

Book IX.
Title XVI.

As to the Cornelian law about assassins.
(Ad legem Cornelianam de sicariis.)

Bas. 60.39.18; Dig. 48.8.

Headnote.

This law was originally enacted primarily against assassins and poisoners. Under it were punished, and with equal severity, not only those who committed murder, but also those who did overt acts for that purpose and with that intent, for it was not so much the result as the intent that was considered. Thus a person who prepared and gave poison to kill or whoever gave false testimony to bring about a conviction of a capital crime or who was in possession of a weapon in order to kill were as guilty as those who actually committed murder. On the other hand, an insane person or infant, who lacked any intent were not guilty. Dig. 48.8.1 and 2; D. 48.12 and 14; Inst. 4.18.5; Mos. Coll. 1.2. Not all homicide constituted murder. Thus killing was permitted in certain cases of adultery. C. 9.9.4 and note. A forcible attempt to violate the chastity of another might be repelled even to the extent of killing. Dig. 48.1.4. Self defense, too, was permitted, even to the extent of killing. So an armed attack on one's possession might be repelled by arms. C. 8.4.1 and note. So a man might kill a nocturnal thief, if he had to do so to protect himself. Dig. 48.16.9.¹ The punishment for plebeians was death; for others deportation (which was considered a capital punishment and included, until Justinian's time, confiscation of property). Dig. 48.16.3.5; 16 pr.² Where a man was killed by negligence the punishment was lighter; Paul., Sent. 5.23.12 says that "in such case plebeians are sent to the mines and others are relegated to an island with the loss of part of their property." The same punishment was meted out to those who killed a person in a brawl, except that condemnation to the gladiatorial combats might be substituted for sentence to the mines for persons of low degree. Paul., Sent. 5.23.4; Mos. Coll. 1.8.1. A woman performing an abortion on herself was relegated temporarily. Dig. 48.16.8; Dig. 47.11.4. If someone else caused an abortion on a woman, the act was punished the same as negligent homicide. Paul., Sent. 5.23.14.

Other offenses not connected with the subject of murder were contained in the Cornelian law here under consideration, or were thereafter engrafted on it, and which shows that criminal law grew up without any logical arrangement. Thus castration, and circumcision (except in case of Jews), were punished under this law. Dig. 48.16.3.4; 11;³ C. 4.42. Justinian enacted Novel 142, specially on the subject of castration, punishing men guilty thereof with the same act which they inflicted on others, together with deportation and confiscation of property. Women guilty thereof were punished by exile and their property was confiscated. On the subject of confiscation of property see Note preceding Nov. 134, c. 13, 2.

¹ It appears that this should be 48.8.9.

² This citation apparently should be: 48.8.3.5 and 48.8.16.

³ Again, it seems the law should be 8 rather than 16: i.e., 48.8.3.4 and 48.8.11.

9.16.1. Emperor Antoninus to Aurelius Herculianus and other soldiers.

Your brother would have done better if he had offered himself up to the president of the province, and if he shows that Justus was struck by him with no intent to kill, the punishment for homicide will be remitted and sentence given according to military regulations. 1. For the crime is only committed if intent to injure⁴ exists. But acts which happen suddenly by accident, rather than evil design, must, generally, be ascribed to fate, and not to guilt.

Promulgated January 31 (215).

9.16.2. Emperor Gordian to Quintianus.

A man in danger of losing his life who kills his aggressor or other person, need not fear prosecution on that account.

Promulgated April 3 (243).

9.16.3. Emperor Gallien to Munatius.

If, as you allege, you killed a man engaged in highway-robbery, there is no doubt that he who first had the intention to kill is slain justly.

Promulgated January 20 (265).

Note.

To the same effect see C. 3.27.1.

9.16.4. A copy of an imperial letter of the Emperors Diocletian and Maximian to Agathones.

If it is true beyond question, as he alleges, that he committed homicide not intentionally but by pure accident, a kick of the heel being apparently the cause of death, we want him to be relieved, according to the contents of our notation, from all fear and apprehension under which he labors on account of the grave nature of his act.

Given at Sirmium November 30 (290).

9.16.5. The same Emperors and Caesars to Agotius.

If anyone has accused you under the Cornelian law concerning assassins, you should purge yourself of the crime by showing your innocence, and not defend yourself by setting up your minority.

Subscribed at Rome October 27 (294).

9.16.6. The same Emperors and Caesars to Philiscus.

A man who roams about with a weapon, with the intention of killing another, will be punished under the Cornelian law concerning assassins, just as a man who has killed another or by whose instigation that was done.

Subscribed at Nicomedia December 25 (294).

⁴ [Blume] Nocendi - Coll. Mos. 1.9 has occidendi.

9.16.7. Emperors Valentinian, Valens and Gratian to Probus, Praetorian Prefect.

Whoever, man or woman, has committed the crime of infanticide, must know that he or she is to be visited with capital punishment.

Promulgated February 7 (374) at Rome.

C. Th. 9.14.1.

9.16.8. Emperors Gratian, Valentinian, Theodosius and Arcadius to Cynegius, Praetorian Prefect.

If a wife is perchance found to have laid snares for the death of her husband or in some other manner is found to have had the intention to kill him, or if perchance a husband has treated his wife in like manner, every member of the household⁵, without exception, not only of the husband, but also of the wife, who were at home at that time, shall be examined under torture.

Given December 11 (385).

C. Th. 9.7.4.

⁵ [Blume] Slaves. See C. 9.9.31.