

amphoras, item oleum, ut in singulos metretas, item frumentum, ut in singulos modios, item argentum, ut in singulas libras certum pretium diceretur, quaeritur, quando uideatur emptio perfici. quod similiter scilicet quaeritur et de his quae numero constant, si pro numero corporum pretium fuerit statutum. Sabinus et Cassius tunc perfici emptionem existimant, cum adnumerata admensura adpensae sint, quia uenditio quasi sub hac conditione uideatur fieri, ut<sup>1</sup> in singulos metretas aut in singulos modios quos quae admensurae eris, aut in singulas libras quae adpenderis, aut in singula corpora quae adnumeraueris. Ergo et si grex uenerit, si quidem uniuersaliter uno pretio, perfecta uidetur, postquam tractantibus. Sed et si ex dolore pars unius uenerit, ueluti metretae centum, uerissimum<sup>10</sup> est (quod et constare uidetur) antequam admetiatur, omne periculum ad uenditorem pertinere: nec interest, unum pretium omnium centum metretarum in semel dictum sit an in singulos eos. Si quis in uendendo praedio confinem celauerit, quem emptor si audisset, empturus non esset, teneri uenditorem.<sup>14</sup>

36 ULPIANUS libro quadragensimo tertio ad edictum. Cum in uenditione quis [E. 19. 1. 36 S] pretium rei ponit donationis causa non exacturus, non uidetur uendere.  
37 IDEM libro tertio disputationum. Si quis fundum iure hereditario sibi delatum [E. 19. 1. 37 S] ita uendisset: erit tibi emptus tanti, quanti a testatore emptus est, mox inueniatur non emptus, sed donatus testatori, uidetur quasi sine pretio facta uenditio, ideoque similis erit sub conditione factae uenditioni, quae nulla est, si condicio defecerit.<sup>20</sup>  
38 IDEM libro septimo disputationum. Si quis donationis causa minoris uendat, [E. 19. 1. 38 S] uenditio ualet: totiens enim dictimus in totum uenditionem non ualere, quotiens uniuersa uenditio donationis causa facta est: quotiens uero uiliore pretio res donationis causa distrahatur, dubium non est uenditionem ualere. hoc inter ceteros: inter uirum uero et uxorem donationis causa uenditio facta pretio uiliore nullius momenti est.<sup>25</sup>

39 IULIANUS libro quinto digestorum. Si debitor rem pigneratam a creditore redemerit, quasi suae rei emptor actione ex uenditio non tenetur et omnia in integro sunt creditoris. Uerisimile est eum, qui fructum oliuae pendentis uendidisset et stipulatus est decem pondo olei quod natum esset, pretium constituisse ex eo quod natum esset usque ad decem pondo olei: idcirco solis quinque collectis non amplius emptor petere potest<sup>30</sup> quam quinque pondo olei, quae collecta essent, a plerisque responsum est.

40 || PAULUS libro quarto epitomarum Alfeni digestorum. Qui fundum uendebat, [E. 19. 1. 40 S f. 259] in lege ita dixerat, ut emptor in diebus triginta proximis fundum metretur et de modo renuntiaret, et si ante eam diem non renuntiasset, ut uenditoris fides soluta esset: emptor intra diem mensurae quo minorem modum esse credidit renuntiavit et pecuniam pro eo<sup>35</sup> accepit: postea eum fundum uendit et cum ipse emptori suo admittetur, multo minorem modum agri quam putauerat inuenit: quaerebat, an id quod minor is esset consequi a suo uenditore posset. respondit interesse, quemadmodum lex diceretur: nam si ita dictum esset, ut emptor diebus triginta proximis fundum metiatur et domino renuntiaret, quanto modus agri minor sit, quo<sup>3</sup> post diem trigensimum renuntiasset, nihil ei profuturum: sed si ita<sup>40</sup> pactum esset, ut emptor in diebus proximis fundum metiatur et de modo agri renuntiaret, FI(P(VU))

<sup>1</sup> in singulis amphoras contrahatur aut ita. <sup>2</sup> emptor petere potest] eum petere posse? <sup>3</sup> quod? didit] πάλιν τὸν μέτρον: requiritur omnino ab emptore pro emptor (Póhner) uel simile quid quasi] qua P<sup>o</sup> 4 pr<sup>o</sup> a etium F<sup>1</sup> 5 admensa om. P<sup>o</sup> | 31 a] am P<sup>o</sup> 32 epitomatorum P | digestorum om. F<sup>1</sup> | uendebat PU, uendebit F, uenditit F<sup>1</sup> 33 medietur F<sup>1</sup> 34 eam] eandem P 36 admittetur P<sup>o</sup> | 37 quaerebat] F, quaerebatur FVU 38 possit F<sup>1</sup> | interesset quemadmodum P<sup>o</sup> 39 modus] dominus F<sup>1</sup> 40 quod] FE<sup>o</sup>, quod P<sup>o</sup> VU | trigensimum F<sup>1</sup> 41 esse P<sup>o</sup> | menciatur P<sup>o</sup>

(Tijpue): οὐκ ἀπατηθῶμαι [scilicet ego qui uen-

the pound, the following question arises: When will the sale be deemed perfect? The same question arises in respect of things to be counted out, if a price per thing be fixed. Sabinus and Cassius hold the view that the sale becomes perfect when the counting, measuring, or weighing has been done, the sale being, as it were, subject to the condition, "so much for each gallon or peck that you measure out" or "each pound that you weigh out" or "each item that you count out." 6. Accordingly, when a whole flock is sold at a single price, the sale is perfect upon the agreement on the price; but if it be sold at so much per beast, what we have just set out will apply. 7. Further, if part of the wine in a vat be sold, say a hundred gallons, it is most true (the point appears settled) that, until the measuring out, all risk is on the vendor, and it makes no difference whether a single price has been fixed for the whole hundred or a price of so much per gallon. 8. If a person selling land should conceal the name of the owner of neighboring land, awareness of which would have deterred the purchaser from buying, he will be liable.

36 ULPIAN, *Edict*, book 43: When, by way of gift, a person puts upon a thing a price which is not to be exacted, he is not regarded as a vendor.

37 ULPIAN, *Disputations*, book 3: If a man sells land which came to him by right of inheritance with the provision, "you shall buy it for the same price which the testator paid," and it is then discovered that the testator did not buy it but received it as a gift, the sale is treated as being made without a price; it is, therefore, like a conditional sale which is without effect, if the condition is not realized.

38 ULPIAN, *Disputations*, book 7: If someone, intending a gift, sells something below its worth, the sale is valid. For we say that a sale is wholly void only when it is made entirely as a gift; but when the sale is made at a cheap price for reasons of liberality, there is no doubt that the sale is good. At least, in general, as between spouses, a sale made at a low price by way of gift is of no effect.

39 JULIAN, *Digest*, book 15: When a debtor redeems his pledge from his creditor, he is not liable to the action on sale because he, in effect, buys his own thing and the creditor's position remains intact. 1. A man selling olives on the tree stipulated that the price should be ten pounds of oil to be produced from the crop. The probable interpretation is that he intended the price to depend upon the yield of the crop up to ten pounds. Hence, if the yield be only five pounds, the purchaser cannot claim more than that. This was the reply of many jurists.

40 PAUL, *Epitome of the Digest of Alfenus*, book 4: The vendor of land laid down a provision that the purchaser should measure the land within the next month and report its extent and that if he did not so report within the specified period, he, the vendor, would be free of any liability in the matter. The purchaser, within the period, reported the extent to which he found the land deficient in acreage and received compensation therefor. The purchaser himself subsequently sold the land and, on measuring it out for his own purchaser, discovered it to be much less in area than he had thought and asked whether he could claim from his own vendor for this deficiency. The answer was that it depended on how the initial provision was framed; if the term was that the purchaser should measure the land within the month and report to the owner the deficiency in its acreage, he will not profit by the further deficiency which he discovers after that month; but if the agreement was that he should measure within the month and report the extent of the estate, then, even though he may have reported,