

Book IX.
Title XXXV.

Concerning intentional (outrage), wrongs to persons (injuries).
(De injuriis.)

Bas. 60.21.44, et seq; Dig. 47.10; Inst. 4.4.

Headnote.¹

This title and the next deal with what is called *injuria* in the Roman law, which was an intentional, or malicious insult, wrong or injury inflicted by a free man on (1) the person, (2) the dignity, or (3) the reputation of another. Injury or damage to property was dealt with under what was called the Aquilian law and was called *damnum injuria datum*, i.e. damage unlawfully inflicted, the term *injuria* there bearing the meaning of "unlawfully." In the Code the Aquilian law is dealt with in book 3 title 35. The term *injuria* as used in the present title has been translated as "malicious wrong," but must be understood as confined to person, dignity or reputation, as above mentioned, and generally really means insult in some form. It was a private delict, though, in later law both a criminal as well as a civil action might be brought for its commission. The wrong did not always need to be direct. A master had an action for the malicious wrong committed against his slaves, if committed with intention to wrong the former. A father might be injured by a wrong to his child, a husband by one against his wife. But a wife could not sue for an outrage against her husband. Inst. 4.4.2 and 3. Hence, too, several persons might have a right of action for the same wrong. Not only the party who committed the wrong was liable, but also whoever aided in or induced it. Inst. 4.4.11. The wrong must be intentional; mere negligence did not give rise to the action here contemplated. Dig. 47.10.3.2. The offense must be committed without the consent of the person that suffers the wrong, and must give rise to indignation. Overlooking it condones it immediately. Dig. 47.10.5 and 11.1; Inst. 4.4.12. It might be compromised. Dig. 47.10.11.1. It might be committed by word or deed. Dig. 47.10.1.1. Being considered penal, it could be brought neither by nor against heirs. Dig. 47.10.15.14. It may be grouped under the following heads:

1. Harm to the body. This included all malicious hurt to the body, like striking a man with the fist, or whip or scourging him; administration of love potions to injure the mind, and threat of personal violence, if accompanied with an apparent intention of immediately executing it. Inst. 4.4.1; Dig. 47.10.15 pr and 15.1.

2. Public insult (*convicium*). To insult a man in a public place or in a shop; to keep following about a respectable woman or youth; to accost a respectable woman with intention to overcome her chastity, or to use obscene language for the same purpose, were acts included herein. Dig. 47.10.15.7 and 15. 11; D. 47.10.15.15 and 15.21-22; Inst. 4.4.1. So too, an insult to a corpse was an insult to an heir; an insult to the statue of a man's father was an insult to the son. Dig. 47.10.1.4 and 10.27.

3. Slander. This is akin to public insult and might be committed in various ways: e.g. falsely calling a free man, or a free man's mother, a slave. C. 9.35.3 and 10; by

¹ Blume penciled in here: "Killing man - D. 47.10.7.1."

apprehending a person known to be free, as a fugitive slave, or by bringing an action against such person claiming him to be a slave. Dig. 47.10.12 and 22; by demanding a debt that was not due, in order to injure a man's credit, or by refusing to accept a solvent surety. Dig. 47.10.15.33; Dig. 2.8.5.1; by refusing a man to bathe in a public bath, or sit in a public seat in a theater. Dig. 47.10.13.7. Insulting statements might, however, be made in litigation, if moderation was observed. Paul., Sent. 5.4.15.

4. Libel - treated in the next title. The twelve tables (8, 1) provided, that "Whoever shall publish a libel - that is to say, shall write verses imputing crime or immorality to anyone - shall be beaten to death with clubs." Tacitus in Ann. 1, c. 72, says that words were free in the Republic and that Augustus was the first who took cognizance of libels under the pretence of the law of treason, incensed by the lampoons of Cassius Severus about distinguished persons of both sexes; that Tiberius, too, took cognizance of them. Dio Cassius 56.27, says that Augustus ordered a search for vituperative books, had them burned and visited punishment upon some of the composers. It would seem that the truth was a defense. Gothofredus ad C. Th. 9.34.1. The Theodosian Code contains ten laws in all on this subject, enacted from 319 A.D. to 406, and capital punishment was revived, as is also provided by the second law of the next title, which, too, makes truth a defense, provided that the composer voluntarily comes forward with an accusation.

5. Invading a man's home. We are apt to think that the thought that a man's home is his castle is of Anglo Saxon origin. Not so. To invade a man's home, even to serve a summons, was considered a malicious wrong. Dig. 47.10.5 pr and 5.1;² D. 47.10.23.

6. Maliciously setting the machinery of the law in motion against a man, came under this head. Dig. 47.13.3.

³7. There were several offenses which were called quasi delicts; as a malicious decision of a judge. Inst. 4.5 pr; Dig. 47.10.13.5. So if a person threw or poured out something from a place where he lived, whereby another was injured; or if a man kept something placed or hung over a public place, which might fall and injure someone, whether it actually fell and injured someone or not, it was a quasi-delict. Inst. 4.5.1; Dig. 9.3.5.6. In the last case the penalty was ten gold pieces; where things were thrown or poured out, the penalty was double the damages done, unless a free man was killed, when it was fifty gold pieces. Inst. 4.5.1.

Penalty in civil suit. In fixing the penalty, for malicious wrongs generally, the rank and standing of the plaintiff, the character of the injury and the place where it was committed were all taken into consideration. The amount assessed was according to the plaintiff's own estimate, controlled doubtless by the judge. Inst. 4.5.10; Dig. 47.10.37.1. Condemnation, whether in a civil or criminal suit, involved infamy. Paul., Sent. 5.4.20; Dig. 3.2.1; C. 2.11.5.

Criminal suit. The injured party had, in later times, the option whether to bring a civil or criminal suit. Savigny, 5 Sys. 251; D. 47.10.6; see fr. 7.1. In the latter the punishment lay generally, except where special punishment had been fixed, in the discretion of the judge. Inst. 4.5.10; Dig. 47.10.45, states that slaves were whipped; that free persons of low degree were cudgeled, others were temporarily sent into exile, or prohibited from enjoying certain privileges. The criminal action was doubtless brought

² It appears this should be 5.2.

³ Blume marked this paragraph and placed a question mark along side it.

mainly in cases where the guilty person was poor, or in extreme cases of malicious wrong.

9.35.1. Emperor Alexander to Syrus.

No malicious wrong may be lawfully inflicted even on the slaves of others.
Promulgated November 21 (222).

9.35.2. The same Emperor to Davus.

You have an action for malicious wrong for a double reason, since the husband by an attack on the chastity of his wife, and a father by an attack on the good reputation of his children are recognized as sustaining a malicious wrong.

Promulgated May 14 (230).

Note.

In this case the attack on the wife was also indirectly an attack on the children.

9.35.3. Emperor Gordian to Donatus.

If you are not an informer, you need not fear that your reputation was injured by reason of some parties stating, in order to injure you, that you were one. You may, moreover, in the customary manner, bring a suit for malicious wrong, against those who will be found to have fabricated lies for the purpose of injuring your good reputation.

Promulgated July 14 (239).

9.35.4. Emperors Valerian and Gallien and Caesar Valerian to Vindes.

There is no doubt that the wrong was an aggravated one, if it was committed against you while, as you say, you occupied a sacerdotal office and wore the garb and ornaments of that office; and you may, therefore, obtain revenge on that account.

Promulgated (259).

9.35.5. Emperors Diocletian and Maximian to Victorinus.

If you can prove that you slandered someone without malice, the truth protects you from being guilty of malicious accusation (*calumnia*). If, moreover, you, in the heat of a quarrel, accused one of being a murderer, and a year has passed since that day, you cannot be sued for the commission of the wrong, since an action for malicious wrongs is limited to one year.

Promulgated July 10 (290).

9.35.6. The same Emperors to Flavianus.

Since justice does not even permit patrons to commit malicious wrongs against their freedmen, and you say that the heirs of the patroness committed malicious wrong against the man who received his liberty from her, the president of the province will take care to prevent injury on the part of the heirs.

Promulgated July 15 (290).

9.35.7. The same Emperors and Caesars to Paenentianus.

An action for malicious wrong is not a public prosecution but is a private suit.
Subscribed at Sirmium February 13 (293).

9.35.8. The same Emperors and Caesars to Marcianus.

It is agreed that a master may sue for aggravated malicious injury inflicted upon his slave in an action given in the perpetual edict, which in plain words states that suit may be brought for damages.

Subscribed October 18 (294).

9.35.9. The same Emperors and Caesars to Nonna.

There is no doubt that those who call free persons slaves, for the purpose of slandering them, may be sued for malicious wrong.

Subscribed at Nicomedia November 26 (294).

Note.

To the same effect see C. 7.16.31; also next law. Such man might be punished with exile. Dig. 40.12.39.1.

9.35.10. The same Emperors and Caesars to Paulus.

If Genodorus, for the purpose of slandering, called your grandmother a public female slave of the city of Comanensis, and then took it back, he may be immediately sued in an action for malicious wrong. But if he perseveres therein, and has the right of suing, it is proper that the contention with reference thereto be deferred and he be sued only after it has been decided that she is not a slave.

Subscribed at Nicomedia December 18 (294).

9.35.11. Emperor Zeno to Alexander, of illustrious rank.

If at any time an action for malicious wrong, which the authors of the ancient law enumerate among private delicts, is brought by any men of illustrious rank, whether in service or not, or by their wives or children of the masculine sex, or by their daughters, whose father or husband of illustrious rank is living, or in case an action (of that kind is brought) against any of the aforesaid persons criminally⁴, we decree that those who complain of such malicious wrong, shall personally subscribe the complaint and shall solemnly observe all other requirements which ordinarily are followed in cases of this kind; provided, however, that an illustrious accuser or defender or his wife or children of the masculine sex, or daughter, with an illustrious father or husband living, may defend or prosecute⁵ any criminal case of malicious wrongs in any competent court through a procurator; and the judge shall give his decision according to law against him who has appointed a procurator, tho he himself was not present at the trial, nor was defended the cause through the procurator. But no other person shall dare to claim such privilege or ask it from our majesty. As to all other persons, the ordinary procedure which has heretofore existed shall remain unimpaired in the future.

Given at Constantinople November 1 (478).

Note.

⁴ [Blume] The suit for malicious wrong might be civil or criminal. Inst. 4.4.10. See headnote.

⁵ [Blume] Movere - it would seem that the information itself could not be filed by a procurator.

This law in substance provides that persons of illustrious rank, whether prosecuting or defending, might, after being personally present at the commencement of the suit, thereafter remain absent and to be then represented by a procurator. Mommsen, Strafrecht 375. Ordinarily both the accuser and the accused must be personally present and could not dispense with their presence by appointing an agent. In cases involving a fine only, however, the accused might be absent and simply be represented by an agent. Mommsen, Strafrecht 375. See also notes to C. 9.1.2 and C. 9.2.4.