**Code of Justinian**

**III. The Lex Aquilia.**

The actio damni iniuriae is established by the lex Aquilia, of which the first head provides that if anyone shall have wrongfully killed a slave, or a four-footed beast, being one of those reckoned among cattle belonging to another, he shall be condemned to pay the owner the greatest value which the thing has possessed at any time within a year previous.

1. As the law does not speak generally of four-footed beasts, but only of those which are reckoned among cattle, we may consider its provision as not applying to dogs or wild animals, but only to animals which may be properly said to feed in herds, as horses, mules, asses, sheep, oxen, goats, and also swine, for they are included in the term "cattle," for they feed in herds. Thus Homer says, as Laelius Marcianus quotes in his Institutes:

You will find him seated by his swine,
and they are feeding by the rock of Corax,
near the spring Arethusa.

2. To kill wrongfully is to kill without any right: consequently, a person who kills a thief is not liable to this actio, that is, if he could not otherwise avoid the danger with which he was threatened.

3. Nor is a person made liable by this law who has killed by accident, provided there is no fault on his part, for this law punishes fault as well as wilful wrong-doing.

4. Consequently, if anyone playing or practicing with a javelin pierces with it your slave as he goes by, there is a distinction made; if the accident befalls a soldier while in the camp, or other places appropriated to military exercises, there is no fault in the soldier, but there would be in anyone else besides a soldier, and the soldier himself would be in fault if he inflicted such an injury in any other place than one appropriated to military exercises.

5. If, again, anyone, in pruning a tree, by letting a bough fall, kills your slave who is passing, and this takes place near a public way, or a way belonging to a neighbor, and he has not cried out to make persons take care, he is in fault; but if he has called out, and the passer-by would not take care, he is not to blame. He is also equally free from blame if he was cutting far from any public way, or in the middle of a field, even though he has not called out, for by such a place no stranger has a right to pass.

6. So, again, a physician who has performed an operation on your slave, and then neglected to attend to his cure, so that the slave dies, is guilty of a fault.

7. Unskillfulness is also a fault, as, if a physician kills your slave by unskillfully performing an operation on him, or by giving him wrong medicines.

8. So, too, if a muleteer, through his want of skill, cannot manage his mules, and runs over your slave, he is guilty of a fault. As, also, he would be if he could not hold them on account of his weakness, provided that a stronger man could have held them in. The same decisions apply to an unskillful or infirm horseman, unable to manage his horse.

9. The words above quoted "the greatest value the thing has possessed at any time within a year previously," mean that if your slave is killed, being at the time of his death lame, maimed, or one-eyed, but having been within a year quite sound and of considerable value, the person who kills him is bound to pay not his actual value, but the greatest value he ever possessed within the year. Hence, this actio may be said to be penal, as a person is bound under it not only for the damage he has done, but for much more; and, therefore, the actio does not pass against his heir, as it would have done if the condemnation had not exceeded the amount of the actual damage.

10. It has been decided not by virtue of the actual wording of the law, but by interpretation, that not only is the value of the thing perishing to be estimated as we have said, but also the loss which in any way we incur by its perishing; as, for instance, if your slave having been instituted heir by some one is killed before he enters at your command on the inheritance, the loss of the inheritance should be taken account of. So, too, if one pair of mules, or a set of four horses, or one slave of a band of comedians, is killed, account is to be taken not only of the value of the thing killed, but also of the diminished value of what remains.

11. The master of a slave who is killed may bring a private actio for the damages given by the lex Aquilia, and also bring a capital actio against the murderer.

12. The second head of the lex Aquilia is not now in use.

13. The third head provides for every kind of damage; and therefore, if a slave, or a four-footed beast, of those reckoned among cattle, is wounded, or a four-footed beast of those not reckoned among cattle, as a dog or wild beast, is wounded or killed, an actio may be brought under the third head. Compensation may also be obtained under it for all wrongful injury to animals or inanimate things, and, in fact, for anything burnt, broken, or fractured, although the word broken ("ruptum") would have sufficed for all these cases; for a thing is ruptum which in any way is spoilt ("corruptum"), so that not only things fractured or burnt, but also things cut, bruised, split, or in any way destroyed or deteriorated may be said to be rupta. It has also been decided that any one who mixes anything with the oil or wine of another, so as to spoil the goodness of the wine or oil, is liable under this head of the lex Aquilia.

14. It is evident that as a person is liable under the first head, if by wilful injury or by his fault he kills a slave or a four-footed beast, so by this head a person is liable for every other damage if there is wrongful injury or fault in what he does. But in this case the offender is bound to pay the greatest value the thing has possessed, not within the year next preceding, but the thirty days next preceding.

15. Even the word plurimi, i. e., of the greatest value, is not expressed in this case. But Sabinus was rightly of opinion that the estimation ought to be made as if this word was in the law, since it must have been that the plebeians, who were the authors of this law on the motion of the tribune Aquilius, thought it sufficient to have used the word in the first head of the law.

16. But the direct actio under this law cannot be brought if anyone has, with his own body, done damage, and consequently utiles actiones are given against the person who does damage in any other way, as, for instance, a utilis actio is given against one who shuts up a slave or a beast, so as to produce death by hunger; who drives a horse so fast as to knock him to pieces, or drives cattle over a precipice, or persuades another man's slave to climb a tree, or go down in a well, and the slave in climbing or descending is killed or maimed. But if any one has flung the slave of another from a bridge or a bank into a river, and the slave is drowned, then, as he has actually flung him down, there can be no difficulty in deciding that he has caused the damage with his own body, and consequently he is directly liable under the lex Aquilia. But if no damage has been done by the body, nor to the body, but damage has been done in some other way, the actio directa and the actio utilis are both inapplicable, and an actio in factum is given against the wrongdoer; for instance, if any one through compassion has loosed the fetters of a slave, to enable him to escape.