.4; 9.2.5 pr.; 9.2.29; 9.2.7.4; 9.2.30 pr.; 9.2.52.4). The offender was condemned to pay the greatest value that the thing had acquired in the year preceding the killing, including possible profits that the owner could have obtained, if the thing had not been destroyed (*id quod interest*). The third chapter (Dig. 9.2.27.5; Gai. *Inst.* 3.217–18) concerned itself with the injuring of slaves or of beasts of burden (Dig. 9.2.2.2); the injuring or killing of any other kind of animal; and the damaging of any inanimate thing (*corrumpere*: Gai. *Inst.* 3.217). In such cases, the judge should condemn the offender to pay the greatest value (Gai. *Inst.* 3.218) that the thing had in the month preceding the damage. The second chapter, which soon ceased to be applied (Dig. 9.2.27.4), punished the co-creditor (*adstipulator*) who, with fraud and damage to the main creditor, remitted a debt (Gai. *Inst.* 3.215–16) through *acceptilatio* (a kind of verbal termination): he was condemned to pay the value of the entire debt.

Some scholars think that the *lex Aquilia* included two other rules, one about

litiscrescentia (the phenomenon by which he who denied his responsibility, if condemned in the trial, should pay double: Gai. *Inst.* 3.216; Dig. 9.2.2.1 and 9.2.23.10) and one about noxality (whenever the damage was caused by a slave or by a *filius familias*: Dig. 9.2.27.1–3).

The "nature" (or "function") of the *actiones* (actions) granted by the *lex Aquilia* underwent transformations in the thought of the Roman jurists. Thus, from an original "penal (i.e., "imposing a sanction") function," they acquired a prevailing "reipersecutory (i.e., "mandating a compensation") function," although for many they remained, in fact, ambivalent in function (*mixtae*: Gai. *Inst.* 4.9 and Just. *Inst.* 4.6.18–19).

In order to give rise to an action, damage had to be inflicted directly on the body of the victim by the physical strength of the offender. If damage was caused by other behavior (i.e., confining a slave and letting him die by starvation: Dig. 9.2.9.2), the *praetor* granted *actiones utiles* or *actiones in factum* (Gai. *Inst.* 3.219; Just. *Inst.* 4.3.16). The criterion according to which the one or the other was granted remains obscure.

SEE ALSO: *Dolus malus*; *Praetor*; Procedure, legal (Greek and Roman); *Tribuni plebis*; *Ususfructus*.

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