

Octavianus emptoris esse periculum aiunt: idem Pomponius libro nono probat. quod si pendente condicione emptor uel uenditor decesserit, constat, si exsisterit condicio, heredes quoque obligatos esse quasi iam contracta emptione in praeteritum. quod si pendente condicione res tradita sit, emptor non poterit eam uisucapere pro emptore. et quod pretii solutum est repetetur et fructus medii temporis uenditoris sunt (sicuti stipulationes et legata conditionalia perennant) si pendente condicione res exstincta fuerit: sane si exstet res, licet deterior effecta, potest dici esse damnum emptoris. Si ita uenerit: est ille seruus emptorem, quoniam certum sit eam contractam. Cum usum fructum mihi uendidis, inter uenditionem, quoniam tuum sit, uendas, an uero in ipsam corpus, quod 10 est, utrum ius utendi fruendi, quod solum tuum sit, uendas, an uero in ipsam corpus, quod tuum sit, usum fructum mihi uendas: nam priore casu etiamsi statim morieris, nihil mihi heredes tuus debebit, heredi autem meo debebitur, si tu uiuis: posteriore casu heredi meo nihil debebitur, heres 11 tuus debebit.

9 GAUUS libro decimo ad edictum pronunciale. Si post inspectum praedium, ante- [E. 19. 6. 3 S] quam emptio contraheretur, arbores uento deiectae sunt, an haec quoque emptori tradi debeant, quaeritur: et responsum est non deberi, quia eas non emerit, cum ante, quam fructum emerit, deiecerint fundi esse. sed si ignorauit emptor deiectas esse arbores, uenditor autem scit nec admonuit, quanti emptoris interfuerit rem aestimandam esse, si modo uenit.

10 ULPIANUS libro octauo disputatorum. Si in uenditione conditionali hoc ipsum [E. 19. 6. 4 S] conuenisset, ut res periculo emptoris seruarietur, puto pactum ualere.

11 In libro septimo digestorum IULIANI SCAEVOLE notat: Fundi nomine emptor [E. 19. 6. 4 a S] agere non potest, cum, priusquam mensura fieret, inundatione aquarum aut chasmate alioque quo casu pars fundi interierit.

12 (11) ALFENUS LARUS libro secundo digestorum. Si uendita insula combusta esset, [E. 19. 6. 5 S] cum incendio sine culpa fieri non possit, quid iuris sit? respondit: quia sine patris familiaris culpa fieri potest neque, si seruorum negligentia factum esset, continuo dominus in culpa erit, quam ob rem¹ si uenditor eam diligentiam adhibuisset in insula custodienda, quam debent homines frugere et diligentes praestare, si quid accidisset, nihil ad eum pertinerebit.

13 (12) PAULUS libro tertio Alfieni epitomarum. Lectos emptos aedilis, cum in uia [E. 19. 6. 6 S] publica positi essent, concidit: si traditi essent emptori aut per eum stetitset quo minus 30 traderentur, emptoris periculum esse placet

14 (13) IULIANUS libro tertio ad Urseium Feroeum. eumque cum aedili, si id non [E. 19. 6. 7 S] iure fecisset, habiturum actionem legis Aquiliae: aut certe cum uenditore ex empto agendum esse, ut is actiones suas, quas cum aedile habuisset, ei praestaret.

15 (14) PAULUS libro tertio epitomarum Alfieni. Quod si neque traditi essent neque [E. 19. 6. 8 S] emptor in mora fuisset quo minus traderentur, uenditoris periculum erit. Materia empti si furto perisset, postquam tradita esset, emptoris esse periculo respondit, si minus, uenditoris: uideri autem trabes traditas, quas emptor signasset.

16 (15) GAUUS libro secundo cottidianarum rerum. Si uina quae in dolis erunt ue- [E. 19. 6. 9 S] F[P(VU)]

1 quam ob rem *del.*

2 conditionem P^o | constant P^o 3 obligatus praestare] fPU, praestari F 29 alfenus F^o | P^o (em. F^o) | emptionem P^o 6 si res exet epitomarum] F^o, ep. digestorum F^o, digestorum epitomarum P^oU: secundum F^o plenior

F^o, res uenerit fPU 10 ibsum F (em. f) uscriptio obtinet in libro digestorum prioribus

15 uento deiectae] P^o cum B (Typ): εαν titur 10, 4, 19), breuor in posterioribus inde a XVIII (excepto uno loco 35, 1, 28) 30 con-

iectae F uentorum ui deiectae fU, ui uenditio deiectae. V^o | an haec quoque F (em. f) | emptor tradit F | 11 deiectae F^o | esse om. P^o V 21 l. 11 continuatur antecedit

fPU: separata Typicus, incipiens kai ori ei τυπωσός | inl. dig. P^o 25 posset F^o | 26 potest] non potest P 28 diligerent P^o |

remum] rerum sine aureorum P^o, om. U

Octavianus say that the risk is on the purchaser and, in his ninth book, Pomponius approves that view. And should either vendor or purchaser die while the condition is pending, it is settled law that, on the realization of the condition, their heirs will be liable, as though the sale were related back to the time of the initial agreement. If the thing has been delivered while the condition is still pending, the purchaser cannot proceed to usucapion of it as purchaser, and if the thing should cease to exist while the condition is pending, any price which has been paid will be reclaimed and fruits of the period of pendency belong to the vendor (conditional stipulations and legacies are similarly extinguished). Of course, if the thing still exists when the condition is satisfied but has deteriorated, it can be said that the purchaser bears the risk. 1. Should a sale be made on the terms, "be the slave bought, whether or not the ship comes from Asia," Julian is of opinion that the sale is perfect forthwith because it is certain that it has been contracted. 2. When you sell me a usufruct, it is important whether you merely sell me a usufruct which you enjoy or rather a usufruct in something which you own. In the first case, if you should die immediately, your heir will owe me nothing, but if you live and I die, the usufruct will be due to my heir; in the second case, nothing will be due to my heir, but your heir will be under an obligation to create the servitude.

9 GAUUS, *Provincial Edict*, book 10: The question is asked: If, after the land has been inspected but before the sale contract is made, trees on the land are blown down, do they have to be delivered to the purchaser? The answer is: "No." For they are not part of the purchase since they ceased to be part of the land before the sale was made. But if the purchaser was unaware, while the vendor knew, and did not advise him that the trees were blown down, the purchaser's interest in the matter is to be assessed, if the sale proceeds.

10 ULPIAN, *Disputations*, book 8: If it be agreed in a conditional sale that the thing shall be at the purchaser's risk, I think that the pact is valid.

11 SCAEVOLE, *Notes on Julian*, Digest, book 7: The purchaser cannot bring proceedings in respect of land if, before the estate has been measured, part of the land be lost by flooding, a landslide, or some other accident.

12 (11) ALFENUS VARUS, *Digest*, book 2: What is the legal position if a tenement which has been sold is destroyed by fire, since there cannot be a blaze without fault on someone's part? The reply was: This can happen without fault on the part of the head of household, and a master is not automatically at fault, if the blaze was caused by the negligence of his slaves, and so the vendor will not be liable for any mischance if he shows, in keeping the tenement safe, the diligence which would be displayed by honest and careful men.

13 (12) PAUL, *Epitome of Alfennus*, books 3: The aedile destroyed couches which had been bought and which were left in the street; if they had been delivered to the purchaser or if it was his fault that they had not been delivered, it is clear that the risk is on the purchaser

14 (13) JULIAN, *Urseius Ferox*, book 3: and he can bring an action under the *lex Aquilia* against the aedile if the latter acted wrongly; or, at any rate, he can proceed against the vendor by the action on purchase to require the vendor to cede to him such actions as the vendor might have against the aedile.

15 (14) PAUL, *Epitome of Alfennus*, book 3: But, if they have not been delivered and there has been no delay by the purchaser in taking delivery, risk will be on the vendor. 1. He replied that where materials purchased are lost by theft, risk is on the purchaser if they have been delivered, otherwise on the vendor; beams of timber are regarded as delivered if the purchaser has put his seal on them.

16 (15) GAUUS, *Common Matters*, book 2: When wine in casks is sold and it goes off