

DELICTS — RESPONSIBILITY OF KRIALHEAD FOR DELICT OF (INMATE)

Kaula vs Mtimkulu s.no 1938 N.B.C. (N.O.T) p. 71.

"Unquestionably, by Native Law whether it be the law as defined in the Code or basic native law, the head of a household is held liable for the delicts of inmates of his household. A priori is he responsible for the delicts of his children, however young, residing with him."

Under the Common Law a father is liable in the event of the delict being committed by his minor son in the execution of his father's work or in the discharge of any duty imposed on him by his father — Carade vs Wakeha, 1911 C.P.D. p. 704. Furthermore a father is negligent in authorising or employing a very young boy, whether he be *doli incapax* or not, in work which results in injury to a third party. The action is based upon the *Lex Aquilia* of which the essential requirement is *culpa*, not *dolus*, ~~that~~ —

It is true that *culpa* can be *lata* & thus become *dolus* but in "In lege Aquilia et levisissima culpa venit" — Emmer, "*De Lex Aquilia*", p. 223

liability attached to the father or master under older Roman Law by the *noxal* action for delicts of sons or slaves but even then there remained liability under the *Lex Aquilia* "if the master or employer either knew their *unfitness* to perform their duties or might have known if he had been <sup>careful</sup>, the example of the *overcheerous* slaves being quoted — (See Emmer, *loc. cit.* p. 252). Thus liability is based not on the action of the son but on that of the father in employing him on his service knowing his immaturity. Similarly a dominus is liable for damage done with his knowledge. He cannot escape liability although the act was done without his command. Emmer, p. 255. This rule was applied in Pet Mabaso vs Samuel Mtimkulu, 1915 N.H.C. 80124.