

Book IX.
Title XX.

As to the Fabian law on kidnapping.
(Ad legem Fabiam.)

Bas. 60.48; Dig. 48.15; Inst. Just. 4.18.10.

Headnote.

The crime of kidnapping is rather fully treated in this title, and little need be added. Generally speaking that crime was committed under the Roman law whenever a person willfully and knowingly brought another's slave or a free person into his power, or withdrew a slave from the control of his master. A person who sold, or made a present of, or exchanged a free person, knowing him to be free, and the purchaser or receiver thereof, a person who kept a freeborn person or a freedman in prison, and the aiders and abettors of such persons, were guilty under this law. Dig. 48.15.1; D. 48.15.4 and 6.2. But the law also aimed at persons who enticed slaves away, and a thief of such slave might become guilty of the present crime by keeping him. Dig. 48.15.6 pr. See also the laws in this title. And, as will be further noted, a person had no right to sell a fugitive slave, although the owner might give orders to catch him and then sell him. Dig. 48.15.2.1. The crime was originally punished by a fine; later on offenders against it, if of the lower class, were sent to the mines or crucified, and persons of rank were deprived of half of their property and deported. Coll. Mos. 14.2. The penalty is referred to in the laws to this title. Where slaves were involved, a pecuniary penalty only appears to have continued in vogue. Law 6 of this title. The corruption of another's slave is mentioned in headnote to C. 6.2 and some of the laws of that title.

9.20.1. Emperor Antoninus to Placidus.

Your father may bring the proper judge a civil action against the man by whom, as he complains, his female slave was induced to flee and by whom she was kidnapped. If he succeeds in his suit¹, he may also prosecute the crime under the Fabian law. And if the slave was carried away by force, he is not forbidden to bring an accusation for violence (vis).

Promulgated March 21 (213).

9.20.2. The same Emperor to Aurelius.

If you can prove that your slave was received by Aelianus and concealed somewhere, and that soon thereafter he persuaded him to take to flight, you may personally bring an accusation under the Fabian law, or bring, through your procurator, some other action suited to the facts, namely for having corrupted the slave.

Note.

See C. 6.1.4 and 6.2.4.

¹ [Blume] That the ownership should be first determined is also stated in law 8 of this title.

9.20.3. Emperor Alexander to Cornelius.

A signed complaint, a trial and a decision, are necessary before the penalty under the Fabian law may be assessed.

Promulgated June 24 (224).

9.20.4. Emperor Gordian to Paulina.

Unless he acts in place of a president, the decision of an (imperial) procurator, that the Fabian law applies, is of no effect, since the proceeding under this law is within the jurisdiction of the president of the province.

Promulgated December 3 (239).

9.20.5. Emperors Valerian and Gallien and Caesar Valerian to Juliana.

If your opponent holds your brother as prisoner, you should accuse him under the Fabian law before the president of the province.

Promulgated May 7 (259).

9.20.6. Emperors Diocletian and Maximian to Marciana.

It is not permitted to sell or give away a fugitive slave. Hence you see that you have fallen into the clutches of the law, which directs a certain fine to be paid into the fisc for such offense. Only co-heirs and their joint owners are permitted to make a division of their property held in common and to bid for the fugitive slaves among themselves. But a fugitive slave may be sold upon condition that the sale shall be valid when the purchaser had found and seized him.

Promulgated March 13 (287).

9.20.7. The same Emperors to Maximus, City Prefect.

Since you indicate that slaves have been taken out of the city and sold by kidnappers, and you write that even free men have, by their crime, been accustomed to be carried away, we order that the audacity of these crimes be met by greater severity. 1. And, therefore, do not hesitate to punish by capital punishment a man who is found to have committed such crime, so that others may be deterred by the character of punishment, and may not, by such audacity, dare to seize and sell either slaves or free persons.

Given December 8 (287).

9.20.8. The same Emperors to Constant.

The president of the province will know whether an accusation of kidnapping should be heard or not, after he has learned who the owner is. For if it appears that you have title to the slave, it is clear that with the ownership known, the criminal action fails. But if it appears that the slave belongs to another, he will, after finishing the inquiry of ownership, also hear the criminal case.²

Promulgated August 25 (290).

² [Blume] Note C. 3 8.3.

9.20.9. The same Emperors and Caesars to Eugenius.

The law is not uncertain that a man who conceals another's slave is subject to an accusation under the Fabian law.

Subscribed May 15 (293) at Heraclea.

9.20.10. The same Emperors and Caesars to Diza.

A man who buys slaves from another who carried such slaves away by kidnapping, is not subject to any accusation, unless shown to be an accomplice.

Subscribed November 5 (293) at Luciona.

9.20.11. The same Emperors and Caesars to Ampliata.

A sale does not change the status of a person abducted by kidnapping. To entice a person away is a crime, but no prejudice to status results.

Subscribed November 5 (293) at Luciona.

9.20.12. The same Emperors and Caesars to Mucianus.

If a man knowingly harbors a fugitive slave together with stolen property, he is subject to an action on theft on account thereof, and the rector of the province will cause such property to be restored to you, with the usual penalty, and if you should file an accusation for the crime of kidnapping, the rector will not hesitate to hear you.

Subscribed at Singidunum September 12 (294).

9.20.13. The same Emperors and Caesars to Severinus.

An accusation for the crime of kidnapping is a case for public prosecution.

Subscribed November 27 (294).

9.20.14. The same Emperors and Caesars to Callisthenes.

The accusation for the crime of kidnapping fails, when those who affirm (and show), that the slaves or free persons, who are said to be detained, are theirs (and that they hold them) not to conceal any crime, but that you were led to that opinion on just grounds.

Subscribed at Nicomedia December 4 (294).

9.20.15. The same Emperors and Caesars to Pomponius.

A person who sells a free person, whose status he knows, against his will, is subject to the penalty of the crime of kidnapping.

Given at Nicomedia December 20 (294).

9.20.16. Emperor Constantine to Domitius Celsus, Vicar of Africa.

Kidnappers who deprive parents of their living children, were formerly sent to the mines, aside from other known penalties inflicted upon them. 1. But if a man is hereafter accused of such crime, he shall, after conviction, be thrown to the beasts, if he is a slave or freedman; and shall be punished by the sword, if he is free-born.

Given August 1 (315).

C. Th. 9.18.1.