

Historical Development and Economic Analysis of the Aquilian Fault Liability: An Exegesis of Pomponius D. 9, 2, 39 ("Driving Off a Pregnant Mare")

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Abstract

With an exegesis on "driving off a pregnant mare," a case handed down by Pomponius (2nd century CE), this article explicates the formation and development of fault liability in Roman Aquilian law. Originally, the term *culpa* (fault) was not mentioned in *lex Aquilia*. However, in order to deal with cases of indirect damages, Roman praetors and jurists applied *lex Aquilia* analogically through granting *actio in factum* (rights to action *ad hoc*) under the Roman pleading system. As a result, the element of fault gradually emerged and was differentiated from *iniuria* (wrongfulness), being used to filter out wrongful acts which could be attributed to the tortfeasor and thereby serving as the foundation of liability for damages. Quintus Mucius (1st century BCE) established the criterium of "precautions which would have been taken by a diligent person" for identifying negligence in individual cases. Discussions of the Learned Hand formula in contemporary "law and economics" may be useful for understanding the application of this standard in Roman law cases.

Key Words: fault liability, duty of care, *lex Aquilia*, procedure of pleadings, Learned Hand formula