

potest intellegi. et tamen fructus et partus futuri recte ementur, ut, cum editus esset partus, iam tunc, cum contractum esset negotium, uenditio facta intellegatur: sed si id egerit uenditor, ne nascatur aut fiat, ex empto agi posse. Aliquando tamen et sine re uenditio intellegitur, ueluti cum quasi alea emitur. quod fit, cum captum piscium uel anum uel missilium emitur: emptio enim contrahitur etiam si nihil incidit, quia spēs emptio est: et quod missilium nomine eo casu captum est si euictum fuerit, nulla eo nomine ex empto obligatio contrahitur, quia id actum intellegitur.

9 ULPIANUS libro uicesimo octauo ad Sabinum. In uenditionibus et emptio-  
[E.19.1.9 S] nibus consensus debere intercedere palam est: ceterum siue in ipsa emptione dissentiat siue in pretio siue in quo alio, emptio imperfecta est. si igitur ego me fundum emere putarem Cornelianum, tu mihi te uendere Sempronianum putasti, quia in corpore dissensimus, emptio nulla est. idem est, si ego me Stichum, tu Pamphilum absentem uendere putasti: 1 nam cum in corpore dissentiat, apparet nullam esse emptionem. Plane si in nomine dissensiamus, uerum de corpore constet, nulla dubitatio est, quin ualeat emptio et uenditio: 2 nihil enim facit error nominis, cum de corpore constat. Inde quaeritur, si in ipso corpore non erratur, sed in substantia error sit, ut puta si acetum pro uino ueneat, aes pro auro uel<sup>2</sup> plumbum pro argento uel quid aliud argento simile, an emptio et uenditio sit. Marcus scribit libro sexto digestorum emptionem esse et uenditionem, quia in corpore consensus est, etsi in materia sit erratum. ego in uino quidem consentio, quia eadem prope f. 257 oīcia est, si modo uinum acuit: ceterum si uinum non acuit, sed ab initio acetum fuit, ut 20 embamma, aliud pro alio uenisse uidetur. in ceteris autem nullam esse uenditionem puto, quotionis in materia erratur.

10 PAULUS libro quinto ad Sabinum. Aliter atque si aurum quidem fuerit, de-  
[E.19.1.10 S] terius autem quam emptor existimaret: tunc enim emptio ualeat.

11 ULPIANUS libro uicesimo octauo ad Sabinum. Alioquin quid dicemus, si cae-  
[E.19.1.11 S] cus emptor fuit uel si in materia erratur uel in<sup>3</sup> minus perito discernendarum materiarum?

1 in corpus eos consensisse dicemus? et quemadmodum consensit, qui non uidit? Quod si ego me uirginem emere putarem, cum esset iam mulier, emptio ualebit: in sexu enim non est erratum. ceterum si ego mulierem uenderem<sup>4</sup>, tu puerum emere existimasti, quia in sexu error est, nulla emptio, nulla uenditio est.

12 POMPONIUS libro trigesimo primo ad Quintum Mucium. In huiusmodi autem  
[E.19.1.12 E] quaestionibus personae ementium et uendendum spectari debent, non eorum, quibus adquiritur ex eo contractu actio: nam si seruus meus uel filius qui in mea potestate est me praesente suo nomine emat, non est quaerendum, quid ego existimem, sed quid ille qui contrahit.

13 IDEM libro nono ad Sabinum. Sed si seruo meo uel ei cui mandauero uendas  
[E.19.1.13 S] sciens fugituum illo ignorante, me sciente, non teneri te ex empto uerum est.

14 ULPIANUS libro uicesimo octauo ad Sabinum. Quid tamen dicemus, si in ma-  
[E.19.1.14 S] teria F[P(VU)]

<sup>1</sup> captus (dedit)? <sup>2</sup> uel del. <sup>3</sup> uel in] a (Hact.)? <sup>4</sup> uendere?

1 intelligi potest P | ementur] F<sup>1</sup>, emuntur  
F<sup>2</sup> P<sup>1</sup> U<sup>3</sup> 3 a ut fiat F<sup>1</sup>, aut fiat P<sup>2</sup> U<sup>4</sup> 4 alea]  
F<sup>2</sup> P<sup>1</sup> U<sup>3</sup>, alia F<sup>1</sup> V | autum] apum uel apum  
legit qui uerit mēccōn (Tipac) 9 dissen-  
tiant] F<sup>1</sup> dissentiant F<sup>2</sup> P<sup>1</sup> U<sup>3</sup> 11 dissen-  
simus] f<sup>1</sup> P<sup>1</sup> U<sup>3</sup>, sedis sensibus F<sup>1</sup> 12 absen-  
te m] F<sup>2</sup> 13 emptionem plane] P<sup>2</sup> U<sup>3</sup>,  
emptione F, inc. V<sup>o</sup> 14 uerum F<sup>1</sup> 16 ut  
putat F (em. f) 17 argesto F<sup>1</sup> 19 est om. P<sup>2</sup>  
20 oīcia] ytia P<sup>2</sup>, ycia P<sup>3</sup>, usia VU | ut em-  
bamm] cum ego emebam f, ut emebam P<sup>1</sup> U<sup>3</sup>  
21 uenditionem] uidentem F<sup>1</sup> 22 inma-  
teria F (em. f) P<sup>2</sup> 23 paulus om. F<sup>1</sup> | at-  
quae F (em. f) 24 autem om. P<sup>2</sup> 25 ul-

pianus om. F<sup>1</sup> | c' a' cecus F<sup>2</sup> 26 orretur (sed  
e postea erasum) P<sup>2</sup> | uel in] non aliter  
uidentur legisse Graeci: περι πλάνης περι την  
φύσιν γενόμενης πώας άκυτάρως έστιν ή πρᾶξις.  
και τινες δοκῶσι κυνανείν, ώς ό τυφλός και  
ό μη άκρίβος τας ψαας ειδικός | perit' o' discer-  
ne' retetur] darum F<sup>2</sup> 27 consensit] consen-  
sum F<sup>2</sup> | uidit] diuit F<sup>1</sup> 28 ualeat F (em. f)  
30 error est] error P<sup>2</sup> 31 pomponius om. F<sup>1</sup> |  
quintum] u P | huiusmodi P<sup>2</sup> 34 existit-  
mam F<sup>2</sup> (em. F<sup>1</sup>) 36 idem om. F<sup>1</sup> | libro xi  
P<sup>2</sup>, lib. uiii V 37 teneri te ex] f<sup>1</sup> P<sup>1</sup> cum B  
(Tipac): οἷκ ἐσένη τῆ ἐξ ἐμῶτο. teneretur  
sex F<sup>2</sup>, tenero me ex F<sup>1</sup> 38 ulpianus om. F<sup>1</sup>

ertheless, future produce and offspring are validly purchased so that when the off-  
spring is born, the sale is regarded as having been complete from the time of agree-  
ment. But if the vendor takes steps to prevent the birth or the growing of produce, he  
will be liable to the action on purchase. 1. Sometimes, indeed, there is held to be a  
sale even without a thing, as where wheat is bought is, as it were, a chance. This is the  
case with the purchase of a catch of birds or fish or of largesse showered down. The  
contract is valid even if nothing results, because it is a purchase of an expectancy and,  
in the case of largesse, if there is eviction from what is caught, no purchase proceed-  
ings will lie, because the parties are deemed to have contracted on that basis.

9 ULPIAN, *Sabinus*, book 28: It is obvious that agreement is of the essence in sale and  
purchase; the purchase is not valid if there be disagreement over the contract itself,  
the price, or any other element of the sale. Hence, if I thought that I was buying the  
Cornelian farm and you that you were selling the Sempronian, the sale is void because  
we were not agreed upon the thing sold. The same is true if I intended to sell Stichus  
and you thought that I was selling you Pamphilus, the slave himself not being there:  
Because there is no agreement on the object of sale, there is manifestly no sale. 1. Of  
course, if we are merely in disagreement over the name but at one on the actual thing,  
there is no doubt that the sale is good; for if the thing be identified, a mistake over its  
name is irrelevant. 2. The next question is whether there is a good sale when there  
is no mistake over the identity of the thing but there is over its substance: Suppose  
that vinegar is sold as wine, copper as gold or lead, or something else similar to silver  
as silver. Marcellus, in the sixth book of his *Digest*, writes that there is a sale because  
there is agreement on the thing despite the mistake over its substance. I would agree  
in the case of the wine, because the essence is much the same, that is, if the wine has  
gone sour; if it be not sour wine, however, but was vinegar from the beginning such as  
brewed vinegar, then it emerges that one thing has been sold as another. But in the  
other cases, I think that there is no sale by reason of the error over the material.

10 PAUL, *Sabinus*, book 5: It would be different if the thing was gold, although of a  
quality inferior to that supposed by the purchaser. In such case, the sale is good.

11 ULPIAN, *Sabinus*, book 28: Now what if the purchaser were blind or a mistake over  
the material were made by a purchaser unskilled in distinguishing materials? Do we  
say that the parties are agreed on the thing? How can a man agree who cannot see  
it? 1. If, however, I think that I am buying a virgin when she is, in fact, a woman,  
the sale is valid, there being no mistake over her sex. But if I sell you a woman and  
you think that you are buying a male slave, the error over sex makes the sale void.

12 POMPONIUS, *Quintus Mucius*, book 31: In questions of this kind, we must look to  
the persons of the actual contracting parties, not to those to whom an action will ac-  
crue from the contract; if, say, my slave or son-in-power buy something in my pres-  
ence but in his own name, it is his intention not mine which must be investigated.

13 POMPONIUS, *Sabinus*, book 9: However, it is true that if you knowingly sell a fugi-  
tive to my slave or mandatory who is ignorant of the fact but I do know, you will not be  
liable to the action on purchase.

14 ULPIAN, *Sabinus*, book 28: Now what are we to say when both parties are in error