How the commentaries to *de his qui deiecerint vel effuderint* and *ne quis in suggrunda* edicts could be used on the ground of *edictum de feris*

Tomasz PALMIRSKI

(*University of Kraków*)

Animals like other things can be possessed or can be an item of property. However, due to their specific character some liability must be imposed upon the people who are in charge of them for any damage they have caused by their activity. In Roman Law the origins of the responsibility for any damage caused by animals go back to the regulations introduced by the Law of the XII Tables, which in a given case expected *actio de pauperie*[1]. Such a complaint was sanctioned

[1] D. 9,1,1*pr* (*Ulpianus libro octavo decimo ad edictum*): *Si quadrupes pauperiem fecisse dicetur, actio ex lege duodecim tabularum descendit*… The relevant literature is relatively abundant. As far as 19th century publications are concerned, see B. WINDSCHEID, *Lehrbuch des Pandektenrechts*[9], ed. Th. Kipp, Frankfurt 1906, reprinted Aalen 1963 and 1984, II, 985. From 20th century studies see, among others, F. HAYMANN, *Textkritische Studien zum römischen Obligatinenrecht*, III, *Zur Haftung für Tierschaden* (*actio de pauperie*), *ZSS* 42 (1921), 357ff; U. ROBBE, *L'actio de pauperie*, *RISG* 7 (1932), 327ff; J.K. WYLIE, *Actio de pauperie Dig. Lib. IX tit. I, Studi in onore di Salvatore Riccobono* IV, Palermo 1936, 461ff; D.I.C. ASHTON-CROSS, *Liability in Roman Law for Damage caused by Animals, The Cambridge Law Journal* 11 (1953), 395ff; B. NICHOLAS, *Liability for Animals in Roman Law, Acta Iuridica* 1 (1958), 185ff; L. MÜLLER, *s.v. pauperies, RE supp.* X, col. 521ff, Stuttgart 1965; A. WATSON, *The Original Meaning of Pauperies, RIDA* 17 (1970), 357ff; B.S. JACKSON, *Liability for Animals in Roman Law: An Historical Sketch, The Cambridge Law Journal* 37 (1978), 122ff; H. ANKUM, *L'actio de pauperie et l'actio legis Aquiliae dans le droit romain classique, Studi in onore di Cesare Sanfilippo* II, Milano 1982, 11ff.

with compensations for the damage (*damnum*), accidentally caused by four-legged animals. Thus, beyond the sphere of application of such a damage suit, were cases of injury or death of a freeman, as those which did not comply with the notion of *damnum*[2]. Moreover, the right to the aforementioned complaint was exercised only when the damage was made by domestic animals[3]. From the noxal character of *actio de pauperie* was derived the right of the sued person to evade responsibility by giving up the animal to the aggrieved party (*noxae datio)*, which in cases of damage made by wild animals or beast (*ferrae bestiae*) could cause some additional complications for the harmed man[4].

Hence, the necessity to introduce adequate regulations sanctioning the cases of damage made by *ferae bestiae*. Their presence in a densely populated Rome[5], despite the fact whether they were tamed or not, did not need to pose a bigger risk and be more dangerous than coexistence of man and sheep, mules or horses in the country. In that case, bearing in mind poor protective measures (or in some cases a complete lack of such) which was guaranteed by *ius civile*, *ius honorarium* had to take over. The charge of the city (*cura urbis*) was in the hands of *aediles curules*, the same officials who in time of the Republic were also responsible for the organization of circus games in Rome (*cura ludorum*)[6]. They must have become quickly aware, that none of the existing legal regulations was sufficient to face the problems of the damage which might be caused in transportation and

[2] See below p. 328.

[3] D. 9,1,1,10. Classical character of this text cannot be questioned. See P. F. GIRARD, *Les actiones noxales*, *RHD* (1887), 409ff and *RHD* (1888), 31ff; M. GARCÍA GARRIDO, *Derecho a la caza e ius prohibendi en Roma*, *AHDE* 26 (1956), 281, 282; T. GIMÉNEZ-CANDELA, *El régimen pretorio subsidiario de la acción noxal*, Pamplona 1981, 32; A. HONORE, *Liability for Animals: Ulpian and the Compilers*, *Satura Feenstra*, Fribourg 1985, 248-249. In accordance with it, if *feritas* was *secundum naturam*, *actio de pauperie* could not be lodged. See also B.S. JACKSON, (Fn.1), 135ff.

[4] As it was accurately pointed out by A. Pernice it would be a bad favour done to the harmed person if they were given a tiger or a lion as compensation for the damage (A. PERNICE, *Zur Lehre von den Sachbeschädigungen nach römischen Recht*, Weimar 1867, 225).

[5] See R. ZIMMERMANN, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Cape Town Wetton Joannesburg 1990, 1104 ff. and the litterature cited there.

[6] See A. WATSON, *Law Making in the Later Republic*, Oxford 1974, 86.

then trading wild beasts, which were usually used in the circus games, and that is why they decided to issue *edictum de feris*.

Little is known, unfortunately, about that edict (we do not know even the date of publication[7]) because in the Digests there are no commentaries of jurists on its nature, but solely the text of that edict included in the commentaries of Ulpianus and Paulus *ad edictum aedilium curulium.* From the content of that edict[8] we can draw a conclusion, which was already pointed by G. Impallomeni[9], F. Casavola[10] and A. Guarino[11], that it was modeled after *edictum de his qui deiecerint vel effuderint*[12]. In my opinion then, while analyzing *edictum de feris*, we are allowed to use respective statements of jurists commenting on the edict sanctioning a case of damage or injury as a result of the expulsion of a liquid or solid object from a dwelling (*deiectum vel effusum*). One can also see some similarity of the *de feris* edict to the *ne quis in suggrunda* edict[13], due to the same structure of them, both commencing with the phrase ***ne quis***. The former one also justifies the reference *per analogiam* to some opinions expressed by jurists commenting the latter edict. Pointing at these analogies will be the topic of my dissertation included in this article.

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[7] Bearing in mind that the *edictum de feris* was modeled after *edictum de his qui deiecerint vel effuderint* and *ne quis in suggrunda*, we can assume that it was issued, similarly to most praetorian edicts, during the Republic. See A. WATSON, *The law of Obligations in the Later Roman Republic*, Oxford 1965, 267ff; A. WATSON, (Fn.6), 31ff.

[8] See below p. 326.

[9] G. IMPALLOMENI, *L'Editto degli edili curuli*, Padova 1955, 87.

[10] F. CASAVOLA, *Studi sulle azioni popolari romane. Le actiones populares*, Napoli 1958, 159ff.

[11] A. GUARINO, *Actiones in aequum conceptae*, *Labeo* 8 (1962), 10ff.

[12] D. 9,3,1*pr* (*Ulpianus libro vicensimo tertio ad edictum*): *Praetor ait de his, qui deiecerint vel effuderint: « Unde in eum locum, quo vulgo iter fiet vel in quo consistetur, deiectum vel effusum quid erit, quantum ex ea re damnum datum factumve erit, in eum, qui ibi habitaverit, in duplum iudicium dabo. si eo ictu homo liber perisse dicetur, sestercium quinquaginta <aureorum> iudicium dabo. si vivet nocitumque ei esse dicetur, quantum ob eam rem aequum iudici videbitur eum cum quo agetur condemnari, tanti iudicium dabo. »*

[13] D. 9,3,5,6 (*Ulpianus libro vicensimo tertio ad edictum*): *Praetor ait: « Ne quis in suggrunda protectove supra eum locum, quo vulgo iter fiet inve quo consistetur, id positum habeat, cuius casus nocere cui possit. qui adversus ea fecerit, in eum <solidorum> decem in factum iudicium dabo. »*

According to O. Lenel[14] the edict clause reads as follows:

Deinde aiunt aediles: NE QUIS CANEM, VERREM [VEL MINOREM], APRUM, LUPUM, URSUM, PANTHERAM, LEONEM, QUA VULGO ITER FIET, ITA HABUISSE VELIT, UT CUIQUAM NOCERE DAMNUMVE DARE POSSIT.

As the basis for its reconstruction O. Lenel used some fragments from the commentaries to the edict *de feris* made by Ulpianus:

D. 21,1,40 (*Ulpianus libro secundo ad edictum aedilium curulium*):

… deinde aiunt aediles: ne quis canem, verrem vel minorem aprum, lupum, ursum, pantheram, leonem

D. 21,1,42 (*Ulpianus libro secundo ad edictum aedilium curulium*):

qua vulgo iter fiet, ita habuisse velit, ut cuiquam nocere damnumve dare possit. si adversus ea factum erit et homo liber ex ea re perierit, <solidi> ducenti, si nocitum homini libero esse dicetur, quanti bonum aequum iudici videbitur, condemnetur, ceterarum rerum, quanti damnum datum factumve sit, dupli.

The content of the edict, though incomplete, is also quoted in Justinian's Institutes:

I. 4,9,1:

Ceterum sciendum est aedilicio edicto prohiberi nos canem verrem aprum ursum leonem ibi habere, qua vulgo iter fit: et si adversus ea factum erit et nocitum homini libero esse dicetur, quod bonum et aequum iudici videtur, tanti dominus condemnetur, ceterarum rerum, quanti damnum datum sit, dupli.

According to the quoted Ulpianus nobody should keep (lead) dangerous animals both on a leash (tied) and at large in a place where usually there was a lot of commotion and rush, and where chances of injuring or causing damage to pedestrians were higher. The ban concerned not only public roads but also private ones[15]. One should

[14] O. LENEL, *Das Edictum perpetuum*[3], Leipzig 1927, 566.

[15] See L. RODRIGUEZ-ENNES, *Delimitacion conceptual del ilicito edilicio de feris*, *Iura* 41 (1990), 67. According to Paulus, commenting upon the edict *de his qui deiecerint vel effuderint* (which in my opinion, can be also applied to *edictum de feris*) it referred not only to cities but to all routes regulary used by people (D. 9,3,6*pr* [*Paulus libro nono decimo ad edictum*]: *Hoc edictum non tantum ad civitates et vicos, sed et ad vias, per quas vulgo iter fit, pertinet*). As for the terms used in the text of commentary (*iter, vicus*, *via*) see H. HEUMAN, E. SECKEL, *Handlexikon zu den Quellen des römischen Rechts*[10], Graz 1958, 290, 632; J. SONDEL, *Słownik łacińsko-*

notice, that the edict did not prohibit to keep potentially dangerous animals, with necessary precaution ensured, so that they could not cause damage or harm anybody. The edict included three cases of responsibility for the damage caused by wild animals. So, in case of

polski dla prawników i historyków, Kraków 1997, s.v. *iter, vicus, via*. With the term *via* were described in the center of Rome only *via Sacra* and *via Nova*. The rest of the streets were defined as *vici* and *clivi* (H. DESSAU, *Inscriptiones Latinae Selectae*, II, Berlin 1902, 6073). In Labeo's opinion, the edict *de his qui deiecerint vel effuderint* could only be applied in daytime (D. 9,3,6,1, [*Paulus libro nono decimo ad edictum*]: *Labeo ait locum habere hoc edictum, si interdiu deiectum sit, non nocte*). Paulus, however, expressed reservations as to the pertinence of that view asserting that in certain places street traffic occurred at night (D. 9,3,6,1 [*Paulus libro nono decimo ad edictum*]: *sed quibusdam locis et nocte iter fit*). This view was plausible to the extent that the *Tabula Heracleensis,* issued at the end of the Republican period, mentioned prohibiting street traffic between sun rise and ten o'clock in the evening with the exception of refuse collection vehicles which in turn must have increased traffic during night time (CIL I 206(=II 593); FIRA I, 140 (lin.56-57): *Quae viae in u(rbem) R(omam) sunt erunt intra ea loca, ubi continenti habitabitur, ne quis in ieis vieis post K(alendas) Ianuar(ias) / primas plostrum interdiu post solem ortum, neve ante horam X diei ducito agito*…, (lin.66-67): *Quae plostra noctu in urbem inducta erunt, quo minus ea plostra inania aut stercoris exportandei caussa / post solem ortum h(oris) X diei bubus iumenteisve iuncta in u(rbe) et ab u(rbe) R(oma) p(assus) M. esse liceat, e(ius) h(ac) l(ege) n(ihilum) r(ogatur)*; see also U.E. PAOLI, *Urbs. Aspetti di vita romano antica*, Firenze 1942, 63). The claim that the pertinent regulations could likewise be applied at night is demonstrated in the edict *de his qui deiecerint vel effuderint*, which made no mention of limiting liability for damage or injury arising exclusively during day time. On the other hand, the edict does refer to cases of expelling liquids or solid objects in places where traffic usually occurred (see D. 9,3,1*pr* cit. above in Fn. 12). However traffic doesn't relate only to pedestrians, which intensifying really could be slight at night time, but also mean the vehicular traffic. Ulpianus also mentioned only that the edict did not apply "when a district is deserted before road and traffic reappears", which did not mean, however, that it referred exclusively to night time (D. 9,3,1,2 [*Ulpianus libro vicensimo tertio ad edictum*]: *Parvi autem interesse debet, utrum publicus locus sit an vero privatus, dummodo per eum vulgo iter fiat, quia iter facientibus prospicitur, non publicis viis studetur: semper enim ea loca, per quae vulgo iter solet fieri, eandem securitatem debent haberi. ceterum si aliquando vulgus in illa via non commeabat et tunc deiectum quid vel effusum, cum adhuc secreta loca essent, modo coepit commeari, non debet hoc edicto teneri*). Paulus' opinion, which was a wider interpretation, was not thus outdated (he was living 300 years later than Labeo) expanding interpretation (Contrary to F. CASAVOLA, [Fn.10], 157). The existence of such divergent views might only indicate that the *Tabula Heracleensis* was issued after Labeo's death. Thus Labeo might have argued that due to the very low frequency of traffic at night the expulsion of a liquid or sold object was less harmful and as such should not be penalised, especially as it offered one way of disposing refuse in cases where sanitation and sewage facilities were lacking (Compare T. GIMÉNEZ-CANDELA, *Los Llamados Cuasidelitos*, Madrid 1990, 70,71).

injury of a freeman, the amount of damages depended upon the verdict of a judge. If, as a result of injuries inflicted by an attacking animal, a freeman died, the penalty was 200 solids (according to O. Lenel 200.000 sesterces[16]). Thus, in the case of damage or destruction of an object, compensation were set at doubled value of the damage inflicted (*duplum)*. The congruence between the *de feris* edict and praetorian *de his qui deiecerint vel effuderint* edict is clearly visible here. We should also pay attention to the fact, that that *edictum de feris* does not mention the culpability (*dolus*, *culpa*) at all as grounds of liability. Therefore, similarly to the case of *deiectum vel effusum* we have encountered here a case of strong objective liability[17]. The only limitation of it was a case of provoking the animal by the harmed person, who by virtue of his deed was not entitled to lay a complaint provided for by the edict:

> PS. 1,15,3:
> *Ei, qui inritatu feram bestiam vel quamcumque aliam quadrupedem in se proritaverit eaque damnum dederit, neque in eius dominum, neque in custodem actio datur*.

The two edicts can be divided into two parts, the first one, in which the owners of dangerous animals and *habitatores* are obliged to take necessary safety precautions not to pose any risk for pedestrians and their property and the second part, where there are included analogous cases of damage resulting in laying a claim, with the exception that in *edictum de feris* in the first place it reads about the injury inflicted to the body of a freeman, whereas in praetorian edict about the damage to the property or things[18]. F. Casavola explains this difference, claiming that cases of attacking man by wild animals were far more frequent than cases of causing damage to property. They were also more significant[19].

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[16] See O. LENEL, (Fn.14), 566. This opinion seems to be right becouse since the half of third cent. B.C., Romans defined their possessions' worth in sesterces (O. JUREWICZ, L. WINNICZUK, *Starożytni Grecy i Rzymianie w życiu prywatnym i państwowym*, Warszawa 1968, 478). Whereas solids were golden coins introduced as legal tender by Constantine the Great, presumably in 311 A.D. (See *Vademecum historyka starożytnej Grecji i Rzymu*, ed. E. Wipszycka, I, Warszawa 1979, 281), so much later than the publication of the *de feris* edict.
[17] Contrary to L. RODRIGUEZ-ENNES, (Fn.15), 72ff.
[18] See also M. KASER, *Zum Ediktsstil*, *Festschrift Schulz* 2 (1951), 69.
[19] F. CASAVOLA, (Fn.10), 160.

The damage is thus one of the elements necessary to constitute liability. Without going into detail of complex problems connected with the etymological derivation of the word *damnum* and multitude of its meanings, which were ascribed to this word throughout various stages of the development of Roman Law[20], we should assume, that the late-classical doctrine understood it as the material loss[21]. Therefore, the damage deprived of this economic aspect, called a moral loss, is not regarded as *damnum*, as it does not cause any damage to the property of those who suffered from it[22]. That is why, the double damages are adjudged (*duplum*)[23] only when animate or inanimate things are damaged or destroyed - *quanti damnum datum factumve sit dupli*. However, there are two more cases not covered by the meaning of *damnum*, which are sanctioned by the edict, such as death or injury of a freeman. Nevertheless, it is obvious, that both death and damage to the body had to be compensated for. Ulpianus, commenting the *de his qui deiecerint vel effuderint* edict writes about that, and we have to make use of his opinion in this case due to the lack of adequate commentaries to the *de feris* edict:

D. 9,3,1,6 (*Ulpianus libro vicensimo tertio ad edictum*):

Haec verba 'si vivet nocitumque ei esse dicetur'[24] *non pertinent ad damna quae in rem hominis liberi facta sunt, si forte vestimenta eius vel*

[20] The etymology of the term *damnum* is controversial. Compare A. ERNOUT, A. MEILLET, *Dictionnaire étymologique de la langue latine*[4], Paris 1959, 163; R. LEONHARD, s.v. *damnum*, RE IV, Stuttgart 1901, col. 2062ff; D. DAUBE, *On the Use of the Term "damnum"*, *Studi Solazzi*, Napoli 1948, 93ff; L. BOVE, s.v. *Danno* (*Diritto romano*), *NNDI* V, Torino 1960, 143ff; G. CRIFO, s.v. *danno (storia)*, *ED* XI, Milano 1962, 615ff.

[21] Paulus, among others, talked about that (D. 39,2,3 [*Paulus libro quadragensimo septimo ad edictum*]: *Damnum et damnatio ab ademptione e quasi deminutione patrimoni dicta*). See also S. PEROZZI, *Istituzioni di diritto romano*, II, Roma 1928, 156.

[22] See A. MARCHI, *Il risarcimento del danno morale secondo il Diritto romano*, *BIDR* 16 (1904), 206ff; C. SANFILIPPO, *Il risarcimento del danno per l'uccisione di un uomo libero nel diritto romano*, *Annali Catania* 5 (1959), 126.

[23] When measuring the amount of damage, in my opinion, we should refer to the views expressed on that subject in the context of applying *lex Aquilia*. We should also pay attention, among others, to the fact that since the times of the jurist Iulianus an individual damage has been included into it and not only a standard value of things. See M. KASER, *Das römische Privatrecht*, I[2], München 1971, 621 and the literature cited there.

[24] In the respective fragment of the *de feris* edict (D. 21,1,42) it is written *si nocitum homini libero esse dicetur* (see above p. 326).

quid aliud scissum corruptumve est, sed ad ea, quae in corpus eius admittuntur.

Regarding the methods of measuring damages in such cases, we can find some detailed information from Gaius. He refers, however, directly to the case of causing damage by pouring out or throwing something from a dwelling but by analogy, which was mentioned earlier in this article, it can be applied to the case sanctioned by the *de feris* edict:

D. 9,3,7 (*Gaius libro sexto ad edictum provinciale*):
Cum liberi hominis corpus ex eo, quod deiectum effusumve quid erit, laesum fuerit, iudex computat mercedes medicis praestitas ceteraque impendia, quae in curatione facta sunt, praeterea operarum, quibus caruit aut cariturus est ob id, quod inutilis factus est. Cicatricium autem aut deformitatis nulla fit aestimatio, quia liberum corpus nullam recipit aestimationem.

According to the jurist cited above the judge ought to take into account doctors' fees, other costs of treatment together with lost benefits and those benefits which will be potentially lost due to the injury in question. Potential profits from work which the injured party could have made during the period in question should not be considered, which is not surprising when one considers that the hired labour of free persons in Rome is considered to be exceptionally rare[25]. On the other hand, scars and other disfiguring features should not be considered when estimating the amount of compensation due because *liberum corpus nullam recipit aestimationem.*

The complaint included in the *de feris* edict was directed against someone who at the moment of causing damage by the animal was in charge of it (*corpus)* regardless of the ownership. It can be traced down not only in the actual text of the edict, which constituted, that nobody (*ne quis*) should lead dangerous animals which might cause damage to the pedestrians but also in a short fragment of *Pauli Sententiae* referring to *actio de feris*:

PS. 1,15,2:
Feram bestiam in ea parte, qua populo iter est, colligari praetor prohibet: et ideo, sive ab ipsa sive propter eam ab alio alteri damnum

[25] See D. NÖRR, *Zur sozialen und rechtlichen Bewertung der Freien Arbeit in Rom*, *ZSS* 84 (1965), 67ff and the literature cited there.

datum sit, pro modo admissi extra ordinem actio in dominum vel custodem datur, maxime si ex eo homo perierit[26].

In the text, a complaint is mentioned against "the one who had the animal", that means, not only against the owner but also a leaser or the one who borrowed the animal. So, either the ending was altered by the addition of *vel custodem* or, which is more probable, this term implies the aforementioned people not necessarily being owners of the animal which caused the damage. Such a circle of people bearing responsibility might be also indirectly pointed out in the Ulpianus' commentary to the *ne quis in suggrunda* edict:

D. 9,3,5,8 (*Ulpianus libro vicensimo tertio ad edictum*):
Ait pretor: 'ne quis in suggrunda protectove'. haec verba 'ne quis' ad omnes pertinent vel inquilinos vel dominos aedium, sive inhabitent sive non, habent tamen aliquid expositum his locis.

The quoted jurists states that someone held responsible for hanging something on a building in a dangerous way (*positum aut suspensum*) is the one who hung the thing, regardless of whether they were owners of that building, the tenants (*habitator*) or a stranger[27]. In roman doctrine there is also a view connecting the liability for *positum aut suspensum* with the person of a tenant or the owner of the building[28]. As a confirmation, a commentary of the same jurist is cited, in which he mentions the liability of the owner or a tenant:

D. 9,3,5,10 (*Ulpianus libro vicensimo tertio ad edictum*):
Positum habere etiam is recte videtur, qui ipse quidem non posuit, verum ab alio positum patitur.

In my opinion the liability of the house owner or the person inhabiting the house (and by analogy of the owner of a wild animal) described in this fragment must be recognized as only ancillary one. Those people could avoid the liability by not agreeing to hanging out

[26] On the subject of this text see O. LENEL, (Fn.14), 566, fn.9; G. IMPALLOMENI, (Fn.9), 87, fn.3; B. NICHOLAS, (Fn.1), 186, fn.12.
[27] See G. LONGO, *I quasi delicta. Actio de effusis et deiectis. Actio de positis ac suspensis*, *Studi Sanfilippo* IV, Milano 1983, 462; W. WOŁODKIEWICZ, *Deiectum vel effusum oraz positum aut suspensum w prawie rzymskim*, *CPH* 20.2 (1968), 38.
[28] See P. STEIN, *The Nature of quasi delictal Obligations in Roman Law*, *RIDA* 5 (1958), 563; A. WATSON, *Liability in the "actio de positis ac suspensis"*, *Mélange Philippe Meylan* I, Lausanne 1963, 380.

or even by disturbing the one who made this[29]. Such interpretation of the liability (exclusively the ancillary one) of the house owner or the tenant of the house in case when someone else hanged out the object, could be supported by the view according to which the D. 9,3,5,10 is commenting solely on a *positum habere* in connection with *noxalis actio*[30]. It is evident from consideration included therein that the noxal complaint could arise only when the slave owner did not know about the hanging of the object in a dangerous manner by the slave. Ulpianus mentioned that:

> D. 9,3,5,6 (*Ulpianus libro vicensimo tertio ad edictum*):
> *… si servus insciente domino fecisse dicetur, aut noxae dedi iubebo.*

If, on the other hand, the slave owner knew about it and agreed to it, than *actio noxalis* could not be applied. In such case an *actio de positis aut suspensis* (and *per analogiam actio de feris*) was led directly against the owner who faced charges himself, which is reflected by the opinion expressed by the aforementioned jurist:

> D. 9,3,5,10 (*Ulpianus libro vicensimo tertio ad edictum*):
> *… quare si servus posuerit, dominus autem positum patiatur, non noxali iudicio dominus, sed suo nomine tenebitur.*

The regime of liability provided for in the two cases described above proves the ancillary character of the house (animal) owner's or the tenant's liability towards the one who hanged the object (used the animal). Naturally, in case when the owner (of the house or the animal) or the inhabitant had no knowledge of the conduct of a free person, we cannot speak of the noxal liability, which took place only when a thing was hanged out by the slave and the owner did not know about it.

It should be added, that there are some different ways in respective cases of liability for *deiectum vel effusum* (which by analogy can be also referred to the damage caused by a wild animal) in which the issue of active and passive transfer of complaint was regulated. Some detailed information on that subject was conveyed by Ulpianus:

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[29] Compare W. WOŁODKIEWICZ, (Fn.27), 36, 37, fn.68; A. WATSON, (Fn.28), 379.
[30] See W.A. GORDON, *The Roman Class of quasi - delicts*, *Estudios de derecho Romano*, Homenaje al Profesor Don Carlos Sánchez del Rio y Peguero, Zaragoza 1967, 307.

D. 9,3,5,5 (*Ulpianus libro vicensimo tertio ad edictum*):

Haec autem actio, quae competit de effusis et deiectis, perpetua est et heredi competit, in heredem vero non datur. Quae autem de eo competit, quod liber perisse dicetur, intra annum dumtaxat competit, neque in heredem datur neque heredi <similibusque personis>: nam est poenalis et popularis: dummodo sciamus ex pluribus desiderantibus hanc actionem ei potissimum dari debere cuius interest vel qui adfinitate cognationeve defunctum contingat. Sed si libero nocitum sit, ipsi perpetua erit actio: sed si alius velit experiri, annua erit haec actio, nec enim heredibus iure hereditario competit, quippe quod in corpore libero damni datur, iure hereditario transire ad successores non debet, quasi non sit damnum pecuniarium, nam ex bono et aequo oritur.

Thus, the heir of an injured party was also entitled to claim payment of double the value of an object which had been destroyed or damaged. Such a claim, however, could not be pursued against the heirs of a debtor. If, on the other hand, the expulsion or fall of an object resulted in the death of a free person the heirs of the victim were not entitled to claim *de deiectis vel effusis*. Nor could such a claim be made against the heirs of a debtor. Ulpianus justified this by the fact that such a claim was *poenalis et popularis*. The popular character of an *actio de deiectis vel effusis* nevertheless enabled the heir of an injured party to make the above mentioned claim, not however in his capacity as *iure hereditario*, but as the most interested party to the case who could vindicate his rights through an *actio popularis*[31]. If a free person sustained physical injury an *actio de deiectis vel effusis* could not be brought against the heirs of a debtor. Such a claim could not be brought against the heirs of the injured party either. The latter could, however, within the course of a year always pursue an *actio popularis*, in their capacity as the most interested parties to the case.

The possibility of pursuing an *actio de deiectis vel effusis* (*actio de feris*) in various cases of liability means that it cannot be classified as a specific category. For example, regarding claims (*actio perpetua*) where an object is damaged or destroyed as perpetual in character

[31] With regards to disputable issues on heredity of *actiones populares,* see A. CODACI-PISANELLI, *Le azioni popolari*, Napoli 1887, 30; H. PAALZOW, *Zur Lehre von den römischen Popularklagen*, Berlin 1889, 43ff; C. FADDA, *L'azione popolare, Studio di diritto romano ed attuale* I, parte storica, *Diritto romano*, Torino 1894, 154; F. CASAVOLA, (Fn.10), 161ff.

means that we cannot state that they entirely originated in the *ius honorarium*[32]. The joint liability of the inhabitants of a given dwelling makes it difficult to categorize this claim as a penal one[33].

Finishing the dissertation on the theme of *edictum de feris* one more issue should be emphasized. It has been said before, that the edict did not mention the culpability (*dolus, culpa)* as the basis of liability[34]. Therefore, the case of damage caused by wild animals, at least for the classical epoch, must be added to the so-called *obligationes quasi ex delicto*[35]. Since quasi-delictal liability was objective liability[36].

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[32] *Actiones poenales* regulated by *ius honorarium* were subject to prescription as a rule after one year period (so called *actiones annales*); G. 1,110: *Quo loco admonendi sumus eas quidem actiones, quae ex lege senatusve consultis proficiscuntur, perpetuo solere praetorem accommodare, eas vero, quae ex propria ipsius iurisdictione pendent, plerumque intra annum dare*; D. 44,7,35*pr* (*Paulus libro primo ad edictum praetoris*): *In honorariis actionibus sic esse definiendum Cassius ait, ut quae rei persecutionem habeant, hae etiam post annum darentur, ceterae intra annum*. See also W. OSUCHOWSKI, *Zarys rzymskiego prawa prywatnego*[2], Warszawa 1966, 203,204.

[33] F. SCHULZ, *Classical Roman Law*, Oxford 1951, 42.

[34] See above p. 328.

[35] This term appeared for the first time in *Res cottidianae*, and then as a source of quasi-delictal obligations were enlisted in Justinian's Institutes. In that category there were included cases of liability for: hanging something dangerous above a place, where there was some traffic (*positum aut suspensum*), damage caused by pouring out or throwing out something from a dwelling (*deiectum vel effusum*), entering a dispute as a side by the judge conducting the trial in this case (*iudex qui litem suam fecit*) and cases of liability of ship, inn or stable owners for the damage caused by their personnel. It is hard to say why a case prosecuted by means of *actio de feris*, regulated in an almost identical way as *deiectum vel effusum* (see p. 326 ff.) was not included in *obligationes quasi ex delicto*. According to A. Perozzi ([Fn.21], 21) in order to preserve symmetry in classification of the sources of obligations, apart from four delicts another four quasi-delicts should have been enlisted. However, the issue of factual number of legal states, which could be recognized in this category, in my opinion, still remains open. Liability independent of the guilt takes place also when the liberated infringes the right of the patron to the *debita portio* left after him, as a result of any deeds *mortis causa* making loss to that share. Then the praetor authorized him with *actio Fabiana* (*actio Calvisiana*) against any purchaser, including those in good faith, to regain the given benefits. See M. KASER, (Fn.23), 626, 630, 709; O. LENEL, (Fn.14), 352.

[36] On the subject of hypothesis regarding the criteria linking quasi-delictal obligations, see T. PALMIRSKI, *Obligationes quasi ex delicto. Ze studiów nad źródłami zobowiązań w prawie rzymskim*, Kraków 2004, 125ff and the literature cited there.