

- 1 non potest, sed de rebus castrensibus potest. Sine pretio nulla uenditio est: non autem pretii numeratio, sed conuentio perficit sine scriptis habitam emptioem.
- 3 Index libro utensimo octauo ad Sabinum. Si res ita distracta sit, ut si [E.19.1.3 S] displicisset inempta esset, constat non esse sub conditione distractam, sed resoluti emptioem sub conditione.
- 4 Pomponius libro nono ad Sabinum. Et liberi hominis et loci sacri et religiosi, [E.19.1.4 S] qui haberi non potest, emptio intelligitur, si ab ignorante emitur.
- 5 Paulus libro quinto ad Sabinum. quia difficile dinosei potest liber homo a [E.19.1.5 S] seruo.
- 6 Pomponius libro nono ad Sabinum. Sed Celsus filius ait hominem liberum [E.19.1.6 S] scientem te emere non posse nec cuiuscumque rei si scias alienationem esse: ut sacra et religiosa loca aut quorum commercium non sit, ut publica, quae non in pecunia populi, sed in publico usu habeantur, ut est campus Martius. Si fundus annua bina trina die ea lege uenisset, ut, si in diem statutum pecunia soluta non esset, fundus inemptus foret et ut, si interim emptor fundum coluerit fructusque ex eo perciperit, inempto eo facto restituerentur et ut, quanti minoris postea alii uenisset, ut id emptor uenditori praestaret: ad diem pecunia non soluta placet uenditori ex uendito eo nomine actionem esse. nec conturbari debemus, quod inempto fundo facto dicatur actionem ex uendito futuram esse: in emptis enim et uenditis potius id quod actum, quam id quod dictum sit sequendum est, et cum f. 256¹ lege id dictum sit, apparet hoc dumtaxat actum esse, ne uenditor emptori pecunia ad diem 20 non soluta obligatus esset, non ut omnis obligatio empti et uenditi utriusque solueretur. Conditio, quae initio contractus dicta est, postea alia pacitione inmutari potest, sicuti etiam abiri a tota emptioe potest, si nondum impleta sunt, quae utrimque praestari debeuerunt.
- 7 Ulpianus libro uicensimo octauo ad Sabinum. Haec uenditio seruus si rationes [E.19.1.7 S] domini computasset arbitrio condicionalis est: condicionales autem uenditiones tunc perficiuntur, cum impleta fuerit conditio. sed utrum haec est uenditionis conditio, si ipse dominus putasset suo arbitrio, an uero si arbitrio uiri boni? nam si arbitrium domini accipiamus, uenditio nulla est, quemadmodum si quis ita uendiderit, si uoluerit, uel stipulanti sic spondeat si uoluerit, decem dabo: neque enim debet in arbitrium rei conferri, an sit obstrictus. placuit itaque ueteribus magis in uiri boni arbitrium id collatum uideri quam 30 in domini. si igitur rationes potuit accipere nec accepit, uel accepit, fingit autem se non accepisse, impleta conditio emptioem est et ex empto uenditor conueniri potest. Huiusmodi emptio quanti tu eum emisti, quantum pretii in arca habeo, ualet: nec enim incertum est pretium tam evidenti uenditione: magis enim ignoratur, quanti emptus sit, quam in rei ueritate incertum est. Si quis ita emerit: est mihi fundus emptus centum et quanto plurius 35 'eum uendidero', ualet uenditio et statim impletur: habet enim certum pretium centum, augetur autem pretium, si plurius emptor fundum uendiderit.
- 8 Pomponius libro nono ad Sabinum. Nec emptio nec uenditio sine re quae ueniat S F[P(VU)]

1 prohibitam in. (dett.)

4 esse] est F¹ 6 libro xi P | religio[n]i F¹ t¹ tota F² | utrimque] F¹ utriusque F² V¹ utrisque V² | utrimque V¹ | utrimque V² | alienationem esse] F¹ V¹ alienas esse P² alienationem prohibitam esse P² V² alienationem interdicitam (uel inhibitam add. U) esse U | et] F¹ aut F² PU 12 popul] apostolis P² 13 habentur F² | maritus F (em. f) 15 fundus F¹ | fructusque] fructus quos P² VU² 18 quod] eo quod F¹ PU 19 et uend.] est uend. P² 20 lege] in lege F¹ PU | dectum F (em. f) | apparet] PU, apparet FV 21 esse] F² 22 in] ab] mnis F | utrimque PU 22 inmutari] 23 a' t¹ tota F² | utrimque] F¹ utriusque F² V¹ utrisque V² | alienationem esse] F¹ V¹ alienas esse P² alienationem prohibitam esse P² V² alienationem interdicitam (uel inhibitam add. U) esse U | et] F¹ aut F² PU 28 quemadmodum P² 29 uoluerit] noni F² 28 quemadmodum P² 29 uoluerit] uoluerit P² | conferri F¹ conferre U 30 arbitrio id collocatum P² | quam] in] domini F² ar 2 32 et ex F² | 33 tu] tam P² | et] in em. F² | prae] et] in non est delatum in F 35 emeritis F² 37 plurius] F² 38 nec] emptio F²

head of household and his son-in-power, but there can be in respect of the latter's military acquisitions. 1. There is no sale without a price. At the same time, it is not payment of the price but the agreement which concludes the contract, when that contract is not in writing.

3 ULPIAN, *Sabinus*, book 28: When a thing is sold on the terms that if it be unsatisfactory, the sale shall be off, it is settled that not the sale itself but its possible dissolution is subject to a condition.

4 POMPONIUS, *Sabinus*, book 9: The purchase of a freeman or of sacred or religious land who or which cannot be held as property is considered valid, so long as the purchaser does not know,

5 PAUL, *Sabinus*, book 5: because it can be difficult to distinguish a freeman from a slave.

6 POMPONIUS, *Sabinus*, book 9: However, the younger Celsus says that you cannot wittingly buy a freeman or anything, the alienation of which you know to be forbidden; for instance, sacred or religious land or land excluded from private dealings, such as those public lands which are not in private possession but are for public use, such as the Field of Mars. 1. If land has been sold on the terms that the price shall be paid in three annual installments and that if the money be not paid on the due date, the sale will be off as also that in such case, the purchaser is to restore any produce which he has gathered by cultivating the land in the period before avoidance of the sale and that if the land be subsequently sold to a third party for less than the original price, the purchaser is to make good the deficiency to the vendor, then, in the event of default of payment on the due date, it is clear law that the vendor has the action on sale. It must not disturb us that the action on sale should be available after the sale has ceased to exist; for in contracts of sale and purchase, we must look to what the parties intended rather than to what they said, and despite the formulation of the provision, it is clear that the intention was simply that the vendor should no longer be under obligation to the purchaser if there were a default in payment on the due date, not that all obligations arising from the sale and purchase should be dissolved on both sides. 2. A condition stated in the original contract can be varied by subsequent agreement; indeed, the whole contract may be called off, if there has, as yet, been no performance of the obligations of either party.

7 ULPIAN, *Sabinus*, book 28: The sale of a slave "if he shall have settled his accounts to his master's satisfaction" is conditional; now conditional sales become perfect, only when the condition is satisfied. Does the condition mentioned refer to the master's personal satisfaction or to the satisfaction of an honorable man? If we accept the former interpretation, the sale is null as would be also the case where a man would sell, if he chose to do so, or if he promised in a stipulation, "I will give ten if I want to"; it cannot be left to the decision of a contracting party whether he is under an obligation. Accordingly, it was settled by the earlier jurists that one looks to the judgment of an honorable man and not to that of the master himself. Hence, if the accounts were acceptable but he refused them or if he, in fact, accepted them but pretended not to, the condition of purchase would be realized and the vendor could be sued by the action on purchase. 1. A purchase "for what you paid for it" or "for what I have in my cash box" is valid; there is no uncertainty of price in so obvious a sale: The case is one of ignorance of the amount rather than of the real existence of the price. 2. If a man buys on the following terms, "I buy this land for a hundred and as much beyond that sum that I receive on selling it," the sale is good and operative forthwith. There is a definite price of a hundred which will, however, be increased if the purchaser sells for more.

8 POMPONIUS, *Sabinus*, book 9: There can be no sale without a thing to be sold. Nev-