INSTITUTIONS OF MORAL THEOLOGY

According to the Doctrine of St. Thomas and St. Alphonsus

by Gennaro Bucceroni, S.J.

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VOLUME I

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Institutions

According to the doctrine of St. Thomas and St. Alphonsus

By Januarius Bucceroni, of the Society of Jesus

Volume I

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Approval Of The Work

Since certain theologians of the Society have reviewed and approved the work entitled *Institutions of Moral Theology*, etc., by Fr. Januarius Bucceroni, S.J., we grant permission for it to be printed.

Rome, Jan. 7, 1897.

Francis Carini, S.J.

Provincial of the Roman Province

Abbreviations

S. Th. S. q. 1. a. 1. = St. Thomas, *Summa Theologica*, Supplement, question 1, article 1.

L. 5., H. A. Tr. 1. n. 37. = St. Alphonsus de Liguori, *Theologia Moralis*, Naples 1829, the same treatise, number 5; and *Homo Apostolicus*, Bassano 1826, Treatise 1, number 37.

A. S. S. V. 1. p. 2. = *Acta Sanctae Sedis*, volume 1, page 2.

E. M. = *Enchiridion Morale*, third edition, at the same number.

The codes of Italy, France, Spain, and Austria are indicated by their initial letters: C. I., C. G., C. H., C. A. [OCR uncertain: last abbreviation printed as "C. h"].

Usual citations of Roman law:

Inst. de Mand. § 1. Mandantis = The Institutes, under the title *On Mandate*, first paragraph, beginning "Mandantis."

L. 7. § 4. Sed cum de Pactis = The Pandects, law 7, paragraph 4, beginning "Sed cum," under the title *On Agreements*; or with D. or ff. added before the title, that is, Digest in Latin, Pandects in Greek.

L. Creditor C. de Usuris = The law which begins "Creditor" in the Code, title *On Usury*.

Nov. 22. C. 1. = Authentic Novel 22, chapter 1.

Lib. 1. f. tit. 7. C. un. = Book 1 of the feudal laws, title 7, sole chapter.

Usual citations of Canon law:

Gratian's Decree:

First Part: Cap. Ieiunium 7. Dist. 76; or Dist. 76, Cap. 7.

Second Part: Cap. Qui viderit 13, question 5, cause 32; or cause 32, q. 5, c. 13.

Treatise on Penance: Dist. 1, Cap. 1.

Third Part: Cap. Est unitas 49, Dist. 4, *On Consecration*; or *De Consecr.*, Dist. 4, c. 49.

Decretals of Gregory IX: C. Presbyter 2, *On the Peculium of Clerics*.

Decretals of Boniface VIII: C. Non putamus 2, *On Custom*, in the Sixth Book.

Clementines of Clement V: Clem. 3, *On Heretics*.

Extravagantes of John XXII: Extr. 2, *On the Granting of Prebends*.

Common Extravagantes: Extr. Comm. 5, *On Penance*.

Pr. d. = condemned proposition.

Cf. 119. = compare here number 119.

A dash at the end of any paragraph or number means the same as "compare."

To The Beloved Son

Januarius Bucceroni, S.J., Rome

Leo XIII, Pope

Beloved son, health and apostolic blessing.

Because you have more than once offered to us books learnedly written by you on moral theology, we approve this not only with deserved praise as an outstanding sign of your obedience toward this See of Peter, but we are also affected by a special delight of soul. For if we rightly rejoice to acknowledge other advances in the sciences, those disciplines certainly claim for themselves a singular benevolence and cannot fail to bring an exceptional cause of consolation, especially those which concern the proper ordering of morals according to the norm of religion.

Therefore we declare the thanks owed to you, and we do so the more gladly inasmuch as, in the volumes published up to now, you rely upon the decrees of the Supreme Pontiffs and of the Roman Congregations, and undertake clearly and diligently to explain opinions drawn from those principles of the Angelic Doctor and St. Alphonsus which we very greatly desire to flourish throughout the nations and to be propagated as widely as possible.

There is added no small pleasure from this fact: that the manifold variety of works, several times edited, not only wins for you a notable reputation and the esteem of a learned writer, but also redounds to abundant fruit for the students entrusted to your care, for whose instruction at the Gregorian Athenaeum we have long perceived you to be rendering very useful service, with continual labors undertaken.

Therefore continue cheerfully in the plan you have undertaken, cultivating these doctrines, as you do, and as we very much and from the heart desire, with Thomas Aquinas and Liguori as guides. Continue to adorn the praises already won with new progress; and since you are devoted to those things which redound to the honor of your Society and contribute to the salvation of all, do not cease to deserve still more concerning the advancement of moral science.

That this may happen according to our wishes, may the apostolic blessing add strength to you. As an undoubted testimony of our special love for you, and as a pledge of heavenly gifts, we most lovingly impart it to you in the Lord.

Given at Rome, at St. Peter's, on the twenty-eighth day of August, in the year 1895, the eighteenth of our pontificate.

Leo XIII, Pope

Preliminary Notices

1. What is moral theology? - If the name is considered, it is that part of theology which deals with morals. But if the thing itself is considered, it can be defined: that part of theology which, relying on divine law manifested through revelation, investigates what is lawful and what is unlawful in human actions, so that it may direct them in order toward eternal life. From this it is easily clear how great are the necessity and usefulness of moral theology. - S. Th. 1 p. q. 1; 1-2 q. 91 a. 4.
2. What is the division of moral theology, and what is the order of the treatises? - All questions of moral theology are reduced to certain principal treatises into which it is divided. To proceed in order, we shall speak: 1. On human acts, which are, so to speak, the proper subject of honesty and sin. 2. On conscience, which proximately regulates human actions. 3. On laws in general, which remotely regulate those same actions. 4. On sins, which arise from the deformity of human actions with respect to the rule, whether proximate or remote. 5. On laws in particular, by which what is lawful or unlawful in human actions is determined in detail.

The order for discussing these particular laws is this: 1. On the properly evangelical precepts, which are established by revealed divine law, namely the precepts of the theological virtues, faith, hope, and charity, by which man tends immediately toward his end. 2. On the precepts of the Decalogue, constituted properly by natural law, although also positively confirmed by divine law, Matt. 19:17 and Trent, session 6, chapter 19. 3. On the precepts of the Church, which depend on human law. 4. On the obligations of various states. For after the more general precepts one must proceed to the more particular. By observing all these latter precepts man tends mediately toward his end. Theol. Wirceburg., *De Virtut. Theol.* 32 ff.; *De Virtut. relig.* 9 ff. 5. On the precepts of the sacraments, which contain a law at once commanding and assisting; for through them sanctifying grace is infused, and

other helps of grace are given, by which man can observe the whole law, so that he may be preserved in friendship with God or restored to it if, by transgressing the law, he has gravely sinned against God. 6. On censures, which are ecclesiastical penalties preventing and following upon the transgression of certain special laws; and on irregularities, which are partly penalties and partly impediments to receiving sacred orders. 7. On indulgences, through which, when sins have otherwise been remitted, the temporal punishment still owed for them is remitted; and thus man is proximately disposed to attain eternal life. - Cf. 136.

I. - On The Nature Of The Human Act

3. By what method is moral theology treated? - Moral theology can be treated by a threefold method: positive, casuistic, and scholastic. The first sets forth and proves in order the precepts and doctrines of morals from properly theological sources. The second insists on resolving practical cases by applying general principles to particular cases determined by various circumstances. The third proceeds by reasoning rather than by authority. For moral precepts and doctrines, already positively proved by properly theological arguments, are confirmed and illustrated by philosophical principles and reasons; their connections, relations, and consequences are also explained.

This threefold method can easily be joined and used together, and from this threefold method, when combined, a perfect and excellent treatment of moral theology is obtained. In the present institutions we shall rely a little more on reason than on authority. For disputation as conducted in the schools is not directed immediately to removing error, but to instructing the mind and leading it to the understanding of the truth intended; "and then one must rely on reasons which investigate the root of truth and make one know how what is said is true; otherwise, if the master determines the question by bare authorities, the hearer will indeed be made certain that it is so, but he will acquire no science or understanding, and will depart empty." S. Th. Quodl. 4 a. 18.

This later scholastic method is in itself brief in the treatment of questions. But since many of the older scholastics often undertook a long examination of the opposing opinions of others in order directly to refute them, especially in moral theology it came about that their most learned works were handled only by a few. In order that these institutions of ours, such as they are, may be of greater use and usefulness, we have decided to proceed in them in scholastic form, omitting that long discussion of others' opinions, which we also observe to have been done in the *Summa Theologica* by the Angelic Doctor.

On Human Acts

I. - On The Nature Of The Human Act

4. What are human acts? - Human acts are, in general, acts of man by which the same man is ordered to the end appropriate to him. Therefore human acts can be considered either in relation to man, who by them is ordered to the end, or in relation to the end to which he is

ordered by their means. We shall speak step by step about human acts considered under both respects. - S. Th. 1-2 q. 1 a. 2; E. M.

5. What is the division of the treatment of human acts in relation to man? - Human acts, considered in relation to man, can be viewed in two ways: 1. insofar as they proceed from human faculties, which is to consider them in their intrinsic nature. For an act, generally speaking among created things, is nothing other than the determination of some faculty from potency to being. 2. Insofar as they fall short of this proper nature because of impediments which do not allow the human faculties to act rightly. We shall speak first of the intrinsic nature of the human act, then of its impediments.

6. What is the intrinsic nature of the human act? - Usage has prevailed by which a distinction is made between an act of man and a human act. An act of man is one which proceeds from man without advertence and deliberation. Human acts, however, are those which proceed not in just any way, but with advertence and deliberation. Nor was this distinction made without reason. For "of the actions which are done by man, only those are properly called human which are proper to man insofar as he is man, namely adequately, both as to the substance of the work and as to the mode of operation. But man differs from other irrational creatures in this, that he is master of his acts... Now man is master of his acts through reason and will; hence free choice is said to be the faculty of will and reason. Therefore those actions are properly called human which proceed from a deliberate will. But if any other actions belong to man, they can indeed be called actions of man, but not properly human, since they are not man's insofar as he is man." S. Th. 1-2 q. 1 a. 1.

Now, since the human act is an act proceeding from deliberate will, in order to know its nature more deeply it is necessary briefly to explain: 1. the nature of the voluntary; 2. the nature of the free; 3. finally, in how many ways any act can proceed from deliberate will. This is done in the following questions.

7. What is the voluntary, and how many meanings does the voluntary have? - To the first: The voluntary, so called from the will, is that which proceeds from or is caused by the will. Therefore the voluntary is nothing except either an act of the will or the effect of that act. Hence the voluntary differs from the willed, which designates only the object of an act of the will. Since the voluntary proceeds from the will, which is a principle intrinsic to the agent, it agrees with any natural motion, but differs from the violent; for the former proceeds from an intrinsic principle, the latter from an extrinsic principle.

To the second: The voluntary can be taken in three ways: 1. more broadly, for the spontaneous; 2. more strictly, for the voluntary precisely as such, insofar as it differs from the spontaneous and from the free, or at least abstracts from the free; 3. most strictly, for the free.

The spontaneous is that which proceeds from sensitive appetite after a previous sensory cognition of the object toward which the appetite tends. "The reason is that, just as the appetite of nature follows from a natural form, so elicited appetite follows from an apprehended form, actually representing the object." Suarez, on 1-2, tract 2, disp. 6, sect. 4. Therefore the spontaneous belongs both to men and to brute animals.

The voluntary properly speaking is that which proceeds from spiritual appetite, or the will, with a previous rational cognition of the object.

Finally, the free is that which proceeds from the will determining itself to an act, with the power either of eliciting that act, or of not eliciting it, or of eliciting another. Therefore the free essentially includes the notion of the voluntary; and the voluntary also essentially includes the notion of the free, if the voluntary is taken according to the proper meaning of the word, but adequately, both as to the substance of the act and as to the mode of operation proper to the will. - S. Th. 1-2 q. 6 a. 1-2; q. 8 a. 1; Suarez disp. 1 sects. 1, 3, 6; L. 1.5 n. 6.

8. Resolutions: The voluntary cannot exist without previous cognition. Nothing is willed unless first known. Nevertheless, a clear and distinct knowledge of the thing is not always necessary; obscure and confused knowledge suffices. Thus an adult is validly baptized, even though he has not yet fully examined all Christian obligations.

Moreover, the voluntary cannot exist except concerning a determinate thing. For the will is moved only toward the good; and the good has the character of an end. "Since the good is what all things desire, and this has the character of an end, it is clear that the good implies the character of an end." S. Th. 1 p. q. 5 a. 4. But an end is nothing unless it is something certain and determinate. S. Th. 1-2 q. 1 a. 2. And therefore one who wishes to contract betrothal with either one of two women does not contract; and a priest who wishes to consecrate any one of several hosts does not consecrate. Sanchez 1.1 disp. 26 sect. 1; Rubr. Miss. *De Defect.*, title 7 n. 1; L. 1.3 nn. 203, 224.

Finally, the voluntary cannot exist concerning an impossible thing. For "the will is a certain rational appetite; every appetite, however, is only for the good. The reason is that appetite is nothing other than a certain inclination toward something. But nothing is inclined except toward something similar and suitable." S. Th. 1-2 q. 8 a. 1. It is by no means required, however, that the voluntary concern only a true and real good. "For the will to tend toward something, it is not required that it be good in the truth of the thing, but that it be apprehended under the aspect of good; and for this reason the Philosopher says: the end is the good, or the apparent good." S. Th. ibid.

9. Can the voluntary at least exist concerning a thing impossible not in fact, but in law? - Concerning a thing impossible as to the fact itself, the voluntary cannot exist, as is clear from what has been said, Cf. 8, if someone uses reason rightly. Hence no one can seriously will to touch with his hand an empty space outside the world.

The question concerns a thing impossible only as to law, for example, to contract marriage with someone who has a diriment impediment, to consecrate water, to baptize with wine, etc. It seems one must answer affirmatively. For the will is directed toward the fact itself, and it need not necessarily be directed at the same time toward the law, or toward the fact only as dependent upon the law. Thus one who contracts marriage with an unknown diriment impediment, and one who even attempts marriage before a civil magistrate, truly wills to contract marriage, as far as he is concerned. Hence the Church sometimes afterwards dispenses in the root, that is, without renewing consent, and validates the marriage. Sanchez, *De Matr.* 1.2 disp. 33.

Indeed, in C. *Ex sponsalibus* un., *De Sponsalibus*, in the Sixth Book, it is said: "From pure and certain betrothals, even if they are null by reason of consanguinity, affinity, frigidity, religion, or any other reason, provided they are not null from defect of consent, there arises... the impediment of public honesty." Therefore true consent with a diriment impediment is plainly supposed. - Cf. vol. 2 n. 1033.

10. What is the free, and how many kinds are there? - The free adds to the voluntary only a relation to the power eliciting the voluntary act, and having the power to suspend that act, or to elicit another act, one different only in species or even opposite. In the first case it is called freedom of exercise or contradiction; in the second, freedom of specification; in the third, freedom of contrariety.

Therefore the free certainly requires in the power or faculty an intrinsic dominion over the act, and accordingly immunity not only from extrinsic coercion, but also from intrinsic necessity. It by no means requires immunity also from infirmity, namely from concupiscence and the other miseries of human life; these, since they are extrinsic and neither coerce nor necessitate, cannot change the intrinsic manner of acting of the human will. "The free is that which is the cause of itself." S. Th. C. G. 2 c. 48.

This liberty of which we are speaking is physical liberty. Moral liberty, however, includes in its concept the absence not only of physical necessity of acting, but also of moral obligation by force of a law commanding or prohibiting. S. Th. 1 p. q. 83; 1-2 q. 1 a. 2. - E. M.

11. Is the free truly found in human acts, not only from coercion, but also from necessity? - Answer: Yes. It is a truth of faith, most plainly established from Sacred Scripture and Tradition. Cf. Suarez disp. 1 sect. 2.

The reason is this: "If some good is proposed to the will which has the complete nature of good, as the ultimate end for the sake of which all things are desired, it cannot not will to be happy, or will to be miserable. But in those things which are ordered to the ultimate end, nothing is found so evil that it does not have some good mixed with it, nor anything so good that it suffices in every respect. Hence, however much a thing is shown to be good or evil, the will can always adhere to and flee into the contrary by reason of something else which is in it, from which, if it is evil simply, it is taken as an apparent good; and if it is good simply, as an apparent evil. Hence it is that in all things which fall under choice, the will remains free, having determination in this alone, that it naturally desires happiness, and not determinately in this or that." S. Th. 2 Sent. dist. 25 q. 1 a. 2.

From this, as is clear, that power toward opposites by which an act of the will is posited by the will itself presupposes in its exercise the objective indifference of the judgment of the intellect. This consists in the intellect proposing to the will various aspects of suitability or unsuitability, good or evil, in the object. - Trent, session 6, chapters 4-6; S. Th. 1-2 q. 10 a. 2; q. 13 a. 6; E. M.

12. "It follows that, when a grave temptation has arisen, and after the sensitive concupiscible, venereal, or irascible appetite has been vehemently stirred by imagination or from elsewhere, then in the will there can be acts of three kinds.

13. Those which precede the use of reason and are elicited by the tempted person at that instant or time in which the intellect has not yet proposed to the will motives deterring it, but only

alluring motives of the object toward which the appetite is carried. These acts of the will are called first-first movements.

14. Those which follow upon some use of reason and are elicited by the tempted person at that instant in which the intellect proposes deterring motives only obscurely, but proposes the motives alluring to illicit love or hatred so vividly that the will is moved by the deterring motives only weakly and imperfectly. These acts of the will are called second-first movements.

15. Finally, those which follow upon the perfect use of reason and are elicited by the will at that instant in which the intellect has proposed to the will clearly and intensely enough the deterring motives, or the unsuitability and moral malice, by which the will could freely be deterred if it seriously wished. These acts of the will are called deliberate acts.

Acts of the first kind are not free, and consequently are not formally sinful. Acts of the second kind are imperfectly free, and only venially sinful. Acts of the third kind are truly free, and consequently, if gravity of matter is present, they are mortally sinful." Struggl, *Theol. Mor.*, tract 1 q. 1 a. 1 n. 10. - S. Th. 1-2 q. 10 a. 3.

13. In how many ways does the voluntary proceed from the will? - Since the voluntary presupposes apprehension of the intellect, includes an act of the will and the exercise of freedom, and extends itself even to some extrinsic act or extrinsic action, the voluntary is therefore from the will in many ways, and from this arise various divisions of the voluntary, which we shall explain immediately.

14. What are the voluntary elicitedly and the voluntary commandedly? - The first occurs when the whole act is completed by the will and in the will, without the assistance of another faculty, whether interior and spiritual or exterior and bodily; such are volitions and nolitions. The second occurs when the act depends on the very command of the will, but is completed by another faculty of the agent: either an interior faculty, such as intellect, imagination, memory; or an exterior one, such as the members of the body and the organs of sense, as in walking or speaking.

An act can also be at once elicited and commanded, for the will can command itself in its own acts. In this sense theologians say that one virtue, for example charity, commands the acts of other virtues, when the will, from the motive of one virtue, elicits an act of another virtue, for example when from love of God one has mercy on a poor person. - S. Th. 1-2 q. 1 a. 1 ad 2; q. 17 a. 5; Suarez disp. 10 sects. 1-2.

15. How many and which are the acts elicited by the will? - "Every action of the will is concerned either with the end or with the means, which happens in two ways: either by desiring or by carrying out. From this there arises a twofold order of acts of the will and of the practical intellect which governs the will in morals. The first contains all those acts which are necessary up to the final choice of the means, which are: will, intention, counsel, consent, choice. The first two concern the end; the latter concern the means, in the order in which they have been listed. Once the choice has been established, the will proceeds to free execution, and thus there is the second order, in which only two acts are numbered: command and use. To these

acts fruition is added; this is not an operation ordered to desiring or attaining the end, but rather follows when the end has been obtained." Suarez, disp. 6, beginning.

16. What is will? - Will, or simple volition, is the first act of the will, which is, as it were, the first inclination of the will toward the proposed object as lovable in itself, without any order to another. From this it is clear that this act is concerned with the end; for only the end is lovable in itself. But it does not include a tendency into the end, stopping only in love and complacency in that good, and therefore it is simple volition, or love and complacency, still ineffective. - Suarez disp. 6 sect. 1; S. Th. 1-2 q. 8 a. 1-2.

17. What is intention? - Intention is a free, or perfectly voluntary, tendency toward a good, so that we may attain it. Therefore intention is a tendency of the will toward some end to be obtained through due means. It is desire for the thing loved, and of itself it is efficacious desire. For desire, in its general meaning, signifies any appetite for obtaining a good which someone lacks; and it extends not only to the appetite of efficacious will, but also to imperfect volitions, or wishes, even of impossible things.

Intention is also, either virtually or expressly, an appetite for means in general. The reason is that intention is an efficacious will of obtaining the end. But to will the end, absolutely as something to be attained, is virtually to will to carry out all the means necessary for the end. Moreover, someone can explicitly elicit this act: "I wish to use all the means necessary for the end"; and this act is intention, because it precedes every consultation about means and every choice, and is the principle of counsel and choice. It concerns means in general, not in particular; for in this respect it is distinguished from choice. - Suarez, loc. cit., sect. 2; S. Th. 1-2 q. 8 a. 2; q. 12 a. 4.

18. Can someone intend several things at once; and if several incompatible things are intended, which intention prevails? - To the first: Yes. For those things are either ordered to one another, or they are not. "If they are ordered to one another, it is clear that a man can intend many things at once. For intention is not only of the ultimate end, but also of an intermediate end; someone at the same time intends both the proximate and the ultimate end, as the preparation of medicine and health. But if two things are taken which are not ordered to one another, even then a man can intend several things at once. This is clear from the fact that a man chooses one thing before another because it is better than the other. Among the other conditions by which something is better than another, one is that it is useful for more things. Hence something can be chosen before another from the fact that it is useful for more things, and thus plainly a man intends several things at once." S. Th. 1-2 q. 12 a. 3.

To the second: 1. If these wills are simultaneous, the predominant one prevails, namely the one that would be chosen if the impossibility were known. 2. If among contrary wills one succeeds another, the later prevails over the earlier; for it is predominant by order of time and actuality. Except if the earlier has revoked, at least virtually, every subsequent will; then the earlier will, provided it is not expressly revoked, is certainly predominant. - Lugo, *De Sacr.*, disp. 8 nn. 121, 123; L. 1.6 n. 24.

19. Resolutions: If one person requested a Mass from you for thanksgiving, and another for someone gravely ill, it must be held that it was applied for the latter, whether he requested it earlier or later.

If you have resolved with yourself: "Whatever vow I shall hereafter make without the permission of my confessor, I do not wish it to be valid"; and later you vow something without consulting your confessor, it is not valid, provided that will is not retracted expressly or virtually, namely if, mindful of the first vow, you were to make the second, for example in a shipwreck, in a fire, etc.

If someone contracted marriage intending it to be dissoluble, with such a mind that if he knew it to be indissoluble he would not contract, the marriage is null; for indissolubility is an essential property of Christian marriage. But he would contract validly if, by error only, he thought marriage to be dissoluble, because a private error does not take away from him the intention of contracting in the way he ought. - L. 1.3 nn. 179, 210, 700; 1.6 n. 24; Elbel 130.

20. What is choice? - Choice is an act of the will by which the will is borne toward a particular means as a means, or as a useful good; namely, it is the efficacious volition of some particular thing which is loved for the sake of another.

Therefore choice proceeds from the efficacious intention of the end, and its object is the useful good as such, and as possible for us; and it contains at least virtually the volition of the end itself.

Choice likewise retains its intrinsic nature even if it does not happen to occur among several things, when that means is only one. For an act is specified by its proper object, and the same object of choice remains, namely a means to an end, whether it is the sole means or whether it is compared with others.

Choice is in the manner of desire, because it concerns the means as something to be carried out and precedes execution; and therefore it concerns an absent thing.

Choice is also the proposal of the will. A proposal is an act of the will by which someone determines that he will do something. - S. Th. 1-2 q. 13; Suarez disp. 8 sects. 1-2.

21. What is consent? - Consent can be attributed to any free act of the will accepting a good proposed by the intellect, in which way sin is said to be completed by consent; and thus it is not a special act, and it concerns not only means but also the end.

But insofar as it is a special act, it concerns the means, and is not an act distinct in species from choice, but only by reason, under different respects. "For insofar as the will wills what the intellect judges to be useful, it is called consent; but insofar as it prefers that either to other useful means, or certainly to other useless things not conducive to the end, it is called choice." Suarez disp. 8 sect. 2. - S. Th. 1-2 q. 15.

22. What is counsel? - Counsel properly is an act of the intellect including two things: inquiry and discovery of means, and judgment. Therefore counsel involves not one but several acts of the intellect. For that inquiry does not occur without discourse and consideration of several things. But counsel sometimes signifies only inquiry, sometimes only judgment, even if it does not proceed from discourse, and sometimes it includes both.

Counsel in this last sense often precedes choice, though not always. For when choice is made among many things, as often happens, all those things must be found, proposed, discussed, and judged by

the intellect. But where very small matters are involved, or matters determined in themselves, or self-evident matters, then there is no formal counsel. - S. Th. 1-2 q. 14; q. 9 a. 4; Suarez disp. 8 sect. 5.

23. What is use? - Use is either active or passive. The first is an act elicited by the will, by which the will moves the other powers to operate. The second is the act of the executing power proceeding from active use.

Use properly concerns means, for use signifies a certain motion of the will toward really attaining the thing willed, or the end.

Use is really distinguished from choice when counsel and choice of the means in itself occur first, before execution is treated. But it is by no means really distinguished from choice when the intellect suddenly determines the means and all the circumstances, and the will, in the same instant in which it chooses the means, also chooses the circumstance of actual execution; for by force of such choice the action of the executing power follows.

Use and choice are not acts specifically distinct from one another, because they tend toward an object under the same aspect of good, namely as useful for attaining the end. - S. Th. 1-2 q. 16; Suarez disp. 9 sects. 1-2.

24. What is command? - The command treated here is command by which someone commands himself, not command by which he commands others. A man can command himself in two ways: 1. as it were in the exercised act, while he moves himself to doing something; 2. in the signified act, by expressly eliciting the act of command: "do this."

This kind of command is partly an act of the will and partly an act of the intellect, because to command is to move toward acting, and "the first mover among the powers of the soul with respect to the exercise of an act is the will." S. Th. 1-2 q. 17 a. 1. But to command is not to move in just any way, but to move as though imposing a law; and it is the intellect that imposes law on the will, since it judges about things to be done. Now the question here is: what is this act of intellect and will which adequately constitutes command?

As regards the act of the intellect, note: 1. Before will and intention there precedes a practical judgment of the intellect, by which one judges not only that the thing is good in itself, but also that it is suitable to oneself and that it is expedient to love it. This judgment contains some aspect of command. "For one commanding orders the one to whom he commands toward doing something, by intimating or announcing it." S. Th. 1-2 q. 17 a. 1.

2. Before choice and consent a practical judgment likewise precedes, whether by way of formal counsel or not, proposing a means suitable to the end as something choosable. A judgment of this kind also contains some aspect of command, since it also moves in its own way by announcing and intimating.
3. After that choice which temporally precedes active use, another more practical judgment precedes. It is distinct from the judgment which precedes choice in this: that it touches the work more immediately, and all the determinate circumstances necessary for execution of the work. The reason is that before every act of the will there must precede a judgment of the

intellect suited to it, by which it is directed and illumined; but active use is an act of the will which adds something to the choice already made. Therefore this judgment still more participates in the nature of command, for it moves the will more forcefully by announcing and intimating, not so much by its own power as by the power of the choice already made. For it is wholly ordered to execution of the work and inclines more to overcoming the difficulty of the work, which at the time of execution always appears greater than in consultation and abstract choice.

4. Besides these practical judgments, there is found in us another judgment, which we experience when we speak inwardly with ourselves in this way: "do this"; and it explicitly expresses the efficacious act of the will to be elicited for executing the work. This judgment is the one which properly constitutes command. This judgment is not of itself necessary for the work; nevertheless it is a useful act, so that the will itself and the whole man may be moved more, or may approach execution more quickly, or may persevere more constantly in it. For while a man thus commands himself, he is, as it were, reflected above himself and becomes superior to himself; and as external speech has power with respect to others, so internal speech has power with respect to oneself, to move and stir the mind.

As regards the act of the will, it must be noted: 1. that this command, if it is efficacious and true, supposes an absolute will. For if it occurs without any will, it is fictitious and only words; but if the will which precedes is inefficacious, the command itself will also be inefficacious. The reason is that the whole efficacy of moving is from the will. Therefore a will of this kind completes the notion of that command.

2. The active use itself of the will has some aspect of command, and is often called command. This is clear from S. Th. 1-2 q. 71 a. 6 ad 2 and 2-2 q. 4 a. 2 ad 2, where he says that it belongs to the will to command the other powers, even the intellect. And in the same way, as was said, one act of the will is commanded by another act of the same will. The reason for this manner of speaking is that commanding belongs to one having dominion; and it is the will which, as it were, has dominion over all human actions. - S. Th. 1-2 q. 17; Suarez disp. 9 sect. 3.

3. What is fruition? - Fruition, as to the name, is to take fruit from a thing. As to the thing itself, it is a certain rest of the will, sweetness, joy, delight, in the presence of the desired object and in its possession.

Joy is said more of a rational good, delight of a sensible good, fruition of both; and fruition is rather restricted to one's own good, whereas joy is also said of another's good, as of a friend's.

Moral theologians commonly distinguish joy from delight by time, teaching that joy is of a past thing, delight of a present thing.

Therefore the object of fruition properly is good under the aspect of delectable good. Both the end and the means can be the object of joy, although the reason for rejoicing, or the formal object, is always the end.

The first reason is that joy arises from the attainment of a delectable good. But the means itself is a certain delectable good. And thus we experience that we are delighted when we obtain suitable

means. The second reason is that every loved good is an end or has the character of an end. Therefore every good that delights is an end or has the character of an end.

A twofold joy or fruition is distinguished: perfect and imperfect. "For since it concerns the end attained, if the end has been perfectly attained, fruition is perfect; if it has been attained in a certain hope, some fruition can arise from this, but imperfect, because that is already a certain attainment. And this seems to be that fruition of which Paul speaks: rejoicing in hope." Suarez disp. 7 sect. 2. - S. Th. 1-2 qq. 11, 31.

26. What are perfect and imperfect voluntary; absolute voluntary and wish; voluntary simply and in a qualified respect? - These various divisions can be taken and explained in various senses, according as one considers in the voluntary either precisely the aspect of the voluntary, or the aspect of the free, or the various object to which it is referred according to its various state. We shall explain them briefly in the following paragraphs according to their various acceptations.

27. By reason of the voluntary, or of the inclination of the will, one voluntary is such simply, or perfect; another is such in a qualified respect, or imperfect. The first is that which proceeds from the will with the full inclination of that same will, without any repugnance. The second is that which indeed proceeds from the consenting will, but not without some repugnance of that same rational will, so that there is indeed volition in act, but mixed with a conditioned nolition of the object. Thus a sailor, when danger of shipwreck presses, actually wills and deliberately wills to throw goods overboard; nevertheless, by deliberate will also, he would wish to preserve them if shipwreck did not threaten. Hence he absolutely consents to throw them overboard, not without a deliberate repugnance of the will, though an inefficacious one. - S. Th. 1-2 q. 6 a. 6 ad 3; a. 7 ad 2; Suppl. q. 47 a. 1; L. 1.5 n. 21.

28. One voluntary is absolute and simply; another is wish, and in a qualified respect, by reason of the object itself toward which the will tends, according as it is considered absolutely, as it really is, according to all its circumstances, or only according as it is in itself, with abstraction made from circumstances.

To the point, the Angelic Doctor says, 1 p. q. 19 a. 6 ad 1: "Everything, insofar as it is good, is willed by God. But something can be good or evil in the first consideration of itself, according as it is considered absolutely, which nevertheless, as it is considered with some addition, which is the consequent consideration of it, has the contrary character. Thus that a man live is good, and that a man be killed is evil, according to absolute consideration; but if it is added concerning some man that he is a murderer, or living to the danger of the multitude, then it is good that he be killed, and evil that he live. Hence it can be said that a just judge antecedently wills that a man live, but consequently wills that the murderer be hanged. Similarly, God antecedently wills every man to be saved, but consequently wills some to be damned according to the demand of his justice. Yet what we antecedently will, we do not will simply, but in a qualified respect, because the will is compared to things according as they are in themselves; but in themselves they are in particular. Hence we simply will something according as we will it with all particular circumstances considered, which is to will consequently. Hence it can be said that the just judge simply wills the murderer to be hanged, but in a qualified respect would wish him to live, namely insofar as he is a man. Hence this can rather be

called a wish than an absolute will. And thus it is clear that whatever God simply wills happens, although that which he antecedently wills does not happen."

29. If the voluntary is considered under the aspect of the free and according to the various degree of deliberation, one voluntary is perfect: that which proceeds from the will with perfect cognition and full deliberation. Another is imperfect: that which proceeds from the will with imperfect cognition and half-full deliberation. Such are the actions of a man half-drunk or half-asleep. - Suarez disp. 1 sects. 3-4; S. Th. 1-2 q. 6 a. 2.

30. Again, by reason of deliberation, one voluntary is absolute and simply; another is voluntary in a qualified respect, which is also called wish. Thus, while a temptation to sin remains in the will, which nevertheless someone deliberately resists, the will as nature, or in a qualified respect, wills the sin; but the same will, as rational will, absolutely and simply detests the sin. Aptly St. Thomas says, 3 p. q. 21 a. 4, where he also gives the reason for this division: "The will of man simply is the rational will. For this we will absolutely, what we will according to deliberate reason. But what we will according to the movement of sensuality, or even according to the movement of simple will, which is considered as nature, we do not will simply, but in a qualified respect, namely if nothing else stands in the way, which is found by deliberation of reason. Hence such a will is rather to be called a wish than an absolute will, because namely the man would wish this if nothing else stood in the way."

31. By reason of its perfection, one voluntary is absolute, efficacious, perfect, or complete, as St. Thomas says; another voluntary, which is again called wish, is of simple complacency, or imperfect and incomplete, as the same Holy Doctor says. The first is that which extends itself all the way to attainment of the thing, by willing the thing and the means to it. The second is that which does not proceed all the way to attainment of the thing, but stops in simple complacency in it.

Thus the Angelic Doctor assigns the reason for this division, 1-2 q. 13 a. 5 ad 1: "The will is intermediate between the intellect and exterior operation. For the intellect proposes its object to the will, and the will itself causes exterior operation. Thus the principle of the motion of the will is considered on the part of the intellect, which apprehends something as good in the universal. But the termination or perfection of the act of the will is considered according to order to operation, through which someone tends to attainment of the thing; for the motion of the will is from the soul to the thing. And therefore the perfection of the act of the will is considered according to this, that something is a good for someone to do. But this is the possible. And therefore complete will is only of the possible, which is good for the one willing. But incomplete will is of the impossible, which by some is called wish, because someone would wish it if it were possible."

Thus a sick man hoping for health wills health with complete will, for he has an absolute and efficacious will for health, willing at the same time the means leading to health. A sick man despairing of health, and therefore neglecting to use the means necessary for recovering it, wills health with incomplete will, for he has only simple complacency, or a wish for health, since he does not at the same time will the means leading to health.

Complete and incomplete will, therefore, must not be taken as though incomplete will were an undeliberated willing, or incapable of merit and demerit, or as though incomplete will were a half-

deliberated willing. For someone can deliberately and with full deliberation wish to expel God from his kingdom, if he could, and similar things, where it is clear that sin, and grave sin, is found.

Rather, the completeness and incompleteness of the will must be taken according to the order of the will to operation, namely according to the mode of the motion of the will toward the thing. Hence, from the fact that the motion of the will is toward the thing to be attained, disposed, etc., by the mediation of exterior operation, it is not perfect with the perfection naturally fitted to be found in the genus of the motion of the will unless it is terminated in an actable good, although it may be perfect as to consent, deliberation, and other things of this kind. And thus the sinner, even a great sinner, who wills to be converted to God, and therefore wills to do penance, has a complete will. Cajetan on the same place.

And in q. 20 a. 4 the Angelic Doctor says: "If we speak of the goodness of an exterior act which it has according to matter and due circumstances, then it is compared to the will as term and end; and in this way it adds to the goodness or malice of the will, because every inclination or motion is perfected in this, that it attains the end or reaches the term. Hence the will is not perfect unless it is such that, given the opportunity, it operates. But if possibility is lacking, while the will remains perfect so that it would operate if it could, the defect of perfection which is from the exterior act is simply involuntary."

Therefore the will can be called and be complete in two ways. In one way, according to that relation by which the willed thing is in the will. In another way, according to that by which the will tends toward the real attainment of the thing willed. According to the first way, the perfection of the will is signified by willing perfectly; according to the second, by having perfectly, or attaining and possessing the thing willed. Hence a will prepared to operate, if it could, is a perfect will because it wills perfectly, and this pertains to the perfection of the first relation; and it is simply imperfect because it does not arrive at really having, attaining, and possessing what it wills and what it is naturally fitted to have. For every motion falling short of its term is imperfect through privation consisting in the attainment of the term. And since the first perfection is of another kind than the second, and the whole latitude of the first is compared to the second as imperfect to perfect, it follows that however much the interior act of the will may grow and be most intense, alone it will never arrive at being simply perfect without exterior attainment. For this reason the Savior said, John 15:13, "Greater love no one has than that someone lay down his life for his friends"; he said "lay down," not "wish to lay down." Cajetan on the same place.

32. What are direct and indirect voluntary, voluntary in itself and in cause, positive and negative voluntary? - By reason of the act of the will by which it proceeds from the will, one voluntary is direct, another indirect. The direct is from the will acting. The indirect is from the will not acting, not preventing, where it ought and can prevent. For "not always is that which follows upon a defect of action reduced as to a cause to the agent from the fact that he does not act, but only then when he can and ought to act. For if the helmsman could not direct the ship, or the governance of the ship had not been entrusted to him, the sinking of the ship which happened through the absence of the helmsman would not be imputed to him. Therefore, because the will, by willing and acting, can prevent not willing and not acting, and sometimes ought to do so, not willing and not acting is imputed to it as though existing from it." S. Th. 1-2 q. 6 a. 3; 2-2 q. 69 a. 7; 3 p. q. 47 a. 1.

33. By reason of the object which immediately terminates the act of the will, one voluntary is voluntary in itself, another voluntary in cause. The first occurs when someone immediately wills something in itself. The second occurs when someone wills a cause from which he foresees some effect will follow; for then he does not will this effect in itself, but in another, namely in its cause.

He foresees, that is, merely foresees; for if he also wills it, then that effect will already be directly and in itself willed and voluntary, and not only in cause. From this it follows that that effect will no longer be willed and voluntary as an effect; nor likewise will its willed and voluntary cause be voluntary as a cause. Rather, the effect will then have the character of an end with respect to the will, and the cause the character of a means. For what someone wills for its own sake has the character of an end, and what someone wills for the sake of another has the character of a means.

Nor is it a valid objection that, if the effect is merely foreseen and the will is not borne toward it by its act, then that effect is beyond intention and can in no way be voluntary even in cause. For because the will can prevent the effect by not willing the cause, and sometimes ought to, the effect is imputed to it. Consequently, since it is not willed in itself, it will be willed in cause. S. Th. q. 6 a. 3; q. 71 a. 5. Thus the evils of a deed committed against neighbor while drunk are voluntary in cause for the one who voluntarily became drunk, foreseeing those evils from previous experience, although he neither willed nor intended those same evils. Cf. 34; Suarez disp. 1 sect. 4.

34. Many theologians entirely distinguish voluntary in itself and voluntary in cause from direct and indirect voluntary. Thus Suarez says: "The voluntary in itself is sufficiently clear; for something is said to be voluntary in itself when it is willed in itself, so that the will is immediately concerned with it, either through its proper act, if it is directly voluntary, or through the lack of an act, if it is indirectly voluntary." Disp. 1 sect. 4.

Likewise St. Thomas, q. 77 a. 7: "Two things seem to be considered. First, something can be voluntary either according to itself, as when the will is directly borne toward it, or according to its cause, when the will is borne toward the cause and not toward the effect, as is clear in one who voluntarily becomes drunk. For from this, what he commits through drunkenness is imputed to him as though voluntary. Second, it must be considered that something is said to be voluntary directly or indirectly. Directly, indeed, that toward which the will is borne; indirectly, however, that which the will could have prevented but does not prevent."

Others call voluntary in itself and in cause direct and indirect voluntary, and express the latter by another division, namely positive and negative voluntary. Gury-Ballerini n. 5.

Now, after making a comparison between both divisions, voluntary in itself and in cause, and direct and indirect voluntary, and insisting on the doctrine of the Angelic Doctor, it must be said that direct voluntary includes under itself both voluntary in itself and voluntary in cause. For direct voluntary is said by the Angelic Doctor to be "what proceeds from the will as from an agent," q. 6 a. 3 ad 1. But both voluntary in itself and voluntary in cause proceed from the will insofar as it is acting and willing.

Indirect voluntary, however, can be reduced both to voluntary in itself and to voluntary in cause. Indirect voluntary is said by the same Holy Doctor to be "what is from the will as from a non-agent,"

loc. cit. But both voluntary in itself and voluntary in cause include a will acting and willing. Therefore indirect voluntary is not properly voluntary in itself, nor likewise properly voluntary in cause. Yet it can be reduced to both. For indirect voluntary is said either only of an interior act of the will, or also of an exterior act. If the first, since not willing is immediately from the will, it can be called voluntary in itself. If the second, since not acting externally is, as it were, the external object completing that not willing, just as the latter is in some way voluntary in itself, so also is the former, since one complete non-act, so to speak, is constituted from both the lack of the interior and exterior act, for example, not willing to hear Mass and not in fact hearing Mass. In the same way one complete act is constituted from the internal and external act of willing to hear Mass and hearing Mass.

Now, just as some effect can follow from the placing of an act as from a cause, so another act can follow from the omission of an act. Although properly this is not the effect of that omission, as the omission is not properly the cause of the following act, since not acting cannot properly be a cause, still it can be considered as an effect. And thus it can be called voluntary in cause; for example, the death of sailors, indirectly voluntary, is, in the sense stated, voluntary in cause for the helmsman of a ship who ceases from governing.

35. What is required so that an evil effect which follows, voluntary only in cause or only indirectly, may be imputable to the will as fault? - The following conditions are required: 1. That the one who places or omits the cause advert, at least confusedly, that such an effect will follow from that cause; because nothing is willed unless it is in some way known beforehand. 2. That the agent be able to prevent such a cause, because no obligation is given toward impossibilities. 3. That the agent be bound to remove or omit that cause, because an effect following beyond intention is not imputed to one pursuing his right; for then the agent does not in reality will the effect, but wills the permission of the effect. - L. 1.5 n. 14; S. Th. 1-2 q. 6 a. 3; q. 21 a. 2; C. I. 1151 ff.; C. G. 1382 ff.; C. H. 1092 ff.

36. When is someone bound to remove a cause by reason of an evil effect that will follow? - 1. He is bound when that cause of itself, directly and primarily, produces nothing except an evil effect. For then the cause is evil in itself. It is said: of itself, directly and primarily, produces nothing except an evil effect, because someone would not therefore be bound to remove a cause if the evil effect followed merely by accident, for then the cause would not therefore be evil in itself; or if the cause of itself, directly and primarily, produces a good effect, and only through this as intermediary an evil effect follows, for the cause is judged according to moral estimation from its effect of itself, directly and primarily, and therefore it is in itself simply honorable. Therefore then someone would not will evil, but would will good and only permit evil.

Likewise, someone would not therefore be bound to remove a cause because it equally directly and primarily, as though in a parallel way, influences a good and an evil effect. For then the cause in itself, according to moral estimation, is indifferent and honorable insofar as it is subject to the honorable intention of the agent; for the evil effect is not intended but permitted. - S. Th. 1-2 q. 20 a. 5; q. 73 a. 8; 2-2 q. 64 a. 7.

2. Someone is likewise bound to remove a cause by reason of an evil effect that will follow when, although the cause is in itself honorable or indifferent, he is nevertheless bound to prevent the

effect by justice, or by charity, or by a precept which presses to be fulfilled. For example, if someone wished to play for recreation when the last Mass on Sunday will soon be celebrated, so that he consequently omits it through distraction. "For one who is bound to a law must necessarily be bound to procure the ordinary means, and those proximately necessary by the very nature of the thing, for observing the law... ordinary, I say; for human laws do not compel to extraordinary and excessively difficult means." Ithur. Cas. 32 n. 4.

Hence "the reason can be given that, by reason of the precept, that cause and the effects following from it, although physically they are connected only by accident, and one is not the cause of the other, nevertheless morally they are judged to have the character of one unsuitable object, or one object to be avoided by the will; and therefore the will of one is judged the virtual will of the other." Suarez disp. 1 sects. 4-5.

3. Finally, someone is bound to remove a cause by reason of an evil effect that will follow when, although the cause is in itself honorable or indifferent, nevertheless there is present, on the part of the agent, no proportionate necessity, usefulness, or fittingness; for then an honorable end of the one acting is lacking. Besides, then to will such a cause often shows a direct evil affection toward that evil effect which will follow; or at least there is often proximate danger of such an evil affection.

The more proximate the cause touches the evil effect, the more probable the evil effect is, the less right one has to the action considered in itself, and the graver the effect itself is, the greater reason is required for acting in such a case. For if no proportionately grave reason is present, natural honesty itself obliges us to omit that cause. - L. 1.1 n. 152; 1.5 n. 14; S. Th. 2-2 q. 64 a. 7.

37. Is a gravely evil effect which follows, voluntary only indirectly or in cause, always imputable as grave fault, so that one contracts the grave malice proper to that effect, if one illicitly places the cause without any sufficient reason? - Answer: 1. Yes, if that cause of itself gravely influences the effect. The reason is that if the cause of itself gravely influences the effect, grave malice from the effect redounds into the cause. Therefore someone contracts the grave malice proper to the effect itself by willing its cause without any sufficient reason. Moreover, at least practically speaking, one who wills a cause gravely influencing of itself a gravely evil effect, without any sufficient reason, in reality directly wills the grave malice of that effect and does not merely permit it, since the cause and effect are inseparably connected with one another, as far as the nature of the thing itself is concerned, and no other honorable reason is present for placing the cause on account of some other honorable effect, as is supposed.

38. No, if that cause of itself influences that effect only lightly. The reason is that, since the cause of itself has only a slight influence on that gravely evil effect, a cause of this kind is not of itself sufficient for the placing of the effect, and therefore, as far as the nature of the thing is concerned, they are not inseparably connected with one another. Therefore it does not follow that because someone wills the cause he also wills the effect; rather, he wills only the permission of the effect, if perhaps it follows. Therefore he does not contract the grave malice proper to the effect. But since the malice of the effect redounds into the cause by reason of the influence which the cause has on the effect, where the influence is light there is only light

malice. Consequently, always excluding the direct intention of the gravely evil effect, someone willing a cause which influences such an effect only lightly, although he will not sin gravely, will nevertheless sin lightly.

And this is the proper reason why, although there is no smallness of matter in venereal matters, there nevertheless is such smallness in those acts of mere sensuality, such as looking, from the cause of mere curiosity, at things less honorable, provided again that the intention of the venereal thing itself is excluded, as the very common opinion of theologians holds.

3. No again, if the cause in no way of itself influences that evil effect, but the effect follows merely by accident. The reason is that, since the effect follows only by accident, there is no connection, as far as the nature of the thing is concerned, between cause and effect. Therefore it does not follow that, because someone wills the cause, he also wills the effect; rather, he wills only the permission of the effect, if perhaps it follows.

Since the malice of the effect in no way redounds into the cause, for the effect does not follow from that cause of itself but merely by accident, someone willing the cause, with every intention of the evil effect excluded, contracts none of its malice, neither grave nor light, although perhaps he may otherwise sin even gravely. Thus, if someone foresees pollution from some excess of drink or food, without willing and intending it, he will sin lightly or perhaps even gravely by reason of that excess, but by no means will he sin gravely by reason of the pollution, since this effect is not willed but happens beyond and against intention, and the cause is outside the genus of lust.

Nor is someone bound to remove all causes influencing some evil effect only by accident, merely by reason of that evil effect; and he is in no way bound to abstain from placing that cause if there is a reasonable motive for placing such a cause. Cf. 40, 1 and 4; Suarez disp. 1 sect. 4; Sanchez 1.9 disp. 45 n. 14 ff.; L. 1.3 n. 484; Salm. tr. 26 c. 7 n. 41; S. Th. 2-2 q. 154 a. 5; 3 p. q. 30 a. 7.

38. When is an effect willed in cause imputed? - It is imputed, speaking of itself, first when someone has placed the cause, or from the time when he could and should have prevented it, if he noticed it after the cause had been placed. "The reason is that the free volition, or the non-prevention of an evil effect, is formally evil, not the physical existence of the effect; and therefore formal sin is committed when this kind of perverse volition or nolition is present... Thus, therefore, one who, for example, offered poison to another does not sin when the death of the other follows, but when he freely placed the cause of this effect." Struggl q. 1 a. 3 n. 32.

Speaking of itself; for if someone can prevent an effect of this kind up to its execution, and does not prevent it, or is pleased in its futurition or existence, he continues in his mind the sin whose cause he previously placed freely and culpably. - L. 1.5 n. 10; S. Th. 2-2 q. 79 a. 3 ad 3.

39. Note: Since the cause as such participates in the specific malice of the effect, but not in a different malice, it suffices in confession to accuse only the malice of the effect; or, if the cause in itself has another special malice, it suffices to state each separately. Thus, if because of play you omitted Mass, it is enough to accuse this omission. If because of theft you likewise omitted Mass, then you can separately accuse the theft and the omission of Mass. - L. 1.5 n. 9; Lugo, *De Poenit.*, disp. 15 n. 479.

40. Resolutions: 1. "If the cause of pollution gravely influences it, and a man does not abstain from placing that cause or action, it is clear that the pollution is imputed as sin, even if it was not intended, provided it was at least confusedly foreseen. Causes of this kind are undoubtedly all those which are of themselves grave faults in the genus of lust, namely touches or looks at the shameful parts of another's or one's own body with base and deliberate delight; looking at human intercourse; and lingering thoughts about venereal matters. Therefore all pollutions arising from these causes are certainly mortal. Thus St. Thomas, 2-2 q. 154 a. 5, and others commonly. And then that base act which is the cause of pollution has a special malice against nature, as Sanchez says, *De Matr.* 1.9 disp. 45 n. 23, and all agree." L. 1.3 n. 482. Special malice, namely the malice of the effect, or pollution, which is a sin against nature, besides its proper malice, which consists in the delight stirred by a base object.

"Gravely influencing"; therefore, if the cause, either by reason of itself or by reason of the disposition of the subject, does not gravely influence, grave fault is absent by reason of the pollution perhaps to follow, since then it follows beyond intention and by accident. "Of themselves are grave faults": "the common and more probable opinion teaches that pollution is not mortal, namely in cause, unless it comes from a cause of itself mortal in the genus of lust... The reason is that, since pollution is not willed except in cause, it will be evil in the degree in which the cause itself is evil." L. 1.3 n. 484. "In the genus of lust," whence "it follows that pollution is not mortal when it happens beyond intention from illicit causes still mortal in another genus than lust, for example from drunkenness, or from eating too immoderately or on a forbidden day." L. 1.3 nn. 484, 477. - Salmanticenses, *Theol. Schol.*, tr. 13 disp. 10 n. 274; *Theol. Mor.*, tr. 26 c. 7 n. 41.

2. "If someone, about to do something necessary or lawful and honorable, foresees that pollution will naturally follow, and this applies much more to distillation, which nevertheless he in no way wills or intends, then, provided the danger of consent to delight is absent, he is not bound to abstain from such an action; because an effect following by accident and beyond intention is not imputed to one pursuing his right. Hence, notwithstanding pollution, it is lawful to hear the confessions of women, to study cases of conscience, to touch oneself from necessity, to kiss women cautiously and from necessity, to embrace according to the custom of the country if otherwise one would be considered uncivil." L. 1.3 n. 481. "It is lawful for someone who suffers great itching in the genitals to drive it away by touch, even if pollution follows." L. 1.3 n. 483.

The reason is that these acts either influence only lightly of themselves; or, although they may influence gravely of themselves, nevertheless, since they do not occur from a base cause of concupiscence and delight, but from an honorable, necessary, useful, or fitting cause, they no longer have the same force and influence on the effect. That force is gravely increased by that evil inclination of the will, and, on the contrary, is greatly diminished by a will turned elsewhere and resisting as far as it can. Hence the evil effect, if it follows, is attributed rather to natural constitution or weakness of nature than to the aforesaid acts as cause. Besides, when the aforesaid honorable end stands, one is not bound to abstain from the cause in order to prevent the evil effect. For when a cause has two effects, one good and the other evil, it can be placed from the intention of the good effect alone, behaving permissively toward the evil. Therefore that evil effect, in the case, truly follows by accident and beyond intention. - L. 1.3 n. 483; 1.5 n. 14; S. Th. 3 p. q. 80 a. 7.

3. "It follows that pollution which arises from a not lengthy conversation with a girl, or from a light look, or from curious reading venially base, is only venial; because, as was said, since these causes influence lightly, the subsequent pollution proceeds rather from a natural cause than from them." L. 1.3 n. 484. But if someone has a just cause, he does not sin at all. L. 1.5 n. 29. A just cause is "any reasonable cause of necessity, usefulness, or fittingness." L. 1.3 n. 484; 1.5 n. 29.

4. A fortiori, grave fault is absent in those actions which influence remotely and by accident, since they are outside the genus of lust. Therefore, although pollution or evil arousal is foreseen to follow, it is lawful to ride on horseback not only for necessity and usefulness, but also for recreation; to lie down in some position in order to rest more comfortably; to take warm foods or drinks moderately; to lead honorable dances, etc. L. 1.3 n. 483.

"Grave fault is absent"; for whether light fault is present in placing such causes without a just reason because of the effect to follow is disputed. Holzmann and others deny it, "because, as they say, then pollution arises rather from weakness of nature than from that cause, which concurs in pollution only by accident and remotely. But Sanchez, Lessius, and others more probably affirm it... because to permit pollution without rational cause always seems somewhat indecent and disordered." L. 1.3 n. 484. - Sanchez, *De Matr.* 1.9 disp. 45; Sporer, *De Matr.* n. 644 ff.; Lessius 1.4 c. 3 disp. 14 nn. 97-103.

41. What are actual, virtual, habitual, and interpretative voluntary? - By reason of the act itself of the will and its efficacy, one voluntary is actual or formal, another virtual, another habitual, another interpretative.

Actual voluntary is given when someone actually wills something, whether he wills it explicitly, that is, clearly and in particular, or implicitly, that is, confusedly, by a universal or quasi-universal will which extends also to this object.

42. Virtual voluntary appears in three ways. First, virtual voluntary is that which perseveres in some power of itself; and it is given when the explicit and clear will, or intention of the end, no longer exists, but only the volitions of the means explicitly and clearly exist, which are accompanied by volitions of the end itself in a more remiss degree. Cf. Lugo, *De Fid.*, disp. 1 n. 98. Thus, for example, when a priest wishes to celebrate Mass and then vests, approaches the altar, and carries out the other customary things, without any longer having that clear actual will of consecrating, the consecration will be virtually voluntary if, while he voluntarily performs all things, there is always confusedly and remissly present to him the will of consecrating.

Second, virtual voluntary is that which perseveres in the exterior work itself commanded by a prior act of the will, or in the voluntary execution of means which someone voluntarily uses by the force, power, and impulse of the prior intention of the end, even if not even a remiss volition of the end any longer exists. Thus the pilgrimage undertaken to a shrine of the Blessed Virgin will be virtually voluntary for a traveler, although on the journey he no longer attends to it, indeed even thinks of entirely different things. Cf. Laymann 1.1 c. 2 c. 3 n. 4; S. Th. 3 p. q. 64 a. 8 ad 3.

Third, virtual voluntary is that which perseveres in some moral effect of itself. Thus, for example, a contract entered by a procurator will be virtually voluntary for the principal agent who gave him power to act in his name. It is said "perseveres in some moral effect of itself" so that a merely physical effect is excluded, into which that prior act of the will perhaps flows insofar as it is a physical act. For example, if, after having the will to consecrate, you later consecrate while sleeping and dreaming, the consecration is null. For that prior act of the will does not flow into this effect as a human or moral act, but merely as a certain physical action. Cf. Laymann loc. cit.; Lugo, *De Poenit.*, disp. 24 sect. 4.

43. Habitual voluntary is that which was, but is neither in itself, not even remissly, nor in the exterior commanded work or in execution of means, nor in any positive moral effect, but is, morally speaking, in a merely negative effect, insofar namely as the prior will has not been retracted. Hence this kind of will suffices for certain moral effects. Thus, if an adult invalidly baptized were rebaptized while asleep, the baptism is valid. Thus also, "for contracting," says St. Alphonsus, 1.3 n. 769, "interpretative or conditional will is not sufficient, as we shall say n. 773, but actual or virtual will is required, or at least a will had and not retracted, according to what is to be said in 1.6 n. 324." Cf. Laymann loc. cit.

44. Interpretative voluntary is an act of the will which neither is nor was, because cognition of the object is not present and was not present, but would be if such cognition were had. Cf. Suarez disp. 1 sect. 4. And this much concerning the voluntary considered in itself.

45. What are expressed, tacit, presumed, and interpretative voluntary? - If the voluntary is considered as it is externally manifested by some sign, then expressed, tacit, presumed, and interpretative will are distinguished.

Expressed will is that which is expressed by words, letters, nods, or some exterior fact. This is either explicitly expressed, namely when someone by an exterior sign clearly and explicitly, or in particular, manifests some act of the will; or implicitly expressed, when someone manifests by an exterior sign that he wills something with which another thing is connected.

Tacit will is that which is manifested by silence itself, for example when a superior, having been questioned, is silent when he is bound and able to speak.

Presumed will is that which, although it does not become known to us a posteriori by some exterior sign or by silence itself, is nevertheless gathered a priori to be present. For some sufficient cause is present for judging thus.

Interpretative will is that which, although it was not actually present and is not present, and is not gathered to be present or to have been present either a posteriori by some exterior sign or a priori by some sufficient cause, nevertheless there is some sufficient reason for gathering that it would be present if cognition of the object were had. Therefore no one sins by merely interpretative will. And for this reason the confessor rightly imparts absolution to one retaining another's property in good faith, if the same confessor does not warn him because of this reason, namely that if the penitent knew the thing to be another's he would still retain it and would not restore. - Struggl tr. 1 q. 1 a. 2.

46. What is the difference between presumed and interpretative will? - Presumed will is often confused with interpretative will. It is also often distinguished from it by distinguishing

presumed will about the present, which is properly called by us presumed, and presumed will about the future, which is properly called by us interpretative. So that the difference between the two may be better known, the matter can be explained by this practical example.

A religious, while traveling and with the superior absent, wishes to buy a thing of some importance and of great usefulness for the whole community. He writes about the matter to the superior. While the superior, having received the letter, writes back, the occasion presses for buying the thing, and the religious buys it before receiving the answer because of lack of time, presuming an affirmative answer from the otherwise well-known will of the superior. Here you have will simply presumed, or presumed about the present. Whether the will of the superior is really present, or is falsely presumed to be present, the truth itself must be inspected, which the superior's answer received later will declare.

But if the same occasion presses for buying something extremely useful to the community, for example a great supply of excellent books at the lowest price, and there is no time to consult the absent superior, yet from the same otherwise well-known will of the superior that religious presumes that he would agree if asked, and buys the books with money received for the journey, preferring the usefulness of the monastery to the more comfortable journey, you have will presumed about the future, or interpretative. - L. 1.3 nn. 288, 700; 1.4 n. 18; Laymann loc. cit. n. 3; Struggl loc. cit. n. 20; La-Croix 1.4 n. 1324 ff.

II. - On The Impediments Of The Human Act

47. What are the impediments of the human act? - As is clear from what has been said, to have a human act there is required: 1. the exercise of the adverting intellect; 2. the free exercise of the will; 3. the exercise of the other faculties proceeding from free will.

Now, if we look at the fact itself, we often act without knowing what we are really doing, for we think we are doing something else. Likewise, we often act impelled by some vehement passion of concupiscence, or oppressed by some vehement passion of fear. In the first case the condition required on the part of the intellect seems to be lacking; in the second case, the condition required on the part of the will seems to be lacking. Hence there is undoubtedly an impediment of the human act; and the question is raised concerning ignorance, concupiscence, and fear, whether they cause the involuntary.

48. Does ignorance cause the involuntary? - 1. Ignorance with which someone acts either has itself causally in relation to what is done, or has itself merely concomitantly with respect to what is done. It has itself concomitantly "when the ignorance is about what is being done, yet even if it were known, it would nevertheless be done. Then ignorance does not induce the willing that this be done, but it happens at the same time that something is done and unknown; as when someone indeed wished to kill an enemy, but, ignorant, kills him while thinking he is killing a deer. And such ignorance does not make the act involuntary, namely contrarily, because it does not cause something repugnant to the will; but it makes it non-voluntary, or merely privatively involuntary, because what is unknown cannot be actually willed." S. Th. 1-2 q. 6 a. 8. And this

holds whether that concomitant ignorance is voluntary or involuntary. Hence the Angelic Doctor speaks generally and does not distinguish.

49. If ignorance is not merely concomitant, or does not have itself merely concomitantly in relation to what is done, but is causing, or has itself causally, namely is the cause of doing what is done, then that ignorance is either voluntary, or consequent upon a free act of the will, or it is not voluntary, or antecedent to a free act of the will. A free act of the will, namely concerning the ignorance itself, not concerning what is then done from the ignorance itself. "Consequently," says St. Thomas in the same place, "ignorance has itself to the will insofar as it is voluntary." Therefore when ignorance of this kind is the cause of doing what is done, "since it is itself voluntary... it cannot cause the involuntary simply, namely contrarily, since what is done is voluntary in cause, from which it proceeds, that is, in that willed ignorance. Nevertheless it causes the involuntary in a qualified respect, insofar as it precedes the motion of the will toward doing something, which would not exist if knowledge were present." In other words, although that motion of the will is voluntary in cause, in itself it is wholly involuntary; for it would not exist if knowledge were present. - L. 1.5 n. 4.

50. But if causing ignorance, or ignorance which is the cause of doing what is done, is not voluntary, or is antecedent, then ignorance causes the involuntary simply, since what is done, by the very fact that it is caused by ignorance, would not exist if knowledge were present, and therefore is against the will. Nor is it willed in itself; nor in any way willed in cause. Therefore it remains totally or simply involuntary. "Antecedently," says St. Thomas in the same place, "ignorance has itself to the will when it is not voluntary and yet is the cause of willing what otherwise one would not will; as when some man is ignorant of some circumstance of the act which he was not bound to know, and from this does something which he would not do if he knew: for example, when someone, with diligence used, not knowing that someone is passing along the road, shoots an arrow with which he kills the passerby. And such ignorance causes the involuntary simply."

51. Does ignorance render an act objectively null? - Answer: No. The reason is that our false judgment cannot change the objective truth of the thing. Thus an unbeliever who baptizes, thinking that a man is not really justified by baptism, nevertheless baptizes validly if he has the intention of doing what the Church does. A priest baptizing in a case of necessity with water which he falsely thinks is not natural, if the water truly is natural, baptizes validly. A pastor who assists at a marriage, falsely thinking that he still needs some special delegation from the bishop which he does not have, assists validly. - Bonacina, *De Sacram.*, disp. 1 q. 2 p. 1 n. 28; Sporer, *De Matr.*, n. 48.

52. Is ignorance always sin? - 1. Some ignorance is invincible, another vincible.

Invincible ignorance occurs when someone suspects absolutely nothing about the matter itself and about the obligation of inquiring; or although he has come into suspicion of the matter and of the obligation of inquiring, nevertheless, after using moral diligence, he could not know the matter. It is said "after moral diligence"; for it is not necessary that the diligence used be the greatest, but it suffices that it be common and ordinary, proportioned to the person and to the matter in question.

Vincible ignorance occurs when someone not only comes into doubt about the matter and the obligation of inquiring, but also has the occasion of coming to knowledge of the matter, yet voluntarily neglects it. - L. 1.1 n. 3.

2. Invincible ignorance is involuntary; vincible ignorance is voluntary.

Vincible ignorance is either directly voluntary, indirectly voluntary, or voluntary by accident.

Directly voluntary ignorance is called affected ignorance. This occurs when someone deliberately wishes to be ignorant, whether because of weariness with learning, or so that he may sin more freely, or so that he may have an excuse, or simply so that he may not be drawn back from sin.

Indirectly voluntary ignorance occurs when someone omits to use effort toward knowing, or neglects to learn, because of mere sluggishness or idleness, because of the labor of learning, or because of other occupations. Ignorance of this kind is distinguished in two ways: namely into crass or supine ignorance, and purely vincible ignorance. Crass or supine ignorance is in one who, although he does not studiously seek ignorance, nevertheless uses no or almost no diligence to obtain the knowledge which, according to his condition, he can have. Purely vincible ignorance is when someone uses some diligence to know the truth, but slight and by no means sufficient diligence, considering the quality of the person and the gravity of the matter.

Finally, ignorance voluntary by accident is that which is not intended and is beyond intention, and which occurs "when someone directly or indirectly wills something upon which ignorance follows. Directly, as appears in the drunk man who wills to drink wine excessively, through which he is deprived of the use of reason; indirectly, when someone neglects to repel the rising movements of passion, which, as they grow, bind the use of reason in the particular thing to be chosen." S. Th., *De Malo*, q. 3 a. 8.

Forgetfulness, lack of consideration, and inadvertence are equated with ignorance. Therefore the same moral judgment must be made about these as about simple ignorance. - Suarez disp. 4 sect. 3; L. 1.1 n. 169; S. Th. 1-2 q. 6 a. 9; q. 76 a. 3.

3. Invincible ignorance is not sin; but vincible ignorance is sin if it concerns those things which someone is bound to know, but not if it concerns those things which one is not bound to know. The reason for the first part is that ignorance is called invincible because it cannot be overcome by effort. But it is not imputed to a man as negligence if he does not know those things which he cannot know. Therefore such ignorance, since it is not voluntary because it is not in our power to repel it, is not sin.

The reason for the second part is that whoever neglects to have or do what he is bound to have or do sins by a sin of omission. Hence, because of negligence, ignorance of those things which someone is bound to know is sin.

Therefore it will be sin to be ignorant of those things without knowledge of which one cannot rightly exercise a due act. Hence all are bound commonly to know those things which belong to the faith and the universal precepts of law; individuals, however, are bound to know those things which pertain to their state or office. But there are certain things which, although someone is naturally able to know them, he is nevertheless not bound to know, such as theorems of geometry and contingent

particulars, unless perhaps in some particular case that occurs. - Suarez on 3 p., tract 5 disp. 4 sect. 8 n. 18; S. Th. 1-2 q. 19 a. 6; q. 76 a. 2; Quodl. 8 a. 15; L. 1.5 nn. 4, 26 ff.; E. M.

51. Does ignorance diminish sin? - 1. Antecedent, invincible, efficacious ignorance, or ignorance which is the cause of sin, "which totally excuses from sin because it totally takes away the voluntary, does not diminish sin, but altogether removes it." S. Th. 1-2 q. 76.

52. "Ignorance which is not the cause of sin, but has itself concomitantly to sin, neither diminishes sin nor increases it," S. Th. loc. cit., since it in no way influences the act of sin. Consequently it does not take away sin insofar as it does not render it involuntary, but takes it away only insofar as it renders it non-voluntary. S. Th. loc. cit. a. 3.

53. Consequent ignorance that is purely vincible, or even crass or supine, efficacious, or the cause of sin, "diminishes the voluntary and consequently sin." S. Th. loc. cit. For the voluntary is then had only indirectly or in cause.

54. Consequent affected ignorance, efficacious, or the cause of sin, "seems to increase the voluntary and sin; for it comes from the intention of the will toward sinning that someone wishes to undergo the damage of ignorance for the sake of the freedom of sinning." Thus S. Th. loc. cit. a. 3 and others. Others deny this, and St. Alphonsus says, H. A. tr. 19 n. 8, that their opinion cannot in reality be called improbable. For one who knowingly and prudently transgresses the law openly contemns it; one who affects ignorance still seems to have some fear of the law.

But a distinction seems necessary, for ignorance of this kind can proceed from various affections and motives. If someone affects ignorance because of weariness in learning, or not precisely lest he be drawn back from sin, but lest he be drawn back from such an action to which he strongly adheres, or even lest he be drawn back from sin, the sin is not thereby increased. For ignorance of itself diminishes the character of a human act and formal contempt of the law. Moreover, if he therefore wishes to be ignorant lest he be drawn back from sin, then if he knew, perhaps he would in reality be drawn back from sin. Therefore that ignorance shows a will not so firmly established in such a sin.

But if someone affects ignorance because he absolutely wills the sin itself, whether or not it is in reality prohibited, then the sin is increased, because that ignorance is a sign both of great affection toward sin and of greater contempt, since he pursues sin with so great an affection that he even wishes to suffer the loss of ignorance, and thus to sin, even if perhaps the thing is not in itself sin. Suarez disp. 4 sect. 2; Lugo, *De Poenit.*, disp. 16 sect. 4 n. 183; Struggl loc. cit. n. 36.

52. Is vincible ignorance of law a special sin of itself? - Answer: No. For every law commanding its observance implicitly commands knowledge of that same law. But it commands this knowledge only in order to the work which is commanded to be done or omitted. Therefore that vincible ignorance of law receives its species from the transgression of the law itself, for which it provides the cause or danger.

This also has place with respect to ignorance of the articles of faith. For although knowledge of them, as the more common opinion holds, is commanded by a special precept and for its own sake, and therefore, stopping at the obligation itself of knowing, such ignorance is culpable of itself,

nevertheless this sin is opposed to the same virtue of faith. For the malice of a sin against faith consists in this, that someone offends the authority of the one speaking by not believing. But this irreverence is found not only when someone knowingly dissents from God speaking, but also when someone culpably neglects to examine whether it is the doctrine of God, and because of that negligence dissents from those things which are said by God. - Lugo, *De Poenit.*, disp. 16 n. 182 ff.; Laymann 1.1 tr. 2 c. 4 n. 10; Viva, *De Act. hum.*, q. 3, last article.

53. Are actions which someone does from a contracted habit to be regarded as human, and therefore imputable? - Speculatively: They are human and imputable if he adverts to them, in themselves; otherwise only in cause, so long as he has not retracted the habit and does not try to uproot it.

Practically: "Sinners of this kind, badly habituated, although they have less ready cognition than others, nevertheless always have some actual cognition of their crimes sufficient to render the acts deliberate and mortal." L. 1.5 n. 4, third paragraph; 1.3 n. 127; tr. *De Act. hum.* XIV. "It is manifest that one who sins from habit sins from certain malice." S. Th. 1-2 q. 78 a. 2.

54. Does concupiscence cause the involuntary? - 1. By the name concupiscence is understood here any passion of the sensitive appetite, which is borne toward its proper good. What is said about the affection of the sensitive appetite can easily be applied to the affection of the will; for just as a motion of the will can be caused by sensitive concupiscence, so one affection of the will can be caused by another affection of the same will. Thus from love of children, of God, or of honor, someone voluntarily approaches dangers; and this will is more fervent the greater that affection is.

Concupiscence is either antecedent or consequent. The former precedes a free act of the will, and consequently is stirred merely naturally. The latter follows a free act of the will. The former draws and inclines reason and will. The latter overflows from the will. The former is not voluntary; the latter is voluntary, either in itself, if the will deliberately wishes and stirs it, or in cause, if it naturally results from a free act of the will. "The sensitive appetite," says St. Thomas, 1-2 q. 77 a. 6, "can have itself to free choice both antecedently and consequently. Antecedently, insofar as a passion of the sensitive appetite draws or inclines reason or will. Consequently, insofar as motions of the higher powers, if they are vehement, overflow into the lower powers. For the will cannot be moved intensely toward something without some passion being stirred in the sensitive appetite."

2. Antecedent concupiscence diminishes the voluntary both in the aspect of voluntary and in the aspect of free. Therefore the act proceeding from it is less voluntary under both aspects to the extent that the concupiscence is more intense.

The reason for the first part is that an act is voluntary insofar as it is from an intrinsic principle. But concupiscence is extrinsic to the will. Therefore an act proceeding from its impulse is less voluntary under the aspect of voluntary. Hence St. Thomas, 1-2 q. 77 a. 6 ad 3, says: "Although the motion of the will is more intense when stirred by passion, it is nevertheless not so proper to the will as if it were moved to sin by reason alone." And in the body of the same article: "An act is sin insofar as it is voluntary and existing in us. But something is said to exist in us through reason and will. Hence, the

more reason and will act from themselves, not from the impulse of passion, the more voluntary it is and the more it exists in us."

The reason for the second part is that an act is less voluntary under the aspect of free to the extent that it has less dependence on the part of the free will and advertence on the part of reason. But when the preceding passion is more vehement, the dependence of this consequent act on the will freely determining itself, and on reason considering, is so much less. For the more the free will finds the soul already inclined through passion, the less it itself influences the determination of the consequent act. Then, although passion cannot directly influence judgment, it can influence indirectly in three ways: 1. By a certain distraction; for attention to individual things is less when it attends to many. 2. By a certain contrariety, insofar as it inclines to things contrary to what ought to be judged, and the soul becomes weak and feeble. 3. By bodily change; for it disturbs the imagination, which does not offer itself to the right operations of the intellect, as can be seen in the insane and in those maddened by the vehemence of passions.

Yet although, from antecedent concupiscence, an act of the will is less voluntary, it becomes more intense and easier. And the greater the passion is, the easier it renders the effort of the will. Thus soldiers from hope of glory, and parents and friends from love of children and friends, bear burdensome things pleasantly. - S. Th. 1-2 q. 6 a. 7 ad 3; q. 10 a. 3; q. 73 a. 6 ad 2; q. 77 aa. 1, 2, 3, 6, 7; Suarez disp. 3 sects. 3-4.

3. Consequent concupiscence presupposes the act to be more voluntary to the extent that it itself is more intense. The reason is that consequent concupiscence is stirred in us consequently upon an act of the will freely determining itself. Therefore, whether it is stirred naturally, through a certain overflow into the lower part from the higher, or is stirred voluntarily, either indirectly through voluntary negligence and omission of repression of rising movements, or directly by deliberately and carefully stirring movements in the lower part, concupiscence, as consequent and not preceding the free act of the will from which it proceeds, cannot exercise any causal influence upon that act, but presupposes the same act of the will, which rather exercises influence upon it.

And if the discussion again concerns concupiscence which is stirred either voluntarily or naturally from the act of the will itself, since an effect must be proportioned to its cause and cannot exceed it, consequent concupiscence does not diminish the voluntary, but rather increases it, insofar as it signifies and demonstrates a greater propensity and inclination of the will toward the act. - S. Th. 1-2 q. 24 a. 3 ad 1; q. 73 a. 6 ad 2; q. 77 a. 6; E. M.

55. Does passion diminish sin? - "It must be said that sin consists essentially in an act of free choice, which is the faculty of will and reason. Passion, however, is a motion of the sensitive appetite... If therefore passion is taken according as it precedes the act of sin, it is necessary that it diminish sin. For an act is sin insofar as it is voluntary... And according to this, passion diminishes sin insofar as it diminishes the voluntary. But consequent passion does not diminish sin, but rather increases it, or rather is a sign of its greatness, insofar namely as it demonstrates the intensity of the will toward the act of sin. And thus it is true that the greater the lust or concupiscence with which someone sins, the more he sins." S. Th. 1-2 q. 79 a. 6; L. 1.5 n. 23.

56. Resolutions: Hence it follows that sin is diminished the more vehement the preceding passion is. "It must be said that it belongs to the nature of sin that it be voluntary, and that is called voluntary whose principle is in the agent himself. And therefore the more its principle is increased, the graver the sin becomes; but the more the exterior principle is increased, the lighter the sin becomes. Passion is a principle extrinsic to the will; but the motion of the will is an intrinsic principle. And therefore the stronger the motion of the will has been toward sinning, the greater the sin is; but the stronger the passion impelling toward sinning has been, the less the sin becomes." S. Th., *De Malo*, q. 1 a. 11 ad 3.

But an act proceeding from consequent concupiscence is more voluntary and a greater sin to the extent that the concupiscence is greater. "If under concupiscence is included even the motion itself of the will, then where there is greater concupiscence, there is greater sin." S. Th. 1-2 q. 73 a. 6 ad 2.

57. Does passion totally excuse from sin? - "It must be said that an act which is evil by its kind is totally excused from sin only according as it is rendered totally involuntary. Hence, if there is such a passion as renders the following act totally involuntary, it totally excuses from sin; otherwise not totally... Passion is sometimes so great that it totally takes away the use of reason, as is clear in those who become insane because of love or anger. And then, if such a passion was voluntary from the beginning, the act is imputed as sin, because it is voluntary in its cause... But if the cause was not voluntary, but natural, for example when someone from sickness or some cause of this kind falls into such a passion as totally takes away the use of reason, the act is rendered altogether involuntary, and consequently is totally excused from sin. But sometimes passion is not so great that it totally interrupts the use of reason; and then reason can exclude the passion by turning to other thoughts, or prevent it from obtaining its effect, because the members are not applied to the work except through the consent of reason. Hence such a passion does not totally excuse from sin." S. Th. 1-2 q. 77 a. 7; q. 6 a. 7 ad 3; q. 10 a. 3.

58. Are the first movements of evil concupiscence always sins, and what kind? - There can be no doubt that the first movements of evil concupiscence are sins, and mortal sins, since grave matter is involved, if, when they arise, the will consents to them at a following time and by consenting takes lingering delight in them, whether with a long, short, or very brief delay. For the act concerns a gravely base thing and is fully deliberate; and that first movement of concupiscence, although it was stirred wholly independently of the will, once the consent of the will is added, now begins to be a commanded act in its delay and continuance.

There is likewise no doubt that the first movements of evil concupiscence naturally stirred and independent of the will, which then dissents from and resists them with its powers, are in no way sins. For the acts are altogether involuntary, and without the voluntary there is no sin. Indeed, there is merit from the resisting will. "The first movement," says St. Thomas, 2 Sent. dist. 40 q. 1 a. 4 ad 3, "does not have the character of fault except according as it is in some way in the power of the will. Hence, as long as the will does not resist, it has the character of sin. But when the will now begins to resist, then man merits."

Finally, if the will, when the first movement of concupiscence arises, neither consents nor dissents, but permits it by not prohibiting it, then a movement of this kind already has the character of sin,

because it is in some way in the power of the will. For that movement is now not against and beyond the will, which surely does not intend but at least permits it. The sin, however, is not mortal but light. For mortal sin consists in aversion from God, which cannot occur without reason turning itself away from God through deliberation; and that aversion is not present here. Therefore that sin is not mortal, but venial. For it is sin, since there is a certain disorder against natural honesty.

"The first movement is a movement of sensuality, preceding the deliberation of reason... But it belongs to the nature of sensuality and reason that a movement of sensuality which is without deliberation of reason cannot be mortal sin, because mortal sin is that which consists in aversion from God, to whom man cannot be turned except through reason; and consequently aversion from God, which constitutes mortal sin, cannot be except in reason." S. Th. Quodl. 4 a. 22.

Moreover, the disorder which constitutes mortal sin is in the will which wills evil. But here the will does not truly will, but permits. To permit evil, however, is not of itself sin, or certainly is not mortal sin. For to will evil is from the perfect dominion of the will; to permit evil is only from its imperfect dominion, since it is only not to prohibit evil. "The will has complete dominion in some things, but incomplete dominion in others. It has complete dominion in those acts which proceed from the command of the will, and these are acts following deliberation, which are ascribed to reason. But it has incomplete dominion in those acts which do not proceed through the command of reason, yet the will could have prevented them; thus they are in some way subject to the will with respect to being prevented or not prevented. Therefore the disorder which occurs in these acts causes the character of sin, but incomplete sin; and therefore in these acts sin is very light and venial." S. Th. 2 Sent. dist. 24 q. 3 a. 2.

The same doctrine of St. Thomas is in Quodl. 4 a. 21: "It must be said that movement implies a certain inclination toward a term; and this inclination pertains to appetite in human acts. But in man there is a threefold appetite. One is natural, according as the appetitive power pertains to the vegetative soul, as do also the digestive, expulsive, and retentive powers. The second appetite is that of sensuality, which is moved according to the apprehension of sense. The third appetite is that of the will, which is moved according to the judgment of reason. Sin which has the character of fault, of which we now speak, cannot exist except in a voluntary act, namely one which is in some way in the power of the sinner. But the act of natural appetite is not subject to the command of reason, just as neither are the acts of the other powers of the vegetative soul; and therefore fault cannot consist in the act of such appetite, just as that a man hungers or thirsts is without fault; and the same must be said in other things of this kind. But the act of the sensitive appetite is subject to the command of reason, because reason, preceding it, can command it or also prevent it. Therefore such a movement can now have the character of fault; and if it follows the judgment of reason, it can even be mortal sin, just as the movement of exterior members commanded by reason. But if it precedes the judgment of reason, it is indeed sin if it tends toward something unlawful, because it was in man's power to restrain it; nevertheless it is venial sin and very light... and this is called the first movement of sin. But the movement of the higher appetite, that is, of the will, following the judgment of reason, can already be mortal sin." - E. M.

59. Does fear cause the involuntary? - 1. Fear is a trembling of the mind because of present or future danger.

It is divided first into slight and grave. The first occurs either when the present or future evil is slight, or when, although it is grave, it is nevertheless only slightly probable. The second occurs when the evil is grave and very probable or certain. An evil is grave either absolutely or relatively. An absolutely grave evil, which causes fear of itself even in a constant man, occurs when the evil feared is grave in itself and is commonly regarded as such, such as death, mutilation, etc. A relatively grave evil occurs when the evil feared is not grave in itself, but is such with respect to this or that person.

Fear is further divided into intrinsic and extrinsic by reason of the cause from which it proceeds. Intrinsic fear is that which arises from an intrinsic disposition of the subject himself, namely from each person's own weakness of body or soul. Fear of death stirred by a grave disease is intrinsic fear, since it arises, as from a cause, from an infirmity which is in the very subject of fear. Extrinsic fear is that which is stirred by an extrinsic cause, whether this cause is natural or necessary, or moral or free; as likewise fear of death from shipwreck, or from a robber encountered on the road.

Extrinsic fear inflicted by a moral or free cause is subdivided into just and unjust, according as the one causing fear has or does not have the right to cause it; as fear inflicted by a judge or by a brigand. And whether fear is justly or unjustly inflicted, such fear can be inflicted simply to obtain something or to inflict some evil, as in robbers threatening death unless someone gives what he has or unless someone helps them steal; and it can be inflicted to extort consent to some definite thing, for example betrothal, marriage, a contract, etc.

Fear is called reverential by a special name when the fear is lest a superior be offended, or by which someone fears to resist one to whom he is subject, namely father, mother, grandfather, father-in-law, husband, king, master, prelate, tutor and curator; and likewise paternal uncle, cousin, or older brother, if the one suffering fear lives with them and receives support from them. "Pontius rightly says that reverential fear is of itself grave, because it is one thing to act from reverence owed to a superior, another from reverential fear, which necessarily carries fear of some grave harm threatening from obedience not given, for example long-lasting indignation, etc." L. 1.3 n. 717. The indignation of a father, master, etc., is surely an evil; and if it is long-lasting, it is a grave evil. Therefore, even setting aside other evils, for example blows, threats, etc., reverential fear is of itself grave. - L. 1.5 n. 20; 1.6 n. 1056; C. H. 1267; C. G. 1111, 1112; C. I. 1111 ff.

2. "It is one thing to do something with fear, another to do it from fear. The first indicates concomitance; hence what is done in this way, although it is absolutely voluntary, nevertheless that voluntary does not arise from fear, but rather is opposed to and conquers the fear, which is a sign of a great will. Thus when Christ the Lord went forward to death, fearing it, he embraced it with the highest will, which did not arise from fear of the Father and of men, and therefore conquered natural fear. But to be done from fear signifies that fear itself induces one to will or to do something, and then fear is the cause of such voluntary, in the way in which among acts of the will intention is the cause of choice, and choice of use, and love of good is the cause of hatred of the opposed evil. For in this way, in the present case, when someone fears death, he decides and intends to flee it; and by force of this decision he chooses this means, for example, throwing goods into the sea, and use or execution follows upon this choice. Therefore, from first to last, fear was the cause stirring and applying the will to that efficacious act by which it commanded that exterior action." Suarez disp. 3 sect. 1.

3. Now those things which are done from fear are more voluntary than involuntary; for they are voluntary simply, but involuntary in a qualified respect. For each thing is simply such according as it is in act. But this act, as it is exercised here and now, is simply willed, because although such an action considered in itself is not lovable simply, nevertheless here and now it is proposed as absolutely to be chosen, as a suitable means for avoiding a greater evil. Therefore under that aspect it is here and now simply voluntary. For judgment about the voluntary must be made by considering the thing in particular with all its circumstances, and not through abstraction or precision of the intellect. "But that what is done through fear be taken as existing outside this case, insofar as it is repugnant to the will, this is only according to reason; and therefore it is involuntary in a qualified respect, that is, insofar as it is considered as existing outside this case." "Therefore what is done through fear is voluntary without condition, that is, according as it is actually done; but it is involuntary under condition, that is, if such fear were not threatening." S. Th. 1-2 q. 6 a. 6. "And because acts are in particulars, therefore it is voluntary simply, but involuntary in a qualified respect." S. Th. Suppl. q. 47 a. 1. - Suarez disp. 3 sects. 1-2.
4. Note: Those things which are done from fear are involuntary in a qualified respect when the thing is evil in itself, but good only in the present circumstances. This is clear in the example already given of throwing goods overboard for the merchant, which is evil for him in itself and good for him in the present circumstance of shipwreck.

But if the thing is good in itself, so that it is such even apart from the present circumstances, then one who acts from fear can be borne toward that thing with a perfect inclination of the will, so that the voluntary simply is had, without at the same time having the involuntary in a qualified respect. Thus one who from supernatural fear of hell wishes to abstain from sin has the voluntary simply, without an admixture of the involuntary, because observance of the divine law is simply good in itself, even apart from that circumstance of fear of divine judgments.

Moreover, "one who wishes to keep a precept from fear of hell, if he understands the force of that motive, cannot have a simple contrary affection, 'I would transgress the precept if there were no punishment'; for by that very affection he would sin and incur guilt of punishment, and consequently act against his motive. Therefore, if he is truly and efficaciously moved by that motive, and understands its force and the quality of his acts, it cannot happen that such an affection be together with that motive." Suarez disp. 3 sect. 2 n. 6. - L. 1.6 n. 442, objection II.

61. Do importunate prayers constitute grave fear? - "Pontius and others affirm it. But it must more truly be denied, unless the prayers are added to fear of reverence toward a superior; thus Sanchez and others. And Sanchez well notes that not all assiduous prayers are called importunate, but only those which are most urgent and are repeated very often." L. 1.3 n. 717.
62. Does grave fear excuse from fault? - Either the discussion concerns those things which are not intrinsically and of themselves evil, or those which by their nature are intrinsically evil, such as, for example, apostasy from the faith or blasphemy against God.

If the first, ordinarily speaking, grave fear excuses from all fault, because any positive law is not accustomed to oblige with grave proportionate inconvenience, as is common teaching. It is said

"ordinarily speaking" because if someone were compelled by grave fear to the violation of some positive law, and this violation yielded to common harm, or to contempt of legitimate power, or of religion with grave public scandal, then grave fear would not excuse from the fault of transgression. For in the first case the common good must be placed before private good; in the second and third, the matter would now concern a thing intrinsically evil by its nature. But in this second and third case, if the one suffering, when he violates the law, publicly protests that he does not act in contempt of the law or religion, but only to decline violence, in the presence of which he declares that the law and religion no longer oblige, then, if public scandal ceases and the aforesaid contempt ceases - which, practically speaking, seems altogether difficult - he would be excused from fault.

If the second, it is certain that fear, however grave, provided it is not such as to take away the use of reason, never excuses from all fault; for since such things include intrinsic and essential malice, if they are done voluntarily, they can never be free of fault. An example is in that Christian who, struck by fear of punishments or even death, would deny the faith of Christ. Fear nevertheless diminishes fault, since it diminishes the voluntary. Yet ordinarily speaking, grave fear still leaves such cognition of the things which are done as suffices for mortal sin. - L. 1.1 n. 175; 1.5 n. 21; S. Th. 2-2 q. 125 a. 4; Elbel 43-52; Del Vecchio vol. 1 n. 144.

63. Resolutions: Grave fear, for example of death, etc., often excuses not only from a positive precept, whether divine or human and even ecclesiastical, but sometimes also from an affirmative natural precept. Thus one is not bound with danger of life to receive baptism, to confess integrally, to receive communion, to preserve a deposit, to fulfill a vow, or to aid a neighbor in extreme necessity of life. On the contrary, to avoid death a priest cannot violate the sacramental seal. - Viva, opusc. *De Act. hum.*, q. 4 a. 4; Lessius q. 6 a. 6; L. 1.1 n. 175.

64. Can the will suffer violence in addition to fear? - 1. Force or violence is said to be what is from an extrinsic principle against the inclination of the will, so that the one suffering force cannot do the contrary and wholly resists. Therefore two things are required for violence. First, that it be from an extrinsic principle, because no one can properly be said to inflict violence on himself. Hence the difference between violence and fear is clear, for fear can come either from an intrinsic principle, such as fear of death coming from disease, or from an extrinsic principle, such as fear of shipwreck, of hell, and of punishments.

The second thing required is that the one suffering wholly resist, that is, positively and with his powers. It is said "with his powers and positively"; for if someone were only passive, then he would not contribute to the violence by acting, but he would contribute by willing to suffer. Nevertheless, to avoid fault, resistance absolutely complete and continuous against the coercion inflicted is not always required, namely when on one side it would be useless, and on the other the matter is less dangerous. Thus martyrs, when led to pagan temples, did not sin, although they walked. But in every case one must resist as much as is required to avert danger of scandal or injury to religion. L. 1.5 nn. 15 ff.

2. "As regards the proper act itself of the will, namely the elicited act, violence cannot be inflicted upon it. The reason for this is that an act of the will is nothing other than a certain inclination proceeding from an interior knowing principle... But what is coerced or violent is from an exterior principle." S. Th. 1-2 q. 6 a. 4. Therefore no one can will unwillingly, because he

cannot will while unwilling to will. By hypothesis he would will and at the same time would not will, because he himself would resist himself willing. L. 1.5 n. 19.

3. "As regards acts commanded by the will, the will can suffer violence, insofar as by violence the exterior members can be prevented from executing the command of the will." S. Th. 1-2 q. 6 a. 4. The will can likewise suffer violence in the exterior members, although command of the will is not properly had, as, for example, if someone is seized against his will, bound hand and foot, thrown into prison, etc. This holds not only with respect to exterior members, but also with respect to interior faculties. For it is clear that the will can command not only the hand, for example, not to sign one's own name on the note of a fictitious creditor, while the hand, seized by him by force, must sign; but it can also command the intellect to think and consider some matter, while the distracted intellect is carried away to thinking other things. It can command the sensitive appetite to obey reason, while that appetite is moved against reason. Likewise an extrinsic cause, for example a demon, can stir images in the imagination against the will, and can stir sensible movements in the sensitive appetite while the will likewise resists, etc. - Suarez disp. 2; Lessius on q. 6 a. 4; S. Th. 1-2 q. 80; L. 1.3 nn. 430, 433; E. M.

4. Does violence cause the involuntary? - Violence causes the involuntary, contrarily such. For "violence is directly opposed to the voluntary, just as also to the natural. For it is common to the voluntary and the natural that both are from an intrinsic principle. And because of this, just as in things lacking cognition violence makes something be against nature, so in knowing things it makes something be against the will. But what is against nature is said to be unnatural; and similarly, what is against the will is said to be involuntary. Hence violence causes the involuntary," S. Th. 1-2 q. 6 a. 5; violence simply causes the involuntary simply, violence in a qualified respect causes the involuntary in a qualified respect - not indeed as to elicited acts, but as to commanded acts. For only as to commanded acts, and not also as to elicited acts, can the will suffer violence. S. Th. 1-2 q. 6 a. 5 ad 1. - E. M.

5. Resolutions: Therefore when some passion is simply violent, namely because someone resists and repels it by will in every way he can, it is simply and contrarily involuntary, and therefore not human nor imputable. But when it is violent only in a qualified respect, namely because someone does not resist and repel it with his powers by his will, then the character of voluntary is not removed, and therefore neither the character of a human and imputable act, but is only diminished according to the greater or lesser resistance and repugnance. L. 1.3 nn. 430, 433; 1.5 n. 16.

"The involuntary is said in two ways, namely through ignorance and through violence. And therefore robbery has one nature of sin, and theft another. Therefore because of this they differ in species... In other genera of sins, the nature of sin is not taken from something involuntary as it is in sins opposed to justice; and therefore, where a different nature of involuntary occurs, there is a different species of sin." S. Th. 2-2 q. 66 aa. 4, 9.

III. - On The Morality Of Human Acts

67. What is the division of the treatment of human acts in relation to the end? - We have spoken of human acts in relation to man, who through them orders himself to the ultimate end of

human life, or beatitude. We must now speak of the same acts in order to the aforesaid end, or of the morality of those acts. For the order of human acts to the common end of human life constitutes the moral order, or the morality of human acts.

First, therefore, one must speak in general of morality itself; then of the various sources of this morality in human acts. - S. Th. 1-2 q. 21 a. 2 ad 2.

68. What is the generic and specific notion of the morality of human acts? - Human acts can be considered either generically, all together, or specifically, these or those. If they are considered generically, as human acts, they are capable of leading man to the end, namely to the ultimate end, in possession of which happiness and beatitude and his full perfection are constituted. For through them man orders and leads himself to the end. S. Th. 1-2 q. 1 aa. 1-2; q. 7 a. 2.

If, however, these or those acts are viewed specifically, as such acts, they actually order and lead, or do not order and lead, to the end, according as they are or are not conformed to the end. Thus, for example, knowledge of God and love of God by their nature order and lead man to the end; ignorance of God and hatred of God by their nature turn and remove man from the end.

If human acts are regarded in the first way, generally, they are called moral. If they are considered in the second way, constituted in a particular species, they are called morally good or evil, honorable or base. "Good and evil," says St. Thomas, 1-2 q. 18 a. 5, "diversify species in moral acts." Therefore morality constitutes the genus; goodness or malice the species.

69. What is the nature of morality? - First it must be noted that doctors commonly understand by morality the relation of human acts to their proper norm and rule, according to which they are ordered and directed. The diversity of opinions lies rather in determining this norm and rule. Thus also commonly, taking the genus for the species, acts are distinguished as moral and immoral, to designate upright human acts and voluntary acts falling short of their proper rectitude.

Now, omitting the divergent opinions of others and insisting on the doctrine of the Angelic Doctor, morality considered generically, according to its primary and fundamental concept, can be defined as: the capacity which human actions have in themselves to be good or evil in order to the end of creation, that is, to be conforming or suitable, or not, for attaining this end.

Specifically, however, it is the aspect of conformity or deformity which human actions have in themselves in order to the end of creation, as means to the end; namely insofar as they are suitable or unsuitable to lead man, or not, to his end.

It is said "according to its primary and fundamental concept," for proximately and formally this conformity or suitability, deformity or unsuitability, is only from law, which is manifested through right reason. For by the very fact that law commands something to be done or omitted, it formally and proximately constitutes it in the character of a means in order to attaining the end, giving rise in conscience to the obligation of using such a means. Hence St. Alphonsus rightly says, 1.5 n. 34: "The moral goodness of a human act consists in a certain conformity and suitability of the free act with right reason and law." - S. Th. qq. 18, 19, 20; Suarez tr. 3 disp. 1, disp. 2 sects. 1-2, disp. 3 sects. 2-3, disp. 7 sects. 1-6, disp. 10, disp. 11.

And indeed, from the Angelic Doctor throughout 1-2, all human actions ought to be directed and ordered to the end, q. 5 a. 7; the end is the proper and principal object of the will, q. 8 a. 2; human and moral acts are specified principally by the end, q. 87 a. 6 ad 2. Therefore the primary and fundamental nature of morality must be drawn from the end. For by the morality of human acts this is commonly understood: namely the character of rectitude or non-rectitude of those same human acts. And since human acts are means to the end, the end is the rule and measure of that rectitude or non-rectitude.

Again, by morality this is understood: that acts are according to reason or beyond reason. Now reason manifests and dictates that this is to be followed in human acts: namely the end to be attained through acts congruent and conforming to it. By moral goodness or malice this is commonly understood: that human acts are ordered to that end, are according to right reason ordering proper acts to the end, or are beyond this right reason. Hence the goodness of acts is insofar as they are useful for the end, q. 7 a. 2, a. 4 ad 2. And hence consequently it is that from that end, and from the object ordered or not ordered to that end, a human act is constituted in the species of a morally good or morally evil act, 2-2 q. 153 a. 2.

But that, from the same Angelic Doctor, this morality, and moral goodness and malice, must be taken proximately and formally from law, is clear from 1-2 q. 19 a. 4, where he at the same time shows how that morality, goodness, and moral malice also proceed from reason: "It must be said," he says, "that in all ordered causes the effect depends more on the first cause than on the second, because the second cause acts only in the power of the first cause. But that human reason is the rule of the human will, from which its goodness is measured, it has from the eternal law, which is divine reason. Hence in Psalm 4 it is said: Many say: Who shows us good things? The light of your countenance, Lord, is signed upon us. As if he said: the light of reason which is in us can show us good things and regulate our will only insofar as it is the light of your countenance, that is, derived from your countenance. Hence it is manifest that the goodness of the human will depends much more on eternal law than on human reason." The same is clear from articles 9 and 10 in the same question.

Since eternal law is unknown to us according as it is in the divine mind, but becomes known to us through natural reason, hence reason itself is also the rule and norm of human acts, and indeed the proximate rule, as proposing immediately to the will good or evil according to eternal law. But that proximate rule is subjective, merely proposing the object; law is the proximate objective rule constituting rectitude. Hence the same St. Thomas says, q. 18 a. 5: "Some acts are called human or moral according as they are from reason." And q. 19 a. 1 ad 3: "The good is represented by reason to the will as object; and insofar as it falls under the order of reason, it pertains to the genus of morals and causes moral goodness in the act of the will. For reason is the principle of human and moral acts."

What is said about eternal law must be understood of any law, since every law is an ordinance of reason constituting the order and rectitude of human acts to the end; nor indeed are all human acts commanded or prohibited by eternal law itself. Hence many human acts are commanded or prohibited only by positive law; and thus they are constituted proximately and formally in the character of a necessary means to the end. - Lugo, *De Incarn.*, disp. 5 n. 75; Lessius, *De Perfect. divin.*, 1.13 c. 26; E. M.

70. Is the assigned twofold rule of morality really universal? - The remote and fundamental norm of morality, namely man's ultimate end, includes all human acts; otherwise it would no longer be the remote and fundamental rule of morality. The reason is clear, because all human acts are means to the end of the whole of human life. Yet not all have the same relation to this end. Some are ordered of themselves, namely by their intrinsic nature are ordered to this end, as, for example, knowledge and love of God, love of neighbor, justice to be observed toward others, etc.; and these acts are called intrinsically good, and because they are good, namely intimately and necessarily consonant with the order of reason, they are then commanded by the natural law.

Others, on the contrary, are opposed of themselves, or by their intrinsic nature are dissonant from the common end of human life, as, for example, blasphemy, perjury, sacrilege, theft, etc.; and these acts are called intrinsically evil, and because they are evil, namely intimately and necessarily dissonant from the order of reason, they are then prohibited by the natural law.

Finally, there are acts which of themselves, or by their intrinsic nature, are not necessarily connected with the aforesaid end, and consequently with the order of reason, as, for example, conversing with a friend, going to the countryside, etc.; and these acts are called intrinsically indifferent. Therefore, by necessity of attaining the end, these acts neither necessarily must be placed nor necessarily must be omitted. But if someone spontaneously wishes to place them, he certainly must exercise them in such a way, by the very necessity of attaining the end, that he does not depart from the end, but always tends to the end, since for this reason nature itself gave man the faculty of acting freely, so that through free action he might lead himself into the end. Hence, by the very fact that the act, namely the act in the concrete, is not opposed to the end, it is already consonant with the end in at least some way, and morally good. S. Th. 2 Sent. dist. 40 q. 1 a. 5. From this it is clear what the order and rectitude of reason signifies: namely, it imports the proportion of means to end, which reason does not make, but knows and proposes to the will. Thus the Angelic Doctor calls moral good that which agrees with the order of reason; likewise honorable good that which agrees with the rectitude of reason, 1-2 q. 18 a. 8; q. 39 a. 2.

The proximate and formal rule likewise, namely law, also includes all human acts, since it commands some and prohibits others. Those which it neither commands nor prohibits, but permits either positively or negatively, must be performed according to the same commanding law in such a way that they are not opposed to the order and rectitude of reason. Thus acts of this kind are by that very fact morally good, since, if the order of reason is preserved in carrying them out, they are already suitable to reason and morally good and honorable.

71. Is morality, or moral goodness or malice, found only in the interior act of the will, or also in the exterior act? - A twofold moral goodness or malice can be distinguished in the exterior act. First, one can consider the objective moral goodness or malice of the exterior act, which that act has of itself, namely from its proper object and circumstances by which it is objectively affected according to the right order of reason. Goodness or malice of this kind, which the exterior act has according to itself because of due or undue matter and due or undue circumstances, is derived from reason, insofar as that object and those circumstances exhibit the rectitude of reason or deviation from the right order of reason. This objective goodness or

malice of the exterior act is prior to the goodness or malice of the act of the will. Thus the exterior act is the object of the will insofar as it is proposed to the will by reason as some good apprehended and ordered by reason, or as departing from this order; and it causes moral goodness or malice in the will.

Second, in the exterior act one can consider moral goodness or malice in order to the end, according as this exterior act stands under the interior act of the will. For the end is the proper object of the will. Thus the character of good or evil which the exterior act has from order to the end is found first in the act of the will and is derived from it to the exterior act. Likewise, insofar as the exterior act consists in execution of the work, it is the effect of the will and follows the will. The will is then compared to the exterior act as efficient cause; hence the moral goodness or malice of the act of the will is the form of the exterior act, as existing in the acting cause, q. 20 a. 1. Therefore "the goodness of the end from the will redounds into the exterior act, and the goodness of matter and circumstances redounds into the act of the will," q. 20 a. 3.

Now the exterior act and the interior act of the will, insofar as they are considered in the genus of morals, are one human act, ibid. If the human act is considered adequately in this way, the formal moral goodness or malice of the human act is intrinsically only in the interior act of the will, but in exterior acts only by extrinsic denomination. For the morality of a human act, formally viewed, is not found except in a free act; but freedom formally is only in the will. Likewise formal moral goodness is from order to the end, which is the proper object of the will, q. 20 a. 1. Hence it is clear that in the exterior act this kind of moral goodness, which is according to order to the end, depends wholly on the will, ibid. a. 2. But that "goodness of the exterior act which it has from matter and circumstances is other than the goodness which is from the end; but it is not other than the goodness of the will which it has from the willed act itself, but is compared to it as its reason and cause," q. 20 a. 4 ad 2.

This is confirmed: "For however much the exterior act may seem good in itself and conforming to reason, nevertheless if it is commanded by an evil internal act or depraved intention and choice, it is not good insofar as it is a human act. Therefore this is a sign that, under the aspect of a human act, it is good only by denomination from the interior act. A similar argument is this: that the exterior act, precisely and taken by itself, does not add formal moral goodness to the man, nor render him more virtuous. For if we understand someone who thinks he can execute an exterior act of virtue to have an efficacious will of exercising such an act, he is upright and virtuous whether he can really execute it or cannot, because virtue does not depend on a faculty which can be lacking to us unwillingly, but on the will, supposing that the will is equal... This doctrine about external acts proceeds in the same way in acts of the intellect and of the sensitive appetite." Suarez disp. 10 sect. 1. "What is plainer than that the will is reckoned for the deed where necessity excludes the deed?" St. Bernard, Ep. 77. - E. M.

72. Does the external act add morality in some way to the internal act? - "First it must be said that the exterior act of itself does not bring an increase of goodness or malice, if other things are equal, in the interior act; thus St. Thomas, 1-2 q. 20 a. 4. The reason is that the exterior act does not have a goodness distinct from the interior act, and necessarily follows from it if it is within our power; but if it is not within our power, it does not diminish the goodness of the will...

Second, it must be said that external action is sometimes necessary for the goodness of the will, or for such goodness... For when it is in a man's power to execute the external action, he cannot have a perfect interior will unless he executes the exterior action, because the exterior act is the term and end of the interior act, and because an absolutely perfect will is one which operates when it can...

Third, it must be said that by accident the exterior act can increase goodness or malice simply... For 1. because of the exterior act, a man often endures and perseveres more in the interior act; indeed he often multiplies interior acts, and in this way it is morally worse to kill. 2. Because the exterior action itself enkindles affection, and thus contributes to the interior act, in the way vocal prayer usually contributes to interior devotion. 3. External actions are useful for moderating passions and habituating the body, so that it may more easily serve justice...

It must also be added that good external acts are useful for the effect of satisfaction for temporal punishment owed for sin, because satisfaction is taken not only from goodness but especially from the penal character of the act; but the exterior act of itself brings its own punishment and pain. Finally, it must be added that exterior acts are necessary for some effects of grace which are conferred either ex opere operato or by special privilege, such as the effects of the sacraments and the effect of martyrdom, and any others that are similar; because, since these effects do not depend on the mind alone of the one acting, they have been promised to one exercising such a work not only in affection but also in effect. And in the same way, on the contrary, evil external acts, or even their effects, are necessary for incurring some penalties or censures, which are not incurred through the interior act alone." Suarez disp. 10 sect. 2; L. 1.2 n. 47.

These are the words of St. Thomas in the cited q. 20 a. 4: "It must be said that, if we speak of the goodness of the exterior act which it has from the goodness of the end, then the exterior act adds nothing to goodness unless the will itself according to itself happens to become better in good things or worse in evil things. This indeed seems able to happen in three ways: in one way according to number, as when someone wishes to do something for a good or evil end, and then indeed does not do it, but later wishes and does it; the act of the will is doubled, and thus there is a double good or a double evil. In another way as to extension, as when someone wishes to do something for a good or evil end and desists because of some impediment, while another continues the motion of the will until he completes the work; it is manifest that such a will is more lasting in good or evil, and according to this is worse or better. Third, according to intensity; for there are certain exterior acts which, insofar as they are delightful or painful, are naturally apt to intensify or weaken the will. But it is clear that the more intensely the will tends toward good or evil, the better or worse it is.

"But if we speak of the goodness of the exterior act which it has according to matter and due circumstances, then it is compared to the will as term and end, and in this way it adds to the goodness or malice of the will, because every inclination or motion is perfected in this, that it attains the end or reaches the term. Hence the will is not perfect unless it is such that, given the opportunity, it operates. But if possibility is lacking, while the will remains perfect so that it would operate if it could, the defect of perfection which is from the exterior act is simply involuntary. But the involuntary, just as it does not merit punishment or reward in operating good or evil, so it does not take away anything from reward or punishment if a man simply involuntarily fails to do good or evil."

Here the discussion concerns the goodness and malice of acts with respect to essential reward or punishment; for the exterior act adds to accidental reward, as the same Angelic Doctor says, 2 Sent.

dist. 40 a. 3. - S. Th. 1-2 q. 13 a. 5 ad 1; q. 20 a. 5; E. M.

73. Can the same exterior act be good and evil? - "It must be said that nothing prevents something from being one according as it is in one genus and multiple according as it is referred to another genus... And according to this nothing prevents some act from being one according as it is referred to the genus of nature, while it is nevertheless not one according as it is referred to the genus of morals... For continuous walking is one act according to the genus of nature, yet it can happen that it is several according to the genus of morals, if the will of the walker is changed, which is the principle of moral acts. Therefore if one act is taken as it is in the genus of morals, it is impossible for it to be good and evil by moral goodness and malice; and yet if it is one by unity of nature and not by unity of morals, it can be good and evil." S. Th. 1-2 q. 20 a. 6.

74. Are there indifferent human acts, that is, acts which are neither morally good nor morally evil, neither honorable nor base? - If human acts are considered in the abstract, or according to their species, which they have intrinsically from their proper object, with abstraction made from the end and from determining circumstances, then certainly indifferent acts are given, namely acts which from their species are neither evil nor good, just as man according to himself, or according to his species, is neither virtuous nor vicious. The reason is that every object has some goodness or malice, at least natural; nevertheless it does not always import moral goodness or malice, which is considered by comparison to order, namely the order of reason. For not every object of a human act includes something pertaining to this order of reason. Indeed, not all actions are of themselves necessarily connected with the ultimate end, nor are all commanded or prohibited by law; many are merely permitted, such as walking, going to a field, lifting a straw from the ground, and things of this kind. Therefore such acts according to their species are indifferent. S. Th. 1-2 q. 18 a. 8.

But if human acts are considered in the individual, or concretely, according as they are determined both by particular circumstances and by the end, the Scotists affirm that indifferent acts are given in the individual. The reason is that no certain law commands directing them to the ultimate end of human life, namely God, nor always acting from a higher motive of honesty and virtue; but, considering human frailty and weakness, God himself permits man to act from this very weakness and frailty for the necessity and comfort of nature itself, as, for example, sometimes to eat more sumptuously, to hold banquets, to be refreshed by looking at the sky, the field, etc. Therefore these and other similar actions can be exercised from a merely indifferent end.

The Thomists, on the contrary, deny that indifferent acts are given in the individual, and more truly so. And this certainly is the opinion of the Angelic Doctor. The reason is that either someone does a thing necessary, useful, or fitting for rational nature, namely for the soul, the body, or the exterior things themselves which are ordered to both; or he does a thing wholly useless and idle. If the first, this action tends to a naturally good end and is good. If the second, he does a thing unsuitable to rational nature, as at least superfluous; for reason dictates that entities are not to be multiplied without necessity, usefulness, or some fittingness. S. Th. 1-2 q. 18 a. 9, sed contra; 2 Sent. dist. 40 q. 1 a. 5.

Moreover, since it is proper to reason to direct and order human acts which are done from deliberation to a due end, either the human act is in reality ordered to the due end and has the character of good, or it is not ordered to the due end, and then from this very fact it is opposed to right reason and has the character of evil. S. Th. 1-2 q. 18 a. 9 c.; Suarez disp. 9 sect. 3.

And from the reason given it is luminously clear that those indifferent acts of the Scotists are not really such, but are morally honorable. For if they are done because of necessity, usefulness, or fittingness, they are according to the order of reason, and consequently morally honorable. Indeed, both sometimes eating more sumptuously, and holding banquets, and refreshing the mind and body are acts according to reason if these things are contained within due limits. Therefore these acts are really done from a motive of honesty and virtue, although they are done from natural frailty, necessity, usefulness, or fittingness; since honesty and virtue consist in this, that the rectitude of reason be preserved. Moreover, they are also ordered to God, at least implicitly, although not explicitly, as we shall explain more fully shortly, since by the very fact that they are according to reason and good, they are by their nature referred to God. - S. Th. 1-2 q. 18 a. 9 ad 3; q. 39 a. 2; 2-2 q. 23 a. 3; q. 141 a. 6 ad 2; q. 145 aa. 1, 3; q. 168 a. 3 ad 3; q. 169 a. 1 ad 1; Suppl. q. 49 a. 2 ad 6; 2 Sent. dist. 39 q. 3 a. 3 ad 6; dist. 40 q. 1 a. 5; 4 Sent. dist. 16 q. 2 a. 2 q. 1; *De Caritate* q. un. a. 7 ad 13, ad 14; L. tr. *De Act. hum.* XLI ff.; E. M.

IV. - On The Various Sources Of Morality

75. Is it necessary for the moral goodness of human acts to direct all actions to the glory of God? - The more common and truer opinion affirms it. The reason is most clearly evident from what has been said: every moral action, in order to be good, must tend toward the ultimate end and be ordered to it by reason. But if a human action tends and is ordered to the ultimate end, it is already directed to the glory of God. Therefore it is as necessary to direct all actions to the glory of God as it is necessary that they be morally good. "The goodness of the will depends on the intention of the end; but the ultimate end of the human will is the highest good, which is God. Therefore it is required for the goodness of the human will that it be ordered to the highest good." S. Th. 1-2 q. 19 a. 9. "All that man is, and all that he can and has, must be ordered to God." S. Th. 1-2 q. 22 a. 4 ad 3.

Hence, as is clear from the reason given, it is enough to direct them to God virtually on the part of the work, or in the very act exercised, namely by acting for the end of some virtue, or for what is honorable and consonant with rational nature; for such an act by its intrinsic nature tends to the glory of God. To the point, S. Th. 1-2 q. 8 a. 3 ad 2: "Whenever someone wills the things which are for the end, he wills the end by the same act; but not conversely." And q. 21 a. 4: "One who does an evil act not referable to God does not preserve the honor of God which is owed to the ultimate end."

Cajetan on the same q. 8 a. 3 says: "The one always desiring what is for the end desires the end, not habitually, but actually, as actual extends to actual and virtual. For to use something virtually is within the latitude of actual use; otherwise that precept would never be fulfilled: Do all things for the glory of God. For to do implies actually operating."

Much more, moreover, it is enough to direct all actions to God virtually on the part of the one acting, who by an act of charity has ordered his whole life to God and remains in habitual charity. Cajetan

says this on 1-2 q. 8 a. 3: "Between a motion of the will into something habitually and actually, there is a middle motion of the will into it virtually... For when one having charity sins venially, he indeed habitually loves God, but not actually, as is clear, nor virtually, because sin is not directable to God. But when one having charity walks or preaches, and whatever else he does not do badly, although he does not actually think of God, nevertheless that act is not only an act of such a virtue, but of charity, and the will is then borne virtually toward God, and not only habitually, which belongs to one sleeping and to one sinning venially." - S. Th. 2 Sent. dist. 10 q. 1 a. 5; E. M.

IV. - On The Various Sources Of Morality

76. What are the sources of morality? - As already said, the morality of human acts, and their moral goodness or malice, comes from their relation to the ultimate end of human life and to law, from their suitability or unsuitability with that same end and law. Now this relation, this suitability or unsuitability, can arise in a human act from a threefold head: namely from the end of that act, from its object, and from its circumstances. Hence it is commonly said that a human act derives its moral goodness or malice from this threefold head: namely particular, specific, and individual goodness or malice. For not all good acts are in the same species, nor likewise all evil acts in the same species. The object, the circumstances, and the end can each have order, and a different order, to man's ultimate end and to law. In this order of human acts to the ultimate end and to law morality consists.

77. What is the end, and how many kinds are there? - By end here is properly understood that which the agent further intends through such and such an act, as the reason for which he operates. This is the end which is called the end of the one acting, and it is an end extrinsic to the act. "It must be said," says St. Thomas, 2 Sent. dist. 36 q. un. a. 5 ad 5, "that some act has a twofold end, namely the proximate end, which is its object, and the remote end, which the agent intends." But if the agent does not intend another end diverse from the intrinsic end itself of the action which he does, then the end of the one acting coincides with the end of the work, as appears in one who wishes to steal in order to steal, that is, in order to become richer from another's property.

Now the end of the one acting can be considered in two ways: 1. with respect to the intention of the will, that is, with respect to the act of the will intending it; 2. with respect to the act itself which is commanded as a means to that end.

Under the first consideration, the end is properly the object of the will, indeed its principal object, since the end is what moves the will to the means.

Under the second consideration, the end is a mere circumstance of the commanded act, and thus is usually numbered among the circumstances. For example, one who steals in order to commit adultery principally wills adultery; he intends this and efficaciously procures it. And from this adultery is the principal malice of the will. But the act commanded by the will of adultery for that reason, namely theft, has the substantial malice proper to itself from its proper object, namely from the taking of another's property against the owner's will. That it is extrinsically referred by the one acting to such and such an end is wholly accidental to it, not from its own nature but from the choice of the one acting.

Therefore the end which is a circumstance of the act is not the end of the work itself, which gives species to the act, but some added end; just as that the brave man acts bravely for the good of fortitude is not a circumstance, but if he acts bravely for the liberation of the city, or for Christ, or something of this kind. S. Th. 1-2 q. 7 a. 3 ad 3; q. 18 a. 6 ad 2.

The intrinsic end is always the proximate end, as is clear; but the extrinsic end can be proximate, remote, or ultimate. The proximate is immediately intended; the remote is mediately intended; the ultimate is that in which one rests.

78. Is the end of a human action single? - "The same act numerically, according as it once proceeds from the agent, is ordered only to one proximate end, from which it has species; but it can be ordered to several remote ends, one of which is the end of another." "According as it once proceeds from the agent": for there can be several ends of the act according as it is continued and repeated, for example, to take another's property so that someone may become rich from another's property; to retain or again take another's property so that it may be preserved for its owner.

"To one proximate end," that is, the end of the act or work itself. S. Th. 2-2 q. 66 a. 4 ad 2.

"From which it has species": for there can be several ends, even proximate ends, of the work of one and the same act, but there is one primary end of the work from which the species, as it were the substantial species, of the act comes; the others are accidental and rather introduce the nature of circumstances. Thus, for example, if someone undertakes a pilgrimage in order to celebrate Mass at the Shrine of the Most Sacred Heart of Jesus, the sacrifice of the Mass is the proximate end of the work from which the celebration of Mass itself intrinsically takes its species. But to celebrate in that shrine in honor of the Most Sacred Heart of Jesus is also a proximate end of the work of that celebration, yet as a certain extrinsic circumstance, not giving species to the act.

But the end of the one acting, whether proximate or remote, to which the act is ordered, can itself give species to the act. Indeed, if it is the ultimate end in some series, it is the one that most powerfully gives species to the act, because it is first in intention and all the other ends depend on it, since all those others are subordinated. Thus one who commits adultery in order to steal, and steals in order to commit homicide, is rather a murderer than an adulterer and thief, because homicide is the formal and motive reason of the other acts. "When many acts differing in species are ordered to one end, there is indeed diversity of species on the part of the exterior acts, but unity of species on the part of the interior act." S. Th. 1-2 q. 18 a. 6. "Nevertheless it is possible that one act according to the species of nature be ordered to diverse ends of the will. Thus this very thing, to kill a man, which is the same according to the species of nature, can be ordered as to an end to the preservation of justice, and to satisfying anger. And from this there will be diverse acts according to the species of morals, because in one way it will be an act of virtue, in another an act of vice." S. Th. 1-2 q. 1 a. 3 ad 3.

79. Does human action take goodness and species from the end, and does this differ from the goodness and species taken from the object? - To the first: "The end is the most principal cause of the act, insofar as it moves the agent to acting; hence also the moral act especially has species from the end." S. Th. 1-2 q. 7 a. 4; q. 1 aa. 2-3.

To the second: "The end is the object of the will, but not of the other powers. Hence, as to the act of the will, the goodness which is from the object does not differ from the goodness which is from the end, as it does in the acts of other powers; unless perhaps by accident, insofar as an end depends on an end and a will on a will." S. Th. 1-2 q. 19 a. 2 ad 1.

This occurs when several ends per se subordinated and willed at the same time are present, as when someone wills healing medicine for the sake of entering military service, and military service for the sake of victory: the formal goodness of the object, for example being healthy, differs from the goodness of another end, for example military service. It also occurs when the will of one end, for example adultery, depends on the will of another end, for example theft; as when someone wills adultery in order to steal, the malice of the object, for example adultery, also differs from the malice of the end, for example theft. Both are by accident, for it happens accidentally to an end that it be subordinated to another, and it also happens accidentally to a will that it depend on another; otherwise this would belong to every end and every volition. Cajetan on this place.

Moreover, a human act is human insofar as it is voluntary. But in a voluntary act a twofold act is found: the interior act of the will and the exterior act. Each of these has its proper object. "The end is the proper object of the will. But that about which the exterior action is concerned is its object. Therefore, just as the exterior act receives species from the object about which it is concerned, so the interior act of the will receives species from the end as from its proper object. But that which is on the part of the will has itself as formal to that which is on the part of the exterior act, because the will uses the members for acting as instruments, nor do exterior acts have the character of morality except insofar as they are voluntary. And therefore the species of a human act is considered formally according to the end, but materially according to the object of the exterior act. Hence the Philosopher says that one who steals in order to commit adultery is, speaking per se, more adulterer than thief." S. Th. 1-2 q. 18 a. 6; 2 Sent. dist. 38 q. 1 a. 4 ad 4; E. M.

80. Can the intention of an extrinsic end intrinsically change the nature of the exterior work? - Some affirm, others deny. The opinion of the latter seems to us uniquely true. The reason is: 1. because the intrinsic nature of things cannot be changed; 2. because the intention of the one acting adds nothing to the work, indeed does not even touch it, since it is wholly extrinsic to it.

Therefore our good intention cannot make an evil work good, nor can our evil intention make what is good evil, nor can it intrinsically transfer what is evil into another species of malice.

This does not prevent, as is clear, that where the object is indifferent of itself, the extrinsic end of the one acting can attribute moral goodness or malice. For this is not to change the intrinsic nature of the exterior work itself, but to determine its intrinsic indifference insofar as it is a human work; and in morals such determination is only from intention. Thus, although the depraved intention of a judge to harm the defendant cannot intrinsically change the nature of a just sentence and constitute it an unjust damage-infliction, nevertheless the intention of taking another's property determines the very taking, according as someone takes another's thing in order to preserve it for its owner, or in order to take it for himself and steal. - L. 1.3 nn. 584, 636.

81. Is an act good if it has a twofold end, one good and the other evil? - Answer: 1. Yes, if the evil end has itself merely antecedently or consequently, that is, merely precedes the whole act or is

added to an already preexisting act; or even if it has itself merely concomitantly, that is, influences nothing in the being of the act itself, but is only joined to it. The reason is that then it is wholly extrinsic to the act constituted in its whole being. For it is not the reason for which the act itself exists, but is only the reason, for example, of a certain simple complacency which precedes, accompanies, or follows the deliberate act. This simple complacency can exercise its influence without infecting the act, so that one is more easily moved to a good act; for example, if almsgiving were proposed to someone as contributing to eternal life, and to this there were joined a simple complacency in the esteem then to be had among men. S. Th. 1-2 q. 19 a. 7.

82. No, if the evil end has itself truly causatively and influences the substance of the act. The reason is that then someone wills the good, at least inadequately, under the aspect of evil, which is to will evil. "For the will to be good, it is required that it be of good under the aspect of good, that is, that it will good and for the sake of good." S. Th. loc. cit. ad 3.

Exception: unless the end is only lightly evil and is not the primary, moving, and determining end. The reason is that then the end, only lightly evil and secondary, merely impelling, does not influence the substantial being of the act itself, but only the accidental being of the act, and therefore the whole substance of the act remains good. Thus almsgiving will be good even if slight ostentation has crept into that act and truly influenced it. S. Th. 1-2 q. 18 a. 4 ad 3; Suarez disp. 8 sect. 1 n. 14 ff.

82. Does one sin who acts for the sake of delight? - Answer: Yes, if he acts for the sake of delight alone, namely by positively excluding the further honorable end of the work; and this sin, speaking per se, does not exceed venial sin. No, if he simply acts for the sake of delight.

The reason for the first is that delight is for the sake of operation, not conversely, namely so that man may be allured to operations necessary or useful for human life. Therefore delight is not the end of action, "but a means for exercising the action more constantly, more easily, and better." S. Th. 1-2 q. 4 a. 2. This is confirmed from proposition 8 condemned by Innocent XI.

The reason for the second is that since delight is not evil of itself, but good, unless someone constitutes his ultimate end in it, which would undoubtedly be grave, there is no grave disorder in human action.

The reason for the third is that delight is not evil of itself, but good, and it is consonant with the very order of nature that man be allured by delight to operating. S. Th. C. G. 3 c. 26 nn. 6-7. Therefore if someone, although thinking nothing expressly about a further honorable end, is moved by delight to an action which he apprehends as consonant with nature, or in which he finds nothing contrary to the order of reason, for example to taking food, playing, etc., he sins not at all. S. Th. 2-2 q. 141 a. 1 ad 1. - E. M.

83. What is understood by object? - By the object of a human act is not understood here whatever is set before the will; for in that way the end and circumstances would also be its object. Rather, it is understood as that thing which someone immediately, or directly and per se, wills.

The object is not considered here physically, namely as it is some existing thing. Around the same physically considered object, moral acts diverse in species can occur. Thus, for example, regarding the

same wife there can be an honorable conjugal act and a base act of adultery. The object is considered here morally, namely as it falls under the rule of morals, or under law commanding, prohibiting, or permitting. Thus the object of theft is not another's property precisely insofar as it is a thing, but insofar as right reason forbids that it be taken against the owner's will. Hence the Angelic Doctor says, 1-2 q. 19 a. 2 ad 3: "The good is represented by reason to the will as object, and insofar as it falls under the order of reason it pertains to the genus of morals, and causes moral goodness in the act of the will." - S. Th. q. 18 a. 5; Suppl. q. 41 a. 3 ad 5.

84. Do human acts derive moral goodness or malice from the object? - Answer: Yes. The reason is that acts are intrinsically specified from the object. Therefore, as they have species from the object, so also they have goodness and malice. "The good and evil of an action," says St. Thomas, 1-2 q. 18 a. 2, "as also of other things, is considered from fullness of being or defect of it. But the first thing which seems to pertain to fullness of being is that which gives species to a thing. Just as a natural thing has species from its form, so an action has species from its object, just as motion has species from its term. And therefore, just as the first goodness of a natural thing is considered from its form, which gives species to it, so also the first goodness of a moral act is considered from a suitable object. Hence also by some it is called good from its genus, for example, to use one's own thing. And just as in natural things the first evil is if the thing generated does not attain the specific form, for example if a man is not generated but something in place of a man, so the first evil in moral actions is what is from the object, as to take another's property. And it is called evil from its genus, taking genus for species, in the manner of speaking by which we call the whole human species the human genus."

85. Is an act good if the object is good but the end evil? - Answer: No. For one who acts for an evil end, although he wills the good, nevertheless wills it under the aspect of evil, and therefore, as willed by him, it is evil. S. Th. 1-2 q. 19 a. 7. Hence St. Alphonsus says, 1.5 n. 38: "If the object is good, but the end of the one acting is evil, the human act is wholly evil from the malice of the end, which destroys all goodness." - S. Th. 1-2 q. 18 aa. 4, 6; 2 Sent. dist. 38 a. 1 a. 4; Suarez disp. 6 sects. 1-2; disp. 8 sect. 1 n. 13.

86. Is an act good if the object is evil but the end good? - Answer: No. Indeed, the Apostle condemns those saying: Let us do evil that good may come. Rom. 3:8. The reason is that the intention of a good end, since it is extrinsic to the willed object itself, if that object is evil, does not prevent someone from really willing evil. - Suarez disp. 4; disp. 8 sect. 1 n. 20 ff.

87. What is understood by circumstances? - By circumstances of a human act are understood all those aspects which are accessory to the willed object, and, as it were, accidental to the substance of the act, and are willed only concomitantly or consequently. "The name circumstance," says St. Thomas, 1-2 q. 7 a. 1, "is derived from those things which are in place to human acts. In local matters something is said to stand around which is indeed extrinsic to the thing, yet touches it or approaches it according to place. And therefore whatever conditions are outside the substance of the act and yet touch the human act in some way are called circumstances. But what is outside the substance of a thing and pertains to the thing itself is called its accident. Hence the circumstances of human acts must be called their accidents."

As with the object, so circumstances are not considered here as certain accidents physically affecting the act, but as accidents of a human act: morally affecting the act itself, already constituted in moral being from the object. Morally affecting, that is, insofar as they pertain to morals. Indeed, it makes no difference to the moral being of the act that someone, for example, slapped another or stole with the right or left hand. But jurists and theologians consider circumstances differently. The former consider them rather insofar as they disturb society; the latter insofar as they more gravely offend God. - Suarez tr. 2 disp. 5.

88. Do human acts also derive their moral goodness and malice from circumstances? - Answer: Yes. Since they tend toward an object not abstract but concrete, or determined by its individuating circumstances, as they derive specific moral goodness and malice from the object, so also they derive accidental moral goodness and malice from circumstances; and from them they take on various accidental qualities. Just as man has the character of his species from the soul, while something accidental belongs to the individual man according to his individual accidents. Indeed, since good is convertible with being, just as being is said according to substance and according to accident, so also good is attributed to something both according to its substantial being and according to its accidental being, both in natural things and in moral actions. - S. Th. 1-2 q. 18 aa. 3, 9; 2-2 q. 154 a. 1.

89. Resolutions: 1. A human act can have a threefold moral goodness or malice, either within the same species or even of diverse species. Thus, for example, if someone stole a sacred thing in order to give it as a gift to a prostitute to obtain fornication from her, such an act would be theft from the object; sacrilege from the circumstance of the sacred thing; fornication from the end; and therefore it would have a threefold malice diverse in species.

90. The intrinsic and essential moral goodness or malice of an act is taken from the object. For from the object the will is first and per se, or directly, moved to the act. Hence, although for a human act to be good simply, it is required that it have no evil circumstance, nevertheless it is not required that it always have proper objective circumstances from which it receives accidental goodness or an increase of goodness, as is clear in an act concerning an altogether simple object, such as love of God. "Objective circumstances" are said, or circumstances on the part of the object; for circumstances on the part of the act itself are always at least somehow found, which confer on it some goodness or malice. Thus there is always, at least morally speaking, which is enough in the present matter, some intensity in the act, pertaining to the circumstance "how," by reason of which the act has some goodness or malice which can be called accidental, insofar as the species of the act could be preserved without it.

91. In order that circumstances confer their moral goodness or malice on an act, they must be willed either by way of object, or at least by way of act, because the object does not confer moral goodness or malice on a human act except insofar as it is intended and willed.

Objective circumstances, that is, those which hold themselves on the part of the object, must be willed by way of object, because circumstances of this kind affect the object itself, and the act indivisibly touches the object not as naked, but as clothed with its circumstances.

But circumstances which hold themselves on the part of the act must be willed either by way of object, if that circumstance is extrinsic to the act itself, as is, for example, the circumstance "who," for

the one acting can regard himself as the object of his will and will to apply the dignity or condition of his person to the work; or by way of act, if that circumstance is intrinsic to the act itself, as is, for example, the circumstance "how" or "when." Thus, for the goodness or malice of an act of the will to be increased from intensity or duration, it is enough that intensity and duration be voluntary by way of act, insofar namely as the intense, lasting act itself is voluntary, etc. - S. Th. C. G. 3 c. 138; 1-2 q. 18 aa. 4, 6, 7; Suarez disp. 4, disp. 5, disp. 6 sect. 3.

90. Can a circumstance intrinsically change the nature of the exterior work? - Answer: Yes. The reason is that a circumstance is intrinsic to the work itself, by no means extrinsic as is the end of the one acting with respect to the exterior work. Therefore it can change the external work itself.

It can change it. For not every circumstance always modifies the external work in such a way that it also intrinsically changes its nature. Thus, if a pastor recites the breviary at the time when he ought to administer the sacraments to a dying person, the intrinsic nature of the recitation of the breviary is not changed. Hence it is enough also to confess only the aforesaid omission of the administration of the sacraments.

Nor should that intrinsic change be understood in such a way that an external work intrinsically indifferent, good, or evil from its own proper nature, or in such a species by reason of its proper object, becomes by its nature determined as to malice or goodness, evil, good, or in another species. For since circumstance is something accessory to the object, if the object by reason of itself is indifferent, good, or evil and in such a species, it remains indifferent, good, or evil and in such a species under that respect; although it can also intrinsically become evil, be changed into evil, and assume another species by reason of the circumstance. Thus, for example, eating is an action indifferent of itself; but eating on a fast day after another meal has been taken is a grave sin, and therefore the action is evil not by reason of eating, but by reason of the fast day, and by this circumstance of time it becomes evil. To use marriage is an honorable action; but to use marriage after a vow of chastity is a gravely sinful action, not by reason of the use of marriage itself, but of the vow; and by this circumstance of the vow it is changed from good into evil. To steal is an action evil against justice; but to steal a sacred thing is an action evil also against religion from that circumstance of the sacred thing, whence to the malice of theft is added the malice of sacrilege.

91. How are various circumstances distinguished? - Some circumstances change the nature of the work or act merely accidentally, namely within the same species; they increase or diminish moral goodness or malice, and therefore are called aggravating or diminishing. These can be either simply such, or notably, that is, greatly aggravating or diminishing. Circumstances of this kind are all those which do not have goodness or malice according to themselves, but through order to another condition of the act which has that goodness or malice according to itself. Hence they increase or diminish the aforesaid goodness or malice. Thus, for example, intensity and remission of the act, or a long or short delay of the act, does not have moral goodness or malice according to itself, but only through order to a good or evil act, of which it consequently constitutes only accidental diversity. Thus also, to take something in greater or lesser quantity does not regard the order of reason in good or evil according to itself, but presupposes some other condition through which the act has malice or goodness, for example,

that it is another's property, which according to itself is opposed to reason. Hence taking another's property in greater or lesser quantity does not diversify the species of sin.

Other circumstances essentially change the nature of the work and act, and are called species-changing. Circumstances of this kind are those which according to themselves regard a special order of reason. Thus, for example, taking another's property has species from the aspect of "another's," for from this it is constituted in the species of theft. And if, besides this, place or time is considered, these will have themselves in the nature of circumstance. But because reason can also order concerning place or time and other things of this kind, it happens that the condition of place around the object is taken as contrary according to itself to the order of reason; for example, reason orders that injury not be done in a sacred place. Hence taking something belonging to another from a sacred place adds a special repugnance to the order of reason. And therefore place, which was earlier considered as a simple circumstance, is now considered as a principal condition of the object repugnant to reason. Hence St. Thomas says, q. 18 a. 10 ad 2: "A circumstance remaining in the nature of circumstance, since it has the nature of an accident, does not give species; but insofar as it is changed into a principal condition of the object, according to this it gives species."

Circumstances which change a sin only from venial into mortal are, under one respect, only aggravating; and they are called aggravating to infinity, if the mere opposition to such a virtue is considered, as can be seen in slight and grave theft: for both are opposed to the same virtue of justice. Under another respect, they are species-changing, if one considers opposition and repugnance to the general rule of morals, namely to law and to the end to be attained.

Circumstances which attribute a new species to an act already constituted in some moral species are called species-adding. Thus, if someone bound by vow sins against chastity, another malice against religion is added to the malice of the sin against chastity. But if the malice of the new species is not grave but light, then that circumstance is held either as simply aggravating, or indeed as changing species but with the addition "lightly"; for then the whole specific substance of the act still remains intact, and, morally speaking, no substantial change of the act is added. Thus, regarding a merely internal sin against chastity committed in a church, if there is in it a malice of sacrilege, it is only light, and therefore is not a circumstance strictly and properly changing species, but aggravating.

But circumstances which first render an act simply good or evil are called species-changing or species-attributing; for example, if someone undertakes a journey from the end of exercising a work of charity, that journey, of itself indifferent, first passes into an act of virtue; if someone gives alms only from vainglory, then that almsgiving, although good in itself, becomes evil. - S. Th. 2 Sent. dist. 38 q. 1 a. 4.

92. Is an act good if the circumstance is evil? - Answer: 1. No, if the question concerns one and the same act of the will in the genus of morals. The reason is that the act of the will, which includes all these things together, namely object and circumstances, is one most simple act, and therefore, if it is not good from every side, it will be evil. Exception: unless it is a circumstance only lightly evil. For this lightly evil circumstance does not corrupt a good act, since it is wholly accidental to the substance of the act constituted in itself. This happens in natural things; the same ought much more to be in moral things. Thus affection toward mortal

sin in Communion substantially corrupts it and renders it sacrilegious; affection toward venial sin in Communion does not corrupt it in its substance, although it renders it less fruitful.

93. Yes, if the question concerns one and the same act in the genus of nature which is multiple in the genus of morals. The reason is that then such an evil circumstance is wholly extrinsic to the good act itself. Thus in the celebration of Mass, a priest consecrating in the state of grace places a good act; then by gravely sinning through adhering to a base thought, and receiving sacrilegious communion, he places an evil act.

94. How many circumstances of human acts are numbered? - Seven, and they are: who, what, where, by what aids, why, how, when. "The reason for this enumeration can be taken thus. Circumstance is so called as existing outside the substance of the act, yet in such a way that it touches the act in some way. This can happen in three ways. In one way, insofar as it touches the act itself. In another way, insofar as it touches the cause of the act. In a third way, insofar as it touches the effect. It touches the act itself either by way of measure, as time and place, or by way of the quality of the act, as the manner of acting. On the part of the effect, when what someone has done is considered. On the part of the cause of the act, as to final cause, why is taken; on the part of the material cause or object, about what is taken, which is included under what; on the part of the principal agent, who acted is taken; and on the part of the instrumental efficient cause, by what aids is taken." S. Th. 1-2 q. 7 a. 3.

95. How are the aforesaid circumstances to be considered? - They are not to be taken insofar as the substance of the act depends on them, but insofar as they accidentally affect it. Otherwise they would no longer have the nature of circumstances.

Therefore: 1. Who does not signify the substance of the one acting, but his quality or condition, for example, that he is bound by vow, joined in marriage, a public magistrate, etc. To this circumstance Lugo, *De Poenit*. disp. 16 n. 200, recalls the custom of sin; for through it is explained how someone is disposed to sin more easily. The circumstance of person, generally speaking, does not transfer a sin into another species unless the sin is directly opposed to the bond, office carrying a special obligation, vow, or state of that person; as if a priest fornicates, it passes into sacrilege, but if he blasphemes, he is guilty only of blasphemy, like another blasphemer. - S. Th. 2-2 q. 45 a. 4; q. 110 a. 4 ad 5; Lugo, *De Poenit*. disp. 16 sect. 4.

2. What and about what likewise do not express the substance of the effect or object, but its quality or quantity. For example, in theft it does not denote that the stolen thing is another's property, for this pertains to the very substance of the act, but that it is sacred or profane, of great or small quantity, with damage thereby to a poor person, wards, marriageable girls, with scandal of many, etc. The circumstance what and about what can easily be species-changing. But what, that is, the effect, when it is foreseen and willed, draws into its own species. Cf. 35 ff. To this circumstance can be recalled how many times, or multiplication of acts. St. Thomas, however, did not count this among the circumstances. The reason is that circumstances are around the same act. But the number of operations does not stand around one and the same operation. For the second theft is not a circumstance of the first, or conversely; nor the third of the second, and so on. From this it follows that, because someone is no less bound to confess the second sin than the first, and no less the hundredth than any other, it is not enough to say

that he stole several times; rather, he must explain how many times he stole, if he remembers the number; and if he does not remember, he must express how frequently, so that a likely number is had. - Lugo loc. cit. sect. 4 §7; sects. 5, 6, 9.

3. Where does not signify the bare place; for it is certain that every act of man happens somewhere. Rather, it signifies the quality of the place, for example that it is public, whence scandal arises; that it is sacred, whence sacrilege is had, etc. The circumstance of a sacred place, although it aggravates all sins by accident, draws into the species of grave sacrilege only those sins which are directly opposed to the sanctity of the place or to the immunity attached to it, such as effusions of blood or human seed, which impede the divine worship to be shown there, for which the place is directly sanctified, and violent extractions, which are contrary to immunity, and similar things. - Lugo loc. cit. sect. 10.

4. By what aids signifies accidental instruments or means which the one acting used, for example, if someone used sacred vessels for poisoning, employed the help of a demon, or induced other men by command or counsel to the execution of sin. Although this circumstance sometimes seems to have itself merely materially to sin, sometimes it also changes species. - Lugo loc. cit. nn. 475-476.

5. Why denotes not the intrinsic end of the work, for this pertains to the substance of the act, but the extrinsic end and the end of the one acting, as if someone steals in order to get drunk. Why can manifestly give another species to the act. - Lugo loc. cit. n. 477 ff.

6. How designates the accidental mode by which the interior act of the will happens, for example intensely or remissly, from contempt, from levity, from ignorance, from fear, from passion. It also designates the mode of exterior action, for example that you killed by poison, by sword, with cruelty and savagery, etc. How, although ordinarily aggravating or diminishing sin, can sometimes also give species. - Lugo loc. cit. n. 497 ff.; Laymann 1.3, *De Iust.*, tr. 3 p. 3 c. 4 n. 1; Tamburini, *Meth. Confess.* 1.2 c. 6 n. 2; S. Th. 2-2 q. 66 a. 3 ad 1, a. 4.

7. When signifies the quality or quantity of time, for example on a feast day, a day of communion, Holy Week; for a long time, for a short time. The circumstance of sacred time aggravates sin, but does not add the grave species of sacrilege unless it is done in contempt of sacred time. - Lugo loc. cit. n. 515 ff.; Lessius on q. 7; Cajetan on the same question; L. 1.6 n. 923; S. Th. 4 Sent. dist. 32 q. 1 a. 5, q. 4 sol. 2.

On Conscience

I. - On The Nature Of Conscience

95. What is conscience, and how many acceptations does it have? - Conscience can be taken in two ways, physically and morally. Conscience viewed physically pertains to psychology and logic, according as it is considered either precisely insofar as the cognitive faculty is able to return upon its own acts, or precisely insofar as it is an instrument for attaining truth. But conscience viewed morally pertains both to moral theology and to moral philosophy. Therefore here the

discussion will concern conscience taken only morally. We shall speak first of the intrinsic nature of this moral conscience, then of its various divisions.

96. What is the intrinsic nature of moral conscience? - Law regulates human actions in order to their moral honorableness or baseness by means of conscience. For, in order to regulate them, it must be applied to the action to be done here and now, so that it may be seen whether such an action is commanded, prohibited, permitted, or counseled by law. From this application a judgment is then formed about such and such an action to be done or omitted here and now; and this practical judgment is conscience.

Therefore conscience is nothing other than a practical judgment by which we pronounce the thing to be done or omitted here and now as good or evil, and this by way of precept, counsel, or simple permission.

In order, then, that we may form this conscience, we make a syllogism. In this syllogism the major proposition generally states the law. The minor proposition of the same syllogism compares the action which we wish to do here and now with the law. Finally, the conclusion, from the conformity or deformity of such and such an action with the law affirmed in the premises, pronounces that such and such an action is to be done here and now as good, or omitted as evil; and this judgment or dictate is called conscience. "Dictate," because to dictate is to command, to order; and conscience is like an interior law which binds man. "Judgment," because, although as dictate it concerns only those things which ought to be done or omitted, as judgment it also concerns those things which can be done or omitted. - S. Th. 1 p. q. 79 a. 13; 1-2 q. 76 a. 1; *De Verit*. q. 16 a. 1; q. 17 aa. 1, 5; 2 Sent. dist. 24 q. 1 a. 4; q. 2 a. 4; Suarez tr. 3 disp. 12 sect. 1; L. 1.1 nn. 1-2.

97. What are antecedent and consequent conscience? - The moral conscience whose nature we have just described, and of which we speak in the present place, is called antecedent conscience, so that it may be distinguished from another moral conscience, which is called consequent. This latter refers an action already done as having been morally good or evil.

To avoid quibbles about that prior conscience, namely that it should not be called conscience since it bears judgment about a thing not done but to be done, for conscience reports internal facts, we briefly note that usage has now prevailed that it be so called. In this matter usage is a sufficient reason.

Now the formal goodness or malice of human acts must be taken not from consequent conscience, but from antecedent conscience. Hence those who study moral theology are sometimes deceived because they think, after acquiring knowledge, that they had sinned in many things; whereas they lacked that knowledge when they acted, and were then in good faith. The same should be said about the uneducated and all others who, after hearing a sermon or reading a pious book, begin to be anxious about past actions. - S. Th. 1 p. q. 79 a. 3; *De Verit*. q. 17 aa. 1-2.

98. What are the divisions of moral conscience? - If, in that syllogism which must be formed in order to have conscience, the major proposition, or law, were always established with evident certainty, and the minor proposition, or that this or that action is contained in the law, were also always established with evident certainty, there would be only one conscience: certain and

right conscience. But since both law and the application of law often must be gathered by force of difficult reasoning, there are various species of conscience.

Therefore it is divided: 1. Into right and erroneous conscience. The right is that which dictates what is true; the erroneous is that which dictates as true what is false. Erroneous conscience is either vincibly or invincibly such, according as the error could and ought morally to have been avoided, or could not morally have been avoided.

2. Into certain, probable, doubtful, strict, lax, and scrupulous conscience, according as it is founded on a certain, probable, doubtful, stricter, laxer, or wholly empty motive. Conscience only subjectively certain, namely that which is thought such, and therefore certainty taken more broadly, and likewise probable and doubtful conscience, can be objectively right or erroneous. Scrupulous, strict, and lax conscience are recalled to the erroneous. For without sufficient reason, scrupulous conscience fears sin where there is no sin; lax conscience bends judgment in favor of liberty, either to avoid the law simply or to diminish its obligation; but strict conscience affirms either an obligation which is not present, or a graver obligation than is in reality present. - Suarez disp. 12 sect. 2; S. Th. 1-2 q. 19 a. 3, a. 6 ad 2.

II. - On Certain Conscience

99. What is certain conscience, and what is its directive force? - To the first: Certain conscience properly is that conscience which rests on a certain motive, and consequently judges about the honorableness or baseness of the action to be done without fear of erring. Less properly, it is that which simply judges about the honorableness or baseness of the action without any fear of erring. The latter is only subjectively certain; the former is also objectively certain.

To the second: The directive force of certain conscience is declared in the following propositions, nn. 100, 102-106.

100. It is unlawful to act without a subjectively certain conscience concerning the honorableness of the action. - Proof: One who acts without this conscience wills an action about whose honorableness or baseness he is uncertain. But to will an action about whose honorableness or baseness one is uncertain is nothing other than to will it whether it is good or evil. But again, to will an action whether it is good or evil is illicit; for this is a will consenting to evil. Therefore. - S. Th. 1-2 q. 19 aa. 3, 5; Quodl. 3 a. 27 ad 2; L. 1.1 n. 3; Suarez disp. 12 sect. 3; E. M.

101. Note: Sin, precisely from the fact that it is against conscience, does not have a special malice, unless it is done so that conscience may be overcome. The first reason is that this is intrinsic and common to every sin, that it is against conscience. The second reason is that then contempt is directly willed against the rule of every good operation, and thus one exposes oneself to the danger of all crimes, which, as is clear, is a special and most grave disorder of the will against the natural inclination of the will into good. - Lessius on q. 19 a. 6 disp. 3.

102. Only subjectively certain conscience is the rule of morals. But morally certain conscience suffices. - Proof of the first part: As is established from the prior proposition, n. 100, one

cannot act without this conscience. Beyond this conscience no more perfect subjective conscience is given. Therefore one can act with this conscience alone; and therefore this conscience alone is the rule of morals. Proof of the second part: 1. From the common opinion of doctors and universal practice. 2. Because most often no other certainty can be had, and no one necessarily sins. 3. Because, while this moral certainty stands, one acts prudently; for although moral certainty does not exclude every doubt, both prudent and imprudent, it does exclude every prudent doubt. Therefore. - S. Th. 2-2 q. 70 a. 2.

103. It is lawful to act according to a certain but invincibly erroneous conscience. - Proof: One who so acts wills, as far as he is concerned, a good action, and consents only to a good action. But it is right to will this action. Therefore. Proof of the major: nothing is willed unless known beforehand. Therefore, while invincibly erroneous conscience stands, one who acts according to it wills, as far as he is concerned, a good action and consents only to a good action. - L. 1.1 n. 5; Elbel 126.

104. It is unlawful to act against a certain but invincibly erroneous conscience. - Proof: One who so acted would will an action which he judged prohibited; he would not will an action which he judged commanded. But it is unlawful to have this will, because it is a will consenting to evil. Therefore. "It must be said that simply every will discordant from reason, whether right or erring, is always evil." S. Th. 1-2 q. 19 a. 5; 2 Sent. dist. 39 q. 3 a. 3; Quodl. 3 a. 27; L. loc. cit.; Cajetan on 1-2 q. 19 a. 5; Suarez disp. 12 sect. 4.

105. It is lawful to act according to a certain conscience, although vincibly erroneous. - Proof: Because since the action is judged with certainty to be honorable or base, the will acting according to this conscience pursues the honorable and flees the base, which is altogether lawful. But the fact that this conscience is vincibly erroneous does not make it that, when someone actually acts according to it, he sins; rather, this makes the fault be only in the cause. Hence also it is that judgment about its gravity or lightness must be made not from the grave or light effect, but from the grave or light negligence in inquiring into the truth. Now when someone actually acts, if he in no way attends to the erroneous conscience which he has and has no suspicion about it, since conscience is certain here and now by hypothesis, he now acts not from a vincibly erroneous conscience, but from an invincible conscience. - La-Croix 1.1 nn. 42, 43, 757, 760.

106. It is unlawful to act against a certain but vincibly erroneous conscience. - Proof: Because then someone would act against a certain judgment; he would will an action which he judges prohibited, and would not will an action which he judges commanded. This will is evil, for it is affected toward evil. Therefore. S. Th. 1-2 q. 19 aa. 5-6; Suarez disp. 12 sect. 4; Elbel 122, 137, 138; L. 1.1 n. 4; La-Croix 1.1 nn. 42, 43, 757. "And therefore it must be said that every conscience, whether right or erroneous, whether in things evil per se or in indifferent things, is obligatory, so that one who acts against conscience sins." S. Th. Quodl. 3 a. 27.

107. Note: "A sin committed against conscience has its species from the particular matter in which it is thought to be concerned, or from order to the particular precept to which it is thought to be opposed. For example, if you think the thing which you take is not yours, although it is really yours, there will be the sin of theft; if you think it is against the obligation of a vow, there will be the sin of sacrilege. The reason is that sins receive species from the object either

of the external action or of the will. Nor does it matter whether this object is really evil, but whether it is apprehended as evil; because the will is borne toward it as proposed by reason." Lessius on q. 19 a. 6 disp. 3; S. Th. 1-2 q. 19 a. 5 ad 3.

108. Can someone labor under an invincibly erroneous conscience regarding evil desires and other merely internal acts, if namely no exterior action follows? - Speaking explicitly and generally about desire, Elbel has this, n. 127: "That many, at least among the more uneducated and less instructed, can inculpably persuade themselves that desires of this kind are not evil unless they are completed by deed, seems sufficiently certain, which Sanchez, Stoz, and La-Croix expressly teach." St. Alphonsus says of this opinion, 1.1 n. 9: "I could never judge it probable... With other learned recent authors I judge it scarcely probable." The reason for this opinion is that if someone certainly knows the malice of the external action, and nevertheless wills to execute it, he already knows that he wills evil. How then will he be excused from sin? But regarding simple delight, such invincible ignorance can more easily be present; for the tendency of the will into evil is not as evident as in desire of itself efficacious. The same also seems to be said about inefficacious desire.

109. Can invincibly erroneous conscience be given concerning precepts of the law of nature? - "It is certain that in the first principles of natural law, as also in proximate conclusions and certain obligations of one's own state, invincible ignorance is not given, because by the very light of nature such things are known to all, except those who close their eyes lest they see them... On the contrary, the unanimous opinion of theologians is... that in conclusions mediate and obscure, or remote from the principles, invincible ignorance is indeed given and must be admitted." L. 1.1 nn. 8, 170 ff.; Struggl tr. 3 q. 1 nn. 10-13; S. Th. Quodl. 3 a. 26; *De Verit*. q. 17 a. 2.

110. Can children invincibly be ignorant of the malice of pollution? - Answer: Yes, absolutely speaking, at least in some rare case and at the beginning of a depraved habit. The reason is that it is not so evidently known from the very comprehension of the first principles that an immodest look or touch, or the pursuit of pleasure from pollution procured, or even naturally arisen, etc., is morally evil and illicit; rather, discourse is needed to detect their malice. Therefore their malice can at least for some time be inculpably unknown. From this the prudent confessor will easily conclude that, in such a contingency of fact, one must proceed cautiously and prudently; and this caution and prudence, if it must be observed with all especially in the matter of chastity, must be observed especially with boys and girls. Elbel 128; Struggl loc. cit. n. 13.

III. - On Probable Conscience

111. What is probable conscience, and what is its directive force? - To the first: "Probable conscience is that by which someone, relying on some probable opinion, forms for himself a practical dictate of reason from certain reflex principles, or accompanying principles, for acting lawfully." L. 1.1 n. 40. Thus, for example, Titius the confessor, relying on a probable opinion, judges that he probably has jurisdiction. Then he says, and this is in the case the reflex principle: But while jurisdiction is truly probable in the case, the Church certainly supplies it. Therefore, he

concludes, and this is the practical dictate of conscience: I can absolve validly and lawfully in the case; and he absolves.

To the second: The directive force of probable conscience is declared in the following propositions, nn. 113, 114, 116, 118, 119.

112. Note: "There are diverse species of probabilities... A tenuously probable opinion is one which rests on some foundation, but not such as can draw the assent of a prudent man to itself... A probable opinion is one which rests on a grave moment, either of intrinsic reason or extrinsic authority, which can draw the assent of a prudent man to itself, even with fear of the opposite. A more probable opinion is one which rests on a graver foundation, but also with prudent fear of the opposite, so that the contrary is also judged probable. A most probable opinion is one which rests on a most grave foundation, and for that reason the opposite is judged either tenuously or doubtfully probable... An opinion or sentence morally certain is one which excludes every prudent fear of falsity, so that the opposite is judged altogether improbable. Finally, a safe opinion is one which recedes from every danger of sinning. The safer is that which recedes more from such danger, even if it does not rest on stronger reasons." L. loc. cit.

But St. Alphonsus says more precisely about the most probable opinion, H. A. tr. 1 n. 65: "Unless we wish to confuse a most probable opinion with an absolutely certain opinion, one must say that the opinion contrary to the most probable is not tenuously probable, but doubtfully probable." The reason is that a most probable opinion "is within the limits of probability," and therefore "does not exclude every prudent fear." "But tenuous probability is not true probability, and therefore does not bring with it a prudent reason. But doubtful probability brings some prudent reason, although not an altogether certain and stable one." Cf. also *Op. Mor.* 1.1 n. 85.

But, lest there be a quibble about words, as far as we are concerned we acknowledge no opinions within the limits of true probability except the probable opinion, the more probable, and the most probable. Below the probable there is only the non-probable, the improbable, although there can be various degrees of this; above the most probable there is only the certain. The probable is immediately opposed, by opposition of comparison, to the more probable, but mediately to the most probable; likewise the most probable is immediately opposed to the more probable, but mediately to the probable, unless someone wishes to confuse the most probable with the certain in reality.

113. With a practically probable conscience, namely one which proximately directs the action really to be placed here and now, it is altogether unlawful to operate. For as we already said, n. 102, only subjectively certain conscience is the rule of morals. And in this sense that saying is consequently false: One who acts probably, acts prudently. L. 1.1 nn. 58, 69, 80.

Therefore the whole question here concerns speculatively probable conscience, namely one which only remotely directs action by stating the probable existence of law: whether by means of some reasoning we can rightly make the step from a speculatively probable conscience to a practically certain conscience; or, what is the same, whether, while a probable opinion about the honorableness of some action in general stands, we can form for ourselves a certain conscience about the honorableness of such an action in a particular and individual case, and thus lawfully follow in

practice a speculatively probable opinion. To resolve this question we establish the following propositions.

114. It is not lawful in practice to follow a tenuously probable opinion, leaving the safer opinion. - This is first clear from the third proposition condemned by Innocent XI. Moreover, a tenuously probable opinion is an opinion resting on a tenuous motive; but a tenuous motive is by no means sufficient to move a serious or prudent man to assent, and therefore is not truly probable. Indeed, a truly probable opinion is said to be one which rests on such a motive as is sufficient to move a prudent man to assent. But if such an opinion is insufficient to move a prudent man to judgment about the non-existence of law, it is impossible to form for oneself a conscience about the lawfulness of the action. - L. 1.1 n. 40; E. M.

115. Resolutions: 1. From the cited proposition condemned by Innocent XI, both because it deals even with tenuous probability and because it asserts too generally that we always act prudently when, relying on probability, we do something, nothing can be drawn against probabilism. For tenuous probability is not true probability. Nor is probabilism extended to the case where the truth of the thing and an end to be absolutely obtained are in question.

116. Hence neither is it lawful in practice to follow a doubtfully probable opinion. For a doubtfully probable opinion is an opinion resting on a doubtful motive, about which it can prudently be doubted whether it is sufficient to move a prudent man to assent. But it is evident that a prudent man in matters of grave moment does not rely on a motive of this kind; hence, if the matter does not in reality go well, all would deservedly accuse him of imprudence. But the moral goodness or malice of human acts is a graver matter than any other temporal business. Moreover, while this doubtful probability stands, it is impossible to form for oneself a morally certain practical dictate about the lawfulness of the action.

117. Therefore a gravely probable opinion is opposed to a tenuously probable opinion; a certainly probable opinion is opposed to a doubtfully probable opinion. There are those who confuse doubtfully probable and tenuously probable opinion with one another. In practice they are indeed often confused; but speculatively, considering the nature of the thing, they are entirely distinguished from one another. Cf. 112, 116; La-Croix 1.1 n. 126.

118. It is not lawful to follow a probable opinion about the objective truth of the thing itself, when the end is to be obtained absolutely, leaving the safer opinion. - Proof: One who is absolutely bound to the end is bound to choose those means which by no means place the end to be obtained in danger. But a probable opinion, since it can be false, brings danger of frustrating the end which must be obtained absolutely. For objective truth or existence of the thing certainly will not be had if the probable opinion about it is false. Therefore. L. 1.1 n. 42. It is said "to be obtained absolutely," namely "when someone is bound by justice or charity to avoid damage which is really present," Suarez apud St. Alphonsus, *Op. Mor.*, Rome ed. 1757, loc. cit. n. 83, or danger of it. Then indeed "in doubts the safer way must be chosen." C. *Illud* 5, *De Cler. exc.* The case must likewise be added in which someone is bound to the safer course by some special positive law or precept, or by contract, or vow. - Suarez disp. 12 sect. 5 n. 8; sect. 6 n. 10; L. 1.2 n. 10; 1.6 n. 918, last part.

119. Resolutions: 1. It is not lawful to follow a probable opinion, but we must altogether choose the safer in all those things which are necessary by necessity of means for salvation, where the fact itself, or the truth of the thing, is alone considered. Hence we must embrace the safer religion. Proposition 4 condemned by Innocent XI; L. 1.1 n. 43.

120. In the conferral of sacraments the minister is bound to follow the safer opinion, unless there is necessity or the Church supplies; for again the truth of the thing is involved. The sacraments would not be had unless those things which Christ instituted for their validity were really placed. Proposition 1 condemned by Innocent XI.

"Unless necessity is present"; "for in extreme necessity we can well use any opinion, not only probable, but even tenuously probable, for the validity of a sacrament... provided the sacrament is conferred conditionally, because the condition sufficiently repairs the injury to the sacrament if perhaps it is conferred invalidly, and, on the other hand, necessity is a sufficient and just cause for conferring sacraments conditionally." L. 1.1 n. 49.

"Unless the Church supplies"; for "we can lawfully use a probable opinion where the Church is presumed to supply, as can happen in the sacrament of marriage to validate a contract only probably valid, if perhaps that contract is null because of an impediment which the Church removes by supplying; and in the sacrament of penance to supply the jurisdiction of the confessor, if perhaps it is lacking." L. 1.1 n. 50.

3. A physician is bound to use the safer medicines which can be had in the case; for here the objective effect itself is involved, that is, the health of the sick person, which must be obtained absolutely. And indeed the physician is bound not only by charity, but also by justice, by reason of office and tacit contract, to provide in the better way for the health of the sick person from whom he receives payment. L. 1.1 n. 44.

4. A judge cannot judge according to the less probable opinion; for he is bound by divine and human precept to give each one his right. Proposition 2 condemned by Innocent XI; L. 1.1 n. 47.

5. A hunter who probably judges that an object hidden in the woods is a man cannot shoot, although he more probably judges that it is a beast. For on one side the neighbor has a certain right to his life; on the other, greater probability does not make it that, if it is really a man, he will not perish by the shot. L. 1.1 n. 52; H. A. tr. 1 n. 33.

6. When scandals and graver evils threaten, the safer part by which they are avoided must be chosen, so that the welfare of all may be consulted. C. *Illud* 5, *De Cler. exc.* - E. M.

7. It is lawful to follow the most probable opinion, and even the more probable opinion, leaving the safer, where the question concerns only the honorableness of the action. - The honorableness of the action in question here is quite different from the effect of the action itself, or from the truth of the thing, which was discussed in the preceding proposition. The honorableness of a human action depends on the dictate of conscience, which is the proximate rule of human acts; the effect of the action, or truth of the thing, depends on the fact itself of the action. The former is subjective, the latter objective. - Proof of the first part from

proposition 3 condemned by Innocent XI. - Proof of the second part by the same reasons as the following proposition. - L. 1.1 nn. 40, 54; Suarez disp. 12 sect. 6 n. 8; E. M.

8. It is lawful to follow a truly probable opinion, leaving the safer, equally probable, or even truly more probable opinion, where the question concerns only the honorableness of the action. - Proof 1. The stated proposition is established from the authority of many and most grave theologians, who not only hand it down, but also affirm it as common doctrine. But one who follows in practice a doctrine which many and very grave theologians teach, and which doctors commonly hand down, acts prudently; and one who acts prudently acts honorably. Therefore.

Proof of the major. Suarez, to hear whom is to hear the whole school, says this in *De Relig.*, tom. 4, tr. 9, 1.4 c. 15 n. 21: "According to common doctrine, it is lawful per se in practice to follow a probable opinion concerning the honorableness of an act, leaving the more probable."

The most learned and erudite Lucius Ferraris says this in his *Bibliotheca Canonica*, v. *Conscientia*, n. 78: "That a man can lawfully follow an opinion which is indeed true but less probable and less safe, leaving the more probable and safer, when nevertheless the question concerns only the honorableness of the action, whether it is lawful or not, is now almost common, and innumerable doctors teach it, both recent and ancient, all of whom it would be too long and laborious to adduce."

Lugo, of whom St. Alphonsus says, 1.3 n. 552, that "after St. Thomas he can easily be called foremost among other theologians, and not rashly," says in *De Poenit.* disp. 22 n. 39: "No one is bound in acting to follow more probable opinions, but can follow probable opinions, speaking regularly." And in *Resp. Mor.* 1.1 n. 26 he supposes the same as altogether undoubted and commonly received.

The most learned Struggl, tr. 1 q. 4 a. 2 n. 18, says: "In matter of law, or when the question immediately concerns only the lawfulness of an action, it is lawful to follow the less safe and less probable opinion in concurrence with the more probable and safer, provided that it is certainly and truly probable. Thus the very common opinion of recent authors and many others from every school..." And lower down in the same place: "If it were not lawful to follow an opinion less, yet truly, probable, then our present conclusion would contain a universal error... Because our present conclusion is not only a general rule for the use of probable opinions, but also, after Medina, who wrote in 1577, so prevailed that long ago ten patrons of our opinion could have been opposed to one adversary author, as Fr. Esparza testifies in the appendix, a. 2 n. 32."

La-Croix, very commonly praised by the doctors, 1.1 n. 268 ff.: "It is proved that it is lawful to follow a probable opinion, leaving the more probable... by the common consent of doctors; for from every age, state, and condition more than 160 authors printed in type could be brought for this opinion, according to Arsdekin; Terillus cites 200 of them, most of them inspected by him; Gobat adds another 25; Moya adds many others." And in the same work, n. 478 ff.: "That it is lawful to follow a probable opinion, leaving the safer... the authors very commonly teach."

The erudite and learned Pignatelli, *Consult. Can.*, tom. 4, cons. 112 nn. 3-4: "A probable opinion excuses from sin according to very many and most learned men, namely Vasquez... In matters of law, it is lawful to follow any probable opinion, even if it is less probable and less safe... Because every probable opinion is within the bounds of right reason; otherwise it would not be probable," etc. And

tom. 1, cons. 182 n. 1: "Very many teach that among two probable opinions it is within one's choice in practice to adhere to the laxer, and this not only if it is more probable, but even if less probable."

Vasquez, certainly an outstanding theologian, on 1-2 disp. 62 c. 4 n. 14, says: "I consider true the opinion which Bartholomew Medina follows, and which long before was already common in the schools, namely that it is lawful for a learned man to act against his own opinion, which he thinks more probable, according to the opinion of others, even if the opinion of others is less safe and in his judgment less probable, provided it is not destitute of reason and probability." And lower down, c. 8 nn. 42-43, he says that an unlettered man can follow the opinion of a learned and upright man.

Elbel, whom St. Alphonsus calls learned, 1.3 n. 51, *Conferent.* 7, *De Conscientia*, n. 185: "Speaking per se, it is not illicit to follow the less probable in questions of law, that is, when the question concerns only the honorableness or lawfulness of some action. Thus today doctors teach sufficiently commonly: Terillus, Manstrius, Herincx, Sporer, Reiffenstuel, Felix Potestas, Ilsung, Castropalaus, La-Croix, Stoz, Banbestuber, and innumerable others, so that Stephen Spinola rightly wrote that this opinion has been confirmed by the calculation of all recent authors and by the almost universal use of peoples."

Castropalaus, a most weighty theologian, tr. 1 disp. 2 punct. 2 n. 2: "It is the common opinion, and to me the more probable, that an opinion less probable and safe can be chosen, leaving one's own more probable and safer opinion; thus hold Valencia, Pasqualigo, Salas referring innumerable others, Navarrus, Sayrus, Thomas Sanchez with several related, Joannes Sanchez alleging them and many others."

Sporer, an altogether grave theologian, on the Decalogue, tr. 1 n. 41: "Among diverse and opposed opinions about the same matter, each of which is truly probable, speaking per se and as far as the honorableness of the action is concerned, anyone can lawfully follow any one, even the less probable and less safe, even against his own opinion which seems more probable or safer; and indeed sometimes he must, especially a subject and a confessor in sacramental judgment. This is still the more common and safe opinion." Sanchez, a most outstanding moralist, teaches the same as "much more probable," in *Decal.* 1.1 c. 9 n. 14, etc.

Omitting the rest, St. Alphonsus says this in his *Dissertation on the Moderate Use of Probable Opinion in Concurrence with the More Probable*, old Naples edition 1755: "We undertake to prove the last, more benign and very common opinion, namely that it is lawful to use a probable opinion even in concurrence with the more probable for the law, whenever that opinion has a certain and grave foundation."

Proof of the minor. "I think," says St. Alphonsus, although in another question, 1.6 n. 460, paragraph beginning "Haec autem," "that he by no means errs who directs himself by opinions commonly received from doctors of this kind and not of humble note. To say that they wrote from passion, so that their own doctrines might be received with applause, or because of something of this kind, does not seem to lack some stain of temerity. But if this is not to be judged, then it should not be believed that these grave doctors were left destitute by God of his light in a matter which concerns the direction of the consciences of the whole Christian people; especially since no proscription of the Church has intervened concerning such opinions. Nor does it prove anything that many opinions which circulate have not been condemned by the Church, and yet by others are more commonly

regarded as lax; for the Church does not condemn all opinions which regard particular cases, although she does not approve them. But opinions which concern the universality of consciences the Church neither approves nor passes over in silence, as St. Augustine said, Epist. 119: The Church of God tolerates many things, and yet those things which concern faith or good life she neither approves nor passes over in silence." - Struggl loc. cit.; L. 1.3 n. 669 toward the end, "Hoc unum," etc.

And concerning this very question, in the dissertation just cited, the Holy Doctor immediately adds: "Add to these especially this argument, namely that if the benign opinion had been false, it would certainly not have been commonly received everywhere by doctors, as it truly was received, or at least the Church would not have tolerated it, permitting souls commonly to walk on this road of perdition, as the adversaries cry out, deceived by such blind guides."

Proof 2. One who follows in practice an opinion which stands within the bounds of right reason and prudence acts prudently and consequently honorably. But one who follows in practice a truly probable opinion, leaving the more probable and safer, follows an opinion which stands within the bounds of right reason and prudence. Therefore. The major is clear of itself. And Benedict XIV, in *Apostolica Constitutio* §21, indeed hands down this rule of acting: that we follow the opinion which reason persuades and authority strengthens. Moreover, it is by no means consonant with right reason, and especially with divine goodness, to wish to oblige a man to perform something no matter what, when after diligent inquiry it remains prudently uncertain to the man himself whether it is required by order or not; especially since doubts of this kind are very frequent because of the weakness of the human intellect itself. This would be to impose unbearable burdens. L. 58, 86; S. Th. 1-2 q. 19 a. 10 ad 1. The minor is clear from the very nature and definition of a truly probable opinion, which is not changed by the concurrence of another opinion, although more probable and safer. St. Alphonsus himself openly affirms this in the definition of the more probable opinion, for he says that its contrary is also judged probable. Cf. 112; Muzzarelli, *Dissert. de Regul. mor. opin.*, Rome 1807, pp. 30 ff.

Proof 3. St. Alphonsus says this in his *Opus Morale Theologicum*, sixth edition, Rome 1767: "There are two principles on which, relying, I defend the lawful use of probable opinion. The first: that a doubtful law, in the conflict of two equally probable opinions, does not oblige, because a doubtful law is not sufficiently promulgated. The second: that an uncertain law cannot induce a certain obligation, because the obligation of law is posterior to the liberty with which man has been endowed by God." Both principles are explained and proved at length by the Holy Doctor, 1.1 n. 66 ff.; H. A. tr. 1 n. 37 ff.

But when a truly probable opinion is present, even in concurrence with another more probable and safer opinion, both principles are still verified: namely, that the law is doubtful or uncertain. Therefore, as the Holy Doctor says in explaining the difference between the two principles, the law does not have the power of actually obliging, since it has not been sufficiently or certainly promulgated; "for then the doubt has been sufficiently promulgated, whether the law exists, but the law has not been promulgated," L. 1.1 n. 70, Turin ed. 1846. Nor is man, having certain possession of his liberty, bound to judge himself despoiled of it because of an uncertain law; for antecedently to every law each one possesses his liberty, since man must be conceived first as free, and then the law which is imposed on man. Therefore. - L. 54 ff.

Now that the law in that hypothesis is really doubtful or uncertain, so that it is prudently judged such, from which those two axioms arise, is clear from the very nature of probability. For where true probability is present, greater probability of itself does not destroy the lesser. Philosophers and theologians commonly affirm this, and St. Alphonsus expressly teaches it, 1.1 n. 40, where he says that the contrary of the more probable is also judged probable. The same Holy Doctor teaches this in many other places: Dissertation, ed. 1755, nn. 13, 17, 31, 32, 34.

Hence the Holy Doctor, 1.6 n. 604, raising the question "whether a penitent can be absolved who wishes to follow an opinion contrary to that which the confessor holds," responds: "The common and to-be-followed opinion teaches that the confessor not only can but even is bound under grave obligation, where grave matter is involved, H. A. tr. 16 n. 118, to absolve a penitent who wishes to follow a probable opinion, although the opposite seems more probable to the confessor... While this common opinion stands, strengthened by so many authorities and reasons, I do not see how a confessor with a safe conscience can deny absolution to one wishing to follow an opinion which appears probable to the penitent himself, indeed perhaps more probable, if not directly, at least reflexively, as the probabilist authors commonly think; for by following a probable opinion in concurrence with the more probable, they judge that they embrace an opinion reflexively more probable, as one confirmed by graver foundations and by the very common authority of doctors." The same doctrine is held by the Holy Doctor in his last work, H. A. tr. 16 n. 118, where he adds no other limits to this opinion than the following: namely, that "the opinion of the penitent have some probability, so that the confessor, even if he does not regard it as solidly probable, nevertheless does not judge it altogether false... evidently erroneous." Cf. also 1.1 n. 87, where after Gerson the Holy Doctor says: "Theologian doctors ought not be easy in asserting that some things are mortal sins where they are not most certain about the matter. Note: where they are not most certain." - Lugo, *Resp. Mor.* 1.1 disp. 26 n. 3; Pignatelli, *Cons. Can.*, tom. 8, cons. 15.

The same is further proved by the reason commonly adduced, which St. Alphonsus expounds in this way in the cited dissertation, ed. 1755, n. 13: greater probability does not destroy the lesser, "unless that lesser probability is drawn from the same principle, or unless the more probable opinion has for itself so convincing an argument that the contrary seems truly improbable, or no longer gravely and certainly probable. But otherwise one must say, if the excess is not notable and the opposed probability receives force from diverse principles, as almost always happens in the concurrence of opinions, that the less probable opinion is by no means deprived of its grave probability." Indeed, the probability or improbability of some opinion is not the same as its truth or falsity, so that one excludes the other; rather it is a fittingness for meriting prudent assent, arising from grave motives, which, although greater or lesser, do not contradict one another if they are taken from diverse principles. But if they present an argument so convincing that the opposite is judged improbable, then we are already outside the case of greater or lesser probability, since one opinion will then be certain or probable, the other false or improbable.

Proof 4. Innocent III granted a three-year trial to a spouse laboring under impotence, C. *Laudabilem* 5, *De Frig.*, and did not prescribe that one first see whether potency was more probable or at least equally probable. In the eighteenth century, among certain Indians converted to the faith in the Kingdom of Paraguay who had several wives, when questions arose about the validity of their marriages, Urban VIII replied to John de Lugo, later Cardinal: "Where learned opinions on both sides

concur as probable, those opinions more favorable to the barbarians are to be followed according to the condition of places and men." Urban did not say that the more probable opinions are to be followed, nor did he say where equally probable opinions concur, but absolutely where probable opinions concur. Cardenas, *Crisis Theol.*, diss. 2 §553.

For a law to oblige, it must be sufficiently promulgated, S. Th. 1-2 q. 90 a. 4. But sufficient promulgation of law is not had if the law is not certain and manifest. Hence in canon law it is generally established: "In those things on which no express law is found, proceed with equity preserved, always inclining toward the more humane part, according as you see persons and causes, places and times to require." C. *Ex parte tua* 11, *De Transact*. And in civil law it is decreed: "Whenever interpretation concerning liberty is doubtful, one must respond according to liberty." L. 20, *De R. I.* The reason is that law imposes moral necessity, and therefore must necessarily bind the will. But it cannot necessarily bind the will except through knowledge. Therefore, knowledge of the law being excluded, the will remains morally free. S. Th., *De Verit*. q. 17 a. 3. Now, if a most probable opinion is present against the law, it is evidently clear that knowledge of the law is lacking. For certainty and evidence cannot exist with the greatest opposite probability; indeed, not even with simple probability. Hence St. Alphonsus says: "To constitute a doubtful law, true probability to the contrary suffices." L. 1 n. 57, ed. 1762, 1763.

Confirmation 5 from the authority of St. Thomas. Law is a certain rule and measure. In order for a rule to direct and a measure to measure, it must be applied to the thing which must be directed and measured. S. Th. 1-2 q. 90 a. 4. Therefore law must reach the subjects whom it directs, and it reaches them through knowledge. S. Th., *De Verit*. q. 17 a. 3. Consequently law must be certain and evident. Therefore, if the law is uncertain, namely if its existence is not established, if the law is doubtful, namely if the sentence of the law is obscure, the obligation of the law ceases; a precept does not bind except through knowledge. S. Th. loc. cit. Hence those axioms: An uncertain law cannot induce a certain obligation; a doubtful law does not oblige. For an effect cannot surpass its cause. These things St. Thomas states altogether generally, and he does not distinguish between a law having against it a less probable, equally probable, or more probable opinion. Therefore the whole question from the Angelic Doctor is this: whether a law which has against it a more probable, equally probable, or less probable opinion can be said to reach man through knowledge, to bind him by means of knowledge, through knowledge, through the power of knowledge. But knowledge is not given if there is true probability against it. Hence every question about mortal sin is determined dangerously unless the truth is expressly had. S. Th. Quodl. 9 a. 15.

120. Is the proposition established above in n. 116 a certain exception to probabilism, as though a true case of probabilism? - Answer: No. For if probabilism is true, it ought always to be true, and ought to be verified in every case. Indeed, probabilism regards the formal or subjective honorableness or baseness of an action; by no means the objective or real existence or non-existence of the effect of such an action. But that thesis precisely regards this objective effect to be obtained or not obtained. Therefore, if someone in this case, in which the effect must be obtained absolutely, uses a probable opinion, he will certainly sin; but he will not sin precisely because he uses a probable opinion about the lawfulness of the action, but because he uses a probable opinion about the validity of the act, exposing himself to the danger of frustrating an effect to be obtained absolutely. Then this would be a case of probabilism when the probable

opinion were that it is lawful by one's action to expose to danger an effect which must be obtained absolutely; but that is not a probable opinion, but a false and erroneous one. Thus, for example, a minister of the sacraments who follows a probable opinion about their validity in their administration does indeed sin, certainly not because he follows a probable opinion about the lawfulness of the action; indeed, on the contrary, because he follows an altogether improbable opinion about the lawfulness of the action. For since the effect of the sacrament to be certainly obtained, namely remission of sins and infusion of grace, depends on true matter and true form, someone using doubtful matter or form exposes the recipient to danger of lacking such an effect, and therefore inflicts harm on the neighbor and consequently sins. - St. Alphonsus, *Op. Mor.*, Rome ed. 1757, 1.1 n. 38; Laymann 1.1 tr. 1 c. 5 §§2-3.

121. Note: An exception, and a true and illogical exception to probabilism, is the limitation which some probabilists and equiprobabilists add to probabilism from the principle of possession: In doubt the condition of the possessor is better. Therefore, they say, a doubtful law in a doubt about the existence of the law does not oblige, because liberty possesses. But a doubtful law in a doubt about its cessation obliges, because the law possesses. Hence if it is probable that you did not make a vow, you are not bound by the vow. If you certainly made the vow, and it is probable that you satisfied it, you are still bound to satisfaction.

But to admit probabilism by halves in this way is to admit the principles and deny the conclusions. If doubtful law does not oblige precisely because it is doubtful, whenever it is doubtful it will not oblige. But the law is as doubtful in a doubt about its existence, namely about its first existence, as it is doubtful in a doubt about its cessation; for if its cessation is probable, by that very fact the existence itself of the law becomes doubtful. The law obliging is not the law which existed, but the law which exists; nor is it the law which exists in the abstract, but the law which, in the present, binds us by its certain obligation. But if a probable opinion is held about the cessation of the law, however that is understood, its obligation becomes doubtful, and its existence likewise becomes doubtful: again, not the very existence of the law in the abstract, but its power of obliging in the concrete, in the particular case, here and now. L. 1.1 nn. 63, 78. Thus, although it is certain that a vow was made and once existed, if you probably satisfied it, that certain vow, as something once existing, becomes doubtful as binding you here and now; and this holds: A doubtful law does not oblige.

Possession indeed constitutes a prevailing right insofar as the one who possesses is shown or at least presumed, by possession itself, to be master of the thing which he possesses. But how can this be shown or reasonably presumed when the opposite is truly probable, or when the opposite is established by grave probability? For then it is established with true and grave probability that the possession is not legitimate, and only legitimate possession can constitute a prevailing right. For if only the fact of possession, without legitimate title at least reasonably presumed, constituted that prevailing right, then all thieves and robbers could retain another's property by the prevailing right of possession.

But against this, the distinguished D'Annibale, third edition, part 1 n. 268, asserts that those who think this err. For whenever something is disputed between two parties, the cause of the possessor is stronger because the burden of proof falls on the plaintiff; this was not introduced by some positive law, but established by natural law and the highest equity.

So indeed; but why did natural law and equity establish this, unless because the possessor of the thing is shown or at least presumed to be master of the thing as long as the plaintiff cannot prove that the thing is his? The material fact of possession itself by no means constitutes a prevailing right in the internal forum as to the very right of dominion and ownership of the thing, but only as to proof in the external forum, which must be brought by the plaintiff against the possessor, because of the aforesaid presumption of ownership. But presumption yields to truth. Hence if someone possessed in bad faith, even for a very long time, he must restore the thing even spontaneously and without the plaintiff's proof and petition.

Moreover, did not D'Annibale himself assert in the preceding n. 256 note 5: "Justice forbids giving damage to one who is in certain possession of his right... I said, one who is in certain possession of his right; for if the right of another is uncertain, either the condition of the possessor will be better, or at least, because no certain right of another is violated, there will be no obligation of restoring." Behold how D'Annibale himself requires certain and legitimate possession in order that it really constitute a prevailing right. And D'Annibale himself also asserted, n. 259 note 18: "Namely, certainty against true probability is not given." How, then, will the obligation of the law be certain if it is probable that its obligation has already ceased? See also ibid. n. 169. Cf. 143; L. 1.3 n. 212, paragraph "Secunda"; n. 290; n. 325, paragraph "Infirmi"; n. 483; 1.4 n. 47.

122. What is the force of extrinsic probability? - There is no doubt that extrinsic probability constitutes an opinion truly and sufficiently gravely probable. "Someone of little knowledge," says St. Thomas, 2-2 q. 4 a. 3, "is made more certain about what he hears from some learned person than about what seems to him according to his own reason."

This probability has force because no one is judged to speak without a grave foundation. L. 1.1 n. 84. Hence if someone does not stop at authority alone, but weighs this foundation, then extrinsic probability is resolved into intrinsic probability. Sometimes, however, this extrinsic probability constitutes intrinsic probability itself, namely when the matter depends greatly on the estimation of wise men, L. 1.3 n. 1032: that is, concerning a matter rather of fact than of law, for example, what is grave matter in the canonical hours, in fasting, etc.

An extrinsically probable opinion is usually designated by the common, more common, or most common opinion. Concerning these, Sanchez says this in *De Matr.* 1.3 disp. 44 n. 3, from which someone can form judgment about common, more common opinion, etc.: "An opinion is not called common which has many doctors asserting it, no discussion having been made beforehand, but following it perfunctorily and, as they say, in passing... Therefore Navarrus says very well that he judges an opinion approved by six doctors treating the matter expressly to be more common than one approved by fifty led almost solely by the authority of the earlier ones. To these add Joannes Lupus... saying that doctors, however much they excel in doctrine, are not to be believed when they lack a foundation." - La-Croix 1.1 nn. 164-165; Muzzarelli, *Dissert. de Regul. mor. opin.*, Rome 1807, pp. 21 ff.; E. M.

123. Note: From the common opinion of theologians "one should not easily depart in practical matters." Lugo, *De Iust. et Iur.* disp. 16 n. 106. Nevertheless, this must not be taken too scrupulously, much less extended too far. Hence St. Alphonsus does not hesitate to affirm that

he "departed from the opinions of many and grave authors," 1.3 n. 547, and lower down in the same place says: "where reason has convinced me, I did not refuse to oppose several authors."

124. Resolutions: Therefore we make the step from speculatively probable conscience to practically certain conscience by the following reasoning. What is forbidden by no certain law is lawful. But such and such an action, which is truly probably prohibited by no law, is by that very fact forbidden by no certain law. Therefore such an action is lawful. Since the major and minor of this syllogism are certain, the conclusion also will be certain. But the conclusion contains the judgment or dictate of conscience.

The same transition can be made by force of another reasoning. One who acts according to what prudence dictates acts honorably. But one who acts according to this or that probable opinion acts according to the dictate of prudence. Therefore one who acts according to this or that probable opinion acts honorably. Since again the major and minor of this syllogism are certain, the conclusion also will be certain. - L. 1.1 nn. 67-69, 84; Muzzarelli, *Dissert. de Regul. mor. opin.*, Rome 1807, pp. 30 ff.

125. Does the authority of one doctor suffice for the probability of some opinion? - Answer: No, ordinarily speaking. The reason is that if it is the opinion of some ancient author and has been deserted by all, by that very fact it ordinarily lacks sufficient foundation. But if it is the opinion of some more recent author, either he brings a grave reason or he does not. If the first, his opinion is ordinarily handed down also by others. If the second, he cannot render his opinion probable to others, since he brings no sufficient reason for it.

It is said "ordinarily speaking," for if some grave author treats a question which others have not treated and brings a grave reason, or if he maintains an opinion against the common opinion but maintains it by some new reason unknown to others, nothing prevents him, even alone, from rendering his opinion probable; but soon many others will adhere to him if that doctrine is publicly spread. Thus "the Salmanticenses and others note that the saying of an eminent doctor, even a modern one, asserting that a law has been abrogated, suffices for us to be released from the law." L. 1.1 n. 107.

126. Note proposition 27 condemned by Alexander VII, which is general and can be understood of any author whatever, even of humble note, and affirms an opinion probable by the very fact that it is not established that it has been rejected by the Apostolic See as improbable. E. M.

127. Is there an opinion speculatively but not practically probable? - Answer: 1. No, speaking per se; for the reasoning established above, n. 124, can always be made if the opinion is truly probable in itself, or speculatively, by which we proceed to practical conscience itself. 2. Yes, by accident, namely if, when that opinion is brought into use, there is always or almost always some extrinsic circumstance which renders the use of such an opinion illicit, for example danger of fall, scandal, hallucination, etc. - Pignatelli, *Cons. Can.* tom. 8 cons. 15; Lugo, *Resp. Mor.* 1.1 disp. 26 n. 3; *De Iust. et Iur.* disp. 10 nn. 165, 189.

128. Can someone lawfully follow in practice diverse probable opinions favorable to himself, although they are opposed to one another? - No one is prohibited from using now one

probable opinion, now also the contrary probable opinion. For if it is lawful for you to follow one and for me to follow the other, it will also be lawful for each of us to follow either; for by no means does the fact that someone has used one make the other cease to be probable and safe.

In one and the same matter, it is not lawful to follow a probable opinion insofar as it benefits, but insofar as it harms not to follow it, but to follow the contrary. For, as is clear, this is an open contradiction. Thus, for example, since some affirm that a will lacking legal formalities is valid, and others deny it, one would act illicitly who, because of this twofold opinion, wished to acquire the inheritance for himself from a less solemn will, but did not wish to furnish the legacies from the same will.

It is not lawful to use at the same time two probabilities of the non-existence of two precepts when the transgression of one or the other is certain. Thus, for example, if the law of abstinence presses today, and I wish tomorrow to approach Communion, and it is probable that midnight has already passed, and the opposite is also probable, it is certainly not lawful to eat meat and at the same time approach Holy Communion. - Elbel, *De Act. hum.* 190 ff.

129. Is it expedient to prefer stricter opinions to more benign ones? - "Where the question concerns removing the penitent from danger of formal sin, the confessor ought, generally speaking and insofar as Christian prudence suggests, to use benign opinions. But where benign opinions render the danger of formal sin more proximate, as some opinions of authors do, for example regarding avoiding proximate occasions and others of this kind, then it is always expedient for the confessor to use, indeed I say that he as physician of souls is bound to use, safer opinions which conduce to preserving penitents in the state of grace." L. 1.1 n. 87; 1.3 n. 547.

Where the penitent is prepared to follow the dictate of the confessor, whatever it may be, then "it belongs to the prudence of the confessor to weigh whether the use of the safer or less safe opinion will profit his penitent... because although this is per se safer and more perfect, nevertheless it will be more dangerous to impose on many the obligation of always operating according to the stricter opinions." L. 1.6 n. 605.

Generally in practice, the confessor should rather be benign, as far as possible, than strict with penitents. L. loc. cit. This is established also by the authority of the Fathers and theologians, whom you have cited apud St. Alphonsus loc. cit., and 1.1 n. 86, paragraph "Ego," and n. 89 toward the end, "Praeterea res"; H. A. tr. 1 n. 79.

130. Must the confessor know all probable opinions? - "The confessor is not to be obliged to know all probable opinions, but to that knowledge which moderately learned men commonly have; just as an advocate, judge, physician, or craftsmen are also not bound to the highest and most exact knowledge and skill in their profession, but to moderate knowledge according to the grade of their office and condition... thus a penitent ought to require from an available confessor only common knowledge about common sins and common opinions; but if he desires subtler remedies, let him approach a more learned confessor." Lugo, *Resp. Mor.* 1.1 disp. 26 n. 2.

IV. - On The Doctrine Of St. Alphonsus Concerning Probabilism

131. Since the authority of St. Alphonsus is very great in moral matters, and several recent authors deny that the Holy Doctor stands for probabilism simply such, but affirm that he teaches equiprobabilism and rejects probabilism as a lax doctrine, for this reason we here especially raise the question of the mind of the holy Doctor, although in the preceding article we have almost constantly used his opinions and even his words to establish the doctrine of probabilism. E. M.

So that there may be no doubt in this matter, and so that we may faithfully set forth the mind of the Holy Doctor, we take his doctrine from the treatise on conscience in his work entitled H. A., which he himself declares there, n. 79, to have written when near death. Now these things are found in nn. 33 and 77: "The third opinion, which is ours, says that when the opinion favoring liberty is equally probable as the opinion favoring the law, it can without doubt be followed lawfully... Here I must warn what must altogether be warned concerning my system, namely that when it is doubted whether the opinion favoring the law is equally probable or a little more probable, then the same principle has place, that a doubtful law does not oblige. For in such a case the law itself does not cease to be strictly doubtful; for then, although some greater probability for the law were present, when it is doubted whether this greater probability is present or not, the preponderance will be so light and minimal that it is to be counted as nothing before that saying commonly admitted even by the adversaries, that little is regarded as nothing. But otherwise it would be when the excess were evident and certain, because then the opinion favoring the law will be certainly and much more probable; and therefore then, as was said at the beginning, the law is already morally promulgated, and therefore obliges and is without doubt to be observed."

132. Two things must be investigated here. The first is what St. Alphonsus understands by an opinion evidently and certainly much more probable. For if he understands an opinion truly and properly probable, he is against us; but if he understands an opinion which passes beyond the limits of probability and reaches certainty, he will be for us. The second is what the Holy Doctor again understands by an opinion equally probable or a little more probable. For if that "a little more probable" denotes a slight excess of probability as distinguished from a greater excess of true probability, again the Holy Doctor is against us; but if it denotes simply an excess of probability, the Holy Doctor will be for us.

133. As regards the first, the Holy Doctor refers himself to what was said at the beginning. These things are found at the beginning, n. 31: "Whether it is lawful to operate with a probable opinion, there are three opinions. The first of these is that someone can lawfully follow an opinion even less probable for liberty, although the opinion for the law is certainly more probable. Authors of the past century held this opinion almost commonly, but we say that it is lax and cannot lawfully be embraced. The reason is that when the opinion for the law is certainly more probable, then the law is no longer doubtful with a strict doubt, as happens, as we explain afterward, when the opinions both for the law and for liberty are equally probable; but it is morally certain, since it has for itself a certain foundation that it is true. On the contrary, the less probable opinion which favors liberty has such a foundation that it is not true, so that it remains tenuously, or at least doubtfully, probable before the safer opinion; and

> therefore it is not prudence but imprudence to wish to follow it. For when it certainly appears to the intellect that truth stands more for the law than for liberty, then the will cannot prudently and without fault follow the less safe part. For then it would not operate from its own judgment, or its own belief, but from a certain effort which by its will it would make against the intellect, removing it from that part which seems truer to it, and bending it to that part which not only seems not true to it, but does not even show that it has a certain foundation that it can be true."

Now from these things it is plainly established that the Holy Doctor by certainly more probable opinion understands in reality a morally certain opinion. For he says that then the law: 1. is not doubtful with a strict doubt, but is morally certain; 2. has for itself a certain foundation that it is true; 3. again, that the same law has against itself only an opinion which has such a foundation that it is not true; 4. that the less probable opinion opposed to the law is tenuously or doubtfully probable, so that it is imprudence to wish to follow it, and it not only seems not true, but does not even show that it has a certain foundation that it can be true.

Now a tenuously probable opinion is not a truly probable opinion; and the same St. Alphonsus teaches this, n. 65: "tenuous probability is not true probability, but is only a certain false or empty appearance of probability." Likewise a doubtfully probable opinion is not truly and properly probable, which we contend it is lawful to follow even in concurrence with the more probable. For if it is doubtfully probable, it participates doubtfully in the nature of probability, and therefore, properly speaking, is not probable. Indeed a truly and properly probable opinion is defined by the same St. Alphonsus, loc. cit. n. 21: "that which rests on some grave foundation apt to incline the assent of a prudent man." Therefore a doubtfully probable opinion will be an opinion which has a doubtfully grave foundation, and therefore does not merit the assent of a prudent man, who would expose himself to danger of acting imprudently. "Doubtfully probable," says St. Alphonsus, loc. cit. n. 65, "which no one can follow; but if it is not probable, it has only some prudent reason that it is true... the doubtfully probable has some prudent reason, although not altogether stable, that it is probable."

And from this it is clear that that opinion which it is imprudence to wish to follow, and which not only seems not true but does not even show that it has a certain foundation that it can be true, is not a truly and properly probable opinion. Therefore if the less probable opinion opposed to the certainly more probable is not truly and properly probable, the certainly more probable opinion by no means remains within the limits of probability, but already reaches certainty.

The same is confirmed from the dissertation inserted in *Op. Mor.* 1.1 n. 56, Turin ed. 1846, where he explains that "certainly more probable" in this way: "I said certainly more probable, because when the opinion for the law is certainly and without any hesitation more probable, then that opinion cannot be other than notably more probable. And in that case the safer opinion will no longer be doubtful, understand with strict doubt, but is morally or quasi-morally certain; at least it can no longer be called strictly doubtful, since it has for itself a certain foundation that it is true. Hence then it happens that the less safe opinion, which lacks a certain foundation, remains either tenuously or at least doubtfully probable with respect to the safer; and therefore it is not prudence but imprudence to wish to embrace it," etc.

Note regarding that "quasi-morally certain" that for the Holy Doctor in this matter, where the question concerns a certain moral estimation, little is regarded as nothing. Moreover, the Holy Doctor is not speaking of any probability whatever, but of that which certainly appears to the intellect, and he speaks of one who, if he departed from this probability, would depart from his own judgment by a certain effort of the will and would act against his conscience. Hence he applies to it that saying of the Apostle to the Romans 14:23: What is not from faith is sin. Ibid. and H. A. tr. 1 n. 31.

Finally, the Holy Doctor calls that opinion lax which also defends the less probable for liberty without any distinction, namely an opinion which has only some foundation of reason and authority; and therefore he distinguished by saying that someone cannot follow this less safe opinion when there is a great and certain preponderance for the safer. *Apolog.* contra Fr. Patuzzi, 1765. But the true doctrine of probabilism which we follow does not defend indiscriminately any probable opinion, but a certainly and gravely probable opinion, which alone is truly probable. Likewise St. Alphonsus calls that doctrine lax which authors of the past century almost commonly handed down; certainly not Suarez, Sanchez, Lugo, Lessius, Laymann, Palaus, Pallavicini, and many others whom St. Alphonsus himself approves and praises for his opinion not only in his moral works, but in that very dissertation on his moral system. He defends and repeatedly champions this doctrine not against probabilists, but against rigid tutiorists, and affirms that for a long series of years it was without doubt common among all. *Breve Dissertaz. dell'uso moderato dell'Opin. Probab.*, Naples 1762, p. 48; *Op. Mor.* 1.1 nn. 59, 68-73, 84.

134. As regards the other point, the matter is evident: if the Holy Doctor by a much more probable opinion understands an opinion morally certain, or quasi-morally certain, then by a little more probable opinion he understands simply an excess of mere probability. But if it is asked why the Holy Doctor designates this excess by saying "a little more probable" and not simply by saying "more probable," the reason is that the Holy Doctor considers the matter rather practically than speculatively, considering the nature of the thing and the principles, and also the strictness of words, and thus distinguishes between a small and notable excess of probability.

A notable excess truly such is had when it is evident and certain; and then, according to the Holy Doctor, it reaches certainty. And thus it is, at least practically speaking; for such probability, at least practically, is confused with moral certainty, which in a certain broader sense is certainty. And indeed the Holy Doctor speaks of a much greater probability certainly and evidently such. Certainly and evidently to whom? Certainly not to the one holding an opinion, since all well know that one and the same opinion appears less probable to one person and more probable to another, indeed even to the same person in diverse circumstances; but to all. And in reality, if a proposition is much more probable certainly and evidently to all, it is already really morally certain.

Every other excess, although perhaps notable, if nevertheless it is not evident and certain, cannot in reality be held by us as notable; for then there is doubt about such a notable excess, and a proposition which seems much more probable to one may perhaps seem much less probable to another, indeed perhaps even to the same person when the matter is better weighed, as St. Alphonsus himself confesses about himself, 1.1 n. 86; H. A. tr. 1 n. 78. Therefore if that notable

excess of probability is evident and certain, then it already reaches certainty. But if, although notable, it is not evident and certain, that excess in reality as to us cannot be regarded as notable, but remains within the limits of equal probability or of a little greater probability. Hence again it is established that by this "a little greater" excess St. Alphonsus in reality understands simply an excess of probability.

And if it is asked why the Holy Doctor made this distinction between a little more probable and notably, much, evidently, certainly more probable, the reason is that the Holy Doctor, as is established from loc. cit. H. A. n. 31 and from the *Apologia* against Patuzzi, 1762, wished to oppose those probabilists who extended probabilism even to tenuous and doubtful probability, and therefore contended that it is lawful to act when any apparent reason is present, but not a firm one, or authority. Hence, by contrast, the Holy Doctor established that then one must follow the certainly, evidently, notably, much more probable opinion, which, as is clear, in comparison with the tenuously or doubtfully probable is deservedly called by the Holy Doctor morally certain or quasi-certain. Since, therefore, St. Alphonsus designated such an opinion in comparison with the doubtfully and tenuously probable as notably more probable, it remained for him to designate any other more probable opinion in comparison with the truly probable as a little more probable. Cf. *Breve Dissertaz.*, etc., cited above at the end of n. 133, p. 51; *Op. Mor.*, Rome ed. 1757, 1.1 n. 33.

135. Omitting the treatise on conscience in the work entitled H. A., and the moral dissertation on this matter inserted in the *Theologia Moralis*, if we consult these very works of the Holy Doctor, we shall certainly see that the Holy Doctor follows with the greatest diligence not only the more common and more probable opinions, but also the less and much less probable and common opinions. Cf., for example, 1.3 n. 404, where after the Holy Doctor has said that the negative opinion is far more probable to him, he calls the affirmative sufficiently probable. And in the same place, n. 649, he says: "This second opinion seems to me certainly and far more probable. Whether the first is probable... I dare not call it either probable or improbable." Therefore the Holy Doctor thinks that there can be a probable opinion whose opposite is certainly and far more probable. Cf. 1.6 n. 868 dub. 3; 1.3 n. 520 q. 4; n. 547, paragraph "Ceterum"; n. 529; n. 700 q. II, where after the Holy Doctor in a certain question of justice has called the first opinion more common and indeed very probable, and has said of the second opinion very modestly that it is not without its probability, he then undertakes to demonstrate that probability broadly and diligently; finally, resolving an objection, he openly affirms that this serves for practice, for he says: "For this is probability of law... which the debtor can well use." Cf. also here n. 136.

If someone therefore still wishes to contend that St. Alphonsus speculatively champions another system, different from true probabilism, he must certainly confess that practically St. Alphonsus is a true probabilist. And indeed, if, according to the system of St. Alphonsus, we are bound to follow the more probable opinion only when this excess of greater probability must be evident and certain, H. A. tr. 1 n. 77, you will scarcely find perhaps one or another such opinion in moral matters, since, as we have already observed, where probability is concerned, the judgments even of the gravest theologians are very diverse. Therefore that excess cannot prudently be held as evident and certain. Indeed, as Ithurriaga observes, Cas. 44 n. 5: "There is scarcely any question discussed among doctors in which there are not both probabilists who embrace the stricter opinion against other probabilists,

and probabiliorists who embrace the more benign opinion against other probabiliorists." Cf. L. 1.3 n. 293; n. 930 dub. 1.

Therefore the doctrine which St. Alphonsus regards as lax is not true probabilism, which remains within the limits of true and proper probability; but it is that probabilism which passes beyond these limits and extends itself to tenuous and doubtful probability. Hence the Holy Doctor does not say absolutely that that doctrine is commonly held, but that it was almost commonly held by authors of the past century; for it was then really held by many. But it would be altogether wrongly confused with the doctrine of true probabilism, truly commonly, indeed most commonly, handed down. Hence the same St. Alphonsus called it most common and most probable in the *Dissertation on the Moderate Use of Probable Opinion*, 1755, a doctrine which for almost two centuries exhausted the labors of so many wise men, and which, if it had been false, the Church would not have tolerated. And if the matter is not so, where is that moral system which in the Catholic Church can be defended as Catholic, as Clement XIII replied in 1761 to St. Alphonsus himself? 1.1 nn. 88-89. For before St. Alphonsus there was nothing intermediate between true probabilism and tutiorism or probabiliorism; nor was equiprobabilism then counted among moral systems. But the Holy Doctor continually refuted tutiorism or probabiliorism. The Holy Doctor asserts that he hands down nothing except the common doctrine, 1.1 nn. 59, 84. The Holy Doctor continually taught: "In order that there not be grave sin, it suffices that true probability be had; I understand that which rests on a foundation not tenuous," etc., 1.3 after n. 139, epistolary response. Therefore it must immediately be noted that the Holy Doctor very rarely uses this note: certainly, notably more probable, etc., which the *Vindiciae Alphonsianae*, appendix 1, *Clavis Operum*, etc., have noted. This would be very strange indeed if his system had been so little practical for the Holy Doctor himself. On the contrary, nothing would have been more frequently and clearly to be expressed in individual questions. The Holy Doctor does not reject true and proper probabilism, but broad probabilism, namely one extended even to tenuous probability, which the Church certainly did not tolerate. Cf. 136.

136. Are all opinions which St. Alphonsus reports and does not expressly reject, although he also does not expressly approve them, held as probable by St. Alphonsus? - Concerning this matter St. Alphonsus himself declares his mind in this way: "I judged that the *Medulla* of Hermann Busembaum should be prefixed, not now so that I would approve all the opinions of that author, but only so that I would follow his method, which among the methods of other doctors seemed very suitable to me for explaining moral matters... Besides, kind reader, I wish you to be warned not to think that I approve those opinions from the fact that I do not disapprove them; for I sometimes faithfully set them forth with their reasons and patrons, so that others according to their prudence may judge of what weight they are. Then observe that when I call some opinion truer, then I do not hold the contrary as probable, even if I do not expressly condemn it as improbable. Moreover, when I call one of the opinions more probable, with no judgment given about the probability of the other, or I use this phrase, I do not dare condemn, I do not for that reason mean to call it probable, but to leave the matter to the judgment of the more prudent." Author's warning to the reader at the beginning of the work.

And again, 1.5 n. 76: "And here I again repeat what I declared at the beginning, namely that when I call some opinion uniquely more probable, I do not therefore mean to call the contrary probable. Likewise, when I say of some opinion, I do not dare condemn it, or call it improbable, I do not

therefore admit it as probable, but doubt about its probability. Likewise, when I call some opinion truer, I understand that the opposite does not, to me, possess solid probability, although I do not altogether disapprove it."

Nevertheless, it can in no way be denied that some opinions are in reality, at least implicitly, held by the Holy Doctor as sufficiently probable, which he not only reports, but also weighs their reasons, and to which he himself seems to add force, if, while listing grave theologians, he says, for example: the Salmanticenses judge it probable, etc., or adds at the end: indeed Palaus says, Lugo adds, notes, etc. - E. M.; A. S. S. vol. 1 p. 497 ff.

V. - On Doubtful Conscience

137. What is doubtful conscience? - Doubt is suspension of assent concerning an apprehended object, not only as to specification, but also as to the very exercise of the act, because namely no sufficient reason is had for either part. Therefore doubtful conscience is that which remains suspended concerning the honorableness of an action, inclining to neither part. This conscience, since it involves no judgment, is not properly conscience, but rather a defect of conscience; for conscience is judgment, not suspension of judgment. Nevertheless this suspension of judgment is called conscience insofar as with this suspension of judgment we often in fact act. Doubt of this kind can be joined with a reflex judgment about the insufficiency of a motive or reason for assenting, and then such a judgment is more properly called doubtful conscience. L. 1.1 n. 20; Suarez disp. 12 sect. 5 n. 1.

138. How many kinds of doubtful conscience are there? - "Doubt is divided into negative and positive. Negative doubt is when probable reasons occur from neither side. Positive doubt is when for each side, or at least for one, there is a grave motive sufficient for forming a probable conscience, although with fear about the opposite; therefore positive doubt almost always coincides with probable opinion." L. 1.1 n. 20.

At present we are not treating positively doubtful conscience, or probable conscience, about which we have already spoken; the discussion will concern only negatively doubtful conscience.

Doubt is further divided into speculative and practical. Speculative doubt is that by which someone doubts about the truth of the thing or about the lawfulness of the thing in general, or in the universal; for example, whether painting on a feast day is servile work, whether baptism with distilled water is valid. Practical doubt is that by which someone doubts about the lawfulness or honorableness of an action in particular, to be exercised here and now; for example, whether on this feast day in these circumstances it is lawful for me to paint, whether it is lawful to baptize this child with distilled water. "To be exercised here and now": for otherwise, although an action is considered as surrounded by many circumstances, speculative doubt can still be had about it if the question is not of an action to be exercised and directed by conscience in the present. S. Th. 1 p. q. 79. Hence speculatively doubtful conscience and practically doubtful conscience. L. 1.1 n. 21.

139. What is the directive force of doubtful conscience? - The answer is clear from the following propositions, this number and the following numbers. It is illicit to act with a practically doubtful conscience. For only certain conscience is the rule of morals. Cf. 102. Hence that

saying: In doubts the safer part is to be chosen. C. *Inquisitioni* 44, *De Sent. exc.*; L. 1.1 n. 22; Suarez disp. 12 sect. 5; E. M.

140. It is lawful to operate with a speculatively doubtful conscience, provided that a practically certain conscience can be formed. For as is established from what was said in n. 102, certain conscience, however finally formed, if it rests at least on moral certainty, is a sufficient rule of morals, indeed the only rule of morals. L. 1.1 n. 25; Suarez disp. 12 sect. 5.

141. The means by which someone may make the step from speculatively doubtful conscience to practically certain conscience are: 1. To weigh the doubt itself. For as St. Alphonsus says, 1.1 n. 24, "if after weighing everything, he notices that the doubt is empty, he can well lay aside his doubt without another reflection and thus carry out the action." 2. To inquire into the practice of good men operating without scruple. 3. The counsel of a learned and prudent man. 4. Some probable reason, and a fortiori a demonstrative reason, which perhaps may be found by inquiring into the truth. 5. Some general reason, or some general reflex principle, so called because by means of reasoning it induces and bends us to rightly defining a question which cannot be resolved through itself and in its immediate principle. Thus a judge is doubtful whether Titius is guilty from intrinsic and direct reasons of law or fact. But from the general and reflex principle, in doubt one must favor the accused, he unhesitatingly absolves Titius. - L. ibid.

142. Certain general reasons, or certain general sayings and principles, are really present and can always be at hand, so that someone may immediately make the step from negative doubt to moral certainty, or at least to probability, from which then by means of the principles of probabilism he can form for himself a certain conscience. Now rules and principles of this kind are the following. - Suarez on 1-2 tr. 3 disp. 12 sect. 5 n. 7; Lugo, *De Iust. et Iur.* disp. 23 n. 110.

143. **In doubt the condition of the possessor is the better one.** C. 6, *de Praescript.*

This axiom has been received in the external forum, both ecclesiastical and civil, as a certain rule of judgments. The same certainly holds in the internal forum of conscience. For certain and legitimate possession produces moral certitude concerning ownership of a thing, L. 1. 1. n. 35; l. 4. n. 210; l. 6. nn. 905, 927. The reason is that, considering human habits, no one, morally speaking, is negligent, but rather all are diligent, and very diligent, in guarding their own property. Moreover, where one does not proceed from a false supposition, the law of the external and internal forum is the same; for both forums are founded on the principles of natural justice and equity. Hence theologians commonly admit the foregoing rule for the forum of conscience. L. 1. 1. n. 26.

Now some say that this axiom holds only in matters of justice. "I, however," says St. Alphonsus, l. c., "do not know how it can be denied in all matters." And this is certainly by far the more common and truer opinion. The reason for extending it also to other matters is, with due proportion, the same as in matters of justice. For no one can justly be deprived without sufficient reason of a good that is his own. Now man naturally, and therefore certainly and altogether legitimately, possesses his liberty, which is indeed a good and a right of his own. Therefore this good also pertains to justice, and whoever unjustly takes it away or weakens it injures justice. Certainly a free man cannot be subjected to servitude without injustice. Suarez, in 1. 2, Tr. 3, D. 12, S. 5, n. 8; Lugo, *de Iust. et Iur.*, D. 17, n. 87; D. 23, n. 110.

Let us now explain the meaning of that axiom. "In doubt," that is, in negative doubt; and the reason for the axiom is then clear, because possession stands for the possessor, and therefore moral certitude, while for the claimant there is no prudent reason. Cf. Lugo, *de Iust. et Iur.*, D. 23, n. 110.

But in positive doubt, or probability, if probability is present on both sides, so that on one side there stand possession and probability of right, and on the other only an equal or nearly equal contrary probability of right, the condition of the possessor is again the better one, as is clear of itself. But if on one side there stands possession, and on the other a contrary probability of right; or on one side possession together with probability of right, and on the other a far greater contrary probability of right, then the condition of the possessor is certainly not better, but doubtful.

For the first opinion holds that the judge is bound to award the thing to the plaintiff, because the right of possession prevails in an equal cause, but not in a less probable cause. For the Rule of Law in the Sixth Book says: "In an equal delict or cause, the condition of the possessor is the stronger"; and in L. 128 ff. *de div. Reg. Iuris* it is said: "In an equal cause the possessor ought to be regarded as stronger." The second opinion holds that the condition of the possessor is still better, and that the judge cannot despoil him of possession. The reason is that "it is certain that legitimate possession gives each person a certain right to retain the thing until the right of another is established, as very commonly they say ... a certain right, which cannot be overcome except by the certain right of another through certain and convincing reasons." For possession is defined as: the right of standing in a thing not forbidden to be possessed. L. 1. 1. n. 36; Ithur. Cas. 1, n. 2. Cf. L. 1. 3. nn. 547, 562, 711, etc.

Therefore the possession spoken of in the present saying is certain and legitimate possession. It is called certain, that is, where the fact of possession is certain; legitimate, that is, begun and continued in good faith, and likewise begun and continued under a just title, at least apparent, or at least believed, or presumed, such as donation, purchase, inheritance, and the like, through which ownership of a thing is ordinarily acquired. Therefore if possession is doubtful, or begun in doubtful faith, or with a doubtful title, it does not of itself give the possessor a special prerogative and presumption against which no contrary probability can avail. L. 1. 1. nn. 36, 47; l. 4. n. 210.

Here someone may ask, first, what that probability of right is, besides possession itself, which can exist only on one side or on both. The answer: it is the probability of a just title that is real, or actually existing, from which true and real dominion and ownership of the thing arises. For legitimate possession, of which the axiom speaks, is sufficiently grounded on a just title that is at least apparent: for example, because there was a donation or purchase from one who was thought to be the owner, though he was not. Or at least believed: because the action signified by the title is thought to have occurred, though it did not occur, as happens when someone thinks that a thing was given to him or bought by him, and yet this was not done. Or at least presumed: because, for example, by reason of long duration in peaceful possession, or other circumstances, it is prudently judged that some title intervened, although the possessor cannot allege any determinate one. Therefore this probability of right is wholly outside possession itself, which gives only the right of standing in the thing, or of holding it, although perhaps its dominion and ownership do not belong to you, since no just title was really present.

It is asked, secondly, why it is called probability of right. The answer: that probability of a just title that is real, or actually existing, can be twofold: first, probability concerning the justice of the title for

beginning or continuing possession and ownership of the thing, for example a testament lacking legal formalities; secondly, probability concerning the reality or existence of a just title for the same effect, for example of a donation, when it is also probable that the thing was taken by theft. The former probability is called probability of right; the latter is called probability of fact. Where the latter is in question, "when the fact is not plainly proved, it is not probable that the defendant can be condemned, since laws never permit a defendant to be condemned unless the delict or debt is fully proved. But it is not fully and sufficiently proved for sentence when, although two or three witnesses testify, other witnesses testify to the contrary; for by these the testimony of the former is destroyed or diminished, and therefore there does not remain sufficient proof required for full proof and condemnation." Lugo, *de Iust. et Iure*, D. 16, n. 100. Cf. also D. 23, n. 110; D. 16, nn. 34, 96, 99.

144. **Resolves:** From the foregoing axiom many practical cases of negative doubt can be resolved, in which every true probability is lacking, namely whether the time of the obligation of a law has arrived or passed. "In doubt about beginning, for example whether you have completed twenty-one years, you are not bound to fast, because then possession is for liberty. Otherwise in doubt about passing, for example whether on Saturday midnight has passed, you may not eat meat, for then the law possesses. So also, if you doubt whether you have sixteen years for profession, or twenty-five years for priesthood, you may not profess or be ordained. Thus commonly." L. 1. 1. n. 99.32.

145. **In doubt one must stand for the side for which presumption stands.** For presumption, drawn from things ordinarily happening, or from other circumstances of person and thing, produces moral certitude, or at least probability. Generally, presumption stands for that side which is not bound by itself to prove the contrary fact, but transfers that burden of proving to the other side. Hence, if you are accustomed diligently to recite the breviary at a certain time, and you doubt whether you recited some part, presumption favors you and exempts you from the obligation of reciting or repeating it. If an insane person, but one who has lucid intervals, made a vow, and afterward doubts whether he was in possession of himself when he vowed, he is not bound as long as it does not appear that he was in possession of himself. L. 1. 1. n. 26.

Nevertheless, in the forum of penance, in which, as St. Thomas says, 4 D. 17, a. 3, q. 3, one must stand by the penitent's statement both for himself and against himself, presumption yields to the truth affirmed by the penitent. Lugo, *de Poenit.*, D. 20, nn. 17, 19; L. 1. 3. n. 270; l. 6. n. 600, par. *Limitant*.

146. **Note:** Where obedience to a superior is in question, in doubt presumption stands, speaking per se, always for the superior. L. 1. 1. nn. 93, 98, 99. "Speaking per se, always," for accidentally it can sometimes happen that presumption is not present for the superior, for example in doubt about the superior's power concerning such a matter, because it is very difficult, or burdensome, or gravely harmful to the subject or to a third party. L. 1. 3. n. 617. "The reason is that subjection and obedience owed to a superior does not remove your right and possession, or another's, concerning the good of honor, reputation, body, or fortune. Therefore you are not bound to deprive yourself of this certain possession in a matter of such great importance; rather it seems consonant with equity that greater account be taken of your certain possession,

and that this be preferred to the right or possession of the superior that is in some way doubtful." Elbel 173; Laymann c. 5, n. 12; Suarez D. 12, S. 5.

Likewise, in doubt concerning the lawfulness of the thing, even when the superior's command is added, for example when a superior "is accustomed rashly and imprudently to command at will things that are not lawful ... when also, even with the command of the prelate added, the matter remains in doubt as to its intrinsic lawfulness, and the authority, learning, probity, or prudence of the prelate is not sufficient to remove the doubt, a case which is possible." Lugo, *Resp. Mor.*, l. 3, D. 19, n. 11; L. 1. 3. n. 617; cf. 113.

147. **In doubt a fact is not presumed, but must be demonstrated.** L. 10 C. *de Non numer. pec.*

For an account is not to be given of non-being, but of being, because non-being does not have a cause of itself, but being does. Understand this, however, of the principal fact, if it is doubtful. For if the principal fact is certainly established, and the doubt concerns an accessory fact, then other principles hold: In doubt every fact is presumed to have been done rightly; In doubt the fact that had to be done by law is presumed to have been done; In doubt one must stand for the validity of the act. For every being naturally tends to its own perfection and good. Therefore if nothing is established as standing in the way, nature goes on pursuing its own course. These three latter principles hold both for liberty and against liberty. For liberty, if no contrary and certain presumption or common good stands in the way; for an obligation is not to be imposed unless it is certainly established. Against liberty, namely if the public good stands in the way; for the common good prevails over the private. L. 1. 1. nn. 26, 27, 137, 182, 251; l. 3. n. 201; l. 6. n. 505; L. *Quoties* 12 *de Reb. dub.* ff.

148. **Resolves:** In doubt whether you have taken some food or drink, and likewise in doubt whether you took food or drink after midnight, you may receive the Eucharist. For unless in both cases the fact is proved, liberty possesses. L. 1. 1. nn. 38, 39; Elbel 166, 167; Amort, *Theol.* T. 2, D. 5, q. 4. At the end he notes this: "I say, however, that he would sin at least venially who, solely for the sake of pleasurable drinking, would bargain in this way around the laws of the Church, exposing himself to the danger of at least material transgression; and if he does this by custom or by a settled purpose always to act in this manner, no other reasonable cause concurring, for example thirst or illness, he will sin mortally, because such a purpose indicates interpretative contempt and a defect of charity toward God and the Church, whose dignity he soils." Busembaum apud La-Croix, l. 1, n. 470, VI.

149. **In doubt no one is presumed evil unless he is proved so.** This axiom is a corollary of the preceding one. Since facts, and consequently delicts, are not presumed but must be demonstrated, neither should anyone be presumed evil, but he must be proved so. No one is evil gratuitously.

150. **Odious things should be restricted, and favors should be enlarged.** R. 15 in 6.

For no one desires to be odious, but all desire to be favored. Therefore favors are to be preferred to odious things. By favor is understood whatever indulges liberty or grants grace. R. 122 *de R. I.* By odium is understood whatever restricts liberty, establishes a penalty, or injures some right. But since it sometimes happens that what is a favor to one is an odium to another, the particular case must be

considered to determine whether favor is to be preferred to odium or odium to favor. "Whenever an express law is not found, proceed, equity being preserved, always inclining toward the more humane side." C. 11 *de Transact*. Hence another general principle arises: **In obscure matters the minimum is to be followed**, R. I. 30 in 6, and therefore the interpretation of a law is to be made less burdensome and more favorable to liberty. Hence there is still another general principle: **In doubtful matters the more benign things are always to be preferred.** L. 56 *de R. I.* Likewise another: **Unless you are certain of the command, you will not be compelled to execute what is commanded.** C. *Cum iure* 31 *de Off. et pot. iud. del.* L. 1. 1. n. 97.

151. **Resolves:** Therefore it is false that, wherever the question is generally of speculative doubt concerning the lawfulness or unlawfulness of an action, "in doubts the safer part must be chosen." Certainly in this Rule of Canon Law the question is not of speculative doubt, in which by means of a reflex principle one can form for himself a certain conscience and thus choose a wholly safe part. Rather the question is either of practical doubt, namely of a practically doubtful conscience with which it is not lawful to act, or also of those cases in which the end must necessarily be obtained. The question is especially of the external forum, in which there is often a special reason for following the safer course in order to remove scandals, abuses, and offenses of the faithful; or it concerns honesty and greater merit, not the necessity of salvation. L. 1. 1. nn. 68, 79; H. A. Tr. 1, n. 39; Struggl Tr. 1, q. 5, n. 17.

152. **Of what species of sin is he guilty who acts with a practically doubtful conscience?** He will be guilty of sin of the same kind and species as the sin about which he doubts. The reason is that one who doubts about that malice and nevertheless acts has an affection toward that malice. Hence, if you doubt whether it is mortal, you sin mortally; if you doubt generally whether it is a sin, not attending, not even confusedly, to the grave malice that may be present, you sin venially. L. 1. 1. nn. 22, 23; Elbel 140.

153. **Note:** One who sinned from an erroneous conscience is not bound in confession to explain that circumstance of erroneous conscience, because it does not change the species; for every sin is against conscience and does not depend on the objective truth of the thing except insofar as that truth is judged by conscience and proposed to the will. Except the case of censure and reservation, since then the erroneous conscience must be explained so that the exemption from censure and from reservation may be established. Except also the case in which otherwise the sin would not be understood, for example if someone, by omitting Mass on a weekday, believed that he sinned gravely.

154. **What must one do if, placed between two precepts, he remains doubtful which he must choose, for example if the precept of hearing Mass urges, and you must assist someone gravely ill?** He must sufficiently inquire into the truth, as far as is in him, so that he may lay aside the doubt.

Once the truth has been sufficiently investigated, and the doubt remains, he can and must choose that which seems to him the lesser evil; and if both seem equally grave, he can choose either. This is true even if someone culpably threw himself into that perplexity, provided he is sorry for the past fault. The reason is that there is no obligation to impossibilities, and therefore the lesser obligation then ceases; or, if they are or seem equal, or through ignorance one does not know how to discern

which is lesser, either obligation ceases. And even if someone thinks that in acting thus he sins, in reality he does not sin, because of the defect of liberty. Suarez D. 12, S. 5; Lessius in q. 19, D. 19, a. 6, D. 9; L. 1. 1. n. 10; Elbel 141.

155. **Resolves:** If the agent chooses what seems to him the greater evil, he sins according to the excess of the evil apprehended, since he freely chooses that excess.

156. **If you doubt whether you have already satisfied some obligation, are you still bound to satisfy it?** Answer: Affirmatively, if the doubt is merely negative. For in such doubt no prudent reason for satisfaction is present, and therefore it is impossible by any reflex principle to form for oneself a conscience of non-satisfaction, since the certain law altogether perseveres. Cf. Ithur. Cas. 44, n. 15.

But if the doubt is positive, it is disputed. The first opinion, which St. Alphonsus wholly holds and thinks must be held, L. 1. 1. nn. 26-29; l. 3. n. 700, final par.; l. 6. n. 477; *quaest. reform.*, recent retractions q. 1 and 18, etc., and which several others hold, affirms. The reason is, first, because a certain obligation is not satisfied by a doubtful fulfillment; second, because, since in doubt the condition of the possessor is better, and the certainly existing law possesses against liberty, it prevails over liberty and will always hold it bound to itself until it is certain that the law has been fulfilled. Cf. further L. 1. 1. nn. 20, 33, 99; l. 3. nn. 112, 290.

The second opinion, which we consider most probable both intrinsically and extrinsically, denies that such an obligation is present. The reason is the very fundamental reason of probabilism, which the holy Doctor expounds most learnedly and wisely above in the cited passages, namely: **a doubtful law does not bind.** For law does not bind in the abstract and universal, but in the concrete and particular case. L. 1. 1. n. 78. But although the existence of the law in itself is certain, nevertheless that same law as obligating in such a concrete and particular case is uncertain, and is prudently declared altogether uncertain, if it is truly probable that the law has already been satisfied. Therefore either it must be said that the obligation of satisfying the law again in the aforesaid case is null, or it must be said that the aforesaid principle, "a doubtful law does not bind," is not universally true but admits an exception; which would not be suitably said. For what is true is always true, and holds for every particular contained in the universal.

From this reason it appears that the obligation is not actually certain, which is assumed in the first reason of the opposite opinion. As to the second reason, as is clear from what has already been said, possession prevails in merely negative doubt. But in order that it certainly prevail also in positive doubt, it must be certain and certainly legitimate possession. Now when in a particular case it is truly probable that the law has been fulfilled, the possession of the law for that concrete and particular case becomes prudently doubtful; for if you have in fact satisfied it, liberty in fact possesses. Besides, it is certainly not legitimate, since the just title of obligation is probably lacking; for you can probably believe that you have already satisfied it, and therefore the just title, at least presumed, probably is not present. Cf. 121, 143, 144.

Moreover, this opinion is held by many and very weighty theologians. Indeed St. Alphonsus himself, L. 1. 1. n. 99, has this: "What in doubt whether you have fulfilled the law? In negative doubt you are bound to fulfill it; otherwise in positive doubt." Cf. also l. 4. n. 150. And thus surely St. Alphonsus himself thought in L. 1. 1. n. 76, edition of the year 1757, and he called this opinion common and

himself deduced it from the very principles of probabilism. Finally St. Alphonsus, l. 6. n. 505, says: "It must be carefully noted that penitents are not to be compelled to repeat confessions unless it is morally certain that they were invalid, as La-Croix and others rightly say."

157. **Resolves:** Therefore that axiom, **a doubtful law does not bind**, is to be understood of a law doubtful by positive doubt, or truly probably doubtful. Now a law can be positively doubtful in many ways, and in all these cases we say that the foregoing axiom has place, unless we wish to admit the truth of the general proposition and at the same time deny the truth of the proposition contained in the general.

Indeed a law can be doubtful:

1. As to its very existence and promulgation. Concerning this St. Alphonsus says: "For a law to bind, it must not only be promulgated, but also promulgated as certain. And this point must be firmly established here," L. 1. 1. nn. 63 ff. and 97. And, to omit others, he cites this from an eminent Doctor: "As long as there is a probable judgment that there is no law prohibiting the action, such a law has not been sufficiently proposed to man; hence, since the obligation of law is of itself burdensome, it does not urge until it is more certainly established."
2. As to its understanding and obvious interpretation, whether it is obscure or ambiguous, according to R. I. 30 in 6: "In obscure matters the minimum is to be followed." For since a law must be sufficiently proposed in order to bind, the legislator is not judged to wish to bind beyond what is clearly and determinately expressed in the law. Suarez in 1. 2, Tr. 3, D. 12, S. 5, n. 7.
3. Whether it has an extensive or restrictive interpretation. Concerning this St. Alphonsus, l. 3. n. 1036, says: "When it is doubted whether a law includes some case or subject, it is the same as if it is doubted whether a law exists for that case or subject; and therefore liberty possesses." Cf. also l. 1. nn. 27, 97; Lugo, *de Poenit.*, D. 16, n. 59; *de Iust. et Iur.*, D. 23, n. 110.
4. Whether it has ceased, either immediately as soon as it was enacted because it was never received, or in the course of time through desuetude. Concerning this the holy Doctor says, l. 3. n. 112: "Nor does the first opinion, which we followed in l. 1. n. 97, stand in the way, namely that in doubt whether a law has been received, the law does bind; for here we are not dealing with doubt, but with a probable opinion ... For in doubt presumption stands for the law, since a delict is not presumed in not receiving a just law. But when it is probable that the obligation of the law never began or has been abolished, then the presumption for the law ceases and liberty possesses." The same holy Doctor has this in l. 4. n. 47. Consequently the same must be said when it is probable that the end of the law has adequately ceased, L. 1. 1. n. 199, or that the law has been abrogated by custom, L. 1. 3. n. 290, or that in a particular case dispensation is not needed, L. 1. 1. n. 192; l. 3. n. 304.
5. Whether the law is just or unjust. Here a threefold case can occur.

The first is that the justice of the law is doubted because it is doubted whether the legislator himself is a legitimate superior. In this case, if the doubt concerning the legitimacy of the superior is positive, which is what we are treating, namely if it is truly probable that he is not a legitimate superior, by

that very fact the non-existence of the law becomes truly probable, and therefore it does not bind. Cf. St. Alphonsus, l. 1. nn. 98, 121. But if the doubt is merely negative, the law must be obeyed "whenever the superior is in peaceful possession of his power; for then his condition is better, as already possessing the right of commanding." L. 1. 1. n. 98; l. 4. n. 47.

The second case is that the justice of the law is doubted because it is doubted whether the superior exceeds his power. In positive doubt, or true probability concerning excess of power, the same must be said as in the preceding case. For by the very fact that it is probable that the superior exceeds his power, the non-existence of the law becomes truly probable, and therefore it does not bind. And to this opinion, as St. Alphonsus says, l. 3. n. 617, Suarez also finally agrees in the matter relevant to us here, "where he admits that there is no obligation of obeying when it is at least manifestly probable [to prevent easy illusion in this matter] that the command is beyond the power of the one commanding." But if the doubt is merely negative, presumption, speaking per se, always stands for the superior.

The third case is that the lawfulness of the thing commanded is doubted. In positive doubt or true probability, the law is not doubtful, and therefore it binds. For the superior then commands a thing probably lawful, indeed certainly lawful; for he commands that the subject embrace in practice some probable opinion, which is certainly lawful. Therefore he commands lawfully and rightly. Therefore the subject is bound to obey. Lugo, *Resp. Mor.*, l. 3, D. 19; L. 90; l. 1. nn. 93, 99, 134. St. Alphonsus, l. 4. n. 47, adds another reason: "Because the right of possession which the superior has prevails over every contrary opinion that does not have convincing reasons founding moral certitude."

"The Doctors commonly limit the foregoing opinion, however, and say that the subject is not bound to obey: first, if the matter is very difficult and burdensome, because then the difficulty of the work, together with the probable opinion that the thing commanded is unlawful, or that the command exceeds the superior's power, prevails over his possession; second, when by obeying the subject would expose himself or another to the danger of suffering grave inconvenience in life, reputation, honor, or goods. The reason is that the subject is not then bound to deprive himself of his own certain right, which he possesses concerning such goods of great importance, lest the superior be deprived of his possession, which in that case is in some way uncertain." L. 1. 4. n. 47; l. 3. n. 617; l. 1. n. 31.

This reason, however, does not seem demonstrative to us; for if the superior's right is certain, as St. Alphonsus himself was just affirming, it can be overcome only by contrary certitude. But if it is uncertain, as is said in that limitation, then the argument just made for the general doctrine is not actually demonstrative. Therefore the better and demonstrative reason seems to us to be that then, in the case of a thing very difficult or harmful, it can rightly be doubted whether the superior exceeds the limits of his power; and therefore, as was just said, the existence of the law becomes doubtful. Or there can also then be place for legitimate epikeia, according to the various circumstances of the particular case.

But if the doubt is merely negative, presumption always stands for the superior. Cf. Suarez, *de Relig.*, T. 4, Tr. 10, l. 4, c. 15; Lugo, *Resp. Mor.*, l. 3, D. 19. Moreover, with regard more to practice, "the common opinion belongs to all theologians, both recent and ancient, who teach that in obscure matters one must obey the superior where sin is not certain; and so all who have treated this matter

have taught. Thus also all the masters of mystical theology with St. Ignatius of Loyola in his letter on the virtue of obedience." L. 1. 1. nn. 100, 194; Lugo, l. c. n. 3; Suarez D. 12, S. 5.

VI. On Scrupulous Conscience

158. **What is a scrupulous conscience?** A scruple is an empty apprehension, and the fear and anxiety arising from it, that there is sin somewhere where there is none, or grave sin where there is only light sin. Therefore a scrupulous conscience is that conscience which from some vain cause doubts about the honesty of an action and therefore fears sin.

Fear of this kind can very well stand with a determined judgment concerning the honesty of the thing, for it rests only on a slight and vain motive. But if that fear exists with a determined judgment that something is sin which in reality is not, this judgment, insofar as it proceeds from a vain motive and afflicts and disturbs the soul, can certainly be called a scruple, or a scrupulous conscience, speaking broadly; properly, however, it is a vincibly erroneous conscience. Likewise there can be a scruple with true practical doubt whether this is a sin or not, from a vain motive, suspecting perhaps that it is sin without any determined judgment that it is or is not sin. And thus again it is a scruple or scrupulous conscience broadly so called; properly, however, it is a doubtful conscience.

159. **Is it lawful to act with a scrupulous conscience?** The answer is clear from the two following propositions in this number and the next.

It is lawful to act with a scrupulous conscience while the scruple remains, provided it is judged to be a scruple and is despised as such. Nor is it necessary that an express judgment be formed for each individual act that it is a scruple; it is sufficient that one act against it from a judgment based on the experience of past acts.

The first reason is that one who is scrupulous in this way has a prudent motive for despising the dictate of a scrupulous conscience, because the scruple proceeds from a slight foundation and therefore does not remove a judgment otherwise certain or probable; and because confessors and theologians commonly say that scruples are to be laid aside, or, if they cannot be laid aside, to be despised. The second reason is that there is then at least a virtual judgment of that contempt of scruples. Suarez D. 12, final S.; L. 1. 1. nn. 18, 19.

160. One who is scrupulous but does not know or notice that he is scrupulous, or at least that he is scrupulous in this action, cannot act against a scrupulous conscience if a judgment of sin is formed or a doubt about it is held. The reason is that such a person would freely choose what he judges to be evil, or about which he doubts whether it is evil.

161. **Whence do scruples proceed?** The causes of scruples, whether dispositive, permissive, effective, or occasional, are some intrinsic and others extrinsic.

The intrinsic causes of scruples are: first, a natural constitution of the body very disposed to suspicions and fears, such as a melancholic temperament; second, weak health of the head, especially in women; third, ignorance, by which someone does not well perceive the precepts of God and of the Church; fourth, hidden pride, by which someone trusts too much in his own judgment; fifth,

excessive abstinence and immoderate vigils, by which, the head being weakened, the mind is easily disturbed; sixth, immoderate and indiscreet fervor.

The extrinsic causes of scruples are: first, God, who permits scruples in the just, so that being purified they may advance more; in the lukewarm, so that they may perform the Christian duties of piety more fervently; in penitents, so that they may pay the penalty of past sins. Scruples are judged to be from God if those troubled by them become better.

Second, the devil, who, "God permitting, can move melancholic humors in man, through which the imagination can either err or be disturbed toward inordinate fear." St. Antoninus, I p., t. 3, c. 10. Scruples are thought to come from the devil if the scrupulous person feels himself being led to tepidity, withdrawn from virtue, and especially inclined to despair.

Third, the society of scrupulous persons, especially if the scrupulous govern themselves by the counsels of such people and frequently converse with them about matters of the soul; for those with whom we associate, we very easily imitate.

Fourth, the reading of books that are too rigorous, "establishing harder precepts which the human condition cannot sustain," St. Ambrose on Psalm 118; little by little and without noticing it, we assent to the opinions to which we give study.

162. **What are the signs of a scrupulous conscience?** "First, obstinacy of judgment, by which the scrupulous person refuses to obey the counsels of the wise, consults various people, but rests in the judgment of none; indeed, the more people he hears, the more perplexed he becomes.

"Second, frequent change of judgment from slight motives, whence arises inconstancy in acting and disturbance of mind, especially in external operations, such as in the celebration of Mass, etc.

"Third, having impertinent reflections on many circumstances which were present or could have been present in the action." L. 1. 1. n. 11.

Fourth, if he thinks he sins in that in which pious people find no sin at all; if he recites his prayers anxiously and continually begins them again from the start; if he makes no end of examining his conscience, and explains every smallest thing, and often even repeats it in confession.

Fifth, if he uses ridiculous signs, gestures, and other ways to lay aside scruples.

Sixth, if a confessor or another prudent man has judged him scrupulous. La-Croix, l. 1, n. 515 ff.

163. **What are the remedies for a scrupulous conscience?**

164. To despise scruples, act against them, and not nourish them by thought. "The scrupulous person is sometimes bound by a grave obligation to act against scruples, since from the anxiety of scruples he can fear grave harm in spiritual progress or in the health of body or mind." L. 1. 1. nn. 17, 13.

165. To acquiesce in the judgment of the confessor, or of another pious and learned man. "For this above all can be called the chief, indeed the single, remedy of such sick persons ... Deprived of this anchor of obedience, they can never be healed." L. 1. 1. nn. 12, 13, 16. "After the scrupulous person has received the answer or example of one confessor or good man, he ought

not consult others, lest he become accustomed to fostering useless anxieties for too long." Sporer n. 108.

166. To look upon the life and practice of good people as a rule, and to avoid the conversation of other scrupulous persons; likewise to abstain from reading books that excite scruples. L. 1. 1. n. 2.

167. Before acting, not to judge anything to be sin unless he certainly knows it, lest from an error of conscience he actually sin. After the operation let him use "the rule wisely handed down by the Doctors, namely, that those who are of fearful conscience, unless they know with moral certitude that they consented to grave sin, are to be judged free from sin; for it is impossible for sin to enter a soul abhorring it without being clearly known by that soul." L. 1. 1. n. 15; Suarez D. 12, final S.

168. To accustom himself to following the milder and even less safe opinions. Busembaum apud La-Croix, l. c. "For the scrupulous, that rule handed down by Blessed Albert the Great and St. Antoninus is to be observed: between a hard and a benign opinion concerning precepts, the benign interpretation, other things being equal, is to be made." L. 1. 1. n. 19.

169. Never to be idle, because idleness fills the imagination with scrupulous thoughts. L. 1. 1. n. 12.

170. To destroy the causes of scruples; for example, let the melancholic person purge black bile with medicines; let the obstinate person break his own judgment; let the proud person not trust his own prudence; let the unlearned person seek instruction; let the fearful person meditate on the goodness of God, who does not impose precepts reducing one to madness.

171. Instantly and confidently to commend himself to God, "who comforts us in all our tribulation," 2 Cor. 1:4; L. 1. 1. n. 12.

172. **Does the Council of Trent bind in those places where it was not promulgated?** It is certain: first, that it binds everywhere as to faith and morals, since there is one rule for these matters and it is necessary for all. Nor are these new laws, but mere declarations of natural and divine law, already sufficiently promulgated beforehand.

Second, it is certain that it does not bind as to the decree concerning clandestine marriages, Session 22, c. 1 *de R*.

As to other decrees that regard discipline, the common opinion, and the one to be held, affirms that it binds. For the bull establishing the obligation of the Council of Trent regards the whole world; likewise the bull determining the day on which Trent begins to bind was given to the whole world and was legitimately promulgated at Rome. Bull of Pius IV, *Benedictus Deus* 1564, and *Sicut ad Sacrorum* 1564. Scavini, v. 4, n. 83, Milan ed. 1874; E. M.

170. **Does the force of law depend on acceptance by the community?** Per se, the law in no way depends on the acceptance of the people in order to bind. Therefore, independently of that acceptance, the law is in itself entirely perfect as to the obligating force that it has.

Proof: the whole force of obligating is in the superior, not in the subject. Therefore as soon as the will of the superior is sufficiently known, one is liable to the obligation. L. 97, 136, 137, 138.

"Per se": therefore bishops sin when they do not accept Pontifical laws; civil governments of Catholic nations also sin when they forbid the laws of the Church to be accepted. These laws, notwithstanding that prohibition, retain their force of binding. Cf. L. 96.

Accidentally, however, a law not accepted sometimes does not bind, by reason of the tacit or express consent of the superior, or by reason of privilege or tolerated custom.

Proof: first, from the common consent of theologians. Second, because, as has already been said, the whole force of obligating is in the superior. Therefore, if the superior consents that it not bind, in whatever manner he consents, the law will no longer bind. Hence, if the greater part of the people has not accepted a law, and the prince knowingly and willingly no longer urges it, although the first persons not accepting the law sinned, others are free from fault because of the presumed consent of the superior.

"Not accepting," namely by contrariwise breaking the law, with the will not to observe it. For if the greater part has not accepted the law merely negatively, that is, on account of a reasonable cause suspends its obligation for a time until that cause is manifested to the superior, meanwhile prepared to obey if the superior urges the obligation, then not even the first persons sin. From a certain benign interpretation, the obligation of the law can be regarded as suspended until the matter is settled. L. 139; Struggl q. 1, nn. 27, 28, 29.

"Knowingly and willingly": for if the prince does not know that it is not received or not brought into use, or cannot contradict it at the beginning, the obligation of the law lasts until the time required for prescription has elapsed and legitimate custom is formed. Nevertheless, "if you are prepared to accept a promulgated law and, given the occasion, also observe it, but most others of the community do not receive it and do not seem likely to receive it, then at least you will be excused from it by discretion," L. 137, or rather because of the presumed will of the superior, who is unwilling to bind you alone. L. 139; Struggl q. 1, n. 30; Laymann c. 3, M.

171. **What are the properties of law?** They are the following.

First, **possibility**, including moral possibility: namely, that it does not bring grave or very grave inconvenience and difficulty, at least commonly speaking, and in the case of positive law. The reason is that since law is an ordinance of reason, it too must be ordered. Now it is imprudent and rash to pour out life and other goods that could be preserved for better use afterward, apart from the case of the common good, contempt of God, or violation of a negative law.

Moreover, since law is again an ordinance of reason, and therefore must itself be ordered, it must be accommodated to the common condition of men, so that it can morally be observed by the whole community, or at least by the greater part of it. Otherwise it would be useless, indeed harmful, to make the law. It certainly does not belong to everyone to exercise any and every act of virtue, even heroic acts. This is confirmed by the very practice of both laws, ecclesiastical and civil, and by the consent of all theologians, who assert that positive divine and human law generally do not bind with proportionate grave harm accidentally joined to observance of the law. St. Thomas, 2. 2. q. 79, a. 3 ad 2; Sanchez, *in Decal.*, l. 1, c. 18, n. 2.

Hence heroic acts generally do not seem to fall under law, because they are morally judged to exceed human strength, and therefore such a law would lack that quality by which it could be called

possible. Nevertheless, when the common good requires it, they can sometimes be prescribed. Thus soldiers on watch cannot abandon their station, even when danger of life is imminent, if the republic would suffer harm from it. Thus also the law binds with danger of life if souls would perish unless the pastor goes to the sick in time of plague. L. 175. "When the common good requires it," namely if that precept is necessary to preserve a good or avert a common evil.

This, however, must not be understood of those laws that are enacted on the given hypothesis of some special state into which the subject has voluntarily placed himself; for this reason they call such a state hypothetical, adventitious, or elective. Thus the Church prescribes perpetual enclosure to nuns. Thus also very grave penalties can be imposed on men guilty of very grave crime. For it was free to them to withdraw themselves from those penalties by acting otherwise. Struggl q. 2, n. 8.

"In the case of positive law": for negative laws, namely those which forbid evil by natural law, must be observed even with danger of life. Evil is never to be done. But except laws prescribing a thing that by its nature cannot be performed without grave inconvenience, such as the law of confession, for which the help of grace is at hand and from which impossibility also excuses. Positive laws, moreover, the more they provide for the good of religion and of the republic, the more they bind even with greater inconvenience. E. M.

Second, **honesty**; for law is an ordinance of reason. Therefore a law cannot prescribe dishonest acts; however, it can prescribe acts indifferent in themselves, which can be ordered to the common good and which consequently become positively honest. Struggl q. 2, n. 9; Elbel 252-254; St. Thomas, 1. 2. q. 95, a. 3; q. 96, a. 2.

Third, **utility**; for law is an ordinance of reason for the common good by him who has care of the community. Hence any law cannot prescribe any honest acts whatever, but all and only those acts whose performance or omission can contribute to the common good of the society, so that at least mediately, indirectly, and ultimately it redounds to the common good. St. Thomas, 1. 2. q. 96, a. 3.

Therefore civil law certainly cannot prescribe merely internal acts. Nor can ecclesiastical law, according to many, do this, because, they say, the legislative power of the Church pertains only to the external governance of the faithful. St. Alphonsus, St. Thomas, Suarez, Benedict XIV, etc., against others who also affirm this probably, because the Church received unlimited power from Christ.

Human law can, however, prescribe mixed acts, that is, acts partly internal and partly external, which together constitute one moral act; and external acts even if hidden, for both kinds of acts can be directed to the common good. "And thus externalized heresy, although hidden, is prohibited under excommunication; thus hidden homicide under irregularity." L. 100. St. Thomas, 1. 2. q. 96, a. 1; q. 100, a. 9; 2. 2. q. 104, a. 5; Suarez l. 4, cc. 12, 18; Ithur. Cas. 41, n. 23; Benedict XIV, *de Syn.*, l. 9, c. 4, n. 4.

Fourth, **justice**. "Laws are called just both from their end, namely when they are ordered to the common good; and from their author, namely when the law enacted does not exceed the power of the one enacting it; and from their form, namely when burdens are imposed on subjects according to proportional equality in order to the common good. For since one man is part of the multitude, every man, as to what he is and what he has, belongs to the multitude, just as every part, as to what it is, belongs to the whole; hence nature also brings some detriment to the part in order to save the whole.

And accordingly laws of this kind, imposing burdens proportionately, are just, and bind in the forum of conscience, and are legal laws.

"But laws are unjust in two ways: in one way by opposition to human good, contrary to what was said above; either from the end, as when someone presiding imposes burdensome laws on subjects, not pertaining to common utility, but rather to his own utility or glory; or also from the author, as when someone enacts a law beyond the power committed to him; or also from the form, for example when burdens are distributed unequally to the multitude, even if they are ordered to the common good. Such things are rather violences than laws ... Hence such laws do not bind in the forum of conscience, except perhaps to avoid scandal or disturbance, for which reason a man should yield even his own right ... In another way laws can be unjust by opposition to divine good, such as the laws of tyrants inducing to idolatry, or to anything else that is against divine good; and such laws it is in no way lawful to observe." St. Thomas, 1. 2. q. 96, a. 4.

Fifth, **stability**; for law is established without a defined time, so that once enacted, unless it is abrogated, or becomes harmful or useless, it lasts as long as the community on which it is imposed stands, or as long as the circumstances for which it was enacted persevere. But what is indeed established generally, yet not in perpetuity, has the name of statute, edict, or decree. St. Thomas, 1. 2. q. 97, aa. 1-2.

Hence law can cease only in three ways. First, by abrogation or derogation, insofar as it is abolished wholly or only in part. L. 102 *de R. I.* For just as the superior can enact a law, so he can take away or restrict the same law. Here it must be noted that a general law never abrogates a particular law of some place unless this is expressly provided in it, nor a particular custom, which the prince is presumed not to know. On the other hand, because universal customs are presumed to be known to the prince, they must be said to be abrogated by the very fact that the prince enacts a contrary law, even if a general derogatory clause is lacking. The same must be said of a universal law. Bishops, however, by their laws abrogate any particular custom, because they are presumed to have full knowledge of the customs of their dioceses. C. *Licet* 1 *de Const.* in 6; C. I. beginning *Dispos.* etc. a. 5; C. H. 5; L. 109, 199; cf. l. 6. n. 680.

Second, by the cessation of the adequate motive cause, or the total end, for which it was enacted, with respect to the whole community; for when the cause of a law ceases, the legislator cannot reasonably urge it. St. Thomas, 1. 2. q. 103, a. 4 ad 3.

Third, by desuetude, or by contrary custom clothed with the required conditions; for then at least the legal consent of the superior accedes.

This stability is a property exclusively proper to law if law is compared with precept. For a precept ceases with the death of the one commanding or with his cessation from office; but law is not extinguished together with the legislator. For when the physical person from whom the law emanated ceases, neither the office of making laws ceases, nor does the common good cease; and therefore the law does not cease, since that common good is the universal and constant good of the whole society. But the good which a precept regards is a private, or individual, good, and by its nature variable; and with the physical person of the superior the very office of commanding per se ceases, as may be seen in a father, lord, teacher, etc.

Meanwhile, however, even a precept or mandate sometimes does not at once expire through the death of the one mandating: namely, if the mandate is for pious causes, or in favor of a marriage dowry or of some student; if the mandatary is expressly ordered to execute something even after the death of the one mandating; if the matter is no longer intact, as in judgments, donations, and promulgations to be made in another's name; if the matter is still intact, but only the execution of some favor has been entrusted in favor of another, and the granting of the favor itself has not been left to the discretion of the mandatary. La-Croix 566, 876; Struggl q. 1, n. 5; L. 140.

Sixth, law immediately affects territory, but precept immediately affects the person. For precept regards the private good of a person, and therefore wherever the person is, the precept urges. But law regards the common good, namely the good of a community, which exists only in a determinate territory; hence it obliges a person only when existing in the territory.

172. **Does a law cease when the final cause ceases only in a particular case?** Answer: Affirmatively, if it ceases contrariwise, namely when the matter of the law would be rendered harmful or very difficult in that case. For positive law, especially human law, does not bind with grave and proportionate inconvenience.

It is disputed if it ceases only privatively, that is, if the law would then be rendered useless. The first opinion, which many weighty theologians hold, affirms, because the law is then rendered useless. The second opinion, which more pleases St. Alphonsus, denies, because although the end of the law ceases in the particular case, it nevertheless does not cease in common. For, commonly speaking, there is almost always danger of hallucination, by which one can easily be deceived in one's own case. Hence the law then becomes founded on a presumption of law, which indeed always binds. Nevertheless the holy Doctor adds that if a case occurred in which "someone were altogether certain and secure that every danger of hallucination was absent," he would not dare to disapprove the first opinion. L. 199; l. 6. n. 613. Indeed, he calls this opinion probable in l. 3. n. 846.

It must be noted, however, that the end of a law can be multiple, as in the reading of prohibited books; and then, if one end ceases, the law does not therefore cease. L. H. A. Tr. 2, n. 69; St. Thomas, 1. 2. q. 103, a. 4 ad 3; 2. 2. q. 154, aa. 2, 3; Struggl q. 4, nn. 25-27.

173. **Resolves:** Betrothed persons are not exempt from the proclamation of banns, even if they know with certainty that no impediment underlies the marriage. Hence one also cannot read prohibited books if he fears no danger to himself from them. And although that danger truly ceases in the particular case, nevertheless the end of the prohibition does not altogether cease, since that end is not only that the danger of perversion be avoided, but also that occasion not be given to wicked writers to commit pernicious things to print. L. 199.

174. **What is interpretation of law, and how many kinds are there?** Law is not always clear. Hence, to understand it rightly, interpretation is needed, which is defined as: the genuine explanation of the law according to the mind of the legislator. "Mind," not hidden, but expressed in the words of the law. St. Thomas, 2. 2. q. 120, a. 1 ad 3.

Interpretation is: first, authentic, doctrinal, and usual, according as it is made by the superior himself, by learned men, or from custom. In order that an interpretation be truly authentic and not doctrinal,

it is necessary that the superior declare the law insofar as he is superior, that is, using the power of jurisdiction. For if he declares his mind as a private person, the interpretation will not be authentic, but doctrinal. Custom is equivalent to authentic interpretation if it is legitimately prescribed; otherwise it is merely doctrinal.

Second, strict or broad, according as it is made strictly according to the natural property of the words, or broadly according to a more benign sense.

Third, comprehensive or extensive, according as either nothing new is introduced by that interpretation, or something is added by it, when the words are taken either as they sound or beyond their natural sense. Ithur. Cas. 53, nn. 2 ff.; L. 1. 3. nn. 760, 765; C. I. beginning *Dispos.* etc. a. 3.

175. **What are the rules of interpretation?** First, the words of a law are to be taken according to their proper and customary meaning, unless something absurd or unjust would follow from this, or the law would become altogether useless.

Second, in doubt about the true sense, attention must be given to the mind of the legislator, or to the end of the law, and to the circumstances either preceding or following. Reg. 88 *de R. I.* in 6.

Third, a penal and odious law is to be interpreted strictly in doubt; but a favorable law receives broad interpretation. L. 17, 18, 19, 23, 24, 25, 26, 37 *de Legib.*; L. 200; Struggl q. 4, nn. 1 ff.

176. **Does authentic interpretation need promulgation in order to bind?** Answer: Negatively, if that interpretation is a declaration of a sense clearly contained in the law, since such a declaration is not a new law; for it establishes nothing new, but declares what has been established. Affirmatively, if the declaration is of a sense obscurely contained in the law, because it is then regarded as a new law; or if it restricts or extends the law, since then it is truly a new law. L. 200; l. 3. n. 1027.

177. **Must a law be extended from case to case because of identity of reason?** "Penal laws are not to be extended from case to case." L. 1. 6. n. 689. For odious things are to be restricted.

Likewise, invalidating laws or laws granting some right cannot be extended from case to case; for then an act lacks value, or has force only from the positive will of the legislator. C. I. beginning *Dispos.* etc. a. 4.

The same must be denied as to other laws, even if the same reason applies, and a fortiori if there is only a similar reason. For it is not the reason of the law, but the will of the legislator, duly made known to the subjects, that has the force of law and binds. For the legislator can well provide for one thing and not for another. Hence the common axiom: **The reason of the law is not the law**; and the end of a precept does not fall under the precept. L. 20, 21 *de Legib.*; St. Thomas, 1. 2. q. 100, a. 9 ad 2; L. 1. 3. n. 273.

But if it is not lawful per se to extend a law from case to case, a fortiori it is not lawful to extend a privilege from persons to other persons, or from things to other things. Reg. 28 *de R. I.* in 6. Nevertheless, "to act contrary to the end of the law is a certain disorder, which does not seem to be excused from all fault." L. 1. 3. n. 1030.

Exception must be made whenever otherwise something manifestly absurd or unjust would follow, and the legislator could manifestly be accused of injustice or imprudence. This occurs in the following: first, in correlatives, for example between bridegroom and bride; as, for instance, if the bride is freed from betrothal because of the long absence of the bridegroom, the bridegroom is likewise freed because of the bride's absence. Second, in things equated by law, such as election, presentation, and postulation to a benefice; eggs and milk foods by reason of abstinence; and so what the law disposes concerning one is judged to dispose the same concerning the other. Third, in connected things, such as deacon and subdeacon. Fourth, in contained things: thus one who can make a testament can also make legacies.

And these hold even if the question concerns a penal law. Nor then does the rule hold: odious things are to be restricted, favors enlarged. For that proceeds only when the disposition of a law is extended from interpretation of congruity, not when it must be extended from interpretation of necessity, which should not so much be called extension as mere comprehension. Indeed, extension of law is either necessary or congruential. The former is altogether required for justice or rectitude; the latter is not so, but is only voluntary, because although a law can justly include many other things, nevertheless a lesser comprehension suffices for preserving the justice of the law and the propriety of the words together with the reason of the law. Therefore the general rule about not enlarging penal laws must be understood of voluntary interpretation, that is, interpretation without which the prudent disposition and justice of the law can still be preserved; not of the necessary extension of law, which is required so that justice or equity be preserved. L. 200; l. 3. nn. 293, 1027; Ithur. Cas. 53.

178. **Do the Declarations, Decisions, and Decrees of the Sacred Congregations have the force of law?** There is no doubt that they bind in the particular cases for which they are issued. Constitution of Sixtus V, *Immensa*.

There is no doubt that they have the force of law if the strength of apostolic firmness is added to them, cf. Benedict XIV, Constitution *Sacramentum Poenitentiae*, or if they have been solemnly published by mandate of the Apostolic See, or if they have been universally promulgated in the Church and by the use of many years. L. 106.

Apart from the aforesaid cases, "there is a twofold opinion, both probable ... The first opinion asserts that they have the force of obliging all ... The second opinion says that they do not bind universally ... The reason of this opinion is that, for a law to bind, solemn promulgation of the law is altogether required." L. 106.

But there is a third opinion, which affirms when the Declarations are comprehensive, namely when they do not depart from the proper and commonly received signification of the words. For then no promulgation is needed, since a new law is not made, but one already made and promulgated is only explained. It denies, however, when the Declarations are extensive, namely when they depart from the proper and commonly accepted signification of the words. For then they are new laws, which require legislative power and promulgation. Schmalz., *Dissert. prooem.*, nn. 373 ff.; Pichler, *Proleg.*, n. 46; Reiffenst., *Prooem.*, nn. 130 ff.; L. 1. 1. n. 106; l. 3. nn. 760, 765, 1027; l. 6. nn. 401, 403, 566, 593, 699; H. A. Tr. 15, n. 87; Benedict XIV, *de Syn.*, l. 6, c. 6, n. 4; in the index of the work under

Congregation of the Council, its prudent inconsistency in its decisions and in rendering judgments; Scavini, l. 1, nn. 339-340, Milan ed. 1874; E. M.

179. **What is epikeia?** Epikeia is referred back to interpretation. It is a benign but equitable interpretation of law by which the law is judged not to extend to such a particular case, although it is clearly included in the words of the law, because of particular circumstances which were not actually foreseen or comprehended by the legislator. For example, if a law forbids carrying weapons at night, I may carry them if I must go out and am about to meet my enemy seeking to kill me.

In order that there be place for epikeia, however, the law must not only cease in the particular case negatively, namely because the end of the law is then lacking; it must cease contrariwise, namely because observance of the law would become sinful, harmful, or too burdensome. Nor is it then necessary to ask the superior, although this could easily be done. This is deduced from the very properties of law. For law must be honest, useful, and possible, and therefore does not bind with grave inconvenience.

But there is also place for epikeia when, although the law in the particular case is not rendered sinful, harmful, or too burdensome, nevertheless from a certain equity and benignity it is judged that the legislator was unwilling to include that case in the words of the law. And then, since it almost falls back into dispensation, it is necessary to approach the superior if he can be consulted. L. 3 ff. *de Legib.*; L. 201; St. Thomas, 1. 2. q. 96, a. 6; 2. 2. q. 120, a. 1; Struggl q. 4, nn. 7-8; Ithur. Cas. 53, nn. 9-13; Schmalz., l. 1, t. 2, n. 44.

II. On the Author of Law

180. **Who, generally, can make laws?** Since God is Lord of all, and has commanded that obedience be given not only to ecclesiastical but also to civil superiors, not only he himself, but they also, can make laws. L. 140. Hence several kinds of law are distinguished.

First, **eternal law**, which is: the eternal reason and will of God commanding that the prescribed order be preserved and forbidding that it be disturbed. It is the beginning and foundation of every law; for from it flows natural law, and from natural law the remaining laws derive their force and norm. Cf. St. Thomas, 1. 2. q. 91, a. 1; q. 93.

Second, **natural law**, which is the eternal law of God promulgated to men through right reason, by which we discern what is good and what is evil, that good is to be done and evil avoided. Therefore the object of this law is what is good or evil per se and intrinsically. Cf. St. Thomas, 1. 2. q. 91, aa. 2, 6; q. 94; L. 102.

Third, **divine law**, which is law given by God through revelation. It is twofold: one contained in the Old Testament, the other in the New Testament. The Old Testament contained ceremonial, judicial, and moral precepts. The New Testament, besides counsels, contains precepts of faith, morals, and sacraments. Cf. St. Thomas, 1. 2. q. 91, aa. 4, 5; qq. 98-108; L. 103.

Fourth, **canon and civil law**. The former is from ecclesiastical power, and it touches those things in the Church that pertain to the salvation of souls. The latter is from civil power, and moderates rights

and obligations between citizens and citizens, between citizens and prince, and between nation and nation. Hence private, public, and international law arise. C. 1, 13 *de Constit.*; C. 2 e. t. in 6; Inst. 1. 1. 1. 1. 2; l. 2. 1. 1 § 11; St. Thomas, 1. 2. q. 91, a. 3; q. 95; E. M.

181. **Who makes laws in the Church?** The Pope and bishops, either by themselves or in ecumenical, provincial, or diocesan Councils. C. *Si quis* 2 *de Maior.*; C. *Ut animarum* 2 *de Const.* in 6. The decrees of Provincial Councils cannot be published unless they have first been examined and reviewed by the Sacred Congregation of the Council. Sixtus V, Constitution *Immensa*.

The Pope makes laws for the whole Church. For he has primacy of jurisdiction over the whole Church. The Decrees of ecumenical Councils have the same force. For General Councils represent the whole Church teaching and governing. Legates also make laws in their provinces, but in the name and by the authority of the Supreme Pontiff. C. *Nemini* 10 *de Off. Leg*.

Bishops make laws in their own dioceses, namely after they have been canonically instituted in their own dioceses, the apostolic letters having been issued and exhibited. C. *Iniunctae de Elect.*, Extravag. Comm.; Constitution of Pius V, *Romanus Pontifex*. For they are true rulers in their dioceses, Acts 20:28. This kind of power is necessary for the right administration of the diocese.

Hence bishops can indeed make laws each for his own diocese, even without the consent of the chapter, unless the matter concerns things that can redound to the prejudice of the chapter or clergy. C. *Novit* 4; C. *Quanto* 5 *de His quae fiunt a praei.* Custom, however, has prevailed that, unless otherwise expressly provided, those things which a bishop decrees outside synod, without consulting the chapter, do not have the force of law but of a simple statute, which consequently ceases when the bishop's right ceases, by death, transfer, or resignation.

But statutes of the bishop, even outside synod, made and promulgated after hearing the counsel of the chapter, according to the truer opinion, have the same perpetuity as Synodal Constitutions. Benedict XIV, *de Syn.*, l. 12, c. 5, n. 1; l. 13, c. 5; L. 104; l. 7. n. 6.

Bishops can decree nothing against the laws of the Pontiff, nor in matters reserved to the Holy See, since an inferior has no jurisdiction over a superior. Archbishops and Patriarchs cannot make laws for the dioceses of suffragans, because they are not superiors properly so called, although they can settle disputes brought before them. L. 105; Struggl q. 2, n. 6; E. M.

182. **Can others also make laws besides the Supreme Pontiff and bishops?** First, a Cardinal can, by reason of his dignity, make laws in the Church of his Title. C. *His quae de Mai. et obed.*; C. *Querel. de Elect.* But the College of Cardinals, when the Roman See is vacant, cannot make laws unless necessity urges; rather it must at once devote itself to the nomination of another Pontiff. Clem. 2 *de Elect*.

Second, abbots and exempt prelates can make laws for their own territory, where they exercise quasi-episcopal jurisdiction; for legislative power is joined to jurisdiction.

Third, the cathedral chapter, when the see is vacant, can make laws. For by law it succeeds to the jurisdiction of the bishop. C. *His quae* 11; C. *Cum olim* 14 *de Mai. et obed.*; L. 104; Lugo, *Resp. Mor.*, l. 1, D. 21, n. 5.

Fourth, chapters or general congregations and regular prelates can make true laws within the limits of their jurisdiction, according to the proper constitutions of the order. For they have statutes approved by the Supreme Pontiff, which grant them this faculty. "Of jurisdiction," namely granted by the Pope, not by force of the vow; for since a vow is personal, it gives only the power of imposing precepts, and by no means of making law. Elbel 278-280.

Fifth, abbesses or superiors of nuns cannot make laws properly so called, since they are not capable of ecclesiastical jurisdiction. They can, however, require obedience in conscience concerning commanded matters, or concerning those things that conduce to the progress of the nuns according to the rules. For they have the right of commanding both from the vow of obedience emitted by the subjects and from the necessity of discipline that must be preserved in a community. Hence novices, although they are not bound strictly to obedience by force of a vow, which they have not emitted, are nevertheless bound in some way to obey by reason of regular discipline. Therefore "abbesses can give precepts for the right government of the house, and can even bind under grave fault." L. 104. Cf. Schmalz., l. 1, t. 31, nn. 38-39; Elbel 281-284.

Sixth, pastors cannot make laws. The reason is that they do not have jurisdiction in the external forum. E. M.

183. **Who makes laws in civil society?** The prince, or the people, or both together, according to the various form of government, make laws. In monarchic governments, princes who enjoy supreme power in civil society make laws. In representative governments, the power of making laws resides in the king, or in the president of the republic, and in the legislative body constituted of deputies, or also of senators. Indeed secular princes are true superiors in civil society, and that power is necessary for the right governance of civil society. Therefore there is no doubt that their laws also can bind in conscience. L. 104; E. M.

184. **Note:** First: "The Supreme Pontiff will be able to abrogate or correct the civil laws of other princes if they are opposed to equity." L. 103. For although the Supreme Pontiff does not have direct power to make all laws binding in civil matters, but only in ecclesiastical matters, C. 13 *de Iudiciis*; C. 13 *Qui filii sint legitimi*, nevertheless he also has indirect power in civil matters insofar as he can correct civil laws harmful to the salvation of the faithful and can supply for the negligence of civil princes. C. 1, 2 *de Empt. et vend.*; *de Tregua et pace*.

Thus, of the old Roman Law, "some civil laws are expressly approved by Canon Law, others expressly corrected, others neither approved nor reprobated ... The approved laws without doubt bind in conscience ... The corrected laws indeed do not bind in conscience ... Those not reprobated seem tacitly approved by Canon Law ... C. 1 *de Novi oper. nuntiat.* ... Likewise C. *Super specula de Privil.* ... And Pope Gelasius, ep. 4 to Emperor Anastasius, wrote: As far as the orders of public discipline are concerned, the bishops of religion themselves also obey your laws." L. 106.

Understand these things not only of Roman Law, which once flourished, but also of the civil law that flourishes at present. For the order of public discipline and the command of legitimate power are the reason why Roman Law is approved by Canon Law, and the same reason holds in any well-ordered civil society. Roman Law, together with Canon Law, constituted the Common Law, so called because for many centuries the whole world commonly used it.

Second: "Certainly both the Church and the state each has its own sovereignty; and therefore in managing their own affairs neither obeys the other, of course within the limits established by the proximate cause of each. From this, however, it does not follow in any way that they are separated, much less opposed." Leo XIII, encyclical *Sapientiae Christianae*, January 10, 1880.

Since both powers are from God and tend to the same end, they mutually foster one another. Hence, whenever the matter is common to both laws, civil law is supplied from Canon Law; and, conversely, what is lacking to Canon Law is supplied from Civil Law, C. 1 *de Nov. op. nunc.*, not indeed Roman Law, which once flourished, but that which now flourishes; because the reason why each law fosters the other is that each power ought mutually to foster the other, certainly not the power that has ceased, but the power that exists. Nevertheless, when Canon Law takes interpretation from Civil Law, it must be interpreted not from that which now flourishes, but from the Common Law, because it was made while that law ruled. Leo XIII, encyclical *Arcanum*, February 10, 1880, par. *Nemo autem*; Benedict XIV, *de Syn.*, l. 9, c. 9 ff.; L. 104, 105-106; D'Annibale, 3rd ed., P. 1, n. 201; E. M.

185. **Can tyrants make laws such that these truly bind?** Laws and sentences, honest and just in themselves, made by a tyrant bind, whether he is such de facto, or in administration, or such by right, or title, but peacefully possesses the kingdom. The reason is that the former has legitimate power, although he abuses it; the latter also has power, although usurped, and is also bound to restore it to the legitimate prince. For society cannot stand without some power, nor ought it destroy itself. "But peacefully," etc.; otherwise there is no obligation of obeying him, since he is not yet a true superior. L. 94; H. A. Tr. 8, n. 13; St. Thomas, 2. 2. q. 104, a. 6; letter of Leo XIII, *Magna animi nostri*, May 3, 1892.

186. **Note:** The obligation of obeying the laws of a tyrant who has usurped power is founded on the necessity of preserving order in the community. Subjects can also render certain things that redound to some utility of the tyrant, such as paying certain taxes, keeping watch, digging for the construction of a fortress, etc., since these are works indifferent in themselves. To refuse them would not benefit the legitimate prince, but would bring very grave harms upon the subjects themselves. But it will be altogether unlawful to do those other works which proximately and formally look to confirming the unjust usurpation and to inflicting harm on the legitimate prince. La-Croix l. 2, n. 275.

187. **Resolves:** If the tyrant is such by right or title, in the very act of invasion he can make no laws; nor must he be obeyed, nor is it lawful in any way to help or recognize him so that he may acquire possession of the kingdom and be established in it. The reason is that invasion gives him no right.

188. **Does custom have the force of law?** Custom, considered materially, is a manner of acting introduced by frequent acts of the whole community or of the greater part of it. Formally, however, it is a certain right established by morals, which is taken in place of law, even if law is lacking, namely written law. Schmalz. l. 1, t. 4, n. 1.

Custom has the force of law. This is established: first, by the common opinion of theologians. Second, from various places of canon and civil law, by which it is undoubtedly drawn out that custom must be regarded as law. Cf. tit. *de Consuet.*; L. 32, 33 *de Legib.*; C. I. 2. 530, 1654; C. G. a. 671. Third, by reason; for once a custom has been introduced, for example against a law, the law no longer

contributes to the common good; and, on the contrary, when a custom is introduced beside the law, the reason of the common good urges. L. 107; St. Thomas, 1. 2. q. 97, a. 3; Struggl q. 4, n. 28 ff.; Ithur. Cas. 53, n. 7; Bouix, *de Princip.*, P. 2, S. 6.

In the external civil forum, generally no custom against the law is usually admitted, whether past or future, except only in certain matters determined by the law itself. C. I. preliminary laws, year 1866, a. 48; C. I. Comm. 1; C. H. 4 and law of May 11, 1888, aa. 5, 6, 7.

189. **How many kinds of custom are there?** Custom is usually distinguished as threefold: according to law, namely that which confirms and interprets an already enacted law by long use, cf. Can. *De istis* D. 4, L. *Si de interpretatione de Leg.* 37 Dig.; beside law, which introduces a new right, prescribing or prohibiting something concerning which no written law is had, cf. Can. *Consuetudo* D. 1, L. *De quibus de Leg.* 32 Dig.; against law, by which either a law is not received or, once received, is abrogated or derogated from. L. 107, 108. "Custom both has the force of law, and abolishes law, and is the interpreter of laws." St. Thomas, 1. 2. q. 97, a. 3.

Moreover, custom is either universal, which obliges all, or particular, which obliges only in some place, in some diocese, etc. To particular custom is reduced the style of the Curia, which is taken for the customary observance in the Roman Curias, and for unwritten law, and is to be observed as law from the Constitution of Paul III, *Cum gravissimae*. But generally the customary observance in some place is called local style, and outside the place it has no force. Riganti, in Reg. 42, n. 225; in Reg. 45, § 1, n. 97, etc.

From C. I. Comm. 89; C. I. Civ. 1513, in commercial matter, style and custom prevail over common law. Suarez l. 7, c. 5, n. 5.

190. **What is required in order to have custom?** In order that custom be legitimate, several conditions are required.

First, that it be rational, that is, that it not be an incentive to sin nor pernicious to the common good. Otherwise it can never acquire the force of law, since law must be honest, useful, and just. Hence there can be no custom against natural and divine law, but only against human law. L. 39 *de Legib.*; L. 107; St. Thomas, *Quodl.* 2, a. 8; Schmalz. l. c. n. 7.

Second, it is required that it be introduced by the whole community, or at least by the greater part of it, capable of being governed by law and capable of making law. And if it cannot of itself make law, it is enough that its manner of acting can obtain the force of law when the consent of the prince accedes. For what is done by the greater part is morally judged to be done by all. Custom, however, must be introduced by those for whom laws or statutes can be established. Hence not only perfect societies can introduce custom, but also imperfect ones: a province, city, diocese, chapter of canons, etc.

Women cannot introduce customs against the laws proper to men, nor conversely; likewise neither ecclesiastics against the laws of lay people, nor conversely, unless the matter is common. Therefore clerics, as to spiritual matters, are not bound by a custom made by lay people, since lay people are incapable, as to spiritual matters, of introducing custom for clerics. Private persons cannot introduce custom. L. 32 *de Legib.*

Third, it must have been introduced through repeated acts, not interrupted until the custom is complete; voluntary, that is, neither from ignorance nor from error, for example if the people think that a law exists which in reality does not; nor extorted by force and fear, but from the intention of introducing custom and of binding oneself or unbinding oneself; finally, public. For only those acts, under these conditions, can be regarded as conducing to the common good, so that afterward the legislator can reasonably consent to such a manner of acting. Custom, moreover, since it has the force of law, must be promulgated no less than law.

"Not interrupted": acts can be interrupted in two ways, de facto, if the community ceases to act; de iure, if the superior urges the law. "With the intention of introducing custom": this mind or intention is gathered from circumstances, namely if the custom is constantly observed, and with no slight inconvenience; if transgressors are punished; if pious people commonly so think. L. 39 *de Legib.*; St. Thomas, 1. 2. q. 97, a. 3.

Fourth, it is by no means required that there always be good faith from the beginning, for even by sinning a custom can be made which afterward becomes honest. For custom against a law has three states. In the beginning all those introducing the custom against the law sin. In its progress, those using it as introduced by their elders no longer sin, but can be punished. At the end, those using it now prescribed neither sin nor can be punished. L. 107; Schmalz. l. c. n. 6.

Fifth, it is further required that it last for a long time. But here a distinction must be made: either the custom is introduced by way of connivance, namely with the legislator knowing and conniving; this happens when the legislator knows that the law is not received and dissembles when he could easily urge observance. Or it is introduced by the ordinary way of prescription, with the legislator ignorant. If the first, Benedict XIV teaches that "no space of time is necessary ... For then, after a few acts tolerated by the superior, it is presumed that he by this very connivance tacitly revokes his law and does not wish to bind by it the community to which it is displeasing." *De Syn.*, l. 13, c. 5, n. 3; Ithur. Cas. 53, nn. 7-8.

If the second, there are those who require forty years, but most universally say that a decade suffices both as to Roman Civil Law and as to Ecclesiastical Law. L. 107, 139; l. 3. n. 849. Here also immemorial custom must be mentioned, by which all those things can be acquired which can be acquired by privilege and indult of the prince. C. 13 *de Iudic.*, n. 5. And this custom is not revoked even when a revocatory clause of any custom whatever is added, "unless it is expressed, because when the superior wishes to revoke even that custom, he expresses it." L. 109.

Sixth, custom can obtain the force of law insofar as the consent of the prince accedes to it, either express or tacit. Tacit consent is had when the prince knows the custom and, although he could, does not contradict it. Or at least legal consent can accede, which is the consent had in advance through laws universally approving legitimate customs. For legal consent of this kind it is not required that the prince know the custom; it is required, however, that it not be established that he could not have protested against the custom. For if the prince constantly resists, then no custom is made. But if there is no law of this kind, such a general will is always supposed in the legislator. For the common good requires this. L. 107; l. 3. nn. 290, 1009; Suarez l. 7, cc. 8, 15; Schmalz. l. 1, P. 1, t. 4; Gur. Cas. 132 ff.; St. Thomas, 1. 2. q. 97, a. 3; E. M.

191. **What if contrary custom is prohibited by the law?** "If the clause is added, 'notwithstanding any custom whatever,' it is understood that the past opposing custom is reprobated, but not a future one ... But if the clause reprobates any future custom whatever, still ... they say that it is more probable that such a custom can abrogate such a law ... If it is reprobated ... as irrational ... as contrary to natural or divine law, then no custom can have force. But if it is reprobated as irrational for the time at which the law is made, then from a new cause it can become rational." L. 108; l. 6. n. 325, final verse; A. S. S. v. 4, p. 26.

III. On the Subject of Law

192. **What is the subject of law?** The subject of law and obligation is every and only subject. For the whole force of obligating is in the superior. But only a subject corresponds to a superior. St. Thomas, 1. 2. q. 93, a. 5; q. 96, a. 5; L. 153.

193. **Resolves:** First, every man is subject to natural law. For natural law is the very divine will commanding that order be preserved and forbidding that it be disturbed, promulgated through the light of reason itself. But every man enjoys reason. Therefore it is not lawful to provoke infants, drunk persons, or the insane to intrinsically evil actions. L. 153, 155.

Second, all and only those habitually in possession of reason can be subject to human law. For law is a rational and stable rule. But men habitually lacking the use of reason cannot be directed by a rational and stable rule. Hence meat can lawfully be given to infants who have not yet attained the use of reason, and to those perpetually insane, on prohibited days. It is unlawfully given to those temporarily insane and to drunk persons. L. 153, 155; Struggl q. 3, nn. 8 ff.

Third, the legislator is not bound directly by his own laws as such, that is, as to their obligating and coercive force; nevertheless indirectly, as to their merely directive force, he is bound from a certain equity to conform himself as head to the members, namely as to those laws that befit his state. Hence "it is probable, scandal apart, that he is bound only under light fault, because he is bound to the law only from honesty." L. 154. "Scandal apart": for if scandal would be present in a public transgression of the law, he would be bound to observe it; but in that case he would by no means also be subject to the penalties which he himself imposed on transgressors. Likewise, in contracts he is also bound to use an equal condition. L. 154; St. Thomas, 1. 2. q. 96, a. 5; Struggl q. 3, n. 1.

Fourth, infidels, not yet baptized, are not bound by the laws of the Church, although they are bound to enter the Church. On the contrary, heretics, schismatics, and the excommunicated are per se bound by ecclesiastical laws. This must be understood of the excommunicated as to acts not forbidden by the excommunication itself. As to heretics, however, in places where they are tolerated, penal laws do not have effect. Council of Trent, Session 7, c. 8 *de Bapt.*; Schmalz. l. 4, t. 1, nn. 378-380; t. 3, n. 99; l. 5, nn. 171-174; Reiffenst. l. 1, t. 2, n. 274; L. 154.

194. **Practically speaking, are heretics excused from observing the laws of the Church, although they are bound per se?** Answer: Affirmatively, first by reason of the ignorance in which they are situated; second, because it is not presumed that the Church wishes to urge this obligation, lest sins be multiplied in vain, at least as to merely preceptive laws that regard

the spiritual good of souls. As to invalidating laws, however, which regard the public good and order, such as impediments of marriage, cf. vol. 2, nn. 984, 1026, 1027.

195. **Are children bound by ecclesiastical laws as soon as they have attained the use of reason, although they have not yet completed seven years?** Some probably affirm, because they are capable of precept, and that precept does not require certain years. Others probably deny, because human laws attend to those things which commonly happen. But it does not commonly happen that the use of reason is present before the completion of seven years.

All admit, however, that children before seven years do not incur penalties imposed on transgressors unless this is expressly declared. Indeed they do not incur ordinary penalties unless they are pubescent, such as males after the completed fourteenth year, girls after the completed twelfth year.

Moreover, it must be noted that children, once seven years are completed, are not bound by human laws unless the matter is accommodated to their age. Hence they are not bound by the law of ecclesiastical fasting. They are bound, however, by the laws of annual confession, hearing Mass, abstinence from meat; and therefore parents sin who neglect the fulfillment of these laws on the part of their own children. Whether they are also bound by Easter Communion is disputed because of the special reverence that the Most Holy Sacrament requires. Several weighty theologians "admit that children are not bound to Communion before the tenth year, except in danger of death, if there is use of reason." L. 155; l. 3. n. 270; St. Thomas, 2. 2. q. 147, a. 4; La-Croix 676; Struggl q. 3, nn. 11-12; Elbel 367 ff.; E. M.

196. **Are clerics bound by civil laws?** Answer: Affirmatively, at least indirectly, unless they conflict with the still-vigorous rights of the Church; because they too are members of the republic, and natural equity requires that in those things that do not conflict with their state they conform themselves to the other members. Moreover, the Church prescribes this, Rom. 13:1.

"Still-vigorous": for Concordats must be attended to, as well as legitimate customs. La-Croix 674, 678; Struggl q. 3, n. 2 ff.; Elbel 275-277; Suarez l. 3, c. 34, nn. 13, 15, 16; Council of Trent, Session 25, c. 20 *De R*.

197. **How should clerics conduct themselves if they are forced to observe some civil law injuring the rights of the Church?** A protest must be made against this sort of coercion and law if otherwise scandal would follow, or legislators of this sort would become bolder against the rights of the Church.

After the protest has been made, one must yield to force, and force is not to be opposed by force, nor are acts of violence, especially public ones, to be excited and provoked. Such acts obtain only this: that more and greater sins are multiplied, and the ecclesiastical state is exposed to greater disgrace and injury. In a case of doubt, recourse must be had to the bishop or to the Sacred Congregation.

198. **Are senators and deputies in representative governments bound by their own laws?** Answer: Affirmatively. The reason is that the legislator is not any singular person, but the whole moral body. The same consequently must be said of the president of a republic, of the

metropolitan and fellow bishops in a provincial synod, of a regular prelate and other capitulars in a general chapter, etc. L. 31 *de Legib.*; Lugo, *Resp. Mor.*, l. 6, D. 20.

199. **Are travelers bound by the special laws of their own territory, or of the place in which they are staying?** A traveler is one who, having a domicile or quasi-domicile somewhere, comes to another place with the intention not of remaining perpetually, but only of staying for some hours, or days, or at most for a lesser part of a year, which can extend even to six months. A traveler is distinguished from a newcomer and from a vagrant.

A newcomer is one who has placed his domicile, or quasi-domicile, outside his own territory. They commonly teach that he immediately acquires domicile, or from the first day, who lives somewhere with the intention of remaining perpetually; this intention is presumed in the external forum if the habitation is for ten years, or if a house has been built there, or the greater part of his goods has been brought there. But quasi-domicile is acquired by one who remains somewhere, or who on arriving there as soon as he is staying there has the intention of remaining for the greater part of the year; such are servants and students.

Finally, a vagrant is one who has no fixed and determinate domicile anywhere, but transfers himself from one place to another. Innocent XII, Constitution *Speculatores*; L. 156; l. 6. n. 115, par. *Secunda*; C. I. preliminary dispositions 6 ff. and l. 1, aa. 16 ff.; C. G. 102 ff.; C. H. 40 ff.; C. A. 29.

Now a traveler is not bound by the laws of his own territory, for law affects territory and he is outside it. Exception: unless by fiction of law he is still judged to be in his own territory. Thus, for example, if someone outside his own territory were to sell his own property existing in that territory, he is bound to observe the laws of that territory in such a sale. So also a beneficed cleric who does not reside incurs the penalties enacted there against non-residents. For a thing is judged to be consummated where it ought to have been done; hence the delinquent is regarded as morally present where he harms by his action.

"Laws": for if the discussion concerns precepts that immediately affect persons, it is certain that they oblige travelers, newcomers, and vagrants everywhere. Hence a priest, for example, suspended in his diocese from priestly functions cannot celebrate Mass in another diocese.

A traveler is indeed bound by the laws of the place in which he stays as to contracts and as to those things necessary for the common good, whose violation would redound to the damage and harm of that place in which he is staying. Common and natural law require this, from which travelers are by no means exempt. The same must be said as to delicts, because it is equitable that crimes be punished everywhere.

As to other matters, however, unless scandal is present, a traveler is not bound by the particular laws of the place, because a law obliges only subjects. L. 1. 3. n. 332. This probably holds even if the particular law is in force both in that place and in his homeland. For he is not bound by the laws of his homeland, because absent, nor by the laws of this place, because he is a traveler. Moreover, from C. *Licet* ult. *de For. comp.*, no one is subject to another's power except by reason of delict, contract, domicile or quasi-domicile, a thing situated in the territory, or finally by reason of origin. L. 156, 159.

"Traveler": for the common opinion teaches that it is sufficient that someone has contracted a quasi-domicile in order to be bound by the laws of the place, even from the first day on which he arrived

there with the intention of living there for the greater part of the year. L. 156; C. I. beginning *Dispos.* etc. aa. 6 ff.

If someone has already satisfied a common law in his homeland, it is more probable that he is not bound to satisfy it again when arriving in a place where, by special privilege, it urges later. Nor is someone bound to satisfy the law if, before the law urges in that privileged territory, he departs from it and goes to a place where the time of the law's obligation has already passed. The first reason is that there is no obligation of fulfilling the same precept again, since it has already been fulfilled in its own time. The second reason is that outside that privileged territory no obligation any longer urges.

200. **Note:** First, an exempt place is equated with a place situated outside the territory. Hence a traveler in an exempt place is also not bound to fulfill the common law there. On the contrary, he is bound by the common law in force in the place where he is, even if it no longer obliges in his homeland; since he too is then subject to the common legislator, and law affects territory. L. 160, 161.

Second, it is also probable and safe in conscience that a traveler before departing from his own territory is not bound to hear Mass prescribed there, provided he is going to arrive outside the place where it urges before the time of obligation ceases; for example before noon, if the last Mass is then celebrated. The reason is that the precept does not oblige you to wait. L. 157; Elbel 375.

201. **Resolves:** If in your territory there is fasting, and on the same day you go to a place where there is no fasting, you can dine in the evening; indeed, you can also breakfast in the morning, since fasting is something indivisible. Existing in the morning in a place where there is no law of abstinence, you can eat meat, even if on the same day you will return home where there is fasting. At home, however, you are certainly bound to abstain from meat. L. 157; Elbel 372.

IV. On the Obligation of Law

202. **What is the obligation of law?** By the name obligation is understood a certain moral necessity, arising from the law itself, of acting in this or that way, so that one acts honestly, that is, without any fault and without incurring penalty.

"Arising from the law itself": for this is the nature of law and precept, and in this it intrinsically differs from counsel. Hence St. Thomas, 1. 2. q. 96, a. 4, speaking especially of human law, says: "Laws humanly enacted ... if indeed they are just, have the force of binding in the forum of conscience from the eternal law, from which they are derived, according to Proverbs 8:15: By me kings reign, and lawgivers decree just things."

203. **Does the obligation of law always urge, and under grave fault?** To the first: the obligation of an affirmative precept is always, but not for always; of a negative precept, however, it is always and for always. For an affirmative precept commands good; and although the good prescribed by law must always be done once the established time has arrived, nevertheless not every good must be done at every time, since it would be an unbearable burden for man always to act. But a negative precept prohibits evil, which must be avoided at every time, and this

indeed can be done. L. 101; St. Thomas, 1. 2. q. 71, a. 5 ad 3; q. 76, a. 2 ad 5; 2. 2. q. 79, a. 3 ad 3.

To the second: law obliges under grave or under light fault according to the will of the legislator, if the matter is capable. The reason is that the whole obligation depends on the will of the legislator, and there must be proportion between the obligation and its matter. Therefore the legislator can prescribe under light fault in grave matter, but not conversely. L. 141, 143.

What matter is grave can be gathered from the very nature of the object, the end, and the circumstances. What obligation is grave can be gathered: first, from the very words of the law, if they have great force, such as "we command in virtue of holy obedience," etc.; second, from the matter, if it is grave and the will of the one commanding is not established to the contrary; third, from the gravity of the penalty; fourth, from the interpretation of Doctors or of custom. L. 144; l. 5. n. 56. Therefore when a matter is simply light, someone does not sin mortally even if the superior commanded it under mortal fault. L. 141 ff.; Struggl Tr. 2, q. 2, n. 24; Tr. 3, q. 2, nn. 28-29.

204. **Does a law founded on presumption always bind?** To presume is to opine; and presumption is a probable conjecture about an uncertain thing, that is, a judgment likely arising from certain signs or indications. It is either human or legal: the former is wholly placed in the estimation of a good man and does not pertain here, for it is a private act; the latter is introduced by laws and therefore is not to be admitted without an express law. For the law itself conjectures or commands that one conjecture.

Legal presumption is twofold: one of danger, the other of fact. Presumption of danger occurs when the legislator, noticing from things that frequently happen that something is not done or omitted without danger, and foreseeing dangers of this kind, forbids the one thing and commands the other. Presumption of fact occurs when, holding as certain that something was done because it is more commonly done thus, the legislator establishes rights and obligations from that supposed fact, as if it had really been done. If this admits contrary proof in law, it is usually called a presumption of law; if not, a presumption of law and by law.

A law forbidding the reading of books of an unapproved edition, or contracting marriage with non-Catholics, rests on presumption of danger. A law that holds a person to have been baptized who, born of Christian parents among Christians, grew up in a Christian manner among Christians, rests on presumption of fact. C. 3 in fin. *de Presb. non bapt*. A presumption of law, for example, is that the husband is the father; a presumption of law and by law, for example, is that those who contracted marriage in a prohibited degree, after banns were disregarded, did not ignore the impediment. Cf. C. 30 *de Spons*.

Therefore a law that rests on presumption of danger always binds, even if the danger ceases in the present matter. The reason is that the law does not cease as long as the end of the law has not adequately ceased.

On the contrary, a law that rests on presumption of fact does not bind in the forum of conscience if the fact is not really present. Hence the axiom: **Presumption yields to truth**, whether that presumption is only of law, or of law and by law. For although presumption of law and presumption of law and by law are accepted for truth, they are not on that account truth itself. Yet as long as it

does not manifestly appear that the presumption rests on a false fact, it is held as truth in both forums. Schmalz. l. 2, t. 23, n. 1; L. 100, 150, 151; Ithur. Cas. 39, nn. 25-26; Cas. 53, n. 23.

205. **Resolves:** You are bound after sentence to compensate damage truly caused by your animal, even without your theological fault. You are not bound to compensate damage if the damage is falsely believed to exist, and you can compensate yourself. L. 100; C. I. 1154.

206. **Does a law founded on fiction always bind?** A legal fiction differs from presumption. It is an assumption of falsity made by the law itself from a just cause in a possible case, inducing the effect of law as though it were truth. Therefore fiction is held for the truth of the thing; from it, just as in a true case, the law establishes rights and obligations.

But first, fiction has place only in cases expressed in the law. Thus the law feigns the testator and heir to be one person, but not in all things; it feigns a sick canon to be present in choir, and indeed he earns the daily distributions, but not those which belong only to those present. For the law does not establish that.

Second, fiction should not operate more in the fictive case than truth would in a true case. Therefore, although the law feigns one still in the womb to have been born when his advantage is at stake, nevertheless if afterward he does not come forth viable, the fiction gives him nothing. Since fiction imitates truth, it must concern a possible case.

Third, it does not have force beyond what is expressed in the law. Therefore it receives strict interpretation. For rights and obligations in the case are only from law. Schmalz. l. 2, t. 23, n. 3; Reiffenst. l. 1, t. 2, n. 185. Thus, for example, in relation to receiving orders, a son born somewhere accidentally is judged, by fiction of law, to have been born in the domicile of his father; and he can receive orders from the bishop of this place, not from the bishop of the place in which he was truly born. A. S. S. v. 28, p. 233.

207. **To what does law oblige?** Every law first obliges to knowledge of itself, and then to observance of itself. For a law cannot be observed unless it is known. Therefore, unless it commands an act in vain, it must also implicitly command knowledge of itself; and it commands this first, since without it observance of the law is altogether impossible. Therefore law is violated not only by an act opposed to it, but also by voluntary ignorance of it. Hence vincible ignorance concerning some precept is sin, and in a grave matter can be grave if the negligence was notable. L. 148-151.

As to the observance of the law itself, it must be noted that the minimum is regarded as nothing, St. Thomas, 2. 2. q. 62, a. 2; for example, if in the recitation of the office or in hearing Mass some small thing is omitted, if a minor is slightly injured in contracting, etc. Exceptions are those things defined by nature, or by law, or by the will of man, since in these there is no place for moral estimation; for example, if a novice emits profession on the penultimate or last day of his sixteenth year, he emits no profession, etc.

208. **Note:** First, one sins against a law not only by action, namely commission or omission, doing or not doing those things which are forbidden or prescribed by law, but also by simple desire without execution of the thing, by simple morose delight, or voluntary complacency without

desire, or, on the contrary, by voluntary sadness. Hence one also sins against a law who contemns, censures, or reproaches those things that are to be done or were to be done; this is equivalent to contemning, censuring, or reproaching the law which prescribes them. Or conversely, one sins who approves, boasts of, or praises those things that are not to be done or were not to be done, whether he himself or another transgressed the law.

Easily, moreover, scandal can also be present from reproach or boasting, since these easily provide others either an incentive or a delight. Exception: if someone praises not the evil thing itself, but the new, clever, or energetic manner in which the thing was accomplished; for this is a certain natural good, provided that the danger of delight in the evil thing and of scandal is absent. Lugo, *de Poenit.*, D. 16, nn. 266, 273; St. Thomas, 2. 2. q. 186, a. 9 ad 3.

Second, formal contempt of the law, by which someone expressly contemns the law or its author as superior, is always, speaking per se, mortal. Hence it is not grave: first, if the thing prescribed itself is contemned insofar as it is held of little account; second, if the superior is contemned not as superior, but insofar as he is a singular person contemptible because, for example, imprudent, vile, foolish, rude, or unlearned. This would nevertheless still be mortal if such a judgment formed about that person were gravely rash, as is clear. Third, if the act by which the precept or superior is contemned is not perfect by reason of advertence and deliberation, as often happens. Hence Lessius, Sanchez, etc., say that mortal sin by reason of contempt rarely occurs. But material contempt, by which someone violates the law in order to indulge his desires, is mortal or venial according to the mode of the matter. L. 142.

209. **Does every law forbid exposing oneself to the occasion of transgressing it?** A law which prescribes or prohibits something also implicitly prescribes avoiding proximate occasions and forbids exposing oneself to proximate occasions of transgressing the law. The reason is that otherwise the law would be altogether frustrated. For if it does not oblige to the means, neither does it oblige to the end.

Therefore whoever seeks these occasions, or voluntarily exposes himself to them, or remains in them with no excusing cause, sins against the law and the virtue in question: against faith, chastity, piety, etc. L. 1. 6. n. 454.

In the present matter, an occasion is called whatever externally offers us danger of transgressing the law. "Externally," because the very frailty of nature, internal passions, and intrinsic habits, although they carry danger with them, do not constitute an occasion. Danger is broader than occasion, and is whatever can induce us to sin, whether from outside or from within. "Of transgressing the law," and therefore of consenting to sin, not of mere temptation. A proximate occasion is that in which a person placed there for the most part sins, whether this is verified as to all who are found in the same circumstances, from the very nature of the thing, or is verified only as to such a person, considering his particular circumstances. But an occasion is remote if a person placed in it for the most part does not sin; and we are not bound to avoid this, since it would be impossible. L. 1. 6. n. 452.

If the proximate occasion is simply necessary, one must make it remote by applying suitable means: prayer, frequent reception of the sacraments, custody of the senses, etc. But if it is morally necessary, it is not unlawful to be in it for a just and proportionate cause, provided, however, that consent to sin

is not morally certainly foreseen. This consent can easily be removed by fortifying oneself with prayers and pious works, and by trusting in the greater help of God. L. 1. 6. nn. 453, 455, 456.

210. **Does law extend itself to past acts?** Answer: Negatively as to fault. For fault and sin could not have existed where there was no law.

Likewise negatively as to penalty. For penalty has no place where there is no sin, because penalty is for the vindication of sin.

Similarly negatively as to the validity of a past act. For an act that was valid cannot become invalid for that same past time, although it can be declared invalid for the future.

Also negatively as to the effects of that act, per se and commonly speaking, and as to the same past time. The reason is that great disturbance of society would follow from this. "Per se and commonly speaking," because in a particular case in which this would not be harmful, but on the contrary very useful, the legislator can reach such effects if they are subject to his power, as, for example, when a dispensation is given for a marriage invalid because of a diriment impediment, which is called a dispensation in the root. For the offspring is held legitimate and succeeds to the inheritance just as if it had always been legitimate. "And as to the same past time," for there is no difficulty that the legislator, for a past delict also, could introduce for the future a certain inability, for example to receive orders, to contract marriage, etc.; this indeed will not be a penalty of sin, but a mere privation because of the defect of a required condition. C. *Cognoscentes* 2; C. *Quoniam* ult. *de Const.*; Clem. *Ex frequentibus* 1 § ult. *de Sent. exc.*; L. 7 *de Legib.* C.; C. I. preliminary dispositions a. 2; C. H. 3.

211. **Does a law also forbid becoming the author of another's transgressing it?** If someone is the cause why another transgresses a law, he sins against the same law and virtue, for example against religion, justice, chastity, etc. The reason is that what someone does through another is judged to be done through himself. Therefore, just as the executor himself, so the one who compels, commands, or counsels another to transgress the law becomes guilty of transgression of the law.

But if someone is only an occasion to another of transgressing the law, for example by his example, and directly intends this, he likewise sins against the same law and the same virtue, since every law also prescribes this, that no one wish it to be violated either by himself or by another. "Directly intends": for if he only foresees it, whether even then someone acts against the same law and virtue is disputed. Some affirm, because he truly and in fact induces another to transgress the law, and is the cause of this transgression, although a cause per accidens. Others more probably deny, because if someone is bound to abstain from his own work lest another sin, this pertains only to charity; and therefore he sins indeed against charity, but not also against that law and virtue which that law touches. Cf. 424.

212. **Does a law also forbid cooperating with another in the transgression of that same law?** It is evident that if it is not lawful to be the cause of another's transgressing a law, much more is it unlawful to be a cooperator with another in the aforesaid transgression of the law. Cooperation is working together; therefore it has place only in an external transgression of the law, which consequently consists of the intention of sinning and the very work of sin.

To cooperate with both constitutes formal cooperation, and this is altogether unlawful, just as it is unlawful to will to act and to act against the law. To cooperate only with the external work supplies merely material cooperation. If this is given by an evil work, it is evil, for example if someone cooperates with a thief by breaking open doors. If it is given by a good work, or at least an indifferent one, it is lawful unless it is forbidden either by office or by charity. By office, for example, that of father, judge, minister of the sacraments, etc. By charity, namely in order to prevent the sin of one's neighbor, if this can be done.

For if the other, even without another's cooperation, is still going to complete the sin, there can be no obligation to abstain from that cooperation, since it truly has no influence on the sin of the other and can scarcely be called cooperation. But apart from a debt of office and charity, since someone by that material cooperation sins neither in intention nor in work, there is no reason from which its malice can be detected. Therefore then it makes no difference whether it is remote or proximate. And thus it is lawful to contract marriage with one who is in the state of mortal sin, and it is lawful for a spouse to render the debt to a spouse bound by a vow of chastity. Cf. 419.

213. **How must the law be observed, and how is its obligation satisfied?** To satisfy an obligation it is required and sufficient: first, to do the work prescribed as to its substance, and to have the intention of doing it; second, simply to omit the forbidden work, and not to have a contrary will. And thus someone satisfies the precept of abstaining from servile works if he actually abstains from them, although he thinks nothing about the precept.

Proof of the first part: a prescribing law commands only the substance of the act, not also the mode; it does command, however, not any act whatever, but a human act. Proof of the second part: a law prohibiting something intends no more than the omission of the work. Therefore it does not also require intention, as a prescribing law does, except in the case where it prescribes giving something, for example tithes. For you have satisfied it even if you gave while not in possession of your mind, since the law does not seem to prescribe anything more than that external and real action. Struggl q. 2, nn. 13-14.

214. **Resolves:** First, you satisfy an obligation if you fulfill different precepts by different acts, even at the same time, provided one precept does not impede another; as, for example, hearing Mass and reciting the Office at the same time. But you do not satisfy the obligation if you fulfill different precepts by one act, when they fall upon different matter; otherwise, however, if they fall upon the same matter.

Thus, if you owe Caius one hundred from a loan and one hundred from a purchase, you do not satisfy by returning only one hundred, because those two obligations fall on different matter. But if you owe the same Caius one hundred from theft, which you vow to restore, and which your confessor has obligated you to restore, by returning only one hundred you satisfy these three obligations, namely of justice, vow, and precept, since they regard the same matter. So also a beneficed subdeacon satisfies a twofold burden, of order and benefice, by one recitation of the canonical hours, for they fall upon the same matter. L. 166; Struggl q. 2, n. 15.

Second, you satisfy the obligation although you do not have the intention of fulfilling the precept, or of acting from the motive of formal obedience; nor the intention of fulfilling the end of the precept;

nor act from the motive of charity, or in the state of grace; nor even have faith, unless the end itself of the precept, or the act of charity, or the state of grace, or faith itself is prescribed. You also satisfy it although, while intending and doing the prescribed work, you expressly intend at the same time not to satisfy; for example, if you hear Mass intending not to satisfy the precept. Nevertheless, if it is the last Mass, or if it is not the last and you intend not to hear another, you sin against another precept, by which one is bound to submit to the legislator.

Finally, you satisfy it although in fulfilling the precept you sin from an extrinsic circumstance, for example if while hearing Mass you occupy yourself with thoughts of vainglory or lust. "From an extrinsic circumstance": for since the law prescribes only honest things, if the very substance of the act is intrinsically evil, you by no means satisfy the law.

Third, he does not satisfy the obligation who, wholly coerced, drunk, or sleeping, fulfills the precept; or who does so with only the intention of doing something else, for example if you read the hours solely with the intention of learning, or go to Mass only to wait for a friend, feed your eyes, or converse with another. But if you fulfill the precept from fear, you satisfy it, even granted that you would not do it if fear were absent, and that you then sin from that perverse will. St. Thomas, 1. 2. q. 89, a. 5; q. 100, a. 9 ad 2 and 10; L. 162-165; Struggl q. 2, n. 17; E. M.

215. **Note:** He does not satisfy who performs the work of a vow or oath while expressly intending not to satisfy, because it depends on the will of the one promising that such an obligation remain. But the obligation of obeying a law comes from the will of the legislator, and therefore does not extend beyond his intention, that is, beyond the substance of the work prescribed.

"Expressly intending": for even in those things that proceed from one's own will, the one acting would satisfy if he merely negatively lacked the intention of satisfying, for example because he forgot the obligation undertaken, provided, however, that he does not apply what he does to another matter. For each person, from a prior general intention, intends to satisfy a debt before satisfying those things which he has imposed on himself by free will. And this also holds for sacramental satisfaction, namely if he does the work imposed by the confessor, yet not intending to fulfill the penance. L. 30, 163; l. 3. n. 700.

216. **When does the obligation of a law cease?** Obligation can cease in two ways, either on the part of the subject or on the part of the superior.

On the part of the subject it can cease: first, simply, through exempting causes, which totally withdraw him from the dominion of the law, for instance if someone betakes himself outside the place which the law affects; second, in a qualified way, through impeding causes, which prevent or excuse the subject, while remaining under the law, from fulfilling it. These causes are reduced to invincible ignorance, fear, and inability.

On the part of the superior it can cease: first, through dispensation, which is the legitimate relaxation of a law in a particular case; second, through privilege, which is generally defined as a constant and permanent grace, contrary to or beside common law, granted by a superior.

Ignorance, if it is invincible, excuses, because no one sins except by a voluntary act; but this presupposes knowledge. If it is vincible and culpable, it does not excuse; such ignorance exists when

you could and were bound to know or learn, and it came into your mind to doubt, and you did not take care to understand. L. 168, 170 ff.

Fear, namely grave fear, often excuses, when observance of the law would from it redound to grave inconvenience. Thus fear of death, for example, often excuses not only from a positive precept, both human and divine, but sometimes also from an affirmative natural precept. Hence someone is not bound with danger of life to confess integrally, preserve a deposit, fulfill a vow, etc. L. 175.

Inability, even moral inability, excuses. Since no one is bound to the impossible, after someone has become unable to fulfill the law, he is excused, although he sinned by placing the cause, for example if someone has squandered his goods and afterward cannot pay his debts. L. 176.

217. **Is one who is unable to fulfill the whole bound to a part?** If the precept is such that it can conveniently be divided or is accustomed to be divided, and the reason or end of the precept is preserved in its part, then one who cannot observe the whole must observe the part that he can. Hence one who cannot read all the hours must say those that he can, because they are divisible.

But if the reason of the precept is not preserved in the part, nor can or does this conveniently or customarily happen, then one who cannot do the whole, that is, so much as is morally judged to be the whole precept, is not bound to a part. Therefore one obligated to visit the thresholds of the Apostles at Rome, knowing that he cannot arrive there, is not bound to enter upon the journey, because neither the end nor the reason of the precept is preserved. All these things must be estimated: first, from the intention of the legislator; second, from the reason, end, and matter of the law; third, from the judgment of prudent persons; fourth, from common usage. L. 176, 177.

218. **Note:** If someone unable to fulfill the whole is doubtful whether he can fulfill a part, he is often excused even from this, "as, for example, in the sick, in whom it can scarcely, or not even scarcely, be determined what they can do, how far they can do it, and no further. Hence, if while they cannot fulfill the whole law they were bound to a part, there would be occasion for very grave scruples, and there would be continual perplexity in determining the part to which they were bound. Therefore it is rightly presumed of the mind of an equitable legislator that he does not wish in similar cases to oblige to a part: thus grave theologians." Billuart, *de Leg.*, diss. 4, a. 7.

219. **Does an obligation cease when it has not been satisfied at the determined time?** Answer: Affirmatively, if the determination of time was made to end the obligation. Thus he who omitted hearing Mass on Sunday is no longer bound to hear it on other days of the week.

Negatively, if that determination was made to urge the obligation. Hence one who did not pay a debt on the day established by contract is still bound to pay it.

220. **Is it lawful to place causes exempting from a law?** It is always lawful to place exempting causes, and more probably even directly and proximately.

Causes freeing from the law are said to be placed directly when the agent is moved by the end of withdrawing himself from the obligation of the law; indirectly, if another cause moves him, while the

impediment to observing the law is foreseen. These causes are proximate or remote according as the law urges shortly or after a notable time.

Now law, speaking per se, does not make someone subject to itself, or make him remain subject; rather, it obliges him who already is and remains subject to observe it. Therefore, if by an otherwise lawful action you withdraw yourself from its dominion, you use your right and do not act in fraud of the law. "Speaking per se," because a law can also prescribe this, that you not go, for example, to a free place and escape its force, as in clandestinely contracting marriage against the Tridentine law. Urban VIII, to the Archbishop of Cologne, 1627. L. 152, 157; Struggl q. 3, n. 20; Elbel 370-372.

221. **Is it lawful to place causes impeding observance of the law?** It is not lawful directly to place impeding causes, whether proximate or remote. Indeed, not even indirectly is it lawful to place proximately impeding causes unless a proportionate necessity is present. But it is lawful, even without reason, indirectly to place remotely impeding causes.

Proof of the first part: every law implicitly obliges that nothing be done deliberately so that the law be eluded; or, what is the same, every law forbids anyone to work in fraud of that law. Otherwise the law would be almost void as to imposing obligation. L. 30 *de Legib.*; L. 5 e. t. C.; L. 152; l. 3. n. 1045; St. Thomas, 4 D. 15, q. 3, a. 4, q. 1 ad 1; Sanchez, *Cons.* l. 5, c. 1, D. 7, n. 11.

Proof of the second part: because a law proximately urging proximately binds the will to apply the means, necessary and ordinary from the very nature of the thing, lest it be violated without sufficient reason, and therefore to avoid placing impediments. Otherwise the act of the legislator, by which he intends to oblige subjects, is altogether frustrated. St. Thomas, 2. 2. q. 147, a. 4 ad 3. The reason for the exception is that on one side there is a sufficient reason for placing the impediment, and on the other side the non-observance of the law is beyond the agent's intention.

Proof of the third part: because neither positive divine law nor human law generally obliges with very grave inconvenience. But it would be too grave a burden if everyone, long before the obligation of the law, were bound to abandon all works incompatible with that obligation and to await the time of obligation. This reason, by which the thesis is proved, can be an excellent norm for judging in doubt whether a cause is only remotely impeding, namely if its omission would bring grave inconvenience. But here it must be noted generally that not always will the same inconvenience, which is truly grave with respect to one precept, also be such with respect to every precept, since not all precepts have the same gravity. Hence that grave inconvenience must be judged not only absolutely and in itself, but also respectively and in relation to the precept in question. L. 152; St. Thomas, 1. 2. q. 152; Ithur. Cas. 32; Sanchez, *in Decal.*, l. 1, c. 15, n. 4; Suarez, *de Pecc.*, D. 3, S. 4, n. 10.

222. **Resolves:** He sins who on a fast day undertakes labor, although honest, in order to be excused from fasting; although, after he has been gravely wearied, even with that evil end, he is no longer bound to fast. L. 1. 3. n. 1022. But he by no means sins who on the day before a fast spends the day hunting, foreseeing that through fatigue he will not be permitted to fast.

He sins who, without a just cause, on the same feast day or one or two hours before it begins a journey, foreseeing that he will not be able to hear Mass. But he does not sin if he does this on the previous day. Gury-Ballerini 111; Del Vecchio 161. But St. Alphonsus, l. 3. n. 301, does not admit

this, denying "that someone can set out on Saturday to hunt in a distant wood, although on Sunday there he cannot hear Mass."

"An excommunicated or interdicted person does not sin by omitting Mass, and likewise one imprisoned, even if they neglect absolution or liberty, because these are not bound to remove remote impediments." L. 1. 3. n. 325; l. 1. n. 152; l. 7. n. 161. "Nevertheless they say otherwise as to annual confession and Communion, since this is one of the divine precepts, toward which we are bound to remove impediments." L. 161; l. 6. n. 299. "Tamburini and Viva judge, however, that those detained in prison are not bound to seek liberty in order to communicate." L. 1. 6. n. 299; Ithur. Cas. 32, n. 7.

V. On Invalidating and Penal Law

223. **What is the nature of an invalidating law, and how many kinds are there?** First, an invalidating law is properly that law which commands that some act, valid of itself by natural law for producing its effect, be invalid and of no force. The law of nature, if the matter is considered abstractly and without its circumstances, seems indeed to require nothing further for the validity of some act. But the law of nature itself requires that, with account taken of circumstances, all things be done concretely in such a way that they conduce to the common good. The determination of those things that contribute to the common good belongs, from the law of nature itself, to the one who has care of the community. Therefore the same law of nature requires that those acts which public power declares to be such be held as invalid.

Some laws command that an act be invalid by the law itself, with full right; others only render it liable to rescission. The former primarily and directly look to the public good; the latter to private good. In the latter the office of a judge is required, namely if the one in whose favor the laws were introduced wishes to use their benefit. In the former, however, a judge's sentence is not needed, unless actual rescission is confused with rescindibility. Nor is it valid to say that no private person is permitted to declare law for himself. This is true in the external forum, but by no means in the internal forum of one's own conscience, where the truth is manifestly established.

The rescission of an act can also be introduced in hatred of some crime, such as impediments of marriage from crime, the nullity of simoniacal conferral of a benefice, etc. In such a case it must be seen whether the nullity of the act is introduced primarily and directly by reason of itself for the common good, or as a penalty for the crime. In the first case the law is simply, or at least primarily, invalidating; in the other it is primarily penal and takes on the nature of a penal law, since the accessory follows the principal. But if the rescission of the act is not established by the law itself, the judge cannot introduce it by his sentence. For it belongs to the judge to judge according to the laws, not to make laws.

Second, acts are invalidated by law either because the acts themselves are prohibited by law, or because the person is declared by law to be incapable, or because the act was done without the form established by that same law.

If the law prohibits the act and at the same time invalidates it, the law is at once prohibiting and invalidating, and obtains force both in the external and internal forum, as, for example, incestuous marriages and renunciation of an inheritance not yet opened. But if the law indeed prohibits the act

but does not invalidate it, the act is valid in both forums; otherwise the law would already not be merely prohibiting, but also invalidating. Thus a mixed marriage, although illicit, is nevertheless valid.

If a person is declared incapable by law, the law is properly called incapacitating. This incapacity is of one kind properly such and renders the act invalid; of another kind less properly such and does not render the act of such a person invalid, but grants him restitution in whole, as may be seen in more recent codes. C. I. 134, 319, 339, 1106, 1300; C. G. 215, 484, 513, 1124, 1304.

Now incapacity can be established because of good morals, because of dangers to be averted, or because of the state or condition of the person in society. If because of good morals, the incapacity is to be understood, and consequently also the invalidation of the act, in both forums, external and internal. Thus theologians commonly teach that a father sins and makes an invalid act who makes a donation contrary to law to an adulterine son, and likewise the son who accepts the invalid donation. Lugo, *de Iust. et Iur.*, D. 24, n. 92.

If because of dangers to be prevented, the incapacity and invalidation are also to be understood in both forums; otherwise nothing would be prevented. Thus judges and officials of public ministry cannot purchase lawsuits. C. I. 1458; C. G. 1597. Guardians cannot take anything from the testament of those under their guardianship. C. I. 769.

Finally, if because of the state or condition of the person in society, the act is valid in the forum of conscience if it is otherwise valid by natural law, provided that by that religious or civil state or condition the natural state or condition is not taken away, and the positive law of this kind does not take away those things that belong to man by natural law according to his natural state or condition, but only according to his state or condition in society. Thus the rights of spouses, the rights of parents, and the rights of children remain firm in the forum of conscience if a true marriage was present, although civil marriage was lacking. For the defect of civil marriage does not take away the natural state or condition flowing from true marriage. On the contrary, when a knowingly invalid marriage has been contracted, neither husband, nor wife, nor dowry, nor legitimate children, nor legitimate succession is understood. C. 10 *Qui fil. sint legit.*; letter of Leo XIII, *Il divisamento*, February 8, 1893, § *Ora una legge*; C. I. 116; C. G. 202; C. A. 160.

A sale is valid in the forum of conscience, although made not to a citizen but to a foreigner where this is prohibited. For a law of this kind does not take away those things that belong to man by natural law, but those that belong to the citizen. On the contrary, the marriage of a slave is not valid when his condition is unknown to the other party. Likewise the testament of a religious is not valid, nor the testament of an incapable person. For both laws take away those things that by the very natural law belong to man because of his state or condition in society: namely, as to the former, in the Church; as to the latter, in civil society. Lugo, *de Iust. et Iur.*, D. 24, S. 4.

Finally, if an act is invalidated because of defect of form, the laws are then more properly held to be invalidating, insofar as they are distinguished from incapacitating laws. Now form is either intrinsic to the act itself and inseparable from the act, or extrinsic to the act. The former is, as it were, the species of the act and is properly called form; it is ordinarily situated in this, that the act be done before some public person and before witnesses, and also be recorded in public instruments juridically producing proof. The latter is called the solemnities of the act. When these are omitted the

acts are properly called invalid; but they are called unmade if form has been omitted, since form gives being to a thing. But these words are often used promiscuously, and an act is also said to be invalid and unmade from defect of capacity of the person.

Thus in marriage the presence of the parish priest and witnesses constitutes the form of marriage. In alienations of ecclesiastical goods, of wives, and of minors, the apostolic consent required in the first, the husband's consent in the second, and the decree of a judge required in the third, pertain to the solemnities of the act. The form and solemnities of an act are introduced to remove frauds. Therefore laws of this kind rest on a presumption of fraud. If they are founded on presumption of fact, and fraud is in reality absent, the act is valid. But if they are founded on presumption of danger, although fraud is absent, the act is nevertheless always invalid. In particular cases it is certainly not easy to define whether the law is founded on presumption of fraud or on the danger of fraud. Therefore, while doubt stands, the possessor is to be favored before the judge's sentence; after it has been given, one must stand by it. L. 1. 3. nn. 711, 890, 918, 927.

224. **Does he sin who performs an invalid act?** Answer: Affirmatively, if the act is evil, as, for example, to enter marriage with a blood relative; or if the act is harmful, whether justice, charity, the republic, or religion is injured, for example if a notary draws up a public instrument without juridical form; if a testator freely makes a testament without observing legal prescriptions, from which he foresees quarrels and scandals will arise; if a judge does not observe the legitimate process of judgments; if the form and solemnities of canon law are not observed in elections to ecclesiastical offices, in the conferral of benefices, etc.

Likewise affirmatively, if the act is by law at once invalidated and prohibited also in the forum of conscience, as in marriages not observing the form prescribed by Trent, or in giving to an adulterine son.

Negatively, if the act itself is neither evil, nor harmful, nor prohibited by law; for then it is only a futile act, for example if someone writes his own testament with the signature omitted, or before he has attained the age prescribed by law. But although the law does not oblige in conscience to omit the act, if in such a case it is merely invalidating and not at the same time prohibiting, nevertheless it obliges one to stand by all those things that intrinsically arise from the invalidation. For legitimate commanding authority must be obeyed. Every legislator can make invalidating laws, because this is required for the common good; otherwise frauds and dangers to human society could not sufficiently be repelled.

225. **Do ignorance, fear, and grave inconvenience excuse from invalidation?** To the first: negatively, because subjective ignorance, whether of fact or of law, does not supply the objective defect of the act. Thus there is no marriage, for example, when the diriment impediment of consanguinity stands, whether it is contracted in good faith or bad faith.

But if the invalidating law is penal, then, if ignorance excuses from fault, it also excuses from the penalty of invalidation. If fault is admitted, however, but the penalty of invalidation is unknown, then more probably this is not incurred, because invalidation is an extraordinary and exorbitant penalty, from which ignorance excuses. Schmalz. l. 5, t. 37, n. 105; Sanchez, *de Matr.*, l. 9, D. 32, n. 17. More commonly, however, they affirm that it is incurred, because such ignorance, since it does not excuse

the sin against the law, consequently does not excuse the penalty, although this is unknown. Suarez l. 5, c. 22; Ithur. Cas. 53, n. 24.

To the second and third: negatively, because grave fear and even the gravest inconvenience neither render a person capable nor restore to acts the force taken away by law. Since laws of this kind primarily and directly tend to preserving the public good, there is no place for epikeia because of merely private harm. Thus a marriage between relatives by blood or affinity will be invalid even to avoid death, even at the point of death. "Private": for if common harm is present, since the law would then become harmful to society, the invalidation ceases. L. 191; l. 3. n. 112; l. 6. n. 1029; *de Privil.* n. 57; Diana T. 2, Tr. 6, R. 62, 73; Sanchez, *de Matr.*, l. 3, D. 17, n. 3; Ithur. Cas. 53, n. 18.

226. **Note:** First, as there are invalidating laws, so there are laws constitutive of right, which others reduce to invalidating laws. Such laws are those that establish and confer some right. Thus religious profession and adoption obtain their force, the former from canon law, from the Church accepting religious profession, the latter from civil law. Therefore such laws have force in both forums, external and internal. For if someone truly has such a right in the forum of conscience, he has it only from either canon or civil law.

Second, there are also laws denying an action in the external forum. If these regard some natural right, they do not profit in the forum of conscience. For laws of this kind do not provide an action, not because they take away the natural right, but only so that there may be some end of lawsuits and lest lawsuits be multiplied. But if they regard a right which flows from the law itself, whether canon or civil, then, if someone has not pursued his right within the predefined time, they take away the right itself, and from the opposite side, the obligation of another. Therefore they profit this other also in the internal forum, unless perhaps he unjustly impeded the other from pursuing his right.

227. **What is the nature of penal law?** A law can oblige one to perform or omit some act or action, and then it is called a moral, preceptive, or prohibitive law. But a law can oblige one only to undergo a penalty, and then it is called penal law. For it is sufficient for the essence of law that it impose some obligation in conscience; nor is it necessary that the obligation determinately regard an act or its omission. Moreover, law has force only from the will of the legislator. But the legislator can oblige only to a penalty if this suffices for procuring the common good. Therefore St. Thomas rightly teaches, 2. 2. q. 186, a. 9, "that not all things contained in law are handed down by way of precept; but some are proposed by way of a certain ordinance or statute obliging to a certain penalty."

Therefore penal law is a law that does not oblige one to place or omit an act under fault, in conscience, but only under temporal penalty, that is, to accept the penalty as just. Therefore, properly speaking, a merely penal law cannot be given in this sense, insofar as it would in no way oblige in conscience. Yet a merely penal law can be given in this other sense, namely insofar as it obliges in conscience to one or the other: either to fulfill the law or to undergo the penalty.

"Sanctions that in no way oblige in conscience, neither to an act or its omission, nor to a penalty, are not properly laws, but simple constitutions and ordinances ... To this are reduced the statutes of various orders, congregations, academies, etc." Struggl q. 2, n. 32. It is beyond all question, however,

that there can be a law at once moral, preceptive or prohibitive of an act, and also penal; and then the law is called mixed. E. M.

228. **How are merely penal laws recognized?** They are recognized: first, from the matter, words, and adjuncts of the law; second, from the common judgment of Doctors; third, from persuasion and practice, especially of the God-fearing.

From the matter: hence, speaking per se, civil laws can be regarded as penal if, with their matter considered, the end of the law is sufficiently obtained by instilling fear of the penalty alone, as, for example, laws concerning tolls or taxes to be paid for goods being brought in or taken out. But civil laws must be regarded as preceptive if, considering their matter, the end of the law is not sufficiently obtained by fear of penalty alone, unless also by fear of fault. Such are those laws that directly and proximately contribute to the common good, peace, and order of civil society, such as laws, for example, of contracts; of public offices, administrators, magistrates, etc.; of judgments and proofs, unless in these the right is certain and evident, since then right is not lacking, but proof of right, provided that proof does not touch the very form of the act. C. I. 779, 1314; C. G. 973, etc.

Likewise laws definitively establishing right are altogether obliging in conscience, such as laws granting to a father the usufruct in the goods of children under paternal power, to such children the legitimate portion in paternal goods, half of a treasure to the finder and half to the owner of the land; restitution in whole to minors, married women, those who suffered fear, and regulars; common ownership of a wall to a neighbor; an action for damage caused by civil fault alone, etc.

From the words: hence Suarez judges, l. 5, c. 4, n. 9, that if by the words of a penal law the precept is not sufficiently declared, presumption must be for a purely penal law, unless the penalty intrinsically supposes theological fault, as does the penalty of excommunication. A law is held as purely penal if it is not enacted by way of precept and prohibition, but merely assertively, for example: whoever carries grain out of the kingdom shall pay one hundred coins; or if it is enacted disjunctively, for example: let no one carry grain out of the kingdom, or if he carries it out, he shall pay one hundred coins.

But if the law is enacted simply by way of precept and prohibition, either it imposes no penalty and is a moral preceptive or prohibitive law, obliging, speaking per se, in conscience to fault; or it has a penalty joined to it, for example, canons are prohibited to be absent from choir under penalty of losing the distributions that are made daily among those present, and the law is mixed, obliging, again speaking per se, both to fault and penalty. "Speaking per se," namely unless the legislator himself has expressly warned otherwise, as may be seen in many rules and constitutions of religious orders and congregations, St. Thomas, 2. 2. q. 186, a. 9 ad 1; or unless something else must be judged from other headings. L. 145-147.

From adjuncts: for example, if no corruption of morals would follow from transgression of the law, no danger to public order, etc., and the superior himself entrusts to his ministers the effective execution of the law, with a heavier penalty imposed. For then the prince is justly presumed not to wish to oblige to fault and penalty at the same time. L. 1. 3. n. 616; cf. 232.

From the common opinion of Doctors: thus laws that prohibit dice and games to lay people are regarded as penal. L. 1. 3. n. 885.

From custom: "hence the laws of towns prohibiting under penalty the cutting of wood or grass, fishing, and hunting do not oblige under fault; for thus custom holds." L. 145. The same seems to be said of carrying weapons for hunting, but by no means of carrying treacherous weapons. C. I. Penal 460 ff.; E. M.

229. **Does ignorance, as it excuses from fault, also excuse from penalty?** Answer: Affirmatively for the internal forum if ignorance excuses from fault, for penalty is a certain natural consequence of fault.

Negatively for the same forum if ignorance does not excuse from fault or concerns only the penalty. Understand this of an ordinary penalty, not an extraordinary and exorbitant one. The reason for the distinction is that an ordinary penalty is always foreseen in some way from the nature of the crime itself, since the natural light itself dictates that evil is to be punished according to its nature. But an extraordinary penalty cannot be foreseen even confusedly.

Affirmatively likewise for the same forum if the legislator himself requires knowledge of the penalty, as may be seen in ecclesiastical censures, which are not incurred by those who invincibly ignore them.

For the external forum, however, negatively, insofar as it is never lawful to resist authority. L. 169; l. 6. nn. 705, 1074; l. 7. n. 351.

230. **Does a penal law oblige one to undergo the penalty before the judge's sentence?** A penalty contained in law is either active, which cannot be given execution without some positive action of the delinquent, as would be, for example, payment of money; or privative, which consists in the mere privation of some acquired right, for example of office, benefice, jurisdiction, right of suffrage, etc. This privative penalty is conditional if it deprives one of some right under a given condition. Or it is incapacitating, namely rendering one incapable of some right, for example of doing, contracting, acquiring, giving something, etc.

Likewise a penalty is either *latae sententiae* or *ferendae sententiae*. The first is incurred by the commission of the crime alone; the second by the sentence of the judge. This sentence to be given is either condemnatory, by which the guilty person is punished with a certain penalty, or declaratory, by which the judge declares someone to have fallen into that crime for which the penalty established by law is incurred by the fact itself. In order that a penalty can be called *latae sententiae*, it is necessary that the legislator have clearly provided that the guilty person, once the delict has been committed, is immediately bound by it.

If the penalty is *ferendae sententiae*, the law does not oblige one to undergo the penalty before that sentence, for then the law does not inflict the penalty by itself, but only decrees that it be inflicted by the judge. But if the penalty is *latae sententiae*, then a distinction must be made.

If the penalty is active, for example of paying or suffering something, it is not to be undergone before the judge's sentence. The reason is "because that human law would be too hard and unobservable: that the guilty person himself should execute the penalty on himself." L. 149, 148.

The same, for the same reason, must be said of a penalty at once privative and active. "And thus it must be said of laws depriving persons of benefices already obtained by reason of simony or

alienation of the goods of the benefice, etc., where a declaration of the judge is always required," L. l. c.; unless this is expressly provided in the law, as seems to be established in Trent, Session 14, c. 18 *de R.*, against synodal examiners receiving something on occasion of the examination, since it is said that "from this [i.e. simony] they cannot be absolved unless the benefices have been dismissed." L. 1. 3. nn. 112, 397. But cf. 521.

If the penalty is simply privative, ordinarily it must be undergone before the judge's sentence, as is clear from the use and custom everywhere received concerning censures and similar penalties. Hence, without another sentence, incestuous spouses are deprived of the right of asking the debt. C. *Si quis de Eo qui cognov.* And rightly so; for since incest is almost always hidden, the penalty would be rendered useless if it had to be proved and a sentence were required. "Ordinarily," for exception is made if the guilty person cannot execute the penalty without infamy, since this would be too harsh; likewise if a particular custom somewhere holds otherwise. L. 148.

"Incapacitating penalties oblige before the judge's sentence, such as the penalty imposed by Trent on non-residents of not acquiring fruits. Likewise when privative penalties are conditional, for example, that one having a benefice with cure of souls, if he is not ordained priest within a year, is deprived ipso facto of the benefice, as from C. *Licet de Elect.* in 6. Thus also a beneficed cleric not wearing the habit is ipso facto deprived of the privilege of forum." L. 149. The first reason is that no one can acquire that to which he has no right. The second reason is that since the law grants right only under such a condition, when this is lacking every right must also be lacking. Nevertheless, as for privative penalties, so also for incapacitating penalties a declaratory sentence is required "in the case in which the guilty person cannot execute the penalty without his own infamy." L. 1. 6. n. 705; L. 1. 3. nn. 397, 442, 472; Struggl q. 2, nn. 38 ff.

231. **Must a conventional penalty in contracts be paid before sentence?** "The first opinion affirms, because each person is bound before sentence to observe the pact ... The second opinion, which the Salmanticenses call equally probable, denies, because it must be thought that the contracting parties do not wish to impose a penalty on themselves otherwise than according to the disposition of law concerning penal laws, which are contracted only after sentence. Certainly the guilty person is bound to the penalty after sentence. But it must be noted that he is not bound to pay the money unless it is requested by the party. And if the penalty is too harsh, beyond the sentence a command of the judge and the execution of ministers is required." L. 150.

VI. On the Law of Taxes

232. **Whether and how do laws of taxes oblige in conscience?** Laws of taxes, speaking per se, are moral, or preceptive in conscience: namely those which are made by legitimate authority, from a just cause of the common good, the support and dignity of the Prince, and with due proportion observed, so that they do not exceed the moral capacity of subjects and so that, for example, the poor are not burdened as the rich are, for in that case the former would sustain a far greater burden than the latter. Lugo, *de Iust. et Iur.*, D. 36, nn. 25-26.

Indeed laws of this kind prescribe an act of natural justice, namely legal justice, by defining and determining it. By this justice both prince and subjects are bound, each for his own part, to contribute necessary supports to society. Therefore this natural justice prescribes to subjects that they supply to the superior who has care of the community those things necessary for carrying out this care. It likewise prescribes that outsiders must compensate harms which they bring upon another society by carrying away and selling goods. It prescribes to both subjects and outsiders that they must compensate necessary expenses in the construction and guarding of roads, bridges, etc., which they use. Rom. 13:5-7.

Nevertheless, since collectors of these taxes are publicly constituted, this seems to be the mind of legislators: that payment of taxes is not judged due unless it is demanded. By no means, however, are lies and frauds thereby permitted for deceiving the collectors. Likewise, since a grave penalty is imposed on those not paying, there are many weighty Doctors who regard laws concerning taxes as merely penal laws. But from this it does not follow that someone ought not pay just taxes when they are legitimately sought by collectors; rather it follows only that unless they are legitimately sought, he is not indeed bound in conscience to pay them, but he is bound to undergo the penalty if he is caught not having paid the tax and a penalty is imposed.

Therefore someone sins only when, the tax not having been paid, as to taxes not sought by collectors, he would be unwilling after confiscation to pay the penalty. And this opinion is confirmed also by common practice and persuasion, namely that these laws do not oblige in conscience to paying taxes spontaneously. Therefore, with at least doubt standing concerning the obligation, no one seems to be disturbed on this head if he has not paid taxes not yet sought by collectors; indeed, even if someone merely eludes the vigilance of collectors by hiding things or not declaring them, namely lest they demand payment, as even the God-fearing are accustomed to do. L. 1. 3. nn. 614-617; H. A. Tr. 10, n. 81; Ithur. Cas. 2; Struggl 32; Elbel 303-306.

233. **Resolves:** The following must be condemned: first, those who violently resist ministers demanding taxes, for they sin against obedience: "He who resists authority resists the ordinance of God," Rom. 13:2. They also sin against legal justice; for the law that regards taxes, even if it is held as merely penal, nevertheless gives governors a certain right to demand the fine if subjects are detected in fraud.

Second, those who by right and wrong practice defrauding as a sort of trade and wander day and night, armed even with the intention of resisting. For people of this kind become rebellious citizens and most pernicious to society.

Third, neither must indulgence be given to those who, although they never resist nor have the intention of resisting, nevertheless with all zeal and effort devote themselves to the art of defrauding and hold it as the profession of life. For these are not rarely exposed to dangers of temporal goods, life, fortune, and soul. Moreover, it is one thing not to declare or to hide one's goods lest a tax be demanded; it is altogether another thing to practice the art of defrauding taxes, which is certainly prohibited, since this is altogether harmful to society, both because of the defrauding of taxes itself and because of many other delicts that are naturally joined with it.

234. **Do officials sin against justice whenever they do not demand a just tax?** Answer: Affirmatively, per se generally, and indeed gravely in grave matter. The reason is clear, since they have obligated themselves to keep proper watch and diligently to demand taxes otherwise just. Therefore, if they fail in their office, they are bound to restitution toward the prince or the republic.

"Generally," because according to many, those appointed to collect taxes are not always to be condemned when from time to time they act more benignly in a light matter, especially with the poor, or even with those who otherwise pay diligently, because in such a case the prince himself is reasonably presumed to remit it. "Moreover, if toll collectors discover defrauders and only dissemble the fine, they probably are not bound to make this up. The reason is that toll collectors, by force of their office, are bound only to demand the tax for the good of the prince, but not to enrich him by fines. Besides, the fine is not owed from elsewhere before the sentence of the judge, nor before this does the treasury have a right to the fine. Hence also paid guards appointed to watch lest tollhouses be avoided by hidden paths, if by their fault they allow passage, are bound from justice to make up the loss of the toll, but not of the fine." Struggl 30; L. 1. 3. nn. 583, 614-617.

But those must be condemned who by unjust means corrupt those appointed to demand taxes, so that they do not perform their office by demanding an otherwise just tax; for they sin at least by cooperating in the sin of these persons, and they are bound to restitution. L. 1. 3. n. 617; Struggl 32; cf. 1386.

VII. On Dispensation

235. **What is dispensation?** Dispensation is the relaxation of a law in a particular case, because of a special cause. St. Thomas, 2. 2. q. 147, a. 4. It differs from declaration, by which it is stated that this or that case is not comprehended in the law. It differs from license, which has place when the law does not prohibit a thing absolutely, but only conditionally, namely without the consent and approval of the superior. Therefore the bond of law is not relaxed by license, but only a condition is placed, and once it is placed, the law no longer has place. The law is then rather observed, for the law in reality prescribes that license be sought if this or that thing is done, namely that the consent of the superior be sought.

It differs from privilege, which can be both contrary to law and beside law, and, when it is contrary to law, simply derogates from it, and therefore not only for a case or some cases in particular, but for all. It also differs from invalidation, abrogation, and cessation of law, because in these the law is extinguished for all.

236. **Note:** The power of dispensing given generally falls back into a privilege beside the law, and is favorable, and therefore has broad interpretation, but not extensive interpretation. But dispensation itself, because it derogates from law, is odious and of strict interpretation, unless it is owed, or was granted *motu proprio*, or to a community, or for the common good, or inserted in the Body of Law. Strict, but not restrictive, unless perhaps the right of a third party is injured. It is never to be interpreted so that it becomes useless or burdensome to the one to whom it was granted. R. 61 *de R. I.* in 6; L. 187, 192, 195.

237. **What is required for dispensation?** First, it is necessary that the one who gives the dispensation give it knowingly and willingly; but a dispensation extorted by fear is valid. It is also necessary that the one to whom it is given, regularly speaking, accept it. For a benefit is not given to one unwilling. It can be given and accepted even tacitly and by the fact itself. L. 184, 187; Sanchez, *de Matr.*, l. 3, c. 36, n. 2. "Regularly speaking," for absolutely a person can be dispensed even without knowing and unwillingly, since it belongs to the legislator to bind and loose.

Second, on the part of the one granting, a just cause is required; otherwise the superior would not be a faithful guardian of the law, but an imprudent dissipator. Moreover, natural law dictates that the part must be conformed to its whole unless a just cause excuses. Trent, Session 25, c. 18 *de R.*; St. Thomas, 1. 2. q. 97, a. 4. Without a just cause, a dispensation given by the legislator himself is indeed valid, although illicit; but one given by an inferior or by a delegate is both illicit and invalid. For the legislator has as his own the power of binding and loosing, to which that just cause is extrinsic; but he is not judged to communicate this power to an inferior or delegate except so that he use it reasonably.

Nevertheless, both the legislator who dispenses without cause and the one dispensed who asks for it sin lightly; but he who, the law having been removed by dispensation, uses it does not sin even lightly. For neither the former in giving nor the latter in accepting does injury to anyone, although they injure legal justice. But a delegate dispensing without a just cause in a grave matter sins gravely, since he gravely abuses the power granted to him. "In a grave matter," for in a light matter it does not exceed venial fault.

On the part of the one asking, however, it is required, both for lawfulness and validity, that a true cause be present, since the superior does not dispense unless the petition rests on truth.

Third, moreover, a probably just cause suffices both for asking and for granting a dispensation, both validly and lawfully, lest the matter be too anxious and liable to scruples. Nor is it necessary that it be as great as would suffice of itself to excuse; otherwise the power of dispensing in the superior would become altogether useless. "The cause is the dignity of the petitioner or of the superior, so that he may show himself benign, and also common or private utility and similar things. In dispensations from impediments for marriages, however, the payment of money in subsidy of the Church suffices as a cause, as is the practice." L. 195, 178, 181, 182, 186, 192, 195; l. 3. n. 251; l. 7. n. 353; St. Thomas, 1. 2. q. 96, a. 6; q. 97, a. 4; 2. 2. q. 63, a. 2 ad 2; cf. 283; E. M.

238. **When a just cause exists, is the superior bound to dispense?** Answer: Negatively, if the cause is only sufficient, so that the dispensation is permitted; and the superior can either give or deny it, or give it to one and deny it to another, for it is a mere grace and therefore free. Moreover, as the dispensation benefits the subject, so its denial benefits the common good.

Affirmatively, if the cause renders the dispensation necessary for avoiding common damage or private damage of great importance, or for procuring common utility or great private utility; otherwise he would sin gravely or lightly according to the matter, for this is why the power was given to him. "Nevertheless, when a dispensation has been denied, even unjustly, the subject cannot act against the law unless such a cause urges as to draw him out from the law. Therefore if a bishop unjustly denies

dispensation from the publications before marriage, the marriage can, with an urgent grave cause, be contracted without them." L. 179; St. Thomas, 1. 2. q. 97, a. 4.

239. **In doubt whether a case needs dispensation, is dispensation needed?** Answer: Negatively in positive doubt, for the extension of the law to that case remains uncertain. Affirmatively in negative doubt concerning the sufficiency of an excusing cause, for the certain law possesses. But negatively in negative doubt concerning the necessity of dispensation, for then on the contrary liberty possesses. L. 97, 180, 192, 195; l. 3. n. 325; l. 4. n. 154; H. A. Tr. 2, n. 51.

240. **Is it lawful to use tacit, presumed, or interpretative dispensation?** To the first: affirmatively, for there is truly a will of dispensing in the superior, since tacit dispensation is had when the superior wills something with which dispensation is connected, or when, knowing and able to contradict, he does not contradict.

To the second: affirmatively, for then too there is truly a will of dispensing in the superior, as is reasonably presumed from the hypothesis, for example if, knowing that you are excommunicated, the prelate confers a benefice on you.

To the third: negatively, for there is not present, nor does any reason persuade that there is present, a will of dispensing in the superior; there is only reason that such a will would be present in the superior if he knew the matter. Nevertheless, in matters of lesser importance one could then more easily use epikeia. Nor does it matter that presumed license for the future is valid; for for actions that require a positive act of the will for their validity, interpretative voluntary does not suffice, as happens in dispensation, since relaxation of the law requires positive consent of the superior. On the contrary, for actions for which it merely suffices that the superior not be unwilling, as in the case of license to be sought, interpretative voluntary suffices. L. 187; l. 3. n. 288; Struggl Tr. 1, q. 1, n. 21; Sanchez, *de Matr.*, l. 3, D. 35, nn. 16, 24.

241. **Who can dispense, and with whom?** To the first: since dispensation is a relaxation of law, it is clear that it is an act of jurisdiction. Therefore only he who made the law, or his superior or successor, can dispense by ordinary power; by delegated power, the one who has received from these the power of dispensing. The reason is that the legislator has as much power to loose as to bind; he has equal power with his predecessors; finally, he has the power of inferiors subordinated to himself. But an inferior has no power over the law of his superior.

The legislator cannot dispense even in his own law if the law passes into a contract. For pacts are to be observed by all. L. 190, 191.

But an inferior can dispense in the law even of a superior if dispensation is generally permitted in the law, for example if it is said "until dispensed," L. 90; if custom has prescribed; if it is commonly admitted by theologians. Hence validly and lawfully an inferior, by ordinary power, dispenses from a just cause in the law of a superior: first, concerning light matters, that is, matters that do not oblige under mortal fault, even if recourse to the superior is easy; second, in cases that frequently occur and in doubtful cases; third, when urgent necessity is present, recourse to the superior is difficult, and there is danger in delay. L. 180, 190-192; l. 6. n. 902.

"By ordinary power, delegated": ordinary power is that which belongs to someone by force of his office; delegated power is that which belongs by concession of one who has ordinary power. If delegated power is granted by the law itself, it is equated with ordinary power, as being joined to office and dignity. But if it is wholly from a superior, it is purely delegated.

To the second: dispensation can be given only with those who are subject to the jurisdiction of the one dispensing: for example, with inhabitants who have domicile, whether they are in their own territory or outside it, L. 1. 1. n. 158; l. 7. n. 81; with newcomers, as long as they have quasi-domicile in the territory, L. 1. 1. n. 158; l. 3. n. 262; S. O. Nov. 22, 1865; A. S. S. v. 2, p. 671, who can use the dispensation obtained even when they go abroad, Suarez l. 8, c. 26, n. 12; with vagrants, as long as they are staying in the territory, Benedict XIV, Not. 33, n. 10; indeed even with travelers, since travelers too become sufficiently subject by approach to the local superior while they are in another's territory, L. 1. 1. n. 158; l. 3. n. 262. And since this dispensation is personal, it adheres to the person, and therefore follows the traveler even outside the territory or diocese of the one dispensing. Cf. 248.

Finally, they can dispense with themselves, although they have only delegated power, provided it is general. The reason is "because it is purely voluntary jurisdiction, which can be exercised even toward oneself. Hence one can well dispense oneself in vows, oath, fasting, etc." L. 183. "General," because no one is excepted in a general faculty in whatever way it is had. But it is otherwise if someone is delegated only for particular cases. L. 158, 183; l. 3. n. 262; E. M.

242. **Can the Pope dispense in divine law?** He can dispense from a just cause in those things in which divine law arises from human will, as in vows and oaths. For it is certain that in these he acts in the place of God. Hence it is that a dispensation in a vow or oath, without a just cause, is invalid even if made by the Pope.

In other matters it is disputed whether he can truly dispense from a most grave cause, or only declare that divine law then ceases. In practice it matters little. "In other matters," namely those in which he can dispense; for he cannot dispense in all, but only in some, for example in betrothals, in ratified marriage, etc. Always except, however, laws that pertain to the essential constitution of the Church, such as laws concerning the forms and matters of the sacraments, concerning the offering of sacrifice, etc. L. 180, 188, 189; St. Thomas, 1. 2. q. 100, a. 8; 2. 2. q. 88, a. 12; q. 89, a. 9 ad 3; Suppl. q. 65, aa. 1, 2, 4; q. 67, a. 3; Struggl q. 4, n. 11; E. M.

243. **In what laws can bishops dispense?** By ordinary right, they can dispense in their own dioceses from laws enacted in provincial synods, since this has been introduced by custom, C. *Cum contigat* 13 *de For. comp.*, provided they are not specially reserved to the council. They can likewise dispense in all episcopal and synodal statutes, and indeed independently of the chapter and clergy. Nor does it stand in the way that the provincial council or diocesan synod was approved by the Apostolic See. For that approval is not specific and absolute, so that the individual statutes are examined, known, and approved *motu proprio* and with certain knowledge. Rather, it is ordinary, common, and conditional: if justly, if canonically, etc. This indeed grants no new right, as Benedict XIV teaches with Fagnano, *de Syn.*, l. 13, c. 5.

Moreover, bishops by their own right dispense in Pontifical laws also enacted for their own diocese, for they are regarded as diocesan laws. The chapter too, when the see is vacant, can dispense from

episcopal and synodal statutes, since it succeeds into the place of the bishop. The bishop's vicar general, however, cannot do this without special delegation, since he does not have it by his own ordinary right; for in a general commission the faculty of dispensing is not understood.

Bishops cannot, however, dispense in a synodal law fixing the suitable income for ordinands. The reason is that Innocent XII, Bull *Speculatores*, established that "his benefice be of such revenue that, for the suitable support of life, whether according to the synodal tax, or, if this is lacking, according to the custom of the region for those to be promoted to sacred orders, the burdens having been deducted, it suffices by itself, and that it be peacefully possessed by the one to be ordained." Therefore the Pontiff implicitly takes from the bishop the faculty of dispensing in this matter, or rather of arbitrating or making the calculation in his own way.

But because every power, and especially spiritual power, has been given not for destruction but for edification, and from the very nature of ecclesiastical laws, and from the presumed will of the Roman Pontiff, and also from custom, bishops also dispense in common laws: first, when the matter is light; second, as to doubtful cases; third, as to cases that often occur, as in most vows, fasts, abstinence with private persons, observance of feasts, the divine office, in particular cases, etc.

Likewise they dispense in other Pontifical laws also whenever recourse to the Supreme Pontiff is not easy and there is grave danger in delay, for example in impediments of marriage, irregularities, reserved vows, etc. They can dispense in Pontifical laws if in the law itself it is said that dispensation from it can be given; for if these words mean anything, and permit dispensation, they certainly permit it to inferiors, namely bishops. Matrimonial dispensations are excepted, however; cf. Trent, Session 24, c. 5 *de R. M.*, from the practice and style of the Curia, or if the Ordinaries themselves were to be dispensed. Cf. C. *super eo* 2 *de Big.*; L. 180, 190, 191, 192; App. 2, nn. 54 ff.; l. 6. nn. 613, 902; H. A. Tr. 2, c. 6, n. 57; cf. 241.

244. **Note:** First, bishops are said in the preceding cases to dispense by ordinary right, because such faculty belongs to them by force of their own office, to which it is perpetually joined; and therefore they can well delegate it to another. L. 190, 192, 193; l. 6. n. 613; *de Priv.* 57, 58; Struggl q. 4, n. 12.

Second, in doubtful cases a bishop can declare that the case does not need dispensation, or dispense for caution. As to dispensation for caution, Benedict XIV, Not. 101, notes this: "Diana wisely observes that dispensations of this kind are granted by the Sacred Penitentiary or Datary not as necessary, but so that the faithful may be rescued from every scruple and anxiety of mind." The dispensation will not then, regularly speaking, be necessary; but it is very useful. For if perhaps the truth later appears, someone nevertheless remains truly dispensed. Sanchez l. 8, D. 6, n. 18.

245. **Can pastors dispense in some matters?** By ordinary right, they can, by reason of custom, dispense with subjects, only for particular cases, in fasts, abstinence, works prohibited on a feast day, and other similar things that frequently occur and need prompt dispensation. "By reason of custom," for they do not have jurisdiction in the external forum. "By ordinary right," since this faculty has been granted to them by reason of office, as to be exercised in cases that frequently occur. Indeed, in more grave matters also they can dispense, in which bishops can

dispense, when a most grave necessity stands, if the bishop cannot be approached and there is danger in delay. L. 190, 192; l. 3. n. 288; l. 6. n. 613; H. A. 59.

246. **Can regulars dispense in some matters?** First, "regular prelates have the power of dispensing with their subjects in ecclesiastical precepts, as bishops can with their diocesans. For they have quasi-episcopal jurisdiction, as the Doctors commonly teach." L. *de Privil.* n. 106. Cf. 243, 281.

Second, "confessors of the Mendicants and other communicating regulars have power of invalidating, remitting, and dispensing oaths and vows. They can moreover dispense with spouses as to the impediment to asking the debt, because of incest committed with a blood relative of the spouse. It must be noticed here, however, that the confessor must obtain in this a special license, and at least from the inferior superior of his monastery. Mendicant confessors can also dispense with spouses in a vow of chastity elicited before marriage, for asking the debt, just as also in a vow elicited after marriage. They can dispense in all vows in which bishops by ordinary right can dispense with their subjects." L. ib. 109; l. 1. n. 194; Struggl q. 4, n. 13.

247. **Can dispensation be given in the external forum or in the internal forum?** Dispensation can be given in the external forum, since if the bond of law is established in the external forum, the loosening of that bond can also be given in the same forum. Thus the dispensation from abstinence that is given through an indult in Lent is given in the external forum.

It can also be given in the internal sacramental forum, for in the sacramental forum all those things that pertain to spiritual salvation can well be handled. It can likewise be given in the internal forum of conscience, although not sacramental, for just as sins properly pertain to the sacramental forum, so all things that regard the spiritual salvation of each person pertain to the forum of conscience. This essential difference intervenes between the internal sacramental forum and the merely internal forum of conscience: in the former, matters are handled among persons present; in the latter, matters can also be handled among absent persons.

The forum of penance is also distinguished; but according to some this is the sacramental forum, according to others the forum of conscience. Therefore what is committed to someone in the forum of penance, besides the absolution of sins, for example dispensation, absolution from censures, etc., can be expedited even outside the sacrament of penance, although the mandate is directed to a priest confessor. Suarez l. 8, c. 6, nn. 15-16; Salm. Tr. 18, c. 1, n. 33; Schmalz. l. 2, t. 2, n. 2; L. 194; St. Thomas, 1. 2. q. 97, a. 4.

248. **When does dispensation cease?** Dispensation ceases: first, by revocation, for by it the bond of the law is restored. Therefore, if made by the legislator, it is valid even without cause; if made by a delegate, it is not valid even from a just cause; if made by an inferior when he granted it by ordinary right, it is valid if from a just cause, otherwise not, because he cannot restore the law of a superior. L. 197. "Of law": for if the obligation depends not on law but on one's own will, as in vows, it cannot be restored without that will. A prelate revoking a dispensation without a just cause sins per se only venially. L. 197.

Second, by renunciation, which immediately has force in those things that have force from one's own will, in vows, oaths, etc. But in those things that obtain effect from law, for example in impediments of marriage, in the canonical hours, etc., it has force when it has been accepted by the superior, who can restore the bond of the law. L. 198.

Third, when the motive cause totally ceases, if the dispensation has successive duration and was not given absolutely, as, for example, a dispensation from the law of abstinence because of illness. Otherwise, however, if the dispensation was given absolutely, although, considering the matter, it can have successive duration; or if it was completed by one act, for example if someone was dispensed from irregularity because of the poverty of parents, or because of honesty of morals, or because of lack of ministers.

Therefore one who was absolutely dispensed from a vow of chastity, when the spouse has died, can marry another; but if the dispensation was granted for a special case, he needs a new dispensation. If some commutation of burden was joined to the dispensation, then even when the cause ceases, the dispensation does not cease.

Likewise dispensation does not cease: first, by non-use or contrary use, whence someone will always be able afterward to use it, since these cannot restore the bond of law; second, by leaving the territory of the one dispensing, because what was legitimately done ought not be retracted, even if afterward a case occurs from which a beginning could not have been had; third, by the death of the one dispensing, whoever he is, whether a superior or inferior prelate, since dispensation is a grace, and grace does not expire by the death of the one granting it.

Moreover, if the cause is judged perpetual, then the dispensation is judged to have been given absolutely, even if afterward by accident the cause ceases. It is otherwise, however, if the cause is judged to be going to endure only for a time. R. 73 *de R. I.* in 6; L. 195-198; cf. 241.

VIII. On Privileges

249. **What is privilege?** First, privilege is, as it were, a private law, granting some special benefit to someone, existing outside the Body of Law. "Private," because it grants something special to someone and not to all. "Law," because while it grants to the privileged person the right of using the privilege, it imposes on all or the whole community the obligation of not impeding the use of the privilege. "Special," for privileges would not be granted if nothing special beyond the general law were granted to anyone. "Benefit," since it contains the grace of the prince. "To someone," that is, either to a singular person or to a moral person, for example a University, religious Order, etc. "Existing outside the Body of Law," because it is not properly a law, whence it does not need promulgation; but since it is a certain donation, it needs acceptance. And this holds for any grace granted; regularly, nothing is acquired except by one willing. Cf. Schmalz. l. 4, t. 3, nn. 203 ff.

But petition counts as acceptance, and if it is sought through a procurator, it suffices that it be accepted through him. Therefore, as long as someone does not know whether a grace has been granted, he regularly cannot lawfully use it; but more truly he can validly use it, Suarez l. 8, c. 25, n. 25; Laymann c. 23, n. 10; Sanchez, *de Matr.*, l. 3, D. 36, nn. 6-8; l. 8, D. 26; Engel l. 5, t. 33, n. 8; l. 4,

t. 3, n. 15, if it is true that the grace has been granted. Nor does it matter if the grace was sought for another, even without his knowledge, indeed even unwillingly. Sanchez, *de Matr.*, l. 8, D. 26, n. 4; Bonacina D. 1, Q. 3, c. 3, n. 4.

Hence if someone neither sought the grace himself nor knows that it was sought by another and granted, and nevertheless perhaps uses it, one must stand for the validity of the act when the act depends only on the will of the one granting the grace, as, for example, may be seen in dispensations of marriage in the root. But unless something else is drawn from the concession of the grace, it is judged to be granted only to one knowing and accepting. Suarez l. 8, c. 25; L. 1; Lugo, *de Poenit.*, D. 19, S. 2; cf. 237.

Privilege differs from a law properly so called, even a singular law, namely one that establishes something special for a certain class of persons. Since it is a true law, it is contained in the Body of Law and is commonly called a privilege enclosed in the Body of Law, as, for example, the faculty granted to bishops by Trent, Session 24, C. *Liceat* 6, of dispensing from irregularities arising from hidden delict; restitution in whole granted by laws to minors, wives, and interdicted persons. Therefore, as other laws, so these need not acceptance but promulgation. Indeed, not even knowledge of those to whom they were granted is required for them to use these validly. Cf. Suarez l. 8, c. 26, n. 16.

Likewise, as other laws, so also these are perpetual and do not cease by renunciation, although in particular cases someone can renounce a right introduced for him, provided the privilege was not granted for the sake of others, or because of the dignity of an order or group, or because of the presumption of a common danger of fraud, such as those things granted to the weakness of persons, like restitution granted to minors and to those professing before canonical age if they renounce restitution.

250. **How many kinds of privilege are there?** First, by reason of the subject, one privilege is personal, which is granted to an individual person, for example Titius, or to a group of persons, for example minors, or to a moral body, for example a religious order; another is real, which is also granted to persons, but with respect to dignity, office, place, or thing. Real privileges are perpetual, and personal privileges of the second and third species are also counted among these. Therefore real privileges pass to successors in the same thing. But personal privileges are extinguished with the same person.

Second, by reason of the object, one is contrary to law, which derogates from law, as the privilege of a private oratory; another is beside law, by which a mere grace beyond the law is granted, for example the faculty of absolving from reserved cases.

Third, by reason of the cause, one is remuneratory, which is granted because of certain merits; another is gratuitous, which is granted without previous merits. A gratuitous privilege can be revoked even without cause, for it proceeds principally from the liberality of the one granting. A remuneratory privilege cannot be revoked without cause, for it is granted because of merits. And if it is remuneratory from strict justice, namely because of a price paid or a burden imposed, it cannot be revoked without due compensation. Suarez l. 8, c. 4, n. 38; Lugo, *Resp. Mor.*, l. 1, D. 19; L. 1. 1. n. 197.

251. **What is grace already made, and grace to be made?** Graces are distinguished into those already made and those to be made. A grace is called made when the one who grants it assents to the petition, if it is given at the prayers of the petitioner; or when the one making the grace grants it simply, if he bestows it *motu proprio*. Now when the Prince himself grants it in grace to the one to whom he grants it, or, as it is said, in gracious form, the grace is then regularly understood as already made; as if the Supreme Pontiff grants to a religious order, or to a singular person, Titius the priest, the faculty of absolving from reserved cases, blessing rosaries and attaching indulgences to them, etc.

But when he grants it through another, or, as it is said, in commissary form, because it falls back into a mandate, then the grace is sometimes made and sometimes to be made. It is made if another is constituted a necessary executor; it is to be made if another is constituted a voluntary executor. For in the first case the other is merely executor of the concession of the grace; in the second the other is executor of the grace to be granted, namely the grace to be granted is remitted to him.

Thus a grace is made if in a rescript, for example, it is said to the Ordinary, "dispense," "absolve," even if some condition to be verified is added, and even if there is added "according to your discretion and conscience," which words are placed only for the expression of reverence and fittingness. S. C. C. Dec. 6, 1845. But it is to be made if in the rescript it is said "dispense," "absolve," "if you judge it expedient," or if the petitions are remitted to him with necessary and opportune faculties. L. 1. 1, App. 2, n. 13; Bizzarri, *Collect.*, p. 666.

Hence a grace already made does not expire by the death of the one granting, or by his ceasing from office. On the contrary, a grace to be made expires, namely while the matter is still intact. But graces to be made, granted by the Roman Pontiff, revive on the day after the election of his successor, from Rule 12 of the Apostolic Chancery. L. 8; l. 6. n. 559; Laymann, l. 1 *de Privileg.*, c. 23, n. 18; Aloysius Trombetta, *Prax. Reg. circa Contr. rer. Eccl.*, c. 6; cf. 255, 283 and vol. 2, 1045.

252. **Who can grant privilege, and to whom?** A privilege contrary to law can be granted by those to whom the law is subject, and indeed only to subjects and only to places contained by their power. The reason is that such a privilege is a derogation from law, and the legislator has no authority over non-subjects or outside his own territory.

A privilege beside law can be granted even to non-subjects, because it is not an act of jurisdiction, but an act of mere faculty and quasi-donation. Thus a prince can grant to a foreigner the privilege of hunting in his territory. Suarez l. 8, cc. 8, 10, 26.

253. **Can travelers enjoy the privileges of the places through which they pass, even if these are contrary to common law?** Answer: Affirmatively. This is established from general custom.

254. **Can one delegated to grant a grace subdelegate?** Answer: Negatively, speaking per se, because this faculty is not per se included in the concession of the superior unless it is expressed.

Exceptions: first, if someone were delegated by the Prince, but in a case in which the delegation was made as through office; not, however, if the person is chosen because of his skill, or if jurisdiction is not committed to him but only execution of some cause. C. 6 and final § 1 *de Offic. et pot. iud. deleg.*

Second, if someone were delegated to supply the whole office of another, or for the universality of causes, even if not by the Prince. Hence vice-pastors universally appointed in place of an absent or deceased pastor can subdelegate another. L. 1 § *Ob eo* ff. *Quis a quo*. Nevertheless this subdelegation cannot be for the whole, but only for one or another cause, as is common with St. Thomas: "A vicar cannot communicate his whole power, but he can communicate part." *Quodl.* 1, a. 31. But a curate-economus, constituted by the bishop when the parish is vacant, by force of the disposition of the Council of Trent, Session 24, c. 18, can delegate another priest to all offices, unless the will of the Ordinary stands in the way. S. C. C. May 9, 1874; A. S. S. v. 8, p. 134. What has been said about delegation made by the Prince holds more strongly of delegation made by the Pope. L. 193; Sanchez, *de Matr.*, l. 3, D. 31, n. 4; Ferraris, v. *Delegare*; L. 1. 7. n. 224.

255. **Does a delegation made absolutely expire by the death of the one delegating?** Answer: Negatively, if the delegation is by way of grace already made, however much the matter is still intact. This happens: first, when it is granted for the sake of public utility, as is the faculty of dispensing in vows, in matrimonial impediments, of absolving from censures, etc.; second, when it is granted for the private utility of another, for example Caius or Sempronius, yet in such a way that a precept of executing the mandate is imposed on the commissary or delegate, as if he said, "dispense with Titius," "absolve," "provide concerning the benefice," etc., if the petitions rest on truth. For delegation of this kind contains a right perfectly granted, and therefore once accepted it perseveres in its being, although the one granting dies. C. 1 § 1 *de Filiis presbyt*. And this delegation is to be interpreted broadly.

Affirmatively, if it was given by way of grace to be made, while the matter is still intact. This happens when the grace is not perfectly granted, as occurs when it is given in favor of another private person and the delegate is not commanded to execute it, but power of granting the grace is given, or it is remitted to his discretion and will, as if he said, "you can and may dispense," etc., if the things set forth are true. "While the matter is intact," for it is otherwise when the matter is not intact. And delegation of this kind is to be interpreted strictly. The matter is said not to be intact if the delegate has begun to exercise the first act, as if he has begun to call the party to know the truth of the petitions. R. 16 *de R. I.* in 6; L. 192-194; cf. 251, 283 and vol. 2, 1045.

256. **How are privileges to be interpreted?** Privileges have force only as much as they sound. C. *Per exemptionem* 9 *de Priv.* in 6. Therefore they receive neither extensive nor restrictive declaration, but regularly only declarative. Therefore, when the faculty of absolving from papal reserved cases is granted, the faculty of absolving also from episcopal reserved cases is not included. L. 1. 7. n. 98. When the faculty of choosing a confessor is granted, one can choose him as often as he wishes.

"Regularly," because if a privilege is granted in general words, in such a general concession those things do not come which one would not likely grant, R. 81 *de R. I.* in 6, that is, things altogether extraordinary and unusual, Laymann in C. *Sedes* 15 *de Rescript.*, Reiffenst. in cited C. 81; nor those things that deserve special mention, or are excluded by custom or law. Therefore, when the faculty of absolving from reserved cases is granted, the faculty of absolving from specially reserved cases is not understood to be granted; when the faculty of absolving from reserved cases even specially is granted, the cases of the Constitution *Sacramentum Poenitentiae* are not comprehended.

Privileges beside law are of broad interpretation, since they are benefits of the Prince. C. 16 *de Verb. sign.*; C. *Quia circa* 22 *de Priv.* On the contrary, privileges contrary to law are of strict interpretation, because they wound the law. C. *Ut filii* 1; C. *Ad praesentiam* 2 *de Filiis presbyt.* Nevertheless these too are of broad interpretation if the good of the republic or Religion is at stake, as are privileges granted to communities or to some pious cause, L. 1. 1, App. 2, n. 8; if they are granted *motu proprio*, C. *Si motu* 23 *de Praeb.* in 6; if otherwise they would be useless, C. 30 in fin. *de Priv.*

Only those privileges are always of strict interpretation which injure the right of a third party, since they are always understood with justice and the right of a third party preserved. C. *Licet* 12 *de Off. iud. ord.*; C. *Super eo* 15 *de Off. iud. deleg.*; C. *Cum olim* 12 *de Priv.*; L. 5 ff.

257. **Are privileges contrary to common law necessarily odious?** Answer: Negatively. For a favorable privilege is one that benefits one person in such a way that it harms no one, for example the privilege of eating meat in Lent. But an odious privilege is one that, from the favor granted to one, produces inconvenience for another, for example exemption from paying taxes, which burdens others. From this it follows that privileges contrary to law are not odious unless they harm someone.

Indeed hardly any privilege can be given that is truly and properly opposed to common law. For, as St. Alphonsus says, privilege differs from dispensation, which exempts from law and therefore is always per se odious and contradicts the law; for although the subject is actually exempted from the law, he remains habitually bound. Privilege, on the contrary, proceeds rather in parallel with law; for privilege is a certain private law directing its subjects, and therefore permanently. Hence the reason which the same holy Doctor adduces seems less to prove his intent, when he contends that these privileges are odious and of strict interpretation because they imply dispensation. L. 7; l. 3. n. 318, Claus. I.

258. **When do privileges cease?** Privileges cease: first, on the part of the one granting, by revocation, for example by a contrary law enacted which otherwise could not obtain its effect, or which contains the clause "notwithstanding any privileges whatever"; or by the command of the prince himself granting the privilege, or of his successor, directly manifested to the one to whom the privilege had been granted. But it is by no means extinguished by the death of the one granting, since it is a grace already made.

Second, on the part of the privileged person, by renunciation accepted by the one granting, C. *Si de terra* 6 *de Priv.*; by non-use or contrary use, if they injure the right of a third party and this third party has legitimately prescribed against them. Cf. Engel l. 5, t. 33, nn. 19 ff.; Pirhing ib. n. 176; Reiffenst. ib. n. 209.

Third, on the part of the privilege itself, if granted under a condition, even tacit, or for a day, when the condition has been fulfilled and the day has elapsed. A personal privilege ceases with the death of the person; a real privilege by the destruction of the thing or place, or by the loss of dignity and office.

But when the final cause ceases, even forever, the privilege does not cease, since it is a certain donation, Suarez l. 8, c. 30, n. 2, unless it ceases contrariwise, so that the privilege becomes illicit and unjust, Suarez l. c. n. 6. Indeed, when the cause ceases merely negatively, the privilege does not on

that account become a useless benefit, as, for example, the privilege of a private oratory granted to an ill person or a person established in dignity, when health has been recovered or dignity lost. L. 14-17.

259. **Note:** No one is bound per se to use a privilege, because each person can renounce his own right. Sometimes, however, accidentally the privileged person is obligated to the use of the privilege: first, by reason of charity; hence one would sin who, having the faculty of absolving from reserved cases, refused to hear a sinner placed in grave necessity. Second, by reason of the common good, namely when the privilege is not personal but real, attached to a place, dignity, or state. Thus a cleric cannot renounce the privilege of canon or forum, nor a religious the privilege of exemption. L. 3; l. 3. n. 318, Claus. XI, Dub. 3, n. 324; Ithur. Cas. 32, n. 20.

IX. Privileges of Clerics, Bishops, and Regulars

260. **What are the principal privileges of clerics?** First, the privilege of forum, by which they are exempted from lay magistrates in civil and criminal matters. C. *Nullus* 2 *de For. comp.* This privilege belongs to clerics constituted in sacred orders, beneficiaries, and others, whether regular or secular, provided that these last, that is, simple clerics, "wear clerical habit and tonsure, serve some Church by mandate of the bishop, or are engaged in some School or University by permission of the bishop, as though on the way to receiving major orders." Trent, Session 23, c. 6 *de R.*; Session 25, c. 20 *de R.*

Therefore ecclesiastics enjoy: first, exemption concerning their persons, and cannot be judged and punished by a lay court; second, exemption also as to their own goods, both ecclesiastical and acquired in any other way; whence with respect to those goods they are not bound to pay any tax. Various Concordats must be attended to here. Schmalz. l. 2, t. 2, nn. 80 ff.; Benedict XIV, *de Syn.*, l. 12, c. 6, n. 5; L. 18 ff.; A. S. S. v. 2, pp. 178, 431, 584.

Second, the privilege of C. *Odoardus* 3 *de Solut.*, namely that a cleric who is a debtor is not condemned if because of poverty of goods he cannot pay debts, until he comes into a richer fortune.

Third, the privilege of canon, by which those who strike clerics incur excommunication ipso facto reserved to the Roman Pontiff. Constitution of Pius IX, *Apostolicae Sedis de censuris*.

Fourth, clerics are stripped of these privileges if they are really degraded; likewise if they exercise a base trade, are married, or, if unmarried, walk as lay people, if after a third warning they have not amended within a suitable time, Clem. *Dioecesanis* 1 *de Vit. et hon. cleric.*; clerics involving themselves in tyranny or enormity, having laid aside clerical habit, C. *Perpendimus* 23 *de Sent. excomm.*; bigamous clerics, who have married two lawful wives or a widow, C. *Altercationis* un. *de Dig.* in 6; C. *Clerici de Cler. coniugat.* in 6; cf. Trent, Session 23, c. 6 *de R.*; Schmalz. l. 5, t. 39, n. 218; clerics constituted in minor orders who lay aside clerical habit, S. C. Imm. Sept. 20, 1860 to the Ordinaries of the Pontifical Territory; clerics ordained in minor orders during a vacant see within a year from the day of vacancy, unless they were constrained by occasion of an ecclesiastical benefice received or to be received. Trent, Session 7, c. 10 *de R.*; L. 24; l. 6. n. 827.

Fifth, immunity concerning asylum for delinquents belongs to churches, public oratories, the episcopal palace, houses of regulars, and hospitals in which there is a public chapel, except in the cases comprehended in the bulls of Gregory XIV and Benedict XIV. All delinquents, provided they are

Christians, although heretics, or interdicted, or enclosed in prison, who, having broken the prisons, flee to the aforesaid sacred places, enjoy this immunity, except, however, the cases excepted in law. But just as ecclesiastical superiors can draw their own subjects out of a Church, so also, if needed, they can grant the same license of drawing out to the secular court. Various Concordats must likewise be attended to here. L. 25 ff.; E. M.

261. **What are the principal privileges of bishops?** As to preserving their dignity: if bishops commit a crime that is forbidden under penalty of suspension or interdict, they do not incur these censures unless they have also been enacted against them by name. Their causes are to be settled by the Supreme Pontiff. Trent, Session 13, c. 8 *de R*. Those who injure bishops incur excommunication reserved in a special way to the Roman Pontiff. Constitution *Apostolicae Sedis de censuris*.

From the same Constitution *Apostolicae Sedis*: "Those knowingly celebrating or causing divine services to be celebrated in places interdicted by the Ordinary, or delegated judge, or by law; or admitting those excommunicated by name to divine offices, or ecclesiastical sacraments, or ecclesiastical burial, incur by the law itself an interdict from entrance into the church, until they have competently satisfied at the discretion of the one whose sentence they contemned."

262. **As to Mass.** "A bishop can dispense for celebrating at another altar, or in a church not designated by the founder, when some just cause is present." L. 60; l. 6. n. 329. "He can dispense for just causes both with himself and with others to celebrate after noon." L. 61; l. 6. n. 344.

They can celebrate not only in their episcopal house, but also in lay houses in which they are received as guests on occasion of visitation or journey, and when, in cases permitted by law or by special license of the Apostolic See, they are absent from the house of their own habitation and for this reason stay in another's house by way of a similar habitation. L. 63; l. 6. n. 358; Benedict XIV, *de Sacr. Miss.*, l. 3, c. 6, n. 6; De Angelis, *Praelect. Iur. Can.*, t. 41, l. 3, n. 3 at the end; S. R. C. Aug. 22, 1818; Gard. 4547; Gattico, *de Usu alt. port.*, c. 7; E. M.

They can grant the faculty of celebrating outside a church, in a non-sacred place and in private houses, if grave and proportionate causes are present, and only by way of a passing act. L. 64; l. 6. nn. 344, 359; Lucidi, *de Visitat. Sacror. Limin.*, v. 1, p. 97, n. 108; cf. 644.

263. **As to confession.** They can choose for themselves a confessor outside the diocese, provided he is their subject, and they can take him with them to various places; but if he is not a subject he must be approved by his own Ordinary. Cardinals can do the same, but only at Rome, although they can take with them outside Rome the one whom they have chosen. L. 65; l. 6. n. 565.

264. **As to censures and irregularities.** Bishops can, by themselves or through another specially deputed, absolve subjects from hidden papal cases, except those that are reserved to the Supreme Pontiff in a special way. From the Declaration of the Sacred Office of June 17, 1866 and April 4, 1871, the case of a person of either sex falsely denouncing a priest for the crime of solicitation in confession is also excepted.

They can likewise dispense in all irregularities and absolve from all suspensions incurred because of hidden delict, except voluntary homicide and others brought to the contentious forum. Trent, Session 24, C. *Liceat*; Constitution *Apostolicae Sedis*; L. 29; l. 6. nn. 593, 705; l. 7. nn. 353, 392, 394. They can probably dispense also in doubtful irregularities from defect. L. 29. Moreover, they can dispense in non-hidden irregularities from defect of birth for minor orders and simple benefices. L. 49. As to incapacities imposed by Pontiffs as penalty, whether they can dispense is disputed, and the matter is very doubtful. L. 53; l. 3. n. 397; l. 6. n. 705.

It must be noted here that under the name of bishops also come capitular vicars when the see is vacant. L. 31 and l. 6. n. 593. Under the name of subjects also come travelers as to the faculty of absolving from hidden papal cases, because by subjecting themselves to the sacramental forum they now become sufficiently their subjects as to that act. L. 32, 35. Under the name of hidden delict is to be understood any delict that can in some way be concealed, even if it can be proved in court. L. 33. A bishop can generally delegate this faculty to others. L. 34, 53; l. 6. n. 594.

As to homicide, "the common opinion is that a bishop can dispense when danger of soul is imminent, or another most grave cause, and recourse to the Pontiff would be difficult, etc." L. 51, 52. Bishops can furthermore absolve, and delegate the faculty of absolving also from reserved cases with censures by other bishops, when they are hidden, provided that censure was enacted by statute or by general sentence and no one seeks absolution in fraud of the law. Thus Bonacina and others apud St. Alphonsus 35; and the holy Doctor seems to approve it.

They can absolve those who lightly strike a cleric; and if these are living collegially, or are impeded from going to Rome, they can also be absolved by the bishop if the striking was grave, but not if it was enormous. L. 46, 47. Various cases are besides reserved to them in the Constitution *Apostolicae Sedis*. E. M.

265. **As to orders.** A bishop can dispense in the interstices prescribed by Trent as to the ordination of clerics, as is established in the same Trent, Session 23, cc. 11, 13 *de R*. L. 59; l. 6. nn. 775, 780, 789. Dispensation of interstices pertains to the bishop also as to regulars.

266. **As to marriage.** They can dispense in the publications of banns, L. 54, and in impeding impediments, except the vow of perpetual chastity, the vow of entering Religion, betrothals, and the impediment of disparity of cult between Catholics and heretics, as well as reasonable dissent of parents.

They can dispense in impediments supervening after marriage has been contracted, in order to asking the debt, for example if they have contracted affinity because one or the other had carnal commerce with the other's blood relatives; or if one has vowed chastity. Indeed a bishop can also dispense a spouse from a vow of perpetual chastity that he emitted before marriage, so that he can exercise matrimonial rights.

They can dispense in doubtful diriment impediments. L. 55. Accidentally, in certain diriment impediments, both before and after marriage has been contracted, when recourse to the Pope is very difficult and there is danger in delay, or when danger of scandal, infamy, incontinence, etc., is imminent.

Concerning matrimonial dispensations, as also concerning reserved cases, bishops are accustomed to have more special faculties for five years. L. 56, 57, 58; l. 6. nn. 613, 1122; E. M.

267. **As to enclosure.** "Bishops are delegates of the Apostolic See for protecting the enclosure of monasteries of nuns, even exempt nuns, and those who are subject to regulars." L. 66, 67.

268. **As to other ecclesiastical laws.** Bishops can dispense for particular cases and persons, or for a brief time, as was already said in n. 243. "For particular cases and persons," for in common law bishops do not have the faculty of dispensing with the whole community. Whether a bishop can dispense in canonical statutes not expressly reserved, St. Alphonsus judged that the negative opinion must altogether be held, l. 1. n. 191. Nevertheless the same holy Doctor, in the work H. A. Tr. 2, c. 6, n. 58, says that the affirmative opinion is sufficiently probable. And in the Appendix *de Privil.* 71 he has this: "A bishop can probably dispense in all things in which dispensation is not specially reserved to the Pontiff." St. Thomas, 1. 2. q. 97, a. 4 ad 3.

269. **As to vows and oaths.** Bishops can dispense: first, in all simple private vows, except the five reserved to the Pope, namely perpetual chastity, Religion, and pilgrimages to Jerusalem, to the thresholds of the Apostles, and to St. James of Compostela; second, in all oaths, if you except oaths accepted by a third party that were not extorted by fear or fraud.

270. **What are the principal privileges of regulars?** As to communication of privileges: all regular orders communicate in the privileges of other orders, whether mendicant or not. L. 1. 4. n. 60. "These mendicant religions communicate in the privileges of other religions, or congregations, or monastic or non-monastic colleges ... And this holds even if in the privilege granted to another religion or congregation there is a clause that it is not communicated ... Both lay brothers, for they are truly religious, and novices enjoy privileges of this kind ... Religious promoted to the episcopate also enjoy them, provided the matter does not concern things from which, if bishops used them, some prejudice would come to the religion, such as habitation in the monastery, giving a vote ... Tertiaries also, men and women, or beatae subject to the mendicants, who wear the habit of religion and have the vow of chastity, also enjoy their privileges, but insofar as they are capable. Confreres of the scapular and cincture, called cordons, enjoy and participate only in all indulgences and remissions of sins, but not in anything else." L. 9; Bouix v. 2, p. 76 ff.

Nuns enjoy the same privileges, understand favorable ones, of which they are capable, as the religious of the same order. The reason is that since they live under the same rule, they are part of the order, and therefore rightly ought to enjoy the privileges of the order. L. 10; l. 4. nn. 60, 61, 63. Hence an abbess can dispense in fasts, office, etc., according to the privileges granted to the prelates of her order; because, although she cannot dispense per se because of defect of spiritual authority, she can nevertheless do this by commission of the prelate, which is presumed to have been made to her as soon as she was elected abbess. L. 1. 4. n. 61.

Privileges granted to some place or person not as to a particular person, but as to a member of a community, are also understood to be granted to other places and religious of the same dignity and grade, both of that order and of others that have communication, namely when the same or similar reason applies. L. 11.

Privileges are not communicated: first, when they are odious or contrary to the proper statutes, so that they prejudice the good or common observance of religion; second, when they are granted to some private person or some congregation, but for a determinate time, or by particular briefs, or because of a particular reason that has no place in others, or concerning an exorbitant matter that is usually granted with difficulty and is worthy of special mention; or, from the General Decree of the Sacred Congregation of Rites, March 20, 1706, concerning those things that regard Masses and Offices, L. 11; third, likewise the privilege of receiving sacred orders from any bishop is not communicated. Benedict XIV, Constitution *Impositi nobis*, February 27, 1747, par. *Quod vero*.

Privileges granted to religious families by Canon Law or by the Holy See belong only to superiors, who communicate them to subjects according to their prudence. Therefore the same prelates can take away or limit the use of privileges for subjects. L. 6; l. 4. n. 64; E. M.

271. **As to the interpretation of privileges.** Privileges "which are granted to some order, convent, community, or for another pious cause, are all to be interpreted not only broadly, but most broadly, even if they are opposed to Common Law or to some third party. For privileges granted to communities are all presumed to be remuneratory for services rendered, and therefore all are held as favorable." L. 8.

Bishops and other secular prelates are forbidden to interpret the aforesaid privileges juridically and authentically. If some doubt arises, let it be judged among skilled men, or let the Apostolic See be consulted. Generals of religions for the whole order interpret privileges not only doctrinally but also juridically and authentically, so that all subjects are bound to stand by their interpretation when they interpret laws and customs or privileges. The same power was given to other regular prelates, even immediate ones, but let them proceed prudently and with the counsel of experts, so that they can authentically and juridically interpret and declare all the aforesaid things for the forum of conscience by apostolic authority. L. 6.

272. **As to exemption.** Regulars have the privilege of exemption from the jurisdiction of bishops. Therefore regular prelates have in their churches and monasteries quasi-episcopal jurisdiction, both as to persons and as to places. L. 72.

Not only professed and lay brothers enjoy the privilege of exemption, but also novices and tertiaries who dwell within the cloister. Likewise, as to censures, sacraments, and burial, servants of regulars who actually serve and reside within the cloisters of monasteries, as quasi-members of the family and perpetual table-companions, no less than the lay brothers themselves. Trent, Session 24, c. 11; L. 74.

This exemption is not universal, but has several exceptions, especially for men as to the celebration of Masses, and for nuns as to enclosure. Trent, Session 22, Decree *de Observ.* etc.; Session 25, cc. 5, 9, etc.; Ferraris v. *Regulares* art. 2; L. 75-91.

Commonly speaking, it is certain that outside mission territories both the persons and monasteries and churches of regulars are exempt from the visitation of the bishop, provided that at least twelve or six religious dwell in them. Except, however: first, churches of seculars whose pastor is a religious; cf. Lucidi v. 2, p. 4 ff.; second, churches of regulars if they are parishes, yet only as to those things that

regard the parish and the pastor insofar as he performs that office. L. ib.; cf. Benedict XIV, Constitution *Firmandis*, Nov. 4, 1744; Leo XIII, Constitution *Romanos Pontifices*, May 8, 1881.

The goods of religious are likewise exempt from the jurisdiction of the bishop. But administrators of monasteries of nuns must render an account to the bishop of the administration of goods. L. 79, 80, 81; E. M.

It is disputed whether regulars can have recourse to the bishop for obtaining graces. Many deny this, founded on the fact that such recourse implicitly says abandonment of exemption. Others better affirm with Schmalz. l. 2, t. 2, n. 149, and Bouix, *de Iud.*, v. 1, p. 256, and teach that recourse to the bishop is lawful in those things that pertain to gracious jurisdiction, such as absolution from sins and censures, dispensation in vows, oaths, irregularities, laws, recitation of the breviary, fasts, etc. But they require a threefold condition: first, that the Pope or his legate cannot easily be approached; second, that the superiors of the order lack the faculty of dispensing; third, that the permission of the prelate be present, at least presumed.

273. **As to the Eucharist.** Regulars, besides public churches, also have private oratories. Now they can admit others in both kinds, both to celebrate and to hear the prescribed Mass. Bouix pp. 191, 196; L. 62, 121; l. 6. n. 357.

The license of the Ordinary is necessary for regulars, even exempt ones, so that they can publicly expose the Most Holy Sacrament unveiled. This license is by no means required either for exposing the sacred Eucharist veiled while the people are present, or for exposing it unveiled when seculars are excluded. Bouix pp. 212 ff.

From the Constitutions of Julius II, Paul III, and St. Pius V, regulars can distribute the Most Holy Eucharist daily and to individual faithful, except, however, on Easter Day. Regulars can in no way be prohibited by the bishop from distributing the Most Holy Eucharist in their churches from Palm Sunday to Low Sunday. Thus S. C. July 9, 1644. Cf. Benedict XIV, *de Syn.*, l. 9, c. 15; L. 123.

"Regulars can celebrate one hour before dawn; therefore they can celebrate Mass three hours before sunrise. Indeed, when some just cause is present, they can celebrate immediately after two hours after midnight. And this holds only for their own churches; in these, however, secular priests can also use this privilege. Moreover Eugene IV granted regulars license to celebrate three hours after noon, yet from a just cause." L. 122; Salmanticenses Tr. 15, c. 7, P. 4, nn. 94-95; Pellizzari, *Manuale Regul.*, Tr. 8, c. 2, n. 97. The same holy Doctor, however, teaches the opposite in l. 6. n. 342. Moreover in this latter place, n. 344, the holy Doctor affirms that all superiors have the faculty of dispensing, in some particular case, from a reasonable cause, concerning the hour of Mass, "privilege apart, toward their own religious, since they are their Ordinaries."

Mendicants, at least superiors or prelates, have the privilege of blessing sacred vestments. L. 1. 6. n. 376; L. 1. 6. nn. 239, 240, 300, 360, 363, 378, 381; H. A. Tr. 12, n. 41; Lugo, *de Euchar.*, D. 18, nn. 49-50; Diana Tr. 2 *de praec. div. et eccles. Commun. Sacram.*, R. 22, 23; E. M.

274. **As to confession.** "With seculars, when the faculty of choosing a confessor is granted, it is always supposed that he is approved by the bishop; but regulars, from the express or tacit

license of their superior, can confess to any simple priest ... Therefore all regular superiors can choose for themselves as confessor any priest whatever." L. 110.

As to cases reserved in the order to be absolved, the superior can and must justly deny the faculty if the matter concerns harm to others, that is, when scandal or any harm whatever would perhaps threaten the religion, the house, another person, or the penitent himself, and this could not otherwise be met unless knowledge of the matter were provided to the superior. L. 1. 6. n. 586. But "if the superior denies to the confessor of regulars deputed for this the faculty of absolving, and the confessor judges that it ought to be granted, he can absolve that time," that is, as often as that case occurs. This is established from the Decree of Clement VIII. Cf. Constitution of Urban VIII, *Sanctissimus*, Sept. 21, 1624; Ferraris v. *Praelatus regularis* n. 58; Pellizzari, *de Monial.*, c. 9, n. 29.

Exempt regulars are not subject to episcopal reservation, since they are exempt from the jurisdiction of the bishop. Indeed neither novices nor familiars of regulars are subject to episcopal reservation. Thus from the Bull *Superna* of Clement X. But if a novice fell into a reserved case before entry into religion, he can be absolved by the confessor of the religion by privilege. L. 1. 6. nn. 583, 602; L. 102, 103, 111, 112.

275. **As to orders.** "Regulars do not receive dimissorial letters from bishops, but from their superiors; otherwise they sin gravely and incur suspension." "They can be ordained outside the times." L. 113, 115; l. 6. n. 797. But cf. *Cas. Consecr. de Ord.*; cf. 906, 907.

276. **As to preaching.** Regulars cannot preach outside the churches of their own orders without obtaining the license of the bishop. But in the churches of their own order they can preach after asking the bishop's blessing, even if they have not obtained it, provided however that the bishop does not contradict.

A bishop who is about to grant license to regulars wishing to preach in churches that are not of their own orders can examine them as to doctrine, although they were nominated by universities or lay magistrates, and even if the bishop's predecessors had been accustomed from time immemorial to grant this license without examination, if this has seemed good to his judgment, which must be moderate and discreet. But as to those wishing to preach in the churches of their own orders, it does not belong to the Ordinary to examine them, but to their superiors.

The bishop can, for reasonable causes, even hidden ones, yet concerning preaching, suspend the license once granted to them to preach. Nevertheless the bishop cannot generally prohibit regulars from preaching in the churches of their own orders. Bouix pp. 148, 263 ff.; L. 124 ff.

277. **As to ecclesiastical censures.** The privileges of absolving from papal cases having been revoked by the Constitution *Apostolicae Sedis*, they can still absolve from the cases reserved to bishops by the same Constitution, and from the censure of the canon, as before the aforesaid Constitution. All regulars of both sexes in time of general interdict can privately perform divine services in their monasteries and receive the sacraments; and they can also celebrate publicly on several feasts, Easter, Pentecost, etc. L. 95 ff.; l. 4. n. 61.

278. **As to irregularity.** "Regulars can dispense with their subjects in all hidden irregularities in which Ordinaries can dispense with their diocesans. And they can do the same with seculars."

L. 104. "They can furthermore dispense with subjects in any irregularity, whether because of delict or because of defect." L. 105; Frassinetti, *Comp.*, 6th ed., v. 2, n. 681. In the cited place, the holy Doctor soon descends to particular cases, concluding: "Finally, regulars can dispense with their subjects in all incapacities and penalties contracted by reason of delict ... even if these are reserved to the Pontiff." Cf. L. 1. 7. nn. 355, 358, 364, 396.

279. **As to the right of burial.** When a deceased regular cannot be buried in the church of the convent, because, for example, a civil law stands in the way, regulars can carry the body to the common cemetery, with stole and cross of the convent, without the intervention of any pastor, provided nevertheless that the body is carried without solemn pomp and by a direct route to the cemetery. The matter was decided in a cause of the Order of Preachers, Jan. 24, 1846. The same right belongs to exempt nuns; therefore it belongs to their chaplain or confessor to lead the funeral, the pastor being excluded. Bouix p. 345.

Moreover, the solemnity that is prohibited does not consist in chant, but in the gathering of the people, in the assistance of ministers vested in sacred vestments, etc. The Sacred Congregation of Bishops and Regulars declared Feb. 26, 1864: "Dispersed religious, as to funerals, are subject to the pastor of the place, as are the others of the parish." A. S. S. v. 1, p. 168; L. 91 ff.

280. **As to oaths, vows, and impediments of marriage.** "Confessors of the mendicants and other communicating regulars have power of invalidating, remitting, and dispensing oaths and vows in which bishops by ordinary right can dispense with their subjects. They can moreover dispense with spouses as to the impediment to asking the debt, because of incest committed with a blood relative of the spouse. It must be noticed here, however, that the confessor must obtain in this a special license, at least from the inferior superior of his monastery." L. 108, 109; l. 4. n. 257; l. 6. nn. 1076, 1127.

"They can furthermore dispense with spouses in a vow of chastity elicited before and after marriage." L. 109; l. 6. n. 987. Finally, it is not improbable to the same holy Doctor, what most affirm, namely that in a case of necessity they can dispense with betrothed persons, as bishops can, in a vow of chastity for contracting marriage, l. c.; l. 4. n. 258.

281. **As to other ecclesiastical precepts.** "Regular prelates have power of dispensing with their subjects [add: and in particular cases] in ecclesiastical precepts, as bishops can with their diocesans ... And the same holds as to the rules of religion." L. 106, 107; l. 4. nn. 63, 64; La-Croix l. 3, P. 2, n. 1310; cf. 246.

282. **As to indulgences.** "All professed regulars enjoy indulgences granted to any religious order," L. 1. 4. n. 64, namely according to the Brief of Leo X, *Dudum per Nos accepto*, Dec. 10, 1519, and the Brief of Paul V, *Romanus Pontifex*, May 23, 1606, with indulgences exclusively proper to each order excluded from this communication. S. C. Indulg. Apr. 25, 1735; Theodorus a Spiritu Sancto, P. 2, pp. 88 ff., p. 114.

More recent nuns of simple vows, in France, of ancient religious orders, from a special indult, "can gain all indulgences that were granted to the religion or institute of other nuns emitting solemn

vows, according to the respective institute or rule." S. C. Indulg. July 10, 1843; S. Poenit. July 12, 1847.

It must further be noted that personal privileges and indulgences in churches of regulars vanish when the religious have been driven out, although some religious remains in the church as quasi-chaplain or guardian. But real privileges, such as the right of burial, when a religious is left there under the name of chaplain or guardian, must be exercised by him. S. C. C. May 29, 1841; Aug. 29, 1864; Sept. 16, 1871; S. R. C. Dec. 20, 1864; S. C. Indulg. May 24, 1819; A. S. S. v. 1, p. 587; v. 4, p. 228; v. 7, p. 34.

Likewise "it must be noted that the privilege of a privileged altar is not communicable by general communication of privileges, from the Decree of the Sacred Congregation of Indulgences dated Feb. 5, 1748, and approved by Benedict XIV on March 2 of the same year." L. 1. 6. n. 339.

X. On Rescripts

283. **What is a rescript, and what are its necessary conditions?** To the first: privileges and dispensations are usually granted through rescripts. Dispensations and privileges that proceed from the Holy See, without letters expedited in the usual way, do not assist in the external forum from Rule 52 of the Apostolic Chancery; more truly, however, they are valid in the forum of conscience, because the letters pertain not to form but to proof. L. 5 C. *de Transact.*; L. 4 *de Pignorib.*; *de Iustis* l. 1, c. 3, n. 25. A rescript is the written response of the Prince; one is of justice for ending lawsuits, another of grace, which contains the benefit of the Prince.

To the second: from C. *Nonnulli* 28 h. t., one cannot obtain rescripts in favor of another unless he has an express mandate. By custom, however, the contrary has been received at present.

In order that a rescript be valid it is necessary that in the petitionary libellus there be no substantial subreption, unless it is granted *motu proprio*, nor obreption, even if it is granted *motu proprio*, because then the superior could be deceived.

Subreption is the concealment of a truth that must necessarily be expressed; obreption is the setting forth of a falsehood. Therefore subreption is had unless all and only those things are expressed that must be set forth from law or from the style of the Roman Curia. C. *Quam gravi* 6 *de Crim. fals.*; cf. Sanchez, *de Matr.*, l. 8, D. 21, n. 10, etc. "All," for ignorance or good faith does not excuse. "Only," otherwise no grace would be safe and certain any longer.

Obreption is had if the motive cause, namely the one that moves or determines to dispensation, is false. And if several are set forth, and only some are false, the dispensation is valid if at least one is true. But the impulsive cause, namely one that only helps toward dispensing when added to the motive cause, even if it is false, does not harm the dispensation, since the clause "if the things set forth are true," C. *Ex parte* 2 *de Rescr.*, refers to the motive cause, not the impulsive. The same should be said if several false impulsive causes are added.

But if a single cause is set forth, whether motive or impulsive, and is false, or if several false impulsive causes alone are set forth, which all together are counted as one motive cause, the rescript is not valid if only one is false. The motive cause lies rather on the part of the object itself, insofar as

this object in the present circumstances becomes liable to some special difficulty or inconvenience. Thus dispensation becomes reasonable and fitting in the case, since the condition of this subject is, in the case, unlike the condition in which others are commonly found. The impulsive cause lies rather on the part of the person himself who gives or to whom the dispensation is given, as, for example, the benevolence of the Prince to be shown and the probity of the subject.

If the rescript is in gracious form, subreption and obreption are judged to be present only if they are present when the grace is granted by the Prince, or rescribed. Therefore the cause must then be present, and that clause must then be verified: "if the things set forth are true." But if the rescript is in simply commissary form, the cause must be present when the grace is granted by the delegate. The reason is that the aforesaid clause must be verified when the grace is granted. But the grace is granted when it is granted by the Prince in the first case; in the other, when it is granted by the delegate, not when the mandate of granting it is given by the superior to the delegate.

This is altogether clear if the delegate is a voluntary executor, since then the delegate actually grants the grace in the name of the one delegating. Power and license of granting the grace is then made to him. But it is more true if the delegate is a necessary executor, since even then the superior does not grant the grace when he commands it to be granted, but when the delegate communicates it. The superior himself truly grants, not the delegate. The delegate then has the simple ministry of executing the mandate, namely of applying the grace which the superior himself then grants. It would be otherwise if the delegate merely communicated or manifested the grace already absolutely granted by the superior. L. 178, 181, 185; Struggl q. 4, nn. 14, 16; Sanchez, *de Matr.*, l. 8, D. 21; Riganti in Reg. 52; cf. vol. 2, n. 1045.

284. **Resolves:** First, the dispensation is invalid whenever an error has slipped into the petition concerning the motive cause or concerning the very object of the dispensation, whether this happened by the fault of the petitioner or another, or even from mere inadvertence; for example, if you put in the petition the impediment of affinity instead of the impediment of consanguinity, or the third degree for the second. It is otherwise, however, if you put the second for the third, because a lesser grace is contained in a greater of the same kind. C. *Si is* 2 *de Fil. presb.*; L. 185, 202; l. 6. n. 1131.

Second, the dispensation is valid if the error slipped into the rescript of the superior, for example by the carelessness of the secretary, because it supervenes upon the concession already made, and the superior grants thus: "Let it be done as petitioned."

Third, a dispensation granted from a just cause to a wicked person whom the superior regarded as good is valid, even if, had he known the wickedness, he would not have dispensed, because probity is not regarded as a motive cause, but merely impulsive. Exception: unless someone was moved because of probity.

It is also valid if a false cause at the time of petition becomes true at the time of concession, whether this is made immediately by the superior himself or mediately through a delegate; but not vice versa. Likewise it is valid even if it is granted in bad faith, as when the one dispensing thinks the cause is not present, though it truly is present; for validity does not depend on subjective knowledge, but on the objective existence of the cause.

Fourth, generally speaking, a dispensation granted by a superior is valid, although it had already been denied by an inferior. Indeed it is also probably valid if, denied by a superior, it is granted by an inferior and even by a delegate, because the power of the inferior is not taken away or restricted through the denial of the superior unless he expressly restricts it. Nor is this prohibited by any law. Cf. vol. 2, n. 1041. A fortiori a dispensation denied by one superior and given by his successor ignorant of the denial is valid. The reason is that the successor has the same power as the predecessor and is not ruled by his judgment and will.

The dispensation is also valid if it was first denied and afterward granted by the same superior forgetful of the matter. For in no way is it consonant with reason that the superior would wish to deny a dispensation for this reason alone, that he denied it another time. For if a just cause is actually present, it is more fitting to temper the former rigor than to confirm it. No mention of the denial must be made, since this is prescribed by no law. And if a twofold faculty has been granted to someone, for example of absolving and of dispensing in irregularities, when one of them, even the greater, has been taken away, the other is not therefore taken away, but remains. L. 1. 4. n. 50; Lugo, *de Fide*, D. 23, n. 130.

285. **What must be done by a delegate in the execution of rescripts?** First, the mandate, and therefore jurisdiction, is not yet had in the delegate until the autograph letters of mandate have reached him. C. *Super eo* 12 *de Appell.*; Sanchez, *de Matr.*, l. 8, D. 29, n. 10. Nevertheless it seems sufficient if the officials of the curia have received and read the letters sent to the vicar general and announced them to him, since the officials belong to the same office. And if letters were to be sent to distant regions and there were danger in delay, it also seems sufficient if it has been officially announced by telegraph that the rescript has been expedited. By the circular letter of the Secretary of State, Dec. 10, 1891, it was prohibited to admit petitions for graces by telegraph. And from the Sacred Office and the Sacred Penitentiary, matrimonial dispensations have been declared invalid unless the telegraphic notice was transmitted officially, by authority ...

of the See. Second, he must investigate whether the things set forth are true. If the investigation is omitted, and in the mandate the clause is had, "if the petitions rest on truth," the dispensation is valid, since this clause does not introduce a new substantial form but is tacitly present.

But if the clause is had, "if you find the petitions to rest on truth," then the first opinion holds that it is still valid, provided they are in fact true, since the dispensation is given because of the motive cause, not because of knowledge of it. Nor is a new substantial form introduced by this clause, for it too is tacitly present. Navarrus calls this opinion very received, c. 27, n. 37.

But the second opinion, more common and to be held, affirms that by that clause a new substantial form is introduced, and therefore, if investigation is omitted, the dispensation is invalid. And as to impediments of marriage in particular, St. Alphonsus, l. 6. n. 1131, affirms that verification of the causes pertains to the validity of the dispensation, from the Constitution of Benedict XIV, *Ad Apostolicae servitutis*, March 10, 1742.

The inquiry, however, need not necessarily be made in the order of law; a summary and extrajudicial inquiry in the external forum suffices. And in the internal forum the petitioner is to be believed.

Trent, Session 22, c. 5 *de R.*; Sanchez, *de Matr.*, l. 3, D. 33, n. 4; l. 8, D. 34, nn. 21 ff.; *de Iustis* l. 1, c. 6, n. 249; Benedict XIV, Not. 87, n. 34.

Third, he must perform the mandate by himself, and only for that case which is expressed in the mandate. C. *Susceptum* 6 *de Rescr.* in 6; C. *Cui* 27 *de Praei.* in 6. L. 202 ff.; Aloysius Trombetta, *Praxeos Regulae circa contr. rer. eccl.*, c. 6; cf. 254; E. M.

286. **Does observance of various clauses pertain to the validity of the act?** Clauses that contain only warning or precept pertain only to lawfulness. But those that contain a condition look to validity. Which clauses these are is not without difficulty.

Zitelli has this in *de Disp. matr.*, c. 5: "Those clauses which are expressed by the particles *if*, *provided that*, *after*, or which are uttered in the ablative absolute, for example, 'their sacramental confession having first been heard,' are generally judged to be conditions, unless perhaps that which is expressed through the clause must be observed from the very nature of the matter in question or from law. For if what the clause enjoins to be done is such that, even if it were not enjoined, it would nevertheless have to be performed either from the nature of the thing or from common law, the Holy See, in commemorating it in the clause, is thought to intend nothing other than to recall and urge an obligation coming from elsewhere. For this reason, for example, the clause 'the publications having been carried out,' which is the form of common law, when perhaps expressed in letters of dispensations, does not introduce a new form and condition, but is a certain admonition that the form of common law itself be observed."

This doctrine, however, although common, is not constant, since various dispensations have been declared valid in which clauses enjoined either in the ablative absolute or by the particle *provided that* had been omitted. Sanchez l. 3, D. 33, n. 3; *Monitore Ecclesiastico Conversano* v. 7, P. 1, pp. 269 ff.

On Sins

I. On the Nature of Sin

287. **What is sin?** Since sin is an evil human act, it is rightly defined by St. Augustine as: a word, deed, or desire against the eternal law. St. Thomas, 1. 2. q. 71, a. 6. "Deed": "sin can happen whether someone does what he ought not, or by not doing what he ought." St. Thomas, 1. 2. q. 71, a. 5 ad 1.

"Against the eternal law," because every law, whether human or divine, has its force from this law; because there is no power except from God; because no transgression of law would be sin unless it offended God; because in the phrase "against the eternal law" there is touched aversion from the end, and all other disorders.

Sin is formal if the law is freely and knowingly violated; it is material if the transgression of the law is altogether involuntary. L. 1, 11; St. Thomas, *de Malo* q. 2, aa. 1-2; 1. 2. q. 71, a. 6 ad 5; q. 87; q. 76, a. 2 ad 1; 2. 2. q. 20, a. 3; *Compend. Theol.*, c. 119; E. M.

288. **Is actual advertence and consent of the will necessarily required for actual sin?** Answer: Affirmatively. For sin is a free transgression of law. But actual free transgression cannot be had without an actual act of the will, either here and now, or in the cause. Likewise, actual free transgression of law cannot be had unless someone in some way, either here and now or in the cause, adverts at least confusedly to sin; for nothing is willed unless first known.

But one who here and now is ignorant, adverts to nothing, doubts nothing, here and now sins in nothing, although perhaps the ignorance or inadvertence was culpable in the cause. For if he previously foresaw the effect of his ignorance or inadvertence, he is indeed guilty of what he does in the cause, but only in the cause. L. 1-5, 10; St. Thomas, 1. 2. q. 76, a. 3; *de Malo* q. 2, aa. 1-2; q. 7, a. 6; E. M.

289. **Resolves:** First, there is no sin if the use of reason is disturbed and liberty is taken away, as in a most vehement movement of anger; if advertence is present but consent of the will is lacking, as in depraved movements against chastity as long as they displease; if advertence and consent are present, but not as toward an evil thing, for example if someone on a day of abstinence eats meat advertently and wholly voluntarily, but thinks nothing about the precept of the Church. L. 2.

Second, a human act has only that malice which is apprehended. Therefore, if in some matter of multiple malice the malice of only one species is adverted to, only this is contracted. L. 1. 1. n. 168. Likewise if negligence, for example in preventing drunkenness or the events that usually follow from it, was only venial, the evils that could have been foreseen are only venial. Since they are free not in themselves but in the cause, they cannot have greater fault than in the cause itself. L. 4.

290. **Is sin contained only in an internal act, or also in an external act?** Sin is formally an internal act of the will. For sin according to its nature is properly only from free will and in the will. "Sin," says St. Thomas, *de Malo* q. 3, a. 1, "as it is properly spoken of in morals, has the nature of fault, and comes from the fact that the will fails from the due end, by tending to an undue end."

Another internal act and the exterior action of other faculties are the object of the internal act of the will, as it were its complement. For from that internal act of the will, and the internal act of other faculties or external action, one total concrete moral thing is produced. For that other internal act or external action, insofar as they are moral acts, belong in their whole extent to the moral individual of the internal act of the will, to which they are subject and from which they receive their moral being.

Therefore sin is begun by the internal act of the will; it is perfected and consummated by another act or another action of other internal or external faculties. Hence, since a part differs essentially from the whole, sin contained in the internal act of the will alone differs essentially, morally speaking, from sin that is perfected by another internal act of another internal faculty, or that proceeds as far as external work, which consequently must necessarily be accused in confession. Hence it is not enough to confess the will of homicide, but it is necessary also to confess the homicide itself committed. St. Thomas, 1. 2. q. 17, a. 4; q. 72, a. 7; q. 74; q. 75; L. 5.

291. **What are the merely internal sins of the will, and what is their nature?** All sins committed only by the interior will can easily be reduced to desire and delight.

Desire is the proposal of some thing, or an act of the will by which we wish to attain some good. One kind is efficacious, and is a proposal absolutely efficacious of itself, whence someone actually undertakes means to bring it to effect. Another is inefficacious, and is a proposal only conditionally efficacious, namely one that someone would execute if he could, for example, if he could steal the treasure of the Church, he would steal it.

Now desire of an evil thing is evil, since one and the same is the object of the action and of the desire. Hence a depraved desire has the species and malice, mortal or venial, which the exterior thing toward which it is borne has. That is, desire tends absolutely, or at least conditionally, to execute the thing and to constitute it really existing. But if someone truly executed the thing, he would contract every malice both of object and of circumstances. Therefore the same must be said if someone pursues the thing by affection and desire; for since this affection of desire is joined with the very existence of the object, it is necessarily joined with all things necessarily connected with the object itself.

Therefore Titius, having relations with Caia, another man's wife, commits adultery if he knows that she belongs to another, even if he would not wish her to belong to another. In the same way, one desiring Caia, another man's wife, is also guilty of adultery if he knows she belongs to another, even if he would not wish her to belong to another, because desire, like execution itself, tends toward the same existing work, and therefore concrete with all its circumstances. Hence in confession, for example, of the desire of fornicating, the circumstances of consanguinity, marriage, vow of chastity of the person, etc., must be declared. L. 12.

Delight is a certain simple rest and complacency of the will from the presence of a fitting good, either possessed according to reality, or according to cognition and apprehension. Delight does not properly differ from joy except insofar as joy is rather said to be the delight of the rational appetite, and delight is rather said of that which belongs to the sensitive appetite with some bodily change. This is also called sensible delight; and if it is with a change of the organs and spirits serving generation, it is called venereal delight. St. Thomas, 1. 2. q. 31, a. 4; q. 72, a. 2; Sanchez, *in Decal.*, l. 1, c. 2, n. 33.

According to St. Alphonsus, n. 15, as desire regards future time and a work to be committed, so joy regards past time, namely when someone is pleased about an evil work committed, and delight regards present time, namely when someone by imagination and thought renders present to himself the work of sin, for example fornication, and with deliberate consent delights in it as though he were actually fornicating, yet without desire of executing it.

Morose delight in a depraved thing is sin, because love is in delight. For that depraved thing would never delight unless it were loved according to itself. Suarez, *de Pecc.*, D. 5, S. 7, n. 5. Morose delight is voluntary delight; it is called morose not because of a necessary delay of some time, but because of the necessary consent of the will. For not delight, but consent to delight, is sin. St. Thomas, 1. 2. q. 74, aa. 6, 8; q. 88, a. 5 ad 2.

"Of a depraved thing": for delight is twofold. One is delight concerning a depraved work, so that the evil work is the object of delight, and this is always evil. The other is delight concerning the thought

of an evil object, so that not the evil work, but the very thought of the evil work, is per se the object of delight. And this can be good if there is a just cause for thinking, for example for the sake of study, consultation, etc., with abhorrence of the object; or it can be venially evil if it is done from curiosity, etc.; or it can sometimes even be gravely evil, if there is proximate danger of consent. St. Thomas, *de Verit*. q. 15, a. 4; L. 16, 17.

Morose delight in a depraved thing, insofar as delight is distinguished from joy according to time, has malice and species according only to the variety of objects exhibited by the mind. For simple delight does not tend into the object as to be placed in reality, but rests in it as represented by the intellect. But the intellect abstracts from the other properties of the object besides that which moves delight. L. 15, 28.

Joy, however, like desire, takes on the malice and species both of the object and of the circumstances really annexed to it. For joy, since it is a volition pleasing itself, and therefore approving a past thing, is borne toward it as it existed in itself, clothed with its circumstances. Hence, in recollection of and complacency in past sins, it is necessary in confession to declare the nature and specific circumstances of the object. L. 15.

"In recollection and complacency": for there is no sin in the simple recollection of a sin formerly committed, when that sin neither pleases nor displeases the one remembering, because by no law are we commanded to repent of sins several times if we have already done penance for them, or to repent here and now if we have not yet repented of them. Laymann, *de Poenit.*, D. 2, S. 8; Sporer, *de Poenit.*, n. 192; Lugo, *de Poenit.*, D. 16, nn. 376 ff.

292. **Resolves:** First, to rejoice over the manner, for example a new, clever, or energetic manner in which a thing was accomplished, is not unlawful, since the object of delight is not evil. L. 18.

Second, if a thing, just as it happens, is not evil, not even materially, nor harmful to another, to desire it is not per se unlawful, although otherwise it would be intrinsically evil, for example pollution that naturally occurs in sleep. "To desire," namely by simple affection and without any cooperation. But if it is lawful to desire, it is also lawful to rejoice over it once done. The reason is "because what it is lawful to desire to happen, it is also lawful to rejoice over having happened, and conversely, if it is right to rejoice over the fact, it is also lawful to desire that it happen; for these are of the same morality, since joy necessarily results from a desired good obtained, and supposes or implicitly includes desire." Lessius, *de Iust. et Iur.*, l. 4, c. 3, n. 104; Laymann l. 3, S. 4, n. 17; Lugo l. c. n. 389.

"I, however," says the same Lessius, l. c., "am not an advocate that desires of this kind be admitted to anyone; both because, although they are not evil per se, nevertheless they indicate an imperfect affection of chastity, and because holier remedies, used by holy men, are not lacking. I would say the same of joy. Also in all things of this kind, as we have often warned, every cooperation and danger of consent must be avoided." Billuart, Tr. *de Temp.*, Diss. 6, a. 4, Obj. III; St. Thomas, 2. 2. q. 154, a. 5; L. 19, 20; l. 3. n. 478.

Third, it is not sin, speaking per se, at least mortal, if spouses take delight, by rational appetite only, in a past, future, or possible act of marriage with respect to the other party present or absent. The same must be said if a betrothed man desires future intercourse, or likewise delights in it by rational appetite only, or if a widow delights in the past act, apart from danger of consent to venereal delight

arising from it. The reason is that these acts have a lawful object. Yet they are full of danger because of the aforesaid venereal delight often arising from them. Lugo, *de Poenit.*, D. 16, nn. 376, 385; Sanchez, *de Matr.*, l. 9, D. 47, nn. 1, 4, 7; L. 23, 24, 25.

Fourth, sadness over a good performed, which was prescribed under grave obligation, is gravely culpable; over a good prescribed under light obligation, it is light. Likewise sadness over a good prescribed neither under grave nor under light obligation is light, unless there is a just cause for now regretting it; for it is a certain disorder to be sad about a good performed, although not prescribed. But if the sadness is borne not toward the good itself, but toward the annoyance, labor, etc., it is not per se sin. Sanchez, *in Decal.*, l. 4, c. 12, n. 2; Suarez l. 5 *de Voto*, c. 7, n. 4.

293. **Is it lawful to desire evil under the condition, "if it were lawful"?** Answer: Affirmatively per se, if the condition added removes the whole malice of the work, for example, "I would eat meat in Lent if the Church did not prohibit it." For such an affection involves no disorder, neither in itself nor in the object, from which every malice is excluded by the condition.

But otherwise negatively, for example, "I would sin if there were no hell," because the affection tends toward an evil object, and indeed absolutely, since the condition does not remove the malice from the object, even as represented; and therefore the whole malice of the object is poured back into the act of the will.

And indeed there are certain objects concerning which a condition, however added, cannot remove the malice, for example, "if it were lawful, I would destroy God." For things that are intrinsically evil cannot be changed; and therefore the condition would be uselessly added, since to wish such things is to desire that the law and order of nature be changed, which would be still worse.

Nevertheless, he would probably be excused from grave sin who by such a desire would not certainly wish that what is intrinsically evil become lawful, but would only show his natural inclination toward that object, for example, "I would take revenge if it were lawful, but I do not wish it because of the law of God"; or who would utter the matter only enunciatively, for example, "as a younger man I would take revenge," signifying not what he would now wish if he were younger, but what perhaps he would have done when younger. Yet the danger must always be removed of efficacious desire, and also of true inefficacious desire, namely every will of doing and every simple affection of the will.

What has been said of desire must consequently also be said of delight and joy of the rational appetite. For it is not lawful to rejoice and delight in that good which it is not lawful to love and desire; and conversely it is lawful to rejoice and delight by rational appetite in that good which it is lawful to love and desire. For love and desire are the way to joy and delight, as motion tending to rest. Lugo, *de Poenit.*, D. 16, nn. 384 ff.; Sanchez, *in Decal.*, l. 1, c. 2, nn. 22 ff.; Billuart, Tr. *de Temp.*, Diss. 6, a. 15, § IV, *Petes* 3; St. Thomas, *de Verit.* q. 15, a. 4; L. 12, 13, 14.

294. **Is it lawful to take delight in some evil thing if it was done without any fault?** If that thing is intrinsically evil, it is not lawful to delight in it according to itself. The reason is that that object is evil in itself; but the reason it was not sin is that it was not voluntary. Therefore, if the will now accedes, approving such an act or rejoicing over it, which happens in delight, it will be sin. La-Croix 89; Suarez, *de Peccat.*, D. 5, S. 7, n. 14.

If that thing is not intrinsically evil, and delight in it is not had under the aspect of prohibition, for example if someone delights that he inadvertently ate meat on Friday, some think that it is lawful to delight in it according to itself, because according to itself it is not evil. Others think it is unlawful, because it did not lack material sin, or was materially evil. Lessius, *de Iust. et Iure*, l. 4, c. 3, n. 104; L. 20, 27.

If delight is referred to a past evil act, not according to itself insofar as it is objectively evil, but exclusively insofar as it was the cause of a good effect, and the right order of justice or charity is not perverted, some affirm that it is lawful, others unlawful. The reason of the first opinion is that then we do not rejoice over the evil work because of the good effect in this sense, that because of the good effect we rejoice that the evil work was done; rather, supposing that that evil work was done, we rejoice over the causation of the good which belongs to such a work. This is not unlawful, since it concerns an honest object, namely that good quality and power which the work, otherwise evil, had. The objective malice is prescinded from, which does not move the affection, and the delight falls precisely on the predicate which is causative of good, which is good. The added restriction, "and the right order of justice," etc., is clear of itself and is confirmed from propositions 13, 14, 15 condemned by Innocent XI.

The reason of the second opinion is that by the very fact that someone delights in an evil work insofar as it is causative of good, he already implicitly delights in the evil work itself according to itself, or according to its existence. For real causality implicitly includes real existence.

"In any case, however, it is lawful, speaking per se, for anyone to delight not in the cause but in the effect that followed, namely in relief caused by pollution even voluntary, or in the obtaining of an inheritance because of homicide, provided the cause is detested." L. 20. Certainly the object of this delight is good. La-Croix 91; Suarez l. c. n. 15; Lugo, *de Poenit.*, D. 16, n. 389; Ithur. Cas. 18, n. 6; Lessius l. c.; St. Thomas, 4 D. 9, q. 1, a. 4, q. 1 ad 5; 3 D. 30, q. 1, a. 1 ad 4; L. 19-22; E. M. 389.

295. **Does someone sin gravely who behaves negatively and does not positively resist a movement of the sensitive appetite concerning an object prohibited under mortal sin?**
"There are three opinions. The first affirms that one sins gravely, even when the danger of consent ceases ... The second opinion says that such a person does not sin even venially, when danger of consent is removed ... The third and true opinion holds that, when danger of consent ceases, not resisting illicit movements positively is venial, but not mortal. And St. Thomas seems expressly to confirm this, 1. 2. q. 74, a. 4, where he says: mortal sin cannot be in sensuality, but only in reason.

"The reason, therefore, is both because consent to sin gravely does not come from the sensitive appetite but from the will; and when it does not positively consent, mortal sin is not committed. Therefore venial sin is committed insofar as man ought to take care lest appetite draw the will after itself; but this obligation, when the danger of consent is not proximate, is only light. Also because, if under grave obligation we were bound positively to repel all disordered movements, we would be bound to the impossible; for it is impossible positively to restrain all these movements taken collectively." L. 6, 29; Diana v. 8, Tr. 6 *de aliq. cas. circa mat. lux.*, R. 8; St. Thomas, 1. 2. q. 74, a. 3 ad 3; q. 79, a. 1; cf. 58.

296. "It must be noted that there is no obligation of positively resisting carnal movements if there is a just cause for not resisting, namely if someone has learned by experience that by resisting the movements are more excited and increased; or if the movements have arisen from a necessary or useful action; ... if it is not easy business to repel them. Therefore it is then enough to behave negatively, with a firm purpose never to consent. For the actual care of not consenting itself then suffices to free a man from fault, at least mortal, although not from venial, if the resistance is tepid." L. 9.

But in the aforesaid case, when the temptation lasts a long time and it would be too burdensome constantly to repel the movements positively, there is no sin in permitting them while behaving negatively. And this is counseled to those who are of fearful conscience. L. 9.

297. **How is one to resist positively?** Positive resistance can be provided in two ways: first, directly, by repelling those movements; and there is indeed no obligation of applying this direct resistance, which, as to carnal movements, often excites them more, much less is there an obligation of material resistance, which itself is often harmful as to those carnal movements.

Second, indirectly, by diverting the mind to other things. As to movements against chastity and against faith and charity, this indirect resistance is more to be counseled than any direct resistance or attack, and if the movements are light, it is better to despise them. L. 8; St. Thomas, 1. 2. q. 74, a. 3 ad 2.

II. On the Specific Distinction of Sins

298. **Whence is the specific distinction of sins to be taken?** St. Thomas, 1. 2. q. 18, a. 2; q. 72, aa. 1, 4, 9, etc., teaches that it is to be taken from the object, because sin is a human act, and a human act takes its species from the object and from the diverse aspect of the same object. Thus homicide, detraction, and theft differ in species because life, reputation, and property are goods that differ in species among themselves. St. Thomas, *de Malo* q. 2, a. 6.

Scotus, on the contrary, in 4 D. 35, q. 2, thinks it is to be taken from the virtue that is injured and from the mode, whether opposite or merely diverse, by which the virtue is injured, because sin formally consists in the privation of the rectitude of the opposite virtue. Every privation is specified by the form opposed to it. Thus heresy, fornication, and theft are sins distinct in species because they are opposed to virtues distinct in species: faith, chastity, and justice. Presumption and despair, omission of love of God and hatred of God are distinguished in species because the former injure hope in a contrary way, the latter charity by defect and by excess. Detraction, calumny, theft, adultery, and homicide likewise differ in species among themselves because they injure justice in a diverse way. Likewise perjury, violation of a vow, and blasphemy, although they are against the same virtue of religion, nevertheless are diverse in species because they are opposed to it in a diverse way.

One opinion is not opposed to the other, for sin is both: a human act and a privation; a human act materially, a privation formally. St. Thomas, 1. 2. q. 72, aa. 1, 6. Hence one opinion perfects the other, and it can be said that sin is proximately specified from the rectitude or honesty of the virtue to which it is opposed, remotely and fundamentally from the object. Laymann l. 1, Tr. 3, c. 2, n. 2. Both

opinions, however, fall almost into the same thing, for "virtues are distinguished in species according to objects." St. Thomas, 1. 2. q. 72, a. 1 ad 2. Hence the same St. Thomas, 2 D. 42, q. 2, a. 2, q. 1 ad 1, says: "Therefore it must be said that the division of sin into its essential species is through opposition to virtue, because it must be according to the object, from which sin and virtue are specified." Cf. 1. 2. q. 71, a. 1; q. 72, aa. 4, 8.

But a diverse object, or a diverse aspect of the same object, or a diverse virtue, or a diverse mode of injuring the same virtue, which carry before themselves a new moral species of sin, are had when these exhibit a special order of reason, or a special agreement or disagreement with right reason, namely when there is from this a special reason why something is morally good or evil. "Wherever a diverse motive occurs inclining the intention to sin, there is a diverse species of sin." St. Thomas, 1. 2. q. 72, aa. 8, 9; q. 71, a. 2; q. 79, a. 2 ad 3; 2. 2. q. 154, a. 11; L. 30, 31, 32.

299. **Can there be a multiple species of one sin?** Answer: Affirmatively, since circumstances can be present to the object that change, or rather multiply, the species. Thus one bound by a vow of chastity who sins with a married blood relative commits four sins diverse in species: against chastity, religion, piety, and justice. St. Thomas, 1. 2. q. 73, a. 7.

300. **Are several sins distinguished in species from diverse precepts concerning the same thing?** When positive laws prescribe or prohibit something, they constitute the act in that virtue with a view to which they prescribe or prohibit. Therefore transgression of the law is attributed to the vice opposed to that virtue. This happens in four ways.

First, when they command or forbid something indifferent with a view to some special virtue, as, for example, abstaining from servile works on a feast day with a view to religion; whence not abstaining from them is irreligion; preserving the natural fast by reason of due reverence toward the Most Holy Eucharist, whence not preserving it is sacrilege.

Second, when they prescribe or prohibit an act of some special virtue or vice with a view to the same virtue, such as assisting at Mass on a feast day with a view to religion, whence absence is likewise a species of irreligion; ecclesiastical fasting with a view to temperance, whence breaking it pertains to intemperance; not entering marriage with blood relatives, relatives by affinity, or adoptive relatives, with a view to piety, whence marrying those persons is incest.

Third, when they prescribe or prohibit an act of some special virtue or vice with a view to another virtue. Hence one who steals a sacred thing or strikes a cleric injures justice from the intrinsic nature of the act itself, or natural law; but from the extrinsic law of the Church he further offends religion. Lugo, *de Poenit.*, D. 16, n. 139; L. 1. 1. n. 167; l. 6. n. 808.

Fourth, if a law commands or forbids something with a view to no special virtue, for example not reading proscribed books; what is done according to that law pertains to the virtue of obedience; what is done against it pertains to the vice of disobedience. "Of obedience," namely broadly taken, because in the proper meaning the object of obedience is precepts, not laws; laws are properly the object of legal justice.

Now if various precepts all look to the same virtue and are distinguished only on the part of legislators, as in theft, which is prohibited by natural, divine, canon, and civil law, they by no means introduce a specific distinction of sins, because diversity of legislators does not make the precept

formally diverse, but only materially. It is otherwise, however, if precepts are distinguished on the part of the object itself, namely on the part of the proximate motive of the precept itself; because then diverse virtues are injured. Thus if someone broke a fast prescribed by the Church and to which he had also bound himself by vow, he would then injure temperance, from which the Church commands fasting, and religion, from which God commands vows to be observed. L. 33; l. 1. n. 167; l. 4. n. 145; Lugo l. c. nn. 144 ff.

301. **Resolves:** Diverse causes by which some precept is imposed do not change the species of sin, nor are sins increased in number. Hence although both one who possesses a benefice and one who is constituted in sacred orders are obligated to the canonical hours by one and the same virtue of religion, with the precept of the Church added, nevertheless a priest, for example, who has a parochial benefice commits one sin by not reciting the canonical hours. Likewise a religious priest who acts shamefully commits one sin of sacrilege besides the sin against chastity, although he is bound to chastity both as priest and as religious. L. 33; l. 3. n. 455; l. 4. n. 145; l. 6. n. 808.

302. **Note:** First, one who sins from culpable ignorance, or because he acts while doubting, and one who sins in the cause, admits a sin of that species whose danger he undergoes and foresees at least confusedly; for each implicitly and, as it were, by consequence wills that sin. Sanchez, *de Matr.*, l. 11, D. 41, n. 7.

Second, "acts accompanying omission, such as playing or eating while, for example, Mass is omitted, are not sinful unless they are the cause of the omission, for instance when play is the cause of omitting Mass ... But then the acts influencing the omission take on the same malice of the omission, not a diverse one ... Therefore then it is sufficient to confess only the omission. But if the action that is the cause of omission is also a grave sin, namely if someone omits Mass in order to steal, then the theft can be said in confession separately from the omission of Mass, because then the theft is only an aggravating cause, not one changing the species." L. 9, 60.

III. On the Numerical Distinction of Sins

303. **Whence is the numerical distinction of sins to be taken?** It is to be taken, first, from the diversity of total objects; second, from the multiplicity of acts morally interrupted.

Here a total object is called that which either from its intrinsic nature or from the extrinsic intention of the agent is completed in itself and is not referred to another as a part. Thus in homicide one total object is had, although the murderer has sent before various prior acts, for example seeking weapons, laying ambushes, and striking several times; because all those prior acts must be held as parts of the principal act and ordered to it. But if the murderer first intended only a beating, and afterward, with his will changed, killed, there will be a twofold total object, because from the intention of the agent one is not ordered to the other, but each is separately intended per se.

"Morally interrupted": because although any interruption suffices physically for the numerical distinction of acts, nevertheless in order to confession they are not multiplied unless they are morally many, because, just as the moral act is attended to in confession, so also moral multiplication and distinction must be attended to.

Proof of the first part: because the object, as St. Thomas teaches, 2. 2. q. 18, a. 2, is in some way the form of the act. Therefore the act is such as the object is. Therefore where there are several objects in number in the moral genus, there are several acts in number in the same genus; where there is one object, the act is judged to be one. Therefore there are as many sins as there are total objects.

Proof of the second part: for when acts of the will are morally interrupted, they become complete in number, and each is constituted in its own malice, since the following act cannot be called a continuation of the preceding one. Therefore those acts become diverse by moral interruption; therefore they are multiplied by repetition. Thus one who, on several morally interrupted occasions, strikes another or steals commits as many sins as there are those beatings or thefts, because these constitute so many diverse acts. L. 35, 36; Lugo D. 16, S. 14.

304. **Is there one sin or several when objects materially and physically total are several, but are referred to one act of the will?** It is disputed. There are two opinions, and many weighty theologians stand for each. The first opinion, which St. Alphonsus follows, n. 45, teaches that diversity of objects materially and physically total constitutes, in one and the same act, sins diverse in number. The reason is that sin is a movement of the will toward its term, or object. Therefore just as it is distinguished in species by specific diversity of objects, so by their numerical distinction it is distinguished in number. John de Dicastillo, *de Poenit.*, D. 9, Dub. 4, nn. 216 ff.; La-Croix 150.

"Hence it is inferred that the following commit sins diverse in number: first, one who by one blow kills several people, or detracts from several ... And the same must be said if someone intends to kill or defame a whole family ... But it is otherwise if someone injured goods possessed in common by a city, monastery, or chapter; for then right does not belong to individuals in particular, but only to the whole community, whence one right is injured. Second, one who by a single act wishes to approach several women, or several times the same woman; much more, one who in the same night knows the same woman several times ... for each fornication has its own complete term. Third, one who steals from several. Fourth, one who on one occasion gives scandal to several. Fifth, one who by one act wishes over several days to omit the canonical hours or fasting. Sixth, one who by one act desires evil to three persons." L. 46.

The second opinion holds that diversity of objects materially and physically total, in one and the same act, constitutes only one sin in number. The reason is that those objects, materially and physically many, are reached by one act by way of one adequate object, and therefore constitute one formal and moral total object. "In one and the same act": in one and the same internal act of the will; and if the question concerns an efficacious act of the will, also in one and the same external act. For if the external act is not one and the same, but there are several, since each is terminated and completed at an object total in itself, it can no longer be united with another. Cf. following number; Lugo, *de Poenit.*, D. 16, nn. 126 ff.; Suarez, *de Poenit.*, D. 22, S. 5, n. 34.

Hence **resolves:** First, he who kills several men with one blow commits one sin. But someone would not sufficiently explain his sin by saying, "I committed homicide," which signifies the killing of one man; rather it would have to be explained at least under some confused generality signifying plurality, for example, "with one blow I killed several," or "many." Lugo l. c. n. 141. The same must be said of one "who by one act of the will wishes to approach, for example, ten women of the same

condition, or wishes to approach the same woman several times. For it is enough if he says: I wished to approach several times an unmarried woman, or unmarried women, or married women, without necessity of expressing the number of objects of such a single volition." Tamburini, *Meth. Conf.*, l. 2, c. 1, § 9, n. 59; Dicastillo, *de Poenit.*, D. 9, Dub. 4, nn. 256-257.

Second, "one who by a single act of detraction injured many at once, for the same reason, does not need to reveal the number of persons injured ... If someone detracts from a family, house, or religion, whether numerous or small, it is enough if he says: I detracted from a certain family, etc." Tamburini l. c. n. 63; Lugo l. c. n. 135. It is also one sin if someone detracts from another before many, since the right to reputation is not multiple but one among all. Likewise it is one sin if someone by one act gives scandal to several. Lugo l. c. nn. 112, 164; L. 49. It is similarly one sin if someone by the same act denies several articles of faith, because the formal object of faith is not multiple but one, namely the authority of God revealing. L. 50; Lugo l. c. nn. 288 ff. One who by the same impulse of passion wishes several diverse evils to an enemy, for example infamy, death, poverty, commits one sin in number and species, namely if all are desired under the generic aspect of evil. Lugo l. c. n. 260; L. 50. It is furthermore one sin if someone steals a purse belonging to several people, or a thing that exceeds grave matter several times. Lugo l. c. n. 137; Diana Tom. 1, Tr. 7, R. 18, n. 8.

Third, "I infer that one who wills not to recite the Office for the whole year, and afterward executes this, commits several sins ... Similarly, one who wills to exercise robberies and killings on the road throughout his whole life afterward commits not one sin but several." Lugo l. c. n. 546; L. 1. 4. n. 149. The same must be said of sin committed with three women: it is threefold, not one, etc.

305. **Does one commit diverse sins who detracts from someone in several matters, or attacks him with diverse insults?** St. Alphonsus, n. 48, more probably affirms. But the common opinion of grave Doctors denies. For reputation and honor are always of the same species, whatever the matter in question. Hence this need not be explained in confession. Lugo, *de Poenit.*, D. 16, n. 265; Diana Tom. 1, Tr. 7, R. 19, nn. 2-3; Elbel 552.

306. **Note:** If a married person sins with a married person, or one having a vow of chastity sins with one also having a vow of chastity, he admits a twofold sin. "For the former malice is against the fidelity which he owes to his spouse ... the latter is insofar as he is the cause by his cooperation that the partner violates the laws of marriage." Likewise, "one species of malice is contracted from violation of one's own vow, another from cooperation in the violation of another's vow, to whose observance I am not bound by vow, as is established." Lugo l. c. nn. 140-141; L. 1. 2. n. 46; l. 3. n. 456.

307. **When is there a moral interruption of acts?** Acts of the will are interrupted in three ways: first, by retraction or express revocation of the will, because this prevents the later act from being joined with the prior one, for example if someone retracts the depraved will of acting badly and afterward resumes it, unless a very brief delay intervened.

Second, by voluntary cessation from the act, or by application of the mind to diverse objects, for example if someone freely ceases from an evil purpose and then returns to it; unless the purpose is present of immediately continuing the same sins, as if someone speaking shamefully with a woman ceases meanwhile when another arrives, but with the intention of continuing when that person leaves.

Third, by a sufficiently notable involuntary cessation, with account taken of the nature of the act, according to the judgment of prudent persons, for example by sleep, distraction, etc. "Sufficiently notable": for if a sufficiently brief time intervenes, the acts, morally speaking, are not discontinued.

These three can easily be applied to a threefold class of acts: merely internal acts; internal acts with a purpose of placing an external action; external acts, or acts externally consummated. L. 35, 38; Lugo, *de Poenit.*, D. 16, n. 551; Struggl q. 1, n. 41.

First, merely internal acts, which are altogether completed inwardly, for example hatreds, heresies, morose delights, inefficacious shameful desires, rash judgments, etc., speaking per se, are multiplied as soon as they are retracted or are left by free will, or are involuntarily abandoned. The reason is that such acts, since they have an object completed in itself and are not ordered to any external effect by reason of which they can be continued with one another, are acts altogether complete in themselves. Therefore the penitent must explain, if he can, how many times he consented by internal will to the depraved thing. But if he cannot, because, for example, the depraved mind was long-lasting, then it suffices to say approximately, or at least to confess the time during which he persevered with such a mind, and whether very frequently or rarely. Thus the confessor will sufficiently understand that ordinary interruptions intervened, or more frequent ones, or, on the contrary, rarer ones.

"Speaking per se": for if several acts of this kind proceed from the same impulse of passion, they constitute one mortal sin, even if some brief interval intervenes between the acts. Likewise one mortal sin is had if the depraved wills have an order among themselves, so that one depends on another. For then the later wills are placed, without new deliberation or consultation, by force of the first will. Lugo, *de Poenit.*, D. 16, nn. 562 ff.; Suarez, *de Poenit.*, D. 22, S. 5, n. 11; Struggl q. 1, n. 36; Tamburini, *Meth. Confess.*, l. 2, c. 1, § 5, nn. 30 ff.; L. 35, 37.

Second, internal acts with a purpose of placing an external action are likewise multiplied: first, by retraction of the will. Then, if someone returns to the evil will, there will be a new sin, since the later act does not proceed from the first. Second, by voluntary cessation, namely if someone voluntarily and freely ceases from the depraved purpose, with a notable delay interposed; for then it is also verified that the later act is a new sin, since it does not proceed from the first. Third, by involuntary cessation, if a long time intervenes; for if a brief time intervenes, the acts are not morally discontinued. L. 35, 38, 39.

Difficulty is present here as to defining the aforesaid notable delay and long time. Now a twofold hypothesis can be made: first, that the internal acts are ordered immediately to several external acts, directed and subordinated to some single and common end; second, that the internal acts are ordered to one external act.

In the first hypothesis, what St. Alphonsus has first holds, n. 40: "Acts of the will, if they proceed from the first will and morally remain in some effect that conduces to consummating the external sin, constitute only one sin for whatever time the depraved will lasts. Hence it is inferred that if someone proposes to kill a man, and therefore prepares weapons, takes the road, and kills the enemy, he commits one sin, although he sought him for many days and repeated the will several times."

In the first and second hypothesis, however, if no exterior effect is yet had, no certain rule can be assigned as to what is to be estimated a brief or long time, so that the aforesaid acts are judged to be continued or discontinued. That brief and long interval can be defined only by the judgment of

prudent persons in particular cases. For the same purpose endures for a greater or lesser time according to its various intensity and according to various circumstances of persons, age, sex, temperament, etc.

Generally speaking, the aforesaid acts are not discontinued by brief and common, or ordinary, interruptions that happen through sleep, a meal, conversation with a friend, etc. Therefore, even if after these you again repeat the depraved purpose of killing an enemy, fornicating, etc., you commit one sin, because since the first will remains virtually, it is united and continued with the second. Salmanticenses Tr. 20, c. 12, n. 38.

But something else must be said of an extraordinary interruption, which indeed removes the moral unity of human action. For then the prior will no longer persists. If someone, for example, wishes to kill an enemy, so that for a month he continues this will despite brief and ordinary interruptions, but afterward for a year, for several months, or for a month he falls ill and by this change of circumstances no longer thinks of killing the enemy, that prior will growing cold, indeed vanishing altogether; if after recovering he again resumes that prior will, this later will can no longer make one thing with the former, since wills so distant can no longer be joined among themselves even by moral estimation. Tamburini, *Meth. Confess.*, l. 2, c. 1, § 5, n. 34; Lugo, *de Poenit.*, D. 16, n. 545.

Third, external acts, or acts externally consummated, are multiplied as many times as the object is disparate or terminated in itself. They are not multiplied, even with a notable interval of time interposed, when they are like parts of a more principal act, or tend to one end, because they make one moral thing that is not completed unless the principally intended act has been consummated; or when, although those partial acts are not ordered to the principal act, nevertheless they proceed from the same impulse of passion. Understand that all prior acts make one moral thing with the more principal and consummated intended act, unless by themselves they introduce a new species that of itself does not tend to the completion of the sin.

Therefore: first, one sin is committed by one who, intending fornication, shamefully touches a woman, kisses her, allures her with shameful conversations, and finally fornicates, because all the prior acts are ordered by their nature to the consummated act. But if from the beginning he had wished only to touch the woman, and afterward, led on by lust, completed intercourse, there will be a twofold sin; and therefore it will not be enough if he confesses intercourse.

Second, a priest who wills to omit the whole Office on one day makes one sin, because the individual hours are ordered to completing one Office. But one who had wished only to omit Matins, and afterward refused to recite the remaining hours, would make two sins, because there would be a twofold distinct act of evil will having an object terminated in itself.

Third, one who from the same impulse of passion repeats an evil act many times commits one sin, for example one who shamefully touches himself or another several times, even with some interruption; one who strikes an enemy several times, or calls down very many evils on him, etc., because there is one depraved affection of the will, and those various actions are morally united.

Fourth, likewise probably one sin is made by one who by the same act blasphemes the twelve Apostles, because all blasphemies against the Saints derive their malice from one relation to God.

Fifth, one sin is made by one who, intending to steal some determinate sum of money, removes it by several occasions morally not interrupted, lest he be detected, because there is one depraved act of the will that is consummated in the final theft. On the contrary, one who steals on several occasions from the same money, without having resolved from the beginning to take the whole, commits several sins, because the individual thefts make an object total in itself.

Sixth, one who fornicates successively several times with the same woman makes several sins, although in the same night. Likewise one who omits the prescribed fast for several days makes several sins, although those fornications and omissions arise from one and the same will; for each fornication and omission successively done is terminated in itself and constitutes a total object. Nevertheless, if someone in mortal sin hears several confessions successively but continuously, one after another, theologians are not lacking who affirm that there is one sin because of moral union. Lugo, *de Poenit.*, D. 16, nn. 135, 546, 556, 557, 561; Tamburini, *Meth. Confess.*, l. 2, c. 1, n. 52; Struggl q. 1, n. 43; L. 41, 42, 43, 44, 46, 47, 50; l. 3. n. 538.

308. **Resolves:** If someone resolves not to restore another's property, and remains always in the same will even for a year, he commits one sin, although he also often renews this purpose. The reason is that in that retention, never retracted, the first will virtually remains, and later wills are morally united. Elbel 551; L. 40; l. 3. n. 683; Diana Tom. 1, Tr. 7, R. 158, nn. 3-4.

309. **Are touches that immediately follow fornicating intercourse a new sin?** All these acts, as also complacency in the intercourse had, are not a new sin if they are had immediately after intercourse and are by no means directed to new intercourse, because they are likely applied as a complement of the intercourse obtained. L. 41; Tamburini l. c. 72.

310. **Must the means used for sinning be explained in confession if the sin was afterward not consummated?** Some generally affirm, even if those means were not evil in themselves, such as taking a road, carrying a ladder for theft, etc. The reason is that then the sin does not remain only internal, but becomes external by those means. For those actions, although indifferent in themselves, become evil from the evil end.

Others distinguish. They probably deny if those means are not evil in themselves, for then they constitute no special sin; rather it suffices to say generally, to explain the external action of sin: "I tried, for example, to kill the enemy; I prepared means for killing him," etc. But they affirm if those means are evil in themselves, and then they must be indicated, and indeed all as to species, if they are diverse in species, such as touches had with oneself or obscene words used for soliciting. The reason is that when the sin has not been consummated, those various means, evil in themselves, can no longer be referred to the end and constitute one thing in the consummation of the sin, whence they would take their ultimate species. Therefore those individual acts must be considered with their proper malice. Therefore they must be accused separately in confession.

But if those means evil in themselves are of the same species, because the same things were repeated several times, then all must be explained as to number if they did not coalesce into one moral act; otherwise, however, if they constituted one moral act, for instance because they proceeded from the same impulse of passion. Lugo, *de Poenit.*, D. 16, n. 240; Tamburini 66 ff.; L. 42; cf. 783.

IV. On the Gravity of Sin

311. **What is the gravity of sin, and whence is it to be taken?** The gravity of sin is the quantity or measure of malice by which sin is more or less offensive to God, and therefore worthy of greater or lesser penalty.

The greater or lesser gravity of sins is to be taken, generally: first, from the object, end, and circumstances, insofar as they are more or less opposed to rational nature or to law; second, from the duration of the evil act, or from its intensity; third, from greater or lesser advertence to the malice of the act, or from the diverse degree of consent given to the depraved act; fourth, from the excellence of the virtues or precepts to which the sins are opposed; fifth, from the various modes by which virtues or laws are violated. St. Thomas, 1. 2. qq. 73, 77, 78, 79, a. 4; 2. 2. q. 39, a. 2; q. 65, a. 4.

312. **How many kinds of sin are there?** One sin is mortal, another venial, insofar as it is the transgression of a law obliging gravely or lightly, a grave or light offense of God. Mortal sin of itself, as such, has some disorder distinct in species from every disorder that is in venial sin. For that depravity which is directly contrary to the last end, and by reason of which man is turned away from it and turned toward the creature as toward his last end, is a proper species of disorder and moral depravity; and this is proper to mortal sin and cannot be found in venial sin. Suarez, *de Peccat.*, D. 2, S. 5, nn. 2-3; St. Thomas, 1. 2. q. 71, a. 4; q. 72, a. 5; q. 74, a. 9; q. 88, 89; *de Malo* q. 2, a. 8.

Mortal sins are such: first, from their whole genus, when their object or matter, whatever it finally is, contains grave disorder, as in lust, blasphemy, perjury, heresy, etc. Second, from their genus but not wholly, when their matter, while remaining in the same species, can be grave, although it can also be light, as are sins against justice.

But sins are called venial from their genus when, considering the matter or nature of the object, they do not admit grave guilt, and therefore as long as they remain within their own species, that is, unless another species mortal from its genus accedes, they cannot be mortal. St. Thomas, 1. 2. q. 77, a. 8 ad 1; q. 88, a. 5; L. 11, 51; Trent, Session 6, c. 15, canons 27-28; E. M.

313. **What is required for mortal sin?** For mortal sin there are required and suffice: first, grave matter; second, full advertence to grave malice; third, full consent to prevarication.

Proof of the first part: light matter induces only a light obligation, and therefore its transgression cannot be a grave sin. Proof of the second and third parts: since by mortal sin man totally withdraws from God, his last end, so as totally to adhere to creatures and rest in them as in his end, this cannot happen unless man, fully deliberately and consequently with full knowledge of the matter, prefers the creature to the Creator.

Therefore a sin mortal from its whole genus can become venial by reason of imperfect advertence and imperfect consent. St. Thomas, 1. 2. q. 74, a. 10; q. 88, a. 6; 2. 2. q. 35, a. 3; q. 36, a. 3; L. 52 ff.

314. **In a case of doubt, what are signs of imperfect advertence and deliberation?** Signs of imperfect advertence are: first, if you apprehended that it was evil thinly and as if half-asleep; second, if afterward, when you consider better, you judge that you would not have done it if

you had apprehended it so; third, if you labored under a most vehement passion, apprehension, or distraction, or were disturbed so that you scarcely knew what you were doing.

Signs of imperfect consent are: first, if someone was so disposed that, although he could easily have executed the sin, nevertheless he did not execute it; second, if someone doubts whether he consented, especially if he is a God-fearing man; third, if someone is accustomed to be so affected that he would rather die than expressly sin mortally, because such a person does not easily consent; fourth, if someone remembers that he proceeded very timidly and hesitantly; fifth, if he was half-asleep, not fully in possession of himself, etc., and judges that he would not have done it if he had been fully awake.

The continuation alone of a depraved thought is not an indication of consent having been given, because a temptation can be long-lasting while it is resisted according to one's strength. Struggl q. 2, n. 6; L. 54, 55; l. 6. n. 476.

315. **Does one sin gravely who deliberates about giving consent to an object gravely evil, if finally he does not consent?** The solution of the question depends on the quality of the deliberation. For if it is imperfect, that is, if it is only a certain hesitation or omission of resistance from torpor, laziness, or negligence, the sin does not exceed venial. But if the deliberation is full, insofar as the will is prepared and affected toward either side, it will be mortal sin, because the will then shows itself prepared to place God after sin, and has an affection toward the deliberated evil.

316. **What is required for venial sin?** For venial sin there are required and suffice some advertence, however slight, to the malice of the act, and some consent of the will, however imperfect. These indeed are required, because if they are removed, there can be no knowledge and willing of evil, and therefore no sin. But they suffice, because when they are placed, knowledge and willing of evil, which are necessary for constituting sin, are had in some way.

317. **Can several venial sins constitute one mortal sin?** Answer: Negatively, by reason of multiplication and speaking per se. For the essences of things are immutable. Affirmatively, by reason of lightness of matter, if this, although light in itself, nevertheless acceding to others coalesces into one and constitutes grave matter by reason of continuation, as from several little bits taken several times on a fast day. Struggl q. 2, n. 26; St. Thomas, 1. 2. q. 88, a. 4.

318. **In what ways does a venial sin become mortal accidentally?** First, by reason of erroneous conscience, as is clear.

Second, by reason of a gravely evil end joined to it, as if someone lies lightly in order to commit fornication. It is enough in confession, however, to confess the fornication; it is not necessary also to explain the lie.

Third, by reason of the final end, which someone constitutes even in a light thing, for example in play, in a person inordinately loved, etc. "If someone from love of play were prepared to commit any mortal sin whatever, it would be a sin of rashness, and indeed most grave, but without species." L. 60.

Fourth, by reason of absolute and formal contempt, "namely when a precept is formally and absolutely violated for this reason, because you refuse to be subject to it or to the superior, which is the sin of consummate pride; or when for this reason you do not wish to obey the precept, because it is a precept, and it is the sin of formal disobedience, both of which fight gravely against the charity owed to the superior. Therefore it is one thing to contemn the law or legislator, even a human one, not as such a person, but as legislator, which is mortal; another to contemn the thing prescribed, which is venial if the matter is light." L. 61; l. 4. n. 161; St. Thomas, 2. 2. q. 105, a. 2; q. 186, a. 9 ad 3.

Fifth, by reason of grave scandal of others, which gravely conflicts with charity.

Sixth, by reason of grave harm to others, which gravely conflicts with justice.

Seventh, by reason of proximate danger of sinning. "In this matter it is most certain that a work of itself venial or indifferent passes into mortal sin if the one acting is exposed to an occasion so proximate that it places him in a moral and proximate danger of sinning mortally ... This moral proximate occasion, or this moral proximate danger, occurs when from its genus the occasion is such that it frequently induces men of similar condition to mortal sin, or by experience it is established that in this man it has such an effect ... just as one is exposed to danger of incurring temporal harm who undertakes a work at such a time and place and in such circumstances that he can scarcely escape that harm ... And in this probable danger of sinning mortally the circumstances of that sin to whose danger he exposed himself must be confessed ... For it is of the same malice to place oneself in moral danger of admitting some crime and to admit it. For by the same precept by which one is bound to avoid a crime, he is also obligated to avoid proximate danger of it." Sanchez, *in Decal.*, l. 1, c. 8, nn. 1, 4.

Exception: first, unless such caution is applied that the danger ceases; second, unless a grave cause is present. For then the danger is not morally voluntary, but one unwillingly is forced by that necessity to undergo it. Sanchez l. c. nn. 2-3; St. Thomas, 2. 2. q. 10, a. 9; L. 63; E. M.

319. **Does he sin gravely who would wish to avoid only mortal sins and would have the purpose of committing all venial sins?** Answer: Negatively, speaking per se, excluding the case of particular frailty, so that proximate danger of sinning gravely is introduced. For the multiplication of venial sins will never constitute mortal sin, because individual venial sins will always remain in the lower species; nor does a mind so disposed introduce proximate danger of sinning. But one who despises small things is gradually disposed also to despise greater things. Lugo, *de Poenit.*, D. 16, nn. 49-50; Suarez, *de Rel.*, Tr. 8, l. 1, c. 4, n. 18; Ithur. Cas. 35, n. 28; L. 1. 4. n. 12; St. Thomas, 1. 2. q. 88, aa. 3-4.

V. On the Capital Vices

320. **What are the capital vices?** "Vices are called capital from which others arise, especially according to the notion of final cause ... Accordingly those vices are called capital whose ends have certain primary reasons for moving the appetite; and according to the distinction of these reasons, the capital vices are distinguished." St. Thomas, 1. 2. q. 84, a. 4; 2. 2. q. 118, a. 7. "It is not required, however, that a capital vice always be mortal sin; because even from a venial sin a

mortal sin can arise, namely insofar as the venial disposes to the mortal." St. Thomas, 2. 2. q. 132, a. 4 ad 3.

The capital vices are numbered as seven: pride, avarice, lust, envy, gluttony, anger, acedia. St. Thomas, 1. 2. q. 84, a. 4; q. 34, a. 5.

321. **What is pride?** "Pride is named from this, that someone by the will tends above what he is." Whence it is clear that it is sin. Insofar as it is the inordinate appetite of one's own excellence, it is a special sin. But insofar as all vices can arise from it, because everything that someone inordinately desires "can be ordered to one's own excellence," and because "man through pride contemns the divine law, by which he is prohibited from sinning," it has a certain generality, or is a general sin. St. Thomas, 2. 2. q. 162, aa. 1, 2, 7, 8.

Hence the same holy Doctor, 2. 2. q. 132, a. 4; q. 162, a. 8, places pride not as a capital vice, but as the queen of all vices; and he places as a capital vice vain glory, which immediately arises from it. Commonly, however, pride is established as a capital vice.

Pride from its genus is mortal sin. For "pride is opposed to humility. But humility properly regards man's subjection to God. Hence, on the contrary, pride properly regards the defect of this subjection, namely insofar as someone exalts himself above that which is fixed for him according to the divine rule or measure ... But it is manifest that this very thing, not to be subject to God, has the notion of mortal sin, for this is to be turned away from God." St. Thomas, 2. 2. q. 162, a. 5. "And therefore to be turned away from God and his precepts, which is as it were consequent in other sins, pertains per se to pride, whose act is contempt of God." St. Thomas, l. c. a. 6.

Now when the aforesaid aversion and contempt cease, and there is only some inordinate movement toward one's own excellence, pride is had only improperly so called, and it is venial, unless it occurs with notable contempt of others, by complacency in their abasement. St. Thomas, 1. 2. q. 77, aa. 4-5; q. 84, a. 2; L. 65.

322. **What are the daughters of pride and of vain glory?** "Those vices that of themselves are naturally ordered to the end of some capital vice are called its daughters." St. Thomas, 2. 2. q. 132, a. 5.

The daughters of pride are three. First, presumption, which is the inordinate appetite of attempting something above one's powers. It is commonly only venial. St. Thomas, 2. 2. q. 130, a. 1; q. 134, a. 2 ad 4. It becomes mortal, however, if it brings grave harm, for example if someone presumes ecclesiastical jurisdiction, the office of physician, etc., without due knowledge. But insofar as presumption is a special sin opposed to theological hope, it is always mortal sin, unless imperfection of the act excuses.

Second, ambition, which is the inordinate appetite of dignity and honor not due, or in an undue way and by an undue means. It is per se venial sin. St. Thomas, 2. 2. q. 131, a. 1. But it becomes mortal by reason of the matter from which, or by reason of the means through which, or by reason of the end for which honor is sought, or by reason of harm inflicted on one's neighbor.

Third, vain glory, namely desire of empty glory, whose end is inordinate manifestation of one's own excellence, whether true or fictitious. It is per se venial sin. It is often mortal accidentally, as was just said of ambition. But to do even sacred things because of vain glory, for example to preach, does not exceed venial sin. St. Thomas, 2. 2. q. 132, aa. 3-4; q. 162, a. 7; L. 66.

By opposition, pusillanimity answers to the three daughters of pride. By it someone, distrusting himself too much, declines honors, glory, or an office of which he is worthy. It is venial from its genus; and becomes mortal if you decline that to which you are bound under mortal sin. L. 67.

Now the daughters of vain glory, which St. Thomas establishes as a capital vice, are assigned by the same holy Doctor as follows, 2. 2. q. 132, a. 5. A man can tend to the manifestation of his own excellence in two ways: "in one way directly, either by words, and thus there is boasting; or by deeds, and thus, if they are true things having some admiration, there is presumption of novelties, which men usually admire more; but if they are false, thus there is hypocrisy. In another way someone strives to manifest his excellence indirectly, by showing himself not to be less than another, and this in four ways. First, as to the intellect, and thus there is pertinacity, by which a man relies too much on his own opinion, unwilling to believe a better opinion. Second, as to the will, and thus there is discord, when he does not wish to depart from his own will so as to agree with others. Third, as to speech, and thus there is contention, when one litigates loudly in words against another. Fourth, as to deed, and thus there is disobedience, namely when someone does not wish to execute the precept of a superior." And thus these vices are fittingly called daughters of vain glory. Cf. 2. 2. q. 37, a. 2; q. 38.

Boasting is per se venial if it concerns good things, and accidentally it can be grave. But if it concerns gravely evil things, it is grave, because approval of the work has the same species as that work, which therefore must be expressed in confession, at least when complacency in the same sin was joined with the boasting. "At least when," etc., because if it was without complacency, several hold that it need not necessarily be explained. For every boasting about mortal sin, prescinding from complacency in it, is of the same species, namely that someone glories in this, that he offended God. St. Thomas, 2. 2. q. 112; L. 26, 66, 67; l. 3. n. 426; Lugo, *de Poenit.*, D. 16, nn. 266 ff.

Presumption of novelties, which is also called ostentation, if the deeds have nothing of admiration, is also per se venial. Thus it is light to dress in foreign garments, or to adorn oneself too much from lightness of mind, vanity, etc.; but grave if it is such as notably to corrupt morals. L. 66, 67.

Hypocrisy, by which someone "does not care to have holiness, but only to appear holy ... is mortal sin ... To simulate holiness, from which he is lacking through mortal sin ... is not always mortal sin, but sometimes venial," according as it happens to be opposed or not to charity. St. Thomas, 2. 2. q. 111, a. 4. Likewise to simulate wickedness is sin, and can be mortal. St. Thomas, ib. a. 1; L. 66, 67.

Pertinacity: "someone is called pertinacious who is shamelessly holding, as it were wholly tenacious." Hence pertinacity is opposed to perseverance; for the persevering man persists in his own opinion "according as he ought"; but the pertinacious man perseveres in it "more than he ought." Therefore it is sin because of excess. St. Thomas, 2. 2. q. 138, a. 2.

Discord is dissent of wills concerning a good that we ought to will from charity. Now since some goods can be owed to one's neighbor not only from charity, but also from justice, discord and dissent from rendering such goods is opposed both to charity and to justice. Discord is a sin per se mortal

from its genus, for it directly conflicts with charity. Accidentally, however, it can become venial from the smallness of the due good, to whose rendering we are unwilling to consent. Indeed sometimes it will be no sin, namely if it arises from a probable judgment, from which one judges this, another that, to the honor of God and the utility of neighbor, and if the manner of dissenting is not opposed to charity. Struggl Tr. 4, q. 5, n. 38; St. Thomas, 2. 2. q. 37, a. 1.

Contention is an attack on truth with the confidence of clamor. Contention is a sin mortal from its genus. The reason is that, from charity, we ought to will and communicate to others truth necessary or useful for the salvation of soul, or even of body; and therefore to attack it and wish to overthrow it is opposed to the virtue of charity and is a sin mortal from its genus. Struggl Tr. 4, q. 5, n. 39; St. Thomas, 2. 2. q. 38, a. 1.

Disobedience, properly and per se speaking, or formal disobedience, is had only "when someone contemns a precept, because moral acts take their species from the end. But when he does something against a precept, not because of contempt of the precept, it is disobedience only materially, but pertains formally to another species of sin," according to various motives, for example to the species of theft, homicide, etc. Therefore disobedience by its nature is grave sin. For not obeying the precepts of God and superiors is contrary to charity. St. Thomas, 2. 2. q. 105, a. 1.

323. **What is avarice?** Avarice is the inordinate appetite of temporal goods. Avarice, insofar as it is precisely opposed to the virtue of liberality, is a sin from its genus only venial. Nevertheless it can become mortal in three ways: first, against charity toward oneself, by constituting one's last end in riches, or by transgressing the precepts of God rather than suffer loss in temporal goods; second, against charity toward neighbor, by not helping him when he is placed in grave necessity, etc.; third, against justice, by taking what belongs to another, etc. St. Thomas, 1. 2. q. 84, a. 1; 2. 2. q. 118; L. 68.

324. **What are the daughters of avarice?** They are the following. First, hardening of heart, against mercy, by not having compassion on the needy and poor, by rebuking them, by demanding debts too harshly when the debtor is not solvent, etc. One can sometimes sin by this mortally, when the precept of almsgiving or charity urges, and yet from such hardness help is not given. L. 69.

Second, unrest of heart, that is, vehement and inordinate application of the mind to acquiring or preserving riches, with empty and vain fear lest they not be acquired or be lost. It is mortal when it draws one away from spiritual things or from others to which we are obligated by grave precept, or induces superfluous fear and from this distrust toward God. It is venial if it concerns a good thing but at an undue time or place, for example, concerning family, harvest, vintage, when someone is in church or ought to be free for God. St. Thomas, 2. 2. q. 55, a. 6; L. 69.

Third, violence, namely usurpation of another's property by force. It is mortal if it concerns a grave thing or inflicts grave force. L. 69.

Fourth, fallacy, or deceit in words; it can be mortal by reason of end or means. St. Thomas, 2. 2. q. 55, a. 4; L. 69.

Fifth, perjury, if confirmation by oath is added.

Sixth, fraud, or deceit in deed. It is mortal from its genus, and occurs in many ways in contracts. St. Thomas, 2. 2. q. 55, a. 5; L. 69.

Seventh, betrayal, which is deception against faith given or owed, to the harm of another. It is mortal from its genus. It happens in nearly three ways: first, concerning persons, in the way Judas betrayed Christ; second, concerning things, as if you show an enemy the way of capturing a fortress, or show a robber money, clothing, etc., hidden; third, concerning a secret, either by revealing one entrusted to oneself or by reading another's letters. If this is in a grave matter, it is per se mortal. L. 69; St. Thomas, 2. 2. q. 118, a. 8; q. 55, a. 8.

325. **What is lust?** Lust, which is opposed to chastity, is the inordinate appetite of the venereal thing. Lust is grave from its whole genus if it is deliberate and directly willed. Hence it does not admit smallness of matter. For the use of venereal things was instituted by its nature for the preservation of the human race, which is a great good of men and external to God. Therefore one who abuses it gravely offends God and injures human society. "If it is deliberate and directly willed": for if deliberation and volition concern only its cause, then smallness of matter can be given in this matter. St. Thomas, 2. 2. q. 153; L. 71; cf. 37 ff.

326. **What are the daughters of lust?** They are eight: four on the part of the intellect, and four on the part of the will.

First, blindness of mind, when someone is so given over to shamefulness that he does not think of heavenly things. St. Thomas, 2. 2. q. 46.

Second, precipitation, by which someone, from the same cause, acts without counsel.

Third, inconsideration, when he sins in manner, acting inconsiderately in ways that dishonor his state or person.

Fourth, inconstancy, when from the same affection of pleasures someone quickly falls away from pious purposes. St. Thomas, 2. 2. q. 53.

Fifth, love of self, for the lascivious person, because of pleasures, makes himself, not God, the end of his actions.

Sixth, hatred of God; for the lascivious person is accustomed to abhor divine things, indeed God himself, as avenger of sins.

Seventh, affection for the present age; for love of carnal pleasures so affects the soul that from time to time it would even be prepared to renounce eternal beatitude, if it were permitted always to enjoy present things.

Eighth, horror of the future age, when one immersed in pleasures inordinately fears death and, unwilling to think of it, strives to prolong life by illicit means, etc. St. Thomas, 2. 2. q. 153, a. 5.

The first four are mortal when some precept of God gravely obliging is omitted. But if the matter concerns only the matter of lust, they are not sins distinct in species; it is otherwise if other precepts are violated. The latter four, if the consent of the will is full, are per se mortal and distinct in species; from lack of deliberation or another imperfection of acts they are often venial. L. 71.

327. **What is envy?** Envy is sadness over another's good insofar as it diminishes one's own glory. St. Thomas, 2. 2. q. 36, a. 1.

Now one can be saddened over another's good in five ways. First, when someone is saddened over another's good absolutely because it is the good of one's neighbor; and this is properly hatred of enmity, or simply hatred or aversion of a person, to whom we wish evil insofar as it is his evil. This from its genus is mortal.

Second, when someone is saddened over the good of a neighbor relatively, because he fears some evil from it; and this is properly fear, which will be lawful unless it is inordinate, for example if he fears that evil will be inflicted unjustly on himself or others.

Third, when someone is saddened over the good of a neighbor, not because the neighbor has it, but because he himself lacks it; and this is not envy, but emulation or zeal, which if it concerns an honest good is praiseworthy, but if concerning temporal goods is sometimes venial, as if the good is disproportionate to the one grieving, as would be if a peasant grieved that he was not king.

Fourth, when someone is saddened over another's good because he thinks him unworthy of such a good; and this is indignation or abomination, which is not sin, but will be sin, and indeed mortal, if it accuses God's providence, and is blasphemy; or if it so affects people as to lead them to imitate evil.

Fifth, if someone grieves that another equal to himself, or not very unequal, grows in excellence, so that he becomes superior to him, and he apprehends the very increase of excellence as evil to himself; and this is envy properly so called. For an envious person is so called because he is not seeing, since he cannot see the goods of another without sadness.

Envy from its genus is mortal, Gal. 5:21. For it is directly against charity, which rejoices over the good of neighbor, which envy wishes destroyed or grieves over not destroyed. St. Thomas, 2. 2. q. 36; L. 72.

328. **What are the daughters of envy?** They are hatred, whispering, detraction, exultation in the adversities of one's neighbor, and affliction in his prosperity. These are from their genus mortal, since directly against charity.

Whispering is speech by which without cause something is reported to one person about another, which of itself is apt to break the friendship of both; and one is therefore bound to restore and reconcile that friendship. It is mortal from its genus both against charity and against justice. St. Thomas, l. c. a. 4 ad 3; q. 34, a. 6; q. 74; L. 72.

329. **What is gluttony?** Gluttony is the inordinate appetite of food and drink. It is opposed to abstinence. It is committed in five ways: first, if you eat before the time; second, if things are too exquisite; third, if more than is just; fourth, if voraciously; fifth, if too fastidiously.

Gluttony from its genus is only venial sin, because it is not gravely opposed to charity toward God or neighbor. Nevertheless it can become mortal under many respects: first, against charity toward God, by constituting one's last end and beatitude in it; second, against charity toward oneself, by reason of grave harm to soul or body, if someone, for example, thereby becomes unfit for functions that he is bound under mortal sin to fulfill, or notably harms health; third, against charity toward neighbor,

against piety and justice, as happens when nobles, in order to devote themselves to gluttony, gravely oppress subjects, dissipate goods necessary to the family, contract debts they are unequal to paying; fourth, by reason of scandal, if a cleric, for example, publicly indulges in feasts and drinking bouts; fifth, when because of gluttony someone transgresses the precepts of the Church, for example by eating meat on a day of abstinence, by eating several times in a day to satiety on a fast day, by not hearing Mass on Sunday because of feasts; sixth, by reason of perfect drunkenness, concerning which more will soon be said. St. Thomas, 2. 2. q. 148; L. 73; E. M.

330. **Resolves:** "To eat or drink to the point of vomiting is probably only venial from its genus, unless scandal [namely grave] is present, or notable harm to health, as they more commonly say ... But those who voluntarily vomit what they have taken so that they may eat and drink again are scarcely excused from mortal sin; for this seems to involve great deformity. Thus probably." L. 73.

And certainly others probably deny this, because there is had only eagerness for delight in foods, which from its genus is venial unless another species of sin accedes. It is scarcely doubtful, however, that it is lawful to create vomiting by food or drink or otherwise if it is judged healthful. For then it has the nature of medicine.

It is judged mortal to eat human flesh and blood, both because it is against piety owed to the dead, and because it is against the instinct of nature; unless it is done for the sake of medicine or another just cause, for example extreme hunger. Laymann l. 3, S. 4, n. 3; Diana Tr. 5 *de Scand.*, R. 76.

331. **What are the daughters of gluttony?** They are the following, which from their genus are venial, but become mortal when they are gravely opposed to another virtue: namely, on the part of the soul, first, dullness of mind or stupidity, born from excess; second, inept joy, which moves one to shameful acts; third, much-speaking; fourth, buffoonery in words and gestures; fifth, on the part of the body, uncleanness, vomiting, and emission of semen. St. Thomas, l. c. a. 6; L. 74.

332. **What is drunkenness?** "Drunkenness is mortal sin because in this a man knowingly and willingly deprives himself of the use of reason, by which he acts according to virtue and avoids sins; and thus he sins mortally by committing himself to the danger of sinning. Hence drunkenness, speaking per se, is mortal sin." St. Thomas, 2. 2. q. 150, a. 2; 1. 2. q. 88, a. 5 ad 1; Gal. 5:21.

Drunkenness is opposed to the virtue of sobriety, whose office is to apply measure "concerning drink, not any drink whatever, but that which by its fumes is naturally apt to disturb the head, such as wine and everything that can intoxicate." St. Thomas, 2. 2. q. 149, a. 1. The malice of drunkenness is in the voluntary privation, by an artificial, unnatural, and violent mode, through immoderate intoxicating drink, of the use of reason, not merely negatively, as in sleep, but contrariwise through disturbance of reason. L. 75.

333. **Resolves:** First, if someone knowingly and willingly takes such a draught of wine as is apt to intoxicate, he is in no way excused from mortal sin, although before he is deprived of senses he commits himself to sleep, by which he may escape the effect of the wine; because that drink is

already intrinsically evil, since of itself it is already apt to deprive man of the use of reason, and it is accidental that he is deprived of senses through sleep. Nor in sleep does he have proximate power for the use of reason. L. 78.

Second, one who from drinking wine does not totally lose the use of reason does not sin mortally, although the mind is disturbed, provided nevertheless that he is able to discern between good and evil, as theologians commonly say. Theologians also commonly add that drunkenness is not mortal if it deprives one of reason for a short time. La-Croix says that one hour seems a long time. La-Croix l. 5, n. 327; L. 75, 78.

334. **Is it lawful to take drink to drive away illness, if drunkenness is foreseen to follow from it?** Answer: Affirmatively, more probably, if the drink is taken to correct depraved qualities, for then privation of reason follows accidentally and indirectly, and therefore can lawfully be permitted.

But if the drink is taken directly to procure drunkenness or privation of reason, St. Alphonsus and others deny, because to deprive oneself of the proximate faculty of the use of reason is intrinsically evil. Busembaum and others affirm, relying chiefly on the authority of St. Thomas, 1. 2. q. 88, a. 5 ad 1, where he says: "For a man, without necessity, to render himself unable to use reason, by which man is ordered to God and avoids many occurring sins, from the pleasure of wine alone, is expressly contrary to virtue." Note "without necessity," "from the pleasure of wine alone." Therefore, if necessity is present, and not from the pleasure of wine, it is not contrary to virtue. Laymann l. 3, S. 4, n. 5; La-Croix l. 5, n. 319; Struggl 25; St. Thomas, 2. 2. q. 150, a. 2 ad 3; L. 76.

335. **Is it lawful for someone to get drunk to avoid death, which another threatens him with unless he becomes drunk?** The first opinion, which St. Alphonsus regards as more probable, denies, because directly depriving oneself of the proximate power of using reason is intrinsically evil. Since here the danger of death is from outside, that immoderate drink to the point of drunkenness cannot here be regarded as a cause producing two effects. Therefore intoxication would be directly intended and willed.

The second opinion, which Lessius and Palaus hold with Busembaum, and Laymann and others think probable, affirms, because the privation of reason here is not intended, but only permitted. For excess of wine is assumed not with the mind of intoxicating oneself, nor without necessity from the pleasure of wine alone, which would certainly be intrinsically evil, but as a means for fleeing death. La-Croix l. 5, n. 321; Struggl 25; L. 76.

336. **Is drunkenness lawful for undergoing a surgical operation?** The first opinion, which St. Alphonsus, n. 76, and others hold, denies, because in this case drunkenness, or privation of reason, would be directly intended as a means of removing pain of the senses, and this is intrinsically evil.

The second opinion affirms. First, because privation of the use of reason at least for a short time, and from a grave cause, does not seem intrinsically evil. Second, because the drinking is not directly given for causing privation of reason, but for the sleep of the senses; and therefore drunkenness follows indirectly and accidentally. For sleep of the senses does not come from privation of reason, but from

laxity and dullness of the nerves. Gury-Ballerini 182. But the use of other medicines, whose primary power is to bring sleep or numb the nerves, such as opium and inhalation of ether, is in no way to be condemned.

337. **Is it lawful to induce someone to drunkenness so that he may be prevented from a graver evil, for example from committing sacrilege or homicide?** The first opinion affirms, because this is to lessen an evil that cannot otherwise be prevented. "That which is contrary to reason has more of the nature of evil than that which for an hour removes the use of reason." St. Thomas, 2. 2. q. 150, a. 3 ad 2.

The second opinion distinguishes and says that it is lawful to induce another to material drunkenness, that is, when the other becomes drunk without sin, for example by placing before him very strong or medicated wine, because then on one side he does not sin, and on the other the harm of drunkenness is permitted to avoid a graver harm to others. But they say it is not lawful to induce him to formal drunkenness, namely with his sin, since this is intrinsically evil and therefore never to be permitted.

The third opinion grants neither, because since such a person is in no way thinking about wine, to induce him positively to drunkenness is evil. "Nevertheless, these things notwithstanding," St. Alphonsus concludes, n. 77, "the first opinion seems sufficiently probable to me and to other learned men consulted by me, whether the drunkenness is material or formal, because of the reason already given, since it is lawful to induce another to a lesser evil so that he may be prevented from a greater." Then, namely, it is no longer evil to counsel, but good, namely the choice of the lesser evil.

338. **Is it lawful to intoxicate someone so that he may reveal secrets?** Struggl, n. 25, has this: "It is lawful materially to intoxicate another ... for eliciting secrets which the other is bound to manifest; but if this were done to elicit secrets that the other could manifest in good conscience, yet is not bound to manifest, injury would be done to him, because he is reasonably unwilling against such intoxication and such a mode of eliciting secrets. This is a fortiori true when the other cannot manifest similar secrets in good conscience." La-Croix has the same, l. 5, nn. 328-329.

339. **Does one sin gravely by inducing an insane person into drunkenness?** Answer: Negatively per se, because a foolish person, as already deprived of the use of reason, cannot further be deprived of the use of reason. "Per se," because if after excessive drink the foolish person is accustomed to do shameful things or break out in blasphemies, and the one inducing him to drink knows this, he will sin gravely against natural law, because the foolish person materially violates it, since he is subject to it in first act. Elbel 679-681.

340. **Are evils committed in drunkenness imputable?** Answer: Negatively, if they were not foreseen at least confusedly, as is clear. Affirmatively, if they were foreseen at least confusedly, at least the evils of the work, as is again clear from what has been said.

"At least the evils of the work": for injurious words, or even insulting deeds, are probably not imputable if they are brought forth against men, since by common estimation they are judged to inflict no injury and insult. It is otherwise, however, if they are brought forth against God, as

blasphemies, etc., because even that material utterance alone of blasphemies, voluntary in the cause, tends to the diminution of divine honor. Nevertheless St. Alphonsus, n. 78, does not dare to call improbable the contrary opinion of the Salmanticenses.

But since blasphemy uttered in drunkenness does not have in itself the true nature of blasphemy, although it was foreseen, it is not subject to reservation and censure, if perhaps present. L. 2, 78; St. Thomas, 1. 2. q. 76, a. 4; q. 150, a. 4; Ithur. Cas. 30; Sanchez, *in Decal.*, l. 1, c. 16, nn. 42 ff.

341. **What is anger?** Anger is the inordinate appetite of revenge. This disorder can happen in two ways: first, on the part of the mode of being angry, as, for example, if you inwardly blaze up too much, or externally make it too manifest by signs. Second, on the part of the object, as if you desire revenge plainly unjust as to cause, or greater than is just, for example by wishing death on an enemy who has not deserved it, or revenge to be executed by one's own authority; or finally, although the revenge is just, nevertheless you desire it not as just, but as satisfying your malevolent soul.

If revenge is desired in an ordered way, it is not the sin of anger, as when superiors are angry at the faults of subjects and punish or vindicate them. Inordinate anger in the first way mentioned above is from its genus venial sin; nevertheless it can become mortal accidentally because of violation of another virtue, for example religion, piety, charity, etc., as if blasphemy, curse, or scandal is added; and also if a movement of the soul of this kind is truly vehement and deliberate. Inordinate anger in the second way is mortal from its genus, because it is directly against charity and justice, Gal. 5:20. St. Thomas, 1. 2. q. 88, a. 5 ad 1; 2. 2. qq. 108, 158; L. 79.

342. **What are the daughters of anger?** Some are from the heart: first, indignation, which is an inordinate affection from the fact that someone judges himself treated unworthily by such a person. Commonly it is venial. Indeed, if it proceeds from a just judgment of reason, it is none. It could nevertheless be mortal if it grew to deliberate hatred and grave contempt of the person.

Second, swelling of mind, by which someone morosely thinks out diverse ways of revenge and with such thoughts puffs up his soul. What kind of sin it is must be judged from the quality of the revenge thought out.

Some are in the mouth: first, clamor, when the angry person raises his voice, pouring out many things inordinately and confusedly. It is commonly venial unless something else is added. Second, blasphemy against God, and it is mortal. Third, insult against men, by which someone casts some evil upon a neighbor with the intention of dishonoring him. Fourth, cursing, by which someone wishes and calls down evil on another under the aspect of evil.

Some are in deed, such as quarrels, fights, seditions, wounds. "Quarrels, by which are understood all harms that are inflicted on neighbors by deed from anger." St. Thomas, 2. 2. q. 158, a. 7. Quarrels, if they do not exceed measure, as also slight fights, are venial; otherwise, if they proceed to seditions, wounds, killings. These are commonly mortal sins on the part of the one beginning the quarrel; for the other can defend himself with the moderation of blameless defense. L. 80, 83; St. Thomas, 2. 2. qq. 40, 41, 42.

Insult. It is mortal from its genus. It is only venial if it is small, or only material without the mind of dishonoring, provided that notable injury to the honor of one's neighbor does not follow. Thus many parents are excused at least from mortal sin when they call their children donkeys, etc.; likewise women, children, and people of the lowest sort who load one another with insults, because since faith is not placed in them, honor is not gravely injured. Nor is it sin if it is done with the mind of correcting, humbling, or for another reason. Thus a superior can object some word otherwise insulting. In this, however, one can sin if the mode of due correction is exceeded, or the subject is dishonored more gravely than he deserved.

Likewise, if light defects are objected jokingly, through fitting recreation, it is urbanity, according to St. Thomas, 2. 2. q. 72, a. 2, provided the other is not saddened nor moved to anger.

Insult is also made by deed, both indirectly, as if you trample or burn another's image or letters, etc.; and directly, as if you strike an honorable man with a staff, place horns at his door, or represent something that injures another's honor. To this belong mockery, illusion, and derision, when done by signs such as wrinkling the nose, stretching the lips, etc., intending the confusion of one's neighbor. If this is grave, or at least the neighbor is gravely saddened by it, they are mortal sins.

Concerning these things note that one who by insult has injured another's honor is bound to restore it, even if reputation was not injured. This can be done either by an honorable and friendly greeting, or invitation to table, or asking pardon, sometimes even on bent knees and before witnesses, according as the injury was grave. It is not necessary in confession to explain the various quality of mortal insult. L. 81, 82; cf. 305.

"Cursing, of which we now speak, is that by which evil is pronounced against someone either by commanding or by wishing. But to will or by command to move toward the evil of another, according to itself, conflicts with charity, by which we love our neighbor; and thus according to its genus it is mortal sin, and so much the graver the more we are bound to love and revere the person whom we curse ... Nevertheless it happens that a word of cursing uttered is venial sin, either because of the smallness of the evil which someone calls down on another by cursing, or also because of the affection of the one who utters words of cursing, while from a light movement, or play, or some subreption, he utters such words, because sins of words are weighed especially from affection." St. Thomas, 2. 2. q. 76, a. 3; L. 83.

343. **What is acedia?** Acedia, or weariness of soul, can be taken in two ways. First, generally, for every slackening of the soul in the exercise of virtues because some labor is joined to it. Second, particularly, for sadness and weariness concerning divine friendship, because it must be preserved through laborious exercises of virtues; and thus someone does not care for that friendship.

Acedia taken in the first way is mortal sin only when, because of it, a work forbidden under mortal sin is committed. Acedia taken in the second way is of itself mortal, because it conflicts with charity toward God. St. Thomas, 2. 2. q. 35; L. 84; E. M.

344. **What are the daughters of acedia?** They are the following. First, malice, by which someone hates spiritual goods and would wish them not to exist; or by which he regrets having done well or having fulfilled what he was bound to do; or by which he contemns God's benefit, for

example by desiring not to have been born, or not to have known Christ, etc. It is mortal from its genus.

Second, pusillanimity and despair concerning salvation, which is also mortal.

Third, rancor, by which those who induce to spiritual things are held in disgust.

Fourth, torpor, when good things are done not with due fervor.

Fifth, wandering of mind, by which someone in the exercise of spiritual things wanders about illicit matters, whether by thought, and it is called curiosity; or by speech, and it is called verbosity; or by restlessness, and it is called restlessness. These are commonly venial. St. Thomas, 2. 2. q. 35; L. 84.

On the Precept of Faith

345. **What is faith, and how is it distinguished?** Supernatural faith, of which we speak here, is defined as: the most firm assent to things revealed by God because of the authority of God revealing. Therefore the material object of faith is every and only truth revealed by God; the formal object is the authority of God revealing. St. Thomas, 2. 2. q. 1.

Faith is one kind formal, another virtual. Formal faith is had when someone believes a truth revealed by God because of the authority of God revealing. Virtual faith is had when formal faith has been had, and habitually endures, and actually influences another act of virtue, as, for example, when someone, without actually eliciting an act of faith, elicits an act of supernatural charity and contrition.

Faith is likewise one kind explicit, another implicit. Explicit faith is that by which some article of faith is believed in itself, under the proper and particular terms under which it is proposed to us; for example, one who believes God one in nature and three in persons, Father, Son, and Holy Spirit, has explicit faith in the Trinity. But implicit faith is that by which something is believed not in itself, but in another in which it is somehow contained; for example, one who believes in Christ, God and man, by that very fact implicitly believes in his twofold will, even if he does not know it. L. 2; St. Thomas, 2. 2. q. 1, aa. 1-7; q. 2, aa. 1, 2, 9, 10; q. 4; E. M.

346. **What are the sins and vices opposed to faith?** Infidelity is opposed to faith, and it is threefold: negative, privative, positive. The first is lack of faith in one who has never heard anything about the true religion. The second is lack of faith in one who, when given the occasion, neglects to acquire for himself knowledge of the faith. The third is lack of faith in one to whom the faith has been sufficiently proposed and who positively rejects it.

Although negative infidelity, as is clear, is not sin, nevertheless it is a penalty of sin, because if such a person had done what was in him, God would not have hidden faith from him. But privative and positive infidelity are most grave sins. The reason is that the former virtually, and the latter formally, contains grave contempt and injury of the authority of God revealing. Moreover faith is the beginning, foundation, and root of justification. Trent, Session 6, c. 8. Therefore one who voluntarily deprives himself of faith likewise deprives himself of justification, and therefore sins as gravely as possible.

Heresy is also opposed to faith, and it is twofold: formal and material. The first is a voluntary and pertinacious error against some truth of faith proposed by the Church, in one who has received the faith. The second is that by which someone adheres to error, but without pertinacity. Now to err pertinaciously here is not sharply and stubbornly to defend one's error, but to retain it knowingly and voluntarily after the contrary has been sufficiently proposed; or when one knows that the contrary is held by the universal Church of Christ on earth, to whose judgment he prefers his own, whether this happens from vain glory, or the lust of contradicting, or another cause.

Merely material heresy is not sin, for that error proceeds from invincible ignorance of the truth. But formal heresy is a most grave sin, just as infidelity itself, for the same reasons.

Apostasy is referred back to heresy, from which it differs only in this, that heresy is an error contrary to faith only in part; but apostasy is contrary in whole, for it is total defection from the truth of the Christian faith. Therefore it must be judged in the same way as heresy.

Heretics are to be denounced to the Bishop or Inquisitor from C. *Noveritis* of Nicholas III and from natural law, since such a crime tends to common harm. L. 1. 4. nn. 249 ff.; l. 7. n. 248. The bishop has the faculty of proceeding in a case of heresy even against regulars, although exempt. C. 9 *de Haeret*. Those who wish to be converted from heresy to the Catholic Church must before absolution abjure their heresy and make a public profession of faith, according as is prescribed in C. *Si qui voluerint* 8, cau. 1, q. 7, and the Roman Ritual. Struggl q. 2, nn. 1, 9; Suarez D. 16, S. 1; Lugo D. 16, nn. 291 ff.; D. 18, nn. 3 ff.; St. Thomas, 2. 2. qq. 10, 11, 12; L. 17 ff.; *Collectanea* S. C. de P. F. nn. 1682, 1683, 1689; E. M.

347. **Is he a formal heretic who doubts about some article of faith?** Answer: Affirmatively, if he doubts positively, judging uncertain the truth which he knows to be revealed by God and proposed by the Church; for he voluntarily contradicts the faith sufficiently proposed, and therefore there is truly voluntary and pertinacious error against some truth of faith, which is the definition of formal heresy.

Negatively, if he behaves negatively and suspends assent, whether this happens from formal or virtual contempt of divine revelation, or from negligence, or because he wishes to divert the mind to other things, etc. The reason is that, since he affirms nothing against the infallibility of faith, as is supposed, he does not err positively in faith, and therefore is not a heretic, although he sins gravely against faith, either from contempt of the word of God or from negligence by omitting the prescribed act of faith. Struggl q. 2, nn. 12-13.

348. **Is faith necessary?** The internal act of faith is necessary for all adults using reason for justification by necessity of means. For, as the Apostle says in Heb. 11:6, without faith it is impossible to please God. For one approaching God must believe that he is and that he is a rewarder of those seeking him.

"By necessity of means": because faith positively influences justification, and when it is absent even inculpably, justification and salvation cannot be obtained. L. 1; St. Thomas, 2. 2. q. 2, aa. 3, 5; E. M.

349. **What things must be believed by necessity of means?** Two things certainly must be explicitly believed by necessity of means: first, that God is; second, that he is a rewarder. This

is established from the same text of Paul just cited and from propositions 22 and 23 condemned by Innocent XI. E. M.

350. **Must the mysteries of the Trinity and Incarnation also be explicitly believed by necessity of means?** There is a twofold probable opinion: one affirms, the other denies. The reason of the former is that the Incarnation is an object most necessary on the part of the means of our salvation, and the Trinity most necessary on the part of the end; and therefore both must especially be believed. The reason of the latter is that no argument of reason, and no positive document, is present from which that necessity can be drawn. The former opinion is favored, especially for practice, by the Response of the Sacred Office, Jan. 25, 1703. Struggl q. 1, n. 21; L. 2; St. Thomas, 2. 2. q. 2, aa. 7-8; E. M.

351. **Can one who is ignorant of those things that are certainly of necessity of means be absolved?** Answer: Negatively, neither lawfully nor validly. The reason is that such a person, from defect of a simply necessary means, is incapable of justification; therefore he is also incapable of absolution. Besides, no one can have hope of salvation unless he believes God to be a rewarder.

352. **Can one ignorant of the mysteries of the Trinity and Incarnation be absolved?** He cannot lawfully be absolved outside a case of necessity, for example danger of death, because the confessor absolving such a person exposes the sacrament to danger of nullity. Probably he can be absolved validly if he is in invincible ignorance. The reason is the probability itself of the opinion denying necessity of means for such mysteries.

353. **Is the internal act of faith also necessary for adults by necessity of precept sometime in life?** Answer: Affirmatively. Proof: first, from 1 John 3:23: "This is his commandment, that we believe in the name of his Son, Jesus Christ"; second, from the first proposition condemned by Alexander VII, and from propositions 17 and 65 condemned by Innocent XI. E. M.

354. **When does the precept of faith oblige?** The precept of faith urges per se and by reason of itself: first, after the completed use of reason, for beginning the Christian life, according to St. Thomas, 1. 2. q. 89, a. 6, and others, although others deny; second, when the truth of our faith has been sufficiently proposed to an adult infidel or heretic; third, at the point of death, according to some, for tending more proximately to God; fourth, several times in life, at least according to many once a year, according to many others every two months, three months, or even six months, and according to some every month.

It urges accidentally: first, when grave temptation urges which cannot otherwise be overcome, and then the obligation arises from the precept of faith itself if the temptations concern faith; otherwise if they concern other temptations. Second, by reason of another precept, when, for example, an act of contrition must be placed in confession, which, since it must proceed from faith, cannot exist without some act of faith, at least virtual and implicit, concerning its proper object or motive. Third, after a fall into heresy, or after faith has been denied, and whenever an exterior profession of faith must be made. Struggl q. 1, nn. 30, 33-35, 46; Suarez D. 14, S. 2; L. 5-8, 11, 20; E. M.

355. **Note:** First, Mazzotta has this, *de Virt. Theol.*, C. 1, § 1: "Anyone in the first moral instant of the use of reason, if he is sufficiently instructed and adverts to this obligation, is bound by divine

precept to elicit these acts ... so that, if he delays for a notable time, he sins gravely against this precept."

Second, in those who have already learned and believed the truths to be held by faith, acts of virtual and implicit faith generally suffice. Therefore this precept is sufficiently fulfilled by exercising other acts of religion. Hence one satisfies the precept who devoutly hears Mass, adores the Crucifix, prays, makes the sign of the cross, receives the sacraments.

Third, by at least general and implicit faith it is necessary to believe all things revealed by God, namely it is necessary that all those things generally be believed which have been revealed by God and proposed by the Church. For the authority of God revealing requires this. Struggl q. 1, n. 35; L. 7; St. Thomas, 2. 2. q. 2, aa. 5-6; Benedict XIV, Constitution *Etsi minime*, Feb. 7, 1742, § 18.

356. **What things must be explicitly believed by necessity of precept?** "Explicitly by necessity of precept there must be known and believed, at least in substance: first, the Apostles' Creed; second, the Lord's Prayer and the Angelic Salutation; third, the precepts of the Decalogue and of the Church; fourth, the sacraments that are necessary for each person, such as baptism, Eucharist, and penance. For concerning the others it suffices to have implicit faith, since explicit faith is necessary only for those who receive them." L. H. A. Tr. 4, n. 3.

Proof is from common practice and the common authority of theologians. The reason is that these contain the substantial heads and foundations of Religion, which someone must profess, and the necessary precepts according to which he must live. E. M.

357. **Note: As to the Creed.** Suarez and Lugo think not improbable the opinion denying the necessity of explicitly believing the perpetual virginity of the Blessed Mary.

Although the Passion of Christ must be explicitly believed under grave obligation, nevertheless that circumstance, "under Pontius Pilate," does not pertain to faith to be explicitly held.

"Crucified": more probably the crucifixion, expressing the kind of death, must be explicitly believed; for thus 1 Cor. 1:23 says, "We preach Christ crucified." And certainly the Church constantly preaches this kind of death to the faithful.

But the burial of Christ must be explicitly believed, yet more probably only under light obligation, because it is a light circumstance. Lugo D. 12, n. 21.

"He descended into hell": more probably this is not to be explicitly believed under grave obligation, indeed not even under light obligation according to Suarez, because it is not easily understood by the faithful. But Lugo contradicts this.

Although the Resurrection from the dead must be explicitly believed under grave obligation, because it is a substantial thing, as is established from Paul, 1 Cor. 15, nevertheless that circumstance of time, "on the third day," is not to be explicitly believed.

"He sits at the right hand of the Father": probably, according to several, this is not to be explicitly believed, because it is difficult for the faithful to understand; others, however, affirm that it must be explicitly believed as to honor, power, and supreme dominion.

"Thence he will come to judge the living and the dead": according to Lugo, these words "the living and the dead" are not to be explicitly believed because of the variety of explanations.

"I believe in the Holy Spirit": procession from the Father and the Son is not to be explicitly believed by necessity of precept by individual faithful, although it is of faith. For many things are of faith that must not be known by all.

"The holy Catholic Church": concerning the Church three things must be known and believed, namely that it is: first, one on earth under one visible head; second, governed and preserved by the assistance of the Holy Spirit; third, infallible in matters of faith and morals, and to be heard by all. This last, however, although certain and of faith, is not explicitly contained in the Creed. As to its holiness, it suffices to know and believe that it is holy because of its head, doctrine, sacraments, and canonized Saints, because concerning the others different people think differently. As to its catholicity, it suffices to profess obedience to it in the person of its visible head.

"The communion of Saints": whether this must be explicitly believed, and as to some communication of prayers only, or only implicitly in the unity of the Church; whether under grave or light obligation, the Doctors do not agree. Whatever the case, in practice all seem to know it sufficiently, since they often say, "pray for me," and frequently invoke the Saints. Trent, Session 4; Session 6, cc. 9, 12-15; Lugo D. 13, nn. 65, 75, 82, 85, 87, 112; Suarez D. 13, SS. 2, 4; St. Thomas, 2. 2. q. 1, aa. 8-9; E. M.

358. **As to the Decalogue.** It must be believed explicitly, because the precepts of the Decalogue are revealed so that they be observed by all. Now what is revealed is to be believed by divine faith; and what is revealed for directing the acts of individuals is to be known explicitly by all. Nevertheless several contradict this, because precepts of this kind can be known in another way than through revelation.

359. **As to the Precepts of the Church.** These are not to be believed by divine faith, because they are not revealed by God, at least insofar as they are precepts of the Church. Only this must be believed: that the Church has from divine authority the right of making precepts. But the principal precepts of the Church, whose observance pertains to all the faithful, must be known by all: namely the precept of observing feasts and hearing Mass on them, the precept of annual confession, Easter Communion, fasting and abstinence. To the obligation of knowing precepts is also referred the fact that individuals must necessarily know the duties of their own state or condition.

360. **As to the Eucharist.** All must know and believe Christ's real presence in it. Likewise, according to the common opinion, it must be explicitly believed that Christ is whole in each species, and more probably also that he is offered in sacrifice, since all must assist at the sacrifice of the Mass. But more probably transubstantiation need not be explicitly believed. Lugo D. 13, n. 121.

361. **As to the Lord's Prayer.** All must know under grave obligation that God is to be prayed to with hope and confidence, and that all goods, both of soul and of body, and graces for escaping evils of the soul, are to be sought from him. In it God is believed as providing, helping, forgiving, rewarding. There is likewise an obligation, at least under light obligation, of reciting

it sometime, according to the common opinion. Lugo D. 13, n. 133; Suarez D. 13, S. 4, n. 12; L. 3.

362. **Must the aforesaid things be known by memory?** Not all are bound under mortal sin to know the aforesaid things by memory, or in that order, or in those words in which they are proposed; but it suffices to know them in a rough way and as to substance. For custom has shown that the obligation of learning these things by memory is not beyond venial sin; as neither is it beyond venial sin not to know how to make the cross. Thus Sanchez, against Sylvius, who teaches that it is mortal. And as to the Angelic Salutation, Father Gury, n. 204, and others affirm that it is to be known and recited only from fittingness. Suarez D. 13, S. 5, n. 8; *de Relig.* T. 2, l. 3 *de Orat.*, c. 6, nn. 8 ff.; L. 3.

363. **Can those who are ignorant of the things that must be known by necessity of precept and under mortal sin be absolved?** Answer: Affirmatively, because although they sinned by omitting to learn, nevertheless they can be sorry for this, with the purpose of learning. But the pastor, like a parent with children, is bound under mortal sin, per se or through another, to teach his sheep at least those things which they are bound under mortal sin to know. L. 3.

364. **Is there also a precept of the external act of faith?** As to the external act of faith, there is a negative precept prohibiting denial of the true faith or profession of a false one. There is likewise an affirmative precept obliging sometimes to confess the faith even with danger of life.

Proof of the first part: to deny the true faith, or to profess a false one, is to deny God and Christ. But Christ says: "He who shall deny me before men, I also will deny him before my Father who is in heaven." Matt. 10:33.

Proof of the second part: ordered charity, which we owe to God and neighbor, requires that when God's honor and the spiritual utility of neighbor would be withdrawn privatively or contrariwise, we sometimes despise temporal goods and even life in order to profess the faith. St. Thomas, 2. 2. q. 3, aa. 1-2.

"Privatively," as if a great honor to God and great utility to neighbor would therefore cease. "Contrariwise," as if otherwise God would be affected by injury, or neighbor by grave evil, for example if the conversion or perversion of others, contempt of religion, or scandal depended on it. Suarez D. 4, S. 2; L. 10; Laymann c. 11, n. 2; St. Thomas, 2. 2. q. 3, a. 2; *Collectanea* S. C. de P. F. nn. 1647, 1648, 1653, 1657, 1683, 1827.

By positive law the following are bound to profession of faith: all to be baptized, either by themselves or by sponsors; converted heretics; bishops before consecration and before the expedition of the letters of their provision, Trent, Session 25, c. 2 *de R.*; Sixtus V, Constitution *Romanus*; Gregory XIV, Constitution *Onus Apostolicae*; all regular prelates, Pius IV, Constitution *Iniunctum nobis*, Nov. 13, 1564. This Constitution, however, has not been received by usage as to those regular prelates who are not immediately placed over governance by the Holy See, but either by a chapter or by a higher superior. Thesaurus, *de Poenis*, c. 1, v. *Fides*.

Those about to have ecclesiastical benefices, and those who must gather in diocesan synod, Trent l. c.; likewise those provided with a benefice with cure of souls, within two months from possession acquired, before the bishop or his vicar general; otherwise they do not make the fruits their own.

Canons of a cathedral church, who are also bound to do this in chapter; otherwise they too do not make the fruits their own, although they can gain distributions for their assistance in choir, S. C. C. 1726; Trent, Session 24, c. 12 *de R*. Those to be promoted to scholastic degrees of doctor, master, etc. Pius IV, Constitution *In Sacrosancta*, Nov. 13, 1564, § V. Doctors and Masters of Universities at the beginning of each year must emit a solemn oath by which they are bound to handing down orthodox doctrine. Trent, Session 25, c. 2 *de R*.

The profession of faith must be made altogether in the form proposed by Pius IV, Constitution *Iniunctum nobis*. A few things must be added, however, so that account may also be taken of the decrees of the Vatican Council. S. C. C. Jan. 20, 1877. Made otherwise, it will not be useful for avoiding the canonical penalties enacted against those who omit this profession. Roman Council of Benedict XIII, Tit. 1, c. 1; Benedict XIV, Inst. 60; Ferraris v. *Fidei Professio*; L. 41; cited *Collectanea* n. 1670; E. M.

Blasphemy is opposed to confession of faith. It will be discussed under the second precept of the Decalogue. St. Thomas, 2. 2. q. 13.

365. **Resolutions:** First, one who, when questioned by private authority, either remains silent, or answers obscurely, or says that he does not wish to answer, that he is not being questioned by right, that he is not bound nor willing to tell others what he himself believes, and in similar ways evades the question, unless the circumstances require something else, does not seem to deny the faith, but to be unwilling to betray himself. Hence, if he can be freed from troublesome inquiry in this way, it is lawful. By private authority; for as regards public authority, it is regularly not lawful. Cf. proposition 18 condemned by Innocent XI; St. Thomas, 2. 2. q. 3, a. 2; Suarez D. 14, S. 3; Lugo D. 14, nn. 37, 39. One who flees does not deny the faith, but shows it; and although this is lawful, nevertheless it is not lawful for a pastor at a time when his sheep need his work. On the contrary, if it is more advantageous to them that he withdraw for a time, and reserve himself for their good, he is bound to flee. Lugo D. 14, nn. 42, 43, 96.

When you are not asked about the faith, it is not only lawful, but often better for the honor of God and the utility of neighbor to conceal the faith than to confess it: for example, if by coming among heretics you will do more good; or if more evil would follow from confession, for example disturbance, killings, exacerbation of a tyrant, or danger of defection if you were tortured. Hence it is usually rash to offer oneself voluntarily. Struggl q. 1, n. 41.

Second, one does not sin against faith who visits the temples of heretics or infidels from mere curiosity, provided scandal, danger of perversion, or a command prohibiting this is excluded. Likewise, one who is present at the wedding feast or burial of heretics does not sin, because these things do not properly pertain to faith, and the aforesaid gatherings are regarded as merely civil. Nor does one sin against faith who, while passing through places of heretics, from fear of grave danger eats meat on a forbidden day lest he be recognized as Catholic, because this of itself is not a sign of heresy. It would be otherwise, however, if he ate meat even from fear of death when compelled to this in hatred of the faith. *Collectanea* S. C. de P. F. nn. 1829, 1833, 1843, 1855; Struggl q. 1, nn. 44, 45; Lugo D. 14, nn. 156 ff.

Third, it is lawful to use signs or clothing of infidels if they are clothing or signs proper to some region and distinguishing one people from another people, even if that region is filled with infidels, because these of themselves do not refer to religion. It is still more probable that this is lawful, though only for a grave cause, if the clothing distinguishes sect from sect, because then its primary use is for covering the body, and only secondarily for distinguishing the sect. Hence it is lawful for a missionary, in order to conceal himself, to put on the garments of ministers of a false religion, so that he appears to be one of them. Gury, Case 196; L. 15; Struggl l. c. n. 43; Lugo D. 14, nn. 70-97. It is otherwise, however, if the clothing or signs are protestative of a false religion, as are the vestments and ornaments that priests use in the exercise of their functions. Hence neither the burning of incense, nor genuflection before an idol, nor taking the heretical supper, etc., is lawful, even if these are done only externally. Cited *Collectanea* nn. 1640, 1649, 1650, 1651, 1663.

Fourth, Catholics living among heretics, if by command of the magistrate they contract marriage before a heretical minister, sin against faith, even if they have contracted before, or intend afterward to contract, before a Catholic priest. For by that ceremony the contracting party testifies that he recognizes him as a minister of the true faith; and this is intrinsically evil, because the authority of the minister, and consequently his doctrine, is increased, and one concurs in heretical rites which the minister exercises by that act. They lawfully contract, however, before the civil magistrate, or rather testify that they have contracted, provided they contract beforehand or afterward in the Catholic rite. For this action is instituted for a political end, namely that the parties be held as spouses and the offspring not be considered illegitimate. Benedict XIV, Constitution *Ex quo singulari*, 1742; L. 12 ff., 18; Lugo D. 14, nn. 156 ff.; E. M.

366. **What communication is prohibited to the faithful with Jews?** "Besides communication in matters of Religion and of marriage, the faithful are prohibited with Jews from: first, living together; second, using their physicians or medicine; third, being present by agreement and society at a meal or the same bath; fourth, acting as servant or nurse in their homes; fifth, leaving them legacies in a will; sixth, committing to them public offices among Christians. Thus from Canon Law. Moreover the end of these prohibitions is partly the dignity of the Christian Religion, partly the danger of subversion. Therefore when some communication from those listed is gravely opposed to this end, it is a mortal sin; but when only lightly, it is a venial sin. Besides, on account of necessity or another reasonable cause, it can happen that some communication with Jews is not sinful even venially," Struggl q. 2, n. 5; La-Croix l. 3, n. 89, especially when custom intervenes, as today it obtains almost everywhere, Scavini l. 2, n. 809. C. *Nullus*, C. *Omnes*, caus. 28, q. 1; C. *Iudaei*, *de Iud. Sarac.*, etc.; L. 18; E. M.

367. **What communication is prohibited with heretics?** First, communication is simply prohibited with heretics if they are excommunicated persons to be avoided. Second, communication with them is prohibited in divine things, namely by communicating in their rites proper to the heretical sect, but by no means by communicating with them in our rites if they are tolerated, for example by hearing Mass in church with a heretic. Third, communication with them is prohibited even in civil matters, although they are tolerated, whenever scandal and danger of perversion are present. Fourth, lay people especially are prohibited from disputing publicly or privately with heretics. C. *Quicumque* 2, § 1, *de Haeret*. in

6; Struggl q. 2, nn. 32, 33; Lugo D. 22, nn. 1 ff.; Suarez D. 20, S. 1; D. 21, S. 3, n. 4; St. Thomas, 2. 2. q. 10, a. 7; Quodl. 10, a. 15; E. M.

368. **What communication is prohibited to the faithful with pagans?** "By both positive divine law and ecclesiastical law, under mortal sin, communication is prohibited: first, in those matters which pertain to Religion, for example in their dogmas, ceremonies, and rites. The reason is that one communicating in such a way uses signs and exercises actions which of themselves signify profession of a false Religion, and therefore at least externally denies the true faith. Second, by divine and ecclesiastical law likewise, the faithful are prohibited from entering marriage with pagans, indeed also with Jews. C. *Cave*, 28, q. 1. Third, on the contrary, in civil actions the faithful are prohibited by no law from communicating with pagans, when danger of perversion is absent." Struggl q. 2, n. 4; 1 Cor. 10:27; St. Thomas, 2. 2. q. 10, aa. 9, 10; E. M.

369. **Note:** "Christian princes can permit Jews, pagans, or heretics liberty of conscience only for the good of Religion and for hope of conversion; but not for temporal advantage. The Church, however, and any supreme prince, can indeed compel Jewish and pagan subjects to hear our faith." L. 18; St. Thomas, 2. 2. q. 10, aa. 8, 10, 11; q. 12, a. 2; E. M.

On the Precept of Hope

370. **What is hope?** Hope is an act of the will by which, with a love of concupiscence, we desire God and divine things for ourselves before all other desirable things, and by which, from God's helping power and fidelity in promises, we firmly expect future beatitude and the means for obtaining it. Hence the primary material object of hope is God and eternal beatitude; its secondary object is the divine help of grace and our good works. The formal object of hope, according to its various acts or formalities, is the respective goodness of God, God's helping power, and God's fidelity in promises. "Hope," says St. Thomas, 2. 2. q. 17, a. 6, ad 3 and a. 8, "makes one tend toward God as a certain final good to be obtained, and as a certain effective help for assistance." Trent, Session 6, c. 31; Struggl q. 3, nn. 1, 2, 3; q. 4, n. 2; Würzburg Theology nn. 233 ff.; Laymann l. 2, Tr. 2, C. 1, n. 6; St. Thomas, 3 D. 26, qq. 1, 2; *de Virtut*. q. 7, single question *de Spe*, aa. 1, 3; 2. 2. q. 17; q. 18, a. 4; L. 20, 21; E. M.

371. **What are the sins and vices opposed to hope?** By reason of the first act, hatred of God is opposed to hope, by which someone abominates God as hostile to him because of vengeance for sins, or by which someone turns away from God, from eternal beatitude, and wishes to place his happiness in some thing other than God. Hence it is also a mortal sin opposed to hope to love earthly things more than heavenly ones with a love of concupiscence; for example, if someone were so disposed that he would desire to spend his life perpetually here and leave heaven to God, if God would leave earth to him.

By reason of the other act, despair and presumption are opposed to hope. The former is voluntary distrust of obtaining beatitude and the means necessary for attaining it. The latter is inordinate confidence of obtaining beatitude without the means ordained by God. Presumption is chiefly

committed: first, if you presume to obtain eternal life by the proper powers of nature; second, if you expect it without penance, without labor, from God's mercy alone. Struggl q. 3, nn. 11, 14-16; Suarez D. 1, SS. 2, 3; D. 2, S. 3; St. Thomas, 2. 2. qq. 20, 21; L. 20, 21.

372. **Is there smallness of matter in sins against hope?** Answer: Negatively as to the aforesaid hatred of God and love of creatures, if the act is perfect, as is clear in itself.

Negatively as to despair, if it is perfect and properly such, for it is most injurious to divine Mercy. It is otherwise, however, if it is imperfect and improperly such, as often happens in sadness and impatience. Here, however, it must be noted that even devout souls are sometimes shaken by nearly continual temptations of despair. It is not easily to be believed that they have sinned gravely, although they think they have given consent to them; just as excessive fear about the danger of salvation is not to be confused with despair properly so called.

Affirmatively as to presumption, although it is grave from its genus. Bonacina, cited by La-Croix 128, teaches that he sins only venially who from presumption concerning God's goodness would sin venially, or would delay doing penance about mortal sin until the following day. Suarez D. 2, S. 3; St. Thomas, 2. 2. q. 20, aa. 1, 3; L. 20.

373. **Is it a sin against hope to wish for death from weariness?** Answer: Negatively of itself, because this is not to withdraw from God as from one's ultimate end. Nor generally is it grave sin, but only venial, unless express rebellion against the order of divine Providence is present. Cf. 386.

374. **Is it presumption to sin under hope of pardon, or to persevere in sin from the same hope of pardon?** "It must be said that to sin with the purpose of persevering in sin under hope of pardon pertains to presumption, and this does not lessen, but increases sin." St. Thomas, 2. 2. q. 21, a. 2, ad 3. Say the same of one who sins, or increases sins, or perseveres in sin from hope of pardon as from the motive or reason for sinning: because God forgives sins, or forgives ten sins as easily as five, now or at the end of life.

It is not presumption, however, to sin from passion and frailty with hope of pardon to be received at some time, and with the purpose of doing penance and thus obtaining remission of sins; even if this act of hope, whether previous or concomitant, removes the greater fear of sin and is accidentally an occasion of sinning more freely. Indeed "this lessens the sin, because by this the will seems to be less firmly fixed in sinning." St. Thomas, l. c. And certainly "while someone actually wills to sin or actually sins, it is good to hope for pardon of the sin and to propose afterward to repent." Struggl q. 3, n. 17; La-Croix 126; L. 21.

375. **Is it presumption to commit the same sin several times because it is accused as easily when committed several times as when committed once?** Answer: Negatively. The reason is that then one does not sin from the ease of obtaining pardon, but from the ease of confessing, although this is an entirely depraved disposition. La-Croix 127.

376. **Is hope necessary?** In adults hope is required for salvation by necessity of means. For a human being cannot come to obtain God, his ultimate end, unless by his own acts he tends toward him; but this cannot be done without hope. The just need hope so that they can ask for

grace to persevere. Sinners need hope so that they may be disposed for justification. This is also established from Trent, Session 6, cc. 6, 13.

Hope is also necessary by necessity of precept. For there is a true precept of eliciting acts of hope several times in life. This is established from the first proposition condemned by Alexander VII.

When and in what way the precept of hope urges is to be determined by the same rules which we established above concerning faith. Cf. 354. For the rest, as for the precept of faith, so also for the precept of hope, no anxiety is to be had in practice. For virtual hope suffices for fulfilling it: by praying, receiving the sacraments, and exercising other pious works. Those who are lacking in these things, since this ordinarily happens without advertence, ought to have no disturbance as to the past. Suarez D. 2, S. 1, n. 3; Struggl q. 3, nn. 7 ff.; St. Thomas, 2. 2. q. 22, a. 1; L. 20; E. M.

On the Precept of Charity

I. On the Necessity of Charity

377. **What is charity?** Charity is an act of the will by which we love God as the supreme good with a love of benevolence and friendship for his own sake, and our neighbor for God's sake. Therefore the primary material object of charity is God, the secondary object is neighbor. Its formal object is the absolute goodness of God. St. Thomas, 2. 2. qq. 23, 25, 27; L. 22, 23; E. M.

378. **Is there a special precept of charity toward God?** Answer: Affirmatively. Proof: Matt. 22:37: "You shall love the Lord your God with your whole heart ... this is the greatest and first commandment." The same is demonstrated from the first proposition condemned by Alexander VIII. The precept of charity, as is clear from the cited sacred text, obliges us to love God above all things, not indeed intensively, although this is most fitting, but appreciatively, so that we value no creature more than God and would rather lose all things than gravely offend God. St. Thomas, 2. 2. q. 44; L. 22; E. M.

379. **Resolutions:** First, it is mortal and most grave sin, and admits no smallness of matter, since it is opposed to God's infinite goodness, if someone formally hates God with hatred of malevolence and enmity, for example if someone wishes God not to exist and wishes to be hated by God.

Second, one sins mortally if he loves God with a love appreciatively less than creatures.

Third, one likewise sins against charity toward God if he does not love God for himself, as the ultimate end of all things, but only for another thing, for example eternal life or the avoidance of hell. This is mortal because, namely, God would not be loved appreciatively above all things if something other than him were loved by actual intention as the principal end. "Principal," because God can be loved because of the reward of eternal life, but less principally. "By actual intention," because otherwise, by loving eternal life and other gifts of God, from the very fact that such an act is right in itself, eternal life or the other gifts of God are always at least implicitly and in act exercised ordered

to God as to the supreme end. L. 23, 24; St. Thomas, 2. 2. q. 34, aa. 1, 2; Struggl q. 5, n. 2; Sanchez l. 2, C. 35, n. 3.

380. **Is schism a special sin against charity?** "The sin of schism is properly a special sin from the fact that it intends to separate itself from the unity which charity makes; and this not only unites one person to another by the spiritual bond of love, but also unites the whole Church in unity of spirit. And therefore those are properly called schismatics who of their own accord and intention separate themselves from the unity of the Church ... And therefore those are called schismatics who refuse to be subject to the Supreme Pontiff and who refuse to communicate with the members of the Church subject to him ... Schism of itself is opposed to the ecclesiastical unity of charity." St. Thomas, 2. 2. q. 39, a. 1; q. 42, a. 1, ad 2.

381. **When does the precept of charity toward God urge?** First, there is no precept of acting always from the motive of charity. This is proved from the eighth proposition condemned by Alexander VIII.

Second, the precept of charity urges more frequently than once in life, or every five years. This is proved from propositions 5, 6, and 7 condemned by Innocent XI.

Third, when and how the precept of charity urges is to be determined by the same rules which we established above concerning faith. Cf. 354. St. Alphonsus thinks that one who delays an act of charity for a month is not excused from mortal sin. But this opinion rests on no demonstrative argument and does not exceed the limits of probability. Moreover the same holy Doctor considers it most probable that the precept of charity urges at the article of death. If the discussion concerns those for whom no other means of justification is available, this is most truly affirmed. But if such necessity is absent, even this opinion does not exceed the limits of probability.

Fourth, the precept of charity is satisfied by working toward this end, namely of pleasing God; by avoiding sin because it displeases God; by praying that the name of God be sanctified and that his will be done; by rejoicing in the divine perfections; by wishing that no one offend God; by eliciting an act of contrition, because contrition includes the motive of charity, but by no means by attrition, because it does not rest on the motive of charity, etc. Therefore no one who lives piously ought to be anxious about this precept. Likewise, because of the various opinions of Doctors and because of lack of advertence, as in the precept of faith and hope, sin is rarely committed here. L. 8, 23; H. A. 13; Struggl q. 4, nn. 7-10; E. M.

382. **Is there a precept of charity toward neighbor?** Charity toward neighbor commands love of self and neighbor, but in ordered fashion; for not every neighbor is a neighbor to us in the same way. Since an enemy also is a neighbor, it also commands love of enemies. Besides this interior love, since charity by its nature is not sterile but operative, it therefore commands certain exterior works, among which almsgiving and fraternal correction hold a special place; these are works of mercy, the one corporal, the other spiritual. For mercy is the virtue which, from compassion, inclines us to assist another's misery.

The same charity, on the contrary, prohibits hatred of malevolence and enmity toward neighbor, which from its genus is mortal. For by it we will evil to our neighbor as it is evil for him, and this is

always inordinate and repugnant to charity. There is, however, smallness of matter, since the evil that we will for our neighbor can be great or small. Besides this internal act, charity consequently prohibits us by our exterior actions from bringing spiritual damage to his salvation through scandal, or from doing him other damage either as regards other goods of soul or as regards goods of body.

This last matter will be treated in the precepts of the Decalogue; here we shall speak only of the remaining matters. Moreover there truly is a precept of loving one's neighbor with a true and internal affection, as is established from John 15:12, 17 and from propositions 10 and 11 condemned by Innocent XI; and also with external love, 1 John 3:15 ff.; St. Thomas, 2. 2. q. 31, a. 2. But one sufficiently satisfies this precept by a certain general love which excludes no one, and therefore by reciting the Lord's Prayer, in which you have both an internal and an external act.

A precept of this kind obliges per se when the precept of charity toward God obliges per se. For it is like it. Matt. 22:39. It obliges accidentally: first, if hatred against neighbor cannot be repelled unless an act of love is elicited; for one who is bound to the end is bound to the means. Second, when a neighbor is in grave necessity; otherwise the precept would be fruitless. L. 8; St. Thomas, 2. 2. q. 25; q. 27, a. 8; q. 30; q. 31; q. 34, aa. 3, 4; q. 44; Struggl q. 6, n. 4; Salm. 17; D'Annibale, ed. 3, P. 2, n. 81; E. M.

383. **What are the sins opposed to charity?** From the Angelic Doctor, 2. 2, they are: first, hatred of God and neighbor, which is opposed to the very love of charity, q. 34. Second, acedia, which is opposed to charity's joy concerning the divine good, q. 35. Third, envy, which is opposed to joy concerning the good of neighbor, q. 36. Third, discord, which is in the heart and is opposed to peace, q. 37. Fourth, contention, which is in the mouth and is likewise opposed to peace, q. 38. Fifth, schism, brawling, war, and sedition, which pertain to work and are likewise opposed to peace, qq. 39-42. Scandal, which is opposed to beneficence, q. 43.

II. On the Order of Charity

384. **What order must be observed in charity toward neighbor?** By the order of charity each person is bound after God to love: first, himself according to spiritual goods, insofar as he wills for himself God as his end, that is, the supreme and uniquely necessary good, more than for another; second, his neighbor as regards the same goods; third, himself as regards intrinsic bodily goods, such as life, health, etc.; fourth, his neighbor as regards the same; fifth, finally himself, and then his neighbor, as regards external goods, such as reputation, honor, and riches.

The reason is that love of self is the rule of love of neighbor. But the rule is prior to and more important than what is ruled. Therefore love of self always precedes and is preferred to love of neighbor where there is question of goods of the same order and of equal necessity. For the order to be observed in charity regards the love itself, the goods, and the persons.

As regards love, one must attend to whether it is merely appreciative love and simple complacency, or also love of effective benevolence and exterior work.

As regards persons, there must be considered both comparison to God, according to which some are more excellent and better than others, and comparison to us, according to which some are more

closely joined to us than others; but with ourselves we do not have conjunction, but unity and identity.

As regards goods, some are more excellent and more necessary than others.

More excellent: supernatural goods are to be preferred to natural goods. Likewise the common good is to be preferred to the private good, because the common good of many is more divine than the private good of one. Intrinsic natural goods, life, health, and integrity of members, are to be preferred to extrinsic goods, reputation, honor, and riches. Reputation and honor, however, with respect to riches are of a higher order, because they are something spiritual and moral.

Necessity, whether temporal or spiritual, is distinguished as threefold: first, extreme, when danger of eternal damnation, or of death or another evil almost equal to death, so threatens one's neighbor that, morally speaking, he cannot escape it without another's help. Second, grave, when someone suffers great danger to the salvation of his soul, or to bodily life, or of another grave evil, which he cannot escape without great difficulty. Third, common or moderate, in which someone can provide for himself without great difficulty. In the spiritual order ordinary sinners are in this kind of necessity, who, if they were willing to apply some effort, would rise from their evil state; in the temporal order generally beggar-paupers are in it, for whom life, according to their condition, is not too troublesome and miserable. Tamburini, *Expl. Dec.* l. 5, C. 1, § 1, nn. 4 ff.; § 2, nn. 5 ff.; Suarez *de Carit.* D. 9, S. 2, n. 4; St. Thomas, 2. 2. q. 26, aa. 4, 5; q. 31, a. 3; q. 44, aa. 7, 8; L. 25, 27, 31; H. A. 18.

385. **Resolutions:** First, he sins against charity toward himself gravely or lightly according to the gravity of the matter who neglects due care of soul or body.

It is indeed lawful, speaking of itself, to deprive oneself of spiritual goods not necessary for salvation on account of the spiritual or bodily good of one's neighbor: for example, to omit entering religion, lest there be no one to devote work to a parish, a seminary, or a mission, or to feeding one's parents or children. Indeed someone can desire and procure for his neighbor greater spiritual goods, not necessary, than for himself, provided contempt for them is excluded.

But it is not lawful to sin lightly or gravely, or to undergo proximate danger of sinning, in order to prevent another's sin, when your fall appears somehow certain. It is otherwise if that danger can be made remote, so that you rightly trust that you will not fall. L. 26; l. 4, n. 78; l. 5, n. 63; l. 6, n. 453; H. A. 14.

Second, in extreme spiritual necessity one's neighbor must be helped even with certain danger of life, provided these four things are established: first, that there is equally certain hope of helping him; second, that the neighbor has no one else by whom he may be relieved; third, that the neighbor is certainly to be damned unless he is helped by you, so that it is established to you that the neighbor cannot free himself from sin by baptism, by the sacrament of penance, or at least by perfect contrition; fourth, that no graver evil threatens from it, for example if, because someone dies for this reason, the salvation of many others is endangered. L. 27; St. Thomas, 2. 2. q. 26, a. 5; Reginald, *Prax. For. Poenit.* l. 4, c. 25, S. 6, n. 357.

Third, in extreme temporal necessity one's neighbor must ordinarily be helped with great inconvenience, but not with the greatest, such as even for a rich person would be the giving of a large

sum of money. The reason is that on one side the life of one's neighbor is a more excellent good than some good of ours; and on the other side, since love of self precedes in order, no one is bound to undergo so great an inconvenience for others. L. 31; St. Thomas, 2. 2. q. 66, a. 7.

Fourth, in grave necessity of either order, no one is bound to help his neighbor with grave inconvenience to himself, excluding, however, the title of justice, piety, office, or common damage. The reason is the same: namely, the good of one's neighbor can be more excellent than some good of ours; but since love of self always precedes by the force of charity itself, charity therefore does not command procuring the neighbor's good except always with a lesser detriment to ourselves than the neighbor's damage which presses. "Excluding, etc.": hence pastors, namely bishops and parish priests, are bound from justice to minister the necessary sacraments to their sheep, such as baptism and penance, with danger of life, but not the others. Nor can a pastor then renounce his office, although he can substitute others with the just permission of the Ordinary. A pastor is also bound, with great temporal damage to himself, to procure great spiritual utility for a subject. L. 27; St. Thomas, l. c.

Fifth, in common necessity of either order, one's neighbor must be helped indeed with some inconvenience, because love of neighbor requires this, but only a light one. For there can be only a light obligation of charity when the neighbor can rather easily remove himself from that necessity, or when it is not too troublesome to him. We are not bound, however, to help all who are placed in common necessity. For this is impossible; and if it could be done, it would no longer be a light inconvenience. L. 32; St. Thomas, l. c.

386. **Is it against charity toward oneself to wish for death because of life's misfortunes?**
Answer: Negatively, if it is done from desire for a better life or eternal happiness, as is clear in itself; or when life is so troublesome that it is judged harsher than death itself. Phil. 1:21-23; Ecclus. 30:17; 1 Macc. 3:59, 60.

Affirmatively, if this is done from weariness of life and dejection of mind, which nevertheless does not exceed venial sin if that desire is ineffectual and does not wish to oppose the order of divine Providence. Defect of advertence and deliberation also usually excuses. Struggl q. 5, n. 12; Viva on propositions 13-15 of Innocent XI, n. 3; L. 30; l. 5, n. 22; St. Thomas, 2. 2. q. 64, a. 5, ad 3.

387. **In those things that are necessary for life, is it lawful to prefer another to oneself?** Some probably deny, because the order of charity demands that, other things being equal, one love himself more than his neighbor. Make an exception, however, if the public good required saving the life of another. Others probably affirm; for in these things one does not really love his neighbor more than himself, but loves the good of heroic virtue more than himself. Make an exception, however, if the one who exposes himself is necessary to the republic or to his family. L. l. 3, n. 366; H. A. Tr. 8, n. 1; St. Thomas, 3 D. 29, a. 5, ad 3; Struggl 20, Tr. 7, q. 3, n. 8.

388. **What order must be observed among neighbors?** Other things being equal, with the love of simple complacency and joy concerning goods possessed, which is followed by honor, worship, and reverence, those who are better are to be loved more appreciatively. The reason is that they are more joined to the principal object of charity, which is God. And thus parents are to be

loved more than children or wife, benefactors more than those benefited; for these have a greater likeness with God, the common parent and benefactor of all.

Likewise, other things being equal, with the love of benevolence and desire, by which we wish for another a good not yet possessed, and which beneficence follows, those who are more closely joined to us are to be loved more, as regards those goods that are due to such conjunction. The reason is that communication of goods is the foundation of friendship and charity. And thus in matters pertaining to civil communication our fellow citizens must be preferred to others; in military matters, fellow soldiers. In spiritual helps, however, greater account must be taken of those who are reckoned our children, fathers, or brothers according to the spirit. Nevertheless it is not improbably held that carnal parents are to be preferred, even in spiritual matters, partly because their conjunction with us is founded even in these; partly because carnal conjunction, as the foundation and basis of other conjunctions, is by its nature prior and more stable, as St. Thomas observes, a. 8. But the grace of charity does not destroy the inclination of nature; it perfects it and directs it to a supernatural end. St. Thomas, a. 7. And what has been said of parents must for the same reason be said of carnal children and brothers, in comparison with spiritual children or brothers.

Finally, in goods pertaining to preserving nature and bodily life, help is to be given, other things being equal: first, to one's wife, because she is one flesh with the husband; second, to children, for whom parents are bound by natural right to provide more than conversely, for, as the Apostle says in 2 Cor. 12:14, children ought not store up treasures for parents, but parents for children, and St. Thomas teaches this, a. 9; third, to parents, and more to the father than the mother, because he obtains a more excellent character of principle, St. Thomas, a. 10; indeed in a case of extreme necessity St. Thomas thinks that parents must be helped before all others, even wife and one's own children, a. 9 and 11, ad 2; for they were the cause and principle of our existing, and therefore equity demands that in extreme necessity we repay as much by freeing them from destruction; fourth, to brothers and sisters; fifth, to other blood relatives; sixth, to benefactors and friends.

"Other things being equal": for example, by the law of charity an outstanding benefactor or friend must rather be aided than a blood relative who is not very close, or who has not deserved well of us. Similarly, even in temporal goods, spiritual brothers seem to be helped more than relatives not very close, since spiritual conjunction is better than carnal. Since, however, this obligation of charity exists only by reason of necessity, it is clear that it generally obliges more where greater necessity is present.

But since there are different degrees both of need and of closeness, it cannot be determined for all cases by a universal rule who is to be helped more. Therefore this requires the judgment of a prudent person. St. Thomas, 2. 2. q. 26; q. 31, a. 3; q. 32, a. 9; q. 44, aa. 7, 8; L. 27.

389. **Is it against charity to desire temporal evil for one's neighbor, or to rejoice in it, because of a good end?** Answer: Negatively, if the due order of charity is preserved, that is, if this is done for a greater good or to avoid a lesser evil. Affirmatively, if the order of charity is perverted. This is confirmed from propositions 13, 14, and 15 condemned by Innocent XI.

Therefore it is lawful to wish temporal evil for one's neighbor, or to rejoice in it: first, on account of the spiritual good of the neighbor himself; second, on account of the common good, whether

spiritual or temporal; third, on account of the good even of several persons, of much greater importance, for example of a family, community, etc.

But it is illicit for a wife to desire the death of her husband because she is unjustly treated badly by him, or to desire the death of her daughter in order to avoid her own trouble because, on account of deformity or poverty, she cannot marry. L. 30; l. 5, nn. 21, 22; St. Thomas, *de Carit.*, single question, a. 8, ad 10; 3 D. 30, q. 1, a. 1, ad 4; Viva on the cited propositions, n. 20; Struggl q. 5, n. 9; E. M.

III. On Love of Enemies

390. **Must enemies also be loved?** It is certain that enemies must be loved in some way, since they are neighbors; and this is established also from the Gospel, Matt. 5:43 ff. This precept, insofar as it is negative, prohibits anyone ever from pursuing his enemy with hatred. Insofar as it is affirmative, it obliges even to positive benevolence and external beneficence according to the necessity in which he is situated.

The question, therefore, is only about the mode of this positive love that must be had by precept; it is explained in the following paragraphs.

391. **Every person is bound per se by precept to show common signs and benefits of love to his neighbor, even an enemy; but special signs and benefits only by counsel, unless some other reason of obligation is added.** "Per se," because sometimes there is a reasonable cause for denying them for a time, for example by reason of due correction, a good effect on children or inferiors, prudent fear of quarrels from the sight or conversation of the enemy, prudent fear that the enemy will abuse those signs, even if common, to inflict a new injury, likewise to express just sorrow conceived from an injury, etc.

"Neighbor, even an enemy": an enemy is not to be loved insofar as he is an enemy; in this respect rather he is to be hated, St. Thomas, 2. 2. q. 25, a. 8; q. 27, a. 7; but insofar as he is a neighbor. For an enemy is understood as one who has undeservedly offended or injured, and pursues with hatred.

Common signs and benefits of love are those which, by reason of general charity, are owed by any Christian in common to a Christian, by a fellow citizen to a fellow citizen, by a relative to a relative, and so forth.

Special signs, however, are those which are not owed by reason of general charity, but are shown to some person by reason of a more special friendship and familiarity. Since this is taken up by free will, these special signs proceed not from a debt of charity, but from the liberality of charity.

"Unless some other reason of obligation is added": such would be, first, fear of scandal from omission; second, hope of the enemy's salvation, whence, if by any of these things you can reconcile your enemy to yourself and to God without inconvenience to yourself, to omit it would be grave; third, temporal or spiritual necessity; fourth, apology for the fault and display of special signs of love. In this last case, however, as regards special friendship and familiarity, its restoration is not always necessarily to be urged. For that special friendship is not owed even to a friend; therefore a fortiori it is not owed to an enemy, since it is entirely voluntary.

Proof of the first part: first, from the very common opinion of theologians; second, because to deny those common signs is a manifestation of hatred, which is opposed to charity.

Proof of the second part: first, likewise from the very common opinion of theologians; second, because, since no other union remains to us with an enemy except only the common union of charity, we are bound to show him only those signs which are common signs of charity. Struggl q. 4, nn. 29-31; St. Thomas, 2. 2. q. 25, aa. 8, 9; 3 D. 30, q. 1, a. 2; *de Carit.*, single question, aa. 8, 9; L. 28.

392. **Resolutions:** It is not lawful to exclude an enemy from common prayers, for example the Lord's Prayer, and from prayer instituted for the community; nor from common alms, returning a greeting, answering, or the sale of exposed merchandise, because these are common signs of love. But, speaking of itself, no one is bound to love an enemy by a positive and particular act, nor to greet him, address him, visit him when sick, console him when sorrowful, receive him as a guest, or deal familiarly with him, etc., because these are special signs of love. Therefore if any of these, with attention to circumstances of places and persons, were a common sign of love, it would no longer be lawful to abstain from it. Struggl q. 4, n. 36; Sporer Tr. 2, in first precept, c. 6; L. 28.

393. Although anyone is bound, toward an enemy legitimately asking pardon, not only to remit the offense internally, but also to show external signs of remission, nevertheless he is not bound immediately after the offense has been committed against him. Nor is he bound to remit satisfaction for damage, if he has been injured. Indeed he is not even bound to accept it, if the enemy offers; but he can also seek it juridically for compensation, provided hatred is put away.

Proof of the first part. As regards the internal act: Matt. 5:44: "But I say to you: Love your enemies." And Matt. 6:15: "If you will not forgive men, neither will your Father forgive you your sins." As regards the external act: because otherwise you would be judged to contemn your enemy and to wish to persevere in hostility. "But if he does not show fitting satisfaction, the offended person is not bound to speak to him, namely when he either does not wish to satisfy at all, or only half fully." St. Antoninus, *Summa* P. 2, tit. 8, C. 2, § 6.

Here, however, it must carefully be noted whether the offended person, while refusing certain offices to the offender, inflicts or wishes some grave evil upon him. For if this is absent, and no other grave inconveniences from those offices denied to the offender can be feared, one ought not immediately be accused of grave fault, so that because of it a confessor would rightly deny absolution. Cf. 391, 392; Coninck *de Virt. Theol.* D. 29, n. 60.

The reason for the restriction made is that the matter seems too violent and above human frailty: to force the injured person immediately to make reconciliation, when the disturbance has not yet settled. Therefore a suitable time is to be awaited, and meanwhile it suffices that the offended person put away hatred.

Proof of the second part: because charity is not opposed to justice. Sporer l. c. n. 18.

Proof of the third part: because revenge by public authority is lawful. Therefore it is lawful to wish a public penalty for an enemy and to seek it. The reason for the limitation is that, "if his intention is borne principally toward the evil of the one upon whom he takes revenge, and rests there, it is altogether illicit, because to delight in the evil of another pertains to hatred, which is repugnant to

charity, by which we ought to love all people. Nor is someone excused if he intends the evil of one who unjustly inflicted evil on him; just as someone is not excused by the fact that he hates the one hating him. For a person ought not sin against another because the other first sinned against him; for this is to be overcome by evil, which the Apostle prohibits at Rom. 12:21, saying: 'Do not be overcome by evil, but overcome evil with good.' But if the intention of the one taking revenge is borne principally toward some good that is reached through the punishment of the sinner, for example toward the amendment of the sinner, or at least toward restraining him and the peace of others, and toward preserving justice and the honor of God, revenge can be lawful, with the other due circumstances observed." St. Thomas, 2. 2. q. 108, a. 1.

These things indeed are speculative and as to doctrine. For in practice it is certainly difficult for public revenge from love of justice to be separated from inordinate love of private revenge, which is illicit, Rom. 12:19 ff. And this is especially true if the penalty is very grave, for example capital punishment or mutilation, and no advantage comes to the injured person from it. It is certainly difficult, and rarely is a malevolent mind absent. Likewise, if the offender satisfies as much as he can, to urge him to what he cannot do seems contrary to charity. Struggl q. 4, nn. 33, 34; L. 28.

394. Although hatred of enmity, whether of the person according to himself and of the goods that he has in himself, namely by willing evil to him as such, or insofar as it is evil for him, is mortal from its genus, nevertheless hatred of abomination, or of quality, by which we turn away not from the person but from his malice, is lawful.

This is clear in itself, and theologians commonly teach it. Hence a private person who, being averse to another, flees him, if he does this in order to deprive him of his conversation and comfort, and thus to sadden him and make things go badly for him, has hatred of enmity and sins. But if, wishing him no evil, he merely flees because the person is uncongenial to his nature or is usually troublesome to him, this is hatred of abomination and aversion, and it is sin if irrational; which it will not be if the person really is very harsh, provided contempt, scandal, and desire of revenge are absent. Struggl q. 4, nn. 26, 28, 37; q. 5, n. 6; L. 30; St. Thomas, 2. 2. q. 34, a. 3.

395. **Must the offender ask pardon from the injured person?** Answer: Affirmatively of itself; for charity must be repaired in the same way in which it was destroyed, unless, however, another means or a more fitting mode of reconciliation is available, by providing various offices or benefits, or unless asking pardon seems to be of no use for placating the offended person. They also except the case in which the offender is far superior to the offended person, unless perhaps such enormity of injury presses that it would require asking pardon even from a subject. Likewise the case is excepted in which the offended person is prudently judged to pardon it. But in reality other means of placating the offended person are not lacking. La-Croix l. 2, n. 189; Struggl q. 4, n. 35.

IV. On Almsgiving

396. **What is almsgiving?** Almsgiving is an act of mercy by which one's neighbor's necessity is relieved. One kind is spiritual, another corporal, according as that necessity is spiritual or

corporal. We treat here only of corporal almsgiving. The chief question concerns its precept, which is explained in the following paragraphs. St. Thomas, 2. 2. q. 32.

397. **There is a true precept of almsgiving.** Proof: first, Ecclus. 4:1: "Defraud not the poor of alms"; Matt. 25:42: "Depart from me, you cursed, into everlasting fire ... for I was hungry, and you gave me not to eat; I was thirsty, and you gave me not to drink." Second, because charity commands us to love our neighbor, and therefore to bring him help in necessity. Struggl q. 4, n. 40; St. Thomas, 2. 2. q. 32, a. 5; E. M.

398. **No one is bound to give alms from goods necessary for his life, unless the necessity were of such a person on whom the safety of the republic depended.** Goods necessary for life are those without which someone, and those whose care he has, cannot be or live. Therefore goods necessary for life are also those that are necessary for feeding and educating children, and for supporting a maidservant who watches over infants or watches over the sick.

Proof: first, from the common opinion of theologians. "That without which," says St. Thomas, "someone cannot be or live, either he himself or those whose care he has, ought not be spent in alms." 4 D. 15, q. 2, a. 4, q. 1. Second, because the right order of charity demands this. Struggl q. 4, nn. 41, 42; Suarez D. 7, S. 4, n. 6; Valentia T. 3, D. 3, q. 9, p. 4; L. 31; St. Thomas, 2. 2. q. 32, a. 6.

399. **Almsgiving must be made only from one's own goods, and from those of which one has free administration.** For charity must keep justice unharmed. Nevertheless it can be made from another's goods when the neighbor is in extreme or quasi-extreme necessity and cannot be helped from elsewhere. For then all things are common. St. Thomas, 2. 2. q. 7; L. 33.

400. **Note:** "When several know of a neighbor's extreme necessity, all are bound to help by equal parts. If the others refuse, all will be bound in solidum, and all who know and omit will sin mortally. If one wishes to provide the whole by himself, the others will be freed. But if, after the others have been admonished about contributing and refuse, one provides the whole, he will be able by right to demand or compensate the proportionate parts from the others." Sporer, on the fourth precept of the Decalogue, c. 6, n. 50.

401. **Resolutions:** First, it is not lawful to give alms from goods liable to restitution, for example goods taken by theft; nevertheless it is lawful from goods acquired by illicit work but not with injustice, for example from the gain of prostitution.

Second, boys, children subject to paternal authority, male servants, and maidservants are not permitted to give alms except small ones, in which the will of parents and masters is presumed. For the same reason a wife can give ordinary and common alms according to the custom of her condition; but not extraordinary alms without the husband's consent, unless from goods wholly her own, of which, namely, she has both ownership and administration, and receives the fruits.

Third, tutors and curators, who have care of another's goods, can give modest alms from the goods they administer, such as those whose goods they are would have to give; for they take their place. Yet they must do this moderately, since they must render account of expenses. L. 33; l. 3, n. 540; St. Thomas, 2. 2. q. 32, aa. 7, 8; Struggl q. 4, n. 49.

402. **In extreme necessity one's neighbor must be helped even from goods somehow necessary for one's state.**

Goods necessary for state are those which we need for living honorably or decently according to our state. These are the things required, according to one's own condition, for supporting servants, receiving guests, honest donations, banquets customarily held, moderate display, etc., with common events and future necessity also considered. "Somehow," because if you would have to fall from your state, you are not bound.

Proof: first, from the common opinion of theologians; second, because the order of charity requires this. For the life of one's neighbor ought to prevail over a good of ours that is far inferior. La-Croix 201; Struggl q. 4, nn. 42, 47; St. Thomas, 4 D. 15, q. 2, a. 1, q. 4; a. 4, q. 1; 2. 2. q. 32, aa. 5, 6; L. 31.

403. **In grave necessity one's neighbor must be helped from goods superfluous to life and state; indeed also, probably, from goods necessary for state, though with very small detriment to one's state.** Proof of the first part: the order of charity demands that we will and procure the neighbor's good when, on one side, the neighbor is placed in grave necessity, and on the other, either no inconvenience or only a small inconvenience results for us. Proof of the second part: from the same reason, but less strongly, since in the case the inconvenience is not simply modest in reality, but rather grave. Hence St. Thomas says that it does not fall under precept, but under counsel, 2. 2. q. 32, a. 6. L. 31; St. Thomas, 4 D. 15, q. 2, a. 1, q. 4; a. 4, q. 1 and 4, ad 4; Struggl q. 4, n. 45.

404. **Resolutions:** Both in extreme and in grave necessity, only as much must be given as suffices here and now to relieve this necessity, unless there are others who wish to help him. Therefore if the neighbor only needs the use of the thing, it is enough to lend it: for example, if you lend a garment to someone stripped by enemies, or a horse to the wounded person until he returns home. Nevertheless no one is bound to spend a large sum of money to free a poor person from danger of death, or to spend it on extraordinary and costly remedies for him. For no one, with attention to the condition of his state, is bound even for his own life to spend as much to procure extraordinary medicine for himself. St. Thomas, 2. 2. q. 32, a. 5; L. 31; La-Croix 215; Struggl q. 4, n. 48; Lugo *de Iust. et Iur.* D. 16, nn. 167, 168.

405. **In common necessity, one who has goods superfluous to life and state is sometimes bound to give alms.** Proof: first, from the common opinion of theologians. Second, both because each person is bound to love his neighbor as himself, and because otherwise these poor would fall into grave necessity. Struggl q. 4, nn. 40, 41, 43; L. 32; St. Thomas, 2. 2. q. 66, aa. 2, 7; E. M.

406. **Note:** "Nevertheless there is no obligation, for lay people, of providing the whole surplus, but it suffices if the fiftieth part of annual revenues that remain is given; and if the revenues are richer, less than the fiftieth part." L. 32; H. A. Tr. 4, n. 19; St. Thomas, 2. 2. q. 32, a. 10.

407. **Does the precept of almsgiving oblige under grave sin?** Answer: Affirmatively, in extreme or quasi-extreme necessity. Thus all. In grave necessity, however, some probably and commonly affirm, because when people are frequently condemned in Scripture because works of mercy were neglected, these are not to be restricted to extreme and rare necessity. Others, however,

deny; and this opinion at least extrinsically does not seem improbable to several. In common necessity, some also probably and commonly affirm, as is gathered from the sentence that Christ will pronounce on the last day through those words, "I was hungry, I was thirsty," etc. For Christ would not allege hardness toward the poor as a reason for condemning the wicked unless this vice were common and frequent among people, which it would not be if there were no obligation from surplus goods to distribute alms to poor persons encountered. Confirmation is from 1 Tim. 6:17, 18: "Charge the rich of this world ... to give easily, to communicate," where those words "charge" and "easily" seem to indicate a precept even outside grave necessity. And Luke 11:41: "That which remains, give alms." Others, however, hold either that there is no obligation, or that at least the obligation is not grave; and this opinion does not lack extrinsic probability. Struggl q. 4, nn. 43, 45-47; Suarez D. 7, S. 3, nn. 7, 10; L. 31, 32; St. Thomas, Quodl. 8, a. 12; 2. 2. q. 32, a. 5; q. 71, a. 1; E. M.

408. **Resolutions:** First, physicians, advocates, etc., are bound to devote work to the poor gratis, because the poor are in true necessity and cannot be helped by others.

Second, if someone rich and abounding were to repel all the poor from himself without any reasonable cause, he truly is in a bad state. Nevertheless absolution should not easily be denied to anyone, however rich, who repels all the poor without alms: both because of the disagreement of authors about this obligation, and because of the difficulty of judging the superfluity of goods and the necessity of the poor, and because of the presumption that others are willing to help, etc. Laymann n. 5; Struggl q. 4, nn. 44, 50, 51; Diana T. 4, Tr. 7, R. 8, 42; L. 32; St. Thomas, 2. 2. q. 71, a. 1.

V. On Fraternal Correction

409. **What is fraternal correction?** Fraternal correction is an admonition by which someone, from charity, tries to call his neighbor back from sin, insofar as this is the spiritual evil of the sinner himself. Hence fraternal correction is an act of mercy. It differs from judicial correction, because the latter is done by public authority and chiefly for the good of others, especially the common good, and at the same time for the good of the delinquent himself; and from paternal correction, because this is done by the authority of a superior chiefly for the private good of the delinquent himself, and at the same time of others and of the common good. These belong only to particular persons over their subjects; but fraternal correction belongs to all, since it arises from the motive of charity, which obliges all. Ecclus. 17:12. Hence if something correctable is found in the prelate himself, he too would have to be reproved charitably by an inferior suited to this. 1 Tim. 5:1, 2. Struggl q. 4, nn. 52, 60; St. Thomas q. 33, aa. 1, 2, 4; 4 D. 19, q. 2, a. 1; L. 34; E. M.

410. **Is there a true precept of fraternal correction?** Answer: Affirmatively. Proof: first, from natural law, by which members of one body are bound by the force of charity to help one another mutually. Second, from positive law, Matt. 18:15: "If your brother sins against you, go and correct him between you and him alone"; Ecclus. 19:14: "Correct your neighbor ... lest perhaps he repeat it." Struggl q. 4, n. 58; St. Thomas, 2. 2. q. 33, a. 2.

411. **What is the matter of this precept?** Every mortal sin of one's neighbor is of itself sufficient matter for this precept to oblige under mortal sin. "Every mortal sin," because although venial

sin is matter for correction, nevertheless it does not gravely oblige, and only if you can do it very easily. Make an exception, however, if the discussion concerns religious orders. For if through venial sins regular discipline seems either wholly to be dissolved or notably diminished, there can be a grave obligation both in prelates and even in private persons, since both are bound by charity to avert this most grave evil of religion. Make an exception also if someone through venial sin is placed in proximate danger of sinning mortally, etc.

"Of itself," because if someone, because of fear, shame, or pusillanimity, thinks himself not so strictly bound or less suited for correcting, he seems to sin only venially. Proof: first, from the common opinion of theologians. Second, because since mortal sin takes away the spiritual life of one's neighbor, it introduces sufficient necessity for correction. Hence one who can easily prevent the mortal sin of his neighbor by correction, and neglects it because of vain fear of some temporal evil, sins mortally. St. Thomas, 2. 2. q. 32, a. 2; q. 33, a. 2; L. 34, 35; l. 4, n. 13; Diana T. 1, Tr. 4, R. 8; Struggl q. 4, nn. 55, 56.

412. **When does the aforesaid precept oblige?** This precept obliges when these circumstances concur: first, if the sin of your neighbor is certainly established to you; but only the superior is bound to investigate. Prov. 24:15. Second, if it is not established that he has amended, nor that he will amend, but that he will relapse; because alms must be given only to one in need. Third, if there is no other equally suitable person present who is thought likely to correct him. Fourth, if there is hope of fruit, because when the end is despaired of, the means cease. Fifth, if there is a good occasion, place, and suitable time, and you can do it without grave damage to yourself, unless, however, someone is bound to correct by reason of office. But if any of these is lacking, the precept does not oblige. St. Thomas, 2. 2. q. 33, aa. 2, 5, 6; L. 36, 42; Struggl q. 4, nn. 54, 57.

413. **Resolutions:** First, private persons among themselves are rarely bound to correction, at least under grave sin, unless they are familiarly joined to one another; because all the required conditions are rarely found. Still more rarely are they bound toward superiors, because of unsuitability.

Second, prudence usually advises that correction be omitted toward those whose character is entirely unknown, lest, receiving correction with a hostile mind, they become worse.

Third, the scrupulous are ordinarily excused from making fraternal correction, because either they are too much fatigued or they are unsuited; for, disturbed by scruples and anxieties, they lack the necessary discretion for correcting, and cannot attend to the causes that excuse.

414. **Does the aforesaid precept oblige all equally?** Although the precept of correction obliges all, even subjects, it nevertheless obliges prelates more. The reason for the first assertion is that all are members of the same body and are bound to provide external offices of charity to one another. The reason for the second is that subjects are bound only from charity, but prelates are bound also from office and justice. St. Thomas, 2. 2. q. 33, a. 3; L. 40.

415. **Resolutions:** First, prelates, bishops, pastors, and magistrates are bound, even with great inconvenience to themselves, to prevent both public and hidden sins of their subjects, because

they are bound from justice to procure and protect the common good.

Second, "Correction of a delinquent ... belonging to prelates, which is ordered to the common good and has coercive force ... is not to be omitted because of the disturbance of the one who is corrected: both because, if he does not wish to amend of his own accord, he must be compelled by punishments to cease sinning; and also because, if he is incorrigible, by this provision is made for the common good, while the order of justice is preserved and others are deterred by the example of one." St. Thomas, 2. 2. q. 33, a. 6.

Third, superiors are bound by office to watch over subjects and to inquire into their sins, though not very much concerning any certain person unless some particular reason moves them to this. Struggl q. 4, nn. 55, 57, 58; Diana T. 7, Tr. 4, R. 24, 30; L. 40, 42; E. M.

416. **What order must be observed in correction?** The order to be observed in correction is the one Christ prescribed, Matt. 18:15-17: namely, that you correct in secret, then before witnesses, and then report to the prelate of the Church or to superiors.

Make exceptions, however: first, unless it is better that the matter become known to a superior, a good and prudent man, rather than to other witnesses. Second, unless the sin is public; for then it can be corrected publicly. Third, unless it tends toward grave damage of a third person or of the community if it is not immediately made known to a superior; for example, if someone is plotting treason or secretly spreading heresy. Then it must be indicated immediately to the superior, because the common good is to be preferred to the private good. Fourth, when the one to be corrected is content that it be immediately signified to the superior, as happens among certain religious who have renounced their right as to this. L. 41; l. 4, nn. 242-247; St. Thomas, Quodl. 11, aa. 12, 13; 2. 2. q. 33, aa. 7, 8; Suarez D. 8, S. 6; Struggl q. 4, n. 59.

417. **Note:** First, if it is certainly established that a brother has perfectly amended a hidden sin, and that from it there is no danger of relapse or damage, either to himself or to another, it is not lawful to denounce him to a father or prelate. The reason is that the motive of charity ceases, and therefore the reason for denouncing ceases; and thus it is sin, and indeed mortal from its genus.

Second, if the immediate superior alone can amend the delinquent, so that no danger of damage or relapse threatens him, another, or the community, he seems to sin by manifesting the delict to a mediate superior. He likewise sins when he publicly manifests and corrects the hidden delict of a subject which he can amend paternally in secret.

Third, in communities living under a rule, in colleges, seminaries, etc., it is usually expedient that correction be made by way of denunciation to a superior, either personally or through another. Members or boarders in such communities cannot be absolved if they do not consent to denunciation of this kind where there is question of grave damage to the community. Likewise, by natural law, priests who are public corrupters, who inflict or seem likely to inflict great spiritual damage on the faithful, are to be denounced to ecclesiastical superiors.

Fourth, correction must be applied not always immediately, but when greater fruit is hoped for. Hence sometimes a repetition of sin can be permitted so that someone may repent more fervently.

Nor is it enough for correction to have been made once; it must be made again and again as long as fruit is hoped for.

Fifth, "To detain a person for an hour from some illicit work immediately to be committed is lawful for anyone; as when someone holds another back lest he throw himself down, or strike another. But simply to shut someone up or bind him belongs only to one who has authority to dispose universally of the acts and life of another; because by this he is prevented not only from doing evil, but also from doing good." St. Thomas, 2. 2. q. 65, a. 3, ad 3. Molina D. 755, n. 4; Lugo *de Iust. et Iur.* D. 21, n. 34; Struggl q. 4, n. 59.

418. **What about admonition to be made?** To the precept of fraternal correction for amendment of delicts must be added the precept of admonition, by which one's neighbor is taught the truth. Cf. vol. 2, n. 814. For the doctrine delivered there is general, and not only special and proper to confessors.

VI. On Scandal

419. **What is scandal?** Scandal is defined as: a saying or deed less right, giving someone an occasion of spiritual ruin.

"Saying or deed": under this name omission also is understood. "Less right": that is, something which is either evil in itself, as if you speak shameful things before an adolescent, or has the appearance of evil, as if, for a just cause, you eat meat on a forbidden day before others who are ignorant of that cause. "Giving occasion": although, metaphysically speaking, occasion is not the same as cause, here nevertheless that occasion is a true moral cause; for since one's neighbor is in fact struck by it and induced to sin, it truly exercises moral influence. "Of spiritual ruin": namely of mortal or only venial sin. Therefore spiritual ruin is not rumor, or wonder among the people, and a fortiori not horror about the deed committed; but grave suspicions and rash judgments, detractions, calumnies, etc., arising among the people. Suarez *de Carit.* D. 10, S. 1; *de Cens.* D. 6, S. 3; St. Thomas, 2. 2. q. 43, a. 1; L. 43.

420. **How many kinds of scandal are there?** One kind of scandal is direct, another indirect, according as the ruin or sin of the neighbor is either intended or, although not intended, nevertheless foreseen, at least confusedly. And if the spiritual ruin of the neighbor is intended, it is called diabolical; otherwise, if only the sin is intended, for example fornication, but not as the spiritual ruin of the other.

Likewise one kind of scandal is active, another passive. Active scandal is that to which the given definition applies. Passive scandal is the spiritual ruin itself of the neighbor, and is called scandal improperly, since it ought rather to be called the effect of scandal. Scandal can be active or given without being passive or received, because an action apt of itself for scandal can be placed without the effect following. And conversely it can be received without being given; but then scandal is not properly to be attributed to the action of the neighbor, but rather to the ignorance, imagination, or even malice of the one who suffers scandal or admits it without foundation. This is called scandal of the weak if it is taken up from the neighbor's infirmity or ignorance; but it is called pharisaical if it

proceeds from the mere malice of the subject. L. 43; St. Thomas, 2. 2. q. 43, a. 1, ad 4; a. 3; Lugo *de Poenit*. D. 16, n. 157.

421. **Resolutions:** It is not always scandal if you sin before others, but only when, with attention to the circumstances both of the person acting and of those before whom the act is done, it can probably be feared that by this act those who otherwise would not sin are drawn to sin. Hence blasphemy uttered before religious and pious men does not have the character of scandal, but of horror and abomination. Likewise it is not scandal to sin before vile and infamous people who are already otherwise going to sin; as if someone fornicates before others who are already prepared to do the same and are not moved by his example. L. 43, 44; St. Thomas, 2. 2. q. 43, a. 5; Struggl q. 5, n. 29.

422. **What kind of sin is scandal?** Scandal is a grave sin from its genus, having a special specific malice, whether it is direct or indirect.

Proof of the first part: Christ the Lord exclaims, "Woe to the world because of scandals! ... Woe to that man through whom scandal comes!" Matt. 18:7. Therefore scandal from its genus is grave sin, unless smallness of matter excuses.

Proof of the second part: scandal is directly opposed to fraternal correction, in which the removal of the sins of our neighbor is intended. Therefore it has a special specific malice against charity toward neighbor.

Proof of the third part: "For if charity obliges us to correct our neighbor and, when we can, to prevent him from falling into sin, how much more does it oblige us not to impel him to sin by counsel or example?" L. 45; St. Thomas, 2. 2. q. 43, aa. 1-4; E. M.

423. **Resolutions:** One sins only venially by reason of scandal who gives another occasion of only venial ruin. This is true even if he directly intends it, and even through a mortal act. For charity is not then gravely injured. On the contrary, one sins gravely by reason of scandal who gives another occasion of mortal ruin, even if he does this through an indifferent work or only a venial one; for example, if a religious utters joking and slightly shameful words before women, or before those who can take occasion of mortal sin from them. L. 44; St. Thomas, 2. 2. q. 43, aa. 4, 6; Ithur. Case 35.

424. **What is the special malice of scandal?** In direct scandal there is sin not only against charity, but also against the virtue which the neighbor is induced to violate. But in indirect scandal, both the opinion affirming and the opinion denying this other special malice are probable.

Proof of the first part: first, from the common opinion of theologians. Second, because any virtue prohibits not only that someone injure it, but also that he will and cause it to be injured by others.

Proof of the second part: first, because grave theologians stand for each opinion. Second, because, just as the indirect voluntary suffices for sinning, so it also suffices for sinning against that virtue with respect to which it is indirectly voluntary. Hence in morals the direct and indirect voluntary pertain to the same species. Therefore probably in indirect scandal there is sin not only against charity, but also against the virtue that is injured by the neighbor.

But to the contrary: virtues do not oblige us to prevent the opposed vices in others, although foreseen, but only not to intend and procure that others injure them. Therefore probably in indirect scandal there is no sin against the virtue which the neighbor violates. "For just as in natural things what is accidental does not constitute the species, so neither in moral things; in these, what is intended is per se, but what follows beyond intention is as if accidental." St. Thomas, 2. 2. q. 39, a. 1. Lugo *de Poen.* D. 16, nn. 159, 168; Struggl q. 5, nn. 21 ff.; L. 44, 45, 46, 47; l. 3, n. 537.

425. **Resolutions:** First, therefore it suffices in confession to express generally the sin of scandal, and it is not necessary to indicate the species of sin to which others were indirectly induced. Much less is it necessary to express the circumstances that perhaps add species to the sins of others, for example whether those who could have been induced to lust by shameful speech or image were married or bound by vow, etc.

Second, the circumstance of solicitation and induction to sin, for example to fornication, is only an aggravating circumstance; and therefore it suffices to confess fornication. For the same malice of induction or scandal is had, although less, when someone does not solicit but consents; for by consenting he still participates with the other in his sin and is a cooperating cause of his ruin. Therefore this malice is only more aggravated within the same species if someone positively solicits. And the same must be said of shameful conversation and the like. Thus Lugo, whose opinion seems sufficiently probable to St. Alphonsus, "since even in cooperation toward fornication there is sin against charity, well distinct from the sin of cooperation toward fornication, by cooperating toward the ruin of the other party." L. 46.

426. **Must scandal of the weak be avoided?** Scandal of the weak or infirm must be avoided whenever this can be done without grave inconvenience, by omission both of an indifferent work and of a good work not prescribed. Proof: because from charity we are bound to prevent the evil of our neighbor when we can do so easily; for example by abstaining from an action that is not very useful, or by delaying it, or by explaining our manner of acting, etc., when the neighbor falls into that danger from a cause given by us. But the weak or infirm fall into that danger from a cause in some way given by us; for although our action of itself does not influence the neighbor's sin, in fact it nevertheless influences it, though this is because of the neighbor's ignorance and infirmity. Therefore. 1 Cor. 8:7 ff.

Hence it is clear that scandal of the weak is not purely received, but in some way given: given, namely, not by reason of the work done, but by reason of the circumstances in which that work is done, although those circumstances are entirely extrinsic. L. 48.

427. **Must pharisaical scandal also be avoided?** Pharisaical or malicious scandal, at least ordinarily, need not necessarily be avoided either by omission of a good work or by omission even of an indifferent work that does not have the appearance of evil. Proof: such scandal arises from the malice alone of the one who takes scandal, and therefore is not in any way given, but purely received. But charity in no way obliges us to prevent the sins of others when these are wholly voluntary in them and wholly independent of our manner of acting, at least ordinarily; for charity does not urge with so great an inconvenience. Therefore. Matt. 15:14.

"Ordinarily": for "if care for the good of neighbor can oblige one to do good, why could it not also sometimes oblige one to omit doing it? Especially since a person is deprived of no spiritual good because of it ... because this very thing, to deprive oneself of the merit of that work for the good of one's neighbor, will be a greater merit than the good work itself. Hence in works of counsel the matter is clear." Suarez *de Carit*. D. 10, S. 3, n. 9. The case could be if, for example, fruit were hoped from the delay of a good work.

428. **Is it lawful to urge a lesser evil upon someone already determined to carry out a greater one?** Some deny, because one who urges a lesser evil truly urges evil. Others more probably affirm, because this kind of counsel formally tends to prevent the greater sin from being committed. Therefore formally it urges only good. And Sanchez adds with the Salamanticenses that this is lawful not only for private persons, but also for confessors, parents, and others on whom by office it falls to prevent the sins of subjects. L. 57; l. 5, n. 77.

429. **Resolutions:** It is lawful to induce someone to drunkenness so that he may be prevented from a graver evil, for example committing homicide. L. l. 5, n. 77. Cf. 837. It is lawful to urge one who wishes to inflict greater damage on one person to inflict lesser damage on the same person. "On the same person," because by reason of justice the same does not seem lawful with respect to another determinate person, at least ordinarily and speaking of itself, because then that counsel is a true cause, of itself effective and unjust, of the damage of another; for the other is not bound to undergo that damage, and therefore would be reasonably unwilling.

"Ordinarily and speaking of itself": for, as Viva affirms on proposition 36 of Innocent XI, to one wishing to steal something from Peter by which Peter would be reduced to extreme poverty, one could urge that he take a little from the very rich Paul, who otherwise would be irrationally unwilling in this matter. Indeed there are those who hold that it is lawful to urge the lesser evil even with respect to a different determinate person, because this is always only to avert from a greater evil, and not also to induce to the lesser one; and this is confirmed by the example of Lot, who offered his daughters to be violated instead of his guests, Gen. 19:1 ff. Sanchez *de Matr.* l. 7, D. 11, nn. 16 ff.; Vazquez, *Opusc. de Scand.* art. 1, dub. 2, n. 14; L. l. 3, n. 565; Diana T. 7, tr. 5, *de Scand.*, Res. 36.

430. **Is it lawful to permit an occasion of sinning, so that the guilty person may be corrected, and even to set one up?** Answer: Affirmatively, when the other is otherwise probably judged to be prepared to continue sinning. The reason is that to permit is not to induce to sin, and there is a sufficient reason for permitting: because the permission is then preventive of a greater evil; for one sin is permitted lest several be committed.

Likewise, even to set up an occasion of sin is not from its nature to induce to sin, but is an act indifferent of itself, from which a twofold effect follows: one good, which is intended; the other evil, beyond the intention of the agent and from the malice of the sinner. Besides, there is a sufficient reason for placing that act. Thus more probably, and it can be confirmed by the example of Judith, who, when she saw that permission of lust in Holofernes would be a prevention of many evils for the whole Israelite people, willingly presented him with an occasion, namely her adornment; and yet in this she is commonly judged not to have sinned. Judith 10. Struggl q. 5, n. 33; L. 58.

431. **Resolutions:** It is lawful for a father and master not to remove the occasion of stealing from children or servants, when he knows that they are nevertheless inclined and ready to steal, so that, having been caught, they may be punished and repent. It is lawful for a guard of fields to hide himself so that he may catch those causing damage and keep himself safe from the danger of damage to come. L. l. c.; St. Thomas, Supplement q. 62, a. 3, ad 4.

432. **Does a girl sin mortally by presenting herself to be seen by a man who will suffer scandal?** St. Alphonsus, n. 53, says: "Busembaum, St. Antoninus, Sylvester, Navarrus, etc., affirm ... But Cajetan, Sanchez, etc., very probably deny that she sins gravely. For, as they say, to excuse her at least from mortal sin it suffices that the cause is that she not be deprived of her liberty; since on one side this scandal is not given, but received from the malice of the man, and on the other the matter would be very inconvenient for the woman and subject to scruples if she always had to weigh whether she has a just cause for going out or not.

"But I could not excuse her from mortal sin if, led by vanity, although she does not intend the scandal of that man, she purposely offers herself to his sight. Hence Sporer, Diana, Hurtado rightly say that a woman is bound under grave sin to avoid the scandal of a determinate man, if she can conveniently go to another church, proceed by another road, abstain from the window, and the like. This, however, is not to be understood for a long time, but only for one or another occasion, until the other can notice that he is being avoided by her; and Sporer asserts that all agree in this. I also could not excuse a woman from mortal sin if she sought some place which she would not approach unless she knew her lover was there."

433. **Resolutions:** First, a woman who, from adornment even fitting to her state, probably foresees that some particular person will fall mortally, is bound to put it aside for a short time, or to flee that person's sight. "For a short time," because for a long time it would be too burdensome for her.

Second, if the same were feared in particular from adornment that is superfluous, vain, and not fitting to her state, which to assume from vanity, other things excluded, is only venial, she would, speaking of itself, be bound to put it aside altogether, even under mortal sin, because she has no right to that adornment, and on the other side she is bound to avoid another's sin when she conveniently can. "Speaking of itself": for since superfluous adornments, speaking practically, soon turn into the custom of the country's women who are honorable, it cannot absolutely be said that such a woman has no right to follow the custom of the country, nor is grave inconvenience lacking.

Third, if a woman does not fear in particular, but only in general, that some will be scandalized by her, provided she does not intend their lust nor is pleased by it, although she is pleased that she is praised as beautiful, she does not seem to be bound under mortal sin to abstain from that adornment, even if superfluous, for example by painting the face, etc. The reason is both because it is scandal received rather than given, and that adornment and beauty provoke remotely only to sin; and because it would be too burdensome for that sex, especially if she seeks a husband, to abstain perpetually in this way, since that occasion is universal and perpetual, and the more beautiful women would never lawfully go outside, since natural beauty moves more than artificial. L. 53, 54, 55; l. 3, n. 425; St. Thomas, 2. 2. q. 169, aa. 1, 2; St. Antoninus P. 2, T. 4, C. 5; Diana T. 7, Tr. 5, R. 9.

434. **Are you bound to give up temporal goods to avoid scandal?** Answer: Negatively, ordinarily speaking. For either a great loss of money must be suffered, and charity toward neighbor does not urge with so great an inconvenience; or only a light loss of money is involved, and since this can occur rather often, it easily becomes grave. It would also harm the common good, since occasion would then be given to evil people to extort and seize the goods of others, and it would be harmful to the evil persons themselves, since they would be confirmed in their depraved will. "Ordinarily speaking": for if in some particular case grave inconvenience ceases, and the scandal were not of Pharisees but of the weak, then either temporal goods must be given up, or scandal calmed through some admonition. L. 52; St. Thomas, 2. 2. q. 43, a. 8.

435. **Resolutions:** You are not bound to pay a worker or coachman more than is fair, although you foresee that otherwise he will blaspheme. A parish priest is not bound to give up stole fees, although he foresees several will detract.

436. **Must precepts sometimes be omitted because of scandal?** Answer: Negatively, if from that omission one's own salvation would be endangered, or grave damage would threaten others, especially the community. Hence spiritual goods necessary for salvation neither ought nor can be given up because of anyone's scandal. Negatively also, if that omission is intrinsically evil. Hence negative natural precepts neither ought nor can be omitted.

As to affirmative natural precepts, of themselves and generally they are not to be passed over. For scandal is not properly given, and there is sufficient reason to permit it. Nevertheless they can sometimes be omitted; indeed they must be, if, all things prudently weighed, it is better to avoid the neighbor's ruin and no grave damage comes to us from this. More truly, however, in that case those precepts are said to cease and not to oblige; for example, correcting sinners or punishing delinquents, when more damage is feared than fruit hoped for.

As to positive human precepts, the matter is disputed. The first probable opinion denies, because again scandal is not properly given, but received. The second probable opinion affirms, grave inconvenience excluded, because the precept of avoiding the neighbor's scandal, as natural, is to be preferred to positive precepts. Hence a woman who knows that she will be shamefully desired by someone if she goes to prescribed Mass is bound to omit it once or again, if there is hope that afterward the scandal will cease; but not several times, because of the grave inconvenience that would follow. Several others, however, hold no less probably that she can indeed omit Mass once or again, but is not bound to do this. She can, because of the probability of the latter opinion. She is not bound, because again scandal is not properly given, and there is sufficient reason to permit it.

Here it must be noted, however, that the present controversy has place only in scandal that someone in particular could suffer; by no means when there is a general fear lest perhaps someone be scandalized, because this would be too difficult. Likewise only scandal of the weak is in question; for if the scandal were pharisaical, occasion would be given maliciously to impede good things always. Struggl q. 5, nn. 30, 31; St. Thomas, 2. 2. q. 43, a. 7; L. 50, 51, 52.

437. **Is it a sin of scandal to ask from another something that he will not provide without sin, when he is already ready to sin?** St. Alphonsus, n. 47, says: "If the thing that is asked is intrinsically evil of itself, so that it can in no way be provided without sin, as to ask fornication from a prostitute who is ready, there is no lack of several Doctors who say that it is not a sin of

scandal, because since such a woman is always in an actual or virtual will of sinning, one who gives her occasion for carrying out that sin is judged to cooperate not gravely, but lightly. Thus Soto, Henriquez, Azor, Valentia, etc. I venerate the authority of such great Doctors, but I would not dare to depart from the contrary opinion, which I judge must be followed, and which Sanchez holds with Cajetan, etc. The reason seems very powerful to me: because, although the prostitute is in an actual will of sinning, nevertheless she certainly brings upon herself a much greater ruin by completing in act that particular sin of fornication. Therefore he who cooperates with her toward consummating the sin sins gravely in two ways: both against charity and against chastity.

"If the thing that is asked is indifferent and can well be provided without sin, as would be to ask a loan from a usurer and the like, the first opinion holds that it is not grave sin to ask without just cause. The reason is that, since that usurer already has a deliberate will of sinning, you do not inflict grave damage on him if you propose to him an occasion by which he carries out the sin beyond your intention. For that anticipation of the external work varies his sin only accidentally. Thus Lugo, Cajetan, etc.

"The second opinion, which we embrace, holds that this is mortal sin both against charity and against the virtue for the injuring of which occasion is provided to the neighbor, by asking a loan from him, etc., without grave cause; for when there is grave cause, the one asking is altogether excused. Thus St. Thomas, 2. 2. q. 78, a. 4; Elbel, etc. The reason is that, since the sinner inflicts a notably greater ruin upon himself by the external act, one who without grave cause cooperates with him toward carrying out the work cannot be excused from grave sin against charity ... But when we have grave cause for asking, we cannot abstain from asking without grave inconvenience; and therefore then indeed we are excused. Thus Busembaum, Sanchez, Valentia, etc. Sporer, Pontas, etc., note that for licitly asking a loan from a usurer, precise necessity is not required, but any notable utility suffices, whether for the preservation or the decency of one's state or family." Lugo *de Iust. et Iur.* D. 25, n. 235; Diana T. 7, Tr. 5, R. 34, 55; L. 48, 49, 78; l. 3, n. 103, q. 5, n. 149; St. Thomas, 2. 2. q. 78, a. 4.

438. **Note.** From the resolution of this question, the resolution is clear of other similar questions: whether it is lawful to accept, offer, give, sell, or do something that another will not give, accept, buy, or use without sin. In all these, scandal exists by way of cooperation.

439. **Resolutions:** First, therefore it is not lawful, for example, to ask a notary for something opposed to his office. But it is lawful to ask the sacraments from an unworthy minister, or an oath from one who will perjure himself, provided a just cause is present: namely, for the first case, if there is necessity or notable spiritual utility; for the second, if a judge asks the oath by reason of office, or if it greatly matters to you to use the perjury for manifesting another's frauds, so that you may obtain your right.

A girl sins by accepting gifts from a lover if they proceed from shameful love, for they foster that shameful love. It is otherwise, as is clear, if they proceed only from honest benevolence and friendship; or if they are offered before others and cannot be refused without scandal of others and her own infamy.

It is in no way lawful for an innkeeper, in order to attract more guests, ordinarily to admit gravely shameful dances in his house, or to set out for them to read public papers that are evidently and ordinarily opposed to religion or good morals.

In cities in which this is permitted to avoid a greater evil, it is lawful to rent a house to a usurer and to a prostitute, especially if other tenants are lacking, or if they could easily rent other houses; unless, however, the prostitute would gravely harm honest neighbors, or because of the location would give a greater opening to sins. L. 47, 60, 61, 70, 76, 77, 79; l. 3, nn. 434, 734; St. Thomas, 2. 2. q. 10, a. 11; Ithur. Case 26.

Second, it is lawful to sell indifferent things, or things which can easily have a good use, if the seller knows nothing about the evil intention of the buyer, because evil is not to be presumed. Hence it is lawful to sell dice, swords, cosmetics, wine, etc., although very many abuse them, because these are not ordered of themselves to sin; indeed, they often serve good use.

But it is not lawful to sell these same indifferent things when it is certainly known that the buyer will use them badly, unless they could not be denied without grave inconvenience, or even unless they would equally be bought from others. For in this latter case, if the seller sinned, it would be only because he did not prevent the sin of the neighbor. But even if he did not sell, he would not therefore prevent the sin; for there would be another who would sell. Hence it is not lawful to sell honorable adornments to a girl if it were established to the seller that abuse would follow, unless he would suffer notable damage, or if she would buy them equally from others. Thus La-Croix l. 2, n. 263, and others. But St. Alphonsus, n. 71, does not admit the latter case.

It is not lawful to sell wine without a grave and proportionate cause to those who resell it mixed with water. It is likewise not lawful for an innkeeper to sell wine to those foreseen to become drunk, or to provide meat to those who will eat on a forbidden day, unless a grave reason excuses, for instance if otherwise he would be notably harmed by diminution of customers. Hence it is also commonly lawful for an innkeeper to give meat when it is requested, unless the request is made in contempt of religion, because it would be a most grave inconvenience to inquire into the reasons of each petitioner. L. 68, 69, 78. Indeed, generally it is lawful for an innkeeper at whose place public coaches stop to set the table with lawful or unlawful foods; because since it is established that several will ask for meat, it does not seem necessary to ask each what he wants. A fortiori it is lawful to sell meats on days of abstinence and during Lent, because the seller cannot judge the reasons of the buyers, nor does it pertain to him to inquire into them. L. l. 3, n. 1030.

But it is not lawful to sell things which by their institution or use are destined to evil, unless in a particular case it is established that danger of abuse is absent, or unless a grave and proportionate reason excuses. Hence it is not lawful to sell poison unless it is morally established that the buyer will use it well, for example for making colors, medicine, etc. It is not lawful to sell bad books indiscriminately, namely to any buyer. Sometimes, however, they can be sold to prudent and learned men who can read such books usefully, for example to refute them, etc. Make an exception, however, for books that are wholly obscene, which must be rooted out completely. Tamburini, on the Decalogue, l. 1, C. 1, § 4, n. 37; L. 69, 72, 76.

Third, it is lawful for workers to build and adorn theaters if the ornaments are honorable in themselves, even if another grave reason is lacking, because it is lawful for princes to permit

spectacles. It is permissible, with the legitimate magistrate permitting, to restore and build synagogues of Jews and temples of heretics, provided scandal and any contempt of religion are excluded, especially if it would equally be done without them. It is also lawful to make statues of idols if these are not to be applied to false worship, but to the ornament of squares, buildings, etc.

It is lawful for Christian captives, from grave fear, to row in the galleys of infidels against Catholics. For they do nothing intrinsically evil, nor proximately pernicious to Christians. From another source there is a most grave and proportionate cause for doing it.

It is not lawful to compose or represent gravely shameful comedies, whatever the profit may be. "Likewise they sin gravely who paint or publicly display obscene images, namely with the shameful parts uncovered, or covered with a thin veil; otherwise if other parts are uncovered while the shameful parts are covered." L. 56. Make an exception, however, if something of this kind must be painted, for example for teaching or learning anatomical or obstetrical science. L. 73; l. 3, nn. 427-429.

440. **Is it never lawful to cooperate in another's sin?** Cooperation in general is concurrence with another acting principally. Insofar as it can be opposed to charity, it is a certain participation in the depraved action of another.

Cooperation is: first, immediate or mediate, according as the cooperator acts with the sinner in the very act of sin, or places other actions having some connection with the other's sin. Second, proximate or remote, according as the action of the cooperator is more closely or more remotely connected, from its nature or from circumstances, with the depraved action of the other. Third, positive or negative, according as the cooperator either places some action influencing the sin of another, for example by helping him, or omits a due act, for example if he does not hinder when he ought to hinder. Fourth, formal or material. Formal cooperation concurs with the evil will of another, and cannot exist without sin, since it intends the cooperation itself toward the depraved action of another, either by the explicit intention of the worker or implicitly in the work itself, which by its nature is ordered to the depraved action. Material cooperation concurs only with the evil action of another, without any intention of cooperating in the sin, neither in the act signified nor in the act exercised.

Like scandal, cooperation can be had in two ways: first, by inducing another to sin, and this is properly scandal; second, by acting in some way together with one who sins, and this is properly cooperation. When the cooperation is formal, it has the same malice in species as scandal, namely both against charity and against the virtue which the other injures by sinning.

It is certain that formal cooperation is never lawful, since it morally influences the sin of another and therefore is its moral cause.

Material cooperation is lawful provided: first, the action is good in itself, or at least indifferent; second, one is not bound by office to prevent the sin; third, there is a just and proportionate cause in relation to the gravity of the other's sin and to the proximity of concurrence in the execution of the sin. The reason is that, when you provide an honorable or indifferent action without a depraved intention, if the other wishes to abuse it to carry out sin, you are not bound except by charity to prevent that; and since charity does not oblige with grave inconvenience, therefore by placing your

cooperation with a just cause, you do not sin. For his sin does not proceed from your cooperation, but from the malice of the one who abuses your action.

"Proportionate cause": for since the obligation of avoiding that action arises from the obligation of the virtue to which the neighbor's sin is opposed, and the obligation of every virtue is not equal, but some obliges more, some less, and cooperations are not equal, but some approach more closely and some less closely to sin; moreover, there is not always equal certainty that the other will not sin if you do not cooperate, nor indeed is there always the same right to the action, but sometimes a greater, sometimes a lesser right. Therefore not always will an equal cause be proportionate for providing this cooperation, but sometimes a greater, sometimes a lesser cause will be necessary.

Hence a more urgent cause is required when the sin is against justice than when it is against charity alone, and such a cause as can deservedly be preferred to another's damage. The reason is that in sins against justice an innocent person unwillingly suffers damage; in sins against charity only the sinner suffers spiritual detriment, and this by his own will, though he also suffers the same detriment when he sins against justice. Sanchez l. 1, c. 7, n. 12; L. 59, 63; E. M.

441. **Resolutions:** First, it is permissible for a servant to open the door to a prostitute, because material cooperation of this kind is sufficiently remote, especially when, even if he did not open, there would still be someone who would open.

Second, it is not indeed illicit if a servant saddles the master's horse when he is going off to sin, because in this he does not seem to cooperate more with the master's sin than by opening the door to a prostitute.

Third, it is lawful for a servant to accompany the master to the house of a concubine when, even without the servant as companion, the master would go, and he is not made bolder by it; because then it is mere accompaniment, and the service itself is a sufficiently excusing reason. Thus Busembaum and others. But St. Alphonsus, nn. 63, 64, and others excuse this case and the preceding one only from fear of grave damage.

But if the master used the servant as companion so that he might sin more securely and freely, then it would certainly be illicit, because it would already influence the sin proximately. It would likewise be altogether illicit for a servant to put his shoulders under the master, or to carry a ladder for him as he climbs up to fornicate, or by force to open the door, and the like; for the cooperation is altogether proximate and makes the sin easier, to the gravest damage of a third person. Yet since these actions are not intrinsically evil, they still would not be illicit if fear of death or mutilation were added. St. Alphonsus, n. 66, adds that no other fear excuses the cooperator except fear of death; for otherwise, because of mere fear of loss of goods or of infamy, it is not lawful to concur in the dishonoring of a girl to be deflowered.

Fourth, Sporer, on the eighth precept, c. 1, n. 99, excuses even a servant carrying gifts to a prostitute, "because," he says, "on one side they are bound by their office and condition to serve and obey their masters; and on the other side the cooperation toward sin is merely material and only remote." Others, however, require another very grave reason, because, since these gifts are apt for fostering lust, the cooperation is proximate. And because of this same reason it is not lawful for a servant to carry love letters to his master's concubine, unless a graver and proportionate reason is present.

Others, however, as with carrying gifts, so with carrying letters, do not require this special reason besides the service itself. For here it does not seem one should consider whether letters or gifts have the force of fostering shameful love, but the very action of carrying letters or gifts should be considered, which of itself is indifferent. Otherwise, since sight has greater force for fostering shameful love, it would not be lawful even to open the door. For the rest, a servant is not bound to inquire what is contained in letters. L. 63-68, 75; l. 3, n. 571; Salm. Tr. 21, c. 8, n. 72; Sanchez on the Decalogue, l. 1, c. 7, nn. 22, 23; E. M.

442. **Is it lawful to serve prostitutes or concubinaries?** Answer: Negatively, of itself and ordinarily speaking: both because of the scandal of others and also because of the greatest danger of falling. Therefore those cases that must be excepted in practice will have to be judged from the degree of necessity and the circumstances of persons, which remove scandal and proximate danger of sinning.

443. **Is it sometimes lawful to cooperate in publishing bad books?** Generally it does not seem lawful to cooperate immediately in the printing of such books, for example to arrange type, put paper to the type, direct the printing, etc., because this very closely approaches the spreading of the depraved doctrine of the books. Nevertheless, in a case of most grave detriment, for a short time, something of this kind could be provided materially, since the matter is not intrinsically illicit after all.

It is lawful, however, for a grave cause, to cooperate mediately or remotely, for example to prepare ink or paper, or to arrange printed books. Laymann *de Carit.*, c. 13, n. 4.

444. **Can one who has received a bad book lent by another to be read restore it to its owner?** Answer: Negatively, unless prudent fear of some grave inconvenience otherwise counsels. This flows of itself from the obligation of preventing the sins of others by reason of charity, when this can be done without grave inconvenience. Grave inconvenience, however, must be judged present if you fear grave quarrels, blasphemies, hatreds, and other things of this kind from the owner.

On the Cardinal Virtues

445. **What is the nature and treatment of the cardinal virtues?** Thus far we have spoken of the theological virtues, so called because both their primary material object and their formal object is God. Material object: since it is God whom we believe, hope for, and love. Formal object: for we believe God because he is truth; we hope for God because he is good to us; we love God because he is supreme goodness in himself.

Besides the theological virtues, there are moral virtues, so called because they perfect the will in order to pursuing honorable good. Four virtues of this kind are numbered as principal or cardinal: prudence, justice, temperance, and fortitude. In the following paragraphs we shall briefly explain their nature and treatment in Moral Theology. St. Thomas, 1. 2. qq. 61, 62.

446. **Prudence** is a certain special virtue of the practical intellect, by which in any business occurring we know what is honorable and what is shameful. And thus prudence is right reason about things to be done, or the virtue rightly ordering those things that are toward the end of the whole life. Every virtue is in a mean; the mean is to do those things which virtue commands, when one ought, where one ought, and as one ought. Therefore the office of prudence is to find this kind of mean. St. Thomas, 2. 2. q. 47.

Here there is no precept of prudence by reason of itself, but only by reason of another thing, namely of a virtue to be exercised and sin to be avoided. St. Thomas, 2. 2. q. 56. Therefore, just as all the precepts of the Decalogue pertain to prudence, so all Moral Theology pertains to prudence, and especially the Treatise on Conscience and on probable opinion; since all Moral Theology, and the aforesaid treatise in particular, hand down rules so that we may act prudently and rightly. Therefore nothing must be said here specifically about prudence.

Imprudence is opposed to prudence. It is such either privatively or contrarily. "Negatively, however, it is not properly so called, namely in such a way that it properly imports only lack of prudence, which can exist without sin. Imprudence is called privative insofar as someone lacks the prudence which he is apt and bound to have; and according to this imprudence is sin by reason of negligence, by which someone does not apply effort to having prudence. But imprudence is taken contrarily according as reason is moved or acts contrary to prudence; for example, if right reason of prudence acts by taking counsel, the imprudent person despises counsel; and so concerning the other things to be considered in the act of prudence. And in this way imprudence is sin according to the proper character of prudence. For it cannot happen that a person acts contrary to prudence except by turning away from the rules by which the reason of prudence is rectified. Hence, if this happens by aversion from divine rules, it is mortal sin; for example when someone acts precipitately as if contemning and rejecting divine documents. But if he acts beside them without contempt and without detriment to those things which are of necessity of salvation, it is venial sin." St. Thomas, 2. 2. q. 53, a. 1.

447. **Justice** is the virtue which renders what is owed unto equality. Hence the other moral virtues hold the mean of reason, namely according to prudent estimation. For since they concern ruling the passions, that which is right for one is little or too much for another. But justice reaches the mean of the thing, namely according to the equality of thing to thing, so that as much is rendered as is owed. And thus the mean of justice cannot vary according to persons, places, and time; but whoever it is, wherever and whenever, who owes one hundred, and whoever the creditor is, he must render one hundred to him. If he renders fifty, he injures justice; if one hundred fifty, he exercises liberality.

Injustice is opposed to justice. Again, nothing specifically must be said here about justice. For it is treated in the Precepts of the Decalogue, and especially in the Treatise on the fifth and seventh precepts. St. Thomas, 2. 2. qq. 58, 59, 61.

448. **Fortitude** is the virtue that moderates and strengthens the soul against dangers, especially of death. There is no precept per se of this virtue, but only by reason of some special precept to be fulfilled, for example of undergoing even martyrdom lest faith be denied. Whether and when there is an obligation of observing the law even with danger of life has been said in the

Treatise on Laws, and is explained in the individual Treatises when it is asked whether it is lawful to do something at least to avoid death.

Therefore no special treatment of fortitude is to be undertaken here. The act of fortitude is twofold: to attack and to endure. For the act of attacking, two things are required. The first is preparation of the soul, namely that someone have a soul ready for attacking; magnanimity provides this. The other regards execution of the work, namely that someone not fail in the execution of those things which he has begun magnanimously; magnificence provides this. For the act of enduring, two things are also required. The first is that by difficulty of threatening evils the soul not be broken through sadness and fall away from its greatness; for this, patience is posited. The other is that from prolonged suffering of difficulties a person not become weary to the point of giving up; for this, perseverance is posited.

Fear, fearlessness, and daring are opposed to fortitude. Presumption, ambition, vain glory, and pusillanimity are opposed to magnanimity. Littleness of expenditure and waste or excessive profusion are opposed to magnificence. Impatience is opposed to patience, but softness and pertinacity to perseverance. St. Thomas, 2. 2. qq. 133 ff.

449. **Temperance** is the virtue that moderates concupiscence and delight in sensible goods. Moreover sensible goods pertain either to preserving the individual or to preserving the species. Hence temperance is chiefly divided into abstinence and sobriety; humility, meekness, and modesty; chastity and shamefastness.

Gluttony is opposed to abstinence; drunkenness is opposed to sobriety. We have already treated these when we spoke of the capital vices in the Treatise on Sins, and they must be treated again in the Treatise on the Precepts of the Church. Pride is opposed to humility; anger is opposed to meekness. We spoke of these in the same place, the Treatise on Sins; but we shall speak of sins opposed to modesty in the sixth Precept of the Decalogue. Finally, lust is opposed to chastity and shamefastness. We also spoke of this in the same Treatise on Sins, when treating the capital vices. It must nevertheless be treated chiefly in the sixth and ninth Precepts of the Decalogue. Therefore no special treatment of temperance is to be undertaken here. St. Thomas, 2. 2. qq. 141 ff.

On the First Precept of the Decalogue

I. On Devotion and Prayer

450. **What is the first Precept of the Decalogue?** The first precept of the Decalogue is: "I am the Lord your God ... you shall not have strange gods." Exod. 20:2. As affirmative, this precept first prescribes acts of the virtue of religion; as negative, it prohibits the vices opposed to religion.

Religion is a moral virtue which gives due worship to God as the first principle of all things. Hence after the theological virtues it obtains first place; and therefore sins opposed to it are most grave and mortal from their genus.

Some acts of religion are internal, others external. St. Thomas posits two internal acts: devotion and prayer. He makes the remaining acts external: adoration, sacrifice, offering of first fruits and gifts, offering of tithes, vow, oath, adjuration, and praise. Below he adds to these the sanctification of feasts and the use of the sacraments, insofar as through this we declare God to be the author of grace by which he affects our mind and soul so that he may subject them more and more to himself. Moreover, all sacred observances and ceremonies ordered by the Church to the worship of God can be added, such as the erection of churches and altars, the use of things blessed by the Church, etc.; these are determined and prescribed by the Church from the motive of religion.

The acts opposed to religion are such either by excess, as superstition with its species, or by defect, as irreligion with its species. To superstition belong idolatry, divination, and vain observance; to irreligion, tempting God, perjury, infidelity in promises, blasphemy, sacrilege, and simony.

In the present Treatise we shall speak only of those acts of religion and opposed sins that regard this first precept of the Decalogue; concerning the rest there will be discussion in the two following precepts and in other proper places. For the first three precepts concern acts of religion. St. Thomas, 2. 2. qq. 81 ff.; 1. 2. q. 100, aa. 4-8; L. beginning; Struggl 8, 9, Tr. 5, q. 1, nn. 4, 5, 6.

451. **What is devotion?** Devotion is a certain will of promptly handing oneself over to those things that pertain to the service of God. Devotion, therefore, imports a certain special act of the will, namely of handing oneself over to God's service, and a certain special quality of this act, namely the aforesaid promptness. The difference between the handing over of oneself that is had through charity and the handing over of oneself that is had through devotion is this: through charity a person hands himself over immediately to God, adhering to him through a certain union of spirit; but through religion a person hands himself over immediately to the works of divine worship. St. Thomas, 2. 2. q. 82.

452. **What is prayer, and how many kinds are there?** Prayer is taken here insofar as it signifies a certain supplication or petition, according as Augustine says that prayer is a certain petition, and Damascene says that prayer is the petition of fitting things from God. Therefore prayer can be defined as a certain conversation, as it were, of our mind with God, in which we disclose to him the desire of obtaining some thing.

Prayer is mental or vocal, according as it is performed by mind alone, or the concepts of the mind are also expressed by the mouth. It is private or public, according as it is done by a private person and in a private name, or by the community, or by a minister of the Church in the name of the Church, in the ways prescribed by her. To this kind most especially belong Mass and the canonical hours, about which we shall speak specifically where there is discussion of the sacraments and particular precepts.

Concerning public prayers two things generally must be attended to from Benedict XIV: first, that these prayers and their formulas are to be indicated and designated not by private persons, but by ecclesiastical authority, Brief *Quemadmodum*; second, that in sacred rites no prayers are to be used except those received by the Church, Brief *Inter omnigenas*. Struggl n. 21; St. Thomas, 2. 2. q. 83; Suarez *de Relig*. Tr. 4, l. 1, c. 3 ff.; E. M.

453. **Is there a precept of prayer?** Answer: Affirmatively. Proof: first, because in Sacred Scripture it is very frequently commanded by both Christ and the Apostles as necessary for salvation.

Second, because, as much as is on God's part, God ordinarily is accustomed to bestow his graces upon us only under this condition, if you except a few, for example the beginning of faith: that we ask for them by prayer. Therefore it is read: "You have not, because you ask not." Jas. 4:2. And Augustine on Ps. 39: "God wishes to give, but he does not give except to one asking." "Ordinarily": since from time to time God from his infinite mercy confers his graces even on those not asking.

And in this sense, more probably and commonly, they teach that prayer is also necessary for adults for salvation by necessity of means. For that can truly be said to be of necessity of means without which, with attention to the ordinary divine order of providence, salvation ordinarily cannot be obtained. But as much as is on man's part, his need is the greatest, so that each person can rightly cry out with the Prophet: "Deliver me, for I am needy and poor." Ps. 108:21, 22. Therefore the Angelic Doctor says: "Every person is bound to prayer for procuring spiritual goods, which are not given except divinely; hence they cannot be procured in any other way unless they are asked from him." In 4 D. 13, q. 4, a. 1; 3 p., q. 39, a. 5. L. beginning; St. Thomas, 2. 2. q. 83, a. 2; Struggl nn. 22-24; E. M.

454. **When does the aforesaid precept urge?** The precept of prayer urges frequently. Proof: for it is the precept of Christ and of the Apostles that we pray always, at every time, without intermission; these words do not prove that one must pray at every physical moment, which would be impossible, but that one must pray frequently, at a suitable time. Luke 18:1; 1 Thess. 5:17.

Moreover this precept obliges per se: first, when a person obtains the use of reason, for then he is bound to turn himself to God, acknowledge him as the font of all goods, and subject himself to the supreme Lord of all things, for which prayer wonderfully serves. St. Thomas, 1. 2. q. 89, a. 6. Second, at the time of death; for then final perseverance is especially necessary, and prayer is necessary for obtaining it. "Since it is established," Augustine says, "that God has prepared some things to be given even to those not praying, such as the beginning of faith, and other things only to those praying, such as perseverance until the end, certainly one who thinks he has this from himself does not pray that he may have it." Book *de Dono Perseverantiae*, c. 16, n. 39. Third, "at fixed intervals of hours and times," as the same Augustine says, Ep. 130. Moreover some teach that one must pray under grave obligation at least once a year; others every six months; others nearly every month; others absolutely every month, in almost the same way as the precept of faith, hope, and charity.

It obliges accidentally: first, whenever some precept urges which cannot be fulfilled without prayer; for one who is bound to the end is bound also to the means. Second, when a grave temptation urges that cannot be repelled in another way. Third, generally whenever some special divine help seems necessary to us, as in some grave calamity, whether private or public.

For lay people and for simple clerics there is no precept of performing certain prayers. But for clerics constituted in sacred orders, and for beneficed clerics, there is the Church's precept of reciting the canonical hours.

One who omits morning or evening prayers, of itself, does not sin if he omits them only sometimes. The reason is that there is no law that commands determinate prayers on individual days and at certain hours. Nevertheless the Doctors warn that some fault of negligence and acedia is rarely

absent. For the rest, in practice those who omit them more often cannot be excused completely from some fault, both because perhaps they do not pray at all at another time or in another way, and so at some time will fail the precept of prayer; and because, on account of the dangers that occur daily, with prayer neglected, they will fall into more sins. L. beginning; E. M.

455. **What are the conditions of prayer?** In order that prayer be made legitimately, it must be made with attention, humility, confidence, and perseverance.

Proof of the first part: for one who is voluntarily distracted in mind, by the act by which he prays, incurs that rebuke of God: "This people honors me with their lips, but their heart is far from me." Matt. 15:8. How indeed does he ask to be heard who does not hear himself? Of itself, he sins venially who without a just reason is voluntarily distracted; and this holds even if the prayer is made without obligation, because he inflicts some irreverence on God.

Proof of the second part: for it is written, "He has regarded the prayer of the humble, and he has not despised their petition ... The prayer of one humbling himself will pierce the clouds." Ps. 101:18; Ecclus. 35:21.

Proof of the third part: "All things whatsoever you ask when praying, believe that you will receive." Mark 11:24.

Proof of the fourth part: "Being instant in prayer, watching in it." Col. 4:2. Struggl nn. 27 ff.; Elbel 419; St. Thomas, 2. 2. q. 83, aa. 13, 14, 15; Quodl. 3, aa. 8, 9; L. l. 4, n. 176; Suarez *de Relig*. Tr. 4, l. 3, c. 4; E. M.

456. **Whom besides God can we pray to?** The Blessed Virgin Mary as our mediatrix; the Angels as guardians of human beings; all the Saints and friends of God as our intercessors before God. Baptized infants who died before the use of reason can also be invoked privately, since they are Saints and reign with Christ. According to Lessius, Bellarmine, Bonacina, and Elbel, the same is more probably to be said of the Souls detained in Purgatory. For they are friends of God. Nor is it repugnant that those who need our prayers can usefully pray for us, just as the living usefully pray for one another, although they too need prayer to be made for them.

The invocation of Saints is of counsel, not of precept, since Trent, Session 25, says only that it is good and useful to invoke them. Nevertheless they commonly say that one who never invoked the Blessed Virgin is not to be excused from venial sin. Trent, Session 25, *de Invocatione*, etc.; Gury comp. 262; Case 247; Struggl 31; Del Vecchio vol. 1, n. 663; E. M.

457. **For whom can we pray?** First, one must pray neither for the Saints nor for the damned. For the former possess in heaven the beatitude that will never be lacking; the latter have already been immutably consigned to eternal punishments in hell. But it is honorable to pray for the just who are detained in the fire of purgatory. "It is a holy and wholesome thought to pray for the dead, that they may be loosed from sins." 2 Macc. 12:46.

Likewise, we may and must pray for ourselves and, if the discussion is about private prayer, for all who dwell on earth, whether faithful or infidels, whether just or sinners, whether excommunicated or not, whether friends or enemies. Namely, prayer must be made for all those whom we are ordered to

love according to that saying of Christ: "You shall love your neighbor as yourself." Matt. 22:39. Hence the Apostle says: "I urge first of all that supplications, prayers, petitions, thanksgivings be made for all people ... for this is good and acceptable before our Savior God, who wills all people to be saved." 1 Tim. 2:1 ff.

"If the discussion is about private prayer, etc.": for as regards public prayer, see the exception in the Treatise on Censures, n. 1111. This office of praying for all is satisfied if someone, although he makes no special mention of others, nevertheless excludes no one in those prayers that are not poured out only for himself, such as the Lord's Prayer and the Angelic Salutation. St. Thomas, 2. 2. q. 83, aa. 7, 8; Struggl 32; E. M.

458. **What ought we and can we ask when praying?** We ought first to ask spiritual goods, and these absolutely, because it is certain that we cannot abuse them: "Seek first the kingdom of God and his justice." Matt. 6:33. But we can also ask temporal goods, and evils of temporal punishment, such as humiliation, poverty, etc., but conditionally; for they can sometimes help us toward salvation. Struggl 25; St. Thomas, 2. 2. q. 83, a. 6.

II. On Adoration

459. **How are the external acts of religion divided?** These acts are distributed into three classes. To the first belong those acts by which someone presents his body for venerating God; such is adoration. To the second belong those acts by which something from exterior things is offered to God. Concerning these a twofold consideration occurs. The first is of those things which are given to God by the faithful, where sacrifices, oblations, first fruits, tithes, and the sanctification of feasts must be considered. We remit consideration of sacrifices to the Treatise on the Eucharist; consideration of the sanctification of feasts to the Treatise on the third precept of the Decalogue; and we omit consideration of oblations, first fruits, and tithes, since no such precept now flourishes in the universal Church. Cf. 1548. The other consideration is of vows, by which certain things are promised to God, and this consideration we remit to the second precept of the Decalogue.

Finally, to the third class belong those acts by which something divine is assumed by human beings, which is either some sacrament or the divine name itself. But the place for speaking of the assumption of a sacrament will be in the Treatise on the Sacraments. The assumption of the divine name happens in three ways: in one way by way of oath for confirming one's own words; in another way by way of adjuration for inducing others; in a third way by way of invocation for praying or praising. And all these will also have to be discussed in the second precept of the Decalogue. Therefore here there will be discussion only of adoration. St. Thomas, 2. 2. qq. 84, 85, 86, 89.

460. **What is adoration, and how many kinds are there?** Adoration is honor shown to another by an external gesture of the body, by which we testify to our submission and to the excellence of another; or, insofar as it is a sign of internal esteem, reverence, and submission toward another, and consequently also of that other's excellence. Therefore adoration requires a twofold internal act: one of the intellect, the other of the will. The former is a speculative judgment concerning the excellence of another, and a practical judgment that it is honorable

for us to submit to him because of his excellence and our inferiority with respect to him. The latter is the command of the will to lower oneself because of that superior excellence in the other. From this finally there exists the execution itself in the exterior gesture of the body.

One kind of adoration is political, another religious, according as it shows cult to another because of merely civil dignity or excellence, or because of supernatural excellence, which is found in God and in his Saints.

Religious adoration contains three species under itself. The first is latria, which is supreme and singular, which we owe to God alone because of the divine excellence proper to him, and which therefore can be communicated to no other, according to Matt. 4:10. The second is dulia, which belongs to Angels and other Saints because of the supernatural and created excellence that is in them. The third is hyperdulia, which is shown to the Blessed Virgin because of her supernatural and created excellence, but one plainly singular and greater than and supereminent over all other created excellences.

Moreover any species of adoration is divided into absolute and respective. It is absolute when something is adored or honored because of excellence intrinsic to itself; and thus God, the Most Holy Trinity, Christ even as man, and the Most Holy Sacrament of the Eucharist are adored with absolute cult of latria; the Saints with absolute cult of dulia; the Most Holy Virgin with absolute cult of hyperdulia. It is respective when something is adored or honored because of excellence and sanctity extrinsic to itself, but intrinsic to the one to whom it is referred in moral estimation. Thus the Most Holy Name of Jesus, the instruments of Christ's Passion, and the Cross are adored with respective cult of latria; relics and images of Saints, etc., with respective cult of dulia; images of the Most Holy Virgin, etc., with respective cult of hyperdulia. Trent, Session 25, Decree on invocation, etc.; St. Thomas, 2. 2. q. 84; Suarez *de Relig.* Tr. 2, l. 1, c. 2; Struggl 11 ff.; E. M.

461. **Can people who have departed this life with a reputation for sanctity be adored?** They can be honored with private cult. But they cannot be honored with solemn and public cult unless they have been numbered among the Saints or Blessed by the Supreme Pontiff. Public cult is that which is shown in the name of the Church or as instituted by her; private cult is that which proceeds only from private devotion, even if it is done before others. Therefore it is not lawful to erect churches or altars in honor of Saints not canonized, or at least not beatified. Cf. 463. Nor is it lawful to invoke them publicly in litanies, or to expose their relics or images for public veneration, or to carry them around in processions. It is lawful, however, to keep these images or relics privately, kiss them reverently, etc., because such cult is altogether private and is not prohibited. Struggl 18; E. M.

462. **Resolutions:** First, it is by no means illicit to place the likeness or statue of some deceased person not canonized, whether in an oratory, even a public one, or in a church, provided this is not done to honor him with public cult, but from another manifest motive, for example if he is the founder or benefactor of the church, or his statue is placed at his tomb in the church. Thus also images of emperors, kings, and other distinguished men could be hung; and the Basilica dedicated to St. Peter at Rome is adorned with images or statues of Pontiffs not enrolled among the Saints.

Second, a priest can accept a stipend and celebrate Mass in honor of a man deceased with a reputation for sanctity, or in thanksgiving for a benefit obtained, etc., provided he takes the Mass of the feast or feria occurring on that day, and not the common of non-Pontiffs, nor recites a special prayer concerning him or with his name. The reason is that to offer the sacred action for the aforesaid intention is not to honor someone with public cult, since the intention of the celebrant is something altogether private. Elbel 443; E. M.

463. **Note:** First, for public cult of relics, it must be certainly established that the relics to be venerated belong to a Saint or Blessed solemnly recognized as such by the Church. In addition, the seal of some bishop or prelate must be applied; the seal of the bishop of the place suffices for relics to be honored with public cult, and an authentic writing is not necessary.

Second, in order that relics, although authentic, be exposed for the public veneration of the faithful in a church or public oratory, it is required that they be recognized by the bishop of the place, even if they were sealed at Rome by the Apostolic Prefect. Trent, Session 25, on invocation, etc.; Sixtus V, Constitution *Dominus*.

Third, for private cult only private moral certitude is required, such as is had, for example, from a trustworthy person.

Fourth, someone sins gravely by stealing notable relics, or even the smallest part of a very precious relic, for example of the Most Holy Cross, because although they cannot be valued by price, nevertheless this removal can gravely sadden the possessor. In the Roman district, moreover, under penalty of excommunication it is prohibited to steal relics, even the smallest, belonging to churches, from the Constitutions of Clement VIII and Paul V. Therefore not in every case is the theft mortal, but it is grave real sacrilege.

Fifth, as to images, aureoles or rays cannot be placed on images of the deceased, although they are commonly held as Saints, unless they have been beatified by the Church. Likewise it is not lawful to hang tablets and images, or lamps or any other lights, namely for veneration and cult, at their tombs. But with the license of the Ordinary or bishop, it is lawful to keep similar relics of a Saint in a place separated from the church and secret, to receive offerings and tablets, and to narrate benefits received in booklets; not, however, without the recognition and approval of the bishop, as Urban VIII established in the Decree *Sanctissimus*, March 13, 1625, and in another special Constitution, *Caelestis Hierusalem*, July 5, 1634.

Sixth, images of the Blessed are to be painted with rays only; those of the canonized with a diadem around the head. Ferraris, v. *Veneratio SS.*, n. 46. Likewise images of Our Lord and the Blessed Virgin, Angels, and Saints must be painted or sculpted in that form and habit which has been in use in the Church from ancient time. Urban VIII, Constitution *Sacrosancta Tridentina*, March 15, 1642. As to the Blessed, it is not lawful to name churches or altars after them, S. R. C., April 11, 1842; and their images and relics can be retained and exposed only in those churches in which their Office is permitted to be celebrated. Urban VIII, cited Decree *Sanctissimus*; Clement XI, Constitution 82, n. 11. L. l. 3, nn. 45, 532; Response Letter at the end of chapter 1; Benedict XIV, *de Canon. SS.* l. 11, c. 2; Struggl 18; Scavini, 12th ed., Milan 1874, l. 2, nn. 168 ff.; E. M.

III. On Superstition and Idolatry

464. **What acts are opposed to religion?** "Something is opposed to true religion in two ways: in one way by excess, namely when that which belongs to religion is unduly shown to another, which pertains to superstition; in another way as by defect of reverence, namely when God is contemned, which pertains to the vice of irreligion ... Superstition impedes religion as to this, that God not be received for worship ... But through irreligion religion is impeded as to this, that God, after he has been received, not be honored." St. Thomas, 2. 2. q. 122, a. 3.

465. **What is superstition?** "Superstition," says St. Thomas, "is a vice opposed to religion according to excess, not because it shows more in divine worship than true religion does, but because it shows divine worship either to one to whom it ought not, or in the way in which it ought not." 2. 2. q. 92, a. 1. "The principal impediment to religion is that a person adhere to a false god ... And therefore in the first precept of the law the worship of false gods is excluded ... But all other superstitions proceed from some pact entered with demons, tacit or express; and therefore all are understood to be prohibited in this which is said: 'you shall not have strange gods.'" 2. 2. q. 122, a. 2; L. 1, 2; *Collectanea* S. C. de P. F. n. 1702.

466. **How many kinds of superstition are there?** On the part of the thing which is endowed with cult, there is a threefold species of superstition: idolatry, divination, and vain observance. For either a creature is worshiped as God, and this is idolatry; or knowledge of hidden things is sought from it as from God, and this is divination; or finally some help is implored, and this is vain observance. All these are mortal by their nature, since they inflict grave irreverence on God by attributing to a creature what is owed to God.

By reason of the mode in which worship is exercised, one kind is superstition of false worship, if it signifies something false, for example if someone now offers worship to God through ceremonies of the Old Law; if a layman worships God as a public minister of the Church, etc. Another is superstition of shameful worship, if it contains certain things injurious to God, for example if someone introduced dishonorable and insulting words in his prayers. Another is superstition of superfluous worship, if it contributes nothing to the true worship of God, for example a ceremony of hearing Mass before sunrise with a certain number, position, and order of candles, etc. This last species, scandal excluded, is ordinarily judged only venial, because the matter is light and should be called mere simplicity rather than positive irreverence. But the other two are always mortal, because they are gravely repugnant to divine honor and worship, which rests on truth and sanctity. Struggl 2 ff.; L. 3, 4; St. Thomas, 2. 2. qq. 92, 93.

467. **What is idolatry, how many kinds are there, and what kind of sin is it?** Idolatry is defined as: an action by which worship due to God alone is shown to a creature.

It is threefold: perfect, imperfect, and simulated. The first gives divine honor to a creature, falsely judging it really to be God. The second indeed gives divine honor to a creature, but either from hatred of the true God or from desire to obtain something from a demon or another creature, while not being ignorant that the same creature lacks divinity. The third finally shows that honor to a creature from fear of death alone, without internal affection, as happened to certain Christians in times of persecution.

Any of these idolatries is grave sin. Proof: "Just as in an earthly republic it seems most grave that someone bestow royal honor on another than the true king ... so among sins committed against God, which nevertheless are the greatest, it seems most grave that someone bestow divine honor on a creature; because as much as is in him, he makes another God in the world." St. Thomas, 2. 2. q. 94, aa. 3, 1; L. 12, 13.

IV. On Divination

468. **What is divination?** Divination is defined as a tacit or express invocation of a demon for knowing hidden things. "Tacit or express," because it can be done in two ways: either by expressly invoking that help of a demon, and it is called express; or by using certain means useless and ineffective in themselves for imploring demonic aid, and it is called tacit. Here it must be noted that it is not required that the demon at some time have made a pact that he will concur with the use of some vain means; for by the very fact that someone uses means lacking all proportion to the end, he invokes in act the help of a demon, who is accustomed to involve himself in these things. St. Thomas, 2. 2. q. 95, aa. 1, 2; L. 5, 6, 8.

469. **How many kinds of divination are there?** Divination is distinguished into several species, but only materially, by reason of the different means. The principal species of divination through express invocation of a demon are: first, pythonism, namely when a demon, occupying the body of some man or woman and emitting voices from there, discloses hidden things. Second, prophecy, when a demon uses the work of pseudo-prophets to signify hidden things. Third, necromancy, when a demon responds through the dead or through those recalled to life. Fourth, oracle, when a demon consulted while hiding in images responds. Fifth, illusion, when the demon himself dazzles the eyes with apparitions. Sixth, oneiromancy, when someone presumes to disclose hidden things from dreams. Seventh, when someone foretells future things through certain figures or signs that appear in inanimate things.

Divination that happens without express invocation of a demon is twofold: one kind uses dispositions of certain things; the other uses certain things that are seriously done by human beings to inquire into something hidden. To the first belong: first, chiromancy, as divination from inspection of the hand. Second, physiognomy from features of the face. Third, haruspicy from the entrails of animals. Fourth, augury from the chatter of birds. Fifth, auspice from their flight, position, and feeding. Sixth, astrology from the stars. Seventh, geomancy, hydromancy, pyromancy, aeromancy from signs in earth, water, fire, and air. Eighth, omen from words said without intention. To the other kind belongs sortilege, as divination from lots.

"Thus therefore it is clear that there are three kinds of divination, of which the first is through manifest invocation of demons ... the second is through consideration alone of the disposition or motion of another thing ... the third is when we do something so that something hidden may be manifested to us ... under each of these many things are contained." St. Thomas, 2. 2. q. 95, a. 3; L. 6; Struggl 20, 21.

470. **Note:** First, natural effects must be carefully distinguished from free effects. For the former often can be conjectured, as, for example, from the song and flight of birds or from the aspect

of the stars, a storm, rain, or clear weather is conjectured, etc. For experience establishes that among these things there is a natural connection; but the latter must be spoken of otherwise.

Second, character or a state of mind can sometimes in some way be conjectured from color of face or other external signs, although in practice one should usually abstain from such conjectures because of danger of rash judgment; but free acts, whether past or future, can never be known certainly.

Third, whatever hidden thing is known in some other way than through revelation or through natural means must be attributed to divination; for no other means is given for investigating hidden things. St. Thomas, 2. 2. q. 95, aa. 1, 7; q. 96, a. 2; L. 9, 10.

471. **What kind of sin is divination?** Divination is mortal from its genus, both because it attributes divine honor to a creature by wishing to know from it things known to God alone, and because association with a demon is great contempt of God, betrayal and apostasy from God, since the demon is his perpetual enemy. Hence the Apostle warns: "I do not want you to become associates of demons." 1 Cor. 10:20; Deut. 18:10-12. Nevertheless tacit divination can sometimes be excused from mortal sin because of simplicity and ignorance, or because of defect of certain faith. St. Thomas, 2. 2. q. 95, aa. 2, 4; L. 7; Suarez *de Relig*. Tr. 3, l. 2, c. 8, n. 15; Laymann l. 4, Tr. 10, c. 3, n. 4; Struggl 19.

472. **Resolutions:** First, he is not free from grave fault who, using means disproportionate for some knowledge, protests that he intends no commerce with a demon; for he acts against his protestation and implicitly invokes the demon, since neither God nor an Angel involves himself with such things.

Second, they sin gravely who inquire of seers about their future fortune or life, unless they act from simplicity, joke, or curiosity, without applying faith to the sayings. If, however, the seer acts seriously, they can scarcely be excused from gravely culpable cooperation. Reuter 43; L. 8, 10; St. Thomas, Quodl. 3, a. 22.

473. **Is it sometimes lawful to conjecture future things from dreams?** There are four kinds of dreams: first, natural, which have their origin from natural causes, for example occupations or the temperament of the body. Second, chance dreams, which arise from the varied concurrence of imaginative representations. Third, those of which God is the author. Fourth, those that have the demon as author.

Moreover, from natural dreams it is not superstitious to conjecture the present health of the body, or its future state, or even a way and discipline of living, because a true and natural connection intervenes among these things. It would nevertheless be superstitious to conjecture from them future free contingents, since these proceed only from the free and changeable will of man.

From chance dreams it is superstitious to deduce future things, because from the very fact that they are chance occurrences, they cannot be suited for signifying any matter. Ecclus. 34:7. But he would not seem to sin mortally who, because of a preceding dream, omits or places an indifferent action; for this seems rather to proceed from a certain simplicity of soul or excessive timidity, for example if someone omitted a walk because he dreamed that he would be treacherously killed in it on this or that day.

To dreams that are certainly or more probably from God we can, indeed must, says St. Alphonsus, n. 9, apply faith, since God promised that he would sometimes speak in this way, Acts 2:17; Num. 12:6.

To believe diabolical dreams is mortal unless ignorance or simplicity excuses, since it is to found truth in falsehood and to enter association with a demon. In this sense Scripture says: "You shall not practice augury, nor observe dreams." Lev. 19:26. Struggl 24; L. 9; St. Thomas, 2. 2. q. 95, a. 6.

474. **Note:** The general rule for discerning whether dreams come from a demon is this: if they impel to evil, or if someone experiences himself disturbed and less prompt toward good. It is otherwise if the dream impels to good, or someone feels himself more eager for it; always, however, with humility and fear, since the devil often transforms himself into an angel of light. Struggl 25; L. 9.

475. **Is astrology sometimes lawful?** Astrology is of two kinds, natural and judicial. Through the first, natural effects are predicted, some certain, others probable. Through the second, freely contingent effects are foretold. Now natural astrology is lawful, as is clear. But judicial astrology is altogether illicit and superstitious, because heavenly bodies can do absolutely nothing upon the free will of man. L. 10; St. Thomas, 2. 2. q. 95, a. 5; E. M.

476. **Is the use of lots sometimes lawful?** Some lots are divisory, some consultory, some divinatory.

Divisory lots, which are used to settle disputes, etc., with both parties consenting, are lawful, since they contain nothing superstitious, but are as a certain kind of contract; and they are also approved in Scripture by these words: "The lot suppresses contradictions." Prov. 18:18. By positive law, except all elections to prelatures and ecclesiastical benefices, which ought to be made by inspiration of the Holy Spirit; this also holds for disputes about the same benefices. C. *Ecclesia* 3, *de Sortil.* Nevertheless the Doctors more probably judge that this is only prohibited, so that if a lot is used, the elections are illicit but valid; the reason is that nowhere are they declared invalid, if the election of a prelate having jurisdiction is excepted. C. *Quia propter*, *de Elect*. Cf. Schmalzgrueber l. 5, p. 2, t. 21, nn. 38 ff. Secular offices also are to be distributed not by lot, but according to the suitability of persons, although among several equally suitable and worthy persons it can be done by lot. Thus also, if several have deserved death, and it is not expedient that all be punished, it can be determined by lot which of them is to be killed.

Consultory lots, by which it is inquired what is to be done in this or that matter, are usually illicit, because they contain tempting God and danger of diabolical fraud. "Usually," for sometimes they are lawful: when they are done by divine instinct or command, as happened in the election of Matthias, Acts 1:26; when necessity and honorable character of the cause require it, for example an urgent necessity of salvation, and no more suitable way of overcoming the doubt appears, provided they are done after prayer, with due reverence, and judgment is expected from God alone, and divine things are not turned to earthly business, etc.

Divinatory lots, by which knowledge of a hidden or future thing is sought through the throwing of dice, and this is sortilege, are in no way lawful, since neither from their own nature, nor from that of other things, nor from the institution of God or the Church, does that casting of lots have any force for the aforesaid effects. If, however, God himself impels one to cast a lot, which should scarcely ever

be thought, then it will be lawful; just as it was lawful for Joshua when he used it to investigate the hidden crime committed by Achan, Josh. 7:14. "Moreover, if someone sought from God the manifestation of hidden truth through lots, such sortilege would not be superstitious, but tempting God or another sin of irreligion, as Laymann teaches with Sanchez, n. 9." Struggl 26; L. 10, 11; St. Thomas, Quodl. 12, a. 35; 2. 2. q. 95, a. 8.

477. **Is the use of a divining rod lawful?** This rod, of which first mention was made, as they say, in the fifteenth century, is made of hazel and forked. They use it to find treasures, veins of water, shifted boundaries of fields, murderers, etc. There are those who defend its use as natural; but this is rightly commonly denied. For intention alone can contribute nothing to physical motion. Moreover the rod is moved according to the mind of the bearer, so that if he seeks metals, not water, the rod is not moved if it finds water, and conversely. Add that it remains unmoved in the hands of one who protests that he wishes nothing superstitious, as examples prove. Yet it must not be denied that it can also happen naturally that some rod is moved toward one part rather than another; and thus it can serve for detecting waters or metals, namely by force of natural attraction, as is clear in the magnet. But then this happens constantly and independently of the intention of the one using it. Hosea 4:12; L. 8; Albitus, *de Inconst. in Fide*, c. 32, n. 26.

V. On Vain Observance

478. **What is vain observance?** Vain observance consists in this: that someone uses means neither proportionate by their nature nor instituted by God or the Church for obtaining a certain effect. It differs from divination in that divination is ordered to knowledge of hidden things, but vain observance to obtaining any effects whatever. It agrees with divination because it too rests on a pact with a demon, express or tacit. It matters little indeed that the demon is not expressly invoked; for he is equivalently invoked, since, as God does not involve himself with vain things, the effect cannot be expected except from a demon. St. Thomas, 2. 2. q. 96, aa. 1, 2, 3; L. 24.

479. **How many kinds of vain observance are there?** There are four species of vain observance, which are distinguished only materially by reason of their effects. First, if certain useless things are observed for acquiring the infusion of knowledge without other study, and this is called the notorious art. It differs from divination because divination directly regards speculative knowledge, while this directly regards the infusion of knowledge for one's own convenience, and indirectly the knowledge itself. Thus they sin who take a prepared potion so that they may immediately become learned.

Second, if useless things are observed for obtaining health, and this is called observation of healings. Thus they sin who use unknown names and certain empty ceremonies to drive away animals; or who wear amulets, wrappings, or something similar around the neck to drive away diseases.

Third, if from consideration of some futile event it is decided what will happen, and someone moderates his actions from that, it is called observation of events. This differs from divination both because observations of this kind are without any reason and art, whence they are more vain and

superstitious, and because they regard the direction of one's own acts; but divination intends rather speculative knowledge of hidden things. Thus he would sin who refused to sit with thirteen at table as if this were a sign of death, although this can usually be excused, since no true faith is applied to this matter, but there is a certain simple and empty fear.

Fourth, if the observance concerns bodies to be altered in various ways and other marvelous or harmful effects to be produced, it is called magic or malefice. Malefice contains a threefold moral malice against religion, charity, and justice. One kind of malefice is amatory or a philter, another poisonous. The former is for exciting carnal love or hatred toward some person, with the demon moving the imagination or bodily humors of the person, but doing nothing on the will; whence it does not necessarily induce the commission of sin. The latter is for inflicting damage on someone, whether in his goods or in his health.

Here it must be noted that possession consists in this: that a demon is in some way united to a human body and works extraordinary things in it and through it. But if the demon does not seem to reside in a person's body, but only works externally by troubling him in various ways, then there is obsession. Struggl 28, 41, 42, 48; Suarez cc. 15, 16; L. 15, 23; St. Thomas, Quodl. 4, q. 9, a. 16; 2. 2. q. 96.

480. **What kind of sin is vain observance?** Like divination, vain observance also is grave sin: both because it attributes divine honor to a creature by expecting from it what ought to be expected from God alone, and because it rests on a pact and consequently imports association with a demon. Often, however, it can be excused from mortal sin by reason of ignorance and lack of consideration, or of very doubtful faith. L. 15; St. Thomas, 2. 2. q. 96.

481. **Resolutions:** First, they are guilty of superstition who carry bindings marked with certain characters, who invoke certain unknown names, or who use a certain number of crosses or prayers to heal wounds, to make themselves invulnerable, etc.

Second, likewise those who carry certain prayers to St. Bridget or other prayers, expecting an altogether infallible effect from them. Nevertheless they are not to be blamed, indeed they are to be greatly praised, who carry pious medals, sacred images, or relics of Saints, hoping that they will specially obtain divine help for themselves.

Third, they too are guilty of superstition who regard some days as fortunate, others as unlucky, so that they direct their actions from this; or who, for expelling diseases, require herbs gathered on such a feast, etc.

Fourth, it is not superstitious to observe the moon or the times more suitable for gathering herbs, cutting trees, etc.; nor to carry sacred things or words of Sacred Scripture for the honor of God or the Saints and for imploring their help. Likewise it is not superstitious to recite a certain number of prayers, nor to do all those things that can increase devotion, provided infallible force is not attributed to them.

Fifth, it is not in any way superstitious, indeed it is very religious and pious, to recite novena prayers or to repeat prayers so many times in worship of Our Lord, or of the Blessed Virgin, or of some Saint, by reason of indulgences that are attached to such a number of prayers, or by reason of mystical signification for increasing devotion: for example, the number three in honor of the Most Holy

Trinity, five in honor of the five wounds of Our Lord Jesus Christ, seven because it recalls to mind the six days of creation and the seventh on which the Lord rested, nine in honor of the nine months during which Christ was in the womb of his Mother, etc., provided infallible force is not attached to such a number, certain day, or fixed time. Struggl 33, 34; Cajetan on q. 96, aa. 3, 4; L. 17-22; St. Thomas, 2. 2. q. 96.

482. **In doubt about the natural cause of some effect, is it lawful to make an experiment?** In doubt whether effects proceed from a natural cause or from a demon, they can be attributed to the powers of nature; and therefore it is lawful to procure them, because it is not established that the thing is evil. Nevertheless a protestation against any intervention of a demon is prudently made beforehand. But in doubt whether effects are produced by a demon or by God, if it is certainly established that they cannot proceed from a natural cause, they must be attributed to a demon, unless the sanctity of the worker or other clear indications persuade the contrary; because it is rash to think miracles are always occurring. Hence it is not then lawful to try whether the effect will follow or not. L. 20; St. Thomas, 2. 2. q. 96, aa. 1, 2; Struggl 32.

483. **Does magic introduce a new species besides vain observance?** Answer: Negatively. For magic differs from vain observance only materially, namely because its effects are more marvelous, for example alteration of bodies, etc. But in moral species it differs neither from vain observance nor from divination, because it matters little whether knowledge of hidden things or marvelous effects are sought from a demon. Therefore these three in the moral line contain the same malice in species. Struggl 39.

484. **What can be done to remove malefice?** It is lawful to use natural remedies taken from medicine to correct depraved humors; exorcisms, sacraments, pilgrimages, invocations of Saints; destruction of signs through which the demon harms, but without another malefice. It is also lawful to place a contrary sign, provided it is honorable in itself. The reason is that this is only to remove a sign and dissolve a pact with a demon.

If the malefactor can remove the malefice in a lawful way, it is lawful to summon him to this, ask him, indeed even induce him by money; and this even if it is established that he will do it through a new malefice, just as for a cause it is lawful to ask a loan at interest from a usurer. And the reason is that since I have the right of asking what can rightly be provided by him and is indifferent, it will be imputed to his malice if he does it badly.

If the malefactor cannot remove the malefice except through a new malefice, it is not lawful to induce him to this, because this would be to induce him to sin and to cooperate in an intrinsically evil act.

If it is doubted whether he can remove it without a new malefice, it is not lawful to ask it from him, because the presumption stands in the way that he knows no way except an illicit one.

It can more easily be presumed that one who placed the signs can destroy them without new malefice than one who did not place them. Hence if the latter offers his work, he will first have to be examined about the manner of dissolving. Suarez c. 17, n. 10; L. 24 ff.; Struggl 44 ff.

485. **What is to be thought of the more recent superstitions that are circulated?** The effects of superstitions of this kind are various and known to all: mechanical, physiological,

psychological, and spiritual effects. Likewise various causes are used, or are said to be used, for producing effects of this kind; whence various names are taken either from the effects or from the causes, namely magnetism, animal magnetism, spiritism, rotating tables, somnambulism, hypnotism.

Two things must be noted in a matter of this kind: namely the proportion or disproportion of the effect with a natural cause; and the honorable or shameful character of the acts that are used, or of the conditions that are prerequisite, for example that the magnetized person subject himself entirely to the will of the magnetizing person and hand himself over to his decision. From that disproportion or proportion there is or is not superstition; from this honorable or shameful character, even without superstition, the thing can be illicit as immoral.

As to the preternatural character of the aforesaid effects, this must be carefully observed: whether, although some effect can be produced absolutely by a natural cause, it is in fact produced by this cause, or rather by another preternatural cause, with attention to all its circumstances.

Moreover, magnetism, animal magnetism, spiritism, rotating tables, somnambulism, and hypnotism, according to those effects which commonly occur in their use, are not lawful, since either they really do not differ from divination, vain observance, magic, and malefice, when the effects, with attention to their intrinsic nature, the mode in which they are produced, and other circumstances, surpass the powers of natural causes; or they are excited by shameful and immoral acts; or certainly they often carry before themselves both that disproportion and this shamefulness. Therefore it is also illicit to be present at experiments of these effects, even merely passively, since it is a sin of cooperation in a thing intrinsically evil. St. Thomas, 2. 2. qq. 95, 96; *Contra Gentiles* l. 3, C. 104; E. M.

VI. On Irreligion and Tempting God

486. **What is irreligion?** Irreligion is a vice that is opposed to the virtue of religion by defect, and that tends toward bringing irreverence upon God either directly in himself or indirectly in sacred things or persons. In the first way it is divided into tempting God, perjury, infidelity in promises, and blasphemy. In the other way, into sacrilege and simony. Perjury, infidelity, and blasphemy will be treated in the second precept of the Decalogue; the remaining matters must be discussed here. St. Thomas, however, treats blasphemy insofar as it is opposed to confession of faith, qq. 13, 14. But cf. q. 13, a. 2, ad 2. Suarez Tr. 3, l. 1, c. 1, n. 8.

487. **What is tempting God?** Tempting God is a saying or deed by which someone explores whether God is powerful, wise, merciful, or has some other perfection. St. Thomas, 2. 2. q. 97, a. 1; L. 29.

488. **How many kinds of tempting God are there?** There are two: one explicit and formal, the other implicit and interpretative. The first is when someone directly intends to explore the divine perfections; and this usually arises from infidelity, although it can also proceed from levity, curiosity, imprudent confidence, etc., for example if someone doubting about some article of faith asks a miracle from God, or if someone throws himself from a high tower, curiously about to test whether God is able to preserve him from death.

The second is when someone does not properly intend that exploration, but says or does something that, considering the circumstances, seems by its own nature to be referred to it. This happens in two ways: first, when someone without just cause neglects ordinary remedies and rashly expects an extraordinary effect from God alone, for example if someone in a dangerous illness rejects every medicine, wishing only to be healed miraculously by God. Second, when someone voluntarily and of his own accord, without any necessity and utility, casts himself into such danger that he can scarcely be freed without a miracle of God; for example, if someone through all Lent, without special instinct of God, wanted to abstain from all food and drink, expecting from God the extraordinary preservation of his life. Here note that if someone acts only rashly, without any respect to God, and without confidently trusting divine providence, but believes with a certain foolish confidence that by chance perhaps he will overcome this or that danger, he does not sin against religion, but only against the fifth precept of the Decalogue. Suarez *de Relig*. Tr. 3, l. 1, cc. 2, 3; L. 29.

489. **What kind of sin is tempting God?** Tempting God is a mortal sin from its genus. Proof: because it inflicts grave irreverence on God; hence it is written: "You shall not tempt the Lord your God." Matt. 4:7. This holds whether the temptation is explicit or implicit. As to explicit temptation, it is clear, because that explicit intention of exploring the divine perfections is explicit contempt of God himself. As to implicit temptation, it is demonstrated from this: that even an implicit petition, namely that God work against the order of his providence without necessity, most evidently turns into grave injury against him, for it is to deal with God as a patron of curiosities.

Tempting God can be only venial not only because of ignorance, inadvertence, or defect of consent, but also because of smallness of matter. Thus, for example, he would sin only venially who, laboring under a light illness, neglected natural remedies and expected health for himself from God by imprudent confidence, or rather presumption; for he does not seem to commit grave disorder, since he does not truly ask a miracle from doubt, or from grave levity and curiosity to test divine power. Indeed he is excused even from all fault if he hopes that naturally, with God helping, he will be freed from such an illness. Likewise he sins of himself only venially who through negligence comes unprepared to preach the word of God, hoping for special help from God.

But if tempting God proceeds not merely from an imprudent and presumptuous imploration of divine help, but from doubt about the divine perfections, then there will be no smallness of matter. For smallness of matter is not given in deliberate doubt against faith. Therefore the sin will then have place against religion, and also against faith, mortal from its whole genus. L. 29, 30, 32.

490. **Resolutions:** From what has been said one can gather what is to be thought about the trials formerly used, commonly called judgments of God. Namely, when witnesses were lacking, various experiments had been instituted to which the accused was subjected; for example, he carried hot iron, walked over burning coals, etc.; and if no evil happened to him, he was regarded as innocent. This is altogether illicit. For it is both a species of divination, since there is no proportion of means to the end, and a tempting of God, since it is to wish indiscriminately to ask a miracle from him by which he would disclose the truth. The Church never approved this. For when a crime cannot be known by natural ways, and a special instinct of God does not advise otherwise, it is to be left to the judgment of God, who searches the

secrets of hearts. C. *Consuluisti* 2, q. 5; title *de Purgat. vulgari*; L. 30; Struggl 6; Muratori, *Antiq. Ital.*, diss. 38, 39.

491. **Is it lawful to ask a miracle from God?** They commonly teach that this is lawful whenever grave utility is present for our salvation or that of others, or for fulfilling the divine will. For then it would not be tempting God, but asking God's help at a suitable time. He would sin, however, who absolutely asked or offered a miracle for the conversion of heretics or sinners, since the testimonies of our faith suffice. Except the case of particular inspiration from God. St. Thomas, 2. 2. q. 97, a. 2, ad 3; L. 31.

492. **Is it lawful to offer oneself to martyrdom?** One must distinguish with St. Thomas. Either a legitimate cause is present or it is not. If the first, for example to avoid blasphemies, to procure the glory of God and of faith, or to eliminate in a neighbor the danger of unbelief, it is certainly lawful, since it is a work of the highest charity. If the second, it is not lawful, since no one is master of his own life so that he can lavish it according to his pleasure. Hence he sins gravely when good faith or divine inspiration does not excuse, as we know happened in several Saints. St. Thomas, 2. 2. q. 174, a. 3; L. 32; l. 6, n. 101.

VII. On Sacrilege

493. **What is sacrilege?** Sacrilege is the violation of a sacred thing as sacred; that is, of a thing dedicated to divine worship, taken not materially but formally, namely insofar as it is ordered to this worship. That is, in order that some action be sacrilege, the thing must be violated in that by which it is sacred. Hence, if someone speaks badly of one who has a vow of chastity, that detraction does not put on the nature of formal sacrilege, because that person is sacred to God only as regards purity of body, but not as regards integrity of reputation.

Moreover, only that thing is properly judged sacred which is not in any way whatever sacred or dedicated in any way whatever to divine worship, but has been deputed to the worship of God by public rite and by divine or ecclesiastical institution, or by the power of the Church. Therefore it does not suffice that the thing has been simply blessed, namely by a merely invocative blessing, by which we pray for the good of the thing or person; rather, a constitutive blessing is necessary, by which a profane thing becomes sacred. Indeed, more than that, a constitutive blessing is necessary by which the thing is consecrated to divine worship. And thus it is not illicit "to throw to dogs the bones of a lamb or eggs that are blessed ... just as it is also lawful to use holy water and candles for profane use." L. l. c. n. 94. Struggl 9; St. Thomas, 2. 2. q. 99, aa. 1, 2; L. l. 6, n. 94.

494. **How many kinds of sacrilege are there?** Sacrilege is threefold: personal, by which a person is violated; local, by which a place is violated; real, by which other sacred things are violated. Sacrilege differs in species according as it affects a person, a place, or a sacred thing. This is established from the common authority of theologians, and because the sanctity of persons, places, and things is not the same. Suarez *de Relig.* Tr. 3, l. 3, c. 1; Lugo *de Poenit.* D. 16, n. 471; L. 48; St. Thomas, 2. 2. q. 99, a. 3.

495. **What kind of sin is sacrilege?** Sacrilege is a mortal sin from its genus if the work is specially repugnant to the sanctity of the thing, because by its nature it always involves grave injury to

God; and it is graver in proportion as the sacred thing itself obtains greater sanctity. Nevertheless it can become light by reason of smallness of matter. "If the work is specially, etc.": for if it is repugnant only generally to sanctity, for example in the way all mortal sins are generally repugnant to the sanctity of a temple, it does not exceed venial sin, or it is a lightly aggravating circumstance. L. 33.

496. **In how many ways is personal sacrilege committed?** Personal sacrilege is committed in three ways: first, by laying violent hands on a cleric or religious. Second, by violating persons dedicated to God luxuriously, even by touches alone. Third, by subjecting ecclesiastical persons to a lay forum, contrary to the privilege of exemption and immunity. St. Thomas, 2. 2. q. 9, a. 3; L. 35; Struggl 11.

497. **In how many ways is local sacrilege committed?** Local sacrilege can likewise happen in three ways: first, by profane actions which either by their nature or by prescription of law are opposed to the sanctity and immunity of the place, although the Church is not polluted by them, such as public market, public banquets, theatrical games, public clamor, secular parliaments, noise of trials, unless a grave cause excuses, etc. Second, by all sins by which a church is polluted by canon law, namely injurious and notorious shedding of human blood; illicit and notorious shedding of human seed; culpable and notorious homicide; burial in a church of an excommunicated person not tolerated, or of an unbaptized infidel, even if such burial had been inculpable. Third, by all sins that are committed against the immunity of asylum of a sacred place.

Local immunity is that by which it is forbidden to exercise profane things in places sacred to God. Immunity of asylum is that by which it is forbidden to violate the rights of asylum. C. 2 *de Immun.* in 6; C. 6 *de Immun. eccl.* Moreover asylum is a privilege by force of which safety is provided to malefactors fleeing to a sacred place, lest they be able to be violently drawn out from there, except for cases excepted by law. Suarez *de Relig.* Tr. 2, l. 3, c. 8; Gregory XIV, Constitution *Cum aliis*; Benedict XIII, Constitution *Ex quo divina*, June 8, 1725; Clement XII, Constitution *In suprema*; Benedict XIV, Constitution *Detestabilem*, Constitution *Officii nostri*.

Here, however, it must be noted that where the discussion concerns sacrilege because this immunity of a sacred place has been violated, the notion of sacred place extends much more broadly than when the discussion concerns acts directly opposed to the sanctity of a sacred place. For as regards these acts, by which a church can also be polluted, sacred place means only the extent of a place, even simply blessed and deputed by the bishop to divine offices or to burying the dead, from roof to pavement, even if interdicted and polluted. Therefore private oratories are excluded. But if the discussion concerns the aforesaid immunity of sacred place, this also includes the exterior parts of the church, for example the porch, sacristy, tower, roof, underground crypts, stairs to the temple, and the whole exterior base. Cemeteries, even separated from the church, are held in the same reckoning, as are the bishop's palace, indeed the house of the parish priest if joined to the church, religious convents with barns, gardens, and all things enclosed within their extent, and finally hospices erected by authority of the bishop and having a chapel for celebrating. C. single chapter *de Consecr.* in 6; C. *Ecclesiis* 20 *de Consecr.* D. 2; C. *Ecclesia* final, *de Consecr.*; C. 9 *de Eccles. aedific.*; L. 36-38; l. 3, n. 460; l. 6, nn. 366, 920; Struggl 13; Schmalzgrueber l. 3, t. 40, nn. 72, 77.

498. **In how many ways is real sacrilege committed?** Real sacrilege, generally speaking, can also be committed in three ways: first, by treating sacred things unworthily. Second, by unjustly usurping them. Third, by profanely selling and buying sacred things, or simony.

Hence real sacrilege is committed: first, by unworthy administration or reception of the sacraments, which produce sanctity. And thus it would also be sacrilege to use sacred vessels, corporals, etc., enormously unclean for sacrifice, to leave consecrated particles to corrupt in the pyx, etc. Second, by abuse of Scripture, by twisting its words, which signify what is sacred, toward vain things. Trent, Session 5, at the end, calls this usurpation rashness and orders it to be punished. Third, by unworthy treatment of sacred images or ceremonies, which represent sacred things. Fourth, by profanation of sacred vessels, instruments, ornaments, etc., which pertain to sacred worship. Understand profanation here concerning those things which are customarily consecrated or at least blessed; for Tamburini, *Expl. Sacrif.* l. 1, c. 2, teaches that it is not sin to use carpets, candlesticks, a basin, indeed even a towel, etc., for weddings or common use, when they serve the sacred ministry mediately, unless it is done from some at least implicit contempt, as if you always and indifferently use the aforesaid things. Fifth, by theft and usurpation of ecclesiastical goods, which are deputed to worship and the support of sacred ministers. Sixth, by theft and unworthy treatment of relics, which are particles of Saints. Seventh, by defrauding the rights of the Church, for example by imposing taxes, etc. Struggl 15; L. 40, 48, 460.

499. **Are the three aforesaid species subalternate, or are they lowest species?** St. Alphonsus, n. 34, says: "The first opinion holds that they are subalternate, containing under themselves other lowest species. Thus Suarez, Palaus, Lessius, etc. And therefore they say that striking a cleric differs in species from intercourse with him. The second opinion, however, holds that they are lowest species. Thus Viva, the Salamanticenses, Cajetan, etc.; so that if someone violates a nun by beating her or by having intercourse with her, he commits one sacrilege formally. And St. Thomas thinks this, 2. 2. q. 99, a. 3, ad 2, where he says: 'It is possible that two sins differ in species according to the material acts, but agree in species according to one formal character of sacrilege; for example, if someone violates a nun by beating or by intercourse.' And this is the more probable."

Nevertheless in this threefold species of sacrilege there are different grades, according to the difference of persons, places, and things. For sacrilege is graver in proportion as the thing against which one sins obtains greater sanctity. St. Thomas, ibid.

500. **Is violation of a person bound by a simple vow of chastity sacrilege?** The first probable opinion affirms, because sin against a sacred person, which is directly committed against that sanctity by which the person is consecrated and dedicated to God, is true sacrilege. But a person is dedicated to God not only through sacred ordination or the religious state, but also through participation in this state, such as a simple vow of chastity, especially a perpetual one. Therefore.

The second opinion, also probable, denies, because through a simple and private vow neither a thing nor a person becomes sacred; rather public deputation of the Church is required in order to preserving chastity. "In order, etc.": for clerics constituted in minor orders also are sacred persons,

and priests of the Greek rite also are sacred persons; but because they have not been consecrated by the Church in order to preserving chastity, they do not incur guilt of sacrilege properly such.

For the rest, whoever is bound by a vow of chastity, whenever he violates this, certainly commits a twofold sin, namely against chastity and against religion, by not keeping fidelity to God. But guilt of sacrilege properly so called is incurred also by those who are truly religious, although bound only by simple vows. L. 47; l. 6, nn. 808, 809; St. Thomas, 2. 2. q. 88, a. 3; q. 97, proem.; q. 99, a. 3, ad 3; q. 154, a. 1, ad 3; a. 10, ad 2 and 3; 4 D. 38, q. 1, a. 3, qq. 2, 3; Suarez *de Sacril*. l. 3, c. 3; *de Vot*. l. 5, c. 3, n. 45; Laymann l. 4, Tr. 10, c. 7, n. 4; Lessius l. 2, c. 45; Struggl 9, 10.

501. **Is a merely internal sin against chastity of a sacred person sacrilege?** There are those who deny, as Gury affirms, vol. 2, n. 165, since chastity, according to which a person is consecrated to God, regards rather external acts, which the Church is accustomed to reach by her laws, than internal acts of itself. But the Doctors commonly affirm, because by chastity the person himself is consecrated to God.

Yet this reason does not seem to demonstrate the matter. For although the person himself is consecrated to God by that vow, not therefore is any internal sin whatever sacrilege, which would be the case if the person himself were really consecrated to God absolutely. Therefore it must altogether be held that the person himself is indeed consecrated to God by that vow, but as regards preserving chastity. But that this extends also to internal acts must be demonstrated. And it seems that it can be demonstrated from the fact that, since a simple vow of perfect chastity is understood so as to include both internal and external acts, a fortiori it is necessary that a solemn vow include both, through which the person becomes sacred, and which certainly is more perfect. L. 454, 457; cf. vol. 2, n. 301.

502. **Are all sins of lust committed in a church or cemetery sacrileges?** Merely internal sins are not to be held as sacrileges, because they do not seem specially to affect the sacred place, unless there is a desire of externally sinning in the sacred place itself. But if they are held as sacrileges, cf. 495, this circumstance nevertheless, as lightly culpable, need not necessarily be opened in confession. Therefore the desire of sinning in a sacred place will be sacrilege, although had outside it; but not the desire conceived in a sacred place of sinning outside it. "Of sinning in a sacred place": namely by an exterior sin that is local sacrilege.

As to external sins, it is certain that sacrilege is committed by consummated, notorious acts, namely by voluntary pollution, fornication, etc. "Notorious": for if these sins are hidden, it is indeed more commonly and more truly affirmed that sacrilege is committed, but there are those who deny. Cf. L. l. 3, n. 334, paragraph *Absolute*. Whether it is also committed by other grave external sins, for example gravely shameful touches, is disputed. St. Alphonsus 459, Collet, etc., more probably affirm. But Sanchez, Tamburini, Bonacina, etc., not improbably deny. Others affirm concerning more immodest touches, but deny concerning other acts. Lugo *de Poenit*. D. 16, nn. 461 ff. Several cited by St. Alphonsus, l. 3, n. 458, hand down as probable that, scandal set aside, marital intercourse had in a church is never sacrilege. Others, however, more commonly and more probably affirm this only in a case of necessity, to avoid danger of incontinence. L. 36, 43; l. 3, nn. 334, 458 ff.; Elbel 575, 576; cf. 805-807.

503. **Is every theft in a church sacrilege?** It is established that every theft of a sacred thing is sacrilege, and also of a non-sacred thing nevertheless committed to the custody of a sacred place. C. *Quisquis* 21, § 2, c. 17, q. 4: "Similarly sacrilege is committed by taking a sacred thing from a sacred place, or a non-sacred thing from a sacred place, or a sacred thing from a non-sacred place." A sacred thing is understood as a thing in some way given to God, and sacred place as a church.

As to things which are found in a church by chance or accidentally, such as purses, watches, etc., it is disputed. Some probably deny, because that circumstance of sacred place, since it is altogether accidental, causes no injury to the sacred place. Others probably affirm, because it is still verified that such a person steals a non-sacred thing from a sacred place. In addition, because although the thing is accidentally in the church, that evil external action is still of itself repugnant to the sacred place as sacred. Sanchez denies that stealing from the sacristy is local sacrilege. But it is certain that theft in cloisters is not sacrilege, nor in the oratory of a private house. In oratories of hospitals, seminaries, or hermitages, although not blessed by a bishop, Sanchez rightly thinks thefts are sacrileges, because they are held as public. L. 39; Lugo *de Poenit*. D. 16, nn. 469 ff.; Struggl 14.

504. **Does injury to any goods whatever belonging to clerics constitute sacrilege?** Answer: Negatively, but only injury to goods that clerics possess not in their own name but in the name of the Church, and of which they cannot dispose, because only these are sacred. L. 42; St. Thomas, 2. 2. q. 99, a. 3.

505. **Can sacred vessels and vestments be converted to profane use?** Answer: Affirmatively, if the thing is so totally changed that it is reduced to common matter, for example if a chalice by fire or iron becomes a mass of silver. It is otherwise, however, if it is not totally changed. Hence it is not lawful to repair profane clothing from an old chasuble, nor to apply the ornaments of priests to profane uses. It is otherwise with those things that are not blessed, such as carpets and candlesticks. "To use sacred vestments, even worn ones, for profane uses is mortal. Nevertheless sacred vestments applied to profane uses do not lose their blessing." L. l. 6, n. 376. L. 41; l. 6, n. 371; St. Thomas, 2. 2. q. 100, a. 4, ad 2; 3 p. q. 83, a. 3, ad 3.

506. **To whom is it lawful to touch sacred vessels?** To all and only clerics without special license; but it is venial, and if there is a cause, not even venial. This is also conceded to lay regular sacristans from the privilege of Sixtus IV, and also to nun sacristans from communication of privileges, and likewise from custom and necessity to lay oblates of more recent congregations of priests who are sacristans, and to all who serve churches in clerical habit.

The first washing of corporals, purificators, and palls must be done by a sacred person and is the proper office of the subdeacon. The second and third washing can also be done by lay people. The water of washing is to be poured into the sacrarium. C. *Nemo* 40 *de Consecr.* D. 1; Roman Pontifical, *de Ordinat. subdiac.*; L. l. 6, n. 387.

It is lawful, however, for all to touch other sacred things, such as, for example, the Agnus Dei, at least from today's custom, relics of Saints, sacred ornaments, except those which immediately touch the Holy Eucharist. C. 41 *de Consecr.* Dist. 1; L. 48; l. 6, nn. 94, 382; l. 7, n. 340; E. M.

507. **Is it sacrilege to sin on a feast day?** Answer: Negatively, "unless notable irreverence is brought upon divine worship, as if someone on Good Friday exhibited comedies, public games, etc." L. 46, 273; St. Thomas, 2. 2. q. 122, a. 4; 4 D. 32, a. 5, q. 2; Lugo *de Poenit*. D. 16, nn. 515 ff.; Suarez *de Relig*. l. 2, c. 18, nn. 12 ff.

VIII. On Simony

508. **What is simony and what is its malice?** Simony is the studied will of buying or selling for a temporal price something spiritual or something annexed to the spiritual.

"Studied," not only because, like any other sin, it requires deliberation, but also because for its essential malice it is not required that the pact be actually completed by mutual consent; the interior will even of one party to contract or to oblige another suffices. Acts 8:18 ff.

"Spiritual" here is understood as everything which of itself or from the institution of God or the Church pertains to the salvation of the soul, and therefore to the order of spiritual goods. Moreover some things are spiritual in themselves and formally, for example the gifts of the Holy Spirit and sanctifying grace; others causally, insofar as they are the cause of spiritual gifts, for example the sacraments and sacramentals; others finally effectively, which proceed from a spiritual cause, such as dispensation in vows, absolution from censures, etc.

Something can be annexed to the spiritual in three ways: antecedently, to which the spiritual comes, as something ordered to the spiritual, such as sacred vessels, which are ordered to the use of the sacraments; consequently, for which the spiritual is presupposed and which depends on the spiritual, such as the right to revenues of benefices, which is had because of a spiritual office; concomitantly, either intrinsically, if in reality it is not separable, such as labor in the administration of the sacraments, or extrinsically, if it is separable, such as singing in the celebration of Mass.

Now the given definition includes only what is consequently annexed to the spiritual; not also what is antecedently and concomitantly annexed. Therefore it is of itself lawful to sell a temporal thing that is antecedently annexed to the spiritual, such as the silver of a chalice; for that thing always retains its intrinsic value, independent of the spiritual thing, C. *Hoc eius* 2, § 1, c. 10, q. 2, provided no account of consecration is had in the price. But if a chalice or sacred vestment is sold for profane uses, it must first be broken or unsewn so that it loses consecration, Authent. *Praeterea* C. *de SS. Ecclesiis*, the material thing remaining with its value. Since this cannot be done in churches, for thus nothing would be sold except a pile of stones, several deny that churches can be sold, Benedict XIV, *Quaest. Can.* q. 142; C. *Quaedam de simonia*. It is said "of itself," for it can happen that a sale of this kind is prohibited by ecclesiastical law. And thus by ecclesiastical law the sale of things of a benefice, blessed chrism oil, and a cemetery is prohibited.

Likewise, for what is extrinsically concomitantly annexed, it is lawful to receive a stipend, for example for travel in celebrating Mass, at a certain hour, in a certain place, etc. Things that are intrinsically concomitantly annexed to the spiritual can likewise of themselves be sold. For intrinsic labor as labor differs in nothing from extrinsic labor. Therefore to receive something because of labor, whether intrinsic or extrinsic, as the wage of work, not the price of a spiritual thing, is not of itself

simony. And thus a stipend is received in the celebration of Mass. "Of itself": for if a prohibition of the Church intervenes, simony is then committed.

But those things which follow a spiritual thing cannot be sold while this connection remains; for what is consequently annexed to some thing presupposes the thing itself and acts as its accessory. Therefore if the principal cannot be sold, neither can what necessarily follows from it. C. *Si quis obiecerit*, c. 1, q. 3. Hence it is simony to sell the right of living from the goods of a monastery, since this is consequently annexed to profession, which is spiritual. "While this connection remains": separation can be made by authority of the Supreme Pontiff.

"For a temporal price," that is, for a thing estimable by price, or which carries a temporal advantage before itself, although perhaps it cannot be valued by price or money. This is whether it is a gift from the hand, such as money itself or any other temporal good equivalent to it; or a gift from the tongue, such as praise, blame, patronage; or a gift from service, such as servitude. It will be simony by a gift from the hand if a benefice is given to someone with a pact that he remit a debt. It will be simony by a gift from the tongue if a bishop confers a benefice on someone so that he may be adorned with praises by him, be affected by favors, or not incur his hatred. Finally it will be simony by a gift from service if a prelate confers a benefice on a servant or the servant's son so that he may serve him gratis, or so that his service may thus be compensated.

Hence it is not simony to give a spiritual thing for a spiritual thing, for example, I will say Mass for you so that you say so many rosaries for me; to give relics for other relics, a chalice for a ciborium; or, with authority of a legitimate superior, to exchange one benefice for another. For things of the same order are well estimated against each other.

"Of buying or selling." These words signify any onerous contract, or the will of obliging another by pact to give a spiritual thing for a temporal thing, or conversely. "Of obliging": so that from it there is either the first obligation or a new onerous obligation of a temporal thing, or an obligation from fidelity, whatever that temporal thing may be, although not properly a thing but some contract to be entered, for example a loan. C. 114, caus. 1; St. Thomas, 2. 2. q. 78, a. 2, ad 4; a. 5; L. 56, 57; Suarez C. 37.

Therefore the malice of simony consists in this: that the spiritual is equated with the temporal. This can have place in two ways, formally and virtually. Formally, when someone directly intends to receive a spiritual thing in place of a temporal thing and because of its estimation. Virtually, when someone wishes to obtain a spiritual thing proximately and immediately by a temporal thing, and no other true and honorable motive intervenes. For in this will there is virtually included the intention of exchanging one for the other. For then someone confers a temporal thing for a spiritual thing, or conversely, as for an intrinsic and final motive, and thus at least in the mind there is a virtual pact.

Hence it will not be simony if someone gratuitously handed over something temporal to another for a benefit already received, or to attract him so that something spiritual may be provided for him, for example if a rich man gives alms to a poor man so that he may pray for him. In this sense it is also lawful to promise someone a gift for his spiritual utility, for example if he hears Mass, receives the sacraments, or enters a monastery; because this is a simple donation, indeed under a condition or mode, but there is no onerous contract. It would be otherwise, however, if an obligation were simply imposed, or if the condition were to provide something for the utility of the giver. C. *Sunt nonnulli*

114, caus. 1, q. 1; L. 49, 55, 56, 59, 61, 63, 104, 70, 72, 93; St. Thomas, 2. 2. q. 100, aa. 1, 2, 4, 5; 4 D. 25, q. 3, a. 2; Ithur. Case 36; Suarez *de Simon.* c. 45; Schmalzgrueber l. 5, t. 3, nn. 62 ff.; Lessius l. 2, c. 35; E. M.

509. **How many kinds of simony are there?** First, by reason of pact, simony is one kind mental, another conventional, another real.

Mental simony exists when a temporal thing is given with the mind of obliging another to return a spiritual thing, or conversely, but without any external pact; or when a temporal thing is given as compensation owed from justice for a spiritual thing received, or conversely, yet without any previous pact. Conventional simony is that which proceeds to the external pact itself, though without its real execution. Conventional simony is called purely conventional if the pact has been fulfilled by neither party; it is called mixed from conventional and real if the pact has been fulfilled by one party only. Finally, real simony is that by which the pact is fulfilled by each party, at least inchoately. Schmalzgrueber l. 5, t. 3, nn. 29 ff.; Struggl 24, 25; L. 49, 67.

Second, by reason of matter, simony is distinguished as confidential, which concerns ecclesiastical benefices, and common, which concerns any matter whatever.

Confidential simony consists in this: that one who gives a benefice to another in any way, that is, either by electing, presenting, postulating, conferring, giving in commendam, instituting, or ceding and resigning in favor of another, reserves something by his own authority from an express or tacit pact, either concerning the fruits of the benefice or concerning the benefice itself, while obtaining the superior's assent; otherwise the simony would already be common, not confidential.

Moreover a fourfold reservation is distinguished. First, reservation of access, when someone procures or confers a benefice on another in any way, yet by this pact, that he at a suitable time resign it to another, for example a blood relative, or to himself. Second, reservation of ingress, when someone resigns to another a benefice already conferred on himself but not yet possessed, on this condition, that in a given case and time the resigning person himself have the right of acquiring its possession, or actually entering into the benefice. Third, reservation of regress, when someone resigns a benefice already possessed by himself to another by this pact, that in some determined case and time it will return to the resigning person himself or to another certain person. Fourth, reservation of pension or fruits, when one conferring or resigning a benefice, whether only conferred or also possessed, causes it to come to someone with a pact that the latter give to himself, or to another designated by himself, all the fruits of the benefice or part of them, or pay a pension from it. "To himself or to another": if to another, all agree that it is confidential simony. If to himself, several deny that it is confidential simony, but say it is common. Pius IV, Constitution *Romanum Pontificem*, Oct. 17, 1564; St. Pius V, Constitution *Intolerabilis*, June 1, 1569; Trent, Session 24, cc. 9, 19; Session 25, c. 7 *de R.*; Suarez *de Simon.* c. 43; Ithur. Case 34, n. 24; Case 36, n. 25; Schmalzgrueber l. 5, t. 3, n. 39; L. 49, 90.

The aforesaid reservation must be from a pact. Furthermore, confidential simony must be either real, or at least mixed conventional; hence it is called confidential because it is with a certain confidence and pact. Therefore mental simony, although concerning benefices, is not properly confidential simony. "With a pact": according to Schmalzgrueber l. 5, t. 3, nn. 40-42, and others, without an express pact the mere intention of the one resigning or conferring, expressed by an external sign, to

oblige the other to give access, ingress, regress, or pension to himself or another suffices; but St. Alphonsus, nn. 86, 87, and others more probably deny this.

In addition, this reservation must be without the due authority of the superior; otherwise there will be no confidential simony. Lastly, the same reservation must concern only ecclesiastical benefices. From Extr. 2. Therefore if simoniacal pacts are made about pensions or any other right which is not properly included under the name of benefice, it pertains to common simony, not confidential. This common and confidential simony is distinguished because of the special laws and penalties that are had in law against the latter; therefore it is not extended beyond the cases determined in the same law.

Hence those exchanging benefices between themselves with a certain confidence or pact about dissolving the exchange at a given time, and about granting regress, for example to benefices thus exchanged for themselves or others, or about a pension to be paid to themselves or others, do not commit confidential simony, but common. For the Constitutions of Pius IV and St. Pius V speak only of cession and resignation of benefices. "Those exchanging between themselves": for it would be otherwise of a bishop or any other collator of a benefice making such a pact with either or both of those exchanging. It is not confidential simony, but common, if the cession and resignation of a benefice is had with confidence or pact not about the benefice itself or about its fruits, but about another temporal or spiritual thing to be given or returned; or even not about the same benefice, but about another to be resigned. C. *Quaesitum* 5; C. *Cum olim* 7 *de Rer. permut.*; L. 85, 88.

Third, by reason of the law by which simony is prohibited, one kind is of natural or divine law, another of ecclesiastical law. Simony of divine law is had where the dignity of the spiritual thing is cheapened, namely a thing that is such in itself or from Christ's institution, by comparison with a temporal thing. Simony of ecclesiastical law is when, against the Church's prohibition, a spiritual thing is given for another spiritual thing, as in an exchange of benefices made by one's own authority; or when a thing temporal in itself, annexed to another spiritual thing or ordered to it, is given for a temporal price, as if someone buys the ecclesiastical office of steward, treasurer, sacristan of a church, etc.; or when in the administration of sacred things a gift or wage is demanded or accepted when this is forbidden by Law. For although properly there is absent from these exchanges and acceptances the malice of equating the spiritual with the temporal, they nevertheless carry before themselves a certain appearance of selling and buying spiritual things, and they contain danger. Hence the Church rightly forbade them from the motive of religion and reverence toward sacred things. Therefore this simony of ecclesiastical law only is not intrinsically evil, but is evil only because it is prohibited by the Church because of reverence toward sacred things. For law has the power of causing its object to be the matter of some virtue in view of the cause for which it commands it; thus, for example, Communion made by a person not fasting without an excusing cause is sacrilege, because the Church from a motive of reverence forbade taking food or drink before Communion. L. 68, 69.

510. **What kind of sin is simony?** Simony is a most grave sin; and if it is of divine and natural law, it does not admit smallness of matter. But if the simony is of ecclesiastical law, smallness of matter can be given in it.

Proof of the first part: first, from the common opinion of theologians. Second, because any spiritual thing, from comparison with a temporal thing, is cheapened with great injury to God himself. This is

also established from the words of St. Peter to Simon Magus, Acts 8:20: "May your money be with you unto perdition, because you have thought that the gift of God can be possessed by money."

Proof of the second part: for on the part of the spiritual thing, even the least is always of the highest estimation. But on the part of the price, the lesser this is, the more the spiritual thing is cheapened.

Proof of the third part: because simony of ecclesiastical law is not forbidden as if a temporal price were given for a spiritual thing, but is prohibited by the Church to remove every appearance of simony and avarice, and other inconveniences. Hence by this an injury is not properly done to a sacred thing, but only a precept of the Church is violated; but in this smallness of matter can be found. According to some, however, an exception seems to be made as to examiners in competition for a parish. Trent, Session 24, c. 18. Others omit or expressly deny this exception. Cause 1, qq. 1, 2, 3; *De Simon. et ne aliq.*, etc.; L. 50; E. M.

511. **Is it simony to give principally a temporal thing for a spiritual thing, or the contrary, but not uniquely?** Answer: Affirmatively. The reason is that even thus there is a comparison of a temporal thing with a spiritual thing. For the motive that is added, however honorable it may be, does not destroy the malice of the former motive, because of which the temporal thing is principally given. This is confirmed from propositions 45 and 46 condemned by Innocent XI. "A temporal thing for a spiritual thing, or the contrary": for it would be otherwise if the temporal thing were given not because of the spiritual thing, or conversely, but to signify a grateful soul, or to attract benevolence, etc. One thing, however, is the intrinsic motive of the work, because of or on account of which the work itself is intended; another is the extrinsic end of the one acting, ordering his action to this or that. L. 51, 52, 53, 54, 55, 64; St. Thomas, 2. 2. q. 100, a. 5, ad 3; 4 D. 25, q. 3, a. 2, q. 2; E. M.

512. **Is it simony to perform sacred functions to earn a stipend, or to receive something for one's teaching?** As to the first, St. Thomas has this, 2. 2. q. 100, aa. 2, 3: "To receive money for spiritual grace is the crime of simony, which no custom can excuse, because custom does not prejudice natural or divine law ... But to receive certain things for the support of those who minister Christ's sacraments, according to the ordering of the Church and approved customs, is not simony nor sin. For it is not taken as the price of a wage, but as the stipend of necessity ... Yet in such a way that the intention of buying and selling is absent, and that it is not exacted from the unwilling by the subtraction of spiritual things which are to be shown; for this would have a certain appearance of selling. Nevertheless, after spiritual things have first been shown gratis, established and customary offerings, and any other revenues whatever, can lawfully be exacted from those unwilling and willing to pay, with the authority of the superior intervening."

Nor is it an obstacle that such a person would neither read Mass nor preach without profit; for this does not prove that the temporal thing is the price, but only that it is the end, namely not the end of the work, but of the one working, occupied for the sake of another, or the condition without which he would not work, namely because the stipend of fitting support is lacking. Therefore simony exists when a temporal thing is given for a spiritual thing as its price, but by no means when a temporal thing is demanded as a just stipend or wage of work and labor, and also of help or temporal office provided; and much less if the temporal thing is given as a subsidy and alms.

Nevertheless those who thus "perform sacred ministries principally because of temporal advantage cannot easily be excused from venial fault, since it is a certain disorder to direct spiritual things to a temporal thing." L. 55. Yet the same St. Alphonsus in the same place says: "It is not illicit to order a spiritual thing, even principally, to an honorable temporal end." Therefore, of itself, what is lawfully received can also lawfully be intended. Nor is it an obstacle that such a person does not need support; for this is accidental. Since this stipend is owed from justice, it is also lawful to make an agreement about it. Schmalzgrueber l. 5, t. 3, nn. 89-95; St. Thomas, 2. 2. q. 100, a. 3; L. 55, 104.

As to the second, one must distinguish. Either that instruction by its nature tends only to the spiritual utility of others, for example catechesis, preaching the word of God, and the like; or it also tends to some temporal good of theirs, for example to delight and honor, as is instruction for interpreting Sacred Scripture, for resolving controversies of Theology, etc. If the first, it is certainly simony to receive something temporal for it, unless by reason of support, since it is a merely spiritual thing. If the second, there will be no simony, because one who teaches knowledge, says the Angelic Doctor, can receive a stipend as if hiring out his work. St. Thomas, 2. 2. q. 100, a. 3, ad 3. Nor does it matter that that knowledge is supernatural; for proximately and of itself it is not ordered to the salvation of the soul, but to enlightening the intellect, just as other natural sciences. L. 94.

513. **Is it simony if a priest promises a layman a Mass for the outcome of a game, while the partner stakes a temporal price?** Answer: Negatively of itself, because in this way the spiritual thing is not properly equated with the temporal, just as it is not equated when Mass is said for a stipend; but only the execution of a spiritual thing is offered in place of a temporal thing that otherwise would have to be handed over. For he does not sin who offers a creditor one hundred Masses to be celebrated for him so that he remit a debt of one hundred francs. Therefore, by parity, neither does he sin who stakes a Mass on the outcome of a game, while the other stakes twenty coins. For the rest, a game of this kind rarely lacks some scandal, and therefore must always be dissuaded. L. l. 3, n. 882; Voit 506.

514. **Is it simony if a priest for a Mass demands a stipend above the customary tax or one established by the bishop?** Answer: Negatively as to the internal forum and before God, unless he acts with a simoniacal mind; because since he has another title for demanding remuneration, the comparison between the spiritual and temporal is lacking. He would indeed sin against obedience or justice by demanding more than is fair, but by no means against religion. Nevertheless in the external forum he would be held as simoniacal, because an increase of this kind would be presumed to be demanded not for support, but as the price of the spiritual thing. For this reason several theologians and canonists absolutely affirm that true simony is committed in that case.

515. **Is a cleric serving a bishop simoniacal if he expects something spiritual as repayment?** Answer: Negatively, if he serves in spiritual matters, for example in the office of preacher; for "those laboring for ecclesiastical utilities are worthy to enjoy ecclesiastical remuneration." C. *Eccles*. 67, c. 12, q. 2. Negatively also if he serves in temporal matters and if the primary intention is to give a temporal thing gratis, because then the immediate comparison is made of a temporal thing with a temporal thing, namely the benevolence of the superior. It is otherwise, however, if a spiritual thing is intended as due repayment, and not as an effect of a grateful soul. L. 51, 62; St. Thomas, 2. 2. q. 100, a. 5, ad 1.

516. **Is it simony to confer a benefice because of carnal affection, namely because of kinship?** St. Thomas has this, 2. 2. q. 100, a. 5, ad 2: "If someone confers something spiritual on someone gratis because of blood relationship or any carnal affection, it is indeed an illicit and carnal conferral, but not simoniacal, because nothing is received there. Hence this does not pertain to a contract of buying and selling, on which simony is founded. Nevertheless if someone gives an ecclesiastical benefice to someone by this pact or intention, that from it he provide for his blood relatives, it is manifest simony." Quodl. 5, q. 11, a. 23.

517. **Is it simony to hand over a temporal thing for the omission of a spiritual thing?** If it is given for the omission of a thing which someone is bound to place by force of spiritual power, such as, for example, omission of absolution, or which directly and proximately prepares the way to spiritual things, for example if you give money to another so that he not compete for a benefice, it is simony; since the exercise of a spiritual thing is sold for a temporal thing. "Correction is a spiritual act: hence he commits simony who receives money so that a sin, which he is bound to reveal or punish, he not reveal or punish." St. Thomas, 4 D. 25, q. 3, a. 2, q. 11.

But if omitting the thing depends merely on freedom, it can indeed be a shameful sin, but it will not be simony, since nothing sacred is sold, but only the use of free choice, as would be the omission of praying, celebrating, etc. "Temporal": for it will be simony if a spiritual thing is handed over, since not doing something spiritual is something temporal, namely the freedom or choice of doing. L. 97; Ithur. Case 36, n. 17.

518. **Is it simony to give or receive something for entrance into religion?** It is certain that it is not lawful to give or receive something for entrance alone, because this would be an exchange of a sacred thing, such as religion is, with a temporal thing.

It is also certain that it is lawful for a poor monastery to demand something for the support of the one entering, because then a spiritual thing is not exchanged with a temporal thing; and otherwise equity demands that something be received, lest the monastery collapse under burdens.

It is likewise certain that it is lawful for a monastery to demand something for the support of novices, because since they do not yet belong to the religious institute, and can leave at their pleasure, and often actually do leave, it is not fair for the monastery to be under so grave a burden for them. The religious institute of the Friars Minor, however, from a special decree, can receive nothing.

But the matter is disputed if it concerns a wealthy monastery. St. Alphonsus, n. 92, denies, unless the one to be received is old or infirm. Not a few others affirm, provided money is not demanded for the entrance itself, but is received or asked only by reason of support or dowry.

As to nuns, since the Sacred Congregation has learned by experience that no monastery is found so wealthy that it is not subject to several inconveniences, it embraced the decrees of St. Charles, by which it is established that a dowry must be handed over indiscriminately by individual women entering religious life. Hence it is enough for the bishop if he places a limit on expenses customarily made on the occasion of entrance, etc., as Benedict XIV advises him, *de Syn.* l. 11, c. 6. They must beware, however, lest they receive unsuitable persons solely because of a dowry or some other

temporal thing; for this would be simoniacal. Trent, Session 25, *de Reg.*, c. 16; St. Thomas, 2. 2. q. 100, a. 3, ad 4; E. M.

519. **Is it simony to redeem oneself by money from unjust vexation concerning benefices or another spiritual good, for example the sacraments, etc.?** "By money," that is, by a temporal thing, whatever it may be, somehow estimable by money. "By money": for if the vexation is redeemed by a spiritual thing, simony is certainly present.

Moreover someone can be unjustly vexed either in a spiritual right already acquired, or in such a right not yet acquired, but certainly to be acquired. If the first, it is not simony to redeem unjust vexation by a temporal price, from whomever it may finally proceed. For the price is not given for a spiritual thing, but for the cessation of unjust vexation. "Unjust vexation": for if the vexation is just, for example if someone is accused of a true crime because of which he ought to lose a benefice, or can no longer exercise spiritual rights, it would be simoniacal to redeem this vexation by a price; because such a right is not firm, and therefore by removing the just vexation a firm right is bought by a price, and this is spiritual. Likewise it is not lawful to give money to a competitor so that he not compete for a benefice; for a way would be directly prepared toward it. Cf. 517.

If the second, either this vexation proceeds from those who cannot concede that right, or from those who can concede it. If the first, it is permissible to redeem it by a price, because the price is given for a temporal thing. Thus, for example, if someone by defamation impedes a patron so that he does not choose you for a benefice, you will certainly be able to give money to the defamer so that he cease from that defamation; because in this case you would redeem only reputation, and you would remove violence and fraud; when these are removed, the patron still remains most fully in his own judgment whether to choose you for the benefice or not. If the second, it will be simony to bestow something temporal on those persons to this end, that they cease from vexation; because in this case a temporal thing would truly and properly be given for a spiritual thing. For "thus by money you would prepare a way for yourself to obtain a spiritual thing." St. Thomas, 2. 2. q. 100, a. 2, ad 5. When money is given to one who can help or place a just impediment, he is induced not to oppose what he could justly oppose; and thus a way is directly and properly paved, for example, to a benefice by the giving of a temporal good.

It would be otherwise, however, if the matter concerned the act of possession of a benefice already conferred. Then it would more probably be lawful to redeem this vexation with money, because possession is temporal, since it is situated in fact alone; nor is the right itself of the benefice redeemed or acquired, since it is already owed or already one's own.

Likewise it would not be simony to give money to electors so that they desist from the election of an unworthy person, because the Church has an acquired right to worthy persons; hence it would be given for desisting from evil. Just as it would not be simony to give for electing a worthy or more worthy person in general; for it would be given so that a bad election not happen. But if the person were determined, it would be simony, since money would be given directly for that person's election. Struggl 29; L. 49, 64, 65, 98, 99 ff.; St. Thomas, 2. 2. q. 100, a. 2, ad 5.

520. **In how many ways is simony of ecclesiastical law committed?** In the following ways.

First, by exchanging benefices, resigning in favor of another, making pacts or compromises in them, or reserving pensions, even spiritual ones, without the license of the superior. C. *Quaesitum de Rer. perm.*; C. *Super eo*; C. *Statuimus de Trans.*; C. *Nisi essent* 21 *de Praeb.* The reason of the law is the danger that this be done with regard to a temporal thing, since these things include some advantage. St. Thomas, 2. 2. q. 100, a. 1, ad 5; a. 4, ad 3. Add selling benefices even according to that which is temporal in them, namely according to the right of receiving fruits. "More probably, however," says St. Alphonsus, n. 70, "they say that it is simony by divine law from St. Thomas, 2. 2. q. 100, a. 4, ad 2 ... as is gathered from C. *Si quis*, 1, q. 3, and from C. *Ex diligenti* 17 *de Simon.*" Cf. also L. 76. Add also selling the right of patronage of presenting to a benefice. C. *De iure* 16; C. *Praeterea* 23, *de Iure patr.* Lessius, Palaus, Laymann, etc., however, affirm that this sale is forbidden even by divine law. L. 71; St. Thomas, 2. 2. q. 100, a. 4, ad 3. Likewise compromises concerning the right of patronage and concerning another thing annexed to the spiritual, an oratory, a temple, etc., are prohibited, namely if on one side a spiritual thing is given and on the other a temporal thing. C. *Praeterea* 9, 10 *de Trans.* But they are lawful if on both sides something spiritual or annexed to the spiritual is given. C. 6 *de Permut.*; C. 2, 3 *de Trans.* "Trent, Session 24, c. 14 *de R.*, commands bishops not to permit any payment or promise for admission to possession of a benefice, as having suspicion of the stain of simony or avarice, with any custom to the contrary reprobated. The Council permits only, if there is a custom, that something be given to be converted to pious uses." L. 99.

Second, by giving or accepting something, even spontaneously offered, before or after, on the occasion of an examination for parochial care, for example when the matter concerns choosing a parish priest in competition, from Trent, Session 24, c. 18 *de R.* "On the occasion of examination": for to give or accept for the examination itself would be simony of divine law.

Third, by accepting something, even spontaneously offered, on the occasion of conferral of an order, or letters for the order itself, or even first tonsure, from the same Trent, Session 21, c. 1 *de R.* There, however, a tenth part of a gold coin is excepted for the notary, if no salary has been established for him and custom permits him to accept. But the Sacred Congregation, Oct. 8, 1678, permitted bishops to receive a candle and also a cloth from those to be ordained priests. Indeed the same Congregation deputed by Innocent XI also set the emoluments that are demanded for dimissorial and testimonial letters, etc. "It is conceded to bishops in dispensations of marriages to accept something to be distributed in alms, provided nothing comes to them or to theirs, by way of penalty or commutation, but not by way of support. For this is forbidden to them by Trent, Session 24, c. 5 *de M.*" L. 96.

Fourth, by selling or buying ecclesiastical offices of procurator, sacristan, steward, defender of the Church; this indeed was done with regard to religion. C. *Si quis* 3; C. *Salvator* 8, c. 1, q. 3; Suarez c. 29.

Fifth, by selling part of a cemetery. Indeed it will be simony of divine law if it is sold as a sacred place, or if the right of burial is sold. Nevertheless the right of a tomb can be bought so that someone may be buried in such a place, because then burial would not be sold even by reason of the earth; rather, the price would be demanded by reason of the burden that is undertaken, of not burying others there. This indeed is something temporal; nor does law prohibit this right, indeed usage approves it. The same must be said if more is demanded to carry a silver cross rather than an iron one; for one is not of greater blessing than the other, but here there is worldly honor, which certainly can be sold. C. *Abolendae* 13 *de Sepult.*; L. 71.

Sixth, by selling blessed oil or sacred chrism, even according to its physical species. Yet the usage has prevailed in cathedral churches that something be accepted from particular churches for compensating the expenses that have been made in procuring the material. C. *Placuit* 102, c. 1, q. 1; C. *Ea quae de Simonia*.

Seventh, by demanding money for admission into religion, not for the state itself, which would be simony of divine law, but by reason of support, unless either law or custom or the poverty of the monastery excuses. Cf. 518.

Eighth, by accepting something for the erection, institution, communication, or aggregation of confraternities, contrary to Constitution *Quaecumque* of Clement VIII.

Ninth, by several decrees of the Sacred Congregation of Indulgences it has been forbidden that blessed rosaries, crosses, or medals be exposed for sale. Trent, Session 21, c. 9 *de R.*; Struggl 23; L. 68, 69, 72, 74, 77; E. M.

521. **What penalties have been imposed on simoniacs?** Even now the penalties imposed by Pontiffs, especially by Julius II, Constitution *Quum tam divino*, Jan. 14, 1505, against simony committed in the election of the Roman Pontiff remain firm. Pius IX, Constitution *Apostolicae Sedis* on censures; L. 112, final paragraph.

There is excommunication latae sententiae reserved to the Roman Pontiff against "those guilty of real simony in any benefices whatever, and their accomplices." Constitution *Apostolicae Sedis*. Because of the same real simony in beneficiary matter, there is incurred besides nullity of election, presentation, and canonical institution, so that one thus promoted and instituted cannot make the fruits of the benefice his own, even if the money was given by a third person while he was entirely ignorant; unless perhaps he possessed the benefice in good faith for a period of three years; or if he, after the depraved plan of simony was known, contradicted it, and nevertheless, without his knowledge, another promised or conferred; or if the third party committed simony to this end, that he render him incapable. In addition, incapacity to obtain the same benefice is incurred. "The same": for he does not become incapable of obtaining others except after sentence, as those explaining the Bull of St. Pius V more probably and more commonly teach concerning the external forum, although the contrary seems to be hinted in the Bull, since the Bull in reality speaks of those convicted. Indeed, if he already has other benefices, he can retain them, because no express law decrees this penalty by the fact itself. Riganti, Rule 36 of the Chancery, n. 132; Suarez *de Relig.* l. 4, cc. 57, 58; L. 111, 112; St. Thomas, 2. 2. q. 100, a. 6.

It must be noted: penalties of this kind for real simony are not incurred if there has not been an external sin completed from each side. For odious things are to be restricted. Hence one accepting an ecclesiastical benefice with a pact of providing money is not bound before payment of the money either to resign the benefice or to restore the fruits received from the benefice. It is otherwise, however, with confidential simony, as will soon be said; for then from the Bull *Intolerabilis* of St. Pius V, the penalties are incurred even through mixed conventional simony, namely completed from one side only. L. 100.

As to the faculty of dispensing from incapacity to obtain a benefice simoniacally conferred, these things must be noted: first, if the benefice is simple, even a canonry or dignity to which care of souls

is not attached, and was accepted through simony ignorantly, namely when the simony was committed by another while the beneficiary was ignorant, then the bishop can dispense even in that vacancy, provided the beneficiary spontaneously resigns. C. *Si alicuius* 59 *de Elect*. Second, indeed the same faculty must be attributed to the bishop when the benefice is indeed double, but its conferral has not been declared invalid by sentence. For when a sentence of this kind has been added, recourse would have to be made to the Supreme Pontiff for dispensation at least that time. It is said "that time," because if the same benefice is first conferred on another and happens again to be vacant, it certainly can be conferred on the one who had been ignorant of the simony committed by another in his provision. Cf. Reiffenstuel l. 5, t. 3, n. 337. Third, if someone knowingly simoniacally accepted a benefice, whether simple or with care, even if he spontaneously resigns, the bishop cannot dispense him for having the same benefice, neither for that time nor another time, as St. Thomas teaches with the Salamanticenses and Sanchez. L. 111, 117, 118; St. Thomas, 2. 2. q. 100, a. 6; Ithur. Case 34, n. 32.

There is also excommunication latae sententiae reserved to the Roman Pontiff against "those guilty of confidential simony in any benefices whatever, of whatever dignity they may be." Constitution *Apostolicae Sedis*. In addition, because of completed confidential simony, that is, when a benefice has been given and accepted in confidence, even if the pact has not yet been fulfilled by the other party, there is nullity of resignation or conferral made in confidence; incapacity for the same benefice; reservation of the same benefice to the Apostolic See. But fruits badly received from these benefices are applied to the Apostolic Camera. L. 89, 90, 111, 117; Schmalzgrueber n. 273; Giraldi T. 2, p. 572.

Likewise there is excommunication latae sententiae reserved to the Roman Pontiff against "those guilty of real simony because of entrance into religion." Constitution *Apostolicae Sedis*. Besides, infamy of law is incurred on each side, and consequently irregularity. It is very probable, however, that these penalties are not incurred in simple entrance, but in profession, which, even when made simoniacally, is certainly valid. L. 118.

All simoniacal elections to the Generalate, Rectorate, and any spiritual office in religion are invalid, Extr. 2 *de Sim.*; L. 112.

As to simony committed by synodal examiners of parochial benefices, these things are decreed by Trent, Session 24, c. 18 *de R.*: "Let them beware lest they accept anything at all on the occasion of this examination, neither before nor after; otherwise both they and the others giving incur the vice of simony, from which they cannot be absolved unless the benefices which they obtained in any way, even previously, have been given up. And they are rendered incapable for others in the future." Therefore they are deprived before any sentence of benefices already obtained. Thus Scavini, 12th ed., Milan 1874, l. 2, n. 143, and St. Alphonsus, n. 112. But others deny, because this penalty has not been received with so much rigor. D'Annibale, 3rd ed., P. 3, n. 118; Thesaurus *de Poen. eccl.*, v. Simony IV, 1; L. 112.

Besides these, there are also other penalties, but they probably are not incurred except after sentence of a judge, except infamy of law and irregularity, which by the fact itself are contracted because of the notorious crime of simony. Decretals l. 5, t. 3 *de Simon.*; Extravag. Comm. l. 5, t. 1; St. Thomas, 2. 2. q. 100, a. 6; E. M.

522. **Must a spiritual thing acquired simoniacally be restored?** Answer: Affirmatively as to benefices; thus the common and certain opinion of the Doctors. The reason is that laws, as penalty for the delict, prevent the recipient from being able to acquire ownership either of the price or of the benefice. And since acquisition of the benefice is invalid, by that very fact ownership of the fruits also cannot be acquired; and therefore these too must be restored if they were received in bad faith. These are to be restored to the church, provided those who committed simony do not receive advantage from this. But it is probable that they can be "distributed in alms" to the poor, St. Thomas, 2. 2. q. 32, a. 7, or returned to the successor in the benefice, or "converted to pious uses," St. Thomas, 2. 2. q. 62, a. 5, ad 2. One can also make composition with the Pontiff for the said fruits. L. 116. "Received in bad faith": because he does not seem bound also to restore fruits received in good faith except insofar as he became richer, and therefore only those still extant. St. Thomas, 2. 2. q. 100, a. 6, ad 3. And, whether there is discussion of a simoniac in good faith or even of a simoniac in bad faith, it is also very probable that fruits received by regard to stole fees are not to be restored, because these fruits are not given as revenues of the benefice, but as stipends of office.

Negatively as to the remaining things, although a judge can impose restitution as penalty for the crime. Thus the common opinion with Schmalzgrueber l. 5, t. 3, n. 284. The reason is not only because certain things cannot be restored, for example sacred order, but also because in order that transfer of a spiritual thing, for example of most holy relics, be valid, divine law requires nothing more than the power in one party of transferring ownership of the thing, and in the other of receiving it. But unless from another source there is a defect in either party, this power is present in each as regards a spiritual thing. Therefore. But if the transfer is valid by divine law, it will also be valid by human law, since by this law scarcely anything is declared invalid except simoniacal beneficiary provisions. L. 113, 116.

523. **Must the price simoniacally received for a spiritual thing be restored?** If only the crime of simony intervened, but no injury of justice, there is no obligation of restoring the simoniacal price before the condemnatory sentence of a judge, unless the price itself exceeds the estimation of the temporal advantage that is transferred to another with the spiritual thing. Schmalzgrueber l. 9, t. 3, n. 286; L. 114, 115. Understand this with the exception of beneficiary matter, in which what was given and accepted must be restored before any sentence of a judge in the forum of conscience, not indeed by natural law, but only by ecclesiastical law from C. *De hoc* 11, h. t. The reason is that laws prevent both the one receiving the benefice and the one receiving the price from being able to acquire ownership of what was accepted, and this as penalty for so grave a delict. Schmalzgrueber l. 5, t. 3, n. 283.

But where a simoniacal pact is also repugnant to commutative justice, the price must be restored before any sentence of a judge. The reason is that from injury of commutative justice the obligation of restoring arises by the very law of nature. L. 114.

524. **Resolutions:** Therefore the following are bound to restore the price. First, one who accepts a price for a merely spiritual thing, which brings no temporal advantage; for there is no price for a thing that cannot be valued by price, and therefore a price is accepted for it against justice. Second, one who accepts a price for a spiritual thing, even if it brings temporal advantage,

which nevertheless someone, for example a parish priest, is bound to provide from office and justice. Third, a bishop or prelate who sells benefices or ecclesiastical offices whose conferral belongs to him by force of his office; for from his office he ought to dispense them gratis, and therefore in accepting a price he sins against justice. Schmalzgrueber l. c. nn. 293, 295.

525. **To whom must the simoniacal price be restored?** If a price was given, but the spiritual thing has not yet been handed over, the common opinion teaches that the price must be restored to the one who gave it, unless the judge decrees otherwise. The reason is that laws establish penalties only against real simony.

But if delivery has followed on both sides, the beneficiary cause must be distinguished from the rest. In this cause, from C. *De hoc* 11 *de Simonia*, the simoniacal price is to be restored to the church in which the benefice is situated; or, if the superior so decrees, it can be distributed to the poor or to another church. St. Thomas, 2. 2. q. 100, a. 6, ad 4. Nevertheless there are those who think restitution must be made to the one who was injured, that is, the one who gave. D'Annibale, 3rd ed., P. 3, n. 119.

As to the price accepted for another spiritual thing, since we find nothing clearly decreed in Law, what remains is that it be restored to the one who paid it. The reason is that of itself, and with law or the superior not establishing otherwise, where unjust acceptance intervenes, restitution is to be made to the one who was injured. But in the case the injured person was the one who gave the price. Therefore, if he who paid the simoniacal price freely remits what was paid, he who accepted it lawfully retains it until he is ordered by the judge, as penalty for the crime, to distribute it to the Church or to the poor. Schmalzgrueber l. 5, t. 3, nn. 297-301; Struggl 32; L. 115.

On the Second Precept of the Decalogue

I. On the Vain Usurpation of the Name of God

526. **What is the second Precept of the Decalogue?** The second precept of the Decalogue is: "You shall not take the name of the Lord your God in vain." Exod. 20:7. This precept directly prohibits every inordinate usurpation of the name of God, such as especially occurs by blaspheming, swearing rashly, vowing, and not keeping a vow. Indirectly, however, it commands reverent usurpation of the name of God and his praise. Struggl 11; L. 120.

527. **What is vain usurpation of the Most Holy Name of God?** The Most Holy Name of God is said to be usurped in vain when it is assumed without reasonable cause or without due reverence. This is customarily done in three ways: first, from impatience or indignation toward creatures; second, from admiration, by way of exclamation; third, merely superfluously, or from levity, or from custom and a certain formula of speech.

528. **What kind of sin is vain usurpation of the name of God?** Of itself it is venial sin. "Of itself": for first, all fault can often be absent because of inadvertence. Second, it can also become mortal because of formal contempt of God or grave anger against God. Proof of the first part: of itself it is sin because it injures the reverence owed to the divine name. This is also established

from Ecclus. 23:10: "Let not the naming of God be constant in your mouth." Proof of the second part: of itself it is only venial sin because that reverence is not gravely injured.

529. **Is it sin in the same way to use the names of Saints uselessly?** Answer: Affirmatively. For what is said about the most holy name of God must, with proportion preserved, also be said about the names of Saints, as is established from the cited place of Ecclesiasticus, where it is added: "And do not mingle yourself with the names of Saints." The same also must be said about vain usurpation of words of Sacred Scripture when they are taken irreverently. L. 123.

530. **Is frequent and useless use of the name of the demon a sin?** Answer: Negatively of itself. Nevertheless it is to be reproved as less fitting in the mouths of Christians, especially in priests, who by reason of scandal are sometimes not free from some fault. But some assert that it is venial of itself. L. 131; Voit 514.

II. On Blasphemy

531. **What is blasphemy?** Blasphemy is defined as: speech of malediction against God. By "speech" are understood not only words, but also thoughts and deeds that bring insult upon God, as if someone tramples a Crucifix under foot, or spits toward heaven as toward the seat of God. "Malediction" here is not restricted to the imprecation of some evil, but is extended generally to speech of any evil, so that it includes insult, abuse, reproach, opprobrium, mockery, derision, scoffing, illusion, irony, imprecation, any derogation of the excellent divine goodness and divine honor. "Against God": namely considered either in himself or in his Saints and creatures in order to God himself, insofar as some divine perfection shines in them, for example sanctity, goodness, wisdom. L. 121, 122, 125; St. Thomas, 2. 2. q. 13, a. 1.

532. **Note:** If the discussion concerns reservation or other penalties inflicted for blasphemy, only oral blasphemy is properly understood. For the word blasphemy must then be used strictly. Moreover, by the common use of people, blasphemy signifies a vice of the tongue, and it is opposed to praise of God, which is shown by words alone. Therefore blasphemy of deed, by which rather the honor of God is injured, is not properly blasphemy, but is referred back to blasphemy as to the character of injury against God. St. Thomas, 2. 2. q. 13, a. 2, ad 2; q. 103, a. 3, ad 3; Struggl 34; Ithur. Case 30; Suarez *de Relig.* Tr. 3, l. 1, c. 4, n. 1.

533. **Resolutions:** First, if someone from anger against a person, or by exclaiming to exaggerate the truth, names the Saints, the Blessed Virgin, the death of God, the Body of Christ, the Blood of Christ, the Head of Christ, and other honorable members of Christ, he does not of himself commit blasphemy, but only unworthy usurpation of the divine name. "Of himself": for it is otherwise if these things are uttered from anger or indignation against God, by way of contempt, or if among those hearing, God and his sacred things are judged to be dishonored.

Second, neither is it blasphemy to say: "I deny God, if I do not strike you"; for one who speaks thus wishes only to signify that he will certainly strike. Nor is it blasphemy to say: "This is true as God"; for created truth is not equated with uncreated truth, but only a certain hyperbolic likeness is hinted at. It would be blasphemy, however, if one really intended to signify that there is truth according to equality as great as there is in the truth of faith.

Third, on the contrary it is blasphemy to say: "May the death of Christ or the blood of God destroy you"; "may the sacraments destroy you"; because injury is brought upon the death, blood, and sacraments of Christ, which are ordered not to the destruction but to the salvation of people. Likewise it is blasphemy to say that one wishes to act with God unwilling, and similar things.

Fourth, it is blasphemy to say: "God has plainly forgotten me"; "why did God create me?" Make an exception, however, if these things are uttered in a human manner of speaking, from levity, or to show the gravity of sorrow or weariness, as often customarily happens. But they are never to be excused from grave sin who advertently and seriously say: "God is unjust"; "God unjustly weighs me down with tribulations"; "he unjustly permits the evil to be happy in the world." Voit 519; L. 123-126, 128.

534. **How many kinds of blasphemy are there?** Blasphemy is first distinguished as: first, direct or indirect, according as dishonor of God is either directly and formally intended by the blasphemer, or, although not intended in itself, nevertheless is contained in deeds or sayings injurious to God, which are uttered by him with an intention, for example, of joking or manifesting anger, with advertence to the meaning that the words contain. Second, immediate or mediate, according as it immediately affects God himself, or only mediately, namely by dishonoring the Saints or sacred things by words. Third, heretical, which is also against faith; imprecative or execrative, which is also against charity toward God; and merely reproachful, according as they contain heresy, or imprecation, or mere contempt of God, although one pronounces true things, but from anger and an evil mind against God. L. 122, 123, 126; St. Thomas, 2. 2. q. 13, a. 1, ad 2.

535. **What kind of sin is blasphemy?** Any formal and deliberate blasphemy, whether direct or indirect, whether immediate or mediate, is mortal sin from its whole genus. The reason is that any insult against God is a grave injury inflicted on the divine Majesty. Hence Lev. 24:16: "The person who curses his God shall bear his sin; and he who blasphemes the Name of the Lord shall die the death." Struggl 36; St. Thomas, 2. 2. q. 13, aa. 2, 3; E. M.

536. **Note:** First, blasphemy, like any other sin, can become venial from imperfection of act, namely from defect of advertence or perfect consent. To the point, St. Thomas, 2. 2. q. 13, a. 2, ad 3: "Blasphemy can proceed without deliberation from subreption in two ways: in one way because someone does not advert that what he says is blasphemy; which can happen when someone suddenly from some passion bursts out into imagined words, the meaning of which he does not consider, and then it is venial sin and does not properly have the character of blasphemy."

Second, direct blasphemy brings a merely aggravating circumstance in comparison with indirect blasphemy, and therefore need not necessarily be expressed in confession. For that circumstance of the direct voluntary, as merely subjective, indeed makes the act more voluntary with respect to the evil object, but does not tend toward a new objective malice.

537. **Resolutions:** He does not sin gravely who pronounces words that are indeed blasphemous in themselves, but halved or corrupted, so that he does not attend to the true meaning; for example one who says: "I deny Di!" "I deny Diana!" For these no longer have the character of blasphemy. L. 123.

538. **Is the intention of dishonoring God altogether necessary for blasphemy?** For perfect blasphemy by reason of the act, an express and explicit intention of dishonoring God is not necessary; an implicit one suffices, which is present in indirect blasphemy. The reason is that the indirect voluntary suffices for sin. Therefore one who advertently pronounces blasphemous words, from which dishonor of God is in fact had, voluntarily admits the sin of blasphemy and becomes guilty of it, whatever the cause for which he does it. Reuter 442; L. 124, 127.

539. **Do blasphemies uttered against God and against the Saints differ in species?** Busembaum with others probably affirms; but Bonacina, Sanchez, etc., also probably deny. But since those who blaspheme Saints, more truly and commonly speaking, intend to affect them with injury not precisely because of their own excellence, but insofar as they are referred to God, therefore they sin not against dulia, but only against latria; and on that account they are not bound to explain whether they blasphemed God or the Saints. But if it is established that something insulting is uttered against the Saints, but only as human beings formerly living on earth, it will be only against dulia; indeed it will also be only venial if it is done as a joke, for example if someone calls Saints Crispin and Crispinian shoemakers. On the contrary it will be mortal if it is done from contempt, from hatred, or from indignation against the Saints. Struggl 37; Lugo *de Poenit*. D. 16, nn. 277 ff.; L. 124, 125, 132; St. Thomas, 2. 2. q. 13, a. 1, ad 2.

540. **Is blasphemy uttered jokingly grave?** Reuter 442 says this: "It is grave blasphemy ... if someone jokingly says blasphemous words, where among those hearing there is dishonor of God joined to them." Therefore grave fault will be absent where that dishonor is absent among those hearing. L. 124.

541. **Is it blasphemy to curse creatures?** It is blasphemy to curse creatures with relation to God, for example rain and winds as commanded by God, or with the word "of God" added; likewise to curse a creature which of itself has a special relation to God, for example our soul, the Catholic faith, heaven, and similar things. It is otherwise, however, as almost always happens, if indignation is directed against creatures without relation to God. "To curse irrational things insofar as they are creatures of God is the sin of blasphemy; but to curse them considered according to themselves is idle and vain," namely venial. St. Thomas, 2. 2. q. 76, a. 2. But of itself it is no sin if irrational creatures are cursed because of harm, for example a storm because it devastated vineyards. Thus David without sin cursed the mountains of Gilboa, namely because of the slaughter of the people that happened on them. L. 128.

542. **Resolutions:** Hence from Viva and others, it is not grave simply to curse the hour, day, or year, unless the word "holy" is added; or unless the day of itself carries before itself something special of sanctity, such as Easter day, etc. The reason is that whatever imports sanctity is of itself referred to God, who is the author of all sanctity; and the utterance of words by which some special sanctity is explained, at least indirectly and speaking of itself, is referred to God.

To curse beasts, winds, etc., is regularly light fault; nor regularly, in anger, is the mind present that the curse be carried out, and it is an act of impatience. Likewise "in anger to wish on others the demon, hail, lightning ... usually, at least when it is said against those who are loved by the angry person, because of sudden commotion and inadvertence and defect of serious will, is only venial ... But it is grave if subjects curse superiors, or children parents, even only materially in this way,

especially to their face, because it is grave against due reverence." L. 130. Cf. ibid. n. 126 ff.; Response Letter and n. 134; St. Thomas, 2. 2. q. 76, a. 3.

543. **Is it blasphemy to curse the whole world?** St. Alphonsus, n. 129, affirms, because just as to swear by creatures in which the divine attributes shine more is a true oath, so to curse them is true blasphemy, because God is indirectly contemned in them. "In reality, however, such a meaning scarcely usually occurs to the mind of the one uttering these things." Thus Gury 304. But the same St. Alphonsus thinks the opposite in the same place: "Ordinarily speaking, I judge that peasants who curse the world very often sin gravely, since they accuse themselves of such a curse with grave horror."

544. **Is it blasphemy to curse the dead and the devil?** As to the first, answer: Negatively, in that case in which the mind of those cursing is not directed to cursing them insofar as they are creatures of God. Indeed, usually this is not even mortal, because by this no grave injury is inflicted on them either in itself or from the mind of those uttering it: not in itself, because the word "dead" is to be referred more to the body, which dies, than to the soul, which always lives; or at most it signifies people who have departed life, who can be either saved or damned; not from the mind of those uttering, because those who curse the dead in no way intend to pray evils upon the souls of the departed, but rather to reproach the living, to whom they usually refer their curses as a kind of injury. L. 130.

As to the second, Tamburini rightly thinks that cursing the devil is rarely mortal sin, because he is always customarily cursed as the author of evils or as God's enemy; in this way, abstracting from the act of impatience, he says it is not even venial. L. 129.

545. **Are these French expressions blasphemous: "Nom de Dieu! Noms de Noms! Mille Noms! Sacre Nom!" without an added word, etc.?** Answer: Negatively of themselves, even if they are uttered in anger, unless the anger is directed against God himself, or unless a blasphemous intention is present, which is usually absent. For these words contain no blasphemy in themselves. Therefore they will be only venial because of vain usurpation of the name of God; but if the name of God is used in the formulas neither explicitly nor implicitly, they will of themselves lack all fault.

546. **Is the French expression "S. Nom de D." blasphemy?** Some answer affirmatively of itself, because those words, by reason of the common acceptance of the faithful, are insulting to God. Others answer negatively of itself, unless a blasphemous intention intervenes explicitly, or at least implicitly, because those words in their obvious sense contain no insult to God in themselves; for they really signify the blessed name of God.

Therefore in practice not all those who utter words of this kind are easily to be accused of mortal sin. For it is certain, experience bearing witness, that not a few, especially the uneducated, do not apprehend grave malice in them. Therefore let the confessor attend first to the various circumstances of the penitents. And certainly "sins of words are especially to be judged from the intention of the one speaking." St. Thomas, 2. 2. q. 73, a. 2.

547. **Note:** First, in doubt whether some expression is or is not blasphemy, it is by no means to be taken as blasphemy. L. 129, 130. If words according to themselves express no diminution of divine honor, they are not to be judged blasphemy or mortal sin. L. 130. If the meaning is doubtful, then one must attend to the intention and affection of the one uttering the words. L. 130.

Second, the uneducated often confuse with blasphemy any less decent words and curses against beasts and people. Therefore they are to be taught, "lest so many souls perish miserably from ignorance because of an erroneous conscience of mortal sin." L. 131.

III. On Oath

548. **What is the nature of an oath?** An oath is: tacit or express invocation of the Divine Name, as of first and infallible truth, as witness of some truth. Heb. 6:16; L. 133; St. Thomas, 2. 2. q. 89, a. 1. Hence it is clear that an oath is an act of the virtue of religion, because "in this very thing, that a person swears by God, he professes God to be more powerful, as one whose truth is indefectible and whose knowledge is universal; and thus in some way he shows reverence to God ... But to show reverence to God pertains to religion." St. Thomas, 2. 2. q. 89, a. 4.

549. **How many kinds of oath are there?** Oath is distinguished: first, as assertory, insofar as God is invoked as witness of past or present truth; and promissory, insofar as "divine testimony is introduced to confirm something future." St. Thomas, 2. 2. q. 89, a. 1. Promissory oath is twofold, strictly or broadly such. The first is confirmatory of a promise either toward God, which is a sworn vow, or toward neighbor, which adds to the obligation of justice or fidelity arising from the promise an obligation from the virtue of religion. The second contains no promise toward another, but a mere purpose. It is comminatory if the one swearing, under attestation of the Divine Name, threatens punishment to another, for example: I swear by God that unless you do this, you will pay the penalty.

Second, solemn or simple, according as it is done in the form required by law and with solemn ceremonies, for example with Mass, with preceding Communion, or with these excluded. Lay people swear in judgment by touching the Gospels; ecclesiastics swear with only the Gospels set before them and the hand moved to the breast. C. *Cum in* 7 *de Iur. cal.* "In judgment": for outside judgment, when clerics swear and make profession of faith, the custom is that they do it with the Gospels touched. Clerics, especially priests, cannot interpose a solemn oath except by license of the bishop, which is granted only for a grave cause before a judge not their own, even if ecclesiastical. Before a lay judge, however, they ought not provide an oath. But bishops need the license of the Supreme Pontiff. C. *Inhaerentes* 1 *de Iur. cal.*; C. *Quoties* 21, c. 22. But outside judgment ecclesiastics do not need the bishop's permission. C. *Ex rescripto* 9 *de Iurei.*; St. Thomas, 2. 2. q. 89, a. 10. Likewise clerics, unless they are vassals, are prohibited from providing an oath of fidelity to Princes, C. *Nimis* 30 *de Iurei.*

Third, explicit or implicit, according as God is expressly invoked as witness, or creatures are used for testimony in which the divine attributes especially shine.

Fourth, there is also invocatory oath, by which God is simply invoked as witness; and imprecatory oath, by which God is invoked at the same time as witness and as avenger of perjury. The formula "So may God help me, and these holy Gospels of God" is referred here. For just as one who pronounces these words prays good for himself if he speaks truth, so he prays evil for himself if he lies. Hence one who voluntarily perjures himself in this way, seriously wishing evil for himself, sins not only against religion, but also against charity toward himself. Struggl 3; L. 139-142; St. Thomas, 2. 2. q. 89, a. 1, ad 3.

550. **What are the requirements for the essence of an oath?** Two things are required for an oath: first, the intention of swearing, at least virtual; because without such intention a formal oath cannot exist. Second, an oath-formula, whether explicitly through God or implicitly through creatures; because, since God is invoked as witness, it is necessary that this be expressed in the oath.

When there is doubt about the intention of the one swearing, judgment is usually made according to the common acceptance of the words which he used. But this intention contributes so much to the value of the oath that if someone uses words in no way importing an oath, yet thinks them to be oaths, he truly swears as to the internal forum; and conversely, if that intention is lacking, the oath is null as to the internal forum, even if words truly oath-making are used. L. 134; Struggl 1.

551. **Resolutions:** First, a fictitious oath, or merely external oath, is not valid because of defect of will or intention of swearing. But one swearing thus sins, though more probably only venially, speaking of itself, because he utters only a lie with vain usurpation of the name of God. Often, however, this is mortal by reason of common or particular damage.

More probably, a promissory oath made with the mind indeed of swearing, but not of obliging oneself from religion, is not valid, because it is nugatory. This, however, very probably is only venial of itself, because, since the oath is null, there is only vain usurpation of the divine name. But an oath made with the mind indeed of swearing, but not of obliging oneself from justice or from fidelity, is valid. L. 172; H. A. 17.

A promissory oath made without the mind of fulfilling it, but with the mind of swearing and obliging oneself, is valid. But one who swears thus sins mortally, because he invokes God as witness of a fictitious purpose or fictitious promise, and therefore swears against truth. For in a promissory oath God is assumed as witness of the present purpose or promise, and in some way as surety of future execution, insofar as this at least depends on human will.

Second, it is an oath to say: "I swear by God," "I attest God," etc. Likewise it is an oath to say: "I swear by the Saints, the Church, the Gospel, the Catholic Faith," because then the Author himself of the Faith, Gospel, Church, and Saints is judged to be brought in as witness. It is likewise judged an oath when it is done through nobler creatures, since through these their Creator is then taken, who singularly resides and shines in them. Thus, for example, when one swears by heaven, its Inhabitant and Lord is understood; when by the earth, He whose footstool it is; when by the temple, He who is worshiped there. In the same way, several judge it more probable that it is an oath if you say, "by my soul," because God singularly shines in the soul and is then judged to be brought in as witness. Yet it must be admitted that scarcely anyone who uses those words thinks of God; and therefore this

formula too rarely contains an oath. It would be otherwise, however, if someone swore by creatures in which divine goodness or power does not specially shine, for example by a beard, etc.

Third, it is not an oath to say, "God is truth," "God lives," "God knows," "I speak before God," if these are uttered merely narratively; but it is otherwise if they are uttered invocatively, which is discerned from the circumstances or intention of the speaker. Likewise to say "I swear it is so" is not truly an oath, because then divine testimony is invoked neither explicitly nor implicitly, unless, however, a question about oath has preceded, because then through the preceding question that "I swear" is sufficiently determined to a true oath. Italian Code of Criminal Procedure 229.

Moreover, these words, "may I be killed if this is not so," and similar words, although they are true oaths if they are said by way of execration, commonly contain only a certain wager or obligation of penalty, and signify: if it is not so, I pledge my life. It is otherwise if God is expressly named there by saying: "May God destroy me if I lie"; because then God is already invoked as avenger of a lie if perhaps it is uttered.

It is not an oath to say: "truly," "certainly," "in truth," "by the faith of a good man, Christian, priest, soldier, prince, king"; nor to say, "by my conscience," because God is not brought in as witness. He does not swear who says: "it is as true as the sun shines, as I sit here, walk," etc.; hence even if the comparison is false, it is only a lie, since no one is invoked as witness. Although to say: "it is as true as God exists"; "as Christ is in the venerable Sacrament"; "as the Gospel is true," etc., commonly seems to contain an oath with blasphemy, nevertheless this does not sufficiently appear, because no one is invoked as witness, nor does there seem to be blasphemy if it is true and the mind of the one uttering is only to signify likeness. L. 134-143; St. Thomas, 2. 2. q. 89, aa. 1, 6; Suarez *de Relig.* Tr. 5, l. 1, c. 13.

552. **Is an oath lawful?** An oath clothed with due conditions is honorable and lawful; and if it is promissory, it obliges in conscience, unless a just cause stands in the way or its obligation has legitimately ceased. This is established both from the definition of the Council of Constance, Session 8, against Wyclif, from proposition 101 condemned by Clement XI in the Bull *Unigenitus*, and also from proposition 75 condemned by Pius VI in the Bull *Auctorem fidei*; and from the universal practice of the Church and peoples; and from various places of Sacred Scripture. Deut. 6:13: "You shall fear the Lord your God ... and by his name you shall swear." And certainly God and his attributes are especially honored from this, that he is brought into the midst and invoked as supreme and infallible Truth in testimony of truth. C. *Etsi* 26 *de Iurei.*; L. 144 ff.; St. Thomas, 2. 2. q. 89, aa. 2, 4; E. M.

553. **What is required for the lawfulness of an oath?** A threefold condition is required, according to that of Jer. 4:2: "You shall swear: The Lord lives, in truth, and in judgment, and in justice." The reason is that otherwise it cannot be provided with due reverence to God.

Truth, that is, conformity of the assertion with the intention and knowledge of the one swearing. Therefore it excludes every lie, but not every error. In an assertory oath, truth regards the existence of the fact; in a promissory oath, the existence of the intention.

Judgment, that is, that it be done with discretion, prudence, consideration, and reverence, and not without necessity or grave cause. For since an oath is a most holy thing, it ought not be made

without prudence, consideration, reverence, and rashly, without any necessity and cause.

Justice, that is, that the oath concern a thing, whether promised or simply proposed, or an assertion, that is honorable and just. Thus he would swear against justice who by oath obligated himself to inflict damage unjustly on his neighbor, or to do anything else prohibited. Ecclus. 23:9, 12; L. 144; St. Thomas, 2. 2. q. 89, aa. 3, 5, 10; E. M.

554. **What kind of sin is it to swear without truth, without judgment, without justice?** To swear without truth is always mortal, even in light matter, because to bring God in testimony of falsehood is to will to destroy his infinitely perfect truthfulness. This is also established from proposition 24 condemned by Innocent XI; St. Thomas, Quodl. 1, a. 18.

To swear without judgment, for example from a certain levity or custom, is venial of itself, scandal and danger of perjury excluded; for instance if someone swore rashly before he had sufficiently investigated the truth. For it is only vain usurpation of the name of God.

To swear without justice is certainly mortal in a promissory oath if the matter concerns committing grave sin, as is clear; indeed, according to St. Alphonsus, even if the matter concerns only venial sin, at least more probably, because it seems to be grave irreverence to invoke God as witness and surety of any sin whatever to be committed. Suarez with others, however, says that the opposite opinion is common.

But in an assertory oath, it is more probably only venial of itself, because the oath of itself falls on the assertion, not as evil, but as true. Thus one who by oath boasts about fornication committed, although by this boasting he sins mortally, nevertheless by force of the oath of itself confirms not the boasting, but only the truth of the fornication. Make an exception unless the oath is assumed as an instrument or means of sinning, for example to strengthen detraction. And this holds even if someone uses an oath as an instrument or means for consummating venial sin, because one swearing thus, as much as is in him, makes God the accomplice of his sin.

"If someone swears," says St. Thomas, 2. 2. q. 89, a. 7, ad 2, "that he will not do some better good which nevertheless he is not bound to do, for example not entering religion, he indeed sins by swearing insofar as he places an obstacle to the Holy Spirit, who is the inspirer of good purpose; nevertheless he does not sin by keeping the oath, though he would do much better if he did not keep it." But sin of this kind, since the matter concerns only not embracing a counsel, is venial. L. 145-147; Suarez l. 3, c. 12; St. Thomas, 2. 2. q. 89, a. 7; Struggl 5, 7, 9; E. M.; cf. 558.

555. **What is a sufficient cause for swearing?** Any honorable cause of some weight, for example peace to be confirmed in families, greater security in contracts, etc. L. H. A. 14.

556. **Is it lawful to swear with probability of truth?** "For swearing rightly, absolute and altogether infallible certitude is not required, but some moral certitude suffices, or a certain probability that reaches a certain moral certitude. Thus Tamburini. Indeed Sanchez, Suarez, the Salamanticenses, Lessius, Bonacina, and Azor with the common opinion say more expressly that in an oath, whether assertory or promissory, probability of the truth asserted or of fulfillment of the promised thing to be executed suffices, provided there is no probable reason to the contrary. Hence they say that what has been heard from a person worthy of faith,

although he does not make one morally certain, can indeed be affirmed with an oath. This, however, does not run in court," L. 148, where the oath that is required must be emitted concerning one's own certainty. Struggl 6. Therefore he sins gravely who swears in mere doubt of truth, because God, infallible truth, cannot be invoked except in testimony of a thing that seems at least morally certain. Struggl 6; St. Thomas, 2. 2. q. 89, a. 7, ad 1.

557. **Is it lawful to swear with mental restriction?** Answer: Negatively, if it is purely mental; and here, according to St. Alphonsus, belong propositions 26, 27, and 28 condemned by Innocent XI. Affirmatively, if it is broadly mental, from a just cause. "It is certain," says St. Alphonsus, n. 151, "and common among all, that from a just cause it is lawful to use equivocation ... and to confirm it by oath ... But a just cause can be any honorable end for preserving goods useful to spirit or body." And again: "For swearing thus, except in trials and contracts, a cause absolutely grave is not required, but any reasonable cause suffices, for instance to free oneself from the importunate and unjust questioning of another." And Busembaum, n. 170, adds: "When a just cause of necessity or utility is present, someone can use amphibologies in an oath, even if he spontaneously offers himself to the oath." Finally St. Alphonsus, n. 151, adds that, according to the more probable opinion, it is venial if one provides this without cause. "The reason is that in an oath of this kind truth and justice are already present, and only judgment or discretion is lacking; the defect of this is only venial. Nevertheless, an exception must be made, with the Salamanticenses and others commonly, unless this is done in court or in contracts." The reason for this exception as to the first is that we are bound from obedience to respond to a superior legitimately questioning according to the sense of the one questioning; as to the second, because then from justice we are bound to utter words according to the mind of the contracting party, lest he be deceived and suffer damage. Struggl 16 ff.; Lugo *de Fid.* D. 4, n. 67; St. Thomas, 2. 2. q. 89, a. 7, ad 4; E. M.

558. **What is the obligation of a promissory oath?** Every promissory oath concerning a lawful and honorable thing, besides the obligation of justice or fidelity which arises from the simple promise, also introduces an obligation of religion. The reason is that a promise already obliges of itself, and is confirmed and strengthened by divine testimony invoked.

But an oath about an illicit or plainly useless thing by no means obliges, because an oath, as an act of religion, cannot be a bond of iniquity or of an idle thing. Rule 58 *de R. I.* in 6. Oaths of this kind do not revive, even if the thing later ceases to be idle or illicit, according to Rule 18 in 6: "What by law does not subsist from the beginning is not made firm by passage of time."

Likewise an oath that impedes a greater good does not oblige, for example an oath not to enter religion or not to marry, unless someone has sworn in favor of another. For then, with the other's right unharmed, he cannot embrace the evangelical counsels. Thus students of the College of the Sacred Congregation de Propaganda Fide cannot enter Religion without permission of the Holy See, because of the oath by which they are bound. Struggl 24 ff.; L. 172, 176; St. Thomas, 2. 2. q. 89, aa. 7, 8; cf. 554.

559. **Resolutions:** First, one who swore to do an evil thing is never obligated by the oath; indeed he sins in two ways if he fulfills the oath: namely against religion and against the virtue to which the matter of the oath is opposed. St. Thomas, 2. 2. q. 89, a. 7.

Second, one who confirmed a prodigal promise by swearing is not obligated by the oath, because that promise is at least lightly evil.

Third, he does not sin against an oath who, for the sake of civility, swore that he would not sit, drink, enter the house, etc., before another, if, compelled by the other, he first sits, drinks, or enters; because usually an oath of this kind is null from defect of intention of swearing; or, if it is valid, it is relaxed by the other yielding his right.

Fourth, parents who do not fulfill an oath of punishing children rarely sin, because usually the oath concerns a useless thing, or rather inordinate revenge; add that often the delinquents have already amended or at least promised amendment.

Fifth, merchants also usually do not seem to be bound by an oath of not selling for less or not buying for more; either because oaths of this kind are very often about a useless thing, or because those people do not have the mind of swearing, or certainly because there is in the oath a tacit condition: unless things seem otherwise to go better. L. 176, 180, 185, 186; St. Thomas, 2. 2. q. 89, a. 7.

560. **How is an oath to be interpreted?** The obligation of an oath is to be interpreted strictly and according to the nature of the act or contract to which it is added, so that it follows all its conditions. The reason is that the one swearing is judged to have wished to oblige himself as little as he could; and from another source, an oath does not change the nature of the act, but adds to it only the obligation of religion, and therefore ought to have the same conditions and limitations.

Hence one who swore and promised marriage to a rich, healthy, virgin girl of good reputation is not bound by the oath if she falls into poverty, illness, infamy, or fornication; because the simple promise then does not oblige. C. *Quemadmodum* 25 *de Iurei*. Likewise, if you promised and swore to Titia that you would marry her, you can, leaving her, enter religion, because this tacit condition is present in the promise of marriage: unless I enter religion. And this also holds if espousals have been confirmed by oath, unless marriage were necessary for legitimating offspring, repairing scandal, or providing for the honor of the bride if provision could not be made in another way. He does not sin who reveals a sworn secret when the law of the secret itself ceases to oblige; because an oath, as we have said, follows the nature of the act to which it is joined. L. 180, 183, 727; l. 6, n. 870.

561. **What conditions are tacitly included or understood in an oath?** They are: first, if I can without grave damage, because no one is judged to oblige himself to a thing physically or morally impossible. Second, if the matter has not been notably changed. Third, if the rights or will of a superior do not stand in the way. Fourth, if the other has preserved reciprocal faith. Fifth, unless the other yields from his right. L. 180; Struggl 31.

562. **Is smallness of matter given in transgression of a promissory oath?** The first opinion denies, because not only a simple promise is violated, but a sworn promise. Therefore in any matter whatever grave injury is brought upon God, whose testimony was invoked in vain by the one swearing. And certainly God would be called as witness of falsehood if the truth were not conformed to the thing promised. St. Thomas, 2. 2. q. 89, a. 7.

The second opinion affirms, because in a promissory oath God is not properly brought in as witness of the future execution of the thing promised, but only as witness of the actual promise, or true intention of executing the promise, and as providing authority to the obligation which arises from the promise made before him, just as a prince by his authority renders espousals contracted before him firmer. Now as to the first, no irreverence toward God is committed through transgression of a promissory oath, or God is not made witness of falsehood, since we suppose that the promise and the intention of execution were sincere in the one swearing. As to the other, however, through infidelity in fulfilling the thing promised, irreverence is indeed brought upon divine authority; but it is neither direct and formal, since it is intended only indirectly in the violation of the promise itself, nor is it greater; indeed, with St. Thomas as witness, 2. 2. q. 89, a. 8, it is of itself a lesser irreverence than that found in transgression of a vow. Since, therefore, in this, just as in any indirect irreverence against God, lightness of matter is admitted by all, it must also be admitted in that irreverence which transgression of a promissory oath brings.

And certainly if the one swearing, in the act of the oath, had the will of fulfilling, and afterward does not fulfill, he does not commit lying and perjury, but only infidelity; and since the thing promised is not grave by hypothesis, it will not be possible to extend it to grave fault. St. Alphonsus 173 says that each opinion is probable, but adheres more to the second opinion, and in H. A. n. 13 says: "If the thing promised is not grave, infidelity does not reach grave fault." Suarez l. 3, c. 16, nn. 9 ff.; L. 172, 173, 178, 211.

563. **Does a promissory oath emitted by error or fraud oblige?** Answer: Negatively, if the error or fraud concerns the substance of the thing; but otherwise if it affects only accidental circumstances, because the simple contract would be invalid in the former case, but not in the latter. L. 175. Yet the same St. Alphonsus, l. 3, n. 187, warns that the opposite opinion is probable when error or fraud concerns those circumstances, although accidental, which, if known from the beginning, would have deterred from the oath and promise. Things entering as if into the substance of the contract are as if a condition sine qua non. This warning of St. Alphonsus ought to hold, as in vows, so in gratuitous contracts, but not in onerous contracts. Cf. 575.

564. **Does a promissory oath extorted by grave and unjust fear oblige?** The first probable opinion affirms. For the general rule is that any oath must be kept when this can be done without sin, lest God be brought in as witness of falsehood.

The second opinion, also sufficiently probable, denies, because an oath follows the nature of the act to which it is added. But that promise by natural law is invalid, or at least rescindable, according as the promise is gratuitous or onerous, because of the grave injury that it contains, which is not to be confirmed and continued by oath. Hence even the patrons of the first opinion warn that one who has suffered fear can seek relaxation of the oath, so that he may be excused from the obligation of paying; but if he has already paid, he can repeat in court what he gave, or secretly compensate himself. L. 174; St. Thomas, 2. 2. q. 89, a. 7, ad 3; q. 98, a. 3, ad 1; Ithur. Case 15, nn. 11, 18; Struggl 28, 29.

565. **Must an oath in favor of a third party always be fulfilled whenever it can be fulfilled without sin?** St. Alphonsus answers affirmatively, even if it is against the evangelical counsels, and even if the promise made is invalidated by law in hatred of the creditor, as a promise of

paying usury, a promise made to a prostitute, although such an oath was illicit. Understand this if, for example, the prostitute has already provided her work; otherwise if she has not. Nevertheless it must be said otherwise if the promise is invalidated by law because it would be against the common good. The reason is that then the fulfillment itself would be illicit. Therefore an oath extorted by fear concerning religious profession, marriage, espousals, etc., does not oblige. On the contrary, because of reverence for the Divine Name, an oath is to be observed whenever it can lawfully be observed. Cf. however 554, 558, 560, 566, 970, and L. l. 6, n. 870.

"When a contract is invalid by law only in favor of the promisor, does the oath then make the contract firm, so that the promisee acquires from it a right of justice? Azor, Sanchez, and others affirm. But Elbel, Sporer, etc., probably deny. The reason is that in no way does an oath have the force of making this kind of contract firm: not from itself, because it obliges only by the virtue of religion; not from positive law, for nowhere is it held that they are to be kept from justice. And therefore this obligation does not pass to the heirs of the one swearing; and the one swearing himself is not obligated once the oath has been relaxed." L. 177. Cf. 560, 970.

566. **How does the obligation of an oath cease intrinsically?** The obligation of an oath, namely a promissory one, can cease both intrinsically and extrinsically.

It ceases intrinsically: first, if what was good at the time of the oath afterward becomes illicit because of circumstances, or impedes a greater good, or is better omitted than fulfilled. For an oath is an act of religion, and God is not worshiped by an illicit thing, or by a thing that rather takes away from divine worship.

Second, if you change the oath into some work openly better and more pleasing to God; for anyone can do this of himself. Always except, however, if you swore something for a person's advantage, for God does not will that person to be defrauded. Cf. 568.

Third, if the state of the matter is notably changed; for such a change makes another object, to which the intention of the one swearing does not extend.

Fourth, if the sworn thing has become useless for the intended purpose, especially if it is more destructive of it; for example if correction of an impenitent son would be entirely useless, indeed would make him worse in himself.

Fifth, if those conditions so bear which nature and the Doctors teach are tacitly understood in any promissory oath, namely, if I can, with the right of a third party preserved, with the right of a superior preserved, unless the matter is notably changed, unless the obligation is removed.

Sixth, if its final cause ceases, for without the final cause the effect does not subsist; for example, you promised alms to a poor person, but he afterward becomes rich. It is otherwise if only the impulsive cause ceases. L. 180, 187, 188; St. Thomas, 2. 2. q. 89, aa. 7-9.

567. **Is that change of itself sufficient, even if not notable, which, if foreseen, would have prevented someone from emitting the oath?** The first opinion affirms from St. Thomas, 4 D. 38, q. 1, a. 3, q. 1, ad 1. The reason is that then the intention of obliging oneself either is lacking or is so understood.

The second opinion holds that it does not suffice, because the obligation is not to be drawn from the promise which would not be made in the future, but from the one that has already been made. Thus Suarez, Sanchez, Cajetan, etc. "Yet they rightly say that the probability of the first opinion cannot be denied. Indeed they themselves with the Salamanticenses judge that change to be notable which, if it had been known from the beginning, the one swearing would not have promised; which certainly coheres with the first opinion." L. 187, 226; cf. 563, 564, 575, 597, 598.

568. **How does the obligation of an oath cease extrinsically?** It ceases by irritation, dispensation, commutation, and remission.

Irritation is the annulment of an oath. Irritation is made by any superior having dominative power over the one swearing, even if the matter concerns promises and contracts. This dominative power is possessed by a father, husband, superior, tutor, master; and they can irritate and annul the oaths of their own in exactly the same way in which they can irritate the vows of their own. St. Thomas, 2. 2. q. 89, a. 9, ad 3; cf. 599 ff.

Dispensation is given by one having jurisdiction in the external forum; understand spiritual jurisdiction. Whoever has ordinary power of dispensing in vows can dispense in oaths and in vows, even if these have been sworn. L. 189; St. Thomas, 2. 2. q. 89, a. 9.

Commutation is reduced to dispensation, and is made, like dispensation itself, by one having jurisdiction in the external forum. L. 191; cf. 566.

Remission is the relaxation of an oath made in favor of a man, either by that same man, or by him to whom the promiser and the promised matter are subject.

Note: first, if a promise in favor of a man, confirmed by oath, has not yet been accepted, there is no obligation of fulfilling it, and it can be revoked; because the oath is then accessory and follows the nature of the promise. But it is otherwise if the promise was made principally to God.

Second, if such a promise has been accepted by the third party to whom it was made, and a right has been acquired by him absolutely, then it cannot be relaxed without his consent, not even by the Pontiff. St. Thomas, 2. 2. q. 89, a. 9, ad 2. This latter point, however, is limited in three cases. The first is if the one swearing is a subject, and the oath concerns those things which are subject to the power of superiors, as St. Thomas teaches in the place cited. The other is if the oath cannot be observed without common harm, or concerns a contract forbidden by law. Oaths of this sort more truly do not need relaxation, since they are null of themselves. The third is if the oath has been extorted by fraud or fear; then, even if it is valid, it can be relaxed. And this holds even if the promise is not undue, for example concerning the payment of a true debt, but the oath has been unjustly extorted; and even if the oath is extorted by light fear, at least for the internal forum, from C. *Sollicite* 2 and C. *Accepta* 3 *de Restit. spol.*, where only an oath wholly spontaneous cannot be relaxed. This oath can be relaxed not only by the Pontiff, but also by bishops, chapters when sees are vacant, and others having episcopal jurisdiction, and also by confessors having delegated faculty of dispensing in oaths.

Third, it is certain that an oath in favor of a third party can freely be remitted by him, without relaxation of the Church, as all teach with St. Thomas, 2. 2. q. 89, a. 9, ad 2, because anyone can yield from his own right. L. 189-193.

569. **Can one who has delegated faculty of dispensing in vows dispense in oaths?** Suarez, *de Voto* l. 6, c. 14, n. 6, says: "It is sufficiently probable that a power simply delegated for dispensing in vows extends to dispensing in pious oaths concerning the same matter, when they stand by themselves and produce their own obligation alone. This is the common opinion, and without doubt can be observed in practice." And n. 19: "Even if the vow and the oath immediately fall upon the same matter, and each obliges of itself unto God's honor, by an absolute faculty of dispensing in vows it will be possible for either the vow, or the oath, or both to be removed at the discretion of the one dispensing. For this assertion we can allege all the authors of the first assertion, that is, the preceding one..., and other moderns and learned men hold it."

Others, however, deny it, because the bond of a vow and of an oath is diverse. Thus Lessius, l. 2, c. 42, n. 60; yet he admits the former opinion when the oath is accessory to the vow. For then, once the vow has been dispensed, the oath vanishes. But by its nature an oath is accessory to the promise to which it is added.

St. Alphonsus 190 holds each opinion as probable; yet he says the second must be wholly held: "for the obligation of an oath already contracted, since it is certain and is in possession, cannot be removed by a dispensation only probably valid. But if the opposite opinion is probable, it is altogether safe in practice; since, that probability standing, the superior granting the former faculty is by law judged also to grant the latter, unless he expressly limits it. Nor indeed does the opposite reason avail; for although the bond is diverse, nevertheless as to dispensation they are equated. But what is disposed in one of two equated things is judged to be disposed in the other." Yet the Sacred Congregation de Propaganda Fide, May 19, 1845, decreed: "the faculty of dispensing from vows does not of itself include the faculty of dispensing from an oath." And as to sworn vows the same Sacred Congregation, May 3, 1828, leaves the matter doubtful. L. 189, 190, 192, 254; *Collectanea* S. C. de P. F. nn. 2085, 2087; E. M.

IV. On Vow

570. **What is the nature of a vow?** A vow is a deliberate promise made to God concerning a possible and better good.

Made to God, for a vow is an act of religion; indeed, it is an act of latria, due to God alone. And therefore, when we vow certain things to the Saints, the sense is that those things are vowed to God in their honor.

Therefore two conditions are required for the validity of a vow: a true intention of a vow, and fitting matter. L. 194; St. Thomas, 2. 2. q. 88, aa. 1, 2, 5; Lugo, *de Poenit.* D. 16, nn. 281 ff.; E. M.

571. **How many kinds of vow are there?** A vow is distinguished:

First, absolute or conditioned. The former is one made without any condition; the latter, one made with a condition, so that unless this condition is posited, the obligation does not arise. Hence a penal vow is distinguished especially, namely when a good thing is vowed as a penalty or penance, for example: I will give alms if I become drunk.

Second, personal or real, according as the action or omission of the one vowing, for example a pilgrimage, or some thing separable from the action of the person, for example the donation of a chalice, alms, etc., is promised.

Third, temporary or perpetual, according as it is promised to be observed only for a certain time, or for the whole of life.

Fourth, solemn or simple, according as it is made solemnly and is accepted by the Church, or held ratified by her; or, setting aside solemnity and the acceptance of the Church, is emitted. Solemn is only the vow of chastity which is annexed to major orders, and the vow of religious profession. L. 195; St. Thomas, 2. 2. q. 88, a. 7; Struggl 28; cf. vol. 2, n. 248.

572. **What kind of intention must the intention of a vow be?** For the validity of a vow there is required a true and deliberate intention of emitting a vow, or a true promise made to God and inducing an obligation from the virtue of fidelity. For a vow is like a kind of law which the one vowing, otherwise capable of weighing the burden which he assumes, imposes upon himself. But no one is judged to oblige himself without sufficient deliberation of soul.

Hence a vow differs essentially from a resolve, because a resolve denotes the deliberate will of doing or omitting something, without the mind of obliging oneself. Therefore a resolve, however firm, produces no bond of obligation; nor is omission of the thing resolved a sin, except perhaps sometimes accidentally, for example because of inconstancy, weariness, or negligence, which of themselves do not exceed venial sin. C. *Literaturam* 3 *de Vot.*; L. 196-199; Struggl 3, 16.

573. **Resolutions:** For the validity of a vow not every will and deliberation which would suffice for mortal sin is sufficient. For grave sin it is enough confusedly to know the gravity of the guilt and to have the voluntary at least indirectly and in cause; but a more perfect knowledge and willing of the burden to which one obliges himself is required where there is question of a promise and an obligation to be contracted. For good arises from the whole cause; evil from any defect.

"Since the obligation of a vow is most grave, there is required intention, deliberation, and perfect liberty, by which one has freely and directly willed in himself to promise with the mind of obliging himself." L. 196. Therefore a vow made with half-full advertence or deliberation does not oblige. L. ibid. Likewise vows made in drunkenness, even if foreseen beforehand and thus willed in cause, are not valid, since they are not willed in themselves and directly.

Yet for this full and perfect deliberation it is not required that one exactly weigh all the circumstances which can entice to the vow or deter from it; rather it is enough that one has sufficiently recognized the burden and obligation of the vow as to its substance. Struggl 5. Likewise virtual intention is sufficient, which proceeds from a prior actual intention. Hence one who, from a prior intention of religious profession, emits the three vows of religion, even if with his mind wholly distracted, is truly bound by them. Struggl 6; Laymann l. 4, t. 4, c. 1, n. 4; L. 196.

But if someone vows with a positive mind of not promising, nor of obliging himself by religion, certainly the vow is null. St. Thomas, 4 D. 38, q. 1, a. 1, q. 1, ad 2. If someone also wills to promise, knowing the obligation of a vow, but does not will to oblige himself to the promise and vow,

according to the more common and more probable opinion he is not held by the vow. To vow in this way without the mind of obliging oneself, Sanchez and others say, is ordinarily only venial because of a certain disorder. Ordinarily, because in religious profession and in the reception of sacred orders it would undoubtedly be mortal, because it would be deception in a most grave matter. L. 201.

574. **Note:** "For a vow an implicit promise suffices, as is clear in the reception of sacred orders, where, although it is not said, I vow, or I promise chastity, nevertheless this vow is made implicitly by the very fact that, knowing the Church has annexed this vow to the orders, you receive them. But whether, if someone were plainly ignorant of this, he would still be judged to vow from implicit intention, is doubtful. Some affirm; others more probably deny, and say that such a one is held to chastity, not from a vow, but from a precept of the Church." L. 200; Struggl 6.

575. **Is a vow emitted from error valid?** Answer: Negatively, if the error concerns the substance of the thing, or substantial circumstances, that is, those which are principally intended, or pertain to the substance, or notably change it; because then the thing promised is not sufficiently known and willed. L. 198. Indeed, St. Alphonsus 198 adds: "it is certain that error concerning the substance invalidates a vow, even if it was concomitant, that is, not giving cause to the vow, as if you would still have vowed once the error was known, and even if the error was however crass." For this ignorance also renders the act non-voluntary.

Affirmatively, if the error concerns only the impulsive cause. "The vow is valid, because that is only a secondary cause; once it is set aside, the act is sufficiently voluntary according to substance. Nor does such error vitiate the act in other contracts; for example, someone vowed a pilgrimage to Rome from zeal of worshiping God, and at the same time also had a secondary impulsive cause, namely that he might visit his brother, whom he thought was at Rome. Even if he later understands that his brother is not there, he does not on that account cease to be obligated by the vow." L. 198.

Affirmatively also, if the error concerns accidental circumstances of lesser moment, which would not have stood in the way of the vow if, the error set aside, they had been known; for one who vows is judged to oblige himself to undergoing merely accidental inconveniences which can occur in fulfilling the vow.

...accidental inconveniences which can occur in fulfilling the vow. Thus St. Alphonsus; yet in n. 198 he does not deny that it is probable that error invalidates a vow in accidental circumstances if these are of great moment and if, had they been known, the vow would not have been emitted. Cf. 563, 567, 597, 598.

Yet vows must be excepted which are emitted after the novitiate in any approved order; for they are not void because of any error except only substantial error concerning the substance. For they constitute a state by its nature firm and irrevocable, and therefore dependent on no error except substantial error. Moreover, otherwise it would follow that many Professions would be invalidated, to the grave harm and scandal of the republic. This also holds of marriage. L. ibid.; Lugo, *de Iust. et Iure* D. 22, n. 88; Sanchez, *de Matr.* l. 10, D. 9, n. 20.

576. **Is a vow made from fear valid?** Answer: Negatively, if the fear is grave, unjust, and impressed from without in order to extort the vow. The reason is that what is extorted by force from

someone through injury cannot be pleasing to God, since the law of nature requires that the right be restored in full. And this indeed proves that vows of this kind are invalid by natural law. It is established by canon law as to solemn vows of religion, and probably also as to other vows. C. *Perlatum* 1 *de His quae*, etc.; L. 197.

Unjust: for if the fear is just, the vow is valid, since there is no true coercion in what someone ought to do, nor is the one vowing reasonably unwilling.

Impressed in order to extort the vow: otherwise the vow is valid, for example if someone, fearing death which robbers threaten, makes a vow to God in order that he may be freed.

Grave: whether a vow emitted from light unjust fear is invalid, "Busembaum here affirms with Suarez and Filliucci. Likewise Navarro and many others cited by Sanchez, *Decal.* l. 4, c. 3, n. 24. The reason, as they say, is that fear invalidates a vow because it takes away full liberty of consent; therefore light fear also will invalidate when it takes away the same liberty and is the cause that the vow is made. And Sanchez calls this opinion probable. But the opposite opinion is more probable, which Sanchez holds, n. 24, with Soto, Valencia, Sa, Azor, etc., and the Salamanticenses ibid. n. 161, who call it common and prove it from C. *Perlatum*, *de His quae vi*, etc. The reason is that light fear, which can easily be rejected, is not judged the cause of so grave a thing as a vow, just as we shall likewise say concerning contracts, n. 718." L. 197.

Affirmatively, if the fear arises intrinsically or from a necessary cause, unless it takes away the use of reason from the one vowing; the reason is that vows of this kind are simply voluntary.

577. **Is one held by a vow who doubts whether he emitted the vow; whether he emitted it with sufficient deliberation; whether he has fulfilled the vow emitted?** Answer to the first: Negatively; and the same must be said if you doubt whether something is comprehended by the vow. You are not held as to the part about which you doubt. For an obligation is not to be imposed unless it is certain concerning it.

To the second: It is plainly impossible that, while a true and positive doubt remains about sufficient use of reason and its sufficient deliberation, a certain obligation of vow should be had from it. For a vow essentially includes perfect deliberation of reason. If therefore this is doubtful, the vow is consequently doubtful, and its obligation doubtful. Suarez l. 4, c. 6, n. 10.

To the third: Negatively, for the same reason as to the first, if the doubt is positive. But affirmatively if the doubt is negative; because possession then stands for the vow. L. 196; Elbel, *de Actib. human.* 156 ff.

578. **Must the matter of a vow be something morally possible?** Answer: Affirmatively. The reason is that a vow is a promise made to God with the intention of obliging oneself; but no one can oblige himself to something morally impossible for himself.

But if the thing is divisible and is possible in part, the vow is valid for this part. Except, however, if it were established that the one vowing had wished to oblige himself to each part by way of one thing, and had indivisibly had each before his eyes. The reason is that a vow is a particular law, which is not extended beyond the intention of the one vowing; and therefore if the one vowing promised both

parts collectively, and one as dependent on the other, if one is impossible the whole vow remains void. Thus the Salamanticenses, tr. 17, c. 1, n. 74, who immediately, ibid. nn. 75, 76, add several examples of vows which either must be observed as to the part which remains possible, or are judged void because of the impossibility of some part. But a vow is not valid if the thing is morally indivisible. L. 202, 225.

579. **Resolutions:** First, a vow of doing whatever is more perfect is not valid, without a special impulse of the Holy Spirit; nor is a vow of avoiding all sins, even venial sins, even half-deliberate ones. For this is morally impossible without special grace and privilege. Council of Trent, sess. 6, c. 23.

Second, a vow of avoiding all mortal sins is valid, or even all fully deliberate venial sins, because this is morally possible with the ordinary help of divine grace and does not need a special privilege, if nevertheless there is question of truly pious persons. "But a vow," St. Alphonsus 203 adds, "of abstaining from venial sins in some determinate matter is commonly valid, especially in persons of great virtue; but in others of slight virtue it will be impossible matter; indeed in some matters, for example dishonest, idle thoughts, etc., since they are unavoidable for all, the vow is null." But the Salamanticenses and others cited by the same St. Alphonsus in the cited place assert on the contrary that a vow of avoiding all venial sins, even if it were concerning fully deliberate ones, is altogether invalid, as concerning a thing morally impossible, from c. 23, sess. 6 of Trent. But in this canon the discussion is not only about fully deliberate ones.

580. **Must the matter of a vow be something morally good, indeed concerning a better good?** Answer: Affirmatively. The reason is that otherwise the promise of a vow would not be pleasing and acceptable to God. "Vows which concern vain and useless things are to be mocked rather than observed." St. Thomas, 2. 2. q. 88, a. 2, ad 3; L. 204.

Likewise a promise which impedes a greater good, under this respect, takes away from the worship of God, and consequently cannot be pleasing and acceptable to him so as to beget an obligation in conscience from the motive of religion, or of divine worship. But this better good is not to be understood comparatively to any good whatever, but comparatively to its opposite, so that this good is such that its placing is better than its omission. Likewise a better good is understood not only absolutely in itself, but also relatively to circumstances.

581. **Resolutions:** A vow of a good thing from a depraved end is not valid if the depraved end holds itself on the part of the vow itself, namely if the vow itself is ordered to a depraved end; for example, if you vow alms in order to obtain a successful outcome of theft. The reason is that the giving of alms for such an end is a blasphemous action, as if God were giving help for sinning. Likewise a vow is not valid from a cause evil in itself, as for example if you make a vow because you won an unjust lawsuit or killed an enemy.

It must be said otherwise, according to the common opinion, if the evil end accompanies the vow only accidentally and holds itself wholly on the part of the one vowing; for example if someone vows for the glory of God, but with some vanity, and more willingly vows externally from vain ostentation.

Likewise a vow of a good thing with an evil condition is valid, if the vow is made from affection toward the good thing as it is good, even if joined with an evil cause or occasion and condition; as if someone vows alms because he has not been caught, or if he is not caught, in theft. For although theft is evil, nevertheless not being harmed is not evil but a gift of God; and the vow does not fall upon the evil, but upon the good, insofar as it is good in itself. Much more, however, does this hold if the vow is made from detestation of the evil condition, as if someone vows alms if and as often as he blasphemes.

Likewise a vow concerning a thing otherwise commanded is valid, because a vow of this kind concerns a thing good in itself, since it is supposed to be commanded, and concerns a better good, since it can add a new bond toward greater fidelity and devotion in fulfilling the law. L. 206, 213; St. Thomas, 2. 2. q. 88, a. 6; Laymann l. 4, tr. 4, c. 2, n. 7.

582. **Is a vow invalid concerning a good which impedes a greater good?** St. Alphonsus 207, 209 says: It is invalid, and a venial sin, to vow a good which is an impediment to a greater good, as especially are vows against the evangelical counsels, for example to remain in the world, to take a wife, to go to military service, to practice trade.

Yet if some good, lesser of itself and absolutely, accidentally became a greater good, then it is valid to vow such things; for example if someone saw that reception of orders would be harmful to him. Hence a vow of marrying, speaking of itself, is null, even if it concerns marrying a poor woman, a prostitute, or removing the sins of others, because celibacy is always more pleasing to God. It is otherwise if the vow was emitted in order to repair scandal, or the honor of a girl from obligation, or for the common good; or also, much more probably, because of experienced frailty in oneself, supposing that such a one is unwilling to use other remedies. For in such a case marriage is a greater good, since it has been granted by God for quieting concupiscence in him who does not will to take up other better remedies. 1 Cor. 7:9; cf. 554, 558.

583. **Does he sin, and how, who vows an evil thing?** St. Alphonsus 204, 205 says: He who vows a vain, useless, indifferent thing sins venially.

He who vows a mortal sin sins mortally.

He who vows a venial sin, some say, sins venially; others, mortally. "It is more probable to me that it is grave fault, since of itself it is blasphemy to will that evil yield to God's honor; but commonly because of ignorance this is only venial."

584. **Whether and how does a vow oblige?** The answer is had in the following propositions:

A vow is obligatory. For a promise made to a man certainly obliges; how much more, therefore, one made to God. And the Scriptures most evidently suggest this: *When you have vowed a vow... you shall not delay to render it*, etc. Deut. 23:21. *If you have vowed anything to God, do not delay to render it*, etc. Eccles. 5:3. "It is heretical," says St. Thomas, Quodl. 3, a. 2, "to assert that a vow does not oblige." Cf. 2. 2. q. 88, a. 3.

585. **A vow obliges of itself, like a law or precept of the Church, and therefore gravely in grave matter, and lightly in light matter.** For a vow is as it were a certain private law which

one imposes upon himself. Struggl 17; L. 211, 213.

586. **A vow obliges according to the intention of the one vowing, if he determines the quantity of obligation in the act of vowing, so that he can bind himself under light obligation only in matter however grave.** The reason is that, just as a legislator or superior can in grave matter oblige only under light obligation, so also one who vows concerning a grave thing can impose only a light obligation upon himself.

Yet, conversely, he cannot oblige himself gravely in a light thing, because light matter is not capable of a grave obligation. But in the vow of chastity annexed to sacred orders, and in the vows of religious profession, the Church specially requires the will of obliging oneself gravely. Hence a religious profession is void when it is expressly emitted without the will of obliging oneself gravely. Struggl 18; St. Thomas, 2. 2. q. 88, a. 3; L. 211, 212.

587. **Note:** That matter is judged grave which, when commanded by the Church, obliges gravely, as fasting, Mass, etc.; or which, compared with another precept, seems grave; or which contributes notably to the end of the vow, or to divine worship.

588. No one can be obligated by another's vow by force of the vow; because a vow is a personal burden voluntarily undertaken, and therefore no one can promise another's thing or action. S. R. C., Apr. 18, 1643, *Decr. Auth.* 834.

By force of the vow: for first, from justice an heir is held to pay the real vows of the deceased, just as he is held to pay his other debts, legacies, etc. The reason is that a real vow affects the thing itself, and therefore that thing remains obligated into whatever hands it may come. Hence such vows must be satisfied before legacies, because the obligation of real vows is prior to a free legacy by reason of death, but after debts of justice, because the deceased is judged to have emitted real vows to be paid only from that part of his goods of which he could freely dispose without injury to others. Hence a necessary heir can licitly reserve the legitimate portion, or the portion due according to the laws, not only for himself but also for other descendants, and therefore is held to pay the real vows of the deceased only from the remaining substance.

Second, from obedience subjects are held, both those who now live and those who in the future will become members of the community, by force of a certain pact or statute or custom, and from the motive of religion, to fulfill a vow which has been emitted in their name by the civil magistrate with the bishop assenting, or by the superiors of religion. Struggl 24, 26; Suarez, *de Voto* l. 4, cc. 1, 9; Scavini, 12th ed., Milan 1874, l. 2, n. 219; L. 213, 214, 216; St. Thomas, 2. 2. q. 98, a. 2, ad 4; E. M.

589. **Resolutions:** First, real vows are to be paid from one's own property; but one who cannot pay from his own is not held to beg from another so that he can satisfy. Yet he satisfies if another, whether asked or spontaneously, wills to pay for him, although he himself could satisfy; because what another gives, with the consent of the one vowing added, or with his ratification if the other gave without his knowledge, becomes the property of the one vowing. Except if the matter of the real vow was determinate; for then that individual thing must be expended, namely when a particular reason moved him to vow this thing in the individual.

Second, personal vows can be fulfilled only by the one vowing himself, nor do they pass to heirs. Hence one who vowed a pilgrimage does not satisfy if he hires another; nor is he held to hire another if he himself cannot go.

Third, vows of parents devoting their children to some religion, or imposing an obligation on them, for example of fasting on certain days, etc., cannot bind those children. But although children are not held by the vow of parents who devoted them to religion or to some obligation, the vow nevertheless obliges the parents, so that, as far as lies in them, with the liberty of the children preserved, they move them to embracing what they vowed for them, and much more that they not stand in the way of children who wish to embrace it. L. 213, 216, 217, 220.

590. **Conditional vows do not oblige when the condition ceases, even if the one vowing himself was the cause that the condition was not posited, provided he did not impede it by fraud, force, or malice.** The reason is that the condition is now not fulfilled, although by the fault of the one vowing. L. 218, 219.

591. **One who vows something to be done at a certain time, once that time has passed, whether with fault or without fault, is held to nothing, if the day was added to end the obligation.** This is how, speaking of itself and regularly, it must be judged in personal vows, unless the opposite is established, as most commonly say. For transgression of a vow does not oblige to compensation. Hence one who did not fulfill on one day is not held to fulfill on another day.

It is otherwise if the day was added only to urge fulfillment, just as, conversely, it must be judged of itself and regularly in real vows, unless again the opposite is established, since that day has no more special reason than others. But if the vow is indeterminate as to time, for example concerning a daily rosary, etc., the vow obliges perpetually unless something else is gathered from the circumstances. Suarez l. 4, c. 15; Sanchez, *in Decal*. l. 4, c. 14, n. 25; Struggl 17; L. 212, 220.

592. **Vows are to be interpreted according to the more benign part, since they are laws of free will.** L. 224.

593. **Resolutions:** First, one vowing that he will hear Mass for a month probably is not held to hear two Masses on feast days; and this is also probable if it is imposed by a confessor for penance.

Second, one vowing that he will recite the rosary satisfies by reciting the third part, because it is commonly understood in this way; and he satisfies by reciting alternately, because such a vow obliges after the manner of the divine office; and he also satisfies by dividing the decades.

Third, one vowing that he will observe a fast can eat milk foods. One vowing a fast for a month is not held on Sunday. One vowing a fast on the vigil of some Saint, which falls on Sunday, can anticipate the fast on Saturday. One vowing a fast on each Saturday probably is not held to the vow if Christmas falls on Saturday, unless he expressly intended that he still wished to oblige himself on that day, because then he is without doubt held.

Fourth, since the matter or substance of a fast is divisible, so that even those who in any way, whether culpably or inculpably, have eaten meat are still held to one meal, he who vowed a fast, if he eats meat and the obligation of the vow ends on that same day, is held at least to observing the one

meal; but if the obligation of the vow does not end on that day, since it is not affixed to the day, he is held to fast on another day.

Fifth, if someone, forgetful of a vow or of an imposed penance, etc., performs the work owed, he satisfies well by the general will which everyone is judged to have of satisfying prior obligations.

Sixth, whether a Religious who vowed, when he asks permission from the superior to fulfill the thing promised by vow, is held to manifest his vow to the same superior, is disputed. Some affirm, because this manifestation of the vow, regularly speaking, conduces to obtaining permission more easily. Others, more probably, deny it, because a vow is of strict interpretation, and consequently the one vowing is judged to be obliged only to that which is a necessary and commonly sufficient means for obtaining permission. Thus Schmalzgrueber, in this title, nn. 23-25. L. 222-224, 226.

594. **Can light matters in vows coalesce with one another so as to make grave matter?** Either those light matters are vowed separately and by way of several things disjoined from one another, for example from a diverse end; or they are vowed together and by way of one thing.

If the first, omissions, even if multiplied, will never be able to form grave matter, because they are in no way united with one another. If the second, they certainly can, for the contrary reason, constitute grave matter and arrive at mortal sin.

But matters are judged to be vowed by way of several things disjoined from one another in personal vows; by way of one thing and together in real vows, unless the contrary is established. For personal vows are commonly judged affixed to the day, whence the passing of one does not coalesce with another; not so real vows. Thus, for example, a real vow is judged if someone vows to give one small coin daily for a year; but it would be a personal vow if he vows to recite one *Our Father* on each day of the year. Therefore by omitting to recite this prayer even for a long time there would be venial sin; but by omitting that small alms there would be grave sin, when it had arrived at grave matter. Hence an omission of this kind must always be supplied, since the obligation of the vow does not cease with lapse of time. Yet if the intention of the one vowing were truly doubtful, the vow is judged affixed to the day, so that its matters do not coalesce, but each is terminated in the day. For everyone is judged to oblige himself as little as he can. Struggl 17, 33; L. 212, 220.

595. **What delay is to be judged grave?** Grave of itself is any delay of a vow gravely obliging when it is affixed to a determinate time, as is a vow of fasting on such a vigil, etc.; because, once the time has elapsed, the obligation of the vow ceases from the general principle that transgression of a vow does not oblige to compensation.

But if a determinate time was not set, or was fixed only to urge, and not also to end, the obligation of the vow, either the delay diminishes the promised matter or it does not. If the first is verified, grave delay in a grave thing will be grave sin, unless a reasonable cause excuses, for example if someone in the meantime awaits an opportune time for the end which he proposed to himself. Hence, for example, if someone vowed religious life, then Tamburini says "the time, or age, of the one vowing must be considered; for if the one vowing is, for example, in his fifteenth year, I would not judge a delay of three, indeed four, years notable. For youths are accustomed to take up religious life around the fifteenth and twentieth year, namely when a state of life is accustomed to be assumed; therefore

while someone in his fifteenth year vows perpetual religion, unless he determines a time for entrance, he does not seem to have renounced the accustomed way and time in assuming a state of life... But if the one vowing were, for example, reaching his fortieth year of age, I willingly admit a delay beyond six months to be sufficiently notable; for such an age does not permit a longer delay."

But if the second is verified, the same Tamburini says "it does not seem improbable that any delay whatever, provided there is not probable danger of omitting the vow altogether, is only venial. The reason can be that no one, when he gives the whole of what he promised and causes no damage from delay to the creditor, seems to be condemned for grave fault, but only for light negligence. But no damage from the aforesaid delay falls upon God," etc. And soon after he adds: "That is deservedly certain: when there is no danger of diminution of service, a vow made without determination of time can be deferred, even without venial sin, until the time when one believes he will fulfill it with greater devotion; because this yields to the greater honor of God, to which the vow is ordered; therefore that greater hoped-for devotion is to be judged a sufficient cause of delay." *Explic. Dec.* l. 3, c. 12, § 3, n. 11. But others generally assert that it is grave to defer temporary vows beyond two or three years, and perpetual vows beyond six months. St. Thomas, 2. 2. q. 88, a. 3, ad 3; L. 221, l. 4, nn. 72 ff.; Struggl 19-21.

596. **How many kinds of sin does one commit who violates a vow?** Either the vow concerns a thing otherwise commanded, or it does not. If the first, there will be a twofold sin: one against the virtue to which the thing promised by vow pertains, the other against the virtue of religion; for a twofold precept is violated. If the second, there will be one sin against religion, because the one vowing in this case does not will to impose upon himself any obligation other than that which arises from the force of the vow itself.

But the malice of this sin against religion is perfidy, or violation of the fidelity owed to God, which violation pertains directly to irreverence toward God. Whether, however, violation of any vow whatever, that is, even if not solemn, also takes on the malice of sacrilege strictly so called, that is, induces another sin against religion directly pertaining to irreverence toward sacred things, some affirm, others deny. Cf. 500. Roncaglia tr. 7, q. 2, last chapter, question 5; L. 213, 224.

597. **How does a vow cease intrinsically?** The obligation of a vow can cease intrinsically and extrinsically.

It ceases intrinsically: first, if matter formerly possible becomes impossible; formerly honorable becomes base; formerly a better good becomes indifferent and impedes a greater good, by reason of the destruction of the thing itself, prohibition, and a new circumstance. For the obligation is extinguished if it falls into a case from which it could not begin.

Second, if you change the vow into an evidently better work; for anyone can do this even of himself, provided no special prohibition is had in the particular case. Cf. 623.

Third, if the state of the thing is notably changed. "It is the common opinion," says St. Alphonsus 226, "among the Salamanticenses, that in every promise, as a vow also is, a change of matter notable of itself removes the obligation. The reason is that through the change the thing becomes diverse

from that which was promised." Understand "excepting the simple vow of chastity and of religion." L. l. 4, n. 50.

Fourth, if the thing vowed has become useless for the intended purpose, especially if it is more destructive of it.

Fifth, if those conditions so bear which are understood in any vow whatever. St. Thomas, 2. 2. q. 88, a. 3, ad 2.

Sixth, if its final cause ceases; but not if only the impulsive cause ceases. Cf. 566.

Seventh, when the condition is not fulfilled, if the vow was conditioned; when the determined time has elapsed, if the vow was affixed to a certain time. Cf. 590, 591. Struggl 32-36; L. 225, 243.

598. **Is that change of itself sufficient, even if not notable, which nevertheless, if foreseen, would have caused someone not to emit the vow?** The first opinion affirms, and St. Thomas expressly holds this when he teaches: "That liberates from the obligation of a vow or oath which, if it had been known from the beginning, would have prevented them from being made," 4 D. 38, q. 1, a. 3. The reason is that then the intention of obliging oneself either fails, or is so interpreted according to what was said in the preceding number, fifth place.

The second opinion denies, because to exempt the one vowing from the obligation of the vow, attention must not be paid to what he would have promised if he had remembered, but rather to what he actually promised. Now St. Alphonsus 226, speaking of the first opinion, says: "This opinion seems to me no less probable, indeed perhaps more probable." And he hands it down as almost certain in l. 3, n. 720. Cf. 563, 567, 575, 597, 3.

599. **How does a vow cease extrinsically? What is irritation, and how many kinds are there?** A vow ceases by irritation, dispensation, and commutation.

Irritation of a vow is its annulment or suspension made by him to whose power the will of the one vowing, or the matter of the vow, is subject. It is: first, direct, if it falls directly upon the person or upon the will of the one vowing; second, indirect, if it falls only upon the matter of the vow. In the former case the vow is altogether annihilated and does not afterward revive any more; in the latter, however, its obligation is only suspended as to the matter subject to another's power, and it revives when the one vowing has become perfectly his own master. Struggl 30, 31, 43.

600. **What is direct irritation?** Since no one's dominion ought to be violated, and any lord can use his own liberty, hence, if the will of someone is subject to the dominative power of another, that superior can directly irritate all the vows of that subject, of whatever kind they are, at his pleasure and validly without any cause. That is, he can will and pronounce that those vows are null, so that in no case does the obligation later revive. For this irritation is not the placing of some impediment to the execution of the act of the will, but the annulment of its value. And this holds even if the vow is in favor of a third party and perhaps accepted.

Dominative power is distinguished from jurisdiction in this, that jurisdiction arises from the right of a public office, while dominative power arises from the right of a private office; hence it is also customarily called economic power. Schmalzgrueber l. 1, t. 32, n. 4; Laymann, *de Leg.* c. 5, n. 1.

Moreover, this right comes from natural law and also from positive law, by which legitimate dominative power over the will of another is given to someone. L. 227; St. Thomas, 2. 2. q. 88, a. 8; q. 185, a. 5; Suarez, *de Relig*. tr. 6, l. 6, cc. 6, 7; Bouix, *de Iure Reg.*, vol. 2, pp. 481-505.

601. **What is indirect irritation?** If not indeed the will of the one vowing, but the matter of the vow, is subject to someone, so that he has a right over it, that one can irritate such a vow by indirect irritation, that is, suspend its obligation insofar as prejudice is done to his right. This is from the law of nature teaching that no one can promise another something to the prejudice of a third party. Hence, once the state of things is changed, the vow revives. But accidentally it can be extinguished if, for example, the vow obliges for a certain time and permission is denied for that time, or the matter is prohibited. L. 241; St. Thomas, 2. 2. q. 88, a. 8.

602. **Can a superior irritate vows if these have been ratified by himself, or after the time of subjection has passed?** Answer to the first: Affirmatively, because he cannot take away from himself the power which he has over subjects. Conversely, however, one who once irritated a vow, if afterward he does not will this, the vow is not therefore revalidated. The reason is that through irritation the vow is extinguished. But for an extinguished vow to revive, the repentance of the superior who irritated it contributes nothing; rather the will of the subject is required, who must oblige himself again by vow. L. 239.

To the second: Vows made during the time of subjection can still be irritated after it, for example when a son is already pubescent; and this, says St. Alphonsus 238, is the more probable opinion. Sanchez, *in Decal*. l. 4, c. 30, nn. 7, 8, gives a twofold rule in this matter: "The first is: when the power of the superior, in whose time the vow was emitted, is not altogether extinguished or altogether suspended, but remains as to some things, he can irritate a vow emitted during the time of his subjection, even if that time has already passed; provided, once it has passed, it has not been confirmed anew." Understand: confirmed when he then knows the vows were weak, as St. Alphonsus has in the cited place. "The second rule is: when that power of the superior is altogether extinguished or altogether suspended, he cannot irritate those vows."

603. **Is some cause required for the irritation of vows?** To irritate the vows of subjects without cause is of itself no sin, because they are judged to have been emitted under the condition of the superior's consent; hence obedience stands for a cause. Of itself, because in practice it will scarcely be able to be excused from venial sin; for it would be an idle act, and another's progress would be impeded irrationally. Yet this commonly does not exceed venial sin. To excuse from venial sin, any reasonable cause suffices.

Suarez, *de Relig*. tr. 6, l. 6, c. 7, n. 16, warns that a lesser cause suffices for irritating than for dispensing. Hence he infers from the opinion of all that a subject who asks from his prelate the irritation of a vow, when he does not have a cause sufficient for a just dispensation, does not sin, because, as he says, he uses his own right. Likewise because the vow was not absolute but conditioned, and through it he did not oblige himself to taking care that the condition not be impeded, or to not taking precautions so that it would not be posited, as is established from the common manner of vowing. Likewise it is not a sin to show oneself inclined to irritation, because this is neither against the vow nor against another precept. Finally, one who feels the burdens of

religion can enjoy its comforts without sin. Therefore, one who has subjected himself to the power of a superior so that he may receive burdens from him does not sin by procuring, through licit means, some alleviation through the same superior's power. Therefore, just as the prelate does not sin by irritating, so neither does the subject by asking. L. 228; St. Thomas, 2. 2. q. 88, a. 8.

604. **Who can irritate the vows of religious?** Besides the Pope, who indeed can directly irritate all vows of religious, and besides a bishop as to nuns subject to him, abbots, guardians, priors, and rectors can directly irritate the vows of religious, of whatever kind, even internal ones, even those emitted under predecessors, even if they are secondary prelates when the primary prelates are absent; and probably also abbesses.

There is excepted, however, besides the vows of religious profession themselves, as Trent establishes, sess. 25, c. 4 *de Reg.*, the vow of passing to a stricter religion, as is established in C. *Licet* 18 *de Regul.* This vow not even the Pope can irritate as supreme prelate of a religious order, although not only the Pope, but also a regular prelate can dispense from it. C. *Monacho* can. 20, q. 4, c. 2; L. 233, 242; St. Thomas, 2. 2. q. 88, a. 8; cf. 616; Struggl 37, 38.

605. **Note:** First, a prelate can likewise licitly and validly irritate the vow of a subject confirmed by an equal or inferior predecessor, but not one confirmed by a superior. L. 239.

Second, it is certain that the vows of religious are extinguished through profession, as is had from C. *Scripturae* 4 *de Voto*: "He is not held guilty of a broken vow who is known to commute temporal service into the perpetual observance of religion." L. 237; St. Thomas, 2. 2. q. 88, aa. 8, 12.

Third, as regards novices, regular prelates can indirectly irritate the personal vows of a novice when their execution prejudices the exercises of probation. But they cannot irritate their real vows, because these do not prejudice the exercises of probation. Struggl 42.

606. **Can a father, grandfather, or tutor irritate the vows of children?** The father, or the paternal grandfather in his absence, can directly irritate any vows whatever of the impubescent, whether personal or real, even of chastity and religion, although the son is capable of malice and the vow concerns peculium castrense, or quasi-castrense, because in such an age there is lacking perfect deliberation for so great an obligation. Therefore nature provided for such a defect by supplying parents the faculty of irritating such vows.

In doubt whether a vow was emitted before or after puberty, the father can still irritate it, because his power prevails. But parents cannot irritate the personal vows of pubescent children, for example of chastity, etc., except indirectly, that is, unless they prejudice domestic governance, as vows of pilgrimage, etc. Likewise they can well indirectly irritate the real vows of pubescent children in the minor age, because in that age the children lack administration of goods. Except if the vow concerns peculium castrense or quasi-castrense; or if the son has left paternal power. What has been said of the father and grandfather must also be said of the tutor with respect to a ward, and of the curator with respect to a minor; and if there are several tutors or curators, each has the same power. C. *Puella* 2, c. 20, q. 2; L. 229, 242; St. Thomas, 2. 2. q. 88, aa. 8, 9.

607. **Can also a mother or grandmother irritate the vows of children?** A mother can irritate the vows of children, in the absence of the father, if she is designated tutor or curator, and she can do what tutors and curators can. But if she was not designated as tutor or curator, and the son lacks father or paternal grandfather, Sanchez, Suarez, etc., think that then the son is his own master. But the opposite, namely that in that case it belongs to the mother to be tutor or curator, is more probably held by the Salamanticenses, Tamburini, etc., because it is reasonable that the mother or grandmother provide for the minor; and therefore she can well irritate his vows as tutor or curator.

But Sanchez, Suarez, etc., deny that a mother can irritate the vows of children while the father or tutor is present, and say that the mother, and in the absence of the mother, the grandfather or grandmother on the mother's side, can irritate only the vows of impubescent children when father or tutor is absent. But no less probably the Salamanticenses, Roncaglia, etc., assert that the mother, even while the father or tutor is present, can irritate all vows of the impubescent, even of chastity and religion, and even personal vows of the pubescent which prejudice the governance of the house; but not real vows, whose administration pertains to the father or curator. The reason is that such power, although not civilly, for by common law it belongs only to the head of the household, is nevertheless naturally also in the mother, whom children are held to obey, although with subordination to the father; so that the father can irritate the vows of children against the mother contradicting, but not so the mother against the father contradicting.

But by more recent laws paternal power is in the father and mother, although exercised by the father alone. Inst. l. 1, t. 9; C. I. 220; C. G. 371-373; C. H. 154; C. A. 143, 144, 147; L. 230; St. Thomas, 2. 2. q. 88, aa. 8, 9; Struggl 39, 40.

608. **Note:** It is owed to positive law, namely to the common law, that parents can directly irritate only the vows of impubescent children, but indirectly the vows of pubescent children. The distinction of impubescent and pubescent children is omitted in more recent laws. Hence not improbably parents can directly irritate all vows of children so long as they remain under paternal power. C. I. 220; C. G. 372; C. A. 174; C. H. 154; L. 227; St. Thomas, 2. 2. q. 88, a. 8; D'Annibale, 3rd ed., part 3, n. 206.

609. **Can a husband irritate the vows of his wife?** It is more probable that a husband can directly irritate all vows of his wife, even if they do not prejudice the use of marriage, or the education of offspring, or domestic governance. The reason is both because a husband has dominion over his wife, and because it is very expedient for the peace of the family and for fostering mutual love that the wife's will be totally dependent on the husband, and thus the impulses of women be checked. Therefore a husband can irritate even vows of chastity and religion emitted by the wife and to be executed after the husband's death.

But a husband cannot directly irritate vows emitted by the wife before marriage, though he can well suspend their execution insofar as they prejudice his power. L. 234, 237; St. Thomas, 2. 2. q. 88, a. 8; C. A. 91.

610. **Can a wife irritate the vows of her husband?** A wife cannot irritate the vows of her husband unless they prejudice her, as a vow of long pilgrimage, etc.; or also a vow of not asking the

debt, as Sporer, Laymann, etc., more probably hold against Lessius, Sanchez, etc., because it would be very grave against the modesty of the wife to be compelled always to ask. The Doctors commonly teach that such vows are to be irritated; but rather they seem to be invalid, as concerning inept matter, as the Salamanticenses think. L. 235, 242; St. Thomas, 2. 2. q. 88, a. 8.

611. **Note:** Spouses could also by mutual consent irritate a vow of continence emitted by mutual consent. This seems to follow from the power of the husband directly to irritate the vows of the wife; from the power of the wife indirectly to irritate the vows of the husband; and from the power of irritating vows even approved or ratified by oneself. St. Alphonsus 236 denies this. Yet grave Doctors are not lacking who affirm it. St. Thomas, 2. 2. q. 88, a. 8, ad 3; Sanchez l. 4, c. 32, n. 7; Suarez l. 4, c. 6, n. 1; Gury-Ballerini 331.

612. **Can a master irritate the vows of servants?** A master can irritate any real vows whatever of servants or slaves, unless they have something of their own, and personal vows which prejudice the master, as vows of religion, etc.; but not vows of chastity, etc. Yet these vows of servants and domestics cannot be directly irritated by masters, but only indirectly, or can be suspended for the time of servitude and service, insofar as they prejudice due services. L. 240, 242; St. Thomas, 2. 2. q. 88, a. 8.

613. **Can a husband or prelate directly irritate vows of a wife or religious about which it is doubted whether they were emitted before or after subjection?** The reason for doubting is that none of the aforesaid superiors can directly irritate vows emitted before subjection, for example before marriage.

St. Alphonsus 237 denies it. The reason is that the vows are certain, and the possession of the husband or prelate is uncertain, because it is doubted whether the vows were emitted at the time when subjection began. But Suarez, Sanchez, and others affirm. The reason is that, on the contrary, the possession of the present will of the subject is certain, since it is certain that she is a wife, or that this one is a religious; but the exception as to those vows is doubtful. Therefore until the exception is proved, namely that the vows were emitted before subjection, the certain possession of the superior prevails. Thus, by parity, a spouse doubting about the validity of marriage is held to render the debt to the other asking because of that other's certain possession, as is had from C. *Dominus de Secund. nuptiis*.

614. **What is dispensation of a vow?** Dispensation of a vow is the remission of a vow, made in the name of God himself, for a just cause, by one having spiritual jurisdiction in the external forum.

Remission, by which is not understood the dissolution of the obligation of natural law, but an action by which the Church in the name of God withdraws the matter from the vow. This is clear from the example of one who remits a promise made to himself; for he does not dispense in the natural right of standing by promises, but rescinds the contract by remitting its obligation. That this faculty belongs to the Church is established both from fact, since she has always used it, and from law, since it is expedient for the good of the faithful and those words of Christ are general: *Whatever you shall*

loose, etc. But that it belongs only to the Church is established from the fact that this act is spiritual; therefore it ought to belong only to spiritual power.

Made in the name of God: for since the Church does not dispense in her own law, but in God's, she can do this only in the name of God himself. Hence the difference between dispensation and irritation is established. Dispensation falls upon a vow insofar as it depends on God's acceptance. But irritation falls upon a vow insofar as it is as it were conditioned either on the part of the will of the one vowing, or on the part of the promised thing subject to and dependent on the superior's power. Irritation can be made against the will of the one vowing, and the superior, by prohibiting the matter or by resisting the obligation of the vow, removes the condition, namely of honesty, without which a vow cannot be valid. Dispensation, on the contrary, cannot be made against the will of the one vowing, because, since in a vow the obligation depends on one's own will, by not accepting the dispensation one as it were confirms the vow, or emits it again.

For a just cause: because an inferior, since he is a simple executor, cannot dispense in the law of a superior without a just proportionate cause; and if he acts, he acts invalidly, and sins unless good faith excuses him.

By one having, etc.: for since this power pertains to external governance, just as the power of making laws, whose nature a vow imitates, only those who possess external jurisdiction can have this faculty of dispensing from a vow as their own. Add that an accepted promise cannot be dissolved unless the one who accepted, or his representative, consents. L. 250; St. Thomas, 2. 2. q. 88, aa. 10, 12.

615. **Who can dispense from vows, and with whom?** First, the Pope, with respect to all the faithful and all vows, even solemn ones.

Second, a bishop, with respect to his subjects, even travelers, in all vows not reserved to the Pope; but not the parish priest, because he has only jurisdiction of the internal forum. Nor indeed by law or custom is such a faculty communicated to him.

Third, exempt regular prelates, with respect to their religious and novices, as to vows which they made either in the world or even in the novitiate, excepting reserved vows. But non-exempt prelates cannot dispense, nor abbesses, indeed not penitentiaries, nor vicars of a bishop, unless faculty is specially delegated to them.

Fourth, by special privilege all regular confessors can dispense in non-reserved vows of the faithful, within or outside confession; nor indeed is it required that he be the ordinary confessor of the person bound by vow. Other confessors have no faculty in this matter unless it is communicated to them by the Pope or by the bishop.

Fifth, legates *a latere* and nuncios have the same faculty in the province committed to them; likewise a chapter when the see is vacant, and abbots having episcopal jurisdiction. L. 256, 257, 262; St. Thomas, 4 D. 38, q. 1, a. 4, q. 1, ad 3; 2. 2. q. 88, aa. 9, 10, 11; Struggl 45, 46, 47; Diana tr. 4 *de Voto et Iuramento*, R. 78; tr. 1 *de Dubiis Regularium*, R. 274, 275.

616. **Note:** In the vows of religious, dispensation can be made by their prelates, even if the vows were emitted with the prelates' permission; and even if it is a vow of passing to a stricter religion, if it is known to be more useful for the religious to remain in his own. A bishop can

dispense with his subjects in a vow of entering a stricter religion, the vow of religion being left as to substance, since such a dispensation is found reserved by no law. But the faculty of dispensing can be delegated by the said prelates even to a simple tonsured cleric.

In substantial vows of religion, or vows annexed to them, as in the vow of not eating meat, etc., which are customarily emitted in some religions, no one can dispense except the Pontiff. Moreover in the vows of novices, if they are not reserved, dispensation can be made both by the prelates of religion and by the proper bishop. L. 257; cf. 604.

617. **What are just causes of dispensation?** First, the good of the Church, or the common good of the republic or family, or the progress of the one vowing.

Second, danger of transgression because of the particular indisposition of the one vowing, or because of the common fragility of men.

Third, great difficulty in execution, not only if it was not foreseen, but also if it was foreseen; both because even then there is danger of transgression, and because a thing is apprehended as much more difficult when execution is imminent than when it is being deliberated; and even if such difficulty has its origin from the frailty of the one vowing.

Fourth, if the one vowing is vexed by great scruples.

Fifth, if the vow was emitted immaturely, namely with too much facility, or from imperfect deliberation, or without perfect liberty. For this reason, in vows of the impubescent, without another cause, dispensation can be made absolutely without any commutation.

Sixth, if the vow was emitted because of light fear impressed from without. C. *Ad audientiam* 4 *de His quae*, etc.

Seventh, when imperfect deliberation or liberty in vowing proceeded from sadness or from intrinsic fear of shipwreck, death, or another evil, because then vows are customarily made immaturely, and therefore dispensation can be made in them without commutation. But if it were established that mature deliberation was present, then some commutation should be mixed with the dispensation. The same must be done if the impulsive cause of the vow ceases. L. 250, 252, 253; Struggl 46, 47.

618. **Can a superior dispense from vows made for the utility of neighbor?** A vow, although gratuitous, if it was emitted for the utility of man alone, or principally for the utility of a third party, and that third party is determinate, for example such a poor person, such a church, can in no way be dispensed, once it has been accepted by the poor person or rector of that church; for that poor person, that church, acquires a true right, of which indeed it cannot be despoiled without injury and without the consent of the party.

Although gratuitous: for much less could dispensation be made from a mutual, onerous promise, as happens in vows and oaths of perseverance which are made in some congregations; for then they assume the nature of a contract, namely the congregation obliges itself to sustain the subject, and he to serve, and Benedict XIV so declared in C. *Convocatis*, Nov. 25, 1749, § 32, which C. *Inter praeteritos*, Dec. 3, 1749, § 66, confirmed.

Or principally for the utility of a third party: for if it was emitted principally in God's honor, then the third party would not acquire a true right to the thing promised except dependently on God's will, which indeed can be relaxed. "Sporer, Viva, Fagundez, etc., say it is sufficiently probable that such a vow can well be commuted by the authority of the prelate or by one's own authority even after acceptance." L. 255. But what has been said here about a vow must also be said about an oath, principally emitted in God's honor, that it can be relaxed by the bishop without the consent of the party.

If the third party is determinate: for a promise made to God alone of giving something, for example to indeterminate poor persons, can always be dispensed and commuted.

If it has been accepted: for before acceptance there is not a completed handing over, and the most common opinion is that it can then be dispensed and commuted. L. 255, 726; Suarez l. 6, c. 15, nn. 7, 8; Sanchez l. 4, c. 41, n. 15; cf. 567.

619. **Which vows are reserved to the Pope?** From custom received everywhere and from Canon Law itself, besides vows of religion and those annexed to them, these five are reserved: first, the vow of entering an approved religion; second, the vow of perpetual and integral or total chastity; third, the vow of pilgrimage to the sepulchre of the Lord in Jerusalem; fourth, the vow of pilgrimage to the thresholds of the Apostles Peter and Paul; fifth, the vow of pilgrimage to visit the relics of St. James of Compostela.

Hence in a general concession of dispensing in all vows, these five vows are not comprehended, although they are not expressly excepted. The reason is that those things which are specially reserved require a special concession. Rule 81 *de R. I.* in 6. Struggl 48; L. 258.

620. **Note:** First, since this reservation is odious, it is always to be interpreted strictly; and therefore reservation is not had: first, if the vows are not perfect by reason of the vow, for example if they are emitted under light obligation. Second, if they are not perfect by reason of affection toward the thing promised, for example if you make a disjunctive vow, say of religion or fasting; or if you make a vow of chastity under a condition, even when the condition is fulfilled; or a vow of going to Rome to visit the sepulchre of St. Aloysius Gonzaga; or of going to Palestine to serve pilgrims, the sick, etc. Third, if they are not perfect by reason of liberty, for example if they were emitted from fear, even light fear impressed by another. Fourth, if they are not perfect by reason of matter, for example a vow of not marrying, or a vow of chastity as to external acts only and not also as to internal acts; of a religion not approved, or one in which solemn vows are not made. Struggl 49 ff.; L. 258, 261.

Second, although the vows are reserved, their circumstances are nevertheless not reserved, for example of making a pilgrimage by begging, of entering religion immediately, etc. L. 258; cf. 616.

Third, bishops, and those having similar jurisdiction, can rightly dispense in reserved vows in urgent necessity, for example if access to the Pope is not easy, and in delay there is danger of grave harm, either spiritual, as of violation of the vow, scandal, quarrels, or temporal, one's own or another's, namely grave infamy of a woman and similar things. The aforesaid faculty, which probably is granted to bishops and to others to whom the power of dispensing in reserved vows has been communicated

by them when necessity urges, is not granted to confessors in a Jubilee who have from the Pope the faculty of dispensing in simple vows. But Mendicants have it. The aforesaid dispensation, however, is not to be granted except insofar as necessity obliges; hence, if it suffices that the vow be suspended, dispensation cannot be made. Struggl 56; L. 258, l. 6, n. 987; Diana tr. 1 *de Dubiis Regular.*, R. 277.

Fourth, a bishop can dispense a spouse from a vow of perpetual chastity, emitted both before and after marriage, in order to asking the debt; because he can dispense from every impediment impeding the exercise of the conjugal act. Mendicant confessors can do the same, and indeed both within and outside confession. L. 258, l. 6, nn. 986, 987.

Fifth, although the faculty of dispensing from an oath is customarily equated with, indeed associated with, the faculty of dispensing from a vow, nevertheless an oath of chastity, religion, etc., is not reserved. L. 259; cf. 569.

621. **What is commutation of a vow?** Commutation of a vow is the substitution of one matter in the place of that which was promised by vow, made under the same obligation of vow. But it can happen in three ways, namely into something better, into something equal, into something lesser. This faculty of commuting, like also the faculty of dispensing, is understood without prejudice to a third party. For God does not hold ratified a dispensation or commutation that is unjust and injurious to another.

622. **Who can commute vows?** One who has power of dispensing in vows also has the power of commuting, because commutation is part of dispensation. Rule 80 *de R. I.* in 6. Moreover, according to Rule 53 *de R. I.* in 6, "to whom that which is greater is permitted, that which is lesser is certainly permitted," namely in the same genus. Yet one who has only the faculty of commuting cannot dispense, because the lesser does not contain what is greater. C. *De peregrinationibus* 1; C. *Venientis* 2; C. *Magnae devotionis* 7 *de Vot.*; Struggl 57; L. 246.

623. **Can someone commute his own vow?** Anyone can by private authority, and without a special cause, commute his own vow into an evidently better work, provided the Church has not prohibited it in the particular case; because when someone performs a work more perfect than the thing promised, by that very fact he observes what he had promised, since the perfect is eminently included in the more perfect. This is established further from C. *Dervenit* 3 *de Iureiurando*. But that is judged better which conduces to the greater spiritual utility of the one vowing and to greater service of God.

Except, however, vows reserved to the Pope, unless the change is made into the religious state, as is established in C. *Scripturae* 4 *de Voto*. Except also if the vow was made in favor of a third party and the promise was accepted by him, because that commutation, which would be made with injury to another, cannot be pleasing to God. Pius IX, in the encyclical letter *Gravibus Ecclesiae*, Dec. 24, 1874, for the Jubilee of 1875, added: "and also penal vows, which are called preservative from sin, unless the future commutation is judged to be such that it restrains no less from committing sin than the prior matter of the vow."

Into an evidently better work: for one who emitted a vow cannot commute it into a lesser good by his own authority; for he must give to God whatever he promised.

But whether one can change his own vow into an equal good is disputed. The first and more probable opinion denies it from St. Thomas, "because commutation is a certain contract, which cannot be completed without the consent of him who holds the place of God on earth, namely the prelate." In 4 D. 38, q. 1, a. 4, q. 1. Then, because once the promise is supposed, it is judged more pleasing to God that the one vowing be faithful to him by providing the thing promised rather than another equal thing. Thus Sanchez, Cajetan, Covarruvias, Soto, etc. The second opinion, which Elbel, Tamburini, Sa, Bonacina, etc., hold, affirms. The reason is that God is presumed to accept a work equal as to substance, because of divine benignity, at least so that the offering may be rendered to him more cheerfully. Struggl 58; L. 243, 244, 536.

624. **Can a priest delegated merely to commute vows commute them into a work notably less?** Answer: Negatively. The reason is that otherwise he would dispense for the greater part, and thus exceed the faculty received. Yet the faculty of commuting vows is not to be interpreted so strictly that it is confined to a work altogether equal; rather it is to be taken in a broader sense, so that it sometimes extends itself to a lesser work. Otherwise it would be subject to innumerable difficulties and scruples, since it is most difficult to find equality in things altogether disparate. Moreover, commutation almost ought to be made for the alleviation of him who has bound himself by vow. L. 247.

Whether a faculty given for commuting vows by dispensing is a faculty of absolutely dispensing: answer, negatively. Rather it is the faculty of commuting even into something lesser, and therefore of dispensing only in part. Otherwise it would be either the faculty of simply dispensing or the faculty of simply commuting.

625. **Is some cause required for commuting a vow into an equal or lesser work?** Answer: Affirmatively as to liceity, because otherwise the prelate would use the power of commuting prodigally. Affirmatively also probably as to validity, because the prelate has a delegated faculty in this matter; for a delegate cannot validly dispense without a just cause, and commutation is a certain dispensation. Yet St. Alphonsus 245 says that the opposite opinion is probable. The reason is that since there is no greater obligation toward men than that of supplying, this holds so much more with God, with whom one deals more mildly, or who deals more mildly with us.

626. **Note:** For commutation of a vow a lesser cause is required than for dispensation, because dispensation plainly frees from the obligation of the vow, but commutation subrogates another obligation; and again less is required for commuting into an equal work than into a lesser one. For the greater propensity of the person, or less danger of transgressing the vow, suffices. L. 244.

627. **Once commutation has been made, is it licit to return to the first work?** Affirmatively, if the commutation was made into something lesser or equal, because the first work is equally pleasing to God, indeed it seems more pleasing.

Affirmatively also, more probably, although the commutation was made into something better, because commutation is made in favor of the one vowing. L. 248.

628. **Resolutions:** Although the one vowing has returned to the first work, he can nevertheless return again to the second, subrogated work. If commutation has been made several times into diverse works, the one vowing can choose whichever of them he prefers. L. 248.

629. **Must you return to the first work if the second becomes impossible?** Answer: Negatively, if the change was made by the authority of another, even if the second became impossible by your fault; because the prior obligation was dissolved through the commutation itself.

Affirmatively, if you made the commutation by your own judgment; because then the prior obligation is not dissolved, but is only supposed to be supplied by an equal or better work. L. 249; Gury 335. But D'Annibale, 3rd ed., part 3, nn. 201, 209, denies this, since by God's acceptance the prior obligation is extinguished.

630. **When a reserved vow has been commuted, does the subrogated matter also remain reserved?** Answer: Negatively. Thus commonly and more probably. The reason is that although the subrogated matter has the same bond of vow, nevertheless since it itself is in no way reserved, it in no way draws reservation with itself, which was assigned only to the first matter. L. 260.

631. **Does one having faculty of commuting vows for others also have it for himself?** Answer: Affirmatively, just as Sanchez, Bonacina, etc., commonly teach concerning the faculty of dispensing. L. 249, 256.

V. On Adjuration

632. **What is adjuration?** Adjuration is a contestation made through God, the Saints, or a sacred thing, to induce an intellectual nature to do or omit something.

Contestation, that is, invocation of the name of God, etc. Through God, etc., indicates the motive on account of whose love, respect, or fear the one adjuring intends to induce another to doing or omitting something.

Made to induce: superiors indeed by entreating, inferiors by commanding.

An intellectual nature, namely God, Angels, men, demons. Therefore irrational creatures are not properly and directly adjured, but only indirectly: namely by adjuring God or the Saints that their use may help us, or demons that through them they may cease to harm. 1 Thess. 5:27; L. 1, 3; St. Thomas, 2. 2. q. 90, aa. 1, 2, 3.

633. **How many kinds of adjuration are there?** One adjuration is solemn or private, according as it is made by ministers of the Church and in the manner determined by her, or lacks solemnities. Another is deprecative or imperative, according as it is made through prayers or through command. L. 1, 3; Struggl 37 ff.

634. **What is required for the liceity of adjuration?** In order that adjuration be licit, three things are required, as in an oath: first, truth, that is, that the one adjuring truly intends to obtain what he asks, and that the cause for which he asks be true. Lack of this truth will rarely be more than venial, since God is not in fact invoked as witness of falsehood. Hence a beggar who

pretends that he is poor and asks through Jesus Christ sins against religion; yet his sin is venial.

Second, justice. From lack of this, one asking a gravely evil thing certainly sins gravely. But if someone asks a lightly evil thing, some hold that it is mortal, others venial. Yet if someone were deliberately to adjure God himself or the Saints to bring him help for a thing even lightly illicit, he would sin mortally, because such adjuration would be directly against the sanctity of God.

Third, judgment, that is, due discretion; and therefore both a sufficient cause of adjuring must be present, and there must be due submission and resignation to the divine will. Lack of this judgment is certainly only venial. L. 2.

635. **Is adjuration against demons licit?** Private adjuration against demons is indeed licit to all. But solemn adjuration through exorcisms belongs only to ministers rightly ordained in the Church, namely exorcists; for it is an act of order. Yet in the present discipline of the Church it can be made only with the express permission of the bishop, without which it is prohibited under grave obligation.

Adjuration against demons must be made only in the imperative mode, not in the deprecative mode. The reason is that demons do nothing from respect for divine honor, but from fear of divine power.

In no way can such an adjuration of a demon be made so that he may provide help; rather it must be made only for removing harms and the vexation of the possessed person, and not for vanity and curiosity. The reason is that power has not been given to us by God for invoking demons, but only for putting them to flight, as the most hostile enemies of God and souls. Struggl 42, 43; L. 4, 5; St. Thomas, 2. 2. q. 90, a. 2.

636. **Does one sin who mingles conversations with a demon?** The Doctors commonly say that one who has many useless conversations with an obsessing demon cannot be excused from grave sin.

To ask a demon one or another curious thing, Palaus affirms to be mortal; but St. Alphonsus more probably says it is only venial, if the adjuration is truly made in the imperative mode.

But it is licit for exorcists to interrogate the demon about all things which conduce to his expulsion, for example about the number and names of those who inhabit the possessed person, how long and from what cause, about the sign of departure, etc. L. 5.

637. **Is it licit to ask imperatively from a demon the manifestation of some truth?** Elbel denies it, because, as he says, ministers do not seem to have any power except that of interrogating only about those things which contribute to expelling him. But more probably, and most commonly, it is affirmed to be licit if this conduces to divine glory. St. Thomas expressly teaches this, 2. 2. q. 95, a. 4, ad 1. L. 5.

VI. On The Praise of God

638. **What is praise of God?** Praise of God is speech by which we profess the excellence and beneficence of God with honor. This speech is not made so that we may manifest our affections to God, the inspector of hearts, but so that we may move ourselves and others hearing to reverence for him. This praise is customarily made in two ways: first, by simple speech; second, by song. Moreover, in Moral Theology there is discussion only of the canonical praise of God, or canonical hours. It must be treated in the tract on particular precepts. St. Thomas, 2. 2. q. 91; decree of S. R. C. on sacred music; *Monitore Ecclesiastico Conversano*, vol. 8, part 2, pp. 127 ff.

On The Third Precept of the Decalogue

I. On The Precept of Hearing Mass

639. **What is the third precept of the Decalogue?** The third precept of the Decalogue is: *Remember that you sanctify the sabbath day... You shall not do any work on it.* Ex. 20:8, 10. This precept is natural insofar as it commands that some time be dedicated to public divine worship. But insofar as in the Old Law it designates the sabbath, and in the New Law the Lord's day from the determination of the Church, and other feast days, it is positive. St. Thomas, 2. 2. q. 122, a. 4, ad 4.

This precept, as negative, principally forbids servile works on a feast day. But as affirmative, it commands under grave obligation that on Sundays and other feast days one be present at Mass. This is established: first, from various places of Canon Law, especially from C. *Missas* 64 *de Consecr.* D. 1, likewise from C. *Omnes* 63 *de Consecr.* D. 1; second, from all catechisms, by which the undoubted precept of hearing Mass on these days is declared; third, from proposition 52 condemned by Innocent XI.

Besides this, however, it commands nothing else under grave obligation, or even under light obligation of itself. The reason is that in fact nothing else is found commanded in law, or lawfully introduced by custom. Hence it is clear: first, that by force of this precept, both insofar as it is natural and insofar as it is ecclesiastical, there is in fact no obligation under grave or under light obligation, of itself, of assisting at evening office on Sundays and feast days, or of hearing a sermon. By force of this precept: for perhaps someone could sin against other virtues and obligations of his state by omitting the sermon, catechesis, and other works of piety. Second, that he satisfies this precept who hears one Mass on the day of the Nativity of Jesus Christ. Third, that there is no obligation of hearing Mass on Ash Wednesday, Thursday, Friday, and Saturday of Holy Week, nor on the Rogation days, nor on the day of all the faithful departed.

But this precept obliges all baptized persons having the use of reason, even priests who are not celebrating; but not infants before the completion of the seventh year, or catechumens. The first reason is that it is universal. The second reason is that then they are not yet regularly capable of observing it in a human mode. The third reason is that they are not subject to the Church. Finally,

the obligation of a feast day begins from one midnight to the other. For such is the modern usage of the Roman Church. Roman Catechism n. 1 ff.; L. 263-271, 308; St. Thomas, 2. 2. q. 122, a. 4; Struggl 12-14; Ithur. case 20, nn. 1-4; E. M.

640. **What is required for rightly hearing Mass?** For rightly hearing Mass there is required: first, that the whole Mass be heard; second, that it be in the due place; third, with the body present; fourth, with the mind attentive.

641. **What is the obligation of hearing the whole Mass?** Mass must be heard in its entirety under grave obligation; and consequently freely to omit a notable part of it is mortal sin. This is proved: first, from C. *Missas de Consecrat*. D. 1; second, from the common consent of theologians; third, because in a matter of great moment and gravely commanded, freely to omit a notable part is grave sin. Moreover, a notable part is a part pertaining to the essence of the sacrifice; half or even a third part of the whole Mass pertaining to integrity; and it can also be a smaller part if the dignity of the omitted part compensates for its duration.

642. **Resolutions:** First, it is grave to omit the consecration and communion together, because then the essential notion of sacrifice is lacking; indeed also to omit the consecration alone, because it is the most worthy part in which at least principally the sacrifice consists. Indeed, more probably it is grave not to be present for even one consecration only, because the essence of the sacrifice more probably consists in both consecrations. L., H. A. 33: "Yet others, such as Lugo, Tamburini, Diana, Escobar, excuse from grave sin even if the whole consecration is omitted, since it is not sufficiently established whether the essence of the sacrifice is truly in the consumption or in the consecration; and Elbel, with Suarez, etc., thinks this probable, and Sporer, etc., strongly adhere to it... This opinion does not seem improbable." L. 110.

But whether to pass over the communion alone is grave is disputed. The affirmative opinion is more probable to St. Alphonsus, who thinks that the essence of the sacrifice also consists in communion. Yet the more common opinion places it essentially in the consecration alone. Communion, however, pertains to the integrity and fullness of the sacrifice.

Hence he indeed satisfies the precept who successively hears two half Masses from different priests, if the consecration and communion are found in the same part of the Mass, because then the complete notion of sacrifice is had in that same part. L. 311. But he by no means satisfies if the consecration and communion are not in the same part, because he does not assist at a substantially complete sacrifice. L., H. A. 34. Successively: for if simultaneously, he does not satisfy, proposition 53 condemned by Innocent XI. From this it also follows that at least probably one who arrives after the consecration is not bound to hear the rest, because the essence of the sacrifice is already lacking, and therefore the obligation of assisting at it ceases, since the precept cannot be fulfilled through this. Yet the opposite opinion also rests on a grave foundation, because there can be assistance at a notable part of a ceremony commanded by the Church. After the consecration: for if he came before, "it must altogether be affirmed that he is held, with Sanchez, the Salamanticenses, Lugo, Suarez, and the common opinion." And indeed then there is had both a wholly notable part and the whole essence of the sacrifice. L. 310.

Second, it is grave to omit everything up to and including the offertory, or everything before the Gospel and at the same time everything after communion, because this is a notable part as to

integrity. Likewise the omission of the canon from after the Preface to the consecration, and from after the consecration to before the *Pater*, is to be held grave, because it is a notable part by duration and dignity together.

On the contrary, it is certainly light to omit everything up to but excluding the Epistle, and more probably also including it; indeed probably even, according to St. Alphonsus 310, up to and including the Gospel. Suarez, *de Euch.* D. 88, s. 2. Likewise it is light to omit everything which follows communion; indeed to omit everything after communion and everything before the Epistle. The reason is that they do not constitute a notable part by reason of integrity, if attention is paid: first, that the Gospel of St. John at the end probably is not part of the Mass, because before it the people are already dismissed by the blessing; second, that there is one reason for the Mass of the catechumens, another for the Mass of the faithful, which extends from the offertory to the consumption. But to omit everything up to and including the Epistle, and everything after the consumption, "Bauny and Llamas also excuse; but Palaus, Suarez, etc., more commonly cited by Croix, contradict." L. 310.

As to the Symbol, since it is not a regular part, St. Alphonsus 310 with others judges that it is not to be counted. But as to the offertory, its omission is reputed light, and the same is judged of the Preface, for neither pertains to the essence of the sacrifice, nor is either a notable part by reason of integrity or dignity. L. 310; E. M.

643. **Note:** Whether one who omits a light part of Mass is held to supply it if he can: some affirm, because he is held to hear the whole Mass. But others probably deny it, "because the precept is already substantially fulfilled... and that manner of supplying it is very imperfect, and does not much conduce to the integrity of the Mass... and because moral things are not to be weighed so rigorously, especially when they are lighter." Suarez, *de Euch.* D. 88, s. 2; L. 310.

644. **What is the due place?** There is no obligation to hear Mass in the parish church. But one does not satisfy the precept who hears Mass in a private oratory, setting aside a special privilege.

The first part is proved: first, from privileges granted to regulars even after Trent. It is established especially from the constitution of St. Pius V *Etsi mendicantium*, 1567, where it is said: "Christ's faithful, by hearing Mass and other divine offices in the churches of brothers of this kind (Mendicants), on Sundays and feast days, are judged to have satisfied the precept of the Church." Second, from legitimately prescribed custom. Third, from the most common and certain opinion of the Doctors, but especially from Benedict XIV, *de Syn.* l. 11, c. 14, where he asserts that the decrees of councils and supreme Pontiffs establishing the obligation have been derogated by contrary universal custom, which constitutes a certain common law, against which bishops cannot rise up either licitly or validly. Struggl 39; L. 320 ff.

Private oratories are chapels erected in a private house from a privilege granted by the supreme Pontiff, so that the divine mysteries may be carried out there. Those oratories are not judged private, but are to be held public, which are legitimately erected in seminaries, monasteries, or houses of religious or nuns, or of other communities, as in conservatories, prisons, hospitals, and also in the houses of bishops and cardinals. For these are not private houses. Indeed sometimes an oratory in private homes can be held as public. But for this there is required: first, that entrance lie open to the

public way; second, that it be subject to no servitude reprobated by Canon Law; third, that it be dedicated in perpetuity to divine worship; fourth, that sufficient revenues for divine offices be established. L. 319, l. 6, n. 357; Benedict XIV, *de Sacrif. Missae* l. 3, c. 6, n. 6.

The second part is proved: from the briefs of concession themselves it is had that those who hear Mass in private oratories do not satisfy the precept unless they are the lords; or their relatives, namely consanguineous relatives and relatives by affinity up to the fourth degree, who live in the same house and live at their expense, as St. Alphonsus 318 wishes; or, as Gatticus n. 11 notes, although they do not constitute one family; or unless they are their noble guests, and also those who are invited to dinner by the privileged person; or unless they are domestics, namely those who are occupied in the service of the lord and live at his expense, and are actually necessary domestics, namely those whose presence in the oratory during Mass is necessary, although they live outside the house.

But for these it is required that someone actually be present from those to whom the indult was principally granted. The indult is understood principally granted only to those to whom the brief is directed, namely those persons who are named by their proper name on the back of the same brief, so that without the presence of one of the said persons the sacrifice of Mass is by no means licitly carried out, even if another is present from those who are mentioned in the same brief.

Indeed, for all, the more solemn feasts are excepted. These are the feasts of the Nativity of the Lord, Epiphany, Thursday in the Lord's Supper, Easter, Ascension, Pentecost, Immaculate Conception, Annunciation, Assumption, St. Joseph, the Blessed Apostles Peter and Paul, All Saints, the titular Saint of the church and patron, the Dedication of the cathedral church, S. R. C., Apr. 10, 1896; and on these days celebration in oratories of this kind is wholly interdicted. Yet no day is excepted when an oratory is granted by the Pontiff because of infirmity. L. 318, l. 6, nn. 357, 359; La-Croix l. 3, part 1, nn. 626 ff.; Gatticus, *de Orat. priv.* c. 25, nn. 23, 24; A. S. S. vol. 4, p. 257; vol. 8, p. 61; vol. 12, p. 254; E. M.

645. **What presence is required?** To satisfy this precept, moral presence of the body is required. Moral presence of the body is had when someone exists within the church, or outside it, yet in such a way that he can be said to be one of the number of those assisting and offering the sacrifice. And this is verified if he can follow the Mass as to the principal parts by hearing, seeing, or attending to the signs of the other assistants, provided nevertheless that a great distance of place does not intervene between him and the other assistants, if he is outside the church.

This is proved: first, from the common opinion of theologians; second, because without at least moral presence, the faithful are not judged, according to moral estimation, to assist the sacrificing priest and to hear Mass. L. 312.

646. **Resolutions:** First, one validly assists at Mass who, although he neither sees the priest nor hears the words, distinguishes the parts of the Mass by the sound of the bell, the chant of the choir, or the movements of the assistants to whom he is morally joined, even if he is outside the church in which the crowd cannot be contained. Likewise, one who stands behind the altar, behind a column, or behind a wall, provided he can attend to the principal parts of the Mass.

Second, likewise more probably, one who is in a nearby house, from which through a window or door he sees the altar or the assistants, or distinguishes the parts of the Mass, provided the space between the church and the place in which he is is small. But it is otherwise if a large space or a public square intervenes.

Third, he does not assist at Mass who remains far away outside the church, even if he sees the temple, altar, and crowd, because in common usage he cannot be said morally to hear and be present. According to Lugo and others, a space of thirty paces from the crowd of assistants does not seem so great that it prevents someone from being present at Mass. L. 312.

647. **What attention is required?** For hearing Mass under grave obligation by reason of the precept, there is required and suffices: first, the will of hearing Mass; second, purely external attention.

Attention: a twofold attention is distinguished, one internal, the other external. The former consists precisely in this, that someone adverts and applies the mind either to the words and actions of the priest, or to the mysteries of the sacrifice, or finally to praising, adoring, and worshiping God by prayers or meditation. The latter, however, consists in this, that someone does not place an external work incompatible with the hearing of Mass, although the mind is internally, continuously, and voluntarily distracted. Incompatible, for example, to sleep, or to converse through the whole Mass, or through a great part of it, about a serious matter.

The first part is proved: each is required; for if either is lacking, either there is no human act, or there is no religious act exhibiting worship to God, not even externally.

The second part is proved: it suffices. For first, many grave theologians teach this, and even those who teach the contrary hold this opinion as probable. L. 313; Struggl 37; Gury 345. Second, because internal attention is not required for the moral substance of external worship. For, as Soto, Suarez, Sanchez, the Salamanticenses, Filliucci, etc., commonly teach, in this third precept only external worship is commanded, both abstaining from servile works and hearing Mass. This is confirmed from St. Thomas, 2. 2. q. 122, a. 4, who teaches that we are not compelled to interior worship, but are moved by the Holy Spirit, "and therefore," he says, "in the third precept the exterior worship of God is commanded." The Roman Catechism n. 1 teaches the same: "by this precept of the law, that external worship which is owed by us to God is rightly and orderly prescribed." L. 264. It is confirmed again from S. C. Indulg., Nov. 13, 1893, *Monitore Ecclesiastico Conversano* vol. 8, part 1, p. 247; E. M.

648. **Note:** According to the very opinion requiring internal attention, very little is required in order that someone satisfy the precept, so that no one ought to be anxious in this matter because of a scruple over attention not furnished. "According to this opinion," says St. Alphonsus 313, "attention as in the office is sufficient for satisfying, namely virtual attention: that someone at the beginning have the intention of attending and not change it; for if afterward he is distracted, even advertently, but does not advert that he is being distracted from the Mass or from the office, he also satisfies; because this one, although he voluntarily distracts himself, nevertheless is not voluntarily distracted from the Mass."

649. **Resolutions:** First, those ministering at Mass satisfy the precept; for they attend sufficiently by exhibiting their ministry, by which they actually cooperate in the sacrifice, although they

depart from the church for a short time to take wine, incense, etc., or to ring the bells, because such departure is ordered to the sacrifice. The same must be said of sacristans, musicians, organists, drummers, etc.; because their acts are referred to the worship of God and do not impede the attention necessary to those things which are carried out at the altar. L. 309, 311.

"But one who spends a great part of the Mass collecting alms is excused by many if it is in a small church, otherwise in a large one: thus Henriquez with others cited by the Salamanticenses n. 52. But Lessius cited by Croix n. 652 excuses them without distinction, if they attend to Mass at the same time; and truly such distraction does not seem incompatible." L. 317.

Second, one who during Mass prepares himself for confession certainly, speaking of itself, hears Mass altogether sufficiently; for he can still sufficiently attend to those pious actions. But as to confession which lasts for a notable interval of time, the more common and more probable opinion indeed denies that the precept is satisfied. Yet there are also many grave theologians who affirm it, if one somehow attends to Mass at the same time. "This opinion," says St. Alphonsus 314, "does not seem altogether destitute of probability, and formerly I myself judged it probable; but because afterward I observed that it was rejected by several grave Doctors, I now do not dare to call it probable." Nevertheless this opinion is not in fact destitute of its probability. For several grave more recent theologians approve it, either tacitly by reporting it and saying nothing against it, or even by positively defending it. Gury-Ballerini 346. Moreover, those who defend the negative opinion, as La-Croix l. 3, n. 655 notes, bring forward diverse reasons; and St. Alphonsus himself notices this, which is certainly an indication that a wholly demonstrative reason for imposing the obligation is wanting. Moreover, the reason for exempting from the obligation seems sufficiently solid. For "he has the intention of hearing, as is supposed; he is present in body, because he confesses in the church; he assists morally, because he is present in a human and religious mode; finally he can also attend to Mass; and although perhaps he does not actually attend, nevertheless he is occupied with a pious occupation, and therefore he is still judged with the sacrificer and those standing about to exhibit worship to God." La-Croix, cited place. Nor indeed is internal attention altogether necessary for someone to satisfy this precept. But if there is question of servants, who otherwise would not confess, Lessius and La-Croix say that they satisfy well; for then at least it is presumed that the Church consents. St. Alphonsus 332 also seems to admit this. Lessius, *Auctar. ad Comment. in 1. 2*, v. *Missa*, c. 2, nn. 8, 9; L. 309.

650. **What causes excuse from Mass?** Any moderately grave cause excuses from hearing Mass, or one which involves some notable and at least moderate inconvenience or harm in the goods of one's own or another's soul or body, private or public. This is established from common interpretation and custom, which is the best interpreter of laws. L. 324.

651. **Resolutions:** First, women are excused who do not have decent clothing according to their condition and state; as also those not having a maidservant or companion, without whom they would be suffused with great shame, are well excused from hearing Mass, provided they cannot be present at it either very early in the morning or in a remote church where the people hardly gather. The same must be said of girls dishonorably pregnant, and of those who leave the church at the time when proclamations are made for their marriages, if they would suffer great shame because of it.

Usage excuses, according to the custom of places, of not leaving the house for six weeks after childbirth, or for a month during mourning because of the death of a husband, and also of a sister or daughter. L. 330; H. A. 42.

Second, mothers and nurses are excused who have no one to whom they can leave little children, nor can bring them to church without great disturbance of those present. If there are only two spouses, they can fittingly attend Mass by turns.

Those are excused who guard a flock or a house, or who must prepare foods, or carry out similar necessary things; yet if several Masses are celebrated, all, so far as can be done, ought to hear Mass successively.

Travelers are excused who do not come upon a place where they may be present at Mass, or who cannot interrupt a journey because public coachmen, or companions of the journey without whom the journey would not lack inconvenience or danger, refuse to stop.

Servants are excused if they cannot omit their service without grave detriment to the master, or if they are prohibited by him. But if they were frequently and without just cause impeded from hearing Mass, they are held to seek another master if they can do this without grave inconvenience. Struggl 53; L. 326-328.

Third, the sick, the infirm, and convalescents for whom going outside is harmful are excused. Likewise one who must guard an infirm person who, if left by him, would suffer grave disturbance; and this even if another assistant were present, but the sick person thought the assistance of the former necessary to himself and otherwise would suffer grave sadness. Likewise those are excused who otherwise cannot prevent blasphemies, quarrels, thefts, etc. Hence also a wife is excused who "from going to church would fear the husband's indignation, or the grave jealousy of the husband." Struggl 50.

Distance from the church of a full hour's space excuses, account being taken of persons and weather. Very grave Doctors teach that a distance of three miles, or a journey on foot of an hour and a quarter, and even something less if it were raining or snowing, absolutely and indistinctly excuses all.

Notable extraordinary gain to be made excuses. L. 325-327, 329, 332; H. A. 41; *Collectanea* S. C. de P. F. n. 2039.

II. On The Prohibition of Servile Works

652. **What works are prohibited on a feast day?** On a feast day all servile works are prohibited, that is, works. Thus the Doctors commonly from C. 1 *de Feriis*.

A servile work is one which is exercised chiefly by the powers of the body, immediately serves the convenience of the body, and is customarily done by servants. Therefore a servile work depends not only on the intrinsic nature of the work, but also and especially on the custom and estimation of men.

A servile work is contradistinguished from a liberal work, which depends especially on the powers of the soul, immediately serves the convenience of the soul, and is customarily done by masters. But there is a work intermediate between servile and liberal, which can serve the convenience both of the

soul and of the body, and is customarily done both by servants and by masters. Of the first kind are plowing, sewing, and other mechanical works; of the other kind are studying, teaching, writing, singing, and other liberal works; but of the third kind are hunting, fishing, making a journey, and similar common works.

A work which by its own nature is liberal does not become servile because it is done for the sake of profit; nor does that which by its own nature is servile become liberal because it is done gratuitously. The same must be said whether the work is done with this or that pious, vain, or base intention. It is likewise irrelevant whether it is done with fatigue and labor or not; whether for a short or a long time, from agreed wages, or for the sake of recreation, etc.; because none of these changes the nature of the work.

By its own nature: for since in this matter the common opinion and estimation of men in fact prevail very much, as is drawn from the definition itself of servile work, hence it happens that the extrinsic element of the gratuitousness of the work, for example, can sometimes be present, at least so that some greater reason for excusing is had. And thus fishing, for example, if it is done for the sake of recreation with a rod or light net, is usually held common and is permitted; yet it is judged servile and is not licit if it is done with great apparatus and labor. L. 272-274, 278; Struggl 7; St. Thomas, 2. 2. q. 122, a. 4, ad 3; E. M.

653. **Resolutions:** First, it is licit on a feast day not only to write, but also to transcribe, even if this is done for wages. It is probably also licit on a feast day for typographers to arrange characters, because the work seems to pertain to the mind in the same way as writing, although it is done with greater fatigue of the body. But if it is exercised in a public workshop by many, by reason of the low apparatus and common estimation, it is held as servile work. But the printing of books is altogether illicit, as being a wholly servile work. L. 278, 279, 282; Struggl 8; Laymann 3.

Second, it is sufficiently probable that it is licit on a feast day to paint, and much more to draw, yet with great apparatus and labor excluded, for example mixing colors, planing boards, etc. For if the action is not liberal, certainly it is an intermediate action and common to servants and free persons, since we often commonly observe noble men not blushing to learn and exercise this operation of painting. Hence also girls are excused who depict images with a needle on cloth; likewise those exercising the photographic art, unless it is done with low apparatus. But sculpting, says St. Alphonsus, commonly, at least in the estimation of men, is numbered among the mechanical arts. "Sporer, however, excepts when goldsmiths sculpt very subtle things in very small matter, in which almost no bodily labor intervenes, but the whole labor is of mind and ingenuity." Struggl 8; L. 280, 283; St. Thomas, 2. 2. q. 122, a. 4, ad 3.

Third, "It is licit on a feast day to hunt, catch birds, and fish, without great apparatus and for the sake of recreation. The reason is that such things, with greater apparatus and labor set aside, are not servile works, but common to masters and servants. Indeed such things, if they are done without great apparatus, are licit even by custom, although they are done for the sake of profit. But if they are done with great apparatus and labor, they are servile and illicit." Struggl 8; L. 283.

Fourth, it is licit on a feast day to make a journey on foot, on horseback, by carriage, by ship, by litter, by railway, etc. The reason for this is that making a journey is not a servile work, but natural and

common to all men. Thus the Doctors commonly; and moreover universal custom also has it so. Now by the very fact that it is licit to make a journey in the aforesaid ways on a feast day, it is also licit to perform the works which are necessary and conducive to it, as, for example, to prepare horses, join a carriage, carry a litter, and draw oars in water. The reason is that the accessory follows the nature of its principal. Struggl 8; L. 275.

Fifth, "Sanchez grants that it is licit to grind on feasts, if it is a mill which is driven by water or wind; but not if it is driven by beasts, and in which great labor and occupation are required. From this doctrine Tamburini n. 14 and La-Croix n. 578 infer sufficiently probably that when the cooperation and application of man is slight, it is not illicit, at least gravely, even to grind with beasts." L. 277.

Sixth, distillation likewise is licit if it is done without low apparatus, and not in a public workshop, for a physical experiment, or without fatigue of the body. L. 282.

654. **What is grave matter in servile work?** For mortal sin labor of less than two hours does not suffice. This is proved: first, because even two hours are truly a small part of the day, namely a twelfth. Second, because theologians commonly think thus. Struggl 12; L. 305.

655. **More determinately, what is grave matter in servile work carried out on feast days?** If the works greatly fatigue the body and are very servile, as cutting stones, digging earth, etc., according to the more probable and more common opinion there is not mortal sin unless someone labors much beyond two hours, say two and a half hours, or at least somewhat more than two hours, or certainly completes two hours; which limits of time St. Alphonsus 305, H. A. 25, La-Croix 594, etc., generally establish as commonly received. Nor indeed are theologians lacking who, speaking generally, require three hours for grave fault. "It seems hard," says Busembaum cited by St. Alphonsus 305, "to condemn one of mortal sin if he spends two or three hours."

If the works are lighter and not very servile, for example making artificial flowers, a greater space of time is required for grave matter than in laborious and very servile works, as St. Alphonsus 282 hands down.

If in performing servile works another excusing element enters in, for example necessity in those laborious works, piety in other lighter works, as in making scapulars or rosaries, then as there is a greater reason for permitting such works, so also a greater reason for permitting them for a greater space of time. L. 293; H. A. 25. But this must be noted as to those lighter works: piety can favor them only when they are undertaken merely gratuitously and merely to foster piety. For if they are done for wages, those works are now altogether servile, as being mercenary, nor does that piety raise them to pious works. This is also confirmed by the common custom and sense of the faithful.

656. **Resolutions:** As to those who drive carriages or loaded animals on a feast day, "the more probable opinion, at least today, judges it altogether licit not only to continue a journey begun, but also to begin one. The reason is that in such labor muleteers do not consume notable time; and if it is sometimes notable, they are excused either because of avoiding grave harm, or because of public utility, or finally because universal custom is present, which Mazzotta rightly asserts to be present. And he says the same of sailors." L. 276.

One who on a feast day commands six servants to labor for an hour, more probably does not of himself sin gravely, because the works of the servants, whether they labor simultaneously or successively, do not coalesce into one so as to form grave matter. And indeed each individual sins only venially, if no cause excusing them is present. L. 306.

657. **Are other works also prohibited?** This precept, insofar as it is negative, prohibits not only all servile works, but also market, and three forensic things: namely pleading, judgment unto death, and oath. Thus the common opinion of theologians from C. 1, 2, and last *de Feriis*. L. 284.

By market is understood the public exercise of trade, or a market with bustle, such as annual or weekly fairs, etc. Public sales of goods are prohibited by reason of scandal; "hence, as usage bears, goods can be sold with doors closed." Scavini, 12th ed., Milan 1874, l. 2, nn. 95, 239. But custom must be observed in this matter, both universal and also particular to places; for this can abrogate human law in whole or in part, and, as Mazzotta says, in great part has already abrogated the law here.

Hence, because of generally received custom, fairs established for a certain day are excepted if they fall on a feast day. Benedict XIV declared this in C. *Ab eo tempore*. Likewise, by received custom, food, drink, shoes, candles, cloths for making clothes, and other things of this kind are licitly sold and bought in public shops. Yet merchants ought to close their shops to show that they distinguish the Lord's day from other days; but here also custom of places and necessity varying according to various places claim very much for themselves.

Public auction sales are also tolerated somewhere after the divine offices have been completed, because on other days there would be fewer concurrents, etc. It is likewise tolerated that merchants of things of small moment carry, display, and sell goods from one place to another.

Houses, horses, oxen, and other goods are licitly sold and bought, whether present or absent, whether in small or great quantity, even if notable time is spent in this, provided these things are done among private persons; both because the usage of the God-fearing bears this, and because the Church has prohibited only sales in public shops, by reason of scandal.

But whether under the name of market leases and other contracts are forbidden on feast days is disputed. More commonly it is denied, because such is the custom of the wise. Hence all contracts are licit if they are made without instruments and the authority of a judge. Indeed St. Alphonsus notes that custom bears that they be celebrated not only privately, but even through instruments, provided they do not require judicial bustle, for example testaments, instruments of espousals, sales, etc.; "although," the holy Doctor adds, "notaries somewhere are accustomed for this to ask from the Ordinary a general permission, which moreover is commonly granted." L. 286, 289.

658. By pleadings is understood a civil sentence, or the hearing of civil causes in court.

By judgment unto death is understood the citation of the accused to judgment, his examination, condemnation, and execution of sentence.

Now judicial processes are prohibited on feast days, and are void by the law itself from C. last *de Feriis*. Except, however, if there is present a cause either of necessity or also of piety, as is established

from the same last chapter *de Feriis* and the common authority of theologians.

Therefore it is licit on a feast day to excommunicate, dispense, privately inform a judge, consult an advocate, compose counsels, etc., because these things are done outside court and consequently do not require judicial bustle. Judicial bustle is said to exist where the cause is contentious and litigious, and where questions and quarrels are treated; and indeed judicial bustle consists in citation, from which the cause especially seems to begin, in the formation of the process, in knowledge of the cause, and in the pronouncing of sentence. Therefore acts of voluntary jurisdiction are not prohibited on a feast day, nor extrajudicial acts. Suarez l. 2, c. 38; Cajetan, 2. 2. q. 122, a. 4; Schmalzgrueber l. 2, t. 9, nn. 52, 53; Struggl 6; Bonacina t. 2, d. 5, q. un., p. 2, n. 25; L. 284, 287, 294, 295.

659. Finally, by oath is understood an oath before a judge, or a judicial oath. L. 284; St. Thomas, 2. 2. q. 89, a. 10.

660. **Note:** In these forensic and judicial works, the quantity of matter sufficient for grave sin is not drawn from quantity of time, but from the quality of the work. L. 307.

661. **What causes excuse from prohibited works?** There are chiefly six excusing causes: dispensation, custom, piety, charity, necessity, utility, as is established from the common opinion of theologians. L. 288.

Dispensation. In the precept of abstaining from servile work, these can dispense: first, the Pontiff, as supreme legislator and pastor, in all festivities and for the whole Church; second, bishops and vicars of the chapter when the see is vacant, in their dioceses; third, regular prelates toward their religious subjects and their domestics; fourth, parish priests, even with the bishop present, from custom now received. But bishops, regular prelates, and parish priests can dispense only in particular cases. L. 288.

Custom. Hence from general custom received almost everywhere, the following are excused: first, barbers, who are moreover excused also because otherwise they would be abandoned by many to their grave detriment; second, those things which pertain to the cleanliness of the house, such as making beds, washing dishes, and those things which regard the grooming of the person, such as shaving the beard, cleaning dust from garments, and the rest of the same kind; third, those things which are necessary for food; indeed it is also licit to prepare more sumptuous foods. Struggl 23; Suarez l. 2, c. 21, nn. 3, 4; L. 289, 298.

Piety toward God, through which those works are licit which proximately, not remotely, regard the worship of God; as to lay floors for a festivity, sweep and adorn the church, altar, etc.; but by no means to build or repair a church, etc. L. 291-293.

Charity toward neighbor. Hence it is licit on a feast day: first, to do what is necessary for relieving the sick; second, to dig a grave for burying the dead; third, to labor for some determinate poor person for whom, by reason of grave necessity, it would be licit to labor. Yet according to grave theologians this is not so for the poor in general, unless there is question of making clothes or other things of this kind which ought to serve the use of the poor, but not for earning money which is to be distributed to the poor. L. 293, 294.

Necessity, whether one's own or another's, both of soul and of body. Hence: first, the poor are excused who otherwise cannot feed themselves and their own, provided they labor privately and scandal is excluded. Likewise they are also excused if they repair their own garments when on workdays they do not have convenient time for this. Second, all are excused whose works begun cannot be interrupted without great harm, as those smelting iron, etc. Third, bakers are likewise excused who must have fresh bread in order to satisfy buyers. Fourth, likewise tailors who make funeral or wedding garments which they cannot finish before the feast either by themselves or through others. Fifth, likewise farmers who, because of past or imminent rain, turn, bind, and carry hay or crops. Sixth, likewise servants compelled to labor, if they cannot easily and quickly find another master without great inconvenience. The same must be said of wives and children compelled by the father to labor, provided nevertheless that it is not in contempt of religion. Seventh, blacksmiths are excused who shoe horses on the road or brought by country people, or repair ploughshares necessary to farmers on the following day; and also those who repair carriages broken by accident, bridges, or public roads, if the work cannot be deferred without loss to the public good. L. 295-304; St. Thomas, 2. 2. q. 122, a. 4; Struggl 15.

Utility. Hence the following are excused: first, those who labor for the public utility when some necessity urges, for example if there is question of celebrating a victory, or preparing a feast for the arrival of a prince, or for the sake of another public exaltation. Second, those are also probably excused, because of the circumstance of notable extraordinary profit, who sustain themselves by labors, because for them to omit such profit is the same as to suffer grave harm. L. 301, 304.

On The Fourth Precept of the Decalogue

I. Obligations of Children Toward Parents

662. **What is the fourth precept of the Decalogue?** The fourth precept of the Decalogue is: *Honor your father and your mother.* Ex. 20:12. This precept primarily and directly regards the obligations of children toward parents, because "they are the particular principle of our being, just as God is the universal principle." St. Thomas, 2. 2. q. 122, a. 3. But secondarily and implicitly it looks to the obligations of parents toward children, and also the mutual obligations of other blood relatives, and of other inferiors and superiors. Roman Catechism part 3, c. 6, nn. 2, 8.

Therefore this precept is of acts which of themselves belong to the virtues of piety, observance, dulia, obedience, and in addition gratitude.

Piety is a certain special virtue, to which it belongs to exhibit cult to parents and fatherland; because they are a "connatural principle producing in being and governing." For piety regards this "principle, insofar as it bestows duty and cult upon parents and fatherland, and upon those who are ordered to these." St. Thomas, 2. 2. q. 101, a. 3. Moreover piety exhibits cult also to other blood relatives, not because they are the principle of our origin, but because in them, by communion of blood, parents are in some way represented; and likewise to those well-disposed toward the fatherland, because in them we behold the favor and help of the fatherland. St. Thomas, cited place, a. 1. Hence piety is also between spouses and with respect to children, "because between spouses there is cult and duty

mutually, as co-helpers for the conservation of the blood-relationship of each, which each spouse has from his or her parents: for by propagation of children the blood of each parent is conserved. And we say the same about children, namely because they are regarded by the virtue of piety as conservers of the blood-relationship received from parents." Cajetan.

Observance is the virtue "through which cult and honor is exhibited to persons constituted in dignity." St. Thomas, 2. 2. q. 102, a. 1. Observance also belongs reductively to this fourth precept, since, just as parents are to us a principle producing in being and governing, so persons constituted in dignity not only have a certain excellence in themselves, but also a certain power of governing. Hence the notion of principle also belongs to them, as the prince of a city is in civil affairs, the general of an army in military affairs, the teacher in disciplines. Hence it is that all such persons are also called fathers because of the likeness of care. St. Thomas, 2. 2. q. 102, aa. 1, 2; Roman Catechism n. 8.

Dulia is "a certain species of observance, because through observance we honor any persons excelling in dignity; but through dulia, properly taken, servants venerate their masters. For dulia in Greek is called service." St. Thomas, 2. 2. q. 103, a. 3.

Obedience is "a special virtue; and its special object is a tacit or express precept." St. Thomas, 2. 2. q. 104, a. 2. "Obedience proceeds from reverence, which exhibits cult and honor to superiors. And as to this it is contained under diverse virtues, although considered in itself, insofar as it regards the notion of precept, it is one special virtue. Therefore insofar as it proceeds from reverence for prelates it is contained in some way under observance; insofar as it proceeds from reverence for parents, under piety; but insofar as it proceeds from reverence for God, under religion, and pertains to devotion, which is the principal act of religion." St. Thomas, 2. 2. q. 104, a. 3, ad 1.

Gratitude is the virtue which recompenses to benefactors some particular and private benefit received. Therefore gratitude is a certain virtue which comes after piety and observance, as deficient from them, since "not whatever we owe to a father or to a person excelling in dignity do we owe to some benefactor from whom we received some particular benefit." St. Thomas, 2. 2. q. 106, a. 1.

663. **What about legitimate and illegitimate children, natural and adoptive?** Children are some legitimate and natural, others natural, others legitimate.

Legitimate and natural children are those who are born from a man and his wife.

Natural or illegitimate children are those who are born outside marriage. By canon law these are irregular; by civil law they are distinguished from legitimate children chiefly as to succession in the paternal inheritance. C. A. 155, 165; C. H. 114, 127, 134, 139. These natural children, if they are born from a man and woman between whom marriage could not have been entered, either by natural law or by divine and canon law, are called by the same canon law spurious, or born from condemned intercourse. C. 3, 10 *Qui fil. sint legit.* But by civil law they cannot be recognized. C. I. 180; C. H. 119; C. G. 335.

Therefore natural children, besides spurious ones, can be recognized and legitimated. They are recognized by the confession of the parents: by civil law an authentic confession, C. I. 181; C. G. 334; C. H. 131; by canon law a simple and bare confession, C. 10 *de Probat.* But once recognized, they are legitimated by subsequent marriage, by the law itself, C. 1, 6 *Qui fil. sint leg.*; C. I. 194; C. G. 331; C.

H. 120, 121; C. A. 161; and they can also be recognized after the marriage has already been contracted, C. I. 197; C. H. 121; cf. C. G. 331. Once they have been legitimated, they are held just as if they had been born from a lawful marriage. C. 6 *Qui fil. sint leg.*; C. I. 194; C. G. 333; C. H. 122; cf. C. A. 161; Benedict XIV, *de Syn.* l. 13, c. 24, n. 16. But one only recognized is understood to be the child only of him who recognized him. C. I. 182; C. G. 336; C. H. 129, 134; L. l. 3, n. 951.

A fetus is usually brought forth in the ninth month from conception, sometimes at the beginning of the seventh, sometimes after a full tenth, namely not before 180 days nor after 300 days. C. I. 161 ff.; C. G. 315; C. H. 108; C. A. 138, 163. Hence of one who is born either after the seventh month from the beginning of marriage, or before the tenth month from the dissolution of marriage, the father is he whom the nuptials demonstrate, unless something else is most evident. Nor indeed does it stand in the way that the mother was adulterous, C. I. 165; C. G. 313; C. H. 109; C. A. 158; or that she herself professed the child adulterine, C. A. 158, unless she brings forward such indications as would suffice in the external forum, Lugo, *de Iust*. D. 12, n. 26, although she is most worthy of faith, and sworn, and asserts it while dying; for no one deserves faith when alleging his own baseness, C. *Inter* 8, § last *de Poenit.*; L. 654, 924.

A fetus brought forth before the seventh month from the beginning of marriage is held legitimate only if the husband either married the pregnant woman knowingly and willingly, or, when he was present, did not altogether repudiate the newborn, C. I. 161; C. G. 314; C. H. 110. A fetus brought forth later after the tenth month from the dissolution of marriage is held as illegitimate, unless the health and morals of the mother and the circumstances of things suggest otherwise. C. I. 169; C. G. 315; C. H. 111.

Those are presumed by law legitimate and natural children who are born from a mother joined in lawful marriage, unless it is juridically certain that their origin is from someone other than the mother's husband. For he is held as father whom the nuptials demonstrate. The mother indeed is certain; the father is presumed. And this presumption also has force in the forum of conscience.

Legitimate children are legitimated natural children and adoptive children. C. I. 737.

Adoption is an act by which one who is not such by nature is taken into the place of a child. By more recent laws the adopted person is held just as a legitimate and natural child only of him who adopted him, and acquires a right of succession to him, C. I. 212, 737; C. G. 350. But he is not exempted from the power of his natural father, nor does he pass into the power and family of the adopting father. C. I. 210, 212; C. G. 348, 349. But it is otherwise from C. A. 183; C. H. 177. This adoption is perpetual and is not dissolved even by mutual consent. C. I. 217. And French jurists also hold thus. It is otherwise from C. A. 185.

Legitimate and natural children, as to the right of succession, are held such from the time when they were truly conceived, provided they are afterward born viable. C. I. 724; C. G. 725; C. A. 138. One is born viable who is born after the 180th day from conception, C. I. 160, 162; C. G. 312, 314; C. A. 138, and is perfectly born. In doubt, one who was brought forth alive is presumed to have been born viable. C. I. 724.

Natural children only, whether legitimated or recognized, acquire a right of succession from the beginning of the parents' marriage, or from the time when afterward they were recognized. C. I. 197; C. H. 124. Legitimate children only acquire the right of succession from the time when they were

adopted, as if then they had first been conceived. C. I. 210, 217. From C. H. 177 an adopted person acquires no right of succession except from a testament or from a prior agreement.

664. **What about infants; impubescent and pubescent persons; minors and majors; wards?** Those less than seven years old are called infants, as if not speaking, incapable of speaking. From the seventh year to the fourteenth year, if males, and to the twelfth, if females, they are called impubescent; but beyond the aforesaid age, pubescent, namely from the proximate power of generating acquired at that age.

Impubescent persons, if they cease to be under the father's power, by death of the father or emancipation of the children, are called wards; once made pubescent, they are called minors: sons up to the twenty-fifth year, daughters up to the twenty-first year of age. Thus from Roman Law.

By more recent law, every other distinction having been removed, one who has not yet completed the twenty-first year of age is called a minor; with this age completed, he is called a major. C. I. 323, 240; C. G. 388, 488. From C. H. 320, majority is established when the twenty-third year is completed; C. A. 21, 174, when the twenty-fourth year is completed.

But in benefices and other spiritual causes a cleric is a major who has completed the fourteenth year of age. C. *Si annum* 3 *de Iudic.* in 6.

665. **What is the proper obligation of children?** Since children have existence from parents, therefore, besides love, they owe them piety. Piety of itself requires two things, reverence and service; but accidentally, help to be furnished if they are in need. At whatever age, however, children owe honor and reverence to parents, because the former are always children, the latter always parents. St. Thomas, 2. 2, q. 101, a. 2; L. 333; C. I. 220; C. G. 371; C. H. 154; C. A. 144, 154; C. H. 154.

Reverence can be wounded by words, gestures, and deeds, namely gravely even in those things which as to others are light, provided they are not altogether light. Therefore children sin gravely: by words, by frequently addressing parents harshly; or even by showing them no sign of benevolence; by calling them with insulting words while present; or by cursing them from the soul. By gestures, by looking at them with grim eyes, by laughing at them or mocking them while they are present. By deeds, by considerately raising hands against them as a sign of striking them; by accusing them of crimes, unless there is question of crimes harmful to the republic, such as heresy, treason, etc. L. 333, 334.

Service is likewise gravely wounded by not obeying parents in those things which regard domestic governance and economy, or pertain to good morals, provided nevertheless that the parents command seriously and in a grave matter; excepting the choice of state, of entering marriage, of entering religion, unless nevertheless parents contradict children in this matter from a just cause. A grave sin is likewise committed by not recognizing them as parents, unless this is done from a just cause, and only externally dissimulating that one is their child. L. 334, 335; St. Thomas, Quodl. 2, a. 9; 2. 2. q. 104, a. 2; C. A. 148.

Children also owe help to parents in need, and consequently they must support them; and it is grave even to enter religion while deserting them in poverty. Likewise grave under this head is not to take care that the sacraments be conferred on them when sick; that when dead they be handed over to

burial; that some sacrifice be offered for their soul. St. Thomas, 2. 2. q. 101, a. 2; a. 4, ad 4; q. 102, a. 2; q. 122, a. 5, ad 3; L. 333, 335; C. I. 139; C. G. 205; C. A. 154.

666. **Do children owe parents also their own goods?** Answer: Negatively. Children owe piety to parents, not their labors. Therefore if a son performs labors in the paternal house, for example of carpenter or shoemaker, what he earns from them is his, after deducting the food which he receives from the father; since he can now be sustained by his own work and labor, and no longer needs paternal sustenance. But if he asks nothing, he seems to remit these things to his father from grateful mind and piety. The same must be said of goods acquired by a son by donation, testament, etc.; the son indeed makes them his own, but is held to reimburse the father for the expenses of education. C. A. 150, 154.

These things are established by natural law, and are confirmed by positive law, which, determining the natural obligation, ascribes to parents the usufruct of the children's goods. As to positive law, dominion or property of goods, usufruct, and administration must be distinguished. Likewise various goods and various laws must be distinguished: common or Roman law, and the various more recent laws which are in force in various regions. Since the right of parents as to children's goods constitutes part of those rights from which paternal power is had, we shall speak of it shortly while explaining paternal power. L. 488.

667. **What is paternal power?** Paternal power is the complex of the rights of parents over children. C. A. 147. It is at once from natural and positive law, positive law defining and determining natural law. For the rights of parents over children flow from natural and civil law.

By natural law piety is owed to parents, whether legitimate or illegitimate, namely to father and mother, and this belongs to them equally and perpetually. Moreover power belongs to them as to those things which pertain to the spiritual salvation of children. And this also belongs equally to each. But if they disagree between themselves, he prevails who consults the salvation of the child. And, with the father dead, if the mother, tutor, and paternal grandmother disagree, the latter will be preferable. Benedict XIV, ep. *Probe te* §§ 20, 21, 23; ep. *Postremo mense* §§ 16, 17; C. *Ex litteris* 2 *de Conv. infid.*

The natural power of parents in those things which pertain to the salvation of the soul ends when infancy is completed; in those things which pertain to the choice of state, it ends with puberty, C. *Cum virum* 12 *de Regul.*; C. A. 148; in those things which pertain to domestic care and discipline, it ends by emancipation. But in those things which regard the sustenance of the body and the generation of offspring, children are their own masters. Emancipation, however, is had naturally when the son of the family has already grown sufficiently by age, so that he can already himself be a father of a family, and by himself duly consider and oblige himself concerning those things which pertain to his person and to his external goods. C. 11, 12 *de Regul.*; St. Thomas, 4 D. 37, q. 2, a. 2; D. 38, q. 1, a. 1, q. last, sol. 3; 2. 2. q. 104, a. 5; Suppl. q. 43, a. 2; q. 58, a. 5.

By common law, paternal power belongs only to the father of the family. Inst. l. 1, t. 9, §§ 2, 3; book 1, title 6, ff. § 3 *de Patr. pot.*; C. 2 *de Convers. infid.* But from the more recent laws it also belongs to the mother of the family, C. I. 220; C. G. 372. Yet the mother does not use it as long as the father uses it, to whom it principally belongs. C. I. 46, 220, 230, 331; C. G. 141, 373, 507; C. A. 144, 147; C. H.

154. But it belongs only over legitimate and natural children, over natural recognized or legitimated children, and over adoptive children. C. I. 66, 184, 220; C. H. 154.

Paternal power is exercised by the father, and with him dead or absent, by the mother with equal right. C. I. 46, 220, 231; C. H. 154; C. G. 141, 390; C. A. 144, 147. Nevertheless, the right belongs to a dying father to prescribe to the surviving mother what manner he wishes to be observed in the education of the children and the administration of goods. C. I. 235, 1059; cf. C. G. 391. If the mother enters second nuptials, it will be in the power of the family council or ward judge to permit or remove tutelage from her. C. I. 237; C. G. 395; C. A. 255.

With parents lacking, and no tutor named, tutelage by law belongs to the paternal grandfather; and, with him lacking, to the maternal grandfather. C. I. 244. Moreover paternal power is exercised partly over the persons, partly over the things of the children.

Paternal power is exercised first over persons by the faculty which the father has of retaining a son at home, unless the son wishes voluntarily to give his name to military service, C. I. 221; C. G. 374; by the faculty which the father has of moderately correcting and punishing a disorderly son; even of excluding him from his own house, and also, by recurring where necessary to the tribunal, of placing him in another house of education or correction, C. I. 222; C. H. 155, 156; C. G. 375 ff.; C. A. 145.

Moreover a son is prohibited from giving himself for adoption without the parents' consent, C. I. 224, 315, 330; cf. C. G. 346; and from entering marriage, C. I. 63, 208; C. G. 142; C. A. 49, 153. But when the mother dissents, the father's consent suffices. C. I.; C. G., cited places. The right of giving a tutor belongs to the parent dying last. C. I. 242; C. G. 397.

Except for marriage, which before puberty is null by canon law, as to other acts and contracts minor children of the family can be obligated naturally and civilly, and those who contract with them are obligated naturally and civilly. Therefore if they have entered espousals, if they have emitted a vow, they are obligated by the espousals and by the vow. If they have given anything, they transfer dominion to the recipient; and if they themselves receive something by gift, they licitly acquire and retain dominion. C. 1 *de Desp. impub.*; C. I. 1304; C. G. 1314; C. H. 160, 161; C. A. 244, 246; Inst. l. 3, t. 20, §§ 5, 10; t. 15, § 1; St. Thomas, 2. 2. q. 88, a. 8; 4 D. 27, q. 2, a. 2; L. l. 3, n. 918; Lugo, *de Iust.* D. 22, nn. 228, 295, 300.

Although a minor validly contracts, nevertheless by more recent laws he does not contract firmly if the various prescriptions of those laws are not observed; and then restitution in full is granted to them, which also holds in the forum of conscience, since a law of this kind is definitive of right and just, since it exists to protect good morals, the peace and good of families, and the common good.

From C. I., an action of nullity is admitted: first, if a non-emancipated minor carried out an act by himself without the intervention of the father or his legitimate representative.

Second, if an emancipated minor carried out by himself an act for which the law requires the assistance of a curator. Third, when the formalities constituted for certain acts by special dispositions of law are not observed.

But an action of nullity is not admitted: first, if the minor by evil art and fraud concealed his condition as a minor; second, if there is question of an obligation arising from delict or quasi-delict;

third, if it is proved that what was paid was turned to the convenience and utility of the minor. C. I. 1300, 1303, 1305, 1306, 1307, 1899.

From C. G. 1304, 2012, an action of nullity is admitted if the prescriptions of law in contracts of minors were not observed. But simple lesion gives place to this rescission in favor of the minor, C. G. 1305. And this rescission is not admitted: first, if the lesion happened from a chance event; second, if the minor exercises commerce or some art, as to contracts entered by reason of his commerce or art; third, if there is question of an obligation flowing from delict or quasi-delict; fourth, if it is proved that what was paid passed into their convenience and utility. C. G. 1306, 1308, 1310, 1312. Therefore from C. I. a minor is restored because he is a minor; from C. G. because he has been injured. L. l. 3, nn. 514, 918.

From C. H. 317, 320, 1304, when the formalities of law have not been observed, the contracts of a minor become liable to rescission. But he is not held to restitution except insofar as he became richer by the thing received. Cf. also arts. 1163, 1764, 1765.

From C. A. 151, 152, 246, a minor generally cannot be validly obligated without the consent of the father and the other prescriptions of law. Yet after puberty has been attained, he can freely dispose of things acquired by his own industry, and of other things given to him for his own use. Cf. arts. 244-248.

Paternal power is exercised second over the things of children. By common law a son at first was a thing of the father of the family: whatever he acquired was the father's. Then peculium was recognized. Peculium is any proper good of a son separated from paternal goods. It is fourfold.

First, castrense, acquired on the occasion of military service; and this whole thing belongs to the son by perfect dominion. Yet an impubescent son does not have its administration.

Second, quasi-castrense, acquired by the profession of sciences, or of liberal arts, or by some civil office, for example of judge; and perfect dominion of this also belongs to the son; administration, however, belongs to the father if the son himself is impubescent.

Third, adventitious, acquired by one's own industry and labor, by the generosity of others, by chance and fortune. Dominion of property belongs to the son; the usufruct and administration of this peculium belong to the father as long as he lives.

Fourth, profectitious, which either is acquired from paternal goods, or is given to the son in consideration of the father. And this wholly belongs to the father: property, usufruct, and administration. Inst. l. 2, t. 9, §§ 1, 2; l. 3, t. 29; Lugo D. 5, nn. 23 ff.

The father can dispose of adventitious goods if they are consumable, yet with the burden of restitution.

If the son does business outside the father's house from goods other than paternal ones, the profit is adventitious. If he labors in the paternal house and is fed by the father, or does business from the father's goods, it is profectitious. L. 488.

"If a son does business with the father's money, whether received as a loan or secretly taken, at his own risk, so that he seriously determines to keep the father unharmed whatever happens, it is certain from the common opinion of all cited by Laymann l. 3, tr. 4, c. 8, n. 12, that all profit pertains to the

property of the son as adventitious peculium. Why is this so, unless because, although he obtains all the profit by the father's money, he obtains it in such a way that the whole profit is derived not from the father's money, sterile by its own nature, but from the son's industry, which renders the money fruitful." Ithur. case 3, n. 6; L. 488.

The father of the family and son of the family are held as one person. Since therefore no one can contract with himself, if they contract, the pact is civilly void. Civilly, for naturally they are mutually obligated and obligate. Inst. l. 3, t. 19, § 16. A son of the family cannot make a testament concerning adventitious or profectitious peculium, not even with the father consenting; but he can, even with the father unwilling, concerning castrense or quasi-castrense. Inst. l. 2, t. 12.

By more recent laws minors are held in law incapable of protecting themselves and their own goods. The administration of all goods of minor children is in the hands of the father, or mother, or tutor, who must supply the incapacity or inexperience of the children until they become majors or obtain emancipation. Majors are altogether free in managing their own affairs, unless in some case the law specially forbids it to them; and therefore they have full administration of their goods. But emancipated persons have it only limitedly. C. I. 323, 310 ff.; C. G. 488, 476 ff.; C. A. 149, 187, 251.

Hence he who exercises paternal power manages the son's affairs, C. I. 224, 242; C. G. 389; C. A. 149, 152; he, not the son, acts in court, enters upon inheritances coming to the son after an inventory has been made, accepts donations, C. I. 226, 1059; C. A. 205, 222 ff., 243; cf. C. G. 389; and administers his goods, C. I. 224; C. G. 389; C. H. 159; C. A. 149. But goods, whether immovable or movable, excepting those which cannot be preserved by preserving them or become worse, he cannot alienate, bind by mortgage or pledge; nor likewise take a loan in the son's name, nor exercise other acts which exceed acts of simple administration, unless from a cause of necessity or evident utility and by decree of a civil tribunal. C. I. 224; C. H. 164; cf. C. G. 389.

The father, or mother exercising paternal power, has the usufruct of those things which come to the son by succession, donation, or another lucrative title, C. I. 228, 229, 231; C. G. 384, 386; C. H. 160, unless the goods were left to the son by testament, or given by donation, on the condition that the usufruct not pertain to the parents; or unless the son acquired them for himself by labor, profession, or separate industry, C. I. 229; C. G. 387. Also excluded from that usufruct are those things which were left to the son by testament, or given by donation for entering upon some course of life, art, or profession, C. I. 229; or for their education and instruction, C. H. 162; or unless, against the parents' will, they accepted the donation or legacy or entered upon the son's inheritance, C. I. 229.

To this usufruct there inheres the obligation of feeding, sustaining, educating, and instructing the children. C. I. 230; C. G. 385. From C. A. 149, 150, 151, 154, all goods, except administration, simply pertain to the son; yet the father can deduct the expenses of education from the revenues. From C. H. 161, goods acquired by children from the goods of the same parents simply pertain to the parents. From the same C. H. 160, to the parent exercising paternal power belongs the usufruct even of those goods which the son acquired by his own labor and industry.

Usufruct of this kind ends by the emancipation of the son, or by death, or with the completion of minority; by the father or mother, being widowed, passing to other nuptials; if the father abuses paternal power, either by not caring for imposed obligations or by administering goods badly, with

the sentence of the tribunal added; and likewise it ceases with respect to the spouse by whose fault divorce has legally been pronounced. C. I. 156, 228, 232, 233; cf. C. G. 384, 386; C. H. 167-172.

But when the son has become a major, those things which were managed by the parents, if they were done according to law, remain ratified; otherwise they can be made void by him. And if in the meantime a conflict as to goods arises between father and son under paternal power, the latter will be able to have recourse to the tribunal. C. I. 224, 227, 1304; C. G. 1314; C. H. 165; C. A. 271; L. 488, 543, 544; Gousset 682.

Paternal power is dissolved by the emancipation of the son, C. I. 220, 311; C. G. 372, 476-479; C. H. 167; C. A. 174, 252. A son is emancipated by the law itself through marriage. C. I. 310; C. G. 476. Emancipation is a legitimate act by which the father releases his minor son from his power so that he may become his own master. Emancipation cannot be made before the eighteenth year. C. I. 311.

It is dissolved besides by majority, C. I. 220; C. G. 372; C. A. 172; cf. 664. It is likewise dissolved if the father abuses paternal power, with a criminal sentence added. C. I. Penal 392; C. H. 171. Paternal power ought to consist in piety, not in cruelty. Cf. C. H. 167 ff. Once paternal power has been dissolved, the son of the family becomes his own master. But whether he is his own master, or still subject to paternal power, he can usefully contract with the father of the family himself, and from the eighteenth year of age can make a testament. C. I. 763, 1107; C. G. 94, 903; C. A. 271, 569; Inst. l. 1, t. 12.

668. **Can a son of the family retain profits which come to him from his own labor, but not from separate industry, in the paternal house?** Several grave theologians deny it. The reason is that then the laboring son of the family is judged to act not in his own name, but as a member of the family; and thus every profit ought to yield to the good of the family. Moreover positive law does not favor him, but altogether stands against him.

Several grave theologians also affirm it. The reason is that the son is not of worse condition than a servant; therefore at least the wages which would be owed to a servant or an external person laboring ought to yield to the son. They would certainly be owed to the son if by his condition he is not held to labor and supplies an external person, or if he spends altogether extraordinary and undue labor in the paternal house. Nor indeed in these two cases does positive law seem to stand in the way, since they are extraordinary and, by legitimate epikeia, not comprehended under positive law, which regards cases commonly occurring. But then the expenses which the father made in feeding, sustaining, educating him, etc., must always be deducted. For he was not held to make these for a son able and willing to earn. L. l. 3, n. 488, 3; 544, 910; Ithur. case 3; St. Thomas, 2. 2. q. 57, a. 4.

669. **Does a son have perfect dominion in movable goods given to him by parents or relatives?** Answer: Affirmatively, if they are consumable by first use, because they are given to him absolutely for use, unless perhaps some restriction was added, as money for buying books, for paying a pension, etc.

"If they are not consumable by first use, as books, clothes, etc., the son generally has only useful dominion, because parents usually intend to confer nothing else upon him." Thus Gury 546. But it seems rather that it must be said that, by the very fact that children can by continued use consume

and destroy these things for their own utility, they have dominion of these things even direct, although perhaps restricted and not altogether absolute, insofar as, from the mind of the giver, the whole thing is to be converted only to their utility, as, for example, is seen in books, clothes, etc.

670. **Is a son judged to renounce the usufruct to which he has a right if, while he sees and remains silent, the father receives this usufruct?** Answer: Negatively, at least speaking generally. The reason is that silence would be equivalent to renunciation only insofar as the son could easily object. But reverential fear commonly stands in the way of his being able to do this easily.

From C. I. 234, if, with usufruct ceasing, the parents still continue to receive it while the son is staying with them, and without the condition of rendering account having been established, the parents or their heirs are held only to the fruits existing from the day on which they are demanded.

II. Obligations of Parents Toward Children

671. **What is the proper obligation of parents?** Parents are the principle of the existence of children, and children are something of the father. Therefore, besides love, parents owe providence to children; namely they must provide for children as to the body, as to the soul, and as to state. L. 336; St. Thomas, 1. 2. q. 100, a. 5, ad 4.

They owe providence as to the body; and therefore parents sin gravely if they expose children not yet brought forth into the light to danger of abortion, or if they expose those already born in public places of mercy, unless they do this from a grave cause. Moreover they must feed them, unless nevertheless the children can feed themselves from elsewhere and do not need it, whether they are legitimate, illegitimate, or spurious. C. *Cum haberet* 5 *de Eo qui dux.*; C. I. 752; C. G. 762; C. H. 139; C. A. 166.

To this, however, father and mother are held together from C. I. 138, C. G. 203; or the father first, as from common law, L. 9 C. *de Patr. potest.*, from canon law, C. 2 *de Convers. infid.*, C. A. 141, 143, 167; C. H. 155. An adopter also must feed an adoptive child in a case of necessity from C. I. 211.

But a mother is held to nurse her offspring with her own milk. For natural law itself requires this. Yet this obligation of itself does not urge under grave obligation, since otherwise there is not grave disorder. Necessity excuses from light fault, if, for example, the mother is weak; notable utility, if, for example, the mother would have to abandon another occupation by which she obtains support for herself and her family; custom, prevailing among noble families. But then the mother is held under grave sin to seek a good nurse. L. 336, 949, 951; C. A. 218.

They owe providence as to the soul; therefore under grave obligation parents must teach children those things which are necessary for eternal salvation, imbue them with good morals by words and examples, keep them from proximate occasions of sinning, correct them with due moderation lest, provoked to anger, they become worse, and restrain them when delinquent, even imploring the office of a judge if necessary. C. I. 222; C. G. 377; C. H. 155, 156; C. A. 145. For this reason parents sin gravely when they allow children freely to accompany depraved companions, read depraved books

and newspapers, frequent depraved workshops and schools, unless a most grave cause excusing them is present. L. 339.

They owe providence as to state; hence parents must instruct children in some art or in letters, according to the custom of the region and the condition of the family. They must take care that children who wish to enter marriage enter an honorable marriage; and if the modesty of daughters is therefore in danger, they must at least from charity provide them a dowry. Indeed there are not lacking those who hold absolutely that a father is obligated to give a dowry to a daughter, which C. H. 1340, 1341 and C. A. 1220, 1222, 1231 prescribe, whether she contracts a worthy marriage or enters religion; and likewise that he is obligated to give a patrimony to a son who wishes to receive priesthood. L. l. 6, n. 819.

Yet from C. I. 147 and C. G. 204, no action belongs to children against parents unwilling to take anything from their own patrimony so that sons or daughters can enter marriage, or by another similar title. But if parents squander their goods and therefore leave their children needy, they are certainly not free from grave sin. Nor indeed can they be excused from sin if they do not employ at least moderate diligence to acquire goods by which the children may be fed and have an inheritance according to their state. But most of all they are held to leave freedom to offspring as to the choice of state; and they sin gravely when compelling the unwilling to marriage or religion, or turning them away from such a state. L. 336, 337, 339, 740; St. Thomas, 2. 2. q. 101, a. 2; C. I. 138, 230; C. G. 203, 385; C. A. 139, 148; C. H. 155; E. M.

672. **Can parents sometimes disinherit children?** Answer: Affirmatively, yet for a just and grave cause of crime against the parents themselves which deserves such a penalty. This is established first by natural law. For it is altogether equitable that parents be able to punish children gravely injurious to them with such a penalty, and by fear of the same penalty to contain them in their proper duty.

It is established besides by positive law. For Roman law recognizes this power in parents and determines several cases in which parents can disinherit children. And for the same reason of crime, children can disinherit parents, and brothers disinherit brothers. Novella 115, cc. 3, 4; Novella 22, c. 47. The same is had from Spanish law 848 ff. and from Austrian law 768 ff. From Italian law 725, 1081 and French law 727, 955, 1046, 1047, there is not indeed disinheritance properly so called, but generally there is established incapacity and unworthiness to succeed by reason of crime, and revocability of the donation itself made by reason of ingratitude, on account of certain determinate delicts: namely if, first, they laid snares for the life of the testator; second, if they were guilty toward him of another crime, cruelty, or grave injuries; third, if they denied him food; fourth, if they calumniously accused him of a grave crime from Italian law or of a capital crime from French law; and fifth, from Italian law, if they compelled him to make or change a testament, or impeded him from making or revoking it. L. 340, 948, 949; Ferraris v. *Exhaeredatio*.

673. **Are parents held in the forum of conscience to leave to children the legitimate portion according to the laws?** Parents, more truly and according to the common doctrine, must leave the legitimate portion after death to their children, whether male or female, natural and legitimate, indeed also natural children recognized and legitimated by law, and also legitimate or adoptive children, unless a grave cause is present. For the law is just and indeed obliging in

conscience; but it does not exclude certain rarer cases of necessity in which the good itself of the children and family suggests that one act otherwise. This is also confirmed by the practice of the God-fearing. L. 215, 740, 947, 950; La-Croix part 3, l. 2, n. 1173; Gousset 794.

There is certainly no doubt that parents can, with attention to civil laws, make manual gifts to children, especially remunerative ones. For if these are not prohibited for friends, neither are they prohibited for relatives, or for pious causes. Moreover they can also make gifts of greater moment to the same persons if these are made from mere revenues; because they are full and free masters of these, nor are they held by civil laws themselves to increase the patrimony by revenues.

Finally, if a just and proportionately grave cause is present, they can also make a donation from those things which constitute the patrimony, provided the legitimate portion of the children is not harmed. The first reason is that law regards ordinary cases, not extraordinary ones in which the good itself of the family and the common good demand something else. The second reason is that law, by determining the legitimate portion, gives parents this faculty: that they may freely dispose of the remaining goods for others. If therefore a father can leave these goods to other strangers, he can also give them to the children themselves, if a reasonable cause for acting thus is present. For it cannot be supposed that the law denies for children that faculty which it gives for strangers. The third reason is that the law of succession properly regards goods which the dying father leaves; provided therefore the legitimate portion is not harmed, he can indeed give the rest, at least by donation between the living.

But it must be noted what Lugo has, D. 23, n. 147: namely that "parents, if they have donated undutifully, that is, to the prejudice of the legitimate portion of the children, their donations can be revoked by the children. Yet the donation is not invalid, but can be irritated." And this holds also in Italian and French law; for in both these laws it is not said that it is void, but that it will be void. C. I. 821; C. G. 920; L. 740, 950.

III. Obligations of Spouses

674. **How many kinds of rights and obligations are there between spouses?** Marriage is the joining of a man and woman, containing an undivided way of life. Inst. l. 1, t. 9, § 1. Hence from marriage a threefold kind of rights and obligations flows: as to persons, as to goods, and as to the body. Concerning the rights and obligations of each spouse as to the body, it will have to be spoken in the tract on Matrimony. Therefore here we shall speak only about the others. C. A. 89.

675. **What are the rights and obligations of spouses as to persons?** The husband is the head of the wife, and therefore the wife is under the husband's power in those things which pertain to marriage, that is, which pertain to the undivided way of life. Eph. 5:22 ff.; C. A. 91. Therefore a wife, without the consent of the husband, cannot be obligated by vow, St. Thomas, 2. 2. q. 88, a. 8, ad 3; L. l. 3, n. 234; cannot regularly be obligated by contract; cannot travel without the consent of the husband, and regularly must follow the husband's domicile, C. I. 131, 134, 135; C. G. 214, 217, 220, 221, 222; C. H. 58; C. A. 91, 92; even without cause, Sanchez, *de Matr.* l. 1, D. 41, n. 2; provided the wife can follow him without grave detriment either of soul or of body.

C. *Pervenit* 1 *de Coni. lepr.*; Sanchez n. 4; L. 351, l. 6, n. 977; St. Thomas, Suppl. q. 64, a. 6, ad 1; Quodl. 4, a. 11; cf. vol. 2, n. 1052.

A wife indeed must furnish reverence, service, and obedience to the husband in those things which regard the governance of the house and good morals; but she is his companion, not his maidservant. L. 351; Sanchez, *de Matr.* l. 6, D. 6, n. 14. Therefore if she is rich or noble, she is not compelled to furnish the husband things which do not belong to her dignity, for example to cook foods, sweep the house, etc. L. 352. Yet if she does not obey the husband in a grave matter, she sins gravely, and a certain moderate coercion is permitted to the husband. L. 356, l. 6, n. 972; C. I. 131; C. G. 213; C. H. 57.

The husband in turn must love and protect the wife, Eph. 5:25; C. I. 132; C. H. 57; C. G. 213; feed her, dwell with her, and therefore it is not licit for him to be long absent from her except from a grave cause. Gen. 2:24; C. 1 *de Coni. lepr.*; C. I. 130, 132; C. G. 212, 214. Nor indeed may he enter upon a long pilgrimage with the woman unwilling. C. 8 *de Voto*. But it is licit for the wife to follow the husband if she can do so without grave inconvenience to him. C. 9 § *In tanta de Voto*. But the husband sins gravely if he affects his wife with insulting or defamatory words; if he impedes her without just cause regarding the precepts of God or of the Church; if he gravely beats his wife; if he neglects the governance of the house and the family estate. L. 356; Sanchez, *de Matr.* l. 9, D. 5, n. 17.

In those things which pertain to mutual help of life, husband and wife are of equal right, since marriage is entered for the sake of mutual help. Hence they owe one another fidelity, assistance, support, C. I. 130; C. G. 212; C. H. 56; C. A. 90; and if anything adverse happens to one, the other must be a participant. Therefore a woman must follow a husband migrating elsewhere because of health or as a penalty, and a husband must follow a woman. L. 353, l. 6, nn. 957, 977. And one must furnish food to the other in need, even if the other has been driven into exile by his or her own fault, or enclosed in prison, indeed even if separated from the other, provided this is not by his or her own fault, if he or she has the means. And a husband must feed the wife even if he married her without a dowry, or the dowry perished by accident. C. I. 132, 133, 142; C. G. 214; Sanchez, *de Matr.* l. 9, D. 4, n. 20; D. 5, nn. 8, 14.

It is not lawful for either to enter religion while the other is unwilling, C. unique, Extr. *de Voto*; and one who passes to religion while the spouse is unwilling can be recalled, C. 3, 12 *de Conv. coni.* Nor is it lawful for a husband, while the wife is unwilling, to receive orders, indeed not even tonsure, C. 4 *de Temp. ord.* in 6, except if he has justly and by law separated from her as to habitation. L. l. 6, n. 969.

676. **Note:** Children and a wife can receive support from one burdened by debts who is not solvent, since he himself is held from justice to feed them; nor is he less held to feed them than to pay other debts. Indeed they can do this even if the father of the family contracts other debts, provided nevertheless that they do not have sustenance from elsewhere.

"Yet a wife cannot use for the sustenance of the family monies given by the husband for paying debts, except in the case in which the family would be gravely in need; for then the husband is held to succor this family first, and therefore the wife then uses her own right. Thus Laymann, who adds that the wages of workers are to be preferred for the necessary uses of the debtor even to mortgage creditors." L. 695.

677. **What are the rights and obligations of spouses concerning goods?** If natural law is considered, marital society does not prevent both husband and wife from retaining property, usufruct, and administration even of goods which they had before marriage and which they acquire during marriage. Yet they must concur for expenses necessarily to be sustained because of common burdens. It is fitting, however, that the husband either have all administration of goods, or certainly help the wife as much as is necessary for supplying her weakness.

But if positive law is considered, the power of the husband in this matter is broader. Hence various goods of the wife are distinguished by positive law. St. Thomas, 2. 2. q. 57, a. 4.

From Roman law: the goods of the wife are some dotal, whose fruits the husband enjoys for sustaining the burdens of marriage; others are paraphernal, namely besides the dowry, which the wife has besides the dowry and specially reserves to herself; others common, which by pacts of the spouses or by determination of law are conferred into a certain partnership. Spouses can determine before entering marriage the conditions to which their goods are to be subjected, with certain statutes of law observed. If they have omitted to do this, the law will supply.

The wife has direct dominion of her dowry, but the husband has usufruct and administration. When the husband has died, she is preferred to all personal creditors of the husband; and even during his life she can juridically claim the dowry back if she fears that the husband may become unable to restore it. If the dowry consists in money, or in other things consumable by use, or in things handed over after valuation, full dominion of the dowry is indeed attributed to the husband, but with the obligation of restoring the value, dominion being transferred for the wife over all goods of the husband pro rata, or according to the quota of her dowry.

The wife has full dominion and administration of paraphernal goods, so that the husband can dispose of nothing concerning these when she is unwilling. Hence as to these the wife in no way depends on the husband.

Property and utility of common goods pertain to each spouse; but their administration pertains to the husband alone. But this community of goods can admit various conditions or restrictions, and therefore attention must be paid to the various dispositions of places. Gury 549; Elbel 69; L. 489.

From more recent law: we can first distinguish goods of the wife, goods of the husband, and common goods.

As to goods of the wife, these likewise are either dotal, or extra-dotal, or paraphernal. Dowry is money given or promised to the husband for sustaining the burdens of marriage. But any goods whatever of the wife not constituted as dowry are held as paraphernal. C. I. 1388, 1425; C. G. 1540, 1574; C. A. 1218.

For there to be dowry, it is necessary: first, that it was expressly constituted under this name, C. I. 1388; C. H. 1336. Therefore those things are not dotal which are given to the woman by contract of marriage, unless something else was expressly provided. But it is otherwise from C. G. 1541. Dowry, however, can comprehend all goods, even future ones. C. I. 1389; C. G. 1542; C. A. 1218, 1227; C. H. 1336, 1337.

Second, that the instrument be made through a notary and, if the dowry is constituted by the spouses themselves, before marriage, C. I. 1382, 1391; C. G. 1394; for after marriage a dowry can neither be

constituted nor increased by the spouses themselves. C. I. 1391; C. H. 1338; and from C. G. 1543, not by others either. Cf. C. A. 1225; C. H. 1344.

Third, that the nuptials were entered according to civil law. L. 3 *de Iure dot.*; C. I. 93; C. G. 165; C. A. 44; C. H. 42.

One who constitutes a dowry must provide it from his own goods, even if proper goods are not lacking to the woman, C. I. 1392, 1393, 1394, 1395; C. G. 1544, 1545, 1546; C. A. 1224; cf. C. H. 1340, 1341; and he provides against eviction, C. I. 1396; C. G. 1547. But the husband is not held to security for the dowry unless he is obligated to it by an agreement made, or is compelled by the sentence of a judge if the dowry is exposed to danger, and the dowry was constituted by him who, with the endowed woman lacking, would be compelled to furnish food. C. I. 1400; C. G. 1550; C. A. 1245; cf. C. H. 1345, 1349, 1358.

Those things which are given by reason of dowry, some pass into full dominion of the husband, others do not, and constitute a permanent dowry.

Into full dominion of the husband pass things which are consumed by use, C. A. 1227; things, whether movable or immovable, which are given to him in payment, C. I. 1403; C. G. 1553; movable things, if they were given after valuation, C. I. 1401; C. G. 1551; not likewise immovable things, unless this was openly expressed, C. I. 1402; C. G. 1551; C. A. 1228. From C. H. 1346, if nothing is determined in the contract of marriage, the wife keeps dominion of all her dotal goods. Cf. C. A. 1227, 1228.

Of those goods which constitute a permanent dowry, natural and direct dominion remains with the wife; civil and useful dominion passes into the husband. C. A. 1227, 1228, 1230. Therefore by force of the natural and direct dominion of the wife, the increase or loss of the dowry will be the wife's. By force of the civil and useful dominion of the husband, the husband has administration and usufruct of dotal goods; hence he administers dotal goods as his own, acts in court for them, C. I. 1339; C. G. 1549; C. H. 1357, 1360; and all things which are contained under the name of fruits are his from the beginning of marriage, C. I. 1399; C. G. 1549; C. A. 1227. And if numbered money was promised, interest is owed to him by the law itself, although a delay was stipulated for payment. C. I. 1397; C. G. 1548.

But the husband must show that diligence in administering dotal things which he shows in his own things, and must fulfill all obligations of a usufructuary. C. I. 1408; C. G. 1562. Moreover he is held to use the fruits for feeding the family; for this reason the fruits are assigned to him, namely for bearing matrimonial burdens.

A woman can obtain by the office of a judge the separation of dotal goods if the dowry is in danger, or the husband's affairs turn toward evil, or she has been judicially separated from him. C. I. 1418; C. G. 1563. Once this has been obtained, she administers the dotal goods in place of the husband, C. I. 1424; C. G. 1449; C. H. 225, 1365, but must provide together with the husband for domestic necessities and the instruction of the children. C. I. 1423; C. G. 1448; cf. C. A. 1241, 1263.

It can be constituted in the contract of marriage: first, that the wife receive every year a part of the fruits for small expenses, C. I. 1399; C. G. 1549; second, that the surviving spouse receive some

profit upon the dowry, with the legitimate portion of the children preserved, C. I. 1398; L. l. 3, n. 539.

Dotal goods regularly cannot be alienated while the marriage remains, and an alienation made can be revoked even by the husband himself who consented to the alienation. C. I. 1407; C. G. 1560.

Dotal goods: namely all from C. I. 1405, but only immovable from C. G. 1554.

Regularly: for they can be alienated from a grave cause of necessity or utility, by decree of the tribunal and consent of each spouse, C. I. 1405; C. G. 1558; C. H. 1358 ff.; or if alienation was permitted in the contract of marriage itself, C. I. 1404; C. G. 1557.

They cannot be alienated for any cause whatever from C. I. 1405, which distinguishes nothing, except the cause of placing some child from C. G. 1556. Alienation, however, also comprehends exchanges, servitudes, mortgages. C. I. 1404, 1405; cf. C. G. 1554, 1559.

While the marriage remains: therefore also after separation from C. I. 1405; cf. C. G. 1449. But if while the marriage remained the woman legitimately contracted debt or any obligation whatever, after the marriage has been dissolved even dotal goods are obligated to creditors from C. I. 1407; but it is otherwise from C. G. 1558, 1560; cf. C. A. 1260.

With the marriage dissolved, dowry ceases and must be restored.

Dowry must be restored to the wife, or to her heirs. C. A. 1229; C. H. 1365. Things whose civil and useful dominion only was in the husband's hands must immediately be restored in their own species, as they then are. C. I. 1409, 1411, 1412; C. G. 1564, 1566, 1567; C. H. 1367. And if by the husband's fault they have been made worse, the loss is assessed to him. C. I. 1408; C. G. 1562; C. H. 1360, 1375.

But of things whose full dominion the husband had, only the price must be restored within a year. C. I. 1401, 1410; C. G. 1551, 1565; C. H. 1347, 1366, 1370. From these the woman can retain for herself linens and those things necessary for her ordinary use, with their actual price deducted, if they were first given after valuation had been made of them. C. I. 1411; C. G. 1566; C. H. 1374.

Moreover the fruits of the last year of marriage must be restored, pro rata by time. The year is computed from the anniversary day of the celebrated marriage. But a widow can at her own judgment either demand these fruits or food for the whole year of mourning. Moreover habitation and mourning garments are owed to her this year, C. I. 1415, 1416; C. G. 1570, 1571; only mourning garments, C. H. 1379; cf. C. A. 1242, 1243.

Finally, with the marriage dissolved, profits also or dotal increases are owed to the surviving spouse from the goods of the deceased, if a pact concerning them was present in the contract of marriage. C. I. 1398.

Paraphernal or extra-dotal goods are those which the wife reserves to herself outside the dowry. C. H. 1381. These are the wife's by full right, and therefore she administers them and enjoys their usufruct. C. I. 1427; C. G. 1576; C. H. 1382. Yet she cannot alienate immovables, nor stand in court for them, without the express consent of the husband, or with the husband resisting, without a sentence of the tribunal. C. I. 134, 136; C. G. 215, 217, 1576, 1538; C. H. 1387; cf. C. A. 91. The same must be said from C. G. 1536 if the wife is altogether separated in goods.

But if the husband administers them by the express or tacit mandate of the wife and receives the fruits, he must restore only the fruits which then exist when the woman asks or dies. But he must restore all fruits which he received if a condition was added to the mandate that he render accounts of the fruits, or if the woman opposed him at least by an extrajudicial act. C. I. 1427 ff.; C. G. 1576 ff.

But from C. H. 1384, 1389 ff., if paraphernal goods are handed over by the wife to be administered by the husband, they are then equated with dotal goods, whose dominion remains in the hands of the wife. From C. A. 1238, 1239, unless the wife opposes, by presumption of law the administration of the wife's free patrimony is judged to have been entrusted to the husband as legitimate procurator. But he answers only for the substance of the thing, or for the capital; he is not held to give an account of fruits received, unless this was expressly agreed.

To paraphernal goods belong, and they are the wife's, those goods which during marriage she acquires from her own goods, or from her singular industry, or from her extraordinary labor, especially if she exercises trade in her own name; or also by subtracting something from what is conceded to her for food, clothing, recreation, etc.; and also those things which were given to her with the express condition that they not yield to the husband. C. A. 1237; L. l. 3, n. 541.

As to the goods of the husband. The wife has no dominion of the husband's goods. But since the wife is the companion of the husband, and the husband must feed the wife according to his condition, the wife can take for herself those things which are necessary to her for this reason. Lugo, *de Iust. et Iur.* D. 16, n. 72; Lessius, *de Iust. et Iur.* l. 2, c. 12, n. 85. And if it is received from the custom of the region that the wife spend something from the goods of the husband, she can also do this. Lugo, cited place.

Therefore a wife can take not only those things which are necessary for the body, but also those which pertain to lifting the mind and to the decency of her state. Lugo, cited place, nn. 68, 70. Nor indeed can she do this only for herself, but also for the children begotten from that marriage, for the utility of the family, or to remove some harm from it, and this even with the husband unwilling. Therefore she can withdraw things from a prodigal husband to reserve them for the family in the future, or from an avaricious husband for making moderate alms. Lugo, cited place, n. 65; Lessius, cited chapter, n. 85. From the very nature of conjugal society, the wife has administration of domestic things: pantry, furniture, etc. Lugo, cited place, n. 64; Lessius, cited place, n. 85.

From C. I. 1482, if the wife has administered the goods of the husband, she is subject to the same law to which he is subject in the administration of the wife's paraphernal goods. But with the husband absent or insane, the wife administers his goods and can spend them, according to the strength of the patrimony, for the sustenance and preserving of the dignity of the family, although perhaps the husband, if present or in possession of himself, would not have spent them. From C. H. 1442, 1444, the wife administering all the goods of marriage has the same faculties and obligations as when the husband administers them. Yet she cannot alienate or burden immovables. Lugo, cited place, nn. 16, 70; Lessius nn. 12, 86; L. 541.

As to common goods. From C. I. 1433, 1435, 1436, 1438, 1439, 1441, in the matrimonial contract itself, although dowry was constituted, the spouses can enter together into a universal partnership, not indeed of goods, but of fruits coming from the goods themselves, whether movable or immovable, whether present or future. Yet this partnership cannot comprehend debts and credits

existing before marriage, nor those which afterward are deferred by title of succession or endowment while the communion itself lasts.

The effect of this communion is to render common and divisible those things which are acquired by the spouses jointly or separately during the communion, whether by common industry, or by economy made from the fruits or incomes of the spouses, always with the debts of the communion itself deducted. Goods placed in common are administered by the husband, who, if he leases them, must observe the laws constituted for leasing which is made by a usufructuary. The partnership ceases by the death of either spouse, by the declared absence of one, by definitive separation of persons, by judicial separation of goods.

From C. H., when a contract concerning goods is lacking, by which they can also constitute separation of goods between themselves, marriage is judged entered under the regime of the legal partnership of gains, 1315, 1432. But if this partnership is excluded, and the rules by which the goods are governed are not expressed, then the dotal regime is observed, and nevertheless the husband receives all fruits of the partnership of gains, just as if it existed. 1364.

Now by the partnership of gains, husband and wife make their own, by half, once the marriage is dissolved, the gains and benefits obtained indistinctly by either spouse during marriage. 1392. The goods proper to each spouse and the common gains are determined by the law itself, 1396 ff., 1401 ff., as are the burdens and obligations of this partnership, 1408 ff. The husband administers the partnership according to the established laws, 59, 1412 ff.; he can make moderate donations for the sake of piety and beneficence; but he cannot reserve the usufruct to himself, 1415. The partnership is dissolved by dissolution of marriage, by absence of either spouse, by separation of persons or goods, 1417, 1433. Once the partnership is dissolved, after an inventory has been made and dotal and paraphernal goods restored, and also the other burdens of the partnership satisfied, what remains is divided equally between husband and wife, or their respective heirs, 1418 ff.; cf. ibid. 1435, 1436.

From C. G. 1393, 1400, 1401, 1402, 1482, etc., even if spouses do not establish that certain goods will be common, nevertheless if any other pact is lacking, legal community has place by force of law. For the pacts which spouses can enter before marriage constitute three classes, or a threefold regime: namely the dotal regime, about which it has already been spoken; the regime of community; and the regime excluding community.

Moreover community is either legal or conventional, according as it is constituted by law or by a special pact of those contracting.

Legal community coalesces: first, from all movable goods which spouses possessed on the very day marriage was entered, or which thereafter come to them by title of succession or donation; second, from all fruits and any revenues whatever of immovable goods possessed by the spouses before marriage, or coming to them during marriage; third, from all immovable goods which were acquired during marriage from common goods.

Conventional community consists in other pacts of the spouses, by which the legal statutes can be restricted or relaxed. When these are lacking, community is governed by the disposition of law alone. Under the regime of community the husband alone has administration and usufruct of common goods. Indeed he can sell them, exchange them, and hand them over in mortgage, even without the

consent of the wife. Yet he cannot donate immovables by gratuitous title, nor movables by universal title, that is, as to their universality or quota, that is, half, third, or fourth part.

Once community is dissolved, the goods and burdens are divided into two parts, unless the wife or her heirs prefer to renounce the goods and thus exempt themselves from the burdens. Debts must be paid by each spouse or by their heirs.

The regime excluding community can be constituted by spouses in two ways: namely, first, by declaring that they enter marriage without community; second, by establishing that each will be altogether separated as to goods. In the former case the husband receives all revenues of the wife's goods and alone administers all. But if they are consumed by use, he is held to render their value. But in the latter case the woman has administration and usufruct of all her goods. Each spouse contributes to the burdens of marriage by a special pact; but if no agreement exists, the wife must contribute up to a third part of her revenues. Therefore in this third regime, just as in the second, a certain dowry is to be furnished by the wife by which she may partly assist the burdens of marriage; but a dowry of this kind can be alienated by the husband. Cf. 868, 1237.

From C. A. 1233, 1234: for communion of goods between spouses a special contract is required. But it is understood only for the case of death, and gives to the spouse a right to the half part of the goods constituted in communion which remain after the death of the other spouse. Cf. arts. 1262, 1266.

Besides these things, both by the husband and by the wife all those pacts must be observed which in the contract of marriage either were tacitly entered according to the proper laws of the region, or expressly constituted by private will. C. I. 1338; C. A. 1217; C. G. 1387; C. H. 1315.

678. **What can a wife do as to entering various contracts?** A wife cannot, without the consent and authority of the husband, donate, alienate, subject to mortgage her immovable things, contract a loan, cede or demand capital sums, stand surety, settle, or act in court concerning these acts. C. I. 134; cf. C. G. 215, 217; C. A. 91. Nor can she undertake to manage another's affairs. C. I. 1743; cf. C. G. 1990.

But a woman needs no consent or authority of the husband or another when the husband is a minor, interdicted, absent, or expiating a penalty longer than a year, or absent, or when she is juridically separated because of the fault of the husband, or when she exercises trade. C. I. 135; cf. C. G. 220-222.

One who contracts with a wife without the consent and authority of the husband, when this is needed, is obligated to the wife both civilly and naturally; and the wife is likewise obligated to him. But restitution in full is given to the wife and her heirs, and also to the husband while the marriage remains, unless it is proved that what was paid to the wife yielded to her convenience and utility. C. I. 134, 137, 1107, 1300; C. G. 217, 225, 1304, 1312. From C. H. 1304, the wife is not held to restore the thing received by contract, once that contract has been rescinded, unless she was made richer by the same. Cf. also art. 1163.

679. **Can a wife ever stand surety for her husband?** Answer: Affirmatively, namely so that she may consult domestic necessities. But otherwise negatively. Thus commonly. The reason is

that the former is sometimes required by the good itself of the family, but the latter is excluded by this same good. Hence it follows that a wife is held to pay debts legitimately contracted by the husband in the name of the wife, with the wife knowing and consenting, for the good and convenience of the family itself. L. 354; cf. C. I. 1405; C. G. 1558.

680. **What is the law if a man and woman have contracted an invalid marriage?** If each was conscious of the nullity, there is indeed no marriage, and from positive law no right can be claimed from it, whether as to the dowry of the wife, or as to the legitimacy and hereditary succession of the children. C. 10 *Qui fil. sint legit.*; C. I. 116; C. G. 202; C. A. 160.

If each was unaware of the nullity, the marriage is just as if it truly were valid, whence rights flow from it as from a true marriage. C. 2, 8, 14 *Qui fil.*, etc.; C. I. 116; C. G. 201; C. A. 160; L. l. 7, n. 425.

If one was conscious and the other unaware of the nullity, civil rights stand only for the spouse who contracted in good faith; but the children are legitimate as to each. C. 14 *Qui fil.*; C. last § *Si quis* 1 *de Cland. desp.*; C. I. 116; C. G. 202; C. A. 160; cf. arts. 1265, 1266. Schmalzgrueber l. 4, t. 17, nn. 13, 18, 57; Lugo D. 24, n. 8; cf. 223.

IV. Obligations of Blood Relatives and Tutors

681. **First, what are the obligations of other blood relatives?** As to other blood relatives, ascendants and descendants, generally the same obligations exist with due proportion as parents have with respect to children and vice versa. For all these, by reason of the generation of some from others, are bound to one another by the strict bond of piety, especially if, with parents lacking, ascendants take up care of grandchildren. Theologians commonly teach that they ought to take up this care in the absence of parents and tutors as long as these are minors, and as much as they conveniently can. Other things being equal, the paternal grandfather is held to take up that care before the maternal grandfather, as the Doctors commonly teach.

As to brothers and sisters, these ought to pursue one another with mutual love, not only with common affection as other men, but with particular love because of the close bond of blood. They must also help one another as to the necessities of life, not only in extreme necessity, but also in grave necessity. L. 340.

The remaining blood relatives and collaterals are likewise held to furnish to one another love and help in necessity, according to the order of degrees of consanguinity. The reason is that the joining of blood and descent from the same stock and principle of life induces this special obligation of piety. Hence in the absence of parents, or quasi-parents, and ascendants, collateral blood relatives also succeed in the obligation of providing food to one in need in ordinary necessity and beggary, if they can, or unless others are present who would freely wish to relieve a similar necessity. Struggl 20.

682. **What about food to be furnished as to various blood relatives and relatives by affinity?** To furnishing food there is obligated in the first place the spouse; second, descendants; third, ascendants; fourth, son-in-law and daughter-in-law; fifth, father-in-law and mother-in-law, C. I. 132, 138-142; C. G. 203, 205-207, 212; finally brothers and sisters; and this obligation indeed is reciprocal. C. I. 140; C. G. 207; cf. C. H. 143 ff.

Ascendants are held according to order of proximity. C. I. 138; C. H. 144. But descendants are held in that order in which they would be called to legitimate succession of the needy person. C. I. 142; C. H. 144.

Food is owed to brothers and sisters if they are in very grave necessity. C. I. 141; C. H. 143. In those places in which civil law does not oblige brothers and sisters to furnish food to brothers and sisters, natural charity and piety nevertheless urge gravely if brothers or sisters are constituted in grave necessity.

As to other more remote blood relatives besides brothers, if they are in grave necessity, the obligation is still present, although light, "since toward them also there is some obligation of piety, although not so strict." L. 339, l. 3, n. 946; Lugo, *de Iust. et Iur.* D. 24, n. 175.

Mother-in-law and daughter-in-law lose food if they pass to other nuptials, or if the spouse from whom the affinity arose has died, no descendants having been left. C. I. 140; C. G. 206.

Parents cannot deny food to children because against their will they contracted nuptials with unworthy persons. L. l. 3, nn. 337, 949. "Sanchez, etc., say that a father is held to furnish food not only to a son, but also to his wife, although he married her without a dowry and against the will of the father himself. Moreover Azor, etc., hold that a father must feed a son even if the son had viciously consumed a portion already handed over to him." L. 336, 337. "But it is certain that parents are held to furnish food to children, even spurious ones, and still those born from condemned intercourse, if these cannot be sustained from elsewhere." L. 951.

Nor indeed generally is it licit to deny food because the one who asks it has come to poverty by his own fault, except to brothers and sisters from C. I. 141.

How much must be furnished is to be estimated from the necessity of the one asking and from the resources of the one giving. C. I. 143; C. G. 208; C. H. 146. Food comprehends nourishment, clothing, habitation, and other things necessary for life, and, according to circumstances, instruction fitting to the person. C. I. 846; C. H. 142. But the option is given either of receiving the needy person at home, or of supplying him a pension, unless the judge establishes otherwise. C. I. 145; C. G. 210; C. H. 149.

Because this obligation of furnishing food is from charity and piety, not from justice, one who does not furnish it is not held to restitution; nor is he obligated toward the heirs of the dead person who had a right to these things. C. I. 144, 146; C. G. 209; C. H. 148, 150, 151. It is otherwise from C. A. 171. L. 339, 356, 946, 949, 951.

683. **What about repairing harms?** The question is generally moved: whether a superior is held to repair harm inflicted by his subjects.

Answer: Affirmatively in the external forum, according to various laws in force in various regions. Cf. C. I. 1153; C. G. 1384; C. H. 1903, in which express mention is made: first, of the father, and with him deceased, of the mother, in relation to minor children living with them; and in C. I. and C. H. of tutors in relation to those whose administrators they are, likewise living with them. Second, of the master and mandator in relation to servants and mandataries in the exercise of functions to which they themselves destined them. Third, of the teacher and artisan in relation to pupils during the time

in which they are under their vigilance. But nothing is established about a husband in relation to a wife. An obligation of this kind, whether in parents, tutors, masters and mandators, teachers and artisans, ceases from both Italian and French law whenever they prove they could not impede the fact concerning which otherwise they would have to answer, or, from C. H., that they employed due diligence.

Negatively in the internal forum. The reason is that the quality of superior imposes only the burden of governing subjects rightly; by no means an obligation from debt of justice of impeding the harms caused by their subjects, and much less of others not subject to them; unless either from a special contract or from a special office he ought to impede them. Inst. l. 1, t. 7; l. 4, tt. 5, 8; Dig. l. 47, t. 5; C. A. 1308, 1309, 1314, 1316.

684. **What is a tutor and curator?** To those who cannot protect themselves and their own, if they are not under paternal power, there is given a tutor or curator. C. A. 187.

Tutor and curator differ between themselves: first, because a tutor is given principally to the person, secondarily to things. But a curator is given either to things only, or principally to things, and only secondarily to the person, at least speaking regularly. C. I. 188, 209.

Second, they differ because a tutor cannot be given for a certain thing and cause. But a curator can be given for certain things and determinate causes. And thus C. I. 980 assigns a curator to a vacant inheritance; C. A. 274, 690 gives a curator to the inheritance of future offspring to be born, and to an inheritance when legacies burden the whole and the heir refuses to administer.

Third, they differ from common law, because a tutor is regularly given to a ward or impubescent person, and to one who is compared to an impubescent person. But a curator is given to a minor or pubescent person up to the twenty-fifth year of age. Inst. l. 1, tt. 13, 23; Ferraris v. *Tutela* 10 ff.

From more recent law a tutor is given to a non-emancipated minor and to one interdicted from the administration of goods. But a curator is given to a son soon to be born; to a minor called to an inheritance; to an emancipated minor; to a major declared incapable because of weakness of mind or prodigality; to a deaf-mute, or to one blind from birth. C. I. 236, 241, 245, 247, 314, 315, 329, 339, 340; C. G. 389, 393, 405, 482, 505, 513.

From C. H. 199, 200, no distinction is had between tutor and curator as to name; but as to the thing it is preserved. For a tutor is given both to person and goods, or only to goods. Subject to tutelage are non-emancipated minors, the insane, deaf-mutes, prodigals, and the interdicted.

Almost the same is had in C. A. 187, 188, 273, 275. But in any tutelage a protutor must also be chosen, whose role is to supply the place of the tutor. C. I. 265; C. G. 420; C. H. 201, 234; cf. C. A. 211, 215; L. 917.

685. **Who designates a tutor; who can be tutors?** Answer to the first: These can give a tutor: the parent who dies last, either by testament or by public instrument, C. I. 242; cf. C. A. 196, 197; C. H. 206; the family council, if the parent did not designate one and those whom the law designates are lacking, C. I. 245; cf. C. A. 198, 199; C. H. 204, 211, 212, 231; the council of tutelage and the judge in certain cases, C. I. 248, 261, 262; C. A. 189, 190, 199, 204.

To the second: Since the tutelage of minors is a public office filled with many cares, not all can assume it, nor can or ought all reject it. C. I. 268 ff.; C. G. 427 ff.; C. H. 202, 203, 237 ff., 244 ff.; C. A. 191 ff., 201; Inst. l. 1, tt. 14-20, 25, 26.

686. **What are the offices of tutor and curator?** A tutor has care of the person of the minor and of his education, and represents him in civil acts, and merely administers his goods. C. I. 277, 298, 318; C. G. 450, 457, 481; C. H. 261 ff.; C. A. 188, 205, 216, 243. Hence he cannot exceed the limits of administration. C. I. 296 ff., 301; C. G. 457 ff., 482; C. A. 233, 484; C. H. 269, 275.

But a curator provides assistance and authority to him who is under his care. C. I. 318, 339, 342. Therefore the power of tutor and curator is constrained by certain limits, and in any thing of graver moment is dependent on the family council and also on the decree of the tribunal. C. I. 296, 297, 301; C. G. 457.

...467; C. H. 269 ff., 293 ff.; C. A. 216, 233. Therefore whether tutor or curator, they are held to employ great fidelity in their office, as a good father of a family; and if they gravely fail in fulfilling it, they sin gravely, even against justice by force of quasi-contract, and are held to compensation of harms. C. I. 277, 302; C. G. 450, 469; C. A. 202, 204, 228, 264, 265; L. 341, 917, 918.

A tutor, unless he is the paternal or maternal grandfather, must give security, from which nevertheless the family council can dispense him. C. I. 292; cf. C. H. 252 ff. From C. A. 237, a tutor is not obligated to security. He must also at the beginning of tutelage make an inventory of the minor's goods. C. I. 281; C. G. 451; C. A. 222, 223, 224; C. H. 264.

Every year, while tutelage lasts, unless he is the paternal or maternal grandfather, he must exhibit the state of his administration to the family council, C. I. 303; or to the substitute tutor, C. G. 470; or to the ward judge, C. A. 238, 239; cf. C. H. 279 ff. When tutelage has ended, he is likewise held to render an account of his administration, C. I. 302; C. G. 469; C. H. 281; and he is held for less diligent administration unless he is freed by legitimate prescription. C. I. 309; C. G. 475; C. H. 287; Inst. l. 1, t. 21.

687. **Note:** A tutor or protutor cannot buy or lease the goods of a minor, nor can he accept cession of the rights of a minor. No agreement can be made between tutor and minor, nor can any testamentary disposition useful to him be made before the account of tutelage has been rendered and approved. Yet he has a right to a fitting remuneration for his office. C. I. 300, 307, 769, 1457; C. G. 156, 450, 472, 907; C. H. 269, 270, 275, 276, 285, 753; C. A. 266, 271; L. 917.

688. **Resolutions:** A tutor or curator cannot make gratuitous donations or remissions from the goods of the ward; he is constituted not for destroying, but for protecting. Except a remunerative donation; for thus he can, for example, add something by liberal donation to the stipend owed for liberal service. Lugo D. 23, s. 10; L. 341; C. H. 275.

689. **What are the obligations of a minor?** A tutor is in the place of a father. Hence the offices of a minor toward him are similar to those which would be owed to the father himself. But the obligation of a minor toward a curator is less; yet as to administration of goods he must both

be subject to him and bear a grateful mind. But a minor, whether toward curator or tutor, is not obligated so strictly to love, reverence, and obedience as toward parents. For his dependence on them is much less than on parents. C. I. 280; C. H. 263; C. A. 217.

690. **What is the value of the acts of tutor and curator?** Those things which are done according to the laws, whether by a tutor or by a curator, are valid and firm, and therefore by no means liable to rescission, although they were not useful but harmful to him who was under tutelage or care. C. I. 1304; C. G. 1314.

On the contrary, those things which were not done according to the laws, although usefully managed, can be revoked by restitution in full. By restitution: for in the meantime they are valid. C. I. 1107; C. G. 1125; C. H. 1291.

691. **How do tutelage and care end?** They end on the part of the tutor or curator by his legitimate excuse, removal, death, or by the business committed to him having already been completed. On the part of him whose tutor or curator he is, they end by his majority, or by cessation of the cause of interdiction or incapacitation, or by his death. C. H. 278; C. A. 249, 251, 253, 283; Inst. l. 1, t. 22.

V. Obligations of Inferiors and Superiors

692. **What is the distinction between servants and domestics?** Domestics are distinguished from slaves. Slaves are those who by the law of nations and civil law, contrary to natural liberty, are subjected to another master, so that they can be possessed, alienated, and sold after the manner of patrimony. Schmalzgrueber l. 4, t. 9, n. 1 ff.

But domestics are not slaves, but free persons who freely enter a contract of service. Domestics are of the family, and therefore are also called familiars or household servants. Hence domestics are under the governance of the master, and masters have rights and obligations toward domestics. Yet those who furnish offices of service for only one or another hour of the day are not properly understood as domestics and of the family; nevertheless those are sufficiently understood as familiars who have stable residence through the whole day in the master's house and serve him, although they sleep at night in their own house.

693. **What are the obligations of masters?** Masters are held to treat their domestics: first, kindly, that is, by speaking to them and commanding them decently and humanely, by furnishing good and sufficient food, by not burdening them with excessive works, by caring fittingly for the sick. This is established from natural law and from Sacred Scripture, Ecclus. 33:31: *If you have a faithful servant, let him be to you as your soul: treat him as a brother.* Eph. 6:9: *And you, masters, do the same to them, remitting threats; knowing that both their Lord and yours is in heaven, and there is no acceptance of persons with him.*

Second, to instruct and correct them; for the master is the head of the domestic, just as of the whole family; but it belongs to the head to direct where there is need. This also seems established from the words of Paul, 1 Tim. 5:8: *If anyone has no care for his own, and especially for those of his household, he has*

denied the faith and is worse than an infidel. But domestics are reckoned among the household. Elbel n. 590.

Third, to pay a just price; for there is question of an obligation of justice and natural equity. Hence the defrauding of such wages is numbered among the sins crying to heaven. 1 Tim. 5:18; L. 342.

694. **Resolutions:** Masters can sin, and indeed even gravely: first, if they do not grant domestics time for learning the rudiments of Christian faith, or do not send them to catechism and sermon; if they do not take care that they confess and communicate at the due time.

Second, if they hire or retain in the house irreligious, impious, blaspheming domestics, or those speaking base things; if they do not warn and correct those gravely sinning, or dismiss those unwilling to promise amendment, unless perhaps they greatly need their work and cannot find others.

Third, if they do not take care, as much as lies in them, that servants abstain from sins; if they permit them an occasion of sinning; if by depraved example or solicitations they induce or allure them into sin.

Fourth, if they do not pay the promised or just stipend, or defer it too much; if they do not care for sick domestics and immediately expel them, or dismiss them before the appointed time without just cause. L. 342.

695. **What are the obligations of domestics?** Domestics are held to furnish to masters: first, reverence. For thus the Apostle, 1 Tim. 6:1: *Let servants judge their masters worthy of all honor.* Hence those can sin even gravely who mock masters, scorn them, or manifest their hidden defects.

Second, service and obedience in all those things to which they obligated themselves by force of contract, and in those things which regard good morals. Thus Eph. 6:5: *Servants, obey your carnal masters with fear and trembling in the simplicity of your heart, as Christ*. And 1 Pet. 2:18: *Servants, be subject in all fear to masters, not only to the good and modest, but also to the difficult*. Hence they sin more or less by reason of the matter who, when something is commanded to them, murmur, answer insolently, waste time uselessly, neglect to perform the commanded work, or with harm to the master labor for themselves; and in one word, all those who do not furnish such service as is ordinarily accustomed to be required and furnished by such persons.

Third, fidelity, according to the words of Paul to Titus 2:9: *Servants should be subject to their masters..., not defrauding, but showing good faith in all things.* Hence they sin, and often gravely against justice, who do not have care for things entrusted to them, who through their own fault allow them to become worse, who steal precious foodstuffs, or things not customarily given to them, whether for eating, or for giving or selling to outsiders. St. Thomas, 2. 2. q. 103; L. 343.

696. **Note:** First, "Wages are owed to domestics sick for a short time, for example for a few days, because the time of a year for which they are hired must be morally accepted, or a deficiency for a short time is not to be considered; for a small time with respect to the whole year is reputed as nothing. But it is otherwise if the domestic is sick for several months, because

wages are by no means owed for an office not furnished." L. 346. Nor is the master held to expenses to be made for treatment, or for remedies and the work of a physician. All agree on this if the expenses are notable; indeed St. Alphonsus n. 864, after Lugo, also admits this, at least as probable, if the expenses are light. "But no wages are owed to workers, even those sick for a short time, because these are hired by the day..., therefore they must be paid only for individual days, indeed for half of a day if they fail for half the day." Gury, case 972.

Second, a master cannot dismiss a domestic before the constituted time without a grave cause. The reason is that a contract of lease is truly onerous, obligating each party according to the nature of the matter. Therefore, just as a domestic cannot abandon the master without a grave cause if this master would have to undergo grave harm from lack of the domestic, so likewise neither can a master without a grave cause throw out a domestic hired for a year. A master dismissing a domestic before the time without sufficient cause is held to repair the harm arising from it. But if the domestic departs before the constituted time, of himself he has a right to salary almost pro rata for the time of service, yet somewhat less; but if the master suffers grave detriment from the departure of the domestic, he can retain a proportionate part of the stipend. L. 342, 345; C. H. 1584.

Third, domestics can rightly receive salary from a master burdened by debts, if they furnished service in good faith. For it is the just wage of labor, and the master gives his own thing. "But whether they themselves are held to leave if they notice that the master is rendered unable to satisfy debts from such service? Navarro, etc., affirm. Yet Molina denies, and Laymann says not improbably. For they do not sin against justice if, asked by the master, they serve and receive wages; nor against charity, if others will not be lacking for service." L. l. 3, n. 694. And this is especially so if the master needs the servant.

697. **Are domestics held to restitution when they culpably do not impede harms which are inflicted on the master?** Either domestics are hired to guard and defend the family estate, and to watch and impede lest any harm be inflicted on it, as are administrators, guards, etc., who are usually called by this name rather than by the name of domestics; or they are hired for mere labor and for furnishing their work in things necessary to the family, who are commonly and properly called domestics.

In the first case they are held to restitution and compensation of harms. For they are held from office and contract, and therefore from strict commutative justice, to impede harm to their masters.

In the other case, some say that domestics also are held to compensation of harms, whether those harms are inflicted by outsiders or by other domestics. Their reason is that, by force of the service itself, the master entrusts his things to the custody of each domestic.

Others, more commonly and more probably, say that they are held if theft and harm are committed by outsiders; they are not held if it is committed by other domestics or household members. The reason is that by the very fact that they are admitted into the family, they are indeed judged to undertake the obligation of defending it against outsiders, but by no means also against other household members. Lugo D. 19, nn. 105, 106; L. l. 3, nn. 344, 573.

Finally, others say that domestics are not held to restitution or compensation of harm. For although from charity they are obligated to impede that harm, nevertheless they are not obligated from justice.

For they are indeed hired to furnish labor and their work in things necessary to the family, but by no means also to guard and defend the goods of the family. Special domestics and administrators are appointed for custody and vigilance over domestic things or the family, and especially for care and custody of the pantry; and to these the keys for guarding things are handed over. Therefore domestics are held to restitution or compensation of harm only when that care and custody of the family estate has been committed to them by a special office, either explicitly or implicitly, for example when a key is given to them for taking something from some place, because for that time custody of that place is entrusted to them.

Given this variety of opinions, the confessor ought prudently to abstain from urging the obligation of restitution.

698. **Can domestics, judging that their salary is below the work furnished by them, use occult compensation?** Answer: Affirmatively, if masters do not pay the stipend established by agreement, or diminish it. For then they openly wound commutative justice. Ithur. case 1, n. 2.

But negatively, at least speaking generally, outside the aforesaid case. This is proved: first, from proposition 37 condemned by Innocent XI; second, because although they agreed upon a lesser price, nevertheless the contract, as just in conscience, must be stood by.

At least speaking generally, because many except: first, if the domestic is compelled by force or fear to consent to an unequal price; second, if compelled by necessity he consented to it, provided nevertheless that the master would not already justly have found other domestics at the same low price, or did not receive this one asking out of mercy. Indeed if a domestic serves with no wage established, from the mere charity of the master so that he may be fed by him, he can claim nothing, "just as happens with boys whom nobles or bishops are asked to admit into their family; for then it is enough if masters furnish them food, clothes, and habitation, since such is the custom." L. 348.

Third, if unwillingly he is burdened with undue works.

Fourth, if he increases his works from the will of the master, whether express or tacit; for the worker is worthy of his wage. But it is otherwise if he altogether spontaneously increases the works himself, because then he is judged to donate the works in order to gain the favor of the master. L. 522, 523; E. M. 1473.

699. **Note:** First, what has been said about domestics must also be said about other workers and merchants.

Second, what is just compensation can be left even to the judgment of the domestic, if he is prudent and of timorous conscience. But in practice the matter often does not lack danger of hallucination. L. 524.

700. **What are the obligations of teachers and students?** Between teachers and students there are in some way the same obligations which exist between parents and children. The reason is that parents, whose right and obligation properly belong to the education and instruction of children, substitute teachers for themselves, who therefore hold their place in this matter toward the children.

Therefore teachers and preceptors owe to students love, example, correction, doctrine. Hence they are held to perfect themselves in the science which they teach, so that they may duly instruct others; to promote the progress of students in letters as much as lies in them; to turn them away as much as they can from others who are corrupted by depraved morals, whom they ought in no way admit into their schools.

Therefore preceptors can fail even gravely when they neglect the instruction of students, or punish them unjustly or indiscreetly; but especially if they seduce them by impelling them to sins; if they do not teach good morals; if deliberately they teach false things as true, or things harmful to salvation; if they retain pupils imbued with evil morals who are harmful to others, etc. But they can fail gravely both by reason of office and by reason of the stipend which they receive.

Students are held to exhibit love and reverence to teachers because of their superiority and care. Moreover they owe obedience while they are instructed by them in good morals and arts. The reason is clear: for this is implied by the reciprocal obligation of students toward teachers, who would plainly be obligated in vain to instruct them, or imbue them with good morals, unless students were likewise obligated to follow the warnings and precepts of teachers.

Students sin, gravely or lightly from the gravity or lightness of the thing itself and its various circumstances, if they do not obey teachers in things pertaining to studies and good morals; if they do not exhibit honor and reverence to teachers; namely if, far from studying diligently, they spend time in idleness, play, and other foolishness against the will of their teachers; if they detract from teachers, or ridicule them, mock them, affect them with curses, calumnies, annoyances, etc. L. 361; E. M.

701. **What are the obligations of inferiors as to ecclesiastical superiors?** Subjects are held to exhibit to their spiritual superiors love, honor, and obedience in those things which regard their jurisdiction and care; likewise necessary support. This is proved: first, this is established from several places of Sacred Scripture, 1 Tim. 5:17, 18; Heb. 13:17, etc. Second, as to love, reverence, and obedience, because they are superiors having true jurisdiction; as to support, because the worker is worthy of his wage. Trent, sess. 25, c. 17 *de R*.; E. M.

702. **Resolutions:** Therefore all Christians are held under grave fault to obey the Supreme Pontiff in matters pertaining to faith and Christian discipline; for in these he is Christ's Vicar on earth. In the same way diocesan persons are held to obey bishops, according to the nature of the matter, in those things which regard their jurisdiction.

703. **What are the obligations of ecclesiastical superiors?** Spiritual superiors in turn are held to exhibit to their subjects love, care, doctrine, and good example. This is proved: first, from several places of Sacred Scripture; cf. the Epistles to Timothy and to Titus, and from Trent, sess. 23, c. 1 *de R*. Second, this is shown from their very office. Hence neglect of souls as to care and administration of the sacraments, as to doctrine and correction, in ecclesiastical superiors is not only against charity, but also against justice, and for the most part mortal sin, according to that saying of Ezek. 34:2, 4: *Woe to the shepherds of Israel... what was weak you have not strengthened, and what was sick you have not healed*, etc. L. 357 ff.

704. **What are the obligations of subjects toward civil authority?** Subjects are held also to exhibit to secular superiors love, reverence, and obedience. For in the civil order they are true

superiors, bearing the place of God himself in the temporal order toward us. This is confirmed from Sacred Scripture, Rom. 13:1 ff.; 1 Pet. 2:13, 17. For this reason the Catechism of the Council of Trent compares and joins an obligation of this kind with that by which we are bound toward paternal and ecclesiastical authority. For, part 3, on the fourth commandment, § 15, after teaching that parents and ecclesiastical superiors are to be honored with due honor, it adds: "Likewise it must be said of kings, princes, magistrates, and the rest to whose power we are subject. For if we give any cult to them, it is referred to God; for the excellent grade of dignity has the veneration of men because it is a likeness of divine power. In this also we venerate the providence of God, who has attributed to them the management of public office, and uses them as ministers of his power." Encyclical letter of Leo XIII, *Quella lunga*, June 29, 1881; E. M.

705. **What are the obligations of civil superiors?** They are held to exhibit to subjects love, good example as to morals and religion, administration of justice, and to provide for public happiness by just and opportune means. This is most clearly established from the very nature of their office. Hence secular superiors sin gravely through negligence, connivance, and omissions, for example if they do not protect subjects from enemies and unjust vexations; but especially through positive injuries, oppressions, excessive exactions, or persecution of the Christian religion. God will certainly not leave these injustices unpunished; for, as is said in Wis. 6:6, 7: *A most severe judgment shall be made for those who preside; for mercy is granted to the little, but the powerful shall powerfully suffer torments.* Struggl 28.

They likewise sin if they set over the republic ignorant and inexperienced men. But this grave precept of choosing the upright, with due proportion, in constitutional and republican government, also urges all electors of deputies. And, other circumstances being excluded, not only do those sin who give their vote to the evil, but also those who by not concurring are the cause that the evil are chosen by others; for each one, when he can, is held to avert evil from the republic. How many evils come from impious deputies both to religion and to civil society, no one is ignorant, since the highest affairs of all things are entrusted to them, and they not only give counsel, but make the laws themselves with others. Except unless somewhere, because of special reasons, it is better to act otherwise, and there is a special prescription of acting otherwise. Leo XIII, encyclical *Immortale Dei*; Trent, sess. 25, c. 20 *de R.*; E. M.

706. **Is it ever licit not to obey temporal authority; is it ever licit to rebel; is it ever licit to kill a prince?**

To the first: Just as it is evident that human authority is never to be obeyed in those things which are evidently against the law of God, so in those things which are of themselves licit and which pertain to civil power, princes must altogether be obeyed, even difficult ones, and also those who abuse their authority. From these purest sources, namely Scripture and Tradition, says Gregory XVI in the brief of June 9, 1832, we are most clearly taught that the obedience which men are held to furnish to powers constituted by God is an absolute precept which no one can oppose.

To the second: It is never altogether licit to rebel. "Too pernicious in this matter," says St. Alphonsus, "was the principle of John Gerson, who dared to assert that a monarch can legitimately be judged by the whole nation if he governs the kingdom unjustly... A principle, I say, not only false, but most

pernicious." The reason is that subjects, by the very fact that they are subjects, cannot arrogate to themselves power above the prince by judging and punishing him. St. Thomas, 2. 2. q. 60, a. 6; L., H. A. tr. 8, n. 13.

To the third: It is never licit for anyone to kill a prince. The contrary opinion of the ancients is called by St. Alphonsus, in the cited place, improbable, false, most false. "I ask," says the holy Doctor, "is he a man as others are? And if he is a man, he cannot be deprived of life or goods by those who do not have the right to despoil him of life or goods. The common doctrine of the holy Fathers is that it is never licit for any private person to kill a man, although private, and however iniquitous he may be, unless he has public authority, or unless this is necessary for protecting his own life." And this holds entirely, whether the prince is good or evil; legitimate or a usurper of the kingdom. St. Thomas, 2. 2. q. 12, a. 2; q. 42, a. 2; q. 64, a. 3; q. 101, aa. 1, 3; q. 102, aa. 1, 2; q. 104, aa. 1, 2, 5.

707. **Are the more worthy to be chosen for civil offices?** Answer: Affirmatively, if there is a competition; for then there is an implicit contract of choosing the more worthy. But negatively, if there is no competition. For such an obligation is not established. For in order that public good be sufficiently provided for, it is enough that the unworthy be excluded and removed, and worthy persons be chosen. And not only the supreme prince himself is held by this obligation, but also all those who can choose by power received from him. For they receive power only of choosing in that mode in which the prince ought to choose. Lugo, *de Iust. et Iur.* D. 33; L. 342.

On The Fifth Precept of the Decalogue

I. On Killing Oneself

708. **What is the order of the precepts among themselves?** "After the three precepts pertaining to religion, by which what is owed to God is rendered, and after the fourth precept, which is of piety, by which what is owed to parents is rendered, in which is included every debt which is owed from some special reason, it was necessary that certain precepts pertaining to justice properly so called be placed consequently, which renders what is owed indifferently to all." St. Thomas, 2. 2. q. 122, a. 6.

Therefore the six precepts of the Decalogue which follow, as the same Angelic Doctor teaches in the cited place, a. 1, are "about acts of justice commonly so called, which is considered among equals." In these six precepts are prohibited homicide, adultery, theft, and false testimony. "But all other harms which are inflicted on neighbors can be reduced to these, which are prohibited by these precepts, as to certain more common and principal ones. For all harms which are inflicted on the person of a neighbor are understood to be prohibited in homicide as in the more principal one. Those which are inflicted on a joined person, and especially by way of lust, are understood to be prohibited together with adultery. Those which pertain to harms inflicted in things are understood to be prohibited together with theft. But those which pertain to speech, such as detractions, blasphemies, and any things of this kind, are understood to be prohibited in false testimony, which is more directly contrary to justice." St. Thomas, cited place, a. 6, ad 2.

709. **What is the fifth precept of the Decalogue?** The fifth precept is: *You shall not kill*, Ex. 20:13. Now this fifth precept, insofar as it is negative, primarily indeed prohibits homicide, that is, the unjust killing of a man. But secondarily and consequently it prohibits unjust anger, or the inordinate appetite of revenge, Matt. 5:21, 22, and every other unjust wounding, injuring, or mutilation of the body, whether one's own or another's, which is reduced to homicide as to the principal bodily injury.

But insofar as it is virtually positive, it commands the conservation of life. Those things which will here be established about killing, whether licit or illicit, will have to be applied, with due proportion observed, to mutilation or to any injury of the body. Struggl 3, 5; L. 363.

710. **Is suicide licit?** Without divine authority it is wicked directly to kill oneself. Someone is said directly to kill himself or another when truly, of itself and directly, he intends to take life away from himself or another; but indirectly when he does not positively intend this, yet voluntarily does something from which he foresees that his own death or another's will follow.

This is proved. First, it is openly prohibited in Sacred Scripture, Ex. 20:13; Deut. 32:39; Wis. 16:13. Second, it is repugnant to charity toward oneself, and is injurious both to God, who alone is direct and absolute master of human life, and to society and the republic, which through suicide is unjustly deprived of its part or citizen. St. Thomas, 2. 2. q. 64, a. 5.

Hence suicide is deservedly punished by each law. For by common civil law both suicides and those who attempt this crime, even when death has not followed, are punished by the penalty of infamy. But by ecclesiastical law suicides are deprived of sacred burial and the suffrages of the Church, as is established in C. 12, c. 23, q. 4, and as can be seen in the Roman Ritual. Yet this penalty does not comprehend those who, disturbed by fury, madness, or fantasy through most grave sadness of soul, have taken life from themselves, or those who before death grieved over the crime. Struggl 7; Ithur. case 40, nn. 3 ff.; L. 366, 375.

711. **Resolutions:** It is not licit for a virgin, even to preserve chastity, which is judged a greatest good, directly to kill herself. Struggl 8; Ithur., cited place; St. Thomas, 2. 2. q. 64, a. 5, ad 3; L. 366.

712. **Is it licit by a positive act to concur in one's own death?** It is never lawful, without divine authority, to place an external act tending immediately of itself to one's own destruction, unless that act has another good and immediate effect which alone is intended, and a grave reason of obtaining that good effect urges. The reason is that where a physical act, even indifferent of itself, has no other effect than suicide, it now becomes evil, since no reason is present by which the precept of conserving life and guarding against danger of death ceases. Hence it is prohibited in any case whatever. L. 366; cf. 717.

713. **Resolutions:** It is wicked to throw oneself into a river with certain danger of death in order to baptize a child. For this would be directly to take life from oneself; namely because one first places a means which directly and immediately tends to one's own killing, so that after this has been placed he may be able to administer baptism. L. 366.

714. **Is self-mutilation licit?** It is not licit to mutilate oneself, or even to mutilate another, unless this is necessary for the conservation of the whole body, and with the consent of him whose member it is, or of him "to whom it pertains to care for the health of him who has a member corruptive" of other members. St. Thomas, 2. 2. q. 65, a. 1.

But otherwise to mutilate someone in a member is altogether illicit; and this even if it is done for conserving chastity and avoiding temptations. The reason is that God is the absolute and direct master of human life; but man has only useful or indirect dominion over his own body.

Unless this is necessary for the conservation of the whole body: for since the part is ordered to conserving the whole body, when such necessity urges some member can certainly be cut off, for example to cut off for oneself a hand bound by a chain in order to avoid death threatening from a beast, tyrant, or fire. St. Thomas, 2. 2. q. 64, a. 2; q. 65, a. 1; Lugo, *de Iust*. D. 10, n. 22; La-Croix 786.

Even if it is done, etc.: because this remedy is neither absolutely necessary nor in fact removes carnal temptations, although one becomes impotent for generating. St. Thomas, 2. 2. q. 65, a. 1. Hence, a fortiori, more probably it is not licit to castrate boys to preserve the voice in them. L. 374. "And indeed the reason is most powerful... For man is not so master of the members of his body that he can consent to the cutting off of one of them, except if the health and conservation of the whole body cannot otherwise be obtained." Benedict XIV, *de Syn*. l. 11, c. 7, n. 4; Lugo D. 10, n. 23; St. Thomas, cited place. But the discipline of the Church brands with the note of irregularity the eunuch who, outside the necessity of saving life, has given consent to his own mutilation. Benedict XIV, cited place, n. 5; Struggl 9, 10.

715. **What is the obligation of conserving life?** Everyone is held to conserve life by ordinary means. The reason is that not conserving life for oneself is equivalent to taking it from oneself. By ordinary means: for one is not held to extraordinary means, unless his life is altogether necessary to the common good. And indeed extraordinary means are placed outside common powers; therefore law commonly cannot command them. L. 372.

716. **Resolutions:** First, the sick person in danger of death, when hope of health is present, cannot reject ordinary medicines prescribed to him.

Second, one is not held for conserving life to make enormous expenses or to apply remedies which cause him enormous pains, for example amputation of a leg, incision of the abdomen to extract a stone, etc.

Third, a virgin is not held to suffer an operation by the hands of a physician, even if life is endangered, when because of modesty this happens to her as most grave and brings upon her greater horror than death itself.

Fourth, it is licit even for a virgin to suffer death rather than permit her own violation, because of the greatest good of virginity. It is licit; for probably she is not held, at least speaking speculatively, provided she positively resists by the will and proximate danger of consent is absent. The reason is that this permission is not formal cooperation in the sin of another, but only material; and a just cause of permission is present, namely danger of death.

Fifth, it is likewise licit for a virgin, for preserving chastity, to expose herself to danger of death, at least if death will not certainly follow, and this both because of love of chastity and because of danger of sin, which is often had in such an occasion. Indeed it must still more probably be affirmed, although death will certainly follow and no proximate danger of consent is present, because even bodily integrity alone is most highly esteemed. L. 366, 368, 372, 430, 433; H. A. 1, 2; St. Thomas, 2. 2. q. 65, a. 1; Struggl 6; tr. 6 *de Iust. et Iure*, q. 5, a. 1, nn. 5, 10; La-Croix l. 3, part 1, n. 916; Lugo D. 10, nn. 197, 198.

717. **Is it licit to concur indirectly in one's own death?** It is licit from a grave cause to concur indirectly in the killing of oneself, or to place an action from which, beyond the intention, one's own death will certainly follow, provided that from that action some good follows equally immediately, and this alone is intended. The reason is that then death, if it follows, is not willed, but merely permitted from a proportionate cause. Cf. 36; Struggl 7; L. 366.

718. **Resolutions:** First, it is licit for the accused not to flee; indeed also to present himself spontaneously before the judge, even if he must certainly be punished by death, because this action of itself is indifferent, indeed honorable. For in the case to will to die is equivalent to willing the order of justice; and just as because of a just cause it is licit to desire death for another, and also to procure it in a legitimate way, so also for oneself. L. 369; H. A. 2.

Second, artisans do not sin who ascend upon the roofs of buildings and expose themselves to various dangers where there is need; nor blacksmiths, who by handling fire daily diminish life for themselves. The reason is that they act from a reasonable cause. On the contrary, bold men sin gravely who from rash wagering and vain glory throw themselves without cause into grave dangers by ascending high, lowering themselves downward, bearing heavier burdens, etc. Hence dangerous bull-fights are also prohibited. L. 365, 369; l. 7, n. 209.

Third, it is never licit to macerate the body in order to shorten life, nor, even with such an end excluded, to ruin health gravely by immoderate and altogether indiscreet penances.

Yet it is licit, from virtue, to use penances ordinarily grave, with some certain shortening of life, because for the sake of merit and the mortification of depraved nature, some loss of longer life can be despised. L. 370, 371; H. A. 2; St. Thomas, Quodl. 5, a. 18. But these things are about the ordinary way; for God has often inspired altogether extraordinary penances in the Saints, whose health was often more robust the less they spared themselves. Cf. Benedict XIV, *De Canoniz. SS.* l. 3, c. 29, n. 6; L., *Prax.* 25, 26.

Fourth, it is licit, at least more probably, to set fire to a ship or tower so that enemies suffer grave harm, although with certain loss of one's own life, because it is expedient that public harm be avoided or the common good procured even with most certain harm to private persons. L. 367.

Fifth, someone can leap through a window from a burning house, or cast himself into the sea from a burning ship, not indeed to seek death, but to escape a harsher one. And the same must be said of a virgin who throws herself down from a very high window so that she may be rescued from the hands of an impure violator. Elbel 13; Struggl 8; Gury, cases 377, 379, 384.

II. On Killing the Guilty

719. **Is it licit by public authority to kill the guilty?** It is licit by public authority either to imprison, scourge, mutilate in some member, or even kill evildoers. The reason is that this is a necessary means for procuring the common good of the whole society, indeed for preserving society itself; and this indeed cannot be obtained except by these penalties, and often not except by the death of wicked men. But God must be said to have conferred the power without which society could not stand. This is also established from the practice of every legislation, from Sacred Scripture, and from the universal consent of all. Lugo D. 10, n. 64; Struggl 34; Ithur. case 40, nn. 11-12; St. Thomas, 2. 2. q. 64, aa. 2, 3; q. 65, aa. 1, 3; q. 66, a. 6, ad 2, a. 8; q. 67, a. 3; q. 108, aa. 3, 4; L. 375; E. M.

720. **How are the guilty to be punished with death by public authority?** A prince or magistrate sins, speaking regularly, who orders the guilty killed without public judgment, not cited or not heard, or not condemned, even if by private knowledge it is established that they are guilty. The reason is that from natural law a public act must be done from public knowledge and authority.

Except: first, if the crime is altogether certain and notorious; second, if there would be danger of sedition in delay if one proceeded juridically. L. 377; St. Thomas, 2. 2. q. 64, a. 3, ad 2, ad 3; Struggl 35, 36.

721. **Note:** The judge is held under grave obligation to grant to the guilty person sufficient time for confession. He is also held to grant time for reception of communion, since the guilty person is then in the article of death, in which the precept of communion obliges by divine law; and then also the guilty person, not fasting, can communicate on the same day of death, provided communion precedes execution by an hour. If the guilty person is unwilling to confess sins, after exhortation he can licitly be killed by the executioner, because then his damnation is attributed to his own fault. L. 379, l. 6, nn. 233-285, par. *Hic autem*, 247.

722. **Is it licit to kill the guilty even by private authority?** It is not licit to kill evildoers by private authority. This is proved because it is not licit to kill evildoers except for the common good, just as it is not licit to amputate a member except for the health of the whole body. But the administration of the common good pertains to public power, which is in the prince or in the republic, but not to private persons. Therefore.

Moreover, if it were licit for anyone by private authority to kill evildoers, and anyone could be judge in his own cause, everything would be full of unjust homicides. Therefore God, as author and conserver of nature, did not give to private men the power of killing evildoers. C. 7, c. 33, q. 2; proposition 19 condemned by Alexander VII; St. Augustine, *de Civ. Dei* l. 1, c. 26; St. Thomas, 4 D. 37, q. 2, a. 1; 2. 2. q. 64, a. 3; q. 66, a. 8; L. 376; E. M.

723. **Note:** Any secular person, speaking of itself, can licitly kill a highway robber and evildoer publicly proscribed within the territory of the one proscribing. The reason is that by a sentence of proscription, anyone is constituted minister of justice by public authority.

Any secular person: for in C. *Sententiam Ne cler.* vel mon., it is gravely prohibited to a cleric to mingle himself even in just causes of blood.

Speaking of itself: for a son cannot licitly kill his banished or proscribed father, nor a parent a son, nor a wife her husband, because this gravely repugns charity and natural piety. Except nevertheless if the common good demands this.

Within the territory of the one proscribing: for a banished person cannot justly be killed in another's territory, unless with the tacit or reasonably presumed consent of the other prince. Struggl 36, 37; L. 376, 378, 380.

724. **Resolutions:** First, one condemned to death cannot execute the sentence of death by himself, by inflicting death upon himself. Whether he can do this at least in the case in which he is constituted by the judge as public minister of justice in order to his own killing, many affirm, Struggl 8; but many also deny, and St. Alphonsus 369 says this opinion is more common. But the holy Doctor calls each probable, l. 4, n. 284; cf. ibid. n. 281.

Second, soldiers ordered to apprehend and guard an evildoer cannot kill him when fleeing, even if he has already been condemned to death; because by force of their office and with a special mandate of the prince excluded, guards can only restrain the guilty person. L. 380; H. A. 9; cf. Struggl 36.

Third, it is not licit for a father to mutilate or kill his own children, nor for a master his own slaves, for the sake of correction. The reason is that to punish through mutilation and killing, which inflict irreparable harm, certainly requires perfect power, which neither father nor master has. St. Thomas, 2. 2. q. 65, aa. 1, 2.

725. **Is it at least licit by private authority to beat or imprison someone?** It is not licit for anyone to beat someone not subject to his power, unless there is added at least the tacit consent of him who has power, for example of a father over a son, of a husband over a wife, of a master over a slave. For beating is punishment; but punishment supposes governing power. Since, however, this beating is done for the sake of discipline, it must be moderate.

Hence of themselves teachers can moderately beat students, because they hold the place of parents. On the contrary, an elder brother cannot of himself beat younger brothers, unless this has been mandated to him by the father, or unless, with the father dead or absent, he himself rules the family, because primogeniture does not confer such a right on him. St. Thomas, 2. 2. q. 65, a. 2.

Likewise, "to imprison someone, or in any way to detain him, is illicit unless it is done according to the order of justice, either as a penalty or as a precaution for avoiding some evil." St. Thomas, 2. 2. q. 62, a. 3; cf. 417.

III. On Killing an Unjust Aggressor

726. **Is it licit to kill an aggressor against life?** Anyone can kill an unjust aggressor against his life, with the moderation of blameless defense. Thus St. Thomas, and he confirms his thesis from the fact that Exod. 22:2 permits killing a nocturnal thief. Therefore much more, he says, is it licit to defend one's own life. Then all laws and all rights proclaim that force may be

repelled by force. Finally nature itself teaches that in man there is a true right of defending one's own life, if it is unjustly attacked, and of preferring it to the life of the unjust aggressor, who from his own malice has thrown himself into such danger.

And this holds not only for secular persons, but also for clerics and religious themselves. For the right of defense is implanted in each one by nature. If it were otherwise, weapons would be supplied to injustice, to the slaughter of honorable persons, and to the overthrow of republics. Hence the Roman Catechism n. 8 attributes this right to all without distinction. C. *Significasti* 18 *de Homic. vol.*; C. *Si vero* 3 *de Sent. exc.*; St. Thomas, 2. 2. q. 64, a. 7; L. 380.

727. **Note:** First, it is said can, for no one is held to kill an aggressor; it is a horrid means for conserving one's own life. But someone can licitly and laudably permit his own killing, lest the other be deprived of temporal and eternal life. Except: first, when the life of the one attacked would be necessary and very useful to the common good; second, when he himself would be in mortal sin, because then he would altogether be held to defend himself. L. 380.

Second, with the moderation of blameless defense, which is situated in these three conditions: first, that the killing of the aggressor not be done for vengeance, since this does not belong to private persons, nor from hatred, since this would oppose charity, but only for repelling injury and force, or for defense of oneself. Second, that the one suffering aggression not use greater violence than is necessary for avoiding death; and therefore, if he can free himself from the unjust aggressor by fleeing or only wounding, he cannot kill; otherwise he would kill unjustly and would be held to restitution proportionate to the excess, since he would exceed the right given by nature. Third, that the unjust aggression actually, morally speaking, be being inflicted, that is, be so impending that one cannot repel it except by applying force. For if he prevents an aggression scarcely probable by striking or killing, he himself becomes the aggressor of another's life, not the defender of his own. C. *Significasti* 18 *de Homic. vol.*; Struggl 17, 20, 30; Ithur. case 40, nn. 9-10; Lugo D. 10, n. 161; L. 380, 381, 387, 388.

728. **Is the same licit for preserving integrity of life?** It is licit with the same moderation to kill an unjust aggressor even for defense of members. This is proved: first, from the common opinion of theologians. Second, because anyone has the right of preserving a good most necessary to himself for life, even with danger to the life of another, to which that other from his own malice exposes himself, provided another means is lacking and the death of the aggressor is not intended. L. 380, 398.

729. **Is the same licit for defending chastity?** It is licit for a woman to defend herself by killing an invader of chastity. This is proved: first, from the common opinion of theologians. Second, because the woman uses her own natural right, by which it is licit to repel force by force, and is more held to provide for herself than for the life of another; for she exposes herself to the danger of consenting to the act of sin by permitting herself to be oppressed. Moreover, if it is licit to kill an invader of goods, how much more an invader of chastity, since it is a good of a higher order? Hence although a girl is not held to kill the invader, but can conduct herself passively, because chastity is not lost unwillingly, nevertheless she is not obligated to this, both

because even the material integrity of the body is a greatest good, and because there is present a danger to modesty, which for good women is graver than death. L. 368, 386.

730. **Note:** But here theologians well warn that it is licit for a girl not only to repel aggression in the act in which she suffers it, but also afterward she can strike the aggressor with slaps, fists, rod, staff, and similar blows by no means dangerous, so that in this way she may show her displeasure and constancy, and the aggressor may more easily depart and not return. This, moreover, provided it is done immediately after the injury received and never for vengeance, is not only to be permitted, but is also altogether to be counseled to women. Struggl 28; L. 386; Lugo D. 10, n. 196.

731. **Is the same licit for defending goods of fortune?** It is licit to defend goods of fortune of great moment with the killing of the thief, if they cannot otherwise be retained. This is proved from the common opinion of theologians, which St. Thomas supposes, 2. 2. q. 64, a. 7. Moreover, because the precept of charity does not oblige one to prefer the goods of a neighbor of a higher order except when he is in extreme necessity, but not when he himself, of himself and spontaneously and from his own malice, meets danger of death, as happens in the case. L. 380, 382; Struggl 23; E. M.

732. **Note:** It is said of great moment; for it is not licit to kill a thief carrying away a thing of lesser moment, because charity then prohibits us from inflicting the gravest harm on a neighbor for light harm to ourselves, although he spontaneously exposes himself to this danger. And indeed our harm is only light, whether the thing taken is considered, which is of lesser moment as supposed, or the injury is inspected which is had in that taking, and consequently the contempt and dishonoring which follows that injury. For who is judged gravely dishonored because a thief violently snatched some thing from him?

Yet even in that case, if the force which is inflicted on the master guarding his own thing, although of lesser moment, is considered precisely, it will always be licit for him to repel force by force, but with the moderation of blameless defense. The reason is that "when someone thus defends his own things, regularly he defends at the same time his own proper person, which he exposes to danger for the defense of his things." Molina, tom. 4, tr. 3, disp. 16, n. 4. Moreover, because the public good itself demands this. Otherwise impunity of crimes would render the wicked bolder for doing harm. Laymann l. 3, tr. 3, c. 3, part 3, n. 4.

But speaking generally, those goods are judged of great moment by whose removal sustenance for someone and his own would be lacking. But theologians of grave note, among whom is Cardinal de Lugo, teach that by this name can also be given those things whose loss would bring notable harm to the master according to the quality of the person. Although it must not be denied that there must be admitted some gravity of harm absolutely grave with respect to all, nevertheless far greater than what suffices for mortal theft. Therefore, speaking absolutely, a sum of four or five gold coins, today forty or fifty lire, certainly does not suffice. But a sum of forty or fifty gold coins, today four hundred or five hundred lire, seems to suffice. L. 382, 383, 384, 385; Struggl 23, 24; E. M.

733. **Is the same licit also for defending honor?** It is not indeed licit to kill an invader of honor if honor is attacked only by words. For since then the injury can, must, and usually is repelled otherwise, striking and killing have the notion not of defense, but of private vengeance.

Likewise it is not licit to kill an invader of honor if honor is attacked by deeds after the deed itself. For even injury to the aggressor after the deed does not have the notion of defense, but of private vengeance.

But it is licit with due moderation to defend oneself against an invader even of honor, if this honor is attacked by deeds, for example by a slap or kicks or a staff, before the deed itself. The reason is that all laws permit repelling force by force. Therefore he is not to be disapproved who wishes to use that right which all laws permit, namely for protecting a good great in the estimation of men, *better than a thousand precious and great treasures*, Ecclus. 41:15, and who defends himself by fists and even kicks and a staff. Lugo D. 10, n. 166; La-Croix 803; Struggl 25, 26, 31; L. 380, 381, 382, 391; St. Thomas, 2. 2. q. 41, a. 1; E. M.

734. **Is the aforesaid defense licit if there is question of others?** A private person can, even by killing the unjust aggressor, defend the life, goods, and chastity of a neighbor. This is proved: first, from the common opinion of theologians. Second, "because just as the innocent neighbor can defend himself by killing the aggressor, so it is lawful to cooperate with him toward a licit thing which he himself can do, and to help him." Lugo, *de Iust*. D. 10, n. 201; Struggl 29; L. 389, 391; St. Thomas, 2. 2. q. 60, a. 6, ad 2.

735. **Note:** First, it is said a private person; for it is certain that princes, magistrates, and soldiers, who are specially hired for the defense of citizens, are held to this. They are held even with danger to their own life where there is question of averting a public evil from citizens. But where there is question only of the life of some private person, they are not held to protect it with so great an inconvenience.

Can: for it is more probable, at least speaking generally, that they are by no means obligated to such defense of the innocent with the killing of the unjust aggressor. This is both because the precept of charity in that case does not seem to oblige, since it is better to avoid the eternal death of the aggressor himself, and because in the killing of another grave inconvenience can never be avoided, for example because of fear of enmities, or of public justice, or also because of the horror conceived in staining one's own hands with human blood.

At least speaking generally: for except, first, if the one attacked were necessary to the public good, which each person is held under grave obligation to care for. Second, if he is a father, son, wife, or brother, whom piety itself obliges one altogether to protect. Third, if he is drunk or insane and in the state of mortal sin, from which he could rise after the frenzy or drunkenness; and this, which is most rare, is certainly established to you. For then he would truly be in extreme necessity of soul, to which one must come to aid even with harm to the bodily life of the aggressor himself.

Second, if there is question of an invader of another's chastity: understand this provided the woman does not furnish her consent to the invader, but positively resists him. Otherwise to kill the invader would not be to repel force by force, since injury is not given where there is consent. Lessius, Sporer, and others except if the one attacked is very close to you; then, they say, before the deed you can still kill the invader, although the attacked woman consents, for in that case you repel an injury which redounds to you. L. 389-392.

IV. On Killing the Innocent

736. **Is it ever licit to kill an innocent person?** It is never licit directly to kill an innocent person, whether by private or public authority, even for procuring the public good. For it is an intrinsically evil action, and expressly prohibited by divine law. Ex. 23:7: *The innocent and just you shall not kill.* St. Thomas, 2. 2. q. 64, a. 2, ad 3, a. 6; L. 393; Struggl 11, 32; Lugo D. 10, n. 104.

737. **Resolutions:** First, it is not licit to kill the lethally wounded, nor any other dying persons, lest they suffer longer; nor the rabid, lest they harm others, provided they can otherwise be restrained from harming. The reason is that from the known maxim, evil things are not to be done in order to obtain good.

Second, it is not licit to kill an innocent person to satisfy a tyrant demanding his death, even under penalty of the city being overthrown, and even if he were to consent to his own death, because he does not have dominion over his own life. Yet more probably he could be compelled to hand himself over to the tyrant for the public good, and probably, if he were unwilling, even be handed over. L. 393; Struggl 11.

But it would be otherwise if the tyrant demanded a girl for defilement, or sacred books for burning. For each is intrinsically evil. In the former case the girl would be exposed to proximate danger of sinning; in the latter contempt of God would be had. Cf. Lugo D. 10, nn. 114-116.

Third, it is not licit to kill envoys or hostages, even if enemies who sent them have not preserved pledged faith, and have unjustly killed hostages or envoys sent to them; because they are innocent. L. ibid.

738. **Is it licit at least indirectly to concur in the death of an innocent person?** It is licit, for a grave cause, to place an action good in itself from which, beyond the intention, the death of an innocent person follows. The reason is that then from a proportionate cause the death of the innocent person is merely permitted.

739. **Resolutions:** First, in war it is licit to direct cannons against the positions of enemies, although from this even some innocent persons will suffer death, because their death follows beyond the intention. L. 393.

Second, if you cannot flee death while an enemy is pursuing except by a narrow path on which someone sitting there would be crushed, it is nevertheless licit to flee with his danger and destruction beyond your intention, provided nevertheless that if he is an infant, he is baptized. The same must be said if an aggressor protects himself with the body of an infant placed before him. Lugo D. 10, nn. 124-127; Struggl 13; L. 393, 569.

740. **Note:** First, one is not guilty of homicide who, even without cause but with diligence applied, places an action otherwise illicit which does not of itself bring death, although it is dangerous, but death rarely happens from it. For then the homicide is altogether fortuitous and involuntary; for example if a cleric occupied in prohibited hunting kills a man by accident, provided he employed due diligence lest this happen.

But it is otherwise if he places an action which, although it does not of itself bring death, nevertheless is commonly dangerous, even if diligence is applied for preventing harm. For it is voluntary in cause, provided nevertheless that he foresees it at least confusedly; for example if someone throws stones with a sling in a public road. Inst. l. 4, t. 3, §§ 3, 4, 5; St. Thomas, 2. 2. q. 64, a. 8; L. 398.

Second, under the name of voluntary homicide, where there is question of reservation, homicide culpable in any way whatever is not understood, but homicide sought by study and procured by industry. Otherwise that addition would be altogether useless. Cf. Ithur. case 40, nn. 19 ff.

741. **Is it licit to kill a drunken or insane aggressor?** Answer: Affirmatively, more probably, unless it is established to you that he is in the state of mortal sin. But the case in which this is certain is most rare. The reason is that although a drunken or insane person is not formally your unjust aggressor, nevertheless he is materially unjust, and you preserve your right of repelling force by force. The right of defense arises from the right to one's own life, not from the injustice of another.

But if you certainly know, which is most rare, that he is in the state of lethal sin, from which he will be able to rise after the frenzy or drunkenness, and on the contrary you morally believe yourself to be in the state of grace, since he is in extreme necessity, charity demands that you prefer his eternal salvation to the conservation of your temporal life. But nothing prevents you from striking or wounding him in such a way that, with his life preserved, you take away from him the force of harming. Lugo D. 10, n. 143.

V. On The Procuration of Abortion

742. **What is abortion?** Abortion is commonly defined: the ejection of an immature fetus. Immature, that is, not yet apt for viable birth, in such circumstances of the time of gestation that the fetus, although still living when it comes forth into the light, nevertheless must necessarily die quickly.

Therefore abortion and mere acceleration of birth are not in fact the same. In acceleration of birth the fetus is not immature, and although it comes forth into the light before the completed time of gestation, it can nevertheless live naturally. Abortion properly has place in the first seven months of gestation; in the remaining two months it is mere acceleration of birth, commonly speaking and from the general rule.

Ejection of the fetus: therefore abortion is properly distinguished from any action which of itself and first is not ejective of the fetus, but injurious to that same fetus, such as that surgical operation which is called craniotomy and embryotomy, because it is the cutting of the skull of the infant, or fetus, in order to extract him from the mother's womb.

743. **How many kinds of abortion are there?** The ejection of a fetus can be procured in two ways: first, directly and of itself; second, indirectly and accidentally.

Direct procuration of abortion, or of the ejection of the fetus, is had by applying a means or medicine of itself efficacious and of itself first ordered to expelling the fetus, such as strong exterior compressions of the abdomen, or the cutting or rupture, by the help of some instrument, of the afterbirth, or of that leathery membrane in which the fetus is enclosed and swims in fluid; with this taken away, he can no longer live there, but is necessarily ejected.

Therefore direct procuration of abortion is here understood not only by direct intention, insofar as someone intends the ejection of the fetus, but also by direct exterior action, insofar as this tends efficaciously of itself and first to expelling the fetus.

Indirect procuration of abortion is had by applying a means or medicine ordered of itself and first to conferring health on the mother, from which nevertheless the expulsion of the fetus also follows; or also by applying a means or medicine from which both the health of the mother and the expulsion of the fetus are equally had. Of the former kind are certain irritating and violent medicines which of themselves and first tend by their own efficacy to correcting bad humors and bad dispositions of disease, but consequently also procure abortion. Of the latter kind are those remedies which cause relaxation of fibers, such as a bath, flow and emission of blood; whence, at the same time that health is consulted, abortion is produced by one and the same cause. This indirect procuration of abortion is indirect at once in action and intention. But someone can, with direct intention toward procuring abortion, apply a means indifferent of itself and ordered of itself to another honorable end.

744. **Is indirect procuration of abortion licit?** It is sometimes licit indirectly to procure abortion, or rather to permit it, namely by supplying to a mother laboring under a grave disease remedies of themselves fit for curing the disease, even if abortion can consequently follow; or remedies equally fit of themselves for curing the disease and harmful to the fetus.

This is proved first from the common doctrine of theologians. L. l. 3, n. 394; Struggl tr. 7, q. 3, n. 15; Sanchez, *de Matr.* l. 9, D. 20, nn. 13 ff.; Diana tr. 6 *de abortu*, R. 38 ff. Moreover, when some remedy, by itself and by one and the same efficacy, can produce both effects at once, of healing the mother and killing the offspring, whether primarily the health of the mother and consequently abortion follows, or these effects are parallel to one another, one is not necessarily assumed in reality or intention as a means for procuring the other. Therefore there is then the case of a good or indifferent action from which a double effect follows, one good, the other evil; and it is lawful to place this action if the end of the agent is honorable, that is, if he does not intend the depraved effect, and a proportionately grave cause is present.

It is sometimes licit: namely if there is question of a lethal disease of the mother, whose life to be preserved is a proportionately grave cause with respect to the temporal life of the offspring. "It is certain," says St. Alphonsus in the cited place, "among all, that it is licit to provide a remedy to a pregnant woman, directly for curing her even with danger of abortion, if the disease is mortal; otherwise if it were not such." And below: "If it tends directly to saving the life of the mother, as would purging of the body, opening of a vein, a bath, etc., these are certainly licit when otherwise it is judged morally certain that the mother will die with the offspring," namely if the remedy is not applied; or when the danger of abortion would be equal whether the remedy is applied or not; or when it is morally certain that the fetus is not yet animated, as can be held at least for the first days of conception. The reason is that then the health of the mother is consulted without greater danger

to the offspring; and because in equal necessity the mother can look more to herself than to the offspring. And the necessity is equal, for no hope of procuring baptism for the offspring is present in the first and third case; but that hope is equal in the second case.

On the contrary, the necessity is not equal when the death of the mother is indeed certain if she does not take the medicine; but if she takes it, the death of the offspring is certain not only temporal but also eternal, because baptism will not be able to be administered to him, while it could certainly be administered if the mother abstained from the medicine, because the offspring will certainly survive the dead mother. And then "the mother is certainly held by the order of charity to abstain from the medicine and to prefer the spiritual life of the offspring to her own bodily life." L., cited place. And "thus also from the same charity she is held to abstain when there is doubt about the safety of the mother and of the offspring," L., cited place, namely when it is doubted whether, with the medicine neglected, the mother can be healed, and whether, with the mother perishing, the offspring can survive and be baptized.

"And even if the death of the mother were morally certain if she does not take the remedy, not even then would I dare to permit medicine to her if some reasonable hope shone forth that, once the mother had died, the offspring would survive and could be baptized; because it is licit for no one, in order to protect his own temporal life, positively to expose a neighbor constituted in necessity to danger of eternal death. But I think it must be said otherwise if there were no reasonable hope concerning the life of the offspring after the death of the mother, such that it could be led to the grace of baptism; because then charity does not seem to oblige the mother placed in extreme necessity to neglect her own life by abstaining from remedies because of a slight and most remote hope of the life of the offspring." L., cited place.

And here, as to practice, the holy Doctor notes in the cited place that "physicians, as to medicines to be provided to mothers, are not to be vexed scrupulously, because it is most probable that the case is very rare, and morally impossible, and almost a miracle, that with the mother perishing, the offspring survive so as to be able to receive baptism." Yet this matter is not to be so neglected, because not once only has it also happened that through the skill of surgeons, as soon as the mother exhaled the spirit, the mother's womb was cut open and living offspring was extracted and baptized.

745. **Is direct procuration of abortion licit?** In no case ever, or for no cause, is it licit directly to procure abortion, even if the fetus were supposed still inanimate. This is proved:

First, if the discussion is about direct procuration of abortion improperly so called, namely through means or medicines by which one tends directly to harming and killing the fetus or infant, as, for example, when physicians by the help of forceps crush the skull of the little infant in the mother's womb itself, so that the dead fetus may afterward be violently extracted; true homicide is had, directly intended and directly exercised, which is never licit.

Second, if the discussion is about direct procuration of abortion through means or medicines which directly cause only premature acceleration of birth, from which the offspring, necessarily and from the laws of nature themselves, must succumb to death, "after animation this would be directly to kill the infant, which is never licit." For by positive action to eject an immature infant outside the womb is positively to withdraw from him the means instituted by nature itself for the conservation of his life, which is directly to kill someone. "But before animation it is not licit directly to procure this

either, just as it is not licit to procure the emission of seed even to save life, in which case Tertullian seems to speak in *Apol.* c. 3; for he gives a universal reason: he who will be a man is a man, he says, for the fruit is in the seed." Lugo, *de Iust. et Iure* D. 10, n. 130. Therefore, since even a non-animated fetus is ordered to forming a man, its ejection is anticipated homicide. Hence Ithur. case 21, n. 5 says: "most certainly, direct procuration of abortion is always infected with grave malice."

Third, there are indeed several grave Doctors, whom Sanchez follows and reports, *de Matr.* l. 9, D. 20, n. 9, and Struggl tr. 7, q. 3, n. 16, who think that directly procured abortion, where nevertheless there is question only of mere premature ejection of an inanimate fetus, is not so intrinsically illicit that at least in the case of preserving the life of the mother, extremely endangered by a present disease, it would not be licit. Indeed Doctors are not lacking who defend the direct procuration of abortion even of an animated fetus in the aforesaid case, "which opinion the distinguished D'Annibale formerly judged not improbable," part 2, n. 284, 3rd ed. But this opinion is altogether excluded by the decrees of the Holy Office concerning the illicitness of craniotomy. For in reality there is no difference between the killing which is had through craniotomy and between abortion of this kind. For who would deny that he equally kills a man who pierces him through, and he who throws him down from a tower, and he who drowns him in the sea? That opinion is moreover rejected by the decree of the Holy Office, July 24, 1895, by which the illicitness of abortion itself is expressly declared.

VI. On Duel

746. **What is a duel?** A duel strictly so called, and as it is prohibited by canon law under grave penalties, is a fight between two or a few, undertaken by private authority and from agreement, with danger of killing, mutilation, or grave wound.

Between two or a few, namely in equal number; and thus it is distinguished from war, which is of many against many.

By private authority: for by public authority it is licit, as was that of David with the giant Goliath, and of the Horatii with the Curiatii, since a fight of a few is no less licit than a fight of many if each is undertaken by public authority for the common good.

From agreement: namely that by common consent it indicates place and time; and thus it is distinguished from a brawl, which supposes no preceding pact. Weapons must also be designated for penalties to be incurred. For this is the ordinary custom of duels, that weapons also be designated. Therefore the Roman Pontiffs prohibiting duel and establishing penalties against those dueling are to be judged to speak about such a fight.

With danger, etc.: so that from the notion of duel strictly so called are excluded all those fights inept for inflicting grave injury, as those which are done with light rods or other instruments not ordered to killing or gravely wounding, although in such a fight someone is accidentally injured.

Hence it is clear that there is indeed illicit action and mortal sin, yet not a duel strictly so called and consequently not subject to the penalties of law, when two men, inflamed with sudden anger because of an injury and provoking one another to a fight, immediately come together, although from the same impulse of anger and revenge they immediately go together to some suitable place. The reason is that thus the provocation and fight are not morally two actions, but only one; and therefore there is

not properly a fight from prior agreement or designation of time and place. Struggl 55 ff.; La-Croix l. 3, part 1, nn. 843 ff.; L. 399, 401.

747. **Is duel licit?** Duel is intrinsically evil and mortal. This is proved: first, for it repugns natural law advertently and by private authority to expose oneself and another to proximate danger of killing, mutilation, or wound; for the right of God is usurped, who alone is Lord of life. Second, Trent, sess. 25, c. 19 *de R.*, teaches: "the detestable use of duels was introduced by the devil's manufacture, so that from the bloody death of bodies he might gain also the destruction of souls." L. 399, 400, 401.

748. **Resolutions:** It is not licit to accept a duel lest someone incur among others a mark of timidity and ignominy. Indeed it is not licit to accept it although one would be deprived of office and sustenance. For what is intrinsically evil can never be licit. Cf. proposition 2 condemned by Alexander VII and the propositions condemned by Benedict XIV. L. 400, 401; E. M.

749. **Is duel also illicit if a condition is added that it be ended at the first blows inflicted; or if someone merely simulates it, although he certainly knows a fight will not follow?** Answer: Affirmatively.

As to the first, even in that case there is the greatest danger of a lethal wound, as experience itself establishes. Moreover Clement VIII, in the bull *Illius vices*, has this: "By Apostolic authority and by the tenor of the present letters we decree and declare... that those are held by the same penalties of reserved excommunication, of the decree of Trent and the constitutions of the other Pontiffs, between whom pacts have been entered concerning the ending of the combat when first one or the other has been wounded, or has shed blood, or a certain number of blows has been inflicted on each side." Moreover this kind of duel creates scandal and offers occasion for fatal duels.

As to the other, because then one sins by furnishing at least to the other scandal and occasion of sin. Moreover he sins by furnishing scandal and occasion of sin also to others; for those who undertake a duel in an appointed place can rightly be believed by others to be about to contend in a duel. Moreover the laws of the Church prohibit not only killings, but also intend to exterminate the detestable use of duels; but even fictitious duels repugn this end. Reuter part 3, n. 380.

750. **Can duel at least sometimes be licit?** Duel is indeed licit in all those cases in which there is question of defense of oneself against an aggressor; for then in reality it is not to duel, but to repel force by force, which all laws concede.

Hence Struggl n. 65 says, "A duel can become licit if a duel against an unjust aggressor must necessarily be undertaken for defense of life, or of enormous goods; as if someone actually threatened you with certain death, plundering of goods, or burning of the house, unless you actually enter a duel with him; for it is licit to defend oneself against an unjust aggressor of life and enormous goods, otherwise irrecoverable."

And, where there is question not of defending life itself and goods, but of defending honor itself, the same theologian had previously handed down these things, n. 61: "If therefore the one provoked to a duel is a noble man, knight, or soldier, to whom flight from the provoker and actual aggressor would be very ignominious, it is licit for him to say to the one provoking, even by taking a sword in hand: I

will defend myself with this sword wherever you seek me, which also here I will do if you attack me; but to go out to the appointed place is not of a Christian man, as being against the law of nature, of God, and of the Church. The reason is: because such a man is not held from charity to flee with so grave an inconvenience of honor and mark of timidity; and therefore he can licitly stand, and by standing defend himself; for thus before an actual duel he would conduct himself merely defensively. Yet if danger of wounding from behind, or grave ignominy, were not imminent to some other person from flight, he would be held to flee; as the same La-Croix 841 teaches with others."

VII. On War

751. **What is war?** War is a fight of a multitude against an external multitude, undertaken by the legitimate authority of the prince, for defending the good of the republic or for vindicating an injury inflicted on it.

War differs from brawl because brawl is, among private persons, of a few or individuals against a few or individuals. It differs from sedition, because sedition is of a multitude against a multitude in the same republic or society. Brawl proceeds from an inordinate will. And therefore brawl always imports sin. And in him who attacks another unjustly, it is of itself mortal sin; for to inflict harm on a neighbor, even by manual work, is not without mortal sin. But because sedition has a special good to which it is opposed, namely the unity and peace of the multitude, it is a special sin. St. Thomas, 2. 2. q. 40, a. 1; q. 41, a. 1; q. 42, a. 1.

752. **How many kinds of war are there?** One war is defensive; another offensive.

Offensive war pertains to vindicative justice, and cannot be undertaken except by authority of the supreme prince.

But defensive war looks only to this: that force inflicted by another republic be repelled by force. "Moreover, since all laws permit that force inflicted by injury be repelled by force, hence defensive war can be undertaken not only by public authority, but also by private authority of those attacked by an enemy, as is had in L. 3 ff. *de Iust. et iur.* Meanwhile, however, between war undertaken by private and public authority there is this difference: that those fighting in defensive war by private authority are held to the moderation of blameless defense, standing in necessary and sufficient defense alone. On the contrary, those fighting in defensive war undertaken by public authority can justly proceed further offensively to vindication of the injury inflicted." Struggl 40; L. 402; St. Thomas, 2. 2. q. 40, a. 1.

753. **Is war licit?** The liceity of defensive war is clear from this, that if it is licit for a private person to repel force by force, the same will certainly be licit for the whole society.

But the liceity of offensive war, if the due conditions concur, is established both from the common authority of Catholics and because by natural law it is licit not only to repel an injury while it is being unjustly inflicted on someone, but also by public authority to vindicate and remove it after it has been inflicted, lest thereafter it be inflicted again. But supreme princes, who do not have on earth a superior judge, cannot vindicate injuries inflicted on them by another prince except through offensive

war. Therefore. C. *Iustum* 1, c. 23, q. 2; C. *Dominus* 2, ibid.; Struggl 41; Ithur. case 40, n. 13; L. 402; St. Thomas, 2. 2. q. 40, a. 1; E. M.

754. **What conditions are there for beginning, continuing, and ending war licitly and justly?** Answer to the first: first, public authority, that is, supreme authority recognizing no other superior in civil matters. The reason is that where a greater authority is had, this ought to judge the dispute. St. Thomas, 2. 2. q. 40, a. 1.

Second, a just and grave cause, which is preponderant over the inconveniences that will follow from war; for example a kingdom or province to be recovered, or a grave injury of the republic to be repelled, or a rebellion of subjects to be repressed, etc. For since from war so many evils come to the body and soul of many, it is to be attempted only in extremities. L. 403; St. Thomas, 2. 2. q. 40, a. 1.

Third, morally certain right. The first reason is because a possessor in good faith cannot be despoiled of the thing possessed unless it is established that he unjustly retains it. The second is because for placing the cause of most grave evils, both of private persons and of society itself, such as killings, injustices, corruptions of morals, and other things of this kind which ordinarily follow war, moral certainty of one's right seems to be required. Thus far more probably and more truly St. Alphonsus 404, Palaus, Tamburini, and others, against several others, of whom some think that greater probability alone suffices, while others think equal probability suffices. But theologians commonly teach that lesser probability by no means suffices.

Fourth, that before war condign satisfaction be required from the adverse party; if this is offered, it must be accepted from justice. For where war ceases to be necessary, it also ceases to be just. L. 405; Verricelli, tr. *de Apost. Mission.*, t. 13, q. 182, s. 17, § 13.

To the second: Even after mutual aggression and conflict, when some have already fallen on the side of him who wages a just war, condign satisfaction must be accepted and war interrupted if that satisfaction is offered by the adversary prince. If not from the rigor of justice, then at least for the most part from charity, provided the other party wishes to compensate all expenses already made, and it is not necessary for the public good that his insolence be checked. L. 405; Laymann l. 2, tr. 3, c. 12, n. 5. The first reason is that then war already ceases to be necessary to the end. The second reason is that, since in vindicative war, when several have already fallen, it is almost impossible to give condign satisfaction, the offended prince is not held from justice, but rather from charity alone, to desist from war actually begun and to accept satisfaction, as Laymann notes with others in the cited place.

To the third: In offensive war, after the thing owed has been recovered and every indemnity, or after the injury has been sufficiently vindicated, the victor is held to accept peace furnished with just conditions. The same is true of the victor in defensive war, after he has sufficiently vindicated the injury inflicted on him. The reason is that excess would be against the right of vindicative justice, indeed even commutative justice. Moreover the end of war is peace and security. Therefore, once these are sufficiently obtained, one must desist from war as from an atrocious means. Moreover the conquered party also, accidentally, is often held to accept peace, lest he expose himself and his subjects to greater danger, misfortune, or intolerable inconvenience. Struggl 44.

755. **What is it licit to do against the enemy in war?** In a just war it is licit to do all things against the enemy which are necessary and apt for obtaining the just end of the war, yet according to the mandate and express or tacit will of the commander of the war. Laymann n. 9; Sporer 112. The reason is that he who has a right to the end also has a right to the necessary and apt means. Therefore in a just war it is licit to do against the enemy all things which are necessary and apt for obtaining the just end of the war. Which are necessary and apt: for other things harmful to the neighbor which are not necessary for such an end cannot justly be inflicted, and the harm must then be repaired. Struggl 45; L. 409.

756. **Resolutions:** First, in a just war it is licit to use ambushes and stratagems. St. Thomas, 2. 2. q. 40, a. 3. These are not reputed lies, because the adversaries are deceived by their own fault, since those means are customarily applied in war. But frauds are illicit which cannot be guarded against by prudence. It is licit to deprive cities of water; but it is not licit to infect wells and fountains with poison, directly to kill the innocent, to kill envoys, cf. 737, who are everywhere inviolable by the law of nations, and likewise to suborn assassins who would secretly slaughter the prince or commander of the army.

Second, the use of any kind of arms is licit, provided these are not poisoned.

It is licit to besiege cities and fortresses, to discharge cannons against them, indeed sometimes to destroy or burn monasteries and churches, to despoil and kill in them, if, for example, enemies use a church as a fortress for defending themselves.

Likewise it is sometimes licit to give a captured city to plunder, but only for most grave reasons. Yet this is not licit to soldiers by their own authority, but it is necessary that legitimate permission be present. And then it is in no way licit directly to kill the innocent, under whose name come boys, women, old men, travelers, clerics, country people, merchants, etc.; because these have committed nothing for which they could be deprived of life, nor are they actual or proximate aggressors. Moreover it is not licit of itself to despoil innocent travelers of goods either, because they are guilty neither in themselves nor in society. Likewise, when a city is given to plunder, monasteries, churches, and pious places are always excepted.

But immovable goods by the law of war yield to the prince or republic. Movables by usage belong to the first taker, unless there is custom or law that part yield to the prince and community, or that all be placed in common, and distribution be made to individuals with due proportion.

Fourth, besides spoils, reprisals are also licit. These are the occupation by force and retention of persons or things of enemies, which by chance or design come into the hands of the other party, since they are a certain species of compensation and war. They are licit, provided nevertheless: first, it is manifestly established that citizens of the other republic have done injury; second, if their superiors, when asked, refuse to administer justice; third, if it is established that they culpably refuse this; fourth, if the supreme prince, the cause having been known, grants it; fifth, if no more harm is inflicted than just satisfaction requires; sixth, if they are not committed against ecclesiastical persons. C. *Etsi* unique *de Iniur.* in 6.

Fifth, in the conflict or attack itself, it is licit to kill all who fight against one or exist in arms, of whatever condition, state, or sex, until they give themselves as captives and perfect victory is

obtained. But after conflict and victory obtained, it is also sometimes licit to kill captured or surrendered guilty persons, namely if before this they have merited death by some crime; or if this is necessary for establishing peace and security or vindicating injury, unless they surrendered with an agreement of preserving life; or unless they are clerics, even guilty ones, whom after conflict a secular prince may in no way kill because of their immunity. C. *Miles* 13, c. 23, q. 5; L. 409, 410; Struggl 47 ff.; Ithur. case 40, nn. 14, 17; Laymann l. 2, tr. 3, c. 12, nn. 7, 9 ff.

757. **Can Catholic princes in war call heretics or even gentiles to aid?** The first opinion universally affirms. The second opinion absolutely denies. The third opinion affirms that of itself it is licit; yet accidentally, by reason of scandal and harm to religion, which for the most part is present, it is illicit. "This third opinion," says St. Alphonsus 406, "is indeed speculatively probable, but the second seems altogether to be held in practice. The reason is that it is morally impossible that, once a society has been contracted with enemies of the faith, the aforesaid harms will not come to religion."

758. **Can soldiers make war with doubt about the justice of the war?** Either there is question of soldiers who are subjects; or of non-subjects; or of hired soldiers.

If the first, they are held to obey the prince commanding until they are altogether certain of the injustice of the war; for subjects are held to obey where sin is not certain. Then in the proposed case they ought to presume the war as just where the contrary does not clearly appear. Namely, the right of the superior possesses, so that, as Augustine teaches, "perhaps the iniquity of commanding makes the king guilty, but the order of serving shows the soldier innocent." L. 22 *cont. Faust.* c. 75.

If the second, they ought not to serve as soldiers unless they become certain of the justice of that war; for since there is question of harm to a third party, and indeed most grave harm, it cannot be inflicted on him before the injustice of the possessor is established.

If the third, either they were already hired before war was declared, and the same must be said as about subjects; or after, and what was said about non-subjects holds. L. 407, 408; Ithur. case 40, n. 16; Tamburini, *Explic. Dec.* l. 6, c. 1, part 1, n. 9; Lugo, *de Iust. et Iur.* D. 10, n. 144; Laymann, cited place, n. 8.

759. **Is it licit for clerics to make war?** Outside a case of necessity, clerics are prohibited by canon law under penalty of irregularity from fighting by their own hand in war. C. *Clericum* D. 50; C. *Eos qui* c. 20, q. 3, etc. Outside a case of necessity: for in certain cases of necessity, clerics can fight by their own hand in war without the permission of the Pope and without the penalty of irregularity. Struggl 54; Laymann, cited place, n. 19; St. Thomas, 2. 2. q. 40, a. 2.

760. **What special obligation is present for a prince and commanders in time of war?** Princes and commanders, especially in time of war, are held to take care that soldiers observe the precepts of morals and religion, lest they be present to peoples as scandal or harm. Likewise they must pay their stipends to them by right administration, and distribute burdens upon citizens with due equity if soldiers ever stay overnight and dwell among them; otherwise they themselves are held to compensate harms both to soldiers and to others who have received harms from soldiers, since they are the unjust and effectively moving cause of all these things.

Likewise some restitution is owed by the republic to citizens who have suffered enormous harm in time of war. For the right of war excuses not those things which are done to citizens, but those which harm the enemy. Nor indeed is it equitable that some be more burdened than others, since there is question of a good common to all. For the same reason contribution is customarily made if the goods of one person have been thrown into the sea so that the things of others may be saved. Luke 3:14; L. 405, 407; Laymann, cited place, n. 18.

761. **When war has been completed, are the parties held to observe public pacts extorted by the force of war and victory obtained?** Gury, case 410, responds affirmatively to this question: "The reason is," he says, "because public treaties have been introduced by the law of nations, common to the whole human race, since the common good of the human race demands this. For unless public pacts between so many diverse princes, and between magistrates and subjects, were to be observed in every way, no peace or stable society could subsist, but a way would be opened to perpetual wars and killings."

Reuter has the same opinion, which he affirms to be common, saying part 3, n. 510: "Public faith given to an enemy, even one waging an unjust war, must be observed, provided the treaty is not objectively evil."

Lugo has these things about the same question: "In war, because of the public good of peace and the security of kingdoms, pacts must be observed on each side when they are made without coercion and fear; otherwise, since each presumes that he has a just cause of war, pacts of this kind would never be observed, which would be the greatest impediment to composing peace. Thus also for the same reason impunity and indemnity are owed to public orators and envoys, because otherwise no treaty concerning peace could be had, which would be a great inconvenience." *De Iust. et Iur.* D. 37, s. 15, n. 179. And St. Thomas, 2. 2. q. 40, a. 3, says: "someone can be deceived from the deed or word of another because something false is said to him, or a promise is not preserved; and this is always illicit; and in this way no one ought to deceive enemies; for there are certain rights of wars, and treaties to be observed even among enemies themselves." C. *Noli* 3, c. 23, q. 1; Laymann, cited place, nn. 15, 16.

On the Sixth and Ninth Precepts of the Decalogue

I. On Non-Consummated Acts

762. **What are the sixth and ninth precepts of the Decalogue?** The sixth and ninth precepts of the Decalogue are: "You shall not commit adultery... You shall not desire his wife," that is, your neighbor's wife. Ex. 20:14, 17.

By the sixth precept of the Decalogue are prohibited all things which are repugnant to the ordered propagation of the human race. For all these are reduced in their own way to adultery, as to the primary act repugnant to this ordered propagation. By the ninth precept, however, every interior concupiscence of those external works which had already been prohibited by the sixth precept is prohibited.

Therefore both these precepts prohibit lust, which is an inordinate appetite or use of venereal things. St. Thomas, 2. 2. q. 154, a. 1; L. 412, 414.

763. **What is the malice of lust?** The malice of lust consists in this: that man uses venereal things, that is, the commotion of the genital spirits and seed, which by nature and by God as author of nature is ordered to the due propagation of the human race, inordinately for pleasure or for some other perverse end. Inordinately means outside marriage, or in marriage against the laws of marriage.

764. **Is lust a grave sin?** Lust of whatever kind or species is, of itself, a grave sin. The reason is: first, because it gravely fights against nature. For the use of a venereal thing is by its nature instituted and necessary only for the conservation and propagation of the human race; therefore it cannot be usurped outside marriage, and not even in marriage except in the due manner, without grave disturbance of right order.

Second, because it is prohibited under grave obligation by God, the Author of nature, as is clear from innumerable passages of Sacred Scripture; thus Gal. 5:19: "The works of the flesh are manifest, which are fornication, uncleanness, immodesty, lust... of which I foretell you, as I have foretold, that they who do such things shall not obtain the kingdom of God." L. 14; St. Thomas, 2. 2. q. 153, aa. 2, 3.

765. **Does directly voluntary lust admit smallness of matter?** Directly voluntary lust in any kind never admits smallness of matter. The reason is that any directly sought delight necessarily brings in a subversion, in a most grave matter, of the natural order established by the Creator. This is also clear from proposition 40 condemned by Alexander VII. Sporer, *de Matrim.* nn. 689, 690; L. 415, 416; St. Thomas, 2. 2. q. 153, aa. 2, 3; E. M.

766. **Does indirectly voluntary lust admit smallness of matter?** Response: affirmatively, because then there is no consent or direct intention toward venereal pleasure, but only toward the cause, which is lightly or gravely sinful according as it lightly or gravely influences delight. L. 482, 483; cf. 37-40.

767. **To what virtue is lust opposed?** Lust is directly opposed to chastity, which, taken generally, is the moral virtue which moderates the inordinate appetite and use of venereal things. A part of chastity, and indeed the most perfect part, is virginity, which imports two things: integrity of body, and integrity of mind, or the purpose of preserving that integrity of body perpetually.

Indeed, three kinds of chastity are to be distinguished: conjugal, widowed, and virginal. Conjugal chastity is that which in marriage uses licit pleasures moderately. Widowed chastity is that which, after the death of a spouse or after virginity has otherwise been lost, abstains thereafter by firm purpose from the appetite and use of venereal things. Finally, virginal chastity is that which proposes perpetually to abstain from all carnal pleasures, both illicit and those licit in marriage. St. Thomas, 2. 2. qq. 151, 153.

768. **How is virginity lost?** Virginity is physically lost in a girl by the opening or breaking of the virginal enclosure, and in a male by the pouring out of seed; but morally it is lost by both female and male through voluntary pollution. Nevertheless, as to political status and in the face of the Church, a girl remains a virgin so long as the enclosure of virginity has not been

violated by intercourse, and a male so long as he has not carnally known a woman. Tamburini, *Explic. Decal.* l. 7, c. 5, nn. 2, 3; Laymann, l. 3, S. 4, nn. 7-9; Sporer, after Tract V, Appendix to the sixth precept, n. 6; St. Thomas, 2. 2. q. 152.

769. **How many kinds of delight are distinguished here?** In this matter two kinds of delight must be distinguished: one venereal, which is also called carnal; the other sensible. Venereal delight is felt in the genital parts through the commotion of the genital spirits and seed. By contrast, sensible delight is felt in the other senses from their application to their object and from the proportion of the object to the proper sense.

Sensible delight appears in two ways: one is purely such; the other is sensible-venereal. Sensible delight purely such is that which arises from an object which precisely of itself is not apt to move one to venereal delight, for example the delight which arises from the touch of silk, the smell of a flower, the hearing of music, or the taste of sugar. Sensible-venereal delight is that which arises from an object which of itself in some way is apt to move one to venereal delight, for example the delight which arises from the touch or embrace of a woman, from her kiss, and the like. L. 412, 413, 415.

770. **Is venereal delight licit?** Deliberately voluntary venereal delight among persons for whom intercourse is illicit properly belongs to lust, and is a grave sin from its whole genus, not admitting smallness of matter, as is clear from n. 765.

771. **Is purely sensible delight licit?** Sensible delight purely such does not properly pertain to lust, but to sensuality, and of itself it is not evil but indifferent. Nor can any other malice be found in it than that which is generally present in an act which is not referred to a rational end; such would certainly be the case if someone not only acted with that delight, but also for that same delight, positively excluding a further honest end of the work.

772. **Is sensible-venereal delight licit?** Sensible-venereal delight either by its nature proximately disposes to venereal delight, or only remotely. If proximately, it is of itself a grave sin because of the proximate danger of venereal delight. If remotely, it does not of itself exceed venial sin, if it is directly intended, because of the inordination which is directly intended in it, though not grave inordination, since the proximate danger of venereal delight is absent. Struggl 4, 7; Tamburini, *Expl. Decal.* l. 7, c. 8, n. 1 ff.; Sporer, *de Matr.* nn. 686-688, 691; L. 416.

773. **How is lust distinguished?** Lust is either interior or exterior. The former is the voluntary occupation of the imagination, intellect, and will by joy, morose delight, or desire of a venereal thing for the sake of pleasure. The latter is the very use of venereal things for the sake of pleasure, and it is multiple in species. For one kind is in non-consummated acts, another in consummated acts, which differ in species from the former; and both the lust which is in consummated acts and that which is in non-consummated acts are subdivided into other species according to the specific diversity of objects.

Consummated acts in this matter are those acts which reach as far as the pouring out of prolific humor. Acts which do not reach this terminus are non-consummated; properly they are acts of sensuality and immodesty. St. Thomas, 2. 2. q. 151, a. 4; q. 154, a. 1 ad 5; q. 155, aa. 2, 3, 4; L. 412. The non-consummated acts of lust are foul looks, hearings or conversations, to which foul readings are reckoned, foul smells and tastes, and finally touches.

774. **What about obscene looks?** The voluntary and deliberate looking at very obscene things which by their nature proximately dispose to venereal delight is, unless it is done from a just cause, of itself speaking a mortal sin. But the looking at less obscene things, which by their nature only remotely dispose to venereal delight, is, unless it too is done from a just cause, of itself speaking only a venial sin.

The reason for the first part is that one acting thus exposes himself to the proximate danger of venereal delight, which is gravely sinful; and so he sins gravely. The reason for the second part is that, although the object is somewhat immodest and therefore the action concerning it illicit, nevertheless it does not bring the proximate danger of venereal delight; hence that action is not gravely illicit. L. 420 ff.

775. **Resolutions.** First, the viewing of obscene pictures, if it is done in passing and from mere curiosity, and if the proximate danger of consent to foul delight is absent, is not held as mortal. This can more easily be admitted by reason of custom with respect to images and sculptures representing angels naked or nearly naked, as many are displayed in Christian churches. But lingering looking at those same pictures does not seem capable of being excused from grave sin, because of itself it gravely influences foul delight. L. 424.

Second, of itself speaking, and with evil intention or danger of consent excluded on account of special frailty, it does not exceed venial sin to look from levity and a certain curiosity at the shameful parts of animals and at animals mating. Struggl 12; L. 419.

Third, it is not mortal to look at one's own genitals if this is done briefly; otherwise, if it is done studiously and lingeringly. L. 419. "It is not mortal of itself, short of danger of venereal consent, to look at the private parts of a person of the same sex, unless the one looking were very inclined to sodomy, or unless a beautiful youth were looked at naked." L. 420, 421. Or again, unless it is done studiously and lingeringly.

Fourth, looks at the honorable parts of a person of the other sex, even a beautiful person, are not of themselves sins. Therefore, if a look of this kind is done from simple courtesy or another honest cause, there is no sin at all. But if such looks are done from curiosity or with some lingering, they are of themselves venial sins. Long looks are not excused from mortal sin if they involve proximate danger of consent to foul concupiscence, especially if commotion of the spirits arises, and all the more if the person is loved with inordinate love. L. 422; Sanchez, l. 9, D. 45, n. 20.

Fifth, looks at the less honorable but not shameful parts of a woman, namely breast, arms, legs, are not of themselves mortal sins if they are done in passing, with the special proximate danger of depraved consent always excluded. But if the looks are done studiously and lingeringly, so that there is proximate danger of consent to venereal delight, it is grave. Therefore generally those are not to be excused from mortal sin who without cause look with notable delay upon the bare breasts of a beautiful woman, because of the danger annexed to such a look. But those do not sin gravely who, with special danger excluded, look at mothers or nurses feeding infants, or who fix their eyes upon the uncovered breast of a woman who is old or not yet formed. L. 423; Sanchez, cited place and D. 46, n. 26.

Sixth, looks at the private parts of the other sex or at parts near them are ordinarily mortal sins, unless perhaps the sight is from afar and for a very brief time, because prolonged looks of this kind of themselves gravely influence foul delight. Nor are you excused from grave sin if you look at shameful parts through a very thin and transparent veil, because such a look almost increases lust rather than diminishes it.

They except: first, if the one looking is a child, very old, or very cold in temperament, because such persons are little moved. Second, if the eyes are fixed on an infant, because this little moves one. Hence maidservants and nurses are not considered to sin gravely when they thus look at children entrusted to them, unless they do it lingeringly or repeatedly and with depraved affection. Likewise it is a grave sin deliberately to look upon a person of the other sex wholly naked, unless the look were only slight, in passing, or from afar; or to look at married persons having intercourse. Sanchez, l. 9, D. 46, nn. 23-25, 29; Laymann, l. 3, S. 4, nn. 10, 14; Struggl 12; L. 420, 421.

Seventh, all the aforesaid looks, which are lightly or gravely sinful, lack all fault if they are done from proportionate utility and necessity, such as occurs, for example, in a physician or surgeon when he must treat these parts. Diana, tr. 6, *de aliq. Cas. circa mater. lux.*, R. 19; L. 419, 420.

776. **What about foul conversations?** "Of itself it is not evil to utter or hear foul words." L. 426. Of itself: for, practically speaking, very obscene words in a continued conversation about these things, which by their nature proximately dispose the speaker or hearers to venereal delight, are mortal sin unless they are done from a just cause. But less obscene words, or words spoken in passing, which by their nature only remotely dispose one to venereal delight, are only venial sin unless they likewise are done from a just cause. The reason is the proximate or remote danger of venereal delight which is had in conversations and words of this kind. L. 426, 427, 428.

777. **Note.** What has been said about conversations must also be said, in the same proportion, about immodest songs and readings. L. 426.

778. **Resolutions.** First, those sin gravely who, before unmarried persons, especially of the other sex, mix conversations among themselves about generation, carnal intercourse, and other things which, with attention to the circumstances of the persons, the thing said, and the manner of saying it, can proximately dispose the speakers or hearers to venereal delight. Nor, of itself speaking, are those excused from grave sin who, under the pretext of joking, mix conversations and discourse about these matters with equivocal but sufficiently known words; except unless some such thing is said in mere jest and in passing. For that joke and equivocation, far from removing the danger of venereal delight, rather increases it by excited curiosity.

Likewise, to read books wholly obscene without a just cause is a mortal sin, even if this seems to be done from curiosity or for the sake of recreation, because this reading of itself greatly provokes lust. Except, perhaps, unless the readers, from curiosity alone and because of advanced age and cold temperament or because of a habit of treating venereal matters, do not incur grave danger of lust. But it is certain that those who compose, and also those who sell, notably foul books can in no way be excused from grave sin, because of the scandal of others, though not intended; nor can profit, however great, excuse it. L. 426, 428.

778. **Resolutions, continued.** Second, it is not of itself mortal to utter foul words indeed, but not gravely obscene ones, if this is done briefly, by way of joke or vain amusement, unless the hearers are so weak in spirit that they suffer grave scandal. Hence the foul jests commonly uttered by reapers, grape-harvesters, and muleteers are not grave, because ordinarily they are said and heard as mere jokes.

Nor indeed are tender conversations, otherwise honorable, with persons of the other sex always to be held as mortal sins, although they are full of dangers, especially if they are long, often repeated, or occur in solitary places.

What, therefore, must be judged about "amours," as they call them, especially among younger people? Not all of them are indiscriminately to be condemned as mortal fault; although often the proximate occasion of sinning mortally will hardly be absent, at least as they progress and when certain circumstances are added, such as if the lovers meet entirely alone, especially for a longer time, at night, and the like.

Likewise, to read amorous and lightly immodest books is not of itself a mortal sin, although in practice it is very dangerous, especially for younger persons. But those who compose or sell lightly obscene books do indeed sin, even mortally if they do this to excite lust; but if they do it only to acquire profit, or from another motive not gravely depraved, the sin will be only venial, since books of this kind can be read without grave danger. Clerics and religious, however, do not seem, of themselves speaking, able to compose or spread books of this kind without grave scandal. L. 422, 426; *Prax*. 63.

Third, to read obscene books for a just cause, for example to form and perfect one's style, to learn the truth of history, to inform superiors, to correct morals, and so forth, is no sin, provided one does not assent to the foul things.

779. **Note.** From what has been said in nn. 774 and 776, a judgment can be made about theaters, namely whether those who attend theaters sin. For if they sin, they can sin only because of foul sights or foul things heard. L. 427, 428.

780. **What about foul touches?** Very foul touches, which by their nature proximately dispose one to venereal delight, are, unless they are done from a just cause, of themselves speaking mortal sin. But less foul touches, which by their nature do not dispose proximately but only remotely to venereal delight, are, unless they likewise are done from a just cause, of themselves speaking only venial sin. The reason is that one who touches in the former way exposes himself or another person to the proximate danger of venereal delight; but in the latter way, only to remote danger. Nor is there a reasonable cause for either touch which would render it honorable. Therefore. L. 415, 416, 417, 418; St. Thomas, 2. 2. q. 154, a. 4; q. 156, aa. 2, 4.

781. **Resolutions.** First, to touch the genitals of brutes is ordinarily only venial. But to carry these touches through to the pouring out of seed is probably mortal, because it is an action most vehemently exciting to venereal delight. Nevertheless, if someone were to do this from mere levity and curiosity, and experiences that he is in no way venereally moved by it, he could not be condemned of mortal sin. Tamburini, *Explic. Dec.* l. 7, c. 8, n. 5; Sporer, *de Matrim.* n. 697; L. 419, 420.

Second, touches of one's own body do not exceed venial sin when, venereal affection excluded, they are had only in passing and from mere levity or curiosity, because they are not very great incentives of lust. L. 419.

Third, touches on the private parts of another person of the same sex, or on the parts near them, even over clothing, ordinarily are not excused from grave sin, unless perhaps they are done from wantonness, joke, levity, and in passing. L. 420.

Fourth, it does not exceed venial sin to touch the honorable parts, for example the fingers, hand, or face, of a person of the other sex, if these touches are done from mere levity and no special danger of venereal delight is present by reason of the manner in which these touches are done. L. 415, 416, 417, 418.

Fifth, touches on the less honorable parts of a person of the other sex, such as breast, legs, and arms, likewise do not exceed venial sin if they are done from mere levity, curiosity, joke, and so forth, with the special danger of venereal delight always excluded by reason of the manner in which these touches are done. L. 430.

Sixth, touches on the shameful parts, that is, on the genital parts or those which are near them, of a person of the other sex, even when had for a brief time, whether immediately or mediately, that is, over clothing, regularly cannot be excused from grave sin, because they contain the proximate danger of venereal delight. Probably, however, maidservants are not to be accused of grave sin when they touch the private parts of infants while dressing them, even if from levity or a certain curiosity; otherwise, however, if this were done studiously and lingeringly, because of the proximate danger of venereal delight. L. 420, 430.

Seventh, as with the other incomplete acts treated in the preceding numbers, so also touches are not evil from their intrinsic nature, as is clear from the reason constantly brought forward, but only extrinsically, namely because of the proximate danger of venereal delight and the proximate danger of consent to it. And indeed all these acts from their intrinsic nature do not pertain to lust or a venereal matter, which is contained only in intercourse, pollution, and carnal delight which disposes to these or follows them in the genital parts; rather, of themselves they belong to sensuality and modesty, as is clear from what has already been said above; cf. 773.

Therefore all the aforesaid touches are wholly licit from proportionate necessity and utility. Hence physicians who from necessity touch the private parts even of a person of the other sex do not sin, although accidentally they suffer involuntary pollution. Nor do those sin of themselves who touch themselves to wipe away bodily filth, or to calm itching, or to cure infirmities. Yet if the itching is tolerable, it should be suggested that they abstain from touches insofar as they can without grave inconvenience. But the confessor must use great discretion in these matters. For doubts of this kind are accustomed especially to trouble persons of timid conscience. L. 417, 419, 420; H. A. n. 3; St. Thomas, 2. 2. q. 154, a. 4.

782. **Note.** From what has been said about touches, it is clear what must be said in particular about kisses, embraces, and dances; these can be gravely foul, lightly foul, and honorable, with attention to the varied manner in which they are done. L. 417, 429, 430.

783. **Do the aforesaid touches differ in species from the consummated act of pollution and intercourse, and from other incomplete acts?** Response to the first: affirmatively. And this response holds both for touches and for the other incomplete acts about which there has so far been discussion. The reason is that an inchoate act differs by nature from a consummated act. Therefore, when similar acts precede a venereal act completed in the same passion, or accompany it, or immediately follow it, such as kisses, touches, and the like, they constitute with the completed venereal act one sin numerically and are not necessarily to be explained distinctly in sacramental confession. But when they are performed without a completed venereal act, they are a sin distinct from it, yet one or several in number according as they are performed in the same movement of passion or in several. Hence in such a case they are a certain incomplete lust, and must be explained in sacramental confession.

To the second: the first and more common opinion affirms. The reason is that these acts, considered in themselves, proceed from distinct and diverse faculties and are ordered to distinct and diverse objects. Hence it follows that "the desire of looking, touching, kissing, or fornicating foully are distinguished in species not only from morose delight concerning those objects, but also each from the others, because they tend to those objects as they would be posited in reality. But if they were posited in reality, they would be distinguished in species, as is clear. Hence one who once delighted in the thought of intercourse, and once desired intercourse, does not satisfy by saying, 'twice I had a foul thought,' but he must say, 'once I delighted in intercourse, and once I desired it.' Likewise, one who once desired to look, once to kiss, once to touch, once to fornicate, does not satisfy by saying, 'four times I desired to do something foul,' but is held to express those objects." La-Croix, l. 6, P. 2, n. 1032.

The second opinion denies. The reason is that, although acts of this kind physically proceed from faculties really distinct and diverse, and tend to objects really distinct and diverse, nevertheless morally considered they do not contain intrinsic grave malice; rather, the grave malice which they contain they have from venereal delight, to which they proximately dispose, and which is the same in species for all these acts. St. Thomas, 2. 2. q. 154, a. 4. Hence it follows that, once the venereal delight that followed and to which someone consented has been explained in confession, it is not necessary to explain whether he procured it for himself by looking at or touching himself, or even by looking at or touching another person, abstraction nevertheless being made from the sin of cooperation and scandal, which certainly must be explained if they were present. Likewise, once the interior delight of the will or desire with respect to venereal delight has been explained, it need not be explained whether that delight and desire of the will immediately terminated in foul looks or touches.

Billuart has the following, diss. 6, art. 15, § III, Note and following: "Francis Henno teaches that delights concerning looking, touching, kissing, etc., differ in species among themselves and must be accused distinctly in this way... because, he says, looks, touches, and kisses are distinguished in species among themselves... but nevertheless he admits that the practice of confessors and penitents is the contrary. Moreover, I think his foundation is false, namely that touches, kisses, and looks are distinguished in species in the genus of lust. For since they are not evil of themselves, as has been said, but only by reason of commotion, or pollution, or intercourse, to which they excite and tend, they have among themselves the same species of malice, namely either of carnal commotion, or of

pollution, or of intercourse, etc. Hence in my judgment a penitent would satisfy who said, 'so many times I excited in myself or in another carnal commotion or pollution,' while passing over whether it was by touches, looks, or kisses, provided he explains the conditions of himself and of the accomplice. All the more would he satisfy by saying, 'so many times I delighted carnally concerning such and such a person,' without explaining whether concerning touches, kisses, or looks; though indeed he must do so if the delight was concerning intercourse or pollution, because since these differ in species from immodesty and must be accused distinctly, so too must delights concerning them." St. Thomas, 2. 2. q. 154, a. 4 ad 3, speaking of kisses and touches, says: "that things of this kind are not sins according to their species." And in the same place, ad 2, he says: "from lust they have the character of sin." And in the body: "things of this kind, insofar as they are libidinous, are mortal sins."

784. **Do touches and other incomplete acts, when they are grave sin, contract malice diverse in species according to the various circumstances of persons?** As regards touches, kisses, and embraces, this is commonly affirmed. And the reason is that, by moral estimation, touches more than other acts chiefly regard the individual person and come very near to intercourse. Hence just as in intercourse the specific circumstances of persons are to be explained, so also in touches. L. 417, 453, 459, 469.

As regards looks, the Salamanticenses apud St. Alphonsus 421 likewise affirm; and both as regards looks and also as regards foul words, whether spoken or heard, Sanchez also affirms in almost the same way as with touches, *de Matrim.* l. 9, D. 46, nn. 17, 18, 30, 45, because of a wholly universal reason: namely, because all these acts are ordered to coitus and share in its moral malice.

784. **Do touches and other incomplete acts contract diverse malice from personal circumstances? continued.** But St. Alphonsus, after reporting the opinion of the Salamanticenses, adds these things as regards looks: "But Croix more truly contradicts this doctrine, l. 6, P. 2, n. 1030, where he says that one who without any desire looks at a person venereally is not held to say what sort of person it was. For how will a woman, by looking foully at a priest... commit sacrilege, which consists in violation of a sacred person, when no violation occurs there? And how will someone, by looking foully at a relative, commit incest?" cited place. These things also hold as regards foul words spoken or heard, as is clear of itself. St. Thomas, 2. 2. q. 154, a. 4 ad 1, ad 2; L. 415, 416, 417; Gur. case 146; Laymann, l. 3, S. 4, n. 13.

785. **In touches which someone has with himself or with another, must the sex be explained, whether he himself is male or female?** Response: of itself speaking, negatively; for this of itself is merely material. Cf. 816.

786. **As regards touches, must the parts of the body which the one sinning gravely in this matter touched be explained?** Response: La-Croix, l. 6, P. 2, n. 1031, has these things: "One who, without desire, venereally touched a girl, according to Diana satisfies by saying that he touched foully so many times, saying nothing about the parts in which he touched. Others probably say that it must be expressed if he touched a shameful part."

II. On Sins According to Nature

787. **How are the sins of consummated lust distinguished?** Some are according to nature, namely when they are performed in that manner which is not opposed to the generation of the human species, that is, if in intercourse there is preserved difference of sex, sameness of species, and the natural vessel and mode. Others are against nature, if seed is poured out in such a way that it cannot serve generation; that is, if the things just enumerated are not preserved, whether this is done outside intercourse or in intercourse. L. 412, 432; St. Thomas, 2. 2. q. 154, a. 2.

788. **What is fornication?** Fornication is intercourse of an unmarried man with an unmarried woman by mutual consent. Of an unmarried man with an unmarried woman means free from the bonds of marriage, kinship or affinity, and vow.

Fornication is intrinsically evil and a mortal sin, so that it is never licit.

The first part is proved: first, from proposition 48 condemned by Innocent XI; second, because fornication and promiscuous intercourse are repugnant to the good education of offspring, which cannot be had without the conjugal bond of male and female. For that education requires not only the care of the mother, by whom the child is nourished, but much more also the care of the father, by whom the child must then be instructed, defended, and advanced to a state in which he can provide for himself the things necessary.

The second part is proved: first, because in Sacred Scripture fornicators are excluded from the kingdom of heaven. 1 Cor. 6:9. Second, because fornication is gravely repugnant to the good of offspring and to the due propagation of the human race. For if fornication and promiscuous intercourse were licit, males, doubtful about the paternity of offspring, would not acknowledge it and would not attend to due education; and women, then abandoned by men, would procure abortions, abandon infants, or even kill them outright.

Moreover, fornication is a mortal sin even if a rich man were willing to take care of the due education of the offspring born of fornication. For if fornication were licit in such a case, many would arrogate to themselves a similar license, would omit marriages, and fornication would successively become common against the due propagation of the human race. Trent, Sess. 24, c. 8 *de Ref. Matr.*; Sess. 25, c. 14 *de Reg.*; Struggl 23; St. Thomas, 2. 2. q. 154, aa. 2, 3; L. 432, 435 ff.; E. M.

789. **Note.** "One who only begins intercourse but does not complete it or emit seed must explain that very thing, because although then there is fornication begun and in affection, nevertheless there is not fornication in fact; rather, it is an immodest act and the extreme of immodesty. Much more must one explain if he begins that same intercourse, recoils once nature has already been excited, and disperses seed; because then there is already a double malice, namely fornication begun and in affection, and consummated softness or pollution, as is clear of itself." Sporer 575, 576; Struggl 25; Lugo, *de Poenit.* D. 16, n. 237 ff.; L. l. 6, n. 916.

790. **What is stuprum?** *Stuprum* is sometimes taken for every illicit intercourse; but more commonly by this word a special sin of lust is designated. The theologians do not agree among themselves about the nature of this sin. Fr. Gury 425 says that *stuprum* is the violation or

oppression of a woman against her will. But theologians commonly place *stuprum* in the deflowering of a virgin. Some hold that the proper nature of *stuprum* consists simply in the illicit deflowering of a virgin; others hold that it consists in violent intercourse with a virgin, so that intercourse with a consenting virgin is not a sin distinct from simple fornication.

By the name virgin, however, in both opinions is understood not one who has preserved the virtue of virginity so that she has been stained by no sin of lust, but one who retains the seal of virginity intact, even if she has been polluted even voluntarily and therefore has irrevocably lost the virtue of virginity. L. 443; St. Thomas, 2. 2. q. 154, a. 6; Laymann, l. 3, S. 5, tr. 3, P. 3, c. 13, beginning.

It is certain among all that the violent deflowering of a virgin, besides a grave sin against chastity, also involves a grave sin against justice, necessarily to be explained in confession, because of the most grave injury inflicted upon the virgin and upon her parents, if the virgin is under their guardianship. Inst. l. 4, t. 4, § 2. And this circumstance of violence, as is clear of itself, must be expressed even if the woman were not a virgin, but corrupted or married.

Moreover, "by violence here is understood not only physical violence, but also moral violence, such as fraud and fear; likewise importunate prayers and flatteries, which, according to the judgment of prudent persons, especially in this matter, are morally reckoned as violence. Such are those which are accompanied by great promises, kisses, touches, incentives of venery, and in a word all those by which a freeborn woman cannot easily resist." Billuart, *de Temper.* diss. 6, art. 3, I say first; Struggl 28, 29.

Although force or violence is not had, certainly notable fraud is had, and therefore a special malice against justice to be declared in confession, if someone were to fornicate with a woman who is insane, drunk, or sleeping, because she is violated without her consent, and therefore a grave injury is inflicted upon her. Sporer 606; Laymann, cited place, n. 1; St. Thomas, 1. 2. q. 154, a. 6; L. 430, 433.

But whether the illicit deflowering of a virgin who willingly consents is a species of lust distinct from simple fornication is controverted, and each opinion is at least extrinsically probable. The negative opinion seems more probable. The reason is that this circumstance of physical virginity or integrity is merely material with respect to the virtue of chastity, and therefore the sin against chastity is not changed in species. Hence, what follows, this circumstance of virginity in any sins whatever committed by a woman or man who are virgins will not necessarily have to be explained in confession; unless perhaps by reason of reservation, censure, or another extrinsic circumstance, for instance if it has culpably become known and disgrace and damage have followed which must be repaired. St. Thomas, 2. 2. q. 154, aa. 1, 4; Laymann, cited place.

For repairing the damage inflicted, however, if no promise of marriage intervened, the violator is held either to marry the girl or to endow her sufficiently, or sufficiently augment her dowry, so that she may marry another equally as if she were a virgin. L. l. 3, nn. 640-642, 648; Laymann, cited place, nn. 2-4; Lugo, *de Poenit.* D. 16, S. 4, § 7; C. I. Poen. 331 ff.; C. G. 331 ff.

791. **If the deflowered virgin consents, does stuprum at least contain a special malice of injustice with respect to the parents in whose custody she was?** Response: negatively. "The reason is that, if the girl herself, since she is mistress of her own body, inflicts no injury

upon her father if she consents to deflowering, using her own right, still less does the deflowerer inflict one. She will sin only, and consequently also the violator, against the piety owed to her father, and also against obedience, if she had an express prohibition from her father concerning such a crime, as Lugo says, n. 226." L. 641; l. 3, n. 641.

792. **What is raptus?** *Raptus* can be taken in two ways. First, it can be taken insofar as it is a diriment impediment of marriage; and it is the violent abduction of any woman from the home or paternal or quasi-paternal power, to another place, for contracting marriage under the power of the abductor.

In the other way, it is a species of lust; and it is the abduction of any person, whether male or female, whether virgin or corrupted, whether married or unmarried, from place to place, by force inflicted either on the abducted person or on those to whose power the person is subject, namely parents or guardians or husband, but not if they are brothers and the woman is sui iuris, for the sake of satisfying lust. Inst. l. 4, t. 4, § 2.

Therefore, in the first way the person is abducted for the sake of contracting marriage; in the other way, for the sake of lust. Raptus in the first way is discussed in the tract on Marriage; here we deal with raptus in the second way.

Moreover, it is clear how raptus taken thus differs from stuprum. For stuprum has place only with an unwilling virgin; raptus, however, with any person whatever. Stuprum involves only violence or fraud; raptus also involves abduction from place to place. Stuprum inflicts violence only on the virgin; raptus inflicts it on the abducted person, or on those to whose power the abducted person is subject, or even on both. "Hence you see that the raptus of a virgin, with the foul effect following, differs from stuprum only very accidentally." Sporer, *de Matr.* 603.

If, however, some woman departs willingly with her lover without her parents' knowledge, it will not properly be raptus, but flight, which does not add a malice distinct in species to fornication. Therefore the proper malice of raptus consists in the injury inflicted in violent abduction for the sake of lust. Therefore, as stuprum perfectly such, so raptus, besides the sin of lust, contains a sin of injustice; and this injustice is both against the very person who is violently abducted and also against the parents or any others in whose power that person is constituted. From Trent, Sess. 24, c. 6 *de Ref. Matr.*, the abductor is held "decently to endow the abducted woman, whether he has married her or has not married her, at the judgment of the judge," unless the woman is a prostitute or of bad reputation. St. Thomas, 2. 2. q. 154, a. 7; L. 444; C. I. Poen. 340 ff.; C. G. 354 ff.

793. **What is adultery?** Adultery is intercourse with another's spouse. It is a grave sin, distinct in species from others. Besides the sin against chastity, it includes another against justice. For it violates in a grave matter the inalienable right of the other spouse; hence such malice does not cease even if that spouse consents. L. 445; St. Thomas, 2. 2. q. 154, a. 8.

The degrees of gravity of this sin are: first, grave, when an unmarried person sins with a married person, because besides fornication he sins against the right of a third party only by cooperating. Second, graver, when a married person sins with an unmarried person, because besides fornication he sins against the fidelity given by himself to his own spouse, and because he violates the right acquired by the spouse over his body. Third, gravest, when a married person sins with a married

person, because besides fornication he himself sins against justice by violating the right of his own spouse, and he cooperates with the sin against justice of his accomplice, who likewise violates the right of that person's own spouse. Hence the status of both must altogether be declared in confession. Fourth, adultery of the wife is graver than adultery of the husband, because of the most grave damage to the family and legitimate heirs, willed in the cause; this circumstance introduces another species of malice. Sporer 529; L. 445; C. I. Poen. 353 ff.; C. G. 336 ff.

793. **Adultery, continued.** "Adultery is committed by a married person in absolutely every species of lust, at least external lust, not only natural lust with an unmarried person, married person, blood relative, sacred person, etc., but also against nature: by bestiality, sodomy, softness or pollution, and likewise by immodest kisses and touches even with unmarried persons. Therefore a married man or married woman doing such things is held to explain the state of his or her marriage. This is the very common teaching of the doctors, Sanchez, l. 9, D. 18, n. 4; Lugo, Tamburini. The reason is that in all these things injury is always done to the spouse, according to the Apostle: the husband does not have power over his own body, etc.; and conversely." Sporer 529.

Spouses also contract the malice of adultery or quasi-adultery when they sin against nature, by sodomy or softness, when mutually or separately they pollute themselves. For thus their flesh is most truly divided against the fidelity of marriage. They must necessarily explain that the sin was committed with their own spouse; otherwise they will never explain the sin committed by them. Sporer 526; L. 446; Diana, tr. 6, *de Matr.*, R. 186, n. 4; E. M.

794. **If a spouse only takes morose delight in imagined intercourse with another, does he or she also contract the malice of mental adultery, necessarily to be explained in confession?** "Vasquez, 2nd part, tom. 1, D. 112, with others, affirms. The reason is that the fidelity of marriage obliges not only the body, but also the mind not to place itself upon another foul object; and therefore one who thus delights morosely sins not only by a sin of lust, but also by mental adultery. In the same way, by everyone's agreement, a religious, priest, or other person bound by a vow of chastity is held in confession of venereal morose delight to explain the circumstance of the vow or of his state, because he offends not only against chastity, but also truly against the vow and the virtue of religion. This is a probable and without doubt safer opinion.

"But Hurtado apud Tamburini, l. 10 *Decalogi*, n. 6, not improbably denies it in these words: Vasquez teaches that a married person who delights venereally concerning fornication with someone not his own sins not only by a sin of lust against chastity, but also by a sin of adultery against the fidelity of marriage. Yet this is proved with difficulty and without sufficient foundation, because it is said with difficulty and without foundation that in marriage fidelity is given to the spouse not to place one's mind on another.

"These things Hurtado says quite probably. Certainly, without sufficient foundation and urgent necessity or reason, the sacrament of penance is not to be burdened. The reason is different for one bound by a vow of chastity. For one vowing chastity to God, the inspector of hearts, without doubt principally vows and obliges himself to internal chastity also, without which external chastity is

worth nothing; but one contracting marriage with a human being is asserted without foundation to bind even the mind to him or her, lest it libidinously tend to another object." Sporer n. 523.

795. **What is incest?** Incest is intercourse with blood relatives or relatives by affinity within the degrees prohibited by the Church for marriage. Incest is a grave sin, and differs in species from other sins of lust. For it is not only against chastity, but also against piety and reverence, which persons joined together mutually owe to one another. St. Thomas, 2. 2. q. 154, a. 9; L. 448; C. I. Poen. 337; C. G. 333 ff.

796. **Do not only intercourse, but also all immodest touches among related persons, take on the nature of incest necessarily to be explained in confession?** Response: affirmatively. For these acts also are repugnant to the reverence owed to those joined by kinship. L. 453, 469; Billuart, diss. 6, arts. 6, 9; cf. 784.

797. **Is there incest between those who are bound by the impediment of public honesty?** Some affirm, and Sporer 613 hands it down as certain. But it is at least probably to be denied. The reason is that incest is between blood relatives and relatives by affinity. But between those who are bound by the impediment of public honesty there is neither blood relationship nor affinity strictly such. Therefore.

798. **Is incest between spiritual and legal relatives of a different species than incest between blood relatives and relatives by affinity?** "It must be affirmed absolutely with the Salamanticenses and St. Thomas, who at 2. 2. q. 154, a. 10 ad 2 teaches that by intercourse between spiritual relatives sacrilege is committed in the manner of incest... Likewise incest between legal relatives, namely by reason of adoption, is of a different species from the others mentioned and must be explained." L. 450, 469.

"It must be admitted that this, incest between legal relatives, is properly incest; hence there is no reason for us to say that it differs in species from incest between natural blood relatives and relatives by affinity... Hence... it will not be necessary to explain the difference of legal relationship from natural relationship... But the circumstance of spiritual relationship is diverse in species from incest, because although it contains some malice of incest... it adds beyond this the malice of sacrilege." Lugo, *de Poenit*. D. 16, n. 327 ff.

Sporer has these things, nn. 612, 613: "One who sins carnally with a person joined by legal relationship, of which there are four grades: first, between the adopting person and the adopted person and his descendants; second, between the adopted person and the legitimate children of the adopter; third, between the wife of the adopted person and the adopter himself; fourth, between the wife of the adopter and the adopted person, without doubt commits a special sin of incest, to be confessed necessarily as such, since between the same persons, on account of the often-mentioned reverence owed to those joined together, the Church establishes a diriment impediment of marriage.

"But whether this incest must be explained as a distinct sin from the other incests mentioned above, and whether also that diversity of grades or persons just mentioned must be explained: again, it is more probable and safer that yes; and it is sufficiently probable that no.

"But one who sins with a person joined by spiritual relationship contracted from the sacrament of baptism and confirmation, of which there is a double grade or species, spiritual paternity between the

one baptizing and confirming, likewise between godparents on one side and the baptized or confirmed on the other side; and spiritual co-parenthood between the same, the one baptizing and confirming and the godparents on one side, and the parents of the baptized or confirmed on the other side, for spiritual brotherhood between the baptized and confirmed and the children of the one baptizing or the godparents has fallen into disuse; that person altogether commits incest distinct from all the aforesaid incests in blood relationship, affinity, or legal relationship, and therefore it must be specially explained in confession, because it adds a special malice of irreverence toward the sacrament, by reason of which it is reduced to a certain genus of sacrilege.

"But whether it must also be explained whether it was done from the sacrament of baptism or confirmation; likewise, whether in paternity or co-parenthood: it is most probable that no, because in all these there is the same deformity, not much graver or lighter." Thus also Billuart, diss. 6, art. 6.

But Cajetan, on 2. 2. q. 154, a. 9, says: "To the second objection concerning spiritual and legal relationship, it is said that because such conjunction is not ordered to blood relationship as to its proper and proximate end, but according to a certain assimilation, therefore its violation is metaphorically called incest."

799. **Do relatives who have obtained a dispensation to contract marriage commit incest if they fornicate before marriage?** There are two opinions; St. Alphonsus 452 holds each probable. The reason of the denying opinion is that, once the special repugnance of marriage ceases, consequently the special repugnance of fornication ceases; for if this remained, the marriage itself would be impeded.

800. **What is sacrilege?** Sacrilege, insofar as it is a sin of lust, is the violation of a sacred place, thing, or person by a venereal act. Therefore, besides the sin against chastity, it also includes a sin against religion. St. Thomas, 2. 2. q. 154, a. 10; L. 454.

801. **What is personal sacrilege?** Carnal and personal sacrilege "properly and strictly is called illicit intercourse or any sin of the flesh of a person bound and consecrated to God by a solemn vow of chastity, as by the profession of an approved religion or by the reception of sacred order from the subdiaconate inclusively. The reason is that sacrilege properly and strictly is the violation of a sacred thing; but a sacred thing is properly called that which by public authority and rite has been instituted and consecrated to the worship of God. But only through the solemn vow of profession or of sacred order is a person, by the public authority of the Church solemnly accepting that vow in the place of God, consecrated to the worship of God; not likewise through a simple vow privately emitted. Therefore the sin of the flesh of a sacred person bound only by a simple vow of chastity is not indeed strictly sacrilege properly so called, since it is not the sin of a sacred person; nevertheless it is a special sin against the virtue of religion and the second precept of the Decalogue, namely violation of a vow and of a promise made to God, and therefore it must also necessarily be explained in confession, according to all." Sporer 615; cf. 500.

802. **Resolutions.** Hence one bound by a solemn vow of chastity who sins carnally perpetrates a sin containing triple malice: of immodesty against chastity; of infidelity against God, because of nonfulfillment of the promise made to him; and of sacrilege because of violation or profanation of a person consecrated to God. The gravity of sacrilege is of three grades if there is an

accomplice: first, grave, if the carnal sin is of a non-sacred person with a sacred person. Second, graver, if it is of a sacred person with a non-sacred person. Third, gravest, if it is of a sacred person with a sacred person. L. 456.

803. **Note.** First, it is probable that there is no need to express whether the vow was solemn or simple, because the opposite opinion also is probable, namely that violation of a sacred person bound by a simple vow of chastity is also true sacrilege. Nor likewise is it necessary to say if a person is sacred by a double title, for example because he is a religious and a priest, because one constituted in sacred orders is more probably and more truly held to chastity only by reason of the vow annexed to the order, and this is gathered from C. *Cum olim de Cler. coniug.* L. 454, 455; cf. 500.

Second, "it must altogether be held that a religious commits sacrilege if he were to take morose delight in the carnal sin of another, or if he were to pollute another with his hands, even without his own delight." L. 457. Likewise he commits sacrilege who induces a sacred person to a sin of lust, although he himself does not sin with that person; for he cooperates in sacrilege. Conversely, it is sufficiently probable that one who has a vow of chastity does not commit sacrilege when by his counsel he induces another to a carnal sin, because one emitting a vow of chastity regards not another's chastity but only his own; hence then he would sin by scandal. Understand this, however, if he did it for some other end than from positive libidinous affection; otherwise he would already be sinning directly against his own chastity, concerning which he emitted the vow. L. 457.

Third, there would be personal sacrilege in affection if someone polluted himself while thinking with delight about a male or female Saint, or, what is most horrible, about Our Lord Jesus Christ himself or the Blessed Virgin herself.

804. **What is a sacred place in local sacrilege?** Here sacred place is understood only as a church, that is, a place consecrated by a bishop for divine offices, or even simply blessed, from roof to pavement; and a cemetery, that is, a place blessed and deputed for burying the dead. Therefore private oratories are excluded, since they are not true churches. All other parts of a church which are not contained between roof and pavement are also excluded, such as cells, cloister, sacristies, dormitory, roof above the church, door outside the threshold of the church, and atrium. L. 460.

805. **Are internal sins in a sacred place sacrileges?** Merely internal sins are not to be held as sacrileges, gravely such, because they do not seem specially to affect the sacred place, unless there is a desire of sinning externally in that sacred place, even if that desire is had outside the sacred place; for then there is sacrilege in affection. Cf. 502.

806. **What about external sins?** As regards external sins, it is certain among all that sacrilege is committed by consummated acts, namely by voluntary pollution, fornication, and so forth. Here it should be noted that many, following St. Alphonsus 458, probably hold that sacrilege is committed in a church only by a public pouring out of seed; although others probably say that even a hidden emission is sacrilege. L. 36, 334, 458; l. 6, n. 920; cf. 502.

807. **Besides consummated acts, is sacrilege committed by other grave external sins that are not consummated?** Some more probably affirm; others not improbably deny. L. 459, 461;

Sporer 619. "Yet Lugo and others commonly make an exception, rightly, unless someone performs immodest things of this kind in a sacred place with great irreverence toward the church, as if he were publicly to touch a prostitute immodestly before the altar, or if he were to present lascivious comedies in a sacred temple, etc. For then it must not be denied that the crime of sacrilege properly is committed; for grave irreverence would be done to divine worship, to which the sacred place is deputed and consecrated." Sporer, ib.; *cf.* 502.

808. **What special cases are to be noted in real sacrilege?** He commits sacrilege who, vested for Mass, pollutes himself. Likewise a priest who, while carrying the most holy Eucharist, sins carnally; or who pollutes himself within half an hour after communion. But by no means one who sins carnally while carrying relics, Agnus Dei, and the like, or on a feast day. The reason is that all these seem to relate accidentally to the carnal sin. Nor is the sacred thing itself truly violated. By contrast, in the first, second, and third cases there would be grave irreverence toward the most holy Eucharist, the sacrifice of the Mass, and the sacred vestments destined for offering it.

Likewise one would not commit sacrilege who gave relics of Saints to a mistress under the title of a simple gift. It would be otherwise if he gave them as the price of sin; for then it would be sacrilege and simony.

To this belongs solicitation to foul things in confession, namely when the confessor abuses the sacrament of penance for carnal sin; for most grave irreverence is inflicted on the sacrament. Elbel, *De Actib. hum.* 104; Sporer 621; L. 463.

III. On Sins Against Nature

809. **What is softness or pollution?** Softness, or voluntary pollution, is the voluntary pouring out of human seed outside intercourse or coitus.

Voluntary: for this pouring out of seed can also proceed naturally from the very abundance of humor, and can often be determined by many external circumstances both in the state of waking and especially in sleep. Some of these circumstances are physical, such as weakness of temperament, some illness producing irritation of the genital organs, reclining on the back, softness and heat of the bed, stimulating drinks, the exercise of horseback riding, etc. Others are moral, such as thoughts of venereal things, readings about those same things, conversations, etc. Pollution will be voluntary, however, when it is intended either in itself or also in its cause, whatever that cause may finally be. And because this voluntary pollution is often excited by manual contact, hence it is commonly called masturbation.

Pouring out: this pouring out in males occurs outside the genital member; hence it is an exterior pouring out. But in females it occurs both externally, though more rarely, and within the genital vessel without any exterior flow. Although in females this pouring out occurs in the genital vessel, they sensibly perceive it; for in it they are affected with great pleasure, and once it is completed they are satiated and come to rest. By this sign of great pleasure and subsequent satisfaction it is recognized whether they were truly polluted.

Hence pollution differs altogether from inordinate motions. These motions are alteration, swelling, and erection of the genital parts; and these motions are joined with a sense of venereal pleasure and dispose toward pollution. These motions can have place both in men and in women.

Seed: seed here is generally understood as a viscous humor destined for generation by the Creator himself. This humor is not of the same nature in male and in female. For the matter which is secreted in a female by pollution is not prolific, but a certain simple mucous excretion which makes the work of marriage easier; but the matter which is secreted in a male is truly prolific, and it is prepared in the testicles.

Hence pollution in a male differs from distillation, which is a certain urethral excretion and flow of another humor, which is prepared not in the testicles but in other glands of the urethra, and is not prolific. Nor is it customarily emitted with so vehement a commotion, but only with light commotion, and sometimes even without any commotion of the flesh and venereal delight. Women also, as many assert, can experience not only pollution, but also the flow of a certain humor not unlike the distillation of males, which therefore is not to be confused with softness or pollution.

Outside intercourse or coitus: hence pollution has this, that it is a sin against nature and therefore diverse in species. Thus St. Thomas, 2. 2. q. 154, aa. 1, 11, 12, constantly derives the special malice of the vice against nature from the fact that through it the generation of offspring is impeded and that it is repugnant to the natural order of the venereal act itself.

810. **Is pollution a sin?** Voluntary pollution is a grave sin, as is clear from proposition 49 condemned by Innocent XI. "The principal reason for this most certain truth is brought forward: because if pollution of this kind were licit, or at least not gravely prohibited, the use of marriage, so necessary in the world, would be impeded, since human beings would be content with that pleasure alone and for the most part would not wish to devote themselves to marriages, which are so burdensome. Add: if fornication is forbidden by natural law and intrinsically evil, much more will pollution be illicit by natural law and intrinsically evil, since through it seed is altogether squandered and generation is impeded against the one end intended by nature." Sporer 628; L. 465; St. Thomas, 2. 2. q. 154, aa. 1, 5; E. M.

811. **Resolutions.** First, the special malice of pollution consists in the frustraneous pouring out of seed against the order of nature. Therefore this sin differs in species from every immodest touch, which may indeed be followed by venereal pleasure, but by no pouring out of seed. St. Thomas, 2. 2. q. 154, aa. 1, 11, 12.

Second, voluntary pollution, for the sake of escaping any illness or danger of death, is always a mortal sin. It is wholly licit for the preservation of life and of the whole supposit to cut off from a human being some member, hand or foot. For from such cutting off, sometimes licit, no inconveniences follow, since natural appetite vehemently abhors it as a very unpleasant thing; human beings will not easily abuse that means and extend it beyond the case of extreme necessity. By contrast, since pollution is a thing bringing great pleasure, toward which nature itself inclines, the greatest danger is present lest, if this were ever licit, human beings would abuse it to the detriment of the species itself.

And thus, for example, it is never licit, not even in a case of extreme necessity, to violate the sacramental seal, because if this were licit even in a very rare case, the sacrament of penance would

be rendered hateful to the faithful, and they would be removed from it, to the greatest detriment of souls; just as in fact people are often deprived of the good of seeking counsel because they know that perhaps in certain cases the secret can be manifested.

Moreover, "the more necessary something is, the more it is necessary that the order of reason be preserved concerning it... But the use of venereal things is very necessary for the common good, which is the preservation of the human race." Hence, although seed is superfluous, nevertheless the emission of seed "ought to be done in such a way that it suits the end for which it is needed." St. Thomas, 2. 2. q. 153, a. 3.

Third, to the malice of simple pollution other malices can be added by reason of circumstances, and this generally also holds for other species of lust, "for instance, if a priest is polluted, sacrilege is added; if a married person, adultery; if with desire of sinning with another person, malice is added according to the quality of the person desired; likewise another malice is added if someone is polluted while delighting in imagined intercourse, when he is polluted by the touches of another." L. 476; Sporer 640, 641; Sanchez, *de Matr.* l. 9, D. 17, n. 16.

Fourth, just as to will and procure pollution itself, or venereal delight, is a grave sin, so consequently it will be a grave sin to will and procure libidinous distillation, namely distillation with a partial pouring out of seed, or with only carnal commotion and venereal delight. But concerning that which occurs involuntarily and insensibly, one need not be troubled. Cajetan, opusc. 22, q. 1; Sporer 660; Salamanticenses 33; L. 477.

812. **Do the impubescent, whether boys or girls, and eunuchs, who try by immodest motions to emit seed, when they cannot do so, sin by the sin of pollution, or only by immodesty?** Tamburini says this, *de 2. Eccl. pr.* c. 17, n. 13: "Those who because of defect of age or for another cause, such as the impubescent and eunuchs, cannot pour out seed by an immodest motion, or pour out useless seed, sin mortally... but certainly this species of sin differs from true pollution, whose nature is to cast forth seed against the end of generation, and this casting forth is not present in the aforesaid in this way; therefore the sin in the impubescent is in reality reduced to an immodest touch."

Thus Sporer 639: "It is answered that it is indeed a mortal sin reducible to softness; for it is of itself a depraved affection toward pollution. Nevertheless, it seems to differ in species from true pollution, through which seed is emitted; in proper species it must be reduced to the immodesty of touch; hence it must be explained in confession." Thus also Holzmann, Babenstuber, and others. Yet St. Alphonsus 476 teaches the contrary, openly affirming that "the pollution of eunuchs and boys, although they do not have perfect seed, differs in nothing from the pollution of adults."

813. **Do women, who lack truly prolific seed, commit the special sin of pollution when they procure pollution for themselves, or only the sin of immodesty, as was said for the impubescent and eunuchs?** Some more recent theologians affirm, because of the reason indicated in the very question. Hence they deduce: first, that the confessor can abstain from every further interrogation, since this malice of pollution is not diverse in species from the malice of touches; second, that in a married woman such pollution does not exceed venial fault, since in her immodest touches probably do not exceed such malice.

But the very common opinion of recent theologians and the wholly unanimous opinion of the older theologians denies this, although many of these older theologians also did not consider the woman's emission of seed necessary for conception. The reason is that although that humor is not of itself prolific and necessary for generation, nevertheless it is by its nature destined for the generative act; for it is ordered to accomplishing that act better and more easily. Hence in the pouring out of this humor the order of nature is still frustrated in the most grave matter of human generation, to which, outside intercourse, that whole act is no longer orderable; and therefore it is against nature.

And from this the distinction is clear between the pollution of women and the pouring out of the impubescent and eunuchs. For the latter is intrinsically and essentially a physically incomplete act, and of itself orderable to a complete licit act, namely conjugal intercourse. By contrast, this pollution of women is intrinsically and essentially a physically complete act, as is clear from the very series of phenomena of excitation which precedes and of repose and satiety which follows; and therefore, if it occurs outside all intercourse, it is of itself no longer orderable to a complete licit act, namely conjugal intercourse. Therefore, again, it is an act against nature.

813. **Women and the special sin of pollution, continued.** Sanchez aptly says, l. 9, D. 17, n. 12:

> "Voluntary pouring out of seed outside the vessel, or that manner of joining from which it follows, is a manifest mortal crime against nature. Because it is opposed to the natural end of generation, to which nature itself has destined seed. This reason manifestly has place in the seed of a man, as being altogether ordered to generation. But the same must be said about voluntary female pollution: for her seed is ordered by nature to generation, either as necessary according to one opinion, or at least, according to the truer opinion, as most useful and greatly contributing to it."

And St. Thomas, 2. 2. q. 154, a. 11, absolutely affirms without any distinction that a vice against nature, such as pollution, is a determinate species of lust, since in it there occurs a special reason of deformity, namely "because it is repugnant to the natural order of the venereal act itself, which befits the human species... if pollution is procured without any intercourse for the sake of venereal delight." And in a. 12, likewise making no distinction, he says absolutely: "Because in vices which are against nature man transgresses what is determined according to nature concerning the use of venereal things, it follows that in such matter this sin is most grave."

Nor is it valid to insist that, although that act is against nature and therefore of itself illicit, nevertheless it is not gravely but only lightly illicit, since this wifely act is not for the simple existence of generation, but only for its better existence. For if that were not gravely illicit and from its intrinsic nature, then women, for whom marriage is so burdensome, content with that pleasure alone by which they are drawn by nature to the work of marriage, would by no means attend to that work; and there would no longer be any limits to wifely masturbation and conjugal onanism on the part of those same wives. Indeed, for immodest women marriage would be a way of fostering and increasing immodesty more and more, since now they could practice it at least short of grave sin.

Nor again can it be urged that at least in that pollution of a woman the proper account of pollution is lacking, namely the frustraneous pouring out of seed against generation, since nothing is done against generation. For in the pollution of a woman two things are especially to be distinguished. The first is the pouring out of humor, which is by no means necessary for generation but only useful. The

other is the release of the ovum, which occurs not only naturally and spontaneously at the time of menstruation, but also occurs through this venereal excitation, which ruptures the follicle in which the ovum is contained, both by the erethism of the whole generative organ itself and by the secretion of humor with which it is filled. Therefore, insofar as this venereal excitation of itself tends to the release of the ovum from the ovary, it contains true malice of pollution, since the ovum on the part of the female is the element wholly necessary for generation, which, fecundated by contact with the spermatozoa of male sperm, presents the generation of a new individual.

Therefore, just as in the male the malice of pollution is not in fact in the frustraneous pouring out of humor, but in the frustraneous release from the testicles of the spermatozoa, in which resides the power of fecundating the ovum, which release of spermatozoa accompanies that pouring out of the remaining humor, whence the latter has from the former that it is against nature; so likewise in the female the malice of pollution is not in the frustraneous pouring out of humor, but in the frustraneous release of the ovum from the ovary, to which that pouring out of humor tends, whence this has from that the fact that it is against nature. Milne Edwards, *Lecons sur la physiologie et l'anatomie comparee*, Paris 1870, tom. 8, pp. 338, 339, 355, 356, 359/360; tom. 9, pp. 106-109; Longet, *Traite de physiologie*, Paris 1850, tom. 2, 3rd part, pp. 80-95.

814. **Are all pollutions of the same species?** "All pollutions according to themselves are of the same species, in whatever way they are done, if they are done without intercourse." L. 476, 477. According to themselves, because by reason of circumstances of the person, or of interior delight and desire, or of cooperation in the sin of another, other malices can be joined to it.

815. **Resolutions.** First, it is not necessary to explain in confession whether someone polluted himself immediately by his own hands or mediately through some inanimate instrument.

Second, intercourse with a dead woman does not include any other malice in the genus of lust than the malice of pollution; likewise if someone were to enter into intercourse with a picture or statue of a woman, or a woman's clothes, etc. Nevertheless this will have to be explained in confession, at least by saying generally: "I polluted myself with an inanimate instrument, with affection toward a woman." For pollution and affective fornication are present. L. 466; Sporer 639; Diana, cited place, resolution 6, n. 5.

Third, "one who pollutes himself by another animated instrument, or by parts of the body of another person... female or male, etc., is indeed held to explain that person by reason of cooperation... But there is no need to explain those particular parts of the body themselves, because they differ only materially, and that greater delight sought in one part does not transcend the species of malice which is in another, unless there were some particular affection toward preposterous parts and sodomy, which certainly would have to be explained." Sporer 636; cf. 816.

816. **Is pollution had by touching a boy or sleeping woman, or persons incapable of deceit, or the private parts of animals, but without intercourse, of a different species from simple pollution?** The first opinion affirms, and says that such pollution with a boy is sodomy, but with a woman is inchoate intercourse.

The second opinion holds that it is simple pollution. The reason is that, when intercourse is absent, they say that whether the pollution is done by one's own touches or another's is material. Then it suffices to confess: "I had pollution by another's touches." For when intercourse is not present, there is no affection toward sex, but toward pollution; and this is more probable. Therefore Roncaglia, *de VI Praec*. c. 7, q. 6, with Bonacina, Trullench, and Filliucci, notes that if someone is polluted by another's touches, it is not necessary that he explain whether by the touches of a man or a woman; because, since only pollution is intended then, it is also material whether it happens by the touches of a man or a woman. Yet it must be said otherwise if it was done by the touches of a married woman or one having a vow of chastity. L. 467, 474, 485.

Here, however, there is a difficulty in reconciling these things with what was said by the same holy Doctor in H. A. tr. 9, n. 3, where he asserts that sex must be explained in touches, because, he says, touches "are all of the same nature as the consummated act."

817. **If seed has become corrupted, is it licit to expel it by medicines, even if beside the intention some emission of true seed follows?** Response: affirmatively. Thus the doctors more commonly. The reason is that those medicines directly of themselves tend only to the expulsion of corrupted seed; but some pouring out of true seed follows accidentally and beside the intention, which cannot be called illicit, since all concede that it is licit by remedies to expel other harmful humors, although pollution accidentally follows, just as it is also licit to take medicine to expel illness, even if indirectly an unanimated fetus is expelled, according likewise to the common opinion.

"I judge this opinion," says St. Alphonsus 478, "sufficiently probable, provided however: first, the seed is certainly corrupted, not if this is doubtful. Second, the expulsion of corrupted seed can occur without a sense of lust. Third, there are no other remedies for treating the corrupted seed. Nevertheless it is never licit to expel corrupted seed by touch, even if the danger of consent is absent; this must altogether be held... The reason is that, although the remedy is permitted, because it of itself tends only to expelling corrupted seed, nevertheless friction is in no way to be permitted; because that of itself tends to stirring the carnal spirits and expelling true seed, which is never licit."

818. **Is it licit to take medicine to corrupt true seed, and afterward, once corrupted, to eject it?** "Sanchez, Bonacina, Anacletus, Roncaglia, etc., probably concede this. The reason is that nature does not oblige one to preserve seed with danger of life. For if, says Sanchez, it is licit to amputate testicles to protect life, although a man without them is rendered altogether impotent to generate, why would it not be licit to corrupt seed?" L. 478.

819. **Is someone held to impede pollution involuntarily begun?** Some affirm, because, they say, it is false that any danger of illness is present from this. Debreyne, *Moechialogie*, Brussels 1853, p. 26. But others commonly deny. For then someone does not will that pollution, but merely suffers it. L. 479; Sporer 657, 642, 656.

820. **Note.** "When pollution begins in sleep and emission occurs in half-waking, then, if the person experiences some delight not fully deliberate, he indeed sins only venially." L. ib.

821. **Is someone held by positive effort to impede depraved motions of concupiscence involuntarily arising?** Response: negatively. Nor indeed is this expedient, since then the

imagination itself grows hot by the very effort, and by natural sympathy of faculty with faculty excites the genital spirits more and more. The more suitable remedy will be to invoke God and to turn the mind and imagination away from obscene images and apply them by serious application to other things, especially to external affairs.

822. **If actions which of themselves in no way influence depraved motions, or even pollution, or influence them only very lightly, gravely influence those same effects by reason of a peculiar infirmity and subjective disposition, is someone held under grave obligation to abstain from such actions?** Response: Scavini affirms, l. 1, n. 78, 12th ed., Milan 1874. But it seems this must be denied, with the proximate danger of consent to those depraved effects nevertheless excluded. The reason is that subjective disposition cannot change the intrinsic nature of that action, and therefore cannot make it gravely illicit if in itself it is only lightly illicit or even simply licit. But that depraved motions or even pollution follow from it is accidental.

This case, when the action is honorable in itself, is the case of a cause honorable in itself having a double effect, one good of itself, the other evil, and indeed accidental. Therefore someone can, in placing that action, pursue his own right. Nor indeed is a sufficient and proportionate reason lacking on the part of the agent in acting in such a way; for one who is thus sensibly affected by honest things themselves is subject to innumerable scruples and anxieties, and if he wishes to avoid everything by which he can be badly affected, he is forced to lead a truly intolerable life. But if that action is altogether lightly illicit, of itself "there is no grave obligation" of avoiding it, L. 484; and practically "it is as if morally impossible for human beings commonly to avoid all these causes." L. ib. Billuart, diss. 6, art. 12, I say first; L. 423, 484.

823. **What is bestiality?** Bestiality is intercourse with a beast. The species of this sin, morally speaking, is not changed by the variety of beasts. Whether it is morally changed by diversity of sex, some affirm, but commonly and more probably it is denied. "Therefore the whole essential deformity of this crime consists in access to a different species." L. 474.

"That bestiality be complete, the pouring out of seed is required on the part of the perpetrator. Soettler says it is hardly necessary to declare in confession whether the congress was in the womb or in another part of the body of the brute, since no part is destined to receive human seed. Nevertheless, in the case in which this sin were reserved, Billuart holds that emission within the vessel of the brute is necessary, because reservation, as odious, must be restricted to the consummated act. Therefore Billuart does not reckon bestiality consummated unless it is done within the vessel of the brute; consequently, at least for the most part, it cannot be consummated by women." Craisson, *Notiones circa sext. Decal. praec.* n. 178; St. Thomas, 2. 2. q. 154, a. 11; E. M.

824. **What about congress with a demon?** Congress with a demon is reduced to bestiality. Hence "bestiality is defined more universally by St. Thomas and others as a sin against nature by which man has intercourse with an animated thing of a different species; so that it may also include the unspeakable coitus of witches and magicians with demons, incubi or succubi, containing, besides the sin against nature, also a special sin against religion, namely of wicked

association and commerce with a demon, the most wicked enemy of God and of us all; and therefore without doubt this must necessarily be explained in confession." Sporer 625.

825. **Does one who has intercourse with a demon appearing in the form of a married woman, nun, or blood relative always sin affectively by the sin of adultery, sacrilege, or incest?** "Busembaum with others seems universally to affirm; but it is very probably to be denied, if the one having intercourse delights in that woman represented by the demon not as married or as a nun, but as beautiful, according to the opinion of Lugo, Palaus, Vasquez, and many others, who very probably teach that morose delight does not involve the species of the object about which someone delights, unless the circumstance of the person enters into the delight." L. 475.

826. **What about touches with a beast?** "Immodest touches with a beast, although they are not properly sins of bestiality, nevertheless have some special turpitude, as Elbel says, at least venial." L. 474; cf. 814.

827. **What is sodomy?** "There is a great question in what act sodomy consists. Some hold that it consists in intercourse toward an undue vessel. Others, in intercourse toward an undue sex. Each opinion is probable, and in each opinion there is discerned the special deformity which sodomy has against nature, which requires that both be preserved for generation, that is, the due vessel and the due sex." L. 466.

The second opinion is called more probable and the common opinion of theologians by St. Alphonsus in the cited place. "The reason is that true and proper sodomy is committed in access to a person with whom generation can in no way occur." L. ib. According to this opinion it does not matter in what vessel males or females among themselves have intercourse, anterior or posterior, or in another part of the body, since the malice of sodomy consists in affection toward the undue sex, and is complete in its genus when the application of the genital member to a part of the body of the same sex is done by way of intercourse. But if only the application of the hand, foot, or mouth to the genital parts of another were done, even if pollution had place on each side, it would not be reckoned sodomy, because it would not be intercourse. Cf. 814. L. 466, 485; St. Thomas, 2. 2. q. 154, aa. 11, 12; Rom. 1; Const. of St. Pius V, *Horrendum*; C. I. Poen. 338; C. G. 330; E. M.

828. **Resolutions.** "Hence it is inferred, first, that coitus of a woman with a woman is true sodomy, as St. Thomas, Roncaglia, Holzmann, Sporer, the Salamanticenses with Cajetan, etc., say. Although Elbel in the cited place with Reiffenstuel not improbably thinks that intercourse of this kind, even with affection toward a preposterous vessel, seems to be only improper sodomy, since perfect intercourse cannot occur between women.

"It is inferred, second, that any intercourse or bodily conjunction had with a person of the same sex is true sodomy, whether in a preposterous vessel or in another part; for then, regularly speaking, affection toward an undue sex is always present, as Tamburini, Roncaglia, Tournely, Croix, and the Salamanticenses hold. Hence Roncaglia, Tamburini, and the Salamanticenses say against Graffius that it is not necessary in confession to explain if the pollution was inside or outside the vessel; for it suffices to confess, 'I sinned with a boy,' so that the confessor may judge that sodomy with pollution was present. But if pollution was not present, this would have to be explained.

"It is inferred, third, with the Salamanticenses, Bonacina, Tamburini, and the more common opinion, that the coitus of a man in the preposterous vessel of a woman is only imperfect sodomy, distinct in species from perfect sodomy, as Tournely and Tamburini say. The latter notes with Filliucci, and Holzmann and Sporer rightly agree with the common opinion, as he asserts, that if a man had intercourse between the legs, arms, or other parts of a woman, it would be a certain inchoate intercourse, at least in affection. Hence, according to this doctrine, a man lying with a virgin outside the vessel commits two sins, against the same chastity indeed, but of diverse species: one of fornication in affection, the other against nature in effect. But the aforesaid Sporer, Holzmann, and Tamburini with Angelus say that a confessor, understanding that the woman was known outside the natural or preposterous vessel, should not ask in what place or how." L. ib.

Moreover Sporer 627 has these things: "Note this: when a man and woman mixing themselves thus are polluted outside the vessel, if indeed this is done from affection toward the person herself, as ordinarily occurs, it belongs to fornication-like, adulterous, incestuous, etc., intercourse, according as the person was; but if it is done from affection toward preposterous parts, it will be imperfect sodomy, about which we are speaking; finally, if it is done without intercourse or any joining, but merely to satisfy lust, it is softness." L. 485.

829. **Is pollution in the mouth of a different species?** "Sporer with some apud Diana affirms, and calls this sin irrumation. But Holzmann, Filliucci, Cajetan, Graffius, etc., more probably say that if a man is polluted in the mouth of a woman, it will be inchoate intercourse; but if in the mouth of a male, it will be sodomy." L. 466.

830. **In the sin of sodomy must it be explained who was agent or patient?** More probably this need not of itself be declared, because the species of sin is the same. Yet the circumstance of pollution, if it was present, which more easily happens in the agent, must altogether be opened. L. 468; Lugo, *de Poenit*. D. 16, n. 243.

831. **Note.** The Salamanticenses with Bonacina probably note that sodomy with a woman is not comprehended under the reservation of sodomy, since it is not true sodomy. It is otherwise if the sin against nature is reserved. Bishops, however, commonly do not intend to comprehend pollutions also under a reservation of this kind. L. 471.

On the Seventh and Tenth Precepts of the Decalogue

I. On Justice Considered Generally

832. **What are the seventh and tenth precepts of the Decalogue?** "You shall not steal... You shall not covet your neighbor's house, nor his servant, nor his maidservant, nor his ox, nor his ass, nor anything that is his." Exod. 20:15, 17.

By the seventh precept, formally negative, under the name of theft taken broadly, every injury, or unjust harming or damaging of one's neighbor in the temporal goods of fortune, is prohibited. Consequently, by the same precept, insofar as it is virtually and implicitly affirmative, it is commanded that to each person his own right be given with respect to temporal goods. Certainly to

the same precept and to the same virtue it belongs both to prohibit that another's right be injured by wrong, and especially to oblige that to any other person his own right be rendered by restitution and other modes.

As the external act is prohibited by the seventh precept, so by the tenth the internal act injurious to one's neighbor in the goods of fortune is prohibited. For by it every inordinate and unjust appetite for the goods of fortune of one's neighbor is prohibited. Therefore they sin against this tenth precept not only who are envious, but also the avaricious, who seek riches with excessive avidity and desire to increase wealth by unjust means.

Both these precepts regard the virtue of justice.

833. **What is justice?** Justice strictly so called, insofar as it is the special virtue about which we are treating here, is defined: the constant and perpetual will of giving to each his own right. Inst. l. 1, t. 1.

Constant and perpetual will: because there must be a firm disposition, not only for one or another day, but always to give to each his own right; for otherwise it is not a perfect virtue, just as penance is not a perfect virtue unless it includes the purpose of never sinning.

Right here is not understood as right broadly so called, which is a requirement of right reason toward something as honorable, that is, toward doing something on account of its honesty, or omitting it on account of its dishonesty. Rather, right is understood as right strictly so called, which is a moral power over something as one's own, that is, over doing, omitting, having, retaining, or exacting something as one's own, that is, as subject to one's own liberty, others being excluded.

This right is either of jurisdiction or of property. The first is the legitimate power of a superior to command or prohibit something to subjects for their own proper good or for the good of the whole community. The necessity and utility of administering the community is the measure of this right as to its acts. The other is the legitimate power of any private person to dispose of some thing for the advantage of his own liberty, or as his own.

The right of property is either in a thing or to a thing. The first is that by which someone has the thing itself immediately bound and juridically obligated as his own. Hence a thing obligated to someone by such a right carries its obligation with it, and wherever it has come, it can be sought back and juridically vindicated by its owner. The second, however, is that by which someone does not have the thing itself immediately bound and juridically obligated to himself, but rather the person of another bound to handing some thing over to him. Therefore a right in a thing makes the thing already one's own; a right to a thing makes it so that the thing becomes one's own. A right in a thing gives immediate action upon the thing itself, so that you may take it to yourself. A right to a thing gives immediate action upon the person himself, so that you may compel him to hand the thing over to you, for instance by the sentence of a judge. C. A. 307, 308; Inst. l. 4, t. 6.

One's own: something can be one's own in three ways, if a person is considered in society as its member. Hence right also is distinguished in three ways: into high right, low right, and right of property. High right is what the prince, republic, or community has over the goods of members, which it can exact as its own for the common good, by the own-ness of the community. Low right is in a member of the community, as such, toward common goods, which the member can exact as his

own in their distribution, by the own-ness of a member. The right of property is in a member of the community, as such, toward proper goods, which one member can exact from another as his own, by the own-ness of property.

To give each his own right means to equalize the right of another by rendering what is owed; for to right, as to a certain moral requirement, debt responds correlatively. Therefore, as is clear, justice is not a virtue toward oneself, but toward another. St. Thomas, 2. 2. qq. 57, 58.

834. **Resolutions.** The prince can indeed, if this is ever required for the common good, take a thing from a subject, because the right to the end necessarily imports the right to the means without which the end cannot be obtained. But the public good sometimes requires that someone be deprived of his own thing, for example a field for constructing a public road, etc. But then the prince, insofar as possible, is held to just compensation, because it is not equitable that one person be despoiled while others remain untouched, as is clear from natural and positive law. C. I. 438; C. G. 545; C. H. 349; C. A. 365.

In no way, however, can he, without a grave cause of public good but for his own proper convenience, by law take from a subject some notable thing or acquired right of his; because he has no power concerning the goods of private persons unless the account of the common good altogether requires it. Therefore he is then held to restitution. St. Thomas, 2. 2. q. 66, a. 8.

835. **How many kinds of justice are there?** Justice is threefold, namely distributive, legal, and commutative. For since justice is wholly situated in this, that it renders to another his own right, it is specified and divided according to right. But right, as was just said, is threefold: high, low, and of property.

836. **How many kinds of justice are there? continued.** Distributive justice therefore equalizes low right by the distribution of common goods, public duties, offices, and rewards, namely the right which a member of the community as such has to these things; and this is the justice of the whole toward the part, or of the head or community toward the members.

Legal justice equalizes high right through actions and goods which are owed to the prince or republic for promoting the common good; and this is the justice of the part toward the whole, or of the members toward the head and community. It is called legal because it has for its object that which is owed to the community by reason and force of laws. Therefore in reality it hardly deserves the name of justice, since in reality it is nothing else than obedience to be furnished to the laws.

Commutative justice, however, equalizes the right of property, or the low right of one member against another member, by the exchange of things and prices; and this is the justice of part toward part.

Vindictive justice, which is customarily added to the three prior species of justice, is not properly a fourth species of justice, because justice is specified and divided according to the diversity of the right which it regards; and this is only that threefold right just mentioned. Yet under a diverse respect it can be reduced to all those three species. Insofar as a superior by punishments provides for the common happiness of citizens, it pertains to legal justice. Insofar as he decrees the punishments themselves proportioned to the gravity of crimes, it pertains to distributive justice. Finally, insofar as

the superior executes the duties of vindictive justice from a certain quasi-contract entered into with the republic about administering public affairs rightly, it pertains to commutative justice. L. 486; St. Thomas, 2. 2. q. 58; q. 61.

836. **What is the difference between commutative and distributive justice?** In commutative justice arithmetical equality must be preserved; in distributive justice, geometrical proportion.

Commutative justice is exercised by citizen toward citizen, by private person toward private person, and has place in contracts and in other affairs pertaining to social commerce. Therefore in it the equality of the things themselves must be preserved, namely equality of thing to thing; as if, for example, you owe a hundred, you render a hundred, attending only to what is owed. Thus, if cases are excepted in which consideration of persons has been prescribed by the law itself, for example when there is question of minors, in all other things no respect is had to the condition or merits of the person. This is that equality which they call arithmetical.

Distributive justice, however, is exercised by a superior toward a subject, and has place in distributing honors, as they say, and burdens; rewards and punishments. Therefore it ought not to have respect of thing to thing, but of the merits and condition of persons, place, time, and similar circumstances. From this arises and is constituted what is called geometrical proportion, which is not equality of thing to thing, but proportion of thing to person, that is, to the merits of persons; or, what is the same, it signifies equality not of things, but of ratios. Hence if to one who has merits as five there are given, for example, ten coins, to one whose merits are as ten there ought to be given twenty. St. Thomas, 2. 2. q. 61; Inst. l. 4, t. 4, §§ 7, 8.

837. **What is the obligation of justice?** Both commutative justice and also distributive, vindictive, and legal justice oblige of themselves under grave obligation. For the violation of commutative justice, as is clear from many passages of Sacred Scripture, is to be punished by eternal punishment. 1 Cor. 6:10. Besides, it is repugnant of itself or by its nature to charity, which moves one to will the good of another; for it consists essentially in inflicting harm upon another. Therefore of itself and from its genus it is a mortal sin. St. Thomas, 2. 2. q. 59, a. 4. But injury to distributive, vindictive, and legal justice of itself brings in grave disorder, since it necessarily harms the order of society gravely.

Of themselves: because in this matter smallness of matter is admitted.

838. **What is dominion?** Since commutative justice regards equality of thing to thing, it is concerned only with the right of property, which is customarily called property and dominion. Dominion is commonly defined: the moral power of disposing at will of some thing as one's own, unless one is prohibited by law, agreement, or the will of a testator.

Moral power: and thus it is distinguished from physical power; moral power, and therefore legitimate power.

Of disposing of a thing: and thus it is distinguished from jurisdiction, which is also called dominion of jurisdiction, so that it may be distinguished from dominion of property; for jurisdiction is the

moral power of governing, and it is exercised immediately not upon a thing but upon a subject person.

At will: that is, by selling, giving, or even destroying without cause. Although this latter is otherwise prohibited, because God permits dominion to each person only with this counsel, that he be ready to serve his own and his dependents' necessity and utility, nevertheless it is not against commutative justice.

As one's own: for dominion properly is a right in a thing, and not precisely a right to a thing, which tends toward it and is perfected and completed by it.

Unless prohibited by law: thus minors are not permitted to alienate their own things except from a just cause and with certain solemnities observed. Yet in that case dominion is not taken away, but only its use is impeded.

By agreement: this would be, for example, if it were agreed between seller and buyer that the buyer not use the thing bought except after a certain day.

By the will of a testator: this would be, for example, if a testator had bequeathed a farm to someone under the condition that he not use it except after a year. C. I. 436; C. G. 544; C. H. 348; St. Thomas, 2. 2. q. 66; E. M.

839. **How many kinds of dominion are there?** Dominion of property is immediately divided into perfect dominion and imperfect dominion. Perfect or full dominion of property is the legitimate power of perceiving from some thing every advantage of one's liberty in one's own name. Imperfect dominion is the legitimate power of perceiving from a thing some, but not every, advantage of one's liberty.

Imperfect dominion is immediately subdivided into direct dominion and useful dominion. The former is legitimate power over the substance of a thing without the fruits. The latter is legitimate power of perceiving fruits and emoluments from another's thing, with its substance preserved. Useful dominion, according to the various advantages of things to be perceived, is divided into various species, especially into use, habitation, usufruct, servitude, and possession. L. 487.

840. **What is use?** Use is defined: the right of using another's things while their substance is preserved both as to matter and also as to form. Right signifies the faculty which belongs to the usuary, for thus the one to whom use belongs is called; but the one to whom the property's ownership or dominion belongs is called the proprietor. Therefore use here is not taken generally for the actual exercise of any dominion, but specially for a certain special power.

Of using signifies that the faculty belonging to the usuary extends only to those things which are necessary. C. I. 521; C. G. 630; C. H. 524; C. A. 504. This necessity must be measured according to the condition, state, and dignity of the usuary himself and of his family, servants included, and children born after the exercise of use not excluded. C. I. 521, 523; C. G. 630; C. H. 524, 526; C. A. 505, 506.

Another's things indicates that use cannot consist in one's own things; for anyone is said to have not only use but also dominion over his own things.

With their substance preserved: otherwise it would not be use but abuse. From this it follows that the usuary cannot change the thing whose use he has obtained, not even into a better form; and therefore those words have also been added: both as to matter and also as to form. C. A. 507.

And this is the principal obligation of the usuary; hence he is also held to ordinary repairs, and to taxes in proportion to the fruits, so that the thing may be preserved whole for its owner. C. I. 527; C. G. 635; cf. C. A. 508; C. H. 527. Use is acquired and ceases in the same ways in which usufruct is acquired and ceases. C. I. 529; C. G. 625; C. H. 529. Inst. l. 2, t. 5, §§ 1, 3, 4; L. 487; cf. 848, 849.

841. **Hence it is clear:** First, that things consumable by a single act, such as wine, oil, bread, etc., do not come under use, nor even under usufruct, because by such use the substance of the thing does not remain preserved.

Second, in the case of destruction of the thing, one is held to refund the equivalent price. And therefore previous security must be given and an inventory drawn up. C. I. 525; C. G. 262; cf. C. A. 520.

Third, with attention to the nature of use itself, the usuary cannot lease, sell, or give his right to another. For use consists in this, that someone uses a thing according to the measure of his necessity. C. I. 528; C. G. 631, 634; C. H. 525; C. A. 507. Except unless it clearly appears that even this faculty was granted to him by a special agreement, or if the use would be entirely useless unless it could be alienated.

Fourth, the usuary of a fruitful thing, such as a garden, field, vineyard, etc., cannot justly gather more of the fruits than is required for necessary sustenance. Hence if he gathers more fruits, he is held to restore them to the direct owner. C. I. 821; C. G. 630; C. A. 505, 506.

842. **What is habitation?** Habitation is the right of inhabiting another's house while its substance is preserved. And thus noble widows are often granted by their husbands the right of dwelling for the days of life in the house of the heir. The one to whom habitation of a house has been granted can dwell in it with his family, although at the time at which he acquired habitation of the house he was not married, and can receive guests in it. He cannot, however, transfer his right to another by selling it, or by leasing the house and acquiring the price of the lease for himself.

One who inhabits the whole house is held to all necessary and ordinary expenses and taxes; one who inhabits only part is held only according to the proportion of the thing. Habitation begins and ceases as use does, with which it is confused in more recent laws. C. I. 521 ff.; C. G. 625 ff.; C. A. 521, 522; C. H. 524, 525, 529; cf. C. A. 508; C. H. 527. By C. I. 1415 and C. G. 1570, besides clothing, habitation for the year of mourning is owed to a widow from the inheritance of the husband. Inst. l. 2, t. 5, §§ 2, 5.

843. **What is usufruct?** Usufruct is the right of using and enjoying some thing, perceiving fruits from it in that same manner in which the proprietor himself would perceive them, with its substance nevertheless preserved, both as to matter and also as to form, as in use. C. I. 477; C. G. 578; C. H. 467; C. A. 509; L. 487.

It differs from use in this, that it extends more broadly; for simply to use is to perceive only the necessary fruits, but to enjoy is to perceive them as the proprietor himself would perceive them. Thus, for example, if someone has the use of some garden, he can indeed take fruits from it for himself and his own, but he cannot alienate them and bestow them upon strangers; but he can if he has usufruct of the same garden.

That phrase, of using and enjoying, is not added in vain. For usufruct, insofar as it regards a fruitful thing, is the right of using; but insofar as it regards the fruits, it is the right of enjoying, or of perceiving fruits from it. And thus, if the revenues of some estate have been bequeathed, usufruct is not understood, but a legacy of revenues, which is a personal burden, not a burden of the estate. And therefore it is said: the right of using and enjoying some thing, perceiving fruits from it, etc. Hence it is a real right constituted in the thing, and thus differs from lease. The one to whom usufruct belongs is called the fructuary. Inst. l. 2, t. 4, § 1.

844. **What is the fruit of a thing, and how many kinds are there?** By the name fruits is generally understood everything which a thing bears or produces; for fruits are so called from bearing. Some are natural, which are produced from the thing itself and by the benefit of nature alone, such as grass, apples, nuts; likewise the offspring of animals and those things which come from them, since they are held as a part of their viscera.

Others are industrial, which are acquired by industry alone, such as the profit which is received from money exposed to business, or from improvements made to a thing. Others are those in which, besides nature, human labor and industry also have a part, such as, for example, wheat and crops. Theologians call these mixed, because they are produced partly by nature, but partly by the benefit of human industry.

Finally, others are civil, which arise only on the occasion of a thing and by the force of a particular obligation founded in civil law, for example the price of a leased house, rents of an estate, interest on money given as a loan, etc.

Natural and industrial fruits themselves are divided into those to be born and those born; the latter likewise into pending and perceived; and these are still customarily divided into existing and consumed. C. I. 444, 480, 494; C. G. 583, 584, 585, 598; C. H. 354, 355, 357; C. A. 330; L. 609, 610.

845. **How many kinds of usufruct are there?** There is a twofold division of usufruct.

The first is into proper and improper usufruct. The former is constituted in things which are by no means consumed by use, such as, for example, a house and garden. The latter is constituted in fungible things, as they call them, namely things which are consumed by use, such as, for example, bread, wine, and oil. Improper usufruct is also called quasi-usufruct. C. I. 483, 484; C. G. 587, 589; C. H. 481, 482; C. A. 510.

The other division is into singular usufruct, that is, of certain things in species; particular, that is, of some part of goods; and universal, in which all goods are contained. Cf. C. H. 469. Inst. l. 2, t. 4, § 2.

846. **What are the rights of the usufructuary?** In general, special agreement excluded, these are:

First, since the usufructuary is considered to act in the person of the proprietor with respect to useful dominion, his first right is that he can perceive all fruits, whether natural, industrial, or civil, and make them his own, whether he has gathered them by himself or through others. C. I. 477, 479; C. G. 578, 582; C. H. 471; C. A. 509, 511. They are understood as gathered when they have been separated from the soil or from the thing.

Hence if the fructuary dies when the fruits are mature indeed but not yet separated from the soil or from the thing, they do not belong to the heir of the fructuary but to the proprietor of the thing, without the burden of paying for cultivation, seed, etc.; for so long as the fruits adhere to the estate, they are considered one thing with it. But if that heir, when the fructuary was already dying, gathered immature fruits, he is held to restore them to the proprietor; for just as the fructuary could not gather immature fruits, still less could his heir.

By contrast, the usufructuary perceives natural and industrial fruits pending at the beginning, also without the burden of paying for cultivation, seed, etc. But civil fruits are acquired from day to day, and therefore must be divided according to the proportion of the time during which the usufruct lasted. C. I. 480, 481, 494; C. G. 585, 586, 598; C. H. 472, 474, 475; C. A. 511; cf. ib. art. 519; C. H. 472, 476, 477.

Second, he also has a right to all those things without which usufruct cannot be had. Therefore he has a right of way to the usufructuary thing through the hereditary estate, if access is not open from elsewhere; likewise a right of using all servitudes inhering in the estate, because they are held as qualities of the estate itself; likewise he has a right to opened mines and to the individual instruments of the estate, unless the contrary will of the testator appears. For the testator is not to be presumed to have wished that the fructuary procure instruments for himself for an estate which he is to use only for a time. C. I. 494; C. G. 597, 598; C. A. 511; C. H. 479; cf. ib. arts. 476, 477.

Third, furthermore, he has the right that he can sell or give the fruits, lease, lend, and mortgage usufructuary things, grant them to another to enjoy, and even hand them over in pledge; for one who enjoys through another seems to enjoy by himself. C. I. 492, 493, 1967; C. G. 595, 2118; C. H. 480. Inst. l. 2, t. 1, §§ 36-38.

Fourth, the usufructuary does not have a right to compensation for improvements made. For he is considered to have donated them. Nevertheless he will be able to compensate increase of price with losses, if any have followed without grave fault of the fructuary.

If that compensation cannot have place, it is licit for the fructuary and his heirs to take back for themselves the additions made, if they can be removed without detriment to the estate and with utility to the fructuary, and if the proprietor does not prefer to retain the additions made for himself, after paying their valuation. But it will always be licit for the fructuary and his heirs to recover mirrors, painted panels, and other ornaments, provided that all things are restored to their former state. C. I. 495; C. G. 599; C. H. 487, 488; cf. C. A. 514-517.

847. **What are the obligations of the fructuary?** In general these are:

First, the burden lies upon the fructuary both of furnishing custody, and of undergoing ordinary expenses so that the thing may be preserved in its whole state, and also of making expenditures so that he may perceive natural fruits from it. He is also held to paying ordinary burdens by which the

usufructuary thing is burdened, such as salaries, annual taxes, and similar things. C. I. 477, 501, 504, 506, 509; C. G. 605, 606, 608; C. H. 500-502, 504, 505; C. A. 512, 513.

Second, the fructuary must use another's thing as a good father of a family, and return it such as it ought to be found after good administration. The proprietor, however, can do nothing by which the condition of the usufructuary becomes worse, because he suffers him to enjoy. C. I. 495, 497; C. G. 599, 601; C. H. 489, 497, 503; C. A. 513.

Third, the usufructuary thing must be restored to the owner, once the usufruct has ended, such as it was as to its substance when it began. C. I. 477. Therefore security must be given and an inventory drawn up. C. I. 496, 497; C. G. 600, 601; C. H. 491. From C. I. 1922 either security or pledge can be given. But security need not be given by father or mother in legal usufruct, nor by one who sold or donated a thing while reserving usufruct to himself. C. I. 497; C. G. 601; C. H. 492. Nor indeed must security be given or an inventory drawn up if the one who constituted the usufruct remits both. C. I. 496, 497; C. H. 493; cf. C. A. 518, 520. Cf. C. I. 483, 484; C. H. 481, 482; C. G. 587, 589.

These things concern the burdens of the fructuary in general. For the special laws which are present concerning the usufruct of a field, flock, and forest must also be attended to. C. I. 486, 489, 490, 494, 512, 579; C. H. 483-485, 499.

848. **How is usufruct acquired?** Usufruct is acquired: first, by law, and then it is called legal; such is the usufruct of parents from the goods of children, or of a husband from the goods of a wife. Second, by agreement or contract, and therefore it is called conventional, for example by force of donation or testament. Third, by prescription. C. I. 478, 2137; C. H. 468.

849. **How does usufruct cease?** "Lest properties in general be useless, once usufruct departs, it pleased the law that usufruct be extinguished in certain ways and return to the proprietor." Inst. l. 2, t. 4, § 1.

Moreover, usufruct ceases: first, by the natural or civil death of the fructuary; for since both use and usufruct are personal rights, they must be extinguished by the death of the one to whom they belong. Hence usufruct, that is, the stable right itself of using and enjoying, neither passes to heirs nor can be sold without the consent of the direct owner. C. I. 515; C. G. 617; C. H. 498, 513. Usufruct granted to a community or moral body is extinguished by the space of thirty years. C. I. 518; C. H. 515.

Second, when the time has ended, if any was established by law or constituted by agreement. C. I. 515, 517; C. G. 617, 620; C. H. 513, 516; C. A. 528.

Third, by complete change, for example if a meadow becomes a pool, or by total destruction of the thing, if, for example, the whole building is demolished. Total destruction: for if the thing perishes only partially, usufruct is sustained in what remains. C. I. 515, 519, 520; C. G. 617, 624; C. H. 513, 514, 517; cf. C. A. 525.

Fourth, usufruct is likewise extinguished when the right of the one granting the usufruct is resolved; for example, if Titius sells a house to Caius under an agreement of redemption, and Caius meanwhile grants its usufruct to Sempronius, once the house has been redeemed by Titius, the usufruct also ceases.

Fifth, by consolidation, namely when the fructuary obtains the property and dominion of the thing itself, or the owner also acquires the usufruct. C. I. 515; C. G. 617; C. H. 513.

Sixth, by renunciation of the fructuary, provided it is not done in fraud of creditors. C. H. 513.

Seventh, by abuse, by which through the fault of the fructuary the thing becomes worse. C. I. 516; C. G. 618. It is otherwise from C. H. 520, 529, which establishes a distinction between usufruct and use, which is extinguished by grave abuse of the thing.

Eighth, by prescription, namely if the fructuary does not use his right for so much time that the usufructuary thing can be usucapted by another; thirty years are required so that the owner can prescribe against the fructuary. C. I. 515; C. G. 617; C. H. 513. Inst. l. 2, t. 4, § 3.

850. **What is servitude, and how many kinds are there?** Servitude, taken actively and generically, is a right which inheres in someone, that another's thing or another person serve his thing or himself. But servitude taken passively is the obligation of another's thing or person corresponding to the aforesaid right. Another's thing or another person: for one's own thing does not serve its owner; therefore the advantages which the owner perceives from it he perceives by the right of dominion, not by the right of servitude. The same must be said all the more concerning a person.

Hence servitude can be: first, personal, which is owed from person to person and is proper to a slave toward a master. Second, mixed, which is owed from a thing to a person, of which sort are use, usufruct, and habitation. C. A. 521. Third, real, which is owed from thing to thing, as a burden imposed on an estate for the utility of another estate. C. I. 531; C. G. 637; C. H. 530; C. A. 473.

Real servitude is divided into continuous and discontinuous. The former is exercised without a human act, such as servitude of view, rain-drip, etc. The latter is exercised by a human act, such as servitude of way, drawing water, etc. C. I. 617; C. G. 688; C. H. 532.

Another is apparent, another non-apparent. The former appears outwardly by some sign, such as servitude of gate, window, aqueduct; the latter lacks this exterior sign, such as servitude of not raising a building higher. C. I. 618; C. G. 689; C. H. 532. Inst. l. 2, t. 3, §§ 1, 2, 3.

851. **By what modes is servitude constituted?** Real servitude can arise from a threefold source.

The first is the natural position of places. Thus, for example, an estate which is in a lower position is held to receive the waters flowing down from an estate which is higher. Servitudes flowing from this source are therefore called natural.

The other is law, under which name also comes the sentence of a judge. Thus, for example, because of public or private utility, law prescribes rules to be observed with respect to construction and repair of roads, deduction of waters, building of houses, distance of walls, etc. Servitudes arising in this way are called legal.

Servitude can also be acquired by prescription. C. I. 2137; C. A. 480, 1469, 1470. Only apparent and continuous servitudes can be acquired by usucaptions, and only by prescription of thirty years. C. I. 629, 630; C. G. 690, 691; but C. H. 537-539 by prescription of twenty years. But in the forum of conscience good faith is required, namely by which someone thinks that the owner who suffers him

to use the servitude is not unwilling. Continuous non-apparent servitudes, such as servitude of not raising higher, and non-continuous servitudes, whether apparent or non-apparent, cannot be established except by means of title. Possession, even immemorial, does not suffice to constitute them. C. I. 630; C. G. 691.

Finally the third source is agreement: namely, proprietors of neighboring estates can, if law or public order does not stand in the way, agree among themselves that one estate serve another, and conversely, if this has pleased them. These servitudes are called conventional. C. I. 532; C. G. 639. Likewise servitude can be constituted by destination of the father of a family, by some act of last will, or among the living. C. I. 629, 630; C. G. 692, 693; C. A. 480. Inst. l. 2, t. 3, § 4.

But here it must be observed: first, servitude in things of the Church falls under the Extravagant *Ambitiosae*, for it is a certain alienation of right, and therefore cannot be imposed without apostolic good pleasure.

Second, by C. I. 556, the faculty of rendering a contiguous wall common does not extend to buildings of public use, and therefore not to churches either.

Third, agreements which constitute burdensome predial servitudes, or moderate them, must be made by public act or by private writing under penalty of nullity. C. I. 1314. But if they are constituted by gratuitous title, a public act is required, since then there is a donation, which otherwise is null. C. I. 1056; cf. 1011.

852. **By what modes is servitude ended?** Real servitude is extinguished: first, when the established time has elapsed, or the condition has been fulfilled. Second, by express or tacit renunciation. Third, by consolidation, by which the owner of the dominant estate becomes at the same time owner of the servient estate, or vice versa. Fourth, if the thing is changed; yet if the thing is reduced to its former state, the servitudes revive, unless prescription stands in the way. Fifth, by prescription, or non-use of the right of servitude for thirty years by C. I. and C. G.; but by C. H., for twenty years. Indeed, since servitudes have the character of immovables, they can be prescribed by the space of time which is observed in prescribing such things. Gury 597, 598; C. I. 662 ff.; C. G. 703 ff.; C. H. 546 ff.; C. A. 524 ff., 1488.

853. **Resolutions.** First, the owner of the higher estate cannot do anything so that the flow of waters is unusually increased, with harm to the lower estate. Nor indeed can the owner of the lower estate do anything which impedes the flow of water with damage to the higher estate. C. I. 536; C. G. 640; C. H. 543, 545.

Second, the owner of the servient estate cannot change the position of the road, waters, or stream, unless the servitude has become more burdensome or impedes useful repairs from being made to the estate; and then he is held to bring no harm or to compensate it to the dominant estate. C. H. 545.

Third, those who possess fields on the banks of navigable rivers cannot stand in the way of opening the necessary path for the course of ships. The same must be said of those whose estates adjoin roads or other public works; for they are held to suffer the servitude as long as it is necessary for the making or repair of the aforesaid works. But in both cases the injured proprietors have a right to some indemnity, if this can be done. C. I. 534; C. G. 650; Inst. l. 2, t. 1, §§ 4, 5.

Fourth, to acquire by prescription a right of servitude, for example a right of way, aqueduct, etc., through another's estate, the one prescribing must exercise positive acts by which he acquires such a right, and at the same time have good faith by which he believes that right belongs to himself. Nor does the knowledge and tolerance of the one against whom prescription is made suffice, if he does not have title. But if he has title, knowledge and tolerance of this kind are not required. C. I. 630; C. G. 691; C. H. 539. Gury 598.

854. **What is possession, and how many kinds are there?** Possession is often confused with property. Yet it differs from it, because possession is the right by which a thing is held as one's own; but property or dominion is the very right by which a thing is one's own and someone is its owner. Possession is more a matter of fact than of right. Nevertheless, a twofold possession is distinguished: one of fact, the other of right.

855. **What are possession of fact and possession of right?** Possession of fact is the apprehension or detention of a thing, with the aid of body, mind, and right.

Of a thing: by this name we understand not only corporeal things, but also incorporeal things, such as rents, patronage, etc., which indeed are said to be quasi-possessed, to distinguish them from corporeal things, which are said to be possessed.

Apprehension or detention: because possession is considered either in its beginning or in its continuation. In its beginning it is apprehension of the thing; in its continuation it is detention of the same thing.

With the aid of body: because for some corporeal thing to be possessed, it must be apprehended by some bodily act, for example by hands, feet, etc. If the thing belongs to no one, true and real apprehension is required to acquire it. If the thing belongs to someone who hands it over to another, fictive apprehension suffices, as if he hands over the keys of the house to another. Finally, if the thing is acquired by the sole disposition of law, legal apprehension suffices, as if an heir, not knowing it, acquires an inheritance. If the thing is incorporeal, apprehension is had by the very use, or exercise of the right, or by observing the forms prescribed by law.

With the aid of mind: because for a thing to be possessed, it must be apprehended with the mind of having it as one's own.

With the aid of right, that is, with right not resisting or impeding, because for possession it is required that right or laws not impede the detention of a thing from being considered true possession of the same thing by rendering someone incapable of possession. Thus, for example, detention of a sacred thing by a layman, or of a public thing by a private person, cannot even be called possession of fact, because right, by rendering these persons incapable of such possession, impedes such possession. By contrast, detention of a stolen profane thing in the possession of a thief is true possession of fact, although unjust, because right does not impede the detention of such a thing from sufficing for possession. L. *Qui universos de acquir. vel amitt. possess.*; Inst. l. 2, t. 1, § 1 ff.; t. 2; C. I. 685, 687, 688, 690; C. G. 2134, 2228, 2230-2232; C. H. 430-432, 437-440; C. A. 309-315.

Possession of right, however, is defined: the right of insisting upon a thing as one's own, not prohibited from being possessed. Right: by this it differs from possession of fact, which is the very occupation or detention of a thing, from which either a right arises if it is just, or does not arise if it

is unjust. Of insisting upon a thing: that is, of peacefully detaining the thing, and defending it by remedies of law, sometimes even by arms where there is need, against disturbers. As one's own: for if someone insists upon a thing in another's name, it will not be true possession. Thus, for example, a tutor cannot be said to possess the goods of a minor, but the minor himself possesses through the tutor, because the tutor does not retain those goods as his own but in the name of the minor. Not prohibited from being possessed: that is, with no law resisting and impeding, as was said above concerning possession of fact. C. I. 686, 701; C. G. 540, 550, 2229, 2268; C. H. 430-432, 437-441; C. A. 316-329. But for possession to be legitimate, the formalities prescribed by law must also be observed.

856. **What are natural and civil possession?** Possession, both of fact and of right, is divided into natural, civil, and most civil. Natural possession is that by which a thing possessed is retained as one's own by body and mind, namely when someone bodily insists upon detention of a thing as his own; this is done by one who is so near to a thing placed in his sight that he can continuously be present to it.

Civil possession is that by which a thing apprehended by body and mind is retained by mind alone. Thus he possesses his house who is absent from the house so long as he has the mind of retaining it for himself.

Most civil possession, finally, is that which is retained by the sole disposition of law, without any aid of mind and body. This happens, for example, in a little child to whom some inheritance has come; he possesses the inheritance of the deceased without any act of apprehension, and even without any knowledge of the intellect. Inst. l. 4, tit. 15 *de Interdictis*.

Natural and civil possession is likewise distinguished insofar as merely natural possession is called the mere detention of some thing, or the mere enjoyment of some right. Civil possession, however, is called this same detention of a thing or enjoyment of a right, but together with the intention of having the thing or right as one's own; and therefore someone possesses not in another's name, but in his own name, namely with the mind of an owner, whether he detains the thing by himself or through another, through a tenant farmer, tenant, fructuary, etc. C. I. 685, 687, 688; C. G. 2134, 2228-2232; C. H. 430-432, 438-441; C. A. 309, 310, 313, 352.

857. **What are the rights of the possessor?** The rights and juridical privileges annexed to juridical possession are the following:

First, by taking possession of a thing belonging to no one, its dominion is acquired. C. A. 381. Likewise the possessor in good faith, after a certain time has elapsed, can prescribe against the direct owner of the thing and acquire dominion over it, as will be said below.

Second, possession in good faith, if it is immemorial, that is, if its beginning exceeds the memory of persons now living, regularly supplies all defects from which otherwise legitimate dominion would not exist, as is clear from C. *Quibusdam de Verb. signific.* Cf. C. I. 630.

Third, a possessor in good faith, when a doubt arises whether the thing is his own or another's, if the contrary cannot certainly be shown, can with safe conscience retain the thing; and the judge, while

such doubt stands, ought to adjudicate the thing to him. C. I. 687, 691, 694, 700; C. H. 446, 459; C. A. 323, 324.

Fourth, a possessor in good faith, if he consumed another's thing, is afterwards not held to restore except insofar as he has been made richer and has spared his own goods. C. A. 329.

Fifth, the possessor at the time of the contested suit is to be defended by the judge in possession, unless he drew it to himself by force, secretly, or precariously; for then he would have to be deprived of possession. C. H. 446; C. I. 694.

Sixth, if a possessor is disturbed from possession by private violence, before all else restitution of the despoiled person must be made; nor is the occupier, alleging title and wishing to prove that the thing is his own, to be heard first. C. *In litteris de Restit. spoliat.* Cf. C. I. 694, 695, 697, 700; C. A. 339.

Seventh, a possessor in good faith can defend the possessed thing even by arms against an invader, provided this is done immediately and with the moderation of blameless defense, that is, defensively and not offensively. L. 3 ff. *de vi et de vi armata*.

Eighth, if someone is successively obligated to give or hand over the same movable thing to two persons, the one who first obtains possession of that same thing also has property of it, although his title is later, provided he is in good faith. C. I. 1126; C. G. 1141; C. H. 445, 1473; C. A. 322. L. l. 3, n. 927; l. 4, n. 210.

858. **Does man have dominion over himself?** Having declared the intrinsic nature of dominion, we now proceed to explain the object and subject of dominion.

Man does not have direct dominion of property over his soul and body and members, but only useful dominion.

The first part is proved. For dominion imports a certain superiority; but man is not superior to himself, to his members, or to another human being. Therefore. Besides, direct dominion by natural right belongs to man over the remaining lower creatures because these by their nature are ordered to man, that they may serve him. Therefore, since man by his nature is ordered to serve God, direct dominion of property over man and his members belongs to God alone. Hence in Wisdom 16:13 it is said: "You are, O Lord, who have power of life and death." And in Deut. 32:39 God says: "I will kill, and I will make alive."

The second part is proved. For man not only can licitly use his body and members for very many functions, but also through these, aided by divine grace, he can merit eternal life. Therefore. Lugo, D. 10, nn. 9, 17; Molina, T. 4, D. 1, n. 1.

859. **Resolutions.** Suicide and mutilation, of themselves speaking, are not only against charity, but also against justice, or the divine right of property; for the usuary has an obligation of preserving the substance of the thing granted to him for use. But homicide of another person is not only against charity and the divine right of property, but also against human useful right.

860. **Does man have dominion over another man?** One man can be under the dominion of another not only by jurisdiction, but also by property, though imperfect or useful property. Imperfect or useful: for perfect dominion of property belongs to God alone, as is clear from the

preceding proposition. The reason is that each human being is owner of his own labor; and therefore he can alienate it for his own utility and hand it over into the dominion of another. For an owner can dispose at will of the object of his dominion. St. Thomas, 2. 2. q. 57, aa. 3, 4; E. M.

861. **From what titles can servitude be introduced?** From the following four titles:

First, from agreement, or one's own renunciation. For it is not repugnant that someone renounce his liberty to relieve his own poverty, etc.

Second, from the right of war. For it is not repugnant that the victor sometimes inflict this penalty. For sometimes he could kill captives for the security of the people; therefore, all the more, he can reduce them to servitude.

Third, from crime, or from just condemnation. For if a guilty person can be condemned to death, all the more to servitude, since deprivation of life is deservedly considered the greatest of all punishments.

Fourth, from birth in the state of servitude, since by law those are slaves who are born from slaves. Thus by the law of nations according to the common opinion. Inst. l. 1, t. 3, §§ 3, 4; Lugo, D. 6, nn. 11, 17; E. M.

862. **Is the trade of Black persons licit?** It is altogether illicit by every law whenever Black persons are unjustly despoiled of liberty and transported in crowds from their own regions as vile cattle and sold, as happens in that wicked trade. Against so inhuman a traffic various apostolic constitutions have appeared, namely those of Paul III, Urban VIII, Benedict XIV, and Gregory XVI, *In supremo apostolatus*, December 3, 1839. Cf. the letter of Leo XIII to the bishops of Brazil, *In plurimis*, May 5, 1888.

But if there is question of Black persons or others existing in legitimate servitude, it is not absolutely illicit of itself, because, once servitude has been admitted as legitimate, the master has a true right in the slaves, or in their labor, and therefore can transmit that right to others. Of itself: for circumstances can stand in the way, for example if one spouse would have to be separated from the other; or if civil laws forbid it, as in fact servitude is generally forbidden in Europe. Collectan. S. C. de P. F. nn. 2103, 2104, 2105, 2107; E. M.

863. **Note.** From C. I. 1628 and C. G. 1780, one cannot oblige one's own labor into the service of another except for a determinate time and a determinate object. From C. H. 1583, one can oblige one's own labor without a fixed time, for a certain time, or on account of a determinate thing. A lease for one's whole life is null.

864. **What about one's own reputation?** Man has dominion over his own reputation. For man acquires it by labor wholly depending on his free will through the exercise of virtue, and therefore by his own acts, which reputation follows as a sort of natural effect. L. l. 3, n. 983; Billuart, D. 3, art. 2.

865. **Resolutions.** From a just cause, and with scandal and the defamation of others set aside, man can licitly defame himself, for example to seek counsel, to restrain his own pride, to commend

divine mercy, to restore another's reputation, etc.

From a just cause: for if someone squanders his reputation without a just cause, he sins venially. But he would sin gravely if the infamy harmed the execution of his own office, for example that of a pastor, teacher, rector, etc.

And with scandal set aside: for if someone, by revealing some wholly hidden crime of his own, gave scandal to others, he would sin by scandalizing others.

And with defamation of others set aside: for otherwise man would sin by injuring the reputation of others, for example of an accomplice, family, or community. Thus a religious cannot reveal to outsiders his crimes committed in religion, because in this way he would in some measure injure the reputation of his own religion and community. Struggl 9; L. 983.

866. **What about exterior things?** Man can have useful and direct dominion over external goods of fortune legitimately acquired. For irrational creatures were immediately created for man, so that he might use them and serve God. Nor indeed was any restriction placed by God upon this use; indeed, it was granted without limit with respect to the aforesaid end, as is clear from the words of Gen. 1:28: "Have dominion over the fishes of the sea and the birds of heaven," etc.; and Ps. 8:8: "You have subjected all things under his feet." Therefore God granted to man useful and direct dominion over these external things. St. Thomas, 2. 2. q. 66, aa. 1, 2.

867. **What is the subject of dominion?** It is certain that every intellectual substance, and only an intellectual substance, is capable of dominion; for dominion is the legitimate faculty of disposing at will of some thing as one's own. But every intellectual substance, and only such, can have this faculty, since only it is endowed with free will.

To God alone indeed belongs supreme, absolute, and independent dominion over all created things. But particular dominion, subject to the supreme dominion of God, also belongs to human beings, even to unbelievers and sinners; indeed also to little children and the insane. For the use of reason is necessary indeed for disposing of goods, but not for having possession and habitual dominion of them. Otherwise those sleeping and those drunk would not have true dominion, and would altogether lose it by the act by which they sleep or are overwhelmed by drunkenness. By the very necessity of natural law and by the disposition of positive law, dominion can be acquired and retained even without any positive act of one's own will. Lugo, D. 3, n. 16; St. Thomas, 2. 2. q. 12, a. 2; q. 66, aa. 1, 2.

868. **What about the dominion of children under paternal power and wives?** A child under paternal power is one who still lies under paternal power. Although "a woman is equal to the man in the act of marriage, nevertheless in those things which pertain to the disposition of the house, the man is the head of the woman, according to the Apostle, 1 Cor. 11." St. Thomas, 2. 2. q. 32, a. 8 ad 2.

Moreover, "one who is constituted under the power of another, insofar as he is such, ought to be regulated according to the power of the superior. For this is the natural order, that lower things be regulated according to higher things. And therefore it is necessary that, in those things in which the

inferior is subject to the superior, he dispense no otherwise than is permitted to him by the superior." St. Thomas, ib., body.

Hence it is clear that although children under paternal power and wives can indeed have dominion over things, nevertheless this dominion is not, of itself speaking, independent of the power of the father of the family and of the husband; but it is subject to the power of these persons as to administration, and also as to usufruct, for sustaining the expenses of education and the burdens of marriage. Cf. 667 ff., 677 ff.

The dominion of children under paternal power regards things given to them by any title transferring dominion, or acquired by their own industry. For as regards paternal goods, children have, while the father is living, no strict right in the father's goods. Hence if children under paternal power steal anything from these goods, they are of themselves held to restitution. Of themselves, unless there is question of a thing of smaller moment and it is prudently presumed that the father remits that obligation. L. 539, 543, 544.

Likewise the dominion of wives is understood in their own goods, not in the goods of the husband. Hence a wife also, if she steals anything from the husband out of his goods, is of herself held to restitution. Of herself, again, unless there is question of a thing of smaller moment and it is prudently presumed that the husband consents. Likewise a wife would be excused if, not having paraphernal goods, she took something from the common goods or from the fruits of her dowry to relieve the necessity of parents or children who had been received from a first marriage. For she is held to this by natural law, and the husband ought to consent to it. L. 541, 542, 543; H. A. n. 33.

But since the husband does not have direct dominion of the wife's goods, if he dissipates them, he is held to restitution. St. Thomas, 2. 2. q. 57, a. 4.

Here the question is moved only concerning common goods, whether the husband is also held to restitution if he spends and dissipates them prodigally or badly. It must altogether be affirmed if there is question of the capital and common goods themselves; since if these goods are common, and consequently belong to husband and wife in common, it is clear that the wife's right is injured in this matter and therefore must be repaired.

But if there is question of the revenues of those same goods, when they are assigned to the husband by laws, he is excused from restitution with respect to those badly spent. But when the revenues themselves enter into the common goods, if the husband spends and dissipates them badly, he is held to restitution. And this indeed is had in C. G. 1401 ff.; C. I. 1433 ff.; C. H. 1392 ff.; cf. 677, 1237; L. 539, 542; Lessius, l. 2, c. 25, D. 4, n. 37.

869. **What about the dominion of the Church?** The Church has dominion of civil jurisdiction, as is the temporal dominion of the Roman Pontiff. The Church also has dominion of property over goods, whether movable or immovable. But the right of the Church in this matter is by its nature independent of the power of the civil State; and therefore it cannot be limited and restricted by that power.

The direct dominion of these goods belongs to the universal or Catholic Church itself. Hence they are called the goods of the Church, and simply ecclesiastical goods. Therefore, when the immediate subject of these goods ceases, for example a pious institute, monastery, etc., their goods do not

become no one's, but continue to belong to the Church; and consequently the Supreme Pontiff can dispose of them in favor, for example, of another pious institute, monastery, etc. Indeed, the Supreme Pontiff has plenary and supreme administration and disposition of all ecclesiastical goods. C. *Licet* 2 *de Praeb. et dignit.* in 6; St. Thomas, 2. 2. q. 100, a. 1 ad 7; Suarez, *Def. Fid.* l. 4, c. 18, n. 8; L. l. 3, nn. 591, 615.

But the usufruct of these goods of itself respectively belongs, by transfer of right, to those persons, places, etc., to whom they were donated or left by the faithful. Of itself: since the Supreme Pontiff could by his power change this usufruct, just as also remit due fruits, etc. For since donations of this kind by the faithful are made altogether voluntarily, it must be whole and entire for those offering, just as they may make them or not make them, so also, when they make them, to transfer their right to whomever they prefer.

Sometimes offerings of this kind made to churches or other religious places are destined for certain uses. Then their immediate administration belongs to the bishop, pastor, or rector of the church, under dependence on the bishop, but by no means to lay persons, unless the works are of merely lay beneficence. Nevertheless lay persons can be employed in the administration of ecclesiastical goods as mere ministers. For since the right of administration of this kind is something spiritual, lay persons cannot obtain possession of it. But if the will of those offering is certain, this must altogether be obeyed. Clem. *Quia contingit de Religios. dom.*; Trent, Sess. 25, c. 8 *de Ref.*; cf. Ithur. case 45, n. 47; A. S. S. vol. 8, p. 174.

Finally, ecclesiastical goods cannot be alienated without apostolic good pleasure, and the other solemnities prescribed by law must be observed in this alienation. Extravagant *Ambitiosae de Rebus Ecclesiae non alienandis*; St. Thomas, 2. 2. q. 86; Collectan. S. C. de P. F. nn. 1622, 1623, 1624; E. M.

870. **What about the dominion of clerics?** Four kinds of goods of clerics are distinguished:

First, patrimonial goods, which come from paternal inheritance or from any other profane cause, for instance from donation, succession, etc. To these patrimonial goods must be equated pensions which are granted by the Government to worn-out priests or to religious formerly ejected from monasteries, as supports paid out for their sustenance and in compensation.

Second, quasi-patrimonial goods, which are acquired on the occasion and in view of functions, for example by celebrating Mass, preaching, etc. They are also called quasi-ecclesiastical or casual goods. To this belong also the uncertain revenues of pastors, which are called stole fees, and the daily distributions of canons on account of choir service, as a kind of stipend of the person.

Third, ecclesiastical goods, which are perceived from benefices of the Church, for example from revenues of benefices, etc. To this also belong goods which are paid by the Government to pastors and canons under the title of supplement, S. Poenit., January 19, 1819, as well as tithes. Therefore, by the name ecclesiastical goods here are not understood the estates, which clerics certainly cannot alienate, since their dominion is with the Church while the clerics are simple usufructuaries, but only the revenues coming from them are understood.

Fourth, parcimonial goods, which a cleric sets aside by living sparingly from the fruits of the benefice, and which he could have consumed by living honorably. L. 490, 491.

A cleric has perfect dominion of patrimonial goods. The reason is that a cleric is of himself truly capable of dominion, nor is he prohibited by any law from disposing freely of the aforesaid goods. Indeed, that right is supposed in hundreds of places of canon and civil law. L. 491.

A cleric has perfect dominion of quasi-patrimonial, or quasi-ecclesiastical, or casual goods. The reason is that these goods are not the fruits of a benefice, nor the price of a sacred office, but a sort of stipend for extrinsic labor to which the cleric is not held, or also a certain largess paid out by the faithful for the cleric's sustenance. L. 491; Lugo, D. 4, n. 23. This is also clear from the response of the Sacred Penitentiary, August 9, 1824, by which it declared that offerings of the faithful are not ecclesiastical goods.

A cleric can use the fruits of a benefice for honorable sustenance; but he is held to pay out everything superfluous to the poor or to other pious works. The first reason is that one ministering to the Church can live honorably from the goods of the Church, since benefices were instituted especially for this end. The second reason is drawn from the precept of the Church, which is evident from innumerable decrees of Councils and sacred Canons. For the canons of the Church impose this obligation upon clerics or suppose it imposed, says Benedict XIV, *de Syn.* l. 7, c. 2, n. 4. L. 491.

Under the name of pious use comes whatever pertains to divine worship. Under the name of the poor, however, come not only those begging from door to door, but also those who otherwise cannot preserve their own state. Blood relatives also come under this if they are truly poor, so that otherwise they cannot sustain their own state. And this is clear from Trent, Sess. 25, c. 1 *de Ref.* A cleric can prefer these needy blood relatives to other poor persons, even those more gravely in need, because assistance of needy relatives also pertains to preserving the cleric's own state, since their poverty redounds to his disgrace. Although it is more fitting, nevertheless the poor who are in the place of the benefice need not necessarily be assisted on an equal footing, because the canons prescribe almsgiving indistinctly, whether to citizens or to outsiders. L. 491.

"Although this special and grave obligation radically and occasionally proceeds from the virtue of charity and religion, nevertheless formally it arises only from the precept of the Church, and from positive law and the virtue of obedience. Thus commonly others with Lessius, l. 2, c. 4, dub. 6. The reason as to the first part is: because nowhere is a special precept imposed on clerics from charity to pay out superfluous revenues to the poor, but they are bound only by the general precept of giving alms, although somewhat more strictly than lay persons. But the reason as to the second part is: because founders did not assign ample revenues to clerics under this formal obligation, but only by hope and intention; therefore." Thus Struggl 27.

St. Alphonsus 491, 492, although he admits at least probably that this obligation does not arise from justice, nevertheless admits that it arises from the precept of the Church from a motive of the virtue of religion; more probably, however, from justice. Schmalzgrueber, l. 3, t. 25, n. 35.

"It has been dispensed with clerics living in the city and in its district up to ten miles, that they could dispose freely of benefice goods just as of their own and patrimonial goods, as is had in the Constitution of Sixtus IV, *Etsi diversis*, Kal. Jan. 1474; Constitution of Julius III, *Cupientes*, Id. May 1550; Constitution of Paul V, *In eminenti*, April 18, 1606." Schmalzgrueber, cited place, n. 36.

A cleric enjoys perfect dominion of parcimonial goods, and therefore can dispose of them as a true owner. The reason is that a cleric has a strict right to honorable sustenance; therefore whatever he

removes from it by living more sparingly belongs to him and remains in his free power, since that right is altogether absolute. Trent, Sess. 24, c. 12 *de Ref.*; C. *Consuetudinem de Cler. non resid.* in 6; L. 491; St. Thomas, 2. 2. q. 185, a. 7; Quodl. 6, a. 12 ad 3; Lessius c. 4; Benedict XIV, *de Syn.* l. 7, c. 2, n. 12.

Secular clerics may make a testament concerning their patrimonial, quasi-patrimonial, and parcimonial goods; but concerning superfluous benefice goods they cannot make any testament by common law, even for pious causes. C. *Ut unusquisque* 3 *de Pec. cler.*; C. *Si quis* 5 ib. It is said by common law, for the case of special privilege or custom must be excepted. Struggl 28; Schmalzgrueber, cited place, n. 33; E. M.

871. **Are clerics who badly spend the superfluous portions of ecclesiastical goods held to restitution?** Response: probably negatively, because although the precept of the Church is established, nevertheless the obligation from justice is not established. Indeed, from Trent, Sess. 24, c. 12 *de Ref.*, it seems to be gathered that they make the fruits their own, though with the obligation of paying out the superfluous to alms or other pious works. For the Council says concerning non-resident clerics: "Let them not make the fruits their own."

Yet others probably affirm, because clerics are only administrators and stewards of ecclesiastical goods; or at least because the Church does not grant to them dominion of those goods except limited dominion, with this burden imposed from justice.

The first opinion, that is, the negative, says St. Liguori in *Retract*. question X, seems no less probable in practice, especially because of the authority and reason of St. Thomas, 2. 2. q. 185, a. 7. But as regards the fault of violating the Church's precept, for grave matter a quantity much greater than in theft is required. L. 491, IV, 492; St. Thomas, Quodl. 6, a. 12.

Since each opinion is probable, the heirs also of these goods can probably retain them without injustice and sin. But whether the one receiving those goods sins by cooperating in the sin of the donor, many affirm; but more probably it must be said that "the recipient does not sin, neither against religion nor against charity, unless he asks or induces the donor to give." L. 492.

872. **What is understood by superfluous?** That is considered superfluous which remains beyond honorable sustenance. Moreover, honorable sustenance of a cleric is that which befits the cleric by reason of his state, dignity, etc. Therefore it does not exclude honorable recreations, moderate donations, and other expenses of this kind; but these can be determined by the judgment of a prudent and timid conscience rather than by a general rule.

Honorable or fitting sustenance cannot be defined equally with respect to all clerics; for more, as is clear of itself, is owed to a bishop than to a canon, more to a canon in a cathedral church than to a simple priest, more in one place than in another. Therefore attention should rather be paid to the usage of others of timid conscience in the same grade and in the same circumstances of places and things.

But whether account can be had of nobility is disputed. One who would affirm this does not seem to be condemned; for each person can live according to his own state.

Likewise one can licitly pay from these goods debts legitimately contracted after the benefice, since this also pertains to the account of one's own state; likewise to exercise moderate hospitality, since this is owed by virtue; likewise to support nephews in studies, if the parents are poor, and other poor persons are not gravely in need, and he himself does not have other goods. For then this becomes a work of charity and mercy. L. 491; Schmalzgrueber, cited place, nn. 24, 25.

873. **Can clerics preserve the superfluous for the future?** Response: affirmatively, because of itself there is no obligation of immediately paying out the superfluous; indeed it can laudably be preserved for a pious foundation, provided one proceeds in good faith and the danger is absent that afterwards it be converted to profane uses. St. Thomas, 2. 2. q. 185, a. 7; L. 491.

874. **Can a cleric who has from patrimony enough to live on sustain himself from the fruits of a benefice?** Response: affirmatively. The reason is that it is just that one who labors in the Church be sustained by the same, and it is altogether accidental whether he is rich or poor. Therefore not by reason of poverty, but of labor, the cleric has a right to sustenance. Hence a cleric can spare his patrimony while using the fruits of the benefice for sustenance fitting to his dignity. This is also clear from the words of the Apostle, 1 Cor. 9:7, 13: "Who ever serves as a soldier at his own wages?... Do you not know that they who work in the sanctuary eat the things that are of the sanctuary, and they who serve the altar share with the altar?" L. 491; St. Thomas, 2. 2. q. 185, a. 7; Billuart, D. 3, a. 5.

875. **What about the dominion of authors?** "It is certain," says Fr. Gury, *Comp.* vol. 1, n. 566, "that any human being has by natural right a right in the fruit of his own industry and ingenuity. For if a thing fructifies for its owner, all the more ought this to be true of internal faculties, since nothing can be more proper to a human being. Therefore anyone can use for his own advantage those things which by his own ingenuity he has devised in the sciences. Therefore the inventor of some art has a strict right that his secret not be stolen, and that it not be divulged to the public against his will. But if this is done, the damager is altogether held to restitution according to the measure of the injury inflicted.

"But the difficulty is whether an author, once works have been brought into the light, can keep them proper to himself and exclude others from their use."

The use being treated here is that by which others, once works have been published, commit them to the press themselves and sell them for their own profit. If the author retains for himself a right of property in his work, already brought into public light, absolutely and without limit, then he can certainly prevent others from publishing and selling his works; or, as is commonly said, the author can reserve to himself the right of property as regards this use. But if the author no longer retains for himself any right of property in those works, he cannot reserve to himself the aforesaid use of publishing and selling the book.

876. **What is the state of the question?** This question can be discussed concerning natural right and concerning positive right.

If natural right is first considered, there are some who hold that the aforesaid right of property by natural law strictly and altogether belongs to the author. The reason is that if the law of nature itself

demands that to each person his right in the fruit of his own industry and ingenuity be preserved, but in our matter no fruit of industry can be perceived unless the work, as they say, is handed over to the community, certainly that same law of nature demands that this handing over or publication of the work to the community not deprive the author of the fruit of his industry.

By contrast, there are those who hold that the author does not have by natural right a right in his work once it has already been published and divulged, because a thing once handed over to the community becomes by that very fact of common right; and therefore the right of nature cannot require that the author be able to reserve to himself the use of the work and exclude others from publishing and selling it.

877. **What does natural equity require in the case?** In order that the question be rightly resolved, strict requirement of right must be distinguished from fittingness or congruity and equity. Furthermore, a book considered formally, namely as to that series of doctrine and its exposition and explanation which it contains, must be distinguished from a book considered materially, that is, as to that material edition which the author made.

Moreover, there is no question here either of mere congruity of right or of mere equity; nor is a question raised about the material edition made by the author himself. It is evident that it is altogether fitting and equitable that an author be permitted to enjoy the advantage and profit which comes from a book produced by him; and he could perhaps perceive that advantage and profit only in small part unless the right is reserved to him of excluding anyone else from the aforesaid use of his book. Therefore positive law, when it accedes and defines a right of this kind, is certainly an altogether just law and one obliging in conscience; and, while that law stands, the author has a strict right of property in his own book.

Likewise it is evident that by natural right itself the author has a strict right of property in that edition of his book which he himself arranged to be produced in his own name.

878. **What in this case belongs to commutative justice?** If the discussion is about the strict requirement of commutative justice from natural right, and about another edition of the book to be produced and sold by another in his own name, it seems far more probable that this is not contrary to natural right.

And indeed the right of property is either a right in the very substance of a thing and its utility, or in only one of the two. If there is question of the very substance of the thing, since truth is the proper object of the human intellect, as soon as truth and a complex of truths have been brought into public light, property becomes that of each person. Therefore, just as, as soon as an astronomer has manifested the existence of some star in the heavens, all can see it, nor can the astronomer retain for himself a right that he alone see the star with others excluded, or that they at least pay him some tribute if others wish to see the star in the heavens with their own eyes; so too, as soon as the author of a book has publicly set forth some truth, or series of truths, he certainly cannot prevent others, no tribute having been paid to him, from understanding the truth and perhaps persuading themselves of it even better than he. And this is confirmed from the very intention and aim of a writer or professor: for all intend this, that readers and hearers be persuaded and make the doctrines handed down their own. And this is their greatest praise, if they attain it.

Hence another point is demonstrated very easily: once a work has been brought into public light, the author does not preserve dominion in the use of his work, formally considered, as we have already explained in n. 877; and in this sense we always speak of an author's dominion, and the question is debated among the doctors. Indeed, if the author does not preserve dominion in the substance of the thing as soon as the work has been divulged, how, once dominion in the substance has been transferred, will he preserve dominion in the use? If this could happen, someone could also by loan transfer to another dominion over the substance of money, while reserving to himself dominion over the use of the money, which he would then sell.

Besides, if the author preserves for himself dominion of the use of truths which he perhaps discovered, explained, or ordered, then no one could use them by study and meditation, and from them proceed by reasoning to other truths perhaps also to be discovered and communicated to others, as can easily happen in the chemical, physical, mathematical, and other arts and sciences, proceeding even to the practical application of those truths, which is of very great utility and also of very great profit. Likewise no one could publish another's book with notes added to explain matters; nor could he cite texts from another's book in his own book; nor could he thoroughly refute another's book and, as erroneous and scandalous, take away all its authority. Yet this imports dominion not only in the use, but also in the very substance of the thing, which he destroys by his own right.

879. **Does one violate another's right who prints a manuscript work without the consent of the author?** Response: affirmatively. The reason is that a work, so long as it has not been brought into the light, remains entirely under the dominion of the author. Therefore such a usurper is held to restitution of the manuscript and to compensation of damages.

880. **Likewise, does one violate another's right who prints the lectures of some professor or the sermon of an orator?** There are some who generally affirm, even concerning a public lecture or sermon. The reason is that to teach or preach publicly is not to hand one's work over to another for publishing or selling.

Yet it seems a distinction must be made. For if there is question of a private lecture or a private sermon, it is clear that the professor or preacher retains his whole right in his lecture or sermon. But if there is question of a public lecture or sermon, the argument already made holds, that the thing has already been handed over to the community, and by that very fact has become of common right. And this is confirmed by fact itself, for there is no one who condemns as injurious toward others those who print public speeches in newspapers: speeches of deputies or senators in Parliaments, or of others in public assemblies. The very words of the Supreme Pontiff in public receptions of the Christian faithful are published publicly, and there is no one who accuses this of grave sin against justice.

881. **Can a recently published book be put to press in another place without the license of the author?** If there is question of a very distant place, those very doctors who contend that by the right of nature the author retains a right of property in his book to be published again, so that others are excluded from such a right, concede that in such a case a right of this kind seems less to be urged. For publication in very distant regions less impedes the author from perceiving the fitting fruit of his industry.

And this reason still more clearly shows that the author in reality does not retain a right of property in his work; for if he retained that right, it would matter little whether the book were published without license, against the will of the author, in a neighboring or distant region. Certainly, as to injustice, it matters little whether someone occupies another's house or another's field and uses and enjoys them against the owner's will in a neighboring or very remote region. Nor is it valid to say that someone in such a very remote region could not defend and protect his right of property; otherwise, as those very doctors aptly observe, it would be lawful for anyone to take crops or grapes for himself at will, because the owner of the field or vineyard could not guard them.

But if there is question of a neighboring place, and treaties are present between various dominions by whose force the author can enjoy elsewhere the same right as in his own country, commutative justice is certainly injured, and the violator of another's right is held to compensate damages according to the norm of the laws. But if no agreement is present between the various regions, since law has no force outside the territory of the legislator, although perhaps such a law is present in the place of the author, nevertheless in another place the publisher of the book is not held by it; and so the matter must be defined only by natural right. But by natural right a right of property of this kind is either none or very uncertain. Therefore he who uses his own right and publishes another's book cannot be accused as a violator of another's right and as a damager. And this holds much more if someone were not merely to publish another's book, but first translated it into another language. For then his own industry and labor enter still more.

II. On Modes of Acquiring Dominion by Natural Right

882. **What are the various modes of acquiring dominion?** To exact knowledge of dominion and of the rights and obligations which derive from it, it pertains not only to know its essence and its diverse species, but also the various modes by which it is acquired.

A mode of acquiring dominion is any title, or cause of itself apt for conferring dominion.

Moreover, some modes arise from natural right or the law of nations, others from civil law, others from private will. The natural modes of acquiring dominion of goods of fortune can be reduced to occupation and accession. C. I. 710; C. H. 609; C. A. 317, 381, 404, 423, 424; C. G. 712, 714; Inst. l. 2, t. 1, § 11; Gousset, *Cod. Comm.* on a. 712; St. Thomas, 2. 2. q. 57, aa. 2, 3.

883. **What is occupation?** Occupation is the real apprehension of a corporeal thing with the mind of having it as one's own. Apprehension: namely in that mode which the thing permits and usage allows, for example by hand, feet, snare, net, or inflicted wound. Corporeal: for incorporeal things, such as rights, cannot be apprehended corporeally.

It is a legitimate mode of acquiring dominion, provided: first, that the thing is capable of private dominion and belongs to no one; or, if it belongs to someone, that the owner willingly yields his right, for instance by contract; or, if he is unwilling, that he is legitimately despoiled of his right, for instance by military occupation. Second, that the one occupying wishes to make the thing his own when he apprehends it in fact. Third, that by no law which has reserved it to some certain dominion, for example to the republic, has the thing been as it were already occupied.

The species of occupation are finding, hunting, and fishing, about which we must now speak in particular. C. I. 711, 758; C. H. 610, 956; C. G. 539, 713, 714, 768; C. A. 382, 760; L. 493; St. Thomas, 2. 2. q. 66, a. 5 ad 2.

884. **Resolutions.** A soldier can keep all movable things if he has despoiled an enemy killed by himself; for this is the general custom. He also seems to be excused if he strips other enemies who have been laid low. But if he has taken things from comrades who have been killed, he must restore them to the parents or heirs of the deceased, if known, insofar as this can be done and the value of the thing requires it. Gury, case 512; Struggl, *de V. Praec. Dec.*, art. 5, nn. 49, 50; Reiffenstuel, tr. 7, D. 5, q. 1, n. 4; St. Thomas, 2. 2. q. 66, a. 8 ad 1; C. A. 402; Inst. l. 2, t. 1, § 17.

885. **What is finding?** To find and to acquire by finding is not only to see a thing, but also to apprehend it physically or morally, according as the thing requires.

Found things are of three kinds. Some are those which were never under the dominion of any human being and are called things belonging to no one, such as a gem found on the shore of the sea. Others are those which were under human dominion but in fact lack an owner: either because the owner cast them away with the mind of no longer possessing them, and these are called abandoned goods; or because the owner dies without testament and heirs, and these are called vacant goods; or because the owner who hid or deposited money or other precious things died long ago, so that no memory of them any longer existed, and these are called treasures. Finally, others are those which have an actual owner, but he is unknown because they were lost by him, and these are called things recently lost.

886. **What about a thing belonging to no one?** A thing belonging to no one, or found things which never had an owner, become the finder's. This is proved: first, from the common opinion of theologians; second, from positive law itself; third, because what belongs to no one, by the fact of occupation, legitimately becomes one's own. Meanwhile, however, as to the right of digging metals, etc., the particular laws of places must be attended to. C. I. 711; C. H. 610; C. A. 317, 382; Inst. l. 2, t. 1, § 18; St. Thomas, 2. 2. q. 66, a. 5 ad 2.

887. **What about an abandoned thing?** Abandoned and vacant goods by natural right become those of the first occupant. The reason is that they no longer have any owner; therefore they yield to the first occupant, no otherwise than those things which never had an owner. But by positive right they are commonly assigned to the republic. C. G. 713; C. I. 425, 758. Yet by custom this seems to be restricted to immovables alone, at least before the sentence of a judge. This is expressly drawn from C. A. 386, 387, 388. Inst. l. 2, t. 1, § 47; Carriere 285, 343; St. Thomas, cited place.

888. **Note.** First, to the title of occupation can be reduced the mode by which the poor occupy dry branches of a forest, ears of grain or chestnuts after their harvest, clusters after the vintage, etc., which are held as abandoned and generally conceded by owners to the poor.

Second, goods lost by shipwreck, even if on the occasion of a storm they are voluntarily thrown into the sea, are not considered abandoned, because they are not cast out with the mind that the owner does not wish to have them, but so that he may escape that danger of shipwreck with the ship. Inst.

cited place, § 48. Nor likewise are things held as abandoned which are rescued from fire, inundation, or the hands of robbers, even if otherwise they would have perished. Hence all these things must be restored to their owners. From C. A. 403, one who preserves another's thing from certain danger can, besides compensation of expenses, exact a proportionate reward.

Third, as regards vacant goods, Struggl has these things, *Theol. univ.*, P. 2, tr. 8, D. 2, q. 2, a. 2, VII: "It is sufficiently probable that one participating in vacant goods, or their possessor, is not held before the sentence of a judge to hand those same goods over to the fisc... I judge this all the more if someone had diligently served such a deceased person, or had been his friend in such a way that he had a prudent hope of inheritance or legacy if that person had made a testament."

889. **What about treasure?** From C. I. 714, C. G. 716, C. H. 352, treasure is any precious movable object which has been hidden by the hand of man, or deposited under the earth, and therefore lying hidden there, of which no one can prove himself to be owner, whether the deposit is old or recent; but from C. A. 398, it is an old deposit.

Treasure, wherever it is found, by the right of nature belongs wholly to the finder. The reason is that treasure is counted among abandoned goods, and is not a part of the estate or a fruit of the estate. But to find treasure is not to apprehend it by hand, but first to see it and recognize that it is treasure. L. 602; St. Thomas, 2. 2. q. 66, a. 5 ad 2.

Treasure belongs, from C. I. 714, C. G. 716, C. H. 351, to the owner of the estate. From C. A. 399, a third part is owed to the fisc. If by chance someone finds treasure in another's estate, whether rural or urban, the treasure is to be divided by halves between the finder and the owner of the estate. But if someone intentionally sought treasure in another's estate, without the owner's knowledge, by force of law the whole treasure belongs to the owner of the estate. To the owner of the estate, whether the owner is a private person, the fisc, a city, or a church. But if it is found in a place destined for public uses, as in a public road, square, or forum, even if by design, according to the common opinion it belongs wholly to the finder. C. I. 714; C. G. 716; C. H. 351; cf. Lugo, D. 6, nn. 114, 117. To the owner of the estate: for it does not yield to the usufructuary. C. I. 494; C. G. 598; C. H. 471. But treasure found in an emphyteutic estate yields, from C. I. 1561 and C. H. 1632, not to the direct owner but to the useful owner; from C. A. 399, it yields to both. L. 602; St. Thomas, 2. 2. q. 66, a. 5 ad 2; Inst. l. 2, t. 1, § 39; cf. C. A. 401.

Dominion of treasure by force of law is acquired at once by the owner of the estate and by the finder. But the law which takes half from the finder when he intentionally seeks treasure in another's estate seems penal, and therefore before sentence that half does not seem to be owed. L. 602; Lugo, D. 6, n. 131; Gury, case 526; C. A. 400; cf. C. I. 714; C. G. 716; Gousset, *Cod. Comm.* on this article; C. H. 351, 614.

Someone can buy an estate at the common price, although he certainly knows that treasure has been hidden there. The reason is that treasure is not a fruit of the estate, on account of which he ought to pay a greater price for the estate; nor does the certainty of the thing which he has inflict any injury upon the seller. For since that treasure has not yet been found by the owner of the estate, it is not yet his, but the thing continues to belong to no one. Therefore, because the buyer certainly knows that treasure is hidden in that field, he injures no right of the seller by buying the field at the common price. Lugo, D. 6, n. 126; St. Thomas, 2. 2. q. 66, a. 5 ad 2.

890. **What about a lost thing?** Concerning a thing lost by someone, if someone accepts a thing found by chance, he must accept it with the mind of restoring it and of inquiring about the owner; and he is obliged to this from a quasi-contract. The reason is that in this way the finder freely receives another's thing into his own custody; and therefore he is considered to bind himself by quasi-contract to restoring it, and consequently to inquiring about the owner of the thing. Besides, the owner of the thing ordinarily wills that the lost thing belong to the finder after the finder cannot discover the owner; and therefore because of this favor he is considered to bind the finder by quasi-contract to the burden of inquiry. Hence, if the finder culpably neglects to inquire about the owner, those goods are owed from delict. Add that, as often happens, when the finder apprehends the thing, he is the cause why the owner, commonly remembering the place in which he lost it, seeks it in vain in that place. Lugo, D. 6, n. 132; Struggl, cited place, III; L. 603.

The finder in bad faith, who has hidden the lost thing and neglected to investigate the owner at the due time, is held in conscience to pay out the found thing to the poor or apply it to pious causes, even if afterwards he cannot discover the owner of the found thing. St. Thomas, 2. 2. q. 62, a. 5 ad 3. The reason for this is: first, because by the very fact that someone hides a thing lost by another or neglects to investigate the owner, he sins against justice by detaining another's thing. Therefore no less than a thief, from unjust detention, he is held to restitution. Since afterwards he can no longer discover the owner, he is held to pay it out to the poor or apply it to pious causes. Second, because it cannot prudently be presumed that the owner of the lost thing wishes that such a finder have profit from his own delict; rather, after he has neglected due inquiry, that he have the burden of spending the found thing in alms or other pious causes, so that the owner at least may obtain spiritual benefit. Struggl, cited place, XIV; L. 603.

The finder who used due diligence in inquiring about the owner and could not discover him can more probably licitly retain the lost thing, without an obligation of justice of giving anything to the poor or spending anything on other pious causes. The reason is that the owner of the lost thing is prudently presumed to will that the found thing, after diligent and sufficient investigation about it has been made, belong to the finder. Therefore, because of the title of finding and a similar prudently presumed will of the owner, the finder can prudently and licitly appropriate the found thing to himself.

The consequence is clear, because, these things being supposed, nothing stands in the way of the finder being able to appropriate the thing to himself. The antecedent is proved: first, the owner of the lost thing wills the finder to be obliged to inquire diligently and sufficiently who the owner of the lost thing is. Therefore by that very fact he is prudently presumed to will that the finder, after he could not discover the owner, can appropriate the lost thing to himself as a reward of his industry; because no one is presumed to wish to oblige another to burdens without remuneration, especially if this can happen without his own damage. Second, the owner of the lost thing is prudently presumed to will that the lost thing be preserved in that mode by which he can recover it more easily and securely; but in this opinion he can recover the lost thing more easily and securely. Therefore. The major is clear, for owners of lost things ordinarily have such a mind. The minor also is established, because a thing is more easily recovered from one finder than from many poor persons or from pious causes. Struggl,

cited place; Lugo, D. 6, n. 100 ff.; L. 603; St. Thomas, 2. 2. q. 66, a. 5 ad 2; C. I. 715; C. G. 2279; C. H. 615; C. A. 388.

891. **Is one who finds another's thing able to leave it in the place where it is, or is he held to gather it up?** Certainly he is not held from justice to gather that thing up; and the reason is that one is held by no special office and no contract to gather up another's found thing.

Yet he is held from charity to gather that thing up for the owner, if otherwise it would perish or the owner could no longer recover it. The reason is that from charity we are held to avert our neighbor's damage when we can easily prevent it. Hence, generally speaking, if the found thing is of great price, and there is a great probability of detecting the owner, and no detriment is to be feared on the part of the finder, that obligation is grave.

892. **Does one sin who first accepted another's found thing, but afterward puts it back in the same place?** He sins not only against charity, but also against justice, if there was probability of detecting the owner, by retaining the thing. The reason is that he exposes another's thing, already existing in a safe place, to the danger that it perish for the owner, just as one who throws into the fire a cloth rescued by him from a fire. Besides, by gathering another's thing, he takes on an obligation from justice of restoring it to the owner, if he can.

Except, however, if you foresee that you will suffer damage from this; for then "you can put it back in the same place and permit another to carry it away, although by doing this you place the thing in a worse state; for then the taking by the thief happens from his malice, and your cooperation is only permissive of another's detriment, which you are not held to avoid with your own damage." L. 569.

893. **Can one who found another's thing, and after sufficient diligence, the owner not having been found, made that thing his own, nevertheless preserve it as his own by the title of prescription if the owner becomes known after a time sufficient for prescription?** Response: affirmatively, probably. The reason can be taken from St. Alphonsus, l. 3, n. 590; for he says: "When, all circumstances considered, it is no longer possible, understand morally speaking, that the owner be found," if the thing, after due diligence has been applied to finding the owner, has been handed over to a poor person, and if afterwards the owner appears, the poor person is not held to restore it, because "then the poor person acquires absolute dominion of the thing without any burden of restitution." Therefore by parity the same must be said about the finder himself, if, as he can, he keeps the thing with himself.

And the a priori reason is that, as the same holy Doctor says in the cited place, n. 603: "When a thing, considering the circumstances of length of time, or distance of place, or because the thing can no longer be recognized by the owner as his own, as happens in ordinary coins, does not seem possible to return to the owner, then it becomes no one's, and therefore is acquired by the first occupant, who is not held to give it according to the will of the prior owner, since he, through the impossibility of recovering it, has altogether lost dominion of it... The a priori reason is that the law of nations gives private persons dominion of things for no other reason than that they may use them. Hence when it is impossible for a thing to come to their use, it, as abandoned, becomes no one's, and returns to the

primeval right of nature, and therefore becomes the first occupant's without any obligation." St. Thomas, 2. 2. q. 66, a. 5 ad 2.

From C. I. 715-718 and C. H. 615, 616, the finder of a movable object which is not treasure must restore it to the preceding possessor; if he does not know him, he must hand it over without delay to the mayor of the place where the object was found. The mayor makes the thing known by publication, to be repeated according to the customary forms on two successive Sundays. When two years have passed from the day of the second publication, without the owner appearing, the thing or its price, if circumstances required that it be sold, belongs to the finder. But if the owner of the lost thing appears at the appropriate time, he owes a reward to the finder. The same as to substance is had from C. A. 388-392. The finder of a lost thing makes it his own once the time required for prescription has passed. If meanwhile the owner appears, he owes a reward to the finder. From C. G. 2229, the owner of the lost thing can reclaim it for the space of three years.

894. **How are various animals distinguished?** As regards hunting and fishing, animals are of four kinds.

Some are tame or domestic, which by their disposition enjoy human companionship, such as horses, sheep, chickens, etc. Some are wild, which by their disposition flee human companionship, such as wolves, deer, hares, birds, fish, etc. These sometimes exist in their natural liberty, as a deer in a forest open on every side, a fish in the sea; sometimes, such full liberty having been taken away, they are enclosed under some custody, as a deer in a grove encircled by high hedges, etc.

Some are tamed, and these are wild animals which by human industry are made tame and are cared for in such a way that they have the custom of going away and returning, such as doves in a dovecote, rabbits in a warren.

Finally, some are become wild, and these are animals which, after laying aside their prior custom, either put on their former wild nature or contract it.

895. **What about tame animals?** Tame or domestic animals remain those of the prior owner, however far they wander; hence they cannot be occupied by another. The reason is that animals of this kind are subject to the dominion of a particular human being and morally recoverable. And therefore, since the owner does not lay aside the mind of recovering them as his own, he always retains dominion of them. For the same reason, if someone snatches your sheep from the jaws of a wolf, he preserves it not for himself but for you. Meanwhile, however, in this and similar cases the one preserving another's animal can ask the price of his labor at least from equity, and the price of necessary fodder even from justice. Inst. l. 2, t. 1, § 16; Lugo, D. 6, n. 41.

896. **What about tamed animals?** Tamed wild animals, so long as they have the custom of returning or are enclosed by certain custody, do not become those of the first occupant; but they do after they have lost such a custom, or after they have escaped custody. The reason for the first is that animals of this kind belong to the possessor both by reason of occupation and also by reason of education and detention. Thus all laws also establish. The reason for the second is that if they have lost the custom of returning, or if they have escaped the owner's

custody, they become those of another first occupant, because they have recovered their first nature and liberty. Inst. l. 2, t. 1, §§ 12, 15; Lugo, D. 6, n. 41.

897. **Resolutions.** First, when a whole swarm of bees flies away from a hive and the owner loses probable hope of recovering it, the swarm of bees becomes that of the first occupant. From C. G., law of October 6, 1791, it belongs to the owner of the estate on which it settles. From C. I. 713 and C. H. 612, unless the owner has pursued the bees flying from his estate into another within the next two days, and likewise unless someone has claimed for himself tamed wild beasts which he has begun to pursue within twenty days, the former become those of the owner of the estate, the latter those of the one capturing and retaining them.

Second, doves, so long as they have the custom of returning home, are not those of the first occupant, just as neither are other tamed animals. Hence it is not licit, by specially prepared food or by other enticements, to draw another's doves to one's own dovecote. Yet if doves, rabbits, or fish of their own accord betake themselves into another dovecote, vivarium, or fishpond, they belong to the owners of these. C. I. 462; C. G. 564; C. H. 613. Inst. l. 2, t. 1, §§ 14, 15.

898. **What about wild animals?** Wild animals which lack an actual owner and enjoy natural liberty become those of the first occupant. The reason is that, as is said in Inst. l. 2, t. 1, § 12, "what previously belongs to no one is granted by natural reason to the one occupying it." Hence a wild beast wounded by one person but captured by another, if it is established that it can no longer escape the hand of the one who wounded it, belongs to the one wounding, not the one capturing. L. 604. The same must be said of a bird to which one person set a snare, although another caught it. L. 604. C. I. 711; C. H. 610; C. A. 383.

899. **How do laws prohibiting hunting and fishing oblige?** Laws which prohibit hunting and fishing at a certain determinate time or with certain determinate instruments, according to the common and probable opinion, are merely penal laws; and therefore they do not oblige except to undergoing the fine and penalty, if someone is caught. The reason is that laws of this kind regard only a material and external good, and indeed not one of great moment: the due procreation and multiplication of fish or birds. L. l. 1, n. 145.

Laws which prohibit hunting and fishing on a private enclosed estate are prohibitive laws in conscience. For these laws confirm the natural law, that no one use another's thing against the owner's will and inflict damage upon him. Therefore those transgressing these laws sin against commutative justice and are held to compensation of damage. L. 604; C. I. 712; Inst. l. 2, t. 1, § 12.

Laws which prohibit hunting or fishing in some public place by force of an entered contract, for example a lease, are prohibitive laws in conscience, by force of commutative justice. Therefore, if someone in that place captured such a multitude of fish or other animals that another's right was notably injured, he would sin gravely against commutative justice and would be held to compensation of damage. L. 605, 614, 617; H. A. tr. 10, n. 71; Lugo, D. 6, n. 189.

Laws prohibiting hunting and fishing in some determinate public place from a privilege granted to others likewise are prohibitive laws in conscience, obliging indeed from legal justice, but by no means from commutative justice. "Diana, however, with Dic. etc., excuses the hunter from restitution and from grave sin if the places are not enclosed. Lessius also admits this if the damage was not notable,

since wild beasts are not of great price or are not many; for then he says that by common judgment the prohibition is taken as made only under venial sin. Indeed he adds with Molina that hunters can always be excused from restitution when a penalty is imposed, because then princes seem to intend only that." L. 605.

As regards animals captured against the aforesaid laws prohibiting hunting and fishing: if those animals were under the dominion of the owner of the place, or of the one having the right of hunting or fishing either from contract or from privilege, they must be restored, since one cannot make them his own by capturing them. But if those animals were not under the aforesaid dominion, for instance although the fish were in some large lake or the wild beasts in some large enclosed forest from which they cannot exit, yet they can still escape the nets of the one who wishes to catch fish, or wander and escape the hunter; then no restitution of them is to be made, since the one capturing them makes them his own. Lugo, D. 6, n. 72.

A wild beast becomes that of the first occupant, even if it is captured on another's estate. The reason is that although the wild beast exists on another's estate, and therefore one's crossing there is illicit, nevertheless it does not exist in another's dominion; unless the estate is enclosed in such a way that the wild beasts cannot exit from there and can easily be captured there, because then they are considered to have lost liberty and to belong to the owner of the estate. Likewise, although the owner of a territory can appropriate to himself the right of hunting in his own territory, nevertheless he cannot appropriate the free wild beast, since he has a title of property only to the former right, not to the latter beast. But the owner who has his own right of hunting in some territory can not only free a wild beast caught in a snare, but also take away the snare or other instrument without being held to restore it, as the theologians commonly teach. The reason is that such taking away is considered by common custom as a penalty for the injured right of hunting. Hence, since by this title he can release the beast, by the same title he can also retain it for himself. Inst. l. 2, t. 1, § 12.

899. **Hunting and fishing laws, continued.** If the owner of the estate, from his generosity, makes little account either of the captured wild beast to be restored or of the inflicted damage to be repaired, and is content with the fine or penalty alone so that the wild beasts may be safe, neither restitution nor repair of damage is to be urged, even if perhaps the fine was not paid because the crime remained hidden. But where damage must be repaired, the estimate is to be made at the judgment of a prudent man, with attention to all circumstances. For this does not depend on the price of the captured wild beast, but on how much it mattered to the owner, or to the one having the right of fishing or hunting, that the animals not be captured, because more animals would have been captured by him or by his people if someone had not unjustly taken them. Therefore, if that deed, with attention to the multitude of wild beasts, did not impede him from capturing as many as he wished, nor caused their price to decrease, repair of damage is not to be urged. L. 604, 605.

900. **What is accession, and how many kinds are there?** Accession can be taken in two ways, generically and specifically. Considered generically, it is an addition made to some thing either because of the production of the same thing or because of the union of the same thing with another. C. I. 443; C. G. 546; C. H. 353; C. A. 404; cf. 902, 905.

901. **Is dominion acquired by production of a thing?** By reason of production of a thing, there is generally distinguished production of fruits and, specifically, birth.

By production of fruits, whether natural or by fiction of law, the proprietor of a fruitful or gainful thing makes the fruits his own, whether natural or civil, such as fruits of fields and payments from the lease of houses or rents. Hence the common saying: "The thing fructifies for the owner." C. I. 444; C. G. 547; C. H. 354; C. A. 405.

Birth, however, is the offspring of animals, through which dominion of the animal begotten from one's own animal is acquired. For this title it matters nothing whether the offspring was conceived from one's own or from another's male animal. Hence the legal saying: "The offspring follows the womb." C. I. 443, 444; C. G. 546, 547; C. A. 406; C. H. 357; L. 494, 609, 610.

One who perceives the fruits of a thing has an obligation of compensating third parties because of expenses made for cultivation, seed, and works. C. I. 445. Inst. l. 2, t. 1, §§ 19, 35.

902. **Is dominion acquired by union of a thing?** The union of one thing with another also comes under the name of accession; and accession taken thus, although more determinate, is still taken generically. And thus accession, taken generically but more strictly, is the union by which something accidental is joined to the principal thing. This union can be made by nature or by art; hence there are various species, about which we shall speak at once.

Since the accessory follows the principal, the property of the principal thing generally gives a right in the accessory thing united to it. R. I. 42 in 6; C. I. 443; C. G. 546; C. H. 353; C. A. 404.

903. **Is dominion acquired by alluvion?** Alluvion is a species of accession in a thing of the soil, not by human industry but by nature alone. Four things must here be distinguished: alluvion, avulsion, change of riverbed, and a newly born island.

Alluvion is a hidden increase which is gradually added by a river to some estate. Through alluvion dominion is immediately acquired over that increase which, by force or even by recession of water, is insensibly and successively added to the estate. C. I. 453, 454; C. G. 556, 557; C. H. 366; C. A. 411; L. 494. Except, however, places left by the sea, which are of the domain; and lakes or ponds of private persons, which whether they increase or decrease give or confer no new right. C. I. 454, 455.

Avulsion is had when an entire part of land, torn away by the force of a river, is joined to another estate. Dominion of this is not acquired at once, but, once possession of it has been taken, after a year, unless the owner has vindicated it for himself. C. I. 456; C. G. 559; C. A. 412; cf. C. H. 368, 369.

Change of riverbed. If a river gradually recedes from one bank and invades the other, the place left belongs to the proprietors of the fields beside the bank, no damages having been refunded. C. I. 454; C. G. 557; C. H. 368, 372. If a river, having left its whole natural bed, forms a new bed for itself, that prior one left behind is divided among the proprietors of the fields of each old bank. C. I. 461; cf. C. G. 563; C. A. 409, 410.

A new island born in the middle of a river likewise belongs to the proprietors of the fields of each opposite bank, provided that the river is not apt for navigation or for transporting things; otherwise, the island belongs to the State, unless a contrary title or prescription is present. C. I. 457, 458; C. G.

560; C. H. 371, 373; C. A. 407 ff. Born: for if it has been made from a river flowing around a field, it remains that of the one whose it was. C. I. 460; C. G. 562; C. A. 408; C. H. 374. Inst. l. 2, t. 1, §§ 20-24.

904. **Is dominion acquired by building, planting, or sowing?** Building, planting, and sowing are likewise certain species of accession in a thing of the soil, but made through human industry. Whatever is built, planted, or sown in the soil yields to the soil. For dominion of the estate generally draws with itself whatever is placed above or below. C. I. 447, 448; C. G. 552, 553; C. H. 350, 358, 359.

Moreover, one who built, planted, or made other works on his own estate from another's material must refund the price of the material to its owner; and if he acted in bad faith, he must repair damages to that same owner. C. I. 449; C. G. 554; C. H. 360; C. A. 416, 417.

But if someone from his own material built, planted, or made other works on another's estate, from C. I. 450 and C. G. 555, the proprietor of the estate has the right of retaining the works, or of obliging the other person to remove them at his own expenses and with damages refunded. But if the proprietor of the estate prefers to retain those works, he must, by C. G., pay their price, or, by C. I., the increased value of the estate. Cf. C. H. 361-364; C. A. 418.

Finally, if some third party builds, plants, etc., on another's estate from another's material, the owner of the material cannot vindicate it for himself, but can seek from that third party compensation of damages, and from the owner of the estate the price of the material not yet paid, if he retains the building. C. I. 451; cf. C. A. 419, 420; C. H. 365. L. 500, 501; Inst. l. 1, t. 1, §§ 29, 30, 31, 32.

905. **What is adjunction, and is dominion acquired through it?** Adjunction or accession, specification, commixture or confusion, are species of accession in movable things. Accession here is not taken generically, for any union of thing to thing, but specifically, for a certain special union of things.

Moreover, adjunction, or accession specifically such, is had when two things are so joined together that from both one whole body is formed, since one thing is completed from the other, while the substance of each thing remains distinct. Thus adjunction or accession is had by weaving, as if another's purple is woven into your garment; by insertion, as if another's gem is inserted into gold or silver; by writing, painting, etc.

Adjunction or accession is ruled by natural equity. C. I. 460; C. G. 562. But in whatever way the union occurs, if the united thing belongs to another and can be separated from the other without grave detriment, the owner of the accessory thing has the right of seeking separation, and each thing must be restored to its owner, from C. I. 464, C. A. 414, 415, C. H. 378, as, for example, stakes joined to vines, tiles joined to buildings, etc. But from C. G. 566, the whole belongs to the owner of the principal thing, after the price of the accessory thing has been paid.

But if the accessory cannot be separated from the principal, by the force of accession it yields to the principal thing, but the owner of this must pay its price. C. I. 464; C. H. 375; cf. C. A. 415; L. 497. The accessory is that which is employed for adorning the thing, that which cannot stand by itself

without another, that which is cheaper, that which is smaller. C. I. 465, 467; C. H. 376, 377; C. G. 567, 569.

But if the accessory excels the principal, it is in the power of the owner of the accessory thing either to vindicate the whole for himself, by paying to the owner of the principal thing what this has, or to remove his own thing, although this cannot be done without detriment to the other thing. C. I. 466; C. H. 378; C. G. 568; cf. C. A. 415; C. H. 379.

And if the accessory altogether far excels the principal, then the accessory is held as the principal and the artisan can retain the whole, after refunding the price of the other's material. C. I. 470; C. G. 571.

Finally, if neither thing excels the other, and one cannot be separated from the other, neither yields to the other, but each thing remains that of its own owner, and the whole remains common to the owners. C. I. 469; C. G. 572. Inst. l. 2, t. 1, § 26.

906. **What is specification, and is dominion acquired through it?** Specification is the introduction of a new form into matter. For specification to be had, although a physical substantial change of the thing is not required, nevertheless a morally substantial change is required; for example, if someone makes cloth from another's wool, a ring from gold, a ship from boards, wine, oil, or grain from grapes, olives, or ears of grain.

Whether the matter can be reduced to its prior form or cannot be, the new species yields to the other's matter, after the price of the art employed has been refunded. C. I. 468; C. G. 570. Nevertheless, if the price of the industry far exceeds the price of the matter, the artisan can retain the species made by himself, after the price of the matter has been paid; and if he acted in bad faith, he is furthermore held to repair damages. C. I. 470, 475; C. G. 571, 577. From C. H. 383, the matter yields to the form, after the price of the matter has been paid, unless the value of the matter is more precious or bad faith has intervened. L. 496; Inst. l. 2, t. 1, §§ 25, 33, 34; C. A. 414, 415.

907. **What are commixture and confusion, and is dominion acquired through them?** Commixture is the union of several solid things. Confusion, however, is the union of several liquid things.

If the commixture or confusion is of several things of diverse genus, and a new species has been made from both, for example if mead has been made from honey and wine, from the right of specification it must be repeated to whom it ought to yield. If no new species has been made and the things can be separated, the one who did not furnish consent to the commixture or confusion can seek separation. If the things can in no way be separated, as the wheat of Titius mixed with the wheat of Caius, or cannot be separated without detriment to the things, the whole mass becomes common according to the proportion of each person's portion and price. C. I. 471; C. G. 578.

Nevertheless, if the portion of one can be reckoned as principal, or as much more precious, and the things cannot be separated, or not without detriment, for example if grain of the best quality has been mixed with grain of the lowest quality or with rye, the owner of the former can retain the whole for himself, after the price of the other portion has been refunded. C. I. 472; C. G. 574; cf. C. H. 381, 382; L. 498, 499, 607, 608, 611, 612, 686. And Lugo, relying on Roman Law, L. *Si alieni nummi* 78 ff. *de Solut.*, understands this both as to coins and as to other things, whenever that which accedes is less

than that preceding to which it is added, and the mixing is done with the mind of acquiring dominion. D. 6, nn. 164-166. Inst. l. 2, t. 1, §§ 27, 28; C. A. 414, 415.

III. On the Mode of Acquiring Dominion by Civil Law

908. **What is usucaption or prescription?** The principal mode of acquiring dominion by civil law is usucaption or prescription, which is defined: the acquisition of dominion, or liberation from some obligation, and the extinguishing of another's right by continuation of possession, in the time and mode defined by laws. C. I. 2105; C. G. 2219; C. H. 1930; C. A. 1451, 1452.

Acquisition of dominion: for by legitimate usucaption or prescription, from the disposition of civil and canon law, the possessor acquires dominion of another's thing, or is liberated from some obligation. For usucaption or prescription is twofold: one acquisitive of right, the other liberative from servitude or another burden. The former is properly called usucaption, the latter properly prescription; but these names are often used promiscuously, and in reality they cannot be separated. For what is acquisitive with respect to one person is extinctive with respect to another. C. A. 1478.

And the extinguishing of another's right: for after the possessor has acquired dominion of another's thing by legitimate prescription, or has liberated himself from some obligation, on the part of the prior owner not only is dominion extinguished, but also every right to the thing. Hence one legitimately prescribing some thing is not held to compensate another for the price of the thing.

By continuation of possession, in the time, etc.: for continuation of legitimate possession in the time and mode defined by laws is the proximate reason on account of which civil and canon law grants the possessor dominion of another's thing. Civil and canon law: since usucaption or prescription is governed by that law to which the thing to be usucapted or prescribed is subject. C. 4, 6, 8 *de Praescr.*; Inst. l. 2, t. 6.

909. **For what causes was usucaption or prescription introduced?** The causes on account of which usucaption or prescription was introduced by civil and canon law are four: first, that uncertainty and confusion of dominions might be removed; second, lest lawsuits be multiplied; third, lest possessors live in continual fear of losing the thing possessed; fourth, lest human beings be negligent in preserving their things and rights.

Therefore usucaptions or prescriptions were introduced for the public good; and so creditors and debtors cannot stipulate that no usucaption or prescription proceed between them. C. I. 2107; C. G. 2220; C. H. 1935; C. A. 1502. Inst. l. 2, t. 6.

910. **Is prescription a legitimate mode of acquiring dominion?** Response: affirmatively, both in the external forum and also in the internal forum, as the very common opinion of the doctors holds, and this is approved by canon law itself. C. 3, 20 *de Praescr.*; C. 1, same title, in 6; St. Thomas, Quodl. 12, a. 24; L. 513, 517; Lugo, *de Iust. et Iur.* D. 7, S. 1.

Therefore a possessor, although after legitimate prescription he discovers that another had been owner of the prescribed thing, nevertheless is not held to restore it to that person, since by legitimate prescription he himself has been made owner. But once prescription has been completed, the thing is

his as if it had always been his, and he does not owe fruits of the past time. And even if the possessor does not know that by prescription he has acquired dominion of the thing, nevertheless he legitimately prescribes; and if from such ignorance he returns the thing thus legitimately prescribed to the prior owner, afterwards, once conscious of the right, he can seek it back. C. I. 2105; C. G. 2219; C. H. 1930; C. A. 1451, 1452; Inst. l. 2, t. 6; St. Thomas, Quodl. 12, a. 14.

911. **What conditions are required for prescription?** For legitimate and consequently valid prescription, by each law the following conditions are required: capacity of prescribing, a thing apt for prescription, possession, title, legitimate time, good faith. Inst. l. 2, t. 6; L. 504.

912. **Who can prescribe?** All those can prescribe who are capable of acquiring dominion. Therefore both private persons and communities and churches can prescribe, just as they are also subject to prescription. C. I. 2114; C. G. 2227, 2251; C. A. 1453, 1454; C. H. 1931, 1932; C. 3, 8, 9 *de Praescr.*

913. **What things can be prescribed?** Generally all and only those things can be prescribed which come under private dominion and commerce, and for whose acquisition a legitimate title can be given. For since the end of prescription is to transfer dominion by authority of law, such transfer cannot be made concerning a thing which, by its nature or by disposition of laws, cannot come into the dominion of private persons. C. I. 2113; C. G. 2226; C. H. 1936; C. A. 1455-1459, 1481; Inst. l. 2, t. 6.

914. **Resolutions.** Sacred things, such as churches, cemeteries, ecclesiastical rights, and also those things which are of public dominion strictly taken, such as squares, roads, etc., cannot be prescribed.

The right of conferring benefices cannot be prescribed by lay persons. C. 7 *de Praescr.*

Nor can the boundaries of parishes or dioceses be prescribed, provided it is established that they were constituted by legitimate authority. C. *Super eo* 4 *de Paroch.*

More truly also, burdens of Masses cannot be prescribed. Cf. Ferraris, v. *Usucapio* n. 17; S. C. C., February 18, 1702; August 18, 1843.

Although the Pontiffs did not wish ecclesiastical benefices to be transferred to lay persons by prescription, nevertheless an ecclesiastical benefice can be prescribed by a cleric through three-year possession, as is had in Rule 36 of the Chancery, concerning three-year possession. Yet here it must be noted that for a similar prescription these conditions are required: first, good faith; second, peaceful possession for three years; third, colorable title; fourth, non-simoniacal entrance; fifth, that the beneficed person did not intrude himself into a benefice reserved to the Apostolic See in the Body of Law. L. 507, 515; Lugo, D. 7, S. 7; Haunold, T. 1, tract 5, c. 2, n. 273. C. I. 177, 427, 430; Inst. l. 2, t. 6; C. 11, 12, 16 *de Praescr.*

915. **Note.** First, that prescription proceed against someone, that is, that it be able to be begun and, once begun, continued, it is necessary that he be able to protect his rights in court, and that he already have a complete right in the thing. Hence prescription does not proceed if someone has fallen into insanity; likewise against conditional rights while the condition is still pending; against rights to a determinate day before the day has elapsed; against an action concerning

eviction until controversy has been moved. Cf. C. I. 2120, 2121; C. G. 2257, 2258; C. H. 1932, 1934; C. A. 1494, 1497; C. *Placuit* 1 *de Praescr.*; C. *De quarta* 4 ib.; C. *Ex transmissa* 10 ib.

Second, prescription simply does not proceed, that is, it can neither begin nor be continued, between those who are estimated as if one person: that is, between spouses; between a child under paternal power and the one under whose paternal power he is; between those administered and administrators given by law; between an heir who approaches an inheritance with benefit of inventory and the creditors of the inheritance approached by him. C. I. 2119; C. G. 2252, 2253, 2258; C. A. 1495.

916. **Is possession required for prescription?** It is certain that legitimate possession is required for prescription. This is clear both from civil law and from canon law: "Without possession prescription does not proceed." R. I. 3 in 6; Inst. l. 2, t. 6; C. I. 2106; C. G. 2229; C. H. 1940; C. A. 1460; Laymann, l. 3, tr. 1, c. 8, n. 4; Struggl, *Theol. univ.*, P. 2, tr. 8, D. 2, q. 3, a. 4, II; E. M.

917. **What are the conditions of legitimate possession?** That possession be legitimate, it ought to be: first, dominative, that is, someone must detain the thing by himself or through another in his own name.

Second, peaceful, without any contestation of suit, without any force; for example, if someone by force has prohibited the owner or his tenant farmer from possession of the estate, usucaption of the estate does not proceed for him.

Third, manifest, not secret; for example, if the lessee of Titius sells the estate to Caius and remains in possession of the estate as lessee of Caius, usucaption does not proceed for Caius.

Fourth, not equivocal, so that it openly appears that you possess the thing as if yours, that you use a right as if yours; and thus usucaption is not had if a tenant from an estate leased to him derives water into his own estate, which is commonly done by right of neighborhood, friendship, and familiarity.

Fifth, continuous, interrupted neither naturally nor civilly, if the thing, for example, in the intervening time had been taken secretly by theft, had been taken away by force, or if judicial citation was present, or petition of the thing in court, etc. Cf. 923, 924.

Sixth, complete. But for fulfilling the time of usucaption constituted by law, a singular successor can use the accession of the possession of his author, for example a buyer can use the possession of the seller. A universal successor, that is, an heir, can also use it from C. G.; he must use it from C. I. But an heir who succeeds someone in office is in the likeness of a particular successor, not of an heir. Cf. 927 ff. C. I. 685, 686, 693, 2115 ff.; C. G. 2228, 2229, 2232-2235 ff.; C. H. 1941, 1942, 1944 ff., 1960; C. A. 1460-1462, 1464, 1493; Inst. l. 2, t. 6; L. 506.

918. **Resolutions.** "Hence it happens that a tenant farmer, lessee, depositary, borrower for use, slave, and the like do not possess sufficiently for prescribing; for these do not possess in their own name, but in the name of the owner, who through them possesses by possession useful for prescription, namely both civil and even natural. But a usufructuary and emphyteuta do possess sufficiently so as to prescribe in order to the right of the estate, not as to property, because they do not possess this civilly. Likewise a tutor and curator, procurator and similar persons possess not in their own name, but in that of others, for whom also their slave, child

under paternal power, and religious can prescribe. Finally, one who is not capable of acquiring dominion does not possess by possession useful for prescribing. Hence a lay person, who is not capable of a spiritual right, cannot prescribe it as to tithes or anything else, as Molina teaches commonly with others, D. 62 toward the end." Lugo, D. 7, n. 13; C. I. 685, 2115.

919. **What is the title required for prescription?** The required title of possession in general is the cause from which we hold or possess a thing. One title is translative of dominion, which of itself is ordered to transferring dominion, such as sale. Another is not translative, which of itself is not ordered to transferring dominion, such as lease. The latter is of itself insufficient for prescription. But the former, if not true and really existing, nevertheless at least apparent, believed, or presumed, is necessarily required for prescription. For when every title is lacking, someone cannot prudently judge the thing to be his own; and therefore without any title there cannot be a possessor in good faith. C. I. 701, 2115 ff.; C. G. 550, 2228 ff.; C. A. 1461; C. H. 433, 1434, 1940, 1952, 1953, 1954, 1955, 1959.

Now, then, something must briefly be said about this title: that it is not required to be true, but it suffices if it is believed, apparent, or presumed. "For if there had been true purchase or donation, etc., prescription would not be required. Therefore an apparent title is required, such as purchase, for example, from one whom the buyer thought was owner, although he was not owner. The reason is that without title there could not have been good faith at the beginning of possession. Yet because title could have existed at the very beginning and afterwards been lost through forgetfulness, therefore it has been established that presumed title suffices. But to presume title, possession for that ordinary time required for prescription does not suffice; rather, possession of thirty or forty or more years is required, which is customarily called possession of very long time. And this indeed is when law does not resist, nor is there from elsewhere a presumption of bad faith in the possessor. But if law resists, or there would be presumption of bad faith in the possessor, possession for immemorial time would be required, as is clear from C. 1 *de Praescr.* in 6. But if there were not only presumption, but it were established concerning the bad faith of the possessor, or concerning ignorance of a law not doubtful, which ignorance, even if it were invincible, is equivalent to bad faith in this matter, then even possession for immemorial time would not suffice, because a possessor in bad faith prescribes at no time. Law is said to resist possession not because it is in any way to the contrary, but because it positively prohibits such possession." Lugo, D. 7, n. 15; L. 505.

920. **What sort of title is required for prescription according to more recent laws?** For ordinary usucaptions, a special title is required, fit for transferring dominion, colorable or apparent, and not merely believed, and just, that is, a title must stand according to its legal form. C. I. 2137; C. G. 2265, 2267; C. A. 1461, 1467; cf. C. I. 1056; C. G. 931. Furthermore, it needs transcription, and once that has been completed usucaption begins to proceed from C. I. 2137 and C. A. 1467. But a believed or presumed title suffices for usucaptions of very long time, or thirty years. C. I. 2135; C. G. 2262; C. A. 1477; C. H. 1952, 1955, 1959.

921. **How much time is required for prescription?** From Roman Law, movable things, if special title is present, are prescribed by the completed three-year period, both between those present and those absent. L. un. C. *de Usuc. transf.* And this still holds as before with respect to goods of

churches. Auth. *Quas actiones*; Extr. *Ambitiosae de Reb. Eccl. non alien.*; Lugo, D. 7, n. 69; L. 506, 507, 510.

Immovable things, from the same law, if special title is present, are prescribed against a private owner among those present by ten years, and among those absent, namely those who are under a diverse provincial government, by twenty years. Inst. l. 2, t. 6; L. 508.

Things, both movable and immovable, if no special title is present, are first prescribed after the completed time of thirty years. L. 509. But immovable goods of churches, monasteries, hospitals, or belonging to other pious causes are not prescribed except by the space of forty years; indeed, immovable goods of the Roman Church only by the space of one hundred years. C. 4, 6, 8, 9, 13, 14, 17 *de Praescr.* The Lateran Church also has the privilege of centenary prescription, and so do several religious Orders. Schmalzgrueber, l. 2, t. 26, n. 100 ff.; Struggl, cited place, q. 3, a. 5; L. 510.

From C. A., the right of property in a movable thing is acquired by legitimate possession of three years, 1466. Rights of impugning a last will, exacting the legitimate portion, revoking a donation, rescinding contracts, and impugning a division are likewise prescribed by the space of three years, 1487. Likewise, the right of property in an immovable thing is acquired by the course of three years by one in whose name the thing is inscribed in the public books; otherwise, however, only by the course of thirty years, even without special title, 1467, 1468, 1477, at which time all rights against a third party are extinguished, 1479. The time of ordinary prescription is doubled among those absent from the Province, and when someone has acquired a movable thing from a vicious possessor, or when he cannot indicate his author, 1475, 1476.

From C. H., dominion of movable things is prescribed by possession of three years with special title, otherwise of six years. Possession itself of movable goods, in good faith, is for title. But as regards things found and things taken by theft, the owner can vindicate them for himself, the price nevertheless being refunded if the actual possessor acquired them by public sale, 464, 1955.

But the right of property in an immovable thing is prescribed by possession of ten years among those present, twenty among those absent, and with special title. An absent person is one who is either beyond the sea or in a foreign nation, 1957, 1958. Likewise a real right over an immovable is prescribed in thirty years without any special title, 1959. By five years the action of revoking a donation because of offspring supervening is prescribed, 646; by four years the action of nullity of contracts, 1301; by one year the action of revoking a donation by reason of ingratitude, 652.

From C. I. and C. G. the following are disposed as regards prescription acquisitive of dominion. As regards immovable goods, as regards things and rights, both real and personal, possessed without special title, thirty years are required for prescribing. C. I. 2135; C. G. 2262. But with special title, as regards immovable goods, ten years are required and suffice if the owner is present, that is, if he has domicile in a place subject to the same higher Court of appeal in whose territory the estate is; but if the true owner is absent, then the years of absence are doubled, from C. G. 2265, 2266. But immovable goods and rights, even real rights over an immovable, from C. I. 2137, with every distinction between present and absent removed, are acquired by usucaption of ten years from the transcription of title.

As regards movable goods, with the exceptions made about which we shall speak shortly, generally no time is prescribed, but possession alone suffices from C. G. 2279. But as regards individual movable things, and not as regards a universality of movables, and likewise as regards anonymous bank certificates or bearer titles, from C. I. 707, 1126, 1513, possession likewise is for title with respect to third parties who are in good faith.

Exceptions: as regards stolen and found things, he who lost some thing, or from whom it was taken by theft, can vindicate it for himself for the space of three years, to be computed from the day of loss or theft, from the one with whom he finds the thing, with action preserved to this possessor against him from whom he received it. If the actual possessor of a thing taken by theft or lost bought it at fairs or market, or on the occasion of public auction, or from a merchant who sells goods of this kind, the original proprietor, that is, the owner, cannot vindicate it for himself unless he pays to the possessor the price for which he acquired it. Thus from C. G. 2279, 2280, with which C. I. 708, 709, 2146 agrees, but a two-year period is established for vindicating one's own thing. L. 590, 592, 610.

But the dispositions of the same C. I. and C. G. as regards liberative prescription from some servitude or from some burden are the following. First, all personal and real actions are prescribed through thirty years without title. C. I. 2135; C. G. 2262.

Second, after ten years an architect and contractors of works are liberated from the burden of furnishing damages for major works. C. G. 2270; C. I. 1639. Likewise an action is prescribed against one who administered tutelage. C. I. 309; C. G. 475. Likewise an action in solidum of a creditor against his debtors is prescribed if for ten years his own portion is paid separately and without any reservation by one of the debtors. C. I. 1197. Also the right against one who, by ceding a perpetual rent, stands surety for the debtor who bought the rent, is prescribed. C. I. 1544.

Third, five years suffice for prescribing pensions owed from rents, whether perpetual or life rents, alimony payments, the price of leasing houses, estates, money received by loan, and generally whatever is to be paid periodically every year or after a shorter time. C. I. 2144; C. G. 2277. The same time is also required for prescribing an action of rescinding a division because of injury in succession, or of seeking restitution in integrum, C. I. 1038, 1300; but from C. G. 887, 1304, ten years are required.

Fourth, two years suffice for prescribing the action of rescinding a sale by reason of injury. C. I. 1531; C. G. 1676.

Fifth, besides these there are other prescriptions because of acts of the family council, because of things furnished by pharmacists, innkeepers, hosts, merchants; because of stipends of advocates, procurators, apparitors, notaries, physicians, surgeons, pharmacists, teachers, those having boarding schools or houses of education, architects, workers, domestics, etc. Yet these do not hold in conscience, since an oath can be required concerning the true extinguishing of the debt. Therefore prescriptions of this kind in reality are only certain presumptions of law in the external forum, which in the internal forum yield to truth. C. I. 256, 2138-2143; C. G. 2271-2275; cf. ib. 2276; Lugo, D. 7, n. 56; L. 347, 516.

[Editorial note: the scanned printed text skips directly from section 921 to section 923; no section 922 appears on the page.]

923. **What is interruption of prescription, and when is it had?** Prescription is interrupted when, because of an impediment interposed, it ceases in such a way that it no longer has force unless legitimate possession is begun anew.

Moreover, prescription is interrupted in two ways. First, naturally, if the one prescribing loses possession for a time greater than one whole year, or if bad faith supervenes. C. I. 2124; C. G. 2243; C. *Quoniam* 20 *de Praescr.*

Second, civilly, if a suit is moved juridically concerning possession, and the interpellation has not been rejected by the judge, "unless the other," adds St. Alphonsus 511, "does this unjustly to interrupt prescription." C. I. 2125, 2128; C. G. 2244, 2246, 2247. Or if the one who began to prescribe, prescription not yet fulfilled, recognizes the other's right in any way. C. I. 2129; C. G. 2248; C. H. 1943 ff.; C. A. 1497.

924. **What is suspension of prescription, and when is it had?** Prescription is suspended when it, having previously begun, ceases for a time because of some legitimate impediment, so that the time during which the impediment lasts cannot be computed; but when the impediment ceases, the prior years, omitting the intermediate time of impediment, can be joined with the following years, and from all these prescription can be completed.

Now prescription is suspended: first, against married women during marriage as regards dowry goods, C. I. 2120; C. G. 1561, 2255. Second, against minors and those interdicted, C. I. 2120; C. G. 2252. Third, against soldiers in time of war, C. I. 2120. Fourth, against a church so long as it lacks a rector, C. 4, 15 *de Praescr.* Fifth, against those absent because of civil or military service, and while they cannot exercise judgments, in time of plague, war, etc. C. A. 1496.

In the first three cases, from C. I. 2121, usucaption of thirty years proceeds for one who possesses an estate or uses some real right. Even after the time of prescription has been fulfilled, the benefit of restitution in integrum is granted to the Church, which, as is had in C. *Auditis de In integr. restit.*, enjoys the right of a minor.

925. **What is good faith required for prescription?** Good faith, required in this matter, is the firm persuasion by which someone prudently judges that the thing possessed by him is his own. C. I. 701; C. G. 550; C. H. 1950; C. A. 326. This good faith is altogether necessary for beginning and continuing acquisitive prescription of dominion. The reason is that whoever notices that he possesses another's goods by that very fact immediately contracts the obligation of restitution, since another's thing, both by natural law and also by positive law, whether divine or human, can knowingly neither be stolen nor retained.

This is also clear from Lateran Council IV and also from Rule 2 of Law in 6: "A possessor in bad faith prescribes at no time." Hence the dispositions of civil law, insofar as they do not require good faith, or require it only at the beginning of possession, do not hold for the internal forum, and must be held as mere denial of recourse, that is, of action against another. C. I. 2135, 2137; C. G. 2262, 2265, 2269; C. H. 1955, 1959; C. A. 1493; C. 5, 20 *de Praescr.*

Good faith is required not only for acquisitive prescription, but also for liberative prescription, because for each the same reasons and authorities press equally. But good faith in this prescription

consists in this: that no obstacle is placed by which another is impeded from the use of his right. The reason is that the one prescribing is bound by no debt toward him against whom he prescribes; nor is he held, while the time of prescription is running, to warn the other that he should use the right of servitude against him. C. A. 1478. L. 504, 513; St. Thomas, 4 D. 41, q. 1, a. 5, q. 1, 2; Quodl. 12, aa. 24, 25; E. M.

926. **Can someone prescribe if from culpable ignorance he thinks the thing is his own?** Response: negatively, if the ignorance is gravely culpable, because no one ought to report advantage from his own fault. Affirmatively, if it is lightly culpable; for in Lateran Council IV only faith with mortal sin is condemned. L. 511.

927. **Does good faith theologically taken, namely by which someone inculpably does not know that the thing is another's, always suffice for prescription?** Response: affirmatively as regards prescription of very long time, or thirty years. The reason is that while good faith stands, if nothing else stands in the way, the obligation of restitution cannot then arise from natural law, as is clear of itself, for one inculpably thinks the thing is his own. Nor indeed can it arise from positive law, since that expressly has that in this case the defect of good faith cannot be opposed, nor does it require colorable and determinate title, but is content with some presumed and indeterminate title. C. I. 2135; C. G. 2262; C. H. 1959; C. A. 1477, 1493. From C. H. 1955 this also holds as regards movable things in prescription of six years.

Probably negatively as regards prescription of long time, or twenty or ten years, and of shorter time, when good faith theologically taken is founded on ignorance of clear and certain law; otherwise, however, if it is founded only on ignorance of fact. This ignorance of law is present when someone knows, for example, that Antonia is married, and that the estate constitutes her dowry, but does not know that the husband cannot validly alienate her dowry. But there would be ignorance of fact if someone knew that dowry goods cannot be alienated, but did not know that Antonia was married and that the good was a dowry good.

The reason for the response is that the right of prescription is from positive law. Therefore prescription cannot have place when the conditions required by that law are lacking. Italian law 2137, French 2265, Spanish 1957, and Austrian 1461 require good faith and just title for immovables. Furthermore, nullity of title from defect of form cannot, by the same law, found prescription of long time, or twenty or ten years. C. I. 2137; C. G. 2265, 2267; C. H. 1952, 1953; C. A. 1467.

Cardinal de Lugo has these things, D. 7, n. 29: "The more common opinion says that invincible ignorance of fact does not exclude the good faith necessary for prescription, nor even ignorance of law that is not clear but ambiguous, because the very ambiguity of the law makes each part probable. But ignorance of clear and manifest law hinders prescription even in the forum of conscience, although it is invincible... The principal reason is that this privilege of prescribing another's thing, since it is of human law, can belong only to those and in those circumstances in which laws grant such a benefit. But the laws expressly say that ignorance of law does not conduce to this effect, nor can good faith be given with it... Therefore prescription cannot be made with ignorance of this kind." Understand this, however, only about that ignorance which concerns a title prohibited by law. Cf. Struggl, cited place, VI. St. Alphonsus 511 calls this opinion more probable, "because for prescription

there is required not only faith theologically good, but also civilly good, since dominion is acquired only by force of laws."

But others, both as regards the dispositions of Roman Law and as regards the dispositions of more recent Law, probably also affirm that prescription can be made with invincible ignorance, whether of law or fact, whether of clear or ambiguous law. The reason is that laws say that prescription is not made with ignorance of law, or require a just legal title, namely according to laws, insofar as that ignorance of law is admitted with difficulty, and with that defect of juridically just title good faith is not presumed. Therefore in the forum of conscience, in which truth and good faith would be established, prescription would not be denied. And Cardinal de Lugo, cited place, n. 32, says this opinion is positively probable. Struggl, cited place, a. 3, 11; cf. C. I. 701-703; C. G. 549, 550; C. A. 326, 1460; C. H. 433, 434, 442, 1952, 1953; L. 511.

928. **Does the good faith of the author profit the successor for completing prescription?** The good faith of the author who begins possession profits the successor in good faith for continuing possession and completing legitimate prescription by accession of each time. Therefore the possessor is held to nothing further if he knows the thing is another's after the time of prescription has been fulfilled, begun by his predecessor and completed by himself, by whatever title, whether universal or particular, onerous or gratuitous, he succeeded him. Thus from Roman Law, Inst. l. 2, t. 6, §§ 12, 13, and from Italian law 693, French 2235, Austrian 1493, Spanish 1960; cf. ib. 442.

929. **Does an heir prescribe if he doubts about the good faith of his predecessors?** Response: affirmatively, because bad faith ought not of itself and ordinarily be presumed, since no one is presumed evil unless he is proved so. Thus commonly. L. 511; C. I. 702; C. G. 2230; C. H. 434; C. A. 328.

930. **Does the bad faith of a predecessor impede the successor from prescription?** Response: negatively, if he succeeds by particular title, because he neither is, nor by fiction of law is considered, one person with the predecessor. The same must be said of things acquired by purchase or another contract. L. 516.

Affirmatively, if the heir succeeds from a universal title as regards ordinary prescription of ten or twenty years. The reason is that "a universal successor, that is, an heir, so represents the person of the deceased that he succeeds to all his obligations and burdens. Therefore, since the predecessor, because of bad faith and unjust acceptance and retention of the thing, contracted the obligation of restoring, and of impeding prescription of that thing, and of repairing all damages, the heir succeeds in this very obligation, and therefore cannot cooperate with the prescription which he himself is held to impede, and for which he ought to restore." Lugo, cited place, n. 60; L. 512; C. I. 693; cf. C. G. 2235; C. H. 442.

If the heir succeeds from a universal title, but there is question of extraordinary prescription of thirty years, Lugo denies because of the same reason, since the heir always represents the deceased with all his defects. Therefore, just as the deceased with his bad faith could never prescribe, so the heir who represents him such as he died, with that bad faith, can never prescribe. Lugo, cited place. Indeed Lugo even extends this also to mediate heirs, n. 61, which, however, many others deny. Struggl, cited place, IX.

But from French Law, and the same holds as regards Italian and Spanish Law, Fr. Gury and others hold as more probable that the bad faith of the predecessor does not harm the universal successor as regards this prescription of thirty years, if the heir approaches the inheritance in good faith and then possesses for thirty years. For French Law 2262, as also Italian 2135 and Spanish 1959, 1963, with no distinction made, says that all obligations, both real and personal, can be prescribed by thirty years; nor does it admit any exception on the part of title or good faith. The same is also had from C. A. 1477, 1479, unless the bad faith of the possessor himself is proved. Cf. also C. H. 442.

The same author likewise denies, as regards a mediate heir, that the bad faith of the predecessor harms him, because this heir is not considered by any fiction of law to constitute one person with the mediate predecessor. And indeed the mediate heir is not the heir of the first deceased, or author in bad faith, but only the heir of the prior heir, who did not have bad faith. L. 512, 516.

IV. On Modes of Acquiring Dominion by Private Will

931. **What is a contract?** A contract is an agreement by which one or more persons oblige themselves to one or more persons to give or to do something. Hence dominion is acquired by private will through various contracts. C. I. 1098; C. G. 1101; C. H. 1254; C. A. 861; L. 707; Lugo, D. 22, S. 1.

932. **How many kinds of contract are there?** Contract is manifold:

First, a contract producing obligation in each contracting party is called synallagmatic or bilateral. But one producing obligation in only one contracting party is called unilateral. C. I. 1099, 1100; C. G. 1102, 1103; C. A. 864.

Second, commutative, when each contracting party is obliged to give or do an equivalent. Aleatory, when an equivalent of this kind depends on the uncertain event of gain or loss for each party. Therefore in the former one contracts about some thing; in this latter one contracts about the probable hope of obtaining a thing. C. I. 1102; C. G. 1104, 1964.

Third, gratuitous, when nothing is exacted from the obligation of justice for what is furnished. Onerous, when each party is obliged to furnish something. C. I. 1101; C. G. 1105, 1106.

Fourth, solemn, which the law subjects to certain formalities, such as the contract of marriage, donation, etc. Simple, which is subjected by law to no peculiar form, such as sale, lease, mandate, etc.

Fifth, clothed, which besides the agreement of the parties has some other support, by reason of which an action arises in external court, for example if delivery of the thing has been made, if a writing of the contract has been made, etc. Naked, which besides the pure pact has nothing else, whence from it an action is regularly not conceded in the external forum. L. 708; Lugo, D. 22, nn. 12-14.

Sixth, named, which has its own name, such as sale. Unnamed, which lacks its own name. All unnamed contracts are reduced to one of these four: I give that you may give; I do that you may do; I give that you may do; I do that you may give. L. 707; Lugo, D. 22, S. 2; C. A. 921. From C. I. 1103 and C. G. 1107, all contracts, whether named or unnamed, are subject to the general rules of contracts.

Seventh, explicit or formal, "which is made with formal and express agreement and obligation of the parties, as purchase, sale, etc." Implicit or virtual, "which is made only with virtual and tacit agreement and obligation; as, for example, when someone takes up tutelage or another office, he tacitly obliges himself to furnish those things which are annexed to such an office by law or custom. Hence such taking up is called a quasi-contract." Struggl 2; C. I. 1140; C. G. 1371.

933. **Note.** First, in Roman Law contracts were divided into contracts of good faith and of strict right. A contract of strict right is one in which only that about which it was expressly agreed must be considered. A contract of good faith is one which is accepted not from the rigor of words, but from benign interpretation. From C. I. 1124 and C. G. 1134, 1135, all contracts are of good faith and must be executed with due equity.

Second, in Roman Law there were contracts which, although they did not need things or delivery for their perfection, nevertheless needed, from the disposition of Law, words; that is, beyond consent explained in whatever way, they needed a certain formula of words, without which there was not such a contract as was signified in the Law by that name. This chiefly proceeded in stipulation, which had to be made in the conceived words of Law, with one asking: "Do you promise that you will give or do this?" and the other responding: "I promise." Inst. l. 3, t. 16 *de Verbor. oblig.* at beginning; L. 5 § *Stipulatio* ff. same title. The one who asked was customarily called the stipulating party and stipulator, and was said to stipulate for himself; the one who responded was customarily called the promisor. By more recent Law this obligation of words has been altogether removed, and even by Roman Law that "superstitious formula of Law received moderation." Lugo, D. 22, nn. 20-22. Therefore at present stipulation is a common name for all pacts or contracts, and he is said to stipulate toward whom another contracts an obligation. C. I. 1134, 1137.

934. **What about the transfer of dominion through contracts?** To acquire dominion of another's thing, a title transferring dominion is needed, such as inheritance, legacy, donation, purchase and sale, and other contracts.

By positive law, however, public instruments are sometimes needed, which have a determinate form from positive law itself, as in the donation of immovable things and in dowry pacts. C. I. 1056, 1382; C. G. 931, 1394. Sometimes private instruments suffice, as in alienations of immovable things or of rights cohering with these. C. I. 1314. And these instruments do not hold unless they are furnished with the signatures of the parties. C. I. 1316, 1321; C. G. 1318, 1323; C. H. 1226, 1228, 1229. Nor indeed are these same private instruments required for the validity of the act itself, but only for proof, unless it has been agreed between the parties that the act does not hold so long as it has not been committed to writing and signed. L. 708; cf. C. H. 1278-1280; C. A. 883-887.

For transfer of dominion, however, delivery is not needed, but only the consent of the owner transferring to another and the acceptance of the latter suffices. Thus from C. I. 1125, 1448, 1538; C. G. 1138, 1583, 1689. But it is needed from Common Law, C. A. 425; C. H. 609, 1095. Nevertheless, that alienation of movable things hold with respect to others wishing to vindicate the thing for themselves, delivery is needed. C. I. 707, 1539; C. G. 1689, 2279. But that alienation of immovable things hold with respect to others, transcription is needed in the cases determined by law. C. I. 1932, 1933; C. G. 939; cf. C. A. 440, 444.

935. **Note.** Delivery is "the transfer of a thing, right, or possession from person to person." By delivery dominion of a thing can be acquired. Yet this must not be understood as if delivery alone, without any other prior disposition of the owner, transferred dominion, but "if sale or another just cause has preceded." L. *Nunquam* 31 ff. *de Acquirendo rerum dominio*.

Moreover, delivery is not necessary by natural law for the transfer of dominion; but if it is necessary, it is so because it is required by positive human law, namely so that contracts may thus be completed and uncertainty of dominion avoided. But physical delivery of the thing is not necessarily required; moral delivery suffices and can be made in diverse ways, like possession. Cf. C. I. 1463-1466; C. G. 1604-1607.

In Roman Law delivery is ordinarily necessary for acquiring dominion of things. Ordinarily: for first, delivery is not required precisely for a right to a thing, as is clear in hypothec and other naked contracts. Indeed, even the right in a thing, or dominion, of things which belong to no one is acquired without delivery, or by mere apprehension and occupation. Second, there are certain cases excepted by law in which dominion is transferred before delivery.

Such cases from the same Roman Law are chiefly six: first, in ecclesiastical benefices, C. *Si tibi absenti de Praeb.* in 6; second, in inheritance, L. 23 Dig. *de Acquir. vel amitt. possessione*; third, in a legacy as regards a thing determined individually, L. 64 Dig. *de Furtis*, L. 86 Dig. *de Legatis et fideicommissis*; fourth, in those things which are sold, donated, or bequeathed to churches, monasteries, hospitals, or for the redemption of captives, L. ult. C. *de Sacrosanctis Ecclesiis*; fifth, in a donation made from an agreement that the donee give sustenance to the donor, for if these are denied, dominion returns by that very fact to the donor, L. 1 C. *de Trad. quae sub modo*; sixth, in those things which by delict are by that very fact adjudged to the fisc. Inst. l. 2, t. 1, §§ 40-44.

936. **Is a contract destitute of solemnities prescribed by positive civil law valid as regards the forum of conscience?** Solemnities are certain forms of making a contract from the prescription of law, for example that it be made before so many witnesses, by writing, etc. Some are accidental, which pertain only to some greater complement, for example that a testament be made on sealed paper; and therefore if omitted they do not invalidate the act. Others are substantial, which are considered to pertain to substance, namely when they have an invalidating clause attached, as, for example, that a holographic testament be signed by one's own hand. The question is raised about these.

But the discussion concerns civil law. For as regards canon law, the prescribed solemnities of law must altogether be observed; among these, in alienations, Apostolic Good Pleasure holds the principal place, without which alienations of things of the Church are null. The same should be said about the form constituted by Trent, Sess. 24, c. 1 *de Ref. Matr.*, as regards the validity of marriage.

"There is a threefold probable opinion. The first denies, because laws invalidating such contracts are founded on a presumption not only of deceit, but also of danger; and therefore human law can altogether remove the natural obligation of a contract entered into... The second affirms... because in these matters human law, although it denies civil action, nevertheless does not remove natural obligation, for which consent alone indeed suffices. The third teaches that in these contracts the possessor is to be preferred until he is condemned by the sentence of a judge to restore... I think this

opinion not only more probable, but altogether to be held in practice, because... since possession grants a certain right, the possessor cannot be despoiled of the thing unless the right of the other is established." L. 711, 927-929.

The first opinion seems more conformed to reason. For not only as regards Roman Law, but also as regards more recent laws, what Lugo observes holds, D. 22, n. 252: "The words of the law seem to sound this, nor does Trent, Sess. 24, c. 1, when it invalidates clandestine marriages, use almost any other words; nor can words more apt for signifying this be employed than to declare antecedently that the contract is null and void... If only invalidation of the contract in the external forum were posited, the law would be considered little useful, since it would serve only to foster the iniquity of one who, conscious of the value and obligation of the contract, would still attempt to despoil the just possessor by taking away, because of defect of solemnity, what could not be taken from him in the forum of conscience. And indeed it would be hard to compel judges to favor this unjust petition when it is established for them that the contract was valid before God and that the adversary cannot seek without sin what he seeks."

The second opinion seems more conformed to the whole context of more recent laws. For C. I. 1104, C. G. 1108, C. H. 1258, 1261, 1278, 1279, 1300 did not enumerate forms of contracts among the essential conditions for the validity of contract. Therefore by these forms they seem to intend only this: namely to determine the instruments or means by which the will of the contracting party can be established before judges. Gousset on the cited article and on article 1101. Indeed public instruments do not seem to be explicitly required for validity of the act, but only for proof. C. I. l. 3, t. 4, c. 5, S. I, rubr. 1313, 1314; C. G. 1315 ff., 1335, 1338; C. H. 1278-1280. From C. A. 883, excepting cases determined by law, contracts can be made in whatever form, without diversity of obligation arising from this. From C. H. 1258, contracts are perfected by consent alone.

The third opinion in reality is not distinguished from the first and second, but, admitting each, deduces the corollary of each. For the possessor can be both the one whom the testament favors, although destitute of legal forms, and the one whom the defect of legal forms favors. Then this third opinion would in reality be distinct from the first and second if it were said that the aforesaid laws do not render the act void by the law itself, but subject to invalidation by the sentence of a judge, which someone will be able to invoke at will. And then, as the same St. Alphonsus says in the cited place, "without doubt the possessor is held to stand by the sentence of the judge, if he is condemned to restore."

937. **Is someone held to restitution if, following a probable opinion, he impedes the other party from approaching the judge who would condemn him and oblige him to restitution?** Response: "Affirmatively, if he impedes by force or fraud; otherwise, if in another way." L. 888. The reason for the first is that he injures the right of another; for the second, because then he legitimately pursues his own right.

938. **What are the essential conditions of contracts?** There are four essential conditions for contracting validly: consent of the party who is obliged; capacity of contracting; a certain object which is the matter of the contract; a licit cause of the obligation. C. I. 1104; C. G. 1108; C. H. 1261.

939. **What sort of consent ought the contracting person's consent to be?** Consent ought to be: first, internal, for the obligation of contract arises from the will of the contracting person alone.

940. **What sort of consent ought the contracting person's consent to be? continued.** Second, free and fully deliberate; otherwise the will would be imperfect and could not produce a perfect obligation under grave obligation.

Third, external, for it must be manifested to the other party; otherwise someone cannot oblige himself to another.

Fourth, mutual; for that someone oblige himself to another by his own will, it is required that the other accept that will.

Fifth, it is not necessary that the consent of each party be elicited at the same time. For the consent of one, once given and not revoked, morally perseveres; hence, when the consent of the other accedes, the contract is immediately perfected. C. I. 1108; C. H. 1262, 1265; C. A. 863, 869.

940. **Resolutions.** First, one who fictitiously consents to a contract does not contract, and therefore no dominion is transferred. But the deceiver is held in conscience to make the deceived party unharmed if the other suffers damage from this, or has already furnished his part, where the contract is onerous; and therefore, if no other means is present, he must furnish internal consent and stand by the contract. L. 709, 711; C. A. 877. But he will be able to supply consent so long as the other has not retracted his own, although the latter is ignorant of the defect of consent of the other party. H. A. 93.

Second, interpretative consent does not suffice for contracting, because it is consent which as yet is not, and therefore cannot produce the obligation of a contract.

Third, when there is question of onerous contracts, the contract is not perfected until each party's acceptance also becomes known to each; and therefore before this someone can withdraw. The reason is that, just as my will of obliging myself to you, not yet manifested to you, does not oblige me to you, so your will of obliging yourself to me, not yet manifested to me, does not oblige you to me, and consequently obliges neither you nor me. Except unless someone wishes himself to be obliged and the contract to be perfected before the manifested acceptance of the other party, for example if someone asks money from you as a loan, and you immediately send it to him; the contract of loan will be perfected, and he will be able immediately to dispose of the accepted money. Lugo, D. 22, nn. 26, 27, 33, 34; D. 23, n. 70 ff.; C. H. 1262.

941. **Is a contract entered into with the mind of contracting, but without the mind of obliging oneself, or of fulfilling it, valid?** Response to the first: "The first opinion affirms with Lessius, Soto, Dic., Pontius, etc., apud the Salamanticenses... But the second and more probable opinion denies... The reason is that a condition appended contrary to the substance of the contract invalidates the contract." L. 710.

Response to the second: affirmatively. The reason is that the will of obliging oneself and the will of not fulfilling the contract can stand together. L. l. 6, nn. 832, 833.

942. **Is every contract intrinsically perfected by mutual consent alone, externally manifested and accepted, without delivery of the thing?** Some contracts are such that, of themselves speaking, they are perfected by mutual consent alone, manifested outwardly either by words, writings, or another sign; and therefore they are called consensual. The reason is that they import nothing other than the mutual agreement of the parties, such as sale, mandate, etc.

But some contracts are such that, of themselves speaking, they are not perfected except by delivery of the thing, and therefore are called real. The reason is that besides that mutual agreement of the parties, they import the very delivery of the thing, such as loan for consumption, loan for use, deposit. C. I. 1837; C. G. 1919. To this second class of contracts, which are perfected by the thing itself, belong all unnamed contracts, which are not completed unless delivery of the thing has followed on the part of one. And indeed without delivery there is not a loan for consumption, but rather a promise of a loan, etc.

It is said, of themselves speaking, for "in the forum of conscience one must stand by the intention of the contracting parties." L. 708; Lugo, D. 22, S. 3.

From C. G. 1138, "The obligation of delivering the thing is perfected by the consent alone of the contracting parties. It renders the creditor proprietor, and establishes the thing at his risk from the very instant at which the thing ought to have been delivered." Thus also from C. I. 1125. From C. H. 1095, 1258, contracts are perfected by mere consent and immediately oblige to execution. As soon as the obligation of delivering the thing arises, the creditor has a right to the fruits of the thing. But a right in the thing is not acquired except by delivery of the thing. Inst. l. 3, tt. 14, 15, 16, 22, 23.

943. **Do error and deceit invalidate a contract?** A twofold deceit is distinguished: good deceit and bad deceit. Good deceit is nothing other than a certain skillfulness in acting; and in this sense Ulpian said that it is licit for contracting parties naturally to overreach one another in the price of purchase and sale, namely within the limits of a just price. Bad deceit, about which the present question is concerned, is cunning, fallacy, or contrivance employed to circumvent, deceive, or mislead another. Cunning is situated in silence, fallacy in lying, contrivance in doing. C. H. 1269.

"A contract is null if the deceit or error is concerning the substance of the contract... because actual consent is lacking." L. 714; C. I. 1108, 1110; C. H. 1266; C. A. 871.

If error or deceit is concerning a quality of the thing, and did not give cause to the contract, the contract is valid; for consent concerning the very object of the agreement is not lacking. C. I. 1110; C. H. 1270.

If error or deceit is concerning a quality of the thing, but gave cause to the contract, it is controverted. The first opinion affirms. "The reason is that, although quality in physical being is something accidental, nevertheless in moral being it has the character of substance. Yet the opposite is commonly handed down by the doctors and is more probable... The reason is that this contract is not invalid either by positive law, whether Roman, Italian 1110, 1115, 1300, French 1116, 1117, Spanish 1266, or Austrian 872, nor by natural law... For to validate a contract, a voluntary mind as regards the substance suffices, although it is involuntary as regards accidents, unless... the contracting person expressly consents under the condition, if such circumstance is present, because

then quality passes into substance. But the doctors commonly teach that such a contract can always be invalidated by the deceived person, by reason of injury and defect of consent, and that the deceiver is held to damages arising from the deception." And although the error was invincible, nevertheless someone can still invalidate the contract in conscience and not fulfill it, if the matter is of great moment, to which he is deservedly not considered to have wished to consent, at least altogether absolutely. L. 714, 715; l. 6, n. 835; C. A. 874; C. I. 1108, 1115.

But "if deceit is employed by some third party, without any fault of the other contracting party, the contract is certainly valid. But some with Lessius, Sanchez, and Bonacina wish it still to be rescindable; others say it cannot be rescinded, yet action is given to the deceived person against the deceiver for obtaining repair of damages." Gury 777; C. A. 875.

Error or deceit concerning the motive cause of the contract invalidates the contract, for then consent is lacking concerning the very substance of the contract. C. I. 1109; C. H. 1266. Hence "it is not surprising if the fiction of poverty impedes the transfer of dominion, since the motive of giving alms to this poor person is his poverty, which he wickedly and deceitfully feigns in order to extort alms." Lugo, *Resp. Mor.* D. 17, n. 1. Restitution, however, in that case probably can be made either to the owner himself, or to other poor persons from the presumed will of the owner. L. 622.

Error or deceit concerning a merely impulsive cause of the contract, for example if you bestow alms on a poor person because you think him very upright, although he is less upright, does not invalidate the contract, since consent to the substance of the thing is not lacking. Yet someone can in conscience rescind the contract if the matter is of great moment, to which he deservedly is not considered to have wished to consent, at least altogether absolutely, as was said about a quality giving cause to the contract. This has place especially in gratuitous contracts, which require a full voluntary and spontaneity. L. 737; C. I. 1109, 1110; C. H. 1266.

Error or deceit concerning the person of the contract, of itself speaking, does not irritate the contract in onerous contracts; for the person is altogether extrinsic and indifferent to such contracts. Except marriage, however, in which the contracting person is at the same time the object of the contract itself. But it invalidates the contract in gratuitous contracts, of itself speaking; for in these, by contrast, the person of the donee is customarily specially intended by the donor. It is said, of itself speaking, for the circumstances of things must be considered, from which the will of the contracting person is better discerned. C. I. 1110; C. G. 1110; C. H. 1266; C. A. 873; Lessius, l. 2, c. 17, D. 5; Rogron and Gousset on a. 1110; Molina, tr. 2, D. 352, nn. 7, 8.

944. **Does grave fear invalidate a contract, or at least render it rescindable?** Response: negatively, if there is question of fear from an intrinsic cause, or from a necessary or natural cause; or of fear from an extrinsic cause indeed, but justly instilled. The reason is that fear does not remove the voluntary simply, unless it is so grave that it disturbs reason. Nor indeed does such fear inflict any injury on the contracting person.

If there is question of grave fear from an extrinsic cause and unjustly instilled, but not for extorting consent, it is controverted, but a distinction seems necessary. "For if it was instilled by the other contracting party... the contract is voidable, because one unjustly instilling fear is held to remove all inconveniences which come from the injury, among which is the obligation arising from such a contract. Thus Lugo more probably. But if fear is instilled by an irrelevant third party, and the

contract is employed as a means for declining an imminent evil, then an onerous contract holds irrevocably... For neither contracting party inflicted injury; and the third party bringing fear cannot remove the obligation by consenting to rescission of the contract, because there is no contract with him. Although he is held to induce rescission, so that he may avert injury from the innocent person, if the latter wishes... And who would say that a contract can be rescinded if, from fear of your enemy lying in wait for you, you bought a sword to defend yourself?... Lugo excepts, first, the contract of marriage, which he thinks is invalid when entered into from such fear. Palavicinus probably excepts, second, gratuitous contracts, because thus better provision is made for the innocent person, and the other cannot complain, because he is deprived only of gain, remaining in the state in which he was before; and just as he himself would not wish to be obliged in such a state, so he ought not wish to oblige another." Reuter 127; St. Thomas, Quodl. 5, a. 17; cf. vol. 2, n. 1022.

If there is question of grave fear from an extrinsic cause unjustly instilled for extorting consent by someone other than the other contracting party, again it is controverted. The first probable opinion teaches that the contract "cannot be rescinded by natural right, because since neither party has done injury, there is no reason from the nature of the thing why it could be rescinded at the will of one rather than preserved at the will of the other." Reuter 126. C. A. 875 favors this opinion. The second probable opinion holds the opposite, "because by reason of the injury, even one inflicted by a third party, the thing remains obligated to the prior owner, and consequently passes to anyone with that burden; but it is not equal that someone lose every right in his own thing through the injury of another. Billuart, etc." Gury 782. To this latter opinion there corresponds both Roman Law, Reuter, cited place, and Italian Law 1111 and French 1111 and Spanish 1268.

944. **Grave fear and contracts, continued.** If fear from an extrinsic cause has been unjustly instilled for extorting consent by the other contracting party, whether a contract entered into thus is invalid by that very fact is controverted. There is a threefold probable opinion.

The first affirms. The reason is that if a contract of this kind were naturally valid, justice would arise from injustice, since from a contract extorted by injury there would arise an obligation, which is an act of justice.

The second holds that gratuitous contracts are invalid, but not onerous ones. The reason is that for gratuitous contracts, unlike other contracts, a wholly free will is required; for it is a benefaction.

But the third, more probable and very common opinion teaches that such a contract is indeed rescindable, but not invalid, neither by natural nor by positive law. Not by natural law, because fear does not remove the voluntary simply. Not by positive law, whether Roman, by which judges are commanded to rescind such contracts, therefore the law of itself has them as valid; or French, as is openly had in article 1117; or Italian 1111, 1113; or Spanish 1268; or Austrian 874, 875. L. 715, 716.

945. **Note.** From canon law it is certain that contracts elicited from grave fear are invalid where there is question: first, of marriage, and probably also of betrothals; second, of the handing over of things of the Church and of renunciation of a benefice; third, of religious profession and of any other vows whatsoever; fourth, of election of a prelate; fifth, of absolution from censures, and probably also of ecclesiastical jurisdiction. L. 715, 716.

946. **Resolutions.** "If, after someone has been detected in theft or homicide, you threaten that you will denounce him to the judge unless he gives or promises to you a certain gift, the promise holds, nor are you held to return what has been received... This is also true even if you did not have the mind of denouncing him, but only of frightening him, because you would at least be yielding your right of doing this, which is estimable by price... For he gave it so that you would resign your right to accusing; and this you truly do, even if you did not intend to accuse." Reuter 120. And St. Alphonsus 894 says this is more probable.

947. **Whether a contract entered into from light fear is rescindable at the judgment of the one who suffered the fear?** "The first opinion affirms in the internal forum; for in the external forum action is not given. The reason is that any fear whatsoever inflicts injury, from which the one instilling it ought not report advantage... Thus probably Lessius, etc. Yet they rightly except marriage according to our opinion, l. 6, n. 1056, and religious profession. Whether also a vow is excepted, see On Vow, 197.

"But the second opinion, which seems more probable to me, and which Pontius, Tamburini, Viva, etc., hold, says that a contract entered into from light fear cannot be rescinded either in the external or internal forum. The reason is that one is not presumed to have consented from fear, but truly spontaneously, who knew it to be light and did not reject it, although he easily could have. Nevertheless the Salamanticenses judge that betrothals must altogether be excepted, which can be rescinded even when contracted through light fear by the sentence of a judge, because of the greatest liberty which betrothals require." L. 718. Gury-Ballerini 780 likewise judges gratuitous contracts to be excepted. C. I. 1114; C. G. 1112, 1114; C. H. 1267 favor this opinion.

948. **Note.** What has been said about grave and light fear you should understand also about reverential fear, insofar as it is grave or light. L. 717; C. I. 1114; C. G. 1114; C. H. 1267.

949. **If grave unjust fear giving cause to a contract intervened, and the thing came to a third possessor in good faith, can the one who suffered the fear revoke the thing from him, and is he held to restore?** Laymann denies. But the Salamanticenses, Lugo, etc., more commonly and rightly affirm, because the thing always passes with its defect, even if the fear was not instilled by that third party. L. 719.

950. **Note.** By the more recent laws, restitution in integrum is given to injured persons, but by civil right, unless namely someone has proved that the matter was properly and rightly conducted. C. I. 1309; C. G. 1311, 1338. It is given only in the cases expressed in law, even if there is question of minors. C. I. 1308; C. G. 1313. That is, it is given in divisions, sales, and exchanges from C. I. 1038, 1529, 1554; in divisions and sales, but not exchanges, from C. G. 887, 1674, 1706; in all contracts except aleatory contracts and settlements from C. A. 934, 1060, 1266, 1386; and only in contracts celebrated by tutors or by those representing absent persons from C. H. 1291, 1293.

It must be sought from the judge; it has place even if injury was absent; and from C. I. 1300 it is prescribed by five years, from C. G. 1304 by ten years, from C. H. 1299 by four years. This benefit likewise belongs to churches and pious places within four years from C. 1, 2 *de Restit. in integr.* in 6. But restitution in integrum which belongs by natural right to injured persons because of deceit or

fear does not need the office of a judge; it is verified in all contracts and is perpetual. L. 717; Gousset 739; St. Thomas, 2. 2. q. 89, a. 7 ad 3.

951. **Who have, by natural right, the capacity of contracting?** By natural right all and only those who have free use of reason can validly contract. The reason is that these all and only these can transfer dominion and take up obligations. Hence infants not yet possessing the use of reason, the insane, the furious, and the perfectly drunk cannot validly contract. They cannot contract, namely by themselves; for since they can have dominion of property, tutors and curators can contract for them.

Likewise by natural right all and only those who have free administration of goods can contract firmly. The reason is that, by the very fact that dominion or administration of goods depends on another's dominion or jurisdiction, the contract has by the nature of the thing this implicit condition: unless the other, whose right it is to contradict, has contradicted. Hence, although religious licitly contract from the presumed will of the superior, nevertheless the contract is revocable by the superior. Although religious prelates, or administrators of common goods constituted by these, can irrevocably contract in ordinary causes in which the constitutions grant them administration without the concurrence of others, nevertheless in those matters in which they are dependent on the consent of the chapter or community, they cannot contract firmly and irrevocably without such consent. Struggl 12; Reuter 141.

952. **Who have, by positive right, the capacity of contracting?** By positive right, for someone to contract validly or at least firmly, it is required that he not be declared by law incapable of making a contract.

From Roman Law a wife cannot contract or dispose concerning her dowry and its fruits; nor concerning common goods of the family when the husband reasonably contradicts. But she can at will dispose of paraphernal goods, even against the husband's will. L. 489.

A son under paternal power who is impubescent is not obliged, even if he contracts with the father's consent and concerning castrense goods. But if he is pubescent, he is obliged, provided there is not question of alienating immovables and precious movables. But he can by no means dispose of profectitious and adventitious goods.

An impubescent person deprived of a father contracts validly by the authority of the tutor, and a minor by the consent of the curator, unless there is question of immovables and precious movables. But a ward can oblige another to his own advantage, for example by accepting a donation, even without the authority of the tutor. Inst. § *Pupillus de Inutil. stipul.*

From C. I. 324 ff., 339 ff., 1105, 1106; C. G. 489 ff., 1123, 1124; C. H. 200, 1263, 1264; C. A. 21, 865, there are some to whom almost all contracts are prohibited, others to whom only certain contracts or contracts in certain cases are prohibited.

Almost all contracts are generally prohibited to wives, minors, and interdicted persons. To interdicted persons must be reckoned those declared incapable, the deaf-mute, and those blind from birth.

Someone is interdicted because of infirmity of mind. C. I. 324; C. G. 489. He is declared incapable who indeed is of sound mind, but senseless, inept, or prodigal. C. I. 324, 339; C. G. 513; cf. C. A. 21,

269.

The deaf and mute, in civil law, are equated with those declared incapable as regards contracts. Those blind from birth are equated with the deaf and mute as regards contracts. C. I. 340.

Interdicted persons are equated with minors; therefore they are under tutelage. C. I. 329; C. G. 509. A curator is customarily given to those declared incapable; with him they legitimately conduct all matters, without him only those which pertain to administration of goods. C. I. 339; C. G. 513.

953. **What about the contracts of wives, minors, and interdicted persons by more recent law?** A wife generally cannot contract firmly without the special consent of the husband, or, in his defect, without the authority of a judge. C. I. 135, 136; C. G. 217, 219; C. H. 61, 62, 65. From C. I. Comm. 14, § 2, a wife who conducts commerce is permitted even alienation of her own immovable goods, not dowry goods.

Non-emancipated minors cannot contract firmly without the assistance of a tutor. C. I. 277; C. G. 450; C. H. 262, 1263; C. A. 152. But emancipated minors are capable of making acts of administration and contracts determined by law. For the remaining acts, however, the assistance of a curator is required. C. I. 317-319; C. G. 480, 484, 487; C. H. 317. But in a matter of greater moment the tutor and curator depend on the authority of the family council. C. I. 277-301, 314 ff.; C. G. 450, 468, 483; C. H. 269. From C. I. Comm. 9 ff., emancipated minors, whether male or female, legitimately exercising commerce, are considered adults, and can alienate their goods, even immovable goods.

Interdicted persons, namely those who by the sentence of a judge are declared incapable of exercising civil acts because of a state of imbecility, dementia, or fury, as also prodigals juridically denounced, cannot firmly contract without the assistance of a tutor, curator, or juridically constituted adviser. C. I. 329, 335, 339, 340; C. G. 502, 509, 513; C. H. 200.

If the prescriptions of law are not observed, the contracts of these persons, namely wives, minors, and interdicted persons: first, are valid unless they are invalidated by the sentence of a judge. C. I. 1300; C. G. 1304; C. H. 1302.

Second, they are rescindable at their judgment, but by no means at the judgment of the other contracting party. C. I. 341, 1107; C. G. 1125; C. H. 1302. Excepted are those interdicted as a penalty, against whom incapacity can be opposed by anyone having an interest. C. I. 1107. But where there is question of wives, the husband or their heirs can also oppose the nullity of the contract. C. I. 137; C. G. 225; C. H. 65.

Third, minors can invoke rescission because they are minors from C. I. 1300, 1303 and C. H. 1300; because injured, from C. G. 1305, 1306. But wives and interdicted persons can invoke rescission even if they were not injured. C. G. 1305; Rogron on this article. Yet the case is excepted for a minor if, exercising commerce or an art, he has contracted for things of commerce or art. C. G. 1308. For a wife also, when she is engaged in public and separate commerce, C. G. 220; Rogron on this article; C. I. 135; or buys those things which are necessary for the sustenance of the family, C. H. 62.

Fourth, they could not in conscience invoke this rescission whenever they acted by deceit and deceived the other party. For no one ought to report advantage from fraud; nor does the legislator

intend to favor fraud, but the weakness of these persons. C. I. 1305; C. A. 866.

Fifth, once rescission of the contract has been made, they must restore what they received, if they perceived emolument from the contract. C. I. 1307; C. G. 1312; C. H. 1303, 1304. If no utility came to them, they can use in conscience the benefit of the law, so that they do not pay what they received, since such a law is just because of the common good, for defending persons of this kind against the frauds of wicked persons. C. I. 1307; C. G. 1312; C. H. 1163, 1304; Gousset 744-749; L. 918; cf. 667, 678, 1085.

954. **To whom are only certain contracts prohibited by more recent law?** Only certain contracts, or contracts only in certain cases, are prohibited:

First, to tutors, who are forbidden to contract with those under their administration. C. I. 300, 1457; C. G. 450, 472; C. H. 275.

Second, to spouses between themselves, C. I. 1054, 1433; C. G. 1525; or with respect to others, C. I. 1405; C. G. 1554; cf. C. I. 1405, 1407, 1433 ff.

Third, to certain private and public persons having care and protection of others' goods. C. I. 1457, 1458; C. G. 1596, 1597; C. A. 879.

But although contracts of this kind are prohibited by civil law, nevertheless not all are declared void by that very fact before the sentence of a judge. From Trent, Sess. 25, c. 16 *de Reg.*, every renunciation or obligation made within the two months immediately before profession is null. Concerning absent persons, cf. C. I. 21 ff., 26 ff.; L. 723, 724.

955. **What ought the object of a contract to be?** The object of a contract ought to be:

First, possible, both physically and morally, because no one can be obliged to the impossible. C. H. 1272; C. A. 878, 882.

Second, existing either in reality, or in a certain hope, or in a probable hope that it will exist; otherwise no right could be had in it, since it would be estimable by no price. An inheritance succession not yet opened is excepted from C. I. 1118; C. G. 1130; C. H. 1271; C. A. 879. This exception, however, does not hold if there is question of a donation by reason of marriage, or of a marriage contract, namely so that future successions are included in or excluded from conjugal community, from C. G. 1082-1084, 1091-1093; Gousset on a. 1130; cf. C. H. 826; or if there is question of the division of a future inheritance from C. H. 1056, 1271; C. I. 1044, 1045; C. G. 1075, 1076; cf. 1069. Nor does it hold, according to many, probably, if the disposition is made in favor of a religious Community, because the end of the law is only to impede the danger of death being brought upon the possessor. Where there is question of a monastery there is no such danger. Gury, *Cas.* v. 2, n. 111, 112.

Third, honorable and licit in itself, that is, prohibited by no law, because no obligation can be given to a dishonorable and prohibited thing. St. Thomas, 2. 2. q. 110, a. 3 ad 5; C. H. 1271; C. A. 878. For the validity of a contract, however, it is enough that the object be substantially honorable, although some accidental circumstance is illicit.

Fourth, proper to the contracting person; for no one can transfer to another a right which he himself does not have.

Fifth, certain and determined as to species, although it may be uncertain as to quantity, provided that quantity can be determined in some way. C. I. 1117; C. G. 1129; C. H. 1273. For there can be no obligation concerning a thing altogether uncertain and indeterminate.

Sixth, in commerce. C. I. 1116; C. G. 1128; C. H. 1271; C. A. 878, 880; Inst. l. 3, t. 20, §§ 1, 2.

956. **Can the object of an onerous contract be an action already owed from elsewhere, and consequently can someone licitly accept a price for it?** Response: negatively, if it is owed from justice to the other contracting party. The reason is that otherwise you would sell another his own thing. Therefore neither a judge, for rendering a just sentence, nor a robber, for not killing you, etc., can accept a price either licitly or validly.

Affirmatively, if it is owed from justice to a third person, yet without injury to that person's right. The reason is that you do not injure the right of the first, and you furnish something useful to the later person. Thus, for example, if someone hired you to go to a certain place to conduct business, you can also be hired by another to make that journey for another business, provided the later mandate does not harm the prior one.

"One who is held to something not from justice, but from charity or another virtue, can well accept a price for it, since what he promises is estimable by price." L. l. 4, n. 216; l. 3, nn. 547, 713. Hence you can indeed accept money so that you observe the fast of the Church; but you are held to restitution if you exact money for showing the way to a man passing by, which you can do immediately and without any labor of your own.

957. **Can a spiritual thing be the object of a contract, whether gratuitous or onerous?** Response: affirmatively, yet with all simony excluded. The reason is that nothing disordered is present in such a contract, nor is it prohibited by positive law. Hence whether from fidelity or from justice you can promise Masses, etc.

958. **What about the cause of a contract?** The extrinsic and impulsive cause of a contract is not necessary for the contract to hold. For neither is what proximately determines the contract. Thus the purchase of oxen holds, which I thought necessary for cultivating a field, falsely thinking that my own had died.

But the intrinsic and motive cause of a contract is altogether necessary for the contract to hold. For it is what proximately determines one to the contract.

This cause in onerous contracts is the utility of the thing at least for one of the contracting parties; in gratuitous contracts, it is the will of doing good to some person.

Hence an obligation which I took up of paying you 1000 francs as owed to you from my father's legacy does not hold if afterwards I learned that it had been revoked by him. C. I. 1101, 1119; C. G. 1105, 1106, 1131; C. H. 1274, 1276; C. A. 922 ff.; Gousset on aa. 1110, 1131.

959. **When a base thing has been furnished by the other party, is someone held to furnish what he had promised?** The first probable opinion denies. The reason is that what is null

from the beginning cannot have value even after the work has been placed by the other party. For when the work is fulfilled, that prior will has no force because of the law invalidating such a contract. For not only natural law itself, but also positive law, both canon and civil, C. I. 1119; C. G. 1113; C. H. 1275, invalidates such a contract from the beginning. Therefore, since that will has no moral value at the beginning of the contract, it persists as such even after the work has been placed. But just as sin is not estimable by price, so also neither is the labor or inconvenience intrinsic to that sin estimable by price.

The second probable opinion affirms. The reason is that the unnamed contract, *I give that you may give*, etc., is perfected when delivery of the thing or furnishing of the work occurs; and then, as is clear, the reason and force of the laws which invalidate base pacts ceases. Nor is the obligation which is then placed on the other party base, or does it oblige to a base thing. But the inconvenience and danger which the other party underwent is truly estimable by price, although sin itself cannot be estimated by price. St. Thomas, 2. 2. q. 32, a. 7; q. 62, a. 5; q. 65, a. 5 ad 2; 4 D. 15, q. 2, a. 4, q. 2, 3; D. 33, q. 1, a. 3, q. 2 ad 1; Lugo, D. 18, n. 45 ff.; L. 642, 712; Struggl, art. 6, VI; Reuter 109, 339; Tamburini, *Explicat. Decal.* l. 7, c. 5, nn. 19, 20; Ithur., *Cas.* 5; Gousset 753.

960. **Resolutions.** "When someone gives to a prostitute because of fornication, the woman can retain for herself what was given to her. But if she had extorted something excessive by fraud or deceit, she would be held to restore it to the same person." St. Thomas, 2. 2. q. 62, a. 5 ad 2; q. 87, a. 2 ad 2; S. Poenit. 22 Apr. 1822; C. A. 1174.

If, on the contrary, a judge, from a contract, rendered an unjust sentence for Peter so that Peter would kill the judge's enemy, Peter after the unjust sentence had been pronounced would neither be held nor able to kill the judge's enemy.

961. **Is one who extravagantly promises something to a woman because of intercourse held, after the intercourse, to give it?** "Lugo, Filiucius, Sanchez affirm, because, once the promise has been posited, the giving is then owed, not extravagant. But Soto, Banez, Trullench, etc., more probably deny, even if an oath was present, because the promise does not remove the fact that the extravagant giving is illicit. Therefore the illicit thing must be reduced to equality according to common estimation." L. 735.

962. **If a man gives to a woman to extort intercourse, can she retain it when intercourse has not been conceded?** "If there was an explicit or implicit pact concerning intercourse, then she is certainly held to restore; otherwise, if the gift was given to attract her mind, because that giving was altogether liberal... Yet the Salamanticenses rightly warn that the woman accepting such a gift is with difficulty excused from the sin of scandal, because by the gift accepted the man is rendered more ardent and more bold in desiring her." L. 712, 734, 736.

963. **What is the force of obligation in contracts?** Each person is presumed to enter a contract for himself and his own, unless the contrary is established by the contracting person himself or from the nature of the thing.

Every contract duly entered into produces an obligation in the forum of conscience, at least on the part of one of the contracting parties, because in a contract some right is attributed to one or both

parties; and to every right there corresponds its own obligation.

An obligation of this kind regards the contracting parties themselves, not others, to whom contracts of themselves neither profit nor harm, except in the cases determined by law.

But it extends not only to that which is expressed in the pact, but to all consequences which equity, law, and custom demand according to the nature of the agreement. The reason is that all these are implicitly understood in any agreement, unless one of these has been explicitly derogated by a special pact.

Unless something else has been agreed, the obligation contracted must be fulfilled immediately. C. I. 1123, 1124, 1127-1130, 1131 ff.; C. G. 1134, 1135, 1165, 1156 ff.; C. H. 1097, 1255-1258, 1278, 1281 ff.; C. A. 904 ff., 914 ff.; L. 734.

964. **Resolutions.** Contracts cannot be revoked except by mutual consent, or by causes approved by natural equity, law, or custom. C. I. 1123; C. G. 1134, 1135; C. H. 1300.

The intention of the contracting parties must be diligently investigated, if it can be clearly and expressly established. But if it remains obscure and ambiguous, it can be explained both from the matter of the agreement, and from the various clauses of the agreement, and from the usage of places, and from the character of the persons, etc. L. 219 *de Verbor. signif.*; C. I. 1131-1139; C. G. 1156-1164; C. H. 1281-1289; C. A. 914-916.

965. **Note.** In all contracts obligatory on both sides, there is tacitly present the condition that, if one of the contracting parties does not fulfill his obligation, it is licit for the other to withdraw from the contract. But by the more recent laws this tacit condition does not dissolve the contract except through the office of a judge; when expressly appended, however, it dissolves the contract by the law itself. C. I. 1123, 1165; C. G. 1134, 1184.

966. **How does the obligation of contracts cease?** The obligation of contracts ceases:

First, by payment, or by furnishing whatever thing is owed, or also by execution of the promised or otherwise owed object. C. I. 1236 ff.; C. G. 1234 ff.; C. H. 1157 ff.; cf. Vinnius on Inst. l. 3, t. 30, nn. 2, 4.

But payment does not hold if the creditor is incapable of receiving, unless it is proved that the payment redounded to his utility. C. I. 1243; C. H. 1163; C. G. 1241; C. A. 1424. But if the creditor unjustly refuses to accept payment, the debtor is liberated if he makes a deposit of the thing owed in the ways prescribed by law. C. I. 1259 ff.

Nor does it matter "who pays, whether the one who owes, or another for him; for he is liberated also by another paying, whether the debtor knows or is ignorant, or even unwilling." Inst. l. 3, t. 30.

966. **How does the obligation of contracts cease? continued.** Second, by novation, or a new obligation, which is not presumed, but must be expressly established. It has place in three ways:

First, by substitution of a new debt for an old debt, which is thus extinguished; for example, I promised to give you ten casks of wine each year; now I agree with you that I am no longer held to

give wine, but a thousand francs. The obligation of giving wine is then extinguished. The effect of novation of this kind is that, with the prior obligation removed, its inconveniences also are removed.

Second, when a new debtor is substituted for the old one, who is therefore liberated by the creditor.

Third, when a new creditor is substituted for the old one, toward whom the debtor no longer has any obligation. C. I. 1267 ff.; C. G. 1271; C. H. 1203 ff.; L. 1 Dig. *de Novationibus*; Inst. l. 3, t. 30, § 3; Vinnius on this place.

Third, by condonation, or the act by which a creditor remits a debt to his debtor from full liberty. For each person can yield concerning his own right in all those things which do not regard the public good, provided he was not incapable of contracting. By presumption of law it is had if the creditor has returned the security to his debtor, or ordered it to be returned; but not at all if the creditor has returned a pledge, or has freed a surety. Condonation of this kind is called acceptilation, because by it the creditor has as though accepted what is owed to him. Hence it is said in law that acceptilation is an imaginary payment. "But just as what is owed is rightly paid in part, so acceptilation can be made in part of the debt." Inst. l. 3, t. 30, § 1; C. I. 1279 ff.; C. G. 1282 ff.; C. H. 1187 ff.

Fourth, by compensation, or fictive and reciprocal payment, which has place by the law itself when persons are debtors to each other in turn. C. I. 1285 ff.; C. G. 1289 ff.; C. H. 1195 ff.; C. A. 1438 ff.; cf. 1471.

Fifth, by confusion, which has place when the obligation of the debtor and the right of the creditor are united in the same person; for example, if a creditor becomes heir of his debtor, or a debtor of his creditor, or the same person becomes heir of the creditor and debtor at the same time. C. I. 1296 ff.; C. G. 1360 ff.; C. H. 1192 ff.; L. *Sicut acceptatio* Dig. *de Solutionibus*, etc.

Sixth, by destruction or loss of the certain and determinate thing owed, which sometimes liberates the debtor from obligation, as in merely gratuitous contracts, and sometimes in others, where there is no fault of the debtor. But sometimes it does not liberate, for example if it happened by fault of the debtor, or if he was in culpable delay, etc. Certain and determinate: for example, such a horse. But something else must be said if the thing was uncertain and indeterminate, for genus and species do not perish. Therefore, if you promised a horse in general, not such a horse, not one of your horses, the obligation remains even if all your horses perish; hence you must buy and hand over another. C. I. 1298 ff.; C. G. 1302 ff.; C. H. 1182 ff.; L. *Si ex legati* Dig. *de Verbor. obligat*.

Seventh, by rescission, or rescindability, which has place when a contract, having the essential conditions, is dissoluble because of some defects. That contract holds until it is rescinded. C. I. 1300 ff.; C. G. 1304 ff.; C. H. 1290 ff.

Eighth, by prescription, about which it was said above. C. I. 1236; C. G. 1234; C. H. 1930.

Ninth, by contrary will. For "those obligations which are contracted by consent are dissolved by contrary will. For if Titius and Seius agreed between themselves that Seius should have the Tusculan estate bought for one hundred gold coins; then, with the thing not yet having followed, that is, neither the price paid nor the estate handed over, it pleased them that there should be a withdrawal from that purchase and sale, they are mutually liberated." Inst. l. 3, t. 30, § 4.

967. **What is understood by accidental modifications of contracts?** Accidental modifications of contracts are certain extrinsic or intrinsic qualities of contracts, which strengthen or weaken their obligation, increase or lessen it, determine, suspend, or extinguish it. Now the principal modifications of contracts of this kind which pertain to the practice of the confessor are: an oath, which extrinsically confirms a contract, and the various modes of contracts, by which the obligations of contracts are intrinsically constituted in various ways.

968. **What is the force of an oath added to a contract?** A promissory oath is added to contracts to confirm them because of reverence for the divine Name. Hence besides the obligation from justice by force of the contract, there is also an obligation from religion by force of the oath.

The obligation of an oath affects only the person swearing. For by it we are obliged to God to do what we promised. Therefore, although the obligation of the contract passes to the heirs, since it affects the goods of the contracting person himself, nevertheless the obligation of the oath does not pass to them.

As regards the obligation of an oath, the general rule is: an oath follows the nature of the act. For the accessory follows the principal. L. l. 6, nn. 870, 873.

By Roman Law several contracts otherwise void became valid and firm by an oath. By more recent law contracts otherwise void or rescindable become neither valid nor firm. C. H. 1260: an oath is not admitted in contracts. Yet this does not impede someone from being bound in conscience to stand by a promise and oath by which he freely renounced a favor conceded by the laws, if this renunciation is not illicit and prohibited, and there is question of the favor of a merely private person.

969. **Resolutions.** An oath is void if the act itself is void by that very fact, whether by natural law or by positive law. Trent, Sess. 25, c. 16 *de R. R.*

When the obligation of the act is removed, the obligation of the oath is also removed.

Those things which are tacitly present in the act, namely if I am able, if the matter is not notably changed, if the other keeps faith, etc., are also present in the oath. Hence, if you swear that you will observe the statutes of some community, if these are no longer observed by the greater part of the community, neither are you held to observe them. L. l. 3, n. 181.

970. **Does an added oath not to rescind a contract altogether make firm a contract rescindable by positive law?** It is controverted.

The first probable opinion affirms. But some say it is made firm both from religion and from justice; others, however, only from religion. And indeed, because of reverence toward God, an oath must be observed whenever it can licitly be observed.

The second probable opinion distinguishes. It denies when rescindability is introduced immediately and directly because of the common good. For then it would be harmful to the common good, and therefore illicit and invalid. The same must be said if renunciation of the right is prohibited; for then it is illicit. Trent, Sess. 25, c. 16 *de R. R.* But it affirms if rescindability has been introduced immediately and directly because of the private utility of the contracting parties, and renunciation is not prohibited. For each person can renounce a benefit established in his favor.

Hence the oath by which someone freely promises another that he will not revoke a testament or legacy made in that person's favor seems to stand, unless that renunciation is prohibited. Cf. 1034. But do the oaths of minors, wives, and similar persons hold for confirming contracts? Gury 792 denies, "even if the law was constituted for their utility, since perverse men would always exact an oath from them, which would redound to the detriment of society." But Struggl, tr. 5, q. 3, n. 27 affirms, second, because of the general reason that that law was made immediately and directly for the good of private persons. Cf. 249, 565 and C. *Cum contingat* 28 *de Iurei*.

Besides, because an oath does not change the nature of the act, if the act is by its nature revocable, as a testament; or revocable by positive law, as a donation when children have been received; or liable to rescission, as a contract of minors and wives, it is validly revoked and validly rescinded. Lugo, D. 22, nn. 200-202; Lessius, l. 2, c. 17, d. 7; L. 727, 739, 757, 891, 892; C. A. 937.

971. **What are the various modes of contracts?** The various modes of contracts, by which the obligation of contracts is variously modified, are: a contract of obligation under condition, to a mode, to a term, alternatively, in solidum, divisibly or indivisibly, with a penal clause, under cause, under demonstration.

A mode must be observed from justice, unless it is repugnant to the substance of the contract. Its violation often does not invalidate the contract, because it is something merely accidental. If the mode is base or impossible, it is held as not added, nor is the contract invalid, unless the mode is repugnant to its nature, or unless the will of the contracting person was altogether restricted to it.

972. **When is there a conditional contract? What if the condition is impossible or base or potestative? How must a condition be fulfilled?** A conditional contract exists when it depends on a future and uncertain event. C. I. 1557; C. G. 1168.

It is said future and uncertain. For if it depends on a past or present event, the contract is immediately valid or null, although still uncertain to us. Therefore a condition concerning the future suspends the contract and its obligation until it is verified; but a condition concerning the present or the past suspends only the execution of the contract. C. I. 1161; C. G. 1181; C. H. 1114; Inst. l. 3, t. 16, §§ 4, 6; cf. Lugo, *Resp. Mor.* l. 4, d. 3, n. 9.

A condition concerning a base or impossible thing renders the contract null both by natural law and by civil law. C. I. 1160; C. G. 1172; C. H. 1115; Inst. l. 3, t. 20, §§ 11, 24. Yet donations between the living and by testaments are excepted by the same C. G. 900, in which impossible or base conditions are held as not added. From C. I. 1065, a donation under an impossible or base condition is null. And from the same C. I. 849, impossible or base conditions in testaments are considered as not appended. Thus it is also had in Inst. l. 2, t. 14, § 10. Marriage is likewise excepted by canon law, provided the base or impossible condition is not contrary to the substance of the contract.

A contract is null when the condition is potestative, namely when it depends solely on the will of the one obliging himself; for example, I will give you 1000 lire if it pleases me. For a contract of this kind, as is clear, can produce no obligation. C. I. 1162; C. G. 1174. But the contract will be valid if the potestative condition is not the very will of the debtor, but the will of the other party, or of a third

person, or some deed to be fulfilled by one of the two contracting parties. Gousset on the cited article; C. H. 1115.

A condition must be fulfilled in the sense in which the contracting parties are prudently considered to have wished to bind themselves. C. I. 1166; C. G. 1175. Therefore, first, the will rather than the words must be regarded. Second, generally speaking, a condition must be fulfilled in its proper form; yet sometimes it suffices that it be fulfilled equivalently, namely when such is prudently considered to have been the will of the contracting person. Gousset on the cited article; L. 734.

A condition is considered fulfilled whenever the reason why it was not fulfilled lay with the one who bound himself under it. C. I. 1169; C. G. 1178; C. H. 1119, 1122. Before the condition is fulfilled, the creditor can exercise all acts preservative of his right. C. I. 1171; C. G. 1180; C. H. 1121; C. A. 897 ff.; E. M.

973. **When is there a resolutory condition of a contract?** Besides the condition about which we have spoken, which is called suspensive because it suspends the contract, there is another condition which is called resolutory, because when verified it dissolves a valid contract and restores the parties to the same state in which they were before the contract. C. I. 1158, 1164, 1168, 1183; C. H. 1123; C. A. 696. A condition of this kind is understood in every synallagmatic contract if the other party does not fulfill his obligation. C. I. 1165; C. G. 1184; C. H. 1124; cf. 965.

974. **When is there a contract to a mode?** A mode must be distinguished from a condition, that is, a merely superadded burden; for example, I give you this estate with the obligation of celebrating so many Masses annually. Now this contract holds immediately, with the burden of fulfilling the obligation remaining on the other party. If the other party does not fulfill it, he sins against justice, but for that reason the contract does not fall, as the more common opinion says. A contract of this kind is called *to a mode*. L. 734.

975. **When is there a contract to a term?** A contract of obligation to a term, or to a determined day, exists when, although its obligation arises immediately, its execution is nevertheless suspended to a determined day. C. I. 1172; C. G. 1185; C. H. 1125; Inst. l. 3, t. 16, §§ 2, 3. A term is always presumed to have been constituted in favor of the debtor, unless otherwise agreed. C. I. 1175; C. G. 1187. It is in favor of the creditor and debtor, unless the thing and its circumstances require otherwise. C. H. 1127.

976. **When is there a contract of alternative obligation?** A contract of alternative obligation exists when two things are obligated disjunctively, so that the debtor is liberated by paying either one. C. I. 1177; C. G. 1189; C. H. 1131. The choice belongs to the debtor, unless otherwise agreed. C. I. 1178; C. G. 1190; C. H. 1132. But if one thing perishes, he is held to give the other, or its price if this also perished in the later place. C. I. 1180; C. G. 1192, 1193; C. H. 1134-1136.

977. **Note.** A facultative obligation must not be confused with an alternative obligation. Paul bequeathed his house to Peter unless his heir preferred to pay the sum of 10000 lire. Peter cannot exact anything except the house, although the heir can pay him 10000 lire for the

house. Hence, if the house perishes by chance, the heir will be held to nothing; and in this properly consists the difference of one obligation from the other. Gousset 765.

978. **When is there a contract of obligation in solidum?** A contract of solidary obligation exists either on the part of creditors, when the whole credit can be exacted by each creditor, and therefore payment made to one creditor liberates the debtor from the molestation of the other creditors, C. I. 1184; C. G. 1197; C. A. 892; or on the part of debtors, when each debtor can be compelled to pay the whole debt, so that payment made by one debtor liberates the others with respect to the creditors themselves, C. I. 1186; C. G. 1200; C. A. 891.

This solidary obligation of debtors is not presumed, but must be expressly stipulated. C. I. 1188; C. G. 1202; C. H. 1137. But if one received the whole, he communicates it with the others; if one paid the whole, he repeats from the others, with his own part deducted. C. I. 1198, 1199; C. G. 1213, 1214; C. A. 896; C. H. 1142, 1143, 1145; C. A. 891 ff.

979. **When is there a contract of divisible or indivisible obligation?** A contract of obligation is divisible or indivisible if it coalesces from some thing which, when it is handed over, or from some deed which, when it is put into execution, can be divided or not, whether from the nature of the thing or from the acceptance of the contracting parties. C. I. 1202; C. G. 1217.

For example, if a debtor dies to whom there are several heirs: if he bound only one to paying, the obligation is indivisible; otherwise the debt will be divisible. Likewise, if a creditor dies to whom there are several heirs: if he leaves the credit to only one, who can exact the whole credit, it will be indivisible; otherwise it will be divisible. C. I. 1204, 1205; C. G. 1220, 1221.

Therefore those who owe something indivisibly each owe the whole, and to those who are indivisibly creditors of some thing or work, the whole is owed to each. C. I. 1206, 1207; C. G. 1222 ff.; C. H. 1149 ff.; C. A. 888 ff.

980. **When is there a contract with a penal clause? What is understood by earnest-money?** Response to the first: a contract with a penal clause exists when someone, to make firm an obligation, binds himself to something if he does not observe it. C. I. 1209; C. G. 1226; C. H. 1152; Inst. l. 3, t. 16, § 7. Hence the debtor cannot exempt himself from the obligation by paying the penalty, unless this had been expressly established. C. H. 1153; C. A. 1336.

If the principal obligation is invalid, the penalty is invalid, but not the reverse. C. I. 1210; C. G. 1227; C. H. 1155. The penalty is indeed owed from justice, if it is sought, for at least culpable non-execution of the principal obligation; but the penalty and the principal thing are by no means owed at the same time, unless it had been constituted for simple delay. C. I. 1212, 1229, 1230; C. H. 1153; C. A. 909-911.

To the second: what is given in advance by the contracting parties takes the place of security for compensation of damages if the agreement is not fulfilled, unless otherwise agreed, and it is called earnest-money, *caparra*. The party who is not at fault, if he does not wish to urge fulfillment of the agreement, can retain for himself the security accepted from the other, or exact double that which he gave. C. I. 1217; C. A. 908, 910.

981. **When is there a contract under cause, or under demonstration? When is a contract of this kind invalid because of error?** Response to the first: an obligation under cause or under demonstration exists when the cause is expressed, or the thing is designated; for example, I bequeath a thousand lire to Titius because he undertook my patronage; I bequeath to Titius the thousand lire which I received from Sempronius.

To the second: in a contract under cause (*because*) or under demonstration (*I sell this* or *so much*), error does not invalidate unless it pertains to the essence of the thing. If the error is in quantity, the whole thing is owed if the quantity was designated demonstratively (*this*); but if taxatively (*so much*), the excess of quantity is not owed. Now a thing is considered designated demonstratively if the thing is expressed first and afterwards its quantity; for example, I bequeath to Titius my estate of thirty acres. But it is taxative if the quantity is expressed first and then the thing; for example, I bequeath three gold coins in such a box. But the circumstances of things must be weighed, and from them the intention of the contracting person must be investigated. Gury 794; Lugo, D. 23, nn. 111, 112; Inst. l. 2, t. 20, § 29 ff.; C. A. 572, 675, 676, 677, 901.

V. On Promise

982. **What is the order of matters to be treated?** Having explained the general doctrine of contracts, we now make our way to their various species. We shall speak first about gratuitous contracts; then about onerous contracts.

983. **What is a promise?** A promise is a deliberate and spontaneous obligation of faith, made to another concerning some good and possible thing.

Deliberate and spontaneous, because an indeliberate promise, or one extorted by fear or fraud, produces no obligation. Obligation of faith, for by a promise we are ordinarily obliged only from faith, or the virtue of fidelity. Concerning some good thing, for a promise concerning an evil thing produces no obligation, according to Rule 60 of law in 6: in evil promises it is not expedient to observe faith. This must be understood even if the promise had been confirmed by oath, according to Rule 58 of law in 6: an oath furnished against good morals is not obligatory. And possible, for according to Rule 6 of law in 6: no one can be obliged to the impossible. C. A. 861.

984. **Resolutions.** A promise differs from a simple proposal in this, that one promising obliges his faith to another, or himself from the virtue of fidelity, or even justice; but one proposing does not oblige himself to another, but only determines himself in the present to do or omit something in the future. Hence one who does not observe a simple proposal, for example of fasting or of paying certain prayers, of itself does not sin, unless he is obliged from elsewhere to do something similar; but only the baseness of inconstancy follows, beyond and contrary to his intention. St. Thomas, 2. 2. q. 88, a. 1; Lugo, D. 22, n. 1.

985. **Does a promise not yet accepted oblige?** A promise does not oblige before the acceptance of the promisee, that is, of the one to whom the promise is made, or without it.

Proof: because an active right on the part of the promisee ought to result from his own acceptance, and therefore without this there cannot result on the part of the promisor a passive obligation in

second act. Besides, every pact ought to be perfected by the consent of each contracting party. Therefore also a promise. C. A. 861.

986. **Resolutions.** First, therefore, a promise before acceptance is revocable by the promisor, because before acceptance it produces no obligation, and still remains in the power of the promisor. From C. A. 862, if the promise is verbal, it must be accepted immediately; if written, acceptance must be made and notified within the time constituted by law. Before that time it cannot be revoked; once it has elapsed, it is no longer obligatory.

But someone can accept through another chosen for that purpose, or through another who has his care; for example, a father for a son, a religious for a monastery, a prelate for his Church, a wife for her husband. For he is considered to constitute morally one person with him. From C. A. 881, no one can make or accept a promise through another, except in the cases determined by law.

Second, a promise, whether made through a messenger or through a mandatary, does not hold if revoked before acceptance. But if it is made through a mandatary, it is necessary that the revocation become known to the mandatary; and if it could not become known, the revocation has no force, and the promise holds just as if it had been made by the mandating person himself.

Third, if the promisor dies before acceptance, a promise through a messenger or through a mandatary does not hold, for the mandate ceases. If the promisee dies before acceptance, the promise can still be accepted by the family and heirs, if the promisor intended these persons also of themselves and principally; otherwise it remains altogether void. Cf. 991, 1002.

987. **How does a promise oblige?** A simple and gratuitous promise, of itself speaking, obliges only under venial sin.

Proof: because the obligation of a simple promise arises only from the virtue of fidelity, which of itself obliges only under venial sin. Hence in the common judgment of men, violations of simple promises are customarily little esteemed. L. 837.

987. **How does a promise oblige? continued.** Of itself speaking; for accidentally even a gratuitous promise could oblige under mortal sin, as would happen: first, when the promisee would incur grave damage because of the promise not fulfilled; second, when the promisor confirmed the promise by a promissory oath, for then he would at the same time be obliged from the virtue of religion; third, when the promisor confirmed his promise by a written instrument, so that the promisee could act civilly, for then he would at the same time be obliged from the virtue of justice.

Therefore someone can oblige himself from justice, and then he is gravely obliged in grave matter. "It is not apparent," says Lugo, D. 23, n. 91, "why you could not gratuitously and without any preceding debt wish to oblige yourself from justice to another, to give or do something afterward in his favor. For just as you can gratuitously donate a house to him, and therefore transfer to him some real right in the house, which is the object of justice properly so called, why will you not also be able gratuitously to transfer to him a right, not in the thing, but to the thing, and constitute yourself his debtor from a debt of justice? Indeed, all that can be given for a price can also be given gratis; and

just as you can sell a house for a price, so you can also donate it gratis. Thus in each case you equally give a proper right of justice in the house. Therefore, just as, with a price accepted, you can oblige yourself from justice to do or give something afterward, from which obligation you give a right from justice properly so called against yourself, so you will also be able to give this same right gratis and constitute yourself a debtor from justice, just as if you had accepted a price for this obligation."

"And here Sanchez, Sporer, and others commonly apud Tournely warn that to constitute grave matter in a promise, matter four times greater is required than in mortal theft, because a promisor deals with his own, a thief with another's." L. 720; St. Thomas, 2. 2. q. 88, a. 3 ad 1; L. *Si pollicitus* ff. *de Pollicitat*.

988. **Is a right to a thing given through a promise?** If through a promise someone obliges himself from justice, although no right in the thing is given, nevertheless a right to the thing is given. For justice obliges one not to injure the right of another; therefore, if at least a right to the thing is not transferred to the other, that promise no longer obliges from justice.

But if through a promise someone obliges himself only from fidelity, a right to the thing is in no way given to the other. "For fidelity does not oblige me to that which I owe to another, but to that which I owe to myself." Lugo, cited place, n. 14.

989. **Does an onerous promise, once the condition has been fulfilled, oblige under mortal sin?** Response: affirmatively, of itself. Proof: because a promise under an onerous condition, once the condition has been fulfilled, obliges from justice; but the obligation of justice, of itself and from its kind, is grave. Hence, when the condition is gravely onerous and the promisor would subtract much from the reward, he would sin mortally. But when the condition is only lightly onerous and the promised reward is great, the promisor would sin only venially even if he subtracted more, because as regards the excess he seems to have obliged himself only from fidelity.

990. **What about promises as they generally are customarily made?** Simple promises, as they are commonly made, do not urge even from fidelity, because commonly it is not in the mind of the promisor to oblige his faith; therefore they express a mere proposal.

991. **Whether, or to what extent, does a promise oblige if the promisee or the promisor dies before execution?** Response to the first: it obliges in no way if the promise was made principally in favor of the promisee, because, with him dead, the end intended in the promise ceases. It is otherwise, however, if the promise was made chiefly with a view to the promisee's family, or to his heirs.

To the second: when the promisor has died, if the promise was to be fulfilled from justice, clothed with the due conditions, it must be fulfilled by his heirs, because every real obligation ought to pass to the heirs in the same way and by the same title by which the promisor was obliged. Accordingly, under grave or under light obligation, the heirs will be held from justice just as the promisor was held while he lived. If the promise was to be fulfilled only from fidelity, then the heirs are liberated from every obligation, since such a promise involves a personal obligation, which does not pass to the heirs. C. A. 900, 955.

992. **How does the obligation of an accepted promise cease?** It ceases because of the following causes:

First, because of condonation by the promisee, for anyone can renounce his own right.

Second, because of change of the object, namely if the thing promised in the meantime became impossible, illicit by the laws, or harmful or useless to the promisee, for whose utility and advantage it was made. C. A. 936.

Third, because of a supervening change of state of the promisor or promisee, so that the promisor would not have promised if he had foreseen this change; as, for example, if someone promised one hundred florins to a poor person and in the meantime he himself falls into poverty and needs them to sustain himself or his family honorably; or if someone promised marriage to a girl who afterwards becomes poor, very deformed, or is corrupted by another.

Fourth, because of ingratitude of the promisee; for this not only removes the obligation of the promise, but also, if it is grave, makes a donation revocable, as is had in C. ult. *de Donat*.

Fifth, through compensation, namely when two people promised something to each other and one does not wish to stand by the promises. For, as is said in Rule 75 of law in 6, in vain does someone demand that faith be kept to him by one to whom he refuses to keep the faith furnished by himself.

Sixth, because of defect of the condition or principal cause of the promise itself; as if someone promised something to another because of poverty, whom afterwards he finds not to be poor. For a promise is always considered made under such tacit conditions. Struggl 23; L. 720; St. Thomas, 2. 2. q. 110, a. 3 ad 5.

993. **What about promise according to civil law?** Promise is admitted by Roman Law, Dig. l. 50, l. 12; likewise by C. A. 861 ff.

From C. I. and C. G. nothing special is had about promise. From C. G. 893 it is gathered that civil action is not given from a simple promise. From C. I. 710 a promise does not seem to be excluded from the various ways by which one's own rights can be transferred to others. The same must be said about C. H. 1089, 1254.

But specifically C. G. 1589, 1590 treats the promise of sale, and it is not distinguished from sale itself. It is also treated in C. H. 1451, and the contracting parties have a right to demand execution of the contract. In C. I. 53, 54 there is specific treatment of the reciprocal promise of marriage, which produces no legal obligation. Yet if it was made by a public act or by private writing, or if publications had been made by the civil magistrate, the promisor who refuses to execute the promise without a just motive is held to compensate expenses made by the other party with a view to the promised marriage. The same is prescribed in C. H. 43, 44.

Likewise C. I. 1129; C. G. 1120; C. A. 881 treat a promise of the deed of a third person. A promise of this kind gives a right to obtain indemnity from the one who obligated himself, or promised the ratification of the third party, if the latter refuses to fulfill the obligation. Besides, if he promised only that he would take care that the other give or do something, if he took care of this in vain, he is held to nothing further. The same can be gathered from C. H. 1254. Lugo, D. 23, n. 114; C. H. 826; C. G. 1326.

VI. On Donation

994. **What is donation?** Donation, strictly so called, is the liberal conferring of some gift. Liberal conferring: for the gift which is conferred on another through donation ought not be owed to him from justice, nor ought the one giving the gift oblige the other to furnish anything else; donation ought to be an act of liberality, and not of justice. C. I. 1050.

Meanwhile, however, a consequent or even antecedent debt of gratitude is not repugnant to donation, and therefore donation can be remunerative from gratitude, or an act of gratitude, although in this way it withdraws somewhat from the properties of donation. C. I. 1051.

But that donation induce obligation in the donor, acceptance by the donee is necessary. For no one by natural law can acquire a right in the things of another without his own consent. L. 725, 726. Acceptance can be made either by oneself or by a procurator. C. A. 938-942; C. H. 618, 619, 623, 629, 630.

But although donation generally does not hold before acceptance by the donee, a donation made to a church or to another pious cause holds before it is accepted. The reason is that the thing is considered donated or promised to God himself, who is everywhere present and immediately accepts. Ferraris, v. *Donatio*, a. 1, n. 26.

995. **How many kinds of donation are there?** Donation is divided, first, into liberal and remunerative. The former is made from the pure virtue of liberality and without a debt of gratitude; the latter is made at the same time from the virtue of gratitude and from the motive of compensating this debt. C. I. 1051; C. H. 618; C. A. 940.

Second, into donation by reason of death and donation between the living. The former is made by the donor with a view to coming death, and consequently by its nature is revocable before death because of this imbibed implicit condition: if I shall have died in this illness, in this danger; or if I shall not have revoked the donation before death. The latter is made actually and absolutely between the living, and consequently of itself is irrevocable. C. I. 1050; C. G. 894; C. H. 620, 621; Inst. l. 2, t. 7, §§ 1, 2; Gousset, *Cod. comm.* on art. 893.

996. **Resolutions.** First, a disposition by which someone now and irrevocably donates to another dominion of a thing, whose use or usufruct he reserves to himself until death, is not a donation by reason of death, but between the living. C. I. 1074; C. G. 948.

Second, dispositions by which the sick actually and irrevocably give to present persons, for example parents, servants, friends, movable or even immovable things, without any condition regarding death, are not to be held as donations by reason of death, but between the living.

Third, promises which are customarily made in life concerning some thing to be given at death to parents, servants, or friends do not have the force of a donation by reason of death; nor by force of such a promise will anyone be able, commonly speaking, to claim even the smallest thing. For those promises are customarily taken to denote nothing other than a mere proposal, or good mind, of making a donation at another time. Therefore care must be taken lest parents, servants, and friends

too easily interpret the will of the deceased in their own favor, and therefore secretly take away various things under pretext of promise or donation.

997. **Does donation by reason of death hold?** By natural and common law donation by reason of death holds, provided it is clothed with the due conditions. Namely:

First, it must be made with a view to death; otherwise it would be considered donation between the living.

Second, it must be accepted by the donee himself, for no one can acquire a right in the things of another unless he first consents.

Third, if the donee dies first, it is revoked by that very fact and does not pass to his heirs, at least in the rigor of law, because it was not directed to them.

Fourth, donation by reason of death is likewise revoked if the donor survives the danger of death, and if it was made precisely with a view to the proximate danger of death. For one can donate by reason of death in three ways: first, when someone donates, terrified by no fear of present danger, but by the mere thought of mortality; second, when someone, moved by an imminent danger, donates in such a way that the thing immediately becomes the recipient's; third, when someone, moved by danger, does not give in such a way that the gift immediately becomes the recipient's, but only then at last when death shall have followed. Inst. l. 2, t. 7, § 1.

998. **Does donation by reason of death hold also according to the more recent laws?** As regards the more recent laws, from C. A. 956 donation by reason of death certainly holds as a legacy if the prescribed formalities are observed. And it also holds as a donation if the donee accepted it, and the donor expressly renounced the faculty of revoking it, and handed a written document to the donee.

From C. H. 620 a donation is admitted which has effect at the donor's death; and it is ruled by the same laws as testamentary succession.

From C. I. 710 and 827 donation by reason of death more truly holds, as any other disposition and agreement for transferring dominion in conscience.

From C. G. there is a grave difficulty because of art. 893, by force of which someone cannot dispose of his goods by gratuitous title except by donation between the living and by testament. But more probably it also holds; for in art. 967 it is said that someone can dispose of his goods by testament, whether by title of institution of heir, or by title of legacy, or by every other denomination apt for manifesting his own will. But donation by reason of death is recalled to testament or to legacy, or certainly is another form apt for manifesting one's own will. And indeed, if that donation had been written in a testament, it would hold as a legacy. Hence here at most there would have place the general doctrine of a contract lacking legal forms.

Besides, that donation certainly seems to hold as a conditional donation between the living, like a donation with a view to marriage, cf. art. 1088, if it is not revocable at the donor's will, but only from the event of health; for then the condition is casual, containing nothing contrary to law.

Furthermore, if donation by reason of death is invalidated by French Law, "it is indeed invalidated through the sentence of a judge, but probably not by that very fact." Gury, *Cas.* 816. Therefore before the sentence of a judge it will be valid in conscience. Finally, "the gravest interpreters of law, for example Merlin and Delvincourt, assert that manual donations by reason of death hold, provided there is delivery or divesting (*dessaisissement*); and thus the Supreme Court declared on 12 December 1815." Gury, *Cas.* 811; *Comp.* 836; Gousset on a. 893; L. 741-743.

999. **Resolutions.** First, a donation under the condition that it be restored if repeated more probably holds. For "although it does not hold as a donation between the living, which demands that the donor divest himself of his thing irrevocably, nevertheless it can hold as a donation by reason of death because of real delivery, which ought to have no less force, although no mention of death is made." Gury 836.

Second, one to whom a movable thing has been donated by reason of death can secretly accept it after the donor has died, provided he is certain of the donation and of the last will of the deceased. For the thing was not donated as to be paid, but as to be accepted from the donor himself. Then he has a right in the donated thing, for donation by reason of death is a conditioned donation, which by the death of the testator becomes absolute. Cf. 997. Therefore, with the donor dead, the donated thing immediately and absolutely passes into the dominion of the donee. Therefore this person can accept it as his own. Hence, if he is compelled by the judge to furnish an oath that he accepted nothing from the goods of the deceased, he can assert by oath that he accepted nothing from the goods of the deceased, namely nothing which was not his own. Gousset on a. 931.

1000. **What is the nature of donation between the living?** Donation between the living is an act of spontaneous liberality by which the donor actually and irrevocably divests himself of the donated thing in favor of the donee, who accepts it. C. I. 1050; C. G. 894; C. A. 938, 946.

He divests himself actually and irrevocably; nevertheless nothing prohibits a donation from being made under a condition, whether suspensive or resolutory. C. I. 1066, 1078; C. G. 944, 953. A suspensive condition is tacitly present in donations which are made by reason of marriage. C. I. 1068; C. G. 1088. A resolutory condition is tacitly present in reciprocal donations which two make to each other; cf. C. I. 1083.

But a donation is invalidated by a condition which is wholly placed in the power of the donor, C. I. 1066; C. G. 944; by one which imposes on the donee the burden of satisfying any future debts whatever of the donor, C. I. 1067; C. G. 945; and by one which establishes that, if the donee or his children die first, the donated thing is to return to another rather than to the donor himself. C. I. 1071; C. G. 951; cf. C. H. 641. But someone can donate under reservation of usufruct for himself and, when he is lacking, also for others, though not by calling others successively one after another. C. I. 1074; cf. C. G. 949; C. H. 640.

If the donor reserves to himself the faculty of disposing of some object or some sum which is comprehended in the donation itself, if he dies before that disposition, such object or sum passes to the heirs of the donor, not to the donee himself, notwithstanding any contrary clause whatever. C. I. 1069; C. G. 946.

In favor of the donee, to whom dominion of the donated thing is immediately transferred irrevocably, namely a right in the thing; hence donation differs essentially from promise, which gives only a right to the thing. Nor indeed is delivery of the thing needed, as is openly established from C. I. 1062, 1125; C. G. 938, 1138; cf. Rogron on aa. 711, 938, 1138; L. 732. But delivery is needed by C. A. 943 if the donation is verbal; and by C. H. 632 if the verbal donation concerns a movable thing; otherwise by each of these laws it does not obtain effect. Cf. 1011.

Who accepts; without acceptance there is as yet no donation, both by positive law and by natural law. Therefore it can be revoked, even if it was confirmed by oath, because an oath follows the nature of the act. C. I. 1057; C. G. 932; C. H. 629; Lugo, D. 23, n. 42; Inst. l. 2, t. 7, § 2; L. 725-727.

1001. **Does an absent person sufficiently accept a donation once he has received the messenger or letters of the donor?** "A donation made to an absent person, if it is made through a messenger, can be revoked until it is accepted before the messenger; for it does not suffice if it is accepted before others. But if a donation is offered by letters, Viva says it suffices that the letters arrive at the donee. But Lessius and the Salamanticenses say that more is required, namely that letters or a messenger of acceptance be sent back, so that the donation be valid." L. 725, 728. This as regards natural law. As regards positive law, cf. 1011.

1002. **What if the donor, having sent a messenger, revokes the donation?** If the donor revokes the donation before it is accepted, and the revocation becomes known to the messenger whom he sent, the messenger can no longer effect anything, since every power of offering or handing over has been taken from him.

But if the revocation does not become known to the messenger before execution, then a distinction must be made: either he has himself only as a messenger reporting another's donation or handing over the thing, or he has a mandate of making a donation. If the former, by the revocation made, the subsequent donation is invalidated, because consent on the part of the donor is altogether lacking. If the latter, his acts hold, and the donation can validly be accepted. For the mandating person is held to have as ratified that which by force of the mandate has been done in good faith in his name. This is according to natural law. As regards positive law, cf. 1011.

1003. **Can a donation be validly accepted after the death of the donor?** "Lessius distinguishes. If the donation has already been made, and the donor before death sends a messenger or letter, then he thinks it can be accepted. The reason is that the donation remains virtually in the letters or messenger sent. And Sanchez, Lugo, Viva probably hold the same. But Lopez... and others more probably deny this, and the Salamanticenses think it probable, because after the death of the donor his will cannot be united with the consent of the donee, as is required for acceptance...

"But if, Lugo, Lessius, and Sanchez say, the donation has not yet been made, but has been mandated to be made by a messenger, even with the gift sent through him, then after the death of the donor the donation can no longer be accepted, from L. *Inter causas* ff. *Mandati*, etc., where it is expressly declared that a mandate expires after the death of the mandating person. Nevertheless, this notwithstanding, Sanchez says that the donation can be accepted, because here the mandate, since it is a certain favor

made, does not expire by the death of the mandating person. And Lessius, Viva, etc., deservedly think this probable...

"Yet one must warn with Lugo, Molina, and Sanchez, from the same L. *Inter causas*, that if the donation was made by the messenger, while both the messenger and the donee were ignorant of the death of the mandating person, then the donation will hold." L. 730; Lugo, *Resp. Mor.* l. 4, D. 6, n. 6; Ithur., *Cas.* 8.

But there is grave difficulty in this: that the donee should validly accept a donation after the donor's death; for then it is no longer donation between the living, but legacy, which is quite different. This is according to natural law. As regards positive law, cf. 1011.

1004. **If the donee dies before acceptance, can his heir accept the donation?** Sanchez, etc., affirm, because the heir represents the person of the deceased. Yet Lessius, the Salamanticenses, etc., more probably deny, because the heir succeeds to the real rights of the deceased, but not to personal rights, such as the right of accepting a donation. Lessius nevertheless concedes that if the heir is the son of the donee, he could accept from equity, since such a mind of the donor is then to be presumed. L. 731. This as regards natural law. As regards positive law, cf. 1011.

1005. **What by natural and positive law concerning the capacity of the donor?** By natural law all those can donate who can alienate their own goods, for donation is a species of alienation. Therefore it is required that the donor be sound in mind and not declared incapable by law when he perfects the donation.

From Trent, Sess. 25, c. 16 *de Reg.*, donations and renunciations, even sworn, which are made by those entering religion are invalidated, unless they are made with the permission of the bishop or vicar within the two months immediately before profession, and profession afterwards follows. Cf. L. l. 3, n. 935.

From Roman Law the following are incapable of donating: first, those deaf and mute at the same time from birth, unless they know how to write; second, those condemned for a capital crime; third, wards or impubescent persons, unless there is question of things of small moment; fourth, spouses between themselves, unless the donation is of moderate moment; fifth, a father toward a son remaining under his power, except by reason of marriage, war, studies, and similar causes.

From Italian and French Law those cannot donate who, by the same law, cannot make a testament; and regularly minors, C. I. 763, 1052, 1386; C. G. 902-904, 1095; wives, C. I. 134; C. G. 217, 905; incapacitated persons under petition and those declared incapable, C. I. 1052, 1387; C. G. 502, 902. From C. I. 1054 and C. H. 1334, spouses during marriage cannot donate to each other. From C. G. 1094, 1098, 1099, spouses generally can donate to one another between the living or by testament: first, if there are no descendants, whatever they could donate to a stranger as regards property, and in addition the usufruct of the part of the inheritance reserved to ascendants; second, if descendants are present, either a fourth part of the goods as regards property and at the same time another fourth as regards usufruct, or only the usufruct of half the part; third, if the spouse has children from a preceding marriage, he cannot donate to the new spouse beyond the part which falls to the child receiving less than the others, nor exceed the fourth part of the goods.

From C. Comm. G. 446, acts transferring dominion of goods, whether movable or immovable, by gratuitous title, made by merchants who have made cession of goods, within ten days before the sentence of the tribunal declaring the day of that cession, are null. From C. Comm. I. 707 the same acts are null from the day of cession. From C. H. 624 all can donate who can contract and dispose of their goods. L. 721, 723, 724.

1006. **Does someone validly and licitly accept a donation from one who is burdened by another's debt?** Lessius, Molina, Navarrus, etc., affirm, and Lugo and Paludanus apud St. Alphonsus think it probable. The reason is that he can well transfer dominion while he is still true owner of the thing which is donated; but you, accepting, are not the per se and efficacious cause of the creditor's damage, but only an accidental and permissive cause. The per se and efficacious cause is only the donor; for he himself is the one who determines to make the donation. Therefore, provided you did not induce him to donate, you do not sin against justice. Nor indeed do you sin against charity, for charity does not oblige you to repudiate your own grave advantage in order to preserve debtors unharmed.

But Paludanus, Bonacina, Lugo, and others apud the same St. Alphonsus more truly and more commonly deny. The reason is that the donee is a true per se and efficacious cause of the creditor's damage; for donation essentially does not consist in the will of the donor alone, but also in the will of the one accepting, without which no alienation or donation exists. Therefore just as the donor injures justice by rendering himself powerless to pay, about which no one doubts, so also does the donee cooperating in the unjust action of the donor with damage to the creditors. L. 722; H. A. tr. 10, n. 128. Each opinion seems not to lack its probability. Ithur., *Cas.* 8, n. 12; L. 612, 694, 695.

1007. **Note.** From C. I. 1091, 1092 and C. G. 920, 921, no right is conceded to creditors of demanding reduction of a donation made by one burdened with debts. This right is conceded only in inheritance, if the legitimate portion is injured, to the heir in whose favor the law reserved the legitimate portion. Nevertheless, from the same C. I. 1235; C. G. 1167; C. A. 953, creditors certainly can impugn acts done by debtors in fraud of their rights. From C. H. 643, 1291, 1297, gratuitous contracts of a debtor, when creditors cannot receive from elsewhere what is owed to them, are presumed to have been made from fraud and are rescindable. L. 722; C. A. 950.

1008. **What by natural and positive law concerning the capacity of the donee?** By natural law, on the part of the donee, aptitude for receiving is required. But all human beings are apt who are not constituted by law incapable of receiving donations. Nor must infants, the insane, or others lacking the use of reason be held incapable, since they are capable of dominion and can accept or occupy things through others, for example through parents, tutors, etc. Cf. 856.

From Common Law the following cannot accept donation: first, all accepting from those who cannot make donations, according to what was said in n. 1005; second, those accepting from those who are burdened by another's debt, in fraud of creditors, and these are held to compensation of the damage coming from this to creditors; third, those accepting in defrauding the legitimate portion which is owed to necessary heirs; fourth, spouses. Generally the reciprocal donations of spouses are invalid. Exceptions: first, unless the donation has been confirmed by oath; second, if the death of the donor

intervenes, who dies before the donee, provided the thing was handed over in life; third, if the donation is remunerative, or is made by reason of death; fourth, if the wife donates to the husband so that he may obtain some dignity. L. 722, 723, 740.

By more recent law donation can be made to all, even to the unknown, the dishonorable, and those to be born, provided they have been conceived and afterwards are born living and viable. C. I. 1053, 724; C. G. 725, 906; C. H. 627. And from C. I. 1053, 1059, provided he from whom the one to be born is hoped has been born, he to whom donation is made. One is considered viable who is born after the one hundred eightieth day from conception. C. I. 160, 162; C. G. 312, 314. In doubt, one who was born alive is presumed born viable. C. I. 724; C. A. 23.

But generally those are excepted to whom something cannot be left by testament. C. I. 1053; C. G. 902. Besides, the spouse is specifically excepted from C. I. 1054; C. H. 1334. Also excepted from C. H. 1335 is the child of the spouse from another marriage, and a person of whom someone is the presumed heir at the time of donation.

1009. **Note.** From C. I. 1055 and C. H. 628 any donation in favor of an incapable person is null; from C. G. 911 it will be null. Cf. C. H. 1334, 1335.

1010. **What is the quantity of goods which can be given?** Goods which are in commerce can be donated, and regularly all which someone has in the present, but not future goods, always preserving the part of the legitimate inheritance. Nevertheless, someone can donate what he has in determinate hope, for example fruits to arise from a certain field this year, fish which he will bring back from fishing, etc., with the exception of the hope of a future inheritance, about which every pact is prohibited. Cf. 955; C. I. 1064, 1091; C. G. 913 ff., 943; C. H. 634-636; cf. C. A. 944, 951.

1011. **What are the special prescriptions of positive law concerning donation?** Concerning the form of donations. Manual donations, from hand to hand, and therefore of movable things, can be made without writings even according to the more recent laws, which touch only non-manual donations and donations of immovable things. Now unless these are made by public instrument, acts of donation are null from C. I. 1056, and are liable to the penalty of nullity from C. G. 931.

Yet exceptions must be made: first, donations which are, as it were, conditions of another contract; for example, I give, I sell you an estate, from which you will give one hundred gold coins annually to Titius, for those donations are something accessory. C. I. 1128; C. G. 1121. Second, donations by which someone renounces some of his rights, for they are donations in a broad sense. Third, remunerative and onerous donations, for these are not donations properly so called. Gousset, *Cod. comm.* art. 948.

From C. A. 943, a donation made only verbally and without effective delivery confers no right of action on the donee. This right must be founded on a written document.

From C. H. 632, 633, the donation of a movable thing made verbally needs delivery; otherwise it will lack effect, unless the donation is made in writing and the acceptance is established in writing. But donation of an immovable thing, in order to be valid, must be made by public writing, and acceptance must be made by the same or another writing; it will have no effect unless it is made during the life

of the donor. If acceptance is set down in a separate writing, it must be notified to the donor in authentic form.

Concerning the acceptance of donation. Only adults who are neither under tutelage nor under care can accept non-manual donations and donations of immovable things. C. I. 1059; C. G. 935. Therefore for non-emancipated minors the one who exercises paternal power or tutelage accepts. Emancipated persons and those declared incapable need the intervention of a curator. C. I. 231, 1059; C. G. 935. But wives from C. I. 134 can accept without the consent of the husband; but from C. G. 217, 934, they need the husband's consent. Yet all these, if they accept by themselves, the donation holds also in the civil forum until the other party complains, since restitution in integrum is conceded to that party, and this is clearly gathered from C. I. 1061; L. 725.

Acceptance must be express in the same or another act; and if a donation is made to an absent person, it is not understood as made before it has been announced to the donor. C. I. 1057; C. G. 932. Therefore before this, the donation is just as if it had not intervened, and therefore the donor can meanwhile revoke the donation by his own right. And if meanwhile the donor dies, the donation vanishes. Thus also from the cited articles of C. H. For indeed the donor ceased to be owner of the donated thing, and if the donee could still accept the donation, the act of donation would now be converted into something altogether different, namely into a testamentary disposition. But once acceptance has been made, the donation is perfected and transfers every right to the donee, without need of delivery. C. I. 1062; C. G. 938. Thus also in Roman Law, Inst. l. 2, t. 7, § 2.

Moral bodies also cannot accept donations unless a faculty has been obtained from the Government. C. I. 1060. This disposition of law in no way holds for the Church.

Concerning donation with a view to marriage. Donations with a view to marriage can be made and received by a minor with the intervention of those whose consent is needed by civil law for contracting marriage. They can also be made and received by one declared incapable, with the intervention of the curator. C. I. 1386, 1387; C. H. 1329.

These donations, made in contemplation of marriage, cannot be impugned because of defect of acceptance. C. I. 1062; C. G. 1087; C. H. 1330. Nor can they be revoked because of ingratitude or because of children born. C. I. 1087; C. H. 1333; cf. C. G. 960. But they are null if marriage does not follow, C. I. 1068; C. G. 1088; C. H. 1333; C. A. 1247; or if it is pronounced void. Nevertheless rights acquired by third parties remain, indeed also the rights of children, if at least one of the spouses contracted it in good faith. C. I. 1068; Inst. l. 2, t. 7, § 3.

Concerning nullity of donations because of omission of legal forms. Donations null in the external forum because of defect of form are not null also in the internal forum. This is established: first, since generally from C. I. 1237 and from C. G. 1235 a natural obligation is admitted independently of civil obligation. Hence one who voluntarily satisfied a natural obligation cannot repeat what was paid. Therefore there is a certain natural obligation of satisfying a donation which is not clothed with the prescribed forms of law. And as regards C. I., this is very clearly confirmed from art. 1311.

Second, donations under the form of an onerous contract, for example sale, certainly hold between persons capable of disposing of their own goods and receiving, if they contain nothing contrary to the laws. And this is proved from actual jurisprudence. Now this jurisprudence openly shows that the

prescribed formalities of donations do not touch the donation itself, but only the act or instrument of donations; otherwise all donations disguised under another onerous contract would be null.

Third, for the law itself in reality does not speak about donation, but about the act of donation, or about the instrument in which the donation is contained, namely that the donation hold with respect to third parties and in the external forum. Only the act is subjected to nullity unless it was drawn up according to the prescribed form. C. I. 1056; C. G. 931; cf. C. I. 1310, 1311, 1312, 1316, 1320, etc.

Fourth, it is commonly handed down that no formality according to the laws is required for manual donations. This is gathered from the fact that the prescribed formalities of C. I. 1070 and C. G. 948 are not demanded for the donation itself, but for the act of donation. Therefore the same holds for non-manual donations and even donations of immovable things. Cf. 936; Gousset on a. 931.

The same seems to be affirmed from C. A. 943. For defect of forms takes away not the right in the thing, but the right of action. There is a graver difficulty from C. H. 633. But unless a contradiction is affirmed between this article and several others, for example 1089, 1091, 1254, 1261, 1278, 1279, one must say that defect of forms renders the donation only rescindable by the sentence of a judge.

1012. **What is the obligation of donation?** Once donation has been perfected, the donor is immediately held to hand over the thing which he donated; and if he destroys it, alienates it, or makes it worse, he sins gravely in grave matter, and is held to compensate every damage to the donee. Lugo, D. 22, n. 42.

1013. **What are the cases in which donations do not obtain their full effect?** These two cases are reduction and collation.

1014. **What is reduction?** Reduction is the rescission of a donation or legacy in proportion to the excess above the disposable quantity; this rescission must indeed be made by public authority. It cannot be demanded except by those for whom the law reserves the legitimate portion. Nor indeed can they renounce this right during the life of the donor.

If the value of the donations exceeds or equals the disposable quota, the testamentary dispositions are without effect. But if the testamentary dispositions exceed the disposable quota, or the portion of this quota which would remain after subtracting the value of the donations, reduction is made proportionately without any distinction between heirs and legatees. Meanwhile the donee makes the fruits of the donated thing his own during the life of the donor. C. I. 821-824, 1091 ff.; C. G. 920 ff.; C. H. 654 ff.; L. 740.

1015. **What is collation?** Collation is the act by which one of the heirs brings back to the sum of goods which the testator left to be divided among the heirs those goods which he received from the donor, so that they may be divided equally among all; unless he prefers rather to renounce the inheritance, for this is an obligation of heirs, and then he can retain those things up to the concurrence of the disposable part.

C. I. imposes collation only on children and descendants toward other descendant coheirs, not toward legatees, creditors of the inheritance, or other heirs. C. H. 1035 and C. A. 787 impose it on a necessary heir. But C. G. commands collation indiscriminately for any heir. C. I. 1001-1004, 1014; C. G. 843-846, 857.

Collation can be made in two ways: first, in kind, that is, by bringing back the donated thing itself; second, by taking less. The former mode is ordinarily used for immovables, the latter for movables. C. I. 1015 ff.; C. G. 858 ff.; C. H. 1045 ff.; L. 954.

1016. **What are the exceptions to collation?** Various donations are exempted from collation:

First, if the testator gave them while expressly exempting the heir from collation, or by title of a preferential right within the limits of the part about which he could dispose. C. I. 1001; C. G. 843; C. H. 1036, 1038. From C. I. 1004, 1006, 1012, the following are presumed to have been made with dispensation from collation: donations of ascendants made to a descendant of an heir; donations made in favor of one who is the spouse of a descendant. Likewise an immovable which perished by chance and without fault of the donee is not subject to collation. Cf. C. H. 1038-1040, 1045; C. G. 847-860, 855.

Second, if expenses were made by the donor in someone's favor, for example for food, clothing, customary gifts, etc. Likewise expenses of nurture, education, marriage, learning an art, and similar things. C. I. 1009; C. G. 852; C. H. 1041, 1042, 1044.

Third, fruits of things subject to being brought back, which the donee perceived before the death of the testator. C. I. 1013; C. G. 856; C. H. 1049; C. A. 789 ff.; Gousset on a. 852; L. 958, 959.

1017. **Must a son bring back expenses made by a father of slender fortune to raise him to the priesthood?** Response: negatively, generally speaking, because those expenses redound to the common good of the family, namely to its honor, advantage, etc., and these are considered to have been donated gratuitously by the parents.

But the patrimony given by the father to the son for receiving sacred orders must be brought back in the division of the inheritance, because it can be equated with the dowry of a daughter, which must necessarily be brought back. Otherwise equality among the children would be injured, which collation intends to guard against. This is also established from C. I. 1007; C. G. 851; C. H. 1035, 1046; C. A. 788; L. 488, 955, 956. From C. H. 1043 they seem to have to be conferred.

1018. **Must expenses made by a father for the sake of a son, for a doctorate, benefice, studies, books, etc., be conferred?** Response: negatively, for these redound to the common good of the whole family, its honor, advantage, etc. Exception: unless the father had goods proper to the son, for then he is considered to have sustained the son in studies from those goods. Exception also if the expenses are altogether extraordinary. L. 724, 950, 955. From C. H. 1043 they must be conferred.

1019. **Must money employed to redeem a son from military service be conferred?** Response: affirmatively, if he is redeemed for his own utility, because equality seems to demand this. Otherwise, if the son is redeemed for the utility of the father, for example one infirm, aged, or poor, or for sustaining the family, because the family which receives the advantage ought also to bear the burden. Rogron on a. 851 of the Civil Code; Gousset on a. 852; L. 955. From C. H. 1043 it must be conferred.

1020. **Is a son held to bring back those things which he badly spent from paternal goods, for example in games, drinking bouts, etc.?** Response: negatively, provided the son did not badly consume more than the father was content that he spend for his sustenance and honorable recreations; otherwise, if the expenses exceeded this. But those things which were given for paying debts must be conferred. L. 543, 544, 957; C. H. 1043; C. G. 851; C. I. 1007; C. A. 788.

1021. **Does the law of collation oblige in conscience?** "The law of collation regards both the external and the internal forum. Nevertheless, when it is certain, whether by verbal declaration of the donor or by various circumstances of fact, that the donation was made with exemption from collation, although this exemption cannot be proved in the external forum because of defect of an authentic document, the donee is not obliged to collation. But generally speaking, the donee cannot retain the excess above the legitimate portion, whatever may be the will of the donor." Gousset on a. 852.

1022. **What are the exceptions to the irrevocability of donation between the living?** Donation, first, is dissolved, but not by full right, if the appended conditions are not fulfilled.

Second, it can be revoked if the donee shows himself ungrateful toward the donor in the cases determined by law. Inst. l. 2, t. 7, § 2. Yet this does not apply if they are donations by reason of marriage, and from C. I. if they are purely remunerative donations.

Third, from C. G. and C. H. it is revoked by full right, but from C. I. not by the law itself, because of offspring supervening, even if that offspring had already been conceived at the time of donation, even if it was born posthumously, or if the donor legitimized a natural child born after the donation. Excepted from C. G. are mutual donations of spouses, or donations of ascendants in favor of spouses, made by reason of marriage; excepted from C. I. are remunerative donations and donations made by reason of marriage.

Certainly the presumption of law is just and pious: that a donor lacking offspring made the donation with this virtual or tacit condition: unless I shall have acquired children. For each person is considered tacitly to wish to prefer his own to strangers. Hence also every contrary agreement is held as null. But since donation in this case is revoked by the law itself, it does not revive through the death of the offspring. Cf. C. A. 954.

Fourth, all donations between the living made by either spouse to the other can always be revoked. Nor indeed does the wife need the consent of the husband or the authority of a judge. C. I. 1078-1090; C. G. 953, 955, 956, 959, 960, 961, 964, 965, 1096; C. H. 644-653, 1333, 1334; C. A. 947 ff.; L. 738, 739.

1023. **Is a donation made to the Church or to a pious cause revoked because of ingratitude or because of the advent of offspring?** Response to the first: a donation made to the Church cannot be revoked because of the ingratitude of the prelate or clerics, because that donation is made principally because of the good of the donor's soul, and principally to God, who cannot be ungrateful. Lugo, D. 23, n. 175; L. 738.

To the second: "All commonly teach that it can be revoked only as regards that in which it is inofficious toward the children, or as regards their legitimate portions, not as regards the whole. The reason is that, as regards the portion owed to the children, the donor is not presumed to have preferred the Church, but rather to have wished first to satisfy his own debt of piety. But as regards the rest, the Church is considered to be loved more than or equally with the children. Therefore, just as a donation made to one child is not revoked when other children are born, except as regards their legitimate portions, so one must say about a donation made to the Church or to a pious cause." Lugo, D. 23, n. 194.

"This revocation would subsist, nor would the donation revive, even if the children died, because an action once extinguished always remains extinguished." Ithur., *Cas.* 8, n. 12; L. 739.

VII. On Testament

1024. **What are testament, codicil, legacy, fideicommissum?** A testament, which according to the etymology of the name is the same as testimony of mind, according to the thing signified is: the just sentence of the will concerning what someone wishes to be done after death concerning his things, with direct institution of an heir. Thus from Roman Law.

Just sentence of the will, that is, a legitimate disposition of will and one congruent with law. Concerning what someone wishes to be done after death: for a testament is not only made by reason of death, but also first acquires its force through the death of the testator, according to that saying of the Apostle to the Hebrews 9:16, 17: where there is a testament, the death of the testator must intervene; for a testament is confirmed among the dead; otherwise it does not yet hold while the one who has testified lives.

With institution of an heir: for by this a testament differs from other last wills, namely codicil, legacy, and fideicommissum, in which no heir is instituted of itself and directly. Inst. l. 2, t. 10; L. 919.

For a codicil, or small codex, is the supreme will of a deceased person, less solemn, outside a testament, concerning what someone wishes to be done after his death, without direct institution or nomination of an heir to whom the inheritance is immediately owed, so that besides the institution of an heir the testator can dispose otherwise of his goods, for example by committing legacies to the heir, or fideicommissa, etc. C. A. 553.

But a codicillary clause is a clause inserted in a testament, by which it is declared that if the testament does not hold because of some defect, nevertheless it ought to hold by force of a codicil. Five witnesses sufficed for a codicil, even not summoned, even women. L. 919 ff.; Inst. l. 2, t. 25.

A legacy is a certain donation left by the deceased and to be furnished by the heir. A certain donation: for it is not properly a donation, since it is not done immediately between the giver and the one accepting. To be furnished by the heir, for a legacy is a certain particular law spoken to the heir, and for this reason it is called legacy, from *lego*, whence *lex* is derived. To be furnished by the heir, namely after the death of the testator. Left by the deceased to the legatee, to whom therefore dominion of the thing passes immediately from the testator, although its possession is first with the heir, and the thing is to be handed over by the testamentary heir. Inst. l. 2, t. 20; C. A. 535.

Fideicommissum is so called because the testator commits his supreme will to the faith of the heir, that he render the inheritance, either the whole or part of it, to another. Hence fideicommissum is a mediate substitution of the heir. C. I. 899; C. G. 896; C. A. 608, 609.

But immediate substitution is had when someone names an heir in such a way that, if he cannot or does not wish to enter the inheritance, another is heir, who is instituted immediately by the testator himself, and not by mediation of the first, from whom he would receive the inheritance, as has place in mediate substitution. This mediate, indirect substitution is called fideicommissary substitution. But immediate and direct substitution is called vulgar substitution. C. I. 895; C. G. 898; C. A. 604.

Fideicommissary institution is distinguished from fiduciary institution insofar as in the former the restoration of the inheritance is committed to the faith of the heir openly, or in the testament itself; in the latter, secretly. Inst. l. 2, tt. 15, 16, 23, 24.

From C. I. 759, "a testament is a revocable act by which someone, according to the rules established by law, disposes for the time when he shall have ceased to live, concerning all his substances or part of them, in favor of one or more persons." Thus almost also from C. G. 895; C. H. 667, 668, 764. Hence institution of an heir is not necessary, and the distinction between testament and codicil has been removed. But it is otherwise from C. A. 552, 553. Likewise mediate, or fideicommissary, substitution has been removed. C. I. 899, 900; C. G. 896, with a certain determined case excepted from C. G.

1025. **Resolutions.** The inheritance is devolved to the heir from the death of the testator, neither before nor after. Not before, because there is as yet no inheritance of a living person; not after, because the heir continues the person of the deceased, and is the same person with him by fiction of law. Therefore, if the heir enters the inheritance later, the entry has retroactive force from the moment of the death of the deceased; and if he dies before entering the inheritance, he transmits his right to his own heirs. C. I. 933; C. G. 111; C. A. 531, 532, 533, 536, 537, 545, 797; C. H. 657, 661. Hence in inheritance a day from which the inheritance ought to begin, or in which it ought to end, is held as not appended. C. I. 851; Inst. l. 2, t. 14, § 9; cf. C. A. 695.

1026. **How many kinds of testament are there?** By reason of disposition of goods, from C. G. 1002, 1003, 1010, testamentary disposition is threefold: universal, by universal title, and by particular title. It is universal when the testator leaves the universality of his goods to one or more persons. It is by universal title when the testator leaves to someone a quota part of all goods, half, a third; all immovables, all movables, or a quota part of these. Each of these dispositions is called by universal title from C. I. 760. By particular title is any other disposition. C. I. 760; C. G. 1010. The first and second dispositions from C. I. 760 and C. H. 660, 667, 668, 768 attribute the quality of heir; the third, that of legatee. From C. G. 1002 this threefold disposition can be made under the denomination of institution of heir or legacy; and thus an heir or legatee can be universal, by universal title, and by particular title. C. G. 1003, 1010, 1014.

By reason of form, from Roman Law, a testament is distinguished:

First, solemn, in which all conditions prescribed by laws are observed. It is twofold. The first is in writing, or closed, which, sealed with a seal, is handed over to be subscribed by seven witnesses,

suitable, male, pubescent, etc., with whom the testator subscribes if he can; but if he cannot, an eighth witness must be added. The other is open, which is made before seven witnesses, either in open writing or by living voice; whence it is also called nuncupative.

Second, privileged, which holds without solemnities. Such is a testament made by a soldier, or by another in time of plague, or in other circumstances of this kind. Inst. l. 2, tt. 10, 11; L. 920, 926.

Likewise by reason of form, from C. I. and C. G., testament is threefold:

First, holographic, which for validity is written wholly by the testator's hand, with indication of year, month, day, and with apposition of the name. C. I. 775; C. G. 970. From C. I. it is expressly required that subscription of the name be appended at the end of the dispositions. The notation of time can be made in full letters or numbers in any part of the testament. The notation of place is not necessary. Any paper suffices, even not stamped; yet if the matter is brought before a judge, in France a fine of 30 francs will have to be paid by the heir.

A holographic testament, before it can be given to execution, must be presented to the judge in the tribunal of first instance. But after sufficient examination the judge will order it to be kept by some notary. Yet this form is altogether accidental. C. G. 1007. Likewise a holographic testament from C. I. 26, 912 ff., at the instance of one whose interest it is, is deposited with the notary of the place in which the succession is opened, in the presence of the praetor and two witnesses, and a due instrument of the matter is drawn up.

Succession is called opened from the point at which the right of the heir begins in the things of the deceased. It is not the same as the opening of the testament, when the testament is made public law. Gousset on a. 970.

Second, public or solemn, which is written by one notary before four male witnesses, adults, etc., or by two notaries before two witnesses, and is subscribed by the testator, the notary, and the witnesses. And if the testator cannot subscribe, mention must be made in the acts, and also of the cause by which he is prevented from subscribing. The testator must declare his will before the witnesses to the notary or notaries, if there are two, who write it; and from C. I. he can use the work of an amanuensis for writing. C. I. 766 ff.; C. G. 971 ff.

Third, mystic or secret, which the testator, closed and sealed with a seal, hands to a notary before six witnesses, asserting that this is his testament, written by himself or by another, and subscribed by himself. This attestation must be inscribed over the codex of the testament and subscribed by the notary, witnesses, and testator. If the testator could not subscribe the testament, mention of this must be made, and another witness is added beyond the six required. C. G. 976 ff.; C. I. 782 ff. But from C. I. 783 only four are required, and if the testator cannot write, the same is observed as in a public testament. If it was written by another, even only in part, from C. I. the testator must subscribe the testament on each page and declare that he has read the testament. If a secret testament does not hold as such because of some defect, nevertheless it can hold as a holographic testament, if it has the required conditions of the latter. C. H. 715.

Those who can write can make a holographic testament; those who can speak, a public testament; those who can read, a secret testament. The deaf-mute and the mute can make a testament by

holographic or secret testament. C. I. 775, 778, 785, 786; C. G. 971, 972, 978, 979; C. H. 688, 695, 697, 698, 708, 709; L. 920.

Fourth, there are besides privileged testaments, which have a special form. These are: first, the testament of a soldier and of those who by office are attached to armies, cf. C. I. 799-803; C. G. 981-984; second, testament in time of plague, cf. C. I. 789, 790; C. G. 985-987; third, testament made at sea, cf. C. I. 791 ff.; C. G. 988 ff.; fourth, the public testament of rural persons, cf. C. G. 974. L. 926, 929; C. I. *Dispos.* etc., at beginning, 8, 9.

From C. A. 577, 584, testament can be made judicially or extra-judicially, in writing or by voice, with or without witnesses. Cf. aa. 578-590, 598, 601.

From C. H. 676, testament can be holographic, open, or closed. A holographic testament, as regards validity, must be written wholly on stamped paper corresponding to the year in which it is made, and subscribed by the testator, with year, month, and day indicated. A. 678, 688 ff. An open testament is made before a notary and three suitable witnesses. A. 679, 694 ff.

A closed testament can be written by the testator himself or by another, on ordinary paper, with place, day, month, and year noted; it is subscribed by the testator at the end, and each page is also initialed if he writes it himself. But if another writes it, then one's own subscription must also be appended on each page. Both in this closed testament and in a holographic one, words blotted, corrected, or written between the lines must be noted by one's own subscription. This testament, wrapped in another paper, closed and furnished with a seal, the testator hands to the notary before five witnesses, declaring that it is his testament. The act concerning this matter is inscribed by the notary on the exterior part of the testament and subscribed by himself, by the testator, and by the witnesses. A. 680, 706 ff.

But special testaments are had: military, a. 716 ff.; maritime, a. 722 ff.; made in a foreign region, a. 732 ff.

1027. **What are the required conditions of testaments?** That a testament be valid and firm, it is required: first, that it have the conditions required for gratuitous contracts, and above all free and spontaneous consent; second, that the disposition of goods be made according to the reservation or legitimate portion assigned by law to heirs; third, that it not be made by one incapable of testating, nor in favor of one incapable of receiving, or of succeeding into the rights of the deceased; fourth, that the substantial formalities prescribed by law be observed. L. 921.

1028. **What kind of witnesses are required in testaments?** From Roman Law they must be male, pubescent, free, not deaf, not mute, not blind, not intestable by law, not heirs from the testament, nor domestics of the testator or heir; nevertheless legatees are not excluded. Inst. l. 2, t. 10, §§ 6, 9, 10, 11; L. 919.

From C. G. 971, 975, 980, there are required males, adults, subjects of the republic, enjoying civil rights, not scribes of the notaries who draw up the act, not legatees or heirs, nor their blood relatives or relatives by affinity within the fourth degree inclusively, that is, within the second according to canonical computation for the transverse line. Yet in a mystic testament legatees or their relatives are

not excluded. For those who are excluded from the office of witnessing are rejected only for a public testament.

From C. I. 788, even foreigners residing in the kingdom are admitted among witnesses, and only those exercising practice and amanuenses of notaries are excluded, and those to whom the exercise of civil rights has been interdicted. From the Law of 9 December 1877 women are also admitted. C. A. 591-597; C. H. 681 ff.

1029. **Do testaments for profane causes, destitute of legal forms, hold in the forum of conscience?** It seems one must affirm from C. I. For art. 804 by no means establishes the nullity of these testaments by the law itself, but only asserts that the constituted formalities must be observed under penalty of nullity. Therefore, with no sentence of a judge intervening, these testaments hold in conscience. This is confirmed from art. 1311, where the validity of such a testament is openly admitted.

It also seems one must affirm from C. G. 970, where concerning a holographic testament it is said that it will not hold unless the established forms are observed; and art. 1001 likewise says that the established formalities of testaments must be observed under penalty of nullity. Likewise it seems one must affirm from C. A. 601, since, even with one prescribed formality omitted, the disposition, it says, will be invalid. Similarly from C. H. 687, the testament, it says, will be null if the prescribed formalities are not observed. But when the sentence of a judge has intervened, which someone can legitimately invoke, one must stand by it. Cf. 936; L. 927.

It is useful here to note the disposition of C. I. 1311: "Voluntary execution of one testamentary disposition after the death of the testator includes renunciation of opposing defects and any other exception." Here it is supposed that the defects are not unknown.

1030. **Are testaments for pious causes valid if they lack legal forms?** Response: affirmatively, and this opinion is very common and certain.

The reason is, first, because it is established from Canon Law, C. *Relatum* 11 *de Testam.*, etc.

Second, because pious causes pertain to the Church and are subject to its jurisdiction. Now the Church is free and immune from civil power in all those things which are directly subject to its jurisdiction. Therefore it was thus established by Trent: "Bishops, even as delegates of the Apostolic See, in the cases conceded by law, are executors of all pious dispositions, both in last will and between the living." Sess. 22, c. 8 *de R*.

Third, the Sacred Penitentiary, having been questioned several times, responded that this opinion must be adhered to. L. 922; E. M.

1031. **Note.** Therefore testaments for pious causes need no solemnity constituted by civil laws; but it is necessary only that the will of the testator be certainly known. Therefore, if the testament was made orally, two or three witnesses suffice. C. *Relatum*, cited. But witnesses can be whoever are legitimately able to testify. If the testator's writing exists, that indeed suffices for the validity of the testament or pious legacy. Indeed, in the forum of conscience, a nod or another sign of the testator suffices, without any witness, provided nevertheless that the

testator's will is certain. Hence a testament begun and not perfected, because of the intervening death of the testator, holds as regards pious legacies already expressed in it. L. 922, 923, 924, 925, 937, 940.

1032. **Does a testamentary disposition under condition and to a day hold?** Response: a testamentary disposition can be made under condition. C. I. 848; C. G. 1040; C. H. 790; C. A. 695; Inst. l. 2, t. 14, § 9.

Impossible conditions, or conditions contrary to good morals, or contrary to the laws, are held as not added. C. I. 849; C. G. 900; C. H. 792; Inst. l. 2, t. 14, § 10; cf. C. A. 696-699, 712; L. 930.

If the condition is of not doing something, security furnished by the heir is required. C. I. 855. This holds both for inheritance and for legacy.

If the condition is suspensive, that is, when the validity of the testament depends on fulfillment of the appended condition, the disposition is null if the heir dies before its verification. But if the condition is resolutory, that is, when the execution of the testament, but by no means the value of the testament, is suspended until the condition obtains its effect, then the heir or legatee acquires a right before the fulfillment of the condition itself, a right to be transmitted to his heirs even before the condition is fulfilled, provided it is fulfilled. C. I. 853, 854; C. G. 1041; C. H. 759, 799; cf. C. A. 701 ff.

No account is taken of a day appended to the institution of an heir by universal title from which day he ought to begin or cease. C. I. 851; Inst. l. 2, t. 14, § 9; cf. 1025.

A disposition by universal or particular title under the condition that someone call another as heir or legatee if he himself is called by that other is null. C. I. 852; C. H. 794; cf. C. A. 543.

From C. I. 850 and C. H. 793, a condition which impedes marriage, whether first or subsequent marriage, is contrary to law, unless there is question of some pension, habitation, use, or usufruct to be furnished during celibacy or widowhood; likewise unless the condition of preserving widowhood to obtain the inheritance from the spouse is placed on the surviving spouse.

From C. A. 700, likewise the condition of celibacy is held as not added. But the condition of widowhood is permitted to a surviving spouse having children.

By Roman Law, if that condition is imposed on a widow it holds, by whomever it is imposed. Auth. *Cui relictum* C. *de Ind. vid. toll.* But a legacy left to a girl that she not marry is owed to her even if she marries. For that condition is invalidated by law, because it matters much to the republic that offspring be increased. L. *Quoties* 22 ff. *de Cond. et demonstr.*; L. *Ambiguitates* 2 C. *de Ind. vid. toll.*

But by Canon Law each condition, of widowhood and of celibacy, seems to be sustained, whether imposed by a spouse or by another person, whether there is question of a prestation or of another disposition, because of the honorableness of the state of widowhood and the greater perfection of virginity. L. 930, dub. 7; Laymann, *de Testam.*, c. 10, n. 13.

1033. **Do substitutions and fideicommissa oblige in conscience?** Immediate substitutions, also called vulgar substitutions, by which another heir or legatee is substituted for an heir or legatee if the first does not enter the inheritance or legacy, are valid from C. G. 898 and C. H. 774 ff. The same is had from C. I. 895 if the first heir or legatee does not wish or is not able to

accept the inheritance or legacy. From C. I. 896, one substituted for him who was unwilling to be heir is understood to be substituted for him who was unable, and conversely, unless the contrary will of the testator is established. But it is otherwise from C. A. 605. Therefore as regards substitutions of this kind, there can be no difficulty for the forum of conscience from positive laws. Hence substituted persons are held to fulfill the burdens which had been imposed on those into whose place they are substituted, unless they are presumed to have been imposed only on those first called. C. I. 897.

From C. A. 608 ff., 618 ff., fideicommissa remain entire, and therefore both vulgar substitution and fideicommissary substitution are admitted.

From C. H. 781 ff., fideicommissary substitutions by which an heir is burdened to preserve the whole or part of the inheritance and transmit it to another cannot proceed beyond the second degree, can never burden the legitimate portion, must be expressed, and can in no way be fiduciary. Their nullity, however, does not harm the institution of the first heir.

From C. G. 896, 897, 1048-1050, fideicommissa, or mediate substitutions of an heir, also called fideicommissary substitutions, by which namely an heir or legatee is ordered to preserve and render to another, will be null even with respect to the donee, legatee, or heir. Hence not only the burden of rendering, but even the donation itself, legacy, and inheritance are subjected to nullity. Those dispositions are excepted by which parents leave their goods, or part of them, to one or more of their children, with the burden that they render those goods to their descendants, yet in the first degree from art. 1048, and also in the second degree from the law of 17 May 1826, born or to be born. But this law of 1826, which permits more, was abrogated on 7 May 1849. The same faculty is given to a brother of leaving goods about which he can dispose to one or more brothers, with the burden of rendering the same to their children born or to be born, likewise only in the first degree.

From C. I. 899, 900, any disposition by which a burden is imposed on an heir or legatee of preserving and restoring to another is a fideicommissary substitution prohibited by law. But its nullity brings no prejudice to the validity of the institution of heir or legacy; only the substitution, even in the first degree, lacks effect. But from C. I. 832, 902, 932, it is permitted to leave an inheritance or annual prestations for a pious cause, or a cause of public utility, for feeding the poor, instructing children, endowing girls, etc., with any heir instituted, for example one's future firstborns, or those of another. Likewise from C. I. 901, property can be left to one, usufruct to others; but by no means successively to several, but only to those first called after the death of the testator.

1033. **Substitutions and fideicommissa, continued.** Now it must be noted first that a substitution prohibited by law is not had if there is not a command and burden of rendering. A simple request, without a burden imposed, does not constitute a prohibited substitution. Besides, a burden of preserving is necessary. Therefore a burden only of rendering does not again constitute a prohibited substitution. For then the instituted heir is not really an heir, but merely executor of the testament. Furthermore, a burden of rendering to a third person is required, namely of rendering after the death of the instituted heir.

Hence neither is a burden of rendering from a day, for example to Caius after he has arrived at puberty, ascended to sacred orders, etc., after ten years, etc., a prohibited substitution, but a certain

legacy under condition or to a term, which is approved by the law itself. C. G. 1040, 1041, 1186; C. I. 854, 856, 857, 1173, 1174. For this is not what the law intends to prohibit, namely that someone by his testament wish to determine future successions twice or several times, or even indefinitely. Cf. C. I. 901.

And hence it is clear that substitution properly is not a conditioned disposition, but a disposition under a mode. Therefore the named heir is truly and absolutely instituted heir, and dominion is transferred to him, with the obligation of fulfilling the burden imposed. If this is not fulfilled, dominion is not lost, but he can always be compelled to fulfill it. Gousset on a. 896; Rogron on the same article.

From C. I. 829, it is permitted to entrust to a fiduciary heir the name of the true heir or legatee, provided the latter is not incapable. But it will be grave for the fiduciary to break faith. Inst. l. 2, tt. 23, 24.

It must further be noted that generally it is established that the inheritance or legacy be adjudged to him who is named in the testament. Nor indeed is proof admitted that the person called in the testament is only apparent, under whose name another person is designated, notwithstanding any expression of the testament. But this is not applied to the case in which the institution or legacy is impugned as made through an interposed person to one incapable. C. I. 829.

From what has been said it appears that the preceding law at least is not unjust, and therefore there is no reason why all power of obliging should be taken from it, of itself and commonly speaking; although, as is established from the very tenor of the law, a testamentary disposition made against such a law cannot be held as void by the law itself. Therefore, if someone directly instituted heir possesses the inheritance by fideicommissary substitution, he will be able to retain it in conscience and invoke rescission of the substitution. Likewise, if a substituted heir has already obtained the inheritance by the aforesaid fideicommissary disposition, he will be able to retain it in conscience until he is compelled by a judge to restore. But if someone is instituted heir by fiduciary substitution, from a prior promise made to the testator, or pact, of transmitting the inheritance immediately or after a certain time to a third person or pious cause, he indeed will not be able to retain it in conscience. For he is altogether held to execute the faith given, if it is legitimate. Otherwise he ought to renounce the inheritance, so that it may come to heirs from intestacy. L. 351, 952.

1034. **What about revocation of testaments?** A testament, under whatever form it has been made, can always be revoked at the testator's will, because a testament by its nature is an essentially revocable act. Accordingly the testator retains dominion of his goods until death. This holds although the testator had promised or written that he would not change the testament. C. I. 916; C. A. 552, 695; C. H. 737; C. A. 716.

Hence by positive law renunciation and alienation of a future inheritance and all pacts concerning a future succession are prohibited; and by private agreement testaments cannot be changed into pacts. C. I. 954, 1118, 1460; C. G. 1130, 1600; C. A. 879, 1383; cf. ib. 602, 1249; L. 932, 933, 934. Furthermore, no one can in any way renounce the liberty of revoking or changing testamentary dispositions: any contrary clause or condition lacks effect. C. I. 916. "Such pactions are odious, and full of dangers because of plots prepared against the life of the one concerning whose goods the pact is made." L. 934.

Exceptions: first, unless the renunciation is made in favor of a community or college; for then every presumption and danger of plots ceases. Cf. 955, 1010. Unless someone, because of the constitutions of the order, must dispose of all goods and rights acquired and to be acquired, and this in favor of a pious community or a certain person. Unless a pact is made concerning the inheritance of an uncertain person, for example, if any inheritance comes to me while I live, let it be yours; the danger likewise ceases. L. 934; Lugo, *Resp. Mor.* l. 4, D. 4, 5.

Second, from Roman Law a testament confirmed by oath cannot be revoked. Gury, *Cas.* 847.

Third, from Canon Law a professed religious who before emission of simple vows has disposed by testament concerning dominion of his goods will by no means be able to revoke or change the disposition without an indult of the Apostolic See. S. C. EE. et RR. 20 Dec. 1861; Bizzarri, *Coll.*, ed. 1885, p. 151.

But a testamentary disposition once revoked remains without effect, although the new disposition cannot obtain execution. C. G. 1037.

By revocation a testament becomes caducous. Caducity of a testament is had when testamentary dispositions, although valid from the beginning, nevertheless become infirm because of certain circumstances; for example, on the part of the testator, if he revokes the testament; on the part of the testament, if the thing about which he disposed has wholly perished; on the part of the heir, if he renounced, if he died first. But legacies remain although the testament becomes caducous. C. I. 853, 854, 890, 891; C. G. 1039, 1040, 1041, 1043; C. A. 703-705; C. H. 764.

From Inst. l. 2, t. 17, some testaments "are said not to have been made by law; some made by law are broken or made void... But a testament is broken when, with the testator remaining in the same state, the law of the testament itself is vitiated." § 5, 1.

Revocation of a testament can be made in two ways: expressly and tacitly.

Expressly, first, by destruction of the testament; second, by an act drawn up before a notary, by which a change of will is expressed; third, by a new testament contrary to the prior one. But then the revocation is not considered complete unless the dispositions of the new testament are contrary to all dispositions of the prior one, and all are then valid; but if they are contrary, the most recent ones hold. C. I. 916 ff.; C. G. 1035 ff.

Tacitly, by donation, sale, exchange, destruction, or any disposition whatever of the thing bequeathed by which a change of the testator is manifested. C. I. 892, 893; C. G. 1042. Any alienation made by the testator, whether of the whole or of part, of the thing bequeathed, even by sale with a pact of resale, revokes the testament as regards that which was alienated, although the alienation is null, or the thing returns into the possession of the testator. C. I. 892; C. G. 1038. And the same holds if the testator so transformed the thing bequeathed that it lost its preceding form and denomination. C. I. 892; L. 700; C. A. 713 ff.; C. H. 738 ff.; Inst. l. 2, t. 17.

1035. **Is a testament sometimes revoked by the law itself?** A testamentary disposition, whether under the title of universal institution of heir or under the particular title of legacy, made by one who, when he drew up the testament, either lacked children or descendants, or was ignorant that he had them, is revoked by the law itself if there exists or supervenes a legitimate son or descendant of the testator, even posthumous, legitimized, or adoptive. And the

aforesaid revocation still has place even if the son was conceived at the time of the testament; and if there is question of a natural legitimized son, even if he was recognized by the father before the testament and legitimized after the testament. But if the son or grandson dies while the testator is alive, the testament convalesces. Revocation does not have place if the testator provided for the case that children or their descendants would exist or supervene. C. I. 888, 889; L. 950; C. A. 777, 778.

1036. **Is each testament valid when a double testament is found, drawn up on the same day?** P. Gury in *Cas. Consc.* n. 833, where he cites Pontas, says: "Each testament is valid, since each enjoys all conditions of a holographic testament and each was drawn up on the same day. Accordingly the two heirs have equal right. And both ought to divide this inheritance between themselves. For it is the same as if each had been instituted heir in the same testament." Cf. C. A. 715.

Cardinal de Lugo, D. 24, n. 47, says: "When two testaments made on the same day are produced, and it cannot be known which was later, and the same, in my judgment, will be when two are produced without the day on which they were drawn up, some say that each holds and the goods must be divided. P. Molina also follows this, disp. 153, par. when on the same day. And certainly if there are some legacies, or certain other things prescribed in each testament, those seem to have to be fulfilled, since as regards those things the will of the testator is certainly established. This will at least be true if a codicil suffices for their value, and that testament can at least hold as a codicil because of a codicillary clause formally or virtually placed.

"But as regards other things in which those testaments are opposed, the common opinion, speaking of common law, deservedly teaches that neither testament holds because of uncertainty, and that the inheritance comes to heirs from intestacy... Thus the doctors commonly, whom Sanchez reports and follows in the cited cap. 1, dub. 22, n. 3. Yet he limits this opinion with others: first, if neither heir possessed; otherwise the possessor in doubt is not to be despoiled. Second, unless in one of them those were instituted who ought to succeed from intestacy; for then that would have to be preferred. Third, unless one was in favor of a pious cause, because in its favor it will be sustained."

This opinion, which stands for the invalidity of each testament, seems more probable to us, since this double testament shows the will of the testator to be suspended and not yet determined. For a testator drawing up two testaments which are mutually opposed actually chooses neither, but is going to choose one or the other. Yet the opinion which stands for the validity of each testament does not lack its probability. Cf. 1034.

1037. **What by natural and positive law concerning the capacity of testators?** From natural law all can make a testament, except only those who are not in possession of their mind, or have been declared incapable by law, although they are under care or under tutelage; and they can make a testament even without a curator or without a tutor. Those deaf and mute from birth can also make a testament. L. 942; C. A. 565-567; C. H. 662.

From Canon Law professed religious cannot make a testament, even if they are bishops; likewise clerics as regards revenues of benefices, except by privilege or legitimate custom. Novices, since they are still of their own right, can make a testament. Nor indeed is their testament broken once

profession has been made, even if the monastery was passed over in it. Nor does Trent, Sess. 25, c. 16 *de Reg.*, obstruct this, since there the question concerns dispositions between the living, valid of themselves immediately, but by no means testaments, which of themselves are revocable. C. 1, 2, 7-9, 12 *de Testam.*; Trent, Sess. 25, c. 1 *de R.*, c. 16 *de Reg.*; L. 935, 942; Schmalzgrueber, *de Testam.*, n. 83 ff.; Ferraris, v. *Beneficiatus*, a. 3, n. 8; C. A. 573; E. M.

From Roman Law all having the use of reason can make a testament, except the deaf-mute from birth, impubescent persons, prodigals, those condemned to civil or natural death, and professed religious. Inst. l. 2, t. 12.

From C. I. 762, 763, all can make a testament who are not declared incapable by law. Now the following cannot make a testament as incapable: minors before the eighteenth year; those interdicted because of infirmity of mind; those who are not of sound mind when they draw up the testament; those condemned to hard prison, Penal Code 32.

From C. G. 509, 903, 904, the following can make a testament: first, all who can make donations between the living; second, wives, who have full faculty of making a testament, although they cannot distribute donations without the special consent of the husband or authority of a judge; for they need neither of these in order to be able to dispose freely by testament; third, minors from the sixteenth year can make a testament only about half of the goods about which adults can dispose. But those who are not of sound mind, and interdicted persons, cannot make a testament.

From C. A. 568, 569, 574, impubescent persons are incapable of making a testament. Those condemned to death and to hard prison can make no valid testamentary disposition. Minors before the eighteenth year of age can make a testament only nuncupatively and before a judge. After this age they can make a testament freely. Prodigals dispose only about half of their patrimony.

From C. H. 663, those incapable of making a testament are minors before the fourteenth year of age, and those who habitually or accidentally are not in possession of themselves.

1038. **What by natural and positive law concerning the capacity of heirs?** From natural law all human beings, even the insane, the deaf, the mute, servants, indeed even a community, can be instituted heirs, unless they are specially prohibited by positive law. L. 943.

From Canon Law professed religious of Orders to which it is permitted to possess immovable goods in common can be instituted heirs, and in their name the monastery succeeds, unless a contrary special Constitution of the Order is present. But religious promoted to the episcopate are capable of hereditary succession in such a way that administration of goods and advantage belong to them, but dominion belongs to the Church over which they preside. Monasteries themselves also, to which it has been conceded to have dominion in common of immovable goods, can be instituted heirs. L. 944.

From Roman Law those prohibited from being instituted heirs are: those condemned to natural or civil death, traitors, natural and spurious children according to the restrictions to be placed below. L. 943, 950, 951, 952.

From C. A. 538 ff., those capable of succeeding are those capable of acquiring. Excluded from the right of succeeding are the unworthy person who offended the testator, and the one who induced the

testator by force or deceit to declare his last will. Adulterers and incestuous persons cannot succeed reciprocally between themselves.

From C. H. 744 ff., 756 ff., those capable of succeeding are those who are not declared incapable by law. Declared incapable are: abortive persons who have not prolonged life for one whole day; moral bodies not permitted by law; those unworthy because of a crime established by law. Testamentary dispositions made in the last illness in favor of the confessor will not produce effect.

From C. I. 2, 721, 724-728, 764-766 and Penal Code 33, the following are incapable of inheritance from testament, who by disposition of law cannot succeed as incapable: first, those who had not yet been conceived when the inheritance was entered; second, those born not viable. Yet immediate children of a person living when the testator died can receive from testament, even if they had not yet been conceived. Third, those condemned to hard prison. Fourth, those incapable of legitimate succession as unworthy, namely: first, one who voluntarily killed or attempted to kill him whose succession is in question; second, one who charges him with a crime, if the charged crime is declared calumnious in judgment; third, one who compelled him to make or change a testament; fourth, one who impeded him from making a testament or from revoking one made, or who suppressed, concealed, or introduced some changes into a later testament. Cf. L. 948, 949; C. H. 673, 674.

One who was excluded as unworthy is obliged to restore the fruits and proceeds perceived after the succession was opened. Nevertheless the unworthy person can be admitted to succession if the one whose succession is in question expressly rendered him apt for this by authentic act or testament. Likewise the descendants of the unworthy retain the right to the legitimate portion which would pertain to the rejected person. The unworthy person is to be repelled from succession by the office of the judge.

From C. G. 25, 338, 725, 727, 762, 906 ff., the following are incapable of inheritance: first, those who were not conceived at the time of the death of the testator; second, those born not viable; third, the civilly dead; fourth, physicians, surgeons, health officials, pharmacists, who cared for the deceased in his last illness, and also confessors, if the disposition was made during that illness in which the sick person dies, with certain cases excepted. Cf. C. H. 752. Fifth, any communities without the approval of the Prince or Prefect, if the disposition exceeds the sum of 300 francs. More recently, however, broader faculties have been conceded to Prefects in favor of civil communities, hospitals, fabric councils, etc., which nevertheless are not extended to religious communities. But it is evident of itself that these prescriptions have no force insofar as they injure the rights of the Church.

But the following are repelled from succession as unworthy: first, one who was condemned because he killed or attempted to kill the deceased; second, one who brought a capital crime against the deceased which was judged calumny; third, an adult who, knowing the murderer of the deceased, did not denounce him to judgment. Cf. aa. 727, 730, 955, 1046.

Furthermore, the following can receive nothing from testament as incapable: first, tutors, before the final accounts of administered tutelage have been rendered and approved, even if the tutelage has ended, C. I. 769; C. G. 907; C. H. 753, with ascendants, descendants, brothers, sisters, and spouse excepted, C. I. 769; cf. C. G. 907; C. H. 753.

Second, the notary and one who was present as a witness to the testament, C. I. 771; C. H. 754; or the one who wrote the secret testament, unless the testator by his own hand, or orally before the

notary and witnesses when it is handed over, approved what he left to him. C. I. 771, 772.

Third, natural children whose filiation is not legally recognized or declared have no right to succession or testament. Illegitimate natural children whom the testator legally acknowledged, or who are established as such by sentence of a judge, when legitimate children exist, cannot receive anything from the father or mother beyond the legitimate portion or that which is owed to them by right of succession. C. I. 181, 192, 193, 723, 743, 764, 768, 773; C. G. 334, 338, 723, 756, 908, 911. Incestuous, adulterine, or spurious children can receive nothing except support; but they have a right to this if the testator acknowledged them or they are established as such by sentence of a judge. C. I. 180, 193, 752, 767; C. G. 762; cf. 1042.

Fourth, it is not licit for a twice-married spouse to leave more to the new spouse than to the child begotten from the prior marriage to whom he left less than to the others. C. I. 770; cf. C. G. 1098; E. M.

1039. **Note.** First, if the testator erred in the name of the heir or legatee, if nevertheless the person is established, the institution and legacy hold. The same must be said if the thing bequeathed was indicated erroneously. C. I. 830, 832, 834, 836, 907, 972.

Second, a testamentary disposition in favor of an incapable person, although simulated under the form of an onerous contract, or made through interposed persons, namely the father, mother, descendants, and spouse of the one to whom it is left, is null from C. I. 773; from C. G. 911 and C. H. 755 it will be null. Hence some affirm that a fiduciary heir to whom it was committed to restore the inheritance to an incapable person, for example to a spurious child, can ascribe the inheritance or legacy to himself, for the condition of restoring contrary to law is null. Others say he ought to restore to the one to whom it had been left, lest he break faith. Others hold, and more truly, that he ought to restore to heirs from intestacy, to whom the right belongs from the just disposition of laws. Cf. Lugo, D. 24, n. 95; Salamanticenses, tr. 14, c. 5, n. 73; L. 351, 952, and here 1045.

Third, a testamentary disposition made in favor of a person who is so uncertain that he cannot be determined, C. H. 750, or of a person altogether uncertain to be named by another, is null. But a disposition by particular title holds for a person to be chosen by a third party from various families or moral bodies determined by the testator himself. "Legacies to pious causes do not become caducous because of uncertainty of place or Church, but generally will have to be given to the poorer Church or hospital." L. 938; cf. C. H. 650, 671. Likewise a disposition made generally in favor of the poor, the sick, etc., is valid.

Fourth, communities or Colleges which are not legitimately approved, since they do not enjoy civil rights, cannot accept from testament except by approval of the Government. But dispositions for the soul or in favor of the soul expressed generically are null. C. I. 831, 832, 833, 932, 1075. But dispositions of this kind, insofar as they regard Churches and pious causes, are by no means null in the forum of conscience.

1040. **How many kinds of heir are distinguished, and how does succession of an heir occur?** Response to the first: first, legitimate, who succeeds by law from intestacy; second, necessary, who cannot be excluded by the testator; third, voluntary, who is called as heir from the free will of the testator.

Hence it is clear that one must also distinguish an heir from testament, if he was designated through testament, and an heir from intestacy, if by law he succeeds to the deceased who made no testament or an imperfect testament. In the first case there is testamentary inheritance or succession. In the other there is legitimate inheritance, or succession from intestacy. C. I. 720; C. H. 658, 763, 807; C. A. 531, 532, 538, 764; cf. 534; Gury 822; L. 945; Inst. l. 2, t. 19.

To the second: succession from intestacy is devolved to blood relatives. C. I. 721, 722. This succession occurs by heads and by stocks. It occurs by heads when the inheritance is divided into as many virile or equal parts as there are heads, or persons concurring to the inheritance by their own right. It occurs by stocks when succession is had by right of representation. C. I. 733. Representation has this effect: that those representing hold the place, degree, and rights of the one represented. C. I. 729. The one represented cannot be heir. C. I. 734, 735. Therefore those representing have no other right to the inheritance than that which would pertain to the person whom they represent. This has place also in testamentary successions, unless the testator disposed otherwise, or there is question only of a personal right. C. I. 890. But if several branches have proceeded from the same stock, subdivision is made by stocks in each branch, but by heads among the coheirs of the same branch. C. I. 733.

Representation obtains only in the direct descending line to infinity and in any case whatever. But in the transverse line, children and descendants of brothers and sisters of the deceased can represent their parents. C. I. 730-732; C. G. 718 ff., 731 ff., 739 ff.; C. A. 726 ff.; C. H. 912 ff., 915 ff., 924 ff.

1041. **How many kinds of goods of a testator are distinguished?** For one who has no necessary successors, it is entire to donate absolutely all his goods to whomever he wishes, either by act between the living or by reason of death. C. I. 809; C. G. 916. But it is otherwise if he has necessary successors. For a portion of goods or inheritance is owed to these, constituted by law, which is called the legitimate portion. C. I. 805, 808, 1091; C. G. 913, 915; C. A. 762, 774.

But that part of the goods which someone can freely donate to anyone, whether between the living or leave by testament, is called disposable. The legitimate part is owed in full property, and therefore without any burden, mode, condition, or day whatsoever. But the disposable part is otherwise, to which burdens can be added. C. I. 808, 810; C. G. 913, 917; C. H. 813; C. A. 774; L. 950.

1042. **Who are necessary heirs?** Necessary heirs are: first, descendants; second, in their defect, ascendants. C. A. 762. If each is lacking, the testator is free to dispose of all his property according to his judgment. C. I. 809; C. G. 916, with preserved right of the surviving spouse to a certain part of the usufruct of the goods left. C. I. 812-814.

But descendants are natural and legitimate children, or only legitimate children, that is, legitimized and adoptive, and their descendants. C. I. 806; C. A. 763. Descendants of children succeed by right of representation if they concur with children, and then, however many they may be, they receive among themselves that portion divisible among them which belonged to their parent, that is, they succeed by stocks. But if no child survives, the testator can distribute his goods to each equally, according to the right conceded to him, and they succeed by heads. C. G. 739-745.

To natural children not legally recognized, no right is conceded in the goods of the parents; to recognized natural children, no right in the goods of those who are relatives of the parents. C. I. 743, 749; C. G. 756; E. M.

"An inheritance is generally divided into twelve ounces, which are contained under the appellation of *as*. These parts have proper names from ounce to *as*, namely these: *sescunx*, *sextans*, *quadrans*, *triens*, *quincunx*, *semis*, *septunx*, *bes*, *dodrans*, *dextans*, *deunx*." Inst. l. 2, t. 14, § 5.

1043. **What is, by positive law, the reservation or legitimate portion owed to necessary heirs?** From Roman Law: first, as regards ascendants, a third, or third part of the *as* or inheritance, is reserved when descendants are lacking.

Second, as regards legitimate children, a third is reserved if there are not more than four children, and a half if there are more.

Third, as regards natural children, they succeed to the mother by equal right with legitimate children. But they do not succeed to the father when he has legitimate children, although they can receive from him a twelfth part of the inheritance. But if the father lacks legitimate children, he can institute natural children as heirs, provided surviving parents are not deprived of their legitimate portion; and if these are lacking, natural children can succeed in all goods of the father. L. 947-951.

From C. G. 913-915, whether for testament or for donation between the living: first, as regards the reservation owed to legitimate children, if there is one, half of the goods is reserved; if two, two-thirds; if three or more, three-quarters. But under the name of child are comprehended his descendants who represent him.

Second, as regards the reservation owed to ascendants, if legitimate children are present, they have no right. With children lacking, ascendants have a right to the legitimate portion, so that this portion is half if ascendants survive from each line; but a quarter if they survive only from one.

Third, the wife does not come among necessary heirs, nor legitimate heirs from intestacy, unless the other legitimate heirs within the degrees established by law are lacking. Thus from each law, namely Roman and French. Yet by natural law the testator ought to assign some part to the surviving spouse if she does not have sufficient goods of her own, because of the very close necessity between husband and wife.

From C. I. 744, 805, 807, 808-810, 812-816, 818, 819: first, the legitimate portion of legitimate children is half of the goods, whatever may be the number and sex of the children. But under the name of children are comprehended legitimate, legitimized, adoptive children, and their descendants.

Second, to illegitimate children duly acknowledged, if children or ascendants exist, half is owed of the quota part which would have fallen to them if they had been legitimate, with the legitimate children computed together. But if descendants and ascendants are lacking, two-thirds of the aforesaid quota are owed to them. But this portion, which is owed to illegitimate children, can be furnished in hereditary goods or in numbered money; and it does not lessen the legitimate portion of legitimate descendants or ascendants, since it is to be subtracted from the disposable part.

Third, the legitimate portion of ascendants, when descendants are lacking, is a third part divisible between father and mother, and if either of them is lacking, to be conferred on the survivor; with

both lacking, to be divided between ascendants of the paternal line and maternal line, provided they stand in the same degree; otherwise to be conferred on the nearest of either line.

Fourth, the spouse has a right in the inheritance of the deceased spouse to the usufruct of a certain portion, greater or lesser according as the deceased left either descendants, or only ascendants, or neither. But this portion is subtracted from the disposable part, and can be given by a certain part of revenues or by annual prestations.

Note: first, if the testator assigns to someone a usufruct or life annuity which exceeds the annual income of the portion about which he could dispose, then the legitimary heirs are given the option either of executing what was prescribed by the testator, or of abdicating from themselves the portion about which he could dispose. C. I. 810.

Second, the surviving spouse, not previously separated personally by a sentence which has passed into judgment, has the right of usufruct in a part of the inheritance which equals the part pertaining to any legitimate child by title of legitimate portion, counting the spouse together with the children. C. I. 812. If the testator does not leave descendants but only ascendants, the portion of usufruct will be a fourth part of the inheritance. C. I. 813. But if the testator leaves neither descendants nor ascendants who have a right to the legitimate portion, the portion of usufruct will be a third part of the goods. C. I. 814. The testator can indeed be more abundant toward the surviving spouse as regards the disposable part. But if children survive the testator himself from another marriage, he cannot then leave to the second spouse more than that which he left to the less-considered child of the prior marriage.

Third, both the spouse and the natural child must impute to their respective quota: the former, everything which came to him or her from marriage agreements; and the latter, everything which he received from the testator while living, if it is subject to collation. C. I. 820.

From C. H. 808, 809, 834 ff., 840 ff., the legitimate portion reserved for children and legitimate descendants is contained in two-thirds of the hereditary patrimony of father and mother. Yet they can dispose of one of these two parts by title of betterment, so that they may apply it to children and legitimate descendants. Concerning the remaining third part of goods they can freely dispose.

The legitimate portion of parents and ascendants, when the preceding are lacking, is constituted by half of the hereditary goods. Concerning the other half, disposition remains free.

For the widowed spouse, not separated by divorce or without his or her fault, a certain part is reserved as regards usufruct, which varies according to various circumstances.

For natural children legally recognized a certain part is also reserved; for illegitimate children not natural, only support.

From C. A. 161, 162, 765, 766, 796, the legitimate portion reserved for children is half of the goods which would fall to them in succession from intestacy. But the legitimate portion of each necessary heir in the ascending line is a third part of the goods which would come to him in succession from intestacy. Natural children legitimized are counted among legitimate children. A legitimate portion is not owed to the spouse, but only suitable sustenance. Cf. as regards the spouse, a. 1242 ff.

1044. **Is a testator held under grave obligation to leave goods to relatives who are not necessary heirs, if they are gravely in need?** Speaking of brothers or sisters, one must altogether affirm, at least as much as suffices to relieve their need, not only from the general precept of charity, which obliges gravely when the matter is grave, but also from the special obligation of piety, which also obliges under grave obligation to assist brothers or sisters in grave necessity before all other poor persons or pious works. But if brothers or sisters are poor, although they do not have grave need, it is still at least venial to pass them over. Toward other more remote blood relatives there does not seem to be a grave obligation of preferring them to other poor persons. Yet passing them over, if they are gravely in need, would not lack light fault, since toward them also there is some obligation of piety, although not so strict. L. 946.

1045. **Can parents leave part of the inheritance even to spurious children?** "Spurious children, beyond support, can receive absolutely nothing from the father under any title whatever, neither between the living, nor from testament, nor from intestacy; and if they receive anything, they are held in conscience to restore it to the heirs of the father... The reason is that these spurious children have been rendered altogether incapable by law in hatred of the parents, as from Nov. 74, etc." L. 951. And Struggl, tr. 7, q. 2, n. 13: "Hence in the case in which a father excessively endowed a spurious daughter, she with her husband is held, even before the sentence of a judge, to restore the excess of the dowry to the legitimate heirs, unless perhaps they freely remit this; as Sporer teaches here c. 5, n. 50, with Molina and Sanchez." C. I. 180, 752; C. G. 762; C. H. 134, 139; C. A. 165, 166; cf. aa. 752, 753, 754; L. 951, 952; cf. 1038, 1039.

1046. **Can necessary heirs be disinherited?** First, from Roman Law children can be disinherited by the authority of the father alone, chiefly in the following cases: first, if a child lays hands on a parent, or treats him contumeliously; second, if he is his accuser or witness in criminal causes; third, if he has relations with his father's wife; fourth, if he is unwilling to become surety for freeing his father from prison; fifth, if he prohibited the father from drawing up a testament; sixth, if a daughter, having refused honorable marriage, lives luxuriously. Inst. l. 2, t. 13; L. 948 ff.

Second, from C. A. 768 ff., necessary heirs can be disinherited for causes constituted in law. The same is had in C. H. 848 ff. From French and Italian Law necessary heirs can never be disinherited by private authority. Yet by law they are excluded from inheritance as unworthy in the cases already noted above. Cf. 672, 1038.

1047. **Who are legitimate heirs?** Legitimate heirs generally are those who are called to succession according to the disposition of law, when the disposition of the deceased is lacking, either because he drew up no testament, or because he drew up an invalid testament, or because the instituted heir cannot or will not enter the inheritance. Now the law calls to succession descendants, ascendants, collaterals, the spouse, and, when these are lacking, the State. C. I. 720-724; C. G. 723, 725 ff., 731 ff.; C. H. 912-914; C. A. 727 ff.

Succession of descendants. Legitimate heirs in particular, in the first place from C. I. 736 and C. G. 745, are legitimate children, or their descendants, without distinction of primogeniture or sex, although born from diverse marriages. They succeed in equal portions and by heads if they are in the

first degree and are called by reason of themselves. They succeed by stocks if they are called by right of representation. But descendants of the deceased exclude the others from succession. From C. I. 737, under the name of legitimate children are also comprehended legitimized and adoptive children and their descendants. But adopted persons and their descendants indeed succeed to the adopter, but are excluded from succession of all those joined to the adopter. The dispositions of C. A. 730-734 and C. H. 930-934 are almost the same.

Succession of ascendants. When descendants are lacking, and likewise brothers or sisters and their descendants are lacking, ascendants succeed, namely from C. I. 738, 739, father and mother in equal portions, or the surviving father or mother. And when descendants, brothers or sisters, and also parents and their descendants are lacking, ascendants of the paternal line succeed in half of the goods, and ascendants of the maternal line in the other half. Yet if ascendants are not in equal degree, the inheritance pertains to the nearer. From C. G. 746, 747, when descendants and likewise brothers or sisters and their descendants are lacking, the nearer ascendant from the paternal line and the nearer ascendant from the maternal line each receive half of the goods, the others excluded. Ascendants, with other legitimate heirs excluded, succeed to their descendants who died without posterity in those goods which they donated to those descendants, or in their price if they were alienated.

If the deceased without offspring left both parents and brothers or sisters, or their descendants, from C. G. 748, 751, 752, half of the inheritance must be divided between father and mother, and the other half among brothers and sisters equally if they were born from the same bed; otherwise if born from a different bed. But if only one parent survives, the portion of brothers, sisters, or their descendants is three-quarters, and only a fourth is left to the surviving parent. From C. I. 740, in no case can the portion of parents be less than a third. But consanguine or uterine brothers or sisters, whether they concur with full siblings or are alone, obtain half of the portion which pertains to full siblings.

The dispositions of C. A. are had in a. 735 ff. When descendants are lacking, while both parents still live, the whole inheritance belongs to them in equal portions. From C. H. 935-938, in defect of descendants, ascendants exclude collaterals. Parents divide the inheritance between themselves in equal parts.

Succession of collaterals. If the deceased is without offspring and without parents, then his brothers and sisters, or their descendants, are called to succession, others excluded. C. G. 750; C. I. 741. From C. I. ib., consanguine and uterine brothers and sisters, concurring with full siblings, obtain half of the portion which pertains to full siblings.

If the deceased is without offspring, without brothers and sisters and their descendants, and without ascendants of either line, half of the inheritance is deferred to surviving ascendants, the other half to nearer relatives of the other line; yet if among the surviving ascendants there is father or mother, they have a right to the usufruct of a third of the goods in which they do not succeed. C. G. 753, 754. From C. I. 742, if someone leaves neither offspring, nor parents, nor other ascendants, nor brothers or sisters, succession is deferred to the nearer relative or relatives without distinction of paternal or maternal line.

Relatives beyond the twelfth degree, namely the sixth according to canonical computation, do not succeed from C. G. 755. When relatives in some line are lacking within the aforesaid degree, the

whole inheritance pertains to the relatives of the other line. From C. I. 742, succession does not extend beyond the tenth degree, namely the fifth by canonical computation. Thus also from Roman Law.

The dispositions of C. A. are had in a. 735 ff. When parents are lacking, the whole inheritance is divided among brothers and sisters in equal portions. But as regards other blood relatives, succession does not extend beyond the sixth line of consanguinity, namely the fifth degree from Canon Law.

From C. H. 946-955, when descendants, ascendants, and natural children legally recognized are lacking, brothers succeed to the inheritance in equal parts. When brothers are lacking, the spouse succeeds to the whole inheritance. If brothers and spouse are present together, the latter receives usufruct of the part determined by law. But if brothers and spouse are lacking, other collaterals succeed up to the sixth degree by civil computation; cf. aa. 918, 919. The nearer blood relative excludes the more remote, preserving the right of representation, a. 921.

1047. **Legitimate heirs, continued. Succession of natural children.** Natural children legally recognized, when natural and legitimate children exist, from C. G. 723, 757, 758, have a right to a third part of the portion which they would have obtained if they had been natural and legitimate; to half of that portion if there are no legitimate descendants and there are ascendants or brothers or sisters; to three-quarters if all these also are lacking; and if, besides, there is no relative who enjoys the right of succession, the whole inheritance pertains to them.

From C. I. 744, 745, 746, 747, 749, natural children legally recognized, when legitimate descendants exist, have a right to half of the portion which they would receive if they were legitimate. Natural children must besides impute into that portion whatever they may have received from the parent or parents, subject to collation, although they had been dispensed from collation.

If a parent dies without legitimate offspring and their descendants, but leaves his parents, or one of them, or another ascendant, or a spouse, natural children succeed in two-thirds of the inheritance; the remainder is deferred to ascendants or spouse. But if ascendants and spouse are present together, a third part of the inheritance pertains to ascendants, a fourth to the spouse, the rest to natural children. If there are no legitimate descendants and ascendants nor spouse, the whole inheritance is devolved to natural children; but they have no right in the goods of relatives of father or mother, just as those relatives have none in the goods of natural children.

From C. I. 180, 752 and C. G. 762, children born from adultery or incest are altogether excluded from succession, and have only a right to support. Certainly support is owed to children by the law of nature. Hence they can never be deprived of it by the father. Struggl, tr. 7, q. 2, n. 15; L. 949, 951.

If a natural child has neither descendants nor spouse, his inheritance is devolved to the father and mother who recognized him, or to only one of them, if only one recognized him. But if he leaves a surviving spouse, half of the inheritance pertains to the spouse himself or herself, and the other half to father and mother or to only one of them, as was just said. C. I. 750, 751.

From C. A. 752, 753, 756, legitimized natural children have the same rights as legitimate children. But illegitimate children also have the same rights as legitimate children in succession from intestacy of the mother. They do not have right in succession from intestacy of the father. But in the succession

of legitimized and illegitimate children, their parents reciprocally have the same right as they themselves have with regard to the inheritance of their own parents.

From C. H. 939-945, when descendants and ascendants are lacking, the inheritance is divided among natural children legally recognized. But if descendants or ascendants are present, they receive only the portion determined by the laws. If they themselves die without legitimate posterity, the parents succeed to them.

Succession of the spouse. From C. G. 767, when all relatives are lacking within the twelfth degree, the spouse is called to succession, provided divorce had not existed between them.

From C. I. 156-158, 753-757, the surviving spouse, if he or she was not legally separated from the deceased spouse, has a right to the usufruct of a certain portion if offspring are present; this portion cannot be greater than a fourth part. If legitimate children survive the deceased spouse, the surviving spouse succeeds to that spouse in an equal part, counting the spouse among the number of children, as regards usufruct. If recognized natural children concur also with legitimate children, the spouse's usufruct must be equal to the quota of inheritance which pertains to legitimate children. When legitimate offspring are lacking, if there are ascendants, or natural children, or brothers and sisters and their descendants, a third of the inheritance in property is deferred to the surviving spouse; but if legitimate ascendants and natural children are present together, only a fourth. If the deceased left other relatives who have the right of succeeding, the surviving spouse obtains two-thirds. If relatives who have the right of succession within the sixth degree are lacking, the whole inheritance pertains to the surviving spouse. Besides, whenever the spouse is called to succession with other heirs, he or she must compute in his or her hereditary portion whatever he or she already obtained because of marriage agreements and dotal gains.

If the spouse was legally separated from the deceased spouse, then no right belongs to him or her. When separation occurs by mutual consent, even before the tribunal and homologated, it is not held as legally made, and therefore does not prejudice mutual rights of spouses. The sentence must have been rendered before the opening of succession. Its effects obtain only against the spouse who is at fault, who also loses dotal gains and all benefits attributed by the other spouse in the marriage contract, and likewise legal usufruct. Yet spouses by mutual consent can annul the effects of judicial separation either expressly or tacitly, by still peacefully cohabiting, without authority intervening.

From C. A. 757 ff., to the surviving spouse, if there are children, belongs a determined usufruct of a certain portion according to the number of children; if children are lacking but there is another legitimate heir, a fourth part of the inheritance belongs to him or her. But if there is no other legitimate heir, the whole inheritance pertains to him or her. As regards C. H., cf. what was said in Succession of collaterals.

Succession of the State. When all who have the right of succeeding are lacking, the inheritance is devolved to the State. C. I. 758; C. G. 768; C. A. 760; C. H. 956.

By Canon Law, as regards superfluous ecclesiastical goods left by clerics, at present the Congregation of Spoils succeeds; as regards other goods, relatives succeed according to civil law; when these are lacking, either the Congregation of Spoils succeeds, or, where this has not been received, the episcopal fisc with the burden of distributing them to pious causes. Reiffenstuel, this title, n. 63.

Religious who did not make a testament before solemn profession are succeeded by the monastery, if it is capable of possessing. Giraldi, on this title; L. 951, 953; E. M.

1048. **What is a lying inheritance?** When an heir is not known, or those who are known have renounced the inheritance, the inheritance is called lying. A curator is appointed to administer it, who is obliged to all those things to which an heir with benefit of inventory is held. If after thirty years no one appears, it is prescribed to the fisc as vacant. C. I. 980, 983, 2135; Code of Civil Procedure 896; C. G. 811, 814.

1049. **What is the right of accretion?** The right of accretion is that right by which the parts of failing heirs or failing legatees in the same inheritance or in the same bequeathed thing are added to other coheirs or other co-legatees. C. I. 879, 884; C. A. 560; C. H. 981.

The right of accretion has place in inheritance when in the same testament, by one and the same disposition, the testator called heirs conjointly to the inheritance without making distribution of parts among them by expressly indicating the quota of each. But when the right of accretion cannot have place among coheirs, the portion of the failing heir is devolved to legitimate heirs from intestacy. C. I. 880, 881, 883; C. A. 560 ff.; C. H. 982 ff.

The right of accretion also has place in succession from intestacy, for the part of one who renounces accrues to the coheirs. C. I. 946.

The right of accretion likewise has place in a legacy when one of the legatees dies before the testator, or renounces the legacy, or is incapable, or the condition under which the thing was bequeathed to him fails; indeed also when one and the same thing in the same testament is bequeathed to several, although by distinct disposition. C. I. 884; C. A. 689.

Heirs and legatees receiving the portions of others undergo the burdens and obligations annexed to them. C. I. 882, 887; C. A. 563.

From C. G. 1044, 1045, the right of accretion among heirs or legatees is had when the inheritance or legacy has been left to several conjointly.

1050. **When, where, and how is the opening of inheritance had?** Succession, whether from intestacy or testamentary, is opened at the very moment of the testator's death, in the place of his last domicile, and immediate possession passes by full right to the heir, if he is capable. C. I. 923, 925.

If among two or more called to succession there is doubt which one died first, for example in a common shipwreck, if this cannot be verified, all are supposed to have died at one point of time; and therefore there is no place for transmission of inheritance from one to another, but they succeed equally. C. I. 924; C. A. 25; cf. C. G. 720 ff.

1051. **What about accepting or repudiating an inheritance?** For accepting or repudiating an inheritance it is required first that it has been deferred. For there is no inheritance of a living person, and therefore there can be no acceptance or repudiation of it. C. I. 954; C. G. 791; C. H. 991.

Furthermore it is required that the one who accepts or repudiates it be capable of contracting obligation and of alienating. For by accepting it, he as though contracts with hereditary creditors and legatees. But by repudiating it, he alienates the same. Hence a family council, tutor, or curator is needed for those who are under tutelage and care. C. I. 226, 296, 930, 931, 932; C. G. 776. And from C. G. and C. H. the consent of the husband is also needed for wives. C. H. 992-996.

It is free to each person to accept or repudiate an inheritance, whether testamentary or legitimate. C. H. 988. The reason is that no one is held to accept a benefit which is often burdened with great burdens. Yet renunciation is not presumed, but must be proved, and must be made in juridic form. Someone will be able to repudiate if he previously took away or concealed nothing from it. C. I. 953; C. G. 792; C. H. 1002. And, when the testament has been repudiated, someone will be able to receive legacies perhaps left to him. C. I. 845; C. G. 845. Once the inheritance has been repudiated, someone can still enter it, so long as it has not been entered by others. C. I. 950; C. G. 790. The right of entering an inheritance is ended by thirty years. C. I. 943; C. G. 789.

Inheritance is accepted expressly or tacitly. Expressly, when someone by any juridic act, or even private writing, assumes the right and name of heir. C. I. 934; C. G. 778; C. H. 999. Tacitly, when someone does something which necessarily demonstrates the will of entering the inheritance and conducting himself as heir. C. I. 934, 938, 965; C. G. 778, 780, 796; C. H. 999, 1000.

An inheritance once entered cannot afterwards be repudiated, although another's debt appears which previously lay hidden. C. I. 942; C. G. 783; C. H. 997. Nevertheless restitution in integrum is given against entry, as also against repudiation, to those suffering deceit or fear. C. I. 942; C. G. 783; C. H. 997.

One to whom an inheritance has been deferred, if he dies before he accepts expressly or tacitly, transmits to his heirs the right of accepting. C. I. 939; C. G. 781.

If someone renounces an inheritance to the damage of creditors, a judge can permit these creditors to enter the inheritance in his name. C. H. 1001; C. G. 789.

But it can be accepted purely, or under benefit of inventory. C. I. 929, 944; C. G. 774, 775, 784; C. A. 800 ff.; C. H. 998. Sometimes the making of an inventory is necessary by law, as in an inheritance deferred to a minor, C. I. 930; C. G. 461, 776, and in an inheritance devolved to some community, C. I. 932. An heir can use the benefit of inventory, notwithstanding any prohibition of the testator. C. I. 956; C. H. 1010.

There are three benefits of inventory, which must be drawn up in a certain time and with a certain solemnity. C. I. 955 ff.; C. G. 793 ff.; C. H. 1011 ff.

The first is that the heir is not held to pay hereditary debts and legacies beyond the powers of the inheritance, and he can cede it to creditors and legatees to exempt himself from the burden of paying.

The second is that the heir's own goods are not confused with the goods of the inheritance, and the heir preserves against the inheritance the right of exacting payment of his own creditors. C. I. 968; C. G. 802.

The third is that in the administration entrusted to him, he is held only for grave fault. C. I. 970; C. G. 804; C. H. 1023; L. 961.

1052. **What are the rights and obligations of heirs?** Generally heirs succeed to all rights and burdens of the deceased, because they represent his person; only those things are excepted which by their nature or by pact were attached to the person of the deceased. Hence they acquire full-right dominion of the goods of the deceased, take up his obligations and debts into themselves, and must fulfill his will in legacies. C. G. 724, 1009, 1012, 1013, 1017; C. A. 547, 548. As regards the mode of paying debts left by the deceased, each pays pro rata of his hereditary portion; and if because of hypothec they are compelled to pay more, they have recourse against the others. C. I. 1029; C. G. 873; cf. C. A. 550, 820, 821; L. 961.

1053. **What about the executor of a testament?** The executor of a testament is the one whom the testator named to execute testamentary dispositions.

But when no one has been named, execution of the testament pertains to the heirs; and as regards pious causes, if no executor has been designated, or the designated one does not wish to perform the office, the bishop of the place is executor. C. A. 817; C. H. 892, 911; C. *Nos quidem* 3 *de Testam.*; L. 936, 937, 938, 941; Trent, Sess. 22, c. 8 *de R*.

A testamentary executor is not compelled to take up the mandate. "Yet one refusing by this very fact loses the legacy, at least that which was left to him as a reward of the office, and it yields to the other executors." L. 936. And indeed execution of a testament contains a mandate by its nature gratuitous, for it is the office of a friend. Gousset on a. 1025. But if he has accepted it, he must perform his office, and this under grave obligation. C. *Joannes* 19 *de Testam.*; C. A. 816; C. H. 898-900, 908; Lugo, D. 24, n. 29; L. 941.

For someone to be executor of a testament, it is necessary that he have capacity of obliging himself. Hence interdicted persons, minors even with the tutor consenting, wives without the husband's consent, cannot be executors. C. I. 904, 905, 1743; C. G. 1028, 1030; C. H. 893. Religious can be executors by permission of their prelate, unless the Rule of the Order prevents it. C. *Religiosus* 2 *de Testam.* in 6; Clem. un. e. t.; L. 936.

Several executors of a testament can be instituted, and when one is absent another can proceed to execution of the testament. But all are obliged in solidum, unless the testator established otherwise. C. *Religiosus*, cited; C. I. 903, 910; C. G. 1025, 1033; C. H. 894-897. The executor of a testament does not transmit this office to his heirs. C. I. 909; C. G. 1032; C. H. 909, 910.

The executor must see: first, that seals are affixed if among the heirs there are minors, interdicted persons, absent persons, or a moral body. C. I. 908. Second, that an inventory is made, with the nearest heir present or duly summoned. C. I. 908; C. G. 1031. Third, that movables are sold if money for payment of legacies is lacking. C. I. 908; C. G. 1031. Fourth, that he urge execution of the testament in the time prescribed by the testator, even sustaining suit if needed. C. I. 908. Fifth, he must render an account of his execution within the time defined by law: from C. I. 908 and C. G. 1031, within a year from the testator's death. C. H. 901-907.

Although the testator can concede to the testamentary executor immediate possession of all movable goods or part of them, provided it does not exceed a year, nevertheless the heir will be able to remove him from such possession if he supplies him with enough money necessary to pay the legacies of

movables, or proves that he has already paid them, or furnishes security of paying in the ways prescribed by the testator. C. I. 906, 907.

But expenses which are made by the executor for the purpose of fulfilling his office must be paid from the hereditary things. C. G. 1034; C. I. 911.

1054. **Resolutions.** "In the forum of conscience heirs and executors are held under grave obligation to fulfill legacies immediately when they can, especially pious legacies." L. 941; cf. St. Thomas, Quodl. 6, a. 13; C. A. 685.

Nor indeed can they reduce or lessen legacies, or commute them in any way or substitute another burden, unless faculty for this was given by the testator; for their office is to execute, not overturn, the will of the deceased.

If legacies are profane, and cannot be fulfilled in the way in which they were left, they are caducous and yield to the heirs. It is otherwise with pious ones, for the testator wished these to yield to the good of his soul. Cf. 1068.

1055. **Is the testamentary heir or executor who did not make an inventory, or did not make it rightly, held in conscience toward creditors and legatees even beyond the powers of the inheritance?** Response: affirmatively, if he omitted the inventory by bad deceit, since he was the cause of damage at least foreseen in a confused way. If he omitted drawing up the inventory without sin, the more common opinion denies, because the law is founded on a presumption of fraud, which is absent. Lugo, D. 24, n. 232; Gousset on a. 802; L. 932, 961.

1056. **What about possession of a legacy and its fruits and increases?** A legacy properly differs from inheritance in this: that it is situated in a particular and determinate thing, that it is owed by the heir, and that its possession must be obtained from him. Yet a legacy to a pious cause is excepted. For then the manifest will of the deceased suffices, and therefore even an heir from intestacy, succeeding in place of the designated heir, will owe the legacy.

But although the legatee ought to obtain possession of the legacy from the heir, nevertheless dominion of the legacy is acquired by the legatee from the death of the testator. C. I. 862, 863, 876; C. H. 881, 885; C. G. 1014, 1018; cf. C. A. 684.

Hence necessary expenses for furnishing the legacy must be sustained by the inheritance. C. I. 877; C. G. 1016; C. H. 886; C. A. 690. But the fruits of the thing and increase are owed to the legatee from the very death of the testator, if the legacy is of some estate or capital or another fruitful thing, or if the testator expressly prescribed thus. Otherwise the legatee cannot claim interest or fruits except from the day of judicial petition, or of promised furnishing of the legacy. C. I. 864, 865; cf. C. G. 1015; C. A. 686; C. H. 882-884.

If the legatee dies before the inheritance has been entered by the heir, the legatee can transmit to his heirs the very dominion of the thing, if the thing was determinate, or at least the right to the thing, if the thing was less determinate. And if the thing bequeathed perishes without fault of the heir, it perishes for the legatee. Inst. l. 2, t. 20, § 16.

A legatee receiving a particular thing from the testator, as a certain donation, does not represent his person, nor consequently succeed into his rights and obligations. C. I. 862; C. G. 1014, 1024; C. H. 881, 882; L. 932.

1057. **Note.** First, if the legacy is under condition, since the condition suspends the disposition, and the legatee, and the same is true of the heir, dies before the condition is fulfilled, the legacy ceases, nor is its right transmitted to the heirs. C. I. 853.

Second, if the legacy is under a mode, the legacy is immediately acquired by the legatee. Therefore, if the legatee dies after the testator's death, before accepting the legacy or before fulfilling the mode, his right passes to the heirs, provided the mode can equally be fulfilled by them.

Third, a legacy to a day, or to be paid at a future time, is not owed before the established time. Meanwhile the legatee has a right to it; if he dies before the constituted day, he transmits this right to his heirs.

Fourth, a testamentary disposition which leaves the quantity of the legacy altogether to the judgment of the heir or of a third party is null, with remunerative legacies excepted because of services shown to the testator in his last illness. C. I. 835.

Fifth, a legacy must be fulfilled according to its proper form. C. H. 886; L. 930; Inst. l. 2, t. 20, § 29 ff.; E. M.

1058. **Who can bequeath, and to whom?** Whoever can make a testament can bequeath. But it is licit to bequeath to those who can be instituted heirs, and to those who can receive a donation. And thus by Canon Law some moderate amount can be bequeathed to Convents of Friars Minor, and to professed members and formed coadjutors of the Society of Jesus, although neither can be instituted heirs by their own Constitutions. Clem. 1 § *Cupientes de Verb. sign.*; Inst. l. 2, t. 20, § 25 ff.

1059. **What things can be bequeathed?** It is peculiar to legacies that not only one's own thing, but also another's thing, can be bequeathed, namely one which the testator knew to belong to another; otherwise the legacy does not hold. Therefore the heir is held to buy the thing from its owner and hand it over to the legatee, or hand over its just price to him. Thus from C. I. 837, 838; C. H. 861, 862; C. A. 662; Inst. l. 2, t. 20, § 4. But the legacy of another's thing from C. G. 1021 will be null, whether the testator was ignorant or knew that the thing belonged to another.

C. I. 870; C. G. 1022; C. H. 875 establish that when an indeterminate thing has been bequeathed, yet contained under a certain genus or species, the heir, to whom the choice pertains, is not held to give the best, nor can he give the worst. C. H. 1167; cf. C. A. 656, 658, 659; L. 938.

If the testator left something annual or monthly to someone and his heirs, or ordered a determined number of Masses to be celebrated each year, it is owed even to heirs of heirs, and these Masses must be celebrated in perpetuity. S. C. C. 4 Aug. 1864; Inst. l. 2, t. 22; E. M.

1060. **Is a legacy left by a debtor to a creditor to be considered given in compensation of the debt?** From C. I. 845 and C. G. 1023, a legacy of this kind, without mention of the debt, is not

presumed to have been made in payment of the debt. Yet the general presumption is that someone wishes first to satisfy his obligation and then to give gratis.

1061. **Can a legacy left to orphans be given to poor persons having useless parents?** If true orphans are lacking, it can be given, because the will of the testator is sufficiently fulfilled; for he wishes to help children who do not have from where they may be fed. If true orphans are present, more probably altogether it cannot be given, because the express will of the testator must be fulfilled in its proper form whenever it can be fulfilled. Clem. *Quia contingit de Rel. dom.*; Trent, Sess. 22, c. 8. Yet St. Alphonsus thinks it not improbably able to be given, because that more approaches the end of the testator, since then such children must provide not only for their own need, but also for the poverty of their parents. L. 930.

1062. **Can a legacy left to girls so that they may marry be given to those who become religious?** If the legacy was left to a determinate person, it is certain that it can be given, unless otherwise established concerning the mind of the testator. For the testator intends primarily to regard the person herself by his benefit. If the legacy was left to indeterminate persons, certainly and more probably it ought to be given only to those marrying. For the express will of the testator must be observed in its proper form whenever it can be observed. But this will of testators is very pious, who intend to provide for girls of this kind so that they may be removed from danger of sinning. L. 930.

1063. **Is a legacy left to a girl under the condition of marrying some man owed if she marries another?** "It is certain that it is not owed," because that condition does not injure the liberty required for marriage, since the girl can freely accept or reject such marriage; and therefore it cannot be had as a base condition and as if not appended. Exception, however, if "she is induced to marry an unworthy man, because then that condition is rejected as base, and the legacy is owed to her if she marries another." L. 853; Schmalzgrueber, l. 4, t. 1, nn. 149, 150; C. A. 700.

1064. **Can a legacy left to girls so that they may marry be given to girls who, without dowry, have already married?** Response: affirmatively, if there is question of determinate girls, because the testator is presumed to have wished absolutely to provide for them because of a peculiar affection toward them, or so that, once married, they may live decently. Otherwise, if there is question of indeterminate girls, because then the testator is judged rather to have wished to assist girls about to marry, so that they might avoid the danger of prostitution. L. 930.

1065. **What comes in legacies under the name of movables or movable goods?** Movable goods are generally those which can be moved from place to place, such as garments, animals, money, etc. The same thing is meant by movable goods, movable things, a movable, or even movables when opposed to immovables.

Movables, without addition and without determination, are said to be all goods which are not immovable, except money, books, gems, coins, active debts, instruments of the arts, linens for bodily use, horses, arms, grains, wine, hay, and other similar things. Also except those things about which a particular trade is exercised.

Household furniture, or movables furnishing a house precisely, is wholly restricted to those things which are ordered to use or to the ornament of habitation, such as seats, tables, cupboards, etc. C. G. 527 ff.; C. I. 416 ff.; C. H. 335 ff., 346; C. A. 647 ff.; Gousset on aa. 533, 535.

1066. **Resolutions.** Hence, first, silver furnishings, animals except horses, and linens except those which are applied to bodily use are movables simply.

Second, if the testator says, "I bequeath the movables to Caius and the immovables to Sempronius," Caius has a right to all movable goods, because the mind of the testator is evidently clear from the opposition of movables to immovables. Gousset on a. 533; Rogron ib.

Third, if the legacy runs thus: "I bequeath to Titius all my movables," or "movable goods," or "the totality of movables," Titius has a right to all goods that are not immovable, because the word *movables* is not here taken without an addition, but with an extension of meaning. Gousset n. 807 on a. 533; Rogron ib.

1067. **Can the Supreme Pontiff commute the last wills of testators?** No one doubts that the Pope can, with cause, commute last wills, as is clear from Clem. *Quia contingit de Relig. domib.*

With cause, "because although the dispositions of testators are judged to be committed to the Pope or Prince, nevertheless they are not committed as to a lord, but as to an administrator of the common good or of pious causes. Hence, since the Pontiff is not the lord of such goods, he cannot, either by ordinary power or extraordinary power, without cause convert these dispositions to another use than that for which they were destined by the testators. Therefore, if the legacy is profane, the Prince will be able, because of public necessity or another just cause, to commute it into another profane or pious legacy. But if the legacy is pious, the Pope alone will be able, when a just cause intervenes, to convert it into another pious use." L. 931; Benedict XIV, *De Syn.*, l. 13, final c.; L. *Legatam* 4 ff. *de Administrat. rer. ad civ. pert.*; A. S. S. vol. 1, p. 609; vol. 2, p. 353.

1068. **Can bishops with just cause commute pious dispositions?** The first opinion affirms. The reason is that from Trent, Sess. 22, c. 6 *de R.*, bishops, at least as delegates of the Apostolic See, and from a just and necessary cause, according to their judgment, can commute last wills.

But the second and more probable opinion denies. The reason is that from C. *Tua de Testam.* and from Trent, Sess. 22, c. 8 *de R.*, bishops are charged to execute all pious dispositions, both in last will and between the living. "Yet Laymann very probably judges, and the Salmanticenses, etc., agree, that if some cause supervenes, or if it was unknown to the testator, which if he had known he would have disposed otherwise, then the bishop with the heir can from epicheia interpret the will of the testator and convert the legacy to another use, for example if a legacy was left for sacred vessels to be made, of which there is no need, but rather of chasubles. But when pious legacies can in no way be applied to the use intended by the testator, they are not caducous, but must be applied to another pious use at the judgment of the bishop and executor." L. 931, 939, 940; Lugo, *Resp. Mor.* l. 4, D. 32, nn. 1, 8, 9, 10, 11.

From the cited chapter 6 of Trent, bishops cannot make commutation except from a just and necessary cause, copulatively. Barbosa, *Collect.* on the cited place of Trent; De Luca, *Annot.* in S. Cone.

Trid., Disc. XII; Trent, Sess. 25, c. 8 *de R*.

1069. **What about division among children to be made by parents?** Parents are permitted to divide their things among their children, whether by an act of donation or by an act of last will or testament, with the same formalities of donations or testaments observed. C. I. 1044, 1045; C. G. 1075, 1076.

For the division to be valid and firm, it is necessary: first, that it be made among all the children, C. I. 1047; C. G. 1078; second, that the legitimate portion not be injured; third, that if it is done by act of donation, the division comprehend only present things, but if it is done by testament, it can also comprehend future things, C. I. 1045; C. G. 1076; fourth, that once the division has been made by donation, dominion of the divided things passes into the children from acceptance of the donation, by which the division is perfected; but if it is done by testament, the division is not perfected except by the death of the testator, and dominion passes into the children from that death; fifth, if any things were not comprehended in the division, these, just as omitted things, are deferred from intestacy, C. I. 1046; C. G. 1077.

VIII. On Loan For Use

1070. **What is a loan for use?** A loan for use is the gratuitous concession of some thing for a sole and determinate use, and for a certain time. C. I. 1805; C. G. 1875; C. H. 1740; C. A. 971.

Of some thing, that is, both immovable and movable, provided nevertheless that it is not consumable by use. C. I. 1805; C. G. 1878.

For a sole use: by this it differs from pledge or deposit, in which use is by no means conceded. For a sole use and a determinate one: therefore precisely a right to a certain use only is transferred to the borrower for use, and consequently the lender for use remains owner of the thing lent. C. I. 1805; C. G. 1877; C. H. 1741.

And for a certain time: in this a loan for use differs from a precarium, because in a precarium the time is not determined, as it is in a loan for use. Therefore a precarium is defined as that which is granted for use to one asking by prayers, as long as the one who granted it permits. C. H. 1750; C. A. 974.

Gratuitous concession: for by this it differs from lease, because in lease the use is conceded for a certain price, but in a loan for use gratuitously. C. I. 1806; C. G. 1876; C. H. 1740; Inst. l. 3, t. 15, § 2; L. 744, 745; Lugo, D. 33, n. 8.

1071. **What are the obligations of the borrower for use?** It is unlawful for the borrower for use to use the things lent for use longer or otherwise than he received them to be used, if he understands that he is doing this against the owner's will, and that the owner, if he had understood, would not have permitted it. Acting otherwise he would not use the thing, but abuse it, and therefore would be held for damages. C. I. 1808, 1809; C. G. 1880, 1881; C. H. 1744; C. A. 972, 973; Inst. l. 3, t. 15, § 7 *de Commodato*; cf. Ithur., Cas. 46, n. 6.

The borrower for use is held to ordinary expenses for preserving the thing, but by no means to extraordinary expenses. The reason is that ordinary expenses are as it were a certain natural consequence of daily use, which has been conceded to the borrower for use, but extraordinary expenses are precisely for preserving the thing itself; and dominion of the thing remains with the lender for use. C. I. 1818, 1817; C. G. 1886, 1890; C. H. 1743; C. A. 981; L. *In rebus* § 2 Dig. this title; Lugo, D. 33, n. 14; L. 747.

The borrower for use regularly is not held for the fortuitous loss of the thing, C. I. 1810; C. G. 1882; C. H. 1744; C. A. 978, 979; L. *Si ut certo* § 4 Dig. this title; Inst. l. 3, t. 15, § 2, namely with his fault, a special agreement concerning the matter, and a judge's sentence excluded. The reason is that a thing perishes for its owner.

Likewise he is not held for damage when this follows, not indeed fortuitously, but as though necessarily from the conceded use of the thing. For the owner is judged to have consented to that. C. I. 1812; C. G. 1884; C. H. 1746; L. *Si commodavero* Dig. this title; L. *Eum qui* Dig. same title. If damage was done by another's injury, the borrower for use is not held for it. L. *Ad eos* Dig. this title. Nor is the borrower for use held for damage if the thing perishes by the fault of him to whom the lender for use had ordered it to be handed over. L. *Si mei* § 1 Dig. this title. Nor again is he held if the borrower for use employed suitable means for restoring it. L. *Argentum* Dig. this title; L. 752.

But the borrower for use is held for fortuitous damage: if it was brought into the pact, L. *Ea quidem* C. *de Commodato*, which is understood if he received the thing valued, C. I. 1811; C. G. 1883; C. H. 1745; if fault of the borrower for use intervened, R. 25 *de R. I.* in 6, L. *Si ut certo* § 7 Dig. this title; if he did not diligently guard the thing and preserve it from dangers, C. I. 1808; C. G. 1880; C. H. 1744; C. A. 978, 979; cited L. § 5; C. *Cum gratia* un. this title.

From Roman Law, Inst. l. 2, t. 15, §§ 2, 4, the borrower for use is held to have greater custody for the thing lent than for his own things. Hence he is condemned who in danger guards his own things rather than the things lent. From C. I. 1808, 1810 and C. G. 1880, 1882, the borrower for use is held to guard the thing lent as a good father of a family; hence also, if in danger he exposes the thing lent rather than his own, he is held for its loss and accident. Namely, since the contract is for his advantage alone, natural equity demands that the borrower for use, in equal cause, consult another rather than himself.

From Roman Law, L. *In rebus* Dig. this title, L. *Obligationes* § 4 *de Obligationibus et Actionibus*, etc., and from Canon Law, C. un. *de Commod.*, the borrower for use is held not only for gross and slight fault, but even for very slight fault. Namely, he is held for gross fault if someone lent for use only for his own sake; for slight fault, if he lent for use for the advantage of himself and of the borrower for use; for very slight fault, if he lent for use only for the advantage of the borrower for use. Cf. 1072.

From C. I. 1809, 1811; C. G. 1881, 1883; C. H. 1743, 1744; C. A. 978, 979, if the thing perishes because it was applied to another use, or not restored at the due time, or if it was valued, the borrower for use is held even for fortuitous loss of the thing.

A precarium imposes obligation only from deceit and gross fault, because the other can revoke the thing at will. L. *Quaesitum est* § 3 Dig. *de Precario*.

If the thing was lent to several at the same time, each is held in solidum. L. 4 § ult. this title; C. I. 1814; C. G. 1887; C. H. 1748.

The rights and obligations which are contracted by force of a loan for use pass to the heirs of the lender for use and of the borrower for use. But if the loan for use was made only in view of the borrower for use, it by no means passes to his heirs. C. I. 1807; C. G. 1879; C. H. 1742. The reason is that if the loan for use was made exclusively by reason of the person, its final cause ceases adequately, for example if you lent a horse for use to your friend who greatly delighted in riding. But if the loan for use was made by reason of some particular thing, its final cause does not cease unless the thing ceases, for example if you lent a horse to your friend for the labors of harvest. But a precarium ceases through the death of the recipient, not through the death of the giver, if it is not revoked by the heirs. L. *Cum precario* ff. *de Prec.*; final C. *de Prec.*; L. 745.

1072. **Do laws of this kind, with theological fault excluded, bind in conscience before the judge's sentence?** Theological fault: fault is one thing theological, another merely juridic. Theological fault is an omission or action harmful to another, free, and which before God is sin. But juridic or civil fault is any negligence, or even an action harmful to another, even if it is involuntary and by no means sin before God.

Such juridic fault from Roman Law is threefold: gross, slight, and very slight. Gross fault, which is equated with deceit, is omission of the diligence and circumspection which people of the same condition commonly tend to apply in the same circumstances of the matter; such would be, for example, if someone left a borrowed book outside before the door, and so a thief took it away. Slight fault is omission of the diligence and circumspection which more diligent and cautious people of such condition tend to apply; such would be if someone left a borrowed book inside a room, but with the door open, for the more diligent tend to shut the door. Finally, very slight fault is omission of the diligence and circumspection which the most diligent and cautious people of such condition apply; such would be if someone left a book lent to him inside a room whose door he indeed closed, but did not test whether it was well locked. L. 549, 749.

By more recent law the diligence which is generally required is that which the nature of the obligation requires, corresponding to the circumstances of persons, time, and place. Unless something else is expressed, that diligence is required which must be furnished by a good father of a family. C. I. 1224; C. G. 1137; C. H. 1104; cf. 1357.

Now the more common and more probable opinion affirms the obligation of the aforesaid laws in the forum of conscience. For first, as Lugo says, D. 8, n. 106: "It cannot be denied that according to the light of nature and the common sense of men, men seem to be obliged more to avoid fault in some contracts than in others. For one who received a thing lent for use for his sole advantage judges himself more obliged to guard it than one who has a thing deposited with him for the depositor's advantage alone. Therefore it cannot be said that in the forum of conscience all are held only for gross fault and grave theological fault; otherwise they would not be held more in one case than in another. Therefore that distinction of contracts, either for the advantage of one or for the advantage of both, even with positive and human law excluded, produces different degrees of obligations, and consequently in some case and for some fault someone will be held from one contract even in the

forum of conscience, for which in another case he was not held; and therefore he will be held not only for mortal fault, but also for light fault, for all are held in every case for mortal and grave fault."

Second, "the reason is," as Lessius says, l. 2, c. 7, n. 45, "that those laws sanction that which is consonant with natural equity to furnish concerning another's thing, which by means of a contract we have with us; and once this sanction has been placed, one who makes such a contract, by accepting a loan for use, lease, deposit, pledge, etc., implicitly obliges himself to furnish that diligence which the laws require. Therefore, if he does not furnish this diligence, although it was done by natural forgetfulness without any fault, he will be held to restitution." And these things certainly seem wholly to hold in the case treated in C. I., C. G., C. H., C. A.

"But Soto, etc., very probably deny it. The reason is that, on the one hand, it is not equitable to oblige someone to a grave penalty without his own grave fault; on the other hand, it is not presumed, or at least it is not established, that someone wished to oblige himself in conscience to satisfy damage done with merely juridic fault. But the laws brought forward to the contrary, obliging with merely juridic fault, either presume theological fault, or oblige only for the external forum, or have not been received in another sense... But those laws which in some cases prescribe restitution certainly oblige, even if sin is absent, but not before the judge's sentence, as the Salmanticenses, etc., commonly say, whatever others may say... Likewise in offices it is probable from the same reason that no one is held to restitution except from gross fault joined with grave theological fault... Yet one who receives a stipend is held even from slight juridic fault... or one who promises greater diligence than is commonly owed, or if the office of itself requires great diligence... But it is always understood that juridic fault must be joined with grave sin in order to oblige gravely." L. 554.

1073. **Is someone held to save from danger things lent to him for use before his own?**
Response: affirmatively, if the things of another are much more precious than his own, especially if they were lent to him gratuitously. The reason is that the custody owed to another's thing is that which any prudent person would apply for his own; but anyone would save his more precious things before cheaper ones. Therefore he ought to act similarly toward another's things lent for use; otherwise he becomes guilty of injustice and is bound to restitution. The other, however, is held to compensate the loss of the borrower's thing. For neither the borrower for use nor even the depositary are held to extraordinary expense for the thing lent for use or deposited gratuitously.

Hence, conversely and from parity of reason, one can of himself prefer his own things if they are more precious than another's. For no one is held to undergo greater damage in order to avert lesser damage of another.

In the case in which both another's things and one's own are of the same value, there is controversy. Some judge that the borrower for use in this hypothesis ought to attend equally to saving the things lent and his own, because by accepting them he took up the obligation of applying serious diligence in caring for and guarding those things as his own. Reuter. Yet others more commonly say that probably the borrower for use can save his own things from danger rather than another's, because rightly ordered charity begins from oneself, at least speaking of itself, with a special contract excluded. But if someone preserves another's thing rather than his own, the other is held to compensate the loss of that thing, since in the case it would be to make extraordinary expense. And

these things hold with natural law considered. As regards positive law, cf. 1071. Lugo, H. 8, S. 10; L. 752; Ithur., Cas. 27, n. 14.

1074. **What are the obligations of the lender for use?** The lender for use is held to disclose the defects of the thing; otherwise he is held for damages. For he is their cause for the borrower for use. C. I. 1818; C. G. 1891; C. H. 1752; L. *In Commodato* § 3 Dig. this title; L. *In rebus* § 3 Dig. same title.

The lender for use cannot demand back his thing before the stated time, or before the constituted use. For we ought to be helped, not deceived, by a benefit. C. I. 1815; C. G. 1888; C. A. 973; L. *In Commodato* § 3 Dig. this title; C. un. *de Commod.*; R. 33 *de R. I.* in 6. Exception: unless equal damage threatens the lender for use, since this condition is always understood: unless necessity urges. For it is not equitable to benefit another by one's own damage. L. 747; C. I. 1816; C. G. 1889; C. H. 1749. But it is otherwise from C. A. 976.

He is held to restore the extraordinary and urgent expenses which the borrower for use had to sustain in order necessarily to preserve the thing lent for use, unless he is at fault. C. I. 1817; C. H. 1751; C. G. 1890; C. A. 981.

IX. On Deposit

1075. **What is deposit, and how is it contracted?** To the first: deposit is a contract by which a thing is handed over to someone to be guarded gratuitously, under that law that the same thing be restored whenever it is demanded. L. 1 *Depositi*; C. I. 1835; C. G. 1915; C. A. 957; C. H. 1758, 1760.

A thing, namely a movable thing. Deposit can be constituted only in movable things, C. I. 1831; C. G. 1918; C. H. 1761. Also in immovables, C. A. 960; L. 746.

Gratuitously: for if a wage or interest has been constituted, deposit passes into lease and hire, or into loan at interest. L. 1 § *Si vestimenta* C. this title; C. I. 1837; C. G. 1917.

To be guarded: if the depositary is permitted to use it, it nearly passes into a loan for use or into a mutuum. L. 24, 26 § 1 this title; C. A. 959; C. H. 1768. Nearly, because the thing deposited must be restored whenever it is demanded by the one asking.

To the second: deposit is contracted expressly or tacitly. Expressly, when such a contract is made explicitly; tacitly, when a thing is brought to those who by reason of office are held to its custody, such as innkeepers, stable-keepers, and shipmasters. But it is not necessary to hand the things over to the innkeeper, stable-keeper, or shipmaster; it suffices to bring the thing into the inn, stable, or ship. L. 1 at end *Naut. Cauponae*, etc.; C. I. 1866; C. G. 1952; C. A. 970, 1316.

From the same Italian, French, and Austrian Law, those who carry goods by land are held, for things deposited, to the same obligations as innkeepers. They answer for things to be transported as soon as these have been committed to them in port or at the merchandise station. Loss and deterioration of merchandise committed to them is imputed to them, unless they prove that a fortuitous event or superior force was the cause. But as regards other artificers, if they contribute nothing except labor to

a thing belonging to another that is to be made, once loss of the thing has occurred, they are not held to compensation unless fault has intervened. C. I. 1630, 1631, 1636; C. G. 1782, 1784, 1789; C. A. 970, 1160, 1316.

1076. **What are the obligations of the depositary?** The depositary cannot, of himself, use the deposited thing. The reason is that the thing is given to him for custody, and its use is not conceded. Use of the thing can be judged permitted only if it can reasonably be judged that the owner of the thing consents to it, for example if the thing is exposed to no danger by use and is not made worse; if someone deposited money not closed up and not sealed. Therefore, if the owner is unwilling, the owner must be compensated for the use made of the thing, if the depositary has become richer from it. C. I. 1846; C. G. 1930; C. H. 1767; C. A. 965; Lugo, D. 33, n. 4.

But one who uses another's thing truly at his own risk, even if he knows that the owner is unwilling, acquires for himself what he gains from it by his own industry. By his own industry, since a thing consumable by use does not bear fruit through use itself, but is destroyed. By his own industry, for fruits produced from the thing itself must be returned with the thing itself. C. I. 1852; C. G. 1936; C. A. 958, 961; C. H. 1767, 1770; L. 748.

The depositary ought to exercise that care of the deposited thing which he exercises for his own things. L. 32 this title; L. 1 § 5 *de Oblig. et action.*; C. I. 1843; C. G. 1927; C. H. 1766; C. A. 961, 964.

This obligation is stricter if the depositary offered himself to receive the deposit; if he stipulated a wage for the deposit; if the deposit was made for the advantage of the depositary alone; if an agreement intervened that he be held for any fault. C. I. 1844; C. G. 1928; C. H. 1182, 1766.

If the deposit is made for the advantage of the depositor alone, the depositary is held to furnish only against deceit and gross fault, which is equated with deceit. L. *Quod Nerva* Dig. *Depositi*. If the deposit is also made for the advantage of the depositary, as when he receives a stipend or wage, the depositary is held even for slight fault, although not very slight fault. L. *Depositum* Dig. *Depositi* § 8 compared with the final § Inst. *de Locat. et cond.* Exception: shipmasters, innkeepers, and stable-keepers, who are held even for very slight fault, but not for fortuitous event or superior force. L. *Et ita* Dig. *Nautae*, etc. Laymann, *de Deposito* n. 1, with others, judges not improbably that this, namely that they are held for very slight fault, does not hold before the judge's sentence in the forum of conscience. Inst. l. 3, t. 15, § 3.

Innkeepers and stable-keepers are considered depositaries of those things which travelers bring into their lodging place in which they stay, and they are held for theft or damage inflicted, if the theft was perpetrated or the damage inflicted by domestic servants, by persons placed over the direction of the lodging place, or by outsiders who frequent it. C. I. 1866, 1867; C. G. 1952, 1953; C. H. 1783, 1784; C. A. 1316; L. 750.

The depositary is held by no obligation if something happens when superior force prevails, unless he had already delayed returning the thing after it had been demanded by the depositor. C. I. 1845, 1868; C. G. 1929, 1954; C. H. 1182, 1766; C. A. 964, 965. Exception for the internal forum, if the thing would have perished equally, and at the same time and in the same danger, with the owner, because then that delay was not the cause of the damage. From C. A., cited place, the depositary is

not held for a fortuitous event, even if the more precious deposited thing could have been saved by damage to his own thing.

He must return the deposit as soon as it is demanded, if it can be done. L. *Depositum* § 22 Dig. *Depositi*. The reason is that the deposited thing is for the advantage of the depositor alone; and therefore there can of itself be no cause for retaining the deposit. Of itself; accidentally, however, sometimes it ought not to be returned, as if it is demanded for one's own or another's damage. L. *Depositum* § 39 Dig. *Depositi*. But the thing must be restored whenever it is asked back, even if perhaps in the contract a day was constituted for restitution. Before the constituted day, however, the depositary regularly cannot restore the thing except from a just cause. C. I. 1860; C. G. 1994; C. A. 462, 963; C. H. 1766, 1775, 1776.

The depositary must restore the deposited thing to the one who deposited it. Yet if he understands that the thing is stolen and knows its owner, he ought to warn him, with a suitable space of time established in which he himself may demand it back; but if the latter has been negligent, the depositary is freed from every obligation by restoring the deposit to the one from whom he received it. C. I. 1853, 1854; C. H. 1771.

The thing is regularly to be restored to the one who deposited it, even to a thief, if the owner when summoned has failed to appear. L. 31 this title; C. I. 1853, 1854; C. G. 1937, 1938.

When the depositor has died, the thing must be restored to the heir. If there are several heirs and the thing is divisible, his part must be returned to each one; but if the thing is indivisible, all must agree concerning the mode of receiving the thing. L. 1 § *Si pecunia* 36 this title; C. I. 1855; C. G. 1939.

Restitution is to be made by the one with whom the deposited thing was, and in the place in which the thing is found without bad deceit of the depositary. L. 12 § 1 this title; C. I. 1859; C. H. 1774. From C. G. 1943, in the place in which it was deposited.

The depositary, as also the borrower for use, cannot compensate themselves for debts from deposit, loan for use, and precarium. Thus from positive law: final L. C. *de Commodato*; L. *Si quis* C. *Depositis*; C. *Bona fides de Deposito*; C. I. 1289; C. G. 1293, 1885; C. H. 1200, 1747. Yet if someone retained a thing under this title, he would indeed sin against legal justice, but by no means against commutative justice. L. 753. By natural law "it is probable," Lessius says, l. 2, c. 27, n. 16, "that in the forum of conscience compensation has place when no other way of obtaining the thing owed to oneself is available." But if the depositary finds that the deposited thing is his own, he is no longer held by any obligation. C. I. 1861; C. G. 1946; L. 753.

1077. **Is the depositary, with theological fault excluded, held to compensation if the thing perishes from his negligence?** This is Busembaum in St. Alphonsus, 749: "If the one to whom a thing has been lent for use, leased, deposited, or pledged guards it negligently so that it perishes, but the negligence is not theological mortal fault, it is probable, as I said from Soto and Sa, that he is not held to restitution in conscience. Yet others think otherwise, namely that one who has contracted juridic fault in guarding is held to restore if it was gross, and then if only slight, indeed sometimes if very slight, namely when the deposit was made for the advantage of both, and if he receives a price for custody. See Lessius, c. 7, d. 8; Laymann, tr. 4, c. 25, where he teaches that a depositary is held only for deceit or gross fault which is equated

with deceit." These things as regards natural law. As regards positive law, cf. 1076. L. 751; St. Thomas, 2-2, q. 62, a. 6.

1078. **What are the obligations of the depositor?** The necessary expenses made by the depositary must be refunded by the depositor, and any damage which the depositary perhaps suffered because of the deposit must be compensated. The depositary can under this title retain the deposit until perfect payment of the debt. His office ought to be damaging to no one. L. 5, 23 *Depositi*; L. 60, 62 § *Quod vero* 5 *de Furt.*; C. I. 1862, 1863; C. G. 1947, 1948; C. H. 1779, 1780; C. A. 967.

1079. **What is sequestration, and what is its nature?** Sequestration differs from deposit insofar as some disputed thing is deposited by those who dispute with a third party under this condition, that it be restored to him whose it will be. L. 110 *de Verbor. signif.*; C. I. 1870; C. G. 1956; C. H. 1763; C. A. 968.

The sequestrator cannot lay down the office he has received, against the will of those whose interest is concerned, except from a grave and just cause. L. 5 § 2 this title; C. I. 1874; C. G. 1960. Nor can he return a part to one of the depositors. L. 17 this title; C. H. 1763.

This sequestration is called conventional, and is entirely distinguished from judicial sequestration, which is constituted only by the office of a judge. C. I. 1875 ff.; C. G. 1961 ff.; C. H. 1785 ff.

X. On Mutuum

1080. **What is a mutuum?** *Mutuum* is sometimes taken for the thing itself given in mutuum, but sometimes and more often for the contract itself by which that thing is given in mutuum to another. It is defined: a contract by which, through delivery, dominion of a thing consumable by use is transferred to another, with the obligation of returning as much in the same species and goodness after some space of time.

Through delivery, to indicate that it is a real contract, which is perfected by delivery of the thing. Dominion is transferred, for one who receives a thing in mutuum can use it; otherwise it would be a mere deposit. But he cannot use it unless he has dominion, since the thing is consumable by use, and no one can consume another's thing at will.

Consumable, whether physically, as bread, or morally, as money, which although it does not perish in itself by use, nevertheless perishes for the one who hands it over to another. With the obligation of returning as much; otherwise it would be a donation. In the same species; otherwise it would be sale or exchange, if in a different species; loan for use or lease, if the identical thing in the individual had to be returned. And goodness, lest the lender suffer detriment from his benefit. After some space of time, by which it is distinguished from exchange, in which, for example, gold is immediately given for silver. L. 754; Inst. l. 3, t. 15; C. I. 1819; C. G. 1892; C. A. 983; C. H. 1740; E. M.

1081. **Is there a precept of lending in mutuum?** As there is a precept of giving alms to the poor, so there is a precept of conceding a mutuum to the rich who, because of a peculiar circumstance, greatly need it. The reason is that the precept of charity binds us toward all human beings, even the rich, and requires that we gladly furnish this which, in the same case, we would wish

to be furnished to us, provided nevertheless that we can help them through a mutuum without grave inconvenience. "No one," Benedict XIV says in the encyclical *Vix pervenit*, "can be ignorant that in many cases a person is held to assist another by a simple and naked mutuum, especially with Christ himself admonishing: Do not turn away from one wishing to borrow from you," Matt. 5:42.

1082. **What are the obligations of the borrower in mutuum?** By force of the mutuum the borrower becomes owner of the thing borrowed, which, in whatever way it perishes, perishes for him. C. I. 1820; C. G. 1893; C. H. 1740, 1753; L. 755.

The borrower ought to restore the thing borrowed in the same quantity, quality, and constituted time; and, in defect of the thing, he ought to pay its value according to the time and place constituted. C. I. 1823, 1828. If no time and no place was constituted, restitution must be made according to the value corresponding to the time at which he is constituted in delay, from C. I.; or at which the mutuum was made, from C. G.; and according to the place at which the mutuum was made. C. I. 1828; C. G. 1903.

Money given in mutuum must always be restored in the same numerical sum expressed in the contract. And whether the value of coins is increased or diminished, the same numerical sum must be restored in the currency current at the time of payment. C. I. 1821; C. G. 1895. It is lawful, however, even in the forum of conscience, to give banknotes for silver or gold coins, with any law or pact to the contrary removed. Law of 1 May 1866; S. Poenit., 21 Jan. 1873. But when gold or silver monies have been given in mutuum with a pact of restitution in the same species and quantity, and their intrinsic value is modified, an equivalent must be returned to the value of the time at which the mutuum was given. C. I. 1822; C. A. 988, 989; cf. C. H. 1170, 1754; L. 782, 791.

If the borrower does not restore the thing or its value according to the constituted pact, interest is owed from the day of judicial petition. C. G. 1904. Indeed, if he is in culpable delay, he is held also for damages of which he is the cause. C. H. 1108.

1083. **What are the obligations of the lender in mutuum?** He is held to warn the borrower concerning a defect of the thing handed over, if there is one; likewise concerning imminent damage, lost profit, and danger to the principal, unless he wishes to lend gratuitously. Otherwise the borrower does not consent and sustains an injury, which the lender will be held to repair. C. I. 1824; C. G. 1898; L. 754.

He cannot demand the thing back before the constituted time. C. I. 1824; C. G. 1899; L. 754. If the time of restitution was not constituted, a judge can concede delay to the borrower according to circumstances. C. I. 1826; C. G. 1900. But if it was constituted that the borrower pay when he can, or when he has the means for this, the judge will establish the term according to circumstances. C. I. 1827; C. G. 1901.

He is held, of itself, not to receive more than the borrowed thing was worth when it was given in mutuum, because a mutuum is of itself a gratuitous contract in this sense: that it imposes no other burden on the borrower than that he return in species, at the due time, that which he received. L. 754, 755.

1084. **Can you receive a thing lent in mutuum in the same measure and quantity, if its price increases during the time of the mutuum? Can you demand more if it decreases?** If, when a thing is handed over in mutuum, there is equal doubt on both sides whether at the time of restitution the thing will be worth more or less, it is lawful to agree that, with the same goodness and measure preserved, it must be restored in due time, even if its price has greatly increased. The reason is that since the danger was equal on both sides, equality is thereby already preserved.

The aforesaid pact is of itself not lawful if it is certain, or far more probable, that at the time of payment the value will be increased. The reason is that equality is not thus preserved, but more is demanded than is given at the time of the mutuum. Hence if a bushel of wheat is now worth three francs and will be worth four at the time of restitution, it is not lawful to agree that as much be paid. Exception, however, unless you had resolved to preserve the thing until the time of increased price, because then more is demanded by reason of lost profit.

If you foresee diminution of value or price, you can demand back only as much as the thing was worth when it was handed over in mutuum, and the borrower ought to pay only that; because in reality you do not demand more than you gave. L. 782, 791; La-Croix, 910 ff.

1085. **Note.** First, "that a mutuum furnished to a Church, pious cause, or University cannot be demanded back unless it is proved to have been converted to its utility. L. *Civitas* ff. *Si certum petatur*. And the same is said of a mutuum given to a minor, who otherwise is not held, even when he has become of age, to restore. L. 3 C. *Quando facto tut*. Yet if a prelate with the consent of the chapter, and the same is said of a governor with the consent of officials, receives a mutuum in the name of the Church, the Church itself is always held to pay, since prelates with the chapter can rightly alienate movable things of the Church.

"Second, that a mutuum given to sons under paternal power, considered as such and lacking castrensian goods, without at least tacit consent of the parents, is afterwards not to be restored by them, at least in the external forum. L. 14 C. *de S. C. Maced.* Sons can use this privilege, even if they renounce it. Exceptions: first, if the mutuum is in other things than money, about which the law speaks; second, if the son swore to pay, although after payment he has an action to recover it, indeed he can procure for himself relaxation of the oath; third, if the mutuum was given with the father knowing and not contradicting, or was converted to the utility of the father or the children in things which the father was held to furnish him. Likewise if the borrowed thing still exists, or if the father had been accustomed to pay the debts of the children.

"Third, it is doubtful whether sons under paternal power, in the first case set down, are free from restitution of the mutuum not only in the external forum, but also in the internal forum. Bonacina, etc., deny this, because civil law does not remove the natural obligation. But Lessius, etc., affirm it as sufficiently more probable, because law with just cause can indeed take away natural obligation, and is judged to have done so in this case in order to provide against damage to parents and to avert the wickedness of moneylenders. Nor does it seem possible to deny that supreme human power, because of the high dominion which it has, can for the common good transfer dominion of things from one person to another, as is clear in the law of prescription." L. 756, 757, 918; Inst. l. 3, t. 15, § 1; C. I. 1307; C. G. 1312; C. H. 1263, 1304; C. A. 152; cf. 953.

1086. **What is usury and a usurious contract?** Usury is profit immediately arising from a mutuum as something owed.

Profit immediately arising from a mutuum: for usury properly is committed when the lender, immediately because of the lending and precisely under the title of mutuum, seeks profit, or something above the principal and the substance lent. Therefore, although one who sells a thing beyond the highest just price, or leases it to another for use, sins against justice, nevertheless he is not said to commit usury strictly so called.

By the name of profit is understood whatever is estimable by price. Hence, if one giving a mutuum exacts, for example, that the other render to you what he owes you from some other source in justice, it is not usury.

As something owed, namely from justice, or by a pact of gratitude or benevolence. Hence if the borrower gives the lender something beyond the principal liberally, precisely from natural gratitude and without any intervening pact, or even from fear that otherwise lending will be denied him in the future, or lest he be judged ungrateful, the lender can accept this without the vice of usury. Hence a usurious contract is a pact by which the lender obliges the borrower to give something estimable by price above the principal from the sole title of mutuum. L. 758, 761-765, 774, 777-781, 791; St. Thomas, 2-2, q. 78, a. 2; E. M.

1087. **How many kinds of usury are there?** Usury is one kind mental and another real. The former is that by which the lender, without an externally manifested pact, either formally intends profit not to be offered gratuitously, but as though owed under the title of mutuum; or virtually, for example if he inwardly hopes for profit in such a way that this hope is the principal motive of lending. The latter is that by which the lender brings profit into an external pact, either expressly or tacitly.

Real usury is one kind open and another disguised. Open usury, or express and formal usury, is when in the contract of mutuum itself something is exacted beyond the principal from this title. Disguised or virtual usury is that which is cloaked by another distinct contract, in which profit because of the mutuum is involved; as would happen if a merchant sold merchandise at a dearer price than is just precisely because he must await payment, for thus greater profit would be virtually exacted because of the mutuum. L. 761, 762; St. Thomas, 2-2, q. 78, a. 2; *De Malo*, q. 13, a. 4.

1088. **Is usury lawful?** Usury is prohibited by natural, divine, and ecclesiastical law.

By natural law. "For evidence of this it should be known that there are some things whose use is the consumption of the things themselves; thus we consume wine by using it for drink, and we consume wheat by using it for food. Hence in such things the use of the thing ought not to be counted separately from the thing itself; rather, to whomever use is conceded, by this very fact the thing is conceded; and because of this in such things dominion is transferred by mutuum. Therefore if someone wished to sell wine separately, and wished separately to sell the use of the wine, he would sell the same thing twice, or he would sell that which does not exist; hence he would manifestly sin by injustice. And by similar reason one who lends wine or wheat in mutuum commits injustice by

asking that two recompenses be given to him: one, restitution of an equal thing; the other, the price of use, which is called usury.

"But there are some things whose use is not the consumption of the thing itself; thus the use of a house is habitation, not its destruction. And therefore in such things each can be conceded separately, for example when someone hands over to another dominion of a house while reserving use to himself for some time, or conversely when someone concedes to another the use of a house, while reserving its dominion to himself. And because of this a person can lawfully receive a price for the use of a house, and besides this demand back the house lent, as is clear in leasing and renting a house.

"But money, according to the Philosopher in 5 *Ethics*, c. 5 in the middle, and in 1 *Politics*, cc. 5 and 6, was principally invented for making exchanges; and thus the proper and principal use of money is its consumption or spending, insofar as it is expended in exchanges. And because of this it is in itself unlawful to receive a price for the use of borrowed money, which is called usury; and just as a person is held to restore other things unjustly acquired, so he is held to restore money which he has received through usury." St. Thomas, 2-2, q. 78, a. 1.

"It is certain," St. Alphonsus says, 759, "that usury is unlawful even by natural law." "But a certain modern author in a recently published book has laboriously attempted to prove that money of itself is not sterile and unfruitful like other things consumable by use, since from the common commerce of men, as he asserts, we observe very many profits arising from money. Hence he infers that, apart from just titles of danger, damage, etc., something can lawfully be exacted from a mutuum of money beyond the principal, provided the profit is moderate, and provided the borrower is rich and spends that money in increasing his goods. But deservedly this new opinion was interdicted by Benedict XIV in the encyclical *Vix pervenit*. The certain reason is that the profit which is received from money arises entirely not from the money itself, which, since it is wholly sterile, cannot produce fruit, but arises from the mere industry of human beings. Nor, because my money will benefit another through his industry, can I exact from him anything beyond the principal." L. 758; Collectan. S. C. de P. F. n. 2130.

By divine and ecclesiastical law. Thus Ezekiel 18:10, 13 said: "If he begets a son, a robber shedding blood... giving at usury and receiving more, shall he live? He shall not live... since he has done these detestable things, he shall surely die; his blood shall be upon him." And "the Lateran Council, Sess. 10 under Leo X, condemns as usury any profit whatever received from an unfruitful thing, with the title of labor, or expense, or danger excluded. Namely, the words of the Council: when from the use of a thing which does not germinate, with no labor, no expense, and no danger, profit and offspring are sought." L. 765. Hence it is evidently clear that usury is not condemned because it is exorbitant, but because it is usury. So also Benedict XIV in his famous encyclical *Vix pervenit ad aures* openly pronounces unlawful any profit whatever arising from a mutuum by reason and force of that same mutuum.

Add the whole title *De Usuris* in the body of canon law, from which also a usurer, if public and notorious, is kept from communion, is deprived of absolution for the forum of penance, is held infamous, and if he dies impenitent without having made satisfaction, is deprived of ecclesiastical burial. Add propositions 41 and 42 condemned by Innocent XI, and 42 condemned by Alexander VII. Benedict XIV, *De Syn.*, l. 10, c. 4; E. M.

Nor indeed does it avail for the intrinsic lawfulness of usury to say that one who gives money in mutuum furnishes a benefit which is worthy of payment, and that he himself undergoes a burden while he deprives himself of his own thing, which again is estimable by price. Besides, a mutuum is in reality nothing other than a lease of money, since in money not the body but the value is regarded, and dominion of that value always remains with the lender. Hence it is that the borrower is truly said to be, and is, burdened by another's money. Finally, with attention to the present increased commerce of things, constant and always progressing in modern society precisely by force of money and the incredible facility of transmitting and exchanging it, money today can no longer truly be called sterile and unfruitful, but fertile and very fruitful.

1088. **Usury, continued.** But all these things are worth nothing. For first, to a benefit formally considered no payment is owed, but gratitude of soul. Cf. St. Thomas, 2-2, q. 106. But the benefit considered materially here is worth no more than the thing borrowed itself; therefore once this has been restored in the same quantity and quality, all things return to the equality which commutative justice intends and makes.

Second, the deprivation of one's thing likewise is not valued at more, but at as much, as the thing is valued of which one is deprived. Therefore, once it has been restored, that burden is entirely compensated to equality. Otherwise it would have to be said that in the sale of a thing, besides the price of the thing itself, the seller ought to receive another price equivalent to deprivation of his thing; and since in sale this deprivation is forever, he ought to receive a price not only doubled or tripled, but multiplied many times, so that perpetual deprivation of the thing may be compensated.

Third, if the borrower were not truly owner of the money, considered not only materially but also formally, he certainly could not spend it according to its monetary value. The formal value of money is inseparable in reality from the money considered materially. And if this formal value did not pertain to the borrower himself, but to the lender, the borrower could enter into no onerous contract in his own name from the money. But when he is said to be burdened with debt, this certainly does not signify that the borrowed money is not his, but that it is not his absolutely, namely without the obligation of restoring as much. *Aes alienum* never signified stolen money, deposited money, leased money, etc.; it signified and signifies debts to be paid, from whatever source those debts arise, whether from mutuum, or from another contract, or from another title.

Fourth, it is as true that the present commerce of things has not rendered money fruitful as it is true that present commerce is governed rather by credit, as it is called, than by material money; and credit is acquired by one's own industry, talent, labor, trust among public merchants, and especially honesty of life. Moreover, especially at present it is seen that poor workers, laborious and industrious, gather immense riches in a short time; and very wealthy noble men, on the contrary, because of lack of labor and due industry, are reduced to extreme poverty. Therefore it is not money that is fruitful, but one's own labor and one's own industry. L. 758, 759, 764; Gousset, 815 ff.; Collectan. S. C. de P. F. nn. 2119, 2121, 2122, 2124, 2133.

1089. **Resolutions.** Both the usurer and his cooperators are obliged to restitution of the usury accepted. For a usurious contract is altogether null; and the bare delivery of the thing does not transfer dominion. L. 761, 783, 791 ff.; St. Thomas, 2-2, q. 78, a. 3.

1090. **In doubt whether the borrower gave something above the principal gratuitously or not, can you retain it?** Response: affirmatively, with the common and more probable opinion, if you accepted in good faith and the doubt supervenes. Negatively, if you accepted with negative doubt. But if with positive doubt, or with probability, you are held to restore, commonly speaking, since in doubt the borrower must be presumed, speaking of itself, to have given under compulsion, not gratuitously; for human beings give their own things gratuitously with difficulty. But you are by no means held to restitution if a donation can truly be presumed from circumstances.

From C. H. 1756, a borrower who paid interest not at all stipulated can neither reclaim it nor impute it to the principal. L. 761.

1091. **Can the lender retain what the borrower gave from fear that otherwise the mutuum would be denied to him?** Response: affirmatively, more probably. The reason is that for usury it is required that it be given by force of a pact, or as owed from justice. Thus more commonly. L. 763.

1092. **Can an antidoral donation, or one made from a grateful mind, be brought into a pact?** Response: negatively. The reason is that from pacts a title of justice necessarily arises, but not a donation bestowed merely from a grateful mind. L. 764.

1093. **Can something beyond the principal be exacted for the obligation to which the lender would submit himself, of not demanding the mutuum back except after a long time, even if no inconvenience comes to him from the delay?** There are three opinions.

The first and common opinion denies, and Lessius, Viva, Laymann, and Lugo hold this; they call the contrary most false and commonly rejected by others. The reason is that such an obligation is intrinsically annexed to a mutuum, namely that it not be demanded back immediately. Therefore, just as something cannot be exacted because payment is awaited for some time, so neither because it is awaited for so much time. Otherwise, they say, in such a way usury could easily be disguised many times by exacting it not for the mutuum, but for the obligation of awaiting payment. And the condemnation of proposition 42 proscribed by Alexander VII seems to favor this.

The second opinion says that, although in a mutuum there is an obligation of awaiting payment for some time, nevertheless when the obligation is not to demand it back except after a long time, for example for three years, then, since that obligation is not intrinsic to the mutuum, something can lawfully be exacted. Thus Medina, Serra, and Ledesma according to the Salmanticenses n. 25, where Trullench, Henriquez, and Bassaeus think it probable, and Sporer thinks it not improbable. And this opinion truly does not seem to lack its probability. For if he who is obliged to lend within a long time can lawfully exact something, as the doctors more commonly teach with Molina according to Viva on the condemned proposition 42, n. 5, why cannot he who is obliged not to demand his own back except after a long time? See what must soon be said below.

The third opinion, little unlike this second opinion, which the Salmanticenses hold with Bannez, etc., says that although, adhering to the first opinion, to exact something precisely for time is usury, nevertheless since it is morally impossible that by waiting for a long time the lender not suffer some

danger, damage, or inconvenience, or at least not be impeded from exercising some act of liberality or other decent operation, therefore he can receive and contract for something beyond the principal.

An obligation of waiting for some ordinary time is indeed intrinsic to every mutuum; nevertheless, to a mutuum in particular, with a pact of waiting for an extraordinary time, such an obligation is not intrinsic but wholly extrinsic. Therefore it does not proceed from liberality, but obliges from justice to wait for so much time. Hence, if the lender accepts something for such an obligation, he accepts it rightly, not by reason of the convenience of which he is deprived, but by reason of the burden imposed on him by pact, which burden is certainly estimable by price. L. 760.

This intrinsic and extrinsic obligation of not demanding back the principal for some certain time can be clarified from another title, namely from danger to the principal, which likewise can be intrinsic and extrinsic to a mutuum. Hence from it it is unlawful or lawful to receive some increase beyond the principal. Cf. Instr. S. C. de P. F., part II. The question can now be asked. E. M.

1094. **What are Mounts of piety, and are they usurious?** To the first: Mounts of piety are certain treasuries, whether public or private, which are instituted so that the needy may have recourse to them as to a mountain of refuge for receiving money in mutuum against pledge, lest they be compelled to receive it from usurers with greater damage to themselves; yet in such a way that they must leave a certain profit to the Mount of piety, and unless, for example, they redeem the pledge within a year, it falls into the dominion of the Mount itself.

To the second: Mounts of piety, duly instituted, are not usurious. This is clear from the authority of Leo X, who in the Lateran Council, Sess. 10, by the bull *Cum inter nonnullos*, approved such Mounts of piety as lawful and lacking the stain of usury. But the reason for the response is that the moderate profit which the borrower must leave to similar Mounts or public treasuries is not exacted under the title of mutuum, but for paying the salaries of officials and preserving such a treasury; and therefore such profit is not usurious.

Duly instituted. For first, the profit which is received must be moderate and proportioned to the expenses to be made for the ministers of that Mount, whose labor is truly estimable by price. Second, sufficient time must be conceded to borrowers so that they can redeem the pledges and are not compelled to abandon them. Third, an equivalent pledge should be exacted, or one not greatly exceeding the thing borrowed, since those pledges, unless they are redeemed, for example, within a year, fall under the dominion of the Mount; there would be disguised usury if those pledges were appraised at too low a price and then sold for a far greater price, with no refund made to the pledger. L. 765; A. S. S. vol. 4, p. 27 ff.; E. M.

1095. **What is the just interest of the lender?** In a mutuum, usury is one thing, and the just interest of the lender is another. For usury is when the lender immediately because of the giving of a mutuum exacts something beyond the principal. But the just interest of the lender is when he, from another just extrinsic title which accidentally occurs in the mutuum, exacts something beyond the principal in compensation for such title or cause estimable by price.

Therefore that increase which is exacted is not exacted by force of the contract of mutuum, but by force of another contract annexed to the mutuum. But a contract ought to intervene; otherwise,

although a just title of exacting something is present, nothing can be justly exacted. Thus expressly C. H. 1755, and it is clearly deduced from C. I. 1829, 1830; C. G. 1902, 1903; C. A. 984; L. 765, 773; E. M.

1096. **Is it lawful for a lender to exact what concerns his interest under the title of emerging damage or lost profit?** Response: affirmatively. For someone can be damaged in two ways, says the Angelic Doctor, 2-2, q. 62, a. 4: in one way, by taking away from him what he actually has, and this is called emerging damage; in another way, by impeding him from acquiring what he was on the way to having, and this is called lost profit. Now because of both emerging damage and lost profit it is lawful for the lender to exact from the borrower what concerns his interest by reason of the mutuum, if the due conditions are present.

The same Angelic Doctor gives the reason, 2-2, q. 78, a. 2 ad 1, teaching that this is not selling the use of money, but avoiding damage. And indeed equity does not permit someone to lose profit or suffer damage from the conferral of a benefit: no one, it is read in the law, ought to suffer loss from that from which he seems to have deserved reward. Add that this is expressly approved by Benedict XIV in the encyclical letter on usuries.

1096. **Emerging damage and lost profit, continued.** If the due conditions are present. The conditions are: first, that interest be brought into the pact from the beginning, but not immediately exacted, and that the borrower also be warned concerning the title of emerging damage and lost profit, or another title if any exists, for which the lender wishes to exact something beyond the principal. For after the contract the lender can no longer exact anything, even if he was forgetful of emerging damage and lost profit; for interpretative or conditional will does not suffice for a contract, but actual or virtual will is required, or at least a will once had and not retracted. He ought to have looked out for himself, says the Angelic Doctor, q. 3 *De Malo*, a. 4, concerning the lender in such a case, lest he incur detriment; nor ought one who receives a mutuum to incur damage from the foolishness of the lender. Yet even if emerging damage was not brought into the contract, if the borrower culpably delays payment beyond the stated term, he is held to make good to the lender whatever damage emerges from such delay; for according to R. 25 in 6: one's own delay is harmful to each person.

Second, that the lender exact no more than the damage which he suffers, or the profit which he hopes for from another lawful contract, according to the estimation of hope and danger, and with expenses deducted. For this is the whole reason for the exaction. Hence interest cannot be exacted for the whole quantity of profit which the lender could hope for; for since this profit can more often be impeded, it ought to be valued lower. Indeed, the lender would have had to concur toward it by his own labor, the absence of which is likewise estimable by some price. Hence the value of lost profit ought to be estimated according to the judgment of prudent men, which must be well observed.

Third, that the mutuum truly be the cause of the emerging damage or lost profit. Hence, if someone had no occasion of making some profit by trading, or even, when the occasion was given, would not wish to trade, he could not exact interest precisely under the title of lost profit, although he could under other titles. L. 768, 769; St. Thomas, 2-2, q. 62, a. 4; Gousset, 819; Collectan. S. C. de P. F. n. 2133; E. M.

1097. **Can a lender exact compensation for emerging damage if he himself spontaneously offers to lend?** Response: affirmatively, more probably. "The reason is that the lender then does not offer the mutuum absolutely, but under the condition that lost profit be compensated to him; and so the borrower, by accepting the mutuum, is the true cause of the cessation of profit, and truly impedes the lender from justly gaining from his own money." L. 769, 807; E. M.

1098. **Is it lawful for the lender to agree from the beginning about a certain profit to be received, if the emerging damage is only probably future?** It is common that something can still be exacted above the principal, with proportion nevertheless carefully had and preserved between the fear of damage or hope of profit and the increase which would be accepted in the hypothesis. The reason is that due equality is already preserved from the start; for just as, if the damage does not occur, the lender would profit, so on the contrary, if it occurs, the borrower would profit. Nor does it matter that the foreseen damage does not occur, for the pact concerning the increase is not made for the damage, but for its danger, which is actually supposed and is estimable by price. A fisherman who sells a cast of the net does not indeed sell the fish, which perhaps will not be caught at all, but he sells the probable hope of them, which actually exists and is estimable by price. L. 770; E. M.

1099. **Can you exact something by reason of lost profit because of a mutuum of money, if you keep other idle money?** Response: affirmatively, "if you had reserved that other money for the use of the family... because by reason of a mutuum you are not held to neglect your providence." Affirmatively also, probably, if without such inconvenience you can substitute other money for the money destined for trade. For once this is posited, that you resolved to destine this money alone for trade, you can lawfully seek lost profit, "because the lending truly is the cause that the hoped-for profit from that money ceases for you." L. 771, 772.

1100. **Is it lawful to exact something above the principal by reason of the danger of losing it?** Response: affirmatively. The reason is that the lender is not held to lend with danger of losing the principal, and such probable danger is estimable by price; therefore, if proportionate interest is exacted because of this danger, such a contract is repugnant neither to the virtue of liberality nor to justice. St. Thomas, 2-2, q. 78, a. 2; L. 765. Exceptions: first, if the borrower is poor, because then the precept of lending from charity urges; second, if the borrower secures the principal by pledge, because thus the danger ceases. E. M.; Collectan. S. C. de P. F. n. 2135.

1101. **What conditions must be observed in the aforesaid title?** For interest to be just from this title, two things must be attended to. First, the danger of losing the principal must not be precisely possible, but also probably future, either by reason of the borrower, who is not sufficiently known, or is of doubtful trustworthiness, or conducts a dangerous business; or by reason of the principal, which is to be carried elsewhere with danger to the lender. Second, the quantity of the interest itself ought to be proportioned to the quantity of the danger.

Each is clear from the response of the S. C. de Propaganda Fide, which in 1645, when asked by Missionaries from the Chinese Kingdom in a similar doubt, and having been convened by mandate of Innocent X, responded: "They judged that by reason of a mutuum immediately and precisely nothing is to be accepted beyond the principal; but if they accept something by reason of danger probably

emerging, as in the case, they are not to be disturbed, provided account is had of the quality of the danger and its probability, and proportion is preserved between the danger and that which is accepted." La-Croix n. 856; L. 765.

1102. **Is it lawful in a mutuum to agree about a penalty to be paid by the borrower if he does not return the principal at the defined time?** Response: affirmatively. The reason is that in this way provision is made for the firmness of the contract, and at the same time the borrower's negligence is guarded against. L. 766. Yet it must be observed that this pact is not lawful unless: first, the delay of the debtor is notable and culpable; notable, for some delay is intrinsic to a mutuum; culpable, for one who has not sinned is not to be punished. Second, the intention of profiting through that added penalty is absent; this is presumed to be present if the debtor is burdened with an obligation of restoring the principal at a time when it is certainly known that he is by no means able to pay. Third, the penalty is moderate and proportioned to the fault; otherwise it would be unjust. More probably it is owed before sentence, for it has the character of pact more than of penalty, although it is also a penalty, as Tournely, Lessius, etc., say. L. 766, 767, 775.

1103. **Does civil law furnish a just title for exacting something above the principal, even when any other title is excluded?** Response: affirmatively. And when written law is lacking, this is supplied by legitimate existing custom, which has the force of law.

Proof: first, since ordinarily in a mutuum an extrinsic title of just interest is not lacking by reason of danger to the principal, lost profit, or emerging damage, civil authority can well determine by law the increase which can justly be exacted in order to impede unjust extortions by wicked people, to render the contract of mutuum easier for all, and also to impede lawsuits and controversies, not without grave damage to the parties.

Second, public authority can, by reason of the common good, transfer dominion of private persons, as is seen in the law of prescription. Therefore the same authority can transfer dominion of an increase above the principal, which in this case is given freely and willingly by all by reason of the public and private good, which, as has been discovered by experience itself, the facility of mutuum greatly favors.

Third, the same is evinced from Responses of the Sacred Congregations: namely, that those are not to be disturbed who accept profit conceded by law, even without any other title. Collect. cited n. 2141; E. M.

1104. **What kind of interest has been constituted by positive laws?** From C. I. 1831, C. G. 1907, and the Law of 3 Sept. 1807, interest is one kind legal, another conventional. Legal interest is five percent in civil matter, six percent in commercial matter. Conventional interest cannot exceed, from the cited French Law, the aforesaid quantity; from C. I., it depends on the judgment of the contracting parties, but if it exceeds legal interest it must be established by written act, otherwise no interest is owed. Yet after five years from the contract the debtor can always restore the sums accepted with interest to be paid, exceeding the legal interest, notwithstanding any contrary pact, provided nevertheless that warning has been given in writing six months before. C. I. 1832; cf. 1833.

From C. H. 1108, 1109, in civil matter, interest is likewise one kind legal, another conventional. Legal interest is six percent. In commercial matter one must stand by the Commercial Code. In it commercial contracts are treated in arts. 50-63.

From C. A. 994, 995, interest is one kind legal, another conventional. The first is four percent, and among merchants six percent. The second cannot exceed five percent in a mutuum with pledge, and six percent in a mutuum without pledge. But by the law of 14 June 1868, the predefined limits in mutuum for conventional interest of this kind were abrogated.

1105. **From positive laws, is interest also constituted from interest?** From C. I. 1232, 1233 and C. G. 1154, 1155, interest from interest is owed after a year, if the creditor juridically seeks it, or by a special agreement, after nevertheless the prior interest has already been owed. But it can also be exacted from the beginning from revenues of estates, perpetual and life revenues. Gousset, commentary on the Code, on art. 1154. From C. H. 1109, legal interest from interest is likewise owed after this is owed and that is juridically sought. From C. A. 998, only interest owed from two or more years can, by agreement, constitute a new capital.

1106. **Is legal interest sometimes to be paid even without agreement?** The civil law itself, apart from every agreement, establishes that legal interest must be paid, sometimes by reason of delay, C. I. 1231; C. G. 1146, sometimes by reason of natural equity.

By reason of delay: for example, of a debtor who does not restore at its time money credited to him; of a tutor who did not place out the ward's money, C. I. 291; of an agent or depositary who used another's sum, C. H. 1724, 1770, etc. This interest is like a penalty, and therefore is not owed before the judge's sentence; after that sentence it is owed even in the forum of conscience, even if the delay carries with it only civil fault.

By reason of natural equity: for example, if a dowry was constituted in numbered money; if a buyer of a house or estate does not pay the price on the stated day, etc. C. I. 1397; C. G. 1548. This interest does not need the sentence of a judge in order to be owed. Cf. C. A. 1336; C. I. 1094.

The cases in which from C. I. legal interest is owed by the law itself are: first, the residual sum owed by a tutor after accounts have been rendered, C. I. 308; second, the dowry owed from the day of marriage by those promising, C. I. 1397; third, the dowry to be restored from the day of dissolved marriage, C. I. 1415; fourth, the sum owed by a partner of a partnership, C. I. 1710; fifth, the sum which a surety paid, C. I. 1915; C. H. 1838; sixth, advances made by an agent, C. I. 1755; seventh, a legacy from the death of the testator, if it is a legacy of an estate, capital, or fruitful thing, C. I. 865; eighth, whenever the thing sold produces fruits while the price has not yet been paid, C. I. 1509; ninth, whenever a manager of another's affairs made expenses for the utility of another, C. I. 1144; tenth, whenever someone in bad faith received what was not owed, C. I. 1147.

1107. **Can a borrower who pays undue interest recover it from positive laws?** Although in law recovery of what is not owed is generally given, C. I. 1237; C. G. 1235; C. H. 1895, here nevertheless it is not given, C. I. 1830; C. G. 1906; C. H. 1756. Therefore a borrower who pays interest which was not agreed upon, or beyond what was agreed upon, cannot recover it, nor impute it to the principal.

1108. **To whom is it lawful to receive six percent by reason of commerce according to civil laws?** It is certainly lawful for merchants lending money to other merchants, because the matter is altogether about commerce.

It is also lawful for merchants with respect to others who are not merchants, because the law intends to favor commerce; and it favors it by permitting merchants to receive a greater return from lent money.

If there is question of others who are not merchants with respect to merchants, there is controversy. More commonly they deny that it is lawful, and they bring forward that this is the decision of tribunals. The reason is that the law which intends to favor merchants would be harmful rather to them if they had to pay greater interest. Yet many, even among jurists, affirm it. Their reason is: first, because the words of the law are general: in commercial matter; nor is it established what the genuine sense of those words is. Second, because it is expedient for commerce that the law be understood in this way; for thus merchants find money much more easily, with greater utility both to themselves and to commerce.

1109. **Is it lawful to exceed the legal rate in a mutuum by reason of emerging damage or lost profit?** Response: negatively, with respect to the poor or others who seek a mutuum in necessity and who would be oppressed by a greater increase. Yet you do not seem to be held, with great inconvenience to yourself, to concede a mutuum to them. Charity does not oblige with grave inconvenience.

If money is handed over for another's utility, but not for another's necessity, there is controversy, and a twofold opinion is given. The first opinion affirms, by reason of indemnity or just compensation. The second opinion denies. The reason is that compensations for damages arising from a pecuniary obligation can be exacted according to the legal rate. This opinion indeed can have place if the lender compels or obliges another to accept a mutuum from him; otherwise the reason does not appear why the lender ought to undergo detriment from emerging damage for another's sake.

1110. **Is it lawful to receive a legal increase where it exceeds five or six percent?** Response: affirmatively, if the law, with all circumstances weighed, and especially the practice and custom of the timorous, seems just, that is, if equality appears between the profit permitted by law and the value of the use of money or the dangers to the principal, etc. For no absolute rate can be constituted, but attention must be paid to the various circumstances of places, and also to scarcity of money, from which its price and therefore its use increases, as in Africa, India, etc.

1111. **What must be said about institutions commonly called Savings Banks?** Institutions of this kind are not only to be tolerated, but also to be praised, since they assist widows, servants, maidservants, and the poor, when their modest money is accepted in mutuum and proportionate interest is paid back to them.

XI. On Mandate And Quasi-Contract

1112. **What is mandate, and what is its nature?** Mandate, insofar as it is a contract, can be defined: a contract by which one of the contracting parties commits to another the management of

some business to be carried out in his name. Inst. l. 3, t. 27 *de Mandato* § 1 ff.; C. I. 1737; C. G. 1984; C. H. 1709; C. A. 1004.

From Roman Law mandate is a contract gratuitous of itself. L. 1 § 4 Dig. *Mandati*; Inst. cited place § 13. From C. I. 1739, C. G. 1986, C. H. 1711, mandate is gratuitous unless otherwise agreed.

Mandate can be express and tacit; acceptance likewise can be express and tacit. A mandate is tacit if someone sees something being done for his benefit and does not prohibit it. Acceptance is tacit if the mandatary executes the matter. L. 6 § 2 Dig. *Mandati*; C. I. 1738; C. G. 1985; C. H. 1710.

If the mandate is against good morals, it is null. Hence there is no civil action of the mandatary against the mandator. Inst. cited place § 7. Yet if the mandatary truly suffered damage by fault of the mandator, a natural action against the mandator is not denied to him. L. 825, par. *Quid*.

1113. **Who can be mandator and mandatary?** For mandate to be contracted, it is required that the mandator be of himself capable of doing those things which he mandates another to do, and that the mandatary be capable by natural law of contracting obligation, although he is incapable by positive law. The reason is that the mandatary acts not in his own name, but in the name of the mandator. But in conducting business, from C. I. 1743, C. G. 1990, C. H. 1716, an emancipated minor can undertake the office of mandatary, but the mandator has no action against him except according to the general prescriptions of obligations and contracts of minors. A wife cannot undertake a mandate without the authority of her husband.

1114. **What are the obligations of the mandatary?** It is free to anyone not to undertake a mandate; but once undertaken, it must be completed, or renounced as soon as possible. Inst. cited place § 11. But in conducting the business the mandatary ought not to exceed the limits of the mandate; otherwise he no longer acts in the name of the mandator, but in his own. Inst. cited place § 8; C. I. 1742, 1751; C. G. 1989, 1997; C. H. 1714, 1715, 1718.

The mandatary is held to apply due diligence in conducting the matter, and to render an account of his execution, and also to restore to the mandator the whole of that which he received by force of the mandate, although that was not owed to the mandator. C. I. 1747; C. G. 1993; C. H. 1719, 1720. And thus, if he received a mandate to give money in mutuum without legal interest, and he gave it with this interest, he will restore this also to the mandator.

Besides, he owes interest for money which he applied to his own use from the day of such use. Likewise he owes interest for money of which he is debtor, from the day on which he is constituted in delay. C. I. 1750; C. G. 1996; C. H. 1724.

The mandatary is held only for gross fault if the mandate is gratuitous, Laymann, l. 3, tr. 4, c. 26, n. 1; but if it is not gratuitous, the matter will be as in lease of labor. Inst. cited place § 13. From C. I. 1745, 1746; C. G. 1991, 1992; C. H. 1726, the mandatary is held for damages arising from a mandate not fulfilled. Besides, he is held not only for deceit, but also for fault committed in execution of the mandate. As regards fault, he is held with less rigor when the mandate is gratuitous than when he received a stipend for it.

1115. **What are the obligations of the mandator?** The mandator is held to ratify what was done in his name within the limits of the mandate, and to execute obligations contracted by the

mandatary. C. I. 1752; C. G. 1998; C. H. 1727.

He must keep the mandatary unharmed, and therefore must compensate the expenses made, although the matter turned out badly and he himself would have spent less. Likewise he must furnish interest on the sums which the mandatary spent, from the day on which he spent them. He must also compensate damages which happened to the mandatary by reason and on occasion of the mandate, which otherwise he would not have suffered. Is the mandator also held for fortuitous damage to the mandatary? If the mandate was for an agreed price, he is not held; if gratuitous, there is controversy. C. I. 1753 ff.; C. G. 1999 ff.; C. H. 1728-1730.

1116. **When does mandate cease?** When the matter is still whole, mandate ceases by revocation of the mandator, renunciation of the mandatary, death of either party, interdiction, or cession of goods. Inst. cited place §§ 9, 10, 11; C. I. 1757; C. G. 2003; C. H. 1732; and according to C. I. cited place, from declared incapacity, whether of the mandatary or of the mandator, only as regards those things which they cannot undertake in their own name without a curator.

Exceptions: if the mandate was to hand over a dowry to a girl, and the mandator dies, it must be handed over even after his death, and this in favor of the dowry; if the mandate is for pious causes, which do not depend on civil power, Laymann, l. 3, tr. 4, c. 26, n. 6; if the mandate concerns some matter which is to be effected only after the death of the mandator.

If the matter has already been begun, and it is in the interest of the mandatary or the mandator that it be completed, the mandator cannot revoke the mandate, nor can the mandatary renounce the mandate, unless compensation is made for that which is in the interest of the mandator or the mandatary. Hence the right and obligation of the other passes to the heirs. C. I. 1758, 1761, 1763; C. G. 2004, 2007, 2010; C. H. 1718, 1736, 1737.

If the mandatary, ignorant of the death of the mandator or of another cause of cessation of the mandate, executed the mandate in good faith, the act is approved, and an action is given to him against the heirs of the mandator. Inst. cited place § 10; C. I. 1762; C. G. 2008, 2009; C. A. 1026; C. H. 1738. But if the mandatary dies, his heirs ought to warn the mandator, and in the meantime, as circumstances require, they ought to provide for the utility of the mandator. C. I. 1763; C. G. 2010; C. H. 1739.

1117. **What is ratification?** Ratification is compared to mandate in law, by which the act of another, done in his own name, is held ratified. In his own name; otherwise there can be approval of the work, not ratification. R. 9, 10 *de R. I.* in 6; Lugo, H. 3, n. 146; D. 19, n. 34.

1118. **What is management of affairs?** Management of affairs is a quasi-contract by which someone usefully undertakes to conduct the affairs of one absent and ignorant. Inst. l. 3, t. 28 *de Obligat. quae quasi ex contr. nascuntur* § 1.

Quasi-contract: for although quasi-contract is often confused with an implicit or virtual contract, cf. 932, nevertheless it is distinguished from this. For by quasi-contract is understood a merely honorable act from which, apart from agreement, even implicit or virtual, obligation arises. In Roman Law many quasi-contracts are listed: management of affairs, administration of a common thing or common inheritance, entry of inheritance, tutelage, and payment of what is not owed. Inst. cited

place. More recent laws list only two quasi-contracts: management of affairs and payment of what is not owed. For administration of a common thing or common inheritance, and undertaking of tutelage, can easily be reduced to management of affairs. But entry of inheritance makes one and the same person of the heir and the testator. C. H. 1887; C. I. 1140; C. G. 1371.

Of one absent and ignorant: otherwise, if the owner is present and knows the matter, although he is silent, it is not management of affairs but mandate.

Usefully undertakes to conduct affairs for him: for not for the sake of his own profit, but for the utility of the owner, in his name, he undertakes to conduct that person's business. Hence if someone redeems another's thing from a thief for the owner, he recovers the price of the same thing from the owner, if indeed he redeemed it for the owner, not if he bought it for himself.

1119. **What are the obligations and rights of the manager and of the owner of the matter managed?** From Roman Law: first, if the goods of another were abandoned and someone spontaneously undertakes to administer them, he furnishes against deceit and gross fault, which is equated with deceit. L. *Ait Praetor* § 9 Dig. this title. Besides, the manager is held not only for deceit, but also for fault, even slight, indeed very slight, in the hypothesis that there was another who would have administered the business more diligently. Inst. cited place.

1120. **Management of affairs, continued.** Second, an action belongs to the manager of affairs against the owner, namely so that whatever he expended from his own be furnished to him, and so that he be compensated for damages if he conducted the business prudently, even without a happy outcome. L. *Sed an* § Dig. *de Neg. gest.*; Inst. cited place. Likewise an action is conceded to the owner against the manager, so that he render an account of what was done and of neglected utility. Inst. cited place.

From C. I. 1143, C. G. 1374, C. H. 1889-1891, one who spontaneously manages the affairs of another is held: first, in his administration, to exercise care as a good father of a family. Yet the judge can moderate damages which arose from fault or negligence of the administrator, with all circumstances of the matter attended to.

Second, one who spontaneously undertakes to manage another's business ought to pursue the management and bring it to an end until the one whose interest is concerned can provide for the business by himself; and if the one whose interest is concerned dies, he must pursue the management until the heir can take over its administration. C. I. 1141; C. G. 1372, 1373; C. H. 1888.

Third, the manager ought to undergo those things which follow from the business itself, and to be subject to those obligations which would exist if he had undertaken the matter to be managed by mandate. But the owner, if the business was rightly managed, ought to satisfy the obligations which the manager contracted in his name, to keep the manager immune from those which he personally contracted, and to compensate all expenses made, both necessary and useful, together with their fruits, to be computed from the day on which they were made. C. I. 1141, 1144; C. G. 1372, 1375; C. H. 1893 ff.

1120. **What are the obligations and rights from tutelage?** "Tutors also, who are held by the action of tutelage, are not understood to be obliged properly from contract. For no business is

contracted between tutor and ward. But because they are certainly not held from malefaction, they seem to be held as though from contract. In this case, however, the actions are mutual. For not only does the ward have the action of tutelage against the tutor; but the tutor also has the contrary action of tutelage against the ward, if he either spent something on the ward's matter, or was obliged for him, or bound his own thing to the ward's creditors." Inst. cited place § 2. The action of tutelage, namely so that he render an account of his administration, both of what was managed and what was not managed. L. 917.

1121. **What are the obligations and rights from community of a thing?** "Likewise if a thing is common among some persons without partnership, for instance because it had been bequeathed or donated to them equally, and one of them is therefore held to the other by the action for dividing a common thing, because he alone received fruits from that thing, or because his associate alone made necessary expenses upon that thing: he is not understood to be obliged properly from contract, since they contracted nothing among themselves; but because he is not held from malefaction, he seems to be held as though from contract." Inst. cited place § 3.

1122. **What are the obligations and rights from community of inheritance?** "The same law applies to him who is obliged to a coheir by the action for dividing the family inheritance from these causes." Inst. cited place § 4.

1123. **What are the obligations and rights from entry of inheritance?** "An heir also, in the name of legacies, is not understood to be obliged properly from contract. For neither with the heir nor with the deceased can the legatee properly be said to have conducted any business; and nevertheless, because he is not obliged from malefaction, he is understood to owe as though from contract." Inst. cited place § 5. By the very fact of entering an inheritance which contains legacies, the heir is held toward the legatees, and the legatees in turn are obliged toward the heir, so that they accept the legacy from no one other than the heir.

1124. **What are the obligations and rights from payment of what is not owed?** "Likewise he to whom someone by error pays what is not owed seems to owe as though from contract. For he is so far not understood to be obliged properly from contract that, if we follow the more certain reasoning, he can be said to be obliged more from a dissolution than from a contract. For one who gives money with the mind of paying seems to give it in order to dissolve a business rather than to contract one. Yet he who accepted it is obliged just as if it were given to him in mutuum, and therefore he is held by condiction." Inst. cited place § 6.

From C. I. 1145-1150, C. G. 1376-1381, C. H. 1895 ff., one who either by error or knowingly receives that which is not owed to him is held to restore it to the one from whom he received it unduly.

One who, when by error he thought himself a debtor, paid, has the right of recovery only against the one to whom he paid. Yet this right ceases if the creditor because of this payment deprived himself in good faith of the title of credit and of securities pertaining to it; in that case, recourse against the true debtor remains free to the one who paid.

One who received payment in bad faith must restore both the capital and the fruits running from the day of payment.

One who unduly received some thing must restore it in the individual if it still exists. But if it does not exist or has suffered detriment, the one who accepted in bad faith must return its value, even if the thing perished fortuitously or was made worse; but the one who accepted in good faith is not held to restore except what was turned to his own benefit.

One who sold a thing accepted in good faith is held only to restitution of the price, or to ceding the action for its recovery.

The one to whom the thing is restored ought to compensate the possessor, even one in bad faith, for expenses necessary for preserving the thing, and also for useful expenses. Gousset, 921.

1125. **Note.** The obligation of restoring from payment of what is not owed arises both from quasi-contract and from another's thing accepted. Cf. the exception of law in mutuum, n. 1107.

XII. On Sale And Purchase

1126. **What is the nature of sale and purchase?** Purchase is a pact of price for merchandise; but sale is a pact of merchandise for price. Purchase and sale therefore are two correlatives, and in reality one contract, constituted by the consent of each contracting party, namely of giving merchandise for a determined price, and price for determined merchandise. Now under the name of merchandise are understood all things, both immovable and movable, which among human beings are customarily sold. But under the name of price is understood coin or money; for when another salable thing is given for one salable thing, it is not purchase and sale, but rather exchange. Therefore money is as it were the instrument, measure, and price, instituted by public authority, of all things which come into exchange. Inst. l. 3, t. 24, § 1; L. *Pacta conventa* Dig. *de Contrahenda emptione*, etc.; C. H. 1445, 1446; L. 793; St. Thomas, 2-2, q. 77, a. 1.

1127. **To whom do dominion, danger, and advantage of the thing belong from Roman Law?** This contract is perfected before delivery of the thing or price. Inst. l. 3, t. 24, beginning; L. *Sicut* Dig. *de Rer. permutat*. § 2. Yet determination of the price is required for it; if this is remitted to the buyer himself, the contract is null. L. *Quod saepe* ff. *de contrahenda emptione*. It is otherwise if it is remitted to a third party. Final L. C. same title. And just as the price, so also the thing ought to be determined, at least in hope. L. 794. Although this contract is perfected by consent alone, so that of itself no writing is required, nevertheless it can be agreed that it not be valid unless the writing has been completed. Inst. l. 3, tt. 23, 24; L. 795.

A right to the thing is produced for seller and buyer, but not a right in the thing unless delivery has been made, by which dominion is transferred. Inst. cited place § 3. Indeed, even if the thing has already been delivered to the buyer, it still remains under the dominion of the seller until either the price has been paid, or satisfaction has been made to the seller in another way, for example by pledge, or the seller has trusted the buyer concerning the price. Inst. l. 2, t. 1, § 41; L. 795, 796.

It is special in this contract that although the contract is perfected, nevertheless before delivery of the thing the seller is owner of the thing, and the danger of the thing nevertheless, as also its advantage and fruits, belongs to the buyer, unless, as regards danger, it perishes by fault of the seller, and unless the thing sold is determined only as to genus, such as so many bushels of wheat; or, although it is determined in species, it is nevertheless a thing which still must be measured, counted, or tasted,

because then the sale is not yet judged perfected. Inst. l. 3, t. 24, § 3; L. *Quod si neque* Dig. *de Periculo et commodo rei venditae*; L. *Quod saepe* Dig. *de Contrahenda emptione*; L. *Illud* Dig. *de Peric. et comm. rei vend.*; Laymann, *de Empt. et Vendit.*, n. 18; L. 797, 798, 828.

The buyer transfers the price or dominion of the money to the seller, but the seller transfers vacant possession of the thing to the buyer. If the seller was truly owner of the thing, dominion of the thing is transferred to the buyer. If, on the contrary, the seller was not owner of the thing, then he is held to furnish eviction to the buyer. L. *Ex empto* § 2 Dig. *de Actionibus empti et venditi*; L. *Servus* § 1 ib. Namely, if the owner of the thing proves by eviction that the thing is his, then the seller of this thing is held to return the price to the buyer, and as much as it was in his interest that the thing not be evicted. L. *Si quaestio* C. *de Evictionibus*; L. *Evicta re* Dig. *de Evictionibus*, etc.

Therefore, even if another's or a stolen thing is sold to an ignorant buyer, the contract holds, dominion of the price is transferred to the seller, and the buyer acquires a right to eviction, by which the seller is obliged to the buyer. L. *Rem alienam* Dig. *de Contrahenda emptione*, etc.; L. *Ex empto* Dig. *de Action. empti et venditi*; L. *Si in emptione* Dig. *de Contrahenda empt.*, etc.; L. *Qui vas* Dig. *de Fur.* § ult. But a thing bought with another's money belongs to the buyer, if he buys in his own name. L. *Si eo* C. *de Rei vindicatione*. Exception: if the money belongs to a Church, a minor, or a soldier, because then the thing is acquired for them. L. 799, 800.

1128. **To whom do dominion, danger, and advantage of the thing belong from more recent law?** From C. I. 1125, 1448, 1450, 1452; C. G. 1138, 1583, 1585, 1587, once agreement has been made concerning the thing and price, the contract is perfected, even if the thing has not yet been delivered nor the price paid, and dominion of the thing, before delivery, is with the buyer.

But if there is question of things which are sold by weight, number, or measure, or which are customarily tasted beforehand, the contract is not judged perfected before the thing has been defined or tasted according to weight, number, or measure.

Hence from the same C. I. 1470 and C. G. 1614, from the day of sale, all fruits of the thing belong to the buyer; and C. I. 1480, 1125 and C. G. 1624, 1138 say that danger of a thing not yet delivered belongs to the buyer. "Just as danger of the thing belongs to the buyer, so its fruits are owed to him; and civil laws opposed on this point have been rejected by Canon Law, as favorable to usurious profit, as the Salmanticenses say." L., H. A., tr. 10, n. 169; L. 798.

1128. **More recent law, continued.** From C. I. 1454, C. G. 1591, 1592, C. H. 1447, 1449, the price must be determined by the contracting parties. It can be committed to the judgment of a third party. But if he cannot or does not wish to define the price, the contract is null.

The sale of another's thing is null, C. I. 1459; C. G. 1599. This nullity cannot be opposed by the seller, C. I. ib. But commercial sale of another's thing is valid. It obliges the seller to acquire it and to hand it over to the buyer under penalty of repairing damage. C. I. Comm. 95.

From C. I. 1314, under penalty of nullity, agreements which transfer property of immovables, or of other goods, or of rights capable of hypothec, must be made by public instrument or private writing. From C. G. 1341, 1583, any sale is perfected by the consent alone of the parties without any legal

formality. When the sale exceeds the sum of 150 francs, in order that it can be proved in the external forum, an authentic or private writing is required.

From C. H. 1450, 1452, 1453, 1468: first, sale is perfected by the agreement itself before delivery of the thing.

Second, damage to the thing is imputed to the seller if he is constituted in delay in handing it over, and if sale of a fungible thing is made in a body, commonly in mass, which happens when merchandise is sold for one and a certain price without account of weight, number, and measure; or if account is indeed had of weight, number, and measure, but only to the effect of determining the price. But if fungible things are sold at a fixed price relative to weight, number, and measure, damage is not imputed to the buyer if the thing was not first weighed, counted, and measured, and unless he is constituted in delay. If things are sold which before being bought are customarily sampled, such as wine, oil, etc., or were bought under this condition, the sale is presumed to have been made under a suspensive condition.

Third, the fruits of the thing sold pertain to the buyer from the day of the perfected contract.

From C. A. 1053, 1054, 1056, 1063, 1064, 1066, 1080, 1081, 1083, 1084:

First, the seller preserves property of the thing before its delivery. The price must consist in numbered money, and cannot be indeterminate or contrary to the laws. Yet it can be remitted to the decision of a third person.

Second, once the thing has been delivered, even with the price not yet paid, its dominion passes to the buyer. The danger and advantage of the thing belongs to its possessor, as also in exchange, with which sale has common laws where special ones are lacking.

Third, in the purchase and sale of a thing for testing, the thing bought does not pass into the property of the buyer unless the price has been paid; and while testing of the thing lasts, the buyer is as a borrower for use, and before the time of testing has elapsed he can withdraw from the purchase. In purchase and sale of a thing under reservation, unless another buyer offers a greater price within the determined time, if the thing was not delivered, the efficacy of the contract is deferred until verification of the condition. But if it was delivered, the contract is perfected, but when the condition is verified, it is resolved.

1129. **What force do earnest-money payments add to sale? What force does a promise of sale have?** From Roman Law: if earnest-money payments are appended only to a promise of sale, they do not confirm the contract, but each of the contracting parties can withdraw. But in this case, if the one who handed over the earnest-money to the other withdraws, he simply loses it; on the contrary, if the one who accepted it withdraws, he must restore double, that is, the earnest-money accepted and besides a value equal to it.

If they are appended to the sale itself, they do not make it conditional, but are an argument that sale has been contracted; for they are computed as part of the price, or are given as security for payment. Hence neither contracting party can withdraw against the other's will.

In doubt whether they were added to the promise of contract or to the contract itself, one must stand for the minimum; that is, they are judged to have been added only to the promise of sale. Inst. l. 3, t.

24; L. 35 Dig. *de Contrahenda emptione*; L. *Contractus* C. *de Fide instrumentorum*.

From C. G. 1589, 1590, a promise of selling is equivalent to sale whenever reciprocal consent of each party is present concerning the thing and price. But if earnest-money payments are joined to the promise, either contracting party can withdraw from the contract, so that they are lost by him who gave them, while he who accepted them returns them doubled. Hence it is clear that a promise of sale is not altogether to be confused, even from C. G., with sale itself, since from the same Code dominion of the thing is transferred by sale, but by no means by promise of sale. Therefore promise of sale is equivalent to sale, not insofar as it transfers dominion, but insofar as the seller can be compelled, once the price has been accepted, or conversely the buyer, once the thing has been accepted, to fulfill it. Gousset, 833.

From C. H. 1451, 1454, a promise of sale and purchase gives the contracting parties the right of reclaiming fulfillment of the contract. If earnest-money payments were given and accepted in the contract of sale and purchase, the contract can be rescinded if the buyer is content to lose them, or the seller to restore them doubled. As regards C. I., cf. 993. Lugo, D. 26, n. 10; L. 794.

1130. **Does purchase of a thing previously sold to another hold?** From Roman Law: a thing sold to one person and not yet delivered to him is in the dominion of the seller, who therefore can validly sell and hand it over to another. Once delivery has followed, it becomes the property of the second buyer.

The same must be said if, although the thing has been handed over to the buyer, the price nevertheless has not yet been paid by him or has not yet been had as paid. For then dominion of the thing has not yet been acquired by the buyer.

But although the second purchase is valid once delivery has followed, nevertheless it is not lawful. Hence if the thing has been sold to two persons and not yet delivered, it must be delivered to the first buyer. But if it has already been delivered to the second buyer, who has already paid the price, he acquires dominion of the thing; but the first buyer has a personal right and action against the seller as regards interest and damages. L. *Qui tibi* C. *de Heredit. vel actione vendita*; L. *Si ancillam* C. *de Action. empti et vend.* But if the thing has already been delivered to the second buyer, but the price has not yet been paid or had as paid, the thing must be delivered to the first buyer, since it is still in the dominion of the seller.

Although the thing has been delivered to the later buyer and he paid the price, if the second buyer was aware of the prior sale, he can be condemned, at least by natural law, to hand over the thing to the first buyer. But since the contract is valid, he is not held to restore it before the judge's sentence, but is held only to repair damage. Yet if the thing had been hypothecated to the first buyer as security of the contract, since he already has some right in the thing, the thing must be restored to him. L. *Si creditor* § ult. Dig. *de Distract. pignorum*. Likewise, if the later buyer received the thing by lucrative title, for example by donation, the first buyer will be able to evict the thing from him. L. *Ignoti* C. *de Revocandis his quae in fraudem creditorum alienata sunt*. And this has place even if the second buyer was unaware of the fraud.

If the first buyer is a Church, or pious place, or City, although the thing is then delivered to another and the price is paid by him, the thing must be restored to the first buyer; because the Church, pious

place, or City has already acquired dominion even without delivery. L. 827; Lugo, D. 20, nn. 112, 116; Molina, D. 369, n. 9; Lessius, l. 2, c. 21, n. 142.

From C. G. 1138, 1583, 1599, after perfected consent of each party the thing sold passes into the property of the buyer before delivery itself. But sale of another's thing is null. Hence it follows that the first buyer always has the right to evict the thing from the second. Yet from the same C. G. 1141, if the thing which someone obliged himself to give or hand over to two successive persons is movable, that person who possesses is preferred and obtains dominion, although his title is later in time, provided nevertheless that he possesses in good faith. The same is had from C. I. 1448, 1459, 1126, whether it is a movable thing or a title to bearer. From C. H. 1473, whether the thing is movable or immovable, the first possessor in good faith is preferred.

1131. **What are the obligations of seller and buyer?** The seller is held to hand over immediately, unless something else has been agreed, the thing and its accessories, free from another's possession and from other unusual burdens, and to furnish eviction for the thing handed over. The buyer also, unless something else has been constituted by pact, must hand over the price immediately.

Likewise, unless something else has been established by agreement, both the thing and the price are to be handed over in the place where the contract is made, and in the mode concerning which agreement was made in the contract. The expenses of delivery are owed by the seller. C. I. 1467, 1468, 1482, 1507, 1508; C. G. 1608, 1609, 1626, 1650, 1651; C. H. 1461, 1465, 1474, 1500.

The contract of sale and purchase consists in equality. If equality between price and merchandise is not preserved, injustice is committed, and in the forum of conscience there is an obligation of restitution or reparation of damage, grave or light according to the measure of the damage itself. St. Thomas, 2-2, q. 77, a. 1; C. H. 1466-1468; Rogron on a. 1604.

Besides, the buyer is held to pay interest for the unpaid price from the day on which he possesses the thing, if the thing is fruit-bearing, although accidentally it gave no fruits from the time of sale, unless the seller gave a delay for paying; because it is not equitable that the buyer have both the thing and the price at the same time. But if the thing is not fruitful, he is not held to pay interest unless he was in culpable delay and nothing else was agreed. C. I. 1509; C. G. 1652; G. 885; C. H. 1501.

Moreover, the buyer is held to pay expenses made for carrying away the thing sold, for writings or authentic acts, likewise for costs necessary for preservation of the thing from the day of sale, unless it was pacted in another way. C. I. 1455, 1467; C. G. 1593; cf. C. H. 1455, 1465.

1132. **When is sale resolved by reason of the price?** By Roman Law: in the external forum, lest lawsuits be too greatly multiplied, action against the author of damage is not conceded unless one buying dearer or selling cheaper was deceived beyond half the price. L. 2 *de Rescindenda venditione*. And this holds also by Canon Law. L. 805.

From more recent laws: if an agreement was expressly made that, when the price was not paid at its time, or the thing was not handed over or accepted, or any other condition added was not fulfilled, the thing would become unbought, the sale is resolved by the law itself. But if such a pact was not

expressed, but only a tacit one was present, it is resolved only by the office of a judge. C. I. 1511, 1165; C. G. 1654, 1656; cf. C. H. 1504.

Nevertheless the sale of movable things is resolved by the law itself if the buyer did not come on the defined day of delivery, or if the buyer makes delay in paying. For then it is in the seller's power, if the thing has not yet been delivered, immediately to withdraw from the purchase, unless a delay has been conceded, C. H. 1505. But if the thing has already been delivered, the seller will be able to claim or vindicate the thing, unless again a delay for paying has been conceded to the buyer, C. I. 1512, 1513; C. G. 1657. But he will be able to reclaim it within fifteen days to be counted from delivery, provided the thing is with the buyer and has neither been changed nor bound to an ignorant lessor. C. I. 1512, 1513; cf. C. A. 1062.

The seller injured beyond half of the just price, C. I. and C. A.; beyond seven-twelfths, C. G.; in the sale of an immovable thing, has the right of petitioning rescission of the contract, even if he expressly renounced this right in the contract and declared that he donated the excess. C. I. 1529; C. G. 1674. It is otherwise from C. A. Rescission of sale by reason of lesion belongs only to the seller and only in the sale of an immovable thing in the external forum; but it is in the buyer's power either to withdraw from the sale or to supply as much as the thing is worth more. This rescission is ended by two years. C. I. 1529, 1531, 1534, 1536; C. G. 1674, 1676, 1681, 1683; C. A. 934, 935, 1060. Yet in the forum of conscience an action of rescission by reason of lesion belongs of itself both to seller and to buyer, whether there is question of an immovable thing or of a movable, whether the thing was bought beyond the highest price or below the lowest. From C. A. 1060, the action likewise belongs to each, namely both to seller and to buyer, by reason of lesion. L. 805, 819; St. Thomas, 2-2, q. 77, a. 1 ad 1.

1133. **When is purchase resolved by reason of the thing?** If a defective thing has been handed over, the buyer can act by redhibitory or estimatory action. To redhibit is to cause the seller again to have what he had had. To estimate is to cause the excess of the price to be restored according to the valuation of the thing. C. I. 1501; C. G. 1644; C. H. 1486, 1491, 1492; L. 819; Rogron on a. 1625.

If the whole thing was not handed over because part of it perished, the buyer can either withdraw from the contract or diminish the price pro rata. C. I. 1461; C. G. 1601; C. H. 1460. But if after delivery the buyer suffered eviction of a part, it is lawful for him to withdraw from the purchase if it is such or so great that, knowing of it, he would not have bought. C. I. 1492; C. G. 1636; C. H. 1479.

If error in the measure of an immovable thing, with quantity brought into the contract, intervened, the seller indeed is not permitted to withdraw from the sale, but the buyer is permitted if the excess is found greater beyond a twentieth part, but not if it is less. If there is no withdrawal from the sale, and the excess or defect is as regards quantity, the price will have to be increased or diminished according to the measure of quantity. An action of this kind is ended by a year. C. I. 1473-1479; C. G. 1617-1623; cf. C. H. 1469-1472.

1133. **Purchase by reason of the thing, continued.** From C. A. 1059, 1060, when there is question of merchandise for which a rate has been established, the buyer can juridically seek

compensation for any smallest lesion. Outside this case, purchase and sale can be impugned both by buyer and by seller only under the title of lesion beyond half.

1134. **Is the seller held to manifest defects of the thing?** Defects are substantial, or only accidental; hidden, or manifest; besides, either the seller is questioned about them, or not. Hence:

The seller in every case is held to manifest all substantial defects of the thing, both in itself and relative to the known end of the buyer, or all those things which make the thing another thing, or render it harmful or notably useless. Otherwise he is held for the price and for damage. Thus from every law.

The seller, when questioned, is held to manifest all hidden defects, even if they do not render the thing harmful or useless; otherwise he would commit deceit. Therefore, if the deceit was the true cause of the purchase, the contract is rescindable. But if the deceit was only incidental, so that the buyer, if he had known the defect, would still have bought, but not for so much, the seller ought to restore only as much as the buyer would have bought it for less; because otherwise almost no sale could take place.

But if the seller was not questioned, and the hidden defect does not render the thing useless, he ought to diminish the price according to the measure of the defect. The reason is that otherwise the thing would be sold for more than it is worth.

The seller is not held of himself to show accidental defects of the thing that are of themselves manifest, provided he diminishes the price pro rata of the defect. The reason is that then no injury is done to the buyer, neither by reason of price, which is diminished, nor by reason of defect; for if the buyer did not see it, he ought to impute this to himself. Exception, however, unless the buyer is very inexperienced, because with respect to him the defect is judged hidden. Exception also if the seller is specially questioned about such a defect.

If the seller protests that he does not wish to give an account of any defect, even the most hidden, he is held to nothing, provided the thing is not sold beyond the just price, at least the highest, with consideration had of that hidden defect. L. 818, 819, 823, 824; St. Thomas, 2-2, q. 77, aa. 2, 3; C. I. 1498 ff.; C. H. 1484 ff.

1135. **Is the seller held for all damages following from a defect of the thing sold?** He is not held except for foreseen damages, because he could not take up an obligation as regards those things which he did not foresee even confusedly.

1136. **To what is the seller held if the thing perishes before or after delivery?** He is held to nothing if the thing perishes before delivery from a fortuitous event. The reason, from C. I. 1480, 1226, 1298, 1299, 1504; C. G. 1624, 1138, 1182, 1302, 1647, is that the thing perishes for its owner, that is, the buyer. Thus it must also be held from Roman Law, unless otherwise agreed, although the seller preserves dominion of the thing until it has been delivered. L. 828.

If the thing perishes before delivery by fault of the seller, he is held for the price and the costs of the contract, and also for what was in the buyer's interest, because he had to guard the thing as his own and is held for damage inflicted. C. I. 1140, 1219, 1224, 1504; C. G. 1137, 1138, 1182, 1302, 1647.

If the thing perishes after delivery from an intrinsic defect which existed at the time of delivery, he is likewise held to restore to the buyer the price accepted and to pay the expenses of the contract, if there are any, and likewise to compensate that which was in the buyer's interest. The reason is that he sold a useless thing, or one of no value; therefore there was in the buyer an error about the substance of the contract; therefore the contract is null from defect of consent and of the matter itself, which was estimable at no price. Besides, he himself was the cause of damage to the buyer. C. I. 1504; C. G. 1647; cf. C. H. 1460, 1094 ff., 1487, 1488, 1497; C. A. 1061.

1137. **When is the seller held for eviction of the thing?** He is held for eviction whenever the buyer is juridically removed from possession of the thing bought. To evict is to take something away by prevailing. Exception: unless something else was agreed in the contract. The reason is that the seller then cannot transfer dominion of the thing. C. I. 1481 ff.; C. G. 1626 ff.; C. H. 1474 ff.

He is also held to refund the price to the buyer when it is discovered that the thing sold certainly belongs to a third party, here and now reclaiming it. The reason is the same; for the seller could not transfer dominion of the thing, which he himself did not have. But he is not held to this in conscience before the judge's sentence, unless it is altogether certain to him that the thing truly belongs to that third party; nor is he held easily to give faith to others asserting that it is so, since presumption favors him and the sentence of a judge has not otherwise intervened.

1138. **Who can sell and buy?** All can sell and buy who can generally contract, and who are not specially prohibited in law. C. I. 1456; C. G. 1596; C. H. 1457.

Now from Roman Law, judges and their officials are specially prohibited from buying in the place where they exercise jurisdiction, apart from things necessary for food, clothing, and daily use. Likewise tutors, curators, and persons subject to them cannot buy the goods of those who are under their care or tutelage, under penalty of nullity. L. un. C. *de Contract. iud.*; L. *Praesides* Dig. *Si certum petatur*; L. *Non licet*; L. *Si in emptione* § ult. *de Contrah. empt.*

From more recent laws the following are prohibited: debtors from alienating their immovable goods which creditors have begun to proscribe, after the mandate of payment has been transcribed, namely insofar as it is in the interest of the creditors. C. I. 2085; C. G. 686. Those who have ceded to the forum; indeed alienations made from the day of cessation of payments, from the Italian Commercial Code 709, and in the ten days before cessation of payments, from the French Commercial Code 446, are null.

Those who administer the goods of a Community or any public Institute; those who in public office, ministry, or duty furnish authority for goods to be alienated, or are involved in it; tutors, protutors, curators; parents as regards buying goods of children who are subject to their power; procurators to whom someone committed alienating something in his name: all these, under penalty of nullity, are prohibited from buying the aforesaid goods, even at auction. C. I. 1457; C. G. 1596; C. H. 1459.

Those who act in the forum by reason of office, such as magistrates, scribes, advocates, procurators, indeed even notaries, are prohibited, likewise under penalty of nullity, from redeeming lawsuits and

litigious rights which pertain to the court, tribunal, or praetorship of which they are part, or in whose jurisdiction they exercise office. C. I. 1458; C. G. 1597; C. H. 1459.

Purchase and sale is forbidden between spouses, with a few cases excepted, from C. G. 1595; and from C. H. 1458, unless they were separated as regards goods.

1139. **What things can be sold?** Sacred things cannot be sold; cf. 508 ff. Things also of public right, such as public roads and the public forum, cannot be sold. Inst. l. 3, t. 24, § 4.

By the very law of nature, sale is prohibited of those things which by their nature can serve only for evil, for example defamatory pamphlets, lascivious pictures, etc. Yet sale of these things, although prohibited, is not thereby null; hence the seller is not held to restitution. Gousset, 836.

From Roman Law each person can sell all his own goods, both present and future, even together, even those which are had in hope, such as future fruits of a field. Things belonging to another can also be sold, for example by reason of pledge, hypothec, etc. But no one validly buys his own thing unless the seller has some right in it. L. *Suae rei*; L. *Si in emptione* § *rei suae* Dig. *de Contrah. empt*.

From more recent laws whatever is in commerce can be sold, provided a particular law has not prohibited alienation of some thing. C. G. 1598. The succession of a person still living cannot be sold, even with that person consenting. C. I. 1460; C. G. 1600.

Sale and purchase is also prohibited of the goods of minors, wives, absent persons, and interdicted persons, if the formalities prescribed by law are not observed. Gousset on a. 1598.

But from positive law itself, or even by any other title, incorporeal rights can be sold or transmitted, such as promissory notes, credits, servitude, usufruct, and right to an opened inheritance; their delivery occurs by handing over promissory notes or other authentic writings. C. G. 1689 ff.; C. I. 1538 ff.; E. M.

1140. **How many kinds of price are there?** Price is one kind legal and another common.

Legal price is that which is established by public authority of the prince or magistrate, so that it not be exceeded. Hence this price is said to consist in the indivisible, as excluding both increase and decrease while the law lasts.

Common or natural price is that which is imposed on things by the common judgment of intelligent people, with the diverse circumstances of things weighed. Hence common price does not consist in the indivisible, but admits a certain latitude.

Common price is subdivided into highest, middle, and lowest. Here it must be noted "that the price of cheap things has a lesser latitude than that of precious things. For wine or a similar thing which is worth five can be sold for six or four; or if it is worth ten, it can be sold for twelve or eight; or if it is worth a hundred, it can be sold for one hundred five and ninety-five." L. 804. But since price, especially common price, depends on several circumstances according to which it is usually judged, the aforesaid rule for defining highest, middle, and lowest price seems somewhat severe and scrupulous. C. A. 1058, 1059; Lugo, D. 26, nn. 38, 39; St. Thomas, 1-2, q. 96, a. 1 ad 3; 2-2, q. 77, a. 1 ad 1, a. 2 ad 2.

1141. **From what causes does the price of things usually increase or decrease?** Response to the first: the price of things is generally taken from their utility in order to human uses, and according as this utility is estimated in society or community.

But specifically, even just price is accustomed to increase from the following causes: from scarcity of merchandise or of some thing, for example wine, grain, etc.; for the rarer something is, the dearer it is, according to the common axiom.

From common abundance of money; for the more something is abundant, the less it is esteemed.

From the multitude of buyers; for the more buyers there are, the more merchandise is esteemed necessary and useful.

From greater labor and danger in procuring merchandise, or greater expenses; for all these are estimable by price.

From greater labor in selling merchandise, as, for example, if someone must sell something by retail and in small parts; for greater labor in weighing, measuring, etc., is estimable by price.

Price can increase also from the seller's own affection toward some thing; and this is called the price of affection. A fortiori it can increase because of the convenience which the seller receives from it, because, as affection is, so also convenience is truly estimable by price, since deprivation of the thing is then greater for him. But it can by no means increase, at least according to the common opinion, because of the special affection or utility of the buyer; otherwise what is not one's own would be sold. St. Thomas, 2-2, q. 77, a. 1.

Price can increase because of delay of payment, provided nevertheless that the legal rate for mutuum is not exceeded, or the measure of some title of emerging damage, lost profit, danger to the principal, frequency of buyers who are thereby increased, custom of the place, etc. The reason is clear from what was said above on just interest.

Likewise something can be sold more dearly if the price is to be handed over by the buyer at a time when the thing will be worth more.

Finally, a thing cannot be sold beyond the just price because the seller, from his ignorance or imprudence or even from fortuitous event, bought it at a greater price, or underwent greater costs than others commonly pay or undergo. The reason is that prices of things do not increase or decrease from what happens to one or another, but from what commonly happens. Nor, because some private merchant suffered theft or shipwreck, is the price of things usually increased in common estimation; just as the price of grain usually does not increase because one or another farmer lost the fruits of his fields by fatal hail. But it would have to be said otherwise if many merchants had lost their merchandise in a shipwreck, because merchandise made rarer would thereby increase in price. Ithur., Cas. 4, n. 11; Elbel, 587; L. 768, 801-811, 829.

1141. **Causes increasing or decreasing price, continued.** To the second: the price of things consequently usually decreases from opposite causes.

From abundance of merchandise; for the more something is abundant, as was said, the less it is esteemed.

From scarcity of money, for the rarer it is, the dearer it is.

From fewness of buyers; and therefore it is lawful to buy more cheaply in favor of a seller seeking a buyer, because unsolicited things grow cheap according to common estimation. Hence it is at least probably lawful also to buy more cheaply where merchandise is sold because of poverty; for the poverty of the seller does not cause the common estimation to be changed.

From the intrinsic cheapness of things, or from greater ease of procuring or preserving them.

From lesser labor of selling the things, as, for example, when a great quantity is bought together for numbered money.

Finally, something can also be bought more cheaply if the thing is to be handed over at a time when it will be worth less.

Hence the price of the same thing, because of diverse extrinsic circumstances, is accustomed to rise and fall within a brief time, as is clear from the daily practice even of sellers and buyers. Ithur., Cas. 4; L. 801-811; St. Thomas, 2-2, q. 77, aa. 1, 2.

1142. **What price must be observed in sale and purchase?** In sale and purchase, speaking of itself, the legitimate price must be observed; and in its defect, the just common price.

The first reason is that what is established by public authority from office and for the sake of equity must also be observed in conscience. But the legitimate or taxed price is such a thing. Hence if someone sells something to an ignorant buyer above the taxed price, he sins not only against legal justice, or obedience owed to the prince, but also against commutative justice, and is held in conscience before the judge's sentence to restore the excess. But those who sell below such a price, if the price was taxed by law in favor of sellers, sin against legal justice and charity, insofar namely as damage to other merchants follows from it.

The second reason is that, when authoritative taxation by the prince or magistrate is lacking, no better measure of the price of things is had than the common estimation of people. Now, since common price is threefold within the limits of justice, namely highest, middle, and lowest, it is lawful to sell and buy at any one of these.

Speaking of itself: for sometimes it is lawful to exceed the legal price, namely: first, if it is not observed by the greater part of people, with the prince knowing and silent, for then he tacitly approves; second, if things are notably changed, for then the rate becomes unjust; third, if the merchandise is notably more precious or worse than usual, for the law touches things of ordinary goodness. Ithur., Cas. 4, n. 9; Elbel, n. 500; L. 803; St. Thomas, 2-2, q. 77, a. 1, a. 2 ad 2.

If not only legal price is lacking, but also common price, because there is question of things not necessary for common living, such as gems, precious paintings, ancient things, ancient codices, etc., more probably they are to be estimated according to the judgment of experts in that matter, with circumstances attended to, and with the novelty, antiquity, rarity, etc., of the thing considered. The reason is that in things of this kind they are regarded as suitable judges, just as the common people are in common matters. "Yet I except from these," St. Alphonsus says, 808, "the use of an honorable woman, which, since it is priceless, she will be able without injustice to accept very much for it." Yet

the opposite opinion appears probable to others, because in that case that price seems just about which the contracting parties agree.

The probability of this latter opinion can be admitted by limiting it to the case in which there is not, on the one side, a thing which among experts truly has great value, and on the other side, an altogether cheap price; for then error is present in the very substance of the contract. Hence St. Alphonsus asserts that the buyer is held to supply the price if, for example, he buys for a few coins a precious gem which is considered glass. L. 819. Yet, as the same St. Alphonsus notes there, that price must be regarded as just about which each party agrees if, because of ignorance of the value of the lot, they commit themselves to danger. L. 735, 801-811; Ithur., Cas. 4, n. 10; Sporer, *de Matr.*, 583.

1143. **Resolutions.** Therefore an honorable woman can rightly exact even marriage with a very noble and very wealthy man, even a prince; and, unless another stronger reason obstructs, this is consequently owed by right. An honorable woman, and a fortiori a virgin; for a prostitute, since she is prepared to prostitute herself with all, does not herself esteem much, nor do others commonly esteem much, the loss of her chastity. Hence she cannot exact a greater price than what is commonly accustomed to be given. Lugo, D. 18, n. 47; D. 26, n. 49.

1144. **Is it lawful to buy below the lowest price precisely by reason of anticipated payment, before the merchandise is handed over?** Response: affirmatively, by reason of the various titles which are accustomed to come extrinsically to a mutuum, if they are truly present and due equality of price is preserved with respect to titles of this kind. For it is in reality a certain mutuum.

Affirmatively, by reason of the proper character of this mode of selling, since this mode of selling brings about scarcity of buyers, multitude of sellers, and furnishes great convenience to sellers on the part of the buyers themselves. Lessius, l. 2, c. 21, n. 62; L. 811.

1145. **Resolutions.** Hence it is also lawful to sell more dearly because of delayed payment of the price, on account of the same reason of mutuum, and because this mode of selling, since on the contrary it brings about a multitude of buyers and scarcity of sellers, increases the price of the thing according to common estimation. L. 811; Lessius, cited place n. 57.

1146. **Can promissory notes and credits be bought more cheaply because of certain and anticipated payment?** Response: negatively as regards "promissory notes, which are commonly called pledges of credit, for which no moral danger is present, provided that because of distance the collection would not be inconvenient or dangerous for oneself, because of the one who must be sent to collect." L., H. A., tr. 10, n. 179.

Affirmatively, if the credit is uncertain or of difficult collection, "even if it is easy for the buyer to collect it whole; because price is taken from common estimation, not from the circumstance of the particular buyer."

If the credit is liquid, there is controversy. The first opinion denies. The reason is that "the action to a liquid credit, in reality, since there is no danger or expense for recovering it, is worth as much as the money owed itself." The second opinion affirms. The reason is that since in practice these credits are commonly subject to dangers and inconveniences of this kind, they themselves decrease in price

according to common estimation. "But in purchase, the estimation of people alone constitutes the just price of things, and here it furnishes the title of buying for less." L. 829-830. Besides, "because they are equivalent to lent money, therefore from the same reason as in mutuum it is lawful to receive moderate profit according to the legal rate." Gury, 894.

For this purchase to hold as regards third parties, it must be denounced to the debtor, or must be accepted by him by authentic act. C. I. 1539. From C. H. 1527, a debtor who satisfies his creditor before he knows of the cession of the credit is free from every obligation.

1147. **Can you sell at the current price a thing which you know will soon be worth less?**
Response: affirmatively, more probably and more truly. The reason is that the present price is just and not yet changed, provided nevertheless that this knowledge is private; for if it were common, it would already be changed. St. Thomas, 2-2, q. 77, a. 3.

Yet sometimes you can sin against charity, if, for example, by such a sale the buyer would be reduced to extreme or grave necessity; for just as charity commands that we assist a neighbor gravely in need, so it forbids that he be reduced to poverty so that we may acquire riches for ourselves. Yet where there is question only of grave necessity of the neighbor, it is not sufficiently established whether the sin against charity is always grave, because charity does not forbid someone from consulting for himself by using his own right, even if damage accidentally comes to another from it.

But Molina excepts the case in which someone, knowing of a law that had been made but not yet promulgated, which diminishes the price, because of that knowledge sold his own things for more or sold at the current price with loss to others, things which, with that knowledge excluded, he either would have sold at the current price or by no means sold. The reason is that "public law ought to be equal and common to all subjects, and the prince would sin against justice if, before it was promulgated to all, he manifested it to certain persons who, anticipating the promulgation, would profit by its occasion with loss to others. And by the same reason, one who used knowledge of it to the prejudice of others, in whatever way that knowledge came to him, would sin against justice, with the burden of restoring the damages which would come to neighbors by that way."

But giving the distinction between this case and the other case in which someone knew that other merchandise of the same kind would soon arrive, while buyers were ignorant of this, he adds: "One who uses knowledge of a law before it is promulgated in order to enrich himself with loss to others uses knowledge of a thing which ought to be common to all, to the detriment of others, and therefore does injury to them. But one who uses knowledge that merchandise is arriving, for the same effect, does not use knowledge of a thing which ought to be common to all; rather, this belongs to the industry, art, and fortune of merchants." *De Iust. et Iur.*, tom. 2, D. 354, n. 5.

But others deny this. For one thing is abuse of power, if, for example, the prince or magistrates delayed promulgation of the law for this reason, until they could alienate their own merchandise or money, since prince and public magistrates do not have power except for the common good of subjects. But another thing is the mere use of knowledge which the prince and other magistrates legitimately have, and which they can legitimately use if for some reasonable cause promulgation of the law must be delayed. L. 824; St. Thomas, 2-2, q. 77, a. 3; Lessius, 45-48; Lugo, 140-143; Gury, Cas. 90; Struggl, tr. 3, q. 1, n. 16.

1148. **Can you sell at the current price a thing mixed with another cheaper thing?** Molina, *De Iust. et Iur.*, tom. 2, D. 353, n. 33, says this: "When the price is not taxed by law, and something is mixed into things which are sold, as water into wine, something unusual into medicines, a distinction must be made. For if the mixtures can bring harm, then those selling things mixed in that way are held for all subsequent damages, and likewise for restitution of that by which those things are worth less to the buyer than what he gave for them. But if they do not bring harm, yet the things are less useful for that for which they are bought, then the sellers are held to restore what they are worth less to the buyers for that for which they are bought. Therefore, if they conduce nothing to that purpose, they are held to restore the whole price, as if a medicine because of the mixture is rendered useless for that for which it is bought. But if things mixed in that way are useful for that for which they are bought, and as much is subtracted from the price as is fitting because of the mixture, then sellers are not held to restitution, because they have not exceeded the just price. Yet they sin, unless compelled by necessity to do this, for example because otherwise they cannot obtain the just price of the thing, as for example of wine, unless they mix a little water into it; or unless the thing with that mixture is truly worth what is given for it, and the buyer for that price would not buy a better one. Yet sellers are to be kept away from fallacies and deceptions of this kind." L. 820, 821; St. Thomas, 2-2, q. 77, a. 2.

1149. **Are merchants held to restitution who, by fraud or lie, induce buyers to buy their merchandise at a higher price than they would have bought, although they do not exceed the highest price?** Response: as regards fraud, affirmatively. The reason is that fraud is an efficacious and unjust cause of the damage which the buyer suffers; and each person has a strict right not to be induced by fraud or deceit to suffer any damage.

As regards lying, of itself the same would have to be said, since it also is of itself an unjust cause of damage. Yet it must be noted "that commonly faith is not given to the lies of sellers, since these are sufficiently known to be common stratagems; hence they regularly are not held on that account to restitution. I said regularly, because if sometimes the seller certainly noticed that the buyer believed the lies and therefore bought for more, then indeed he is not to be excused from injustice." L. 805. Therefore the seller is held to restitution if by lies and frauds of this kind he truly induced the buyer to buy merchandise at a higher price, although he does not exceed the highest price. 1 Thess. 4:6; St. Thomas, Quodl. 2, a. 10.

1150. **Whether or how do merchants sin who, when asked about the price of merchandise, notably exaggerate it?** If they truly intend to sell at this price, they sin against justice by wickedly seeking another's good; and they are held to restitution if that price is in fact paid to them. But if they intend only to give the buyer room to offer his own price, so that thus they may arrive at a just price, they are excused, because it is known and customary that merchants speak in this way in order to lead buyers to the just price.

1151. **Do those sin against justice who, before delivery, diminish or adulterate a thing sold at the lowest price?** Response: affirmatively, because they act against the pact entered with the buyer. For although it is lawful to sell at the highest price, nevertheless it is not lawful for a merchant who sells at the lowest or middle price secretly to procure for himself a middle or

highest price by diminishing the quality of the merchandise, or by subtracting from measure or weight; otherwise agreements would be utterly useless. Exception: if the price is either taxed by law or unjust because of the malice of conspiring buyers. For equality is the essential property of this contract. Therefore then it is not injustice to compensate oneself by diminishing the quantity of merchandise. Lugo 137; L. 822.

1152. **Do European merchants sin against justice who sell at the highest price among Indians knives, mirrors, and other things of this kind, which among us are held to be of lower price?** Response: negatively, because although these things are cheaper in our regions, nevertheless they are commonly highly valued by Indians or Chinese, etc.; but the common price is determined from the common estimation of the people of the region.

1153. **Do those sin against justice who buy valuable things at a cheap price when they are exposed for sale at dealers in old goods?** Response: negatively, because those things are judged to have lost their former price and to receive another by custom, or by the agreement of the contracting parties. Hence things of this kind receive the greatest latitude with respect to price. Thus sometimes books are bought for a few small coins which could have been sold for five or ten francs. The same must be said of the purchase of old furniture, because these are commonly held to be of lesser value. L. 807.

1154. **Is a pact of retro-sale in favor of the seller lawful, namely so that at a certain time, or when he wishes, the buyer is bound to sell the thing back to the seller?** Response: affirmatively. This is clear from the law of Leviticus 25, Lessius, bk. 2, ch. 21, n. 113, Lugo d. 26, n. 184. The reason is that the owner of a thing can dispose of his own thing as he wishes, provided that justice is preserved. Therefore, with a due lowering of the price made for the burden imposed on the buyer, a pact of this kind is lawful.

How great should such a lowering be? Some wish a third part of the price to be deducted; others hold that a fourth part of the price is to be deducted; others more truly think the matter must be defined by the judgment of prudent persons, with all circumstances duly weighed. L. 812.

But the buyer, when the thing is redeemed by the former seller, can demand that a greater price be paid to him than that which he himself paid. "Because from the very fact that a thing is sold with a pact of retro-sale in favor of the seller, it must be sold below the just price on account of that added burden. But when it is later sold to the same seller, it is given without any burden. Therefore it must then be bought at the full just price. Therefore the buyer cannot be forced later to sell it back at a lower price without injustice." Hence the buyer who bought the thing at the lowest price can demand the highest price from the former seller. For one selling his own thing can demand the just price which the thing is then worth. Lugo, ibid., n. 192, 196. But since meanwhile the buyer enjoys that portion by which the price was lowered, and the advantage and fruits of the thing, he can indeed in the pact of retro-sale also demand by pact that the thing cannot be redeemed by the owner for a lower price than that for which he himself bought it from him; but he cannot absolutely demand by pact that it be redeemed by the owner only for a higher price. For absolutely, in order to preserve justice, it is enough that the owner, when redeeming his thing, pay a just price; and the just price in the case is not necessarily a higher price.

But it is lawful to make a pact that the seller can redeem his thing by restoring the same price which he received. For then it is a certain simple dissolution of the sale by the mutual will of the contracting parties. Moreover, there is no injustice in the buyer receiving from the former seller only as much as that seller gave him. For if this price is just, the matter is clear; if it is less than just, the buyer can be sufficiently compensated by the advantage and fruits of the thing meanwhile received by him. C. I. 1515; C. G. 1659; C. H. 1507; C. A. 1068.

In order that a pact of retro-sale be lawful, it is further necessary that the risk of the thing sold not remain with the seller, unless the price is increased according to the estimation of the risk. But the thing to be restored by the buyer is understood to be such as it was when received by him, without deterioration or new burden. L. 812; C. H. 1519, 1520; C. I. 1528; C. G. 1673; C. A. 1069; E. M.

1155. **Is a pact of repurchase at the discretion of the buyer lawful?** "The first opinion denies it, because in reality the thing does not seem to be sold, but only given in pledge, so that the buyer receives fruits from his money, which he can recover at his pleasure. The second, very common opinion affirms it. I certainly think this more probable, but with these conditions: 1. That there be a true intention of buying and selling. 2. That the buyer pay a greater price, according to the estimation of this burden which he imposes on the seller. 3. That the seller not be obliged to repurchase at the same greater price which he receives. Hence I judge that in such a contract the buyer cannot bind the seller except to paying only the price according to the value of the thing at the time of sale, and if the thing has deteriorated, according to the value of the thing at the time of repurchase. And conversely, if the thing increases, it increases for the seller. H. A. tr. 10, n. 181. For the excess of the just price given to the seller belongs wholly to him by reason of the burden imposed on him of repurchasing at the discretion of the buyer. With these conditions preserved, the burdens are compensated on both sides." L. 813; E. M.

1156. **You will resolve:** Consequently a pact of retro-sale in favor of both seller and buyer at once is lawful, provided that due equality of price is preserved, so that it is less than the price which would be demanded if the pact were in favor of the buyer alone, but greater than the price which would be paid if the pact were in favor of the seller alone.

1157. **What is established by more recent laws concerning retro-sale?** From C. I. 1515, 1516, 1520, 1528; C. G. 1659, 1660, 1664, 1673; C. H. 1507, 1508, 1510, 1518, 1520, a pact of redemption or recovery in favor of the seller alone is lawful, yet so that the faculty of recovering his thing is not extended beyond five years; from C. H., beyond four years or beyond ten years. When this time has elapsed, the thing irrevocably becomes the buyer's. Within this time the seller can pursue his thing even in the hands of another who acquired it from the buyer.

The seller reclaiming his thing must not only restore the principal price, but also pay the expenses for the contract of sale, those which the buyer incurred for necessary repairs of the thing, and likewise those which increased the value of the land. Unless he has satisfied all these, he cannot obtain possession of the thing. But when he returns into possession of the land, he receives it free from any burden and mortgage with which it may have been burdened by the buyer; nevertheless he is bound

to observe lease contracts which the buyer entered without fraud, and, from C. I., if they were not constituted beyond three years.

From C. A. 1068-1071, a pact is permitted of repurchasing at the discretion of the seller, and of selling back at the discretion of the buyer. The thing and the price must be restored in both cases, unless the thing has been made better or worse; for then compensation is owed. Cf. C. H. 1521ff.; C. A. 1068ff., 1072ff.

1158. **What is mohatra, and is it lawful?** A mohatra contract is one by which someone buys merchandise at a higher price on credit, with an explicit or implicit pact that the same thing is immediately sold back to the seller at a lower price and for cash. Such a contract is altogether unlawful. This is clear: 1. from proposition 40 condemned by Innocent XI; 2. because it is disguised usury. For a burden is imposed on the buyer of immediately selling back at a cheap price, without any compensation and without any just title which, otherwise, is found in a mutuum. Yet if the thing is sold back, even for less and to the same seller, without a prior pact, provided every usurious intention is absent, the contract of itself will be lawful, because then no burden is imposed against natural equity. And if the excess which is demanded is a suitable profit by reason of the loan, then no unlawful usury is found in it. L. 813; E. M.

1159. **What is sale by auction, and is it lawful?** Sale by auction, or by bidding, is that which is made through a crier, and in which the thing is assigned to the final bid. Sale by auction is lawful, whether it is made with the owner's consent or against his will, that is, by public authority; whether it is bought below the lowest price or sold above the highest. "The reason is that then public authority approves as just that price which is publicly approved by the concurrence of buyers." L. 808; C. I. 987; C. G. 1686. Hence, if buyers gather, the thing becomes more valuable; if they do not gather, it is held cheaper.

1160. **Can the seller withdraw his thing once bidding has begun, if a lower price is offered?** Response: negatively of itself. The reason is that buyers publicly summoned to the auction acquire a certain right to the saleable thing, insofar as there is a tacit stipulation that it should yield to the one offering more. Yet the rigor of this doctrine must be moderated where a contrary custom prevails, by force of which the contracting parties consent to this.

1161. **Can the seller send fictitious bidders, so that the price of the thing may rise?** Response: negatively. The reason is that this is too fraudulent to be excused, since it tends to deceive sincere buyers, and therefore to inflict an injury on them, since the fictitious bidders are the cause that the price rises from fraud, not from the natural concurrence of things, namely from the free concurrence of buyers. L. 808; H. A. n. 175.

1162. **Can one whose goods are sold for the benefit of creditors send friends to buy them in his name?** Response: affirmatively, at least with attention to common usage, if the bidding is voluntary, because this seems to follow from the fact that the seller can withdraw his own thing. Affirmatively a fortiori if the bidding is forced, or if it is made by public authority; for the one whose goods are sold should not be of worse condition. Besides, he is not properly the seller, since the sale is made against his will. Therefore.

1163. **Can a buyer ask others not to bid?** Response: affirmatively, according to the very common opinion. The reason is that in this case the right of the seller is not violated; for freedom of bidding is not taken away. Therefore the buyer then uses his own diligence in order to consult his own interest. L. 808.

1164. **Can a buyer make a pact with others that they not bid, or that they not offer more?** St. Alphonsus denies this "at least in the case in which, by sentence of a judge, a thing is exposed to auction. The reason is that then the owner of the thing is altogether bound to hand over the thing to the one offering more; and therefore the buyer inflicts an injury on him if, by offering only the lowest or middle price, he prevents the seller from obtaining the highest price, to which he has a right, namely that he not be impeded from obtaining it." L. 808.

Nevertheless several make an exception if the buyers are joined in partnership, or are as it were joined, as brothers, friends, etc., because they make as it were one moral person, nor can it be demanded that they bid against themselves. Others also probably make an exception if a usage prevails that the seller withdraw his thing when a lower price is offered to him; because if he can prevent the price from being too small, equity also demands that he not complain that buyers agree that the price not be increased too much.

Yet others affirm absolutely. The reason is: 1. because in any auction sale of itself the owner is bound to hand over the thing to the one offering more; 2. by making a pact with someone, the buyer does not prevent the owner from obtaining the highest price of the thing, for others can gather and offer; 3. the seller does not have a right that someone not be impeded in any manner whatever from gathering, but that he not be impeded by force and fraud; otherwise he could not be impeded even by requests; 4. as anyone can freely not gather for an auction, so he can freely bind himself not to gather. Yet civil laws approve this in no way.

1165. **What is monopoly, and is it lawful?** Monopoly, as to the name, is the same as sale by one. As to the thing, it is a power of selling existing with one or a few. Monopoly can happen in four ways: 1. if the prince grants someone a privilege that he alone sell some kind of merchandise, and this is certainly lawful, namely when it contributes to the common good, with a legitimate price having been fixed; 2. if a merchant prevents other goods from being brought in, so that he himself may sell his merchandise, with damage to the republic, and this is certainly unlawful, and he is held to restitution of the damage. The same must be said of one who spreads a false report that ships have sunk, or similar lies; 3. if sellers conspire among themselves about the price, so that they do not sell for less; 4. if one or a few buy all the goods, so that they may afterward sell them as dearly as possible. Concerning the last two ways the following questions are treated. L. 814, 815.

1166. **Do merchants sin against justice and against charity who conspire not to sell their merchandise except at the highest, though just, price?** As regards justice, there is no sin, since the highest price is still a just price. The highest price, that is, which would exist if the monopoly were set aside. For a price cannot be judged just which arises from this conspiracy. The justice of price cannot depend on the mere discretion of seller and buyer. Thus likewise workers sin who agree among themselves not to lease out their labor except at a price exceeding the highest, namely the highest with this agreement also set aside.

But as regards charity, affirmatively, because although charity does not oblige one to sell below the highest price, nevertheless it seems to oblige one not to dissuade others from selling at a lower price. That certainly would be grave for the poor, and indeed even for those who are not poor. Just as charity does not oblige you to give alms, yet it obliges you not to dissuade others who wish to give alms. Lugo 173, 175; L. 817.

1167. **Do merchants sin against justice or against charity who, at harvest-time or vintage, buy all the wheat or wine of a region at the lowest price, so that afterward they may sell it more dearly?** "It is certain that this is lawful if goods are bought which are not necessary for the sustenance of life, or for the common state of the republic, such as precious gems, noble horses, ornaments of women, and similar things." L. 816. But if the discussion is about things necessary for the sustenance of life, the answer is more probably negative, as it seems, as regards justice, provided they do not sell above the highest price which, with the monopoly set aside, would run. The reason is that they violate no one's right. Also more probably negative as regards charity, provided they do not induce others to sell more dearly and they themselves do not sell above the highest price which, with the monopoly set aside, would have place, because they use their own right. For no one is held to neglect his own advantage in order to avoid another's damage which he is not obliged to avert. L. 816, 833; Lugo 176; Lessius 150-152; Molina d. 345, n. 7-10.

1168. **Once a monopoly has been made by merchants concerning an unjust price, is it lawful for others to sell goods at the same price?** The first opinion affirms, because the just price is what commonly runs, from whatever source this comes. The second opinion, which seems better, St. Alphonsus 817, denies. "The reason is that a price increased through injustice is always and of itself unjust, and must be brought back to justice."

1169. **What is sale through brokers?** Sale through brokers is that which is not made immediately by him to whom the things belong, but through others by commission; and these are called brokers. Brokers can be either only friends, or hired for this by a special wage, or leased for different works at an annual price.

1170. **Can a broker who sells above, or buys below, the price designated to him retain the excess price for himself?** Response: negatively, generally speaking. The reason is that he has no title for retaining anything. For: 1. not by reason of the thing, because it is not his but the owner's; 2. nor by reason of labor and industry, at least as owed by the strict title of justice, because if he has been hired by stipend, he has a right to nothing else; but if he offers his industry gratuitously, he has already renounced a wage; 3. nor by reason of the designated price, for the assignment of the price made by the owner is commonly understood so that he not sell below that price, but by no means so that he not sell above it.

Exception: 1. if by extraordinary and undue labor, or by altogether special industry or diligence, he made the thing better; 2. if the owner expressly or equivalently declared that he demands nothing beyond the determined price, for then the excess can be retained; 3. if the owner knew and approved the broker's manner of acting. L. 825; C. A. 1086.

1171. **Can a broker buy for himself a thing to be sold at the price determined for him, and afterward sell the same thing as his own at a higher price?** Response: affirmatively, with two conditions posited, namely: 1. that, after moral diligence has been applied, he does not find a buyer who offers more; otherwise he would certainly act against his office and against the known will of the mandator; 2. that he buy the thing for himself not fictitiously but truly, so that he undergo its risk; and if by chance he does not sell it for so much, nevertheless he renders the determined price; otherwise equity is not preserved. L. 825; C. A. 1087, 1088.

1172. **Can a broker retain for himself those things which the seller freely gives solely out of regard for him?** Response: affirmatively, if the true donation is certain, because, absolutely speaking, a merchant can yield something of his profit to some broker, so that he may bring him to his shop. But for this it is required that he really be disposed to sell to any other at the higher price, and actually thus ordinarily sell. Yet a confessor should not easily give credit to brokers asserting that such donations have been made to them. L. 825; H. A. 189.

Thus concerning cases of this kind St. Alphonsus 826 says: "It must be cautiously permitted to tailors buying cloths for others to retain something of the price; for sometimes merchants rather pretend to give to them than actually give, so that, if the owner himself approached, he would obtain the thing for the same price. Besides, if the tailor faithfully manages the owner's business, and the merchant gives something to him truly gratuitously because he frequents his shop, or in order to entice him to frequent his shop, the tailor could lawfully retain the gift, provided he applied moral diligence to buying from other merchants at a lower price."

1173. **What is exchange, and what are its properties?** From Roman Law, exchange is a real contract, and therefore takes its beginning only from delivery of the thing. Therefore it does not follow all the laws of sale and purchase. Inst. bk. 3, tit. 24, § 2.

From C. I. 1549, 1550, 1552, 1554; C. G. 1702, 1703, 1705, 1706, exchange is a contract by which each party obliges himself to give a thing in order to have another. It is perfected by consent alone, as sale is. Therefore immediately ownership of the thing and risk pass mutually from one to the other. If one thing has been evicted, it is in the power of the one evicted either to seek compensation for the damage or restitution of his own thing. It can also be perfected by a private act and verbally. Nevertheless, in this contract there is no place, in the external forum, for rescission on account of lesion. But in the forum of conscience, the same reason of compensation holds as in sale and purchase. Gousset, Cod. comm., art. 1706.

From C. H. 1538-1541, one who received another's thing by exchange cannot be obliged to deliver the thing which he in turn promised. He satisfies by restoring the thing received. One who has suffered eviction of a thing received by exchange can either demand restitution of his own thing or compensation of damages. In other matters exchange is ruled by the same laws as sale.

From C. A. 1045ff., effective delivery of the thing is not necessary for the essence of this contract, but it is required for its fulfillment and for acquiring ownership. One who does not fulfill the contracted obligation is held for emerging damage and lost profit. If meanwhile the thing totally perishes by chance, or beyond half, the exchange is held as not made. Other deteriorations are to the loss of the possessor. But if the thing was exchanged in its body, and individual things perish by chance, but not

beyond half, they perish to the loss of the one accepting. The useful products of the thing belong to the possessor until its delivery.

1174. **What is exchange of money?** Exchange of money is the exchange of money with money, with some profit of the money-changer. The one from whom exchange is sought is called the money-changer; the one who seeks it, the exchange customer. Exchange of money differs from sale because in sale merchandise is exchanged for money, but in exchange of money, money is exchanged for money. C. A. 1046. Ownership of the money is immediately acquired by the one accepting before he has rendered what he owes, even from Roman Law, since in this Law ownership is acquired immediately in exchange before the contract is completed on the other side. L. Cum precibus, C. de Rerum permut.; L. 850.

1175. **How many kinds of exchange of money are there?** One kind of exchange is real, another dry. Dry exchange is fictitious exchange, for example, when money to be delivered to another is feigned to be transported from place to place, so that something can thus be demanded for the transfer, although in reality it is not transferred. Real exchange is true exchange, by which truly and really money is exchanged for money, as if gold is given for silver. Real exchange is either small or manual, when present money of one form or material is exchanged for money of another form or material; or local, when present money is exchanged with absent money. This happens either when the money-changer gives money in this place, to be restored by the exchange customer in another place, or when the money-changer receives money in this place, to be restored by him in another place. This exchange is ordinarily made by bills of exchange. L. 851-854.

1176. **Is dry or fictitious exchange lawful?** Response: negatively, of itself. The reason is that in it there is no title for receiving profit, since it is not true exchange but a fiction of exchange. Hence St. Pius V, in the bull *In eam* of 1571, expressly declared it usurious; for it is disguised usury. It is said "of itself," for by reason of a loan, profit which is lawful in a loan is lawful. E. M.

1177. **Is real exchange of money, both manual and local, lawful?** Response: affirmatively, provided the profit does not exceed the price determined by law or by the custom of places. The reason is that several just titles of such profit are present: 1. the leasing of labor and office for collecting, counting, and transmitting money; 2. expenses in paying toll; 3. insurance of the money up to the place where the money must be paid; 4. lost profit, emerging damage, and danger to the principal from the misfortunes of debtors; 5. the different value of money in different places, whence it happens that money is worth more in the place where it must be rendered by the money-changer than in the place where it is received by the money-changer. But if the contrary were the case, namely if the money were worth more in the place where it is received than in the place where it is rendered, then nothing would be lawful to receive by this title; indeed compensation would have to be made up to equality. L. 851-854.

1178. **Is the Frankfurt exchange lawful, in which the money-changer gives money to be rendered at the next fairs, so that greater profit is demanded for a longer delay?** Response: affirmatively, if there is a title of emerging damage or another similar title.

Affirmatively again by reason of a loan, if the legal rate is not exceeded. Negatively, if it is demanded precisely by reason of delay; for this is usury. L. 855.

1179. **Is exchange of money lawful for those who do not have the public office of exchanging?** Response: affirmatively. The reason is that they furnish another a useful thing. L. 851.

1180. **Can a servant who receives gold money from his master, in order to satisfy the master's creditors, make profit by exchanging it with other money?** "It is affirmed, because it is the fruit of industry, unless it is against the express or tacit will of the master." L. 856.

1181. **Can one who receives counterfeit money spend it?** Response: negatively. The reason is "because a defective thing cannot be handed over to another without the defect being disclosed. Nor from the fact that he himself was deceived can he deceive others, since the action by which he was deceived gives no right to this." But if you have already spent it in good faith, you are held to restitution "by force of the contract itself, by which you are obliged to pay a just price for the thing bought." L. 855; C. I. Poen. 440.

1182. **What can money-changers receive by reason of a loan?** They can receive 6 percent according to the legal rate for merchants, because they exercise the trade of money. Indeed they are permitted to receive 7 percent on account of the risks, expenses, and labors which they must undergo. For ordinarily money-changers need much money in order to exercise such an office, and many assistants, and they are exposed to various risks.

1183. **What about the bull of St. Pius V concerning exchanges?** St. Pius V added various restrictions in order to remove usury; nevertheless they testify that these no longer have force in most places. Lessius 93; Lugo 107; L. 852.

1184. **What is trade?** Properly, it is when someone procures a thing for himself with the intention of making profit by selling it more dearly, whole and unchanged, or by exchanging it. L. 831; St. Thomas, II-II, q. 77, a. 4, ad 2; Lugo d. 28, n. 20.

1185. **How many kinds of trade are there?** There are three: household trade, productive or artisan trade, and trade properly and strictly so called. Molina, d. 339, n. 2, says: "A threefold kind of buying and selling is customarily distinguished. One is that by which each person buys those things which are necessary for the sustenance of himself and his family, while superfluous things are sold. Another is that by which something is bought so that, changed by industry, it may be sold. To this kind belongs not only if someone buys wool in order to make from it cloth which he may sell, or iron in order to sell swords which he makes from it; but also if he buys birds or horses so that, after he has raised them and trained them for something, he may sell them. To this kind of trade there also pertains that by which a thing not bought, but from your goods or lands, is sold after being changed into a better form. Finally another buying and selling is that by which something is bought so that, unchanged, it may be sold more dearly for obtaining profit; and this is trade in the most proper sense."

1186. **Is trade lawful?** The first species of trade is lawful. "This," says Molina in the cited place, "is as it were natural, and of itself is good and lawful. For it is ordered not to profit, but to suitable sustenance; and it pertains to householders and political governors, not to traders taken strictly."

The other species of trade is also lawful. "But this," says Molina in the cited place, "is not mere trade, because the thing thus bought is made better by industry and art." Therefore not only the thing bought is sold, but at the same time one's own industry and one's own work. Persons of this kind are called craftsmen and artisans rather than traders or merchants. Therefore there is no injustice in it, no unlawfulness, since it is very useful for private and public good.

The third kind of trade also is lawful of itself, since it too is very useful for private and public good, and otherwise necessarily, or of itself, contains no injustice or dishonesty. For as regards justice it is enough that one, in buying and selling, stay within the limits of the lowest and highest price; and the prices of things are otherwise accustomed to be diminished and increased according to the various circumstances of times and places. There is added, moreover, the labor of these traders, and likewise the enormous expenses to be made by them, so that they may always have ready the merchandise necessary for all. But the profit which is intended can be intended in an orderly and moderate way toward a good and even pious end, and therefore from this head too there is not necessarily and of itself any baseness. St. Thomas, II-II, q. 77, a. 4.

XIII. On Census

1187. **What is a census?** A census is a contract by which someone reserves for himself, or buys, the right of receiving an annual pension. The buyer is called the censualist, censitor, purchaser, creditor. The seller is called the censuary, seller, debtor. The pension itself is called the canon or revenue, because it returns and is rendered each year. As is clear, a census essentially differs from a mutuum. For in a mutuum the borrower is principally debtor of the capital itself; but in a census the censuary is not debtor of the capital, but of the revenue, the right of which he sold for the price of the capital itself. C. I. 1778; C. H. 1604; C. G. 1909; Gousset in h. a.; L. 839.

1188. **How many kinds of census are there?** Census is manifold: 1. reservative, by which the censualist transfers his own thing to another under a gratuitous or onerous title, for example, he gives or sells it to another while reserving to himself an annual pension from that thing. C. I. 1778, 1780; C. G. 530; C. H. 1607.

1189. consignative, by which the censualist buys the right of receiving a pension from another's thing, whether movable or immovable, or from the very person obliging himself to furnish an annual pension from his art, trade, or office. C. I. 1782; C. G. 1909; C. H. 1606.

Hence 3. census is distinguished into real, personal, and mixed, according as it is immediately constituted in some fruitful thing, or in the labor and industry of a person, or in both, insofar as immediately and directly the person alone is obligated, but for security some things of the debtor are obligated; nevertheless, if these perish, the person remains obligated. Therefore in a real census, the thing is obligated to whomever it comes, and when the thing perishes, the census perishes, C. H. 1624, 1625. In a personal census the person is obligated, and when the person's industry perishes, the census perishes, unless the census is constituted independently of any industry and only in the mere obligation of the person to pay. In a mixed census, when the person's industry perishes, the thing quasi-mortgaged is obligated, and when the thing perishes, the person is still obligated. Cf. L. 841, 846, 847.

4. temporary, perpetual, or for life, according as it is constituted for a time, for example for ten years, or in perpetuity, or for the life of a person. C. I. 1779; C. G. 1910; C. A. 1284; C. H. 1802.

5. redeemable or irredeemable, according as it can or cannot be redeemed by restitution of the capital or price. Lugo d. 27, n. 4; E. M.

6. **You will resolve:** The censuary is not freed from paying the pension because of accidental sterility of the land and loss of fruits. C. H. 1624.

7. **Note:** 1. From the more recent laws, when revenue is the price of alienation, or a condition of cession of immovable property, whether by onerous or gratuitous title, the revenue is called land revenue. But a cession of immovable property of this kind transfers full ownership to the cessionary, notwithstanding any contrary clause. Revenue constituted by means of capital is called simple revenue or census. C. I. 1778-1782; C. G. 530, 1909.

8. From C. I. 1782, a census properly so called is not permitted except by means of a special mortgage on a determined piece of land. That is, not every census is permitted, but a mixed or real census.

9. A perpetual census, or one for a long time, is counted in Canon Law among immovable goods. Clem. *Exivi*, De verbor. signif.; Lugo n. 8. From C. I. 418; C. G. 529, life or perpetual revenues which are owed by the State or by private persons are counted among movables.

10. **Is a reservative census lawful?** Response: affirmatively. The reason is that anyone giving or selling his own thing to another can reserve for himself a right to a part of the fruits of that thing, provided, however, that in a sale the price is lowered in proportion to the reservation. L. 839.

11. **Is a consignative, real census lawful?** Response: affirmatively. For anyone, as all admit, can give to another the right of receiving an annual pension from his own fruitful thing; therefore he can also sell this right. Nor does it matter that, in the course of time, the pensions to be received exceed the price paid; this also happens in the sale of a fruitful thing, and yet that is not unlawful. Hence a real census is lawful, whether perpetual or temporary. For if due equality is preserved between the price and the perpetual or temporary right of the pension, no injustice indeed appears. L. 839; E. M.

12. **Is a consignative, personal census lawful?** Concerning Natural Law: "The first opinion denies it, because a person cannot be sold. The second opinion, more common and more probable, teaches that it is lawful, because if anyone can lease his services, he can also sell them. But in such a contract the person is not properly bought, but improperly; for properly a right over the industry of the person is bought." L. 840.

Concerning Canon Law, where this has force, this census is prohibited by the bull of St. Pius V *Cum onus* of 1568, L. 840, 846, 848. "But the bull of St. Pius V," says St. Alphonsus 849, "has not been received in the two kingdoms of Sicily, nor has it been received in Spain, nor in Belgium, nor in Germany, nor in France; nor is it observed even at Rome." Cf. Collectan. S. C. de P. F. 2132. From C. I. 1628; C. G. 1780, no one can bind his services except for a time, or for a determined business.

1194. **Is a life census lawful?** Response: affirmatively. For it is an aleatory contract, in which both the censualist and the censuary expose themselves to equal risk: the former of receiving more or less, the latter of paying less or more. Moreover Civil Law approves this, both under an onerous title, on account of money, or a movable thing, or an immovable thing, and under the gratuitous title of a donation between the living, or of a testament. C. I. 1789ff.; C. G. 1910, 1968, 1969. That it is lawful is also drawn from Canon Law, Clem. *Monasteriorum*, De Reb. Eccl. non alien. But to establish the just price of a life census, if it is a question of a life census from an onerous title, account must be taken of age. Ordinarily, they say, the price should not extend beyond 15 percent. L. 844; C. A. 1285; C. H. 1802, 1803.

1195. **Is a redeemable real census lawful?** Response: affirmatively by natural law, whether on the part of the censuary or even on the part of the censualist. For in census there is a true sale, in which redemption is lawful even on either side. By canon law, from the cited bull of St. Pius V, it is indeed always permitted to the censuary that he can redeem the census, after notice has been given for two months; but this is not permitted to the censualist.

From C. I. 1783; C. H. 1608, census is by its essence redeemable; from C. G. 1911, perpetual census is essentially redeemable. But a census cannot be redeemed by the censualist as long as the censuary has observed the pacts. C. I. 1783, 1785ff.; C. G. 530, 1911ff. On the contrary, it can be redeemed at any time by the censuary, C. I. 1783; C. G. 530, 1911, and a pact that he cannot redeem the census is null. C. I. 1783; C. G. 530. Nevertheless, it can be agreed that it not be redeemed as long as the censualist lives, or before a certain time which, in reservative or land revenues, cannot exceed thirty years, and in consignative revenues ten years, or not unless the censualist has been previously warned at the legitimate time. C. I. 1783; C. G. 530, 1911. Cf. C. H. 1608, 1609, 1658, 1662.

But a life census is irredeemable, both on the part of the creditor, if the debtor has been in delay of paying, and on the part of the debtor, if by chance he begins to be burdened by it more than is fair. Nevertheless the creditor can rescind the contract if the debtor has not furnished the promised securities for execution. C. I. 1785, 1796-1798; C. G. 1912, 1971, 1977, 1978, 1979. Cf. C. H. 1805; L. 843, 847.

1196. **Is an irredeemable or perpetual real census lawful?** Response: affirmatively by natural law. For as such a right of pension or revenue is acquired by a certain thing or sum of money, with which the seller will be able to trade, buy a field, a house, etc., and thus make profit indefinitely, so also that pension or revenue is to be received indefinitely; and if due proportion of price is preserved in the contract, they can well be equivalent, as regards the utility and emolument to be received from them, to the thing or sum of money handed over as the price. But in sale and purchase, equality is to be preserved precisely in this: between the price and the merchandise, namely as regards the utility and emolument to be received on each side, with attention to law, custom, and common estimation. Tamburini, De Contract., tr. 2, ch. 2, § 3, n. 3; Lugo d. 27, n. 20, 158; Collectan. S. C. de P. F. n. 2129.

1197. **Is a redeemable personal census lawful?** Response: affirmatively, both on the part of the seller and on the part of the buyer. For as a real census rests on a thing, so a personal census rests on the industry of a person. But a person's industry can be sold like a thing. Therefore, as a redeemable real census is lawful, so also a redeemable personal census is lawful, if due

proportion is preserved for the burden imposed. Benedict XIV, De Syn., bk. 10, ch. 5, n. 4, 5; L. 840, 843.

1198. **Is it lawful to buy the right of an annual pension by the mere transfer of ownership of money, without that right being constituted in some fruitful movable or immovable thing, or in some determinate industry of a person?** Response: affirmatively. This is clear: 1. from the almost universal practice of God-fearing men themselves. For everywhere annual pensions are bought with money, like other merchandise, whether for a time or for one's whole life, without any scruple being raised about this matter; 2. because a merely pecuniary census of this kind is a very true sale, which certainly is lawful. For on one side that right of annual pension is estimable by price; on the other side money, whose ownership is absolutely transferred, and not with the burden of restoring the same amount as in a mutuum, is truly the price of that right. C. I. 1778; C. G. 1909.

1199. **Note:** 1. This merely pecuniary census has this as proper to itself: that it is constituted in no fruitful thing, but is a very true sale; and consequently, although the censuary loses the capital of money received, nevertheless he is always held to pay the constituted census. The same would have place if someone, instead of money as the price of the right to that pension, handed over a movable or immovable thing, without consigning and binding the right of that pension in it. Such a contract by its proper name in the new Law is called the constitution of revenue. And indeed C. I. 1778ff. and C. G. 530, 1909ff., 1968ff. seem to recognize not properly census but this constitution of revenue.

1200. Annual revenues constituted in government funds can be referred to census, and likewise bank, commercial, and industrial shares. Their sale and purchase is lawful like that of other things; and likewise their price, like that of other merchandise, has increase and decrease from day to day. Hence it is lawful to buy at the current price annual revenues constituted in the government, or shares from a public banker. For they are sold and bought as ordinary merchandise, and their price increases or decreases according to the common estimation of people judging that greater or lesser risk is present in them.

1201. **What conditions are required for the lawful constitution of census?** "By natural law only two conditions are desired: 1. that there be equality between the census and the price; 2. that pacts added beyond the nature of census be justly compensated." L. 845. By Canon Law more conditions are required, but these have been derogated by almost universal custom. L. 845-849. But we have already enumerated the principal dispositions of Civil Law. Since census is a true sale and purchase, those conditions and modifications can be added to a census contract which do not conflict with sale and purchase. Likewise the price, as in buying and selling, can vary according to the various circumstances of things. Tamburini, De Contract., tr. 2, ch. 4, n. 1, 2.

1202. **Does a life census run divisibly with time, or is it owed only after the constituted time, for example after a year has elapsed, so that if the censualist dies before that time, the censuary is not held to pay the pension to the heirs in proportion to the time elapsed?** Some deny that it runs divisibly. But more truly it must be affirmed. For: 1. a life census is for food and a pension of life; for one placing his money wishes to live from the pension. Therefore it is equitable that the pension run in proportion to the life which must be

sustained, and which is sustained from the day of the constituted census. Therefore the censualist, dying, acquired a right to the pension for the preceding time; but the right then acquired by him passes at his death to the heirs.

1203. A life pension stands exactly as a pension assigned to a cleric for food and sustenance of life; for both are personal for sustenance, and end with the death of the pensioner, nor is there a right to it except after a year has elapsed. But the pension of a cleric, when the pensioner has died, is owed to the heir in proportion to the elapsed time. Therefore.

1204. If an ordinary censualist dies within the year, the census is owed to the heir in proportion to the past time. Therefore equally, even if a life censualist dies; for this is only the difference between these censuses: that in the former the right to the principal remains for the heir, while in the latter no right to the principal survives when the censualist has died. Therefore a life censualist should not be of worse condition than an ordinary censualist. Therefore in both cases the pension has the same division of time; and in both cases the pension runs and comes to the censualist by the lapse of time. Therefore the pension must be paid to the heirs in proportion to the past time. La-Croix 1023; Gury, Cas. 1005.

1205. From C. I. 1799; C. G. 1980, pensions accrue day by day; but if it has been agreed that they be furnished in advance at the beginning of each year or month, when that time comes, the whole pension of the whole year or month is immediately owed. Likewise from C. I. 867, a legacy under the title of food can be demanded from the beginning. From C. A. 1285, 1418, a life annuity, in doubt, is paid in advance each quarter; but food is furnished in advance at least for a month. From C. H., the revenue corresponding to the year in which the one enjoying the life annuity dies must be paid in proportion to the days which he lived; and if it was to be paid in advance, the whole is owed. Cf. art. 880. From the Constitution of St. Pius V *Cum onus*, § 3, 16 February 1569, "payments which are commonly called anticipatory" are forbidden to be made or brought into pact.

1206. **How is census extinguished and rescinded?** Census is extinguished: 1. by redemption on the part of the censuary, C. I. 1783; C. G. 1911; and, if it is for life, by the death of him for whose life it was constituted, C. I. 1801; C. G. 1982; C. A. 1285; 2. by the office of the judge in cases determined by law, C. I. 1785, 1786; C. G. 1912, 1913.

Census can be rescinded like any other sale and purchase, for example if the censualist, as quasi-seller, has been injured beyond half the just price, or if, as quasi-donor, he afterward has children. If the debtor, before he cedes his goods or ceases to be solvent, has alienated the land, the creditor cannot demand redemption of the census if the possessor of the land is ready to pay the canon and give securities for it. C. I. 1786. When the census has been dissolved because the conditions were not fulfilled, or rescinded because children have been born, the rights acquired by a third party over immovable goods remain whole, just as in sale and exchange. C. I. 1787. Census is not extinguished by the civil death of the censualist, but passes to his heirs until his natural death. C. I. 1801; C. G. 1982, 1983.

XIV. On Lease-Hire

1203. **What is lease-hire?** It is a contract by which someone obliges himself to grant a thing to someone for use or usufruct for a certain time and for a price, and the other obliges himself to accept it. C. A. 1090, 1091.

"Obliges himself," for it is a consensual contract. L. 1, Dig. Locati conducti; C. I. 1569, 1570; C. G. 1709, 1710; C. A. 1094.

"A thing," that is, one not fungible by use, whether a thing properly so called or a person; therefore an immovable thing can be leased, as an estate; a movable thing, as a flock; a person, as a worker or servant with respect to services to be furnished, for example service, transporting things and persons, etc. C. H. 1542.

"For use," as a house; "for usufruct," as a vineyard. C. H. 1545.

"For a certain time," namely with attention to positive law, by which no perpetual lease is admitted. Indeed, if it is beyond ten years, it is another contract, namely emphyteusis, which by Roman Law is distinguished from lease. C. H. 1543, 1544; C. A. 1090.

"For a price"; if gratuitously, there is not lease but commodatum. L. 46, Dig. Locati et conducti. Cf. Vinnius, De Inst., De Locatione, § 1.

"For a price," that is, for money. Inst. bk. 3, tit. 24, beginning and § 2; L. Depositum § 9, Dig. Depositi vel contra; L. Naturalis § 2, Dig. de Praescriptis verbis, etc. If a thing is given for use or usufruct not for money but for another thing, it is another contract from Positive Law, but not lease-hire. From Positive Law, I say, for by Natural Law the distinction is not essential. Italian and French law agree with Roman Law in this, C. I. 1569 and C. G. 1709. Therefore, as regards rural estates, L. Si merces § 4, Dig. Locati etc.; C. A. 1103; C. H. 1579, if the tenant is a sharecropper, namely one who furnishes to the owner not money but part of the fruits, the contract is said to be one of partnership. But if the tenant hired for cash, there is true lease. The same must be said of partnership or lease of animals. From C. I. 1665; C. G. 1711, the contract is counted under lease by which one hands over animals to another so that the fruits may be divided between the owner and him to whom they are handed over. Likewise C. I. 1647ff.; C. G. 1711, 1763, when the tenant is a sharecropper, lease is still held.

"For a price": in order that there be true lease, it is necessary that the price be determined when the agreement is made. If an agreement is made that the price is to be determined afterward, the contract will be unnamed: "I do that you may give," Vinnius, cited place. What is repaid by the lessee takes the name of wage, and likewise of rent when immovables are leased. Inst., cited place; L. Ex conducto § 4, Dig. Locati conducti; C. A. 1092. But the one who grants is called the lessor, and the one who receives is called the lessee. C. H. 1546; L. 857.

1204. **You will resolve:** Since the object of this contract is the use of the thing, not the thing itself, though this is presupposed, if the leased thing perishes before delivery, the contract is dissolved and the lessee is freed. The same must be said if, during the lease, without fault of the lessee, the whole thing perishes. If the thing perishes only in part, the rent must at least be diminished; and if that part is notable, the lessee can either seek diminution of the rent or even dissolve the contract. C. I. 1580. If the thing itself does not perish, but nevertheless the lessee

is impeded from the use or cultivation of the thing without his fault, for example if a field is overwhelmed by a long-lasting flood, occupied by an enemy army, etc., the lessee is freed from paying rent. L. Si fundus; L. Perinde; L. Et haec; L. Habitatores § 1, Dig. Locati etc.

The contract of lease of itself is dissolved neither by the death of the lessor nor of the lessee, C. I. 1596; C. G. 1742, but by the lapse of the time defined in the contract. C. A. 1109ff.; C. H. 1565ff.; L. 857.

1205. **Who can lease and hire, and does lease-hire pass to the heirs?** Whoever can sell and buy, the same can lease and hire. From C. I. 1572, a lease beyond nine years is not permitted to those who have simple administration. Cf. C. H. 1548. The lessee can sublease to another the thing hired, L. Cum in plures, Dig. Locati et conducti, and L. Nemo, C. de locato; C. I. 1373; C. G. 1717; C. H. 1550.

Moreover the contract of lease-hire passes to the heirs of both parties as long as the predefined time of the lease lasts, unless otherwise agreed. Inst. bk. 3, tit. 24, § 6. So also from C. I. 1596; C. G. 1742. Likewise it passes if work has been leased for something which can be fulfilled by another, L. Veteris, C. de contrahenda et committenda stipulatione; otherwise if it is such work as cannot be fulfilled by another. C. I. 1642, 1643; C. G. 1795, 1796, the contract for lease of work is dissolved by the death of the worker who had leased his service. But the one who commissioned the work is held to pay that person's heirs the price both of the work completed and of the prepared material, if these can be useful to the one commissioning it. If the things belong to the Church, the approval of the Holy See is required for them to be leased beyond three years. E. M.

1206. **What can be leased and hired?** Whatever comes into commerce can be leased, provided it is not consumable by use and can and usually is estimated by a wage. Therefore both immovables and movables can be leased; likewise services and work, as to carry someone elsewhere, to paint a picture, etc.; and incorporeal rights, as usufruct, habitation, taxes, etc. C. A. 1092, 1093.

Moreover the service of a surveyor is regarded as a benefice; and therefore, according to the older authors, lease-hire is not made with such a person, and thus neither wage, but remuneration and an honorarium. The same must be said of the service of an advocate, physician, and others who furnish us service by intellect, eloquence, fidelity, etc. But remuneration owed to servants and workers is usually called salary and stipend. For remuneration, since service proceeding from human freedom is something nobler than merchandise, takes on the character of merit and of a right to reward. Cf. Encyclical of Leo XIII, *Rerum novarum*; S. C. Cas. Conse. N.

From C. I. 1571-1696, as regards things which can be leased, special mention is made only of a rural estate, a house for habitation, and animals. As regards services, three principal species of lease of services and industry are said to exist. The first, by which someone binds his services into the service of another; the second, by which carriers, both by land and by water, bind themselves to transport persons or things; the third, by which contractors for works bind themselves to make works. Cf. C. H. 1575ff.; C. A. 1151ff.

1207. **What are the obligations of the lessor?** Once the agreement has been perfected, he must hand over the thing in such a state that the lessee can use it, and therefore he is held to make the expenses necessary for this. Likewise he must take care that the lessee enjoy the thing peaceably. L. Sed addes § 5; L. Ex conducto § 1, Dig. Locati etc.; C. I. 1575, 1576; C. G. 1719, 1720; C. H. 1554; C. A. 1096; L. 857.

The lessor must disclose the defects of the thing which render its use useless or harmful. L. cited, Sed addes § 1. From C. I. 1577; C. G. 1721, the lessor must hold the lessee harmless from all vices and defects of the thing which would impede its use, even if the lessor did not know them when the contract was entered. But if from vices or defects of this kind damage comes to the lessee, the lessor is held to compensate the damage, unless he demonstrates that he was ignorant of them. Cf. C. A. 1117; L. 857.

The lessor cannot, before the predefined time, deprive the unwilling lessee of the thing hired, unless an unforeseen case occurs on account of which the house is necessary for the owner himself. C. I. 1612; C. G. 1761, the lessor cannot dissolve the contract, even if he declares that he wishes to inhabit the house, unless a contrary agreement was entered.

C. I. 1579, 1580; C. G. 1724; C. H. 1557, 1558; C. A. 1118, 1119: the lessor cannot, during the lease, alter the form of the thing leased. If necessary restorations of the thing leased are such that they prohibit habitation of that part which is necessary to the lessee and his family, there is place, according to circumstances, for rescission of the contract and compensation of damages.

C. I. 1584; C. G. 1729; C. H. 1569: if the lessee uses the leased thing for a use other than that for which it is destined, so that the lessor can suffer damage from it, the latter can, according to circumstances, seek rescission of the contract.

C. I. 1165, 1595; C. G. 1741; C. H. 1556; C. A. 1096, 1117, 1118: the lease contract can be dissolved by one party if the other does not satisfy his principal obligations. The principal obligation of the lessor is that he furnish the leased thing fit for use, and preserve it in that state. The principal obligation of the lessee is that he not ruin the thing hired, and that he pay the rent at the appointed time. By Canon Law, in the matter of leasing an ecclesiastical thing, if the lease is beyond two years, the lessor must wait two years, and cannot before this time deprive the unwilling lessee of the thing hired if he does not pay the rent. C. Propter, De Locato. But this condition is neither of natural law, nor is it required by Roman Law in a non-ecclesiastical thing.

From Roman Law, a universal successor, or heir, cannot expel the lessee before the completed time. But a partial successor, such as buyer, donee, legatee, etc., is not held to stand by the lease contract, nor is the lessee, unless nevertheless otherwise has been agreed, for example that the leased thing not be alienated during the time of the lease. L. 9, C. de Locato, etc. Although the buyer is not held to stand by the lease contract, nevertheless the lessee, if he is expelled, can bring action against the lessor and his heirs to obtain his interest. L. Si merces § 1, Dig. Locati etc.; L. Qui fundum, ibid.; L. 858, 859.

From C. I. 1597ff.; C. G. 1743ff.; C. A. 1120, 1121, the buyer of a leased thing generally cannot expel the lessee, unless it was established in the lease contract that, if the leased thing is sold, the buyer can dissolve the lease and expel the lessee. In this case the buyer is held to warn the lessee at a

suitable time. And if no stipulation intervened, from C. I. and C. A., the lessor is held to compensate the damages of the lessee; from C. G., as regards damages and interest, the lessor and, if he fails, the buyer, is held to keep the lessee indemnified. Cf. C. H. 1571.

1208. **What are the obligations of the lessee?** He must pay the price at the appointed time. C. I. 1583; C. G. 1728; C. H. 1555. He must use the thing for the end for which it was given and not for another. C. I. 1583; C. G. 1728; C. H. 1555. He is held to make lease expenses, namely expenses of lesser moment pertaining to the restoration of the thing worn by use, defined by custom or law. C. I. 1604, 1625; C. G. 1754, 1777; C. A. 1096. He must apply in the use of the thing that diligence which he applies in his own thing, lest the owner of the thing suffer detriment. C. I. 1583; C. G. 1728; C. H. 1555. He is not prohibited from subleasing, unless otherwise stipulated, or unless detriment arises from it to the lessor. L. 11, C. h. t.; C. I. 1573; C. G. 1717; C. H. 1550; C. A. 1093. When the lease has ended, he must restore the thing in the state in which he received it. C. A. 1109; C. H. 1561; C. I. 1585.

1209. **What as regards the fault to be furnished?** Since the contract of lease-hire is for the advantage both of the lessor and of the lessee, each furnishes only gross and slight fault, not very slight fault. Lugo d. 29, n. 64; Molina d. 494, n. 1. Neither is held for fortuitous cases in which there is no fault. C. H. 1555, 1559.

1210. **What if the leased thing perishes?** From the general rule, if the leased thing perishes, and it is unknown whether the thing perished by the fault or deceit of the lessee or custodian, or by chance, the lessee or custodian is obliged to prove both: that the thing perished, and that the thing perished without his fault or deceit. Cf. Molina d. 494, n. 13. Yet if a leased house perishes by fire, the lessee must be absolved unless the lessor demonstrates the lessee's fault. For often fire happens by the fault of servants, which a householder is not compelled to furnish. L. Si vendita, Dig. de Periculo et commodo rei venditae. Cf. Laymann n. 6; L. 855.

From C. I. 1588, 1589, 1590; C. G. 1733, 1734, 1735, the lessee of a house or rural estate is held for fire unless he demonstrates that the fire happened by fortuitous case, or by superior force, or from a defect of construction, or, from C. I., notwithstanding the usual diligence applied by any diligent householder, or that the fire was communicated from a neighboring house. If there are several tenants, all are equally held, together with the lessor from C. I. if he also inhabits it, and each in proportion to the value of the part occupied by him, unless he demonstrates that the fire began in the dwelling of one of them, in which hypothesis that one alone is obligated; or unless he demonstrates that the fire could not have begun from his place. And generally the lessee must furnish for detriments and damages which happen in the time of his hiring, unless he proves that they happened without his fault; and he must furnish for those same things of which someone from his family or from his subtenants was the cause. C. H. 1563, 1564, 1568; C. A. 1111, 1112.

1211. **Is the lessor of fields held to remit at least part of the rent in a case of sterility because of hail, for example, or another misfortune?** "Of itself, by natural law, speaking strictly, the lessor is never held to remit the rent owed by the tenant, because misfortunes naturally fall upon the tenant himself. For a thing which is destroyed by fortuitous or extraordinary chance perishes to the owner; but the lessee is owner of the fruits to be gathered; therefore. I said 'of itself,' because by a general agreement confirmed by law it has been introduced that, if the loss

is enormous, something is remitted; but if it is total, that the damage be divided between both, namely the lessor and the lessee. But if it had not been so established, the lessee would pay a smaller rent." L. 860; Gury, Cas. 973.

1212. **What if the tenant indeed had a favorable harvest, but nevertheless lost all the fruits already collected into the barn, whether by plundering of enemies or by fire?** "In this case the tenant cannot demand a diminution of the rent, as it seems, at least more probably. The reason is that, when the fruits have already been collected into the barn, they are by full right in the ownership of the lessee; nor do the agreements or laws, by which the rent is to be paid in a lesser amount when an extraordinary calamity comes upon it, seem to regard this case. Elbel n. 673; La-Croix, bk. 3, pt. 2, n. 1049, against Lessius and others. In practice, surely, the lessor would be held to nothing before the sentence of a judge." Gury, Cas. 976.

1213. **What are the dispositions of the law concerning the preceding cases?** L. Ex conducto § 2, Dig. Locati etc.: "If a blight has occurred and has taken away every fruit, it is not the loss of the tenant, lest he be compelled to furnish the rents of the field beyond the loss of the seed lost." Therefore if the damage is immoderate, the lessee is freed from paying rent. L. Si merces § 6, same title: "Superior force must not be damaging to the lessee, if the fruits have been injured beyond what is tolerable." Hence, if there is great sterility but not full sterility, the rent is remitted proportionately. Canon Law agrees with Roman Law, C. 3, De Locato. L. 860.

C. I. 1620, 1621; C. G. 1772, 1773; C. A. 1104, 1106: the tenant can by explicit agreement subject himself to fortuitous cases. But such an agreement is not understood except for ordinary fortuitous cases, of which sort are hail, lightning, frost; not for extraordinary cases, such as devastation by war, or an inundation to which the region is not accustomed to be subject, unless the tenant has subjected himself to all fortuitous cases foreseen and not foreseen.

C. I. 1617; C. G. 1769: if the lease is for several years, and during it the totality or half of the fruits of some year perishes by chance, the tenant can ask for a certain remission of the price, unless he is compensated by what he gathered in preceding years. If this compensation is absent, the remission of price is determined at the end of the lease, after the fruits of all the years of the lease have been computed.

C. I. 1618; C. G. 1770: if the lease is for one year, and the totality, or at least half, of the fruits has perished, a proportional remission of price is made to the lessee, who cannot demand any remission if the loss is less than half. Cf. C. A. 1105.

C. I. 1619; C. G. 1771: the tenant cannot obtain remission if the loss of fruits happened after they had been separated from the soil, unless the contract grants the lessor a certain part of the fruits, in which hypothesis the lessor will undergo the loss of his part, provided fault or delay of the lessee did not intervene in handing over to the lessor his portion. Cf. C. A. 1107, 1108.

C. I. 1619; C. G. 1771: if the cause of the damage existed and was known when the contract was entered, the tenant can ask for no remission.

1214. **What is emphyteusis?** Emphyteusis is a Greek word which sounds the same as "planting in," because this is held as special in it, namely that the land is to be improved, and this is done by planting something in the land. As regards the matter, emphyteusis is the concession of useful

ownership in an immovable thing, with the obligation of cultivating and improving it and paying a canon, that is, a stated pension in recognition of direct ownership, made either in perpetuity, or for the life of the emphyteuta, or of several persons, or for a time not less than ten years. Considered under Common Law, the emphyteuta is held to pay the customary contributions, because, since he receives all the benefits of the thing, it is equitable that he also sustain its burdens. Inst. bk. 3, tit. 25, § 3; Struggl 13, 17ff.; L. 865.

1215. **Is emphyteusis admitted by more recent laws?** From C. G., emphyteusis does not seem to be recognized. But it is recognized from C. H. 1605, 1628ff.; from C. A. 1123, 1127ff.; and from C. I. 1556ff. From C. I. 1556, emphyteusis is a contract by which a certain land is conceded in perpetuity or for a time, with the obligation of improvement and of payment of a determined annual prestation, whether in money or in fruits.

1216. **By what laws is emphyteusis governed?** Emphyteusis, by reason of the goods which are given in emphyteusis, is either ecclesiastical or lay. Ecclesiastical emphyteusis is governed by Canon Law and Roman Law. Hence it is not lawful to redeem an ecclesiastical emphyteusis without Apostolic approval. Lay emphyteusis is either ancient or new. The former is governed by ancient Law and by the agreed pacts. The latter, that is, one entered after the year 1865, is governed by more recent Law. Italian law, 20 Nov. 1865, art. 29; L. 865.

1217. **What are the special laws of emphyteusis from C. I.?** Emphyteusis by law itself is subject to the following prescriptions: the emphyteuta has power to dispose of the emphyteutic land and its accessions, both by act among the living and by last will; and in whatever way the land is transmitted, no prestation is owed to him who conceded it. Subemphyteusis is not admitted. The conceder of the land can every twenty-ninth year ask recognition of his right from the possessor of the land, yet without any prestation being owed to him. The emphyteuta can always redeem the land from the burden of emphyteusis by paying the prescribed sum of money. Arts. 1562-1564.

Provided the aforesaid laws are observed, other particular agreements can be constituted. If these are absent, one must stand by the laws established in the same Code. According to these laws, arts. 1558-1561, the emphyteuta makes all the fruits of the land and its accessions his own, and has the same rights which the owner would have in treasures and mines which are discovered in the land. Whatever the sterility or loss of fruits may be, or if part of the land perishes, the emphyteuta cannot ask for remission or diminution of the canon. But if a notable part perishes, the emphyteuta can renounce his right by yielding the land to the conceder. Taxes imposed on the estate and any burdens inhering in it pertain to the emphyteuta. L. 865.

1218. **How does emphyteusis end?** Emphyteusis is lost by prescription of thirty years, namely if the emphyteuta has ceased for so much time from payment of the canon. C. I. 1563. It is rescinded if the emphyteuta has made the land notably worse, or, after being legitimately called upon, has not paid the canon for a whole two-year period. C. I. 1565. It is extinguished by the destruction of the thing, or when the time of concession has been fulfilled, or if the emphyteuta has redeemed the land at the legitimate price. C. I. 1560, 1564, 1566.

1219. **What is a fief?** A fief, from faith, is the concession of useful ownership in an immovable thing with the obligation of furnishing fidelity and personal service to the direct lord. One who

receives a fief is called a feudatary or vassal, and one who hands it over is called the enfeoffing lord or lord. But a vassal differs from an emphyteuta in this: that the latter must pay a real pension in recognition of direct ownership, while the former must only furnish fidelity and personal service, for example, to fight. The solemn act by which the vassal was placed in possession of the feudal thing and at the same time was bound in faith to the lord is called investiture. Struggl 14; L. 867.

1220. **What is a libellus?** A libellus is nothing other than an emphyteusis, or a fief, subordinated to another emphyteusis or fief, insofar as the emphyteuta or vassal sub-emphyteuticates or sub-enfeoffs another. The one who receives emphyteusis or land from the direct lord is called an emphyteuta or feudatary. But one who receives the same thing from them for a pension is called by the special name libellary. L. 868.

XV. On The Contract Of Partnership

1221. **What is the contract of partnership?** Partnership is a contract by which two or more bring something into common, for the sake of receiving profit in common. C. I. 1697; C. G. 1882; C. A. 1175; C. H. 1665.

It is said "two or more," namely those who are able to dispose of things, and who are not prohibited from acquiring reciprocal utility for themselves because of violation of the rights of other persons; for this reason, for example, this partnership cannot be entered between a mother and her natural son. C. I. 1704; C. G. 1840.

"Something," that is, money, or other goods, or even one's own industry. Excepted are goods which the partners will acquire either by donation, legacy, or succession, unless, from C. G., it is a question of spouses, for these can be brought in such a way that only their enjoyment, not their ownership, becomes common. C. I. 1433, 1698, 1701; C. G. 1526, 1833, 1837.

"Into common." Something can be brought into common in two ways: 1. so that not only the use and fruits of the contributed thing are common, but also the ownership, so that individuals are made owners of the whole capital by partial ownership; 2. so that, while ownership of the thing remains with the contributor, the use and fruits are common. L. 1 § 1; L. 2; L. 7, etc., Dig. Pro socio. Moreover by law itself those things pass into the ownership of the partnership which are consumed by use or become worse; those which are contributed so that they may be sold; those which are given after an estimation of them has been made and consigned in an inventory. C. I. 1715; C. G. 1851; C. H. 1687. Cf. C. A. 1181, 1182; Lugo d. 30, n. 1, 4; Molina d. 411, n. 7; Lessius, bk. 2, ch. 25, n. 1; L. 904.

1222. **Is the contract of partnership lawful?** Response: affirmatively. For it contains nothing which is opposed to justice. Nevertheless it requires the following conditions: 1. that the partnership be made in honest trade, C. I. 1698; C. G. 1833; C. H. 1666. Certainly no one can lawfully be obligated in a base matter. 2. That damage to the principal pertain only to its owner, if only the usufruct of the thing is brought into the partnership; but that it pertain to the partnership itself if the principal itself is brought into the partnership. For the thing perishes to the owner. C. I. 1715; C. G. 1851; C. H. 1687. Cf. C. A. 1183. 3. That due equality be preserved between profits and losses and expenses to be divided among the partners. Here losses are understood

as those which come upon the partners by regard to the partnership alone. Expenses are costs of journeys, payments of taxes, etc. C. I. 1716, 1717; C. G. 1852, 1853; C. H. 1689; C. A. 1192-1197. 4. A partnership of immovable things, or the use of them beyond nine years, needs writing, and, as regards third parties, transcription. C. I. 1314, 1932, 1942. Cf. C. A. 1178; C. H. 1667, 1668; L. 904-907; St. Thomas, II-II, q. 78, a. 2.

1223. **You will resolve:** Therefore it is necessary that to each one be constituted a share of profit in proportion to the thing which he contributed, and a share of loss in proportion to the profit. But if something else has been freely agreed, the pact is valid, provided the profit is at least established equal to the just wage of the thing or service which one contributes, as if it were leased; and provided it is not established that one person feel no part of profit or no part of loss. C. I. 1719; C. G. 1855; C. H. 1689, 1691; C. A. 1193, 1196. The proportional share of one who contributed labor alone will be that of the one who contributed less. C. I. 1717; C. G. 1853; C. H. 1689. Nevertheless, with attention to natural law, if the industry of the merchant were notably worth more than the capital of the co-partner, an agreement certainly could be made about receiving a proportionately greater profit, which indeed is approved by positive Law itself. Inst. bk. 3, tit. 26, § 1, 2. Cf. C. A. 1183, 1187, 1193.

"It seems to me," says St. Alphonsus 907, "that it must altogether be said that, with the capital preserved for the owner, the profit is to be divided proportionately, account being taken of the value of industry on one side and, on the other, of the advantage furnished from the money, according to the common estimation of the profit which is commonly accustomed to be had from money applied to trade. Hence it must be well noted that sometimes the industry of the merchant will be worth more than the use of the money, and then the profit must be distributed proportionately; so that sometimes a pact can be lawful that at the end even the capital be divided, while meanwhile the profit has been equally distributed, as happens by custom in several places in a partnership of animals. Moreover it must be noted that sometimes the value of industry decreases because of the multitude of workers seeking partnership; for this reason several contracts can perhaps be excused which at first sight seem unjust, because the industry of the workers contributed into the partnership is commonly not estimated there as worth more, according to the custom of the place."

1224. **You will resolve:** The pact is altogether unjust by force of which, after merchandise has been bought, before all else and while the partnership itself lasts, the capital is restored to its owner; and then what remains is divided equally. For for the one placing that capital, the danger of his capital is diminished, but the merchant, if the merchandise afterward perishes, is subject without compensation to the danger of capital and of profit. L. 907.

1225. **Is the pact lawful that, if some sheep perish from a flock, they must be supplied from the offspring which are born, and meanwhile the other offspring, wool, and cheese are divided equally?** The first opinion affirms, "because such substitution of sheep results as much in favor of the shepherd as of the one buying the sheep." The second opinion denies, and this seems altogether true to St. Alphonsus 909, "because although the profit is first diminished for each, and afterward compensated for each, nevertheless the offspring which are substituted would have had to be divided equally between the shepherd and the owner; but when they are substituted, this certainly yields more to the utility of the owner than of the

shepherd, since the owner then compensates himself for the loss of profit, just as the shepherd does, but meanwhile the owner always preserves his principal safe for himself, which should have been diminished for him; and therefore equality is not preserved in the contract."

1226. **Is the contract of partnership called "with the capital safe" lawful, namely when animals are handed over to a shepherd with the pact of rendering them safe in the same number at the end of the partnership, and dividing the profit?** "Speaking of itself, this contract is unlawful, because the principal must stand at the risk of the one contributing it, for a thing perishes to its owner. Yet it can probably become lawful if another contract of insurance is added, compensating the shepherd by a greater part of the fruits for the burden of such danger to the principal undertaken by him. Certainly a contract is unjust by which the owner gives oxen estimated according to present value, with the pact that, if they decrease, the same value must be restored when the partnership has ended, because deterioration of the thing pertains to the owner, unless this damage is otherwise compensated. But if nevertheless a pact were present that at the end of the partnership not only the profit, but also the principal of the animals, is to be divided with the partner, then it will not indeed be an unjust pact that, if meanwhile the capital perishes, the shepherd is held to restore to the owner half the principal." L. 909, 907, q. 4.

1227. **Is a partner who ought to have brought a sum of money into the partnership but did not bring it also liable for interest?** Response: affirmatively. C. I. 1710; C. G. 1846; C. H. 1682. The same is established there if a partner took some sum of money from the partnership treasury for his own particular utility.

1228. **To whom does the administration of the partnership pertain?** Administration of the partnership pertains to him to whom it was mandated. C. A. 1190, 1198. But administration which was given to someone in the very contract of partnership cannot afterward be taken away except for a legitimate cause. But if it was given afterward, it can be revoked as a simple mandate. C. I. 1720; C. G. 1856; C. H. 1692. If it was mandated to no one, it is judged to have been tacitly permitted to all. C. I. 1723; C. G. 1859; C. H. 1695.

But each person must apply such diligence to common things as he applies to his own things. Cf. C. A. 1185, 1186. Therefore, if he has done some things negligently and injured the partnership, but has done other things diligently and increased the partnership, negligence is not compensated with diligence unless this was altogether extraordinary. C. I. 1714; C. G. 1850; C. H. 1686; C. A. 1191. If one of the partners has exacted something from a debtor of the partnership who is at the same time his own debtor, he must impute the payment to each debt proportionately; but if he has ascribed the whole to the partnership, it is valid. C. I. 1712, 1713; C. G. 1848, 1849; C. H. 1684. Cf. C. A. 1202, 1203; Inst. bk. 3, tit. 26, § 9.

1229. **In what ways is partnership ended?** If nothing special has been agreed, partnership is ended: 1. when the time for which it had been entered is completed; 2. when the common thing has been totally extinguished, or the business has been finished; 3. by the natural or civil death, interdiction, or publication of goods of one of the partners; 4. by the expressed will of one or several partners, when the duration of the partnership is unlimited. But if the partnership is for a determined time, its dissolution cannot be demanded unless some grave reason is

present, for example, the infidelity of a co-partner, or the continual illness of a partner by which he can no longer conduct the business of the partnership. Cf. C. I. 1729, 1731-1735; C. G. 1865, 1867, 1869-1871; C. A. 1189, 1205, 1207, 1210-1212; C. H. 1680, 1700ff.; Inst. bk. 3, tit. 24, § 4-8; L. 907.

1230. **Note:** Once a partnership of profits has been dissolved, the capital must be restored to the owner in the first place, even if no profit in fact remains. Sixtus V, bull *Detestabilis*, § 2; L. 907; St. Thomas, II-II, q. 78, a. 2, ad 5. Similarly, if the capital perishes at the beginning, it perishes to the owner; for in a partnership of profits, the capital, or sum of money, is not contributed, but only the advantage of the money. L. 907.

1231. **Can an agreement be made that the partnership, after the death of a partner, be continued with his heir?** Affirmatively. This was indeed prohibited by Roman Law, L. 35, 59, C. h. t. But it is admitted by Italian, French, Austrian, and Spanish Law. Nor does it seem unlawful by Natural Law. C. I. 1729; C. G. 1868; C. A. 1206-1209; C. H. 1704: the partnership remains if it has been agreed that it should remain with the survivor or with the heir. But although the partnership does not remain with the heir, nevertheless the heir is held to complete those things which were begun by the deceased. L. 40, C. h. t.; C. I. 1732; C. G. 1868; C. A. 1206, 1209.

1232. **Does any loss of a thing dissolve the partnership?** Response: affirmatively, if one of the partners promised to bring the ownership of a thing, or only its use and fruit, into common, and the thing perishes before it is contributed. Negatively, if the ownership of the thing has already been brought into common. C. I. 1731; C. G. 1867.

1233. **When a partnership has been contracted without limit as to duration, can someone depart from it at pleasure?** Response: affirmatively, provided nevertheless that his renunciation is made in good faith and not untimely. C. I. 1733, 1734; C. G. 1869, 1870; C. A. 1212; C. H. 1705; Inst. bk. 3, tit. 24, § 4.

1234. **How many kinds of contract of partnership are there?** The contract of partnership can be diverse, both by reason of end, insofar as the proximate end is either the common use of things alone, or only fruits or profit, or both; and by reason of matter, insofar as either all goods are contributed, or only use and profits, or the profits of certain goods or of a certain trade; and by reason of time, insofar as the partnership is entered either for life, or for a determined time, or until the outcome of some business. C. I. 1699ff.; C. G. 1835ff.; C. A. 1176; L. 907.

1235. **What about universal and particular partnership?** Partnership is distinguished as twofold: universal and particular. C. H. 1671. Universal partnership can be either of all present goods or of all profits. C. I. 1700ff.; C. G. 1836ff.; C. A. 1177; C. H. 1672, 1673. If a partnership of all present things has been entered, all the goods which then belong to those entering it immediately become common. Those which the parties afterward acquire by succession or donation enter the partnership only as regards use and fruit. C. I. 1701; C. G. 1837; C. H. 1674. Cf. C. A. 1177. But if a partnership is made of all profits, it embraces only those profits which the parties will acquire by their own industry under whatever title; the goods of the partners, whether movable or immovable, become common only as regards use and fruit. C. I.

1702; C. G. 1838; C. H. 1675. A universal partnership entered without another declaration is a partnership not of things but of gains. C. I. 1703; C. G. 1839; C. H. 1674.

But a particular partnership is that which is contracted concerning only some things or services. C. I. 1705, 1706; C. G. 1841, 1842; C. H. 1678. It can be made in several ways: 1. if all the partners contribute capital and labor; 2. if all contribute only capital, but a third person hired by stipend applies industry; 3. if one contributes capital and another labor. L. 907.

1236. **Note:** Partners are not held jointly and severally for debts of a noncommercial partnership; nor can one oblige another without express faculty. C. I. 1726; C. H. 1698.

1237. **Whether and what kind of partnership exists between spouses?** A partnership, or rather community, between husband and wife can be entered before the wedding, and can take its beginning only from the beginning of the marriage. C. I. 1433; C. G. 1399; C. A. 1180, 1233. Indeed, from C. G. 1400, it is judged to have been entered by law itself, unless otherwise agreed. From C. I. 1433 they are prohibited from entering a universal partnership of goods; but it is permitted only as regards useful gains.

The administration of this partnership is with the husband, to whom moreover it is permitted to alienate common things from an onerous cause. C. I. 1438; C. G. 1421. The effect of this partnership from Roman Law is to make ownership common to each spouse. But the husband has the usufruct. L. 539, 542. Its effect from C. I. 1436 is to render common and divisible the acquisitions made by the spouses jointly or separately during the partnership or community. From C. G. 1470, 1474, when the community has been dissolved, one's own goods and owed indemnities are first taken out, then what remains is divided in equal portions between husband and wife, or their representatives. From C. A. 1233, 1234, 1236, community of goods, if entered by special contract, is understood only for the case of death, and gives to the spouse a right to half of the goods which have been reciprocally placed in community and which by chance remain after the death of the other spouse. But no right is acquired to the fruits during marriage. Cf. 677, 868.

1238. **Is there partnership between brothers?** Among brothers "a partnership is not judged to have been made unless this is held expressly or tacitly from conjectures. Hence not because brothers have an undivided patrimony and live from a common table is a partnership contracted among them, unless indeed all exercise themselves in some business; or unless, while one trades, the others contribute their goods. And this is more clearly presumed if all contribute into common all goods belonging to each one. Yet this is understood when each one also contributes his own goods besides the common goods; otherwise, if only one contributes his own proper goods, for example profits from some office or art, and the others only common goods, then he can compensate these to himself. And likewise, if one contributes greater labor, he can receive more, according to the estimation of his labor. But if some absent brother trades in the common name from the common goods, he is understood to have partnership until he is warned by the other brothers that they wish to make a division; and then the partnership does not cease even for businesses begun." L. 907.

1239. **What is the triple contract?** The triple contract is that by which someone contributing money makes a pact with another partner that whatever happens, the whole sum be restored to him

with a certain profit, yet with a profit smaller than that which he could probably hope for. Or it is a contract of partnership to which two other contracts are joined, namely insurance of the principal and insurance of profit, or the sale of the hope of receiving a greater profit for a smaller profit which is certain and insured.

Thus it is instituted. I contract, for example, with Peter, giving him a sum of money for trading. But since the hope of making 15 percent profit shines upon me, and on the other side I fear lest I lose the principal, I enter a second contract with Peter, giving him 5 percent if he wishes to undertake the insurance of the principal upon himself. Once this second contract has been entered, only 10 percent remains for me to make. But I would prefer a profit still smaller but certain, rather than a greater and uncertain one. Therefore I propose to my partner that he give me only 5 percent, but that he refund it certainly, whatever happens, both the principal and the established profit. Hence there is a threefold contract, namely partnership, insurance of the principal, and insurance of profit. L. 908.

1240. **Is the triple contract lawful?** There is a twofold probable opinion among theologians. The first opinion denies it. The reason is: 1. because in this way partnership is destroyed, whose nature is that the dangers be common; therefore it is a true mutuum; therefore the title or foundation of receiving profit is lacking, at least above the legal rate for a loan. 2. Because, they say, the opposite doctrine was reproved by Sixtus V through the bull *Detestabilis* in 1586, § 1, and by the bull of St. Pius V *Onus*, § 4.

The second opinion commonly affirms it, provided the money is spent in trade. The reason is: 1. because these individual contracts separately and with different persons are of themselves lawful and just; therefore also if they are made together and with the same person; 2. because nothing is against equality, for compensation is given, and the danger is equivalently sustained by the one giving the money; 3. because Benedict XIV declares, De Syn., bk. 7, ch. 1, that the triple contract was not condemned by Sixtus V, nor did he intend to condemn it. And in the encyclical *Vix pervenit* he says that he does not wish to condemn contracts about which there is dispute among theologians.

As regards civil law, some say that the triple contract is reproved by C. I. 1719; C. G. 1855. Others, and more truly, say that nothing about it is contained in C. I. or C. G. For those articles regard the simple contract of partnership. L. 842, 847, 849, 908; Lugo n. 37.

1241. **What is community of goods?** Community of goods is indeed distinguished from the contract of partnership, yet it implicitly contains in itself some contract of partnership, whatever the original beginning of this community may have been. Moreover, community of goods is co-ownership of two or more persons with respect to one and the same thing, as, for example, if several possess one and the same house. C. A. 825; C. H. 392. Cf. 1121ff.

1242. **By what laws is community of goods governed?** If special agreements or special dispositions of law are lacking, then one must stand by the general prescriptions of the law itself. C. I. 673; C. H. 392; C. A. 826. These are the general norms of law: the concurrence of those participating in the ownership of the same thing in rights and burdens must be proportionate to the share of each. C. I. 674; C. H. 393; C. A. 830, 839ff. Anyone can use the thing placed in community, and alienate, cede, mortgage his portion, or even substitute another in his right of enjoyment, unless it is a question of a merely personal right, as is the

right of habitation. C. I. 675, 679; C. H. 394, 399; C. A. 829. If the greater part does not consent, innovations cannot be made, even useful ones. Nevertheless, anyone can oblige the others to necessary expenses for the preservation of the thing. C. I. 676, 677; C. H. 395, 397; C. A. 828, 835. Anyone also can always withdraw from the community, unless the time has been determined by pact, which will not be beyond ten years. C. I. 681; C. H. 400. Dissolution of community cannot be demanded from co-owners of things which, if divided, could no longer serve the use for which they are destined. C. I. 684; C. H. 401. Cf. C. A. 830ff.

There are various cases of community, for which special dispositions of law are present: 1. when several things of different owners have been mixed together and cannot be separated without damage, then ownership is common, yet according to the proportion of the value of the thing pertaining to each one. C. I. 471; C. H. 381; C. G. 572ff. 2. When a wall is common between houses or gardens, or a tree is common, a ditch is common at the boundary of fields, or flowing water is common, or pastures are common. C. I. 546ff., 542ff., 682; C. A. 421, 854ff.; C. H. 572ff., 593; C. G. 646, 653ff. 3. When there are several owners of the same building, some of the upper parts, others of the lower parts. C. I. 562ff.; C. H. 396. 4. When an inheritance is common. C. I. 984ff., 1034ff.; C. G. 815ff.

XVI. On Wagering, Gaming, And Insurance

1243. **What is wagering?** Wagering is a contract in which two or more persons, contending about the truth or outcome of some thing, pledge something to one another, so that it may belong to him who has attained the truth. C. A. 1270; L. 869; Lugo d. 31, n. 73.

1244. **Is wagering lawful?** Wagering furnished with due conditions is of itself lawful. For it contains nothing dishonorable, nor is it prohibited by any positive law. The required conditions are: 1. that it not be about unlawful things; no obligation is given against morals; 2. that it be about a thing doubtful with respect to both wagering parties, otherwise equality is not given, C. A. 1270; 3. that there be equality between the thing which is pledged and the uncertainty of the outcome, namely so that he for whom the greater probability stands promises more, but he for whom the lesser probability stands promises less; 4. that each receive the thing in the same sense, otherwise they would by no means agree in one thing. L. 869, 870, 878, 879; Lugo d. 31, n. 82, 83.

1245. **Does wagering oblige?** Wagering obliges in conscience by natural law, like any other lawful contract. C. I. 1892; C. G. 1965; C. H. 1799: the same is established for wagering as for gaming. Cf. 1247. C. A. 1271: a wager made in good faith, and otherwise lawful, obliges insofar as the price has not only been promised but also handed over or deposited. But it cannot be sought judicially.

Through the bull of Pius IV *In eligendis*, wagers concerning a doubtful election of the Pontiff, or concerning his life and death, are prohibited. Gregory XIV, through the bull *Cogit nos*, extended this to the election of Cardinals, with an added excommunication latae sententiae as regards the election of the Pontiff, reserved even outside the time of a vacant See. And because wagers of this kind are declared invalid, no obligation arises from them. L. 869.

1246. **What is gaming, and how many kinds are there?** Gaming is a contract by which players agree among themselves concerning a certain prize which will fall to the victor. It is threefold: 1. industrial, which is chiefly ruled by the skill of the players; 2. aleatory, which principally depends on chance; 3. mixed, which depends partly on skill and partly on chance. L. 871; St. Thomas, II-II, q. 168, a. 2.

1247. **Is gaming lawful and valid?** A contract of this kind, considered by the law of nature and if the due conditions are present, is valid and lawful. The reason is that anyone, as owner of his own thing, just as he can dispose of it by giving it absolutely, can also hand it over to another under some condition, whether that condition is fortuitous or depends on skill. L. 871. Moreover, that gaming, insofar as it is simple relaxation of the mind, is lawful is beyond every controversy. For just as the body needs rest lest it be too much weakened by labor, so the soul also needs rest lest it be too much wearied by continual meditation. St. Thomas, II-II, q. 168, a. 2.

"Considered by the law of nature," I said. For games of mere chance are prohibited by Canon Law. Dist. 35, can. 1. Yet as regards lay persons, they say that Canon Law has already been derogated by custom. But as regards clerics, cf. vol. 2, n. 176. By Roman Law certain games, namely dice and games of fortune, were prohibited. L. 1, 3, C. de Aleatoribus et alearum usu. By the same Law, those who were beaten in forbidden games could not be sued to pay, and, if they paid, they had an action for recovery. Therefore payment made by the loser was not invalid, but to be invalidated by the judge. But because these laws either were penal, or by use and custom were held as penal, hence, with attention to Roman Law, it is most probable that lay persons playing would not sin even venially. L. 883-885; Lugo d. 31, n. 8.

From C. A. 1272, what was established for wagering is applied to games. Cf. 1244. But all aleatory games are held as unlawful, and it is declared that they produce no obligation. Nevertheless an action for recovery of what has been paid is denied. C. I. 1802-1804 and C. G. 1965-1967 contain no prohibition of any game. Nevertheless it is established that the law gives no action for demanding payment of what is owed because of gaming or wagering. Games which contribute to bodily exercise are excepted, such as the handling of weapons, running either on foot or on horse, ball game, etc.; for these an action is granted. Yet it remains open to the judge even in these to deny action, if the sum deposited for the game or wager was exorbitant. But if the loser has freely paid, he cannot recover what was paid, provided fraud or deceit of the victor was absent, and the loser is not a minor, interdicted, or declared incapable. C. H. 1798-1801: games of mere chance are prohibited, and no action is granted to the victor for them, yet no action is granted to the loser to reclaim what was paid unless deceit intervened, or he is a minor or incapacitated. The same is established for wagering which has analogy to these games. Games which contribute to bodily exercise are permitted, as in C. I. and C. G.; and for these games and analogous wagering, action is granted. Yet the judge can reject the petition, or reduce the sum owed, if it is excessive.

If the due conditions are present, which as regards validity are: 1. that the things exposed in the game be proper to the player, and in his ownership and in his free faculty of disposing; otherwise the contract will be either null or rescindable, or at least the payment made by the loser will be voidable. 2. That every force and fraud be absent; hence it is necessary that the players gather freely, and indeed that there be moral equality among them in the hope of gain and in the danger of losing.

But for lawfulness it is required: 1. that nothing dishonorable be mixed in by words or deeds; 2. that there not be near danger of sinning, for example of bursting into blasphemies, or harm to neighbor, for example neglecting care of domestic affairs, making oneself unable to pay debts or to support the family, etc.; 3. "that it befit the person, time, and place, and be duly ordered according to the other circumstances." St. Thomas, II-II, q. 168, a. 2, 3, 4; L. 882; Lugo n. 28.

1248. **You will resolve:** If someone wins by exposing stolen money to the game, besides which he has nothing else which he may hand over, then he is held to restore what he won, because the contract was null, since he exposed money which the fellow player could not acquire. But if he has other money, it makes no difference at all that the money was stolen from the fellow player or from another. Since he was able to pay, he can indeed retain the profit, for it is the fruit of his skill; but the obligation always remains of rendering to the other what was taken from him by theft. L. 875.

1249. **Is someone held to restore what he won from a son under paternal power in gaming?** Response: negatively, if the sum lost by the son under paternal power is from his own goods, of which he has perfect ownership. Affirmatively, if the sum lost is from the goods of the father, or from those goods of which he himself has only direct ownership. Exception: unless the sum is of small moment, in which the father's consent is presumed, since he would not wish to deny honest recreation to his son; or unless it is some moderate part deducted from the support which the father supplies to him. "Nevertheless it is probable that in that case, if the son under paternal power is unwilling to pay what was lost in the game, he can lawfully oppose the exception and is not held to pay by reserving something from support." L. 876, 871-873.

1250. **Is the victor who is much more skilled in the game held to restore, so that he knows certainly in advance that he will be victor?** Response: affirmatively, much more probably, because the equality required among players is lacking, and consequently justice is injured. Hence one notably more skilled must withdraw from the game, or remit some advantage to the adversary. Thus the more common opinion against some. Yet in practice restitution should not be urged if it is a question of a thing of lesser moment, or even when the adversary, sufficiently warned, nevertheless obstinately wished to play, because then no deception would have intervened. L. 881.

1251. **According to the law of Roman Law, is the victor in a prohibited game held to restitution, or is the loser in the same game held to pay?** Response to the first: negatively before the sentence of a judge, because by positive law the contract is not declared void, but only unlawful, and an action is given to the loser for recovery.

To the second: the first opinion, very probable, affirms. The reason is that by natural law the contract was valid, and therefore the loser is held to stand by it until he judicially opposes an exception or seeks restitution. The second opinion, more probable, denies. The reason is that the law, by giving the loser a right to defend himself by exception or by recovery of what was paid, also gives an absolute right not to pay. For to what end is someone held to pay if he can immediately recover what was paid? From the more recent laws also, the victor is not held to restitution, and the loser is of

himself held to pay, since the game is not declared invalid, unless force or deceit intervened. L. 887-894. Cf. 1247.

1252. **Is a game valid if a large sum of money is exposed at one time?** Response: affirmatively, of itself, more probably, if the required conditions are preserved, that is especially if the players are able freely and fully to dispose of their own goods, without detriment to family, creditors, etc., because the players undergo the danger equally, knowingly, and willingly; and consequently there is no injustice. But the aforesaid conditions easily fail; and otherwise, even if such a game were not against justice, it is at least opposed to honesty. Hence a prudent confessor, by way of satisfaction, if it seems opportune, could enjoin a penitent victor to spend some part of the profit on pious uses. Yet since this opinion is not certain, those who would not wish to pay a large sum which they had lost do not seem to be troubled in the tribunal of penance. Thus rightly Gousset 889. C. I. 1803; C. G. 1966; C. H. 1801; and the German Code 762 favor this opinion. L. 735.

1253. **Is one who uses fraud in playing held to restitution?** "One is not held to restore who uses those stratagems which the rules of the game and received custom allow, since each knows that such stratagems are customary, and thus tacitly and freely consents to them; for example: 1. if one having the better cards and secure of victory increases the wager, or simulates fear so that the adversary may increase it; 2. if one, knowing that he has inferior cards, conceals this and increases the wager so that what was staked may be left to him; 3. if one looks at another's cards from that person's negligence alone and without fraud, otherwise if he so places himself that he can see, or if he sets up another by whom he is warned; 4. if one learns to know cards from the back during play, which he had not marked beforehand nor known. But one who uses frauds not customarily applied, or unknown to the fellow player, for example, steals cards, or marks them on the back, or uses marked cards, or those which he knew beforehand while his partner is ignorant, or arranges them by some art, etc., is held to restore not only the profit, but also as much as the hope of winning, indeed also of playing, was worth to the other." L. 882, 877.

1254. **If someone injuriously compels another to play, can he afterward retain what he wins?** "The first opinion denies it, because damage following from injury must altogether be restored. But the second opinion affirms that he can retain it, because then not the compulsion or the game, but rather chance or the skill of the one compelling was the cause of the damage. This opinion, speaking of itself, is more probable to me, unless the fellow player who compelled surpassed the compelled person in skill at playing; for in that case I judge that he is held to restitution of at least part of what he won, according to the measure of the skill by which he excelled the other. The reason is that that contract, notwithstanding the injury of fear introduced, was sufficiently voluntary on each side and valid, according to the more common opinion related. I said 'speaking of itself,' for if the one who suffered fear asks restitution of the money lost, Lessius rightly teaches that the one who introduced the fear is held to restore what he won." L. 880; St. Thomas, II-II, q. 32, a. 7, ad 2, etc.

1255. **What if someone compels only by importunate requests?** "Sanchez, etc., still hold that he cannot retain it. But Lessius, etc., far more probably contradict this, because requests do not

take away voluntariness, just as threats do not either, as Busembaum asserts from the common opinion with Bannez and Molina." L. 880.

1256. **What is a lottery?** It is a contract by which, for a certain thing or for a certain sum of money placed in the middle, several persons paying money acquire a right of drawing lots; whence, after the drawing has been made, some have a whole proposed prize, some a part, some nothing.

1257. **Is a lottery lawful?** Response: affirmatively of itself. For a lottery can be regarded as the sale and purchase of a hope and right to acquire a certain prize by lot. But just as it is lawful to make a pact concerning the risk of some thing, so it is also lawful to buy the hope and right to some thing. It is said "of itself"; for by accident, from extrinsic circumstances, it can become unlawful, for example, if from this a family were to be cast into misery. C. A. 1267, 1269.

1258. **What conditions must be observed in a lottery lest it become unlawful?** The first condition is that there be no fraud in drawing the tickets, nor in paying the prize which has fallen. The second condition is that proportion be preserved between the smallness of the price and the greatness of the uncertainty, and at the same time with the greatness of the prize, and, in a public lottery which is constantly repeated, with the greatness of the danger to which the owner of the lottery is exposed, so that he can always make satisfaction to future victors. Some add a third condition, namely that the profit in the lottery not exceed that which would be had in an honorable business if the money were spent in it. But this condition is established by no reason, since then profit received by any aleatory contract would be unlawful, and generally profit received by gaming. For this is proper to these contracts: that uncertain chance intervenes, to which the contracting parties freely subject themselves; and, when chance favors, it often happens that someone receives in a short time a profit which even in a long time his own industry would not produce. C. A. 1273, 1274.

1259. **What are stock-exchange games?** Stock-exchange games are commonly called certain business and mercantile operations which are done in the money-market, ordinarily through mediators who are called exchange agents. They are called games because titles of public revenues are sold and bought, and these have varying value according to the various circumstances of societies and governments; hence the aforesaid operations are aleatory, and a certain wager intervenes concerning this variation of values, namely concerning their increased or diminished price. But they are called stock-exchange games from the public place, or money-market, which is called the exchange.

1260. **Are stock-exchange games lawful?** The various stock-exchange games, more or less complex, are reduced to the following simple mercantile and business contracts.

1261. Someone buys a title, for example, of 1000 lire, at the current price and with cash of 900 lire. The annual revenue of the title is 50 lire, namely at the rate of 5 percent. For days, for months, for a year, for several years, the buyer receives the aforesaid revenue. Certainly nothing unlawful is present in this matter, for it is a certain simple purchase, or simple consignative census, or simple constitution of revenue. But if the buyer, when a good opportunity is offered and taken because the price of public revenues has increased, sells the title of that annual revenue of 50 lire at the current price and for cash of 1100 lire, he indeed receives great profit,

but again there is nothing unlawful in this matter; for it is a certain simple sale, and the profit is owed from the changed price of the titles in the market. And if someone, intending this profit, buys several titles of annual revenues at the current price and for cash when the price is lowest, so that he may resell them for cash when the price is highest, there is trade properly so called, which of itself has nothing unlawful.

1262. If someone again buys a title of annual revenue of 50 lire at the current price of 900 lire, not for cash but on credit to a term, for example for fifteen days, for a month, then either the title is immediately given, or not until the term, or fixed day, arrives. If the first, there is nothing except a certain purchase made on credit, by which the buyer can profit if on the appointed day the value of the title increases, or conversely the seller can profit if on the appointed day the value of the title decreases. There is certainly nothing unlawful in this matter. But if meanwhile the seller demands legal interest on the money until the price is paid, he can do this by right, since it is not equitable that the buyer retain for himself both the thing and the price, and enjoy the utility of both. Then sale-purchase and mutuum, or a simple mutuum, intervene at the same time. If the other is verified, then the danger of loss is equal for buyer and seller, and likewise the hope of profit is equal for each; for meanwhile the value of the title can increase, and can decrease. Therefore, when the day arrives on which the seller must hand over the title and the buyer the price, if the value of the title has increased, the profit will be the buyer's; if the value of the title has decreased, conversely the profit will be the seller's. Since therefore equality is preserved on both sides, nothing unlawful of itself is held here.

1263. Likewise the seller and buyer make a contract to a term or to a day; but the seller does not hand over the title to the buyer in the present, nor does he oblige himself to hand over the title to the buyer when the day arrives. Similarly the buyer neither hands over the price to the seller in the present, nor obliges himself to hand over the price of the title to the seller when the day, or constituted term of the contract, arrives. Therefore the seller and buyer oblige themselves to hand over, when the day arrives, only the difference of value or price of the title in the present, or today, and of the value or price of the same title on the constituted day. It is therefore a certain wager in which, again, there is equal danger and equal hope for seller and buyer. For if, when the day arrives, the value or price of the title has increased, the buyer gains this difference of value, to be handed over to him by the seller without the title. But if the value of the title has decreased, then the seller gains that difference of value which the buyer must hand over to him alone, without the rest of the price of the title, namely the excess of the former price established on the day of contract over that other lower price which the title obtains on the stated day. Therefore neither is anything unlawful of itself held here, just as nothing unlawful would be held in a simple contract of wagering on the increase of the value of the title on the part of the buyer, who hopes it will increase and therefore buys, and on the diminution of the value of the title on the part of the seller, who fears it and therefore sells.

1264. The buyer, buying a title and paying only part of its price immediately, to a term or day, reserves to himself the right, when the day arrives, either of demanding execution of the contract or of withdrawing from the contract, leaving to the seller that price already given. Since the right which the seller grants to the buyer is estimable by price, this contract is just if

the price is proportionate. The proportion of this price depends on various circumstances, and on the various concurrence of sellers and buyers.

1265. A mercantile carry-over, or report, is a certain species of retro-sale. It consists first in selling at a lower current price, paid immediately, any titles which are sold in the money-market, and immediately redeeming the same titles at a price to be paid to a term, or to a day, but a higher one. C. I. Comm. 73. Here also no unlawfulness appears of itself; for there is a double sale of the same thing, or the sale of a thing with its immediate retro-sale, and if due equality of price is preserved, there certainly is no injustice. In the second sale, or in that immediate retro-sale, the thing is indeed sold to a term for more than it had been bought. But this comes from the fact that within a short time the price of these titles changes according to common estimation. But from what the thing will probably be worth on the constituted day, the seller can take the norm of the price. Therefore this second sale, or retro-sale, is an aleatory contract, by which both the seller and the buyer can profit, namely if the price of the title on the constituted day has increased still more than the price foreseen by the seller and to be paid by the buyer. Gury, Cas. 946-950.

1266. **What is insurance?** "The contract of insurance is that by which someone undertakes upon himself the risk of another's thing, obliging himself either gratuitously or for a certain price to compensate it if it perishes. If this is done gratuitously, it is a gratuitous promise; if for a price, it is as it were a purchase by which the insurer sells his obligation of furnishing another's thing indemnified. For its justice it is required that the event of the thing be uncertain to both, at least as regards the knowledge which they have about it, because otherwise equality is not preserved." L. 911. For the same reason it is likewise required that the price be proportioned to the danger. Nor, from C. I., C. H., C. G., can someone insure the same thing for its whole value with several insurers. Lugo d. 31, n. 97; C. I. Comm. 417, 426, 429, 430; C. A. 1288, 1289, 1291; C. H. 1791, 1792, 1795, 1797; C. G. Comm. 348, 357, 359.

Insurance is treated in the Italian Commercial Code; for it is considered as an object of commerce, whence there is nothing about it in the Civil Code. From C. I. Comm. 417, insurance is a contract by which the insurer obliges himself, by means of a premium, to repair detriments and damages which can come to the insured from certain fortuitous cases, or from superior force, namely that which cannot be resisted, or to pay a sum of money according to the duration or events of the life of one or several persons. Hence all immovable and movable goods and life itself can be insured. The contract of insurance must be made in writing. C. G. Comm. 332; C. H. 1793, 1794; C. I. 420.

1262. **You will resolve:** 1. If the insurer is certain that the thing is already safe, he unjustly seeks a price, and is held to restore. If the insured certainly knows that the thing has already perished, he cannot make a pact concerning its insurance. Likewise, if he himself was the cause that the thing perished in order to obtain the insurance premium, he is held to restitution. L. 911; C. I. Comm., cited place; C. G. Comm. 348; C. A. 1290, 1291; C. H. 1797.

1263. **What are the obligations of the insurer?** The insurer must be solvent. C. I. Comm. 433; C. G. Comm. 346. But the insurer can bring it about that another insure his undertaking. C. I. Comm. 422; C. G. Comm. 342.

The insurer must furnish for detriments and damages which happen to the insured things from fortuitous cases or from superior force; but he by no means must furnish for detriments and damages which arise from a defect inhering in the thing which was not declared, nor those which are owed to the action or fault of the insured, or of those acting in his name, or of agnates or cognates who are named in the instrument, nor furnish damages produced from war or from popular tumult, unless a contrary agreement existed. C. I. Comm. 434. Cf. C. G. Comm. 350ff.; C. A. 1290.

Insurance against fire includes all damages inflicted by fire, from whatever cause it was produced, except that which came from grave fault imputable personally to the insured himself, and except the case of war or popular tumult. C. I. Comm. 441.

The insurer is freed from the obligation of paying when, by an act of the insured, the dangers are changed or aggravated by the change of some essential circumstance, so that the insurer would not have given consent if it had existed from the beginning. C. I. Comm. 432.

If a third party inflicted the damage, the insurer who repaired the damage has action against him.

XVII. On Suretyship, Pledge, And Transaction

1264. **What is suretyship?** "Suretyship is a contract by which someone undertakes another's obligation to be fulfilled, if the principal debtor has not paid." L. 912; C. I. 1898ff.; C. G. 2011ff.; C. A. 1344ff.; C. H. 1822ff.; Inst. bk. 3, tit. 21.

1265. **Is it lawful to receive a price for suretyship?** "For suretyship it is lawful to receive a price, even if no danger is feared, because of itself it is estimable by price. This is common and seems altogether to be held." L. 912; C. H. 1823.

1266. **What is the obligation of the surety?** The surety cannot be obliged for more and to more than the principal debtor. "For his obligation is an accessory of the principal obligation; nor can there be more in the accessory than in the principal thing. But conversely he can be obliged for less." Inst. tit. 21, § 5; C. I. 1900; C. G. 2013; C. H. 1826. Suretyship for an invalid obligation of the principal debtor is invalid. Rule 42 in VI; C. A. 1351. But it is valid for an obligation which is rescindable but valid, for example in the case of minority. C. I. 1899; C. G. 2012; C. H. 1824; L. 912. "Nor does it even matter whether the obligation to which the surety is added is civil or natural." Inst. tit. 21, § 1. The obligation of suretyship, insofar as it is real, is transmitted to the heirs themselves; but by no means insofar as it is personal. Inst. tit. 21, § 2; C. G. 2017.

1267. **Who can become surety?** No one can be surety unless he has free administration of goods and cannot be principally obliged. Such are a ward, minor, religious, wife, and interdicted person, without the consent of tutor, superior, husband, or judge. Moreover, from C. G. it is required that the surety dwell in the territory of the royal court, and from C. I. of the court of appeal, where the suretyship is to be furnished. C. I. 134, 1904; C. G. 2018; C. H. 1828; C. A. 1349; L. 912. Clerics are forbidden to indulge in suretyships, lest they be entangled in secular businesses. C. 1, De Fideiuss. But if they have made suretyships, they are held to satisfy.

1268. **What does the surety owe to creditors; what if there are several sureties?** The surety is held toward creditors for all the obligations of the debtor, but only in his default, or inability,

and indeed juridically proved. C. I. 1907; C. G. 2021; C. H. 1830; C. A. 1355; L. 912.

From C. I. 1911-1913; C. G. 2025-2027, if there are several sureties of one debtor for the same debt, each is obliged for the whole debt. Nevertheless, each of them, unless he has renounced the benefit of division, can demand that the creditor divide his action beforehand, asking from each his own part. If, when some surety asked for division, some were then not solvent, he is held for his part, account also being taken of this failed payment; but thereafter, even if other payments fail after the division, he can no longer be troubled. Yet if the creditor himself freely divided his action, he can no longer withdraw from it, however much before this very division some sureties were not solvent. From C. H. 1837, if there are several sureties of one debtor for the same debt, each is obliged only for his part. From C. A. 1359, in the same case each is obliged for the whole debt. But if someone pays the whole debt, he has recourse against the others. Inst. bk. 3, tit. 21, § 4.

1269. **What are the rights of the surety?** The surety who pays for the debtor is subrogated to all the rights of the creditor, and therefore has recourse against the same debtor, so that from him he may recover whatever he was compelled to pay in his place. Inst. bk. 3, tit. 21, § 6; C. I. 1915, 1916; C. G. 2028, 2029; C. H. 1838, 1839; C. A. 1358; L. 912.

From C. I. 1919, 1920; C. G. 2032, 2033; C. H. 1844, when several sureties of the same debtor for the same debt exist, the one who has paid the debt has an action against the other sureties, each for his own part. Yet this action belongs only in certain cases. Cf. Inst. tit. 21, § 4; L. Fideiussoribus, Dig. de Fideiussoribus, etc.; L. 11, C. de Fideiussoribus; C. 2, 3, 5, De Fideiuss.

1270. **Can suretyship be given in a criminal case?** Sureties can also be given in criminal cases, whether pursued civilly or even criminally, provided the penalty is no other than a monetary fine, which either the principal debtor or the surety can pay. De Angelis, Praelect. Iur. Canon., bk. 3, tit. 22, n. 1.

1271. **What is pledge?** Pledge is a contract by which the debtor gives a movable thing to the creditor for the insurance of a credit. "A movable thing"; for if he obligates an immovable thing, from more recent Law it is mortgage. C. I. 1878; C. G. 2072; C. H. 1864; C. A. 447, 448. From Roman Law, although pledge and mortgage in the broader sense are taken for the same thing, as in L. 5 § 1, ff. de Pignor. et Hypoth., nevertheless in the stricter sense they differ. For pledge signifies a thing so consigned to the creditor that it physically exists in the creditor's possession; but mortgage signifies a thing not handed over, but only written over to the creditor, as is expressly held in L. 9 § 1, ff. de Pignorat. act., where it is said: "Properly we call pledge what passes to the creditor; mortgage, when not even possession passes to the creditor." Cf. C. A. 451, 1358; L. 913.

1272. **What are the rights of the creditor?** The creditor has the right of retaining the pledge until the extinction of the whole debt. C. I. 1878; C. H. 1860, 1866. Hence he can vindicate it for himself from any possessor from whom it was taken. C. H. 1869.

He can ask from the judge that the pledge be sold by auction if the debt is not paid, or that it remain with him in payment of the debt up to the concurrence of the debt, according to the estimation of experts. Any pact which gives the creditor authority of appropriating the pledge to himself, or of

disposing of it without the prescribed formalities, is null. C. I. 1884, 1894; C. G. 2078, 2088; C. H. 1858, 1859, 1872; C. A. 461, 1371; C. 7, De Pignor. Yet this law rests on a presumption of fact, that the pledge is worth more. Therefore it ceases in the forum of conscience if the pledge truly is not worth more. L. 775; C. 7, De Pignor.

If the thing has been handed over in pledge in the possession of the creditor or of a third party chosen by the contracting parties, the creditor has a privilege, so that from it the debt is paid to him before other creditors. Yet if the thing is worth more than 500 lire from C. I., more than 150 francs from C. G., or if incorporeal rights of credit, whatever they may be, have been handed over in pledge, a public or private writing is needed.

From C. H. 1865, in order that pledge take effect against third parties, a public instrument is needed. C. I. 1879ff.; C. G. 2073ff.; C. A. 1368, 1369.

The creditor is held to restore the pledge or mortgage to the debtor who pays the whole principal or debt, but not to one who pays only a part. Hence, if the pledge or mortgage comes to several creditors by testament, action, or contract, and one of them retains it with himself, he cannot restore it to the debtor, although he has received from him the part owed to himself, but is held to consign it to the remaining creditors who have not yet been satisfied. Likewise if the debt comes to several persons by testament, the heir who pays his part cannot seek restitution of the pledge unless the others also have fully satisfied the debt. Indeed, not even when the whole debt has been paid is the creditor held to restore the pledge, if something else began to be owed without pledge after that pledge was received, which can be demanded before the former debt was paid. C. I. 1888, 1889; C. G. 2082, 2083, 2087, 2090; C. H. 1860, 1866; C. A. 469.

1273. **What are the obligations of the creditor?** The creditor must not use the thing entrusted to him, unless with the consent of the debtor, at least reasonably presumed. "But the owner is presumed to consent if no damage follows for him." L. 914, 776; C. A. 459. But if the creditor abuses the pledge, the debtor can seek its sequestration, C. I. 1887; C. H. 1870, or its restitution, C. G. 2082.

He must diligently guard the pledge as a good householder; otherwise he is held for damage. L. 14, de Pign. actio. Since the pledge is given for the security of the creditor, and at the same time for the utility of the debtor, the creditor is held concerning it for slight fault. Therefore the creditor must furnish for loss or detriment of the pledge which happened by his negligence. C. I. 1885; C. H. 1867; C. A. 459, 1369; Inst. bk. 3, tit. 15, § 4.

He must compute fruits received from the pledge toward diminution of the debt, in order to preserve equality. C. I. 1886; C. G. 2081; C. H. 1868; C. A. 1372; L. 914.

He cannot appropriate the pledge to himself, nor can he sell it by his own authority in payment of the debt. He is held to render the excess of the price to the debtor. C. I. 1884; C. G. 2078, 2088, 2115; C. H. 1859, 1872; C. A. 461, 464; L. 775, 913; E. M.

1274. **What are the rights of the debtor?** By force of the pledge or mortgage contract, the debtor remains full owner or proprietor and usufructuary of the pledged or mortgaged thing. C. H. 1868, 1869.

1275. **What are the obligations of the debtor?** The debtor is held to hand over to the creditor a suitable pledge. C. H. 1857. Cf. C. A. 456. He must reimburse the creditor for expenses necessarily made for its preservation. C. I. 1885; C. H. 1867. He cannot reclaim the pledge before he has paid the whole debt, unless the creditor abuses it. For then he can ask that it be placed under sequestration. C. H. 1870, 1871.

1276. **What is mortgage; what is its nature?** It is a contract by which an immovable thing is obligated to the creditor, so that he can pay himself from it if the debtor has not paid. C. H. 1858. Mortgage is indivisible, and subsists wholly over all the obligated goods, and any of them, and any part of them. Moreover it inheres in the goods and follows the same goods with any possessor whatever. C. I. 1964; C. G. 2114; C. H. 1860. From C. G. 2115, mortgage has no place except in the cases and according to the forms prescribed by law. From C. I. 1965, mortgage does not produce effect unless it is published, and cannot subsist except over goods specially indicated and for a certain sum of money. From C. H. 1875, the document by which mortgage is constituted must be inscribed in the Registry of property.

1277. **How many kinds of mortgage are there?** Mortgage is distinguished as threefold. C. I. 1968; C. G. 2116; C. A. 449. The first is legal, which from C. G. 2121 is introduced by the law itself in favor of wives, minors, interdicted persons, and communities over the goods of husbands, tutors, and administrators. From C. I. 1969 it belongs to wives, minors, and interdicted persons. Moreover it belongs to coheirs, partners, and other co-dividers, over the goods of inheritance, partnership, or community. Likewise it belongs to the State over the goods of condemned persons for the expenses of justice in criminal or police matters, and to sellers or others alienating, over alienated immovables for the fulfillment of obligations deriving from the act of alienation.

The second is judicial, which results from the sentence of a judge in favor of him who obtained sentence against the one who lost the case; for by force of that sentence the goods of the condemned person are burdened by mortgage for repairing the damage of the victorious party. C. I. 1970; C. G. 2123.

The third is conventional, which depends on the mutual will of the contracting parties. From positive law this requires persons able to contract, or who have free administration of their goods. Hence minors, wives, and interdicted persons cannot hand anything over into mortgage. It must be made with the formalities prescribed by law under penalty of nullity, and can be made only in present goods. From C. G. 2127 it must be made before a notary. From C. I. 1978 it requires a public act or private writing. C. I. 1974, 1975, 1977ff.; C. G. 2124, 2127, 2129, 2130.

1278. **What goods can be subjected to mortgage?** 1. Immovable goods which are in commerce, with all accessories which are held as immovables. 2. The usufruct of the same goods with their accessories, except the legal usufruct of ascendants. 3. The rights of the conceder and of the emphyteuta over emphyteutic goods. 4. Revenue upon obligations of the State. C. I. 1967. Cf. C. G. 2118; C. A. 448; C. H. 1874, 1877.

1279. **What are the rights and obligations of the mortgage creditor?** The mortgage creditor has this proper right: that from the mortgaged goods he be satisfied before other common creditors. C. I. 1964; C. G. 2114. Therefore, if the debtor alienated the things subject to

mortgage among several persons, each can be compelled either to yield the thing received or to pay the whole debt. C. I. 2013, 2014; C. G. 2167, 2168, 2169; C. H. 1876, 1879. But the mortgage creditor cannot appropriate the mortgaged thing to himself, or dispose of it. He is held to free the immovable from mortgage once the whole debt has been paid to him. C. H. 1859, 1860.

1280. **What is antichresis?** It is a contract by which an immovable thing is so obligated to the creditor that it is handed over to him, and the faculty is given to him of receiving the fruits of that immovable thing. But he must impute the fruits received to his credit to be paid to him, namely to payment of the principal and interest. Therefore the debtor remains only proprietor of the thing, but not also usufructuary. C. I. 1891; C. G. 2071, 2072, 2085, 2114; C. H. 1881, 1885; C. 1, 2, De Usu.; C. 6, De Pignor.; L. 776, 916.

1281. **What are the obligations of the creditor?** The creditor is held to guard the thing handed over to him diligently as his own; to pay the annual taxes inhering in it, unless a contrary agreement has been entered, and other necessary expenses, but with the right of compensation from the fruits of the same thing. C. I. 1892; C. G. 2086; C. H. 1882. Antichresis gives no real right to the creditor because of an unpaid debt. Every contrary pact is null. C. I. 1894; C. G. 2088; C. H. 1884.

1282. **What are the obligations of the debtor?** The debtor cannot return to the enjoyment of the immovable thing given in antichresis before he has paid the debt in full. Nevertheless it is in the power of the creditor to depart from antichresis at any time and restore the thing to its owner, unless he has renounced this right. C. I. 1893; C. G. 2087; C. H. 1883.

1283. **What is transaction; who can transact; what is the force of transaction?** Transaction is a contract by which the contracting parties, by promising, giving, or retaining something, put an end by mutual consent to some lawsuit which either has already arisen among them or is foreseen as about to arise. No one can transact unless he has the faculty of disposing of the things which fall under the transaction; hence tutors cannot transact over the goods of minors except in cases permitted by law. Let the same be said of wives and other similar persons.

Transaction has the force of finally judging the matter, whence it can no longer be impugned, neither by reason of lesion nor of ignorance of law. Transaction will be null if it has been made over a thing subject to no controversy, either because the controversy had already been ended by the final sentence of the tribunals, which was not known, or because it was made upon documents which afterward were recognized as false. Transaction is rescindable if a new document manifests that the other party has no right, or if there was error in the person, or in the disputed object, or if there was error of some fact from which the title was null, but by no means when this title was null from some law which was not known; or finally if deceit or force intervened. C. I. 1764, 1765, 1772, 1773, 1774, 1775, 1776, 1777; C. G. 2044, 2045, 2052-2057; C. H. 1809ff.; C. A. 1382ff. Cf. art. 1387; Gousset in h. a.; L. Non minorem, C. de Transact.

1284. **Note:** Although the matter is not doubtful, nevertheless the owner of the thing can transact in order to end a lawsuit; yet the transaction then is not valid in the forum of conscience except insofar as a donation would be valid. But how much is to be conceded to each person in a transaction must be judged from the greater or lesser probability of each one's right.

1285. **What has been the order of matters so far?** Thus far we have spoken of contracts in species, and first of gratuitous contracts: of promise, donation, testament, commodatum, deposit, and mandate. Then we spoke of onerous contracts: of sale and purchase, census, lease-hire, and the contract of partnership. In the third place we spoke of aleatory contracts: of wagering, gaming, and insurance. Finally we spoke of subsidiary contracts: of suretyship, pledge and mortgage, and transaction.

XVIII. On Injustice

1286. **What kind of sin is opposed to justice?** Thus far we have treated justice; now we treat injustice, which is the vice opposed to the virtue of justice. Violation of legal justice is contained in transgression of laws, and it is a grave or light sin according as it gravely or lightly injures the common good. Transgression of distributive and vindicative justice is had by respect of persons, through which, in the distribution of common goods and burdens, rewards and punishments, account is not taken of the reason of the cause, or the motive of justice, but of the person, namely of his qualities not pertaining to the matter, for example consanguinity, friendship, flattery, etc. This is a grave or light sin according to the matter in question; and thus the election of an unworthy person to offices, even secular ones, for example of governor or judge, is a grave sin. Finally, transgression of commutative justice is properly contained in injury.

1287. **What is injury?** This must be noted beforehand: a simple or pure offense is one thing, and injury is another. A simple offense is an injury or irritation of another's will by which someone brings annoyance upon another against his will, and gives him as it were some right to anger, indignation, or aversion against the offender, without nevertheless injuring any right of property. Thus, if you deny to your friend asking for loan-for-use a book which he greatly needs, and which you can easily do without, you undoubtedly offend the friend and give him sufficient motive for aversion; nevertheless you do not inflict injury on him, because you injure no right of his. Hence from justice you are not obliged to satisfaction, but only from the virtue of charity and of human peace to the renewal of friendship.

But injury is the voluntary lesion of another's right, against his reasonable unwillingness, namely by which someone knowingly and willingly does something not only against the will, but also against the true and strict right of another. Moreover, such injury can sometimes be done without damage to another, and then it is called a mere injury. Such occurs if you commit hidden adultery with no offspring conceived; for in such a case you injure another's right, but nevertheless you cause no damage; hence you are held to satisfaction, but not to restitution. Cf. 1319. But sometimes injury is done with damage to another and is called damaging injury. Such occurs if you commit adultery and offspring is conceived; hence you are held to restitution or to reparation of the damage. L. 584; C. A. 1293-1295; Inst. bk. 4, tit. 4.

1288. **What is the object of injury?** Injury can have place: 1. in the goods of reputation and honor, concerning which there is discussion in the eighth precept of the Decalogue; 2. in the goods of body and life, concerning which there is treatment in the fifth precept of the Decalogue; 3. in goods of fortune, about which the question is chiefly here. C. A. 1293.

1289. **How many kinds of injury are there in goods of fortune?** There are chiefly three: theft, robbery, and simple damage-causing. Theft properly is the hidden taking of another's thing against the reasonable unwillingness of the owner. St. Thomas, II-II, q. 60, a. 3. They share the malice of theft, and therefore are reduced to theft, even the acceptance of another's thing taken by someone else, or the simple detention of another's thing, for "to detain what is owed to another has the same character of harm as unjust taking." St. Thomas, II-II, q. 66, a. 3. "Against the reasonable unwillingness," otherwise another's right is by no means violated.

Robbery is the taking of another's thing by force, or made through violence brought upon the person. L. 1, Cod. de Vi bonorum raptorum. Hence robbery adds to theft a distinct species of sin of injustice, because force and personal injury are brought upon the owner who sees and wishes to preserve his thing. Finally, simple damage-causing is when some damage is inflicted against the reasonable unwillingness of the owner, without anything being received by the one inflicting the damage. Inst. bk. 4, tit. 1, 2, 3; L. 518; St. Thomas, II-II, q. 66, a. 3, 4, 9.

1290. **Does legitimate consent remove the character of injury?** Injury is not done to one who knows and at the same time fully and juridically consents. This is proved: 1. from Rule 27 of law in VI, where it is expressly said: injury is not done, nor deceit, to one knowing and consenting. And Rule 145, ff. de Regulis Iuris: no one is seen to defraud those who know and consent; 2. because one who juridically consents has, according to human and divine laws, the legitimate power of consenting. Therefore from the very fact that he fully and perfectly consents to some action, such an action is not injurious to him. St. Thomas, II-II, q. 59, a. 3.

1291. **Does simple consent also remove the character of injury?** Injury is done, by an action which otherwise is injurious to him, to one who knows and freely consents without the right of consenting validly. This is proved because from the very fact that the consent is invalid by law, it is null in moral estimation; and therefore injury is done to one so consenting just as if consent were absent. "Without the right of consenting validly," I said; for if some consent were only prohibited by law, but not void and invalid, it would still be efficacious in moral estimation, and consequently would remove the active right and the injury. Thus, although defloration of a virgin outside marriage, and consent to it, is prohibited, nevertheless if the virgin consents to it, no injury is done to her, and there is sin only against chastity. St. Thomas, II-II, q. 59, a. 3, ad 3.

1292. **You will resolve:** Injury is done to a cleric, although he consents to being brought before a secular tribunal or to being struck, because he cannot validly and efficaciously yield a right conferred in favor of the whole clerical state. Likewise injury is done to a husband, although he consents to the adultery of his wife; for such consent, on account of reverence for the sacrament and the indissolubility of marriage, is invalid by divine law. Cf. proposition 50 condemned by Innocent XI. "The most that will be effected by the consent of the spouse is that the spouse consenting to the adultery of the other cannot institute a complaint concerning the injury inflicted upon him by the adulterer, since he seems voluntarily to have despoiled himself of action against him." Ithur. cas. 6, n. 16.

1293. **Does consent from error and fear remove injury?** Injury is done to one consenting from error, fear, or necessity. This is proved because from the very fact that consent is made from

error, fear, or necessity, it is involuntary, at least in a qualified sense, and the one consenting does not altogether freely wish to yield his right. Therefore, with such consent standing, injury is done to him.

1294. **Can injury be inflicted by an interior act alone?** Although injury can effectively be inflicted on another through a merely internal act, nevertheless an internal act of itself cannot bring it about that an external act becomes unjust. The first part is proved because sometimes by an internal act alone the strict right of another can be injured. This is clear from the example of rash judgment, by which, according to the common opinion, justice toward neighbor is violated, since each person has a strict right to a good estimation of himself among individuals.

The second part is proved because an internal act cannot change the nature of an external act. Hence one does not sin against justice who from hatred refuses to help another, unless he is held by office; nor does a judge who from hatred condemns a murderer to the death he has deserved; nor does a merchant who sells his merchandise at the lowest price in order to deprive other merchants of profits.

"Of itself," I said, for an external action which is inchoatively indifferent is determined only by the interior intention, so that it is the beginning of a completed unjust external action rather than of a just one. Thus one taking a thing from the hands of a thief in order to restore it to the owner does not sin against justice; but it is otherwise if he takes it in order to retain it. Lugo d. 22, n. 156; La-Croix, bk. 3, pt. 2, n. 635, 636; C. A. 1305.

1295. **What kind of sin is injury?** Injury is a grave sin from its genus. But that matter is judged grave which from its nature, or from human estimation, is apt to cause another a sadness difficult to soothe, or to dissolve mutual charity. The first part is proved because injury of itself brings grave harm to the common good, for it tends to dissolve charity. The second part is proved because, since the end of justice is to promote common peace, public tranquility, and mutual love through the preservation of rights, that matter is rightly judged grave which, from its nature or from human estimation, can dissolve mutual love with loss of common peace, or cause sadness difficult to soothe.

"From its nature," I said, because generally speaking, in establishing a general rule, attention must be paid to what commonly happens among persons using temperate judgment and affection, not to what the tumult and intemperance of passions suggest in those circumstances; for justice follows the guidance of reason and the dictate of prudence. But speaking specifically of justice, since it belongs to justice to preserve equality of thing to thing, one must attend in it to the objective lesion itself of another's thing, and by no means also to the subjective dispositions of the individual, to which charity further extends itself. L. 700.

XIX. On Theft

1296. **What is the malice of theft?** Theft is a sin mortal from its genus. This is proved because theft, from its generic concept and with other malice set aside, is gravely opposed to justice, indeed to common peace and tranquility; therefore it is a sin mortal from its genus. Meanwhile, however, it is certain among all that theft admits smallness of matter, and because

of this is often in the individual only a venial sin; for example, if a poor person steals something small. St. Thomas, Quodl. 66, a. 6; II-II, q. 66, a. 3, 5, 6; L. 700; E. M.

1297. **What is grave matter in theft?** The matter of theft is either absolutely grave or relatively grave. Matter of theft absolutely grave is that which according to itself, and apart from the state, or wealth or poverty, of the one from whom it is taken, gravely conflicts with justice. But matter of theft relatively grave is that which is grave not precisely according to itself, but by respect to the person from whom it is taken, and brings him relatively grave detriment. L. 526.

1298. **What is matter of theft absolutely grave?** Two or three gold coins, that is, about ten or fifteen lire, do not seem sufficient for matter of theft absolutely grave; but twenty or thirty lire do. For the older theologians established two or three gold coins as matter absolutely grave. But in our time the value of money has decreased almost immensely, and the abundance of money certainly has doubled and more than doubled. Therefore, if in an earlier time matter absolutely grave was constituted by ten or fifteen lire, at present it seems to be constituted by twenty or thirty lire, and by thirty rather than twenty.

Indeed, the rule for discerning absolutely grave matter is partly extrinsic, partly intrinsic. The extrinsic rule is contained in the common judgment of theologians and prudent men, since this matter, as it depends on many circumstances, depends very much on common sense and estimation. Moreover, commonly at present doctors and God-fearing and judicious men hold this as matter absolutely grave.

But the intrinsic rule must be taken from this: that that matter of theft is absolutely and universally grave on account of whose removal any owner, even the richest, would reasonably be gravely unwilling; because such is the quantity which can serve many uses and necessities of life, and if it were snatched away often and by many, through light thefts, which are frequent, there would be danger of enormous damage to society. But the quantity designated as absolutely grave, with attention also to the changed circumstances of the times, certainly appears such. L. 527, 528; Gennari, Consultazioni Mor. Can. Liturg., pt. 1, cons. 64.

1299. **What is matter of theft relatively grave?** Matter of theft relatively grave, speaking of itself, is the price which is required for one day's suitable sustenance of the person from whom it is taken. This is proved because against the removal of the price necessary for obtaining one day's sustenance suitable to himself, anyone can reasonably be gravely unwilling; therefore such a price is aptly established as matter of theft relatively grave.

"Speaking of itself," I said, for if a prince or another person were to live very splendidly, a smaller price would suffice for relatively grave matter of theft than would be required for that person's daily living. "For suitable sustenance," because if a very rich person lived sparingly from thrift, the price which he is accustomed from thrift to spend on daily living would not suffice for relatively grave matter of theft. "For sustenance," in which not only food is counted, but also clothing and habitation, as well as honorable recreations. "For sustenance," that is, whether for the whole sustenance or even for a notable part of it, since even then one would be reasonably gravely unwilling. L. 527.

1300. **You will resolve:** For grave matter considered relatively, with attention to the principal places of Europe and the circumstances of our times, there seem to be required: 1. about the value of one lira relatively to the poor, and sometimes less or more according to the greater or lesser degree of necessity; 2. about two or three lire relatively to workers who procure their living for themselves by daily labor; 3. about five or six lire relatively to men who exercise a liberal profession and live honorably from it; 4. about nine or eleven lire relatively to ordinary rich persons, but ten or fifteen relatively to the more wealthy rich, though not the richest. L. 527, 528.

1301. **What if the necessity of the one stealing is grave?** Matter of theft which is graver can become relatively light because of the grave necessity of the one taking it, in which without the surreption of another's thing he would have to lead a most wretched life, as La-Croix, bk. 3, pt. 1, n. 955, and Struggl, on the seventh precept of the Decalogue, 13, teach with Laymann and Sporer. The reason is that the owner cannot reasonably be gravely unwilling if a miserable person in such a case takes as much as is necessary to relieve such grave necessity in some measure.

1302. **What if the person stealing is domestic?** Likewise, matter can become relatively light because of the condition of the person, for example, if the one taking is a son, wife, or servant very useful to the owner; for against the thefts of such persons the owner is not so gravely unwilling. L. 539.

1303. **How much determinately is required in grave thefts of children under family power?** Several theologians require for grave thefts of children a sum twice as great as for strangers, and others extend this quantity of matter much further still. But since a universal and absolute rule concerning the gravity and lightness of similar thefts cannot be given, it will have to be taken: 1. from the state, wealth, liberality, and greater or lesser affection of the parent toward the child; 2. from the number, age, and other circumstances of the children; 3. from the end and use of the thing taken. The reason is that from these headings it is ordinarily accustomed to happen that a father is more or less unwilling against the theft of a child. L. 543, 544.

1304. **How much determinately is required in grave thefts of wives?** Several theologians also require for grave thefts of wives a greater quantity, and indeed twice as great as for thefts of children. The reason is that between husband and wife there is a greater union and moral identity, especially in order to common goods, than between father and child; therefore against theft by a wife the husband is ordinarily judged to be less unwilling. Nor are there lacking several grave theologians who extend this quantity of matter still more broadly, and assert that a wife does not sin mortally even if each year for honorable uses she secretly takes a twentieth part of the revenues; but St. Alphonsus 540, H. A. tr. 10, n. 33, judges this sum excessive, at least speaking universally.

Therefore, since here too a universal and absolute rule cannot be established concerning the gravity or lightness of similar thefts, this must be taken: 1. from the state, wealth, liberality, and greater or lesser affection of the husband toward the wife; 2. from the greater or lesser dowry brought by the wife in order to the common good; 3. from the greater or lesser cooperation of the wife in household management, and other circumstances. The reason is that from these headings it is ordinarily

accustomed to happen that the husband is, or at least can be, more or less unwilling against the theft of the wife. L. 539-542.

1305. **How much determinately is required in grave thefts of servants?** "Concerning thefts of servants, the doctors commonly say that small thefts made by servants from foods which are not customarily guarded carefully never arrive at grave fault, provided they do not sell them or carry them outside, and provided they do not take them in extraordinary quantity, or, it must be added, if they were not things of extraordinary price." L. H. A. tr. 10, n. 34; bk. 3, n. 545.

But if servants steal money or things carefully guarded, no greater quantity is required for grave sin, because then owners are not less unwilling toward them than toward others. Indeed, thefts of this kind are punished more severely by civil law because of the defect of fidelity which intervenes in them. But if these things are by no means guarded, and indeed the servants themselves have the administration of the things, several and grave theologians require a still greater quantity than for strangers. This will have to be judged: 1. from the state, wealth, liberality, and affection of the owner toward the servant; 2. from the labor, usefulness, and necessity of the servant himself, and the greater or lesser freedom which is given to him in administering the things committed to him. Tamburini, Expl. Dec., bk. 8, tr. 2, ch. 3, par. 4, n. 1; L. 539, 545, 546.

1306. **What if several small thefts are made?** Matter which is graver can also become relatively light when it is done through several small thefts and performed successively. The reason is that against these thefts owners are not accustomed to be so gravely unwilling. Hence, if small thefts are made against the same person at different times, the matter will be grave when it exceeds by half the sum commonly required for grave theft. If small thefts are made against different persons, the matter will be judged grave of itself when it is twice as great as the sum commonly required for grave theft. Therefore a still greater quantity is required if these thefts are made against several persons and several times. But these things hold when those small thefts coalesce with one another. L. 530.

1307. **Can small thefts made several times coalesce together?** Small thefts can coalesce into grave matter. This is proved: 1. from a similar case in feasting on a fast day and in servile works on a feast day; 2. from proposition 38 condemned by Innocent XI; 3. because from multiplied light thefts there can be grave damage, or danger of grave damage. And this holds even if the little thefts are made against several persons. For although grave damage is not done to individuals as individuals, nevertheless grave damage is done to the community and society itself, or to one moral body in its members. Moreover, the matter concerns something which, unless it were gravely prohibited by justice, a very grave evil would arise against the common good; for it would be easy, for example, for sellers to defraud measures, etc. Ithur. cas. 1; L. 533, 534; E. M.

1308. **When do small thefts coalesce together?** Small thefts coalesce into grave matter in four cases: 1. by the intention of reaching grave matter, unless that prior will is retracted. The moral effect of this intention is to give moral unity to the various little thefts, and thus they arrive at grave matter. 2. If there is not a great interval of time between theft and theft. Otherwise, morally speaking, one theft is not united with another theft, and therefore they do not constitute one object in the genus of morals. But more probably, and speaking commonly,

thefts no longer coalesce beyond the space of two months, even if they were approaching quasi-grave matter. Yet some assign a longer interval, others a shorter one; and the variety of these opinions shows that judgment in this matter is to be taken not from the space of time alone, but also from other circumstances of things. Besides, small thefts, even with any interval whatever posited, coalesce according to all opinions whenever they were committed with the intention of arriving at a notable sum, because through this intention they are truly united with one another. 3. By conspiracy, where several conspire among themselves and the little thefts of the individuals collected together constitute grave matter; for then anyone is the cause of the whole damage, to which he cooperates together with the others. 4. By accession of a stolen thing to a stolen thing, if each is preserved; and then not only moral but also material union is had. Ithur. cas. 27, n. 16; L. 530, 533, 535, 536, 537.

1309. **Note:** 1. One who often steals a little from the same person, even if he did not have the will of becoming rich or of taking away a notable quantity, nevertheless, if in the last small theft he notices that he has already arrived at a large quantity, regularly speaking sins mortally through the last small theft. The reason is that such a thief through the last theft wishes to continue and complete another's grave damage; therefore by force of this willing he sins mortally, although the external theft precisely according to itself is light. L. 533. The same must be said if, after grave matter has been completed, he steals something light; for the grave sin is continued. L. 538.

1310. "It is not mortal, speaking of itself, to steal any sum whatever with the intention of restoring immediately, for example within a quarter-hour. The same is true if within that brief time someone wishes to restore only that last part completing grave matter, or if he delays restitution for a brief time." L. 531, 533, 653.

1311. "If little thefts which together arrive at a large quantity have been made against different certain owners, it seems more probably to be said that a thief of this kind does not sin gravely if he does not restore to the certain owners when he conveniently can, and that he satisfies his grave obligation if he distributes what is owed to the poor; and he will also be excused from venial sin if some reasonable cause is present." L. 534.

1312. **In extreme necessity is it lawful to steal another's things?** In extreme necessity it is lawful to steal another's things which are simply necessary for preserving life. The reason is: 1. because against a taking of this kind the owner of the thing cannot be reasonably unwilling; 2. because the division of goods, however it came about, cannot derogate from the natural right which belongs to each person, that he provide for himself while he labors under extreme necessity. Therefore in such a case all things become common; and thus one taking another's thing in order to help himself takes a thing truly common, which he makes his own, just as happened before the division of goods. Therefore he does not commit theft. St. Thomas, II-II, q. 32, a. 7, ad 3; q. 66, a. 5, ad 4, a. 7; L. 520, 623, 624.

1313. **You will resolve:** A poor person in extreme need can take a thing even of great value if it is absolutely necessary to him for preserving life, although the other is not held to give it. Lugo d. 16, n. 159; L. 520.

1314. **Note:** 1. Since necessity is the reason for stealing another's things, hence if one in extreme need has elsewhere, in fact or in probable hope, from which he can pay, he cannot take another's thing except with the burden of restitution; because necessity does not demand that ownership of the thing be acquired when it can be sufficiently relieved by accepting the thing as a mutuum or commodatum. 2. A rich person hiding his own things, or using another device so that he does not help the poor person, when the poor person's necessity ceases, is not held to restitution, because even extreme necessity gives the poor person a right to the use of another's thing only as long as the necessity itself presses. 3. If a rich person prevents the poor person by force from taking his goods, he sins against justice and is held for the damages arising from it; for since in that case the poor person has a right of using those things, he also has a right not to be impeded from them. L. 520, 701; H. A. 19, 20; St. Thomas, Quodl. 5, a. 17.

1315. **Is it lawful also in only grave necessity to steal another's things by private right?** Response: negatively. This is proved: 1. from proposition 36 condemned by Innocent XI; 2. because in these circumstances owners are reasonably unwilling, since things do not become common, and otherwise an entrance to plunderings would be opened more easily.

"In only grave necessity," I said. For if someone suffers necessity which is not indeed actually extreme, but is very urgent, and which more probably or certainly will soon verge on extreme necessity, he could steal from another in order to avoid extreme necessity and danger of life. "By private right," I said, because since the common good prevails over a particular good, because of necessity and public good the prince can by high right at least dispose that the rich, for example, open their granaries and sell at a taxed just price, etc. L. 520; Lugo d. 16, n. 154, 160; E. M.

1314. **If a thief threatens to take your thing unless you take and hand over to him another's thing, can you steal this other thing so that you do not lose your own?** "This is not lawful, because I do not have a right of inflicting damage on another in order to preserve my goods; and therefore if I do this, I perform an unlawful and unjust action." L. 569.

1315. "**Do those who cut wood in a forbidden forest sin and are they held to restitution?**" "The doctors commonly teach that if the grove belongs to the whole community, the inhabitants of that community who cut wood against the prohibition do not sin, at least gravely; indeed, according to Sanchez, etc., not even venially, and they are held to restore nothing unless they make great devastation, but are held only to the penalty after sentence. For such a prohibition is judged purely penal." L. 529, 614; bk. 1, n. 145. The same holds concerning fields of the whole community as regards pasturing animals. L. ibid.

1316. "**Is it lawful to eat grapes in another's vineyard?**" Covarruvias, Valerius, Ripa, etc., apud Lugo d. 16, n. 33, affirm, provided one does not carry grapes away; and they adduce Deuteronomy 23:23-24. And the same thing which is said of grapes and ears of grain, says Abulensis apud Cornelius a Lapide, understand of apples and other fruits. L. 529. St. Alphonsus in the same place calls this opinion sufficiently probable, and adds: "Besides, probably, says Lugo, by the law of nature it is lawful to eat one or another cluster of grapes, that is, one or another grape; and in like manner he concedes eating from another's orchard one or another apple. For to prohibit this seems very harsh and against humanity."

1317. **What is to be judged concerning remnants of tailors?** If the remnant is a notable part, they are held to restore it to the owner, if the owner pays the due price of labor. The reason is that the owner would be reasonably unwilling. If the remnant is of lesser moment and is expressly reclaimed by the owner, they are also held to restore it, if the owner pays the due price of labor, for the same reason. If the remnant is of lesser moment and is not expressly reclaimed by the owner, it can then be retained, because owners commonly know that tailors retain similar moderate remnants, and therefore they also often pay a lower price for the labor. L. 568.

1318. **How does one sin who takes from another a very dear thing of small value, or a thing of greater value which the other does not care about?** Response to the first: he sins mortally against charity, but not in the genus of theft against justice. The reason is that such a person gravely saddens another unjustly; nevertheless he does not inflict grave damage in goods of fortune. Hence, if such a thing perishes, the thief is not held to restore to the owner as much as he estimated the thing, but only the value and common estimation of the thing in itself.

To the second: he sins only venially if the owner cares little for it and treats it as if it were of small moment. But if the owner does not care about it at all, and holds it as neglected and abandoned, he does not sin even venially. The reason is that injury is inflicted on the owner in goods of fortune insofar as he is unwilling; therefore, since in the former case he is lightly unwilling, and in the latter in no way unwilling, in the former a light injury is inflicted on him, and in the latter none.

XX. On Reparation Of Injustice

1319. **How is injustice repaired?** Injustice, or injury inflicted on another, is repaired by restitution. Restitution is the rendering of another's thing, or compensation for damage unjustly inflicted. This definition, as is clear, includes not only restitution of mutuum, commodatum, deposit, and pledge, where no violation of another's right preceded, but also restitution from actions in which violation of another's right preceded.

Therefore restitution differs from satisfaction in this: that satisfaction is compensation for offense, or personal injury, through some service, petition for pardon, or some fine or penalty; but restitution is the rendering of a real right or compensation for a real injury. St. Thomas, II-II, q. 62, a. 1, 5; L. 547.

1320. **Does the obligation of restitution arise from any violation of justice?** The obligation of restoring does not of itself arise from violation of distributive or legal justice, but from damaging violation of commutative justice alone.

The first part is proved because by violation of distributive or legal justice, precisely as such, a right of property in a thing or to a thing is not injured, or no damage is inflicted on another; therefore from violation of distributive or legal justice, precisely as such, no obligation of real restitution arises. The second part is proved because restitution strictly so called is compensation of damage unjustly inflicted. But real damage is inflicted only when a right of property and commutative justice is injured; therefore.

Hence St. Thomas, II-II, q. 62, a. 1, says: "To restore seems to be nothing other than to set someone again in possession or ownership of his own thing." But since "to preserve justice is of necessity for

salvation, it follows that to restore what has been unjustly taken from someone is of necessity for salvation." St. Thomas, ibid., a. 2; L. 547.

1321. **You will resolve:** 1. A superior is not held to restitution if he distributes offices of society to those less worthy, because he does not violate the strict right of the more worthy person, nor of the community, which cannot demand anything else except that the unworthy be kept from offices. But it is otherwise if in a competition the superior preferred the less worthy to the more worthy, because in a competition, speaking of itself, a pact intervenes from which a strict right belongs to the more worthy person. 2. A superior who distributes merely honorific dignities, whether to those less worthy or even to the unworthy, is not held to restitution, because he deprived no one of his right, although he sinned because of respect of persons. L. 547; bk. 4, n. 107; St. Thomas, II-II, q. 63.

1322. **Does the obligation of restitution sometimes arise from violation of distributive and legal justice?** From violation of distributive and legal justice by accident, and because of connected commutative justice, an obligation of restoring can arise. This is proved: from violation of each of those kinds of justice, real damage to a third party can arise, which by reason of office could and should have been avoided; and therefore an obligation also arises of repairing that damage. But this obligation arises because of connected commutative justice, since in that case someone is guilty not only of having omitted the common good, to which distributive and legal justice incline, but also of having violated a contract by which, in assuming office, he implicitly obliged himself to prevent damages to subjects or others. St. Thomas, II-II, q. 62, a. 7; q. 66, a. 8.

1323. **You will resolve:** An unjust distributor of offices is held to nothing toward the worthy person passed over, because he violated no one's strict right. Nevertheless he is certainly held toward society and toward private persons for all damages thence arising, both to society and to private persons. St. Thomas, cited place.

1324. **Is one unable to restore from goods of the same order held to restore from goods of a different order?** Response: more probably negatively. The reason is that there is no comparison between goods of different orders; therefore neither can compensation be given. And indeed it could never be determined how much arithmetically ought to be restored, since among goods of different orders there is no common measure. Yet others affirm, because, they say, one who cannot repair the whole damage is held at least to compensate the part which he can. Thus St. Thomas, II-II, q. 62, a. 2, ad 1, who nevertheless can well be understood of equity of right rather than of justice of right. St. Alphonsus calls this opinion probable, but holds the first as more probable.

Nevertheless, through vindicative justice it can be imposed by a judge or by a superior that someone, for injury concerning one kind of goods, furnish something in goods of another order; yet more probably by reason of penalty only, not by reason of justice. Moreover the injured person has a right before the judge of denouncing the one from whom he has received injury, and therefore of receiving money from him so that he omit the denunciation. Thus, for example, a woman violently oppressed by someone can bring the violator before a judge, or exact money from the scoundrel so that she renounce her right. C. A. 1326, 1329, 1330, 1413; L. 627.

1325. **Is restitution made by an incapable person valid?** By positive law, payment of a thing owed is not valid if made by one who was not owner of the thing, or was incapable of alienating. So from C. I. 1240; C. G. 1238; C. H. 1160; and from C. A. 1421, if the debt was not yet liquid. But a payment of this kind, made by one incapable of alienating, although subject to rescission, is not declared invalid by full right. Nor does it seem that there is place for rescission even in the external forum if the thing owed is certain and the day has arrived. But by natural law there can be no doubt about the validity of the payment of a debt made, for example, by a minor, by a wife, or by an interdicted person.

1326. **From what source does the obligation of restitution proximately arise?** The obligation of restitution broadly accepted can proximately arise from the following headings: 1. from unjust taking of another's thing, for such taking injures another's right, and therefore the injured right must be repaired; 2. from another's thing possessed, formally or equivalently existing, and not yet legitimately prescribed, for although another's thing was not unjustly taken, nevertheless another's thing possessed and not yet prescribed is always its owner's, and must be rendered to him; 3. from the fact that someone has been made richer unjustly from another's thing, for if he has been made richer unjustly, another's right has been injured, and an injured right requires reparation; 4. from unjust damage-causing, for one who brings damage to another injures his right; 5. from contract or quasi-contract, for contracts have the force of private law, and therefore oblige one to render to the co-contracting party his right; 6. from law or from juridical sentence, for law or the sentence of a judge has force of obliging in conscience; 7. from unjust cooperation, for one who cooperates unjustly in an unjust action truly injures another's right by his cooperation. L. 534, 547, 548, 711, 927; St. Thomas, II-II, q. 62, a. 1, 2, 4, 6, 7; q. 66, a. 6.

XXI. On Restitution From Unjust Taking

1327. **Is there an obligation of restitution from unjust taking; what in a case of doubt?** It is undoubted that from unjust taking of another's thing there arises an obligation of restitution. Inst. bk. 4, tit. 1, 2; St. Thomas, II-II, q. 62, a. 6; L. 548.

But one thing can be asked here: whether someone unjustly takes another's thing when he begins possession with doubt concerning his right. Now he could begin this possession here in two ways: 1. by despoiling another, without any title of itself capable of transferring ownership; and in this case, since another's peaceful possession gives a morally certain right, the despoiler is held to restitution. 2. By receiving the thing under another title, for example, purchase, donation, etc., from another person concerning whom it is doubted whether he is its owner. Then one is held to inquire into the truth of the matter, and, if the doubt perseveres, "he must restore in proportion to the doubt," says Fr. Gury 652, "to the probable owner, or to the poor if the owner is unknown. The reason is that possession begun with doubtful faith does not favor him, and therefore he cannot retain the whole; nor otherwise does he seem held to restore the whole, since he doubts whether the thing is another's and not his."

But even if that doubt is not merely negative but positive, he seems to others to be held to nothing; for he can then form a conscience from reflex principles: no one is bad unless he is proved so, etc.,

and otherwise no certain obligation can be imposed which is not certainly established. Moreover, he can use the right of the one to whom he succeeds under the title of purchase, donation, etc. Therefore, if that person possessed the thing in good faith and therefore could retain it, the one who succeeds him will be able to retain the same thing. Lugo d. 17, n. 83. But as to what the one retaining and continuing possession with doubt concerning his right is held to, cf. 1352-1354. St. Thomas, II-II, q. 62, a. 6; L. 547, 625.

1328. **From what fault does the grave obligation of restitution arise in delicts?** It arises only from gross juridic fault joined with grave theological fault; and likewise from slight and very slight juridic fault, namely when someone, by grave theological fault, omits that diligence which he was held under grave obligation to apply. "The reason is that restitution is commonly taken as a penalty; and therefore we say that, in order that due equality be preserved, for the grave obligation of restoring a thing of grave value, grave theological fault is required. Theological, because since the conscience is burdened with the obligation, there must have been a delict in conscience. Grave, because in order that conscience be held to a grave obligation, the fault must have been grave." L. 550, 551; C. A. 1295; Inst. bk. 4, tit. 3, § 6, 7.

1329. "**Does a venial sin against justice include an obligation of restoring?**" "If it is venial by reason of smallness of matter, it certainly obliges to restitution under light obligation. But if it is venial by reason of inadvertence or lack of deliberation, the first opinion affirms. Yet the second, more probable and common opinion teaches that in that case there is no obligation of restoring, neither under grave nor under light obligation. Not under grave, because a grave obligation has no proportion with that light fault. Not under light, because a light obligation has no proportion with a grave thing." L. 552.

1330. **Can a grave obligation of restoring ever arise by accident from a light sin against justice because of smallness of matter?** Response: "Affirmatively, and the case is when in the last little theft completing grave matter the thief does not advert to the previous little thefts; for then he is held under grave obligation to restitution of at least the last little theft. The graver obligation then does not arise from that last unjust taking, but arises from unjust retention of grave matter already culpably accepted." L. 553; E. M.

XXII. On Restitution From Another's Thing

1331. **Is there an obligation of restitution from another's thing?** It is undoubted that by reason of another's thing there is an obligation of restitution. For this is to restore: to set the owner again in possession of his own thing. Moreover a threefold possessor of another's thing must be distinguished: of good faith, of bad faith, and of doubtful faith, according as he invincibly does not know that the thing is another's and prudently judges it to be his own; or openly knows that it is another's; or doubts whether it is his own or another's. We will speak of each in order. St. Thomas, II-II, q. 62, a. 1, 6; C. A. 326; Inst. bk. 4, tit. 1, 2; E. M.

1332. **What about a possessor of good faith?** A possessor of good faith, as soon as he knows that the thing possessed is another's, is held to restore it, still existing, to the owner. The reason is that otherwise he retains another's good against the reasonable unwillingness of the owner, and consequently violates his strict right. L. 607.

1333. **Note:** A possessor of good faith can deduct all necessary expenses, indeed also useful ones, namely those which preserve the thing and make it better; otherwise the owner would receive more than what is his. He can also recover ornamental expenses in those very cases in which a possessor of bad faith can do this. For what is granted to a possessor of bad faith cannot be denied to a possessor of good faith. Cf. 1348. But among expenses there are not to be counted fortuitous cases, nor damages caused by accident. Thus, for example, if your horses perished while cultivating another's field, the value of the horses cannot be deducted, but only the estimation of the work done by the horses for the cultivation of the field. C. 331, 332.

1334. **Can a possessor of good faith retain the thing if, before the time required for prescription, he certainly discovers that the thing is another's, but it is impossible to recognize the true owner of the thing, whether the thing is movable or immovable?** If it is a question of a movable thing, that possessor seems able to retain the thing for himself, and not to be bound by the obligation of donating it, or the equivalent price, to the poor or to a pious work. For that thing can then be equated with a lost thing. Moreover, the finder of a lost thing can retain it for himself if, after sufficient diligence has been applied, the owner does not appear, and there is no hope that he can be found.

If it is a question of an immovable thing, the same seems to have to be said; for whether the thing possessed is movable or immovable is material with respect to the nature of justice. Therefore, if in that case a movable thing can be retained, an immovable thing can also be retained. Moreover, the same reasoning can be made here as is made for a lost thing. For in the hypothesis that the owner can no longer be found, the thing becomes no one's and is acquired by the first occupant. Finally, the possessor of this thing can indeed still retain the thing while waiting until the owner appears. For thus he better provides for the good of the owner himself than if he donates it either to the poor or to a pious work. Hence, if the owner ever appears before the time required for prescription of the longest time, he is held to restore it to him. But if the owner appears after the time required for this prescription, then nothing seems to have to be restored to him. For this is admitted in the case of a lost thing; therefore also for the present case, which is equated with it. L. 589.

1335. **To what is a possessor of good faith held, who has alienated the thing?** A possessor of good faith who has alienated or consumed the thing with profit, by sparing his own, is held of himself to restore this profit insofar as he has been made richer. The reason is that profit which is immediately from another's thing is equivalently the very thing of another. Therefore, just as a possessor of good faith is held to restore another's thing formally existing, so he must restore the same thing equivalently existing. A possessor of good faith who has alienated, lost, destroyed, or consumed the thing without any profit is held to nothing. The reason is that the thing perishes to its owner, and truly it no longer exists either in itself or in an equivalent; "because one who neglected it as if it were his own is subject to no complaint." L. 31, § 3, ff. de Petit. haered.; L. 607-609; C. A. 329; C. G. 1238; C. I. 1240.

1336. **Must a possessor of good faith also restore fruits?** A possessor of good faith is held by no reason to restore industrial and mixed fruits insofar as these correspond to industry. But as regards natural and mixed fruits, insofar as these correspond to the thing, he is held by natural law to restore them. The reason is that a thing bears fruit for its owner. Therefore, as a thing

bears fruit naturally for its owner, so one's own industry and labor bear fruit for the one laboring. L. 609, 610.

1337. **What about fruits by positive law as regards a possessor of good faith?** From Roman Law, according to the common interpretation, natural fruits received and still existing are to be restored, although the law is not always so clear. But there is controversy concerning fruits no longer existing or consumed. Some judge that nothing is to be restored, although the possessor has become richer from them, because an obligation of restitution cannot be proved. Yet they make exception if someone possessed another's inheritance which has been evicted; for then by law he is evidently held to render everything from which he has been made richer.

C. I. 701, 703; C. G. 549, 550; C. H. 451; C. A. 330 assign all fruits, whatever they are, to the possessor of good faith, provided he possesses the thing itself as owner and from a title which by its nature is capable of transferring ownership. But can this disposition of law also have force in the forum of conscience? It must more probably be affirmed, because it can reasonably be presumed that such is the force of the law, since understood thus it much more promotes the public good and removes from the midst inextricable complaints and difficulties which would continually be raised about the quantity of fruits to be restored, etc. That the force of the law is not merely to deny action in the external forum, but truly to transfer ownership, as in the case of prescription, is openly clear from its words; for it says: the possessor makes the fruits his own. Carriere 1052, 1054; Vernier 564; Gousset 931, on art. 550; L. 610.

1338. **To what is a possessor of good faith held if he has donated another's thing to another?** If the possessor of good faith has donated the thing to another, and otherwise would have donated nothing of his own, he is held to no restitution, as is clear from n. 1335. But if otherwise he would have donated something equal or less, and he himself received the thing as a gift, he would be held to restore that equal or lesser amount to the owner appearing and unable to recover his thing, as is clear from n. 1335. "And he himself received the thing as a gift"; for if he bought it, he would likewise be held to nothing according to n. 1335.

1339. **To what is a possessor of good faith held if he bought a thing from a thief and sold it to another?** In the case of eviction, that is, if the owner vindicates his thing from the buyer, the seller is held to render the price to the buyer. The reason is that, when eviction intervenes, the contract must be dissolved, and the buyer acquires recourse by that very fact against the seller, since by handing the thing over to the buyer he implicitly obliged himself to repair the damage if by chance there were future eviction.

The same must be said for the same reason in the case of spontaneous restitution made by the buyer. "Spontaneous restitution," I said, except in the case in which spontaneous restitution made by the buyer would be the cause that the seller afterward could not recover the price from the one who had sold the thing to him; for then he is not held to render the price, because the damage which he inflicted on the buyer by selling another's thing, the buyer in turn inflicted on him by hastened restitution. The same must be held if another's thing has passed into the hands of various possessors by onerous title. For if the last possessor is forced to render the thing to the owner, he himself and the individual buyers have a right of pursuing their own seller, so that they may recover the price paid. L. 601.

Outside the case of eviction, or, according to some, even of spontaneous restitution on the part of the buyer, the matter does not lack difficulty and is sharply disputed.

From Roman Law the seller is held to nothing, at least more probably, unless he has been made richer from the sale. The reason is that the sale of another's thing in good faith is not held in law as altogether invalid. For although through it ownership of the thing is not transferred to the buyer, nevertheless ownership of the price is transferred to the seller. And indeed this seller, even if afterward he discovers that the thing sold is another's, nevertheless is not held either to warn the owner so that he can recover his thing, or to indicate to the buyer that the thing is another's. Thus the more common opinion: Lugo d. 17, n. 106; Salm., ch. 1, n. 88, etc., against Billuart a. 10 and others, who oblige the seller to render the price to the owner or to the buyer, because, they say, the sale of another's thing is altogether invalid.

From Italian and French Law the difficulty increases, because the sale of another's thing is declared invalid. If therefore, they say, the contract was plainly invalid, the buyer did not transfer ownership of the price to the seller, and consequently the seller has no right of preserving that price. Therefore the price seems to be refunded to the owner, if he cannot reclaim his thing from the buyer. Thus Carriere 1047 with others.

Nevertheless others rightly contradict, and their opinion seems sufficiently probable. For it is not plainly established, even from Italian and French Law, that the sale of another's thing has no effects at all. From C. I. 1459; C. G. 1599, these things alone can be deduced: 1. that the owner of the thing preserves his right in it; 2. that the buyer is subject to eviction; 3. that the seller, in the case of eviction or restitution on the part of the buyer, is obliged to restore the price to the buyer. Nothing else besides these can be deduced from the practice of the tribunals. Besides, what case is there between the seller and the owner of the thing? What recourse can the latter assign to himself against the former? Namely, the owner has neither a personal action against the seller, because no fraud intervened, nor a real action, because this seller does not have the thing. Moreover, it would be very harsh for one who neither any longer has another's thing nor has been made richer from it to be obliged to undergo so great an inconvenience voluntarily. Therefore, for pursuing his right or reparation of the violated right, recourse remains to the owner indeed against the actual possessor of the thing, or against the thief; but in no way against others. Gousset 929; Gury 638; L. 608.

From C. A. 333, this alone is held: that the possessor, even of good faith, cannot demand from the owner of the thing the price paid by him for the acquisition of that thing. But these provisions do not pertain to the seller. And article 1306 says that, by the general rule, no one is held to repair damage caused without his fault or involuntary action. But article 931 says that the seller is held only by the obligation of keeping the buyer indemnified in the case of eviction. From C. H. 1474ff., likewise the seller is held to nothing else except to keeping the buyer indemnified in the case of eviction.

If another's thing perishes in the hands of the buyer, the possessor of good faith who first bought it and then sold it is held to nothing. For he is not held by reason of the thing, since he no longer has it; nor by reason of damage, since he is not the cause of its destruction, nor otherwise in any way formally cooperated in the taking of the thing. Gury 641; C. A. 329.

1340. **If someone in good faith bought another's thing at a moderate price and sold it at a higher price, is he held to render the profit received to the owner?** Response: negatively, if

that profit is to be attributed to extraordinary industry, for example, if he went to another place with notable labor in order to find a suitable occasion of selling the thing more dearly, etc. The same must be said if the thing was made better during the time of detention by the care of the detainer. Conversely, affirmatively, if the thing increased from its own nature or from the common estimation of people, but not from the industry of the detainer, because in that case it increases for the owner. Thus Gury 640. But cf. 1337, 1339, 1341. But in other cases there is controversy. Some affirm, because from that profit the possessor was made richer. But others, more commonly and more probably, deny, because that whole profit seems to be the fruit of the possessor's industry. Lugo d. 17, n. 20; Gousset 930; Gury 640. Cf. 1337, 1339, 1341.

1341. **To what is a possessor of good faith held if he has sold to another a thing received gratuitously?** In the case of eviction he is held to repay the damage to the buyer, as in the preceding case. Cf. 1339.

Outside the case of eviction, namely when the thing cannot be recovered by the owner, whether because the last possessor consumed it, or because he no longer appears, the seller, according to the common opinion, must refund to the owner the whole price received from the buyer. The reason is that from that whole price he was truly made richer, and consequently suffers no loss on its occasion; while on the contrary the owner, unjustly despoiled of his thing, is forced to undergo the whole damage of the thing. Hence the latter must be kept indemnified from the profit which the seller received without any title. L. 608; Vogler 66.

Yet there are not lacking those who free the seller from every obligation, because the owner can have no recourse against him, just as in the preceding case, since altogether the same reasons have force, which it will help to weigh.

Indeed, although the sale of another's thing is by that very fact null as regards transferring ownership of the thing, nevertheless it is not by that very fact null as regards acquiring ownership of the price. Therefore, with the case of eviction or spontaneous restitution set aside, the seller is held to nothing, both toward the buyer and toward the owner. And surely, if this reason has force in the case in which the possessor of good faith bought the thing from a thief, cf. 1339, the same must also have force in the case in which he received the thing gratuitously; for this gratuitous reception is altogether extrinsic to that contract of sale, and therefore does not bring it about that he does not acquire ownership of the price.

Moreover, the seller would have to restore the price either to the buyer or to the owner. But he must not restore it to the buyer; for the seller is bound toward the buyer by no other obligation except that of furnishing for eviction or even spontaneous restitution, and outside this case the buyer suffers no damage at all. And again, he must not restore the price to the owner, for the owner has neither a personal action against the seller, because no fraud intervened, nor a real action, because this seller does not have the thing. Nor is it valid to say that although he does not have the thing formally, nevertheless he has it equivalently in the price accepted for it; for in every contract of sale, since on one side ownership of the thing is transferred, and on the other ownership of the price is transferred, the price is no longer equivalently the merchandise sold, nor does it represent it. Rather, it brings only the obligation for the seller of keeping the buyer indemnified in the case of eviction. This appears more clearly in the sale of another's thing; for ownership of the merchandise is not

transferred in it, yet ownership of the price is transferred. Therefore the price, as belonging to the seller, is not equivalently the merchandise, which belongs neither to the seller nor to the buyer. "Nor can it be said," says Fr. Gury, Cas. 608, "that the price of the thing represents the thing itself." And D'Annibale, 3rd ed., pt. 2, n. 125: "This is not asked, if by chance I bought a thing from another, whether I bought it with another's money, for instance stolen money; because the thing does not succeed into the place of the price; nor, if I sold another's thing, does the price succeed into the place of the thing." Therefore the seller, not only if he bought the thing, but also if he received it gratuitously, after he has sold it does not have it equivalently.

Furthermore, the reason why the seller who received the thing gratuitously would have to restore the price to the owner, if the last possessor of the thing does not appear or has consumed the thing, would be this alone: because the seller was truly made richer from that whole price, and consequently suffers no loss on its occasion; while on the contrary the owner, unjustly despoiled of his thing, is forced to undergo the whole damage of the thing. But: 1. it is one thing that someone is made richer from another's thing, another that he is made richer on the occasion of another's thing; one thing that someone is made richer unjustly from another's thing, another that someone becomes rich without any injury to another. But the seller indeed becomes rich on the occasion of another's thing, and does not become rich unjustly; and this is not unlawful. 2. That the owner alone would suffer damage in the case is accidental. For his legitimate right is no other than against the thief and against the actual possessor of his thing. If he cannot pursue that right, this is altogether accidental.

Finally, in the case in which a seller who received the thing gratuitously sold it to another, and the thing perished in the hands of the buyer, those who oblige the seller to restitution do not agree among themselves. For some probably say that he must restore to the buyer, because the thing perished to the owner, and the buyer has a right to recover his money, since the sale was invalid. Others probably say that he must restore to the owner, because, since the owner was unjustly despoiled of his thing and the buyer in truth suffered no damage, equity requires that the owner be made indemnified. But if the right both of the owner and of the buyer is only probable, probably the seller also is held to nothing, and actual possession prevails, according to the common rule. Gousset 930; Gury 639, 641.

Nevertheless the heir of a depositary who in good faith sold a thing which he did not know had been deposited is obliged either to restore the price received or to cede his action against the buyer who has not yet paid him the price. C. H. 1778; C. I. 1851; C. G. 1935. Likewise one who in good faith received a thing not owed to him and sold it must restore only the price of the sale, C. G. 1380, or cede the action for obtaining it, C. I. 1149; C. H. 1897. Cf. 1124.

1342. **After a sale or donation has been made of another's thing, and the error has been discovered, is the possessor of good faith held to warn the donee or buyer to render the thing to the owner, or the owner himself so that he may be able to recover his thing?** Response: affirmatively, if he can do this without grave inconvenience to himself. For no one, precisely by force of charity, is held with his own grave inconvenience to aid his neighbor placed in some grave necessity, whether temporal or even spiritual. Nor is anyone, precisely by force of justice, held with his own grave inconvenience to repair or impede grave damage to a neighbor, whether temporal or spiritual, unless from piety, from contract or quasi-contract,

from formal grave and efficacious injustice, or from juridic sentence or authority of law. L. 601; Gury 637.

1343. **Can one who bought a stolen thing in good faith render it to the thief in order to recover his price?** Response: negatively, if the owner appears, asking that thing back from him; for then he must render it to him, even with loss of his price, because by natural law the owner can occupy his thing wherever he finds it. Yet an action is given to the buyer against the thief. C. A. 333.

Exception from C. I. and C. G.: if the thing was bought in a public market, or from one who is accustomed to sell things of this kind; for then the buyer is not held to render the thing to the owner unless the price has been paid. This disposition of law, according to several, has force also in the forum of conscience, because it is very useful for the public good, for tranquility of possessions, and greatly favors commerce. Bouvier, De Possessore bonae fid.; Carriere 1041; Gousset 1027.

If the owner is indeed known, but unaware of the thing, the first opinion, "very probable," denies, "because the thing taken from the hand of the thief has already attained a better state; and therefore if he rendered it to the thief, he would cast it down into a worse state, and thus would inflict injury on the owner." The second opinion, "perhaps more probable," affirms, "because you are not held to preserve the thing for the owner with your own damage." Since each person has a right to guard against his own damage, "that action is certainly not forbidden to him which is necessary and direct of itself for repairing his own damage, although indirectly and by accident damage happens to another. Nevertheless it must be noted that this opinion can have place only when no other way of recovering his price is available to the buyer except by restoring the thing to the robber." L. 569.

If the thief, or another seller, does not appear or is unwilling to return the money, the buyer, once he knows the owner, cannot sell the thing to others, nor convert it to his own uses so as to keep himself indemnified, because he is not owner of the thing; but he must render it to the owner, notwithstanding the loss of the price. But he preserves recourse against the seller. If he cannot find him, the damage must be undergone by the buyer. C. A. 333.

1344. **Can one who buys a thing from a thief in order to restore it to the owner seek the price from that owner?** Response: affirmatively, if he bought it at an altogether small price. For he usefully manages the owner's business. But one who usefully manages the owner's business is not to be defrauded of the price which he paid for the utility of the owner. C. A. 333.

Negatively, speaking of itself, if he buys it at an altogether just price. For the owner on one side is not held to buy his own thing; and the buyer on the other side would not usefully manage the owner's business in the case if he could compel him to pay that whole price. Therefore in the case he can seek only that part which he could seek from management of affairs useful to the owner. "Speaking of itself," I said, for if the owner was prepared to recover his thing at whatever price, then the buyer could demand this whole price, because then he in fact usefully manages the owner's business. C. A. 333.

But what if the buyer indeed judged that the thing was valued so highly by the owner, but falsely? Some stand for the buyer, others for the owner. "Tamburini settles the dispute by establishing that the just price, however enormous, must be paid to the buyer if he was deceived while relying not on

slight but, by the judgment of prudent persons, on grave grounds; otherwise if from levity of mind and without the matter having been well weighed." Ithur. cas. 4, n. 5; L. 600.

1345. **What about a possessor of bad faith?** A possessor of bad faith must restore the thing itself, formally or equivalently existing; for the thing cries out for its owner. Moreover, he is held to compensate all damages which have come to the owner from the unjust possession of the thing, for he is the per se efficacious cause of those damages. Likewise he is held to restore all those things in which he has been unjustly made richer from the unjust detention of another's thing; for no one can justly become rich from another's injury. C. A. 335.

From C. I. 1147, one who has received payment in bad faith is held to restitution both of the principal and of interest or fruits from the day of payment.

1346. **You will resolve:** If the thing had varied value, the possessor of bad faith is held to restore the thing to the owner, if he has it, whatever value it now has, for the thing increases and decreases for its owner; and moreover to compensate damages, if any followed, for example if it was made worse by his fault, if the owner would have sold it at the time of greater value, etc.

But if he no longer has the thing, he must restore it according to the value which it had when it perished or when he alienated it. For since the thing perishes to its owner, and then perished according to the value which it then had, no other obligation now remains except that of the value which was then equivalent to the thing and represented it. Likewise, when the thing was alienated, it belonged to the owner, and belonged to him according to the value which it then had; consequently that value is owed to the owner. Likewise he must compensate damages, if any followed, for example if the owner would have preserved the thing until the time of receiving the greatest profit from it. And surely, if then the thief had restored the thing to the owner when it perished or when he alienated it, he would have had to give him nothing else except the thing itself, whatever value it then had, and compensate emerging damages or lost profits, "according only to the estimation of the hope." L. 768, 619, 620, 621; C. H. 1896; C. I. 1147, 1148; C. G. 1378, 1379.

1347. **Must a possessor of bad faith also restore fruits?** Absolutely speaking, standing in the rigor of principles, he would have to restore all fruits, with expenses deducted, as will be said in the following number, because the thing bears fruit for its owner. Yet, morally speaking, when the question concerns theft of a small and very common thing, for example a hen, it is enough if the value of that thing is restored, because by common estimation the owner of the thing suffered no other damage to his property. For if he wishes to have another similar thing, he can very easily procure this for himself. Hence one need not restore either eggs or other chicks obtained from it. L. 621.

1348. **What about industrial fruits and expenses made?** A possessor of bad faith can retain all industrial fruits and deduct expenses, both necessary and useful. The reason is that labor bears fruit for the one laboring; but the owner himself would have made the necessary expenses in order to preserve the thing for himself; and useful expenses increase the thing for him and render it better. Indeed, in the forum of conscience and before the sentence of a judge condemning him to the penalty of the delict, he can deduct even merely ornamental expenses where they can be separated with the substance of the thing intact, for no right of the owner is

injured by this; or, if they cannot be separated without detriment to the thing, and the owner himself would also have made them, or wishes to sell the thing, but not in the opposite case, because again in one case the owner suffers no damage, but truly in the other he does. L. 618; C. A. 336; C. I. 705, 1150.

1349. **Is a thief held to restitution who stole a thing otherwise certainly about to perish?** Response: affirmatively, but with expenses made deducted, together with the price of the labor applied to freeing the thing from danger. The reason is that that thing did not cease to pertain to the owner, although it had been exposed to the greatest danger. Several probably make exception if the thief immediately consumes the thing remaining in certain danger, for example food or drink already about to perish in a fire, because a thing not freed from danger has no value for the owner, since it is estimated by no price. Moreover the owner then cannot be reasonably unwilling that a thing certainly about to perish for him be consumed by another. Several extend this to the case in which another's thing is removed from near danger and immediately consumed; for example, if you take another's wine already certainly about to be seized by hostile incursion, and drink it with family or friends. Lugo d. 18, n. 77, 144ff.; L. 620; Elbel 80.

1350. **Is a thief held to restitution if the stolen thing perishes in his possession?** Response: affirmatively, absolutely, if it perished by the fault of the thief or of anyone else, because the thief was the efficacious cause of the damage, whether he himself, or another, lost, consumed, donated, or destroyed the thing from culpable negligence. Generally affirmatively also if the thing likewise perished in the thief's possession even without any fault of his. The reason is that by taking the thing away the thief undertook upon himself its whole risk.

Nevertheless negatively, if the thing would have perished in the owner's possession at the same time and by the same chance, or from its intrinsic defect, because then no damage at all is inflicted on the owner. More probably this holds even if the thing would certainly have perished at the same time and in the same common danger in which it perished in the thief's possession, for example in the same fire or in the same public calamity. The reason is that then the theft was not the cause of the damage, but the thing would have perished equally and in the same way and time. L. 620; H. A. 79; Lugo d. 18, n. 141; Vogler n. 501; C. A. 338; C. H. 1896; C. I. 1148, 1298; C. G. 1302, 1379.

"If the thing would have perished at the same time in the owner's possession," I said; because if it would have perished before, and it is to be ascribed to the theft that it did not perish, it was already crying out for the owner while it remained with the thief, and it would not have perished if it had already been restored. Therefore the thief is held to restitution. But if it would have perished afterward in the owner's possession, the same obligation of restitution presses for the thief, who at that instant in which the thing perished in his possession contracted the obligation of restoring.

"In the same danger," I said; because where the danger is altogether different, it can well be imputed to the thief that it perishes, because without his theft the thing would not have been exposed to this danger, although it would have undergone another peril. Yet some contradict this, because, they say, it is the same whether the thing perishes in that danger or in another, when each peril coexisted at the same time. L. 620.

From Roman, Italian 1298, French 1302, Austrian 338, and Spanish 1185 Law, in whatever way the thing perished in the hands of a possessor of bad faith, he is held to restitution. Nevertheless he does not seem to be obliged to restitution before the sentence of a judge, unless it is certain that he is obliged by natural law. Carriere 1072; Gousset 933, on art. 1302.

1351. **Can a buyer of bad faith restore the thing to the thief?** Response: "The doctors more commonly deny this. But Holzmann, Elbel, etc., still affirm. And Lessius calls this opinion not improbable. And indeed Busembaum, not undeservedly, thinks it absolutely probable; indeed Lugo says perhaps more probable. The reason is that although this man sinned by buying the thing in bad faith, nevertheless after the purchase he has a right, just like the buyer of good faith, to rescind the contract by rendering the thing to the thief, as was proved above." L. 570, 600; cf. 1343.

1352. **What about a possessor of doubtful faith?** A possessor of doubtful faith can be such either at the beginning, or only in the course of possession. Concerning the first case, it was said above in n. 1327. The second is treated here. A possessor of doubtful faith must inquire after the true owner of the thing; otherwise he exposes himself to the danger of retaining another's thing from his own culpable negligence. When inquiry has been made and doubt perseveres, he can retain the whole thing if before the doubt arose he possessed in good faith. The reason is that peaceful possession of a thing in good faith exhibits moral certainty. L. 547, 608; C. A. 323; C. I. 687; C. G. 550; C. H. 433.

1353. **What if the possessor of doubtful faith neglects to inquire after the true owner of the thing?** If inquiry has been neglected and the owner can no longer be found, "something," says Fr. Gury 653, "seems to have to be restored to the poor in proportion to the hope which the owner could have had of recovering his thing. Generally that hope does not attain half of the price, but is of much lesser value."

But that resolution does not seem capable of demonstrative proof from the principles of law; rather, the opposite seems to be drawn from them. For if someone until now neglected to inquire, he can still institute inquiry in the present. Moreover, since it is probable that in reality there is no owner, because the thing probably is not another's, it is not established that this possessor culpably deprived the owner of the hope of recovering his thing. Likewise, although someone neglected to make that inquiry, he always has in his favor the previous entirely peaceful possession of the thing before the doubt arose, and therefore even now can invoke in his favor that well-known principle: the condition of the possessor is better.

This can be confirmed from another resolution which the same Fr. Gury 655 has. For according to the praised theologian, a possessor of doubtful faith who began to possess in good faith, if, after inquiry has been made, he finds that the thing is more probably another's, more probably is not held to restitution, "because from certain possession a morally certain right arises. Moreover, until another has proved his certain right, the axiom has force: the condition of the possessor is better. St. Alphonsus, bk. 1, n. 35, and others very commonly according to St. Alphonsus, against some who teach that then restoration must be made proportionately." But: 1. each of these reasons does not lose its value even if someone neglected to inquire. 2. As is clear from the second reason, in reality someone is not held by a strict obligation of justice to inquire, but can always prudently say: the

condition of the possessor is better until another proves his certain right. 3. That hope of finding the owner through inquiry, even if the doubt is not merely negative, for then it can be disregarded as imprudent, but positive, constituting true probability, can by right be equated with probability or even greater probability in favor of the owner. But even with this greater probability standing in favor of the owner, after inquiry the possessor is not held to restore. Therefore neither before, until another has proved his certain right. L. 547, 562, 657, 658, 706; bk. 6, n. 906.

1354. **Note:** The conclusion placed last also holds for a possessor of doubtful faith from the beginning of possession, when he received the thing under the title of purchase, donation, etc., doubting whether the one from whom he received it is its owner, and neglected to inquire, and the owner of the thing can no longer be found. For almost similar reasoning can be made here. This can again be confirmed from the doctrine of the same Fr. Gury; for he openly has this in n. 656: 1. "If you doubt whether your predecessor possessed goods by a legitimate title, you can, after weighing the matter and with the doubt persevering, nevertheless accept and retain the inheritance, provided it is established that he possessed in good faith. For if the axiom in doubt the condition of the possessor is better favors your predecessor, it also favors you his successor; for in this case the principle of the possessor of doubtful faith who began possession in good faith must be applied, since predecessor and successor by law make one moral person." 2. "In doubt whether someone began in good or bad faith, presumption must be made in favor of the possessor, because delicts are not presumed, but must be proved." Besides, if someone is of such a mind that, possessing the thing as if meanwhile by precarium, he wishes to render it to the owner whenever he appears, he lawfully takes and retains possession. Lugo d. 16, n. 96; D'Annibale, 3rd ed., pt. 2, n. 121.

1355. **What, in a case of doubt, if possession of the thing is not had?** When none of those concerning whom it is doubted whether they are owners of the thing in fact possesses the thing itself, if the doubt is equal, the thing is to be divided equally among them. But if the doubt is unequal, it seems to be divided according to the proportion of the doubt. But if the thing cannot be divided, it must be sold so that the price may be divided; or by consent of the parties it must be granted to one, who is obliged to render to each of the others his right; or it is even to be cast into lots, so that it may be assigned to the one whom the lot favors. La-Croix 566; Sanchez, Decal., bk. 2, ch. 23, n. 173; Carriere 1101; L. 706.

XXIII. On Restitution Because Someone Has Been Unjustly Made Richer

1356. **What kind of obligation of restitution is had from the fact that someone has been unjustly made richer from another's thing?** This heading of restitution from the fact that someone has been unjustly made richer from another's thing does not regard another's thing itself, but fruits of another's thing received; and not just any fruits, but fruits immediately received from another's thing, by which someone has been unjustly made richer, as we have already declared. Cf. 1341. But concerning restitution of these fruits we have already said enough. Cf. XXII. Therefore nothing remains to be added here.

XXIV. On Restitution From Unjust Damage-Causing

1357. **Whether and when does an obligation of restitution arise from damage-causing?** One is called a damage-causer who injures another's right, harming his neighbor in his goods, without nevertheless becoming richer from it. Therefore damage-causing is a source of restitution different from the preceding ones. "Whoever causes damage to someone seems to take away from him that in which he causes him damage; for damage is so called from the fact that someone has less than he ought to have. And therefore a person is held to restitution of that in which he damaged someone." St. Thomas, II-II, q. 62, a. 4; Inst. bk. 4, tit. 3.

But for damage-causing to induce the obligation of restitution, it is necessary that it be culpable. Moreover, fault is either theological or juridic, about which we have already spoken, cf. 1072. But juridic fault from Roman Law is either gross, slight, or very slight, about which we have also already spoken, cf. 1072. Although this distinction of faults is not expressly commemorated in C. I., C. G., C. A., C. H., nevertheless it is supposed when, according to the different circumstances of the matter, those same Codes require ordinary or extraordinary, lesser or greater diligence. Cf. C. I. 1151ff., 1224, 1843, 1844; C. G. 1137, 1382ff., 1927, 1928; Rogron on art. 1137; C. A. 1293ff., 1306, 1323, 1324, 1331, 1332; C. H. 1902ff.; St. Thomas, II-II, q. 62, a. 1, ad 2, a. 4, 7; E. M.

1358. **What conditions are required for restitution from damage-causing?** In order that an action causing damage induce an obligation of restitution, by the law of nature a threefold condition is required, namely that it be unjust in itself and not only in intention; that it be an efficacious cause of the damage, that is, that it really influence the damage of another; and that it be theologically culpable. That is, it must be unjust truly, efficaciously, and formally.

Proof: the action must be unjust in itself; otherwise there is no place for real reparation of justice. C. A. 1305. It must be efficaciously unjust; otherwise, since someone is not the author of the damage, he is not held to repair the damage. It must be theologically culpable; otherwise the obligation in conscience of repairing damage inflicted by injury by no means arises, since injury was lacking in the forum of conscience. Hence, very probably, juridic fault alone is not sufficient for compensation of damages, with theological fault set aside. But if juridic fault also induces theological fault, then indeed it obliges to compensation of damages. Cf. 1072, 1073, 1077; Ithur. cas. 27, n. 2, 3, 5, 12, 13; L. 550, 551, 556, 570, 572, 613; C. A. 1299, 1300, 1306ff., 1331.

1359. **What must a damage-causer restore?** An unjust damage-causer is held to restore: 1. the whole equivalent of the damaged thing. Thus, for example, if someone culpably sets another's house on fire, he must repay its whole price to the owner. 2. The whole equivalent of foreseen damages besides the damaging of the thing, if any have come from it. Hence, for example, if a craftsman is forced to omit his customary work for some time because you destroyed an instrument necessary to him, you are held to compensate him not only for the value of the instrument, but also for lost profit. Concerning lost profit: "such damage need not be recompensed equally, because to have something virtually is less than to have it actually." St. Thomas, II-II, q. 62, a. 4.

1360. **Is one held to restitution who indeed inculpably placed the cause of damage, but afterward did not impede it, although he could have impeded it?** Response: affirmatively.

The reason is that each person is held from justice to impede, if he can without great inconvenience, that his action harm his neighbor; therefore he is also held to impede that the evil which followed from his action persevere. Hence: 1. one who inculpably put fire under another's house, when he notices the danger of fire, is held from justice to impede it if he can; 2. likewise a pharmacist who by error sold poison as medicine must from justice warn the buyer; 3. likewise one who by error said something grave against another's reputation is afterward held, when the error is known, to correct it; and if he does not do so, he sins gravely and is obliged to reparation of all damages which come from this. L. 564.

1361. **Must damage following from a cause culpably placed, but already retracted when the damage is inflicted, be repaired?** Response: affirmatively, at least if that damage was determinate and known beforehand in species. Thus, for example, if someone voluntarily gave poison to another and afterward cannot impede its effect, although, repenting of the deed, he very greatly wishes to do so, he will be held to repair damages coming from homicide. The reason is that the one who placed the cause of the damage continues always to influence it efficaciously.

1362. **Must damage inflicted by accident, but while devoting oneself to an unlawful work, be repaired?** Response: negatively, because that damage is not voluntary, since it was not foreseen even confusedly. Nor does it matter that the action was unlawful; for this pertains nothing to the nature of justice. Thus a cleric who, while engaging in hunting against the prohibition of the Church, kills a person instead of a wild animal, is no more guilty of injustice than a lay person who had done this. Indeed, damage inflicted by accident need not be repaired even if it happened on the occasion of an unjust action, because it has no connection with that action. Hence one is not held to restitution who kills Titius, whom he by no means saw nor knew to be present, while he was directing a gun at Caius. Lugo d. 8, n. 72, 82; L. H. A. 39.

1363. **Is one held to restitution who by his bad example induced others to inflict damage, if he foresaw the efficacy of the bad example?** The first and more probable opinion denies, because one who gives bad example is not the cause of the damage, but a mere occasion. For a bad action does not of itself tend to this, that it excite others to imitate it. Therefore the other damage-causers are altogether determined from themselves to inflict damage.

The second opinion affirms, because one who offers bad example with foresight of contagion can be held as an efficacious cause of the damage, since in some way he influences the determination of those who inflict damage; and experience teaches that people are moved more by examples than by counsels, according to the axiom: words move, examples draw. L. 537; bk. 2, n. 45; Antoine, pt. 2, ch. 3, qu. 15; Billuart, diss. 8.

1364. **Are you held to repair damage coming to someone on the occasion of your unjust action, for example if you stole, and the theft is imputed to him?** Response: certainly negatively if you did not foresee that damage. For you are not a theologically culpable cause of such damage. Also more probably negatively, although you did foresee this damage. The reason is that your action, even with foresight of the damage posited, is not the cause of it per se, but only by accident. Indeed probably it must also be denied even if you acted deliberately so that your action would be imputed to him, because this action is always only a cause of the damage

by accident, and not per se; for by its nature it did not efficaciously induce that damage. For a wicked intention does not make unjust that work which of itself is not unjust with respect to a third party.

Affirmatively, if at some time the circumstances were such that a true connection would be given between them and grave suspicion concerning the other. Likewise altogether affirmatively, if someone used those means which furnish the gravest suspicion for accusing another, for example, if he put on his clothes to commit homicide and threw them away stained with blood, etc. L. 635, 636; La-Croix 157.

1365. **What if an external work is placed from a bad intention, but although damage can happen, it is not truly probable that it will follow?** This is disputed among very grave theologians. But the state of the question will be clearer from the following examples, namely: 1. Someone places poison or a snare in a place where his enemy very rarely passes, but with the intention that he be killed if by chance he passes. 2. A physician applies all the diligence to which he is held, but from hatred does not wish to apply greater diligence, so that the death of the sick person may follow. It is asked whether they are the cause of the unjust death which may perhaps follow, if in fact it follows.

There is a twofold opinion. The first opinion, which seems more common, denies. The reason is that on one side the external act is not unjust, since a mere possibility of another's damage in human affairs must not be attended to; and on the other side the external act is not made injurious by reason of the intention, since intention does not influence the efficacy of the cause, or the danger of damage. For then the cause must be called merely accidental, and the wicked intention does not change its nature.

But the second opinion affirms. The reason is that in the aforesaid cases homicide is certainly against justice, and is not excused except insofar as it is involuntary. But the intention renders it voluntary. For therefore, with intention set aside, it is not voluntary, because the one placing the cause is not judged efficaciously to will the effect, since the effect is not probably connected with the cause; but the intention supplies that connection and makes the one acting a true cause of it. For the intention of the one acting contributes much to the nature of a cause. Therefore. But mere foresight of the possibility of damage in the aforesaid cases would not suffice for the nature of injury; the intention of procuring it is also required. Lessius, bk. 2, ch. 9, n. 133; Lugo d. 8, n. 75.

1366. **Is one who from invincible error thinks that the damage inflicted by him is much less than it really is held to restore the whole, if afterward he recognizes the true price, for example if someone throws into the sea another's gem worth 100, while he believes it to be worth only 10?** Probably he is held to restore only in proportion to the damage known, because damage is not judged willed which was invincibly unknown. Yet there will be an obligation of repairing the whole damage if, because of a suspicion of greater price arising at least confusedly, the whole damage becomes voluntary. L. 613.

1367. **Is one held to restitution who impeded another from obtaining some good or benefice?** Response: affirmatively, if the neighbor has a strict right to obtaining the thing, for example in the case of a competition. If the neighbor does not have a strict right to obtaining the thing, a

distinction must be made. It must be affirmed if this is impeded by unjust means, for example by force, fraud, calumny, fear, etc. But it must be denied if it is impeded by means just in themselves, for example by persuasion, requests, etc. The reason is that no right of the other is then violated, neither in itself nor in the means. L. 582, 585, 587, 588, 614, 632, 633; H. A. 61; St. Thomas, II-II, q. 62, a. 2, ad 4.

1368. **Are you held to restitution if from a bad intention, for example hatred, yet with means unjust of themselves set aside, you turn another away from obtaining a good to which he does not have a strict right?** Response: more probably negatively. The reason is that no injury is inflicted on the neighbor. For bad intention is not sufficient for injury; an external action is required which is a true and efficacious cause of unjust damage. L. 584, 585; Elbel 108.

1369. **Is one held to restitution who doubts whether he himself was the cause of the damage?** It is common among the doctors that in doubt whether a cause was placed, or whether damage was inflicted, one is held to no restitution. The reason is that a fact is not presumed but must be proved.

If the doubt concerns the influence of the action on damage which certainly happened, there is controversy. The first opinion, from St. Alphonsus, very probable, affirms, because once the fact of the action is posited, the action is presumed to have been the cause of the evil, if it was truly apt to inflict the damage. The second opinion, from the same holy doctor, "also sufficiently probable, denies; and St. Thomas seems to hold this, II-II, q. 62, a. 7. The reason is that general rule, that no one is obliged to restitution unless such an obligation is altogether certain, namely that he was the true cause of the damage." L. 562, 547, 575, 579, 706.

1370. **Are you held to repair damage which you inflicted on someone by error, while intending to harm another, for example if you burn the house of Caius, which you think is the house of Titius your enemy?** There is a twofold probable opinion. The first, which several grave theologians hold, affirms, because in that case all the conditions required for urging restitution are present, namely an unjust action, an efficacious cause of damage, and theological fault.

The second, "with Leander, Molina, Tamburini, Sporer, Lugo, La-Croix, denies that he is held to restitution, provided he did not intend, not even confusedly, to burn the house of anyone other than Titius. The reason is that for the obligation of restitution, which arises from damage-causing principally done because of injury, formal injury is required; nor is material injury sufficient, and only effective injury without intention, just as merely affective injury is not sufficient when the external work is not completed, as this would be. For Cardinal de Lugo speaks thus: when I intend to inflict damage on Titius, with the intention of bringing injury upon him alone, with anyone else excluded, if afterward by invincible error I injure Caius, the injury with respect to Titius is not formal and affective, but only material and effective, and merely accidental, since I did not have the intention of injuring him, either in particular or in general; and therefore I am not held to restore to him the damage which arises from injury. Nor is it an obstacle to say that for the obligation of restitution it is enough to intend some unjust action and execute it; for the cited doctors respond that for the burden of restitution by reason of damage-causing, a merely materially unjust action is not sufficient, but in

addition an action formally, or voluntarily, injurious against the person injured is required. But this voluntary injurious action is lacking in our case, since the action happens beyond the intention, and is not formally injurious to anyone: for if I intend to injure only Titius, and exclude anyone else, then I voluntarily offend no one; not Titius, because in fact he is not injured; not the other, because with respect to him my action is altogether involuntary, and therefore the error is about substance." Thus St. Alphonsus 629.

But immediately showing the distinction between damage-causing and theft, the same holy doctor adds: "For in theft, attention is not paid to whom he wished to do injury, but whether he truly wished to take the thing against the owner's will, since in this the obligation of restitution because of damage-causing seems to differ from restitution because of theft: for in damage-causing, injury against the person of the owner is principally intended, and his damage accessorily; but in theft, unjust profit is principally intended, and the injury of the owner accessorily; and therefore error about the owner in the case of theft seems to be about quality, but in the case of damage-causing about substance." Cf. L. 628.

1371. **To what is a damage-causer held in goods of the soul?** Whoever by fraud, lie, force, fear, or another unjust means, or being obliged by office, strives by his action to inflict on someone spiritual damage, whether of the natural order, for example by depriving him of memory, reason, etc., through poison, a love potion, etc., or of the supernatural order, for example by inducing him into sin, into error against faith, etc.; or strives to deprive him of some good, whether of the natural or supernatural order, for example, lest he learn a science or art, lest he enter religion, etc., is held from justice to remove that unjust means. Moreover he must repair the damages which come from that unjust means, provided those damages can be repaired in the same order. The reason for both is that each person has a right that damage not be unjustly inflicted on him, or that he not be impeded from obtaining a good. L. 660-662; St. Thomas, Quodl. 5, a. 25; C. A. 1299, 1300.

But if someone not obliged by office, and without fraud, lie, force, fear, or another unjust means, by his action is the cause to another of some spiritual damage, whether supernatural or natural, or of the privation of some good, he is held from charity to impede, if he can, with greater or lesser inconvenience to himself according to the greater or lesser danger of another's damage, and according to the greater or lesser good of which the other is deprived, that his action harm his neighbor. For if he does not do this, his action, the cause of another's damage, which at the beginning was perhaps altogether inculpable, when he now adverts to the damage following, becomes altogether culpable. And if from the beginning it was culpable, he must not persevere in the fault. Yet he is held to no reparation of damages from justice; for example, if someone by bad example only, or by wicked persuasion, without force and fraud, induced another to sin; or if someone gratuitously, without any obligation of pact or office, and with fraud and deceit set aside, taught another badly from mere negligence or ignorance. L. 660.

1372. **To what is a damage-causer held because of unjust homicide?** More probably, murderers or mutilators must restore nothing precisely for life, limb, etc., because these are not estimable by price. But they are held to compensate all other temporal damages of which homicide was the efficacious cause. L. 626; C. A. 1325ff., 1329.

1373. **You will resolve:** A murderer or mutilator is held to compensate the damages which are inflicted on the injured person himself before his death, of which sort are expenses made in treating the illness, and anything which he lost during that time and for that reason from interruption of work, from omitted business, from impeded profit, etc. Unless these are condoned by the injured person himself, they must be paid, in his default, to the heirs, whoever they are, to whom the real rights of the killed person pass. L. 630, 631; G. 725; C. A. 1325, 1326, 1337.

He must compensate damages necessarily coming to the wife, children, or parents of the killed person. For an unjust murderer is also held to restore to those to whom, from his unjust action, he brought damage per se. But to those whom the killed person should and could have supported, with attention to age, health, etc., he brought damage per se from his unjust action. Therefore. But their injured right, since it is not the right of the killed person himself, cannot be remitted by him to the killer. From the very reason adduced, the quantity of compensation to be made by the killer toward such persons is clear. Namely, speaking of itself, he is held to restore as much as the killed person was held and was able to furnish for their necessary sustenance and that owed to their state, yet according to the hope of that sustenance. Lugo d. 11, n. 81, 82, 88; L. 630, 631, 632; C. A. 1327, 1329.

He must compensate any damages, and damages of whomever, which follow necessarily and per se from the death of the killed person; such are damages of creditors. L. 633, 634. Nor can the killed person condone these, because he has no power of disposing of the rights of others. But Sanchez and others oblige him only in the case in which the one injuring foresaw the damages of the creditors. This seems certain. Cf. L. 613. Yet several other grave theologians assert that the murderer is not held to restore to the creditors of the killed person, even if the murderer foresaw it, provided he did not intend their damage. But this direct intention, whether it is present or absent, does not change the nature of that externally unjust action toward the creditors and of the most efficacious cause of their damage. Indeed, if killing objectively considered is not the per se cause of those damages, it certainly does not become such by this extrinsic intention. L. 584, 636.

1374. **Note:** Although the murderer is punished with capital penalty, the obligation of restitution passes to the heirs. C. A. 1337. For these succeed both to the rights and to the real debts of the deceased. Yet several judge that the heir is excused from restitution if compensation of damages is not asked, because then the parties are presumed to condone. L. 631, 705.

1375. **Is one held to anything who kills another in a duel?** Response: more probably negatively, whether he was the challenger or the challenged. For the very one who was killed, by consenting to the duel, placed by his consent the whole necessary and sufficient cause of those damages. Exception: unless he induced the other by force or grave threats, and thus as it were compelled him. L. 638.

1376. **To what is a damage-causer held because of rape and fornication?** Two things must be distinguished: simple injury and damage. Injury is compensated by satisfaction; and this is owed both to the woman who suffered rape unwillingly and, regularly speaking, to her parents, namely if this becomes known to the father and the daughter still remains in the father's

family, although she is no longer under paternal power. By satisfaction, namely by asking pardon, showing honor, humble submission of oneself. L. 641.

For merely natural damage, or for lesion of bodily integrity and loss of virginity, nothing, at least more probably, must be restored, because that damage cannot be compensated by money. L. 640.

Even for temporal damage which followed from the shameful intercourse, nothing, except the education of the offspring, must be restored when the woman consents to the solicitation; neither to the consenting woman herself, because injury is not done to one knowing and willing, nor to her parents, because no strict right of theirs is violated. L. 641; C. A. 1328.

If the rapist violated the girl by force, fraud, deceit, or threats, he is held to repair every damage thence coming to her or to her parents, because he is the efficacious and unjust cause of damage of this kind. L. 641; C. A. 1328.

Damage is to be repaired, namely if from lost virginity the woman either can no longer marry, or can enter only worse marriage. But damage from this is present if the rape is revealed; by no means if it remains hidden, and therefore then restitution ceases. But if it is revealed by the woman's fault, although she herself suffered force, she must impute the damage to herself. But if it is revealed by the man's fault, he is held to compensate the damage, although the woman consented and had already previously been corrupted. But if it is revealed by the fault neither of the man nor of the woman, and the woman was oppressed unwillingly, the man undertook upon himself the risk of damage and is held to restitution. L. 640, 641, 642, 646.

Restitution consists in this: that the man either provide the woman with a dowry, or marry her. Provide a dowry, namely if she has none; or, if she has an insufficient one, increase it, so that the woman can marry equally well. Marry her, namely if the woman wishes, lest injury be added to injury if she is forced. But it belongs to the woman to choose either to receive a dowry or to enter marriage; for she cannot be compelled to receive a dowry, since the damage inflicted cannot otherwise be repaired to equality except by entering marriage. Nevertheless, because forced marriages often have a bad outcome, the doctors commonly teach that it is enough if the man provides the woman with a dowry by which she can marry equally well; and they say the man is held to marriage only if he cannot provide the woman with a dowry, provided he can do this without far greater damage to himself, as, for example, if the woman is of much lower condition, or if great scandal is feared from the marriage. But the dowry is owed to the woman alone, whose interest it is to marry, and begins to be owed from the time it is asked. L. 641, 642, 644, 648, 649; bk. 6, n. 104, 851; Lugo d. 12, n. 8, 9, 11, 42, 14, 16, 17, 18.

Each is held to recognize and support the child born. Cf. C. H. 135, 136. If the child cannot be recognized without infamy, and the woman suffered force, the man alone is held to support him, C. A. 1328; but if the woman makes gain from her body, she alone is held to support the child. But in default of the rapist, the mother must undertake care of the child, although she admitted no fault, because she is the mother. But then she preserves recourse against the corrupter, who is held to compensate her for all expenses which she made on the occasion of the offspring. But if the woman consented to sin, by Roman Law the mother is held to support the infant for three years, and afterward the father must provide for him. From C. I. and C. G. nothing is expressly established. Yet jurists recognize that parents are equally and jointly and severally obliged at least to support and

educate legally recognized children. This is drawn from C. I. 138; C. G. 203. From C. A. 139, 141, 143, 166ff.; C. H. 155, the father is principally obliged, and in his default the mother. But even if the children were not recognized, by natural law the same obligation rests upon them. Carriere 1371; Gousset 1016.

1377. **To what is a damage-causer held because of adultery?** Whatever comes to an illegitimate child from a false cause, as if to a legitimate one, must be restored. Hence "restitution must be made for the expenses which the husband makes in the support of another's offspring. Likewise what for that reason he gives to him, or leaves after death, which indeed must be rendered to the other children or coheirs. Likewise if blood-relatives of the husband, thinking the child legitimate, give or leave something to him out of that consideration. For all these things they do and spend from a false cause and the unjust deceit of the adulterer." Lugo d. 13, n. 2, 34ff.

Both the adulterine child himself and his adulterous parents must restore. The adulterine child must restore from the thing unjustly received, and therefore must restore those things which he still has, or their equivalent in which he has been made richer. The parents must restore from unjust damage-causing, and therefore must compensate the damage which follows per se and as if necessarily from the adulterine child being held as legitimate, namely the expenses made by the husband or by his ascendants for supporting, sustaining, and educating the adulterine child; and those things which the adulterine child received from them, not from other blood-relatives, by gift, testament, or succession. Lugo d. 13, n. 37, 40; L. 659.

But the parents must restore: 1. the adulteress, unless she was oppressed unwillingly, by leaving more to the legitimate children, by living more sparingly, by administering the family property more diligently; 2. the adulterer, unless the mother could easily have removed the child. Lugo d. 13, n. 9, 13; L. 659. Each is held jointly and severally if the crime was voluntary on each side, because the whole is to be imputed to each. If the adulterer extorted the consent of the woman by force or grave fear, he alone is held to repair the whole damage. Lugo d. 13, n. 9; Lessius 10, 41.

But the child must restore if it is certain and evident to him that he is adulterine. Likewise his parents must restore if it is certain and evident that he was conceived from adultery. Lugo d. 13, n. 17.

Restitution is to be made to those who spent or gave, and, when they have died, to their heirs; restitution is likewise to be made to legitimate children injured because of the adulterine child, if the illegitimate child received the inheritance together with legitimate children. L. 659.

A cause justly excusing from the aforesaid restitution is present if it cannot be made without grave danger and damage to life, liberty, or reputation. Lugo d. 13, n. 58; L. 653.

If the crime becomes known to the husband, they must compensate the personal injury by asking pardon, by signs of sorrow, and by other things of this kind. Ithur. cas. 6.

1378. **What in doubt whether the offspring is the husband's or the adulterer's, or from this adulterer rather than from another?** Response to the first: more probably the adulterers are

held to nothing, because the damage is not established. L. 657; Lugo d. 13, n. 17, and many others against others who say restitution must be made proportionately.

To the second: the first opinion holds that each adulterer is held to restitution proportionately. The reason is that the damage is certain, and it is established that it was committed by one or the other; but each is the efficacious and unjust cause of the uncertainty which prevents compensation from being demanded determinately from one. La-Croix n. 337; Lugo n. 19; Roncaglia ch. 2, q. 3. The second opinion denies, because a certain burden cannot be imposed where the obligation is doubtful. Nevertheless exception is made if the second adulterer noticed, at least implicitly, that by his sin he would be the cause of uncertainty. Likewise if the adulterers committed adultery from common counsel. L. 658; Elbel, De Actib. human., 161ff.; cf. 1369.

1379. **Is the woman held to reveal her crime if she cannot repair the damage in another way?** Response: negatively, generally speaking. The reason is: 1. because commonly this revelation cannot be made without great infamy of the woman, and often without danger of death, perpetual hatred, or other grave evils; 2. because, even with such a means applied, she could repair the damage with difficulty, especially since the child is not held to give faith to the mother. Cf. 1380. They commonly make exception if the mother is of ruined reputation, etc. L. 653.

1380. **Is the child held to believe the mother, even swearing, that he is illegitimate?** Response: negatively, because from law and common sense no one is held to believe one witness, even of most approved faith. It is otherwise, however, if besides the testimony of the mother evident indications are present, for example, the absence of the father for a long time. L. 654.

1381. **If adulterers or fornicators were wealthy and sent the offspring to a foundling hospital, would they be held to repay the expenses?** This is disputed. The first opinion affirms. The reason is that foundling hospitals are instituted for the benefit of infants, not of parents; nor are their founders to be presumed to have wished to exempt the rich from paying expenses. Lugo d. 13, n. 3; Bouvier, De Restit., pt. 2, art. 2; Carriere n. 1373; Rousselot, opusculum De Sexto Praec.

The second opinion denies, because those hospitals were erected for all infants indiscriminately who are cast away by parents, whether they belong to rich or poor parents. Nor is it an obstacle that subsidies are furnished by the Government or Municipality for those little ones, because these are distributed generally for abandoned children, without attention to parents. Moreover, hospices of this kind were instituted for this end, that illegitimate infants be freed from the danger of both eternal and temporal death, to which they would be most exposed if they were not received in those pious places. For how many impious and cruel parents has fear of infamy driven either to procuring abortion of their offspring or to inflicting death on it? But children of the rich would incur such danger no less than children of the poor. St. Alphonsus 656, who thinks this opinion more probable.

1382. **To what are soldiers held because of damage inflicted on the occasion of military service?** Soldiers are held to nothing by reason of damage in common action, unless the injustice of the war is established to them, because they are not formally unjust damage-causers. But soldiers in an evidently unjust war are held for all damages which they inflicted by

private action; and individuals are held proportionately for damages inflicted by the whole army, unless perhaps they were compelled to fight from grave fear. But commanders or princes are primarily and jointly and severally held for the whole damage inflicted by the army, because they are truly mandators; or, if they did not command the damage, they were held from office to impede it.

1383. **Are individual soldiers held jointly and severally for the whole damage inflicted by the army, in default of others?** Response: more probably negatively, because individuals are not the cause of the whole damage, but only of a part. Besides, in practice they would have to be excused from absolute inability.

1384. **To what are conscripted soldiers who desert held?** They are held to return to camp from obedience or from legal justice. Exception: 1. if they would encounter too great a danger to salvation, for example, if means of confessing were not available, etc.; 2. if, returning, they would be punished by death, galleys, or other very grave penalties; 3. if the war is evidently unjust. But certainly deserters are held to no restitution whenever the law does not require others in their place, because they in no way injure commutative justice, since they inflict damage on no other.

1385. **To what are those held who hired themselves out for others and then deserted military service?** Of themselves they are held to restore the price received to him from whom they received it, because they lack the reason for receiving the money, which is paid only on account of the burden of military service. Yet this seems to hold only where the one who hired a soldier in place of himself is exposed to danger of undergoing military service.

1386. **To what are those not yet enrolled in military service held who withdraw themselves from it, or obtain exemption without true causes?** Those who corrupt magistrates or physicians so that they may be declared invalid by them are certainly held to restitution. For they are cooperators, as commanding, counseling, or in whatever other way, in injustice; for magistrates and physicians are obliged from quasi-contract. Likewise, those who deceive magistrates by lies, frauds, or prior mutilation are obliged to restitution according to the more common opinion. The reason is that other exempt young men have a strict right that such means not be applied with their detriment; and those required by lot cannot decline the burden of military service, legitimately imposed on them, without strict injury, since the law, or lots established by law, constitute a strict right by requiring some and exempting others from military service. Bouvier, De Restitutione, q. 2, art. 2; Gousset n. 1002; Collat. Andeg., etc.

One who, to escape military service, betook himself to another country to live there would in no way sin, because as absent he would not be bound by the law of his own country, since law cannot be extended beyond its own territory. But those already designated for military service who withdraw themselves from it, or obtain exemption without true causes, if no one by law must be required in their place, sin against legal justice, but are held to no restitution. Cf. 234.

XXV. On Restitution From Contract

1387. **Is there an obligation of restitution from contract?** Restitution is the restoration of damage given. But damage is named from taking away. Therefore restitution properly supposes that something has been taken away and as it were diminished from our goods. Hence what someone owes another precisely by force of contract or quasi-contract, for example by force of sale, purchase, mutuum, commodatum, etc., he does not restore, but renders, as if giving back.

Nevertheless, just as true restitution belongs from nature and from law, so it can also belong from pact. And thus, if a borrower for use broke vessels lent to him by evil deceit, he is held to restitution by natural law. If by civil fault he did not guard them and lost them, he is held to restitution by civil law. If he undertook a fortuitous case upon himself, he is also held to restitution, not from natural or civil law, but from pact. Likewise, one is held to restitution and compensation of damages from pact when it is not fulfilled, or if he is constituted in delay; and the same obligation of restitution arises from quasi-contract. "Thus princes, who are held to guard justice in the land, if through their defect robbers increase, are held to restitution, because the revenues which they have are as it were stipends instituted for this, that they preserve justice in the land." St. Thomas, II-II, q. 62, a. 7; C. I. 1218ff.; C. A. 919, 1295; Inst. bk. 3, tit. 14.

1388. **Is theological fault required to induce the obligation of restitution for damage inflicted on another's thing which was detained from some contract, for example commodatum, deposit, lease, etc., or is juridic fault sufficient?** There is a twofold probable opinion in this matter, one affirming, the other denying, about which we already spoke in n. 1072.

1389. **Is theological fault also required for the obligation of restitution because of damage inflicted on another in fulfilling an office, or in observing a quasi-contract, for example if a physician from inculpable error furnished a harmful remedy to a sick person?** Response: more probably affirmatively. The reason is: 1. because an obligation of restoring because of merely juridic fault in office, or in quasi-contract, cannot be proved either from natural law, or from positive law, or from the agreement of the parties; 2. because such an obligation would be harmful to the public good, for from this it would happen that upright and God-fearing men would be kept away from undertaking the affairs of others, and also from public offices.

Exception: 1. if someone undertaking some office expressly promises that he will apply such diligence, for thus he is obliged from a special pact, especially if for that reason he receives a greater stipend. 2. When he tacitly promised such diligence, for example by boasting that he was better and more learned than others, and thus preventing the other from seeking someone more learned or more diligent. For thus he deceived the other, and consequently is held for damage following from his ignorance or negligence, even if this in itself was not theologically gravely culpable. Cf. 1072; Ithur. cas. 27, n. 20; C. A. 1299, 1300, 1306; Inst. bk. 4, tit. 3, § 6, 7.

1390. **What is owed by reason of delay?** If the obligation concerns handing over a certain sum of money, which was not handed over at its time, legal interest must be paid from the day on which the debtor is in delay, without the creditor being held to prove the damages which he suffered. C. I. 1231; C. A. 1333. Indeed, from the day of judicial petition or of a special

agreement entered after the time of restitution has elapsed, interest on interest is owed. C. I. 1232. Cf. 1105, 1106; C. A. 1335.

If the matter of the contract is not money, but another thing, and the debtor is in delay in handing over the thing, the thing remains at his risk, although before the delay it was at the creditor's risk. C. I. 1219. If compensation of damages has been determined by agreement, one must stand by it. C. I. 1230. Otherwise, when deceit has not intervened, only damages which were foreseen or could have been foreseen at the time of the contract are to be compensated. C. I. 1228. But when deceit has intervened, all damages which directly and immediately come from the unperformed fulfillment of the obligation are to be compensated. C. I. 1229; C. A. 912, 913, 1324, 1333; L. 704.

XXVI. On Restitution From Law Or From The Sentence Of A Judge

1391. **Is there an obligation of restitution from the sentence of a judge?** There is no doubt that an obligation of restoring is present from the juridical sentence of a judge. This is clear: 1. from the common opinion of theologians; 2. because civil power also, when it legitimately commands, has the force of obliging in conscience. But the civil magistrate commands legitimately, whether according to law he imposes a fine to be paid, or according to the same law settles lawsuits concerning property. Therefore. But that these laws are just is again clear: 1. from the common authority of theologians; 2. from the fact that these laws have had and do have force among all civil nations; 3. because these laws are very necessary for the right governance of civil society and its common good, whence civil authority can in no way lack the moral faculty of making such laws. L. 631, 641, 711, 927; St. Thomas, II-II, q. 62, a. 3; q. 66, a. 5, ad 1.

1392. **Is there an obligation of restitution from law?** There is also no doubt, as is clear from what has just been said, that an obligation of restoring is present immediately from the law itself, even with no juridical sentence of a judge intervening. Consequently civil law produces such an effect of restitution to be made in only two cases: 1. when by the fact itself it transfers ownership, as are laws of prescription; 2. when again by the fact itself it prevents transfer of ownership, as are laws invalidating a contract by the fact itself, and laws decreeing the legal price of merchandise. Therefore one is in no way held to a fine or to restitution before a condemnatory or at least declaratory sentence of a judge if the law is penal, or merely prohibitive but not invalidating, or even invalidating, but only by right, not by the fact itself.

1393. **In the remaining laws, with juridic fault standing, is one held to restitution before the sentence of a judge, and after it can he compensate himself?** St. Alphonsus 554 speaks of juridic fault, whether it alone, without theological fault, suffices to impose restitution, and says: "Those laws which in some cases altogether command restitution indeed oblige, even if sin is absent, but not before the sentence of a judge."

But one condemned by a judge "to repair damage because of juridic fault can by no means compensate himself for such reparation, because the sentence of the judge assists the one suffering damage even for the internal forum." Ithur. cas. 27, n. 4. Therefore, although an owner is not held to repair damages inflicted on a neighbor by his animals without his theological fault before the

sentence of a judge, nevertheless he is held after the sentence, and afterward he cannot secretly compensate himself. Hence also "although precisely for life, limb, or killing there is no obligation of restoring, nevertheless by the sentence of a judge the one injuring is compelled to satisfy for the injury." L. 631; C. A. 1320ff.; C. I. 1154, 1155; C. H. 1905ff.; Inst. bk. 4, tit. 3, 5.

1394. "**Is one who by frauds or lies, or false witnesses, prevents goods from being applied to the treasury, which because of a crime, for example of unpaid tax, or another crime, would have been assigned to the treasury, held to restitution?**" Response: with Lessius and others very commonly, after the sentence he is certainly held; but before the sentence otherwise, because before the sentence the treasury acquired no right to the penalty, which is not owed except after sentence; or because this right of the treasury to penalties is at least commonly taken thus. L. 583. Cf. 1367.

XXVII. On Restitution From Unjust Cooperation

1395. **Is restitution owed from unjust cooperation, and how many kinds are there?** Restitution must be made from unjust cooperation. For a cooperator in the unjust damage of a neighbor is truly the cause of it. Hence all those are held to restitution who in any way are an influencing and efficacious cause of the damage which followed, and those who, being obliged from office and obligation of justice to guard against damage, did not guard against it.

But cooperation in damage to a neighbor can happen in nine ways, of which the first six are positive, the last three negative. All are contained in the following verses: command, counsel, consent, flatterer, recourse, participant, silent, not preventing, not manifesting. St. Thomas, II-II, q. 62, a. 7.

1396. **What about one commanding?** Here one commanding or mandating is called one who induces another to act so that he may inflict damage on another in his name. One commanding is held to repair every damage commanded and inflicted by force of the mandate; but otherwise if he only approves damage done in his name. The reason is that in the former case he efficaciously influences the damage. But as regards the latter case, mere approval of the fact pertains nothing to the nature of mandate; and therefore one who merely approves what has already been done neither should nor can be called one mandating. L. 558; St. Thomas, II-II, q. 62, a. 7; E. M.

1397. **Is one mandating held to restitution if he revoked the mandate before the damage was inflicted?** Response: negatively, if the revocation becomes known to the mandatary before the execution of the mandate; but otherwise if it becomes known in no way or too late, because in the former case he does not influence the damage, but in the latter he does. L. 558.

1398. **Is one mandating held for damages which come to the mandatary in the execution of the mandate?** La-Croix with others affirms, because one mandating, by commanding damage, is judged to undertake upon himself the obligation of keeping the mandatary indemnified. But this seems to be restricted to the case in which one mandating compelled another by fraud, deceit, force, or fear. Otherwise the mandatary seems voluntarily to have undertaken upon himself the whole burden and its consequences; and unless a pact of indemnity preceded, the one mandating will be held only from a certain equity.

1399. **Is one mandating held to repair damage which the executor by invincible error inflicted on another?** Response: negatively, because the true cause of the damage is the error of the mandatary. Yet exception must be made if by chance it was too difficult to guard against the error. For although all agree that one mandating is not held for damages which the mandatary inflicted beyond the mandate, they limit this if it was in the power of the mandatary to preserve the limits of the mandate. Therefore also in the case, if it was morally not possible to guard against the error, the error must be imputed to the one mandating.

1400. **Is a superior who ratifies damage to be compared to one mandating?** Response: negatively, if ratification follows the execution of the damage, because then it cannot influence the damage. But otherwise if it precedes the damage, or regards the proposal of inflicting damage, and truly influences it. L. 558.

1401. **What about one counseling?** One counseling sins against justice whenever knowingly and willingly he offers unjust counsel by which another is efficaciously induced to inflict damage unjustly, because the damage is imputable also to him. This is also clear from proposition 39 condemned by Innocent XI. Hence one counseling who in good faith gave damaging counsel, once the truth is known, is held to retract it, and indeed from justice. But one counseling is not held to restitution if the executor was already determined of himself to damage-causing, so that even without that counsel he would have inflicted the damage, because then the counsel did not efficaciously influence the damage. It is otherwise if the executor was also efficaciously moved by that counsel, because then it truly is an efficacious co-cause of the damage. L. 561, 562; St. Thomas, II-II, q. 62, a. 2, ad 4, a. 7; C. A. 1300, 1315; E. M.

1402. **Is one counseling held to restitution who revokes his counsel before execution of the damage?** Response: negatively, if the counsel was bare, that is simple, because by revocation the whole force of the counsel is taken away. If the counsel was clothed, or supported by motives, there is controversy. Probably also negatively, provided other motives, at least equally efficacious, were applied in the retraction. Thus Azor, etc., against others, whose opinion St. Alphonsus calls more probable.

Exception: if you showed to a thief already determined to inflict damage the way of entering a house, which otherwise he would not have found, or something similar; because then your cooperation was truly efficacious, especially if you foresaw that the thief would not change his wicked proposal; unless, however, you warned the one to whom damage is imminent. In the case you are held to this, as the doctors cited by St. Alphonsus 559 judge, if without equal or greater damage you can warn the one to be damaged about the damage imminent. L. 564.

1403. **Is one counseling a lesser evil in order to avert a greater held to restitution?** Response: negatively, if it concerns the same person, because the counsel favors him rather than harms him. But otherwise according to many if it concerns another, about whom the damage-causer was not thinking, because this person is rightly judged reasonably unwilling. L. 565, 577. Yet others hold the contrary, led by the reason that this is not inducing to a lesser evil, but removing from a greater one. Vasquez, Op. de Scand., art. 1, dub. 2, n. 14; Turrianus, De Fide, Spe etc., disp. 95, dub. 6.

1404. **What if another is already determined to damage, for example to kill, and you persuade only the mode, namely that he kill by poison, not sword; in this place, not another; or at this time?** "There is a twofold probable opinion. The first says that you are held to restitution, because by persuading the mode you concur in the substance of the damage; but by persuading that the damage be inflicted sooner, you are the cause of the whole damage, since during that time the other could have changed his mind. The second opinion absolutely excuses from restitution, provided it is certain that the other was not going to change his wicked mind. The reason is that one counseling then is not the efficacious cause of the evil as regards the substance of the damage; and this is more probable to me. And thus likewise they most probably excuse from restitution one who materially cooperates in damage to the owner, namely when the other would still certainly have inflicted the damage without his cooperation; for example, if someone holds a ladder for one who would climb even without his help." L. 563, 576.

1405. **Is one who counsels damage from ignorance, but with grave fault, held to restitution?** If he gives counsel from his state or office, for example as advocate or confessor, he is held, because then he truly is the unjust and efficacious cause of the damage. If he is not such a person, he is not held toward the one seeking counsel, unless deceit is present, or he pretends to great expertise which he does not have; for the one seeking counsel from an unlearned man must impute it to himself if he is deceived. But he is held toward a third person if he foresees damage about to follow to him; for one inducing another into an error harmful to him is the unjust and efficacious cause of the damage. But one giving inculpably counsel harmful to another is held from justice to do as much as he can, yet without great inconvenience, lest the damage happen. L. 564.

1406. **Is one who knowingly counsels evil to another also held for damages which this other suffered by executing the wicked counsel?** Response: negatively, of itself. The reason is that he inflicted no injury on him, since no injury is done to one knowing and willing. It is otherwise, however, if the one counseling so surrounded the executor with frauds or sophisms that the latter did not advert to the iniquity of the counsel.

1407. **Is one counseling held to restitution primarily or only secondarily?** Of itself, he is held only secondarily, because the executor is the principal agent, as one who is judged, speaking of itself, to act in his own name and for his own utility. L. 560.

1408. **What about one consenting?** One consenting is held to restitution whenever knowingly and freely he casts a vote or sentence on which the violation of another's right directly depends, that is, whenever he gives efficacious consent to the damage or injury of a neighbor. "Efficacious consent," because if the consent did not efficaciously influence the injury, he would not be held to restitution, since he consented affectively but not effectively to the harm; likewise if, with fraud or special pact set aside, by his vote he impeded another from obtaining a good to which he had no right. One who authentically revokes the sentence or vote previously given before the wickedness is consummated is not held for the damage; nor is one voting in good faith, although when the error is detected he is held from charity, indeed from justice, to revoke his vote, if by reason of time this is lawful to him. L. 566; St. Thomas, II-II, q. 62, a. 7.

1409. **Is one consenting held to restitution who gives an unjust vote, if other votes already sufficient for the damage are not lacking?** It is certain that all consenting persons are equally held to restitution if they gave votes by agreement, since, once conspiracy has been entered, there is one moral action of all. It is also certain that all consenting persons contract the obligation of restoring when they gave a vote at the same time; because since none was then earlier or later, the sentence resulting from the sum of the votes is rightly attributed to each voting person.

It is also certain that those are not to be excused from restitution who first give a vote before the number is completed, even if they foresee that others who consent will not be lacking, because they truly influence the damage; for although it would have been inflicted without them, nevertheless through them it is partially inflicted in fact. But whether, with conspiracy and simultaneous casting of votes set aside, the last voters can be excused from the obligation of restoring when the number of votes required for defining the business has already been completed is disputed. Several grave theologians affirm, because voters of this kind are in no way the cause of the damage, since it had already been sufficiently prepared and determined by others. Others deny, because since a sentence is never judged perfect unless it is concluded by the casting of all votes, the last influence the unjust sentence no less than the first. Lugo d. 19, n. 17, 22; L. 566, 574.

1410. **Does one who does not cast a vote, when he can cast it, contract the obligation of restoring?** Response: negatively when the right of casting a vote was conceded to someone for his mere grace or favor, because here he inflicts no injury on another. Affirmatively, if it had to be given from office and his omission was the efficacious cause of grave and unjust damage.

1411. **What about the flatterer?** A flatterer is one who by praising, flattering, or blaming moves another to damage-causing. One who induced another to inflict damage by proposing praise, or otherwise ignominy to follow, is held for the damages. For such cooperation has the character of counsel, namely when motives for acting which of themselves are commonly efficacious are proposed. Therefore the flatterer is subject to altogether the same obligations as one counseling. Those who represent the magnitude of an injury to a person affected by injury in such a way that, moved by it, he takes revenge, are held to restore, provided they at least probably noticed that damage would follow. But one who approves or ratifies a deed already committed is not held to restitution, unless he is the cause why restitution is not made or new damages are inflicted. L. 567; St. Thomas, II-II, q. 62, a. 7; E. M.

1412. **What about recourse, or about one receiving, or furnishing recourse?** One receiving, namely one who knowingly and freely furnishes assurance to a robber, is held for damages thence arising. For thus he efficaciously and unjustly determines or makes firmer the thief's will in the proposal either of stealing, or of not restoring, or of stealing again. Likewise merchants, and especially innkeepers, who receive the stolen things of children under paternal power, servants, etc., or conceal them, or are accustomed even to vindicate them to themselves as the price of merchandise, drinking bouts, etc., are held to restitution.

Among receivers are not to be counted those who receive at home friends or blood-relatives who are criminals; nor those who conceal them under the hope of amendment, or show them the way by

which they can flee, when they are sought for prison or death. L. 568; St. Thomas, II-II, q. 62, a. 7; C. A. 1314.

1413. **What about one participating?** A participant is twofold: one in the prey, another in the damaging action. A participant in the prey is held to restitution of the part which he received and detains with himself; this is clear from what was said above about a possessor of bad faith. A participant in the damaging action, or one concurring with another, whether immediately or mediately, to inflict damage physically, is held, generally speaking, to restitution whenever his cooperation really influenced the substance of the damage.

Yet sometimes a participant in a damaging action will be excused from restitution, especially if he concurred only mediately, provided the required conditions are present, namely: 1. that the act not be intrinsically evil; 2. that it be elicited from a relatively grave cause; 3. that the good effect intended by the one cooperating arise immediately from a good or at least indifferent cause. Billuart, diss. 8, art. 13; St. Thomas, II-II, q. 62, a. 7; L. 571; C. A. 1313.

1414. **Whether or when is immediate cooperation in damage to a neighbor in the matter of justice lawful?** As regards damage of life, it is never lawful to cooperate immediately, not even with danger to life, because it is never lawful to kill an innocent person directly. As regards damage to limbs, likewise it is never lawful, even to avoid death, to concur immediately in the mutilation of another, unless perhaps to avert his death.

As regards damage in goods of fortune, three cases are commonly admitted in which, from grave fear, cooperation is lawful, because the owner is not judged reasonably unwilling: 1. if the one cooperating can and wishes to repair the damage, when perhaps he is held to this; 2. if grave damage without the one cooperating would have been equally and certainly inflicted by the principal agent; 3. if the damage is light with respect to the owner, for then from charity he must bear it with a calm mind.

But it is disputed whether it is lawful for you to cooperate immediately in grave damage to a neighbor from most grave fear, for example of death, if you cannot or do not wish to repair the damage. Some deny, because the act seems intrinsically evil, since it injures the right of the neighbor, who is rightly supposed reasonably unwilling. And surely the injured person is held to consent to this cooperation neither from justice, which does not oblige one to preserve another's life with so great a burden to oneself, nor from charity, which also does not urge with so great an inconvenience.

Yet others probably affirm. For one constituted in extreme necessity can steal that by which he avoids death, because then all goods are common. Why therefore will one whose death is threatened not be able to cooperate in the taking of the neighbor's goods in order to rescue his own life from near danger? L. 563, 571; H. A. tr. 10, n. 56; St. Thomas, II-II, q. 78, a. 4.

1415. **What about the silent one, the one not preventing, the one not manifesting, or negative cooperators?** Negative cooperators are those who do not impede damage to a neighbor, although from accepted stipend, pact, or office they are held to impede it. They are commonly called the silent one, the one not preventing, and the one not manifesting. The silent one is he who does not speak, does not cry out, does not prewarn the one to be damaged, while he is held to this from office or contract. The one not preventing is he who, while damage is being

inflicted, does not prevent it, does not guard the thing, although he ought to furnish this from justice. The one not manifesting is called he who, after damage has been inflicted, does not denounce the damage-causer to the injured owner or to the superior, although from office, and therefore from justice, he ought to denounce. Besides, the same principles and the same moral applications suit all these.

No one by reason of damage not impeded is held to restitution unless he is held from justice to impede it; for one who is not constrained to impede damage from justice is obliged from charity alone, whose violation does not oblige to restitution. All who are obliged from contract or from office to impede another's damage, if they culpably neglect this, are held to restore; for from justice they must impede the damage. Therefore if they omit it, they sin against justice, and consequently are obliged to repair the damages. In order that one cooperating negatively be held to restitution, it is necessary that he could have impeded the damage without grave inconvenience, because neither contract nor positive law is accustomed, at least for the most part, to oblige with grave burden. L. 573; St. Thomas, II-II, q. 62, a. 7.

1416. **Is a confessor held to restitution if from grave negligence or ignorance he omitted to warn a penitent about restitution to be made?** Response: more probably negatively. For although from office a confessor is held to instruct the penitent well, and therefore sins gravely if he omits this when it is necessary, nevertheless he is not held to this from an obligation toward a third party. Exception: if the silence of the confessor is equivalent to positive approval, for example, if when questioned he so evades the response that the absence of an obligation is suggested to the penitent. L. 578.

1417. **Is a counselor held to restitution if by omission of his vote he did not prevent an unjust sentence?** Response: affirmatively, if he ought to cast a vote from office, because office is to be fulfilled from justice, at least commonly speaking, with just cause set aside, and unless one sees that he will obtain nothing by his vote. But negatively if he has the right of vote from privilege, or from mere favor; for then he can omit the vote without injustice. Lugo d. 19, n. 61ff.; L. 574.

1418. **Is one held to restitution who accepted money from a thief in order to be silent, if from office he does not have to cry out?** Response: more probably negatively, at least of itself. The reason is that he could be silent because of the thief's requests without injustice, since he is not held from justice to cry out. Therefore, equally, because of gifts promised or handed over, he can be silent without injustice. But it would have to be said otherwise if he accepted money in order to watch whether someone is coming, because then he would cooperate positively in the theft. L. 571.

1419. **Are guards who do not denounce damage-causers held to compensate all damages and also pay the fine?** Response to the first: affirmatively, of itself, because they are constituted to impede damages. Exception: if it concerns things of lesser moment, for which, from custom and the presumed will of the owner, secret admonition is enough.

To the second: more probably negatively because of contrary practice, with which common sense agrees. The same must be said of a judge not procuring compensation of damage, or not exacting a

punitive fine. Yet, if denunciation of the damage-causer has been made before the judge, he is held to punish and to reparation of the damage. L. H. A. tr. 13, n. 73.

XXVIII. To Whom Restitution Must Be Made

1420. **To whom must restitution be made?** Restitution must be made to the certain and known owner whenever this can be done without grave difficulty and injury to another, and no other cause excusing from restitution is present. L. 599; H. A. 64. For through restitution all things return to their former state. Hence one who took away a thing deposited with another, or leased or lent for use, must restore not to the owner, but to the possessor himself. For the possessor cannot without injury be deprived of the right of custody, use, or possession, unless he himself consents. L. 596, 599; H. A. ibid.; St. Thomas, II-II, q. 62, a. 5; C. I. 1241; C. G. 1239; C. A. 1424.

From C. I. 1243; C. G. 1241; C. H. 1163; C. A. 1424, payment made to a creditor is not valid if he was incapable, unless it is proved that what was paid turned to his utility. Conversely, from C. I. 1242; C. G. 1240; C. H. 1164, payment made in good faith to the one who possesses the title of credit is valid, even if afterward the possessor of the credit suffers eviction, for the possessor is held as the legitimate owner.

1421. **To whom must restitution be made when it is uncertain to whom the thing owed belongs?** "When goods to be restored, or any debts whatever, are uncertain, that is, when you do not know to whom they are owed, or cannot approach him, or restore to him, then if you have them without delict, as if you found them, or, for example, received from a merchant by error two ells of cloth for one, and now he has departed and you do not know where he went, you are held to apply some diligence of inquiry. After this, if there is no hope of knowing the owner, it is probable that you are not held to give them to the poor, but can retain them for yourself." L. 589.

If the thing was accepted in bad faith, and the owner of the thing is unknown only among a few, for example three or four, "then restitution cannot be made to the poor, but the thing must be divided among those among whom the defrauded person exists." But if the owner is unknown among many, for example among the inhabitants of a place, "then restitution must be made to the poor, as is held in C. Cum tu, De Usuris. But it is enough that it be made to the poor of any place. It is also enough that it be made to pious places, as they commonly teach. But if several and various uncertain owners of some community have been affected by damage, then restitution must altogether be made to the poor of the same injured community." L. 590, 595, 596; St. Thomas, II-II, q. 62, a. 5, ad 3.

"It must be noted that concerning these uncertain debts a composition can well be made through the bull of the Crusade. This composition can also be made through the Sacred Penitentiary. This composition is also customarily granted for ecclesiastical fruits badly received." L. 591, 593; Lugo d. 21, n. 111.

"If, in a case in which you are held to restore the thing to the poor, you give it to yourself when you are truly in need, then indeed, even afterward when you have been made richer, you are still not held to restore." L. 696; Lugo d. 20, n. 8.

1422. **You will resolve:** If someone selling in some city defrauded many in weight or price, restitution is to be made by increasing in the same way the weight or measure, or by lowering the price toward ordinary buyers, who are presumed to have been damaged, if this can easily be done. Otherwise restitution is to be made to the poor.

1423. **When your creditor has been forced to cede his goods, must you restore to him or to his creditors?** Generally speaking, you must not restore to your creditor, but your debt must be manifested by you to his creditors. The reason is that although the creditors of the one ceding goods do not have direct ownership in his goods, nevertheless they enjoy a strict right that from those goods they be kept indemnified. Yet sometimes you could restore to your creditor, for example, if the debt is small, if he is upright, and you believe that he will restore to the creditors; likewise if he is in grave necessity and greatly needs that debt for living, because, as theologians commonly teach, one ceding goods can subtract those things which are altogether necessary for living. L. 699; Gousset 772.

XXIX. How Much Must Be Restored

1424. **What is the quantity to be restored?** As much must be restored as the other has been injured. The reason is that by force of commutative justice equality must be preserved, and when injured it must be repaired. Nor is it repaired unless an equation is made between what was taken away and what is rendered. Hence, if someone is damaged because that which he actually had is taken away from him, such damage must always be restored according to recompense of an equal. But if someone is damaged by being impeded from obtaining what he was on the way to having, such damage need not be recompensed equally, because to have something virtually is less than to have actually; but recompense is to be made according to the condition of persons and affairs. L. 614; St. Thomas, II-II, q. 62, a. 1, 3, 4, 5; C. A. 1323, 1411, 1412.

1425. **What is solidarity?** Solidarity, or the obligation of restoring jointly and severally, is the burden incumbent upon individual cooperators of repairing the whole damage inflicted. For the reason of restoring, or of repairing damage, is that someone was the cause of the damage. Therefore one who was only partially the cause of the damage is held only to partial restitution or reparation of the damage, namely for that part by which he himself was the cause of the damage. But one who was the cause of the whole damage must repair the whole damage. Therefore, in order that someone be obliged jointly and severally to restitution or reparation of damage, he must have been the efficacious cause of the whole damage. But if he alone is the efficacious cause of the whole damage, he alone is indeed held to repair the whole damage, but by no means jointly and severally. But if together with other cooperators he was the cause of the whole damage, then indeed he is held jointly and severally to repair the whole damage. C. A. 1301, 1302.

1426. **When is someone the total cause of damage?** Someone can be the total cause of damage either morally, by moving others to inflict damage, or physically, by inflicting and executing the damage. C. A. 1301.

Someone is the physical total cause of damage when he places an action necessary and sufficient for the whole effect, as if someone fires upon another to kill him; when he places an action sufficient, although not necessary, actually influencing the whole effect, as when two together fire upon another and kill him; when he places an action indeed insufficient, but necessary, as if four cannot carry off a beam, a fifth joins them, and they transport it. The reason is that in all these cases someone influences the whole damage by his action.

Someone likewise is the moral cause of the whole damage when by command, counsel, etc., he moves with an influence necessary and sufficient for inflicting the whole damage; when together with another, or with others morally acting, he concurs by a moral influence sufficient of itself for the whole effect, although not necessary, yet actually influencing the whole effect, as if several command, counsel, etc., together, and each of them by his command, counsel, etc., suffices for the execution of the whole effect, and actually moves efficaciously to that execution; when he concurs for the whole effect by an influence necessary, although not sufficient, as if someone shows the one way of executing the thing. The reason likewise is that in these cases someone morally influences the whole effect.

Someone is the cause of the whole damage, whether physical or moral, in the case of common conspiracy, although he concurs in the damage by only partial influence. For with moral conspiracy standing and with the unity of several among themselves, each participates in the influence of the others, and thus becomes the cause of the whole.

Someone is not the cause of the whole damage, whether physical or moral, if he is not sufficient for the whole effect, and without him the whole effect would still follow; as if five carry off a beam and a fifth joins them, helping them, with the case of conspiracy set aside, since another joining influences by a merely partial influence, and since no conspiracy is present, he is not morally joined to the others. But the question is whether one is the cause of the whole damage who influences it by an influence sufficient for the whole damage but not necessary, with the case set aside that he influences together with others at the same time; for example, if someone without any conspiracy with others sets fire to another's house, which others had already set on fire, or gives counsel already given by others, etc. Some probably affirm, because since the influence is sufficient for the whole damage, he is then the cause of the whole damage, since he influences the whole. Others probably deny, because since that influence is not necessary for the whole damage and is added to another influence, the influence in reality is only partial in the whole damage, at least morally speaking, since without concurrence of this kind the damage nevertheless would have happened. L. 579.

1427. **Are you held jointly and severally in doubt whether you influenced the whole damage?** Response: negatively, because a certain burden cannot be imposed for an uncertain obligation. L. 579. Cf. C. A. 1302.

1428. **Are you held jointly and severally in doubt whether the others restored their part proportionately?** Response: more probably negatively, if after diligent inquiry the doubt perseveres, because a cooperator is not held to anything beyond his own part except in default of another; and if there is doubt about that default, there is doubt about the obligation.

XXX. In What Order Restitution Must Be Made

1429. **How many kinds of order of restitution are there?** The order of restitution is twofold: the first on the part of those who must restore, when several cooperated in the same damage; the second on the part of those to whom restitution must be made. L. 579.

1430. **What order must be observed in restitution as regards cooperators?** Cooperators in another's damage either are held to restitution for a proportionate part, or are held to restitution jointly and severally, namely individual persons to restoring the whole. If the first, no order among them must necessarily be observed. If the second, order among them must necessarily be observed. For the obligation of restoring jointly and severally is an obligation by which someone is held to restore or repair the whole damage inflicted by several, when several concurred together in inflicting the whole damage. Therefore an order to be observed is altogether necessary. For the one who suffered the damage has a right only to one complete restitution or reparation of the damage. Therefore several damage-causers cannot be obliged jointly and severally absolutely, but only conditionally, namely if others who are held first do not pay; or if others who are held together at the same time do not pay. L. 579; St. Thomas, II-II, q. 62, a. 6, ad 3, a. 7, ad 2.

1431. **What order must be observed as regards cooperators obliged jointly and severally?** If cooperators concur by a different species or degree of cooperation, then in the first place the principal causes of the damage are held, so that there is held: 1. the possessor of the thing, in individual or in equivalent; indeed even if he unjustly destroyed the thing without having become richer from it; 2. the one mandating. Yet if the one mandating was the principal cause both of the taking of the thing and of its destruction, or of its destruction alone, then he is held in the first place as the principal damage-causer; 3. the executor, namely the mere executor of the damage inflicted, as instrumental cause.

But in the second place the secondary causes are held, so that there are held: 1. the remaining positive cooperators; 2. the negative cooperators. The reason is that each person is held to restitution according as he influences another's damage. Positive, secondary causes, such as one counseling, consenting, praising, participating, since they are not subordinated one to another, are held equally and in the same place, yet more or less according to greater or lesser influence if it is a question of restitution for a proportionate part. Among negative causes, those are held first which more immediately and more greatly influenced the damage. And thus the guard is held first for the burning of the forest, then the steward. L. 560, 580; St. Thomas, II-II, q. 62, a. 7; C. A. 1301, 1302, 1304, 1312.

1432. **You will resolve:** 1. Secondary causes are held to nothing if the principal cause has restored or obtained remission of the debt. For secondary causes are held only in default of the principal cause. But when the principal ceases, the accessory ceases. Hence: 2. if one of the secondary causes restores, the principal cause is held to make him indemnified; likewise if the secondary cause is freed by the creditor, the principal cause is not therefore freed. For the latter's obligation is independent from the former's obligation. St. Thomas, II-II, q. 62, a. 6, ad 2, a. 7, ad 2.

1433. **What order must be observed as regards several equal cooperators?** If cooperators concur in another's damage by the same species of cooperation or by the same degree of cooperation, then the individual cooperators must restore equally, jointly and severally, yet conditionally, without any determined order. For none of them, by influencing another's damage more, undertook upon himself a greater burden of reparation. But it is said "conditionally": namely if the other cooperators do not restore, or if no one pays jointly and severally. But all are absolutely held to satisfy for their proportionate part, since all concur equally in another's damage.

1434. **You will resolve:** 1. If one of the causes equally obliged has restored the whole debt, the others are held to repay him the part which he also gave for them, and the individual persons are held for their own part. For the reason of restitution jointly and severally does not press toward him, since each person is not the cause why he first restored the whole and the others did not restore. But if several of such equally obliged causes restored, and one could not or would not restore his part, the others would have to divide it among themselves.

1435. If a creditor remits to one of the debtors equally obliged his debt, he is judged to remit to the others that one's part; for if he exacted the whole from the others, they would compel that one to restitution, and thus the remission would be frustrated. L. 581. But the others are still held to restore their own part, unless the condonation was altogether full, or is rightly presumed such. Exception from C. I. 1281; C. G. 1285: if the debt is from contract, remission made to one co-debtor jointly and severally frees all the others altogether, unless the creditor expressly reserves his rights against them.

1436. **Is the executor held to make restitution before the one counseling?** Response: "If the counsel is useful to the one offering it, he is held first; otherwise if it is useful to the executor alone. But if it is useful to each, each is held proportionately; and I think the same if from the damage inflicted nothing useful came to either. But in default of the other, that one is held jointly and severally." L. 560.

1437. "**Yet it must be noted that although the unlearned are held jointly and severally, it is rarely expedient to oblige them to the whole, since they are with difficulty persuaded that they are held to restore the part taken by associates. Indeed, it can sufficiently be presumed that the owners themselves, to whom restitution is owed, consent that they restore only the part taken by them, since otherwise it is greatly to be feared that they will restore nothing if they are obliged to the whole.**" L. 579, 580.

1438. **What order of restitution must be observed as regards creditors?** Order as regards creditors has place in restitution only when there are several creditors. In such a case, if the debtor can satisfy all, he can restore in whatever order, because the precedence of one inflicts no damage on another. L. 684. But if the debtor cannot restore to all, the due order in restitution must be observed, for the opposite reason, namely because the precedence of one inflicts damage on another. Moreover this order is determined from justice itself. For restitution is the repair of an injured right. Therefore the preference of right determines the precedence of restitution. But this injured right is a right of property. Therefore the more perfect right of property in creditors requires that they be preferred to others.

Therefore first, creditors still truly owners of the thing, since they preserve in their own thing not only a right to the thing, but also a right in the thing, are to be preferred to all the rest, who have only a right to the thing. And thus before all other debts stolen things, deposited things, and things leased or lent for use must be restored.

Second, privileged creditors are to be preferred to the rest. For restitution is to be made by the law of nature and on account of the private good of persons, which commutative justice directly regards. Therefore, if to natural right there is added positive right, prescribing the preference of some creditors in particular on account of the common good, these certainly are to be preferred to the rest because of the privilege of law, as privileged. And this law obliges in conscience according to the common opinion of theologians, since it is a legitimate law of a superior, made for the common good. But privileged debts are, for example, expenses which are called of justice, funeral expenses, stipends of physicians and servants, debts for food, etc. If there are several privileged creditors, their preference is determined by the law itself according to the quality of the privilege. And if several enjoy the same privilege, they obtain payment in proportion to the credit. C. I. 1950ff.; C. G. 2095ff.

Third, mortgage creditors are to be preferred to the rest, for these have obligated to themselves not only the person, but also the very goods of the debtor. Where there are several mortgage creditors, they have the order constituted by the law itself, either from the day of inscription in the registry preserving mortgages, or from the very day of constitution of the mortgage, according to Rule 54 of Canon Law in VI: one earlier in time is stronger in right. L. 690; Laymann, De Restit., ch. 11, n. 3ff.; C. I. 1964ff.; C. G. 2114ff.

Fourth and finally, the remaining creditors, who are called common, must be made indemnified. But whether among these some order must also be established from circumstances of time, persons, contracts, and the things themselves, is a question. Some generally deny, because commutative justice regards only equality of thing to thing, which is altogether independent of conditions of time, persons, contracts, and things themselves. Others, on the contrary, generally affirm, because restitution is for repairing an injured right and for repairing damage inflicted. But from the various circumstances of time, persons, contracts, and things, the right is various, and the damage is greater or lesser. Therefore according to those circumstances order is to be established in restitution even of common creditors. The principal circumstances are those about which the following questions in particular are raised. L. 689, 694, 695.

From C. I. 1948-1950; C. G. 2092-2094; C. H. 1911, whoever has personally obliged himself is held to satisfy his obligation from all his goods, whether movable or immovable, present or future. Therefore the goods of the debtor are as it were the common pledge of his creditors, and these are equal in the right of demanding what is theirs, unless legitimate causes of preference exist among them. But legitimate causes are privileges and mortgages. C. H. 1921ff.

1438. **Must another's thing existing with the debtor be restored to its owner before all debts, however privileged?** Response: affirmatively, if the thing is held under the title of deposit, lease, etc. For that thing existing in individual cries out for its owner. L. 684.

If the thing is held under the title of purchase, with the price not paid, or at least not secured by pledge, suretyship, or pledged faith, it is certainly to be restored to the seller according to Roman Law; for the seller still retains ownership of the thing. But when the seller has handed over the thing

and has accepted only credit for the price, there is controversy. "The first opinion says that then the seller is to be preferred. The reason is both because natural equity requires this, and because ownership of the thing, although in that case it was transferred, nevertheless was transferred under the condition of the price being paid; hence such a thing remains mortgaged for payment of the price. But the second and more probable opinion holds that no preference is owed to the seller. The reason is that since ownership has now been transferred, only a personal credit against the buyer remains to the seller; and by no law is it held that the thing remains mortgaged to the seller until the price is paid to him." L. 685.

From C. I. 1512, 1513; C. G. 2102, 2103, a thing sold, the price not having been paid, remains obligated to the seller as regards payment of the price against all other creditors, after, however, the owner of the house or estate for the price of lease, if the thing is movable. Indeed the seller can reclaim it, if no day of payment was fixed, within 15 days from its delivery according to C. I., within 8 days according to C. G. If a thing is held by theft and has been mixed with one's own things, satisfaction must be made to the owner of the thing before all other creditors, because the whole heap is specially obligated to the owner of the thing taken away. L. 686. Cf. 907.

1439. **Are debts whose creditors are known to be restored before other debts to the poor or pious causes, because their owners are unknown?** There is controversy. The first opinion, probable and common, affirms, because the owner is not judged reasonably unwilling, both by reason of the debtor, who would often have to be pursued by another creditor, and by reason of the other creditor, who is made indemnified when the unknown owner cannot be. The second opinion, also probable, says that restitution can then be made proportionately to the poor. For the preference of a known owner is shown neither by positive law nor by natural law. For by natural law the poor or pious causes succeed to the unknown owner, so that what is his may profit him, that is, may profit his soul, since it cannot be restored to him. L. 687.

1440. **Are debts from delict to be paid before debts from an onerous contract?** There is controversy. The first probable opinion affirms, because to retain a thing injuriously taken away is a graver injury than not to pay a thing owed from contract. The second, more common and more probable opinion denies, but says they are to be paid proportionately, because no such preference is held from positive law; and from natural law the obligation which arises from commutative justice is the same in contract as in delict. But delict is blotted out by repentance, not by restitution. L. 688.

1441. **Note:** It is certain that debts from a gratuitous title, even pious debts, are to be paid in the last place, because these always include a tacit condition: unless something prevents. L. 688, 689.

1442. **Are common creditors earlier in time to be preferred to later ones?** There is controversy. "The first opinion holds that satisfaction must be made to all these proportionately. The reason is that not the goods of the debtor, but the person, is obligated to them, and the person is equally bound to all." Positive law, moreover, establishes no preference among them. Indeed Roman Law states: "it is permitted to someone, by adding a creditor to himself, to make the condition of his creditor worse." The second opinion "teaches that the earlier ones are to be preferred from Rule 54 of Canon Law in VI, One earlier in time is stronger in right. For although civil law speaks thus only about mortgage creditors, canon law speaks of all, and is

founded on natural law; for an earlier personal creditor, although he directly has the person of the debtor obligated, nevertheless indirectly also has his goods obligated, in which he ought not to be prejudiced by a supervening creditor. Each is probable, but the second more probable." L. 690.

1443. **Are poor creditors to be preferred to the rich, or to those not in need?** There is controversy. The first probable opinion denies, because such a preference is held neither by positive law nor by natural law; for commutative justice does not attend to persons. The second probable opinion affirms, "because the obligation of restitution is given for repairing the damage of the neighbor; but a poor man suffers more damage if restitution is not made to him than one not in need." L. 691.

1444. **Is it lawful to pay first the one asking first, even if he is later in time?** Response: negatively, if the creditor earlier in time is privileged or a mortgage creditor; and therefore one acting otherwise is held for the damage.

If the creditor earlier in time is common and seeks payment in court, affirmatively. Thus commonly, "because the laws give preference, even in conscience, to the one who first obtained a sentence, and after it the debtor also ought to pay him in conscience." L. 692; C. I. 1970; C. G. 2123. But if he seeks payment outside court, there is controversy. The first opinion denies, because earlier creditors, to whom preference belongs, are prejudiced. The second opinion more probably affirms, because a personal creditor has an action against the debtor, and by seeking the whole debt pursues his right. L. 692.

1445. **Can a debtor who knows his condition is unstable satisfy fully even one not asking?** Response: negatively. For since all are equal in right, and no one becomes stronger by diligence in asking, from natural equity restitution cannot be made to one with detriment to the others. Therefore, speaking of itself, the debtor sins gravely against charity and justice by secretly warning one of the creditors about his unstable condition, or in that case by offering full payment to one alone. L. 692.

1446. **Is a creditor who accepted payment in this last case held to restitution toward the other creditors?** There is controversy. The first probable opinion affirms, because he has no right that payment be made fully to him with detriment to the others. The second probable opinion denies, because he received his own; and since he has the right of demanding even outside court, he violates no one's right by accepting payment. Except, however, cases in which such payment is declared invalid by law. L. 692, 693.

From C. I. 1237; C. G. 1235, repetition of what has been paid is not admitted as regards natural obligations which someone has voluntarily satisfied. Yet from the same C. I. 1235; C. G. 1167, creditors have the right of attacking all acts which the debtor performed in fraud of them. From C. H. 1291, 1292, 1297, 1298, such payment, as also generally the contracts of such a debtor, whether gratuitous or onerous, are rescindable. One receiving anything in bad faith in fraud of creditors is held to restitution and reparation of damages.

XXXI. How Restitution Must Be Made

1447. **How must restitution be made?** In order that restitution be made legitimately, it is required and sufficient that restitution be made in the way by which violated justice is repaired to equality; and thus the injured owner is made indemnified. This is clear from the very nature of commutative justice, from which restitution is owed. And thus, speaking of itself, the very thing owed, not another thing although equivalent, or perhaps even greater, must be given. L. 676; St. Thomas, II-II, q. 62, a. 1, 2; C. H. 1166.

1448. **You will resolve:** It is not necessary of itself that restitution be made openly, that it be made through the debtor himself, or that it be made with the owner noticing. Hence the debtor can restore by increasing the weight in selling, or the owed work in laboring, by simulating a donation, etc. L. 676.

1449. **When restitution has been made through a simulated donation, is the debtor held to restitution if the creditor, moved by gratitude, repays him with another gift?** There is controversy. The first probable opinion affirms, because the creditor's donation is null, and therefore the gift must be restored; for it proceeds from a false motive cause, and consequently is not fully spontaneous. The second opinion denies; nevertheless it does not admit this mode of restoring unless restitution cannot be made otherwise than through a simulated donation, for example because otherwise the debtor would suffer detriment to his reputation; otherwise it will be unlawful. The reason is that "since this return-gift is from mere liberality, to which I neither induced nor obligated my friend, I am called only the indirect cause of it, or I am not absolutely its cause, but only the occasion; therefore since the danger to my reputation is a proportionate cause excusing me from cooperation in this new loss which the friend suffers on the occasion of my feigned gift, I will not sin, nor consequently be obliged to restitution." Tamb. Expl. Dec. l. 8, tr. 4, c. 1, § 5, n. 2.

1450. **In what place, and at whose expenses, must restitution be made?** If the thing is owed from contract, one must stand by the agreement made about the mode and place of transfer. If no special agreement was made, one must stand by the special laws according to the diversity of contracts; for then they are judged to have contracted according to them. Cf. Lugo d. 20, n. 196ff. From C. I. 1249, 1250, 1508; C. G. 1247, 1248, 1651; C. H. 1168, 1171, 1500, payment is to be made in the place designated by the contract; and if no place was fixed beforehand, and it concerns a certain and determined thing, payment ought to be made in the place where the thing itself existed at the time of the contract. Outside these two cases payment is to be made in the domicile of the debtor, and the expenses are to be borne by the same debtor. As regards purchase in particular, if nothing was established in the contract concerning the day and place of payment, this must be made by the buyer in the place and time in which delivery of the thing must be made. Cf. C. A. 905, 1420.

But if the thing which is owed was accepted and is retained in good faith, "all agree in this, that restitution ought to be made in the place where the thing is, or if the thing must be sent to another place, that this be done at the expense of the creditor; because since the debtor was not obliged either from any fault or from contract to anything else, he is bound only to permit the owner to receive his own thing." Lugo l. c., n. 193.

If the obligation of restitution arises from delict, the thing is to be restored in that place in which the owner would have possessed it if it had not been taken away; or the price of the thing is to be transmitted there if the owner would have sold it; and this at the expense of the debtor. The reason is that the owner must be kept altogether indemnified; for he is not held to suffer damage from another's delict. Lugo l. c., n. 180ff.; L. 597, 677, 678; St. Thomas, II-II, q. 62, a. 5, ad 3; C. A. 1420.

1451. **Must a debtor from delict still pay expenses for sending the thing back to the owner if the expenses exceed the value of the thing itself?** Response: affirmatively, if the debtor's damage is equal, or the excess is not notable. The reason is "for it is more equitable that the delinquent suffer that loss and lose one hundred from his own goods, than that the innocent creditor be forced to sustain the same loss in his goods; for the thief suffers that evil from his own delict, but the creditor would suffer it without any fault." Lugo d. 20, n. 186.

Negatively, if the excess were extremely notable. The reason is that "certainly justice, since it is a virtue and commands prudently, cannot oblige to this, because no prudent person will say that the creditor is then reasonably unwilling unless the thing owed is restored to him with such great expenses." Lugo l. c., n. 185.

Affirmatively, if the excess is simply notable. But that some moral rule may be established, it seems that one should say that when, all things considered, the excess will not be greater by double, it does not seem sufficient that the owner be deprived of his thing; but it does seem sufficient if it exceeds this proportion. The reason of fittingness is "because, supposing the delict of the debtor and the innocence of the creditor, there seems to be a double greater cause that the debtor should suffer at least, than that the creditor should suffer." Lugo l. c., n. 190. "All things considered"; for attention must be paid not only to the material quantity of the debtor's and creditor's damage, but also to the quantity of the damage relative to such a person. For it can happen that damage of 100 lire for a rich creditor, with respect to a poor debtor, is valued at 200 lire and more. Lugo l. c., n. 188; L. 598, 677, 702.

1452. **Note:** A lesser damage of the debtor can suffice for him to defer restitution, or to restore in another kind, for example, when he can transmit the price of the thing more easily. Lugo l. c., n. 188, 191. Today, moreover, there is much greater facility for transmitting the thing or the price.

1453. **Must a debtor restore again if he sent the debt through a faithful person, and it perishes by chance or by the fault of a third party?** Response: negatively, if he was a possessor of good faith. For the thing perishes for the owner.

Negatively, if he owes the thing from contract. For again the thing perishes for the owner, unless something else was agreed. But affirmatively if he owes not the thing but the price from contract; for the debtor preserves ownership in it until it reaches the creditor.

There is controversy if he owes the thing from delict. The first opinion, which St. Alphonsus calls common and to be held, affirms. The reason is "because a debtor from delict is held to every damage, even fortuitous damage (as is certain among the doctors), which comes to the owner from his unjust taking." L. 705; C. A. 335; C. I. 1148. Except, however, if this person was designated by the judge, or

by the creditor himself, or at least if the creditor gave the debtor the faculty of choosing a prudent and faithful person; "for then, by force of his mandate, he would have as accepted the debt given to such a person by his mandate, and therefore would have remitted the right which he had to the damages that followed, as long as the thing did not reach him." Lugo d. 21, n. 60.

The second opinion denies. The reason is that since the debtor cannot restore in another way without detriment to his reputation, the creditor cannot be reasonably unwilling if the debtor chooses this mode, and therefore is presumed by law to consent to it. Now this presumed consent of the owner extends even to the liberation of the restitution itself, if the thing is not restored by that person, for example by a confessor. For the owner of the thing, if he were questioned, would rather will that restitution be made by that means, although he would have to take upon himself the danger of such a means, than that restitution not be made at all; for since it could not be made otherwise because of detriment to reputation which the debtor would suffer, he would be excused from it. Therefore. This opinion, to which St. Alphonsus once adhered and which he does not dare to reject, several grave theologians judge probable. Cf. C. A. 1425; C. I. 1241; C. G. 1239.

1454. **How must restitution be made for damages inflicted on the republic?** It must be restored through the means established by the government itself, if means of this kind exist. Therefore attend to the various laws of places. But if such means have not been established, some say restitution must be made through those placed over taxes, while others hold that the obligation of justice is satisfied if restitution is made to the poor or to pious places, from the presumed will of the government, though others, and better, say to the very persons damaged. But, as it seems, restitution can always well be made to the republic itself, namely by restoring to the treasury office, commonly the ministry of finance. Cf. 1420. Carriere 1240; Ithur. Cas. 1, n. 12.

XXXII. When Restitution Must Be Made

1455. **When must restitution be made?** As regards any debts whatever, generally restitution must be made as soon as it can be done without grave inconvenience. For natural law requires that you not retain another's thing, when the owner is reasonably unwilling, not even for a little time. St. Thomas, II-II, q. 62, a. 8.

Hence: 1. one who culpably and notably defers restitution remains in continuous sin and cannot be absolved. Moreover, if damages come to the owner from the delay of restitution, he is held to compensate them.

2. If someone having the purpose of restoring defers for some brief time without grave inconvenience to the owner, he is not easily to be condemned of mortal sin, indeed not even of venial sin, if there is some cause for deferring, for example, hope of a more convenient occasion, etc. L. 678, 679; H. A. 104, 105.
3. One who wished to restore by parts, when he can easily restore the whole, should not be absolved, namely when the matter is grave; because the owner is reasonably unwilling also in this. The same must be said of one who, though he can restore during the course of life, nevertheless defers until death; or who, placed in danger of death, would reject without

sufficient reason the obligation of restoring upon his heirs, unless perhaps it concerns restitution of uncertain goods. L. 679, 681ff.; C. A. 1415; C. I. 1246.

4. **As regards debts from injury, must damages coming from delay of restitution be compensated?** As regards debts from injury, all damages which have followed from delay must be compensated. One contracting debt by injury takes upon himself the burden of compensating damages of this kind, even if they later come from inculpable delay. Cf. 1458. But whether extraordinary damages also must be compensated, or those which do not necessarily follow from the delay of restitution, is controverted. It seems probably to be denied, because these damages could not have been foreseen, and therefore cannot be imputed. Vogler 426.
5. **What about time as regards debts from contract?** As regards debts from contract, generally one must stand by the conditions attached to the contract concerning time or concerning other circumstances, unless it is prudently presumed that the will of the other contracting party is different. L. 678.

Hence: 1. restitution, or rather payment, must be made at the time about which there was express or tacit agreement.

2. The debtor can anticipate if the term assigned for payment is in his favor, as ordinarily happens; but otherwise if the same term turns to the utility of the creditor, as, for example, in the furnishing of money with profit to be received.
3. If the term is not fixed, according to the opinion of many the debtor can wait without sin, at least grave sin, generally until he is warned by the creditor, unless however the creditor suffers damage from this, or does not dare to warn from fear, or omits the warning from forgetfulness or inability.
4. If the debtor has a just cause for deferring, he is not held to compensate damage coming from the delay. L. 680; C. A. 1417, 1418.
5. **Is a debtor deferring restitution from a just cause held to render to the creditor legal interest, ceasing profit, and emerging damage?** There is controversy. The first opinion denies, if the debt is from contract, because then the debtor is not the unjust and culpable cause of that damage, for he is not in culpable delay; but it affirms if the debt is from delict, "because then the first unjust taking truly was the culpable cause of the damage." The second opinion denies even in this second case, because "the damage does not then come to the creditor from that first unjust taking, but from the later retention, which is done justly." L. 680, 704. Cf. C. G. 1151, 1153; Gousset on this article.

XXXIII. On Causes Excusing From Restitution

1459. **What generally excuses from restitution?** Those things excuse from restitution for a time, or even totally exempt, which cause the creditor reasonably to have to be content, even if in fact he is not content. L. 696, 700.

1460. **Does remission excuse from restitution, whether express or tacit, freely made by the creditor, indeed even reasonably presumed?** Response: affirmatively. The reason is that if the owner is not unwilling, omission of restitution will not then be unjust. Hence you will more easily excuse, in things of lesser moment, children under parental power, servants in common foods and drinks, etc. L. 700. Cf. Lugo d. 21, n. 51; Ferraris, v. Restitutio, a. 5, n. 34.

1461. **Does damage to be prevented excuse from restitution?** "It is most probable that you are not held to restore a thing which the owner will abuse for sinning; indeed if he is foreseen to be going to abuse it to the damage of a third party, you would sin by restoring when you could refuse without your own graver or at least equal grave damage. And then you would sin by restoring not only against charity, but also against justice. The reason is that the neighbor has a right that you not hand over something to another for his destruction." L. 697. Yet others more truly hold that then one sins only against charity and not also against justice, because the cooperation is material and not proximate, which charity, not justice, forbids; since that action of restoring his own is not of itself illicit and unjust, but indifferent, which another abuses by his malice. St. Thomas, II-II, q. 62, a. 5.

1462. **Does inability excuse from restitution?** Not only physical inability, which is had in extreme necessity or quasi-extreme necessity, excuses from restitution, but also moral inability, or grave difficulty of restoring; for example, if you cannot live according to the decency of your state justly acquired, but otherwise if it was unjustly acquired; if you cannot restore without danger to life or notable detriment to goods or reputation; if restitution cannot be made without danger to your salvation or that of your own. The reason is: 1. because otherwise you would sustain more damage than you inflicted in several of these cases, if not in all; 2. more generally, because what is very difficult, and what cannot be done decently and honorably, cannot reasonably be urged by the owner, since justice does not exclude charity and prudence. And this certainly holds, as is clear, although the debtor culpably cast himself into such straits. L. 697, 698, 702; Ithur. Cas. 16, n. 10, 11.

1463. **You will resolve:** "If a nobleman, for example, cannot pay at once unless he deprives himself of servants, horses, arms, etc.; or a craftsman unless he sells his tools by which he lives, or undergoes great damage, he can defer and restore little by little without loss of his state." L. 698.

"Likewise you are excused from restitution if there is danger that a wife or daughters prostitute themselves, that sons give themselves to robberies, or that you yourself through impatience fall into despair." L. 648.

"But you are held to restore even with your own damage if, restitution being omitted, the owner is going to suffer equal damage." L. 697.

1464. **Is the debtor excused from restitution by reason of necessity if the creditor also is in necessity?** "If the debtor cannot aid himself otherwise than through the goods which he ought to restore, then he is not held to restore them and to cast himself into extreme necessity, even if the creditor is placed in the same necessity unless the debt is restored to him. The reason is that then all things become common." Exception: "unless precisely because of that taking the

owner was cast into extreme necessity, because the condition of the owner previously possessing ought to be better." L. 701.

"If the creditor already suffers grave necessity, and the debtor then does not labor under it but will labor under it by restoring, he certainly is held to restore, even though he must be placed in any grave necessity," because in equal necessity the condition of the innocent person is better, if the debt is owed from delict; likewise the condition of the creditor and owner is better, if it is owed from contract. L. 697, 698.

If the debtor is already placed in grave necessity, whether he is held to restore when the creditor likewise labors under the same necessity is controverted. The first opinion affirms, because again the condition of the innocent person, creditor, and owner is better, and therefore he is to be preferred. The second opinion denies, because since the debtor "already labors under grave necessity, certainly he could not restore except with very grave inconvenience, so that he would seem to cast himself as it were into extreme necessity." L. 703. Except again, unless precisely through that taking the creditor was cast into grave necessity. L. 703; St. Thomas, II-II, q. 62, a. 5, ad 4.

1465. **Does cession of goods made to creditors excuse from restitution if the debtor afterward becomes richer and can restore?** Response: negatively. For if the cession is judicial, it is merely a benefit of law, so that the one ceding goods is immune from coercion in the external forum, as is clear from Roman, Italian, and French Law. But if it is voluntary, because the creditors compound the matter with the debtor since they cannot have more, they do not therefore renounce their right as regards full payment, if the debtor can ever make it. Except if the creditors expressly, or at least implicitly, truly free the debtor from payment of this kind. L. 699; C. G. 1265-1270; C. I. Comm. 815, 830; C. H. 1175.

1466. **Can one ceding goods secretly reserve something to himself?** Response: negatively, speaking of itself, if the thing is of great value, because he inflicts notable damage on the creditors.

Affirmatively, if he reserves to himself only things necessary for his own support and that of his family. For as regards these, the creditors cannot be reasonably unwilling. And this is admitted by C. I. Comm. 735, 752. Gousset 772; L. 699; St. Antoninus, 2 P., tit. 2, c. 8, § 3, Si tertio modo; Lugo d. 21, n. 41; Ferraris, v. Restitutio, a. 5, n. 54, 55.

1467. **Is one excused from restitution who, forgetful of the debt, gratuitously gave something to his creditor?** The first probable opinion denies. "The reason is that since he is a debtor both from the title of justice and from the title of accepted donation, he cannot by one payment satisfy these two obligations arising from diverse titles." The second probable opinion affirms. The reason is that in every liberal furnishing each person has a certain prior general will of satisfying obligations of justice, and a later actual will of giving. But "the first will prevails as the stronger and preceding." L. 700.

1468. **Does entrance into religion excuse from debts to be paid? If the religious gains something in religion, must he apply this to paying debts? If a legacy comes to him, must he satisfy debts from it?** Response to the first: entrance into Religion does not directly

free one of itself from debts to be paid, but indirectly, namely insofar as it licitly impedes the means by which debts can be paid. For, excepting cases prohibited by canon law, the debtor licitly enters religion, at least when he cannot easily and in a brief time satisfy debts before entrance. Therefore by that very fact he is freed from the burden of restoring. For natural law no longer urges when the debtor cannot satisfy except with such great detriment to his liberty and with danger of losing eternal salvation in the world. For the debtor is not held with such great inconvenience to be deprived of the more perfect state of religion.

To the second: affirmatively, if he can easily work and the superior permits; for the state of religion does not of itself free from the obligation of restitution, but only licitly impedes it. Yet the superior is by no means held from justice to grant this permission, but only from charity, if no inconvenience stands in the way.

To the third: negatively, if he has emitted solemn profession; because then he is incapable of ownership, and from canon law that legacy is acquired for the monastery. Affirmatively, if he has emitted only simple vows; because in that case the legacy is acquired for him. L. 1, 4, n. 71; St. Thomas, II-II, q. 189, a. 6, ad 3.

1469. **Is a debtor excused from restitution in doubt of payment?** Response: negatively in merely negative doubt, because then there is no prudent reason that payment was made.

In positive doubt, or probability, there is controversy. The first probable opinion affirms, because an obligation is not to be imposed unless it is certainly established. Moreover, because, as St. Alphonsus says, l. 4, n. 107, "no legitimate possessor of his own is held to restitution who has for himself a probable opinion." The second, more common and probable opinion denies, because a certain obligation is not satisfied through a doubtful fulfillment. The third probable opinion says that restitution must be made according to the proportion of the doubt, because it is not equitable that as much be paid from a doubtful right as would be paid if the right were certain.

1470. **Is one freed from restitution who pays the debt to the creditor of his creditor; for example, I owe you 100 francs, but you owe 100 to Titius: do I satisfy by paying 100 to Titius?** Response: affirmatively, of itself, according to the strict summit of law. The reason is that by paying your creditor what you owe him, I acquire the right which he had of requiring from you the debt owed to him; hence the right which I have in you is equivalent to the right which you have in me, and compensation occurs. For your creditor can transfer his right to me, or I can buy it, just like anyone else who owes you nothing.

"Of itself," because I am not freed if perhaps you are still compelled to pay, or you have privileged or mortgage creditors. "According to the summit of law," because such payment, if done without cause, will be unlawful because of the various inconveniences to which it is liable. But there is sufficient reason if your creditor cannot recover his debt. L. 700; Billuart, diss. 8, a. 14, § 1.

XXXIV. On Occult Compensation

1471. **What is occult compensation?** Occult compensation is nothing other than a hidden recovery of the equivalent of one's own thing, a reparation of damage unjustly suffered in one's own

goods. This compensation is customarily called semi-legal, to distinguish it from legal compensation, which reaches certain particular cases, when two persons mutually debtors to each other receive in payment each the thing owed to the other; this compensation, from the force of law itself, has place by full right. C. I. 1285ff.; C. G. 1289ff.; C. H. 1195ff.; C. A. 1438ff.

Legal compensation obtains, even when the debtors do not know it, up to the concurrent quantity of each debt, if nevertheless both are of the same nature and goodness and can be demanded at once. But a delay which is granted to the debtor for paying does not prevent compensation.

But legal compensation is not admitted: 1. when restitution is sought of a thing of which the owner was unjustly despoiled; 2. when restitution of a deposit or thing lent for use is sought; 3. when it concerns a debt whose title has its origin from supports which do not fall under seizure, such as stipends, pensions, etc.; 4. when the creditor renounced the right of compensation. C. I. 1286-1289; C. G. 1290-1293; C. A. 1438-1440; C. H. 1196ff.

1472. **Is occult compensation lawful?** Occult compensation, when certain conditions concur, is lawful according to the common opinion of the doctors. The reason is that it is nothing other than a just defense from injury, by which the debtor continually troubles you by unjustly retaining your thing, or that to which you have a right from justice.

1473. **What are the conditions required for the lawfulness of occult compensation?** The conditions commonly required, so that occult compensation is done justly and lawfully, are:

1474. That the spiritual and temporal damage of the debtor be guarded against; namely, lest he remain in erroneous conscience and sin, lest he again restore what he now does not owe, by warning him of the cessation of the obligation, by feigning, for example, condonation, etc. Yet one is not held to this from justice, but only from charity, which does not oblige with grave inconvenience.

1475. That grave damage of another be guarded against, for example if suspicion of theft threatens another. One is not held to this from justice either, but only from charity, since he is the cause of that damage not per se, but only per accidens.

1476. That the thing which is accepted in compensation from the debtor not be another's, because otherwise you would not exact the debt from the debtor, but from another who owes nothing.

1477. That you cannot recover the debt otherwise, by asking it from the debtor or before a judge, or certainly not except with great difficulty, expenses, lawsuits, troubles, etc. The reason is that one cannot regularly despoil a possessor by one's own authority, since this belongs to a judge or magistrate having public authority. Besides, the public good requires that no one declare law for himself where recourse to a judge is easy.

1478. That compensation be made, as far as can be done, in a thing of the same species as that which was owed. Otherwise the debtor is compelled altogether unjustly, without his consent, to exchange his thing. But if it cannot be done in a thing of the same species, it can indeed be done in another thing, but with lesser detriment to the debtor, as far as can be done. For this detriment is made honorable only from necessity.

1479. That the debt be certain; for in doubt the condition of the possessor is better, and therefore he would be unjustly despoiled of his thing. Lugo d. 16, s. 5; Ithur. Cas. 3, n. 14, 15; L. 521; St. Thomas, II-II, q. 66, a. 5, ad 3; E. M.

1480. **Can compensation be made by retaining a thing handed over to the creditor in deposit or loan for use?** Several deny, relying on the positive dispositions of law. C. I. 1289; C. G. 1293; C. H. 1200, 1747; C. A. 1440; l. ult. § 1 C. de Compensationibus; C. Bona fides de Deposito. "Yet others more probably teach that those laws proceed only in the external forum, in which it is presumed that the debt could have been recovered by another way and the good faith of deposit preserved. The reason is that the fact that the thing is deposited with you does not make it more its owner's than it was before, nor does it oblige you to defend it against the true owner who wishes to vindicate it, or against him who has a true right to receive it, if that right is clear to you; indeed you ought to give it, if damage threatens you from elsewhere. Therefore similarly you will be able to take it for yourself, if you have true ownership of it, or a true right against its owner for recovering your debt." Lugo d. 16, n. 89; Gousset on a. 1293.

1481. **Setting aside impossibility or grave inconvenience in recurring to a judge, does someone sin gravely against legal and commutative justice by secretly compensating himself?** Response to the first: negatively, generally speaking, because ordinarily from this inversion of order there does not follow grave scandal or grave disturbance of the republic.

To the second: negatively, if you take your own thing, which still belongs to your ownership, or if you take it in equivalent in fungible things, such as money for money, wheat for wheat, etc., because in these the debtor is not compelled to undergo any burden beyond that to which he was held. But affirmatively, speaking of itself, if you take a thing of another kind, for example a horse for money, without cause and necessity, because in this case you compel your debtor to sell the horse, and therefore to undergo a grave burden beyond that to which he was held. But you have no right to impose this new burden upon him; but per accidens you can permit it to follow where there is sufficient cause and necessity for recovering your thing in the way in which you can. For then the debtor must impute this other burden to himself, since he does not pay what he was held to pay. Lugo d. 16, n. 91; C. A. 1413, 1414.

1476. **Can a creditor compensate for himself before the time, for a future debt?** Response: affirmatively, if there is a true moral danger that the debtor at his time will not satisfy his debt. "The reason is that defense by natural right is lawful not only when you now actually offend me, but also when you are prepared to offend me and I cannot escape otherwise except by forestalling." Yet, "if some damage comes to the debtor because of the anticipation of compensation, all of that must either be diminished from the principal debt, or restored to the debtor. The reason for this is that no one can be punished for a future delict before it happens." Lugo d. 16, n. 93.

1477. **Can someone compensate himself with only a right to a thing?** Response: affirmatively. For by a right to a thing, from a strict obligation of justice in another, although the person is immediately and directly obligated, nevertheless mediately and indirectly the thing itself is obligated to you. Therefore, as you can licitly compel the person to pay you by recurring to a judge, so also you can licitly compel him to pay you by taking the thing which is owed to you,

when recourse to a judge is impossible. And certainly it is evident that there is no violation of commutative justice if you take for yourself what another owes from the same justice and does not wish to give. L. 614; Lugo d. 16, n. 97.

1478. **With only probability of right in the thing standing, can occult compensation lawfully be made?** Ithur. Cas. 3, n. 11, says this: "As often as the opinion will have been equally probable for each party, or as frequently happens, his own opinion more probable to each, compensation is justly made not in the whole, but certainly in half of the debt." The first reason is that in such a case "the judge cannot adjudicate the whole to either party, but ought to divide the thing between the litigants. But no one may acquire more by occult compensation than could be adjudicated to him by a judge after allegations and proofs." The second reason is that "whenever the right to the same thing is equal, the advantage of each party must be equal, justice so requiring, whose office it is to care for equality."

But Cardinal Lugo, after relating the common opinion, which requires a certain right for compensation, then adds these things: "This doctrine, if it is understood as it sounds, is difficult, nor does it seem to be consistently retained by its authors. I will add some examples. First, concerning one who was defamed by Peter, it is asked whether, for reputation which Peter does not wish or cannot repair for him, it is lawful for the defamed person to make compensation by denying the money which he owed to the same Peter. Lessius responds that he can, because the opinion is probable which teaches that defamation must be compensated with money when it cannot be restored in its own kind, although the truer opinion denies this. Second, when two have mutually defamed each other, they can, when the damage is equal, compensate themselves, so that each is not held to restore as long as the other does not wish to restore. This compensation in that case is founded only on a probable opinion, since the contrary is also most probable. Third, one who ought to have a legacy from a less solemn testament, since the opinion is probable that those legacies are owed in the forum of conscience, although the contrary opinion is sufficiently common and probable, nevertheless can retain the legacy, or receive it anew, or secretly compensate himself."

Hence Lugo generally concludes: "it seems probable that the creditor, before the matter is brought to judgment, can secretly compensate himself for his debt. The reason also seems to prove this, because notwithstanding the possession of the debtor, a judge would pronounce sentence, or certainly could pronounce it, for the creditor, embracing the probable or more probable opinion which favors him. Why therefore will the creditor himself, when he cannot recur to the judge without grave inconvenience, not be able to embrace the same opinion which the judge ought or could have embraced, and compensate the debt for himself?"

But the same Lugo notes that although a judge is held in judging to follow the more probable opinion, nevertheless the creditor in occult compensation does not seem to be obliged to this, because the reason on account of which the judge especially cannot do this is "because from office and implicit pact toward the Republic he seems to be held to inquire into the truth as much as he can, which reason does not hold in the creditor, who is held by no such pact toward the Republic. Yet concerning this I wish to assert nothing, indeed I willingly abstain from a final judgment about this whole point concerning compensation lawfully to be made with only probable opinion." D. 16, n. 94ff.; L. 521, 544, 700, 817, 928; l. 1, n. 30.

But the reason of the common opinion is: 1. the danger in this matter of easy hallucination; hence, practically speaking, there is a grave danger of injuring another's rights. 2. Because if the other truly possesses the thing in good faith, and by a title at least reasonably presumed, he now has a certain right at least of detention of the thing, and consequently cannot be despoiled of the thing until another's right and ownership of the thing are certainly established.

On the Eighth Precept of the Decalogue

I. On Rash Judgment

1479. **What is the eighth precept of the Decalogue?** The eighth precept of the Decalogue is: You shall not speak false testimony against your neighbor. Ex. 20:16; Matt. 18:19. Through this precept, insofar as it is negative, false testimony is primarily prohibited, especially in judgment; secondarily, every unjust injury of the neighbor in the goods of reputation and honor is prohibited, which is reduced to false testimony as to the principal injury, such as rash judgment, detraction, insult, and lying. But insofar as it is affirmative, it commands that, with every simulation and fallacy removed, simple and naked truth be spoken. Roman Catechism, On the 8th Precept, n. 2; L. 961.

1480. **What is reputation? What is rash judgment?** Reputation is the common opinion about someone's life, morals, and other qualities which can increase or diminish his moral estimation. Good reputation, therefore, is the common opinion about the virtue, wisdom, or noble deeds of another; if it goes out into external verbal testimony, it is called praise; but if into real testimony, it is called honor. Hence the good reputation of someone can be unjustly injured not only through detraction and insult, but also through an internal rash judgment about some crime or moral defect of another.

One must distinguish rash doubt, suspicion, opinion, and firm judgment. Rash doubt is had when someone, without sufficient reason, remains suspended, yet without inclining more into judgment about vice than about virtue. Rash suspicion is given when someone, without sufficient motive, inclines more into judgment about vice than about virtue of another; nevertheless he suspends actual judgment. Rash opinion is given when someone, without sufficient motive, elicits assent about the vice of another, yet with fear about the opposite. Finally, rash judgment is given when someone, without sufficient motive, elicits a determined judgment about the vice of another without fear about the opposite. L. 962, 965; St. Thomas, II-II, q. 60, a. 3.

1481. **What kind of sin is rash judgment?** Rash judgment is a sin opposed to justice, and of its genus mortal. Proof of the first part: because each person has a right not to be judged by another to be evil as long as he does not give to him sufficient motive for judging that he is evil; and therefore rash judgment from its generic concept, and apart from other malice, is repugnant to justice. Proof of the second part: because good reputation is a notable good of a person.

"Of its genus," because it is often only venial because of smallness of matter, either according to itself or relatively to the persons about whom it concerns, or because of imperfection of the act. L. 962; Lugo d. 14, n. 11; St. Thomas, II-II, q. 60, a. 3.

1482. **When is rash judgment a grave sin?** For rash judgment to be a mortal sin in the individual case, three conditions are required: 1. that it be firm and deliberate; 2. in grave matter; 3. conceived rashly. Proof: because rash judgment, unless it is firm, in grave matter, and conceived rashly, is not a grave injury to the neighbor; but if it is not sufficiently deliberate, it is not perfect on the part of the act and consent of the will. Therefore, unless it has the aforesaid three conditions together, it is not a mortal sin. L. 962; Lugo d. 14, n. 11, 23.

1483. **What kind of sin is rash doubt, suspicion, or opinion?** Positive doubt, suspicion, or rash opinion about another's crime is of itself only a venial sin. Proof: because even an opinion, if it is fearful, about another's crime, speaking of itself, does not inflict grave injury on him, since it is not a firm judgment. Therefore.

Positive rash doubt is given when someone ought, from graver motives, to judge that someone is good and innocent; yet from other lighter motives he positively doubts, or reflexively judges, that it is doubtful whether he is good or evil, innocent or guilty.

"Of itself," for per accidens it can sometimes become grave, if, for example, these acts are concerned with very extraordinary sins, and grave ones by reason of the condition of the persons whom they regard, and from altogether slight indications, because such opinion, suspicion, or doubt is a greater injury than even firm judgment about less grave ordinary sins. Thus also such acts are a grave sin if they proceed from malevolence without cause; for then they proceed from contempt of another, and therefore are considered a grave injury. L. 963, 964; St. Thomas, II-II, q. 60, a. 3; Cajetan ibid.; Quodl. 12, a. 34; Lugo d. 64, n. 17.

1484. **What about negative doubt?** Purely negative doubt about the innocence or crime of another is no sin. Proof: because in such doubt no one is held positively to judge that another is innocent, and thus to expose himself to the danger of error; and therefore by suspending every judgment about the innocence or crime of another, he does not sin. St. Thomas, II-II, q. 60, a. 4; Lessius, l. 2, c. 11, n. 32-36; Lugo d. 14, n. 21.

1485. **Note:** In sufficient doubt about the crime or innocence of another, that axiom of prudent persons is to be observed: In the order of caution worse things are to be presumed, but in the order of charity and justice better things. The reason for the former part is that each person has a right to guard against evil, especially his own or that of his own; and therefore in the order of caution he can presume worse things, at least practically, and precisely in order to avoid evil. But the reason for the latter part is that a merely speculative error against truth is a lesser evil than a practical one against charity and justice; and therefore in the order of charity and justice toward another, better things are to be presumed. St. Thomas, II-II, q. 60, a. 4, ad 3.

II. On Detraction

1486. **What is detraction; what is calumny?** Detraction is the hidden and unjust violation of another's reputation. "Hidden," that is, in the absence of the one whose reputation is attacked. "Another's," for one who injures his own reputation is ordinarily not unjust, since he is its owner. Reputation is the public opinion about another's excellence. Violation of reputation can happen in various ways: 1. positively, if a false crime is imposed, if a true crime is amplified, if a hidden crime is manifested, if a good work is taken sinisterly; 2. negatively, namely by denying the good works of the neighbor, or diminishing them, or even sometimes by being silent when others praise him, or by praising coldly.

If someone's reputation is attacked by revealing a true crime, it is called simple detraction; if by imputing a false crime, it is called calumny, which is graver and differs in species from simple detraction, because it adds to detraction a lie damaging to the neighbor. Yet this diverse species, "precisely insofar as it is against truthfulness, is not mortal malice, and therefore does not bring a different mortal species necessarily to be explained in confession." Lugo d. 14, n. 36.

Detraction differs from whispering, which is a word sowing discord among friends. Yet whispering agrees with detraction on the part of matter, because each says evil about the neighbor; but it differs in species on the part of the end, because whispering also intends the dissolution of friendship. And therefore it is of its genus mortal, of a species different from and graver than detraction; hence it must be expressed in confession, as St. Thomas notes, II-II, q. 74, a. 2. L. 966; St. Thomas, II-II, q. 73, a. 1; E. M.

1487. **What kind of sin is detraction?** Detraction is a sin opposed to justice and of its genus grave. Proof: because it is opposed to the right which another has to his reputation, or good name; therefore it is a sin opposed to justice, and from its generic concept mortal. Besides, detraction of itself is worse than theft, just as reputation is better than money, according to Prov. 22:1: A good name is better than many riches. And Ecclus. 41:15: Have care for a good name, for this will remain with you more than a thousand precious and great treasures. L. 966, 967; St. Thomas, II-II, q. 73, a. 2; E. M.

1488. **Is it grave to reveal another's natural defects?** To reveal another's natural defects, speaking of itself, is not a mortal sin. Proof: because such defects are inculpable, and ordinarily known to many; and therefore to reveal them is not usually gravely harmful to reputation. Thus it is not usually gravely harmful to reputation if someone says that another is ignorant, imprudent, etc.; nor if he says that another is one-eyed, lame, hunchbacked, etc. "Speaking of itself"; for if from the revelation of some natural defect another would suffer damage or be gravely saddened, the revealer would sin gravely against justice or charity, unless he had a just cause for manifesting a similar natural defect to someone. L. 967.

1489. **Note:** The same is to be said, generally speaking, of all those moral defects which, although they are without sin and without crime, can make a person less worthy of honor; and the same is to be said of merely civil defects in the same case, for example, if someone says of an honorable girl that she suffered violence, or of an honorable and serious man that he practiced the butcher's trade.

1490. **Is it grave to reveal another's slight sin?** To reveal another's venial sin, or to speak about sins by general words, speaking of itself, is not a mortal sin. Proof: because in many things we all offend; and therefore to reveal another's venial sin, or sins by general words from which it cannot be gathered that another sinned mortally, is not usually gravely harmful to reputation.

"Speaking of itself"; for the condition of some person can be such that even venial sins in him are judged to be of great moment, for example, if it is said of a serious and religious man that he is mendacious, or often lies; or if certain sins are reported about some religious community, even by only general words, for example, "I know many things about it which charity forbids me to disclose," etc.; or if so many things are said, although the individual things are not grave, that the reputation of some person constituted in conspicuous dignity is notably injured, even if this is done over a long time. L. 997.

1491. **Is it always grave to reveal another's grave sin?** To reveal another's mortal sin is a mortal sin when on account of it he suffers grave detriment to reputation, but not when he suffers only slight detriment. The reason as to the first part is clear of itself. The reason as to the second part is that certain mortal sins are committed so frequently by persons of a certain condition that they are already almost presupposed of them; and therefore to report a certain mortal sin about a person of a similar condition diminishes his reputation little, as, for example, if it is said of a soldier that he committed a duel or seduced a girl. It would be the same if someone revealed a delict about which another is accustomed to boast, or one of the same kind or species as that for which he had already previously been publicly defamed. L. 967; St. Thomas, II-II, q. 73, a. 2, 3.

1492. **You will resolve:** 1. It follows that he does not sin mortally who reports another's grave crime, if he is of so low a condition and authority that he can prudently persuade himself that the hearers will not believe him. The reason for this is that such a person does not cause in the hearers a firm judgment about another's crime, but at most some slight suspicion.

1493. He does not sin mortally who narrates to a friend an injury inflicted on him by someone, so that he can receive some consolation from him and, by laying out his complaint, lessen the bitterness of grief. The special reason for this is that it would be too difficult if someone had to digest a grave injury in silence and, under grave obligation, could not even relate it to a friend for the sake of consolation. Hence servants revealing injuries inflicted by masters, wives by husbands, children by a father, religious by a prelate, are excused at least from mortal sin when it is only for the sake of mitigating grief. L. 973; St. Thomas, II-II, q. 73, a. 3; I-II, q. 38, a. 2.

1494. It is not mortal to speak badly of someone unknown or indeterminate, if such a person is not such that infamy redounds upon others who are known and determined. Thus, for example, one sins who detracts from a religious order, or names a monastery in which someone committed a hidden grave sin. For this gravely harms such an order or monastery. They except if it concerns some broad order, and not one of stricter observance, since in any broad place there are almost always some disorderly persons. L. 979.

1495. It is not a sin against justice, at least not mortal, to ask the cause of someone's captivity or to speak about it; for just as the captivity is public, so also the cause seems to have become public. L. 974.

1496. To defame a dead person is less grave than to defame a living person, since he no longer needs reputation for living rightly; yet it can still be mortal and obliging to restitution, because no one wholly dies, and the estimation of the dead often pertains to the living. L. 978.

1497. To recall to memory crimes already given to oblivion is grave of itself against justice, since it takes away recovered estimation. But constantly to renew the memory of crimes not yet given to oblivion is grave of itself against charity, since without just cause, as is supposed, this affects the neighbor with grave sorrow.

1498. **Is calumny or detraction ever lawful?** It is never lawful to place a false crime on another, as is clear from proposition 44 condemned by Innocent XI. Yet for a just cause it is lawful to manifest another's hidden crime, even with loss of his reputation, because sometimes the public or private good requires this, and then the neighbor's right to preserving reputation is overcome by a stronger right. L. 972; St. Thomas, II-II, q. 69, a. 2.

1499. **For what causes is it lawful to reveal another's crime?** The causes on account of which another's crime can lawfully be revealed, and indeed sometimes must be, are the following: 1. notable utility of the revealer himself, for example, to seek counsel or help in a grave matter, with any affection toward detraction set aside; 2. utility of the delinquent, namely for his instruction or correction, etc.; 3. public utility, as for impeding evils threatening the republic, religion, or some community; 4. even grave private utility either of the hearers or of others, for example, that they may be freed from evils, damages, or inconveniences certainly or probably going to happen.

The reason for these is that then the one manifesting another's sins injures neither justice nor charity. He does not injure justice, because the neighbor does not have so strict a right to his reputation that others are obliged to conceal the truth when its manifestation is necessary for avoiding grave damage either one's own or another's. Nor does he injure charity, because charity does not oblige with grave inconvenience; and just as you are not held to impede the damage of your neighbor, however great, with grave damage to yourself, so neither in the case are you held to hide the hidden crime of the neighbor. L. 968; St. Thomas, II-II, q. 73, a. 2; Lugo d. 14, n. 97, 112, 113; Gousset 1070.

1495. **You will resolve:** 1. If someone unjustly injures your reputation, either by calumny or by simple detraction, by denouncing your altogether hidden delict, and you cannot defend or recover it by another way than by also diminishing his reputation, this is lawful, provided that you do not say false things, and only so far as is necessary for preserving your reputation, nor injure him more than you are injured, comparing your person and the other person's. L. 972.

1496. It is lawful to defame another for avoiding grave torments, if the crime is true, because you do no injury to another, since in necessity you have the right of revealing it; but it is not lawful if the crime is false, because it would be a pernicious lie. L. 982.

1497. You also lawfully diminish someone's reputation if an estimation falsely conceived about his learning and uprightness is pernicious to others, provided there is no other more convenient way of impeding the evil, and the damage feared for the neighbor is greater or at least equal to the damage which would come to him from manifestation of another's defect or crime. Lessius

968. Indeed, according to Lugo d. 14, n. 112, neither excess nor equality of your damage or that of others is required, "provided the damage which you fear for yourself or others is not slight, but grave and notable." Thus also St. Alphonsus 968.

1498. **Is it mortal to reveal another's grave sin, which gravely dishonors him, to one prudent and discreet man, with special malice set aside?** The first opinion, more common and more probable, says that one sins gravely, unless inadvertence or great levity excuses. The reason is: 1. because injury of reputation even before one grave person is judged grave, as is clear from rash judgment, which of itself is grave; 2. because often people bear it more painfully to be injured before one grave person than before three or four others.

The second probable opinion denies. The reason is that since reputation consists in the common estimation of people, one is not judged absolutely defamed who lost his good name before only one or another. But there is no parity with rash judgment, because in that there is the imposition of a false crime; and in the case at issue, the bare manifestation of a true crime. Exception: unless one reveals it to him from whom the guilty person would especially and above all others wish to be hidden, and it gravely matters to him that it not be revealed to that person. L. 973; St. Thomas, Quodl. 11, a. 13, ad 3.

1497. **Can another's hidden crime be revealed by also narrating the penance performed?** Response: negatively. For that manifestation of the delict is not equally compensated by the subsequent penance. For some sinister opinion is always injected into others. L. 974.

1498. **Is it grave to manifest a hidden grave sin about a certain person who is already defamed by another known grave sin?** Response: affirmatively, of itself, if the sins are disparate among themselves. For one infamous in one kind of vice has not lost the right of reputation as regards other virtues. But negatively, if they are connected among themselves and one implies the other, because then the infamy is not notably increased. L. 976; H. A. 14.

1499. **To avoid your own grave damage, can you reveal another's hidden crime if you received knowledge of it unjustly, by force or fraud, for example by opening letters, etc.?** St. Alphonsus says this, 969: "In this question there are several opinions. But among these so various opinions, the opinion of Lugo pleases me more. This great theologian teaches that you cannot, generally speaking, use that knowledge unjustly received with another's damage in order to escape any damage whatever of your own. The reason is that the unjust action by which you received the secret obliges you to restore all damages going to come to the neighbor on account of it. Lugo and others rightly admit that you can manifest the crime only then: 1. if revelation were necessary for the common good of the republic; 2. if the other were held from justice to reveal the secret for repairing your damage; 3. if he unjustly vexed you."

1500. **Can a public crime be revealed to those ignorant of it?** Response: affirmatively, because this seems to be neither against justice nor against charity, whether it is public by publicity of law or by publicity of fact. L. 974.

1501. **Can a crime public in one place be revealed in another place where it is unknown?** Response: more probably affirmatively of itself, at least without grave sin, if it concerns a neighboring place, or a place where it is easily and shortly going to be made public. The reason

is that reputation shortly and necessarily to be lost is of no or certainly not great estimation, and morally speaking, has already been cast away. Except, however, unless someone is going to suffer grave damage from it.

If it concerns places to which the divulgation is not going to arrive, or not except after a long time, one must distinguish. As regards notoriety of law, it is not against justice, because when a judge publicly condemns someone, he intends to despoil the guilty person of reputation, so that he may be an example to others everywhere. Nor more probably is it against charity, at least gravely, because it greatly contributes to the common good that the sentence be published everywhere, so that the penalty may be more efficacious, and the guilty person may be known even by inhabitants of a remote region who could have dealings with him. L. 974.

As regards notoriety of fact, there is controversy. The first, very probable opinion says that it is not of itself illicit, because one sins neither against justice nor against charity, at least gravely, provided it concerns crimes which render a person pernicious. The reason is that it conduces to the public good that criminal persons be known, so that all can beware of them. L. 974; H. A. 12; In Retr. n. 12. The second opinion, on the contrary, says that it is a sin both against justice and against charity. Against justice, because one defamed in one place has not lost the right to reputation in another remote place, where the reputation of the crime is not shortly going to arrive; therefore one who defames him there does him injury. Against charity, because the defamer harms the neighbor in a grave thing, or in reputation, which elsewhere he continues to possess without injury to anyone.

1502. **Note:** 1. From St. Alphonsus, H. A. 12: "that a delict published in one monastery cannot be called absolutely public; hence it cannot be manifested elsewhere, and not even in another monastery of the same order, which would have frequent communication with that one."

1503. From the same holy doctor, l. c. 13: "a delict of someone public at one time cannot be published at another time, in which it has become hidden, without grave fault, at least against charity, unless the delict was public not only by notoriety of fact, but also by notoriety of law, that is, by sentence of a judge, or by confession of the guilty person in judgment." Yet this does not prevent public delicts from being narrated in public histories for the public good, for preserving the truth of facts, instilling horror of vice, commending divine mercy, etc. Cf. Lugo d. 14, n. 87.

1504. **When can a crime or fact be called public or notorious?** It is called altogether public or famous when it has become known to the greater part of the community, or city, town, village, etc. It is called simply public or notorious when it has become known to so many persons that it cannot be hidden by any evasion, and it is morally impossible that it not come to the knowledge of the community.

But it is very difficult to determine the knowledge of how many persons is required for a crime to be judged public. Theologians have assigned various rules according to the varied number of persons composing the community. According to the more common opinion, a crime can be called public if fifteen know it from a community of one hundred persons; or twenty from diverse families in a community of a thousand persons; or forty scattered in a town of five thousand persons. Thus St. Liguori 975. But, as Billuart better says, De Iust., diss. 15, art. 2, § 5, this is remitted to the judgment

of a prudent person, who, with attention to the number of the community, the talkativeness of people, and other circumstances, judges whether it is possible that the thing remain secret.

1504. **Does one sin gravely who only reports another's grave sins as heard from others, for example if he says: "It is reported," "they narrate," "I heard this or that about such a person"?** He sins gravely against charity and justice if he reports in such a way that others are more likely and deservedly going to believe it, for example, if he asserts that he heard what he narrates from a trustworthy person, because then he furnishes a sufficient cause for believing the evil. Otherwise, if faith probably is not given to the words, because no infamy will arise from it. But one who reports, even as merely doubtful, another's enormous sin, for example heresy, sodomy, etc., will much more easily sin gravely, because suspicion alone of these enormous crimes greatly defames.

He sins gravely against charity if he reports things heard before those who will probably believe them from their own levity or malice, because each person is held under grave obligation from charity to remove the occasion of another's damage when he can do so easily. Yet he does not seem to sin against justice, because he is not the efficacious cause of the damage. L. 977, 978; Billuart ibid., art. 2, § 4.

1505. **How does one hearing detraction sin?** One who efficaciously induces another to detract certainly sins gravely not only against justice, but also against charity. The reason is that he is not only the unjust cause of further detriment to the reputation of the one whose reputation is attacked, but also of the further sin of the detractor. Therefore with respect to the first he sins against justice; with respect to the latter against charity because of scandal and cooperation.

He sins gravely against charity, as regards the one whose reputation is attacked, who rejoices over grave detraction done by another, because he rejoices over the grave damage of the neighbor. Exception: if he rejoiced only over hearing a new or curious thing, but not over the detraction itself. He also sins against charity as regards the detractor, for he furnishes him an occasion of externally consummating sin. St. Thomas, II-II, q. 73, a. 4.

A superior sins against charity if he does not impede detraction insofar as he conveniently can, even if he does not rejoice over it, because a special obligation rests on him of correcting the detractor or of meeting the damage of the defamed subject. But more probably he does not sin against justice: 1. the superior of the detractor, because he is not held to watch over the good of another who is not his subject; 2. the superior of the defamed person, because it does not fall upon him from justice to attend to the temporal good of his subject. L. 979. Yet the superior of the detractor "is not excused from grave fault against charity, and also against justice, if he is a bishop or pastor and does not correct, because these are held from justice to correct subjects." L. 980; Struggl 40.

A private person is for the most part either altogether excused, or at least excused from grave sin, if he does not impede detraction, whether from shame, fear, or even negligence, even if he conveniently can, provided he does not rejoice over it and no other damage besides infamy is added. The reason is that in this matter it often cannot be clear that correction will be useful; indeed often it is dangerous, and it can deservedly be feared that the detraction will rather be increased or prolonged. Yet he will not lack some fault if he can easily apply efficacious correction. One is likewise excused at least from

grave sin if he is silent because he does not know whether the things which the detractor reports are hidden. But those are excused even from venial sin who, when they notice detraction, depart, break off the conversation, or turn away the face and show themselves sad, according to Prov. 25:23: A sad face dissipates a detracting tongue. L. 980, 981; St. Thomas, II-II, q. 73, a. 4.

1506. **What obligation of restitution is present in the detractor?** A detractor is held from justice, as far as can be done: 1. to repair the reputation unjustly taken away; 2. to compensate all temporal damages coming from defamation and in some way foreseen. The reason for the first is that by taking away reputation a damaging injury was inflicted; for the right which each person has to reputation cannot be taken away by private authority. Therefore, since restitution of the good unjustly taken away is necessary, that injury must be repaired. The reason for the second is that all damages coming from detraction are to be attributed to the detractor as their efficacious cause, whether the crime revealed was false or true, since in either case the detractor unjustly injured reputation.

The obligation of restoring reputation is personal. But the obligation of repairing damages which have arisen from defamation is real, and therefore passes to the heirs. L. 613, 991, 994, 995, 996; St. Thomas, II-II, q. 62, a. 2; q. 73, a. 2.

1507. **How must reputation be restored?** Restitution of reputation must be made in one way by the calumniator, and in another by the simple detractor. Hence: 1. the calumniator is held to retract the things said, and indeed of itself even with loss of his own reputation, if reparation cannot be made otherwise. The reason is that the condition of the innocent person is better than that of the guilty, and he must impute to his own malice whatever he will suffer on account of this.

1508. The simple detractor cannot retract the things said, because thus he would lie; but in another way, as far as is in him, he must restore reputation by saying, for example, that he spoke badly, that he erred, or something similar. For not only those err who depart from truth, but also those who depart from rectitude, according to Prov. 14:22: They err who work evil. But often that mode does not suffice among intelligent and cunning persons, who rather infer from these formulas that the crime is true, since it is not asserted openly to be false. Therefore then the detractor, keeping silence about the things said, must, when occasion is given, with dexterity and truth praise and honor the one whose reputation he attacked. L. 992; St. Thomas, II-II, q. 62, a. 2, ad 2; q. 73, a. 2.

1509. **Must someone restore reputation even with his own inconvenience?** One who by injuring another's reputation sinned only venially is not held to restore it with his own grave inconvenience. But one who sinned mortally is held to restore it even with grave inconvenience, yet one proportioned to the other's damage. The first reason is that from only slight and venial fault in simple damage-causing to the neighbor, no grave obligation can arise, and no obligation under mortal sin for restitution in the forum of conscience, at least from justice. Yet if one who sinned venially in detraction from semi-full advertence can conveniently restore reputation in a grave matter, he is held under mortal sin to restore it from charity and from justice; for charity gravely obliges to avert the grave evil of the neighbor, even if one is in

no way the cause of it, and justice gravely obliges that our action not continue gravely to influence the damage of the neighbor.

The second reason is that such a person is held to restore reputation from justice, and on account of preceding mortal fault; but an obligation from justice and from mortal fault and in a grave matter obliges with grave inconvenience. The third reason is that if the evil which the detractor would have to suffer is of a higher order, or in the same order notably greater than the evil which the innocently defamed person must suffer, the defamer could, in the order of charity, prefer his own greater good to the lesser good of the innocent person, as theologians commonly note. Yet if direct restitution of reputation, by retractation of the things said, cannot be made, or is not expedient, at least indirect restitution must be made by praising, honoring, etc., the injured person. L. 994.

1509. **Is the one defaming held to restore reputation also before those who received the crime revealed by him mediately?** Response: affirmatively, if he violated reputation before hearers whom he foresaw would easily spread the infamy. The reason is that then he himself was the first and efficacious cause of the damage. But when second causes are deficient, the first cause always remains obligated. Otherwise he is not held. L. 991.

1510. **What are the causes excusing from restitution of reputation?** The following are commonly admitted: 1. if the delict which you revealed to one or more persons has become public by another way, or if reputation has been repaired in another way, for example by sentence of a judge, etc.; 2. if it is prudently judged that the memory of the crime has been erased by oblivion through the passage of time; 3. if restitution of reputation cannot be made without danger to life, because life is a good of a higher order than reputation; likewise if restitution of reputation is of much lesser value than the loss which the defamer would have to suffer, for example, if he were an honorable man and especially very useful to the public good or to religion; 4. if reparation is morally impossible because of excessive distance of places or other special difficulties, which are especially found in reparation of simple detraction, for example, if those who heard the detractor cannot be recalled from their preoccupied opinion; 5. if it is judged that faith was not given by the hearers to the detraction, as happens rather often when detraction is done in the heat of anger; 6. if the defamed person has remitted the obligation expressly or tacitly, provided he can remit it; indeed sometimes presumed condonation suffices. L. 1003. But he cannot remit it when scandal follows from his infamy, or common damage or damage to his own, etc., for example, if it concerns the infamy of a priest, etc. L. 997ff.

1511. **Are you excused from restitution of reputation if the injured person also violated your reputation and does not wish to restore it?** Navarrus, Sporer, and some others deny; but it must more probably be affirmed with St. Alphonsus 999, because you are not held to render his right to another if he refuses to render yours to you.

1512. **Are you held to compensate reputation with money if you cannot restore it?** Response: negatively, at least more probably, because justice obliges only to rendering what was taken away, or an equivalent; but money was not taken away through detraction, nor is it the equivalent of reputation, since it is of another order. L. 1000; St. Thomas, II-II, q. 62, a. 2.

1513. **What must be done if there is doubt whether the defamation has been given to oblivion?** St. Alphonsus 998 says this: "Retractation of itself brings infamy upon the one retracting; hence, when there is doubt about the oblivion of defamation, one does not seem held to suffer certain damage in order to repair uncertain damage of the neighbor. And although the injury inflicted is certain, and therefore possesses, nevertheless, because restitution is not owed on account of injury alone, but on account of damage truly inflicted, as we say with St. Thomas, there does not seem to be an obligation of repairing doubtful damage with certain damage to the one restoring, unless in some case the danger alone of another's infamy would be valued more than the certain infamy or damage of the detractor."

III. On Contumely

1514. **What is contumely, how many kinds are there, and what kind of sin is it?** Contumely is the unjust violation of the honor of a present person. Therefore contumely differs from detraction first in this, that detraction directly injures reputation, or the internal estimation which others have about the neighbor; but contumely directly injures honor, or the external attestation of such estimation, whether it is done by words or deeds. Second, contumely differs from detraction in this, that detraction is done secretly and in another's absence; but contumely is done openly and in another's presence, through contempt of him, whether someone is present in himself or in another, for example, in his legate or statue; for contumely is said from contemning. L. 966.

Contumely is done in three ways, namely by word, writing, and deed. Under contumely which is done by word are comprehended reviling, reproach, opprobrium, and cursing. Under contumely which is done by writing from the intention of defaming another is comprehended a defamatory libel. And finally, under contumely which is done by deed are comprehended mockery, derision, and jeering. "Meanwhile these species of contumely in the theological forum are only material; for formally they all pertain to the unjust injury of another's honor." Struggl 23. Yet according to St. Thomas, II-II, q. 75, a. 1, "derision is a special sin." For "just as someone by reviling intends to depress the honor of the one reviled, so also by ridiculing someone intends that the one ridiculed blush. One who disturbs someone's conscience by confounding him inflicts on him some special harm."

Injury of due honor is not only against charity, but also against justice; for individuals have a right to a certain honor, and not to be held in contempt. But any injury of honor, if only this is considered and not other extrinsic effects, is of the same lowest species. Lugo, De Poenit., d. 16, n. 265; St. Thomas, II-II, q. 72, a. 1; q. 73, a. 1; q. 75; q. 103, a. 1, 2; Struggl 23-27; Ithur. Cas. 30, n. 5.

1515. **What are reviling, reproach, opprobrium, mockery, jeering, derision, and imprecation?** "Reviling, as though called combined shouting, properly signifies the voices of several struck together among themselves, or a disorderly shout; and because insults are often thrown in with contention, therefore in rigor it should be used for contumely done by several. Yet usage brings it about that reviling is confused with contumely, so that it is an injury by which some crime, or even an evil of punishment or nature, is cast in the face of someone present. Reproach is an injury by which someone casts upon another a benefit previously conferred on

him, reproaching his ungrateful mind toward the benefactor. Opprobrium in law is the same as disgrace, l. Probrum ff. de Verbor. signific.; it is, as it were, an objected disgrace. Hence since disgrace signifies dishonor or infamy from delict, opprobrium is an injury by which someone casts upon another the dishonor with which he is affected because of crime.

"Mockery and derision have the same force and are derived from deriding and ridiculing, which signify laughing with contempt of another. And according to St. Thomas, II-II, q. 65, it happens when someone turns another's evil or defect into play and laughter so that the other blushes. If laughter or loud laughter is added to words, it is properly called derision; it should be called jeering if movement of the nose, head, or another member of the body is added, indicating another's vice so that he is covered with shame; but if other deeds are added to words for this same end, derision will be called mockery. It will be called irony if you then especially blame another when through derision you praise him. To these add imprecation, that vice by which someone wishes upon another some evil of fault, punishment, or nature." Ithur. Cas. 30, n. 5.

Cursing done to an absent person is repugnant only to charity; but when done to a present person it often is repugnant also to justice, namely when it injures the honor owed to another and takes on the character of contumely. Struggl, tr. 4, q. 5, n. 13; Lugo d. 14, n. 193; St. Thomas, II-II, q. 72, a. 1; q. 75, 76.

1516. **Is contumely a grave sin?** Contumely is a mortal sin of its genus. For it is something graver than detraction, which of itself is grave. It is clear besides from the words of Scripture, Matt. 5:22: Whoever shall say to his brother, Raca, shall be liable to the council; but whoever shall say, You fool, shall be liable to the hell of fire.

"Of its genus"; for it will be venial both from imperfection of the act, and "if it is a slight reviling, not greatly dishonoring a person, and is uttered from some levity of mind, or from slight anger, without a firm purpose of dishonoring someone." St. Thomas, II-II, q. 72, a. 2; L. 966; E. M.

1517. **Does an obligation of restitution arise from contumely?** Contumely of itself induces a strict obligation of restoring honor and repairing damages, if any have followed, at least if they were foreseen in a confused way, as is clear from what was said about restitution of reputation. Cf. 1506ff.; L. 966; St. Thomas, II-II, q. 62, a. 2, ad 3; C. A. 1330.

1518. **You will resolve:** 1. Honor publicly taken away by contumely must be restored publicly before those who were witnesses of the dishonoring, or at least in such a way that the satisfaction can come to their knowledge. It is enough, however, that satisfaction be made through another person who asks pardon in the name of the one dishonoring. L. 984.

1519. That restitution of honor is required which is judged sufficient to manifest estimation according to the condition of the offended person. For if the one who dishonored was a superior, it will regularly suffice if he greets the dishonored person, visits him at home, or shows benevolence toward him. But if he was an equal, or a fortiori an inferior, greater satisfaction is required, namely that he anticipate in greeting, yield place, ask pardon, etc., if he cannot satisfy sufficiently in another way. L. 986; Lugo d. 15, n. 57.

1520. If the dishonored person took vengeance, for example by striking or wounding the other, further satisfaction for honor is usually not required, because he seems to accept the vengeance for satisfaction, while the other by not resisting seems to confess his fault and his estimation of the other. L. 989. Likewise peasants are exempted from restitution of honor if equal revilings or reproaches were mutually cast among them, because by that very fact compensation occurs.

1521. In practice it is many times expedient that the confessor omit warning a penitent existing in good faith about the obligation of satisfaction, especially if he foresees that the warning will not be useful; or if he thinks that the one who was dishonored will easily condone it, or will refuse reparation, especially public reparation, lest the memory of the injury return among others, or lest he himself be more affected by shame, etc. L. 988.

1522. **If the offender is publicly punished by a judge, is he still held in conscience to exhibit satisfaction for the injury inflicted?** Lugo with the common opinion most probably denies. The reason is that the penalty itself inflicted for the honor taken away from you seems sufficiently to repair your honor. Thus also, if the offender, compelled by the judge, has furnished due satisfaction to you; for then, although compelled, he has now truly exhibited an attestation of estimation for your dignity. L. 990.

1523. **When contumely was hidden, is satisfaction owed?** Molina and Laymann deny. But it must altogether be affirmed with the common and true opinion, which Lessius, the Salmanticenses, etc., hold, because in every contumely, even hidden, beyond injury there is damage of unjustly injured honor, since each person has a right that due honor be preserved for him. L. 985.

1524. **Whether and when is contumely lawful?** Contumely is lawful in the following cases: 1. if for the sake of joke, through suitable recreation, slight defects are objected, it is urbanity, according to St. Thomas, provided the other is not saddened or moved to anger; 2. if it is done with the intention of correcting, humbling, or for another reason; thus Christ called the apostles foolish, and the Apostle called the Galatians senseless. Thus St. Thomas, II-II, q. 72, a. 2, ad 2, who says "that just as it is lawful to beat someone for the sake of discipline, so also someone can say some reviling word to another whom he ought to correct." L. 966.

1525. **How should one affected by contumely conduct himself?** "We are all held to tolerate contumelies by casting away the spirit of vengeance. Yet sometimes it will be expedient to repel contumelies, namely when tolerance is foreseen to be ascribed to inability to resist, or to stupidity; or if it could harm the common good, as if a prelate by tolerating would be rendered contemptible, and thus the insolence of subjects would be increased." L. 966; St. Thomas, II-II, q. 72, a. 3.

IV. On Lying

1523. **What is a lie and how many kinds are there?** A lie is a false word with the intention of saying what is false. Therefore jokes are excluded from lying when they are uttered or acted in such a way that from the very mode of uttering or acting it is sufficiently understood that what is externally stated is false, even though the hearer from his excessive simplicity and dullness takes the joke seriously and is deceived rather by himself than by the one joking. Likewise

tropic and figurative locutions, ironies, fables, and parables are excluded from lying, because they contain the true sense which the speaker intends to express, although sometimes he notices that it is not immediately grasped by the hearer, but that another false sense is conceived, which the speaker does not intend, but only permits. St. Thomas, II-II, q. 100, a. 1.

A lie is threefold, namely jocose, officious, and pernicious. A jocose lie is one which neither profits nor harms, but is uttered in order to delight. Meanwhile, however, for a joke to be a lie, it is required that a false thing be uttered with the mind of deceiving the hearer for the sake of a joke, and of inserting into him a false opinion. An officious lie is one which is done without another's injury, so that it may profit a third party. Finally, a pernicious lie is one which is done with another's injury and harm, even if it profits some third party. St. Thomas, II-II, q. 110, a. 2.

No one regularly lies by silence and dissimulation, by not speaking, by not acting, St. Thomas, II-II, q. 111, a. 1, ad 4, because one who is silent and does not act neither affirms nor denies. "Regularly"; for sometimes not speaking and not acting is not without deceit and fraud. Lugo d. 23, n. 82.

1524. **What is mental restriction and how many kinds are there?** Mental restriction is an act of the mind turning or restricting the words of some proposition to another sense than the natural and obvious one.

Mental restriction is: 1. purely or strictly mental, if the sense of the speaker can in no way be perceived, and this is properly called mental; 2. broadly or improperly mental, if the sense of the proposition can be gathered from the circumstances. Equivocations or amphibologies are reduced to mental restriction; these are locutions having from themselves a double principal sense, but one more and the other less obvious.

1525. **What is simulation?** A lie not in words but in deeds is called simulation. To simulation, or to lying, belong hypocrisy, boasting, and irony. All are opposed to the virtue of truth, which is a special virtue through which a person duly orders his externals, whether words or deeds, to something as sign to thing signified. St. Thomas, II-II, q. 109, a. 2; q. 110, a. 2; q. 111, a. 1; q. 113, a. 1; Quodl. 6, a. 17; Quodl. 8, a. 14.

1526. **Is lying illicit?** Lying is intrinsically evil. Proof: because a lie formally imports the intention of stating what is false, against the institution of words; and therefore it is intrinsically evil. Besides, lying is immediately opposed to the virtue of created truthfulness, and mediately to the virtue of divine truthfulness; and therefore it is intrinsically evil and lawful in no case. Hence Innocent III, C. Super eos de Usuris, says: "Not even for protecting life is it lawful for us to lie." Cf. Eph. 4:24; Col. 3:9; St. Thomas, II-II, q. 110, a. 1, 3; Quodl. 8, a. 14.

1527. **What kind of sin is lying?** A jocose and officious lie is a sin of its genus venial, but a pernicious lie is of its genus mortal. Proof: because a jocose and officious lie is not opposed to charity or justice, but a pernicious one is; and therefore the two former are not sins of their genus mortal, but the third is. Moreover, a pernicious lie in the individual case often becomes a venial sin not only from imperfection of the act, but also from smallness of matter, or of the harm inflicted on the neighbor through the lie.

1528. **Is purely mental restriction lawful?** It is never lawful to use purely or properly mental restriction, nor an amphibology imperceptible in a human way; a fortiori it is not lawful to swear with these, because it is simply a lie. This is also clear from propositions 26, 27, and 28 condemned by Innocent XI. L. 152; E. M.

1529. **Are amphibologies lies?** Amphibologies, or equivocations and restrictions not purely mental, are not lies. Proof: because amphibologies and restrictions not purely mental, unless they are done from the positive intention of deceiving another, are not against the mind of the speaker and the virtue of truthfulness. Therefore. Besides, by the very fact that the restriction is not purely mental and can prudently be gathered from some circumstance of thing, place, time, or the person speaking, the deception of another follows per accidens. Therefore.

1530. **Is broad mental restriction lawful?** It is sometimes lawful for a just cause to use broad, that is, improper, mental restriction, and equivocal words, when the sense intended by the speaker can be understood. The reason is that this is not evil in itself, since the neighbor is not properly deceived, but from a just cause his deception is only permitted; besides, for the good of society it is required that there be a licit means of concealing a secret; and sometimes no other means is available except equivocation or broad or improper mental restriction. Struggl, tr. 5, q. 3, n. 17; Ithur. Cas. 37, n. 11ff.

1531. **Note:** It is lawful to use a broad restriction of this kind even with an oath, although a greater cause is then required, since divine testimony must not be employed without judgment. L. 151.

1532. **When are amphibologies illicit?** Amphibologies, or equivocations and restrictions, even not purely mental, are not lawful: 1. if they are done without an honest and proportionate cause; 2. if damage to the neighbor would emerge from them against the order prescribed by charity; 3. when mutual contracts are celebrated; 4. if the one questioning has the right of inquiring or of commanding confession of the truth. Proof: the first reason is that if, without any honest cause and always, it were lawful to speak amphibologically, equivocally, and with restriction even not purely mental, all sincerity and human faith would perish; but people are held by natural law to preserve human faith. The second and third reason is that this is required by charity and justice. The fourth reason is that to that right corresponds the obligation of confessing the truth without ambiguity.

1533. **You will resolve:** 1. All public persons questioned about things committed to their trust can use restriction of this kind, such as secretaries, legates of princes, leaders of armies, magistrates, advocates, physicians, surgeons, midwives, and anyone who has an office and reason for hiding some truth. For if secrets committed to these persons were violated, very grave inconveniences would follow in society.

1534. A servant, by command of his master, can deny that he is at home, although he is present, because such a locution is generally received by usage to signify that he is not at home insofar as he can be seen or visited. Attend, however, to the custom of places. L. 165.

1535. **Is simulation lawful?** "Formal simulation, namely when someone intends through an external deed to signify something other than what he has in mind, is never lawful, because it is a true lie of deed. But material simulation, that is, when someone does something, not intending the

deception of another but some end of his own, is lawful with just cause, whenever from the circumstances others can conjecture that it is done for another end, as was said about restriction not purely mental. Thus Christ the Lord, in Luke 24, at Emmaus feigned that he would go farther, not intending that the disciples believe this, but wishing to signify that he really would have gone farther unless he were invited by them." L. 171; St. Thomas, II-II, q. 111, a. 1.

1536. **Does a superior have in every case the right of knowing the truth, so that the one questioned cannot licitly use broad mental restriction?** Response: negatively, as is clear from the following exceptions.

For: 1. A confessor questioned by a tyrant whether Titius confessed homicide can and must respond: "I do not know," because the confessor does not know this with communicable knowledge. Indeed even if the tyrant insisted and said, "Do you not know this with communicable knowledge?" he could still respond: "I do not know." The reason is that the tyrant well knows that he has no right of questioning about this, nor does the confessor understand that he knows it as a man, but as vicar of God, and therefore by incommunicable knowledge.

2. A penitent questioned by a confessor about a sin confessed can swear that he did not commit it, understanding "that which he has not confessed." Thus Cardinal de Lugo, the Salmanticenses, Sanchez, etc. Yet this must be understood unless the confessor justly questions in order to know the state of the penitent, from proposition 58 condemned by Innocent XI. L. 157. "But if the penitent has not sinned mortally since the last confession, the confessor sufficiently knows his state, and then has no right of questioning about past life." Gury, Cas. v. 2, n. 442.

3. "The opinion of Cardinal de Lugo, De Iust., d. 40, n. 15, Tamburini, Cardenas, Sporer, Mezger, Babenstuber, Elbel, and several others is sufficiently probable; they admit that a defendant, with only half-full proof standing, and when there is hope of escaping death, can use amphibology and deny the crime even with an oath, understanding: in such a way that I am held to confess, as long as hope of escaping death appears. The reason for this is that the precept of obeying a legitimate judge cannot oblige the defendant so that he acts against himself and by his own confession completes the half-full proof of his capital crime, when otherwise it cannot be sufficiently proved. Nor is the aforesaid restriction in such a circumstance of the cause purely mental, because it can prudently be gathered by a shrewd judge and assessors. Hence a confessor can safely follow this opinion, at least so that he does not deny absolution to a defendant wishing to follow it, as the cited doctors note." Struggl, De 8 Praec. 46 and De Virt. Relig., q. 3, n. 22; L. 154; l. 4, n. 57.

4. A witness can swear that he does not know a crime which he truly knows, understanding that he does not know a crime about which inquiry can legitimately be made, namely if it is clear to him that the crime lacked fault, as the Salmanticenses and Elbel say; or if he knows the crime, but under secrecy, with no prior infamy, as Cardinal de Lugo says; or if the crime is altogether hidden. Struggl, De Virt. Relig., l. c. 21, 22.

V. On Violation of a Secret

1536. **What is a secret and how many kinds are there?** In general, secret is said of whatever is hidden. St. Thomas, Quodl. 12, a. 21. As regards the present question, a secret is some hidden matter revealed to someone, or known in any way, with the burden of silence.

A threefold secret is distinguished: natural, promised, and entrusted. A natural secret exists if you know something by chance which you cannot reveal without another's just sorrow or damage. L. 970. It is promised if by a gratuitous promise you promise another that you will reveal to no one a matter which you already knew or of which you receive knowledge; or if, by a burdensome promise of revealing the matter to no one, another manifests it to you under this condition. Finally, it is entrusted when you reveal a matter to another for the sake of counsel or help, under this express or tacit condition of revealing it to no one. L. ibid.

1537. **How does a natural secret oblige?** A natural secret in a grave matter obliges of itself under grave obligation, and indeed from justice, unless a just cause excuses. The reason is that from revelation of the secret there follows of itself damage to the neighbor, who has the right not to be injured without reasonable cause. L. 970.

1538. **How does a promised secret oblige?** A promised secret obliges of itself gravely or lightly according as by the promise one wished to oblige himself gravely and from justice in grave matter, or lightly and from mere fidelity, which of its genus is light. The reason is to be repeated from what was said about promise, n. 987. Ithur. Cas. 37, n. 2, 5, 6; L. 970.

1539. **How does an entrusted secret oblige?** An entrusted secret obliges of itself under grave obligation from justice, and indeed more strictly than a merely natural secret, and also than a promised secret. The reason is that, besides the natural obligation, there also presses an obligation from a contract, not indeed gratuitous as in a simply promised secret, but onerous; for another would not entrust to you knowledge of the matter unless he received from you a promise of secrecy. Ithur. l. c. Civil law also forbids magistrates to question about those things which by reason of the office someone performs, for example of pastor, advocate, etc., have been entrusted to him. C. I. Proc. poen. 288.

1540. **Note:** There are several grave theologians who probably defend that it is not mortal to reveal a grave matter entrusted under secrecy, under the same secrecy, to one or another upright person, provided it is not disclosed to the person from whom the one who entrusted the secret specially wished it to be hidden; since in these circumstances the matter can still be called secret. Yet this is not so easily to be permitted in practice. For so great is human talkativeness that a secret can scarcely stand in one person.

1541. **Does an obligation of restitution arise from violation of a secret?** One who by revealing another's secret has sinned mortally is held from justice and under grave obligation to repair another's grave damage. The reason is that it is unjust damage-causing. Cf. 1358.

1542. **Is it ever lawful to investigate and reveal a secret?** It is lawful to investigate and reveal a natural, promised, and entrusted secret: 1. from the rightly presumed consent of him whose interest it is that the secret be hidden; for then there is no injury of anyone's right. 2. If the

matter has already been divulged from elsewhere; for then it ceases to be secret. 3. If damage to the republic is going to follow from the secret. The reason is that private good must yield to common good, and therefore there can be no obligation of procuring a private good against common damage. And for the same reason, if common damage would follow from revealing a secret, one is held rather to undergo death and any torments whatever than to reveal the secret. 4. If from observing the secret grave damage would come to you, or to him to whom the secret pertains, or to another innocent person. The reason is that naturally no obligation can be given against the order of charity; nor is someone presumed by his promise and contract to have obliged himself to such a burden that he would preserve the secret even with his own grave damage, unless this certainly appears from the circumstances.

But if it concerns an entrusted secret and the damage of another person, an entrusted secret does not cease for the private damage of anyone, even most grave, unless the damage threatens from him to whom the secret was promised, as if a girl tries to procure abortion and kill the fetus. The reason for the assertion is that it is still more in the interest of the public good that this secret be preserved than that the private damage of another, even most grave, be impeded. But the reason for the exception is that otherwise you would scarcely find anyone who would wish to give counsel or help in difficulties of this kind, which likewise would be pernicious to the public good. "Except," says La-Croix, l. 3, p. 2, n. 1231, "unless the one who entrusted the secret were unjustly vexing the republic or another innocent person, and would not otherwise wish to desist from the injury; for then you could reveal it, even if you had obliged yourself rather to sustain death, because this bond of obligation would be unjust." L. 570, 971; l. 4, n. 49; l. 6, n. 698; St. Thomas, II-II, q. 70, a. 1, ad 1, 2; Laymann, l. 3, tr. 3, p. 2, c. 5, n. 2; Lugo, De Iust. et Iur., d. 14, n. 142; d. 38, n. 37ff.; Ithur. l. c., n. 8-10, 11, 28, 29, 30-34, 37, 38; Appendix n. 4, 19, 22, 23.

1543. **Is one held to manifest a secret to a judge legitimately questioning?** Response: affirmatively, if it concerns a merely natural secret, because the obligation of obedience to be furnished to a judge legitimately questioning on account of the common good is stronger than that of impeding damage to a private person by observing the secret; and in any case, since that damage is legitimately inflicted by the judge, there will be no injury of another's right.

Affirmatively, if it concerns a promised secret, "because by the promise you obliged yourself only to that which you could lawfully furnish. But you could not promise against obedience owed to a judge or superior; because when you knew the crime, you had already contracted the natural obligation of manifesting it if the judge or superior required it. Therefore the subsequent promise of secrecy could not destroy the prior obligation." Gury, Cas. 437.

Negatively of itself, if it concerns an entrusted secret, whether from necessity or from pact. For a twofold entrusted secret must be distinguished: simply entrusted by a mere intervening pact, and entrusted from necessity of counsel, help, etc. The first reason is that the common good itself demands that, through fear of such revelation, people not be deprived of the convenience of seeking necessary counsel or help, which they certainly would never seek unless they were certain that the secret would be preserved. Therefore the common good itself demands that, as long as the entruster can lawfully preserve his secret, he retain the right that the other not betray it. Hence one can respond to the judge questioning: "I do not know," understanding, "in such a way that I ought to

manifest it," even if, with oath interposed, he is compelled to give testimony. Sacred Penitentiary, Aug. 21, 1830.

The second reason is that, as St. Thomas says, II-II, q. 70, a. 1, ad 2, "to keep faith is of natural law; but nothing can be commanded to man against that which is of natural law." Indeed, when an onerous contract intervenes, it is altogether of natural law to keep faith given. L. 970; Ithur. l. c., n. 13, 25; Appendix n. 10, 11, 12; Lugo d. 14, n. 135, 141.

1544. **Can you reveal a secret if you promised to preserve it even with loss of life?** Response: affirmatively, if the common good requires it, because a promise made against the common good is null.

Negatively, if it concerns your own simply grave damage, because it is better to preserve the secret promised by this special contract.

Negatively also, more probably, if it concerns your extreme damage, because you expressly renounced your right, and it is not illicit to omit preservation of life in order to keep a promise. But it is altogether necessary that the business to be kept secret be of very grave moment. Otherwise the promise would be prodigal, which we are not held to keep. L. 971. Yet St. Liguori deservedly says that the opposite is sufficiently probable. Ithur. l. c., n. 30.

1545. **Does one sin gravely by opening or reading another's letters?** Response: affirmatively, of itself, or of its genus. The reason is that by natural law and the law of nations there is an obligation to leave the secrets of letters unharmed; otherwise human commerce would be ruined.

Exception is made for the following cases: 1. if the tacit or presumed consent of the one who writes, or of the one to whom the letters are sent, is present; 2. if it is known or presumed that the letters contain things of slight moment; 3. if it is done from a just cause, for example to avert public or private damage, provided that, in order to repel that evil, one has the right of opening the letters, and does not read more than is necessary for this end; 4. if the letters are opened from levity or from some inadvertence. L. 1, 5, n. 70; H. A. 5.

1546. **Note:** Until a letter is handed over to him to whom it was sent, it still belongs to the sender, who can recall it to himself.

1547. **You will resolve:** 1. It is not lawful, justice being preserved, to collect letters torn into little pieces, join the various parts together, and read them. For someone tore the letter in this way precisely so that it could not be read. L. 1, 5, n. 70.

1548. "Thus a prince can open letters not only of enemies, but also of others, which in time of war come from places bordering on enemies. Likewise public ministers, as often as they judge it necessary for the public good. And this proceeds not only for the prince and ministers, but also for private persons. A religious superior lawfully opens and reads the letters of his subjects, provided they are not sent to a higher superior, or to one whom the statutes exempt, nor come from him, either by statute or custom of the religious institute, or from probable suspicion

that they contain something evil." L. 1, 5, n. 70. Cf. Struggl 56 III; Ithur. l. c., n. 26ff.; Ferraris, v. Litterae, n. 9, 10.

On the First and Second Precepts of the Church

1548. **What are the precepts of the Church, and what about tithes?** There are indeed very many precepts of the Church which concern particular states of persons. But the precepts of the Church which regard all states of persons are commonly counted as six. We shall speak about the former in the treatise on particular states; about the latter one must speak here. Struggl, beginning.

Here, however, we omit the precept about paying tithes, since in very many places they have been extinguished by an agreement entered into with the Church, or by legitimate prescription. But where neither the aforesaid agreement nor legitimate prescription has existed, they are still owed and must be paid to the pastor.

Praedial tithes, which are received from lands, are owed to the pastor in whose territory the estates are situated. Personal tithes, which are received from things which someone acquires by his own industry, are owed to the pastor from whom the sacraments are received.

Tithes are owed both from religion, as a sign of the universal dominion of God, whence not to pay them is a graver sin of irreligiosity; and from justice, because those who serve the altar ought to live from the altar. Hence under obligation of restitution, "tithes are required as a debt, and those who have refused to give them invade another's things." St. Thomas, II-II, q. 87; L. 1, 3, n. 42; H. A. tr. 20, n. 85; tit. De Decim.; Trent, sess. 25, c. 12 de Ref.; E. M.

1549. **What is the first and second precept of the Church?** The first is that the faithful observe feasts instituted by the authority of the Church, C. 1ff., De Consecr., d. 3; tit. De Feriis. The second is that the faithful be present at Mass at least on Sundays and feast days, C. Missas, De Consecr., d. 1. Hence these two precepts are intimately connected with each other. Struggl, l. c.

1550. **What is the power of the Church to institute feast days?** The Church enjoys the power of instituting feasts and of commanding their sanctification under grave obligation for all the faithful, since she received from Christ every power in order to the spiritual good of the faithful.

Only the Pope can proclaim feasts for the universal Church, because he alone enjoys jurisdiction over the universal Church.

Bishops also can institute feast days in their own dioceses; for they have the faculty of making laws in their own diocese. Yet from C. Conquestus ult., De Feriis, bishops are forbidden to establish new feasts without consulting the clergy and faithful. But whether at present it is still lawful for bishops to institute new feasts: the first opinion affirms, provided they are instituted in honor of Saints, not Blesseds, and the counsel of some clerics is used; yet they are warned to endeavor to abstain. Urban VIII, Const. Universa, Sept. 13, 1642; Bonacina, tom. 2, d. 6, q. un., p. 1, n. 3ff. The second opinion

denies, from the response of the Sacred Congregation of Rites, June 23, 1703. Bouix, De Iur. Liturg., p. 4, c. 4; E. M.

1551. **What feast days are to be observed?** Many feasts were formerly instituted which in the course of time fell into disuse or were abolished by ecclesiastical authority itself. Urban VIII, Const. Universa, suppressed many feasts and established a new list of feast days for the universal Church. To this catalogue must be added the feast of the Immaculate Conception of the Blessed Virgin Mary, Clement XI, Const. Commissi nobis, Dec. 6, 1708.

Of these, certain less solemn ones, such as feasts of the Apostles, were later diminished, namely with the prohibition of servile works removed; and these afterward were entirely abrogated in some places. But some even of the more solemn feasts in some places were transferred to Sunday. Yet both as regards the abrogated and as regards the transferred, nothing at all was innovated as regards the office and Mass, ecclesiastical functions and choir, all of which therefore must be observed as before the abrogation or transfer. S. R. C., Oct. 18, 1818; May 23, 1835. Understand perpetual transfer; for if transfer is sometimes made because of some impediment, for example of the feast of St. Joseph or the Annunciation of the Blessed Virgin Mary, only the office is transferred, not the observance of the feast. Likewise nothing was changed as regards the obligation imposed on pastors of celebrating Mass for the people, and therefore one must still stand by the catalogue of Urban VIII. Pius IX, Const. Amantissimi, May 3, 1858; L. 267.

Pius VI, on account of the calamity of the times, condoned for the Roman faithful the obligation of celebrating certain feasts. These are the following: namely feasts of the Holy Apostles except the solemnity of Saints Peter and Paul; the two weekdays which follow Easter and Pentecost; the Finding of the Holy Cross; feasts of St. Anne, St. Lawrence, St. Stephen, the Holy Innocents, St. Sylvester, the Nativity of St. John the Baptist, St. Michael, and St. Joseph; the last three of these, however, were afterward restored.

In France after the indult of Cardinal Caprara, Apr. 9, 1802, by concession of the Supreme Pontiff Pius VII, only four feasts besides Sundays remain of precept for the faithful, namely: 1. the feast of the Nativity of the Lord; 2. of his Ascension; 3. of the Assumption of the Blessed Virgin Mary; 4. the feast of All Saints. By the same indult, the feasts of the Epiphany of the Lord, of the Most Holy Body of Christ, of the Holy Apostles Peter and Paul, and of the Holy Patrons of each diocese and parish are to be transferred to the nearest occurring Sunday. The remaining feasts, formerly precepted, are now celebrated on the same days as before, but without any obligation for the faithful.

In the United States of America, by concession of Leo XIII, Nov. 25, 1885, only six feast days are to be observed: 1. of the Immaculate Conception of the Blessed Virgin Mary; 2. of the Nativity of Our Lord Jesus Christ; 3. of the Circumcision of Our Lord Jesus Christ; 4. of the Ascension of Our Lord Jesus Christ; 5. of the Assumption of the Blessed Virgin Mary; 6. of All Saints. The solemnity of the feast of the Most Holy Body of Christ and of the Holy Apostles Peter and Paul is transferred to the nearest following Sunday.

For Spain, Pius IX conceded by decree of May 2, 1867: 1. that the precept of hearing Mass be derogated on feast days of the second order, commonly called Mass days; 2. that the same precept be derogated, and besides the precept of abstaining from servile works, on Monday after Easter and after Pentecost, on the day immediately following the feast of the Nativity of Our Lord Jesus Christ, and

on the day of the Nativity of the Blessed Virgin Mary and St. John the Baptist; 3. that in individual dioceses only one principal Patron be venerated, who must be designated by the Holy See. Therefore besides Sundays, the feasts still in force are the Nativity of Our Lord Jesus Christ, Circumcision, Epiphany; Immaculate Conception, Purification, Annunciation, Assumption of the Blessed Virgin Mary; Ascension of Our Lord Jesus Christ, Body of Christ; Saints Peter and Paul, St. James the Greater; the feast of All Saints, and of the principal Patron of each diocese. But by decree of Dec. 12, 1867, the feast day of the Nativity of the Blessed Virgin Mary was restored.

Finally, in Spain and in regions subject to it, as also in several regions of Italy, the feast of St. Joseph must again be observed as of precept. A. S. S. v. 24, p. 192.

To the feasts which the Church celebrates, it is lawful besides to add the feast of the Patron, not Titular, or of one of the principal Patrons: 1. of the kingdom or diocese; and 2. of the place, where they happen to be had or venerated. Urban VIII, Const. Universa; Pius VI, Bull Ex quo divina, June 7, 1780. And where each feast has been introduced, each must be observed. S. R. C., Mar. 25, 1817. But it is not lawful to choose Patrons except with the consent of the people, clergy, and bishop; and they must be Saints, not Blesseds, with the cause of election known and approved by S. R. C. Thus the same S. R. C., Mar. 23, 1630. Ferraris, v. Festa, n. 2ff.; L. 266; E. M.

On the Third and Fourth Precepts of the Church

1552. **What is the third and fourth precept of the Church?** The third precept of the Church is that the faithful confess their sins at least once in each year to their own priest, namely to the Pope, bishop, pastor, or any priest approved by the bishop. Innocent III in Lateran Council IV, a. 1218, can. 21, Omnis utriusque sexus; Benedict XIV, De Syn., l. 11, c. 14, n. 2-6.

The fourth precept is that the faithful, each year, at least in Easter time, approach the Most Holy sacrament of the Eucharist. Innocent III, l. c.; Trent, sess. 13, c. 9; E. M.

1553. **When are children judged to have attained years of discretion, so that they are bound by the precept of annual confession?** When they are capable of mortal sin; this is not to be judged from age alone, but especially from the degree of intelligence or discernment of good and evil. But the spirit of discretion is judged to be present in those who now apprehend that lying or disobedience is evil, or who blush about certain impure actions, etc. Hence pastors of souls are held gradually to prepare little children, even seven-year-olds, for confession, and to absolve those in whom they notice mortal sin, even doubtful, at least within the year, by force of the Lateran Council. In doubt about discretion, let them be absolved conditionally. Therefore confessors gravely err and cannot be excused who never wish to absolve children committed to them before the age of first communion. L. 1, 3, n. 270; l. 6, n. 432-666.

1554. **Is one who is not burdened with mortal sins held to confess by reason of the precept of annual confession?** Response: negatively. The reason is that the Church, in prescribing annual confession, determines the precept of confession imposed by Christ. But Christ imposed no other precept of confession than of mortal sins, as is clear from Trent, sess. 14, c. 1, 5; can. 1,

2, 6, 7. Therefore. Cardinal de Lugo calls this opinion common and truer, Resp. Mor., l. 1, d. 15, n. 2; L. 1, 6, n. 663, 667; Schmalz., De Poenit. et Rem., n. 16.

1555. **Note:** "These things notwithstanding, there are certain regular, or even synodal, statutes by which religious, and in certain dioceses clerics, are obliged to receive the sacrament of penance more often within the year, even if they are conscious only of venial sins. Meanwhile, however, similar statutes ordinarily, and speaking of themselves, do not oblige under grave sin." Struggl 18.

1556. **You will resolve:** "If someone within the year and at the beginning of Easter time confessed only venial sins, and then within Easter time fell into mortal sin, he would be held to confess it, because he had not yet satisfied the precept of the Church, which obliges only to confessing mortal sins. Meanwhile it is also probable that he is not held to confess before the year from the committed sin has elapsed." Struggl 12. Cf. St. Thomas, IV, d. 17, q. 3, a. 1; d. 16, q. 2, a. 2; Suppl., q. 6, a. 3; q. 8, a. 5, ad 4; Benedict XIV, Inst. 18, n. 2, 3.

1557. **Is this precept annexed to Easter time?** This precept is not per se, but only per accidens, annexed to Easter time. The reason is that the Church nowhere prescribed annual confession determinately for Easter time, as it did Easter Communion. It is not per se, but only per accidens annexed, etc.; for one having mortal sin is obliged to confession at Easter time per accidens, and by reason of Communion to be received at Easter time, because for receiving this worthily in a sinner, contrition does not suffice, but sacramental confession is required. Trent, sess. 13, c. 17, can. 11; Struggl 10.

1558. **From what time is the year of confession to be computed?** It can probably be computed from the first day of January to the last of December, or from the last confession, or from one Easter time to another Easter time. Struggl 11; L. 662. "Lugo with the common opinion says that there is no obligation of confessing because of the mere danger of forgetting sins." L. 665, 671.

1559. **Is the precept of the Church satisfied through invalid confession?** Response: negatively, whether the confession is voluntarily or involuntarily invalid. The first part is openly clear from proposition 14 condemned by Alexander VII. The second part is clear from the fact that the Church prescribes confession through which the sinner is reconciled with God. Hence if a priest had absolved a penitent invalidly from defect of due intention or jurisdiction, and the penitent learned this, he would have to confess again, if he knew himself to be guilty of mortal sin. Struggl 13. Likewise one who communicates sacrilegiously by no means satisfies the precept of Communion. E. M.

1560. **Is annual confession which is not made to the pastor, or to another with the pastor's permission, sufficient for satisfying the Church's precept about annual confession to be made to one's own priest?** Response: affirmatively. The reason is that one who confesses to a priest having jurisdiction and approved already confesses to him with the license of his own pastor, namely either of the Supreme Pontiff or of the bishop, who deputed him to hear the confessions of all who come together to him. Lugo, Resp. Mor., l. 1, d. 15, n. 2.

1561. **Is one who has not confessed for a whole year held to confess as soon as possible?** Response: affirmatively. Because the precept imposed by the determination of the Church

presses; for the term of the year was not added by the Church to end the obligation, but only to urge it. L. 1, 6, n. 668. But cf. 1568.

1562. **What is the nature of the precept of Easter Communion?** The precept of Easter Communion, no differently from the precept of annual confession, is divine as regards substance, but ecclesiastical as regards determination of time.

Communion is prescribed in one's own parish, as is clear from the general practice of the Church and various Constitutions of the Supreme Pontiffs. Benedict XIV, Const. Cum magno, a. 1751. Each is grave: not to communicate in one's own parish, and not during Easter time, even if only one or another day after Easter time has elapsed. There is no precept of the Church of receiving Communion determinately on Easter day, or on the Lord's Supper, even for clerics. But priests by celebrating anywhere satisfy this precept; otherwise they are held to communicate in the parish, as other laypersons. L. 300; Lugo d. 17, n. 31; E. M.

1563. **What is Easter time, and who can grant extension?** Easter time by common law begins from Palm Sunday and ends on Low Sunday. But it can be prolonged by dispensation of the bishop or pastor. Thus judged S. C. C., Nov. 19, 1616; Ferraris, v. Eucharistia 1, 10. But pastors can do this only in singular cases. L. 1, 6, n. 294, 296.

Since the confessor is judge not only of the disposition required for Communion, but also of the greater opportunity for receiving the Most Holy Sacrament, he can permit or impose some delay if he judges the greater good of the penitent to require it, at least if the penitent is not unwilling. L. 1, 6, n. 297, third part at the end. For this is expressly provided in C. Omnis de Poenit. et Remiss. Yet the penitent would indeed sin if the confessor had to defer Easter Communion for him because of defect of due disposition for receiving sacred absolution. For one who is held to the end is also held to the means. But due disposition for absolution is an altogether necessary means for receiving the sacred Eucharist at the prescribed time. Therefore.

1564. **Who can dispense from Communion in the parish?** The bishop, vicar general, and the pastor himself can dispense from the precept of communicating in one's own parish. Interpretative or presumed consent suffices, provided there is moral certainty about their will. Thus St. Alphonsus, l. c., n. 300; Gousset 224, 226.

1565. **Can all who are of the diocese fulfill the precept in the cathedral by communicating there?** Tamburini responds "that they can, because the bishop resides there, who is the common head and pastor of the whole diocese. Thus Diana. Thus also Bonacina." De 3 Eccles. pr., c. 4, n. 4. And about this same matter, "there are many of the ancients," says Cardinal de Lugo, Resp. Mor., l. 1, d. 15, "who recognize in the archpriest of the cathedral church the power of administering the sacraments to all subjects of that diocese, and therefore seem to suppose that the cathedral church is common to the whole diocese; Thomas Sanchez reports and gathers them, l. 3, De Matrim., d. 27, n. 1. Therefore one who receives Communion in the cathedral church seems to receive it in the common parish of the whole diocese. Hence just as, if he received it from the hand of the bishop, he would undoubtedly satisfy the precept of the Church, since the bishop is pastor of the whole diocese, so if he receives it in the episcopal church, he seems to satisfy the same precept," n. 3.

"Yet I," Cardinal de Lugo continues, "believed more that in rigor it is not satisfied except in the proper parish of each one, or unless the bishop expressly or tacitly consents," n. 4. St. Alphonsus, l. 6, n. 300, adheres to this opinion of Lugo, and says about the opposite opinion: "I do not know whether it is probable, unless in some place common usage is present which makes one presume the consent of the bishop, for the sheep must be known by their own pastor." And the same opinion is clear from S. C. EE. et RR., Jan. 21, 1848. Yet S. R. C., Sept. 6, 1636; Apr. 1, 1662, favors the contrary opinion.

1566. **Where can pilgrims, vagrants, soldiers, and servants satisfy the precept of Easter Communion?** Pilgrims and vagrants can communicate in any church, nor are they held to approach the parish of the place where they are staying, because they do not have a proper pastor who ought to know them. Soldiers in station, or having domicile in a city, must communicate in the parish in which they dwell; otherwise they can fulfill the precept in any church. Servants and all others having quasi-domicile are bound by the same law as inhabitants of the place. L. 1, 6, n. 300.

1567. **Is one held to communicate again in the parish who communicated sacrilegiously there?** Response: negatively, because he fulfilled the end of the precept as regards the circumstance of place; therefore it suffices that he communicate in any place for satisfying the precept of Easter Communion, which he did not fulfill through sacrilegious Communion. Nor is one who received sacred Viaticum during Easter time held to make Easter Communion in the parish; for the end of the law was sufficiently fulfilled. La-Croix 630.

1568. **Is one who omitted Communion at Easter held afterward, when Easter time has passed, to receive Communion as soon as possible?** The first opinion, more common, and which St. Alphonsus holds, l. 6, n. 297, affirms; and according to this opinion, just as one is held to Communion when Easter time has passed, so also he is held to receive Communion in his own parish. The other opinion denies. Several grave theologians hold this, among whom is St. Antoninus; Busembaum, Palaus, Bonacina, and others think it probable; and St. Alphonsus himself thinks it not contemptible, l. c. According to this second opinion, just as one whose Easter time has now passed is no longer held to Communion, so consequently he is not obliged to Communion in his own parish. "Which," notes the holy doctor, 688, "proceeds pari passu with the precept of annual confession."

1569. **Is one who cannot communicate during Easter time held to anticipate?** Response: negatively, because "such Communion would not be fulfilling of the precept; for at the time when it would be made, the time of obligation would not yet have begun, since the time of annual Communion had not yet begun. Conversely, it is certain that, once Easter time has begun, if someone foresees that he is going to be impeded from Communion, he is held immediately to receive it, as they commonly teach." L. 298.

1570. **Is an excommunicated person held to obtain absolution, so that he can fulfill the precept?** They commonly affirm, "because Communion greatly contributes to the salvation of the soul, whence its precept strictly obliges to removing spiritual evils which stand in the way." L. 299.

On the Fifth and Sixth Precepts of the Church

I. On Abstinence From Flesh Outside Fasting

1571. **What is the fifth and sixth precept of the Church?** The fifth precept of the Church is that the faithful abstain from flesh on certain days, as is clear from various Constitutions of the Supreme Pontiffs, catechisms, and the universal custom of the Church.

But the sixth precept of the Church is that the faithful observe fasts at the established times, as is likewise clear from various Constitutions of the Supreme Pontiffs, catechisms, and the universal custom of the Church. C. Quadragesima 16ff., De Consecr., d. 5. Each precept obliges of itself under grave obligation, since its matter is grave, proposition 23 condemned by Alexander VII. "Of itself"; for in each, according to the common opinion of theologians, smallness of matter is given. L. 1030.

1572. **The flesh of what animals is prohibited on a day of abstinence?** Flesh is prohibited of animals born and breathing on land. The reason is that these bring the greatest delight in eating and most provoke a person to venereal things. St. Thomas, II-II, q. 147, a. 8. "For discerning which animals are to be reputed flesh, although it is not a slight judgment to attend to whether they are accustomed to live long outside water, nevertheless more attention is to be paid to the common estimation of the faithful and the judgment of physicians, if they regard them as flesh or fish." L. 1011.

Hence for discerning prohibited flesh, there is a twofold criterion: the physical-natural criterion, namely that they are animals born and living on land; and the moral criterion, namely that according to common estimation and the judgment of physicians they are terrestrial animals and not fish. But each criterion fails and does not provide a determined and fixed universal rule. The physical criterion fails because amphibious animals are given; and it is lawful to eat snails, turtles, frogs, crabs, oysters, locusts, shellfish, and according to some, beavers, otters, ducks of a certain species, coots, and some add cormorants. The moral criterion fails because it is valid only for ordinary and common cases, as is clear.

Hence in doubt there is a threefold rule: 1. the structure of the animal, whether it is similar or dissimilar to terrestrial animals; 2. nutritive power; 3. custom, which in these things is the best rule. If doubt still remains, it is lawful to eat, because the law about abstinence is negative; therefore unless the prohibition is clear, it is lawful to eat. St. Thomas, II-II, q. 147, a. 8; Benedict XIV, De Syn., l. 11, c. 5.

But both flesh and other things derived from flesh, or parts constitutive of animals in any way, are prohibited; namely fat, blood, marrow, bacon, grease or lard, broth expressed from flesh, etc. Tamburini, Decal., l. 4, c. 5, n. 19; L. 1010; E. M.

1573. **When outside fasting does the precept of abstinence from flesh press?** Besides the time of fasting, this precept presses: 1. on Friday of any week in the whole Christian world, C. Explicari, De Observ. ieiun.; 2. on Saturday, unless legitimate custom has prescribed otherwise somewhere, or a privilege is had from the Holy See, C. Quia 31, De Consecrat., d. 5.

By privilege of Honorius III, the Nativity of the Lord is excepted from this law of abstinence for those who are bound neither by vow nor by regular observance, if it happens on Friday or Saturday, C. Explicari 3, De Observ. ieiun. But in most dioceses of France, by a particular custom, the obligation of abstinence is in force on the three Rogation days and the vigil of St. Mark. Therefore attend to the special custom of places. E. M.

1574. **Can flesh be given to little children on those days on which it is prohibited?** Response: affirmatively, if they have not obtained the use of reason; otherwise, negatively. But if they possess the use of reason before the seventh year, there is controversy; St. Liguori more probably denies, De Leg., n. 155. Cf. 195; L. 1012.

1575. **What quantity of flesh is required for grave sin?** There is controversy. All agree that matter is grave which notably nourishes; but this can scarcely be determined. According to several, grave matter must exceed half an ounce; but St. Liguori rejects this opinion, 1029, where he reports and seems to approve what the Salmanticenses say, that small matter is only the eighth part of an ounce. Yet they say this about days on which fasting must also be observed. More recent theologians say that grave matter in flesh, eggs, and milk-foods is only two ounces. Yet a distinction seems to have to be made between flesh, eggs, and milk-foods.

1576. **Is it mortal sin to eat soup, lettuce, etc., seasoned with flesh or grease?** Response: affirmatively, if that food is notably brothy; otherwise it will be only venial. Hence it is mortal if the broth of the soup was cooked with a great quantity of flesh, and so in other cases. But the poor are more easily excused from grave, or even slight, sin when, since they cannot buy butter, they use a small quantity of lard for seasoning soup.

1577. **Who are judged excused from the law of abstinence?** 1. Poor beggars; for they can eat whatever they receive as alms, as theologians commonly think. 2. Poor workers, who have nothing else except a bit of grease or bacon for seasoning soup or lettuce. 3. The sick, for example, those suffering from fever, etc.; also those who are so weak in stomach that they cannot digest lawful foods. 4. Those who daily perform labors so arduous and exhausting to the stomach that, like the sick, they do not experience hunger and refuse foods; of this kind are those who live in mines, or in glass and iron workshops. Also in the number of these seem to be counted drivers who over the space of several days lead public carriages day and night and can scarcely swallow one or another bit of food; but not those who lead carriages, horses, or mules slowly and rest at night in inns. 5. Travelers who find nothing in inns except forbidden foods and cannot easily turn elsewhere. Yet they are held seriously and insistently to ask for lawful foods. For the mere reason of a journey in no way exempts from the law of abstinence, even if from excessive fatigue it perhaps dispenses from fasting. Hence travelers cannot be excused because of human fear, fear of displeasing companions, mockeries, and other difficulties of this kind; otherwise almost all making a journey would be exempted from this law. 6. Soldiers staying in camps or barracks and nourished in common at the expense of the Government are excepted. 7. Those who for just cause have obtained dispensation, which besides the Supreme Pontiff, bishops, regular prelates, and pastors can give to their subjects in individual cases. C. Consilium 2, De Observat. ieiun.; L. 1008.

II. On Ecclesiastical Fasting

1578. **What is ecclesiastical fasting, when, and whom does it oblige?** Ecclesiastical fasting is situated in abstinence from foods and from a certain quality of foods, which, according to the form prescribed by the Church, is to be observed especially in the time of Lent, Ember Days, and certain vigils, namely of the Nativity of the Lord, Pentecost, Assumption, All Saints, St. John the Baptist, and the individual Holy Apostles, except the two vigils of Saints Philip and James, and also of St. John the Evangelist. In antiquity there were several fasts also in the time of Advent, Rogations, and the vigil of St. Mark; but all these in many places have become obsolete. The fasts of vigils themselves have almost everywhere been reduced or transferred to Fridays and Saturdays of Advent, or Wednesdays and Fridays of Advent. Pius VI, May 27, 1786.

In Spain the fasts of vigils of abrogated feasts have been transferred to Fridays and Saturdays of Advent; and the same is observed in Rome as regards vigils of the Holy Apostles, except the vigil of the feast of the Holy Apostles Peter and Paul. But when a vigil occurs on Sunday, one must fast on Saturday. C. Ex parte 1; C. Consilium 2, De Observatione ieiunior.

All the faithful, from the completed twenty-first year of age, are held under grave obligation to observe the fast on established days, unless they are legitimately excused or are dispensed by superiors. It is a most ancient obligation, which is said to have been handed down by the Apostles themselves. "From the completed twenty-first year," because the Church, a pious mother, does not wish to impose on children and adolescents a law surpassing their strength. This is clear from universal custom and from all catechisms.

Ecclesiastical fasting consists as of three parts, namely: 1. one meal during the 24 hours of the day, with a little evening refreshment added; 2. abstinence from flesh and milk-foods, as will be declared below; 3. the time determined for taking refreshment. Yet notice that the custom of places and times contributes very much to determining, modifying, or restricting the nature and obligation of fasting. L. 1004; St. Thomas, II-II, q. 147, a. 4, 5; Benedict XIV, Notif. 11; Ferraris, v. Ieiunium, Appendix; E. M.

1579. **Note:** "The fast on the vigil of the feast of the Holy Apostles Peter and Paul is to be observed in France on the Saturday before the Sunday of the feast of the said Apostles. But if the day of June 29 occurs on Saturday, the fast of the vigil in question is to be observed on the fourth day before the Kalends of July." S. C., Nov. 22, 1879.

For the whole kingdom of Spain it was conceded that "as often as the feast of the Immaculate Conception happens to fall on Friday or Saturday, the fast of that day be transferred to the immediately preceding Thursday." S. C., Nov. 9, 1870.

1580. **What is one meal?** One meal is the primary condition of fasting; for its essence is chiefly situated in this, and once this is removed, no one is ever said to fast, while on the contrary fasting without abstinence from flesh and milk-foods is conceived.

But small eatings which are done besides are venial sins when taken separately, and repeated rather often on the same day they can coalesce into grave matter, as is clear from proposition 29 condemned by Alexander VII.

The fast is not broken by a draught of water, wine, and other drinks which of themselves are ordered and commonly used for quenching thirst, although according to the first discipline of the Church, Christians entirely abstained from wine and similar liquids. Hence the axiom: liquid does not break the fast. But by liquid is understood only that which by common usage is taken by way of drink, not by way of food, as milk, etc. L. 1021, 1022; St. Thomas, II-II, q. 147, a. 6.

1581. **Does wine drunk to quiet hunger break the fast?** Response: more probably negatively. The reason is that the law of fasting prescribes only abstinence from food, not from drink; and according to St. Thomas, IV, dist. 15, q. 3, a. 4, q. 1, "the statute of positive law does not attend to the intention of the observer, but to the act itself, because the mode of virtue does not fall under precept, but is the end of the precept." L. 1022; St. Thomas, II-II, q. 147, a. 6, ad 2.

1582. **Does drinking coffee and tea break the fast?** Response: more probably negatively, unless an excessive quantity of sugar is mixed in, because these do not have the nature of food, but of drink or medicine. St. Liguori 1019 says: "indeed they are altogether permitted at will."

1583. **Does drinking water mixed with sugar or made from juices of oranges or lemons break the fast?** Response: negatively, of itself, that is, unless you mix in a great quantity of their substance which is judged to have the character of food. The reason is that all these things by common estimation are held as drinks. Nor does it stand in the way if they are served frozen; for freezing does not change the nature. L. 1022.

1584. **You will resolve:** It would therefore be otherwise about the taking of milk, broth, juice of apples, commonly melon, and other fruits, likewise of preserved grapes or grapes then pressed by the teeth, although afterward spit out. For all these are judged to have the character of food, and are referred rather to nutrition than to the vehicle of food. Indeed as regards drinks mixed with milk, there is an express prohibition of Clement XIII, Bull Appetente sacro, 1759. Whey, properly so called, is held as a simple drink, or rather as medicine. Yet as regards tea and coffee to which milk is mixed, Billuart, Tr. De Temper., diss. 2, art. 5, part V, says: "Tea and coffee seem to me to have the character of drink, and not to dissolve the fast, unless perhaps much milk and sugar is mixed in, and they are taken in great quantity." L. 1019, 1021, 1022.

1585. **Does drinking chocolate break the fast?** Response: affirmatively, if it furnishes rich nutrition, as is the custom outside the time of fasting. But negatively, if a moderate quantity of chocolate is taken, and this is done only once in the day. The reason is drawn from general custom. L. 1023. What quantity can be taken? The holy doctor says that no less than an ounce and a half of chocolate is usually put into ordinary cups; for thus it is commonly done from the custom tolerated by the Church and observed by pious faithful. But not a few, diminishing the aforesaid quantity of chocolate, substitute bread proportionately. But the total quantity of that food ought not to exceed the weight of two ounces, water set aside. Benedict XIV, Notif. 15; E. M.

1586. **Is it lawful on a fast day to taste something of food before drink, lest the drink harm?** Certainly this is not lawful "as often as one wishes," as they say; for then the law of fasting would be laughable. Therefore it can be permitted only once or twice in the day, especially lest strength fail, if dinner, for example, happens to be delayed much beyond the customary time,

as happens to religious serving table, readers, and servants. Indeed the obligation of taking something will press if this is necessary for observing the fast. L. 1018, 1019; E. M.

1587. **Do electuaries break the fast?** Electuaries are said of those things which are composed from selected things, for example from sugar and juniper, etc. But they are not judged illicit on fast days if they are taken by way of medicine and in moderate quantity. Any reasonable cause suffices for excusing from all fault, for example, for digestion of foods, strengthening the stomach, removing bad breath, preserving the voice, and the like. St. Thomas, II-II, q. 147, a. 6.

1588. **What quantity of food is judged grave matter if taken outside the meal and little supper?** There is controversy. Matter must undoubtedly be judged grave which, added to the evening little supper, would make another meal. Certainly, however, a quantity of two ounces is to be held as light matter. Not a few think grave matter is a quantity equivalent to half the little supper, or four ounces. "Outside the meal"; in the meal there is no fixed quantity of foods; it is otherwise in the little supper. Cf. 1593. L. 1020, 1025; St. Thomas, II-II, q. 147, a. 6; IV, d. 15, a. 4, q. 8.

1589. **Does one who culpably took a double meal sin gravely if he adds a third?** Response: negatively, at least more probably. The reason is that the precept of fasting presses in an indivisible way during the day of the precept; therefore one who once violated it does not sin again and again by eating. Therefore, once mortal sin has been committed by violation of the fast, the whole law pressing on such a day has been violated. Yet one who breaks the fast by eating forbidden flesh or milk-foods several times sins as many times as he eats. L. 1030; H. A. 20.

1590. **Is one who inculpably took a double meal in a day held under grave obligation to abstain from a third, once the error is detected or the excusing cause removed?** Some affirm. The reason is that he injured the fast only materially, not formally; therefore as soon as he adverts to the law of fasting, or sees the excusing cause cease, he is subjected to the same law and is held to observe it like the rest; otherwise he would violate it formally. Thus probably Reuter, De Leg. 176. Yet others more probably deny, because since the essence of fasting is situated in one eating, after two meals fasting becomes impossible. L. 1030; H. A. 20.

1591. **What if on a fast day you have inadvertently taken breakfast?** If you have taken a little, for example two, three, or almost four ounces of food, you ought indeed to fast according to custom, without leaving the meal and little supper at the accustomed hours; for the fast was not substantially injured.

If you have taken a quantity equivalent to the little supper, you must transfer dinner to the evening time, or abstain from the little supper itself, unless this yields grave inconvenience to you.

Yet if a quantity of this kind was equal to almost two little suppers or to the customary meal, you ought, with dinner omitted, to take only the evening little supper, though earlier if you cannot wait without grave difficulty. Besides, you could increase this little supper according to the measure of necessity. E. M.

1592. **Is the evening collation permitted?** Besides the customary meal, it is lawful, from universal custom introduced over many centuries and tolerated, indeed tacitly approved, by the Church,

to take toward evening a little refreshment from lighter foods.

The evening collation began in some way from monks, who in fasts introduced by their own rule, before or after sacred conversations, called collations or conferences, took some draughts of water or another drink for refreshing their strength. Then a bit either of bread or of another food was added, lest the drink harm. But the faithful embraced this custom in the fasts of the Church; and this custom came to the point that a small supper is had. That this custom is altogether legitimate at present is proved by the custom received everywhere, and indeed indiscriminately as regards all, even if someone does not need it. Elbel 478; L. 1024.

1593. **What quantity of food can be taken in the little supper?** From present and common custom, at least ordinarily speaking, about eight ounces of food can be taken, or about 250 grams. For a common ounce is equivalent to about 31 grams, and a Roman ounce to about 29 grams. A pound of 16 ounces equals 500 grams. L. 1025. But others say that a fourth part of supper is to be permitted. Yet this doctrine is too vague or liable to scruples.

A quantity of eight ounces seems to be denied to no one; but a greater quantity is to be granted to those for whom this would not suffice. Certainly a wholly fixed rule cannot be established, since attention must also be paid to constitution, duties to be performed, duration of the fast, etc. In general it is lawful to take as much as someone judges necessary for avoiding indisposition which impedes him from conveniently performing his duties. Account must also be had of one's own region, if somewhere a greater quantity of food is necessary. L. 1024.

1594. **What excess is judged grave in the little supper?** All agree that an excess of two ounces is light matter. The stricter theologians with Concina teach that an excess surpassing two ounces is grave; but others with Billuart hold that there is required an excess which, taken separately, would be equivalent to an entire little supper. Yet commonly the doctors require an excess above the little supper equivalent to another half of the little supper, or four ounces. In various places, from introduced custom, on the vigil of the Nativity, even on Saturday if the Nativity falls on Monday, and likewise on the Lord's Supper, it is lawful to take double the quantity; but this custom is not in force everywhere. L. 1024, 1025.

1595. **What quality of foods can be used in the little supper?** Lighter foods are permitted: bread, any fruits, any vegetables also, sweets of various kinds. But above all the custom of places is to be observed. For several things are permitted in various dioceses or provinces which are forbidden elsewhere. L. 1024-1026.

1596. **Is it lawful to eat eggs, cheese, or butter in the evening little supper?** Response: negatively, generally, although there is dispensation for milk-foods, as is clear from the decree of Benedict XIV and Const. Appetente of Clement XIII, Dec. 20, 1759. Yet in certain places by custom it is lawful to take some butter, or cheese, or milk; but eggs are by no means permitted, because they are of very great substance, and therefore are rejected by custom, says St. Liguori 1027. Thus in France and elsewhere, generally, it is lawful by custom to eat cheese. Likewise the privilege of cheese in the diocese of Novara for the whole Vicariate of Intra was conceded by Innocent XII through the organ of S. C., Jan. 30, 1694.

1597. **Are fish permitted in the little supper?** Response: affirmatively, if it concerns little fish, especially dried ones, and probably also larger fish; yet St. Liguori 1208 thinks that a weight of two or three ounces of these should not be exceeded.

1598. **Is it lawful in the little supper to use broth from herbs cooked with water, vinegar, oil, or cooked wine?** Response: affirmatively, probably, unless custom certainly stands against it; then, however, neither water nor wine are to be computed in the weight; but according to Viva, that which does not have the character of drink, for example oil, must be computed. L. 1209.

1599. **Is it lawful to take in the little supper bread cooked with water and oil, or brothy bread?** Response: affirmatively, from present custom, which even the timorous follow and recent theologians commonly approve.

Yet according to St. Liguori 1009, it is not lawful to take eight ounces of bread cooked with water, the water set aside. The reason is that bread through cooking and a certain fermentation with water acquires almost another nature, so that from these one thing is made and it becomes one larger substance. Cooked bread truly enters a chemical change, which only renders digestion easier. For that change scarcely differs from that which is had at the beginning of digestion, whence it is as it were the beginning of digestion.

But it can be conceded, says St. Liguori, that during the meal itself someone dip bread in water or wine, and thus even take eight ounces of bread soaked in wine; for here almost the same substance of bread remains, and the liquid, since it serves only as vehicle, is not computed.

1600. **What quantity of cooked bread of this kind can be permitted, water set aside?** Theologians disagree. Some, more strictly, deny that it is lawful to exceed eight ounces. More strictly, for if one ounce of bread cooked in ten ounces of water with another ounce of oil were lawful, what scruple would there be in permitting these twelve ounces? Others, more lax, concede eight ounces of cooked bread, water set aside. But because of this cooking and fermentation, you have one thing of food which, although it does not constitute a greater quantity of nutritive substance, nevertheless generates greater satiety. Hence it seems that one cannot altogether set aside at least the water. The middle opinion seems to be chosen, namely that five, or at least four, ounces of cooked bread can be permitted, not computing the water or oil. Salmanticenses, c. 2, n. 77. But St. Liguori says, 1029, that he does not disapprove this opinion. The same likewise must be said of other cooked foods which are customarily placed in the little supper, for example, from spelt, rice, legumes, etc.

1601. **What is the abstinence prescribed in fasting?** To all the faithful using reason, eating flesh on individual days of fasting is forbidden by precept of the Church. Hence by the law of fasting a double precept is imposed, as Benedict XIV also defines, namely of abstaining from several meals and of abstaining from flesh. Therefore, contrary to what several older theologians hold, one dispensed or unable as regards one is not therefore to be excused from the other.

During Lenten time, eggs and milk-foods are also prohibited under grave obligation, namely all things which draw origin from flesh. This is clear from the practice of the Church, from her dispensations, and from proposition 32 condemned by Alexander VII. Yet now in most places a general dispensation from that law is granted to the faithful, if a few days are excepted. Indeed in

many dioceses bishops, from a faculty delegated by the Roman Pontiff, grant dispensation also as regards eating flesh for the principal part of Lent. Moreover, although eating eggs and milk-foods of itself could not be excused from grave sin according to the common opinion, nevertheless smallness of matter seems more easily to be admitted in these than in eating flesh. L. 1005, 1006, 1007; St. Thomas, II-II, q. 147, a. 3; Benedict XIV, Notif. 16; E. M.

1602. **Must abstinence from milk-foods be observed also in fasting outside Lenten time?** Response: negatively, because no such obligation is imposed by any general law. This is the common opinion, says St. Liguori 1009. Yet somewhere, for example at Rome, a custom having the force of law has prevailed, so that this kind of abstinence is observed also on certain other days, for example Ember Days. St. Thomas, II-II, q. 147, a. 8, ad 3; Struggl, tr. 8, q. 2, n. 18.

1603. **Does abstinence from eggs and milk-foods oblige also on Sundays of Lent?** Response: affirmatively. The reason is that in Canon Law, C. Denique 6, d. 4, abstinence from milk-foods is universally prescribed on Lenten days. But it is certain that Sundays are also days of Lent. Therefore St. Alphonsus concludes, 1007, that the opposite opinion denying this "does not seem sufficiently probable, since several think it improbable." St. Thomas, II-II, q. 147, a. 8.

1604. **In Lenten time is it lawful at the meal to eat breads made with eggs?** Response: negatively, unless eggs were permitted. The reason is that their substance does not perish from being mixed with flour. L. 1009.

1605. **Are those dispensed for milk-foods judged by that very fact also dispensed for eggs?** Response: affirmatively, because these are equated by custom, unless the distinction is clearly expressed in the dispensation. But those dispensed for flesh are also judged dispensed for eggs and milk-foods, because to whom the greater is conceded, the lesser is also conceded. L. 1007.

1606. **Are those dispensed for flesh still held to fasting?** Response: affirmatively. Proof from the prescription of Benedict XIV, Bull In Suprema, Aug. 22, 1741, and more clearly Bull Libentissime, July 10, 1745; L. 1013, 1014, 1015; Benedict XIV, Inst. 15, n. 20ff.

Those dispensed, that is; but those who cannot abstain from flesh because of grave inconvenience are still more truly held to one meal; but one thing seems to some, another to others. Benedict XIV, Not. 15, n. 19ff. But those who likewise because of grave inconvenience cannot be sustained by one meal are held to abstinence from flesh; this is the truer and certain opinion. Benedict XIV, cited Constitutions; Collect. S. C. de P. F., n. 2057; E. M. 514, 515.

1607. **Can those dispensed for flesh eat flesh and fish together?** Those dispensed for flesh cannot on fast days in Lenten time, and through the year, nor on Sundays of Lent, eat flesh and fish together, namely in the same eating. This is clear from the three Constitutions of Benedict XIV, Non ambigimus, In Suprema, Libentissime. L. 1013, 1014, 1015; E. M.

1608. **Can those dispensed for flesh, without injury of the fast, eat flesh that is not healthful, namely pork and similar meats?** "The doctors most commonly, and indeed probably, affirm; both because a license to flesh generally imparted is not to be restricted to only healthful flesh, and because otherwise those dispensed would be subjected to many scruples, often doubting what meats harm or profit. But speaking in particular about pork, it does not seem that it can

absolutely be called unhealthful." L. 1015. "Those dispensed," namely individual persons, not all universally; for then only healthful meats are permitted. Benedict XIV, Const. Libentissime, § 1. But this restriction, which previously was added at Rome, has now been omitted in this year 1897, as can be seen in the Lenten Indult. E. M.

1609. **At what hour must the meal be made?** In our times, by universal custom, the meal is lawfully taken almost at midday. L. 1016; H. A. 9.

1610. **Does the hour of the meal pertain to the essence of fasting, so that one sins gravely who notably anticipates it without just cause?** The first probable opinion affirms. The reason is that just as the Church instituted fasting, so also it instituted a certain time for eating for those fasting. Therefore one who notably anticipates dissolves the fast. The second opinion, also probable, denies. The reason is that from present custom the hour no longer pertains to the substance of fasting.

Some say that notable anticipation exists if the meal is anticipated more than an hour; others, if by only an hour. "Anticipates"; for someone would not sin by delaying, since he would approach more to the ancient custom, which indeed conduces better to the end of fasting. "Without just cause"; for as a just cause can excuse from fasting itself, so also it can excuse from the hour of the meal. "Moreover," says St. Alphonsus 1016, "it is lawful to anticipate within an hour, even without cause." L. H. A., tr. 12, n. 21.

1611. **Is the fast broken if the little supper is taken at midday, but the meal in the evening?** It is not broken essentially, and therefore, if it is done without cause, it does not exceed venial sin. But even from this venial sin a reasonable cause, and the custom of place or condition, excuses. Indeed in many places by present custom the little supper can be made at the tenth hour in the morning, and the meal in the evening. L. 1020, 1024; E. M.

1612. **How long can lunch be prolonged?** Nothing absolutely can be determined about this; but it does not seem that it can be prolonged beyond two hours without some fault. L. 1020; H. A. 10.

1613. **Does one break the fast who interrupts the meal and, after an interval has passed, comes to it again?** If the interruption is slight, for example, of one quarter-hour, it lacks all fault, even if it is done without reason. L. ibid. If the interruption is of about one hour without reason, it does not lack some slight fault, as it seems. If the interruption is very notable, for example, of two hours, it cannot be excused from grave sin, because it cannot be called one meal, unless a just cause excuses.

But if the interruption is had for a grave cause, there is no sin in returning to the table, even with notable delay interposed, when the preceding meal was not sufficient, because the Church never intended to oblige someone to pass the day without sufficient refreshment. L. 1017, 1020.

1614. **Can one who rose from table with the intention of eating no more sit down again at table?** Response: affirmatively, probably, if the diners are still eating, or if a new dish is placed on the table which he did not know was to be placed there. The reason is that morally it is still judged the same lunch. L. 1020.

1615. **What are the causes which excuse from fasting?** Causes excusing from fasting are customarily reduced especially to three: 1. to impossibility, whether physical or moral; 2. to piety or charity; 3. to dispensation, as was said about other precepts. L. 1031ff.

1616. **You will resolve:** 1. Poor persons begging door to door are excused from fasting, and all others who neither have nor can provide for themselves that from which they may procure an adequate refreshment for the whole day. But bread and fruits do not suffice for this, nor soup with bread and fruits, nor bread and wine alone, unless perhaps for one or another day.

1617. The sick, the infirm, convalescents, and the weak are excused, for example those who suffer from tertian or quartan fever, or are convalescing from it; besides, those who, unless they are refreshed twice, suffer notable headache or dizziness from emptiness of the stomach, or cannot sleep at night. Nor are these held to take breakfast in the morning and dine in the evening, which is extraordinary and brings grave inconvenience.

Pregnant women and nurses are also excused; likewise wives to whom fasting is forbidden by husbands, and who by fasting would suffer grave indignation of their husbands.

3. Those are excused who exercise very laborious works, such as plowing, digging, cutting stones, carrying heavy burdens, and other things of this kind. Soldiers are excused whether in camps or lodgings, even in time of peace, both because they do not have suitable food for fasting, and because of the labors of military life, and because of custom.

4. Male and female servants, or others of this kind, are excused when they are occupied with so many and such great labors that fasting cannot be joined with them without great difficulty or inconvenience; likewise those making a journey on foot for a notable time with great fatigue.

5. But barbers, tailors, painters, scribes, servants, footmen, printers who do not turn the press but only arrange the type, and those occupied in similar tasks are not of themselves and ordinarily excused. C. Consilium 2, De Observ. ieiun.; L. 1008, 1031ff.; H. A. 23; St. Thomas, II-II, q. 147, a. 4; E. M.

6. **Are sixty-year-old elderly persons excused from fasting?** Certainly they are excused if they are weak in strength, as is clear. Indeed they are also excused, according to the common opinion, in doubt about the validity of their strength, because then presumption stands for its weakness. L. 1036.

If they are strong in strength, there is controversy. The first opinion denies that they are exempted from the law of fasting, because those who at that age have valid strength are not reputed as elderly. This opinion indeed is probable, says St. Alphonsus in the same place, but the opposite opinion is no less probable. The reason is both because universal custom so bears, as the doctors more commonly testify, and because otherwise the matter would be liable to many scruples, to examine whether some sixty-year-old is or is not sufficiently robust to sustain fasting. But the stronger reason is that elderly persons of this kind, both because of weakness of strength and because of defect of heat, cannot take sufficient food all at once, and need more frequent food; and although some at such an age seem robust, nevertheless their vigor is easily illusory and inconstant, since it cannot be denied that in

elderly persons of this kind strength fails and slips into destruction. Hence the common saying: Old age itself is a disease.

1618. **Note:** What is said about ecclesiastical fasts can be established likewise about fasts which religious observe from the Rule; for sixty-year-olds can be excused also from these, unless perhaps, as St. Alphonsus notes, l. 3, n. 139, they expressly promised observance of the fast until death. This norm can be extended also to those who have vowed some weekly or monthly fasts for the whole of life. But likewise except if someone, thinking of old age, expressly wished to bind himself until the extreme of life. L. 1038ff.

1619. **Is the weaker sex, as one which ages more quickly, also excused from fasting more quickly?** The doctors generally move the controversy about the fiftieth year. Those who deny that women are excused are moved by the fact that although a woman ages more quickly, nevertheless she is less worn down by fasting and needs less food. But others affirm and urge what no one denies, namely that what is true for men is equally true for women: that old age is a disease. Nor indeed does it sufficiently appear why those things which St. Alphonsus notes about old age for men would not be equally valid for women. But if women need less food, or rather if they are unequal to bearing more abundant food because of weakness, this will rather prove that they are excused from the law which allows only one eating, since one slight eating cannot be equal to sustaining strength. L. 1037.

1620. **Are smiths, artisans, etc., excused from fasting if they are so robust that they can fast rather easily?** Response: affirmatively, probably, because custom generally exempts all who exercise arts of this kind; but laws do not regard that which rarely and per accidens happens, but that which commonly and per se occurs. Yet Concina, Bonacina, etc., also probably deny. This second opinion, says St. Liguori 1043, speaking speculatively, seems more probable, but in practice scarcely one will be found who is not gravely weakened by labor of this kind.

1621. **Are workers excused from fasting on those days on which they abstain from labor?** Response: affirmatively, if they interrupt labors for only one or another day, by reason of repairing exhaustion and preserving strength for sustaining the next labors. L. 1044.

1622. **Are rich artisans excused who can cease from labor on fast days?** Response: more probably affirmatively. The reason is that it is in the interest of the republic that workers not interrupt the exercise of the arts to which they are bound from their office because of fasting. This also seems clear from the declaration of Eugene IV apud St. Liguori 1042. Nor is it the mind of the Church that the faithful be impeded from ordinary occupations. St. Thomas, II-II, q. 147, a. 4, ad 3, speaking about those traveling, has these words: "It does not seem to have been the intention of the Church establishing fasts that through this it would impede other pious and more necessary causes."

1623. **Do those sin who without just cause assume an unusual labor incompatible with fasting?** Response: affirmatively, of itself, even if they do not act in fraud of the law; for the law which commands fasting consequently orders that causes opposed to satisfying it not be placed without reason.

"Without reason"; because when just cause intervenes, it is lawful to undertake labor incompatible with fasting, although that labor is unusual, for example to receive very great profit, etc. But the reason of mere recreation alone never suffices, unless another honorable cause is added. L. 1045, 1046, 1048, 1049.

1624. **What journey undertaken on foot for a just cause exempts from fasting?** They commonly say that a journey of almost five leagues is required and suffices, that is, fifteen thousand paces. But if the way were very arduous, or the weather harsh, or the traveler weak and unaccustomed to journeying, he could be excused by a journey of two leagues. L. 1047; E. M.

1625. **Whether or how are preachers, teachers of sciences, and confessors excused?** Preachers who have a sermon daily or almost daily are commonly excused from fasting by reason of piety and office. Missionaries, who are exercised by graver fatigue in missions, are excused by an even stronger right. Generally speaking, preachers who preach only three or four times in the week are not excused; but in this one must stand by the judgment of prudent persons.

Teachers of sciences are excused, although they teach for only one hour on individual days, if they need study and labor for preparing lessons; but not those who only deliver from writing lessons already previously arranged and often repeated.

The same must be said about advocates and judges, if they need great study, and also about physicians, if they are fatigued by great labor in visiting the sick. Likewise students are excused who otherwise cannot attend to their office. Sanchez and Azor deservedly judge, against the Salmanticenses and others, that grammar teachers are excused if they teach for four or five hours.

Confessors are not excused of themselves, but only when they undergo extraordinary labor, for example, when they must hear confessions for several succeeding days, as is customary in missions, or when they are so weak that they cannot satisfy the frequency of penitents without grave inconvenience. L. 1047, 1049; H. A. 34.

1626. **Who can dispense in the law of fasting?** The following can dispense: 1. the Supreme Pontiff, in the universal Church, and his dispensation, even without cause, is valid. A just cause is required for lawfulness at least under slight sin. If the fast falls on the feast of a Patron or Titular, or on a market day, with a great gathering of peoples, the bishop can anticipate or even dispense from fasting and abstinence. S. C., Dec. 5, 1894. Benedict XIV, for dispensing private persons as regards abstinence, requires the counsel of each physician, bodily and spiritual. Yet the usage has prevailed that the faithful are content with the counsel either of the pastor or confessor alone, or of the physician alone, or even of some prudent man, and therefore they are not to be troubled.

1627. Bishops, with individuals, from legitimate cause; but not with the whole community, unless from very grave and urgent necessity, and only in individual instances. Benedict XIV, Bull Prodiit iam dudum; Bull Non ambigimus; Bull In suprema, § 2.

1628. Regular superiors, by force of privileges.

1629. Pastors, by force of custom with individuals, and only in individual instances. But the law of one eating and of forbidden mixture must always be observed by all, whether dispensation as

regards abstinence is given to the whole community or given to private persons, provided that no certain and dangerous reason of affected health intervenes and necessarily requires that it be done otherwise. Benedict XIV, Const. In suprema, § 2.

1630. A physician and confessor cannot dispense, but according to their office they can declare that someone is excused from fasting or abstinence when the excusing cause is manifest or doubtful. Sanchez, Cons., l. 5, c. 1, d. 5, n. 3, 28.

1631. But a superior can dispense not only when the cause is manifest, but also when it is doubtful, and then he can mix with the dispensation a commutation into other pious works, prayers, alms, etc. Sanchez, Cons., l. 5, c. 1, d. 5, n. 26; L. 1, 6, n. 1031, 1032; H. A., tr. 12, n. 22; St. Thomas, II-II, q. 147, a. 4; E. M.

Bishops dispensing by apostolic indult from abstinence during Lent prescribe a visit to some church, prayers, and alms. Under grave obligation? There are some who affirm, because bishops dispensing by delegation are judged to make a kind of commutation, and therefore the substituted work represents the grave obligation of abstinence; and thus declared the bishop of Montpellier in 1861. But others generally do not recognize this rigorous commutation. But one must more probably say that bishops intend principally to dispense, and accessorily to impose some pious work as a kind of slight satisfaction; and thus, among others, declared the bishop of Mondovi in 1844 and of Vigevano in 1879. S. C., Feb. 5, 1890, Vicar Apostolic of Southern Japan, declared "that this is remitted to the prudent judgment and conscience of the Right Reverend Vicar Apostolic."

A. M. D. G.

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