

Book IV.
Title XLVIII.

Concerning the risks and advantages of property bought.
(De periculo et commodo rei venditae.)

4.48.1. Emperor Alexander to Julia Secundina.

After a sale is complete, every advantage and disadvantage that accrues to the property bought belongs to the purchaser. The vendor is responsible, in his turn, only for those matters which in the preceding time gave rise to a cause of eviction, and then (only) if he is notified to defend a suit and judgment is given against him while the purchaser is in court.¹

Given September 1 (223).

4.48.2. The same Emperor to Gargilius Julianus.

When it was agreed that each amphora of wine should be sold at a certain price, the risk of the spoiling of the wine was not that of the purchaser, who was not the cause of the delay of measuring out the wine, till delivery was made, the sale (till then) being incomplete.

1. But since you allege that all of the wine in the storehouse was sold without requirement of measurement, and that the keys were delivered to the purchasers, the sale was complete, and the damage from the spoiling of the wine falls on the purchaser.

2. All these provisions apply not only to wine, but also if oil, grain or similar things shall be sold, and these are spoiled either in part or entirely.

Promulgated March 28 (223).

Note.

In the absence of a specific agreement on the subject, as soon as a contract of sale was made, the benefits from specific property bought belonged to the purchaser.

C. 4.49.12,13 and 16. So, too, the risk thereof, both as to deterioration or destruction rested on him. Laws 1, 2, 4, 5, 6 h.t. C. 4.49.12. Delivery was not first necessary. It was the purchaser's duty to get it. D. 18.1.25.2; D. 21.1.31.8. Till delivery, however, the vendor had to guard it carefully. D. 18.6.3.

But if the contract of sale was not ready to be fully carried out—e.g. was not ready to be delivered, the risk did not fall on the purchaser till it was so ready. The sale, then, was not deemed “complete” as distinguished from “made.” That was true if the sale was conditional. Law 5 h.t. It was true also when instead of specific, generic property was bought at so much a unit. Here the property had to be singled out---counted, weighed, or measured. Till that was done, the risk was the vendor's. Vat. fr. 16; D. 18.1.35.5, 6 and 7. The purchaser's default, however, shifted the risk. Law 4 h.t. See 47 S.Z. 117-263.

4.48.4. Emperor Gordian to Silvestrus, a soldier.

When the price is agreed on in a contract entered into orally between the purchaser and seller, and no default² (mora) of the vendor in the delivery intervenes, there is no doubt that the thing sold is at the risk of the purchaser.

¹ [Blume] See note law 2 h.t. As to eviction see C. 8.44.8 note.

² Blume originally translated this as delay.

Promulgated December 18 (239).

Note.

Default—mora. If a party was in default—e.g. if the vendor or other person fails to deliver property when he should, the risk of damage to or destruction of such property was thereafter on him, until he purged himself of the default (D. 18.6.18), unless he could show that the loss would have happened in any event. D. 16.3.14.1. Ordinarily a demand was necessary to put a party in default. Wrong conduct was necessary, and that was always a question of fact. D. 22.1.32 pr. But no demand was necessary to hold a thief responsible. C. 4.7.7; C. 6.2.9. And see C. 4.65.2.1; C. 8.37.12; C. 2.40.8; C. 4.49.5.

4.48.5. Emperors Diocletian and Maximian to Aurelius Leontius.

Since you say that a specific property sold (by you) was destroyed by fire, the risk of the loss is not yours if the sale was not suspended by any condition.

Promulgated November 3 (285).

4.48.6. The same Emperors and the Caesars to Aurelius Cyrillus.

The loss by death of a sold female slave does not fall on the seller even before delivery, delayed by no default of the seller, but falls on the purchaser, and if she is not taken from this earth by reason of previously existing weakness, the purchaser does not rightly object to the payment of the price.

Subscribed at Nicomedia December 18 (294).