

VI.

DE PERICULO ET COMMODO REI UENDITAE R SEP

- 1 ULPIANUS libro uicesimo octavo ad Sabinum. Si unum uenditum acuerit uel quid aliud S uiti sustinerit, emptoris erit damnum, quemadmodum si unum esset effusum uel usis contusis uel qua alia ex causa. sed si uenditor se periculo subiecit, in id tempus periculum sustinebit, quoad se subiecit: quod si non designauit tempus, et eatenus periculum sustinere f. 267¹ debet, quoad degustetur unum, uidelicet quasi tunc plenissime ueneat, cum fuerit degustatum. aut igitur conuenit, quoad periculum unum sustineat, et eatenus sustinebit, aut non conuenit et usque ad degustationem sustinebit. sed si nondum sunt degustata, signata tamen ab emptore uasa uel dolia, consequenter diebus adhuc periculum esse uenditoris, nisi si aliud conuenit. Sed et custodiam ad diem mensurae uenditor praestare debet: priusquam enim admetiatur unum, prope quasi nondum uenit. post mensuram factam uenditoris desinit esse periculum: et ante mensuram periculo liberatur, si non ad mensuram uendit, sed forte amphoras uel etiam singula dolia. Si dolium signatum sit ab emptore, Trebatius ait traditum id uideri: Labeo contra, quod et uerum est: magis enim ne sum-¹⁵ 3 mutetur¹, signari solere, quam ut traditum uideatur. Licet autem uenditori uel [E. 53, 7, 3] effundere unum, si diem ad metendum praestituit nec intra diem admensum est: effundere autem non statim poterit, priusquam testando denuntiet emptori, ut aut tollat unum aut sciat futurum, ut unum effunderetur. si tamen, cum posset effundere, non effudit, laudandus est potius: ea propter mercedem quoque dolorum potest exigere, sed ita demum,²⁰ si interfit eius mania esse uasa in quibus unum fuit (ueluti si locatus ea fuisset) uel si necesse habuit alia conducere dolia. commodus est autem conducti uasa nec reddi unum, nisi quanti conduxerit ab emptore reddatur, ut uendere unum bona fide: id est quantum sine ipsius incommodo fieri potest operam dare, ut quam minime detrimentum sit ea res emptori. Si doliare unum emeris nec de tradendo eo quoquam conuenierit, id [E. 53, 7, 5] uideri actum, ut ante euacuarentur quam ad uindemiam opera eorum futura sit necessaria: quod si non sint euacuata, faciendum, quod ueteres putauerunt, per corbem uer- [E] ditorem mensuram facere et effundere: ueteres enim hoc propter mensuram suaserunt, si, quanta mensura esset, non apparet, uidelicet ut apparet, quantum emptori perierit.²⁹
- 2 GAUUS libro secundo cotidianarum rerum. Hoc ita uerum est, si is est uen- [E. 53, 7, 5] S^o ditor, cui sine noua uindemia non sint ista uasa necessaria: si uero mercator est, qui emere uina et uendere solet, is dies spectandus est, quo ex commodo uenditoris tolli possint.
- 1 Custodiam autem ante admetiendi diem qualem praestare uenditor oportet, utrum plenam, ut et diligentiam praestet, an uero dolium dumtaxat, uideamus. et puto eam diligentiam uenditorem exhibere debere, ut fatale damnum uel uis magna sit excusatum.³⁵
- 3 PAULUS libro quinto ad Sabinum. Custodiam autem uenditor talem praestare debet, S quam praestant hi quibus res commodata est, ut diligentiam praestet exactorem, quam in suis rebus adhiberet.

FIP(VU)

1. commutetur (Bynkershoek)?
 2 et om. P^o 3 alit F. 4 unum] unum P^o
 5 qua] quia P^o 2, om. V^o 6 quoad] quoad-
 ad P^o 8 quoad] quoad P^o | unij] iuris P^o
 9 nondum] non PVU 11 si om. PU 14 am-
 phoras] ad anforas. P^o 15 ait] eit Fz |
 labe P^o | et om. PV 16 traditum] tradere
 unum P^o | I] unum] diem unum P^o 18 te-
 stando] F. testato PVU; testanto f. testa F:
 ΕΞΕΤΙ ΤΩ ΠΡΑΤΗ ΕΧΕΙΝ ΤΟΝ ΟΙΝΟΝ, ΔΙΑΜΑΡΤΥΡΟ-
 ΜΕΝΟ ΜΕΝΤΟΙ ΤΟΥΤΟ ΠΡΟΤΕΡΟΝ ΤΟΝ ΔΙΟΡΑΚΤΗΝ Β
 19 effu u dit F^o 20 doliorum F. 21 inter-

RISK AND BENEFIT OF THE THING SOLD

- 1 ULPIAN, *Sabinus, book 28*: If wine which has been sold goes sour or goes off in some other way, the loss is the purchaser's, as it would be if the wine were spilled, whether through the casks being staved or for some other reason. But if the vendor has undertaken the risk, he will sustain it for so long as he has undertaken it; if he has specified no period, then he bears the risk until the wine is tasted, wine, of course, being regarded as absolutely sold only when it has been tasted. Consequently, either it will have been agreed how long the vendor bears the risk in the wine or, in the absence of agreement, he will bear it until the wine is tasted. If it has not yet been tasted, then, even though the purchaser may have sealed the casks or jars, we must still say that the risk is on the vendor, unless the parties have made some other agreement.
1. The vendor is also liable for safekeeping until the date for measuring; for, prior to the measuring, it is as though the wine is not yet sold. But after the measuring out, risk ceases to rest on the vendor; indeed, he will be released from risk-bearing before any measurement, if he sold the wine not by measure but by the jar or individual cask. 2. Trebatius says that if the purchaser has sealed a cask, it is deemed to have been delivered to him, but Labeo correctly states the opposite; for sealing is deemed to be for the purpose of preventing substitution, not to indicate delivery. 3. Now the vendor may legitimately pour the wine away, if he has set a time for its measuring out and it is not measured within that period. He cannot, however, thus pour it away, so to speak, out of hand; he must first warn the purchaser, before witnesses, that he should remove the wine or realize that if he does not, the wine will be poured away. All the same, if he does not pour it away when he would be entitled to do so, he is to be commended; he can further charge rent for his casks, so long as he has an interest in the vessels which hold the wine being empty (as, for instance, if he would have let them out) or if he would have to hire other containers. It is, though, the more appropriate course for him to hire other containers and to hold back the wine until the purchaser pays him the rent thereof or else to sell the wine in good faith; in short, he should mitigate the purchaser's loss so far as he can without detriment to himself. 4. If you buy wine in the cask and nothing is agreed about its delivery, it is assumed that the intention was that the casks should be emptied before they are needed for the new vintage. If, though, they should not be so emptied, the vendor should follow the practice advised by the earlier jurists: Measure the wine through a wicker basket and pour it away. These earlier jurists advised this course for the purpose of measuring, assuming the amount to be unascertained, so that it might be apparent how much the purchaser has lost.
- 2 GAUUS, *Common Matters, book 2*: All this is true of a vendor who would not require the vessels except for the new vintage; but should he be a merchant who regularly buys and sells wine, the time to be looked to is that when removal can be made to the vendor's advantage. 1. Let us now consider the extent of the vendor's liability for safekeeping until the time of measuring out; is it absolute, so that he has to show diligence, or is he liable only for bad faith? I take the view that he has to display diligence but that unavoidable accident or great violence will excuse him.
- 3 PAUL, *Sabinus, book 5*: The vendor has to observe the same degree of diligence as does a person who borrows something for use and return; thus, he has to display greater care than he might show in his own affairs.