

- 2 sequatur quod interfuit eius, ne deciperetur. Res in auersione empti, si non dolo uenditoris factum sit, ad periculum emptoris pertinebit, etiamsi res adsignata non sit.
- 63 IAVOLENUS libro septimo ex Cassio. Cum seruo dominus rem uendere certae [E.19.1.63] E personae iusserit, si alii uendisset, quam cui iussus erat, uenditio non ualet: idem iuris in libera persona est: cum perfecti uenditio non potuit in eius persona, cui dominus uenire 5 1 eam noluit. Demonstratione fundi facta fines nominari superuacuum est: si nominentur, etiam ipsum uenditorem nominare oportet, si forte alium agrum confinem possidet.
- 64 IDEM libro secundo epistularum. Fundus ille est mihi et Titio emptus: quaero, [E.19.1.64] E utrum in partem an in totum uenditio consistat an nihil actum sit, respondi personam Titii superuacuo accipiendam puto ideoque totius fundi emptionem ad me pertinere. 10
- 65 IDEM libro undecimo epistularum. Conuenit mihi tecum, ut certum numerum [E.19.1.65] E tegularum mihi dares certo pretio quod ut¹ faceres: utrum emptio sit an locatio? respondit, si ex meo fundo tegulas tibi factas ut darem conuenit, emptionem puto esse, non conductionem: totiens enim conductio alioquin rei est, quotiens materia, in qua aliquid praestatur, in eodem statu eiusdem manet: quotiens uero et immutatur et alienatur, emptio 15 magis quam locatio intellegi debet.
- 66 POMPONIUS libro trigensimo primo ad Quintum Mucium. In uendendo fundo [E.19.1.66] E quaedam etiam si non dicantur, praestanda sunt, ueluti ne fundus euincatur aut usus fructus eius, quaedam ita demum, si dicta sint, ueluti uiam iter actum aquae ductum praestatu 1 heri: idem et in seruitutibus urbanorum praediorum. Si cum² seruitus uenditis praediis deberetur nec commemorauerit uenditor, sed scienus esse retinuerit et ob id per ignorandiam rei emptor non utendo per statutum tempus eam seruitutem amiserit, quidam recte putant uenditorem tenei ex empto ob dolum. Quintus Mucius scribit, qui scribit ruita caesa 2 quaeque aedium fundite non sunt³, his idem scriptum³: nam ruita caesa ea sunt quae neque aedium neque fundi sunt. 25
- 67 IDEM libro trigensimo nono ad Quintum Mucium. Alienatio cum fit, cum sua [E.19.1.67] E causa dominum ad alium transferimus, quae esset futura, si apud nos ea res mansisset, idque toto iure cuius ita se habet, praeterquam si aliquid nominatim sit constitutum.
- 68 PROCULUS libro sexto epistularum. Si, cum fundum uenderes, in lege dixisses, quod E mercedis nomine a conductore exegisses, id emptori accessurum esse, existimo te in ex- 30 gendo non solum bonam fidem, sed etiam ut culpa. Fere aliqui solent haec uerba adicere: 1 ut a te dolum malus absit, sed etiam ut culpa. Fere aliqui solent haec uerba adicere: 2 'dolum malus a uenditore aberit', qui etiam si adiectum non est, abesse debet. Nec [E.19.1.68] uidetur abesse, si per eum factum est aut fiet, quo minus fundum emptor possideat. erit ergo ex empto actio, non ut uenditor uacuum possessionem tradat, cum multis modis ac- 35 cidere poterit, ne tradere possit, sed ut, si quid dolo malo fecit aut fecit, dolum malus eius aestimaretur.
- 69 IDEM libro undecimo epistularum. Rutilia Polla emit lacum Sabatenem An- [E.19.1.69] E gularium || et circa eum lacum pedes decem: quaero, numquid et⁴ decem pedes, qui tunc q. 27 f. 261 accesserunt, sub aqua sint, quia lacus creuit, an proximi pedes decem ab aqua Rutiliae 40 F[P(VU)]
- 1 quod ut¹ quas tu (deti)? 2 cum] qua? 3 habere ins. 4 num quia ii?
- 1 diceretur F. 4 uendendisset F (em. f) nisi PV. inc. U^o | caesa] ces P^o | quae] que F (suppl. f) 26 lib. xxx VU. lib. xx P. 29 dixisset] fPU, sixisset F¹, sixisset F² 32 ad- dicitur P. 10 superuacuo] FV^o, pro super- uacua P, pro superuacuo U^o | totius] toti et P^o 12 a n' locatio F² 14 conductio- nes F¹ | qua] P(VU), quo F 18 non con di- cantur F²; TINA CIOHPACOC EΠΕΤΑΙ ΤΗ ΠΡΑΞΕΙ B (Typec) 19 praestatum P(VU) 20 praed. malo P | aut faciat P 38 epistularum] epi- tomarium P | polla. fPU, pall (non pallia) F 40 lacus] fPU, locus F
- 63 IAVOLENUS, *From Cassius, book 7*: Suppose a master to direct his slave to sell something to a particular person; if he sells to someone other than that person, the sale is null; the same would apply if the master asked a freeman to sell it; a sale cannot stand, if made to someone to whom the principal has no wish to sell. 1. Where land is pointed out, it is not necessary to specify its boundaries: If they are specified, it is for the vendor himself to specify, if he should chance to possess another field adjoining.
- 64 JAVOLENUS, *Letters, book 2*: I bought this land for me and Titius: I ask whether the sale is good in whole or in part or is a nullity. The reply is that the mention of Titius should be held superfluous and so the purchase of the whole land is for myself.
- 65 JAVOLENUS, *Letters, book 17*: I agreed with you that you should make and supply me with a certain number of tiles at a certain price. Is this sale or hire? The reply was that if the agreement was that I should furnish tiles made out of clay from my own land, I think that to be sale, not hire. There is hire only when the material from which the goods are to be made remains in the same condition and ownership; when it is both changed and alienated, we must infer a sale rather than a hiring.
- 66 POMPONIUS, *Quintus Mucius, book 31*: When land is sold, certain obligations are due, even if not stated, such as that the purchaser shall not be evicted from the land or the usufruct of it. Other obligations are due only if made express, such as that the rights of way and of drawing water will be forthcoming; the same is true of urban servitudes. 1. If, in the sale of land, the vendor does not mention a servitude run- ning with it but deliberately keeps silent about it so that the purchaser, being unaware of its existence, loses the servitude through nonuse for the recognized period, there are those who rightly hold that the action on purchase will lie against the vendor for his fraud. 2. Quintus Mucius writes that a person who writes that "things dug up or cut down are not part of the land or building" writes the same thing twice; for such things are those which are part of neither the land nor the building.
- 67 POMPONIUS, *Quintus Mucius, book 39*: When we convey a thing, we transfer own- ership of it together with all that would pertain to it, if it had remained ours. This is a general rule at civil law, unless something else has been specifically stated.
- 68 PROCULUS, *Letters, book 6*: If, in selling land, you include an express term that what you get as rent from a tenant of the land shall also go to the purchaser, I am of opinion that you have not merely to show good faith in collecting the rent but also diligence, that is, you are liable not only for fraud but also for negligence. 1. Many parties add the words: "The vendor must abstain from fraud"; but he would be under that duty, even without such express provision. 2. He is not seen so to abstain, if the purchaser is unable to possess the land because of something the vendor has done or may do. And so the action on purchase will lie not to require the vendor to transfer vacant possession; for there are many contingencies which might make-transfer im- possible for him, but for the estimated value of the damage caused by the fraud that he has committed or is committing.
- 69 PROCULUS, *Letters, book 11*: Rutilia Polla bought the lake Sabatenis Angularius and ten feet of land around the lake. I ask whether, when the ten feet around the lake at the time of sale are submerged because the lake has spread, the next ten feet legally belong to Rutilia Polla. Proculus replied: "I think that the lake purchased by Rutilia