LEGAL AND ADMINISTRATIVE STUDIES, www.jlas.upit.ro.
e-ISSN: 2344-6900, ISSN-L: 1583-0772
Supplement 2025, pp. 453-461

THE EVOLUTION OF THE CONCEPT OF CULPA IN ROMAN LAW

Daniela IANCU
ORCID ID: 0000-0002-7733-3642
E-mail: daniela.iancu@upb.ro
Afiliation: Faculty of Economic Sciences and Law, National University of Science and Technology Politehnica Bucharest

Abstract: *The concept of culpa in Roman law underwent a significant evolution, from its early association with objective liability to the nuanced distinctions developed by classical jurists and codified under Justinian. Initially centered around the idea of harm (damnum) caused iniuria (unjustly), legal responsibility was assessed without regard to the internal state of the wrongdoer. Over time, however, the interpretation of the Lex Aquilia by Roman jurists introduced a shift toward subjective fault. Culpa, alongside dolus (intent), gradually emerged as a decisive element in determining civil liability, especially in delictual and contractual contexts. This paper traces the development of culpa, with particular focus on its various forms—lata, levis in abstracto, and levis in concreto—and analyzes how these distinctions influenced the legal treatment of obligations in Roman jurisprudence.*

Keywords*: damnum; iniuria; culpa; liability; obligations; Aquilian Law.*

Introduction

As with most primitive legal systems, early Roman law — particularly the Law of the Twelve Tables — operated on the principle of strict liability. This meant that a person could be held responsible for causing damage, regardless of whether they had acted intentionally or

negligently. The act itself and its consequences were the only relevant factors.

This rigid approach began to change with the adoption, around 287 BC, of the Aquilian Law, which regulated liability for damage to property and in whose text, according to Niels Jansen (2012), the foundations of all general continental provisions on tort liability for negligence can be identified. According to Niels Jansen (2012), the text of the Aquilian Law contains the basis for all general continental provisions on tort liability for negligence.

Although Ulpian states in the Digesta[1] that "Lex aquilia omnibus legibus, quae ante se de damno iniuria locutae sunt, derogavit, sive duodecim tabulis, sive alia quae fuit: quas leges nunc referre non est necesse" (the Lex Aquilia repealed all laws that had been formulated before it regarding damages caused unjustly, whether they were from the Law of the Twelve Tables or from another law; it is not necessary now to mention those laws), specialists question this statement with arguments. For example, according to Dana McCusker (1999), Grueber argues that a main reason to question this statement is that Lex Aquilia does not provide a definition of unlawful damage, and Daube states that certain older laws relating to damage to property remained in force, existing in parallel with Lex Aquilia for a period of time, or even permanently (p. 381).

The Aquilia Law – regulatory content

Although it also began with the punishment of offences, the text of the Aquilian Law paved the way for a much more nuanced legal interpretation. The law comprised three main chapters, each addressing a particular type of damage.

The text of Chapter I is provided by Gaius in D.9.2.2.pr: " ut qui servum servamve alienum alienamve quadrupedem vel pecudem iniuria

[1] D.9.2.1, https://www.thelatinlibrary.com/justinian/digest9.shtml

occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto".

Therefore, anyone who unlawfully killed a slave or cattle belonging to someone else had to pay the owner the highest value that the property had had in the previous year (McKusker, 1999, p. 381).

The exact content of Chapter II has not been preserved in Roman documents, as it has fallen into disuse.

According to Gaius (Institutions Gai. 3.215): The second chapter establishes an action for an amount equivalent to the value of the damage against an adstipulator who, with the intention of defrauding the stipulator, has released a debt. ("Capite secundo adversus adstipulatorem, qui pecuniam in fraudem stipulatoris acceptam fecerit, quanti ea res est, tanti actio constituitur") (Bauman, 1983, p. 84).

Chapter III punished any other damage to a person's property, as well as injury to slaves or animals (Molcuț, 2011, p. 348).

According to Geoffrey MacCormack (1970, p. 164), Chapter III contained the following provisions: "if anyone causes damage to property, other than a person or cattle killed, which he has burned, broken, or destroyed without right, he shall be obliged to pay the owner the value of that property in the last 30 days ." The full value could be recovered regardless of the severity of the injury or damage, as compensation was not proportional to the harm caused.

The basis for legal liability under the Aquilian Law was unjust damage (damnum iniuria datum).

The conditions regarding damage that had to be met for the Aquilia Law to apply were:

- it had to have been caused unjustly, contrary to the law - injuria, which excluded damage committed in self-defence,

An act causing harm did not incur liability if it was committed in justified circumstances. One justification for killing was self-defence. According to the jurist Gaius (D. 9.2.4pr.), if a person killed a slave who was a thief and attacked them, they were not considered liable because their act was a response to imminent danger. In this case, the element of injuria was missing, and the act did not entail liability.

However, Roman law established strict limits to prevent abuse. Ulpian (D. 9.2.5 pr.) emphasises that the right to self-defence does not confer the right to kill. If an individual was able to immobilise their attacker but chose to kill them, that individual was considered to have acted unjustly (iniuria) and could be held responsible. This demonstrates an essential distinction: the act was judged not only in terms of the action itself, but also in terms of the moral context and necessity.

- it must have been caused by the fault or intent of the person who committed it,
- it must have been caused corpore, i.e. by a material and direct act of the offender on the object and not by the action of an external cause set in motion by the offender,
- it must have been caused corpori, in the sense that the offender must have caused damage or injury to the object.

Only the owner of the thing was protected by the application of the provisions of the Aquilia law, but, thanks to the intervention of the praetor, the application of the Aquilia law was extended "also in favor of persons other than the owners...and to cases where the damage was not caused directly, but only indirectly" (Bob, 2019, p.322).

Roman lawyers transformed a rigid text into a flexible instrument by reinterpreting concepts in light of practical cases. To support this, we will present the case of the barber (D. 9.2.11pr.). A barber placed his chair where people usually played ball. A player hit the ball so hard that it bounced into the barber's hand. This caused the barber to cut the slave's throat while he was cutting it. Proculus attributed the blame to the barber. By performing his dangerous task in an area where there was a foreseeable risk, he created a dangerous situation. This decision emphasises that liability was not based solely on direct action, but also on failure to anticipate danger.

A similar case is that of the carrier (D. 9.2.7.2) who, when overloaded, either drops the load and kills a slave, or slips and falls on a slippery path due to the excessive weight, crushing a slave. He is considered guilty because he did not behave according to the standard of diligence. A prudent person would not overload themselves and would be

careful when walking on a dangerous road. Thus, lack of diligence and prudence were punished.

Guilt and Causation: Beyond the Letter of the Law

The Aquilian law was originally designed to punish damage caused by direct, physical actions (corpore corpori). However, jurists recognized that damage could also be caused by indirect causation. Celsus (D. 9.2.7.6) makes the fundamental distinction between killing directly (occidere) and causing death (mortis causam praestare).

In these cases of indirect causation, the praetor granted an action in factum (an action "based on facts"), which did not fall strictly within the text of the Aquilian Law, but sanctioned illicit conduct. Fragments from the Digesta provide clear examples:

- person who gives poison instead of medicine (D. 9.2.7.6),
- the one who gives a gun to a madman, who commits suicide (D. 9.2.7.6),
- one who blocks the exit from a building, causing death by starvation (D. 9.2.9.2),
- the one who, by shaking a horse, causes a slave to fall into the river and die (D. 9.2.9.3),

Thus, by creating in factum actions, the law was adapted to complex social realities, ensuring that a culpable act did not remain unsanctioned simply because it did not fit into the initial formulation of the law.

Fault and standards of diligence

At first, iniuria was interpreted as a simply illegal, “unrightful” action. The great transformation took place in the classical period of Roman law, under the influence of jurists. They considered that a purely formal interpretation of the term injuria was insufficient to deal with the complexity of social and economic life. Therefore, they began to explain injuria in terms of personal guilt, that is, dolus (intention, bad faith) and

culpa (negligence or lack of care), which made the system of liability subjective.

According to Andrew Mason (2022), Roman citizens were obliged to act in such a way as to avoid causing harm to others. "The 'standards of care' in the Aquilian Law were therefore not codified, but were based on a fundamental social norm: citizens were expected to behave in a manner worthy of a Roman."

Culpa denoted any negligence that a good administrator would not have committed, but also the failure to take normal precautions or to observe the rules accepted in the exercise of a profession. This concept is demonstrated by the writings of Roman jurists, such as Ulpian in the Digesta (D. 9.2.7.8), where he quotes the opinion of Proculus: “Proculus ait, si medicus servum imperite secuerit, vel ex locato vel ex lege aquilia competere actionem.” (Proculus says that if a doctor operated on a slave in an unprofessional manner, there is an action either under the lease or under the Aquilian Law). This passage confirms that culpa also included a specific standard, imposed by a profession. A professional, such as a doctor, was judged by the standards of diligence and skill of his profession, not just by those of an ordinary person. The text shows that, for the same act, two distinct actions could be brought: a contractual one (ex locato), based on the promise to provide a competent service, and a tortious one (ex lege aquilia), based on the fact that the lack of professionalism caused damage.

Omission and liability

Another issue, which frequently arises in the Digest, is whether a person can be held liable for an omission to act. Roman jurists did not approach this issue through a rigid distinction, but through the lens of fault.

Texts such as D. 9.2.8 (Gaius) demonstrate that omission could engage liability. A surgeon who successfully operated on a slave but failed to provide post-operative care was held liable for the slave's death. In this case, it was not the act itself but the culpable omission that was

the source of liability. Similarly, in D. 9.2.7.9, a slave who fell asleep while watching over a furnace and caused a fire was held liable, even though he had not committed a positive act.

This approach is supported by Paulus (D. 9.2.45pr.), who states that a master is responsible for the acts of his slave if he had knowledge of them and failed to prevent them.

Contractual liability and degrees of fault

Tort liability is differentiated from contractual liability as the latter referred to the debtor's liability for non-performance or poor performance of the obligations arising from a contract.

Contractual fault designated the fault of the person bound by a contract, that is, the fault of the debtor of a certain body. This fault was an act or an omission done without intention and which had led to the loss of the thing owed.

It was only in the classical era, and only in what concerned the obligations of good faith, that it was admitted that the debtor was liable only for his acts, but also for having refrained from doing what he should have done.

In strict law contracts, the debtor was not liable for his omission, even if it was in bad faith. However, if the creditor inserted a clause of tort in the stipulation, it was possible to bring an actio de tort against the debtor.

In Justinian's law, a distinction was made between culpa levis and culpa lata (Iancu & Gălățanu, 2025, p. 295).

Culpa levis denoted slight fault and sometimes it was assessed in the abstract by comparing the debtor's activity in the execution of the contract with that of a careful and conscientious head of the family - diligens pater familias. This slight fault assessed in the abstract was called *culpa levis in abstracto*. The special care that the debtor had to have in this case towards a thing was designated by the name of *diligentia*.

At other times, *culpa levis* was assessed in a concrete way, comparing the debtor's activity in the execution of the contract with the way in which he administered his own assets. This form of fault was called *culpa levis in concreto*.

Culpa lata was a gross fault that even the most clumsy administrator would not have committed.

Although less frequently mentioned and applied, there was also a third form of fault, *culpa levissima*. This represented the lowest degree of guilt, a tiny negligence, a deviation from the highest standard of diligence. This applied in exceptional cases, such as custodial obligations, where a debtor had to take special care of an asset, greater even than that of a bonus *pater familias*.

Fault, of whatever kind it was, differed from malice in that the latter was committed intentionally.

There were some contracts in which the debtor was liable only for malice and not for his culpa, namely contracts where he had no vested interest. In contracts where he had a vested interest he was also liable for his culpa.

Conclusions

From a primitive justice system based on mechanical and objective liability, the Romans created a system of remarkable complexity that recognized the importance of intent and negligence in determining guilt.

The classical period marked a fundamental advance, with subtle distinctions between culpa lata, culpa levis, and culpa levissima, standards that allowed for a flexible and equitable application of the law.

The bonus pater familias principle became a universal standard of prudence, while the utilitas contrahentium principle ensured that liability was proportional to the benefit obtained from a contract.

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