# Summa of Moral Theology

Adapted for the use of schools

by

H. Noldin, S.J.

Professor of Sacred Theology in the University of Innsbruck.

II.

On Precepts.

With the approval of the Bishop of Brixen and of the superiors of the Order.

# On the Precepts of God and of the Church

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# Introduction

**1.** In that part of moral theology which is concerning principles, it is shown in general how the moral actions of man ought to be constituted, so that they may be apt for the ultimate end of eternal life. The other part of moral theology, which is concerning precepts, teaches in particular what moral actions, according to the will of God, are to be performed, so that man may through them arrive at the end of eternal life. For precepts proximately and directly determine by what acts man, according to the will of God, ought to tend toward his ultimate end; and since acts of precept are so many acts of some virtue, the precepts at the same time determine what virtues man ought to exercise, in order that he may obtain the end of eternal life. But the precepts with which we must deal are of three kinds: a. the precepts of the theological virtues; b. the precepts of the decalogue; c. the precepts of the Church. d. To the precepts must be added the penalties enacted by the Church against transgressors of the precepts.

With the exposition of laws there must be joined the treatment of virtues: for just as sins committed by transgression of laws, namely their gravity and their specific diversity, are understood better and more perfectly from the virtues to which they are opposed, so the laws to be fulfilled according to the will of God are perceived more clearly and accurately when the virtues are known. Moral theology considers virtues only so far as their acts are acts of precept and therefore necessary for obtaining eternal life. A full treatment of the virtues, even with respect to those acts which indeed are not required for obtaining eternal life, but nevertheless are required for attaining Christian perfection and the holiness of life, belongs to that theological discipline which is called Ascetics.

**2. Survey of the precepts.** 1. The precepts of the theological virtues, faith, hope, and charity, which differ from the other precepts in this, that they are known only from revelation, that the acts of these virtues immediately attain God, and that they have the divine attributes as their formal object.

2. The precepts of the decalogue, which contain the law of nature to be observed by all even in the New Testament. Almost all of these, except the third and fourth, are proposed in negative form, but in reality each of them is both affirmative and negative.

3. The precepts of the Church, of which some are common to all the faithful, while others are particular for determinate states: clerics, beneficiaries, parish priests, bishops. Those of each kind which are principal are customarily treated in moral theology.

4. The precepts of administering and using the means of grace, by which the moral life becomes supernatural and proportioned to the ultimate end, and by which that same life is preserved and perfected. The third volume, on the sacraments, deals with these.

**Note.** 1. Some moral authors consider man according to the threefold relation by which he is referred to God, to himself, and to his neighbor, or according to the threefold precept of charity which is founded on those relations, namely of loving God, himself, and his neighbor; and therefore they reduce the precepts and the virtues corresponding to them to three heads:

a. To precepts which determine obligations toward God - the precepts of the theological virtues, the first, second, and third precepts of the decalogue, and the precept of the Church concerning the sanctification of feasts, the precepts concerning the use of the sacraments, and the particular precept of reciting the divine office;

b. To precepts which determine obligations toward oneself - the precept of charity toward oneself, the fifth precept of the decalogue, insofar as it requires the preservation of life, the sixth precept of the decalogue, and the precept of the Church concerning abstinence and fasting;

c. To precepts which determine obligations toward the neighbor - the precept of charity toward the neighbor, the fourth, fifth, seventh, and eighth precepts of the decalogue.

2. Others consider man insofar as he is private or individual, abstraction being made from relations with other men, and insofar as he is social and, existing in society, has relations with other men. According to this twofold respect they reduce all the precepts which constitute the object of this part of moral theology to two heads:

a. To precepts which regard man as private - the individual duties of man toward God: the precepts of faith, hope, charity, and individual religion, whose primary acts are prayer, adoration, and sacrifice, and whose secondary acts are oath and vow; the duties of man toward himself with respect to the intellect, the will, the preservation of life, and external goods - and the part which treats of these they call individual morals (*Individualethik*);

b. To precepts which regard man as social - the social duties toward God: the sanctification of Sunday and of feasts, abstinence and fasting; the duties of charity toward the neighbor; the duties of justice toward other men, and indeed in domestic society, in civil society, with respect to the good of life, with respect to the goods of the person, and with respect to goods of fortune - and the part which treats of these they call social morals (*Socialethik*).

3. If the precepts were to be distributed and treated according to either respect, an order would arise far different from that which is indicated above. In a book of moral theology which chiefly serves the practical uses of pastoral care, the threefold division into the precepts of the theological virtues, of the decalogue, and of the Church seems to be preferred, although the other division into precepts which determine the duties of man toward God, toward himself, and toward the neighbor, and likewise the other into precepts which regard man as private and into precepts which regard man as social, is more suited to scientific and systematic treatment.

By these things the moral life of the Christian man, elevated by grace to the state of a son of God, is described, both individual and social. In order that the life of the Christian man may be truly supernatural, his soul is adorned with sanctifying grace, his powers, namely intellect and will, are furnished with supernatural habits of virtues, and actual graces flow into his several moral actions. In this way it comes about that all the virtues by which the Christian life is contained shine with that perfection and excellence which the dignity of a son of God and his vocation to eternal life require.

# Part First. On the Precepts of the Theological Virtues

# Book First. On the Precepts of Faith

[1]

## Question First. On the Nature of Faith

**3. Notions.** 1. To believe signifies to give assent to some thing on account of the testimony or authority of another.

a. Faith differs from opinion, because it holds a thing as true certainly and without fear of erring; it differs from knowledge, because it holds a thing as true not from internal reasons, but on account of the authority of a witness. What we know, we owe to reason; what we believe, to authority.[2]

b. To an act of faith considered in general, the intellect is for the most part moved by the will; but that faith may be rational, the intellect ought beforehand to know that the witness deserves belief, because it understands that the witness can neither be deceived in knowing nor deceive in testifying.

2. The theological virtue of faith can be considered insofar as it is a habit and insofar as it is an act. Habitual faith is permanent and is already had in baptized infants; actual faith is transient and is had in him who elicits an act of faith.

a. Theological faith as a virtue is defined: an infused supernatural habit by which man is disposed to assent firmly to truths revealed by God on account of the authority of God Himself revealing.

b. The first words of the definition present the mark which faith has in common with the remaining theological virtues; the words, "to assent firmly," etc., present that which is proper to faith and by which it is distinguished from the remaining theological virtues, namely its material and formal object.

c. The subject of faith, or the power in which the habit of faith inheres, is the intellect: for a habit resides in the same power from which the act is elicited; but the act of faith is elicited by the intellect, which is furnished with the habit for eliciting that very act. Yet because the will also concurs in eliciting the act of faith, namely by commanding the assent, there is also in the will a habit disposing it to elicit the pious affection of believing.

d. The habit of faith is lost only through the sin of infidelity or through the sin of heresy, which is directly opposed to faith: for by an act by which man withdraws from the motive of faith, the habit itself of faith is destroyed. Therefore if someone culpably omits to elicit an act of faith, or if someone only externally denies the faith, he indeed sins gravely against faith, yet he does not lose the habit of faith, because he does not withdraw from the motive of faith.

e. The habit of faith is customarily called the light of faith: for as the intellect by which we know the truths of the natural order is called the natural light, so the power by which we embrace revealed truths is called the supernatural light.

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**Notes**

1. St. Thomas, II-II, qq. 1-16. St. Alphonsus, bk. 2, nn. 1-19. Laymann, *Theologia moralis*, bk. 2, tract. 1. John de Lugo, *Disputationes scholasticae de virtute fidei divinae*, disp. 3, nn. 2-20. Francis Suarez, *De fide*, disp. 1-8; 12-24. Lacroix, *Theologia moralis*, bk. 2, nn. 1-115. John Reuter, *Theologia moralis*, II, nn. 1-39. Sporer-Bierbaum, *Theologia moralis decalogalis*, Paderborn: Typographia Bonifaciana, 1901, I, tr. 2, nn. 1-92. August Lehmkuhl, *Theologia moralis*, Freiburg: Herder, 1902, I, nn. 269-404. Ballerini-Palmieri, *Opus theologicum morale*, Prato: Giachetti, 1899, II, nn. 1-108. Fr. Ad. Goepfert, *Moraltheologie*, Paderborn: Schoeningh, 1905, I, nn. 264-282. E. Genicot, *Theologiae moralis institutiones*, Louvain: Polleunis and Ceuterick, 1905.

2. St. Augustine, *De utilitate credendi*, n. 25.

f. Theological faith as an act is defined: the firm assent by which we embrace truths revealed by God on account of the authority of God Himself revealing.

**4. Object of faith.** a. The material object of theological faith is the word of God: namely, all truths revealed by God constitute it. The primary material object is distinguished, which is God Himself and His perfections; and the secondary material object, which is constituted by other truths distinct from God, which nevertheless have all been revealed in order to God, namely that God and His perfections may be known better, and that man may be able to arrive at God, his eternal beatitude.

b. The formal object of theological faith is constituted by the authority of God revealing, who, since He is first truth, can neither be deceived in knowing nor deceive in speaking. Therefore theological faith rests on first truth, or on two divine perfections: on the supreme wisdom of God, or infallibility in knowing, and on the supreme veracity of God in speaking.

From the formal motive it is clear that faith ought to be universal, that is, that it should extend itself to all revealed truths: for he who denies even one article of faith, by that very fact implicitly denies all, because he denies the formal object of faith, the authority of God revealing, on which all the remaining articles rest.

**5. Genesis or analysis of faith.** In order that an act of faith may be elicited, reason must first know several truths, which cognitions therefore are called by theologians the preambles of faith.

1. First, it ought to know that God has spoken, or that God has given revelation: for unless it is established that a truth has in reality been revealed by God, we neither can nor ought to believe it with divine faith. Those arguments by which the fact of revelation is demonstrated are called motives of credibility, because they render revelation, that is, the Christian religion, credible. Now these arguments, miracles, prophecies, the wondrous preservation and propagation of the Church, the constancy of martyrs, etc., are indeed not evident, yet they are of such a kind that anyone from them can know the fact of revelation certainly, or without prudent fear of erring.
2. Next, it ought to know that God is supremely wise and supremely truthful, so that He can neither Himself be deceived nor deceive others: for faith by its nature rests upon the authority of God revealing, known with certainty; but authority derives all its force from the knowledge and truthfulness of the witness.
3. From this twofold cognition there arises the judgment: truths revealed by God are credible, that is, they can be believed rationally and prudently, which judgment is called the judgment concerning the credibility of revelation; indeed there arises the judgment: truths revealed by God must be believed, that is, they must be believed absolutely, which judgment is called the judgment concerning the credendity of revelation. Certainly, where it is certain that God, supremely wise and truthful, has spoken, man understands the most grave obligation of believing: for man is bound to believe God demanding faith; but by the very fact of revelation God demands faith. Each of these judgments, concerning the credibility and the credendity of revelation, is altogether evident.
4. Therefore this twofold cognition precedes the act of faith: namely, the cognition of divine authority, that what God reveals is true and must be believed, and the cognition of the fact of revelation, but God has revealed the Christian religion. Yet once these things have been known beforehand, the assent of the mind does not yet immediately follow, therefore the Christian religion is true and must be believed. For since one of the prerequisite cognitions, namely the fact of revelation, is not evident, the mind is not determined by arguments of reason to giving assent to revealed truth, but must be moved and determined by command of the will to giving the assent of faith. Now with this cognition shining beforehand, namely that the will can and ought to command assent, the will itself by a positive act commands the assent of faith to the intellect; this act of the will the Second Synod of Orange calls the affection of credulity. From this command of the will the act or assent of faith finally follows.

5. The assent of faith is free and therefore, the suppositions being supposed, meritorious. But the liberty of faith consists in this, that the assent of faith depends on the free will: for the will itself, with the goodness of that same assent shining beforehand, freely determines itself to command it.

6. Since theological faith, which by the Council of Trent is called the beginning, foundation, and root of all justification,[3] must be a supernatural act, it is elicited not by the powers of nature, but of grace. Therefore the judgment of the intellect by which we know the fact of revelation, the authority of God revealing, and the obligation of believing, proceeds from supernatural illumination; the will through the inspiration of grace conceives the pious affection of credulity; and finally the intellect through the powers of grace assents to revealed truth.

a. Once the nature of faith has been explained, it is now easily understood that by acts of faith we believe God (*credere Deo*), because by reason of the formal object we believe God revealing; that we believe God (*credere Deum*), because by reason of the material object we believe God and whatever things have been revealed concerning God; and finally that we believe in God (*credere in Deum*), because through faith we tend into God, our end.[4]

b. Although true faith requires from man the sacrifice of the intellect, insofar as he is bound to embrace truths whose internal reason he does not understand, and insofar therefore as he must bring his intellect into captivity unto the obedience of faith, nevertheless true faith is and must be a rational service, insofar as it does not believe and cannot believe unless by the light of reason it knows that all those things which it embraces by faith are absolutely true from divine authority.

**6. Division of faith.** 1. Into habitual faith, which is the habit or virtue of faith described above; and into actual faith, which is the act or assent of faith likewise defined above.

2. Habitual faith is one thing when formed by charity, or living, and another when unformed, or dead, according as it is joined with the habit of charity as in a just man, or is deprived of it as in a sinful man.

Unformed faith is not therefore called dead because it cannot and ought not exercise itself by acts of faith, and those supernatural acts: for it is a true virtue and true faith;[5] but it is called dead because the faithful man not yet justified lacks true supernatural life, which is had only where meritorious acts of eternal life can be exercised.

3. Actual faith is divided into internal faith, which is the assent of faith conceived in the mind; and external faith, which is the external profession of internal faith by words, actions, or other signs.

4. Actual faith is further divided into faith simply divine, by which that is believed which indeed has been revealed by God, but has not also been proposed by the Church to be believed; and into Catholic faith, by which is believed whatever is revealed by God and proposed by the Church to be believed.

a. By the will of Christ the Church has been constituted the means and organ by which revealed truths to be believed are proposed to the faithful; from this it is clear that by Catholic faith only public revelation can be believed, which by the authority of the Church is proposed to all to be believed, but by divine faith even a private revelation can be believed, which is granted to one man alone.

b. Therefore faith is also secondarily founded on the authority of the Church as on an infallible and necessary means by which we know the things which God has revealed. Therefore he who believes an article of faith

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**Notes**

3. Sess. 6, c. 8.

4. Cf. St. Thomas, II-II, q. 2, a. 2.

5. Council of Trent, sess. 6, can. 28.

acknowledges not only the authority of God revealing, but also the infallible authority of the Church; and he who denies an article of faith contemns not only the authority of God revealing, but also the authority of the Church infallibly proposing revealed truths.

c. Hence it is rightly said that theological faith is immediately resolved into the authority of the Church as into the means infallibly proposing truths revealed by God, and is ultimately resolved into the wisdom and veracity of God as into the motive of faith.

5. Actual faith is divided objectively into explicit faith, by which something is believed in itself, whether this happens with the terms known only confusedly or distinctly; and implicit faith, by which something is believed not in itself, but in another in which it is in some way contained.

Now that which is believed can be contained in another in two ways: a. in the truth which is believed, if this truth is general, in which other truths are contained; thus he who explicitly believes all things which God has revealed implicitly believes the Most Holy Trinity, and he who explicitly believes that God is the creator of all things implicitly believes that He is the creator of men; b. in the motive on account of which it is believed, which is the authority of God revealing: for he who explicitly believes some determinate article of faith because God has revealed it, by that very fact implicitly believes all other revealed truths, because their faith rests on the same motive.

6. Finally, actual faith is divided subjectively into formal and virtual, or exercised, faith: the former is faith which is expressly elicited in some truth on account of the authority of God revealing, as if someone believes that God is triune in persons because God, supremely wise and truthful, has revealed it; the latter is faith in some truth which is presupposed by the act of some virtue and accompanies it by its own influence. Thus faith in the Most Holy Trinity accompanies by its influence the act of one forming the sign of the cross and is presupposed by it.

The difference between formal and virtual faith consists in this, that he who elicits formal faith explicitly attends to the motive of faith, while he who elicits virtual faith does not expressly attend to the authority of God revealing nor think reflectively about it. Virtual and exercised faith supposes actual and express cognition of the motive of faith, which cognition, remaining habitually in the soul, flows by its power into the action by which faith is exercised. Thus he has virtual and exercised faith who bends his knees before the Most Holy Sacrament, or receives the sacrament of penance, even if he does not think reflectively about the revelation of God, just as the farmer has virtual and exercised hope of the harvest who scatters seeds from hope of the harvest, even if he does not think reflectively about the harvest.

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# Question Second. On the Necessity of Faith

## Article First. On the Necessity of the Act of Faith

**7. Assertion.** Actual faith is necessary for all adults by necessity of means: for those not yet justified, unto justification; for those justified, unto salvation.

a. In order to salvation there is distinguished a twofold necessity, one of means, the other of precept. That is called necessary by necessity of means without which the end cannot be obtained, even if it is inculpably not employed; and that is called necessary by necessity of precept without which the end cannot be obtained only then, if it is culpably not employed. Of this kind is everything which obliges under grave precept.

If that which is necessary by necessity of means is not in our power, it is called necessary by necessity of means only; but if it is in our power, it is called necessary by necessity of means and of precept: for by the

same obligation by which we are bound to the end, we are also bound to employ the means necessary for it, if they are in our power.

If that which is necessary by necessity of means is required in itself and cannot be supplied by another means, as sanctifying grace at the end of life, it is called necessary by a strict, absolute necessity of means and in reality; but if it can be supplied by another means, as the sacrament of baptism, it is called necessary by a broad, hypothetical necessity of means and at least in desire.

b. Habitual faith also is necessary for salvation by necessity of means: for from faith it is certain that no one is saved unless he is adorned with sanctifying grace; but together with sanctifying grace, which is infused in justification, habitual faith also is at the same time infused. But since moral theology treats not of habits, but chiefly of the acts of virtues, the discussion in this place is concerning the necessity of the act of faith. From this it is clear that this necessity regards adults alone; but in moral theology those are called adults who have attained the use of reason.

c. There are among recent theologians some who, in order to render easier the eternal salvation of unbelievers, teach that for obtaining justification there is not always required faith properly so called, by which a revealed truth is believed on account of the authority of God revealing, but that sometimes faith improperly so called suffices, by which the mind embraces a truth known by the light of reason under the actual influence of grace. The assertion is understood concerning faith properly so called.[6]

d. Where here the necessity of the act of faith is treated, it is only affirmed that some act of theological faith is necessary, prescinding from its object or from the truths to be believed, concerning which there will be discussion below.

**8. Necessity of means.** 1. Actual faith is necessary for adults not yet justified by necessity of means unto obtaining first justification, whether *ex opere operato* through the sacrament or *ex opere operantis* through an act of charity or of perfect contrition: a. But without faith it is impossible to please God: for he who approaches God must believe that He is, and that He is a rewarder to those who seek Him;[7] but these words of the apostle must be understood concerning actual faith, and that properly so called.[8] b. And indeed an adult man cannot arrive at justification unless by his own acts he disposes himself for it; but he cannot dispose himself for it unless he knows that God is and that the same God will be propitious to him; and he cannot know this except through faith.[9] c. The Council of Trent, speaking of faith, and that properly so called, adds, "without which justification has never happened to anyone."[10]

Explicit and formal actual faith is necessary only for the first justification of an adult; but for second justification, which the sinner obtains either in the sacrament of penance or through perfect contrition, virtual faith suffices, unless he has lost the habit of faith. For although the Council of Trent[11] enumerates faith and hope among the dispositions of the adult for obtaining justification, nevertheless the acts which the council enumerates do not always have to be formally elicited, as in first justification, but it suffices that they be virtually present.

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**Notes**

6. Fr. Schmid, *Die ausserordentlichen Heilswege*, Brixen: Pressverein, 1899, second section, *Die Notwendigkeit des Glaubens*, p. 79. W. Liese, *Der heilsnotwendige Glaube*, Freiburg: Charitas-Druckerei, 1902. Martin, *De necessitate credendi et credendorum seu de fide salutari*, Paderborn: Schoeningh, 1906.

7. Heb. 11:6. Cf. Gal. 2:16.

8. Cf. Schmid, loc. cit., n. 103.

9. Cf. Schmid, loc. cit., who in n. 94 ff. develops the arguments with equal acuteness and learning.

10. Council of Trent, sess. 6, c. 7. Cf. Vatican Council, sess. 3, c. 3.

11. Sess. 6, c. 6.

2. Actual faith is necessary for adults already justified by necessity of means unto salvation: for the adult man ought to order himself and all his things to God, the ultimate end, or to tend by his acts to the supernatural end of eternal life and merit it for himself by good works; but this cannot happen unless he believes that God is, and that He is the rewarder of the good and the avenger of evils.

There are some who say that actual faith is necessary by necessity of means for absolutely all men using reason, even baptized children, as soon as they have arrived at the use of reason;[12] others, on the contrary, say that actual faith is necessary for children of this kind by necessity of precept.[13] Now nothing prevents it from being called necessary by necessity of means, provided it is held that adults of this kind are to be equated with infants until they have been instructed in faith and attend to the obligation of eliciting an act of faith, and therefore can be saved even without an act of faith.

3. This faith in adults not yet justified ought to be explicit and formal, by which some truths are believed explicitly in themselves; nevertheless in adults already justified virtual faith suffices, provided they explicitly know the things which must be believed by necessity of means and acknowledge the authority of God revealing: for a more perfect faith is not required for obtaining the end on account of which faith is necessary. Furthermore, faith is necessary in reality, nor does its desire suffice, which is contained in the act of charity of God.

## Article Second. On the Truths Necessarily to Be Believed

**9. Declaration.** Now it is asked which truths must necessarily be believed explicitly. It does not suffice that everything which the Church proposes to be believed as revealed be implicitly believed, but some truths must be believed explicitly and therefore also known. Further, some truths are to be known and believed explicitly by necessity of means, others by necessity of precept. But with respect to the remaining truths it suffices that each one believe them implicitly, being prepared also to believe explicitly any which he has known to have been proposed by the Church as to be believed.

**10. Truths to be believed by necessity of means.** 1. It is certain that by necessity of means unto justification and salvation this twofold truth must be explicitly known and believed: that God is, and that God is a rewarder: for a. But without faith it is impossible to please God: for he who approaches God must believe that He is, and that He is a rewarder to those who seek Him.[14] b. The contrary proposition, "Only faith in one God seems necessary by necessity of means, but not explicit faith in a rewarder," has been condemned.[15] c. Man cannot be converted to God and tend into Him unless he knows that God is, and hopes that He will pardon his sins and confer eternal beatitude upon him.

Hence it follows that never, not even in the article of death, can baptism or absolution be conferred on an adult who is ignorant of these two mysteries, the knowledge and faith of which are certainly necessary by necessity of means; for since he lacks the absolutely necessary means, he is not capable of the grace of justification.

2. Practically, it is probable that after the promulgation of the Gospel, the mysteries also of the Most Holy Trinity and of the Incarnation must be explicitly known and believed by the same necessity of means unto justification and salvation; but certainly they must be believed implicitly, and by necessity of precept also explicitly.

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**Notes**

12. Lacroix, bk. 2, n. 11 ff.
13. Ballerini-Palmieri, II, n. 10.
14. Heb. 11:6.
15. Proposition 22, condemned by Innocent XI.

a. The question whether, for obtaining justification, faith also of each mystery, of the Most Holy Trinity and of the Incarnation, is required by necessity of means, is very difficult and disputed among theologians. Those who affirm the necessity of means attempt to demonstrate it not indeed from the nature of the thing, but by positive arguments. But those who deny this chiefly show from St. Paul that faith in only the twofold truth suffices, since, speaking of the necessity of faith, he teaches: Without faith it is impossible to please God: for he who approaches God must believe that He is, and that He is a rewarder to those who seek Him.[16]

The same authors argue thus: before the coming of Christ explicit faith in these mysteries was not necessary; but it cannot be admitted that gentiles after the coming of Christ can be saved with greater difficulty than before His coming, which would have to be affirmed if explicit faith in these mysteries were necessary by necessity of means.[17]

b. Although the opinion which denies this is not to be called morally certain, nevertheless it can be called truly probable, indeed theoretically more probable, and it is called sufficiently probable by St. Alphonsus, to whom the affirmative opinion seems more probable (n. 2);[18] therefore for practice these things are to be held:

c. An adult not yet baptized who is found in the article of death and cannot be instructed because of the gravity of the illness can be baptized; in the same way a baptized adult who in the article of death cannot be instructed can be absolved conditionally, even if each is ignorant of the mysteries of the Trinity and of the Incarnation: for since their knowledge and faith is probably not absolutely necessary, it is permitted to use this probable opinion concerning the value of the sacraments where the eternal salvation of the dying person is at stake.

d. But outside the article of death, it is not permitted to baptize an adult not yet baptized, nor to absolve a baptized adult, if they are ignorant of the mysteries of the Trinity and of the Incarnation: for since the opinion affirming absolute necessity is probable, baptism and penance could be frustrated of their effect. Therefore an adult of this kind must either be dismissed until he has been sufficiently instructed, or immediately before the conferral of the sacrament he must be instructed, insofar as there is need, with the admonition added that he should acquire for himself the knowledge of those things which must be known and believed by precept.[19]

e. Therefore an adult who for some time had confessed while ignorant of the mysteries of the Most Holy Trinity and of the Incarnation need not necessarily repeat the confessions made in this state of ignorance: for confessions are not necessarily to be repeated unless it is certain that they were invalid; but those confessions were probably valid.

**11. Truths to be believed by necessity of precept.** From the precept of Christ the Lord, obliging under grave matter, all the faithful, when they have arrived at the use of reason, are bound, besides those things which must be believed by necessity of means, explicitly to know and believe the principal mysteries of the Christian faith; besides this they ought to know the commandments which are to be observed by all: a. Going into the whole world, preach the Gospel to every creature. He who has believed will be saved, but he who has not believed will be condemned.[20] Therefore going, teach all nations … teaching them to observe all things

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**Notes**

16. Heb. 11:6.
17. Cf. Schmid, loc. cit., n. 137 ff.
18. Citations from the moral theology of St. Alphonsus are made according to the typical edition.
19. Cf. Holy Office, 3 May 1703.
20. Mark 16:15-16.

whatsoever I have commanded you.[21] b. Besides this, the state of the Christian man requires that he know and believe the principal mysteries of the Christian faith, and know and observe the precepts common to all.

**12. Declaration of this precept.** 1. What things in particular must be known by necessity of precept and, insofar as they are revealed, also believed, we learn from the usage and practice of the Church; but according to all authors these are reduced to these four:

a. The Apostles' Creed,[22] which contains the sum of the Christian faith.

In the Apostles' Creed, however, some things are contained which must be explicitly believed not under grave obligation, but only under light obligation: a. the perpetual virginity of the Blessed Mary; b. the burial of Christ and the descent into hell, because these circumstances are of lesser moment; c. the session at the right hand of the Father and the communion of saints, because these are too difficult for the faithful to grasp. Indeed, some things need not be known even under light obligation: that Christ suffered under Pontius Pilate and rose again on the third day.

b. The precepts of the decalogue, which ought to be observed by each one, and by parity of reason the common precepts of the Church also must be added.

The precepts of the decalogue must not only be known, but also believed, for these precepts have been revealed so that they may be observed by all; but what has been revealed by God must be believed with divine faith. The precepts of the Church, however, are not to be believed, but only known and observed, because they have not been revealed.

c. The Lord's Prayer, which contains all things which are to be hoped for and asked from God.

d. The sacraments necessary for all: baptism, penance, and the Eucharist; but the other sacraments he ought to know who is about to receive them.

Besides these four, there are not other things which all the faithful must know and believe, except the manner of eliciting acts of faith, hope, charity, and contrition, even if a fixed formula for eliciting them is not held in memory; but by reason of state and condition, for example of a priest or parish priest, it can happen that someone must explicitly and distinctly know and believe many other things.

2. Generally it is not necessary that the faithful hold these truths in memory word for word or in the order in which they are proposed; nor is it required that they have a clear and distinct cognition of each one, but it suffices that they know them as to substance, that is, as to the common and simple meaning of the words.

Nevertheless most authors judge that those who do not learn word for word the symbol of faith, the Lord's Prayer, and the Angelic Salutation, commit a venial sin, unless dulness of mind excuses them, especially since it is greatly to be feared that they will entirely neglect the obligation of praying unless they have learned at least the Lord's Prayer and the Angelic Salutation.

a. Therefore under grave obligation it is necessary that the faithful, with respect to the Creed, when asked concerning the several things which are contained in it, answer rightly; with respect to the decalogue and the precepts of the Church, that, when asked, they know that those things are commanded or prohibited

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**Notes**

21. Matt. 28:19-20.

22. A symbol, etymologically, signifies a collection of several things; in military usage, a sign or tessera by which true soldiers are distinguished from others; in Christian usage, a brief sum of things to be believed. The principal symbols are these three: a. the Apostolic Symbol, which the faithful recite in daily prayers and clerics in the divine office. b. The Niceno-Constantinopolitan Symbol, which was begun by the first general Council of Nicaea and was augmented by the first Council of Constantinople. This, with some explanations added, is that which the Latin Church recites in Mass. c. The Athanasian Symbol, which the Church orders to be recited in the office of Sunday at Prime; nevertheless, learned men commonly deny that it belongs to St. Athanasius. From symbols are to be distinguished professions of faith, of which the more celebrated is the Tridentine, which Pius IV composed and decreed to be emitted with an oath in certain determined circumstances.

by God or by the Church; with respect to the Lord's Prayer, that they know that God is to be prayed to and that all goods of soul and body are to be sought from Him; with respect to the sacraments, that they know the things which are necessarily required so that they can be received with fruit.

b. From these things for practice it follows: a. that not only those who neglect to learn these things sin, gravely or lightly according to the gravity of the matter, but also pastors who do not instruct their subjects, and parents who do not instruct their children, either by themselves or through others, in those things which are necessary for salvation.

c. In confession penitents who are probably presumed to lack this knowledge are to be questioned concerning the things which are necessary to know. And since in our time, in matters pertaining to religion, those who in profane matters appear sufficiently cultivated are frequently very unformed, and these are easily offended by questions of this kind, it will be better to teach them concerning the necessary truths in such a way that acts of faith are elicited with them concerning these truths.

d. Those who are ignorant of the things necessary to know by necessity of precept cannot be absolved unless they have first promised that they are willing to learn them; and where the ignorance is gravely culpable, unless they first grieve over this sin, accuse it, and conceive the purpose of learning these things afterward.

e. It is clear that those who because of narrowness of mind are incapable of learning these things are not bound by this precept; and if there were men so unformed that they could not conceive and explicitly believe the mysteries of the Most Holy Trinity and of the Incarnation, one should not despair concerning their salvation: for although faith in these mysteries is said to be necessary for adults by necessity of means, the unformed of this kind in this respect are not to be reckoned among adults, but among infants, who cannot elicit faith concerning these mysteries.

f. Those are bound to acquire for themselves a more perfect knowledge of faith who live in circumstances in which, without greater knowledge of religion, they are in great danger of losing faith, as happens to those who must converse more frequently with unbelievers and socialists.

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## Article Third. On the Precept of Internal Faith

**13. Things to be premised concerning the precepts themselves of faith.** 1. The precept of faith concerns both the internal act and the external act; each is twofold: negative, of not denying the faith either interiorly or exteriorly; and affirmative, of eliciting interiorly an act of faith and of confessing the faith exteriorly. This precept of external faith is both divine and ecclesiastical.

2. The obligation of eliciting an act of faith sometimes exists *per se*, or by reason of faith itself; sometimes it exists accidentally, or by reason of another precept which cannot be fulfilled without an act of faith, for example, of receiving Holy Communion. He who violates the former obligation commits a sin against faith; he who violates the latter sins only against that virtue which cannot be exercised without an act of faith.

3. In order that the faithful may satisfy the precept of faith, it is not necessary that the act of faith be formal, but virtual faith suffices, such as pious faithful very frequently elicit, provided the mysteries of faith have been proposed to them as revealed by God, for example, when they recite the Apostolic Symbol, make the sign of the cross, pray, hear Mass, frequent the sacraments: for all these things suppose or include an act of faith.

**14. Whether it exists and when it obliges.** 1. There exists a divine precept gravely obliging one to elicit

acts of faith. In Sacred Scripture this precept is often enjoined: He who has not believed will be condemned;[23] he who does not believe is already judged;[24] and this is His commandment, that we believe in the name of His Son, Jesus Christ.[25] But it is clear that this precept is grave: for condemnation is the punishment of mortal sin.[26]

2. Since an affirmative precept does not oblige always, but only at certain times, it is now asked how often and when the internal act of faith must be elicited. An affirmative precept which at the same time does not determine the time at which it obliges is judged to oblige when it is understood to be necessary; and there are five times at which the precept of eliciting an act of faith urges *per se*:

a. When divine revelation has been sufficiently proposed to a man.

b. As soon as divine revelation has been sufficiently proposed, an act of faith is necessary: for reverence toward the infallible authority of God demands that man believe at once when something is proposed to him as revealed by God and to be believed; otherwise the authority of God would be judged to be contemned. Just as we ought immediately to show reverence to a king appearing to us, so we ought immediately to believe God speaking to us. Besides this, when man has attained the use of reason, he is bound to place the beginning of spiritual life, that is, to tend to God, the supernatural ultimate end of his life, through the observation of the commandments; but this cannot happen without an act of faith at least virtually elicited.

c. The truths of faith are judged to have been sufficiently proposed to those who certainly know that their revelation has been made by God and know the obligation of believing. Therefore the children of the Christian faithful are bound to elicit an act of faith as soon as they have perfectly attained the use of reason and have been so instructed in faith that they apprehend the mysteries of faith as revealed by God; but unbelievers and heretics are bound to this, together with entrance into the Catholic Church, when first the truths of faith have been so proposed to them that they certainly know them as revealed by God and know the obligation of believing them.[27]

d. If anywhere the political power forbids conversion to the true faith before a certain year of age, the sixteenth or eighteenth, the law is impious, and it is not permitted to him who has been persuaded of the truth of the Catholic religion to defer the profession of faith longer on account of civil law. Pastors of souls are bound to admit to the profession of faith those who seek to be gathered into the bosom of the Church, notwithstanding any temporal evil of their own or of another. But to avoid evils which from the civil law threaten both the parish priest and the one to be converted, it can be permitted that by mutual consent the conversion be deferred until the legal age, or that the conversion already completed be hidden until that age, if it is now very near.

e. More often in life, because faith is very necessary for conserving the spiritual life. Apart from the beginning of spiritual life, another determinate time cannot indeed be assigned at which the divine precept of eliciting an act of faith obliges; nevertheless it cannot be denied that it obliges several times. Therefore the faithful are indeed to be earnestly exhorted to elicit acts of faith frequently; but they are not easily to be accused of sin on account of an omitted act of faith.

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**Notes**

23. Mark 16:16.

24. John 3:18.

25. 1 John 3:23.

26. This proposition (16) was condemned by Innocent XI: faith is not judged to fall under a special precept and according to itself.

27. An unbeliever or heretic is not indeed bound to believe so long as he does not certainly know the truth of the Christian faith, but he is bound to inquire into the true faith: for where eternal salvation is at stake, it is not permitted to rest before the certain way of obtaining it has been found. Therefore this proposition (4) was condemned by Innocent XI: An unbeliever not believing, led by a less probable opinion, will be excused from infidelity; that is, so long as his sect appears probable to the unbeliever, even if less probable than the Christian religion, he indeed is not bound to believe, but neither can he licitly remain tranquil in his sect, since he is bound to inquire further until he has arrived at certain knowledge of the truth.

Some authors affirm that faith must be elicited at a determinate time, and some indeed at least once a year, others once a month, others on each Sunday and feast.[28] To confirm this opinion of theirs they appeal to two propositions condemned by Innocent XI, of which one (17) is this: It is enough to elicit an act of faith once in life; but the other (65) reads thus: It suffices to have believed those mysteries, namely of the Most Holy Trinity and of the Incarnation, once. Yet the authors who establish these precepts add that they are satisfied through the use of faith, namely, by the fact that faith is exercised through the observation of other precepts.

But from the condemned propositions we have only this: that there exists a precept of eliciting an act of faith more than once, or more often, in life; but how often and when it must be elicited is altogether indeterminate; and an indeterminate precept cannot urge at a determinate time. Besides, the faithful will rarely sin formally against this precept: for those who live as Christians satisfy it abundantly through the exercise of faith; but others do not advert to the obligation of believing. Therefore it is not necessary that the confessor question penitents about an act of faith elicited from time to time, whether they had been diligent or negligent in exercising religion.

c. After a lapse into heresy or after a denial of faith: for he who has lost faith ought again to adhere to God through faith.

d. When a temptation against faith urges which is hoped to be overcome only through an act of faith.

If a temptation against faith urges, by the virtue itself of faith we are bound to fight against the temptation in order to preserve this faith; therefore as often as an act of faith is the only means of overcoming the temptation, we are bound to elicit it from the precept of faith. Yet outside the article of death it will rarely happen that a temptation against faith can be overcome only through an act of faith, and this all the more because temptations against faith are generally overcome more efficaciously if we do not struggle against them directly, but turn the mind to other objects.

e. When a new definition or a new article of faith is proposed: for God speaking is to be believed. Hence, if some new dogma is proposed, it does not suffice not to deny it by suspending assent, but it must be believed by internal assent.

There are some who, with St. Alphonsus (n. 7), say that the precept of eliciting an act of faith also urges *per se* in the article of death, because then we are most of all bound to tend into God, the ultimate end; and besides this, if the precept of communion then obliges, the precept of faith also obliges. But it cannot be proved with certainty that faith is necessary at that time, unless a vehement temptation against faith urges. And indeed, he who is said to be bound in death to elicit faith is either in the state of grace or in the state of sin: if the first, the necessity of faith does not appear, unless otherwise the temptation against faith cannot be overcome; if the second, faith is indeed necessary, but not *per se* from the virtue of faith, but accidentally from the obligation of reconciling oneself with God, which cannot happen without faith at least virtually elicited. And as regards Holy Communion, there indeed exists a precept of receiving the Holy Eucharist in death on account of the particular necessity of this sacrament in the last struggle, but a precept of eliciting an act of faith in death cannot be brought forward.

**15. When it obliges accidentally.** Accidentally the obligation of eliciting an act of faith urges: a. when other obligations which require faith must be fulfilled; thus the faithful cannot hear Mass, nor receive the sacraments, etc., unless an act of faith is supposed, which is virtually elicited; b. when a grave temptation against another virtue urges, and this temptation cannot be overcome without an act of faith: for everyone is bound to use the necessary means for avoiding sin.

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**Notes**

28. Cf. St. Alphonsus, bk. 2, n. 7.

## Article Fourth. On the Precept of External Faith

**16. Whether there exists a divine precept and when it obliges.** 1. There exists a grave obligation of confessing faith externally, even with danger to life; this is established from Sacred Scripture: Everyone therefore who shall confess Me before men, I also will confess him before My Father who is in heaven; but he who shall deny Me before men, I also will deny him before My Father who is in heaven.[29] If you confess with your mouth the Lord Jesus, and believe in your heart, you will be saved: for with the heart belief is unto justice, but with the mouth confession is made unto salvation.[30]

Since this precept also is affirmative, it is asked when the obligation of confessing faith externally urges. The question, however, is concerning formal confession of faith, which is made with the intention that internal faith be outwardly manifested, not concerning material confession, which is made through the observation of a precept that contains a manifestation of faith.

2. The divine precept of formally confessing faith obliges:

a. When the honor of God or of Christ requires external confession, where namely from the omission of confession great detriment of divine honor follows, but from confession great honor accrues to God or to Christ; and this happens especially: a. if someone is asked about his faith by public authority in a cause of faith; b. if the doctrine of faith is mocked or if sacred things are violated.

b. If someone is asked by public authority in a cause of faith about his faith, namely whether he is a Catholic, or what he thinks about some truth of faith, whether this happens publicly or privately, he is bound to confess his faith without ambiguity, even with danger to life,[31] because the omission of profession among unbelievers would greatly diminish esteem for God and for the true religion; on the contrary, through public confession the true faith is confirmed and propagated. But if some private unbeliever or heretic asks someone about his faith, of itself he is not bound to confess it, but can be silent or evade the question in another way.

c. If in your presence the doctrine of faith or of the Church is exposed to mockery or blasphemies, you are bound not only to profess the faith, but also, if you judge yourself sufficient for this, to defend it; and if in your presence the Most Holy Eucharist or sacred images or relics are violated, you are bound to manifest yourself as a Catholic and to restrain the injuries, unless you foresee that your efforts will be of no profit.[32]

d. When the utility of the neighbor requires external confession, where namely from the omission of confession the faithful would fall away from the faith and unbelievers would be confirmed in their error; but, on the contrary, from confession unbelievers would be converted and the faithful confirmed in the true faith.

Whether an adult who receives baptism or returns to the Church ought publicly to profess the faith. Every Christian, by the will of Christ, ought visibly to adhere to the Church; but he adheres visibly to the Church through profession of faith. This obligation of outwardly manifesting the faith endures throughout the course of life; but it is fulfilled by this very fact, that the precepts are observed which contain the external profession of faith, such as hearing Mass, receiving the sacraments, etc.

a. Hence, outside the case of necessity, it is not permitted to baptize an adult or admit him to conversion secretly, with only the priest knowing, but this ought to happen publicly before others, at least two

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**Notes**

29. Matt. 10:32-33.

30. Rom. 10:9 ff. Cf. 2 Tim. 2:12.

31. Proposition 18, condemned by Innocent XI: If someone is questioned by public authority, I counsel that he sincerely confess the faith as glorious to God and to the faith; to be silent I do not condemn as sinful of itself.

32. Sporer-Bierbaum, I, tract. 2, n. 43.

witnesses. Therefore the Church prescribes that the abjuration of heresy which is required of new converts be made before two witnesses, and that the completed conversion be inserted into the parochial books, both so that satisfaction may be made to the obligation of professing the faith, and so that the converted person may be subject to the jurisdiction of the Church in the external forum.

b. Baptism received or conversion completed may indeed be hidden for a time for a grave reason, without being made public, provided the new convert does nothing by which he professes a false sect; thus, as history witnesses, hidden Christians lived in the court of the Roman emperors; but meanwhile he is excused from the positive precepts either of God or of the Church on account of grave inconvenience. Yet concealment for a long time is illicit, both because the obligation of professing the faith urges, and because in practice it cannot happen that circumstances will not soon occur in which the convert must deny the faith and externally profess the sect. Therefore it has been established that a Mohammedan who on account of danger to life wishes to be and remain a hidden Christian cannot be admitted to baptism, but he ought to transfer himself to places where he can publicly profess the Christian religion.[33]

c. In a case of necessity, where namely one dying, for a grave cause, refuses public conversion to the faith, he can be received into the Church altogether secretly by any priest, so that provision may be made for his salvation, unless the reason of preventing scandal or of promoting the salvation of the neighbor requires otherwise, as in a man of great dignity and authority. But even in this case the conversion can be made before only two witnesses, who, if there is need, can afterwards make the matter public.[34]

**17.** By ecclesiastical law, to certain persons, both ecclesiastical and lay, in certain circumstances profession of faith is prescribed. The cause of this precept is judged to be grave, namely lest spiritual or temporal rule and the office of teaching others be committed to an unbelieving or heretical man. Yet in many regions this precept, at least in part, has been abolished by desuetude.[35]

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## Article Fifth. On the Denial of Faith

**18. Preliminary notions.** a. The negative precept of faith prohibits faith from being denied, whether internally or externally; therefore this precept, as negative, obliges always and for always.

b. It is one thing to deny faith, another to dissimulate faith; he dissimulates faith who uses words or signs which neither manifest nor deny faith, but leave it in doubt, and therefore are apt for hiding faith.

c. It is one thing to deny faith, another to be ashamed of faith; he is ashamed of faith who, because of shame or fear, does not profess faith when the precept requires this.

d. He directly denies faith who knowingly and voluntarily denies the true faith or professes a false one; he indirectly denies faith who, without the intention of denying faith, places an action which others have or can have as a denial of faith, as if someone assists at the rites of heretics.

**19.** It is never permitted directly to deny faith, whether this is done seriously or fictitiously and only externally.

The reason of the first is that denial of faith is a most grave injury inflicted on God: for he who denies faith either indicates that divine revelation is not true, or at least is ashamed of the divine majesty. He who shall

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**Notes**

33. S. C. de Prop. Fide, 28 May 1635.

34. Cf. Lehmkuhl, *Casus conscientiae*, I, n. 182 ff.

35. Concerning who must emit the profession of faith according to the form prescribed by Pius IV, with the addition made by Pius IX, see Lehmkuhl, I, n. 296; Aichner, *Compendium iuris ecclesiastici*, Brixen: Weger, 1900, §150, 3.

deny Me before men, I also will deny him before My Father who is in heaven.[36] He who shall be ashamed of Me and of My words, of him the Son of Man will be ashamed when He shall come in His majesty.[37] Therefore the Church has always held denial of faith, even in times of persecutions, as a most grave sin.

The reason of the second is that a fictitious denial of faith is a lie injurious to God and harmful to the neighbor because of scandal; wherefore the Church has held even only external denial of faith as a grave sin. Therefore even if he who only externally denies faith is not a heretic and does not lose the habit of faith, because he retains faith internally, nevertheless he sins against the negative precept of faith.

**20. In how many ways faith is denied.** Faith can be denied either by words, or by deeds, or by signs, or by silence.

1. He denies faith by words who seriously or fictitiously uses words which either of themselves or as they are rightly perceived by the hearers deny faith universally or deny some article of faith.

a. He who, when asked, denies that he is a Catholic, an infallibilist, etc.; likewise he who affirms that he is a Turk, a Freemason, etc.; in like manner he who professes that he is a Lutheran, an Old Catholic, explicitly denies the true faith.

b. If a priest or religious passing through the lands of an unbelieving or heretical prince were asked by this prince about his state, namely whether he is a priest, he could of itself for a grave cause evade the question by ambiguous words, because it is not an interrogation concerning faith, but concerning his state; and if he denied his state, he would sin not against faith, but against truth by a lie, venially.

2. He denies faith by deeds who seriously or fictitiously performs an action which either from its own nature or from the circumstances necessarily signifies profession of a false religion.

a. He who sacrifices to an idol, bends the knees before an idol, communicates in the supper of heretics, ordinarily frequents the sacred rites of heretics, prays or sings with them, denies faith, because by deeds he professes a false religion; and he who does this fictitiously commits by deed a lie injurious to God and harmful to men. Therefore the Holy See declared that it is not permitted to Chinese Christians to exhibit external signs of adoration to an idol, although the intention is directed to a cross hidden under the garment.[38]

b. To the proposed question whether it is permitted for the faithful to bend the knees before hosts consecrated by intruders or schismatics, the response was that although one must genuflect, nevertheless care must be taken, lest Catholics by offering worship of this kind seem to mingle with schismatics, that they avoid occasions of encountering schismatics while they carry the sacrament.[39]

c. It is permitted to visit the Most Holy Sacrament which is reserved in churches of schismatics, and to pray before images of the saints which are found in them, provided Catholics do not associate in prayers with schismatics.[40]

3. He denies faith by signs who uses garments or signs which either from their own nature or from use and custom indicate only heresy or infidelity.

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**Notes**

36. Matt. 10:33.

37. Luke 9:26.

38. S. C. de Prop. Fide, 12 Sept. 1645.

39. Responses of Pius VI, 18 May 1793, to 11. Cf. continuation of the Roman Bullarium, ed. Barberi, Rome, IX, p. 314.

40. S. C. de Prop. Fide, 15 Dec. 1764.

To wear the insignia of Freemasons or to use the nods and compression of hands or fingers by which Freemasons recognize one another is illicit, because it contains profession of a false sect and denial of the true faith. Yet this must be restricted to the case in which a Catholic uses these signs: for the use of these signs by which Freemasons themselves, who habitually deny the faith, use them among themselves to recognize one another, does not seem on each occasion to be a new denial of faith.

4. He denies faith by silence who is silent in those circumstances in which silence is deservedly held as a denial of faith.

He who is silent when another answers for him that he is not a Catholic, likewise he who is silent when, after several have been asked concerning faith, some deny that any of them is a Catholic, has denied faith, because silence in this case is consent to the denial.

He who hears others speaking against faith or mocking and calumniating the Catholic religion is of himself bound to contradict them and admonish them, lest he seem to consent to them; yet if he fears either worse calumnies or grave inconveniences to himself, he does not sin by being silent. But a priest in such a case, especially among Catholics, will hardly ever be able to be silent: for his silence would be scandal and confirmation of error;[41] besides this, the fruit of admonition can be more easily hoped for.

**21.** It is permitted to hide or dissimulate faith when the precept of confessing faith does not oblige; indeed, if from the profession of faith no good but rather detriment to the honor of God or to the salvation of neighbors follows, hiding faith can be a precept. But someone can dissimulate or hide faith either by silence, or by ambiguous words, or by deeds, signs, garments, etc.

a. It is permitted for a Catholic or priest existing in the lands of heretics to eat meat on prohibited days, lest, recognized as a Catholic, he undergo grave danger either of life or of goods: for this action of itself does not signify denial of faith; besides this, in these circumstances there is no necessity of confessing faith, and the precept of the Church does not oblige with grave inconvenience. But to avoid mockeries the same thing would not be permitted, because a light inconvenience does not excuse from the precepts of the Church.

b. He who, whether in contempt of faith or of an ecclesiastical precept, or in protestation of disobedience toward the Church or the supreme pontiff, or in profession of a false sect, when challenged to eat meat, does this, denies faith, because in these circumstances, in which the obligation of professing faith urges, the eating of meat is not an indifferent action, but a virtual denial of faith.

Whether it is permitted to use ambiguous words for hiding faith. When the precept of professing faith obliges, it is certainly not permitted; but when this precept does not urge, it is permitted not only to be silent or to decline a response, "this does not concern you," but also to use ambiguous words, unless the words ought to be understood by the hearers as a denial of the true faith.[42]

**22. Whether for hiding faith it is licit to use the garments or other signs of unbelievers.** In general it must be said: if the garment or sign is of such a kind that he who assumes it ought to be judged to profess a false religion, it is not permitted; but if it can be judged that he assumed it for another end, it is permitted from a just cause: for without cause it is not permitted to allow the deception of others. But the cause ought to be the graver, the more the sign is apt to introduce a false judgment.

a. Some garments or signs are distinctive of a nation rather than of a religion, as the hat of the Turks; now it is permitted for a grave cause to use these garments or signs for hiding religion.

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**Notes**

41. E. Muller, *Theologia moralis*^7, Vienna: Meyer, 1894, II, Section 10, n. 6.

42. Cf. Lacroix, bk. 2, n. 61.

b. Other garments and signs are distinctive of religion: wherefore by common usage they are employed only by unbelievers or by members of a determinate sect to distinguish men of one sect from men of another, as the cloak of preachers, or the gown of bonzes, or the yellow hat which the Jews used at Rome; further, from a most grave cause it is permitted to use even these garments or signs for hiding faith.

Because by the usage and institution of men these are not signs which immediately manifest the faith which the sect professes, therefore he who uses them does not necessarily have to be judged an unbeliever or heretic: for their primary use is for covering or adorning the body, and their secondary use for distinguishing the sect.

c. Finally, other garments and signs are not only distinctive of a sect, but from institution or custom immediately manifest and protest heresy or infidelity, such as priestly garments which idolaters or heretics use in the exercise of their functions, for example in sacrifices, or the sign by which Turks profess themselves followers of Mohammed. It is not permitted to use these garments or signs, because their use is a profession of false faith, unless from the circumstances it manifestly appears that they are employed not for professing a false sect, but from an entirely different cause, as if someone uses them in public spectacles.

In a similar way one must judge concerning the signs of Freemasons and of other non-Catholic sects, which from their institution and use signify nothing other than profession of a false sect.[43]

**23. Whether, when persecution of faith urges, it is permitted to flee.** Of itself, or by reason of flight, it is always permitted to flee: for he who flees neither denies nor dissimulates faith, nor feigns a false faith, but, fearing persecution, uses his right to preserve faith. Accidentally, however, it is not permitted for all to flee; concerning this matter this rule is established:

a. Those whose presence is necessary for the salvation of the faithful, as are pastors of souls, bishops, and parish priests, cannot licitly flee.

b. Those whose presence is indeed useful but not necessary can remain or also licitly flee.

c. Those whose preservation is necessary to the public good, or for whom proximate danger of denying faith threatens, are bound to flee.

**24.** From a just cause it is permitted indirectly to deny faith, provided the action which is placed is indifferent and the intention of placing that action is honorable.

Although of itself it is not permitted to deny faith even indirectly, nevertheless under certain conditions this must be called licit; thus it is permitted for a Catholic from a just cause to assist at the religious functions of heretics. For if the action which is placed is of such a kind that in these circumstances it ought not to be judged, either of itself or from human institution, a profession of false faith and a denial of true faith, but is customarily judged by men as such, the action indifferent in itself is illicit so far as from it there follows deception and scandal of others; but, when a just cause exists, it is permitted to allow this evil effect, unless it can be entirely impeded by opportune admonition.

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## Question Third. On Sins Against Faith

**25. What sins there are against faith.** One can sin against faith by omission, namely by omitting: a. due diligence in learning the truths of faith necessary to be known; b. the prescribed act of faith; c. the profession of faith prescribed either by God or by the Church; and by commission, by placing an action prohibited by the precept of faith. A sin of commission can be committed by excess and by defect. By excess one sins through

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**Notes**

43. Cf. Lugo, *De virtute fidei divinae*, disp. 14, n. 87.

credulity, by which, without sufficient reason, something is rashly believed as revealed by God which has not been revealed, as if someone lightly believes private revelations; yet this sin does not exceed venial sin. By defect one sins by external or internal denial of faith, which happens by infidelity, apostasy, heresy, doubt concerning faith, and communication in sacred things with unbelievers and heretics.

## Article First. On Infidelity

**26. Definition.** 1. Infidelity properly so called is the lack of faith in a man not baptized: for properly that man is called an unbeliever who has not received the infused habit of faith. Infidelity improperly so called is any defect of internal faith; in this sense infidelity also comprehends heresy and apostasy from faith.

2. Infidelity properly so called is one thing when negative, which is the lack of faith in him who has never heard anything concerning faith; another when privative, which is the lack of faith in him who neglects to acquire for himself the knowledge of faith when the occasion has been given; another when positive, which is the lack of faith in him to whom the truths of faith have been sufficiently proposed.

**27. Moral malice.** 1. Negative infidelity is not a sin, because it is not voluntary; therefore Baian proposition 68 was condemned.[44]

2. Privative infidelity is a grave sin of omission, by which the means necessary for salvation is neglected. A similar sin is committed by him who neglects the inquiry of truth after reasonable doubt concerning the truth of his own religion.

3. Positive infidelity is a grave sin of commission, by which the means necessary for salvation is rejected; besides this, it contains formal contempt of God revealing.

The species of infidelity are paganism, Judaism, Mohammedanism, deism, atheism, pantheism: they are taken from the diverse errors to which unbelievers adhere, but these errors do not pertain to moral theology.

## Article Second. On Apostasy from Faith and on Heresy

**28.** Apostasy from faith is a total defection from faith in him who had received the true faith through baptism; therefore those who have professed heresy from infancy, faith having been altogether cast aside, are not apostates, but only those who once embraced the true faith.[45]

In order that someone be an apostate from faith, it is not required that he adhere to some false sect, but it suffices that after baptism received in the Catholic Church he entirely fall away from faith; wherefore rationalists, naturalists, free thinkers, etc., who have entirely withdrawn from faith and manifest this externally, are judged to be apostates.

**29.** Heresy is defined: the voluntary and pertinacious error of a Christian man against a truth of faith.

a. It is said: a. "Of a Christian man," namely of one who through baptism had received the Christian faith and retains it; for if he rejects it totally, and the true faith, he becomes an apostate. b. "Voluntary error": heresy by its nature demands a positive assent contrary to the truth of faith; therefore he who only externally, by speech or work, denies a truth of faith while internal faith is retained is not a heretic. c. "Pertinacious": for formal heresy there is required pertinacity of the will against the authority of the Church, which proposes revealed truths to be believed; but he is pertinacious who knowingly opposes the authority of the Church,

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**Notes**

44. Purely negative infidelity in those to whom Christ has not been preached is a sin.

45. From apostasy from faith, three other kinds are distinguished: apostasy from religion, which is withdrawal from a religious order without the intention of returning. A religious who only for a time wanders in the world by his own authority with the intention of returning is called a fugitive. Apostasy from sacred order, which is defection from sacred order with the intention of living in the lay state. Apostasy from obedience, which is total defection from obedience to the supreme pontiff and the Church; such apostasy is schism.

whether this happens from vainglory, or from the desire of contradicting, or from levity, or from any other cause. Therefore in order that someone be pertinacious it is not required that he defend his opinion stubbornly and with a certain delay of time, but it suffices that he know this opinion to be contrary to the definition of the Church. d. "Against a truth of faith": namely one which has been proposed by the Church to be believed; wherefore, strictly speaking, they are not heretics who deny a theological conclusion which in itself has not been revealed by God; nor those who affirm a proposition condemned by the Church or by the supreme pontiff, but not as heretical. Here it must be noted that the Church proposes as to be believed all things which are contained in Sacred Scripture as revealed; wherefore he is a heretic who denies a revealed truth manifestly contained in Sacred Scripture.

b. So long as someone retains the will of submitting himself to the authority of the Church, even if he errs in faith or holds an opinion contrary to faith, he is not a heretic, because he is not pertinacious, but acknowledges the infallible authority of the Church. From these things it is gathered to what extent those who adhere to a false sect are heretics. Namely, a child born in heresy but validly baptized belongs to the true Church of Christ, which alone has true baptism. When in heart he embraces the faith of his sect and begins to frequent its religious rites, he becomes a material heretic and remains such so long as either he does not doubt concerning the truth of his religion, or indeed doubts, but omits the investigation of truth only from negligence and carelessness, or from human fear lest he have to believe the truth once found, which he would not dare to embrace. He becomes a formal heretic when, seriously doubting concerning the truth of his religion, he neglects the investigation of truth for this reason, that he refuses to embrace the Catholic religion if perchance it were true, or does not embrace the Catholic religion which he knows to be true.

To discern a formal heretic from a material heretic, he is to be asked: a. whether he apprehended the obligation of inquiring into the truth; b. whether he investigated the truth or neglected the investigation; c. whether he was prepared to embrace the truth as soon as it had been sufficiently proposed.

c. He who knowingly denies a dogma which is believed by all, or who deliberately embraces an opinion which he knows to be contrary to the definition of the Church, by that very fact contemns the authority of that same Church, even if he does not think explicitly about it: for it is impossible that he not advert to it at least virtually.

**30. Heresy is divided:** a. Into material heresy, which proceeds from ignorance alone without pertinacity of the will, and formal heresy, which is joined with pertinacity of the will. Formal heresy is defined above; material heresy is to be defined: the voluntary error of a Christian man against a truth of faith.

b. Into internal heresy, which is conceived only interiorly in the mind, and external heresy, which is also outwardly manifested; moreover it can be manifested by words or deeds or even by omission of a deed.

c. External heresy is one thing when public, if it is manifested before several persons, and another when occult, if it is uttered with no one present or before only a few, so that it can still be hidden.

**31. Moral and specific malice.** 1. Formal heresy and apostasy from faith are sins mortal from their whole genus, after formal hatred of God the gravest, graver than all sins which are committed against the moral virtues: for they contain formal contempt of the wisdom and divine veracity.

2. Material heresy is free from fault before a reasonable doubt concerning the truth of one's own sect has arisen; after such a doubt has arisen, it is a grave or light sin according to the gravity of the negligence in inquiring into truth.

3. Heresy and apostasy do not differ specifically, because both apostasy and heresy are morally opposed in the same way to the authority of God speaking; therefore the fact that the apostate denies more truths and the heretic fewer is only an aggravating circumstance.

4. Diverse heresies, whether conceived interiorly in the mind or outwardly uttered by word, do not differ in species for the same reason, namely because each one contemns the same authority of God speaking in the same moral way.

**32. Whether he sins against faith who does not reject a proposition proscribed by the Church.**

a. He who does not reject a proposition which the Church condemns as heretical sins gravely against divine faith and is a heretic.

b. He who does not reject a proposition which the Church through a council, or through the Roman pontiff speaking *ex cathedra*, condemns, but not as heretical, sins gravely against ecclesiastical faith, but not, at least not immediately, against divine faith, and therefore is not a heretic.

A proposition which the Church proscribes in this way is indeed certainly false, because the Church is certainly infallible in proscribing these things. Therefore he who does not reject a condemned proposition of this kind virtually denies the infallibility of the Church. But because it is not of faith that the Church is infallible in those things which are not revealed, therefore he does not sin against divine faith.

c. He who does not reject a proposition which the Church, either through some congregation or through the Roman pontiff, but not speaking *ex cathedra*, condemns, sins gravely against the faith of obedience, or against the obedience which is owed to the authority of the teaching Church, but he does not sin against faith.

Although doctrinal decrees of this kind are not absolutely infallible, nevertheless they surpass any authority of a private man, because the supreme pontiff has been placed by Christ the Lord to rule the Church by his supreme magisterium. Therefore it does not suffice to offer them external assent, namely by saying or writing nothing against them, but all Christians are bound to embrace them with internal assent, which the Church by that very fact requires from her subjects, because by her doctrinal authority she condemns error and proposes truth. The Vatican Council intimates this in these words: "We admonish all of the duty of observing also the constitutions and decrees by which depraved opinions have been proscribed and prohibited by this Holy See."[46]

**Note.** To the truths which merit ecclesiastical faith, though others think obedience, belongs that by which we believe that the fire of hell is real, not metaphorical. This truth is therefore to be noted explicitly, because not long ago the Holy See declared that penitents who do not admit the reality of the fire of hell are to be diligently instructed, and the pertinacious are not to be absolved,[47] without, however, the use of the rule being prohibited concerning not admonishing a penitent who errs in good faith, where no fruit can be hoped for and likewise no scandal or common detriment is feared. The assent of obedience is owed also to decrees of beatification of the servants of God and to decrees by which books are prohibited with respect to the doctrines which are reproved in them.

**32*. On private revelations.** a. There are private revelations about which ecclesiastical authority has rendered no judgment; and there are private revelations which have been approved by the Apostolic See. Approbations are of two kinds: some revelations are approved only for the effect of the beatification and canonization of servants and handmaids of God. Approbation in this case is merely negative, signifying that

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**Notes**

46. Constitution *De fide catholica*, c. 4.

47. S. Poenitentiaria, 30 Apr. 1890.

nothing is contained in them which is against faith or good morals; but concerning their divine origin the Church determines nothing. Of this kind are the revelations granted to those on whom afterwards the honors of the heavenly ones have been conferred. Other revelations are positively approved, in that ecclesiastical authority explicitly or implicitly decrees that a revelation has truly been made by God to a determinate person: of this kind is the revelation granted to St. Francis of Assisi, to Juliana of Liege, to Margaret Alacoque, and to the virgin of Lourdes.

b. Private revelations positively approved by the Holy See must be admitted by the assent of obedience: for although they are confirmed by ecclesiastical authority, nevertheless they are not infallibly certain, and therefore they merit only human faith; and concerning these it is permitted to doubt, indeed even to deny them, provided sufficient reasons shine forth. Concerning other private revelations, whether they have been negatively approved or not, let these things be noted: a. By the persons to whom they are granted by God, they can and must be believed by divine faith, if they are persuaded concerning divine revelation, which also holds for the former kind; but others cannot believe them except by human faith, yet they ought not believe them, both because they do not pertain to them, and because they can scarcely ever have certainty concerning them, not even when they are approved by the Church: for the approbation of the Church declares only this, that they are not opposed to faith and good morals, and therefore can be made public for the edification of the faithful. b. If from the rules of sound criticism it is established that they are genuine, it is not permitted to despise them, but according to the rules of prudence they are to be admitted. Therefore he who without sufficient reason denies them acts rashly and imprudently, both because even private revelations often present truths most profound and most useful, and because they can be the word of God; nevertheless he does not sin gravely.

Schism is defined as separation from the unity of the Church, insofar as this is a society consisting of the faithful as members and of the Roman pontiff as head. They are called schismatics who refuse to be subject to the Roman pontiff and refuse to communicate with the members of the Church subject to him.

Schism properly is not a sin against faith, yet practically it is scarcely found without the sin of heresy, because schismatics at the same time deny one or another dogma of faith, for example, the primacy of the Roman pontiff. Schism is a special sin against charity, because it separates from the unity of the Church, which charity makes.

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## Article Third. On Doubt in Faith

**33. To what extent it is a sin.** 1. Concerning matters of faith, doubt is not impossible, because both the fact of revelation and the very object of faith lack evidence which would compel the intellect to assent and exclude the possibility of doubt.

Wherefore in a faithful man doubts concerning faith and its truths can arise, even against the will; and in this itself the merit of faith consists, that doubts of this kind, sometimes vehement, are excluded through the will and faith is preserved in its firmness.

2. A Catholic faithful person can never licitly change faith or doubt concerning faith.[48]

For since he knows that faith is founded on divine authority, to which falsity is absolutely repugnant, he can never have a sufficient cause of changing his faith or of calling it into doubt. Wherefore, when doubts or difficulties against faith arise, he ought to persuade himself that no difficulty occurs which cannot be solved.

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**Notes**

48. Cf. Vatican Council, *De fide*, c. 3.

a. Therefore the universal doubt of Hermes was rightly condemned, who had taught that a Catholic faithful person must be given license voluntarily to doubt concerning the truth of religion and to remain in doubt until, after an examination has been undertaken concerning the truth of the Catholic religion, he has acquired full persuasion. Yet by these things methodical doubt is not prohibited, which consists in this, that a Catholic faithful person, not suspending but retaining the assent of faith, so acts and inquires into the foundations of faith, especially into the fact of revelation, as if it were not yet established concerning it, so that by an undertaken examination he may be confirmed in faith, which he sees to be a rational service.

b. Therefore with respect to faith the condition of a Catholic and of a heretic is unequal. A Catholic cannot doubt concerning his faith without falling away from his own persuasion: for he knows that his faith cannot be false; but a heretic can doubt concerning faith and inquire further into the truth, nor does this in any way conflict with his principles and therefore with his conscience. For the heretic does not acknowledge in his own sect the infallible foundation of truth; on the contrary, he defends the principle of free inquiry (*das Prinzip der freien Forschung*). For this reason not only is it permitted to him to doubt, but even we can stir him up to doubt, although we suppose that he is in good faith. The more a Catholic strives to know the Church and its origin and propagation, the more he is confirmed in faith; on the contrary, the more a heretic strives to know his own sect and its origin and propagation, the more clearly and certainly he understands that it is a teacher of error.

3. A Catholic faithful person: a. Who doubts positively, that is, by positive assent judges that truths proposed by the Church to be believed are doubtful and uncertain because of contrary reasons, is a formal heretic: for faith requires of us a certain assent; therefore he who judges the truths of faith to be uncertain sins against the authority of God and the Church equally as he who altogether denies the truths of faith. And in this sense it is rightly said: one doubtful in faith is an unbeliever.

b. He who holds himself negatively, or suspends assent concerning faith or some article of faith, is not a heretic, because he does not err in faith nor admit any pertinacity; but he sins against internal faith.

c. He who in a temptation against faith fluctuates between assent and dissent, and yet does not deliberately suspend assent, does not sin unless perhaps venially, because he resists the temptation negligently and remissly.

When doubts against faith arise, at the same time there arises a struggle between the intellect offering assent and the will commanding assent either of faith universally or of a determinate truth of faith. To avoid sin it is necessary that the will resist the doubts, wish to preserve faith, and continue to command firm assent. The intellect in relation to doubts can hold itself in two ways: either it immediately understands, either directly from the consideration of the doubts or at least indirectly from divine authority, that the doubts are empty and retains firm assent; or it retains the doubt for a time, since it does not see the emptiness of it and therefore cannot remove it. Now an indeliberate doubting of this kind does not harm the firmness of faith, provided the will resists the doubt and by its command excludes fear of erring, or provided the will of submitting itself to the authority of the Church is retained.

4. Indifferentism, which arises from doubt concerning matters of faith, is morally evil and illicit, in whatever way it is taken.

For a. if it affirms that the true religion cannot be known, it is opposed to the arguments by which the Christian religion is shown to be true; b. if it teaches that all religions are equally true or equally false, it contains besides this error, namely that truth and falsity are to be held in the same place; c. if finally it says that man is to be estimated and judged not from that which he believes, but from that which he does, it is opposed to this moral principle, namely that man is held by an absolute obligation to have faith in God speaking.

**Note for practice.** 1. At the present time there are many who seriously doubt concerning the truth of religion, or cherish and proclaim errors contrary to revealed truths, but nevertheless think themselves to be Catholic faithful and fulfill Christian duties in their own way. Concerning these it is now asked: a. whether they commit the sin of formal heresy or can be in good faith; b. whether in their good faith they can be admitted to the sacraments.

To a. From defect of sufficient instruction it can happen that they do not advert that doubts or errors of this kind are gravely sinful, as being against the infallible authority of the Church and therefore against the authority of God revealing; indeed, it seems possible that they persuade themselves that they have a just cause of withdrawing from faith, so that they entirely fall away from faith without the sin of formal heresy.[49]

To b. Let the confessor consider what contributes more to the salvation of a penitent of this kind, who in confession says that he doubts concerning faith or that he cannot believe all things: whether he should absolve him or dismiss him without absolution until, doubts and errors having been laid aside, he fully embraces faith. Since absolution can be valid, with the admonition added of believing all things which God has revealed and the Church proposes, and of taking care not to induce others to doubts or errors against faith, he will also be able to be absolved licitly whenever from denied absolution greater spiritual detriment is to be feared.[50]

2. Lay persons who accuse themselves of doubts in faith or of speeches against faith are to be asked: a. concerning what thing they doubted or spoke: for often they erroneously think that things are truths of faith which are not such, in which case they can sin against faith only from an erroneous conscience.

b. But if the matter is really concerning a truth of faith against which they spoke, they committed heresy if, knowing that the doctrine had been proposed by the Church, they seriously attacked the truth of faith, indeed, supposing knowledge of the penalty, they incurred excommunication. But if they spoke in this way either from human respect or from vanity, they sinned gravely against external faith. But finally, if they spoke in this way to set forth their difficulties and to understand the truths of faith better, they sinned in no way.

## Article Fourth. On Communication with Unbelievers and Heretics

**34. Notions.** a. A twofold communication is distinguished: civil communication, which happens in matters pertaining to social intercourse, and religious communication, or communication in sacred matters, which happens in matters pertaining to religion. This again is twofold: active, when we participate in the sacred rites of others, and passive, when we permit unbelievers or heretics to communicate in our sacred rites.

b. Active communication is one thing when formal, if someone internally, in mind and will, is present at the sacred rites of non-Catholics; and another when material, if someone assists at their sacred rites only externally and bodily.

c. Active communication is one thing when public, if someone is present at sacred rites which are instituted by non-Catholics as they are a religious assembly, of which kind are the sacred rites which happen in their temples; another when private, if someone participates with a non-Catholic in a sacred matter which he performs as he is a private person, as if a Catholic recites the Lord's Prayer with a non-Catholic.

What is established concerning communication in sacred matters also holds concerning communication in mixed matters, of which kind are marriages and funerals, insofar as these consist of religious rites and therefore pertain to religion.

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**Notes**

49. Cf. Pesch, VIII, n. 383 s.

50. Cf. Berardi, *Praxis confessariorum*, I, n. 87 ff.

**35. On communication with unbelievers.** 1. Civil communication with unbelievers is prohibited by no law and never has been prohibited, provided the danger of perversion is absent.

Since familiarity introduces a great danger of perversion, and banquets signify and promote familiarity, banquets with unbelievers are of themselves prohibited on account of the danger of perversion.[51]

2. Active communication in sacred matters with unbelievers is prohibited of itself, because it signifies at least external profession of a false religion and denial of the true religion; therefore the apostle says: What part has the faithful with the unbeliever?[52]

This communication is more strictly prohibited with unbelievers than with heretics, because the worship of the former is plainly false and superstitious; therefore it is also much more difficult to permit the faithful to be present at the mixed rites of unbelievers than of heretics, especially where few faithful live intermingled with many unbelievers.

3. By both divine and ecclesiastical law it is prohibited in particular to contract marriage with an unbeliever.[53]

**36. On communication with Jews.** With Jews in particular, besides communication in sacred and mixed matters, several other civil communications are forbidden to the faithful: a. to dwell with them in the same house; b. to use the same bath with them; c. to employ a Jewish physician; d. to serve Jews or employ them as servants; e. to be present at the same banquet with Jews; f. to concede public offices to them among Christians; g. to eat their unleavened bread, etc.[54] The end of these prohibitions is both that the dignity of the Christian religion be preserved and that the danger of perversion be avoided. Today, however, since Jews almost everywhere enjoy the same civil rights with Christians, these prohibitions, insofar as they are positive, have gone into desuetude; wherefore from universal law no other communication with them is strictly forbidden except that which the law of nature or a particular statute forbids by reason of scandal or danger of perversion; yet by way of a norm the faithful should never fail to have before their eyes, outside the case of necessity, these prohibitions which show us the mind of the Church in this matter.

Therefore not even service among Jews can be prohibited in every case: for if female servants are not solicited to base or illicit things, if besides this it is permitted to them to observe the precepts of the Catholic religion, hearing Mass, abstinence, fasting, etc., and no other danger threatens, service ought not be absolutely forbidden. Indeed, even that service by which a Catholic woman acts as nurse in a Jewish family ought not now to be absolutely prohibited of itself. Yet particular circumstances of places can bring it about that serving among Jews, and especially offering oneself as nurse to the infants of Jews, is illicit.

**37. On communication with heretics.**[55] 1. Passive communication in sacred matters with heretics, and the same holds concerning unbelievers and Jews, is prohibited when it must necessarily be judged a sign of religious unity, as to mix themselves in the Catholic rites themselves.

a. To admit a heretic to participation in the religious rite itself is of itself intrinsically evil, because it is a sign of union and consent between a Catholic and a heretic in religious profession, as if Catholic and heretical worship did not differ essentially from one another. Yet not always and necessarily does this intimate communication in sacred matters signify unity and consent in religious worship: for sometimes from the circumstances themselves it can be gathered that the heretic in this matter acknowledges the truth of the

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**Notes**

51. S. C. de Prop. Fide, 2 July 1827.

52. 2 Cor. 6:15.

53. 2 Cor. 6:14 ff.; C. *Cave* 15, c. 28, q. 1.

54. C. *Nullus* 13 and C. *Omnes* 14, c. 28, q. 1.

55. What communication with heretics is forbidden by reason of the excommunication inflicted on them will be said where censures are treated.

Catholic religion; wherefore in circumstances of this kind, from a most grave cause, this communication can be licit. Thus the Church permits the celebration of a mixed marriage before a Catholic minister.

b. Therefore heretics can hear sermons in our churches, assist at Mass, be present at liturgical functions, etc., because in these things they do not communicate in the Catholic rite itself. Yet they are excluded from the sacraments, from sacramentals which are administered publicly in church to individuals, from ecclesiastical burial, and things of this kind. There are several decisions of the Holy Office concerning this matter, from which especially it is understood what the functions are in which heretics cannot licitly participate, because participation of itself signifies the consent of a Catholic with a heretic in religious profession.

c. It cannot be permitted that a heretic act as sponsor in baptism conferred Catholicly.[56]

d. "Therefore it is illicit in sacred functions to invite heretics into the choir, to sing alternately, to give them the peace, sacred ashes, candles and blessed palms, and other external things of worship of this kind, which by law are judged signs of an interior bond and agreement."[57]

e. It is not permitted to admit heretics, schismatics, or Jews, even if they are boys or girls, so that they sing in the musical choir at liturgical functions in Catholic churches.[58] Yet it can be tolerated that schismatics together with Catholics sing in ecclesiastical functions, provided the danger of scandal is excluded and the schismatics cannot be excluded from singing without great difficulties.[59] But it is permitted to allow non-Catholics to play the organ at liturgical functions in a Catholic church, if scandal is not to be feared from this.[60]

f. It is not permitted to allow non-Catholics to carry torches or lights at liturgical functions of Catholics.[61]

**38.** 2. Active communication in sacred matters must be distinguished in several ways:

a. Formal active communication in sacred matters is never licit, since it is denial of faith by internal and external profession of a false religion.

Communication in sacred matters is formal in a twofold case: a. explicitly, if it happens with the intention of participating in the sacred rites and therefore with approbation of the false religion; b. implicitly, if it happens in the sacred rite itself, that is, in an action which pertains to the sacred rite, as to receive the supper of heretics, to sing with heretics in a sacred function: for from actions of this kind the depraved intention of participating in the heretical rite cannot be separated.

b. Material and private active communication in sacred matters, if it does not concern a matter evil in itself, with scandal and danger of perversion excluded, is licit.

Thus a Catholic can licitly recite the Lord's Prayer or other prayers together with a Protestant, because in this action profession of a false religion is not contained: for private worship, in which nothing false is contained, is not heretical.

c. Material and public active communication in sacred matters is of itself prohibited under grave obligation, not only by ecclesiastical law,[62] but also by the law of nature, and this from several heads: a. because of the

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**Notes**

56. Holy Office, 1763; 3 May 1893; 27 June 1900.
57. Holy Office, 8 June 1859.
58. Holy Office, 1 May 1889.
59. Holy Office, 24 Jan. 1906.
60. Holy Office, 23 Feb. 1820.
61. Holy Office, 20 Nov. 1850.
62. C. *Quicunque* 2, *De haereticis*, in VI (V. 2).

danger of perversion in faith; b. because of scandal, both on the part of the faithful, who from it take occasion of judging badly concerning the person who communicates with heretics and of doubting concerning the true faith, and on the part of heretics, who are confirmed in their error; c. because of the approbation of the false religion and denial of the true religion, which communication of itself signifies. With the other reasons set aside, this last is chiefly to be attended to here.

d. Material and public active communication in sacred matters can sometimes become licit from a proportionately grave cause (n. 22). Namely, those actions which do not pertain to the sacred rite itself and therefore do not necessarily involve confession of the false religion and denial of the true, with scandal and danger of perversion excluded, are licit from a just cause, for example, to assist at heretical functions, to accompany the funeral of some heretic.

The graver the sacred matter in which the Catholic participates, and the nearer the action through which he participates approaches to non-Catholic worship itself, the graver a cause is required. For the rest, judgment is to be made concerning this matter from the same principles which have already been set forth concerning an action from which there follows a twofold effect, good and evil,[63] and which will be set forth below concerning cooperation.

**39. Particular questions concerning communication in sacred matters with heretics.** In three ways we can externally profess a false religion: a. by communicating in sacred matters with non-Catholics; b. by cooperating with their false rites; c. by employing signs of their false religion. Concerning this last, something was said above (n. 20); concerning the second, something will be said below, where cooperation is treated; the questions which pertain to the first are to be considered in this place.

1. On simultaneousness. a. Just as it is not permitted to allow heretics to celebrate their rites in our churches, so it is not permitted for us to celebrate ours in their churches: for this, because of the identity of the church, is to communicate with heretics in divine things.[64] Yet since to celebrate divine things in the same church at the same time with heretics is not by its nature communication in the same sacred rites, therefore from a most grave cause this simultaneousness can be permitted and in fact is permitted.[65] In reality at Jerusalem, in the church of the Holy Sepulchre, all sects perform their rites. b. Likewise, just as it is not permitted to allow heretics, that is, sects of heretics, to mix themselves in our prayers or rites, so it is not permitted for us to perform a liturgical function together with heretics, or in general to pour forth public prayers with them: for the worship of a sect proceeds from the faith which it professes as from its root; and since this is heretical, the worship also is heretical.

2. On communication in the baptism of heretics. a. It is never permitted for a Catholic to act in the office of sponsor in the baptism of the child of a heretic, who is baptized by a heretical minister. For a long time and much on each side it was disputed whether this action is intrinsically evil, as being communication in the heretical rite itself; the controversy was finally ended by the declaration of the Holy Office, which establishes that this is absolutely not permitted either by oneself or through others.[66] For baptism solemnly conferred by a heretic is a heretical rite; but he who acts as sponsor truly participates in this rite and implicitly approves it, since he offers the child to be baptized and asks for baptism. But to be present at the baptisms of heretics merely materially as a spectator or for the sake of honor, and to act as witness or honorary sponsor, is not prohibited when a just cause exists.

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**Notes**

63. Cf. *On Principles*, n. 53 ff.

64. S. C. de Prop. Fide, 14 Aug. 1627; Holy Office, 10 May 1753.

65. S. C. de Prop. Fide, 12 Apr. 1704.

66. Holy Office, 10 May 1770.

b. It is not permitted for Catholic parents positively to permit their children to be baptized by a heretical minister; but if it cannot be avoided without grave inconvenience, it can be permitted negatively, by holding themselves passively.

3. On communication in the weddings of heretics. a. It is licit to be present at their wedding banquet: for this action is merely civil and therefore civil communication, which is licit with heretics. b. To be present at weddings which are celebrated by heretics before a heretical minister in a heretical rite is licit if the matter concerns a merely material presence which happens for the sake of curiosity or honor.[67] c. To be present at the weddings of heretics in some office, for example of witness, which is required for the validity of the marriage or constitutes part of the sacred rite itself, is illicit, because it is tacit approbation of a false sect. d. It is altogether illicit for a Catholic to enter marriage with a heretic before a heretical minister: for this action is a manifest participation in the heretical sacred rites themselves and recognition of heretical worship.

Girls who, as in North America, perform the principal attendance upon the bride (*first bride's maid*) are judged by common estimation to perform only a civil office.[68]

4. On entrance into the churches of heretics and on assistance at their sacred rites. a. Of itself, scandal and danger of perversion being excluded, it is licit to enter the churches of heretics to view them for the cause of mere curiosity, when no sacred rite is being had there, because this entrance is an indifferent action and signifies neither explicitly nor implicitly the approbation of false worship.[69]

b. Of itself it is not permitted to assist at the sermons or sacred functions of heretics, because this assistance of itself is participation with heretics in sacred matters; yet from a proportionately grave cause assistance could be permitted, provided the one assisting is present only materially without any sign of reverence.

c. Thus, from a most grave cause and with the danger of perversion excluded, it is permitted for a Catholic female servant to accompany her mistress into a heretical church, and it is permitted for soldiers to assist a heretical king visiting a church, according to the example of Naaman the Syrian, to whom the prophet Elisha permitted that he accompany his lord the king into the temple and there bow himself with him, so that the king might lean on his shoulder while he genuflected before the idol.[70]

d. It is permitted for learned Catholic men to hear the sermons of heretics in order to refute them, with scandal and danger of perversion always excluded: for they approach only so that they may know what heretics teach. Yet it must be noted that all these things, even if they happen only materially, are prohibited in some regions, as in several dioceses of Italy, by a special ecclesiastical law.

e. But it is never permitted in the churches of heretics, when religious functions are performed there, to play the organ or other instruments, to sing hymns and psalms, etc., because actions of this kind contain participation in the false worship itself of heretics, which is formal and altogether illicit communication in sacred matters.[71]

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**Notes**

67. Holy Office, 14 Jan. 1874, declares that it can be tolerated if Catholics are present only for the sake of a civil office at weddings which are contracted between a Catholic party and a non-Catholic before a heretical minister, with scandal and any danger of perversion removed, and also contempt of ecclesiastical authority, which nevertheless is generally to be feared if near relatives are present at marriages entered against the prohibition of the Church.

68. Sabetti, cited in Genicot, *Casus conscientiae*, p. 45.

69. Cf. Lugo, *De fide*, d. 14, n. 171 ff.

70. 4 Kings 5:18-19. Cf. Lugo, ibid., n. 173.

71. S. C. de Prop. Fide, 19 June 1889.

5. If assistance which happens at the sacred functions of heretics is prescribed to Catholics by the government, a distinction must be made thus:

a. If Catholics are compelled to participate in the sacred functions themselves of heretics, as happens to boys frequenting public schools in the Russian empire, who are ordered to go to the churches of schismatics, to receive blessed breads, to pray with others, etc., this is not permitted.[72]

b. If assistance is prescribed to Catholics in hatred of the faith or in favor of a false sect, it likewise is not licit.

c. If assistance is prescribed to Catholics only for the sake of domestic order, not in favor of a false sect, as sometimes happens to soldiers, captives in prisons, and sailors on public ships, all of whom are ordered to assist at sacred functions which are had there, it seems licit, provided they assist at the functions only materially.[73]

6. With respect to the burial of heretics: a. It is permitted for a Catholic to accompany the funeral of a heretic, even if the funeral is celebrated in a heretical rite, provided a. he is present only materially to offer civil honor, b. he cannot be absent without grave harm, at least without violation of a civil office, c. he does not communicate with heretics in sacred matters, therefore neither prays together with them, nor mixes himself in their rites, nor carries a light, nor is present at the sermon which is to be given.[74]

b. A Catholic priest cannot, in places in which heretics do not have their own ministers, accompany the corpse of a heretic from the house to the cemetery, even if the corpse is not carried to the church and the bells are not rung.[75]

7. To frequent the religious instruction of heretics is not communication in sacred matters, because religious instruction does not have the character of a sacred rite, but of literary discipline instituted for cultivating the mind. Yet voluntary attendance is an illicit profession of a false religion; involuntary attendance, with the danger of perversion excluded, can be permitted from a most grave cause; but it is by no means permitted to repeat the false doctrines of heretics as if they were true and admitted.

8. Whether it is permitted to seek sacraments from heretics, see *On the Sacraments*, n. 43.

**40. Whether disputation with heretics is licit.**

a. Public disputation, or disputation before a numerous people, both clerics and lay persons, is prohibited without the express license of the Roman pontiff, because public disputations are accustomed to lack the desired fruit.[76]

b. Private disputation, or disputation before a few hearers, is permitted to clerics if they are challenged, if some fruit is hoped for either in the one challenging or in the hearers, and if the clerics are skilled and instructed with sufficient doctrine.

c. But for lay persons even private disputation concerning matters of faith is prohibited by positive law:[77] for since it is much easier to propose difficulties than to solve those proposed, from the lack of skill of lay persons it could easily happen that heretics are confirmed in error, but Catholics themselves conceive

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**Notes**

72. Holy Office, 26 Apr. 1894.
73. Cf. Lehmkuhl, I, n. 651, in note.
74. Holy Office, 13 Jan. 1818. Cf. Lugo, loc. cit., n. 159.
75. Holy Office, 26 Jan. 1886.
76. S. C. C., 8 Mar. 1658.
77. C. *Quicunque* 2, *De haereticis*, in VI (V. 2).

doubts and waver in faith. Yet this prohibition does not extend to men truly learned and firm in faith, where great utility is hoped for or where custom has been introduced, as in Germany.

**Note.** By these things are presented the principles to be observed by law in religious communication with heretics or schismatics; nevertheless for practice these things are to be noted: in regions in which Catholics have already lived mingled with heretics for a long time, by custom many things are done without grave cause which of themselves are licit only from grave cause; thus from mere curiosity Catholics enter the churches of heretics, even while sacred functions are being had there, are present at funerals, etc.; indeed they even perform in good faith those things which are altogether illicit. Now because in regions of this kind the danger of perversion and scandal of the faithful is less to be feared, communication which is not illicit in itself can more easily be tolerated; indeed even in prohibiting those things which can in no way be permitted, pastors of souls ought to be very cautious and prudent, lest without hope of fruit they disturb good faith and provoke the hatreds of heretics. Therefore the Holy See itself declared that illicit communications can sometimes be dissembled in order to avoid graver harms.[78] But in regions in which heretics a little before have fixed seats and erected churches, and therefore the danger and scandal of forbidden communication is greater, the norms set forth above are to be urged more severely. Therefore the Cardinal Vicar, when heretics were erecting churches at Rome, in an instruction published for the pastors of the City, declared that all those sin gravely who from mere curiosity hear the sermons of Protestants and assist, even only materially, at non-Catholic functions.[79]

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# Book Second. On the Precepts of Hope

[80]

## Question First. On the Nature of Theological Hope

**41. Definition.** 1. Hope as a virtue, habitual hope, is defined: an infused supernatural habit by which man is disposed to expect with certainty, from the promise of God, eternal beatitude and the means necessary for it.

Theological hope as an act, actual hope, is defined: the certain expectation of future beatitude, to be obtained from the most faithful divine promise through the means ordained by God.

The name of hope is taken in various senses: for it signifies a. the expectation of a possible future good, whether sensible or suprasensible; b. the thing hoped for itself, as when it is said: awaiting the blessed hope,[81] or: hope, that is beatitude, comes to us from merits; c. the cause and reason of hope, whether primary or secondary, as when it is said: Thou hast become my hope, O Lord, or if the Blessed Virgin is called our hope; d. both the habit and the act of the theological virtue.

2. Hope is not an act of the intellect but of the will, consisting in a trustful expectation which is joined with certainty, or firmness and quiet, excluding inordinate fear lest we not obtain the hoped-for good.

a. The act of hope supposes and contains several acts: a. an act of love, love of concupiscence, by which God pleases us as our good and the object of our beatitude; for we cannot hope except for what pleases us as our good. b. An act of desire, by which the will is borne toward an absent good: for from love of a good by its nature there arises desire of it, if the beloved good is absent. c. From the divine promise we know that the

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**Notes**

78. Holy Office, 26 Apr. 1894.

79. Instruction of 12 July 1878, in Aichner, *Compendium iuris ecclesiastici*, Brixen: Weger, 1900, p. 156.

80. St. Thomas, II-II, qq. 17-22. St. Alphonsus, bk. 2, nn. 20-21. Suarez, *De spe*, disp. 1 and 2. Sporer-Bierbaum, *Theologia moralis decalogalis*, tract. 2, nn. 107-125. Reuter, *Theologia moralis*, II, nn. 56-70. Ballerini-Palmieri, *Opus theologicum morale*, II, nn. 109-133. Lehmkuhl, *Theologia moralis*, I, nn. 305-313.

81. Tit. 2:13.

attainment of the desired good is possible for us: for we cannot hope for a good which cannot be obtained by us, and at the same time we know that God, on account of His fidelity in preserving promises, cannot fail us; whence, toward that good, there arises an act of expectation and trust that we shall one day be made participants of it. Finally we understand that neither power nor will is lacking to God on His part for giving the promised goods, whence we are raised up to firm and certain expectation.

b. Therefore, because hope, looked at fully and adequately, contains several acts in itself, the formal object of hope so considered must also be called multiple: and indeed the formal object of love of concupiscence and of desire is God insofar as He is good to us, or the relative goodness of God; the motive of hope formally considered is the fidelity of God in fulfilling promises; the motive of the certainty and firmness which is inherent in trust is the omnipotence and mercy of God.

**42. Hope joined with fear.** Theological hope ought to be firm and certain, excluding all diffidence and hesitation, and nevertheless it has fear joined to it: with fear and trembling work out your salvation.[82] Firmness is referred to the promise; fear to the attainment. The firmness and certainty of hope arises from the motive of hoping, which we have on the part of God, namely from certain knowledge that God can and wills to stand by all His promises, because He is omnipotent and merciful; and indeed the firmness of this knowledge is increased from the fact that God has already given such manifest arguments of His kindness and mercy toward us. The fear which is joined to hope has its origin on our part, because we know that the outcome of those things which we hope for can be frustrated because of our frailty. For God did not promise beatitude to us absolutely, but conditionally, namely dependently on our cooperation; now since with absolute certainty we cannot know whether the conditions are fulfilled on our part or not, there is always a reason for fear: for we cannot know with certainty whether we are worthy of love or hatred.[83] Yet since we can attain eternal beatitude, provided we ourselves seriously will it, this fear ought to exclude on the one hand rash security, and on the other also faint-hearted anxiety.

**43. Object of hope.** a. The material object of hope is constituted by all the goods promised to us by God; and since these are of two kinds, a primary object is distinguished, which is God Himself insofar as He is our highest good and our objective beatitude, and a secondary object, which is constituted by all the means which, from God's ordination, are necessary and useful for obtaining that beatitude, namely habitual gifts, helps of grace, remission of sins, goods both spiritual and also temporal, and the special providence of God, which may turn evils away from us and procure goods for us.

b. The formal object of hope is the supreme fidelity of God promising, who can perform what He has promised, because He is omnipotent, and wills to perform what He has promised, because He is most benign. And as faith supposes revelation, so hope supposes the divine promise of those things which we hope for as a necessary condition.[84]

## Question Second. On the Necessity of Hope

**44. On the necessity itself of hope.** 1. Actual hope is necessary for adults by necessity of means: for those not yet justified, unto justification; for those justified, unto salvation.

Arguments. a. An adult ought to dispose himself by his own acts for obtaining justification from God, which is impossible without hope, by which he trusts that he can obtain remission of sins. Besides this, he who intends

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**Notes**

82. Phil. 2:12. Cf. Council of Trent, sess. 6, c. 9.

83. Eccl. 9:1.

84. Others present the reason of hope and its formal object otherwise. Cf. *Zeitschrift fur katholische Theologie* XXII (1898), p. 63 ff.: "Das Formalobjekt der Hoffnung."

to be justified ought to have at least the implicit purpose of keeping all the commandments for the whole time of his life; but since he cannot accomplish this by his own powers, he cannot conceive this purpose unless he trusts in the help of grace. Therefore the Council of Trent, among the dispositions which are required for the justification of adults, after faith also enumerates hope.[85] b. A justified man ought to attain his supernatural end of eternal beatitude by his own merits to be acquired through the help of grace; but he cannot tend to this end unless he hopes for eternal beatitude and for the helps of grace necessary for obtaining it. Besides this, prayer is necessary for salvation by necessity of means; but prayer is impossible without the exercise of hope;[86] therefore hope also is necessary by necessity of means.

The discussion here concerns the act of hope, which moral theology chiefly considers. The infused habit of hope is necessary for all, even infants, for salvation by absolute necessity of means: for since sanctifying grace is absolutely necessary, the habit of hope also, which is infused together with it, is absolutely necessary.

2. Actual hope is necessary for adults also by necessity of divine precept, both natural and positive.

a. For by natural precept man is bound to employ the means necessary for salvation; but the act of hope is a means necessary for salvation. b. In Sacred Scripture we are everywhere admonished and stirred up to hope;[87] but by these texts of Sacred Scripture the act of hope is not only counseled, but truly prescribed. Besides this, Christ the Lord in the Lord's Prayer taught us the manner of hoping and asking, and prescribed it to us.[88]

The precept of hope is affirmative and negative: insofar as it is affirmative, it imposes the obligation of eliciting an act of hope; insofar as it is negative, it enjoins the obligation of not despairing and not presuming. But the affirmative precept obliges *per se* and accidentally; now it is asked when and how often the act of hope must be elicited.

**45. When the precept of hope obliges.** 1. The precept of hope obliges *per se*, or by reason of the virtue itself of hope:

a. At the beginning of the use of reason or of spiritual life, that is, when first God and eternal beatitude, into which man ought to tend by the means ordained by God, have been sufficiently proposed to him.

b. For reverence owed to God requires that we immediately adhere to God with firm trust as soon as we know that God has promised eternal beatitude to us. b. Besides this, at the beginning of the use of reason man ought to tend into God, the ultimate end, through the means ordained for this; but he cannot tend into God and begin a spiritual life which is meritorious of eternal life unless he hopes for eternal retribution and the means necessary for salvation.

c. Several times in life, in order to conserve justice; but the time at which the act of hope ought to be elicited cannot be determined. Yet it must be elicited frequently, because it is so necessary for leading the Christian life; this is clear both from the fact that the desire of eternal beatitude is a most efficacious motive for observing the precepts, and from the fact that prayer is necessary, which cannot be exercised without hope.

Yet because, for satisfying the precept of hope, a formal act of hope is not required, but virtual hope suffices, practically it does not bring difficulty: for there is no sufficiently instructed Christian faithful person who does not in this way rather often elicit acts of hope, while he prays, receives the sacraments, observes the precepts,

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**Notes**

85. Council of Trent, sess. 6, c. 6.

86. James 1:6-7.

87. 1 Tim. 6:17; Rom. 8:24; Col. 1:5; Ps. 4:6.

88. Proposition 1, condemned by Alexander VII: Man at no time whatever of his life is bound to elicit an act of faith, hope, charity by force of the precepts pertaining to those virtues.

and purposes not to offend God lest he fall away from eternal salvation; but if he neglects the Christian life, he does not advert to this obligation.

c. When a temptation against hope urges which cannot be conquered except through an act of hope: for the precept of hope obliges one to repel temptations which arise against it; for if an act of hope is the means necessary for this, it must be employed from the precept of hope.

d. When man through the mortal sin of despair has lost the habit of hope: for he is bound to return to God by conversion from despair, which ought to happen through an act of hope.

2. Accidentally the precept of eliciting hope urges: a. in a temptation against another virtue, if this temptation cannot be overcome unless the soul is strengthened by an act of hope; b. when another precept must be fulfilled which cannot be fulfilled without at least a virtual and implicit act of hope, such as the precept of prayer, penance, etc.

**46. On fear and hope insofar as they are motives of moral actions.** Since non-Catholic writers reproach the moral doctrine of the Church, indeed even of the Gospel, for this reason, because Catholic doctrine says that moral actions performed from fear of punishment or from hope of reward are honorable and licit, although, they say, they are useless, indeed even vicious, it is helpful to explain briefly in what sense fear and hope are licit and honorable motives of moral actions. Namely, although according to the doctrine of the Church works done from charity are more perfect, nevertheless works performed with a view to eternal recompense do not lack moral honesty and spiritual usefulness.

Long ago Luther and Calvin had taught that works performed with a view to eternal recompense are useless and savor of vicious cupidity; afterwards Baius and the Jansenists had affirmed the same, whose doctrine the Council of Trent[89] and Alexander VIII[90] condemned. With these heretics today atheist philosophers agree, who agree in this affirmation: Actions from the motive of eternal life are opposed to pure morality. *Die Motivierung der Handlungen durch die Hoffnung auf ewige Seligkeit ist eine Falschung der reinen Sittlichkeit.*

1. On fear. a. Fear is an act of the will which turns away from an imminent evil; fear of God, or divine fear, turns away from the evil which God can inflict because of sin.

Servile fear fears punishment, damnation, to be inflicted by God because of sin, or sin as the cause of this punishment; it is called servile because servants are accustomed to obey because of fear of punishment. This fear is servilely servile if one fearing punishment, or sin because of punishment, has the will of sinning if there were no punishment, that is, hell.

Filial fear fears offense of God and the loss of divine friendship, or sin because it is an offense of God with loss of divine friendship. It is called filial because it belongs to sons to fear lest they offend their parents.

Initial fear fears offense of God and eternal punishment, or sin because it is an offense of God to be punished by eternal punishment. It is called initial because it belongs to beginners to fear sin, both because it is an offense of God and because it is a cause of punishment.

b. Just as servile fear is licit and honorable, so to serve God, to avoid sins, and to observe the precepts from fear of punishment is licit and honorable, provided the will of sinning is excluded; yet the motive of charity is far nobler and more perfect.

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**Notes**

89. Sess. 6, can. 31: If anyone shall say that the justified man sins when he works well with a view to eternal recompense, let him be anathema.

90. Prop. 13. Whoever serves God even with a view to eternal recompense, if he lacks charity, is not without vice whenever he works with a view, although to beatitude.

Servilely servile fear is morally evil and vicious, because it does not exclude the will of sinning; it prefers punishment to sin, the sinner to God the Creator, which cannot be said of servile fear. Therefore fear is commanded by God: Fear Him who … has power to cast into gehenna;[91] in Sacred Scripture it is said to be opposed to sin: The fear of the Lord drives out sin;[92] it is sought from God as a gift: Pierce my flesh with Thy fear.[93]

2. On hope. a. From the motive of hope someone can serve God and observe the precepts in three different ways: a. in such a way that he would not serve the precepts unless eternal reward had been promised; b. in such a way that he observes them only because of eternal reward, thinking nothing of that condition; c. in such a way that he observes them both because of the reward and because of God.

b. To observe the precepts with a view to eternal recompense in such a way that they would not be observed if no recompense were given is vicious cupidity: for he who thus does good prefers himself to God; but to observe the precepts with a view to recompense is a morally good work and, under the due conditions, meritorious.

c. The motive of hope is most fitting to human nature, since it is especially consonant with the natural appetite by which man is borne toward his own happiness. Besides this, where great difficulties must be overcome in the service of God, man must be aided by the motive of hope and fear, lest he fall away from moral perfection.

d. Sacred Scripture praises and commends works which are done from the motive of hope with a view to recompense: Everyone who contends in a contest abstains from all things; and they indeed do this in order that they may receive a corruptible crown, but we an incorruptible one.[94]

e. Although the motive of hope is lower than the motive of charity, nevertheless it does not exclude the motive of charity; indeed it necessarily leads to charity.

He who wills to attain eternal life also wills those things which are necessary for attaining eternal life; but for attaining eternal life charity is necessary.[95]

**Note.** The peculiar relation which exists between man's holiness, charity of God, and eternal beatitude must be considered. Eternal life, toward which we strive, is at the same time man's holiness and happiness. Therefore he who observes the precepts with a view to recompense implicitly at the same time intends his own holiness and the glory of God; and he who observes the precepts from charity of God or for acquiring holiness implicitly at the same time intends his own beatitude, since eternal beatitude is God.

## Question Third. On Sins Against Hope

**47. What sins there are against hope.** One can sin against hope by omission and by commission: by omission indeed if an act of hope is not elicited when by force of the precept it is to be elicited. Sins of commission against hope are of two kinds: for they are opposed either to the twofold act which precedes theological hope, namely to love and desire of beatitude, or to the act which essentially constitutes hope, namely to the trust of obtaining beatitude and the means necessary for it. Further, to hope insofar as it contains desire of beatitude

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**Notes**

91. Luke 12:5.

92. Ecclus. 1:27.

93. Ps. 118:120.

94. 1 Cor. 9:25. Cf. Ps. 118:112; Col. 3:23 s.; Apoc. 2:10.

95. Cf. concerning this question: Kneib, *Die "Lohnsucht" der christlichen Moral*, *Theologische Studien der Leo-Gesellschaft*, Vienna: Meyer, 1904. Kneib, *Die "Jenseitsmoral" im Kampfe um ihre Grundlagen*, Freiburg: Herder, 1907. Schneider, *Die gottliche Weltordnung*, Paderborn: Schoeningh, 1900: "Die 'Lohnsucht' der religiosen Moral," p. 496.

there is opposed hatred of God, our beatitude, or excessive adherence to earthly goods; but to hope insofar as it is trust two sins are opposed, one by defect, which is despair, the other by excess, which is presumption.

Whether it is a sin against hope to wish for death from weariness of life. Because this act does not contain aversion from God, the ultimate end, nor exclude the desire of eternal beatitude, it is not a sin against hope, but either is a defect of subjection toward the order of divine providence, which defect ordinarily does not exceed venial sin, or it is impatience arising from inordinate love of self, by which someone refuses to bear the miseries of this life, which likewise ordinarily does not exceed venial sin. This desire is a grave sin if it happens with full deliberation and express rebellion against divine providence. But if someone wishes for death with due patience and subordination toward God, he does not commit a sin but performs an act of virtue, provided it proceeds from desire of eternal beatitude to be attained in God.[96] To wish never to have been born, or to be annihilated, is a grave sin against hope, unless someone intends by desires of this kind only to signify the vehemence of pain.

**48.** Hatred of God, which is directly opposed to hope, namely hatred of abomination, is that by which man turns himself away from God, his ultimate end, not willing to constitute his beatitude in Him. This hatred of God is a sign of great and inordinate adherence to earthly goods and is certainly a grave sin, because earthly goods are preferred to God and His possession, which involves contempt of God.

Whether it is a grave sin to wish to remain perpetually in this life. If this desire coheres with that disposition of soul by which someone is prepared to leave heaven to God if He grants him earth, it is a grave sin against hope, because, turning himself away from God, he turns himself to creatures and places his happiness in them. But if this desire only signifies an excessive affection for this earth and its goods, or fear of death because of the uncertainty of eternal happiness, it is not necessarily a grave sin against hope, because this disposition of soul of itself does not exclude desire of beatitude. Spouses who desire to live together perpetually on earth not rarely intend by words of this kind only to signify the vehemence of love.

**49.** Despair is voluntary and full diffidence of obtaining beatitude and the means necessary for it.

a. Despair consists in a positive act of the will by which it, all hope having been cast away, voluntarily withdraws from God, the ultimate end, or from beatitude and the pursuit of it. Despair proximately arises from a prior judgment of the intellect by which someone thinks that he will be excluded from beatitude; but the reason because of which someone thinks that he is not to be saved can be diverse: for either he persuades himself that his sins are greater than that God can remit them, or he judges the way of the commandments of God to be too arduous, or he judges that God does not will either to spare him or to grant him helps, or he judges that it will never happen that God spare him, that he duly dispose himself for obtaining pardon of sins, etc.

b. From despair must be distinguished the fear by which sometimes even pious men are distressed because of the uncertainty of salvation. In like manner devout souls, which are sometimes troubled by continual temptations of despair, are not easily to be judged to have sinned gravely. In order that the confessor may know whether the penitent has consented to the sin of despair, he will be able to ask him whether for this reason he omitted his customary exercises of piety. For if someone, for example, for this reason ceases to pray because he is persuaded that God does not will to assist him, he sins gravely against hope; but if only from a certain inordinate sadness he loses heart and ceases from prayer, he does not sin gravely, and he sins in no way if he ceases to ask for health because he thinks that God does not will to restore it to him.[97]

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**Notes**

96. Phil. 1:23.

97. Cf. Bucceroni, *Casus conscientiae*, Rome: Typographia Iuvenum Opificum, 1902, n. 32.

**50. Its moral malice.** Since despair is directly repugnant to the divine attributes, fidelity and goodness, it is a sin mortal from its whole genus, not admitting smallness of matter; indeed greater than sins which are opposed to the moral virtues, but less than the sins of infidelity and hatred of God which is opposed to charity: for infidelity and hatred of God are against God as He is in Himself; but despair is against God as He is our good.

a. Although despair is not the gravest sin of all, nevertheless it is more dangerous than other sins: for experience establishes that, with hope of salvation plainly cast away, men rush without restraint into vices.[98] But in concrete cases it must be adverted whether someone really despairs concerning the goodness and mercy of God, or rather from faint-heartedness concerning his own cooperation with divine grace.

b. Men who from a depraved habit are given to sins, for example of drunkenness or pollution, sometimes seem to despair, since they are accustomed to say that they can no longer lay aside a depraved habit now too inveterate. Yet these are more faint-hearted than despairing; they despair rather concerning their own cooperation than concerning divine help. Wherefore they are to be raised up into greater trust in divine grace and admonished concerning cooperation with the help of grace.

**51.** Presumption is the rash expectation of eternal beatitude and of the means for attaining it, namely otherwise than God has ordained. The sin of presumption can be committed in five different ways:

a. If someone trusts that he will obtain remission of sins and eternal beatitude by his own powers, which is Pelagian presumption.

b. If someone trusts that he will obtain remission of sins and eternal beatitude without good works, from the merits of Christ alone, or without observation of the commandments, from the mercy of God alone, which is Lutheran presumption.

c. If someone trusts that he will obtain divine help for carrying out evil, for example revenge. In this case blasphemy is joined with presumption.

d. If someone trusts that he will obtain extraordinary goods against the order of divine providence, for example the holiness of the Blessed Virgin Mary or of the greatest saint, to which he knows that he is not to be elevated by God.

e. If someone assumes divine mercy as a motive of sinning and of repeating sins.[99]

Whether it is presumption to sin because of hope of obtaining pardon. a. To sin or to persevere in sin from passion or frailty with the hope of obtaining pardon is not presumption: for hope of pardon is not the motive inducing to sinning, but an affection accompanying the sin; as if a soldier indulging in a rather free life defers confession until his military service has been completed.

b. To sin because of the ease of accusing sins, that is, if someone repeats sin because it is easy to confess or because several sins are accused as easily as one, likewise is not presumption, because the motive inducing one to repeat sins is not the ease of obtaining pardon, but the ease of confession.

c. To sin because of hope of pardon, that is, if someone sins and perseveres in sins because God remits several sins as easily as one, late as easily as soon, is a sin of presumption, because hope of pardon is the motive inducing to sinning and therefore an inordinate trust in divine mercy. Yet this sin of presumption is rarely committed, because hope of pardon must be called rather the occasion than the motive of sinning.[100]

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**Notes**

98. St. Thomas, II-II, q. 20, a. 3.

99. Cf. Lehmkuhl, I, n. 310.

100. Cf. Ballerini-Palmieri, II, n. 130.

**52. Its moral malice.** 1. Presumption is a sin grave from its whole genus, or always mortal, if it contains heresy or blasphemy, the first, second, or third mode; otherwise it admits smallness of matter, the fourth and fifth mode.

Thus it is light to assume divine mercy as a motive of sinning lightly. Likewise, in a light danger, to expect without prayer a help which God has not promised.

2. Despair and presumption are either simple or qualified, according as they either are or are not joined with a sin against faith. For both despair and presumption suppose an erroneous judgment of the intellect; now if that erroneous judgment is against faith, those sins are joined with heresy.

Thus he who despairs because he thinks that God cannot or does not will to save him, or because he judges that observation of the commandments is impossible for him, is not only despairing, but, the suppositions being supposed, also a heretic; likewise both Pelagian and Lutheran presumption contains heresy.

**Note 1.** For discerning in the practice of confession whether the penitent has really committed a sin against hope, and whether with the sin against hope there is also joined a sin against faith, he will have to be asked why he despaired or presumed, and from the response a judgment concerning this matter can be formed.

**Note 2.** The habit of hope is not lost through every sin against hope, but only through that which is directly opposed to the formal object of hope; wherefore through the sin of despair, through hatred of God by which one withdraws from God insofar as He is our beatitude, and through Pelagian presumption, the habit of hope is lost. Besides this, since faith is the foundation of hope, through sins by which the habit of faith is lost, at the same time the habit of hope is lost.

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# Book Third. On the Precepts of Charity

[101]

# Question First. On Charity of God

## Article First. On the Nature of Charity of God

**53. Definition.** 1. Theological charity as a virtue is defined: an infused supernatural habit by which we are inclined to love God above all things for His own sake, and ourselves and the neighbor for God's sake.

Habitual charity is not the Holy Spirit Himself inhabiting the soul, nor sanctifying grace inhering in the soul, but is a supernatural gift really distinct from sanctifying grace, inhering in the will, which renders man capable of eliciting, with the help of grace, acts of supernatural love of benevolence toward God, himself, and the neighbor. Although charity is distinct from sanctifying grace, nevertheless it is inseparably joined with it; hence it is acquired, increased, and destroyed together with sanctifying grace and, when the habits of faith and hope cease, remains in the heavenly fatherland.

2. Theological charity as an act is defined: love by which we love God above all things for His own sake, and ourselves and the neighbor for God's sake. Therefore there is a twofold act of charity according as its object is twofold, but one motive of each act.

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**Notes**

101. St. Thomas, II-II, qq. 23-44. St. Alphonsus, bk. 2, nn. 22-80. Suarez, *De caritate*, disp. 1-10. Sporer-Bierbaum, *Theologia moralis decalogalis*, tract. 2, nn. 126-225. John Reuter, *Theologia moralis*, II, nn. 71-138. Castropalao, *Operis moralis*, pars I, tract. 6, on charity. Lessius, *De summo bono*. St. Francis de Sales, *Theotimus*. Ballerini-Palmieri, *Opus theologicum morale*, II, nn. 134-302. Lehmkuhl, *Theologia moralis*, I, nn. 314-327. Goepfert, *Moraltheologie*, I, nn. 305-312. Chr. Pesch, *Praelectiones dogmaticae*, Freiburg: Herder, 1900, VIII, nn. 533-661.

**Note.** 1. The name of love in theological usage signifies both natural and supernatural love, pure love and love of concupiscence, honorable and vicious love; on the contrary, the term charity signifies only supernatural and theological love, namely that by which God loves Himself and us, or that by which we by habit or by act love God.

2. The object of theological charity ought to be God, insofar as He is proposed to us by faith; for the theological virtues ought to be supernatural not only with respect to their principle but also with respect to their object. But in those who habitually hold faith, in reality God, wise, powerful, just, etc., is conceived not only as He is known by natural reason, but also as He is known from faith.

**54. Division.** 1. Love of benevolence is love by which we love a thing or person for its own sake, or by which we will good to someone for his own sake, that it may be well with him; love of concupiscence is love by which we love a thing or person for our sake, or by which we will good to someone for our sake, that it may be well with us from it.

a. To love is to will good. Now since in the act of love two things are to be considered, the good which we will and the person to whom we will the good, we can will the good, whether thing or person, in two ways: because it is good in itself, or on account of the perfection which it has in itself and by which it is lovable in itself; or because it is good to us, or on account of the advantage which it brings to us. Likewise we can will or desire good to some person in two ways: either because it is good for the beloved person, or because good comes to us from it. In the former case there is love of benevolence; in the latter, love of concupiscence.

b. Love of benevolence can be distinguished into love of complacency, by which we love a thing or person, virtue or a friend, for its own sake; and into love of benevolence, by which we will and desire good to some person for the person's own sake, that it may be well with him.

c. Love of benevolence which is referred to God, by reason of the formal object, is called perfect charity; love of concupiscence referred to God is called imperfect charity, or less perfect charity, since it is more perfect to love God because He is good in Himself than to love Him because good from God redounds upon us. And this latter indeed is the love which is contained in hope.

d. Love of benevolence is called love of friendship if those loving a. mutually will and communicate good to themselves, or if by affection and effect they mutually love one another, and b. if they have knowledge of this mutual benevolence and beneficence. The act of theological charity is an act of love of benevolence and friendship exercised between God and man: You are My friends, if you do the things which I command you.[102]

2. Charity of God can be highest or above all things in two ways: appreciatively, if through it God is preferred to all other things, if therefore by force of charity we are prepared rather to lose all other goods and to sustain all other evils than to make a loss of God, or, what returns to the same thing, if we are prepared to avoid any mortal sin; intensively, if with a more vehement and ardent affection we love God than any other created thing.

a. Charity by which God is loved above all things has three grades: the first is if God is loved in such a way that we are prepared rather to lose all things and suffer all things than to offend God by grave sin; the second is if we love God in such a way that we are prepared rather to lose all things and suffer all things than to displease God by a light offense; the third is if we love God in such a way that we are prepared rather to lose all things and suffer all things than to omit that which is pleasing to God, indeed that which we know to be

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**Notes**

102. John 15:14.

more pleasing to God. The first grade, since it is simply love of God above all things and excludes affection for any grave sin, suffices for obtaining justification and for fulfilling the precept of charity.

b. Therefore the faithful who fear lest they love a creature, a son or spouse, more than God are to be instructed concerning appreciatively highest love of God, and they must be told that if they observe precepts obliging under grave matter, and a fortiori if they also observe precepts obliging under light matter, there is no need to doubt concerning love of God as it is required for salvation. But if without an excusing cause they violate some precept on account of love of a creature, their love is inordinate and is not appreciatively highest love of God.

3. Charity is divided into affective charity, by which by an internal act we love God and the neighbor; and effective or practical charity, by which we endeavor to observe the precepts and avoid sins, which two things are effects of internal charity.

**55. Object of charity of God.** 1. The primary material object of charity is God Himself; the secondary object is creatures capable of divine grace and glory. Therefore the same infused habit which inclines to loving God for His own sake also inclines secondarily to loving ourselves and the neighbor for God's sake.

2. The formal object or motive on account of which each object is to be loved is God Himself, His highest goodness. But this infinite goodness of God, which is the motive of theological charity, is constituted not only by the accumulation of all perfections, but also by each single attribute of God, whether absolute or relative: for any attribute of God is God Himself, and expresses infinite goodness and perfection.

a. The formal object of theological charity is the goodness of God; for because charity is a theological virtue, its formal object ought to be God Himself, and because it is an act of the will, it ought to be the goodness of God. Now the goodness of God can be considered in two ways: absolutely, insofar as it is good in itself; and relatively, insofar as it is our good, beatifying us. Considered in the latter way, it is the object of hope; considered in the former way, it is the object of charity. The absolute goodness of God again can be considered in two ways: insofar as it embraces the divine essence with all attributes, or insofar as it is some single divine attribute, for example, wisdom, benignity. But since the divine attributes are distinguished neither among themselves nor from the essence, any attribute of God, whether absolute or relative, includes the whole divine goodness. Therefore the formal object and motive of charity is both the goodness of God insofar as it is, as it were, the sum of all attributes, and the goodness of God insofar as in any divine perfection, whether absolute or relative, the whole infinite goodness of God is contained.

b. Since the act of perfect charity is necessary for all the faithful by necessity of means, it ought to be easy and accessible to all; but the act of charity is rendered easy for the faithful if they consider God under that aspect or perfection under which He moves more strongly to love. But the relative attributes of God move more strongly to love than the absolute ones: for through them the highest and infinite goodness of God is manifested to us better and more perfectly. And indeed goodness more fittingly shines forth from those perfections which show God as father, redeemer, sanctifier, as Him who adopts man through grace as a son and makes him a participant of divine beatitude. Therefore from these we are more easily moved to charity. And this is the reason why Sacred Scripture, provoking us to divine charity, proposes God to us under the aspect of our strength, our joy, and our benefactor.

c. Since Jesus Christ is true God, he who loves Jesus as He is a divine person elicits an act of charity of God. But nowhere does divine goodness manifest itself to us more splendidly than in the incarnation, passion, and death of Christ the Lord. Therefore there is no easier way of arriving at an act of divine charity than by considering the benignity of God by which, being born, He gave Himself as companion; eating with us, as food; dying, as price; reigning, as reward.

**56. Practice of theological charity.**[103] Charity of God has several acts, and therefore can be exercised in diverse ways:

a. By complacency, by which we rejoice concerning the good which He possesses: for he who loves God wills His good, and since he understands that God possesses goods both internal, namely the highest and infinite perfections, and external, namely glory resulting from His wonderful works, he rejoices concerning these and exults that God is infinitely knowing, powerful, merciful, etc. This is the act of love by which God loves Himself, rejoicing infinitely concerning His infinite good, and by which the angels and saints love God: for clearly beholding God, carried away by love toward Him, they rejoice and exult with joy unspeakable and glorified that God is so immense, so incomprehensible.[104]

b. By desire, by which we wish good to Him, both that which He possesses and that which He does not possess: for he who loves God wills good to Him, and since he understands that God most abundantly possesses every good, namely infinite perfections, with intimate affection he congratulates Him, admiringly praises Him, and blesses Him. Since, besides this, he understands that there is a good which He does not possess, namely greater external glory, he wishes and desires that He be always more and more perfectly known and loved by all His creatures. Therefore he who recites *Glory be to the Father*, who prays, "hallowed be Thy name, Thy kingdom come, Thy will be done," elicits so many acts of theological charity.

c. By grief and sadness concerning sins: for he who wills good to God by that very fact hates what is contrary to the divine good, and since he understands that sins are contrary to the divine good, he is saddened by them, both his own and those of others, as by an evil contrary to God, and detests them.

d. By effective love, by which we endeavor to confer and procure external glory for God: for he who truly and sincerely wills goods to God and understands that the glory of God is a good which He can possess and does not yet possess, cares for increasing and promoting the knowledge and love of God, both in himself and in others. Hence zeal for the glory of God and the salvation of souls is an exercise of charity toward God.

e. By obediential love; for he who wills good to God and understands that God's good is increased and promoted by this, that what He Himself wills and commands is done, intends this, that God be served as perfectly as possible both by himself and by others, by the fact that precepts are observed and sin, at least mortal sin, is avoided. Therefore Christ says: If you love Me, keep My commandments. He who has My commandments and keeps them, he it is who loves Me. If anyone loves Me, he will keep My word.[105]

**57. On the efficacy of charity.** 1. An act of perfect charity justifies man of itself without a sacrament, though not without the desire of the sacrament: I love those who love Me.[106] He who loves Me will be loved by My Father, and I will love him and will manifest Myself to him.[107] Everyone who loves is born of God.[108] Many sins are forgiven her, because she loved much.[109]

a. The will of receiving the sacrament which is the necessary means instituted by God for obtaining remission of sins is implicitly contained in the act of charity, because in it is contained the will of observing all precepts.

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**Notes**

103. Sporer-Bierbaum, I, tr. 2, n. 142 ff.
104. 1 Pet. 1:8.
105. John 14:15, 21, 23.
106. Prov. 8:17.
107. John 14:21.
108. 1 John 4:7.
109. Luke 7:47.

b. An act of charity justifies man not by way of an efficient cause, but by way of the ultimate disposition; when this has been placed, God by force of promise infallibly infuses sanctifying grace.

2. Since charity is an act of love by which God is loved from the whole heart, from the whole mind, and from the whole soul, it contains full subjection and perfect oblation toward God, by which man subordinates himself to God and refers himself and all his things to God.

## Article Second. On the Necessity of Charity of God

**58. On the necessity itself of charity.** Habitual charity, which is inseparably joined with sanctifying grace, is necessary for all, both adults and infants, by necessity of means unto salvation: for no one can come to God without sanctifying grace and the habit of charity. But here the question concerns the necessity of eliciting an act of charity.

1. Actual charity in the New Testament is not necessary by necessity of means unto justification and salvation except in defect of a sacrament: for if an adult first acquires justification through the sacrament of baptism or penance, the act of charity is not equally necessary as the act of faith and hope, since the disposition through attrition suffices for obtaining justification through the sacrament.

Yet an explicit or implicit act of charity in contrition, which in the Old Testament was absolutely necessary for justification and salvation, in the New Testament is hypothetically necessary by necessity of means, namely for those who cannot receive the sacraments of baptism or penance: for outside the sacrament, except in the case of martyrdom, there is no other means of arriving at justification.

2. Actual charity is necessary by necessity of divine precept: for there exists a special precept of charity by which we are bound to love God above all things with appreciatively highest charity, but not necessarily also with intensively highest charity.

a. Christ the Lord enjoins upon us the great commandment of charity in these words: You shall love the Lord your God from your whole heart, and in your whole soul, and in your whole mind. This is the greatest and first commandment.[110] And indeed, since God is the ultimate end of all things, supremely lovable for His own sake, the order of things requires that God be loved by a creature capable of love for His own sake and above all things; therefore He could not fail to command this act of charity. Besides this, the very nature of man is of such perfection that it cannot be quieted and fully beatified except in charity of God, the highest good, whence the well-known words of St. Augustine: Thou hast made us for Thyself, and our heart is restless until it rests in Thee.[111]

b. The precept of charity is a special precept distinct from the others; therefore it is not satisfied by the mere observation of other precepts, but must be fulfilled by the act itself of charity. Certainly there exist three propositions condemned by Innocent XI, from which we especially gather this: that there exists a special precept, distinct from the others, of eliciting an act of love of God above all things.[112]

Nor let it be said that from Sacred Scripture effective charity suffices and affective charity is not required, since it says: He who keeps His word, in this man the charity of God is perfected.[113] For since this testimony cannot conflict with the other words of Sacred Scripture which prescribe affective charity, it must be explained

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**Notes**

110. Matt. 22:37-38. Cf. Mark 12:30; Deut. 6:5.

111. *Confessions*, bk. 1, c. 1.

112. We do not dare to condemn as sinning mortally him who would elicit the act of love of God only once in life (5). It is probable that the precept of charity toward God does not rigorously oblige of itself even in single five-year periods (6). It obliges only then when we are bound to be justified and do not have another way by which we can be justified (7). Cf. also proposition 1 condemned by Alexander VII (n. 45).

113. 1 John 2:5.

thus: he who keeps the commandments has perfect charity, internal and external, because observation of the commandments is the effect and sign of internal charity. Besides, he who does not elicit an act of charity does not keep His, God's, word, because he neglects the first and greatest commandment, which concerns affective charity of God.

c. To fulfill the precept of charity there is required perfect charity, which is love of benevolence: for the charity by which we ought to love God is an act of love from the whole heart, from the whole mind, from the whole soul, from all the powers; therefore it is love of the most perfect species. But charity by which we love God for His own sake is more perfect than charity by which we love God on account of goods coming to us from Him.

d. Above all things: If anyone comes to Me and does not hate his father and mother … and besides this even his own soul, he cannot be My disciple.[114] And indeed we ought to love God in that manner which corresponds to the divine goodness on account of which we love God; but this infinitely surpasses all other things.

e. Appreciatively highest, because the infinite goodness of God demands that we prefer God to all created goods. Not intensively, because the intensity of love corresponds not so much to the dignity of the object as to the vividness of apprehension and the natural disposition of the subject. Yet it is especially fitting that love of God even intensively be greater than love of a creature.

Therefore he does not sin who loves a son, friend, or bride more intensely and more sensibly than God, provided he is prepared in soul rather to lose all things than God and His friendship, because intensively highest love is not required. But he would sin who were so disposed in soul that he would not love God if there were no hope of reward or if hell were not to be feared, because he would constitute not God, but himself or his own beatitude, as the ultimate end.

**59. When the precept of charity obliges.** The precept of loving God is affirmative and negative; insofar as it is negative, it prohibits hatred of God and love of creatures appreciatively greater than love of God; insofar as it is affirmative, it prescribes an act of love of God. Since affirmative precepts oblige at certain times, it is now asked how often and when an act of love of God must be elicited. Further, sometimes it must be elicited *per se*, or by reason of charity itself, sometimes accidentally, or by reason of another precept to be fulfilled.

The precept of loving God obliges *per se*: a. After man has attained the use of reason, that is, when man, sufficiently instructed concerning God and His goodness, apprehends the obligation of loving God above all things; yet this is to be taken not mathematically concerning a determinate time or day, but morally, that is, in such a way that after the use of reason has been acquired the act of charity cannot be deferred for a long time without sin.

b. Several times in life. From proposition 6 condemned by Innocent XI, it is certain that the precept of loving God obliges at least within five years; but whether it urges more often and how often cannot be determined.

Authors establish diverse things concerning this matter: for some say that an act of charity must be elicited on each Sunday and feast day; others with St. Alphonsus, bk. 2, n. 8, once a month; others once a year; others finally every three years; but nothing certain can be established. Therefore the faithful are to be earnestly exhorted and admonished to elicit acts of the theological virtues frequently, but it must not be said that they are obliged to this either each week, or each month, or each year, because this obligation is not determinately established.

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**Notes**

114. Luke 14:26. Cf. Matt. 10:37.

c. In a temptation of sinning against charity by hatred of God, which can happen in adversities: for if an act of charity is the only means without which the temptation cannot be overcome, it must be elicited from the precept of charity; but it will rarely happen that an act of charity is the only means by which the temptation is repelled.

For the rest, since satisfaction can be made to the precept of charity, as also to the precept of faith and hope, by a virtual act of charity, it is not necessary that penitents be asked whether they have fulfilled the precept of charity of God. For those who live as Christians frequently elicit acts of charity, even if they do not advert that they elicit them, for example while they keep the precepts and avoid sins lest they displease God; while they desire that all may worship God; while they pray that His name be hallowed, His kingdom come, His will be done, etc. But those who live impiously do not advert to the obligation itself, and therefore they sin only materially.

**Note.** There are some who add that an act of charity must be elicited:

a. In the article of death. St. Alphonsus calls this obligation most probable, because then "the safest way must be chosen"; but this obligation exists only for those who are in mortal sin and cannot receive the sacrament. For the rest, it is not necessary that the safest way be chosen, but it suffices that one simply secure and safe be chosen.

b. When man through mortal sin has lost the habit of charity. Yet the obligation by which the sinner, who has been justified through attrition in the sacrament of penance, would be bound immediately or soon after he has obtained justification to elicit an act of charity, cannot be demonstrated by any probable argument. Indeed, those who urge this obligation too much seem to affirm, against the Council of Trent,[115] that attrition with the sacrament does not suffice for true justification, or without sufficient motive they establish a special precept of referring all our actions to God from the motive of charity.[116]

**60.** Accidentally the obligation of eliciting an act of charity urges: a. When someone needs the state of grace and cannot receive the sacrament, as when one existing in mortal sin must administer a sacrament or receive a sacrament of the living, or when someone is placed in danger of death and there is no supply of a confessor: for he cannot arrive at the state of grace unless he elicits an act of charity or of perfect contrition, in which an act of charity is contained.

b. When someone is found in a grave temptation against another virtue, and this temptation cannot be removed unless an act of charity has been elicited, as if someone must either deny faith or undergo death.

**Note.** 1. Parish priests, teachers, and parents ought to take care that children and the unformed are aptly instructed in eliciting the theological virtues. Wherefore not only are revealed truths to be explained, but at the same time it must be added that those truths have been revealed by God and that we ought to believe God revealing. In a like manner they ought to be instructed concerning the end for which they have been created by God, and that they may be more easily stirred up to love of God, God must be proposed to them under that respect under which He provokes more efficaciously to love (n. 55).

2. Nevertheless Lugo judges that even those faithful to whom it is only said that the Son of God was incarnate, that Christ died for us, without its being added that God revealed these things, "regularly elicit acts of divine faith," because they conceive this doctrine confusedly as something superhuman and divine.[117]

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**Notes**

115. Sess. 14, c. 4.

116. Cf. *On Principles*, n. 85.

117. Cf. Lugo, *De virtute fidei divinae*, disp. 1, n. 126.

**61. Moral value of the theological virtues.** 1. The theological virtues, as acts, are of the highest dignity and excellence; for since their immediate object is God Himself, man through the theological virtues is intimately joined by intellect and will with God and His perfections.

2. If they are compared with one another by reason of origin, the first is faith: for unless knowledge of the highest good precedes, neither desire nor love of it is possible; the second, ordinarily, is hope: for he who knows that the highest goods in heaven have been proposed to him tends trustingly toward them, that he may be beatified from them; the third is charity, which embraces God with love of benevolence on account of His highest lovableness. By reason of dignity the first is charity: a. by its nature it is an intimate and most pure union with the highest good; b. it immediately disposes for receiving sanctifying grace and accompanies it by an inseparable bond; c. when charity is lost, faith and hope are unformed virtues, which must be informed by habitual charity that they may make man simply good and his virtues meritorious; besides this, it perfects faith and hope, because it confers singular dignity and splendor upon virtues which are done from charity; d. faith and hope are virtues of the state of the way; charity is the virtue of the fatherland; therefore in the state of the term faith passes into vision, hope into possession, and charity alone remains.[118]

3. If they are considered in themselves. Faith is the full service of intellect and will exhibited to God revealing: for the will, reverently obeying the Creator commanding faith, determines the intellect to embracing the truth, which in itself is indeed obscure, yet elevates man above that which can be known by natural light.[119] Hope, insofar as it is desire, tears man away from earthly pleasures and directs him to the spiritual beatitude of the other life; insofar as it is trust, man through it rests, fully trusting in the goodness of God and His grace. Charity embraces the highest good in the most perfect way and intimately joins man with God; it constitutes Christian perfection, and since charity cannot be sluggish and idle, it moves and stirs man to exercising virtues diligently; but the fullness of the law is love.[120]

## Article Third. On Sins Against Charity of God

**62. What sins there are against charity of God.** a. All mortal sins indeed in some way are against charity of God, because any grave sin destroys the habit of charity and is a virtual aversion from God, since it is conversion to a created thing; but some are sins which, as formal aversion from God, are directly opposed to charity of God.

b. Sins directly opposed to charity of God are committed either by omission, when the act of charity to be elicited from the special precept of charity is omitted, or by commission, if an act prohibited by the precept of charity is placed. Acts of this kind are hatred of God and sloth, concerning which there has already been discussion.[121]

There is no reason for confessors to be solicitous concerning the sin of omission: for those who live as Christians do not commit it, while those who for a long time entirely neglect Christian duties, because of inadvertence, sin only materially.

**63. On hatred of God.** 1. Hatred is an act of the will by which it turns away from some object as evil. A twofold hatred is distinguished: hatred of abomination and hatred of enmity; the former is opposed to love of concupiscence, the latter to love of benevolence and friendship.

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**Notes**

118. 1 Cor. 13:8.

119. Cf. Vatican Council, constitution *De fide*, c. 3.

120. Rom. 13:10.

121. Cf. *On Principles*, n. 310.

a. Hatred of abomination is that by which we turn away from something as evil to us or to ours. A twofold hatred of abomination is distinguished: hatred of abomination of a person, by which we turn away from the person himself as evil to us; and hatred of abomination of a quality, by which we turn away from a quality of the person as evil to us.

b. Hatred of enmity or malevolence is that by which we turn away from something, a person, because it is evil in itself, or by which we will evil to some person, that it may be ill with him. Thus the worst men wish and procure destruction for their enemies, even if they themselves receive no advantage from it.

2. Hatred of God is an act by which someone turns away from God apprehended as evil. Hatred of abomination of God is an act by which someone turns away from God apprehended as evil to himself or to another loved person. Hatred of enmity of God is an act by which someone wills evil to God, that it may be ill with Him, or because it is evil to Him.

Therefore he sins by hatred of enmity of God: a. who wills that God not exist or that God not be omnipotent, omniscient, just, etc.; b. who is saddened by His perfections or rejoices concerning His offense, violates the precepts of God or persecutes the works of God because this displeases God. In this way the devil wishes and, as far as he can, procures evil for God because it is evil to God, even if he knows that he perceives no advantage from it.

**64. Its malice.** a. Hatred of God is the gravest of all sins, because it is directly opposed to the most excellent of all virtues and therefore to the infinite goodness itself of God; and indeed hatred of enmity is graver than hatred of abomination, because the former is opposed to the internal goodness of God, which is falsely apprehended as evil, while the latter is opposed to the external goodness of God, that is, to some effect proceeding from God, which is apprehended by man as evil and contrary to himself.

In order that this sin of hatred be committed, it is required that the abomination and indignation tend into God Himself: for if the affection of aversion and indignation is not referred to God, but to adverse things without respect to God, it will not be a sin of hatred, but of impatience or of hatred toward the neighbor.

b. Hatred of God does not admit smallness of matter, but every act of hatred and every depraved affection toward God, provided it is deliberate, is mortal sin, because it is directly opposed to the highest goodness of God. But when hatred of God is joined with blasphemy, imprecation, or an act of persecution against the Church, manifestly a twofold sin is committed.

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# Question Second. On Charity of Self

[122]

## Article First. On the Nature of Charity of Self

**65. Notions.** 1. Self-love which is an innate appetite must be distinguished from self-love which is a moral act. Man by natural necessity is borne toward his own conservation, his own perfection, and his own happiness; and since he cannot attain these unless he appropriates that which is good for him, by natural necessity he is borne toward that which is good for him. But to will good for oneself is to love oneself. Now if man wills good to himself by an act which proceeds from a deliberate will, this act is moral self-love.

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**Notes**

122. Lehmkuhl, I, nn. 569-590. Goepfert, II, nn. 1-10. Th. Meyer, *Institutiones iuris naturalis*, Freiburg: Herder, 1900, II, nn. 29-47. V. Cathrein, *Moralphilosophie*, Freiburg: Herder, 1904, II, pp. 46-54. E. Muller, *Theologia moralis*, Vienna: Mayr, 1894, II, p. 86 ff.

2. In acts of love there must be distinguished the necessary condition on the part of the object and the formal motive. For man cannot desire except that which is represented to the will as good and fitting for the one desiring. For a power cannot be moved to act except by its proper object; but the proper object of the will is that which is good and fitting for the one willing. But that which the one desiring knows and ought to know to be his own good, he can desire either because it is his own good, or because it is good in itself, or because it is good for another. Wherefore every act of love is implicitly self-love, insofar as in every act of love the love of one's own good is contained as a necessary condition, but not explicitly, insofar as one's own good is the formal motive of love; and this has place only in acts of love of concupiscence.

3. Self-love is called natural by reason of the object if it tends toward natural perfection and happiness, and by reason of the principle if it is elicited by the powers of nature alone; it is called supernatural by reason of the object if it tends toward supernatural perfection and happiness, which consists in the goods of grace and glory, and by reason of the principle if it is elicited by the help of grace.

Since natural self-love tends to this, that man procure for himself the goods of nature and avoid the evils of nature, this love must be ruled by divine law, lest he seek goods which indeed please the senses but harm the spirit, or avoid evils which must be borne so that man may attain his end.

4. Supernatural self-love is the love of hope if man loves God, his eternal beatitude, for himself, that it may be well with him; and it is theological charity if he loves himself for God's sake, namely because he is a participant of grace and glory and thus, as it were, of the family of God.

The foundation and condition of moral love and charity toward oneself is a fitting esteem of oneself (*Selbstachtung*), by which we know ourselves according to the natural dignity of the person and according to the supernatural dignity of sons of God and heirs of eternal life. Yet this esteem of self does not impede contempt and despising of self (*Selbstverachtung*), which the Christian religion commends to us as an exercise of humility: for humility is founded on recognition of those things which are in us from ourselves; but charity toward ourselves is founded on knowledge of those things which are in us from God.

## Article Second. On the Precepts of Charity of Self

**66. On the precepts themselves.** 1. There exists a divine precept of loving ourselves with theological charity: You shall love your neighbor as yourself;[123] by these words, if not explicitly, certainly virtually, theological charity toward ourselves is prescribed, since it is supposed that man ought to love himself, so that he may love the neighbor according to the likeness of this love. Besides this, we are bound to love God above all things; but charity of God, if it is true, naturally induces one to loving all those things which are God's, especially the adoptive sons of God or the members of His family; therefore it ought to be extended also to us and to the other sons of God.

2. By force of this obligation we are bound in general to will and procure for ourselves the supernatural goods of grace and glory and the natural goods, both spiritual and bodily, internal and external; and since the appetite of our own perfection and beatitude has been placed in us by nature together with the appetite of our own conservation, we are stirred up by nature itself to obtaining greater and always greater goods both of soul and of body for ourselves. Nothing prevents us from following this appetite, provided the norms of honesty are observed in all things.[124] But what goods in particular we are bound to will and procure for ourselves must be derived from the fundamental obligation of tending toward the ultimate end of eternal life, or of willing and procuring eternal beatitude for ourselves.

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**Notes**

123. Matt. 22:39.

124. Mausbach, *Kernfragen*, III, *Weltflucht und Weltarbeit*, M.-Gladbach, 1903.

a. With respect to supernatural goods we are bound: a. to know our ultimate end and those things which by necessity of means and of precept are necessary to know, so that we may be able to live a life worthy of a Christian man; b. to procure for ourselves supernatural life, namely sanctifying grace and the means which are necessarily required for conserving and increasing it, and besides this merits through the observation of the commandments, without which one cannot arrive at God.

But besides those things which are prescribed under grave obligation, we are not bound from charity toward ourselves under grave obligation to acquire for ourselves further merits and a greater increase of grace and glory through good works and the exercise of virtues; yet charity toward ourselves furnishes us an efficacious motive for diligently applying ourselves to the exercise of virtues and good works.

Therefore we are bound also from charity toward ourselves to learn those things which by necessity of means and precept are necessary to know, to acquire for ourselves the state of grace in danger of death, and not to defer conversion for a notable time, because a state of sin protracted for a long time induces almost a certain necessity of increasing sins;[125] to exercise those virtues and those good works which are prescribed by precepts obliging under grave matter; but we are not bound under grave obligation to works of supererogation, otherwise they would not be supererogatory.

b. With respect to spiritual goods we are bound to pursue that perfection and cultivation of mind and will which is necessary so that we may be able to obtain the ultimate end without difficulty and fittingly fulfill the duties of our state. But there is not given a strict obligation of acquiring for ourselves further knowledge, although it perfects the intellect and is useful to us: for since such knowledge is not necessary for obtaining the end from precept, there does not exist a precept of acquiring it, but only a counsel. Now it is asked what the obligation is of choosing a certain state of life.

c. Since today, with universal culture increased, individuals can scarcely fulfill their duties unless they have acquired richer knowledge for themselves, they are bound to use an occasion offered to them of acquiring such knowledge through suitable schools.

d. All are earnestly to be exhorted and admonished that they cultivate and perfect their intellectual and moral faculties as much as possible. For in this way they will not only attain the end of this life more suitably and perfectly, but they can also contribute more richly to the utility of others and to the common good. Added to this is that those who are better instructed more easily resist the seductions of unbelievers, provided education of the will and morals is joined with cultivation of the mind.

e. With respect to bodily goods we are bound by ordinary means to conserve our own life and health by procuring food, clothing, and habitation for ourselves.

f. For food, all nourishment fit for sustaining life can now serve man; as to quality, indeed, no distinction being made between clean and unclean foods, taken from vegetables or animals; but as to quantity, the order of temperance must be observed, by which it is provided that from the use of food and drink the health of the body or the liveliness of the mind not suffer harm.

g. Clothing serves a threefold end: that it ward off harmful influence of the air, that it provide for modesty, that it show distinction of sex and state. Any clothing which satisfies these ends as much as is necessary is morally honorable. It is permitted and becoming to follow the customs of one's own age and nation in this matter; yet each excess must always be avoided, which St. Jerome rebukes with these words: "adornment and sordidness are to be fled in an equal manner, because the one smells of luxury, the other of glory."[126]

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**Notes**

125. St. Thomas, I-II, q. 109, a. 8.

126. Ep. 55, n. 6.

h. Habitation ought to be suitable for conserving life and health, for protecting modesty, and for conducting domestic life conveniently among the members of the family. Since today from fact it is established that the wretched habitations which the poor and workers everywhere inhabit, especially in great cities, greatly harm both bodily life and moral life, those whom it concerns are to be admonished that they strive to remove these harms through suitable dwellings for workers.[127]

i. Necessary recreations are of the highest moment for conserving and perfecting the life of body and soul; all are licit, provided the laws of modesty and chastity are not violated and, with respect to the circumstances of time, duration, and manner, they are ordered according to reason. From these, bodily games and gymnastic exercises (*Sport*), especially for young people, ought to be earnestly commended, because these contribute very much to educating and conserving a healthy mind in a healthy body, provided due moderation is guarded in performing them. For games and exercises which are suitably performed with fatigue of the body serve not only for recreation, but also conduce to preserving and increasing the virtues of chastity and temperance. Wherefore there is no reason why pastors of souls ought to shrink back from societies instituted for the sake of playing and exercising (*Sportvereine*), but rather they should endeavor to promote them and direct them according to the norms of honesty and religion.[128]

j. External goods of the person are honor and reputation. Honor broadly is the good estimation of someone founded on his excellence. Honor strictly is the external testimony of that good estimation. Reputation is the public estimation of someone's excellence.

k. By the law of nature we are bound to have care for our own reputation, by guarding it lest it be lost, and by recovering it if it has been lost.

Reputation is a good of the greatest moment both for the person himself, for since it is the fruit of virtue, it contributes much to preserving virtue and removing vice because of fear of losing good reputation; and for social life, because it conciliates the trust of others, opens access to public offices, and is necessary for fulfilling duties fruitfully. Therefore Sacred Scripture admonishes: Have care for a good name: for this will remain to you more than a thousand precious and great treasures.[129] Yet this obligation ordinarily is only light; and since reputation is not the highest good, with a view to a greater good it can licitly be neglected, unless, considering the condition of the man, it is necessary.

b. Without a reasonable cause it is not permitted to defame oneself; but from a just cause, especially of virtue, of itself it is licit, just as from a reasonable cause it is licit to suffer loss of goods of fortune.

To defame oneself without cause is not indeed against justice, because man is master of his own reputation; wherefore by defaming himself he does injury to no one. Nor is it against charity, because charity does not oblige one to conserve external goods except insofar as they are necessary for conserving internal or spiritual or bodily goods; but it is a vice of prodigality against liberality, by excess, which nevertheless does not exceed venial sin. It can be grave either against charity or against justice if reputation is necessary for fulfilling an office or if others suffer harm from it.

e. We are bound to acquire for ourselves those external goods of fortune which we need so that we may conveniently fulfill both individual and social duties: for he who is bound to the end is bound by the same precept also to the necessary means. But besides goods morally necessary for this end, we are held by no obligation to seek a greater abundance of goods and prosperity of life. Yet it is permitted to each one to

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**Notes**

127. Cf. *Stimmen aus Maria-Laach*: L. Pesch, "Reform des Wohnungswesens," 1903, p. 251; "Die Wohnungsfrage in ihren Ursachen," 1903, p. 524.

128. Cf. Stohr-Kannamuller, *Handbuch der Pastoralmedizin*, Freiburg: Herder, 1900, p. 184 ff.

129. Ecclus. 41:15.

acquire for himself more abundant goods, provided in the acquisition and use of them he observes moral norms. Since the means of acquiring for oneself necessary external goods is labor, here the occasion offers itself of inquiring whether there exists an obligation of laboring.

**67. On the obligation of embracing a certain state of life.**[130] 1. State, as it is taken here, is a certain condition of life having stability from a permanent cause. Civil and ecclesiastical state are distinguished according as it pertains to civil or ecclesiastical society. Thus a judge, advocate, physician, worker has a civil state, because after an election has been made he obtains a stable, although changeable, condition of life in civil society; a Christian faithful person, a priest, a religious occupies an ecclesiastical state, because, having received baptism or sacred order, or having emitted religious profession, he has embraced a stable, and immutable, condition of life in ecclesiastical society.

2. Since a special vocation of God to a determinate state of life, if one prescinds from the clerical, religious, and virginal state in the world, does not exist, each one can choose that state which, with the qualities of the person and the external circumstances of life, family, and society considered, he judges suitable for himself, so that he may be able to conserve and perfect life and work out his salvation. For the rest, here the question is not what state is to be chosen or how it is to be chosen, for ascetical writers treat of this matter, but concerning the question whether for individual men there exists an obligation of choosing some state, whether ecclesiastical or civil, and of spending life in it.

a. The great utility which comes to men from a certain state of life is manifest, both because a state provides a determinate manner by which man can exercise his activity for his own utility and that of others and can guard against idleness, to which those who wander without a state of life easily indulge; and because it is the best means of working out his salvation: for he who diligently fulfills the duties of the Christian religion and of his state can be secure concerning the salvation of his soul.

b. The obligation of choosing a certain state of life can arise from a twofold head: a. from charity of self, or from the obligation of working out one's own salvation. Hence he who understands that the matrimonial state or the religious state is for him a necessary means of salvation is bound to choose it. b. From piety, or from the obligation of assisting parents placed in need. Hence he who understands that he cannot satisfy his duties unless he embraces the state of his father, farmer, craftsman, etc., is bound to choose it.

Therefore he can sin, though not by injury against human society, who does not use an opportune occasion of acquiring for himself a state of life, who, although he can, does not cultivate his faculties, whether spiritual or bodily, nor learn sciences and arts by which he may make himself fit for a certain state of life.

**Note.** To satisfy these precepts of charity of acquiring for ourselves necessary goods, whether supernatural or natural, it is not necessary that we act from the motive of charity.

## Article Third. On the Precept of Laboring

[131] Manual labor, which pagans in general contemned as a dishonorable thing, is not at all contemptible, but rather prescribed by the law of nature, ennobled by the example of Christ and the Apostles, and therefore is for everyone a highest ornament.

**67*. Preliminary notions.** 1. The name of labor is taken in a broader and a stricter sense: in the broader sense it is understood as any occupation, whether it is exercised by body or mind, whether it is useful to others or

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**Notes**

130. Krier, *Der Beruf*, Freiburg: Herder, 1899.

131. St. Thomas, II-II, q. 187, a. 3. Encyclical letters of Leo XIII concerning the condition of workers: *Rerum novarum*, 15 May 1891. Ed. Genicot, *Theologiae moralis institutiones*, Louvain: Polleunis and Ceuterick, 1902, I, n. 365. S. Weber, *Evangelium und Arbeit*, Freiburg: Herder, 1898.

useless; in the stricter sense it is understood as human activity, both bodily and spiritual, by which goods in some way profitable are produced.

In the former sense even prayer, both vocal and mental, exercises of piety, works of mercy toward the neighbor, and things of this kind are counted by the name of labor, in general any human activity, with only that excluded which is undertaken merely for the sake of delight. In the latter sense only productive and gainful labor is called labor, which is useful to the laborer himself or to others or to society, and therefore is also called "social labor."

2. There are some who contend that on all and individual men who are fit for this there has been imposed a natural and divine precept of laboring, not indeed always with productive and gainful labor, but nevertheless with serious and constant labor, ordinarily undergone through the greater part of the day. Although there does not exist a divine precept directly obliging all and individual men to labor, nevertheless there exists a universal precept of labor for the human race, so that labor pertains to the duties of human life; but indirectly labor is prescribed more or less to all and individual men.

3. To labor there belongs a. social moment, since it begets temporal prosperity, perfects culture, and increases the comforts of life; b. moral moment, since it is a means of exercising virtue and self-denial; c. supernatural moment, since it renders us like Christ our Savior, who was in labors from His youth.

**68. Whence the obligation of labor arises.** 1. From several reasons there exists a true obligation of laboring, which binds each one more or less.

a. From the precept of conserving life. The obligation of laboring certainly arises from the duty of conserving life by ordinary means: for since most men lack the means necessary for preserving life either simply or fittingly unless they acquire them for themselves by continual labor, and since labor is a means equally ordinary and necessary for this end, all who from another source do not have a sufficient abundance of goods by which they can honorably nourish themselves are bound by the obligation of undertaking labor.

b. The precept of laboring indeed requires that man by labor proportioned to his powers acquire for himself the necessary means by which he can lead a life fitting to the dignity of human nature; but it by no means requires that he procure for himself a more abundant supply of things, by which he can also enjoy the comforts and luxuries of those nations which are chiefly praised for material culture and progress.

c. Just as those who already have the things necessary for conserving life are immune from the precept of laboring insofar as it arises from this head, so those are immune from the same who are nourished by the piety of others, even if they could acquire the necessary livelihood for themselves by their own labor, as religious who live by begging: for labor is not prescribed for its own sake, but as a means necessary for preserving life; therefore for those who receive the necessities of life from elsewhere and do not indulge idleness, the precept of seeking them by their own labor ceases.

d. Besides the obligation of preserving one's own life, other precepts induce a necessity of labor in many men, which cannot be observed without manifold labor, such as duties of piety of parents and children, duties of religion of clerics, etc.

e. From the obligation of avoiding idleness. Idleness exposes man to the imminent danger of falling into various sins: for with experience as witness, this is the condition of corrupted human nature, that an idle life is defiled by very many vices, which Sacred Scripture signifies by these words: idleness has taught much

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**Notes**

132. Ecclus. 33:29.

malice;[132] but the only means of avoiding idleness is labor; therefore man is bound, for avoiding the dangers of sinning which arise from idleness, to apply himself to some honorable labor.

It is clear that any labor whatever suffices for fulfilling this obligation, even if it is useful to no one, as the anchorites teach us by their example. But certainly occupation which consists in mere games and recreations does not suffice: for with experience as witness, those who are intent upon hunting merely after delights and pleasures are no less defiled by vices than those who are given to idleness.

2. Whether from positive divine precept. Although labor is especially fitting to human nature[133] and ennobles and perfects it, while on the contrary idleness and sloth are unbecoming to man, nevertheless it cannot be affirmed that a divine precept of labor, especially gainful labor, independent of all other obligations, has been enjoined in Sacred Scripture upon absolutely all men.

a. A natural precept of laboring is demonstrated neither from the innate inclination to working, nor from the destination of the human race to culture, which otherwise it cannot attain except by tireless labor of men, nor from tranquility of soul, which labor produces, while on the contrary idleness generates disgust. But the highest fittingness and utility of labor and the natural destination of men for working are rightly inferred from these reasons.

b. There are indeed many testimonies of Sacred Scripture, both of the Old and New Testament, by which labor is extolled with the highest praises and earnestly commended,[134] but none by which labor itself as such is strictly prescribed.

c. The words of Genesis: In the sweat of your face you shall eat bread[135] do not signify that no man can licitly obtain those things which are necessary for life except by arduous labor, but indicate the punishment imposed upon the human race because of sin: namely, that the human race, which before sin in the earthly paradise would have obtained in abundance the necessities for nourishing life by easy and pleasant labor, afterwards as punishment for sin would obtain them only by arduous labor. In a similar way the words are to be understood: in sorrow you shall bring forth children.[136]

d. The words in Job (5:7), man is born to labor, and the bird to flight, have an entirely different sense; for labor from the context signifies hardships and pain, so that the sense is either this: as the bird is born for flight, so man is born for pain; or this: as the bird is incited by nature to fly, so man by the inclination of nature is incited to sin, from which hardships and pains arise.[137] Outside the context, the cited words have this sense: as the bird is incited by natural instinct to flying, so man is incited by natural inclination to motion and labor.

e. But the words of St. Paul: If anyone is not willing to work, neither let him eat,[138] are to be understood concerning those who, since they were doing nothing but indulging idleness, wished to live at another's expense, namely that these are not even worthy of food.[139]

3. Whether from the obligation of contributing to the common good. Serious labor of men, especially that which is expended in cultivating arts and sciences, indeed contributes much to promoting the prosperity

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**Notes**

133. Gen. 2:15.

134. Prov. 22:29; 31:13 ff.; Eccles. 11:6; 9:10; Eph. 4:28; 1 Thess. 4:10; 2 Thess. 3:10, 12.

135. Gen. 3:19.

136. Gen. 3:16.

137. Cf. Knabenbauer, *Commentarius in librum Iob*, Paris: Lethielleux, 1886.

138. 2 Thess. 3:10.

139. B. Justiniani, *Explanationes in omnes B. Pauli Ap. epistolas*, on this place. C. Estius, *Commentaria in omnes B. Pauli epistolas*, on this place.

and culture of human society; wherefore to those who enjoy an abundance of necessary things, labor of this kind can never be commended enough. But man is not held by strict obligation to contribute by his labor to the progress of culture. Nor can any argument be brought forward by which it is demonstrated that individual men are strictly obliged, according to their powers, to contribute to promoting social progress. For the rest, what individual members of society ought to contribute from obligation to the common good and therefore to procuring and promoting the temporal prosperity of society, the precepts of charity and the precepts enacted by public authority for the common good determine.

**69. On the right to labor.** With the obligation of laboring is connected the right to labor, which socialists interpret badly. The social and economic conditions of our time bring it about that from time to time very many workers lack labor and therefore also necessary sustenance. Therefore socialists proclaim a right to labor, by which right either private men or the republic are held to provide for workers lacking labor at any time the occasion of laboring and of gaining wages by which they can live. Concerning this matter it is useful to note these things:

a. Each one has a right of laboring, that is, he has a right of seeking licit labor for himself by just means and of exercising it, and therefore he has the right of demanding that he not be impeded by others in the exercise of this right. This right is founded on another right, that of conserving and perfecting life, for which end economic labor in general is altogether necessary.

Therefore an injury is inflicted upon one willing to labor if he is impeded from seeking and exercising labor as he wishes, which is done by socialists especially in strikes. But upon civil power falls the obligation of protecting the right of laboring of him who does not voluntarily yield his right.

b. No one has a right to labor, that is, a right of demanding that another, whether a private person or the republic, provide or procure labor for him, even if he lacks the means necessary for sustenance. For he who lacks labor and at the same time sustenance cannot by right demand from the neighbor that he provide labor for him, though from charity the neighbor can sometimes be bound to this: the obligation of supplying gainful labor in every case is opposed to the right of property. But neither is the political power bound to provide or procure labor for him, since it does not pertain to its office to procure the temporal good of individuals.

c. But if the multitude of those who lack labor is so great that from it the common good suffers detriment, the public power is bound from legal justice, lest the common good be brought into danger, to procure for them the occasion of laboring.

**Note.** To the right and obligation of laboring corresponds the right and obligation to religious days of rest. For neither can the life of the body be preserved safe, nor the salvation of the soul be placed in safety, unless at stated times rest is granted to the body, so that the soul through prayer and contemplation of religious truths may look after eternal salvation. For this reason God prescribed: Six days you shall work … but on the seventh day is the Sabbath of the Lord your God; you shall not do any work on it.[140]

## Article Fourth. On Sins Against Charity of Self

**70. What these sins are.** 1. Any sin whatever is opposed in general to charity of self, because by any sin whatever we bring evil upon ourselves: those who do sin and iniquity are enemies of their own soul.[141]

2. Against charity of self in particular a sin is committed:

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**Notes**

140. Ex. 20:9-10.

141. Tob. 12:10. Cf. Ps. 10:6.

a. by excess, through the sin of egoism, by which someone seeks his own advantage in his actions in such a way that he prefers it even to the divine good, the glory of God, and to the public good.

b. by defect, through hatred of self, concerning which are the words of St. Augustine: if you have loved badly, then you have hated,[142] namely by this, that a precept obliging from charity of self itself is violated, as if care of eternal salvation or temporal health is neglected, if someone wishes or inflicts evil upon himself against the order of charity, if someone in danger of death does not seek reconciliation with God, if someone remains in the state of sin for a notable time.

3. Sins committed against charity of self in particular are not customarily declared as such in confession, because there is no precept which from charity of self alone obliges under grave matter; hence if the violation of another precept is accused, the violation of charity of self is understood underneath.[143]

Thus he who accuses himself of a sin against the fifth precept of the decalogue, insofar as this is affirmative, at the same time accuses himself of violation of charity of self, insofar as this prescribes care of bodily life; he who accuses himself of violation of a precept, whether divine or ecclesiastical, at the same time accuses himself of violation of charity of self, insofar as this prescribes care of eternal salvation.

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# Question Third. On Charity of Neighbor

## Article First. On the Nature of Charity of Neighbor

**71. Notions.** 1. By the name of neighbor is understood every rational creature which is capable of divine grace and eternal beatitude: the angels and saints in heaven, the souls detained in purgatory, and men, whether they are good or evil, whether friends or enemies, with only demons and the damned excepted.

Christ the Lord teaches that the notion of neighbor, which the Greeks and Romans restricted to fellow citizens, and the Israelites, according to the interpretation of the Pharisees, to fellow tribesmen, must be extended to absolutely all men, enemies not excepted.[144]

2. We can love the neighbor with theological charity and with charity which is a moral virtue. We love the neighbor with moral charity when the love has for its motive the natural honesty which by the light of reason we know in love of this kind.[145] We love the neighbor with theological charity if the motive of loving is God, supremely good in Himself, known by the light of faith.

In order that we may be able to love the neighbor for God's sake and will good to him, he himself must in some way be apprehended as referred to God: as a creature, image, son, friend of God, as a brother of Christ, as redeemed by the blood of Christ, as a temple of the Holy Spirit, as called to glory, etc. And indeed this relation is the foundation and motive of charity toward the neighbor. Therefore we love the neighbor with theological charity if we will good to him because, for example, he is a son of God: for the reason on account of which we love him is God supremely good, or love toward God supremely good, whose son man is. In the same way we love the son of a friend for the sake of the friend: for that which moves us to loving the son of the friend is love toward the friend whom we love in his son.[146]

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**Notes**

142. *In Ioannem*, tract. 51, n. 10.

143. Cf. Ballerini-Palmieri, II, n. 156.

144. Cf. Luke 10:30-37.

145. Cf. Struggl, *Theologia moralis*, tr. 4, q. 4, n. 16; Ballerini-Palmieri, II, n. 152.

146. Cf. *Zeitschrift fur katholische Theologie* XXII (1898), p. 77 ff.: "Das Formalobjekt der gottlichen Nachstenliebe."

## Article Second. On the Precept of Charity of Neighbor

**72. On the precept itself.** 1. By divine precept man is bound to love the neighbor with theological charity; this is established from the words of Christ: But the second commandment is like to this: You shall love your neighbor as yourself.[147] And this commandment we have from God, that he who loves God should love also his brother.[148] From these words it is clear first indeed that charity of neighbor is prescribed, and then that this charity is the same by which we love God, and therefore theological.

a. Moral love of neighbor proceeding from the motive of natural honesty is not at all evil, but, if it happens from grace, is supernatural and prescribed by God: Therefore all things whatsoever you wish men to do to you, do you also to them.[149] Yet by that love the divine precept of loving the neighbor with theological charity is not satisfied. Nor is it satisfied by love of concupiscence, by which we will good to the neighbor so that it may be well with us from it.

b. By the words "as yourself" there is signified not equality of love with respect to intensity, since we ought to love ourselves more than the neighbor, and not all neighbors with the same grade of love, but equality with respect to motive and object, insofar as for God's sake we generally will and procure the same goods for the neighbor as also for ourselves.

2. By the divine precept of love we ought to love the neighbor with affective love, or with an internal act of benevolence: for we are bound to love the neighbor as ourselves; but we love ourselves by an internal act of benevolence, nor can we love ourselves otherwise. And indeed love by its nature consists in the internal act of the will by which we will good to another; therefore without an internal act, external love would not be true love.[150]

a. Affective love toward the neighbor is exercised by acts the same in species as those by which we love God, such as: a. joy concerning the goods of the neighbor; b. desire, by which we wish him happiness; c. sadness concerning his evils; d. purpose of the will by which, when the occasion has been given, we are prepared to do good to him (n. 56).

b. The precept of loving the neighbor with theological charity is satisfied both by praying for him and by external acts of beneficence which proceed from the motive of divine charity. He satisfies the precept of loving the neighbor by an internal act who abstains from hatred, prays for all, has the will of observing the precepts existing concerning the neighbor, and, when the occasion has been given, actually observes them.

3. The divine precept of loving the neighbor also prescribes effective love, or external acts of beneficence and mercy, by which we assist the neighbor who needs our help: He who has the substance of this world and sees his brother having need and shuts his bowels from him, how does the charity of God remain in him? My little children, let us not love in word nor in tongue, but in deed and in truth.[151] For I was hungry and you did not give Me to eat, etc.[152] And indeed the internal affection, if it is true and sincere, ought outwardly to manifest itself by works.

Therefore by the precept of charity man is bound to procure good for his neighbor and to impede his evil both with respect to body and with respect to soul, if it can easily be done. Yet to satisfy this precept it is not

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**Notes**

147. Matt. 22:39.

148. 1 John 4:21.

149. Matt. 7:12. Cf. Tob. 4:16.

150. Concerning this precept there are two propositions condemned by Innocent XI: We are not bound to love the neighbor by an internal and formal act (10). We can satisfy the precept of loving the neighbor by external acts alone (11).

151. 1 John 3:17-18. Cf. James 2:13 ff.

152. Matt. 25:42 ff.

required that works of beneficence toward the neighbor be done from the motive of charity, but it suffices that they be done from another lower motive, for example, mercy, kindness, etc.

4. Love of neighbor, both affective and effective, ought to be universal, that is, it ought to extend itself to all who are reckoned under the name of neighbor, especially also to sinners and enemies. But it is not required that we pursue each individual with internal love of benevolence and external love of beneficence: for this is nowhere prescribed and in reality is impossible. Rather, general love suffices, which excludes no one from the affection of benevolence and is prepared, when there is need, to assist the needy.

This common love must then, in determinate circumstances, be referred and applied to singular persons, as if someone is solicited by a temptation of hatred against the neighbor, or if the neighbor is placed in necessity.

## Article Third. On the Order of Charity

Before the precept of external charity is determined more accurately, the order of charity must be presented. For since the persons to be loved and the goods to be wished and procured for them are of unequal excellence, charity also ought, according to their diverse excellence, to be borne toward them in a diverse way. Besides this, diverse necessities must be distinguished, because according to the greater or lesser necessity of the neighbor the obligation of assisting him is diverse. Therefore a threefold order must be observed: among persons, among goods, and among necessities.

**73. On the order to be observed among persons.** 1. One can love one more than another in three ways: objectively, appreciatively, intensively. a. Objectively we love him more to whom we will a greater good than to another. b. Appreciatively we love him more whom we esteem more highly than another, so that, if it were necessary, we would rather lose the friendship of this one than of that one. c. Intensively we love him more whom we love by a more fervent and more perfect act of charity than another. It is clear that these three modes of loving are not necessarily joined, but we can love one more, for example appreciatively, and another more intensively.

2. There are three persons to be loved: God, ourselves, and the neighbor;[153] now ordered charity requires that each one:

a. First love God above all things with love at least appreciatively highest, since divine goodness infinitely surpasses all created goods.

b. In the second place, each one ought to love himself: for by the will of Christ love of self is the norm of love of neighbor; but the norm is more important than that which is normed. Therefore the common axiom: ordered charity begins from itself, namely from the one loving.

c. Finally, in the third place, each one ought to love neighbors.

**74. On the order to be observed among goods.** 1. The goods to be wished and procured both for ourselves and for others are of three orders: a. spiritual goods, both supernatural, namely eternal life, grace of God, virtues, etc., of which goods some are necessary for salvation and others only useful, such as the religious state, virginity; and natural, namely intellect, will, liberty; b. bodily goods, internal goods: life, health, integrity of members and other dispositions of the body; c. external goods, of which some are goods of the person, honor, reputation, others goods of fortune. Honor and reputation, as being something moral, are of a higher order than riches.

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**Notes**

153. You shall love the Lord your God with your whole heart and your neighbor as yourself. Luke 10:27.

2. Among goods each one ought to love more those which are more excellent; therefore of itself he ought to love spiritual goods more than bodily goods, and bodily goods more than external goods. To these things must be added that the common good is greater than a private good, because the good of the whole surpasses the good of the part.

Yet from these things it does not follow that any good whatever of a higher order must be preferred to any good whatever of a lower order: for in the moral estimation of men, sometimes a great external good is worth more than a slight internal good; thus anyone would rather suffer a headache for a short time than a great loss of riches.

**75. On the order to be observed among necessities.** The necessity which the neighbor can suffer is one thing when spiritual, another when bodily; each is either extreme, or grave, or light, or common.

1. On spiritual necessity.

a. He is found in extreme necessity who without the help of another can either in no way or only with the greatest difficulty escape eternal damnation, as an infant about to die without baptism or a heretic without penance.

b. He is found in grave spiritual necessity who can free himself from danger of damnation without another's help only with great difficulty, as an unformed Christian sinner in death, who can elicit an act of contrition only with great difficulty.

c. He is found in light spiritual necessity who can free himself from the danger of damnation or from sin without another's help without great difficulty, as ordinary sinners who, if they wished to make some effort, could easily be freed from sin or abstain from it without being helped, taught, or corrected by others.

2. On bodily necessity.

a. He is found in extreme necessity who is in danger of death threatening either now or after a short time, whether from natural causes or from the malice of men.

b. He is found in quasi-extreme necessity who is in danger of falling into extreme necessity or into a grave evil, either perpetual or at least long-lasting, grave imprisonment, loss of goods, loss of state; St. Alphonsus adds also very grave infamy.

c. He is found in grave necessity who suffers a grave evil, but not one long-lasting, or indeed one long-lasting but not so grave.

d. He is found in common necessity who suffers an inconvenience not very troublesome, such as ordinary poor people suffer.

Since there are almost innumerable grades of necessity, other distinctions besides these are proposed by authors, but of them only quasi-extreme or very grave necessity is to be attended to.

3. The order of necessity in which a greater or lesser obligation of helping the neighbor urges:

a. extreme spiritual necessity;

b. grave spiritual necessity;

c. extreme bodily necessity; yet it can happen that in this necessity there urges a greater obligation of assisting than in the former;

d. grave bodily necessity;

e. common necessity, whether spiritual or bodily.

**76. On the order to be observed between ourselves and the neighbor.** 1. Other things being equal, that is, in the same order of goods and in equal necessity, each one can and sometimes is bound to love himself more than the neighbor. Therefore of itself he is bound to love first himself with respect to spiritual goods, second the neighbor with respect to the same spiritual goods, third himself with respect to bodily goods, fourth the neighbor with respect to the same bodily goods, fifth himself with respect to external goods, sixth the neighbor with respect to the same external goods.

2. But where the order of goods is diverse and our necessity and the neighbor's necessity are diverse, we must often prefer the neighbor to ourselves according to the following rules.

**77. Special rules.** 1. Man is bound to love himself more than the neighbor with respect to necessary spiritual goods: for if ever, man certainly ought to prefer himself to the neighbor in those things which are necessary for salvation. But in those things which can be done or omitted without sin, charity inclines to preferring oneself to others; yet it is permitted to prefer the neighbor to oneself, both because there is no obligation of procuring those things for oneself, and because the good which is omitted is compensated by another greater good, namely the good of the virtue which is exercised in this way.

a. The desire of lacking eternal beatitude for the sake of any good whatever of another is illicit; but it is permitted to will the delay of beatitude in order to labor longer for the glory of God and the salvation of neighbors.[154] It is never permitted to commit any venial sin to procure any good whatever, whether spiritual or bodily, of the neighbor, for the good pleasure of God must be preferred to all things; but it pleases God more if I avoid sin than if by sinning I profit others. Besides this, evils are not to be done that goods may come.[155]

b. It is licit for procuring the spiritual or bodily salvation of the neighbor to expose oneself to a remote danger of sinning; wherefore it is permitted for a priest to read dangerous things so that he may be capable of hearing confessions, and for a physician it is permitted so that he may render himself capable of healing bodies. Indeed, for procuring spiritual salvation in the extreme necessity of the neighbor, it is permitted to expose oneself to proximate danger of sinning, with remedies nevertheless applied against sin, which through the grace of God can be avoided.[156]

c. Someone can defer or omit entrance into religion in order to exercise care of souls where another pastor cannot be found, or even to support poor blood relatives. A priest can omit prayer or spiritual reading in order to instruct neighbors or to care for the sick.

d. It is permitted to desire greater spiritual goods for the neighbor than for oneself: thus it is permitted to wish that all know and love God more perfectly than I do. Yet charity rather inclines each one to wish and procure greater goods for himself than for others, but because this is not prescribed, anyone can procure these things for himself or for others as he pleases.[157]

e. It is not only licit but also laudable to offer all one's satisfactions for the souls in purgatory. Formerly theologians indeed disputed whether this oblation is consonant with ordered charity; but since the Church approved it by granting indulgences, there can be no doubt concerning this matter. And indeed it is permitted to prefer the neighbor to oneself even in spiritual goods, provided in things necessary for salvation we prefer ourselves to him. Added to this is that the least increase of grace and glory must be esteemed

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**Notes**

154. Cf. Ex. 32:32; Rom. 9:3; Phil. 1:23 ff.

155. Cf. Matt. 10:26.

156. Cf. St. Alphonsus, bk. 2, n. 26; Lehmkuhl, *Casus conscientiae*, I, n. 376.

157. Cf. Castropalao, tr. 6, disp. 1, punct. 7.

more highly than liberation from long-lasting punishment of purgatory; but this oblation is an excellent good work, which produces a great increase of grace and glory.

Whether it is licit to expose one's own life to danger in order to preserve the life of the neighbor.

Man indeed is bound, absolutely speaking, to love his own life and the goods necessary for its conservation more than the life of the neighbor; nevertheless a. he ought to prefer the life of the neighbor both for preserving a person necessary or very useful to religion or to the republic, and for preserving a community in danger; b. he can licitly prefer the life of the neighbor for preserving even an equal or inferior person, especially if this happens from the motive of virtue. The reason of the first is that for the common good we ought to expose not only goods of fortune but even the good of life; therefore anyone can and ought to expose his own body to defend the prince from the sword of a killer, likewise he ought to hand himself over to enemies to preserve the fatherland unharmed. The reason of the second is that the matter does not concern a good necessary for salvation; but if one's own life is exposed to danger from the motive of virtue, one's own life is not compared with the life of the neighbor, but the virtue which is exercised in saving the life of the neighbor is compared with the life of the neighbor. Therefore it is laudable to serve those infected with plague with danger to life; likewise with danger to life to throw oneself into water to snatch another away; in Sacred Scripture Tobias is praised, who exposed himself to danger of life in burying the bodies of the dead;[158] sometimes pious men have offered their life for the recovery of the neighbor's health, and God has accepted the oblation.[159]

**78.** 2. Man is bound to love the neighbor more with respect to spiritual goods than himself with respect to bodily or external goods; therefore sometimes he is bound to help the neighbor even with his own damage or inconvenience. But in particular these things are to be established:

a. The neighbor placed in extreme spiritual necessity must be assisted even with danger to life or grave temporal damage: for according to the example of the Lord, we also ought to lay down our souls for the brethren.[160] Certainly the loss of temporal life compared with the eternal salvation of the neighbor is a slight evil, which we are bound from charity to undergo if the necessity of the neighbor is extreme.

For this precept to urge, three conditions are required: a. that there be certain hope of helping him; b. that there not be another who can and wills to help him; c. that a graver evil not follow from it, as if by someone dying for this cause several others would be brought into danger of salvation.

b. Man is not bound to assist the neighbor placed in grave spiritual necessity with danger to life or grave temporal damage, unless by office he ought to care for the spiritual salvation of the neighbor, as a pastor of souls; yet he is bound with light damage or inconvenience to himself.

c. For since the neighbor himself can help himself if he wills, one must not assert an obligation of assisting the neighbor even with danger to life or with notable loss of temporal goods; nevertheless this would be an exercise of excellent virtue, because the salvation of the neighbor is a far greater good than one's own life.

d. Because to the obligation of charity there is added another obligation, namely of office, or justice, pastors of souls ought to assist even one placed in grave necessity with danger to life or temporal goods: the good shepherd gives his soul for his sheep.[161]

e. The neighbor placed in light spiritual necessity must be assisted if this can happen without temporal damage or with only light damage: for charity of neighbor certainly requires something - God commanded each

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**Notes**

158. Tob. 12:12.

159. Cf. Muller, II, p. 99.

160. 1 John 3:16.

161. John 10:11.

one concerning his neighbor;[162] but it does not require that we undergo any damage except light damage for freeing the neighbor from an evil from which he himself can easily free himself.

**79.** 3. Man is bound to love the neighbor more with respect to bodily goods than himself with respect to external goods; therefore sometimes he is bound to assist the neighbor even with loss of his own external goods. In particular these things are to be established:

a. The neighbor placed in extreme temporal necessity must be assisted with great inconvenience indeed, yet not with danger to life or of an almost equal good, unless someone by office ought to care for the bodily good of the neighbor, as a physician hired for a wage: for for a good of the neighbor so excellent we are indeed bound to undergo some inconvenience; yet since each one is bound first to love himself, he is not bound to undergo so grave an inconvenience for another's temporal good.

b. The neighbor placed in grave temporal necessity must be assisted with some light inconvenience: for although we ought to undergo some inconvenience for the more excellent good of the neighbor, nevertheless no one is bound from charity to deprive himself of a great good unless a much greater good is to be procured for the neighbor.

c. The neighbor placed in common temporal necessity must be assisted if it can easily be done: for charity of neighbor does not require that we undergo inconvenience to free him from an evil which is not grave for him.[163]

**80. On the order to be observed among diverse neighbors.** There were some who said that those act against Christian perfection who love one neighbor more than another on account of blood relationship or human friendship. But they are false: for by rational nature itself we are induced to love more those who are more joined to us; but grace does not destroy nature, but perfects it; therefore even by supernatural charity we can and ought to love more those who are more closely joined to us. The same is confirmed by the example of Christ, who in the Gospel is narrated to have loved St. John more than the other disciples. And so:

1. Objectively we ought to love more those who are better than others: for charity wills for each one those natural and supernatural goods which he has or which are fitting to him; therefore those who are holier are to be loved objectively more than others.

2. Affectively and effectively, in equal necessity, those who are more closely joined to us are to be loved more; but if the necessity is unequal, he who suffers the greater necessity must be helped first.

We ought to assist a brother placed in extreme spiritual or bodily necessity before a stranger placed in the same necessity, if we cannot help each. But we ought to assist a stranger placed in spiritual necessity before one joined to us placed in temporal necessity. A priest called to baptize an infant and absolve a dying person, if the danger in delay is equal and there is no lay person who may baptize the infant, is bound to prefer the infant if the adult can help himself by contrition; if he cannot do this, he is bound to prefer the adult.

3. Those more closely joined to us are to be preferred to others only in those goods which pertain to that conjunction; therefore those spiritually joined are to be preferred to others with respect to spiritual goods, those carnally joined with respect to bodily goods, those civilly joined with respect to social goods. In goods common to every conjunction, those are to be preferred who are united with us by a stronger conjunction.

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**Notes**

162. Ecclus. 17:12.

163. Therefore the solemn adage, charity does not oblige with grave inconvenience, has its exceptions: for we are sometimes bound to assist the neighbor even with grave inconvenience.

Therefore the solemn adage, charity does not oblige with grave inconvenience, has its exceptions: for we are sometimes bound to assist the neighbor even with grave inconvenience.

4. Among all conjunctions, carnal conjunction is stronger, because nature is prior and the foundation of every other conjunction; spiritual follows carnal next, and then moral or civil.

Therefore a parish priest in time of plague, called to two dying persons, of whom one is his father but not a parishioner, while the other is a parishioner, must leave his father, if he is not in extreme necessity, and assist the parishioner, because in spiritual goods those who are spiritually joined to us are to be preferred to others. Yet in extreme necessity equal on each side, whether spiritual or temporal, those carnally joined to us must be assisted first, because carnal conjunction is stronger.

## Article Fourth. On the Love of Enemies

[164]

**81. Declarations.** 1. By the name of enemy are signified those who pursue us with hatred or have affected us with offense or injury. The doctrine concerning love of enemies is to be extended *a fortiori* to those whom for any motive whatever we naturally turn away from.

Offense is defined as a wound to the will of another; therefore through offense something is done which displeases another and therefore excites his indignation and aversion. Injury is defined as a wound to the right of another; through injury, something is done not only against the will but also against the right of another. Finally, if the injury inflicted is joined with damage of another, it is called damaging. Offense is compensated by friendly reconciliation; injury is compensated by satisfaction, by the fact that the offender undergoes something troublesome so that the wounded person may be reconciled to him; damaging is compensated by restitution, by the fact that the damage inflicted is repaired for the wounded person.

2. Common signs of love are called those which men of a certain condition and relation are accustomed to exhibit to one another to signify mutual love. But special signs are called those which, beyond the common signs, some men are accustomed to exhibit to one another to signify the friendship and familiarity flourishing between them.

a. These are generally reckoned common signs: to return greeting to one who greets, to respond to one asking or writing, to sell exposed merchandise to one wishing to buy, not to exclude from common prayers or alms, to provide common services, to avert damage threatening another if this can conveniently be done, etc. To common signs belong also those which are freely exhibited to some multitude, as if someone were to distribute alms to all the poor of some place. Special signs are generally reckoned these: to receive as a guest, to invite to a banquet, to console one who is sad, to visit the sick, to speak familiarly, to foster frequent exchange of letters, to greet first someone encountered, etc.

b. From this definition it is clear that these signs must be determined not absolutely, but relatively, namely with account taken of determinate state and condition, determinate relation, and also determinate region: for the common signs of love which cultivated men, and those which unformed men, brothers and sisters, more remote blood relatives, fellow citizens, or the altogether unknown exhibit to one another are different.

**82. Precept.** 1. There exists a special precept of charity of loving enemies: for although love of enemies is already implicitly contained in the general precept of charity toward the neighbor, nevertheless Christ the Lord added an explicit command both because of its great difficulty, and because of its eminent perfection, and

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**Notes**

164. M. Waldmann, *Die Feindesliebe in der antiken Welt und im Christentume*, Vienna: Mayer, 1902.

finally because in the Old Testament this precept is not clearly contained in its whole amplitude and, besides this, had been obscured by the interpretation of the Pharisees: Love your enemies; do good to those who hate you, and pray for those persecuting and calumniating you.[165]

a. The obligation of loving enemies is already contained in natural law: for an enemy also is our neighbor, whom the law of nature commands to be loved. Nevertheless ancient philosophers before Christ did not arrive at knowledge of the precept of loving enemies, although they praised the same love in certain cases. Finally, in the Christian age later Stoics, not without the influence of revealed truth, teach that enemies are to be loved.[166] In the Old Testament love of enemies was prescribed: You shall not hate your brother in your heart … You shall not seek revenge nor remember the injury of citizens.[167] If your enemy shall hunger, feed him; if he shall thirst, give him water to drink: for you shall heap coals upon his head, and the Lord will repay you.[168] Although the Israelites taught that an enemy was to be loved as a neighbor, nevertheless they did not extend this love of enemy to all, but restricted it to enemies of their own race; indeed they pursued with hatred those whom they knew as adversaries of their nation and ancestral religion. Finally Christ clearly pronounces perfect love of enemies.[169]

b. This precept does not impose a special obligation distinct from the obligation of loving the neighbor. Insofar as it is negative, it prohibits us from ever having hatred for our enemies or fostering revenge or anger against them; but insofar as it is affirmative, it prescribes that we pursue even enemies with both internal and external love. The internal love owed to enemies does not require a special act of charity toward the person of the enemy, but only this, that we not exclude the enemy from the general love of neighbors, and that we have a ready will of assisting even enemies in necessity. Yet two things must be declared in particular: the obligation of exhibiting signs of love and the obligation of reconciling oneself with the offender.

2. From the precept of charity we are bound of itself to exhibit even to enemies common signs of love, but not special signs, unless accidentally.

The reason of the first is both because these signs are signs of general love, which is owed to all who are neighbors to us, therefore even to enemies; and because their omission is a sign of hatred, and therefore would confirm enemies in enmity. The reason of the second is both because these signs are signs of special friendship, which is owed to no one, therefore neither to an enemy, and because from their omission the enemy cannot presume an affection of hatred and revenge, but only lack of friendship and familiarity, which is not owed to him.

3. From a reasonable cause, even common signs of love can be denied to an enemy for a time, hatred nevertheless always being excluded; in like manner it can accidentally happen that sometimes even special signs are owed to him.

a. We are not bound to exhibit common signs of love to an enemy for a time in a threefold case: a. if there is hope that the enemy will thereby be corrected, or that his audacity and insolence will be blunted; b. for just punishment, as if a superior has been offended by an inferior; c. to show grief and displeasure concerning the injury inflicted upon us, especially if it was atrocious.

b. But special signs must be exhibited to an enemy: a. if their omission, since previously they were accustomed to be given, would be in others a cause of scandal, because from charity we are bound to prevent the

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**Notes**

165. Matt. 5:43 ff. Cf. Luke 6:27 ff.

166. Cf. Waldmann, loc. cit., p. 19 ff.

167. Lev. 19:17 s.

168. Prov. 25:21-22.

169. Matt. 5:44. The source prints “Matth. 35, 4.”

neighbor from taking damage from our manner of acting, though not with grave inconvenience; b. if from these signs reconciliation of the enemy can be hoped for, because from charity we are bound to draw the neighbor back from sin if it can easily be done; c. if their denial would be a special sign of hatred and enmity, as if an enemy seeking reconciliation exhibited special signs of charity by greeting, speaking, etc., not to return these would be a sign of hatred.

**83. Denial of common signs of charity can be a grave sin.** a. For measuring the gravity of the sin which is committed by omission of signs of charity, attention must be paid to: a. whether the omission of these signs proceeds from internal hatred; b. whether it is a cause of offense with respect to the enemy or of scandal with respect to others. If neither has place, it is only venial sin.

b. To discern whether denial of the signs of charity proceeds from hatred, attention must be paid to the cause because of which they are omitted: for if it is grave, the omission of signs is judged to proceed from hatred.

c. He who, lest he meet an enemy, turns aside elsewhere, even without internal hatred, sins gravely if the enemy adverts that this is done on his account and therefore is gravely offended; it is no sin or only venial if he does not advert this or does not care, and if it happens from a reasonable cause.

d. Omission of greeting is not a sin unless from the circumstances it is a sign of internal hatred, as if previously greeting between them was accustomed as a common sign, or if among several who are greeted, the enemy alone is passed over.

e. A mistress does not sin who for a time neither looks at nor speaks to a maid discharged from service because of a grave injury, nor returns greeting to her when she meets her in the road and is greeted by her, provided these things are not done from hatred but from some honorable motive: from abhorrence of the offense, to show the gravity of the injury inflicted upon herself, or for just punishment. Yet she cannot for a longer time deny common signs of charity to her, but is bound to return greeting to one greeting, so that by an external sign she may show that she has already remitted the offense.[170]

f. He who breaks off all dealings with another by whom he has been offended and neither wishes to speak with him nor greet him: a. does not sin if he does this for a few days in order to manifest just sadness or abhorrence against the depraved manner of acting of the other, or to correct the other; b. commits a light sin where the matter concerns persons among whom speech, greeting, exhibition of services, and things of this kind pertain to common signs, as when two neighbors of the same village or two pupils of the same seminary or two nuns do not wish to speak with one another nor greet one another, and if the cause of enmity is light, even if dealings were avoided and common signs denied for some time; c. commits a grave sin if those things proceed from hatred, as when a grave quarrel had preceded, or if they provoke hatred or offer scandal to others.[171]

**84. On reconciliation.** He who has been wounded in any way whatever is bound by the precept of charity to reconcile himself with an enemy seeking reconciliation. Therefore he is bound to remit offense or injury to the enemy and to show external signs of remission; yet not immediately after the offense has been inflicted. But he is not bound to remit reparation of injury or the damage inflicted, nor to restore the more intimate familiarity which perhaps had existed before.

a. To remit offense or injury, or to give pardon, is nothing other than to lay aside hatred and affection of revenge; but this is prescribed by divine law, as is established from the general precept of charity and from

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**Notes**

170. Cf. Ethel-Bierbaum, *Theologia moralis*, Paderborn: Typographia Bonifaciana, 1894, I, pars 2, n. 249 ff.

171. Ballerini-Palmieri, II, n. 179.

several places of Sacred Scripture, for example, if you do not forgive men, neither will your Father forgive your sins.[172]

b. That remission ought to be manifested outwardly is gathered from the general precept of exhibiting common signs of charity even to an enemy. Not immediately: for it surpasses human frailty that the wounded person, immediately, while internal disturbance has not yet been quieted, be compelled to exhibit signs of reconciliation. Hence it suffices that meanwhile the internal affection of hatred and revenge be laid aside.

The offended person of himself is not bound to seek reconciliation; but accidentally he is sometimes bound to this, if it can easily be done, where namely the offender would otherwise persevere in the state of sin, or if scandal would arise because the cause is unknown on account of which common signs are denied.

Reconciliation, and therefore common signs of charity, can for a time be denied even to one seeking peace, with hatred and revenge laid aside, as a sign of sorrow; but scandal can easily be absent if the cause is known on account of which common signs are denied. But if they were denied for a longer time, even to one not seeking peace, their denial would rightly be judged a sign of enmity and revenge, and therefore would be a sin, except in the case in which the enemy would not respond to signs exhibited.

c. No one is bound of himself to remit to the neighbor a good owed to him; but satisfaction for injury and restitution for damage is a good which is owed to him who has suffered injury or damage. Therefore each one can of himself will that, the affection of hatred and revenge nevertheless being laid aside.

Wherefore, if the offender should refuse to compensate the debt, it is permitted to seek before a judge not only restitution for the damage inflicted, but also satisfaction for the injury done: for each one can demand what is justly owed to him.

Indeed, strictly speaking, even if the offender asks pardon, it is still permitted before a judge to demand vindication for the injury done, so that justice may be satisfied or that others may be restrained, with every malicious affection against the neighbor nevertheless laid aside. But in practice this must altogether be dissuaded, because it is very difficult to demand punishment of an enemy with every depraved affection of hatred and revenge excluded.

Yet accidentally it can happen that the wounded person is bound from charity also to forgive the enemy the reparation of injury, where namely he would have to undergo too great an inconvenience to repair the injury in comparison with the good which would come to the wounded person from it.

d. Once peace has been restored, more intimate familiarity is not owed to him who before was a friend. Therefore even all signs of friendship, except those which, considering the natural relation of blood relationship, living together, identity of state, etc., are common, can be omitted without sin.

**85. On the manner of reconciliation.** 1. He who offends another in any way whatever is bound, as soon as he morally can, to seek reconciliation with him, and indeed, if another means of reconciliation is not available, through petition of pardon: for he who has wounded charity is bound to repair it in that manner which is morally possible for him; but reparation of charity is ordinarily made through reconciliation. Whence Christ prescribes: if therefore you offer your gift … go first to be reconciled to your brother.[173]

Whether the offender ought to ask pardon. The petition of pardon is a means for obtaining the end of reconciliation; therefore when it is the only means, it must be called necessary, which generally happens if the offended person is a father, master, superior, etc. Accidentally it can be necessary if a superior or judge enjoins

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**Notes**

172. Matt. 6:15. Cf. Lev. 19:17.

173. Matt. 5:23-24.

it. But ordinarily it is not necessary, since peace among enemies can also be restored by other means, through special signs of friendship, through services exhibited, through the intercession of friends, etc.

2. Of two persons who have mutually offended one another and have mutually become enemies, he who has offended the other more gravely ought first to procure reconciliation; and if the mutual offense is nearly equal, he who first offended. But in practice each should be persuaded that either by himself or through another he seek reconciliation.

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# Article Fifth. On External Charity of Neighbor

## § 1. On Mercy

**86. On the nature of mercy.** 1. An act of charity toward the neighbor constituted in misery is called mercy. A benefit furnished to a neighbor constituted in misery is a work of mercy, or alms taken generally.

2. Mercy is a moral virtue by which man, from commiseration, is inclined to relieve another's misery. Therefore it differs from charity in this, that charity universally wills and procures good for the neighbor from benevolence, but mercy wills and procures it for him who is in misery from compassion. For the misery of the neighbor naturally moves one to compassion, and compassion to relieving misery.

3. The material object of mercy is the evil or misery of another (sickness, ignorance, poverty, sin, etc.), which the merciful person tries to remove. The formal object is the moral goodness which shines forth in removing another's evil from compassion.

Note. The Christian religion especially has taught us the virtue of mercy. For although the law of nature demands it, nevertheless its notion among the gentiles had been obscured and its exercise so neglected that Plato wanted the poor to be banished from the republic, and Seneca thought mercy a vice of the soul. To these Christ the Lord opposed His own mind, saying: I have compassion on the multitude;[174] Come to Me all who labor and are burdened.[175]

**87. On the precept of mercy.** a. From the universal precept of charity it follows that each one of himself is bound under grave obligation to succor a neighbor constituted in misery, if he morally can (n. 54): for he who refuses to relieve another's misery does not truly love the neighbor.

Someone can be obliged to succor the neighbor from common charity, by which all, having the same human nature, ought to do good to one another; or from special charity (piety), by which those who are joined by a special reason, as blood relatives, are bound to succor one another; or from charity and justice, by which those who by office have care of others are bound to aid them. Moreover, as long as there are those who are bound to succor from justice or from special charity, and are also believed to be able and willing to succor, others are not bound from common charity; but when those fail, these are bound.

b. Although we are bound to furnish to the neighbor who is in want the good which he needs, or to avert from him the evil which threatens him, whether it is bodily or spiritual, nevertheless none are bound to inquire into the needy except those upon whom the care of others rests by office: for it belongs to the needy themselves to set forth their necessity.

Yet one who reasonably doubts concerning the extreme necessity of someone is bound to inquire into the truth; and if, after inquiry has been made, the doubt remains, there is no obligation of aiding.

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**Notes**

174. Mark 8:2.

175. Matt. 11:28. Cf. A. Weiss, *Apologie*, Freiburg: Herder, 1897, III, p. 807.

**88. Works of mercy.** The misery of the neighbor can be bodily or spiritual; wherefore some works of mercy are bodily, others spiritual. The bodily works are numbered as seven: to feed the hungry, to give drink to the thirsty, to clothe the naked, to receive travelers, to visit the sick, to redeem captives, to bury the dead. Likewise the spiritual works are numbered as seven: to teach the ignorant, to give counsel to the doubtful, to console the sorrowful, to correct sinners, to forgive those who offend, to bear with the troublesome, to pray for the living and the dead. Here we must treat only of two: of alms strictly so called, by which name the bodily works of mercy are designated, and of fraternal correction, which alone among the spiritual works of mercy presents a special difficulty.

## § 2. On Alms

**89. Notion.** Alms strictly so called is defined: a bodily work which from commiseration is exhibited to one in need in order to relieve his want; most strictly: a thing which is bestowed upon a poor man from commiseration in order to relieve his want.

Therefore three things are essentially required to constitute alms in the strictest sense: a. that something be given or donated, that is, that the ownership of the thing offered be transferred to the poor man; b. that it be given to one in need; c. that it be given from compassion in order to relieve his want.

**90. On the precept of alms.** 1. From the divine precept, both natural and positive, and indeed one grave of itself, we are bound to give alms.

The first is clear both from the general principle of charity of doing to another what we would want done to us (were we placed in the same condition), and from the nature of private dominion. For although man has a true right over his goods, nevertheless this right, as secondary, is connected with the obligation of contributing from his goods to those who by their own labor cannot obtain for themselves the necessities of life.[176] The second is clear from many testimonies of Scripture: I command you that you open your hand to your needy and poor brother who dwells with you in the land.[177] Break your bread for the hungry, and bring the needy and wandering into your house; when you see the naked, cover him, and do not despise your own flesh.[178] He who has the substance of this world and sees his brother have necessity and shuts his bowels from him, how does the charity of God remain in him?[179] The third is clear from this, that Christ announces that on the day of judgment eternal damnation is to be inflicted upon the impious because of the sole defect of alms: Depart from Me, cursed ones, into eternal fire … for I was hungry and you did not give Me to eat, I was thirsty and you did not give Me drink.[180]

2. In order that this precept of alms oblige, two things are required: on the part of the neighbor, necessity; on the part of the giver, possibility or superfluous goods.

a. Necessity according to degree we divided above (n. 75); but according to origin necessity is distinguished as involuntary both in itself and in its cause, and this is misfortune; voluntary both in itself and in its cause, and this is virtue; involuntary in itself and voluntary in its cause, for example, in weariness of labor, and this is vice. But one in need must be succored not only from misfortune, but also from virtue: for he suffers true necessity, and that from an excellent cause.

b. It must be declared in how many ways goods are called necessary and superfluous.

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**Notes**

176. Cf. St. Thomas, II-II, q. 32, a. 5 and ad 2.

177. Deut. 15:11.

178. Isa. 58:7.

179. 1 John 3:17. Cf. Matt. 25:34-45; 1 Tim. 6:17-18.

180. Matt. 25:41-42.

c. Goods necessary for life are those without which one's own life and that of one's dependents cannot be preserved, so that if these were taken away, someone would cast himself or his dependents into extreme necessity. Therefore goods necessary for life are also those which are required for feeding and educating children, or for sustaining a maidservant who is necessary to the family. Therefore goods superfluous for life are goods without which someone can sustain himself and his dependents.

d. Goods necessary to the state itself are those without which the state of life cannot be preserved, so that if they were taken away, someone would fall from his state.

e. Goods necessary to the decency of state are those without which someone cannot live suitably to his condition, so that if they were taken away, he could not preserve his state decently. Therefore those goods also are called necessary to the decency of state which are required for the honorable support of himself and of his household servants, for the suitable education and dowry of children, for suitable donations, for honorable customary banquets, for receiving guests, etc.

**91. More accurate determination of the precept.** 1. The neighbor constituted in extreme necessity must be succored from goods necessary to the decency of state: for a neighbor constituted in such great necessity must be aided even with great inconvenience.

a. Although alms must be given to the neighbor in extreme necessity from goods necessary only to the decency of state, nevertheless the obligation of giving even from goods necessary to preserve the state itself cannot be demonstrated, so that one would be bound to fall from his proper state: for no one is bound to preserve his own life with the loss of his state, or through extraordinary means.

b. We are not bound to take care that a sick person, who would soon die in his own country, be sent into the more healthful air of a distant region. A physician is not bound to perform an extraordinary surgical operation for preserving the life of a poor man. No one is bound to spend a large sum of money to redeem the neighbor from danger of death or of harsh and perpetual captivity.

c. In extreme necessity only so much must be given to the neighbor as is required to relieve his necessity here and now, unless it is an extraordinary matter; and indeed, if he is absolutely poor, it must be given to him gratuitously; but if he needs only the use of the thing, it is sufficient to lend it.

2. The neighbor constituted in grave necessity must be succored from goods simply superfluous: for ordered charity demands that we succor the neighbor in grave necessity if we easily can. Nevertheless this precept does not oblige the rich to give to all who come, but to some; nor to provide for their want entirely, but in part: for ordinarily they can presume that there are others who also are willing to aid.

Therefore physicians, advocates, etc., are bound to spend their work on the poor gratuitously, if these are found in grave necessity and cannot be helped by others. In time of famine the rich are bound to succor the poor suffering hunger, insofar as they can do so without grave inconvenience.

3. Those constituted in common necessity must be succored here and there from goods simply superfluous. There is no obligation of succoring some determinate poor person, nor generally all the poor; but there is an obligation of sometimes aiding, according to one's means, some indeterminate persons among the poor constituted in common necessity: for if individual persons give something, the common necessity is sufficiently relieved.

How great an alms is to be distributed by the rich in common necessity cannot be accurately determined. According to the mind of St. Alphonsus (n. 32), the rich who distribute a fiftieth part (two percent) of their incomes which are truly superfluous satisfy the precept of alms. Although this determination of several authors seems to lack a solid foundation, so that the rich who have goods simply superfluous are bound to more

abundant alms where a greater want of the poor exists, nevertheless from it this is gathered, that the rich who spend some goods on superfluous uses or set them aside for increasing riches are not to be accused of sin.

**92. Gravity of the obligation.** The neighbor constituted in extreme or grave necessity must be succored under grave obligation; but a grave obligation of giving alms to a neighbor constituted in common necessity cannot be demonstrated.

a. No one denies the grave obligation of succoring a neighbor suffering extreme necessity: for if the precept of alms is grave of itself, certainly in the extreme necessity of the neighbor it obliges under grave obligation.

b. The gravity of this obligation depends especially upon the necessity of the neighbor; hence in the grave necessity of the neighbor a grave obligation of succoring urges.

c. With regard to the neighbor constituted in grave necessity, a grave obligation seems to be established with St. Alphonsus (n. 31) and most others: for from Sacred Scripture many are excluded from the kingdom of heaven because of the sole defect of alms; but if the grave obligation were restricted to the rare case of extreme necessity, many could not be excluded. Moreover, for the holy Fathers the obligation of giving alms is grave, as their testimonies everywhere among authors attest; but it is incredible that those texts are to be understood only of extreme necessity. Finally, authors agree in establishing a grave obligation of averting from the neighbor, if it can conveniently be done, a grave evil, for example, of extinguishing a fire set to a house, of restraining grave defamation; therefore also in this matter a grave obligation must be established.

d. If some rich man who possesses superfluous goods has the intention of never giving alms except in extreme necessity, of itself this intention is gravely sinful; nevertheless in particular cases a rich man of this kind who sends the poor away without alms will not easily sin gravely, both because of the difficulty of judging concerning the superfluity of goods and concerning the necessity of the poor, and because of the presumption that others are willing to succor, and because perhaps he assists the needy in another way, for example, by providing them an occasion of earning something by labor, and finally because he can fear grave inconvenience for himself from giving.

e. Authors dispute whether the obligation of giving alms in the common necessity of neighbors is grave or light; nevertheless, since the opinion affirming a grave obligation is not certain, but only probable, it cannot be established.

Those who, with St. Antoninus[181] and St. Thomas,[182] deny a grave obligation, argue thus: the obligation of succoring is as great as the necessity and want of the poor man; therefore, since the necessity is not grave, neither can the obligation of aiding be grave.

Yet there are those who establish a twofold title of grave obligation, not only the necessity of the neighbor, but also superfluous goods, so that the superfluous goods themselves induce a grave obligation of giving alms in common necessity. But since the grave obligation arising from this head is not evident, it is not to be established.[183]

**93. On the care to be expended upon the poor (Armenpflege).** 1. In the present order of things the distinction between rich and poor, as having arisen from the natural diversity of the powers of soul and body and from the different care of Christian virtue, will never be eliminated: For the poor you have always with you.[184] To soften this distinction and to reconcile the poor with the rich, the precept of alms contributes very

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**Notes**

181. *Summa theologica*, p. 2, tit. 1, c. 24, § 5.

182. *Summa*, II-II, q. 32, a. 5.

183. Cf. Laymann, bk. 2, tr. 3, c. 6, n. 4 ff.

184. John 12:8.

much, and the care of the poor through works of mercy which has its origin from it, provided it is exercised fittingly. In order that alms may attain this end, first it must be bestowed spontaneously, not by compulsion, and then in such a way that spiritual misery is cared for while bodily misery is warded off. For since poverty often arises from vices, alms together with want ought also to remedy moral defects. But if someone is in need without fault, alms bestowed should render the poor man content with his lot.

2. The poor are called those who neither have the means of sustaining life themselves nor can obtain them for themselves by their own labor.

Those who by their own fault have come into a state of poverty are not to be excluded from the number of the poor, provided they cannot obtain for themselves the necessities of life; but those are not counted poor to whom the necessities of life are lacking because of their idleness and weariness of labor; concerning these are the words of the Apostle: If anyone does not wish to work, neither let him eat.[185]

3. The care of the poor is committed in the first place to private men and to the Church.

a. The common good indeed demands the support of the poor, but public power ought not to take care of everything which is necessary or useful for the common good, if in the community there are others to whom the care of that thing has been committed, and who therefore can provide better and more efficaciously for the necessary good.

b. For the precept of love of neighbor (He commanded each one concerning his neighbor) especially demands this, that we succor the needy, which Christ the Lord effectively commended by teaching that what someone has done to "the least" he has done to Him. The Church teaches by word and example the precepts of Christ and imbues the faithful with that spirit of charity and humility by which works of mercy are exhibited to the poor.

4. Since the circumstances of the time are such that neither private persons nor the Church can provide sufficiently for the poor, public power also ought to take their care upon itself and to assist the provisions for the poor made by both private persons and the Church.

5. Therefore care of the poor is either private or public; public care is either ecclesiastical or civil. In the present order of things the care of the poor pertains to the duties of the state; nevertheless private and ecclesiastical care will never be able to cease at any time. For civil care of the poor by itself alone cannot sufficiently meet the necessities of the poor, but necessarily needs the help both of private care and especially of ecclesiastical care. For this reason it belongs to the state to assist the Church in relieving the poor, but in no way can it arrogate the whole care of the poor to itself. Civil care of the poor, as it is ordinarily exercised, labors under several defects which prevent it from fully attaining its end. And indeed:

a. The offerings of individuals are not spontaneous but compelled. Hence it happens that for the rich they have the character of a tax, while the poor consider them owed to themselves by right. Hence in the rich Christian mercy toward the poor is lacking, and in the poor the spirit of gratitude toward their benefactors.

b. In distributing alms: a. temporal want is almost exclusively regarded, but moral defects are less cared for; b. Christian charity and mercy are neglected, whence it happens that the poor do not cease to envy the rich and to bear their lot with difficulty.

6. Since public power, both in communities (Gemeinden) and in the state (Staat), takes the means of aiding the poor from taxes which are paid by citizens either for the common good universally or specifically for the poor, the question has arisen whether those paying the tax (of the poor) satisfy their obligation of

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**Notes**

185. 2 Thess. 3:10.

giving alms. a. These taxes have the character of true alms: for the civil law by which they are imposed is considered to oblige the rich civilly to fulfill the obligation toward the poor which rests upon them from the law of nature. b. By the payment of this tax the obligation of giving alms is certainly diminished, because the necessity of the poor who are helped from those taxes is diminished; nevertheless the obligation does not entirely cease, just as the necessity of the poor is not extinguished by the help received from taxes. Therefore private men are bound to aid those whom they know to be in extreme or grave necessity.[186]

One feigning himself poor does not become owner of the alms: for the giving of alms is essentially a donation whose motive cause is the want of the recipient; therefore when made to a fictitious poor man it is a donation whose motive cause is lacking, and therefore an invalid donation. Wherefore the recipient is bound to restore it to the owner, or to the poor according to the reasonably presumed will of the owner.

Nevertheless alms which are of minimal value need not necessarily be restored to those who gave them, according to the presumed will of the givers: for it is rightly supposed that the primary motive of the donation in alms of this kind was not so much the want of the poor man as love of God and neighbor.

## § 3. On Fraternal Correction

**94. Notions.** Fraternal correction properly is an admonition of the neighbor made by a private person in order to amend or prevent his sin. The motive of correction can be either that the neighbor be freed from spiritual evil (mercy), or that God supremely good not be offended (charity); its end is the spiritual good of the neighbor, namely his correction or amendment.

a. Correction need not necessarily be made by words, but can also be made by other modes which are judged apt for correcting the neighbor, for example, by a sad countenance,[187] by turning conversation to other things, by withdrawing temporal assistance.

b. Fraternal correction must be distinguished both from judicial correction, which proceeds from a judge, has for its end the chastisement of the guilty person, and for its motive the common good, and from paternal or evangelical correction, which indeed intends amendment but is made by a father or superior; on the contrary, fraternal correction can be made even by an inferior, and by a superior not as superior, but as a private person.

**95. On the precept of correction.** 1. There exists an obligation of fraternal correction, both natural and positive divine: for the natural precept of charity obliges us to remove from the neighbor the evil by which he is already oppressed or which imminently threatens him. But the positive precept Sacred Scripture inculcates rather often, and especially by these words: If your brother has sinned against you, go and correct him between you and him alone; if he hears you, you shall have gained your brother.[188] Correct a friend … Correct your neighbor.[189]

a. This obligation indeed rests upon all, even subjects, who are fit for making it, because the precept of charity is universal; but not upon all in an equal way: for superiors are obliged more gravely, since from piety or from office they ought to procure the spiritual good of their subjects. Hence if a superior (likewise if another more apt person) is hoped to correct, the obligation of others ceases; but if others fail in their office, anyone fit is bound to make the correction.

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**Notes**

186. Cf. *Kirchenlexikon*, 2nd ed., "Armenpflege"; Krieg, *Wissenschaft der Seelenleitung*, Freiburg: Herder, 1904, § 321: "Die kirchliche Armenpflege"; Ratzinger, *Geschichte der christlichen Armenpflege*, 2nd ed., Freiburg: Herder, 1884; Ehrle, *Beitrage zur Geschichte und Reform der Armenpflege*, Freiburg: Herder, 1881; Forstl, *Das Almosen*, Paderborn: Schoningh, 1909.

187. Eccl. 7:4.

188. Matt. 18:15.

189. Ecclus. 19:13-14.

b. Superiors (bishops, prelates, parish priests, parents, masters, magistrates, etc.) are bound to amend and prevent the sins of their subjects, both public and hidden, even with great inconvenience to themselves, because their obligation proceeds not only from charity, but also from justice or piety. For the same reason superiors are bound not only to correct and prevent the sins of subjects, but also to inquire into them, that is, they ought to watch over subjects universally and over a particular person if a special reason compels this.

2. The precept of fraternal correction is grave of itself: for if in the grave bodily necessity of the neighbor we are bound under grave obligation to succor him by alms, a fortiori we are bound to aid him in grave spiritual necessity by fraternal correction, which is a spiritual alms.

**96. Required conditions.** In order that this precept oblige under grave obligation, these four conditions are required:

a. That there be grave matter.

Any mortal sin of the neighbor, since it removes his spiritual life, is considered grave matter, which induces the grave obligation of fraternal correction; therefore he who by fraternal admonition can remove or prevent the mortal sin of the neighbor without any inconvenience, and neglects this from vain fear, sins gravely.

b. That there be hope of amendment: otherwise the end of correction ceases, which is the amendment of the neighbor, and therefore its obligation.

c. Therefore persons of slight authority are excused from this obligation. In doubt whether it will profit, admonition should be omitted; wherefore also with respect to those whose character is unknown, prudence advises that it rather be omitted, lest they become worse by bearing it badly. If greater fruit is hoped for later, admonition can be deferred, even if meanwhile the sin is repeated.

d. Although grave obligation ceases where no hope of fruit appears, nevertheless the obligation remains, and indeed the greater it is, the graver the matter is concerning which there is question, even if a hope that is only more or less probable shines forth. Yet an equal hope of fruit is not required for a superior to be bound to correction and for another to be bound. For a superior is bound to admonish, even if a modest hope of fruit exists; indeed, if scandal of others would follow from omitted correction, he is bound even to an admonition useless with respect to the one to be corrected.

e. Although a sinner, especially if he labors under the same vice from which the neighbor must be corrected, may seem less apt to carry out correction, nevertheless for that reason he is not exempted from the obligation, especially if he is a superior: for on account of his sin no one is exempted from the natural law. The correction of a sinner will indeed be less efficacious, yet not wholly useless, if he corrects the delinquent not by reproaching the sin but by proposing it and admonishing him.[190]

f. That it can be done without great inconvenience to the one correcting, since charity does not oblige with so great a burden.

Therefore one who because of excessive shame or pusillanimity cannot be induced without great difficulty to make correction is certainly excused from mortal sin, unless he is a superior, who by reason of office is bound to correct subjects. In like manner fear that he may offend the one to be corrected and hold him offended excuses another from making admonition, but certainly does not excuse a superior.

d. That there truly be spiritual necessity of the neighbor, which is judged to be present if these three things concur: a. if it is certain concerning the sin committed or the will to commit it; b. if correction is judged

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**Notes**

190. Cf. Castropalao, tr. 6, disp. 3, punct. 7, n. 1 ff.; Ethel-Bierbaum, *Theologia moralis*, Paderborn: Typographia Bonifaciana, 1894, I, pars 2, n. 311.

necessary for the amendment of the delinquent: for if he has already amended himself or it is hoped that he will soon amend himself, correction is superfluous; c. that there not be another more or equally suitable person who will correct.

If one or another of these conditions is lacking, the obligation will either be none or only light; wherefore, since rarely do all concur, private persons are rarely bound to fraternal correction (at least under grave obligation), except perhaps with relation to a person with whom they deal very familiarly. But the scrupulous are entirely excused from this obligation, since they are unfit for this duty: both because on account of disturbance of soul they lack the discretion so necessary for correcting, and because they are not able to attend to excusing reasons.[191]

**97. The order to be observed in correction.** 1. If the sin is hidden, in fraternal correction the order prescribed by Christ the Lord must be observed: a. that it be done secretly; and if admonition has been applied in vain, b. that it be done before one or another private witness; and if private correction has been applied in vain, c. that it be done publicly by denouncing the matter to the superior, first indeed as to a father, secondarily also as to a judge.[192] This precept is founded on the law of charity, which demands both that the neighbor be amended with the least inconvenience to himself, and that the reputation of the neighbor be preserved. And because charity obliges under grave obligation of itself, this prescription also is of itself to be observed under grave obligation.

2. From the necessity of observing this order the following cases are to be excepted, in which the matter is immediately to be referred to the superior as to a father: a. if the amendment of the delinquent cannot otherwise be obtained, or at least is more easily and efficaciously obtained through the superior: for in order to procure the spiritual good of the neighbor it is licit to manifest his offense; b. if the sin is public: for in this case the one to be corrected has lost the right to reputation; c. if the sin turns to the damage of the community or of a third party: for the common good is to be preferred to the reputation of a private man, and the good of an innocent person to the reputation of a malefactor; d. if denunciation or public correction is necessary to prevent scandal, as was done by Paul with respect to Peter;[193] e. if the one to be corrected has renounced his right, which obtains in some religious communities.

a. Therefore it is so far from being the case that denunciation made to superiors is in every case an ignominious thing, that sometimes it is prescribed even by divine law under grave obligation. Whence the question is resolved whether pupils are bound under grave obligation to denounce hidden corrupters. a. If common damage is feared, as the corruption of several or the infamy of the house, they are bound to denounce even with grave inconvenience: for grave inconvenience does not excuse where common damage is at stake. b. But if only the damage of one or another is feared, they are not bound with grave inconvenience, because charity does not oblige with grave inconvenience where private damage is at stake. Grave inconvenience can be present if the denouncer must confess his own crime, or if he incurs the suspicion of being an informer among others.[194]

b. In religious communities it will rarely happen that offenses cannot immediately be denounced to the superior, both because the superior is more apt for making correction, and because otherwise there is reason to fear lest denunciation be entirely omitted when it should be made to the superior: for if the private correction which preceded remains ineffective, as usually happens, already few will approach the superior,

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**Notes**

191. Gury-Palmieri, *Compendium theologiae moralis*, Prato: Giachetti, 1898, n. 233.

192. Matt. 18:15 ff.

193. Gal. 2:11, 14.

194. Cf. Genicot, I, n. 221.

fearing lest it become known to the delinquent who denounced him.[195] But from this secret denunciation alone the superior cannot manifest the defect (for example, in chapter), nor proceed to ordinary penalties, but ought secretly to admonish the subject and correct him by opportune means.[196]

c. For those who have renounced their right in this matter, two things must be admonished: a. If it is certain that the brother has perfectly amended the hidden sin, and there is no fear of danger of relapse or damage, it is not licit to denounce the matter to the superior unless the brother consents: for although in this case justice would not be injured on account of the renunciation made, nevertheless charity would be injured.[197] b. If the immediate superior alone can of himself correct the delinquent, so that danger of relapse or of common damage is not to be feared, it is not licit to manifest the offense to a mediate superior.

**98. On the obligation of admonishing a neighbor sinning from invincible ignorance.** 1. A strict obligation of admonishing the neighbor does not exist in a private man, whether the neighbor sins against the natural law or against positive law, because the precept of admonition or correction is only concerning the (formal) sin of the neighbor, which brings damage to him.

St. Alphonsus (n. 36), with many others, teaches that one who ignorantly violates the natural law must be admonished, because he does a thing intrinsically evil; indeed several think that even one who sins from ignorance of divine law must also be admonished;[198] but they concede that one who sins against human law need not be admonished, as if someone from ignorance violates abstinence. But this obligation is not induced by charity of neighbor, since he undergoes no damage, but by the reverence owed to the law which is materially violated; this, however, does not induce so great an obligation.

2. But the superior of an ignorant person is bound to admonish or instruct him in all cases, even in those things which are evil only from precept: for the obligation of admonishing and teaching his subjects rests upon him.

3. Anyone, whether superior or private person, ought to admonish and instruct an ignorant person in the following cases: a. if the material sin of the neighbor harms the delinquent himself, as if it induces a bad habit; b. if it harms another, as if he retains another's property; c. if it gives scandal, as if an unaware priest enters a brothel; d. if it dishonors God, as if someone utters blasphemous words whose meaning he does not know: for in these cases the damage of the neighbor or injury to God must be guarded against. And indeed the superior ought to admonish the one erring, even if fruit is not hoped for, where scandal arises from the material sin of a subject; but a private person, only if fruit of the admonition is hoped for.

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## Article Sixth. On Sins Against Charity of Neighbor

**99. What these sins are.** Sins against charity of neighbor are, on the one hand, sins of omission, namely the omission of love, whether internal or external, when this is prescribed, as the omission of due alms and fraternal correction; on the other hand, they are sins of commission, which are committed by positive acts contrary to charity of neighbor. These are opposed either to internal charity: hatred; or to external charity: scandal, induction, cooperation.

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**Notes**

195. St. Alphonsus, bk. 4, n. 245.

196. Sporer-Bierbaum, I, tr. 3, n. 797.

197. Ballerini-Palmieri, II, n. 234.

198. Cf. Lacroix, bk. 2, n. 214; Castropalao, I, tr. 6, disp. 3, punct. 4.

## § 1. On Hatred

**100. How great a sin it is.** 1. Hatred of abomination, which is referred to a quality of the neighbor: a. is licit if the quality is absolutely evil; b. is licit if the action is relatively evil, insofar as it harms me or others, unless the abomination is greater than the evil action deserves; c. is a sin, and indeed of itself mortal, if the quality is simply good (piety, zeal).

2. Hatred of abomination, which is referred to the very person of the neighbor, is from its genus a mortal sin, as contrary to the precept of charity by which we are bound to love the neighbor; nevertheless from lightness of matter it can be venial.

Simple displeasure with or aversion from a person, if evil is not wished to him, is for the most part a venial sin; yet it grows into grave sin if someone utterly turns away from the person of the neighbor as wholly unworthy of love, who deserves no love.

3. Hatred of enmity, which properly is the sin of hatred, is from its genus mortal, both because it is opposed to the precept of charity, which obliges under grave obligation, and because hatred toward the neighbor is expressly condemned as a grave sin: everyone who hates his brother is a murderer.[199]

One who from slight displeasure with a person wishes a small evil to the neighbor commits a light sin because of the smallness of the matter. One who deliberately wishes another a grave evil from displeasure with the person or because it is evil for him sins gravely against charity by hatred of enmity. Likewise one who deliberately rejoices concerning the great evil of another because it is his evil sins gravely against charity by hatred of enmity. Likewise one who deliberately grieves concerning the good of the neighbor because it is his good sins gravely by hatred of enmity. But to wish evil to another and to rejoice concerning it, not insofar as it is evil for him, but insofar as it is good for oneself or for others, the order of charity being preserved, is licit.[200]

Note. Those who accuse themselves of hatred are not immediately to be accused of sin, especially of mortal sin. For often what they call hatred is nothing other than a certain natural antipathy or aversion of soul arising from diversity of character, which aversion, as involuntary, is not a sin; or it is abomination of an evil quality or action, which rightly and deservedly displeases; or finally it is a desire of evil from an honorable end, which likewise is not a sin. But these are dangerous, because they can easily pass into abomination and ill will against the person. For if motions of aversion and natural antipathy are not restrained, they are easily approved by the will and thus degenerate into acts of hatred.

**101. On malediction.** Malediction is a vocal imprecation of evil; therefore malediction is an external sin which proceeds from hatred or anger.

1. Malediction is a sin grave from its genus, because it is opposed to the precept of charity, which obliges under grave obligation; therefore he who seriously and deliberately imprecates upon the neighbor a grave evil from hatred of enmity commits a grave sin.

2. Nevertheless in the concrete maledictions are often excused from mortal sin by defect of the threefold condition which is required for malediction to be mortal: a. because of inadvertence to the gravity of the thing, as often happens in vehement anger; b. because of defect of consent, because they are not uttered seriously and with the will that they happen, but only either to signify indignation or to strike terror into others (children, subjects); c. because of the lightness of the evil which someone imprecates upon another.

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**Notes**

199. 1 John 3:15.

200. Cf. *De principiis*, n. 329.

3. Malediction which is made to one present often also has the character of contumely, because it injures not only charity but also the honor owed to another. Hence it can happen that grave maledictions which are only venial because they are not said seriously become grave by reason of contumely, as if a subject should curse a superior or a son his father to his face.

## § 2. On Scandal

**102. Definition.** Scandal is defined by St. Thomas as: a word or deed less right furnishing to another an occasion of spiritual ruin.[201]

a. From scandal properly and strictly such, which the given definition presents, scandal taken in a broader and improper sense must be distinguished; by this is frequently signified astonishment or rumor stirred up among the people because of an unusual action, though no one is incited to sin.

b. Word or deed: by these words not only a positive external action, but also an external omission must be understood, since even the omission of a precept can be an occasion of sinning for others. Less right, namely what is evil or at least has the appearance of evil, as when on a prohibited day one who has been dispensed eats meat before others. If an action in itself good or indifferent, which does not have the appearance of evil, is to another an occasion of sinning, the action is not the occasion of sin, but rather the evil disposition of the sinner, namely frailty or malice.

c. Furnishing to another an occasion, namely that by its presence, without exercising a positive influence upon his will, it furnishes to the neighbor an occasion of determining himself to sin: the sin itself is wholly from the will of another freely determining itself to the sinful act. Therefore of the nature of scandal it is that to the neighbor whose will is not yet determined to sin, by its existence, it furnishes an occasion of sinning.

d. Of spiritual ruin: for true scandal it is not required that the sin of the neighbor actually follow, but it is sufficient that from the action placed, the circumstances considered, it can follow and perhaps is foreseen as going to follow. But it makes no difference whether the neighbor is induced to the same sin or to a wholly different sin. A sin committed before others has the character of scandal if those before whom the sin is committed are foreseen to be drawn from it to sin, which otherwise they would not have committed; but it does not have the character of scandal if those before whom the sin is committed are either already determined to sin, or are so confirmed in probity that sin is not to be feared. One who by his example gives others an occasion of omitting a thing indeed good but not prescribed, for example prayer before or after table, likewise does not commit the sin of scandal, because he does not entice to sinning.

**103. Division of scandal.** 1. Scandal is divided into active and passive; active is called the action which furnishes to the neighbor an occasion of sinning, and passive is called the very sin to be committed for which the occasion is furnished to the neighbor.

a. The definition placed at the beginning fits only active scandal. Passive scandal is customarily called occasioned sin.

b. Active and passive scandal are not always connected with each other; for active scandal can be had without passive scandal following, which was thought going to follow; and passive scandal can be had without active scandal preceding, which is clear from the definition of pharisaical scandal.

2. Active scandal is divided into direct and indirect, according as the sin of another is intended or not intended, but only foreseen; direct scandal is again divided into diabolical, when the sin of another is intended because

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**Notes**

201. *Summa*, II-II, q. 43, a. 1.

it is an offense of God or the spiritual ruin of the neighbor, and simply direct, when the sin of the neighbor is intended on account of another end, for example because it brings utility or pleasure to the one scandalizing.

3. Passive scandal is twofold: given, when it arises from an action which by its nature can furnish the neighbor an occasion of sinning; taken, when the sin indeed arises on the occasion of another's action, which nevertheless furnishes an occasion of sinning not by its nature, but only because of the evil disposition of the one scandalized. But if this occurs only from ignorance or weakness of the one scandalized, it is called scandal of the little ones, as if a young man from the honorable adornment of a woman takes an occasion of sinning; but if it occurs from the mere malice of another, it is called pharisaical scandal, as if a father from the exercises of piety of his daughter takes an occasion of blaspheming.

Since this division is not taken in the same way by all, attention must be paid to the sense which individual authors put under these terms.

**104. Malice of scandal.** 1. Active scandal is a sin from its genus grave against the precept of charity. Therefore Christ the Lord says: He who shall scandalize one of these little ones who believe in Me, it is expedient for him, etc. Woe to that man through whom scandal comes.[202] And indeed, if charity obliges us to correct the neighbor and to prevent him from falling, much more does it oblige us not to incite him to sin by bad example.

a. The sin of scandal will ordinarily be grave or light according as it furnishes an occasion of sinning gravely or lightly; therefore the gravity of scandal must ordinarily be taken from the gravity of the sin to which another is incited, not from the gravity of the action by which another is incited to sin. Wherefore it can happen that someone furnishes only light scandal through mortal sin, and conversely grave scandal through venial sin, indeed even through an act indifferent in itself. One who excels in dignity and esteem, for example, easily furnishes grave scandal, as if a priest keeps in his house a maid suspected by the people. Ordinarily, because passive scandal which arises almost from malice or excessive weakness must be excepted.

b. Therefore both parents and superiors, and also clerics, priests, and religious, ought carefully to guard themselves from any less right action: the former because children and subjects are always inclined to follow the bad examples of parents and superiors, the latter because they easily furnish occasion that in others the love of virtue and piety be diminished, that others judge and speak badly of clerics and religious, and that they despise religion and its exercises.

c. One who furnishes to a man very prone to committing grave sins only a light occasion of sinning mortally does not sin by grave scandal, because his grave sin arises more from his malice and bad custom than from the light occasion. Therefore children who know that parents from any light acts of disobedience take an occasion of gravely blaspheming and cursing do not sin gravely; nor do girls who by their vain levities furnish to young men an occasion of sinning gravely.[203]

2. Direct scandal is a special sin also against that virtue to the injury of which the neighbor is incited: for every virtue prohibits both that we ourselves violate it and that we will it to be violated by others; but through indirect scandal one sins only against charity.

a. With regard to indirect scandal St. Alphonsus (n. 45) affirms that a twofold sin is committed, against charity and against that virtue which is injured by passive scandal; but others with de Lugo deny this, saying that in this case sin is indeed committed against charity, but not also against that virtue to the violation of which another is indirectly incited: for every virtue indeed demands that it not be violated and that another not be directly stirred up to violating it, but it does not demand that its violation be prevented, which belongs to

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**Notes**

202. Matt. 18:6-7. Cf. 1 Cor. 8:9 ff.

203. Berardi, *Praxis confessariorum*, Faenza: Novelli, 1898, I, n. 271 ff.; Genicot, I, n. 232.

charity.[204] Therefore one who by his example induces others to stealing indeed sins against charity, but not against justice, provided he neither intended the sin of others nor used exhortation, counsel, or command.

b. Wherefore it is not necessary in confession to declare the species of the sin which another committed because of indirect scandal, but it is sufficient to say: I was to another (or to others) an occasion of sinning, or I was scandal to another (or to others) by bad example. But one who committed direct scandal does not satisfy in confession if he says that he gave scandal or incited another to sin, but he must also declare the species of sin to which he drew another.

c. Diabolical scandal furthermore has a special malice against charity of God.

**105. Principles concerning permission of passive scandal.** 1. Although an action good or indifferent, which does not even have the appearance of evil, is not properly scandal given, nevertheless from charity we ought to omit it where it can be done without inconvenience, so that the sin of the neighbor may be prevented; yet from any cause, even not grave, it is licit to place it.

a. Therefore even scandal of the little ones must be avoided if it can easily be done. Pharisaical scandal ordinarily indeed is not to be cared for; nevertheless without any cause it is not licit to place an action because of which another, even from mere malice, is foreseen as going to sin, because charity demands that without any cause we not offer to the neighbor an occasion of sinning.

b. It must be noted that the scandal of others can be avoided by omitting the action, or by deferring it to another time, or by hiding it, and, if the action presents some appearance of evil, by admonishing the neighbor concerning the rectitude of the action (that, for example, an excusing cause or dispensation is present); but if, after admonition has been made, scandal nevertheless continues, that scandal must be judged pharisaical.

2. That it is sometimes licit to place an action, although the sin of the neighbor is foreseen as going to follow from it, is established from the known principle: where from an action good or indifferent a twofold effect follows, one good (the advantage of the one scandalizing) and the other evil (the sin of the neighbor), the latter can be permitted from a just cause of necessity or utility.

**106. Rules concerning the permission of scandal.**[205] In order that these principles be applied more safely, the following rules must be noted, in which, however, pharisaical scandal is not considered.

1. Works prescribed by negative natural law, indeed also affirmative works in those circumstances in which the law truly urges, may never be omitted because of scandal.

The reason is that these can never be omitted without sin; therefore it is never licit to lie or perjure oneself to avoid scandal; nor is it licit to omit profession of faith where it is prescribed in order to prevent the sin of a tyrant, or the reception of baptism because of the scandal of parents.

2. Works prescribed by positive law, whether divine or human, can be omitted because of scandal, but they ought not to be omitted except perhaps once or twice.

a. The reason for the first is that, when two precepts concur which cannot both be observed at the same time, the natural precept of avoiding scandal prevails. Hence a parish priest can celebrate on a feast day when not fasting in order to avoid the scandal of the people, which cannot otherwise be avoided.

b. With regard to the second it must be noted: once or twice, that is, if the danger of scandal is foreseen as soon going to be removed, most authors affirm that these precepts must be omitted, because the natural

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**Notes**

204. Cf. Lugo, *De poenitentia*, disp. 16, n. 157 ff.

205. Cf. Reuter, *Theologia moralis*, II, tr. 1, n. 137; Lehmkuhl, I, n. 635.

precept is to be preferred to the positive, and because the omission does not bring great inconvenience. But all deny that this must be done rather often or for a long time, because this would be too grave. Therefore they say that a virgin who knows that a young man is scandalized by the sight of her ought, once or twice, to remain at home omitting Mass; and in like manner a wife ought to omit Mass or fasting if she knows that her husband takes an occasion of blaspheming from the observance of the precepts. But certainly they are not bound to omit these precepts for a long time, because this would be too burdensome for them. But since the opinion obliging them for a brief time is not certain, practically they cannot be obliged to omit a prescribed thing.

c. It must be noted that this alone holds if someone knows that a determinate person takes scandal from his action; for from fear lest the action be a scandal to some indeterminate person, it ought not to be omitted, because the obligation of preventing even this danger would be too grave and troublesome.

3. Works not prescribed, whether good or indifferent, we are bound to omit in order to avoid scandal, if it can be done without grave inconvenience; but with grave inconvenience we are not bound.

Therefore if a woman knew that she was an occasion of sinning to a determinate man, she would be bound to flee his sight if she easily could, for example by walking by another road, by not approaching the window; but she would not be bound to do this for a long time, because it would be too hard for her to be deprived of her liberty for a long time. She is not bound to abstain from a public walk in order to prevent scandal, because it is judged too burdensome.

4. Temporal goods must be given up in order to avoid scandal if they are of lighter moment; but if they are of greater moment, they need not necessarily be given up. The reason is that the spiritual good of others not only can be preferred to one's own temporal good, but where it can easily be done, it must also be preferred; but charity does not oblige with grave inconvenience.

Hence no one is bound to pay more to a worker whom he foresees will blaspheme: for this inconvenience, although light in itself, nevertheless becomes grave because it can occur often, and because impious men would thereby become more audacious. Parish priests are not bound, indeed cannot omit, those things which are necessary for preserving ecclesiastical goods, for example lawsuits and exactions of stole fees, in order to avoid scandals arising from them; but they are bound to prevent scandal by suitable admonition, for example by explaining the reason for the exaction.

## Particular Questions Concerning Scandal

**107. On the adornment of women.** a. First of all attention must be paid to the intention with which a woman adorns herself: for this can be done in order to preserve the decency of her state according to the custom of the country, to please her husband, to find a spouse, to hide defects of the body, and these intentions indeed are licit; then it can be done from levity or vanity in order to display beauty, and these intentions are lightly sinful; finally it can be done to provoke the concupiscence and impure love of men, and this intention is a grave sin.

Therefore to smear the face with rouge and cosmetics will be mortal if it is done for wantonness, venial if only to feign beauty, none if it is done to hide some defect.

b. As regards adornment itself, honorable adornment and adornment fitting one's state according to the custom of the country is licit and is to be permitted to women; therefore they are not bound to put aside decent and honorable adornment, even though others, even determinate persons, are thereby enticed to concupiscence: for to abstain from modest garments and ornaments which are according to the custom of the country would be too great a burden, which charity does not demand for preventing the sin of another.

c. Immodest and gravely sinful adornment is always grave scandal, because it gravely and proximately provokes others to lust.[206]

Where authors speak of dishonorable feminine adornment, they have especially before their eyes the uncovering of the breast. What uncovering is gravely dishonorable depends much upon custom: for things to which people are accustomed entice less. Hence it can happen that adornment which in one place is not grave scandal furnishes in another place an occasion of sinning gravely. Therefore authors teach by common consent that a woman can sin gravely by introducing somewhere an adornment which elsewhere, because of a custom already long prevailing, is not gravely scandalous.

d. Superfluous and venially sinful adornment, for example an uncovering of the breast not gravely dishonorable, is not grave scandal, because it entices only lightly and remotely to sin. For this reason women are not bound under grave obligation to abstain from adornment of this kind. Yet if it is established for the woman concerning the grave danger of falling for some determinate man, which danger will cease after a brief time, she is bound under grave obligation to abstain from adornment of this kind for that time.[207]

A woman who without just cause uses male clothing, or a man who uses female clothing, commits a light sin, because this of itself induces a light danger of lust and light scandal; if this change of clothing is made from a just cause, for example to hide oneself, for honorable recreation, etc., it is no sin.[208]

**108. On obscene pictures and statues.** Obscene or immodest are called those pictures and statues which commonly excite to lust; this can happen either because of the scene which they present, or because of the nakedness of the persons who are represented. Wherefore those are obscene both which represent a more or less base action, and which display to sight dishonorable parts of the body; but those which, with the dishonorable parts covered, have other parts uncovered, at least if they are male images, are not judged obscene, nor are likenesses of infants, even if wholly uncovered, obscene, because they excite less. Therefore they commit grave scandal:

a. Those who make notably obscene images or statues, except, however, the case in which this is done from a just cause, as if something of this kind must be painted or fashioned for teaching anatomical science.

b. Those who expose publicly images or statues of this kind in their workshops, or in houses and gardens, or even in museums and art galleries to which all can have access.

c. Those who expose images and statues, even not gravely obscene, in public squares: for all see these, indeed they can scarcely not see them; and, with attention paid to the common frailty of men, there will always be several who take grave scandal from things of this kind, even if they are not gravely obscene.

d. By no means can what is said be conceded, that works of art, even if in themselves dishonorable, are not to be considered as an occasion of sinning, but that each one can look at them and licitly enjoy their artistry. For, omitting the question whether obscene representations truly deserve to be called works of art, insofar as they excite lust, they certainly do not cease to be occasions of sin and therefore, just as they cannot be recommended without restriction, so the one who has no other excusing reason than the pursuit of acquiring for himself, as they say, universal culture cannot licitly enjoy the sight of them. To these things must be added that works of ancient art, even if obscene of themselves, excite lust less than works of recent art. Therefore what Aertnys has is to be approved: "immodest images and statues, but of excellent art, made by distinguished artists of an earlier age, can be exposed separately in some hall (of a museum or art gallery) under this law, that entrance be open not to all, but only to experts in art of mature age."[209]

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**Notes**

206. St. Alphonsus, n. 55. What adornment is to be called gravely immodest must be judged from the things which are said in *De sexto praecepto*, n. 48.

207. Cf. Lessius, *De iustitia*, etc., bk. 4, c. 4, n. 112 ff.

208. Cf. St. Alphonsus, n. 52.

209. Aertnys, *Theologia moralis*, Paderborn: Schoningh, 1898, I, n. 72.

**109. On participation in civil funerals.** a. To accompany the funeral of a deceased person who, for example because of suicide, is deprived of ecclesiastical burial, is not a sin, because attendance is considered a merely civil action when the funeral is arranged without a special ecclesiastical or civil solemnity.

b. If funerals are carried out with a special civil solemnity, attendance is of itself illicit, both because it is judged a favor furnished either to an impious person or to an impious sect which requires or prepares a funeral of this kind, and because it begets scandal.

Therefore where this twofold reason ceases, participation in a civil funeral can become licit; but it ceases: a. in places in which funerals of this kind have already been held rather often and therefore are less noticed; for in these circumstances participation is considered a merely civil act, especially for those who by reason of kinship or friendship are more closely connected with the deceased; b. for those who by moral necessity must attend the funeral, such as soldiers compelled by commanders, bearers of the bier who otherwise would be deprived of office, subjects who are ordered by superiors to attend: for where the moral necessity of attending is publicly known or can easily be known, all understand that attendance is made only materially in order to avoid grave damages.

c. If a civil funeral is so arranged that Freemasons or socialists attend with their signs and banners and attach the signs of their sect to the bier, attendance can be permitted with much more difficulty: for since funerals of this kind have the character of a solemnity established by an impious sect, one who attends them without grave necessity is judged to approve the sect.[210]

## § 3. On Induction

**110. Notion.** Induction, or seduction or solicitation to sin, is an external action by which another is explicitly and directly provoked to sinning. Induction can be made by various actions: by words or writing, by nods or gesture.

Induction agrees with scandal in this, that induction and scandal stir up to sinning a neighbor not yet determined to sin. But it differs from indirect scandal in that induction is always joined with the intention of drawing another to sin. It differs from direct scandal, by which the sin of the neighbor is intended, in this, that scandal is an occasion, but induction is the cause of another's sin. Therefore through induction an obligation of restitution is contracted, but through direct scandal an obligation of restitution is not contracted.

**111. Malice of induction.** 1. Induction is grave or light according as the sin to the committing of which another is provoked is grave or light, unless he is already habitually prepared to commit the sin when the occasion is given.

One who invites another to commit a grave theft with him commits a grave sin of seduction if the other is not accustomed to steal; but he does not sin gravely by seduction if he already knows the other is accustomed to thefts.

2. Any sin of induction contains a twofold malice: one against charity, because it brings evil upon the neighbor; the other against the virtue to the injuring of which another is provoked, because any precept demands that another not be directly provoked to its injury.

a. Therefore he does not satisfy in confession who accuses himself of this sin: I seduced another to sin; but in addition he must add the species of sin to which he provoked another: I seduced another to steal.

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**Notes**

210. Cf. Genicot, I, n. 236; Berardi, *Praxis confessariorum*, 6th ed., I, n. 333; Villada, *Casus conscientiae*, 2nd ed., Brussels: Vromant, 1885, II, p. 103 ff.

b. Yet in sins which by their nature have an accomplice, such as fornication, adultery, filthy speech, etc., it is not necessary that the circumstance of induction be declared in confession, but it is sufficient that it be said, for example, I committed adultery, I spoke filthy things; for because one sinning with another, for example by fornicating, already sins against charity by cooperation, the circumstance of induction, which likewise is against charity and is added to this sin of cooperation, is only an aggravating circumstance, unless the other is seduced to sin by deceit or threats, which would be against justice.

**112. Whether it is licit to ask from another what he himself will not furnish without sin.** 1. It is never licit to ask what another cannot furnish without sin, for example a sacrament from an excommunicated vitandus: for such a petition is true induction to sin. Therefore it is not licit to ask from a notary or a guard what is against his office.

2. If the thing which is asked can be furnished without sin, when a grave cause exists it can licitly be asked, although the other will not furnish it without sin; for example, a loan from a usurer, an oath from one about to perjure himself, a sacrament from a priest existing in the state of sin: for from a just cause it is licit to permit another's sin. But without a grave cause this is not licit, as if the thing could equally be had from another without notable inconvenience, who will furnish it without sin.

**113. Whether it is licit to advise a lesser evil in order to prevent a greater evil to the committing of which another is determined,** for example, to one who wishes to kill an enemy, to advise that he rather strike him.[211]

1. When a neighbor cannot in any way be turned away from the sin to the committing of which he is determined, it is licit, in order to prevent a greater evil, to advise him to the lesser, to the committing of which, however, he is already prepared: for evil is not advised absolutely, but to him who is already altogether going to do evil, he is advised not to do so great an evil, but rather to choose a lesser one, which advice indeed is good.[212]

a. Therefore a twofold condition is required for this induction to be licit: a. that the neighbor cannot be turned away from the greater sin; for if the sin can be wholly prevented, the advice of a lesser evil is no longer good; b. that the neighbor is already determined to commit the sin which is advised; but only he can be said to be already determined to commit a sin to whom an evil of the same species is advised. Therefore it is licit to advise one who is prepared to steal one hundred from Peter to steal fifty from the same man, and to one who is prepared to kill Peter for the end of stealing from him, to advise that he only steal.

b. The action of the sinner which is less evil is not said to be good: for this always remains evil; but the counsel of the one advising in these circumstances is good, since, when the evil cannot be wholly prevented, it tends at least to its diminution.

2. It is not licit to advise the neighbor to a lesser evil to the committing of which he is not yet determined: for he who advises another to an evil to the committing of which he is not prepared is himself the cause of that evil, which is sin, although he acts from a good end.

Therefore it is not licit to advise one who is prepared to commit homicide that he rather commit adultery; but it is licit to propose to him the object of a lesser evil, without nevertheless inducing him to commit it. St. Alphonsus (n. 57) says the affirmative opinion is more probable; and objectively indeed even this advice is good, since it tends to the lessening of evil, but it is difficult to understand subjectively that a lesser evil is advised to him to whom a sin of a different species is advised. And indeed, if adultery is advised to one who

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**Notes**

211. Cf. Castropalao, *Opus morale*, tr. 6, de carit., disp. 6, punct. 6.

212. Cf. Gen. 37:27.

is determined to commit homicide, he is induced to committing a new sin, and the one following the advice, besides the internal sin of homicide, also commits the sin of adultery.

3. Not only is it licit to advise a lesser evil, but it is also licit to cooperate with an indifferent action toward a lesser evil in order to prevent a greater evil which otherwise cannot be prevented.

Therefore it is licit to lead home with oneself a friend who is thinking of turning aside to an inn for the purpose of violating the fast, and to serve him supper. It is licit to help a robber in carrying off another's property if in this way he can be prevented from bringing greater damage or death upon the owner.

To the question whether it is licit to induce a robber to drunkenness and to cooperate with it by proposing wine, so that he may be drawn back from committing homicide, it must be said: a. It is not licit to provoke him to drunkenness, to the committing of which he is not determined, not even to prevent a greater evil, because evil is not to be done that good may come. b. But it is licit to place wine before the robber, although it is foreseen that he will become drunk, because this is indifferent, and drunkenness can be permitted from a just cause, namely in order to prevent homicide.

**114. Whether it is licit not to remove, or even to place, an occasion of sinning, although another's sin is feared, indeed foreseen.** a. It is licit from a just cause not to remove an occasion of sin which could be removed, because from a sufficient cause it is licit to permit another's sin; but it is a sufficient cause to allow one sin for the sake of many which would afterwards occur and in this way are prevented.

Therefore parents and masters can permit to children and servants an occasion of stealing in order to correct them if they have offended, so that in this way they may be amended. Guards of vineyards and forests, etc., can hide themselves so that those causing damage may be caught and punished and thus be deterred from thefts to be committed later.

b. If the action furnishing the occasion of sinning is good or indifferent and a just cause exists, it is licit even to place the occasion: for he who places the occasion does not induce to sinning nor concur in the sin of another, but from a grave cause permits it, namely that he may have his fidelity tested or that several other sins may afterwards be prevented.

Therefore parents and masters can expose money or open a chest in order to test the fidelity of children or servants.

**115. On the reparation of scandal and induction.** a. There exists an obligation of repairing, insofar as can be done, scandal or induction: for if anyone from charity is bound to procure the amendment of one sinning, a fortiori he is bound to this who himself, through scandal or induction, was the author that another should sin.

b. This reparation must be made from charity, whether another has been induced to sin through scandal (for example, by bad example) or through induction (command, counsel, prayers): for no injury has been done to him, as one knowing and willing; it must be made from justice only if someone has drawn another to sin by an unjust means (force, deceit, fear), because injury has been inflicted on him as unwilling.

c. Public scandal must also be repaired publicly, both so that the further influence of the scandal may be removed, and so that all to whom scandal was given may be admonished concerning the evil which they have suffered.

d. As regards the mode of reparation, it must be distinguished thus:

e. Ordinary scandals, namely those which consist only in sins committed before others, whether they are private or public scandals, it is sufficient to repair implicitly, namely by cessation from scandal, by good example, by public reception of the sacrament of penance, etc.

f. But scandals given by this, that false and pernicious doctrines have been spread among the common people, or by this, that someone has committed crimes worthy of a graver censure (for example, plotting against the Church), must be repaired explicitly by revoking false doctrines or by publicly detesting the crimes.

The mode of explicit retraction can be diverse: for either a retraction composed in writing is made public through public papers, or retraction is made before (two) witnesses who will afterwards make the matter public, or finally retraction is made before the parish priest (confessor), who will afterwards make public that the penitent has satisfied his obligations.

Note. Since cessation from scandal and its reparation is an obligation of conscience, it is clear that one who has not yet satisfied this obligation, if it is grave, cannot be admitted to the sacraments of the Church, as unworthy. Indeed, one administering the sacraments to him who has not ceased from furnishing scandal and has not repaired it himself commits the sin of scandal, because he furnishes the faithful an occasion of judging that the sacraments are administered to the unworthy and that scandalous actions are tacitly approved.

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## § 4. On Cooperation

[213]

**116. Notion.** 1. Cooperation, taken in a broader sense, signifies concurrence with another who is acting; but in a stricter sense it signifies physical concurrence toward the evil action of another acting principally.

Cooperation taken in a broader sense also comprehends scandal and induction; but if it is taken in the stricter sense, it differs both from scandal and from induction: for scandal and induction concur in determining a neighbor, who is not yet determined to sin, either as an occasion or as a cause; but cooperation already supposes in another a will determined to sin and helps him by a physical action in perpetrating an external sin. Yet it can happen that cooperation at the same time becomes scandal, namely if it increases or confirms the evil will of the neighbor.

2. In this place the discussion is of cooperation taken in the strict sense, which is always positive and physical. Through this cooperation someone helps the neighbor in committing sin, either by his action alone, as he who puts his shoulders under one wishing to steal, or by furnishing matter, as he who supplies wine to one wishing to become drunk. Cooperation is to be considered insofar as it is opposed to charity.

**117. Division of cooperation.** Cooperation is divided:

1. Into formal, if the one cooperating concurs both with the intention and with the evil action, and into material, if he concurs only with the evil action.

a. One who hands keys to a thief so that he can steal cooperates formally if he intends to help him in the sin of theft, and cooperates materially if he supplies the keys, which the other abuses for stealing, from another end, for example to preserve his own life.

b. Cooperation can be formal in a twofold way: a. explicitly, from the intention of the one cooperating, who expressly has the will of participating in the sin of another; b. implicitly, from the nature of the work which is furnished, namely when someone exercises a work which by its nature or with attention to the circumstances is directly ordered to an evil action: for then the contrary intention is by that very fact retracted, and the intention of the evil action is had implicitly; as if someone participates in the sacred function of heretics, he cooperates formally, although he says that he does not intend this.

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**Notes**

213. Cf. *Zeitschrift fur katholische Theologie* III (1879), p. 511 ff.

2. Into immediate, if the cooperation concurs in the evil action itself, and into mediate, if it concurs in an action which serves the sin and prepares the way for it.

Therefore one who sells a sword or poison which another abuses for homicide does not cooperate immediately; but one who with another beats or wounds someone, who with another sets fire to a house, drives cattle from a stable, or carries off a chest filled with another's property, cooperates immediately.

3. Mediate cooperation is either proximate or remote, according as the one cooperating concurs in those things which more proximately or more remotely serve the evil action. Let the cooperation of one who hands a ladder to a thief, or holds it while he climbs, or supports him as he climbs, be an example.

St. Alphonsus (n. 63) presents another notion of formal cooperation, who calls that cooperation formal which concurs with the evil will of another, "namely by exciting it or otherwise positively influencing it," as Aertnys interprets. Hence it happens that several particular questions are not solved by the holy doctor in the same way as by other authors.

**118. Principles concerning the liceity of cooperation.** 1. Formal cooperation is never licit: for since it includes approval of the sin of another, it is always evil in itself.

Formal cooperation has a twofold malice, one against charity, the other against the virtue which is injured through the cooperation; therefore in confession the sin to which someone has formally cooperated must be declared.

2. Material cooperation is indeed illicit of itself, but sometimes, when the required conditions are present, becomes licit.

a. Material cooperation is opposed to the precept of charity: for we are bound to prevent the sin of the neighbor if we conveniently can; therefore a fortiori not to help him in committing sin.

b. The conditions under which material cooperation becomes licit are two: that the action be good, or at least indifferent; that there be a proportionately grave cause of permitting another's sin. But when these conditions have been posited, material cooperation becomes licit: for where from some action not evil a twofold effect follows, one good, the other evil, from a proportionately grave cause it is licit to place that action, although the evil effect is foreseen as going to follow.[214]

c. The cause excusing cooperation must be proportionately grave. Now what cause is sufficient so that cooperation can be made must be determined by the judgment of prudent persons; but in forming this judgment attention must be paid to these four things:

d. To the gravity of the sin: for the graver the sin is to which someone cooperates, the greater the cause excusing cooperation must be.

Thus a greater cause is required for it to be licit to cooperate in homicide than in theft, and a greater cause for it to be licit to cooperate in a sin against justice than in other sins: for this cooperation brings spiritual damage to the sinner alone, but that one also harms an innocent and unwilling neighbor.

b. To the proximity of the cooperation: for a graver cause is required for proximate cooperation than for remote cooperation; thus a greater reason is required for it to be licit to cooperate in printing an evil book by setting the type than by preparing the paper.

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**Notes**

214. Cf. *De principiis*, n. 82. Of the four conditions which are there said to be required in order that it be licit to place a cause from which a good and evil effect follow, two in this question are fulfilled from the nature of the thing; hence only two are counted here.

c. To the necessity of the cooperation: for a greater cause is required where the cooperation is so necessary that without it the sin would not be committed; but a lesser cause where, if cooperation were denied, the sin would nevertheless be committed.

d. To the obligation of preventing the sin: therefore a greater cause is required in those who are bound to prevent the sin also from the office of piety or justice.

3. Immediate cooperation likewise is illicit, excepting certain cases in sins against justice. For immediate cooperation ordinarily is evil from the nature of the work, therefore in itself; therefore it is never licit to cooperate immediately in the killing of another. But in some actions which are opposed to justice, sometimes the character of evil ceases; thus from a very grave cause it is licit to cooperate immediately in bringing grave damage upon the neighbor in goods of fortune.

a. It is licit, for example, from fear of death to help another in burning the house of another: a. if the one cooperating is willing afterwards to repair the damage; b. if the damage would have been inflicted even without his cooperation; c. if through the cooperation a greater evil of the neighbor can be prevented: for in all these cases the owner cannot be reasonably unwilling.

b. Whether this is also licit when the damage would not be done without the cooperation and the one cooperating cannot repair it, authors dispute. Those who deny say that the action of the one cooperating is intrinsically evil, because he who is injured is reasonably unwilling, since he is not bound with so great damage to himself to save the life of another. Those who affirm say more truly that one constituted in extreme necessity may take from the goods of the neighbor (even by destroying) as much as is required for preserving life.

4. Cooperation in a sin which tends to the destruction of the Church or of the republic is never licit; wherefore no cause ever, not even fear of the gravest evil, indeed not even of death itself, excuses from cooperation of this kind: for this evil, as public, is so great that any private person is bound to prevent it even with danger of life.

**119. On material cooperation.** The theory just explained concerning material cooperation and its liceity is altogether plain; but a great and twofold difficulty arises in judging particular facts: for often it is hardly understood whether some action is evil in itself or indifferent; then, not without trouble, there is determined the quantity of the cause which excuses from material cooperation to be furnished. Therefore first the principles must be explained from which judgment is to be made concerning the indifference of the action of the one cooperating; then some norm will be assigned according to which the gravity of the excusing cause can be determined.

**120. On the indifference of the action of the one cooperating.** 1. It belongs to the nature of a thing or action intrinsically evil that it cannot have a good use; things or actions which can become good or evil from the end of the agent are indifferent in themselves. Therefore a thing or action is not intrinsically evil because in fact it serves only an evil end, but because it neither has nor can have an honorable end. Thus to paint an obscene image which serves only to excite lust is an action evil in itself, because the image is unfit to serve another end, and that an honorable or indifferent one. There are very few (artificial) things evil in themselves which cannot have a good use; of this kind are wholly obscene images, wholly obscene writings, books wholly contumelious against God and religion, instruments which are apt only for frustrating generation, and remedies which can serve only for procuring abortion.

a. To make or sell idols is of itself an indifferent action: for idols, besides a superstitious end, can also have another use, for example for adorning a palace, for preserving the image of them, etc.

b. To write or print heretical things is indifferent of itself: for they can also be written and printed so that they may be refuted.

c. To make or sell signs of Freemasons, speaking absolutely, is an indifferent thing, because these signs also admit another use and contain no impiety.

d. To ring a bell for a heretical sermon is a conventional sign; from its signification it depends whether it is an action evil in itself or indifferent. For if it designates an invitation and convocation to a heretical rite, the action is evil in itself; but if it indicates nothing other than that the time of the sermon or heretical rite is present, it is indifferent. Laymann[215] and Lehmkuhl (n. 654), with others, attribute the latter signification to the sound of the bell.

2. Cooperation does not become illicit by this, that the one cooperating knows his thing or action to serve proximately for sin, provided the thing or action is indifferent and a sufficiently grave cause of permitting another's sin is present. Yet because in these circumstances, in which others also know that the thing is being used for an evil use, cooperation of itself signifies consent to an evil end, protestation can be necessary by which the one cooperating, in order to prevent scandal, declares that he does not wish to concur in evil.

a. A priest who administers the Eucharist to a sinner cooperates proximately indeed, but materially, in sacrilege: for his action, by which he places the consecrated host from one place into another, is indifferent and does not become evil in itself from the knowledge which he has that another abuses it for committing sacrilege.

b. To make or sell idols to those who use them for superstitious worship can practically be called illicit, because rarely will there be a sufficiently grave cause which excuses this proximate cooperation; but in itself and by its nature it is not to be called illicit, because the thing is indifferent and the knowledge by which it is known that it will be used proximately for evil does not make it illicit; therefore, if a gravest cause exists, this cooperation could be permitted.[216]

3. Actions which are apt to increase or confirm the evil will of the sinner are not intrinsically evil. For this circumstance, that the action of the one cooperating in its own way influences the evil will of the sinner, indeed shows that it also contains the character of scandal, because another is confirmed by it in evil; but it does not show that it is intrinsically evil.

Therefore the following actions are not evil, but indifferent: to accompany someone to a duel; to indicate to a thief the time and place in which he can put a theft into execution without danger; to keep watch while theft or adultery is committed; to carry love letters to a prostitute. Wherefore a servant can furnish these and things of this kind, not indeed by reason of service, but from a truly grave cause.[217]

**121. On the gravity of the excusing cause.** 1. In order that some norm may be determined, these things can be established:

a. Remote cooperation is excused because of a light inconvenience which the one cooperating would suffer because of omitted cooperation, therefore also from the mere subjection by which a son is subject to his father, a servant to his master, or from the profit alone which is received from the action or ceases when the action is omitted.

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**Notes**

215. Bk. 2, tr. 3, c. 13, n. 5.

216. Cf. Lehmkuhl, I, n. 657; Genicot, I, n. 238. In this sense the responses of the Sacred Congregation de Propaganda Fide which declare cooperations of this kind illicit seem to be understood, namely because of defect of a sufficient cause.

217. Cf. Tamburini, *Explicatio decalogi*, bk. 5, c. 1, § 4, n. 19; St. Alphonsus, nn. 65, 67; Ballerini-Palmieri, II, n. 289.

b. Proximate cooperation is excused because of a grave cause or grave inconvenience which would follow from omitted cooperation.

c. Most proximate cooperation, especially that without which the sin would not be committed, is excused only from a very grave or even gravest cause, or from a gravest damage which would follow from omitted cooperation.

2. But grave, very grave, and gravest damage, according to the mind of St. Alphonsus, can be determined thus:

a. Examples of grave damage or inconvenience are: fear of great pain, of suffering great indignation from husband, father, or master; fear of losing notable profit (about ten florins for a poor man, about twenty for a man of slender fortune); notable annoyance or repugnance; great shame.

b. Examples of very grave damage: fear of not easily finding another master except with notable detriment, with great loss in reputation, honor, or goods of fortune; fear of falling notably from one's state; fear of grave prison.

c. Examples of gravest damage: danger of incurring death, of losing a principal member or some sense, for example an eye; fear of perpetual captivity, greatest infamy, acute disease; loss of all or almost all goods.[218]

## Particular Questions Concerning Cooperation

a. Just as sins, so also cooperations in sins occur in every kind of life (religious, moral, political, social, economic, etc.) and are furnished by men of any condition; therefore the questions to be solved are most diverse and sometimes sufficiently difficult.

b. The following questions are considered only under the aspect of cooperation; but from the character of scandal and from the intention of the one cooperating, which could be evil, abstraction is made. It is clear that a greater cause is required for an action to become licit in which the character of cooperation and the character of scandal are joined, as in the printing of an evil book.

**122. On cooperation in false rites.** a. To build churches of heretics, unless labors of this kind are demanded in hatred of the Christian religion or for profession of false worship, is of itself material cooperation, and remote; yet it is not equal in all who concur in such a work. Wherefore it is not licit to cooperate in building or restoring a church of this kind in the office of architect or overseer of the building except from a grave cause; but in the office of a secondary worker it is licit from a lighter cause, yet not from the sole reason of the profit to be received from the wage paid.

a. Moreover, the circumstances of this cooperation must be considered. For if it concerns a recent sect, or a place where the sect has not hitherto been admitted, cooperation of this kind takes on the appearance of favor toward heresy, and therefore of formal cooperation; wherefore, at least for architects and overseers of the building, it would be licit only from a very grave cause, from which the cooperation itself would be understood to be only material. A similar judgment must be made concerning buildings which serve impious sects, such as Freemasons or socialists, for their meetings.

b. Although the Holy See has permitted cooperation in building Mohammedan temples from a grave cause,[219] nevertheless it has never permitted, not even for avoiding death, that Christians apply their labor to building temples of idols.[220] This seems to have been done because in individual cases it was established that the erection of the temple was held as a protestative fact of false worship; hence outside this case cooperation

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**Notes**

218. Cf. Villada, *Casus conscientiae*, 2nd ed., Brussels: Vromant, 1885, I, p. 85 ff.

219. Sacred Congregation de Propaganda Fide, November 21, 1837.

220. Holy Office, January 8, 1851, and several other times.

in building temples of idols seems to be permitted. Yet a much graver cause is required for cooperation in building temples of idols to become licit.[221]

c. To sell utensils necessary for a non-Catholic rite, for example benches, tables, cloths, lamps, etc., is remote cooperation, for which the mere reason of profit to be received from the sale excuses. But the more the use of these things is required for the false rite itself, such as vestments with which they are clothed in exercising rites, or bread which they use in the supper, the graver the cause required for their making and sale to become licit, because the cooperation is nearer.

d. To make works of art for the heretics themselves requesting them, for adorning a non-Catholic church, if the work itself is good or indifferent, for example an image of the crucified one, organs, bells, and things of this kind, is not licit from the sole reason of profit, because these things contribute to increasing the splendor of the rite and to promoting the sect. Since therefore in this case the character of scandal also is added, a greater cause is required in order that both cooperation and scandal can be permitted.

e. Whether it is licit to contribute money to idolatries. a. If money is contributed spontaneously, the cooperation is formal and illicit. b. If money is contributed under compulsion, and indeed as a tax offered to the community, which from it also contributes to heretical or superstitious worship, the difficulty is less, because the tax offered can also be applied to indifferent ends. c. If money is contributed under compulsion, and indeed immediately for superstitious worship or for building a temple, the contribution contains in itself external consent with the evil intention of heretics or unbelievers, and external favor furnished to heresy or idolatry. But if in some way it can be brought about that consent with heretics is excluded from the contribution, for example by a protestation made beforehand, the contribution can be licit.[222] From the same cause and under the same conditions it is also licit to contribute money for building churches of heretics; for although it is known that the money is applied only to an evil use, nevertheless the action itself is not intrinsically evil, because it does not necessarily contain approval of the false sect.

f. Concerning this matter the response of the Sacred Penitentiary (1822) must be noted: that contributing money for building heretical churches is licit only if in this way Catholics, who celebrate worship in the same church with Protestants, can free themselves from this scandalous simultaneity. From this response two things are gathered: first indeed, that the very action of contributing money is not evil in itself; but then, that the Sacred Penitentiary indicated only a cause of common damage as sufficient for this cooperation to be excused. Nevertheless authors think that a grave cause of private damage can also excuse this cooperation.[223]

g. In places in which Catholics live mixed with Protestants, it is licit for Catholics to contribute money for building or sustaining schools or orphanages of Protestants: for the end of these buildings is not religious, but one of providing instruction or mercy. Yet a twofold condition is required: that scandal arising from this be absent, namely that the contribution of money not be considered as favor furnished to a false sect, and that it be established that the money is not applied to perverting Catholics who are received in these institutions.[224]

h. Whether it is a sin to give money to some socialist or liberal association depends on the end of the association. If the end is evil in every respect, as to attack the Catholic Church, to promote heresy, to help the election of a socialist candidate, the donation is intrinsically evil: for to give money to an association of

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**Notes**

221. Cf. Th. Gallo, *Suppetiae missionariorum*, Rome and Turin: Marietti, 1872, I, p. 197.

222. Holy Office, April 21, 1847.

223. Cf. Genicot, I, n. 237.

224. Lehmkuhl, I, n. 660.

this kind is the same as to promote its end. If the end of the association is honorable (care of the sick, support of the poor, education, etc.), nevertheless it is not licit without an excusing cause, because in pursuing the end the evil principles of the association supply the norm.

i. To summon a heretical minister to a dying person who asks that minister to administer to him the religious rite of his sect is illicit induction to evil; but if nothing else is said to the minister except that there is a sick person who asks for him, it is an indifferent thing, yet nevertheless proximate cooperation, which from the circumstances can easily be understood wrongly; therefore it seems to be excused only from a grave cause of necessity.[225]

Whether it is licit to take care that an illicit action to be furnished by office be furnished by another because of conscience. It is not licit to ask another that he himself furnish the illicit action in one's place: for this would be to induce another to sin, which is not licit even when the other commits only material sin. But it is licit to permit another to have to perform an illicit action in one's place. If Christian servants hire out their work to a community together with unbelievers, they can ask the prefect, indeed even make an agreement with him, that superstitious works not be assigned to them, although they foresee that pagans will perform them: in the case, they permit what they cannot prevent.

**123. On the cooperation of craftsmen and merchants.** a. Those who make or sell things evil in themselves, which neither have nor can have a good use, can never be excused from the sin of formal cooperation.

b. Those who make or sell indifferent things which buyers can abuse for evil, for example dice, cosmetics, swords, feminine ornaments, etc., are excused from sin, although they foresee that several (indeterminate) buyers will abuse them; for no greater cause is required to render this sale honorable than the ordinary profit which is received from their sale. Yet if it were certain that a determinate buyer was going to abuse that thing, the loss of the price to be received from it would not be a sufficient cause of making or selling the thing; but a greater cause would be required, yet not a grave one, where the matter concerns a thing saleable even otherwise, so that by denied sale the sin would not be prevented. But where the sin of the buyer can be prevented by denied sale, the sale is licit only because of a grave cause.

c. To make or sell things which are indeed indifferent in themselves but by their nature very rarely have a good use (as idols, ornaments which are used only for the worship of idolatry, signs of Freemasons, obscene images and statues, and things of this kind), and are manifestly sought or bought from an evil intention, is licit only from a gravest cause, and therefore commonly is altogether illicit (n. 120).

Merchants are not ordinarily bound to inquire for what use things indifferent in themselves are bought, since this burden would be too grave. Yet if some thing to be sold is accustomed to be applied to a harmful use (as certain poisons), it is not licit to sell it unless it is morally established that the buyer is not going to abuse it, or a gravest cause urges.

According to the same norms, the case which St. Alphonsus (n. 69) seems to solve more strictly will also have to be solved. For he judges that it is not licit to sell wine to one who will then sell wine mixed with water, except from a gravest cause, namely from fear of death or infamy. Other authors permit this if the wine cannot be sold to other buyers without great loss.[226]

**124. On cooperation in evil newspapers.**[227] Several concur in publishing evil newspapers and in the sins which are committed by the reading of them.

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**Notes**

225. Holy Office, December 26, 1898.

226. Lehmkuhl, I, n. 673.

227. Cf. Villada, *Casus conscientiae*, 2nd ed., I, p. 95 ff.

a. Readers: some sometimes buy and read the paper; others are subscribers and by their subscription cooperate in preserving and propagating the newspaper. And the first indeed cooperate very remotely; therefore any light cause excuses them from sin on this side, scandal being excluded, for example the utility of reading, recreation, etc. Those who subscribe to the paper and sustain it with their money cooperate proximately; therefore only a grave cause excuses these from sin, for example great utility in managing their business.

One who from a reasonable cause can licitly subscribe to an evil paper ought to guard against two things: a. danger of perversion; wherefore, besides those things which pertain to his business, he can licitly read nothing except merely indifferent things; b. scandal, which household members and outsiders can take; wherefore on the one hand he ought to declare that he has a just cause for reading that paper, but that he rejects its principles, and on the other hand he ought to take care that the paper does not fall into the hands of household members.

b. Writers: some are editors, others collaborators, and these indeed are either ordinary or extraordinary, who only sometimes insert an article in an evil paper.

c. Editors and writers who acknowledge the principles defended by the paper and according to the same principles edit the paper or compose articles manifestly cooperate formally, and therefore cannot be excused from grave sin.

d. Ordinary writers who do not acknowledge the principles, and therefore cooperate materially and write articles indifferent and harmless of themselves, sin by cooperation more or less proximate according as by their articles the paper is commended and propagated more or less; wherefore only a more or less grave cause can excuse them from sin. Such certainly is not the greater profit which they receive from it, but only the profit which they need for the support of themselves or their dependents. But they must always take care that scandal be prevented, which can be prepared for those who have knowledge of the cooperation.

e. Extraordinary writers cooperate remotely; wherefore without a just cause it is not licit to insert one's productions in evil papers, yet a moderately grave cause excuses from this cooperation. Likewise to insert announcements of sales, rentals, and things of this kind (*Inserate*) in evil papers is not licit without a just cause excusing this cooperation. But the cause must be greater the more announcements of this kind cause the papers to be propagated more widely and sustained more easily. Wherefore, since the announcements of individual persons ordinarily do not contribute much to this, a light advantage received from it excuses from this cooperation.

It can happen that the circumstances of newspapers and of readers otherwise heretical are such that one who takes care that his good articles be inserted in them obtains an occasion of setting forth true and good principles to the readers. In these circumstances the cooperation is not illicit, provided the esteem of the evil newspaper and its number are not increased.[228]

c. Those who sell, distribute, etc., evil newspapers indeed cooperate proximately, yet not so proximately as those who print them; wherefore these also can licitly be occupied in this work only to avoid very grave inconvenience, until they have found another means of obtaining a livelihood.

**125. On the cooperation of innkeepers.** Innkeepers can cooperate in the sins of others chiefly in three ways:

1. By furnishing forbidden foods. a. It is not licit voluntarily to offer forbidden foods to guests: for this would be to invite them to sin.

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**Notes**

228. Cf. the Constitution *Officiorum ac munerum* of Leo XIII (January 25, 1897), n. 22: "Let no one of the Catholics, especially of ecclesiastical men, publish anything in newspapers, papers, or periodical booklets of this kind, unless a just and reasonable cause advises it."

b. It is licit to serve meats on prohibited days to those asking for them, because it would be too hard and dangerous to ask individuals whether they have a legitimate cause; but if it is established that they are not excused, meats can be supplied only from a grave reason of notable damage, as if otherwise the gathering of guests would be notably diminished.

c. Hence if they foresee that there will be guests who ask for prohibited foods, they can set the table with licit and illicit foods; and if they foresee that no one will ask for fasting foods, they can prepare only meat foods. But they are bound to admonish the guests that they can receive fasting foods, and they ought to serve such foods to those asking.

In a private family in which a table is provided for outsiders for a paid price, it is not licit without a special cause to cooperate in violating abstinence; therefore even to those asking, forbidden foods cannot so easily be supplied. Yet a moderately grave cause excuses this cooperation if the sin cannot be prevented by denied supplying.

2. By serving wine. a. It is never licit spontaneously to offer wine to one who is foreseen as going to become drunk from it; for this supplying would be formal cooperation.

b. It is licit from the sole cause of profit to serve wine to guests flowing in indiscriminately, although it is foreseen in a confused way that some of them will sin by drunkenness, quarrels, and blasphemies, both because the sins cannot be prevented (for wine will be supplied to them in other taverns), and because the innkeeper would undergo grave damage; for since sins of this kind ordinarily happen in taverns, he would suffer a great loss of guests.

c. But in a particular case it is not licit to serve wine which he asks for to a guest who will become drunk, from the sole cause of profit nor because of the guest's indignation; but for cooperation in a determinate and certain sin to be licit, a graver cause is required, for example fear of a quarrel, blasphemy, or notable damage from the diminution of guests.[229]

3. By proposing evil newspapers. a. It is not licit to expose newspapers which are altogether evil, namely which almost always are opposed to faith or good morals, although they may be asked for by many who on that account will leave the inn; for the damage of the innkeeper, although grave, cannot be a sufficient cause for permitting the spiritual ruin of many which would follow from it. It is added that newspapers of this kind are also prohibited by ecclesiastical law.[230]

b. Newspapers which only more rarely contain something that is opposed to faith or good morals can be supplied to those asking in a separate place if otherwise they would suffer notable damage.

c. Only if it is established by experience that almost all guests ask for those papers and otherwise would leave the inn, can they be publicly proposed, provided good newspapers are also exposed at the same time. Thus in greater cities it can scarcely any longer be prevented that papers of this kind are now publicly exposed by innkeepers.

**126. On the cooperation of a bookseller through evil books.** a. To sell a prohibited book which is altogether evil or harmful to faith and good morals, so that it has no good use, is in no way licit.

b. To sell a prohibited book which is not evil in every respect, but also contains useful things, which nevertheless the buyer is going to abuse, is licit from a grave cause of necessity.

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**Notes**

229. Cf. Ethel-Bierbaum, *Theologia moralis*, 2nd ed., I, pr. 1, n. 17.

230. Constitution *Officiorum ac munerum*, n. 21.

c. Booksellers are not bound to inquire for what end a book is bought, but they can sell it to all whom, with regard to their quality, they prudently think to ask for it licitly; otherwise a too grave burden would be imposed upon them. If they doubt concerning the good use of the book, they can sell it, because no one is to be presumed evil.[231]

**127. On the cooperation of printers.** All who are occupied in print shops help the publisher of a book in publishing an evil work, some remotely, others more or less proximately.

a. The printer himself, or owner of the print shop, can never licitly undertake the printing of an evil book: for to undertake to print a written book is to cooperate formally and to induce others to cooperate.

b. The cooperation of those who direct the print shop, set the type, and correct the pages is proximate; since their action is not evil in itself, it is licit for them to cooperate from a gravest cause (as if otherwise they would lack necessary support for themselves and their dependents), except in the case in which the book is so evil that it cannot have a good end.

Those correcting the printed pages are referred by all authors both to those reading an evil book and to those cooperating in its publication, but by some to those cooperating proximately, by others to those cooperating remotely.

c. The cooperation of those who place the paper on the types, prepare the ink and paper, arrange and bind the pages already printed, move the machines and take care of them, is rather proximate; from a grave cause it is licit for these to cooperate.

d. The cooperation of those who sell to the printer ink, paper, machines, and other things necessary for the printing of a book is remote; wherefore the price to be received from the sale already excuses this cooperation.

In a print shop in which almost exclusively perverse books and evil newspapers are printed, it is not licit to place one's work. Those who cooperate in a print shop of this kind are bound under grave obligation to leave it if they cooperate proximately in the evil; but if they cooperate only rather proximately or remotely, they can remain if they cannot withdraw without notable damage. In a print shop in which good and evil books are printed indiscriminately, it is licit to take work for a light cause or only for a grave cause according to the diversity of cooperation.

**128. On cooperation through dances.** a. Dances must be considered in a twofold way: insofar as they are an occasion of sinning for those taking part, and insofar as for those arranging them they contain cooperation in the sins of others. Of dances considered in the first way there is discussion elsewhere; concerning dances under this other aspect something must be said here. The matter concerns the arranging of dances (*Veranstaltung einer Tanzunterhaltung*), which several persons indeterminately abuse for sin.

b. Among those cooperating through dances, the first place is held by those arranging and inviting to them; the second, musicians; the third, those renting their houses or halls for this end.

c. Those arranging and inviting sin gravely if the dances are gravely dishonorable; they sin lightly if the dances are lightly dishonorable: for they induce to a thing gravely or lightly evil. If the dances are honorable, they do not indeed sin by inviting; but by arranging the dances they cooperate in the sins which are committed in them.

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**Notes**

231. Cf. Constitution *Officiorum ac munerum*, n. 46.

d. Musicians, if the dances are dishonorable, cannot licitly concur except from a graver cause, because the sounds directing dishonorable dances constitute part of the dishonorable dance itself and therefore proximate cooperation. If the dances are not dishonorable, it is licit to concur from a light cause.

e. Those renting halls cooperate remotely; wherefore already the cause of losing profit excuses them, even if the dances are dishonorable, when, if they do not rent, there are others who will rent their house for this end. But if the dances would be prevented by their not renting, a greater cause is required.

**129. On the cooperation of servants in the sins of masters.** a. Actions which concur only remotely in the sin of the master, which cannot be prevented by denied cooperation, are excused because of the mere reason of service. Therefore from this cause alone it is licit to set wine before a master about to become drunk, to prepare meats on a day of abstinence, to buy or bring evil books or evil papers, to drive the master by carriage to the house of a mistress, to carry gifts to a mistress, etc.

b. Actions which cooperate rather proximately or proximately in the sin of the master are not excused unless another proportionately grave cause is added to the reason of service. How great this must be should be determined in a particular case by prudent judgment, with all its circumstances considered. Therefore only for avoiding grave damage is it licit to carry love letters written by a master to a mistress, or to keep watch while the master is with a mistress.

It can be permitted to drivers that they furnish their service indiscriminately to all, both because they are not bound to ask individuals for what end they seek a determinate place, and because, even if they know the evil end, nevertheless they cannot prevent the sin, and finally because they incur grave damage unless they offer their office to all.

With this resolution agrees the response of the Holy Office that Christians are not to be disturbed who, by boats or sedan chairs by which all persons indiscriminately are customarily transferred from place to place, convey even those gentiles who go to the sepulchers of their ancestors to exercise superstitions there.[232]

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# Part Second. On the Precepts of the Decalogue

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**130. The Decalogue** (*hoi deka logoi*) is contained twice in Sacred Scripture.[234] Concerning its division there is not one opinion among doctors. St. Augustine is the first to enumerate the ten precepts according to the manner which the Catholic Church afterwards preserved.[235]

a. The supreme importance which belongs to the precepts of the Decalogue is already gathered from the solemn manner in which God commanded the Decalogue to be promulgated and preserved. And indeed it contains the first precepts of the natural law, which, two excepted, oblige all men of all times and places.[236] The precepts which are called of the first table (the first three) order man to God; and the precepts which are called of the second table (the remaining seven) order man to neighbors, the fourth indeed to superior neighbors, among whom parents obtain the first place, but the remaining six to equal neighbors. The

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**Notes**

232. Holy Office, July 12, 1854.

233. St. Alphonsus, bk. 3, nn. 1-1003; Thomas Sanchez, *Opus morale in praecepta decalogi*, bks. 2-4; Sporer-Bierbaum, *Theologia moralis decalogalis*, Paderborn: Typographia Bonifaciana, 1901, tr. 2-6; Thomas Tamburini, *Explicatio decalogi*, bks. 2-40; Ballerini-Palmieri, *Opus theologicum morale*, 3rd ed., Prato: Giachetti, 1899, II, tr. 6, *De praeceptis decalogi*.

234. Ex. 20:2-17; Deut. 5:6-21.

235. *Quaestiones in Exodum*, q. 71.

236. The precept concerning not making a graven thing, and concerning the observance of the Sabbath, insofar as it is ceremonial, pertained only to the Jewish people.

precepts of the Decalogue themselves, as St. Augustine well notes,[237] blossom forth, as it were from their own seed, from the two precepts concerning the love of God and neighbor.[238]

b. In the precepts of the Decalogue there is supreme social and political importance, since they constitute the foundations of any society and state and protect their highest goods. The first three precepts protect the worship of the supreme Deity, the religious foundation of kingdoms; the fifth and eighth precepts protect the life and reputation of the neighbor; the seventh and tenth the right of property; the fourth, authority, the foundation of the family; the sixth and ninth protect marriage.

# Book First. On the First Precept of the Decalogue

"I am the Lord your God … You shall not have strange gods before Me." Ex. 20:2-3.

This precept, insofar as it is affirmative, commands that the one sole true God be worshiped; therefore it commands acts of the virtue of religion. But insofar as it is negative, it prohibits the worship owed to the true God from being denied, or from being attributed to another besides God; therefore it prohibits sins opposed to the virtue of religion.

## Question First. On the Nature of Religion

[239]

**131. Notion.** Religion is defined: a moral virtue inclining the will to exhibiting to God the worship owed to Him as the supreme principle of all things.

a. Religion is said in a threefold sense: a. it signifies the whole relation of man to God, which embraces the truths declaring this relation and the duties which are derived from it; b. it signifies the special virtue by which we render to God the worship owed; c. it signifies the state of those who are perpetually deputed to divine worship through profession of the three vows of poverty, chastity, and obedience. Ethics and apologetics treat of religion taken in the first sense; dogmatic and moral theology treat of religion taken in the second sense; canon law treats of religion taken in the third sense.

b. Worship is to be distinguished from honor: honor is an external signification of the excellence of another; worship is an external signification of excellence with submission toward him who is worshiped. Hence worship cannot be exhibited except to a superior in some kind of excellence, but honor can be exhibited even to an equal and inferior. The excellence on account of which worship is owed to God is this: that He is the supreme principle of all things.

**132. Object of religion.** The material object of religion is the worship itself to be exhibited to God, or those actions by which God is worshiped and His excellence is signified, such as praises, prayers, inclinations, genuflections, sacrifices, etc. The formal object is not divine excellence, but the natural moral goodness which is found in divine worship: for to exhibit a sign of divine excellence and of our subjection is fitting to rational nature and owed to God. But the reason on account of which worship is morally good and owed to God is His infinite excellence. Therefore, although divine excellence is not the formal object of religion, nevertheless it is the reason why God is to be worshiped, and therefore the foundation of religion or its remote formal object.

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**Notes**

237. *Quaestiones in Exodum*, q. 140.

238. Cf. *Kirchenlexikon*, 2nd ed., "Decalog"; Simar, *Lehrbuch der Moraltheologie*, 2nd ed., Freiburg: Herder, 1893, p. 39.

239. St. Thomas, II-II, qq. 81-100; Suarez, *De virtute religionis*, tr. 1-6; Laymann, *Theologia moralis*, bk. 4, *De virtute religionis*; Castropalao, *Operis moralis*, pars II-III, *De virtute religionis et ei annexis*; Bouquillon, *De virtute religionis*, Bruges: Steyaert, 1880; J. B. Wirthmuller, *Die moralische Tugend der Religion*, Freiburg: Herder, 1881.

**133. Religion a moral virtue.** Religion is a moral virtue, not a theological one; nevertheless among the moral virtues it is the most excellent. Therefore sins opposed to religion are the gravest after sins against the theological virtues.

a. Moral: For theological virtues immediately attain God Himself as their proper object, both material and formal; but the object of religion is not God. For religion is not immediately occupied with God, but with actions, whether internal or external, by which God is worshiped; and its formal object is the aspect of debt and fittingness which is derived from the relation of creature to Creator. Therefore the proximate and immediate object of religion is not God but the worship of God, just as the immediate object of justice is not the neighbor, but the thing owed to the neighbor; but the end and term of religion is God, just as the term of justice is the neighbor.[240]

b. Most excellent: because it rightly disposes man toward God Himself, not toward himself or toward other men, and because therefore the term and object to which worship is exhibited is God Himself on account of His excellence. Hence it is not strange that Christ the Lord especially gave men the most excellent example of this virtue.[241]

**134. Acts of the virtue of religion.** a. The proper acts of the virtue of religion suppose an act of the intellect by which the highest excellence of God and our entire subjection and dependence are known; and the same acts contain an act of the will by which it intends to exhibit to God the worship and honor owed, and therefore commands certain acts, whether internal or external, by which that worship is actually exhibited.

b. The act of religion immediately elicited is devotion, or the prompt will and intention of worshiping God: for devotion is defined as a prompt will of doing those things which pertain to the worship of God. The acts of religion mediately elicited and commanded by devotion are all those acts, whether internal or external, by which the worship owed to God is exhibited; but they are chiefly six: adoration, prayer, sacrifice, vow, oath, and the sanctification of certain days.

Of these acts, those by which religion is principally exercised (adoration, prayer, sacrifice) pertain to the first precept; those by which it is secondarily exercised (vow, oath) pertain to the second; finally that act by which public and common worship is exhibited to God (sanctification of days) pertains to the third precept. From these things it is clear that the first three precepts of the first table prescribe acts of the virtue of religion.

c. Besides elicited acts of religion, which properly and of themselves are referred to this virtue, other acts can pertain to religion accidentally, namely acts of other virtues which are commanded by religion, because they are exercised from the motive of religion or are directed to the worship and honor of God, for example fasting undertaken in honor of God or of some saint.

# Question Second. On the Acts of Religion

[242]

## Article First. On Adoration

**135. Notion.** Adoration taken in a broader sense is an act by which we attest the excellence of another and our subjection toward him. In this broader sense adoration is the same as worship, and in this sense in Sacred Scripture even angels and men, for example kings, are said to be adored.[243] Adoration strictly taken is

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**Notes**

240. Cf. Lessius, *De iustitia et iure*, bk. 2, c. 36, n. 7 ff.

241. Cf. Heb. 10:7; Luke 23:46; and very many testimonies in which He is read to have prayed to God the Father and to have given thanks to Him.

242. On sacrifice cf. vol. III, *De sacramentis*, n. 162 ff.

243. Cf. Gen. 18:2; 3 Kings 1:16; Acts 10:25.

an external act of religion by which we attest the supreme excellence and dominion of God and our perfect dependence on and subjection to Him. This adoration belongs and is owed to God alone.[244]

a. Adoration comprehends a twofold act: one internal, both of the intellect and of the will, namely acknowledgment of another's excellence and of one's own subjection, and the intention of manifesting veneration and submission outwardly by some sign; and another external, namely an act of humiliation and subjection by which the internal act is outwardly signified.

b. The external acts by which adoration can be exhibited are: a. sacrifice; b. prostration on the ground; c. inclination of head and breast; d. genuflection; e. a kiss impressed upon him who is adored, or upon his garment; f. uncovering of the head, etc.

c. All these external acts of adoration (sacrifice alone excepted) are indifferent and can be exhibited both to God and to creatures; therefore in these acts the species of worship which is rendered to someone depends and is discerned not from the external act, but only from the internal act. For he who by an external act, for example of prostration, intends to submit himself to someone as to God, exhibits an act of latria; he who intends to submit himself as to a friend of God exhibits an act of dulia; he who intends to submit himself as to a powerful man exhibits an act of civil worship.

**136. Division of worship.** a. Worship is one kind civil or political, another sacred or religious, according as it is exhibited on account of natural or supernatural excellence.

b. Religious worship is twofold: one which is owed to God on account of His supereminent excellence and supreme dominion; the other which is owed to the saints on account of divine excellence communicated to them by a certain participation. The former is called the worship of latria, which is adoration strictly taken and owed to God alone; the latter is the worship of dulia. This again is twofold: one is the worship of hyperdulia, by which we attest the supereminent supernatural excellence of the Blessed Virgin Mary and our subjection toward her; the other is the worship of dulia, by which we attest the supernatural excellence of the saints and our subjection toward them.

c. Some worship is absolute, by which someone is worshiped on account of excellence inherent in him; other worship is relative, by which something is worshiped on account of excellence external to it, or because of relation to a person holy in himself, excellent in himself.

With absolute worship of latria, God, the Most Holy Trinity, Jesus Christ, and the sacrament of the Eucharist are adored; with absolute worship of hyperdulia, the Blessed Virgin Mary is honored; with absolute worship of dulia, angels and saints are honored. With relative worship of latria, the most holy name of Jesus, an image of the crucified one, the holy cross, the instruments of Christ's Passion - the crown of thorns, nails, lance, etc. - are honored; with relative worship of hyperdulia, images of the Blessed Virgin Mary are honored; with relative worship of dulia, relics and images of saints are honored.

d. Some worship is public, which has been instituted by the Church and is exhibited in the name of the Church; other worship is private, which either has not been instituted by the Church, or is not done in the name of the Church.

Two things are required for public worship: that it be instituted by the Church, and that it be performed in the name of the Church by a person deputed for this. Hence the divine office recited by a layman is private worship; likewise prayers recited commonly by men of the whole parish in church are private worship. On the contrary, the divine office recited outside choir by a cleric constituted in sacred orders is public worship.

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**Notes**

244. Matt. 2:11.

**137. On the precept of adoration.** 1. By precept both natural and positive we are obliged to adore God with internal and external worship of latria, and Him alone. This precept is natural: for since God, the principle and end of all things, is of highest and most perfect excellence, He must be adored with the most perfect worship.[245] At the same time the precept is positive: The Lord your God shall you adore, and Him alone shall you serve.[246]

2. From the virtue of religion we are without doubt bound sometimes to worship God as the first principle and lord of all things; but the time and manner in which this precept must be satisfied have not been determined by God. But it has been established by the Church that God should be worshiped by the whole Christian people on Sundays and feast days through hearing Mass and religious cessation from labor. Therefore he who observes the precept of the Church at the same time satisfies the divine precept. But he who cannot observe the precept of the Church, in order to satisfy the divine law, ought at least several times in the year (on any days whatever) to assist at the sacrifice of the Mass.

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## Article Second. On Prayer

[247]

**138. Notion.** Prayer taken in a broader sense is an elevation of the mind to God; but taken in the stricter sense it is a petition of fitting things from God. This petition before God can be made either by mind alone or also by voice.

a. A twofold act concurs in prayer: one of the will, namely desire, by which we desire that some good be conferred by God or some evil averted; the other of the intellect, which is petition, or the manifestation of this desire, by which we endeavor to induce God to furnish what we desire.

b. Fitting things are called goods which can be desired honorably and fittingly: spiritual goods indeed absolutely, but temporal goods under at least the implicit condition that they contribute to the salvation of the soul.

c. Prayer is an act of religion: for by the very fact that we ask goods from God, we acknowledge the power and goodness of God and profess that we depend on God and need Him as the first author of our goods, which is the duty of religion.

**139. Whether attention of mind is required for the essence of prayer.** The question is referred to vocal prayer, namely whether vocal prayer performed with distraction of mind is essentially prayer. Internal attention is not required for the essence of prayer; wherefore wandering of mind during the course of prayer does not prevent prayer from being, as to substance, true prayer, provided it is begun with attention of mind and this attention virtually endures during the time of prayer.

a. With respect to prayer, a twofold attention is distinguished: external and internal. Attention excludes distraction; therefore external attention excludes external distraction. But external distraction consists in external actions which so occupy the mind that they entirely impede internal attention, such as conversation, the reading of some book, etc. Internal attention is the exclusion of internal distraction; internal

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**Notes**

245. That by the law of nature worship, both internal and external, both individual and social, is owed to God, moral philosophers and apologists show at length. Cf. C. Gutberlet, *Lehrbuch der Apologetik*, 2nd ed., Munster: Theissing, 1895, I, p. 25 ff.; G. Wilmers, *De religione revelata*, Ratisbon: Pustet, 1897, p. 16 ff.; Th. Meyer, *Institutiones iuris naturae*, Freiburg: Herder, 1900, II, p. 24.

246. Matt. 4:10.

247. Fr. Schmid, *Die Wirksamkeit des Bittgebetes*, Brixen: Pressverein, 1895; Ch. Pesch, *Praelectiones dogmaticae*, 3rd ed., Freiburg: Herder, 1899, IX, nn. 312-365; St. Alphonsus de Liguori, *Del gran mezzo della preghiera.*

distraction is a wandering of the mind to other things not pertaining to prayer. Therefore internal attention consists in application of the mind to prayer.

Internal attention is distinguished as threefold: material, by which attention is paid to the words of the prayer, so that they may be uttered entire and in their order; literal, by which attention is paid to the meaning of the words; spiritual, by which attention is paid either to God, who is worshiped by prayer, or to the mystery to be recalled to memory, to which the prayer is ordered, or to the good which is asked from God through prayer.

b. For the essence of prayer a twofold condition is required: a. intention, and indeed in order that prayer be formally true prayer, or a special act of divine worship, it is required and sufficient that it be begun with the intention of praying to God, and that this intention virtually endure through the course of the prayer. Without this intention the prayer would not be true prayer; but from this intention virtually enduring the prayer has it that it is formally true prayer and an act of divine worship. b. Attention to the act of prayer had at the beginning and virtually enduring is required, because without this attention prayer would not be a human act: for the one praying must know that he is praying. But just as the intention of praying, so also attention is judged to endure as long as no external action is placed which impedes the internal attention of mind and the intention of praying. Therefore for the essence of prayer there is indeed required internal attention of mind to the act of praying elicited at the beginning of the prayer; nevertheless through the course of the prayer formal internal attention is not required for the substance of prayer. From these things it is inferred that practically nothing else is required for validly reciting a prayer than that the one praying have at the beginning of the prayer the will of praying and that through the course of the prayer he avoid external distraction.[248]

c. Therefore external distraction indeed impedes true prayer; but internal distraction does not impede it, because it does not prevent attention and intention from virtually enduring. Now the principal reasons by which Lugo shows that prayer recited with a distracted mind is substantially prayer are these: To pray signifies to speak with God and to manifest one's desires to Him; but one can do this even when plainly distracted. For if someone, wishing to manifest a petition to a king, reads it from writing while meanwhile he is plainly distracted in mind, he is to be said to speak to the king and to ask him. Moreover, all concede that the administration of the sacraments is valid, although the minister, plainly distracted, utters the form of the sacrament; but the form of extreme unction, which is deprecatory, could not in this case be valid if it were not even substantially prayer. Finally, all concede that one validly recites the office who is indeed plainly but involuntarily distracted; but if every distraction impeded the very essence of prayer, not even one involuntarily distracted would satisfy the obligation.

Whether distraction in prayer is a sin. It is clear that involuntary distractions in themselves are no sin; but voluntary distractions, although they do not corrupt the substance of prayer, nevertheless contain some irreverence toward God, however not grave; wherefore they are a venial sin, even if the matter concerns prayers which are not to be recited from precept.

**140. Division of prayer.** Prayer taken in a broader sense:

1. By reason of end is: a. adoration, by which we acknowledge before God the supreme excellence of God and our entire subjection; to this prayer of adoration is referred praise of God; b. thanksgiving for benefits received; from the virtue of gratitude man is bound several times in life positively to give thanks to God for goods obtained; c. petition, which is prayer strictly taken.

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**Notes**

248. Cf. Lugo, *De eucharistia*, disp. 22, n. 29 ff.

It is manifest that propitiatory prayer, by which remission of sins and punishments is asked, and likewise prayer of intercession, by which goods are asked for others, pertain to prayer of petition taken generally; wherefore they are not to be distinguished from it as diverse species.

2. By reason of mode, one prayer is mental, which is performed by the mind alone, namely by intellect and will; and the other is oral (vocal), which is performed at the same time by mind and mouth: for what is done by words alone is not prayer.

3. Oral prayer is one kind public, which is made in the name and by the authority of the Church; the other is private, which is made in the name and by the proper authority of the one praying. Therefore two things are required for public prayer: that it be made in the name of the Church and that it be instituted by the authority of the Church, such as the canonical hours, the greater litanies, etc. (n. 136, d).

No one can pray in the name of the Church except a minister of the Church, or a person deputed to this by the Church. Prayers instituted by the authority of the Church are performed according to a determinate form approved and prescribed by the Church. Prayers recited, although instituted and approved by the authority of the Church, are private prayer if they are performed not in the name of the Church, but in the name of the one praying, whether the one praying is an ecclesiastical or secular person.

4. By reason of the one praying, prayer is singular, which is made solitarily by only one person, and common, which is made commonly by several persons together. The Lord commends common prayer in a special way: Where two or three are gathered in My name, there am I in the midst of them.[249]

**141. Who are to be prayed to.** Although God alone is to be prayed to as the principal author and giver of goods, so that to pray to a saint in this way is true idolatry, nevertheless, as patrons and intercessors before God, these can usefully be invoked:

1. Angels and saints in heaven, which the Council of Trent teaches as of faith.[250]

a. Privately, even baptized infants who died before the use of reason can be invoked.

b. Although there is no precept of invoking the intercession of saints, nevertheless he who would never invoke the Blessed Virgin Mary could not be excused from venial sin: for he would be guilty of neglect of salvation if he wholly neglected so efficacious a help.[251]

2. Saints and just persons existing on earth, which likewise is of faith from Sacred Scripture.[252]

3. It is very probable that souls detained in purgatory not only intercede for us, but that we also can privately invoke them.

a. Since the Church has defined nothing concerning this matter, there is not one opinion of theologians. Commonly now it is conceded that the souls of purgatory help us by their suffrages: for the communion of saints suggests this, and it is confirmed by the testimony of Sacred Scripture, from which it is established that souls detained in limbo prayed for the people.[253] Nevertheless the older authors with St. Thomas deny this, because the souls of purgatory are in a state of punishment;[254] but more recent authors, especially Bellarmine and Suarez, depart from them. And indeed, the state of punishment does bring it about that the

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**Notes**

249. Matt. 18:20.

250. Sess. 25, *De invocatione sanctorum.*

251. Cf. Council of Trent, sess. 25, *De invocatione sanctorum.*

252. Rom. 15:30; James 5:16.

253. Jer. 15:1; 2 Macc. 15:12 ff.

254. *Summa*, II-II, q. 83, a. 11, ad 3.

souls do not pray for us as the saints in glory do, as if from their proper office; but it does not prevent them from being able to intercede for us, since they are in the state of grace and divine friendship.

b. Those who deny that we can usefully direct our prayers to the souls of purgatory contend that they do not know our needs and our prayers. But although the contrary cannot be demonstrated by certain arguments, nevertheless it is piously believed that God, either by Himself or through guardian angels, manifests our needs and prayers to them. The opinion which holds that we can usefully invoke souls is confirmed by the practice of many of the faithful.

**142. For whom one must pray.** We can and must pray for all who can be helped by prayer and whom we are commanded to love from the precept of charity. Therefore one can and ought to pray:

a. Each one for himself, as is clear from the nature of the thing;

b. For his neighbor, even for a sinner and an enemy,[255] so that from prayers poured out for all, such as, for example, the Lord's Prayer, it is not licit without sin to exclude anyone positively. Yet we are not bound to pray for a determinate person unless he is constituted in grave or gravest necessity and a special relation of office or necessity intervenes with that person.

c. For the souls detained in purgatory, both for all in common and especially for those who are joined to us by a special bond, as parents and benefactors; for since their necessity is truly grave and since we can easily succor them in various ways, piety and gratitude suggest that we help them by prayer. Yet a strict obligation of praying for parents and other connected persons cannot be established, because it is not certainly established that they need our intercession.

**143. What must be prayed for.** What goods we can ask from God is gathered first from the Lord's Prayer handed down to us by Christ, then from the prayers which the Church directs to God for her faithful. Therefore we can ask:

1. Supernatural goods, namely eternal beatitude and the means necessary for it; and these indeed absolutely, because by their nature they are necessary or useful for salvation and no one can abuse them for sin.

But it is not licit to ask them contrary to or beyond the order of divine providence, for example beatitude without good works, remission of sins without penance, grace greater than the highest saints have; but within the order of divine providence supernatural goods can be asked without limitation. Graces gratuitously given are not to be asked, except in the case of special necessity.

2. Natural goods, whether spiritual (sciences, arts) or bodily (health, riches, honors, dignities), can indeed be asked, but only under the at least implicit condition that God has foreseen that they will be profitable to us for salvation: for these are not of themselves useful for salvation, and therefore we can abuse them.

3. That God avert evils from us, both moral evils (sins, temptations) and physical evils (diseases, pains, want, misfortunes), unless it is useful for our salvation that we bear temptations and certain physical evils.

It is not to be asked that God entirely extinguish concupiscence in us, because this is contrary to ordinary divine providence; nor is it to be asked that we be able to avoid all or even the lightest sins, because this is a special privilege; but privileges are not to be asked. With regard to light sins, we can ask that we diminish them more and more or avoid determinate ones.

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**Notes**

255. 1 Tim. 2:1-3; James 5:16; Matt. 5:44.

4. To ask from God a morally evil thing (evil of fault) is always a grave sin, even if the thing which is asked is in itself only lightly evil: for to ask from God help for an evil thing and thus to make Him the author of evil, even light evil, is grave irreverence toward God, because it is directly opposed to His infinite sanctity.

It is not licit to ask an indifferent thing without further relation to an honorable end, for example profit from a game without relation to another end, because it is not the petition of a true and fitting good. Yet because a petition of this kind is not directly opposed to some divine attribute, it is not a mortal sin.

**144. Efficacy of prayer.** Prayer made with the due conditions, from the liberal promise of God, has infallible efficacy of obtaining those things which are asked, whether he who prays is just or a sinner; and from the clear sayings of Sacred Scripture this seems to be certain of faith to theologians.

a. Insofar as prayer is a good work, with the suppositions to be supposed, there belongs to it the threefold effect common to all good works, namely meritorious of sanctifying grace, satisfactory for temporal punishments, and impetratory of actual graces. Insofar as prayer is a petition by which we implore God, powerful and merciful, that He succor our need, it has a special impetratory power of obtaining those things which are asked from God. Now here the discussion is of this special force and virtue of prayer for obtaining. But the conditions which are required for prayer infallibly to obtain that which it asks are commonly numbered as four, as will be said below.

Prayer deprived of the due conditions nevertheless is not wholly without every effect: for although it does not obtain infallibly from the promise of God, nevertheless from His kindness it will obtain at least the spirit of more fervent prayer.

b. Although it befits God, supremely powerful and kind, that He succor him who humbly implores His help, nevertheless prayer has infallible efficacy from the promise of God, whose promise cannot deceive. God in fact promised infallible efficacy to prayer made with the due conditions: Amen, amen I say to you, if you ask the Father anything in My name, He will give it to you.[256] Ask, and it shall be given to you; seek, and you shall find; knock, and it shall be opened to you, etc.[257]

Note. Since every prayer or petition intends to move God so that by His special intervention He may effect that which is asked, it can now be asked how God produces the effects of prayer, namely whether through natural causes or through supernatural causes.

a. If the effect of prayer is a good of the supernatural order, namely actual grace, God Himself produces it immediately, without the intervention of a natural cause.

b. If the effect of prayer is a good of the natural order, it can be produced by God in a diverse way:

c. Either God Himself produces the effect without the intervention of natural causes (at least acting in a natural way). In this case God, because of prayer, works a miracle, either according to substance or at least according to mode.

d. Or God, because of the foreseen prayer, from eternity so disposes and directs natural causes that the effect follows necessarily in time.

e. Or God foresees that the effect is going to follow from natural causes according to the present order without special intervention. In this case God by His intervention only prevents the effect from being frustrated through the influence of a free cause (of a demon or of man).[258]

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**Notes**

256. John 16:23. Cf. 14:13-14.

257. Matt. 7:7 ff. Cf. Luke 11:10; James 4:3; Ps. 49:15.

258. Cf. Suarez, *De oratione*, bk. 1, c. 18; Pesch, IX, n. 331 ff.

Therefore the effects of prayers are sometimes miracles, which are produced by God Himself without the concurrence of natural causes; but more frequently they arise from natural causes, yet not without the special intervention of God. From these things the difference is clear between miracles and what are called hearings of prayers (*Gebetserhorungen*). For if hearing of prayers is taken generically for any effect which God produces because of prayer, even miracles are numbered among hearings of prayers; but if the term is taken specifically, hearing of prayers is opposed to miracle and signifies an effect which God produces because of prayer through secondary causes.

**145. The conditions which are required in order that prayer have an infallible effect** are comprehended in this brief formula: that prayer be made in the name of Jesus: whatever you ask the Father in My name, this I will do.[259] To pray in the name of Jesus signifies to pray in union with Jesus; but for prayer to be made in union with Jesus, four conditions are required, of which one is referred to the object, two to the mode, and the fourth to the subject of prayer.

a. The object of prayer ought to be useful for promoting the end intended by Christ, namely our salvation.[260]

If supernatural goods are asked, prayer has an infallible effect, although sometimes the very goods which are asked are not granted, but in place of them others which contribute more to our salvation. If natural goods are asked, prayer does not have an infallible effect, because those goods can be an impediment of virtue and an occasion of sinning for us; but if God foresees this, He does not grant them, although they are asked earnestly and constantly.

b. As to mode, prayer first ought to be made with confidence, without hesitation and distrust: therefore let us approach with confidence to the throne of grace.[261] The divine promises especially demand this condition: for we pray in the name of Jesus if we pray with confidence in His merits.

This confidence proceeds from theological faith and hope: for first we must believe that God can and wills to succor men; then, because God has so often promised that He will hear prayers, we ought without doubt to trust that God will give what we ask, provided that it contributes to our salvation. This confidence, necessary for efficacious prayer, refers to prayer in general; a particular prayer by which a determinate good is asked can be joined with doubt whether God will grant it, both because there can be defect in the prayer, and because it is not evident to the one praying that what is asked is truly good. This doubt indeed does not impede, but diminishes the efficacy of prayer. Hence if someone by the grace of the Holy Spirit can pray with great confidence, he has a sign of future obtaining.[262]

Then it ought to be made with perseverance.[263] Those goods indeed which are necessary here and now, such as helps for overcoming temptation, God grants immediately; but other goods He does not always bestow immediately. For certain goods, by a positive disposition of God, are not granted except after constant prayer, as the gift of perseverance; but other goods, both natural and supernatural, God does not confer except after some time, so that meanwhile through prayer we may dispose ourselves better for receiving them.

c. The subject of prayer ought to be in the state of grace: for he prays most in union with Jesus who prays in the state of grace. Not that the prayer of a sinner, if the remaining conditions are not lacking, is not heard, but that the state of grace contributes much to increasing the efficacy of prayer.[264]

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**Notes**

259. John 14:13.

260. John 16:23-24.

261. Heb. 4:16.

262. Suarez, *De oratione*, bk. 1, c. 21, n. 9.

263. Cf. Luke, c. 11.

264. John 14:13; 15:7, 16; 16:23.

The prayer of sinners is not only efficacious for obtaining, which is established from Sacred Scripture, where sinners are read to have been heard;[265] but also for infallibly obtaining, because the efficacy of prayer is not founded on the dignity of the one praying, but on the mercy and promise of God.[266] But if in Sacred Scripture it is said that God does not hear the prayers of sinners,[267] this signifies that the prayers of sinners are less efficacious, or even inefficacious if namely sinners ask badly. From these things it is clear that great care must be taken not to deter sinners, as if their good works and prayers were useless before God.

Whether prayer made for others is of infallible efficacy. There are those who for the infallible efficacy of prayer require this condition also, that prayer be made for oneself. St. Augustine[268] and St. Thomas[269] seem to require this; but others with Suarez[270] teach that of itself even prayer made for others has infallible efficacy, because the divine promise, wholly general, contains no limitation: Whatever you ask. Yet this difference intervenes between prayer made for oneself and for others: that he who in the due manner asks for himself things useful for salvation by that very fact acquires the disposition necessary for receiving graces; but by the fact that someone prays for another, this other does not acquire the necessary disposition; on the contrary, he can obstinately resist the graces which are asked, on account of which obstinacy prayer made for others can lack effect.

**146. Necessity of prayer.** An adult man is bound to pray (with impetratory prayer), not only by necessity of divine precept, but also by necessity of means.

a. Concerning the necessity of divine precept no one doubts: for so many explicit testimonies of Sacred Scripture by which prayer is inculcated cannot be understood of counsel alone: Ask and it shall be given to you;[271] Be instant in prayer;[272] It is necessary always to pray and not to faint.[273] The internal reason of this precept is: a. the obligation of exhibiting worship to God, which is exhibited by every kind of prayer; b. one's own indigence.

Prayer of petition prescribed need not be vocal: for we have no divine precept of vocal prayer. Nor do the words of Christ the Lord, Thus therefore shall you pray,[274] contain a precept imposed upon individual faithful of using that formula of praying which He Himself taught.

b. Concerning the necessity of means, the question is whether adult man is bound to ask for himself the helps necessary for salvation. Most theologians say the affirmative opinion must be held not only as certain, but scarcely not as of faith. The reason is this: that must be called necessary by necessity of means without which ordinarily salvation cannot be obtained; but without prayer, according to the ordinary mode of providence, salvation cannot be obtained. For it is certain of faith that the grace of God is necessary for salvation; but according to the ordinary mode of providence, God does not confer efficacious helps of grace except on those asking: Ask and you shall receive,[275] that is, according to the interpretation of the holy Fathers: if you do not ask, you do not receive.

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**Notes**

265. Luke 18:14; 23:43.
266. Cf. St. Thomas, II-II, q. 83, a. 16; Suarez, *De oratione*, bk. 1, c. 25.
267. John 9:31; Ps. 65:18.
268. *In Joannem*, tr. 102, n. 1.
269. *Summa*, II-II, q. 83, a. 7, ad 2.
270. *De oratione*, bk. 1, c. 27.
271. Matt. 6:9.
272. Col. 4:2.
273. Luke 18:1. Cf. Luke 11:9; Matt. 26:41; 1 Pet. 4:7; 1 Thess. 5:17.
274. Matt. 6:9.
275. John 16:24.

**147. When the precept of praying obliges.** 1. When man is bound to pray of himself cannot be accurately determined; without doubt he is bound to pray frequently. Yet he who fulfills the obligation of praying arising from his own indigence also fulfills the obligation arising from the precept of worshiping God.

a. There are those who say that we are bound to pray every week; there are those who with St. Alphonsus say every month; there are those who say that to have prayed once a year is sufficient. But neither the weekly nor the monthly obligation is certainly established. The same must be said concerning the opinion of those who teach that there exists an obligation of praying at the moral beginning of the use of reason. Besides, since the faithful are bound on every Sunday to assist at the sacrifice of the Mass, those who rightly fulfill this precept also satisfy the precept of praying.

b. Therefore he who through a long time (through years) neglects every prayer sins in a twofold way, both because of neglected divine worship and because of neglected care of salvation. Yet in confession it is sufficient to indicate the time during which he omitted prayer, and the other sins which he committed because of neglected prayer.

2. But accidentally we are bound to pray as often as without prayer we cannot fulfill another precept or overcome temptation.

Note. From these things it now follows: a. that the precept of praying is satisfied even by merely internal prayer: for this precept refers to private prayer, and to it insofar as it is petition of divine help; b. that for those who are not constituted in sacred orders, there are no certain and determinate prayers which must be recited from precept; c. that neither of itself nor accidentally are we bound to pray morning and evening, before and after table. Therefore the omission of those prayers of itself is no sin, not even venial. Yet pastors and confessors ought earnestly and frequently to commend this pious exercise to the faithful: for if they neglect morning and evening prayers, it will soon happen that they rarely pray, and thus are deprived of the special help of God, and in dangers of sinning which occur daily fall into sins.

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## Question Third. On Sins Against Religion

**148. What sins against religion are.** a. One can sin against religion by omission, by neglecting the precepts of religion, such as due adoration or prayer; and by commission, by positive acts against the negative precepts of religion. The positive sin generically opposed to religion is irreligiosity taken generically, which can be committed by excess and by defect. By excess indeed, not because God can ever be worshiped with greater worship than He Himself deserves, but because divine worship is exhibited viciously.

b. Sins against religion committed by excess are called by the proper name superstition (*Aberglaube*), which is defined: vicious worship of the true or of a false deity. Divine worship can be vicious in a twofold way: by reason of the object, when something is worshiped as God which is not God; or by reason of mode, when God is worshiped in an undue mode. Wherefore superstition is twofold: one by which God is worshiped with undue worship; another by which a creature (especially the demon) is worshiped with divine worship. This latter superstition, according to the different reason of the end on account of which divine worship is attributed to the creature, is threefold: idolatry, divination, and vain observance, to which magic and malefice are reduced.[276]

c. Sins against religion committed by defect are signified by the name irreligiosity taken specifically. Irreligiosity taken in this sense consists in this, that God is affected with irreverence and injury, which can be

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**Notes**

276. Simar, *Der Aberglaube*, 2nd ed., Cologne: Bachem, 1897, Vereinsschrift der Gorres-Gesellschaft; Walter, *Aberglaube und Seelsorge*, Paderborn: Schoningh, 1904.

done by tempting God, sacrilege, and simony. Therefore there will be eight articles of this question: a. on undue divine worship; b. on idolatry; c. on divination; d. on vain observance; e. on magic and malefice; f. on tempting God; g. on sacrilege; h. on simony.

By these are comprehended only sins committed against religion which are prohibited by the first precept of the Decalogue. To gather in one view all sins committed against religion, there must also be added sins against the second and third precepts of the Decalogue, which likewise are opposed to the virtue of religion, namely: blasphemy, perjury, violation of vows, omission of Mass, servile works.

## Article First. On the Superstition of Undue Worship

The superstition of undue divine worship is one thing as superstition of false worship, another as superstition of superfluous worship.

**149.** 1. Superstition of false worship is committed if in the worship of the true God something of falsity or lie is contained, wherefore it is customarily called superstition of false worship.

This can be done in many ways: a. if God were now worshiped by ceremonies of the old law, for example by eating the paschal lamb; b. if someone proposed false miracles or false revelations for confirming faith, or if he exhibited false relics to be venerated; c. if one who is not a priest presumed to celebrate Mass or absolve; d. if someone wished to worship God by a dishonorable action; e. if someone fabricated a miracle for promoting the worship of some saint.

2. Superstition of false worship is for the most part a grave sin, because it is gravely injurious to God, who cannot be worshiped by falsity and lie, and because it is pernicious to religion, since it renders religion suspect of error.

It is said for the most part because it seems to be conceded that superstition of false worship can sometimes be a venial sin because of smallness of matter. Thus if a preacher in an otherwise true miraculous history added a false circumstance, or fabricated an entire history in order to move the people more, this could be a venial sin, both because the falsity is not employed immediately for worshiping God, and because this does not much prejudice true religion.[277]

**150.** 1. Superstition of superfluous or vain worship is committed if God is worshiped contrary to the custom of the Church by some superfluous and useless thing.

a. Worship of this kind is superfluous: to wish to hear Mass before sunrise with a certain number and order of candles, of a priest who is called John or who has the stature of Christ; not to eat from the head of an animal on the day of the beheading of St. John: for these things contribute nothing to the worship of God. To kiss the foot of the chalice when it is put down after the elevation in Mass; in the office or in Mass to add prayers, crosses, alleluias, or other things which are contrary to the rubrics. For all those things which disordered devotion devises contrary to the prescription and custom of the Church, although in themselves they are not vain, nevertheless because they are contrary to the decrees and usage of the Church, are useless, superfluous, and superstitious.

b. This sin of superstition is also committed through new worships and new devotions which, although they contain nothing unfitting, nevertheless are proposed to the faithful and propagated among them without the approval of the Church. In the constitution *Officiorum* (n. 13), it is expressly prohibited that devotions

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**Notes**

277. Cf. Struggl, *Theologia moralis*, tr. 5, q. 5, n. 6; Lehmkuhl, I, n. 353.

of this kind be introduced; therefore new devotions introduced without license of the Church have rather often been prohibited.[278]

2. Superstition of superfluous worship of itself does not exceed venial sin, because it does not contain grave irreverence; but good faith and simplicity sometimes excuse entirely from sin. Yet by reason of scandal and notable defect against the ordering of the Church, even this superstition could become mortal sin.

## Article Second. On Idolatry

**151. Notions.** 1. Idolatry is superstition by which divine worship is exhibited to a creature, whether this is an animate or inanimate thing, or finally the demon himself.

Therefore two things are required for true idolatry: first indeed, that the worship which is exhibited to the creature be truly divine worship owed to God alone, or a testification of supreme excellence; then, that this worship be exhibited to the creature seriously and truly, not fictitiously and by simulation or for the sake of jest.

2. A twofold idolatry is distinguished: formal, which is committed with the intention of adoring a creature; and material, which is done only externally without the will of adoring a creature, as when someone from fear of death adores an idol.

3. Formal idolatry again is twofold: perfect, if someone adores a creature which he in fact thinks to be God; and imperfect, if someone, knowing that there is nothing divine in the creature, nevertheless worships it with divine worship from hatred toward God or from desire of obtaining something from the demon.

**152. Its moral malice.** 1. All idolatry is a grave sin, indeed the gravest after sins which are opposed to the theological virtues, because all idolatry inflicts grave injury upon God, who alone is the principle of all things.

Therefore even material idolatry is a grave sin, although less grave than formal: for although it is not true idolatry, nevertheless it is an external denial of faith and a lie injurious to God against the virtue of religion.

2. Perfect idolatry is a sin against faith and religion; imperfect idolatry indeed is not against faith, yet (insofar as it is idolatry) it is graver than that, since it proceeds from mere malice, not from ignorance, and involves great contempt of God. The former can be without fault, as if someone adores an unconsecrated host which in good faith he believes to be consecrated.

The sin of idolatry is committed not only by gentiles and magicians, but also by those who so worship and invoke saints as if they could furnish natural or supernatural gifts by their own power. In a certain broader sense, they commit idolatry who: a. attribute to false saints or to the damned the worship owed to true saints; b. take care that worship owed to saints be exhibited to themselves by feigned sanctity, false miracles, and false revelations. Today among baptized faithful, those commit the sin of idolatry together with the sin of apostasy who, imbued with the principles of materialism, worship nature as God in the manner of pagans, or who attempt to restore the worship which the ancient Germans exhibited to mythological figures (Wodan).

## Article Third. On Divination

**153. Notions.** 1. Divination (*Wahrsagerei*) is defined as superstition by which the demon is invoked in order to know hidden things by his help.

a. Divination tends to this, that knowledge of some thing be obtained which cannot be known by natural means. Hidden things: these can be present, past, or future; and although those things whose knowledge is

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**Notes**

278. Cf. Bucceroni, *Casus conscientiae*, 3rd ed., Rome: Typographia Augustiniana, 1903, n. 40.

sought are for the most part hidden, nevertheless if things known to all were sought from the demon for the sake of jest or experiment, there would be true divination, since its essence consists in commerce with the demon.

b. It is certain that the same spirit of Python which St. Paul cast out at Philippi from the girl who, by divining, brought great gain to her masters,[279] even now, although more rarely, manifests hidden and future things to men.

2. Divination can be done in a twofold way: through express invocation of the demon (with an express pact), or through implicit or tacit invocation (with an implicit pact). It is committed by express invocation when the demon is invoked by express words, or if an agreement is expressly made with him that, when such signs have been placed, he produce such effects; but for committing this divination it is not necessary that the demon in fact respond, but it is enough that the effect be sought by his help. It is committed by implicit invocation when someone, in order to obtain knowledge, uses inept means which he knows have the power of producing the intended effect neither from their nature nor from the institution of God or the Church. For he who knowingly uses an inept means for obtaining some effect expects this effect from a higher power; but the effect cannot be expected either from God or from the angels, who disapprove the use of such means; therefore it is expected from the demon, who is implicitly invoked by the very use of those means.

a. For this reason those are not excused who knowingly employ vain means and protest against any commerce with the demon: for the protestation is contrary to the deed and therefore null.

b. The demon gladly intermingles himself with vain and inept means of this kind; for he approves all things which are vain and reprobated by God, and freely seizes the occasion of effecting what he himself intends, namely that man, having left God, recur to him and render divine honors to him.

**154.** a. Nine different species of divination with an express pact are numbered according to the different mode by which the demon invoked responds and reveals hidden things. Seven different species especially of divination with an implicit pact are numbered according to the different mode by which knowledge of hidden things is sought.[280]

b. Judicial astrology also is numbered among divination with an implicit pact, by which knowledge of hidden things is sought from the position and motion of the stars. For natural and judicial astrology are distinguished; the former, by which certain effects are known from the influence of the stars, especially of the moon, is founded in natural science; the latter, by which rules are established for knowing future things from the stars, especially the varied fortune of men, is founded in superstitious art.

c. Since today the divination of crystallomancy is again not rarely exercised, it helps to note that those who gaze into crystal, or into water contained in a vessel, etc., see various images there, which are nothing but hallucinations (visions) provoked by the "scryers" themselves by the aid of imagination. But the demon easily intermingles himself with these experiments and manifests hidden or future things to the scryers, so that in this way he may revive divination used both in the ancient age of the gentiles and in the middle age.[281]

**155. Its moral and specific malice.** 1. Divination which is done through explicit invocation is a sin grave from its whole genus. For in every divination there is commerce with the demon; but any commerce with the demon, the most hostile enemy of God and men, is gravely illicit, as injurious to God and pernicious to man.

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**Notes**

279. Acts 16:16.

280. Cf. Sporer-Bierbaum, I, tr. 2, n. 313 ff.; Gopfert, I, n. 387.

281. Cf. Bessmer, "Die Visionen im Kristalle," *Stimmen aus Maria Laach* 1908, p. 165 ff.

Moreover, some worship is exhibited to the demon by the very fact that man recurs to him and thus subjects himself to him.

2. Divination with implicit invocation is indeed also by its own nature a grave sin, because it involves commerce with the demon; yet it can become venial: a. from ignorance and simplicity, because its malice is not equally manifest as that of express invocation; b. from defect of firm faith, when certain faith is not given to vain signs, but only some fear or suspicion of a future event is conceived; c. from defect of serious will, when knowledge of a hidden thing is sought more for the sake of jest or curiosity than from serious intention. And since almost commonly something intervenes which excuses from mortal sin, divinations with implicit invocation are rarely grave sins; nevertheless the thing is always dangerous if someone directs his actions from them.

Those who consult soothsayers or diviners (gypsies) concerning fortune sin gravely if this is done with firm faith or scandal of others; but venially if it is done only for the sake of curiosity, or if firm faith is not given to their sayings, as is most often the case. Likewise it is a light sin to do or omit an indifferent thing because of responses heard from them, if it is done from some fear or for the sake of curiosity in testing. Yet those who consult them in addition commit a sin of induction or cooperation.

3. Divination which is done through explicit and implicit invocation, and likewise the different divinations which are done through invocation, whether explicit or implicit, do not differ in species, but contain the same specific malice. Therefore of itself it is not necessary that it be declared in confession whether the invocation of the demon was express or tacit; and likewise the penitent is not bound to declare by what signs or means he exercised divination.

Yet ordinarily in confession it must be declared, for another twofold reason, whether the invocation was explicit or implicit: a. so that the confessor can judge whether a grave or light sin was committed; b. because it is established that divination with express invocation generally has several other sins joined to it which do not occur where only tacit invocation is had. But the sins which are often joined to express invocation are these: abjuration of Christ, adoration of the demon, promise of perpetual service with a promise of help in return on the part of the demon, blasphemies against God, sacrileges (abuse of sacred things and of the Eucharist itself), etc.

**156. On dreams.** 1. Dreams: a. ordinarily depend on natural causes, namely either on daily occupations, or on the temperament and constitution of the body, or on the concurrence of phantasms, etc.; nevertheless it cannot be denied that b. dreams are sometimes stirred up by God: for although God does not direct men through dreams, He nevertheless promised that sometimes He would be the author of dreams;[282] moreover, from Sacred Letters and from the lives of the saints we learn that dreams were sometimes sent by God;[283] c. but that the demon can be, and in fact sometimes is, the author of dreams cannot be denied, since he can stir up phantasms in men.[284]

If God sends dreams, at the same time there are certain indications from which it can be gathered that they have been sent by God. Signs of this kind are these: a. if the matter is worthy of God, and not vain and indecent; b. if it impels to good, but not to evil and presumptuous things; c. if it makes the soul tranquil and more ready for works of piety, not disturbed, inclined to earthly things, and slower for the service of God.

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**Notes**

282. Acts 2:17; Num. 12:6.

283. Judg. 7:13; Dan. 2:19; Matt. 1:20; 2:12, 13, 19.

284. Deut. 18:10.

2. Since dreams are sometimes also sent by God, where prudent reason suggests this, they must be diligently examined whether they are from God. But if it appears morally certain that a dream has been sent by God, we are bound to believe it; if it is probable, we can believe it and direct our actions according to it.

3. To believe natural dreams with blind faith in such a way that someone ordinarily directs his actions according to them is the mortal sin of divination; but sometimes to place or omit an indifferent action because of a dream, or then lightly to fear lest what dreams portend may happen, does not exceed light sin.

He sins gravely who desires to be taught by the demon through a dream, and more so he who for this reason takes sleep in a certain position of the body. He sins gravely who directs his life almost from dreams, lots, cards, and vain means of this kind. But he ordinarily does not sin gravely who plays in a game the numbers which he dreamed, or who does not mount a horse because he dreamed of a fall, or who digs up the earth because he dreamed that a treasure was hidden there, because he does this not so much from certain faith in a future event as from a certain excessive timidity or hope.

**157. On sortilege, or on the use of lots (*Loswerfen*).** Since threefold lots are distinguished, these things must be established concerning them:

1. Divisory lots, which are used for discerning what is to be attributed to each one in things to be divided or in suits to be settled, are licit unless they are prohibited by human law: for this sortilege is nothing other than a contract by which it is decreed by common consent that the thing is to be attributed to him to whom the lot has fallen.[285] But lots are prohibited by canon law in ecclesiastical elections.[286]

This means of lots for settling controversies is to be preferred to conducting lawsuits before a judge and to the appointing of arbiters themselves; it is also brought into use by the Austrian Code §§ 885, 841, and by the German Code §§ 659, 752. Concerning these lots Sacred Scripture says: Lots are cast into the lap, but they are tempered by the Lord.[287]

2. Consultory lots, which are used for investigating what is to be done or omitted, constitute a sin of superstition if the response is expected from the demon. If the response is explicitly expected from God, there is the sin of tempting God, unless they are used from divine inspiration (as in the election of Matthias), or from a sufficiently grave cause of necessity or utility (where other ordinary means are lacking) and with prayer to God sent beforehand, as if someone, remaining at a crossroad in a matter of great moment, cannot otherwise determine himself as to the way.

3. Divinatory lots, which are used for obtaining knowledge of a hidden thing, are ordinarily a grave sin of superstitious divination: for lots have the power of manifesting a hidden thing neither from themselves nor from divine institution; therefore its manifestation is expected from the demon, although the demon is not explicitly invoked.

Ordinarily. Without doubt he commits superstition who, for example, by lots tries to divine what numbers are to be drawn in a lottery; but divinatory lots are not superstitious if they are used: a. from divine inspiration;[288] b. from the intention of obtaining from God the manifestation of a hidden thing (in which case temptation of God can be committed); c. from mere jest or curiosity of seeing what in that case is designated by the lot, without faith being given to the thing.

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**Notes**

285. Cf. John 19:24.

286.

c. *Ecclesiae* fin., *De sortilegiis* (V. 21).

287. Prov. 16:33.

288. Cf. Josh. 7:14.

**158. On the use of the divining rod.** The divining rod (*Zauberrute*) is a rod cut from hazel (*Haselnuss*) or willow (*Weide*) which is used for finding hidden or lost things, indeed even for detecting men (murderers, thieves).

a. The use of the divining rod is certainly illicit if the rod is used so that it may move according to the intention of him who holds it in his hand: for if it were moved by natural force, it would be moved toward all things of the same nature.

Thus, if the rod of one seeking a boundary stone is moved only toward that stone, not likewise toward other stones, and the rod of one seeking water only toward water, not likewise toward metals, and conversely, it is moved according to the intention of the one seeking, not by natural force.

b. The use of the rod for seeking waters or metals is licit, especially if a protestation against diabolical influence is made.

He will scarcely err who attributes the motion of the rod placed in the hand of a certain determinate person to natural magnetic or electric forces, which are more abundantly contained both in the body of certain persons, and in the branches of certain trees (for example, peach), and in certain bodies (water, metals), provided that independently of the intention of him who uses the rod, it is moved only toward certain bodies (water, metals), and toward these bodies always in an equal manner.

Note. Of itself it is licit to use the power of a natural means which has been known through superstition, provided its efficacy does not depend on the influence of the demon: for a thing does not become evil from this, that it has been known in an illicit way.

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## Article Fourth. On Vain Observance

**159. Notions.** 1. Vain observance (*Zauberei*) is a superstition by which the demon is invoked for obtaining some effect by his help.

2. Vain observance, like divination, is twofold: one with explicit invocation of the demon, the other with implicit invocation, namely by employing vain means which have power neither from nature nor from God to produce such an effect. These means are called sacraments of the devil, because, when they have been placed, he produces the intended effect, as it were, by promise.

Vain observance differs from divination in this, that the latter is ordered to knowing hidden things by the help of the demon, but the former to obtaining by his help any external effects whatsoever. He who for obtaining an effect employs a vain and useless means, which neither by nature nor by the Church nor by God has been instituted for producing this effect, cannot expect this effect except from the demon.

Note. 1. Among the diverse forms of vain observance there widely wanders the observance of healings (magical medicine), which is the art of curing diseases or of avoiding misfortunes by employing diverse signs, inhalations, prayers, charms (*Besprechungen*), sacred things, etc. This superstition, like the rest, is found no more among Catholics than among non-Catholics, nor more among the lowest populace than among the cultivated and learned; indeed among the pagans it was already spreading widely. Therefore only by calumny can it be affirmed that superstition has arisen from the Catholic religion, inasmuch as that religion teaches that divine effects can be obtained from the use of prayer and sacramentals.[289]

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**Notes**

289. Cf. concerning this matter Stohr-Kannamuller, *Handbuch der Pastoralmedizin*, Freiburg: Herder, 1900, p. 403 ff.; Walter, *Aberglaube und Seelsorge*, Paderborn: Schoningh, 1904, p. 92 ff.

2. Prayers of this kind are made especially in three ways. For either physical means are employed (touchings, inhalations, ointments, etc.), which nevertheless do not have a known power of healing; or besides physical means there are also employed moral means (prayers, charms, adjurations); or finally only moral means (sympathetic cures).[290] Not every use of means of this kind must be charged with superstition: for besides the fact that God can produce the effect of health by His special influence on account of prayer, there are natural remedies which can contain a power of healing still unknown to us; nor finally can it be denied that a man by moral influence (in whatever way this is effected, for example by suggestion) can produce various effects of cure in another man. Yet frequently the use of these means is either plainly superstitious, or something of superstition is mixed with the use of a natural or supernatural means.

3. Pastors of souls should strive to know the diverse forms of superstition which are in use among the faithful committed to them, and should endeavor to root them out: for superstitious uses do not foster true religion and its exercises, but harm them as much as possible; for they obscure the purity of faith, impede a truly religious life, and retard the perfection of Christian life. To obtain this end, let him collect and destroy booklets which teach superstition, and let him instruct the people concerning the mode of acting which God observes, concerning the vanity of superstition, and also concerning the dangers which arise from its exercise.

**160. Concerning the moral and specific malice of vain observance,** the same must be said as concerning divination:

a. Vain observance with explicit invocation is always a mortal sin; vain observance with implicit invocation is frequently excused from mortal sin, both because of ignorance, and because of defect of certain faith, and because of defect of serious will.

Thus those do not sin mortally who hold it as an indication of misfortune that a certain person (an old woman) meets them on the first day of the year; who are unwilling to be present at a banquet where thirteen sit at table; who do not undertake a journey on Friday. Indeed, properly speaking, a sin of superstition is not committed by these, since they think neither of the demon nor of some higher power. Yet these things are foolish and contrary to sound reason.

b. Its malice consists both in illicit commerce with the demon and in superstition, by which some worship is exhibited to the demon by recurring to him and by expecting from him what ought to be expected from God alone.

c. Divination and vain observance do not differ from each other in species: for in both the virtue of religion is injured in the same way, because in the genus of morals it makes no difference whether knowledge of a hidden thing or some external effect is sought from the demon.

Berardi well observes that those who expect certain effects from foolish things are not immediately to be charged with the sin of superstition. For often they act from simplicity and error, without thinking about the influence of the demon; but for a sin of superstition to occur, it is required that the agent advert to the invocation of the demon and intend it in some way. Therefore if the confessor detects that penitents otherwise pious, who do such things, are in good faith, let him not charge them with sin, but rather teach them how vain their means are for obtaining the effect, or, if the matter so requires, let him tell them that the means employed by them, with some vain circumstance and the infallible expectation of the event removed, are entirely licit.[291]

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**Notes**

290. By this name (*Sympathiekuren*) are called those cures which are not effected by natural remedies, but through the moral influence of some person endowed with a hidden power, which power they call sympathy.

291. Cf. Berardi, *Praxis confessariorum*, I, n. 433 ff.

**161. Criteria for discerning vain observance.** 1. Signs of this kind are especially these three: a. the insufficiency of the cause for producing the effect, since it has no such power either from itself or from God; b. the addition of a vain or false circumstance as necessarily required for obtaining the effect, even if the signs or means in themselves are good and holy; c. the infallible expectation of the effect on account of the mere application of these signs, as if from the work having been worked.

a. Therefore if certain prayers, images, blessed things, etc., are employed in such a way that there is attributed to them an infallible power of obtaining some effect, for example of escaping death or disease, of not falling into misfortune, of not dying without confession, etc., they are superstitious; but if they are employed in honor of God without vain adjuncts, with pious confidence of obtaining, if it shall have pleased God, that which is asked, they are pious and religious.

b. The faithful must very especially be taught and instructed not to foster superstitions in the use of sacred things and the sacramentals of the Church, lest, for example, they think that the greater effect is produced in the use of holy water the more abundantly it is sprinkled, and things of this kind.

2. In doubt whether the means employed possess a natural or supernatural power of causing such an effect, this twofold rule must be attended to:

a. If there is doubt whether some effect proceeds from a natural cause or from the demon, it must be attributed to natural powers, because very many powers of natural causes are unknown even to wise men. Therefore a means about which it is doubted whether it has natural power of causing the effect or not may be employed, yet with a protestation added against the influence of the demon.

It is licit to employ a means of this kind, because it is not established that the thing is evil; on the contrary, from the circumstances it can rather be considered honorable. Hence, so that such a means can licitly be employed, there ought to be at least a probable reason, especially drawn from comparison with other effects certainly natural, which suggests that the effect is produced by a natural power. Besides, it is always advisable that in a case of this kind a protestation against the intervention of the demon be sent before: for as long as the matter is doubtful, the protestation removes the invocation of the demon.

b. If the effect certainly is not from a natural cause and there is doubt whether it is from God or from the demon, it must be attributed to the demon, because miracles are not easily presumed. Wherefore in this case it is not licit to employ the doubtful means, because it contains a tacit invocation of the demon.[292]

Nevertheless, a means of this kind which is truly doubtful, with the certain expectation of the effect excluded, can be excused from mortal sin if it is employed only once or twice, both because of the imperfection of the act and because there is no grave danger of commerce with the demon.

**162. Criteria for discerning the grace of healings.** Sometimes it happens that men, even rude men who do not enjoy a reputation for holiness, by the sign of the cross or by sacred prayers and inhalations heal diseases and wounds. These are not all at once to be condemned of superstition: for it can piously be believed that God even at the present time confers on some men, although they are not saints, the grace of healings for the common good.[293] But the signs to which one must attend in particular cases, so that vain observance can be distinguished from the grace of healings gratuitously given, are especially these:

a. Whether he who heals is alone in producing the same effect by the same means, or whether others also produce it, and whether he himself learned such power from others: for God ordinarily confers the grace

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**Notes**

292. Cf. Lacroix, l. 3, pr. 1, n. 28.

293. Cf. 1 Cor. 12:9; St. Thomas, II-II, q. 178, a. 2; St. Alphonsus, l. 3, n. 18.

of healings in such a way that it is a personal grace conferred upon a certain person. b. Whether the means which he employs are vain and foolish: indeed it can happen that the effect of a grace granted by God depends on certain external signs as on a condition, but these signs are never vain. c. Whether he thinks that the power of healing is in the very words or signs employed: for God confers the grace of healing upon the person, not upon external signs. Nevertheless supernatural powers of this kind gratuitously given will be very rare.[294]

If there are found those who heal diseases and wounds, whether of men or of animals, which not infrequently happens, these things are to be noted for practice:

a. First of all it will have to be inquired whether the means employed by them can produce the effect by natural power. If by at least probable reason the effect can be attributed to powers of nature, their use can be permitted, with a protestation against the influence of the demon premised.

b. But if the effect can be attributed to the powers of nature by no probable conjecture, the matter is not immediately to be rejected *a priori* as superstitious and illicit, but the fact with all its adjuncts must be examined diligently.

c. If, when the examination has been instituted, it is established that the matter is not certainly superstitious, especially if the prayers and invocations contain nothing false or foolish, if an infallible effect is not expected, and finally if those who employ the means are in good faith and attribute no infallible power to the means themselves or to the invocatory formulas, it is not necessary that the use of those means be interdicted. Yet it must always be advised that before the use a protestation be premised for rejecting any effect which may be produced by the help of the demon.

## Article Fifth. On Magic and Malefice

[295]

**163. Notions.** a. Magic is generally defined as the art of working wonders through hidden causes. One kind is white or natural magic, which is defined as the art of working wonderful and unusual things through natural means; another is black or superstitious magic, which is defined as the art of working wonders by the help of the demon. Magic also can be done with explicit or implicit invocation of the demon.

b. Magic which is employed for harming others is called malefice (incantation, *Behexung*), which therefore is defined: the art of harming others by the help of the demon. A twofold malefice is distinguished: amatory (philtrum, from *phileo*), if by the help of the demon a most vehement affection of love or hatred toward a determinate person is excited in another; and poisoning (*veneficium*, from poison), if damage is brought upon some person or his goods.[296]

Magic differs from other species of superstition in this, that it intends to produce wonderful effects. Malefice differs from magic by reason of the end: for the magician intends to show the power of the demon, but the malefactor intends to harm others.

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**Notes**

294. Cf. Laymann, l. 4, tr. 10, c. 4, n. 4.

295. Mart. Delrio, *Disquisitiones magicae*. Concerning this work Lehmkuhl notes (II, p. 830): "Although it also contains useless and fabulous things, nevertheless it hands down very useful things by which the malice of superstition may be thoroughly known."

296. In canon law malefice is called sortilege, because an evil lot befalls him who is affected by malefice; for this reason magicians and witches are called *sortiarii* and *sortiariae*.

**164. Its malice.** 1. White magic is of itself licit: for it is exercised by the powers of nature, and by the sagacity and dexterity of men; but it can become dangerous, because the demon, even when not invoked, easily mingles himself in these matters and induces to superstitious magic.

2. Black magic of itself is a grave sin of superstition, which does not differ in moral species from divination and vain observance. Their common malice consists in association with the demon. Yet ignorance sometimes excuses magic from grave sin, if it is done with an implicit pact.

**165. Malefice.** a. It must be conceded that malefice can in reality be inflicted: for it cannot be denied that the demon, both by himself and through evil men, can, God permitting, harm the bodies and goods of men in various ways; and that God sometimes permits this by a most wise counsel is likewise certain.[297] Wherefore, although faith must not easily be given to malefices, nevertheless all would be imprudently denied.

b. One infected by amatory malefice ordinarily does not lose freedom, but can resist temptation with the grace of God; wherefore if he yields to it, he commits sin, grave or light according to the measure of deliberation and freedom.

c. Malefice contains a twofold malice, one against religion, the other against charity or justice, because evil is brought upon the neighbor.

Since by experience it is established that malefices are rare today, let the confessor be slow in believing malefices which are narrated by rude penitents; but for driving away the evils which are attributed by them to malefices, let him teach them to employ natural and supernatural means, especially those which consist in prayers, the use of sacramentals, and the reception of the sacraments.[298]

**166. In what way malefice can be removed.** a. Certainly it cannot be removed by another malefice, otherwise it would be licit to do evils that goods may come; therefore it is not licit to ask a magician to loosen a malefice, if he cannot loosen it except through another malefice, even if he is of his own accord prepared to loosen it. b. It can be removed by means both natural and supernatural, such as medicines, prayers, exorcisms, sacramentals, sacraments, and the destruction of signs by which the demon harms. c. It is also licit to consult the magician himself concerning the way of loosening the malefice, and likewise it is licit to ask that he himself loosen the malefice, if he removes it in a licit way, or if at least he can remove it in a licit way, even if it is foreseen that the magician will do this by the help of a new malefice.[299]

## On Recent Magic

[300] In this treatise on superstition there is presupposed what is demonstrated in dogmatic theology, namely that the demon not only of his own accord and spontaneously, even if he is not called, exercises a malign influence upon human affairs and harms men in various ways, but also, when called by men either explicitly or implicitly, produces various effects, as if by a pact entered into with them, as is established from the history of Job and of the magicians in Egypt. Although the common persuasion concerning the existence and influence of witches, which was spreading especially in Germany in the seventeenth and eighteenth centuries, must be rejected as vain and false and mourned as a most unhappy error, nevertheless it cannot be denied that there have existed, and even now can exist, wicked men who by the help of the demon manifest hidden things and effect unusual

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**Notes**

297. Job 1:12. Cf. Ex. 22:18.

298. Cf. Berardi, *Praxis confessariorum*, I, n. 458.

299. What a confessor ought to do with those who are guilty of superstition with an explicit pact St. Alphonsus teaches at n. 28.

300. Cf. Fr. Spee, *Cautio criminalis*; Janssen-Pastor, *Geschichte des deutschen Volkes*, Freiburg: Herder, 1894, VIII, pp. 494-694; I. Diefenbach, *Der Hexenwahn*, Mainz: Kirchheim, 1886; Stohr-Kannamuller, *Handbuch der Pastoralmedizin*, Freiburg: Herder, 1900, p. 425.

works. What in antiquity they strove to obtain through various divinations and observances, that today they strive to seek out through turning tables and spiritism; the name is different, the thing is the same.

**167. On turning tables.** 1. All agree that consultation of tables, even if questions are proposed concerning merely indifferent matters, for example concerning the age of a determinate person, is altogether illicit, although it is done only for the sake of experiment: for it is manifest commerce with the demon, and indeed also superstitious divination, because by the very recourse to the demon some worship is exhibited to him.

2. Concerning simple rotation without consultation there is a twofold opinion, of which the one permits it, because it is not established that the rotation cannot be accomplished by natural powers; but the other prohibits it, because it is accomplished by preternatural powers and therefore is superstitious and diabolical: for consultation is for the most part joined with the rotation; but this consultation is diabolical; therefore also the rotation. Moreover they narrate that the rotation is impeded whenever a blessed thing is placed on the table.

3. Therefore in practice simple rotation, with a protestation against the influence of the demon premised, can of itself be permitted: for since it is doubtful whether the effect of the rotation is produced by natural or preternatural powers, it must rather be attributed to natural powers; indeed it is very probable that it is produced merely by electric or magnetic powers of nature.

a. From the fact that consultation of the table is for the most part joined with its rotation, it is indeed gathered that there is an easy passage from one to the other, because the demon uses a natural experiment in order to induce to superstition; but from the fact that consultation is diabolical, it does not follow that rotation, which is distinct from it and independent, is likewise to be attributed to the demon. The things which are added concerning blessed things are said by others, with experience as witness, to be false.

b. Nevertheless, the faithful are to be kept away from experiments of this kind, even if they are produced by the powers of nature, unless there is question of investigating the powers of nature, because the matter is not without danger. For it is explored that the demon gladly mingles himself with these things and impels to illicit divination.

**168. Animal magnetism** properly signifies the power which they thought to be in living bodies, similar to the magnetic power of the mineral magnet. Then it signifies the new art of curing diverse diseases by the help of animal magnetism. This medical art, from its inventor Franz Mesmer (+1815), is also called Mesmerism. In the course of time animal magnetism degenerated into a diabolical superstition. There is no reason why moral theology should speak more accurately about animal magnetism: for insofar as it is a medical art, hypnotism has succeeded into its place, concerning which there will be speech below; and insofar as it is a new superstition, it is now called spiritism.[301]

Animal magnetism, insofar as it is a means of curing diseases under certain conditions and with due cautions, can be licitly employed;[302] but to degenerate magnetism are referred several responses of the Holy Office, by which the use of magnetism is said to be illicit, because through it a certain new genus of superstition is brought in from magnetic phenomena.[303]

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**Notes**

301. Cf. *Kirchenlexikon*, 2nd ed., "Magnetismus"; Gopfert, I, n. 390 ff.

302. Holy Office, June 23, 1840; July 28, 1847.

303. Holy Office, April 21, 1841; July 30, 1856. These responses can be compared in Ballerini-Palmieri, II, n. 366 ff.

304. W. Schneider, *Der neuere Geisterglaube*, 2nd ed., Paderborn: Schoningh, 1885; C. Gutberlet, *Der Spiritismus*, Cologne: Bachem, 1882; J. E. Wieser, *Der Spiritismus und das Christentum*, Innsbruck: Rauch, 1881.

**169. On spiritism.**[304] First of all the system of spiritism must be distinguished from the phenomena of spiritism. The system of spiritism, which is a religious system plainly opposed to the Catholic religion and which the sect of spiritists professes, does not pertain to moral theology; but concerning the phenomena of spiritism the question is asked whether they can licitly be produced.

1. Spiritism (as it is considered here) is the art of communicating with spirits and, by their help, of knowing hidden things. Revelations of hidden things do not proceed immediately from the spirits themselves, but for the most part depend on persons who are called "media" or mediators, *spiritistische Medien*. These media, while the spirits use them to manifest their revelations, are occupied by artificial sleep or hypnosis.
2. Spiritistic phenomena are numbered as many and diverse, but especially revelations of diverse things, which for the most part are manifested to men by the help of media; sometimes also, with no visible person intervening, writing appears on a board or paper; indeed sometimes the evoked spirits themselves appear and respond to proposed questions, and when they are interrogated concerning their name, they affirm that they are now angels, now saints, but most often souls of the dead. Among these phenomena is found also what is called clairvoyance (*Hellsehen*): a spiritistic medium reads books of an unknown language, even if he has never learned letters; he discourses about things which otherwise he utterly ignores; he knows hidden things and even the secrets of the heart; he indicates the diseases of the sick and their remedies, etc.

There are those who say that spiritistic phenomena are nothing but fabulous inventions. It cannot be denied that spiritistic phenomena in many particular cases must be attributed either to frauds and deceptions, or to the art and dexterity of spiritists, or finally to the imagination of the media; but the same would be affirmed imprudently concerning all experiments. It is certain that many spiritists and their media are persuaded that they evoke spirits and really have commerce with them.

**170. Whether it is licit.** Spiritistic phenomena are to be attributed to the demon; wherefore spiritism is nothing other than most foul magic, and in species superstitious necromancy. For spiritistic phenomena must be attributed not to a natural cause, but to a preternatural and intellectual cause; but this cause is nothing except an evil spirit: for God, the angels, and the saints do not cooperate with vanities and impieties of this kind; but the souls of the dead can neither licitly nor effectively be evoked by men; therefore nothing remains except that they be attributed to the demon, with whom spiritists enter into impious commerce. These things are confirmed from the responses themselves given by the spirits, which contain many vain and foolish things, indeed also things impious and contrary to the Catholic faith.

a. Therefore it is never licit to undertake spiritistic experiments, wherefore the Holy Office declares the use of spiritism illicit, even if every convention with the demon is excluded and commerce is instituted only with a good spirit: for by a protestation of this kind commerce with the demon cannot be removed, since it is contained in the very consultation of spirits.[305]
b. It is not licit to serve as a medium in spiritistic experiments. For although spiritists think that they invoke not evil but good spirits, nevertheless in reality they invoke none but evil ones and exercise true magic. It is scarcely credible that subjectively they are excused from the exercise of sinful magic because of good faith; certainly it will happen only rarely.
c. It is not licit to be present at spiritistic experiments as a spectator, because of scandal and cooperation, even if approval of spiritism is excluded. Yet if someone from mere curiosity is present once or twice at experiments of this kind, with grave scandal excluded, he does not sin gravely; and if it is morally established that the spiritist is only a fraudulent deceiver, with scandal excluded, it is licit to be present at the spectacle.

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**Notes**

305. Holy Office, March 30, 1898. To this place must also be referred the responses by which animal magnetism is prohibited (n. 168).

## Article Sixth. On Tempting God

**171. Notion.** 1. Tempting God is defined as: a saying or deed by which someone explores whether God has or exercises some perfection (knowledge, power, mercy).

a. One temptation is called that of seduction to evil, another that of probation. Where there is question of tempting God, temptation of seduction to sin can have no place, neither actively, because God tempts no one in this way,[306] nor passively, because God cannot be induced to sin.

b. Temptation of probation is called active when God tempts man, in order to test his virtue;[307] and it is called passive when God is tempted by men, who intend to take an experiment concerning His perfections. Concerning this last temptation there is speech here, as is clear from the definition.

2. Tempting God arises especially from two vices: a. from infidelity, when someone, doubting concerning some perfection of God, intends to explore it; b. from presumption, when someone rashly (without a cause of necessity or utility) asks or expects from God an extraordinary effect.

From infidelity, if someone, doubting concerning the real presence of Christ in the Eucharist, asks to see Christ hidden under the species. From presumption, if someone, firmly holding the real presence of Christ, asks to see in the consecrated host the divine Child, as several saints saw Him, or if someone for forty days abstains from food and drink while expecting from God the preservation of life. It is clear that in the same fact there can be a diverse intention of the agent.

**172. Division.** A twofold tempting of God is distinguished: formal or explicit, and virtual or interpretative, according as God is tempted with an explicit intention or only with an implicit one, latent in the mode of acting.

a. Formal temptation can happen in two ways: a. when someone intends to explore some perfection of God, as if someone, doubting concerning the power of God, asks from Him a miracle; b. when someone intends to explore the will of God through an extraordinary sign, as if someone casts himself down from a very high tower with the mind of curiously testing whether God wishes to save him. Formal temptation for the most part proceeds from infidelity, although it can also proceed from presumption.

b. Virtual temptation is had if someone indeed does not intend to tempt God, yet does or omits something which of itself demands a miracle, as if someone expects health in a grave illness from God alone, natural means having been passed over, or if someone exposes himself to danger from which he could be freed by God alone through a miracle. Virtual temptation proceeds from presumption, since it is a rash expectation of divine help.

It belongs to the notion of temptation that something be expected from God, and that it be expected rashly from God.

a. It is not tempting God if someone expects nothing from God, which can happen in two ways: a. when someone exposes himself to danger because he wills the danger, as if someone enters a duel in the way in which today men enter it, without expecting, as formerly used to happen, a special intervention of God in favor of the innocent; or if a sick man rejects all medicines, either so that he may die more quickly or so that he may suffer the troubles of the disease. b. When the effect is expected from imprudence or stupidity

**Notes**

306. Jas. 1:13.

307. Deut. 13:3; Tob. 2:12.

contrary to all probability, as if someone without sufficient preparation undergoes an examination, trusting that by some chance he will nevertheless satisfy.

b. It is not tempting God if someone, from a just cause, for example from divine inspiration, or from necessity or great utility, where ordinary means are lacking, expects some effect from God alone. Therefore it is licit to ask a miracle from God from a just cause of necessity or utility, namely for one's own salvation or that of others, or for fulfilling the will of God, and under the condition, if it shall have pleased God. But it is not licit to offer or ask absolutely for a miracle for the conversion of heretics without divine inspiration, because for this end the testimonies of the Christian faith are present and suffice.[308]

c. The judgments of God, commonly ordeals (*Gottesurteile*), which once were in use, such as the trial of fire or water for exploring innocence, are illicit: for in these the sin of interpretative tempting of God is committed by asking a miracle without necessity, wherefore in law they are expressly prohibited.[309] Nevertheless several prelates of the Church and also particular synods approved the use of ordeals. In this matter they must be excused from their good faith and from the circumstances of the times. Yet the supreme pontiffs never approved them, although it must be conceded that the same pontiffs neither immediately reprobated them nor took care severely enough that this abuse be eliminated. But if it is read that God declared the innocence of certain persons through a miracle, this must be explained from the fact that the purgations were chosen by the innocent themselves either from divine instinct or in good faith, or that the innocent were driven by force by others to the purgations.[310]

**173. Its moral malice.** 1. Formal tempting of God is a sin mortal from its whole genus, which does not admit smallness of matter.

a. Formal tempting of God, whether it happens in one way or the other, inflicts grave irreverence upon God, because it is directly opposed to divine wisdom: for he who tempts asks and expects that God by His omnipotence produce an extraordinary effect for a vain and useless end. Therefore Christ answered: Thou shalt not tempt the Lord thy God.[311]

b. If formal tempting of God proceeds from infidelity, a twofold malice concurs: one against faith, which consists in doubting whether God is endowed with some determinate perfection; the other against religion, which consists in the irreverence by which someone demands from God Himself that He prove His perfections.

2. Interpretative tempting of God is a sin grave from its genus, admitting smallness of matter; yet for the most part it is a venial sin. It is a grave sin when someone rashly expects from God a miracle; but if he expects only special help from God from curiosity or levity, it does not seem to be a grave sin, unless there is introduced a danger of grave harm to oneself or another.

Therefore he who without a just cause, in danger of death, natural remedies having been omitted, expects divine help, sins gravely, because it is judged to be grave irreverence in so great a danger to expect health from God without necessity. He who in a slight illness, natural means having been rejected, hopes for health from God, sins only lightly; and he does not sin at all if he hopes that, with God helping, he will be freed naturally from such an illness. In like manner he sins only lightly who, through negligence unprepared, proceeds to a

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**Notes**

308. Cf. 3 Kings 18:23, 24.

309.

c. *cura* 1, *De purgatione vulgari* (V. 35).

310. *Kirchenlexikon*, 2nd ed., "Gottesurteile."

311. Matt. 4:7.

sermon hoping for special help from God; but an untaught cleric would sin gravely if he wished to preach without preparation, hoping that the matter would be suggested to him by God.

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## Article Seventh. On Sacrilege

**174. Notion.** In the broader sense sacrilege is any sin against religion, in which sense also divination, magic, blasphemy, etc., are sacrileges; but strictly and properly sacrilege is defined as: the unworthy treatment of a sacred thing. Therefore sacrilege is committed by any action by which the reverence owed to sacred things is injured.

a. Sacred thing is here taken broadly, so that under this name are comprehended sacred persons, sacred places, and sacred things: for these three are accustomed to be consecrated to God and His worship.

b. That is called a sacred thing which by the authority of God or of the Church has been deputed to divine worship. Therefore a person who by private purpose or vow has dedicated himself to God is not properly called sacred, but only that person who by the public authority of the Church has been consecrated to the worship of God.

c. So that it can be known whether some action is sacrilegious, attention must be given: a. to that for which the thing which is violated has been consecrated; b. whether the action is against that for which the thing has been consecrated. For only those actions committed by a sacred person or against a sacred person are sacrileges which injure him in that in which he is sacred. Thus a priest by fornicating commits sacrilege, because he has been consecrated to God for living chastely; by blaspheming or making himself drunk he does not commit sacrilege, because he has not been consecrated to God for avoiding these sins. Likewise sins, besides those to be enumerated below, which are committed against a priest, such as calumnies and insults, are not sacrileges, because these do not injure the sacred person himself, but his external goods: reputation and honor.

**175. Division of sacrilege.** A threefold sacrilege is distinguished: personal, local, and real, according as there is a threefold genus of sacred things: sacred persons, sacred places, and sacred things.

a. Besides these, however, there is no other sacred thing whose violation constitutes sacrilege, for example time, which is called sacred: for time is not in a special way consecrated to God. Therefore he does not commit sacrilege who sins on a feast day, or in Lent, or on the day of holy communion, nor must there be opened in confession the circumstance of the sacred time at which the sin had been committed.

b. Yet it is admitted that it is a grave sin to exhibit public games on Friday in Parasceve, such as are customarily exhibited on carnival days, especially if this is prohibited by a special law, not because irreverence is inflicted upon sacred time, but because irreverence is inflicted upon the Passion of the Lord and grave scandal is given to the faithful.

**176. Moral and specific malice.** 1. Sacrilege is a sin against religion, grave from its genus: for from the fact that something has been deputed to divine worship, special reverence is owed to it, and if this is injured, the irreverence redounds upon God; but it admits smallness of matter, because the irreverence which is inflicted on things consecrated to God affects God Himself only mediately.

2. Personal, real, and local sacrilege differ from each other in species, because, since there are three diverse genera of sacred things, the virtue of religion is injured by this threefold sacrilege in a morally diverse way.

And indeed all agree in this affirmation; but whether those three species of sacrilege are the lowest species, or whether in each one circumstances must be admitted which change the species of sacrilege, authors do

not agree. Suarez affirms this latter opinion;[312] but to St. Alphonsus, who followed St. Thomas,[313] the denying opinion seems more probable (n. 34). Therefore according to him, he commits the same sacrilege specifically who violates a nun by striking her or by fornicating with her, and he who treats some sacrament or sacred image irreverently. And indeed we can follow this opinion in practice.

**177. On personal sacrilege.** 1. Personal sacrilege is defined as: violation of a sacred person. A twofold consecration of persons must be distinguished: one by which a person through ordination, to which tonsure also is referred, or through admission to the religious state, is deputed to divine worship; the other by which through a public vow of chastity, emitted either in sacred ordination or in religious profession, both solemn and simple, he is consecrated to God for preserving chastity.

2. The actions by which personal sacrilege is committed are three:

a. Violent laying on of hands upon a cleric or religious against the privilege of the canon.

b. Usurpation of jurisdiction over ecclesiastical persons by dragging them to a secular tribunal against the privilege of the forum, or by imposing on them a servile burden, for example of military service or of tribute, against ecclesiastical immunity, unless the Church consents.

c. A sin of lust committed by a person consecrated to God for preserving chastity, against the vow of chastity. Here it must be noted: a. that sacrilege is committed not only by the sacred person, but also by that one who, even if he is not sacred, participates in the sin of lust; wherefore, if this latter person also is sacred, a double sacrilege is committed on both sides; b. that by a sacred person sacrilege is committed not only through external sins, but also through merely internal sins against chastity.

Whether violation of a simple and private vow of chastity is sacrilege. It is certain that that violation is sacrilege in the broader sense; therefore he who violates a private vow of chastity commits a twofold sin, against chastity and against religion. That this violation is sacrilege strictly such must indeed be denied from the definition of a sacred person; yet because to St. Alphonsus (n. 35) it is more probable that sacrilege is committed also through injury of a vow of chastity privately emitted by a person, the affirming opinion can be held in practice as probable.[314]

**178. On local sacrilege.** 1. Local sacrilege is the violation of a sacred place.

a. A sacred place in the strict sense is called that place which by the authority of the Church has been deputed to divine worship, and therefore consecrated or at least blessed. In this sense sacred places are churches, public oratories (not private nor semi-public), and cemeteries. A religious or sacred place in the broader sense is called any place destined by the authority of the Church for a pious and religious use, as the palace of a bishop, a parochial house, a seminary, a monastery, a hospital erected by the authority of the Church which has an oratory for celebrating, etc.

From a sacred and religious place there must be distinguished a pious place, which without the authority and intervention of the Church has been erected for exercising pious works, as a private oratory, a hospital erected by laymen.

b. Because sacrilege is committed by violation of the sanctity and immunity of a sacred place, there must be distinguished the sacred place to which sanctity belongs and the sacred place to which immunity belongs. Sanctity belongs only to a place strictly sacred, and indeed from the ceiling down to the pavement, even if it

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**Notes**

312. Suarez, *De religione*, tr. 3, l. 3, c. 1, n. 8.

313. St. Thomas, II-II, q. 99, a. 3, ad 2.

314. Ballerini-Palmieri, II, n. 386 ff.

is interdicted or polluted; therefore sacrilege because of injured sanctity of a sacred place is committed only within this area. But immunity belongs also to a place sacred in the broader sense, and to a strictly sacred place also in its exterior parts, such as are the portico, sacristy, tower, roof above the church, underground crypt, stairway, and door of the church.

2. The actions by which local sacrilege is committed are these four.

First of all there must be noted the doctrine of those who with de Lugo[315] teach that all sins committed in a sacred place have some notion of sacrilege, because it is against the reverence owed to a sacred place that a place destined for the worship of God be converted into a place of divine offense; but grave sacrilege to be declared in confession is committed especially by those actions which by positive law are prohibited from being done in a church, of which kind are the four following.

a. Sins by which a church is polluted, even if they remain hidden and therefore the church is not in fact polluted.

The sins by which a church (oratory and cemetery) is polluted, if they have become notorious by notoriety of law or of fact, are these five:

a. Unjust shedding of human blood: therefore if blood is shed in a church either by chance or for just defense, it is not polluted. Besides, copious shedding of blood is required, and that the wound at least be inflicted in the church, even if the blood is poured out outside the church. Hence the shedding of human blood which happens, for example, from the nose or teeth because of a slap inflicted, neither pollutes the church nor consequently constitutes sacrilege in the said sense.

b. Unjust homicide, even without shedding of blood: therefore if a just homicide were done in a church, the church would not be polluted; but it suffices that the cause of death be placed in the church, even if death follows outside the church.

c. Illicit effusion of human seed, which can happen either through voluntary pollution, or through fornication, or through conjugal intercourse, which apart from necessity is illicit in a church; but necessity because of the danger of incontinence renders it licit even in a church; therefore by this licit intercourse the church is not polluted.

Other external sins of lust (touches, looks, filthy speech), although grave, probably are not grave sacrileges. But grave internal sins (impure thoughts and desires) certainly are not grave sacrileges, unless there is a desire of an act by which the church is polluted, and this desire is conceived of perpetrating that act within the church.

d. Burial of an excommunicated person, which must be understood of ecclesiastical burial, and indeed of a person specially and by name excommunicated. The burial of others in a sacred place is indeed interdicted, but from this the church or cemetery is not polluted.

e. Burial of a non-baptized person, which must be understood of pagans, Jews, and other unbelievers, whose burial in a sacred place causes that place itself to be polluted. As for the infants of the faithful who die without baptism, probably their burial in a sacred place does not induce its pollution.[316]

f. Profane actions, even indifferent ones, which either by their nature or from the prohibition of the Church are opposed to the sanctity of a sacred place, such as judicial actions and markets, public banquets, theatrical plays, secular parliaments, and generally all those actions, whether illicit or profane, which according to

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**Notes**

315. *De poenit.*, disp. 16, n. 466.

316. Schmalzgrueber, in l. 3, t. 40, n. 47.

the common estimation of men are very unbefitting to the sanctity of the place, such as stabling of horses, evacuations of nature, dances, grave quarrels, etc.

g. To eat something privately in a church, even without necessity, does not exceed venial sin.[317]

h. It is customary to permit that plays which conduce to fostering piety be performed in church, and in like manner literary exercises.

i. Laymann judges that, if it happens without disturbance of the divine offices, it can be permitted, or at least tolerated, that in a cemetery or in the temple itself candles or other things which pertain to the devotion of the people be sold.[318]

j. Theft committed in a sacred place; yet in order that by theft perpetrated in a sacred place grave sacrilege be committed, it is required that the thing taken be grave and be joined by some special bond with the church, and therefore either belong to the church or at least be entrusted to its custody or use.

By law sacrilege is committed by taking away 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;[319] by these words it is significantly said "from a sacred place," not "in a sacred place," so that it may be signified that theft committed in a sacred place is not sacrilege unless the thing taken belongs in some way to the church. Therefore he who in a church steals the purse of a rich man does not commit local sacrilege; but he who steals a sacred thing from a sacred place commits a double sacrilege, real and local.

d. Actions by which the immunity of a sacred place is violated, therefore actions by which the right of asylum is injured.

Ecclesiastical immunity is a privilege by which ecclesiastical things (persons, things, places) are free from certain burdens which are customarily imposed on other things in civil society. Local ecclesiastical immunity comprises the privilege granted to sacred places, by which criminals fleeing thither cannot be dragged out by lay power. This privilege is called the right of asylum. Although civil laws today do not acknowledge the right of asylum, nevertheless the Church does not yield her right unless she has derogated from it by concordats; indeed she inflicts excommunication on all who, by rash daring, order the immunity of ecclesiastical asylum to be violated, or violate it.[320]

Note. By burning or breaking into a sacred place real sacrilege is committed: for the place is injured insofar as it is a sacred thing.

**179. On real sacrilege.** Real sacrilege is committed especially in three ways: a. by treating sacred things unworthily; b. by usurping sacred things unjustly; c. by buying or selling sacred things against the prohibition of the Church, which is the sin of simony.

Sacred things are of two genera: some which are ordered to divine worship by their essence, others which are so ordered only by the dedication of the Church. Of these, some (for example, sacred vessels) are deputed to divine worship by special consecration; others (as ecclesiastical goods) without special consecration. The former serve this end proximately, the latter only remotely. Therefore sacred things are:

1. The sacraments, of which the chief is the sacrament of the Eucharist.

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**Notes**

317. Cf. Lacroix, l. 6, pr. 2, n. 266.

318. Laymann, l. 4, tract. 10, c. 7, n. 9.

319.

c. *Quisquis* 21, c. 17, q. 4.

320. Constit. *Apostolicae sedis*, II, 5.

a. Therefore sacrilege is committed: a. if the sacraments are invalidly confected, unworthily ministered, or unworthily received; b. if the sacred species are not renewed in their time with danger of corruption; c. if the most holy sacrament is left for a longer time (a whole day) without a burning lamp; d. if the most holy Eucharist is touched irreverently, but most of all if it is trampled upon or employed for superstitions; e. if vessels, corporals, etc., very unclean are employed for the sacrifice of the Mass.

b. Although Christ the Lord is really present in the most holy sacrament of the Eucharist, nevertheless the violation of this sacrament is not personal sacrilege, but real, because Christ in this sacrament does not exhibit Himself in His own person, but under inanimate species.[321]

2. Sacred objects: sacred vessels, altars, crosses, images of saints, sacred oils, relics, Sacred Scripture, sacred buildings, and blessed things.

a. Grave sacrilege is committed: a. if sacred vessels which immediately serve for the sacred ministry, and therefore are accustomed to be consecrated or at least blessed, are employed for profane uses, for example chalices for banquets; but to employ for profane uses vessels which serve only mediately in the sacred ministry, such as cruets, a basin, etc., would not be a sin; b. if sacred oils, relics, sacred images are profaned by throwing away the former or by breaking images from contempt, etc.

b. Grave sacrilege is committed if the words of Sacred Scripture are employed for indecent and vain things; it would be venial if they were employed for jokes otherwise honorable. But if the words of Sacred Scripture are not employed for mere jokes, but for expressing one's own meanings by the words of Sacred Scripture, even all fault of irreverence can be absent, especially if the words of Christ the Lord Himself are not usurped and this is not done rather often and as if from custom. Yet one must take care lest a joking meaning be placed under the words of Sacred Scripture which occur in Mass and the divine office, lest an occasion be given for distractions that will arise during prayer. To employ fragments of books in which sacred words are contained for profane uses, if this is done without contempt, is not a profanation of Sacred Scripture and therefore not sacrilege. The same must be said concerning images of saints which are not blessed.[322]

c. It must be noted that no irreverence is committed if bones of meats or shells of eggs which are customarily blessed at Easter time are thrown away, because the blessing does not fall upon the bones or shells, but upon the meats and eggs. Likewise no irreverence is committed if things simply blessed (by an invocative blessing) are applied to profane but nevertheless decent uses, as if blessed candles are employed for having light for study, or holy water for mixing wine, or blessed salt for seasoning foods.[323]

3. Ornaments of the church or of ministers, which are customarily blessed, such as priestly vestments.

a. Sacrilege is committed: a. if these things are treated unworthily from contempt; b. if they are employed for profane uses. But to employ for profane uses those things which are not customarily blessed, for example curtains, candelabra, etc., to employ them for weddings, would not be a sin.

b. Negligence which is committed in cleaning and cleansing altars, images, or sacred utensils, and in cleaning and repairing sacred vestments, will not be mortal unless the sacred vessels are notably unclean or the vestments notably torn.

c. The canons of the ancient law severely prohibit sacred things ever to be employed for profane uses, not even when their form has been changed, for example stones and wood of a demolished church or worn-out

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**Notes**

321. Cf. Lessius, l. 2, c. 45, dub. 3, n. 16.

322. Scavini, *Theologia mor. universa*, 4th ed., Milan: Oliva, 1890, II, n. 130.

323. Cf. Lacroix, l. 6, pr. 1, n. 227.

vestments, but they ought either to be burned or employed for other sacred uses. But by contrary custom it has happened that sacred things, even if before they had been consecrated or blessed, are today licitly employed for profane uses, provided their form is first changed. Therefore stones and wood of a demolished church can be sold, and sacred vessels first melted down and vestments first cut apart can be employed for other uses.[324]

4. Ecclesiastical goods, under which name are counted:

a. Goods both movable and immovable of the Church, which are deputed for the sustenance of ministers, for the fabric of the church, or for other sacred uses; but not the goods of the ministers of the Church themselves.

Yet in order that sacrilege be committed by their theft or unjust detention, it is required that the goods have already passed into the dominion of the Church; therefore a legacy left to the Church is not yet a sacred thing unless it has been handed over to the Church.

b. Goods which pertain to some ecclesiastical institute, such as a monastery, a hospice, etc. For since these goods from the will of the donors are destined to no use except a pious one and have been accepted by the Church for this end, they are counted among sacred things, and their theft, detention, or defrauding is everywhere in law called sacrilege.

**180. Whether it is licit to touch sacred vessels.** a. Consecrated vessels which are destined immediately to contain the most holy Eucharist, likewise corporals and purificators which after sacred use have not yet been washed, only clerics (even of first tonsure) can touch licitly; the same is granted by privilege to regular lay sacristans and to nun sacristans. Therefore this is not licit for secular lay persons without special faculty, but it does not exceed venial sin, and if a cause is present, it is not even venial.

b. Corporals and purificators before use, vessels and ornaments which do not immediately touch the most holy Eucharist, likewise other sacred things (Agnus Dei, relics, etc.), all can touch licitly.

c. Therefore if palls, corporals, and purificators which have already served for sacred use must be washed, their first washing must be done by a sacred person (this is the office of the subdeacon), and the water of the washing must be sent into the sacrarium.

d. Some authors (Lacroix, Suarez, Pasqualigo) probably affirm that the first washing can also be done by inferior clerics, indeed by tonsured clerics.[325]

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## Article Eighth. On Simony

[326]

**181. Definition.** Simony, named from Simon Magus,[327] is defined as: the studious will of buying or selling, for a temporal price, something spiritual or annexed to something spiritual.[328]

a. It is said: *studious*, that is, deliberate will; because for the essence of simony it is not required that the pact be actually completed by mutual consent, but it suffices that it be begun, because there is present the interior

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**Notes**

324. Cf. Gennari, *Consultazioni moral. canon. liturg.*, 2nd ed., Rome: Monitore ecclesiastico, 1901, pr. 2, cons. 33.

325. Cf. St. Alphonsus, l. 6, n. 387.

326. Laymann, l. 4, tract. 10, c. 8; Reuter, pr. II, n. 452-503; Lacroix, l. 3, pr. 1, n. 56-246; Castropalao, tract. 17, disp. 3; A. Leinz, *Die Simonie*, Freiburg: Herder, 1902. Canonists treat simony diffusely throughout.

327. Acts 8:18 ff.

328. St. Thomas, II-II, q. 100, a. 1.

will of one party of making an agreement or of obligating another. *Of buying or selling* signifies any onerous pact by which a spiritual thing is exchanged for a temporal thing. *For a temporal price* signifies not only money, but any temporal good or advantage which is exchanged with a spiritual thing. *Something spiritual or annexed to something spiritual* signifies the matter about which simony turns, which can be either a spiritual thing or a temporal thing annexed to something spiritual.

b. He does not commit simony of itself who gives a spiritual thing for a spiritual thing, or a thing annexed to a spiritual thing for a thing annexed to a spiritual thing; therefore it is not simony to give a Mass for a rosary, a chalice for a ciborium, nor to exchange mutually spiritual things of diverse orders: the application of an indulgence or a dispensation for a sacred relic, because a spiritual thing is not given for a temporal thing. Likewise he does not commit simony of itself who serves a bishop in a spiritual matter, for example as preacher or confessor, with the intention that he may receive a benefice: for a spiritual thing is exchanged for a spiritual thing.

Note. This definition applies only to simony of divine law, not likewise to simony of ecclesiastical law. Simony taken universally can be defined as: a contract concerning something spiritual or annexed to something spiritual, forbidden by law from a regard for religion.

**182. Division of simony.** Three things necessarily concur for simony: matter, pact, and price; wherefore simony is divided in three ways.

1. By reason of matter, into simony of divine (natural) law and of ecclesiastical law. a. Simony of divine law is committed when for a temporal thing a spiritual thing or a thing annexed to a spiritual thing is given; and this simony indeed is evil in itself and therefore prohibited by natural-divine law. b. Simony of ecclesiastical law is committed when a spiritual thing or a thing annexed to a spiritual thing is given for another spiritual thing or thing annexed to a spiritual thing, or when a temporal thing is given for another temporal thing, but each against the prohibition of the Church. But this simony is not evil in itself, but is evil only because it is prohibited by the Church.

It is simony of divine law if money is given for the sacraments, for the sacrifice of the Mass, etc.; it is simony of ecclesiastical law if ecclesiastical benefices are exchanged, or if money is given for blessed oil without the license of the Church. But when the prohibition of the Church has been removed, the exchange or buying and selling of these things is no longer simoniacal.

2. By reason of the pact, simony is divided into mental, conventional, real, and confidential. This division tends especially to this, that the penalties established by law against simony may be explained.

a. Mental simony is committed when a temporal thing is given or offered with the intention of obligating another to give a spiritual thing, or conversely, without any pact externally manifested.

Therefore for mental simony the mere internal proposal of giving a temporal thing for a spiritual thing does not suffice, but it is required that something actually be offered or given with the merely internal will of obligating another to return a spiritual thing, as if a cleric serves a bishop with the intention that a benefice be conferred on him as wages, or if a patron gives a benefice to someone in order to compensate him for services received, yet with no agreement outwardly made. The mere internal proposal of committing simony without any external execution would be purely mental or intentional simony, which the law, as pertaining to the merely internal forum, does not attend to.

b. Conventional simony is made by a pact or agreement of giving or receiving a spiritual thing for a temporal thing, but with the agreement not yet fulfilled from each side. And if the agreement has been fulfilled from neither side by delivery of the thing promised, it is called pure conventional simony; but if it has been fulfilled from either side by at least partial delivery of the thing promised, it is called mixed.

c. Real simony is had when the agreement has been completed from each side by delivery of the thing promised, or at least has begun to be fulfilled, as if, when the spiritual thing has been given, the temporal thing has been received at least in part.

Titius sells Sempronius a benefice for five hundred crowns, but neither the benefice nor the price has thus far been handed over - pure conventional simony. Titius has conferred the sold benefice, but Sempronius has thus far paid nothing of the price - mixed conventional simony. Titius has conferred the sold benefice and Sempronius has already paid either the whole price or at least part of it - real simony.

Concerning confidential simony it will be said below.

3. By reason of the price, it is divided into simony with a gift from the hand, from the tongue, and from service: for the temporal price in law is customarily called a gift.[329] A threefold diverse gift is distinguished: a. a gift from the hand, by which money or any external good which can be appraised by a temporal price is designated, as remission of debt, lending of money, etc.; b. a gift from the tongue, by which any patronage which is exhibited by the tongue or by speaking is designated, as praise, recommendation, intercession, defense, etc., made before another from agreement for a spiritual thing; c. a gift from service, by which any temporal service is designated, as service as a servant, administration of affairs, etc., from a pact of obtaining something spiritual.

Therefore simony is committed on account of a gift from the hand if someone gives another a benefice so that he may remit a debt to him; on account of a gift from the tongue, if someone gives another a benefice so that he may recommend him to a prince; on account of a gift from service, if someone gives another a benefice so that he may instruct the children of the one conferring the benefice.

**183. Moral and specific malice.** 1. Simony of divine law is a sin against religion, grave from its whole genus, which does not admit smallness of matter. Its malice consists in this, that the spiritual and sacred thing is judged to be valued no more highly than a temporal and profane thing, by which reason not only is the spiritual thing treated unworthily, but at the same time injury is inflicted upon God, the author of spiritual things. Therefore there is the precept of Christ concerning supernatural goods: Freely you have received, freely give,[330] and the words of reprobation of St. Peter to Simon Magus: Thy money be with thee unto perdition, because thou hast thought that the gift of God may be possessed by money.[331] That this simony does not admit smallness of matter is clear: for a spiritual thing, however small, is by that very fact despised with the greatest injury to God, that it is equated with a temporal thing.

From these things it is clear that simony is a sin against religion, which is reduced to real sacrilege, although it is specifically distinct from it. Yet because its treatment is lengthy and filled with many difficulties, for the sake of clarity it is customarily set forth apart from sacrilege.

2. Simony of ecclesiastical law is a sin grave from its genus, which admits smallness of matter. This simony is evil because it is prohibited gravely by the Church from a motive of religion, namely for removing the danger of simony and therefore for guarding against irreverence toward sacred things. It admits smallness of matter, because the prohibitions of the Church, unless something else prevents, are accommodated to the matter, so that they are grave in grave matter and light in light matter.

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**Notes**

329.

c. *Sunt nonnulli* 114, c. 1, q. 1.

330. Matt. 10:8.

331. Acts 8:20.

3. Simony of divine law and of ecclesiastical law are sins of the same species, since even simony of ecclesiastical law is a sin against religion and therefore has the nature of true simony: for if the Church, from a motive of some virtue, commands or prohibits anything, by that very fact the thing commanded or prohibited becomes the matter of that virtue or vice on account of which the thing is commanded or prohibited; therefore even simony of ecclesiastical law is a sin against religion.

**184. Matter of simony of divine law** is either something spiritual or something temporal annexed to something spiritual; therefore a twofold matter of simony is distinguished: the one is constituted by things spiritual in themselves, the other by things spiritual through connection.

a. Spiritual is understood as everything which either from itself or from the institution of God or of the Church is ordered to the salvation of the soul, whether as to substance it is a spiritual or a sensible thing.

This spiritual thing is of three genera: a. formally spiritual, which in itself and as to its substance is spiritual, such as sanctifying grace, the gifts of the Holy Spirit, supernatural virtues, graces gratuitously given, etc.; b. causally spiritual, which causes something spiritual, such as the sacraments, sacramentals, prayers both public and private, sermons, etc.; c. effectively spiritual, which is caused by something spiritual, such as acts of the power of order or jurisdiction: consecration, absolution, blessing, dispensation, excommunication, conferral of a benefice, etc.

b. Annexed to a spiritual thing is said of something temporal in itself, which nevertheless either by God or by the Church is annexed to something spiritual (a thing, right, or office).

A temporal thing can be annexed to a spiritual thing in three ways: a. antecedently, if a temporal thing preexists, to which a spiritual thing is then added, as are all things consecrated and blessed (sacred vessels, a temple, blessed oil), a plot of land or building to which the right of patronage adheres; b. consequently, if a temporal thing supposes a spiritual thing as the cause on account of which it is given, such as ecclesiastical benefices (the right of receiving temporal fruits), which are given on account of an office; c. concomitantly, if a temporal thing exists at the same time with a spiritual thing, as bodily labor to be undertaken in sacred functions. But labor annexed to a spiritual work is either intrinsic, when it is joined with the work of itself and necessarily, as the labor necessary in celebrating Mass, in carrying Viaticum, in preaching the word of God; or extrinsic, when it is joined to the work only accidentally, as the trouble which someone must undergo in celebrating with chant, in a distant place, at a determinate hour.

**185. When it is simony to buy or sell a temporal thing annexed to something spiritual.** 1. To buy or sell temporal things consequently annexed to something spiritual, according to the most common opinion, is simony of divine law: for the temporal thing which follows from the spiritual thing as from its root is so conjoined with the spiritual thing that in moral estimation it constitutes one thing with it, and therefore one can in no way be bought or sold without the other by private authority.

Therefore it is not licit to sell the right to the revenues of a benefice, which is founded in the spiritual right to pastoral offices as in its root and cannot be separated from it. Likewise it is not licit to buy or sell the right of living from the goods of a monastery, which is necessarily joined with religious profession, which is spiritual.

2. To buy or sell temporal things concomitantly and intrinsically annexed to something spiritual, according to the most common and true opinion, is simony of divine law: for the temporal thing which is concomitantly and intrinsically annexed to the spiritual thing is not appraisable by a price for the faithful from itself and independently of the spiritual thing; wherefore if it were sold, the spiritual thing itself would be judged to be sold.

Therefore it is not licit to receive something as a price for the labor and fatigue which are joined with the spiritual work of celebrating, preaching, consecrating a church, etc. The external work which is performed

in celebration, administration of a sacrament, etc., is indeed distinct from the spiritual thing, but of itself in this case it has no value. For in order that something be appraisable by a price, that which is laborious to one person ought to be useful to another; but the external work of celebration or administration of a sacrament furnishes no utility to the faithful: for that which they value and seek, and which brings utility to them, is the spiritual thing alone.[332]

3. It is licit to buy or sell temporal things concomitantly and extrinsically annexed to something spiritual: for what is concomitantly and extrinsically annexed can be separated from the sacred thing and therefore appraised by a price and sold independently of the sacred thing.

Therefore it is licit to give and receive money if a priest about to celebrate Mass must undergo the inconvenience of a long journey, or the fatigue of chant, or must remain fasting until noon. It is licit to receive something for sacred relics if to deprive oneself of them involves great inconvenience by reason of special affection.

4. It is licit to buy and sell temporal things antecedently annexed to something spiritual, provided the price is not increased because of the spiritual thing, nor the exchange prohibited by the Church. For the thing antecedently annexed to something spiritual on the one hand retains, after blessing or consecration, its physical value; but on the other hand the connection of the material thing with the spiritual blessing or consecration is not so great that by the intention of buyers and sellers one cannot be separated from the other. But if the price is increased because of the spiritual thing, simony of divine law is committed; and if the prohibition of the Church stands in the way of the sale, simony of ecclesiastical law is committed.

Therefore of itself it is licit to buy and sell blessed wax, sacred relics enclosed in precious cases, sacred vessels, sacred vestments, blessed medals and rosaries: for temporal things (wax, the case, etc.) have their own value, for which a price is licitly paid; but many things of this kind, as will be said below, cannot be bought and sold without simony because of the prohibition of the Church.

Note. Sacred relics, if we wish to speak properly, are themselves material things, to which a spiritual character is added, and therefore things antecedently annexed to something spiritual. But since relics, insofar as they are material, are of no value, they are customarily considered as spiritual things, and only the cases in which the relics are enclosed are held as material things appraisable by a price.

**186. Simony of ecclesiastical law is committed especially in these ways:**

1. To give or receive anything, even small, even spontaneously offered, on the occasion of an examination for parochial care, whether before or after the examination.[333] It is said on the occasion of the examination: for if something is given for the examination itself, namely for a positive mark, simony of divine law is committed.

2. To receive anything, even spontaneously offered, for the conferral of orders, even of first tonsure, for dimissorial letters, testimonial letters, or letters of formatae of the order conferred.[334] Nevertheless it is permitted that bishops receive a candle from those to be ordained, and the emoluments for dimissorial letters (so that orders can be conferred by another bishop) and for testimonial letters or formatae of the order conferred, determined by the sacred congregation by order of Innocent XI (the Innocentian tax).[335]

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**Notes**

332. Cf. *Zeitschrift fur kath. Th.*, XXXIII (1909), p. 480 ff.

333. Council of Trent, sess. 24, c. 18, *De reform.* Although in other cases the smallness of a gift offered (some flowers, a few fruits, moderate things to eat and drink) plainly excuses from the sin of simony, even of divine law, because these small things are not apt to induce an obligation, nevertheless even these are interdicted to examiners in a concursus: for the decree of the council establishes: that they receive absolutely nothing.

334. Council of Trent, sess. 21, c. 1, *De reform.*

335. S. C. C., Oct. 8, 1678.

3. To sell and buy temporal offices canonically instituted, which are ordered to the administration of the temporal things of the Church (of sacristan, cantor, steward, procurator, defender of the church): for these are prohibited to be bought, whether by clerics or by laymen.[336]

But the right of burial in a determinate place can be sold: for by this pact ecclesiastical burial is not judged to be sold, nor the sacred place of burial, but the right of burying another in that place, which indeed is appraisable by a price, and its sale is not prohibited by the Church. Wherefore the practice has long prevailed in the Church that rights of this kind are sold everywhere.

4. To sell a part of a consecrated cemetery, the sale of which, as a thing antecedently annexed to something spiritual, would of itself be licit.

5. To sell blessed oil or sacred chrism even according to physical value, which likewise could be sold licitly of itself as annexed antecedently to something spiritual; nevertheless those churches are excepted in which, against the common law, a custom has prevailed of receiving something for compensating the expenses made for acquiring the material.[337]

6. To receive something for the erection, institution, communication, or aggregation of confraternities, under penalty of nullity of the act if anything is received for them.[338]

7. To commit to another, to be celebrated, a Mass which someone has undertaken to celebrate for a stipend, while part of the stipend has been retained by mutual pact.

8. To sell, expose as saleable, or exchange for another thing crowns, medals, and other things of this kind which are blessed and enriched with indulgences, and which by the very fact of the sale lose the indulgences.[339]

Nevertheless crowns, crosses, etc., do not lose the indulgences if the buyer of them commits to the seller himself the care of the blessing in his own name, even if he pays the price and the expenses of transmission only when the things already blessed are handed over to him.[340]

**187. On a simoniacal pact.** Declarations. a. A simoniacal pact is understood as any contract by which someone intends to obligate another to give a spiritual thing for a temporal price, or conversely.

b. A twofold simoniacal pact is distinguished: explicit, which is expressed by distinct words or signs: I give you one hundred for a canonry; and tacit or implicit, which is contained in some fact, from which, namely, when the circumstances have been considered, it appears that the temporal thing which is given and received is not a mere gift, but is conferred to obligate the other, so that he himself may give the spiritual thing.

So that it can be judged whether something is given with a simoniacal or a liberal mind, attention must be given to these three things: to the quality of the giver, to the quantity of the thing, and to the time of the donation. For if the gift is given by a rich and liberal man, or if the thing is of small price (a few things to eat or drink), or if it is given when necessity or opportunity requires it, it is not judged to have been given simoniacally, but liberally. On the contrary, if someone, at the time when the conferral of a benefice is imminent, should give a precious thing to the patron, although before he was not accustomed to give him gifts, he is judged to have given simoniacally.

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**Notes**

336.

c. *Consulere* 38, *De simonia* (V. 3).

337. S. C. C., Dec. 20, 1879. Cf. *Acta s. sedis*, vol. XIII, p. 180 ff.

338. Constit. *Quaecunque* of Clement VIII, Dec. 8, 1604, nn. 11-12.

339. *Decreta authentica S. C. Indulg.*, Ratisbon: Pustet, 1893, nn. 78, 82, 344. Cf. Fr. Beringer, *Die Ablasse etc.*, 11th ed., Paderborn: Schoningh, 1900, p. 339 ff.

340. S. C. Indulg., July 10, 1896.

Assertions. 1. To constitute true simony, some contract of giving a temporal thing for a spiritual thing, begun at least on one side, is essentially required; but any contract suffices, provided it is truly obligatory.

a. Any burden which is imposed on another suffices for committing simony, even if it obligates only from gratitude or from fidelity, not from justice, provided a new obligation is imposed on another which brings it about that his return is no longer gratuitous, but in some way owed. Hence it is simony if someone gratuitously gives a temporal thing on this condition, that the other likewise gratuitously give a spiritual thing.

b. It is licit to give a temporal thing with the hope of receiving something spiritual, or conversely, by way of gratitude, even if this hope is externally manifested, because in this way no pact is had, because no obligation is imposed, and from the other side no right is acquired.

2. Furthermore it is required that the temporal thing be given as a price, or as just compensation, for the spiritual thing; for otherwise the spiritual is not equated with nor exchanged for the temporal, which is required for the formal nature of simony.

Therefore simony is not committed if the temporal thing is given and received not as the price of the spiritual thing, but from another title, unless even this in a determinate case is prohibited by the Church. Several titles of this kind for giving and receiving a temporal thing for a spiritual thing exist, as will appear from the questions to be solved below; but the chief are: liberal gratitude, sustenance of the minister, poverty to be relieved, external labor, vexation to be redeemed, custom. If there is no other title for giving the temporal thing, in the external forum the temporal thing is presumed to be given as a price; in the internal forum it depends on the intention of the giver whether he has committed simony of divine law, or of ecclesiastical law, or none at all.

3. Simony is committed also when a temporal thing is given for a spiritual thing as a motive, that is, for moving another so that he may confer the spiritual thing, provided nevertheless that he acts with that disposition that he would not give the temporal thing if he knew that the other would not return the spiritual thing: for he who gives the temporal thing with this mind virtually gives it as a price.

4. Likewise simony is committed when a temporal thing is given as gratuitous compensation for a spiritual thing, or conversely,[341] in such a way, namely, that besides the natural obligation of gratitude, under the name of "gratuitous compensation," another obligation is imposed, whether of gratitude or fidelity or justice.

5. Finally, simony is committed when principally, although not solely, a temporal thing is given for a spiritual thing or conversely, because even in this case a true exchange of a spiritual thing with a temporal thing is made.

He commits simony who serves a bishop principally for obtaining a benefice as a thing owed for service, even if he attends upon him from other secondary motives also; but he does not commit simony who serves a bishop principally for conciliating his benevolence and secondarily also for obtaining a benefice, provided he does not intend the benefice as a thing owed for service, but as an effect of mere gratitude.[342]

## On Simony in Beneficiary Matters

**188. Preliminary notions.** a. An ecclesiastical benefice, which is defined as the right of receiving fruits from ecclesiastical goods, is properly annexed consequently to something spiritual; but it is considered together

**Notes**

341. Therefore this proposition (45) was condemned by Innocent XI: "To give a temporal thing for a spiritual thing is not simony when the temporal thing is not given as a price, but only as a motive for conferring or effecting the spiritual thing; or even when the temporal thing is only a gratuitous compensation for the spiritual thing or conversely."

342. Cf. St. Alphonsus, n. 51.

with the office as a spiritual thing, because it is inseparably joined with a spiritual office and is given only on account of the spiritual office, from which it springs forth as from its root.

b. From law it must be recalled that an ecclesiastical benefice is acquired in three ways: a. by election, when a cleric is elected by a chapter, which election must be confirmed by a bishop or by the pope; b. by presentation or nomination, when a cleric is offered by a patron to the superior, by whom he is then instituted as beneficiary; c. by collation or provision, when a benefice is freely given by the superior alone.

By presentation the right to obtain the benefice is acquired. Through installation in the benefice possession of it is taken.

c. Regular prelacies (generalates, provincialates, priorates, guardianates, etc., except nevertheless some abbacies and priorates which because of the goods annexed to them are true benefices) in the matter of simony, and especially in order to incurring penalties, are not comprehended under the name of benefice: for an ecclesiastical benefice in odious matters must be taken in the strict sense; but regular prelacies are rather offices than true benefices. Likewise parishes which have not been canonically erected and therefore are conferred in a revocable manner are by no means benefices properly so called.

Hence if someone gives a temporal thing for election to an office in religion, for example a priorate, he commits simony of divine law; nevertheless simony of ecclesiastical law is not committed if two agree concerning giving suffrage mutually to each other in order to obtain a regular office.

Note. The Church has prohibited every onerous pact especially in beneficiary matter, because, on account of the right of receiving temporal fruits, the danger was present that benefices would be treated as temporal things, and that for money the unworthy would be promoted while the worthy were left aside.

**189. Assertions.** 1. He commits simony who gives or receives something for obtaining in any way some ecclesiastical benefice.

a. He commits simony who gives something to electors for obtaining a vote, to a patron or collator for obtaining presentation, nomination, or confirmation; who gives or receives something for admission into possession of a benefice.

b. It is not simony by prayers to induce a bishop to give a benefice to someone, even if it is given because of the prayers; nor is it simony if someone by prayers obtains from another that he induce the bishop to confer a benefice, neither for him who asks or induces another to ask, nor for him who confers, nor for him who receives the benefice: for prayers do not have the nature of a price, but are ordered only to moving another to do something in favor of another, and no pact intervenes. But it is simony if the bishop says: I will confer the benefice on you if this person asks me, because in this case the prayers have the nature of a temporal price for which the spiritual thing is given.[343]

c. It is not simony if a bishop confers a benefice on someone because of consanguinity or friendship or another temporal cause of this kind, both because no pact intervenes and because the other returns no temporal price, nor does the one conferring have the intention, as is supposed, of obligating him to return anything: for the temporal thing (consanguinity) is only the motive cause of conferring the spiritual thing; but it belongs to the nature of simony that the spiritual thing be given for the temporal thing in compensation for it.

d. It is not simony if a bishop gives a benefice to someone with the intention that he may be able to pay debts which he contracted with the bishop himself, because the bishop does not intend to receive an emolument

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**Notes**

343. Cf. St. Alphonsus, n. 63.

beyond that which is already owed to him, nor does he impose a new obligation for paying the debt; wherefore he confers the benefice entirely gratuitously, unless he enters into a pact concerning the paying of the debt.

e. It is not simony if a bishop confers a benefice on a cleric in recognition of his merits, because the benefice is not given as wages owed, nor does any pact intervene.

2. He commits simony who by a temporal price, whether immediately or mediately, yet directly, prepares for himself the way to obtaining a benefice.

a. He who gives or receives something for procuring intercession for himself with the bishop or patron, so that he may obtain a benefice, commits simony, because by the offering of money he prepares for himself the way to obtaining a benefice. The same must be said if someone gives money to a mediate intercessor, unless the money is given solely for expenses, labor, loss of profit, etc.[344] This buying of intercession in order to obtain a benefice is simony of ecclesiastical law if the price is given independently of the efficacy of the intercession, and is simony of divine law if it is given only for efficacious intercession: for together with the intercession the benefice is also bought, which is a spiritual thing.[345]

b. He commits simony who gives money to a competitor so that he may cease to compete for the benefice: for by the money he prepares for himself the way to obtaining the benefice, since that abstention is not appraisable by a price except because of the spiritual thing which can be obtained through it.[346]

c. He commits simony who wagers with the collator of a benefice, for example for one hundred gold coins, that he will confer the vacant benefice not on himself but on another, if this is done so that the collator, for the sake of winning the money by the wager, may confer the benefice on the one wagering.

3. Simony is committed through any mutually onerous pact concerning benefices entered into without license of the superior, whether concerning a spiritual or a temporal thing.

a. Therefore it is simony: a. to give a benefice to someone with the pact that he undergo a new burden, even a spiritual one, for example of explaining the catechism, assisting the dying, etc.; b. to exchange benefices without license; c. a pact concerning resigning a benefice.

b. If a bishop in the collation of a benefice obligates another to pour forth prayers for him, he does not commit simony of divine law, because a spiritual thing is exchanged with a spiritual thing; but he commits simony of ecclesiastical law, which prohibits every agreement in the matter of benefices as simoniacal.

**190. On confidential simony.** Confidential simony, which has place only in ecclesiastical benefices, consists in this, that someone procures an ecclesiastical benefice for another in any way (by electing, presenting, conferring, resigning, etc.) under a certain confidence, that is, with the obligation that he resign it to himself or to a third person, or pay him from it a pension or part of the fruits. This simony can be mental, conventional, or real. Confidential simony can happen in four ways:

a. With reservation of access, when someone procures a benefice for another by this pact, that he himself or a third person, who here and now because of some impediment (for example, defect of age) is not yet capable of it, when the impediment ceases, may have access to the benefice, because the one for whom the benefice is procured resigns it.

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**Notes**

344. Ballerini-Palmieri, II, n. 439.

345. Lehmkuhl, I, n. 389.

346. St. Alphonsus, n. 103.

b. With reservation of entrance, when someone yields a benefice conferred on himself, before possession has begun, to another by this pact, that after the death of this other or the laying down of the benefice, he himself, the one yielding, can enter into possession of it.

c. With reservation of return, when someone resigns to another a benefice which he already possesses by this pact, that he himself, the one resigning, at a determinate time may receive the benefice or return into possession of it.

d. With reservation of a part, when someone procures a benefice for another by this pact, that he pay to himself or to a third person part of the benefice or of the fruits.

**191. On restitution of a price accepted simoniacally.** The obligation of restitution in this matter can arise both from natural law and from ecclesiastical law. The law of nature obligates to restoring the thing accepted simoniacally only when, besides religion, commutative justice also has been injured; but ecclesiastical law sometimes obligates, as a penalty for the delict, to restoring the thing accepted simoniacally, even if only the virtue of religion and not commutative justice has been injured.

1. If simony was committed with injury of commutative justice, the price accepted simoniacally must be restored before the sentence of the judge: for from injury of commutative justice there arises by natural law an obligation of restoring. But commutative justice is injured: a. if a merely spiritual thing, having no temporal price, is handed over for a price; b. if for a price there is conferred what by office (from justice), and therefore gratuitously, ought to be furnished.

Hence he who accepted a price for a blessing, for the concession of a dispensation, for the consecration of a church, etc., must restore, because these things are merely spiritual. Likewise a parish priest who has accepted something for explaining catechism must restore; likewise a bishop who confers a benefice for a price, because each ought to do this from justice and therefore gratuitously.

2. If simony was committed without injury of commutative justice, the price accepted simoniacally does not have to be restored, unless restitution is imposed by the Church as a penalty for the crime, and then after the sentence of the judge. But restitution is imposed when simony has been committed: a. in beneficiary matter; b. in entrance into religion.

Therefore he who against the laws of the Church sold a blessed rosary enriched with indulgences, or sacred oil, is not bound to restore the price, unless this exceeds the material value of the thing sold, because he did not sin against justice, but only against religion, and the Church in this case does not impose restitution of the price. But he who resigns a benefice to another for money indeed does not injure commutative justice, because the fruits of a benefice are appraisable by a price; yet from the statute of law he must restore the money.

**192. On returning the spiritual thing accepted simoniacally.** a. If the temporal price has either been restored or has not yet been handed over, the spiritual thing, where it exists and can be restored, must be returned, unless the one handing it over yields his right: for dominion over the spiritual thing was transferred under the condition of receiving the temporal price; therefore, when the condition fails, the transfer of dominion fails, wherefore no title for retaining the spiritual thing is present.

b. But if the temporal price has been handed over and has not been restored, the spiritual thing, even if it is of such a kind that it can be restored, does not have to be restored unless restitution is enjoined as a penalty for the crime: for dominion over the spiritual thing has been validly transferred.

Hence he who simoniacally procured for himself relics of the saints or the right of patronage is not bound to give these up, because after the price has been handed over he has acquired dominion over them, and the Church does not enjoin restitution. But he who simoniacally acquired a benefice must both give up the benefice

and restore the fruits received, because the Church, as a penalty for the delict, prevents both him who receives the benefice and him who receives the price from acquiring dominion.

**193. To whom the price must be restored.** If the obligation of restoring arises from injury of commutative justice, the thing must be restored to him who gave it, except in the case of a benefice; but if the obligation of restoring arises from ecclesiastical law alone, restitution must be made according to the disposition of law. But law disposes these things:

a. If the spiritual thing has not yet been handed over, restitution must be made to him who gave the price: for he has suffered the loss.

b. If the thing has already been handed over from each side, in the matter of benefices the price accepted, even if justice has been injured, must be restored to the church in which the benefice is situated; in other matters it must be restored to the poor.

**194. Particular questions concerning simony.**

1. To give another a temporal thing so that he may perform a spiritual thing for his own advantage, for example to give gifts to an adolescent so that he may frequent the sacraments, to give a dowry to a girl so that she may enter a monastery, is not simony; for these have the nature of a donation, although conditional, which imposes on the recipient no obligation of performing the spiritual thing, but intends only to incline his will toward the thing useful to him.

Whether it is simony or not to give these gifts with this intention, that the other is truly obligated to receive the sacraments or to enter religion, is disputed. Those who affirm simony bring as a reason that an exchange intervenes, since the giver acquires the right of demanding that the other perform the spiritual thing, and the recipient contracts the obligation of performing the same thing. Those who deny simony give as a reason that not every pact in this matter constitutes simony of divine law, but only a pact by which a spiritual thing is bought or sold for a temporal thing which is given as a price.[347]

2. To give money to an impious man detaining sacred relics or other sacred things in order to redeem them is not simony, because the price is not given for the sacred thing, but so that it may be rescued from the danger of profanation.

Nevertheless, it is prohibited that the faithful voluntarily buy sacred relics which impious men expose for sale; rather the ordinary must be warned, who will take care that they be recovered opportunely.[348]

3. If of two persons playing, one exposes for the outcome of the game a spiritual thing (a rosary, the hearing of Mass), but the other a temporal thing, simony is not committed, because properly there is not made an equating between the spiritual and the temporal, but one, in place of a temporal thing, offers the execution of a spiritual thing, which the other accepts. Yet a mode of playing of this kind must be dissuaded because of scandal.

In like manner the priest does not sin who offers to a creditor one hundred Masses to be celebrated for him, so that he may remit a debt of one hundred florins.

**195. Whether it is simony to give something so that another may omit a spiritual thing** depends on the action which he omits because of the money.

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**Notes**

347. Cf. St. Alphonsus, n. 59; Ballerini-Palmieri, II, n. 437; Lessius, *De iust.*, l. 2, c. 35, n. 66 s.

348. S. C. Indulg., Dec. 21, 1878.

a. If the omission of the spiritual act involves at the same time the exercise of spiritual power, it is simony. This sometimes has place if an act of ecclesiastical jurisdiction is omitted, for example if he is not absolved who has already confessed or who is bound by a censure: for in this case not to absolve is to retain; therefore a temporal thing is given for the exercise of spiritual power.

b. If the omission of the spiritual act does not involve the exercise of power, but is a mere free omission of an action, even though spiritual, it is not simony, as if someone accepts money so that he may omit to pray, to celebrate, to ordain someone, to give alms, to hear confession, etc.: for free cessation from a work, which is merely the use of free choice, is appraisable by a price. Yet from another reason sin can be committed by acting thus.

c. If an act owed from justice is omitted, as if a parish priest did not hear the confession of his subject or did not proclaim a marriage, Suarez with others excuses from simony, because the omission does not involve an act of spiritual power, but is a mere free non-use of power, which in this case, in which the act is owed from office, certainly is a sin.[349]

**196. Whether it is licit to sell the right of patronage.** In the right of patronage two things must be distinguished: the right to honors and subventions which are owed to patrons, and the right of presenting to a benefice; the former is temporal, the latter spiritual. If the right to honors, etc., is sold, which is consequently annexed to something spiritual, the sin of simony is committed; likewise if the right of presenting is sold, or if the thing to which the right of presenting is affixed is sold at a higher price because of this right, simony is committed. But it is not simony to sell at a just price the thing to which the right of presenting is annexed, which right with the purchased thing is transferred gratuitously to the buyer, just as it is also transferred to another by inheritance and can be transferred by donation. But a transfer of this kind, if it is made by a layman without the license of the bishop, is illicit, yet it is not simoniacal.

**197. Whether it is licit to receive something for the instruction of others in sacred doctrine.** Attention must be given to the good which others take from the instruction.

a. If the instruction is immediately ordered to the spiritual utility alone of others, as a homily, catechesis, spiritual instruction, etc., it is not licit to demand anything except by reason of sustenance, as for sacred functions.

b. If the instruction is not ordered solely to the spiritual good, but at the same time to the temporal good of others, for example to cultivating the mind, to honor, to delight, etc., it is licit to receive something for it. Therefore those can demand and receive something who teach theology, who give doctrinal counsels or solve doubts and difficulties even in a moral matter, although by accident their counsels also conduce to the tranquility of conscience of the hearers.

**198. Whether it is licit to receive something for sacred functions.** a. It is simony to receive something for any sacred functions, for example for the administration of sacraments, a sermon, ecclesiastical burial, as the price of the spiritual work: for the spiritual thing is sold for a temporal price. But it is licit to demand and receive something for sacred functions by way of stipend for suitable sustenance: for those who expend their work for the spiritual utility of others can by divine and human law demand temporal sustenance from them, just as those who expend their labor for the temporal utility of others can do.[350]

Christ willed that the ministers of the altar be sustained from the offerings of the faithful; for this reason Christ

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**Notes**

349. Suarez, l. 4, c. 22, n. 9 ff.; Lacroix, l. 3, pr. 1, n. 175 ff.

350. Luke 10:7; 1 Cor. 9:7-14.

Himself, sending the apostles to preach the Gospel, says: the workman is worthy of his food.[351] But St. Paul demonstrates diffusely the right of the apostles of demanding suitable sustenance and the obligation of the faithful of supplying it to them, appealing to the precept of the Lord.[352]

b. From these things it is now deduced: a. that a stipend for suitable sustenance is owed to sacred ministers from justice; b. that therefore even those who do not need it can demand and receive it: for it does not have the nature of alms, which are given to the needy, but of a stipend owed; c. that a pact can licitly be entered into concerning the stipend and its measure, if it has not been determined by ecclesiastical law or custom: for that which is owed from justice can be brought into a pact.

c. Whether a stipend can be demanded and received not only by the title of sustenance, but also by the title of wages, as a price for the labor necessarily undergone in sacred functions, for example in celebrating, in preaching, is disputed. For while authors commonly deny this (n. 185), some think that labor, although internal to sacred functions and inseparable from them, nevertheless remains a physical action and therefore appraisable by a price, so that it can be bought and sold without simony of divine law. Laymann tries to reconcile both opinions by an apt distinction: for if labor undertaken in spiritual ministries is considered in order to the spiritual work according to its proper and specific nature, nothing can be received for it; but if it is considered in order to the worker according to the generic nature of work and service furnished for the sake of another, it is licit to receive wages for it.[353]

d. Several affirm that to demand for Mass or for other sacred functions a stipend greater than is just, or to receive a stipend against the usage and law of the Church, is simony, because the excess is judged to be demanded for the spiritual thing, since another title of demanding more is lacking.[354] But, excluding the depraved intention of receiving a temporal thing for a spiritual thing, it cannot be affirmed that simony is committed in this case: for to demand more for owed sustenance than can licitly be demanded will be a vice of avarice and injustice, but, when that depraved will is excluded, simony is not committed.

e. He who demands a stipend for an office owed from justice, as if a parish priest demands something for a sermon or for the administration of the sacraments, likewise does not commit simony, if the simoniacal mind is excluded, but sins only against justice. But where the custom is in force that something be received even for ministry owed from office, for example for the administration of baptism, it can be retained; yet three things must be guarded against: a. lest in demanding those stipends an appearance of avarice appear; b. lest more be demanded than has been determined by law or custom; c. lest the sacred ministries be denied to those not paying.

f. Where a stipend can be demanded for a sacred function, it is also licit to perform the sacred function from the intention of receiving the stipend; indeed it would not be simony to perform sacred things principally because of the stipend, so that they would not be done unless a stipend were given: for the sacred thing is not sold for the stipend, but in performing the sacred act, not the honor of God, but primarily one's own utility is intended, which is not simoniacal.

**199. Whether it is licit to receive something for entrance into religion.** a. It is clear that the religious state is a spiritual thing: for it is ordered to the salvation of the soul; therefore it is not licit for a monastery to receive anything as if a price for the admission itself to the novitiate or to religious profession: for a spiritual thing would be sold.

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**Notes**

351. Matt. 10:10.

352. 1 Cor. 9:4-14.

353. Laymann, l. 4, tr. 10, c. 8, n. 42.

354. Cf. Gury-Ballerini, ad n. 292.

b. It is licit for a poor monastery, both of men and of women, to demand something from those entering for sustenance, because thus the spiritual is not exchanged with the temporal; moreover equity demands that something be received, lest the monastery collapse.

c. It is licit for a monastery, both wealthy and poor, to demand something for sustenance during the time of novitiate,[355] unless it has been prohibited by a special decree (as for the Friars Minor), both because novices do not yet pertain to the religion, and because they can depart at will and often in fact do depart.

d. If the monastery is wealthy, as regards nuns indeed the Church indiscriminately permits that some dowry be received, because experience establishes that monasteries of nuns, even wealthy ones, are more frequently liable to misfortunes. Yet they must beware lest unsuitable persons be received because of the dowry, which would be simoniacal.

e. It is not licit for a wealthy monastery of men to demand anything for the sustenance of the religious themselves. Whether it is always simony, and whether it is simony of divine or ecclesiastical law, if a rich monastery on the occasion of profession demands something for sustenance, is disputed.[356] It does not seem that simony of divine law is committed if the money is demanded not for entrance, but by reason of sustenance.

**200. Whether it is licit to give something for redeeming unjust vexation,** namely lest someone be impeded in obtaining a spiritual thing, for example a benefice or another spiritual good. If it is given for removing the unjust vexation itself, it is not simony: for the removal of vexation or liberation from injury is something temporal and appraisable by a price; but if it is given for procuring or confirming for oneself some right to a spiritual thing, it is simony: for by this reason a way is directly prepared for obtaining the spiritual thing, which is simoniacal.

a. It is said: unjust vexation: for to remove a just vexation by money, for example an accusation concerning a crime which renders one unfit for a benefice, is simony: for he who tries to redeem a just vexation has no right to the spiritual thing; therefore by removing the vexation he is judged to buy the right to the spiritual thing, which is simoniacal.

b. Therefore it is licit to give money to a priest who without it would not wish to administer the sacraments, provided there is a grave reason for receiving the sacraments, for example for fulfilling the paschal precept, because without a grave cause it is not licit to permit the sin of another.[357]

Note. So that in the matter of benefices it can be discerned whether he who redeems an unjust vexation commits simony, this must be noted. Unjust vexation either turns about a right already acquired to a spiritual thing, or about a right to be acquired; if this latter, the unjust vexation proceeds either from him who can confer the right, or from him who can only harm, but can in no way confer the right. Therefore:

a. To remove by money an unjust vexation which turns about a right already acquired to a spiritual thing is not simony, because a temporal thing is given for a temporal thing, namely for the removal itself of the vexation.

b. To remove by money an unjust vexation which turns about a right to be acquired is not simony if the one unjustly vexing can only harm, for example by defaming before the bishop, because the money is given only for removing the injury.

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**Notes**

355. Council of Trent, sess. 25, c. 16, *De regular.*

356. Cf. St. Alphonsus, n. 92; Lehmkuhl, II, n. 958.

357. St. Alphonsus, n. 103.

c. To remove by money an unjust vexation which turns about a right to be acquired is simony if the one unjustly vexing can not only harm but also assist, as if he is an elector or patron, because the one removing the vexation in this case directly, although mediately, prepares for himself the way to obtaining the spiritual thing: for he gives money so that he may be elected or presented.

Several other questions, as well as the penalties laid upon simoniacs, since they are intimately connected with beneficiary matter, can be consulted among the canonists.

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# Book Second. On the Second Precept of the Decalogue

"Thou shalt not take the name of the Lord thy God in vain."

Ex. 20:7.

The second precept of the Decalogue, insofar as it is affirmative, commands that honor be exhibited to the name of God; and insofar as it is negative, prohibits every irreverence toward the most holy name of God. Now the divine name is honored: a. by reverent pronunciation; it is dishonored by vain assumption; b. it is honored by invocation and praise; it is dishonored by blasphemy; c. it is honored by vow; it is dishonored by violation of a vow; d. it is honored by oath; it is dishonored by perjury and illicit adjuration.

## Question First. On the Vain Assumption of the Name of God

**201. Notion and malice.** 1. He is said to take the divine name in vain who usurps the name of God without due reverence.

a. This vain assumption of the divine name proceeds: a. from impatience and indignation: My God, how greatly these are troublesome! or b. from admiration: My God, Jesus, Mary, who would have said this! My God, what are you saying! or c. from mere custom.

b. What is affirmed concerning the name of God must, with proportion preserved, also be said concerning the vain and useless usurpation of the names of saints or of sacred things: for irreverence inflicted upon saints and sacred things redounds upon God.

2. Vain usurpation of the name of God is a venial sin against the virtue of religion: for this virtue demands that the name of God, on account of the special relation which the name has to God Himself, be uttered only from a reasonable end and with due reverence. Hence Sacred Scripture warns: Let not the naming of God be constant in thy mouth.[358] Nevertheless it does not exceed venial sin, because, since it does not contain insult, it does not bring grave irreverence.

Wherefore without doubt they offend venially who are accustomed to utter the most holy names at nearly every word, at jokes, and at vain things of this kind; nevertheless because of inadvertence there is often no sin.

3. To use frequently and uselessly the name of the demon, although it is not a sin, is nevertheless very unbecoming, especially in clerics and religious: for the name of the most hostile enemy of God and of the faithful is not to be continually uttered by a Christian man.

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**Notes**

358. Ecclus. 23:10.

# Question Second. On Blasphemy

## Article First. On Blasphemy Itself

**202. Definition of blasphemy.** Etymologically, blasphemy signifies insulting speech;[359] but from common use it signifies insulting speech against God.

a. It is said *speech*, because blasphemy is ordinarily committed by words, although it can also be committed by thought or deed; *insulting*: for blasphemy properly consists in this, that by a word something is done by which divine majesty and excellence is dishonored; *against God*, either immediately or mediately, insofar as God is dishonored in saints or sacred things. For insulting words against saints or sacred things are blasphemies insofar as they redound upon God and thus injure the honor owed to God: for just as the worship of saints and sacred things redounds upon God, so also does the dishonoring of them.

b. Only blasphemy committed by words is blasphemy properly so called; blasphemy committed by deeds alone (to spit toward heaven, to make a fist at God, to trample a crucifix) is improperly called blasphemy; wherefore this is not judged to be reserved wherever blasphemy would be a reserved case. For blasphemy properly is a vice of the tongue: for it is directly opposed to praise, which is exhibited by words; but a written word suffices for committing blasphemy properly so called.[360]

**203. Division.** Blasphemy is divided: a. by reason of the sense of the words, into heretical, imprecatory, and reproachful (simple), according as the blasphemous words contain heresy (God is a tyrant), or an imprecation by which evil is wished to God (May God perish, cursed be God), or a mere reproach by which something is uttered insultingly concerning God (Ah, thou who destroyest the temple of God and in three days rebuildest it, save thyself).[361]

b. By reason of the object or term, into immediate, which dishonors God in Himself, and mediate, which dishonors God in creatures which have a special relation to God, such as saints and sacred things.

c. By reason of intention, into direct (diabolical), which is done with the intention of dishonoring God, and into indirect, which is not done with the intention of dishonoring God, yet with advertence that contempt of God is contained in the words or deeds.

d. By reason of mode, into verbal and real, according as it is committed by words or deeds.

**204. Malice.** 1. Blasphemy is a sin grave from its whole genus: for any blasphemy, even that which is directed against saints, is an insult inflicted upon God; but any insult inflicted upon the supreme majesty is grave. Therefore Sacred Scripture says: The man who shall curse his God shall bear his sin; and he who shall blaspheme the name of the Lord, dying let him die.[362]

a. Yet not rarely blasphemies are either no sin or only venial sin, namely when blasphemous words are uttered either without any advertence or with only light advertence, which ordinarily happens to those who blaspheme in the heat of some passion, for example anger, unless the anger is borne against God Himself or the saints. But defect of advertence does not excuse him from grave sin who neglects to amend a depraved custom of blaspheming.

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**Notes**

359. Blasphemy, considered as to the origin of the word (*blapto* = I injure, *pheme* = fame), signifies injury of fame, which, if it is committed against men, is insult; if it is committed against God, is blasphemy.

360. Cf. Suarez, *De religione*, tract. 3, l. 1, c. 4, n. 1 ff.

361. Matt. 27:40.

362. Lev. 24:15-16.

b. Expressions which are uttered against saints, not as they are saints and have a special relation to God, but as they were men living here on earth, as if Saints Crispin and Crispinian are called vile shoemakers, St. Peter is said to be bald, St. Charles Borromeo to have a nose, are not blasphemies: for no abuse is uttered against God if someone speaks about the natural defects of men, even of the friends of God. But if this is done from jest, it is a venial sin; if from contempt, a grave sin against dulia.

2. The three blasphemies, heretical, imprecatory, and simple, differ from one another in species, because to the violation of religion there is added the injury of another virtue also: for simple blasphemy is opposed to religion alone, heretical blasphemy moreover to faith, and imprecatory blasphemy to charity; wherefore these must be distinguished in confession.

3. Blasphemies in the reason of blasphemy are all of the same species: for all are opposed to the same virtue of religion, which they do not injure in an essentially diverse mode. Wherefore it suffices in confession to say: I have gravely blasphemed so many times.[363]

**205. Conditions required for blasphemy.** Therefore for committing the sin of blasphemy two things are required: that blasphemous words be uttered, and indeed with advertence that they contain dishonoring of God.

a. Therefore he who in anger and indignation against men or beasts utters words or sacred names which do not contain dishonoring of God, such as *Himmel*, *Herrgott*, *Kruzifix*, *Sakrament*, does not properly blaspheme, but sins venially by vain usurpation of the name of God or of sacred things, provided the indignation is not borne against God. Yet because of an erroneous conscience there can be grave sin.

b. He who from anger and indignation against men or beasts utters blasphemous words, without attending to the injury and dishonoring of God, does not commit formal blasphemy. For the most part, blasphemies which are uttered without advertence happen from custom. Now what kind of sin blasphemy uttered from a depraved custom of blaspheming is has been said elsewhere.[364]

c. Therefore he who in anger and indignation utters blasphemous words, whether for demonstrating anger, or for frightening children, or for spurring horses, not indeed with the mind of dishonoring God, but nevertheless adverting to the irreverence which is contained in those words, commits the sin of blasphemy.

**206. Which formulas are blasphemous.** For discerning blasphemous expressions from those which are not blasphemous, these rules must be attended to:

1. Words are judged blasphemous which from their proper signification, or from common acceptance, or from the mode in which they are uttered, for example ironically or with contempt, contain dishonoring of God.

a. For it can happen that words which of themselves are not blasphemous are grave blasphemies from common estimation; therefore one must carefully consider what expressions in a certain region are commonly held as blasphemous: for in nearly individual regions there are certain formulas which are held by all as blasphemous, whose assumption there therefore dishonors God, although etymologically they are not insulting, which authors from France and Belgium affirm concerning the formula: *sacre nom de Dieu*.[365]

b. Likewise it can happen that words which of themselves are blasphemous are not formal blasphemies, because from common estimation they are not held as insulting. Thus the French formula *Mille nom de Dieu* and the German formulas *Tausend Sakrament*, *Tausend Herr Gott* of themselves contain heretical blasphemy; yet those who use these formulas neither intend nor know the heresy latent in them. Wherefore by these

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**Notes**

363. Cf. Ballerini-Palmieri, II, n. 518; Lugo, *De poenitentia*, disp. 16, n. 178 s.

364. Cf. *De principiis*, 7th ed., n. 85.

365. Cf. Genicot, I, n. 293.

words, which for the most part are uttered from admiration, ordinarily nothing is committed except venial irreverence of vain assumption of a sacred name.

2. Expressions which have an incomplete sense, and in like manner corrupted and halved words, are not blasphemies, unless in some region from common apprehension they are held as insulting.

3. In doubt concerning the signification of words, attention must be given to the intention and affection of the speaker: for in sins of words it seems that especially this must be considered, from what affection someone utters the words;[366] and while doubt remains, they must not be held as blasphemous.

To say: God has plainly forgotten me; why did God create me? if God existed, these things would not happen to me, is blasphemy, unless they are uttered, as often happens, only for showing the gravity of sorrow or from mere levity. God unjustly weighs me down with tribulations; God unjustly allows the wicked to be happy in the world, is heretical blasphemy if they are uttered seriously and advertently. *Bei Gott, beim Sakrament* is not blasphemy, but rather a formula of oath, and therefore the venial sin of vain assumption of the name of God. *Herrgott Sakrament* is not blasphemy, because it does not have a perfect sense nor contain contempt, but it is a venial irreverence toward God and the sacraments, unless it is said with indignation and contempt against God. *Sakramentspfaff*, *Sakraments-schelm*, *Sakramentsvieh* are blasphemous, since because of the contemptible name added they contain contempt of the sacraments. May the blood of Christ destroy you seems to some a mere imprecation, but to others also a blasphemy, because it also falls into contempt of God.

**207. In how many ways blasphemy is committed.** The sin of blasphemy can be committed especially in five ways:

a. If something is attributed to God which is repugnant to Him, as God is cruel; or if something is denied to God which belongs to Him, as God is not omniscient.

b. If there is attributed to a creature what belongs to God alone, as if someone were to say: I can do this as well as God; for by that very fact a divine perfection as proper to God alone is denied, and thus injury is brought upon God.[367]

In this way those blaspheme who swear by false gods; likewise insane lovers who call the beloved person a goddess, their every and only good, their beatitude, if indeed they speak in this way seriously and not by a certain exaggeration.

c. If true things indeed are said about God, but irreverently and with contempt.

d. If, with anger against God, divine or sacred things (sacraments, the blood of Christ, the holy cross) are named, or if the same are uttered with a contemptible name added.

e. If insulting words are said against the Blessed Virgin or against the saints, insofar as they are saints and friends of God.

To utter the name of God or of sacred things in the heat of anger against men or irrational creatures is not blasphemy, unless it is done with indignation or contempt toward God.

## Article Second. On Curses

**208.** To curse properly is to imprecate evil upon another. Therefore curses uttered against creatures are blasphemies when the curses redound upon God. But curses uttered against creatures redound upon God when

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**Notes**

366. St. Thomas, II-II, q. 72, a. 2.

367. Cf. Lehmkuhl, I, n. 368.

they are cursed insofar as they have a relation to God, that is, insofar as they are the work of God or insofar as they are sent by God. Therefore:

1. To curse saints or sacred things, for example the sacraments of the Church, or to speak malevolently about some saint, ordinarily is blasphemy, because in these there is ordinarily had and apprehended a relation to God.

2. To curse creatures lacking reason, for example winds, rain, hail, animals, ordinarily is not blasphemy, because their relation to God is not apprehended; ordinarily therefore it is a light sin of anger and impatience. And if there is an honorable end of cursing creatures, there is no sin, as David cursed the mountains of Gilboa, Job and Jeremiah the hour of birth, and the psalmist cursed sinners in the imprecatory psalms.

Yet if the relation of irrational creatures, for example animals, to men is regarded, a sin against charity is committed, because the evil which is wished to them is in reality wished to the man to whom they are useful.

3. To curse rational creatures ordinarily is opposed only to charity, because their relation to God is ordinarily not apprehended. This sin rather often is venial, either because of smallness of matter or because of defect of serious will, for example in him who in great anger curses his neighbor.

These curses: May God damn me; may the devil take you, are blasphemies if they are uttered against the creature insofar as it has been made by God or bears before itself the likeness of God; but ordinarily he who utters an imprecation of this kind does not attend to the respect which the creature has to God.

4. To curse the devil, with anger, impatience, or another defect excluded, is not a sin: for he is not customarily cursed insofar as he is a creature of God, but insofar as he is the hostile enemy of God and of men and the author of so many and so great evils.

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# Question Third. On Vow

[368]

## Article First. On the Nature of Vow

**209. Nature of vow.** 1. A vow is defined: a promise made to God concerning a better good. Two things are required for a valid vow: the will of vowing and suitable matter.

a. A promise is the will of obligating oneself to doing or omitting something, and accordingly it introduces a true obligation. Wherefore a vow differs from a resolution conceived before God, which is the will of doing or omitting something, and therefore introduces no obligation. Hence omission of a resolution is not of itself a sin; but because of the motive of negligence or weariness on account of which it is omitted, it can accidentally be a venial sin.

b. It is of the essence of a vow that it be a promise made to God Himself; if some vow is made to saints, it is ordinarily to be understood that it is made to God in honor of the saints. But if someone vows only to a saint and in no way intends to promise anything to God, he does not make a vow properly so called, which by its nature is an act of latria, but elicits an act of dulia or hyperdulia (n. 136).

c. The faithful not rarely doubt whether they conceived a resolution or made a vow. In order that their doubt may be solved, it is not enough to attend to the word which they used: for even the word *I promise* often

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**Notes**

368. St. Thomas, II-II, q. 88, a. 1-12. St. Alphonsus, l. 3, n. 194-262. Suarez, *De religione*, tr. 6, l. 1-6. Thom. Sanchez, *In praecepta decalogi*, l. 4, c. 1-56. Lessius, *De iustitia et iure*, l. 2, c. 40. Th. Bouquillon, *De virtute religionis* (Bruges: Beyaert, 1880), pars II. I. Wirthmuller, *Die mor. Tugend der Religion* (Freiburg: Herder, 1881), p. 538 ff. Io. Reuter, *Theologia moralis*, pr. II, tr. 4. C. Kirchberg, *De voti natura, obligatione, honestate etc.* (Monasterii: Aschendorff, 1897).

expresses only a resolution; but, according to St. Alphonsus, they are to be asked "whether then, when they made the vow, they thought that they would have sinned gravely or not, if afterward they had not satisfied it."[369] If the matter remains doubtful, it must be resolved that they made a resolution, because the obligation is not established.

d. For the value of a vow its acceptance on the part of God is required, for it is of the nature of a promise that it be accepted by him to whom the promise is made. But God at once accepts all promises made to Him which do not lack the due conditions: for unless God accepted promises made to Him, sacred Scripture would not urge the obligation of fulfilling the things which have been promised to God.[370]

2. A vow is an act of the virtue of religion, and indeed of latria: for by vow man offers a good work to God in order to honor and worship Him; but an act which is ordered to worship to be exhibited to God is an act of latria. And just as a vow is an act of the virtue of religion, so also the fulfillment of a vow pertains to the same virtue. Therefore a work furnished from vow has a twofold moral goodness.

The moral value of a vow is clear not only from this, that sacred Scripture exhorts to fulfillment of a vow (the places cited) and reports the example of St. Paul, who had made a vow,[371] but also from the very nature of the thing: for a. works done from vow, beyond the goodness which they have from the object, put on the value of an oblation made to God and the merit of the virtue of religion; b. the one vowing offers a greater subjection toward God and a more perfect oblation; for by vow he obligates himself toward God and offers to God not only the thing promised in act, but through the obligation his very will; c. the tendency of the will into the good becomes more serious and firm through a vow; d. but if the execution of the vow is entangled with difficulties, not only is the fickle will strengthened, but in addition there is offered to the one vowing an occasion of showing fidelity and love toward God.[372]

**210. Division of vow.** A vow is divided in many ways:

1. Into a private vow, which is made by the one vowing alone without the intervention of the Church, and a public vow, which is made by the authority and intervention of the Church.[373]

2. A public vow is either solemn or simple, according as the Church by her authority accepts and confirms it as such, or accepts it not as solemn but only as simple; but before God each vow obligates essentially in the same way.

a. Solemn vows are: the vow of chastity made in the ordination of the subdiaconate, and the substantial vows which are made in religious orders, to which in some orders other solemn vows (accidental vows) are added; all remaining vows are always simple.

b. There is a celebrated controversy about what that is by which a solemn vow is constituted and differs from a simple one. It is certain that the solemnity of a vow has been constituted by the Church; therefore solemnity belongs to a vow not from its own nature but from ecclesiastical law. Moreover it seems certain that in the solemn vow itself, from the will of the Church, there is something which is not found in a simple vow. Each vow, solemn and simple, consists essentially in the handing over of the one vowing made to God and the Church, and in acceptance on the part of the Church. Now the specific note added by the Church to

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**Notes**

369. *Praxis confess.*, c. 2, n. 25.

370. Cf. Eccl. 5:3, 4; Num. 30:3 ff.; Deut. 23:21.

371. Cf. Acts 18:18; 21:23 ff.

372. Cf. St. Thomas, II-II, q. 88, a. 6.

373. A public vow is sometimes defined in such a way that it is a manifest vow and is opposed not to private but to hidden. From this it is clear that a simple vow, which is opposed to solemn, according to the diverse definition of public, can be public and not public. Thus simple vows which are made in regular orders before profession are public (not private), because they are accepted by the Church; they are not public, because they are not manifest.

a solemn vow consists in such a handing over and acceptance as is of itself perpetual and irrevocable on each side, and which renders the one vowing incapable of certain acts contrary to the vows (of marriage, of possession, of contracting), unless the Church dispenses. Nor nevertheless is this note external to the vow, since the one vowing himself, from the will of the Church, consents that from his vow there follow both the aforesaid incapacities and a bond between himself and the Church or religious order which is indissoluble by the ordinary way.[374]

3. Into a personal vow, if some action of the one vowing himself, or omission of an action, is promised, as a vow of making a pilgrimage or of fasting; and a real vow, if directly some thing external to the one vowing is promised, but an action only so far as it is required for furnishing the thing, as a vow of giving alms; and a mixed vow, if each is promised at the same time, as a vow of making a pilgrimage and offering a candle.

4. Into a determinate vow, if the thing promised is accurately designated: *I vow abstinence*; and a disjunctive vow, if from several things proposed one thing to be furnished is promised, which can be determined at will: *I vow fasting or alms*.

5. Into a reserved and non-reserved vow, according as the power of dispensing or commuting belongs to the supreme pontiff alone, or also to other superiors.

6. Into a temporal and perpetual vow, according as it is promised to be observed only for a certain time or through the whole of life.

7. Into an express vow, if the internal promise is declared outwardly by words or other signs, as commonly happens; and a tacit vow, if the internal promise itself is not expressed outwardly, but nevertheless an action is knowingly posited to which a vow is annexed: thus the vow of chastity is made in reception of the subdiaconate.

An implicit vow must be distinguished from a tacit vow; thus he who vows religion implicitly vows chastity. An implicit vow differs from a tacit one in this, that an implicit vow is contained in that which is explicitly promised; a tacit vow is not contained in the action to which it is annexed, but the external action shows that a vow has been made interiorly.

8. Into a singular vow, which is made by a physical person, and a common vow, which is made by a moral person or by a community.

This division is taken from the subject making the vow, which in a common vow is the community as such, not the individual persons of the community.

9. Into an absolute and conditioned vow, according as something is promised simply or under a condition. A conditioned vow is divided into penal, if under the condition of fault a penalty to be inflicted is promised: *if I blaspheme again, kneeling I shall recite the rosary*; and non-penal, if something is promised merely under a condition: *if I recover health, I shall undertake a pious pilgrimage*.

## Article Second. On the Conditions Required for a Vow

For vowing validly, some conditions are required on the part of the one vowing, others on the part of the matter.

**211.** On the part of the one vowing, for the essence and value of a vow there is required intention, deliberation, and perfect liberty.

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**Notes**

374. Cf. Sanchez, *In praecepta decal.*, l. 5, c. 1; Ballerini-Palmieri, II, n. 603; Lehmkuhl, I^11, n. 647.

Once these conditions have been declared, it will be clear that anyone who has reason and is not prohibited by positive law can vow. Therefore vows made after the completion of the seventh year are of themselves judged valid. Religious vows cannot validly be made before the sixteenth year of age, because before that time they are declared invalid by positive law.

1. Intention, or the will of promising and obligating oneself, is required, because each will pertains to a true promise.

a. A fictitious vow, or one made without the will of promising or of obligating oneself, is null; but a vow made with the mind of obligating oneself, but not of fulfilling it, is valid, but gravely or lightly illicit according to the nature of the matter.

b. The will of vowing or promising can indeed be distinguished by reason from the will of obligating oneself: for obligation is the essential and necessary effect of a promise; nevertheless, for this very reason, it is impossible that someone will to promise and not will to obligate himself.

**212.** 2. Perfect deliberation, namely that consideration of the thing and of the obligation which is required for a truly and perfectly human act: for no one is judged to obligate himself without sufficient deliberation. And this deliberation indeed is required for every vow, whether its matter is grave or light: for in every vow an obligation is undertaken; but for an obligation to be undertaken voluntarily there is required an act of mind and will that is perfectly human.

a. Therefore the vow of a child not yet perfectly in possession of reason is not valid even under light obligation, nor that of a man half-asleep or half-drunk. Nor is a vow made with complete ignorance or with only half-full knowledge of the obligation which it introduces valid; nor a vow made with only confused or general knowledge of some burden which is assumed. Nevertheless, in order that a vow be valid, consideration of the thing promised as to all its circumstances is not required, but knowledge of it as to its substance is sufficient.

b. In order that a vow be valid, prolonged and mature deliberation is not required. From defect of mature deliberation it not rarely happens that a vow is made imprudently; an inconsideration of this kind in making a vow furnishes a cause of dispensation or commutation, but it does not render the vow invalid.

c. If it is doubtful whether a vow was made with full deliberation, the vow does not obligate, since a doubtful obligation is none. But where the fact of the vow made is established, defect of full deliberation is not easily to be admitted.

**213. On a vow made from error.** a. It is not valid if the error is substantial, that is, either concerning the substance of the thing promised or concerning a substantial circumstance which, if it had been known, would have impeded the vow: for error of this kind removes the will of vowing, since there is no will where there is no knowledge. But it is valid if the error is accidental, that is, concerning an accidental circumstance which, if it had been known, nevertheless would not have impeded the vow: for error of this kind does not remove the will of vowing.

Therefore invalid is the vow by which someone promises to offer a chalice which he thinks is of copper, when it is of gold; by which someone promises a pilgrimage to a sanctuary which he thought was two hours distant, but is eight. But valid is the vow by which someone promises a pilgrimage to a place which he thought was three hours distant, but is four.

b. It is not valid if the error concerns the final or motive cause, because when the final cause is lacking, consent is lacking; but it is valid if the error concerns only an impulsive cause, namely one without which the vow would nevertheless be made, because full consent is present.

If someone promised a pilgrimage on account of health restored to his father, whom he later knows never to have been ill, he is bound to nothing. - If someone promised to go to a sanctuary primarily for honoring the Blessed Virgin, secondarily for visiting a friend there, he is bound to go, even if, at the time at which he promised this, the friend had already left that place.

c. Religious vows, however, are always valid, unless error bears upon the substance of the vows: for in making religious vows each person ought to have that intention which the religious state demands; but this demands that the one vowing will his vow to be valid, even if he is ignorant of some circumstance; for otherwise the religious state would not have that firmness which by its nature it ought to have.

**214.** 3. Perfect liberty, or free consent of the will, by which the one vowing wills himself to be obligated toward God to doing or omitting something.

**On a vow made from fear.** A vow made from fear which disturbs the use of reason, and therefore impedes the necessary deliberation, is not valid; but supposing the necessary deliberation, which even grave fear ordinarily does not impede,[375] these things are to be stated:

a. A vow made is valid: alpha. from grave fear which has arisen from an internal cause or from an external necessary cause; therefore a vow made in danger of life, whether from illness or from shipwreck, is valid, because the vow is freely chosen for escaping the imminent danger; beta. from grave fear which has arisen from an external free and just cause, as if one guilty of a crime must be subjected to a penalty unless he makes a determinate vow; gamma. from grave fear which has been impressed by an external free and unjust cause, but not for extorting a vow; therefore he is held by the vow who, in fear of death which robbers threaten, vows a pilgrimage if he should escape.

b. A vow made from grave fear which has been impressed by a free and unjust cause for extorting a vow is not valid, not only by ecclesiastical law, which in this case declares vows (at least solemn ones) void,[376] but also by the law of nature, not indeed because of defect of consent, but because God does not accept a coerced vow of this kind: for God cannot accept a promise which is extorted by unjust force, lest He seem to approve the injury inflicted upon the one vowing.[377]

There are those who probably extend this same thing even to light fear; and indeed the reason in each case is the same, provided it is established that fear was the true and sole cause of vowing. Therefore the vow of entering religion made by a girl is not valid, on the ground that her parents induced her to such a vow by importunate admonitions.

**215.** On the part of the matter, for the value of a vow it is required that it be possible, honorable, and concerning a better good.

1. Possible to the one vowing not only physically, but also morally: for no one can obligate himself to the impossible. But that is judged morally impossible which cannot be accomplished without great difficulty.

Therefore a. a vow of avoiding all venial sins, even semi-deliberate ones, is not valid, since this is impossible without a special privilege of God; b. a vow of avoiding all deliberate venial sins, whether in general or in a determinate species, is valid if it is made by a person who seriously strives for perfection; but in others, because of moral impossibility, this vow is null, unless it is a vow of avoiding deliberate venials of a certain

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**Notes**

375. For the same reason, a vow made in the heat of passion or devotion is ordinarily valid, even if the one vowing afterward repents of his vow, because an affection of this kind rarely impedes the necessary deliberation and liberty. Nevertheless, in these circumstances there is a sufficient reason for recurring to dispensation.

376. C. *Perlatum* 1, *De his, quae vi metusve causa fiunt* (I. 40). Council of Trent, sess. 25, c. 19, *De reg. et mon.*

377. Ballerini-Palmieri, II, n. 609.

species; c. a vow of avoiding all mortal sins is valid, because this is possible to all with the ordinary help of God: nevertheless it is not expedient that it be made by a frail person.

Whether a vow concerning a thing partly possible and partly impossible is valid depends upon the intention of the one vowing. If he intends to promise each part after the manner of one thing, he is held to nothing where he cannot fulfill the whole; but if he does not intend to vow after the manner of one thing, or if the intention of the one vowing is not established and the matter must be resolved from presumed intention, these things can be established:

a. If the matter is indivisible, or if in the possible part the reason of the vow is not preserved, he is held to nothing. Thus he who promised a Roman pilgrimage and cannot complete the whole way is held to nothing.

b. But if the matter is divisible, it is valid for that part which is possible, unless that part is accessory; hence he who vowed fasting and cannot abstain from meats is held to fasting as to the single meal.

You have another example in a vow of pilgrimage to be undertaken with bare feet, or of pilgrimage with reception of the sacraments. He who in the former vow cannot furnish the accessory is held to the principal thing, namely to the pilgrimage itself. In the other vow he who cannot make the pilgrimage is not bound to receive the sacraments; but if reception of the sacraments were the principal thing, he would be held to receive the sacraments at home.

**216.** 2. Honorable: for God is worshiped only by an action which is pleasing and acceptable to Him; but nothing is of this kind except what is morally good.

a. A vow concerning a vain or useless thing, for example of not going out of the house first with the right foot, is invalid. Likewise a vow concerning an indifferent thing, for example of not passing through a determinate street, is invalid, because it contributes nothing to divine worship. But if an indifferent thing from circumstances or from the end becomes morally good, it can be matter of vow.

b. To vow a vain or indifferent thing is a venial sin. To vow a lightly evil thing, according to some, is a venial sin; according to others, a mortal sin. To vow a gravely sinful thing, according to all, is a grave sin, because a grave injury is inflicted upon God.

The argument of those who say that a vow concerning a lightly evil thing is a grave sin seems to be convincing: for a vow of this kind supposes that an evil thing pleases God and is accepted by Him; but in these things there is contained irreverence toward God, which does not admit smallness of matter, because this is directly and immediately repugnant to His supreme holiness.

Whether a vow concerning a good thing, but evil from the end of the one vowing, is valid.

a. It is not valid if the evil end is the motive and total cause of the vow, which happens in two ways: when the vow is made for obtaining from God an illicit thing, and when it is made in thanksgiving for an illicit thing, as if someone vows alms for obtaining a favorable outcome of an unjust case, or if someone makes a vow because he has happily killed an enemy; for that end infects the whole vow and renders it evil and blasphemous.

b. A vow is valid if the evil end is an impulsive and partial cause of the vow, as if someone vows large alms before others indeed in honor of God, but also in order to be praised by men on that account. A vow of this kind is valid, because the evil end accompanies the vow, good in itself, only accidentally.[378]

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**Notes**

378. Ballerini-Palmieri, II, n. 621.

c. In like manner a vow made under an evil condition, which is not posited as the end of the vow, is valid; and this indeed not only if the condition in itself is a good thing which supposes an evil action, as if someone vows a pious work if he has escaped unharmed from a duel (to preserve life is a good thing, which he intends to obtain through the vow), but even if the condition is an evil thing, as if someone vows a pious work if he actually kills an enemy: for once the condition has been posited, it is honorable to fulfill the vow.[379]

**217.** 3. Concerning a better good, that is, such that it does not impede a greater good; therefore the matter of a vow must be not only good in itself, but also better, not than any other good whatsoever, but than its opposite: for if the thing promised is a lesser good, the one vowing obligates himself to omitting a greater good in order to do a lesser; but this cannot be pleasing to God, who desires that man always do that which is better.[380] But it is not required that the thing promised absolutely be a better good, but it is sufficient that relative to the person vowing it be better than its opposite.

a. Hence a vow of marrying is not of itself valid, even if the vow is of taking a pious and poor woman, or one exposed to danger of incontinence, because for the one vowing celibacy is the greater good; nevertheless if marriage is necessary for someone, whether for removing scandal or because of danger of incontinence, for him it would be a better good and suitable matter of vow. Likewise, if someone has already proposed to take a wife, a vow of taking a poor woman in order to relieve her need is valid.

b. A vow of not vowing made absolutely is invalid, because it is better to vow than not to vow; but a vow of not vowing except with the license of the confessor is valid, because it is better to vow without danger of imprudence than with danger of imprudence. Yet if someone afterward should vow without consulting the confessor, the act of vowing would indeed be a sin, but the vow itself would be valid, unless he had also established this, that the future vow be invalid.[381]

Whether an action commanded can be matter of vow. - Nothing prevents a thing commanded from being able to be matter of vow; for on the part of the matter nothing else is required for a true vow except that it be a good thing, not impeding a better good; but a thing commanded is good and is better than its opposite, namely its omission, and the one vowing can add another obligation from religion to the obligation arising from the precept.

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## Article Third. On the Obligation of Vow

**218. On the obligation itself.** 1. Every vow obligates the one vowing to fulfill it, and indeed from religion.

a. Sacred Scripture often inculcates the obligation of a vow: *When thou shalt vow a vow to the Lord thy God, thou shalt not delay to pay it, because the Lord thy God requireth it.*[382] *If thou hast vowed anything to God, delay not to pay it: for an unfaithful and foolish promise displeaseth Him ... and it is much better not to vow, than after a vow not to pay the things promised.*[383]

b. From a promise by its nature there arises an obligation of furnishing the thing promised. The virtue by which one is obligated to keep promises is fidelity; but fidelity owed to God pertains to the virtue of religion.

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**Notes**

379. St. Alphonsus, n. 206.

380. Suarez, l. 2, c. 7, n. 2.

381. Laymann, l. 4, tr. 4, c. 2, n. 5.

382. Deut. 23:21.

383. Eccl. 5:3, 4.

alpha. Since in all vows not fulfilled there is injured the reverence and fidelity owed to God, and this in any matter is of the same nature, the injuries of vows are all of the same moral species. Wherefore it is not necessary that the matter of the violated vow be declared in confession.

beta. Therefore he who violates a vow by which a thing already otherwise commanded is promised commits two sins, one against religion, the other against the precept to which the matter of the vow pertains; but he who violates a vow by which a supererogatory thing is promised commits one sin, and that against religion.

**219.** 2. The obligation of a vow is grave or light according to the nature of the matter and the intention of the one vowing. For since a vow is, as it were, a certain private law which the one vowing imposes upon himself, the measure of the obligation depends upon the intention of the one vowing. Hence he can vow grave matter under grave or under light obligation, but light matter only under light obligation, since light matter is not capable of grave obligation. If the one vowing does not expressly determine the gravity of the obligation, he is judged to bind himself under grave or under light obligation according to the nature of the matter.

a. Therefore in order that a vow obligate under grave obligation, two things are required: alpha. that the matter be grave; beta. that the one vowing have the intention of obligating himself under grave obligation.

b. That matter is held as grave which, if it is enjoined by ecclesiastical law, obligates under grave obligation, such as Mass, fasting, communion, or any thing which notably contributes to the end of a vow, which is the worship of God.

c. Vows made in religion, since they depend not upon the one vowing alone but also upon the will of the Church, cannot at the will of the one vowing be made under light obligation only; and likewise in the vow of chastity annexed to sacred orders the Church requires the intention of obligating oneself gravely.

Whether several light matters promised by the same vow coalesce into grave matter. - This depends upon the intention of the one vowing, either explicitly made or presumed from common estimation. Therefore if several light matters are promised from the intention of the one vowing as singular things, they do not coalesce; but if they are promised as some one thing, which for the sake of greater facility is divided into several parts, they coalesce. But if the one vowing did not conceive a determinate intention, the matter must be judged from presumed intention or from common estimation. Moreover, in personal vows diverse matters are generally judged to have been vowed rather as singular things; but in real vows generally by way of one thing. Therefore the obligation of the former is usually affixed to the day, while the obligation of the latter, after omission, usually must be supplied, unless from the manner of vowing another intention must be supposed.

Hence, if someone vowed to give a small alms daily, the matter coalesces, and if he omits it for a longer time, he sins gravely or is held to supply it. But if someone vows to recite one *Pater* daily, the individual omissions do not coalesce, and therefore not even the omission of a long time is a grave sin. - But if someone vows each year throughout the whole month of May to assist at May devotion, he vows the assistance of the whole month by way of one thing, whose individual omissions coalesce; on the contrary, if someone vowed each Saturday to give a small alms in honor of the Blessed Virgin, the omissions do not coalesce, and if he omits it for a long time, he does not sin gravely, because the vow is affixed to the day.

Note. For judging the smallness of matter in vows whose matter is promised by way of one thing, the omitted matter must be considered not absolutely, but relatively to the whole thing promised, so that only a third or fourth part of the whole ought to be judged a notable thing which cannot be omitted without grave fault. Thus he who promised to assist at May devotion throughout the entire month of May does not sin gravely because he omits the devotion once or twice, although the individual devotions considered absolutely (if they last for half an hour) constitute grave matter, but because he omits eight or ten assistances.

**220.** 3. A vow obligates only the one vowing: for no one can obligate another by his own vow, because no one can promise the thing or action of another, not even of one very closely joined, such as a son or a subject.

a. Children are not held to fulfill the vows of parents by which they consecrated them to religion, unless they themselves afterward consented; but parents, by force of the vow, are held, as far as lies in them, to take care that the children, with their liberty preserved, fulfill what they had promised for them.[384] But if parents vow a thing which they can enjoin upon their children, they themselves by force of the vow are held to prescribe it, while the children are held from obedience to fulfill it.

b. Subjects are held to fulfill vows made by the superiors of the community, not indeed by force of the vow, unless they themselves consented, but by force of a precept imposed from the motive of religion: therefore he who would not observe it would commit a sin against religion.

Whether posterity is obligated by a vow made by a community. - All concede that posterity is not held to observe the vows of ancestors by force of the vow, since no one can be bound by another's vow; but likewise all concede that posterity is held to observe vows made by ancestors, for example of fasting or of keeping a certain day religiously as a feast, of instituting a procession, etc.; but they labor greatly in explaining the origin and quality of this obligation. It seems it must be said:

alpha. If the vow must be fulfilled through a social act, as when it is a question of instituting a procession, those who represent the community are held to fulfill the obligation undertaken by their predecessors from the virtue of religion, inasmuch as they take care that the procession be instituted.

beta. If the vow must be fulfilled through an act of individuals, as when it is a question of fasting, of religious keeping of a feast, individuals are held from religious obedience to fulfill the work promised by their ancestors. For by the very fact that superiors make a vow of this kind with the will that posterity also be held to its observation, they impose upon posterity the precept of observing the vow, provided they have the faculty of prescribing the matter of the vow. Now if it is not a question of celebrating feasts, not only the bishop but also the magistrate has the power of imposing another thing, for example fasting, a pious pilgrimage. And indeed the magistrate, by reason of the common good, can also promise a work of this kind to God and enjoin it upon the community over which he presides.[385] But because the work has been enjoined from the motive of religion, the community is held to obey from the same motive.[386]

gamma. From the declaration of the Holy See it is established that a vow of observing some feast obligates only those vowing, and not likewise posterity, not even if the consent and precept of the bishop accedes.[387] In order that posterity be held to observe this vow, the consent of the supreme pontiff is required. Since the reason of this declaration is the power taken away from all by Urban VIII of instituting new feasts,[388] this declaration is not to be extended to other vows made by a community, to the observance of which even those not vowing can be obligated by force of precept.

c. The obligation of observing a vow made by ancestors can arise not only through a precept of superiors, but also through custom. Nevertheless, in order that a custom of this kind obtain the force of law, it is required that it begin through voluntary or free acts, which are observed for as much time as is necessary

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**Notes**

384. Boys (girls), who already at a tender age, having first been consecrated to God by their parents, were handed over to monasteries for education and were called oblates, at first indeed were obligated from the vow of their parents to embrace the monastic life; but afterward (from the thirteenth century onward), once they had entered the age of puberty, they could choose the monastic state or freely depart from it. Cf. *Kirchenlexikon*, s.v. *Oblati.*

385. Cf. Suarez, l. 3, c. 12, n. 9.

386. Cf. Suarez, l. 4, c. 9, n. 5 ff.; Ballerini-Palmieri, II, n. 634; Berardi, *Praxis confessariorum*^3 (Faventiae: Novelli, 1898), I, n. 600.

387. S. C. R., 18 Apr. 1643 (n. 834); 19 Nov. 1650 (n. 932); 23 Jun. 1703 (n. 2113).

388. Constitution *Universa*, 13 Sept. 1642.

for inducing custom. Therefore the people, knowing that they are not held to these acts, must observe them, in order that an obligatory custom can arise: for if they erroneously thought that they were held to these acts by force of law and therefore observed them, an obligatory custom would not be induced.

**221. On the obligation of a conditioned, disjunctive, and doubtful vow.**

A conditioned vow does not obligate unless the condition has been fulfilled: for the condition attached suspends the obligation so long as it has not been fulfilled. Wherefore, where the condition is not fulfilled, no obligation of observing the vow arises.

a. Nevertheless, even a conditioned vow begets some obligation: for it is a true vow, whose obligation is contained in these things: alpha. of preserving the will of fulfilling the promise once the condition has been verified, or of not revoking consent; beta. of not fraudulently impeding the condition.

b. He who impedes the condition, but not fraudulently or culpably, does not sin nor is he afterward held to fulfill the vow. But he who culpably, for example by force or deceit and fraud, impeded the condition, sins against the vow; yet not even here is he obligated by the vow, because the obligation of observing the vow depends upon the fulfilled condition.

c. If the attached condition is fulfilled not formally, but only equivalently, according to the probable opinion the vow does not obligate. For example, he who vowed religion if his sister should marry is not held to enter if she has died, even if the reason of the condition had been the support of the sister.

**222. On the obligation of a disjunctive vow,** for example, *if I recover, each Saturday I shall either fast or give alms.*

a. If someone vows disjunctively either a good thing or an evil, vain, or impossible thing, the vow is null, because he cannot be equally obligated to a good thing and an evil thing, as if someone vows: either I shall steal, so that I may become rich, or I shall enter religion.

b. If someone vows good things disjunctively, the vow is valid and is to be understood in such a way that the option belongs to the one vowing; but the part once chosen must be furnished, even if after the choice the other part becomes impossible.

c. If one part becomes impossible before the choice, the one vowing probably is not held to the other part, unless it has become impossible by his fault: for in this case he is judged to have willed to choose the other part, which is still possible.

d. If the very part chosen becomes impossible after the choice without fault of the one vowing, he is held to nothing else.

**223. On doubtful vows.** a. He who positively doubts whether he made a true vow or only a resolution is held to nothing.

In the former question St. Alphonsus agrees (n. 201); but in the latter he teaches (n. 224) that the vow must be fulfilled again.

b. He who positively doubts whether he has fulfilled a vow made is likewise held to nothing according to the principles of probabilism.

**224. Who must fulfill a vow.** 1. A personal vow must be fulfilled by the one vowing himself, nor can it be validly fulfilled through another: for by a personal vow the one vowing promised his own proper action; therefore if the one vowing himself cannot fulfill it, he is held to nothing.

2. A real vow must be fulfilled from one's own goods: since indeed the one vowing promised his own thing; therefore he who cannot fulfill it from his own goods is not held to take care that another pay it, but the

obligation ceases. Nevertheless it can always be fulfilled through another: for by this vow not the proper action of the one vowing, but some thing of his is promised; if another, whether asked or spontaneously, pays this for the one vowing, with the consent of the same acceding it becomes the proper thing of the one vowing himself.

a. He who, forgetful of the vow, furnishes the work promised, satisfies the vow: for anyone is presumed to have the intention first of all of satisfying his obligations, rather than of furnishing a supererogatory work from devotion alone. But he does not satisfy if he furnished the work with the express intention of not satisfying the vow: for it depends upon his intention whether the obligation remains.

b. Therefore heirs are not held to fulfill the personal vows of the deceased; but they are held to pay real vows, not indeed by force of the vow from religion, but by force of the inheritance from justice toward the deceased: for an inheritance passes to the heirs with its burdens; but a real vow affects the thing itself, which accordingly passes to the heirs with the obligation by which it is affected. Heirs must pay these vows before legacies, even pious ones, but after debts of justice; not, however, beyond the resources of the inheritance, that is, if it can be done without prejudice to the legitimate portion.

**225. When a vow must be fulfilled.** a. If no time was fixed for fulfilling the vow, it must be fulfilled as soon as it can conveniently be done: for a vow is after the manner of a debt, which must be paid as soon as possible. But if the one vowing determined a certain time, it must be fulfilled at the fixed time. But if an impediment is foreseen, there is no obligation of anticipating.

b. A vow which was not fulfilled at the fixed time ceases, if the time is attached for ending the obligation, as in a vow of fasting on Saturday in honor of the Blessed Virgin. But if the time is attached for urging the obligation, the vow does not cease, but once the time has elapsed it must be fulfilled as soon as possible.

Whether the time has been added for urging or for ending the obligation depends upon the intention of the one vowing. But if this intention is not established, in personal vows the added time is generally judged to be for ending the obligation, but in real vows rather for urging the obligation, unless from the nature and end of the vow something else must be established, as if someone in thanksgiving vows to fast on a certain day, or to offer candles for a certain solemnity.

c. Notable delay of a vow without a just cause in a grave matter is certainly a grave sin if the thing promised is diminished by the delay, for example in the vow of entering religion, because the one vowing withdraws a notable part of the service promised. But if the thing promised is not diminished by delay, as in the vow of a pious pilgrimage, delay even notable and made without a just cause does not seem to exceed the venial sin of negligence, because the thing promised can always be fulfilled integrally, nor does any detriment arise to religion from the delay. Nevertheless, a notable delay, namely one which exceeds several years, can be a grave sin because of the danger of forgetfulness or of future inability to fulfill the vow.

St. Alphonsus judges (n. 221) that a delay which extends beyond six months, with respect to entrance into religion, is notable; others think that a delay of two or three years is not yet notable; others finally judge that this depends much upon the age of the one vowing, and therefore that a young man of sixteen years does not sin gravely if he defers entrance for three or four years.

**226. On the interpretation of vows.** 1. A vow must be interpreted according to the intention of the one vowing, either expressed or reasonably presumed: for since the whole obligation of a vow depends upon the intention of the one vowing, a vow does not obligate beyond the intention of the one vowing.

a. Therefore he who vowed that he would hear Mass daily for a month is not held to hear two Masses on feast days, unless he expressly intended this, because he is judged to have had the intention of passing no day without Mass.

b. He who vowed to give a chalice to a church which he thought was poor, but which afterward he recognizes to be rich, is not held by the vow if the principal intention was of assisting a poor church; but he is held if his primary motive was of doing good to the church and the poverty of that church was only an impulsive cause.

c. Peter vowed that for ten years he would give ten gold pieces to Paul, so that he might more conveniently feed his family; after a year Paul dies. Peter is still held if the motive cause of the vow was the more convenient feeding of the family and the impulsive cause was relief of the father; he is not held if the motive of the vow was relief of the father from inconvenience and anxiety in feeding the family.

2. Where the expressed intention of the one vowing is not established, a vow must be interpreted according to the nature of the vow, or according to the custom of the Church, or according to common use: for thus the one vowing is judged to have willed to obligate himself.

a. Therefore he who vowed that he would recite the rosary satisfies by reciting alternately. - One vowing fasting for a month is not held to fast on Sunday; one vowing fasting each Saturday is not held to fast if the Nativity of the Lord falls on Saturday (now it can be added: or another solemn feast), unless he expressly intended otherwise. - He who vowed the fast of an entire week is not held to fast on that day on which he must undertake such hard labors that he is excused from the ecclesiastical fast.

b. If someone, forgetful of the earlier vow, has made another which cannot be observed together with the first, for example of undertaking a pious pilgrimage and of serving the sick at the same time, this must be distinguished: alpha. if the second is manifestly more worthy, he is held to observe the second; beta. if it is equal, those who concede that anyone can change his vow into another equal one say that he is held to observe the second; but those who deny this power say that he is held to observe the first; gamma. if the second is a lesser good, or if it is doubtful which one is better, he is held to observe the first.[389]

3. A vow must always be interpreted toward the more benign part: for every obligation is odious; but odious things are to be restricted rather than extended.

He who promised something without a determinate quantity, for example alms, satisfies by giving as much as he wishes, provided it is not so little that he seems rather to mock God than to fulfill the vow. - He who promises something without a determinate quality, for example a chalice for a church, can determine it at his discretion, provided that it is not unsuitable.

4. In every vow certain conditions are included, whether by natural law or by ecclesiastical law: *if I shall be able*; *with the right of the superior preserved*; *if the thing shall not have been notably changed*; *unless the other yields his right*, etc. Yet these conditions do not make the vow conditioned.

According to these rules the obligation of him who, in order to fulfill a vow of entering religion, entered into a monastery, but was again dismissed from it, is to be interpreted. Namely, if he intended to promise only entrance into a determinate monastery, he is held to nothing further, even if he himself gave the cause of his dismissal. But if he intended to promise entrance into religion in general, he is held to take care of the execution of the vow by ordinary means; therefore if without great difficulty he finds another monastery by which he is received, he is held to enter it; if he is again dismissed from it, he certainly is not held to enter another.

## Article Fourth. On the Cessation of Vow

The obligation of a vow can cease in four ways: a. by simple cessation, with no authority intervening; b. by irritation; c. by dispensation; and d. by commutation, with human authority intervening.

**Notes**

389. Laymann, l. 4, tr. 4, c. 2, n. 4.

## Section 1. On Simple Cessation

**227.** By simple cessation the obligation of a vow ceases:

1. If its principal end or motive cause ceases: for when the end ceases, the reason of the obligation ceases, because the one vowing did not will to obligate himself except for obtaining the end which determined him to vow. Therefore he who vowed a pilgrimage for obtaining the health of his son is not obligated by the vow once the son has died. But a vow does not cease when the secondary end or impulsive cause ceases, because the vow does not depend upon it. Thus he who, for honoring a saint, vowed to give alms to Peter, whom he thought poor, is held to give it to another needy person.

2. If the matter becomes physically or morally impossible, even by fault of the one vowing.

Thus he who vowed to build a chapel is not held by the vow if unexpectedly he falls into poverty; and he who, after making a vow of receiving the Eucharist on that day, deliberately breaks the fast, is no longer held by the vow, from the general principle: transgression of a vow does not obligate to compensation, but only to penance.[390]

3. If the matter becomes illicit, useless, or impeding a greater good.

Thus he is not held by the vow who promised to give alms to someone, if this would serve only for drunkenness; nor he who promised to relieve a necessity if this afterward ceases; nor he who vowed a pilgrimage on that day, if for this reason he cannot serve those infected with a disease which in the meantime has begun to rage.

4. If the circumstances of the one vowing or of the matter are notably changed, namely in such a way that, if the one vowing had foreseen the change, he would not have made the vow: for a vow does not obligate beyond the intention of the one vowing.

Therefore as often as the intention of the one vowing cannot be presumed in determinate supervening circumstances, the vow does not obligate; but it does obligate if the change could in some way have been foreseen. Hence a vow of chastity is valid, even if vehement temptations supervene: for he who vows chastity promises to overcome all difficulties rising up against it. In like manner a vow of ministering to the sick is valid, even if danger of death from a contagious disease supervenes. On the contrary, he who after making a vow of a Roman pilgrimage falls into poverty, so that he cannot pay the expenses of the railway, is not held to go to Rome on foot.

## Section 2. On the Irritation of Vow

**228. Declarations.** 1. Irritation is defined as the annulment or suspension of a vow made by him who has power either over the will of the one vowing or over the matter of the vow. The power of irritating is exercised immediately either upon the act of vowing or upon the matter of the vow.

He who is subject to the power of another cannot make a firm vow. His vow is indeed valid, yet it always includes this tacit condition: unless the superior contradicts; therefore his vow is called infirm or irritatable. But if the superior afterward actually irritates the vow, its obligation ceases by that very fact.

2. A twofold irritation is distinguished, direct and indirect. Direct and properly so called is the annulment of a vow made by him who has power over the will of the one vowing; this irritation touches the act itself and dissolves it in such a way that it never revives. Indirect and improperly so called is the suspension of a vow made by him who has power only over the matter of the vow; this irritation touches the thing promised,

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**Notes**

390. Cf. Suarez, l. c., l. 4, c. 15, n. 17 ff.

whose offering is impeded; therefore it only suspends the obligation of the vow, which revives again as soon as the matter promised is withdrawn from the power of the one irritating.

For the irritation of a vow, the power of jurisdiction is not required, but dominative power. Now dominative power is twofold: one over the person of the one vowing, by which the will of the one vowing is so subordinated to another that without his consent he cannot undertake any firm obligation; the other over the things and actions of the one vowing, by which it happens that the thing promised can be withdrawn from the power of the one vowing, and in this way not indeed the vow can be annulled, but the execution of the vow can be impeded.[391]

3. For validly irritating vows, whether directly or indirectly, no cause is required: for the vows of subjects always involve this condition: unless the superior contradicts. Nor for licitly irritating vows is a cause required of itself: for anyone can use his own right; nevertheless, in the concrete, irritation which is made without any cause will be a venial sin, as an idle and irrational action. But any reasonable cause is sufficient so that the superior can licitly irritate vows and the subject can seek irritation.

**229. Who can directly irritate vows.** He who has dominative power over the will of another can directly irritate all this person's vows.

Not just any dominative power suffices for directly irritating vows, but only that from which the will of the subject, even in spiritual matters, is so dependent that he cannot firmly and absolutely obligate himself (to God).

1. A regular prelate (from the immediate superior: prior, guardian, rector, up to the supreme superior) can directly irritate all private vows of religious made after profession; the same is true of superioresses of nuns with respect to their subjects: for through the vow of obedience a religious fully subjects his will to his superior.

a. The power which a regular prelate enjoys is had also by the supreme pontiff, not insofar as he possesses supreme jurisdiction in the Church, but insofar as he is the supreme prelate of all religious orders.

b. They ask whether this power is of natural law or of ecclesiastical law, and they answer in diverse ways. It seems it must be said that religious profession with the promise of obedience is of ecclesiastical law; but once subjection toward the superior has been made through the vow of obedience, the power of irritating vows arises by natural law.

c. A regular prelate can irritate all private vows of religious made after profession, whether solemn or simple, even merely internal vows, indeed even concerning a thing otherwise commanded; but the substantial vows of religion and those which in some orders are annexed to them cannot be irritated. From private vows only the vow of passing to a stricter religion is excepted,[392] which not even the supreme pontiff can irritate. But not only the pope, but also the regular prelate, can dispense in this vow.

d. There are those who deny that a regular prelate can irritate the vows of those who have made only simple profession. There are two kinds of simply professed: some belong to an order in which solemn profession is made, but before profession a three-year period of simple vows is premised; others belong to an institute in which only simple vows (whether perpetual or temporary) are made. Those who think that the vows of those who have nothing except simple profession cannot be irritated seem to be of this opinion, that there is an internal essential distinction between solemn and simple vows; but since the offering made to God and to the prelate is essentially the same both of him who makes simple profession and of him who

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**Notes**

391. Cf. *De principiis*^9, n. 105.

392. C. *Licet* 18, *De regularibus* (III. 31).

makes solemn profession, and the irritability of vows depends upon this offering, there is no reason why the power of irritating the vows of those who have made simple profession should be denied to the regular superior.

e. The power of irritating the vows of their subjects must also be conceded to superioresses of nuns: for on the one hand nuns promise obedience also to their superioresses, on which the power of irritating depends; on the other hand, no jurisdiction is required for irritation.[393]

f. The vows of novices can be irritated by a regular prelate only indirectly, because the power of directly irritating is founded upon religious profession. Wherefore those vows of novices cannot be irritated whose execution does not impede the exercises of probation. Vows made by regulars before profession are extinguished by religious profession, or rather are commuted into it.

**230.** 2. A father can directly irritate all vows of children made before puberty.

a. This power is derived from the law of nature: for natural reason demands that the impubescent, because of immaturity of judgment and inconstancy of will, be ruled by the will of another, even if they have already arrived at the use of reason. Now this power is perfected by positive law as to the determination of time, namely up to puberty, which is established by ecclesiastical law alone.[394]

b. This power belongs to the father and to all to whom paternal power belongs by law, namely to the tutor and, when he is lacking, to the paternal grandfather. There are those who, when the father or tutor is absent or does not contradict, rightly attribute the same power also to the mother.

c. All vows of children made before puberty can be irritated; also vows otherwise reserved and promised in favor of a third party, likewise vows of impubescent persons concerning things to be furnished only after puberty; finally, even vows confirmed after puberty, unless afterward they were confirmed by a new vow independent of the former vow. But vows of children made after puberty can be irritated only indirectly.

**231.** 3. Whether a husband can directly irritate vows of his wife made after marriage is very controversial; the opinion of those who hold that the husband cannot directly irritate the vows of his wife, whether made before or after marriage, seems to be preferred.

Those who hold the affirmative opinion use: a. a positive argument from Num. 30:2-17, where the law concerning irritation of vows is had, and Eph. 5:24; b. an internal argument: it greatly contributes to the peace of the family, to restraining the impulse of women, and to succoring the weakness of their judgment, if the will of wives depends fully and in all things upon the man.[395]

But those who follow the negative opinion say: a. This power does not arise from the law of nature: for the things which the adversaries exaggerate concerning weakness of judgment and levity of feminine character do not show that so perfect a subjection of the wife is necessary, since it is not necessary in a pubescent daughter. b. It does not arise from positive law: for the cited texts of sacred Scripture have another explanation; namely, the texts of the Old Testament are to be understood of a special law long since abrogated; but the text of the New Testament of subjection in all things which pertain to the right governance of the household.[396] c. The subjection of the wife toward the husband arises from the matrimonial contract, wherefore it does not extend beyond the rights of marriage, by which the woman is subject to the man in the use of marriage, in the society of life, in the education of offspring, and in the governance of the family.

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**Notes**

393. Cf. Ballerini-Palmieri, II, n. 674.

394. Cf. *Puella* 2, c. 20, q. 2.

395. *Summa*, II-II, q. 88, a. 8, ad 3.

396. Cf. Kirchberg, l. c., n. 123 ff.

**232. Who can indirectly irritate vows.** Every superior who has power over the matter of a vow can indirectly irritate those vows of his subjects which injure his rights: for by the law of nature a promise cannot be made which yields to the damage and prejudice of another. And vows indeed can be irritated by a superior even when he himself gave license of vowing or approved the vow, provided he did not expressly intend to yield his own right. Therefore:

1. A husband can irritate those vows of his wife, even if made before marriage, which injure his rights over the body of his wife, over cohabitation, over the governance of the family, over the administration of goods, for example a vow of continence, whether perpetual or temporal, a vow of large alms, etc.; but not vows which do not turn to his prejudice, such as a vow of moderate prayer.

A wife can irritate those vows of her husband which injure her rights, such as a vow of continence, a vow of sleeping separately, etc.

2. A master (mistress) can irritate both real and personal vows of servants which turn to his prejudice, such as a vow of a longer pilgrimage or fast, by which servants are rendered unfit for furnishing due services to their masters.

3. A father can irritate those vows of pubescent children not yet emancipated which impede the free administration of the family or the obedience owed to the father, such as a vow of a distant pilgrimage.

4. A regular prelate can irritate vows of novices which impede the exercises of probation or injure the rights of the order. The same must be said of the superior of a college, who can irritate vows of his students which stand in the way of the right of exacting obedience from them.[397]

5. The supreme pontiff can irritate the vows of all the faithful, and a bishop the vows of his subjects, which prejudice their rights.

## Section 3. On the Dispensation of Vow

**233. Declarations.** Dispensation is the remission of the obligation of a vow made in the name of God. Dispensation immediately touches the effect of the vow, or the obligation.

a. By force of a vow, man has contracted an obligation before God, from which he cannot be loosed except by him who has received power for this from God. Now that the Church has the power of dispensing in vows is deduced from the general concession of loosing all bonds: *whatsoever you shall loose*,[398] therefore also the bond of divine or natural law, whose existence nevertheless depends upon the human will, as in vows and oaths.[399] The Church herself has always used this power.

b. Dispensation differs from irritation: alpha. because for dispensation the power of jurisdiction is required; for irritation dominative power suffices; beta. because dispensation is made in the name of God, but irritation is made in the proper name of the one irritating; gamma. because for valid dispensation a just cause is required, but not likewise for irritation; delta. because irritation can be made even when the one vowing is unwilling, but dispensation when the one vowing is unwilling is null, because he imposed the obligation upon himself; epsilon. because dispensation immediately touches the effect of the vow, but irritation touches either the act of vowing or the matter of the vow.

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**Notes**

397. Ballerini-Palmieri, II, n. 686.

398. Matt. 18:18.

399. Cf. *De principiis*^9, n. 181.

**234. Requisites for dispensing.** 1. For validly dispensing in vows a just cause is required; for the one dispensing does not act in his own name, but in the name of God, who is not judged to have given the power of dispensing without a legitimate cause; therefore he who dispenses without a cause effects nothing.

a. He who doubts whether a cause for dispensing is present cannot dispense; he who doubts whether the cause for dispensing is sufficient validly and licitly dispenses.

b. If someone in good faith dispenses, thinking that a cause for dispensing is present, and afterward knows that none was present, the dispensation is invalid; if someone in good faith dispenses, thinking that the cause for dispensing is sufficient, and afterward knows that it was not sufficient, the dispensation is valid.

c. From the use which the Church observes, some commutation is customarily joined to dispensation; and this indeed ordinarily must be done when there is question of relaxing a vow made with full deliberation, but especially when the cause for dispensing does not seem to be sufficient.

**235.** 2. For validly and licitly dispensing there is required and sufficient a moderately grave cause, which nevertheless ought to be the graver the more excellent the vow is.

The just causes of dispensing, according to St. Alphonsus, are the following:

a. The good of the Church or the common good of the republic or family, or the progress of the one vowing.

b. Danger of transgression because of the particular indisposition of the one vowing or because of the common fragility of men.

c. Great difficulty in execution, whether it was foreseen or not foreseen.

d. If the one vowing is vexed by great scruples.

e. If the vow was made rashly, namely with too much facility or without mature deliberation. For this reason, in the vows of impubescent persons, without another cause, dispensation can be given absolutely without commutation.

f. If the vow was made because of fear, whether arising from an external cause or from an internal cause: for in this case vows are usually made immaturely, and therefore dispensation can be given in them without commutation.[400]

**236. Whether a vow made for the benefit of a third party can be dispensed.**

a. If a gratuitous promise made in favor of a third party, even a determinate third party, has not yet been accepted, it certainly can be dispensed: for the promisor is held to give the thing promised only by reason of the vow; but he can be dispensed from the vow.

From these things it is clear that dispensation can be given in vows made for the relief of the dead, since the promise has been accepted by God alone.

b. If the promise has been accepted by the other, it cannot be dispensed: for in this case the one vowing is obligated not only toward God by force of the vow, but also by force of the promise toward the man, who by accepting the promise has acquired a right to the thing promised; but this right cannot be remitted without the consent of the one accepting.

alpha. Yet if the vow in this case was made principally in honor of God and only secondarily in favor of the third party, it probably can be dispensed even without his consent, provided there is question of a gratuitous

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**Notes**

400. St. Alphonsus, n. 252 ff.

promise: for with the remission of the vow, probably the right of the man also falls, since the accessory follows the principal. Nevertheless, dispensation cannot be given if the promise made to the man is principal and the vow secondary, or if each is equally principal.

beta. But if the promise is not gratuitous, but onerous and mutual, as happens in the vow and oath of perseverance which is made in some congregations, dispensation cannot be given without the consent of the congregation, even if the vow is made principally in honor of God: for the vow follows the nature of the contract to which it is annexed; but a contract cannot be dissolved without mutual consent.

**237. Who can dispense.** Only ecclesiastical superiors who have spiritual jurisdiction in the external forum have the ordinary power of dispensing; others cannot dispense except by a power delegated by those who have ordinary power. Therefore, by ordinary power, there can dispense:

1. The supreme pontiff in all vows of all the faithful. Therefore he can dispense: a. not only in the solemn vow of chastity which is annexed to sacred order, but b. also in solemn religious profession; and in fact he has already often dispensed in each case.

Concerning the practice of the Church in dispensing in solemn vows, these things are to be noted.

a. As to the solemn vow of chastity: alpha. subdeacons and deacons, with a cause of the common good of the Church or kingdom intervening, have often been dispensed for entering marriage, yet with this condition, that they abstain from every exercise of order; beta. but no example exists of a dispensation (publicly) conceded to a priest for contracting marriage; yet there are several examples of dispensation conceded to priests for convalidating a marriage invalidly contracted, with every exercise of orders nevertheless removed. Thus there were dispensed both priests who, in the time of the English schism, and priests who, in the time of the French Revolution, had attempted marriage.

b. As regards religious vows, full dispensation indeed has been given from the vow of poverty and obedience, but no example exists of full dispensation from the vow of chastity. For dispensation is restricted either in such a way that the dispensed person can pass to another order, in which only the vow of conjugal chastity is made, and can enter only one marriage; or in such a way that he can return to the world, but is held to enter only one marriage and to observe conjugal chastity from vow.[401]

2. Bishops and abbots having episcopal jurisdiction in all vows of their subjects, except vows reserved to the supreme pontiff.

a. They have the power of dispensing in vows by force of their office, which office indeed demands that they be able to dispense in those things which frequently occur. Legates and apostolic nuncios also have this in their own province; vicars capitular, when the see is vacant. Archbishops cannot dispense the subjects of their suffragans in vows, not even when they visit some diocese.

b. Parish priests, because of defect of jurisdiction in the external forum, lack the faculty of dispensing in vows, nor do they have it from custom, as they have it with respect to feasts and fasts.

3. A regular superior in non-reserved vows of his subjects, if he is exempt; but a non-exempt regular superior cannot dispense, because the prelate of non-exempt persons is properly the bishop.

In non-reserved vows of novices made either in the world or in the novitiate, both their own bishop and the regular superior can dispense. The former indeed, because novices before profession are not yet altogether exempt from episcopal jurisdiction; the latter, because he possesses jurisdiction over them.

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**Notes**

401. Cf. Scavini, *Theologia moralis universa*^2 (Mediolani: Oliva, 1890), II, n. 224; *Archiv fur k. Kirchenrecht* 1889, I, p. 329 ff.

4. Regular confessors by delegated power from special privilege can dispense in non-reserved vows of the faithful, whether within or outside confession, whether they are the ordinary confessors of those vowing or are not.

a. All concede that regular confessors can commute the vows of the faithful by dispensing; most attribute to them also the power of simply dispensing, from the privilege granted by Julius II to the Canons Regular of the Most Holy Savior and by Leo X to the Camaldolese Hermits, which through communication of privileges passed also to other regular confessors. The privilege consists in this, that regular confessors can dispense with any of the faithful in all vows in which bishops by ordinary power can dispense with their subjects.[402]

b. Any confessor (having the privilege of dispensing in vows and of commuting the same) can do this even outside confession, unless in the document of delegation the power is restricted to the forum of penance, because this power of itself pertains to the external forum, nor is it anywhere prescribed generally that the dispensation be made in confession.

**238. On reserved vows.** 1. Vows reserved to the supreme pontiff, besides religious profession and the vow of clerical chastity, are these five:

a. a vow of perfect and perpetual chastity;

b. a vow of entering religion approved by the Church;

This vow can be made in two ways: either simply of entering religion, or additionally of professing or persevering in it. Yet since entrance into religion for undergoing the probation of the novitiate of itself tends toward profession, he who explicitly vows entrance implicitly vows also profession and perseverance. Now the vow reserved to the pope is the vow of entering religion, whether by this vow entrance into religion in general is promised, or entrance into a determinate order or into a determinate monastery.

c. a vow of Roman pilgrimage to the thresholds of the apostles;

d. a vow of Hierosolymitan pilgrimage to the sepulcher of the Lord;

e. a vow of Compostellan pilgrimage to the relics of St. James.

Therefore in the general faculty of dispensing in all vows these reserved vows are not comprehended, unless express mention of them is made.

alpha. From recent Roman law there are also reserved to the pontiff the simple religious vows made before solemn profession,[403] and those which are made in more recent congregations approved by the Apostolic See, whether these vows are perpetual or temporary. For vows made in religion have the character of an onerous contract, from which there arises a right acquired for a third party, which can be taken away only by the supreme pontiff.

beta. In the body of law the reservation of these five vows is not established, but is supposed; wherefore it seems to have been introduced by use and custom.[404]

2. Since reservation, as being odious, is of strict interpretation:

a. The vow of not marrying is not reserved, nor the vow of virginity, nor the vow of not sinning against chastity, nor the vow of conjugal chastity, nor the vow of temporary chastity even if perfect, nor the vow

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**Notes**

402. Cf. Piat, *Praelectiones iuris regularis* (Tornaci: Casterman, 1890), II, p. 504.

403. S. C. Ep. et Reg., 12 Jan. 1858, which at the same time declared that these simple vows are dissolved in the act of dismissal, so that, dismissal having been given, the professed become by that very fact free from every bond and obligation of these vows.

404. C. *Etsi dominici* 5, *De poenit. et remiss.*, Extrav. com. (V. 6).

of receiving sacred orders, because it is not a vow of chastity but a vow of assuming a state to which the vow of chastity is annexed; likewise, the vow of entering an institute in which only simple vows are made is not reserved.

b. These five reserved vows themselves are not reserved if they are not perfect, that is, obligating under grave obligation; if they are not perfectly free (made without all fear, even light fear), absolute, that is, neither conditioned (*I shall enter religion if I escape unharmed*) nor disjunctive concerning reserved and non-reserved matter (*either of fasting or of religion*), and certain.

c. They are reserved only as to substance, not likewise as to circumstances; thus he who vowed to enter a stricter religion can be dispensed by the bishop or by another having privilege, so that he may enter a milder one.

**239. Dispensation in reserved vows.** Nevertheless, bishops can dispense in reserved vows when necessity urges, namely when in delay there is danger of grave harm, whether spiritual or temporal, and the supreme pontiff cannot be approached at once.

a. If a bishop dispensed in a doubtful reserved vow, which afterward is known by the one vowing to have been certain, a new pontifical dispensation is not necessary: for since a doubtful vow is not reserved, it has already been dissolved by the bishop.

b. Whether bishops, when necessity urges, dispense by ordinary power or from presumed license is certainly not established; but since it is probable that this is done by ordinary power, the power of dispensing in reserved vows when necessity urges probably also belongs to regular confessors, as those who can dispense in those vows in which bishops dispense by ordinary power.[405]

c. The power of dispensing in reserved vows is customarily granted by the supreme pontiff only on this condition, that the vow be commuted into other works of penance. Now these works enjoined by the one dispensing have the character and obligation of a vow, yet not of a reserved vow, which can be taken away by any confessor having the power of dispensing in vows.

d. Whether an oath of chastity or of religion is reserved just as a vow. - It is not reserved if the one swearing intends to obligate himself by oath alone: for the obligation of an oath is not reserved; but if the one swearing intends to obligate himself by a double bond, both of oath and of vow, that is, if he willed to make a vow and to confirm the vow by oath, the vow certainly is reserved, but not the oath. This formula, *I promise, I vow, and I swear*, from the common acceptance of men contains only an oath.

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## Section 4. On the Commutation of Vow

**240. Declarations.** 1. Commutation is the substitution of another work in place of that which had been promised, with the same obligation.

Dispensation differs from commutation in this, that by dispensation the obligation of the vow is removed, but by commutation it is transferred into another matter.

2. This commutation can be made into a better work, into an equal one, and into a lesser one; then it can be made by proper or ecclesiastical authority.

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**Notes**

405. Cf. St. Alphonsus, l. 3, n. 258; on the contrary Kirchberg, l. c., n. 151. What regular confessors can do with respect to married persons who have made a vow of perpetual chastity, see *De sexto praecepto etc.*^11, n. 101.

That work is called better which here and now, all things considered, is more pleasing to God; but that is judged more pleasing to God which, according to place, time, and disposition of the one vowing, is more suitable to his salvation. Thus he who promised to give alms to a determinate poor man can give it to another more needy man, provided the former has not accepted the promise.

**241. Who can commute vows.** 1. Into an evidently better work commutation can be made even by the proper authority of the one vowing: for that which, all things considered, is better, is also more pleasing to God and without doubt is accepted by Him. But these must be excepted: a. reserved vows, which cannot be commuted except into the religious state; b. the vow of passing to a stricter religion, which, because of the prohibition of the Church, cannot be commuted by proper authority;[406] c. vows made for the benefit of a third party and accepted by him, which cannot be commuted without his consent.

2. Into an evidently equal work, a vow probably can also be commuted by proper authority; but because of the great difficulty of substituting a truly equal work, it must be advised that commutation not be made by proper authority, unless the work which is substituted is at least probably better.

Those who affirm use this argument: since the substituted matter is equal, it is equally pleasing and acceptable to God; but the usefulness of the one vowing is increased, since he will furnish this new matter more gladly and more fervently. Those who deny argue thus: the matter considered in itself and the substituted matter are indeed equal; but once the promise has been made, it is more pleasing to God if the one vowing furnishes the thing to which he obligated himself than if he substitutes another.

3. But into a lesser work commutation certainly cannot be made by proper authority: for for this some dispensation is required, which cannot be made without ecclesiastical authority.

**242. Required conditions.** 1. For validly commuting vows, legitimate power and a just cause are required.

a. He who has the power of dispensing in vows, whether ordinary or delegated, can commute them even into a lesser work: for he to whom the greater is lawful, the lesser is also lawful. He who has only the power of commuting cannot commute vows except into a morally equal work, or into one a little less good: for in commutation which is made into a lesser work something of dispensation is contained.[407]

A perpetual work can be commuted into an equivalent temporal work, a personal work into a real one, and conversely. But commutation cannot be made into commanded works.

b. A vow can be commuted into a better thing even without cause; into an equal thing, at least licitly, only for some cause, but a light cause suffices (for example, greater devotion of the one vowing, less danger of transgression); but into a lesser thing it can validly be commuted only for a graver cause, which nevertheless need not be as great as is required for dispensation.

2. Once commutation has been made, it is always lawful for the one vowing to return to the first work, whether the commutation was made by his own authority or by another's authority, whether into a lesser or equal or even better work: for commutation is a favor, which the one vowing is not held to use. And if commutation has been made several times into diverse works, the one vowing can choose any one of them.

3. If the work into which the vow was commuted becomes impossible: a. he is not held to return to the first work when the commutation was made by ecclesiastical authority, even if by the fault of the one vowing the work has become impossible: for by commutation the prior obligation is utterly extinguished, so that it

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**Notes**

406. C. *Licet* 18, *De regular.* (III. 31).

407. S. Poenitent., 1 Nov. 1899. A distinction must be made between the faculty of simply commuting vows, the faculty of commuting vows by dispensing, and the faculty of dispensing by commuting.

no longer revives; b. he ought to return to the first work if the commutation was made by proper authority, because in this case the obligation is not extinguished before the fulfillment of the substituted work.

# Question Fourth. On Oath

[408]

## Article First. On Oath Itself and Its Liceity

**243. Definition.** An oath, which is also called a sacrament, is customarily defined: the invocation of the divine name in testimony of truth.

a. Invocation is a petition by which God is asked that, by His infallible testimony, He will, when it shall please Him, in this life or in the other, manifest the truth of that which is asserted or promised. The end of an oath is the confirmation of truth by a testimony which exists as most firm, that is, infallible, and therefore the ending of controversy.[409] Invocation can be express or tacit, namely through mere external signs, such as the touching of the cross or of the Gospel, or the raising of the fingers made as a sign of an oath. Of the divine name: for an oath can be made only by God; for it was introduced for confirming truth by a testimony greater than every exception, or infallible; but the testimony of God alone is infallible.

b. An oath supposes faith concerning the existence of God and fear of God; wherefore the oaths of those who acknowledge God as omniscient and infallible, such as Jews, deists, etc., are true oaths; but the oaths of those who do not acknowledge the true God, such as pantheists, atheists, materialists, etc., have no value; finally the oaths of gentiles who swear by false gods are null, although accidentally from an erroneous conscience they can be obligated.

c. An oath, as soon as it has been uttered, produces its effect, namely it confirms the hearers concerning the truth of that which is affirmed or promised. For they reason thus: if it were not true, the one swearing, who is supposed to fear God, would not dare to invoke God as witness of his assertion, who can immediately manifest, or certainly will manifest in the other life, whether that which is affirmed or promised is true.

Note. From the peculiar end of an oath and from its supreme sanctity these things are to be inferred: a. that an oath is not to be exacted or admitted unless there is question of a great good, whether of the community or of some private person, lest a religious act, to the detriment of the common good, degenerate into a mere ceremony; b. that it is not to be exacted or admitted from those who are foreseen to be about to perjure themselves, nor from those who do not admit the existence of God (socialists, atheists); c. that those who from the doctrine of their sect in good faith reject an oath as illicit, and attribute the force of an oath to a simple assertion, are not to be compelled to swear, lest they be compelled to act against their conscience. It is clear that these are to be subjected to the penalties by which perjurers are punished, when it has been established that they knowingly confirmed a falsehood by the pledge of the right hand.

**244. Liceity.** 1. The liceity of an oath, from the Pelagians down to the Jansenists, many have denied, each from various reasons.[410]

From the proper end of an oath it is established that it is not to be sought on account of itself, but is a means of assisting some defect, namely by which one man does not believe another. For this reason an oath is licit

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**Notes**

408. St. Thomas, II-II, q. 89. St. Alphonsus, l. 3, n. 133-193. Suarez, *De religione*, tract. 5. Dicastillo, *De iuramento*. Sporer-Bierbaum, *Theologia moralis decalog.* (Paderbornae: Typographia bonifac., 1897), tract. 3, n. 7-172. Fr. Gopfert, *Der Eid* (Mainz: Kirchheim, 1883). Bouquillon, *De virtute religionis* (Bruges: Beyaert, 1880), pars III. Ballerini-Palmieri, *Opus theolog. morale*^3, II, n. 532-601.

409. Heb. 6:16.

410. Cf. Gopfert, *Der Eid*, p. 111 ff.

not absolutely, but only relatively, namely when it becomes either necessary or useful for its proper end. But that an oath clothed with the due conditions is licit and honorable is certain from faith.

a. Sacred Scripture approves an oath: alpha. of the Old Testament: *Thou shalt fear the Lord thy God and shalt serve Him alone, and thou shalt swear by His name*;[411] beta. it determines the conditions of a licit oath: *And thou shalt swear … in truth and in judgment and in justice*;[412] gamma. and it attributes an oath to the Lord God Himself: *By My own self I have sworn, saith the Lord; because thou hast done this thing … I will bless thee.*[413]

b. From the books of the New Testament we know that St. Paul often swore: *God is my witness … that without ceasing I make a commemoration of you.*[414]

c. From the use and practice of the Church it is established that an oath is not only permitted, but is often even prescribed.

d. An oath by its nature is an act of the virtue of religion: for through it we acknowledge and profess a twofold divine perfection, namely His infallible omniscience and His veracity, by the profession of which we exhibit reverence to God; but to exhibit reverence to God is an act of religion or an act of the worship of latria.

2. From these things it is clear that the words of sacred Scripture,[415] by which an oath seems to be forbidden to Christians, from the interpretation of the Church are to be understood not of an absolute prohibition, but of a prohibition for the state of Christian perfection.

And indeed by these words it is signified that an oath is not good and to be sought of itself, but is from evil (it is not said: it is evil): for its necessity has arisen both from the unbelief of hearers and from defect of truthfulness in speakers. But Christians ought to be of such perfection that an oath is rendered altogether superfluous, and the same faith can be given to their simple affirmation or negation as to an oath.[416]

Note. a. It is not lawful for ecclesiastics to interpose a solemn oath before a lay judge without the license of the bishop; b. a parish priest cannot exact a solemn oath from a parishioner except in the name and by the authority of the bishop; c. impubescent persons cannot be compelled to a solemn oath;[417] d. an oath can also be interposed through a procurator.

**245. Division.** a. By reason of matter, an oath is divided into assertory, by which God is invoked as witness of a past or present thing: *I swear that I gave alms; I swear that I am a Catholic*; and into promissory, by which God is invoked as witness of a future thing: *I swear that I will give alms.*

It is called promissory because for the most part it is used for confirming a promise made to another.

b. By reason of form, into invocatory, by which God is invoked only as witness of truth; and into imprecatory (execratory), by which God is invoked as witness of truth and avenger of perjury: for the one swearing imprecates evils upon himself or his own, if he asserts a falsehood, or if he does not keep that to which he obligates himself.

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**Notes**

411. Deut. 6:13.

412. Jer. 4:2.

413. Gen. 22:16-17. Cf. Ps. 131:11.

414. Rom. 1:9. Cf. 2 Cor. 1:23; Gal. 1:20.

415. Matt. 5:33 ff.; Jas. 5:12.

416. Cf. Knabenbauer, *Cursus scripturae sacrae* (Parisiis: Lethielleux), on Matthew, c. 5, 33 ff.

417. C. *Pueri* 15, c. 22, q. 5.

alpha. An execratory oath is customarily made in two ways: either by directly imprecating: *may I be struck by lightning, if it is not true*; or by interposing some good which may perish if a falsehood is sworn: *by my life, by my salvation.*[418]

beta. The formula which is customarily used in both ecclesiastical and forensic oaths: *So may God help me and these holy Gospels of God*, is a formula of an imprecatory oath and is to be explained in this way: if what I swear is true, may God help me; if it is false, may God deprive me of His help.

c. By reason of the term, into explicit, by which God Himself is immediately invoked as witness: *God is my witness*;[419] and into implicit, by which immediately a creature is invoked, which nevertheless has a special relation to God, because the divine attributes specially shine forth in it: *I invoke heaven and earth as witnesses today*;[420] for he who swears by the saints, by heaven and earth, invokes God shining forth in them.

d. By reason of mode, into solemn, which is made with some external solemnity, for example before a crucifix, with candles lit, before witnesses, by touching the Gospel or a scepter, by raising the first fingers, etc.; and into simple, which is made without external solemnity.

All these diverse oaths are of the same moral species, for all agree in the formal nature of oath, which is the invocation of the divine name; but the diverse mode of invocation by which they differ from one another is accidental and therefore does not change their specific essence.

## Article Second. On the Conditions Required for an Oath

**246.** The conditions of a valid oath are two: a. the intention of swearing; b. an oath-formula.

That on the part of the one swearing there are besides required for a valid oath the same conditions which are required for a vow, namely perfect deliberation and perfect liberty, is gathered from the same reason in each case. But on the part of the matter in a promissory oath it is required that it be possible, good or licit, and better than the opposite, as was said above concerning vow.

1. The intention of swearing is required, either formal or at least virtual: for an oath by its nature is an act of the will, namely a petition; but without the intention of petitioning there is no true petition.

a. The value of an oath in conscience depends upon the intention of the one swearing, so that he truly swears who has the mind of swearing, even if the formula which he uses is less suitable; and he certainly does not swear who does not have the mind of swearing, whatever the words or signs may be which he uses. In doubt concerning the intention of swearing, the value of the oath must be judged from the sense which the words used have from common acceptance; therefore if the words from common use are oath-words, he must be judged truly to have sworn; if from common use they are not oath-words, he is presumed not to have sworn; but if the words are ambiguous, likewise no oath is had.

b. He has virtual intention who uses oath-words in their customary sense, even if he does not expressly think of invoking divine testimony. Therefore if one uttering oath-words, whether from ignorance or from inconsideration, does not even implicitly advert to an oath, he makes no oath.

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**Notes**

418. Suarez, l. 1, c. 12, n. 9.

419. Rom. 1:9.

420. Deut. 30:19.

421. Suarez, l. 1, c. 1, n. 4.

2. An oath-formula is required, by which God is invoked in testimony. For although an internal oath conceived by the mind alone, absolutely speaking, is a true oath,[421] nevertheless, because an oath from its proper end is used for the sake of others, it must be manifested to them by an external sign.

**247.** Some oath-formulas are certainly oath-formulas; some are ambiguous; some certainly are not oath-formulas.

a. Formulas of explicit oath are: *let God be witness to me*; *I swear by God, by Christ, by the truth of God*; *may God destroy me, if*, etc.; even simply the word *I swear* suffices, if the intention of swearing is established. Nevertheless, when the intention of swearing has not been premised, he does not make an oath who uses these words: *I swear that it is so*, because he does not invoke the testimony of God. For although *I swear* signifies: I invoke God as witness, yet those who use this word alone, unless they have been warned about oath, do not attend to its full sense. *God lives, that it is so*, is an oath: for the life of God is added in testimony of truth.

b. Formulas of implicit oath are: *I swear by the Blessed Virgin, by the cross, by the holy Gospels, by the altar, by the sacraments, by the Catholic faith, by the Church, by the saints, by the temple, by my soul, by heaven*, etc.; for he who swears thus is judged to invoke the author or lord of these. In practice, however, those who frequently use these words: *bei Gott, bei meiner Seele*, etc., do not think of God; therefore from defect of intention these formulas often do not contain oaths.

c. Ambiguous formulas are: *by my oath* (*auf meinen Eid*); *by my conscience*; *by my faith*; *God lives*; *God is truth*; *God knows*; *I speak before God*, etc. These and words of this kind are true oaths if the intention of swearing accedes, or if they are required in the judicial forum as oath-words; but if the intention of swearing is not established, they are judged to be uttered only enunciatively, for procuring greater belief, not invocatively for invoking divine testimony. Wherefore if in common conversation the formulas are used: *ich schwore dir einen Eid, dass ich das tun werde; bei meinem Eide tue ich das*, most intend by these words not seriously to swear, but to affirm more gravely.

d. Oath-formulas are not: *truly*; *certainly*; *in truth*; *it is as certain as it is certain that I exist, that I am here, that the sun shines*, etc.; nor: *may I die, may my ears be cut off, may the devil destroy me, if this is not true*: for these and things of this sort contain a certain exaggerated confirmation of truth, not an oath, because invocation of divine testimony is lacking. Wherefore if what is affirmed by these formulas is false, only a venial lie is committed. Nevertheless, if the formula contains a penalty to be inflicted by God: *may I be struck by lightning, if it is not true*, it can more easily be held to be an oath-formula.

e. If an assertion or promise is exacted from priests and furnished through their consecration: *bei meiner priesterlichen Ehre und Treue*, there is not question of a true oath, but of a firmer and more secure affirmation of truth, according as it befits a priest to affirm or promise. The same must be said of the formula which princes are accustomed to use: *bei meiner fuerstlichen Ehre und Treue.*

f. Formulas by which the truth of an assertion is compared with the truths of faith: *It is as true as God exists - as Christ is in the venerable sacrament - as the Gospel is true; I am as innocent as the Blessed Virgin*, etc., seem to some to contain an oath with blasphemy. Nevertheless they certainly contain neither an oath, because no one is invoked as witness, nor blasphemy, provided that what is affirmed is true, because the one uttering intends to signify only a likeness between the certitude of his assertion and the certitude of revealed truth, not equality. Therefore he who uses formulas of this kind sins venially by vain invocation of the divine name, provided the thing is true; but if the asserted thing is false, he commits blasphemy objectively, because he contemptuously compares his lying speech with divine speech or existence.

**248.** The conditions of a licit oath from Jer. 4:2 are three: "Thou shalt swear: the Lord liveth, in truth and in justice and in judgment"; for if one of these conditions is lacking, the oath lacks the reverence owed to God.

1. The truth of an oath requires that a lie be excluded from the oath; therefore in an assertory oath it requires that that which is asserted be so, or at least be believed to be so, as it is asserted; but in a promissory oath, that the one swearing have the will of afterward fulfilling what he promises.

a. It is not lawful to swear with only probable knowledge of the matter, but certain knowledge of the thing which is sworn is required; however, that moral certitude suffices which is had when no prudent and reasonable doubt militates against the thing. If one must swear concerning the deed of another, which is known from the report of a man worthy of faith, outside judgment indeed it is lawful to swear, because morally certain knowledge of the thing is had; but in judgment it is not lawful to swear unless the fact is known by one's own experience: for an oath in judgment, unless something else is expressly said, is understood of one's own knowledge.

b. Therefore he who swears with doubt concerning the truth sins gravely, because he wills that God testify to it, whether it is true or false. - And he who in judgment swears to a thing indeed true and certainly known, of which nevertheless he does not have experimental knowledge, commits perjury. - He who makes a promissory oath without the mind of executing the thing promised, likewise he who doubts whether he will do what he swears, and finally he who judges the thing promised to be morally impossible for himself, swears falsely.

c. Whether it is licit to swear with mental restriction. alpha. To swear with purely mental restriction is perjury; beta. to swear with broadly mental restriction before those who have the right of knowing the whole truth is mortal; gamma. to swear without a just cause, with broadly mental restriction before those who do not have this right, is venial; delta. but from a just cause it is licit: for since the assertion is true, God is not invoked in testimony of falsehood. Nevertheless, a greater cause is required for making restriction with an oath than if it is made without an oath.[422]

2. Justice in an assertory oath consists in this, that the one swearing can licitly communicate with others the thing which he asserts; but in a promissory oath it consists in this, that the thing promised is licit and honorable.

Thus he swears against justice (by an assertory oath) who without a just cause reveals another's hidden crime with an oath; likewise he who with an oath boasts about a duel committed. He swears against justice (by a promissory oath) who obligates himself by oath to telling a lie, to committing a duel, to inflicting damage upon another.

3. Judgment or discretion in an oath requires two things: first, that a just cause of swearing be present; then, that the oath itself be furnished with that external and internal reverence which befits the divine majesty. But any cause of necessity or of great usefulness is judged just.

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## Article Third. On the Promissory Oath

**249. Definition.** 1. A promissory oath is an act by which someone, under invocation of the divine name, obligates himself to doing or omitting something.

a. Therefore two things are confirmed in a promissory oath: alpha. the truth of the present assertion, that is, that the one swearing actually has the will of doing the work promised; and beta. the truth of the future execution, that is, that he will actually do the work promised; and for each truth he invokes God, and indeed as witness of the former and as surety of the latter. Insofar as a promissory oath regards the present will

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**Notes**

422. Cf. St. Alphonsus, l. 3, n. 151.

of doing the work promised, it is assertory; but insofar as it regards future fulfillment, it is exclusively promissory, and under this respect it is considered here.

b. In a promissory oath God is not introduced as witness of future execution: for testimony is borne only concerning past or present truth. For confirming a promise as to future execution, a surety is customarily introduced; but God cannot properly be called a surety: for He Himself does not assume the burden of fulfilling in the default of the one promising. Therefore suretyship with respect to God only signifies that God, by His authority, gives greater firmness to the promise made before Him, insofar as the one promising through the oath takes upon himself the obligation of fulfilling from reverence toward God, and therefore from the virtue of religion, what he promises.[423]

2. A twofold promissory oath is distinguished, simple and confirmatory, according as the thing to which someone obligates himself to do or omit is a mere resolution or a promise made to another.

If the first obtains, there is had a sworn resolution: *I swear that I shall fast*; if the other obtains, the promissory oath either confirms a promise made to God, and is a sworn vow: *I swear that I shall observe the fast promised to God*; or it confirms a promise made to a man and accepted by him, and is a sworn pact: *I swear that I shall fulfill the betrothal contracted*; or finally it confirms each, namely the promise made to God and to man, and is a vow sworn with a pact.

**250. Principles.** 1. A promissory oath induces an obligation of religion of keeping the things promised: for the one swearing is held, from reverence toward God, whom by swearing he invoked as surety, to keep the promise.

a. Therefore he who violates a simple promissory oath commits one sin against religion; he who violates a sworn vow sins in two ways against religion, namely against fidelity through violation of the vow and against reverence owed to God through violation of the oath; he who violates a sworn pact commits two sins, one against fidelity or justice, the other against religion.

b. The obligation of the oath, which accedes to and is superadded to a promise made to a man and obligating from justice, is altogether personal; accordingly, it affects only the one swearing and does not pass to his heirs.

c. Theologians ask whether the obligation of a vow or of an oath is greater. The question must be understood in such a way that the comparison is made between vow and oath insofar as it is promissory, not insofar as it is assertory. Now to the question so proposed it seems it must be answered that the obligation of a vow is greater than that of an oath. For a vow obligates from fidelity toward God; but a promissory oath, insofar as it is an oath, properly obligates not from fidelity but from reverence owed to God: for by an oath nothing is promised to God, but He Himself is invoked that by His authority He may give special firmness to the resolution or promise made to another. Wherefore transgression of a promissory oath is not a sin of infidelity, but a sin against reverence owed to God.[424]

2. A promissory oath, whether the promise was made to God or to man, obligates under grave or under light obligation according as the thing promised is grave or light: for since the obligation of an oath is less than the obligation of a vow, and a vow in light matter obligates only under light obligation, an oath also in light matter obligates only under light obligation.

Therefore an oath not fulfilled is a grave or light sin according to the nature of the matter. Therefore he who does not fulfill a light thing which he promised by oath, or a small part of a grave thing, sins venially.

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**Notes**

423. Cf. Suarez, l. 3, c. 16, n. 10 ff.

424. Suarez, l. 2, c. 3, n. 7.

There are indeed some who say that a promissory oath always obligates under grave obligation, because in a promissory oath God is adduced as witness of future execution; but in this oath God is adduced only as witness of the contracted obligation, so that this cannot be violated from the intention of the one swearing without irreverence inflicted upon God. But this irreverence is grave or light according to the nature of the matter.

3. A promissory oath concerning an impossible, illicit, or useless thing induces no obligation. The reason of the first is that no obligation is given to the impossible; the reason of the second is that likewise no obligation is given to an evil thing; the reason of the third is that a vain or indifferent thing does not yield to the worship of God; therefore we cannot obligate ourselves to it for worshiping God.

a. If the thing afterward ceases to be illicit or useless, the oath does not revive: for: that which by law does not subsist from the beginning is not strengthened by the passage of time.[425]

b. If the oath is concerning a thing indeed honorable, but less good, it must be distinguished whether the promise was made to God alone, or whether it was made for the benefit of a third party. If the first, the oath does not obligate, because it does not yield to the worship of God that a work indeed good, but impeding a greater good, be done; if the other, it obligates, provided the promise has also been accepted by the other, because the acquired right of the third party must be preserved. Therefore a cleric who swore that he would serve some church is held by the oath, unless he obtains dispensation, even if this impedes entrance into religion.

Whether a promissory oath unjustly extorted obligates. Just as a vow unjustly extorted is not valid, so also an oath unjustly extorted must be said not to be valid: for a promise which is founded upon injury is invalid by the law of nature; moreover, God is not judged to confirm by His authority a promise of this kind unjustly extorted.

**251. On the interpretation of a promissory oath.** In the forum of conscience a promissory oath must be interpreted according to the mind of the one swearing: for the obligation which he imposes upon himself by oath depends upon his intention. But if the intention of the one swearing is not established, it must be interpreted according to the following rules:

1. An oath must be interpreted strictly: for odious things are to be restricted; but that an oath is odious is gathered from the grave obligation which it induces and from the danger of violation. Moreover, the one swearing is judged to have willed to obligate himself as little as he could.

2. A promissory oath follows the nature and conditions of the act (resolution, promise, contract) to which it is added: for an oath does not change the nature of the act, but supposes the act and superadds to it an obligation of religion. And indeed, since the act is the principal, but the oath is the accessory, the principle holds: the accessory follows the nature of the principal.[426]

a. Therefore alpha. an oath added to an act invalid by the law of nature, for example to a promise extorted by (substantial) deceit, is itself invalid. beta. Since every promise contains this tacit condition, *unless it be remitted*, the oath also contains the same condition, and accordingly ceases when the promise ceases. gamma. Sworn betrothals can be dissolved by mutual consent just as non-sworn betrothals can.

b. He who swore that he would observe the statutes of some congregation, college, office, etc., is not held to observe these except in that way by which they obligate of themselves. Therefore alpha. he is not held to observe those which have already gone into desuetude and are not observed by the greater part of the

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**Notes**

425. *Non firmatur*, reg. iuris 18, in 6.

426. *Accessorium*, reg. iur. 42, in 6.

community; beta. those which of themselves obligate only under light obligation, or under penalty only, or from mere fittingness, are not to be observed otherwise because of the oath; gamma. by transgressing those which obligate under grave or light sin, he commits besides a grave or light sin against religion.[427]

c. An oath of keeping a secret does not obligate when the obligation of the secret itself ceases; but violation of a secret obligating in conscience will be a grave or light sin against religion according as the secret itself obligates under grave or light obligation, because the obligation of the oath follows the obligation of the secret.[428]

d. Oaths of parents to punish children for the most part are not true oaths, because there is not present the intention of swearing, but only of frightening the children. But if they are true oaths (sworn resolutions), they must be put into execution unless their obligation ceases; but this ceases if execution of the resolution becomes irrational, as if the penalty would not correct the child but would only embitter him: for the oath is accessory to the resolution, and when this ceases, the oath also ceases.

3. A promissory oath must be interpreted according to the conditions which are understood in every promise; conditions of this kind are: a. *if I shall be able*, both physically and morally; b. *with the right of the superior preserved*, who from a just cause can irritate or dispense in the obligation; c. *if the thing shall not have been notably changed*: for if it has been notably changed, the intention of the one promising did not refer to it; d. *if the other shall have kept faith*; e. *unless the other yields his right.*

According to these rules the oath of not playing is to be interpreted.

a. If the oath is made from zeal for mortification and religious perfection, the one swearing is held to abstain from every game.

b. If the oath of not playing in general is made without the intention of greater perfection, the one swearing is not held to abstain from honorable and licit play: for the end of this oath is judged to be lest time be spent uselessly and money squandered.

c. He does not act against an oath of not playing who assists others playing, observes them, gives money to someone which is to be exposed in play, and helps him by his advice: for he who does these things is not said to play.

**252. On the oath of fidelity.** By this name is signified the oath of obedience and fidelity which political authority is accustomed to exact from its subjects, not indeed from all, but from magistrates, soldiers, and primary officials of the kingdom.

a. This oath (supposing a legitimate government) of itself is honorable and licit, unless it is exacted from ecclesiastics, and unless it contains anything which is against the rights of God and the Church: for since subjects are held to obey valid laws of the political power, this oath can be exacted and furnished by subjects.

b. It is clear that an oath of furnishing obedience to laws which are contrary to the rights of God and of the Church is illicit; nevertheless, from a sufficient cause it is lawful to furnish an oath of obedience, even if some laws are contrary to divine laws, under this twofold condition: alpha. that the clause be added: with the laws of God and of the Church preserved; beta. that, for preventing scandal, if there is need, it be declared that the Holy See has permitted the oath with this clause added.[429]

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**Notes**

427. St. Alphonsus, n. 181.

428. St. Alphonsus, n. 183.

429. S. Poenitent., 10 Dec. 1860. Cf. Scavini, *Theologia moralis*^2 (Mediolani: Olivia, 1890), t. IV, p. 431 ff.

It is not necessary that the clause be expressed, or that mention be made of the liceity of the oath, if it is publicly known, for example from the declaration of the prince, that the oath is to be accepted in this sense,[430] or if, the circumstances being considered, scandal is not to be feared, because, for example, from the quality of the person it is already understood that the oath is not made in another sense.

c. It is not lawful to exact this oath from ecclesiastics, nor can they themselves licitly furnish it, because the oath is repugnant to the personal immunity which they enjoy. Nevertheless, alpha. if custom makes the oath honorable, it can licitly be exacted and furnished. For this reason those who receive an office from the government are accustomed to make the oath of fidelity. beta. It is licitly furnished if a pontifical privilege permits it. For this reason bishops are accustomed to swear before the prince before they undertake governing their church.

d. Those who make this oath obligate themselves only to this, that they will to be subject to the laws and to plot nothing against legitimate authority; and if they are public officials, that they will discharge their office according to the laws, but not that they will to observe individual precepts of law also from religion.

**253. On the cessation of a promissory oath.** A promissory oath ceases: a. by cessation of the end; b. by condonation made by him in whose favor the oath was made; c. by irritation; d. by dispensation; e. by commutation. Therefore the obligation of an oath ceases in the same ways in which the obligation of a vow ceases, with one exception, condonation, by which an oath can cease, but not a vow.

1. On condonation. a. Just as oaths which are made in favor of another do not induce obligation unless they are accepted by the other, so afterward they can be relaxed by the same, if he renounces the favor furnished to himself.[431]

b. Just as ecclesiastical authority, so also civil authority can relax the obligation of an oath made concerning those things which are subject to civil power. For by the very fact that civil authority remits an obligation arising from a right acquired for itself, the obligation arising from the oath is also indirectly extinguished: for the accessory follows the principal.

2. On dispensation. Not only he who has ordinary power, but also he who has merely delegated power of dispensing in vows can dispense also in oaths, whether they are annexed to a vow or are not, unless at the same time there is question of the acquired right of a third party, from which that person is unwilling to yield: for vows and oaths are equated as to dispensation.

a. Although all concede this concerning him who has ordinary power, such as a bishop, nevertheless there are some who with St. Alphonsus (n. 190) deny that he who has only delegated power of dispensing in vows can dispense in oaths. But since St. Alphonsus himself concedes the probability of the affirmative opinion, it is safe in practice, because in the case of speculatively probable power the Church supplies. Indeed, many probably teach that he who has delegated power of dispensing in vows can also dispense in sworn vows, in which the double bond of vow and oath concurs.[432]

b. He who can dispense in vows can also dispense in oaths which turn upon the matter of reserved vows, unless a vow accedes, because oaths are not reserved. But if a reserved vow has been confirmed by oath, he cannot dispense unless he can dispense in reserved vows.

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**Notes**

430. It is established that this was done in Austria. Cf. *Archiv f. kath. KR.*, XXVI, p. 250 ff.

431. Suarez, l. 2, c. 39, n. 1 ff.

432. Cf. Suarez, *De voto*, l. 6, c. 14, n. 6; Genicot, *Instit. theol. mor.*, I, n. 307; Ballerini-Palmieri, II, n. 595 ff.

c. Regular confessors from special privilege (of Gregory XIII and Paul III) can dispense in oaths and commute them, unless they were made in favor of a third party and accepted by him.

## Article Fourth. On Perjury

**254.** Perjury is taken in a twofold sense: strictly and properly it signifies a false oath, or one lacking truth; broadly it signifies any illicit oath, so that even an iniquitous oath, lacking justice, and an incautious oath, lacking judgment, are called perjury. The malice of each must be discussed.

Therefore perjury (*Meineid*) properly is: alpha. an assertory oath concerning a false thing which the one swearing knows to be false; beta. a promissory oath without the intention of fulfilling the thing promised or with the intention of not fulfilling it. If someone afterward culpably does not fulfill a thing seriously promised under oath, he does not properly commit perjury, but rather breach of oath (*Eidbruch*), although he also is customarily called perjured.

1. On perjury strictly taken. a. Perjury or a false oath is a sin grave from its whole genus: for he directly brings injury upon the veracity of God who asks that God by His supreme authority attest to a false thing; and this injury remains grave even if God is invoked in testimony of the slightest falsehood: for it is always insultingly supposed that God can be deceived or deceive.[433]

b. All perjuries are of the same moral species: for just as diverse oaths do not differ specifically, so also their violations are of the same moral species.

Although execratory perjury can seem to be a double sin, against religion and against charity, nevertheless in reality it is a simple sin against religion: for no one is judged seriously to imprecate evil upon himself or his own; therefore he who utters execratory words inwardly trusts that God will not do this. Yet by these things it is not denied that execratory perjury is a double sin, both against religion and against charity toward oneself or against piety, if the perjurer seriously intends to imprecate evil upon himself or his own.

**255.** 2. On perjury broadly taken. a. An assertory oath which lacks justice, insofar as it is an oath or insofar as it is opposed to religion, is venial, even if the sin against charity or justice is grave, as if someone confirms grave detraction by oath: for by this perjury grave irreverence is not committed, since God is not invoked in testimony of a false thing, but of a true thing, although evil.

b. A promissory oath lacking justice, by which someone obligates himself to a gravely evil thing, is a grave sin; by which he obligates himself to a lightly evil thing, a light sin; by which he obligates himself to an indifferent or useless thing, likewise a light sin.

Therefore in an oath of this kind (supposing the will of fulfilling it) two sins are contained, one because the one swearing (for example, that he will commit a duel) wills an evil thing, the other of irreverence, because with divine authority interposed he obligates himself to sinning.

c. An oath, whether assertory or promissory, which lacks judgment, or to swear without sufficient cause or without due reverence, does not exceed venial sin: for the irreverence does not seem to be grave, because nothing is done which is directly opposed to some divine attribute.

alpha. The faithful must be seriously admonished not to contract the habit of swearing rashly at nearly any doubt which is objected to their sayings, or of indiscriminately confirming their promises by oath: for those

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**Notes**

433. Wherefore proposition 24 was condemned by Innocent XI: To call God as witness of a light lie is not such irreverence on account of which He would will or be able to condemn a man.

who contract and retain this habit expose themselves to the great danger of swearing without consideration of the things which they swear, and thus of making many perjuries.

beta. An oath uttered from the habit of swearing, if it is voluntary, of itself is only a light sin, because it is an oath lacking judgment; but by reason of the danger which it contains of committing perjury it can be a grave sin. Therefore the faithful are to be admonished concerning the obligation of laying aside the depraved habit of swearing, as was noted above (n. 205) concerning blasphemy.

**256. On a fictitious oath.** A fictitious oath is an oath made only externally, without the mind of swearing or without the mind of invoking God as witness of the assertion. Two things must be declared concerning this oath: a. whether it induces obligation; b. what kind of sin it is.

1. A fictitious oath, whether assertory or promissory, is no oath and accordingly induces no obligation from the virtue of religion; but from another source there can be present an obligation of keeping unharmed him who has been deceived by the fictitious oath.

2. a. A fictitious oath which is made in confirmation of a falsehood is always a grave sin, because it is grave irreverence to invoke God, even only externally, in testimony of a falsehood, just as it is grave irreverence only externally to burn incense to an idol.

An assertory oath is made in confirmation of a falsehood if the one swearing externally invokes God as witness of a false assertion; and a promissory oath, if he swears externally without the mind of fulfilling.

b. A fictitious oath which is made in confirmation of a truth does not exceed venial sin: for although an oath of this kind contains a lie with vain invocation of the divine name, nevertheless God is not invoked in testimony of falsehood.[434]

Yet from another source the one swearing fictitiously can sin gravely, namely if he swears fictitiously in those circumstances in which he is held under grave obligation to swear, for example because of the precept of a superior or judge, or if there is question of a matter of great moment, such as an onerous contract.[435]

## Article Fifth. On Adjuration

**257. Notion.** Adjuration is an action by which someone is induced to doing or omitting a thing by invocation of God or of a sacred thing.

a. Adjuration differs from oath: for in an oath God is invoked for confirming truth; but in adjuration, for rendering a command more efficacious or for confirming a petition. It differs from prayer, because by praying we ask something from God; in adjuration we command or urgently demand something through God.

b. Adjuration is an act of the virtue of religion: for by adjuration we profess that the authority or goodness of God is so great that anyone, scarcely having heard the name of God, is immediately induced to furnishing what is exacted from him through the name of God, which yields to the honor of God.

c. There can be adjured: alpha. God or Christ; beta. the Blessed Virgin Mary, angels, saints; gamma. wayfaring men, as if a subject adjures a superior, a friend a friend, a poor man a rich man, that he furnish something for the love of God; delta. demons.

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**Notes**

434. Cf. Reuter, II, n. 309 ff.

435. Cf. Lessius, *De iustitia et iure*, l. 2, c. 42, n. 42.

**258. Adjuration is divided.** 1. Into solemn and private, according as it is made in the name of the Church, by ministers of the Church and by a rite instituted by the Church, or without solemnities of this kind.

2. Into imperative and deprecatory, according as it is made by command or by prayers.

alpha. Imperative adjuration is that by which the chief priest adjured Christ: *I adjure thee by the living God, that thou tell us if thou art the Christ*;[436] deprecatory is that by which St. Paul sometimes adjures those to whom he writes: *I beseech you therefore, brethren, by the mercy of God.*[437]

b. God can be adjured only deprecatorily, because He is not capable of command; a demon can be adjured only imperatively, because he is capable only of command, not of deprecation; he who is capable both of command and of deprecation, such as a subject man, can be adjured imperatively and deprecatorily.

c. God is adjured deprecatorily if, from the use of the Church, salt, water, mice, locusts, storms are exorcized, and indeed either through Himself (His mercy, goodness, etc.) or through the merits of Christ or through the intercession of the Blessed Virgin Mary and of the saints. This mode of supplicating is called obsecration.

**259. Principles.** 1. Adjuration does not induce an obligation of furnishing that which is asked (from the adjured man), whether the adjuration is deprecatory or imperative: for adjuration has not been instituted for inducing obligation, but for exciting in the adjured person fear or love of the divine name, by which he is moved to furnishing what is asked from him.

Therefore if a superior adjures a subject by imperative adjuration to furnish the thing asked, the subject is indeed held to obey, yet not by force of the adjuration, but by force of the precept joined with the adjuration. Hence if the subject does not furnish the thing commanded, he does not sin against religion, but only against obedience.

2. In order that adjuration be licit, the same three conditions are required as in an oath: truth, justice, and judgment.

a. The truth of adjuration requires that the one adjuring truly intend to obtain what he asks by adjuring, and that the cause on account of which he asks be true.

Defect of truth in adjuration does not exceed venial sin, because divine authority is not introduced for confirming a lie, but only for moving another to furnishing something, as if a fictitious poor man should ask alms through God.

b. Justice requires that the one adjuring ask for a licit thing.

Defect of justice in adjuration is a grave sin if the thing asked or commanded is gravely evil; and it is a light sin if the thing asked or commanded is lightly evil: for to induce another to an evil thing with divine authority interposed certainly contains irreverence toward God, and indeed greater or less according as the thing is more or less evil.

c. Judgment requires that adjuration be made from a just cause of necessity or usefulness, and with due reverence of the divine name.

Defect of this condition is only a venial sin.

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**Notes**

436. Matt. 26:63.

437. Rom. 12:1.

# Book Third. On the Third Precept of the Decalogue

[438] "Remember that thou keep holy the sabbath day."

Ex. 20:8.

This precept, insofar as it is affirmative, commands the sanctification of feast days, or the external and public worship of God through the sanctification of certain days; but insofar as it is negative, it prohibits those days from being profaned, especially through servile works.

**End and importance of the precept.** a. This precept chiefly tends to this, that man, ceasing from labors, especially bodily labors, may enjoy the necessary rest by which he can attend to divine things and refresh himself as to soul and body. The precept is of the greatest importance because of the most salutary fruits which arise from its observance, both for individual life and for social life. Yet in order that these fruits may be perceived more abundantly, rest of the body ought suitably to be joined with religious sanctification of the day. The principal effects are these:

alpha. The health of the body is cared for: for the human organism is so constituted that from seven days it needs one for resting, lest it gradually fail from labor. Unless, however, feast days are passed religiously, they are customarily spent in leisure and pleasures which harm health and do not profit it.

beta. Readiness in undertaking labor is increased: for uniform labor, which is interrupted by no change of holidays, depresses the soul; rest which the worship of the divine majesty adorns raises the soul and suffuses it with holy cheerfulness.

gamma. Domestic life is promoted: for the members of the family, on working days usually scattered and distracted by various occupations, are all gathered together at the same time, they establish familiarity more fully, devote themselves more earnestly to the office of education, and nourish and foster mutual love by daily association.

b. The opposition between rich and poor is softened: for, mindful of his sublime destination and of his own personal dignity, the poor man before God acknowledges himself equal to the others and persuades himself that virtues are worthy of honor, but riches are vain.

c. Since these advantages of holidays which are held on feast days contribute very much to the good of the republic, the obligation falls upon civil authority of protecting the holidays of feast days and of forbidding servile works; this in some states (England, Germany) has partly been done and not without fruitful effect.

## Question First. On the Sanctification of Feast Days

**260. Origin of the precept.** The precept of sanctifying feast days is partly natural, partly divine, partly ecclesiastical: natural, insofar as it commands that some time be assigned to divine worship, not only private but also public; divine, insofar as it commands that on one day of each week, in praise of the Creator, there be cessation from every work; but ecclesiastical, insofar as it determines certain days and the mode of worshiping God. Therefore the Church in this matter has determined natural and divine right more accurately.

a. The precept of sanctifying feast days, as it is now observed in the Church, contains several elements: alpha. that one day of each week must be sanctified; beta. that this day is not, as in the Old Testament, the last day of the week, the sabbath, but ought to be the first, the Lord's day; gamma. that the day is to be understood as a space of twenty-four hours and that it is to be computed from midnight to midnight; delta. that on

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**Notes**

438. St. Thomas, II-II, q. 122, a. 4. St. Alphonsus, l. 3, n. 263-332. Suarez, *De virtute religionis*, tract. 2, l. 2. Sporer-Bierbaum, *Theologia moralis decalog.* (Paderbornae: Typogr. bonifac., 1897), I, tract. 3, n. 482-541. Gasparri, *De sanctissima eucharistia* (Parisiis: Delhomme, 1897), II, c. 8. Ballerini-Palmieri, *Opus theolog. morale*^3, II, n. 711-814. E. Genicot, *Theologiae moralis institut.*^6 (Bruxellis: Dewit, 1909), I, n. 332-341.

feast days certain acts of religion are prescribed for the worship of God, but certain works, as contrary to religious rest, are prohibited.

b. Concerning the ecclesiastical origin of this precept, so far as the third and fourth element are concerned, there is no doubt; concerning the origin of the precept as to the first and second element, some teach that each, namely both that one day in any week must be sanctified and that the Lord's day must be sanctified in place of the sabbath, is of divine law;[439] others, on the contrary, teach that by ecclesiastical law not only was the Lord's day substituted for the sabbath, but also by the same law one day in the week is to be sanctified;[440] finally others teach that one day of each week is to be sanctified by divine law, but that the Lord's day was destined for this end by ecclesiastical or rather apostolic law.[441] And indeed God Himself instituted the division of time into weeks and commanded that the seventh day of each week be assigned to divine worship.[442] Christ the Lord did not abrogate this precept, but willed it renewed for the whole Christian age, power having been granted to the apostles of substituting the Lord's day for the sabbath and of determining the mode by which that day was to be sanctified in praise of the Creator and Savior.

c. From these things it is inferred how far the power extends which belongs to the Church of dispensing in this precept, namely that she can change it and dispense in it insofar as it is ecclesiastical; but that she cannot establish that no day be deputed to divine worship, nor that the division of time into weeks and the sanctification of one day of each week be abrogated, nor finally that those works be licit which, by the common judgment of men, would destroy the end of the precept, namely religious rest.

**261. On the precept itself.** 1. The precept of sanctifying feasts obligates under grave obligation[443] all the faithful in possession of reason, therefore after the completion of the seventh year: for the matter and end of the precept are grave; therefore also by the universal use of the Church it is held as grave; yet it admits smallness of matter.

a. Feast days which are to be sanctified must be computed from midnight to midnight, as the use of the Roman Church bears.

b. Feasts formerly to be observed by common law from the constitution *Universa* of Urban VIII,[444] besides Sundays, were thirty-six;[445] but today several of them (in diverse regions in diverse number) have been abrogated, so that, for example, in France and Belgium, besides those which are fixed to Sunday, only four are celebrated, and in North America only six.

2. On Sundays and feasts the Church obligates the faithful to two things: a. to hearing Mass, because God as the first principle of all things is to be worshiped by sacrifice; but all sacrifices in the new law have been reduced to the sacrifice of the Mass; b. to abstaining from servile works, because the principal end of this precept is that man attend to divine things; but servile works plainly impede application to divine things.

a. This precept is not intimated in canon law, but is supposed;[446] but it is established from universal custom, which Christian doctrine everywhere declares in catechisms.

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**Notes**

439. Sporer-Bierbaum, tract. 3, n. 484.

440. Suarez, *De religione*, tract. 2, l. 2, c. 4, n. 5.

441. Fr. Schmid, *Worin grundet die Pflicht der Sonntagsruhe?* (*Quartalschrift.* Linz, 1900), p. 12 ff.; *Die Gewalt der Kirche uber die Sonntagsruhe* (*Zeitschrift fur kath. Theologie* XXV [1901]), p. 436 ff.

442. Gen. 2:2-3, compared with Ex. 20:8-11.

443. Cf. proposition 52 condemned by Innocent XI: The precept of observing feasts does not obligate under mortal sin, scandal being set aside, if contempt is absent.

444. Const. *Universa* of Urban VIII, 13 Sept. 1642.

445. Cf. *De sacramentis*^9, n. 181.

446. C. *Omnes* 62, *De consecr.*, d. 1; C. *Missas* 64, *De consecr.*, d. 1.

b. Priests satisfy the precept by celebration; but those who do not celebrate are held to hear Mass.

3. Beyond these two things, nothing else is expressly commanded by the ecclesiastical precept of sanctifying feasts, nor has anything else been introduced by legitimate custom. Wherefore:

a. The faithful are not held to hear a sermon or catechesis, unless the natural precept obligates them to this, namely if someone is not sufficiently instructed in those things which he must explicitly know and believe, and either does not wish or is not able to employ another means of learning them.

Nor from the fact that parish priests, by precept of the Church, are held to preach on Sundays and feasts,[447] does it follow that the faithful are obligated to hear the sermon: for parish priests are held to furnish the occasion so that the faithful, for whom this is necessary or useful, can be instructed in Christian doctrine. But hearing a sermon is so salutary and profitable that the fathers of the Council of Trent (loc. cit.) said that the faithful are held, if they conveniently can, to hearing the word of God.

b. They are not held to assist at vespers or evening devotions, not even under light obligation, unless accidentally scandal arises from the omission.

c. They are not held to worship God by certain internal acts, such as acts of faith, hope, and charity: for not internal but external worship of God is enjoined upon us by this precept; moreover, the sanctification of the soul is the end of the precept, which does not fall under the precept.

# Question Second. On Hearing Mass

## Article First. On the Mode of Hearing Mass

**Required conditions.** Five things are required for satisfying the precept of hearing Mass: a. due intention; b. due attention; c. an entire Mass; d. presence of the body; e. a due place.

**262. Due intention,** which indeed ought not to be the intention of obtaining the end of the precept, nor the intention of satisfying the precept, but of positing the work prescribed by the Church, that is, of hearing Mass. Wherefore he does not satisfy the precept who goes to church merely to hear music; but he does satisfy who goes there only from fear of his parents.

**263. Due attention.** A twofold attention is distinguished: external and internal. The latter excludes internal distraction; the former, external distraction.

External attention consists negatively in the removal of an external action which cannot stand at the same time with internal attention, for example sleeping, conversing; positively it consists in a certain confused attention, by which one adverts that sacrifice is being offered on the altar (n. 139).

1. For satisfying the ecclesiastical precept, external attention is certainly required, without which assistance would not be a human nor a religious action; therefore he does not satisfy who during the time of Mass attentively reads profane books, or attentively considers pictures, reads inscriptions, etc.

From the law of nature, or from the virtue of religion, internal attention is required under light obligation, which the reverence owed to God demands while we worship Him.

2. From the precept of the Church internal attention is not required, but external suffices; wherefore he satisfies the precept of hearing Mass who during the whole time of Mass is distracted, whether involuntarily or

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**Notes**

447. Council of Trent, sess. 24, c. 4, *De reform.*

voluntarily. And indeed prayer does not require internal attention; therefore *a fortiori* the hearing of Mass does not require it.

a. Since for satisfying the precept of hearing Mass there is no need to pray, because the Church commands nothing other than an act of divine worship, the whole question comes back to this, whether an act of divine worship can truly be furnished with the mind distracted. Now just as prayer, so also any other act of external divine worship as to its substance can be exhibited with the mind distracted (n. 139).

b. For practice, there is scarcely a distinction between each opinion, namely that affirming and that denying that internal attention is required: since the patrons of the affirmative opinion with St. Alphonsus (n. 313) demand so slight an internal attention that from defect of attention the hearing of Mass is invalid only when the distraction has been total and voluntary; but it is valid, provided there be an attention by which in some way one adverts that sacrifice is being offered; but this attention is present, provided external distraction is excluded.

c. Therefore he does not satisfy the precept who sleeps heavily through a notable part of Mass, so that he does not advert to what is being done at the altar; but he who only dozes, yet in such a way that he can confusedly discern what is being done at the altar, satisfies the precept, even if this happens through a notable part of Mass. - He satisfies the precept who sometimes converses with a companion, because this does not impede the confused attention which suffices for satisfying the precept. - Likewise organists, singers, and those collecting alms satisfy, even if they are occupied with this matter the whole time, because these actions do not impede attention to the Mass. For the same reason, those who are half-asleep or half-drunk satisfy if they are present at the sacrifice of the Mass.

Whether he satisfies the precept who confesses his sins during the time of Mass. - He would not satisfy insofar as confession impeded external attention; but confession, just as the hearing of confession, does not exclude external attention, which several authors hold not improbably.[448]

**264. Hearing an entire Mass.** 1. It does not suffice to assist at the essential and integral part of the sacrifice, but by the precept of the Church one must assist at the whole Mass, that is, at the entire liturgical function from the psalm *Iudica* up to and including the priestly blessing.[449] The Gospel of St. John does not seem to pertain to the integrity of the Mass.

2. He who cannot assist at an entire Mass is held to assist at least at the essential and integral part, that is, the consecration and communion, if he can; he who cannot assist even at these parts is not held to assist at the accidental parts, because he can no longer fulfill the precept even as to its substance.

Therefore he who comes before the consecration and cannot assist at another Mass is held to hear the remaining part; but he who comes after the consecration is not held to hear the remaining part, because he does not assist at the essence of the sacrifice, for which the consecration is certainly required. Hence in this case he cannot satisfy the precept as to substance; but the Church does not command us to assist at ceremonies alone without the sacrifice. Therefore in practice in this case the obligation cannot be urged.[450]

3. Therefore to omit a part of Mass is a sin, and indeed grave or light according as the part omitted is notable or slight. But the gravity of the omitted part must be established not only from duration, but especially from its dignity; wherefore a third part of the Mass is judged notable, and if it is from the more worthy parts, even a lesser part can constitute a notable part. Accordingly:

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**Notes**

448. Cf. Ballerini-Palmieri, II, n. 773 ff.; Genicot, I, n. 431.

449. C. *Missas* 64, *De cons.*, d. 1.

450. Ballerini-Palmieri, II, n. 781.

a. A slight part, the omission of which is a light sin: from the beginning up to and including the Creed, or up to the offertory exclusively; all things after communion; up to the epistle exclusively and at the same time those things which follow communion; the offertory alone; the preface alone.

b. A notable part: alpha. by reason of duration, from the beginning up to and including the offertory; all things before the Gospel and at the same time those things which follow communion; beta. by reason of dignity: from the preface exclusively up to the consecration; from the consecration up to the *Pater noster*; consecration and communion together, even if the intervening parts are heard; the consecration alone, yet not (at least probably) the communion alone. - He who goes out of the church before the consecration and, the consecration having been completed, immediately enters, in rigor does not satisfy the precept. Yet because the time in which he is absent is very brief, he need not necessarily be compelled to assist at another Mass, provided the consecration and communion are not omitted together.[451]

c. For determining the sin of those who come to church later, when Mass has already begun, attention must be given not so much to the part of the Mass omitted, but chiefly to the greater or lesser negligence in caring for the integrity of the Mass and to the foresight of the danger to which they voluntarily exposed themselves of not hearing an entire Mass.[452] For he who thinks that he will omit only a slight part unless he dispatches himself more quickly sins lightly, even if he finally comes after the offertory; but he who doubts or thinks that he will omit a notable part unless he dispatches himself more quickly, and culpably neglects this, sins gravely, even if he comes at the *Gloria*.

Whether he satisfies the precept who hears two half Masses. - He certainly does not satisfy if he hears them at the same time, because a Mass by its nature consists of successive parts.[453] If he hears them successively and the consecration and communion are had in the same Mass, he satisfies, because he hears one entire Mass; but if the consecration and communion are not had in the same Mass, he does not satisfy, because the parts do not constitute one and entire sacrifice; but the Church commands assistance at one and entire sacrifice.

4. From these things is gathered the obligation of supplying the defect in another Mass, where it can be done, if someone has omitted a part of the Mass at which he was present for the consecration and communion: for since anyone is held to hear an entire Mass, he who omitted a notable part is held under grave obligation to supply it, and he who omitted a slight part, under light obligation; yet a little is accounted as nothing, and a reasonable cause excuses from the obligation of supplying a light defect.

**265. Bodily presence,** which must be at least moral; but he is judged morally present who a. is morally joined with the celebrant, and b. whether standing inside or outside the church, can see or hear the celebrant or at least can follow the Mass from signs of those assisting. Hence he satisfies:

a. He who is inside the church, even if he stands in the choir behind the altar, or behind a wall or column, or in some chapel where he cannot see or hear the priest, provided that either from the sound of the bell or from the signs of others who hear Mass, he discerns what is being done by the celebrant. Likewise he who in a great church is even very far (beyond thirty paces) distant from the altar at which Mass is being celebrated, provided he can advert to what the priest does, because he is morally joined with the celebrant.[454]

b. He who is in the sacristy or in another place near the altar, from which he can see the priest; or even if, the door being closed, he cannot see the priest, provided he hears what is being done at the altar. Likewise

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**Notes**

451. Suarez, *De eucharistia*, q. 88, sect. 2, n. 6.

452. Genicot, I, n. 339.

453. This proposition (53) was proscribed by Innocent XI: He satisfies the precept of the Church concerning hearing Mass who hears two parts of it, indeed four, at the same time from diverse celebrants.

454. St. Alphonsus, n. 312.

those who withdraw from the church for a brief time to ring the bells or to bring wine, because they do not morally withdraw: for they cooperate with the sacrifice and withdraw from the intention of cooperating.

c. He who is outside the church but near the door, even if closed, provided he can follow the Mass by hearing. Likewise he who is at some distance from the church, which cannot hold the multitude of the faithful, provided he is joined to the multitude. Finally also he who from the window of a private house looks at the altar, even if a street is interposed, provided the house is not more than thirty paces distant from the church (as de Lugo has it). But he does not satisfy who is outside the church at a distance which exceeds about thirty paces, even if he can follow the Mass, because he is no longer morally joined with the celebrant.

**266. Due place.** 1. The faithful can satisfy the precept of hearing Mass in any church or in any public or semi-public oratory.

a. The ancient law by which the faithful on Sundays and feasts were held to hear Mass in the parish church has long since been abrogated, both through privileges granted to mendicants[455] and through a contrary custom prevailing in the whole world. Therefore a bishop cannot command his faithful to hear Mass in the parish church, because he cannot abrogate a universal custom which has already put on the nature of common law.[456]

b. What from the common doctrine of authors has long since been brought into practice, namely that for satisfying the precept it suffices to hear Mass in a semi-public oratory, has recently been confirmed by an authentic declaration of the Holy See.[457]

2. With special privilege excluded, he who hears Mass in a private oratory does not fully satisfy the precept:[458] for the precept is twofold, of hearing Mass and of hearing it in the due place; he satisfies the first, but not the other.

He who has an indult of a private oratory satisfies the precept by hearing Mass there. Yet in order that it be established who and when satisfy the precept by hearing Mass in a private oratory, the indults must be considered. Ordinarily these things are gathered from the indults:

a. Only one Mass can be celebrated on the same day.

b. On any day one Mass can be celebrated except on more solemn feasts. But these more solemn feasts which are excepted are: the Nativity of the Lord, Epiphany, Thursday in the Lord's Supper, Resurrection, Ascension, Pentecost, Immaculate Conception, Annunciation and Assumption of the Blessed Virgin, the feast of St. Joseph, of the Holy Apostles Peter and Paul and of All Saints, the feast of the patron of the place.[459]

c. But when an indult of a private oratory is granted because of infirmity, no day is excepted; indeed, even on the day of the Nativity three Masses can be celebrated.

d. In order that it be lawful to celebrate in a private oratory, it is required that there be present at Mass someone from those to whom the indult has been principally granted; but the indult is understood to have been principally granted only to those to whom the brief of concession is directed, namely to those persons who are named by their proper name on the back of the same brief.

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**Notes**

455. Const. of Pius V, *Etsi mendicantium*, 16 May 1567, Section 2, n. 8.

456. Benedict XIV, *De synodo*, l. 14, n. 10.

457. S. C. R., 23 Jan. 1899.

458. Oratories which are erected with the license of the Holy See in the villas of religious are merely private oratories, because villas of this kind are not religious houses, but profane houses. Therefore in them the precept of hearing Mass cannot be satisfied by those who do not belong to the religious, unless this has been granted by a special privilege, as was granted by Gregory XIII to the Society of Jesus.

459. S. C. R., 10 Apr. 1896, n. 3896.

e. The following satisfy the precept: alpha. those to whom the indult has been principally granted; beta. their blood relatives and relations by affinity up to the fourth degree living in the same house; gamma. their guests; delta. their household members or servants whose service at the time of Mass is actually necessary, whether because they serve the Mass itself, or because they must accompany their masters.

3. He who has the privilege of a private oratory is not held to use the privilege for satisfying the precept if he cannot go to a church, even if he can conveniently have a priest. He is held to this neither by force of the privilege, because no one is held to use a privilege, nor by force of the precept, which does not obligate one to employ an extraordinary means so that the precept can be observed.

For the same reason a priest is not held to use the privilege of celebrating on a portable (movable) altar or in a private oratory for satisfying the precept of hearing Mass on a feast day.

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## Article Second. On the Causes Excusing from Mass

**267. Excusing causes.** From hearing Mass, generally, any moderately grave cause excuses, or any notable inconvenience or damage in the goods of one's own soul or body, or of a neighbor;[460] for since this precept does not pertain to the graver ones, any truly grave cause excuses from its observance. Four causes of this sort are numbered: a. moral impotence; b. charity; c. office; d. custom.

In judging in concrete cases the excusing causes, whether they are or are not sufficient, one must attend both to the condition of the person about whom the matter is in question, since what is grave for one person is not grave for another, and to the same person's state of conscience: for he who is of a timorous conscience will not easily exaggerate inconveniences nor seek pretexts for declining the obligation.

1. By reason of moral impotence, such as any grave inconvenience, the following are excused:

a. Those who are far distant from a church. According to St. Alphonsus, for all, even the healthy, a walking journey of one hour and a quarter excuses, and a lesser distance if the weather is adverse or if the person is weak in strength; but those who can ride are not excused unless the distance is at least twice as great.

Busenbaum rightly adds that in this matter account must be taken of the custom of the place; and indeed in the mountainous regions of our country no one holds himself excused because he is distant from the church by the space of an hour and a quarter, provided he is not of impaired health.

b. Those who fear loss of honor, as those who lack garments suitable to their state and condition, girls pregnant from hidden fornication, unless they can hear Mass very early in the morning.

c. Those who must make a necessary journey or cannot interrupt one already begun.

d. Those who fear loss in goods of fortune: damage arising or profit ceasing. Now the damage which someone must undergo excuses more easily than profit ceasing; but a notable loss of profit certainly excuses. Notable profit differs according to diversity of state and condition.

Therefore, in order that profit ceasing may excuse, it is required that it be extraordinary profit and notable with respect to the determinate man; profit of this sort is judged to be profit which is at least twice greater than the ordinary profit of a day. A greater cause would be required if servile labor also had to be undergone, and a still greater one if the wonder and scandal of the people were to be feared.

e. The sick and convalescents who fear grave damage to health or a notable delay of convalescence.

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**Notes**

460. Cf. St. Alphonsus, n. 324.

alpha. When such damage is truly to be feared must be determined by the judgment of prudent persons, nor is it necessary to have recourse to the judgment of a physician or confessor; but the sick person himself can judge of this matter, provided he is capable of forming a prudent judgment. Generally it can be said that he is excused who fears such an inconvenience on account of which he is accustomed to omit other business of equal labor, for example, going out to handle business, to buy necessities, etc.[461]

beta. According to the opinion of physicians, the corrupt air of a church can truly bring a more or less grave inconvenience and therefore can be a cause excusing from frequenting the church. Therefore those who experience a notable inconvenience in church, such as constrictions or faintings, are excused from hearing Mass. This rarely happens to healthy persons, more frequently to those who are of infirm health and easily suffer irritations of the nerves.[462]

f. Those laboring in workshops in which they cannot abandon a work already begun or extinguish a burning furnace. But if the necessity of labor does not press, the owner of the workshop is held to permit the workers a suitable time so that they can hear Mass.

g. Wives and children on account of grave indignation of husband or parents; soldiers, who would be exposed either to the vexation of officers or to long-lasting and strongly troublesome mockeries of fellow soldiers.

2. By reason of charity, that is, for helping a neighbor in necessity, whether bodily or spiritual, the following are excused:

a. those who assist the sick;

b. those who bring help to a neighbor in a fire or flood, etc.;

c. those who hope that by their presence they can impede sin.

3. By reason of office the following are excused:

a. Soldiers on guard posts; guardians of cities, flocks, even of individual houses, where only one Mass is celebrated; nevertheless superiors are held to take care that subjects can hear Mass.

b. Mothers and nurses who can neither leave little ones alone nor take them with them.

c. Servants who are impeded by necessary service; yet if without great trouble, for example by rising earlier, they can hear Mass, they are held to this. But if they are impeded by the master's evil will, they can obey if they fear a grave inconvenience; however, on account of a light inconvenience they are not excused, but ought to bear it patiently. If they are frequently impeded, when a suitable occasion has been obtained, they ought to seek another service.

d. Those who must prepare food or perform necessary things of this kind; yet if several Masses take place, care must be taken that they be present at Mass successively.

4. By reason of custom in certain places where custom prevails, the following are excused:

a. Women recently delivered of a child, who for a month or six weeks after birth do not go out of the house.

b. Widows, who after the death of the husband remain at home for a month.

c. Betrothed women, especially noble ones, who do not approach the church when their nuptials are proclaimed.

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**Notes**

461. Ballerini-Palmieri, II, n. 803.

462. Cf. Capellmann, *Medicina pastor.*, p. 90 s.

# Question Third. On the Prohibition of Servile Works

## Article First. On Prohibited Works

**268. Distinction of works.** 1. A threefold kind of works is distinguished: servile, liberal, and middle or common.

Those are called servile which are ordered to the advantages of the body, are exercised chiefly by bodily labor, and were anciently accustomed to be done by slaves, as to plow, dig, sow.

Those are called liberal which are ordered to the utilities of the mind, are exercised chiefly by the powers of the soul, and were accustomed to be done by free men, as to read, teach, study.

Those are called common which serve partly the advantages of the soul, partly of the body, and were exercised promiscuously both by free men and by slaves, as to hunt, play, make a journey.

a. It is clear that servile and liberal works are distinguished from each other from the very end of the work, but not from the intention of the one working, nor from the delay of time, nor from the fatigue of the body; wherefore a servile work does not cease to be servile and prohibited because it is done gratis, or for recreation, or from a holy end, or only for a brief time; and, by equal reason, a liberal work remains liberal and licit, even if it is exercised for pay and profit or from an evil end. Hence, for example, to sew garments is servile, even if with little labor, and to make a journey on foot is liberal or common, even if it is performed with great labor.

b. Which works are servile and which liberal is, indeed, in many cases manifest from their nature; but in others this does not depend upon the nature of the work alone, but much must also be deferred to the custom and estimation of men. Therefore it can happen that a work which in itself is servile is, from the usage and estimation of the faithful, licit; moreover, that what in one place is licitly performed is prohibited in another on feast days.

2. To these are added forensic works, by whose name a twofold kind of actions is designated: a. judicial actions; and b. civil actions or markets; for each is signified by the name of forum: the place where judgments are held, and the place where markets are held.

**269. The precept of abstaining from certain works.** 1. On Sundays and feasts the following are prohibited: a. servile works, and indeed for the whole day from midnight up to midnight, but not liberal nor common works;[463] b. forensic works: for although these works are not servile, nevertheless they are prohibited by special law,[464] because on account of the excessive distractions which they bring and on account of the contentions and discords which they are accustomed to cause, they impede religious quiet and application of the mind to divine things.

2. The precept of abstaining from servile and forensic works is of its kind grave. According to the opinion now received, labor of about two hours constitutes grave matter, so that it is a grave sin to labor, whether continuously or interruptedly, when labor much exceeds two hours, that is, two and a half hours, in very servile labor, and labor which extends to about three hours if the labor is of lesser bodily exertion. But in forensic works the gravity of matter is taken not so much from delay of time as from the quality of the work, as if a case were publicly conducted.

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**Notes**

463. C. *Omnes* 1, *De feriis* (II, 9).

464. Ibid.

He who on a feast day commands six servants to labor for an hour does not sin gravely by himself, because the works of the servants, whether they labor simultaneously or successively, are not joined to form grave matter; but he would sin gravely who on a feast day commanded one servant several times to labor up to grave matter.[465]

**270. Servile, liberal, and common works.** a. Certainly servile are: rural works, as to plow, dig, sow, reap, etc.; mechanical arts, as the works of masonry, smithery, carpentry, tailoring, shoemaking, weaving, sculpture, typography, etc.; labors of workers in factories, mines, foundries, etc.; light manual labors, even if they are done with slight fatigue of the body, as to make rosaries, scapulars, artificial flowers, etc.; likewise to pluck roses, peel fruits, etc.

b. Certainly liberal are works of letters and arts: to devote oneself to the study of letters, to teach, even for pay, to sing, to play musical instruments, to draw (*Zeichnen*), to write, transcribe, dance, etc.

c. Those which are certainly common are not prohibited, even if they are done with great fatigue of the body: to make a journey on foot, by horse, by carriage, by ship; likewise to hunt, to catch birds, to fish with a hook or reed or small nets, but not with large nets with great apparatus and great labor.

Since to make a journey in whatever way is licit on feast days, all those things also are licit which are necessary for obtaining this end, even if by their nature, as rowing, they are servile. Therefore in our time those labors are licitly undertaken which are necessary for transporting travelers either by railroad or by steamship.

d. There are several works whose character is doubtful: in judging these, attention must be given both to the nature of the work and especially to the custom, whether universal or particular, of the region. And so:

To draw, that is, to draw up plans of buildings (*Entwurfe, Bauplane ausarbeiten*), is licit, since it is a liberal work, in which the mind is exercised more than the body.

Sculpting is a liberal and licit art only if the matter is one of the final perfection of the work; otherwise, by the common estimation of men, it pertains to the mechanical arts.

To paint with a brush (*malen*) seems to be a liberal work, because it is ordered more to expressing the conceptions of the mind than to laboring; therefore it is licit to paint on feast days, excepting those actions which are done with much labor, as to mix colors, prepare panels, whitewash walls, and generally those things which constitute the daily labor of craftsmen during the week.

To embroider (*sticken*) does not seem to be a servile work.[466] Therefore it can be permitted where this work is taken up occasionally and incidentally; but it cannot be permitted where it constitutes daily labor. Other manual works of women, as to knit or crochet (*stricken, hakeln*), are of themselves servile and prohibited.

Photography seems to be a middle work, excepting the apparatus which is prerequisite and requires much labor.

Typography is certainly a mechanical art; therefore the printing of books is prohibited on feast days, unless necessity excuses, as in the printing of newspapers which must appear daily. Nevertheless there are some who permit the setting of type, unless it is done in a public workshop by many, because it is similar to transcription, which is not prohibited.[467]

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**Notes**

465. St. Alphonsus, n. 206.

466. St. Alphonsus, n. 281.

467. St. Alphonsus, n. 279.

Milling is not licit, since it is a servile work; yet if the mill is driven by wind or water and therefore moderate labor of men is required, with custom acceding, it can be permitted.

**271. Judicial actions.** All judicial acts which are done with judicial stir are prohibited, whether the cause is civil or criminal, whether secular or ecclesiastical; but actions which are done without stir are not prohibited.

a. Judicial stir is said to be required in the exercise of contentious jurisdiction, namely where a judicial process is instituted, but not in the exercise of voluntary jurisdiction, as is to dispense, absolve, etc.

b. The prohibited judicial acts, in which the judicial stir itself consists, are: to summon the parties, examine witnesses, demand a judicial oath, pronounce or execute sentence. Actions which are done without stir are these: to consult an advocate, inform a judge, interpose an appeal, etc. Judicial actions are not only prohibited, but also annulled; but markets are only prohibited.[468]

**272. Civil actions or markets.** By this name two things are prohibited: public fairs and the act of trading, that is, contracts of buying, selling, leasing, etc. Hence by law not only all markets, both annual and weekly, but also all contracts of buying, selling, leasing are interdicted. But from present-day custom those things which follow are to be observed.

a. Annual fairs (*Jahrmarkte*), in which things are sold which the day before are brought to the place of the fair, are licit on feast days where the custom exists.

Weekly markets (*Wochenmarkte*) are prohibited;[469] wherefore if a feast day falls on the day of markets, these ought to be anticipated or transferred after the feast day; yet if the magistrate establishes otherwise, the faithful are excused on account of necessity.

Public sales by auction are not licit; nevertheless in some places they are tolerated after the divine offices have been completed, on account of the greater concourse of buyers.

Private sales, not only of those things which pertain to daily use but also of other things, even if they require much time, are licit by custom; but sales in public shops are prohibited. Wherefore merchants ought to close shops on feast days, unless a contrary custom prevails somewhere. For in very many places a custom has prevailed of opening shops for a time, both so that those things may be sold which are required for daily use, and in favor especially of those buyers who are unable to approach shops on other days.

b. Solemn contracts of selling, buying, leasing, etc., namely those which are made with instruments drawn up by notaries and with public authority, are prohibited on feast days, unless by contrary custom they are licit.

Private contracts of selling, etc., which are made without public instruments by private authority, are permitted by universal custom; thus everywhere on feast days workers are hired, beasts of burden are bought, horses are sold, houses are leased, etc.; indeed, according to the testimony of St. Alphonsus (n. 286), custom bears that contracts are celebrated even through instruments, as betrothals, sales, testaments, etc.

From these things it is now gathered what must be said about the acts of notaries. Namely, contracts of selling, leasing, etc., on feast days are of themselves prohibited under the name of market; gradually by custom it has come about that contracts of this sort without instruments and without the public authority of a notary were licitly entered into; finally custom has effected that contracts can be celebrated even with instruments drawn up by notaries, provided judicial stir is not required.

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**Notes**

468. C. *Conquestus* 5, *De feriis* (II, 9).

469. Constit. *Ab eo tempore* of Benedict XIV, 5 Nov. 1745, n. 26.

## Article Second. On the Causes Excusing from Labor

**273.** A cause excusing from this law must universally be grave; and the longer labor is prolonged, the graver the cause required. Canon law itself mentions a twofold excusing cause, piety and necessity[470] (one's own, another's, common), to which custom is to be added.

Although, when a sufficiently grave cause exists, the faithful are of themselves excused from the law, nevertheless on account of the danger of error they are to be warned that they should nevertheless ask the parish priest whether in these circumstances it is licit to labor, or rather that they should seek a dispensation. This indeed they ought chiefly to do when the matter concerns public labors, so that by this means the danger of scandal may be forestalled.

By reason of piety those labors are licit which are necessary for divine worship to be exercised here and now. And so:

a. Servile works are permitted which are proximately ordered to divine worship, as to ring bells, carry a cross or banner in processions, etc.

b. But those are prohibited which concur only remotely with divine worship, as to whitewash walls, build a church, carry stones and wood for the building of a church, make ornaments of the church; nevertheless, that vestments and ornaments, such as chasubles and other vestments, flowers, purificators, corporals, rugs, etc., be made for some poor church can be permitted.

c. Actions intermediate between those which are proximately and those which are remotely ordered to divine worship, as to sweep churches, bake hosts, decorate altars and the church, erect platforms necessary for a festivity, etc., by universal custom now prevailing are to be done on the day before the feast; but if these without just reason are deferred to the feast day itself, a venial sin is committed. Although St. Alphonsus (n. 292), from the custom then prevailing, excuses this from even venial sin, nevertheless when a just reason exists they can be done without sin on the feast day itself.

**274. By reason of one's own necessity** the following are excused:

a. Servants who are forced by the master to labor and cannot easily or shortly find another master, unless they are forced to labor in contempt of religion.

b. The poor, who otherwise cannot sustain themselves and their own. Mothers of families who mend their own garments or those of their children, if they cannot do this on other days. Maidservants to whom during the week time is not granted so that they can mend and wash their garments. Workers who cultivate their own garden, if they must labor away from home through the whole week. These things indeed ought to be done secretly to avoid scandal.

c. Farmers who, on account of past or imminent rain, turn, bind, carry hay or crops, pluck fruits, etc.

d. Country folk who in the city buy things necessary for their own food or clothing, if they can migrate into the city only on feast days.

Whether the reason of avoiding idleness excuses. - The sole reason of avoiding idleness does not excuse from this precept; for idleness must be driven away by other occupations, and those licit. But if someone could not without difficulty be occupied with other things, and especially if there remained danger of spiritual damage or of sin from games or dangerous conversations, there would be a sufficient reason for permitting light labors to be done for some time at home, by which, namely, scandal may be forestalled.

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**Notes**

470. C. *Liceat* 3 and C. *Conquestus* 5, *De feriis* (II, 9).

Thus to a worker who, unless he is occupied with some labor, is accustomed to go to taverns and become drunk, some domestic labor can be permitted. To pious women who complain about the leisure of feast days, and yet do not have in temptations to sin an excusing cause for labor, it can be counseled that they make ornaments for churches or garments for the poor.[471]

**275. By reason of another's necessity** the following are excused:

a. Tailors and shoemakers who make garments necessary for funerals or nuptials, which they could not complete the day before. But from this reason, that they had promised the garments, it is not licit for them to labor unless otherwise they would suffer grave damage; for they ought to take care, as far as they can without grave damage, not to cast themselves into this necessity by assuming labor which they cannot complete before the feast day.

In practice let the confessor show himself severe toward those who have contracted the custom of laboring on feast days, easy with those who sometimes do it: for these, not those, are usually excused by right.[472]

b. Those who exercise works of mercy, although servile, for the support of the poor, as to make garments, bring wood, etc., when by reason of their own necessity the poor themselves could labor for themselves.

alpha. Not only for a determinate poor person, but also for the poor in general existing in common necessity, it is licit to make garments and other things which serve the uses of the poor; but it is not licit to labor to earn money afterward to be distributed among poor persons of this sort, unless they are in grave or extreme necessity, because in these circumstances it would be licit for the poor themselves.

beta. By reason of another's necessity, exercises are also licit which are instituted on feast days by societies destined for extinguishing fires (*Feuerwehr*), since those exercises cannot be done on weekdays by men impeded by other labors. But care must be taken lest they be withdrawn from ecclesiastical functions, neither those who perform the exercises nor those who gather to watch them.

c. Craftsmen who repair instruments which farmers or artisans need the following day.

d. Those who in extraordinary and urgent necessity, as in a fire, flood, or other misfortune, repair a road, mend a bridge, or assist in another way.

**276. By reason of common necessity or utility** the following are excused:

a. Bakers, who make bread and cakes, both by reason of custom and by reason of necessity; but others are not permitted to make bread, nor bakers other foods which neither they themselves nor others need on that day.

b. Butchers, who kill and skin animals where this could not have been done the day before, as in great cities; but not in small towns, unless several feasts occur.

c. Those who in a public profane solemnity, for example, on account of the arrival of a prince or on account of victory, prepare and make those things which are necessary, as triumphal arches, fireworks, garments, decorations, etc.

These indeed ought of themselves to be prepared beforehand, lest the feast day have to be profaned by servile labors; nevertheless, if either culpably or without fault they had not been prepared, it is not necessary that the solemnity be omitted on that account, but they can licitly be done on the feast day. For to omit the solemnity is a grave inconvenience of the republic, to the undergoing of which the precept of the Church does not oblige.

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**Notes**

471. Genicot, I, n. 337.

472. Ballerini-Palmieri, II, n. 765.

Yet those who deliberately defer labors of this sort to the feast day without sufficient cause, of themselves sin gravely.

**277. By reason of custom:** a. It is licit to prepare foods, even if for more sumptuous meals they need greater labor. Those things which are servile, as to kill and skin smaller animals, ought to be done on the day before if this can conveniently be done; but if on the day before, even culpably, it has not been done, it can be done on the feast day without sin. It is licit to make beds and clean garments with brushes.

b. Barbers licitly shave beards and cut hair.

c. It is licit to drive loaded carriages or ships not only when the journey is continued, but also when it is begun on a feast day, and the labors necessary for this end can be completed.

d. Light labors, as to make rosaries, scapulars, artificial flowers, etc., are indeed of themselves servile and therefore illicit, especially if they are exercised as is customarily done during the week by women gathered into one place; yet if they are done privately, by custom they can be licit.[473]

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# Book Fourth. On the Fourth Precept of the Decalogue

[474] "Honor thy father and thy mother."

Ex. 20:12.

This precept, insofar as it is affirmative, directly commands that due worship be shown to parents; but indirectly it also commands those things to which parents are bound toward their children. And insofar as it is negative, it forbids that the same parents be affected by irreverence or injury. By the name of parents come not only carnal parents, who properly are so called, but also all other superiors, both spiritual and secular, who improperly are called parents, because they are in some way participants of paternal dignity and authority.

The fourth precept, which orders and determines relation toward other men, and those superiors who are for us the principle of life and governance, prescribes the social obligations which belong to man insofar as he is a member of a twofold society, namely the family and the state. In fulfilling these obligations he chiefly exercises the virtue of piety. This virtue, since it shows worship to those who are for us the principle of life, has obtained the promise of life: "Honor thy father and thy mother, that it may be well with thee, and thou mayest be long-lived upon the earth."[475]

## Question First. On Piety, Observance, and Obedience

**278. On piety.** 1. Piety is defined as a moral virtue by which due worship is paid to parents and country.

a. Piety is taken in a threefold sense: alpha. for religion or divine worship, in which sense it is said in sacred Scripture: "piety is profitable to all things";[476] beta. for mercy or for the affection of kindness, in which sense God is called pious and merciful;[477] gamma. for the special virtue by which we worship parents and country as the principle of our origin.

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**Notes**

473. Cf. Gury-Ballerini, I, n. 356.2.

474. St. Thomas, II-II, q. 101-105. St. Alphonsus, l. 2, n. 333-355. Lessius, *De iustitia*, l. 2, c. 46. Sporer-Bierbaum, *Theologia moralis decalog.*, I, tract. 3, n. 612-690. Ballerini-Palmieri, *Opus theol. mor.*^3, II, n. 815-847. Genicot, *Theologiae moralis instit.*^6, I, n. 345-359.

475. Ex. 20:12; Eph. 6:2 s.

476. 1 Tim. 4:8.

477. Ecclus. 2:13.

b. God, who is the supreme principle of life and governance, through creatures as through secondary principles communicates life to others and governs them. Therefore, just as to God as the supreme principle of life and governance worship is owed, which is exercised through the virtue of religion, so to parents and country worship is owed, which is exercised through the virtue of piety.[478]

c. The virtue of piety is exercised not only by children toward parents, but also by spouse toward spouse and by parents toward children; wherefore the offices which are owed by parents to children and which are owed by spouse to spouse are called offices of piety.

2. The material object of piety is constituted by those acts by which parents are worshiped, namely love, reverence, and obedience; the formal object is the natural honesty which is perceived in this worship. For natural reason understands that, on account of the special relation of superiority by which parents as principle of life and education are referred to children, honor and worship are owed to them.

Piety toward parents differs from charity toward neighbor, because piety worships parents precisely insofar as they are authors of life and education; and piety toward country differs from legal justice, because the motive of the latter is the good of the community, of which someone is a part, to be procured chiefly through the observance of laws; but the motive of the former is the good which country confers for our origin and education, both bodily and spiritual. Hence it is that piety toward country must be shown even by him who has left his native soil; but only he is held to exercise legal justice who actually is a part of the community, even if he was neither born nor educated in it.

**Note. Sins against piety.** a. Sins committed against parents put on the specific malice of wounded piety if the evil which is inflicted upon them immediately injures their person or personal good, such as life, safety, honor, reputation; therefore sins of hatred, wounding, detraction, etc., are against piety, but by no means sins of theft. Something similar must be said about sins which are committed by parents against children.

b. Sins committed against brothers or sisters, even if they injure their personal goods, do not put on the grave malice of wounded piety unless a most grave evil is inflicted upon them, as of a very grave wound, killing, notable defamation. For conjunction with brothers is not as great as with parents; therefore the evil which, inflicted on parents, suffices to constitute another species of sin does not suffice when inflicted on brothers, but a greater evil is required. - Sins committed against blood-relatives in more remote degrees do not induce a special malice against piety.[479]

**279. On observance.** 1. Observance (*Hochachtung*) is defined as a moral virtue by which due worship is shown to superiors and to persons constituted in dignity.

That which this virtue chiefly regards in persons constituted in dignity is governance. Nevertheless by this virtue we worship not only superiors, but all who are endowed with some excellence: the former, indeed, because they actually govern us; the latter, because on account of their excellence they are fit to govern us.[480]

2. According as this dignity of the person is diverse, diverse observance is distinguished: a. civil, if the dignity is human, as in kings, masters, teachers; b. religious, if the dignity is conjoined with religion, as in the pope, bishops, priests. Religious observance is either natural or supernatural, according as the religion is natural or supernatural; to the latter is also referred the worship which we pay to the saints and call dulia.

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**Notes**

478. Cf. St. Thomas, II-II, q. 101, a. 1.

479. Cf. Lugo, *De poenit.*, disp. 16, n. 299, 307.

480. Cf. St. Thomas, II-II, q. 102, a. 1.

3. Its material object is the honor and worship to be shown to superiors and other persons constituted in dignity; the formal object is the honesty which is perceived in this worship: for reason understands that honor and submission are owed to those who after God are our superiors and govern us toward the due end.

Observance is distinguished from piety by motive: for piety is owed to parents because they are authors of our life; observance is owed to superiors because they govern us. Insofar as parents govern their children still constituted under paternal power, observance is owed to them by children; but this virtue in children is not distinguished from piety, since piety "in a higher and more eminent mode also contains that which is the honesty of observance."[481]

**280. On obedience.** 1. Obedience is defined as a moral virtue by which we comply with the will of a superior.

a. Its material object is that which the superior wills, whether by the will of precept or by the will of counsel or good pleasure; the formal object is the natural honesty which is in this, that a man conforms himself to the will of the superior, whether he commands or not, provided he has the power of commanding, since the will of the superior is a certain rule of the subject.

b. Whether obedience properly so called requires a true precept of the superior, or whether a manifestation of the will short of precept suffices for it, is disputed. Lessius indeed holds (n. 27) that obedience requires a true precept; but Lehmkuhl holds (n. 779) that he performs an act of true obedience who executes the will of a superior even not commanding, because he subjects himself to the will of him who has the right and power of commanding.

2. To satisfy the precept of obedience it is not necessary that the enjoined work be done from the motive of obedience, but it is enough that the prescribed work be posited from an honest end; but if it is done because it has been commanded, it will be an act of the special virtue of obedience.

3. A special sin of disobedience is committed only when someone does not obey from contempt of the precept or of the one commanding, or when someone does not obey because it has been commanded.

a. In all sins, indeed, some material or general disobedience is found, but not the formal or special sin of disobedience unless contempt accedes. The omission of a prescribed work is a sin against that virtue to which the prescribed work itself pertains, if the superior has legislative power and has used it by commanding; otherwise it is a sin against that virtue, such as religion, piety, etc., from which obedience is owed.

b. Since the formal sin of disobedience involves contempt of the law or lawgiver, or of authority itself, it is clear that the sin of disobedience is always a grave sin.

## Question Second. On Obligations in Domestic Society

**281.** By divine disposition man, by his very nature social, must live life in society so that he may attain his end, both the immediate end of this life and the ultimate end of the other life. From this natural sociality of man it has come about that man has always and everywhere lived, and henceforth lives, in a twofold society, domestic and civil. The first society, and the foundation and essential condition of the other societies, civil and ecclesiastical, is domestic society. It is composed of a threefold social element: of conjugal society, which consists in the conjunction of man and wife; of parental society, which arises between parents and children; of masterly society, which arises between master and servants. From these three societies the family is completely constituted. Therefore obligations of a threefold kind are had within the family: obligations of spouses, obligations of parents and children, obligations of masters and servants. And on account of the analogy, on the one

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**Notes**

481. Lehmkuhl, I, n. 778.

hand, of parents and children with teachers and pupils, and on the other hand of masters and servants with employers and workers, in this place there must also be treated the obligations of teachers and pupils and the obligations of employers and workers.

## Article First. On the Obligations of Spouses

The root of the obligations which fall upon spouses is marriage, by which domestic society is constituted. But the obligations which flow from this root are of three kinds: namely, some are referred to the persons, some to the goods, some to the body of the spouses. Only the obligations of the first kind pertain to this precept; of these, some are mutual, while others are proper to either spouse.

**282. Mutual obligations.** Since Christian marriage, in which these obligations are founded, is an image of the union of Christ and the Church, to which Christ communicated Himself wholly, between spouses there ought to flourish the most perfect union and communion both of souls and of bodies.

1. Therefore spouses are bound to mutual love: husbands are commanded to love their wives, wives to love their husbands.[482] So intimate ought this union of love to be that a spouse ought to prefer spouse, in effective love or in bringing help, even to parents and children, unless these are in extreme necessity.

Therefore spouses sin against piety who pursue one another with hatred, offend one another with quarrels and insults, spread calumnies, and by jealousy, harshness, or neglect of duties render life very troublesome to the other party.

2. They are bound to bring mutual assistance to each other, both as to body and as to soul.[483]

Spouses complete each other not only insofar as they are the principle of generation, but also in the actions and necessities of human life. In the work of salvation they promote each other, both because they pray for one another and because they help one another by word and example, and especially because they patiently bear defects committed from human frailty.

3. They are bound to render mutually to each other the conjugal debt and also to preserve conjugal fidelity;[484] hence it happens that every sin, whether internal or external, committed against chastity with another person or concerning another person, has the character of adultery.

4. Since they cannot satisfy these obligations otherwise, spouses are bound to common habitation, indeed also to common table and bed.[485]

a. Yet this obligation does not affect husband and wife in the same way. For the choice of domicile pertains to the husband, but the wife must follow the husband to the chosen domicile, even if he changes domicile without a just cause. But the husband is not bound to follow a wife migrating elsewhere, unless the migration is made from a necessary cause.

b. Spouses can by mutual consent separate from each other even for a longer time, unless there is present danger of incontinence or the education of children would suffer detriment from it. But one spouse cannot without grave fault depart for a long time against the will of the other unless a grave cause is present. And although the husband of himself can be absent for a brief time even without the wife's knowledge and

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**Notes**

482. Cf. Eph. 5:25; Col. 3:18; Tit. 2:4; 1 Tim. 2:15.

483. Gen. 2:18.

484. 1 Cor. 7:4.

485. Cf. Matt. 19:5.

against her will, nevertheless, with attention to the relation of love between spouses, it is not becoming that the husband be absent even for a day without the wife's knowledge.

**283. Obligations and rights of the husband.** 1. To the husband from legitimate marriage belongs marital power, by force of which he is the head of the wife, who in the governance of domestic affairs and of the family is truly subject to him; but he must protect the wife and treat her as spouse and companion.

Although coercive power is not contained in marital power, nevertheless the husband has the right of requiring from the wife not only reverence and obedience, but also labor suitable to her state and condition.

2. He is bound to support his wife, by furnishing food, clothing, habitation, and other things necessary for life, so that according to her condition she can live at home and abroad.

He sins if he refuses or neglects to provide for his wife according to the measure of her state concerning things necessary for food and clothing, even if he married her without dowry; if he does not care for the governance of the house and the family estate; if he treats her harshly after the manner of a maidservant; if he demands from her things which women of the same dignity and condition are not accustomed to furnish.

3. To the husband belongs paternal power over children, by force of which he can order not only their things and actions, but even their persons, to the good of the family.

Not only the ancient pagan peoples extended this power beyond just limits, who against natural right vindicated to themselves the power of killing and selling their children, but also the Christian peoples of the Middle Ages, who contracted betrothals and marriages for their children or offered them to monasteries.

**284. Obligations and rights of the wife.** 1. Although the wife is subject to the husband, nevertheless she is the husband's wife, not concubine; the husband's companion, not maidservant; and as mother she has the right of educating the offspring, certainly dependently on the father.

From the mode by which God made the first parents, it is clear that dominion belongs to the man: for man is not from woman, but woman from man;[486] moreover, God indeed gave the same nature to woman, yet added her to man as a help: "Let us make him a help like unto himself";[487] "Man was not created for woman, but woman for man."[488] St. Paul both expressly calls the man the head of the woman,[489] and implicitly does so by comparing the union of man and woman to the conjunction of Christ and the Church, whose head Christ is.[490] Hence he infers: "As the Church is subject to Christ, so also let women be to their husbands in all things."[491] What we learn from revelation, the nature of the thing also teaches: for domestic society, as any society, needs authority; but domestic authority by the institution of nature is in the man.

2. She has the right of receiving from the husband congruous support; likewise the right and obligation of caring for the family estate, yet with due dependence on the husband.[492]

She sins if from the goods of the family she makes expenses without the consent of the husband and against the custom of women of the same condition; if she arrogates to herself command or administration of the house, except the case in which the man neglects it or is unfit for it; if she omits care of the family or domestic business.

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**Notes**

486. 1 Cor. 11:8.

487. Gen. 2:18.

488. 1 Cor. 11:9.

489. 1 Cor. 11:3.

490. Eph. 5:23.

491. Eph. 5:24.

492. Col. 3:18; 1 Pet. 3:1.

3. Ordinarily she is bound to follow the domicile which the husband has chosen as head of the family.

## On the Emancipation of Women

[493]

**285. State of the question.** 1. The theories set forth above concerning the man as head of the family, to whom woman ought to be subject, are vehemently opposed by all who contend that women are to be made equal to men, so that men and women enjoy the same rights and are held in the same place. Since a threefold order is distinguished, in which rights equal with men can be attributed to women, the domestic order, the social or economic order, and the political order, equality between man and woman can be more or less perfect, according as it is extended to all the orders, or to only one or another.

2. Since now equality does not flourish between man and woman, but in domestic society woman is subject to man, while in other orders of life she is of an inferior condition, the effort of introducing equality is called the emancipation of women. This is more or less perfect, according as only political and economic emancipation is intended, or also domestic emancipation.

3. Diverse in this question are the studies and opinions of authors. Some demand perfect equality of man and woman in domestic, economic, and political life, so that woman not only may acquire the right of suffrage, but also be admitted to managing public offices, can exercise the same arts and businesses which are exercised by men, and finally at home not be subject to the man: radical emancipation. Others chiefly demand equality of women in the political and economic order. Others finally restrict the equality of women to the economic and social order: moderate emancipation. All likewise demand another and more perfect education and instruction of women. From moderate emancipation of women, especially in the economic and social order, after considering the circumstances of our time, not even theologians shrink away.

**286. Principles to be held in this question are these:**

a. Each, man and woman, possesses the same nature and the same personality, equally perfect as to substantial things, that is, human person. To each belongs the same destination to grace and glory, as child of God, heir of eternal life; each can and must work his or her salvation and attain Christian perfection independently of the other; and therefore from this side the duties and rights of each are the same: for in Christ there is neither male nor female.[494]

b. But human nature and person, which is substantially the same, is expressed, developed, and operates in another and diverse mode in man and in woman: for the differences between feminine and masculine nature, as it exists in the concrete, are great and manifest both as to body and as to soul; and as to soul, both in the intellectual order and in the moral order.

The properties of nature diverse on each side show that the man is destined by nature to command and rule, but the woman, on the contrary, to be subject, to help the man and to be governed by him. Therefore nature confirms the condition of woman set forth above (n. 284), and the history of all times and of all peoples also confirms it.

c. In the social and political order, woman is to be excluded from those arts and businesses for which, considering her nature, she is less fit than man and which she cannot exercise without detriment to her natural

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**Notes**

493. Rosler, *Die Frauenfrage*^2 (Freiburg: Herder, 1907); Cathrein, *Die Frauenfrage* (Freiburg: Herder, 1901); Mausbach, *Die Stellung der Frau im Menschheitsleben* (M. Gladbach: Zentralstelle, 1906); Gnauck-Kuhne, *Die deutsche Frau um die Jahrhundertwende* (Berlin: Liebmann, 1907); Gnauck-Kuhne, *Die soziale Lage der Frau* (Berlin: Liebmann, 1895); Molsberger, *Ratschlage zur Berufsfrage der Frau* (Koln: Bachem); Bebel, *Die Frau und der Sozialismus*^43 (Stuttgart: Dietz).

494. Gal. 3:28.

destination, that is, to the office of mother of the family. But nothing prevents her from being admitted to arts and businesses for which either she is equally fit or more fit than man and which she can undertake without loss to the office of mother of the family.

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# Article Second. On the Obligations of Children and Parents

## Section 1. On the Obligations of Children

**287. On obligations in general.** 1. Children are bound from piety to show parents love, reverence, and obedience. This obligation is founded in the threefold peculiar relation by which children are referred to parents: by reason of origin, which children draw from parents; by reason of dignity, by which parents excel them; and by reason of power, by which the same parents can and ought to educate and direct children.

a. Some children are legitimate, who are born in legitimate marriage from a husband and his wife; others are illegitimate, who are generated outside legitimate marriage. Of illegitimate children, some are natural, who are born from a man and woman between whom marriage could then have been entered, wherefore, marriage having been entered, the children are by that very fact legitimated. Others are spurious, who are born from a man and woman between whom marriage could not have been entered, as those born from adultery, from incest, from sacrilegious fornication; wherefore the spurious cannot be legitimated. Among legitimate children are also numbered legitimated natural children and adoptive children.

b. Between father and son there intervenes both a debt of piety and a debt of justice; hence it happens that violations of justice sometimes constitute two sins. If a son unjustly injures his father in the goods of life, reputation, and honor, he commits a twofold sin, against justice and against piety, because the father, as he is a man, has a right to his own life, reputation, and honor even in relation to son and wife; and the father, as he is a father, has a peculiar right of requiring reverence and obedience from his children (n. 279). The same must be said if, conversely, the father injures the son in the same goods, because the son retains his own right even with respect to the father. But if the son unjustly injures the father in goods of fortune, he does not sin against piety but only against justice (n. 278), and that less than by theft committed against strangers; for the natural conjunction between father and son effects that the goods of the father are in some way also the goods of the son.[495]

2. This obligation is of its kind grave, so that he sins gravely who in a notable matter, and lightly who in a small matter, injures the love, reverence, and obedience due to parents. But more easily it is a grave sin if these offices are injured toward parents than if toward other superiors.

**288. On the obligation of love.** 1. The love of children toward parents ought to be internal, by which they are bound to will good to them, and external, by which they are bound to signify benevolence to them, to do good to them, and to furnish help to them when they are constituted in necessity, whether bodily or spiritual.

a. Therefore children sin gravely against piety who deliberately and in notable matter are carried with indignation or hatred against parents, wish evil to them, treat them harshly, habitually look upon them with grim eyes, converse with them in bitter words, speak ill of them, or gravely sadden them, for example, because they frequent games, neglect study or a trade, return home late, etc.

b. Likewise they sin gravely who do not assist parents in grave bodily or spiritual necessity, as those who do not furnish food to parents in need, do not take care that in danger of death they can receive the sacraments, that when dead they have funeral rites suitable to their condition and to the custom of the place, who do

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**Notes**

495. Ballerini-Palmieri, III, n. 4.

not execute their testaments, and do not pay their debts, whether sacred or not sacred, according to the resources of the inheritance.

2. Since the obligation imposed by nature precedes every obligation assumed by one's own will, or an action which is of mere counsel, such as the religious state, it is not licit for a son, when his parents are constituted in extreme or grave necessity, to enter religion, even if by vow he has promised entrance, provided that by remaining in the world he can assist his parents. And if he had entered against the will of his parents, he is bound under grave obligation to depart if the necessity of the parents is extreme, provided that outside religion he can assist them more efficaciously. But if the necessity of the parents is only grave and already existed at the time of entrance, he is likewise bound to seek permission to depart; but if the grave necessity did not yet exist at the time of entrance, he is not indeed bound to depart, but he can justly seek and obtain permission.

a. The reason for the distinction is that in the first case at the time of profession the son was bound by the law of nature to assist his parents. Now this obligation, as prior and natural, is to be preferred to the obligation of the vow, which is posterior and voluntarily assumed. But in the second case the obligation supervened after the change of state; and one is not bound to satisfy a supervening obligation except insofar as it can be done while preserving the state.[496]

b. A brother is bound from piety to assist a brother or sister in extreme and grave necessity; nevertheless this obligation is not as great as that which exists between parents and children. Therefore one who is professed in religion is indeed bound to depart so that he may assist parents, but he is not bound to depart so that he may assist a brother or sister existing in extreme or grave necessity.

Whether a son is bound from his own goods to pay the debts of a father who left nothing to the son. - A son to whom the father left goods is bound to pay the father's debts as soon as he conveniently can, both from the obligation of love, lest the reputation of the deceased suffer, and from the right of succession, because one succeeding to the goods also succeeds to the burdens. But if the father left nothing to the son, he is not bound, because the obligation of paying debts in this case is personal.

Therefore a son is not bound to return the money which the father had received as a loan, not even if he had received it for paying expenses for the education of the son, because the son by nature has the right of receiving education, and therefore its expenses are to be demanded from the father, not from the son.

**289. On the obligation of obedience.** 1. Children are bound of themselves under grave obligation to obey parents in all things which are honest and licit and pertain to their care, as long as they are under their power, provided they command expressly and seriously: "Children, obey your parents in all things," namely those things which pertain to their care; "for this is pleasing in the Lord."[497] And indeed, parents are bound to instruct and educate children; therefore in turn children are bound to listen to parents.

a. The obligation of obedience lasts as long as children are under paternal power; but it ceases when they are emancipated from paternal power or become of age. On the contrary, the obligation of love and reverence never ceases.

alpha. A son of the family becomes major or of age at the time determined by civil law. Nearly all modern laws declare children of either sex majors after the twenty-first year of age has been completed.[498] If an adult

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**Notes**

496. Lessius, *De iustitia*, l. 2, c. 41, n. 34.

497. Col. 3:20.

498. The German civil code, Section 2, and the Austrian civil code, Section 21, declare children of the family majors only after the twenty-fourth year has been completed. From canon law a son is major who has completed the twenty-fifth year of age.

son remains in the paternal house, the obligation of obedience toward the head of the family does not cease in those things which are necessary for domestic order.

beta. An emancipated son is one who has been released from paternal power. Civil law governs emancipation, so that according to some laws a son is emancipated by the very fact that he has attained the legitimate age, but according to other laws he is emancipated only when he himself wills it.

b. Sacred Scripture indicates in many places that this obligation is of itself grave;[499] yet in order that a grave sin of disobedience be committed, it is required that parents command seriously, not merely by warning, exhorting, or directing show their will, and that they command in a grave matter pertaining to their care.

alpha. What matter is to be judged grave must be defined by prudent judgment, after account has been taken of the end which parental power has, which is the good of the son himself and the good of the family. Hence generally that matter will be grave by whose omission parents, domestic order, or the temporal or spiritual good of the son himself will suffer grave detriment, as to avoid evil companionships, gambling games, suspect houses, etc.[500]

beta. In practice the disobedience of children, even in a grave matter, will not rarely be excused from mortal sin both on account of defect of a strict precept on the part of parents, and on account of defect of advertence to the gravity of the malice on the part of children.

gamma. Where the matter concerns a precept which refers to several successive acts, for example, that they not approach a tavern, that they not return home too late, etc., grave sin, contempt being excluded, is not committed unless the precept is violated rather often.[501]

c. The object concerning which parents can justly command comprehends all those things which pertain to their care; but this care extends to three things: alpha. to the salvation of the soul; beta. to good morals; gamma. to the governance of the family, both in temporal and in spiritual matters.

Hence children can sin gravely against obedience due to parents: alpha. if against the express precept of parents they do not assist at Mass on feast days, and for a notable time do not receive the sacraments; beta. if they frequent the tavern or theaters, give themselves to harmful games, go out at night, do not avoid dangerous conversations; gamma. if they neglect to devote themselves to studies or to learn a trade, if they do not execute a work of great importance enjoined upon them.

**290.** 2. But in other matters, especially in choosing a state of life, whether matrimonial, clerical, or religious, children are free by the law of nature. They are indeed ordinarily bound under grave obligation to consult parents both about entering marriage and about choosing a certain person; but of themselves they are not bound to follow their counsel. Hence to reject just and prudent counsel does not exceed a venial sin, unless the matter concerns obtaining an end of great importance, for example, extinguishing hatreds or relieving the necessity of parents.

But concerning a clerical or religious vocation, it will be better not to seek the counsel of parents when the necessary knowledge of these matters seems to be lacking to them; but, once the choice has been made, it suffices to seek their consent. If they deny it, God calling is to be obeyed more than resisting parents. Indeed, if it is foreseen that parents will unjustly impede the matter, children can embrace the state without the parents' knowledge.

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**Notes**

499. Ecclus. 3:9 ss.; Deut. 27:16; Rom. 1:30; 2 Tim. 3:2.

500. Genicot, I, n. 318.

501. Cf. Ballerini-Palmieri, II, n. 821; Elbel-Bierbaum, I, tr. 3, n. 555.

Therefore parents sin gravely if they compel children to enter religion or to enter marriage without a just reason; and in equal manner they sin gravely if they impede children without just cause from entrance into religion or from contracting marriage: for it is a grave injury to deprive someone of the liberty which the author of nature has given to each concerning the state of life. The gravity of the sin increases if parents impede a son from contracting marriage either entirely or for a time, because marriage was instituted also as a remedy for concupiscence; for by this manner of acting parents can be the occasion of many sins which are committed by children. Yet if parents are in grave necessity, they rightly require that they be helped by their children as long as the necessity lasts.

**291. On the obligation of reverence.** The reverence which children owe to parents requires that interiorly they acknowledge their dignity and exteriorly profess it by words, signs, and deeds.

a. Hence children can sin gravely against the reverence due to parents by words, if they call them by contumelious names or seriously curse them; by signs, if they despise them, mock them, are so ashamed of them that they pretend they do not know them; by deeds, if they strike them, even only lightly, or if they only raise the hand as a sign of striking them, if they accuse them in court, even concerning a true crime, except for the cause of the public good. Children by striking parents sin not only against piety, but also against justice; and although the deeds are only lightly opposed to justice, nevertheless they gravely injure reverence.

b. St. Alphonsus notes (n. 334) that a son is excused from mortal sin who, for a just cause and without internal contempt, pretends that he does not know his parents or refuses to have them with him, for example, because they are marked by an infamous crime or because he himself would suffer grave damage from it, provided that he furnishes them necessities; because in such a case the parents themselves are not judged gravely or reasonably unwilling. And in like manner, at least from grave sin, children are excused who restrain by words or deeds parents lacking the use of reason on account of old age, drunkenness, etc., without contempt or malice.

c. Children who have sinned against the reverence due to parents properly and strictly ought to restore wounded honor by petition for pardon; yet if this has not been done before confession, it can and ought indeed to be advised that it be done afterward, but it must never be strictly enjoined or imposed as penance, lest children who do this with difficulty be exposed to the danger of sinning again. For deservedly it can be presumed that parents remit this obligation to children precisely lest they sin again.

**292. On illegitimate children.** 1. Parents do not enjoy paternal power over illegitimate children, nor do illegitimate children enjoy the same rights as legitimate children, unless they have been legitimated, since they have been brought into human society through wrong, that is, injury.

2. Illegitimate children do not pertain to the family of the father, but rather to the family of the mother, whose name also they receive; nevertheless they do not enjoy the rights of children of the family. Therefore by civil law a guardian (*Vormund*) must be constituted for them.

3. The obligations of parents extend also to illegitimate children; and in equal manner illegitimate children are bound to show parents love and obedience which the end of education requires, because in each case the foundation of obligation is the same, namely natural generation.

a. By natural right both parents are bound in an equal manner to support illegitimate offspring; yet recent codes primarily enjoin the obligation of support upon the father, and only if he fails, upon the mother, with the exception of the French code, which imposes this burden upon the mother alone. This disposition of law, after the sentence of a judge, is to be obeyed in conscience.

b. According to the civil codes, parents, or the father, are bound to provide for illegitimate children concerning an education consonant with the condition of the parents, or of the mother, although by the law of nature they seem to satisfy their obligation if they procure for them the education necessary and suitable to a man.[502]

## Section 2. On the Obligations of Parents

**293. On obligations in general.** Parents, and in their defect ascendants, are bound from piety to show children love, bodily education, and spiritual education. And the obligation of love indeed never ceases, but the obligation of education ceases when the end itself ceases.

a. The right of educating offspring belongs in the first place to parents; wherefore they offend against nature itself who vindicate the right of educating to civil authority.[503]

b. The obligation of education arises from the law of nature and is of its kind grave.

c. In defect of parents, ascendants, namely grandfather and grandmother, are bound to educate children; and indeed the paternal grandfather, because he succeeds to the father, before the maternal. But now civil law is accustomed to supply the defect of parents by constituting a tutor or curator. This obligation also extends to illegitimate and spurious children (n. 292).

**294. Obligation of love.** The obligation of love comprises three things: they ought to will good to children, do good to them, and turn away evil from them, whether bodily or spiritual.

a. Therefore parents sin against piety, and also gravely according to the measure of the matter, if they pursue children with hatred, seriously call down evils upon them, favor one of the children before the others without just cause, subordinate some children, for example those of a prior marriage, to others, inflict evils upon them or do not turn evils away from them when they can.

b. If they manifest the hidden defects of their children to outsiders, if they treat them too harshly, so that, for example, they inflict a grave evil upon them by mutilation, they offend not only against piety, but also against justice.

**295. Obligation of bodily education.** Bodily education likewise requires three things: that they procure for children life, sustenance, and state.

Since the primary end of marriage, which is the procreation of offspring, cannot be obtained unless to generation there is added the preservation and suitable education of the offspring received, those about to marry, with the obligation of rendering the conjugal debt, also contract the obligation of preserving and educating the offspring to be received.

a. Therefore parents are bound, from the very conception of the offspring up to the time when it can sufficiently provide for itself, to supply to it those things which are necessary for preserving life and health, and likewise to turn away all things which harm life or health. And so the care of the mother concerning the life of the offspring begins immediately from conception; therefore she ought to guard against both the danger of abortion and any detriment whatever of the fetus.[504]

The mother ought to take care that the offspring be born sound in mind and body. Therefore let her abstain from food and drink, especially alcoholic, which harms the body and irritates the nerves. She ought to beware,

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**Notes**

502. Austrian civil code, Sections 165-171; German civil code, Sections 1705-1718.

503. Cf. Th. Meyer, *Institutiones iuris natur.*, II, n. 108 ss.

504. Cf. Capellmann, *Medicina pastoralis*^6 (Aquisgrani: Barth, 1893), p. 155 ss.

as far as can be done, of more vehement excitations and movements of the heart, of illicit desires, and especially of all those things which injure chastity, such as wicked readings and obscene spectacles. For since every movement of the soul, every passion, in general all internal thoughts and appetitions exercise an influence upon the fetus, the whole internal life should be peaceful, chaste, religious, and pious, so that the offspring may acquire hereditary dispositions rather toward virtue and good morals than toward vices.[505]

b. Parents are bound to supply to children sustenance, that is, food, clothing, habitation, and education, up to that time when they themselves can provide the things necessary for themselves according to the measure of their state, indeed even through the whole time of life if they are found in extreme or grave necessity. Nor are they excused from the office of supporting children on account of their perversity.

alpha. The father is not immune from the obligation of supporting a son, with support necessary for life, if the latter has dissipated the portion previously given to him. In equal manner, if the son has contracted debts for procuring sustenance for himself, the father is bound to pay them, because he is bound to support the son; but debts contracted from another title he is not bound to pay.

beta. Therefore parents sin gravely who without just cause expose offspring, whether in a hospital or on the threshold of a parish house, etc., not only because they fail in their office, but also because they harm the offspring, since they bring it into suspicion of spurious origin. And if they expose the offspring in a deserted place, so that for this reason it undergoes danger to life, they sin not only against piety, but also against justice. Yet if they had a just cause for exposing offspring, such as the danger of losing life or reputation, or the impossibility of supporting the offspring, this would excuse them at least from grave sin.

gamma. But if a rich father exposes offspring in a foundling hospital (*Findelhaus*) erected by pious generosity for supporting exposed infants, according to a probable opinion he is not bound to restore the expenses for supporting the offspring. For these hospitals were erected to protect the life of little ones who are accustomed to be killed by the poor lest they have to support them, and by the rich lest they be defamed. From these things some infer that the rich ought to pay the expenses for supporting offspring, because, to avoid infamy, it is not necessary that they be excused from paying expenses. But others probably release them from this burden, because the reputation of the parents and the safety of the little ones would not be sufficiently provided for if the rich had to pay the expenses of support.[506] But where exposed infants are supported by care of the civil community, whether in private homes or in a hospital, from taxes or from goods destined for the poor, rich parents are bound to compensate the expenses.[507]

c. Parents are bound to procure for children a state suitable to their condition, so that afterward they can live honorably according to their state. Therefore alpha. they ought to take care that they learn either a trade or letters; beta. they ought to employ at least some moderate diligence so that they may leave to children an inheritance suitable to their state.[508] Wherefore parents can sin gravely not only if they squander their goods so that they leave the children needy, but also if they employ no care to acquire goods from which children may be supported according to their state and receive an inheritance.

Parents are indeed bound to furnish a suitable dowry to children who embrace an honorable state; yet if they justly dissent from their marriage, they are bound to furnish only necessary support if they need it.

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**Notes**

505. Cf. Ernst, *Elternpflicht*, chapter 2 (Kevelaer: Butzon-Bercker).

506. St. Alphonsus, n. 656.

507. Cf. Marres, *De iustitia*^2 (Ruraemundae: Romen, 1889), l. 2, n. 310 ss.

508. Cf. 2 Cor. 12:14.

**296. Whether mothers are bound to nourish children with their own milk.** A mother of herself is bound to nourish children with her own milk; yet this obligation can scarcely be called grave. Wherefore a mother does not seem to sin gravely, even if without just cause she hands over an infant to a nurse to be nourished, provided the little one is suitably and sufficiently nourished. Physiologists judge of this obligation somewhat more severely than theologians. For maternal milk, so they say, is for the infant the most natural food; indeed it is the nourishment uniquely suited to it. Wherefore a mother assuming a nurse, and especially nourishing offspring either wholly or in part with cow's milk, fails in the office imposed upon her by nature itself; moreover she exposes her own health to various dangers. There is added the reason of the common good: for from the custom, widely prevailing, of employing nurses without just cause, it follows that nurses neglect their own offspring, that they fornicate lest they lose the office of nurse, etc.[509] But from these things it indeed follows that mothers are earnestly to be exhorted to nourish their offspring themselves, without however needing to be obligated to this under grave obligation.

Three causes are customarily enumerated on account of which mothers can without sin hand children over to others to be nourished: alpha. necessity, as if the mother is too weak, sick, if milk is lacking, etc.; beta. notable utility, as if the mother cannot nurse the child without abandoning labor by which she is accustomed to procure sustenance for herself; gamma. custom flourishing among noble families. But custom against the law of nature can generate good faith, but it cannot remove the law itself; wherefore not even for a noble woman without legitimate cause is it licit to hand over offspring to another's nurse. But in this case they are bound under grave obligation to employ a nurse who in no way harms the health of the infant; for experience establishes that by certain diseases of the nursing woman the infant also can easily be infected. Capellmann and Antonelli rightly affirm that the moral qualities of the nurse effectively influence the infant, although others deny this.[510]

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**297. Obligation of spiritual education.**[511] Spiritual education is chiefly instruction and right governance in those things which are necessary for attaining salvation, and therefore it comprises four things: instruction, example, correction, and vigilance.

a. Parents: alpha. ought to instruct children, either by themselves or through others, in all things which are necessary for salvation, whether by necessity of means or of precept, and in the exercises of Christian life which are common to all the faithful. beta. They ought to take care that children be imbued with good morals, observe the precepts of God and of the Church, frequent the sacraments, and abstain from sins.

After considering the social and economic circumstances which now occur almost everywhere, parents are bound to send children to school, not only so that they may be suitably instructed in the Christian religion, but also in letters. Although elementary instruction is not called absolutely necessary for procuring for oneself the supports of life, nevertheless those who lack the instruction which others enjoy are pressed by many difficulties and inconveniences; but parents are bound to preserve their children from inconveniences of this sort, since they easily can. There is added that those whose mind is suitably developed and cultivated can much more easily drive away the dangers which today everywhere threaten both faith and morals.

b. They ought to furnish children a good example; wherefore they sin gravely against piety if in a grave matter they are for them an occasion of sinning, for example, by blaspheming before them, by speaking foul things against good morals, impious things against faith.

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**Notes**

509. Capellmann, *Medicina pastoralis*^6, n. 47 s.

510. Cf. Antonelli, *Medicina pastor.*^2, I, 489 ss.; Olfers, *Pastoralmedicin*^2 (Freiburg: Herder, 1893), p. 32 ff.

511. Pedagogical institutes treat professedly of the end, object, and means of education.

c. They are bound seriously indeed, but prudently and discreetly, to correct the vices of children. Sacred Scripture inculcates this obligation rather often,[512] so that parents can sin gravely if they notably neglect to correct the defects and sins of children.

Parents sin, sometimes even gravely, if without legitimate cause they beat children from hatred alone, likewise if they exceed just limits by punishing more gravely than the children have deserved.

d. Vigilance, by which parents are bound to guard children, demands that they remove all things which can be harmful to children. Therefore let them not permit them to associate with evil companions, read bad books, frequent bad workshops or schools or theaters, unless necessity compels them.

Parents must also watch lest children harm others: and indeed those who do not yet have the use of reason they must watch continually and from justice; but those who have sufficient discretion they must watch from piety and to this extent, insofar as they prohibit them from inflicting evils, as far as they morally can.

## On Children to Be Sent to Non-Catholic Schools

[513]

**298. Declarations.** 1. Non-Catholic schools are of diverse kinds: a. positively non-Catholic, in which heresy or impiety is openly taught; b. neutral, which in instruction and education wholly prescind from positive religion. These are also called mixed schools, because they admit pupils belonging to any sect whatever.

2. Pupils of schools of this sort are exposed to proximate danger of perversion both as to faith and as to morals. This danger chiefly flows from a threefold cause: from teachers, from books, and from fellow pupils. Nor do neutral schools lack this danger; for by the very fact that pupils are neither instructed in the faith nor educated to live in a Christian manner, indifferentism is fostered and the way is prepared for atheism. Moreover, it can scarcely happen that instruction wholly prescind from religion; but what is said about religion in schools of this sort is usually contrary to the Catholic religion.

3. What is said here about non-Catholic schools is valid not only of elementary and middle schools but also of higher schools: for in all, even the highest, which are not truly Catholic, grave dangers in faith and morals threaten the pupils.

**299. Assertions.** 1. Never, not even for avoiding the gravest damage, is it licit for parents to send children to non-Catholic schools in which the proximate danger of perversion can in no way be removed; nor is it ever licit for the children themselves to frequent schools of this sort, even if parents force them to this, because it is never licit to expose oneself to a proximate danger of sinning which cannot be removed.

Schools of this sort are those in which those things are taught or done which cannot be heard or performed without grave spiritual detriment, as if openly evil doctrines are proposed, if pupils are forced to recite heretical prayers, to be present at false rites, if fellow pupils are so evil that scarcely anyone can be preserved from contagion.

2. Although of itself it is always illicit to send children to non-Catholic schools, nevertheless from a just cause it is licit to send them to those schools in which the proximate danger of perversion can be made remote. The reason for the first is that parents do not satisfy their obligation if they procure for children an education which is only not openly opposed to the true religion, unless it is also truly Christian and Catholic. The reason for the second is that from a just cause it is licit to expose oneself to a remote danger of perversion.

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**Notes**

512. Prov. 13:24; 23:13.

513. Instruction of the Holy Office, 24 Nov. 1875, to the bishops of North America. Cf. I. Aertnys, *Fasciculus theol. moral.*^4 (Tornaci: Castermann, 1888), tract. 1, n. 38 ss.; Genicot, I, n. 352.

a. A sufficient cause on account of which a non-Catholic school can be approached is present if no Catholic school is had, or if the Catholic school which is available does not suffice for the condition of the children, while the parents lack the resources by which they can send the children into another region to a Catholic school. Moreover, the excusing cause must be greater in proportion as the danger of perversion is greater. But judgment both concerning the quality of the school and concerning the sufficiency of the cause belongs to the ordinary.

b. The means by which the proximate danger must be removed are these: alpha. to instruct and educate the children suitably outside school in those things which are necessary for believing and living in a Christian manner; beta. to teach and confirm them suitably in those things which are usually chiefly attacked in schools of this sort; gamma. to watch diligently lest children suffer damage in faith and morals either from bad books or from evil companions.

c. The Holy See itself declared that it could now be tolerated, what had previously been prohibited, that Catholic youths approach the universities of Oxford and Cambridge, because a Catholic university was lacking in England; and at the same time it determined what cautions had to be employed for removing the dangers arising from it.[514]

**Note.** From these things the following are now inferred for practice:

a. Parents cannot be absolved: alpha. if they send children to non-Catholic schools because they approve their principles and prefer them to Catholic schools; beta. if they commit children to be instructed in positively non-Catholic schools; gamma. if they hand over children to a non-Catholic school and do not take care that the danger of perversion be removed.

b. To parents who without sufficient cause send children to a non-Catholic school, but take care that the dangers of perversion be removed by a good education of the children, absolution cannot be denied, unless by reason of scandal or cooperation in promoting bad schools they sin gravely; because they do not expose them to proximate danger of perversion, and they are not bound under grave obligation to avoid a remote danger.

c. That priests teach Christian doctrine in mixed schools and Catholic men teach other disciplines in the same schools, the Holy See not only permits, but greatly commends. Yet at the same time it wills that the people be warned that this is done so that the evils which flow from schools of this sort may be turned away as far as can be done, and that parents are not for this reason excused from sending their children to merely Catholic schools, in which their faith and morals are in no way endangered.[515]

# Article Third. On the Obligations of Servants and Masters

## Section 1. On the Obligations of Servants

**300. On obligations in general.** Servants are called those who are hired for pay to furnish services in some family. Servants through the contract of service become part of the master's family, and therefore are called familiars and domestics.

a. From servants are distinguished workers or artisans, who lease their labors to some master for a definite time. These are not received into the master's family nor properly subject to his governance; for masters do not become their superiors.

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**Notes**

514. Holy Office, 26 Mar. 1895. S. C. de Prop. Fide, 17 Apr. 1895, to the Archbishop of Westminster.

515. Holy Office, 26 Mar. 1866, to the bishops of Switzerland.

b. The principal obligations of masters and servants arise from the contract of service, and therefore are obligations of justice; but from the same contract there also arises a relation of superiority and subjection, for which reason servants are subject to the master's governance. Therefore if they offend gravely against the honor or obedience due to the master, they sin against the virtue of observance and ought in confession to indicate the circumstance of service in order to declare the lowest species of the sin.

c. In most cultivated regions today, the rights and offices between master and servants are specifically determined by civil law, that is, by the servant ordinance (*Dienstboten-Ordnung*).[516] Since contracting parties enter contracts according to the laws in force, the dispositions of these laws are contained in the contract of service, to which special agreements can be added.

**301. On obligations in particular.** Servants are bound to furnish their masters: a. reverence; b. service.

1. Reverence: for their own condition enjoins observance upon servants, which by its nature requires reverence: "Let them judge their masters worthy of all honor."[517]

Therefore they are bound to bear with an even mind the troubles, harshness, and moroseness of masters, and not for this reason to desist from their office. Hence according to the measure of the matter servants can sin even gravely if they spurn masters, mock them, use contumelious words against them, or conduct themselves arrogantly and insolently.

2. They owe service and obedience to masters in those things which pertain to service and to good morals. The reason for the first is that by force of the contract they obligated themselves to these things; the reason for the second is that governance belongs to superiors by reason of office, to which in subjects corresponds the obligation of obeying.

a. Hence according to the measure of the matter servants can sin even gravely: alpha. if they do not labor strenuously or waste time in idleness; beta. if from culpable negligence they bring detriment to domestic affairs; but if without fault and beyond intention, for example by breaking something, they cause damage to the master, of themselves, apart from a special agreement, they are not bound to repair it; gamma. if they reveal the secrets of the family to others, especially where damage follows from their revelation.

b. They sin if without just cause they abandon service before the constituted time. A servant who without cause departs before the constituted time of himself has the right to the agreed pay for the time during which he actually furnished service, although this pay, according to a quantity to be determined by prudent judgment, can be diminished somewhat; for service furnished merits its pay, but the master can lessen it because the servant did not stand by the contract. Yet if the master suffers grave detriment on account of the departure of the servant, he can keep himself indemnified by deducting part of the pay.[518] But positive laws sometimes establish otherwise.[519]

**302. Whether servants are bound from justice to guard the goods of the family and therefore to impede damages which are inflicted upon the master.** - a. Servants who are hired for guarding and defending the family estate, such as guards, administrators, etc., certainly are bound from commutative justice to impede any damage from being inflicted on the master.

b. But servants who are hired only for furnishing their labor and work are indeed bound from charity to guard the goods of the family and to impede damages, but that they are obligated to this from justice cannot be

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**Notes**

516. Cf. Austrian civil code, Section 1172; German civil code, Section 617 ss.

517. 1 Tim. 6:1.

518. St. Alphonsus, n. 345.

519. Austrian civil code, Section 1172; German civil code, Section 617.

certainly demonstrated, unless the care and custody of some thing has been committed to them for a special reason. For from the fact that special servants are hired for guarding domestic goods, who are also called by a peculiar name, it seems possible to infer that the others are hired only for furnishing their labor to the family. Therefore, because the obligation is not certainly established, it is not to be imposed upon them, unless civil law enjoins it upon servants.

There are those who contend, Diana and Pontius, that servants are held from justice to impede damages, whether these are inflicted upon the master by outsiders or by other servants. Their reason is that, by reason of service itself, domestic goods are committed to the servants to be guarded. Others, on the contrary, teach, Salmanticenses and Tamburini, that servants are obligated to impede those damages which are inflicted by outsiders, but not those which are inflicted by members of the household; for by the fact that they are admitted into the family they are judged indeed to assume the obligation of defending the goods of the family against outsiders, but not also against other members of the household. Nevertheless, the opinions of these authors do not exceed probability.[520]

## Section 2. On the Obligations of Masters

**303.** Masters are bound toward their servants: a. to treat them kindly; b. to direct them; c. to pay them a just price.

1. To treat them kindly, that is, to address them humanely, to provide sufficient food, not to burden them with excessive labors, to care suitably for the sick: "If thou hast a faithful servant, let him be to thee as thy own soul; treat him as a brother."[521]

Hence masters sin against charity if they offend servants by addressing them with harsh and contumelious words, if they burden them with excessive labor, if they do not devote due bodily care to the sick. But they are not bound to the expenses to be made in their cure, namely for physicians and remedies.

2. To direct them and, if there is need, to correct them, that is, to devote due spiritual care to them; for the master is head of the whole family, to which servants also pertain. But it belongs to the head to direct subjects: "But if anyone does not have care of his own, and especially of those of his household, he has denied the faith and is worse than an unbeliever."[522]

Therefore they are bound: a. to grant servants time so that they can fulfill religious obligations, for example, hear Mass, attend a sermon, frequent the sacraments; indeed they ought to take care that servants do this. b. They are bound to warn and correct them, especially if they sin by blasphemies or foul speech and give scandal; to prohibit illicit familiarities to them; to impede the occasion of sinning. c. They are bound to dismiss impious servants who are a scandal to others and, when warned, do not amend themselves, where they can find other suitable servants; *a fortiori* they are bound not to hire servants of this sort. d. But they must especially beware lest by bad example, scandal, or solicitation they themselves induce servants to sin. Nevertheless, the sin of scandal or induction does not put on a specific malice from the relation of master to servant unless the master has assumed special spiritual care in place of parents.

3. To pay a just price, and that from justice; for by the contract entered they obligated themselves to this. Defrauding due wages is numbered among the sins crying to heaven.[523]

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**Notes**

520. Cf. Lessius, *De iustitia*, l. 2, c. 13, n. 75; Lugo, *De iustitia*, disp. 19, n. 105 ss.

521. Ecclus. 33:31. Cf. Eph. 6:9.

522. 1 Tim. 5:8.

523. Deut. 24:14 s.; Jas. 5:4.

a. Hence they sin against justice if without just cause they subtract anything from the promised wage or for a long time defer payment with damage to the servants. If a servant who has been hired at least for a year becomes sick for a brief time, for example, for a week, the whole stipend is due to him; but if he is sick for a notable time, the whole stipend is not due to him, for he cannot demand pay except for service furnished.[524]

b. They also sin if they demand labors to which servants are not bound by force of the contract and do not increase the stipend for them; if they dismiss servants before the constituted time without just cause and do not keep them indemnified. Therefore if a servant unjustly dismissed cannot find another service, the master must pay him the whole wage. If indeed he finds another, but not equally good or not immediately, the master must supply the defect. But if he immediately finds another equally good, the master is bound to nothing in conscience before the sentence of a judge, because he has inflicted no damage upon him.

c. If a servant departs before the constituted time from the fault of the master, because, for example, he is treated harshly by him, he does not indeed have the right to the whole wage, but he has the right that damages be repaired to him; and sometimes the whole salary does not suffice to repair them.

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## Article Fourth. On the Obligations of Employers and Workers

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**304. Obligations of employers.** 1. They are bound to avoid those things which harm workers in the goods of the body.

a. They sin if they force them to labor in workshops harmful to health, or in circumstances in which they are exposed to danger of losing life or the integrity of members, if they force them to labors which greatly harm health, if they must handle poisonous things for a long time.

b. Works in which dangers to life and health cannot be sufficiently excluded can licitly be undertaken only if the reason of the common good requires works of this sort.

2. They are bound to remove those things which harm the salvation of the workers' souls.

They sin if they admit or do not dismiss workers who are a scandal to others or seduce and corrupt them; if promiscuously they force persons of both sexes, or adolescents together with adults, to labor without due precautions.

3. They are bound to have account of the Christian religion, so that they grant workers suitable time for fulfilling the offices of the Christian religion.

They sin if they force workers to labor on Sundays and feast days; but if necessity or the quality of the work requires labor even on those days, they ought at least to take care, as far as can be done, that all can be present at the sacrifice of Mass.

4. They are bound to pay workers a just wage for labor.

a. They sin if they do not pay workers the wage at the due time, or pay a wage less than just; likewise if they give goods instead of money, unless they had previously agreed with the workers about this mode of paying. There will be discussion below concerning the just wage of labor. Moreover, he who pays the common wage is ordinarily judged to have satisfied commutative justice.

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**Notes**

524. Cf. St. Alphonsus, n. 346.

525. Cf. Jos. Biederlack, *Die soziale Frage*^7 (Innsbruck: Rauch, 1908), n. 140 ff.; A. Vermeersch, *Quaestiones de iustitia*^2 (Brugis: Beyaert, 1904), n. 455 ss.

b. They ought ordinarily to pay the wage, and that entire, to workers even when they have suffered losses from the unhappy outcome of a work or business.

5. They are bound not to prohibit them from work, that is, to lock them out (*aussperren*), where either justice or charity prohibits it.

6. They are bound to assist workers placed in necessity.

An employer is joined with his workers by a special bond, because he has entered a special society with them and, moreover, perceives profit from their work; therefore before other poor persons he ought to exercise offices of charity toward his own poor workers.

**305. Obligations of workers.** 1. They are bound to observe the conditions of a just contract freely entered.

a. He who, compelled by want, consented to a wage less than just is not bound to observe the contract, because he did not consent freely, unless the employer admitted the worker asking only from mercy, when otherwise he would not have needed him. - He who either spontaneously or under compulsion consented to labors to be performed on Sundays and feast days is not bound to labor, unless the master has sufficient reason for requiring labor on those days, because the contract is unjust.

b. They sin who, during the time in which by force of the contract they ought to labor, either labor remissly and lazily or wholly indulge idleness. Wherefore if they do not employ even the lowest degree of ordinary diligence, they ought of themselves to remit part of the wage or restore what has already been received. The more suitable mode of making restitution consists in this, that on other days they labor beyond what is due.

2. They are bound to abstain from those things which bring damage to the employer.

They sin if they badly complete works committed to them; if they do not guard the goods of the master or instruments of the art, or lose them.

3. They are bound to abstain from force and seditions, but especially from unjust cessation from work by agreement.

Concerning strikes, or cessation from work by agreement (*Strikes*),[526] two things must be declared: a. whether it is just; b. whether it is licit.

**306. On the justice of cessation.** A twofold condition is required so that cessation from work can be called just: a. that the hiring contract not be violated; b. that unjust conditions not be demanded.

1. If the hiring contract is unjust, workers do not injure justice if, before the time of the contract has ended, they cease from work by agreement until they have obtained just conditions of contract.

A hiring contract can be unjust either because workers do not receive a just wage, or because without necessity they are forced to labor even on feast days and Sundays, or because dangers to life or health are not sufficiently forestalled, etc.

2. If the hiring contract is just, they manifestly injure justice when they cease from labors before the time of hiring has ended. But they do not act against justice if, when the time of hiring has ended, they cease from work until they obtain better conditions, provided they demand only just conditions, such as a greater wage, not above the highest, a time of labor not excessive, etc.

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**Notes**

526. Lehmkuhl, *Arbeitsvertrag und Strike*^3 (Freiburg: Herder, 1904), in *Die soziale Frage*, 2. Heft; A. Vermeersch, l. c., n. 470 ss.

a. The just conditions which workers demand are sometimes of such a kind that they cannot be denied by employers without injustice, as a just wage and a time of labor not excessive; but sometimes the conditions, although they are just, can be denied without injustice, as the highest wage, daily labor of eight hours, etc.

b. If indeed they receive the lowest just wage but demand a greater one, those ceasing from work ought to grant other workers the liberty of laboring for the lowest wage, if they wish. But if they do not receive the lowest just wage, they do not act unjustly if they morally compel others to cessation, provided this is done by licit means, for example, by excluding them from societies freely entered for the good of workers.[527]

3. Workers ceasing from labors who by persuasions induce other workers also to cease from work, supposing a just cessation, do not injure justice. But those who do this by force, threats, fraud, or lies injure justice in two ways: both toward the workers, who are unjustly impeded from the wage to be earned by them, and toward the employers, who are unjustly impeded from the profit to be procured by them.

Hence workers who by persuasions induce others to cease from work, where the cessation is unjust, are bound as counselors together with the others to restitution toward the injured masters; but toward the workers they are bound to nothing, because no injury is done to one willing. But those who by unjust means induce others to cease are themselves bound to repair the damage inflicted both upon masters and upon other workers.

**Note.** Frequently workers enter associations among themselves, for helping the sick, their widows, etc., into which they are received only on this condition, that they cease from work as often as cessation is decreed by the moderators. Now it is licit to join associations of this sort only when it is established that the moderators will not decree a cessation which is contrary to justice.

**307. On the liceity of cessation.** A twofold condition is required for the liceity of cessation: a. that the end be honest; b. that there be a proportionately grave cause.

1. It cannot be denied that workers not rarely rightly and deservedly complain about a wage less than just, about labor either too heavy or too long, about conditions of labor unworthy of a Christian man, indeed of a rational man. To meet these evils and to obtain better conditions of labor, which employers refuse to grant, workers sometimes licitly use the means of a just cessation from work.

There are, moreover, other and diverse ends for which cessations from work are sometimes instituted, for example, to disturb social order, to explore the force and number of workers associated by a common league, to extort unjust conditions of labor, etc. It is clear that the end stated above is the only one from which strikes can become licit.

2. Cessation from work brings great damages both to the workers themselves and to employers, to common prosperity, and finally to public tranquility. To avoid these evils, workers from the precept of charity must first try other means by which their just desires may be fulfilled; and only where another way of obtaining the intended just end, truly grave, is not available, is it licit for them to use a means in itself just, from which so many and such great evils follow.

## Article Fifth. On the Obligations of Pupils and Teachers

**308.** By the name of teachers here are understood those who in lower schools are constituted by office to instruct and educate boys and youths. The obligations of teachers and pupils are taken from the mutual relation which exists between them; and this mutual relation arises from the contract which parents enter with teachers, whether spontaneously or compelled by the civil power. But since by force of this contract parents

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**Notes**

527. Cf. Lehmkuhl, *Theolog. mor.*, I, n. 1119.

substitute teachers for themselves in instructing and educating their children and communicate to them their own authority, the obligations of pupils and teachers are nearly the same as those which fall upon children and parents.

**On mutual obligations.** 1. Pupils ought to show teachers love, reverence, and obedience in those things which pertain to studies and good morals.

Hence pupils, according to the measure of the matter, can sin gravely either against charity or against observance: a. if they mock teachers, speak irreverently about them, conduct themselves insolently and provoke others to irreverence and insolence, affect them with annoyances and provoke them to anger; b. if they do not comply with teachers seriously commanding in those things which pertain to studies, to good morals, and to the discipline of the school; but pupils are for the most part excused from mortal sin on account of levity and inadvertence; c. if in the time of lesson they do not attend and pass the time of study uselessly. For judging the gravity of this sin, attention must be given both to the quantity of time which is spent inattentively and uselessly, and to the object of instruction and study, and to the condition of the persons: for there will not be grave sin unless they are notably impeded in acquiring those things which are necessary to their state and condition.

2. Teachers owe pupils instruction and education, and this from piety, because in place of parents they take this obligation upon themselves, and from justice, because both by reason of office and by reason of the stipend received they ought to furnish it.

Hence teachers can sin: a. if they do not perfect themselves in letters insofar as there is need; if they do not employ due diligence so that pupils be well instructed; if they teach them false and inept things; b. if they do not correct their bad morals, do not exclude from their schools boys imbued with bad morals where they can, or at least do not turn others away from these; c. if they punish them unjustly or indiscreetly; d. if by bad example they harm their morals.

**Note.** a. Once the relation between pupil and teacher has been dissolved, sins which are committed against the teacher do not differ in species from sins which are committed against another neighbor.[528]

b. Over adolescents who are instructed and educated in boarding-schools, strictly only superiors hold authority in place of parents and the power of commanding. Hence if pupils do not obey their prefects from a certain contempt, they are more easily excused from mortal sin, because those prefects lack the authority by which they can command and which can be contemned by pupils.

c. If a teacher seduces to sin a pupil whose care he has taken upon himself in place of parents, for example, to theft, he offends not only against justice but also against piety, and therefore commits a twofold sin.

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## Question Third. On Obligations in Civil Society

**309.** 1. Just as from several individuals a family arises, so from many families civil society arises, which generally consists in the organically associated assembly of several families. Therefore its elements are: the people organically joined, that is, citizens; supreme power, which governs the people by suitable means for obtaining the social end and therefore is furnished with the rights which are necessary for effecting this; the social end, which consists in this, that both individuals and communities may securely enjoy their rights and attain temporal prosperity.

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**Notes**

528. Lehmkuhl, I, n. 880.

2. The obligations to be declared in this place exist between rulers and subjects, since the obligations which are had among the citizens themselves are referred to the seventh precept.

By rulers we mean those who possess supreme power in some civil society, whatever may be the form of government in the republic which they govern. And because now the power which in ancient times resided wholly in the ruler, according to the recent form of government, is divided among several, those who cooperate with the ruler in governing society and deputies are added.

By the name of subjects we understand citizens who in the republic are subject to legitimate civil power. Their obligations are chiefly these four: a. subjection; b. the obligation of paying taxes; c. of following military service; and d. of electing deputies to assemblies.

These are obligations of justice, and indeed those which belong to civil power are obligations of legal and distributive justice, but those which are present in citizens as subjects are obligations of legal justice.[529]

## Article First. On the Ruler

**310. His obligations.** 1. Rulers are bound to procure the common good while preserving the liberty of individuals; therefore they must first know wherein the true good of society, namely the temporal happiness which they ought to promote, consists.

2. They are bound to avert temporal evils and dangers as far as can be done, such as wars, whether with outsiders or civil wars; sects which overturn the foundations of society, as socialism and masonry, etc.; crimes which turn to the damage of the common good, etc.

3. They are bound to commit public offices to worthy and suitable men, but to remove the evil and inept from them.

4. They are bound to administer justice without acceptance of persons.

5. They are bound to preserve the due relation to the Church, to protect her rights, and to help her so that she may obtain her end more easily and more abundantly.

Moreover, it will be more useful to indicate some little works which treat this matter excellently:

a. St. Thomas, *De regimine principum ad regem Cypri*, Opusc. XVI.

b. Cardinal Bellarmine, *De officio principis christiani ad serenissimum principem Wladislaum, Sigismundi III. regis filium.*

c. De Ponte-Brandis, *Der Weg zur Vollkommenheit fur die hoheren und hochsten Stande in der Gesellschaft* (Regensburg: Manz, 1860).

d. W. E. Ketteler, *Die Pflichten des Adels* (Mainz: Kirchheim, 1868). This is a version of the little work of St. Thomas, or rather of Guil. Peraldus, *De eruditione principum.*

e. John Mariana, *De rege et regis institutione libri tres. Ad Philippum III. Hispaniae regem catholicum.* A work otherwise excellent, if he had not defiled it by the doctrine on tyrannicide.

f. The encyclical letters of our most holy lord Leo XIII, *Immortale Dei*, 1 Nov. 1885, and *Libertas*, 20 Jun. 1888.

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**Notes**

529. Cf. *De principiis*^9, n. 269 ss.

## Article Second. On Deputies

**311.** Deputies can be elected to the assemblies of the kingdom or of the province or of the municipality. Indeed these things apply to all, proportion having been preserved, but chiefly to deputies to the assemblies of the kingdom, to whom belongs the power of making laws. In like manner it makes no difference whether the government is liberal or Catholic, provided it is legitimate.

**Their obligations.** 1. Deputies legitimately elected are bound from legal justice to accept this office, unless they are excused on account of grave inconvenience, provided they are suitable.

a. Therefore those who on account of defect of knowledge or prudence or probity are unfit for this office can neither seek nor accept the office of deputy without sin, because they expose themselves to the danger of inflicting grave damage upon the republic.

b. Suitable persons not accepting the office without just cause sin against legal justice: for although the damages which by accepting the office they could have impeded, but did not impede, can be imputed to them, nevertheless they are not guilty of violated commutative justice but of legal justice.

2. They are bound to have sufficient knowledge so that they can rightly discharge their office, namely without danger of inflicting damage upon the republic or of approving wicked laws and decisions.

a. Therefore they ought to know wherein consists the end and true good of the republic, what the rights of the Catholic Church are, what the relation between the Church and civil society is, and what the obligations of civil society toward the Church are.

b. Before the exercise of the office in individual sessions, they are bound by study and by taking counsel to render themselves fit for handling the affairs which will be proposed in the assemblies, or at least to seek a suitable guide whom they can follow with a safe conscience.

3. Of themselves they are bound to be present at sessions and to cast a vote for the common good.

a. They are excused: alpha. if notable damage is not to be feared from their absence; beta. if by attending they would have to undergo grave inconvenience; gamma. if they foresee that their presence and vote will be of no utility.

b. Therefore they ought to beware: alpha. lest led by vain respect toward the ministers of the kingdom or pursuing private advantages they cast a wicked vote; beta. lest they prefer the advantages of the nation to the common good.

c. Since by office they are bound to impede damages to the republic, they violate commutative justice if by a positively evil vote they are the cause on account of which damage follows.

4. If a law certainly wicked or unjust is proposed, they ought either to abstain from casting a vote or, if there is hope of fruit, to cast a vote for the contrary side. For since in modern assemblies of the kingdom deputies are held as true legislators, laws are attributed to them as to their true causes; for a law proceeds from votes as from so many particular causes.

Therefore if they make a wicked law, they not only sin by consenting to an evil matter, but where damage is inflicted upon others through the law, they are also bound to restitution, provided the vote was certainly efficacious for the effect of the law.

## Article Third. On the Obligation of Subjection

**312. Obligations of citizens.** Subject citizens ought to show kings and rulers reverence, obedience, and fidelity; sacred Scripture commemorates these obligations: “Let every soul be subject to higher powers, for

there is no power except from God."[530]

1. Reverence due to rulers requires that in them there be acknowledged the supreme authority conferred on them by God, and that therefore, on account of the superiority by which they excel, due honor be furnished to them. And what is said of the ruler is valid, proportion having been preserved, also concerning inferior magistrates.

Hence subject citizens can sin even gravely both by internal contempt and by external irreverence, if they inflict insult either upon the ruler himself or upon his publicly displayed image; if from contempt of authority they deny due signs of honor when these must be publicly shown to the ruler; if publicly by mouth or in writing they bring forth contumelious words against him.

2. Obedience. To the right of commanding, which belongs to the head of society, there corresponds in its members the office of obeying. Therefore the Apostle says: "Be subject of necessity, not only because of wrath, but also because of conscience."[531] But a twofold condition is required so that a civil law oblige in conscience: a. that it be just; b. that it be preceptive, not merely penal or merely invalidating.

**On the obedience due to a usurper.** A usurper is one who by force casts out the legitimate ruler and unjustly arrogates public power to himself. Now:

a. Citizens are bound to obey a usurper who is in quiet possession of the arrogated power in laws which are established for preserving public order; not indeed from a right of making laws, which in the usurper is none, but on account of the common good. This good requires from citizens that they furnish obedience lest the republic be disturbed, and from the legitimate ruler that he consent to the obedience of the citizens, because he cannot will that the republic perish rather than that the citizens subject themselves to the usurper.

b. Citizens ought to abstain from any act by which the usurper is acknowledged as legitimate ruler or by which his usurped power is confirmed and consolidated.[532]

3. Fidelity: for it is never licit to rebel, even if the ruler abuses his power; and in like manner it is never licit to kill the ruler, even if his regime is excessively tyrannical; therefore the Church has always condemned rebellion and tyrannicide.[533]

**313. On fidelity to be furnished to a tyrant.** A tyrant is called a legitimate ruler who abuses his power to oppress the people by force. It is asked whether and how the people can legitimately defend themselves against a manifestly tyrannical government.

a. Rebellion is never licit. By the name of rebellion is understood violence inflicted by subjects upon a legitimate ruler to depose him. Therefore rebellion properly so called has the character not of defense, but of aggression; but subjects indeed have the right of defending themselves, but not of making war upon the tyrant, since he is the true lord. Therefore the Apostle says: "He who resists the power resists the ordinance of God";[534] and Pius IX proscribes this proposition: "It is licit to refuse obedience to legitimate rulers, indeed even to rebel."[535] Therefore by the law of nature and the Christian law tyrannicide is illicit, that is, the killing of a legitimate ruler is illicit, whether it is done by a private man or by the multitude.

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**Notes**

530. Cf. Rom. 13:1-7.

531. Rom. 13:5.

532. What things in this matter are licit or illicit we learn from several responses of the Sacred Penitentiary given on the occasion of the recent Roman invasion, 6 Oct. 1859; 10 Dec. 1860; 1 Dec. 1866. Cf. Villada, *Casus conscientiae*^2, I, p. 197 ss.; Pruner, *Kath. Moraltheol.*^3, p. 355.

533. The Christian doctrine on this matter is contained in the encyclical letters of Gregory XVI, *Mirari*, 15 Aug. 1832, and of Leo XIII, *Diuturnum*, 29 Jun. 1881.

534. Rom. 13:2.

535. *Syllabus*, n. 63.

b. Passive resistance, by which an oppressed people defends and protects itself against the injury of a tyrannical government, is not only licit but sometimes even prescribed.

Passive resistance consists in this, that subjects constantly deny obedience to the unjust laws of the tyrant. That this is licit is clear, because the obligation of obeying in subjects cannot extend more widely than the right of commanding in the ruler. The same is prescribed as often as those things are demanded which are contrary to the natural or divine law.

In this case it is necessary to obey God rather than men;[536] and the punishments which are inflicted on that account must be borne patiently. To passive resistance in this case, officials of the republic are chiefly obligated, since it is not licit for them either to promulgate or to commit to execution unjust laws of the tyrant which are contrary to a higher law.

**Note.** It can happen that even a government which cannot be called tyrannical establishes unjust laws. In this case also it is licit to oppose passive resistance to them. And laws which cannot be observed without sin, because they are directly opposed to the rights of God or of the Church, it is never licit to obey, even if on that account the gravest temporal evils had to be sustained. But laws which can be observed without sin, because they are directly opposed only to the rights of subjects, which they themselves can renounce, may be obeyed, and sometimes they must be obeyed, namely where greater evils would follow from non-observance. Moreover, the present form of government supplies to citizens certain means by whose use they can obtain the abolition of unjust laws, such as public papers which show that the laws are wicked, the election of deputies who defend the rights of citizens, the right of petition, the right of association, and the right of calling assemblies.

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## Article Fourth. On the Obligation of Paying Taxes

**314. Declarations.** 1. Tax in general is everything which is paid to the republic for meeting common expenses.

A tax described in this way comprises several species of taxes, which are all reduced to two genera, direct and indirect taxes. A direct tax is tax strictly accepted, which is defined as a payment imposed to be paid by citizens for common necessities or utilities.

2. Some taxes are direct, others indirect.

a. Those are called direct which are imposed immediately upon persons, whether by reason of goods, both movable and immovable, or by reason of art or business. To this belong personal taxes (*Personalsteuer*), which are exacted from individual persons or families according to movable wealth; real taxes, which are imposed on account of immovable goods, such as fields and houses (*Grund-, Haussteuer*); and concessions which are made to subjects for exercising an art or for exercising a business (*Gewerbe-, Erwerbsteuer*).

b. Those are called indirect which are imposed immediately upon certain things on the occasion of the change of rights by contract or succession (*Steuer vom Vermogensverkehr, Erbschaftssteuer*), on the occasion of the manufacture, sale, or use of certain things (*Branntwein-, Brau-, Tabaksteuer*, etc.), on the occasion of the transport of merchandise into another region (*Zolle* - customs).

alpha. Inheritance tax (*Erbschaftssteuer*) is referred by others to direct taxes, because it immediately affects the heir by reason of the inheritance.

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**Notes**

536. Acts 5:29.

beta. From taxes must be distinguished those things which are paid to the treasury by force of a private contract entered with it, as the price for transporting persons, merchandise, and letters; for these are owed from commutative justice.

**315. On the law of taxes.** 1. Political authority can establish tax laws obligating subjects in conscience, provided they are just; for by the very fact that it has the right and office of directing society to its proper end, it also has the right of demanding the means which are necessary or useful for governing society, and upon subjects falls the obligation of contributing those things which are demanded for this end.[537]

Therefore the obligation of paying taxes arises from the very fact by which someone is a citizen, that is, a part of civil society. For just as in the present order each one by natural necessity concurs for his own good to constitute society, so by the same necessity he ought to contribute that which is required for preserving the same society. Those do not rightly conceive tax who affirm that it is a recompense furnished by citizens to the community for the goods and advantages which individuals receive from social life. In determining the amount of tax to be imposed upon individuals, account can also be had of the advantage received from society; but the received advantage cannot be called the foundation of the obligation.

2. In order that the imposition of taxes be just, besides legitimate power to impose them three things are required: a. a just cause, which is judged to be present if the tax immediately or mediately falls to the common good, to which must also be referred the support of the ruler suitable to his dignity; b. a just mode, that is, the tax must not be excessive but moderate, namely one which does not exceed the demand of public necessity or utility; c. just proportion with the means of the subjects, so that the rich ought to pay more than the poor. If one of these conditions is lacking, the tax law must be called unjust, and it does not induce an obligation of paying taxes except for avoiding a greater evil.

In doubt concerning the justice of a tax, according to the mind of St. Alphonsus (n. 615), it is licit to presume that it is unjust. Generally indeed in doubt one must presume in favor of the justice of the law and in favor of the obligation of obeying; yet if peculiar circumstances suggest the contrary, in doubt it is licit to hold it unjust. But the peculiar circumstances in our case are these: because the conditions which are required for the justice of taxes have in fact not been observed, unjust laws have several times been established, on account of which the presumption is rather contrary to these laws. Moreover, by tax law subjects are not only heavily burdened, but are also deprived of their own goods; but in doubt concerning the justice of such a law, subjects are not bound to obedience.[538]

**316. On the obligation of tax laws.** 1. Just tax laws, if they are preceptive, oblige from legal justice; for tax laws have nothing special, but must be judged according to the norm of other laws;[539] but other civil laws of themselves oblige from legal justice. And indeed, from legal justice subjects are bound to supply those things which are required for the common good, if by law they are demanded from them. Although now taxes are imposed through deputies elected by the people, nevertheless tax laws do not obtain the force of obligating from the consent of the people, but from the will of the deputies and of the ruler himself; and therefore they have the character of true law, equally as others do.

a. Most among the older authors, and those of the best reputation, were of this opinion: that tax laws, at least some, oblige from commutative justice. They derived this obligation from a quasi-contract tacitly entered between ruler and subjects, by which the former indeed obligates himself to good and right governance, but

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**Notes**

537. Writers of ethics and natural law treat this matter professedly. Cf. Theod. Meyer, *Institutiones iuris naturae* (Friburgi: Herder, 1900), II, n. 628 ss.; Vict. Cathrein, *Moralphilosophie*^4 (Freiburg: Herder, 1899), II, p. 625; A. Vermeersch, *Quaestiones de iustitia*^2 (Brugis: Beyaert, 1904), n. 97-128.

538. Cf. Lugo, *De iustitia et iure*, disp. 36, n. 86.

539. Cf. Suarez, *De legibus*, l. 5, c. 13, n. 6.

the subjects obligate themselves to furnishing a stipend by which the ruler can sustain public burdens.[540] But, if we prescind from the feudal right of former times, no tacit contract of this sort intervenes; rather the ruler, without a contract, by natural ordination is bound from legal justice suitably to govern the republic, and subjects from the same legal justice are bound to supply the means necessary for good governance.

b. The obligation of tax law can be understood in such a way that subjects are not bound to pay taxes except insofar as they are demanded from them, determined as to quantity; for it belongs to the superior of the community to divide the common burdens among subjects, who therefore are not bound to furnish a determinate burden before distribution.

2. Laws which regard indirect taxes are merely penal laws.

a. Indeed, among men even timorous ones, the persuasion is common that they are held to pay these taxes lest they incur the punishment enjoined upon those not paying. Moreover, punishments inflicted on those defrauding these taxes are extraordinarily grave; but very grave and exorbitant punishments inflicted on transgressors of a law are ordinarily a sign of a penal law. Finally, public power not only possesses sufficient means by which it may exact the payment of taxes, but in fact also employs these physical means, and these alone; but from this manner of acting it is gathered that it does not urge an obligation of conscience.

b. Therefore they do not sin nor are they bound to restitution who import and sell prohibited merchandise. Yet those who deliberately and as if from their own business are occupied in defrauding customs, smugglers (*Schmuggler*), cannot be excused from grave sin, both because they expose themselves to grave danger not only of incurring a very grave punishment, but also of undergoing damage to life, and because they are of a disposition so prepared that they would defend themselves even by inflicted force against public guards and collectors of customs.

3. Tax laws which regard direct taxes, provided they are just, in our regions of Austria and Germany seem to be preceptive from legal justice: for of themselves they oblige from legal justice; but the reasons which are adduced for denying preceptive force as to indirect taxes do not seem to hold for these taxes. There is added the manner of speaking of sacred Scripture, from which taxes in general oblige in conscience: "Render to Caesar the things that are Caesar's."[541] "Be subject of necessity not only because of wrath, but also because of conscience: for therefore also you pay taxes; render therefore to all what is due: tax to whom tax, custom to whom custom."[542]

There is no lack of authors who, from nearly the same reasons which can be adduced concerning indirect taxes, think that direct taxes also are imposed by way of penal law. It must be conceded to these that among the faithful, even timorous ones, there is a common persuasion that among so many and such great taxes which are demanded, some are unjust or at least excessive, and therefore that they do not act against conscience if they do not pay all taxes, but sufficiently contribute to the common good insofar as they are bound, because they pay part of the taxes. Hence it is that they judge themselves not bound accurately to declare the goods on account of which taxes are demanded. Moreover, these authors take account of the conditions of their own region, where perhaps the legislator attaches little weight to an obligation of conscience and subjects hold

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**Notes**

540. Cf. Lugo, l. c., disp. 36, n. 38; Lessius, *De iustitia*, l. 2, c. 33, n. 57; Sporer-Bierbaum, II, tract. 5, n. 926; and several others. Of more recent authors, from a similar reason, Marres, *De iustitia*^2 (Ruraemundae: Romen, 1889), l. 2, n. 196; Scavini, *Theologia moralis*^12 (Medolani: Oliva, 1890), II, n. 604; E. Muller, *Theologia moralis*^3 (Vindobonae: Mayr, 1894), II, p. 466; Amberg, *Die Steuer in der Rechtsphilosophie der Scholastiker* (Berlin and Leipzig: Rothschild, 1909).

541. Matt. 22:21.

542. Rom. 13:5-7.

these laws as penal.[543]

**317. On declaring goods for which taxes are imposed.** a. If there exists no obligation of conscience of paying the taxes themselves, neither does there exist an obligation of declaring the goods for which they are imposed. Wherefore stocks or merchandise on account of which indirect or unjust direct taxes are demanded do not have to be declared. Therefore merchandise which is imported can licitly be hidden, but one must abstain from lies and frauds.

b. Where there exists a strict obligation of paying direct taxes, the goods and their just value are to be declared from legal justice; for by a law issued by the ruler, it is commanded that citizens themselves declare their things subject to tax, and they are bound of themselves to obey this law from legal justice.

c. Nevertheless, one who tries to conceal a fourth or third part of goods must not be held guilty of injustice for a twofold cause: alpha. because some taxes can be held unjust, so that each person, with that part deducted, can still be judged to have satisfied his obligation of contributing to the common good for his part; beta. because this manner of acting is commonly observed also by others, from which it happens that others are not therefore forced to pay more, nor does the government lack necessary subsidies, since for this very reason it is accustomed to increase taxes.

Notaries who in drawing up instruments of sale or things of this sort declare a lesser value of things which are liable to tax do not act against commutative justice, since from the office committed to them they must not care for the utility of the government, but draw up authentic documents according to the norm of law. Indeed, both notaries and the private persons for whom instruments of this sort are drawn up can be excused from lying, where the usage has commonly prevailed of declaring a lesser value of things; for in this case the instruments affirm only that this is the value which, according to received custom, is subject to tax.

d. The oath by which it must sometimes be confirmed that all things have been rightly declared effects that a sin against religion is committed if anything has been hidden or if the price of things which are liable to taxes has been depressed below the lowest. Yet where it is established that a tax is unjust either wholly or in part, it is licit to use a mental restriction, so that, the oath having been emitted, religion is not injured, even if that which is unjustly demanded has been hidden.

Declaration has the character of a necessary means, without which the tax law cannot be committed to execution. Therefore by the same right and the same obligation by which the taxes themselves are demanded, the declaration of things which are liable to taxes is also imposed. It is clear that by the same right and the same obligation there is also demanded an oath concerning the declaration rightly made. One who justly and licitly hides part of the things liable to tax can also licitly emit an oath concerning the declaration rightly made, namely the one which is justly demanded.

**318. Obligations of collectors.** a. They are bound to exact the taxes and customs for whose exaction they have been constituted with suitable diligence, and indeed each one of them unless it is established that they are unjust, yet in such a way that they treat more kindly the poor and those who are diligent in paying taxes, and this from the reasonably presumed will of the ruler. If they do not diligently exact taxes and customs, or if without just cause they act more indulgently so that either the whole or a great part can be defrauded, they sin against commutative justice, because from contract and from the stipend received they have been constituted to exact taxes.

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**Notes**

543. Genicot (I, n. 474) affirms that tax laws at least in Belgium are more probably merely penal laws; Berardi (*Prax. conf.*, II, n. 413) and Bucceroni (*De leg.*, n. 81) teach the same universally. Ballerini-Palmieri (I, n. 327) affirms that only laws which regard indirect taxes are penal.

b. Collectors of taxes or customs who allow themselves to be corrupted by money or to be induced by other unjust means, so that they exact either no taxes and customs or lesser ones, or omit to inquire into things liable to tax, sin against commutative justice. Against the same justice also act those who corrupt collectors, because they induce them to a sin of injustice and by unjust means impede the treasury from obtaining the just tax.

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## Article Fifth. On the Obligation of Furnishing Military Service

[544]

**319. On military laws.** 1. To political authority belongs the right of providing the means which are necessary for preserving and defending the republic. To this right in citizens there corresponds the obligation from legal justice of contributing those things which are necessary for defending the republic from internal and external enemies. Since this end of preserving and defending the republic cannot be obtained without military force, political authority can by right establish military laws, which citizens of themselves ought to obey from legal justice, provided they are just.

2. The mode by which political power provides for itself the necessary military force depends upon the conditions of times and peoples, and in fact was diverse in diverse times. Since today nearly all great republics sustain standing armies (*stehende Heere*), there can chiefly be distinguished a threefold diverse mode of obtaining soldiers. For soldiers either are hired, that is, volunteers, who are assumed for an agreed wage for a definite time, or are conscripted, and this either by a law of universal conscription, by which all suitable young men must follow military service, or by a law of particular conscription, by which from suitable men some, usually chosen by lot, are assumed for military service.

3. In order that military laws be just, chiefly a twofold condition is required: a. as to the number of soldiers, that no more be assumed for military service than are truly necessary for the security of the republic; for if more are ordered to furnish military service, the money of the citizens is vainly lavished in supporting an army greater than is fitting, and soldiers are exposed in barracks without necessity to great moral dangers. b. As to the mode of gathering the army, that compelled soldiers not be conscripted where volunteers can be had and at the same time suffice for the necessities of the republic; for otherwise citizens are deprived without necessity of their liberty of providing for domestic affairs and of embracing whatever state they prefer.

It is clear that the justice of military law requires this especially, that those be exempted from the obligation of furnishing military service who are exempt either by ecclesiastical, that is, divine, law, as clerics and religious, or by natural law, as sons who are necessary for supporting a family. For the higher law prevails over the lower law.

**320. On the obligation of military law.** The opinion does not seem improbable which affirms that in most regions military laws, especially where universal conscription flourishes, are merely penal laws; for the common judgment even of prudent and timorous persons interprets their force in this manner, and there are added extraordinarily grave punishments by which transgressors of these laws are punished. But if military laws somewhere are preceptive laws, they must be obeyed from legal justice.

a. There are those who say that military laws which command universal conscription are certainly unjust, and that those which require particular conscription are probably unjust.[545] From the things said above it is clear

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**Notes**

544. Theod. Meyer, *Institutiones iuris naturae*, II, n. 615 ss.; Vict. Cathrein, *Moralphilosophie*^4, II, p. 628; A. Vermeersch, *Quaestiones de iustitia*, n. 129 ss.

545. I. Aertnys, *Theologia moralis*^7 (Paderbornae: Schoningh, 1898), I, n. 380.

that they are unjust if so many soldiers are not necessary for protecting the security of the country, or if the necessary number of soldiers can be obtained through soldiers hired for pay. Since very many social and political matters must be known for forming an equitable judgment in this very difficult matter, it cannot be demanded from the confessor that he himself define the question; but he can prudently hold the law to be just if those to whom it belongs, after considering all circumstances, affirm that in a determinate republic so great an army, and indeed one compelled by conscription, is necessary.

b. What is added, namely that a law of military service which calls all suitable persons to the service of arms is contrary to distributive justice, because only the families which have sons suitable for military service are forced to undergo this burden, is true unless care is employed that upon the families of the rich who do not have sons fit for military service another burden be imposed. But from that reason, that military law forces young men to celibacy for several years, it is not demonstrated to be unjust; for, once the necessity of so great an army has been supposed, the reason of the common good rightly demands from them that they defer marriage for some time.

**321. Obligations of soldiers.** Since the mode of obtaining an army is diverse in three ways, it is useful to determine more accurately the obligations of soldiers according to these diverse conditions, with the true obligation of these laws supposed.

1. Hired soldiers are bound from commutative justice to follow military service and to observe the promised conditions; for by entering a contract and agreeing to a wage they obligated themselves to furnishing military service, and therefore they are bound from justice to observe the conditions of the military contract. Therefore if they do not furnish those things which according to the agreement they ought to furnish for the stipend, they are bound to restitution of the stipend, except in the case in which the republic which hired them does not itself observe the conditions of the contract.

2. Soldiers conscripted by particular conscription: a. are bound to undergo the danger of the lot; if they withdraw themselves from the drawing of lots, they offend against legal justice. b. Those designated by lot are bound to follow military service; if they withdraw themselves from it, they injure legal justice, but not commutative justice, neither as to those who are assumed into military service in their place, nor as to the republic.

Not as to those, etc., both because they are not the cause but the occasion of the damage which those persons suffer, for the efficacious cause of the damage is the military law, and because they are not bound from justice to impede this damage, since none of them has a right that he be immune from military service. Not as to the republic, because the republic obligates them only from legal justice to furnishing military service.

3. Soldiers conscripted by universal conscription are bound to follow military service from legal justice. Therefore he who withdraws himself from military service, where all suitable persons are assumed for military service, certainly does not injure commutative justice; this is clear already from the fact that from his manner of acting no one else suffers damage, since all suitable persons are assumed.

**322. Resolutions.** 1. Since clerics are immune from following military service, they can licitly withdraw themselves from it and, already conscripted, licitly flee, even if they have taken the military oath; for they are not bound to obey an unjust law. The same of itself holds also concerning those who are necessary for supporting a family, since by natural right they are immune from following military service.

2. Those who employ artifices to exempt themselves from military service, for example, by weakening the eyes or procuring for themselves a defect, sin neither against justice nor against another virtue, provided the means which they use is licit; for they are prohibited by no law from exempting themselves from a burden as grave as possible to themselves.

3. Those who on the occasion of military service undergo grave danger in faith or in morals which they cannot forestall can withdraw themselves from military service or licitly desert it, even if they have taken the oath, provided that by fleeing they do not expose themselves to graver dangers. The same must be said about those who deservedly fear that on the occasion of military service they will fall away from a clerical or religious vocation.

4. Those who desert military service without just cause sin gravely both against justice and against religion, and of themselves are bound to return, and indeed both from the oath and from commutative justice if they are hired for pay, or from legal justice if they are conscripted. But from this obligation they are for the most part excused, both on account of the very grave punishment which awaits those returning, and on account of the great moral dangers which threaten soldiers in barracks; from the obligation of the oath they can be freed by dispensation.

## Article Sixth. On the Obligation of Electing Deputies

[546] Deputies are to be elected either to the assemblies of the kingdom or to the assemblies of the province and municipality; but the obligations which refer to electors are the same in each case, proportion being preserved. Likewise it makes no difference whether the government is Catholic or non-Catholic or liberal, provided it is licit to use the faculty of electing. The obligation of those who have the right of electing is twofold: of concurring in the election and of electing a suitable deputy.

**323. On the obligation of electing.** Individual citizens are bound from legal justice to use the faculty of electing where the use of this faculty is necessary or useful for promoting a good election or impeding an evil one, unless they are legitimately excused; for everyone is bound, as much as is in him, to promote the necessary or useful good of the community and to forestall damages to the republic.

a. The right of electing does not belong to citizens by force of a function or office. Therefore one who does not use his right where he is bound to use it does not act against commutative justice, and hence he is not bound of himself to repair the damages which have arisen from that neglect. The right of electing ought rather to be considered as a privilege granted by the ruler to those for whom certain conditions are verified. Therefore from the faculty of electing granted to citizens there does not by that very fact also arise the obligation of concurring in the election, since of himself no one is bound to use a privilege. This obligation arises either from the obligation of contributing to the common good or from civil law, if somewhere citizens are commanded to concur in elections; but this obligation is an obligation of legal justice. Therefore those exercising the right of electing contribute from legal justice to the common good; but there exists no obligation of contributing to the common good unless necessity or utility demands it.

b. A legitimate excuse from the obligation of concurring in an election must be admitted if concurrence brings great inconvenience, because affirmative laws do not oblige with so great an inconvenience. But loss of time or labor necessary for this is not such an inconvenience, nor the mockery or insult of the malicious, but only grave damage or great expense or notable vexation and things of this sort.

c. The obligation of electing, especially if it is commanded by law, must be called grave or light according to the measure of the good which can be promoted, or of the evil which can be averted from the community. Now all agree that in our time the good both of the Church and of the republic depends much upon elections; wherefore a grave obligation of concurring in elections can exist. But in particular it must be noted: alpha.

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**Notes**

546. Vict. Cathrein, *Moralphilosophie*^4, II, p. 674 ff.; Lehmkuhl, I, n. 799 s.; Villada, *Casus conscientiae*^3 (Bruxellis: Vromant, 1885), I, p. 139 ss.; Genicot, I, n. 359; Vermeersch, *Quaestiones de iustitia*^2 (Brugis: Beyaert, 1904), n. 85-96; Waffelaert, *De virtutibus cardinalibus* (Brugis: Beyaert, 1886), III, n. 406-413; Leo XIII, encyclical *Sapientiae Christianae*, 10 Jan. 1890.

if two candidates are to be elected, of whom one is good, the other evil, or one more evil, the other less evil, there exists an obligation of concurring as long as it can prudently be hoped that the good or less evil one will be elected; beta. if someone can prudently hope that by his concurrence in the election several others will be drawn to electing, and thus an evil election be impeded, for him there exists a grave obligation of electing.

**Note.** A Catholic and upright man in certain circumstances can be bound under grave obligation to offer himself as a candidate for public office and to accept election to magistracy or to deputy, whether of the province or of the kingdom, namely: a. if his election is certain; b. if he can impede grave common damages; c. if he can hold public office without truly grave inconvenience; d. if there is no other who may equally benefit the common good.

**324. On the obligation of electing a worthy man.** There indeed exists no obligation of electing the more worthy; but anyone is bound under grave obligation to elect a suitable man if grave damage can be foreseen from the election of an unworthy man. The reason for the first is that nowhere is it prescribed that superiors be the best, but that they be apt and suitable. The reason for the second is: a. because electors of themselves are judged to approve the principles and actions of those whom they elect; b. because those knowingly electing an unsuitable man cooperate in all the evils which the elected man inflicts upon the republic or the Church; c. because they are a scandal to others.

alpha. A candidate must be called unsuitable both if from defect of knowledge, prudence, or experience he is unequal to his office, and especially if he is hostile to the Catholic religion. Wherefore, so that a Catholic man can be held truly suitable, he ought to be one who not only shines by praise of ability and prudence, but also discharges his office according to Catholic principles.

beta. Those who knowingly elect a candidate hostile to Catholic principles, such as liberals and socialists are, and intend to help him so that he may attain his evil ends, sin gravely, even if otherwise he displays skill; for they formally cooperate in evil.

gamma. This also holds concerning elections to provincial assemblies, indeed even municipal ones. Therefore those are deceived who think that men not plainly Catholic, elected to magistracies, do not harm cities, provided they are suitable for managing affairs; for magistrates who are hostile to the Church can harm a city very greatly, because in the education of youth they follow false and impious principles, do not impede scandals and crimes, etc.

**325. On the election of an unworthy man.** Sometimes it is licit to elect an unworthy man. The cases in which it can happen that an evil man is licitly elected are these:

a. If without very grave inconvenience, for example, loss of office, no one can be elected except an evil man.

In this case the elector can abstain from election even in those circumstances in which election is prescribed to others under grave obligation; for an affirmative law does not oblige with so great an inconvenience. But if he can neither abstain without incurring great evils nor cast a good vote without being discovered, it is licit for him to elect the unworthy candidate, because cooperation in the evil election is only material. For by his action to effect that someone receive the office of deputy is not evil, even if it is established that he will abuse this office to inflict evils; nor does election necessarily involve approval of the principles and actions of an evil deputy.

b. If an evil man must be elected to impede the election of a worse man.

If it happens that electors are given only the option between two candidates who are both evil, of whom one, however, is less unworthy, the other more unworthy, of themselves they ought to abstain from election. Yet if by casting votes they can effect that, the more unworthy being rejected, the less evil one be elected, it is licit to

concur; for it is licit to cooperate by an indifferent action in a lesser evil so that a greater evil may be impeded. Some affirm and others deny that electors in this case are also bound to concur.

c. If it can rightly and deservedly be hoped that from the election of an evil man great utility will come to the city, province, or republic.

d. If there is no hope that a list composed of good men will be elected unless evil men who are contained in the same list are also elected.

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# Book Fifth. On the Fifth Precept of the Decalogue

[547] "Thou shalt not kill." Ex. 20:13.

This precept is formally negative, prohibiting homicide; but because death can be inflicted both on oneself and on others also by omission of necessary care, the same is virtually also positive. Insofar as it is positive, it commands the preservation of life; but insofar as it is negative, it prohibits primarily indeed the unjust killing both of oneself and of others, but secondarily every unjust injury, whether wounding or mutilation, of one's own or another's life. All these injuries are reduced to homicide, the chief injury of human life. Wherefore there must be treated: a. the preservation of life; b. the killing and mutilation of oneself; c. the killing of a criminal; d. the killing of an unjust aggressor; e. the killing of an innocent person; f. killing in a duel; g. killing in war.

## Question First. On the Obligation of Preserving Life

**326. On the obligation itself.** 1. Everyone is bound to preserve his own life, health, and integrity of members; and this precept is of itself grave, but as to health and integrity of members it admits smallness of matter.

a. The same precept which prohibits the killing of oneself by that very fact also commands the preservation of one's own life, since virtually it is the same thing not to preserve life and to take life from oneself.

b. Among natural goods entrusted to us by God, bodily life occupies the first place, since it is the foundation and condition of all other goods. But a good committed to us by God as to guardians we ought carefully to protect until He Himself demands it back.

c. From revelation we know that temporal life is the time of preparation in which we merit eternal life; the time of sowing for the day of harvest;[548] the time of working in the vineyard of the Lord;[549] the time of gathering interest from the talents committed to us by God;[550] the time of storing up treasures in heaven;[551] the time of running in the stadium to receive the prize and of contending in the contest to receive an incorruptible crown.[552] By divine disposition this time obtains its end with death. From these things the supreme importance of the whole of life and of any particle of it shines forth.

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**Notes**

547. St. Thomas, II-II, q. 64, 65. St. Alphonsus, l. 3, n. 363-411. Lugo, *De iustitia et iure*, disp. 10. Lessius, *De iustitia et iure*, l. 2, c. 9. Reuter, *Theologia moralis*, III, n. 366-386. Sporer-Bierbaum, *Theologia moralis decalog.*, II, tract. 5, n. 150-549. Ballerini-Palmieri, *Opus theolog. morale*^3, II, n. 848-958. Lehmkuhl, *Theologia moralis*^10, I, n. 831-859.

548. Matt. 13:24 ss.

549. Matt. 20:1.

550. Matt. 25:14 ss.

551. Matt. 6:20.

552. 1 Cor. 9:24-25.

2. Therefore everyone is bound to procure for himself those things which are necessary for preserving life and health: food, clothing, habitation; to ward off those things which harm life and health; and to restore impaired health by suitable means, namely physician and medicines.

Those sin who voluntarily do not procure for themselves food, clothing, and habitation necessary for the preservation of life and for other ends, even if this demands hard labor (66, 2).

3. We are indeed bound to preserve life and health by ordinary means, but not by extraordinary means; for he who is bound to the end is also bound to employ the ordinary means which are required for obtaining it, but not of himself also extraordinary means. Therefore not to employ ordinary means would be the same as to inflict death on oneself; but not to employ extraordinary means is the same as to permit death, which is sometimes licit. Which means are judged extraordinary must be judged by the common estimation of men.

a. Sick persons sin who in grave illness, where hope of recovery shines forth, do not wish to call a physician and employ the remedies prescribed to them,[553] which by reason of their condition can easily be procured and employed. But those do not sin who in a dangerous disease do not wish to employ a remedy very costly by reason of their state and condition, or a remedy very difficult on account of great pains. Therefore no one, not even the richest, is bound of himself to call the most skilled physicians to drive away a grave disease, nor is anyone bound of himself to leave his domicile and seek healthier air elsewhere, because all these things are extraordinary.

b. From this same reason it must be said that there does not exist an obligation of undergoing a grave surgical operation or a notable amputation. For although today the pains of many operations, on account of numbed senses, are not sharp, nevertheless the obligation is not to be imposed, both because most people greatly dread it, and because the success, especially lasting success, is ordinarily uncertain, and finally because it is a grave inconvenience to lead life with a mutilated body.[554] That no one of himself is obligated to undergo a grave surgical operation which he vehemently dreads, because this very dread is an extraordinary difficulty, is suitably confirmed from this, that St. Alphonsus (n. 372), following several authors, judges that a virgin is not bound to suffer an operation by the hands of a surgeon, even if life cannot otherwise be preserved, when on account of modesty she dreads this handling more than death itself. Accidentally, however, someone can be obligated to undergo an operation or amputation, namely where the matter concerns a person very necessary to the family or to the public good and the success is morally certain.

c. Those do not sin who for a reasonable cause do not wish to employ a remedy against a light illness, because light care in recovering health can be neglected from a just cause, just as a light shortening of life admitted from a reasonable cause is licit.

d. A monk bound by rule to perpetual abstinence from meats does not sin if in grave illness he refuses to eat meats by which he could preserve life; for it is licit to omit the preservation of life for obtaining a great good. But it conduces to a great common good of the order that the rule of abstinence be strictly observed even with danger to life.

**Whether a superior can command a grave surgical operation.** If the sick person is necessary for the good of others and the success of the operation is morally certain, a superior, father or superior, can obligate a son or subject to undergoing an operation whose pains are not very sharp. But if some one of these conditions is lacking, the superior does not seem able to command so arduous a matter.[555]

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**Notes**

553. Cf. Ecclus. 38:1, 4.

554. Cf. Capellmann, *Medicina pastor.*, p. 23 s.

555. Cf. Sanchez, *Consilia mor.*, l. 5, c. 1, dub. 34, n. 6; Lugo, *De iustitia*, disp. 10, n. 33; St. Alphonsus, n. 370.

**Note.** Concerning drunkenness and concerning the influence of drunkenness on health and the life of the body, cf. *De principiis*, n. 344.

## Question Second. On the Killing and Mutilation of Oneself

**327. On the killing of oneself.** 1. It is never licit by one's own authority directly to kill oneself, even if life has become hard for us and useless to others.

For the destruction of a thing is an act of dominion; but man does not have dominion over his own life. Therefore by the killing of oneself the supreme and exclusive dominion of God over the life of man is injured.[556] Moreover, charity is injured, by which man is bound to love himself, since he inflicts the greatest evil upon himself. Finally life, even if bitter or useless to others, always retains its principal importance of meriting eternal life. Wherefore self-killing is against justice toward God and against love of oneself. Also in sacred Scripture the killing of oneself is rather often prohibited,[557] and the Church punishes self-killing by deprivation of ecclesiastical burial.

a. He directly kills himself or another who posits a killing action with the intention of inflicting death upon himself or another; he indirectly kills himself or another who does not intend the killing of himself or another, but knowingly does something from which he foresees that his own or another's death will follow. In order that someone be said directly to kill himself or another, it is required that the action and intention be immediately and directly killing. But the intention is necessarily directly killing where the action immediately has only one effect and that a killing one. But if neither the action nor the intention is immediately and directly killing, or if the action alone is so but not the intention, someone is not judged directly to kill himself or another, as is clear from the deed of Samson.[558]

b. Therefore self-killing is not permitted, not even for escaping the gravest evil, for example, the miseries of the present life, vehement shame because of a crime committed, fear of punishment, or fear of ignominy. For temporal evils, however great, are lower than the good of life; but to choose a greater evil for escaping a lesser is against reason and against ordered love of oneself. Therefore it is not licit even for a virgin to kill herself to escape violent corruption or to preserve the good of integrity.

c. It is not licit, with certain loss of life, to throw oneself from a window into a river or to leap into the midst of flames to baptize a child; for this would be direct self-killing, because the action posited immediately tends to the killing of oneself, and only by this action posited can the child be baptized. In order that this can be done licitly, there must be at least some hope of escaping from the waves or flames.

2. It is licit directly to kill oneself by divine authority; for then man leaves life with the permission of the supreme lord of life itself. The same is probably also licit by public authority: for where someone has been justly condemned to death, by natural right the judge can commit the execution of the sentence to anyone, even to the guilty person. Therefore the guilty person who must be punished by death, with the judge permitting, can licitly kill himself or execute the penalty of death upon himself.[559]

The deeds which are read in the lives of the saints, namely that some killed themselves either from desire of martyrdom or to preserve chastity, are explained by some through divine inspiration by which God granted them permission to kill themselves; by others rather through invincible ignorance, which indeed can be

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**Notes**

556. Lugo, disp. 10, n. 21; St. Thomas, II-II, q. 64, a. 5.

557. Ex. 20:13; Gen. 9:6; Deut. 32:39; Wis. 16:13 ss.; Rom. 14:7-9.

558. Judg. 16:30.

559. Cf. St. Alphonsus, n. 369; Ballerini-Palmieri, II, n. 861 s., where also the reasons of each opinion are submitted to examination.

supposed more easily because from an obvious consideration of the matter it is not immediately evident that self-killing for preserving a great good is illicit.[560]

3. From a proportionately grave cause it is licit indirectly to kill oneself. Although even indirect self-killing is of itself prohibited, nevertheless it is licit to posit an action indifferent in itself from which one's own death follows, if at least equally immediately a good effect follows, and if there is a grave cause of common or private good for positing that action. In this way the deed of Eleazar, killing the elephant by which he himself was crushed, is explained.[561]

a. It is licit to leap from a window with certain danger of death to escape a harder death, for example, one about to be undergone immediately in flames. It is licit to cast oneself from a high tower with certain danger of death to flee an atrocious death which a tyrant is actually about to inflict. But the same is not licit if the tyrant, otherwise about to inflict an atrocious death, demands it; for if death is not yet actually inflicted, the casting down is not an action from which each effect immediately follows, one's own death and the flight from the more atrocious death, but is self-killing which is chosen as a means to escape a greater evil.

b. It is licit for a virgin to cast herself from a very high cliff with certain loss of life, in order to free herself from the hands of an impure violator and thus preserve virginity, even if she reasonably hopes that she will not consent. Yet this is not licit unless force is morally being actually inflicted; for if force is not yet being inflicted, self-killing is chosen to avoid a grave evil, which is illicit.

c. It is licit to burn a ship or tower to submerge or destroy enemies, even if one's own death will certainly follow from it.

d. It is licit in shipwreck to yield to another a plank which one had already seized, even if the one who, yielding the plank, lowers himself into the sea, is certainly going to perish. And indeed St. Thomas calls this action of yielding the plank and handing oneself over to death for a friend an act of most perfect virtue.[562]

e. It is licit to present oneself to a tyrant by whom one certainly knows he will be killed, to strengthen others in faith or to save others from death, etc. For when a proportionately grave cause exists, both the obligation of preserving one's own life and the obligation of impeding another's sin cease.

**Note.** The two principles which follow are already contained in the preceding matter; nevertheless, for the sake of clarity, it is useful to propose them explicitly.

4. From a just cause it is licit indirectly to shorten life, even by several years. Since the precept of preserving life is affirmative, which does not oblige always and in every case, from a grave cause it is licit to do or omit something from which a shortening of life or hastening of death follows. Indeed the conditions of human life are such that sometimes even a more notable shortening of life must be admitted.[563] - A just cause either of shortening life or of exposing life to danger is moral necessity and the exercise of virtue.

a. Blacksmiths do not sin who, handling fire daily, shorten life for themselves, nor other workers, such as those blowing glass, gilding metals, etc., whose labors bring no small shortening of life.

b. One who by labors, penances, fasts, and austerities of this kind undertaken in honor of God hastens death somewhat does not sin, provided he is ruled by the rules of prudence and discretion in undertaking them.

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**Notes**

560. Lessius, *De iustitia*, l. 2, c. 9, n. 23.

561. 1 Macc. 6:43 ss. Cf. Lessius, *De iustit.*, l. 2, c. 9, n. 32; Lugo, *De iustit.*, disp. 10, n. 55.

562. In 3, dist. 29, a. 15, ad 3.

563. Ballerini-Palmieri, II, n. 866 ss.

c. One who, on the authority of a physician, can prolong life for some time by abstaining from moderate use of wine is not bound under grave obligation to abstain. - Likewise one who, on the authority of a physician, can prolong life by drinking wine or eating meats which he was not accustomed to use, is not bound under grave obligation, because in each case the shortening is slight; indeed from a motive of virtue in the latter case he can licitly abstain.

d. Those who by excessive drink or food shorten life for some time do not sin gravely against the fifth precept, provided they do not bring on a proximate danger of death or grave disease, or a notable shortening of life.

5. From a just cause it is licit to expose oneself to danger of life; indeed to remote danger from a light cause, but to proximate danger only from a grave cause. He who without cause exposes himself to remote danger of life sins lightly; he who without cause exposes himself to proximate danger of life sins gravely. The greater the danger of death which is induced from the action, the greater must be the reason on account of which it is licit to induce it.

He is said to expose himself to proximate danger of life who exposes himself to a very probable danger of death to be undergone either proximately or after some time. He is said to expose himself to remote danger of life who exposes himself to a danger of death in some way probable, either proximately or after some time. In order that someone be judged to expose himself to proximate danger of life, he must have at least some hope of escaping; he who has no hope of escaping is said not to expose life to danger, but to destroy it. A danger is called probable in some way where death follows from some action rarely or not so frequently; on the contrary it is very probable where death follows from some action frequently or for the most part.

a. It is licit to serve those infected by plague or another contagious disease; likewise to administer the sacraments with great danger of contracting the disease. - It is licit for guilty persons detained in prison to cast themselves down from a height to escape a certain sentence of death or perpetual prison, provided there is some hope of preserving life; but the same would not be licit to escape prison of only a few years, unless the danger of life which they induce by throwing themselves down were very remote.

b. Artisans do not sin who climb upon roofs of buildings and expose themselves to various dangers where the work requires it.

c. Audacious men sin gravely who from a rash wager, from vainglory, or solely for the sake of making profit, cast themselves into proximate danger of life, for example, by provoking wild beasts, exercising the art of the rope-dancer, prolonging a fast for a very long time, etc., unless from experience it is established that probable danger of life is absent, as happens in horse races.

d. He sins who, laboring under a grave fever, makes a journey or undertakes great labor without necessity.

**328. On the mutilation of oneself.** Mutilation of oneself is of itself gravely illicit, unless it is necessary for preserving life itself. The reason for the first is that man, just as he is not lord of life, so also is not lord of his members, so that he can dispose of them at will. The reason for the second is that he is guardian and preserver of his body, and therefore he can cut off a part or member to preserve the whole body; for a part is ordered to the whole, and therefore must be postponed to the good of the whole.

a. Therefore it is licit, for example, to cut off for oneself a hand bound by a chain in order to escape a fire. And just as self-mutilation is licit for the preservation of life, so for the same reason it is licit to consent to the amputation of a member. - Yet in light matter, as if someone without cause cuts off for himself a little part of the ear or a joint of the little finger, grave sin is not committed.

b. Mutilations of themselves which are read as having been done by holy virgins must be explained either from divine inspiration or from good faith, as was said above concerning self-killing (n. 327, 2).

**Resolutions.** From another end, which does not tend to the preservation of the whole, self-mutilation does not seem licit. 1. It is not licit to castrate oneself for spiritual good, namely to avoid the sin of incontinence or to calm temptations;[564] for that end can always be obtained by other means. Moreover, mutilation of this kind renders one impotent for generating and yet does not exempt from carnal temptations.

2. Much less is it licit to mutilate oneself for procuring some profit or advantage for oneself; wherefore it is not licit for a youth to mutilate himself in order to escape the burden of military service, nor for a poor man in order to obtain greater alms.

3. Some authors admit as at least probable the opinion of those who say that castration in boys is licit so that with a sweeter voice they may sing the praises of God in church and prepare for themselves an honorable livelihood, provided this twofold condition is had: that danger of life be morally absent, and that it not be done to unwilling boys.[565] But if it is illicit for obtaining a notable spiritual good, much more will it be illicit for attaining a temporal good.[566]

The supreme pontiffs have never approved the castration of boys, nor ever said it to be licit; indeed they declared irregular those who culpably had made themselves or others eunuchs. Yet they admitted to ecclesiastical concerts eunuchs who without their own fault were made such.[567]

4. There is a surgical operation which is called by physicians, from its inventor, the physician Porro, the Porro operation. It consists in the extirpation of the uterus with the ovaries, by which a woman is rendered impotent for generating. Certainly this operation is licit for preserving life; but from another end besides the preservation of life, for example, for impeding future conception or for forestalling the necessity of Caesarean operation, it cannot be admitted.[568]

**329. Whether it is licit to wish death for oneself.** - It is licit from the motive of obtaining a good which is better than life, or escaping an evil which is worse than death, because in this way neither God's dominion over man's life nor the charity owed to oneself is in any way violated.[569]

a. Indeed, alpha. it is one thing to inflict death on oneself, another to wish death for oneself: for he who inflicts death on himself injures the divine right; he who wishes death for himself awaits death to be inflicted on him by God. beta. The desire of death, as of a thing indifferent, receives morality from its motive; therefore from an honest end it is licit to wish death for oneself, but from an evil end to wish it for oneself is of itself a grave sin. But neither to reason nor to charity is it repugnant to wish for oneself death which would be the beginning of greater goods or the end of greater evils; but it is repugnant to reason and to charity owed to oneself to will for oneself the gravest evil for avoiding another light evil.

b. Therefore death can licitly be desired in order to enjoy eternal beatitude, to love God more perfectly, never again to offend God, to avoid truly most grave evils, for example, long illness, troublesome vexations and snares, etc.; therefore sacred Scripture has: "Death is better than a bitter life."[570] But it is a grave sin to wish death for oneself on account of the ordinary troubles of life, unless this is done in the heat of anger or in some disturbance of mind without sufficient deliberation.

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**Notes**

564. St. Thomas, II-II, q. 65, a. 1, ad 3.

565. St. Alphonsus, n. 374.

566. Cf. Lugo, *De iustit. et iure*, disp. 10, n. 23.

567. Benedict XIV, *De synodo*, l. 11, c. 7, n. 3.

568. Cf. Capellmann, *Medicina pastoralis*^6 (Aquisgrani: Barth, 1893), p. 26 ss.

569. Cf. 3 Kings 19:4.

570. Ecclus. 30:17.

## Question Third. On the Killing of a Criminal

**330.** By the name of criminal here is understood one who has perpetrated a crime worthy of the penalty of death.

**On the right over criminals.** 1. Public authority, and it alone, has the right of killing criminals insofar as this is necessary for the common good. This is proved from sacred Scripture, from the universal consensus of all peoples, and from the nature of the matter.[571]

a. There are those who altogether deny to civil authority the very right of inflicting the penalty of death; others do not deny the right itself, but grant it only in certain extreme cases of necessity; others indeed grant the right without limitation, yet say that its exercise in our times of civilization and humanity must be abrogated. From this it has happened that the penalty of death has been abolished in several kingdoms. But after a short time, when crimes grew strong, the subjects themselves asked that it be restored.

b. Although some testimonies of the old covenant pertain to judicial laws that were to have force only for the Israelites,[572] nevertheless others have universal value, as this: "Whosoever shall shed human blood, his blood shall be shed; for man was made to the image of God."[573] St. Paul also attributes to civil authority as such the right of inflicting punishments in general, and specifically the right of inflicting the penalty of death: "He is God's minister to thee for good. But if thou do evil, fear; for he does not bear the sword without cause. For he is God's minister, an avenger unto wrath to him who does evil."[574]

c. Legislators of all times decree that the penalty of death is to be inflicted; even those who, imbued with perverse principles of right, thought that it should be abolished, nevertheless decreed that it must be retained for certain cases. All nations have recognized this penalty as licit and just, which they would never have done unless by the light of reason they had known it to be necessary to supreme power.

d. The right of decreeing and inflicting the penalty of death is necessary to supreme authority. And indeed, from the right and office of efficaciously defending social order and of providing stable security of rights for subjects, it can decree and inflict those penalties by which men are efficaciously deterred from even more atrocious crimes. But, as experience witnesses, many are not sufficiently deterred from the most atrocious crimes except by fear of capital punishment. Criminals of this sort, who become harmful to the community, are like a rotten member in an organism, which has lost the right to life and must be separated from the body of society for the common good.

e. But the reason for the second is that criminals can be licitly killed only on account of the common good. Therefore it belongs to him to whom the administration of the community is committed, namely to the supreme ruler, to punish criminals. Far greater evils would come upon the republic if anyone by private authority could kill criminals. Wherefore it is licit neither for a father nor for a master to kill or mutilate a son or servant for the sake of correction, or universally to inflict an irreparable damage upon him; this is licit only to supreme power on account of the common good.

2. In order that one guilty of crime can be justly killed, three things are required: a. that he has committed a truly grave crime; for the penalty of death is the gravest penalty which civil society can inflict; b. that he has certainly committed the crime; for he cannot be certainly despoiled of the right over his own life except on account of a certain crime; therefore if the crime is only probably established, the guilty person must be

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**Notes**

571. Cf. Vict. Cathrein, *Moralphilosophie*^4 (Freiburg: Herder, 1899), II, p. 634 ff.; Theod. Meyer, *Institutiones iuris natur.* (Friburgi: Herder, 1900), II, 593 ss.

572. Lev. 24:17.

573. Gen. 9:6.

574. Rom. 13:4.

favored by law; c. that the crime committed be judicially established; for the law of nature demands that the guilty person be able to defend himself and that he be condemned only if juridically convicted, unless public authority in a particular case, for a reason of the common good, has given power of killing a man caught in the crime itself.

To one condemned to death there must be granted time to receive the last sacraments. Yet if he were unwilling to confess his sins, after admonition had first been given, he could nevertheless be killed; for he ought to attribute eternal damnation to himself.

**331. Resolutions.** a. It is not licit for guardians of public order to kill fleeing criminals, even if they have already been condemned to death; for public authority's power is required for killing anyone. Hence if sometimes the same guardians discharge weapons against criminals either resisting or fleeing, they can do this either by right of defense or from a special power given to them against guilty persons already condemned to death. For anyone can of himself be constituted by the judge as executor of the penalty. But once the permission of public authority has been removed, it is licit for no one to kill even public robbers.

An outlaw, that is, one declared guilty of death by public authority, is licitly killed by anyone; for in this case anyone is constituted by public authority executor of the just sentence against the outlawed criminal. Wherefore the outlaw himself cannot defend himself and kill the aggressor; for it is licit to defend oneself only against an unjust aggressor.

b. A soldier placed on guard can licitly fire upon one approaching whom he had vainly warned not to advance, under these conditions: alpha. that the instruction of supreme power command it; beta. that the one ordered to stop be warned of the penalty, namely the discharge of a gun; gamma. that, once wounding is admitted, killing be avoided. For although the disobedience by which he resists the just order of the soldier, by reason of the common good, can in certain circumstances be gravely punished, nevertheless it is not a crime worthy of death. Something similar must be said of guards of borders who fire upon smugglers of merchandise.

c. Nor is it licit for citizens to exercise the vengeance which they call popular justice, that is, *Lynchjustiz*, because public order in civil society once constituted demands that the power of punishing guilty persons be reserved wholly to public authority; otherwise all things would be filled with slaughter.

## Question Fourth. On the Killing of an Unjust Aggressor

**332. On the right against an aggressor of life.** It is licit for anyone to defend both his own life and the life of others, even with the killing of an unjust aggressor, provided the moderation of blameless defense is observed. This is both because everyone has the right of preferring his own life to the life of an unjust aggressor, and because otherwise criminals, with the greatest damage to human society, would affect others with injuries. Therefore all laws and all positive rights permit force to be repelled by force, even if from defense of oneself the death of the aggressor follows.[575]

a. An aggressor is called one who is already actually attacking or actually does certain things from which he is morally judged already to be attacking, for example, he is already preparing weapons; for if physical aggression had to be awaited, defense of oneself would often become impossible. Nevertheless, it is not licit, by preventing the aggression, to kill one who lays snares and will certainly attack later, although it is impossible to escape the danger.[576] It is not licit after the aggression to kill the aggressor, because that would not be defense but vengeance.

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**Notes**

575. C. *Si vero* 3, *De sententia excom.* (V, 39).

576. Cf. proposition 18 condemned by Alexander VII.

b. Where the required conditions are present, anyone can defend himself against any unjust aggressor, even with the death of the aggressor, whether the aggression is formally or materially unjust. Wherefore even a son can defend himself against a father, a subject against a ruler, unless greater evils such as wars are to be feared, a layman against a cleric, a cleric against a layman, and anyone even against a furious, insane, or drunken person. For although here he commits only material injustice, nevertheless the right to life is not lost through the insanity or drunkenness of the aggressor.

c. It is licit for anyone to defend his own life in this way, but no one is bound to kill an unjust aggressor; wherefore he can licitly permit his own killing, for this means of preserving life is hard and cruel, from which nature recoils. Yet in a twofold case it is not licit to permit one's own killing: alpha. if the life of the one attacked is either necessary or very useful to the common good; beta. if the one attacked is in a state of mortal sin.

d. It is licit to defend in this way not only one's own life, but also the life of others; for what someone licitly does by himself, he can also do through another. Indeed, by reason of charity, piety, or office, this ought sometimes also to be done by those who are hired to protect the life or goods of others. But because such killing ordinarily brings great inconveniences with it, a private person is rarely bound to this, unless a reason of piety or office is added.

Therefore if the one attacked were a person necessary to the public good, or if he were father or son or wife, legal justice or piety would obligate one to defend his life. And those who are hired for the defense of others, such as soldiers and guards, are bound to defend the life of others even with their own grave inconvenience, because office obligates them to this.

e. If the one attacked knows that the aggressor is in a state of mortal sin, ordinarily he can defend himself even by killing the aggressor. For if the aggressor is formally unjust, he freely exposes himself to this danger; therefore since he himself can provide for himself, he is not in extreme spiritual necessity. But if he is materially unjust, as an insane person, in fact he is in extreme spiritual necessity and only the one attacked can assist him. Hence if the one attacked prudently judged himself to be in a state of grace, and moreover knew certainly that the aggressor was in a state of mortal sin which he would afterward amend, charity would demand that he prefer the aggressor's eternal salvation to his own temporal life. But since this twofold knowledge cannot be had, this obligation scarcely ever certainly exists; and an uncertain obligation cannot deprive another of the certain right of defending himself.

**333. On the right against an aggressor of goods.** 1. It is licit to defend not only life, but also other goods of greater importance of an inferior order, even with the killing of the unjust aggressor, if they cannot be preserved in another way. For charity does not oblige that one prefer another's goods of a higher order to his own goods of a lower order, unless the other is in extreme necessity. But the unjust aggressor of another's good is not in extreme necessity, since he voluntarily exposes himself to the danger of death.[577]

That even goods of fortune can be licitly defended with the killing of an unjust aggressor, theologians have always rightly inferred from sacred Scripture, which permits the killing of a nocturnal thief breaking into a house.[578]

2. But the goods which it is licit to defend in this way, with the moderation of blameless defense observed, are:

a. Goods of fortune of great importance. These goods must be of great importance, because charity prohibits that on account of a light damage the gravest damage be inflicted upon a neighbor.[579]

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**Notes**

577. St. Alphonsus, n. 383.

578. Ex. 22:2; St. Thomas, II-II, q. 64, a. 7.

alpha. Goods of great importance are not only those which, if taken away, would leave someone lacking sustenance for himself and his own, but also those whose loss would be a notable damage according to the quality of the person.

beta. It is licit to kill a thief taking away a thing of great importance, if the thing cannot be recovered in another way and if, after warning, he is unwilling to let it go; but if warning is impossible or useless, it also can be omitted.[580]

gamma. It is not licit to kill one who takes away a thing of small importance; but it is licit to protect it against the thief and to recover it once taken away by the thief if it cannot be recovered otherwise with sufficient certainty. But if the thief employs force, where there is need he can even be killed. For in that case he is not killed to protect or recover the thing, but to defend one's own person.[581]

b. Chastity: for if it is licit to kill the aggressor of goods of fortune, *a fortiori* it is licit to kill the aggressor of chastity, which is a good more excellent than riches. Nevertheless a virgin is not bound to kill the aggressor of chastity, but can passively submit, because chastity is not lost against the will.

c. Integrity of members: for what is licit for preserving life is also licit for defending integrity of body.

**334. On the aggressor of honor.** According to the law of perfection handed down to us by Christ, injuries received are to be borne equanimously and forgiven to the enemy without satisfaction; but according to the order of justice and natural equity, these things seem able to be established:[582]

a. It is not licit to kill the aggressor of reputation or honor either to impede an imminent injury or to recover honor taken away.

For this is prohibited by the first part of condemned proposition 30,[583] and rightly indeed, because rarely are the conditions required for bloody defense present, such as that grave damage be inflicted and that there be no other way of repairing the damage. But if the required conditions are present, nevertheless this is not licit because the moderation of blameless defense is not observed; for to recover honor taken away by verbal, indeed even real injury, according to the moral estimation of men, the killing of the aggressor is not required. Rather the retorsion of the injury suffices, even, if there is need, with the striking of the calumniator, where honor cannot be recovered through a judge.

b. It is licit to recover honor taken away by real or verbal injury by immediately inflicting an equal injury, if, as ordinarily happens, it cannot be recovered through a judge without trouble.

Therefore it is licit immediately to strike back at one who ignominiously struck someone, not indeed for the sake of vengeance, but to avoid infamy or to recover honor, where in the moral estimation of men the one struck is judged deprived of honor until he has struck back, but, on the contrary, to have recovered honor if he has struck back. Likewise it is licit to return a similar name to him who called someone by a disgraceful name. Nor should it be said that this opinion has been condemned, since only this is condemned: that one striking can be killed if he flees. Practically, however, this opinion involves a twofold danger: lest the striking back be done for the sake of vengeance, and lest the moderation of blameless defense be violated. Moreover, if the one

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**Notes**

579. Proposition 31 condemned by Innocent XI: Regularly I can kill a thief for the preservation of one gold coin.

580. St. Alphonsus, n. 382; Bucceroni, *Casus consc.*^5, n. 59, 3.

581. Ballerini-Palmieri, II, n. 890.

582. Cf. Elbel-Bierbaum, *Theol. mor.*, I, pr. 4, n. 67 ss.; Genicot, *Casus conscient.*, I, p. 154 s.; Viva, *Theses damnatae*, in prop. 30 condemned by Innocent XI, n. IX.

583. It is licit for an honorable man to kill an aggressor who tries to bring calumny, if otherwise this ignominy cannot be avoided; the same also must be said if someone strikes a slap or strikes with a staff and after the inflicted slap or blow of the staff flees.

struck back wishes to strike again, nothing prevents the second striking from being impeded, even with drawn sword, if there is need.

c. It is not licit to recover honor taken away before by real or verbal injury by killing or striking the one who took it away.

For this is prohibited by the second part of condemned proposition 30, because the killing would not be defense but vengeance. Moreover, punishment for a committed offense must be inflicted by a judge.

**Note.** It must be observed that by positive law he who kills an aggressor of honor, chastity, or goods of fortune is considered as a homicide to be punished; only for impeding rape can a woman by civil law kill the aggressor.

**335. On the moderation of blameless defense.** The moderation of blameless defense, which must be observed in defense of oneself, requires that nothing be done against the life of the aggressor unless it is necessary for protecting one's own life; for what necessity does not excuse is against justice. Therefore it requires three things: a. that life not be attacked unless the aggression is actually, morally, at hand; b. that the life of the aggressor not be attacked if the danger can be avoided in another way, such as by crying out or fleeing; c. that the aggressor not be killed if his wounding suffices for defense.

a. He is not bound to flee who cannot flee without great detriment, because, for example, he would incur the disgrace of a timid and cowardly man; for the moderation of blameless defense does not require that the danger of the aggressor be avoided with the greatest detriment to oneself. Therefore the following are bound to flee if they can do so safely enough: alpha. common men, because they suffer no loss of honor; beta. clerics and religious, because for them, who ought to furnish an example of meekness, flight is not disgraceful; gamma. all, even noble and military men, if the aggressor is drunk or insane, because in this case flight is disgraceful to no one.

b. Practically, judgment concerning the means necessary for the defense of oneself must be committed to the judgment of him whose life is in danger. But if someone in sudden danger, where time is lacking for weighing all circumstances, seizes a means which would not have been plainly necessary, he is not to be blamed.

# Question Fifth. On the Killing of an Innocent Person

## Article First. On Homicide

**336. Definition.** Homicide taken broadly or etymologically, insofar as it prescinds from whether it is licit or illicit, is defined as the violent taking of life of a man done by a man. But if there is speech simply of homicide, illicit homicide is understood, or the killing of an innocent person, who has committed no crime and is not going to commit one on account of which he would be worthy of death.

a. Of a man: by this name taken broadly is understood also a human fetus not yet brought forth into light, provided it is animated. Therefore those procuring abortion are of themselves guilty of homicide. Yet where homicide is a reserved case, this name is taken more strictly, namely for the killing of a man already born. By a man: for if a brute kills a man, the killing is not called homicide, but pauperies.

b. Since homicide is properly against justice, strictly speaking he does not commit homicide who does not free from death one whom he could free and from charity ought to free. But he who does not free from death one whom he could free and from justice ought to free, as if a physician does not assist a sick person whose care he has undertaken, commits homicide.

**337. Division.** a. Homicide is distinguished as voluntary and involuntary: the former is intended; the latter follows from some action or omission beyond every intention.

b. Homicide, namely voluntary homicide, is one thing direct and another indirect, according as it is intended in itself or only in the cause from which it is foreseen that it will at least probably follow.

Casual homicide is taken in a twofold sense: more strictly, if it is wholly involuntary, and more broadly, if it is voluntary indirectly or in the cause. The former is called merely casual; the latter, mixed casual. Therefore casual homicide can sometimes also be imputed as fault, just as everything indirectly voluntary is imputed as fault under certain conditions.[584]

One who without just cause posits an action, even an illicit one, from which the death of another rarely follows, is not guilty of homicide, provided he has employed due diligence; as if someone, even a cleric, devoting himself to hunting and employing due diligence kills a man. For it is merely casual homicide. But one who without just cause posits an action from which the death of another frequently follows is guilty of homicide, even if he employs due diligence, as if a mother suffocates an infant in bed, or if someone throws tiles from a roof into a public road without due precautions. For this is homicide voluntary in the cause. Therefore the former action is not prohibited on account of the danger of homicide, but the latter is prohibited on account of this very danger.

c. Homicide is simple, which besides homicide contains no other species of sin from circumstances, and qualified, which moreover contains another species of sin from circumstances. Of this sort are: alpha. sacrilege by reason of the person killed or by reason of the place in which the killing happens; beta. parricide, which is the killing of father or mother, likewise the killing of an ascendant or descendant, fratricide or the killing of brother or sister, uxoricide likewise and the killing of a husband; gamma. regicide or the killing of a ruler; delta. robbery, which is killing perpetrated from the will of plundering.

alpha. To the question whether parricide, uxoricide, and fratricide differ in species, likewise whether parricide in the first degree and in other degrees differ, it must be said consistently with the doctrine set forth concerning incest: it is probable that injuries inflicted on parents or wife or brothers, and injuries inflicted in the first and in other degrees, do not morally differ from one another in species, because all are opposed in morally the same mode to the same virtue of piety. Therefore it suffices if the penitent in confession says that he killed someone closely joined to himself, without declaring whether it was father, son, brother, wife, etc.[585] The new species of sin which is contained in regicide or in the crime of injured majesty, as if someone killed the pope, or a king, or ruler, is the injury of observance which is owed to those persons in a special way. To robbery there accedes a new species of sin from the end, namely from the will of plundering, just as a new malice of sin accedes to the homicide of him who kills another from the will of fornicating.

beta. What is said about killing is also valid, proportion being preserved, concerning mutilation, wounding, beating, or violent striking, which sins can induce a specifically distinct malice if moreover they are opposed to religion or piety. Besides, these same sins can be light from smallness of matter, except mutilation, in which smallness of matter is scarcely to be admitted if it is taken for the amputation of a member. Thus quarrels of boys on account of smallness of matter are for the most part light sins.

**338. General principles.** 1. It is never licit directly to kill an innocent person, not even by public authority; for this action is evil in itself. And indeed no one has from God power to kill an innocent person, not even public authority. Moreover, charity owed to the neighbor and the rights both of the one killed himself and of his own and of society are irreparably injured. For this reason it is expressly prohibited by divine law: "The innocent and just thou shalt not kill."[586]

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**Notes**

584. Cf. *De principiis*^9, n. 82 s.

585. Ballerini-Palmieri, II, n. 850 ss.

586. Ex. 23:7.

a. Sacred Scripture depicts homicide as a nefarious crime, both because the homicide impiously invades the supreme right of God, who is the only Lord of life and death,[587] and because he kills man made to the image of God.[588] Therefore, just as in the Old Testament, so also by most modern penal codes, homicide is punished with the harshest penalty of death.

b. Therefore it is not licit to kill those lethally wounded or any other dying persons so that they may not suffer longer; nor the furious, so that they may not harm others, provided they can be restrained from killing in another way; nor a woman placed in extremity so that her infant can be baptized; nor is it licit in shipwreck to throw anyone into the sea so that the others may be saved. For evils are not to be done that good may come.

c. It is not licit to kill hostages, even if the enemies who sent them had not observed the pledged faith and had themselves unjustly killed the hostages sent to them. Nor is it licit to kill some sons as hostages so that the parents may more easily give themselves up to free the remaining sons; for they are innocent.

d. It is not licit to kill an innocent person to satisfy a tyrant demanding his death, even if he threatens the destruction of the city. Nevertheless, an innocent person could be handed over to the tyrant to save the country,[589] although his death is certainly foreseen; and if he himself were unwilling, he could be compelled to hand himself over to the tyrant, because for the public good he is bound to expose his life to danger.[590]

2. From a proportionately grave cause it is licit indirectly to kill an innocent person, that is, it is licit to do or omit something in itself indifferent whence, beyond the intention, the death of an innocent person follows, because from the principles concerning the voluntary in the cause, the death of the innocent person in this case cannot be imputed to the agent.

a. Therefore in a just war it is licit to direct artillery against a besieged city, although many innocent persons are foreseen to perish.

b. If someone, with an enemy pursuing, cannot be freed from death unless by trampling a child by chance sitting in a narrow road, it is licit to flee and, if there is need, to trample the child; for he is killed indirectly, because from the same action each effect proceeds equally immediately, the good effect or flight from the enemy, and the evil effect or death of the infant.

c. It is licit to baptize a little one soon to die with cold water, if no other could be had, even if from this the death of the infant is feared to be hastened.[591]

**339. On puncture of the heart (*Herzstich*).** It happens that physicians in a corpse, before it is placed in the tomb, perform puncture of the heart or open an artery, either because the deceased himself demanded this by testament, or because surviving relatives demand it.

a. Puncture of the heart or artery which, whether by testament or by relatives of the deceased, is demanded with the intention that one who is only apparently dead not be buried alive, is certainly illicit on account of this very intention, even if in reality he is dead, because it is not licit directly to intend the killing of someone, even if this is done for the best end. But if it is demanded to be performed when certain signs of death are already present, to calm a mind disturbed by fear of apparent death, it is not illicit.

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**Notes**

587. Deut. 32:39.

588. Gen. 9:6.

589. 1 Macc. 13:16 ss.

590. Cf. Lugo, *De iustitia*, disp. 10, n. 113.

591. St. Alphonsus, l. 6, n. 106.

b. It is certainly not licit for a physician or surgeon to cut the heart or vein unless from undoubted signs he has a certain persuasion that death has already followed. But if from undoubted signs of death he has procured this certain persuasion for himself, it is licit for him to puncture the heart or vein to free from fear and anxiety those who seek the puncture. For if it is licit to place a man in the tomb, it is also licit to wound his heart by a blow, since each action of itself is apt to inflict death upon a man who in reality is only apparently dead.

**340. On craniotomy.**[592] 1. Craniotomy, which is also called perforation or cephalotripsy, is a surgical operation by which the infant in the mother's uterus is cut apart and, having been cut apart, is extracted through the birth canal. Physicians now use this operation when a mature infant, on account of the narrowness of the mother, cannot be brought forth into light in another way, and therefore if this operation is omitted, the mother with the offspring is going to perish.

2. Craniotomy is illicit, that is, it is not licit to kill an infant in the mother's uterus, even if no other means of preserving the mother is available, so that if the operation is omitted the mother and infant are going to perish. For it is the direct killing of an innocent person, since the death of the infant is intended as a means for preserving the mother. Therefore the Holy Office responded that "it cannot safely, that is, without danger of error, be taught that the surgical operation which they call craniotomy is licit."[593]

a. To some theologians[594] craniotomy did not seem illicit if no other means of preserving the mother is available, and the infant has been baptized in the mother's uterus. By this reasoning the infant indeed perishes, but the mother is saved; but craniotomy not employed, mother and offspring perish together, while the eternal salvation of the infant is equally provided for in either case. They chiefly confirm their opinion by a fourfold reason: alpha. By this operation the death of the infant, otherwise certainly going to die, is hastened, and this to preserve the mother, otherwise likewise certainly going to die; but so slight a shortening of life for obtaining so great an end must be accounted as nothing. beta. It is licit to kill an unjust aggressor who is the cause of death for another; but the infant is indeed innocent, but objectively an unjust aggressor, because he is the cause of death for the mother. gamma. If two rights conflict with each other, the stronger right must prevail; but in this conflict of rights between mother and fetus, the right of the mother is stronger. delta. He who has a right to life can yield it to another if he wishes; and the fetus is judged to yield his right to the mother.

But although by the responses of the Holy Office the opposite doctrine is not declared simply false, nevertheless it is no longer licit to use it either theoretically or practically. The reason for the decision seems to be this. alpha. It cannot be affirmed that through craniotomy an action is exercised from which a twofold effect proceeds equally immediately, one good, the other evil. Rather it is an action which directly kills the offspring to preserve the mother; but the direct killing of an innocent person is always illicit, even if it is only the hastening of a death certainly to follow. beta. The infant cannot be considered as an objectively unjust aggressor; for he himself does not posit an objectively unjust action, since using his own right and from the natural course of things he is the cause of death for the mother. Therefore he must rather be compared to a man infected with plague and infecting others than to an unjust aggressor. gamma. But if the fetus cannot be considered as an unjust aggressor, neither can the right of the mother be called stronger in the conflict of rights between the mother and the fetus. It must be conceded that two rights collide in this case, namely the right of the mother and of

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**Notes**

592. Cf. A. Eschbach, *Disputationes physiologico-theologicae*^2 (Romae: Desclee, 1901), disp. 4; I. Pennacchi, *De abortu et embryotomia* (Romae: Typogr. S. C. de Prop. Fide, 1884); Bergervoort, *Directer Abortus und Kraniotomie* (Munchen: Abt, 1896); Capellmann, *De occisione foetus* (Aquisgrani: Barth, 1875); Fr. Sippel, *Uber die Berechtigung der Vernichtung des kindlichen Lebens zur Rettung der Mutter* (Tubing.: Pietzcker, 1902).

593. Holy Office, 28 May 1884; this resolution the same Holy Office extended on 19 Aug. 1889 to any surgical operation directly killing the fetus or the pregnant mother.

594. Ballerini, Avanzini, Apicella, Viscosi, Pennacchi, Constantini.

the offspring to preserving life; but it must be denied that the right of the mother prevails. For no one's right to any good whatever, even a public good, can ever so prevail that the killing of an innocent person becomes licit for obtaining that good. For the dignity of the human person, who has God as the only end, prevents that person from being employed as a means for obtaining another good. delta. No one can yield to another the right over his own life in such a way that he could ever licitly permit the direct killing of himself.

b. In those circumstances in which the infant, on account of the narrowness of the mother, cannot be brought forth into light by the natural way, there exist surgical operations by which the living infant can be extracted: Caesarean section and symphysiotomy. But even if neither of these operations can be performed, nevertheless it is not licit to crush the head of the infant to preserve the mother. Rather, both are to be permitted to the natural course of things, even if death follows from it. For the author of nature is not offended by death which follows by force of the laws of nature, but He is offended by the direct killing of an innocent person. Yet since the demonstration by which from natural principles craniotomy is shown to be illicit is not so plain and evident, it can easily happen that physicians in good faith exercise it. Therefore let the confessor beware, unless he is expressly questioned about this matter, lest he disturb their good faith.

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## Article Second. On the Procuring of Abortion

**341. On ectopic fetuses.** a. Ectopic fetuses are those which are found outside their natural place; and since their natural place is the maternal uterus, they are also called extra-uterine fetuses. In the first months of pregnancy it is very difficult to distinguish an extra-uterine fetus from a tumor.

b. If it is doubtful whether that which the mother carries is a fetus or a tumor, and there is no danger in delay, one must wait until the fetus is mature; but in no way is it licit to destroy the supposed tumor by an electric current or by any other means, because in this way the fetus would be directly destroyed if one were present. But if there is danger in delay lest the mother perish, according to the mind of Father Genicot it is licit to extirpate that from which the danger to life arises as a tumor: for the certain right of the mother to her own life prevails over the uncertain right of the fetus, whose existence is doubted.[595]

c. If it is certain that an extra-uterine fetus is present, it is not licit to extirpate it, because an innocent person would be directly killed; nor can the extra-uterine fetus be considered more as an aggressor of the mother's life than a uterine fetus who cannot be brought forth into light. But it is licit to cut out the pregnant uterus affected by disease, if, this operation being omitted, the mother's death would certainly follow, although the death of the fetus would also certainly follow. For in this way the death of the fetus follows only indirectly, since the operative action directly and immediately affects not the fetus, but the uterus in which the fetus is enclosed.[596]

**342. Declarations.** Abortion is the ejection of an immature fetus from the mother's uterus. A twofold abortion is distinguished: natural or casual, which happens through natural causes, and artificial or voluntary, which is brought about deliberately.

a. Physiologists call the maternal fruit, before the fifth month from conception, an embryo, and afterward a fetus. The fetus is called mature (by others premature, by others viable) when it can live, even if it comes forth into light before the ninth month of gestation; for the fetus can certainly live outside the maternal uterus if it is brought forth into light after the seventh month of gestation; before that time the fetus is immature, and when it comes forth into light it is almost always going to die.

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**Notes**

595. *Casus consc.*, I, p. 159 s.

596. Holy Office, 4 May 1898; 5 March 1902.

b. The ancients thought that the male fetus was informed by a rational soul only 40 days, but the female fetus only 80 days, after conception; therefore they distinguished between an animated and an inanimate fetus. For they thought that the soul was not infused into the body before the body itself was formed; but they had learned from Aristotle that male fetuses have a formed body about 40 days, female fetuses about 80 days, after conception. They thought besides that this opinion of theirs was confirmed by sacred Scripture, which, on account of the diversity of sex, prescribed for women a diverse time of purification from this reason.[597] But today the received doctrine is, although it is not demonstrated by a certain argument, that the human fetus is informed and vivified by a rational soul in conception itself, namely when the male seed is united with the female ovum, which union happens some hours, sometimes even some days, after conjugal copulation. Wherefore the distinction between an animated and an inanimate fetus is no longer attended to in theology except in the one case in which canon law retains that distinction, namely where the matter concerns the irregularity to be incurred by those procuring abortion.

c. Abortion is one thing; acceleration of birth is another. For acceleration of birth is called the ejection of a fetus already mature, but abortion is the ejection of an immature fetus; wherefore abortion has place before, acceleration of birth after, the seventh month of pregnancy.

d. The procuring of abortion is one thing direct and another indirect: it is called direct if means are employed for this end, that the fetus be expelled; it is called indirect if means are employed for another end, for example, for procuring the health of the mother, from which nevertheless it is foreseen that abortion also will follow beyond the intention.

**343. Principles concerning the procuring of abortion.** 1. From a grave cause it is licit to procure premature birth or acceleration of birth. It is licit because from this operation the death of the infant does not follow, but he is only placed in another state in which he can live of himself, since he is supposed viable. But a grave cause is required, because not only is the life of the infant exposed to danger, but the infant brought forth prematurely ordinarily also remains weak; but it is not licit to induce this danger except to drive away a greater danger either of the mother or of the infant.

2. From a proportionately grave cause it is licit to procure abortion indirectly: for from a proportionately grave cause it is licit to posit an indifferent action from which a twofold effect follows, one good, which is intended, the other evil, which from a grave cause is permitted.

Therefore it is licit in a lethal disease of the mother, which cannot be cured in another way, to furnish a remedy which directly and immediately tends to the cure of the disease, even if from it abortion at the same time follows, because the mother is not bound to provide for the bodily life of the offspring with the loss of her own life. But the same is not licit if the disease is not lethal. Indeed, even in a lethal disease it is not licit to furnish such a remedy to the mother if, once the remedy has been employed, the offspring is deprived not only of temporal life but also of eternal life, whereas, the remedy not being employed, the death of the mother indeed is certain, but on the other side the salvation of the offspring is also certain, since the offspring, about to survive the mother, can be baptized. For the mother is bound to prefer the eternal life of the offspring to her own temporal life. Ordinarily, however, the offspring dies before the mother, so that it cannot be baptized even if the mother is permitted to perish.

3. It is not licit directly to procure abortion, even if the fetus is supposed still inanimate. If the fetus is animated, this is the same as taking life from him; for since the fetus can live only in the mother's uterus, to place him outside the uterus is the same as by a positive action to take life from him. But if the fetus is inanimate,

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**Notes**

597. Cf. Lev. 12:2-5.

yet nevertheless living, homicide properly so called is indeed not committed, but nevertheless mortal sin is committed, because begun generation is destroyed against the end of nature.[598]

a. Therefore it is not licit for a pregnant girl to procure abortion lest she lose her reputation or suffer another grave evil: for she would kill the offspring to obtain some good or to avoid some evil, or she would directly procure abortion; for abortion is directly procured whether it is intended as an end or as a means to obtaining another end.

b. Women who, fearing that they are pregnant, try to induce abortion by various means, for example, by washing their feet in cold water, by taking potions harmful to the fetus, by compressing the abdomen, by exercising actions very fatiguing, etc., sin gravely, at least by wicked intention.[599]

4. Even in this case it is illicit to procure abortion, when the mother is placed in certain danger of life and no other means exists of saving the mother than the procuring of abortion: for the procuring of abortion even in this case is the direct killing of the infant, which always remains illicit, even if through it a great good is obtained.

a. In a twofold case physicians are accustomed directly to procure abortion to save the life of the mother: alpha. when they foresee that a sick mother, on account of the pregnancy itself, will certainly die unless the fetus is expelled; beta. when they notice that the mother, on account of narrowness, cannot bring forth a mature infant, and that she shrinks from a surgical operation, for example, from Caesarean section. In these cases they directly procure abortion, because the means which they are accustomed to employ, namely puncture of the membrane (*Eihautstich*) and effusion of the amniotic fluid, is equivalent to the direct procuring of abortion and therefore to direct killing. Abortion is also directly procured if the pregnant mother uses a means by which, the fibers of the uterus having been relaxed, the emission of the fetus occurs.

b. There were theologians who thought that abortion could licitly be induced positively where the fetus brings a lethal disease and death itself upon the mother: for they thought that such an abortion is not direct but indirect killing of the fetus, which can be permitted for saving the mother. Namely, the mother who induces abortion either by herself or through another only ceases to preserve the infant in the uterus and thus permits him to perish; but the mother is not bound to preserve the offspring with the loss of her own life.

But this opinion is reproved by a response of the Holy Office. For to the proposed case: Titius the physician, when he was called to a pregnant woman lying gravely ill, commonly noticed that no other cause of the lethal disease underlay it except the pregnancy itself, that is, the presence of the fetus in the uterus … To save the mother from certain and imminent death he entered upon the way of procuring abortion, employing nevertheless means and operations tending of themselves and immediately not indeed to this, that he should kill the fetus in the maternal womb, but only that it should be brought forth alive, if this could happen, although soon to die, as one which was still altogether immature - to this case, therefore, the Holy Office responded that the stated operations, in the said circumstances, cannot safely be undertaken.[600] The reason for this decision seems to be this: that the induction of abortion consists in a positive action by which the fetus is directly ejected and by that very fact killed, from which killing ejection only afterward, as an effect, the safety of the mother follows.[601]

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**Notes**

598. Therefore this proposition (34) was condemned by Innocent XI: "It is licit to procure abortion before the animation of the fetus, lest a girl discovered pregnant be killed or disgraced."

599. The penalties borne against those procuring abortion are: a. papal excommunication reserved to bishops, whether the fetus is presumed animated or not; b. irregularity, if nevertheless the fetus is animated, therefore practically if abortion happens eighty days after conception.

600. Holy Office, 25 July 1895.

601. Cf. Bucceroni, *Commentarii theol. morales*^2 (Romae: Cuggiani, 1890), *De procuratione abortus*, p. 47 ss.

c. If the narrowness of the mother were so great that after the seventh month she could no longer bring forth the fetus, and she were unwilling to undergo any operation, accelerated birth could be admitted between the sixth and completed seventh month, provided at least some slight hope shone forth that the infant could live. For by this reason the safety of the offspring is provided for in the better and more certain way in which it can be done.[602] But without hope of saving the infant it is not licit to extract even ectopic or extra-uterine fetuses from the womb of the mother.[603]

**344. On Caesarean operation.** 1. That the state of the question may be determined: a. It must be noted that here there is no question of the section of a deceased mother. Elsewhere we have taught that Caesarean operation can and must be performed when the mother is already dead, so that the infant, who is supposed living, may be extracted and baptized.[604] The question here concerns a living mother, who carries an offspring likewise living in the uterus, whom she cannot bring forth by the natural way on account of narrowness. Since craniotomy, which physicians are accustomed to employ in these circumstances, is illicit, for saving the mother only a twofold remedy remains. Either the infant must be extracted by Caesarean section or symphysiotomy, or one must wait until the offspring dies in the uterus, so that afterward, divided into parts, it can be extracted by the accustomed way, if the mother is still alive.

b. It must be noted that a mature fetus existing in the mother's womb can indeed be baptized, but the baptism is not of altogether certain validity. Moreover, in order that Caesarean operation or a similar operation offer hope of a happy outcome, it is required that the mother be robust, the physician very skilled, and that the necessary precautions by antiseptic means can be employed; for if a skilled physician and suitable preparation are lacking, or if the mother is very weakened, the operation is almost equivalent to the direct killing of the mother.

2. Concerning the obligation of undergoing Caesarean operation, it must be said that there scarcely ever exists a certain obligation of undergoing Caesarean or a similar operation. And indeed:

a. If there is indeed hope of saving the mother, but no hope exists of extracting the child alive, the mother cannot be obligated to suffer the operation, because no one is bound to preserve his own life by extraordinary means. Capellmann indeed denies that this operation, with chloroform employed, is to be called an extraordinary means; but it cannot be denied that mothers are affected with the greatest horror of Caesarean operation. But a remedy from which all especially shrink must be called extraordinary, even if pains are prescinded from.[605]

b. If there is hope of saving the mother and of extracting the child alive, who could have been baptized in the mother's womb, the mother is not bound to undergo incision, even if the child's baptism is doubtful; for in order that someone be bound, with danger to his own life, to assist a neighbor existing in extreme spiritual necessity, it is required both that the hope of saving the neighbor be certain and that the extreme necessity likewise be certain; but neither has place here.

c. If there is hope of saving the mother and of extracting the child alive, who could not be baptized in the mother's womb, there are those who oblige the mother to suffer incision so that the child may be saved from eternal damnation. But a certain obligation can scarcely be established, because there is scarcely ever a certain hope of a happy outcome and therefore of saving the child from eternal death. Wherefore in practice

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**Notes**

602. Holy Office, 4 May 1898.

603. Holy Office, 5 March 1902.

604. Cf. *De sacramentis*, n. 70.

605. Capellmann, *Medicina past.*^6 (Aquisgrani: Barth, 1893), n. 24 ss.

the operation can indeed be advised, but prudence will advise that the confessor abstain from urging the obligation.

d. Indeed, there are not lacking authors who simply deny the obligation of the mother to undergo danger of life so that the offspring can be baptized: alpha. because the lot of infants dying without baptism cannot be called unhappy; beta. because it is only probable that the offspring, afterward having become adult, would attain eternal life.

**345. On beating.** The right in the goods of the body, which the fifth precept protects, can be injured by beating or striking.

1. The power of beating belongs: a. to public authority, which, since it possesses coercive power, can punish evildoers with blows; b. to parents, who can punish immature children, not only to correct them and draw them back from evil in the future, but also to punish them for offenses.

2. The right of beating is not possessed: a. by the master toward servants hired for wages, nor b. by the husband toward the wife; for although he is the head of the family, nevertheless he does not of himself have coercive power over the wife, since she is not a slave, but the husband's companion and mother of the family.

It is licit for no one to beat anyone unless either he is subject to his power, or the consent of him who has the power is present, namely of the father over the son or of the master over the servant; for beating is punishment, but punishment supposes governing power. Therefore teachers can indeed of themselves punish pupils, because they hold the place of parents; but an elder brother by birth cannot punish younger brothers by birth, unless either this has been commanded to him by the father, or he himself rules the family in the place of the father.[606]

**346. On the vexing of animals.** 1. To solve the question whether and what sort of sin the vexing of animals is, three principles from moral philosophy must be recalled to mind: a. Animals, since they lack reason and therefore also personality, are not subjects of right; therefore man is held by no obligation either of justice or of charity toward animals. b. Man is lord of animals, as of other things lacking reason, so that they ought to serve him as means for obtaining any licit and honest ends whatsoever.[607] c. Nevertheless the right of using animals is not absolute and unlimited; for man can licitly use them not according to whim, but only according to the prescriptions of reason. Therefore the end for which he uses them ought to be honest and the mode of using them conformable to reason.

2. From these things it follows that the vexing of animals is sin. For he is said to vex animals who inflicts torments or bitter death upon them without sufficient reason. Although man can licitly inflict pains even bitter pains, indeed bitter death, upon animals, provided there is an honest end and the mode of acting is morally necessary for obtaining the end, nevertheless what is done against reason is sin; but it is contrary to sound reason that torments and a hard death be inflicted without sufficient reason.

Therefore, although experiments on the living body of animals (vivisections) for promoting physiological science or medical art are of themselves licit, nevertheless those which either entirely lack an end of true utility or are in no way necessary for obtaining a licit end cannot be excused. But it cannot be denied that the vivisections of many physicians greatly exceed honest limits and have degenerated into mere torture of animals.[608]

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**Notes**

606. Cf. Bucceroni, *Institutiones theol. moral.*^3 (Romae: Typogr. Augustin., 1900), n. 725.

607. Gen. 1:26.

608. Cf. R. Marty, *Ein Wort uber Vivisection* (*Stimmen aus Maria-Laach*, 1881, I, p. 11, 276).

3. The sin which torturers of animals commit does not exceed venial sin: for the use of animals, even if joined with pains, is an indifferent thing; but excess in an action otherwise licit, however enormous, is not a mortal sin. Hence it is also understood why moral theologians, who are chiefly solicitous about mortal violations of moral laws, do not mention the sin of vexing animals.[609]

This sin is not opposed to a determinate virtue, since it does not violate a determinate obligation, but the general obligation of not acting against the prescriptions of reason. Nevertheless it has a likeness with the sin of cruelty, which is opposed to temperance and specifically to clemency; and insofar as torturers of animals act drawn by pleasure, by which they delight in torments, they commit a sin like savagery.[610]

4. Moreover, a. although animals do not have reason, nevertheless they are endowed with sensation, and therefore they do not lack a sense of pain, which nevertheless in them is much less than in men, both because of the lack of reason and consciousness and because of a body less tender and less perfectly organized. b. In sacred letters animals are exhibited as an object of divine providence, indeed even of compassion, since God is said to hear the young raven crying,[611] to give food to all in due time,[612] and to have willed that even animals rest on the seventh day.[613] By these things mildness and clemency in the use of animals are commended to us.

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## Question Sixth. On the Duel

[614]

**347. Definition.** A duel is defined as a single combat, undertaken by agreement, with arms apt for killing.

a. A single combat is a combat entered into between two, or between several in an equal number on each side. For constituting a true duel it makes no difference with what intention it is undertaken: for the sake of spectacle, of showing courage, of vengeance, of repairing honor, or of exercise.

b. By agreement is an essential condition of a duel, and indeed by agreement concerning time, place, and arms; whence between the agreement for the duel and the duel itself some space of time ought to intervene. Therefore it is not a duel if two men, from an impulse of anger, provoke each other to a fight and immediately engage, even if they betake themselves to a determined place in order to fight; nor if someone provokes another to a duel and immediately attacks him, while the latter, having snatched up arms, defends himself.

c. With arms apt for killing: for it is of the notion of a duel that it be done with arms, and indeed with arms apt for killing or lethally wounding, such as guns, swords, daggers. It is not of the notion of a duel that a lethal wound can be inflicted, or that there be danger of killing or mutilation; but this is required, that a grave wound can be inflicted of itself and not only by accident, that is, a wound which constitutes a grave injury of the body or a gravely sinful injury. Therefore fights which are made with switches or sticks, or with iron whose edge is blunted, are not duels; nor are they duels which are so instituted that a grave wound cannot be inflicted except by accident, for example, because of the lack of skill of the combatants.

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**Notes**

609. Fr. Schmid, *Wie ist das Tierqualen zu beurteilen? Priester-Konferenzblatt* (Brixen: Weger, 1898), p. 179 ff.

610. Cf. Lessius, *De iustitia*, l. 4, c. 4, n. 43.

611. Job 38:41.

612. Ps. 103:27.

613. Ex. 23:12.

614. Ferraris, *Bibliotheca*, s. v. *duellum. Das Duell in seinem Ursprunge und Wesen* (Paderborn: Schoningh, 1864). M. Hofmann, *Stellung der Kirche zum Zweikampf* (*Zeitschrift fur kath. Theol.*, XXII, 1898, pp. 455, 601). A. Wiesinger, *Das Duell vor dem Richterstuhle der Religion, der Moral, des Rechtes und der Geschichte* (Graz, 1895).

d. A grave wound is taken in a threefold sense: in a moral sense it signifies an injury which constitutes grave sin; in a juridical sense it signifies an injury which is punished in court by a determined penalty; in this sense, in the Austrian code, an injury is considered grave which cannot be healed within twenty days; in a specific sense it signifies a lethal injury.

e. Therefore three things are of the notion of a duel: alpha. a single combat; beta. undertaken by agreement; gamma. with arms apt for killing or lethally wounding. By reason of the second condition, a duel differs both from a brawl and from legitimate defense.

f. A fictitious duel is not a duel. Therefore those who fictitiously provoke and accept without the intention of engaging, or with certain hope that the duel will be impeded, or who only fictitiously fight without any danger of a wound, do not incur censures and do not sin except by reason of scandal, since the will of dueling is excluded.

**348. A duel is divided:** a. Into solemn, which is done with certain solemnities, namely letters of provocation and employed seconds, etc., and simple, which is done without solemnity.

b. Into fatal, which is to death or with the intention of killing, and non-fatal, which is done only with the intention of wounding.

c. Into public and private, according as it is undertaken by public authority or only in a private name.

That even non-fatal duels are by law true duels and fall under the penalties of a duel is gathered from the constitution *Illius vices* of Clement VIII, who interdicted even duels entered into with the pact "of ending the combat as soon as either one has been wounded or has shed blood." But the reason why the Church also punishes non-fatal duels as fatal by the gravest penalties is chiefly this: because they promote fatal duels.

**349. Principles.** 1. A duel undertaken by private authority is never licit. And indeed it is opposed to the law of nature: for duelists expose themselves to danger of death, mutilation, or at least wounding, to be inflicted both on themselves and on another; but this is equally illicit as the very killing, mutilation, or wounding inflicted on oneself or another. Nor can that action be made honorable from its end; for it is never licit to posit an action evil in itself for a good end. It is also opposed to ecclesiastical law: for the duel has been prohibited and punished with penalties by the Council of Trent and afterward more often by the Church.[615]

a. Among the decrees by which duels are prohibited by the Church, especially to be noted is the constitution *Detestabilem* of Benedict XIV, by which five theses concerning the duel are condemned.[616] From these it is clear that every duel properly so called is illicit, even if it is offered or accepted to avoid the gravest evils, for example, lest reputation, office, or goods of great importance be lost. For that the acceptance of a duel may be licit for preserving the greatest goods, the good effect, or the conservation of the goods, ought to follow from the duel at least equally immediately as the evil effect, or the danger or injury of one's own and another's life. But the conservation of the goods does not follow immediately from this, that someone exposes his own or another's life to danger or injures it in reality, but from this, that one accepting a duel procures for himself the common estimation of those who, by a dangerous confusion of concepts, call culpable rashness true fortitude.

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**Notes**

615. Sess. 25, c. 19, *De reform.* Constitution of Gregory XIII, *Ad tollendum* (5 Dec. 1582); constitution of Clement VIII, *Illius vices* (17 Aug. 1592); constitution of Benedict XIV, *Detestabilem* (10 Nov. 1752); constitution of Pius IX, *Apostolicae sedis* (12 Oct. 1869); encyclical letter *Pastoralis officii* of Leo XIII (12 Sept. 1891). The Austrian criminal code also punishes duelists with the penalty of grave prison of at least ten years.

616. They can be consulted in Lehmkuhl, I, n. 852; their first is this: A military man who, unless he offers or accepts a duel, would be held as fearful, timid, abject, and unfit for military offices, and thence would be deprived of the office by which he sustains himself and his own, or would have to lack forever the hope of promotion otherwise owed and merited by him, would be free from fault and penalty, whether he offers or accepts a duel.

b. From the older authors, several had taught that it is licit to accept a duel if it were the only means of avoiding the gravest evils.[617] But now this opinion, after the Benedictine constitution, can no longer be defended; rather this must altogether be held, that to expose one's own or another's life to danger is licit only for defending one's life or goods against an actual aggressor. But in this case there is no actual aggressor.[618]

2. Duels which are undertaken by public authority for the common good are licit, when that common good cannot be obtained without the shedding of blood. For if an army can licitly fight against an army by public authority, a few against a few, or one against one, will also be able to do this.

The sole cause of the common good on account of which a duel is licitly undertaken is this: that a just war may be ended or forestalled. But if duels are undertaken by public authority from another end, for example, to avenge an injury, to finish private controversies, or to manifest truth and innocence (the vulgar purgation), they are equally illicit, because to obtain these ends there is at hand another more apt means, namely legitimate judgment.

**350. On academic duels.** From the declaration of the Holy See it is clear that duelists of this sort and their seconds are irregular from infamy of law.[619] From this these three things are gathered: a. The single combats of students are true duels; for infamy of law is a penalty imposed on duelists by the Council of Trent. The same is clear from the nature of the thing: for in academic fights all things are present which constitute a true duel: a single combat undertaken by agreement with arms apt for lethally wounding. And although the danger of killing or mutilation is excluded of itself, nevertheless it is so instituted that a grave wound (in the moral sense) can be inflicted of itself, not only by accident. b. For a duel prohibited by the Church under penalties it is not required that there be danger of a lethal wound, but the danger of grave injury of the body suffices. c. Students who commit the *Mensur* incur excommunication; for if they incur the other penalty imposed by the Council, namely infamy, they also undergo this one imposed by the same Council. And indeed, if from the declaration of the Church they commit a true duel, they cannot escape the penalties inflicted by the same Church on duelists.

The penalties which are always affixed to duels and still have force are reckoned: a. infamy of law, which is contracted by the very fact of committing the duel, and from which irregularity arises; b. excommunication simply reserved to the Roman Pontiff; c. deprivation of ecclesiastical burial, if the duelists die in the conflict itself; to these penalties there can be added d. irregularity from delict, if death or mutilation really occurs.[620]

## Question Seventh. On War

[621]

**351. Declarations.** a. War is a fight of multitude with an external multitude, undertaken on account of the common good by public authority.

b. War is distinguished as offensive, which is instituted either for avenging an injury or for recovering possession, and defensive, which is instituted for repelling by force the force brought by another republic.

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**Notes**

617. St. Alphonsus (n. 400) attributes this doctrine to Holzmann, Pichler, Reiffenstuel, Sporer, Elbel, Lessius, Sanchez, etc.

618. Cf. Lugo, disp. 10, n. 172; Lehmkuhl, *Das Duell im Lichte der Vernunft* (*Stimmen aus Maria-Laach*, 1894, I, p. 345).

619. S. C. C., 9 Aug. 1890.

620. Cf. *Acta s. sedis*, XXIII, p. 212.

621. Cathrein, *Moralphilosophie*^4, II, p. 611 ff.; Meyer, *Institutiones iuris nat.*, II, n. 732 ss.; *Kirchenlexikon*^2, *Krieg.*

War differs from a brawl, which is done in a private name and is of few or single persons against few or single persons; it differs from sedition, which is a fight of multitude against multitude in the same republic or city; it differs from a duel, which is a single combat, not of a multitude, and is instituted by agreement.

**352. On the lawfulness of war.** 1. War, both defensive and offensive, is licit if the due conditions concur. Defensive: for if it is licit for a private man to repel force by force, the same will also be licit for the republic. Offensive: for the law of nature gives to each one the power of prosecuting his right or avenging an injury inflicted by public authority; therefore the same power of prosecuting right or avenging an injury belongs also to a prince if his right has been injured by another prince. But since princes do not have a higher authority, they cannot prosecute their right or avenge an injury inflicted on them except through offensive war.[622]

2. In a just war all things are licit which are necessary or apt for obtaining the end, provided they are permitted by the law of nature and by the law of nations. For he who has a right to the end also has a right to the necessary or useful means. Therefore those things which are neither necessary nor useful to the end of war, or which are interdicted by the law of nature or by the law of nations, cannot be inflicted on enemies without injustice, and therefore damage inflicted in this way must be repaired.

Therefore it is licit to prepare ambushes and to employ stratagems, for example, to feign flight; but it is not licit to employ frauds which can be guarded against by no prudence. - It is licit to besiege cities and deprive them of water, to discharge artillery against them, to destroy monasteries and churches if enemies use them to defend themselves; but it is not licit to infect wells or fountains with poison. - It is licit to kill all those fighting against one or existing in arms, of whatever condition, state, or sex, until perfect victory has been obtained; but it is not licit directly to kill the innocent, nor ambassadors, who by the law of nations are inviolable, nor is it licit to suborn assassins who may secretly kill the commander. The innocent, whom it is not licit directly to kill, are children, women, old men, pilgrims, rustics, merchants, etc., who are not found in arms. Captured enemies cannot be killed by today's law of war; for they can be killed insofar as soldiers fighting in an unjust war are guilty of a grave crime, on account of which the penalty of death may be inflicted on them. But in our times fighting soldiers, as compelled men, cannot be considered guilty of a grave crime. - Private goods of enemies by the strict right of war can be given to soldiers as spoil; for citizens of a hostile region are considered participants in the injustice on account of which war is brought. Yet by today's custom it is not licit to give the private goods of enemies as spoil unless a special reason exists, as if some private person or some village had exercised a special hostility.

3. After the owed thing has been recovered, or after the injury has been sufficiently avenged, the victor is bound to accept peace offered on just conditions: for when the just cause ceases, the war becomes unjust. Accidentally, even the conquered is sometimes bound to accept peace, lest he expose himself and his subjects to greater damages.

**353. Required conditions.** The just conditions under which it is licit to bring war are three:

a. Supreme authority: for if a greater authority is present, this ought to settle the controversy and avenge the injury inflicted.

Yet if the supreme authority either did not wish or were unable to avenge the injury inflicted on a subordinate society, necessity itself seems also to give to the subordinate republic the right of bringing war upon enemies.[623]

b. A just and grave cause. The sole just cause of offensive war is an inflicted injury which the enemy refuses to repair. Hence, that war can justly be begun, it is required that satisfaction be demanded from the opposing

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**Notes**

622. Cf. St. Thomas, II-II, q. 40, a. 1.

623. Laymann, l. 2, tr. 3, c. 12, n. 4.

party; and if it is offered, it must be accepted from justice. A grave cause is one which would outweigh so many evils coming from war both to body and to soul.

Causes of this kind, on account of which it is licit to bring war, are these: a province usurped by an adversary to be recovered; a grave injury inflicted on the republic to be driven away; religion to be protected against aggressors, even against unbelieving peoples who impede the preaching of the faith by expelling or killing missionaries;[624] a people unjustly oppressed to be defended. For the proposition (62) of the *Syllabus* is condemned: "The principle which they call non-intervention is to be proclaimed and observed," etc. But just causes are not: enlargement of the kingdom, glory of name, the power of a neighboring prince to be diminished, etc.

c. A morally certain right, if the war is offensive, or at least probable, if the war is defensive. The reason for the first is that the damages coming from war are so many and so great that it is not licit to declare it unless the right to be vindicated is certain; besides, no one can be despoiled or punished unless the unjust possession or delict is certain. The reason for the second is that, for force brought to be justly repelled, it suffices that it be probable that the force is unjustly brought.

There are not lacking authors who say that it suffices that the right of the prince bringing war be probable (Sporer, Azor) or more probable (Suarez, Victoria, St. Alphonsus). Others reject both (Elbel, Holzmann, Laymann, Tamburini). Genicot joins himself to these; citing Waffelaert, he has these things worthy of note (I, n. 383): "If doubt remains about the right, recourse must be had to the arbitration of other princes and especially of the Roman Pontiff: but if the other party wholly rejects this recourse, or refuses to obey the sentence given by the arbiter, then there will already be a certain injury, on account of which it will be licit to declare war."

**354. On soldiers.** a. In a certainly unjust war it is not licit to serve as a soldier, and in the conflict itself it is not licit for soldiers to kill enemies, not even for the sake of defense: for they themselves are unjust aggressors. Therefore, if they cannot flee, they ought to see to it that by their blows they strike no one except the air.

b. In doubt concerning the justice of the war, a soldier who is a subject or hired before the war is bound to obey, both because a subject ought to obey unless the sin is certain, and because he ought to presume that the war is just unless the contrary is established.

c. But a soldier who is not a subject, or who is hired after the war has been declared, cannot serve as a soldier unless he is certain of the justice of the war: for since the matter concerns a very grave damage to be inflicted on another, it is not licit to inflict it unless it is established that the war is just. Yet if the war is defensive, a probable judgment concerning the justice of the war also suffices.

d. It is not licit for soldiers fighting in a just war to take away anything from the goods of enemies, except those things which are necessary for sustenance, unless the commander of the war has permitted it. Wherefore those things which have been taken away against the commander's will must of themselves be restored, provided he is unwilling with respect to the taking itself, not only with respect to the violated military discipline.

Although a war cannot be just on both sides, nevertheless it can happen that the soldiers of each side wage war with a safe conscience. For on the one hand grave authors deny that the right of the prince bringing war must be certain; and on the other hand soldiers usually do not know the more hidden causes of the war declared. But the causes which are spread abroad among the common people can seem just to them. Nor are they bound to inquire into the more hidden causes of war unless there is grave suspicion of injustice and at the same time hope of knowing the truth.

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**Notes**

624. St. Thomas, II-II, q. 10, a. 8.

Theologians of an earlier time, having made a distinction between just and unjust war, absolutely forbid the plundering of fellow soldiers, and in a just war also of enemies; but they permit the plundering of enemies in an unjust war. In our time, by force of the law of nations or of international conventions, the plundering of the slain is absolutely interdicted; their goods, which can be recognized, pertain to their heirs.

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# Book Sixth. On the Seventh Precept of the Decalogue

[625][626] "Thou shalt not steal." Ex. 20:15.

This precept, insofar as it is negative, prohibits every act by which the neighbor's right in goods of fortune is injured; and insofar as it is affirmative, it commands that to each one be rendered his own right which he has in goods of fortune. To the seventh precept the tenth must be joined: "Thou shalt not covet thy neighbor's house … nor anything that is his."[627] For just as external acts are prohibited by the seventh precept, so by the tenth internal acts are prohibited, namely the will of harming the neighbor in goods of fortune. Therefore the virtue which this precept regards is commutative justice, insofar as its object is the neighbor's right in goods of fortune; and since this right is called right of ownership, there must be treated: a. ownership in goods of fortune; b. injury of ownership in goods of fortune; c. reparation of injured ownership.

## Preliminary Question. On the Force of Civil Law in the Matter of Justice

[628]

**355. Declarations.** 1. Political authority, to preserve and promote the common good, establishes diverse laws, among which those laws chiefly hold place which are referred to the private rights of citizens, are called civil laws or civil right, and are contained in the civil code. For especially in this matter of external goods, the civil power ought to declare, perfect, and determine more accurately the obscure, defective, and indeterminate law of nature. Concerning these laws the question is asked: what value do they have, and what obligation do they induce?

Formerly Roman law was in force almost everywhere, whence it is called common law; but today almost every republic has its own civil code. Now, modern theologians must attend each to the code of his own country in the same way as earlier theologians looked to Roman law: for recent codes are of themselves of the same authority as ancient Roman law.[629]

2. Civil laws are of a twofold kind: some constitute and determine rights among citizens, of which sort is the law which establishes that part of a treasure found in another's land pertains to the owner of the land; others are referred to juridical acts and, besides those things which are essentially required by natural law (as that those contracting ought to be in control of themselves), prescribe several formalities or solemnities

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**Notes**

625. Concerning the sixth and ninth precepts of the Decalogue the matter is treated in a fascicle edited separately.

626. Ioan. de Lugo, *De iustitia et iure*, tom. I. Lud. Molina, *De iustitia et iure*, tom. I. L. Lessius, *De iustitia et iure*, l. 2, c. 1-16. I. Reuter, *Theologia moralis*, pars III, *De iustitia et iure*. L. Carriere, *De iustitia et iure*, 3 tom. (Lovanii: Fonteyn, 1845-1847). I. Vogler, *Iuris cultor*^3 etc. (Parisiis: Mequignon, 1833). P. H. Marres, *De iustitia*^2 (Ruraemundae: Romen, 1879). D. Delama, *Tractatus de iustitia et iure*^3 (Tridenti: Monauni, 1889). G. I. Waffelaert, *Tractatus theologici de virtutibus cardinalibus*, Tr. II, *De iustitia* (Brugis: Beyaert, 1885). Ballerini-Palmieri, *Opus theol. morale*^3, III, n. 1-550. A. Lehmkuhl, *Theologia moralis*^10, I, n. 884-1044. I. E. Pruner, *Die Lehre vom Rechte und von der Gerechtigkeit* (Regensburg: Manz, 1858), 2 Bd. Ios. Schwane, *Die Gerechtigkeit u. s. w.* (Freiburg: Herder, 1873). Georg Crolly, *De iustitia et iure* (Dublini: Gill, 1877), 3 vol. K. Kiefer, *Die Tugend der ausgleichenden Gerechtigkeit* (Eichstatt: Bronner, 1908).

627. Ex. 20:17.

628. Van Gestel, *De iustitia et lege civili*^2 (Groningae: Wolters, 1896), c. 2. Lehmkuhl, *Das burgerliche Gesetzbuch*^2 (Freiburg: Herder, 1900), p. 29 ff. A. Vermeersch, *Quaestiones de iustitia*^2 (Brugis: Beyaert, 1904), n. 324-337.

629. The precepts of justice in the following pages are chiefly to be set forth according to the law of nature; nevertheless, in the notes there are added, marked by the sign C. A. = Austrian code, C. G. = German code, those texts of civil law to which the confessor ought to attend.

which must be observed in placing juridical acts and especially in celebrating contracts, so that they may acquire full value.

a. Juridical acts are human acts by which some right is acquired or extinguished. To these are especially referred contracts, which must be made in a certain form prescribed by civil law, so that they may have full value.

b. Of these formalities some are accidental, which, if absent, do not affect the act itself, for example, that a document ought to be sealed; others are substantial, which, if absent, affect the act itself.

3. Civil laws can affect juridical acts in five ways:[630]

a. The law neither prohibits nor invalidates the act, but only does not assist it, or in the external forum denies every action. Thus the law does not assist contracts of gaming, and therefore denies every action for demanding those things which are owed from gaming.

b. The law prohibits the act and makes it illicit, although it does not invalidate it. Thus brokers are prohibited from doing business for themselves in that matter for which they have been admitted.

c. The law makes the act rescindable, in that it grants to the judge the power of invalidating. Thus a contract entered into by a minor without the father's consent can be invalidated by the judge; but if the judge does not invalidate it, the act remains valid.

d. The law invalidates the act by the fact itself, but only civilly, so that the judge, if the act is brought to his forum, must hold it invalid; outside the civil forum it can have natural value.

e. The law invalidates the act by the fact itself, civilly and naturally, so that in the external forum of judgment and in the internal forum of conscience it is destitute of value.

**356. On the value of civil law.** Therefore it is asked what value civil laws have, whether establishing rights or invalidating juridical acts. And since juridical acts are often invalidated because of the defect of some formality prescribed by law, the question is asked specifically what value acts or contracts have which lack a formality prescribed by law.

**Assertions.** 1. Civil laws establishing rights or transferring ownership ordinarily oblige in conscience, from commutative justice, before any sentence of the judge. For a law established by competent authority for the common good obliges in conscience. But rights which are referred to goods of fortune constitute the object of commutative justice. Therefore preceptive laws which establish citizens' rights concerning goods of fortune oblige from commutative justice.[631]

The legislator, both ecclesiastical and civil, by the consent of all can, if he wishes, establish invalidating laws.[632] That the ecclesiastical legislator requires solemnities prescribed by himself for the value of an act is certain; concerning the civil legislator in particular cases his intention must be sought, whether and how far he wishes to invalidate acts, specifically whether the prescribed formalities are required for the value of the act.

2. Civil laws invalidating juridical acts because of the defect of an essential condition have value in conscience also before the sentence of the judge.

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**Notes**

630. Laymann, *Theologia moralis*, l. 1, c. 16, n. 2 ss.; Van Gestel, l. c., n. 64.

631. Cf. St. Thomas, II-II, q. 58, a. 6.

632. The S. Poenitent., by response of 21 Jan. 1873, manifestly acknowledges the power of political authority of invalidating juridical acts even in the forum of conscience. Cf. *Acta s. sedis*, VII, p. 211.

Therefore contracts entered into with an insane person, a drunken person, under a base condition, concerning an impossible thing, etc., which are invalidated by law,[633] are plainly invalid without the intervention of the judge. But if civil law declares a juridical act invalid by natural law, for example, because of substantial error, only rescindable, it must be said that supreme authority, on account of the common good, gives to acts of this kind a value which they do not have of themselves, until they are rescinded by him who had erred in contracting.[634]

3. Civil laws invalidating juridical acts because of defect of the prescribed form probably do not invalidate fully before the sentence of the judge, but only civilly, unless the nature of the thing or contract requires otherwise. For since these laws restrict the liberty of citizens in transferring ownership and therefore are odious, they admit strict interpretation as far as can be done. Besides, contracts valid by natural law are not to be held invalid unless their nullity is certain. Finally, modern legislators, denying the law of nature, acknowledge only positive law; therefore by their laws, where it depends on them, they intend to invalidate only this, not also that.

a. Therefore, even if certain contracts are said in the civil code to be simply invalid or null, nevertheless by force of civil law they are constituted null only civilly. For from the reasons brought forward above, the opinion of those thinking that contracts which by law are called null are constituted invalid only in the external forum is certainly probable and therefore safe in practice. Therefore if, for example, a sick man near death verbally gives a legacy to someone, the donation, as lacking legal form, is without form. Therefore the heir is not bound to pay the legacy and can juridically reclaim what has been paid, because he can use the right which is granted to him by law; but neither is the legatee bound to return it until the heir has obtained invalidation of the donation through the judge.

b. The nature of the thing requires that the contract be invalid immediately before the sentence of the judge when the end on account of which the contract is declared invalid cannot otherwise be obtained. Of this kind are contracts entered into with parents concerning support not to be given, and contracts by which the right of a son to the legitimate portion is injured.

4. After the sentence of the judge declaring the juridical act invalid, the acts are to be held fully invalid also in conscience.

For the just sentence of a legitimate judge has value in conscience. Besides, public order and security of rights demand that a judicial sentence put an end to doubts and disputes also in the internal forum of conscience.[635]

**Note.** Nevertheless onerous contracts which are invalidated by civil law ordinarily lack natural value also in conscience. For contracts do not have force beyond the consent of those contracting; but in onerous contracts those contracting are judged not to have wished to consent to the contract except according to the norm of civil law, because otherwise they are not protected by civil right. Wherefore onerous contracts which by law are null must for the most part be held naturally null also.

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**Notes**

633. C. G., Section 104, 138, 306; C. A., Section 865.

634. Cf. C. G., Section 119, 123.

635. Lehmkuhl, *Das burgerliche Gesetzbuch*, p. 37.

# Chapter First. On Ownership

## Question First. On Ownership in General

### Article First. On the Nature of Ownership

**357. Definition.** Ownership is the legitimate faculty of disposing according to one's choice concerning some thing as one's own, unless the owner is prohibited from elsewhere.

a. To be owner of a thing signifies that the thing is one's own, and has such a connection with its owner that in having it and in its use he ought to be preferred to all others. Therefore, although he must render an account of its use to none of men, nevertheless he must render it to God.[636]

b. Of disposing, that is, of possessing, using, selling, exchanging, giving, destroying, etc. According to one's choice: ownership gives to the owner the faculty of disposing of his own thing as it shall please him, without injuring justice; therefore by an arbitrary disposition, for example, by a prodigal donation or destruction of the thing, he can sin against another virtue, say liberality, charity, or piety, but he does not sin against justice. Concerning some thing is to be taken generically, insofar as it signifies corporeal and incorporeal things: for there is ownership not only of corporeal things, such as gold or a field, but also of incorporeal things, such as reputation, honor, right of inheritance. As one's own, so that ownership may be distinguished from a simple right to a thing, which does not give the faculty of disposing of the thing, from mere possession, even legitimate possession, which, for example, gives to a tenant the right of disposing of a thing, but not as his own, and finally from the power of a curator and procurator, who likewise dispose of a thing, but not as their own.

c. In various ways the owner can be impeded from disposing of his own thing according to his choice: alpha. by civil law, as if minors are prohibited from selling their own things; beta. by agreement, as if someone sells another his house with this pact, that it not be converted into an inn; gamma. by the will of a testator, as if someone transmits an estate by legacy to another on this condition, that it cannot be sold.

**358. Principles of right.** From the nature of ownership these principles are deduced and explained, of which there is frequent use in law:

a. A thing cries out for its owner.

This principle exhibits the very right of ownership: for since by force of the right of ownership the thing itself is bound to the owner, it tends to return to the owner when it has escaped from his possession.

b. A thing bears fruit for its owner.

This follows immediately from the notion of ownership: for if the whole substance of a thing pertains to the owner and ought to serve for his advantage, the fruits also begotten from it fall to the owner.

c. A thing perishes for its owner, or more accurately: a thing which perishes by chance perishes for its owner; a thing which perishes by fault perishes for him who committed the fault.

This likewise follows immediately from the nature of ownership: for since the owner by force of ownership possesses a right in the thing itself, when the thing perishes the right in it also naturally perishes. But if the thing perishes by another's fault, the thing itself indeed perishes for the owner, but because he by whose fault

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**Notes**

636. Cf. Lugo, *De iustit.*, disp. 1, n. 5.

it perishes is bound to render to the owner an equivalent price, it is said to perish for him who committed the fault.

d. It is not licit to grow rich from another's thing.

This follows from the second principle: for he who grows rich from another's thing turns the fruits of another's thing to his own utility, which is opposed to justice. But he who grows rich not from another's thing, but on the occasion of another's thing, injures neither another's right nor justice.

**359. Divisions of ownership.** 1. Ownership is divided into high and low: high ownership is the power which belongs to public authority of establishing concerning the goods of its subjects for the common utility; low ownership is the ownership which private men have in their own things and is called private right.

a. It is clear that high ownership is not ownership of property in the true name (for civil power has no property in the goods of subjects), but in reality is nothing except ownership of jurisdiction or the right of prescribing concerning the goods of citizens those things which the prince has judged expedient for the common good. Therefore the prince can transfer ownership from one to another, restrict the exercise of ownership in various ways, indeed he can even deprive subjects of their goods by the right of expropriation, or rather compel them to abdicate ownership of their goods.

b. A twofold condition is required that supreme power can use this ownership of its own: alpha. that a cause of necessity or of great public utility be present; beta. that, if it can be done, it make the subjects who are deprived of their goods by the right of expropriation unharmed.[637]

2. Low ownership is divided into perfect or full and imperfect or semi-full: the former is the power of disposing according to one's choice concerning the substance and the utility of a thing; the latter is the power of disposing either concerning the substance of the thing or concerning its utility.

3. Imperfect ownership is divided into direct or radical ownership, which is power over the substance alone of a thing, and indirect ownership or useful ownership, which is power over the utility alone of a thing, and is defined: the power of receiving utility from another's thing while its substance is preserved. The chief species of indirect ownership are use, usufruct, and servitude.

**Note.** Recent codes reduce the diverse species of imperfect ownership to servitude, and therefore treat use and usufruct as species of servitude, as will be clear from the things to be said below concerning servitude.

**360. On use.** 1. Use is the right of using another's thing while its substance is preserved.

a. He to whom the use of some thing belongs is called a user, so that he may be distinguished from the proprietor of the same thing.

b. It is one thing to use some thing; it is another thing to enjoy some thing. He who can use a thing can receive for himself and his own from the thing that utility which necessity requires; but he who can enjoy a thing receives by right every utility from the thing which it can offer.

2. To use are usually referred: a. habitation or the right of using some part of another's house; b. gathering wood or the right of gathering wood in another's forest; c. pasture or the right of leading cattle into another's pastures; d. diverse species of loan for use, as the use of a horse, garment, etc.

3. Use, as it is taken here, is a right of using some thing which is not revocable at will. From this use there must be distinguished use revocable at will, of which sort is permission of using some thing, such as religious receive from their superior.

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**Notes**

637. Cf. Van Gestel, l. c., n. 46 s.

Formerly a sharp dispute arose whether there is true use of a thing when the substance of the thing is consumed by use, as happens in food and drink, or rather whether the use of a thing consumable by its first use contains ownership of it. Religious gave occasion to the question, who (as the Friars Minor) said that they had ownership of no thing, not even the least, but only use. Those who affirmed that the use of a thing which is consumed by use cannot be separated from its ownership argued in this way: he who can dispose concerning the substance of a thing has ownership of it; but he who can use a thing which is consumed by the very use disposes concerning its substance. But those who affirmed that the use of a thing consumable by the very use can be separated from the ownership of the same thing used this distinction: if use is understood as an irrevocable right and independent from the will of the one granting, the use of this thing contains ownership; but if the use of a thing is understood as a right revocable at will and fully dependent on the will of the one granting, the use of this thing does not contain ownership, even if the thing is consumed by the very use.[638]

**361. On usufruct.** Usufruct is the right of using and enjoying another's thing while its substance is preserved. Usufruct is distinguished as legal and conventional, according as it is had from canonical or civil law, or from contract.

a. He to whom the usufruct of some thing belongs is called a usufructuary or fruituary, so that he may be distinguished from the owner or proprietor of the same thing.

b. Usufruct differs from use in this, that the fruituary has the right not only of using another's thing, but also of receiving the fruits which arise from it. Indeed he has perfect ownership in the fruits, so that he can receive not only the fruits necessary to himself, but all, and alienate them according to his choice.

c. By canonical law beneficiaries have the usufruct of their benefices; by civil law parents have the usufruct from the goods of minor children, and sometimes the husband from certain goods of his wife.

**362. On servitude.** a. Servitude (*Dienstbarkeit*) taken actively is the right which someone has, that another's thing may serve him or his own thing; taken passively it is a burden inhering in a thing, by force of which it ought to serve another for some advantage. Thus if a right of passing through another's field belongs to someone, he himself is the subject of active servitude, but the field is the subject of passive servitude.

b. Passive servitude is twofold: one personal, when some thing ought to furnish utility to another person, of which sort are use and usufruct, if they are taken passively; the other real or praedial, if some thing ought to furnish an advantage to another thing, as is the servitude of pasturing a flock in some forest.

c. For constituting a real servitude two things are required, of which one bears the burden and is called serving (the forest), the other receives the utility and is called dominant (the flock).

**Note.** 1. The law of servitudes is drawn up in modern codes with diligent study; and since it determines rights and conduces to preserving the mutual concord of citizens, it obliges in conscience.[639]

2. Since the law of servitudes, especially real servitudes, is very intricate, it often gives occasion for disagreements among neighbors. Let the pastor take care either to forestall or to remove disputes of this kind, and for obtaining this end let him admonish the opposing parties that they should rather yield somewhat from their right than expose goods of fortune and mutual concord to danger.

**363. Fruits of a thing.** By the name fruits of a thing is understood everything which arises from the thing. Fruits are divided by reason of origin into spontaneous, industrial, and mixed, and by reason of collection into pending, to be received, and received.

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**Notes**

638. Cf. Holzmann, *Theologia moralis*, IV, n. 166 ss.; Elbel-Bierbaum, *Theologia moralis*, II, pr. 5, n. 40 ss.

639. C. A., Section 472-530; C. G., Section 1018-1093.

1. a. Those are called spontaneous which the thing produces without special industry of men. Special is said because there will scarcely be a fruitful thing which bears fruits without any industry and labor of man.

Spontaneous fruits are either natural or civil, according as they are produced by nature itself, such as hay of a meadow, wood of a forest, offspring of animals, milk, wool, eggs, etc., or are received by force of a contract or another obligation, such as the price which is acquired for the rental of a house, interest which is acquired for money lent, a pension which is acquired for an office.

b. Those are called industrial which are acquired by the industry and labor of man alone, although by means of some thing or instrument, such as the works of artisans and workers, profit received from trading.

Profit received from simple sale can be considered as a fruit of industry; for that profit received can be called a fruit of industry, it is not required that singular and extraordinary industry have intervened, but true work and industry of the person suffices.

c. Those are called mixed which are produced partly by nature and are owed partly to human industry, such as crops, wine, oil, cheese, butter. And because even natural fruits require some industry, it is sometimes difficult to say whether some fruit ought to be reckoned among natural or mixed fruits.

2. a. Those are called pending which have not been separated from the thing, such as offspring of animals not yet brought forth into light, apples still hanging from the tree, crops not yet harvested.

b. Those are called to be received which the possessor could have received if he had wished, but did not receive, whether by negligence or by fraud.

c. Those are called received which have already been separated from the fruitful thing and collected by the possessor. These again are divided into consumed and extant.

## Article Second. On the Object of Ownership

The object of ownership is that of which man can be owner. Those things of which man can be owner are usually called goods, and are distinguished into three kinds: internal, mixed, and external. Among internal goods are reckoned man's life, powers, members, and actions; mixed goods are reputation and honor, which are, as it were, midway between internal and external goods; external goods which fall under man's ownership are sublunar things.

**364. On internal goods.** 1. Of those internal goods which are not distinct from man himself, such as life, powers, and members, man does not have direct ownership, but only useful ownership, so that he receives every utility from them and is their administrator and guardian.

a. God has given no one the right over his own life and members, but has reserved it to Himself: "See that I alone am, and there is no other God besides me; I will kill and I will make alive."[640] And indeed no one can truly be lord of himself, because lord signifies superiority with respect to him whose lord he is. b. He ought to have the power of using them for obtaining his end, and he cannot be impeded by any man in this use, since in tending to his own end he is independent from any man and fully in his own right.

2. Of those internal goods which are distinct from man, such as actions both natural and supernatural and the goods effected by them, man has full ownership, and therefore can dispose concerning them at will. For since he can use his own faculties as his own, he has ownership both in their operations and in the goods arisen from the operations, which are the fruits of the operations.

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**Notes**

640. Deut. 32:39. Cf. Wis. 16:13 s.

**365. On mixed goods.** Man has full ownership of reputation and honor: for he has ownership of those goods which are the fruits of his own industry; but reputation and honor are acquired and increased by his own industry. Besides, by the consent of all, acts of ownership concerning reputation and honor belong to man: for by defaming himself he can cast them aside for seeking counsel, and he can condone restitution to a calumniator. Nevertheless this ownership is sometimes restricted by another and higher law.

**366. On external goods.** It will be said below that man can acquire full ownership in external goods; here it is helpful to set forth the various distinctions of external things of which man can have ownership.

1. Things placed in commerce are those which can be in the ownership of a private person; and things placed outside commerce are those which cannot be in the ownership of a private person. Of this kind are: a. public things of the Church, such as sacred places, temples, cemeteries; b. public things of civil society, such as public roads, squares, public bridges, city walls; c. common things, such as air, light, the sea, of which things the use is common to all, but ownership belongs to none.

2. Things are movable and immovable according as, with their substance preserved, they can be transferred from place to place, such as animals and furniture, or cannot be transferred, such as a house or forest. Some things are movable and immovable from their nature, others from the disposition of law, concerning which the civil codes must be consulted.

Civil law also counts fruits not yet collected and the "stocked estate," that is, those things which are necessary for carrying on domestic economy, among immovable goods in some cases.

3. Fungible things (*vertretbare*) are those of which one can perform the function of another in payment or restitution, in which therefore attention is given not to the species (that is, to the individual thing), but to the genus (to quantity and quality), such as oil, wine, wheat, money, in which not the substance of the coin but its value is considered. Non-fungible things are those of which one cannot perform the function of another, but which must be handed over in the individual, in which therefore attention is given to the species (that is, to the individual thing), not only to the genus, of which sort are animals, garments, etc.

4. Finally, things consumable by first use and things not consumable by first use: the former in their first natural use are destroyed or changed into another substance, such as bread, wine, wood for burning; the latter are indeed worn by use, but are not corrupted, but endure in their substance after use, such as a garment, house, furniture.

The division of external things into corporeal, which can be touched, such as a house, field, money, and incorporeal, which cannot be touched, such as diverse rights, for example, the right of hunting and the right of fishing, which was of great importance in Roman law, scarcely occurs any longer in recent codes.

## Article Third. On the Subject of Ownership

**367. On the subject itself.** By the subject of ownership is understood the person to whom ownership belongs. A twofold person is distinguished who is capable of ownership: a physical person and a moral person.

1. From the law of nature the subject of ownership is every living man, even an infant not yet born and a man perpetually insane.[641]

a. The foundation of ownership is rational nature: for through reason man has the power of disposing concerning his own things. Wherefore even infants and the perpetually insane are capable of acquiring ownership and habitually retaining it, but not of exercising ownership; for rational nature without any act

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**Notes**

641. Gal. 4:1. Cf. C. A., Section 22; C. G., Section 1, 1923.

of will suffices for acquiring and habitually retaining ownership, but the use of reason is required for the exercise of ownership.

b. After death man does not retain ownership of goods of fortune, although he retains ownership of reputation: for since goods of fortune have been granted by the author of nature to man for sustaining temporal life, the right in goods of fortune is extinguished by death itself.

c. Although every man using reason is capable, by the law of nature, of ownership and its exercise, nevertheless by positive law this capacity is restricted in various ways on account of the common good. These matters must be treated below.

2. Moral persons or societies are also capable of ownership. Any society which has been instituted for an honest end is, by the law of nature, capable of acquiring ownership of temporal things. But by civil law this right is recognized only in those which are constituted by it as juridical persons, namely persons capable of acquiring rights.

a. With respect to ecclesiastical societies, juridical persons are first the universal Church, which by natural and divine right is capable of ownership of temporal goods; then within the ambit of the Church: lesser societies, namely dioceses, parishes, church fabric funds, religious societies, seminaries, hospitals, pious institutes, etc.

b. With respect to profane societies, juridical persons are first the state itself or republic, which, since it is a perfect and independent society, has ownership of its goods by its nature; then within the ambit of the state: provinces, municipalities, colleges, universities, and several other lesser societies which are endowed with the privilege of juridical personality and thence are called privileged societies.

# Question Second. On Ownership in External Things

## Article First. On the Origin of Ownership in External Things

**368. Principles.** Concerning the origin of ownership, from those things which natural right teaches expressly, only those principles are to be taken which are required for rightly understanding these questions.[642]

1. God granted the ownership of temporal goods for the preservation of life at the beginning to the human race in such a way that the goods were common to all and proper to one no more than to another.

a. Temporal goods were made by the author of nature for this end, that man may provide for himself from them concerning the things necessary for the preservation of life. Therefore man has a right of acquiring for himself from temporal goods the things which are necessary for the sustenance of life; but this right is true ownership in temporal goods.

b. Twice God granted dominion of earthly things to man: first indeed soon after creation: "Have dominion over the fishes of the sea and the birds of the heaven and all living things that move upon the earth";[643] then again after the fall and the flood: "Increase and multiply and fill the earth, and let your terror and dread be

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**Notes**

642. Cf. St. Thomas, II-II, q. 66, a. 2. Encyclical of Leo XIII, *Rerum novarum*, 16 May 1891. Walter, *Das Eigentum nach der Lehre des hl. Thomas u. s. w.* (Freiburg: Herder, 1895). F. Cathrein, *Sozialismus*^7 (Freiburg: Herder, 1903). F. Cathrein, *Moralphilosophie*^4 (Freiburg: Herder, 1902), II, p. 247 ff. H. Pesch, *Liberalismus, Socialismus u. chr. Gesellschaftsordnung* (Freiburg: Herder, 1901), p. 196 ff. Schaub, *Die Eigentumslehre nach Thomas von Aquin und dem modernen Sozialismus* (Freiburg: Herder, 1898). Th. Mayer, *Institutiones iuris naturalis* (Friburgi: Herder, 1900), II, n. 162 ss. A. Vermeersch, *Quaestiones de iustitia*^2 (Brugis: Beyaert, 1904), n. 194-245. Pottier, *De iure et iustitia* (Leodii: Ancion, 1900), p. 18-47. Diederlack, *Die soziale Frage*^6 (Innsbruck: Rauch, 1904), p. 131 ff.

643. Gen. 1:28.

upon all the animals of the earth," etc.[644] By these words God granted created things to the human race as a common good.

2. The division of things initially common, and private ownership of them, both movable and immovable, is not only licit, but in the present state of fallen nature also necessary.

Socialists affirm that temporal goods are to be held and preserved as a good common to all, so that the division of goods and private ownership of them is illicit and altogether unjust. But by a manifold argument it is shown that private ownership in the present order of things is altogether necessary, and therefore must be derived from the will of God.[645] From these things it is clear that the distinction between rich and poor will never cease in human society at any time: "The poor you have always with you."[646]

3. From the law of nature itself, and indeed by occupation, the division among men of things initially common and private ownership were introduced.

By what right the first division of things was made, and in what way private ownership was first introduced, is not established among the learned. Some think that it was made by paternal authority; others by a pact of men, whether explicit or implicit; others by human law; others finally by force and violence by which the stronger oppressed the weak. In general it cannot be denied that this was done by the law of nature. With the natural faculty of acquiring ownership of things there must be joined a free fact which is the reason and title of ownership in some determinate thing; but this fact is the occupation of a negatively common thing. Hence the principle: a thing belonging to no one becomes the thing of the first occupier.

4. Ownership obtained by legitimate occupation is not absolute, but restricted by its own limits. Namely, man cannot have his goods as his own in such a way that in no respect are they any longer common, or that he can always and under every condition exclude all others from their use; for private ownership, which is a secondary right, cannot take away a primary right. Now the primary end on account of which corporeal goods were created is this: that there be at hand for men means for preserving those goods which nature itself wills to be common to all. Therefore, even after the division of goods has been made, man retains the right implanted by nature itself to those things which are required for protecting and preserving these goods.[647]

a. This right of acquiring those things which are necessary for preserving life is diverse according to the diverse condition of men. alpha. He who can labor has a (strict) right to labor, that is, of acquiring for himself the necessaries of life by labor (n. 69). beta. He who is unfit for labor has a (moral or legal) right of receiving the necessaries of life from the superfluous goods of the rich. gamma. He who is in extreme necessity has a (strict) right of taking those things which are necessary for preserving life. For each right, as far as can be done, ought to be preserved uninjured; but if private ownership impedes the preservation of life, the secondary right ceases and the primary right prevails. This right is not to be understood in such a way that the rich man is bound to confer upon the one in extreme need those things which he needs, but in such a way that he is bound not to impede him who, in extreme danger, provides for himself concerning the necessaries. To these rights on the other side correspond just so many duties, which are connected with ownership of temporal things.

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**Notes**

644. Gen. 9:1-2.

645. Diederlack briefly gathers the arguments, *Die soziale Frage*^6, n. 91 ff.; Cathrein, *Das Privateigentum* (Freiburg: Herder).

646. Matt. 26:11.

647. Cf. St. Thomas, II-II, q. 66, a. 2; H. Pesch, l. c., *Pflichten und Schranken des Eigentums*, p. 390 ff.

b. Goods which nature wills to be common to all must be distinguished from goods which nature itself does not intend for all, but which individuals acquire for themselves according to their condition. Goods of the former kind are life, health, liberty, reputation; goods of the latter kind are a noble state, riches, great dignity, office, and things of this sort.[648]

## Article Second. On Possession

**369. Notion.** Possession is the holding of a thing not prohibited to be possessed, with the mind of having it as one's own.

a. Holding supposes apprehension of the thing: for possession is begun by apprehension, by which someone occupies the thing, and by holding possession is continued. As to rights, their apprehension ordinarily consists in acceptance and holding consists in their exercise.

b. By the name thing is signified the object of possession, which can be not only a corporeal thing, such as money, a field, a house, but also an incorporeal thing, such as a right. In the former case there is possession properly so called; in the latter there is possession improperly so called, or quasi-possession.

c. For possession it does not suffice that someone physically apprehend and hold some thing, but it is required that he hold it with the mind of having it as his own. Therefore it is required that he apprehend the thing not only by body but also by mind or will; therefore a depositary does not properly possess the deposit.

d. For true possession a right in the thing possessed is indeed not required; for even a thief possesses, although unjustly. But it is required that the law not declare a certain thing incapable of being possessed, or a certain person incapable of possessing. Thus public things cannot be possessed by a private man, and some sacred things cannot be possessed by a layman.

e. Therefore three things are required for having possession: alpha. holding of the thing, or if the matter concerns a right, use of the right; beta. the mind of having it for oneself; gamma. permission of the law, which indeed does not approve the possession, but does not prohibit it.

**370. Division.** Possession is divided: a. into legitimate possession or possession of right, which is begun with a title which of itself can transfer ownership, such as donation, purchase; and into illegitimate possession or possession of fact, which lacks a title which can transfer ownership, such as possession from theft.

He who doubts whether a thing which he assumes for possession is his own or another's begins to possess it legitimately, if it is in the possession of no one and he himself has the mind of inquiring and restoring the thing to the certain owner.

b. Possession of fact is either possession of good faith, doubtful faith, or bad faith: possession of good faith is had if the possessor invincibly thinks that the thing is his own; possession of doubtful faith is had if the possessor, either at the beginning or in the course of possession, doubts whether the thing is his own; possession of bad faith is had if the possessor knows that the thing which he possesses is another's.

He who doubts whether a thing which another possesses is his own or another's possesses illegitimately if he assumes it for possession against the will of the other. The same must be said concerning him who doubts whether a thing which another possesses is this one's or a third person's.

**371. Effects of possession.** 1. All rights attribute certain privileges to possession, both because the very fact of possession, if it is of good faith, founds a presumption of law, namely that with possession there is also joined a right in the thing possessed, and because these privileges conduce to public tranquility and arouse the

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**Notes**

648. Cf. Lugo, disp. 16, n. 153 ss.

diligence of citizens in guarding their own things. These privileges, which belong to possession both from the law of nature and from civil law, are reckoned as two:

a. In an equal cause or doubt the condition of the possessor is better, that is, possession gives the right of retaining the thing possessed until it is certain, or at least established by a stronger motive, that it is another's.

Therefore no one can be despoiled without injustice of a thing which he possesses unless it is sufficiently established that another has the right of possessing it.

b. Possession of good faith begets prescription, but nevertheless it does not transfer ownership of the thing except by the help of prescription.

2. Possession does not confer these privileges unless it is certain and legitimate; doubtful possession or possession of bad faith has no value.

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## Article Third. On the Ownership of Sons Under Family Power

**372. Declarations.** A son under family power is called a legitimate son (or legitimated son) who is not yet in his own right, but is subject to paternal power.

a. Distinction of persons. An infant is called a man up to the completed seventh year of age; an impubes is called one who has not yet arrived at puberty, therefore up to the fourteenth year of age if he is a boy, and up to the twelfth if she is a girl; a minor or minor of age is called one already pubescent up to emancipation; an adult or one of full age exists after emancipation. The year of emancipation is different in different laws.[649] A ward is called an impubes who by the death of the father or by sentence of the judge (for example, on account of a physical or moral defect of the father) has gone out from paternal power; for him by force of law a tutor is constituted. For a minor who, already pubescent, has gone out from paternal power, a curator is constituted for the administration of goods.

b. Distinction of goods. From Roman law the goods of sons were distinguished into castrensian goods, which a son acquires for himself from military service or another public office; profectitious goods, which a son receives from his father or gains from the goods of the father; adventitious goods, which come to the son from elsewhere, for example, by inheritance, donation, special industry and labor.

Recent codes distinguish: alpha. free goods, which the son acquires by separated industry (while outside the paternal house he devotes himself to an office or labor, even if he lives at home) or by donation or a similar title; beta. non-free goods, which the son acquires by non-separated industry (laboring at home together with the father, or trading from paternal goods).

**373. Rights of sons, in establishing which recent codes nearly agree.**[650]

a. Of goods which are called free, the son himself, even if he is a minor, has ownership; but their administration, and sometimes also usufruct, pertain to the father.[651]

alpha. Therefore where the son has not only direct ownership but also useful ownership of these goods, all their fruits pass into his ownership. And if the son dissipates these goods against the will of the parents, he

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**Notes**

649. According to several codes (C. G., Section 2), children are minors up to the completed twenty-first year; according to C. A., Section 21, up to the completed twenty-fourth year. Emancipation according to some laws happens by that very fact when the son has attained legitimate age, according to others only must happen if the son wishes; with the conditions prescribed by law observed, it can also happen before this age.

650. C. A., Section 140 ff.; C. G., Section 1627 ff.

651. From C. A., Section 149, administration alone; from C. G., Section 1649 ss., partly also usufruct pertains to the father.

sins against other virtues, but not against justice. - Although a minor son acquires for himself of himself those things which he acquires outside the paternal house by furnishing service or exercising his own art or trading with another's goods, nevertheless, since their administration belongs to the father, he ought to hand them over to the father; and if he secretly retains some things for himself without the father's knowledge, he acts illicitly by arrogating the administration to himself.

beta. If the son labors outside the paternal house, but lives and is fed at home, he ought to pay for his sustenance. For the father is not bound to feed a son who can provide for himself. Wherefore he ought to hand over the whole wage to his parents for paying the expenses of sustenance, unless perhaps he receives an extraordinarily great wage, or undertakes labor altogether extraordinary, or the parents consent that he retain some part of the wage for himself. But if, without the father's knowledge and against his will, he secretly retains part of the ordinary wage for himself, so that he does not pay the expenses of sustenance, of himself he sins against justice.

gamma. In a twofold case sons are not to be accused of sin because they withdraw something of the wage received from the father's administration, provided they have paid as much as is sufficient for sustenance: alpha. if they notice that the parents do not reserve those things which remain over after sustenance for the sons, but spend them for superfluous uses; beta. if sparing parents do not grant to sons, for honest recreations, those things which they can prudently expect from them.

b. Non-free goods of themselves pertain to the father, even if the son is of full age. For the fruits of the labor which the son exercises not in his own name but in the father's name fall to the father. Wherefore if the son withdraws or dissipates these goods against the will of the parents, he acts against justice.

**374. Whether a son can demand some wage by laboring in the paternal business.**

a. A minor son constituted under paternal power cannot demand a wage for his labor: for as long as he is under paternal power, the parents can demand by right that he labor for preserving and increasing the domestic estate, and that he be content with the sustenance received at home.

b. A son of full age can demand nothing for owed labor. That labor is judged owed which, according to the condition of the father, is necessary for the decent and suitable sustenance of the family: for the father has the right of demanding from the son services which are necessary for the sustenance of the family. For example, a farmer can demand that he be helped by his son in agriculture; but for those things which are owed from piety no stipend can be demanded.[652]

c. A son of full age can of himself demand a wage for labor not owed, unless he intended to labor gratuitously; for parents have no right of demanding from sons services which are not necessary to their state and condition. But the son cannot demand a greater wage than an outsider would receive for the same labor; profit received from the business and labor pertains to the father, yet the father can by right subtract the expenses of sustenance and therefore diminish the wage.

alpha. But the son cannot demand the owed wage immediately; rather it must be committed to the father at what time and in what way he wishes to pay the debt owed to the son.

Ordinarily parents are not accustomed to pay wages to sons laboring at home, nor to increase the inheritance on account of their labors. Nor by this way of acting is justice judged to be injured: for ordinary labors are nearly compensated by food, clothing, peculium, and other advantages received in the paternal house. But on the other side, if sons, especially those of full age, remaining and laboring at home, steal something from

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**Notes**

652. Cf. Lugo, *De iustitia*, disp. 5, n. 42.

paternal goods for the labors undergone or secretly compensate themselves, after the fact they are not easily to be compelled to restitution.

beta. And this, namely that the son cannot demand or take for himself another compensation for ordinary labor furnished in the paternal house, is valid even if other brothers meanwhile have been idle or have given themselves to studies; for these circumstances, merely external, do not make the profit of the labor fall not to the family but to the son. Yet parents are accustomed, either by donations or by other ways, to see to it that the industry and diligence of sons has its reward.

d. Yet if the labor not owed is extraordinary, which notably exceeds the customary labors of others or is very useful to the family estate, the son can of himself demand a greater wage or part of the profit, with the expenses for food deducted, unless from the beginning he had the express intention of furnishing those labors gratuitously; for if he had such an intention, it is not licit for him afterward, with his will changed, to demand a stipend.

If the son, without the father's knowledge, receives profit by trading from his goods, it must be distinguished in this way:

alpha. If the son acted in the father's name from the presumed permission of the father, he committed no sin, but the whole profit is the father's.

beta. If the son acted in his own name with money which he had made his own, the profit is the son's, but he committed sin because he took the money, and he ought to repair damage to the father if any arose in the father's business from the lack of money.

gamma. If the son acted in his own name with money which remained in the father's ownership, he can retain half the profit: for the matter can be considered as a partnership business, to which the father contributed the money, and the son the industry. Whether the son in this case committed sin depends on whether he acted against the father's will or from the presumed permission of the father.[653]

**375. Whether a minor son has ownership in goods given to him.** - To determine the ownership which a minor son living outside the family has in goods given to him by parents or relatives, attention must be given to the will of those giving, whether expressed or reasonably presumed.

a. If goods are given absolutely, the son acquires full ownership of them, and therefore can dispose of them at will. In this way things consumable by their very use, money destined for recreation, and things which are given not by parents but by relatives, are usually given. Therefore if the son spends these things for vain uses, he sins by prodigality, but not by injustice.

b. If goods are given exclusively for a determined end, for example, money for buying books, garments, paying room and board, etc., the son does not acquire full ownership, and therefore he acts against justice and of himself is bound to restitution if he spends them for other ends, especially vain or dishonest ends. Yet he is often excused from restitution, because condonation by the parents can be supposed.

c. If things are given generally for occurring necessities, with no condition attached, the parents are judged to transfer full ownership of them to the son; wherefore he can spend some part of them, according to the state and condition of the parents, even on honest recreations. But if the son spends them against the will of the parents for vain uses, he sins against obedience, but not against justice.

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**Notes**

653. Cf. Lehmkuhl, *Casus consc.*, I, n. 565 ss.

d. If goods are given by the parents for use, as it is said, which are not consumable by first use, such as garments, books, etc., the son indeed has perfect ownership of them;[654] nevertheless he ought to use them according to the intention of the giver, to whom he owes obedience. Hence if, for example, he were to sell books and dissipate the money received from them, he would not indeed sin against justice, but nevertheless, besides prodigality, also against obedience.

**Note.** Of itself it is not to be advised that agreements be made between parents and sons who live together and labor in the paternal house; much less are secret compensations to be promoted. Rather, the piety of sons toward parents and of parents toward sons is to be fostered and inculcated. But parents are to be exhorted to grant a just peculium and an equitable wage to sons remaining and laboring with them.

## Article Fourth. On the Ownership of Spouses

**376. Declarations.** 1. In order that it can be judged whether the way of acting of spouses concerning temporal goods is just or unjust, one must first investigate which goods are common to them, which are proper, and what rights in both proper and common goods belong to the spouses. Moreover, these rights of spouses depend on the contract which they enter into before marriage (by an authentic act before a notary), or on the regime (system), as they call it, under which they contracted marriage. For those about to marry can freely choose the system according to which disposition is to be made concerning their goods, and to the chosen system add whatever agreements they wish, provided these are not opposed to good morals and are not prohibited by law. Now there are three chief systems according to which spouses are accustomed to enter marriage with respect to ownership of temporal goods: a. the system of community; b. the system of separation of goods; c. the dotal system. But if spouses contract without a special agreement, they are judged to follow that system which commonly prevails in that region. The rights which belong to spouses concerning temporal goods in the individual systems are contained in the civil codes.[655]

2. The goods of spouses are distinguished in this way:

a. Dotal goods (*eingebrachtes Gut*), which are handed over by the wife or by another to the husband for sustaining the burdens of marriage.

Dotal goods occur not only in the dotal system but also in other systems, since in any system a dowry is brought by the wife. It rarely happens that ownership of dotal goods is transferred to the husband; ordinarily their ownership remains with the wife, but administration and usufruct pertain to the husband.[656]

b. Goods besides the dowry or proper goods, which the wife has besides the dowry, whether she acquired them by inheritance or by donation or by her own and extraordinary industry.

alpha. Ownership of those things which the wife acquires for herself by her own labor distinct from the care which is owed to the domestic estate, for example, by painting or by trading with her own goods, belongs by strict right to her until she contributes them into common.[657]

beta. The wife retains ownership and usufruct of these goods, but ordinarily the husband has administration.

c. Common goods, which spouses contribute into common either from pact or from disposition of law. Each spouse exercises ownership (common ownership) or co-ownership of these goods, but their administration is with the husband.

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**Notes**

654. C. A., Section 151.

655. C. A., Section 1217-1266; C. G., Section 1363-1563.

656. C. A., Section 1227 ss.; C. G., Section 1363.

657. Ballerini-Palmieri, III, n. 52.

From common goods there are to be distinguished goods of the family, which sometimes are also called common. They are those which are acquired from the undivided custom of life and from the common labor of each spouse, whose ownership nevertheless belongs to the man alone by force of law.

**377. Rights and obligations of the husband.** 1. In administering common goods, wide power is granted by law to the husband, so that by law (at least before a judge) nothing can be demanded from him on account of bad and prodigal administration.

But in conscience the husband must be obligated to restitution, because the wife preserves ownership of goods strictly common, although the husband alone has administration. Wherefore the husband, by dissipating them, injures the strict right of the wife. Nevertheless on account of bad administration the husband is not to be obligated to restitution if community of goods is so determined by law that the wife has a strict right only in half the goods extant after the death of the husband.[658]

2. A husband who badly administers or even dissipates goods of the family, of which he alone is owner, offends against charity or piety, but not against justice.

3. If a husband, against the will of the wife, dissipates anything from goods of which he has only administration or only usufruct with administration, he injures her strict right and is bound to restitution. The same must be said where, in administering goods strictly common, he exceeds the limits granted by law.

4. From common goods or goods of the family the husband is bound to supply to the wife those things which are necessary for procuring the family estate according to the state and condition of the family, for her sustenance, and for fulfilling her obligations (at least if she does not have proper goods).

**378. Rights and obligations of the wife.**[659] 1. If the wife takes something from goods of the family, of which the husband is owner, while the husband is reasonably unwilling, she injures his strict right and of herself is bound to restitution unless the injury is condoned.

2. Of herself the wife can licitly spend nothing without the husband's knowledge: for administration of goods, even common goods, belongs to the husband. Besides, the subjection by which the wife is subordinated to the man as head of the family demands that she take nothing without the husband's knowledge and without having consulted him. Yet since the wife is not a maidservant, but the husband's companion and helper, from universal custom that liberty in the use of goods which the decency of state requires is to be granted to her. Therefore several things, especially when a just cause exists, are licit to the wife even without the husband's knowledge, indeed even against his will.

From custom wives have free administration of poultry and their fruits, such as eggs.

a. The wife can spend certain goods, even rather notable ones, without the husband's knowledge for the good of the family if the husband would not give the things necessary for the honest sustenance of herself and the offspring, or if the necessities of the family would be set forth to him in vain. Yet in this case the wife ought to beware lest she make expenses excessive for the condition of the family.

b. She can give customary alms which are usually given by women of the same condition; greater ones indeed if the husband neglects this obligation; some, but lesser ones, even if the husband satisfies his obligation according to the condition of the family. For the wife would appear too hard against decency if she could give no alms.

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**Notes**

658. Cf. Lacroix, l. 3, pr. 1, n. 1020; Lehmkuhl, I, n. 897; Gury-Ballerini, n. 556; Dalama, n. 40.

659. Lugo, disp. 16, n. 64 ss.; Lehmkuhl, I, n. 895.

c. She can assist parents or children received from another marriage if they are constituted in grave necessity.

If she has proper goods, she ought to assist needy blood relatives from them. Yet she can give customary alms to blood relatives even if she has proper goods. If she does not have proper goods and customary alms do not suffice, she can take from common goods or from the goods of the husband to relieve the grave necessity of parents and children. Nor is she bound, after the husband has died, to restore those expenses from that part of the dowry or common goods which she receives, unless those expenses greatly exceed the limits of customary alms. The reason of the first is that the husband, as administrator of the family, ought to furnish to the wife those things by which she can satisfy her obligations; but the laws of piety demand from the wife that she assist parents and needy children. The reason of the second is that the man is not bound to suffer extraordinary expenses from his own goods if the wife has goods whose ownership is with her.

d. She can reserve certain goods without the husband's knowledge so that she may provide for the necessities of the family and of the husband himself and so that she may preserve her rights intact, if the husband dissipates the goods.

e. She can take care that prayers and Masses be said for averting spiritual or temporal damage of the husband or of the family.

f. She can bestow small gifts and spend certain things on honest recreation, according as these things are licit for other women of the same condition and therefore cannot be omitted without some mark of reproach.

**Note.** The rights of wives in common goods which belong to them from use and custom are not to be proposed publicly in instructions, and ordinarily neither privately in the confessional should too much indulgence be given to women, since they themselves, from an implanted desire of ruling, are very prone to extending their rights more than is equitable. Universally, greater care must be taken that the wife be subject and obedient to the husband in charity, as is fitting, than that she insist upon her rights.

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## Article Fifth. On the Ownership of Authors

**379.** By the name author is understood everyone who by his own talent invents something, of which sort is: a. one who has written a book; b. one who has composed a work of art, such as a musical rhythm or painting; c. one who has discovered a scientific theory, an art, a medical remedy, etc.

**Rights of authors.** 1. By natural right an author has perfect ownership in the thing which he himself invented before it has become of public right: for each one has a right in the fruits of his own talent; wherefore as true owner he can dispose concerning his own thing according to his choice.

a. Therefore he acts against justice and is bound to reparation of damage who publishes manuscripts against the will of the author, or who steals his secret from the inventor of an art.

b. Therefore he acts against justice who publishes in print, against the will of the author, the lecture of a professor or the sermon of an orator. Nor is the appeal to the fact valid for the contrary opinion, that public speeches either of preachers or of deputies in assemblies are printed in newspapers; for these things are done with the authors knowing and not contradicting. - But by that very fact that someone teaches publicly or preaches, the proposed doctrine becomes in some way of public right; therefore it cannot be impeded that hearers make it their own, use it according to opportunity, or write it out for their own private use and lend the writing to others.

2. In a work already published, the author retains ownership and the right of publishing the work further, but grants to all the use of the published work. For the author is judged to retain that right which from the nature of the thing he can retain, but to grant that which from the nature of the thing he ought to grant; but

even after publication has been made he can retain ownership in his own work and the right of publishing the work further; and by that very fact that he publishes the work, he ought to grant its use to all who wish it and pay the owed price. - Besides, to each one naturally belongs the right in the fruits of his own work; but he cannot receive the fruits from his own work unless he retains ownership in the published work and the right of publishing it further.

a. There are those who say that the right of property and further publication in a work or invention already published is lost by the publication itself; and therefore, if the right belongs to the author or inventor of prohibiting that his work or invention be published by others, this is had not from natural law, but from positive law.[660] Although their opinion does not differ much from the proposed one, because they readily concede that a positive law of this kind is altogether consonant with natural equity, nevertheless it is more aptly affirmed that the right of property is indeed from nature, but in many things obscure and indeterminate and therefore must be declared and determined by positive law.[661]

b. Therefore he acts against the right of the author and publisher and is bound to reparation of damage who sees to it that a published work be printed again without the author consenting. - He who, without the knowledge of the author or publisher, sees to it that some work be printed and published in distant regions inflicts damage insofar as by this reason a greater profit of the author or bookseller is impeded, which can now happen more easily, with means of communication considered, than formerly. - To multiply a book or sheet by transcription for private use, whether for oneself or for another, provided the transcription is not published, is neither unjust nor illicit, because the buyer, by force of the ownership which he acquires in the published work, can dispose of it for his every advantage if the author suffers no damage from it; but from use of this kind the author morally suffers no damage.

c. Whether by natural right the right of impeding that the translation of his work into another language be published belongs to the author is not certainly established, because it is not established whether publication of the translation in reality harms the author and whether the profit which the translator receives exceeds the labor of translation. But positive laws almost everywhere reserve to the author the right of publishing a translation.

3. Civil laws which prohibit the work of some author from being printed without the consent of those whose interest it is, not even after his death unless a certain time has elapsed,[662] or which reserve to the author the right of publishing a translation of his own work, oblige in conscience, since they constitute rights (n. 356).

## Article Sixth. On the Ownership of Clerics

**380. Declarations.** The goods of clerics are of three kinds:

1. Patrimonial goods, which come to clerics from paternal inheritance or from any other profane cause, for example, donation, contract, industry, or another mode of this kind common with seculars, for example, by teaching letters.

Of these goods clerics have perfect ownership equally as laymen: for by no positive law is natural right now limited in this matter with respect to clerics.[663]

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**Notes**

660. Among recent authors Vermeersch defends this opinion, *Quaestiones de iustitia*, n. 240 ss.

661. Cf. Ballerini-Palmieri, III, n. 53.

662. C. A., laws for the protection of copyright, Section 13, according to which, thirty years after the death of the author have elapsed, his work can be printed by anyone.

663. Cf. Benedict XIV, *De synodo dioec.*, l. 7, c. 3.

2. Quasi-patrimonial or quasi-ecclesiastical or casual goods, which clerics acquire from ecclesiastical functions and offices, such as stipends of Masses and sermons.

To these goods belong: a. stole fees; b. salaries which are received by assistants of pastors, military chaplains, professors of religion in gymnasia; stipends for the office of teaching theology in universities or seminaries, whether they are paid by the Church or by the government; distributions which are given to canons, fruits of a lay benefice; c. offerings of the faithful which are given to the pastor himself; d. pensions which, whether by the government or by the Church, are conferred upon retired or sick clerics.

Of these goods clerics likewise have perfect ownership: for there is no reason for affirming that they have limited ownership; and indeed neither those who bestow goods of this kind nor the Church have limited this ownership in any way.

3. Ecclesiastical or beneficial goods, which clerics receive from ecclesiastical benefices.

a. From beneficial goods there are distinguished goods simply ecclesiastical, such as beneficial lands, which pertain to the Church; beneficiaries have their administration and usufruct. Here there is no question of beneficial lands, but of the fruits which clerics receive from them.

b. To ecclesiastical or beneficial goods also belong: alpha. salaries which are paid by the government to pastors, canons, or bishops; for the Church considers these as ecclesiastical goods, because they are paid by the government in place of goods of the Church that were taken away.[664] Likewise, beta. supplements which are paid out to pastors by the community for suitable support, because by public authority they are substituted in place of ecclesiastical goods.

c. The notion of ecclesiastical good is to be taken strictly, that is, only for those goods which come from an ecclesiastical benefice properly so called, and is not to be extended to goods which a cleric acquires for himself from some ecclesiastical office (as of vicar general, rector of a seminary, professor of sacred theology), even if these goods are drawn from ecclesiastical goods.[665]

These ecclesiastical goods are either necessary, parsimonial, or superfluous. a. Those are called necessary which clerics need for honest support. b. Those are called parsimonial which clerics could consume by living honorably, but which by living more sparingly they set aside from the revenues of the benefice. c. Those are called superfluous which remain over after honest support.

**381. On the ownership of clerics in ecclesiastical goods.** 1. In ecclesiastical goods necessary for suitable or honest support, clerics have perfect ownership; for from the Council of Trent beneficiaries make the fruits received from benefices their own,[666] but by these words the acquisition of ownership is signified.

a. Therefore clerics can take honest support from the revenues of the benefice even if they have other goods; for benefices were chiefly instituted for this end, that those who serve the Church may also be supported by the Church.[667] But if a cleric lives from his own patrimony, he can receive as much from ecclesiastical goods and dispose of it at will.

b. What support is suitable must be defined not by a certain rule, but by prudent judgment. In rendering this judgment account must be taken of alpha. the person, for more things are necessary to one than to another; beta. the custom of the place; gamma. the office and quality of the benefice. Moreover, under suitable support

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**Notes**

664. S. Poenitent., 19 Jan. 1819; 19 Aug. 1821; 9 Aug. 1824.

665. Cf. Hollweck, *Das Testament der Geistlichen* (Mainz: Kirchheim, 1901), p. 32 ff., who calls these goods ecclesiastical; on the contrary, Hilgenreiner, *Professorengehalt eines Geistlichen* (*Linz. Quartalschrift*, 1902), p. 349 ff.

666. Sess. 24, c. 12, *De reform.*, and elsewhere often.

667. 1 Cor. 9:7-14.

are also comprehended alms to be given, hospitality, honest recreations, moderate donations, a quantity reserved for future events, and decent support of blood relatives if they need it, so that prodigality and avarice may equally be absent from an ecclesiastical man.

c. With respect to goods left by a cleric, concerning which it is not established by what title they were acquired, it must be distinguished in this way: if it is established that the cleric acquired other goods besides the revenues of the benefice, he must be presumed to have consumed the beneficial goods for his support, but reserved the others for blood relatives. But if it is not established that he acquired other goods besides beneficial goods, he must be presumed to have left ecclesiastical goods until something else is proved.[668]

2. In parsimonial ecclesiastical goods clerics likewise have perfect ownership: for they are goods set aside from necessaries; but in these they had acquired perfect ownership; therefore also in those they have perfect ownership, since they do not lose the ownership which they had acquired.

3. Even in superfluous goods clerics acquire true ownership; yet they are bound under grave obligation to distribute them to the poor or to other pious uses.

a. That clerics acquire true ownership in superfluous goods is the opinion of St. Thomas,[669] which St. Alphonsus holds sufficiently probable.[670] And indeed ecclesiastical goods are offered by the faithful to the Church with this pious intention, that they may be dedicated to the honor of the saints. But it must be said that the Church acquires true ownership and free disposition of those goods, so that it can validly dispose of them for any use whatsoever, but licitly only for a pious and religious use, since that alone corresponds to the nature of the goods and the intention of the faithful.

b. While the Church, with benefices having been constituted, gives a part of these goods to clerics, it transfers true ownership in these goods to them, but at the same time also the obligation which inheres in them, namely of not spending them except for pious uses. That clerics have true ownership in superfluous goods is clear from the Council of Trent, which teaches concerning ecclesiastical goods generally and without distinction that clerics make their fruits their own.

c. Therefore clerics have in ecclesiastical goods, even superfluous goods, true ownership, but ownership burdened with a charge which the nature of the goods demands, namely of distributing them to pious uses. Whether clerics are bound to this distribution from justice is disputed; but because the opinion which denies an obligation of justice has true probability, clerics who spend superfluous goods badly cannot be obligated to restitution, either themselves or their heirs. But concerning this matter it will be said below.

**Note.** It is altogether fitting that a cleric distribute even goods which are not ecclesiastical, at least in part, to the poor or to pious causes; for the people easily take scandal if all non-ecclesiastical goods are given to blood relatives who are not in need.

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## Question Third. On the Acquisition of Ownership

**382. Preliminary notions.** 1. By a mode of acquiring ownership is understood a title or cause apt of itself to confer ownership. Five diverse modes of acquiring ownership are distinguished: occupation (invention), accession, labor, prescription, contract.

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**Notes**

668. Cf. Schmalzgrueber, in tit. *De pecul. cler.*, n. 15.

669. *Summa*, II-II, q. 185, a. 7; *Quodl.*, 6, a. 12, ad 3.

670. L. 3, n. 492, compared with *Quaest. ref.*, q. X.

a. These modes have the force of conferring ownership either immediately from the law of nature, such as occupation (invention), accession, and labor; or from human law, such as prescription; or from the private will of men, such as contract.

Modes of acquiring ownership are distinguished into original and derived. By original modes there is acquired ownership of things which have never had ownership, or at least actually do not have it, of which sort are occupation, (natural) accession, and labor; by derived modes there is acquired ownership of things which already fall under ownership, as by prescription and contract.

2. The distinction among vacant, abandoned, and lost things must be noted. Those are called vacant which never had an owner, whether they are animate, as wild animals in forests, or inanimate, as gems in the sea. Those are called abandoned which had an owner, but actually do not have one, as treasures once hidden, and things of an owner who died without legitimate heirs. Those are called lost or uncertain which have an owner, but an unknown one, as a gold ring found in a street.

Lost things are held as abandoned: a. when the owner from certain circumstances no longer has any hope of recovering his thing; b. when the owner neglects recovery of the lost thing, even if he could recover it; c. when the thing is not of great price, so that the owner is not judged to demand its restitution.

**Note.** Now the individual modes of acquiring ownership must be treated. But because the treatment concerning contracts became longer, we refer that matter to its own chapter (the fourth of this book).

## Article First. On Occupation

**383. On occupation in general.** Occupation (*Aneignung*) is the apprehension of a thing which belongs to no one, with the mind of acquiring it for oneself.

1. Occupation, if the due conditions are present, is a legitimate mode of acquiring ownership: for by the law of nature things belonging to no one become the things of the first occupier. Therefore just as at the beginning private ownership began by occupation of things which then were all things belonging to no one, so now things which belong to no one pass into the ownership of the occupier (n. 368).

2. The conditions which are required that some thing become the thing of the occupier are: a. that the thing belong to no one, whether it is vacant or abandoned; otherwise by occupation an injury would be done to the owner; b. that true or real apprehension be present; c. that the mind of making the thing one's own be present.

At the present time in our regions, where there are no parts of the earth not yet occupied by men, there occur only occupations of animals, which are made by hunting, fishing, and fowling, and occupations of found things, which are either buried, abandoned, hidden in the bosom of the earth, or lost.

**384. Distinction of animals.** Animals are distinguished into three kinds:

a. Tame or domestic animals, which by their nature use human society and therefore do not enjoy natural liberty, such as horses, sheep, oxen, chickens, dogs. These of themselves have an owner.

b. Tamed or domesticated animals, which of themselves indeed enjoy natural liberty, but by the industry of men are deprived of it and are subjected to their ownership, such as birds in a cage, bees in a hive, doves in a dovecote. Fish in private fishponds and wild animals enclosed by fences are also numbered among domesticated animals.

c. Wild or sylvan animals, which by their nature shrink from human society and enjoy natural liberty, such as hares, fish, birds. These do not have an owner.

**385. On occupation of animals.**

1. Tame animals always remain of the former owner, even if they wander off or depart from custody; for since they are domestic by their nature, they never become things belonging to no one.

a. Therefore they cannot be occupied by another, neither they themselves nor their fruits, but must be restored to the owner even when dead, wherever they have been found.

b. The same is also valid in the case in which they certainly would have perished for the owner unless they had been freed from destruction; for a thing does not cease to belong to its owner because it has been rescued from destruction by another. Therefore animals snatched from a fire or from a wolf must be restored to the owner; nevertheless, for the labor a just stipend is owed.

**386.** 2. Domesticated animals remain of the former owner as long as they are detained in custody; but as soon as they have escaped from custody and recovered their former liberty, they become the things of the first occupier.

a. Animals which are detained in custody are of a twofold kind: some which, once sent out from custody, are not accustomed to return, such as deer, hares, most birds, fish; and others which are accustomed to return, such as doves and bees. Now the former are judged to have recovered liberty when their pursuit has become morally impossible for the owner, or when the owner no longer pursues them; but the latter when they have lost the custom of returning. But they are judged to have lost the custom of returning if they do not return for some days, which positive law determines more accurately.[671]

b. It is not licit without injustice to attract to oneself by fraud the domesticated animals of another, such as doves, for example, by throwing out more exquisite food, because the owner of a thing has a strict right that his own thing not be withdrawn from him by others through force or fraud.[672]

Whether it is licit to kill the animals of another (dogs, doves, chickens) which harm a field. It is licit to kill them lest they harm: for it is licit to repel force by force. But these things are required: a. that the damage cannot be forestalled in another way, for example, by driving them away or by warning the owner; beta. that the damage which they inflict be notable or at least equal to the damage which the owner of the animals suffers; but doves, chickens, and such things inflict notable damage only at the time of harvest and sowing; gamma. that the preservation of one's own thing be directly intended, but not the damage of the neighbor; delta. that the animals killed can be retained only as compensation for the damage inflicted.[673]

**387.** 3. Wild animals, as long as they wander freely, can be taken by anyone: for they belong to no one, and therefore become the things of the first occupier. Therefore he who takes an animal of this kind becomes its owner by the occupation itself, whether he took it on his own land or on another's land; and he preserves ownership of it as long as he detains it in his own custody, or, if it has escaped, as long as he pursues it with hope of recovering it.

a. A wild animal which is found on another's unenclosed land does not pertain to the owner of the land, but belongs to no one. The owner of the land indeed has the right of prohibiting another from hunting on his land and of demanding compensation for damage which has been brought upon the land by the hunter; but the wild animal killed or taken from a nest pertains to the hunter.

b. Wild animals which are in enclosed lands, and fish which are in preserves from which they cannot escape, pertain to the owner of the land or preserve, because through the enclosure erected to guard them they

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**Notes**

671. From C. A., Section 384, a swarm of bees which the owner does not pursue for two days, and a domesticated animal which has not returned to the owner for 42 days, can be occupied by another. Cf. C. G., Section 961.

672. Cf. Elbel-Bierbaum, II, pr. 5, n. 207.

673. C. A., Section 1320 ff.; C. G., Section 833 ff.

have already been taken. Therefore he who hunts in enclosed groves or fishes in private fishponds acts against justice and is bound to restore the animals taken or an equivalent price. Yet if the enclosed forests or lakes of water are of very great extent, so that the capture of the animals becomes uncertain, they are not judged to have lost their natural liberty. Therefore he who hunts or fishes in places of this kind indeed injures another's right, but the damage inflicted must be taken from the probable hope which the owner had of taking those animals.[674]

c. A wounded wild animal belongs to the hunter wounding it if it has been so wounded that it can no longer flee away: for the hunter by the wounding itself apprehends it in fact. Likewise a wild animal caught in a snare belongs to him who placed the snare, provided it is so ensnared that it cannot escape; for by the snare it is in reality occupied.

It is asked whose a wild animal is which is caught in a snare which someone placed on another's land. a. Besides the owner of the land and the hunter, no one has a right in the captured wild animal; therefore any other person who either releases the wild animal from the snare or takes it away acts unjustly, unless it would have escaped; for if it would have escaped unless another extracted it, it belongs to the one extracting. beta. A wild animal caught in a snare is indeed of itself the hunter's; nevertheless the owner of the land, if the snare was placed against his will, retains the right of impeding him from approaching to extract the wild animal, and therefore of releasing it while still alive, and probably even of taking it for himself.[675]

**388. On the right of hunting and fishing.** 1. In an open place accessible to all, whether public or private, each one can of himself hunt (fish), provided he does not bring damage upon another's lands. Nevertheless hunting (fishing) can be prohibited. From received custom this prohibition is judged to be merely penal, which obliges only to paying the fine or undergoing the penalty. But if the right of hunting has been leased, the tenant acquires the exclusive right of hunting in that place; and in our European regions the right of hunting is leased almost everywhere.

Yet laws which prohibit hunting (fishing, fowling) at a certain time to avoid a lack of wild animals (*Schonzeit*) rightly seem to most to be preceptive laws, which by reason of the common good in a matter of sufficiently great importance oblige in conscience from legal justice.

2. If the exclusive right of hunting (fishing) in an open place belongs to someone, whether because he has leased the right or because the owner of the land has reserved it for himself, by this fact he does not acquire a right in the animals which are found in that place, since they still enjoy natural liberty. But with the right of hunting there before others he has the hope of taking the animals which are found there. Therefore he who hunts or fishes in a place of this kind against his will, by the very hunting (fishing), injures the right of the tenant or owner, but makes the animals killed his own and can retain them; nevertheless he ought to repair the damage inflicted.[676] But damage is not judged to be inflicted unless either several or larger animals are killed.

a. If a great slaughter of animals or a great capture of fish takes place, the hope of the owner of taking at least some of them is manifestly injured. If only one or another animal is taken, the hope which the owner had of taking precisely that animal is injured. Now if the matter concerns smaller animals, and if there are many animals there, this hope is almost none and is worth little or nothing; wherefore no restitution must

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**Notes**

674. Laymann, l. 3, tr. 1, c. 5, n. 12; Holzmann, *Theol. moral.*, t. 4, n. 31.

675. Cf. Gury-Ballerini, I, n. 572, q. 3, note.

676. Positive laws can not only prohibit hunting, but also impede the hunter from acquiring ownership of the captured wild animal; statutes of this kind, if they certainly exist, oblige in conscience. C. G., Section 958.

be made. But if there are few animals of this kind there, or if the animals are larger, this hope is judged to be worth about half the price of the captured animal itself.[677]

b. Where hunting is prohibited in public or private forests, the owners of the forests or tenants of the hunting: alpha. ought to beware lest wild animals be permitted to eat down or devastate fields or meadows; otherwise farmers have the right of defending their own goods not only by driving away the wild animals, but also by killing them if there is need; beta. they are bound to repair damages which are inflicted either by wild animals or by hunters on the occasion of hunting.

## Article Second. On Invention

Invention is a species of occupation. But found things are of four kinds: treasures, vacant things, abandoned things, and lost things, concerning which one must treat in particular, because the rights of the finder are determined diversely by positive laws according to the diversity of the thing found.

**389. On the finding of a treasure.** A treasure is a precious thing, buried or hidden, which no one can prove to be his own.

a. Therefore three things are of the notion of a treasure: alpha. that it be a precious thing; beta. that it belong to no one; gamma. that it be buried or hidden. Therefore, in the proper sense, metallic or coal veins which are found in the bosom of the earth are not treasures.[678]

b. The owner of the land in which the treasure is found is he who has its direct ownership. Therefore if a treasure is found in the land of an ecclesiastical benefice, the owner of the land is not the beneficiary but the Church;[679] if it is found on public land, the owner is the community or city (the fisc), which administers public goods.

c. He is not called the finder of another's thing who first sees it, but he who sees and apprehends it. He is not called the finder of a treasure who first sees and apprehends a treasure already uncovered or dug up by another, but he who uncovers it or makes it visible. The first right of apprehending the treasure belongs to the detector; if the detector does not use this, the treasure can be apprehended by another.

**390.** 1. By the law of nature a treasure seems to be a thing belonging to no one and therefore a thing of the first occupier, that is, of the finder, who by finding occupied it. For it was not born in the land in which it is found, but was placed there by an external force. Yet positive laws consider a treasure in some way as a part of the land and therefore adjudicate part of the treasure to the owner of the land.

2. Recent laws nearly agree with the dispositions of Roman law:[680]

a. A treasure which is found in one's own land belongs wholly to the finder. (A law which ascribes the whole treasure or part of it to the fisc is penal.)

b. A treasure which by chance is found in another's land must be divided; therefore half is of the owner of the land, but half is of the finder.

This law must be observed in conscience, and indeed before the sentence of the judge (n. 356). At what time the owner of the land acquires a right in part of the found treasure, whether by the finding itself or after the

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**Notes**

677. E. Muller, *Theologia moralis*, II, Section 102.

678. It seems to make no difference whether the thing has been hidden by the hand of man or by the powers of nature; therefore C. A., Section 398, refers ancient things which are dug up (*antiquarische, archaologische Funde*) to treasures; likewise C. G., Section 981.

679. From C. A., Section 399, each is considered as owner of the land: both he who has direct ownership and he who has usufruct.

680. C. A., Section 398-401. By decree of 16 June 1846, political authority renounces the part reserved to itself there. C. G., Section 984.

finder apprehends it, depends on the disposition of the law. Ordinarily from the codes the treasure found, not only apprehended afterward, must be divided between the owner of the land and the finder. Therefore the finder could not without injustice bury the treasure again, buy the land, and retain the whole for himself.[681]

c. A treasure which deliberately and without the knowledge of the owner is sought and uncovered in another's land, after the sentence of the judge, either wholly belongs to the owner or must be divided between the owner and the fisc.

alpha. The law prohibiting that the lands of others be dug up was established to protect the rights of owners; but transgressors of this law are deprived, as a penalty, of part of the found treasure. Because the law was established as a penalty, the finder of the treasure is not bound to undergo the penalty before the sentence. Hence if the finding remains hidden, he can licitly agree with the owner of the land concerning dividing the found treasure.

beta. If money or another precious thing is found in a chest, or in an old garment, or in a corner of a house, whose owner cannot be found, it can be considered as a treasure; and therefore the whole is of the finder if he himself is the owner of the thing in which it is found. Otherwise the found thing must be divided between the finder and the owner of the thing which contains the treasure.

**391. On occupation of a vacant thing.** Vacant things by the law of nature become the things of the first occupier, unless by human law their ownership, either in whole or in part, belongs to another: for things belonging to no one by the law of nature become the things of the first occupier.

a. Mines or useful things hidden in the bosom of the earth, such as metallic, marble, sand, coal veins, etc., are considered by some (Lugo) as accessory parts of the land in which they are found, which therefore pertain to the owner of the land. Yet others (Lessius, Soto) adjudicate mines to the first finder, because it does not seem equitable to them to consider a precious thing, such as a vein of gold, as an accidental part of a thing of much lesser price. Concerning this matter the codes must be consulted.

b. Movable vacant things, such as little stones, gems, fragments of gold, and things of this kind, become the things of the first occupier.

**392. On occupation of an abandoned thing.** Abandoned things likewise belong to the first occupier, unless their ownership is attributed to another by positive law: for things belonging to no one become the things of the first occupier.

a. Goods found on the shore of the sea or on the bank of a river after a shipwreck or flood, likewise goods thrown out from fear of shipwreck, cannot be held as abandoned and therefore do not become the things of the first occupier.[682]

b. Wood or other goods which are carried from one place to another by flood are not abandoned things unless from the circumstances it appears either that the owner is no longer solicitous about them or has no hope of recovering them.

c. Fruits, such as nuts, grapes, ears of grain, etc., which remain after the harvest has already been completed, from the presumption that owners do not care about them, are held as abandoned. Therefore the owner can also forbid their collection.

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**Notes**

681. Cf. Matt. 13:44.

682. C. A., Section 388.

d. He who finds coins in a shop or in a church (for example, by sweeping it) or in a public street can retain them for himself when, on account of the great concourse of men into that place, there is no hope that the owner will be found. Yet if the found thing is of some value, it ought to be deposited in the sacristy or with the pastor, where things lost in the church are usually sought by the owner. But if after some time (about two months) the owner does not claim the thing for himself, it belongs to the finder.

e. In doubt whether a thing is lost or abandoned, it must be treated as lost.

f. Goods left by one who has died without a testament and without an heir, whether movable or immovable, fall to the fisc.[683]

**393. On the finding of a lost thing.**

A lost thing differs from a treasure in two ways: a. in that it is not hidden; b. in that it is not a thing belonging to no one, but has an owner, although unknown. But where, with the circumstances considered, there is no longer any hope of finding the owner, it is judged to have fallen from his ownership and is held as abandoned.

1. The finder can leave the found thing in its place; nevertheless ordinarily there exists an obligation, not indeed of justice but of charity, of carrying it with him.

An obligation of justice does not exist because, with special contract excluded, no one is bound from office to carry another's thing with him; but an obligation of charity can exist. For from charity we are bound to avert damages from the neighbor if it can be done conveniently. Hence if otherwise the owner would not recover his thing, and if there is hope of detecting the owner, the obligation of taking the thing urges, unless inconvenience excuses. This obligation is greater according as the detriment which the owner suffers from the lost thing is greater.

2. He who has taken the found thing is bound from justice to seek the owner, not at his own expense but at the owner's, and meanwhile to guard it diligently.

a. He who takes a found thing, by that very fact, spontaneously receives another's thing into his own custody. But he who has another's thing in his custody is bound diligently to preserve it for the owner and to render it to the owner; and if the owner is unknown, to seek him by suitable means.

b. He who culpably neglects to investigate the owner, and a fortiori he who deliberately hides the found thing, when hope of finding the owner exists, is the cause why the owner cannot recover his own thing. Therefore he becomes an unjust possessor of another's thing and cannot retain it, but, if the owner does not appear, ought to distribute it to the poor or to pious uses.

c. A certain mode of investigating the owner is indeed not prescribed by the law of nature, but any mode suffices which is judged suitable for the end; but by positive law the mode of investigating the owner is accurately determined.[684]

d. If the found thing is not of lesser importance,[685] the mode of investigating the owner prescribed by law must generally be observed in conscience: for private inquiry is not judged an apt and sufficient means of finding the owner. Therefore he who knowingly and willingly does not observe the statutes of positive law does not become owner of the found thing, not even by prescription, because good faith does not assist him.[686]

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**Notes**

683. C. A., Section 760; C. G., Section 1936.

684. C. A., Section 389, 390, where a diverse mode is prescribed for the diverse value of the found thing; C. G., Section 965 ss.

685. A thing is of greater importance from C. A., Section 389, if it exceeds the value of 2 crowns; from C. G., Section 965, if it exceeds the value of 3 marks; from custom, if it exceeds the value of 10 (according to others, 20) crowns.

686. Cf. Lehmkuhl, *Das burgerliche Gesetzbuch*, at Section 965 ff.; Carriere, *De iustitia*, I, n. 336, 347.

3. If the owner has been found, the finder is bound to restore the thing to him; nevertheless the expenses made in investigating the owner, and the reward if any has been promised by the owner or by law, he can by right demand or deduct for himself from the thing.

4. If, after diligent inquiry has been employed, the owner is not detected, the finder can retain the thing for himself by right of occupation; and if afterward the owner appears, he is no longer bound to restore the thing to him.

a. Once sufficient diligence has been employed in investigating the owner, it can prudently be judged that the owner can no longer be found. But where there is no reasonable hope of finding the owner, the thing by natural right or from the tacit consent of men is judged abandoned. But an abandoned thing becomes the thing of the first occupier. Therefore by occupation the finder acquires ownership of the found thing, not by prescription.

b. Some positive laws establish that the finder acquires ownership of the found thing after a year, others after three years.[687] By this statute there is defined the time after which the owner is judged to lose ownership in his thing; for it is prudently presumed that after this time has elapsed the owner can no longer be found.

## Article Third. On Accession

Accession (*Verbindung, Vermischung, Umbildung, Verarbeitung*) is a mode of acquiring ownership by the fact that something is joined to one's own thing. Three species of accession must be distinguished: natural, industrial, and mixed accession, according as something accedes to one's own thing either by the powers of nature alone, or by human industry alone, or from the concurrence of each.

**394. Natural accession** can happen in three ways:

a. By fructification, by the fact that fruits arise from someone's tree or land without human industry. Their ownership is determined from the principle: a thing bears fruit for its owner.

b. By birth, by the fact that an animal arises from someone's animal. Its ownership is determined by the rule: offspring follow the womb, that is, whose the generating animal is, his also is the generated animal, whether it was conceived from one's own or from another's animal.

c. By alluvion, by the fact that earth is added to someone's land. If it accedes gradually, it immediately pertains to the owner of the land;[688] but if a notable part of earth accedes suddenly (avulsion), the owner of the land acquires ownership if the prior owner has not claimed it for himself within the time prescribed by law (within a year).[689]

**395. Industrial accession** can happen in four ways:

a. By specification, when another specifically diverse form accedes to one's own thing, as if someone makes cloth from my wool, or a garment from cloth, bread from my wheat, a ring from my gold. From the law of nature the ownership of the new thing is determined according to the axiom: the accessory follows the principal. But since frequently it cannot be determined whether the principal is the substance of the thing or the new form, one must stand by the dispositions which the civil code contains concerning this matter.[690]

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**Notes**

687. C. A., Section 391, 392, 1466; C. G., Section 973.

688. C. A., Section 411.

689. C. A., Section 412.

690. C. A., Section 415; C. G., Section 946-950.

From the codes, some establish that the new thing pertains to him who gave the new form to the matter, with the price of the matter paid, unless bad faith intervened or the value of the matter is greater. But others establish that the new thing pertains to him whose the matter is, with the price of the art employed paid, unless the price of the art far exceeds the price of the matter and unless bad faith intervened.

b. By adjunction, when another thing is so joined to one's own thing that both make one whole, as if someone makes a painting on my canvas or inserts a gem into my ring. If the two things cannot be separated, ownership of the whole is determined from the same axiom: the accessory follows the principal, which positive law determines more accurately.

c. By commixture, when solid things belonging to diverse owners are joined; by confusion, when liquid things are joined, as if wheat is mixed with another's wheat, wine with another's wine.

alpha. If the united things can be separated, separation ought to be made and each thing must be restored to its own owner, unless someone uses another's thing only for repairing his own, for example, another's thread for sewing his own garment. In this case the owner of the principal thing becomes owner also of the accessory thing, but he is bound to pay to the owner of the accessory thing its price.

beta. If the united things cannot be separated, as if the wheat of one is mixed with the wheat of another, both are owners of the whole mass, which must be divided between them in proportion to the part previously pertaining to them. Yet if the part of one can be considered as principal, because it is greater or more precious, he, if he wishes, becomes owner of the whole, which therefore he can retain for himself, yet with the obligation of paying to the other the price of his part.

d. By building, when a building is constructed on one's own land from another's material or on another's land from one's own material. The laws nearly agree in this, that according to the principle, the accessory follows the principal, they establish that the building, as accessory, pertains to the owner of the land, who nevertheless ought to compensate the other, unless he acted in bad faith.

He who knowingly and in bad faith builds on another's land loses ownership of the building and cannot demand compensation either of the material or of the labor. In this way the S. C. of Bishops and Regulars, 11 March 1892, following Roman law, decided a particular case;[691] nevertheless modern laws do not all define the matter in the same way.[692]

**396. Mixed accession** happens in a twofold way:

a. By sowing, when seeds scattered in another's field germinate. b. By planting, when plants placed in another's land grow. Ownership of the thing which grows in his land is attributed to the owner of the land, according to the little verse:

Whatever is planted, sown, or built, All yields to the soil, if nevertheless it has set roots.

Yet if something is planted in a movable thing, for example, a flower in a pot, ownership of the whole must be determined from the principle: the accessory follows the principal. Therefore according as the flower or the pot is of greater price, the whole pertains either to the owner of the flower or to the owner of the pot.

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**Notes**

691. Cf. *Acta s. sedis*, XXIV, p. 550.

692. Cf. C. A., Section 417-419; C. G., Section 910, 947.

## Article Fourth. On Labor

**397. Preliminary notions.** 1. This mode of acquiring ownership today merits special attention, because socialists, rejecting the other modes, call this alone legitimate: for they contend that no one has ownership except of those things which he produces by his own labor.

By the name labor is understood human industry which is apt for producing goods. It makes no difference whether it is spiritual or bodily, whether it contributes mediately or immediately to producing goods, provided it consists in the use and effort of human powers, which by their nature tend to this, that they produce goods useful either to a single man or to the community.

2. Now, although labor is not the sole nor the primary mode, nevertheless it is a legitimate mode of acquiring ownership.

a. And indeed, since man is owner of the actions both of soul and of body, he can employ them either in his own name or in the service of another. If the first, by natural right he is also owner of the fruits which he produces by his own labor. If the second, he has a right to a suitable wage for the labor and becomes owner of it.

b. Bodily labor, whether it is exercised in one's own thing or in another's thing, necessarily supposes already preexisting ownership of the matter in which the labor is performed and the new form is produced. Therefore it cannot be either the sole or the primary mode of acquiring ownership.

**398. Assertions.** 1. He who produces a new form in his own thing is owner of the thing and of the form produced, or of the whole new substance, since he has a right in the fruits of his own labor.

2. He who by laboring in another's thing produces a new form of itself acquires partial ownership of the changed thing: the substance is of the prior owner, but the new form, as fruit of labor, belongs to him who performed the labor.

3. Since man is owner of his own labor, he can hire it out to another. Now he who has hired his powers, whether spiritual or bodily, to another and therefore labors in the service of another does not acquire a right in the fruits of the labor, but in a just wage for the labor, the quantity of which will be determined below, where there will be speech concerning the contract of hiring.

## Article Fifth. On Prescription

**399. Definition.** Prescription can be defined: a mode of acquiring ownership through possession continued for the time and in the mode defined by law.

a. Prescription is sometimes, especially by theologians, taken for the same thing as usucapion, but sometimes is distinguished from usucapion. But in assigning the distinction between the two, authors do not agree.[693]

b. The term ownership in the definition must be taken generally: for the right which is acquired by prescription is diverse: either full ownership, or direct ownership, or useful ownership, or servitude, or liberation from servitude.

c. The law which determines the mode and duration of possession required for prescribing is positive law, whether ecclesiastical or civil. Therefore, according to the variety of laws, the time necessary for legitimate prescription is also diverse.

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**Notes**

693. C. A., Section 1451, uses these terms in such a way that it calls acquisitive prescription usucapion (*Ersitzung*), but liberative prescription simply prescription (*Verjahrung*). In a similar way C. G., Section 194 ss. and Section 937 ss.

**400. Division.** Prescription is divided: a. Into acquisitive, by which someone acquires a new right, for example, of passing through another's field; and liberative, by which someone liberates himself or his thing from some burden, for example, himself from the burden of paying a debt, or a field from the burden of suffering another to be able to pass through it.

b. Into memorial, whose beginning does not go beyond the memory of men, and immemorial, whose beginning goes beyond the memory of men now existing.

c. Memorial prescription is divided into ordinary, which is completed in the space of three or ten years, and extraordinary, which requires thirty or more years.

d. By reason of time, into prescription of very short time, which is below three years (in Germany two years); of short time, which is below ten years; of long time, which is below thirty years; of the longest time, which exceeds thirty years.

e. By reason of persons, into prescription among those present and prescription among those absent.

Those are called present, according to the disposition of law, who dwell in the same territory, or who exist under the same judge or governor; those are called absent who dwell in diverse territories or exist under a diverse judge or governor.

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**401. Nature of prescription.** 1. Prescription is a legitimate title of acquiring ownership: for prescription by its nature consists in this, that possession by the very course of time, if the required conditions are present, transfers ownership of the thing possessed to the possessor. It has the force of transferring ownership from human law: for human law, by force of high ownership, can transfer ownership from one to another, even against the will of the owner, on account of grave reasons of the common good; but grave reasons of the common good demand this.

a. The reasons on account of which prescription has been introduced are: alpha. lest ownership of things be uncertain for a long time; beta. that disputes may more easily be ended or altogether avoided; gamma. that doubts of conscience and fears of losing things possessed may be removed; delta. that the diligence of men in preserving things and prosecuting their rights may be sharpened. - For liberative prescription this twofold reason is brought forward: alpha. presumption of payment on the part of the debtor, because creditors are not accustomed to neglect for a long time the payment of a debt; beta. immunity from the burden of preserving testimonies of payment forever.

b. Both ecclesiastical and civil law use prescription.[694] Where human law in reality intends to transfer ownership by prescription, the law of prescription has value also in the forum of conscience. Therefore he who legitimately prescribes against another makes his own, by force of law, the thing which he possessed for a certain time; hence if, after prescription has been completed, he learns that the thing was another's, he is not bound to restore it, even if the former owner demands it back.

2. The five conditions which are required for legitimate prescription are contained in the following verse:

You will not usucapt unless such five things are yours: Let there be an apt thing, faith, title, possession, time.

**402. An apt thing,** or one capable of prescription, is generally a thing whose ownership can be acquired. But a thing which, whether by its nature or from the disposition of law, cannot come into another's ownership is incapable of prescription, because by prescription ownership of the thing is transferred to another.

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**Notes**

694. C. *Quoniam* fin. (20), *De praescript.* (II, 26).

a. Sacred things, that is, things consecrated to divine worship, such as churches, chapels, altars, cannot be prescribed by laymen; but they can be prescribed by those who can have their ownership. Thus, for example, a cemetery can be prescribed by one church as a juridical person against another church; but a private man can prescribe only the right of burial in a determined place of the cemetery, because he can acquire this alone. In the same way a private man can prescribe sacred utensils which are in the ownership of a private man.

b. Sacred rights of themselves can be prescribed just as sacred things can; thus an ecclesiastical benefice, the right of conferring a benefice, and the right of electing to a prelature can be prescribed only by a cleric, because they can be possessed only by a cleric; but the right of patronage can be prescribed even by a layman, because it can also be possessed by a layman.

c. Public profane things can be prescribed by a community against a community, but not by a private person, because they cannot be possessed by a private person, such as public roads, bridges, fountains, ports, etc.

d. Stolen things indeed cannot be prescribed by the thief because of defect of good faith, even if by lapse of time he had forgotten that he possessed the thing unjustly, unless the defect has been purged. But it is purged by possession of 30 years if the matter concerns a movable thing, 40 years if the matter concerns an immovable thing. Whether they can be prescribed by another who received them from the thief in good faith depends on the disposition of law. And modern codes indeed nearly establish that he who in good faith received the thing from the thief (by donation, purchase) can prescribe. The same is valid concerning a found thing if the finder omitted due diligence of finding the owner.

e. Finally, among things which cannot be prescribed must be referred those whose prescription law impedes. Ecclesiastical law impedes that the boundaries of parishes or dioceses once constituted, conditions attached to pious foundations, or burdens of Masses[695] can be prescribed; but civil law impedes prescription against dotal goods, goods of wards, etc.[696]

**403. Good faith** is an erroneous judgment by which someone prudently, that is, with moral certitude, judges that the thing which he possesses is his own. Therefore he who doubts from the beginning whether the thing is his own cannot begin prescription.

a. By liberative prescription a burden or obligation is extinguished. But obligations are of two kinds: active, which are referred to a personal or real action, such as of paying from purchase or loan; and passive, which are referred only to a burden to be undergone, for example, of suffering passage through one's own land.

b. Likewise good faith is one thing positive, which is the persuasion of the prescriber or debtor that he has no obligation; another negative, which is the persuasion of the prescriber that he does nothing against the right of another. This therefore requires that he not impede another in the use of his right, but does not require that he warn him about the use of the right.

1. Good faith is required for beginning and also for continuing every prescription, both acquisitive and liberative: for it is repugnant to justice that someone should make his own a thing which he knows to be another's, since rather he is bound to render it; nor can civil power through the law of prescription help anyone in inflicting an injury. Therefore the Church altogether requires good faith for legitimate prescription.[697]

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**Notes**

695. Council of Trent, sess. 25, c. 5, *De reform.*; S. C. C., 18 Aug. 1813; 20 Dec. 1879. Cf. *Acta s. sedis*, XIII, p. 220.

696. C. A., Section 1455-1459.

697. C. *Quoniam* fin. (20), *De praescript.* (II, 26), where the words of the Fourth Lateran Council are had: "By synodal judgment we define that no prescription, whether canonical or civil, has value without good faith." Reg. iur. 2 in 6: "A possessor of bad faith prescribes in no time."

a. Therefore prescription begun in good faith, to which bad faith supervenes, is interrupted; but if to prescription begun in good faith there supervenes a doubt which cannot be laid aside after moral diligence has been employed, prescription can be continued. Indeed, even if investigation of the truth is culpably neglected, prescription itself, which has been begun in good faith, is not impeded; but the one prescribing contracts an obligation of restitution insofar as the presumed owner is deprived of hope of recovering his own thing.

beta. If there is any prescription for which the law requires either no good faith or only good faith in the beginning, it has no value in conscience. Therefore a law of this kind must be understood in such a way that it only denies judicial action (*das Klagerecht*), but not in such a way that it transfers ownership itself.

2. For active liberative prescription, positive good faith is required, even if civil law should establish otherwise. Therefore, if positive good faith is lacking, this prescription has no value in conscience. But for passive liberative prescription, negative good faith is required and suffices. But if civil law admits the prescription of him who impeded another in the use of his right, prescription has no value in conscience.

3. The good faith of the predecessor always benefits a successor, both universal and particular, who himself is in good faith. Therefore if someone, after the completed time of prescription begun by the predecessor and continued by himself, learns that the thing is another's, he is not bound to return it. The reason is that the predecessor hands over the thing to the successor with every right which he himself has.

Whether the bad faith of the predecessor impedes prescription of the successor, if he himself is in good faith through the whole time required for prescription, depends on the disposition of law, by which one can stand also in conscience: a. Roman law, and canon law, which adopted it, establishes: the bad faith of the predecessor impedes prescription in the immediate universal successor, but not in the particular successor or in the mediate universal successor. b. Modern civil law admits prescription even in the universal and immediate successor or heir, so that he prescribes the inheritance, provided he has possessed it in good faith for 30 years (according to other codes for 10 years).[698]

alpha. A universal successor is called one who, from a universal title, succeeds into a universal right, whether there is one heir or several, whether he succeeds by force of a testament or ab intestato. A particular successor is called one who by a particular title, whether of legacy, purchase, donation, etc., succeeds another in possession of a determined thing. A successor or heir is one thing immediate, who succeeds the deceased himself; another mediate, who is heir of the immediate successor.

beta. A universal successor or heir in Roman law is considered as one person with the deceased; therefore just as the predecessor who is in bad faith cannot prescribe, so neither can the successor. But the successor of this one, that is, the mediate universal heir, can prescribe if his own predecessor was in reality in good faith; for a mediate heir is not the heir of the first deceased, who was in bad faith, but of the immediate heir, who is supposed to have been in good faith. A particular successor can prescribe notwithstanding the bad faith of the predecessor, because he does not represent the person of the predecessor; wherefore the latter does not communicate to him personal defects, of which sort bad faith is.

**404. Title** is the cause on account of which someone possesses a thing, for example, purchase, donation. Therefore title at the same time is that reason on account of which the one prescribing judges that the thing is his own.

Title is universally divided into true, which in reality transfers ownership, and apparent, which does not transfer ownership. Apparent title, which comes here to be considered, is either colored or believed or presumed. Colored title is a cause truly indeed existing, but invalid by reason of a hidden defect, as if someone

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**Notes**

698. C. A., Section 1463, 1493; C. G., Section 194, 195.

buys a thing from a thief. Believed title is called a cause which is thought to exist, but in reality does not exist, as if a master who had handed money to a servant for buying a thing thinks that the thing was bought by the servant, which nevertheless was not bought by him but taken away by theft. Presumed title is called a cause capable of transferring ownership, which never intervened nor was thought to have intervened, but on account of the long duration of possession is supposed by law.

1. True title is not required for prescription, but apparent title is required and suffices, whether it is colored or believed. a. If true title which transfers ownership were present, prescription would be superfluous. b. Apparent title is required, because without a title from which the possessor judges that the thing is his own, prescription cannot be begun in good faith. c. Not only colored title but also believed title suffices, because each can found good faith.

Therefore if by law a just or legitimate title is required for prescribing, a title is understood which by the disposition of law suffices for prescribing.

2. In extraordinary prescription, presumed title suffices: for the long duration of possession founds the presumption of title.

Therefore he who can demonstrate possession of the longest time is not bound to allege and prove the title, but in this case title is presumed from long possession. Yet if the adversary can demonstrate absence of title, possession even of immemorial time has no value: for presumption yields to truth.[699]

**405. Possession.** 1. For prescribing, legitimate possession is required: for possession is the foundation of prescription; wherefore from the rule of law, without possession prescription does not proceed.[700]

a. Possession in acquisitive prescription consists in the holding of a thing or in the exercise of a right, according as a thing or a right is prescribed; but in liberative prescription it consists in possession of liberty, by which the person or thing is not held to serve for the utility of another who does not use his right.

Since this liberty is possession very improperly so called, others simply teach that no possession is required for liberative prescription, but that the right (for example, of demanding payment) which is not exercised within the time determined by law is extinguished by its own nature.[701]

b. He who possesses a thing in his own name also prescribes in his own name; he who possesses another's thing in another's name also prescribes in another's name. Thus a tutor who possesses in the name of a ward prescribes not for himself but for the ward.

2. Possession which is required by law for prescribing ought to be continuous. Prescription already begun sometimes does not proceed or does not run, either because it sleeps or because it is interrupted.

Prescription is said to sleep when on account of a supervening impediment it is suspended. But when this impediment is removed, it proceeds in such a way that the subsequent time can be computed with the preceding. It is said to be interrupted when on account of a supervening impediment, for example, because bad faith supervenes or possession is lost, it is altogether extinguished.

**406. The time** necessary for prescribing is determined by law.

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**Notes**

699. C. A., Section 1472.

700. Reg. iuris 3 in 6.

701. Cf. Holzmann, *Theologia moralis*, t. 4, n. 136.

The time required for prescribing is diverse in diverse laws. Prescription of goods of the Church which has value in conscience is governed not by civil laws, but by the laws of canon law (which are the laws of Roman law with peculiar privileges added); all other prescriptions are subject to the laws of their own province.

1. Concerning ecclesiastical prescription.

a. Immovable and precious movable goods are prescribed in 40 years.

alpha. It is not necessary to warn that among ecclesiastical goods are also referred the goods of monasteries and of any pious places whatsoever which have been erected by ecclesiastical authority.

beta. The Roman Church enjoys a privilege by force of which its immovable goods are not prescribed except in 100 years. A similar privilege has been granted to certain monasteries. Thus the goods of the Order of St. Benedict are not prescribed except in 60 years; the goods of the Cistercians and Mendicants are not prescribed except in 100 years.

b. Movable goods not precious are prescribed in 3 years with title, in 30 years without title.

c. Servitudes inhering in immovable goods are equated with immovable goods themselves. Therefore, that ecclesiastical goods may be burdened with servitudes, the time indicated above is required; but that they may be freed from servitudes, the time of civil prescription suffices if prescription is made against a profane person or profane goods, but the time of ecclesiastical prescription is required if prescription is made against ecclesiastical goods.

2. Concerning civil prescription. The time required in civil prescription must be taken from the civil code of the region.[702] In this place only the question must be treated whether those things which modern laws establish concerning liberative prescriptions, especially active ones, have value in the forum of conscience.

**407. On the value of liberative prescription.** 1. All concede that liberative prescriptions of long and a fortiori of the longest time have value in conscience from the general motive of prescription. Therefore if, for example, after ten years a creditor demands from another a debt which the latter thought extinguished through that time, he is not bound to pay the debt, provided the civil code declares this time sufficient for extinguishing the debt.

2. Authors commonly affirm that liberative prescriptions of very short time do not have value in conscience; for those prescriptions, from the very mind of the legislator, do not intend to transfer ownership or extinguish the debt, but only to deny judicial action (*das Klagerecht*), and if they wished to extinguish the debt, they could not do it.

Prescriptions of this kind are, for example, payments owed to physicians, servants, teachers or instructors, workers, merchants, innkeepers, etc., which, if they are not demanded within the time determined by law (half a year, a year, two years), are held as extinguished before a judge. Therefore these debts are not extinguished in conscience where it is certainly established that payment has not yet been made, because prescriptions of this kind, which provide to the powerful a means of defrauding the weak of their goods, do not benefit the common good but harm it.

3. Authors dispute concerning the value of prescriptions of short time. Therefore it is difficult to determine whether, for example, the debts enumerated above or yearly rents, after three or four years have elapsed, are

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**Notes**

702. From C. A., movable goods of private persons are prescribed by the course of three years (Section 1466), but movable goods of the fisc, communities, and the Church by the course of six years (Section 1472); concerning immovable goods several things are established in Sections 1467-1472. From C. G., the ordinary time of prescription is ten years for movable things (Section 937), thirty years for immovables (Section 195, 900); yet there are things which are prescribed by the course of two years (Section 196), and others by the course of four years (Section 197).

still to be paid in conscience, or whether the debtor is immune in conscience from the obligation of paying, even if it is established that payment has not yet been made. But if it can certainly or at least probably be shown that the intention of the legislator was not only to deny action, but to extinguish the debt itself after that time has elapsed, the debtor, with good faith supposed, can be considered immune from the obligation of paying.[703]

It is clear that good faith can scarcely be present in the first debtor; but his successor, if he is in good faith, can use this prescription. Yet there are those who think that even for active liberative prescription negative good faith suffices, which consists in the absence of fraud, although there is certain persuasion that the debt has not yet been paid. Therefore they think that he who does not pay rent or the price of a lease through the time apt for prescription can with a safe conscience deny payment, especially if the payment was not made from the creditor's negligence. For since the whole force of prescription depends on civil law, where civil law does not require positive faith, it is licit to stand by it also in conscience. Nor can a law be called unjust which tends to this, that creditors be rendered more diligent and more attentive.[704]

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# Chapter Second. On the Injury of Ownership

## Question First. On Injury in General

**408. Definition.** Injury is the violation of another's right strictly so called, whether this happens by action or by omission of an action which is owed by strict right. A violation of strict right of this kind is theft, detraction, homicide.

a. Concerning the relation between injustice and injury it must be said that injustice is the wicked habit which is contrariwise opposed to the virtue of justice; for just as justice signifies a good habit, so injustice signifies the opposed evil habit. Injury is an act which pertains to that vicious habit.

b. Since there is a threefold true and properly so-called right, namely the right which is the object of legal, distributive, and commutative justice, there is also a threefold injury of right, namely injury of the right of legal justice, which lacks a proper name; injury of the right of distributive justice, which is called acceptance of persons; and injury of the right of commutative justice or of right strictly so called, which is properly called injury.

c. It is clear that injury is opposed to charity and justice, because through it a right is injured and at the same time an evil is inflicted. Nevertheless sins of injustice (for example, thefts) do not contain a twofold malice, one against charity and another against justice, but only one against justice, in which the injury of charity is contained as a genus.

**409. Division.** Injury is divided:

a. Into positive, which is inflicted by doing something against another's right, and negative, which is inflicted by omitting what is owed to another by strict right.

b. Into personal and real, according as the right of another is injured in the person, that is, in goods of soul or body, or in external goods.

c. Into verbal and real, according as the neighbor's rights are injured by words or by deeds.

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**Notes**

703. Neither from the Austrian code nor from the German code is the mind of the legislator concerning the force of this prescription certainly established.

704. Cf. *Conferenzblatt* (Brixen: Weger, 1895), p. 105 ff.; C. A., Section 1432. Cf. Lehmkuhl, *Das burgerliche Gesetzbuch*^2 (Freiburg: Herder, 1900), p. 59 ff.; C. G., Section 222.

To verbal injury is referred injury inflicted by writing, namely when through a letter, poem, defamatory pamphlet, etc., something which falls to another's ridicule, contempt, or infamy is spread among the people.

d. Into mere and damaging, according as the right of another is injured without damage or with damage of him to whom the right pertains. Thus adultery of a wife, with offspring not conceived, is mere injury; with offspring conceived, it is damaging injury.

**410. Moral and specific malice.** 1. Injury is a sin grave from its genus, because it is opposed to commutative justice, which indeed of itself obliges under grave obligation. This is also established from sacred Scripture: for the precept of not injuring justice is reckoned among the commandments which must be observed that we may enter into life.[705] It admits smallness of matter, because order is not gravely disturbed if a right in a slight thing is injured.

2. The gravity of matter in an injury of justice, especially if the matter concerns goods of fortune, must be determined from a twofold source: a. from the damage which is inflicted on the neighbor; b. from the damage which would arise for the community if such matter were not prohibited under grave obligation. For a twofold reason demands that the right of each be preserved uninjured: both the good of individual men, and the peace and security of the community. Since each person is gravely unwilling about grave damage inflicted on himself, it is usually said that a grave injustice is committed when the injured person, either on account of the damage which he himself suffers, or on account of the damage which threatens the community, is by right deservedly gravely unwilling.[706]

In sins which are committed against justice, gravity is to be taken not so much from the affection with which the owner is borne toward the thing taken away, nor from the indignation or sadness with which he is affected on account of it, but from the damage which he himself suffers, and consequently from the reluctance and opposition of will by which he is reasonably unwilling. Hence it can happen that he who takes away a thing of slight value, but very dear to the owner, sins gravely against charity, if namely he foresees that he will be affected with grave sadness and indignation, but not against justice.

**Note.** This universal norm, which extends itself to all genera of goods, will have to be applied and determined more accurately in its own places to individual goods.

3. Not all injuries are of the same moral species, but there are as many specifically diverse injuries as there are rights or goods diverse in species in which the neighbor can be injured. But first four genera of goods must be distinguished: a. spiritual goods, both natural and supernatural; b. internal goods (of life and members); c. mixed goods (of reputation and honor); d. external goods (of fortune). Some of these genera contain within themselves goods diverse in species, as will be said in their own places.

4. A right in goods of fortune can be injured in a twofold way: by unjust taking away of a thing and by unjust damaging. Through taking away a thing, the one taking receives profit; through damaging, the one damaging takes no advantage. Unjust taking away and damaging do not differ in specific malice: for each injures the neighbor's right only in goods of fortune; but that someone takes an advantage from this does not change the morality of the action.

**411. To one knowing and consenting no injury is done:**[707] for no injury is inflicted where no right is injured; but no right is injured of him who freely yields his own right. But he freely yields his own right who consents to an action unjust of itself. Nevertheless a twofold condition is required, that then no injury be done:

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**Notes**

705. Matt. 19:18.

706. Cf. Reuter, *Theol. moralis*, III, n. 294; Lehmkuhl, I, n. 761 s.

707. C. *Scienti* 27, reg. iur. in 6.

a. that the one consenting can yield his right; for if he cannot yield it, the yielding is invalid; b. that he in reality wishes to yield his right, that is, that the yielding be altogether free. For this it is required that consent be given fully and with full knowledge. Hence where consent is given from error or is extorted by fraud or fear, in reality it is none.

Hence a. he who kills one consenting or asking for his own killing commits injury: for since God alone has ownership over the life of man, man cannot fully yield this right. He who strikes a cleric renouncing the privilege of the canon does injury, because a singular person cannot renounce this privilege, since it was granted in favor of the clerical state. He who takes goods from a ward, even one consenting, commits injury, because the ward cannot validly yield his right. He who sins with another's wife commits injury, even if the husband approves the adultery of the wife, because he cannot alienate all the rights which in this case are injured.[708]

b. Therefore the action of him who kills one consenting is unjust against God, but cannot be unjust against him who consents to the action injurious in itself. Likewise the action of a wife who commits adultery with the husband consenting is opposed to the holiness of the sacrament and to the right of legitimate offspring, but is not unjust against the husband himself.

c. He who gives money to a robber to avoid death suffers injury; likewise a buyer who pays for merchandise beyond the highest price, or buys a defective thing as sound, because these persons do not consent freely. A worker who, compelled by necessity, consents to a wage less than what is owed to him by natural right suffers injury.

d. If someone, as holy men are read to have done, desires that injury be inflicted on himself and rejoices over it once inflicted,[709] likewise if someone, having followed the counsel of Christ the Lord, leaves his cloak also to one taking away his tunic,[710] he is not judged to wish to yield his right, but to exercise excellent virtue.

**412. Whether the intention of harming can render the external act unjust.**

a. If the action indeed harms another, but does not injure his strict right, whether because the other does not have strict right, or because the agent has the right of placing the action, intention cannot render the act unjust, although it is harmful: for no injury is inflicted where no right is injured.

A private man who does not extinguish a fire from a wicked mind of harming does not act unjustly, because he is not bound to this by strict right. A judge who condemns a guilty person from hatred, so that he may harm him and his family, likewise he who in legitimate defense of himself wounds an enemy from hatred, is not unjust, because these persons have the right, one to condemn the guilty person, the other to defend himself.

b. If the action of itself is indifferent toward a just or unjust effect, it can become unjust through the wicked intention of the agent: for an unjust intention causes that then the right of another is injured.

He who takes another's thing from a thief so that he may restore it to the owner does not act unjustly; he who takes it so that he may retain it for himself commits injustice. According as someone takes away the book of a friend either with the mind of stealing or with the mind of joking, he acts or does not act unjustly; wherefore if afterward by chance he lost the book, by reason of the intention he would or would not be bound to restitution.

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**Notes**

708. Cf. Lugo, disp. 8, n. 10; Vermeersch, n. 144.

709. Cf. Heb. 10:34.

710. Matt. 5:40.

## Question Second. On the Unjust Taking Away of a Thing

**413. Declarations.** 1. Another's thing can be taken away in a twofold way, either secretly and without force brought upon the owner, or openly and by force brought upon the owner. If the first, theft is committed; if the second, robbery.

Therefore two things are required for robbery: a. that the thing be taken away with the owner present; b. that it be taken away with violence brought upon him, which is judged to be employed also by any fear unjustly instilled, as when someone threatens another with death or a grave evil and thus compels him to hand over the thing. Hence a thief who breaks open doors but takes away the thing while the owner does not notice does not commit robbery; nor he who takes away the thing while the owner is indeed present, but without force brought upon him.

2. Theft and robbery are sins specifically distinct: theft is against commutative justice through real injury concerning goods of fortune; robbery is against commutative justice through injury concerning goods of fortune and through personal injury against the owner.

## Article First. On the Nature of Theft

**414. Notion and malice.** 1. Theft is defined as the hidden taking away of another's thing, while the owner is reasonably unwilling.

a. Taking away is understood as done with the mind of retaining the thing for oneself and receiving profit. Therefore he who takes another's thing to destroy it is not called a thief. Hidden, so that theft may be distinguished from robbery.

b. Unwilling: for committing theft it is required that the owner be unwilling, and indeed as to the substance or as to the taking itself, not only as to the mode of taking away, namely that the thing be taken away secretly while the owner is ignorant. He who takes something away while the owner is unwilling only as to the mode sins venially, because in the mode of taking he acted against the will of the owner, but he does not commit theft.

c. Reasonably unwilling: he is reasonably unwilling about the taking away of a thing who is not bound to leave his own thing; but he who is bound to yield his thing is unreasonably unwilling about its taking away. But he is unreasonably unwilling only if he is bound to give or leave it from justice or from piety, not however if he is bound from mere charity. Hence he who takes away a thing in extreme necessity or to compensate himself does not commit theft; nor a son who secretly takes from the goods of the parents what is necessary to himself for honest sustenance. But a poor man who takes away the goods of a rich man in grave necessity commits theft.[711] - Likewise he who abuses his own thing (for example, a wicked book) for sinning is reasonably unwilling if the book is taken away from him lest he commit sin, because he is not bound to deprive himself of the book either from justice or from piety.

2. Theft is a sin grave from its genus: a. For by theft commutative justice is injured, which of itself obliges under grave obligation. b. By the Apostle theft is reckoned among the sins which exclude from the kingdom of God: "Neither thieves … nor robbers shall possess the kingdom of God."[712] That theft can become a light sin from smallness of matter will be conceded the more easily because here the matter is divisible, which can be diminished so much that it is no longer capable of grave fault.

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**Notes**

711. Cf. Vermeersch, n. 150 ss.; Ballerini-Palmieri, III, n. 274 ss.

712. 1 Cor. 6:10.

**415. Grave matter of theft (and damaging)** must be determined both relatively and absolutely.

Matter absolutely grave is taken from the value alone of the thing taken away, with no account had of the condition of the person from whom it is taken away, and therefore it is always and with respect to all considered grave. Matter relatively grave is derived from the value of the thing and from the condition of the owner, and therefore is grave with respect to some, but light with respect to others. Wherefore matter absolutely grave is called that which, when taken away (in this place and time), inflicts grave damage, not always indeed on him from whom it is taken, but at least on society. Matter relatively grave is called that which inflicts grave damage on him from whom it is taken.

1. Matter relatively grave must be determined: for the gravity of theft depends on the gravity of the damage which is inflicted on the neighbor. But damage is of diverse gravity according as the condition of the person who suffers the damage is diverse: for what is light to one can be grave to another. Besides, if no account were had of the condition of the owner, and the same grave matter were established for all, this greatest inconvenience would follow: that a florin taken from a rich man would be grave sin, or ten florins taken from a poor man would be light sin, according as great or small matter is assigned for constituting grave sin.

That matter is considered relatively grave which, for the one from whom it is taken, would suffice according to his condition for the suitable sustenance of himself and his own for a day: for since external goods have been granted to man for the sustenance of life, and to be deprived of daily sustenance is a great harm, the quantity equaling daily sustenance (food, clothing, habitation) is deservedly considered grave.

To determine this rule more accurately for practice, from the nearly common consensus of more recent theologians and with account had of the value which money now has in most provinces of Europe, it seems possible to establish that grave matter is:

a. relative to poor beggars, about 1/2 florin = 1 mark = 1 lira = 1 crown, or even less according to greater poverty;

b. relative to workers who acquire sustenance for themselves by daily labor, about 1 florin = 2 marks = 2 lire = 2 crowns;

c. relative to craftsmen, artisans, merchants who labor in their own workshop, about 3 florins = 6 marks = 6 lire = 6 crowns;

d. relative to those moderately rich, about 5 florins = 10 marks = 10 lire = 10 crowns;

e. relative to the truly rich, about 10 florins = 20 marks = 20 lire = 20 crowns;

f. relative to the very rich or extraordinarily rich, about 50 florins = 100 marks = 100 lire = 100 crowns and more, but when the matter concerns these, attention must be given to absolute matter.

**Note 1.** These quantities are to be taken not mathematically, but morally; besides, attention must be given to the circumstances of places. For the wealth of inhabitants is not the same everywhere, nor is the value of money the same everywhere. 2. When it is unknown to whom the damage has been inflicted, according to the common opinion of doctors it is presumed to have been inflicted on one moderately rich, because this is usually what happens more frequently.

**416.** 2. Matter absolutely grave must also be determined, because, if matter absolutely grave were not determined, great damage would threaten the common good. For since men on the one hand are not accustomed to avoid light sins so diligently, and on the other hand most wish to become rich, unless a certain matter were prohibited always under grave sin, thefts would become very frequent with great damage and disturbance of peace and security.

Matter absolutely grave, which is such relative to anyone very rich and even to the fisc itself, is about 15 florins = 30 marks = 30 lire = 30 crowns. For on account of the taking away of this sum even the very rich man is gravely unwilling, even if not on account of the damage which he himself suffers, certainly on account of the damage which society would suffer if such matter were not prohibited under grave obligation.

For determining the gravity of matter relative to sacred things, one must distinguish: if the sacred thing can be estimated by price, such as a chalice, the gravity of matter must be measured as in a profane thing; but if it cannot be estimated by price, such as sacred relics, its dignity and rarity must be considered. Therefore it would be mortal to steal the smallest particle of the Holy Cross, but outside the territory of the City it would not be mortal to take away the smallest thing from the body of some saint.[713]

## Article Second. On Causes Diminishing Theft

The rules concerning the gravity of matter in theft set forth above admit various modifications in the concrete: for various causes can bring it about that the owner is less unwilling about the taking away of his thing; therefore the same causes can also bring it about that a greater quantity is required for constituting grave sin. Now, that the owner may be less unwilling can happen: a. by reason of the persons who steal; b. by reason of the things which are taken away; c. by reason of the mode of taking away. Therefore in order there must be treated: domestic thefts, theft of exposed things, petty thefts of things pertaining either to one or to several.

**417. On domestic thefts.** The persons toward whom the father of a family, if they take something away at home, is judged to be less unwilling are sons under family power, wives, and servants.

1. With respect to thefts of sons, ordinarily a quantity twice greater is required for constituting grave sin than in thefts of strangers; but wives generally can be judged still more liberally, especially if they spend the things taken away for the uses of the family or relatives.

a. Yet attention must be given whether the father is rich, liberal, friendly, or on the contrary poor, avaricious, little loving; whether household members steal for their own uses or for giving to others; whether they steal money or other precious things, or other things; whether there is one son or several.

b. Not rarely, although the father of a family, once the theft is known, seems very unwilling and is vehemently angry, he is unwilling not so much about the thing taken away as about the mode, namely that it is secretly stolen, or about the end, namely that it is consumed by gambling and drinking. Therefore frequently sons taking a thing at home do not sin except venially.

c. With respect to the obligation of restitution which is to be imposed on sons (wives), these things are to be noted: alpha. If things taken away by them are consumable by first use and have already been consumed, restitution is scarcely ever to be imposed. beta. If things taken away (for example, money) are still extant, they must be restored. gamma. If things taken away in greater quantity are no longer extant, they are earnestly to be exhorted that by caring for the domestic estate more diligently they repair the damage in some way. Moreover, condonation by the father can for the most part be presumed, unless the things taken away are very notable and were spent for the uses of outsiders. Yet it is scarcely ever expedient to advise, and much less to command, that wives or sons ask condonation of the debt.

2. With respect to thefts of servants. a. If servants steal money or other things which are usually carefully guarded, such as precious things, garments, etc., a greater quantity is not required for grave sin, because

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**Notes**

713. Reuter, *Theologia moralis*, III, n. 438. Outside the territory of the City: for from the constitution *Apostolicae sedis* (II, 15) they incur censure who extract relics from the sacred cemeteries or catacombs of the City of Rome and its territory without legitimate permission, with no account had of quantity of matter.

masters are not less unwilling toward them than toward others; and rightly indeed, because of the continual danger which threatens them from the unfaithfulness of servants.

b. If the thefts of servants happen in things which they administer or which are not usually cautiously guarded, such as food and drink, ordinarily servants do not arrive at grave sin, provided the things taken away are consumed by the servants themselves, are not sold, and are not taken away in extraordinary quantity: for in these things masters are usually less unwilling. Moreover, in estimating the gravity of the fault attention must also be given whether the master is liberal or close, and whether the person serving is disliked or dear, useful and diligent or of slight industry.[714]

**418. On theft of exposed things.** The things in whose taking away a greater quantity is required for constituting grave sin are those which grow spontaneously with almost no labor of men, especially if they are exposed, such as fruits (grapes, apples) beside roads and wood in forests.

1. Concerning fruits plucked from another's vineyard or another's orchard, the old authors are very benign and indulgent. For they say that travelers who pluck one or another apple or cluster of grapes to quench thirst or refresh strength do not sin. Indeed they universally permit grapes and apples to be eaten up to satiety, provided they are not rare and of great price and nothing is carried away.[715]

But today, on account of the circumstances of things altogether changed, which cause most fruits to be valued more highly and carefully guarded, this doctrine seems to be restricted to those fruits which are not much valued.

a. Yet these things seem able to be conceded: that it is not a sin to pluck one or another apple or cluster of grapes here and there; that workers, from the presumed consent of the owner, do not sin if they eat of the fruits for whose gathering they have been hired; that he who more often takes away that quantity of fruits which he himself can eat sins only lightly, unless the fruits are of great price.

b. But thefts of these things are to be gravely reprehended where rather grave damages are caused to the owners from them, because not only are fields trampled down, but owners are compelled to gather immature fruits lest all be carried away.

2. Wild fruits (mushrooms, strawberries, bilberries [*Heidelbeeren*], etc.) indeed of themselves pertain to the owner; but he is presumed to grant permission that they be gathered by passers-by and the poor and also sold. But if, using his right, he prohibits their collection, those gathering them sin against justice. Yet in forests of the government or of one's own community, a prohibition of gathering fruits of this kind is judged merely penal, unless a manifest reason (for example, of forestalling damages in a growing forest) dictates otherwise.

3. With respect to wood which is cut in forests, these things should be noted:

a. If wood is cut in forests which pertain to private ownership or to another community, sin is committed against justice, unless the matter concerns brushwood and dry fragments of wood; for with respect to these the owner is not judged unwilling.

b. If wood is cut in a forest which pertains to one's own community, no sin is committed if the poor take away only those things which are required for domestic use, and no great destruction is made. For the law prohibiting the cutting of wood is judged penal, which obliges only to paying the penalty after the sentence of the judge.[716]

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**Notes**

714. Lessius, *De iustitia*, l. 2, c. 12, n. 48.

715. Cf. St. Alphonsus, n. 529.

**419. On petty thefts.** The third cause on account of which a greater quantity is required for constituting grave sin is the mode of stealing, namely through thefts in light matter, which are usually called petty thefts. Therefore it is asked when thefts in light matter become grave sin and what quantity is required for constituting grave matter.

Generally, theft of light matter becomes grave sin when the matter taken away in individual thefts coalesces into grave matter. But this can happen in a threefold way: a. by intention of arriving at grave matter; b. by conspiracy; c. by multiplication alone.

**420. By intention.** 1. The intention of arriving at grave matter causes individual thefts to coalesce, even when a rather long interval is placed between the individual thefts, whether the thefts are committed against the same owner or against various owners.

This intention, by which individual thefts are committed, causes two things: first, that the matter of the individual thefts coalesces into one, even if a rather long interval intervenes between them; and then also that even thefts in light matter are grave sin: for what happens from an intention gravely evil is grave sin. In this case we have a sin indeed light with respect to the external act, but grave on account of the internal affection. The sin, even insofar as it is external, becomes grave when grave damage is completed.

2. For constituting grave matter, a greater quantity is not required than in thefts which are done at once and together, if they are committed relative to the same owner; but if the thefts are done to diverse owners, an absolute quantity is required.

Therefore he commits grave sin in each instance: a. a merchant who, by moderately falsifying measures and weights in individual instances, intends to gather notable profit or foresees that in this way he will arrive at great profit; b. an innkeeper who, by mixing a little water with wine several times, wishes to become rich: "A deceitful balance is an abomination before the Lord";[717] c. he who, having the intention of harming the neighbor in a grave matter, inflicts light damage in individual instances. Yet because all these sins proceed from the same intention of becoming rich (of harming) virtually enduring, morally they constitute one sin.[718]

**421. By conspiracy.** 1. If several, by common plan and consent, either together or successively, commit small thefts against the same owner or against various owners, their matter coalesces into one, because the individual conspirators intend the whole taking. Therefore when small thefts taken together constitute grave matter, the individual conspirators sin mortally: for conspiracy causes the individuals to will the whole damage and cooperate toward the whole.

2. If petty thefts are done to the same owner, a greater quantity is not required for constituting grave sin; but if they are done to diverse owners, an absolute quantity is required.[719]

a. If individuals act independently from each other, even if they know the damage inflicted by others, they do not sin gravely, because none of them inflicts grave damage, nor intends the damage inflicted by others, nor cooperates in it.

b. If several, stirred up by the example of another, commit light thefts which together inflict grave damage, he gravely sins whose example provoked others to inflicting damage, not indeed against justice, but against charity, provided he foresaw the damage to be inflicted.

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**Notes**

716. St. Alphonsus, n. 529.

717. Prov. 11:1.

718. Cf. *De principiis*^9, n. 308.

719. Cf. Ballerini-Palmieri, III, n. 311.

**422. By multiplication.** He who by petty thefts committed either against the same owner or against various owners arrives at grave matter sins gravely, provided he retains the things taken away, a great interval is not present between the individual thefts, and the thing taken away is of some price. For in this case the individual thefts coalesce.

1. That petty thefts which happen successively coalesce into grave matter, a twofold condition is required: a. That the thief retain the things taken away.

If he restores the prior thefts, the subsequent little thefts are not united with the preceding ones. But if he only had the intention of restoring, this does not impede thefts from coalescing; for by a new theft the intention is judged revoked.

b. That a great interval not intervene between the individual thefts.

If a notable space intervenes between individual thefts, the things taken away are no longer judged to be united. This interval must be determined from common sense, with the quantity of the thing taken away considered. If the thing taken away nearly reaches grave matter, an interval of two months causes it no longer to coalesce; if the thing taken away is far distant from grave matter, an interval of one month causes the same; finally, if the thing taken away is very slight, either it does not coalesce at all, or certainly an interval of one week impedes it from coalescing.[720]

alpha. In this case of coalescence, that theft by which grave matter is knowingly completed is grave sin; but the individual preceding thefts are venial. beta. Petty thefts which afterward happen after grave matter has been completed are grave sins, provided the will of retaining the things taken away endures and they happen with advertence to the grave damage inflicted, because they coalesce with the prior ones into grave thefts and continue the prior grave sin, but they constitute one sin in number with the prior one.[721] gamma. He who does not advert that by a light theft grave matter is completed does not indeed commit grave sin by stealing; but when afterward, adverting to grave matter, he does not propose restitution of the thing taken away, he sins gravely on account of the wicked will of retaining another's thing in great quantity.

2. For constituting grave sin in these petty thefts which happen successively, a greater quantity is required, and indeed, if the thefts happen to the same owner, matter is required which is greater by half: for the owner ordinarily does not suffer so grave a damage if the thing is taken away at intervals. But if the thefts happen to diverse owners, an absolute quantity is required.

a. Therefore tailors sin gravely when they reach grave matter by retaining fragments of cloth which remain and are still useful to the owners, unless either this custom is in force somewhere and therefore less is paid for the labor, or it is established that rich persons do not wish fragments to be restored to them, or these are of lesser importance and are not cared about by the owners. Something similar must be said of millers who retain a moderate part of the grain or flour for themselves.

beta. Servants or maidservants, especially in the families of the rich, who continually take away or consume certain small things and never restore, are not easily to be accused of grave sin nor obligated to making restitution, both because in this case from a twofold reason a greater quantity is required for constituting grave sin, and because they do not advert to grave damage, and because owners are not gravely unwilling nor demand restitution, and finally because ordinarily the things consumed are of the kind that do not coalesce into grave matter.

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**Notes**

720. Cf. Ballerini-Palmieri, III, n. 312.

721. Lugo, disp. 16, n. 43 s.

**Note.** Those accustomed to thefts are to be asked concerning the number and quantity of thefts, and where the matter concerns petty thefts, concerning the interval placed between individual thefts, so that judgment can be made concerning the coalescence of matter. Yet because they ordinarily do not know how to indicate these things, since they steal on any occasion, it suffices that in general they indicate the frequency of the thefts, the quality of the things taken away, and the time elapsed from the last confession. From these the confessor will form for himself a judgment concerning the state of the soul of his penitent. Then he will warn him concerning his obligations: of restoring, of laboring, and of abstaining from thefts in the future.

**423. On thefts of things pertaining to several.**

a. He who in grave matter takes away a thing pertaining to several sins gravely: for although grave damage is not inflicted on individuals, nevertheless individuals are gravely unwilling, because, if thefts of this kind were multiplied, the security of human commerce would suffer grave damage unless they were prohibited under grave obligation.

b. For constituting grave sin in thefts of things pertaining to several, whether these several constitute a moral person (as a commercial, industrial, insurance society, or religious community), or do not constitute a moral person, matter absolutely grave is required, because grave damage is not inflicted either on individuals or on a particular community, unless the community is small or the associates are few.

# Article Third. On Causes Excusing from Theft

There is a twofold cause which excuses altogether from theft and renders the taking away of another's thing licit: extreme necessity and hidden compensation.

## Section 1. Extreme Necessity

**424. The right of one in need.** Extreme necessity in the temporal order is that by which life is endangered.

1. He who is constituted in extreme necessity can, and of himself ought to, take from the goods of another as much as is sufficient for freeing himself from such necessity, unless the other is in the same necessity. The reason for the first is that in extreme necessity all goods are common (n. 368). The reason for the second is that each one is bound to preserve his own life if he morally can. The reason for the third is that extreme necessity gives the right of taking away another's thing; when this ceases, that right also ceases. The reason for the fourth is that in an equal cause the condition of the possessor is better; therefore it is not licit to deprive him of his own thing to whom the thing is equally necessary.

a. It makes no difference whether someone is in extreme necessity from natural causes or from the malice of men, as if robbers threaten someone with death or perpetual captivity unless he hands over a great sum of money.

b. In a fire it is not licit to seize another's ladder to save oneself if the other cannot escape danger of life without it. In shipwreck it is not licit, in order to save oneself, to seize a plank already seized by another, which he needs in order to escape.

c. What is licit in extreme necessity is also licit in quasi-extreme necessity, which commonly is equated with extreme necessity, as if someone is in moral danger of falling into a lethal disease, of losing liberty, etc.

d. Another's thing can also be taken to relieve the extreme necessity of the neighbor: for what someone can do by himself, it is also licit to do through another.

e. Even if the thing which is necessary to one in extreme need is of great value (a great sum of money), nevertheless he can take it for himself. For since in extreme necessity all things are common, he has the right of taking whatever here and now is necessary for preserving life, even if it is of great value. Nor therefore

does the right of the poor man cease because the rich man is not bound to offer him a thing of great price spontaneously. For to the right of the needy man of taking the necessary thing there does not correspond an obligation of the rich man of giving it, because the obligation of assisting and the faculty of taking from created goods those things which are necessary for the preservation of life are derived from a different source: the former arises from charity, the latter from the right of preserving life from created goods. To this right of the poor man there corresponds in the rich man the obligation of not impeding him from taking the necessaries.[722] Nevertheless Lugo seems to restrict the faculty of the needy person to taking only that which pertains to the ordinary means of preserving life: for just as he does not have the obligation of preserving life by extraordinary means, so neither does he have the right of taking them against the owner's will. - But although he does not have the obligation, nevertheless he has the faculty and permission of preserving life from created goods, from which follows the power of taking those things which are necessary.

2. In grave or common necessity it is not licit to take away another's thing, because in grave necessity the matter ordinarily concerns goods which nature did not wish to be common to all; but for preserving goods of this kind nature did not wish the means to be common.[723] Yet if in grave or common necessity the matter concerns preserving goods which nature wished to be common to all, it is licit for a poor man to take from the goods of another, if he cannot receive them by asking, as much as is commonly accustomed to be employed for preserving them.

A poor man constituted in necessity of this kind must first ask for the thing which he needs, because the owner is reasonably unwilling if it is taken away without his knowledge. But if the owner were unwilling to give it, or if the poor man could not ask without inconvenience, he licitly takes for himself a thing not of great value, a greater one indeed if the necessity is grave, a lesser one if it is light.[724] Moreover, in cases of this kind there will be necessity at least quasi-extreme.

**425. Obligation of the needy person and of the owner.** a. The poor man ought to ask for the thing which he needs if this can be done, unless a just cause excuses from asking. But if he takes the thing without asking, he does not sin gravely; for since one in extreme need has a right in the thing itself, the owner can be unwilling only as to the mode of taking.[725]

b. If the thing taken away is still extant when the necessity ceases, it must be restored to the owner: for the one in extreme need has the right only to the use of the thing if this alone was necessary; the thing itself remains the owner's. But if the thing taken away is no longer extant, one must distinguish. If the one in extreme need is indeed poor in fact, but has probable hope of receiving something afterward, he can take another's thing only with the burden of restitution; for it is not licit for him to take more than is necessary for preserving life. But if he is poor both in fact and in hope, he is held to nothing, even if afterward he comes to a better condition: for he who in extreme necessity takes another's thing makes it his own; but he who consumes his own thing is not bound to restore.

c. The owner, alpha. from charity, not from justice, is bound to give his own thing to one in extreme need. Therefore he who neglects to assist one in extreme need or hides his own things is not bound to restitution when the necessity has ceased. beta. From justice he is bound not to impede the poor man from occupying the thing and not to take away the thing occupied.

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**Notes**

722. Lugo, disp. 16, n. 159.

723. Proposition 36 condemned by Innocent XI has: "It is permitted to steal not only in extreme necessity, but also in grave necessity." Cf. Lugo, disp. 16, n. 160; Ballerini-Palmieri, III, n. 283.

724. Lugo, disp. 16, n. 156.

725. Cf. Lessius, l. 2, c. 12, n. 66.

## Section 2. Hidden Compensation

**426. What it is, whether it is licit.** a. Hidden compensation is an act by which someone secretly takes from the goods of the debtor what is owed to himself.

b. Hidden compensation of itself is illicit; yet if the due conditions are present, it becomes licit. The reason for the first is that the common good demands that, to forestall disorders which easily arise from hidden compensation, the creditor should strive to recover possession of his own thing by both private and public petition through a judge. As to the second: with respect to the thing it is licit because one secretly compensating himself does not take another's thing, but his own; and if the required conditions are present, even with respect to the mode it becomes licit. Therefore the debtor, even if unwilling, nevertheless cannot be reasonably unwilling.

Hidden compensation in practice is rarely to be advised, especially because danger of abuse and deception threatens. Yet let the confessor know that after the fact he cannot obligate the penitent to restitution if the due conditions were present.

**427. The required conditions are four:**

a. That the debt be true, founded in strict right, which the creditor actually has in the thing to be taken for himself.

If a master promised a servant that from gratitude for service faithfully furnished he would give him a certain sum of money as a gift or leave it by testament, but the master did not make the gift or died intestate, the servant cannot secretly take the promised money, because he does not have a strict right in it.

b. That the debt be certain, both because in doubt the condition of the possessor is better, and because each one has the right of retaining the thing possessed unless it is established that it is another's, and finally because otherwise, on account of danger of deception, many would be deprived of their own thing.[726]

Since the opinion which holds that restitution must be made also in goods of another kind is only probable, it is not licit for him who has been injured in another kind of goods, for example, in reputation, to compensate himself in goods of fortune, if the defamer does not restore the reputation taken away.

c. That the debt cannot be obtained by another way: for the common good demands that the creditor first strive to recover his own thing by the ordinary way, and only if he cannot seek it without difficulty (quarrels, enmities, expenses, etc.) or if the petition is foreseen to be useless (on account of defect of proof or malice of the judge or debtor), is it licit secretly to compensate himself.

Moreover note: alpha. the defect of this condition indeed renders compensation illicit, since it is against legal justice, but not unjust, and therefore it does not involve the burden of restoring. beta. This defect, even where it can easily be avoided, does not exceed venial sin.

d. That damage of the debtor or of a third person be forestalled. This damage of the debtor can be twofold: namely that he remain in the erroneous conscience of a debt still to be paid, and that he pay the debt twice. But each can be forestalled, if there is need, by a fictitious condonation.

Damage of a third person can occur because others (servants, household members) can come into suspicion of theft with danger of infamy or penalty.

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**Notes**

726. Cf. Lugo, *De iustitia*, disp. 16, n. 94 s.; Vermeersch, l. c., n. 333.

It is clear that he who compensates himself is bound only from charity to forestall these damages, because one compensating himself uses his own right. Therefore if a sufficient reason is present for permitting the damage of others, he acts licitly, even if others suffer damage.

**428. On hidden compensation of servants** (the same is valid of a worker, artisan, official) it must universally be said that servants are permitted what others are permitted. Namely, where the due conditions are not lacking, they can compensate themselves for work which, with the wage received, they rightly judge to be greater. But in particular these things are to be noted:

1. If the master does not pay the wage concerning which he made an agreement with the servant, or if he unjustly subtracts something from the stipend, the servant can compensate himself. But beyond the wage concerning which there was agreement, provided at least it is the lowest wage, it is not licit to compensate himself: for beyond the just pact to which he himself consented, nothing is owed to him.

A master who subtracts from the wage because the servant inadvertently breaks vessels or damages instruments acts unjustly unless an agreement has intervened concerning this matter. Yet if a servant more often inflicts damage from inadvertence, the master could licitly impose a moderate fine upon him and thus deduct something from the wage.

2. If agreement has been made concerning a wage below the lowest wage, it is not licit for the servant to compensate himself if he freely consented to this wage, or if the defect of the wage is compensated by other advantages, for example, by a richer table, by occasion of receiving gifts, by garments given as a gift, etc.; for he has a right to nothing else. But he licitly compensates himself: a. if, compelled by force or fear, he consented to a stipend less than just; b. if, compelled by necessity, he made an agreement concerning a wage less than just, with the exception if the master had received the servant asking from mercy alone; c. if, against his will, he is burdened with works not owed.

3. If a servant increases the labors owed and does this by his own will, he cannot compensate himself; but he can if he does this from the will of the master, whether express or tacit. Moreover, if the servant is received not for determined labors, but simply for domestic labors, so that he ought to spend his whole work in the service of the master, labor cannot be called not owed unless it is such that it could in no way have been foreseen, such as nocturnal or dangerous labor.

a. Nearly the same thing must be said to the question whether sons under family power are permitted to compensate themselves secretly if they have not received a just stipend for their labor. Nevertheless the conditions required for hidden compensation will more rarely be present in this case. Wherefore confessors before the fact should incline rather to the stricter side, but after the fact sons are not easily to be driven to restitution: for even if justice has been injured, condonation can more often be presumed.

b. Those things which have been said concerning servants may also be transferred to merchants: they cannot compensate themselves by diminishing weight or measure if they themselves freely sold goods at a certain price which afterward they judge too low. But they can secretly compensate themselves: alpha. if they were unjustly compelled to sell below a just price; beta. if through error they sold below a just price; gamma. if they cannot procure payment of a certain debt for themselves without grave inconvenience.

c. Proposition 37 condemned by Innocent XI[727] does not prohibit any compensation whatsoever of servants; for the proposition was condemned because it is too vague and indeterminate. And indeed from that

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**Notes**

727. "Domestic male and female servants can secretly take from their masters for compensating their work, which they judge greater than the wage which they receive."

proposition it would follow that servants could compensate themselves even when they freely consented to an agreement concerning a lesser wage or when they judge only probably that more is owed to them.

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## Question Third. On Unjust Damaging

**429. Declarations.** 1. Unjust damaging (actively) is an action by which someone inflicts damage on another in external goods, taking no profit from it.

Damage can be inflicted on a neighbor in two ways: either because the neighbor's thing is destroyed (by action or by omission of a due action), or because the neighbor is impeded from obtaining a good which is owed to him.

2. Damaging is a sin grave from its kind. It is grave or light according as the damage which is inflicted on the neighbor is grave or light.

**430. On him who impedes another from obtaining a good.** 1. He who impedes another from obtaining a good to which he has a strict right (whether the right is in the thing or to the thing), acts against justice and is bound to restitution, whether he impedes him directly or indirectly, by just or unjust means; because he is the efficacious cause why the other does not obtain what is owed to him by strict right.

He who, even by means not unjust, for example, by prayers, induces a father to deprive his son of the legitimate part of the inheritance to which the son has a strict right from positive law, injures justice and must restore to the son the good of which he is deprived.

2. He who impedes another from obtaining a good to which he does not have a strict right, but does this by unjust means, likewise sins against justice and is bound to restitution; not so if he does this by just means, for example, by prayers and persuasions, although he does it from hatred. The reason for the first is that everyone has a right not to be impeded by unjust means from obtaining a good of which he is not unworthy. Here it must be noted that not only frauds, lies, and accusations, but also importunate prayers and troublesome flatteries by which another's liberty is impeded, are unjust means. The reason for the second is that everyone can use the right which he has of asking or persuading another for his own utility or that of others.

a. A poor man who by detractions or calumnies brings it about that another poor man is deprived of alms; a servant who by defaming another servant brings it about that this one does not obtain the service which he deservedly hopes for; an innkeeper who by calumnies spread against another innkeeper is the cause that guests are turned away from him, sins against justice and is bound to restitution. As to the obligation of restitution it makes no difference whether the injury is inflicted on him who is impeded from obtaining the good, or on him who was going to give the good. Therefore he too is bound to restitution toward the poor man who, by unjustly instilling fear in a rich man, impedes him from giving alms to a determined poor man to whom he was going to give it.

b. He who by prayers induces a testator not to leave an inheritance to Caius, who has no right to it, but to Sempronius; or he who, from hatred, by persuasions induces a bishop, already determined to confer a benefice on the more worthy man, to confer it on a less worthy man, does not act against justice if a strict right to the benefice does not belong to the more worthy man.

3. He who impedes another from obtaining a good of which he is unworthy does not sin against justice nor is he bound to restitution, even if he uses unjust means; because an unworthy man has no right to the good which he seeks, for example, to an office or benefice, nor does he have a right to demand that he not be impeded from obtaining that good by whatever means.

Therefore he who by calumny brings it about that another does not obtain an unjust legacy or office, of which he is not worthy, indeed sins against justice by calumny against the neighbor and is bound to repair the injury to reputation; but he does not sin by the fact that he impedes him from obtaining the good. A woman who by frauds turns her husband away from a prodigal donation is bound to repair nothing to the donee, because the gift can neither be given nor received without sin.

He too is considered unworthy who uses illicit means for obtaining a good; whence justice is not injured if he is turned away from obtaining the good by likewise illicit means. Thus, where Caius had corrupted with money the magistrates on whose vote the conferral of an office depends, in order to obtain their vote, he cannot complain of injustice if another by calumny brings it about that Caius does not obtain the office.

4. He who impedes someone from averting damage from another acts against justice and is bound to restitution by the same reason as he who unjustly impedes another from obtaining a good. Thus he who, by force inflicted, impedes someone from extinguishing fire applied to the house of the neighbor, is bound to restitution toward the neighbor.[728]

# Chapter Third. On the Reparation of Injured Ownership

[729]

## Question First. On Restitution in General

**431. Definition.** Restitution is an action by which damage unjustly inflicted on the neighbor is repaired.

a. Therefore from an injury by which either no damage or no unjust damage is inflicted, no obligation of restitution arises; as if a judge gives a sentence which he thought was unjust, although it is just, or if a husband by adultery inflicts an injury on his wife. He who kills a man who was shortly and certainly going to die from an internal disease is not bound to compensate damages to the heirs, because he inflicted no damage.

b. Therefore restitution differs from satisfaction: for the former is compensation of a real injury, by which the thing taken away or destroyed is returned; the latter is compensation of a personal injury, by which the offender, through the deference shown, intends to reconcile to himself the person to whom the injury was inflicted.

**432. Obligation of restitution.** 1. Restitution is necessary for salvation by necessity of precept, both natural and divine, but not by necessity of means except in vow.

a. The natural precept of charity teaches: As you will that men should do to you, so do you also to them likewise;[730] but when we have been injured, we will the reparation of the injury. Moreover the same precept which prohibits taking away another's thing also commands not retaining the thing taken away: for he who retains a thing taken away continues to despoil the owner of his own thing.

b. God expressly enjoins restitution of the thing taken away: If anyone injures a field or vineyard . . . he shall restore according to the estimation of the damage;[731] moreover he proposes restitution as the condition on which a sinner may obtain pardon for his offenses.[732]

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**Notes**

728. Sporer-Bierbaum II, tract, n. 242 ss.

729. I. Vogler, *Iuriscultor theologus circa obligationes restitutionis instructus*. P. J. Loenartz, *Die Restitutionspflicht des Besitzers fremden Gutes* (Trier: Paulinus-Druckerei, 1885). A. Vermeersch, *Quaestiones de iustitia^2* (Bruges: Beyaert, 1904), n. 155-172. Marres, *De iustitia^2* (Ruraemond: Romen, 1889), l. 2. Kutschker, *Die Lehre vom Schadenersatze* (Olmutz: Neugebauer, 1851).

730. Luke 6:31; Matt. 7:12.

731. Exod. 22:5.

c. Restitution positively contributes nothing to salvation, but only must be made, if it is possible, lest sin be committed and lest an obstacle to salvation be placed.

d. He who has contracted the obligation of restitution must be so disposed in mind that he wishes to restore when he can; otherwise he would retain affection for the injury inflicted.

Therefore for him who is bound to restitution under grave obligation, at least a serious and efficacious will of repairing the damage inflicted is necessary for salvation. In this sense, namely concerning a serious will, the saying is true: the sin is not remitted unless the thing taken away is restored.[733] Indeed this is also necessary, that he apply the means which morally he can, so that restitution becomes possible. Therefore debtors who otherwise cannot restore are bound not only to avoid superfluous expenses, but also to diminish daily expenses insofar as they can according to their condition.

**433.** 2. He who cannot restore from goods of the same order is not bound to restore from goods of a different order, for example, to compensate injured reputation by money; for commutative justice commands restitution only so that the violated equality may be restored; but equality cannot be recalled from goods of a different order, and indeed reputation taken away is not repaired by money.

a. The opposite opinion is held as probable by St. Alphonsus (n. 627); but the words of St. Thomas[734] seem to be understood of counsel, not of precept. And indeed it is fitting that compensation in money be enjoined for damage inflicted in goods of a higher order.

b. A judge or superior by reason of penalty can impose that, because of an injury inflicted in one good, something be paid from goods of another order, for example, money for an inflicted wound; and certainly this sentence must be obeyed.

**434. On the gravity of the obligation of restoring.** 1. The obligation of restitution is of itself grave: for it obliges by the same reason as commutative justice, which requires that to each one be rendered what is his. Therefore in grave matter restitution must be made of itself under grave obligation, and in light matter under light obligation.

2. In particular, for determining the obligation of restitution, especially where there is question of damage inflicted on another, attention must be given not only to the quantity of the damage, but also to the quantity of the fault with which the damage was inflicted.

a. He who inflicted grave damage with grave fault is bound to repair the damage under grave obligation.

b. He who inflicted grave damage with light fault, which was a perfectly human act, is bound to restitution under light obligation; for from light fault a grave obligation cannot arise, because the obligation of repairing an injury cannot be greater than the injury from which it arises.

Therefore he who restores a thing taken away not wholly but only in part does not sin gravely if the part which he retains does not reach grave matter.

alpha. The principle must be held altogether, that the obligation of restitution and its gravity arise from the formal injury by which the damage was inflicted, and from its gravity. Therefore grave damage inflicted with light fault, which was a perfect act, must not be repaired under grave obligation, unless the damager either retains another's thing or has become richer from it. Thus he who steals thirty florins from a prince while

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**Notes**

732. Cf. Ezek. 33:13 ss.; Tob. 2:20 ss.

733. St. Augustine, ep. 152, to Macedonius.

734. *Summa* II-II, q. 62, a. 2, ad 1.

invincibly thinking that this matter is not grave is bound only under light obligation to return them, if he consumed them and did not become richer from them.

beta. He who by several acts of damaging committed either against the same person or against various persons inflicted grave damage, to the gravity of which he never adverted, is bound to repair the damage inflicted only under light obligation. Not under grave obligation, both because the damage was inflicted without grave fault, and because grave matter is not retained which would have to be returned under grave obligation.

gamma. Yet he who by several small thefts committed either against the same person or against various persons sinned only venially, because he never adverted to the coalescing grave matter, is bound under grave obligation to restitution as soon as he adverts to the gravity of the matter taken away, because it is gravely illicit to retain another's thing in grave matter or to grow rich unjustly from another's thing.

b. There are authors who exempt from the obligation of restitution him who inflicted grave damage with light fault, so that this opinion can be called externally probable; yet it is plainly destitute of internal probability, since their arguments are nothing.

**435.** c. He who inflicted grave damage with fault light from imperfection of the act, according to the opinion to be followed practically, is bound to nothing; and by like reason, he who inflicted light damage with fault light from imperfection of the act, contracts no obligation of restoring.

alpha. Authors do not agree in this question: for some teach that a damager of this sort must repair the damage under grave obligation: for, once theological fault is supposed, the quantity of the obligation of restoring depends on the quantity of the matter, because the law of nature, such as the obligation of restoring is, obliges under grave obligation in grave matter. But truly the quantity of the obligation of restoring does not depend simply on the quantity of the damage, but also on theological fault sufficient of itself for inducing the obligation; but fault light from imperfection of the act is not sufficient for inducing the obligation, which the third opinion proves.

beta. Others teach that he must repair, under light obligation, either the whole damage or a part proportioned to the quantity of the fault: for the obligation of repairing damage cannot be greater than the fault with which the damage was inflicted.[735] This opinion is true insofar as it denies a grave obligation of restoring, but it does not demonstrate that the obligation is light.

gamma. Finally the third opinion teaches that the obligation of restoring is none: for a true obligation arises only from an act perfectly human, that is, one exercised with full advertence and full consent; but from an act imperfectly human, that is, one placed with half-full advertence and half-full consent, no obligation arises. Therefore a vow or oath made with half-full deliberation is void; likewise a contract entered with half-full deliberation is invalid. And because the patrons of the prior opinions do not deny at least the probability of this opinion, it must be followed in practice.[736]

d. He who inflicted light damage with fault light (from smallness of matter), or with fault grave (from error), is bound to repair the damage under light obligation, both because the obligation of restoring in light matter urges under light obligation, and because light matter is not capable of a grave obligation.

Therefore there exists an obligation of repairing even small damages; yet since this obligation is not grave, it cannot be urged under penalty of denial of absolution; indeed frequently prudence will advise that it be entirely passed over in silence.

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**Notes**

735. Laymann, l. 3, tr. 3, pr. 1, 6, n. 4.

736. Lugo, disp. 8, n. 57 ss.; St. Alphonsus, n. 552.

**436. Roots of restitution.** The root of restitution is called the cause from which the obligation of restoring arises. A twofold root of restitution is distinguished: general and remote, which consists in the violation of commutative justice; special and proximate, which consists in the diverse modes by which commutative justice is injured. And because this can be injured in three different ways, a threefold root of restitution is usually distinguished: a. possession of another's thing, whether materially or formally unjust; b. unjust damaging; c. unjust cooperation in damage inflicted on the neighbor by another, whether through theft or through unjust damaging.

a. The roots of restitution are properly reduced to two: to unjust possession of another's thing, whether the thing was received in good faith or unjustly usurped, and to unjust damaging, by which someone inflicts damage on another and himself profits nothing from it. Unjust cooperation is recalled to one or the other of these; yet for greater clarity of matters it is treated separately.

b. St. Thomas sets forth two roots of restitution thus, saying that the obligation of restitution arises from a thing accepted, when someone possesses another's thing without formal injustice, and from unjust taking, when someone unjustly deprived another of his own thing, whether by taking it to himself or by destroying it.[737]

## Question Second. On Restitution Because of Possession of Another's Thing

He who possesses another's thing can hold it in good faith, bad faith, or doubtful faith. Now the obligations of the possessor of another's thing are different according as he holds it in good faith, bad faith, or doubtful faith.

# Article First. On the Possessor in Good Faith

**437.** A possessor in good faith is said to be one who invincibly does not know that the thing possessed by him belongs to another. The obligations of a possessor in good faith are referred: a. to the thing itself; b. to the fruits received from it; c. to the expenses made for it.

Obligations by reason of the thing. In general a possessor in good faith must restore only as much as he still possesses of another's thing, but he is not bound to repair the damages which the owner has suffered, because they occurred to the owner without his fault. Now, in order that the obligations of the possessor in good faith by reason of the thing may be determined in particular, three different hypotheses must be distinguished: a. if he still possesses the thing; b. if the thing has perished; c. if another possesses the thing.

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**438. If he still possesses another's thing,** 1. he is bound of itself to restore it to the owner, if he is known, as soon as possible, unless meanwhile the thing has been prescribed; because a thing cries out for its owner.

a. If he possesses the thing not in whole but only in part, he must restore the part which he holds. If meanwhile the thing has become worse, and indeed without the profit of the possessor, he must restore it in the state in which it now is, even if from the fault of the possessor it has become worse; if it has become worse with the profit of the possessor, he must also restore the profit by which he has become richer. If meanwhile the thing has been made better, he must restore the thing as it is, unless it is mixed with others so that it cannot be separated: for in this case the possessor receives ownership of the other's thing if, in the mixture, his own thing is principal; but he must restore that by which he has become richer. But if he must restore the better thing itself, he can deduct the expenses of improvement.[738]

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**Notes**

737. *Summa* II-II, q. 62, a. 6.

738. Cf. Ballerini-Palmieri III, n. 416 s.

b. If he culpably delays restitution, he is bound to compensate the damages which arise from the delay of restitution: for if he knowingly retains another's thing, he becomes a possessor in bad faith and is bound concerning the damages.

c. If the owner is unknown and there is no hope of finding the owner, the possessor in good faith can retain another's thing for himself: for the thing is held as abandoned; therefore the possessor acquires ownership of it by right of occupation.

d. Unless it has been prescribed: for in the possessor in good faith the conditions required for prescribing can be present; when these truly exist and are completed, he can retain the thing for himself.

2. But it is not necessary that he always restore the thing to the owner himself; sometimes he can return it to the one from whom he received it: for one must distinguish whether he received the thing gratuitously or by an onerous title.

a. If he received the thing gratuitously, it is not permitted to return it to the donor or thief, but it must be restored to the owner himself: for the thing cries out for its owner.

b. If he bought the thing and the owner appears to vindicate the thing to himself (in the case of eviction), he is bound to return it to the owner, even with loss of the price: for the owner can vindicate his own thing to himself wherever he finds it, since he has a right in the thing. Yet the possessor has recourse to the seller; but if he cannot recover the price from the seller, he must consider the loss of it as a misfortune and bear it patiently.[739]

c. If the owner does not appear (outside the case of eviction), that is, if the owner indeed is known but is unaware of the thing, it is permitted to the possessor to return the thing to him from whom he received it, in order to recover the price given by himself, unless by another way he can render both himself and the owner unharmed. If he cannot recover the price, he must bear the loss of it.

alpha. For this opinion a twofold reason can be adduced: he who returns the thing to the thief and places it back in the state in which it was before, on the one side indeed inflicts no damage directly on the owner, and on the other side is not bound to preserve the thing for the owner with his own damage; thus a finder too would licitly replace the thing found, which he could not preserve without his own damage, in the place where he had found it. Next, all the conditions are present which are required so that this action can licitly be placed for recovering one's own goods, although from it damage to the neighbor is foreseen to follow indirectly. And indeed the action, namely the rescission of the contract, is licit in itself; the end which is intended, namely to keep oneself unharmed, is upright and follows immediately from the action; finally there is a proportionately grave cause for permitting the damage of the neighbor, namely to prevent one's own damage equal to the neighbor's damage.[740] Ordinarily indeed there will be no other means for the buyer of recovering the price given, unless he returns the purchased thing to the thief; but if another existed, he would be bound to use it: for he would act against justice by again exposing to danger, without just cause, the owner's thing already placed in safety.

beta. More recent laws sometimes establish that the owner cannot recover his own thing from a possessor in good faith, who bought it or received it by another onerous title, unless its price has been paid, when he bought the thing at a fair, or at auction, or from a merchant who usually sells things of the same kind.[741] Concerning a disposition of law of this kind one must first investigate whether the mind of the legislator is

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**Notes**

739. Lugo, disp. 17, n. 1.

740. Cf. St. Alphonsus, n. 569.

741. A.C. Sections 367, 368. G.A. commerc. Sections 306-308.

only to deny the owner a civil action in recovering his own thing unless he pays its price, or whether his mind is to transfer ownership in the possessed thing. If the latter, it is asked whether this disposition of law has value in conscience. Most authors indeed probably affirm this question, because the civil power so establishes by reason of the common good, namely that commerce among men may be rendered easier and possession more secure; but this reason of common good seems sufficient for the civil authority to be able to use its power of transferring ownership.

**439. If another's thing has perished,** one must distinguish whether it perished with the possessor in good faith himself or with another; and in this latter case, whether the possessor in good faith handed the thing over to another without profit or with profit.

1. If the thing perished with the possessor in good faith, whether he consumed it, lost it, or destroyed it, he is bound to nothing unless he has become richer from it; but if from it he did become richer, he must restore to the owner that in which he has become richer. The reason for the first is that one who consumes or destroys a thing which he thought was his own inflicted injury on no one, even if deliberately and by his own fault he had lost it. In this case the owner must consider the loss of the thing as his own misfortune and patiently tolerate it. The reason for the second is that that in which he has become richer constitutes the equivalent of the thing, which pertains to the owner.

a. The equivalent of a thing is called that into which someone has become richer from that thing. Someone becomes richer from another's thing insofar as from it he has something which otherwise he would not have had; and this can happen in two ways: either because from a thing received gratuitously he has fruits, or because he spares his own thing while he uses another's, as when someone spares his own calf while he eats the flesh of another's.

b. What is said of a thing consumed also holds for a thing made worse: namely, if the owner has made the thing worse by applying it to his own uses, he must restore that in which by this reason he has become richer. Therefore he who in good faith wore a garment belonging to another, received as a gift, and nearly wore it out, is bound, if the owner becomes known, to restore the garment and in addition to pay as much as otherwise he would have worn out of his own garment.

2. If the thing perished with another, diverse hypotheses are to be distinguished.

a. If he donated to another a thing belonging to another, received gratuitously, when otherwise he was going to donate nothing, he is bound to nothing, because he did not become richer; but if in place of that thing he would have donated his own, he is bound to restore the price of this, because by this he has become richer.

b. If he sold to another a thing belonging to another, received gratuitously, he can, as it seems, retain the price of the thing, because it is not certain that it must be returned either to the owner or to the buyer.

Authors bring forth three different opinions about this matter:

alpha. Some (Carriere, D'Annibale) judge that the price must be restored to the buyer, because the sale of another's thing is null, and therefore the seller does not acquire ownership of the price, or at least the buyer has a right of recovering his money. But this is true only in the case of eviction, which does not occur here; outside the case of eviction, the seller in good faith acquires ownership of the price of the thing sold.

beta. Others think that the whole price must be returned to the owner, because the possessor in good faith has truly become richer by that whole price. Moreover by returning the price he suffers no damage; on the contrary, the owner unjustly despoiled of his thing is forced to undergo the whole damage; but there is no reason why the owner should suffer the damage rather than the possessor in good faith be deprived of profit received from another's thing. This opinion, which among more recent authors Gury and Lehmkuhl defend, is called common. But the owner, who always retains ownership in his own thing, has no other right except

against the actual possessor of the thing and against the thief; but if he can no longer pursue this right, that is his misfortune.

gamma. Finally others think that the price can be retained by the possessor in good faith, because no one has a right to demand it: not the buyer, because outside the case of eviction the seller acquires full ownership in the price of the thing sold; not the owner, because the thing naturally perishes for him. Nor can it be said that the price is the equivalent of the thing to be returned to the owner: for since the seller acquired ownership in the price of the thing sold, this is not the equivalent of the thing sold, or the seller no longer has another's thing equivalently. Finally the seller did not become unjustly richer from another's thing: for he became richer on the occasion of another's thing, and not unjustly, because by selling a thing which he thought was his own, he injured no one. Among more recent authors Bucceroni defends this opinion, and Genicot accedes to it.[742]

c. If he donated to another a purchased thing belonging to another, he is bound to nothing, even if otherwise he would have donated his own thing, because he has become richer in no thing.

d. If he sold to another a purchased thing belonging to another without profit, he is bound to nothing, because he did not become richer.

e. If he sold to another a purchased thing belonging to another with profit, he can retain the price of the thing and the profit received from its sale: for the price of the thing does not pertain to the owner, and the profit is from the occasion of another's thing or from the industry of the seller, unless the thing has grown in itself; in which case the profit belongs to the owner.

But if after the destruction of the thing its owner is detected, who claims the thing for himself, since the thing perishes for the owner, he has no other right except that of receiving from the thief the price of the thing.

**440. If the thing is found with another,** again diverse hypotheses must be distinguished.

a. If he donated to another a thing belonging to another, received gratuitously, when otherwise he was going to donate nothing, he is bound to nothing, because he has not become richer; but if in place of that thing he would have donated his own, he is bound to restore the price of this, because by this he has become richer.

b. If he sold to another a thing belonging to another, received gratuitously, one must distinguish: if the owner appears and vindicates his own thing to himself (in the case of eviction), or if the buyer spontaneously restores the thing, he is bound to return the price to the buyer, because in the contract of sale he implicitly obligated himself to this. If the owner does not appear and the buyer cannot recover his own thing (outside the case of eviction), according to the opinion of some, which seems probable, he is bound to nothing (n. 439, 2b).

c. If he donated to another a purchased thing belonging to another, he is bound to nothing, even if otherwise he would have donated his own thing: for he has become richer in nothing.

d. If he sold to another a purchased thing belonging to another, one must distinguish: if the owner appears and vindicates the thing to himself (in the case of eviction), or if the buyer spontaneously restores it, the seller in good faith must return the price to the buyer, because the contract of sale always implicitly includes this condition; yet he himself has recourse to his seller from whom he had bought the thing belonging to another. But if the owner does not appear (outside the case of eviction) and the buyer does not spontaneously restore it, the seller in good faith is bound to nothing: for he no longer has the thing, and what he himself received by selling, he spent by buying.

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**Notes**

742. Bucceroni, *Institutiones th. m.* I, n. 1341.

There are indeed some who oblige the seller in good faith to return the price either to the owner or to the buyer, because the seller has no title of retaining the price, since the sale of another's thing is invalid. But by a sale of another's thing made in good faith the seller acquires ownership of the price, except in the case of eviction, in which he is bound to return the price to the buyer.[743]

e. If he sold to another a purchased thing belonging to another for a dearer price: alpha. he is bound to return the excess of the price to the owner if he received it because the thing grew in itself, for example, a young animal grew up; beta. he can retain the excess of the price for himself, both if he received it from special industry and if he received it by the simple sale of the thing, because it is the fruit of industry received on the occasion of another's thing.

As to the obligation of warning the owner of the thing, which a possessor in good faith has when he has handed over another's thing to another, so that the owner may be able to recover his own thing, one must distinguish: a. If he donated to another a thing belonging to another, whether received gratuitously or bought, from charity he must warn either the possessor of another's thing that he restore it, or the owner of the thing that he recover it, provided, however, that he can warn without grave inconvenience. b. But if he sold to another a purchased thing belonging to another, he is not bound to warn the buyer that the thing belongs to another, nor the owner where his thing is, if he himself cannot recover the price from the thief from whom he bought the thing: for he is not bound, with his own great detriment, to take care that the owner receive his own thing.

**441. Obligations by reason of the fruits.** He is bound to restore natural, civil, and mixed fruits insofar as they are fruits of the thing, even if the owner would not have received those fruits, because the thing bears fruit for the owner; but he is not bound to restore:

1. fruits of industry, because they are not fruits of the thing, but of him by whose labor they were acquired;
2. nor fruits which he did not receive from another's thing, which nevertheless the owner would have received if the thing had remained in his power, because he neither became richer from it nor unjustly inflicted damage on the owner;
3. nor fruits of the thing which he has made his own by prescription.

a. Therefore he who leased another's beast of burden to another for a price must return this price to the owner, even if the owner himself would never have leased the beast of burden: for civil fruits are fruits of the thing. But he who, by trading, acquired riches for himself from another's money is bound to restore none of these to the owner of the money. Likewise he who sold another's wheat for a dearer price satisfies by restoring similar wheat.

b. The fruits of the last three years, which still exist and which have been consumed insofar as the possessor has become richer from them, must be restored by natural law; but the other fruits of prior years have already been prescribed.[744]

alpha. Modern laws generally grant to the possessor in good faith all fruits already received.[745] If by this disposition of law the legislator intends only to deny to the owner of the thing a civil action in recovering the

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**Notes**

743. Cf. Bucceroni, *Institutiones th. m.* I, n. 1339.

744. On the prescription of fruits these things must be noted: a. fruits, as movable things, are prescribed, for example, by a three-year period. Hence if the fruitful thing itself is movable, such as animals, the fruits and the thing which produced them are prescribed at the same time. But if the fruitful thing is immovable, such as fields and trees, the fruits received from it can be prescribed long before the fruitful thing itself is prescribed. b. If the fruitful thing itself has been prescribed, by that very fact the fruits too, not only pending but also received, have been prescribed, even if the time which would be required for prescribing the fruits, if they themselves had to be prescribed independently of the fruitful thing, has not yet elapsed. Thus he who prescribes a field has also prescribed with it the fruits of the last three years.

745. Thus also G.A. Section 330; not likewise G.G. 988.

fruits, it is clear that the possessor is bound in conscience to return the fruits to the owner of the thing. But if the legislator intends to transfer ownership itself in the fruits received to the possessor in good faith, authors now commonly teach as at least probable the opinion that the possessor in good faith can licitly retain the fruits for himself: for the disposition of the law is founded in the common good, namely that by it innumerable difficulties and suits may be forestalled.

beta. What is here established from modern laws about fruits still formally existing holds a fortiori concerning fruits virtually, or only in the equivalent, existing, namely from whose use and consumption the possessor has become richer. Indeed, already from the old laws several theologians denied the obligation of restoring fruits existing only equivalently.[746]

**442. Obligations by reason of expenses.** He can deduct necessary and useful expenses: otherwise the owner would receive more than is his own; but for voluptuary expenses he can reclaim nothing, unless they increase the common value of the thing; yet he can remove the improvements if this can be done without detriment to the thing.

1. Necessary expenses are called those without which the thing would perish or would bear no fruits or worse fruits; expenses of this sort are those which are made, for example, in repairing a house, in clearing or fertilizing a field. Useful expenses are those which are made so that the thing becomes more apt for common uses, or bears more fruits, as planting new trees. Voluptuary expenses are those which are made for adornment and pleasure and do not increase the thing or its fruits, such as expenses for paintings, statues, gardens, etc.
2. Under the name of expenses also comes the valuation of the labor and industry of the possessor himself: for he is not obligated to labor gratuitously for the advantage of the owner.

## Article Second. On the Possessor in Bad Faith

**443.** A possessor in bad faith is said to be one who unjustly retains a thing which he knows belongs to another. His obligations are referred: a. to the thing itself; b. to its fruits; c. to expenses; d. to loss of profit and emergent damage.

Obligations by reason of the thing. In general a possessor in bad faith, besides another's thing or its equivalent price, must restore only as much as is the damage which followed for the owner from the unjust taking away of the thing, or as much as the owner would have if the thing had not been taken away from him. In order that the obligations of a possessor in bad faith may be determined in particular, again diverse hypotheses must be distinguished.

**444.** 1. If he still possesses another's thing, he must restore it to the owner as soon as possible: for the thing cries out for its owner.

a. Indeed he must restore the very thing taken away, not another in its place: for the owner has a right to his own thing itself, unless the circumstances are such that the owner cannot reasonably be unwilling if the equivalent price of the thing is restored, as if the thief could not return the thing itself without infamy.
b. Probably even a possessor in bad faith can return a purchased thing to the seller (thief) in order to recover the price given, because by returning it nothing is done which appears illicit: for the thing is placed back in the same state in which it was before, and therefore no damage is inflicted on the owner; nor is the possessor bound, with his own grave detriment, to take care that the owner receive his own thing[747] (n. 438, 2).

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**Notes**

746. Cf. Holzmann, *Theologia moralis*, t. 4, n. 367 ss.

747. Cf. Lugo, disp. 17, n. 37, with whom St. Alphonsus agrees, n. 570.

2. If he no longer possesses the thing, whether it still exists or does not exist, and in this case, whether it perished with fault or without his (the thief's) fault, he is bound to restore its price, even if from this he has not become richer: for he must render the injured owner unharmed; with two cases excepted, however: a. if the thing perished from an internal defect; b. if it perished from a cause (for example, fire) because of which it would also have equally perished with the owner, because in neither case is the theft the efficacious cause of the damage, since the thing would have perished even without the theft.

a. If the possessor in bad faith sold the thing to another and the owner appears and vindicates the thing to himself (in the case of eviction), the distinction which intervenes in this case between a possessor in good faith and one in bad faith must be noted. Namely, if the buyer knew that the thing bought by him belonged to another, the seller or prior possessor in bad faith is not bound to restore to him the price which he had received: for the condition which otherwise is supposed in a sale, namely unless the thing belongs to another and is vindicated by the owner, has no place in this case unless it was expressly otherwise provided, because no injury is done to the buyer, as one knowing the thing to belong to another.[748]

b. If the thing which perished in whatever way with the possessor in bad faith would have perished with the owner at the same time from another cause, several authors probably teach that the thief is bound to nothing, because the owner suffers no damage from the theft.[749] But if the thing would have perished with the owner from the injustice of another, the thief is bound to restore its price, because the owner suffers damage from the theft: for if the thing had not been taken away, others (the thieves) would have contracted the burden of restoring.

**445. To what is a possessor in bad faith bound, if the thing which he took would otherwise have perished with the owner?**

a. He must restore the thing to the owner, whether the possessor rescued it from the danger itself or whether the thing escaped the danger because it had already been taken away: for a thing rescued from danger or saved from danger does not cease to belong to the owner, and therefore cries out for the owner. Yet he can deduct both expenses made for the thing and the price of the labor which he applied in saving the thing.

b. He is not bound to restore the thing to the owner if he consumes it in the very danger, that is, morally at the time and place in which it would have perished with the owner: for a thing not freed from danger, but certainly going to perish, is of no value for the owner.

A thing is considered to be consumed in the very danger even when it is consumed where the danger in which the thing is certainly going to perish is now foreseen as imminent; thus he who foresees that tomorrow the house of Titius is certainly going to perish by fire is not bound to restitution if with others he consumes a cask of wine which could not have been rescued from the fire: for in these circumstances the thing is worth nothing for the owner, and therefore he is not reasonably unwilling concerning its destruction.

**446. To what is a possessor in bad faith bound, if the thing had various values during the time of unjust possession?**

The change of value which a thing undergoes during the time of unjust possession can be internal or external. It is called internal if the thing becomes better or worse in itself, as if a calf grows up or an ox grows old; it is called external if the thing, while remaining unchanged in itself, receives diverse value from external circumstances, as if wine now has a greater price on account of scarcity, later a lower price on account of abundance.

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**Notes**

748. C.A. Section 929. C.G. Section 434.

749. Lacroix, l. 3, pr. 2, n. 218; D'Annibale, *Summula theologiae moralis*^5 (Rome: Desclee, 1908), II, n. 420; St. Alphonsus, l. 3, n. 620.

1. In the case of internal change: a. If the thing has become better with the possessor in bad faith, it must be restored to the owner with the increase: for the thing grows for the owner, though the price of labor and industry is to be deducted. b. If the thing has become worse from a cause because of which it would not have become worse with the owner, it must be restored with the value of the decrease: otherwise the owner would suffer damage. c. If the thing has become worse from a cause because of which the same thing would also have happened with the owner, it suffices that the thing be restored in the state in which it is found.
2. In the case of external change: a. If the owner would have sold the thing at the time of the greater price, or if at that time he had to buy a similar thing for himself at the greater price, the possessor is bound to restore the greater value. b. If the owner would have sold the thing at the time of the lower price, it suffices if he restores the thing itself or its value which it had at the time of the theft.

In practice ordinarily restitution of the thing or of its price according to the value which it had at the time of the theft is not to be urged, because the circumstances mentioned above can either in no way or only with great inconvenience be known with certitude. But if those circumstances were certainly established, the possessor in bad faith would have to be compelled to repair the whole damage.

**447. Obligations by reason of fruits.** 1. He must restore the fruits of the thing, both natural and civil: a. those which he himself received, even if the owner would not have received them, whether they still exist or no longer exist; for the thing bears fruit for the owner; b. those which the owner would have received, even if he himself received none: for the whole damage which the owner suffered must be repaired.

2. He is not bound to restore fruits of industry: for what he acquires by his own industry is his.

He who exposes money taken away by theft to gambling can retain for himself the profit which he receives from it. A depositary who uses another's money entrusted to his keeping for trading indeed sins, because he is presumed to act against the will of the owner; but the profit which he acquires by trading, the money itself being safe, he makes his own.

Case. Trees which grow from small trees taken away by theft and planted in the land of the thief are to be considered as fruits of industry: for since a plant cannot grow unless it has driven roots in the land, the owner of the land is also owner of those things which grow in the land, even if they have been taken away by theft. Therefore he for whom trees have grown from small trees taken away by theft is not bound to return the trees themselves to the owner of the small trees, but it suffices that he render him unharmed, and indeed, if he would not have uprooted the small trees, by restoring the double price, and if he would have uprooted them, by restoring the simple price. The same must be said of hens which someone acquired from another's eggs placed under his hen; namely he is not bound to restore to the owner anything except the price of the eggs.[750]

**448. Obligation by reason of emergent damage and loss of profit.** He must repair both loss of profit and emergent damage, provided he in some way foresaw it, at least in confused manner: for he must restore to equality, that is, so that the owner has as much as he would have if his thing had not been taken away. Thus if the owner would have sown grain taken away by theft, but because of the theft lacked a harvest, the emergent damage must be repaired to him.

If debts are not paid at their time, the profit which ceases for the creditor from this would in rigor have to be compensated; yet ordinarily late payers are not compelled to compensate these damages, because creditors rarely demand them and therefore are considered to remit them. I say ordinarily, because this cannot be applied to those rich men who delay beyond what is right the payment of those things which they owe to workers or

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**Notes**

750. Cf. Lehmkuhl, *Casus consc.* I, n. 654.

small merchants and thus bring them great inconvenience and damage, which in conscience must certainly be compensated.

Whether interest also, or the interest of money, must be restored. Certainly it must be restored if the owner would have received interest from his money. But if the owner would have kept the money idle with himself, there are some who free him from the burden of restoring the interest received;[751] but undeservedly: for interest received from money is now to be referred to civil fruits arising from the thing itself; wherefore in rigor it must be restored to the owner himself, even if the owner would not have received interest.

**449. Obligation as to expenses.** A possessor in bad faith can deduct both necessary and useful expenses which the owner would have had to make for preserving or increasing his own thing: otherwise the owner, besides the damage inflicted on him, would receive something; but he cannot deduct voluptuary expenses, yet he can retain them for himself if they are separable with the substance of the thing safe.

## Article Third. On the Possessor in Doubtful Faith

**450.** A possessor in doubtful faith is not said to be one who doubts from only a slight reason whether the thing which he possesses belongs to another: for he is bound to nothing and can retain the thing for himself; but a possessor in doubtful faith is said to be one who doubts from a grave and probable reason whether the thing which he possesses is his or another's. Now this can happen in two ways: either the doubtful faith is supervening, namely when he accepted the thing in good faith and afterward a doubt arose; or the doubtful faith is antecedent, when he accepted the thing when the faith was already doubtful.

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**451. In the case of supervening doubtful faith.** 1. When doubt has arisen, he is bound diligently to investigate the truth, and with so much greater solicitude as the thing about whose ownership he doubts is more precious. During the investigation he must preserve the thing; but if afterward, once investigation has been made, the doubt perseveres, he can retain the thing and dispose of it: for by possession in good faith he acquires the right of disposing of the thing until it is established that it belongs to another.

If afterward the owner appears, he is bound to restore as a possessor in good faith, namely the thing itself if it still exists, or, if it no longer exists, that in which he has become richer, unless meanwhile he has acquired ownership of the thing by prescription: for a supervening doubt does not impede prescription (n. 403).

2. If, once doubt has arisen, he culpably neglects inquiry, by this culpable negligence itself he begins to become a possessor in bad faith. Therefore:

a. If a certain owner afterward appears, he must restore to him as a possessor in bad faith: the thing, fruits not yet prescribed, loss of profit, and emergent damage from the time at which he became a possessor in bad faith.

b. If a certain owner afterward does not appear, and from the omitted inquiry it has become impossible for the doubt to be solved, restitution must be made to the owner who possesses a doubtful right to that thing, according to the ratio of the hope which he had of recovering his own thing. But if no determined person has a doubtful right, he can retain the whole thing, because he began possession in good faith.[752]

The hope which the owner would have had of recovering his own thing is worth much less than half the price of that thing about whose ownership there is doubt. If, however, it is established that the owner at the

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**Notes**

751. Cf. Gury, *Compendium theol. mor.* I, n. 649.

752. Bucceroni, *Institutiones theol. moral.*^3 I, n. 1353; Genicot, I, n. 534.

time when the doubt arose had no hope of recovering his own thing, he is bound to nothing: for the thing, as abandoned, had then already passed into the ownership of the possessor.[753]

3. He who inculpably omits inquiry is held as a possessor in good faith; therefore if he consumed the thing, he must restore only that in which he has become richer.

He alone is considered culpably to neglect inquiry who omits it from grave negligence; therefore he who from inadvertence or invincible ignorance, or in good faith thinking that the owner cannot be found, or from light negligence omits inquiry, is considered to have neglected it inculpably. But grave negligence is present if inquiry is voluntarily omitted as long as probable hope shines forth that the owner can be found.

**452. In the case of antecedent doubtful faith.** 1. He who in doubt despoiled a possessor in good faith is bound, if the doubt cannot be solved, to restore the whole thing to the possessor in good faith; for him himself who probably thinks the thing is his own only recourse to a judge lies open: for in doubt the condition of the possessor is better.

2. He who despoiled no one, but knowingly accepted a thing (for example, by buying) from a possessor in doubtful or suspicious faith, is bound, if the doubt cannot be solved, to restore according to the ratio of the doubt, and indeed to the probable owner, if he can be found, and if he cannot be found, to the poor or to a pious cause. For he cannot retain the whole, because the doubt prevents him from ever becoming simply the owner of the thing; but neither must he return the whole, because it is not certain that the thing belongs to another.

"Artisans and merchants who buy from those about whom they greatly doubt whether they sell their own things or another's, buy in bad or at least doubtful faith, and therefore will always be bound to restore either the whole or a part."[754]

3. He who accepted a thing with doubtful faith (for example, by buying) from a possessor in good faith, if the doubt cannot be solved with moral diligence applied, is probably bound to nothing: for he can use the right of him whom he succeeds.[755]

## Question Third. On Restitution Because of Unjust Damaging

**453.** 1. Unjust damaging here is understood as damage unjustly inflicted on the neighbor in external goods, without profit being taken from it. Damage can be inflicted on the neighbor in two ways: positively, by destroying his good, or negatively, by impeding him from obtaining a good (n. 429), or by not guarding goods which had to be guarded by duty of office.

2. For estimating the quantity of restitution to which he is bound who impeded another from obtaining a good, the damage which this one suffered must be considered. Therefore where the injured person had full certitude of obtaining the good, the whole good must be restored; but where he had only a more or less probable hope of obtaining the good, only a part of the good must be restored according to the value of the hope as determined by prudent judgment: for hope, however great, scarcely has half the value of the thing itself, because hope can fail and be impeded in many ways.

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**Notes**

753. St. Alphonsus, l. 1, n. 37; Ballerini-Palmieri III, n. 439.

754. Lugo, disp. 17, n. 81.

755. Lugo, l. c., n. 83.

# Article First. Required Conditions

**454.** In order that a damaging action induce the obligation of restitution, this threefold condition is required: a. that the action be truly unjust; b. that it be an efficacious cause of the damage; c. that it be theologically culpable, or that the damaging action be truly, efficaciously, and formally unjust.

## Section 1. A Truly Unjust Action

A damaging action must be truly unjust, depriving another of a good to which he has a strict right either in the thing or to the thing, because only damage unjustly inflicted induces the obligation of restitution (n. 431).

a. He who by his action inflicts damage on another, but does not injure commutative justice, even if by that action he sins against another virtue, is not bound to repair the damage.

Thus when Caius, with the mind of harming Sempronius, persuades Titius not to make a testament, because he foresees that he would make it in favor of Sempronius, he is not bound to restitution toward Sempronius, because Caius's action (persuasion), although damaging, is not unjust.

b. He who inculpably places a cause of damage and does not remove it, although he could, sins against commutative justice and is bound to reparation of the damage: for everyone must take care that an action placed by himself not harm another, as long as he can impede its damaging efficacy. Yet this obligation does not urge with relatively grave inconvenience, because the damaging action, as only materially unjust, is less voluntary than an action formally unjust.

From this principle the following cases are solved: alpha. a traveler who inadvertently set another's forest on fire; a pharmacist who by error gave poison for medicine; a counselor who inculpably gave harmful counsel, are bound to repair the whole damage which they could have impeded without grave inconvenience and did not impede. beta. He who by error charged another with a grave crime is not bound to retract if he cannot do this without grave detriment to his own reputation.[756]

c. An owner who abuses his own thing for sinning does not thereby lose his right in his own thing; wherefore he who takes it away or destroys it does an injury; and he who holds another's thing is bound from strict right to return it to the owner, even if the owner is going to abuse it.

Yet since everyone is bound to impede the sin of his neighbor as far as he morally can, it is not permitted to return a thing to one who will abuse it for sin, unless a greater or lesser inconvenience is feared in proportion to the greater or lesser sin which the neighbor is going to commit.

d. An unjust distributor of offices or benefices injures commutative justice toward private persons who have obtained a strict right to the office or benefice. But they obtain this where a competition is proposed and under an onerous condition it is promised that the worthier man will be chosen. Such is a competition which is proposed with this condition, that a determined prize will be received by him who has made the best work or displayed the best thing.

As to the obligation of restitution which arises on the occasion of various exhibitions which today are made of machines, horses, fruits, flowers, etc., attention must first be given to whether the exhibition has the character of a competition or the character of a means for promoting the cultivation of things and therefore the common good.

In the former case he who displays the best thing acquires a right to the (first) prize, and therefore he who brings it about that the prize is not adjudged to him is bound to make restitution to him. In the latter case no

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**Notes**

756. Cf. Lugo, disp. 8, n. 86; Ballerini-Palmieri III, n. 349; Lehmkuhl I, n. 969; Genicot I, n. 513.

one has a strict right to the prize. Therefore he who is the cause why the prize is not given to him to whom it corresponds by reason of the thing displayed, sins against distributive justice, but is not bound to reparation of damage.

**455. On competition for ecclesiastical benefices.** a. A twofold competition is distinguished: one general, which is proposed for an indeterminate benefice or office not yet vacant; another special, which is proposed for a certain and determined vacant benefice or office. If an office or benefice is conferred after a general competition, it must be conceded that the superior is not bound from commutative justice to prefer the more worthy man to the others, because the more worthy man who is omitted does not have a strict right to a determined benefice.

b. If a special competition is instituted, all teach that the superior is bound to confer the benefice on the worthier man; but not all agree whether the worthier man, by force of the competition, also acquires a strict right to the benefice, so that the superior must compensate him for the damage if, after omitting him, he chooses a less worthy man. The common opinion indeed teaches that the worthier man has a strict right to the benefice; but the opinion of those who deny the strict right of the worthier man seems probable. St. Alphonsus later retracted the opinion which at first he had called probable.[757]

## Section 2. An Efficacious Cause of Damage

**456.** In order that a damaging action induce the obligation of restitution, it is required that the damage have actually followed from the action as from its own cause: for he alone can be obligated to repair damage who is author of the damage and therefore either himself effects the damage or in some way moves another to effect the damage.

Therefore the obligation of repairing damage is not had: a. if the damaging action is only the occasion of the damage: for an occasion is not a true cause, but that at whose presence the true cause acts; b. if it is only a condition without which not, or that without which the cause cannot act; c. if it is only a cause per accidens, from which damage can indeed follow, but it is not probable that it will follow from it, and therefore that it will follow is not foreseen: for justice does not oblige one to avoid actions from which damages to another follow only remotely and per accidens.

a. If a theft committed by Titius, from error because of other thefts previously perpetrated by Sempronius, is imputed to Sempronius, who therefore is punished as guilty of theft, the theft of Titius is the occasion of the damage which Sempronius suffers; its cause is the judge's sentence arising from the judge's error.

b. If someone returns a sword to him who abuses the sword to commit homicide, the handing over of the sword is a condition without which the homicide would not have been committed.

c. A cause per se of an effect is said to be that which by its nature is ordered to producing it; thus applying fire to a barn is the cause per se of the burning of the barn. A cause per accidens of an effect is said to be that which by its nature is not ordered to producing this effect, but produces the effect only when external circumstances concur; thus to kindle fire in a remote place, which a wind unexpectedly arising casts into the barn, is the cause per accidens of the burning of the barn. Therefore a cause per accidens: alpha. contributes something to producing the effect, whereas the occasion and necessary condition contribute nothing; beta. its connection with the effect is neither certain nor probable, but only possible, and therefore the effect is not foreseen by the agent.

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**Notes**

757. St. Alphonsus, l. 4, n. 109; *Elench. quaest. reform.*, q. 47. Cf. Lehmkuhl I, n. 972.

**457. Resolutions.** 1. He who by his example entices others to inflict damage is not bound to repair the damage inflicted by them, even if he foresaw, indeed even if by acting he intended, that others would follow his example: for example is not a cause, but a mere occasion of the action of others, who imitate the example. And indeed not the example which they see, but the evil will of the others, is the cause of the damaging action, which itself is the efficacious cause of the damage. Yet he who truly induces others to inflict damage is bound to repair it: for induction is not a mere occasion, but the cause of the action of others.

2. If someone's damaging action is imputed to another, for example, if someone's theft is imputed to another, who suffers damage from it, one must distinguish.

a. If he either did not foresee the damage, or indeed foresaw it and even intended it, but did not use means by which suspicion of the crime would be turned onto the other, he is not bound to repair it, because he is not the cause, but the occasion of the damage: for the cause of the damage is the error or evil will of those who ascribe the damaging action to the innocent person, and he by his action offers an occasion to this error. b. But if he not only foresaw the damage, but if in addition he used means which would supply a grave motive for attributing the action to another, for example, if to steal he dressed himself in another's garments, or if to commit homicide he used another's weapons and threw the weapons sprinkled with blood into his house, he is bound to repair the damage, because he is its cause per se.

To the question whether a guilty man is bound to denounce himself, lest an innocent man be punished as guilty, one must answer thus. In the former case he is not bound to denounce himself as guilty, because, since he is not the cause of the damage, he is bound only from charity to free another from penalty; but charity does not oblige with so great an inconvenience. In the latter case he is bound to denounce himself, because, since he is the cause of the damage, he is bound from justice to free another from penalty; but justice obliges the guilty man even with equal damage to himself.

3. If someone's damaging action of itself is only a cause per accidens of damage, but is placed by the agent with the single and direct intention that the damage follow, this intention brings it about that the effect is voluntary and can be imputed to the agent as a cause per se, provided his action truly existed as the cause of the damage and was placed uniquely, or at least primarily, from this intention. But if the action does not truly cause the damage, it must be called its occasion; and if it is placed from another intention, it is the cause of the damage per accidens.

He who steals from a miser a thing of slight value and by this theft is the cause why the miser falls into a grave illness is the cause of the illness per accidens; but if he intends only this, that the miser fall into illness because of that taking away, he is the cause per se of the illness and must repair his damage, because he is at the same time the unjust cause of the damage. He who places a snare in a road through which his enemy rarely passes, yet with the intention that the enemy, going to pass by chance, break his leg, is the cause per se of the damage and is bound to reparation, because at the same time he acts unjustly. But if from another end he places the snare while at the same time desiring the enemy's damage, he sins internally against charity, and the external action is the cause of the damage per accidens, although unjust.[758]

## Section 3. Theologically Culpable

**458. Notions.** Juridical fault must be distinguished from theological fault. Theological fault is said to be that which constitutes a true sin, whether mortal or venial; juridical fault consists in the omission of diligence and caution required by positive law for forestalling damage, whether that omission is joined with sin or is not. But if damage is inflicted entirely without sin, or without advertence, there is merely juridical fault.

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**Notes**

758. Cf. Lugo, disp. 8, n. 75.

a. A threefold juridical fault is distinguished according to the degree of diligence omitted: broad fault, which is the omission of the diligence which men commonly are accustomed to apply in their own affairs; light fault, which is the omission of the diligence which more diligent and prudent men are accustomed to apply; very light fault, which is the omission of the diligence which only the most diligent and accurate persons are accustomed to apply in their actions. A precious thing received on loan is taken from Caius; now Caius is guilty of broad fault if by night he leaves the house open; of light fault if, on going out, he closes the door of the house but does not lock it; of very light fault if, on going out, he closes and locks the door of the house, but does not examine whether it has been well locked. Recent laws indeed do not expressly have this distinction; yet because in some circumstances they require less diligence, in others greater diligence, they contain it equivalently.

b. Broad fault is ordinarily accompanied by theological fault, both because ordinary diligence must be applied in fulfilling one's office, and because advertence to the damage going to follow can scarcely be absent; but theological fault does not accompany light or very light fault unless the affair is of the gravest moment. For in proportion to the greater gravity and moment of the action or office, greater diligence and solicitude must be applied; hence in affairs of greatest moment the most accurate diligence must be applied. Wherefore it can happen that omission of this diligence, or fault juridically very light, is theologically grave fault or even most grave fault.

c. A damaging action from a threefold source can be theologically lightly culpable: alpha. from smallness of matter; beta. from imperfection of the act; gamma. from a light defect of due diligence, namely where some, but not all, diligence which is due is applied.

d. There are several cautions which by force of positive law are required from architects in raising buildings, from masters in constructing factories and workshops, from mechanics in caring for machines, etc., to forestall misfortunes. Those in whose favor laws of this kind are made have a right to demand that they be observed accurately; but those for whom they are made are not bound in conscience to observe those which exceed the moral diligence necessary for impeding misfortunes, if those whose interest is involved at least tacitly consent to the omission.

**459. Principles.** 1. In order that a damaging action induce the obligation of restitution, it is required that it be theologically culpable: for no one is obligated in conscience to repair damage unless it was inflicted in conscience. Moreover no one is held for his actions and their effects unless they are voluntary; but an action which is not theologically culpable is generally not voluntary.

a. He who in good faith accepted another's thing and consumed it is bound to restore nothing, unless from it he has become richer. Boys who knowingly and voluntarily indeed steal, but without advertence to the theological malice of their action, which they apprehend only as subject to penalty, are not obligated to restitution. He who from mere inadvertence did not extinguish a candle, whence a fire arose, is not bound to repair the damage. A physician who from inculpable error gives a harmful remedy to a sick man contracts no obligation of restoring: for in all these cases theological fault does not intervene.

b. He who retracts an evil will before the damage is produced by the physical cause is bound to repair it: for repentance of the will cannot bring it about that the obligation of restitution, which has already been contracted when the efficacious cause of damage had been placed with theological fault, ceases. But if the cause of damage is moral, retraction of the will sometimes brings it about that the obligation of repairing the damage ceases, as will be said below (concerning restitution because of unjust cooperation).

2. The obligation of restitution from merely juridical fault is present only after the sentence of a judge, unless someone has obligated himself otherwise by a special contract.

a. Laws which impose the obligation of restitution from merely juridical fault are just laws established by legitimate authority: for they are founded for the common good, namely so that citizens may be rendered more cautious and diligent, and by this reason damages may be forestalled; but just laws oblige in conscience. But those laws are penal, because they punish the omission of prescribed diligence; but penal laws do not oblige before the sentence of a judge, because no one is obligated to impose a penalty on himself.

b. Damage inflicted without theological fault on another's thing held by contract (loan, deposit, etc.) need not be repaired in conscience before the sentence of a judge, because in entering the contract the contracting party did not obligate himself to this.

Nothing indeed prevents someone from obligating himself by a special contract to repair, before the sentence of a judge, damage which arose from merely juridical fault or from a fortuitous event; but without a special contract no one is bound to this, because it is not established that in entering the contract he wished to obligate himself to this.

c. Damage inflicted in fulfilling an office (of judge, advocate, physician, confessor, etc.) without theological fault need not be repaired in conscience before the sentence of a judge: for from the common judgment even of the timorous, he who undertakes an office is not considered to obligate himself except to ordinary diligence; otherwise offices, with detriment to the public good, would be rendered too burdensome.

There are some who contend that in contracts which redound only to the profit of one of the contracting parties, and in quasi-contracts which are entered by undertaking an office, this implicit pact is always contained, namely of repairing damage even when it has arisen from merely juridical fault; and therefore in these cases restitution must be made in conscience before the sentence of a judge. But it can be denied that a pact of this kind is contained in those contracts or quasi-contracts, because neither the law of nature nor human law requires a pact of this kind. But because those offices by their nature demand great diligence, it can easily happen that negligence materially light is gravely culpable.

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## Article Second. On Doubtful Damaging or Damaging Performed with Error

**460. On doubtful damaging.** 1. He who doubts whether damage was truly inflicted, that is, whether the action placed by him was the cause of the damage, if after diligent inquiry the doubt perseveres, is bound to nothing; for an obligation must not be imposed unless it is certainly established.

Thus he is bound to nothing who doubts whether a calumny uttered by him brought damage to another in business.

2. He who doubts concerning the influence of the cause on the damage, as if damage is established and there is doubt whether it followed from his action or from a natural cause, by the same reason is bound to nothing.

Therefore he is bound to nothing who doubts whether the death of an enemy followed from poison administered by him or from disease. Likewise he is bound to nothing who doubts whether the damage which a merchant truly suffered arose from a calumny uttered by him or from another cause.

3. If the damage is established and it is established that several placed a cause per se efficacious of the damage, but there is doubt from whose action the damage followed, it seems that one must distinguish thus: a. if several acted by common conspiracy, or at least with advertence by which they knew that several together were placing a cause of damage and that for this reason the author of the damage could become uncertain, they are bound to repair the damage: for each by his own manner of acting is the cause why it is uncertain who inflicted the damage, and thus they unjustly impede the owner from being able to demand

compensation. b. If the individuals did not foresee that by their manner of acting the author of the damage could become uncertain, since the damage cannot certainly be imputed to anyone, likewise no one is bound to restitution.

Thus if two discharge a bullet into another's cow and only one bullet is found in the body of the killed animal, each is bound to repair part of the damage, and if one is deficient the other is bound to the whole, if, what rarely happens, they foresaw that they were making the author of the damage uncertain in this way. St. Alphonsus, n. 657 coll. n. 562, contends that no one is bound to repair damage unless it is established with moral certitude that he himself was the cause of the damage: for to induce the obligation of restitution it does not suffice to place an unjust action, but in addition it is required that the damage certainly followed from it.

**461. To what is he bound who doubts whether he has already paid a debt?**

a. If he doubts only negatively, he is certainly bound to payment: for a debt once contracted must be paid, unless at least a solid reason suggests that payment has already been made.

b. If he doubts positively, so that solid probability stands for each side, the creditor certainly can seek payment either privately or through a judge, and can accept and retain payment either made spontaneously or adjudged to him by a judge: for the creditor is not despoiled of the right of seeking payment unless it is established that payment was made.

c. Whether the debtor must pay spontaneously in conscience is very much disputed: some oblige him to make full payment, others to pay a part according to the ratio of the doubt, finally others entirely free him from making payment: for a doubtful obligation is none. And indeed equality between the given and the accepted, which commutative justice demands to be established, cannot be established while doubt remains; but there is no reason why the creditor should receive more than what is equal rather than the debtor, supposing that the debtor is not the culpable cause of the uncertainty.[759]

**462. On error in damaging.** He who inflicted damage from invincible error, being ignorant of its magnitude, must repair it insofar as it was voluntary, or insofar as he foresaw it at least confusedly; but as to the part of the damage which he did not apprehend, the damage is involuntary and therefore is not theologically culpable.

a. Therefore he who throws a gem into the sea from invincible ignorance, thinking that it is glass, afterward knowing its true value, is bound only for the damage which he knew. This solution is true if invincible ignorance is certainly established; but if the true damage was foreseen in some way, at least confusedly, which ordinarily happens, the whole must be repaired. For unless the error is excessively great, it must be said that it was foreseen in some way. Hence he who takes away a watch thinking it bronze, which afterward he finds to be gold, is not excused from restoring the whole price of the watch.[760]

b. He who, wishing to kill Paul's goat, by error kills his horse, must repair the damage of the goat. Nor is the opinion of those to be admitted who teach that no obligation of restoring is present because this damage happened per accidens and therefore was involuntary.

c. He who burns a house must repair the whole damage inflicted from the fire, even if he did not distinctly know its magnitude: for it suffices that he foresaw that indefinitely great damage would follow from his action. In this case only that damage can be called involuntary of whose existence he could not even have suspicion.

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**Notes**

759. Cf. Waffelaert, *De iustitia* (Bruges: Beyaert, 1886), II, n. 261; *De principiis*^3, n. 220.

760. Cf. St. Alphonsus, l. 3, n. 613; Lugo, disp. 8, n. 63; Carriere, n. 1151.

**463.** The famous question is, to what he is bound who, intending to harm someone, from invincible error inflicted damage on another; for example, who, wishing to burn the house of Titius, burned the house of Sempronius, invincibly thinking it was the house of Titius.

a. From the hypothesis the error of the damager is invincible: for if he has even the smallest suspicion that the thing which he destroys does not belong to him whom he intends to harm, without doubt he is bound to restore it.

b. All concede that the question must be solved from this principle: if the damage inflicted is voluntary and therefore formally unjust, it must be repaired; but if the damage must be said to be involuntary and therefore only materially unjust, no obligation of restitution exists. Therefore it is asked whether this error impedes the damage from being able to be considered voluntary.

c. Several and weighty authors are of this opinion: that in this case no obligation of restoring is present,[761] not to Titius, because he suffered no damage, nor to Sempronius, because with respect to him the damaging action is altogether involuntary.

For an action is involuntary whose object is not apprehended; but he who, altogether ignorant, inflicts damage on Sempronius does not apprehend that he injures the right of Sempronius; therefore he inflicts damage on Sempronius involuntarily. In other words: the obligation of restitution does not arise except from an action which is formally unjust against him to whom damage is truly inflicted; but this action against Sempronius is not formally unjust, but only materially unjust; therefore nothing must be restored to Sempronius.

d. Nevertheless, in this case the damager theoretically cannot be excused from the obligation of restitution: for all the conditions required for inducing the obligation of restoring are present: an unjust action, efficacious of damage, and theologically culpable; nor can error concerning the person impede the action from being voluntary as to its substance and inducing the obligation of restitution.

Indeed alpha. Although the damager did not intend to inflict damage on this person, nevertheless he willed to destroy another's thing; but by that very fact he took on himself the burden of restoring the destroyed thing. For just as the damaging action contains a true sin against commutative justice, even if the damager errs in the person whom he injures, so from the same action arises the obligation of restoring, which is always connected with a voluntary damaging injury of commutative justice. Now if it is asked to whom the damage must be repaired, it must be said: to the injured owner, even if he did not explicitly intend to inflict damage on him. For he who destroys another's thing, which he erroneously thinks belongs to this owner, has a twofold intention with respect to the owner: explicit of injuring the putative owner, and implicit of injuring the true owner of the thing; but when the error has been detected, there is no obligation with respect to the putative owner, but the obligation remains with respect to the true owner of the thing. beta. The common sense of men agrees: no one who does not know the controversy of theologians about this matter frees such a damager from the burden of restoring, because this persuasion is implanted in all by nature: he who advertently inflicts damage is bound to repair it, even if he does not know the damaged person or errs concerning him.[762] gamma. Yet if someone by error kills Peter while wishing to kill Paul, and if the damage to be repaired to the one involuntarily killed is much greater than the damage to be repaired to Paul, he does not seem bound to repair the whole (n. 462).

e. Yet if someone, relying on the authority of theologians and especially of St. Alphonsus, can form his conscience according to the contrary opinion and intends to follow it, practically he cannot be obligated to make restitution.

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**Notes**

761. Of this opinion is Lugo (disp. 17, n. 77 s.), whom St. Alphonsus follows (n. 629) with his followers, and among recent authors D'Annibale (II, n. 232) and Genicot (I, n. 522).

762. Ballerini-Palmieri III, n. 441; Lehmkuhl I, n. 977; Marres l. 2, n. 69; Vermeersch n. 165.

# Article Third. On Certain Acts of Damaging in Particular

## Section 1. On Damaging in Spiritual Goods

**464. Obligation of restoring.** In this place a fitting occasion offers itself also to treat of the obligation of restoring because of damage inflicted in spiritual goods. Spiritual goods are understood not only as supernatural goods, which conduce to the eternal salvation of the soul, but also natural goods such as sciences and arts, the use of reason and of free will. To supernatural goods also pertains the good of the priestly and religious state.

Assertions. 1. He who by an unjust means (fraud, lie, force, fear instilled) inflicts spiritual damage on another, or impedes another from obtaining a spiritual good, is bound to repair the damage inflicted if it can be repaired in the same order: for anyone has a right to demand that evil not be inflicted on him by an unjust means.

a. Therefore he who induced another to sin by fraud or instilled fear is bound from justice to call him back if he cannot of himself return to the former state. But if of himself he can do this and does not do it, the damager is bound to nothing: for since the damaged person voluntarily perseveres in evil, by this very fact he is considered to remit the injury to the damager.

b. He who by fraud induced another into practical error, from which another evil can follow, for example, that reputation unjustly taken away from the neighbor need not be restored, is bound to recall the error and compensate the damages arising from it and foreseen in some way.

c. He who by fraud induced another into speculative error, for example, that there is no purgatory, generally does not commit a grave injury unless the error concerns the principal dogmas of faith, or unless the errors are many and of great moment.

d. He who by poison or other illicit means deprives another of the use of reason, memory, or free will, injures justice, but is not bound to restitution because of this spiritual damage itself inflicted, because it cannot be repaired in the same order; yet he is bound to repair temporal damage, if any was suffered by him who was deprived of the use of reason. The same must be said if someone by force, fear, or fraud turns another away from the study of letters or arts, or does not permit him to use the science or art acquired.

2. He who without an unjust means inflicts spiritual damage on another, or impedes him from obtaining a spiritual good, is bound not from justice but only from charity to repair the damage inflicted, if he can: for where no injury is inflicted, no obligation of restitution is had.

He who by evil example or persuasion induces another to sin is bound to call him back only from charity, not from justice.[763]

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## Section 2. On Damaging Because of Homicide

**465. Prenotanda.** a. It is clear that the obligation of restitution arises only from voluntary and unjust homicide; therefore he who kills another by chance or for the sake of defense is bound to nothing.

b. What is here established concerning homicide, with due proportion, also holds concerning damage inflicted by mutilation or wounding.

c. The obligations of the killer pass to his heirs, because they are real obligations inhering in his goods; and likewise restitution which cannot be made to the one killed himself is owed to his heirs, unless condonation has been obtained, because heirs succeed to all the rights of the one killed.

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**Notes**

763. Cf. on this matter Lugo, disp. 9, n. 1 ss.; Elbel-Bierbaum, *Theologia moralis* II, pr. 6, n. 180-205.

The remission of injury which a dying man grants to the killer is not of itself a condonation of damages or of restitution. In the same way, if the killer is punished by a judge, the obligation of repairing damages to the heirs is not extinguished by this penalty.

d. By homicide the killer contracts two kinds of debts: some toward the one killed because of damage inflicted on the one killed himself, others toward persons joined with the one killed in some way because of damage which followed for those persons from the homicide.

Persons joined in some way with the one killed are: wife, children, parents, blood-relatives and relatives by marriage, friends, the poor, to whom the one killed was accustomed to do good, and creditors. But the damages which occur to these persons joined with the one killed consist in this: that they are deprived of goods which were conferred on them by the one killed, or which they hoped would be conferred, either gratuitously or from debt, such as due support for children, alms for the poor, payment to creditors.

e. The one killed can condone the restitution of damages which the killer inflicted on the one killed himself; but the one killed cannot condone the restitution of damages which the killer inflicted on persons joined with the one killed (whether they are heirs or others), because he cannot remit the rights of others.[764]

**466. Obligation of restoring.** 1. The killer must repair all temporal damages which befell the one killed himself from the killing before his death.

a. Therefore expenses (necessary, not likewise superfluous) for treatment must be repaired, and emergent damage or loss of profit arising from work omitted or from business omitted during the time of illness.

The loss of profit which must be compensated to the injured man himself, if he lives, is not that quantity which he had profited before the misfortune happened to him, but much less, "because," as Lugo notes, "there is question of profit not held in fact, but in hope; but profits in hope are worth less because of the dangers and impediments which can happen; but especially uncertain are profits from business." It is better to enter a settlement with the injured man concerning this matter, because the quantity of the damage is very difficult to determine.

b. Expenses made for funerals must not be repaired, since they would likewise have had to be made if he had died by a natural death; nor for bodily damages, namely for pains tolerated, or for a member amputated, or for life itself lost, is anything to be restored from commutative justice, because restitution must not be made in another kind of goods unless it has been enjoined by the sentence of a judge.

2. Damages inflicted on those persons who are so joined with the one killed that the killing is the cause per se, and not only the occasion or cause per accidens, of those damages must be repaired.

a. To these persons pertain wife, children, and parents,[765] to whom support was owed by the one killed: for the damage of those to whom support is owed from piety follows per se from the killing of the father of a family, because they constitute with him as it were one person; and therefore the damage follows proximately and necessarily from the killing.

alpha. In order that the killer must restore to those joined with the one killed, it does not suffice that support is owed to them from piety, but it is required that they truly received it from the one killed: for if they did not receive support from him, either because the one killed could not furnish it on account of incapacity or did not wish to furnish it on account of malice, or because, on account of abundant riches, the father's work was

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**Notes**

764. Cf. Lugo, disp. 11, n. 63, 64.

765. From C.A. Section 1327, only wife and children.

not necessary, they truly suffered no damage from the killing.[766] Indeed even in the case in which the family of the one killed is otherwise provided for after his death, by the same reason restitution is not owed to them.

beta. The quantity of restitution which is owed to these persons is not the whole of what they were accustomed to receive before the death of the one killed or to which they would have had a right, but must be determined according to the hope of support. But this hope must be estimated from the conditions of the killed person, namely how long he would still have lived and how much by his skill and diligence he would have profited.[767] Yet because of the difficulty of determining the quantity of damage to be repaired by the killer, in practice it will generally be licit to follow the opinion, in itself little probable, which holds that to those joined with the one killed the support must be restored which they were receiving from the one killed, as long as they do not have from elsewhere that by which they may be supported.[768]

If the widow of the one killed is provided for by a pension paid from the public treasury, she suffers either no damage or little damage; therefore either no restitution or only little restitution is owed to her. In rigor of right, restitution would have to be made to the public treasury. But the public treasury, and the same must be said of an insurance society (of life), perhaps do not urge the obligation of repairing the damage inflicted on them: for concerning cases of this kind, although foreseen, nothing is provided in their statutes.

b. To these persons do not pertain alpha. the poor or pious causes, even if they certainly would have received alms from the one killed; beta. nor other blood-relatives besides those named above: for the damages of those to whom goods came from the mere liberality of the one killed follow from the killing not per se but per accidens, because they do not morally constitute one person with the one killed, and therefore the damage follows only remotely.

**467. Whether the killer must repair the damages which befell the creditors of the one killed from the homicide, or whether he must pay the debts of the one killed.**

a. Two things first of all are certain: that the killer is not bound to pay to the creditors the debts of the one killed which he in no way foresaw, as is clear; then that he must restore the damages which he so directly intended to inflict on the creditors that the damage of the creditors was the sole cause of the killing: for this intention brings it about that the killing becomes the directly voluntary cause of those damages and therefore a cause per se.

b. In practice the killer is not bound to repair damages which befall the creditors of the one killed but are not intended, because either he did not foresee them, or, even if he had foreseen them, he is the cause of them per accidens: for what follows rarely or only remotely from some action is said to happen from it per accidens.

Theoretically they dispute whether the killer is a cause per se or per accidens of these damages. Those who say that the killing is the cause per se of the damages consequently oblige the homicide to repair the damages if he himself foresaw that the one killed had a certain hope of satisfying the creditors, because they have a right not to be unjustly impeded from obtaining their good.

**468. He who kills another in a duel** is not bound to restitution, even if he was the challenger, neither toward the one killed nor toward those joined with the one killed, except in the case in which the one killed accepted only to avoid grave damage. The reason for the first is that by freely accepting the duel he implicitly consents to the damages to be inflicted on himself, and by consenting remits to the killer the obligation of repairing

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**Notes**

766. St. Alphonsus, n. 631.

767. Cf. Lugo, disp. 11, n. 42 ss.

768. Cf. St. Alphonsus, n. 631.

those damages; the reason for the second is that he who consents to the duel is himself by his consent the cause that those damages are not inflicted unjustly; the reason for the third is that the challenger compelled the other by force and fear to expose himself to danger.

a. The one killed indeed cannot consent to the damages which are inflicted on those closely joined to him in such a way that the obligation of repairing them is remitted, because he can yield only to his own rights, not to the rights of others. Nevertheless the killer cannot be obligated to repair the damages of those joined with him. For he would be bound to repair them insofar as the killing would be unjust either against the one killed or against his family. But the consent of the one killed brings it about that the killing is not unjust either against the one killed or against the family of the one killed. Not against the one killed, because no injury is done to one knowing and willing; not against those joined with the one killed: for he impeded them from obtaining support, and because support is owed to them not from justice but from piety, the killing with relation to the family would be unjust insofar as by unjust force it impeded them from obtaining support; but since the one killed consents to his own killing, the killer did not by unjust force impede the family from obtaining support.[769]

b. Since today it not rarely happens that those are challenged to a duel who, because of religion, will not accept it and therefore are foreseen to be deprived of their office with great damage to themselves, it is asked whether those challenging are bound to repair this damage. But the challenge and the rejection of the duel constitute the occasion of the damage, not its cause, which is constituted by the sentence of the tribunal of honor (*Ehrengericht*), by force of which, dismissed from office, he incurs damage. But from the fact that the challenger foresaw and even intended the damage, the challenge, which of itself is the occasion, does not become the efficacious cause of the damage. Wherefore the challenger is not bound to repair the damage.

## Section 3. On Damaging Because of Stuprum or Fornication

[770] The obligations of a violator by *stuprum* are referred, some to the oppressed virgin, others to the offspring perhaps conceived; and the obligations toward the injured virgin are different if the violator promised marriage to her, and if he did not promise marriage. The violator by *stuprum* contracts obligations toward the injured virgin because the virgin (which is required for true *stuprum*) was oppressed by force and violence: for the fornicator who commits the sin with the virgin consenting, if offspring is excepted, is bound to nothing, neither toward the virgin, because no injury is inflicted on one willing and consenting, nor toward her parents, because injury is done to the parents only insofar as the injury inflicted on a minor daughter redounds to the parents; but no injury is inflicted on the consenting daughter; therefore none redounds to the parents.

**469. Toward the virgin.** 1. If the violator by *stuprum* did not promise marriage, he is bound to repair all damages which befell the virgin from the sin, because of these he himself is the efficacious and unjust cause. But he can repair these damages in two ways: either by taking her as wife, or by furnishing her a dowry, or by otherwise seeing to it that she can marry equally well as she would have married if she had not been violated; and if for that reason she cannot marry, he must support her.

a. Yet the woman is not bound to accept the violator by *stuprum* who offers himself as spouse, unless she spontaneously wishes it: for it is altogether repugnant to equity that she who has suffered injury through *stuprum* should in addition lose the liberty of marrying whom she wishes; wherefore if she refuses to marry the violator by *stuprum*, he must endow her.

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**Notes**

769. Lugo, disp. 11, n. 71, 72; Bucceroni, *Casus consc.*, n. 82, 6.

770. Cf. Lugo, disp. 12, n. 1-37.

b. The violator by *stuprum* is not bound to marry the virgin who, after refusing the dowry, demands marriage: for he is bound only to repair the damage inflicted by *stuprum*, but this is repaired by endowing her so that she can marry equally well.

2. If he promised marriage, so that he obtained intercourse by the promise of marriage, by force of the contract of promise, even if he promised fictitiously, he must marry her, with these cases excepted: alpha. if there is fear that the marriage will be unhappy, as if there is between them a great inequality of status (not only of riches); beta. if the virgin could easily advert that the promise was not made seriously; gamma. if the parents reasonably dissent.

3. For the good of virginity taken away he must restore nothing, because virginity cannot be compensated by goods of fortune. Therefore if the *stuprum* remained hidden, so that the woman suffered no other damage besides the loss of virginity, the violator by *stuprum* is bound to nothing.

**470. Toward the offspring.** If offspring is born from the intercourse, the violator by *stuprum* is bound:

a. To pay the expenses of birth.

b. To nourish the offspring, that is, to pay the expenses for food, clothing, habitation, and education, and this he alone, because he alone is the cause of the sin.

c. To acknowledge the offspring and legitimize it through subsequent marriage; yet this obligation is only of charity or piety, and therefore does not urge with grave inconvenience.

**471. Obligations of the fornicator:** a. The fornicator is not bound to pay the expenses of birth if the mother can bear them, because the mother freely consented to the sin.

b. The burden of nourishing the offspring rests upon both parents from natural law.

The quantity which each part must contribute for nourishing the offspring they can establish by common consent. But if the father refuses to contribute his part, the mother can go to the judge: for civil law imposes the burden of nourishing illegitimate offspring, at least in part, on the male fornicator, with the exception of the French code, which imposes this burden on the mother alone.

c. If a woman admits two lovers and sins with each, so that it is unknown who is the father of the offspring, of itself neither is bound to nourish the offspring (except indeed the rare case of which in n. 460), because the woman is the cause why the father cannot be established.

Yet if civil law imposes in penalty of the offense the burden of nourishing the offspring on any male fornicator who can be the father of the offspring, the woman can demand payment from either through the judge: for a law of this kind cannot be called unjust, both because it is established in favor of the offspring, and because each fornicator truly placed the act by which he could become the father of the offspring.[771] But where civil law does not grant this right to the woman, she acts unjustly and is bound to restitution when she denounces either man at will as father of the offspring, not having certitude of this thing, since she herself is the cause of the uncertainty.

## Section 4. On Damaging Because of Adultery

It is asked: a. who must repair the damages arising from adultery; b. what damages must be repaired; c. how they must be repaired.

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**Notes**

771. Cf. C.A. Section 163, where he is presumed the father who had access to the mother at the suitable time; on the contrary C.G. Section 1717 denies every right of this kind to such a mother.

**472. Who must repair the damages.** 1. If from adultery no offspring is born, the adulterers are bound to nothing, except the case in which the adultery becomes known to the husband: for since an injury is inflicted on the husband by adultery, this indeed cannot be compensated by money, but must be repaired by satisfaction.

2. If offspring has been born from adultery, and the woman was driven to consent by force, the adulterer alone must repair all damages which follow from the adultery.

3. If the woman freely consented to the adultery, each is bound in solidum to repair the damages arising from the adultery.

4. If the husband consented to the adultery, the obligation of restoring ceases, provided necessary heirs are not deprived of the legitimate portion.[772]

5. If the adulterous wife doubts whether the offspring is of the husband or of the adulterer, no restitution is to be made: for offspring is presumed legitimate unless the contrary is certainly established, from the known axiom: the father is he whom the nuptials demonstrate.

6. But if the offspring is certainly adulterine and it is doubtful which of several adulterers whom the woman admitted is its father, no one is bound to repair the damages, except in the case in which the individuals knew that the woman admitted several and adverted that by this manner of acting they impeded it from being known who should nourish the offspring, and therefore impeded the woman from obtaining that to which she has a right.

The opinion of certain older authors affirming that each adulterer is bound to nourish the offspring is supported by no reason, since no one must repair damages of which he himself is not the certain cause.[773]

**473. What damages must be repaired.** 1. Nearly every difficulty vanishes if the spurious offspring can be separated from the family and nourished and educated outside the family; therefore if this can easily be done, care must be taken that it be done.

2. But if this cannot be done: a. the adulterer must repair the expenses of birth and education which the husband made; b. the detriments which other members of the family suffer from the fact that the spurious child received the paternal inheritance equally with the others: for these damages follow per se from the adultery.

3. If anything is bequeathed or donated to the spurious child by blood-relatives who think him legitimate, it indeed need not be restored by the adulterer, because this damage follows from adultery per accidens.

4. It is clear that a spurious son who knows his condition can retain neither the paternal inheritance nor gifts made to him solely as legitimate, because the donation, as proceeding from error, is null, unless it is of slight moment or made in view of the person.

**474. How they must be repaired.** 1. The adulterous woman is not bound to manifest her crime, neither to the husband lest he give anything to the spurious child, nor to the spurious child so that he himself restore: a. because manifestation cannot be made without the gravest evils excusing from restitution, namely hatred and sadness of the husband, domestic discords, grave infamy; b. because manifestation is useless: for the son is not bound to believe his mother asserting that he is illegitimate, since he is not bound to believe one witness.[774]

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**Notes**

772. Cf. D'Annibale II, n. 281.

773. Cf. Lugo, disp. 13, n. 19; St. Alphonsus, n. 658.

774. Cf. Lugo, disp. 12, n. 62. This opinion among doctors is sufficiently common, namely that no one is bound to believe one witness, even if of faith in no way suspected: for positive law (in St. Alphonsus, n. 651) has established this for the common good, to forestall the frauds of men.

2. Yet the adulterous woman is bound to repair damages by other modes: by laboring more diligently, by administering the domestic estate more industriously, by diminishing her own expenses, and, if she has her own goods, by disposing of them in favor of the legitimate offspring.

3. If the adulterer cannot make restitution without the gravest inconvenience (danger of life, detriment to reputation, discord of families), he is excused from making it.

## Section 5. On Damaging Because of Injured Law of Military Service

**475. Because of refused military service.** 1. Those who by illicit means, for example, lies, feigned diseases, mutilation, withdraw themselves from military service, even with the obligation of the law in conscience supposed, a. certainly do not act against commutative justice nor are they bound to restitution where all are called to military service: for they injure the rights of no one: not of society, which obligates to military service only from legal justice; not of others, who suffer no damage from this manner of acting. b. But neither are they bound to restitution where only a determined number are assumed for military service, whether they withdraw before or after the drawing of lots, because their manner of acting toward those who are called in their place is neither unjust nor efficacious of damage.

It is not unjust, because they are bound to serve as soldiers only from legal justice and therefore they are not bound by a strict obligation of justice to impede the damages of others; nor do others have a right of remaining immune from military service. It is not efficacious of damage: for the manner of acting of the youths is the occasion, and the law of conscription is the cause, why others are assumed in their place.

2. Those who corrupt physicians or other officials by money or other gifts so that they are declared unfit by them, although they labor under no defect, act against commutative justice equally as the physicians and officials do, and are bound to restitution, not indeed toward the republic, which suffers no damage, but toward those who are called to military service in their place. For since physicians and other officials, by force of their office, are bound to choose those fit while rejecting only those unfit, all have a strict right of demanding from them that they perform their office rightly.

a. Those who corrupt physicians: for those who strive only to win their benevolence for themselves, so that in doubt concerning fitness they may pronounce sentence in their favor, do not act illicitly.

b. Against the common opinion of others Lehmkuhl (n. 888) raises a doubt whether physicians and officials are bound from commutative justice or from legal justice to discharge their office rightly, that is, according to the laws. He who judges this opinion probable, and likewise he who probably thinks the law of conscription unjust, can excuse youths who corrupt and corrupted physicians from the obligation of restoring toward the substituted soldier.

c. If those who by ecclesiastical (divine) or natural law are exempt from military service (n. 319) use frauds or corrupt physicians so that they may be declared unfit for military service, they are not bound to restitution, because they pursue their right; but they sin insofar as they do this by illicit means.

d. They are not bound to restitution toward the republic, not even in the case of universal conscription. For although the republic has a strict right of demanding from physicians that they assume for military service all youths who are not unfit, nevertheless neither is there question of grave matter nor does the republic suffer true damage because among so many one or another is unduly exempted. From this it also happens that they are not accustomed to interpret this office so rigorously as other public offices.

3. He who, after receiving payment, serves in the military for another and deserts from military service, is bound to restitution toward him from whom he had received the price, if this one is forced either himself to undergo military service or to hire another.

If he who had hired the deserter suffers no damage, the deserter cannot be obligated to restitution: for he who had hired the deserter can demand nothing else except that he himself be free from the military burden, not that another truly serve as soldier for him.

## Section 6. On Damaging Because of Defrauded Taxes

**476. Obligation of restoring.** 1. The question whether those defrauding taxes are bound to restitution means whether afterward they are bound to supply the omitted payment; whether a law not observed at the determined time, once the time has elapsed, still obliges. Since there is no obligation of paying indirect taxes, the question is referred to direct taxes.

a. Those who say that tax laws are penal laws consequently deny any obligation of restitution, unless it is pleasing to call the payment of the imposed penalty restitution in the case in which defrauding has been punished.

b. Those who teach that tax laws oblige in conscience and indeed from commutative justice consequently affirm also the obligation of restitution, that is, that from the same commutative justice the defrauded tax must be paid to the republic.

c. Finally those who teach that tax laws oblige in conscience from legal justice ask about the obligation of afterward paying the tax which previously had not been paid; therefore they ask whether the tax law, which was not observed at its time, must still be satisfied afterward. Now those defrauding are not bound to pay taxes afterward unless by the sentence of a judge they are obligated to this.

Nor may it be said that those defrauding the whole tax compel other citizens to have to pay more: for from the defrauding of some, the taxes of others are not increased, because there is so great an abundance of taxes that those which are paid suffice for the republic; yet if it could be shown that others therefore have to pay more, commutative justice would be injured by him who does not pay the tax; but this can scarcely ever be shown.

2. Those defrauders are bound to restitution who, after entering a pact, express or tacit, with the collectors, use force or frauds so that they may decline payment of taxes. For by an unjust means they impede the republic from obtaining a just tax, and therefore also citizens from enjoying the good of freedom from paying larger taxes.

The distinction must be noted between a tax which is imposed by a preceptive law and a tax which is imposed by a penal law. To avoid the payment of this latter, he alone uses an unjust means who uses force or a pact, but not he who uses lies or perjuries: for in this case the fisc does not have a right in the tax, but only the right of occupying the tax; wherefore a means which concerns the goods subject to tax (concealment, lie) is not unjust, but only a means which concerns the person occupying the tax (force, pact). In a similar way one does not inflict injury on a poor man existing in extreme necessity if he conceals his goods by lies, but only he who impedes him wishing to occupy the goods which he needs.

3. Collectors are bound to restitution of the tax if they culpably neglect collection: for from office they are obligated to collect them; but they are not bound to restitution of the fine which would have been imposed on the defrauders if the collectors had reported them, because the office of caring that the fisc receive a fine does not rest upon them.

Restitution which is owed because of defrauded taxes either by collectors or by citizens is not to be made to the republic, which therefore suffers no damage, but can be made to the poor or by contributing something to the common utility.

## Question Fourth. On Restitution Because of Unjust Cooperation

# Article First. On Unjust Cooperation in General

**477. Prenotanda.** Cooperation in general is concurrence with another acting. As it is taken here, it is concurrence with another unjustly inflicting damage; therefore a cooperator is said to be one who with another is the cause of unjust damage.

a. This cooperation is either positive or negative: negative consists in the omission of an action due from justice for impeding damage; positive consists in an action by which damage is unjustly inflicted with another; each can be physical and moral.

b. Positive moral cooperation influences the will of the damager; physical cooperation concurs with the damaging action, or assists the damager in inflicting damage. Negative moral cooperation consists in the omission of an action due from justice by which damage must be impeded through influence on the will of the damager, as if someone omits counsel or command by which he can and must turn another away from inflicting damage. Negative physical cooperation consists in the omission of an action by which damage can be impeded through influence on the damaging action, as if a guard does not drive away a thief.

c. This cooperation differs from that of which there was speech above (n. 116 ss.) in that here there is question alpha. of cooperation in a sin against justice; above, of cooperation in a sin against any virtue; beta. of formal cooperation, from which the obligation of restitution arises; above, of formal and material cooperation; gamma. of any cooperation whatever, whether the cooperator is an equally principal or secondary cause; above, of cooperation with another acting principally.

**478. Obligation of restitution.** 1. Unjust cooperation induces the obligation of restitution: for it is the cause of damage unjustly inflicted, at least partial cause, whether the cooperation was positive or negative.[775]

Therefore even negative cooperation, by which another's damage is not impeded when it ought to have been impeded from justice, induces the obligation of restitution. To impede the damage of others pertains of itself to charity, just as to preserve and promote the good of others does, because commutative justice only requires this: that we not violate the rights of others nor inflict damages on them. Yet per accidens, namely from contract or from office or quasi-contract, there can be an obligation of justice to procure the good of others and to impede the damages of others.

2. In order that unjust cooperation induce the obligation of restitution, these conditions are required: that it be truly unjust, efficacious of damage, and theologically culpable: for an action by which damage is inflicted on the neighbor induces the obligation of restitution only under this threefold condition (n. 454).

Therefore no obligation of restoring exists if the action of the cooperator influenced nothing in the damage; and this generally has place in moral cooperation when the damager is already determined of himself and independently of the cooperator to inflict the damage.

**479.** The diverse modes of cooperation are contained in these verses:

Command, counsel, consent, flattery, recourse,

The participant, the silent, the one not opposing, the one not manifesting.[776]

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**Notes**

775. Therefore proposition 39 was condemned by Innocent XI: "He who moves or induces another to inflict grave damage on a third person is not bound to restitution of that damage inflicted."

776. Cf. St. Thomas II-II, q. 62, a. 7.

Of these nine modes, some set forth negative cooperations (the silent, the one not opposing, the one not manifesting), others positive cooperations; and indeed four (command, counsel, flattery, recourse) set forth moral cooperations, while two (consent and participant) set forth physical cooperation.

It is clear that moral cooperations are so many inductions to sin, while physical cooperations pertain to that cooperation of which there was speech above (n. 116 ss.).

## Article Second. On the One Commanding

**480. Declarations.** 1. The one commanding (ordering) is here understood as he who induces someone to inflict damage on another in his name.

a. It makes no difference whether the mandatary undertakes the business to be done gratuitously or for payment, provided he acts in the name of the one mandating. In the same way it makes no difference whether the one mandating is a superior of the mandatary, who by his authority enjoins on him the business to be done, or is equal to the mandatary: for to the nature of mandate only this belongs, that the mandatary act in the name of the one mandating.

b. The one mandating is the principal and primary cause of the damage; the mandatary or executor is its instrumental and secondary cause.

2. In order that a mandate induce the obligation of restitution, it must be the true cause of the damage inflicted; but it is the cause of the damage inflicted if it truly influences the will of the mandatary.

a. Therefore approval or ratification of the damaging action made after execution is not a mandate; but approval or ratification made before execution is equivalent to mandate if it influences the damage.

Therefore if someone manifests to you his plan of inflicting damage on another in your favor, and you do not contradict it, you are bound to repair it when you can contradict without difficulty, because by tacitly approving you are considered to have influenced the damage; but if someone, without your knowledge, inflicts damage on another in your favor, you are not bound to repair it.[777]

b. A mandate can be given in diverse ways: alpha. by reason of the mandate, either by entering a contract, whether gratuitous or onerous, or without a contract: by command, prayers, approval; beta. by reason of the mode, expressly or tacitly, as if someone by some sign shows that it will be pleasing to him if damage is inflicted.

**481. The obligations of the one mandating toward the damaged person** are contained in this principle: the one mandating must repair all damages which the mandatary inflicted by force of the mandate; for of these he himself is the efficacious cause. By force of the mandate are considered to be inflicted not only those damages which are expressly contained in the mandate, but also those which in executing the mandate could be avoided only with difficulty.

1. Damages which the mandatary inflicted from invincible error, not likewise damages which he inflicted from vincible error (which he could morally have avoided), the one mandating is bound to repair, because the mandate efficaciously influences the former, but not the latter.

2. Damages which the mandatary inflicts by exceeding the limits of the mandate, the mandatary is bound to repair, because he alone is their cause. Nor, if the one mandating afterward ratifies them, does he therefore become their efficacious cause.

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**Notes**

777. Cf. Vogler, n. 283.

To what is the one mandating bound if he revoked the mandate?

a. If the revocation of the mandate became known to the mandatary before its execution and the mandatary nevertheless inflicts damage, he is bound to nothing: for through revocation the influence of the one mandating on the damage ceases.

b. If the revocation of the mandate from any inculpable cause did not become known to the mandatary, whether because the messenger could not reach him on account of the shortness of time, or because by chance he was not brought, he is bound to repair the damage: for in fact the mandate is the cause of the damage.

c. If the revocation of the mandate did not become known to the mandatary because a free cause culpably impeded this, the one impeding is bound to repair the damage: for he exists as its cause.

**482. The obligations of the one mandating toward the mandatary** are contained in this: the one mandating must repair the damages occurring to the mandatary in execution of the mandate, of which he himself is the efficacious and unjust cause.

1. If by force, fraud, or grave fear he drove the mandatary to executing the mandate, he is bound to repair all damages occurring to him in the execution which he foresaw in some way, at least confusedly: for of these he himself is the efficacious and unjust cause; unjust indeed, because by compelling the mandatary by force he inflicted an injury on him; efficacious, because damages foreseen in some way follow per se from the mandate. But he is not bound to repair damages which he could not foresee, because of these he is only the cause per accidens.

Hence if one ordered by grave threats to commit theft is condemned to prison, the one mandating is bound to repair the damage arising from this: for this effect, as one not improbably connected with the action, follows from the action per se. But if the one ordered to commit theft falls from a horse and breaks an arm, the one mandating is not bound to repair the damage arising from this: for this effect, as connected with the action only by a possible nexus, follows from the action per accidens.

2. If the mandatary spontaneously or hired for payment undertakes the mandate, the one mandating is not bound to repair the damages occurring to him in the execution, because he himself is their cause neither unjust nor efficacious: for no injury is inflicted by the one mandating on the mandatary who freely undertook the action; moreover he himself is the cause of all effects of his action, which he freely undertook.

Note. One ordering, insofar as he is distinguished from one mandating, differs from him in two ways: a. the one ordering is the superior of the mandatary and by his authority enjoins the action on him; b. the one ordering is bound to repair to the mandatary all damages which he suffered in execution of the mandate and which the one ordering probably could foresee.

## Article Third. On the One Counseling

**483. Prenotanda.** The one counseling is said to be he who by his persuasion moves another to inflict damage on the neighbor.

a. The one counseling differs from the one mandating in that the mandatary acts in the name of the one mandating, but the executor of the counsel acts not in the name of the one counseling, but in his own name and ordinarily for his own utility; wherefore the one counseling, with relation to the executor, is a secondary cause of the damage, while the executor of the counsel is the primary cause of the same. Yet if the one counseling gives counsel solely for his own advantage, he is equated to one mandating and is the primary cause of the damage.

b. It belongs to the nature of counsel that it move the will of the executor as a moral cause to the damage. Counsel can be given in diverse ways: by suggesting reasons and motives, by prayers, exhortations, promises, flatteries, by showing the way and mode, etc.

c. Counsel is either impulsive, if it moves and determines another to inflict damage, or doctrinal, if it says an opinion concerning the goodness or malice, validity or invalidity of an action, for example, of a contract. Impulsive counsel is bare if it does not rest on motives but consists in exhortation alone; or clothed, if motives determining to harm are added, or if means of harming are suggested.

d. The distinction between bare and clothed counsel must be noted: bare counsel loses the character of a cause and the force of influencing the will of another by retraction, and becomes merely the occasion of the damage; but clothed counsel continues to influence even if it has been retracted, unless it is destroyed by contrary motives equally efficacious.

**484. Obligations of the one counseling as to the counsel itself.** He who gave an iniquitous counsel, whether he acted in good faith or bad faith, is bound from justice to retract it: for everyone is bound from justice to bring it about that from his action, whether formally or materially evil, damage not follow for another.

But if he cannot turn the executor away from inflicting damage, he is bound to warn the one to be damaged so that he may guard himself, if he can warn him without too great inconvenience; and indeed from justice, if he gave impulsive and clothed counsel, because he must impede, as much as he can, lest damage follow from his unjust action; and from charity, if he gave bare counsel, because he must avert the evil of the neighbor of which he himself is the occasion.

a. He who gave counsel in good faith and cannot retract it, or, once the retraction has been made, nevertheless cannot impede the damage, is bound to nothing further: for he is not a theologically culpable cause of the damage. But if he culpably neglects retraction, he is held for the damages.

b. If he gave counsel in bad faith and retracted it, one must distinguish: alpha. if the counsel is doctrinal, or impulsive and bare, the one counseling is not bound to repair damages nevertheless inflicted by the executor; for the force of the counsel, and therefore the cause of the damage, is taken away by the revocation itself. beta. If the counsel is impulsive and clothed, again one must distinguish. If the one counseling, in retracting the counsel, does not apply contrary motives at least equally efficacious, he must repair the damages, because his counsel truly remains the efficacious and theologically culpable cause of the damage. But if in the retraction he applies contrary motives at least equally efficacious, he can be excused from the obligation of restoring: for he who does not yield to motives of this kind is proved to act from his own malice, not from another's counsel.[778] Which motives for drawing another back from damaging are more efficacious depends on the quality of the person; but ordinarily in a Christian man the most efficacious motives are those which are sought from faith.

c. He who shows the damager the mode of inflicting damage which could not have been inflicted without that counsel, for example, the mode of committing theft which otherwise could not have been committed, is not excused from restitution by retraction: for in this case retraction is not efficacious unless the damager is impeded from inflicting damage or the one to be damaged is warned concerning the damage which threatens him.

**485. Obligations toward the damaged person.** The one counseling is bound to repair all damages which have been inflicted by the executor by force of the counsel: for of these he himself is the efficacious moral cause.

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**Notes**

778. Ballerini-Palmieri III, n. 362.

a. The one counseling is bound to nothing if the executor, already determined to inflict damage, would have inflicted the damage equally without the counsel, except in the case in which the damager is moved to inflict damage not by his own motives but by the motives of the one counseling.

b. If it is doubtful whether the counsel had influence on the executor, he is likewise bound to nothing, because the damage inflicted by the counsel is not established.[779]

c. If the counsel certainly influenced the executor, he is bound to repair the whole damage: for he is an efficacious concause of the damage.

d. If the one counseling persuades a greater evil than otherwise would have been inflicted, he is bound only for the excess, because of this alone he is the efficacious cause.

e. If the one counseling suggests to an executor already determined to inflict damage another mode of inflicting damage, he is bound to restitution insofar as that mode increases the damage.

f. To what the one counseling a lesser evil is bound will be said below (n. 487).

**486. Obligations toward the executor.** The one counseling is not bound to compensate damages which the executor suffered in executing the counsel: for no injury is done to one knowing and willing. Yet in a twofold case he is bound to restitution toward the executor:

a. If by deceit, fraud, or lies he was the author to another that he inflict damage: in this case he must repair the damage to each, both to him to whom he fraudulently gave counsel and to him to whom by force of the counsel damage was inflicted.

b. If he who must give counsel from justice gave harmful counsel. He must give counsel from justice who by force of state or office is bound to it, as advocate, physician, counselor, confessor, as will appear more clearly from the things to be said below (n. 488).

**487.** It is asked to what he is bound who induces another, already determined to inflict damage, to inflict a lesser damage.

a. If there is question of damage to be inflicted on the same person, he is bound to nothing: for he who persuades one who is determined to take away one hundred from the same person to take away only twenty, not only does not act against justice, but exercises a good work, since he persuades the diminution of evil, which is good.

b. If there is question of damage to be inflicted on a different person, as if someone persuades one determined to take away one hundred from Cantius that he should rather take twenty from Cantianus, authors disagree. It seems that one must say he is bound to repair the damage, except in the case in which the injured person must consent to the damage to be inflicted on himself, or in which a lesser damage is not counseled to be inflicted on a determined person, as if one wishing to steal from a church is told that he should rather take elsewhere.[780]

Namely, this counsel is licit and does not induce the obligation of restitution insofar as the other must consent to damage to be inflicted on himself; now if he to whom the damage was going to be inflicted (Cantius) would have fallen into extreme necessity because of this, another (Cantianus) is bound, if not to aid him, at least not to impede him providing for himself, and therefore to consent to the damage.

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**Notes**

779. St. Alphonsus (n. 562) calls this opinion sufficiently probable.

780. Cf. Lugo, disp. 19, n. 44 ss.; Ballerini-Palmieri III, n. 365.

**488. On doctrinal counsel.** 1. He who is deputed by force of office to give counsels and with evil intention or from gravely culpable ignorance gave harmful counsel, must repair damages which arise from the evil counsel both to the one seeking counsel and to a third person, because the one seeking counsel has a strict right of demanding that he who must give counsels from office have due knowledge and apply moral diligence.

2. He who by reason of office is not bound to give counsels is not bound to repair damages which arise from evil counsel to him who seeks and accepts the counsel, unless he deceitfully affects knowledge: for the one seeking counsel cannot be reasonably unwilling concerning the counsel nor concerning the damage arising from it. But he must repair damages which arise from evil counsel to a third person, provided the one counseling knew his own ignorance and foresaw, at least confusedly, the damage going to follow: for the one counseling concurs positively in inflicting the damage, and the injured person does not consent to the damage.

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## Article Fourth. On the One Consenting

**489. Notion.** The one consenting is said to be he who by external approval, vote, or sentence influences the damage of the neighbor; of this kind can be a sworn judge who with others gives sentence, a deputy who with others by his vote establishes a law, an elector who with others elects someone to an office or benefice.

The one consenting who by his consent does not influence the damage can sin against charity or even against justice affectively, but not effectively.

**490. Obligations as to the consent itself.** a. He who culpably gave consent for inflicting damage is bound to revoke it; if he does this before the damage has been inflicted, he is bound to nothing; but if he either has not done this or could not do it, he is held for the damage.

b. If in good faith he gave consent for inflicting damage, once the error has been detected he is bound to revoke it; if he has done this or could not do it, he is bound to nothing.

**491. Obligations toward the damaged person.** 1. The one consenting is bound to repair the damages into which the consent efficaciously influences; but it certainly efficaciously influences those damages for the infliction of which the consent is necessary.

Whether he who gives an unjust vote which is not necessary is bound to restitution.

a. Those who by agreement (for example, among the members of some faction), or at the same time (for example, by rising), or secretly (for example, by secret ballots) give a vote, all are equally bound to restitution. The reason for the first is that, once a conspiracy has been entered, each influences the vote of the others and therefore the damage; the reason for the second is that no one gave his vote earlier and no one later, and therefore all and each place one morally unified action for producing the effect, which therefore is attributed equally to each; the reason for the third is that it is unknown who was earlier or later, and therefore the effect is attributed equally to each, since each placed an action efficacious of itself of the effect.

Yet if even in secret voting it could be established that the vote of someone certainly did not influence the damage, he would be excused from restitution just as in voting which is made openly.[781]

b. If they give a vote openly and successively, certainly the first, whose vote is necessary, are bound to repair the damage, even if they foresee that others will not be lacking who would vote in the same way: for these truly and in fact influence the damage.

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**Notes**

781. Cf. Ballerini-Palmieri III, n. 366, 5.

c. Those who vote when the number necessary for deciding the matter has certainly already been completed are (at least probably) bound to nothing, because they no longer influence the damage already inflicted by others.

This opinion is called probable because there are some who think that in fact all votes influence the effect, because the matter is not decided, that is, the sentence is not fully given, unless when all votes have been given.

2. He who gives an unjust vote which is the sole means for impeding a greater damage is not bound to repair the damage; indeed he acts licitly if the thing to which he consents by his vote is not intrinsically evil, and if it is publicly known that this is done only to forestall a greater evil.

## Article Fifth. On the Flatterer, the Receiver, and the Participant

**492.** 1. A flatterer is said to be he who by praising or blaming moves another to inflict damage on the neighbor. He ordinarily has influence on the damage itself where the other would not have inflicted the damage without the flattery.

2. The obligations of the flatterer are the same as those of the one counseling: for he gives, as it were, clothed counsel, whose motives are generally taken from a false concept of worldly glory.

a. In order that the flatterer be bound to restitution, it is required that he advert that by his praises or reproaches he exists as a cause of the damage; but it is not required that he himself intend the damage.

b. It is clear that the flatterer is bound to restitution not only if he exists as cause of the damage, but also if by praise or blame he is the cause why the damage inflicted is not repaired.

**493.** 1. One receiving or furnishing recourse is said to be he who knowingly cooperates in the damage of the neighbor by furnishing security to the damager. This can happen in two ways: either by receiving another's thing or by protecting the author of the damage.

It belongs to the nature of one receiving that by his manner of acting he influence the will of the damager and determine it either to inflict damage again or to retain the thing taken away.

a. Therefore these are not receivers: alpha. those who receive criminals at home as friends and blood-relatives, or by reason of office as innkeepers, or to avert grave damage from themselves; beta. those who defend thieves or criminals in judgment in those things in which they themselves could defend themselves.

b. But these are receivers: alpha. innkeepers who receive thieves into lodging and conceal them lest they be captured; beta. tavern-keepers who accept from sons under family power money or other things secretly taken from their parents; gamma. parents who do not impede the thefts of sons and in this way add courage to them for repeating thefts.

2. The receiver is bound to repair damages of which he himself is the efficient cause; therefore if the one furnishing recourse brought it about that damage was inflicted or that the thing taken away was retained.

**494.** The participant is twofold: a. a participant in the prey is he who receives part of the thing unjustly taken away; b. a participant in the action is he who assists the principal damager in the unjust action itself.

1. The participant in the prey must restore that which he unjustly accepted: for he is an unjust possessor of another's thing; but he has no other obligation.

2. The participant in the action must repair the damages of which he himself is the efficacious and culpable cause. Which these are must be determined from the principles established concerning cooperation (n. 118 s.). Therefore if the cooperation is licit, no obligation of restitution arises from it.

Whether it is licit, in order to avoid one's own damage, immediately to cooperate in an action damaging to another, is said elsewhere (n. 118).

## Article Sixth. On Negative Cooperations

**495. Prenotanda.** Negative cooperators are said to be those who do not impede the damage of the neighbor which they are bound from justice to impede. Three are numbered: the silent, the one not opposing, the one not manifesting.

a. The silent one is said to be he who before the damaging does not impede the damage, for example, does not deter thieves by a shout, does not warn concerning the damage to be inflicted.

b. The one not opposing is said to be he who, while the damage is being inflicted, does not impede it, for example, does not defend the thing or turn away the damaging action, as a guard who does not drive away a thief.

c. The one not manifesting is said to be he who after the damaging does not reveal the damage inflicted either to superiors or to the damaged person, so that the damage may be repaired.

**496. Their obligation.** Those who are bound from justice to impede damage and do not impede it, when they can do so without grave inconvenience, must repair the damage inflicted.

a. If there is question of restitution because of damage not impeded, first of all one must investigate whether he who did not impede the damage was bound to impede it from justice or from another virtue.

All are bound from charity to impede the damages of others by both moral and physical influence if they easily can, and this in two ways: both so that the damager may be turned away from sin, and so that evil may be forestalled from the one to be damaged.

Those on whom the office of superior rests are bound by a special obligation, which arises from superiority, to avert damages from their subjects. Thus a father, who must procure the good of his children from piety, is bound from piety both to turn his son away from inflicting damage on others and to impede others from harming his son; a prince, who must procure the common good from legal justice, of itself is bound from legal justice to forestall that someone inflict damage on the community over which he presides. Yet the condition itself of superior does not of itself oblige from commutative justice to preventing damages, whether those inflicted on subjects or those inflicted by subjects, unless superiors are obligated to this by a special office.

b. Only he who is bound from commutative justice to impede damage and does not impede it must repair it. But those are bound from commutative justice who are bound by force of an explicit contract or by force of office or implicit contract.

alpha. Damage inflicted by a son who does not yet have the use of reason, with theological fault supposed, the father is bound to repair before the sentence of a judge, because he must watch over sons not yet having the use of reason from justice. But damage inflicted by a son who already has the use of reason the father is not bound to repair, because he must watch over sons having the use of reason only from piety; the son will repair it as soon as he can. Yet after the sentence of a judge such damage too must be repaired, provided it was truly inflicted, because a law cannot be called unjust which incites parents and superiors to greater care and vigilance. The same must be said if a father catches his son inflicting damage and is silent in those circumstances in which silence is equivalent to approval. But in this case by his consent he cooperates positively.

There are some who oblige parents to repair damage inflicted by sons not yet having the use of reason, even if it was done without theological fault of the parents. Yet rightly they are held immune from the obligation of restitution if the damage was inflicted although the parents watched over their children with ordinary

diligence.[782]

beta. He who, asked by a thief, is silent, is not bound to restore; indeed neither is he bound to restitution who, in order to be silent, received money from the thief, unless he must shout from office. But if he receives money to watch whether someone is coming, he is held for the damage, because he cooperates positively in the theft.

gamma. Guards of vineyards and forests who do not impede acts of damaging or do not denounce the damagers are bound to repair the damages inflicted by them, unless the owner can be considered less unwilling, as if there is question of things of less moment, or if something is permitted to the poor. But they are not bound to compensate the fine, because they were hired only to avert damages from the owners.

The same must be said of overseers of customs duties who permit duties to be defrauded or do not denounce those defrauding, unless there is question of things of less moment, or of things for which from usage the tax is not usually exacted so precisely. Yet they are not bound to restore penal fines nor the price which they received from the defrauders so that they would permit the defrauding.

delta. The owner is bound to repair damage inflicted by his animals, and indeed before the sentence of a judge if with grave theological fault he neglected custody of them; but if theological fault did not intervene, after the sentence of a judge, provided the damage was truly inflicted. Here it must be noted that the owner culpably neglects the custody of animals even when he knowingly places over them an unfit or negligent guard.[783]

c. But he is not bound to impede damages with grave inconvenience, because of itself no one, by entering a contract or undertaking an office, is considered to obligate himself to this.

Whether he who does not cast a vote is bound to restitution when there is question of damage to be inflicted on another.

He is not bound to restitution if by his vote he cannot impede the damage, because no one is held for damage inflicted by another which he himself cannot impede. If by his vote he could have impeded the damage, one must distinguish: if the damage which arises from omission of the vote he is bound to impede from commutative justice, he must repair it; but if he is bound to impede the damage only from another title, whether from charity or from legal or distributive justice, by omission of the vote he will sin against that virtue which obliges him to vote, but he is not bound to restitution.

He is bound to give his vote from commutative justice who from office must protect the rights of the damaged person and therefore from office must impede his damages. In order that in a particular case the obligation of restitution be present, it is required in addition that he who must vote from office was bound to be present at the voting, or culpably was absent from it, and that he foresaw that damage would arise from the omitted voting.

**497. Obligation of the confessor.** From these things the obligations of the confessor are now gathered without difficulty, when he either obliges a penitent to make restitution to which he is not bound, or frees him from making restitution to which he is bound. For a. the confessor with respect to the penitent must be considered as one counseling, who furnishes doctrinal counsel; b. moreover the confessor must give sound counsels not only from charity, but also from office and therefore from justice in those things which concern the spiritual good of the penitent; c. but in those things which pertain to the temporal good of the penitent, insofar as he is confessor, he has no obligation of justice. Therefore:

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**Notes**

782. C.A. Section 1309 agrees.

783. G.A. Sections 1299, 1315, 1320.

alpha. The confessor who with grave fault positively frees from making restitution a penitent who must restore is himself bound to restitution toward the third person, because by his counsel he is the efficacious moral cause of the damage which the third person suffers.

beta. The confessor who with grave fault induces a penitent who need not restore to restore is bound to restitution toward the penitent, because he is the efficacious moral cause of the damage which the penitent suffers.

gamma. The confessor who culpably does not warn concerning error a penitent falsely thinking himself bound to restitution is not bound to repair the damage which the penitent restoring suffers: for the confessor is indeed bound from justice to impede spiritual damages, but not temporal damages of his penitent. Yet if the silence of the confessor would deservedly be taken by the penitent for an affirmation of the obligation of restoring, the confessor would certainly be bound to repair the damage.

b. He who culpably does not warn the penitent concerning making restitution and thus is the cause why damage is not repaired to the injured owner is not bound to restitution, because he is not obligated from office to forestall the temporal damages of others.[784]

## Article Seventh. On Restitution to Be Made by Cooperators

Concerning restitution to be made when several concur in inflicting the same damage, it is asked: a. what or how much; b. in what order the individuals must restore.

### Section 1. On the Quantity of Restitution

**498. Notions.** 1. The quantity of restitution, when several concur in inflicting the same damage, can be different in three ways: for they are bound either in solidum absolutely, or in solidum conditionally, or only pro rata.

2. Solidarity, or the obligation of restoring in solidum, is the burden incumbent on each cooperator of repairing the whole or solid damage which was inflicted by several. Solidarity is called absolute if someone alone must repair the whole damage, while the others are bound only if he is deficient; it is called conditional if someone is bound to repair the whole damage only where others do not restore. If he restores the whole damage, in the first case he cannot demand compensation from the other cooperators; but in the other case he can demand compensation from them by right. The obligation of restoring pro rata is the burden incumbent on each cooperator of restoring only part of the damage inflicted.

**499. Principles.** In general it must be said that only he who is the cause (whether physical or moral) of the whole damage is bound to restitution in solidum. In particular:

1. He who together with others is the cause (whether physical or moral) of the whole damage, and indeed the principal cause, is bound to restore in solidum absolutely: for because he is the cause of the whole damage, he is bound in solidum, and because he is the principal cause, he must repair it absolutely; for others acted in his name and as his instruments, and therefore are bound to restitution only if he is deficient.

The principal cause is the one mandating with respect to the mandatary, and the one counseling who takes care that the counsel be executed solely in his own favor. Therefore he who by his mandate induces servants to steal, who seeks companions for carrying off a stolen thing, is bound to restitution in solidum absolutely; the cooperators are bound only if he is deficient.

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**Notes**

784. Cf. *De sacramentis*^3, n. 420.

2. He who together with others is the cause (whether moral or physical) of the whole damage, and indeed an equal cause, is bound to restore in solidum conditionally: in solidum indeed because he inflicted the whole damage, but conditionally because he inflicted it not alone but together with others.

It is asked when someone must be held as the efficacious cause of the whole damage.

a. He inflicts the whole damage who by common conspiracy concurs with others for inflicting damage, as if several conspire to despoil a house, because each influences at least morally the whole damage, provided the conspiracy is true and efficacious. But true conspiracy is had when each determines the others by persuasion, exhortation, etc., to inflict damage.

b. He inflicts the whole damage whose cooperation, whether moral or physical, is necessary for inflicting the damage, so that if he did not concur the damage would not be done, as if two despoil a traveler whom one could not despoil, or if someone casts a vote necessary for an unjust sentence which the others, if he were absent or contradicting, would never have given. For although his cooperation does not suffice for inflicting the whole damage, nevertheless, if the cooperation were denied, it could have impeded the whole damage. If someone helps a thief to carry off a chest which neither could carry alone, each is bound to repair the whole damage, because each is the cause of the whole effect insofar as without his help there would have been no effect.[785]

c. He inflicts the whole damage who is the moral cause per se sufficient of the whole damage, as if two give counsel for inflicting damage which each so influences the whole damage that even one would have sufficed for inflicting the same, or that even without the other the damage would have been inflicted: for it cannot be denied that several moral causes can be total or adequate causes of the same effect.[786]

3. He who together with others is the cause (whether moral or physical) of partial damage is bound to restore pro rata of the influence on the damage, as if several without mutual conspiracy concur to despoil a tree or to ravage a crop.

a. A partial cause of damage is he whose action is neither sufficient nor necessary for producing the whole effect, so that even without that action the effect would have happened, although it made it easier; as if four carry away another's beam which even three could have carried away; if three ravage a field which even two would have ravaged; or if someone suggests to a thief determined to steal a motive for stealing which indeed moves him but by itself alone could not have moved him. Therefore in this case each is bound to restore pro rata of cooperation.

b. They dispute whether he whose physical action is indeed sufficient for producing the whole effect, but not necessary, so that even without it the effect would have happened, is a partial or total cause of the damage, because it is not sufficiently established whether even several physical causes can be total and adequate causes of the same effect. Since the opinion affirming him to be only a partial cause is truly probable, in this case the obligation of restoring in solidum is not to be established, but only pro rata. Therefore if two without mutual conspiracy take away a chest filled with things which one could have taken away and would truly have taken away if the other had been absent; if two at the same time discharge into another's goat and kill it, which even one would have killed, each is bound only to part of the damage.

There are some who distinguish whether several together place an action sufficient of itself for the effect, as if two together discharge into another's goat and kill it, or whether they do not together place an action sufficient of itself for the effect, as if someone on another side applies fire to a house to which another has already applied

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**Notes**

785. Cf. Ballerini-Palmieri III, n. 376.

786. Cf. Ballerini-Palmieri III, n. 380 and 388.

fire. But this distinction does not seem necessary, since in each case the damaging action is a partial cause, from which no obligation arises except of restoring part of the damage.

4. What is to be done in doubt is resolved from the principles of probabilism. Therefore:

a. In doubt whether someone influenced the whole damage, he is not bound to restore in solidum, because the obligation of restoring in solidum is not certainly established.

b. In doubt whether others have restored their part, likewise he is not bound to repair the whole damage if it is truly probable that others have already restored or will restore: for the obligation of restoring the part of others is doubtful.

For practice St. Alphonsus wisely warns: "It must be noted that the rude, even if they are bound in solidum, it is rarely expedient to oblige them to the whole, since with difficulty they persuade themselves that they are bound to restore the part taken away by companions. Indeed, it can be sufficiently presumed that the owners themselves, to whom restitution is owed, consent that they restore only the part taken away by them, since otherwise there is great fear that they will restore nothing if they are obligated to the whole."[787]

## Section 2. On the Order of Restitution

**500.** Among cooperators who concur in the whole damage, that an order must be established in making restitution comes from this, that in the damaging action not all always cooperate in the same degree, but some have in it a more principal part, others a less principal part. Wherefore these things must be established:

1. If all cooperated in the same degree for inflicting the whole damage, there is no order among them, but each must equally first and immediately restore his part.

When several who concur in inflicting damage influence only part of the damage and therefore must restore only pro rata, likewise there is no order necessarily to be observed among them, but each is bound to restore his part according to the ratio of influence on the damage.

2. If they cooperated in different degree for inflicting the damage, the order to be observed among them is contained in these rules.

a. In the first place the possessor of another's thing is bound, whether he has it in good faith or bad faith; and if in bad faith he destroyed it, he is bound to restore its equivalent price.

If the possessor restores another's thing, the other cooperators are bound to nothing further, for the damage has already been repaired; and if another restores in place of the possessor, the possessor must render him unharmed.

b. In the second place the one mandating is bound, who is the principal cause of the damage inflicted.

c. In the third place the executor of the mandate is bound, who is the instrument of the one mandating and therefore together with him the primary cause of the damage.

Concerning the one counseling, it must be noted: if the counsel is useful only to the one counseling, he is equated with the one mandating and must restore before the executor; if it is useful only to the executor, this one is bound in the first place and the one counseling in his defect; if it is useful to each, each is bound pro rata, and each in the defect of the other in solidum.

d. In the fourth place the positive cooperators are bound: the one counseling, the one consenting, the flatterer, the receiver, and the participant in the unjust action.

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**Notes**

787. St. Alphonsus, n. 579.

e. In the fifth place negative cooperators are bound, who, since they do not inflict damage but only do not impede it, concur in it less than those positively cooperating.

**501.** From this established order the following are inferred:

a. If the principal cause restores, the secondary causes, which are obligated only in defect of it, are bound to nothing.

If one of the secondary causes restores, the principal cause must compensate him.

If one of the equal causes restores the whole, the others are bound to pay their part to him.

Therefore if one of the cooperators repaired the whole damage, one must distinguish in this way: alpha. if he is bound to restitution before others, these are free; beta. if others are bound before him, these must compensate the whole to him; gamma. if all are equally bound in the first place, the others must compensate to him the part which belongs to them.

b. If condonation has been made by the owner to the principal cause, the others also are immune from the obligation.

If condonation has been made to the secondary cause, the principal is not therefore freed from the obligation.

If condonation has been made to an equal cause, the other equals are not therefore freed, unless full condonation can be presumed.

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## Question Fifth. On the Circumstances of Restitution

# Article First. To Whom Restitution Must Be Made

In order that the proposed question may be answered suitably, a threefold case must be distinguished: a. the owner is certain and known; b. the owner is plainly unknown or, though known, cannot be reached; c. the owner is uncertain. The owner is said to be uncertain when among several it is doubtful whether this one or that one is owner.

**502.** 1. If the owner is certain and known, restitution of itself must be made to the owner himself or to the just possessor from whom the thing was taken away, whenever this can be done without injury to another and without great difficulty for the debtor, because on the one hand the thing cries out for its owner, and on the other the affirmative law does not urge with proportionately grave inconvenience.

a. Therefore if damage has been inflicted on the republic or community, restitution must be made to the republic or the community itself, if this can be done without great difficulty. Yet in this case, more easily than if there were question of restitution to be made to private persons, it can be conceded that restitution be made to the poor, whose care rests upon the republic or community.[788]

b. If damage has been inflicted on a community whose goods serve for pursuing an evil end, one must distinguish: if the community itself has no right of existing nor of possessing legitimately in the forum of conscience, because its end is evil, as the sect of Freemasons or a society of socialists, restitution is not to be made to the community, but to its members; but if the community itself has the right of existing and therefore the right of possessing, as a religious sect, restitution must be made to it, even if certain goods are applied to an evil use: for the evil use of goods does not prevent the sect itself from retaining ownership in these goods.[789] But even in this case a reason can more easily be admitted for restitution to be made to the

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**Notes**

788. Cf. Lehmkuhl I, n. 1020.

poor, for example, because the damage inflicted on each person is slight, because there is great difficulty of restoring to each person.

c. If a thing has been taken away which had been deposited, leased, or lent with another, it must be restored not to the owner but to the possessor, otherwise an injury is done to the possessor holding the thing by a just title, unless either he himself consents to restitution being made to the owner, or it is rightly and deservedly feared that he will consume the thing with detriment to the owner. Hence he who takes away linens from a washerman must return the linens taken away not to the owner but to the washerman, because otherwise this one would suffer grave damage.

d. He who culpably burns an insured house of itself must restore to the insurance society only as much as it pays to the owner, and in addition to the owner that part of the damage which the society does not repair. Yet sometimes restitution can be made to the poor, as will be said below.

e. Although restitution of itself must be made to the owner, not to his creditor, nevertheless restitution made to the creditor is valid, because indirectly restitution is made to the owner himself; and if there is a reasonable cause of restoring to the creditor, the owner is considered to consent to this mode of restitution. But if there is no cause of restoring to the creditor of the owner, the restitution in the external forum is invalid, when the law so establishes; but in the internal forum it is valid, because in this way equality between debtor and creditor has been restored.

f. Although restitution of itself must be made to the owner, not to his creditors, yet if the owner was forced to make cession of goods, restitution or payment of debts must be made not to the owner but to the administrator of goods constituted by public authority: for the creditors of the owner have a right that from his goods they be preserved unharmed. Yet if the owner is found in grave necessity, restitution can be made to him, because in grave necessity he can subtract from his goods those things which are necessary for sustaining the life of himself and his family.

g. When the owner has died, restitution must be made to his heirs, and only if these are lacking can it be made to the poor: for all the rights of the deceased pass to his heirs. Nor is it permitted to expend the thing to be restored for the repose of the soul of the deceased owner, unless from the reasonably presumed will not of the deceased but of the heirs, because the deceased now has no ownership.[790]

h. If the deceased owner had several heirs, whether necessary or by testament, the thing to be restored must be divided among them with the proportion of the inheritance preserved. The same must be said if the owner distributed all his goods among several legatees, namely the thing to be restored must be divided among the legatees with the proportion of the legacies preserved, unless another disposition which the owner would have made about this matter is certainly established.

2. He who restores to the poor or to pious causes, as long as the owner or his heirs are known and can be reached, does not satisfy his obligation and must restore again, because restitution must altogether be made to the owner himself. Yet sometimes prudence will advise the confessor to pass over this obligation in silence.

In order that a debtor may be excused from making restitution to the owner himself, so that in place of him restitution may be made to the poor, it is required that the damage of the debtor exceed by more than double the value of the debt or the damage of the injured owner.[791]

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**Notes**

789. Holy Office, Sept. 21, 1842.

790. Sacred Penitentiary, Feb. 7, 1899.

791. Cf. St. Alphonsus, n. 598.

**503. If the owner is unknown,** or indeed known but cannot be reached, one must distinguish thus:

1. If the possessor of another's thing is in good faith, he can retain it for himself; for the thing is held as abandoned, and therefore by right of occupation it passes into the ownership of the possessor.

The contrary opinion of St. Thomas,[792] according to which restitution must be made to the poor or to pious causes even by him who possesses another's thing in good faith, can indeed be advised in practice, but cannot be imposed by a strict obligation, especially since even St. Alphonsus (n. 589) holds the opinion of St. Thomas only as probable.

2. If the possessor of another's thing is in bad faith, he must expend it for the poor; and in like manner an unjust damager who does not receive profit from the damaging is bound to restore to the poor or to pious causes if the owner to whom he inflicted damage is altogether unknown.

a. He must expend the thing. Although all authors agree in establishing the obligation of returning another's thing and of repairing damage inflicted in this case, yet some derive the obligation both from natural law (because of the common good) and from positive law, while others derive it from positive law alone, whose foundation is the reason of the common good.[793]

b. But he must expend it for the poor or pious causes, both because in this way the common good is procured, and because this is rightly presumed to be the will of the owner, that his goods be expended in such a way that they redound to his own utility.

c. Yet since this obligation, as one that seems to have arisen from positive law, is generally unknown to the faithful, who moreover, if warned about it, obey with difficulty, the confessor will prudently abstain from making a warning if he foresees that it will be harmful.

3. If he who must restore to an unknown or uncertain owner is himself truly poor, according to the opinion of several authors he can retain the thing or part of it for himself as alms: for as poor he must not be of worse condition than other poor persons, even if he possesses the thing in bad faith.[794]

From these things it is now clear what must be established concerning uncertain goods and in like manner concerning uncertain debts. Uncertain goods are those which are certainly another's, but whose owner is plainly unknown or cannot be reached. Uncertain debts are debts certainly owed, when however the owner to whom they are owed is plainly unknown or cannot be reached. Namely, not only uncertain goods must be restored by a possessor in bad faith, but uncertain debts too must be paid to the poor or to pious causes.[795]

**504. If the owner is uncertain,** but the thing is certainly another's, first of all the true owner must be investigated; but if, after diligent investigation has been instituted, the doubt perseveres, restitution, as far as is permitted from the circumstances, must be made to the probable owner himself; but if it cannot be made to the owner, it must be made according to the presumed will of the owner. From these things, for three diverse sets of circumstances, these things can be established.

1. If the true owner is found among a few (three or four), about whom it is doubtful who is the true owner of the thing, the thing or its price must be divided among them, or, if this can be done, they are to be induced to make a composition.

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**Notes**

792. *Summa* II-II, q. 62, a. 5, ad 2.

793. C. *Quum tu* 5, *De usuris* (V. 19). C. *Quum sit* 16, *De iudaeis, sarracenis*, etc. (V. 6). These laws, which immediately refer only to usurious price and to profit from an office illegitimately undertaken, are extended by universal custom to all debts from offense. Cf. Laymann, *De restit.*, c. 9, n. 2; Lessius, l. 2, c. 14, n. 33 ss.

794. Cf. Lessius, l. 2, c. 14, n. 41; Lugo, disp. 6, n. 148.

795. Cf. Sporer-Bierbaum II, tract. 4, n. 386 ss.

2. If the true owner, or a few true owners, are found among the inhabitants of a place, among whom they cannot be discerned, restitution does not necessarily have to be made to the inhabitants of the place, but can be made to the poor, and indeed of any place whatever.

3. If the true owners are many and cannot be discerned among the inhabitants of a place, restitution must be made to the inhabitants of the place, so that restitution, as far as can be done, may be made to those very persons who suffered the damage. Yet if the damage inflicted on each was light, restitution can more easily be made to the poor, but of the same place.

If a merchant inflicted damage on several buyers by adulterating goods or by diminishing weights or measures, he must restore by increasing weight or measure or by diminishing price, if the ordinary buyers are the same as those who suffered the damage; but if the buyers now are others and restitution cannot be made to those damaged, restitution must be made to the poor of the place.

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# Article Second. In What Order Restitution Must Be Made

## Section 1. The Order Among Creditors from Positive Law

**505.** In what order restitution or payment must be made to creditors is asked only when a debtor cannot satisfy all his creditors: for if he can satisfy all, it is not necessary that an order be observed in paying debts; but if restitution cannot be made to all, damage is of itself inflicted on some where restitution is made to one before the others.

1. Positive law especially determines the order to be observed in paying debts among creditors, and indeed the law concerning cession of goods (*Konkursordnung*), of which there will be speech below. That law, which varies in its particular statutes in diverse kingdoms,[796] first generally establishes these two things: a. that satisfaction be made integrally to the prior class of creditors, with no account had of creditors of a later class; b. if the goods do not suffice for paying creditors of the same class integrally, satisfaction must be made to each of them pro rata.

**506.** 2. In particular the law distinguishes four classes of creditors: proprietary, privileged, hypothecary, and common creditors, concerning whom it establishes these things:

a. In the first place satisfaction must be made to proprietary creditors, namely those whose things still exist in themselves with the debtor: for a creditor has a real right in his own thing.

alpha. Therefore before all other debts, stolen, deposited, leased, lent, or found things which still exist in themselves must be restored.

beta. If the thing no longer exists in itself, but only in the equivalent with the debtor, the creditor is not to be preferred to others, because he does not have a real right in the equivalent of the thing, but only a personal right.

gamma. If the debtor retains with himself a purchased thing whose price he has not yet paid, one must distinguish. If by a sale in which the price has not yet been paid ownership of the purchased thing is not transferred to the buyer, from natural law the thing must be restored to the seller, because it is his. But if by sale ownership is transferred to the buyer, even if the price has not yet been paid, the seller indeed is no longer owner of the thing; yet whether nevertheless the thing must be restored to him before satisfaction is made to other creditors is not sufficiently clear. Therefore if positive laws establish something concerning this matter, they must be observed; but if positive laws have nothing, it is probable that the seller can be preferred to other

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**Notes**

796. Cf. C.A. *Konkursordnung und Anfechtungsgesetz.*

creditors. Whether in the contract of sale ownership in the purchased thing is transferred by the handing over of the thing or finally by payment of the price depends on the disposition of law.

b. In the second place satisfaction must be made to privileged creditors, namely those to whom by positive law, because of the quality of the credit, a special privilege is granted.

alpha. This privilege is a right situated in the very quality of the credit, by force of which the creditor must be preferred to other creditors.

beta. Privileged credits are judicial expenses, funeral expenses, stipends of physicians, wages of servants, debts for food, etc.

gamma. Among privileged creditors themselves, a determined order from the quality of the credit is sometimes established by law; thus the wages of servants are generally privileged before the stipend of physicians.

c. In the third place satisfaction must be made to hypothecary creditors, who by force of hypothec have bound to themselves not only the person of the debtor, but his goods themselves.

If there are several hypothecary creditors, the law determines the order among them, founded in the very nature of the thing, according to the axiom: he who is prior in time is stronger in right. For since the debtor's goods themselves are bound to the hypothecary creditor, an injury would be done to the earlier creditor if payment were conceded to another from goods already bound.

d. In the fourth place satisfaction must be made pro rata to common creditors, concerning whom positive law establishes nothing further.

## Section 2. The Order Among Creditors from Natural Law

**507.** If a debtor cannot satisfy all his creditors, it is asked whether before cession of goods, or with abstraction made from it, payment must be made to each pro rata, or whether some order among creditors can or must be observed. Now from natural law these things can be established:

1. To the owner must be returned another's things which exist in themselves with the debtor, for example, deposited or leased things, as was said above (n. 506).
2. Before all others satisfaction must be made to creditors who through hypothec have acquired a real right in certain goods of the debtor. But satisfaction must be made to these so that earlier ones are preferred to later ones: for these later ones acquire a right in the goods of the debtor only insofar as they are not already bound to prior ones.
3. The full debt can licitly be paid to the following creditors, although from this the part to be paid to other creditors is diminished: for, by acting thus, an injury properly so called is not done to these, because on the one hand they do not have a right in certain goods, and on the other the others receive only what is owed to them by strict right:

a. to poor creditors;

b. to creditors prior in time;

c. to creditors asking first.

alpha. If the debtor has a just cause of paying one integrally before the others, nothing prevents him from warning him to seek payment of the debt.

beta. Sometimes laws declare payments made a short time before cession of goods to be void. Therefore if creditors to whom satisfaction cannot be made integrally have recourse to a judge, and the judge declares the payments made invalid, creditors must return in conscience the payments received.

**508. What must be done by a servant who adverts that his master is so burdened with debt that he cannot satisfy his creditors?**

a. A servant who is necessary for preserving honor and a justly acquired state can remain in service and receive wages: for what is necessary for this end the master burdened with debt can licitly expend.

b. A servant who is not necessary for this end can seek and receive wages if in good faith he furnished service to the master and only now adverts that he is unable to pay all creditors, both because he belongs to privileged creditors and because of the reason to be adduced below.

c. Whether a servant who is not necessary for preserving the honor and state of the family must depart when he adverts that his master cannot feed so many servants without damage to creditors, or whether he can remain and receive wages, authors do not agree. It can probably be said that the master indeed cannot licitly retain superfluous servants to the damage of his creditors, but that servants whom the master does not spontaneously dismiss can ordinarily remain and accept wages: for they must be considered as materially cooperating in the sin of the master; but ordinarily a sufficient reason will be present on account of which they can licitly cooperate in the sin of the master, especially where, if they depart, others will not be lacking who will enter the service.[797]

## Article Third. How Restitution Must Be Made

**509.** As to the mode of restoring, nothing else is required except that violated justice be fully repaired, if this can be done without grave inconvenience of the debtor.

a. It is not necessary that the act of restitution be a human act, nor that the owner advert to the restitution, provided he has what is his. Hence restitution can be made by increasing weight and measure, or by freely taking up and increasing labor for the utility of the owner, or by living more sparingly beyond what is owed. In these modes wives, children, and servants can make due restitution to the father of a family.

b. It can be made through a simulated donation; indeed if a debtor unmindful of the debt bestows an equivalent gift on his creditor, he still probably satisfies his obligation. Wherefore in this case the debtor, as St. Alphonsus himself admits, cannot be obligated to further restitution, because the obligation of restoring is doubtful. Yet if the creditor from gratitude gives back another gift, this must be restored to him.[798]

c. Indeed even alms made by the debtor after contracting the obligation of restoring can be counted as restitution if restitution is to be made to pious causes or to the poor.

**510.** To the question at whose expense restitution must be made, one must distinguish thus:

a. A possessor in good faith is not bound to restore at his own expense, but the owner of the thing must bear those expenses: for since this one inflicted no damage on the owner, he is not bound to render him unharmed, but only to permit him to take his own thing to himself. Therefore it is enough that he warn the owner about his own thing.

b. A debtor from offense must restore at his own expense: for the owner must altogether be preserved unharmed; therefore he must receive his own thing in that place in which he would have it if it had not been taken away. Only if the expenses of transmission would notably exceed the value of the thing (by more than double), he could transmit not the thing itself but the price of the thing; and if even this could not be done, he could restore to the poor: for the creditor cannot reasonably demand that restitution be made to

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**Notes**

797. Cf. Ballerini-Palmieri III, n. 526.

798. St. Alphonsus, n. 700.

him with such great expenses.[799] Yet considering the means of communication which are now had, it can scarcely happen that at least the price of the thing cannot easily be restored.

**511.** To the question whether the debtor must restore again if the thing to be restored perishes before it comes to the owner, these things must be noted.

a. A possessor in good faith is bound to nothing: for a thing which perishes without fault perishes for the owner. Yet if in choosing the messenger he committed juridical fault, he can be obligated to restitution by the judge.

b. As to a debtor from offense, one must distinguish: if the owner or the judge designated the messenger, or if the debtor himself with the consent of the creditor chose the messenger who received the thing from the debtor, this one is bound to nothing, even if the thing perishes by chance or by fault of the messenger or of a third person: for the thing, by being handed over to a messenger thus designated, becomes the creditor's, and therefore perishes for him. But if the debtor himself chose the messenger without the consent of the creditor, the obligation of restoring remains.[800]

alpha. Lugo judges that the opinion denying the obligation of restoring anew, if the debtor himself chose the messenger, is not probable; and St. Alphonsus (n. 705) nearly agrees with him. The principal reasons of Lugo are: alpha. Money handed over to a messenger fully remains the debtor's; therefore it perishes for him, not for the creditor. beta. He who sends through a freely chosen messenger money owed from contract certainly is bound to pay again if the money perishes; therefore also if the money is owed from offense. gamma. A debtor from offense must bear every fortuitous damage which the owner suffers because the thing has been unjustly taken away from him; therefore he must also bear this damage, by whatever fault it perished; but the owner must be restored into that state in which he would be found if the thing had never been taken away from him.

beta. According to these same principles the question must be solved whether the debtor must restore again if he gave the money to be restored to the confessor, with whom it perished by chance or by fault of a third person. Yet there are some who think that the opinion is probable which teaches that the confessor can be considered as a messenger chosen from the presumed consent of the creditor, and therefore that in this case the debtor is freed from the burden of restoring anew. Lessius, Sporer, Tamburini, and most recently Frassinetti and Lehmkuhl defend this opinion. Their reasons are these: since the debtor cannot restore by another way without infamy, by handing the thing to the confessor he does what morally he can and must; but from him who restores insofar as morally he can and must, further restitution must not be demanded. Moreover, since restitution cannot be made by another way, the creditor is considered to consent implicitly to this mode of restitution. Since this opinion, which St. Alphonsus indeed does not judge probable, but does not dare to condemn, appears truly probable, the confessor in practice will be able to follow it, so that he is not bound to oblige the penitent to make restitution again. But even if he judges the stricter opinion to be uniquely true, it will be better to leave in good faith a penitent who thinks that he has already satisfied his obligation and is foreseen scarcely to obey if warned about restitution to be made anew.

**512. On restitution to be made to the fisc or to an insurance society.** 1. Restitution which must be made to the fisc can be made in diverse ways: a. by expending the owed sum for the poor: for since the obligation of aiding the poor rests upon political power, its burden is diminished in this way; b. by paying the owed sum to those who have been injured in goods of fortune by the civil power, to whom therefore restitution is owed by the fisc; c. by destroying tickets by which the price for carrying letters is paid (*Briefmarken*), where these

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**Notes**

799. Cf. Lugo, *De iustit.*, disp. 20, n. 186 ss.

800. Cf. St. Alphonsus, n. 705; Ballerini-Palmieri III, n. 501; Lugo, disp. 21, n. 58 ss.

pertain to the government; d. by destroying banknotes (*Banknoten*), where they pertain to the government; e. by destroying titles of public debt (*Staatsobligationen*).

2. Restitution must be made to the insurance society itself if this is founded in mutual insurance among those insuring and those damaged, so that those insuring must pay less insofar as the damage which the society suffered is less. If restitution must be made to public insurance which pertains to the fisc, attention must be given to those things which have been said concerning the mode of restoring to the fisc. But if the insurance society is private and has not stipulated mutual insurance, the damager, absolutely speaking, satisfies his obligation by restoring to the administrators of the society, even if perhaps compensation is not received by those who suffered the damage: for it cannot be demanded that the damager obtain certitude for himself concerning the injured persons, since this is not only difficult but nearly impossible. But restitution which is owed to an insurance society without mutual insurance can ordinarily also be made to the poor or to pious causes: a. because it is doubtful whether the due compensation reaches the injured persons themselves; b. because often it is doubtful whether grave damage has been inflicted on any person: for frequently the injured persons are possessors of shares, on each of whom perhaps only light damage has been inflicted; c. because reinsurance societies, wherever they have been instituted, bring it about that the damager can in no way come to knowledge of the injured owner.[801]

## Article Fourth. When Restitution Must Be Made

**513. On the time of restitution.** 1. Restitution, and indeed integral restitution, of itself must be made as soon as possible: for detention of another's thing is the continuation of an injury; but just as it is illicit to inflict an injury, so also to continue it.

a. He acts unjustly and is held for damages who, although he can at once restore the whole, wishes to restore only by degrees, or to leave to his heirs the obligation of restoring.

b. He who cannot restore the whole is bound at least to the part which he can return: for the owner has a right to each single part of the whole thing. Hence penitents must be urged to restitution of a part at once, especially if the part is notable and the whole can be restored only after a long time.

c. He who cannot restore at once is bound meanwhile to take care that he can satisfy his obligation as soon as possible: for he who is bound to the end is also bound to the means necessary for obtaining the end.

2. Delay of restitution, provided a serious will of restoring is retained, is then only a grave sin if a new grave damage arises for the owner from it, or if restitution is rendered impossible.

alpha. He who has and retains the will of not restoring, although he adverts rather often to the obligation of restoring, commits numerically one sin, which becomes graver the longer restitution is delayed. But he who conceived the intention of restoring and retracts it, sins gravely as often as he withdraws from the intention of restoring.[802]

beta. He who notably delays restitution from a just cause is not bound to repair the damages which befell the owner from the delay, whether he is a debtor from contract or from offense: for he who has the will of restoring licitly delays restitution, and is not the unjust nor theologically culpable cause of the damages which befall the owner from this, since they arise from a just delay of payment.[803]

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**Notes**

801. Cf. Fr. A. Gopfert, *Moraltheologie*^6 (Paderborn: Schoningh, 1906), II, n. 126.

802. Cf. *De principiis*^9, n. 306.

803. Cf. St. Alphonsus, n. 680; Ballerini-Palmieri III, n. 508; Burghaber, *Casuum conscientiae centuriae tres*, cent. 1, cas. 10.

gamma. In order that restitution can be delayed longer, it is required that the damage which the debtor incurs from restitution to be made at once be much greater than the damage which befalls the owner from delayed restitution.

Note 1. Those who delay restitution until death and leave the care of restoring to heirs sin not only because of the delay of restitution, but also because of the danger to which the owner is exposed of never receiving his own thing: for it can happen that the heirs either do not wish or are not able to restore. Yet because debtors who entrust restitution to heirs are usually in good faith, especially if restitution is to be made to the poor or pious causes, care must be taken lest they be deprived of this good faith without hope of fruit.[804]

Note 2. The faithful sometimes are of this opinion, that souls are detained in purgatory for so long until the restitution owed by them has been made. Indeed a theological reason for this persuasion cannot be adduced, but it rests wholly on apparitions of souls which are narrated to have indicated neglected restitution as the cause of prolonged penalty and to have demanded restitution. Although it may be conceded that by exception this can sometimes happen, yet that this is ordinarily or more often established by God seems to have to be denied; wherefore this erroneous persuasion must be removed from the faithful.[805]

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## Question Sixth. On Causes Excusing from Restitution

**514. Declarations.** The causes excusing from restitution are numbered chiefly as four: a. condonation of the creditor; b. impotence of the debtor; c. cession of goods; d. composition.

1. Some of these causes excuse altogether (condonation and composition), because they take away the obligation of restoring; others excuse only for a time (impotence and cession of goods), because they suspend the obligation of restoring as long as the cause lasts.

2. With condonation excepted, all other causes excuse on the part of the debtor. The common principle of these causes is: on the part of the debtor all those things excuse which bring it about that the creditor cannot be reasonably unwilling, although in fact he is unwilling. But the creditor cannot be reasonably unwilling when by restoring the debtor would undergo an inconvenience notably greater than the inconvenience of the creditor from restitution not received. But if the owner would suffer equal inconvenience from omitted restitution as the debtor, this one is not excused from making restitution.

# Article First. On Condonation

**515. What condonation is and when it excuses.** That condonation frees from restitution to be made either at once or simply is manifest: for the creditor can renounce his right.

1. Not only express and tacit condonation, but also presumed condonation excuses from making restitution.

a. Express condonation has place when the creditor, asked either by the debtor himself or by another in his name, remits the debt. The confessor can especially undertake this office of asking condonation in the name of the penitent when the dying man cannot furnish the restitution to be made to a rich person, so that, once condonation has been received, the debtor may die more tranquilly.

b. The creditor is considered tacitly to condone the debt if, for example, he tears up the note of debt or restores it to the debtor; but he is not considered to condone the debt if he restores the pledge.

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**Notes**

804. Cf. Ballerini-Palmieri III, n. 509.

805. Cf. Ballerini-Palmieri V, n. 761.

c. Presumed condonation is had when it can prudently be judged that the creditor, if asked either by the debtor himself or by another, for example, by the confessor in his name, would liberally remit the debt.

d. To condonation is also referred the agreement by which the creditor concedes to the debtor that by restitution of a small part he be freed from the whole debt. Namely creditors who detect the unstable fortune of debtors are not unwillingly driven to making some composition, by which they may receive at least part of the goods which are owed to them. By this composition the debts are considered extinguished; wherefore a debtor who afterward comes to better fortune is bound to nothing further.

2. In order that condonation excuse from restitution: a. it must be made by the owner himself of the thing taken away or destroyed; for he who does not have ownership has no right of giving. Hence condonation concerning family goods made by wife or children is not valid of itself, since they do not have ownership in those goods. b. It must be free: for it is a donation, and it belongs to the nature of donation that it be free. Therefore condonation extorted by force, fraud, or grave fear, or made from error, is invalid.

Condonation is not undeservedly presumed:

a. In thefts even of greater moment which have been made at home by children under family power if the things taken away no longer exist: for parents ordinarily are not so unwilling because of the thing taken away as because of the mode (secretly) of taking it away, and because of the sin committed by the taking away; therefore they rarely urge restitution. The same holds for thefts of wives.

b. In thefts of lesser moment which are perpetrated by servants in foodstuffs or in other things committed to their custody, unless they are carried outside the house or sold. If thefts, whether of money or of other things, occur in grave matter, condonation can be presumed when the servant, once the matter has been detected, is corrected by the master or dismissed from service without the master demanding restitution; otherwise it cannot easily be presumed.

c. In small thefts which are committed by workers concerning the things of the master with whom they work; thus workers laboring in forests, vineyards, or factories sometimes carry away something with themselves which the owner does not greatly care about, and therefore is supposed not to urge its restitution.

d. In small thefts of the poor which are made from diverse owners. If thefts have been made from the same owner, it must be demanded that the poor too, if it can be done, restore at least some part. Once this restitution has been made, if they conceive the intention of stealing no more, condonation can more easily be supposed as to the remaining part.

## Article Second. On Impotence

**516. What impotence is and when it excuses.** Both physical impotence excuses from restitution, when the debtor does not have and cannot afterward have the means from which to restore, and moral impotence, when restitution cannot be made without grave damage which would arise from this to the debtor or to a third person. Hence impotence of restoring, or rather a just cause of delaying restitution, is considered to be present:

1. If by restoring the debtor would fall into very grave or grave necessity.

2. If by restoring the debtor would fall from his justly acquired state, for example, from the state of merchant to the condition of a worker.

Justly acquired: for he who acquired his state unjustly (by frauds, deceits, things of another) cannot licitly delay restitution because otherwise he would lose his state; for by restoring he does not lose his state, but rather returns to his own state.

3. If by restoring the debtor would suffer grave damage in goods of fortune which by delaying restitution he would avoid, as if a farmer by restoring would have to deprive himself of grain necessary for cultivating fields, or if a merchant would have to sell "obligations" with great detriment.

4. If restitution cannot be made without grave damage in goods of a higher order, for example, without danger of sin, or of life, or of reputation.

**517. Whether entrance into religion excuses from restitution.** 1. If the debtor has not yet entered religion, one must answer with a distinction. Where he has hope of paying debts within a short time, he is bound to delay entrance, because creditors are reasonably unwilling that, because of a slight spiritual damage, he not satisfy his temporal obligations. But if the debtor would have to remain in the world for a long time in order to pay, considering natural law he can licitly enter religion, because the creditors cannot be reasonably unwilling that with such great loss in spiritual goods he not satisfy his temporal obligations.

2. If the religious is a debtor, whether because he entered religion burdened with debts or because he contracted debts in religion, these things must be held.

a. Religion does not free from the obligation of paying debts except insofar as it renders payment impossible; but neither is the prelate bound to pay the debts from the goods of the monastery, unless he had received the debtor in bad faith or the religious contracted the debts in his name.

b. Therefore the religious debtor is bound to labors suitable to his state and condition, so that he may earn those things by which he can pay, if the prelate has given permission; but he is not bound to extraordinary labors not suitable to his state, even if the superior had given permission.

The prelate who denies permission for ordinary labors does not injure justice, because he himself owes nothing and has a right in the labors of his subject; yet he seems to injure charity if he denies this permission without a just cause.

c. If the religious debtor acquires goods for the monastery, whether by inheritance, donation, or stipend of his labor, for example, by teaching, after expenses have been deducted, debts must be paid from these: for these goods are acquired for the monastery with that burden which they would have had annexed if they had remained in the ownership of the religious debtor.[806]

## Article Third. On Cession of Goods

**518. Declarations.** Cession of goods is said to be that act by which a debtor who is unable to pay all debts hands over his goods to creditors so that from them the debts may be paid to them.

1. A twofold cession of goods is distinguished: one voluntary, by which a cession offered by the debtor is spontaneously accepted by creditors; another judicial, which is made with a judge intervening, and indeed in two ways: either the debtor himself spontaneously yields his goods before a judge, or at the action of one of the creditors he is compelled to yield his goods.

Voluntary cession has those effects about which the debtor and creditors agree. In judicial cession, when the matter has been brought to a judge in whatever way, a concourse is proclaimed, namely the creditors come together to the judge and prove their rights, so that from the goods of the debtor (sold or auctioned) they may receive payment.

2. Cession on the part of the debtor can be culpable or inculpable, according as the debtor has become unable to pay by his own fault or without fault from mere misfortune.

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**Notes**

806. Cf. Lugo, disp. 3, n. 220; Lacroix, l. 3, pr. 2, n. 441 ss.; Reuter III, n. 362; Lehmkuhl I, n. 1039.

**519. Principles.** 1. The juridical order of cession of goods, from the common opinion of theologians, obliges in conscience insofar as it is not opposed to natural law.

2. Once cession of goods has been juridically declared, the debtor is deprived by law of administration and free disposition of his goods; but creditors acquire the right of receiving payment from those goods.

a. Therefore it is not permitted to him who has yielded his goods to withdraw his goods or credits, that is, those things which are owed to him by others, from his creditors. Indeed, not even before cession is it permitted to do this, because the debtor thus directly intends to make himself unable to satisfy creditors. Wherefore he acts unjustly who, either before or after an intimated cession, to that end sells his goods to his children or takes care that his credits are transferred to his wife, unless a just cause renders this manner of acting licit, as if the wife belonged to the creditors, or if those things which are transferred to the wife were necessary for support.

b. Hence if a debtor, after cession of goods has been made, makes donations or remits debts, those actions are invalid; likewise debtors of the cessor must pay debts not to the one yielding but to his creditors.

3. The debtor who yields his goods can, by natural right, secretly retain for himself those things which are necessary for the honorable support of himself and his own, if he lives sparingly according to his state:[807] for the obligation of restitution, at least to be made at once, ceases if it cannot be made without grave inconvenience; therefore he is not bound to cast himself into grave necessity, nor to fall from his justly acquired state, in order that he may be able to restore.

a. Therefore he sins against justice who, besides these necessary things, conceals, sells, or in another way withdraws other goods from creditors, for example, more precious things, unless there is question of a thing which those yielding value very highly, for example, on account of memory of parents, but which others do not hold at a great price.

b. He is not to be condemned of injustice who reserves for himself the means by which he can begin another business from small beginnings: for the beginning of some business also pertains to necessary support.

c. When a husband encumbered with debts has died, his heirs, namely wife and children, can secretly withdraw from the goods of the deceased, before creditors receive them, as much as they judge necessary for honorable support.

4. Cession of goods of itself does not extinguish the obligation of paying fully, but only suspends it until that time when the debtor comes to a better condition, unless the creditors have explicitly or implicitly declared that they condone the remaining part of the debt.

a. For the cause excusing from restitution in this case of cession of goods is impotence; but impotence does not excuse altogether, but only as long as it lasts; wherefore when impotence ceases, the obligation of restoring urges again.

b. Among recent laws some expressly establish that the obligation of afterward restoring remains, while others free him who has yielded his goods, in the external forum, from restitution to be made afterward. Hence it happened that theologians began to ask whether he who yielded his goods would also be freed in conscience from the burden of restitution. All indeed concede that he who by his own fault has become unable to pay debts is not freed from the obligation of restoring; but some declare him immune from this obligation who inculpably became unable, unless creditors add the express condition that the obligation of afterward

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**Notes**

807. C.A. in this matter, agreeing with Roman law, does not permit the debtor to retain anything from his goods; yet it cannot take away the right which nature grants to necessary support.

paying remains. Now it can be conceded that the cessor is immune from the obligation where the common persuasion has prevailed that the obligation of restoring itself ceases if civil law, because of cession of goods, denies creditors a judicial action against the debtor: for according to this persuasion creditors are considered to accept the cession unless they expressly declare otherwise.

## Article Fourth. On Composition

**520. Declaration.** Composition with the supreme pontiff also excuses from restitution. Composition is the remission of a debt made by authority of the supreme pontiff. By composition sometimes the remission of the whole debt is conceded, and sometimes, with the greater part of it remitted, a small part must be expended for pious causes. A twofold and diverse composition must be distinguished: a. for uncertain goods; b. for ecclesiastical goods.

**521. Composition for uncertain goods (debts).** 1. Since these goods cannot licitly be retained unless by prescription they have become the debtor's own, either restitution of them must be made (n. 503) or their condonation must be sought from the supreme pontiff.

2. The supreme pontiff is accustomed to make this condonation so that he decrees that some part of the debt be applied to pious causes, remits the remaining part, and finally supplies from the treasury of the Church the spiritual fruit which is withdrawn from the unknown owner by this condonation.[808]

a. The just cause of the condonation is this: because through it provision is made for the conscience of the debtor, who, if restitution were omitted, would easily have remained in bad faith; and because through it at least part of the debt is acquired for pious causes, which perhaps would have received nothing.

b. By this condonation the obligation of restoring is considered altogether extinguished, so that the debtor is not bound to restore anything to the owner if by chance he appears afterward.[809]

3. To obtain composition recourse must be had to the Sacred Penitentiary; but where the bull of the Crusade is in force, whose last part is the bull of Composition, he who obtains the aforesaid bull for himself can obtain composition.

**522. Composition for ecclesiastical goods.** 1. That the supreme pontiff can make condonation where there is question of goods taken away from the Church and to be restored to it is easily conceded, since he himself is the supreme administrator of all ecclesiastical goods. This condonation is conceded both to governments and to private persons, not only for immovable goods but also for movable goods taken away from the Church.

2. Governments which occupied ecclesiastical goods have almost everywhere obtained condonation from the supreme pontiff, so that both governments and private persons who had received goods of this kind from the government possess them legitimately.

In recent time several compositions of this kind have been conceded to Catholic governments, and indeed so that ecclesiastical goods can be retained as one's own without the obligation of fulfilling any burden, and freely alienated.

a. For France, by the convention entered between Pius VII and Napoleon, July 15, 1801, condonation was made as to ecclesiastical goods which up to that time had been occupied and alienated by the government; afterward the condonation was extended to all goods occupied by the government up to that time, even if they had not yet been alienated.[810]

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**Notes**

808. Cf. Lugo, disp. 6, n. 150.

809. Cf. Lehmkuhl I, n. 1024.

b. For the kingdom of the Two Sicilies condonation was made March 17, 1819, as to ecclesiastical goods alienated before the year 1818.

c. For all Sardinia condonation was made May 14, 1828, as to all ecclesiastical goods occupied and alienated by the government up to that time.

d. For Belgium condonation was made Sept. 16, 1833, as to all ecclesiastical goods occupied by the government.

e. For Spain condonation was made through the concordat of 1851 and 1859, so that all who bought ecclesiastical goods usurped by the government can possess them safely in conscience without any obligation of prior burdens.

f. For the Archdiocese of Cologne and for the dioceses of Trier and Munster, condonation was made Nov. 27, 1891, as to occupations continued by the French government up to the end of the year 1814 on the left bank of the Rhine.

This condonation was extended on Feb. 7, 1894, to ecclesiastical goods which in the whole kingdom of Prussia were secularized up to the end of the year 1824 and at present are possessed by private persons as their own or will be possessed in the future.

3. To private persons who either themselves occupied ecclesiastical goods or bought them from a usurping government to which condonation has not been made, universal condonation has never been conceded; wherefore, in order that they may possess them legitimately, in individual cases they must have recourse to the Holy See for composition, unless the goods have already been prescribed.

Prescription of these goods seems to have to be admitted, provided the conditions required for this by canon law are present (n. 406). Yet because as to immovable ecclesiastical goods the existence of those conditions, and especially the good faith of possessors, can rarely be established, recourse to composition with the Holy See is to be advised.

4. As to movable goods, the Holy See establishes these things:[811] a. On those who acquired movable ecclesiastical goods which cannot be preserved, some alms must be imposed in favor of the pious places to which those goods belonged, insofar as they bought them at a price which, in the judgment of the ordinary or confessor, was less than just. b. If there is question of goods which can be preserved (sacred vessels, furnishings), there should be imposed on the penitents the obligation of having recourse as soon as possible to the ordinary, who will provide according to the faculty granted to him.

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# Chapter Fourth. On Contracts

[812]

## Question First. On Contracts in General

## Article First. On the Nature of Contracts

**523. Notions.** The most frequent mode of acquiring ownership is contracts, in which a great part of social life is contained (n. 382).

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**Notes**

810. Sacred Penitentiary, March 20, 1818. Brief of Pius VII, Oct. 20, 1821.

811. Sacred Penitentiary, June 1, 1869.

812. John de Lugo, *De iustitia et iure*, tom. II, *De contractibus*. Lucius Molina, *De iustitia et iure*, tom. II, *De contractibus*. L. Lessius, *De iustitia et iure*, l. 2, c. 17-28. Jos. Carriere, *De contractibus*, 3 tom. (Paris: Mequignon, 1839). Jos. Schwane, *Die theol. Lehre uber die Vertrage*^2 (Munster: Theissing, 1872). A. Vermeersch, *Quaestiones de iustitia*^2 (Bruges: Beyaert, 1904), q. 7-10. Add the authors who wrote the whole of moral theology, cited above p. 382.

The terms pact, contract, stipulation, which in Roman law are distinguished, are now usually used without distinction.

1. Contract can be defined: the consent of two or more persons concerning a right to be transferred.

a. A contract *in fieri* must be distinguished, which consists in mutual consent by which one transfers some right and another accepts it, and a contract *in facto esse*, which is the effect arising from mutual consent. That effect is the acquisition and possession of the right transferred and accepted, with which coheres the obligation, arising from the transfer of right, of doing or omitting something. Now the definition adduced sets forth the contract *in fieri*.

b. Therefore the immediate effect of any contract is commutation of right, from which arises an obligation of doing or omitting something; and according to the diversity of the contract this obligation arises either from each side or at least from one side.

c. The contract itself and its obligation depend especially on the free will of those contracting, so that without the will of the contracting parties no contract subsists, and beyond their will it does not oblige.

2. For entering a contract validly, four conditions are essentially required: a. apt matter; b. capable persons; c. mutual consent; d. cause of the consent. Each of these must be discussed. Yet the essence of contract consists in mutual consent concerning some right, so that the contract remains imperfect as to essence as long as each contracting party has not given consent.

3. In every contract three things must be distinguished: essentials, naturals, and accidentals.

a. Essentials of a contract are called those things without which a certain contract cannot be substantially perfected, as the consent of the contracting parties and merchandise and money in sale: for without consent there would be no contract, and without merchandise and price there would be no sale.

b. Naturals of a contract are called those things which, either from law or from custom, are considered to be contained in a contract unless they are excluded by the express will of the contracting parties, as in sale the security of the buyer in the case of eviction.

c. Accidentals of a contract are called those things which are considered excluded from a contract unless by express agreement of the contracting parties they are received into it, as payment in a determined money or delay of payment beyond the time established by law.

**524. Divisions of contracts.** 1. By reason of effect: a. Unilateral, which produce an obligation in only one of the contracting parties, as promise and donation; and bilateral, which produce an obligation in each contracting party, as purchase-sale, lease-hire, loan for consumption, and loan for use.

b. Nude, which generate only a natural obligation or obligation of conscience; clothed, which produce a natural and civil obligation, or one in the external forum.

Nude contracts rest on the consent alone of the contracting parties; these the external forum does not acknowledge nor furnish aid for their execution. Clothed contracts have, besides the consent of the contracting parties, other solemnities prescribed by law joined to them, for example, writing, and therefore are acknowledged in the civil forum and produce a civil action. Contracts which do not produce a civil action (*nicht klagbare Vertrage*) are different according to the diversity of civil codes.

c. Gratuitous, in which only one of the contracting parties assumes a burden and the other has only an advantage, as in donation, loan for use, deposit; onerous, in which each contracting party has a burden and advantage, as in sale and lease, in which each receives something and must return something.

2. By reason of mode: a. Consensual contracts, which are essentially perfected by consent alone, as in some laws sale; and real contracts, which are finally essentially perfected by handing over of the thing, as loan for consumption and pledge.

There are contracts whose very nature and name demand the real handing over of the object, as loan for consumption, loan for use, deposit; but some contracts require for their essence, besides mutual consent externally manifested, nothing else, as sale, lease, etc. In these contracts, the real handing over of the matter pertains by natural law not to the essence but to their execution and complement.

b. Solemn contracts, which are made with certain formalities prescribed in law; simple contracts, which are contracted without formalities from the sole conditions of natural law.

From natural law no formalities are required in celebrating contracts, so that without them they are valid; but by positive law, for some contracts, determined formalities or solemnities are prescribed, without which they do not have force in civil law. Thus for testaments and hypothec certain legal forms are prescribed.

c. Contracts formally initiated, which are made by words or signs expressly showing consent; virtually initiated contracts or quasi-contracts, which are made by the tacit consent of the contracting parties. Thus he to whom the office of judge or pastor is conferred, by accepting the office tacitly obligates himself to undergoing all the obligations of that office; therefore undertaking an office is a quasi-contract.

But to jurists a quasi-contract is a presumed contract, to which one of the contracting parties indeed does not consent, because he is ignorant of the contract, but to which he would consent if he knew it. Thus he who usefully conducts the business of an absent person deservedly presumes that the absent person consents to the management of the business. Indeed it cannot be denied that contracts are valid, especially exchanges, from the presumed will of the other contracting party, provided this can reasonably be presumed; which obtains if the exchange does not harm the other but profits him.

3. Contracts of certain event, in which something must be given or done independently of a fortuitous event, as in donation and lease; aleatory contracts (*Glucksvertrage*), in which something must be given or done only dependently on a fortuitous event, as in gaming, wagering, insurance.

4. Named contracts, which have a proper name in law, as sale, lease, etc.; and unnamed contracts, which lack a proper name and therefore are signified only by the generic name of contract. Unnamed contracts are recalled to four species: a. I give that you may give; b. I give that you may do; c. I do that you may do; d. I do that you may give. It must be noted that by the verb to do, not to do is also signified, for example, I give you money so that you do not accuse me.

5. Principal and accessory contracts, according as they subsist in themselves and independently of another agreement, as sale, or depend on another agreement or suppose it, as hypothec.

6. Pure contracts, to which no mode or no condition is added; and qualified contracts, to which a mode or condition is added. Wherefore qualified contracts are subdivided into modified contracts, to which a mode is added, and conditioned contracts, to which a condition is added.

There are other divisions of contracts, which nevertheless either do not occur in recent codes, as contracts of good faith and of strict right, or are understood of themselves from the terms themselves, as valid, firm, void, and rescindable contracts.

## Article Second. On the Matter of Contracts

**525. What the matter of contracts is.** Whatever constitutes an object of ownership, whether it is a thing, an action, or the omission of an action, generally can be the matter of a contract; but in particular some qualities

are necessarily required in order that a valid contract can be entered: the matter of the contract must be possible, existing, one's own, honest, estimable by price.

1. Possible, both physically and also morally, unless someone has spontaneously wished to obligate himself even to a very difficult thing: for no one can be obligated to the physically impossible, and no one is considered to wish to obligate himself to the morally impossible unless he expressly says this.

a. Therefore if someone spontaneously obligated himself to a very difficult thing or to a heroic act, the contract, unless it is void from another source, is valid by reason of the object. But if someone obligated himself by contract to furnishing a thing which afterward from unforeseen circumstances became very difficult, he is no longer held to the contract.

b. If the matter of the contract is divisible and cannot be furnished wholly, the obligation of furnishing the possible part remains, unless from the nature of the thing or from the mind of the contracting parties it is established that they wished to be obligated either to the whole or to nothing. Yet he who by his own fault brought it about that the matter of the contract was rendered impossible is bound to repair the damage arising from this for the other contracting party.

2. Existing in fact or at least in hope, as the fruits of an orchard not yet born: for a right cannot be transferred in a thing which does not exist and is not hoped ever to exist.

**526.** 3. One's own, of the contracting party: for no one can transfer ownership to another which he himself does not have; therefore a donation of a thing taken away by theft is invalid.

a. If two contract concerning a thing to be furnished by some third person, the contract must be understood so that the contracting party obligates himself to taking care that the other furnish the thing; otherwise he would enter a contract not about his own deed but about the deed of another.

b. A contract can be made concerning a thing which at the time at which the contract is made is still in the ownership of another, provided it will be in the ownership of the contracting party; yet modern laws nearly all declare invalid the sale of an inheritance which is expected from a person still living.[813]

4. Honest and licit: for there is no obligation to a dishonorable or illicit action; otherwise there would be an obligation to do and omit the same thing at once. Wherefore contracts concerning an evil thing induce no obligation, for example, concerning committing homicide, theft, etc.

For the value of the contract it suffices that the thing be honest as to substance, although some accidental circumstance is illicit; in which case the contract concerning an honest thing is illicitly perfected. Thus the sale of arms against the prohibition of the republic is valid but illicit.

5. Estimable by price, if the contract is made concerning a thing to be exchanged for a price. That is estimable by price which for one is burdensome or which deprives him of an advantage, but for another is useful or delightful. Wherefore he unjustly demands money who shows the way to one passing by, because the labor necessary for this is less than can be estimated by price; and in like manner contracts concerning a thing altogether useless have no force.

a. Therefore estimable by price is not only a thing or action which someone assumes is to be furnished, and an advantage of which someone deprives himself, but also an obligation which someone takes on himself.

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**Notes**

813. G.A. Section 879.

b. Nothing prevents spiritual things from being able to constitute the object of a contract, whether gratuitous or onerous, provided simony is avoided, that is, provided they are not exchanged for a temporal price. Thus concerning prayer or Mass a promise, donation, or exchange with another spiritual thing can be made.

**527. Whether a contract concerning a thing already owed from another source is valid, so that it is permitted to receive payment for it.**

a. A contract cannot validly be made concerning a thing which is already owed from justice to the other contracting party, because the contract would be made concerning the transferring of a right which the other already has independently of the contract. Thus a judge cannot enter a contract of accepting something for giving a just sentence, nor a finder for restoring a thing found.

b. But a contract can validly and licitly be made concerning a thing which is already owed from justice to a third person, if it also profits another in such a way that it does not harm the former. Therefore for the same action someone can receive the whole price from several by agreement: for the work which he furnishes is worthy of a price and is not less useful to several than to one.[814]

Thus he who has been hired by Peter to undertake a journey for the sake of some business can also receive from Paul the price of the same journey, if he can at the same time accomplish his business too. For although the journey is already owed to one from justice, nevertheless it is not owed to him according to its whole value, but only insofar as it is required for the end for which he was hired by Peter.

c. Of itself valid, but illicit, is a contract concerning a thing which is already owed to the other contracting party from charity or from another virtue, as if a physician or advocate demands a price from a poor man to whom from charity he is bound to furnish his work gratuitously: for by the contract entered the poor man can demand the work not only from charity but also from justice, which is estimable by price.

d. Valid and of itself also licit is a contract concerning a thing already owed from another title or from another virtue, but not to the other contracting party, for example, concerning hearing Mass on a feast day, concerning laying aside hatred: for to the price corresponds the right which the other contracting party acquires and did not have before. Yet he who is so disposed that he would not furnish the thing owed unless the price were paid sins by this act of will; but the contract is valid.

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## Article Third. On Capable Persons

**528. Which persons are capable.** 1. By natural law all who possess the use of reason are capable of contracting: for for a valid contract on the part of the contracting party nothing else is required except that he be able to show sufficient consent, that is, consent which is a perfectly human act.

Therefore of themselves incapable are those who lack the use of reason, as infants and the perpetually insane, the drunk and the furious at the time at which they are incapable of a perfectly human act. Besides, the half-witted, half-drunk, half-asleep, half-delirious are incapable, because they do not have perfect use of reason. But minors are not incapable, nor are those who labor under monomania, provided they use sound reason concerning the matter about which they contract.

2. By positive law all are capable of contracting who by natural law can contract validly, unless they are declared incapable by law. Now generally those are declared incapable of contracting by law who do not have the free administration of their goods; but in particular minors, interdicted persons, namely those who

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**Notes**

814. Cf. Holzmann, *Theologia moralis*, t. 4, n. 279.

by the sentence of a judge are declared incapable of exercising civil acts, and wives. What these persons can and cannot do as to contracts must be taken from the civil code.[815]

a. Positive law, while it weakens the contracts of certain persons, limits and restricts the right innate to each person from nature, and this justly on account of the common good, both lest less experienced persons be deceived and suffer damage, and that peace of families may be provided for. Wherefore the disposition of law which is founded in common danger has force, even if in a particular case no inconvenience follows.

b. By this disposition of law, in modern codes the contract of a person legally incapable is generally not constituted invalid unless it is made void by a sentence of a judge, but only infirm, namely one which at the discretion of the incapable person, but not of the other contracting party, can be rescinded within the time determined by law. Wherefore, when the condition prescribed by law accedes, a contract of this kind becomes altogether firm; thus the contract of a minor son or wife, when the consent of the father or husband accedes, or a contract which is not rescinded in the time determined by law, becomes firm.

c. For confirming contracts of lesser moment the presumed consent of the father or tutor suffices. Therefore those contracts are firm by which minors give, buy, sell, or spend small things in play.

**529. Whether minors (interdicted persons, wives) can in conscience use the benefit of civil law.** The benefit conceded by civil law to minors, etc., is twofold: a. that their contracts, if they lack the condition required by law, are rescindable; b. that minors, if the contract is rescinded, are not bound to restore the thing accepted unless it still exists either in itself or in the equivalent.[816]

If they acted without fraud, they can use each benefit, because both the firmness of the contract and the obligation of restoring (if the thing no longer exists) have been removed by law for the common good. Indeed, lest the law be rendered altogether void, they can use this benefit even if they gave a special promise of paying in every hypothesis or of renouncing the benefit of the law.

alpha. Therefore if a minor without the consent of the father buys something, the seller, before the merchandise has been handed over, cannot compel him to give the price; yet if the minor wishes to stand by the contract, he can compel the seller to hand over the merchandise for the established price: for the seller must preserve the contract, but the minor buyer can rescind it. If the thing has been handed over, the seller can be compelled to receive the thing and return the price. But if the minor uselessly consumed the purchased thing while the price had not yet been paid, the seller cannot demand payment of the price.

beta. A minor who, without the consent of the father or curator, received money as a loan for consumption and consumed it for useless purposes, once the rescission of the contract has been made, is not obligated to restitution, even if afterward, having become of age, he could restore. For those who contract with minors, even in good faith, must impute to themselves the damage if they suffer any from this. But he is bound to restitution if he spent the money on necessary and useful purposes, because then he has become richer by it.[817]

gamma. If a minor seeks before a judge the rescission of a contract which by law he can rescind, charity requires that the other party rescind the contract without waiting for the sentence of a judge, lest the minor be forced to make useless expenses.

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**Notes**

815. C.A. Sections 865, 270. From C.A. Section 1237 ss., a wife can freely enter contracts concerning her own goods. C.G. Section 106 ss.

816. C.A. Section 865; C.G. Section 108. Other codes declare these contracts rescindable not simply, but only when the minor has been injured, as C. Gall. and C. Angl.

817. Cf. Reuter III, n. 151; St. Alphonsus, n. 757.

## Article Fourth. On the Consent of Contracting Parties

Concerning the consent of contracting parties it must be set forth: a. what the qualities of valid consent are; b. what the vices of consent are.

### Section 1. On the Qualities of Consent

**530.** In order that a contract be valid by natural law, consent must be:

True, or internal, not only external or fictitious; for the transfer of right, which is made through a contract, and the obligation which follows from it, proceed from the will of the contracting party; therefore when this is lacking there can be no contract.

a. Fictitious consent is had when someone indeed contracts externally, yet interiorly lacks the mind of contracting, or, what comes to the same thing, the mind of obligating himself: for the mind of obligating oneself coheres by necessary nexus with the will of contracting. The will of fulfilling the contract is to be distinguished from the will of contracting and obligating oneself.

b. He who fictitiously consents, or who contracts without the mind of obligating himself, enters no contract; therefore by reason of the contract he is bound to nothing. But if one feigning consent and deceiving another by it has inflicted damage on him, he is bound to repair this damage, and if he cannot repair it otherwise, he is bound to fulfill what he fictitiously promised.

c. He who enters a contract with the will of contracting, but with the will of not fulfilling the contract, contracts validly and therefore takes on a true obligation and is bound by force of the contract to fulfill it.

d. Fiction in contracting is not presumed, but must be proved. Yet if fiction happens in those circumstances in which it could easily be detected by the other contracting party, in each forum the other is presumed to have sufficiently detected the fiction, and therefore he who fictitiously consents cannot be obligated to compensation: for no injury is done to one knowing and willing.

**531. Free and deliberate,** that is, furnished with that advertence, deliberation, and liberty which are required for a perfectly human act, whether the contract concerns grave matter or light matter: for the contracting party imposes on himself a true and perfect obligation of justice; but this can proceed only from a perfectly human act.

Therefore a contract entered with half-deliberate consent, even of only one contracting party, is null. And this is the reason why the half-witted, half-drunk, half-asleep, etc., cannot enter a valid contract, in the same way as the same persons cannot emit a valid vow, even one obliging only under light obligation.

**532. Mutual,** that is, furnished by each contracting party concerning the same object: for one cannot by his own will acquire a right for another and obligate him to himself unless he himself wishes and consents. Therefore a unilateral contract is not perfected unless the other accepts the offered right; but a bilateral contract is not perfected unless each accepts the offered right.

a. It is not required that the consent of each contracting party be elicited and expressed at the same time, but it suffices that the consent of one has not been revoked, but virtually or morally still endures when the other elicits and expresses his consent. Wherefore that the consent of contracting parties must be simultaneous signifies nothing else than that the consent of one must be furnished as long as the consent of the other endures.

b. He who offers a contract to another can by natural law also determine the time within which the other must consent to the contract, and therefore can determine how long his consent virtually endures. Wherefore if the other consents within this time, the contract is valid; but if he consents after this time, the contract has no force because of the defect of mutual consent. Likewise he who offered a contract to another can by natural

law withdraw from his offer as long as the other has not yet given consent. But to exclude disputes which could arise from this source concerning the value of contracts, positive laws are accustomed to establish how long the consent of him who offers a contract to another is considered to endure, and how long the one offering a contract can withdraw from his offer. Therefore civil codes must be consulted concerning this matter.[818]

c. If a contract is made through a procurator, the contract is essentially perfected when the procurator consents, even if the contracting party himself has not yet consented: for the consent of the procurator is morally considered to be the consent of the contracting party himself.

**533. Manifested by a sensible sign,** so that it can be perceived and accepted by the other: for acts which pertain to the mutual commerce of men must be manifested by external signs. Hence if someone offers a contract to another, it is not perfected when the other internally consents, but when his consent is externally manifested.

a. By natural law, for the value of a contract, words are not required, whether spoken by mouth or written, but any external sign which is apt for expressing consent suffices; yet positive laws, to forestall disputes, sometimes command that contracts be perfected by words or writing, so that contracts entered without these signs are either invalid or at least do not produce a civil obligation.

b. Whether the silence of him to whom a contract is offered is a sufficient sign of consent. alpha. Silence is held as consent if the contract is favorable to the one silent, as in a promise or donation: for acceptance of a favor is deservedly presumed and, when even a very slight sign accedes, becomes certain. beta. Silence is held as consent also in onerous contracts if the one silent can easily contradict and, if he does not consent, must manifest dissent. gamma. But silence in onerous contracts is not held as consent if the one silent either cannot easily contradict or is not bound to express dissent.

At what moment of time contracts among the absent are perfected; in other words: whether for the value of a contract it is required that the consent of the one accepting be intimated to the one offering, or whether the contract is perfected at the time at which the one accepting externally manifests his consent by a sign, before this manifestation becomes known to the one offering.

a. In unilateral contracts it is not required that acceptance be manifested to the one offering; therefore a promise or donation has force when the other has accepted it, even if the acceptance has not yet become known to the one promising or giving: for besides acceptance of the offered right, nothing else is required by natural law for perfecting these contracts. Yet positive laws sometimes demand that acceptance must be intimated to the other party.

b. In bilateral contracts it is more probable that it is necessary that the acceptance of the other become known to the one offering: for just as the consent of the one offering does not oblige him unless it has been manifested to the other contracting party, so of itself the consent of the one accepting does not oblige him unless it is known to the one offering, because in bilateral contracts the one accepting also offers something on his part. Therefore the contract is perfected at that moment when the acceptance of the other becomes known to the one offering. Hence if a contract is made among the absent by letters, the contract is more probably perfected when the consent of the one accepting becomes known to the one offering from the letters of reply. Yet the contracting parties can establish that the contract have force when the one accepting consents,

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**Notes**

818. C.A. Section 862; Commercial Code 318-322; C.G. Sections 147, 149.

819. Cf. Lugo, disp. 22, n. 26 ss.; Marres l. 3, n. 53; Vermeersch n. 316 ss.

before the consent becomes known to the one offering.[819] Positive laws likewise sometimes establish that a contract is already perfected by acceptance alone.

## Section 2. On the Vices of Consent

**534. Declarations.** 1. The vices of consent are called those impediments which obstruct the liberty of consent and therefore bring it about that a contract is either altogether invalid or at least rescindable. Vices of this kind are error and deceit, force and fear.

2. A contracting party in contracting can be deceived in two ways: either by his own error, which is caused by no other, or by error which has been induced by another. The former deception is simply called error, but the latter deceit (taken passively).

a. Deceit actively is a saying or deed applied to deceiving another. This deceit can be committed either by the other contracting party or by some third person in order to enter a contract.

b. As to the value of the contract, it makes no difference whether the error was caused by the deceit of the contracting party or not; but this matters between the contracting parties: that the contracting party who deceived the other is bound to repair the damage arising from this for the other contracting party, provided he foresaw it at least confusedly; but the contracting party who did not deceive the other is not held for damages.

3. Absolute force, which takes away voluntariness, manifestly renders the contract invalid; but force that is not absolute, which does not take away voluntariness, is not distinguished from fear. Wherefore the same principles hold concerning force and fear. But it makes no difference whether he who instills fear threatens evil to the contracting party himself or to a person closely joined with the contracting party.

**535. Divisions of error, which also equally hold concerning deceit.** 1. Error can be substantial or accidental. It is called substantial: a. if it concerns the substance of the thing concerning which the contract is made, as if someone thinks he is buying gold but buys brass; b. if it concerns a substantial quality or a quality redounding into the substance of the thing concerning which the contract is made, either because that quality is intended primarily or because it is a condition without which consent is not given; c. if it concerns the substance of the contract itself, as if the contracting party thinks that there is question of donation when there is question of sale.

If a painting is bought for this reason, because it is thought to be the work of a very famous painter, this circumstance is intended primarily. A condition without which not need not necessarily be expressed, but can be known implicitly either from the disposition of law, from the usage of places, from the nature of the contract, or from the end to which the thing concerning which the contract is made is applied, as if wine is bought for a sick man or for the sacrifice of Mass.

Accidental error is said: a. if it concerns an accidental quality (not redounding into the substance) of the thing concerning which the contract is made, as if someone buys wine of two years which he thought was of four years; b. if it concerns an accidental quality of the contract, as if someone thinks payment of the price is to be made in this money, when it is to be made in another.

Error concerning the person with whom a contract is made is sometimes substantial, sometimes accidental. And in marriage indeed it is always substantial, because in this contract the person not only has the character of the contracting party, but also of the thing concerning which the contract is made; but in other contracts it is substantial if the person is intended per se and principally, which more easily happens in gratuitous contracts than in onerous ones. Thus if someone gives a precious thing to Peter thinking he is Paul, the error is substantial; but if someone sells a horse to Titius thinking he is Caius, the error is accidental. The same must be said of error concerning the quality of the person: namely, if the contracting party makes his consent depend

on a determined quality, because it is the principal motive of the contract, the error is substantial, as if someone gives to Titius because he thinks him a blood-relative when he is not; otherwise the error is accidental, as if someone gives alms to someone because he is poor, but at the same time is thought to be a blood-relative.

2. Error is called antecedent when it gives cause to the contract, so that the contracting party, with the error removed, would not have made the contract; and it is called concomitant if it does not give cause to the contract, so that the contracting party would have made the contract even with the error removed.

**536. On contracts entered from error.** 1. Every substantial error, even merely concomitant, renders the contract invalid from defect of consent into the substance of the contract: for he who errs concerning the substance of the thing does not consent to the thing concerning which the contract is made, but to another concerning which he thinks the contract is made; and he who does not wish to contract except under a certain condition, namely that the thing be furnished with a determined quality, does not consent to the contract if that condition is lacking, even if the condition in itself is of no moment. Therefore by natural law a contract of this kind is invalid.

a. Therefore if someone buys wine made from apples thinking it wine from the vine, or if a priest buys blue cloth for making a cassock, thinking the cloth is black, the contract is null because of substantial error. And if the substantial error of one contracting party was caused by the deceit of the other (by substantial deceit), the deceiver is bound to repair the damage arising from this for the other, and if it cannot be repaired otherwise, he is bound to fulfill the contract.

b. In the external forum it is not enough that someone assert that he erred concerning the substance of the contract, but he must also prove the error; if he has not proved it, one must stand for the value of the contract. But in the internal forum the contract is void, provided the error truly happened, even if it cannot be proved.

c. It is not necessary that a quality of this kind, to which consent is attached, be expressly indicated by the contracting party: for it can also be known from the end to which the thing concerning which the contract is made is destined, as if a priest buys wine for the sacrifice of Mass.

2. No accidental error, even if it was antecedent and caused by the other contracting party, renders the contract invalid: for for the value of the contract it suffices that there be consent into the substance of the contract; otherwise contracts would be invalid too frequently, with disturbance of human commerce. But accidental error, even antecedent and caused by the other, does not impede consent into the substance of the contract; therefore the contract is valid by which someone buys fresh wine which he thinks to be old.

3. Antecedent accidental error which was caused by the deceit of the other contracting party renders the contract rescindable at the discretion of the deceived person, if it is soluble by its nature: for although the deceived person gave consent as to the substance, nevertheless the injury which he suffered obstructs its efficacy.

a. And indeed he who deceived another must remove the deceit or injury inflicted with all its effects; but the effect of the deception is the contract; therefore he must dissolve the contract if the deceived person wishes. But he who deceived another cannot dissolve the contract against the will of the deceived person: for the deceiver gave consent, against whose force and efficacy nothing obstructs. Hence antecedent error which is not caused by deceit, but is proper to the contracting party, does not make the contract (at least an onerous one) rescindable. A contract of this kind can be rescinded only by mutual consent, either simply or with reparation of the damage which arose for the other contracting party.

b. If not the contracting party himself, but some other person caused the error, the contract is rescindable where the contracting party was a participant in the deceit; but where the deceit was committed without

the knowledge of the contracting party, although in his favor, the contract is not rescindable. For the right of rescinding a contract arises from the injury which one contracting party suffers from the other contracting party; but in this case one contracting party does not suffer injury from the other contracting party. Yet the deceiver must repair the damage of the contracting party, if any was suffered, and if he cannot repair it otherwise, he is bound to procure that he in whose favor he deceived the contracting party rescind the contract.[820]

4. Concomitant accidental error, even if it was caused by the deceit of the other contracting party, does not render the contract rescindable: for the deceived person in this case does not suffer a true injury, because he would have made the contract even with the error known. Hence he who buys Austrian wine thinking it Rhenish, which nevertheless he would have bought even with the error known, makes a contract not only valid, but also firm or not rescindable; yet he has the right of reducing the contract to equality, or of diminishing the price so that it corresponds to the thing bought.

Therefore if a merchant sells adulterated goods or deceives buyers in weight and measure, it can happen that the contract of sale is invalid, or only infirm or rescindable, or valid and firm but to be reduced to equality.

a. The contract is invalid if the adulteration is so great that the thing sold is no longer suitable for the common use and the use intended by the buyer, as if old cloths recently colored, or worn garments recently cleaned and repaired, are sold as new; or if goods mixed in a notable quantity with cheaper matter are sold: for substantial deceit intervenes.

b. The contract is rescindable if the buyer bought adulterated goods for this reason alone, because the seller affirms that they are genuine; as if a wine-seller sells wine mixed with artificial wine as natural to him who would have bought only natural wine; or if a merchant sells goods mixed with cheaper matter, but not in a notable quantity, when nevertheless the buyer would have wished only genuine goods: for deceit intervenes, accidental indeed but antecedent.

c. The contract is valid and firm if the buyer would have bought the goods even if he had known the error, although not at the same price, as if the seller does not give full measure or full weight: for accidental and concomitant deceit intervenes. But the deceived buyer has the right that the excess of the price which he paid be restored to him.

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**537. On contracts entered from fear.** A contract is made from fear if fear gives cause to the contract, so that without fear it would not have been made. In general it must be said that contracts entered from fear are valid, provided fear did not disturb the use of reason: for consent which is given from fear is a perfectly human act and voluntary simply, although at the same time it is involuntary in a qualified sense.[821] In particular these things must be held:

1. Fear, even grave fear, which is not unjustly instilled, renders a contract neither invalid nor rescindable: not the first, because fear does not take away consent simply voluntary; not the second, because no injury is inflicted on the contracting party.

Valid and not rescindable is the contract of him who, from fear of prison because of a grave crime committed, wishing to emigrate to America, enters a contract with the captain of a ship. Likewise valid is the contract of him who injured another in honor and from fear of penalty promises him money, lest he refer the matter to a judge.

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**Notes**

820. C.A. Sections 871-876. C.G. Section 123 agrees with natural law.

821. Cf. *De principiis*, n. 56.

2. Fear, both grave and light, unjustly instilled for extorting consent, by natural law does not render a contract invalid, but nevertheless renders it rescindable at the discretion of him who suffered the fear.[822]

The reason for the first is that the contract cannot be demonstrated invalid either because of defect of consent or because of injury inflicted on the contracting party: for this injury indeed brings it about that the contract is rescindable, but not that it is invalid.

The reason for the second is that he who, by instilling fear, inflicted injury on the other contracting party must remove the injury inflicted, whether it was grave or light. But this is removed by the fact that he who suffered the fear can dissolve the contract if he wishes, but if he does not wish, can compel the other party to fulfill the contract. Light fear in the forum of conscience makes a contract rescindable if the fear was truly the cause of the contract; in the external civil forum light fear is not considered.

a. In this matter a twofold exception must be made: alpha. a contract entered from grave and unjust fear, as if a robber extorts money by instilling fear of death, is invalid if the contracting party did not consent in fact: for since he consents not spontaneously but under compulsion, it can happen that he furnishes no other consent than that which in circumstances of this kind suffices for avoiding the evil which he fears; but for this merely external consent suffices. Therefore it can happen that a contract of this kind is invalid from defect of consent. beta. Marriage and religious profession, if they are celebrated from grave and unjust fear, are invalid by positive law, as will be declared in their own places.

b. There are authors (Dicastillo, Lugo, Reuter, etc.) who, also excepting gratuitous contracts from this law, teach that those entered from grave fear unjustly instilled are invalid by natural law. Nearly all admit the probability of this opinion. For for the value of a gratuitous contract, consent altogether free and perfectly voluntary seems to be required; otherwise the one promising or giving is not considered to transfer right in the thing promised or given. Therefore in practice the one promising (according to some simply, but according to others only after rescission of the promise has been made) is not bound to hand over the promised thing. The same must be said of the giver.

3. Fear, both grave and light, unjustly instilled for another end, not for extorting consent, makes the contract rescindable if it is instilled by the other contracting party, but does not make it rescindable if it is instilled by some third person without the consent of the contracting party.

The reason for the first is that the one instilling fear must cease from injury and repair every effect or damage arising from the injury; as if someone spontaneously promises money to an enemy so that he may cease from vexations and calumnies.

The reason for the second is that the contracting party inflicts no injury and therefore must repair no effect or damage of injury; as if someone, in fear of death instilled by a robber, promises money to a man he meets so that he may free himself from danger.

## Article Fifth. On the Cause of Consent

**538. What and of how many kinds it is.** 1. The cause of a contract or of consent is called the reason because of which one transfers a right to another. This cause in gratuitous contracts is the will of doing good; in onerous contracts it is the utility to be received from the thing concerning which the contract is made.

2. A twofold cause of contract is distinguished: one motive, which proximately determines the consent; another impulsive, which does not proximately determine the consent, but is either its occasion or only

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**Notes**

822. Lugo, disp. 22, n. 133 ss. C.A. Section 870 and C.G. Section 123 declare contracts entered from unjust fear rescindable.

moves somewhat to the consent. The motive cause is also called the principal and primary motive; and the impulsive cause is called the secondary and impulsive motive of the contract. The former especially moves the contracting party, and therefore when it exists the contract is valid, and when it is lacking the contract is invalid. The latter does not suffice of itself for determining the will, but indeed moves the will already determined, yet only so that it may contract more willingly; wherefore, even if it is lacking, the contract nevertheless exists.

The payment of a legacy which someone made while falsely thinking that it had been established by his father does not have force, because the motive cause is lacking, namely the debt enjoined by the father. The purchase of a field which someone made while falsely thinking that a treasure was hidden in it has force, because only the impulsive cause is lacking, namely the hope of finding the treasure. Whether in a particular case the cause was motive or impulsive can be known from the contracting party alone.

Whether contracts entered from a base cause are valid: I give you one hundred so that you kill Peter; or under a base condition: I give you one hundred if you kill Peter.

alpha. While the contract has not yet been fulfilled, neither contracting party is obligated to fulfill it; indeed each is bound to withdraw from the contract, and if the price had already been paid before the base action was placed, it would have to be restored, because it is not permitted to place the condition under which the price was paid.

beta. But when the contract has already been fulfilled, that is, once the dishonorable action has been placed, the other contracting party must pay the price, and the other can licitly demand and retain it.[823]

alpha. This opinion, which is common among authors, can be called certain and is confirmed in this way. A contract concerning a base object or from a base cause is a promise concerning an evil thing, which is illicit and invalid; but if the other truly furnishes the evil work, by that very fact a new unnamed contract arises, I do that you may give, so that the one promising is bound to pay the price from justice by force of this unnamed contract. Namely, he who executes the base work furnishes something which is estimable by price: for the work is burdensome and dangerous to one contracting party, but useful or delightful to the other; and he furnishes it with the intention that the one promising be bound to pay the promised price. But this one by the base promise itself consents to the obligation of paying the price if the work has been furnished in his favor. But this contract, which is distinct from the base contract and is perfected when the base work is perpetrated, is indeed illicit insofar as it supposes a base deed, but in itself is licit and valid: for the matter of the contract is not the action insofar as it is evil, but on the one hand the material work placed at the service of another, and on the other the price to be paid for the work furnished.[824]

beta. And these things indeed hold by natural law; but positive laws now declare invalid contracts whose motive cause is illicit.[825] Now those invalidating laws, since they were established for the common good in penalty of an offense, oblige in conscience. Therefore if it is certainly established that the law renders these contracts void even as to payment of the price after the base work has been furnished, there is no obligation of paying the price for the evil action truly furnished. The only question is whether these laws void the contracts before or after the sentence of a judge. If from the tenor of the law the former is established, the one promising cannot be obligated to pay the price, and the other can neither demand nor retain it; but if this is not established

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**Notes**

823. The Sacred Penitentiary, Apr. 23, 1822, declared that a prostitute can demand the price of prostitution and retain it.

824. Cf. Lehmkuhl I, n. 1052 ss.; Vermeersch n. 292 ss.; *Zeitschrift fur k. Th.*, 1909, p. 480 ff.

825. C.A. Section 878. Yet Section 1174 establishes that what someone knowingly already gave for executing an illicit thing can no longer be reclaimed; C.G. Sections 138 and 817.

(as generally happens), in practice before the sentence of a judge favor must be given to the possessor, that is, to him who promised, if he has not yet given, or to him who did the base work, if he has already received.[826]

gamma. With contracts concerning a base thing one must not confuse cases in which, without any agreement, something is given to another with the intention that he be enticed to a dishonorable action; for example, if a master gives gifts to a maidservant in order to draw her to base things. For these are gratuitous gifts which need not be restored, even if the dishonorable action did not follow. Yet restitution is to be advised where there must be fear that base love is fostered by retention of the gift.[827]

## Article Sixth. On the Obligation of Contracts

**539. What obligation they produce.** A threefold obligation arising from contract is distinguished: natural, which arises from the very nature of the contract and affects conscience, but does not produce an action in judgment; civil, which arises from civil law and produces an action in judgment, but does not oblige conscience; mixed, which obliges in conscience and at the same time produces an action in the external forum.

1. Every valid contract produces an obligation in the forum of conscience, and indeed from commutative justice (except a gratuitous promise): for the will of obligating oneself, and this from justice, is of the essence of any contract except promise. By this obligation must be fulfilled not only those things which are expressly established in the contract, but also those things which are implicitly contained in the contract either from the nature of the contract, from positive law, or from custom of the region, for example, security of eviction (n. 523, 2).

2. The gravity of the obligation arising from contract is necessarily proportioned to the matter; therefore grave in grave matter, light in light matter: for from a contract the other contracting party acquires a right; but the nature of things requires that the obligation of preserving the right of another in grave matter be grave.

Wherefore the gravity of the obligation is so independent from the intention of the contracting parties that they would make no contract if in grave matter they did not wish to contract a grave obligation. But the object of the contract and of the obligation arising from it, unless determined by nature as in marriage, depends on the intention of the contracting parties. But if the intention of the contracting parties is not clearly expressed, it must be interpreted from the common sense of the words which they used, from the nature itself of the contract, from positive law, from the usage of regions, etc.; and if from all these it is not certainly established, one must stand for the minimum.

3. A rescindable contract obliges one party until the other party, who has the right of rescinding, requests rescission; but if that party renounces the right of rescinding, it produces the same obligation as a firm contract. A contract can be rescinded by private authority, with two cases excepted, namely if the matter is doubtful or if the law prescribes that rescission must be made by a judge. A contract which is not rescinded within the time defined by law becomes firm.

Note. Sometimes contracting parties mutually agree concerning a determined sum of money (*poena conventionalis - Reuegeld*) to be paid by him who withdraws from the contract without a just cause. A penalty of this kind must be paid both by natural law and by civil law (C.A. Section 909), provided it was seriously added and is not immoderate.

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**Notes**

826. Cf. D'Annibale, *Summula theolog. mor.*^5 (Rome: Desclee, 1908), II, n. 301; St. Alphonsus, n. 712.

827. Cf. St. Alphonsus, n. 712; Holzmann, *Theol. mor.*, t. 4, n. 689.

**540. On an oath added to a contract.**[828] An oath added to a contract is a promissory oath by which the contracting party, under invocation of the divine name, obligates himself to fulfilling the contract. Concerning the force and efficacy of this oath added to a contract, these things must be held.

1. An oath follows the nature and conditions of the contract to which it is added, from the rule of law: the accessory follows the principal (n. 251).

Therefore betrothals can be dissolved by mutual consent, even if the betrothed persons added an oath. A promise, even if confirmed by oath, does not oblige unless it is accepted.

2. An oath added to a contract which cannot be observed without sin is invalid: for it cannot oblige to a thing even only lightly evil.

Therefore an oath is invalid when added to a promise whose object is base or illicit, even if only by positive law, for example, to a promise of helping another in defrauding taxes to be paid from precept.

3. An oath added to a contract invalid by natural law cannot render the contract valid; indeed the oath itself is invalid, even if it could be observed without sin.

a. For an oath cannot supply the defect because of which a contract of this kind is invalid. Therefore, for example, sworn betrothals which are invalid by natural law are not confirmed by the added oath.

b. The common opinion indeed teaches that in this case the oath is valid and must be observed, because every oath must be observed if this can be done without sin. Therefore he who had sworn about paying usury is obligated from religion to pay it unless he had received dispensation from the oath, although he can seek it again as unjust. But the opinion seems altogether probable which says that the oath in this case is invalid and altogether frees from paying unjust usury.[829]

4. An oath added to a contract invalid or rescindable by positive law alone indeed does not make the contract valid or firm, yet brings it about that it must be observed, if it can be licitly observed, by reason of the oath, unless this oath is relaxed, provided the oath added to the contract was valid: for any valid oath, out of reverence for the divine name, must be observed if it can be observed without sin. Therefore from religion a contract of this kind must be observed, even if from justice it need not be observed.

a. Concerning contracts invalid or infirm by positive law, the older authors taught that they are confirmed by an oath, because Roman law established that because of the added oath the invalidation of the law ceased and that these contracts were to be held as valid and firm in reverence of the divine name. Yet since today civil law establishes nothing of this kind, it can be affirmed that all contracts, by an oath added, are not changed in the nature of contract.[830]

b. Thus a minor who promised by oath that he would not rescind the contract must observe it insofar as it is just (at least after attaining majority), unless dispensation from the obligation of the oath has been obtained. If someone under oath promised a robber a certain sum of money, the promise, if it was internal, is valid but rescindable; yet the oath, as one extorted by fear, is invalid and therefore does not stand in the way of rescission of the promise.

5. An act contrary to an antecedent oath is indeed valid, yet the one acting against the oath is perjured: for an oath does not take away the power of doing what he had promised that he would not do.

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**Notes**

828. Cf. Laymann, l. 4, tract. 3, c. 8; Lessius, l. 2, c. 17, n. 50 ss.; Marres, *De iustitia*^2 (Ruraemond: Romen, 1889), l. 2, n. 267 ss.

829. Ballerini-Palmieri II, n. 588; Genicot I, n. 599.

830. Since the Church in this part retains the dispositions of Roman law, in sacred causes an oath added to a contract of this kind renders the contract itself valid or firm, so that it must be observed both from justice and from religion.

Therefore the revocation of a testament has force for one who had previously sworn that he would not revoke it; the donation made to another has force for one who had previously sworn that he would give to Caius and not to another.

**541. Obligation of a qualified contract.** A qualified contract is one to which a clause (mode or condition) has been added which accidentally modifies its obligation. Contracts of this kind are chiefly: a. contracts entered under a condition; b. under an end; c. under a cause; d. under a demonstration; e. to a day. The added clause must be determined from its own nature.

I. Contract under a condition. 1. Notions. a. A condition is an external circumstance added to a contract, on whose existence the value of the contract depends.

b. The added condition can concern the present, the past, or the future.

A twofold condition concerning the future is distinguished: one suspensive, which brings it about that the existence of the obligation depends on the fulfilled condition, for example, I give you one hundred if you go to Rome; another resolutive, which brings it about that an already existing obligation is afterward revoked or resolved when the condition is fulfilled or not fulfilled, for example, I sell you a book unless within a week it displeases you.

c. A condition concerning the future concerns either a necessary thing, which is known will certainly be, or an impossible thing, or a possible thing, which can exist and not exist, and whose event therefore is uncertain.

2. Principles. a. A condition concerning the present or the past brings it about that the contract has force if the condition exists, and does not have force if the condition does not exist, even if its existence or non-existence is not yet established.

b. A condition concerning a necessary future does not prevent the contract from having force at once, because a condition certainly future is considered added in vain, unless the contracting party expressly wished the event to be awaited, as if someone says: I will give you a watch if tomorrow the sun rises.

c. A condition concerning an impossible future brings it about that the contract is invalid: for he who wills something under an impossible condition in fact does not will, as if someone says: I give you a gold coin if tomorrow the sun does not rise.

Here also belongs a condition concerning a base thing, which is considered as concerning a morally impossible thing. But from positive law, especially canon law, conditions concerning an impossible or base thing in all contracts of last will are held as not added. Here it must be noted that a base thing is considered not only the demand that an illicit thing be done (if you become a Lutheran), but also the demand that a good action not be done, whether it is of precept or counsel (if you do not become a religious). Therefore a testament has force even if the dishonorable condition is not fulfilled by the heirs: for anyone is considered to wish to contract according to the laws.

But if civil codes do not agree with canon law, it must be noted that testaments and pious legacies are ruled by the dispositions of ecclesiastical law, not civil law. Wherefore impossible or base conditions (at least in the forum of conscience) are held as not added, even if the civil code has established otherwise.

d. A suspensive condition concerning a possible future suspends the consent and produces the obligation of awaiting and not impeding the event of the condition; but once the condition has been fulfilled, the obligation itself of the contract arises without any other consent; for example, I will give you half if my uncle leaves me a legacy. For if the condition is not fulfilled, the contract is null; but once the condition has been fulfilled, the contract becomes absolute without another consent.[831]

Note. A contract entered under this suspensive condition is usually understood if there is speech of a conditioned contract.

**542. II. Contract under an end or under a mode** is said to be one in which one contracting party prescribes to the other to what end and use he must apply the thing accepted, and the other contracting party accepts this, for example, I give Titia one thousand so that she may enter a monastery. This contract does not suspend the obligation, but has force at once, with the end not yet fulfilled, because each contracting party consents to the contract and to the mode added. But it enjoins on the other contracting party the burden of fulfilling the end or mode added.

In this a contract under a condition differs from a contract under a mode: that the condition suspends the effect until the condition is fulfilled, but the mode or end does not suspend the effect, but adds the obligation of fulfilling the end. Hence if one is given one hundred so that he may celebrate one hundred Masses, the contract is perfected at once when the other accepts the thing, and once the money has been handed over the one accepting at once acquires ownership of it; but he is bound from justice to fulfill the mode added. But if afterward the mode or end is not fulfilled, especially in donations under a mode, attention must be paid to the intention of the giver. If from the words or circumstances of the donation it is established that he intended to obligate the donee to that end, the donation, when the end has not been furnished, is resolved and the gift must be restored. If he only intended to furnish the means for furnishing the end if it should please the donee, the gift can be retained, even if the end is not fulfilled.[832]

**543. III. Contract under a cause** is said to be one by which the motive of contracting is indicated, for example, I give you one hundred because you are my blood-relative. This contract is invalid if the added cause is lacking and is the principal and primary motive; it is not invalid if the cause is a secondary and merely impulsive motive.

**544. IV. Contracts under a demonstration** are called those in which the matter of the contract is not accurately determined, but is rather pointed out. Now if error occurs in designating the quantity of the matter, the contract must be interpreted differently according to the diversity of designation. For if the quantity is designated demonstratively, for example, I buy this cask containing five, nothing must be supplied; but if the quantity is designated taxatively, for example, I buy five which are contained in this cask, the defect must be supplied.

**545. V. A contract entered to a day** is said to be one in which the day of execution is designated. If the designated day is certainly going to come, the contract obliges at once, but execution does not oblige before the designated day, for example, I give one hundred to the parish church when my father dies. But if the designated day is not certainly future, the obligation is suspended as if the contract were conditioned, for example, I give you one hundred when my son enters religion.

a. Because in the first example the contract obliges at once, and therefore the right is transferred at once, if the giver died before the designated day, the obligation of executing the donation would pass to the heirs; but in the second example, if the giver died before the entrance of his son into religion, no obligation of giving would exist in the heirs.

b. By the particle if a condition is indeed usually expressed, but sometimes not a condition but the designation of time is set forth by it, as if someone says: I give you a gold coin if (that is, when) Titius pays me the rent.

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**Notes**

831. Cf. Ballerini-Palmieri VI, n. 265 ss.

832. Cf. Lugo, disp. 23, n. 111; Lessius, l. 2, c. 18, n. 124 ss.

## Question Second. On Unilateral Contracts

Special contracts, of which a great number exists, can be recalled to three classes: a. to unilateral contracts; b. bilateral contracts of certain event; c. aleatory contracts. To unilateral contracts pertain donation, promise, and testament. Testaments are indeed not properly contracts; nevertheless they are usually counted among contracts and explained, because they closely approach gratuitous donation.

# Article First. On Promise

**546. Its nature.** 1. Promise signifies a contract by which someone gratuitously obligates himself toward another to doing or omitting something.

a. Promise must first be distinguished from purpose: for one proposing does not intend to assume some new obligation, but one promising intends to bind himself by a new obligation.

b. He who promises something is called the promiser, but he to whom something is promised is called the promisee.

c. Here there is question of a promise which is made to man, not of a promise which is made to God. But a promise which is made to man is either simple or mutual. Promise, whether simple or mutual, of entering a contract is accustomed to precede onerous contracts, especially real contracts, for example, a promise of giving a loan for consumption, of buying and selling a house, of entering marriage. In this place there is speech of simple promise.

2. In order that a promise have force, the conditions are required which are necessary for the value of a gratuitous contract: a. that the will of obligating oneself be present, which he who seriously wishes to promise is considered to have implicitly, even if he does not advert to the obligation; b. that the promise be externally manifested and accepted; wherefore the promiser before acceptance can always still revoke the promise made by natural law.

**547. Its obligation.** 1. It depends on the intention of the promiser whether the promise obliges from fidelity or from justice.

a. If the promiser intends to obligate himself only from fidelity, he is indeed bound in conscience to fulfill the promise, but only under light obligation, even in a thing of great moment, because fidelity of itself does not oblige under grave obligation; but per accidens, by reason of grave damage which is foreseen to arise for the promisee, it can oblige even under grave obligation.

b. If the promiser intends to obligate himself from justice, he is bound to fulfill the obligation under grave obligation in grave matter. Yet for constituting a grave sin matter four times greater is required than in theft, because not to give one's own thing promised to another is much less opposed to justice than to take away or retain another's thing.[833]

c. If doubt exists concerning the obligation of the promise, one must stand for the minimum, because an obligation about which there is no certainty must not be imposed. Hence if someone makes a promise in a grave matter, not attending whether he obligates himself under grave or under light obligation, he must be considered obligated only under light obligation.

d. Obligatory promises ordinarily do not oblige from justice, because those promising rarely have the intention of obligating themselves so strictly. But he is considered to obligate himself from justice (and in the external

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**Notes**

833. Cf. St. Alphonsus, n. 720.

forum is presumed so to obligate himself) who promises with some solemnity, for example, under oath, or adds a written note to the promise, or makes the promise before witnesses.

e. Between the obligation of fidelity and of justice this distinction intervenes: that the obligation of fidelity gives the promisee no right in the thing promised, but obliges only because everyone is bound to conform his deeds to his promises; but the obligation of justice gives the promisee a right to receiving the thing promised, so that from strict right what was promised is owed to him. Yet it does not give a real right in the thing promised, but only a personal right against the promiser or his heirs; therefore it is not licit for the promisee secretly to seize the thing promised for himself.[834]

2. A promise even obliging from justice ceases: a. if, after the promise has been made, a notable change of things becomes known or supervenes, which, if it had been known or foreseen before the promise, would have impeded it: for any gratuitous promise is considered made under this tacit condition: if it can be fulfilled without grave inconvenience; b. if before execution the motive cause of the promise ceases, by which the promiser was truly moved either uniquely or principally to promising; c. if the thing promised without fault of the promiser has become impossible, illicit, or useless to the promisee.

3. Whether a promise must be fulfilled if before execution the promisee dies depends on the intention of the promiser: if the promiser intended either uniquely or primarily the person of the promisee, the obligation ceases, because when he is dead the motive cause of the promise ceases; but if he chiefly intended the family or heirs of the promisee, the obligation does not expire.

4. If before execution the promiser dies, a real promise passes to the heirs, unless it is established that the promiser wished to obligate himself alone; a personal promise does not pass to them (n. 210, 3).

## Article Second. On Donation

**548. Its nature.** 1. Donation is a contract by which ownership of some proper thing is transferred gratuitously to another.

a. He who gives is called the giver, but he to whom something is given is called the donee.

b. Donation by natural law is a consensual contract, which before the handing over of the thing given is substantially perfected by mutual consent alone.[835]

c. Donation differs from promise (obliging from justice) in that donation transfers a right in the thing, whereas promise transfers only a right to receiving the thing, or a right to an action against the person of the promiser.

2. Donation must be made from one's own things; but because the goods of him who is unable to pay debts are not altogether his own, a donation made by him is indeed valid, but unjust.

a. The donation is valid but unjust both on the part of the giver and on the part of the one accepting, because the giver inflicts injury on creditors and the one accepting cooperates immediately in the injury; for creditors have a strict right of demanding that debts be paid to them from those goods.

b. The donee who, ignorant of the impotence of the giver, accepted the gift, is not bound to restitution; but the donee who, conscious of the impotence of the giver, accepted the gift, is bound to restitution of the gift, both if he induced him to make the donation and if he did not induce him. The reason for the first is that he acquires a right in the thing given, since the donation is valid; but he cooperated in the injury only

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**Notes**

834. Cf. Lugo, disp. 23, n. 12 ss.

835. From C.A. Section 943, in verbal donation ownership in the thing given is finally transferred by handing it over.

materially. The reason for the second is that he cooperates immediately in a damaging injury, namely by an action which is not indifferent in itself but unjust.[836]

**549. Donation is divided:** a. By reason of effect, into donation among the living, by which ownership of the thing given passes to the donee while each contracting party is still living; and donation because of death, by which ownership of the thing given finally passes to the donee after the death of the giver. Of this latter, which is a species of last will, there will be speech below; of the former, here.

Therefore that is not properly a donation because of death which is indeed made in view of death, but in such a way that it at once obtains an irrevocable effect. Of this kind are dispositions by which the sick give to relatives, servants, or friends movable or even immovable things.

b. By reason of motive, into merely gratuitous or purely liberal donation, which supposes no obligation in the giver, and remuneratory or antidotal donation, which supposes an obligation of gratitude in the giver.

Because remuneratory donation falls short somewhat from the strict concept of donation, it has happened that merely gratuitous donation alone is understood wherever donation is prohibited in canon law.

c. By reason of mode, into verbal donation, by which someone by words gives a thing to another, and real donation, by which someone gives a thing to another and at the same time hands it over.

Although a donation which is made in writing is properly a verbal donation, nevertheless the civil code distinguishes it from verbal donation.

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**550. Required conditions.** By natural law a donation made by one person and accepted by another is valid.[837]

a. In order that a donation be valid, the acceptance of the donee, and this externally manifested, is always required; hence a donation before acceptance can be revoked, even if it has been confirmed by oath: for an oath follows the nature of the act. Wherefore the opinion which Busenbaum considers probable, namely that a donation made to a pious cause is valid without acceptance, is contrary to natural law.[838]

b. Besides the offering and acceptance of the thing given, indeed by natural law nothing else is required for a valid donation; but positive law, which generally favors donations less and therefore renders them difficult, requires determinate conditions (manual donations being excepted). Donations which are contrary to the laws can be held valid in the forum of conscience before the sentence of the judge (n. 356).[839]

c. Donations made to pious causes are governed by canon law; hence if by civil law donations of this kind are declared void either absolutely or under certain conditions, in the forum of conscience even after the declaration of the judge they are valid, provided the conditions are present which natural law demands.

**551.** The effect of donation is the transfer, and that of itself irrevocable, of ownership to the donee.

a. Since donation is a consensual contract, it is perfected by the mutual consent of the giver and of the one accepting; but ownership by positive law is generally transferred only by the handing over of the thing.

b. Although a donation valid in itself by natural law is irrevocable, by positive law in certain cases it can be revoked either wholly or in part. This especially holds in three cases: alpha. if the donee has been

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**Notes**

836. Cf. Lugo, disp. 20, n. 116. The opinion of Lessius (l. 2, c. 20, n. 168) and Molina (disp. 328), namely that he is not bound to restitution who did not induce the giver to giving, seems to lack all probability.

837. In order that donation produce a civil obligation, from C.A. Section 943 either a public document or handing over of the thing is required; C.G. Section 518 establishes the same.

838. Cf. St. Alphonsus, n. 725.

839. According to C.A. a donation made privately is valid, but according to other codes it is not valid.

enormously ungrateful toward the giver; beta. if offspring has been born to the giver contrary to expectation; gamma. if by the donation the children are deprived of the legitimate part of the inheritance.

Other cases can be consulted in the codes.[840] Since these dispositions of law probably have force also in the internal forum, the giver can use them with a safe conscience, unless there is question of a donation made in favor of a pious cause. Therefore children after the death of the father can petition the judge for revocation of a donation, by reason of which they are deprived of the legitimate part.

**Note.** If the giver or the donee dies before the handing over of the thing, the same holds which above (n. 547) was said in the similar question concerning promise.

# Article Third. On Testaments

Since a testament constitutes some mode of hereditary succession and at the same time a species of last wills, some things must be premised concerning each of these matters.

## Section 1. On Hereditary Succession

**552. Preliminary notions.** 1. Hereditary succession is the right of succeeding to the goods and rights of some deceased person.

Hereditary succession is twofold: one is legal, or from intestacy, by which the right of succeeding to the goods and rights of the deceased arises from the disposition of law; the other is testamentary, by which the right of succeeding to the goods and rights of the deceased is acquired from the last will of the deceased himself.

Inheritance signifies the universality of the goods and rights of some deceased person.

Heir is said of the person representing the deceased, to whom belongs the right of succeeding to his goods and rights.

An heir can succeed to the goods of the deceased either wholly or in part; the former is an heir to the whole, the latter an heir in part; but each is said to succeed by universal title (n. 403, 3).

The legitimate portion is called that part of the inheritance which must be left to necessary heirs. Its quantity is diverse according to diverse codes.

2. Modes of acquiring an inheritance. The right of inheritance can be acquired in a threefold mode: a. by hereditary pact (*Erbvertrag*), by which someone confers on another, for example, on a wife, a right of inheritance; b. by testament, by which someone declares whom he wishes to succeed him after death in his goods and rights; c. by succession from intestacy, which happens to children or relatives according to the order established by law, if someone dies without a testamentary disposition.

**553. On heirs.** A twofold heir is distinguished: an heir from intestacy, who, when no testamentary disposition exists, succeeds to the goods of the deceased from the disposition of law; and an heir from testament, who by force of the testament succeeds to his goods from the will of the deceased.

Some laws, for example Roman and French law, do not admit that an heir be instituted only for part of the goods and the remaining part come to heirs from intestacy; but others, for example Austrian, German, and English law, admit this.

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**Notes**

840. C.A. Sections 947-954, where six cases are enumerated in which a donation can be revoked. C.G. treats this matter in Section 530 ss.

Some heirs from testament are necessary, who by force of positive law must be instituted, except in a few cases in which they can be deprived of inheritance;[841] others are arbitrary, who can be instituted heirs, but by force of law do not have to be instituted.

Necessary heirs are diverse in diverse laws, generally only legitimate descendants, sometimes also the wife.[842]

Some heirs are legitimate, who from law have the right of succeeding him who did not institute an heir but died intestate; others are extraneous, who do not have this right.

Therefore necessary heirs are also legitimate; but not all legitimate heirs are also necessary; but extraneous heirs are neither legitimate nor necessary.

**554. On the right of succeeding.** By natural law there belongs to descendants the right of succeeding to the goods of the deceased, unless they have been legitimately excluded; therefore Sacred Scripture, from the persuasion of all nations, calls a son by that very fact also an heir: *But if a son, also an heir.*[843]

a. The several families out of which civil society comes together, by the disposition of nature itself, are conserved and propagated through an indefinite series of generations; but the conservation and propagation of families would be impossible unless the goods of the family, at least as to the greatest part, were transmitted from one generation to another, and did not either become the property of the first occupier or be occupied by political power; therefore, nature itself demanding it, descendants succeed to the proper goods of the family.[844] Therefore all civil laws establish that members of a family succeed to the goods of a deceased person who died without a testament, and authors almost concede that this is demanded by natural law.

b. Therefore the same reason by which the necessity of private property is constructed also proves that children of the family by natural law succeed to the goods of their parents. Yet since by natural law only the right of succeeding is certain, it pertains to civil authority to determine more accurately those things which are indeterminate from natural law, for example, to establish the mode of succession, the quantity of the inheritance, the degree of kinship beyond which the family is considered extinct and therefore the goods of the deceased are no longer devolved to descendants, etc.

**555. On acceptance of the inheritance and the obligation of the heir.** 1. When the testator has died, the heir does not yet acquire the inheritance, but his acceptance is still required for acquiring it; nor is he bound to accept the inheritance, but he can also repudiate it.

2. An inheritance can be accepted in a twofold mode: purely and simply, or under benefit of inventory (*mit Vorbehalt der Rechtswohltat des Inventars*).

He who accepts the inheritance in the former mode must pay by law all debts and legacies of the deceased; he who accepts the inheritance in the latter mode is not bound to pay the debts and legacies of the deceased beyond the powers of the inheritance.

a. Whether he who accepted it simply, without inventory, is bound in conscience to pay the debts and legacies of the deceased even beyond the powers of the inheritance is disputed. The opinion which denies that the heir is bound beyond the powers of the inheritance, not even after the sentence of the judge, is probable. Practically therefore the heir cannot be obligated in conscience to pay debts and legacies which exceed the

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**Notes**

841. Cf. C.A. Section 768 ss.; C.G. Section 2339, in which causes are enumerated on account of which someone can be deprived of inheritance.

842. C.A. Sections 765, 766; C.G. Section 2303 ss.

843. Gal. 4:7.

844. Cf. Theod. Meyer, *Die Arbeiterfrage* etc.^3 (Freiburg: Herder, 1895), who in chapter 8, *Das Erbrecht und die Familie*, developed this argument diffusely and learnedly. The same author, *Institutiones iuris naturalis* (Freiburg: Herder, 1900), II, n. 203 ss.; Carriere, l.c., II, n. 502 ss.

inheritance; yet since this opinion is not certain, creditors and legatees are not prohibited from petitioning payment and retaining what has been paid.

b. In order that the reason of the controversy may appear, it must be noted that here there is question of a law which is founded on a presumption: for the law presumes that the heir who entered upon the inheritance without inventory accepted more goods than are required for satisfying debts. Now whether a law which is founded on a false presumption obliges in conscience depends on whether the false presumption is a presumption of fact or of law. Those who in our case release the heir from paying debts contend that the law is founded on a false presumption of fact, namely that the goods accepted in the inheritance in reality exceed the debts to be paid; but those who obligate the heir to paying debts judge that the law is founded on a presumption of law, namely on the common danger of deceit and fraud.[845]

3. He who accepts an inheritance by that very fact assumes both the goods and rights and also the real burdens and debts of the deceased, provided they do not exceed the powers of the inheritance; but the personal rights and burdens of the deceased are extinguished with him.

Hence the heir is bound: a. to fulfill as soon as possible both pious and profane legacies; b. to pay the debts of the deceased as soon as possible. But if there are several heirs, each one is bound for that part which he accepted in the inheritance; wherefore if one afterward becomes unable to pay, the others are not obligated.

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## Section 2. On Last Wills Themselves

**556. On last wills themselves.** By the name of last will is understood that disposition by which someone establishes what he wishes to be done concerning his goods after his death.

1. All dispositions which are called last wills have this as proper to them, that he who disposes of his goods retains full ownership of them until death; wherefore these dispositions are by their nature revocable and have no force unless the will of the one disposing remains unchanged, so that in reality it is the last will.

2. The dispositions of last will have the force of transferring ownership not by the mediation of positive law, but by natural law itself.

Some thought that dispositions of last will have force for transferring ownership by positive law alone: for in order that they be able to transfer ownership by natural law, the mutual consent of the testator and heir is required; but that mutual consent cannot be had, since the testator's donation can be accepted only after his death. But from these things it indeed follows that ownership in this case is not transferred after the mode of a properly so-called contract, yet it is not proved that it is not transferred by natural law. And indeed the will of the testator disposes by natural law that the inheritance can be occupied or accepted by the heir alone, with every other excluded; this will, when the testator has died, perseveres morally, as it were inhering in the inheritance, so that the heir by natural law can occupy or accept the thing deferred to him. Therefore ownership in the inheritance is acquired by the disposition of the testator and by the occupation or acceptance of the heir.[846]

3. In order that a disposition of last will be valid by natural law, nothing else is required except that the last will of the deceased be certainly known; but by positive law certain formalities are required, and if these are lacking, they have no force either simply or at least after the sentence of the judge.

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**Notes**

845. Cf. Bucceroni, *Casus consc.*^4, n. 17, 1.

846. Cf. Th. Meyer, l.c., n. 209.

The will of the testator can be certainly known either by writing, by which the last will of the testator is indubitably expressed, or by the assertion of witnesses.

4. Dispositions of last will made in favor of a pious cause are governed not by civil laws but by ecclesiastical laws: for the Church has the power of making laws of this kind and in fact has made them; now the Church holds dispositions of last wills which regard pious causes as valid, provided they are certainly known.[847]

In order that the last will of the testator be certainly known from testimony, the assertion of one witness is not sufficient, even if he is most worthy of trust, as a parish priest or confessor, even if confirmed by oath, unless to the testimony are added other signs of grave moment which confirm the assertion. For by canon law two legitimate witnesses are required for producing full proof.[848]

**Whether the supreme pontiff or a bishop can commute the last wills of testators.**

The last wills of the faithful regarding pious causes, as accepted by God, are held as holy and are equated with vows and oaths. Hence those who lack ecclesiastical jurisdiction in the external forum have no power over them. Therefore a parish priest, indeed even a bishop, cannot convert a legacy or testament constituted for a pious cause to another use, even a better one.

1. The supreme pontiff certainly can commute the last dispositions of testators to another use, since the administration of pious causes has been committed to him,[849] yet not without a reasonable cause, because he is not their owner but administrator. By a like reason even the supreme prince can commute profane wills of testators from a just cause.

2. A bishop certainly cannot do this from any just and reasonable cause, as the supreme pontiff can, since exact execution of last wills is rather enjoined on him by law;[850] but from a just and necessary cause, namely when the disposition of the deceased morally cannot be fulfilled, he can convert the last wills of the deceased, according to some indeed as a delegate of the apostolic see, as the Council of Trent disposes,[851] but according to others only by epikeia and with the consent of the heir or of the legatee church.

Therefore this power belongs to a bishop in the following cases: a. if the money bequeathed for some use is not sufficient; b. if the thing bequeathed cannot serve for the determined use; c. if a legacy for a determined use is not necessary, as if it was left for making sacred vessels, which the church does not need, but it needs vestments; d. if ancient legacies, because the circumstances of times have changed, have either a useless use or one little conducive to the worship of God.

**557. Division of last wills.** Last wills are divided: a. into testaments; b. into codicils; c. into legacies; d. into fideicommissa; e. into donations because of death.

1. Testament is called a last will by which someone disposes of his goods, whether by instituting an heir or without the institution of an heir.

In Roman and Austrian law only that last will by which an heir is instituted is called a testament; but by recent law any disposition which someone makes concerning his goods for the time following his death is called a testament.

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**Notes**

847. C. *Relatum* 11, *De testamentis* (III, 26); Sacred Penitentiary, June 23, 1844. Cf. Ballerini-Palmieri III, n. 983 ss.

848. C. *Relatum* 11, *De testamentis* (III, 26). Cf. Genicot I, n. 675.

849. C. *Quia contingit* 2, *De relig. dom.* (III, 11), Clem.

850. Council of Trent, sess. 22, c. 8, *De reform.*

851. Sess. 22, c. 6, *De reform.*

2. Codicil is called a disposition of last will by which something concerning a testament is explained or changed, by adding or subtracting.

Where the institution of an heir belongs to the nature of a testament, as in Roman law, a last will by which someone disposes of his goods without the institution of an heir is called a principal codicil, in order that it may be distinguished from an accessory codicil.

**558.** 3. Legacy is called a disposition of last will by which a determinate thing is left to someone directly, for example, I bequeath to Titius my farm. Directly: for if something is left to be attributed to someone indirectly, that is, through the heir, it is called a fideicommissum.

a. A legacy must be made concerning a determinate thing, such as a house, farm, sum of money. b. The legatee, as soon as the heir has entered upon the inheritance, acquires ownership of the legacy; yet he cannot occupy it by his own authority, but must wait until it is handed over to him by the heir. c. A profane legacy, according to the opinion of some, follows the nature and conditions of the testament; if therefore the testament is void because of defect of some solemnity, the legacy also is void; but according to the opinion of others it is equated with a pious legacy. A pious legacy always obliges in conscience, provided the will of the legator is certainly known (556, 3).

4. Fideicommissum is a last will by which the heir is ordered to leave something to another, whether this is the whole inheritance or part of it or some particular thing, for example, I will that Gaius the heir give this farm of mine to Titius.

From this fideicommissum must be distinguished the fideicommissum of a family, or that disposition by which an inheritance is declared to be an inalienable good of the family, which must be transmitted within the same family, either to the firstborn of the older line, or to the nearer blood-relative, or to the older by birth. This fideicommissum cannot be constituted without the consent of the legislator and receives binding force in conscience through positive law.[852]

**559.** 5. Donation because of death is called a disposition of last will by which something is given to another in such a way that the donation obtains its effect after the death of the giver.

a. In order that a donation because of death be valid by natural law, nothing else is required except that alpha. there be a true donation, not only a promise of donation; beta. that acceptance of the donee be present: for donation because of death differs from other last wills in this, that while the giver is living it must be accepted by the donee and gives him a right to the thing, or rather in the thing; but in this it agrees with them, that only when the giver has died does it receive force, and therefore it can still always be revoked;[853] gamma. that it be certain that the donation has not been revoked.

b. He to whom a donation because of death of a movable thing has been made can, when the giver has died, secretly take it for himself, provided it is certainly known that there was a true donation: for this donation differs from a legacy in this, that the thing given is left not as to be paid by the heir, but as to be accepted by the donee as his own; since, when the giver has died, the donee has a right in the thing concerning the gift left to him.

c. If the donee dies before the giver, the donation is considered revoked, so that it does not pass to his heirs, because the giver is considered to have intended only the donee.

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**Notes**

852. C.A. establishes laws concerning this fideicommissum in Sections 618-646; C.G., *Einfuhrungsgesetz* 59.

853. Cf. nevertheless C.A. Section 956; C.G. Section 2301.

**Note.** Where the civil code does not admit donations because of death: a. a donation which is made to pious causes is valid; b. a donation which is made to profane causes is probably valid by natural law before the sentence of the judge, but by positive law can be made void through the sentence of the judge. Hence before the sentence of the judge the donee can accept the thing given and retain it once accepted; but the heir is not bound to hand the thing over to the donee.[854]

## Section 3. On Testaments Themselves

**560. Division.** a. Into solemn testament, which is furnished with certain formalities prescribed by law, and non-solemn testament, which lacks these formalities. A non-solemn testament is either ordinary, which without formalities has no force at least in the external forum, or privileged, which has force without solemnities, as is, for example, a testament made by a soldier, or on a sea voyage, or in time of plague.

b. Into written and nuncupative, according as it is drawn up in writing or is made only orally without writing.

c. Into judicial and extrajudicial, according as it is made with the intervention of a judge or notary, or without the intervention of a judge.

d. A holographic testament is admitted both by C.A. and C.G., if it is written wholly by the testator's own hand and signed with his name and surname, with the addition of the year, month, and day.

**Note.** The formalities which must be observed from law, in order that a testament obtain full value, are prescribed as very many and diverse by diverse codes; wherefore they cannot be enumerated here, but must be learned from the codes themselves.

**561. On the value of an informal testament.** 1. Testaments which lack legal form are certainly valid if they have been made for pious causes, provided the will of the testator is certainly known (n. 556).

a. Whether a profane legacy which is contained in an informal pious testament is valid is controversial. The reason for denying it is that these testaments are valid only from the will of the supreme pontiff, who does not care for profane causes and therefore does not convalidate profane legacies. The reason for affirming it is this: testaments to pious causes are valid not so much from the will of the pontiff as by natural law, because namely the will of the testator is certainly known; but the will of the testator is certainly known also as to profane legacies; therefore these also are valid by the same natural law and therefore must be committed to execution.[855]

b. If the faithful have persuaded themselves that even pious testaments and legacies are of no value where they lack the solemnity of civil law or are rescinded by the judge, the confessor can abstain from admonition, which is foreseen as more likely to harm than to profit, lest they retain in bad faith what they possess in good faith.

2. Informal testaments to profane causes before the sentence of a judge invalidating them are probably valid according to recent laws, unless by them the right of a necessary heir is injured.[856]

From this doctrine the following things are now inferred:

a. An heir from a testament valid by natural law but destitute of legal form alpha. can enter upon the inheritance; beta. is not bound to warn the heir from intestacy about the defect of the testament; gamma. is not bound to restore the goods of the deceased to the heir from intestacy before the sentence of the judge,

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**Notes**

854. Cf. Gury, *Compendium th. mor.* I, n. 835; *Casus consc.* I, n. 811 ss.

855. Cf. Lugo, disp. 22, n. 274.

856. Cf. Marres, *De iustitia*^2 (Ruraemond: Romen, 1889), I, n. 367 ss. Delama (n. 95) judges that C.A. does not invalidate testaments destitute of legal forms; authors think the same about most modern codes.

even if the heir petitions these goods; yet if he petitions them before a judge, and the defect of the testament is certain, charity demands that the goods be handed over to him, lest he be forced to incur great expenses in vain; delta. the sentence of the judge must be observed in conscience.

b. An heir from intestacy can licitly impugn an informal testament before a judge, and he has the same right not to be impeded by frauds in obtaining a just sentence. Therefore the heir from an informal testament acts unjustly who, for example, in a holographic testament lacking the testator's signature, supplies this with his own hand.[857]

**Note.** The Sacred Penitentiary considers informal pious testaments and legacies generally as valid for the forum of conscience; nevertheless the heir is easily admitted to composition with the pious cause in whose favor the legacy or testament had been made.[858] In this case the supreme pontiff remits the obligation of paying the legacy under this condition, that a small alms be given to the pious cause.

**562. Obligations of the testator.** 1. Of itself no obligation of making a testament exists, since strict duties can also be satisfied through succession from intestacy. Yet per accidens this obligation can be present, for example, because of restitution owed to someone, or because of lawsuits and dissensions which are deservedly feared and cannot be forestalled in another way.

2. By natural law he must leave to his children, if he has anything, only as much as is needed that they may live according to their state; concerning the rest it is permitted to him to dispose according to his judgment. The portion to be left to children is determined more accurately by positive law.[859]

3. To necessary heirs he must leave the legitimate part of the inheritance determined by civil law, unless they are unworthy:[860] for the civil law which determines for children of the family a legitimate part from paternal goods obliges in conscience and from justice.

a. A father who without just cause deprives a son of the legitimate part sins gravely, and the heirs are bound to return that part. But if without a just cause he favors one son before the rest, to whom he leaves only the legitimate part, he certainly sins, but only lightly; if from a just cause he favors one, he does not sin at all. Now there is a just cause for leaving more to the firstborn son than to the others.

b. Since the law which determines the legitimate part to be allotted to children obliges in conscience, a father of himself sins against justice who either by testament or by donations made without just cause injures the legitimate part of the children. Yet from mere revenues, with the patrimony or capital intact, donations can be made at pleasure: for by these the legitimate portion of the children is not injured, because parents are not bound to increase the patrimony for their children.[861]

c. He who either by testament or donation accepted something by which the legitimate part of the children is injured is, strictly speaking, bound to restitution, yet not before the sentence of the judge, because the law does not declare dispositions of this kind absolutely void.[862]

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**Notes**

857. Cf. Gury, *Compendium th. mor.* I, n. 819, 4.

858. Sacred Penitentiary, Jan. 10, 1901.

859. C.A. Section 765 s.; C.G. Section 1922 ss.

860. C.A. Section 540 ss. and C.G. Section 2333 ss. determine who can be deprived of inheritance because of unworthiness. Nevertheless there remains in parents an obligation of piety of providing even for unworthy children the necessities of life, if they cannot provide for themselves.

861. Cf. Gury, *Compendium th. mor.* I, n. 827 s.

862. Lugo, disp. 23, n. 147. Cf. St. Alphonsus, l. 3, n. 740.

4. By natural law he is bound under grave obligation to leave to a wife, brothers, and sisters who are gravely in need as much as suffices for relieving their grave need; to brothers and sisters who are simply poor, and likewise to other relatives gravely in need, he is bound to assist only under light obligation.

Because this obligation indirectly affects the very goods of the deceased, the obligation also passes with the goods to the heirs.[863]

Whether expenses made for studies must be deducted as a part of the inheritance already received. They are not to be deducted, but rather to be considered as gifts conferred by the father, unless the father openly signified that they were not to be disregarded in the division of the inheritance.

a. Expenses made for children which redound to the common good of the family are not to be deducted in the division of the inheritance; but expenses made for studies or for attaining a dignity or for freeing a useful son of the family from military service redound to the good of the family.[864] Civil law agrees with this doctrine.[865]

b. If expenses made for a son in studies, considering the condition of the parents, are extraordinarily great, in the judgment of some they must be brought into the common inheritance; yet the same authors warn that this is founded not on strict right, but only on natural equity.[866]

5. Blood-relatives who are neither necessary heirs nor poor can licitly be passed over in a testament; hence, with blood-relatives passed over, remaining goods can be given to pious causes without sin.

**563. On revocation of a testament.** Since a testament by its nature can always be revoked or changed as long as the testator lives, it is asked what is effected by a promise not to revoke it, especially where it has been confirmed by oath.

1. A promise not to revoke a testament is null by civil law: therefore he who made this promise does not lose the right of changing the testament, even if the promisee on his part had made another promise, even if, for example, when the husband promised, the spouse in turn had promised that she would not change her testament: for private persons cannot despoil themselves of a right which is conceded to them by a law made for the common good.

2. If an oath has been added to the promise, one must distinguish whether there is question of a testament to profane causes or of a testament to pious causes.

a. If there is question of a testament to profane causes, the oath is null (n. 540), and therefore neither confirms the promise nor obliges one to observe it from religion.

b. If there is question of a testament to pious causes, the oath is valid and induces an obligation from religion of observing the promise and not revoking the testament.[867]

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## Question Third. On Bilateral Contracts of Certain Event

Bilateral contracts of certain event are: deposit, commodatum, mandate, mutuum, purchase-sale, lease-hire, partnership, exchange.

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**Notes**

863. Lugo, disp. 23, n. 100.

864. St. Alphonsus, l. 3, n. 955; Lehmkuhl I, n. 1169.

865. C.A. Sections 788-792.

866. Cf. Lehmkuhl I, n. 1169.

867. Cf. Ballerini-Palmieri III, n. 967 ss.

## Article First. On Deposit

**564. Notion.** Deposit (*Verwahrungsvertrag*) is a contract by which some thing is received to be guarded and to be restored in kind to the one handing it over.

a. He who deposits a thing is called the depositor, but he with whom the thing is deposited is called the depositary.

b. Deposit can be a gratuitous or onerous contract, according as the depositary undertakes custody of the thing gratuitously or for payment. There are those who say that deposit by its nature is a gratuitous contract, because it is done only for the advantage of the depositor. Hence if payment is required for the custody of the thing, there is not a contract of deposit, but an onerous contract of lease of work. Yet all concede that almost the same obligations exist in each case, both as to the right of the depositor and of the depositary, except that the depositary who accepts payment is bound to guard the thing deposited with greater diligence.

c. Deposit is a real contract, which is perfected only by the real handing over of the thing to be guarded.[868]

d. Sometimes it is sufficient that the depositary tacitly consent to the contract; if, for example, travelers deposit their things on a ship or in a house or in a carriage, sailors, innkeepers, and drivers, by the very fact that they see the things being deposited and do not contradict it, tacitly undertake to guard them. Those who practice the carrying of things (*die Frachtfuhrer*) also undertake their custody when the things to be transported are handed over to them.

**565. Obligations of the depositary.** a. The depositary in the custody of the thing is bound to employ that diligence which he is accustomed to employ in guarding a thing of his own of equal value; but he is not bound to employ greater diligence. Therefore in a common danger, for example, of fire or theft, he is not bound to prefer the thing deposited, even if more precious, to his own things, unless he has either expressly obligated himself to this, or stipulated payment for the custody, or the deposit was made solely in favor of the depositary.

b. The depositary cannot use the thing deposited except from the expressed or tacit, or at least reasonably presumed, will of the depositor: for it is not licit to use another's thing without the consent of the owner. The consent of the depositor can be presumed if the thing deposited undergoes no danger and does not become worse from the use.

alpha. To use a thing deposited which is consumed by use, as money, is not a grave sin, provided the depositary is certain that he can restore a thing of the same value; but the depositary commits a grave sin against the conditions of the contract if in this way he exposes himself to the danger of impotence for restoring.

beta. Yet if the depositary illicitly uses the thing deposited, for example, money for business, he can retain the profit received from it, because it is the fruit of his own industry. He is bound only to compensate the damage, if any, which the depositor suffered from the illicit use of the thing.[869]

c. The depositary must restore the thing deposited when it is sought by the depositor, whether the time for returning the thing was determined or not; but he cannot return it earlier if the time for guarding the thing had been determined. Nevertheless he is not bound to return the thing deposited: alpha. if he certainly knows that the thing is stolen, because he would cooperate in continuing injury against the owner of the thing; beta. if he knows that the depositor is going to abuse his thing, for example, a sword for killing an enemy, because he would cooperate in inflicting injury; gamma. if the depositor refuses to pay the compensation which the depositary can justly require.

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**Notes**

868. C.A. Section 957; C.G. Section 688.

869. C.G. Section 698 differs in this matter from other codes.

Hence if the depositary refuses to return the thing deposited except in these cases, he commits sin and is bound to repair the damages which arose from this for the owner; and if the thing itself suffers damage from a fortuitous event which it would not have suffered with the owner, he is likewise bound to repair that, for he retains another's thing against the will of the owner reasonably unwilling.

d. He is bound to repair the damage which the thing deposited has suffered: and indeed, if it suffered it because of his grave theological fault, before the sentence of the judge; if it suffered it because of his juridical fault, after the sentence of the judge. But damage which the thing has suffered without any fault of his he is not bound to repair, unless he expressly undertook every danger of the thing upon himself.

**566. Obligations of the depositor.** The depositor is bound: a. to pay the expenses which the depositary must undergo in guarding the thing; b. to repair the damages which have come to the depositary because of the deposit, and indeed before the sentence of the judge if they have come from theological fault, after the sentence of the judge if from juridical fault only.

**567.** Sequestration is a species of deposit and is defined: a contract by which a disputed thing is deposited with a third party under this condition, that when the lawsuit has been decided it be restored to the owner.

A distinction is made between conventional sequestration, which is constituted by the private will of the litigants, and judicial sequestration, which is constituted by a judge from office.

He with whom the disputed thing is deposited is called the sequestrator. His obligations are: a. he cannot lay down the office undertaken except from a grave and just cause; b. while the lawsuit has not yet been decided, he cannot return either the whole or a part to one of the depositors.

## Article Second. On Commodatum

**568. Notion.** Commodatum (*Leihvertrag*) is a contract by which a thing is conceded to another for use alone for a certain time, with the obligation of restoring the same thing after use.

a. He who concedes the thing to another is called the lender for use, but he to whom the thing is conceded for use is called the borrower for use.

b. Commodatum is a gratuitous contract: for if the use of a thing is conceded to another for payment, the contract is rather called lease, even if the thing conceded for use is movable.

c. Commodatum is a real contract, which is essentially perfected only by the handing over of the thing.[870]

d. The object of this contract can be a movable or immovable thing, provided it is not consumed by use, since it must be returned to the lender for use in its individuality.

e. The time during which the commodatum lasts can be determined either expressly or implicitly; and indeed it is determined implicitly if the thing is conceded for a use which by its nature lasts for a certain time.

f. Commodatum differs from precarium (*Bittleihen*): for precarium is a contract by which a thing conceded for use can be reclaimed at any time at the pleasure of the one conceding it; on the contrary, in commodatum a thing is conceded for a certain time, so that before the time has elapsed it cannot be reclaimed.

**569. Obligations of the borrower for use.** a. The borrower for use, who accepted the thing for a certain use, cannot apply it to another use without acting against the contract and therefore committing injustice and being bound to repair the damage, if any, which the owner suffered from it.

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**Notes**

870. C.A. Section 671 grants a civil action to him to whom a promise has been made concerning a thing to be lent for use.

b. The borrower for use must bear the ordinary expenses which the use of the thing requires, for example, he must feed a horse lent for use, but not extraordinary expenses, for example, the price of curing a sick horse, which is necessary without his fault.

c. He is bound to guard the thing lent for use diligently, and indeed with greater diligence than a depositary, because the contract redounds solely to his own utility. Hence he is bound to compensate the damages which the thing suffers from his theological fault, and after the sentence of the judge also those which it suffers from merely juridical fault; yet he is not bound to compensate the deterioration which the thing necessarily suffers from licit use.

d. He must restore the thing at the time determined either explicitly or implicitly, even if it is not demanded by the lender for use, because beyond that time he does not have use of the thing; but before the established time he cannot restore the thing against the will of the lender for use.

But if he retains the thing beyond the established time, he must compensate every deterioration which the thing suffers even from a merely fortuitous event, with the sole deterioration excepted which it would have suffered even with the lender for use. Moreover he must compensate the owner for ceasing profit and emergent damage, because he is the unjust cause of these.

e. The deterioration which the thing lent for use suffers from a merely fortuitous event must of itself be borne by the lender for use, because he himself is the owner of the thing; but the deterioration which the thing suffers when the borrower for use applies it to another use than the contract permits, the borrower for use himself must bear.

Whether the borrower for use in this last case, if theological fault was absent, must repair the damage before the sentence of the judge or after the sentence depends on the tenor of the law. Most codes seem to be understood so that they confer on the lender for use only the right of requiring compensation through the judge.

Example. Titius borrows from Sempronius at harvest time a horse for carrying in grain. Since at the same time a theft is committed in the house of Titius, he uses the borrowed horse to pursue the thief; but behold, from a grave wound received by chance, the horse dies.[871]

**570. Obligations of the lender for use.** a. He is bound to disclose to the borrower for use the harmful defects of the thing; but if he omits this in bad faith, he is bound to repair the damage which arises from it for the borrower for use.

b. He must pay the extraordinary expenses which the borrower for use must make in order to preserve the thing, provided they arose without the fault of the borrower for use.

c. He cannot without injury reclaim the thing before the established time, except in the case in which the lender for use himself, from an unforeseen cause, immediately needs his own thing:[872] for he is not considered to have obligated himself not to reclaim the thing in this case.

d. If the thing perishes with the borrower for use without his fault or culpable delay, it perishes to the owner, or lender for use.

## Article Third. On Mandate

**571. Notion.** Mandate (*Vollmachtsvertrag*) is a contract by which one person undertakes to manage an affair in the name of another.

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**Notes**

871. Lehmkuhl, *Das burgerl. Gesetzbuch*^2 (Freiburg: Herder, 1900), Section 603; Marres IV, n. 110.

872. C.A. Section 976 does not admit this; on the contrary, C.G. Section 605 does.

a. He who commits the affair to be managed is called the mandator, but he to whom the affair is committed is called the mandatary.

b. Because the mandatary acts in the name of the mandator, the latter is held concerning all things which the mandatary does by force of the mandate, without exceeding the limits of the mandate.

c. Mandate can be a gratuitous or onerous contract, according as the mandatary undertakes the affair to be managed gratuitously or for payment. Yet there are those who say that mandate is a contract gratuitous by nature: for if a price is accepted for managing the affair, there is rather a lease of work. Nevertheless an essential difference exists between onerous mandate and lease of work: for the mandatary acts in the name of the mandator; but the worker acts not in the name of the master, but in his own name.

**572. Obligations of the mandatary.** a. He must manage the affair committed to him diligently and faithfully, namely with that diligence which he is accustomed to employ in his own affair of the same kind; yet he must employ greater diligence if he accepts payment than if he manages the matter gratuitously.

b. He is bound to observe the limits of the mandate; but for managing the affair rightly he can employ all means which the nature of the affair requires. If he exceeds the limits of the mandate, both damage and profit pertain to the mandatary.

c. He must hand over to the mandator every profit which he receives: for since he acts in the name of the mandator, whatever he acquires, he acquires for him, unless he has acquired something by extraordinary industry, or a special agreement has been entered between them.

d. He is bound to repair damages which come to the mandator because of culpable negligence in managing the affair, and indeed before the sentence of the judge if he admitted grave theological fault, otherwise after the sentence of the judge.

**573. Obligations of the mandator.** a. He must fulfill all obligations contracted by the mandatary in the execution of the affair, provided the mandatary has not transgressed the limits of the mandate.

If the mandator revoked the mandate, but the revocation was not known to the mandatary, the mandator nevertheless is held concerning obligations contracted by him, except in the case in which the mandate had been committed for contracting espousals or for entering marriage: for these contracts are invalid when the mandate has been revoked, even if the revocation was unknown both to the mandatary and to the other party.

b. He must pay the necessary and useful expenses which the mandatary made in executing the affair, even if the affair did not have the desired outcome, provided this happened without the fault of the mandatary.

c. He must compensate damages which the mandatary suffered without fault, but not damages which came to the mandatary from a fortuitous event.

**574. Management of affairs** (*Geschaftsfuhrung ohne Auftrag - Vertretung ohne Vollmacht*) is a quasi-contract by which someone undertakes to manage another's affair from the presumed will of the absent and ignorant owner.

a. Management of affairs is called a quasi-contract in a juridical sense (514, 2, c), by which namely, without any consent, not even implicit or virtual, an obligation arises in each contracting party, because the common good requires this. Hence if someone buys a thing, for example, a precious ring, from a thief for the owner, the latter must compensate the price paid, both by natural and positive right. Or if someone undertakes the care of feeding a wandering animal and bringing it back to the owner, he can require compensation for labor and expenses.

b. Management of affairs is a contract plainly akin to mandate, so that it can be called a presumed mandate: therefore the things which have been said concerning the obligations of the mandatary and mandator must be applied to the manager of affairs and to him whose affair is being managed.

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# Article Fourth. On Mutuum

[873]

## Section 1. On the Nature of Mutuum

**575. Definition.** Mutuum (*Darlehensvertrag*) is a contract by which a thing consumable by the first use is handed over to another, with the obligation of returning another thing of the same nature and goodness at the established time.

a. The name mutuum is taken in a twofold sense: in the formal sense, in which it signifies the contract described above, and in the real or objective sense, in which it signifies the thing which is handed over to another by way of mutuum (*Darlehen*).

b. He who hands over the thing to another is called the lender, or giver of the mutuum; but he to whom the thing is handed over by way of mutuum is called the borrower.

c. Mutuum is a real contract, which is perfected only by the handing over of the thing; from mutuum must be distinguished the promise of giving a mutuum, which ordinarily precedes the mutuum itself.[874]

d. The object of mutuum is a thing consumable by the first use; but not only a thing which is physically destroyed by use, as grain, wine, oil, is said to be consumable by use, but also a thing which indeed physically remains as to substance, but perishes for the user, so that the same thing in its individuality cannot be returned, as money, which is destined to be spent, and wood which is used for building a house.

e. The borrower becomes the owner of the thing lent by mutuum: for by force of the mutuum the right of using the thing handed over is conceded; but the right of using a thing consumable by the first use is the same as the right of destroying the thing; but the right of destroying a thing pertains to ownership of the thing. If therefore the thing lent by mutuum perishes in any way, it perishes to the borrower, because the thing perishes to the owner; therefore when the thing perishes, the borrower is not freed from the burden of restoring a thing of the same kind. Likewise the fruits, if the thing lent by mutuum produces any, are acquired by the borrower, because the thing bears fruit for the owner.

f. Mutuum differs: alpha. from commodatum and lease, because in mutuum a thing consumable by the first use is handed over, ownership of the thing is transferred, and a similar thing or a thing of the same kind is returned; but in those contracts a thing not consumable by the first use is handed over, ownership of the thing is not transferred, and the same thing in species or individuality must be returned; beta. it differs from exchange, because in exchange, for example in sale, a thing of a different kind is returned; gamma. it differs from exchange of money, because in exchange of money the thing is handed over immediately, not after some time.

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**Notes**

873. St. Thomas II-II, q. 78; Lessius, *De iustitia*, l. 2, c. 20; Lugo, *De iustitia*, disp. 25; Benedict XIV, *De synodo*, l. 10, c. 4; his encyclical *Vix pervenit*, Nov. 1, 1745; Fr. Zech, *Rigor moderatus doctrinae pontificiae circa usuras* etc.; Alb. Weiss, *Soziale Frage und soziale Ordnung* (Freiburg: Herder, 1892); Fr. X. Funk, *Zins und Wucher* (Tubingen: Laupp, 1868); the same author, *Zur Geschichte des Wucherstreites* (Tubingen: Laupp, 1901); H. Pesch, *Zinsgrund und Zinsgrenze*, *Zeitschrift fur kath. Theol.* (Innsbruck, XII, 1888), pp. 36, 393; J. Diederlack, *Der Darlehenszins* (Vienna: Mayer, 1898); A. Vermeersch, *Quaestiones de iustitia*^2 (Bruges: Beyaert, 1904), n. 357-385; Van Roey, *De iusto auctario ex contractu crediti* (Louvain: Van Linthout, 1903).

874. From C.A. Section 983 a promise of giving a mutuum produces a civil obligation; likewise from C.G. Section 610.

**576. On the gratuitousness of mutuum.** Mutuum of itself is a gratuitous contract, so that it is not permitted to impose any other burden on the borrower, except that he return a thing of the same kind and goodness at the due time, without anything being required for the lending itself. Indeed he who requires gain for the thing lent by mutuum requires a price for the use of the thing lent by mutuum: for since the thing lent by mutuum is consumed by the first use, nothing is found in the mutuum which can be judged estimable by price except the use of the thing; but he acts against justice who requires a price for the use of the thing lent by mutuum: for if the lender were to require anything for the use, since the borrower becomes owner of the thing, he would require something for a thing not his own. Moreover the use of a consumable thing does not have a value distinct from the value of the thing, just as the use of purchased wine does not have a value distinct from the substance of the wine. Therefore he who requires a price for the use of the thing lent by mutuum is like a seller of wine who separately sells the wine and the use of the wine.[875]

a. Therefore he who requires anything for the mutuum itself or for the lending and use of the thing lent by mutuum sins against justice and is bound to restitution. And a contract whose object is gain to be received from the mutuum itself is invalid as illicit and unjust. Therefore the Church by most severe laws prohibited any gain beyond the thing lent by mutuum from being received by reason of the mutuum itself.

b. Against the proposed argument this cannot be excepted: the lender, by lending to the borrower, performs a service which is estimable by price. For if by the name of service is understood the thing lent itself, this is restored in the same kind and the same goodness; but if by the name of service is understood the use of the thing, this in a consumable thing does not have a value distinct from the thing itself; if finally there is understood the utility which the borrower receives from the use of the thing, it is wrong to require a price for the utility which someone receives from his own thing. Nor can this be excepted: he who concedes a mutuum to another deprives himself of his own thing; but the burden which someone undergoes by this privation is estimable by price. For the burden itself by which someone deprives himself of his own thing, where this privation is not conjoined with a special detriment, is not worth more than the thing itself of which he deprives himself; and since this is restored, nothing remains which is estimable by price. The same privation is also had in sale, without a price being able to be required for it. The following exception returns to the same point: to lack one's own thing for a certain time is estimable by price. For to lack an unfruitful thing, which has no other use except consumption, is not estimable by price, where the lender receives a similar thing when he himself has need of it. The obligation which the lender contracts of not reclaiming the mutuum for a certain time is likewise not estimable by price, where the thing lent by mutuum is not necessary to the lender. He indeed deprives himself of the liberty of reclaiming the thing lent by mutuum; but this inconvenience, whatever it be, is abundantly compensated by another advantage, namely that the borrower undergoes the danger of losing the thing lent by mutuum while the obligation of restoring a similar thing remains: for the mutuum perishes to the borrower.[876] The lender does not suffer damage, because he lends an unfruitful thing which he himself does not need. He would suffer damage if, from circumstances not foreseen, the borrower lost the power of restoring; but he can meet this danger by demanding a surety, who, if the borrower fails, will restore the thing.

**577. On external titles.** An external title is called a cause placed outside the essence of mutuum, on account of which the lender in a particular case can require a price for the mutuum. Now four titles of this kind exist: ceasing profit, emergent damage, danger of the principal, and conventional penalty.

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**Notes**

875. Cf. St. Thomas, II-II, q. 78, a. 1.

876. Therefore this proposition (42) was condemned by Alexander VII: It is licit for a lender to require something above the principal if he obligates himself not to reclaim the principal until a certain time.

From these titles, with the Church itself approving, some gain beyond the principal could already in ancient times be licitly required. But it was necessary that these titles really exist, that a special pact distinct from the mutuum be entered between the lender and the borrower, and that certain conditions be observed, especially that the due proportion of equality not be exceeded between the gain and the title from which the gain was to be received.

1. Ceasing profit is the loss of a price which the lender would have gained if he had used his thing in another licit contract or business; now hope of gain is estimable by price and is external to the mutuum; therefore because of ceasing profit it is permitted to accept something above the mutuum.

2. Emergent damage is a positive detriment which the lender must undergo because he gives his thing to another by mutuum; but it is manifest that compensation can be required for damage which someone undergoes in favor of another.

3. Danger of the principal is a special danger which is prudently feared, lest the lender not recover his own thing. This danger is external to the mutuum and estimable by price; wherefore, if the lender truly must undergo it, he licitly requires something for it, and the greater the danger of losing the principal is, the greater compensation he can require.

a. For the common danger to which any thing whatsoever, and therefore also the thing lent by mutuum, is subject with the lender, it is not permitted to accept anything, because this danger is internal to the mutuum; but for the special danger to which the thing is exposed with the borrower, it is permitted to accept something beyond the mutuum, because this danger is estimable by price and external to the mutuum.

b. Danger of the principal can arise either on the part of the thing lent by mutuum, if, for example, it must be transported through dangerous roads, but the borrower cannot restore it if the thing perishes; or on the part of the borrower, if he is a man little trustworthy, negligent, or fraudulent, whereby it happens that the mutuum cannot be recovered without troubles and lawsuits.

4. Conventional penalty is a money fine to be paid by the borrower from agreement if he does not return the thing accepted by mutuum at the established time; but nothing prevents contracting parties from mutually obligating themselves to paying a certain penalty if they fail in contracts.

**578. Civil law or legal reward.** From the seventeenth century onward civil laws here and there admitted a certain interest to be received from mutuum and compelled the borrower by civil action to pay it. From that time there was much discussion among theologians whether, with other titles lacking, the title of civil law alone suffices in conscience for receiving gain from mutuum licitly.[877] The chief reason of those who affirmed that this is licit is this: civil authority can validly transfer ownership of material goods from one person to another where the necessity or great utility of the common good demands it; but the common good of our time demands great facility of lending money by mutuum for fostering and increasing commerce; and since this facility cannot be universally obtained among men in another way except by permitting interest as a kind of reward for money given by mutuum, civil authority can permit this and transfer ownership of the interest to the lender.

This title of civil law, about which theologians in the eighteenth century sharply disputed and still dispute, the Church seems not at all to have reprobated, but rather to have approved; for it decrees both that the faithful who receive interest established by civil law from mutuum are not to be disturbed, and that confessors who teach that it can be licitly received are not to be disturbed, provided they are prepared to stand by the mandates

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**Notes**

877. Cf. Fr. Zech, *Rigor moderatus*, c. 1, sect. 5.

of the Holy See if it defines anything on this matter.[878]

Nevertheless the Church by these things did not wish to settle the question agitated among present-day theologians concerning the force and efficacy of this title: for they dispute whether civil law itself, with no other title existing, renders the agreed interest licit, or whether it is rather itself an argument for the existence of some external title on account of which interest can be licitly received. Many are of this latter opinion, which Ballerini briefly presents in this way: the law "does not make just the gain received from mutuum, but finds it just."

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## Section 2. On Pecuniary Mutuum

[879]

**579. Notions.** Money is the principal object around which today the contract of mutuum turns; but because of the nature of money, very diverse from other things which are customarily given by mutuum, this species of mutuum deserves particular consideration.

1. Pecuniary mutuum (*Gelddarlehen*) is a contract by which money is handed over to another with the obligation of returning other money of the same value at the established time.

a. Money which is given by mutuum is usually called in the schools the principal, but now commonly capital.

b. Pecuniary mutuum is a gratuitous contract if money is handed over to another gratuitously, and it is an onerous contract if it is handed over to another with the burden of paying interest.

2. By reason of the end which the borrower intends, pecuniary mutuum is divided into consumptive mutuum, which is handed over to another for procuring for himself things necessary for his use; and productive mutuum, which is handed over to another for making gain, as if it is given to a merchant for trading, or to a rich man for increasing his goods, or to a farmer for improving his fields.

**580. Nature of money.** In the proper sense money is sterile; but improperly it is potentially fruitful, and in present times per accidens can simply be called actually fruitful.

a. Since a fruitful thing in the proper sense is said to be that which produces fruits from itself by internal fertility, as a tree, vine, field, money cannot properly be called a fruitful thing, but in the proper sense it is sterile, since money does not beget money.

b. In the improper sense a thing is called fruitful which is equivalent to fruitful things, because it can be exchanged for fruitful things, or which serves as a means and instrument for procuring gain for oneself; but money can be exchanged with any other things whatsoever and substituted for them. Therefore money itself, insofar as it can be substituted for things fruitful in themselves, is equivalent to fruitful things; moreover, by the aid of industry and commerce, it serves as a means and instrument for procuring gain for oneself.

c. Although money was always of itself apt to be exchanged with fruitful things or to be employed as the means of a lucrative business, nevertheless in ancient times the economic conditions were not such that this could have been done easily and frequently; but now, both because of the very easy communication among diverse regions and because of the very great extension of industry and commerce, economic conditions are such that everywhere money can easily be substituted for fruitful things or employed as the means of

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**Notes**

878. Concerning the title of civil law there are two decrees of the Holy See, one of Sept. 16, 1830, the other of Jan. 17, 1838.

879. Van Roey, *De iusto auctario ex contractu crediti* (Louvain: Van Linthout, 1903).

lucrative trade. Wherefore money, which in ancient times was not held as a fruitful thing and could not be held as such except potentially, must now be called an actually fruitful thing.

**581. Gain from pecuniary mutuum.** In the economic conditions which now exist, it is licit for each person to accept payment for pecuniary mutuum, unless by the law of charity he is bound to lend gratuitously.

a. There exist many responses of the Holy See by which today permission is positively conceded to all, both ecclesiastics and laymen, independently of the existence of an external title, to receive moderate gain from mutuum, as will be said below.

b. Since money from the conditions of our time is a fruitful thing, by the common estimate of all there belongs to it a special value, on account of which it can bring profit and utility to its possessor. Therefore he who concedes a mutuum to another deprives himself, together with the money, also of this value which now inheres in money; but it is permitted to require compensation for a special value. The circumstances of the time today are such that money commonly has for all the value of a fruitful thing: for all to whom even a modest sum of money is available easily find occasion of procuring gain and utility for themselves from it. Therefore it is licit for all to accept interest, and indeed from any mutuum, even from consumptive mutuum.

c. Just as charity requires that we assist a neighbor constituted in grave necessity through alms, so the same charity can require that to a neighbor who needs a mutuum we not only furnish it, but also furnish it gratuitously, if he is unable to pay compensation, provided this can be done by us without grave inconvenience: *From him who wishes to borrow from you, do not turn away.*[880]

Ordinarily, however, this very inconvenience excuses the rich from furnishing mutuum to the poor where there is question of a larger sum: for ordinarily they expose themselves to the danger of losing the principal, which certainly is a grave inconvenience. Practically therefore the rich in this case satisfy their obligation by bestowing a small alms on the one seeking a mutuum.

## Section 3. On Interest and Usury

**582. Notions.** Interest (*foenus*, *Zins*) is gain licitly received from mutuum, which is commonly called *interesse*. A threefold interest is distinguished: legal, common, and conventional.

a. Legal interest is that which is constituted by law.

Legal interest is not had everywhere: for there are civil societies in which laws of this kind either never existed or once existing have been abolished.[881] But where laws determine the quantity of interest which at the same time they prohibit to be exceeded, those laws oblige in conscience, so that he who exceeds it is bound to restitution, unless there is extraordinarily great danger of the principal or ceasing profit.

b. Common interest is that which is constituted from the common use of men.

Common interest is especially had where legal interest does not exist; but even in regions in which legal interest has been established, common interest sometimes exists at the same time, and exceeds it. He who exceeds common interest commits injustice, unless peculiar circumstances make the excess honorable.

c. Conventional interest is that which is constituted by agreement and consent of lender and borrower.

Conventional interest has place where neither legal nor common interest is had. Its measure must be determined not from the profit which the borrower receives from the money lent by mutuum, but from the common

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**Notes**

880. Matt. 5:42.

881. Legal interest in Austria formerly was six percent (6 percent) each year; afterward, however, when that law was abolished in 1886, interest even of any greater height is not forbidden by law.

hope of profit which the lender could have received from the possession and use of the money, and from an external title, if in a particular case a title of this kind is present.

**583.** The measure of licit interest cannot be determined by a general norm, because the circumstances of places, times, and persons, on which the quantity of just interest depends, are very diverse. Generally it can be said that that interest is licit which, with the conditions of industry and commerce in a determined region attended to, is constituted by the common judgment and use of men.

a. From natural law the borrower is not bound to pay interest where nothing has been agreed concerning paying it, especially if money is lent for a short time. But attention must be given to what positive law or the received custom of the place establishes in this matter.[882]

b. In our European regions, licit interest from the very fertility of money in ordinary circumstances is 4-5 percent. In order that greater gain can be received, a special cause must be present, such as the titles constitute on account of which interest could be required in ancient times, unless the borrower himself spontaneously offers greater gain because of the extraordinary utility which he himself is going to receive from the mutuum. From these special causes it can happen that even great interest, 10-20 percent, is licit and just.[883]

**584. On usury.** 1. Usury (*Wucherzins*) is gain unjustly received from mutuum. Since every gain received from mutuum by reason of the mutuum itself is unjust, usury can be defined: gain received from the mutuum itself; and because in present times from any pecuniary mutuum some interest is licitly received, usury can be defined as excessive interest.

a. Usury is taken in the formal and objective sense; formally it is a contract by which the lender obligates the borrower to giving something beyond the principal from the sole title of mutuum; objectively it is gain received from mutuum by force of the mutuum.

b. In ancient times every gain received from mutuum was presumed illicit; therefore every interest was considered to have the character of usury, whence it happened that in canon law interest signified the same thing as usury, and usurers were said to be those who accepted interest from mutuum. But today there is a broad difference between interest or licit gain and usury or unjust gain. The reason for the difference is that in ancient times only an external title rendered interest licit, but a title of this kind was rarely present; therefore every interest was presumed unjust, unless the existence of an external title could be demonstrated. But today interest in general is considered just, even if no external title is present, because the circumstances of the time attribute to money itself a value which it did not have before.

2. Usury is divided into open, when it is expressly required by reason of the mutuum, for example, I lend you one hundred under this pact, that you return to me one hundred and five; and into cloaked, when it lies hidden in another contract which contains a lending by mutuum, by force of which gain is required. Therefore it is covered as if by another contract as by a cloak, as if someone sells something at a higher price precisely because of deferred payment.

3. Usury, formally, is a sin against commutative justice; and since it must be equated with theft, the gravity of the matter must be determined in the same way as in theft.

## Section 4. On the Prohibition of Usury

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**Notes**

882. C.G. Section 608 s. agrees with natural law.

883. Holy Office, Dec. 18, 1872.

**585.** Usury, formally, is prohibited by natural law, divine law, and ecclesiastical law.[884]

1. It is prohibited by natural law, because usury is repugnant to commutative justice: for to accept something beyond the principal is to accept more than that is worth which has been given, since mutuum by its nature is a gratuitous contract (n. 576); but this in exchanges is repugnant to commutative justice.

a. From these things it is gathered that usury received from mutuum is of itself always a sin against justice, whether the mutuum is furnished to the poor or to the rich, whether it is consumptive mutuum or productive: for its very nature demands that it be furnished gratuitously to the borrower. But if usury is required from the poor, one sins moreover against charity.

b. You will say: that cannot be prohibited by natural law which God once permitted to the Jews; but he permitted usury to them: *You shall not lend to your brother at usury money or fruits or any other thing; but to an alien. But to your brother you shall lend without usury that which he needs.*[885] Now some say that the permission conceded by God was licit for this reason, that God, the supreme owner of all things, transferred ownership in the interest received to the Jews; but others say it was licit for this reason, that there was a reason external to the mutuum for requiring interest, whether this was danger of the principal or ceasing profit because of opportunity for trade.

2. By divine law. The testimonies of Sacred Scripture by which usury is prohibited are many;[886] but from these, especially if attention is given to the interpretation of the Church, we gather two things: first, that to accept usuries from divine revelation is a grave sin; and second, that the malice of this sin consists in this, that something more is required than was given by mutuum.

Although it cannot be affirmed that the encyclical of Benedict XIV *Vix pervenit* is a definition *ex cathedra*, both because it is directed to the bishops of Italy alone and because it does not appear that the doctrine set forth there is proposed by force of the primacy, nevertheless what the same pontiff teaches elsewhere must be held: "Every gain received from mutuum precisely by reason of the mutuum is illicit by every law, namely natural, divine, and ecclesiastical; this was and is the perpetual doctrine of the Catholic Church."[887]

3. By ecclesiastical law. There exist many and very severe laws of the Church prohibiting usury, the chief of which are these.[888]

The Council of Vienne (1311) decrees that he who pertinaciously presumes to affirm that practicing usuries is not a sin must be punished as a heretic.[889]

The Fifth Lateran Council (1515) condemned as the practice of usury "when someone from the use of a thing which does not germinate, with no labor, no expense, or no danger, strives to procure gain and interest."

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**Notes**

884. Until more recent times usury was also prohibited everywhere by civil law; but now laws forbidding usury have been abolished almost everywhere.

885. Deut. 23:19-20.

886. Do not accept usuries from him, your brother, nor more than you gave. Fear your God, that your brother may live with you. You shall not give your money to him at usury, and you shall not require an abundance of fruits. Lev. 25:36-37. If he has not lent at usury and has not accepted more, he shall live life. Ezek. 18:8. Giving at usury and accepting more: shall he live? He shall not live, since he has done all these detestable things; he shall die death. Ibid. 18:13. Lehmkuhl I, n. 1096, and Vermeersch n. 358 collected other passages. Yet for demonstrating the gratuitousness of mutuum and the illicitness of interest, Luke 6:34-35 cannot be adduced: And if you lend to those from whom you hope to receive, what thanks is there for you? … Lend, hoping nothing from it; because from the context of the discourse here there is no question of interest, but of the principal itself, which he who truly loves his neighbor, even if he is an enemy, must renounce: for he sometimes must give mutuum even in those circumstances in which he foresees that he is going to receive nothing.

887. *De synodo*, l. 10, c. 4, n. 2.

888. See other laws in Lehmkuhl I, n. 1098; Vermeersch n. 360.

889. C. *Ex gravi* un., *De usuris* (V, 5), Clem.

Alexander VII condemned this proposition (42): "It is licit for the lender to require something above the principal if he obligates himself not to reclaim the principal until a certain time"; Innocent XI condemned this one (41): "Since counted money is more precious than money to be counted, and there is no one who does not value present money more than future money, the creditor can require something above the principal from the borrower and by that title be excused from usury." Cf. also the proposition 42 of Innocent XI.

There is added the most celebrated encyclical of Benedict XIV, *Vix pervenit*, directed to the bishops of Italy on Nov. 1, 1745, by which laws previously made are approved and confirmed. But the penalties laid upon public usurers are excommunication, infamy of law, and deprivation of ecclesiastical burial if they die impenitent.

Yet by these things the Church did not prohibit every interest, but usurious interest; but interest is usurious which is received from the lending itself and the use of money; but interest is not usurious which is received from another legitimate external title connected with the lending and use of money.[890] Nor by these laws did the Church prevent gain from being taken from surplus money, provided the gain was just; for there were many modes of taking gain from money, not indeed by force of mutuum, but by other contracts added to mutuum, such as the purchase of rents, the contract of partnership, the triple contract, and the like.

**586. On the recent law of the Church.** 1. Today the Church permits moderate interest to be required for pecuniary mutuum.

There exist several decrees of Roman congregations on this matter,[891] the first of which is that of the Holy Office, Aug. 18, 1830; from these decrees these things are gathered:

a. It is licit to receive interest from mutuum, even if another title making the gain honorable does not exist: for the words which occur in the decrees, "they are not to be disturbed," whether penitents who receive interest or confessors who absolve penitents of this kind, are equivalent to a positive permission.

b. The quantity of interest cannot be determined by a general rule, but the matter must be decided according to the common practice observed by men of fearful conscience in their respective places and times.[892]

2. The difference between the ancient and present-day law and practice of the Church is explained in diverse ways.

a. Haters of the Catholic Church accuse it as if in determining the nature of money it shamefully erred and from this error prohibited gain from mutuum, which was an impediment to the economic matter of the Middle Ages and to its progress, and brought enormous detriment to trade; they say now at last the Church, having unlearned its error, permits gain from mutuum. From what has been said it is already clear that these things are false and are reproached to the Church by injury.

b. Some theologians judge that the internal reason why the Church now permits interest which before it had prohibited must be taken from the disposition of civil law transferring ownership of interest to the lender.

But this explanation does not satisfy: for alpha. civil laws permitting gain from mutuum already existed at the time when the Church was still reproving interest; beta. in most kingdoms civil laws now permit unlimited gain, which laws indeed the Church cannot approve; gamma. the Church nowhere appeals to civil law as the cause making interest honorable, but permits it independently of civil law.

c. Others more truly explain it from the economic conditions of our time. Namely money, which is sterile of itself, can be made fruitful from external circumstances; but now the economic circumstances of our time

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**Notes**

890. Cf. St. Thomas II-II, q. 78, a. 2, ad 1.

891. Cf. Bucceroni, *Enchirid. morale*^3 (Rome: Typographia iuvenum opificum, 1905), p. 113 ss.

892. Sacred Penitentiary, Apr. 18, 1889.

bring it about that money must be called fruitful. Since these circumstances did not exist in former times, money then had to be called sterile.

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# Article Fifth. On Purchase and Sale

## Section 1. On Purchase and Sale in General

**587. Notion.** Purchase-sale is a contract by which two persons agree between themselves concerning merchandise to be handed over for a price. Therefore three things pertain to the essence of this contract: a. mutual consent of buyer and seller; b. some thing, either movable or immovable, as merchandise; c. money as price.

a. This contract in itself is indeed one; but because it necessarily involves two acts, buying and selling, it is usually signified by the joined double name purchase-sale.

b. Sale is a consensual contract, which is perfected by consent alone; therefore by natural law neither the handing over of the thing and price nor any solemnity, for example writing, is required for the essence of this contract. Yet positive laws generally establish that by consent itself only a right to the thing is acquired, namely, on the part of the buyer, the right of accepting the merchandise, and on the part of the seller, the right of accepting the price; but ownership or the real right in the merchandise and in the price is acquired only by the handing over of the merchandise and price.[893] These dispositions of law must also be observed in conscience, unless the contracting parties themselves knowingly and voluntarily establish something between themselves contrary to the dispositions of civil law, which they can licitly do, provided they preserve the norms of natural justice.

c. For the essence of this contract it is required that it be made concerning merchandise on the one side and money on the other side, or concerning a price to be handed over for merchandise and merchandise for a price: for if on each side it is made concerning merchandise, there is not sale but exchange; and if on each side it is made concerning money, there is exchange of money.

**588. Division.** 1. Purchase-sale is divided into natural and artificial. It is called natural or economic if those things are bought which are necessary for sustenance, and superfluous things are sold; and it is called artificial if things are bought with the intention of selling them with gain. Artificial purchase-sale is called trade.

2. Artificial purchase-sale is twofold: lucrative, when a thing is bought so that, without change of itself, it may be sold at a higher price; and simply artificial, when a thing is bought so that it may be changed naturally or by industry and, once changed, be sold at a higher price. By the former sale trade is exercised in the stricter sense; by the latter, trade in the broader sense.

## Section 2. On the Obligations of Seller and Buyer

The obligations of the seller refer: a. to the thing to be sold; b. to manifesting the defects of the thing to be sold; c. to handing over the thing sold; d. to guaranteeing the thing sold.

**589. As to the thing to be sold.** 1. The thing physically or at least morally must be that which the buyer seeks; otherwise the sale is invalid because of substantial error, and the seller is guilty of injustice.

a. At least morally: for although the thing given is physically diverse from that which the buyer seeks, yet if morally it is the same, for example, if it is equally good and equally useful to the buyer for the end intended by him, the contract is valid, because saleable things are appraised according to moral estimation. Therefore

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**Notes**

893. Thus also C.A. Section 1053 and C.G. Section 433, with which Roman law agrees, but not English nor Belgian law.

a medicine physically different from that sought is validly and licitly sold, if nevertheless it conduces equally to the intended end as the one sought.

b. If therefore an artificial thing is substituted for the natural thing sought, for example, wine which is not from the vine, butter which is not from milk, the contract of itself is invalid; yet if things of this kind made by art are not harmful and are commonly sold, the contract is valid, provided the buyer did not expressly seek the natural thing and the seller diminishes the price according to the value of the thing sold.[894]

2. The thing must be one's own, not another's: for, of itself, neither can the seller transfer a right in another's thing nor can the buyer acquire a right.

If another's thing has been handed over and the price paid, the buyer indeed does not acquire ownership of the thing, but the seller acquires ownership of the price, except in the case of eviction. But if recent laws establish that a buyer of another's thing, if he acted in good faith, with a few cases excepted, acquires ownership in the thing bought through the handing over of the thing,[895] one can stand by this disposition of law also in conscience:[896] for civil power, by reason of the common good, in order to render commerce easier and more secure, can transfer ownership in another's thing bought.

3. The thing must be integral, not adulterated or mixed; therefore injustice is certainly committed when the mixture of merchandise is so great that, if it were known by the buyers, they would not buy the merchandise at such a price.

It is permitted to sell a mixed thing at the common price if the thing before the mixture is more perfect than that which is commonly sold, but after the mixture is not worse than it.[897]

The same seems to have to be said concerning those moderate mixtures which are commonly made by merchants and are well known by buyers, at least skilled ones, and yet they do not refuse to buy the merchandise at the common price.

**590. As to manifestation of defects.** Some defects are substantial, which make the thing to be sold either harmful or plainly or at least notably useless for the known end of the buyer; others are accidental, which make the thing neither harmful nor useless, but only less apt; likewise some are manifest, which are easily noticed by all, others hidden, which are not easily noticed generally.

1. The seller is bound to manifest substantial defects to the buyer not adverting to them, even if he is not questioned; otherwise the contract is invalid because of defect of consent, and the seller is bound to return the price.

2. If he is questioned about the defects of the thing in general or about some defect in species, the seller is bound to manifest even accidental defects, whether they are hidden or manifest; but if he does not manifest them, and more so if he hides them, he commits deceit, and therefore the contract is rescindable when the error gave occasion to the contract. On the contrary, when the buyer, with the defect known, would nevertheless have bought the thing, it suffices to diminish the price according to the defect.

3. If he is not questioned about defects, the seller is not bound to manifest accidental defects, not even hidden ones, even if they make the thing less useful; and the contract is valid and licit, provided deceit did not

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**Notes**

894. Cf. St. Alphonsus, n. 820; Ballerini-Palmieri III, n. 796; Lehmkuhl, *Casus consc.* I, n. 870.

895. C.G. Section 932 ss.

896. Cf. Lehmkuhl I, n. 1113; Ballerini-Palmieri III, n. 752.

897. St. Alphonsus, n. 820.

intervene and the price is diminished according to the defect. But if the buyer is so unskilled that he does not see even manifest defects, he must be warned about all of them.[898]

**591. As to the handing over of the thing.** 1. He is bound to hand over to the buyer the thing sold in that state in which it was at the time of sale, and indeed at the time, place, and mode concerning which agreement was made between the contracting parties; and if agreement is lacking, according as is determined by civil law or received custom. Otherwise the buyer has the right of rescinding the contract and requiring reparation of damages.

2. He is bound to guard the thing sold until handing over as a depositary; wherefore if the thing suffers damage from the fault of the seller, he is bound to repair the damage to the buyer, and indeed before the sentence of the judge if from theological fault, after the sentence of the judge if from juridical fault. But if the thing suffers damage by chance, according to the diverse time at which ownership passes to the buyer, the thing perishes sometimes to the buyer, sometimes to the seller.

3. The fruits of the thing sold and not yet handed over pertain to him who is its owner, for whom therefore it bears fruit, just as he himself of himself must bear its danger.

If the same thing is successively sold to two persons and is handed over to the second buyer, a distinction must be made according to the diverse time at which ownership is transferred. If ownership was transferred by the first sale, the second buyer cannot acquire ownership, and therefore the thing must be handed over to the first buyer; if ownership was not transferred by the first sale, the second buyer, if he is in good faith, acquires ownership by the handing over of the thing, at least by positive law; that is, the handing over of the thing constitutes a right in the thing, which overcomes the right to the thing of the first buyer. But the first buyer must be kept harmless by the seller.[899]

**592. As to guarantee.** 1. The seller is bound to furnish the buyer security concerning the tranquil possession of the thing: for the seller acquires a right to the price on this condition alone, that the thing sold pass fully into the power of the buyer; but the thing is not fully in the power of the buyer unless it is guaranteed for the case of eviction.

To evict a thing means to take away a thing by winning it; eviction (*Entwindung*) is defined: the legitimate disturbance of the buyer from possession of the thing bought, which is claimed, either wholly or in part, by its true owner.

2. The seller is bound concerning eviction if the cause of eviction was not declared to the buyer; but if the seller knows no cause of eviction, he can agree with the buyer that he not be held concerning eviction. Yet this agreement is null in a seller of bad faith.

3. The seller is bound to furnish the buyer security concerning hidden defects of the thing, and therefore either to restore the price or to diminish it, according as was said above (n. 590).

**593. Obligations of the buyer.** 1. If the seller is ignorant of the value of his thing and intends to sell it below the just price, the buyer is bound to warn him or at least to offer the lowest price. Likewise if the buyer is ignorant of the value of the merchandise and offers a price greater than the just price, the seller must warn him; otherwise purchase-sale would be unjust: for neither can it be supposed that the seller wishes liberally to give the defect of the price or the buyer its excess.

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**Notes**

898. The positive laws almost agree with these things: C.A. Section 871 s.; C.G. Section 459 ss.

899. Cf. Lehmkuhl, *Casus consc.* I, n. 873.

2. He is bound to pay the price, and indeed at the established time if the time of payment was determined; if none was determined, when the merchandise is handed over. But if the price is not paid, the seller is not bound to hand over the thing; and if payment of the price is delayed beyond the time determined either by agreement or by custom, interest also must be paid.

3. He is bound to accept the merchandise, and indeed at the determined time if any was established; if none was determined, the contract must be committed to execution at once. Wherefore the seller has the right of requiring that the buyer at once accept the merchandise and pay the price.

Whether the practice of merchants is licit by which buyers who paid more than the just amount lose the right of recovering the excess. With fraud excluded, this practice is licit if the seller, to whom less than the just amount was paid by error, equally loses the right of requiring the defect, just as the buyer loses the right of recovering the excess: for on each side then there is equal danger of undergoing damage.

## Section 3. On the Just Price

**594. Notion.** Price is the value of a thing expressed in money. The value of a thing is the common estimation of men concerning the thing in some region, which estimation depends especially on the utility which the thing brings to men. That price is called just which is considered to equal the value of the merchandise. Further, a threefold price is distinguished: legal, common or natural, and conventional.

**595. On legal price.** 1. Legal price is called that which is determined by public authority, by statute of the prince or magistrate.

a. Legal price is not divided into highest, middle, and lowest, but is mathematically determined and is presumed just, unless the contrary is established. Besides, today it is rarely any longer in use.

b. A private man who by knowledge justly acquired has learned that the legal price of the merchandise is shortly to be changed can without injustice sell his own things or buy another's at the current price, because the price is still just; yet he sins against charity if by this mode of acting, for the sake of his own gain, he inflicts grave damage on a poor person. But a public person, to whom it is not permitted to use with the damage of others knowledge which he has by force of office, can at most buy things necessary for his own use or sell his own superfluous things.

2. A law which determines legal price obliges in conscience and from commutative justice: for it is established by public power concerning an object which pertains to it, by reason of the common good, and it refers to exchanges.

Therefore he who, without a just title, sells a thing above the legal tax commits injustice and must restore the excess of the price to the buyers. Indeed frequently also he who sells a thing below the legal tax commits injustice, not indeed against the buyers, but against other sellers, to whom damage is inflicted in this way and must be repaired. For legal price is established not only in favor of buyers, but often also in favor of other sellers. Whether this has in fact been done by a law obliging in conscience must be gathered from the tenor of the law.

**596. On common or natural price. Notions.** 1. Common price is called that which is determined by the common estimation of men, and therefore which men commonly pay for some merchandise at a determined place and time.

2. Common price is not mathematically determined, but highest, middle, and lowest are distinguished: for the prudent estimation of men is not mathematically fixed and determined, but has a certain moral breadth.

a. How great the breadth of the common price is, or how great the distance between the highest and the lowest is, cannot be determined by one rule, since it depends on many and diverse circumstances. Generally, the

price of a thing necessary for life has a smaller breadth, the price of a superfluous thing a greater breadth, and the price of a very rare and precious thing the greatest breadth.

b. For things which commonly serve the uses of life, the breadth of the just price between lowest and highest can ordinarily be determined according to this norm. If the middle price is 5, the lowest will be 4, the highest 6; if the middle is 10, the lowest will be 8, the highest 12; if the middle is 50, the lowest will be 45, the highest 55; if the middle is 100, the lowest will be 90, the highest 110. Yet extraordinary circumstances, such as an unexpected coming together of buyers in a particular case, for example, at markets, can bring it about that the highest price is notably increased.[900]

c. The circumstances which ordinarily influence the saleable value of merchandise are chiefly abundance or scarcity of merchandise, abundance or lack of money, multitude of buyers and sellers, the mode of selling either in a small or in a great quantity, expenses, damages, dangers, and labors which commonly occur in acquiring and preserving merchandise: for their compensation is justly required. Which commonly occur: for on account of the expenses or labors of some singular merchant the price cannot be increased, because the expenses and labors of one person do not change the common estimation, which regards things commonly happening.

**597. Principles.** 1. When legal price is lacking, the common price must be held as just: for the common estimation indicates the saleable value which the thing has in that place.

Common estimation makes the price just, even if that estimation seems imprudent; hence among barbarous peoples gold or ivory can justly be exchanged for glass or cloths: for the common judgment among those peoples attributes great value to things which elsewhere are of very little value.[901]

2. Since any common price is just, merchandise can be sold and bought within the limits of the common price without lesion of justice; but the price which exceeds the highest or does not reach the lowest must ordinarily be considered unjust.

a. Therefore he who sold a thing above the highest is bound to restore the excess, and he who bought a thing below the lowest is bound to supply the defect. In the external forum an action is conceded for rescinding sale both to the buyer and to the seller who has been deceived beyond half the just price.[902] From this statute of law it does not follow that a buyer or seller who deceives the other short of half the just price is excused from restitution in the internal forum.

b. It can happen that even a price which does not exceed the highest is unjust, namely where the seller by frauds or lies leads the buyer to giving a greater price than he would have given if he had not been deceived: for anyone has the right of requiring that he not be impeded by frauds from buying at the price which he would have wished to give and which is not unjust. Yet the lies by which merchants are accustomed to exaggerate the price of a thing are not considered true frauds.[903]

3. From a just title it is licit to sell a thing above the highest common price, or to buy below the lowest.

**598. A title of this kind is had:** a. If the seller from the sale or the buyer from the purchase suffers peculiar damage.

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**Notes**

900. Cf. St. Alphonsus, n. 804; Lehmkuhl I, n. 1117.

901. Cf. Lugo, disp. 26, n. 42.

902. C.A. Section 1060.

903. Genicot I, n. 633.

If someone in favor of the buyer immediately sells merchandise which he would have kept for another time when it would have had a greater price, he can require a price above the highest; and if someone in favor of the seller now buys a thing which he needs only when it will be of lower price, he can buy at a price below the lowest.

b. If the seller has a special affection toward the thing which he sells in favor of another: for the seller deprives himself of the pleasure which the thing affords him; but this privation is estimable by price, which can be required beyond the highest common price.

alpha. The common opinion with St. Thomas[904] denies that a greater price can licitly be required because the thing brings peculiar utility or pleasure to the buyer: for the seller would require a price for something which is not his. Yet among more recent authors there are some, Gousset, Schwane, Marres, Woffelaert, Genicot, who hold the contrary opinion as probable. Nor is this opinion wholly without reason: for he who, with no necessity compelling him, knowingly consents to a greater price is considered to give the excess of the just value. But today almost common use has this, that a thing which brings a peculiar convenience to the buyer is sold more dearly. Yet an exorbitant price is by no means permitted to be required.

beta. But all affirm that this is valid only when the buyer seeks from the thing to be bought nothing except convenience or pleasure; but that he commits injustice who requires a greater price for this reason, that the other needs this thing: for mere want and necessity, which compels the other to buying the thing, is not estimable by price, nor is the needy person considered to give the excess of the price.

c. If the seller of his own accord offers the thing to be sold, it is permitted to buy below the lowest price: for the value of a thing to be sold decreases the more, the greater the service which is furnished to the seller by purchase. Hence it is said by way of proverb: things voluntarily offered become cheap.

d. If payment of the price is delayed, the thing can be sold more dearly; and if it is anticipated, the thing can be bought more cheaply: for just as gain arises from anticipated payment, so damage arises from delayed payment.

Whether it is permitted to sell merchandise below the lowest common price in order to entice buyers, if in this way other sellers suffer damage.

a. This manner of acting of itself is repugnant neither to justice nor to charity, whether other sellers can procure merchandise for themselves at the same cheap price and sell it at the same price, or whether they cannot, provided frauds and lies are excluded. It is not repugnant to justice, because the sellers use their own right; nor to charity, since charity does not oblige with grave inconvenience, and therefore does not require that someone deprive himself of gain so that another not suffer damage.

b. If sellers who sell their merchandise below the lowest price with damage to others use lies or frauds, they act against justice and are bound to repair damage to the other sellers, if, for example, they adulterate merchandise or lessen weights and measures. It is clear that justice in this case is not injured against the buyers, if namely the price is diminished in the same degree in which the quantity or quality of the merchandise is diminished, but that it is injured against other sellers, from whom buyers are turned away by fraud.

**599. On conventional price.** 1. Conventional price is called that which is determined by the free agreement of seller and buyer.

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**Notes**

904. Cf. *Summa* II-II, q. 77, a. 1.

2. Those things have a merely conventional price which, since they are placed outside common commerce, have neither a legal nor a common price.

3. The conventional price of these things is just unless it is of plainly irrational greatness.

4. Very few things are had which can be bought and sold by a merely conventional price:

a. Works of exceptional art, as paintings drawn by a celebrated artist, or very precious things, as gems of extraordinary magnitude, or very rare things, as ancient manuscripts.

b. Cheap things or things already worn by use, such as are the things which are sold by dealers in old goods.

c. Things whose common value is equally unknown by each contracting party, concerning which nevertheless they are doubtful, so that each equally exposes himself to advantage or damage.

alpha. If the contracting parties in this case nevertheless agree concerning a certain price, they mutually condone to each other the excess or defect of the price; wherefore if the buyer afterward sells the thing with the greatest gain, by right he is bound to return nothing to the seller.

beta. From this case must be distinguished the case in which each contracting party, erring about the thing itself, buys a thing of great value at a slight price. Hence a contract is invalid by which someone buys at a cheap price a gem which each considered to be glass, or that by which someone buys at a slight price a precious image of a most celebrated painter which each contracting party thought to be a common panel: for there is substantial error.

If a precious thing is bought at a small price, judgment concerning the justice of the sale must be made thus: a thing is worth as much as it is commonly estimated.

alpha. If the true value of the thing is known by all skilled in the art, the sale is unjust, because the thing in common estimation has a greater value. But if the true value of the thing, either by chance or because of singular skill, is known only to the buyer or to a few others, but publicly is unknown in common estimation, the sale is just.

beta. If a thing cheap in common estimation after the sale is at last known, whether by the immediate or mediate buyer, to be precious, the purchase is just, and therefore neither the first nor the mediate buyer is bound to anything, but can retain the thing.

gamma. If the thing sold-bought is in itself altogether unknown, as being hidden in another thing bought, for example, a fish is bought from a fisherman, in whose belly a precious thing is found; or a garment is bought from a dealer in old goods, in which a precious thing sewn in is found; a thing which belongs to no one becomes the property of the first occupier, but a thing which has an owner is his; but if the owner is unknown, the thing is held as abandoned.[905]

## Section 4. On Sales in Species

Three sales especially are to be considered in species: sale by auction, monopoly, and sale through brokers.

**600. On sale by auction.** Sale by auction, auction, bidding (*Versteigerung*) is a sale by which, when several buyers come together, a thing is sold in such a way that it is adjudged to the one offering the greater price.

a. Sale by auction is one kind voluntary, another judicial or forced, according as it is done spontaneously by the owner of the thing or is commanded by law, for example, for paying creditors.

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**Notes**

905. Cf. Lehmkuhl I, n. 1120; Ballerini-Palmieri III, n. 773; Genicot I, n. 635; Sporer-Bierbaum II, tract. 6, n. 711 ss.

b. In sale by auction the thing to be sold is estimable the more as more buyers come together, because with many coming together and offering there is hope of accepting a greater price.

c. The just price in sale by auction is that which is constituted from the bidding itself without fraud, namely that which is offered by the last bidder, whether it is above the highest or below the lowest.

d. The equality required for the justice of the contract consists in this, that on each side there is the same hope of gain and the same danger of damage.

**601. Obligations of the seller.** a. He is bound to hand over the thing to the one offering more, even if the price has remained below the lowest: for sale by auction implicitly contains the contract of handing over the thing to him who offers more, unless there exists a custom of withdrawing the thing if at least the lowest price is not offered.

b. It is not permitted to send fictitious bidders, who without intention of buying the thing intend only to increase the price of the thing: for bidders have the right of requiring that the price be increased only through the concurrence of buyers and not by frauds.

Authors disagree whether the seller himself, either through himself or through another, can join himself to the bidders. If the bidding is forced, they commonly concede this, because the sale is made not by him but against his will; if it is voluntary, they forbid it, because this would be the same as withdrawing the thing.

c. It is not permitted to change afterward into worse things those things exposed for sale and already inspected by the bidders.

**602. Obligations of buyers.** a. They are bound to take care that they do not impede others by force or frauds from bidding or from offering a greater price. In this matter sin is committed against justice in two ways: both against him who is impeded from bidding and against the seller, who is deprived of greater gain.

b. They can ask and exhort others to abstain from bidding, because the seller does not have the right that someone come together for buying. Whether it is unjust to agree with another not to bid is disputed.

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St. Alphonsus (n. 808) affirms that it is unjust, because the seller has the right of requiring that anyone be able freely to intervene in the bidding; Lehmkuhl (n. 1120) and Ballerini (n. 771) probably deny it, because the agreement of some to abstain from bidding does not prevent others from coming together; but that determined men come together for the bidding, the seller cannot require. Moreover one is not impeded from bidding by force or fraud, but by a just means, namely by a pact freely entered.

**603. On monopoly. Notions.** 1. Monopoly is the exclusive power of selling certain merchandise, which belongs to one person only or to a few only.

2. A distinction is made between monopoly of right or legal monopoly, which is exercised by public authority, and monopoly of fact, which is exercised without public authority by the deed of private persons. This monopoly especially arises from this, that one or several buyers buy up all merchandise of a certain kind in some place at a modest price and afterward sell it at a great price.

Monopoly of right is either public (*Staatsmonopol*) if civil society itself reserves to itself the right of selling certain merchandise; or private, if a man or particular society has the exclusive right of selling certain merchandise.

**604. Assertions.** 1. Public monopoly of right is of itself licit, even if because of it certain merchandise is sold above the highest price which otherwise, with monopoly excluded, it would have. For this monopoly pertains to the means which public authority employs in order to procure for itself money necessary for promoting the common good, and therefore the increased price of the thing has the character of an indirect tax.

2. Private monopoly of right is likewise licit: for public authority from a just cause of the common good can concede rights and privileges to men or particular societies, such as are customarily conceded to inventors of a new art. Those who enjoy this monopoly sin against justice if they sell their things at an excessive price; but the just price of such things can scarcely be established, especially if they have been made by a new art. Others sin against justice if they injure their privilege by making and selling similar things.

3. Monopoly of fact of itself is not repugnant to justice, provided the sellers do not exceed the highest price which the thing had before the monopoly: for by buying up merchandise of a certain kind in some place, they use their own right and, as is supposed, sell it at a just price. But it is against charity if others, especially the poor, with grave inconvenience to themselves, are forced to buy necessary things at a greater price.[906]

4. Similar to monopoly of fact is an agreement entered among all sellers of some certain merchandise not to sell it below a determined price (*Ring*).

a. With force or fraud excluded, this agreement is not opposed to justice if the price does not exceed the highest which the thing would have if the agreement were excluded: for the individual merchants use their own right of not selling their own thing except at the highest price.

b. But it is opposed to the charity owed to buyers if in this way things necessary either to all or to many are sold at the highest price, because to their own damage they are forced to buy at a higher price things which otherwise they would have received at a cheaper price. The same cannot be said concerning things not necessary, because they can abstain from buying these things.[907]

**605. On sale through brokers. Notions.** a. Sale through brokers is called that which is made by others from the commission of the owner of the thing to be sold.

b. A broker (*Makler*, *Sensal*) is called one who buys or sells in the name of another.

There are brokers who are constituted by public authority for exercising this office, and there are brokers who are constituted by owners alone for buying or selling certain things, as children of the family who buy for parents, servants who buy for masters, craftsmen who buy for those from whom they undertook work to be completed.

c. Brokers by their nature are mandataries of those in whose name they sell or buy; wherefore the obligations of a mandatary must also be applied to brokers.

**606. Principles.** 1. A broker who sells a thing above, or buys below, the price designated to him by the owner cannot retain the profit for himself, unless he acquired it by extraordinary industry: for since he acts not in his own name but in the name of the owner, what he acquires by negotiating he acquires not for himself but for the owner.

2. It is not permitted to a broker to buy for himself a thing to be sold at a determined price and afterward to sell the same thing at a higher price and retain the excess for himself: for the owner is considered to have excluded this mode of acting, as harmful to himself, except in the case in which the broker, after using moral diligence, does not find another buyer. Yet then he must seriously carry out the purchase and take the danger of the thing upon himself.

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**Notes**

906. Cf. Ballerini-Palmieri III, n. 789.

907. Genicot I, n. 641. Cf. Lugo, disp. 26, n. 172 ss.

3. A broker can retain those things which merchants remit from the just price in his favor. But attention must be given whether the merchants remitting from the price intend in reality to favor the buyer or the mandator.

If brokers buy frequently and for diverse men, as craftsmen do, the remission of the price is considered to be made rather in favor of the buyer; but if brokers always buy for the same person, as servants and children of the family do, merchants are considered to remit from the price rather in favor of the mandator.

## Article Sixth. On Location

**607. Notion.** Location is a contract by which the use or usufruct of some thing, or the work of a person, is conceded to another for a certain price.

a. He who furnishes the use or usufruct of the thing is called the locator; he who pays the price, the tenant or lessee; he who hires out his work, the servant or worker; he who pays the price, the master. The price owed from the pact must be paid in money; if another thing is paid in return for money, there is not a contract of location, but another innominate contract.

b. Location by its nature is an onerous contract: for if someone gratuitously concedes to another the use or usufruct of some thing, there is commodatum; and it is a consensual contract, which is already perfected as to essence by consent alone before the handing over of the thing leased. Wherefore once a contract of location has been entered by mutual consent, neither the locator nor the tenant is permitted to recede from the contract.

c. The object of this contract can be twofold: the use or usufruct of a material thing, whether movable, as of a horse or sheep, or immovable, as of a house, field, or farm; or services to be furnished by a man. Therefore a twofold location is distinguished: alpha. location of things and beta. location of work. The former is usually called simply location (*Mietvertrag - Pachtvertrag*), the latter hiring (*Arbeitsvertrag - Lohnvertrag*). To these can be added hiring of a work (*Werkvertrag*), because some work, such as the building of a house, is undertaken to be completed.

### Section 1. On Location

**608. Obligations.** Because the contract of location is similar to purchase-sale, for the right of using some thing or of receiving its fruits is bought and sold, those things which above were said concerning purchase-sale must also be applied to location. But in species these things must be noted:

1. The tenant is bound to repair damages which happen to the leased thing in these cases:

a. If he himself is their gravely culpable cause theologically;

b. If he himself by expressed agreement undertook upon himself any dangers whatsoever of the leased thing;

c. If by the sentence of the judge according to the laws in force he has been condemned to repair them.[908]

2. Positive laws establish that in location of fields some part of the price of location be remitted when the field has in great part lacked fruits because of misfortune, for example, because of hail. The quantity of price to be remitted in this case is usually determined by law.[909]

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**Notes**

908. Cf. C.A. Section 1096 s.

909. C.A. Section 1104 ss.

**Note.** a. Since today in most parts of Europe tenants of fields, because of the sad conditions of agriculture, have fallen into a miserable lot, locators must be warned not to require too great a price of location, so that the tenant in ordinary circumstances can live honorably with his family from the fruit of his labor.

b. Yet as a norm which justice requires this cannot be admitted: that the tenant can take from the fruits of the fields those things which are required for the honorable support of himself and his family, and that the price of location is to be paid only from those things which remain over. For the price of location determined by just agreement must be paid, even if, because of accidental misfortune, the fruits of the fields are less. Nor is an agreement of this kind to be called unjust, that the same price be paid even if fewer fruits have grown, provided that a greater price is not required when the fruits grow more abundantly.[910]

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## Section 2. On Hiring

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**609. Notions.** 1. Hiring is a contract by which one person obligates himself to furnishing certain labor, and the other to paying wages for the labor.

a. The object of this contract is not that which is produced by industry or labor, and the price which corresponds to the value of the thing produced, but on the one side labor, or rather operative power (*die Arbeitskraft*), which one person lets to another so that the latter may use it for a determined end, and on the other side the price which corresponds to the value of the labor.

b. The labor which on one side constitutes the object of this contract refers to personal work to be furnished, whether the work to be furnished is servile or liberal, fruitful or unfruitful. Therefore to this belong the hiring of servants, workers, craftsmen, artists, physicians, etc. The circumstances of the times demand that the contract of hiring entered between masters and workers be considered chiefly in this place.

c. Hiring differs from mandate, because the mandatary carries out the business in the name of the mandator, but the servant or worker carries out the business enjoined in his own name.

d. Since the object of this contract is not material things, but human actions, which cohere by an inseparable bond with the human person, from hiring, both on the part of the worker and on the part of the master, there arise duties and rights which cannot be passed over without lesion of justice (n. 304 s.).

2. The contract of hiring is not only honorable and licit, but sometimes even necessary from the law of nature.

a. Socialists attack its liceity under a twofold head: both because it is not permitted to man to alienate his powers, and because justice requires that the worker for his labor accept not a determined wage, but the profit owed to him from the fruit of the labor. Concerning the former head there is speech here; concerning the other, below.

b. It is licit and honorable, because man has full ownership over his operations, and therefore can dispose of them at pleasure for honorable ends. It is necessary by the law of nature whenever labor is the only means by which someone can sustain himself and his own, or by which someone can arrive at a certain end that must be obtained from obligation.

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**Notes**

910. Cf. Genicot I, n. 644.

911. Encyclical of Leo XIII, *Rerum novarum*, May 15, 1891; De Gryse, *De contractu conductionis* (Roeselare: De Meester, 1895); J. Biederlack, *Die soziale Frage*^4 (Innsbruck: Rauch, 1908), p. 142 ff.; A. Lehmkuhl, *Arbeitsvertrag und Strike*^2 (Freiburg: Herder, 1904); A. Vermeersch, *Quaestiones de iustitia*^2 (Bruges: Beyaert, 1904), q. 10, n. 386-469; A. Pottier, *De iure et iustitia* (Liege: Ancion, 1900), n. 195 ss.; Fr. Schindler, *Der reine Lohnvertrag* (*Jahrbuch der Leogesellschaft* for the year 1892, Vienna, 1893); C. Eberle, *Arbeit und Lohn* (Stans, 1894); H. Pesch, *Lohnvertrag und gerechter Lohn* (*Stimmen aus M. Laach* I, 1897), p. 22; Alb. Weiss, *die Gesetze fur Berechnung von Kapitalzins und Arbeitslohn* (Freiburg: Herder, 1883).

3. The natural destination of labor is this, that man may have a means by which he can fulfill the duties enjoined on him by nature. The first of these duties is the duty of preserving life and therefore of procuring for himself necessary support;[912] the other is the duty of feeding the family and therefore of procuring the necessities of life for his own:[913] for from the law of nature it pertains to the man to seek the necessities of life for wife and children, in which matter he must be helped somewhat by his wife and adolescent children.

**610. On a just wage.** 1. A distinction is made between an individual wage, which suffices for feeding one sparing and well-conducted worker on that day, that is, for furnishing food, clothing, and housing, and a family wage, which moreover suffices for feeding a family.

2. The individual wage is one thing minimum, which corresponds strictly to equality with labor considered in itself; another thing maximum, which corresponds to labor considered together with external circumstances.

External circumstances of this kind, which increase the value of the work, are these: expenses for acquiring skill, knowledge, dexterity, experience; the future time of infirmity, old age, interruption of labor; special dangers of life and health which are joined with the labor, etc.

3. The family wage is one thing absolute, which suffices for sustaining a family in ordinary circumstances and always remains the same; another thing relative, which agrees with the number of persons of which the family consists and the weight of the necessities by which it is pressed, and therefore is variable.

a. Those who say that the just wage of work is a family wage intend not the relative but the absolute. But this family wage is not to be understood in such a way that it alone must suffice for feeding the entire family, but in such a way that through it the worker is equal to feeding a family, if there is added, on the one side, that which the wife and children can honorably procure for themselves, and on the other side, prudence in expending goods. This prudence especially consists in this, that the worker who has not yet been joined in marriage put aside the things which are not necessary for support, but the one who has been joined in marriage live more sparingly at that time in which the members of the family are still unequal to labors.

b. A family wage is paid if the frugal and honorable worker, with the customary aid of the family received by work, can: alpha. provide for himself and his own moderate food, clothing, and roof according to condition; beta. observe feast days and indulge in some recreation; gamma. provide for the suitable instruction of children; delta. meet customary cases of illnesses and dangers; epsilon. prepare for himself an old age not needy.[914]

**611. Assertions.** 1. Commutative justice first requires that an individual wage, and indeed at least the minimum, be paid to the worker for his work.

a. The equality between what is given and what is accepted, which commutative justice requires, is not preserved unless at least the minimum individual wage is paid: for the worker expends his powers for the utility of the master; therefore the master must render back to the worker at least the wage which suffices for restoring by food, clothing, and housing the powers worn down in favor of the master.

b. Commutative justice requires that the wage be equivalent to the value which belongs to work by its nature; but the value which belongs to work by its nature is this, that through it the worker acquire the necessities of life: *The worker is worthy of his food*[915] (n. 609, 3).

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**Notes**

912. St. Thomas II-II, q. 187, a. 3.

913. St. Thomas II-II, q. 164, a. 2.

914. Vermeersch, l.c., n. 444.

915. Matt. 10:10.

alpha. Since the worker has the right of receiving from labor the necessities of life, circumstances cannot of themselves occur in which the value of labor and the salary equivalent to entire labor decreases so much that it does not suffice for the support of the worker, provided he is healthy and well-conducted. An infirm worker whose labor does not have a value equivalent to support must, from the ordination of nature, be sustained by the alms of others.

beta. Therefore although because of the objective inequality between labor and wage justice is of itself injured if the wage is unequal to acquiring support, nevertheless cases can occur in which per accidens the just wage is less than the personal minimum.

gamma. Without lesion of justice the worker can require from the master the maximum individual wage: for since in compensation for labor no more is required than is expended for the utility of the master, the equality of thing to thing, which is proper to commutative justice, is not injured.

2. Commutative justice requires that for the labor of a healthy and adult worker a family wage be paid.

a. The just wage of work is that by which the value which belongs to human labor of itself and in itself is compensated; but the value of labor is equivalent to a salary which of itself suffices for feeding a family. For the value of labor must be so great that by his labor the worker is equal to fulfilling his duties; but the duty of a healthy and adult worker is that he sustain himself and his own. For since by nature he has the right of entering marriage and generating offspring, by nature also there lies upon him the duty of feeding a family; therefore labor, which of itself is the only natural means by which he is rendered fit for fulfilling his duties, must be equivalent to a salary suitable for feeding a family.

Nor should it be said that labor is a personal action of the worker and therefore justice cannot require that remuneration for a personal prestation come to other persons besides, who have furnished nothing. For labor is indeed a personal action insofar as it is exercised by the worker alone; nevertheless by its nature it has a social value insofar as it must suffice for feeding not only the worker, but also his family.

b. A worker who has no goods of fortune besides his physical powers, and of this sort is the greatest part of workers, must by necessity remain unmarried unless he accepts a family wage: for he cannot enter marriage unless he can feed a family; he cannot feed a family if he accepts only a personal wage; but such a state of affairs is repugnant to the order of nature, which of itself conferred on each person a destination and right to the matrimonial state: *increase and multiply and fill the earth.*[916]

alpha. If the wage paid from contract does not suffice for feeding an ordinary family, the contract of hiring is of itself unjust and therefore void. Yet there exist some cases in which, without injustice, it is permitted to agree concerning a smaller salary: alpha. if the worker because of old age or infirmity or defect of aptitude cannot furnish entire labor: for the master is not bound to compensate labor furnished beyond its value; beta. if the conditions of business in some region are such that this business does not produce so great an abundance of fruits as suffices for a suitable wage; gamma. if the master only from mercy hires a worker whom he does not need.

beta. It is not permitted to the master without injustice to press the wage of labor below the family wage because of abundance of workers: for whether few or many offer their work, the healthy and useful worker has a right to a wage which is equal to feeding a family.

gamma. The duty of taking care that workers receive a family wage falls especially on masters who hire workers: for they themselves must take care both that they sell merchandise at such a price that they can pay

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**Notes**

916. Gen. 1:28.

a suitable salary to workers, and that they entrust works under those conditions so that undertakers of works are not forced to lessen the wage of workers below the just wage.

3. Justice by no means requires that the worker receive, as the wage of labor, a part of the profit received from the business.

a. Socialists attribute to the worker an inalienable right of requiring a part of the profit received from the business: for they contend that whenever a master with a worker concurs in some business for receiving fruit or profit, he must enter a contract of partnership, by force of which profit must be divided between them according to the proportion of contribution. But there appears no reason of strict right on account of which the master must assume the worker as a partner of the work or commerce and, after entering a contract of partnership, make him a participant also of the profit: for this depends on the free choice of the master. Therefore the worker can enter with the master a contract of location of work; once this has been entered, by strict right he can require nothing else except that a suitable salary be repaid to him for the work furnished.

b. Socialists and those who with them demand that the worker receive a part of the profit from the work to the completing of which he concurs by his labor confuse the contract of partnership with the contract of location: for the contract by which the worker hands over his labor to another for a time, so that the latter may use it for a certain end, is by its nature a contract of location; but for labor hired out to another he can justly require nothing else except a wage which is equivalent to the natural value of labor.

Yet two things must be warned about this matter: a. It is plainly consonant with the nature of things and the dignity of man that a contract of partnership be made between master and worker and that the worker receive a part of the profit obtained by his labor. b. Equity demands that to the worker who has collaborated for completing a work at an agreed wage, at least a modest part of the profit come as a reward, especially if great profit is received from the business.

**612. On the wage owed to women.** The question has been moved whether women can require for labor furnished by them the same wage as men, or must be content with a lesser one, as in fact a lesser wage is commonly repaid to women. The principles to be held concerning this matter are these.

1. For the same labor, that is, labor of the same quality, the same wage is owed to women as to men.

a. The wage must correspond to the value of the labor; but from the hypothesis the value of the labor is the same whether it is furnished by a man or by a woman: subjectively, human labor; objectively, a thing produced of the same quality.

b. Therefore injustice is committed if the labor of women, for this reason alone that it is feminine, is estimated at a lesser price, and if to women who, for example, labor in the same factory and under the same conditions as men, or are occupied with men in the same office, a lesser price is paid for the same labor.

c. From this mode of acting a great social evil follows: for when women compete with men for the same labor, the occasion of labor is withdrawn from men, and therefore the occasion of procuring necessary support for themselves.

2. Yet because women laboring outside the domestic walls, because of the innate conditions of feminine nature, all things considered, generally cannot furnish the same labor as men, the just wage of feminine labor ordinarily will be less.

Experience establishes that women, in all those businesses which require great bodily strength and long perseverance in labor, such as agriculture, crafts, trade, etc., because of innate weakness and defectibility cannot equal men. Hence with nature itself as guide, it has happened that a distinction has been made between

masculine and feminine labors and feminine labors have been estimated at a lesser price. But if in present times women undertake labors which are called masculine, ordinarily they are of lesser value, and therefore their just wage is also less.[917]

### Section 3. On Hiring of a Work

**613. Notions and principles.** a. Here work is called whatever someone undertakes to complete, as to build a house, construct a road, make a garment. The making of the work for a determined price is the object of this contract.

b. He who undertakes to complete a determined work for a certain price, whether by private agreement or by public competition, is called the redeemer or undertaker of the work (*Unternehmer*).

**Principles.** 1. The undertaker acts against justice if he does not pay a just wage to hired workers, so that he himself may receive greater gain from completing the work.

2. He acts against justice if he does not observe the conditions of the contract and therefore the locator suffers damage, because he uses cheaper matter or works with less diligence.

It is not permitted to press the wage of workers below the family wage, not even when the undertaker of the work adverts that he cannot complete the work for the agreed price without his own damage.

3. He must make the entire work within the constituted time for the determined price, and he cannot increase the price, even if afterward the prices of things or of works have risen; nor conversely can the lessee diminish the price if those have decreased.

4. Yet in this case he can require a greater sum than was agreed if he suffers damage from a wholly unforeseen cause, because contracts of this kind are customarily entered in such a way that the undertaker assumes upon himself ordinary dangers, such as the increased price of things or works, but not extraordinary ones;[918] likewise if he committed a manifest error in computing expenses.[919]

## Article Seventh. On the Contract of Partnership

**614. Notions.** 1. Partnership is a contract by which two or several persons obligate themselves to bring some thing into common, so that the profit received from it may be divided among them.

a. Profit received from goods brought into common immediately pertains to the partnership, if it is itself a juridic person; but individual partners have a right to a part of the common profit which corresponds to the good brought into common by them; but at the same time they must also bear part of the common damage.

b. The contract of partnership is a consensual contract, which is perfected by agreement alone before the handing over of the good to be brought into common. Yet by positive law the agreement ordinarily must be confirmed in writing in order that it receive force.

c. The thing to be brought into common is either money or another good or one's own work. But partnerships can be entered in such a way that individual partners bring into common either all their goods or only part of their goods, or in such a way that some bring money, but others only their work.

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**Notes**

917. Cf. Rosler, *Die Frauenfrage^2* (Freiburg: Herder, 1907), p. 113 f.; the same author, *Die Ubung der Charitas* (Freiburg: Herder, 1903), p. 59; Nawiasky, *Die Frauen im osterreichischen Staatsdienst* (Vienna-Leipzig: Deuticke, 1902).

918. Cf. Lehmkuhl I, n. 1127; Genicot I, n. 650.

919. Cf. Lehmkuhl, *Casus consc.* I, n. 903.

2. Partnerships are divided by reason of end into civil partnerships (*Erwerbsgesellschaften*), which are entered for receiving profit not by trade, but by any other mode whatsoever, as if two agree between themselves concerning a farm to be bought and administered from money brought into common and concerning dividing the profit received from it; and into commercial partnerships (*Handelsgesellschaften*), which are entered for receiving profit from trade.[920]

**Note.** Partnerships are governed either by the peculiar agreements of those contributing, or, when these are lacking, by the laws of the civil or commercial code and received customs. For those who enter an onerous contract are considered to enter it according to civil laws and received customs, unless they have expressly declared the contrary.

**615. Principles.** Among the diverse industrial and commercial partnerships, special attention is merited by share companies (*Aktiengesellschaften*) and limited partnerships (*Kommanditgesellschaften*), whose constitution social economics explains. It suffices to note these two principles.

1. The end of the partnership must be licit. If the end is illicit, for example, to publish depraved newspapers, the members of the partnership by force of the contract are not bound to place any action in the future, because there is no obligation to the illicit; but they are bound to pay those who from the fulfilled contract acquired some right, as is clear from the things said above concerning a base contract. If the end of the partnership is unjust, for example, to sell adulterated merchandise, the partners are also bound to repair the damage inflicted, and generally indeed in solidum.[921]

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2. Equality must be observed among the members of the partnership, both as to gains and as to damages. Therefore profit arisen from the partnership must be divided among the partners pro rata of the part which they brought into common, and likewise individual partners must pay debts contracted by the partnership according to the quantity of their part, unless because of peculiar circumstances some partners ought to accept a greater part of the profit or bear a lesser part of the damage.

## Article Eighth. On Exchange of Money

**616. Notion and division.** Exchange of money is a contract by which money is exchanged for money.

a. He who exchanges money is called the money-changer; but he who seeks that it be exchanged in his favor is named the customer. A money-changer who by exchanging monies exercises trade is called a banker, money-dealer, money-changer, or trapezite.

b. Ownership of money handed over by common law is transferred to the customer already by the handing over of the money, before the latter has returned the money.

c. It differs from mutuum, both because mutuum can be made not only in money but also in other things, and especially because it belongs to the nature of mutuum that a delay of time intervene between the handing over of the thing and its returning; but exchange of money of itself requires that for money handed over another money be returned at once, and only per accidens does some time intervene between the handing over and its returning.

**Division.** Exchange of money is divided in diverse ways: a. Into manual or small exchange, if present money is exchanged with other present money in the same place and at the same time, for example, gold for silver,

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**Notes**

920. C.A. treats civil partnerships in the civil code, Section 1175 ss., and commercial partnerships in the commercial code, n. 85 s.

921. Genicot I, n. 652.

smaller money for larger, paper for coin; and transfer exchange, if present money is exchanged with absent money, namely to be received in another place or at another time.

b. Transfer exchange is local when present money is given for money to be received in another place, which is customarily done through bills of exchange, as if Titius here gives money to a money-changer, but the money-changer gives letters so that Titius or another in his name may receive money elsewhere within a very brief time; and it is temporal when present money is given for money to be received after a notable time in the same place.

It is clear that exchange of money can be mixed, that is, local and at the same time temporal, as if someone gives present money in this place so that after some time he may receive other money of the same value in another place.

**617. In order that exchange of money be just, it is required:**

a. That money of the same value be handed over.

Yet various causes exist on account of which future money is not worth as much as present money; therefore the money-changer justly requires more than he himself hands over to the customer, especially where there is question of temporal exchange.

b. That the payment which is required be equivalent to the service furnished by the exchange.

The common estimation of this service determines the just payment, which can be greater the greater expenses are required so that the money-changer may habitually satisfy customers.

**Note.** Besides, for avoiding injustice in exchanges of money and bills of exchange scarcely anything else is required except that the statutes of law and the usage of upright money-changers be observed.

## Question Fourth. On Aleatory Contracts

**618. Notions.** 1. Aleatory contracts are called those whose object, that is, what must be furnished by one or by each contracting party, depends on an uncertain event, or on chance. Wherefore these contracts confer on the contracting parties not an absolute right in the object of the contract, but only the hope of receiving it.

There are aleatory contracts in which only that which must be furnished by one depends on chance or is uncertain, as in insurance, in which one must pay a certain thing, but the other must repair uncertain damage; there are others in which that which must be furnished by each depends on chance or is uncertain, as in wagering.

2. An aleatory contract differs from a conditioned contract in this, that in the latter the consent or the contract itself depends on an uncertain event, but in the former the object of the contract depends on an uncertain event; the contract itself is perfect and absolute.

3. Aleatory contracts are unilateral or bilateral, according as only one contracting party or each contracting party in a certain event obligates himself to furnishing something.

The aleatory contracts to be explained here are: a. wagering; b. game; c. lottery; d. insurance; e. stock-exchange speculations.

## Article First. On Wagering

**619. Nature.** Wagering is a contract by which two or more persons disputing concerning the truth of a thing or concerning some event agree between themselves that some good belong to him who wins.

a. Therefore wagering by its nature supposes disagreement among the contracting parties concerning some truth, and a price is constituted for him who is going to attain the truth.

b. Wagering can be a unilateral or bilateral contract. If the first, it obliges either from fidelity or from justice, according as the one wagering intended to obligate himself; if the second, it obliges from justice, provided it has been entered seriously. In this last case those wagering mutually hand over to each other a right to the reward founded on hope of gaining.

c. From the nature of the contract it follows that he who wagers, or plays, without intention of obligating himself to paying contracts invalidly and therefore is not bound to pay, but neither can he accept and retain gain; but he who wagers, or plays, without intention of paying contracts validly and therefore is obligated to paying and can retain gain.

**620. Wagering is a just contract:** a. If on each side the reward which is wagered is equal, unless the other of his own accord wagers an unequal good of greater value;

b. If the thing is uncertain to each party, even if objectively in itself it is most certain.

Authors dispute whether he who is certain about a future event can enter a just wager. It seems that a distinction must be made thus: a. If someone manifests that he knows the thing certainly, and the other nevertheless wishes to wager, the wager is just. Yet in this case there is not an onerous but a gratuitous wager, by which the other promises that he will give something if the certain event has followed. beta. But if one knowing the thing certainly pretends that he at least in some way doubts about it, the wager is unjust: for the due equality among the contracting parties is lacking, since he who knows the thing certainly hands over to the other a hope of gain which is of no value, since he knows certainly that he is going to be the winner.[922]

**621. Wagering is a licit contract:** a. If it is made concerning an honorable or at least indifferent thing; therefore illicit is a wager made, for example, concerning the fact that the other lacks courage to commit a duel: for it contains an incitement to dueling. Yet since the wager is just, when the duel has been committed, the thing promised by the wager can be retained as in a contract concerning a base thing, but it need not be furnished (n. 527).

b. If there is present a motive making the wager honorable. An end of this kind is honest recreation, an incentive for completing something or investigating truth. Yet since wagers, the same holds for games, often lack an honest end, and rather are made from vanity or prodigality or desire of becoming rich, and give occasion to innumerable abuses and frauds, in practice they are for the most part illicit.

c. If the good promised by the wager is not excessive: for in this case on one side there is committed a sin of prodigality, with which other sins are generally joined, whether against charity or against piety; and on the other side a sin of induction or at least of cooperation toward evil.[923]

## Article Second. On Game

**622. Notions.** 1. Game in the juridical sense is a contract by which those playing agree between themselves concerning a certain price to be handed over to the victor as a reward.

a. Game in the moral sense signifies a certain artificial operation ordered to relaxation of the mind or exercise of the body, which the virtue of eutrapelia moderates. Frequently that game is joined with game taken in the former sense.[924]

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**Notes**

922. Cf. Lugo, disp. 31, n. 78.

923. From C.A. Section 1277 wagers do not produce a civil obligation; therefore the victor cannot require by civil action the good owed to him from wagering.

b. Game differs from wagering almost only in the cause on account of which the victor acquires the reward: for in wagering the reward is constituted for him who will have attained the truth; but in game the price is constituted for the happy success of the game.

c. The object of this contract is the right of playing and the hope of gaining, which those playing mutually hand over to each other.

2. Games are divided: a. into aleatory, in which the event depends chiefly on chance, as in a game of dice; b. into industrial, in which the event depends chiefly on the aptitude of the player, as in a game of disks or chess; c. into mixed, in which the event depends both on chance and on the aptitude of the player, as generally in a game of cards.

**623. In order that game be a just contract, it is required:**

a. That frauds and illicit arts not be employed. He who gains through frauds is bound not only to restore the gain, but also to compensate the hope of victory which the fellow-player would have had if no frauds had occurred.

Those arts are illicit which are opposed to the rules of the game, which either received custom or the common consent of players has determined. Of this kind are: deliberately to place oneself so that the other's cards can be known, to mark cards with signs, etc. But it is not illicit to use those industries which are not opposed to the rules of the game or to received custom, as to inspect the other's cards from his negligence alone, to simulate fear so that the other may become bolder, etc.

b. That among those playing there be moral equality as to the hope of gaining and the danger of losing: for if on one side there is certainty of gaining and on the other equal certainty of losing, there is no object of the contract, which is hope of gain with danger of damage. Hence if someone most skilled in a game plays with another unskilled in the game, the latter of himself is not bound to pay the reward, nor can the other accept and retain it.

He who is ignorant of the greater skill of another player is not bound to pay the price of the game if he was induced by deceit by the other to playing; but he is bound to pay it if, without deceit, he determined himself to playing only from error, even antecedent error. He who certainly knows the greater skill of the other and nevertheless plays with him must pay the reward, because he is considered to yield his own right.

c. That the contract be entered freely; therefore he who plays with a half-drunk person must restore the whole gain, because this person cannot enter a valid contract.

He who drew another to playing by fear having been struck into him must restore the gain. Although authors almost agree in this affirmation, nevertheless not all assign the same reason for the affirmation. For some obligate him to restitution because a contract entered from fear is valid indeed, but rescindable on the part of him who suffered the fear. Others obligate him because the one striking fear inflicted injury on the other and therefore must repair the whole damage which arose from the injury.[925]

d. That the player be able justly to alienate the thing which he exposes in the game; wherefore he commits injustice who exposes another's thing, or indeed his own thing whose administration he does not have, as can happen to children of the family, or which he cannot lose without injustice, as happens to those who cannot pay debts.

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**Notes**

924. Cf. Ballerini-Palmieri III, n. 904.

925. Cf. Lugo, disp. 31, n. 28; Lessius, l. 2, c. 26, n. 9; St. Alphonsus, n. 880.

alpha. He who exposes another's thing in a game can require and retain the gain if he himself wins. The victor who gained another's thing must return it to the owner; but the loser must keep the victor harmless or, if the victor does not restore the thing to the owner, repair the damage to him.

beta. A player who does not have the means from which he could pay if he were conquered cannot require the reward, because the contract is invalid: for equality among those playing is lacking, since he who cannot pay handed over to the other a hope of gaining which is of no value.

**624. In order that game be a licit contract, it is required:**

a. That the game itself be honorable both in itself and in its circumstances, that is, by reason of time, place, persons, mode, etc. If the game is dishonorable, the victor nevertheless can require and retain the reward, provided the game was just.

In order that a game be licit, it is not necessary that it be undertaken for a positively honorable end; wherefore he does not sin, not even venially, who plays either uniquely or principally to receive gain: for any indifferent action can, even with other ends passed over, be ordered without sin to that end to which it is useful.[926]

b. That the reward exposed not be excessive: for if a great sum of money is exposed, of itself a sin of prodigality is committed, with which per accidens other sins are customarily joined, as if the player makes himself unable to pay debts or sustain his family.

alpha. There are those who say that a game in which a great sum of money is exposed at one time is unjust;[927] but since this opinion does not exceed probability, the victor cannot be obligated to return the gain, but neither can the loser be obligated to pay it.

beta. If some game is prohibited by positive law, one must distinguish: if the law prohibits and invalidates the game, the price can neither be required nor retained; but if the law merely prohibits the game, the price can be required and retained.[928]

## Article Third. On Lottery

**625. Nature.** Lottery is a contract by which, when a certain price has been paid, a right is acquired of obtaining the thing exposed if the drawing of lots has favored.

a. Lottery is an aleatory contract, because one part of the contracting parties acquires nothing except the hope of obtaining by lot the thing exposed. Lottery differs from wagering in this, that wagering supposes disagreement of opinions among the contracting parties; but it differs from game in this, that game requires an occupation whose event is uncertain, but lottery requires the drawing of lots of an uncertain event.

b. By force of the contract there is immediately acquired the hope of obtaining by lot the thing exposed. This hope grows or decreases according to the smaller or greater number of those drawing lots. The same hope involves a conditioned right to the thing exposed, which, when the favorable drawing has been made, passes into an absolute right.

c. Since lottery gives occasion to many abuses, in most kingdoms it is prohibited by civil law, unless permission to institute the lottery has been obtained from competent authority.

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**Notes**

926. Cf. Lugo, disp. 31, n. 4; Ballerini-Palmieri III, n. 906.

927. Among the authors who say this game is unjust, St. Francis de Sales also is counted (*Philoth.*, part 3, n. 29). Cf. Gury I, n. 949; Ballerini-Palmieri III, l.c.

928. C.A. Section 1271 ss. declares that a prohibited game produces no obligation, which seems to have to be understood of civil obligation: for just as it denies to the victor in a game of this kind an action for requiring the reward, so in like manner it denies to the loser an action for seeking back a price already paid; likewise C.G. Section 762.

**626. For the justice of lottery there is required:** a. Equality between what is given and what is accepted; and this equality is present when the price of the lot is worth as much as the hope of acquiring the thing exposed by lot is worth. To estimate the value of this hope it must be noted that it is so much greater, the greater the thing exposed is and the greater the number of those drawing lots is.

If it happens that in a lottery the price of the lot is greater than the hope of acquiring the thing exposed, and those who are about to draw lots, who know this, nevertheless freely buy lots for themselves, the buyers are considered to give the excess; this especially has place when the lottery is instituted for the utility of a pious cause.

b. There are those who for the justice of lottery also require this condition, that the profit received from the lottery be morally equal to the profit received by means of the same money from trade.[929] But others rightly teach that for the justice of this contract equality between the hope of gain and the price paid, and equality of danger among the participants, is sufficient.[930]

## Article Fourth. On Insurance

**627. Nature.** Insurance is a contract by which one person, for a certain price, obligates himself to compensating damages which another has suffered from a fortuitous event.

a. He who undertakes the obligation of compensation upon himself is called the insurer; but he who can require compensation is called the insured.

b. Insurance is an aleatory contract because its obligation for the insurer depends on an uncertain event; but it differs from other aleatory contracts in this, that its object consists in uncertain danger.

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c. The contract of insurance can be entered validly orally; writing or the instrument of insurance is required not for perfecting the contract, but only for proving its existence. Therefore the mutual obligations of the contracting parties already exist before the instrument has been signed, unless the contracting parties have agreed otherwise.

d. De Lugo reduces the contract of insurance to sale, because the undertaking of danger which threatens another's thing is sold for a price. The undertaking of danger is of so much greater value, the greater the value of the thing insured is and the greater the probability of detriment or destruction of the same insured thing is.

e. Because the danger of any thing, provided it is estimable by price, can be the matter of insurance, therefore according to the diversity of the thing insured there are diverse contracts of insurance. Commonly buildings are insured against the danger of fire, crops against the danger of hail or flood, merchandise against the danger of shipwreck or carriage, and life against the danger of death (*Lebensversicherung*).

**628. Justice of the contract.** In order that the contract of insurance be just, these conditions are especially required:

1. That the price of insurance be proportioned to the quantity of the danger which is undertaken.

The quantity of the danger must be determined not from the event, but from the probability of detriment which in the judgment of prudent men is had at that time at which the contract is made.

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**Notes**

929. Gury I, n. 943; Lehmkuhl I, n. 1137.

930. Ballerini-Palmieri III, n. 926; Genicot I, n. 663.

2. That the danger of the insured thing be declared integrally and not increased after the insurance.

a. From those things which have been established concerning sale, it follows that the contract of insurance is void if in declaring the danger of the insured thing a notable circumstance is passed over in silence, so that the insurer would not have made the contract if he had known the circumstance: for substantial error occurs concerning the matter of the contract. But if the circumstance passed over in silence is not notable, so that the insurer would nevertheless have made the contract, but would have demanded a greater price, the contract is valid unless it is made void by the sentence of the judge; but the price must be increased according to the measure of the danger.

b. The same must be said if, after the contract has been entered, the danger of the thing is increased; namely, if it is notably increased, the contract becomes void; if it is increased only lightly, the price must be increased according to the quantity of the danger.[931]

3. That the insurer have the means from which he can compensate the damages which he promised that he would compensate: for he acquires the right to the price only insofar as he can in reality furnish the security promised.

a. Therefore he can undertake as many obligations as he can fulfill according to probable foresight; but if he has undertaken more than he himself can fulfill, he cannot retain the price of insurance as to those which exceed his powers, even if the insured have suffered no damage.

b. If the insurer is equal to compensating not the whole damage but only part of it, some judge that the contract is invalid and the whole accepted price must be restored, because the insured does not consent to partial security; but others, on the contrary, think that he can retain the part of the price which corresponds to the quantity of security which he actually furnished, because the insured intends to obligate him to furnishing the security which he can furnish. But all agree in obligating the insurer to compensating the whole damage if the insured thing has perished, because by unjust fraud he impeded the insured from seeking true and full security elsewhere.

**629. Obligations of the contracting parties.** They are bound to observe the conditions of the contract, which have been established either by private agreement or by public law, provided they are just. Concerning conditions which are customarily attached to this contract, these things must be noted.

1. The insurer is not bound to compensate damages which have arisen from grave fault of the insured or of his relatives, who are named in the document of insurance.

a. If damage was caused from light theological fault or from merely juridical fault of the insured or of his relatives, he can require and accept compensation, unless by the sentence of the judge he is deprived of this right.

b. If damage occurs from the malice of other men, the insurer is bound to compensate the damage, unless otherwise established; but the damager is bound to restitution toward the insurer. He is not indeed the efficacious cause of the damage which the insurer suffers, but only the occasional cause; nevertheless from the statute of insurance the insurer succeeds into all the rights of the insured in relation to the damager.

2. The insurer is bound to compensate only the damage which the insured actually suffered; this damage is determined according to the value which the consumed thing had at that time at which it perished.

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**Notes**

931. Genicot I, n. 657.

If arbitrators establish a greater compensation than the value of the consumed thing requires, the insured can accept it; but he himself cannot require a greater one without injustice.

## On Life Insurance

[932]

**630. Notions.** Among the diverse contracts of insurance, life insurance, both because of its great frequency and because of the moral difficulties which it contains, merits special consideration.

a. A twofold diverse mode is especially distinguished according to which this contract is customarily entered: alpha. The one to be insured pays each year to an insurance society a certain sum of money under this condition, that immediately after his death a determined sum of money be repaid to his heirs or to a third person. beta. The one to be insured pays each year to the society a sum of money under this condition, that a determined sum be repaid to himself or to a third person if he arrives at a certain year of age, for example, the sixty-fifth year. But if he dies before the year determined in the agreement, the obligation of the society is extinguished.[933]

b. For the equality between the insurance society and the insured, on which the justice of the contract depends, it is required that the danger which the society assumes equal the premium which the insured pays. In the former mode the danger consists in this, that the insured dies before the premiums which the society accepts are equivalent to the sum to be paid. In the latter mode the danger consists in this, that the society must repay a sum which exceeds the premiums received, where the insured attains the determined year of age.

c. For forestalling detriment arising from this contract, the insurance society is accustomed to propose several questions to those to be insured, from which it tries to gather what duration of life the one to be insured can hope for. Now it is asked whether the contract of insurance must be held as valid or invalid if at any time a false response has been made to the proposed questions, whether by fraud or from error.

Concerning the question which the insurance society proposes about hidden sins committed from a depraved habit, it seems that one must say that the insurer does not have the right of questioning about moral defects, and therefore the one to be insured is not bound to manifest his hidden vices. Therefore denial of these is neither a lie nor makes the contract void. Nor is the society deceived or harmed by this: for it belongs to the physician to examine whether perhaps health has been affected by such a vice; but if this is not the case, there is no reason why the sum to be paid should be increased on that account.

**631. On the validity of the contract.** 1. The contract is invalid if a circumstance is denied or kept silent by which the probability of life being prolonged for a longer time by the one to be insured is notably diminished, as if he were to keep silent about a vomiting of blood which he had previously suffered: for substantial error intervenes concerning the object of the contract, namely concerning the life to be insured.

a. The contract must be considered valid if the notable defect of health was hidden both from the one to be insured and from the physician: for the society must undertake upon itself dangers of life which arise from altogether unknown causes.

b. If the one to be insured concealed in good faith a notable circumstance, he has the right of recovering the premiums paid by him; but those in whose favor the insurance was made acquire no right of receiving the determined sum. If in bad faith he kept silent about a notable defect of health, he not only loses the right of

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**Notes**

932. These things are taken from the excellent little work of Ph. Huppert, *Der Lebensversicherungsvertrag* (Mainz: Kirchheim, 1896).

933. Huppert, l.c., p. 15 ss.

receiving the insured sum, but he must also repair the damages which the society suffered by entering this invalid contract, for example, because of expenses. Yet societies are accustomed to declare that the annual premiums paid in this case pertain to them.

c. There are societies which in their statutes declare that a contract of insurance void because of false declarations is to be held as valid after it has lasted for five years. Therefore after this time has elapsed the contract can be held as valid, whether the false declaration was made in good faith or in bad faith.

2. The contract is valid, but must be reduced to equality, if a circumstance is denied or kept silent by which, had it been known, the insurer would indeed have made the contract, but would have demanded a greater premium, as if an illness is kept silent by which hope of prolonging life is diminished not altogether lightly only. Therefore there must be given to the society the premium which it would have demanded had the truth been known.

If therefore in the case of misfortune the entire insured sum is paid to an insured person who falsely declared accidental circumstances, he himself must restore a proportionate part from the sum accepted to the insurance society, or, according to the measure of the circumstances, to the poor.

3. The contract is valid and must be observed by each party if a circumstance of very slight moment is denied or kept silent, as if the one to be insured falsely denies that homeopathic remedies were used by him: for the insurer, even with the truth known, would have made the contract under the same conditions.

The statutes of societies which declare that any error in the responses invalidates the contract are opposed to justice in this matter; for the insured cannot be deprived of every right of his own because of a light error which does not harm the society in any way.[934]

**Note.** By these things are presented the principles from which one must establish the obligations and rights of the insured if the matter is not brought to a judge. When the matter has been brought to a judge, one must stand by the judicial sentence even in conscience, unless the contract is invalid on the part of the insurance society.

a. The judge gives sentence according to the statutes of the insurance society, which generally declare the contract void because of false declarations made in bad faith and, as a penalty for the fraud committed, deprive the insured of every right in the premiums paid.

b. On the part of the insurance society the contract can be unjust and invalid, both because there is not a just proportion between the annual tax and the insured sum to be paid after the death of the insured, and because the procurators of the society fraudulently deceived the one to be insured.

**631*. On insurance of workers. Declarations.** 1. This insurance tends to this, that workers, for the time in which they become unfit for labors and can no longer provide for themselves and their own, receive a certain revenue. Since the wage received for labor does not suffice for them to provide for themselves for times of this kind, poverty is guarded against by this means of insurance.

2. According as the causes are diverse on account of which workers cannot be free for labor, diverse insurances are distinguished: of the sick, of misfortune, of old age, etc.; *Kranken-, Unfall-, Alters-Versicherung*. In Germany, Austria, and Switzerland public laws compel either all workers, or at least those laboring in workshops in which there is greater danger of misfortune, to be insured. Therefore insurance of this kind is governed by public law, not by a contract privately entered. The tax of insurance is paid partly by the workers, partly by the masters; from this the workers acquire a right to the insured sum of money.

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**Notes**

934. Huppert, l.c., p. 176 ss.

**For the solution of cases.** If in a particular case there is question of the worker's right to the insured sum, attention must be given to the words of the law, which, since it was made for the assistance of workers, admits as broad an interpretation in their favor as can be made.

a. The annual pension is paid only to those to whom a misfortune happens in the exercise of work (*beim Betriebe*); but that is considered to have happened in the exercise of work which has occurred in an action which in some way coheres with the exercise of the work, for example, in access to the place of labor, during lunch which is taken in the place of labor, during leisure which is taken in the place of labor.

b. Workers do not receive an annual pension if the misfortune happened by their fault; but those misfortunes alone are considered to have happened by the fault of the worker which have been caused deliberately or from great negligence, by no means those which have been caused from carelessness, rashness, or some light negligence.

c. He who unjustly received an annual pension, for example, by falsely narrating the cause of the misfortune, of himself is bound to return the sum received and cannot licitly receive a further one. But since he cannot confess the fraud committed without danger of grave damage, he licitly receives the annual sum under this condition, that the money received be distributed to the poor. But if the worker himself is truly poor and cannot be sustained in another way, he can retain for himself the pension, or at least part of it. That restitution be made not to the society but to the poor can more easily be permitted because the damage which has occurred to the contributors themselves by this fraud is light, since many concur for the insurance. Wherefore that restitution be made to those damaged is an obligation only under light obligation; but restitution which obliges only under light obligation can from a reasonable cause be made to the poor.

**631**. Note.** Lehmkuhl judges that contracts void by natural law because of false declarations can probably be held from the very statutes of insurance societies as valid until they are declared invalid by the society or by the judge; therefore the insured can licitly accept the insured sum if the contract is not rescinded by the society. Yet he is bound to repair the damage which he efficaciously inflicted on the society by his mode of acting. Hence:

a. Because he pays a tax less than the just amount, he is bound to increase this up to that quantity which the insurer would have demanded if he had known the defect, and he must restore the increase to the society.

b. Reparation of damage must be made also in the case in which the false declarations proceeded from inculpable error, because the error is the efficacious cause on account of which the society accepted an annual tax less than the just amount.

c. But if the death of the insured follows not because of the defect concealed, but from another cause, the increase of the annual tax is not to be enjoined, because the fraud is not the efficacious cause of the damage.

d. Indeed even in this case damage is not efficaciously inflicted on the society, in which the insured actually lived as long as, probably from statistics, it was foreseen that he would live: for there is present a proportion of equality between the annual tax and the sum of insurance.[935]

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## Article Fifth. On Stock-Exchange Speculations

[936]

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**Notes**

935. Lehmkuhl, *Casus consc.* I, n. 919 ss.

936. Villada, *Casus conscientiae* etc.^3 (Brussels: Vromant, 1885), II, p. 272 ss.; Ballerini-Palmieri III, n. 927 ss.; Gury, *Casus conscientiae* I, n. 947 ss.; Gopfert, *Moraltheologie*^6 (Paderborn: Schoningh, 1906), II, n. 125.

**632. Notions.** 1. The stock exchange (*Borse*) signifies a place constituted by public authority in which certain businesses are transacted and certain contracts are celebrated. Since the object of these contracts is especially twofold, namely money or securities, such as shares and obligations, and merchandise, such as grain and oil, a twofold exchange is distinguished: money exchange (*Geldborse*) and commercial exchange (*Warenborse*).

2. The exchange, which in itself is useful, indeed necessary in a well-ordered republic, especially so that occasion of trading securities may be available, began to have a bad reputation from the time when aleatory contracts were frequently celebrated in it, from which very great damages and dangers arise both for the contracting parties and for others. These contracts are called by the generic name speculations or operations of the exchange; but in species there are distinguished operations for a term (*Termingeschafte*) and operations for a premium (*Pramiengeschafte*).

3. Operations for a term are called those in which securities or merchandise are bought in such a way that the price must be paid after a certain time, namely on a day established in the exchanges, for example, the first or fifteenth of the month, which day is called liquidation. But the price to be paid is that which will be in force on the day of liquidation in the exchange. Since price is subject to perpetual changes, it ordinarily happens that the future price obtains an increase or decrease. Now on the change of price which can occur up to the day of liquidation the whole speculation of the contracting parties is founded: for generally they do not intend to hand over securities and merchandise, but only this, that from him whom the change of price disadvantages the difference be paid to the other. If the price has increased, the seller must pay the difference to the buyer; if the price has decreased, the buyer must pay the difference to the seller: for the seller is said to play for depression (*a la baisse*), the buyer for elevation (*a la hausse*).

A and B on March 15 enter a contract concerning 100 modii of wheat and 500 florins, in such a way that A is obligated on September 15 to hand over 100 modii and B on the same day is held to pay 500 florins. Now if meanwhile the price of wheat increases so that it is sold for 540 florins, the buyer gains; but if meanwhile the price of wheat decreases so that it is sold for 470 florins, the seller gains. But A and B can also enter the contract in such a way that they are not bound to hand over the merchandise and price, but only to pay the difference between the price established in the contract and the common price which wheat has on the determined day. If the price has increased, therefore A will be held to pay the buyer 40 florins; but if the price has decreased, B will be held to pay the seller 30 florins. This same thing must also be transferred to purchase-sale of securities.

4. Operations for a premium are called those in which the buyer reserves to himself the right of rescinding the contract on a certain day, for example, the day before liquidation. If he does this, he must pay the seller a certain sum, which is called the premium; but if he declares that he wishes to stand by the contract, the purchase, which previously was conditioned, becomes absolute.[937]

**633. Their liceity.** 1. Operations of the exchange considered in themselves are not unjust: for they are recalled to aleatory contracts and in species to wagering and game. Therefore if the conditions are observed which make these contracts licit, especially if the contracting parties have or hope to have at the established time what they promise, stock-exchange speculations in themselves are licit.

a. In operations for a term each one hopes that he will gain; therefore since on each side there is hope and danger, a wager is in reality entered. Yet the contract is not merely aleatory, since by prudence and sagacity the future price can be foreseen in some way, for which reason this speculation is rightly compared to an industrial or mixed game.

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**Notes**

937. Genicot I, n. 664.

b. In operations for a premium a right is sold which in reality is estimable by price; therefore if the premium is equivalent to this right, the contract is not opposed to justice.

Nor are these speculations to be called illicit for this reason, that they furnish a means of procuring great riches for oneself without labor: for if it is permitted to become rich without labor by other modes, for example, by accepting a great gift or rich inheritance, or by occupying goods which until now belonged to no one, it will also be permitted by means of these speculations, provided injustices are avoided and duties, whether social or religious, owed from another source are fulfilled.

2. But per accidens several vices can be joined with stock-exchange speculations.

a. Because unjust means are employed by which the price of the thing sold is increased or decreased, for example, by spreading false rumors concerning the state of a kingdom or of some society.

b. Because so great a sum is exposed in speculations that there is danger of losing one's entire substance with detriment to family and creditors.

c. Because the price of saleable things is artificially increased or decreased in such a way that many fall into poverty from it: for although this is done by means just in themselves, for example, by buying up a great supply of securities or merchandise and thus constituting something like a monopoly, nevertheless charity forbids anyone to seek riches with the ruin of others.

# Book Seventh. On the Eighth Precept of the Decalogue

[938] "You shall not speak false testimony against your neighbor." Ex. 20:16.

This precept, insofar as it is negative, prohibits primarily false testimony, whether in judgment or outside judgment; secondarily, however, it prohibits lying and the unjust lesion of the reputation and honor of one's neighbor which is done by words. But insofar as it is affirmative, it commands that we always speak the truth. Therefore by this precept generally it is prohibited that damage be inflicted on one's neighbor by words or equivalent signs. Wherefore one must treat: a. of veracity and fidelity; b. of lying; c. of detraction; d. of insult; e. of violation of a secret.

Although violation of a secret can harm one's neighbor not only in the goods of reputation and honor, but also in goods of life and fortune, and therefore can also be opposed to the fifth and seventh precept, nevertheless authors are accustomed to refer the treatment of it to the eighth precept.

## Question First. On Veracity and Fidelity

[939]

**634. On veracity.** 1. Veracity is a virtue which inclines the will to inducing conformity between our mind and the signs by which we manifest something to our neighbor; therefore it inclines to taking care for truth in signs.

a. Veracity is a special virtue, because it regards a special honesty distinct from the honesty of other virtues, namely truth in sayings and deeds.

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**Notes**

938. St. Thomas II-II, q. 72-74; St. Alphonsus, l. 3, n. 962-1003; Lugo, *De iustitia et iure*, disp. 14; Tamburini, *Explicatio decalogi*, l. 9; Reuter, *Theologia moralis* II, n. 395-432; Sporer-Bierbaum, *Theologia moralis decalogalis* II, tract. V, n. 630-776; Ballerini-Palmieri, *Opus Theolog. moral.* II, n. 1050-1102; Lehmkuhl, *Theologia moral.*^10 I, n. 1172-1200; Genicot, *Theologiae moralis institut.*^3 I, n. 412-433.

939. Lessius, *De iustitia et iure*, l. 2, c. 47, n. 29 ss.; Kossing, *Uber die Wahrheitsliebe* (Paderborn: Schoningh, 1893).

b. Veracity is a virtue annexed to justice: alpha. because it is toward another: for signs have been given to us so that we may manifest to others the judgments of our mind; beta. because of itself it induces a moral debt; but per accidens it can happen that a strict right belongs to others of requiring truth, for example, in contracts.

2. The material object of this virtue is signs by which we manifest our mind to our neighbor; the formal object is the honesty which is found in the conformity of the mind with external signs: for that signs which have been given to us for making the mind open to others be discordant from the mind is opposed to the natural order; then, without truth social life cannot stand.

3. The duties of veracity are: a. to love truth in sayings and deeds; b. to take care lest anything be said against the judgment of the mind; c. to express the mind where reason and occasion demand this: for veracity does not require that always and everywhere the judgment of the mind be opened, which rather sometimes must be hidden; d. to inquire into the truth of the thing when something must be absolutely affirmed or denied; e. to execute promises.

**635. On fidelity.** 1. Fidelity is a moral virtue inclining the will to conforming deeds to promises, that is, to past words promising.

a. Fidelity is akin to veracity: for just as veracity requires that we conform words to the mind, so fidelity requires that we conform deeds to words.

b. Like veracity, so also fidelity has very great social moment: for faith and trust in one's neighbor (*das Vertrauen*) are founded on fidelity; but human commerce requires no less that we be able to trust those promising than that we be able to believe those speaking.

2. The obligation of fidelity arises from promise, by which someone freely obligates himself to doing something afterward: for it belongs to the nature of promise that the one promising intends in some way, either from justice or from fidelity, to obligate himself to doing the thing promised.

a. A saying by which someone predicts that a future action will be done or omitted signifies two things: the present will, or purpose, of the future action, and the future execution of the purpose. Therefore the same saying must have a twofold conformity: conformity with the present purpose, which veracity requires, and conformity with future execution, which fidelity requires.

b. Not any purpose whatsoever of a future action or omission expressed before others obliges to execution; only a promise made to others induces the obligation of execution. He who does not execute a purpose, even a serious one, is accused of inconstancy; he who does not execute a promise is accused of infidelity: for a saying in an externally expressed purpose is nothing except a sign of the internal will of doing something; but in a promise a saying is a surety of future execution, or is faith made to another concerning future execution (*sein Wort geben*).

c. He who seriously promises something must have the will of obligating himself to doing that which he promises, and the will of fulfilling the promise. He who promises without the former will sins by lying; he who promises without the latter will sins by mental infidelity.

3. Fidelity from itself obliges only under light obligation; wherefore infidelity does not exceed venial sin, unless damage follows to one's neighbor because the thing promised is not furnished.

There are those, such as Lessius, Suarez, and Vasquez, who say that fidelity in grave matter obliges under grave

obligation; but Lugo rightly notes[940] that the dishonesty which is contained in infidelity is not grave. For he who does not observe faith given to another deceives the other, who had hope, not right, concerning the thing promised; but to frustrate hope of this kind is not grave. Moreover he who does not observe faith given is not worthy that trust be given to his promises; but neither is this deformity and baseness of the one promising grave. The reason is the same on account of which a lie from itself is only a light sin.

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# Question Second. On Lesion of Truth

## Article First. On Lying

[941]

**636. Definition.** A lie is defined: speech against the mind brought forth for deceiving. By the name of speech is understood any external sign by which the interior concepts of the mind are signified, whether this is done by words or by nod or deed.

a. Four things are to be distinguished in a lie: alpha. speech discordant from the judgment of the mind; beta. the will of saying what is false; gamma. the will of deceiving another; delta. the deception of another. The two former things pertain to the essence of a lie; the fourth is its effect; whether the third is an essential element of a lie or rather a necessary consequent is disputed. It seems one must say that the intention of deceiving belongs virtually and implicitly to the essence of a lie, insofar as the speaker sees that the hearers are deceived if they give faith to his words, and wills that the false thing which he himself brings forth be believed by them; but not formally and explicitly, insofar as he wills that error be generated in the hearers.[942] Therefore a lie is defined by many as: speech against the mind with the intention of saying what is false.

b. Therefore he who says what is false, thinking it to be true, errs, but does not lie: for he does not have the will of saying what is false. On the contrary, he who affirms what is true, which he thinks false, does not indeed err, but he lies, because he wills to say what is false. He who thinks that prudent hearers do not believe the things which he affirms does not lie, even if he speaks against the mind, because he does not have the will of deceiving. Therefore he does not lie who says that he has seen a flying ox, nor the merchant who says that merchandise cost him more than he sells it to others.

c. A lie can be committed in four modes: alpha. if someone affirms that something is which he knows is not; beta. if someone denies that something is which he knows is; gamma. if someone affirms as certain that about which he doubts whether it is; delta. if someone affirms to be doubtful what is certain to him.

**637. Division.** 1. A lie by reason of the intended effect is divided: a. into harmful, which is brought forth so that it may harm; b. into officious, which is brought forth so that it may profit; c. into jocose, which is brought forth so that delight may be drawn from it. Yet in order that a joke be a lie, it is required that it be made with the intention of saying what is false and deceiving others: for he who says what is false while knowing that hearers, at least prudent ones, understand it as false, does not lie.

2. If lie is taken generically for discordance between the mind and its sign, from verbal lie, which can also be committed through writing, must be distinguished real lie, by which someone by deed signifies one thing which he does not have in mind. This is properly called simulation; a lie properly is a sin of the mouth.

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**Notes**

940. *De iustitia et iure*, disp. 23, sect. 6, n. 90 ss.

941. Fr. Ildephonsus, Carmelite, *De mendacio et falsiloquio morali*; Laymann, l. 4, tract. 3, c. 13.

942. Cf. St. Thomas II-II, q. 110, a. 1.

From formal simulation, by which someone intends by deed to signify one thing other than what he has in mind, must be distinguished material simulation, by which someone by deed does one thing other than what he has in mind, but does not intend this. The former is never licit, since it is a true real lie; but the latter is licit from a just cause by the same reason as mental restriction. Thus a rich man licitly puts on worn clothing lest he be despoiled by robbers.

**638. Malice.** 1. A lie is evil in itself, wherefore it is not permitted to lie, not even for avoiding the gravest evil.

a. Whether a lie, especially an officious lie, is absolutely and intrinsically evil, or is sometimes licit, is a very difficult question. Gentile philosophers, Plato and the Stoics, taught that a lie is sometimes licit, namely where there is question of averting a great evil or of pursuing a great good. In the Christian age not only the Priscillianists and Semipelagians asserted that a lie was licit, but also, among ecclesiastical writers, Origen and Cassian; but Clement of Alexandria, Jerome, and Chrysostom are undeservedly counted among these. St. Augustine proves its internal malice,[943] and the scholastic theologians, adhering to his footsteps with common consent, defended the same opinion. Afterward many, especially Protestants with Hugo Grotius, distinguishing between lie and false-speech, declared that a lie, which is repugnant to the right or good of others, is always illicit, but false-speech, which consists simply in speech against the mind, is of itself licit. More recent non-Catholic writers generally adhere to this doctrine, which also some Catholic doctors do not wholly reject. These opine that a lie is then especially licit when it is necessary for protecting a secret.[944] But the common doctrine must absolutely be held: every speech alien from the mind, even if it harmed no one but rather greatly profited, is a lie; and every lie is morally evil.[945]

b. Arguments of reason. alpha. That which is repugnant to the natural end for which speech has been instituted is prohibited by natural law; but a lie is repugnant to the natural end of speech and to the faculty of speaking, which were instituted by the author of nature so that man may manifest his thoughts to man. beta. That is prohibited by the law of nature which, if it were licit, would redound to the detriment of human society; but if a lie were licit, faith and security could not be had in society. In order that the force of this argument be perceived, it must be estimated not from something once done, but from something once licit. gamma. That which is repugnant to divine perfections is morally evil; but any lie whatsoever, which by its nature is discordance between a sign and the thing to be signified, is repugnant to supreme truth. Therefore St. John says: every lie is not from truth, that is, from God,[946] but every lie is from the devil, who is a liar and the father of lying.

c. The same is confirmed by texts of Sacred Scripture: *You shall flee a lie*;[947] *Do not be willing to lie any lie*;[948] *Putting away lying, speak truth each one with his neighbor*;[949] *Every lie is not from truth*;[950] which texts, without any distinction and limitation, reprove lying itself.

To the several texts of Sacred Scripture which seem to commend lying,[951] it suffices to note what St. Augustine has: "When examples of lying are proposed to us from the holy Scriptures, either they are not lies, or, if they

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**Notes**

943. St. Augustine, *Contra mendacium ad Consentium* and *De mendacio.*

944. Cf. Th. Meyer, *Institutiones iuris naturalis* (Freiburg: Herder, 1900), II, n. 54 ss.

945. Cf. Ballerini-Palmieri II, n. 1055.

946. 1 John 2:21; John 8:44.

947. Exod. 23:7.

948. Ecclus. 7:14.

949. Eph. 4:25.

950. 1 John 2:21.

951. Exod. 1:19; Josh. 2:4 s.; 1 Sam. 20:6; 21:2 s.; 4 Kings 6:19; Tob. 5:18, etc.

are lies, they are not to be imitated."[952] Interpreters must be consulted concerning the individual texts.

2. A lie of itself does not exceed light sin, because formally it is repugnant neither to charity nor to justice, but only to veracity, which from its kind obliges only under light obligation. Insofar, therefore, as a harmful lie is repugnant to charity or justice, it is a sin grave from its kind (635, 3).

Hence the words of Sacred Scripture, *The mouth that lies kills the soul*,[953] must be understood thus, that a lie kills the soul dispositively, not formally, insofar as the custom of lying disposes to grave sins: for he who is accustomed to lies does not shrink from gravely harmful lies, indeed not even from perjuries.

## Article Second. On Amphibology and Mental Restriction

**639. Declarations.** 1. Amphibology is the use of words which of themselves are equivocal and therefore apt for generating a diverse sense. Thus *gallus* signifies a man sprung from Gaul and a rooster.

If someone uses amphibology, for example, "I killed a *gallus*," or "We are Germans," it can happen that the words are brought forth according to one signification by the speaker and understood according to another by the hearer, who is thus indeed deceived, yet nevertheless could understand the words also in the signification in which they are brought forth by the speaker: for of themselves they have a double sense.

2. Mental restriction is defined: an act of the mind by which the words of the speaker, through something which is kept silent or retained in the mind, are narrowed to another sense than the natural and obvious one.

It is one thing to lie, another to conceal the truth. Although to lie or to say what is false can never be licit, nevertheless to conceal the truth is often licit, indeed sometimes even necessary. Now mental restriction frequently is the only means of concealing the truth: for often neither is it permitted to decline a response nor to repel the one questioning.

3. A twofold restriction is distinguished: purely mental restriction, if the sense of the speaker can be perceived in no way, as if, when asked whether he has seen Rome, he responds, "Certainly," adding in his mind, "in a picture"; and broadly mental restriction, if the sense of the speaker can in some way be understood from the circumstances.

In mental restriction the words of themselves indeed have only one sense, but in the circumstances of person, place, or time in which they are brought forth, they admit another sense besides the natural one. Thus one asked about a secret which he knows but must conceal, and responding, "I do not know," manifestly denies only communicable knowledge; in this sense Christ denied that he knew the day of judgment.[954]

**640. Principles.** 1. From a just cause it is permitted to use amphibology or equivocation and to confirm it by oath.

Words brought forth amphibologically contain in themselves and externally in relation to the hearer the sense intended by the speaker; therefore the speech is not against the mind and hence is not a lie. Thus Christ said that he was sleeping who had died.[955] That a just cause is required in order that an amphibological oath be licit is clear from the things to be said below.

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**Notes**

952. *Contra mendacium*, l. 2, c. 15, n. 31.

953. Wis. 1:11.

954. Cf. Mark 13:32; likewise John 7:8.

955. John 11:11.

2. Purely mental restriction is never licit, because it does not differ from a lie: for in this restriction the words of the speaker, both of themselves and from the circumstances externally, have only one sense, and that discordant from the mind of the speaker.

Wherefore after the propositions (26, 27) condemned by Innocent XI, there is no theologian who says that purely mental restriction is licit, even if before this several had not judged it illicit.[956]

3. From a just cause we can licitly use broadly mental restriction, unless the one questioning has the right of knowing the truth; indeed sometimes we must use it.

a. This restriction is not a lie: for the words of the speaker are equivocal not of themselves but from the circumstances. Therefore they are conformed to the mind of the speaker, since they truly contain the sense which the speaker has in mind, even if only obscurely or incompletely. Moreover, for the good of society it is required that there be a means of licitly concealing the truth and preserving a secret; but, St. Alphonsus concludes (n. 152), "if it were not permitted to use broadly mental restriction, there would exist no mode of licitly concealing a secret, which would be harmful to human commerce no less than a lie." Finally, one's neighbor is not directly and necessarily deceived, but his deception is only permitted: for if the words of the speaker with restriction are taken by the hearer according to a false sense, the hearer is in reality deceived; but since the words of the speaker can be understood according to a true sense, the deception must be imputed not to the speaker but to the hearer himself.

alpha. A manifest sign of this necessity is detected in those affirmations of many by which they assert that they had to lie either for preventing discord or blasphemies or other inconveniences. In circumstances of this kind there is a just cause of using mental restriction; and since the faithful rarely grasp the theory concerning mental restriction, they must simply be told that the responses which they bring forth in circumstances of this kind for avoiding grave inconveniences are not lies but licit responses.

beta. From the end of restriction it is clear that the speaker can not only deliberately conceal the full truth through restriction, but can also desire and intend that the hearer not perceive the full truth; but it is permitted only to allow his deception. Yet in order that mental restriction be licit, it is required that the sense retained in the mind be able to be known morally or prudently from the circumstances. Therefore it is not necessary that the speaker use a restriction which the hearer easily supplies; yet this is required, that the restriction be able to be understood prudently and reasonably from the circumstances.

b. From a just cause: for it is not permitted without reason to furnish another an occasion of deception. Moreover, if this were always and without any cause permitted, no one could any longer believe another, because in any saying whatsoever he could and would have to suspect ambiguity, which would turn to manifest detriment of human society.

A just cause of using mental restriction is a true utility which follows from the concealed truth, or a true inconvenience, whether one's own or another's, which would follow from the truth manifested. But it is never permitted to use mental restriction where the one questioning has the right of knowing the truth: for to this right there corresponds in the other an obligation of confessing the truth without ambiguity, as if children are asked by parents, or those to be promoted to some office, order, or marriage, by superiors concerning a defect or crime committed, because they can and must withdraw from the office which they seek if they do not wish to declare the crime.[957]

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**Notes**

956. Cf. Viva, *Damnatae theses*, on the cited propositions.

957. Cf. proposition 28 condemned by Innocent XI.

c. We must use broadly mental restriction when neither can the truth about which inquiry is made be manifested without sin, nor can the one questioning be dismissed without a response.

An example by which this may be clear, if we prescind from the secret of confession and of office, is presented by Lehmkuhl, *Casus conscientiae* I, n. 455 ss.

4. From a just cause it is licit to confirm broadly mental restriction by oath: for since words brought forth with broadly mental restriction are true, God is not invoked in testimony of falsity.

a. A just cause of swearing with mental restriction is a great good to be preserved or grave damage to be avoided. Yet because many do not grasp the theory of mental restriction and others calumniate it, it is rarely expedient that oaths with mental restriction be recommended, unless they are necessary.

b. There are those who affirm that an oath emitted with mental restriction is repugnant both to the essence and to the end of an oath, and is therefore illicit. But they are plainly mistaken. For the essence of an oath requires that that which is confirmed by oath be true; but speech with broadly mental restriction is true. The end for which an oath was instituted does not require that this end be in reality obtained in individual cases, but that it can be obtained; or it requires only this, that the one swearing not impede the attainment of the end by a positive action, but only permit its frustration from a grave cause. But this obtains in oaths of this kind.

**Note.** All understand that for human intercourse a means of concealing the truth is necessary in those circumstances in which a response cannot be declined. According to the opinion of Catholics, this means is broadly mental restriction; but according to the doctrine of Protestants, it is a lie, or false-speech, which they say is licit when it harms no one but profits the speaker or another. Although practically in most circumstances broadly mental restriction and false-speech return to the same thing as to the matter, nevertheless the doctrine of Catholics must absolutely be held, both because it says that every lie is illicit and therefore more easily forestalls abuses, and because mental restriction, as speech true in itself, can be confirmed by oath, which sometimes is necessary; but a lie, even if it is called licit, cannot be confirmed by oath.

**641. Applications.** The difficulty of this matter is not in the liceity of mental restriction, which all must concede who understand what is signified by it; but the difficulty is in discerning purely mental restriction from broadly mental. Concerning this matter it must be noted that he who questions, from the usage received among men, does not expect, or cannot expect, any response except one conforming to the circumstances; and therefore the one responding does not lie if he restricts the response to the circumstances of the one questioning and of the one responding, provided he observes the condition proposed above (n. 640, 3, beta).

This is confirmed by common usage, from which it is established that circumstances bring it about that the words of the speaker can and must be understood in another sense than the natural and obvious one. Indeed, there are innumerable cases of human life in which the words of the speaker or of the one questioning are not accepted according to the sense which they have of themselves, but which they have from determined circumstances. Thus, to prescind from ironic sayings, one asked by him who seeks his father through the house whether he has seen his father rightly responds, "No," understanding well from the circumstances that the matter is whether he has seen the father here and now.

a. To one asking those things which cannot be manifested, it is licitly answered, "I do not know," namely, so as to tell you, or by communicable knowledge. Therefore a confessor asked whether Titius confessed homicide can and must respond: "I do not know," because he does not know it by communicable knowledge. Yet if the words or circumstances of the questioner are of such a kind that the word "I do not know" signifies every ignorance, it is not permitted to use it, but one must tell the questioner that he questions in vain. But the confessor, if the questioner were to insist whether he did not know this by communicable knowledge, can

still answer, "I do not know": for since the questioner ought to know that the confessor cannot speak about this matter, he cannot prudently expect any other response unless he wishes to bear a refusal.

b. In those circumstances in which there is present a grave reason for concealing the truth, the denial of the thing, "No," from the common judgment of men, does not signify that the thing is denied, but that manifestation of the thing neither ought nor can be made. Therefore a penitent asked by a confessor about a sin which he is not bound to confess can respond with restriction that he did not commit it, namely, in such a way that he is bound to confess it, unless the confessor justly asks in order to know the state of the penitent: for the penitent rightly supposes that the confessor does not wish to question indiscreetly, and therefore expects a response only to those things which he prudently asks. But a prudent confessor ought to suspect that the response can be taken in this way.

c. If public persons are asked about matters committed to their trust, such as secretaries, legates of princes, leaders of armies, magistrates, advocates, physicians, surgeons, midwives, and whoever have an office and reason for concealing the truth, they can use restriction, rightly supposing that the one questioning does not wish to provoke them to an illicit or imprudent thing.

d. To one asking whether I can lend him money, it is permitted to respond, "I do not have it," subunderstanding: which I can easily or securely lend. For it can prudently be supposed that the one asking does not wish to be troublesome by his petition and therefore seeks only that money which can be lent without difficulty.

e. Servants from the will of their master can deny that he is at home, although he is present, because such speech from received usage signifies that he is not at home insofar as he can be seen or visited. Yet attention must be given to the custom of places.

f. He who is asked by a tax collector whether he has anything about which a tax must be paid can of himself respond that he has nothing, namely about which he must pay or which he must declare; for since of himself he is not bound to pay or declare, the collector by the highest right cannot prudently expect any response except one corresponding to the obligation of the speaker. Yet tax collectors questioning thus generally intend to free travelers from troublesome inspection; wherefore the words of the one questioning, from the circumstances, rather contain this sense: whether they have anything about which they would have to pay if it were detected by the inspector. Therefore tax collectors, especially from clerics and priests, deservedly expect a response without restriction.

g. Some restrictions which are called broadly mental by authors most certainly must be referred to the purely mental, because the conditions explained above are not observed. Thus if an adulterous woman, asked by her husband whether she committed adultery, denies this while subunderstanding idolatry, because idolatry in Sacred Scripture is sometimes called adultery, she uses purely mental restriction. By these things it is not denied that an adulteress can employ restriction and deny the crime committed, namely that she is bound to manifest it to her husband; for on the one side the husband does not have the right of knowing the hidden crimes of his wife, and on the other side the wife cannot manifest the truth without very grave inconvenience. Therefore the husband ought prudently to judge that the response can be conformable to the circumstances, and therefore inadequate.

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# Question Third. On Lesion of Reputation

## Article First. On the Right to Honor and Reputation

**642. Preliminary notions.** 1. Honor taken broadly is the good estimation concerning someone's perfections.

a. In this sense honor is an internal judgment whose object is constituted by the perfections of one's neighbor, that is, the gifts and qualities by which a man is commended in human society. Therefore qualities both moral, namely virtues, and natural internal, as wisdom, learning, talent, eloquence, excellent disposition, strength, beauty by which women are commended, health, and also natural external, as riches, nobility, legitimate birth, etc.

b. The object of this judgment is the foundation of reputation and of honor strictly so called; and since this foundation can be true and false or putative, true and false honor, true and false reputation, are distinguished.

2. Honor taken strictly is external testimony concerning someone's perfections, namely where the good estimation which we have conceived concerning our neighbor manifests itself outwardly in the whole manner of acting.

3. Reputation is the common estimation concerning someone's perfections brought forth by speech.

a. Reputation taken generally is the common estimation concerning someone's qualities, which can be good or bad. It is clear that good reputation is considered here, which the proposed definition therefore exhibits.

b. Common estimation is said, because reputation consists in the judgment of many brought forth by speech: for reputation by its nature signifies something which is public. Wherefore the judgment of one or another concerning someone, brought forth by speech, cannot constitute his reputation. Yet it is not required that this judgment be true.

**643. On the right to honor and reputation.** 1. To each person belongs the right to the good estimation which is owed to the human person, and likewise that the honor which he merits be testified to him.

a. The right to good estimation is the negative and positive estimation by which nothing evil but rather that dignity which human personality contains of itself is attributed to another. Although no one of himself has the right to the estimation by which special virtues are attributed to another, nevertheless to each belongs the right of requiring that in human commerce he be treated as one to whom the virtues common among upright men belong: for each one must be held good until he is proved bad.

b. Whence it is clear that each one must be honored, because in each man, even of the lowest condition, there is present some perfection on account of which honor can be shown to him, which the Apostle indicates: *anticipating one another in honor.*[958]

2. Each one has a right to his own reputation, not only true but also false.

a. For reputation is an external good produced by one's own industry; but over an external and proper good each one of himself exercises full right and ownership (n. 365). The right to false reputation is not taken directly from the very right of man, but from the inconveniences which would follow against the common good if it were everywhere permitted to publish the hidden defects of others.

The inconveniences which would follow against the good of peace and tranquility if hidden defects were everywhere manifested are these: one's neighbor could not usefully discharge his office, he would lose all authority, he would lack the good of conversation, those closely joined to him would be affected by disgrace, and he himself would be deprived of a great safeguard against greater vices.

b. Further, the right to true reputation is absolute and universal, which demands that each one be held by all as he truly is; wherefore this reputation can never licitly be taken away. But the right to false reputation is

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**Notes**

958. Rom. 12:10.

relative and limited, and since it is founded on the common good, it ceases when at some time the good of others rather demands that the hidden defects of one's neighbor be revealed.[959]

The reputation which each one needs is ordinary reputation or simply a good name, which is necessary to him for carrying out duties according to the condition of life, whether it has arisen from life and morals truly or only apparently honorable, from talents which truly belong to him or which by error are thought to belong to him. Therefore no one has a right to extraordinary reputation, which is founded on singular gifts and talents, for example, of an outstanding theologian, orator, jurist, physician, etc., if in reality he does not possess these. Wherefore the manifestation of an error on which an extraordinary reputation rests is not against justice nor against charity, provided there is a reasonable motive of manifesting it.

3. Even the dead have a right to reputation: for all things are present which are required that they be said to have a right to reputation, since the subject of the right still consists, namely their immortal soul, and they esteem greatly and desire to retain the reputation by which they live among men. Therefore it is a sin against justice to injure the reputation of some dead person, whether he has died long ago or recently. Yet since the dead need reputation less, of itself it is a lesser sin to injure the reputation of the dead than of the living, although it can be mortal.

a. It is also clear that moral persons, such as cities, religious orders, and monasteries, have their own reputation and right to reputation: for just as they are an apt subject of a right in goods of fortune, so also in the good of reputation and honor.

b. But those who are altogether unknown in some place have no reputation, and therefore no right to reputation.

## Article Second. On Detraction and Calumny

**644. Declaration.** 1. The reputation of another can be unjustly violated in a twofold mode, either by detraction or by calumny. Detraction is the unjust and hidden lesion of another's reputation which is done by revelation of a true crime, or of one which in good faith is believed to be true; but calumny is the unjust and hidden lesion of another's reputation which is done by narration of a false crime.

Some in the definition of detraction and calumny add with St. Thomas the word hidden;[960] others omit it. Those who add it call only a lesion of reputation brought forth while the one defamed is absent detraction, and they call a lesion of reputation brought forth before the one defamed mere insult; those who omit it call a lesion of reputation brought forth before the one defamed insult joined with detraction.

2. A distinction is made between direct detraction and calumny, which are done from the intention of injuring reputation; and indirect, which is done from lightness and talkativeness without the intention of defaming.

According to others, detraction and calumny are done directly when another's vices are narrated, which obtains in four modes: if a false crime is imposed, if a true crime is amplified, if a hidden one is manifested, if a good work is taken sinisterly. The same are done indirectly when another's gifts are diminished, which again can happen in four modes: by denying the good works of one's neighbor, by lessening them, by being silent when others praise, by praising coldly.

**645. Moral malice of detraction and calumny.** Detraction and calumny are sins mortal from their kind against justice: for they injure the strict right which another has to his own reputation; but a sin against commutative justice is mortal from its kind. Moreover theft is a sin grave from its kind against justice; therefore

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**Notes**

959. Cf. Lugo, disp. 14, n. 97.

960. *Summa* II-II, q. 73, a. 1.

*a fortiori* detraction and calumny, because reputation is a greater good than riches.[961] Therefore each can be a light sin from smallness of matter. But sins of detraction will more often be light from imperfection of the act, especially because of inadvertence to the damage of one's neighbor.

a. To this is referred whispering (*Ohrenblaserei*), which is detraction or calumny by which discords are sown among friends. Therefore whispering differs from detraction and calumny by reason of the end, because it is committed in order secretly to dissolve friendship and to sow discord. Hence, other things being equal, it is a graver sin than simple detraction, because it moreover deprives another of the good of peace and friendship with his neighbor.

b. To commit the sin of detraction it is not necessary that the detractor have the intention of detracting from his neighbor and of harming him in reputation, but it suffices that he advert that from those things which he narrates the blackening of reputation follows.

**646. Norm for judging gravity.** The gravity of detraction and calumny is taken from the gravity of the damage which another suffers in reputation; but the gravity of the damage depends not only on the gravity of the crime which is manifested, but also on the circumstances both of the detractor and of the person from whom one detracts. Hence for judging the gravity of these sins one must attend:

a. To the defect which is narrated: manifestation of a grave defect ordinarily injures reputation notably, and manifestation of a light defect ordinarily injures it lightly;

b. To the condition of the detractor: a grave and prudent man harms more than a light and talkative one;

c. To the condition of the injured person, namely to the reputation which he enjoys among men and to the dignity by which he stands out among others: for he who is of intact reputation and great dignity experiences much greater detriment from detraction or calumny.

Hence it can happen that grave damage is inflicted if a light sin or even an inculpable defect is narrated about someone, as if someone says of a bishop that he is a liar or of illegitimate origin. On the contrary, to narrate a grave sin about someone can be only light detraction, as if someone says of a soldier or of a young man of lighter disposition that he is a lover of girls or has been drunk: for certain vices occur so frequently in persons of a determined condition that in them they are almost already supposed, and therefore do not gravely harm their reputation; but to narrate the same vices about a priest is mortal because of the condition of the person.

**647. Applications.** 1. To manifest natural defects, for example, to say that someone is ignorant, unlearned, imprudent, illegitimate, etc., ordinarily is not a grave sin, because all know that defects of this kind are not imputed and therefore do not notably diminish reputation. Moreover these things are usually publicly known. Yet if an inculpable defect is truly disgraceful, and if moreover men are gravely saddened by its revelation, and especially if they suffer damage, its revelation would be a grave sin, whether against justice or against charity.

2. To call someone in general proud, avaricious, angry, lazy, etc., ordinarily is not a grave sin, because defects of this kind signify rather a natural inclination than personal fault, or only venial defects, but not mortal sins; but to reveal inculpable defects or only venial ones ordinarily does not gravely harm.

3. To narrate a single grave sin to several will ordinarily be grave detraction, because grave damage in reputation is inflicted on one's neighbor, for example, to narrate that someone is a concubinary, unjust, or a robber.

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**Notes**

961. Prov. 22:1; Ecclus. 41:15.

4. To manifest a grave defect to one prudent man who is not going to divulge the matter certainly is not mortal if it is done from a reasonable cause, as if someone narrates an injury accepted to his friend in order to take consolation from it, although some defaming of the author follows from it. But if it is done without reasonable cause, there exists a twofold opinion: of those who judge that grave damage is inflicted even in this case, and of those who judge that damage to reputation in this case is not notable. Since the opinion which denies grave damage is truly probable, in practice it is permitted to follow it. Therefore a wife does not commit grave sin who communicates to her husband even gravely defaming things which she has discovered about her neighbor, provided the husband is prudent and silent. But if there is present a just reason for communicating these things, she is immune from sin.

Those who affirm that it is grave, such as Molina, Lessius, Lugo, the Salmanticenses, and others, commonly argue in this way: insult gravely injures honor even if it is done by only one person; moreover rash judgment in a grave matter is a grave sin; therefore, by parity, lesion of reputation before one grave man must be judged grave. But those who with St. Thomas, Navarrus, Bonacina, and Tamburini deny that it is grave bring this reason: reputation consists in the estimation of many; therefore he who has lost reputation before one or another prudent man is not considered to have undergone grave damage of reputation. But to the arguments of the former opinion these authors deny the parity. And indeed insult is made to one present; but rash judgment must be compared more to calumny than to detraction; but to impose a grave crime on someone is mortal. But all except the case in which a crime is manifested to him to whom the delinquent would especially wish to conceal it before all others.

5. To say nothing special, but only general things about someone, of itself is not a mortal sin; yet if general things are brought forth in that mode that hearers must suspect something grave, it can be mortal; for example, if you say that you know certain things which, if they were revealed, would affect another with great disgrace, or that you know certain things about that person which charity forbids revealing.

6. To narrate a grave matter about someone as heard from others:

a. is grave against justice if the narrator foresees that the hearers are going to believe because of motives brought by him, as if he says that he accepted the matter from a trustworthy person: for in this case he is the efficacious cause of the damage;

b. is grave against charity if he foresees that the hearers are going to believe not because of motives brought by him, but because of their own lightness or malice: for although the damage of the defamed person must be attributed not to the narrator but to the lightness of the hearers, nevertheless each one is bound to impede the grave damage of his neighbor which he can conveniently impede by being silent;

c. is a light or no sin if he foresees that the hearers are not going to believe, because light or no damage is inflicted on one's neighbor.

7. He who narrates a hidden crime committed, without naming the person, for example, "it happened in this place," does not sin if the hearers cannot come to knowledge of the person; but he sins gravely if he either describes the matter in such a way that the person can easily be known, or if grave infamy redounds upon the family or monastery or religious order of that person from the narration. This can happen if someone, while keeping silent about the person, says that a member of this family or order committed such a crime.

8. About one who is already defamed in some crime, to narrate a defect commonly connected with that crime, for example, to narrate perjury about a robber, or about a drunken husband that he quarreled with his wife, is not grave, because the infamy is not notably increased from it. But to narrate about him an altogether disparate defect is ordinarily grave defamation: for he who has lost reputation in one matter, for example, in chastity, has not therefore lost reputation in another quality also, for example, in learning; but he can have good reputation in one matter and bad reputation in another.

9. To say that in such a city all or most are unjust is considered grave defamation, because the reputation of individuals is gravely injured. But to say that in such a city many are unjust is not grave, unless it can be referred to determined persons, because no determined person is injured. Hence if someone by enormous exaggeration says that in such a city all merchants are defrauders, all virgins are corrupt, and the hearers judge that many are of this sort, and yet do not refer the vice to determined persons, he does not seem to sin gravely.

10. To say about some religious order or some monastery that religious in it live badly or do not observe regular discipline is grave detraction, unless the matter is plainly notorious: for both the whole religion or house and its individual members suffer grave damage by this defamation, because suspicion is induced about individuals.

11. It is not permitted to reveal another's hidden crime while at the same time adding the penance performed for it: for there always remains in others a certain sinister opinion, since the blackening of reputation from the manifestation of the fault is not wholly taken away by knowledge of the penance.

12. To refer in general the vice of a people or of a whole nation, for example, that it is proud, generally is not a sin, or is only venial, because either the matter treated is known, or concerns a natural disposition, not personal sins, or many indeterminate persons are understood.[962]

**648. Specific and numerical malice.** 1. Detraction and calumny are sins specifically diverse, not insofar as they injure reputation, but insofar as calumny adds to detraction the malice of lying; yet this malice, since it is against veracity, is not mortal.

Therefore of itself it is not necessary that it be declared in confession whether the reputation of one's neighbor was injured by detraction or calumny. Yet generally it is fitting that the confessor know this, both so that the gravity of the sin and so that the mode of restitution can be determined.

2. Detractions in matters diverse in species, for example, to say that someone is a robber and an adulterer, are not sins diverse in species: for reputation morally is of the same nature, whatever the prerogative may be in which it is founded; therefore also lesions of reputation are of the same species, just as all lesions in goods of fortune are of the same species.

The opposite opinion, which seems more probable to St. Alphonsus (n. 48), uses this argument: as many diverse sins are committed as there are diverse reputations and therefore diverse rights injured; but as many diverse reputations and diverse rights in reputation are injured as specifically diverse crimes of one's neighbor are revealed: for one is the reputation which someone has, for example, concerning justice, and another which he has concerning chastity, and to each there corresponds its own right. But although it must be conceded that one reputation is that which someone has concerning justice, and another that which he has concerning chastity, nevertheless each is not specifically diverse, but is of the same species. In like manner one property is that which someone has of money, and another which he has of a house and a forest; yet each is of the same species. Since St. Alphonsus also holds the former opinion as probable, the confessor would imprudently require the matter of detraction from the penitent where this is not necessary from another reason. Therefore it suffices to say: I gravely injured another's reputation.

3. He who detracts from someone before several commits only one sin, because he injures only one right to reputation: for reputation by its nature consists in the estimation of several; yet the sin is extensively so much graver as there are more who hear the detraction.[963]

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**Notes**

962. Cf. Titus 1:12.

963. Lugo, *De poenit.*, disp. 16, n. 112. Cf. St. Alphonsus, l. 5, n. 49.

## Article Third. On the Licit Revelation of Another's Crime

**649. Declarations.** Another's crime which is manifested is either public or hidden.

a. A crime is called hidden which is not publicly known, even if it is known by some persons or some rumor about it has already been spread, provided there is hope that it will not come to the knowledge of the community. A crime is called public or notorious which is already known to many men of some community.

b. A twofold publicity or notoriety must be distinguished: of law and of fact. A delict is called public by law if it is established concerning it by the sentence of a judge; and it is called public by fact if it is known to many men of some community, whether because the crime was publicly committed before many, or because it was indeed committed hiddenly, but afterward became public through divulgation.

How many persons a crime must be known to in order that it can be called public by fact cannot be determined. Universally one must say: when it has become known to so many persons that, with attention given to the community, the quality of the matter, the talkativeness of men, etc., it can no longer be concealed, but will become known within a short time, it must be considered public by fact. Most theologians establish these rules: a crime is publicly known if in a college which consists of thirty persons, seven know it; in a college which consists of one hundred persons, fifteen; in a village which consists of one thousand persons, twenty dispersed through it; in a town of five thousand citizens, forty dispersed through it.

c. The community in which some crime is known is either a closed community, such as a college, monastery, seminary, etc., or an open community, such as a city, town, village, etc. Now a crime which is known in an open community is called absolutely and simply public; but a crime which is known only in a closed community is called relatively and in a qualified sense public.

**Note.** 1. A defect or delict which is committed to the damage of the community by him who holds a public office is also considered publicly known: for he who accepts an office of this kind submits himself to public judgment, so that his public acts can be judged by others. In like manner all matters are considered public which are carried out publicly, such as the acts of preachers and professors, which therefore are subject to the prudent estimation of others.

2. A crime whose divulgation the delinquent does not care about, indeed even shows to be pleasing to himself, is equated with a publicly known crime: for injury is not done to one consenting.

**650. On the revelation of a hidden crime.** 1. From a just cause it is permitted to manifest another's hidden crime, provided the due conditions are observed. A just cause of this kind is the common good or the private good either of the one revealing, of the hearers, or of the delinquent himself. For the right to false reputation ceases when either public or private good is promoted by the manifestation of the hidden defects of others.

a. Therefore not only from the precept of fraternal correction can the hidden crime of children be licitly signified to parents and of subjects to superiors, so that the guilty may be amended, but also from true charity hidden defects can be revealed to others so that either by prayers or by other means they may concur toward the amendment of the delinquent: for the spiritual good of the delinquent must be preferred to his reputation.

b. Therefore those are excused who for the sake of consolation or counsel narrate to a friend an injury done to themselves by another; likewise servants revealing injuries inflicted on themselves by masters, wives by husbands, children by a father, religious by a prelate, etc., although from this some infamy may come to the author of the injury. Likewise if someone is accused of a false crime, he can licitly open the hidden crime of the accuser in order to diminish his trustworthiness and authority. Indeed even the accused may do this,

provided the manifestation is necessary for invalidating the force of testimony. For no one is bound with so great an inconvenience to himself to protect the reputation of another, especially one unjustly injuring him.

c. Therefore another's reputation is licitly diminished where a false estimation concerning his learning and uprightness is harmful to others, if grave and notable damage which threatens others cannot be impeded in another way. For the good, especially the spiritual good, of the innocent must be preferred to the reputation of the guilty.

Therefore when there is question, for example, of conferring an office, of contracting marriage, of entering religion, of taking on a physician, teacher, servant, etc., it is permitted to manifest another's hidden defects, incapacity, and vices, from which some detriment is deservedly feared. He who knows that someone is a thief can manifest it to those with whom he lives so that they may be on guard for themselves. Any private person can report the delict of another to the judge, so that by the punishment of that person the common good may be promoted.

2. In revelations of this kind a twofold condition must be observed: a. that the damage which is avoided through revelation be proportioned to the damage which is inflicted on another from the manifestation of the vice; but it is considered proportioned if the damage to be avoided is grave, although greater damage follows for the one defamed, because the right of the innocent is superior, yet not if it is light or far less; b. that the revelation be made with the least damage of the guilty person, that is, that it not be manifested to more persons than is necessary, nor the person revealed if this is not necessary, nor be manifested without the delinquent first being warned, if warning can be done without grave inconvenience and is hoped to profit for the intended end.

**651. On the revelation of a public crime.** 1. A crime which is public by law can everywhere be manifested without another excusing cause, unless it has been amended and wiped away by oblivion.

a. For the judge by judicial sentence deprives the delinquent not only of reputation, but also of the right to reputation in this matter, and this in perpetuity; and just as he himself takes care that the sentence be published, so he gives to all others the license of further divulging it, so that all can guard themselves against criminal men.[964] Wherefore it is not a sin to write or speak publicly about a crime because of which someone has been punished by prison or another penalty.

b. To reveal again a crime which was public by law, but is now amended and wiped away by oblivion, is not indeed against justice, because the force of the judicial sentence which had despoiled the delinquent of the right to reputation always endures; but it is against charity if someone without utility restores the memory of the crime in those circumstances in which he foresees that the hearers are going to hold as criminal one who has already amended himself, and that he is going to suffer grave damage.

2. A crime which is public by fact and indeed simply public can be manifested both to members of the same community and outside the community without another excusing cause, unless it has been amended and wiped away by oblivion.

a. It is expedient for the public good that each one be known as he publicly truly is, lest men suffer damage because the wicked or unskilled are held for upright or skilled. Therefore concerning publicly known matters and those things which are publicly done, anyone can speak freely before all, even those not knowing, although the estimation of others is diminished by it. Yet he must take care not to exceed the limits of truth, nor without utility inflict damage on others.

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**Notes**

964. Lugo, disp. 14, n. 72.

b. To reveal again a crime which was public by fact, but is now amended and wiped away by oblivion, is not only against charity, but also against justice, because through oblivion the matter returns to that state in which it was before the publicity of the crime, and therefore the right to reputation also revives.[965]

c. To the question whether a crime public by fact in one place can be divulged in another distant place, these things must be noted:

alpha. If the crime will justly become public in that place within a short time, it can licitly be divulged: for reputation certainly to be lost within a short time is no longer of any value; therefore its loss inflicts no damage. Something else must be said about anticipated loss of life, because any moment of life in which we can merit eternal reward is of the greatest value.

beta. If the reputation of the crime is not going to come to that place, at least within a short time, some indeed permit all crimes to be manifested, because it is expedient for the public good that each one be known by others as he publicly is, lest men be deceived in the relations which they have with him;[966] but others permit this only concerning those crimes which render a man harmful to others, such as crimes of homicide, treason, scandalous impurity, etc. The first opinion is also probable, since its reason has force concerning all crimes and defects.[967]

3. A crime which is public by fact, but only relatively public, can be manifested to the members of the same community; but outside that community the same cannot be manifested without injustice.

For the delinquent has not lost reputation outside his own community, since members of a closed community are accustomed to conceal outside the community those things which are known within the community, and ordinarily there is no reason which shows further divulgation to be necessary or useful. Therefore members of a household indeed speak licitly among themselves about the crime of a religious which is known in the house or monastery; but it is not permitted to them to speak about it with outsiders, nor with religious of another monastery, whether of the same or of a diverse order.[968]

**652. On writers of newspapers.** In order to determine what is permitted and what is not permitted to writers of newspapers, the conditions of the present time must be kept before one's eyes, in which public papers by their office have so great an influence on public life, both political and social. Wherefore to those who direct Catholic papers there must be conceded a broad faculty, insofar as it is permitted by moral laws, of speaking and judging: for unless this were done, the place would be wholly ceded to depraved papers.

a. They can narrate all new matters: for since readers expect that they be taught about all things recently done, whether good or evil, they licitly report even crimes, defects, etc., which are public either by law or by fact, at least in one place. But things which are hidden they are not permitted to investigate and divulge once investigated, unless the common good or a truly grave good of a third person renders the manifestation licit. Since that matter is difficult to judge, great discretion and caution are needed.

b. They can publicly judge public matters: for things which are done publicly, especially by those who hold public office, can be subjected to public censure. Therefore they can report unjust acts and defects which are committed by magistrates in fulfilling office to the damage of the community. In this way enemies of the Catholic religion can be deterred from inflicting vexations either on religion or on pious men, since officials greatly fear lest their unjust actions be divulged through newspapers and subjected to censure.

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**Notes**

965. Lugo, disp. 14, n. 85, with Molina; cf. nevertheless Lessius, l. 2, c. 11, n. 82, who thinks that one sins only against charity.

966. Lugo, l.c., n. 80 ss.

967. St. Alphonsus, n. 974.

968. Cf. Lacroix, l.c., n. 1221.

c. It is licit for writers of newspapers, which is especially valid at the time of elections, to manifest the hidden crimes or defects of those who are to be elected to the supreme magistracies of the republic or community, or to assemblies, and which render the candidate unworthy, both because the common good demands this, and because from universal custom candidates are considered to yield their right as to this as soon as they seek a public office. Yet certainly those publicists must be condemned "who, led away either by an itch for divulging everything or by partisan zeal, also touch those crimes whose knowledge contributes nothing to the public good," especially if they inveigh against the crimes and defects of men who discharge a higher office.

**653.** A certain greater license is customarily conceded to historians in narrating the vices and crimes of the dead: for they can, without a peculiar reason of public or private good, consign to letters even hidden crimes of those whose history they weave, so that memory of them may stand; and they can stir up again crimes already wiped away by oblivion, and this for a manifold reason. First from the general end of history: for in order that history can be that which it ought to be, the teacher of life, witness of truth, vindicator of divine justice, etc., it is altogether required that the causes and effects of deeds also be manifested, which demands the revelation even of hidden crimes. Then the prudent narration of vices and crimes contributes to public utility: for horror and abomination of crime is struck in, men are frightened away from evil, and princes are excited to punishing vices. Finally, although of itself it is not permitted to tear away the reputation not even of a dead damned person, supposing that it is known that he is damned, yet it is permitted to narrate the hidden crimes of an impious man who even after death continues to exercise harmful influence, so that his authority may be destroyed or diminished.

Yet three things must be noted about this matter: a. In writing the history of a recent age, care must be taken lest from the narration of the crimes of a deceased person surviving relatives suffer damage. b. In writing the history either of a recent or of an earlier age, care must be taken lest from the narration of crimes some state, for example, the clerical or episcopal, be so defamed that scandal arises from it which is greater than the good hoped for from the manifestation. c. Since in present times archives, even the more secret, are opened to all, and a true desire has seized learned men of divulging whatever can be found in them, it is better that a Catholic narrate according to truth those things which of themselves ought to be covered by silence, than that they be brought forth adulterated by an adversary of the Church.[969]

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## Article Fourth. On One Hearing Detraction

**654. How he sins.** 1. He who hears one detracting and does not impede the detraction which he can easily impede sins in a twofold way against charity: first, because he does not impede the sin of the detractor by correcting him; then because he does not avert evil from the defamed person. For anyone is bound from charity to avert evil from his neighbor if he conveniently can.

A superior also who hears detraction is bound to impede it from charity; but neither the superior of the one defaming nor the superior of the one defamed is bound to impede it from justice: not the superior of the one defaming, because he must only correct his subject, but not watch over the good of others; not the superior of the one defamed, because by reason of his office he must take care only of the spiritual good, not of the temporal good, of his subjects.

Therefore anyone, even a private person, in grave matter is of himself bound under grave obligation from charity to impede detraction; yet in order that to hear and not impede one detracting be a grave sin, it is

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**Notes**

969. Cf. Lugo, disp. 14, n. 87 ss.; Lehmkuhl I, n. 1183; Ballerini-Palmieri II, n. 1097.

required: a. that the other certainly and unjustly detract: for it can happen that there is present a just cause of narrating the vices of another, which cause must be supposed in a grave and God-fearing person; b. that there be certain hope of impeding the detraction: for it often happens that from correction the detractor is rather excited to increasing the detractions; c. that the detraction can be impeded without grave inconvenience. An inconvenience of this kind would be insults which he fears, or great shame which the one impeding the detraction must suffer.

Hence private persons are almost always excused from mortal sin if because of negligence, shame, or fear they do not impede detraction; and they are excused from every sin if they fear lest the detractor break forth into greater things or lest they themselves gravely offend him. A fortiori they lack every fault who, noticing the detraction, depart, turn the conversation elsewhere, or by some sign show that this speech displeases them: for by this reason they indirectly try to impede the detraction.

2. He who voluntarily hears a detractor in such a way that he rejoices over the defamation of his neighbor, yet does not cooperate toward his damage, sins against justice by affection, because he consents to the detractor and therefore commits the same sin by internal affection.

a. He who against his own will must be present among those detracting and cannot impede detraction, for example, servants serving at tables or ministering to clients in workshops, does not sin at all, provided he neither directly nor indirectly provokes detractions nor narrates what he has heard to others, unless they are public.

b. He who rejoices not over the detraction, but only over the mode of narrating or over the novelty of the matter, etc., morally does not sin, because these do not pertain to hatred nor to injustice, but at most to idleness and curiosity, which are only lightly evil.

3. He who directly or indirectly induces another to detract in grave matter, whether by provoking, questioning, or approving him, sins gravely against justice, because he provokes another to a sin against justice and thus is the cause of the damage which a third person suffers in reputation.

Yet he who privately fishes out another's crime from another without intention of divulging it does not seem to sin gravely, both because he does not gravely harm the reputation of the other, and because he acts more from curiosity than from the intention of injuring another.

## Article Fifth. On Restitution of Reputation

**655. Obligation of the detractor and calumniator.** 1. The unjust detractor is bound from justice: a. to repair as soon as possible the reputation unjustly taken away; b. to repair all temporal damages which he foresaw at least in confusion would follow from the defamation: for he is the efficacious and unjust cause of all these. And indeed the former obligation of restoring reputation is personal and therefore does not pass to heirs; but the latter of repairing temporal damages is real and therefore passes to heirs.

a. Therefore the calumniator is always bound to restitution of reputation; but the detractor is bound only when he harmed another in reputation without a just cause, because only then is he the unjust cause of damage.

b. It can happen that a light lesion of reputation can inflict grave damage in goods of fortune. Therefore with light detraction there can at the same time be joined a grave obligation of repairing temporal damages arisen from detraction, as if someone narrates that he is talkative whom the hearer of the narration wished to assume for the office of secretary.[970]

c. He who cannot restore the injured reputation is not bound to compensate it with money, because reputation and money are not goods of the same order; yet if the defamer is condemned by the sentence of the judge to furnishing compensation in money, he must obey the just sentence of the judge, from vindicative justice.

d. He who by defaming another, from smallness of matter, sinned only lightly, must repair the reputation under light obligation; therefore he is not bound to repair it with grave inconvenience to himself. But he who sinned gravely must repair it even with grave inconvenience to himself; for a grave obligation of justice obliges with proportionately grave inconvenience. Yet if the damage which the defamer would have to suffer greatly exceeded the damage of the defamed person, he would be excused from restitution.

2. A non-unjust detractor who from inadvertence or from inculpable error injured another's reputation is bound from justice, insofar as he conveniently can, to forestall his speech from harming further: for anyone is bound to impede further damages proceeding from his action. But he is not bound to this with grave inconvenience to himself, because he harmed the other inculpably; nor is he bound if he foresees that retractation will be useless (n. 454, b).

He who culpably omits due retractation is bound to repair the damages which follow from this omission and were foreseen in some way, even with grave inconvenience to himself, because he is the culpable cause of these.

To the question whether reputation must be repaired not only before the hearers, but also before those who received the defamation mediately, one must distinguish. If the detractor foresaw that the hearers would easily divulge the defamation, as if he had narrated it without secrecy to light and talkative men, of himself he is bound, because he is the efficacious and unjust cause of the damage; yet because he is a mediate cause of the damage, he himself is bound only when other causes, namely immediate causes, fail. But if he did not foresee the future damage, because he narrated under secrecy to those whom he judged prudent, he is not bound, because he is not the theologically culpable cause of the damage. It is said of himself, because in practice detractors are generally excused from the obligation of restitution before those who had received the detraction mediately, both because it is morally impossible, and because by retractation made before those who immediately received the matter, they implicitly commit to these that they also divulge the retractation.[971]

**656. How reputation must be restored.** It must be restored in one way by a calumniator and in another by a detractor.

1. The calumniator is bound before the hearers to retract the things said in an efficacious mode, even with loss of his own reputation or another good, because the condition of the innocent is better than that of the guilty. He is excused only when the damage which he himself would have to suffer would greatly exceed the damage of the defamed person.

Hence if this is required for efficacious retractation, the calumniator must confess that he lied. If retractation would not be efficacious unless an oath is added or witnesses are employed, these means would have to be employed, because they are not considered very difficult. He who calumniated another by a book published in print must also, so that it may be efficacious, divulge the revocation in print.

2. Strictly speaking, the detractor cannot retract, lest he lie, but he must repair the injured reputation in another way, and first indeed by employing equivocal words. And so he can say that he spoke unjustly, that he did injury to the other, that he erred, that he was deceived; but not that he said what is false or that he lied. But since from these formulas of speaking most persons infer that that is true which is not openly declared false,

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**Notes**

970. Cf. Genicot I, n. 449.

971. Cf. Lugo, disp. 15, n. 16.

the detractor will very often repair the damage more efficaciously by, when occasion is given, following the defamed person with praise and honor, excusing his vices, etc.

**657.** Five causes excusing from restitution of reputation are usually numbered:

a. If it is prudently judged that no detriment of reputation followed, either because the hearers did not believe the detraction, or because another, by correcting the detractor, impeded the damage: for in order that there be an obligation of repairing reputation, moral certitude concerning damage caused is required.

b. If the damage has already been taken away, either because by the sentence of a judge or the testimony of others the reputation was repaired, or because by the passage of time the defamation was wiped away by oblivion.

c. If the other either expressly or tacitly condoned it, provided he could condone it; but an injury done cannot be condoned if from the condonation damage to others would follow. Sometimes even presumed condonation suffices. "And by this reason," says Sporer, "commonly men, especially the common people, are excused from restitution of reputation among themselves."

d. If restitution is morally or physically impossible. Therefore he is excused who could repair reputation only with danger to life; likewise he who would suffer a much greater damage of reputation or honor than was inflicted on the defamed person; finally, if the defamer cannot meet those who heard the detraction because of too great a distance, or if the fault has become public by another way.

e. If the injured person also violated the reputation of the defamer and refuses to restore: for one is not bound to return his right to another if the latter refuses to return the right which he himself owes him.[972]

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# Question Fourth. On Injury to Honor

## Article First. On Rash Judgment

**658. Nature.** Rash judgment, which is also called suspicion or temerity, is a firm assent of the mind, by which, from a light and insufficient reason, evil is thought of one's neighbor. It is called rash, because it is conceived without a sufficient reason and against the rule of prudence.

Suspicion in the broad sense is threefold: a. doubt, namely when, from a light reason, someone doubts concerning the probity of another; b. suspicion in the strict sense, namely when, from a light reason, someone inclines to think evil of another; c. rash judgment, namely when, from a light reason, someone firmly judges evil of another.

**659. Malice.** 1. Rash judgment is a sin against justice: *Judge not, and you shall not be judged*; *Judge not, that you may not be judged.*[973] For every man has a right that no one, without sufficient reason, think evil of him; therefore he who, from a light reason, judges evil of another violates this right.

2. Suspicion and doubt, if they are voluntary, are sins against charity, because charity requires that we think well of our neighbor unless a sufficient reason persuades otherwise. Yet they can also become sins against justice if, from suspicion or doubt, someone causes another an external injury.

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**Notes**

972. Cf. Lugo, disp. 14, n. 44; St. Alphonsus, n. 999.

973. Luke 6:37; Matt. 7:1 s.

3. Rash judgment is not, like detraction or insult, an external but an internal violation of justice; therefore the obligation of restitution does not arise from rash judgment as such. If, however, from rash judgment an external injury is committed, this must be repaired.

**660. Causes of rash judgment.** They are commonly assigned as three:

a. A perverse disposition of the one judging, by reason of which he is prone to think evil of others. Thus proud men easily judge others to be proud; the impure, impure; the avaricious, avaricious.

b. Hatred, envy, jealousy, or another passion, by which one is impelled to believe evil readily of another.

c. Experience of the vices of men. Hence old men and those who have long dealt with men easily judge evil of others.

None of these causes, however, furnishes a sufficient reason for judging evil of a determinate person, unless signs are added from which that evil can be prudently inferred.

**661. In order that rash judgment be a grave sin, it is required that it be:**

a. Rash, that is, conceived from a light and insufficient motive.

b. In grave matter; but that matter is generally judged grave which notably injures reputation (n. 646); nevertheless graver matter is required to constitute grave judgment than grave detraction.

c. Firm: for if it is not firm but only doubtful, no grave injury is inflicted on the neighbor.

d. Deliberate, that is, he who judges rashly must advert at least confusedly both to the gravity of the matter and to the lightness of the motives, and nevertheless must will and command the assent of the mind.

Because of the lack of this last condition rash judgments are for the most part not grave sins, because men, unless led by hatred, are not accustomed to judge against sound reason; and sound reason does not judge without a sufficient motive.

Whether it is lawful to conduct oneself as if another were evil. It is not lawful with firm assent to judge another to be wicked unless this is certainly established; nevertheless, unless it is established that someone is upright by acquired virtues, it is not necessary that we positively hold him good in this sense, but it suffices that negatively we do not judge him evil. But supposing this state of mind, which suspends judgment, it is lawful, in order to avoid evil, to conduct oneself as if the other were wicked: for by this manner of acting nothing is done which would be illicit. And indeed he who acts thus does not positively judge or suspect that another is evil, but suspends judgment concerning his wickedness and positively judges only that it can happen that he is wicked; but by this judgment, so long as the contrary is not established, injury is inflicted on no one. Moreover, everyone has a right of guarding against damage which can befall himself or his own. Therefore it is lawful to lock up money, because it can happen that unknown guests are thieves.

## Article Second. On Insult

**662. Notions.** 1. Insult (*Beschimpfung*) is the unjust injury to another's honor which is inflicted on a person in some way present. As honor consists in an external act by which one signifies esteem toward another, so insult consists in an external act (by word or deed) by which one signifies contempt toward another on account of some vice, whether true or fictitious.

a. Therefore it differs from detraction in object: for it injures honor, not reputation; and in mode: for it is not committed secretly and against an absent person after the manner of theft, but openly against one present after the manner of robbery.

b. As honor is greater than the good of reputation, since it includes reputation, so also insult is more grave than detraction if, together with honor, as often happens, reputation also is injured. But if honor alone is injured, it is a lighter sin than detraction, just as honor separated from reputation is a lesser good than reputation: for a man values reputation without honor more highly than honor without reputation.[974]

c. Someone can be present either physically or morally (through something by which he is represented, for example an image or a legate): for it suffices for insult that the other know or at least be able to know that he has been dishonored. Something can also be committed against the honor of someone absent, yet with others hearing or looking on, as if abusive words and reproaches are cast against someone in conversation with others or in public sheets. Whether these are properly so-called insults can be disputed; nevertheless they are commonly held as insults.

2. Insult can be inflicted positively, that is, by words or deeds which contain contempt; for there are certain words and deeds which, from the common use of men, signify contempt, and by these insult can be inflicted. It can also be inflicted negatively, or by omission of an act, namely when the omission of due honor, for example of a greeting, involves contempt; that omission, by reason of this contempt, constitutes insult.

According to the diverse manner in which insult is inflicted there are distinguished: mockery, if someone is treated with contempt by words and laughter; derision, if by ridiculous gestures; and reproach and reviling, if someone is contemned by having a vice or defect cast against him.

**663. Moral and specific malice.** 1. Insult is a sin from its kind mortal against justice: *Whoever shall say to his brother, Fool, shall be liable to the fire of Gehenna.*[975] And indeed it injures the neighbor in the good of honor, which according to the common estimation of men is preferred to goods of fortune; but to violate goods of fortune in a grave matter is a grave sin. It is against justice: for anyone has the right not to be contemned, but that the honor due according to his condition be shown to him.

In order that a grave sin of insult be committed, it is not necessary that insulting words be uttered with the intention of dishonoring another; but it suffices that in themselves or by reason of the injured person they be gravely insulting and be uttered with full advertence to this thing.

2. All insults, although some are more grave than others, are of the same moral species: for the same essential malice is found in all, namely injury to honor, just as all thefts, although diverse, injure goods of fortune. Therefore for the integrity of confession it is not required that one declare how he injured honor (whether by words or deeds and by what abusive words).

**664. Gravity of matter.** When the neighbor suffers a notable injury of honor, so that insult is a grave sin, must be taken from the prudent consideration of the one injuring, of the one injured, and of the words or deeds.

a. Hence Lacroix rightly teaches that abusive words by which women and men of the lowest populace call themselves harlots, adulteresses, rogues, commonly are not grave sins, because those saying such things do not truly think so, and those hearing do not believe words of this kind uttered in the heat of passion.[976] Likewise parents are excused from mortal sin who call their children by insulting names (stupid, donkeys), because for the same reason they are not judged gravely to injure the honor of the children. Indeed, if they do this for the sake of correction, they commit no sin, although it would be better to abstain from insulting words even in corrections.

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**Notes**

974. Cf. Lugo, disp. 14, n. 9.

975. Matt. 5:22.

976. L. 3, pr. 2, n. 1224.

b. Insulting words uttered against someone before others indeed, but with the person himself absent, are scarcely grave sins, unless the one uttering the insult wills that the offended person learn the matter, or foresees that the matter will be communicated to him.

c. Joking mockery concerning a slight defect of another, so that he is suffused with a little blush, can happen without sin if it is done without contempt and without the anger or sadness of the other; indeed it is an act of the virtue of eutrapelia if it is done among friends for honorable recreation. But he sins against charity who, in jesting, casts a small fault against another while foreseeing that the latter will bear this thing badly: for charity and prudence demand that another's anger or sadness be avoided in jokes.[977] Nevertheless the one jesting does not sin gravely, even if he knows that the other takes a light joke gravely, because the cause of this grave embarrassment is not the mockery of the one jesting, which is light in itself, but the foolishness of the other.

**665. On restitution of honor.** 1. He who inflicted an insult on another is bound to return the honor taken away and to repair the damages which followed from it and were foreseen at least confusedly: for he who by injury caused damage to another is bound to repair it.

That restitution of honor is required which, by reason of the manner in which the insult was inflicted and by reason of the condition of the person offended, is judged sufficient for removing the injury or for signifying true esteem. Hence he who inflicted an insult publicly must restore publicly, that is, before those who were witnesses of the insult, or at least in such a way that the reparation can come to their knowledge. He who injured honor secretly must likewise repair the injury, but it suffices that this be done secretly. Satisfaction, however, can always be made through another who asks pardon in the name of the offender.

2. The mode of repairing injured honor which certainly suffices is that which, by reason of the condition of the offended person, signifies true esteem for him; therefore it is clear that one mode must be chosen in order that satisfaction be shown to a superior, and another in order that it be shown to an equal or a subject.

a. Various modes of repairing injured honor, which are listed by authors, are: to greet in a friendly way or first, to speak kindly, to visit at home, to invite to table, to drink to someone, to ask pardon, to fall upon the knees. Besides, as Lessius wisely notes, by the petition of pardon any injury, even one inflicted on a most noble man, is sufficiently repaired; if he is not content with this satisfaction, he can be referred to the judge.[978]

b. The offender is excused from restitution: a. if he rightly supposes that the offended person condones restitution; b. if he has been punished by the judge on account of the injury inflicted; c. if the offended person has taken vengeance; d. if the offender and the offended person mutually inflicted equal abusive words on one another.

Whether there is an obligation of asking pardon in order that honor be repaired.

a. Subjects and equals must ask pardon if the injured person, affected by grave insult, demands it and is unwilling to accept another satisfaction; but if the injured person does not demand it, subjects and equals can also satisfy in another way.

b. Superiors are never obliged to ask pardon from a subject who has suffered injury, as a master from a servant, a prelate from a religious, a teacher or superior from pupils: for the injured honor is abundantly repaired by some sign of benevolence.

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**Notes**

977. Cf. St. Thomas, II-II, q. 72, a. 2, ad 1.

978. Lessius, l. 2, c. 11, n. 145.

3. He who has been affected by insult must patiently tolerate it without hatred and without zeal for vengeance. He can indeed, and sometimes even must, demand satisfaction and a just penalty; yet he must be so disposed that, if need be, he sustain the injury without any reparation, and even do good to his enemy.[979]

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## Question Fifth. On Violation of Secret

**666. Preliminary notions.** 1. A secret subjectively is the obligation of not manifesting some hidden matter; objectively it is the hidden matter itself and the matter to be kept hidden. A threefold secret is distinguished (besides the sacramental secret):

a. Natural, whose obligation arises without contract from the nature of the thing alone, namely because the matter which someone has known by chance cannot be manifested without another being reasonably unwilling.

b. Merely promised, whose obligation arises from a promise, if someone promises silence to another about a matter already known before.

This promise can be given in two diverse circumstances: for either one promises another secrecy concerning a matter which he already knew before, or he afterwards promises secrecy concerning a matter which he had received from another without secrecy.

c. Committed or strict, whose obligation likewise arises from a promise, if someone receives from another a matter previously unknown to himself under the condition and express or tacit promise of keeping secrecy.

d. Therefore one committed secret arises from a promise or explicit pact, and can be called a private committed secret; another arises from a promise or tacit pact, and can be called an official (committed) secret (*Amtsgeheimnis*). The observance of the former is demanded only by private good; the observance of the latter is demanded in some measure also by the common good.

e. By the obligation of official secrecy are held counselors, physicians, midwives, advocates, theologians, etc., to whom, by force of office or for the sake of seeking counsel or help, secrets are revealed. Some refer here also friends and relatives to whom, by right of friendship and kinship, secrets are manifested for the sake of help or consolation.

Note. A secret can be an invention of art or science; it can be some fact (for example, that an office is vacant); it can be a hidden crime. The same principles do not apply to every secret.

2. Anyone has a right to his own secret; hence of itself it is not lawful: a. to investigate a secret; b. to manifest a secret; c. to use secret knowledge.

a. It is not lawful to investigate a secret unjustly, because a secret is like another's property; therefore he who unjustly investigates a secret takes another's property away from its owner.

b. A secret which is an invention of art or science may not be investigated by unjust or dishonorable means (by listening secretly, opening letters, employing force or deceit), but it may be investigated by natural and honorable means (art, study): for the owner cannot reasonably be unwilling that each one strive to know these secrets by licit means. The same must be said of a secret which is some fact. b. A secret which is a hidden crime, either already committed or to be committed later, may be investigated when there is question of averting truly grave damage to oneself or to an innocent third person, which threatens from that very person whose secret it is.

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**Notes**

979. Cf. St. Thomas, II-II, q. 72, a. 3.

c. It is not lawful to manifest a secret, because manifestation is against justice or at least against charity, unless there is question of a case in which use of the secret is lawful.

d. It is not lawful to use a secret, or secret knowledge unjustly acquired: for he who has inflicted an injury on another is bound to remove it, or at least not to continue it; but he who uses knowledge unjustly acquired to the damage of another continues the injury inflicted on another. It is lawful to use secret knowledge justly acquired for one's own or another's advantage, even if some damage to another follows from it: for when someone has justly acquired knowledge of a secret, whether there is question of a fact or of an invention of art or science, the right of secrecy ceases, because the secret itself ceases.[980] Nevertheless it is not lawful to use a committed secret for one's own or another's advantage against the will of the one committing it: for a secret is judged to be committed in such a way that he to whom it is committed must abstain not only from its manifestation but also from its use.[981]

**667. On natural secret.** 1. A natural secret obliges either from justice or from charity, and therefore under grave obligation in a grave matter, namely where the neighbor, from its revelation, is affected either by grave sadness or by grave injury.

2. It is lawful to manifest a natural secret where it cannot be kept without grave inconvenience; this inconvenience indeed must be greater if the secret obliges from justice.

To reveal one or another secret of lesser moment does not exceed venial sin. In a (positive) doubt whether the secret is of slight or great moment, it cannot be revealed without grave sin, because the one revealing exposes himself to the danger not only of sinning gravely but also at the same time of causing grave damage; therefore the principle of probabilism cannot be applied in this case.

**668. On a promised secret.** 1. A promised secret as such obliges either from mere fidelity under light obligation, or from justice, and indeed in a grave matter even under grave obligation, according as the one promising intends to bind himself either from fidelity or from justice; ordinarily, however, it obliges only from fidelity.

a. The matter of a promised and committed secret is sometimes that which by its own nature must be kept hidden, and therefore imposes a double obligation, of natural secret and of promise.

b. It must be noted that a promise of keeping secrecy is sometimes made from mere propriety and civility; this promise indeed of itself induces no obligation.

2. A promised secret does not oblige: a. where it cannot be kept without grave inconvenience to oneself or another, unless someone expressly obligated himself otherwise; b. when the matter would have had to be manifested without the promise: for no one can obligate himself by a promise to that which is illicit.

Therefore he who is legitimately questioned by a judge or superior concerning some matter must manifest it, even if he had promised secrecy.

**669. On a committed secret.** A committed secret obliges from justice and therefore under grave obligation in grave matter, because this obligation arises from a promise burdensome on both sides. Moreover, the common good demands that the opportunity of seeking necessary counsel or help be available to all; but men would be

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**Notes**

980. Cf. Lugo, l.c., disp. 14, n. 103; St. Alphonsus, l. 3, n. 969; Sporer-Bierbaum II, tract. 5, n. 674; Ballerini-Palmieri II, n. 1083.

981. Cf. Elbel-Bierbaum I, pr. 4, n. 412 s.; Bucceroni, *Casus consc.*, 2nd ed., n. 88, 5. Let the examples be: a. From another's opened letters someone knows that some office is vacant; using this knowledge he himself seeks and receives it earlier. b. By chance, hearing persons speaking in a loud voice, he knows an invention of art whose secret they were diligently guarding; he himself uses this knowledge for his own advantage. c. An advocate, knowing by reason of office the unstable state of someone's business, warns his brother, a creditor of that business, about this matter, so that he may provide for himself in time.

deprived of this advantage unless, because of the grave obligation of this secret, they were certain concerning its observance.

a. The obligation of a committed secret is stricter and graver than that of a promised secret, and the obligation of an official secret is graver than the obligation of a privately committed secret. For a committed secret obliges from justice, but a promised secret ordinarily only from fidelity; an official committed secret, however, obliges even when otherwise the matter would have had to be manifested, because the common good demands that this secret be kept unharmed except in a few cases. Therefore a committed secret may not be opened even to a judge or superior legitimately questioning, and the one questioned must answer with restriction that he knows nothing, namely nothing which he can reveal.[982]

b. Not all committed secrets are of the same strictness and obligation, but some urge more strictly than others; this must be attended to when there is question of the licit revelation of a committed secret. Thus the obligation of a secret which is committed entirely freely, without another cause, to a private man is less; the obligation of a secret which is committed to a private man for the sake of receiving counsel is greater; the obligation of a secret which is committed to men constituted in public office (physicians, advocates, etc.) is still greater; finally the obligation of a secret which is committed to counselors in public causes is the greatest (if we abstract from the sacrament).[983]

c. To reveal even a committed secret of greater moment to one or another prudent man under secrecy is a venial sin, provided no other grave damage follows from it, and the secret is not manifested to him from whom the one committing it especially wished it to be hidden: for a matter communicated to one person only can still be called secret; hence by this lesion of secrecy only a light injury is inflicted on another.

**670. A committed secret can licitly be revealed in the following four cases.**

It is evident of itself that the obligation of secrecy ceases: a. if the consent of him who committed the secret can rightly and deservedly be presumed. If a subject (the example is Cardinal de Lugo's) manifests under secrecy to a superior the crime of some subject, it must be supposed that the informer indeed wishes to remain hidden, but it can also be supposed that he permits the superior to do concerning the delinquent what he judges opportune.[984] b. If the matter is already known or divulged from elsewhere; hence anyone can licitly speak of a committed secret with a man who has knowledge of it, even if this knowledge is not yet public. The same holds if he to whom the secret was committed received knowledge of the matter from elsewhere. Therefore the secret can be revealed:

1. If it is necessary for averting grave common damage to the Church or the republic: for the obligation of secrecy, which was introduced for the sake of the public good, ceases where the same public good demands the manifestation of the secret. But it is not lawful to reveal a secret because of light public damage, such as arises, for example, from the guilty man remaining unpunished.

If someone knows under secrecy another's purpose of harming the city, and the latter cannot otherwise be turned back from executing it, he can and must reveal the secret committed to him.

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**Notes**

982. By civil law it is for the most part prohibited that those who perform a public office, as pastors, physicians, etc., be questioned by magistrates or judges concerning those things which have been entrusted to them by reason of office. Yet in some places this is enjoined by civil law on all, even physicians who were present at childbirth, that they report the name of the father and mother to the magistrate. Where a law of this kind is in force, since it must be said to be just (so that children may know their parents), it must also be observed by physicians: for in this case the obligation of committed or official secrecy ceases for them.

983. Cf. Lehmkuhl I, n. 1198.

984. Lugo, disp. 14, n. 117.

2. If it is necessary for averting grave damage unjustly to be inflicted on an innocent third person by him who committed the secret: for charity demands that we free the innocent from the injury of the harmful man even with some damage to the harmful man.

a. If Titius knows under secrecy another's purpose of killing Gaius, and the wicked man cannot be turned back from his purpose, Titius can and must manifest it as much as is necessary to avert the evil, for example by warning Gaius to take care for himself. Likewise a physician knowing that a bridegroom, who pretends himself healthy, is laboring under a contagious disease, could manifest the matter to the deceived bride, if the bridegroom, after warning, was unwilling to desist.

b. Note that the obligation of a committed secret does not cease in favor of the innocent unless the secret concerns an evil still to be inflicted by injury; for if the secret concerns an evil already committed, its obligation does not cease, even if by manifestation the damage of the innocent person could be averted. If, for example, someone knew from a committed secret that Titius is a homicide, he could not reveal the matter in order to free Sempronius, who is unjustly condemned to death in place of Titius. For just as Titius himself is not bound, with equal damage to himself, to manifest his own crime in order to free Sempronius from an evil of which he is not the cause except accidentally, so he to whom Titius committed the secret is not bound, indeed he cannot manifest the crime of Titius in order to free Sempronius. For Titius is reasonably unwilling concerning the revelation of a secret committed by himself, so long as he himself can licitly keep it.[985]

3. If it is necessary for averting grave damage to the one committing the secret himself: for the one committing cannot be reasonably unwilling concerning the manifestation of the secret.

If someone knows under secrecy that Gaius has resolved to enter marriage with a hidden impediment, and he cannot otherwise be impeded from entering marriage, he can and must denounce the impediment.

4. If it is necessary for averting grave damage to oneself, even if from this there would follow for the one committing the secret danger of death: for one accepting a secret is not judged to wish to bind himself with so great an inconvenience, unless he expressly promises that he will keep the secret even with the gravest inconvenience.

If someone knew under secrecy that homicide had been perpetrated by another, and he himself, to whom the secret was committed, being suspected of the homicide, was in danger of undergoing a grave penalty, he would licitly reveal the secret even with danger of death to the one committing it, supposing that there is not another means of averting the most grave penalty threatening.

## On the Letters of Others

**671. The secret of letters.** To open the letters of others, or to read them when opened and secretly kept, is of itself a sin from its kind grave against justice: for anyone has a strict right to his own secret. But smallness of matter is given in this thing; therefore if someone were to read letters which he prudently supposes contain only matters of light moment, he would not sin gravely.

To collect letters torn into tiny pieces and thrown into a public place, and to read them after putting together the fragments, is probably not against justice; yet if the letters contain anything whose revelation would turn to the detriment of the owner, that must be kept hidden from charity, under grave or light obligation according to the measure of the damage.

St. Alphonsus indeed (n. 70) judges it more probable that one who reads the fragments after putting them together sins against justice, because letters are torn up so that they cannot be read, and therefore the tearing

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**Notes**

985. Cf. Laymann, l. 3, tr. 3, pr. 2, c. 5, n. 2.

is a sign that the owner wishes to reserve to himself the right over the secret which is contained in the letters. Lugo, on the contrary (disp. 14, n. 151), judges that the reader does not sin against justice, because casting into a public place is a sign that the owner yields his right over the letters cast out, whose reading he cannot impede; but they are torn up in order that the reading may be made more difficult.

**672. Permission to open the letters of others.** It is lawful to open another's letters or to read them when opened:

a. From tacit consent or consent rightly and deservedly presumed (for example, by reason of friendship) either of him who writes the letters or of him to whom they are written: for each can yield his right over the secret, and therefore thus injury is done to no one.

b. From a rule to which one has freely subjected himself. Therefore regular superiors can licitly open and read the letters of their subjects where either this right is granted them from the rule or has been introduced through legitimate custom. Nevertheless letters which are directed to mediate superiors are excepted, and letters which contain secrets of conscience. If the superior rightly doubts whether the letters truly contain secrets of conscience, he can licitly inspect them; but if they truly contain secrets, he must abstain from reading.

c. From the necessity of averting grave damage from the republic, from subjects, or from oneself. Therefore a. it is lawful for public authority (princes, military leaders) to open letters if sufficient indications are present that this is necessary for consulting the public good. b. It is lawful for a father of a family to read the letters of children who are still under paternal power, and for a superior to read the letters of pupils committed to his care, unless they treat of matters of conscience or contain secrets of the family, because this is judged necessary for consulting the good of the son or subject. c. It is lawful for a private man in particular cases to read another's letters when he rightly and deservedly judges that something is contained in them which would turn to his grave damage (n. 666).

It is not lawful for masters to read the letters of servants, nor for husbands the letters of wives, by reason of servitude or marriage; yet if they judge with moral certitude that something evil is contained in them, this is lawful to them from what has been said above.

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# Part Third. On the Precepts of the Church

[986] That the Church has power to make laws obliging in conscience is established from the nature of the Church, from certain sayings of Christ the Lord, and finally from the practice and doctrine of the Church.[987] Therefore the precepts of the Church also must be observed, so that we may be able to attain the end of eternal life. Some precepts of the Church are universal, which oblige all the faithful; others are particular, which refer to particular states of the faithful. The universal precepts, concerning which we must treat here, are listed by different authors in different ways as to number and order. Since the observance of feasts was treated above, where there was discussion of the third precept of the Decalogue, it remains to speak: a. of abstinence and fasting; b. of annual confession and Paschal communion; c. of the prohibition of books; to which, because of

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**Notes**

986. St. Alphonsus, l. 3, n. 1004-1050; Tamburini, *In quinque ecclesiae praecepta* (posthumous work); St. Fagundez, *Quaestiones in quinque ecclesiae praecepta*; M. Struggl, *Theologia moralis*, tract. VIII, *De praeceptis ecclesiae*; Ballerini-Palmieri, *Opus theolog. morale*, 3rd ed., II, n. 1103-1225; Lehmkuhl, *Theologia moralis*, 10th ed., I, 1201-1222; Genicot, *Theologiae moralis instit.*, 8th ed., I, n. 434-460.

987. Dogmatic theologians and canonists demonstrate this truth expressly. Palmieri, *De romano pontifice* (Rome: Typograph. S. C. de prop. fide, 1877), p. 126 ss.; Wernz, *Ius decretalium* (Rome: Typograph. S. C. de prop. fide, 1898), I, n. 90 ss.; Aichner, *Compendium iuris ecclesiastici*, 10th ed. (Brixen: Weger, 1900), section 23, 3.

the peculiar circumstances of this time, must be added d. the support of pastors; e. the prohibition of cremating corpses.

# Book First. On Abstinence and Fasting

## Question First. On the Precept of Abstinence

**673. On the precept itself.** The precept of abstinence, which here is considered separately from the precept of fasting, prohibits three things: a. flesh meat; b. eggs and milk foods; c. the mixture of foods. Furthermore, sometimes only flesh meat is prohibited; sometimes also eggs and milk foods with the mixture of foods are prohibited.

a. Although a canon cannot be adduced by which the precept of abstinence separated from fasting was first prescribed for the universal Church, nevertheless that a precept of this kind exists is certain from various constitutions of the supreme pontiffs, from catechisms, and from the practice of the universal Church.

b. The natural law commands voluntary abstinence from food and drink insofar as the effect to be obtained through fasting is necessary. According to St. Thomas, fasting greatly serves to restrain the desires of the flesh, to make satisfaction for sins, and to raise the mind more freely upward.[988] For fasting is undertaken first to repress the very desire of food and drink, and then all concupiscences of the flesh. But since fasting is more or less necessary for all, for *in many things we all offend*,[989] and in all *the flesh lusts against the spirit*,[990] the Church by her laws determines the mode of fasting suitable for all. Nor is this surprising: for a. since our first parents brought ruin into the world by the illicit use of food, abstinence from the licit use of food is an excellent means of sanctifying man and expiating past sins; b. Christ the Lord commended fasting by his own example, when he began the work of redemption with a forty days' fast.

c. Since the Church intends by this precept to repress the concupiscence of the flesh, which is carried toward the delights of food and venery, she especially prohibits those foods which are more savory and nourish the body, and by nourishing the body abundantly excite to luxury. But the flesh of birds and terrestrial animals, and those things which come from them, namely the eggs of birds and the milk of animals, are more savory and nourishing; therefore these especially are prohibited by the Church on days of abstinence.[991]

## Article First. On Abstinence from Flesh Meat

**674. Its declaration.** 1. The precept of abstinence alone (without fasting), from the universal law of the Church, obliges: a. on Sundays in Lent (unless a dispensation is granted); b. on all Fridays, except the day of the Nativity of the Lord if it falls on a Friday;[992] c. on the Sabbath, unless an indult or legitimate custom excuses.

Whether abstinence on the Sabbath is prescribed by the universal law of the Church is not sufficiently established. This is certain: the universal law of abstinence on the Sabbath no longer exists now. Therefore Benedict XIV affirms that it is lawful to eat flesh meat on the Sabbath wherever its use is not forbidden by received custom.[993] But where this law of abstinence is in force, whether it was first introduced by precept of the Church or by custom, it must be considered as a universal law of the Church. Therefore travelers coming

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**Notes**

988. *Summa* II-II, q. 147, a. 3.

989. Jas. 3.

990. Gal. 5:17.

991. Cf. St. Thomas, II-II, q. 147, a. 8.

992. From custom approved by Honorius III, c. *Explicari* 3, *de observ. ieiuniorum* (III, 46).

993. *De synodo*, l. 11, c. 5, n. 5.

from a place where that law is not in force into a region where it is in force are bound to observe abstinence.[994] If that law was never universal, by custom it has happened not only that abstinence was introduced, but also that it is considered as a universal law of the Church where it has been introduced.

2. The precept of abstinence obliges all the faithful having the use of reason, that is, those who have completed the seventh year of age: for it is an ecclesiastical precept, which does not oblige before the use of reason.

Before the seventh year of age has been completed, children are not bound to observe abstinence, even if they have already attained the use of reason; nevertheless parents are earnestly to be exhorted to accustom their children to abstinence as soon as possible: for afterwards they will more easily observe the precepts which they are accustomed early to observe.

3. The precept of abstinence of itself obliges under grave obligation, because its end and matter are grave; yet it admits smallness of matter.

a. All agree that matter is grave in that which notably nourishes; but in determining the quantity which notably nourishes, authors differ greatly. It seems it must be said that matter is grave which exceeds two ounces (60 gr.).

b. A greater quantity is required to constitute grave sin if not flesh meat properly so called, but something which comes from flesh meat, is eaten. Therefore he who eats an ordinary portion of vegetables seasoned with lard or broth made from meat does not sin gravely.[995]

4. A sin is committed against abstinence as often as flesh meat is eaten by morally distinct acts: for this precept, although already injured, can always be violated anew.

**675. What is signified by the name of flesh meat and fish.** 1. As regards abstinence animals are divided into flesh meat and fish: for on days of abstinence flesh meats are prohibited, but fish are permitted, because their flesh nourishes less and is less savory. What comes under the name of flesh meat and fish in the ecclesiastical sense we must learn not from the theories of physicists but rather from the common estimation of the faithful and especially from custom.

a. The animals whose flesh is prohibited are mammals (*Saugetiere*) and birds; nevertheless from mammals the following are permitted (because ordinarily they live in water and are nourished, or were thought to be nourished, by fish): otters (*Fischottern*), beavers or castors (*Biber*), seals (*Seehunde*), walruses (*Walrosse*); from birds, divers (*Tauchenten*) and probably also coots (*Wasser- u. Rohr-Huhner*);[996] but by no means cormorants (*Seeraben*).

b. By the name of fish are understood not only fish in the strict sense but all animals which have cold blood: a. reptiles and amphibians, as frogs (*Frosche*) and tortoises (*Schildkroten*); b. mollusks, as snails (*Schnecken*), shells (*Muscheln*), especially oysters (*Austern*); c. crustaceans, as crabs (*Krebse*), lobsters (*Meerkrebse*).

c. Ancient authors say that prohibited flesh is the flesh of terrestrial animals or animals "resting and breathing on land" (*Landtiere*), but licit flesh of fish they say is the flesh of aquatic animals, which live and breathe in water (*Wassertiere*). To these they referred also otters, beavers, ducks, and coots, because, taking the

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**Notes**

994. The Holy Office, Jan. 10, 1855, declared that travelers outside Belgium (where abstinence on the Sabbath is not in force) cannot eat flesh meat on the Sabbath in places in which the law of abstinence is in force.

995. Genicot I, n. 443.

996. From an indult granted by Pius VII to religious of the Order of Minims of St. Francis of Paola, who by vow must abstain perpetually from flesh meat, it is not lawful to infer that coots of themselves, not only from custom, are permitted on days of abstinence: for by the fact that, at the petition of those religious, that they might freely use that food (coots), the supreme pontiff kindly assented by way of grace, he permitted the eating of that flesh to pious religious, without intending to settle the theoretical question concerning the nature of this food. Cf. Ballerini-Palmieri II, n. 1110.

criterion from the ordinary place of these animals, they thought that they lived in waters after the manner of fish, or at least were nourished by fish.[997]

d. Custom permits these animals alone; therefore where custom renders their use licit, they can be eaten, although it arose from error concerning natural things; but where this custom does not exist, they belong to prohibited flesh meats.

e. In doubt whether something is flesh meat or fish, it is lawful to eat it: for that which is not certainly established to be flesh meat is not prohibited.

2. By the name of flesh meat in the ecclesiastical sense come all parts of prohibited animals, therefore also blood, marrow of bones, parts of the brain, fat or grease, lard (*Speck*), unless something of these is permitted by custom or indult; but not the fruits of these animals, as eggs and milk. Therefore foods cooked with flesh meat are also prohibited of themselves, as meat broth and foods seasoned with fat or flesh meat.

a. Long ago fat was permitted for preparing foods (in place of oil); before, by this name only swine fat (*Schweinfett*) was granted, but now fat or grease of any animal (*jede Art von Tierfett*) is permitted;[998] likewise when grease is permitted, one may also use butter as seasoning.[999]

b. Where the use of lard is permitted for seasoning foods (as in some places of Italy), the faculty must be interpreted in such a way that even those smallest little pieces which remain mixed with the lard liquefied by fire are licitly taken.[1000]

c. The use of margarine is permitted not only for preparing foods but also by way of food or seasoning, the use of butter remaining lawful.[1001]

d. On days of abstinence it is lawful to use the seasoning of broth invented by Maggi (*Maggi's Suppenwurze*), because it is not established that it is made from flesh meat; but it is not lawful to eat extracts of flesh meat which are called meat extracts (*Fleischextrakt*), since they certainly are made from flesh meat.

**676. From the precept of abstinence are excused those who cannot abstain from flesh meat without great inconvenience. Such are:**

a. Poor beggars, who can eat flesh meat if they have nothing else.

b. If poor workers, who have no other seasoning, use some lard or fat for seasoning foods, they are not to be condemned in this matter.

c. Therefore flesh meat which cannot be preserved without danger of corruption until a non-prohibited day can be given to the poor who are excused from the law of abstinence.

d. The sick, convalescents, those laboring under weakness of stomach, those weak in strength, those who must take medicine whose efficacy is impeded by fasting foods, and finally pregnant and nursing women: the former indeed if they are weak or fear danger to health from fasting foods, the latter if they must nourish a sick child.

It is established that pregnant women sometimes labor under great appetite for flesh meat; if they do not satisfy

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**Notes**

997. St. Thomas, II-II, q. 147, a. 8; cf. Olfers, *Pastoralmedicin* (Freiburg: Herder, 1893), p. 46 ff.

998. Holy Office, May 31, 1889.

999. Holy Office, May 13, 1896.

1000. Sacred Penitentiary, Nov. 17, 1897.

1001. Holy Office, Sept. 6, 1899. Margarine is artificial butter (*Kunstbutter*) made from bovine fat and the purer part of milk.

this, the fetus could suffer harm. Olfers[1002] and Capellmann[1003] indeed deny that any harm arises to the fetus because this appetite, however great, is resisted; nevertheless Lehmkuhl (I, n. 1208) excuses pregnant women of this kind from sin "if sometimes they take a small morsel of flesh meat."

c. Workers who are devoted to very difficult labors or to labors taking away the appetite for food, as workers in foundries, glassworks or ironworks, in metallic or coal mines. To these can also be equated those who must tend furnaces in factories or locomotives.

d. Those who cannot have other foods:

e. Wives, children, servants, if the father of the family does not admit other foods, because they are in moral impotence of observing the precept; servants, however, of themselves are bound to seek another master.

f. Travelers who do not receive other foods in inns; nevertheless they are excused only if they need food for suitable refreshment and if they seriously asked for other foods.

g. A guest who on a day of abstinence is invited to a meal which he knows is to be prepared from flesh meat is of himself bound to refuse the invitation, and can accept it licitly only if from refusal he must deservedly fear notable inconvenience, as grave offense or enmities. A guest who, beyond expectation, finds an entire meal prepared from flesh meat licitly eats flesh meat if he can neither receive other foods nor depart without grave inconvenience.[1004]

h. If by error the meal has been prepared from prohibited foods, one can distinguish in this way. If there is question only of seasoning from flesh meat, eating can be permitted: for since this is prohibited only under light obligation, a reasonable cause excuses. But if there is question of an entire meal prepared from flesh meat, the circumstances must be attended to, namely whether other foods can soon be prepared, whether the foods prepared from flesh meat can be kept without notable detriment until the following day, etc.; for if the prepared meal cannot be left without grave inconvenience, it is licitly taken.[1005]

i. Those who receive only worse and more expensive foods are not excused from observing abstinence, except in the case where the foods are so bad that they do not provide suitable refreshment, or so expensive that they bring notable detriment in goods of fortune.

## Article Second. On Other Prohibited Foods

**677. On abstinence from eggs and milk foods.** 1. The universal law introduced by custom prohibits eggs and milk foods. By the name of milk foods are understood milk and all those things which are prepared from milk, as butter, cheese, etc. Eggs and milk foods are prohibited when they come from those animals whose flesh meats are prohibited.

2. They are prohibited only in Lent, even on Sundays, unless a dispensation has been obtained; but on other days of fasting through the year they are not prohibited. For among other fasts the Lenten fast is more solemn; and therefore in any fast the eating of flesh meats is forbidden, but in the Lenten fast eggs and milk foods also are forbidden.[1006]

This prohibition is in force in Italy, France, Spain, etc.; but in our regions of Germany it has already long been abrogated by contrary custom. The chief reason for this custom is the scarcity of fasting foods, and especially

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**Notes**

1002. *Pastoralmedicin* (Freiburg: Herder, 1893), p. 51.

1003. *Medicina pastoralis* (Aachen: Barth, 1893), p. 101.

1004. Cf. Berardi, *Praxis confessarii* (Faenza: Novelli, 1899), II, n. 1463.

1005. Cf. ibid., 1464 s.

1006. Cf. St. Thomas, II-II, q. 147, a. 8, ad 3.

of oil and fish. Yet even where the law is still in force, a dispensation is granted for eggs and milk foods for almost the entire Lent, with only a few days excepted, in almost the same way as among us a dispensation for flesh meat is granted.

3. This prohibition obliges in conscience, as is established from the declaration of the Church,[1007] and indeed under grave obligation: for if the law of abstaining from eggs and milk foods obliges in conscience, since its matter is grave, it certainly obliges gravely, which the sense of the faithful and the consensus of theologians confirm.

To constitute grave matter in this precept a greater quantity is required than in the eating of flesh meat, because eggs and milk foods are not prohibited as principally as flesh meat. The opinion of those who require a twice greater quantity seems to be approved, so that four ounces (120 gr. = two hen's eggs) constitute grave matter.[1008]

4. Eggs and milk foods are equated; hence one dispensed for milk foods is judged also dispensed for eggs. But flesh meats and milk foods are not equated; therefore one dispensed for milk foods is not by that very fact also dispensed for flesh meats. But one dispensed for flesh meats is by that very fact judged also dispensed for milk foods, because the lesser is contained in the greater.

Butter and milk are not equated, but stand as lesser and greater in the same species; hence if in a place in which milk foods are prohibited the use of butter is granted for seasoning foods, the use of milk also is not by that very fact granted.

**678. On prohibited mixture of foods.** 1. This prohibition, which Benedict XIV issued, is contained in these words: he who by force of a dispensation can eat flesh meat, cannot licitly eat flesh meat and fish together in the same meal on days of fasting. For the indult or dispensation of eating flesh meat on days of fasting, by the will of the supreme pontiff, is granted and can be granted only on this condition: that flesh meats not be taken together with fish in the same meal.[1009]

a. By force of a dispensation: therefore those who licitly eat flesh meat on days of fasting not by force of a dispensation or indult, but for another reason, for example because of affected health, can also eat fish at the same time.[1010] But those who by reason of age or labor are not bound to fast, as children after the seventh year or workers laboring gravely, who can take refreshment several times, are held by this law: for those who are not bound to fast by reason of age or labor can from this reason only refresh themselves more often, but they eat flesh meat in the meal by force of an indult.[1011]

b. Can eat flesh meat: but he who is dispensed only for eggs and milk foods can at the same time also eat fish. Likewise for those who are dispensed not for flesh meat, but only for meat broth or for meat seasoning, it is not forbidden to eat fish at the same time with these.[1012]

c. In the same meal: therefore he who, from dispensation, took flesh meat at dinner is not prohibited from eating fish at supper.

d. By the name of fish are understood fish in the broader sense, insofar as they are opposed to flesh meats (n. 675). Therefore it is not lawful to eat flesh meat together with shellfish or caviar (*Kaviar*)[1013] or frogs or

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**Notes**

1007. It is not evident that the custom of not eating eggs and milk foods in Lent obliges. Proposition 32 condemned by Alexander VII.

1008. Genicot I, n. 443.

1009. Benedict XIV treats of this matter in three encyclical letters, but especially *In suprema*, Aug. 22, 1741; and the Sacred Penitentiary issued several decrees on this matter.

1010. Sacred Penitentiary, Jan. 9, 1899.

1011. Holy Office, May 24, 1841; June 23, 1875.

1012. Sacred Penitentiary, Feb. 8, 1828.

snails or coots in those places in which coots are held as fish. But it is lawful to eat flesh meat together with fish broth or with seasoning made from fish, and conversely it is lawful to eat fish together with meat broth or with seasoning made from flesh meat: since broth and seasoning from flesh meat is not called flesh meat, and broth or seasoning from fish is not called fish; but flesh meats together with fish are prohibited.[1014]

e. But it is not lawful to eat a dumpling seasoned with flesh meat cut into tiny pieces together with fish, or a dumpling seasoned with little fish cut into tiny pieces together with flesh meat: for flesh meat remains flesh meat and fish remains fish, even if they have been cut into little pieces; nor are those little pieces properly seasonings, but another substance joined to flesh meat or fish.

2. This prohibition, from the declaration of the same supreme pontiff, obliges under grave obligation,[1015] and indeed on all days of fasting; therefore: a. throughout the whole time of Lent even on Sundays;[1016] b. on Ember days and on vigils on which fasting is prescribed; c. in Advent; but it does not oblige those who on Friday and Saturday, when the law of fasting does not oblige, are dispensed from the law of abstinence.[1017]

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# Question Second. On the Precept of Fasting

## Article First. On the Precept of Fasting Itself

**679. Notions.** Fasting is distinguished as threefold: natural, which consists in abstinence from absolutely all food and drink; ecclesiastical, which consists in abstinence from foods according to the form prescribed by the Church for the faithful; moral, which is abstinence from food and drink according to a form diverse from that which the Church prescribes, as if someone fasts on bread and water, or eats only roots and herbs, or takes food only every other day. Ecclesiastical fasting is called strict if abstinence from flesh meats, eggs, and milk foods is prescribed; and non-strict if abstinence from flesh meats alone is prescribed.

The end of ecclesiastical (and moral) fasting is chiefly threefold: to repress the concupiscences of the flesh, to render the elevation of the mind to divine things easier, and to make satisfaction for sins.[1018] Physiologists show that the ecclesiastical precept concerning abstinence and fasting does not harm health but rather benefits it.[1019]

**680. On the precept of fasting.** 1. The precept of fasting, even as regards the solemn Lenten fast, is not of divine but of ecclesiastical law: for no trace of a divine law appears; moreover in the law of fasting, even the Lenten fast, there is such variety as to time and mode, etc., as cannot occur in divine law, since divine law must be observed by all in the same way and cannot be changed by custom.

It is certain that fasting, if it is considered in general, was introduced by the apostles, but it is equally certain that the Lenten fast does not descend from the apostles. It can be derived from Christ the Lord insofar as fasting, which originally was observed only for a few days before Easter, gradually was extended to forty days according to the example of the fast which he himself observed in the desert.[1020]

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**Notes**

1013. Sacred Penitentiary, Jan. 16, 1834.

1014. Sacred Penitentiary, June 14, 1880.

1015. Benedict XIV (July 8, 1744), *Si fraternitas tua* to the Archbishop of Compostella, n. 1.

1016. Benedict XIV extends the precept about not mixing foods even to Sundays of Lent, although fasting need not be observed on those days. Ibid., n. 5.

1017. Sacred Penitentiary, Feb. 15, 1834.

1018. St. Thomas, II-II, q. 147, a. 1 and 3.

1019. Cf. Moser, *Das kirchliche Fasten- und Abstinenzgebot in gesundheitlicher Beleuchtung, Frankfurter zeitgem. Broschuren* (Heft 6, 1907).

1020. Cf. Linsenmayr, *Entwicklung der kirchlichen Fastendisziplin bis zum Konzil von Nizaa* (Munich: Stahl, 1877); Funk, *Die Entwicklung des Osterfastens* (*Theol. Quartalschrift* of Tubingen, 1893), p. 170 ff.

2. The precept of fasting of itself is twofold: one refers to the quantity of foods, the other to their quality; the former permits one meal, the latter prescribes abstinence from flesh meats. Therefore he who violates fasting as to both precepts commits two sins.

3. The precept of fasting is from its kind grave, because there is question of a grave matter, namely one which notably conduces to the spiritual good of the faithful. This is also established from the declaration of the Church;[1021] yet it admits smallness of matter.

Authors disagree in assigning the quantity of food which constitutes grave matter. It seems it must be said that a quantity which exceeds four ounces (120 gr.) constitutes grave matter. It does not matter whether this quantity is taken together in one eating or divided into several times through the day, because small eatings taken through the day coalesce and together constitute grave matter, which is held from proposition 29 condemned by Alexander VII.[1022] Therefore grave sin against fasting is committed not only by him who dissolves the essence of fasting by a second meal, but also by him who violates fasting in grave matter, that is, who adds a grave quantity of four ounces, either at breakfast or at the evening collation or otherwise in the course of the day, to the quantity of food which on days of fasting can licitly be taken at breakfast and the evening collation.

4. Fasting from the common law and apart from dispensation is to be observed on the days of Lent (except Sundays), on Ember days, and on certain vigils (5).

The vigils on which one must fast are the vigils of Pentecost, of the holy apostles Peter and Paul, of the Assumption of the Blessed Virgin Mary, of All Saints, and of the Nativity of the Lord. In antiquity fasting was prescribed on almost all vigils; but after some feasts (as of the apostles) were later abrogated, the fast of the preceding vigil was also abrogated. In place of the fast of these vigils was substituted the fast of Wednesday and Friday of Advent.

5. The precept of fasting as to one meal does not oblige the faithful before the twenty-first year of age has been completed. Because before this age a man ordinarily needs more abundant food, the Church did not wish to oblige adolescents with so great an inconvenience; and because the Church looks to things as they commonly happen, those who before this age already possess perfectly developed strength are not bound to fast.

**681. Essence of fasting.** 1. The essence of fasting consists in only one daily meal. Therefore he who, whether advertently or inadvertently, has already essentially injured the fast by a second meal, is no longer bound to fast on that day: for once the essence of fasting has been injured, the precept of fasting can no longer be observed.

a. It does not matter whether someone again fully refreshes himself in one eating or by eating several times through the day, because the individual eatings coalesce. Therefore he who, besides one full meal, takes so much food through the day that the whole together makes another full meal, dissolves the essence of fasting.

b. Therefore to the question whether he sins mortally several times who takes several meals, it must be answered that he sins gravely only once, because fasting, insofar as it consists in one meal, can be broken only once, just as the natural fast or a vow of not drinking wine on this day can be violated only once: for according to the mind of theologians fasting was instituted by the Church in such a way that a second meal

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**Notes**

1021. *He who breaks the fast of the Church does not sin mortally unless he does this from contempt or disobedience.* Proposition 23 condemned by Alexander VII.

1022. *On a fast day, he who several times eats some little thing, even if in the end he has eaten a notable quantity, does not break the fast.* Proposition 29 condemned by Alexander VII.

dissolves the essence of fasting; and once the essence is broken, fasting can neither be observed nor broken any further.

c. From these things is deduced what he must do who on a fast day, from forgetfulness, took an entire breakfast. Namely, if he refreshed himself fully at breakfast, he must abstain from a second meal; and if he did not refresh himself fully, he must abstain from the evening collation. For after breakfast has been taken, the precept can still be observed and must be observed, and only grave inconvenience excuses from its observance.

2. Abstinence from flesh meats does not belong to the essence of fasting, from which it follows that fasting can be separated from abstinence, that is, that fasting as to essence can be observed even if abstinence is not observed.

For a long time it was disputed among theologians whether abstinence from flesh meats was required for the essence of fasting, so that, when abstinence was removed, the essence and therefore also the precept of fasting ceased. Those who thought that abstinence from flesh meats belonged to the essence of fasting therefore also granted several meals to those dispensed concerning flesh meats. Benedict XIV finally removed the controversy; by the constitution *Non ambigimus* (May 30, 1741), he established that those dispensed concerning the eating of flesh meats on days of fasting are held to one meal.

## Article Second. On the One Meal

**682. On the meal itself.** 1. On days of fasting only one full meal is permitted, to which now, from custom approved by the Church, there is licitly added a little supper or evening collation, and breakfast or morning morsel. For fasting as to the quality of foods, abstinence from flesh meats is also required of itself; therefore the foods which may be eaten on days of fasting are fasting foods, unless an indult or an excusing cause permits flesh meats. As regards quantity, however, ecclesiastical law prescribes nothing; the natural law of temperance must be observed. Hence it can happen that someone in that one meal violates the natural law of temperance, but does not injure the ecclesiastical precept of fasting.

If ever in another matter, certainly in this one custom has been very powerful in interpreting and mitigating an ecclesiastical precept. For in the first times of the Church the faithful observed almost a natural fast until sunset, and from the sixth century until the third hour after midday. Afterwards the evening collation began to be added to the one meal; as to its name it took its origin from monasteries: for on days of fasting, at the *collationes* or conferences which were customarily held in monasteries in the evening, something liquid was permitted to the monks, and "lest the drink do harm," also a morsel of bread or something from fruits. Seculars, observing the same custom of taking some food on ecclesiastical fast days, gradually added a greater quantity of foods, and the Church afterwards approved this custom. Then they began to take the meal at the ordinary hour of dinner, which was the twelfth hour; and finally in the morning they also took a little something for breakfast. The Church at length also approved this use.[1023]

2. The meal must be morally continuous: for if moral continuation were dissolved through interruption, it would not be one meal, but several. One meal remains both if only the space of an hour comes between one eating and the other, and if, even with a longer space intervening, someone withdraws from the table with the explicit or implicit intention of returning to the eating.

It is asked how great a space of time can licitly intervene between one eating and the other, or how great an interruption of dinner can licitly be made.

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**Notes**

1023. Cf. Noldin, *Zur Erklarung des Fastengebotes* (*Zeitschrift f. Theol.*, 1903), p. 565 ff.

a. It is lawful to interrupt dinner lightly even without cause; an interruption is judged light which does not exceed half an hour. Hence if someone has already risen from table with the intention of not returning any more, he can eat again if within half an hour something is brought beyond expectation, because this morally belongs to the dinner.

b. It is lawful to interrupt dinner notably, that is, up to an hour, from a reasonable cause, provided the one interrupting had the intention of returning and was not refreshed fully before; if this is done without cause, it is a light sin. Therefore those who read at table, as is accustomed in religious communities, can licitly take some food before dinner: since this is done from a just cause and with the intention of dining afterwards, the taking is morally connected with dinner.

c. To interrupt dinner very notably (much beyond an hour) without just cause is grave sin, because eatings so interrupted are not united into one meal. But if someone not yet fully refreshed were forced to interrupt dinner, he could return to it even after two hours, because the Church does not require that one pass the day without sufficient refreshment.

**683. On the evening collation.** 1. From the custom now received everywhere, in the evening collation, as regards the quantity of food, a fourth part of supper (dinner) or absolutely eight ounces (about 240 gr.) can licitly be taken even by those who would be fully refreshed by this quantity: for it is merely accidental that these foods satisfy someone. From a just cause even more can be taken, especially if the added quantity does not exceed light matter. But any cause by which someone needs more abundant food for suitably fulfilling his duties must be judged just, for example the complexion of the body, the kind of labors, the duration of the fast, the character of the region, lack of wine, etc.

a. The former determination of the licit quantity is relative: for since the quantity of dinner or a full meal necessary for sustenance in individual persons is very diverse according to the diverse quantity of foods, its fourth part is also diverse for different persons. But the latter determination is absolute and in general grants more than the former relative one.

b. There is a universal custom on the vigil of the Nativity of the Lord of taking a double quantity (the joyful fast).[1024] In some places the same double quantity is also taken on other vigils of solemn feasts; where this custom is in force, it can licitly be observed.

c. Some say that into the aforesaid weight must be counted only that which has the character of solid food, but not what has the character of drink.[1025] Others, however, rightly rejecting this opinion, establish that the weight of solid food must be diminished if the solid substance is cooked with water, wine, or another liquid by way of porridge or dumpling, so that it is lawful to take not eight but only five or six ounces of bread, flour, rice, etc., which are cooked.[1026]

Note. The quantity of food which is licit in the evening on days of fasting can be determined from the instruction which some bishops propose to the faithful in the Lenten indult, so that it may be said that, besides the one meal, about half part of an ordinary supper can licitly be taken. Since by these words the quantity is determined which can licitly be taken besides the one meal, therefore at breakfast and collation, this rule does not differ much from that which was established above.

2. As to the quality of foods, in the collation only lighter foods that are not very nourishing are permitted, such as dumpling, bread, fruits, vegetables, legumes, sweets, etc.; but if stronger foods are taken, such as

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**Notes**

1024. St. Alphonsus, n. 1025.

1025. Genicot I, n. 437; Berardi, *Praxis confessariorum*, 3rd ed., II, n. 1474.

1026. St. Alphonsus, n. 1029; Lehmkuhl I, n. 1211.

eggs, cheese, fish, etc., the quantity is to be diminished in due proportion. In this matter also one must stand by custom, which is one thing in warmer regions and another in colder regions. Therefore where custom permits nothing else, this prescription must be observed; but in our regions of Germany, from custom, no distinction of foods is made, so that all fasting foods are permitted indiscriminately in the quantity which I have mentioned.

**684. On breakfast.** 1. From universal custom it is lawful in the morning to take breakfast (coffee, chocolate, tea with a morsel of bread), but only in a small quantity, namely one which as to nutritive food does not exceed two ounces or about 60 gr.

2. From the declaration of the Sacred Penitentiary it is established that breakfast of this kind can be taken everywhere, even where the custom of breakfasting has not yet prevailed, and by all, even by those who could fast without breakfast.[1027]

**685. On the time of the meal.** 1. From universal custom the time of the one meal is around midday; where, however, there is a custom of dining at the eleventh hour before midday, it is not necessary that on days of fasting one depart from this hour.

a. For breakfast and for the evening collation neither law nor custom prescribes a determined time; hence generally the former can be taken in the morning, the latter in the evening.

b. The time of the meal is determined insofar as the meal, from ancient custom, must have the character not of dinner but of supper. Therefore in antiquity the time of the meal was the evening time or the third hour after midday; from which it follows that to defer the meal to a later time is always lawful, but to anticipate it without cause is not lawful.

2. To anticipate the time of the meal even notably is not grave sin, because the circumstance of time is accidental with respect to fasting: for if only one meal is taken, the end intended by the precept is not frustrated as to substance. Anticipation is judged notable which exceeds an hour. Therefore to anticipate the meal within an hour even without a special cause is lawful, but beyond an hour only from a just cause.

a. St. Alphonsus indeed at first had proposed this opinion as the more common and more probable;[1028] but afterwards he did not even hold it probable, and declared that the affirmative opinion, according to which notable anticipation would be grave sin, must altogether be held.[1029] But the reason adduced, on which the denying opinion rests, is certainly probable.[1030]

b. A just and reasonable cause of notably anticipating dinner would be, for example, a journey to be begun, urgent business to be dispatched, weakness of constitution, the custom of dining at such an hour, etc.

3. It is lawful to invert the time of dinner and the little supper, so that the collation is taken around the tenth or eleventh hour in the morning and the meal in the evening around the fourth or fifth hour, "if there exists some reasonable cause of the aforesaid inversion."[1031] In this case, however, before bed it is not lawful to take anything further except those things which do not break the fast. From a reasonable cause it is also lawful to take the collation in the morning, dinner at midday, and the morsel in the evening.[1032]

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**Notes**

1027. "Whether it can be permitted that in the morning on days of fasting coffee or chocolate be taken in a small quantity with a morsel of bread, as is done in the Canadian region." The Sacred Penitentiary replied Nov. 21, 1843, that those who follow such a use are not to be disturbed.

1028. Cf. l. 3, n. 1016.

1029. Cf. the second list of reformed questions, n. 13.

1030. Ballerini-Palmieri II, n. 1118, who in this matter followed several ancient authors, as Laymann, Lessius, Sporer, Holzmann, Elbel, etc.

1031. Sacred Penitentiary, Jan. 10, 1834.

1032. D'Annibale III, n. 134.

4. Certainly it is not lawful to prolong the time of the meal immoderately without violating the precept of fasting; but it can be prolonged to two hours without any fault, and if a special cause were present, even beyond this time.

5. Alphonsus (n. 1020 at the end) has these words: "Elbel with Gobat grants up to three or four hours, at least for Germans according to their custom; but Croix rightly doubts whether this custom is approved, unless, as he says, after about two hours only desserts or lighter foods are placed, especially if afterwards the little evening meal is omitted. And this I neither approve nor reprove."

**686. What it is lawful to take outside the full meal (with collation and breakfast) without breaking the fast.** That which has the character of food is prohibited on days of fasting; but that which has the character of drink can licitly be taken on days of fasting; hence the axiom has prevailed: liquid (that is, drink) does not break the fast. That has the character of food which principally serves nutrition, whether it is solid or liquid; that has the character of drink which, from common use, is taken to drive away thirst or as a vehicle of food to aid digestion.

a. Not only water has the character of drink, but also wine, beer, various liquids such as lemonade, sugared water, coffee, tea with a small quantity of sugar mixed in, although accidentally these also nourish, as beer does. But broth, oil, honey, sugar, chocolate, and of itself milk, do not have the character of drink, although these are liquid and are taken by drinking. It must be noted, however, that in some regions (of Tyrol), from use and custom, milk (cleansed of cream) is taken to drive away thirst, as elsewhere wine or coffee; there therefore milk of this kind without doubt belongs to the liquids which do not break the fast.

b. Apples, pears, grapes, and fruits of this kind rather have the character of food; and therefore they are not permitted, unless perhaps they are taken in a small quantity to extinguish thirst: for we say that these are eaten, not drunk. St. Alphonsus permits lozenges (*Pastillen*) and frozen liquor, but both only in a small quantity.

c. Outside the hour of the meal and collation, to take liquid (wine, beer, etc.) and, lest the drink do harm, a morsel of bread, of itself does not break the fast, because the bread is taken by way of medicine. But certainly it is not lawful to take bread as often as one likes to drink, but at most once or twice in a day; and especially this can be permitted to those who otherwise could not bear the fast, especially if the dinner happens to be deferred for a long time.

## Article Third. On Causes Excusing from Fasting

**687. Who are excused.** In order that someone be excused from fasting, a grave cause proportionate to the gravity of the precept is required. The causes excusing from fasting can be reduced to three: a. weakness of body; b. poverty; c. grave labor, whether of body or of mind.

1. Because of weakness of body are excused:

a. The sick, convalescents, the weak; likewise those who cannot take sufficient nourishment at one time; moreover all who from fasting suffer notable headache or dizziness, or who without supper cannot sleep for a notable part of the night.

b. Pregnant and nursing women, even if on account of robust strength they do not seem to suffer detriment from fasting; to these physicians add women who are suffering the menstrual flow.

c. Those who suffer from nerves: for according to the judgment of physicians the "nervous" must take food in smaller quantity but more frequently; hence those whose disease (nervousness) is notable are excused from the law of fasting, or at least there is sufficient reason for seeking and granting dispensation.

d. The aged, that is, sixty-year-old men from the beginning of the sixtieth year, and fifty-year-old women from the beginning of the fiftieth year of age. For when old age begins, the faithful are excused from fasting; but according to things as they commonly happen, old age begins in men from the sixtieth year, in women, who grow old more quickly just as they flourish sooner in age, from the fiftieth year of age. This same age also excuses from fasting which is observed by force of a rule in religious orders or which is undertaken from vow, unless something else is expressly established.

e. The reason why old age excuses from fasting is this: because on the one hand in old age nature and strength are diminished and therefore need restoration more often; on the other hand the aged, because of weakness of strength and because of heat gradually failing, cannot digest sufficient food all at once and at the same time, and therefore need food more frequently.

f. Since the aged are of themselves excused from fasting, not only those who in fact are weak in strength are not bound to fast, but also those who seem robust enough to bear the fast: for this is accidental.

2. Because of poverty all those are excused who do not have the means from which they may procure for themselves a full meal, such as those begging door to door, and those who do not have such foods that one full meal would suffice for their nutrition: for bread and legumes or other foods of little nourishment do not suffice for the just nutrition of the whole day.

3. Because of bodily labor are excused: workers who exercise a mechanical art with great labor of body: farmers, blacksmiths, carpenters, masons, weavers, stonecutters, sailors, porters, runners, shoemakers, cooks who must prepare several foods for many persons, etc.; and indeed these (by reason of custom) are excused of themselves, so that not even those must fast who, because of sufficiently robust strength, could fast without grave inconvenience, because they exercise an art which of itself is joined with great weariness of body.

Travelers, if the journey cannot be deferred without inconvenience or if it has already begun, and indeed: a. a longer journey on foot, that is, of four or five hours, of itself excuses from fasting; and if the road is hard, or the weather harsh, or the traveler weak, even a shorter journey excuses. b. Those who travel by horse or carriage are excused if they are on a journey for several days; a journey of one day excuses only if it must be made with great weariness. c. But a journey by railways, since it is not laborious, can excuse only accidentally, namely if the travelers lack suitable nourishment.

a. Those who by reason of bodily labor are excused from fasting are not bound to fast on those days on which they interrupt labor if they do this for only one or another day: for they are excused so that they may restore and preserve the strength necessary for their next labors. But in order that those who exercise an art joined with grave labor may be judged actually excused, they must at least ordinarily labor through the greater part of the day: for if ordinarily they were occupied in labors of this kind for only two or three hours, they would not be excused of themselves.

b. No one is bound, in order that he may be able to fast, to interrupt labors incompatible with fasting which he ordinarily exercises, even if he does not need the labor, since he is excused from fasting even because of labor that is not necessary: for the Church does not intend to impede the faithful from their ordinary occupations.

c. Nevertheless it is not lawful, on a fast day, without just cause, that is, merely for the sake of recreation, to undertake labor incompatible with fasting which otherwise is not exercised, unless this is done very rarely; but it is lawful for a useful end, even if not necessary. Therefore it is lawful on a fast day to undertake a pious pilgrimage if there is a special reason for undertaking it on that day, for example, a special spiritual utility of the pilgrims; but if a special reason of this kind is absent, the pilgrimage must be deferred to another day.

Note. It cannot be admitted that all those are of themselves excused from fasting who exercise serious labor, especially bodily labor: for there are many workers and craftsmen whose occupation is not so laborious that they are excused of themselves from fasting; of this kind are painters, scribes, typesetters and others laboring in printing houses who do not themselves have to turn the press, barbers, tailors, servants and maids who perform only lighter domestic services. Yet because of the great weakness of men at the present time, many of these, especially in towns, are accidentally excused from fasting.

4. Because of mental labor, which is often joined with bodily weariness, are excused:

Lecturers of sciences, even if they have a lecture only once in the day, when they need great study and labor to prepare the lectures, but not those who deliver lectures already prepared before and often repeated.[1033]

Professors of grammar and schoolmasters who must teach daily for four or five hours with great weariness.

Students who through the greater part of the day (for about nine or ten hours) attend schools and seriously apply themselves to studies.

Preachers who daily or almost daily have a sermon; and a fortiori missionaries, who are exercised in missions with still greater weariness. But generally preachers are not excused who have a sermon only three or four times in the week, unless they undergo notable inconvenience in observing the fast.

Confessors are excused if they cannot hear penitents and at the same time fast without grave inconvenience; but this ordinarily happens only if they receive confessions almost through the whole day, that is, for seven or eight hours.

All these, however, are not excused of themselves, but only accidentally, namely if by reason of some circumstance aggravating the ordinary labor (weakness of the person, special gravity of the labor, etc.) they could not, while fasting, perform their offices. Yet they easily have sufficient reason because of which they can seek and receive dispensation.

Note. 1. All who judge themselves excused from the law of fasting or abstinence, because of the danger of hallucination, are to be warned that, where the excusing cause is not altogether manifest, they should seek the declaration of the pastor or physician, and that they should seek dispensation where, because of the lightness of the cause, a declaration alone does not suffice.

2. Ecclesiastical superiors should not be difficult in granting dispensation; but let them remember that this reason alone, that if dispensation is denied the precept will be violated, is not a sufficient cause for granting dispensation. Nevertheless the faithful who seek dispensation can ordinarily be presumed to have some reasonable cause, such as weakness, wearying labor, etc.; indeed a founded fear lest, if dispensation is not granted, those weak in faith and in Christian life be alienated from the Church itself constitutes some cause for granting dispensation.
3. Confessors should beware lest they warn those who are in good faith and are foreseen not to obey about observing the precept of abstinence and fasting to the very point of moral theology, lest, once warned, they commit formal sins and be frightened away from the sacraments.
4. Not every difficulty which follows from fasting excuses from observing it, but only grave external difficulty, which is not joined to the very nature of the precept: for some weakening of the body and some headache, likewise difficulty in exercising one's duty somewhat greater than usual, necessarily follow from fasting, and therefore belong to inconveniences internal to this precept.

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**Notes**

1033. St. Alphonsus, n. 1094.

## Article Fourth. On Dispensation from Abstinence and Fasting

**688. Who can dispense:** a. The supreme pontiff for the whole Church. His dispensation, from the known principles, is always valid and, when a just cause exists, also licit.

b. The bishop with his subjects from a just cause in particular cases, but without an indult not with an entire community; therefore neither with an entire diocese, nor with some parish, nor with some family.[1034]

In recent times there has been granted to bishops the faculty, for most grave causes, of dispensing in the law of abstinence if some solemn feast falls on Friday or Saturday, except in the times of Lent and Advent, on Ember days, and on vigils consecrated to fasting. This power is extended also to days on which extraordinary fairs are held with a great concourse of the people.[1035]

c. The pastor, from custom, with his subjects in a particular case, that is, individual persons, but not with the whole parish nor with an entire family, not even for one day.

d. A regular superior with his subjects taken individually, but not with the whole community.

e. Confessors, unless they have been expressly delegated, have no faculty of dispensing, but can only declare whether an excusing cause is present; which, moreover, physicians also can do, and superiors of nuns.

In declaring inability to fast, especially if the excusing cause is not plainly certain, superiors and confessors should attend to what Sanchez wisely warns, that they provide for necessity with the least loss of the law: thus where it suffices to take the morning breakfast or the evening collation more indulgently, they should grant this, but by no means relax the fast entirely.[1036]

**689. On the dispensation itself.** 1. Universal dispensation by pontifical indult, whether immediately by the supreme pontiff or mediately through the bishop, ordinarily is granted only from the law of abstinence, but not from the law of one eating, because in this matter legitimate excuse suffices. But particular dispensation is customarily granted either from both laws or from either one.

a. An example is not lacking of a faculty generally granted of dispensing in both laws and of the dispensation itself: on Jan. 14, 1892, the supreme pontiff Leo XIII, because of diseases raging in that year, granted to all bishops of the world that they release the faithful from the law by which they are bound to observe abstinence and fasting. The same supreme pontiff, through the Lent of the year 1898, because of diseases raging at Rome, dispensed both from abstinence and from fasting.

b. From the will of Benedict XIV, particular dispensation is to be granted only on the advice of both physicians.[1037] Therefore to the petition must be joined the testimony both of the pastor or confessor and of the physician; but in some regions this precept has fallen into desuetude.

c. Superiors inferior to the Roman pontiff cannot dispense from the law of not mixing foods without special delegation. Although this dispensation is granted very rarely, nevertheless some examples of it are not lacking.

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**Notes**

1034. Constitution of Benedict XIV, *Libentissime* (June 24, 1745); nevertheless authors grant to the bishop the faculty of dispensing with some particular college or institute from an urgent cause, for example in an epidemic disease.

1035. This faculty was granted by Leo XIII through a decree of the Holy Office, Dec. 5, 1894, and Dec. 15, 1897. Cf. *Acta S. Sedis* XXVII, 512.

1036. *Consil.* l. 5, c. 1, dub. 4, n. 3 s.

1037. Constitution *Non ambigimus*, May 30, 1741.

2. If sometimes for many indeterminately a general dispensation from the law of abstinence is sought or granted, the cause of the dispensation must affect in some way all those for whom it is sought or granted; thus in places of baths, by reason of infirmity, a dispensation could be granted for all who live in an inn destined for bathers.

3. He to whom an indult is granted of eating flesh meats on days forbidden by the Church, with the law of fasting nevertheless preserved, can use this dispensation not only on days of abstinence, but also on days of fasting; but on days of fasting only for the meal, and by no means for the evening collation. But if he is not bound to observe fasting, he can eat flesh meats in all eatings.

**690. Some documents concerning fasting, which are gathered from various decrees of the Holy Office and especially of the Sacred Penitentiary.**[1038]

a. Those who, by reason of age or labor or infirmity, are excused from fasting (but not those who have been dispensed from a just cause), can, on days of fasting on which by the general indult of the bishop the eating of flesh meat is permitted, eat flesh meat as often as they take food,[1039] unless the bishop dispensing by force of an apostolic indult restricts this faculty.[1040]

Those who are excused from fasting from a just cause, by the will of the Holy See, unless from the same cause they are also excused from abstinence, are plainly dispensed from abstinence, unless the bishop establishes otherwise. But the Holy See does not extend this dispensation to those who are not bound to fast only by reason of dispensation. Therefore these need a special dispensation in order that they may eat flesh meat more often than is lawful through the Lenten indult.

b. A dispensation granted to the father of a family of itself is not extended to the whole family; wherefore, if it is permitted to children that in a case of this kind they eat flesh meat, this is not done because of the father's dispensation, but because of the impossibility in which they are placed of observing abstinence.[1041]

c. Bishops dispensing in the eating of flesh meats from a pontifical indult are accustomed to enjoin on the faithful who use the dispensation some pious work (either certain prayers or alms). This precept obliges under light obligation and is affixed to the day; wherefore when the day has passed it ceases.

**691. On the Bull of the Crusade.** 1. The Bull of the Crusade was first granted to the Spaniards by Julius II in 1509 and was enlarged by Gregory XIII. The same afterwards was granted also to the Neapolitans by Pius V in 1569.

2. The Bull of the Crusade contains various and great indults and privileges, the chief of which are reduced to these four:

a. Of eating flesh meats, eggs, and milk foods in the time of fasts of the whole year (with a few days excepted).[1042]

b. Of commuting simple vows into other pious works and some alms, except vows of chastity and religion and of pilgrimage overseas.

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**Notes**

1038. Compare the decrees themselves in Lehmkuhl I, n. 1219 ss.

1039. Sacred Penitentiary, Feb. 24, 1819.

1040. Sacred Penitentiary, May 27, 1863.

1041. Sacred Penitentiary, Jan. 16, 1834; Dec. 19, 1862; Apr. 20, 1865.

1042. This privilege is not properly contained in the Bull of the Crusade, but in an added apostolic indult for the use of flesh meats.

c. Of absolving from sins and censures reserved to any ordinary and even to the Apostolic See, except the crime of heresy and, as regards ecclesiastics, except the censure which is contained in the Bull *Sacramentum poenitentiae*.

d. Several indulgences, both partial and plenary.

3. In order that someone enjoy the graces and privileges of the Bull, he must receive the summary of the Bull, pay the assessed stipend, and guard the received summary with prudent diligence. The Bull received is valid for a year; hence each year, after the tax has been paid, it must be taken anew. The summary of the Bull can also be taken twice in any year, the assessed stipend being given for each; he who does this can enjoy the graces of the Bull twice in a year.

4. The Bull is granted "to all the Christian faithful who dwell in the whole Spanish territory, or who come into it within the year from the publication of the Bull, give alms for pious ends, and receive the summary of the same Bull."

5. It must be noted: a. The Bull is called of the Crusade because, in likeness to those bulls which once had been granted on the occasion of the "crusade" for recovering the Holy Land, it was granted to the king of the Spains for the conquest of unbelievers.

b. Although the reason because of which it was originally granted is no longer in force, the Bull itself nevertheless still has force, since it has been prolonged several times by the supreme pontiffs. The alms which are collected in this way are spent on other pious causes.

c. The Bull of the Crusade is not a personal privilege, but a local one; therefore outside Spain or the kingdom of Naples it is not lawful to use it.[1043] The privileges of the Bull are to be interpreted broadly.

# Book Second. On Annual Confession and Paschal Communion

## Question First. On Annual Confession

**692. On the precept itself.** The Church establishes that all the faithful who have arrived at the years of discretion should confess their sins at least once a year to their own priest.

a. Annual confession was first prescribed by the Fourth Lateran Council, c. 21: "Every faithful person of either sex, after he has arrived at the years of discretion, should faithfully confess all his own sins alone at least once a year to his own priest … reverently receiving at least at Easter the sacrament of the Eucharist, unless perhaps by the counsel of his own priest, for some reasonable cause, he judges that he should abstain from receiving it for a time." The same precept was renewed by the Council of Trent.[1044]

b. Since a certain time of the year in which confession must be made from the prescription of the Church cannot be determined, the precept of annual confession is satisfied at whatever time of the year confession is made. It is not certainly established how, from the will of the Church, the year within which the prescribed confession is to be made should be computed. De Lugo indeed maintains that the year must be computed according to civil use, from January to January, because the word *year* naturally has this sense;[1045] nevertheless the opinion seems preferable which Suarez holds with others, that the year must be computed from Easter to Easter, both because universal custom has interpreted the law in this sense, and because the

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**Notes**

1043. Holy Office, June 2, 1897.

1044. Cf. sess. 13, can. 9; sess. 14, can. 8 and c. 5.

1045. Lugo, *De poenitent.*, disp. 15, n. 157.

Church, prescribing communion at Easter, seems at the same time to prescribe confession as a necessary preparation.[1046]

**693. Its declaration.** 1. The precept of annual confession obliges under grave obligation; this is gathered both from the gravity of the matter and from the grave penalty added (privation of ecclesiastical burial).

2. This precept of itself obliges all the faithful who have arrived at the years of discretion, that is, who are capable of grave sin; therefore, after the seventh year has been completed, the faithful are bound to confession, unless it is established that, beyond the ordinary course of nature, they have not yet arrived at sufficient use of reason.

Pastors are not excused from the obligation of admitting to confession children who have reached the eighth year of age, unless they prudently suppose that they have not yet sinned gravely. Therefore, as Busembaum warns, "if the child seems, at least in a crude way, to know that God is offended by this or that, and shows sorrow and purpose, he must be absolved; otherwise, however, if sufficient use of reason is not noted; but if it is doubtful, he can (indeed in the article of death must) be absolved under condition."

3. The precept of annual confession obliges only those who have committed grave sin: for we are not held to the confession of venial sins by divine law, because according to the Council of Trent venial sins can be kept silent in confession without fault,[1047] nor by ecclesiastical law, because by this precept the Church does not intend to impose a new obligation as regards the matter of confession, but only to prescribe the time for making confession.

Only he satisfies the precept of annual confession who confesses necessary matter, which alone falls under the precept; but not he who confesses only venial sins (or mortal sins already remitted), because these do not fall under the precept. Therefore he who, for example, at Easter confessed only venial sins and then, as the year passes, commits a mortal sin, is by that very fact held to another confession in the same year. Many authors defend this doctrine with Lugo;[1048] but Ballerini, with many others, judges that he who has committed only venial sins indeed is not obliged to confession, but that by the confession itself of venial sins the precept is satisfied. And indeed the use and persuasion of the faithful certainly confirm this opinion: for he who in Paschal time confesses his venial sins with the intention of satisfying the precept judges that he has satisfied it, and does not think that he is obliged to make confession again in the same year if perhaps he commits a mortal sin.[1049] Moreover, it is not equitable that he who has confessed mortal sins in the same year should be in a better condition than he who has confessed only venial sins. Hence Lehmkuhl (n. 1204) rightly advises that the faithful are not to be warned of a further obligation.

4. This precept is not satisfied by invalid confession, and much less by sacrilegious confession: for the divine precept requires confession by which the sinner is reconciled with God, which can happen only through valid confession. Hence the contrary proposition was condemned.[1050]

5. The proper priest is the pastor, the bishop, and the pope; but confession now can be made to any approved priest, nor is it any longer required that it be made to the pastor or in the parish church: for after pontifical privileges granted to regulars, the custom prevailed of making annual confession before any approved priest, by which custom the contrary disposition of the Lateran Council was abolished.

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**Notes**

1046. Suarez, *De poenitent.*, disp. 35.

1047. Sess. 14, c. 5.

1048. Cf. Lugo, *De poenitent.*, disp. 15, n. 162 ss.

1049. Ballerini-Palmieri V, n. 696.

1050. Proposition 14 condemned by Alexander VII: *He who makes a confession voluntarily null satisfies the precept of the Church.*

6. Whether the obligation of confessing is affixed to the time of one year for ending the obligation, or rather for urging the obligation, authors do not agree; but it seems that one must altogether say with St. Alphonsus that the time is determined by the Church for urging the fulfillment of the divine precept.[1051]

Therefore he who did not fulfill the precept within the year is held afterwards to confess as soon as possible in order to fulfill the precept, because the obligation of the preceding year still urges.

## Question Second. On Paschal Communion

**694. On the precept itself.** The Church commands that all the faithful having sufficient discretion should approach holy communion at least once a year, and indeed in Paschal time, in their own parish.[1052]

This precept is divine as regards the matter, but ecclesiastical as regards the determination of the time. In reality this precept contains two: one divine-ecclesiastical, namely the divine precept of eating the flesh of Christ, indeterminate as to time but so determined by the Church that holy communion must be taken at least once a year; the other merely ecclesiastical, concerning communion to be taken in Paschal time, because Paschal time is most fitting for fulfilling this precept on account of the memory, then recollected, of the institution of this sacrament and of the Lord's Passion.

**695. Its declaration.** 1. The year within which holy communion must be taken, from universal custom approved by the Church, is computed from Easter to Easter,[1053] so that the year begins from the end of one Paschal time and ends with the end of the following Paschal time.

Paschal time from the universal law of the Church embraces only fifteen days, from Palm Sunday up to and including Low Sunday.[1054] Nevertheless bishops can prolong it; for an individual person indeed or for some village by force of quasi-ordinary power, but for the whole diocese from custom or, where this is not in force, from a special faculty of the Holy See. Pastors and confessors, when a legitimate impediment exists, can for an individual person defer Paschal communion for a time from the Lateran Council.

Therefore Paschal time, which in most places is prolonged beyond the Paschal fortnight, must be considered as a local privilege, enjoyed both by those who have domicile or quasi-domicile in the place itself, and by vagi and travelers who can licitly receive Paschal communion outside their own parish.

2. This precept also as to the determination of time is grave; therefore he who culpably defers holy communion beyond Paschal time, even to one day, of himself commits grave sin.

3. The determination of time is placed not for ending the obligation, but for urging observance.

a. The reason for this opinion, which more recent authors, especially after St. Alphonsus (l. 6, n. 297), establish almost unanimously, is taken from the words of the Lateran and Tridentine Councils: for since it is said that the faithful are held *at least at Easter* or *at least in Paschal time*, a twofold obligation is manifestly established, one primary of communicating once a year, the other secondary of doing this in Paschal time. To this is added that the Lateran Council obliges those who because of lack of disposition cannot communicate in Paschal time to take holy communion afterwards; but it would not do this if the obligation ceased with Paschal time.

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**Notes**

1051. Cf. Lugo, *De poenitentia*, disp. 15, n. 177 ss.

1052. Cf. Fourth Lateran Council, c. 21, *Omnis utriusque sexus*; Council of Trent, sess. 13, can. 9.

1053. Eugenius IV, const. *Fide digna*, July 8, 1440.

1054. Eugenius IV in the cited constitution.

b. Therefore he who did not communicate in Paschal time is held afterwards in the course of the year (up to the following Paschal time) to communicate; but it is not necessary that this be done as soon as possible: for since, as de Lugo notes, Paschal communion has become impossible, there remains only the precept of communicating once a year, which can be satisfied at any time of the year.[1055]

4. This precept is not satisfied by sacrilegious communion, but only by worthy communion; for just as the divine precept can be satisfied only by worthy communion, so by the will of the Church the ecclesiastical precept also is satisfied only by worthy communion, as is established from proposition (55) condemned by Innocent XI.[1056]

**696. On the place of Paschal communion.** 1. Paschal communion, from the precept of the Church, must be received in one's own parish.[1057] This circumstance of place indeed obliges under grave obligation, because its end is grave, namely that the pastor may know his own sheep, and that they in turn may testify their subjection toward him. Therefore he who at Easter communicates in the cathedral church or in the church of regulars does not satisfy the precept, but is held to communicate again in the parish church.

a. If the precept of communicating in the parish church is called grave, by these words it is not affirmed that he already sins gravely who once takes Paschal communion in another church, but he who does so often.

b. He who in Paschal time communicated sacrilegiously in his own parish is indeed held to communicate again, but he is not held to communicate in the parish, because he has already satisfied the precept insofar as it prescribes the circumstance of place. He who in Paschal time communicated outside the parish church is of himself held afterwards to communicate in the parish, unless there was a legitimate impediment excusing him (for example, absence, infirmity) from going to the parish church. But he who did not communicate in Paschal time is held afterwards to do this in the parish church, because the precept also of communicating in one's own parish still urges, unless either the consent of the pastor or a legitimate impediment excuses.

c. He satisfies the precept who in Paschal time receives holy communion by way of viaticum from the pastor or his delegate: for by one action diverse precepts can be fulfilled if the end of each precept is satisfied; moreover also the end of the other precept, which is submission toward one's own pastor, can be obtained in this way, because viaticum is received from the hand of one's own pastor.

d. A sick person who received viaticum before Paschal time must communicate in Paschal time, because a precept cannot be fulfilled before it urges. But the reception of Paschal communion for a sick person of this kind can be deferred beyond Paschal time if need be: for the Church consents to delay where someone has been legitimately impeded.

2. Permission of receiving Paschal communion outside the parish in another church can be granted by the supreme pontiff, the bishop (vicar general), and the pastor: for all these are signified by the name of proper pastor.

Presumed permission also suffices, provided it is established with moral certitude that the pastor consents. This consent, whether of the pastor or of the bishop, can be presumed more easily in great cities at the present time, the greater the danger that many of the faithful may altogether abstain from sacred communion if they are forced either to go to the parish church or to seek from the pastor permission of communicating elsewhere.

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**Notes**

1055. Cf. Lugo, *De euchar.*, disp. 16, n. 69.

1056. Proposition 55 condemned by Innocent XI: *The precept of annual communion is satisfied by a sacrilegious eating of God.*

1057. This precept is not clearly contained either in the Lateran Council or in the Council of Trent, but, first introduced by custom, afterwards was strengthened by various decrees of the supreme pontiffs, especially Clement VIII, Clement X, and Benedict XIV (const. *Magno cum animi*, June 2, 1751). Cf. *De synodo*, l. 9, c. 16, n. 5.

3. From the precept of taking Paschal communion in the parish church are exempt:

a. Priests, who satisfy everywhere by the celebration of Mass.

b. Regulars of either sex and seculars who are of their household.

c. Travelers, who, since they cannot go to their own parish, can receive communion in the place where they are staying in Paschal time, nor are they bound to go to the pastor of that place, because the pastor of the place is not their pastor. Likewise vagi, who do not have their own parish.

d. All the faithful in those places in which a contrary custom (of 40 years) has been legitimately introduced, as in these our regions.

**697. On the first communion of children.** The question until now controverted among theologians, namely at what age children are to be admitted to first communion, the Apostolic See itself settled by a new decree, and by the same decree reduced to unity the practice very diverse in different parts of the Church.[1058]

a. This decree is of the highest moment, since it gives an authentic interpretation both of the divine law concerning the holy Eucharist to be taken, and of the Lateran and Tridentine canon treating of this same matter.

b. The age of first communion to be taken from obligation until now varied in diverse places between the eighth and fourteenth year of age, so that before the determined year, for example the tenth, indeed sometimes (especially in Germany and France) before the fourteenth, first communion was not granted. In determining this age pastors for the most part took reasons not from the internal disposition of the children, but from external circumstances.

1. Rejecting the distinction between imperfect and more perfect use of reason, the Holy See establishes that children are to be admitted to first confession and communion at the same time, as soon as they have arrived at the years of discretion, which happens around the seventh year of age.

a. In the first centuries of the Church (almost up to the thirteenth century) holy communion was given even to infants themselves immediately after baptism had been received, and in some places also here and there through the course of infancy, and indeed under the species of wine. In later time it was given to them when they had attained the use of reason, and the Fourth Lateran Council decreed that all are held to receive the sacrament of penance and the Eucharist when they have arrived at the use of reason or the years of discretion. In the course of time it happened that they required one discretion for confession and another and more perfect one for holy communion, and therefore delayed holy communion to a maturer age.

b. They are not to be admitted to the most holy sacraments before they are sufficiently instructed. Nevertheless it is not required that they have acquired a perfect knowledge of Christian doctrine and of the sacraments which they receive; but it suffices that they understand according to their capacity the mysteries necessary by necessity of means, distinguish the Eucharistic bread from common and bodily bread, and approach holy communion with that devotion which their age bears: for their innocence compensates for a more perfect disposition. Afterwards they will gradually learn a more perfect knowledge of the catechism.

2. Judgment concerning the suitability of children for receiving holy communion, and their admission to first communion in private form, belongs to the parents and the confessor. Nevertheless first communion in solemn form in some regions (for example, in Germany, Austria, France, Belgium), from the particular law

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**Notes**

1058. Sacred Congregation of the Sacraments, Aug. 10, 1910.

of the province or diocese or from custom, belongs to pastors, with exceptions preserved as regards regulars who devote effort to the education of youth.[1059]

3. But if children are brought into danger of death, the pastor is bound, after suitable instruction has first been given, to provide holy viaticum for them, even if they have not yet been admitted to holy communion, provided signs of discretion appear in them. Since this can already happen before the completion of the seventh year, the pastor must prudently examine whether perhaps they are already capable of this sacrament: for in the article of death the divine precept of taking the holy Eucharist urges.[1060]

Note. The reasons which gave occasion to this decree are chiefly these: a. Christ the Lord pursues little children with singular love and desires from his heart that they come to him; little children in turn are carried by inborn love and desire toward Jesus, their father and friend. b. It contributes very greatly to preserving innocence that children be nourished by spiritual food before sensual temptations arise, and be strengthened more often by the same at the time when they are exposed to the dangers of the world.

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# Book Third. On the Prohibition of Books

[1061] A threefold prohibition of reading bad books must be distinguished: a. from the law of nature; b. from ecclesiastical law simply prohibiting; c. from ecclesiastical law prohibiting with censure. The third must be treated where ecclesiastical penalties are spoken of; the second must be treated in this place, yet in such a way that a few things are first premised also concerning the first.

**698. On the prohibition of books from the law of nature.** 1. By the law of nature the reading of any book is prohibited which brings danger to faith or good morals; since therefore the reason for prohibiting is the spiritual danger which is to be feared from the reading, it follows: a. that everything is prohibited which can bring damage to the reader, of whatever form or size, whether printed in type or written by hand; likewise it makes no difference whether someone himself reads the book, or hears one reading; b. that this prohibition ceases where every danger of perversion ceases; therefore what is prohibited to one person can be lawful to another.

2. The gravity of the sin which one reading a book prohibited by natural right commits does not depend on the quality or size of the book, but solely on the danger which arises from the reading; therefore if a proximate danger of grave spiritual damage is to be feared, it will be grave; but if either a remote danger of grave damage or a proximate danger of light damage arises from the reading, it will be a light sin. Wherefore from a proportionately grave cause it is lawful to read books from which only a light or remote danger is to be feared.

Therefore to read bad papers (*Zeitungen*) is a grave sin if from the reading a proximate danger of grave spiritual damage is feared; and since frequent reading ordinarily brings a danger of this kind, it is ordinarily a grave sin.

3. To retain bad books is prohibited by the law of nature insofar as from retention there arises danger of spiritual damage to oneself or another.

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**Notes**

1059. Sacred Congregation of Bishops and Regulars, Mar. 14, 1908, asserts to regulars the right of admitting pupils to first communion in solemn form.

1060. Benedict XIV, *De synodo*, l. 7, c. 12, n. 3.

1061. A. Vermeersch, *De prohibitione et censura librorum*, 2nd ed. (Rome: Desclee, 1906); J. Hollweck, *Das kirchliche Buecherverbot*, 2nd ed. (Mainz: Kirchheim, 1897); Ph. Schneider, *Die neuen Buechergesetze der Kirche* (Mainz: Kirchheim, 1900); M. C. Gennari, *La costituzione "Officiorum"* (Naples: Typogr. d. Artigianelli, 1898); G. Peries, *L'Index* (Paris: Roger et Chernoviz, 1898); J. Pennachi, *Commentarium in constitutionem Officiorum ac munerum* (Rome: Typogr. S. C. de prop. fide, 1898); A. Boudinhon, *La nouvelle legislation de l'Index* (Paris: Lethielleux, 1899); J. Hilgers, *Der Index der verbotenen Buecher* (Freiburg: Herder, 1904); Wernz, *Ius decretalium* (Rome: Typogr. polyglotta, 1901), III, *De prohib. censura et divulgat. librorum*, n. 95-131; Sleumer, *Index romanus*, 2nd ed. (Osnabrueck: Pillmeyer, 1906).

## Question First. On the Prohibition of Books in General

**699. On the law itself.** 1. All the precepts of the Church which concerning the reading and publication of books still have force today are contained in the recently issued constitution *Officiorum ac munerum* and in the *Index of Prohibited Books* published by command of this constitution: for all laws and statutes formerly issued on this matter having been abrogated, only the decrees which are contained in this constitution and in the Index have the force of law.[1062]

a. There is indeed also another constitution treating of bad books, namely *Sollicita et provida* of Benedict XIV (July 9, 1753), which by the will of the supreme pontiff still retains its force; but since this Benedictine constitution establishes only norms to be followed by the Sacred Congregation of the Index and by the Holy Office in examining and proscribing books, the constitution *Officiorum* and the Index contain all the universal laws now in force concerning this matter.

b. Therefore the prescriptions of Urban VIII concerning the narration of miracles and concerning the title Saint or Blessed attributed to servants of God have also been abrogated; wherefore the protestations which previously had to be prefixed to lives of saints or blessed can now be omitted.

c. The twofold excommunication which concerning prohibited books is found in the Bull *Apostolicae sedis* (1. 2, IV. 5) is indeed abrogated by this constitution; nevertheless in the future it still has force, because both are restored in this constitution (n. 47, 48).

2. The obligation of the precepts and prohibitions of this constitution in grave matter is grave: for the end of the law, of warding off from the faithful the danger which threatens faith and morals from the reading of bad books, is grave, and the law itself contributes greatly to obtaining this end. The same is further gathered from the grave penalties added.

Therefore both precepts grave in themselves in light matter, and some lighter precepts of this constitution because of smallness of matter, oblige only under light obligation. Thus a book which is prohibited because of the matter which it treats is judged prohibited under grave obligation; but a book in itself either not at all or not very dangerous, which is prohibited because of lack of approval, is ordinarily not judged prohibited under grave obligation.

3. This constitution is universal, affecting all the faithful of the whole world: for thus it is found in the preface of the constitution itself: *let Catholics throughout the whole world religiously obey these general decrees*; and in n. 45 it is said: *Books condemned by the Apostolic See are to be held prohibited everywhere among the nations.* Therefore by these words the controversy concerning the obligation of the Index has been removed.[1063]

Therefore universal custom contrary to this constitution, if anywhere it was legitimate, has certainly been removed by this constitution. Whether legitimate particular customs also have been abrogated, authors do not agree. It seems one must assent to those who judge all customs, even particular ones, abrogated: for although a derogatory clause is not expressly contained in the constitution itself, nevertheless the will of the legislator to introduce a uniform discipline concerning this matter among all Catholics of the whole world is established.[1064]

4. Not only the penalties but also the prohibitions which this constitution contains are of strict interpretation: for they bear before themselves all the marks which make a law odious. Moreover the ancient laws, according to the mind of the legislator, have been made somewhat milder by this constitution, in such a

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**Notes**

1062. Constitution *Officiorum ac munerum* of Leo XIII, Jan. 25, 1897.

1063. Cf. Sacred Congregation of the Index, May 23, 1898.

1064. Cf. Wernz, n. 110, note 46; contra Vermeersch, n. 21.

way indeed that to obey them *cannot be grave and difficult*;[1065] but only a strict interpretation corresponds to this end.

Nor is the argument worth anything that they were issued in favor of faith: for all laws favor either faith or morals, but they favor them by restricting liberty and inducing fault and penalty.

5. The prohibitions of this constitution which forbid books because of the matter which they treat comprehend also books previously published, because they bring the same danger to readers as books to be published afterwards; but those which prohibit books because of lack of approval do not extend to books previously published: for since in this case the law affects a human action, the principle holds: law does not act retroactively.

**700. What matter is grave.** a. As regards the publication of a book, he ordinarily commits grave sin who publishes a book prohibited for this reason, that it is bad and its reading harmful: for he can induce indefinitely many persons into danger of spiritual damage. But if the book is prohibited for this reason, that it lacks due approval, grave sin can more easily be absent.

b. As regards reading, he commits grave sin who reads a notable part of a prohibited book; but in a book (or part of a book) truly dangerous either because of the matter which it treats or because of the mode of treating it, three or four pages constitute a notable part; but in a book, or rather in a part of a book, which it is established is not gravely dangerous, about thirty pages (if the book is of small format, sixty) constitute a notable part.

The opinion of the ancients concerning this matter was almost this: that a few lines suffice for grave matter if an error against faith is contained there, and that a few pages constitute grave matter if indifferent matter is treated in them.[1066] Grave matter is to be determined from this principle: matter which of itself or ordinarily induces grave danger for the reader is grave, although accidentally in a particular case it brings greater or lesser danger; from which principle, considering the circumstances of our time and the reason of the recent constitution, the norm set forth above seems to follow.

c. As regards retention, he commits grave sin who retains a prohibited book beyond a month. Yet if someone retains a prohibited book from a reasonable cause, for example until the license arrives or until he has found an opportunity of handing the book over to someone having the faculty, he is not to be condemned of sin, although he retains it longer, but not notably beyond a month: for within this time the license sought or the occasion awaited can easily be present.

**701. What is understood by the name of book.** By the name of book is understood a writing which consists of some bulk and unity of object and is printed in type. What is signified by the name of book must be taken from the manner of speaking received today; but today a writing is not called a book unless it is distinguished by these marks.

a. Some bulk. What bulk is required that a writing can be called a book must be drawn from common use; yet so that some norm may be had, it can be said that a writing composed in the form of a book or an entire treatise and consisting of ten complete sheets, that is, 160 pages, is signified by the name of book.

b. This opinion, by which by the name of book only a writing consisting of some bulk is signified, is confirmed besides by a twofold argument. For from the declaration of the Church, those who read newspapers defending heresy do not incur the excommunication inflicted on those reading prohibited books.[1067] Then

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**Notes**

1065. Cf. Preface of the constitution *Officiorum ac munerum*.

1066. Cf. Lugo, *De fide*, disp. 21, n. 85; St. Alphonsus, l. 7, n. 284, 292.

this constitution itself distinguishes between books and writings of lesser bulk, since it expressly names journals, papers, fascicles, etc., wherever it intends also to comprehend these by its decrees.

c. Wherefore by the name of book are not comprehended newspapers, flying sheets, letters, speeches, small fascicles, nor sheets separated from a prohibited book.

d. Unity of object; wherefore small fascicles of diverse object bound into one volume are not books, nor are newspapers or journals collected into one volume; but the unity of object which is required for constituting a book is not lacking in periodical publications which are destined to compose one volume. Wherefore both individual fascicles of a periodical publication (provided they consist of the required bulk) and a volume composed of several fascicles of this kind constitute a book.[1068]

Therefore by the name of book are not comprehended anthologies or chrestomathies which contain parts taken from prohibited works, and therefore they are not prohibited unless either from the whole character of the collection they are opposed to faith or good morals, or the prohibited parts are so great that either individually or all together (to which the purpose of the collection seems to give sufficient unity) they grow to the quantity of a book.

c. Printed in type. In antiquity indeed, namely before the art of typography was invented, a manuscript work was called a book; but today in common use books are distinguished from manuscripts. Moreover because manuscripts are spread with more difficulty and less danger of perversion threatens from them, it is at least probable that manuscripts are not comprehended by the name of book.

Therefore those decrees in which there is discussion of books alone are not to be extended to booklets and writings of such slight bulk that they are not judged books, nor to manuscripts or to writings printed lithographically.

**702. By the term "to prohibit," in ecclesiastical use three actions are directly forbidden: to publish, to read, and to retain a book.**[1069]

a. They are said to publish a book who see to it that a book is made public, and therefore stand forth as the primary and principal cause of its publication: namely, the author who wrote the work, if however he handed it over for this end, that it be published; the printer, who undertakes the work to be printed; and the publisher, who sees to the circulation of the printed work.

Not rarely the printer is distinct from the publisher; in which case the printer belongs to those who cooperate proximately with the publisher, and this for the most part formally, although he can also cooperate only materially.

b. They are said to read a book who, scanning the book with their own eyes, themselves understand the things written.

Therefore they are not said to read who hear another reading, nor those who recite something from a book by memory, nor those who, scanning the book with their own eyes, do not understand the things which they read because of ignorance of the language. He who hears another reading, whom he himself induced to read by prayers or command, truly reads morally, namely through another. Nevertheless according to the probable

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**Notes**

1067. Holy Office, Apr. 27, 1880.

1068. The Holy Office, Jan. 13, 1892, declared that the censure imposed on those reading books of heretics is incurred by those "who knowingly read periodical publications bound into fascicles."

1069. Cf. D'Annibale, *Summula Theologiae moralis*, 5th ed. (Rome: Desclee, 1908), III, n. 143.

opinion of St. Alphonsus (n. 292), he is not numbered among readers, because the law must be restricted to those reading physically.

c. They are said to retain a book who keep a book, whether their own or another's, with themselves, or, ownership being retained, deposit it with another, unless the latter has the faculty of reading and retaining prohibited books and keeps the book until the one handing it over obtains the faculty of reading.

d. It is not lawful even for him to retain a book who does not understand it because of ignorance of the language.

e. The keeper of a library is not said to retain books, because he does not preserve them in his own house, nor in his own room, nor in his own name.

f. A bookbinder who binds prohibited books must be said to retain them; yet if he binds them for one having the faculty of reading, he is excused by epikeia; if he binds them for one not having the faculty of reading, one must investigate whether he has a proportionately grave excusing reason.

g. He who has a prohibited book must either destroy it, or hand it over to one having the faculty of retaining, or obtain for himself the faculty of retaining it.

**703. On a prohibited book.** a. The whole book is prohibited, not only the part which contains the error or brings danger to the reader; yet if this part is removed in any way whatever so that it cannot be read, the prohibition ceases.[1070]

Therefore not even the harmless parts of a prohibited book can licitly be read, even if someone proposes to omit the part which had given occasion to the prohibition, because, considering the character of men, the danger threatens that those who have once begun to read another part may also read the prohibited part. Hence it also happens that when the part which had given occasion to the prohibition has been removed, the prohibition of the book ceases, because every danger of reading the harmful part ceases.

b. If a prohibited work consists of several tomes, all are prohibited if they treat of the same argument and one indivisible; only the tome which contains the error or dangerous part is prohibited if the diverse tomes treat of a diverse argument, or indeed of the same but divisible argument, as universal history is, for example, because in this case the diverse tomes are judged to be several diverse books.[1071]

c. A new edition of that book is also prohibited, however much amended it may be, unless permission to publish has been obtained from the Sacred Congregation of the Index (n. 31), as also its translation, into whatever language it may be turned (n. 45).

A compendium of a prohibited work is not a new edition of the same work, but must be considered as a new work distinct from the former.

d. If all the works of some author are prohibited, a. those works which treat of religion are judged prohibited; but of those which do not treat of religion, only those which are forbidden either by a special or by a general decree; b. works of the same author published afterwards are indeed not prohibited, but are to be presumed prohibited by a general decree; for which reason they cannot be read licitly unless it is established that they are prohibited by no decree; c. the prohibition seems to be understood of books alone, not likewise of writings of lesser bulk, unless by reason of matter these also are prohibited by a general decree.

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**Notes**

1070. St. Alphonsus, n. 283.

1071. Lugo, *De fide*, disp. 20, sect. 2, n. 9.

**704. On the author and mode of prohibition.** 1. Books are prohibited by the Holy See for the universal Church:

a. through apostolic letters; b. through the Sacred Congregation of the Index, from which most prohibitions proceed; c. through the Holy Office, which, as the supreme tribunal of faith and morals, sometimes exercises the office of prohibiting books.

2. Books are prohibited by ordinaries for their own diocese and by regular prelates for their own subjects.

a. Ordinaries are warned that they themselves should proscribe harmful writings published in their own diocese (even if by exempt persons) or spread there (even if published elsewhere), but that those which require a more subtle examination they should refer to the Holy See (n. 21, 29).

b. Prohibitions of bishops do not affect exempt regulars, whether bishops act by ordinary power or as delegates of the Holy See.[1072]

3. Considered as to mode, books are prohibited either by general decrees (kinds of books) or by special decrees (individual books). All books prohibited by name are inserted into the Index of Prohibited Books with the express name of the author, if he is known, and the title of the book.

The *Index of Prohibited Books*, which the supreme pontiff in this very constitution commands to be reviewed most diligently and, after review, published (Preface), appeared at Rome from the Vatican Press; and Leo XIII, through the brief *Romani pontifices* (Sept. 27, 1900), commanded it to be published and to be observed by all everywhere.

**705. On the faculty of reading and retaining.** Because the law or prohibition is universal, the necessity of obtaining license to read a prohibited book is also wholly universal, so that neither hierarchical degree (the cardinalate) nor the singular learning of the reader exempts from this law. Nevertheless necessity or great utility of reading a prohibited book excuses from observance of the law, at least where an occasion of seeking license is not available.

1. Who can give it.

a. A general faculty of reading and retaining books prohibited by the Holy See can be given (n. 24):

b. by the Sacred Congregation of the Index and the Holy Office for the whole world; b. by the Master of the Sacred Palace for the City only.

c. A special faculty, that is, "for individual books and in urgent cases only," can be granted (n. 25):

d. by bishops and their vicars general;

e. by prelates possessing quasi-episcopal jurisdiction. Of this kind are nuncios, apostolic vicars, capitular vicars, and superiors of regulars: abbots general, provincials, and probably also local superiors (guardians, priors, unless they are subject to an abbot, rectors).

Since this power is quasi-ordinary, namely one which belongs by law to bishops and prelates having quasi-episcopal jurisdiction, they can also delegate it to others.[1073]

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**Notes**

1072. Vermeersch, n. 6 ter.

1073. Besides this faculty, bishops (and superiors of regulars) have another specially delegated to them by the Holy See, which nevertheless is bounded by several limits: for ordinarily they can grant only to priests (the bishops of Germany also to laymen) a general license of reading and retaining prohibited books, "excepting, however, works treating expressly of obscene things and against religion." But the faculty granted by force of this constitution suffers no exceptions, since, when a just cause exists, they can permit any book to any one of their subjects. By the clause *treating expressly against religion* are prohibited books which act against the whole of religion, both revealed and natural. Therefore books which attack revealed religion but leave natural religion intact are not excepted by this clause. Cf. Konings-Putzer, *Commentarium in facultates apost.*, 3rd ed. (New York: Benziger, 1898), n. 157.

c. The faculty of reading and retaining books prohibited by ordinaries is given:

d. by the ordinaries themselves; b. by those to whom the ordinaries have given delegated power for this.

2. How it is to be interpreted.

a. Those who have the faculty of reading and retaining books prohibited by the Holy See do not by that fact also have the faculty of reading and retaining books and newspapers proscribed by ordinaries, "unless in the apostolic indult power has expressly been given of reading and retaining books condemned by anyone whatsoever" (n. 26).

b. He who has the faculty of reading prohibited books by that very fact can also read journals, papers, and periodical booklets (newspapers) which are prohibited by this constitution (n. 21): for the lesser is contained in the greater, but not conversely.

c. He who received this faculty from the Holy See can use it everywhere; the same must likewise be said of a faculty received from the ordinary: for since this dispensation is a personal privilege, the contrary opinion of some lacks foundation.

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## Question Second. On the Publication of Books

In this place are gathered the decrees which refer to printers and booksellers.

**706. To printers it is prescribed:** a. That they not dare to publish again a book proscribed by the Apostolic See unless license has first been obtained from the Sacred Congregation of the Index, and the conditions prescribed by it have been observed, if indeed from a grave cause such a book seems to be published again (n. 31).

There are some who not without merit judge that here there is discussion only of books prohibited by special decrees and listed in the Index.

b. That they not publish any writing which needs ecclesiastical approval without approval.

c. That no book which needs ecclesiastical approval be printed unless it bears before it the name and surname both of the author and of the publisher, the place and year of printing and publication, unless the ordinary, for just causes, has given license to conceal the author's name (n. 43).

d. Therefore books which do not need ecclesiastical censure can be published without the name of the author, without the place and year of printing and publication. And since the decree speaks only of books, writings which do not reach the bulk of a book, and even periodical publications, as it seems, can be published without the author's name.

e. If there is question of publishing a translation, this precept seems to be satisfied whether the name of the author or of the translator is placed before the work.

f. The ordinary who can grant license either of suppressing the author's name or of publishing a book under an assumed name is the ordinary who grants the book's approval.

g. That they not undertake to print a new edition of an approved work or a translation into another language without new approval (n. 44).

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**Notes**

1074. Sacred Congregation of the Index, May 23, 1898.

An article excerpted from a periodical publication is not judged a new edition, and therefore does not need new approval;[1074] but a book composed from several articles and published is judged a new edition and therefore needs new approval.

e. That a book not be published without the approval of the ordinary of such place, and, if there is question of regulars, without the approval of the superiors of the order and of the ordinary of such place (n. 36), to be printed at the beginning or at the end of the work (n. 40).

Authors do not agree whether the approval obtained must be printed in authentic form in the very words in which it was granted, or whether it suffices to indicate it only in general words. Gennari, Hollweck, Schneider hold the former opinion; Pennachi, Vermeersch, Genicot, Dilgskron, Gopfert adhere to the latter, because the words of the constitution do not expressly require that, because this is sufficient for obtaining the end of the law, and because usage interprets the law in this way.

**707. To booksellers it is prescribed:** a. That they not sell, lend, or retain books treating expressly of obscene things (n. 46).

Yet books which can licitly be read and retained are also licitly sold; wherefore classical books treating expressly of shameful things can be sold to those to whom the reading of them is granted (n. 10).

b. That they not have other prohibited books for sale unless they have obtained license from the Sacred Congregation of the Index through the ordinary (n. 46).

c. That they not sell a prohibited book to anyone unless they can prudently judge that it is legitimately sought by the buyer (n. 46).

In order that prohibited books can be licitly sold, it is not necessary that the bookseller question each buyer seeking a prohibited book concerning his license to read it; but it suffices that, taking account of the book and the buyer, it does not appear with moral certitude that he lacks license to read it. Under the same conditions the bookseller can also procure for one seeking it a book which he does not have for sale.

Note. 1. The sale of a bad book of whatever kind (whether it happens in a shop, in the streets, or by auction) is prohibited by these things not only by the law of nature but also by positive law. Yet license can be obtained of retaining prohibited books and selling them in any manner, except books treating expressly of obscene things.

2. Those selling writings or periodical papers prohibited by ecclesiastical law cooperate by their own action toward evil. Now this action is wholly illicit if the book or paper is altogether bad, as pornographic or plainly impious writings are; but the remaining prohibited writings or papers can be sold from a proportionately grave cause. Sellers of this kind must be warned, however, that they also have good newspapers for sale and offer them to buyers.

## Question Third. On the Censorship of Books

**708. Notions.** 1. A twofold censorship of books is distinguished: previous censorship, which consists in the examination of a book to be published and in its approval or rejection; and repressive censorship, which consists in the prohibition of a book already published. Through the former the Church intends to impede the publication of bad books; through the latter, to avert from the faithful the danger of books already existing.

2. Previous censorship, concerning which we treat here, and approval and license of printing and publishing a book, is not approval of the matter concerning which the book treats, but of itself signifies nothing else than that the book is such that in the present circumstances it can be read without danger to faith and morals.

The precept concerning not publishing a book without previous license refers both to the publisher and to the author. Although this precept of itself is grave, nevertheless the fault contracted because license was not

sought, with scandal and contempt of authority excluded, will scarcely ever be grave if there is question of a new edition of an approved book; but if there is question of a first edition, fault can be grave if the book is of the gravest moment or of a difficult argument.

Note. According to the ancient discipline, all books to be committed to type had to be subjected to previous ecclesiastical censorship. But since this law in the course of time became impossible, it fell into desuetude for the greater part. The writings must be indicated which, from this our constitution, need previous approval.

**709. What writings need previous censorship.**

1. Books which regard divine Scriptures, sacred theology, ecclesiastical history, canon law, natural theology, ethics, or other religious or moral disciplines of this kind (n. 41).

a. Therefore books treating of liturgical matters and books describing the life of the saints must also be referred here. Of philosophical books only theodicy and ethics are subjected to previous censorship.

b. Since only books are subjected to previous censorship, publications which are of lesser bulk than to be judged books do not fall under this law, unless by reason of a peculiar argument (from n. 13, 17, 20, 32, 41) they need approval. And because only books which are published need approval, writings which are destined for private use, whether they are published lithographically or in type, do not need previous approval.

c. Periodical publications which treat theological disciplines and whose individual fascicles rise to the bulk of a book need approval of themselves from this decree.

2. All writings in which the interest of religion and honesty of morals is especially involved (n. 41).

The sense of the words is: all writings treating a matter which has special importance for religion and morals. Therefore it is established that not only books but all writings need approval if their object is of peculiar importance as to religion and morals. Thus at the time of the Vatican Council, writings treating of the infallibility of the Roman pontiff and its definition would have needed approval by force of this decree, because religion had a special interest.[1075]

3. New editions and translations into another language of a work which is subject to the law of censorship, even if already approved (n. 44).

a. And a new edition indeed, because it is accustomed to be emended and enlarged; but a translation, because that which is harmless in one place can be harmful in another, and ecclesiastical authority will discern this.

b. Elaborations first published in periodical papers and afterwards published separately do not need new approval.[1076]

4. All translations of sacred Scripture, even those made by Catholic men (n. 7).

5. Books and writings which narrate new apparitions, revelations, visions, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private (n. 13).

a. Not only books, but also writings or publications of whatever bulk or form, whether they are printed in type or not printed, provided they are published, need approval.

b. Devotions are called new whose object is new, as the heart of St. Joseph, of St. Teresa, or whose mode of worshiping is new, as the girdle of St. Anthony.

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**Notes**

1075. Vermeersch, l.c., n. 21.

1076. Sacred Congregation of the Index, May 23, 1898.

6. New images printed in any way whatever of our Lord Jesus Christ, of the Blessed Virgin Mary, of the angels and saints or other servants of God, whether they have prayers attached or are published without them (n. 15).

Therefore images which have already long been spread among the faithful and approved, as it were, by long use do not need approval: for those images are new and are called new which exhibit a recently invented representation, not used up to now.

7. All books of indulgences, summaries, booklets, sheets, etc., in which their grants are contained (n. 17).

a. By this statute it is provided that apocryphal indulgences not be spread among the faithful; at the same time ecclesiastical superiors are enjoined to take away from the hands of the faithful apocryphal indulgences already spread.

b. Therefore images which are distributed among friends in memory either of the first sacrifice offered to God or of some deceased person do not need approval, nor also images which are simply spread, even if they have attached prayers enriched with indulgences: for one thing is a sheet containing grants of indulgences (*Ablasszettel*), another is an image having attached prayers enriched with indulgences (*Andenkenbilder mit einem Ablassgebet*).

8. All litanies except those already approved by the Holy See, which are: the litanies of all saints and of the dying, of the Blessed Virgin of Loreto, of the Most Holy Name of Jesus, of the Most Sacred Heart of Jesus,[1077] and of St. Joseph[1078] (n. 19).

Litanies which are published with the approval of the ordinary can be recited only privately; in order that they be recited publicly in a church or public oratory, they need the approval of the Sacred Congregation of Rites.[1079]

9. Books and booklets of prayers, devotion, or religious, moral, ascetical, mystical doctrine and instruction, and others of this kind, although they may seem to conduce to fostering the piety of the Christian people (n. 20).

Therefore printed sheets do not need approval, nor writings which are not printed in type; but periodical publications of this argument do need it, unless they are so slight that they do not deserve the name of booklet.

10. Books proscribed by the Apostolic See, if from a grave cause they seem to be published again (n. 31).

11. Writings which in any way pertain to causes of beatifications and canonizations of servants of God (n. 32).

There is discussion of those servants of God whose causes are not yet concluded; therefore proofs brought by the defender, observations made by the promoter of the faith, etc., cannot be published without the license of the Sacred Congregation of Rites.

12. Collections of decrees of the individual Roman congregations (n. 33).

**710. Who must grant approval.** 1. The Holy See has reserved to itself or to Roman congregations the approval of certain works:

a. Versions of the Bible in the vernacular language which are published without notes must be approved by the Holy See itself (n. 7).

b. Books prohibited by the Apostolic See must be approved by the Sacred Congregation of the Index if, from a grave cause and with the prescribed conditions observed, they are permitted to be published again (n. 31).

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**Notes**

1077. Approved Apr. 2, 1899.

1078. Sacred Congregation of Rites, Mar. 18, 1909.

1079. Holy Office, Apr. 18, 1860.

c. Writings pertaining to causes of beatifications and canonizations of servants of God must be approved by the Sacred Congregation of Rites (n. 32).

d. Collections of decrees of Roman congregations must be approved by the Sacred Congregation whose decrees are published (n. 33).

e. Writings or books, whether treating directly or indirectly of religion or discussing ecclesiastical matters, which are published by missionaries subject to the Sacred Congregation of Propaganda Fide, must be examined and approved by the Congregation of the Index or the Holy Office; and approval must be obtained in writing and printed at the beginning of the work (n. 34).

Nevertheless bishops or apostolic vicars can permit that small doctrines, catechisms, instructions, and prayers which serve the daily use of the faithful be published.

f. Books, summaries, booklets, and sheets of indulgences must be approved by the competent authority (n. 17). What this competent authority is, we learn from statutes of law already long in force. Therefore: a. approval must be given by the Sacred Congregation of the Office if there is question of publishing new indulgences or of new collections to be published for the first time; b. it can be given by the bishop if there is question of publishing indulgences which are taken from pontifical rescripts or from collections already approved;[1080] c. the catalogue of indulgences which are customarily attached to crosses, rosaries, medals, etc., and are commonly called papal indulgences, must be approved by the Holy See or by the Sacred Congregation of the Office.

2. The ordinary of the place in which writings are made public must approve those whose approval is not reserved by the Holy See (n. 35).

a. According to the ancient discipline, the work had to be approved by the bishop of the place in which printing took place; but according to the recent discipline, by the bishop of the place in which the work is made public or where the publisher exists. An exception is made (n. 37) with respect to authors dwelling at Rome.

b. If the bishop himself publishes a book, and this in his own diocese, he needs no approval; but if he publishes it outside the diocese, the approval of the bishop of the place where the book is published is required.

3. The cardinal vicar of the City and the Master of the Sacred Palace must approve the works of an author dwelling at Rome, even if he wishes to print the book elsewhere; but besides this no other approval is required, even if the work is published elsewhere outside the City (n. 37).

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**711. Particular points.** 1. It is prescribed to secular clerics:

a. That they not publish even books which treat of merely natural arts and sciences without consulting their ordinaries, so that they may furnish an example of an obedient spirit toward them (n. 42).

Most authors think that this article contains a true precept by which clerics are held to go to their ordinary and seek his counsel before they publish a book, even a profane one. Nevertheless, especially in large dioceses, this precept will easily fall into desuetude.

b. That without the previous permission of the ordinary they not undertake the direction of journals or periodical papers (n. 42).

2. Regulars, besides the license of the bishop, must also obtain from their superior the faculty of publishing a work, as the Council of Trent prescribes[1081] (n. 36).

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**Notes**

1080. Sacred Congregation of Indulgences, Jan. 23, 1858; Sacred Congregation of the Index, Aug. 7, 1897.

Therefore regulars need the bishop's approval for all books which are subject to ecclesiastical censorship; but the Council of Trent strictly requires the license of their prelate only for sacred Scriptures, their annotations, and commentaries; nevertheless the statutes of the order extend the obligation of seeking the superior's approval also to other books.

3. In three cases the book itself is prohibited if it has been published without previous approval; in other cases, however, he who prints the book without approval indeed sins, but the reading and retention of the book is not prohibited.

a. The books which are prohibited if they are published without approval are: a. books narrating new apparitions, revelations, visions, etc. (n. 13); b. books and booklets of prayers, devotion, Christian doctrine, etc. (n. 20); c. versions of sacred Scripture, even those made by Catholic men in the vernacular language (n. 7).

b. Yet if in some region books of this kind are published without approval, and they are widely known as useful for fostering the piety of the faithful, it is not necessary that the faithful abstain from reading them.

## Question Fourth. On the Prohibition of Books in Particular

The works whose reading and retention are prohibited by general decrees can be reduced to three heads.

**712. Books absolutely prohibited to all.** 1. All books which before the year 1600 either the supreme pontiffs or ecumenical councils condemned, except those which are permitted by these general decrees (n. 1).

a. Some examples of books which before this time were condemned either by a supreme pontiff or by a council are listed in this constitution itself (preface), namely books of the Manichaeans and Monothelites, books of Berengar, Abelard, Marsilius of Padua, Wycliffe, Hus, Luther, etc.; but an authentic catalogue of them does not exist.

b. Yet books of heretics of the first period, as of Tertullian, Eusebius of Neocaesarea, Origen, Pelagius, etc., which before this constitution were commonly excepted from the prohibition, seem also now to be excepted, although they were condemned by supreme pontiffs. For since today every danger which might threaten the faithful from reading them has been removed, the end of the law has altogether ceased as regards those books; on the contrary, the reading of them can be very useful at least to theologians. Wherefore they are held as merely historical documents which can be read by all.

2. Books of apostates, heretics, schismatics, and any writers whatsoever defending heresy or schism, or overthrowing in any way the very foundations of religion (n. 2).

a. To these two conditions are assigned, each of which causes the book to be absolutely prohibited: the defense of heresy and the overthrow of the foundations of religion, even if the book does not treat of religion.

b. He is said to defend heresy not who simply proposes heresy, but who upholds and defends it with reasons added.

c. By foundations of religion are understood truths of the natural order which must be known in order that someone can embrace faith, of which kind are the existence of God, the immortality of the soul, the possibility of miracles, the probative force which is in miracles, the possibility and existence of revelation, etc.

d. To overthrow in any way, whether directly or indirectly, whether by arguments or insults, by attacking these things; wherefore by this decree are also prohibited books which defend materialism or skepticism, because if those theories are admitted, the existence of God cannot be demonstrated.

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**Notes**

1081. Sess. 4, decree *de edit. et usu sacr. libr.*

3. Books which expressly treat, narrate, or teach lascivious or obscene matters (n. 9).

a. In order that a book treat expressly of some matter, it is required that that matter be the principal argument of the book, and therefore that it treat of it directly and notably. It treats directly of obscene matters if from the whole character of the book the intention of the writer appears of instructing the reader concerning shameful sins or of exciting him to lust; of this kind are novels which narrate and describe illicit loves. It treats of them notably if there is discussion of them not only incidentally and scattered here and there, but either in the whole book or in a great part of it, for example, an entire chapter.

b. Therefore by these words books are not prohibited which treat indeed of obscene matters, but for this end, that they provide necessary instruction about them, as anatomical, medical, and moral-science books.

4. Books in which detraction is made against God, or the Blessed Virgin Mary, or the saints, or the Catholic Church and its worship or sacraments, or the Apostolic See (n. 11).

In order that a book be prohibited under this head, it does not suffice that detraction be made incidentally and accidentally, but it is required that it fill a notable part of the book (several pages, an entire chapter).

5. Books in which the concept of the inspiration of sacred Scripture is perverted, or its extension is too greatly narrowed (n. 11).

It is clear that only those works are prohibited which attack certain doctrine concerning inspiration, either by perverting its formal reason or by too greatly narrowing its extension, of which kind would be a book in which it is not only affirmed but defended by reasons that inspiration must be narrowed to matters of faith and morals or to only some parts of Scripture.

6. Books which deliberately cover the ecclesiastical hierarchy or the clerical or religious state with reproaches (n. 11), not only some person or some religious order.

In order that a book deliberately treat of some matter, it is not required that that matter be the principal argument of the book; yet it is required that there be discussion of it not incidentally and transiently, but either more often in the course of the book or in a notable part of it, for example, an entire chapter, and indeed with the intention of instructing the reader concerning it.

7. Books in which sorceries, divination, magic, evocation of spirits, and other superstitions of this kind are taught or commended (n. 12).

Therefore by this decree are prohibited the Talmud, Magazor, books explaining dreams in a superstitious mode, and finally books treating of magic and spiritism or another superstition of this kind, as of animal magnetism, etc.; not however books which simply narrate superstitious facts, but those which teach or commend the magical or spiritistic art.

8. Books which establish that duels, suicide, or divorce are lawful (n. 14).

a. Divorce is understood as perfect, which consists in the dissolution of the matrimonial bond, so that while the other party is still living, one party is permitted to pass to other nuptials.

b. They establish, that is, they not only affirm lawfulness but try to demonstrate it by reasons.

9. Books which treat of Masonic sects or other societies of the same kind and contend that they are useful and not pernicious to the Church and civil society (n. 14).

a. Sects are said to be similar to Masonic sects which plot against the Church and civil society. Of this kind are anarchist, nihilist, Fenian, Carbonari, Mazzinian, and socialist sects.[1082]

b. Therefore two things are required in order that books of this argument be judged prohibited: a. that they try to demonstrate that those societies are useful; b. that they treat of them not incidentally and by the way, but in such a way that they are the principal object of an entire book or of a great part of it.

10. Books which defend errors proscribed by the Apostolic See (n. 14).

It does not matter whether the proposition was condemned by the supreme pontiff himself or by some Roman congregation; for either condemnation is said to have proceeded from the Apostolic See. By this decree are comprehended very many books in which errors condemned by the Syllabus are defended.[1083]

11. Journals, papers, and periodical booklets which deliberately attack religion or good morals. Let ordinaries, however, where there is need, take care opportunely to warn the faithful concerning the danger and damage of reading of this kind (n. 21).

a. The name of religion in this decree can be taken in a twofold sense: either so that it signifies true religion both natural and revealed (Catholic), or so that it signifies only natural religion. If it is taken in the latter sense, only those newspapers are prohibited which attack natural religion, of which kind are newspapers defending materialism and atheism. The decree seems to be taken in the former sense, so that newspapers which attack all true religion are prohibited, of which kind are liberal and socialist newspapers, and atheistic and materialistic newspapers.

b. By journals are understood daily newspapers; by papers, newspapers which appear either once or several times in the week; by periodical booklets, fascicles of lesser bulk appearing at stated times.

c. These periodical publications are prohibited also by positive law if they deliberately attack religion or good morals, that is, if from the frequency and abundance with which impious or shameful matters are treated in them, their intention of attacking religion or good morals appears. Therefore by positive law periodical publications are not prohibited in which here and there, incidentally and accidentally, something against religion or good morals is contained, nor those in which only once or again an article of this kind, even a longer one, is found.

d. From the fact that publications of this kind are now also prohibited by positive law, these two things follow: a. that they are forbidden also to those who suffer no damage from reading them; b. that they are forbidden in their entirety, not only the dangerous parts. But other publications which are not contained in this law can be read by those who fear no damage.

e. Not only those who are subscribed to the purchase of papers of this kind gravely offend against this law, but also those who habitually or often read them without subscription, or who once or again read a notable part treating of that matter because of which they are prohibited. To read once or again, indeed even more often, in a prohibited paper those things which do not pertain to the prohibited matter, as merely political articles, merely literary articles, commercial news, does not exceed venial sin; and if it is done from a reasonable cause, it is wholly without sin. Nevertheless it cannot be approved at all that priests traveling by railway buy and read liberal papers. For, leaving aside the sin which they commit unless they have license to read papers of this kind, they are a scandal to others, because they induce fellow travelers both to contemning the laws of the Church, which they see are not observed even by priests, and to reading papers harmful to themselves.

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**Notes**

1082. What qualities are required so that a sect may belong to the genus of Masonic sects is explained in *De poenis eccles.*, n. 74.

1083. Sacred Congregation of the Index, May 23, 1898.

12. Images printed in any way whatever of our Lord Jesus Christ, of the Blessed Virgin Mary, of the angels and saints or other servants of God, which are discordant from the sense and decrees of the Church (n. 15).

a. The term images (*Bilder*) seems to be taken strictly, so that neither medals nor statues or paintings are comprehended by this prohibition, although they were contained by the Tridentine prohibition:[1084] for the constitution speaks of printed images which are published.

b. Images discordant from the sense and decrees of the Church are first of all images which furnish an occasion of error in faith or which by sensual beauty provoke to lasciviousness. Besides, Benedict XIV explains in the constitution *Sollicitudini* (Oct. 1, 1745) the norms to be observed in approving or rejecting images.

c. Therefore if new images are published without ecclesiastical license, the publisher indeed sins, but the use of the images is not forbidden to the faithful, provided they are not discordant from the sense and decrees of the Church (n. 709, 6).

**713. Books prohibited under condition.** 1. Books or writings which narrate new apparitions, revelations, prophecies, miracles, or which introduce new devotions, even under the pretext that they are private, are proscribed if they are published without the legitimate license of the superiors of the Church (n. 13).

a. Therefore writings which narrate apparitions already known to the faithful, as the apparitions of the Most Sacred Heart of Jesus or of the Blessed Virgin of Lourdes, or which explain and commend to the faithful devotions already used in the Church, do indeed need approval (n. 41), but where they are published without approval, the reading and retention of them is not prohibited.

b. By these words are not prohibited newspapers which narrate and spread marvelous facts seemingly exceeding the order of nature, because they narrate such things only incidentally, not as their proper object.

2. New editions of the Missal, Breviary, Ritual, Ceremonial of Bishops, Roman Pontifical, and other liturgical books approved by the Holy Apostolic See are prohibited if they are diverse from authentic editions (n. 18).

a. Those editions are called authentic which have been approved by legitimate power, that is, by the Holy See. Now new editions are prohibited even if they have been changed only in matters of lesser moment, whether by adding, omitting, or transposing something; for it is said (n. 18): let no one presume to change anything. But a new edition is not judged changed because, for the convenience of users, certain things are repeated in their own places.

b. New editions of liturgical books must be approved by the bishop, both because from the bishop's approval this conformity is established, and because n. 41 and n. 44 require approval. But if they are published without approval, the books themselves are not prohibited, provided they are conformable to authentic or typical editions; and therefore they can be used not only for private use but also for public or liturgical use.[1085]

3. Books or booklets of prayers, devotion, or religious, moral, ascetical, mystical doctrine and instruction, and others of this kind, although they may seem to conduce to fostering the piety of the Christian people, are prohibited if they are published without the license of legitimate authority (n. 20).

By this decree are not comprehended books which theoretically set forth religious, moral, or ascetical doctrine, but books and booklets which intend practically to instruct the faithful in religious, moral, or ascetical matters.

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**Notes**

1084. Cf. Council of Trent, sess. 25, *De sacr. imag.*

1085. Therefore the prescription of Urban VIII is judged abolished by which the use of liturgical books was forbidden if they were published (outside the City) without the license of the ordinary of the place; this license, to be obtained in writing, had to mention diligent collation with the typical exemplar and the conformity found between the two, and had to be printed at the beginning or end of the book.

Hence it follows that books of the former kind indeed need approval (n. 41), but if they are published without approval, they are not prohibited; but books of the second kind are prohibited unless they have been approved.

4. Books of non-Catholics which expressly treat of religion are prohibited, unless it is established that nothing is contained in them against Catholic faith (n. 3).

a. Non-Catholics by the force of the word are properly called not only heretics and schismatics, but also Jews and unbelievers; but in theological use only heretics and schismatics are signified by this term. In this decree, however, the term seems to be taken in the broader sense.

b. Books are judged to treat of religion not only if they deal strictly with revealed dogmas, but all which treat theological disciplines: sacred Scripture, canon law, ecclesiastical history, moral disciplines, liturgical matters, Christian asceticism, and books of piety.

c. Books of non-Catholics treating expressly of religion are prohibited even if only here and there they contain something against faith; on the contrary, books of non-Catholics not treating expressly of religion are not prohibited, even if here and there they mix in something against faith (n. 4).

d. Therefore it is not lawful to read these books unless, before the reading, it is established from the testimony of others that nothing is contained in them which is against faith: for of themselves they are judged prohibited, because non-Catholics treating of religion are presumed to write things contrary to faith.

5. All versions of the Bible in the vernacular language, even those made by Catholic men, are prohibited unless a. they have been approved by the Apostolic See, or b. they have been published with annotations taken from the holy Fathers of the Church and from learned and Catholic writers and have been approved by bishops (n. 7).

a. Therefore to publish a licit version of sacred Scripture in the vernacular language without notes, the approval of the Holy See is required; to publish it with notes, the approval of the bishop suffices.

b. Versions of sacred Scripture in the common language can be read and retained by all, even lay persons, if the prescribed conditions are observed in their publication, that is, if they have been approved.

c. By these words it is not forbidden that annotations which regard not faith and morals but profane matters, as geography, archaeology, ethnography, etc., can be taken from learned works of non-Catholics, provided they are approved by the bishop.

d. Prayer books in which parts of sacred Scripture are contained without notes, for example the epistles and gospels of the ecclesiastical office, likewise what are called biblical histories, by use already received can be published without the special approval of the Holy See and with the approval of the bishop alone.

**714. Books permitted only to some.** 1. Editions of the original text and of ancient Catholic versions of sacred Scripture, even of the Eastern Church, published by any non-Catholics; other versions of the sacred Bibles, whether in Latin or in another non-vernacular language, published by non-Catholics; all versions of the sacred Bibles in any vernacular language made by any non-Catholics, and especially those which are spread by Bible societies, are permitted: a. to those who devote themselves to theological or biblical studies; b. provided Catholic dogmas of faith are not attacked in the prolegomena or annotations (n. 5, 6).

a. Therefore editions of the Bible and versions both in another language besides the vernacular and in the vernacular, made by Catholics, whether they are published by non-Catholics or by Catholics, are permitted a fortiori to those who devote themselves to theological or biblical studies. But of themselves even versions in the vernacular language made by Catholics and published by Bible societies are prohibited: for biblical versions without approval, even if published with notes, are altogether prohibited (n. 7).

b. These are permitted not only to those who study sacred theology in universities, colleges, or seminaries, but to all, whether clerics or laymen, who truly devote effort for at least some time to theological or biblical studies, for example, to prepare an examination or to compose an essay.[1086] Wherefore they are not judged permitted indiscriminately to all priests, whether secular or regular, but only to those who truly are occupied in these studies. Yet what Ballerini-Palmieri has (II, n. 1175) seems to be approved, namely that the privilege granted to those occupied in biblical studies does not cease when studies have been completed, if afterwards priests still study theological or biblical matters in some way.

2. Books of authors, whether ancient or recent, whom they call classic, even if they expressly treat or narrate obscene matters, because of the elegance and propriety of the language, are permitted to those whom the reason of office or teaching excuses (n. 10).

a. Only classical authors are permitted who otherwise are prohibited because of obscenity, but not classics who are prohibited because of errors against religion or for another reason. Classics are permitted, however, even if because of obscenity they have been placed in the Index.

b. Since this license cannot remove the natural law, it can happen that classical authors whom the Church permits are prohibited by the natural law.

c. The reason of office excuses those who professionally (not merely accidentally) either compose or judge works of letters; the reason of teaching excuses those who teach letters (but not those who teach another discipline); whether the reason is office or teaching, it excuses those who prepare themselves to compose literary works or to teach letters in universities.

d. It is expressly added that these classics are by no means to be handed over or read aloud to children or adolescents unless they have been expurgated with careful attention. Since childhood lasts up to the eighteenth year and adolescence up to the twenty-fifth year of age, from the strict rigor of law this prescription also applies to those who study in universities. But if the public laws of schools prescribe uncorrected editions, they may be used through epikeia; yet it is not lawful to read obscene parts before children, unless perhaps this is judged the lesser evil, when children, though warned, nevertheless do not omit the reading of them.

Note. Whether a determinate book is prohibited by general decrees is permitted to be discerned by the judgment of individuals, unless there is a declaration of the Church. Wherefore a book which is not established to be prohibited can be read insofar as is required to form this judgment. He who cannot discern the matter himself is bound to question one more expert, especially the pastor or confessor.

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# Book Fourth. On the Support of Pastors and Cremation of Corpses

## Question First. On the Precept of Supporting Pastors

[1087]

**715. On the precept itself.** 1. By natural and divine right the faithful are held to furnish pastors with what is necessary for sustenance. The Church determines this law as to mode and quantity by the precept of paying tithes.

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**Notes**

1086. Sacred Congregation of the Index, May 23, 1898.

1087. Gury-Sabetti, *Compendium theol. moralis* (Ratisbon: Pustet, 1897), n. 343 s.; Genicot, l.c., I, n. 431.

a. The law of nature requires that those who spend their work for the spiritual utility of the faithful receive from the faithful what is necessary for sustenance, just as those who procure the temporal happiness of citizens, such as princes and soldiers, must be sustained by citizens:[1088] *For who ever serves as a soldier at his own charges?*[1089]

b. The divine law is contained in these words of the Lord, who says concerning those who work for the salvation of souls: *the laborer is worthy of his food*;[1090] and the Apostle writes in the same sense: *Do you not know that those who work in the sanctuary eat the things that are of the sanctuary; and those who serve the altar share with the altar? So also the Lord ordained that those who announce the Gospel live from the Gospel.*[1091]

c. In the first centuries of the Church clerics devoted to the care of souls were fed by the spontaneous offerings of the faithful; but afterwards, especially from the ninth century, tithes had to be paid from the precept of the Church.[1092]

2. The law of tithes having been abrogated almost everywhere, in most places provision has been made for the support of pastors from elsewhere, either by the revenues of benefices or by a pension paid by the government; but where provision has not been made from elsewhere, as in North America, the obligation is incumbent on the faithful of contributing the things necessary for the support of pastors.

a. The Fathers of the Third Council of Baltimore decreed that this obligation also urges from ecclesiastical right; and they took care that in their catechism, to be published by their command, there be inserted as the fifth precept of the Church: To contribute some subsidy for the suitable support of pastors.

b. In our regions the faithful contribute something to the support of the ministers of the Church by paying stole fees. Although the faithful are bound to pay these according to the custom of the place, nevertheless a priest would act against the mind of the Church if he denied sacraments or sacramentals to those not paying.

3. Since the ecclesiastical precept does not determine more exactly the mode and quantity of the subsidy to be contributed, it must be said that generally there is incumbent on the individual faithful the obligation of contributing something according to their means for the support of pastors.

Although this precept is certain and of itself obliges under grave obligation, nevertheless the faithful are not easily to be accused of grave sin because of this subsidy omitted, unless by refusing the subsidy without just reason they are the cause that priests are in need or the rest of the faithful are too much burdened.[1093]

Note. In collecting the subsidies of the faithful, priests must carefully avoid those things which cast them into suspicion of avarice, render the Catholic religion hateful to the faithful, and contemptible to non-Catholics.[1094]

## Question Second. On the Prohibition of Cremating Corpses

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**Notes**

1088. Cf. St. Thomas, II-II, q. 87, a. 1.

1089. 1 Cor. 9:7.

1090. Matt. 10:10; cf. Luke 10:7.

1091. 1 Cor. 9:13, 14.

1092. C. *Pervenit* 5; *Nuncios* 6; *Quoniam* 13; *Ad apostolicae* 20, etc., *De decimis* (III, 30). Cf. concerning the precept of paying tithes Ballerini-Palmieri II, n. 1157; *Kirchenlexikon*, 2nd ed., "Zehnt."

1093. Kenrick, *Theologia moralis*, 3rd ed. (Mechlin: Dessain, 1860), whose opinion in this matter others commonly approve.

1094. Cf. Third Council of Baltimore, n. 292, 293.

1095

**716. On the prohibition itself.** 1. History being witness, several peoples of the gentiles followed the custom of cremating the bodies of the dead; but the Church from her beginnings everywhere observed the custom of burying corpses as the proper custom of Christians, just as the Israelites had observed it.

The reasons for which the Church introduced this custom and inviolably observes it are: a. Burial is the most suitable means of recalling to the faithful several truths of the Christian religion and impressing them more deeply on their hearts, especially the dogma of the immortality of the soul and of the future resurrection with Christ. b. The example of Christ, whose body was placed in a tomb. c. Greater fittingness is discerned in this: that the human body, to which so great a dignity belongs both in itself and before the Christian religion, be resolved not in a violent manner through fire, but by the forces of nature in a slow process. For the human body, fashioned by God in a peculiar manner,[1096] is an essential part of a rational substance; moreover it was assumed by the Son of God, so that redemption might be accomplished in it, and after the glorious resurrection it might be placed at the right hand of the Father; finally, sanctified by so many sacraments, it is the temple of the Holy Spirit,[1097] a member of the body of Christ,[1098] and awaits a future and glorious resurrection. d. Burial alone is consonant with the words of sacred Scripture: *In the sweat of your face you shall eat bread until you return to the earth from which you were taken, because you are dust and into dust you shall return.*[1099] *It is sown (the body) in corruption; it shall rise in incorruption*,[1100] and other things of this kind.

2. Although cremation of the human body is neither contrary to any truth of the Christian religion nor intrinsically evil, nevertheless from the circumstances in which it is promoted in recent times, it is accidentally evil and, because of the prohibition of the Church, gravely illicit.

a. The reason for the first is that cremation of itself denies neither the immortality of the soul nor the resurrection of the body, although it does not symbolically signify it. Since the body of the deceased by natural destination is to be resolved into parts, of itself it does not matter whether it is resolved by fire into ashes or by earth into dust.

Wherefore, although the Church requires that in those parts of the Indies in which they have kept up to now the custom of cremating bodies, the bodies of the faithful be placed in the earth in the Christian manner, nevertheless she permits that missionaries conduct themselves passively, in order to avoid greater evils, where they know that the body of some neophyte is to be cremated.[1101]

The reason for the second is that efforts to substitute cremation of corpses for burial in recent times proceeded from adversaries of the Church with this express will of restoring a pagan custom. By this restoration they intend on the one hand to remove those things which preserve and promote the Catholic faith, namely the ecclesiastical rite to be observed in burial and Christian cemeteries displaying almost innumerable signs of faith and piety; on the other hand, they intend to profess the annihilation of the whole man, which cremation would signify. Therefore since cremation chosen in these circumstances involves approval of this impious intention and heretical profession, it must be called evil, even if it had not been prohibited by the Church.

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**Notes**

1095. Lehmkuhl II, Appendix I, XIX; Genicot II, n. 628; L. Ruland, *Die Geschichte der kirchlichen Leichenfeier* (Regensburg: Verlagsanstalt, 1901); Swoboda, *Neue Wendungen in der Leichenverbrennungsfrage* (Vienna: Mayer, 1901); A. Perger, *Zur Beurteilung der Feuerbestattung* (*Stimmen aus M. Laach*, 1892, II, p. 1, 133, 271); Gspann, *Sarg oder Urne?, Th. pr. Quartalschrift* (Linz), 1906, p. 320, 501; *Kirchenlexikon*, 2nd ed., VII, 1679.

1096. Gen. 1:26.

1097. 1 Cor. 3:16.

1098. 1 Cor. 6:15.

1099. Gen. 3:19.

1100. 1 Cor. 15:42.

1101. Sacred Congregation of Propaganda Fide, Sept. 27, 1884.

The reason for the third is that it is not lawful to change the use and rite introduced by the Church in burying bodies and everywhere observed: for the burial of an inanimate body is a religious act; but the Church preserves the custom of burying, and the religious rite to be performed by ministers everywhere supposes burial. To this is added the explicit prohibition of the Church, as will appear from the declarations soon to be cited.

b. Therefore nothing prevents the bodies of the faithful from being burned in particular cases when a just cause intervenes, as if this is judged necessary for averting danger of contagion.

c. The reasons which are brought forward for promoting cremation of corpses (the aesthetic and economic consideration) are of no weight. The single reason which could be urged against the custom of the Church consists in this, that danger threatens public health from the burial of bodies. But it is sufficiently established that no danger to health arises from the custom of placing the dead in the earth, provided the cemetery occupies a suitable place and the precautions prescribed by the Church are observed in burying bodies.

**717. Declarations of the Church.** Several declarations have been issued concerning this matter, by which the principles just set forth are excellently confirmed:

a. It is illicit both to command that one's own or another's corpses be burned, and to give one's name to societies which have been instituted for promoting the cremation of corpses; and if there is question of societies that are daughters of the Masonic sect, the penalties issued against this sect are incurred.[1102]

Approving this declaration, the supreme pontiff commanded that ordinaries take care that the faithful be taught concerning the detestable abuse of burning human bodies and be deterred from it with all their strength.

b. It is never lawful to cooperate in cremation by command or counsel; but material cooperation can sometimes be tolerated, provided a. cremation is not held as a protest-sign of the Masonic sect; b. nothing is contained in it which directly and uniquely of itself expresses reprobation of Catholic doctrine and approval of the sect; c. nor is it established that Catholic officials and workers are called to the work in contempt of the Catholic religion.[1103]

c. It is not lawful to administer the sacraments of the dying to the faithful who have commanded that their bodies be cremated after death, if they are unwilling to retract this command.[1104]

d. It is not lawful to bestow ecclesiastical burial on those who by their own will chose cremation and persevered certainly and notoriously in this will up to death;[1105] nor is it lawful to apply Mass for them publicly, but only privately.[1106] But whenever there is question of those whose bodies are subjected to cremation not by their own will but by another's, the rites and suffrages of the Church can be applied, scandal being removed, both at home and in church, but not as far as the place of cremation. Scandal can be removed if it becomes known that cremation was chosen not by the deceased's own will.[1107]

Nevertheless, those do not seem necessarily to be deprived of ecclesiastical burial who in good faith, ignorant of the prohibition of the Church, commanded that their corpse be cremated; likewise those who could no longer retract the command, which they seriously wished to retract, for whatever reason: for these either never had a gravely sinful will, or at least did not persevere in it up to death.

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**Notes**

1102. Holy Office, May 19, 1886.

1103. Holy Office, July 27, 1892.

1104. Holy Office, July 27, 1892.

1105. Holy Office, Dec. 15, 1886.

1106. Holy Office, July 21, 1892.

1107. Holy Office, Dec. 15, 1886.

# Part Fourth. On Particular Precepts

1108

**718.** 1. From universal precepts, which are common to all men or at least to all the faithful, particular precepts of God or of the Church must be distinguished, which refer only to certain persons, namely to those who have embraced a determinate state of life.

2. State in general is called a constant mode of living. Therefore two elements concur to constitute a state: a certain mode of living and constancy in it.

a. In order that a certain mode of living be called a state in the strict and proper sense, it is required that it be immovable or unchangeable, and indeed from an obligation which he who lives in that state cannot cast off at his own will.

Of this kind is the matrimonial state, which is immutable by reason of the matrimonial bond; the priestly state, by reason of the sacramental character and by reason of the solemn vow of chastity; the regular state, by reason of religious profession.

b. In a broader and improper sense a certain condition of life is called a state, which a man cannot easily change at his own will. Its certain immutability arises not from obligation, but from external circumstances.

Of this kind is the state of merchants, officials, physicians, craftsmen, who, although they cannot easily change the condition of life from which they ordinarily take necessary sustenance, nevertheless absolutely can renounce it.

Note 1. We are accustomed also to speak of the state of the just and sinners, of the blessed and the damned; but in this case not a mode of living, but a mode of existing is called a state. Therefore in German we call their condition not so much *Stand* but rather *Zustand*.

Note 2. State differs from office, which is not named from the habitual obligation or liberty of the person, but from the acts to be exercised by a determinate person, as the office of judge, physician, confessor, etc.[1109]

The particular precepts to be explained in this place refer to the state of laymen and to the state of clerics; for concerning other states there is treatment either expressly in canon law, as concerning the state of regulars, or in other parts of moral theology, as concerning married persons.

# Book First. On the Precepts of Laymen

The precepts which look here do not affect all laymen, but only certain ones because of the special office which they exercise. These precepts are customarily called obligations of state (*Standespflichten*). Nevertheless there can be discussion here not of all particular offices, but only of the principal ones, of which kind are the offices of judge, plaintiff, defendant, advocate, witness, and physician.

# Question First. On the Judge and Jurors

**719. Notions.** 1. A judge is a public person constituted by legitimate authority to pronounce right.

He pronounces right either by deciding in a civil process a matter disputed between parties, or by imposing in a criminal process a suitable penalty on a delinquent.

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**Notes**

1108. St. Alphonsus, l. 4, n. 140-292; Lugo, *De iustitia et iure*, disp. 37-41; Elbel-Bierbaum, *Theologia moralis*, 8th ed. (Paderborn: Typographia Boni Fac., 1894), II, pr. 7; Ballerini-Palmieri, *Opus theolog. mor.*, 3rd ed. (Prato: Giachetti, 1900), IV, n. 224-614; Genicot, *Theologiae moralis institut.*, 8th ed. (Brussels: Dewit, 1909), II, n. 1-62; Berardi, *Praxis confessariorum*, 3rd ed. (Faenza: Novelli, 1898), III, n. 1-186.

1109. Cf. Ballerini-Palmieri IV, n. 9.

2. An ecclesiastical judge and a secular judge are distinguished according to the diverse authority by which he is constituted; a civil judge and a criminal judge according to the diverse matter in which he judges.

a. A judge who, either from the disposition of the law or by the litigants themselves, is constituted to settle a controversy existing between them, is called an arbiter.

b. From modern law in criminal causes sworn judges are customarily employed, who are only judges of fact: for they pronounce sentence only concerning the truth of the crime which is objected to the accused, or concerning his culpability; judges of law then decree the penalty.

We must treat: a. of the qualities of the judge; b. of the obligations of the judge; c. of the judicial sentence.

**720. Qualities of the judge.** In order that a judge can duly perform his office, he must have knowledge, jurisdiction, and integrity.

a. He must have sufficient knowledge, lest he be exposed to the danger of harming those whose causes he conducts. Therefore he must know the laws in force, according to which judgment must be instituted in the causes which are customarily brought to his tribunal.

b. A judge destitute of sufficient knowledge cannot be absolved unless he either leaves the office or acquires the due knowledge for himself and meanwhile abstains from the function, if he can, or at least strives to forestall the damages of others by seeking the counsel of one more learned, if he cannot abstain altogether.

c. A judge who, knowing his own lack of skill, conducts a cause is bound to repair the damages which the injured party has suffered.

d. If he has made an error to the damage of the litigant (even inculpably), he is bound (if he can without infamy) to warn him, so that he may provide for himself by appeal or another way.

e. Jurisdiction; for if this is lacking, he pronounces an invalid sentence (unless jurisdiction is supplied), and he can sin gravely, because he injures the right of the competent judge, whose power he usurps, and the right of the defendant, against whom he unjustly employs coercive force.

Therefore if a secular judge handles ecclesiastical causes in his own forum or drags ecclesiastical persons to his tribunal, he acts invalidly, sins gravely both against justice and against religion, and sometimes incurs excommunication.[1110] Nevertheless today, through concordats, it has happened in most places that secular judges can licitly judge not only civil causes, but under certain conditions also criminal causes of ecclesiastical persons. Where this faculty has not been granted through concordats, it must be sought in individual cases; and indeed, in order that a cleric can be summoned, from the ordinary; in order that a bishop can be summoned, from the Apostolic See.[1111] Genicot rightly judges that a judge who omits to seek this license ordinarily does not sin gravely where he is commanded by civil law to conduct causes of this kind. In the same way an ecclesiastical judge sins because of usurped foreign power if he judges merely temporal causes.

c. Integrity, by which in all things he preserves justice and is not bent to injuring right by respect of persons, by the passion of hatred or love, or by prayers or gifts.

**721. On the acceptance of gifts.** 1. It is not lawful for a judge to demand gifts from litigants as a stipend for judicial action or for a sentence to be rendered: for the judge is bound from office to dispatch causes brought to his tribunal and to render a just sentence; but it is repugnant to commutative justice that a price be received for a thing already otherwise due from justice.

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**Notes**

1110. To this belongs the twofold excommunication (I, 6, 7) from the constitution *Apostolicae sedis*.

1111. Holy Office, Jan. 23, 1886.

If a judge, from a contract for rendering an unjust sentence, received a gift, before the sentence has been rendered he is bound to restore it, but after the sentence has been rendered he can retain it, unless either positive law has declared the contract concerning receiving the gift invalid, or he himself has been condemned to restitution, because he actually furnished the promised thing (n. 538). But if from a contract for rendering a just sentence he received a gift, he must return it even after the sentence has been rendered.

2. It is not lawful for a judge to receive gifts from litigants as presents offered from mere liberality, unless they are of small moment. For in order that every danger of corruption in the judge be cut off, the acceptance of gifts is prohibited both by natural and by positive law. It is prohibited by natural law, because one accepting gifts exposes himself to the danger of rendering an unjust sentence: for *presents and gifts blind the eyes of judges.*[1112] But in positive law, both ecclesiastical and civil, this prohibition is contained in express words.[1113] Small gifts, however, are not judged to have the force of enticing a judge to an unjust sentence.

If a judge accepted a prohibited gift offered from mere liberality, he can retain it both from natural law and from positive law, because neither invalidates the donation. Positive law indeed is preceptive; therefore one accepting prohibited gifts sins, but he is not bound to restitution unless he has been condemned to make it by the sentence of a judge. What has been established particularly concerning ecclesiastical judges, canon law teaches.[1114]

**722. Obligations of the judge.** The judge from justice, both legal and commutative, must conduct causes with due diligence and with justice: for by the quasi-contract which he enters into, in accepting the office with political power and in accepting the cause with the parties, he obligates himself to this.

1. Diligence, which must be employed in conducting causes, demands first that he employ that care which by the prudent judgment of prudent persons is necessary for the gravity of the cause; then, that he not prolong causes without necessity so long that damages arise for the parties.

If from excessive delay of a cause, and that gravely culpable, damages have arisen to a party, he is bound to repair them; and if from gravely culpable negligence he pronounced a false sentence, he is bound to restitution toward the injured party.

2. Justice, which he must observe in conducting causes, demands that he institute process and render sentence according to the laws in force, provided they are just: for he has been constituted to render sentence according to law. If he violates laws, he sins against legal justice, unless at the same time he acts against the strict right of another.

a. Therefore he injures commutative justice and is bound to restitution if in civil causes he does not give to litigants the right which belongs to them from law; likewise if in criminal causes he imposes penalties greater than legal ones. But if he unjustly frees a defendant from a pecuniary fine, he violates not commutative justice but only legal justice.

b. It is not lawful for a judge to suggest to one of the litigating parties that which the party can allege for himself, because this would be to act the part of an advocate, which is not lawful for a judge, who by his own office must judge only according to the things alleged and proved.

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**Notes**

1112. Ecclus. 20:31.

1113. C. *Statutum* 11, *de rescriptis* in 6 (I, 3); cf. Deut. 16:19; l. 18, Dig. *de officio praesidis.* With Roman law all recent codes prohibit judges the acceptance of gifts.

1114. Cf. Aichner, *Compendium iuris eccles.*, 9th ed. (Brixen: Weger, 1900), p. 756 ss.

**723. On the judicial sentence.** The judge must render sentence according to juridical knowledge, which he acquired from judicial acts, or according to the things alleged and proved, not according to private knowledge: for he acts as a public person, and therefore must proceed according to public knowledge.

a. Therefore he must absolve him whom by private knowledge he knows to be guilty, if he has not been juridically convicted, so that he acts against justice and is bound to restitution if he condemns him.

b. But if by private knowledge he knows an innocent person who juridically has been proved guilty:

c. First he is bound to attempt all that he can in order to free the innocent person from undergoing the penalty, because from charity he is bound to avert a grave evil of the neighbor, especially an unjust one; and very rarely, says Lugo, can it happen that a judge cannot free him whom he certainly knows to be innocent.[1115] But if he can rescue him by no means, practically, at his pleasure, let him absolve or condemn him, since the matter is much controverted among theologians.

d. For some teach that it is lawful for a judge to render sentence against an innocent person in all causes in which there is question of imposing a penalty in external goods, such as a pecuniary penalty or deprivation of office, over which goods public authority has power in view of the common good. For in this case public authority deprives a subject of his goods for the common good, which demands that the judicial order be preserved, unless natural right is violated, and gives the judge power of condemning the innocent. But if there is question of imposing a penalty in goods over which society has no power, such as the penalty of death or imprisonment, it is not lawful for a judge to pronounce sentence against an innocent person: for since society has no power over the life or liberty of an innocent person, it cannot confer on the judge the power of condemning the innocent.[1116] Others, however, with St. Thomas, hold that the judge can always pronounce sentence according to the things alleged and proved, even if there is question of imposing the most grave penalty of death, because the judge is a public person, who must proceed according to public knowledge.[1117] But it must be demonstrated that it is not against the law of nature, and therefore not intrinsically evil, to condemn an innocent person, even if he is legitimately proved harmful. Besides, this question at the present time is not of great moment: for since almost everywhere there are sworn judges, this case can occur only where jurors affirm someone guilty whom the judge knows to be innocent.

**724. On the force of a judicial sentence.** 1. A certainly just sentence of a judge produces obligation in conscience: for it is like a precept of a legitimate superior in a particular case, which obliges in conscience.

a. A sentence of a judge in a penal cause produces an obligation of obedience, because penal laws are to be observed from obedience which is owed to a just law (from legal justice); wherefore a fine imposed by the sentence of a judge must be paid from obedience.

b. A sentence of a judge which defines a strict right, for example that an heir must pay a legacy, imposes an obligation of commutative justice with the burden of restitution.

c. In a doubtful cause, whether the doubt is of fact or of law, anyone can stand by the sentence of the judge with a safe conscience: for it belongs to the judge to resolve doubts.[1118]

2. A certainly unjust sentence cannot produce obligation in conscience. And this indeed holds in every case, whether the sentence is false only in itself or even juridically from the order of judgment not being observed, whether the judge pronounced sentence in good or bad faith.

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**Notes**

1115. Lugo, *De iustitia*, disp. 37, n. 41.

1116. Cf. Lugo, disp. 37, n. 42 ss., with whom Laymann, Lessius, St. Alphonsus (n. 208), and others hold the same.

1117. Cf. St. Thomas, II-II, q. 64, a. 6, ad 3; q. 67, a. 2.

1118. Marres, *De justitia*, 2nd ed. (Roermond: Romen, 1889), I, n. 18.

Therefore he who by a certainly unjust sentence of a judge has been deprived of his property can, if no other means is available, recover his property by hidden compensation; and he who as a litigant in good faith obtained property by an unjust sentence, for example an inheritance, is bound, once the injustice of the sentence is known, to restore it to the legitimate heirs; but he is not bound to compensate expenses, because he acted in good faith.[1119]

3. If the sentence is doubtfully just, an appeal can indeed be interposed, but the sentence itself must be observed, not only in the external forum but also in conscience: for in doubt the sentence of the judge must be presumed just.

**725. On a judicial sentence in a doubtful cause.** If a cause is doubtful, whether by doubt of fact or doubt of law, one must distinguish.

A doubt of fact is had if it is doubted whether the defendant committed the crime, contracted the debt, etc., because on each side there are only probable reasons; a doubt of law is had if it is doubted in what sense the law according to which judgment must be rendered is to be understood, because it is explained probably by doctors on either side.

a. In criminal causes and in causes in which a penalty is to be imposed, favor must be shown to the defendant, that is, the defendant must always be absolved, because he cannot be punished unless the crime is certainly established.

b. But in civil causes concerning a disputed matter one must again distinguish: if one is in certain possession of the disputed matter, the matter must be adjudged to him until the other party sufficiently proves his right. But if neither party is in certain possession of the disputed matter, and a. probability on each side is unequal, the matter must be adjudged to him whom the greater probability favors, from proposition 2 condemned by Innocent XI.[1120] If b. probability on each side is equal, the judge can advise an amicable composition, or even adjudge the matter to one whom he prefers.

c. It is the more common opinion, which St. Alphonsus holds (n. 210), that the matter must be adjudged to the possessor until the other party certainly proves his right, because the certain right of possession cannot be struck down except by another certain right. But others judge that the matter must be adjudged to the possessor so long as on each side there are equally probable reasons: for in an equal cause the right of the possessor is better; but if the plaintiff has greater probability, the matter can be adjudged to him, because he has the greater right for himself, which strikes down the presumption which the fact of possession furnishes to the other.

d. The reason why the judge must adjudge the matter to him whom the greater probability favors is this: because the judge has been constituted by supreme authority so that in the better way in which he can he may investigate and follow the truth, and therefore assign right to the parties according to the merit of the cause; but he would fail in this office if he favored that party which has a lesser appearance of truth and a greater danger of error.[1121] But if in this case the less probable right of the other is injured, supreme power by reason of the common good (that lawsuits may be ended) demands that the injured person yield from his right.

e. From natural law nothing prevents the judge from dividing the matter among the litigants according to the proportion of probability, whether on both sides it is of equal or unequal probability; but from positive law

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**Notes**

1119. Lugo, disp. 37, n. 187.

1120. *I probably think that a judge can judge according to an opinion even less probable.* Proposition 2 condemned by Innocent XI.

1121. Lugo, disp. 16, n. 99; Ballerini-Palmieri IV, n. 578; Lugo, disp. 37, n. 114 s.

he must follow the positive laws of tribunals, which establish that the disputed matter must be adjudged to one or the other party.

f. If the causes of the litigants are equally probable, it is not lawful for the judge to accept money in order to favor one before the other;[1122] indeed this manner of acting is also unjust, because the judge doing these things furnishes nothing besides that which from justice he already must furnish.[1123]

**726. On a judicial sentence rendered according to an unjust law.** 1. If a law is unjust because it is contrary to the laws of ecclesiastical immunity, from which the Church can dispense, the judge must seek from ecclesiastical authority the faculty of judging such a cause, unless it has already been granted. The faculty sought is easily granted, lest a good and upright judge be forced to leave office; but he must forestall public scandal which can arise from use of the faculty.

2. If the law is unjust because it is contrary to divine or natural laws, it is not lawful to render sentence according to that law, because the matter is intrinsically evil; wherefore the judge would have to leave office rather than conduct a cause of this kind.

a. A sentence rendered according to an unjust law either commands a dishonorable thing, as if it pronounces that those who are joined only civilly must cohabit, or imposes a penalty on the innocent. Now a sentence of this kind must be called intrinsically evil, even if there is question only of imposing a penalty; wherefore it is not lawful for the judge, in order to avoid his own grave damage, to impose even a light penalty on an innocent person, unless from the at least presumed consent of him who must undergo the penalty. For this reason it can be called lawful that a judge who cannot abstain from sentence without his own grave damage impose a fine on a priest who assists those about to marry in church before civil marriage.[1124]

b. There are some who try to demonstrate that a sentence rendered according to an unjust law is lawful, because a judge rendering sentence only declares what the wicked law establishes; but to declare this is not evil. Nevertheless the force of a judicial sentence is altogether different: for it itself produces a new obligation or new right not existing before, so that a judicial sentence is customarily called a particular law.[1125]

**727. Obligation of a judge who rendered an unjust sentence.**

a. If he did this with grave fault (whether from iniquity or from lack of skill), he is bound to revoke the sentence if he can, even with great inconvenience, and if he cannot, he must repair the damages.

b. If he did this inculpably (from error or forgetfulness), he is bound to revoke the sentence if he can without great inconvenience, because he is bound to impede the evil which from his action is going to come upon another; if he cannot, he is bound to nothing. But if from gravely culpable negligence he does not revoke an unjust sentence which he can conveniently revoke, the whole damage must be imputed to him and he is bound to repair it.

c. If he imposed a penalty greater than just, he injured commutative justice and is bound to restitution. A penalty is also judged greater than just if, although it is contained within the limits of the law, nevertheless, considering the circumstances of the cause and the practice of tribunals, it manifestly exceeds measure.[1126]

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**Notes**

1122. This proposition (26) was condemned by Alexander VII: *When litigants have equally probable opinions for themselves, the judge can accept money for rendering sentence in favor of one before the other.*

1123. Cf. Lehmkuhl, *Casus consc.*, I, 496.

1124. Genicot II, n. 5.

1125. St. Thomas, II-II, q. 67, a. 1.

1126. Genicot II, n. 5.

d. If a judge has unduly freed someone from a pecuniary fine to be paid from the law as punishment of an offense, he is not bound to restitution toward him to whom the fine had to be paid: for he to whom from law the fine is to be paid does not have a strict right to the fine before the sentence of the judge, whether he is the fisc or some private person.[1127]

**728. On jurors.** Sworn judges are called by this name from the oath which they emit, that they will perform their office duly. They are not employed except in criminal causes. Their office is, from their intimate persuasion, to judge concerning the existence of the crime and concerning the guilt or innocence of the accused; the judge properly so called then decrees the penalty according to law. But the culpability which they must affirm or deny is understood as formal culpability (*Zurechnungsfahigkeit*), namely a crime committed with moral fault. They are never held to render a reason for the sentence which they pronounce; wherefore the danger of abuse is clear unless the jurors are men of most upright conscience.

1. He who is assumed to the office of sworn judge can follow it with a safe conscience, provided he has the will never to affirm guilt unless it is certainly established concerning it.

Since jurors are ordinarily citizens not instructed in juridical knowledge, who nevertheless sometimes must render judgment in a difficult and intricate cause, it can be asked whether it is lawful for them to perform this office. But if they strive to have a mind empty of disordered affections and diligently attend in judicial actions, it can scarcely happen that they judge an innocent person guilty. But because it is not lawful for jurors to affirm guilt unless it is certainly established concerning it, it can more easily happen that they absolve a delinquent; but this is to be imputed not to the jurors, but rather to the mode of judging through jurors instituted by civil authority.

2. Since a juror from law must affirm only that of which he is intimately persuaded, it is not lawful for him to affirm guilt unless it is certainly established concerning it, even if by this reason sometimes a delinquent is absolved.

3. They must acquire for themselves from the judicial acts the intimate persuasion according to which they pronounce their sentence, yet they are not prohibited from also using private information.

The reason for the first is that it belongs to the nature of a judicial sentence that it rest on the things alleged and proved in judgment; the reason for the second is that the law itself furnishes them this faculty by commanding them to render sentence according to intimate persuasion: for intimate persuasion cannot arise so long as private knowledge stands opposed.

4. Therefore if by private knowledge they certainly know that the accused is innocent, they must free him, because they cannot have persuasion that he is culpable; and if by private knowledge alone they know that he is guilty, they must likewise free him, because from the judicial acts, from which one cannot abstract, the defendant is not proved.

Berardi (III, n. 108) contradicts this last opinion, which Lehmkuhl (I, n. 807) and Ballerini-Palmieri (IV, n. 593) defend, because criminal law does not permit nor can it permit that a juror draw intimate persuasion from private knowledge alone; Berardi thinks that the law of the criminal code must be understood so that a juror can declare guilty him concerning whose guilt he has intimate persuasion, even if he drew this only from his own private knowledge.

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**Notes**

1127. St. Alphonsus, l. 4, n. 196.

## Question Second. On the Plaintiff and Accuser

**729. Preliminary notions.** a. A plaintiff is he who in a civil cause calls another into judgment, for example, in order to obtain payment of a debt. At the petition of the plaintiff judgment is instituted, in which he himself is bound to prove the cause.

b. An accuser is he who in criminal causes brings a crime before the judge. Once accusation has been made, one likewise proceeds to judgment, and the accuser also takes on himself the obligation of proving the crime brought forward.

c. A denouncer is he who brings an offense before a superior or judge, yet does not take on himself the obligation of proving it, but commits to the office and prudence of the judge whether he himself wishes to pursue the cause, in which case the denouncer will be a witness.

In a well-ordered state there must be one constituted who protects common rights and goods and therefore prosecutes crimes by bringing them into judgment. In diverse times this was entrusted to diverse persons, either to each private citizen, or to a public official, or to the official and citizens. From present law a judicial accusation made by private persons is not admitted, but must be made by a public person constituted for this purpose, who is customarily called the fiscal or royal prosecutor (*Staatsanwalt*): for public authority itself takes on itself the office of accusing delinquents. Therefore today nothing is left to private persons except the denunciation of crimes; this indeed can always be done where the committed crime is sufficiently established, and sometimes also must be done, as will soon be said.

**730. Obligation of accusing and denouncing.** 1. From commutative justice those are bound to accuse who have been constituted for this by office. Of this kind are public officials, guards of forests, fields, and vineyards, prefects of taxes, etc.; and indeed all these must accuse even with their own grave inconvenience, because they are held to this not only from charity but from justice.

a. The royal prosecutor himself is bound without respect of persons to accuse or punish by fine those who have been found in crime or denounced by private men for a crime, provided the criminal or penal law is just. Nevertheless he is not prohibited from acting more mildly with those who have offended from mere levity.

b. Those who fail in their office in a grave matter are bound to repair the damages which come to the community or to owners from the accusation omitted; indeed they must also restore wages according to the measure of the neglected office.

c. Guards of fields, etc., are permitted to act more mildly in this matter if the damages are of lesser moment and not repeated more often, if the consent of the owner in the omitted accusation can prudently be presumed, if the delinquent is very poor and not accustomed to thefts. Guards are not bound to make accusation if delinquents of their own accord offer themselves for secretly compensating the damage.

2. From charity or from law, private men are bound to denounce in these cases:

a. If there is question of a crime which turns to common damage; in this case denunciation must be made even with grave inconvenience.

b. If there is question of grave damage to be averted from, or repaired to, an innocent third person, yet not with grave inconvenience.

c. If denunciation is prescribed by positive law.

Both civil law and ecclesiastical law sometimes prescribe that denunciation be made; the former scarcely ever obliges a private man in conscience, the latter more frequently. Thus the following are to be denounced:

a. soliciting priests; b. hidden leaders of a sect prohibited by the Church under censure; c. heretics publicly dogmatizing.

3. In order that a delinquent can licitly be denounced, it is required that his crime be certain, or at least that grave indications render someone suspected of the crime; but in this case the crime is not to be denounced as certain, for otherwise the right to reputation would be injured. It is sometimes lawful to denounce even a hidden crime: for those delinquents do not have a right to reputation whose hidden crime turns to common damage or to the damage of an innocent third person.

## Question Third. On the Defendant

**731. Declaration.** 1. A defendant is one against whom a case is conducted in judgment; therefore in civil causes, he from whom something is demanded as owed; in criminal causes, he who has been accused of a committed crime.

2. In a judicial action instituted against a defendant, the rights of the common good of punishing crimes collide with the right of the defendant to his own reputation; this conflict of rights is resolved in one way by ancient laws, in another by recent laws. But where there is question of undergoing a penalty, the same rights of the common good collide with the innate right of the defendant to preserve liberty and life.

**732. Right and obligation of the defendant in judicial process.** 1. The defendant is not held to confess a crime committed by himself; wherefore he must indeed abstain from lies, but he can respond to the questions of the judge with mental restriction. Indeed the very denial of the crime in this case is not a lie, but a broadly mental restriction, since he denies that he committed a crime which he is bound to confess.

From Roman law (and from canon law) a defendant legitimately and juridically interrogated concerning a crime is bound to confess the committed crime, except in the case in which by confession of the crime he would have to undergo the most grave penalty of death, or perpetual prison, or confiscation of goods. For the judge legitimately questioning justly commands the confession of truth; and a superior justly commanding must be obeyed, unless he commands what is morally impossible. Moreover, by the same law an oath concerning the truth of the response which he is about to give to the judge is required from the defendant. But from modern civil law confession of the crime is not required from the defendant, nor is an oath imposed on him. The judge can question the defendant only concerning this: whether he wishes to respond anything to those matters about which he is accused. From the same law he can be condemned as convicted of a crime, even if he does not confess it, which from Roman law is illicit.

2. To weaken the credibility of witnesses and therefore to diminish the force of testimony, the defendant can licitly manifest their hidden crimes if this is necessary for this end: for no one is bound to preserve the reputation of another with grave inconvenience to himself.

a. And indeed this is lawful whether the defendant committed the crime or did not commit it, whether the witness testifies freely or does this under compulsion. Nevertheless it is lawful to the defendant only under a twofold condition: a. if the manifestation is necessary for his defense, because only by right of defense can he manifest hidden crimes. Therefore if he can defend himself by another way, or if the manifestation is useless for this effect, it becomes illicit; b. if to the witness or accuser there does not arise damage notably greater than that which he himself tries to avert from himself by the revelation: for the precept of charity demands this.

b. The revelation of a hidden crime which is illicit from defect of these conditions offends both against charity and against justice: for the witness has a right that his hidden crimes not be revealed without a just cause.

3. But it is never lawful for the defendant, not even an innocent one, even if there were question of the most grave penalty of death, to impose a false crime on a witness by calumny for his own defense, even if the damage cannot be avoided by another way: for it is a lie, which moreover turns to the damage of another.[1128]

**733. Right and obligation of the defendant in undergoing penalty.** 1. An innocent defendant who is arrested or condemned by an unjust sentence to undergo punishment must be compared to one who can defend himself against an unjust aggressor: for neither the judge nor the ministers of justice have any right over an innocent person. Nevertheless the defendant must forestall scandal, if any is deservedly to be feared.

Not only can he take himself from the hands of the guards arresting him and flee, but he can also positively resist, for example by repelling the guards, by terrifying them with weapons; yet it is not lawful to bring force against them and injure the guards, because he must preserve the moderation of blameless defense.[1129]

2. A defendant who has committed the crime is bound to obey the ministers of justice who have the right of arresting him and executing the sentence, so that he does not positively resist them and pays the penalty imposed.

a. Therefore a defendant who is justly arrested can indeed flee from the innate right of preserving liberty, but he cannot resist the guards, because they have the right of arresting him.

b. A defendant, justly captured, who before the sentence of the judge is detained in custody, can flee from prison, because, since sentence has not yet been rendered against him, he is not bound to undergo the penalty. This holds also concerning a defendant who, after the sentence of the judge, is detained in prison, not indeed to pay the penalty, but that he may be kept for the penalty, for example of death, to be inflicted afterwards, because the sentence of the judge does not oblige him not to flee.

c. After the sentence of the judge by which he has been justly condemned, he is held in conscience to undergo the imposed penalty, because one must obey the just sentence of a judge. Wherefore it is not lawful for a defendant to whom prison has already been assigned as penalty to flee. Yet if the penalty is atrocious or most grave, such as a very hard or perpetual prison, he can flee, because human law cannot command things too hard. According to others, he can simply flee, whether the penalty is atrocious or not, because he is not held to remain in prison, but only to permit that he be contained in prison.[1130]

He to whom it is lawful to flee can also break prisons, because he can licitly remove the impediments of flight and employ honorable means which conduce to flight. Nevertheless the danger of incurring graver evils prohibits defendants from using this right.

3. He who can licitly flee can also deceive the guards, with force and injury nevertheless excluded; but it is not lawful to corrupt the guards by money or other means, because it is not lawful to induce anyone to fail in his office. But one unjustly condemned could corrupt a guard who has been forewarned (concerning the injustice of the sentence, in order to forestall his sin), because the obligation of the office ceases, since it would become cooperation toward injustice.

One fleeing is not bound to repair the damage of the guards, nor the damage of citizens which perhaps they suffer because other captives also escape: for he himself is not the unjust cause of these damages, since he uses his own right and only permits, but does not inflict, the damages. But according to the common opinion he is

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**Notes**

1128. Proposition 44 condemned by Innocent XI: *It is probable that he does not sin mortally who imposes a false crime on someone in order to defend his own justice and honor.*

1129. Cf. proposition 18 condemned by Alexander III: *It is lawful to kill a false accuser, false witnesses, and also a judge from whom an unjust sentence certainly threatens, if by another way the innocent person cannot avoid damage.*

1130. Cf. Ballerini-Palmieri IV, n. 632; D'Annibale II, n. 601.

bound to repair the damages of the broken prison, because he is the cause of these and does not have the right of inflicting them without compensation.[1131]

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**734. On the obligation of the defendant in a civil cause.** a. The defendant cannot begin litigation if he holds the action of the petitioner to be certainly just.

b. The defendant who is certainly a debtor is bound in conscience to satisfy his debt, even if he has been absolved in judgment; nor is he excused from this obligation "because the other party consented to the sentence and did not appeal: for all this is judged involuntary, nor is he presumed to have wished to renounce his right in the internal forum."[1132]

c. Whether a defendant who is certainly a debtor, having been absolved in judgment, is bound to compensate the expenses of the lawsuit depends on whether he used unjust means in his own defense and was absolved because of them or not: for if he either did not use unjust means, or was not absolved because of them but because of lack of proofs, he is not bound to compensate the expenses.

## Question Fourth. On the Advocate

**735.** An advocate (*causidicus*) is one who undertakes the defense of some party's cause in judgment. Similar is the office of the procurator, who in the name of the litigant protects the cause in judgment.

The obligations of an advocate as regards sufficient knowledge and due diligence in conducting causes agree with those things which were said above concerning the judge. Therefore if he undertakes a cause for conducting which he knows himself unequal, and by his lack of skill or care inflicts damage on his client, he is bound to restitution, unless the client, conscious of this lack of skill, nevertheless had recourse to him. There remain the obligations which refer to the justice of the cause, to fidelity toward the client, and to a just price.

**736. On the justice of the cause to be defended.** 1. Concerning a civil cause. a. He cannot undertake a civil cause which he certainly knows to be unjust; but he can undertake a doubtful cause, even that for which the lesser probability stands: for it often happens that a cause which at the beginning seemed doubtful or less probable is shown in the course of the process to be more probable or even certain.

b. If in the course of the process he certainly knows the injustice of the cause undertaken, he must abandon it; nor in this case can he advise a composition, which cannot have place except in a doubtful cause: for he would inflict damage on the opposing party. If from the will of the client he nevertheless pursues an unjust cause, he is bound to repair the damage inflicted on the other party, like a mandatary of an unjust action.

c. In defending a cause he cannot use anything except just means, lest he induce the judge to render a false sentence; but he can conceal those things by which his own cause could be impeded, because he does not deceive the other party but permits him to be deceived. If he wins by unjust means, for example by bringing false or abrogated laws, by producing false witnesses, by bringing false documents, etc., he is bound to repair the damage inflicted on the injured party; primarily indeed if he acted without the mandate of the client, but secondarily if he acted from the mandate of the client.

He can be bound from charity to warn the opposing party concerning circumstances which could help his cause but which he himself either does not know or does not attend to; by justice he is by no means bound.

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**Notes**

1131. Cf. Lugo, disp. 40, n. 47; Ballerini-Palmieri IV, n. 633.

1132. Lugo, disp. 37, n. 187.

2. In a criminal cause he can defend the defendant, even if he certainly knows him to be guilty, provided he abstains from all fraud, deceit, and illicit means: for since the defendant is not bound to punishment unless convicted, by the right of defense he can take care that the force of the proofs be weakened and that certain demonstration of the crime be impeded.

It is never lawful to use a false document in judgment. To determine the malice of this thing one must distinguish.

a. If the right of the client is not yet certain, it is a sin against truthfulness and against justice, because by an unjust means he impedes the other party from obtaining a sentence favoring him.

b. If the right of the client is certain and the document previously existing was lost, the substitution of a new document is a lie, but it is not a sin against justice. Indeed, if the right of the client is certain, even if the document which is brought forward to defend the certain right is wholly fabricated, a sin against justice is not committed, but against truthfulness by lying.

c. In either case, however, one can sin against charity, because those acting thus expose themselves to the danger of undergoing a most grave penalty if the fraud is detected;[1133] indeed the lie, according to Lehmkuhl (I, n. 824), is gravely harmful against the public good.

**737. On fidelity toward the client.** a. He is bound to examine the cause diligently and to warn the client about the cause, namely about its injustice, certainty, or probability, and to declare to him the state of the cause, if he himself demands this or if it changes notably, lest he be induced to useless expenses. If he omits this with grave fault, he is bound concerning the damages which come to the client from this omission.

An advocate who does not warn the client concerning a doubtful cause and loses it must repair the damage of the client if it is established that he would not have pursued the doubtful cause; but he is not bound to repair the damage if it is doubtful whether the client would have conducted the cause, because in this case the damage inflicted is not established.

b. He is bound to employ at least ordinary industry, both that he win in the cause and that he finish it quickly; and if from gravely culpable negligence damage arises to the client, he is bound to repair it.

c. It is not lawful in the same cause to help the opposing party, for example to communicate depositions of witnesses or other acts to him, or to manifest the secrets of the client to him.

**738. On fees to be demanded.** a. For a cause which he has conducted, he can receive a just stipend, but it is not lawful for him to demand anything beyond a just stipend. Wherefore if the stipend has been assessed by competent authority, one must stand by it; but if none has been assessed, it must be determined by the judgment of prudent men.

b. The law by which the stipend is assessed can be penal, or preceptive from legal justice, or preceptive from commutative justice. Only in this last case is he who violated the law by taking a fee greater than just bound to restitution.

c. He is bound to conduct the causes of the poor gratis according to the precept of charity; and therefore a. he is bound to help those who are in extreme necessity under grave obligation and with his own grave inconvenience; b. those who are in grave necessity, under grave obligation indeed, but not with grave inconvenience; c. finally those who are in common necessity, under light obligation, if he can conveniently do so. Therefore it suffices if he furnishes them some help or counsel when he is free from other labors.

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**Notes**

1133. Ballerini-Palmieri IV, n. 608.

d. He is not bound to provide help spontaneously, but only to those who implore his help; by repelling those asking he sins against charity if he foresees that because of this they will suffer grave damage.

## Question Fifth. On Witnesses

**739. Preliminary notions.** 1. Witnesses are called suitable persons who are employed for establishing the credibility of some matter. Who can be witnesses, and who cannot, the laws teach.

2. It belongs to the nature of a witness that he know the fact concerning which he testifies; but a witness is judged to know only that which he himself perceives by his senses.

3. A witness in a civil cause, and for the most part also in a criminal cause, must bind himself by oath to saying only the truth and the whole truth.

4. Ancient laws required a determined number of witnesses (at least two) for proving a crime; but modern laws do not require a certain number of witnesses, so that even one witness suffices for condemning a defendant; nevertheless his bare testimony does not suffice for this unless other indications against the defendant are added.

5. A witness is not bound to give testimony except in legitimate judgment, that is, unless the judge legitimately and juridically questions him.[1134]

**740. On the obligation of appearing in judgment.** 1. There exists no obligation of offering oneself spontaneously for testifying except in a twofold case: a. if this is necessary for averting grave damage to the republic: from legal justice we are bound to this even with grave inconvenience; b. if it is necessary for averting grave damage to the neighbor: from charity we are held to this if it can be done without grave inconvenience.

a. Yet where there is question only of the punishment of a past crime, no one must spontaneously offer himself for testifying, because from the omission of such punishment the republic scarcely suffers light damage.

b. If someone has been condemned because of a crime which you know was committed by another, you are not bound to betray the malefactor in order to free the innocent person, provided the malefactor is not the unjust cause because of which the innocent person has been condemned: for no one is bound to help his neighbor with the most grave damage of another, if the latter is not bound to betray himself.[1135]

2. He who has been cited by legitimate authority to testify is bound from legal justice to appear: for a superior legitimately commanding must be obeyed. This obligation of itself is grave, unless there is question of a matter of light moment or the testimony is not necessary.

**741. On the obligation of testifying.** 1. A witness is bound from legal justice to answer simply according to his conscience to the judge questioning, unless he is legitimately excused. This obligation also of itself is grave.

a. A witness who says false testimony in judgment sins: a. against truthfulness by lying; b. against religion, if, as is customary, he promised by oath that he would say what is true; and c. also against commutative justice if by his false testimony he inflicts damage on another.

b. One thing is to conceal the truth, another to testify falsely; he who, by denying that he knows anything, conceals the truth, does not positively inflict damage, but only does not impede it. Wherefore he does not sin against commutative justice except in the case in which from office or from contract he is bound to testify.

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**Notes**

1134. A judge questions legitimately if he is a legitimate judge, that is, if he has been furnished with judicial power not only in general but in particular for this cause; he questions juridically if he questions in a judicial process instituted according to the norm of law.

1135. Cf. Lugo, disp. 39, n. 1 s.

c. If a witness from false testimony given is the cause because of which the defendant is absolved and by this reason the fisc is deprived of a pecuniary fine, he is not bound to repair the damage toward the fisc. For the judge is not bound to repair damages which have come to the fisc from a pecuniary fine not imposed; therefore neither is the witness.[1136]

2. From giving testimony, even if the judge questions legitimately and juridically, the following are excused:

a. A confessor who knows the matter from sacramental confession, and this in absolutely every case.

b. He who knows the matter only under a natural or committed secret, except those cases in which even a natural or committed secret ceases to oblige.

c. He who from testimony reasonably fears grave damage to himself or his own, unless nevertheless the public or private damage which follows from denied testimony notably prevails. Therefore ordinarily no one is bound to testify against relatives, unless there is question of forestalling public damage, because the precept of the judge does not oblige with so great an inconvenience.

d. He who came to knowledge of the matter through injury, for example by opening another's letters or by inducing another through force or fraud to revelation.

e. He who does not certainly know the fact concerning which he must testify, if, for example, he received it from men not sufficiently worthy of trust.

Therefore if he is commanded to say what he knows, he can hide those things which he heard from others; and if he is commanded to say what he heard from others, he can hide those things which he received from men not altogether worthy of trust.

f. He who knows that the defendant did not sin in conscience, if, for example, he is accused of theft who took property in order secretly to compensate himself: for a witness can answer according to the mind of the one questioning; but the mind of the judge is to inquire into offenses. Nevertheless in a civil cause, in which there is question only of juridical fault, he must testify, even if the defendant did not commit theological fault.

g. He who alone knows the offense or the author of the offense: for unless another testimony or at least other indications of the offense can be brought, the defendant cannot be condemned.

Note. In all these cases a witness who has a just cause of concealing the truth can say that he does not know: for these words from the circumstances can be understood of the knowledge concerning which he is questioned at present.[1137]

**742. On the obligation of a false witness.** He who gave false testimony is bound:

a. To revocation of the testimony; and indeed if he said it materially, or from error, he is bound when revocation is useful to another and does not bring grave damage to himself; but if he said it formally or knowingly, he is bound when it is useful to another and does not bring greater damage to himself than can arise to another from the false testimony. Therefore he is bound even with danger of life, if he has cast the other into the same danger, because in equal damage regard must rather be had for the innocent person.

b. To restitution under this threefold condition: a. if by his false testimony he truly inflicted damage on another (efficacious cause); b. if he did this knowingly, that is, if he knew that he was giving false testimony and that he was held concerning its effects (theological fault); c. if he indeed gave false testimony in good faith, but afterwards did not revoke it, although he conveniently could and revocation would have been useful

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**Notes**

1136. Cf. Lessius, *De iustitia*, l. 2, c. 13, n. 70 ss.

1137. Genicot II, n. 17.

to another, because he did not impede the damage which he foresaw would follow to another from his materially unjust action.

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## Question Sixth. On Physicians

Concerning the obligation of having sufficient knowledge and of employing diligence proportionate to the gravity of the matter, it is established from those things which were said above (n. 722); but concerning the obligation of helping the poor, those things must be transferred here which were said above (n. 738) concerning advocates.

**743. On undertaking care of the sick.** 1. A physician who has not been hired by a stipend is bound to help the sick only from charity.

Hence he commits grave sin if he refuses to help one laboring under a grave disease, where another physician is not present and he himself is not excused because of grave inconvenience.

2. A physician who has undertaken the care of a sick person, from the contract tacitly entered into with him, is bound from justice: a. to help the sick person in the better and more certain way in which he morally can; b. not to abandon him, even if the disease becomes contagious, unless another is found who will conduct his care.

3. A physician who has been hired by stipend is bound from justice: a. to hasten at any hour, even of the night and with his own grave inconvenience, unless he certainly knows that from delay no damage will follow to the sick person; b. to help the sick even in the time of contagious disease.

**744. On remedies to be employed.** 1. The physician is bound to employ the remedy which he judges safer; therefore if he has a certain one, he must employ it and omit the doubtful one; if he has only doubtful ones, he must employ the more probable, because he must provide for the sick person in the better way in which he can.

a. If the safety of the sick person is despaired of and there is present only a doubtful remedy, namely one which can help and in no way harm, he can and must employ it, because by this reason he helps the sick person in the better way in which he can.

b. If the safety of the sick person is despaired of and there is present only a doubtful remedy, namely one which can bring health but also can hasten death, it is lawful to employ it, provided he has some reason, even slight, of thinking that it will be useful, because this reason causes the harm from the remedy to become less, and the hope of advantage greater.[1138]

c. If the safety of the sick person is not despaired of, it is not lawful to employ a doubtful remedy, namely one which can help and can harm, because it can happen that a doubtful death is rendered certain. In this case it must be committed to nature, that nature itself may raise itself up, especially if the sick person would be unwilling; therefore if a remedy doubtful in this sense is employed without the knowledge of the sick person, at least his interpretative consent must be established.

2. Since to expose another's life to danger is evil in itself, it is never lawful to test a remedy with danger to health or life, not even with the consent of the sick person, since he is not the master of his own life. Nor is the reason valid that the remedy, once its power is known, will be salutary to others, because it is not

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**Notes**

1138. Cf. Burghaber, *Centuriae casuum*, I, n. 12.

lawful to do evil that goods may come to others. Yet it would be lawful to test a remedy with the consent of the sick person if there were question of light damage, which can easily be repaired.

3. He must altogether abstain from employing illicit remedies and operations, of which kind are: a. procurement of abortion; b. remedies of sterility; c. craniotomy; d. mesmerism; e. use of morphine, opium, cocaine, etc., in that mode and degree in which these harm mind and body, and things of this kind.[1139] Whether it is lawful to employ hypnotism will be said below.

For those operations must be called illicit and unjust both by which the sick person, without his consent, is exposed to danger of life, and those by which the sick person, illicitly consenting, exposes himself to danger of life. Now one may expose oneself to grave danger of life only in order to remove a notable or dangerous inconvenience. In such great proclivity as now exists of rashly performing any surgical operations whatever and of employing harmful or doubtful remedies, especially in hospitals of the poor and of children, physicians easily offend against justice, so that they are held even to repairing damages.

4. A physician sins gravely against chastity who, without true necessity or manifest utility, inspects or touches the genital organs of women; and more gravely he who gives counsels to the sick which are directly opposed to the law of chastity.

**745. Obligation as regards the sick person.** 1. By natural right physicians are bound, either by themselves or through another, to warn a sick person who is in proximate danger of death concerning the grave danger, so that he may receive the sacraments and arrange his temporal affairs, if the warning is necessary for avoiding grave damages: for from charity they are bound to remove grave evil from the neighbor if they can without grave inconvenience.

a. If others either would not wish or would not be able to warn the sick person, likewise if the sick person would not believe others warning him concerning the danger, the physician himself is bound to warn him. Nevertheless in a twofold case he is excused from giving this warning if inconvenience is added: a. if he knew with moral certitude that the sick person is in the state of grace and has already arranged his temporal affairs; b. if with the same certitude he knew that the sick person is so hardened in his impiety that even if warned he would reject the sacraments.

b. The Fourth Lateran Council under Innocent III (1215) had decreed that a physician should not undertake the care of a sick person (dangerously lying ill) unless he had confessed.[1140] St. Pius V, in the constitution *Supra gregem* (Mar. 8, 1566), confirmed this decree and at the same time prescribed that physicians, before they were promoted to the doctorate, should promise by oath that they would warn the sick person laboring under grave disease, before undertaking his care, about making confession, and that they would no longer visit him if he had not confessed within three days. Nevertheless these laws in most regions were never received; but where they had been received, they fell into desuetude.

2. They are bound to keep secret (official-committed), if need be, concerning those things which they perceived only from care of the sick person.

As regards the obligation of bearing testimony in judgment concerning those things which a physician knows under a committed secret, diverse codes establish diverse things; likewise as regards the right and obligation of revealing a secret for driving damage away from the neighbor, for example, of revealing the hidden disease of a bridegroom, lest marriage be contracted with danger of infecting the future wife.

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**Notes**

1139. Cf. Capellmann, *Medicina pastor.*, p. 32 ss.

1140. C. *Quum infirmitas* 13, *De poenit. et remiss.* (V, 38).

**746. Obligation as regards expenses.** 1. They are bound from justice to avoid useless expenses.

Therefore they sin if without necessity they call other physicians; if for the sake of gain they multiply visits without utility; if they demand too great a stipend for visits; if they prolong treatment for too long; if they prescribe useless or superfluous remedies.

2. They act unjustly if they demand a price greater than ordinary: for he who seeks the work of a physician in a common infirmity is judged implicitly to agree with him concerning the ordinary price. The ordinary price is determined by use and is diverse according to the diverse condition of men.

If extraordinary services are sought from a physician, for example a difficult surgical operation which supposes singular skill, and a pact concerning the price to be paid has not preceded, it is not lawful for him to demand whatever price he likes at will, but that price into which the sick person is judged tacitly to consent. But he tacitly consents to a price which, taking account of the labor, difficulty, etc., has proportion with the stipend which the same most skilled persons are accustomed to demand for ordinary services from persons of the same condition.[1141]

Whether it is lawful to provide to a sick person whose safety is despaired of remedies which are indeed harmless, but also useless. It is lawful with the presumed consent of the sick person and after warning his relatives, provided the expenses are not great. For if the sick person is troubled on the one hand because nothing is prescribed for him, but on the other hand is affected by consolation because something is provided to him, the remedies must not be called wholly useless, so that the consent of the sick person in this case can easily be presumed.

## On Hypnotism

[1142]

**747. Its nature.** 1. Hypnotism actively signifies the art of producing in another an artificial sleep and peculiar phenomena connected with this sleep; passively it signifies the complex of phenomena which are produced during hypnotic sleep.

The name of hypnotism was recently invented (by James Braid, d. 1860). The thing signified by this name was already known long ago, and as regards the matter hypnotism scarcely differs from animal magnetism or mesmerism, which at the beginning served only for curing diseases, except in the mode of inducing the state of sleep.

2. Hypnosis is the state of sleep more or less deep, from which the whole complex of phenomena received the name hypnotism. Concerning the nature of hypnosis authors indeed think diverse things; nevertheless one must assent to those who judge that hypnosis agrees essentially with natural sleep, but differs chiefly in this: that the hypnotized person is "suggestible," that is, depends on the hypnotizer and lies open to his influence, while the deliberate activity of the intellect and will ceases.

3. These two phenomena of hypnotism are chiefly distinguished:

a. Hypnosis or the state of sleep. From this sleep, into which he is cast by the hypnotizer in various ways, the hypnotized person is ordinarily called back only by the hypnotizer; but if he is not called back, after some time he returns to himself spontaneously. During this sleep he can converse with the hypnotizer as if he

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**Notes**

1141. Genicot II, n. 21.

1142. Finlay, *Der Hypnotismus* (Aachen: Barth, 1892); Schutz, *Der Hypnotismus* (Fulda: Aktiendruckerei, 1907); Haan, *Uber Hypnotismus* (*Stimmen aus M. Laach*, Freiburg: Herder, 1890); W. Wundt, *Hypnotismus u. Suggestion* (Leipzig, 1892); Rissart, *Der Hypnotismus* (Paderborn: Junfermann, 1902).

were in the state of waking; but once awakened he retains scarcely any memory of those things which had happened during the time of hypnosis.

b. Suggestion, which is the influence which the hypnotizer exercises on the hypnotized person, so that the hypnotized person is subjected in all things to the will and command of the hypnotizer, and executes accurately the things enjoined on him not only in the time of sleep but also afterwards. By the senses he perceives nothing else, yet he sees and hears the hypnotizer; the intellect, and especially the will, depends on the hypnotizer, so that at his nod it obeys blindly in almost all things; but these powers do not exercise another deliberate activity. Nevertheless if the sleep is not deep, the hypnotized person does not receive suggestions which are contrary to his conscience, but preserves his own will.

4. The end because of which hypnotism is exercised is manifold: a. it is employed by physicians to cure various diseases, especially of the nerves, and to numb the senses before a surgical operation; b. by artists (for example, by painters) to obtain for themselves a model (*Modell*) which may retain the same position for a long time and express the same internal affection by the arrangement of the face; c. by judges in criminal causes, so that from defendants or witnesses they may fish out confessions useful to themselves; d. by parents and teachers to aid education: for those things which are suggested to the hypnotized person in the time of hypnosis, he afterwards in the state of waking diligently executes, at least for some time, by force of a certain inclination retained from hypnosis; e. finally, hypnotism is exercised publicly before many for the sake of recreation and for feeding curiosity.

**748. Its phenomena seem to be natural.** 1. There are not lacking those who think that the phenomena of hypnotism cannot be produced by natural powers, but are effected by preternatural powers; and since it is impious to presume divine influence in this matter, they attribute the whole of hypnotism to the demon.

By the name of hypnotism, spiritistic phenomena are also sometimes comprehended: for since from hypnotic phenomena there is an easy passage to spiritistic ones, these in reality are not rarely connected with those, especially since the demon easily mingles himself in things of this kind and drives men from natural things to superstitious ones. Authors who call hypnotism superstitious and diabolical seem also to signify spiritistic phenomena by the name of hypnotism.

2. Although the Church has not yet resolved the question concerning the origin of these phenomena, nevertheless it is established by the judgment of the Church that they are not certainly superstitious.

For from the response of the Holy Office, July 26, 1899, it is clear that the Holy See did not wish to resolve the question concerning the liceity of hypnotism and hypnotic suggestion; therefore it only determines the conditions under which experiments of this kind can be made, namely after a protestation has first been made that the agents do not wish to have any part in preternatural facts.

3. Both the phenomena themselves considered in themselves and the means by which they are produced do not seem to transcend the powers of nature.

a. For the phenomena themselves are either altogether the same or at least very similar to those which are also found outside hypnosis in the sick, in sleepers, in sleepwalkers, in those hallucinating or delirious; and these, although for the greater part extraordinary, are nevertheless certainly natural.

b. The means which are employed for producing either hypnosis or hypnotic phenomena are natural, and the forces of those means suffice for producing these effects: for the chief of these effects is suggestion, which chiefly consists in the influence of the hypnotizer on the imagination of the hypnotized person. By natural necessity the imaginations of the imagination are followed by inclinations of the sensitive appetite and of other powers, and by external activities which are consonant with them. Now in the state of waking all these activities are governed by intellect and will; but in the hypnotized person, in whom the superior powers do

not exercise deliberate operation, they follow spontaneous impulses and the influence of the hypnotizer, as we also find similar things in sleepwalkers.

**749. On its liceity.** 1. Hypnotism of itself is illicit. a. It harms health: for from the testimony of physicians, by any exercise of hypnotism whatsoever, danger to health is induced; but frequently the health either of mind or of body actually suffers detriment, since the whole nervous system is more or less affected by hypnosis.[1143]

b. It is of itself opposed to natural honesty, and this in many ways: a. it is not lawful without just cause to deprive oneself in a violent mode of the use of reason; b. it is not lawful to subject one's will plainly to the judgment of another, so that someone can use and abuse at will another's will; c. it is not lawful to provide another an occasion of sinning; but the hypnotizer can abuse the hypnotized person for sinning, can investigate the secrets of his heart, suggest to him the persuasion of a crime, etc.; d. the hypnotizer can suggest to the hypnotized person a crime to be committed afterwards, which the latter then in the state of waking will commit, with liberty scarcely preserved.

2. Nevertheless it seems that it can licitly be employed under certain conditions for curing diseases (and for promoting science).

a. The conditions are the following: a. that detriment of health, as far as can be done, be forestalled, and therefore that hypnotism be exercised only by a physician skilled in this art.

b. That no other more suitable means of recovering health is available: for since hypnotism is dangerous of itself, it cannot be licitly employed except for excluding a greater evil than that which hypnotism can induce.

c. That it be certainly established that the hypnotizer will not abuse his power, which he can exercise over the will of the hypnotized person: for not even for a brief time is it lawful to submit one's will to the judgment of another unless it is established that the danger of any abuse whatever is excluded.

d. That the consent of the sick person be present, who without consent cannot, apart from injury, be deprived of the use of reason and free choice, nor be exposed to danger to health.

e. For curing diseases. Without a just cause it is not lawful to expose either oneself or others to danger of damage of body or soul; but besides health (and science), no other end contains a sufficient cause because of which the danger of spiritual or bodily damage can be induced.

Note. The salutary effects produced through hypnosis are called more into doubt day by day by more recent physicians. Physicians had already long affirmed that by this remedy organic diseases cannot be cured, but only affected and impeded functions of the nerves; but now, taught by experience, they grant that even bad affections of the nerves are only partly and for a time somewhat lessened, while the disease itself almost always returns.

c. Most authors absolutely forbid the use of hypnotism, as Ballerini-Palmieri, Villada, Franco, Bucceroni, Aertnys, Marc, Capellmann, etc. Yet Berardi and Genicot permit it not only, like Lehmkuhl and D'Annibale, for healing diseases, but also "for investigating the powers of nature," therefore for scientific ends. This must be granted, supposing the consent of the person to be hypnotized, if it is morally certain that from hypnosis there threatens only the danger of damage which can easily be repaired.

Note. Let all these things be said concerning suggestion which happens in the state of hypnosis or artificial sleep: for suggestion which happens either in the state of waking or during natural sleep is immune from the

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**Notes**

1143. Cf. Finlay, p. 52 ss. Therefore it has happened that public hypnotism has been wholly forbidden by most governments, and the use of private hypnotism restricted.

damages about which there was discussion above, and therefore can be licitly employed, provided the things which are suggested are honorable and useful.

# Book Second. On the Precepts of Clerics

**750.** Cleric (*kleros* - lot), chosen into the lot or part of the Lord, is a Christian man who has been specially deputed to the service and worship of God. The name cleric is taken more broadly and more strictly. More broadly it signifies any Christian man who has been specially deputed to divine worship and service, whether this deputation happens through the reception of orders or through religious profession. Therefore in this sense all religious are comprehended by the name cleric, not excepting lay brothers and nuns. More strictly it signifies only those who by some ecclesiastical order or at least first tonsure have been deputed to the divine ministries.

In favorable matters the name cleric is taken in the first sense, but in odious matters in the second; in this same stricter sense there is also discussion here concerning the precepts or obligations of clerics.

Note. Since canonists treat expressly of the obligations of clerics, let it suffice in this place to speak: a. of vocation to the clerical state; b. of the divine office; c. of the obligation of spending superfluous goods on the poor.

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## Question First. On Vocation to the Clerical State

[1144]

**751. On vocation itself and its necessity.** 1. By the name of clerical state here is understood the condition of those who have received sacred order: for since the condition of those who have been initiated only in minor orders is not yet constant and immovable from obligation, clerics of minor orders do not yet have a state properly so called.

2. A twofold vocation is distinguished: external, which consists in this, that the one to be ordained, having been approved and elected by the bishop, is admitted to the clerical state; internal, which consists in the decree of divine providence by which, from the common state of laymen, some are chosen to the clerical state and fitting helps are prepared for them for fulfilling the special obligations of this state.

3. That external vocation is required is clear from this: that the bishop must approve those whom he admits to the ecclesiastical state before he confers orders on them.

In this sense are to be understood the words: *Nor does anyone take honor to himself, but he who is called by God as Aaron was*;[1145] and elsewhere the Apostle says: *Impose hands quickly on no one.*[1146] *But let these (deacons) first be proved, and so let them minister, having no crime.*[1147]

4. That internal vocation is required for the clerical state is gathered both from the nature of divine providence and from the singular excellence of the state itself, and from the condition of the Christian Church.

a. Since divine providence directs all things to their ends, a special end demands a special decree, which destines to the end and prepares for those destined means consonant with the end; but the clerical state

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**Notes**

1144. Ballerini-Palmieri IV, n. 224 ss.; Genicot II, n. 24 ss.; Aem. Berardi, *De clerico ad ordines sacros initiando* (Faenza: Novelli, 1888); Vermeersch, *De vocatione religiosa et sacerdotali* (Bruges: Beyaert, 1903).

1145. Heb. 5:4. In this place there is discussion of external vocation. Therefore the Roman Catechism (part 2, c. 7, q. 3): "But they are said to be called by God who are called by the legitimate ministers of the Church."

1146. 1 Tim. 5:22.

1147. Ibid. 3:10; cf. Council of Trent, sess. 23, c. 5, *De reform.*

constitutes a special end distinct from the common end of other men and more excellent, which because of its excellence demands more abundant and more perfect helps of grace.

b. Since the Church of Christ is on the one hand perpetual, but on the other cannot endure without ministers, divine providence must at no time fail to prepare for the Church ministers suited by vocation to the clerical state.

5. He who does not follow a divine vocation to the clerical state certainly known does not seem to sin gravely, but he certainly sins lightly.

a. Since this vocation is only an invitation to a higher state and does not involve a strict precept, he who does not follow it does not commit a sin properly so called because of this. Moreover this would be a sin insofar as he who does not follow God calling deprives himself of the graces necessary for obtaining salvation; but God denies to no one graces sufficient for salvation; indeed through the help of prayer efficacious graces also can be obtained.

b. But he sins lightly, because, supposing a divine vocation certainly known, the one called cannot be carried to declining the will of God except by motives not consonant with reason, such as weariness of labor, sensuality, desire of worldly liberty, etc.

6. He who enters the clerical state without a vocation certainly known does not seem to sin gravely, provided he has a good will of fulfilling all the obligations of the clerical state and is duly admitted by superiors to receiving orders.

He who lacks vocation must be kept from orders, even if he is imbued with good morals. But if one who feels himself destitute of vocation nevertheless enters the clerical state, he acts rashly, yet he does not seem to sin gravely. For he would sin insofar as he either would not wish or would not be able to fulfill the offices of the state; but since good will is supposed in him, he will not be deprived by God of necessary graces for this reason alone, that he lacks vocation. Yet this is certain: a priest destitute of vocation experiences greater difficulties in fulfilling his offices and is therefore in greater danger of losing eternal salvation.

**752. On proving clerics to be promoted to sacred orders.** 1. From many laws of the Church, a grave obligation is incumbent on the bishop of carefully proving clerics to be initiated in sacred orders and of keeping away the unworthy, who are imbued with depraved morals. Although the habit of any grave sin renders one to be ordained unworthy, nevertheless this holds most of all concerning the vice of luxury, wherefore the laws of the Church explicitly require that those to be ordained be of proved chastity.

a. *And let these (deacons) first be proved, and so let them minister.*[1148]

b. Let no one be permitted to approach sacred order unless he is either a virgin or is of proved chastity.[1149]

c. Let subdeacons and deacons be ordained who have good testimony and have been proved in minor orders … who hope, God being the author, that they can contain themselves.[1150]

2. As regards the force of these laws, some affirm that they oblige only the bishop, that he keep from sacred orders those who are not immune from external sins (concerning which, namely, it can be established in the external forum of the Church);[1151] but others contend that they affect not only the bishop but also the one to be ordained and his confessor, so that by force of these laws the one to be ordained is prohibited under

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**Notes**

1148. 1 Tim. 3:10.

1149. C. *Nemo* 12, d. 32.

1150. Council of Trent, sess. 23, c. 13, *De reform.*

1151. Ballerini-Palmieri; Berardi.

grave obligation from approaching orders unless he has already amended himself from the habit of sinning, especially against chastity; and that the confessor is bound under grave obligation to deny absolution to a cleric with a bad habit wishing to approach sacred orders, even if otherwise disposed, because this very will itself is gravely sinful, unless he is endowed by God with so great a compunction as to furnish security concerning change of life.[1152]

3. Concerning a habituated cleric. He is not immune from grave sin who, laboring under a bad habit of sinning, receives sacred order, unless he has a founded hope that, once ordained, he will preserve chastity.

a. It is difficult to demonstrate that the aforesaid laws of the Church refer directly and immediately not only to the bishop and to external proof, but also to the one to be ordained and to his internal state;[1153] nevertheless from them the mind and intention of the Church is clear, which in those to be promoted to sacred orders desires and requires immunity from a bad habit even internal.

b. From the nature of the matter a cleric cannot approach sacred orders with a safe conscience unless he holds a founded hope that he will live at least habitually chastely, as he is about to promise to God in ordination; but he who is entangled in a bad habit cannot have this hope (except in the case of extraordinary help). He can indeed, with the help of grace, overcome any temptations whatever; but considering the character of the human heart and the ordinary operation of divine grace, he will not overcome them, but exposes himself to manifest danger of sinning against the vow and of accumulating very many sacrileges.

How long a cleric must be free from a bad habit, so that safely, that is, with founded hope of preserving chastity in the future, he can approach sacred order, cannot be determined by a general rule, since it depends on diverse circumstances, namely on the intensity of the bad habit, on the greater or lesser diligence of employing means of amendment, on the danger of giving scandal to the faithful by external sins, etc. But this counsel must altogether be given, that at least for several (six) months he have amended the custom of sinning before he approaches sacred order.

# Question Second. On the Obligation of Reciting the Divine Office

## Article First. On the Divine Office

**753. Its nature.** The divine office is the public prayer of the Church. Public prayer of the Church can happen in two ways: either because the Church prays through itself, or because it prays through determinate persons. It prays through itself when the members of the Church, coming together in such number and condition that they represent the Church, pray; it prays through determinate persons when ministers deputed by the Church for this pray in its name. In this case the formula of prayer is prescribed by the Church itself.

In the first times the Church poured forth public prayer through itself: for the faithful were accustomed to come together to perform prayer in common (to sing psalms and hymns and read sacred Scriptures). But afterwards, when, because the number of the faithful had increased, this was impossible, she deputed her ministers, namely ecclesiastical persons, who would pour forth prayers in the name of the whole body of the Church; but the divine office is the formula of praying prescribed by the Church for this end.[1154]

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**Notes**

1152. St. Alphonsus defends this opinion in the dissertation *De clerico habituato in vitio turpi cupienti statim initiari in sacris*, l. 6, n. 63-77.

1153. Cf. Benedict XIV, *De synodo*, l. 11, c. 2, n. 18.

1154. Cf. Bouquillon, *Institutiones theologiae moralis specialis* (Bruges: Beyaert, 1880), I, n. 226 ss.; Suarez, *De virtute religionis*, tract. 4, l. 4, c. 1, n. 11; S. Baumer, *Geschichte des Breviers* (Freiburg: Herder, 1895).

**754. Its fruit.** 1. From recitation of the divine office a twofold fruit comes forth: one from the work of the minister operating, or of the person reciting; the other from the work of the Church operating, for which the minister performs an embassy before God and in whose name he prays.

2. This fruit is impetratory, propitiatory, and satisfactory, and as regards substance it is the same whether the office is recited by a holy minister or a wicked one: for the malice of the minister does not obstruct the efficacy of the prayer of the Church itself.

3. Four kinds of persons receive the fruit arising from the work of the Church operating: a. the one reciting himself; b. those for whom the reciter especially intends to pray; c. the faithful who have founded benefices with the burden of reciting the office; d. all the faithful, for whom the Church intends to pray.[1155]

**755. Its parts.** The divine office is called by this name because it was instituted by the Church for praising God. It is also called the canonical hours, because through the sacred canons it was prescribed for certain hours of the day. The canonical hours are numbered as seven: Matins with Lauds, Prime, Terce, Sext, None, Vespers, and Compline. Of these, Matins with Lauds and Vespers are called the greater hours; the rest, the little hours. Moreover the night office is distinguished, which consists of Matins with Lauds, and the day office, which consists of the little hours, Vespers, and Compline.

## Article Second. On the Obligation of Reciting the Divine Office

The obligation of reciting the divine office arises from a threefold title: a. from sacred order; b. from religious profession in an order bound to choir; c. from an ecclesiastical benefice. Only the first must be spoken of in this place.

**756. On the obligation itself.** All clerics constituted in major orders, from the precept of the Church, are held daily to recite the divine office, either publicly or privately.

1. All clerics constituted in sacred orders are held, even the suspended, excommunicated, interdicted, etc.: for the reason of the obligation, namely sacred order, always remains in them. But those constituted in minor orders are not held to the divine office unless they have obtained an ecclesiastical benefice, because they are bound to this by no law or custom.

Clerics constituted in major orders who by dispensation of the supreme pontiff return to the lay state are exempted from the obligation of reciting the office. Although the excommunicated, etc., cannot pray in the name of the Church, nevertheless they are held to the recitation of the office, lest they gain advantage from their malice and because they do not lose the clerical state.[1156]

2. There indeed exists a written law which binds priests (at least if they are pastors) to reciting the divine office;[1157] but the obligation which extends to all clerics constituted in sacred orders is taken from ancient and universal custom, which has obtained the force of law.[1158]

3. The obligation begins on the day on which the subdiaconate is received, and indeed from that part of the office which (morally) corresponds to the time at which the order is received: for as soon as sacred order is received, the reason of the obligation is present and therefore the obligation itself.

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**Notes**

1155. Cf. Bonacina, *Operum*, tom. 1, tract. *De horis canonicis*, disp. 1, q. 4, punct. 2, n. 1 ss.

1156. Tamburini, *Explicatio decalogi*, l. 2, c. 5, section 1, n. 4; D'Annibale, *Summula th. mor.*, 5th ed., III, n. 153.

1157. C. *Presbyter* 1 and C. *Dolentes* 9, *De celebr. miss.* (III, 41); cf. can. *Presbyter* 2, dist. 91.

1158. Const. *Quod a nobis* of Pius V (July 9, 1568); Lessius, *De iust. et iure*, l. 2, c. 37, n. 45.

a. Therefore he who is ordained in the morning before the ninth hour must begin from Prime; he who is ordained after the ninth hour or around midday is held to recite the office of that day from Sext.

b. He who recites the hours before ordination, which he is held to recite only after ordination, satisfies his obligation and is not held to recite them again. For although in general the principle is true: a precept cannot be satisfied at a time at which it does not yet urge, nevertheless there are some precepts which can be fulfilled a little before they urge, namely those which are of such a kind that the prescribed work can be placed before the precept urges.[1159]

**757. How great and of what kind it is.** 1. The obligation of reciting the divine office is from its kind grave, because its end, namely divine worship, is grave, and the thing prescribed conduces greatly to the intended end. Therefore he who omits the entire office of one day or a notable part of it without an excusing cause sins gravely.

2. An entire little hour or a quantity of office equivalent to it is judged a notable part; a light part is judged one which is less than a little hour. For the recitation of an entire hour, by the judgment of prudent persons, is judged to conduce notably to the end intended by the Church. Moreover the Church intends that the whole time of the day be dedicated to the divine majesty by the fact that at determinate hours of the day a peculiar worship is shown to God; but by the omission of an entire hour this end piously intended by the Church is gravely injured.

a. Entire, and this must be taken strictly, so that therefore he does not sin gravely who does not omit the hour entirely. Yet he who recites only a very small part of the hour, for example only *Deus in adiutorium*, etc., or only the prayer, or only the hymn, is judged to have omitted it entirely: for a little is reckoned as nothing.

b. Therefore it is grave: a. to omit an entire nocturn with its lessons; b. after omitting the rest, to recite only a very small part of one little hour; c. to omit nine lessons with their responsories, but not, as it seems, to omit three lessons with their responsories; d. to omit from several hours so much that the omitted parts equal a little hour, provided the omitted parts are from the principal parts of the office, because the omitted parts of one daily office coalesce into one. Hence to omit the *Pater*, *Ave*, and *Credo* in the course of the office, as often as they would have to be recited, does not seem to be grave; but to omit the third part of a psalm in any hour is grave.

c. To omit the Vespers of Holy Saturday is not mortal, because this matter is light both in itself and with respect to the whole office.

3. The entire office of one day is enjoined by the Church by one precept; therefore he who decides to omit the entire office commits one sin by this act of the will and by the subsequent omission.

4. The obligation of reciting the office is affixed to the day and expires with the day, so that afterwards it neither must nor can be supplied.

**758. Obligation of restoring fruits because of neglected recitation.** But if beneficed persons, after six months have passed from obtaining the benefice, culpably omit to recite the divine office, they must restore the fruits of the benefice according to the proportion of the omitted part.

a. The obligation of restoring does not arise from justice, but from the precept of the Church imposing a penalty for neglected recitation. The law establishing this penalty, issued by the Fifth Lateran Council under Leo X,[1160] is more accurately declared by Pius V, the great reformer of the divine office.[1161]

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**Notes**

1159. Cf. Lugo, *De eucharistia*, disp. 16, sect. 2, n. 39 s.; Tamburini, *Explicatio decal.*, l. 2, c. 5, section 5, n. 9.

1160. Constitution *Supernae*, May 5, 1514.

b. It obliges beneficed persons after six months from obtaining the benefice; therefore he who in the first six months omits recitation of the office indeed sins against the law of the Church, but is not bound to restore the fruits.

c. It obliges before the sentence of a judge: for without recitation "he does not make the fruits his own." Nor therefore is he bound to restore by the law of nature, but only by positive law, which by these words impedes the beneficed person from making the fruits his own; therefore by the law of nature he must restore this as another's property.[1162]

d. Restitution must be made to pious causes; but if the beneficed person himself is truly poor, he can apply to himself the fruits to be restored.

Whether restitution can be supplied through alms which the beneficed person makes from the fruits of the benefice. It cannot be supplied through alms which he had made before; but it can be supplied through alms which he made after the omission, even if he was forgetful or unaware of the obligation.

e. If the omitted part does not reach grave matter, there is no obligation of restoring except under light obligation, even if the fruits corresponding to the omitted part constitute grave matter: for since the obligation of restoring has the nature of penalty, a grave obligation is not contracted except because of theological fault, and that grave (n. 434).

f. A simple beneficed person who has no other obligation besides recitation of the office must restore all the fruits; but a beneficed person with cure, or one who has besides another obligation and fulfills it, for example celebration of Mass or service of the church, must restore the part which corresponds to the obligation of the divine office.

Because in benefices with cure the greater part of revenues is received in compensation of other offices, not for recitation of the breviary, a bishop or pastor who fulfills his pastoral offices will scarcely have to restore a tenth part of revenues because of neglected recitation of the breviary.

g. The obligation of restoring urges for individual days, indeed for individual hours omitted. Therefore he who on one day omits the whole office is bound to restore the fruits corresponding to that day; he who omits Matins and Lauds only, half the fruits of one day; he who omits the remaining hours, the other half; but he who omits one of these hours must restore the sixth part of this half, or a twelfth part of the fruits of one day.[1163]

Therefore the opinion of certain doctors cannot be admitted, which establishes that he who within a year omits the office for eight or ten days is not bound to restitution, because these are light matters which God, since he is a most liberal lord, does not attend to.

## Article Third. On the Form of the Divine Office

**759. Form of the office.** The divine office must be recited according to the form prescribed by the Church (n. 753).

The form of reciting the divine office is either substantial or accidental. Substantial form refers either to the very substance of the thing or to substantial quality. If substantial form is injured, grave sin is committed; if accidental form is injured, light sin, because in this second case the precept of the Church is observed as to

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**Notes**

1161. Constitution *Ex proximo*, Sept. 20, 1571.

1162. Proposition 20 condemned by Alexander VII: *Restitution imposed by Pius V on beneficed persons not reciting is not owed in conscience before a declaratory sentence of a judge, because it is a penalty.* Cf. Ballerini-Palmieri IV, n. 344.

1163. Cf. constitution *Ex proximo* of Pius V, Sept. 20, 1571; Mazzotta I, tr. 2, disp. 1, q. 2, c. 1.

substance, but in the first the precept is not even observed as to substance. Substantial form is injured: a. if the office is recited according to another breviary than the Roman; b. if it is recited in the vernacular language;[1164] c. if the office recited is notably diverse either as to quality or as to quantity.

**760. On the breviary to be used.** The divine office must be recited according to the Roman breviary, so that he who uses another breviary does not satisfy his obligation.

a. By the constitution of Pius V, *Quod a nobis* (July 9, 1568), the Roman breviary is prescribed for the whole Latin Church, all others being abolished, with only those breviaries excepted which either from their first institution approved by the Church or from custom introduced had already been in use for two hundred years. Benedictines, Premonstratensians, Dominicans, the Milanese, Trier, Liege churches, etc., have proper breviaries of this kind. Already in this constitution the supreme pontiff declares "that no one can satisfy except by this form alone." He declares the same in another constitution, *Ex proximo* (Sept. 20, 1571), establishing concerning beneficed persons that those who use another breviary than the Roman do not make the fruits their own. Therefore a secular priest who does not have the Roman breviary, but only a proper breviary, for example a Benedictine one, is not bound to recite the office from it, because by this recitation he cannot satisfy his obligation.[1165]

b. But to those to whom it is lawful to use a proper breviary, the supreme pontiff gives the option either of retaining their breviaries or of accepting the Roman one; once the Roman has been accepted, they cannot return to the proper breviary without the license of the same pontiff, because by the very acceptance they are judged to have renounced the pontifical concession. The supreme pontiffs have openly shown at all times that this acceptance of the Roman breviary would be pleasing to them.

c. Priests and religious who in choir must use their own breviary, not the Roman, can privately recite the office according to the Roman breviary. Thus a Milanese priest or Benedictine monk who for the sake of studies is staying outside the diocese or monastery can use the Roman breviary. Nevertheless their superiors can prohibit the use of the Roman breviary even in private recitation.

**761. Accessory parts of the office.** 1. Today there exists no obligation either publicly or privately of reciting the office of the Blessed Virgin Mary, the office of the dead, the penitential psalms, and the gradual psalms on those days on which they are assigned in the breviary, unless somewhere there is a custom in force, which nevertheless does not oblige to private recitation outside choir.

For for those who use the Roman breviary, by the cited pontifical constitutions the obligation was removed of reciting each month on days designated by the rubrics these accidental parts of the office.

2. There is an obligation for all who are held to the office of reciting the office of the dead on the day of the commemoration of all the faithful departed, and of reciting the greater litanies on the feast day of St. Mark and in the three days of Rogations. Matins with Lauds of the office of the dead can be anticipated after Matins with Lauds of the office of the day; but the greater litanies cannot be anticipated.

That the office of the dead must be recited under grave obligation is not doubtful; but concerning the greater litanies, although the obligation of reciting them must be granted, several nevertheless judge not improbably that it is not grave, not because the matter is not grave, but because the law itself does not oblige under grave obligation.[1166]

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**Notes**

1164. Sacred Congregation of Rites, June 1904, where it is declared that he does not satisfy the obligation who does not recite the office or litanies of the saints in the Latin language.

1165. St. Alphonsus, l. 4, n. 158, calls the contrary opinion more probable.

1166. Cf. Ballerini-Palmieri IV, n. 382.

**762. What office must be recited.** Daily the office must be recited which is assigned in the calendar or directory for that day.

The offices assigned in the calendar are either offices common to the whole diocese or proper offices of some church. The following are bound to recite proper offices: a. canons and beneficed persons attached to the choir of that church; b. clerics who have a benefice in that church; c. clerics enrolled in that church.

a. The proper offices of that church can be these: the office of the titular of the church, the office of the dedication of the church, the office of an outstanding relic, an office granted to that church by special indult.

b. Only those are called enrolled in that church who by the authority of the bishop exercise there from office the care of souls: pastors and their coadjutors, but by no means priests who celebrate Mass in it, receive confessions, or exercise another sacred ministry.[1167] These neither must nor can licitly recite the proper offices.

c. Teachers and pupils of the seminary living in it are judged enrolled in the church of the seminary, although they celebrate Mass elsewhere; therefore they are bound to recite the proper offices of the church of the seminary.[1168]

Therefore there is a twofold precept of the Church concerning the divine office: a. of reciting the office daily; b. of reciting it according to the order of the directory. The former is primary, the latter secondary: the former is always grave, the latter at one time grave, at another even light, as will appear from what must be said.

1. He who lacks the office prescribed on that day, for example, of the saint, must recite another which he has, for example, of the feria or of the Blessed Virgin, provided it is in the Roman breviary: for he who cannot observe the precept of reciting the particular office of the day must at least observe the general precept of reciting the office daily. In the same way he who does not have the proper lessons of the occurring office must read the common lessons.

2. Non-beneficed clerics who stay in another diocese can conform themselves to the office of the place where they stay, but they are not bound to this unless they intend to remain there so long that they acquire quasi-domicile. Outside clerics having quasi-domicile in a diocese are subjects of the diocese, and therefore are bound to conform themselves to its calendar.[1169] But beneficed persons are always bound to the office of their own church.[1170]

3. Regulars dwelling outside the house or monastery are bound to follow the calendar of their province. If the same are staying in another house of their order and are attached to choir, they are bound to recite the office in choir with the rest. But if they pay the office privately, they must follow the calendar of their own house where they are outside it only for some days; but they must follow the calendar of the house in which they stay where they remain in it for a long time (at least for a month, for example, in the time of Lent); those constituted on a journey must recite the office of the house from which they departed.

4. Those who are obligated to recite the office according to the calendar of the diocese are bound also to recite the propers of the diocese and votive offices, according as they are assigned in the calendar: for although the concession of these offices is a privilege given to the community, which is not bound to use the privilege, nevertheless individuals are bound to use it where the community uses it, because they must conform themselves to the community.

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**Notes**

1167. Sacred Congregation of Rites, Dec. 7, 1844, n. 2872.

1168. Sacred Congregation of Rites, Sept. 7, 1850, n. 2980.

1169. Sacred Congregation of Rites, May 14, 1672, n. 1445.

1170. Sacred Congregation of Rites, Nov. 12, 1831, ad 46, n. 2682.

The office must be recited as it is indicated in the calendar, even if someone more probably judges that the calendar errs;[1171] yet if it is evidently established that the calendar errs, the error must be corrected.

**763. He who deliberately exchanges the office of one day with the office of another day:**

a. Sins gravely if he changes it into an office notably diverse either by reason of quality or by reason of quantity, because he does not preserve the substantial form obliging under grave obligation.

This proposition (34) was condemned by Alexander VII: *On Palm Sunday, one reciting the Easter office satisfies the precept.* According to Viva, there is a twofold reason why he sins gravely who in place of the office of Palm Sunday recites the Easter office: both because the object of this office (joy of the resurrection) is wholly diverse from that which the Church proposes to be recalled on Palm Sunday (the memory of the Passion), and because one is notably shorter than the other; in other words, because the diversity of either office is notable both by reason of quality and by reason of quantity.

b. He sins lightly if he changes it without reasonable cause into an equal or almost equal office, as the office of a confessor into the office of a martyr, because there is only an accidental injury of the prescribed form.

Whether the change of a ferial office into the office of some saint is substantial or accidental, authors dispute on either side, but only probably.[1172]

c. He does not sin at all if from a reasonable cause he changes it into an equal or almost equal office, or when a grave cause exists, even into a shorter one.

It is not a sufficient cause of changing the office that it can be recited with a companion or with a choir which has another office;[1173] but it can licitly be changed if the office of the day cannot be had without inconvenience, provided the other office is not notably shorter.

**764. What he must do who from error changed the office.**

a. If he notices the error when the office is already finished, he is not bound to recite another, because the Church does not oblige one to recite the office twice on the same day. Therefore the axiom has prevailed: office for office.

If the office recited is much shorter than the prescribed office, for example the office of a saint for the office of Sunday, compensation can be made by reciting the nine psalms from the first nocturn of Sunday; but it does not seem to be a precept, because the obligation as to substance already seems to have been fulfilled and the error had been involuntary.

b. If he notices the error when the office is not yet finished, at pleasure he can either finish the office begun, lest discordant parts be joined into one office, or he can recite the rest from the prescribed office, in order to preserve the form prescribed by the Church on that day. This latter is more approved by St. Alphonsus (n. 161) according to the axiom: an error is corrected where it is detected.

c. He who, for example, in place of None recited Sext twice, is bound to recite None; for the saying *office for office* indeed holds if, quantity and form being preserved, only the quality of the office is changed, as if in place of the office of one saint the office of another is recited; but it does not hold if the form of the office is not preserved because one hour is substituted for another. Nor can one hour be supplied by another: for defect of quantity can be supplied only if as to form the whole office was recited. Thus where in place of the

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**Notes**

1171. Sacred Congregation of Rites, June 13, 1899, n. 4031.

1172. Cf. Castropalao, tr. 7, disp. 2, n. 18.

1173. Sacred Congregation of Rites, Jan. 27, 1899, n. 4011.

office of Sunday the office of a saint was recited, the defect can be supplied by reciting the twelve psalms of the first nocturn; but defect as to form cannot be supplied by the fact that, for example, another nocturn is recited twice for the omitted nocturn.

d. He who from error recited an office not yet occurring can, when this very office afterwards occurs, at his own choice either recite the office prescribed on that day, so that he conforms himself to the common rite of the Church,[1174] or he can recite the omitted office, lest some office be passed over in that year. Another reason besides commends this resolution: for from a reasonable cause it is lawful to change the office prescribed on that day; but this is a reasonable cause of changing the office, lest the same office be recited twice and another be altogether omitted.[1175]

## Article Fourth. On the Mode of Reciting the Divine Office

For fully satisfying the precept of the Church, the divine office must be recited: a. by mouth; b. with due intention; c. with due attention; d. integrally; e. continuously; f. in order; g. in the due place and posture; h. at the prescribed time.

**765. By mouth, or vocally,** because the office by its nature is not purely mental prayer, but oral or vocal. Therefore the words must be formed by mouth, that is, lips and tongue; but it is not required that they be heard by others, nor is it required that the one reciting hear himself, nor that he could hear himself if no external impediment stood in the way: for to the essence of oral prayer it is not required that the one reciting be able to hear himself, because words can be brought forth by mouth without a sound being given by which the one reciting can hear himself. Ordinarily, however, it will happen that some whisper can be heard.

Therefore it does not suffice to read the office mentally or to run through it with the eyes alone; but it must be recited by distinctly forming the voice. The privilege which had been granted to regulars by Leo X of reciting the divine office in choir, as regards the parts which are said secretly, mentally without pronunciation of the words, was again revoked by Gregory XV through the Bull *Romanus pontifex* (July 2, 1622).[1176]

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## Article Fourth. On the Mode of Reciting the Divine Office (continued)

**766. On recitation with a companion or in choir.** 1. It is lawful to recite the divine office with a companion, even if he is not held to the office.

Recitation with a companion must imitate recitation in choir; therefore a. it is required that they recite by alternate turns, not by threefold turns, that is, that on one side there be one or more and on the other likewise one or more; but it is not lawful so to recite that one says the first verse, another the second, a third the third; b. the antiphons and verses of the psalms must be said alternately, as order demands; c. all the lessons can be read by one while the rest listen, or also alternately; d. the chapters and prayers are said by one who performs, as it were, the office of the officiant.

2. It is required that they hear one another distinctly: for in order that anyone satisfy the obligation, he must either recite himself or hear one reciting. If the companion is not held to the office, it is indeed required that he who is not held be heard by the other; but it is not required that he himself hear the other reciting.

a. Therefore a deaf man who hears nothing cannot validly recite the office with a companion; and he who, although he could, nevertheless does not hear the companion reciting does not satisfy his obligation,

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**Notes**

1174. Sacred Congregation of Rites, June 17, 1673, n. 1474.

1175. St. Alphonsus, n. 161; Ballerini-Palmieri IV, n. 383; Lehmkuhl II, 626.

1176. Cf. Ferraris, *Bibliotheca*, s.v. *Officium divinum*, n. 100.

whatever be the cause on account of which he does not hear the companion, whether noise or deafness. Therefore he is held to repeat the office, or at least to supply the part not perceived.

b. He who does not perceive only some things (one or another verse or lesson) satisfies the obligation and is not held to supply anything, provided he tries to hear the other, because, says St. Alphonsus (n. 163), through the companionship and at the same time through that application of his own, he is judged morally to communicate in the prayer, so that the prayer which the other pours forth is also his own.

Hence one reciting in choir, who while others are reciting must prepare something in choir, is not held to repeat what he did not perceive, even if he had not heard an entire psalm.

c. In order that a deaf man who is obliged to choir satisfy the obligation of reciting the office, he must afterward supply the omitted part, namely that which he did not perceive, or better, while it is being sung by the other side, recite it in a low voice.

d. He who plays the organ while the divine office is sung in choir does not satisfy the obligation unless he at least recites or sings the verse of one part. And where the office is so sung that to the verse which the whole choir sings only the organ responds alternately, the whole choir does not satisfy the obligation unless someone from the choir pronounces or sings in a clear voice that which is to be answered by the organ.[1177]

3. Recitation must be so arranged that one does not begin his verse unless the other has completed his: for the prayer prescribed by the Church is by its nature successive.

a. Therefore if those things which are uttered at the same time constitute a notable part, grave sin is committed, unless the whole office is repeated or at least an equivalent part is supplied.

b. One reciting the office with a companion who clips the final syllables, yet without the sense being notably corrupted, satisfies the obligation and is not held to repeat, although he sins venially; but if the clipping is great, so that the sense in a notable quantity is corrupted, it is a grave sin and either the part viciously pronounced or an equivalent part must be repeated, if that part by itself does not yield a sense.

4. Recitation by a companion that is too swift and headlong, but especially singing in choir that is too hurried, so that the others cannot distinctly perceive everything, is ordinarily a venial sin, because he who perceives only some things does satisfy the obligation as to substance.

**767. The due intention** is the intention of reciting the prescribed office, or of praising and praying to God through recitation of the office; and this intention is had by the very fact that one deliberately takes up the breviary in order to recite the office.

Although the actual intention of praying, elicited at least implicitly at the beginning and then virtually persevering through the course of the prayer, is altogether necessary in order that the recitation of the office be prayer and not reading, nevertheless there is no need to doubt the existence of the due intention, provided the recitation is not explicitly ordered to another end.

**768. The attention required** is external attention: for neither from the nature of the matter nor from the precept of the Church is a more perfect attention required than external attention, or the exclusion of any external action impeding internal attention.[1178]

a. There are external actions which gravely or notably impede internal attention, and others which impede it only lightly. The former must be excluded under grave obligation during recitation of the divine office, the

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**Notes**

1177. *Caerem. ep.* l. 1, c. 28, n. 6.

1178. Cf. n. 139.

latter under light obligation; but from a just cause actions lightly impeding attention can licitly be admitted. Actions of the former kind are: painting, writing, listening with great attention to others speaking, reading attentively, attentively considering images or statues, etc. Actions of the latter kind are: putting on or taking off clothes, washing the hands, looking at the countryside, fields, meadows, mountains, buildings, tending the fire, etc. Yet if one knew by experience that he is not gravely distracted by actions of the former kind, he would not be held to avoid them under grave obligation, scandal being excluded; and in like manner, if one knew by experience that he is notably distracted by actions of the latter kind, he would be held to avoid them under grave obligation.

b. Since prayer without internal attention can exist as to substance, the obligation of internal attention would have to arise from a grave precept of the Church. Those who affirm this obligation in fact appeal to the Lateran Council under Innocent III, which commands clerics in virtue of obedience to "celebrate the divine office zealously and devoutly alike."[1179] But to one reading the cited chapter it will at once be evident that the supreme pontiff commands nothing other than devotion or external attention against those who, while reciting in choir, were chatting with secular persons.[1180]

**769. Integrally.** In order that the office be recited integrally, two things are required: a. that the whole office be recited, with no part of it omitted; b. that the individual words be pronounced without mutilation or truncation.

a. To the integrity of the office belong the *Pater*, *Ave*, and *Credo* at the beginning and end of the office; but the prayer *Aperi* and *Sacrosanctae* do not belong to it, although these prayers are nevertheless piously and usefully added.

b. Therefore he who omits a notable part sins gravely; he who omits a non-notable part sins lightly. What part is judged notable has been defined above (757).

c. If the truncation of words is so great that the sense is changed, and this in a notable part, grave fault is committed and the part not recited integrally must be repeated; yet truncation of words rarely involves grave fault. But it is free from all fault if it happens from a natural defect of a stammering mouth or a hurrying tongue, or if it happens from inveterate custom.

**770. Continuously,** that is, without interruption. A twofold interruption must be distinguished, one between one hour and another hour, the other between the parts of the same hour. No interruption, however great, is a grave sin, provided the whole office is recited within the space of the same day, because even a notable interruption does not prevent satisfaction being made for the substance of the obligation. Yet a notable interruption which is made without cause between certain parts of the office is a venial sin; but an interruption which is made from a just cause, even if notable and in the same hour, is free from all fault, nor must the earlier parts be repeated in this case, because individual psalms and verses have a complete signification and are sufficiently united by the intention of continuing.

a. Therefore there is no obligation after an interruption to repeat the psalm or lesson from its beginning, even if the interruption had been made without cause, for a long time, or with the intention of repeating the earlier parts; but the recitation can be continued where it had been interrupted, provided the verse or an entire proposition had been completed before the interruption.

b. Since recitation of the hours must be continuous, it is not of itself lawful to begin an hour with foreseen future interruption: for an interruption of this kind would be voluntary in its cause. Yet since a reasonable

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**Notes**

1179. C. *Dolentes* 9, *De celebr. miss.* (III. 41).

1180. Cf. Lehmkuhl II, n. 633. Burghaber, *Casuum conscientiae centuriae tres*, cent. I, n. 21.

cause excuses from this precept, confessors do not sin who recite part of an hour in the confessional while they are waiting for a penitent, in order to spare time.

1. Lauds can be separated from Matins even without cause and for a longer time.

a. Therefore nothing prevents Matins from being separated from Lauds even by an entire night: for although Matins and Lauds constitute one hour, nevertheless custom has made it lawful that between Lauds and Matins (but not between the individual nocturns) the whole space of the night can intervene even without cause. The reason seems to be that Lauds in a more perfect way constitutes a part complete in itself than the individual nocturns do, and therefore there is a greater connection among these than between Matins and Lauds.

b. From the prescription of the rubric, the *Pater* must be added as often as, after an hour has been completed, one ceases from recitation. But if Matins is separated from Lauds, Matins must be concluded in the way in which, from the prescription of the rubric, it is concluded on the night of the Nativity of the Lord, on which Mass is celebrated immediately after Matins, namely after the prayer of the day there is added: *Dominus vobiscum*, *Benedicamus*, *Fidelium*.[1181] But it is not necessary that before Lauds separated from Matins the *Pater* and *Ave* be said.

2. The nocturns can be separated from one another without cause at least by the space of three hours, because in ancient times they used to be separated in this way, and now no law exists which prohibits this. And indeed any nocturn constitutes a part of the office complete in itself after the manner of a little hour, of which one can licitly be separated from another. From a reasonable cause a nocturn can be separated from a nocturn for even a longer time, for example, for an entire night.

3. The little hours can be separated from one another even without cause and for a longer time, because each of them constitutes a part complete in itself.

According to St. Alphonsus (n. 168), just causes of interrupting an hour or psalm are: one's own or another's utility, courtesy, devotion, execution of a superior's commands, hearing of confession, etc. Therefore the office can licitly be interrupted in order to note something down, so that the cause of distractions may be removed, or to elicit a pious affection of heart, or to recite a short (but not a longer) prayer.

**771. In order,** that is, without inversion of the prescribed order. A twofold order is to be observed in the recitation of the office: the order of offices already explained above, which the calendar describes, and the order of the hours. The prescribed order of the hours is that first Matins and Lauds be recited, then Prime, Terce, Sext, and None, and finally Vespers and Compline.

1. This precept does not oblige under grave obligation, because it does not refer to the substance of the office, but only to an accidental circumstance. Therefore inversion of order among the several hours of the same office, indeed even inversion of order among the parts of the same hour, is only venial; and if it happens from a reasonable cause, it is no sin.

A reasonable cause of this kind is judged to be present: a. if someone who does not have the breviary at hand recites the hours before Matins; b. if someone who does not have the lessons at hand meanwhile recites the psalms of Matins and Lauds, or indeed even the little hours, and postpones the lessons; c. if someone is invited by another to recite the hours when he has not yet recited Matins; d. if someone comes late to choir, when one hour has already been entirely finished or already begun. In this case he licitly, indeed laudably, continues to

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**Notes**

1181. S.C.R., Feb. 1, 1886, n. 3653.

sing psalms with the others in choir, afterward reciting the omitted hour or part of an hour.[1182]

2. To recite Matins of the following day when Vespers of the present day have not yet been discharged, according to the opinion of some, is venial, and if it happens from a reasonable cause, is no sin; but according to the opinion of others it is never a sin, because the office of one day has no order with the office of another day.

3. Not to recite commemorations in the order designated by the rubric is not a sin, because this rubric is not preceptive but directive.

**772. In the due place and posture.** 1. Public recitation of the office must be done in choir; but for private recitation no determinate place is prescribed by the Church; therefore any place can be chosen which is judged apt for the due recitation of the office, although a sacred place is more fitting than others.

Therefore he is not free from venial fault who without a just cause recites the office in a place which, on account of the crowd of people, noise, or other circumstances, impedes due attention.

2. Likewise no bodily posture is prescribed by the Church for private recitation of the office. Therefore it is not required that the office be recited on bended knees, but it can be recited standing, sitting, walking, or even, when a reasonable cause exists, lying in bed. Therefore not only a sick person, but also a healthy person who passes a sleepless night can recite the office while lying in bed. The rubrics which prescribe certain bodily postures refer to recitation of the office in choir. The same must be said of the rubrics which prescribe other signs, such as inclinations, genuflections, the sign of the cross, etc. Although therefore there is no obligation of observing these in private recitation, nevertheless they are laudably observed even outside choir.

**773. At the fixed time,** which is determined either by written law or by custom.

1. He satisfies the precept as to substance who recites the whole office within the space of one natural day, that is, from midnight of one day until midnight of the following day. When this time has elapsed, no one can any longer satisfy his obligation: for the office is the burden of the day, whose obligation begins and ends with the natural day.

According to the mind of the Church, in recitation of the office each one at his own discretion can follow either true solar time or the time of his own place, whether it is mean time or legal time.[1183] Since, therefore, legal time, which has been introduced almost everywhere, in some regions follows true time by half an hour and more, there at least half an hour before the second legal hour it is lawful to anticipate Matins.

2. To the individual parts of the office time has been assigned in such a way that Matins with Lauds, Prime, and Terce must be recited before midday, Vespers and Compline after midday; but Sext and None can be recited both before and after midday. Yet this designation of time, since it does not belong to the substance of the office, does not oblige under grave obligation; wherefore from a reasonable cause recitation can licitly either forestall this time or be deferred to a later time.

a. In Lent (except the first three days and Sundays), in choir Vespers, but not Compline, must be said before midday in memory of the ancient discipline according to which the fast was not broken before the recitation of Vespers. But in private recitation they can be recited at pleasure either before or after midday. But if they are recited before midday, there is no reason for affirming that they must be recited before the eleventh hour. Certainly they can be recited at the time at which they are accustomed to be recited in choir, that

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**Notes**

1182. De Herdt, *Prax. pontif.* t. 1, n. 242.

1183. S. Poenitent., Nov. 29, 1882; S.C.C., July 23, 1893.

is, after the conventual Mass, which nevertheless is not celebrated everywhere at the same time. Indeed nothing prevents them from being recited privately already in the morning before Mass.

b. The individual hours were formerly recited at this time: Matins after midnight, Lauds at dawn, Prime after sunrise, Terce in the morning at the ninth hour, Sext at midday, None after the third hour in the afternoon, Vespers at sunset, Compline at the twilight of night.[1184]

c. Therefore he who without cause defers Matins or Prime or Terce to the afternoon, or without cause recites Vespers and Compline before midday, sins venially. A reasonable cause of either forestalling or deferring recitation is the danger of an occupation about to supervene, greater devotion, a time more apt for studies, indeed even greater convenience; therefore the whole office can be deferred to the afternoon if the forenoon is more apt for continuing studies.

3. Matins with Lauds privately, from legitimate custom, can be anticipated, that is, recited on the preceding day; but it is not lawful for it to be anticipated publicly in choir. But if it is recited before the time assigned for anticipation, it must be repeated, because the precept cannot be satisfied before it obliges.

a. The faculty of anticipating the office is a privilege, and since of itself no one is held to use a privilege, he who foresees that on the following day he will be impeded from reciting the office is not held to anticipate Matins with Lauds.

b. In order that Matins can be habitually anticipated in choir, an indult of the Holy See is required, which has been granted to many churches; the bishop can only permit that it be anticipated for a time from a just cause.

4. From the rubric of the missal, Matins with Lauds must be recited before Mass.[1185]

Some teach that this rubric obliges under grave obligation (St. Antoninus), others under light obligation (St. Alphonsus), others judge that it is not preceptive but merely directive, because Matins does not contain a necessary disposition for the celebration of Mass, and because the connection between Matins and Mass (which St. Alphonsus thinks to be none) is not so great that Matins must be said before Mass (Ballerini). Although the rubrics urge this matter twice, nevertheless, since there is not sufficient certainty about a true precept, in practice this is not to be established.

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**774. At what hour Matins can be anticipated.** 1. With all agreeing, Matins with Lauds can be anticipated from legitimate custom when the sun holds the middle of its course between midday and sunset. And since this time varies, tables are usually drawn up (inserted in the directory) by which the suitable time for anticipating the office at different times of the year is indicated. This time is placed between the second hour (in the month of December) and the fourth hour (in the month of June) in the afternoon.

2. From the probable opinion of many doctors, validly and at least from a reasonable cause also licitly, Matins with Lauds can be recited privately at any time of year at the second hour in the afternoon, even without privilege.[1186] This opinion is confirmed from the responses of the Holy See, which, when often questioned concerning this matter, has so far been unwilling to settle the question, but has referred it to approved authors, of whom many hold this opinion. Therefore at any time of year it can be anticipated at the second hour, until the Holy See shall determine otherwise.

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**Notes**

1184. Cf. Baeumer, l.c., p. 180.

1185. *Missale rom.*, *Rit. serv.* I, n. 1; *De def.* X, n. 1.

1186. Not rarely a privilege is granted of anticipating Matins with Lauds at the first hour after midday; indeed to priests of the order of St. John of God on June 12, 1899, the privilege was granted of anticipating immediately after midday.

a. The authors assign the internal reason of this opinion in this way. In the course of time it came about that Matins with Lauds, which at the beginning used to be recited at night, was already recited on the preceding day, and indeed in the evening or after sunset. Gradually, however, the custom prevailed of anticipating the office not when evening time ends but when it begins, that is, when the sun, having the middle of its course between midday and sunset, begins to incline toward sunset. Finally custom brought it about that Matins was recited when the evening time began, not of the natural day but of the ecclesiastical day; but the evening time of the ecclesiastical day begins at the hour at which Vespers are customarily recited in choir. But now in choir Vespers are customarily recited, or at least can be recited, about the second hour in the afternoon; therefore according to ecclesiastical reckoning, the time which runs after Vespers have been recited in choir, or after the second hour, already belongs to the following day, on which Matins with Lauds can indeed be validly anticipated privately and also licitly, if a reasonable cause is present. St. Thomas is a witness of this custom, writing: "As regards the ecclesiastical office, the day begins from Vespers; hence if someone after Vespers and Compline have been said says Matins, now this belongs to the following day."[1187]

b. It cannot be denied that among older and recent authors the more common opinion is the one which denies that he satisfies his obligation who, without a special privilege, recites Matins with Lauds at the second hour at any time of year. St. Alphonsus in the first edition of his moral theology had called the contrary affirmative opinion most probable; but afterward he retracted this and called the negative opinion truer. Yet since so many and such great authors, both older ones such as Sanchez, Viva, the Salmanticenses, and recent ones such as Ballerini-Palmieri, D'Annibale, Frasinetti, Sabetti, Bucceroni, and Genicot, hold the affirmative opinion, probability, both internal and external, cannot be denied to it.

c. The manner of acting of S.C.R. is added. For to the question: "At what hour is it lawful to begin the private recitation of Matins with Lauds in the evening of the preceding day?" it responded: "The private recitation of Matins with Lauds can be begun in the evening of the preceding day when the sun holds the middle of its course between midday and sunset."[1188] And to the question: "Whether in private recitation Matins for the following day can be begun at the second hour in the afternoon, or whether the table of the diocesan directory must be followed at every time," it responded: "Let approved authors be consulted."[1189] From these responses two things can be gathered: first, indeed, that if the affirmative opinion lacked all probability, the Holy See would have rejected it long ago; and then, since the sacred congregation refers the matter to approved authors, and many of these say that recitation at the second hour is lawful, with the Holy See itself approving, it is lawful to anticipate at the second hour in the afternoon.

## Article Fifth. On Causes Excusing from Recitation of the Office

**775. On the excusing causes themselves.** Causes excusing from recitation of the office can be reduced to two: a. to infirmity; and b. to occupation, which cannot be joined with recitation of the office without grave inconvenience: for the Church is not judged to wish to oblige with grave inconvenience.

a. It is not necessary that express mention be made of physical impotence and dispensation. For it is evident of itself that he who lacks a breviary and cannot procure a breviary for himself is not held to reciting the office; likewise a blind man who cannot read is not held. But if these can recite some hour (Lauds or Compline) or a notable part of an hour from memory, they are held to recite it.

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**Notes**

1187. *Quodlib.* V, a. 28, ad 1.

1188. S.C.R., March 16, 1876, n. 3391.

1189. S.C.R., May 12, 1905.

b. Likewise it is evident of itself that the supreme pontiff can dispense from the obligation of reciting the office, since this obligation is of ecclesiastical law. A bishop and a regular superior also can dispense in this precept, but unless they have obtained broader power, only in a particular case and for a time. Therefore they can dispense: a. if it is doubted whether the excusing cause suffices, that is, whether the inconvenience joined with recitation is sufficiently grave that the obligation ceases of itself; b. if recourse to the supreme pontiff is difficult; c. in a cause which frequently occurs, such as infirmity; d. in any cause, if the dispensation is sought for a short time.

**776. General preliminary notices.** 1. He who cannot recite the whole is held to a part, if in it the character of the end is preserved.[1190] Therefore he who can recite an entire little hour is held under grave obligation to reciting it; he who cannot recite even a little hour is held to nothing, because a part which is less than a little hour is not judged to conduce notably to the end intended by the law.

2. He who has been legitimately excused from recitation of the office is not held in place of the office to pour forth other prayers or to supply through another, because the divine office is a personal burden.

3. He who cannot recite the office alone, but can with a companion, is held to employ a companion (even one who is not held to the office), if he can have him gratis and easily; but he is not held if he must hire him for pay or can find him only with great difficulty. The reason for the first is that recitation with a companion belongs to the ordinary means of reciting the office, which therefore must be employed if it can conveniently be had. The reason for the second is that this inconvenience is sufficiently grave to excuse from recitation.

Authors ask whether a beneficed person is held from the fruits of the benefice to hire a companion for pay, so that he may be able to recite the office. This obligation can be established: a beneficed person who is continuously impeded from reciting the office alone, and by reason of the benefice has no other obligation besides the divine office, is held either to hire a companion or to seek a dispensation.[1191]

**777. Infirmity,** and indeed both infirmity actually existing, which is so great that the office cannot be recited without notable difficulty, and a founded fear of increasing or contracting infirmity from recitation of the office. Therefore the following are excused:

1. The sick person who suffers from any grave disease whatever.

a. Therefore he is excused who suffers from notable pain of the head, so that he cannot perform his customary occupations; or who is so weakened from an internal disease that he is compelled to lie in bed; and this indeed holds even if he can spend one or another hour in conversations with visitors or can read newspapers: for recitation of the breviary of itself rather wearies and does not relieve; but those occupations of themselves rather relieve and do not burden.[1192]

b. A sick person who cannot recite the whole office, but doubts whether he can recite a part, is held to nothing, lest occasion be given to doubts and anxieties.

c. He who doubts whether infirmity suffices for excusing can stand by the judgment of a superior or of a prudent physician or of another prudent man, or even by his own judgment.

2. The convalescent person who from recitation of the office deservedly fears grave inconvenience, such as notable weariness, exhaustion of strength, heaviness of the head, crudity of the stomach, great pain, etc.

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**Notes**

1190. To this pertains proposition 53 condemned by Innocent XI: He who cannot recite Matins and Lauds, but can recite the remaining hours, is held to nothing, because the greater part draws the lesser to itself.

1191. Cf. St. Alphonsus, n. 158; Lehmkuhl II, n. 639.

1192. Cf. Elbel II, pr. 7, n. 177.

A convalescent person is excused for some time from recitation of the office, even if through the day he can speak with others or read something profane: for this, as has been said, is done for the sake of recreation and restores strength, but recitation of the office requires greater attention and therefore more wearies and hinders the restoration of strength. Moreover not all are wearied by recitation of the office in an equal way, but some more than others according to the character of their disposition and condition.

**778. Occupation undertaken from office or charity,** which cannot be combined with recitation of the office and deferred to another time without notable detriment to oneself or another. Here it must be noted that no one is held to deprive himself of refreshment of the body or of necessary sleep, in order that he may be able to recite the office. Therefore the following are excused either in whole or in part:

1. He who in the evening, when the office has not yet been discharged, is unexpectedly called to a sick person, and on that day obtains no further suitable time for discharging it. Nor is he held, if he returns a little before midnight, to defer nightly rest in order to discharge the office.
2. He who is occupied the whole day in hearing confessions which cannot conveniently be deferred to another day, as in the time of exercises or missions; the same holds concerning other labors of this kind, for example, concerning visitation of the sick in time of contagion, etc.

It is false that he is excused from recitation of the office who during the day is occupied for seven hours with grave labors; indeed not even he is of himself excused from recitation who during the day is occupied for ten hours with grave and urgent labors, unless perhaps he is so wearied that he cannot recite the office without notable difficulty.

3. He who needs the whole time for preparing a sermon which he cannot omit without scandal. Yet if, foreseeing these straits of time, he did not prepare the sermon at an opportune time, by this negligence he certainly committed sin.

## Question Third. On the Obligation of Expending Superfluous Goods

**779. On the obligation itself.** A grave obligation of religion is incumbent on clerics of expending on pious causes the benefice goods which remain over after honorable support.[1193]

1. That clerics are held under grave obligation to expend superfluous goods for pious uses is established from the will of the Church explicitly prohibiting that any beneficed persons whatsoever increase their relatives or household members from the revenues of the Church, unless they are poor, to whom for this reason they may distribute ecclesiastical things, which are God's, as to the poor.[1194]

The very nature of the goods demands that the Church impose this obligation on beneficed clerics: for goods are offered by the faithful to God in order that they may be spent for his worship; but they are accepted by the Church in the name of God and must be administered as goods of God; therefore the Church accepts those goods with the obligation of administering them as goods of God for the end on account of which they have been given by the faithful.

2. That smallness of matter is given in this precept is manifest; but what matter expended for profane uses is grave must be determined by the judgment of prudent persons, with account taken of the revenues of the benefice and of the person of the beneficed cleric. Yet that is certain, that a much greater quantity is required here for grave sin than in theft, since clerics do not take what belongs to another, but badly spend what is their own.

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**Notes**

1193. Cf. Benedict XIV, *De synodo*, l. 7, c. 2; Hollweck, *Das Testament des Geistlichen* (Mainz: Kirchheim, 1901), p. 27 ff.

1194. Council of Trent, sess. 25, c. 1, *De reform.*

**780. On honorable support.** 1. To determine honorable support, attention must be paid to the quality of the person; wherefore honorable support is not equal in all: for a bishop requires more than a canon, a canon more than a pastor, a weak and unhealthy man more than a robust and healthy man, a noble cleric more than a cleric of lower condition.

In order that a cleric proceed with a safe conscience in this matter, let him attend to the practice of others who stand in the same grade and are of timorous conscience.

2. To suitable support belong not only food, clothing, and habitation, but all those things which are customarily expended under the title of moderate support. Therefore from benefice goods a cleric can:

a. Exercise fitting hospitality, not only toward poor travelers, but also toward friends and visitors.

b. Pay both his own debts and the debts of his relatives, even though contracted for a profane end, if neither he himself nor his relatives can pay them from elsewhere.

c. Aid his relatives and household members who are poor, so that they can live decently according to their state.

d. Supply to a relative the means for learning letters or other arts.

e. Endow poor sisters, so that they can honorably marry according to their state.

f. Support his offspring, both legitimate offspring whom perhaps he had begotten before entrance into the clerical state, and spurious offspring whom he begot afterward.[1195]

**781. From the virtue of religion.** 1. This obligation arises from the precept of the Church; and since this precept is imposed on clerics from the motive of religion, they commit the sin of sacrilege against religion if they spend superfluous goods for profane uses.

a. The benefice goods themselves indeed lose their proper holiness when they pass from the ownership of the Church into the ownership of clerics, and they become profane goods; but the Church transfers the action which it commands to that virtue from whose motive it commands it. But, account being taken of the origin of these goods and of the intention of pious faithful persons desiring that their donations be spent for the worship of God and for pious causes, the Church from the motive of religion enjoins on clerics the precept that they not spend them except for pious uses.

b. There are those who say that clerics are held to expend superfluous goods from justice.[1196] But this obligation would arise either from this, that clerics do not acquire ownership in benefice goods, or from this, that the Church obliges clerics from justice to expend them; but from neither source does an obligation of justice arise: for clerics acquire true ownership in superfluous goods; and that the Church has added an obligation of justice cannot be demonstrated by a sufficient argument.[1197]

2. If it is established that a cleric has badly spent superfluous goods, these things must be noted concerning the obligation of the cleric and of those who illicitly accepted the goods:

a. The cleric is not held to restitution of those things which he badly spent, because in spending he did not injure justice.

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**Notes**

1195. Laymann, l. 4, tr. 2, c. 3, n. 3 ss.; Ballerini-Palmieri IV, n. 432 ss.

1196. Navarrus, Roncaglia, Laymann, etc.

1197. Cf. Lehmkuhl I, n. 900.

b. The donee is not held to expend on the poor those things which he illicitly received from the cleric, even if he himself (although in bad faith) induced the cleric to make the donation, because neither he nor the cleric violated justice, unless by unjust means he induced the cleric to make the donation.

c. The heir or legatee who received ecclesiastical goods from a cleric is likewise not held to expend them on pious causes, unless he prevented the cleric from making a will or by unjust means induced him to make a will in his favor, because the obligation of expending superfluous goods is not real but personal, which does not pass to heirs.[1198]

Note. The things just noted hold concerning goods which are certainly ecclesiastical. But for the most part it will be difficult to demonstrate whether the goods of clerics, especially those left by inheritance, are truly ecclesiastical. What must be presumed in doubt was said above (n. 381 c).

**782. As to the mode of expending,** a. it is not required that a cleric immediately spend those goods on pious uses, because this is prescribed by no law; but he can spend them in that way which he judges more apt and more useful for the end. For sometimes it will be more useful to preserve the goods for accomplishing some notable work which redounds to the glory of God and the salvation of souls.

Nevertheless when necessity urges, namely if the poor are present who are placed in extreme or grave necessity, it is not lawful to preserve the goods, but aid must be brought to those in need. In like manner they must be spent during life when there is danger lest after death they be carried off by the fisc or by friends and relatives.

b. Nor is a cleric held to spend them on the poor or for the utility of that place where the benefice is situated, unless poor persons are there placed in extreme or grave necessity, because no reason appears why, outside the case of necessity, they must be distributed to the poor of that place.

**783. On pious causes.**[1199] 1. Pious causes are called all those works which either by their nature or by the disposition of the faithful serve a supernatural end.

Any end is called supernatural which intends religion or the worship of God and of the saints, or Christian charity or the spiritual or temporal utility of the neighbor, according as suits the character of the Christian religion.

2. Works of three kinds can be distinguished with the end (of the work) considered:

a. Some which by their nature have a supernatural end, such as the sacrifice of the Mass, prayers, churches, religious houses, confraternities, etc.

b. Others which by their nature have a merely natural and profane end, such as a theater, a society instituted for performing gymnastic exercises, etc.

c. Others which by their nature are indifferent to a supernatural and temporal end, such as the support of the poor, both of those who lack the necessities of life and of those who lack the necessities of their state, schools, hospitals, orphanages, etc.

Works which by their nature are indifferent are converted into pious causes by the pious intention of donors or founders; but works which by their nature are profane cannot be converted into pious causes by the intention of donors or founders.

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**Notes**

1198. In Austria the civil code, sec. 761, establishes that the goods of a cleric dying without a will are divided into three equal parts, of which one yields to the Church, another to the poor, and the third to relatives.

1199. Since mention of pious causes occurs rather often, as when restitution is said to be made to pious causes, or when there is discussion of the value of a testament and legacy to pious causes or of expending superfluous goods on pious causes, it is helpful to define the notion of a pious cause.

3. In order that some disposition (donation, legacy, testament) be judged to have been made for pious causes, both things are required: that the end of the one operating (donating, etc.) be supernatural, and that the work at least from the end of the one operating become supernatural.

a. If the work in whose favor the disposition is made is pious by its nature, the disposition is judged to have been made from a supernatural motive.

b. If the work by its nature is ambiguous and the intention of the one operating is not established from elsewhere, attention must be paid to these things:

c. If the whole work has been committed to the administration of the Church or at least subjected to her governance, it must certainly be reckoned among pious causes.

d. From the fact that some work, for example a hospital, is administered by laypersons alone with every intervention of the Church excluded, it does not yet follow that there is question of a profane cause, unless it is established that it was erected from a merely philanthropic motive.

e. In doubt whether there is question of a pious or profane cause, favor must be given to the pious cause.

Note. Ecclesiastical penalties are treated in the separately issued fascicle.

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