

## CS 296F: WRONGS AGAINST SLAVES

The three principal wrongs are: killing/severe physical injury (Lex Aquilia) = loss and/or severe damage; theft of a slave (furtum) = loss but no damage; physical or verbal assault (servi corruptio; iniuria) = less severe damage and no loss.

### 1. Killing/ severe physical injury (Lex Aquilia; loss wrongfully caused)

- a. there must be an application of force involved
- b. there must be (severe) damage
- c. the act must have been done iniuria: with dolus or culpa/neglegentia
- d. the thing damaged must belong to the plaintiff.

Aquilian liability **DOES NOT** result in the following cases: 1. Unavoidable killing: what of the slave who crosses a field where people are throwing javelins and is struck and killed? Does the owner have an action? No, because it was an inopportune time for the slave to cross: in other words, carelessness on the part of the owner led to his loss. 2. Negligence or carelessness is generally not murder, IF one can prove that although one took care the slave died anyway (e.g., the tree pruner). 3. A person who killed another's slave caught in adultery was not liable under the Aquilian law. 4. if one caught a slave thief by night it was lawful to kill him (although one jurist thinks that if the victim could have captured the slave but 'preferred' to kill him this should count as a wrongful killing. 5. One could legally kill a slave in self-defense. 6. If a third party (e.g.) quarreled with a slave and killed him unintentionally this was covered under the Lex Aquilia but apparently the penalty was less. Note that this is different from gross carelessness.

**2. Theft of a slave (Lex Fabia) kidnapping for economic purposes; or a situation which involves concealing the person and/or holding him against his or her will.** Thus if a man takes away a female slave for sexual purposes, rapes and frees her then this is a simple charge of theft/assault, unless he conceals her, in which case it is kidnapping under the Lex Fabia. The seller of a fugitive slave is also liable for kidnapping (=economic profit).

**3. Physical or verbal assault where the damage is less and there is no loss is covered under iniuria** (an action is brought suo nomine or servi nomine); or under **servi corruptio**. (if a slave is made worse or debauched or depreciated by a third party, physically, mentally, or morally).