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I. Principle of Personal Liability

Ulp. (52 ad ed.) D. 39.1.5.5 (Fragment 1)

Si plurium res sit, in qua opus novum fiat et uni nuntietur, recte facta nuntiatio est omnibusque dominis videtur denuntiatio: sed si unus aedificaverit post operis novi nuntiationem, alii, qui non aedificaverint, non tenebuntur: neque enim debet nocere factum alterius ei qui nihil fecit

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Für fremde, widerrechtliche Handlungen, woran jemand keinen Theil genommen hat, ist er in der Regel auch nicht verantwortlich. Selbst in den Fällen, wo die Gesetze das Gegentheil anordnen, bleibt ihm der Rückersatz gegen den Schuldtragenden vorbehalten.

II. Noxal Liability

Tab. XII, 2a (Fragment 2)

Si servus furtum facit noxiamve no[x]it [...].

Gai. (2 ad ed. provinc.) D. 9.4.1 (Fragment 3)

Noxales actiones appellantur, quae non ex contractu, sed ex noxa atque maleficio servorum adversus nos instituuntur: quarum actionum vis et potestas haec est, ut, si damnati fuerimus, liceat nobis deditione ipsius corporis quod deliquerit evitare litis aestimationem.

Gai. Inst. 4.75 (Fragment 4)

Ex maleficio filiorum familias servorumque, veluti si furtum fecerint aut iniuriam commiserint, noxales actiones proditae sunt, uti liceret patri dominove aut litis aestimationem sufferre aut noxae dedere. erat enim iniquum nequitiam eorum ultra ipsorum corpora parentibus dominisque damnosam esse.

cC 3.41.4 pr DIOCL. ET MAXIM. AA. ET CC. SOSIO. [a. 293] (Fragment 5)

Si servus ignorante domino vel sciente et prohibere nequeunte res tuas vi rapuit, dominum eius apud praesidem provinciae, si necdum utilis annus excessit, quadrupli, quod si hoc effluxit tempus, simpli noxali iudicio convenire potes: qui si noxae maluerit servum dedere, nihilo minus cum ipso quantum ad eum pervenit experiri non prohiberis: nam si eo conscio et prohibere valente, detracta noxae deditione conventus ad summam condemnationis solvendam omnimodo compellendus est.

If the property on which new work is being carried out belongs to several persons and a notice is served on one of them, that notice has been correctly served and is regarded as having been served on all the owners. However, if one of them carries out building-work after the serving of the notice of new work, the rest, who have not done so, will not be liable, since the action of one person ought not harm another who has done nothing.

As a general rule, a person is not liable for third-party unlawful acts in which he or she did not participate. Even in cases where the law provides to the contrary, the person retains the right to seek reimbursement from the liable party.

If a slave has committed theft or caused damage [...].

Noxal actions are so called because they are instituted against us not out of contract but because of some damage (noxa) or misdeed committed by a slave. The force and effect of such actions is that if judgement is given against us, we can avoid having to pay the amount of the condemnation by bodily handing over the wrongdoer.

Noxal actions lie when sons in power and slaves commit a delict, for instance, theft or contempt. These actions allow the father or owner either to pay damages as assessed in money or to make noxal surrender. For it would be unjust to allow the wickedness of sons or slaves to inflict on fathers or owners any loss beyond their own value.

If a slave, without his master's knowledge, or with his master being aware but unable to prevent it, has violently seized your property, you may bring an action against his master before the provincial governor, provided the year for prescription has not yet passed, for fourfold damages; but if that period has passed, you may sue by a noxal action for single damages. If the master prefers to surrender the slave by way of noxal surrender, you are nevertheless not prevented from proceeding against him to the extent that property has come into his hands. For if the act was done with the master's knowledge and while he was able to prevent it, then, with the option of noxal surrender removed, he must in every case be compelled to pay the full amount of the judgment.

III. Actio de effusis vel deiectis

Ulp. (23 ad ed.) D. 9.3.1 pr. (Fragment 6)

Praetor ait de his, qui deiecerint vel effuderint: "Unde in eum locum, quo volgo iter fiet vel in quo consistetur, deiectum vel effusum quid erit, quantum ex ea re damnum datum factumve erit, in eum, qui ibi habitaverit, in duplum iudicium dabo. Si eo ictu homo liber perisse dicetur, quinquaginta aureorum iudicium dabo. Si vivet nocitumque ei esse dicetur, quantum ob eam rem aequum iudici videbitur eum cum quo agetur condemnari, tanti iudicium dabo. Si servus insciente domino fecisse dicetur, in iudicio adiciam: aut noxam dedere."

The praetor says the following about those who pour out or throw out anything: "If anything should be thrown out or poured out from a building onto a place where people commonly pass and repass or stand about, I will grant an action to be brought against whoever lives there for double the damage caused or done as a result. If it is alleged that a free man was killed by whatever fell, I will grant an action for fifty aurei. If he is alleged to be injured, but survives, I will grant an action for whatever it seems appropriate to the judge that the defendant should be condemned to pay. If a slave is alleged to have done it without his master's knowledge, I will add to the judgement: or noxally surrender him.

Ulp. (23 ad ed.) D. 9.3.1.1. (Fragment 7)

Summa cum utilitate id praetorem edixisse nemo est qui neget: publice enim utile est sine metu et periculo per itinera commeari.

No one would deny that the above edict of the praetor is most useful; for it is in the public interest that everyone should move about and gather without fear and danger.

Ulp. (23 ad ed.) D. 9.3.1.4 (Fragment 8)

Haec in factum actio in eum datur, qui inhabitat, cum quid deiceretur vel effunderetur, non in dominum aedium: culpa enim penes eum est. Nec adicitur culpa mentio vel infitiationis, ut in duplum detur actio, quamvis damni iniuriae utrumque exigit.

This actio in factum is given against him who occupies the house when anything is thrown down or poured out and not the owner; for the fault lies with the former. Nor is there added any mention of fault or of the defendant denying the facts, so that he becomes liable for double the damage although these are both factors of liability in an action for unlawful damage.

Gai. (3 aur.) D. 44.7.5.5 (Fragment 9)

Is quoque, ex cuius cenaculo (vel proprio ipsius vel conducto vel in quo gratis habitabat) deiectum effusumve aliquid est ita, ut alicui noceret, quasi ex maleficio teneri videtur: ideo autem non proprie ex maleficio obligatus intellegitur, quia plerumque ob alterius culpam tenetur ut servi aut liberi [...].

He too, from whose attic (whether his own, rented, or one in which he lived rent-free) something has been thrown down or spilled in such a way as to harm someone, seems to be held liable in quasi-delict; yet he is not properly regarded to be liable in delict, because he is usually held liable for another's fault, whether a slave or a free man [...]

Paul. (19 ad ed.) D. 9.3.6.2 (Fragment 10)

Habitator suam suorumque culpam praestare debet.

The occupier is liable for their own negligence and that of their people.

D. 9.3.1.10 - D. 9.3.4 (Fragment 11)

Si plures in eodem cenaculo habitent, unde deiectum est, in quemvis haec actio dabitur [Ulpian (23 ed)], cum sane impossibile est scire, quis deiecisset vel effudisset [Gaius (6 ed prov)], et quidem in solidum: sed si cum uno fuerit actum, ceteri liberabuntur [Ulpian (23 ed)]. Perceptione, non litis contestatione, praestaturi partem damni societatis iudicio vel utili actione ei qui solvit [Paulus (19 ed)].

If several people are occupying a lodging house and something is thrown from it, legal action may be brought against any of them because it is impossible to determine who threw or poured out anything, and each person is liable for the full amount of the damage. However, if legal action is brought against one of them, the rest go free, on actual payment, not merely on joinder of issue, the others being made to contribute their shares to the one who paid by an action on partnership or an actio utilis.

IV. Nautas, caupones, stabularios

Gai. (3 aur.) D. 44.7.5.6 (Fragment 12)

Item exercitor navis aut cauponae aut stabuli de damno aut furto, quod in nave aut caupona aut stabulo factum sit, quasi ex maleficio teneri videtur, si modo ipsius nullum est maleficium, sed alicuius eorum, quorum opera navem aut cauponam aut stabulum exerceret: cum enim neque ex contractu sit adversus eum constituta haec actio et aliquatenus culpa reus est, quod opera malorum hominum uteretur, ideo quasi ex maleficio teneri videtur.

Ulp. (18 ad ed.) D. 4.9.7 pr (Fragment 13)

Debet exercitor omnium nautarum suorum, sive liberi sint sive servi, factum praestare: nec immerito factum eorum praestat, cum ipse eos suo periculo adhibuerit. Sed non alias praestat, quam si in ipsa nave damnum datum sit: ceterum si extra navem licet a nautis, non praestabit. Item si praedixerit, ut unusquisque vectorum res suas servet neque damnum se praestaturum, et consenserint vectores praedictioni, non convenitur.

Ulp. (38 ad ed.) D. 47.5.1.5 (Fragment 14)

Servi vero sui nomine exercitor noxae dedendo se liberat. Cur ergo non exercitor condemnetur, qui servum tam malum in nave admisit? Et cur liberi quidem hominis nomine tenetur in solidum, servi vero non tenetur? Nisi forte idcirco, quod liberum quidem hominem adhibens statuere debuit de eo, qualis esset, in servo vero suo ignoscendum sit ei quasi in domestico malo, si noxae dedere paratus sit. Si autem alienum adhibuit servum, quasi in libero tenebitur.

Ulp. (18 ad ed.) D. 4.9.7.4 (Fragment 15)

Hac autem actione suo nomine exercitor tenetur, culpa scilicet suae qui tales adhibuit: et ideo et si decesserint, non relevabitur. Servorum autem suorum nomine noxali dumtaxat tenetur: nam cum alienos adhibet, explorare eum oportet, cuius fidei, cuius innocentiae sint: in suis venia dignus est, si qualesquales ad instruendam navem adhibuerit.

Paul. (22 ad ed.) D. 4.9.6.1 (Fragment 16)

Si servo meo in nave vel in caupona utaris et damnum mihi det vel furtum faciat, quamquam et furti actio et damni iniuria mecum sit, haec tamen actio, quia in factum est, etiam servi mei nomine adversus te competit. Idem dicitur, et si communis sit: tu tamen quod mihi praestiteris eius nomine, vel communi dividendo vel pro socio actione, aut si partem eius vel totum conduxisti, etiam ex conducto habebis me obligatum.

Likewise, the operator of a ship, inn, or stable is considered to be held liable in quasi-delict for a damage to property or theft that has been committed on the ship, in the inn, or in the stable, provided that there was no wrongdoing on his part, but rather on the part of one of those whose services he employs for the ship, inn, or stable. For since this action is not established against him on the basis of a contract, yet because he used the service of bad men, he is in some degree guilty of fault, and consequently he is held to be liable in quasi-delict.

The shipmaster is liable for the conduct of all his sailors, whether they are free men or slaves: and he does so with good reason, since he himself made use of their service at his own risk. But he is only liable for their conduct when the damage was done on board the ship itself; if, however, the sailors act outside the ship, he will not be liable. Likewise, if he has declared that each passenger is to look after his own belongings and that he will not be responsible for any loss, and the passengers have agreed to this declaration, he is not liable.

But where the shipmaster is sued in respect of a slave, he can absolve himself from liability by surrendering the slave noxally. Why, then, is the shipmaster not condemned personally, since he admitted such a wicked slave onto the ship? And why, if he be fully liable for theft by a free member of the crew, is he not liable that way for a slave? The reason must be that when employing a free man, he ought to have judged him by the sort of person he was, but in the case of his own slave, such evaluation by him may be waived, as for an offense ashore, if he is prepared to surrender the slave noxally. But if he employed another man's slave, he will be held as if he was a free man.

However, the shipmaster is held liable by this action on his own account, of course, in respect of his own fault in hiring such persons; and therefore, even if they have died, he will not be relieved. However, he is liable only noxally for his own slaves; for when he employs another man's slaves, he must investigate their trustworthiness and integrity. In the case of his own slaves, he deserves to be excused, whatever kind he has employed to man the ship.

If you employ my slave on a ship or at an inn and he causes me damage or commits theft, although both the action for theft and the action for damages in respect of my slave normally lie against me, yet this action, because it is in factum, lies against you even on account of something done by my slave. The same will be said if he is owned in common: Nevertheless, whatever you have paid me on his account, either under an action for dividing common property or an action on partnership, or if you have hired a share of him or all of him, you also will hold me to be under an obligation to you under the contract of hire.

Ulp. (38 ad ed.) D. 47.5.1.3 (Fragment 17)

Cum enim in caupona vel in navi res perit, ex edicto praetoris obligatur exercitor navis vel caupo ita, ut in potestate sit eius, cui res subrepta sit, utrum mallet cum exercitore honorario iure an cum fure iure civili experiri.

For when goods are lost in an inn or on a ship, the ship's master or the innkeeper is bound by the praetor's edict so that it is at the discretion of the victim whether he would prefer to proceed against the shipmaster under the praetorian law or against the actual thief under the civil law.

Paul. (22 ad ed.) D. 4.9.6.4 (Fragment 18)

Possumus autem furti vel damni iniuriae actione uti cum nautis, ut certi hominis factum arguamus: sed una contenti esse debemus, et si cum exercitore egerimus, praestare ei debemus actiones nostras, quamvis ex conducto actio adversus eos competat exercitori. Sed si absolutus sit exercitor hac actione, deinde agatur cum nauta, exceptio dabitur, ne saepius de eiusdem hominis admissio quaeratur. Et contra, si de admissio unius hominis actum sit, deinde in factum actione agatur, exceptio dabitur.

However, we may bring an action for theft or for damages against the sailors, provided that we prove that a particular individual committed the offense. But we must be content with one action, and if we have sued the shipmaster, we must make our own actions to him, even though he has an action under the contract of hire against the actual wrongdoers. But if the shipmaster has been acquitted in this action and then the sailor is sued, a defense will be given so that the same person may not be sued more than once for the same offense. Conversely, if an action has been brought for one person's offense and then an actio in factum is brought, a defense will be given.

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Sources

II. General Liability Standards in Locatio Conductio

Ulp. (30 ad ed.) D. 16.3.1.10 (Fragment 1)

In conducto et locato [...] et dolum et culpam praestabunt [...].

In letting and hiring [...] they [...] will be liable for both **dolus and culpa** [...].

Diocl. et Maxim. C. 4.65.28 (a. 294) (Fragment 2)

In iudicio tam locati quam conducti dolum et custodiam, non etiam casum, cui resisti non potest, venire constat.

In the contracts of letting and hiring it is established that the lessor can bring suit on the ground of **dolus or custodia**, but not for unavoidable event.

III. Principle of Personal Liability in Roman law and Locatio Conductio

Ulp. (52 ad ed.) D. 39.1.5.5 (Fragment 3)

Si plurium res sit, in qua opus novum fiat et uni nuntietur, recte facta nuntiatio est omnibusque dominis videtur denuntiatio: sed si unus aedificaverit post operis novi nuntiationem, alii, qui non aedificaverint, non tenebuntur: neque enim debet nocere factum alterius ei qui nihil fecit

If the property on which new work is being carried out belongs to several persons and a notice is served on one of them, that notice has been correctly served and is regarded as having been served on all the owners. However, if one of them carries out building-work after the serving of the notice of new work, the rest, who have not done so, will not be liable, **since the action of one person ought not harm another who has done nothing.**

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Für fremde, widerrechtliche Handlungen, woran jemand keinen Theil genommen hat, ist er in der Regel auch nicht verantwortlich. Selbst in den Fällen, wo die Gesetze das Gegentheil anordnen, bleibt ihm der Rückersatz gegen den Schuldtragenden vorbehalten.

Generally a person is not liable for illegal actions of someone else in which he did not participate. Even in the event the opposite is provided by law, he can claim regress against the culpable party

Lab. (5 post. a Iavol. epit.) D. 19.2.60.7 (Fragment 4)

Servum meum mulionem conduxi: neglegentia eius mulus tuus perit. si ipse se locasset ex peculio dumtaxat et in rem versum damnum tibi praestaturum dico: sin autem ipse eum locassem, non ultra me tibi praestaturum, quam dolum malum et culpam meam abesse [...].

You hired my slave as a muleteer; due to his carelessness your mule died. If he [the muleteer] leased himself out, I [Labeo] decide that I will be held responsible to you for the loss up to the value of his peculium or the amount of benefit I [the lessor] took; but if I leased him out, I **will be held responsible to you for no more than the absence of my bad faith and fault [...].**

V. Contractual Noxal Liability

Ulp. (18 ad ed.) D. 9.2.27.11 (Fragment 5)

Proculus ait, cum coloni servi villam exussissent, colonum vel ex locato vel lege Aquilia teneri, ita ut colonus possit servos noxae dedere, et si uno iudicio res esset iudicata, altero amplius non agendum. Sed haec ita, si culpa colonus careret [...]

Proculus says that when the slaves of a tenant farmer have burned down the country house, the **tenant is liable either on the contract of tenancy or under the lex Aquiliae**, but with the privilege that the **tenant is able to surrender the slaves (noxae deditio)**. And if the case is decided in one of these actions, the other cannot be brought in addition. But the position is thus only if the **tenant farmer was free of fault [...].**

VI. Liability for Violation of a certain Contract Clause

Ulp. (32 ad ed.) D. 19.2.11.4 (Fragment 6)

Inter conductorem et locatorem convenerat, ne in villa urbana faenum componeretur: composuit: deinde servus igne illato succedit. Ait Labeo teneri conductorem ex locato, quia ipse causam praebuit inferendo contra conductionem.

Lessee and lessor agreed that hay must not be stacked in a city villa. He [the lessee] stacked hay, and his slave then set a fire and ignited it. Labeo says that the lessee is **liable on the lease because he himself furnished the cause by bringing in hay against the contract.**

Hermog. (2 epit.) D. 19.2.12 (Fragment 7)

Sed etsi quilibet extraneus ignem iniecerit [in villam urbanam, ubi conductor adversus conventionem faenum composuerat], damni locati iudicio habebitur ratio.

But if some **outsider sets the fire** [in the city villa in which hay was stacked against the contract], **damage can also be claimed by the action on lease.**

VII. Liability for Culpa in Eligendo

Ulp. (18 ad ed.) D. 9.2.27.9 (Fragment 8)

Si fornicarius servus coloni ad fornacem obdormisset et villa fuerit exusta, Neratius scribit ex locato conventum praestare debere, si negligens in eligendis ministeriis fuit. [...]

If a tenant farmer's stoker-slave falls asleep at the furnace and the house burns down, Neratius says that the tenant must nevertheless make good the damage in accordance with the contract of lease, **if he was negligent in choosing his workers [...].**

VIII. Liability for Culpa in Habendo vel Inducendo

Ulp. (32 ad ed.) D. 19.2.11 pr. (Fragment 9)

Videamus, an et servorum culpam et quoscumque induxerit praestare conductor debeat? Et quatenus praestat, utrum ut servos noxae dedat an vero suo nomine teneatur? Et adversus eos quos induxerit utrum praestabit tantum actiones, an quasi ob propriam culpam tenebitur? Mihi ita placet, ut culpam etiam eorum quos induxit praestet suo nomine, etsi nihil convenit, si tamen culpam in inducendis admittit, quod tales habuerit vel suos vel hospites: et ita Pomponius libro sexagesimo tertio ad edictum probat.

Should a lessee be held responsible for fault on the part of his slaves and of those whom he admits? And to what extent should he be liable: to surrender his slaves noxally or rather to be liable in his own name? And will he just have to cede the actions against those he admitted to the leasehold, or will he be liable as if their fault was his own? My view is that he is **liable in his own name for the fault of those he admitted to the leasehold even if the parties did not agree to this, provided that he is guilty of fault in admitting them because he has such people as members of his household or as guests.** Pomponius supports this view in the sixty-third book of his Edict.

IX. D. 19.2.25.7 - Indication of a strict Vicarious Liability?

Gaius (10 ed. prov.) D. 19.2.25.7 (Fragment 10)

Qui columnam transportandam conduxit, si ea, dum tollitur aut portatur aut reponitur, fracta sit, ita id periculum praestat, si qua ipsius eorumque, quorum opera uteretur, culpa acciderit: culpa autem abest, si omnia facta sunt, quae diligentissimus quisque observaturus fuisset. idem scilicet intellegemus et si dolia vel tignum transportandum aliquis conduxerit: idemque etiam ad ceteras res transferri potest

A person undertook [as a task] to transport a column. If it broke while being raised or carried or repositioned, he is held **responsible** for the damage if this happens due to his **own fault or/and that of those whose labour he employs; but there is no fault if all precautions were taken which a very careful person would have observed.** I would obviously construe the same result if someone undertakes [as a task] to transport storage jars or wood; and the same rule can be applied also to other things.