St. John of Capistrano, O.F.M.

ON COVETOUSNESS

De cupiditate

From the Latin of Eugen Jacob's Johannes von Capistrano (Breslau)

English translation

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About this translation

Translated from Eugen Jacob, *Johannes von Capistrano*, vol. II, part 2, pp. 42–340. The translation covers the whole text, including the long section on usury (*De usura*), and ends at the explicit on p. 340. Uncertain readings are marked [uncertain] or [text unclear]. Legal references marked [?] in the translation were afterwards checked against the *Decretum*, the *Decretals*, the *Digest* and the *Code*, and all the marked places against Jacob's Latin text: those found correct were cleared, and those found wrong were corrected; the marks that remain are places the Latin does not settle.

Not translated: the title page (p. 27); the editor's textual notes and list of chapters (pp. 28–41); the editor's notes from p. 341. Manuscript variants in the footnotes are not translated, except where they affect a reading; those places are marked in the text.

Treatise on Covetousness

Treatise on Covetousness

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The Treatise on Covetousness of the venerable father Brother John of Capistrano, of the Order of Minors and doctor of both laws, happily begins. In it are treated the various crimes by which other people's goods are usurped; also usury, most fully; the partnership of merchants, lawful and unlawful; the comparison of perpetual and life rents bought with money or other things, with or without an agreement of repurchase; the matter of coinage; and very many useful matters that occur daily. [A gloss in one manuscript adds: "under Frederick III, Emperor, 1450".]

Lay not up for yourselves treasures on earth (Matthew 6).

Let us discuss the matter of treasuring up in as few words as we can, pursuing the matter from day to day in what is to be said hereafter, since the Lord and Saviour has admonished us in the words of the present gospel about the observance of the fast, where it says, *When you fast*, etc. So that the fast salutarily instituted may effectively profit us to salvation, and the fruit of the good works to be done during the whole coming Lent may not vanish, the Saviour admonishes us to place a treasure, to be kept without failing, in the heavenly palace and to preserve it eternally, when he says, *Lay not up treasures.* In these most sacred words three things are briefly indicated to us. The first is a certain general prohibition: there,

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Lay not … on earth. The second is a certain spiritual kindling: there, *treasures* [rather "lay up"]. The third is a certain eternal drawing: there, *your treasures.*

As to the first, know that this prohibition is to be understood according to a threefold difference: first in respect of necessity, second in respect of usefulness, third in respect of covetousness.

Whether it is lawful to lay up treasure. The answer is that treasuring up can happen in the three said ways: first, out of providence, in respect of necessity, for the care of a household; second, out of diligence, in respect of usefulness, for the care of a realm; third, out of avarice, in respect of covetousness, for worldly care.

Of the first way in which it is lawful to lay up treasure, namely out of providence in respect of necessity for the care of a household. It is granted to secular parents to gather money because of the need to bring up their sons or to give their daughters in marriage, since treasuring in this way is permitted in consideration of their states, according to the Apostle's saying (1 Timothy 5): *But if any man have not care of his own, and especially of those of his house, he has denied the faith and is worse than an infidel.* Nor let Christ's word move or frighten you when he says (Matthew 6): *Be not solicitous for tomorrow*, etc. For from Augustine's exposition on John 12 and 13, where he speaks of the Saviour's purse, it is plain that it was not Christ's mind or intention to forbid every kind of treasuring, but only the covetous and avaricious kind. He declares this when he says in his gloss: "The Lord had a purse, and keeping what the faithful offered, he gave both to the needs of his own and to other needy people. Then first the form of church money was instituted, so that you might understand that his command not to think of tomorrow

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was not a precept that no money should be kept by the saints, but that God should not be served for the sake of these things, and that justice should not be abandoned out of fear of want." These words are found in the sacred canons, C. 12 q. 1 c. *Habebat*. And the same says in the same place: "Take the example of the Lord while you live on earth: why did he to whom angels ministered have a purse, unless because his Church was

to have purses? Why did he admit a thief, unless so that his Church might patiently tolerate thieves?" That is to say: that we should draw away all disordered and unjust love from all temporal things and the vanities of this world, and if adversity and the loss of temporal things come upon us, we should keep the salvation of the soul in our patience, as Job preached in his tribulations, saying: *The Lord gave, the Lord has taken away; as it pleased the Lord, so it is done; blessed be the name of the Lord.*

Of the second way in which it is lawful to lay up treasure, namely for the support of the poor, out of diligence in respect of usefulness, or for the care of a realm, for instance to defend a kingdom or to enlarge divine worship. In this way it is fitting and lawful to lay up treasure for the benefit of the spiritual and temporal commonwealth in Christ's Church, both for the pope and other prelates of the Church and for the emperor, kings, princes and any governors or rulers of the commonwealth. On this Ambrose says in his book *On Duties*: "The Church has gold not to keep it but to pay it out and give help in necessities. What need is there to guard what helps nothing? Or do we not know how much gold and silver the Assyrians carried off from the temple of the Lord?" And further on: "Will not the Lord say:

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Why did you allow so many poor to die of hunger? And certainly you had gold. You should have ministered", that is, you ought to have ministered, "food. Why were so many captives led into captivity and, not ransomed, killed by the enemy? It would have been better to preserve the vessels of the living than those of metal. And that is truly the treasure of the Lord which works what his blood worked", namely the salvation of souls. And further on: "Many build walls and take away the columns of the Church: marbles shine, ceilings gleam with gold, altars are adorned with gems, and there is no choosing of Christ's ministers." Of the foregoing it is also found in C. 12 q. 2 c. *Aurum* and the following chapter. He means that many devote themselves to vain and superfluous treasuring but care nothing for the needs of Christ's poor, although Christ himself declares that whatever has been given to his brethren, namely the poor living in the faith of Christ, has been spent on him, when he says (Matthew 25): *Amen I say to you, as long as you did it to one of these my least brethren, you did it to me*; and further on: *As long as you did it not to one of these least, you did it not to me.* And he means especially the works of bodily mercy when he promises: *For I was hungry and you gave me to eat; I was thirsty*, etc.

It belongs to the aforesaid, both clerics and civil rulers, to defend Christ's Church. Of clerics the Lord says (John 10): *The good shepherd gives his life for his sheep*, which is to say: to labour for the salvation of the souls committed to him even unto death, that is, the final penalty. Of temporal rulers he meant to instruct when he said (Matthew 22): *Render therefore to Caesar the things that are Caesar's, and to God the things that are God's.* From which the Apostle says (Romans 13): *Let every soul be subject to higher powers;

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for there is no power but from God, and those that are, are ordained of God. Therefore he who resists the power resists the ordinance of God, and those who resist purchase damnation for themselves. For princes are not a terror to the good work but to the evil. Will you then not be afraid of the power? Do what is good, and you shall have praise from it. For he is God's minister to you for good. But if you do what is evil, fear; for he bears not the sword in vain. For he is God's minister, an avenger to execute wrath upon him who does evil. Therefore be subject of necessity, not only for wrath but also for conscience' sake. For therefore also you pay tribute; for they are the ministers of God, serving unto this purpose. Render therefore to all their dues: tribute to whom tribute is due, custom to whom custom, fear to whom fear, honour to whom honour*, etc. Hence the Lord also told his disciples on the night of the Supper to buy swords. *But they said: Lord, behold, here are two swords* (Luke 22). *And he said: It is enough* — to indicate to us that there must be two principal lights of the world, just as at the beginning of the world he made two great lights, namely the sun and the moon.

Of the sun and the moon, that is, of the pontifical and royal pre-eminence and dignity: so that by the sun he might figuratively indicate to us the pontifical, and by the moon the royal, sublimity, of which see Genesis 1 and the chapter *Solitae*, *Extra*, *De maioritate et obedientia*: so that as great a difference as appears between sun and moon, so great is denoted between the government of spiritual and of temporal things. And as the moon receives its brightness from the sun's illumination, so royal authority depends on papal. For

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the pope holds the rights of both empires, namely the earthly and the heavenly (Dist. 22 c. *Omnes*), as is also plain from experience, since the emperor receives approval and confirmation [one manuscript: "the crown"] from the pope in order to rule (as in the first chapter *De iureiurando* in the Clementines). The emperor also swears the oath of fidelity and promises the protection of the Church (Dist. 63 c. *Tibi domino* and c. *Ego Ludovicus*).

Of the third way, know that it happens to lay up treasure in respect of covetousness for worldly care, to heap up riches with disordered affection, without any regard to the necessity or usefulness of the household or of the commonwealth. No one doubts that this is altogether forbidden. For covetousness and avarice of their own nature are mortal sin and the root of all evils, as the Apostle says (1 Timothy 6), where he says: *For we brought nothing into this world, and certainly we can carry nothing out. But having food and wherewith to be covered, with these we are content. For they who will become rich fall into temptation and into the snare of the devil, and into many unprofitable and hurtful desires, which drown men into destruction and perdition. For the root of all evils is covetousness, which some coveting have erred from the faith and have entangled themselves in many sorrows. But you, O man of God, fly these things.* On these words Peter of Tarentaise, of the Order of Preachers, who became Innocent V and most singularly glossed the epistles of Paul, says on the word *The root*, etc.: "This it is that commits sacrileges, practises thefts and robberies, wages plunder and wars, commits homicides, buys and sells simoniacally, unjustly

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asks and receives, trades wickedly and lends at usury, presses on with tricks, threatens with frauds, breaks agreements, violates oaths, corrupts testimony and perverts judgement." Here note, in each word, three things: definition, distinction and punishment.

Sacrilege. First, of sacrilege it is asked what it is. The answer, according to Papias, is that sacrilege is the injury, violation or usurpation of a sacred thing; and so *sacrilegium* is said as it were *sacri-laedium*, or "injuring the sacred", or "taking (*legens*) the sacred", that is, carrying it off or plundering it. Raymond also says this.

Of the distinction of sacrilege it is asked in how many ways it is committed. Briefly, the answer is that it is committed principally in three ways. First, by reason of the person, as when someone strikes a cleric or carries off a nun. Second, by reason of the place, as when someone violates the immunity of a church or cemetery. Third, by reason of a sacred thing, as when a sacred thing, or a thing assigned to sacred use, or placed in a sacred place, or held as sacred, is usurped. This last kind is again subdivided in three: for one carries off a sacred thing from a sacred place, or a sacred thing from a non-sacred place, or a non-sacred thing from a sacred place. Of these see C. 17 q. 4 c. *Quisquis* and c. *Sacrilegium*, where it follows: "It is sacrilege, therefore, whenever someone violates the sacred, either by taking a sacred thing from a sacred place, or a sacred thing from a non-sacred place, or a non-sacred thing from a sacred place." And there it follows, besides the other aforesaid kinds, that he also is said to commit sacrilege who lays violent and impious hands on a cleric, etc. Of local sacrilege there is the text in the same cause and question, c.

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Sicut, where Pope Pius says: "As one who lays waste the church of God and despoils and invades its estates and gifts becomes sacrilegious, so he who persecutes its priests is judged sacrilegious." And so the aforesaid kinds are plain. Broadly, however, someone is said to commit sacrilege in many other and diverse ways; but for the present it suffices to disclose five other kinds.

First, beyond the foregoing, a transgressor of public law, which consists in sacred rites, priests and magistrates, is called sacrilegious (Dist. 1 c. *Ius publicum*). Second, he is called sacrilegious who violates and offends the articles of faith and the precepts or prohibitions of God by neglecting them or by not knowing them. This is to be understood, according to Thomas (II-II q. 99), when he attacks the law of God, like the heretic and the blasphemer: from the fact that he does not believe God he incurs the sin of unbelief; but from the fact that he perverts the divine words of God's law he commits and incurs sacrilege. Third, one who disputes about the judgement of the prince, or judges it — unless it were evidently established that it was against God. And understand "disputes" as calling it into doubt; it would be otherwise if it were done for the sake of fuller discussion. Fourth, one who entrusts public offices to Jews. On the foregoing see C. 17 q. 4 c. *Qui autem*, c. *Nemini* and c. *Constituit*. Fifth, one who retains or receives any property of the Church against the Church's will (C. 12 q. 2 c. *Nulli liceat ignorare*).

And note that sacrilege against a person is graver than against a place, and against a place graver than against a thing,

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other things being equal. But things must be distinguished. The first place is held by the sacraments, among which is the highest sacrament, the Eucharist, which contains Christ himself; sacrilege against it would be the greatest among all kinds of sacrilege. Next to it is [sacrilege] against the person of the pope, and then successively according to the greatness of ranks and persons and the holiness of person or place. After the sacraments, in the distinction of things, the second place is held by the sacred vessels fit for receiving the sacraments, and the images of the saints and relics, in which in a certain way the persons of the saints themselves are venerated or dishonoured. The third place is held by those things which pertain to the ornaments of the church or of the ministers. The fourth place is held by those things which are assigned to the support of the ministers, whether movable or immovable, etc.

Of the punishment of sacrilegious persons, note what we shall add below. These things are useful for discerning the penalties of the sacrilegious. According to the civil laws, for an atrocious injury done to a person of the Church, the penalty of beheading is imposed (C. *De episcopis et clericis*, l. *Si quis in hoc genus*). Otherwise it is reserved to the judge's discretion according to the quality of the person, the thing, the time and the place (Dig. *Ad legem Iuliam peculatus*, l. *Lege Iulia* § 1, and l. *Sacrilegii*). According to the canons there is a twofold penalty. One is spiritual, namely excommunication: for sacrilege against an ecclesiastical person there is major excommunication by the law itself (C. 17 q. 4 c. *Si quis suadente*); for sacrilege against things there is in some cases minor excommunication, of which we shall speak below when we treat of excommunication. In some cases a lesser penalty is to be imposed, namely

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a money penalty, which is to be imposed in various ways according to the quality of the crime, the persons, places and times, and the customs of the regions (C. 17 q. 4 c. *Si quis in atrio* and c. *Si quis contumax*). And let these things said of sacrilege suffice for the present.

Theft. There follows theft. For its definition, know that theft is the fraudulent handling of another's movable and corporeal thing, against the owner's will, with the intention of gain, whether of the thing itself or of the use of the thing or of its possession, as is gathered from Dig. *De furtis*, l. 1. On this definition note that it says "another's thing". Note there that theft can be committed even of one's own thing that is bound to another, for

instance because it has been pledged or lent (Dig. *De furtis*, l. *Si res* § 1, and l. *Si is qui rem*, at the beginning). Know also that a thing is said to be handled "against the owner's will" even when the owner sees and does not object (Dig. *De furtis*, the penultimate law). It would be otherwise if the owner's will were present and the thief believed he was stealing against the owner's will: for although he would sin mortally, he is not liable to the penalty of theft or to restitution (Dig. *De furtis*, l. *Inter omnes*, penultimate §). Know also that if someone burned the stolen thing or threw it into the sea, he would be no less liable for theft, because he gains enough who fulfils his will and extorts the use and power [of the thing] (Dig. *De furtis*, l. *Qui iumenta*; and Dist. 50 c. *Qui furtum*).

Know that under the name of theft several kinds are contained. For one theft is manifest, when the thief is caught before he comes to the place to which

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it was destined. Another is not manifest, because he has not been caught (Dig. *De furtis*, l. 1 and 2). Another is called sacrilege, of which we have already spoken above. Another is called *peculatus*, which is theft from the commonwealth (Dig. *Ad legem Iuliam peculatus*, l. 1 and throughout; C. 23 q. 4 c. *Quid ergo*). Another is called *abigeatus*, which is the theft of a flock scattered by the thief, as when he disperses a flock of beasts of burden and a herd of oxen and other cattle or sheep and steals from it (Dig. *De abigeis*, l. 1 and throughout; C. 4 q. 4 § *Item abigeati*). Another is *plagium*, which is the theft of a free man knowingly sold or bought (Dig. *Ad legem Corneliam* [rather *Fabiam*] *de plagiariis*, l. 1 and l. 4). In this offence he walks at an equal pace who entices or carries off another's slave, and so also of another's maidservant. To this point is C. 1 q. 1 c. *Qui studet*, at the end, and Isidore, *Etymologies*, book 10. Among all these, sacrilege holds the first place, *plagium* the second, *peculatus* the third, *abigeatus* the fourth, and so on; and in all, manifest theft is graver than hidden theft.

Of the penalty of theft, know that the penalty of manifest theft, if the action is civil, is fourfold restitution; of non-manifest theft, double, even after a year (*Institutes*, *De perpetuis et temporalibus actionibus*, § *Furti*; C. *Quando civilis actio praescribitur*, l. 1; Dig. *De furtis*, the last law). But in the court of conscience it suffices to restore the simple value with all damages, according to the theologians on the fourth book of the *Sentences*, dist. 15. When, however, there is more than a thief — for instance, because he comes armed [one manuscript: "and kills"], or is

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a nocturnal ravager of fields or vineyards — then the penalty is death by civil law, as we shall say below of robbers. The penalty of *plagium* is the final penalty even by divine law (Exodus 21 [the text reads "XXVII"]): *He who shall steal a man and sell him, being convicted of the guilt, let him be put to death*; this is taken over in *Extra*, *De furtis*, c. 1.

Robbery. There follows robbery (*rapina*). For its definition know briefly that robbery is the violent seizure of a thing or a person with the intention of keeping it permanently, or of disposing at pleasure of the thing seized or of its use; this is proved by C. 36 q. 1 c. *Raptores*.

From this know that rape (*raptus*) is committed against a person — not only a virgin but a widow and a nun (C. 36 q. 2 c. *Raptores* and c. *Si quis non dicam rapere*; C. *De episcopis et clericis*, l. *Si quis*). And according to the civil laws no distinction is made whether one carries off a woman willing or unwilling, one's own betrothed or another's, married or unmarried (C. *De raptu virginum*, l. *Raptores*). But according to the canons there is no rape in the case of one's own betrothed (C. 36 q. 1 c. *Lex illa*; *Extra*, *De raptoribus*, c. *Cum causam*). The robbery of things is when someone by violence seizes another's goods. Know that the sin of robbery is graver than that of theft, because of the violence that goes with robbery and because of the injury done to the person robbed, which do not go with theft, although sensual men are more ashamed of the crime

of theft than of robbery, as blessed Thomas says (II-II q. 66).

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Of the penalty of those who carry off persons, together with their abettors, know that according to the civil laws it is death, as in the said law *Raptores*, C. *De raptu virginum*, and the said law *Si quis*, C. *De episcopis et clericis*. According to the canons they must be excommunicated (C. 36 q. 2 c. 1 and 4). The penalty of those who rob things is likewise, according to the laws, loss of life if he is a notorious brigand, as above (Dig. *De poenis*, l. *Capitalium*, § *Grassatores* and § *Famosos*; C. *De furtis*, *Authentica Novo iure*); and this if the action is criminal. If the action is civil, within a year he is punished fourfold, after a year in the simple amount (Dig. *Vi bonorum raptorum*, l. 1 and 2). According to the canons, robbers of things are punished in many ways. First, the robber is excommunicated by the bishop where he offended (*Extra*, *De raptoribus*, c. 1; C. 6 q. 3 c. *Placuit*). Second, penance is refused him unless he returns what he took, or gives full security of returning it if he can. If he cannot, penance and the viaticum will not be refused at death, if as a true penitent he asks devoutly and humbly and grieves that he cannot make satisfaction; yet church burial must be refused him, for the terror of others, as in c. *Super eo*, *Extra*, *De raptoribus*. With secret robbers, however, such rigour should not be observed, according to Innocent on c. *In literis*, *Extra*, *De raptoribus*. And note that priests who behave otherwise with the said robbers, or receive alms from them, are to be deposed from office and benefice as sharers in the robbery, as in the said c. *Super eo*.

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Plunder. There follows, according to the aforesaid authority of Innocent, plunder (*praeda*). For its definition know that plunder properly is to take others' goods by violence, being named as it were from *praedium* [estate]. For plunder is gain from an enemy, *lucrum* from business, *compendium* properly from weight; hence *praedari* is the same as to pillage. And a *praedo* properly is one who invades another's province; hence *praedo* means as it were a despoiler and robber of others, according to Papias.

Of the distinction of plunder note that it can be distinguished in four ways. First, what is seized by force by robbers can be called plunder. Those are called *praedones* who are public brigands attacking travellers on the public roads; according to the laws it is lawful to kill such brigands (C. *Quando liceat unicuique sine iudice se vindicare*, l. 1 and 2). Second, a soldier who takes beyond the pay appointed him is called a *praedo* (C. 23 q. 1 c. *Militare*). From this John the Baptist said to the soldiers who asked him what they should do to be saved: *Do violence to no man, neither calumniate any man, and be content with your pay* (Luke 3). Third, a prelate is called a *praedo* who, in order to pay procuration to a legate or meet similar expenses, extorts more from his subjects than he pays (*Extra*, *De immunitate ecclesiarum*, c. *Quia plerique*). For such as seek only their wage and do not care for the sheep are named by the Lord hirelings and not shepherds (John 10): *But the hireling, and he who is not the shepherd*, etc. Fourth, a judge or official who unduly takes money is called a *praedo*

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(C. *Ad legem Iuliam repetundarum*, l. *Omnes*). Know that the penalty of the plunderer and of the robber is equal; for "those whom an equal crime defiles a like penalty must accompany" (C. 15 q. 3 c. *Sane*).

War. There follows war. For its definition note that *bellum* was formerly called *duellum*, because there are two (*duae*) parties, one winning and the other losing; afterwards, a letter being changed and removed, it is called *bellum*. Others say that *bellum* is named by antiphrasis from *bonum*, as a diminutive, because it is least good, as Papias says, and the Archdeacon reports [on C. 23], at the beginning, etc.

Of the distinction, know that war can be distinguished principally in two ways: it is either lawful or unlawful war. To know that a war is lawful three things are principally required: first, a preceding cause; second, an authority added; third, an accompanying intention. First, then, for a just war a just cause is required, as when

the one who starts the war was first offended and, seeking justice, did not find it. Hence Augustine says in the book of *Eighty-three Questions*: "Those wars are to be defined as just which avenge injuries, if a nation or city is to be punished which has either neglected to punish what was wickedly done by its own, or to return what was taken by injury" (C. 23 q. 2 [the text reads "3"] c. *Dominus noster*). Hence it is also plain that reprisals are granted, as the lord Bartolus treats in his treatise *On Reprisals*. Second, the authority of a superior is required, when someone cannot be helped by a judge in pursuing his right (C. 23 q. 1 c. *Quid culpatur*; C. 23 q. 2 c. 1 and c. *Iustum*),

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where it is said that a just war is one waged by edict, for recovering things or for repelling men. Third, a right intention is required, namely that it is intended either that good be promoted or evil avoided; hence it is not lawful to do it out of hatred and the like, but for justice and charity, as in the aforesaid c. *Quid culpatur* and c. *Militare*, and this is also Thomas (II-II q. 40 [the text reads "IV"]).

On this know that whoever has a just war makes his own whatever he seizes from the enemy or his helpers, whether subjects or others, until satisfaction is made to him for all damage, labour and effort, both his own and his men's, or until the enemy offers himself to justice and is willing to make satisfaction (Dist. 1 c. *Ius gentium*; C. 23 q. 7 c. *Si de rebus*). Beyond this, however, they must not take, unless perhaps the enemy were such that because of heresy or something of the kind his goods had been confiscated by public edict.

But the subjects of those who wage war unjustly, if in such a war they do not give their lords counsel, aid or favour, are not to be despoiled or punished in anything; for the penalty must have only its own authors (*Extra, De his quae fiunt a maiori parte capituli,* c. *Quaesivit*; C. 1 q. 4 c. 1). This is true even if the lord of the aforesaid uses their goods, taken from them, in that unjust war. Likewise, clerics, religious, lay brothers, pilgrims, merchants, peasants going and returning and engaged in farming, and the animals with which they plough and carry seed, are not to be despoiled (*Extra*, *De treuga et pace*, c. *Innovamus*; C. 24 q. 3 c. *Si quis romipetas*).

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Further, all the plunder that comes from a just war belongs to the lord, and he is bound to divide it according to the proportion and quality of the persons (Dist. 1 c. *Ius militare*; and it is noted in C. 23 q. 5 c. *Dicat aliquis*).

The penalty of those who wage war unjustly is like the penalty of the plunderer. Hence tournaments are also forbidden by canon law (*Extra, De torneamentis*, c. 1). For "bloody spectacles do not please" (C. *De gladiatoribus*, the single law, book 11), and this is cited in the gloss on *Extra, De purgatione vulgari*, c. 1. For a harmful game too is culpable (Dig. *Ad legem Aquiliam*, l. *Nam ludus*); and in the preface to the Digest, near the end, it is said: "And who would call those things games from which crimes arise?" For savage contests are forbidden to Christians, according to Isidore, *Etymologies* book 18, where he treats it fully through eight chapters. Hence also the spectacles of such things are forbidden, because of the proneness to lewdness and cruelty which they tend to (Dist. 23 c. *His ergo*; *De consecratione* dist. 1 c. *Qui in die*; *De consecratione* dist. 5 c. *Non oportet*; of which [see] dist. 16, and the theologians treat it on the fourth book of the *Sentences*, dist. 16). And blessed Thomas treats of lawful and unlawful play (II-II q. 168).

Know also that it is not lawful for clerics to make war (C. 23 q. 8 throughout; blessed Thomas II-II q. 40). Yet it is lawful for them to carry arms for terror, not to strike but to defend (C. 23 q. 3 c. *Maximianus*; and it is noted on *De vita et honestate clericorum,* c. *Clerici*). For the arms of clerics are prayers and tears (C. 11 q. 3 c. *Salvator*; C. 23 q. 8 c. *Salvator*; and

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C. 23 q. 8 c. *Convenior*; and of the foregoing enough is found in C. 23 q. 8 throughout). Monks who hold arms within the enclosure of the monastery, without leave of the abbot or superior granted for a just and reasonable cause, are excommunicated by the law itself, as in c. *Ne in agro*, § *Quia vero*, *De statu religiosorum*, in the Clementines.

Know concerning the matter of war that by natural law anyone may repel force by force, provided only that it is done immediately and with the moderation of blameless defence, that is, that the defence is moderate and without fault, as the text says in c. *Significasti*, towards the end, *Extra*, *De homicidio*: "Although all laws and all rights permit force to be repelled by force immediately, yet this must be done with the moderation of blameless defence, not to take vengeance but to repel injury." There the gloss says, near the end: "For moderation is kept if only that is done without which the violence could not be repelled. If, then, where you so kill the violent man you could not avoid the danger of death from him, you kill him without penalty (Dig. *Ad legem Aquiliam*, l. 4; C. *Ad legem Corneliam de sicariis*, l. 2 and 3). But if force is used against things, it is lawful to repel force inflicted immediately, or about to be inflicted, or as soon as one can or knows how, having gathered friends (Dig. *De acquirenda possessione*, l. *Quod in eo*, last §, and l. *Clam possidere*, § *Qui ad nundinas*; *Extra*, *De restitutione spoliatorum*, c. *Olim*). But it is not lawful to repel an injury already inflicted after an interval, because that would be vengeance. And so the contrary passages noted in the said gloss are understood; and in

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what is said, that it is lawful to repel an injury about to be inflicted, it is understood whether against oneself or against a companion (C. 23 q. 3 c. *Non inferenda* and the last chapter)." And if force without right is used against persons, then force can be repelled before it is inflicted. For it is lawful to kill an assailant and one who wishes to kill, if one cannot otherwise escape his hands (Dig. *Ad legem Aquiliam*, l. 4 and 5).

And know that although such defence is granted, it is not commanded, so that one is bound to it; rather it would be more perfect to let it go and make no defence, according to the Saviour's saying (Matthew 5): *But I say to you, not to resist evil; but if one strike you on your right cheek, turn to him also the other. And if a man will contend with you in judgement and take away your coat, let go your cloak also to him. And whoever will force you one mile, go with him other two.* And Matthew 10 says: *Behold I send you as sheep in the midst of wolves*; and further on: *The brother also shall deliver up the brother to death, and the father the son, and the children shall rise up against their parents and shall put them to death*; and further on: *And fear not those who kill the body and are not able to kill the soul; but rather fear him who can destroy both soul and body in hell.* And the Apostle says (Romans 12): *Bless those who persecute you; bless, and curse not*; and further on: *If it be possible, as much as is in you, having peace with all men; not revenging yourselves, my dearly beloved, but give place unto wrath*, etc.

For this patience, to be borne for the love of Christ, there are many reasons. The first is that from your vengeance or

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defence after the injury has been inflicted no fruit follows. For if you put out the eye of him who put out yours, yours is not restored to you on that account. Genesis 37: *What will it profit us if we kill our brother?* The second reason is that by this you make your cause unjust. Psalm 7: *If I have rendered to those who repaid me evils, let me deservedly fall empty before my enemies*; as if to say, let me fall from my justice. The third reason is that anger is stirred up more by vengeance, as fire by oil mixed with water. Hence blessed Severinus [rather Boethius] says: "Nature refuses that contraries be joined together"; and the Apostle (Romans 12): *Be not overcome by evil, but overcome evil by good.* The fourth reason is that you lose the fruit of patience. For if you had borne the injury patiently, you would have received a great reward; but because you took vengeance, you suffer the loss both of the body and of salvation. Hence the Lord says (Luke 21):

And you shall be betrayed by your parents and brethren and kinsmen and friends, and some of you they will put to death. And you shall be hated by all men for my name's sake. But a hair of your head shall not perish. In your patience you shall possess your souls. And James 1: *And patience has a perfect work, that you may be perfect and entire, failing in nothing.* The fifth reason is that it gives joy to the devil, because then with one blow you condemn both yourself and him; and he loses when you have glutted yourself on him and him on you. Hence it is said (Ecclesiasticus 21): *All iniquity is like a two-edged sword; there is no remedy for the wound thereof.* For the devil's sword is two-edged, because with one blow it kills two spiritually, as Phinehas

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pierced two with one thrust of his dagger, caught in adultery (Numbers 25). The sixth: because God will avenge better if you reserve the vengeance to him; for as he is eternal, so he will inflict an eternal wound. Matthew 25: *And these shall go into everlasting punishment.* And Daniel 12: *Those who sleep in the dust of the earth shall awake, some unto life everlasting, and others unto reproach, to see it always.* And Matthew 25: *Depart from me, you cursed, into everlasting fire.* The seventh: because you must not take away from God his office. For he says: *Revenge is mine, and I will repay* (Deuteronomy 32). The eighth: because patience grows through tribulations. Romans 5: *We glory also in tribulations, knowing that tribulation works patience, and patience trial, and trial hope; and hope confounds not, because the charity of God is poured forth in our hearts by the Holy Spirit who is given to us.* The ninth reason: because our Lord will more readily have mercy. Hence when David was cursed by Shimei, and Shimei was rebuked for cursing by his servants, David answered: *Let him alone that he may curse; perhaps the Lord will render me good for the cursing of this day* (2 Kings 16).

Homicide. After war, in the aforesaid authority, follows homicide. For its definition know that *homicidium* is the same as the slaying (*caesio*) of a man; it is compounded of the verb *caedere* and the noun "human". Hence a homicide is one who kills a man, as Isidore and Papias say.

Homicide can be threefold: first spiritual, second vocal, and third real. The first homicide, namely the spiritual, is every mortal sin,

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according to the Apostle's saying (Romans 6), where he says: *The wages of sin is death.* Yet understanding homicide spiritually, we might speak of homicide of the heart, of the mouth and of the deed. Homicide of the heart, properly speaking, can be committed in three ways. First, by hating to the death, according to 1 John 3: *Whoever hates his brother is a murderer.* Such could be called the homicide of Joseph's brothers, of whom it is written (Genesis 37): *His brothers hated him and could not speak peaceably to him.* And when they had resolved to kill him, Judah said to his brothers: *What will it profit us to kill our brother and conceal his blood? It is better that he be sold.* Second, by resolving to kill, as Esau resolved to kill his brother Jacob, saying: *The days of mourning for my father will come, and I will kill my brother Jacob* (Genesis 27). Third, by consenting to the death of one's neighbour, as Ahab to the death of Naboth; hence the prophet Elijah said to Ahab on the Lord's behalf: *You have slain, and you have taken possession; in the place where the dogs licked the blood of Naboth* … (3 Kings 21). Of these kinds of homicide it is also found in the Decretum, *De poenitentia* dist. 1 c. *Homicidiorum*, and Dist. 86 c. *Singulis.*

Vocal homicide is that which is committed by the voice in the mouth, in these ways. First, by commanding. Matthew 2: *Herod, sending, killed all the boys who were in Bethlehem and in all its borders* (Dist. 50 c. *Si quis viduam*; *De poenitentia* dist. 1 c. *Periculose*). Second, by judging, namely unjustly and without observing the order of law,

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as Pilate did against Christ, of whom it is written (Luke 23): *And he gave sentence that their petition should be granted.* On this see what is noted on c. *Cum aeterni*, *De sententia et re iudicata*, in the Sext, and C. *De poena iudicis qui male iudicavit*, the last law, where a judge who unjustly judges someone to death must be punished with the penalty of retaliation. On this see also what is found in c. *Pro humani generis redemptione*, *De homicidio*, in the Sext, and in the single chapter *De homicidio* in the Clementines. Third, by counselling, as Caiaphas did in the council against Christ, saying: *You know nothing, neither do you consider that it is expedient for you that one man should die for the people, and that the whole nation perish not.* There Augustine says: "Not only those are murderers who kill a man with their hands, but also those by whose counsel, fraud and exhortation men are destroyed." Hence also the Apostle (Romans 1): *Not understanding that those who do such things are worthy of death, not only those who do them but also those who consent to those who do them.* To this also C. 11 q. 3 c. *Qui consentit*; and Innocent III in c. *Ad audientiam*, *Extra*, *De homicidio*, says that one is understood to have given counsel or command for someone's death who persuaded, asked and commanded, or by exhortation tried to show the advantage that would follow from such a homicide. Fourth, by instigating, as the Lord says of the devil (John 8): *He was a murderer from the beginning*; and Wisdom 2: *By the envy of the devil death came into the world; and those who are of his side follow him.* So all pimps, diabolical procuresses, and all who solicit

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and instigate to evil knowingly and on purpose — for will and purpose distinguish evil deeds, as in c. *Cum voluntate*, *Extra*, *De sententia excommunicationis* — are therefore, like assassins, in a broad sense called murderers, according to what is noted on the said c. *Pro humani*, *De homicidio*, in the Sext. And note that in these more atrocious crimes the intention suffices even if the effect does not follow, provided an act close to the effect is done, as in the law *Si quis non dicam rapere sed attemptare*, C. *De episcopis et clericis*; in the law *Is qui cum telo*, C. *Ad legem Corneliam de sicariis*; in the *Authentica De lenonibus*; and *De poenitentia* dist. 1 c. *Si quis non dicam rapere*. Fifth, by detraction, of which vice Tully Cicero says (*On Duties* 3): "Detraction, if it is done for the detractor's own advantage, is more against nature than death, than pain, than other things of the same kind." For the detractor too is called a murderer, as in the said c. *Homicidiorum*, *De poenitentia* dist. 1, because among good and serious people the infamy that follows from detraction is reckoned as death. Hence the Apostle (1 Corinthians 9): *For it is good for me rather to die than that any man should make my glory void.* Hence the detractor and defamer is punished capitally (C. *De famosis libellis*, l. 1; C. 5 q. 1 c. *Si quis famosum*), and such persons must be excommunicated and flogged by canon law (C. 5 q. 1 c. *Qui in alterius*). For "worse are those who corrupt the life and morals of the learned than those who plunder the substance and estates of others" (C. 6 q. 1 c. *Deteriores* and the following chapter), where it is said: "It is the height of wickedness to detract from and accuse one's brethren. Hence it is written: Everyone who

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detracts from his brother is a murderer, and no murderer has part in the kingdom of Christ and of God" (C. 6 q. 1 c. *Summa iniquitas*). For these the Apostle calls hateful to God (Romans 1): *whisperers, detractors, hateful to God.*

Sixth, by selling, like Judas, of whom it is written (Matthew 26): *What will you give me, and I will deliver him to you?* For one who sells a free man is punished capitally (C. *Ad legem Corneliam* [rather *Fabiam*] *de plagiariis*, l. 1 and throughout; C. *De patribus qui filios distraxerunt*, the last law), unless a father sold his son compelled by the necessity of hunger. Yet the buyer is bound to release him if satisfaction has been made to him, whether by the father or by another, as in the said last law, C. *De patribus*. Seventh, by omitting to correct. Ezekiel 3: *But I will require his blood at your hand*; where Gregory says: "The watchman kills his subject who by keeping silent has betrayed him to death." Hence also the Apostle said (Acts 20): *I am clear from the blood of all of you; for I have not spared to declare to you all the counsel of God.* Hence also the

text of the Decretals says in c. *Irrefragabili, Extra, De officio ordinarii*: "lest their blood", namely of the subjects, "be required at his hands"; where the gloss says: "This is a terrible word for prelates who neglect to correct the faults of their subjects."

Real homicide is committed in eleven ways. First, by preventing conception, like Onan the son of Judah, who spilled his seed on the ground so that children might not be born (Genesis 38; C. 32 q. 2 c. *Quod vero non formatum*). Second, by procuring sterility or destroying the fruit of the womb. Amos 1: *They have ripped up the women with child

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of Gilead* (*Extra, De homicidio*, c. *Si aliquis*). Third, by knowingly selling poisons and things especially fit for the purpose of homicide (C. 17 [rather 11] q. 2 c. *Si tu abstineas*; C. 11 q. 3 c. *Praecipue*). Fourth, by striking with a club or sword or other weapons. Exodus 21: *He who kills a man on purpose, let him be put to death; and if he strikes him intending to kill, let him be put to death.* Fifth, by handing over with one's hands, like Judas, to whom the Lord said: *Judas, do you betray the Son of Man with a kiss?* (Luke 22). Sixth, by not freeing when you could, or hindering the freeing. Proverbs 24: *Deliver those who are led to death, and those who are drawn to destruction forbear not to deliver.* Understand: if they are drawn unjustly; but if justly, then forbear (C. 23 q. 3 c. *Non inferenda* and the following chapter). Seventh, by defrauding the poor of their price. Proverbs 26, where it is said: *As he is guilty who casts lances and arrows unto death, so is the man who hurts his friend by deceit.* Ecclesiasticus 34: *The bread of the needy is the life of the poor; he who defrauds them of it is a man of blood*, etc. Eighth, by withholding or hiding necessities. Proverbs 11: *He who hides up corn shall be cursed among the people.* Proverbs 18 [rather Ecclesiasticus 34]: *He who takes away anything from the poor is a sharer in homicide.* To this also Dist. 47 c. *Sicut hi* and Dist. 86 c. *Pasce*. Ninth, by neglecting to watch, as when a child is smothered at its parents' side. 3 Kings 3: *For in her sleep she overlaid him* (*Extra, De poenitentiis et remissionibus*, c. *Quaesitum*; *Extra, De his qui filios occiderunt*, c. *De infantibus*; C. 2 q. 4 [rather 5] c. *Consuluisti*; C. 34 q. 2 c. *In lectum*). Tenth, by poisoning.

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Hence John names sorceries [*veneficia*, also "poisonings"] together with murders (Apocalypse 9): *And they did not do penance from their murders, nor from their sorceries*; and Apocalypse 18: *For by your sorceries all nations have been deceived. And in her was found the blood of prophets and of saints, and of all who were slain upon the earth.* Eleventh, by giving example. Hebrews 4: *That no man fall into the same example of unbelief.* Hence if by the example of someone's killing another is encouraged to homicide, the first killer is liable for both, because "he who gives the cause of damage is held to have given the damage", as in c. *Si culpa, De iniuriis et damno dato*, with its concordances.

Of the penalty of homicide, note that according to divine law, from the law of Moses, the penalty of the murderer is the final punishment. Exodus 21: *He who strikes a man intending to kill him, let him be put to death*; and further on: *If a man kill his neighbour on set purpose and by lying in wait for him, you shall take him away from my altar that he may die*, etc.; *He who strikes his father or mother shall be put to death*, etc. By civil law, as a rule, the penalty for voluntary homicide is the same (Dig. *Ad legem Corneliam de sicariis*, l. 1 and throughout; C. *Ad legem Corneliam de sicariis*, l. *Is qui cum telo*, and the like). By canon law such rigour is tempered, so that it is brought back to the penance for mortal sin, and he is made irregular, so that by such irregularity he is barred, and if already promoted is cast down (Dist. 50 c. *Si quis viduam* and c. *Si quis post*; Dist. 55 [the text reads "119"] c. *Aliquantos*, etc.;

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Extra, Ne clerici vel monachi, c. *Sententiam sanguinis*; *Extra, De homicidio*, c. *Sicut dignum* and c. *Significasti* I and II, and throughout).

As to the court of conscience, if it is asked in the judgement of sacramental confession what penance is to be imposed on a murderer, it must be said, according to the theologians and especially Richard [of Middleton] and Scotus on the fourth book of the *Sentences*, dist. 15, that a fitting penance should be imposed on him: that as he deprived a man of life, so he should expose himself to the danger of death for Christ Jesus, for the defence of the truth of his faith and for the salvation of his soul — by going on pilgrimage to the Holy Sepulchre, or to Saint James, or to the threshold of the holy apostles Peter and Paul, and the like. And if he could not be induced to this, let him be induced as far as possible that, if the man killed by him supported some persons by his labour, for instance children or parents and the like, the killer do whatever he can for their support. For one who strikes in this way is bound to make good the expenses and the interest, even by divine law. Exodus 21: *If men quarrel and one strike his neighbour with a stone or with his fist, and he die not but keep his bed, if he rise again and walk abroad upon his staff, he who struck him shall be quit, yet so that he make restitution for his loss of time and for his expenses upon the physicians.* This is also found in substance in c. 1, *Extra*, *De iniuriis et damno dato*. How much more, then, must he make satisfaction as far as possible to those harmed by the homicide he committed. For since he cannot

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make equivalent satisfaction for a homicide, he must do whatever he can in compensation for the damage of those offended, as the aforesaid doctors say. Yet a discreet priest will judge the penance to be imposed according to the condition of the penitent (C. 26 q. 7 c. *Tempora paenitudinis*; *De poenitentia* dist. 1 c. *Mensuram*; the said c. *Sicut dignum*; *Extra*, *De poenitentiis et remissionibus*, c. *Deus qui*, with their concordances).

Simony. After homicide, in the aforesaid authority, follows simony. For its definition note that simony is "a deliberate desire to buy or sell something spiritual or annexed to something spiritual", as is gathered from C. 1 q. 1 c. *Qui studet*. So also the doctors of canon law define it, and the theologians too, and blessed Thomas (II-II q. 100, and on the fourth book of the *Sentences*, dist. 25).

Note that simony in spiritual things is committed in three ways, according to the gloss on C. 1 q. 1 c. 1. First, the graces, virtues and gifts of God are called spiritual things, which can be neither bought nor sold, as far as lies in them, because they are offered only freely (C. 1 q. 1 c. 1), where the text says: "Grace, if it is not given or received freely, is not grace." To the same, C. 1 q. 3 c. *Salvator*. Second, the dignity of orders and every sacrament of the Church except matrimony are called spiritual things; likewise all ecclesiastical rights of spiritual things, such as administrations, prebends, the right of tithes, cemeteries, orders. All these, when sold, are transferred as to the character only and not as to the merit of life; for in such things the sale proceeds in fact and not in law (C. 1 q. 1 c. *Presbyter*, c. *Reperiuntur* and c. *Si quis

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per pecuniam*). Third, sacred things, vessels and all utensils are called spiritual things. These are rightly sold to churches whole, but to laymen melted down (C. 10 q. 2 c. *Hoc ius porrectum*, which is taken from the title C. *De sacrosanctis ecclesiis*, l. *Hoc ius*).

Simony, then, can be committed by a threefold gift, according to the authority of Gregory on Isaiah 33, *He who shakes his hands from every bribe*: Gregory says the gift is either from the hand, or from service, or from the tongue. The gift from the hand is money; and under the name of money is comprehended every temporal thing, whether movable or immovable (C. 1 q. 3 c. *Totum*; and the law *Recepticia*, C. *De constituta pecunia*, where the text says: "Let the ancients not blush; we define that under the name of money all things are included"). Indeed, sometimes under the name of money rights and actions are also contained (Dig. *De verborum significatione*, l. *Pecuniae*); sometimes it contains every kind and quantity and any thing, as in the said c. *Totum* and Dig. *De legatis* III, l. *Cum quisquis*; sometimes only those things that consist in weight, number and measure (Dig. *De legatis* I, l. *Talis scriptura*). In simony, then, it is taken broadly for any thing

of the world. The gift from service is service unduly rendered; and the gift from the tongue is favour (C. 1 q. 1 c. *Sunt nonnulli*). Under the gift from service is comprehended all labour unduly rendered; under the gift from the tongue, every word spoken on behalf of the unworthy (C. 1 q. 1 c. *De ordinationibus*; *Extra*, *De aetate et qualitate ordinandorum*, c. *Tuam*; C. 1 q. 1 c. *Latorem*; *Extra*, *De simonia*, c. *Mandato*; C. 8 q. 1 c. *In scripturis*). For if anything is given or received freely, entirely of one's own accord, and

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with a pure intention, no sin is incurred, nor simony (C. 1 q. 1 c. *Quidquid invisibilis*). But if it is doubted whether something was given freely or with a corrupt intention, this becomes clear under a threefold determination: first, from considering the quality of the giver and the receiver, as if a poor man gives to a rich man or the reverse; second, from considering the size of the gift, as if a thing of great or small price is given; third, from considering the time of the gift, as if it is conferred while the need is pending or at another time. And so a presumption may be made for or against (*Extra*, *De simonia*, c. *Etsi quaestiones*). And these things are to be understood in the judicial or contentious court; but in the court of conscience or penance the intention is regarded, not the presumption. For as regards God the will alone suffices for mortal sin (*Extra*, *De simonia*, c. *Ad nostram*; C. 1 q. 1 c. *Si quis episcopus*; C. 1 q. 3 c. *Salvator*; *Extra*, *De simonia*, c. *Mandato*, with similar texts).

Know that the penalty of simoniacs in orders is: first, that they do not receive the execution [of their orders] but are suspended by the law itself, as to themselves and as to others, even if they are secret simoniacs ordained by simony (*Extra*, *De simonia*, c. *Tanta est labes*; Dist. 32 c. *Verum*; C. 1 q. 1 c. *Reperiuntur*). The reason is that they have a stolen character. And such persons are suspended not only from the order they received simoniacally but also from the acts of all the others, as Innocent says on the said c. *Tanta*; indeed he says further that they also lose the administration of temporal things (Dist. 81 c. *Eos etiam*). Such persons are also punished with deposition and infamy, if the crime is established

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(C. 15 q. 3 c. *Sane*; *Extra*, *De accusationibus*, c. *Inquisitionis*). Nor can they recover the money they gave; nor can he who received it lawfully keep it, but it must be restored to the cathedral church to whose disgrace it was given (*Extra*, *De simonia*, c. *De hoc autem*; and by argument from C. 17 q. 4 c. *Si quis in atrio* and C. 27 q. 1 c. *Si quis rapuerit*). If one so ordained has the title of some benefice to which he ought to have been ordained freely, it must be restored to that benefice which suffered the outrage (this supports *Extra*, *De simonia*, c. *Veniens*, and C. 16 q. 6 c. *De lapsis*, and what is noted on the said c. *De hoc autem*).

The penalty of simoniacs in benefices is that he who receives a simple benefice is suspended in the same way as above, and in addition is bound to renounce the benefice and restore all the fruits received and those that could have been received (C. 14 q. 6 c. *Si res*; *Extra*, *De restitutione spoliatorum*, c. *Gravis*), unless he spent them for the benefit of the church. And the foregoing holds even if the simony was committed by another without the knowledge of him who receives the benefice, and he did not renounce at once when he knew — although he is not bound for the fruits he received before he knew, if they are already consumed; but for those still existing or … [the text reads "optantibus"; text unclear] he is indeed bound (by argument from C. *De rei vindicatione*, l. *Certum*). But know that although a simoniac in a benefice, if it is secret, is not suspended by the law itself but is to be suspended (C. 1 q. 3 c. 1, 2 and 3), yet by reason of a benefice acquired simoniacally he will not minister without sin, either spiritually

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or temporally. But if it is notorious, by the deed itself he is suspended from the acts of all orders and from the administration of temporal things, as Innocent says, as above. If someone has received a benefice with cure of souls or a dignity, besides the aforesaid penalties he is suspended both as to himself and as to others, since

he does not have the execution; whatever he does, he does suspended, at least in respect of that benefice, and he deceives souls (*Extra, De electione,* c. *Dudum,* [on the] bishop of Rouen, etc.). Further, the penalty of the one who confers or of the go-between: if it is manifest, he is suspended by the law itself as to himself and others (*Extra, De simonia,* c. *Accusatum*; Dist. 32 § *Verum*). If it is secret, he is suspended as to himself only, like any criminal, but not as to others (*Extra, De simonia,* c. *Etsi quaestiones,* c. *Veniens* and c. *Ex tuae*). Today, however, simoniacs, whether in orders or in benefices, incur by the deed itself the sentence of excommunication, from which they cannot be absolved except by the authority of the apostolic see, apart from the moment of death, as in the extravagant of Pope Martin [V] and of Pope Eugene IV.

Unjust asking and receiving. After simony is set unjust asking and receiving, which belong to the diminishing of justice, as when an ordinary judge makes saleable what he ought to bestow freely. For ordinary judges ought to receive nothing from the parties, since they take their appointed provisions for the purpose of executing justice. "For therefore by a certain providence pay was appointed for soldiers, lest while seeking their costs the plunderer should run riot" (C. 23 q. 1 c. *Militare,* at the end). As Gregory says:

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"Human judgement is perverted in four ways: by fear, when through dread of someone's power we are afraid to speak the truth; by covetousness, when we corrupt the mind with a reward; by hatred, when we strive against some adversary; by love, when we strive to help a friend or relative" (C. 11 q. 3 c. *Quattuor*). And there are verses on this: "These four — fear, hatred, love and money — often pervert the right senses of men."

From this Boniface VIII, in the first chapter *De sententia et re iudicata* in the Sext, gives a warning, saying: "Let the judges of the Church beware and attend prudently, that in the conduct of cases hatred may claim nothing, nor favour usurp, fear be banished, and that reward or the expectation of reward may not overturn justice; but let them carry the balance in their hands and weigh the scales with just moderation, so that in all things that are to be done in cases, especially in drafting and passing sentences, they may have God alone before their eyes, imitating the example of him who, entering the tabernacle, referred complaints to the Lord, so that he might judge according to his command." Such was Moses. And in c. *Statutum,* § *Insuper, De rescriptis,* in the Sext, he says: "Moreover, let the judgement proceed before him freely and with all equality [one manuscript: "depravity"]; and let him not presume in any way to receive from the same parties any gift or anything else, except perhaps food or drink offered from pure liberality which can be consumed in a few days — unless, when it happens that he must travel outside his home because of the case committed to him, [he receives] moderate expenses." And note that he speaks there of a delegated judge; therefore it is otherwise

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with an ordinary judge who has appointed pay, although he could receive moderate presents freely offered from others (Dist. 18 c. *De eulogiis*; Dig. *De officio praesidis,* l. *Solent*). And if a judge acts contrary, receiving beyond the foregoing, he is bound to restitution, as in the said c. *Statutum,* § *Insuper*.

What if a judge judged unjustly, knowingly and deliberately? He is bound exactly to the injured party for all the interest, unless he can induce the one for whom he passed sentence to full restitution (C. *De poena iudicis qui male iudicavit,* the last law). Moreover, a penance must be imposed on him as for a most grave crime (C. 11 q. 3 c. *Quicumque*). And if he is an ecclesiastical judge, he is suspended for a year from the execution of his office; and if during the suspension he has involved himself in divine offices, he becomes irregular, and such a one can be freed only by the pope (*Extra, De sententia et re iudicata,* c. *Cum aeterni,* in the Sext). And Thomas says (II-II q. 100) that one who sells any spiritual things to which he is bound by office is a simoniac (by argument from *Extra, De simonia,* c. *Nemo*). But if he is a lay judge and over a temporal matter, it is not simony but a grave sin (C. 1 q. 1 c. *Iubemus*; by argument from C. 17 q. 4 c. *Si quis in atrio*; Dig. *De*

calumniatoribus, l. *Generaliter*, § *Illud*). If he judges unjustly through ignorance, he is bound to the injured party "as far as will seem good and equitable to the conscience of the judge" (Dig. *De variis et extraordinariis cognitionibus*, the last law); but in the judgement of the soul he is bound as in the first case if he was at fault, for instance because he knew or ought to have known that he was insufficient and presumed [to judge] what he did not know how to judge. The same

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if he had been sufficient but had neglected to study and look into the merits of the cases as he ought. Yet one deals more mildly with such a one than with one who judges wrongly knowingly. If he was a delegate and, from the necessity of obedience, being ignorant, judged wrongly, but in good faith and on the advice of experts or assessors whom he thought sufficient, he is not bound, according to Raymond and Oldradus.

Wicked trading. After the impairing of justice is set trading [the text reads "fenus", usury; the order of Innocent's list suggests "trading"; uncertain]. Here know that, as Gregory says in his twenty-fourth homily on John: "There are very many businesses that can scarcely or in no way be practised without sin." By way of example he says: "And therefore a soldier, or a merchant, or one given to some office which could not be practised without sin, if, entangled in graver faults, he comes to penance — or one who unjustly holds another's goods, or who has kept hatred in his heart — let him acknowledge that he cannot perform true penance by which he can attain eternal life unless he abandons the business or leaves the office and puts away hatred from his heart; let him restore the goods he took unjustly, lay down his arms, and bear them no further except on the counsel of religious bishops, to defend justice." These are taken over in *De poenitentia* dist. 5 c. *Falsas* and c. *Negotium*. And in *De poenitentia* dist. 5 c. *Qualitas*, where Pope Leo says: "It is difficult for sin not to intervene in the dealings of buyer and seller." And the civil law says: "For it is natural for contracting parties to deceive each other" (Dig. *Locati*, l. *Item si pretio*; Dig. *De minoribus*, l. *In causae*, § *Item Pomponius*). And Dist. 25

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c. *Qualis*: Gregory says: "The care of a household is scarcely carried on without fault even by those who know how they ought to avoid fault"; where the gloss says: "Similarly soldiering, trading, procuratorship or any administration is scarcely done without sin." Hence Pope Gelasius commands clerics to cease from every device of any trade and from covetousness (Dist. 88 c. *Consequens*). Hostiensis says that a sixth must be added, which is as it were more dangerous than all, namely advocacy; and do not omit the seventh, namely the office of bishop, "than which nothing before God is more wretched, sad and damnable, if the matter is handled perfunctorily and with flattery", as Augustine says to Valerius, and it is taken over in Dist. 40 c. *Ante omnia*.

The office of advocacy is dangerous because advocates commonly take on a stubbornness in winning (Dist. 51 c. *Aliquantos*). Indeed, what is more, advocates are called faithless who do not defend their clients with full faith. Hence Pope Gelasius says: "We judge it altogether irreligious and execrable if anyone does not conduct with faith and the whole holiness of his soul [the defence of] the destitute or strangers taken into his protection" (Dist. 87 c. *Irreligiosum*). For which reason, since the wisdom of God says, *By what things a man sins, by the same also he is punished* (Wisdom 11), it therefore sometimes happens that impious advocates lose the benefit of the tongue, as the gloss says on the *Institutes*, *Quibus non est permissum facere testamentum*, § *Saepe*, where the text says: "Often even lettered and learned men lose, by various accidents, the power of hearing and speaking"; where the little gloss says: "especially impious advocates". For it is plain by the clearest experience that very many advocates die without a tongue.

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Of such Bernard says to Eugene (book 1, chapter 9 [10]): "For I wonder how your religious ears can bear to hear such disputations of advocates and battles of words, which serve rather for the overthrow than for the finding of truth. For nothing makes truth so manifest without labour as a short and pure statement. Cut off, then, the vain-speaking tongues and close the deceitful lips. These are they who have taught their tongues to speak lies; eloquent against justice, learned for falsehood; wise to do evil, eloquent to attack the truth." And Cassiodorus in a certain letter says: these, namely the advocates, "are they who, when engaged, prolong cases; when passed over, assail them; when reminded, are disdainful; when enriched, forget. These are they who buy lawsuits, sell intercessions, appoint arbiters, dictate what is to be judged, tear up what has been dictated, draw in litigants, drag out those who are to be heard, drag back those who are settling. These are they who deny delays to counties, markets to merchants, measures to buyers, reverence to clerics, origin to nobles, place to elders, rights to all who are distinguished, privileges to those by whom no kind of men is ordered. These are buffoons at banquets, harpies in exactions, beasts in speech, statues in questions; stony for understanding, leopards for friendships, bears for fury, foxes for deceiving, wooden for judging, iron for pardoning, bulls for pride, and minotaurs for consuming. These are they whom, if the males [the text so; text unclear] breathe on them, you will at once see there the rusty [one manuscript: "shaggy"] arms of Marsyas and

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the eyes and hands of Briareus, and the claws of battles, the perjuries of Laomedon, the cunning of Ulysses, the deceits of Sinon, the faith of Polymestor and the age of Pygmalion applied", etc. [This passage, as printed, is corrupt in places; uncertain.] It is plain, then, how much wickedness and how manifold and varied a deceit is mingled everywhere with such businesses.

Usury

Usury

After wicked businesses is set *fenus*, which properly is taken for usury. Of this matter, as a necessary and quite practical one, I have thought it useful to teach more at length. For treating it I take an authority from a figure of this kind described in Daniel 7, where, designating metaphorically a strange beast, he says: *After this I beheld in the vision of the night, and lo, a fourth beast, terrible and wonderful and exceeding strong; it had great iron teeth, eating and breaking in pieces, and treading down the rest with its feet.*

And note that he says he saw four beasts, namely a lioness [the Vulgate: "lioness"], a bear, a leopard, and the fourth a strange one, as we said before. These animals are strong and huge, and morally they signify four most pernicious crimes. The first beast, namely the lioness, signifies pride; the second, namely the bear, signifies uncleanness; the third, namely the leopard, signifies hypocrisy; the fourth, namely the strange one, signifies avarice. Of the first it is written (Job 10): *For pride you will take me as a lioness.* For the nature of the lion is to surpass the other beasts and to rule like a king over the other animals, as Isidore says. The lioness is a lustful beast, for she always burns for coupling, and therefore the lioness is crueller, as Aristotle, Pliny and Isidore say, treating of the nature

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of animals. Of the second, namely the bear. For the bear is a rapacious animal and unclean, very greedy and eager for honey — so much so that, as Pliny says, those wishing to catch a bear in India without danger look for a place of honey in a tree near the ground, or at least prepare one artificially, with a hole big enough for the bear to put its mouth to the hole. And they prepare a mass of iron hung in the tree on an iron chain, coming down as far as the hole, so that the hole is blocked by it. And anointing herbs along various paths up to the hole of the tree, they lure the bear to the honeycomb. Drawn by the smell of the honey along the herbs anointed with honey, it comes to the hole; and seeking to remove the mass of iron from the hole, it moves the mass, which, once moved, does not come to rest, but when the bear puts its mouth into the hole, the mass strikes the bear's head back. And the bear, angered, strikes the mass back with a more violent rush; and from this, seeking again to put its mouth into the hole, the bear is struck back harder; and fighting like this, it remains there dead. So many who follow uncleanness and the gluttony of the belly have perished. Hence the Lord Jesus commanded the apostles to beware of surfeiting and drunkenness (Luke 21): *And take heed to yourselves, lest perhaps your hearts be overcharged with surfeiting and drunkenness and the cares of this life, and that day come upon you suddenly; for as a snare it shall come*, etc. And Solomon says (Proverbs 28): *As a roaring lion and a hungry bear, so is a wicked prince over the poor people*, etc. Of the third, namely the leopard, which

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has a spotted hide and by cunning and betrayal kills the lion. For it is a most savage beast, begotten of the adultery of a lioness and a pard, as Isidore says; very headlong, thirsting for blood, having a disposition like the panther, ringed with varied colour; and it is a very lustful animal, and from its coupling with the lioness the leopard is born, as Aristotle says on the nature of animals; and when its cubs are taken it becomes more savage, as the gloss says on Hosea 13, where: *And I will be to them as a lioness, as a leopard in the way of the Assyrians. I will meet them as a bear that is robbed of her whelps, and I will rend the inmost parts of their liver, and I will devour them there like a lion.* The leopard, then, from the variety of its hide signifies hypocrisy, which intends one thing and shows another. Just as the leopard, near a den which it has and skilfully prepares, pretends to turn to flight, and fleeing to the den — fitting it with an entrance and an exit on the other side — invites the lion pursuing it; and when it has entered the den, it pretends to be trapped, so as to provoke the lion to attack; and when the pursuing lion, squeezed, cannot pass through the den, it goes out,

and circling round from the entrance of the den it enters the den behind the lion, and seizing it by the testicles kills it. So, then, the deceitful hypocrite tries to get round by hidden snares and false pretences those whom he cannot overcome openly. Hence it is written (Jeremiah 13): *If the Ethiopian can change his skin, or the leopard his spots, you also may do well, when you have learned evil.*

Of the fourth beast, then, namely the strange one, which designates the vice of covetousness — "terrible and voracious" [manuscripts: "fierce"], etc., as above —

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Boniface VIII shows that the vice of usury above all is signified, when he says in c. 1 *De usuris* in the Sext, citing Gregory X in the general council of Lyons: "Desiring to restrain the whirlpool of usuries, which devours souls and exhausts fortunes." Of this vice, in the words set before us, three things are briefly to be examined. The first is the showing of horrible covetousness, when it is said: *I beheld in the vision of the night, and lo, a beast.* The second is the condition of terrible malignity, when it is said: *terrible and wonderful and exceeding strong.* The third is the confusion of most terrible iniquity, when it is said: *it had great iron teeth.*

As to the first, which is the showing of horrible covetousness, three things are briefly to be seen: first, the definition of usury; second, the preparation of understanding; third, the detestation of its essence.

The definition of usury. As to the first, it is said, according to the etymology of the word, that *usura* is almost the same as *usus raptus* — a use seized, or rapacious, taken violently from a thing which properly has no use, as is money, which was invented not for use only but as a kind of intermediary of things necessary for the use of men, as for a kind of exchange, as Aristotle says (*Politics* 1).

Second, it is defined according to Augustine on Psalm 36, and in the Decretum, C. 14 q. 3 c. *Si feneraveris*, where it follows: "If you have lent at usury to a man, that is, if you have lent your money to someone from whom you expect more than you gave — not money alone, but anything more than you gave, whether it be wheat or wine or oil or anything

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else — if you expect to receive more than you gave, you are a usurer, and in this to be reproved, not praised." And so it is plain according to Augustine that whatever accrues to the principal is usury. Jerome determines the same on Ezekiel [book] 6, where it is said: *And if a man be just, and has restored the pledge to the debtor*, and below, *has not lent upon usury nor taken any increase* (Ezekiel 18). Jerome says: "Some think that usuries are only in money. Foreseeing this, divine Scripture takes away the excess of every thing, so that you may not receive more than you gave." And below: "Others, for money lent, are wont to receive little gifts of various kinds, and do not understand that Scripture calls usury and excess whatever it is, if they receive more than what they gave." Ambrose says the same in substance in the treatise *On Naboth*, and it is found in the Decretum, as above, c. *Plerique*, where it follows: "Many, fleeing the precepts of the law, when they have given money to merchants, do not exact usuries in money, but take from their wares as it were the profits of usuries. Therefore let them hear what the law says: You shall not, it says, take usuries of food, nor of any things." I think Ambrose meant to cite the law of Moses (Leviticus 25), where it is said: *Fear your God, that your brother may live with you. You shall not give him your money upon usury, nor exact of him any increase of fruits*; and just before he says: *If your brother be impoverished*, and below: *Take not usury of him nor more than you gave.* And Deuteronomy 23: *You shall not lend to your brother money at usury, nor corn, nor any other

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thing.* Therefore Ambrose adds: "Food is usury, clothing is usury, and whatever name you wish to give it, it is usury." The same was decreed in the Council of Agde, where it was determined that whatever is exacted

beyond the principal is usury (C. 14 q. 3 c. *Usura*). In general it is also defined by the theologians on the third book of the *Sentences*, dist. 37, under the fourth precept of the second table, namely *You shall not steal*, where the Master of the *Sentences* also touches it when he says: "Here too usury is forbidden, which is contained under robbery." Hence Jerome: "To seek usuries, or to defraud, or to receive makes no difference. Lend to your brother, and receive what you gave, and seek nothing superfluous, because excess is counted as usury." And he sets out in substance the aforesaid definitions of Augustine and Jerome.

But in brief the doctors of theology define it thus: usury is gain owed or exacted from a loan by agreement; or thus: usury is whatever accrues to the principal with a preceding intention or by agreement.

And so it is plain that intention alone makes a usurer, from the sentence of the Saviour, who says (Luke 6): *Lend, hoping for nothing thereby.* This is also proved in *Extra, De usuris*, c. 1, c. *Consuluit* and the last chapter. This is understood, according to the gloss and the doctors on the said c. *Consuluit*, when the cause of the loan is rooted principally in the hope of gain. For if he is moved to lend principally out of charity, and yet believes that the other will repay [a favour], it is not vicious or evil (by argument from Dist. 61 c. *Si officia*). Nor is it evil to receive [something] — [marginal note: how one proceeds against such a one, see the fifth kind of disguised usury]

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with such a preceding intention, if it is offered freely — understand, as above, when he is moved to lend principally out of charity (by argument from C. 1 q. 2 c. *Sicut* and c. *Quam pio*; *Accedat gratis*; and Dist. 18 c. *De eulogiis*). Hence God also commanded the apostles, on behalf of all the faithful, saying: *Freely you have received, freely give* (Matthew 10). For one who lends liberally can know that the debtor is naturally obliged to him for a return favour (Dig. *De petitione hereditatis*, l. *Sed et si*, § *Consuluit*; *Extra, De testamentis*, c. *Cum in officiis*). And what is said, "in hope of gain", understand: whether of money or of any other thing whatever, whether it consists in giving, or in doing, or in speaking, and so of similar things. For he gains enough who fulfils his own will (Dig. *De furtis*, l. *Qui iumenta* and l. 1, according to the doctors; to this, Dist. 50 c. *Qui furtum*). And so every addition is usury, whether it consists in weight, or in number, or in measure, as the gloss says on the said c. *Si feneraveris*. To this what is found in Psalm 14 serves very well, where it is said: *He who swears to his neighbour and deceives not; who has not put out his money to usury, nor taken bribes against the innocent.* Alexander of Hales treats this matter quite briefly on the third book of the *Sentences*, as above, and blessed Thomas (II-II q. 78). And let these things suffice for the first part.

Preparation of understanding. As to the second part, which is the preparation of understanding, we must note certain evident points which open and illumine our understanding for grasping more easily

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the truth of the matter. These are principally seven.

The first evident notable point is that usury exists only in the contract of loan (*mutuum*). Of its nature two things occur: first, that the contract is gratuitous (Luke 6: *Lend, hoping for nothing thereby*); second, that by the contract of loan ownership is transferred from the lender to the receiver, which is expressly proved in Dig. *Si certum petatur*, l. 2, § *Appellata*, where it is said: "The giving of a loan (*mutui datio*) is so called because from mine it becomes yours (*de meo tuum*)."

The second evident notable point is that there are some things which, properly speaking, have no use, as money, which is only a kind of medium in the exchanges of things that have use. Hence moneys were invented for the concord of the human race, to supply those things which are necessary for the use of men, so that some equivalent is given in compensation, as Aristotle says (*Politics* 1). And therefore, properly speaking, money cannot be sold or bought, or let or hired; yet it can be lent, deposited and exchanged. There are some things whose use is the consumption of the things themselves, like corn, wine, bread and the like;

and such cannot be let or hired, yet can be sold, bought, deposited, exchanged and lent. And there are some whose use can be separated from their ownership, like a house and other possessions, a horse, clothing, silver vessels and the like; and such can be bought and sold and also let. The others mentioned above cannot be let, because from such

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letting no benefit could be drawn. In these last, since the ownership stays with the one who lets, and the use with the one who hires, a rent can lawfully be taken for such things by the one who lets. For, as blessed Thomas says, as above, in things which are consumed by use, if someone wished to count the use separately from the thing, he would also do violence to nature. For if someone wished to sell the wine separately and the use of the wine separately, he would either sell what does not exist or sell the same thing twice, and so sin expressly by injustice; which however does not apply in things whose use can be separated from their ownership. Hence in such things each can be granted separately: for example, when someone hands a house to another, reserving to himself the use of the house for some time, or conversely, when someone grants to another the use of a house, reserving the ownership to himself; whence he can lawfully receive a price for the use of the house (Dig. and C. *Locati*; *Extra, De locato*, throughout).

And it is notable that usury properly so called, as it exists only in the contract of loan, so it exists only in money. Hence in the psalm cited above it is said: *Who has not put out his money to usury*. Yet in other contracts and other things many things can be committed in fraud of usury, as in the said c. *Consuluit* and c. *Naviganti*, *Extra*, *De usuris*, and as we shall say more fully below. Hence the gloss of Jerome says on that text of Ezekiel 18, *has not lent at usury*: Jerome says, "according to the Hebrew truth, usury of all kinds is forbidden",

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although the prophet says in the psalm, *Who has not put out his money to usury*, adding, *nor taken bribes against the innocent.* To this also the aforesaid authorities of Augustine, Ambrose and Jerome are relevant, which are also found in the Decretum, as above, namely C. 14 q. 3, as we said above. And since usury properly taken is in money, which has no use, therefore usury takes such a name, as it were *usus raptus*, a use seized, or rapacious. For by the contract of usuries the use is as it were seized, when the use of a thing that properly has no use is sold or let.

And it is notable that usury is twofold, namely mental and real. Mental usury is when something is lent without agreement or hint of receiving more, but principally with the intention of receiving something beyond the principal, without which he would not lend — understand this as we said above. Real usury is when something is lent by agreement or with a hint of receiving more, so that the one receiving the loan can perceive that the one lending would not otherwise lend except in hope of gain. And in both ways it is a grave mortal sin.

And it is notable that, according to the gloss of Jerome, the law forbids usury with regard to a brother (Deuteronomy 23): *You shall not lend to your brother at usury money, nor corn, nor any other thing, but to the stranger*, etc. The prophets, like David and Ezekiel, as above, forbid it with regard to any man. But the evangelical law, adding still more, forbids the hope and

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intention of receiving more, when it says, *Lend*, etc. Understand, however, that it was never lawful to receive usury as usury from anyone, even a stranger, because usury is against nature, as we shall say below. But it was permitted to the Hebrews, because of their great covetousness, to receive it from strangers, especially from those who inhabited the land owed to them — as is said of the bill of divorce, which was permitted to them because of their cruelty, lest they commit graver things, namely the murder of wives, of which enough

is found in Deuteronomy 24 [the text reads 23]. Bertrand also treats of the foregoing on Ezekiel, as above; and blessed Thomas (II-II q. 78) says that the Mosaic law allowed the Jews to receive usuries from the gentiles to avoid a greater evil, namely lest, because of the avarice to which they were given, they should take usury from Jews who worshipped God. Indeed, according to Ulrich, such receiving of usuries was for them rather a recovery of their own property than usury, because to them, as worshippers of God, the ownership of the whole earth belonged; of which we shall speak below when we treat of the detestation of usury from political law.

And it is notable that usury is a great and execrable sin, which is plain by the seven reasons written below. First, because it is against nature that money should breed money, as Aristotle says (*Politics* 1). For, as was said above, money was invented as a kind of intermediary in the exchanges of things for the use of the human race, for common concord, as the same Aristotle says (*Ethics* 6);

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and it is expressly plain to the senses, because it neither begets nor conceives. To which Ecclesiasticus 20 is relevant: *Wisdom that is hid, and treasure that is not seen, what profit is there in them both?* For money hidden is kept rather under danger of loss than under hope of its multiplication, according to the sentence of the Saviour (Matthew 6): *Lay not up to yourselves treasures on earth, where the rust and moth consume, and where thieves break through and steal.* Second, it is execrable because it is against use, as was said sufficiently above. Hence when the usurer wishes to establish a use in a thing which properly has no use, he acts expressly against natural justice, as blessed Thomas says (II-II q. 78). Third, I say it is execrable because it is against the contract, since it is of the nature of the contract of loan that it be gratuitous — the Lord saying (Luke 6), *Lend*, and Matthew 10, *Freely you have received, freely give*; and in C. 1 q. 1 c. 1 it is said, "Grace is not grace if it is not given freely." Since, then, the usurer wishes to pervert the nature of a gratuitous contract into a mercenary contract, he acts expressly against divine justice; therefore, etc. Fourth, usury is execrable because it is against ownership; for it is of the nature of the contract of loan that ownership is transferred from the lender to the borrower, that is, to the one to whom the loan is made (Dig. *Si certum petatur*, l. 2 and l. *Appellata*), from the etymology of the word, because "from mine it becomes yours", etc. Fifth, it is execrable because it is against time; that is, because time is sold, which ought to be common to all, and so ought not to be

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sold privately, according to what is noted on c. *Consuluit*, *Extra*, *De usuris*. Hence Seneca too, in the first letter to Lucilius, says: "Do this, my Lucilius: claim yourself for yourself, and gather and keep the time which until now was either taken from you, or stolen, or slipped away." And below: "For the most shameful loss is that which comes through negligence." And below: "Whom will you give me who sets any price on time?" — as if to say that no one values time as much as he ought, etc.

Sixth, I say that usury is execrable because it is against labour. For it is plain from the order of nature that he who has laboured should receive the fruit of his labours; hence we say that every labour desires a reward (*Extra*, *De rebus ecclesiae alienandis vel non*, c. *Ad nostram*). Similarly we say that labour ought not to be without fruit (C. 12 q. 2 c. *Caritatem*). And in Wisdom 3 it is said: *For the fruit of good labours is glorious, and the root of wisdom never fails. But the children of adulterers shall not come to perfection, and the seed of the unlawful bed shall be rooted out.* And Wisdom 10: *God will render to the just the wages of their labours, and he conducted them in a wonderful way, and he was to them for a covert by day and for the light of stars by night.* And the Apostle says (2 Thessalonians 3): *If any man will not work, neither let him eat*; or as we say more briefly, "He who does not labour does not eat". Therefore usurers, who will not labour, ought not to eat. It is also cited in the Clementines, c. *Ut hi qui*, in the gloss, *De aetate et qualitate ordinandorum*: namely, "he who does not labour does not eat".

Seventh and last, I say it is execrable

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because it is against risk; for the risk of the thing lent belongs to the debtor (C. [rather Dig.] *Si certum petatur*, l. *Incendium*, § *Item is*). He, then, who feels the burden ought to feel the benefit (*De regulis iuris*, c. *Qui sentit*, in the Sext). For the law has so established that where the benefit is, there also the burden ought to be, and conversely (*Institutes*, *De legitima patronorum tutela*, § *Cum agnatos*; C. 12 q. 2 c. *Caritatem*; and *Commodati*, l. *Si is*, § 1). But the usurer wants to feel the benefit without burden and risk. For whether the borrower's house or possession or vineyard or animals or any other goods perish, the usurer, always without risk, does not put off exacting his usuries. For since the thing has become another's, it ought to run at the risk of him whose it has become, whose also the fruit ought to be (Dig. *Si certum petatur*, l. *Vinum*; and it is noted at Dist. 95 c. *Presbyter* and C. *De periculo et commodo rei venditae*, l. 1 and throughout). And so by the foregoing reasons it is plain that the sin of usury is execrable. It must be known [one manuscript: "The seventh evident point is that"] whatever is received from real usury must be restored, of which we shall speak below.

The detestation of usury. Yet the gravity of this sin is increased still further according to the third principal part, which is its detestation according to a sevenfold law: first by physical law, second by Mosaic law, third by prophetic law, etc., as will appear in order.

First, that it is against physical [natural] law is already plain, because it is against nature, since it is against nature that money should

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breed money, as we said above. For, as Innocent says on the rubric *Extra*, *De usuris*, and Hostiensis on c. 2 of the same title, if it were lawful to exact usuries, many evils would follow from it. For men would not attend to the cultivation of farms except when they could do nothing else; whereby so great a dearth and scarcity would come everywhere that all the poor would easily perish of hunger. For supposing that the poor wished to take care of the cultivation of the fields, they could not have the animals and other instruments necessary for cultivation — not of themselves, because they are poor; not from the rich, because for the gain and security of their money they would rather put their money out at usury than into smaller and less safe gains. And granted that some spent on these, victuals would be so dear that the poor would not have the means to live; from which the greatest danger would threaten the faithful. Hence David, having stirred up the divine fury against himself and his people by numbering the people, when the option was given him by the Lord to choose one of three — either to suffer famine for seven years, or to flee for three months from pursuing enemies, or to endure pestilence for three days in his land — chose pestilence rather than war or famine, because pestilence could be common to the poor and the rich alike, whereas war would have harmed the rich more, and famine would have oppressed the poor more than the rich. The story is plain in 2 Kings, the last chapter, where in three days there died of the people, from Dan to Beersheba, seventy thousand men.

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Moreover, since those who pay usuries for a long time are reduced to poverty almost in a short time — and poverty is dangerous unless it is kept with special love out of devotion; for which reason Solomon prayed to the Lord, saying, *Give me neither beggary nor riches; give me only the necessaries of life* (Proverbs 30 [the text reads 3]); and it is found in C. 4 q. 3 c. 1, verse *Testium*. For this reason also the Apostle says (1 Timothy 6): *But having food, and wherewith to be covered, with these we are content.*

Moreover, since the disordered love of money can scarcely avoid idolatry, according to that saying of the Apostle (Ephesians 5): *For know this and understand, that no fornicator, or unclean, or covetous person, which is a serving of idols, has inheritance in the kingdom of Christ and of God.* To this also the saying of

Gregory applies (*Moralia* 19), as found in the Decretum, Dist. 47 c. *Omnes*, where it follows: "All lovers of this world are strong in earthly things and weak in heavenly ones. For they desire to toil for temporal glory even unto death, and for eternal hope they do not hold out even a little in labour. For earthly gains they bear any injuries, and for a heavenly reward they refuse to bear even the insults of the slightest word. They are strong enough to attend an earthly judge the whole day long; but in prayer before God they grow weary in the moment of a single hour. Often they endure nakedness, dejection, hunger, to acquire riches and honours, and torment themselves by abstinence in the hope of those things which they hasten to look upon; but they pretend all the more not to seek laboriously the things above, the more slowly they think these are granted." And Ambrose on Luke says: "As those who

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through madness are carried out of their mind no longer see the things themselves but the phantasms of their passion, so also the mind of the avaricious man, once bound by the chains of covetousness, always sees gold, always silver; always he reckons his revenues; he looks on gold more gladly than on the sun; his very prayer and supplication to the Lord seeks gold." And after a little: "Sometimes too, by a most wicked art, usuries gain gold from gold itself; but there will never be satiety, nor end to covetousness" (Dist. 47 c. *Sicut hi*), where the gloss says: "because the whole world does not seem even an obol to the avaricious man" (C. 14 q. 4 c. *Quid dicam*). Hence this: "The miser is always in need; seek a fixed end for your wish." And this: "You will be a slave, if the look of bronze has drawn you." And this: "… [verse corrupt; text unclear] — naked thirst, drunkenness, full hunger." And Virgil: "To what do you not drive mortal hearts, accursed hunger for gold?" etc.

That it is against the charity of God and neighbour [is plain], because it is against the law of God and against the charitable help owed to the neighbour, and also against the natural law, which dictates: *What you would not have done to you, do not do to another* (Tobit 4), and Matthew 7: *All things whatsoever you would that men should do to you, do you also to them.* But no one doubts that anyone would rather have what he needs lent to him freely than pay usuries. For as from the root of charity all good things come, as Gregory says, so from the extinction of charity all evils sprout and rise up; because, as the Apostle says (1 Corinthians 13): *If I should deliver my body to be burned, and have not charity, it profits me nothing.*

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That it is against Mosaic law is plain in Exodus 22: *If you lend money to any of my people that is poor, who dwells with you, you shall not be hard upon them as an extortioner, nor oppress them with usuries.* And Leviticus 25: *If your brother be impoverished and weak of hand, and you receive him as a stranger and sojourner, and he live with you, take not usury of him, nor more than you gave.* And below: *You shall not give him your money upon usury, nor exact of him any increase of fruits.* And Deuteronomy 23: *You shall not lend to your brother money at usury, nor corn, nor any other thing.* How this is to be understood is plain in the fifth evident point.

That it is against prophetic law is plain in many places of Scripture; but it suffices to cite those written below [the word before "namely" is unclear; the editor suggests *quotiens*, *convocatas* or *convocationes*]: namely Nehemiah 5: *Do you every one exact usury of your brethren?* And below: *The hundredth part of the money, and of the corn, the wine and the oil, which you were wont to exact of them, give it rather for them.* And in Psalm 14 David says: *Lord, who shall dwell in your tabernacle?* and below: *He who has not put out his money to usury, nor taken bribes against the innocent.* And in Psalm 54 he says: *Cast down, O Lord, and divide their tongues; for I have seen iniquity and contradiction in the city. Day and night shall iniquity surround it upon its walls, and in the midst thereof are labour and injustice. And usury and deceit have not departed from its streets.* And Psalm 71: *He shall redeem their souls from usuries and iniquity, and their name shall be honourable in his sight* — namely Christ's; as if to say that Christ was to redeem the souls of

sinners

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who believe in him from any crimes and sins, however grave and wicked. And Solomon says (Proverbs 28): *He who heaps together riches by usury and loan gathers them for him who will be bountiful to the poor*; that is, since they grow rich execrably, they will easily become poor. Hence he adds: *He who turns away his ear from hearing the law, his prayer shall be an abomination. He who deceives the just in a wicked way shall fall in his own destruction, and the upright shall possess his goods.* And Ezekiel 18: *The soul that sins, the same shall die. And if a man be just, and do judgement and justice,* and below, *has not lent upon usury nor taken any increase,* and below, *he is just; he shall surely live, says the Lord God.* And below: *who robs by violence, and restores not the pledge, and lifts up his eyes to idols, commits abomination, who gives upon usury and takes an increase* — as if to say: those who do such things God will judge. And below: *But if he beget a son who … has not taken usury and increase,* and below, *he shall surely live.* And Ezekiel 22: *They have taken gifts in you to shed blood; you have taken usury and increase, and have covetously oppressed your neighbours, and you have forgotten me, says the Lord God. Behold, I have clapped my hands at your covetousness which you have exercised, and at the blood that has been shed in the midst of you.* And below: *Her princes in the midst of her are like wolves ravening the prey, to shed blood and to destroy souls, and to run after gains through covetousness.* And Ecclesiasticus 20: *Today a man lends, and tomorrow he asks it again; such a man is hateful.* And Isaiah 24: *Behold, the Lord shall lay waste the earth,* and *it shall be, as with the people,

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so with the priest*; and below: *as with the lender, so with the borrower; as with him who calls for his money, so with him who owes. With desolation shall the earth be laid waste, and it shall be utterly spoiled; for the Lord has spoken this word.* And Ecclesiasticus 8: *Lend not to a man who is mightier than yourself; and if you lend, count it as lost.* And Ecclesiasticus 29: *Many have refused to lend, not out of wickedness, but they were afraid to be defrauded without cause.* And below: *Place your treasure in the commandments of the Most High, and it shall bring you more profit than gold.* And below: *These things are grievous to a man who has feeling: the upbraiding of the house, and the reproach of the lender.* It is better, therefore, that lenders at usury return to the Lord and seek mercy from him, restoring their debts to all and lending to their neighbours freely what they need, according to Ecclesiasticus 29: *He who shows mercy lends to his neighbour; and he who is stronger in hand keeps the commandments. Lend to your neighbour in the time of his need; and pay your neighbour again in due time.* And below: *Many have looked upon a loan as a thing found, and have given trouble to those who helped them.* For *fenus* properly means the gain of money; hence *fenerator* is understood both for the one who lends for gain and for the one who borrows; hence we have *fenero, -as* and *feneror, -aris,* as Papias says. But he who lends freely will gain more than he who lends at interest; for this one, for temporal gain, loses eternal goods, while the other, for his piety, obtains glory, according to Proverbs 19: *He who has mercy on the poor lends to the Lord, and he will repay him.* And so the prophetic detestation is plain.

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That it is against evangelical law [is plain], because, as was said, the Lord in the Gospel forbids not only gain but the hope of gain for money lent (Luke 6): *Lend, hoping for nothing thereby.* For after he had said above, *Woe to you who are rich, for you have your consolation. Woe to you who are filled, for you shall hunger. Woe to you who now laugh, for you shall mourn and weep,* a little after he added: *And if you lend to those of whom you hope to receive, what thanks are to you? For sinners also lend to sinners, to receive as much. But love your enemies, do good, and lend, hoping for nothing thereby; and your reward shall be great, and you shall be the sons of the Highest.* To the same, Matthew 10: *Freely you have received, freely give,* as we said

above. The Lord Jesus also showed sufficiently that he detests avarice (Luke 12), where he gives the example of the rich man who sought to enlarge his barns and multiply his riches, to whom the Lord said: *Fool, this night do they require your soul of you; and whose shall those things be which you have provided? So is he who lays up treasure for himself and is not rich towards God.* And in Luke 16 he tells the parable of the steward accused to his lord of wasting his goods, and adds: *And I say to you, make unto you friends of the mammon of iniquity.* And below he gives the example of the man who was clothed in purple and fine linen and feasted sumptuously every day, and adds: *And the rich man also died, and he was buried in hell.* And in the same place he says: *No servant can serve two masters … you cannot serve God and mammon. Now the Pharisees, who were covetous, heard all these things, and they derided him.*

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And Matthew 19 says: *It is easier for a camel to pass through the eye of a needle than for a rich man to enter into the kingdom of heaven,* which he said only because of avarice and in detestation of that crime.

Of the fifth detestation, that it is against apostolic law [one manuscript continues: "canonical law, is plain in the Decretum"], it is plain. For the Apostle detests avarice enough in Romans 1, when he says: *And as they liked not to have God in their knowledge, God delivered them up to a reprobate sense, to do those things which are not convenient; being filled with all iniquity, malice, fornication, avarice, wickedness*, etc. And 2 Corinthians 9: *Therefore I thought it necessary to desire the brethren that they would go to you, and prepare this blessing before promised, to be ready, so as a blessing, not as covetousness.* And Ephesians 4: *This then I say and testify in the Lord, that henceforward you walk not as also the gentiles walk in the vanity of their mind, having their understanding darkened, being alienated from the life of God through the ignorance that is in them, because of the blindness of their hearts; who, despairing, have given themselves up to lasciviousness, unto the working of all uncleanness, unto covetousness. But you have not so learned Christ*, etc. And Ephesians 5: *But fornication and all uncleanness or covetousness, let it not so much as be named among you, as becomes saints.* And below: *For know this and understand, that no fornicator, or unclean, or covetous person, which is a serving of idols, has inheritance in the kingdom of Christ and of God*; where it is plain that he calls avarice idolatry, as also in Colossians 3 he says: *Mortify therefore your members

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which are upon the earth: fornication, uncleanness, lust, evil concupiscence, and covetousness, which is the service of idols.* And writing to Timothy (1 Timothy 6): *But godliness with contentment is great gain. For we brought nothing into this world, and certainly we can carry nothing out. But having food, and wherewith to be covered, with these we are content. For they who will become rich fall into temptation and into the snare of the devil, and into many unprofitable and hurtful desires, which drown men into destruction and perdition. For the desire of money is the root of all evils; which some coveting have erred from the faith, and have entangled themselves in many sorrows. But you, O man of God, flee these things.* And in Hebrews 13 he says: *Let your manners be without covetousness, contented with such things as you have*, that is, with necessaries.

Of the sixth detestation of usury, that it is against canon law, it is plain in the Decretum, in the Decretals, in the Sext and in the Clementines. For in the Decretum a great detestation and strict prohibition of usuries is made: Dist. 46 c. *Seditionarios*, where it follows: "We decree that seditious persons are never to be ordained clerics, just as neither usurers nor avengers of their own injuries." And in the following chapter it is said: "It is not lawful for ministers of the altar, or those set in the priestly order, to lend at interest, or to receive usuries or the gains called *sescupla* [one and a half times]." And in the last chapter it is said: "Let none of the clergy attempt to practise usury, neither in his own name nor in another's. For it is unbecoming to devote one's crime to the profit of others. But we ought to look to and practise only this usury: that what we bestow mercifully here

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we may be able to receive from the Lord, who gives back manifold things that will last for ever." And in Dist. 47 c. 1 it is said: "That at the end of this chapter usurers are forbidden to be ordained is because those practising usury are proved to serve covetousness." And throughout the whole distinction a great detestation of usuries is made against clerics ordained or to be ordained. Yet lest anyone perhaps think that only clerics were forbidden to exact usuries, let him rightly understand c. *Quoniam multi* and c. *Omnes huius saeculi dilectores*, where usuries are forbidden in general, not only to clerics but also to laymen and to any of Christ's faithful. For from the fact that, from the Council of Nicaea, in the said c. *Quoniam multi*, divine Scripture is cited, it is plain that it intends to forbid usuries in general. And throughout Dist. 47 such detestation is treated, but it is found more fully and expressly in the Decretum, C. 14 q. 3 c. 1, 2 and 3 and throughout the question, and C. 14 q. 4 c. 1 and throughout to the end. Indeed in c. *Si quis usuras* Ambrose says in the book *On the Good of Death*: "If anyone receives usury, he commits robbery; he shall not live." And in the same cause and question, c. *Quid dicam*, Augustine says to Macedonius: "Is he crueller who takes away or snatches something from a rich man than he who slaughters a poor man with usury?" And so it is plain that he speaks generally.

In the Decretals, usuries are forbidden in general more expressly, in c. 2 *Extra*, *De usuris*, where Alexander III says: "Since it is dangerous not only for churchmen but also for any others to attend to the gains of usuries," etc.

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This Alexander, in the Lateran Council, rising up more vigorously, with an increase of penalties not only as to usurers but also as to clerics who offend regarding the detestation of usuries, decreed "that manifest usurers be admitted neither to the communion of the altar, nor, if they die in this sin, receive Christian burial; and that no one accept their offerings. And whoever has accepted them or given them Christian burial shall be compelled to restore what he accepted, and until he makes satisfaction at the judgement of his bishop shall remain suspended from the execution of his office" (*Extra*, *De usuris*, c. *Quia in omnibus*). And in c. *Praeterea* the same Alexander says: "Moreover, forbid your parishioners to receive usuries; if they scorn to obey, if they are clerics, suspend them from office and benefice; if laymen, bind them with the bond of excommunication until worthy satisfaction." He also decreed that not only the sons of usurers but also heirs who are strangers be thus bound to restore the usuries, as is plain in c. *Tua nos*, *Extra*, *De usuris*. Urban III declares further, in c. *Consuluit* under the same title, namely that the purpose and intention alone make a man a usurer. And therefore Innocent III decreed that in the cases of manifest usurers appeal has no place, as in c. *Quam perniciosum* under the same title.

And not only against Christians but also against Jewish usurers princes and secular powers must diligently exercise their office to have usuries remitted, as in c. *Post miserabilem* under the same title.

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And the same [pope] also decreed that even those who had paid usuries, if they had sworn to the usurers not to reclaim them, notwithstanding such an oath, be compelled by ecclesiastical censure, appeal set aside, [that is, the usurers be compelled] to desist from exacting the payment of usuries or to restore them after they have been paid, lest it happen that they carry off profit from deceit and fraud, as in c. *Tuas dudum* under the same title. And the same decreed that if any usurer has obtained letters for restoring usuries or reckoning fruits into the principal, unless he has first himself restored the usuries he is known to have received from others, he is in no way to be heard on the authority of those letters, as in c. *Quia frustra* under the same title. And the same decreed that against usurers, even if no accuser appears, yet if it is established that they are manifest usurers, one proceeds to the penalties of the aforesaid chapter *Quia in omnibus*. Moreover the same added against Jewish usurers, "that they not extort grave and immoderate usuries from Christians; and if they do,

the society of Christians be withdrawn from them until they have made fitting satisfaction for the immoderate burden. Hence Christians, if need be, shall be compelled by ecclesiastical censure, appeal set aside, to abstain from dealings with them. And princes are enjoined to show themselves favourable to Christians against the Jews for the restitution of usuries," as in c. *Quanto* under the same title.

In the Sext of the Decretals, Gregory X, in the general Council of Lyons, restrained the depravity of usuries more expressly, with an increase of penalties, decreeing

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"that no college, nor any community, nor any single person of whatever dignity, condition or state, permit foreigners and others not native to their land, who publicly practise or wish to practise money-lending at interest, to rent houses for this purpose in their lands, or to have rented ones, or otherwise to dwell there; but that they expel all such manifest usurers from their lands within three months, never to admit any such hereafter. Let no one let houses to them for practising usury, or grant them under any other title whatever. Those who act contrary, if they are ecclesiastical persons — patriarchs, archbishops, bishops — shall know that they incur by the deed itself the sentence of suspension; lesser single persons, of excommunication; and a college or other community, of interdict. If they endure this for a month with hardened mind, their lands, as long as those usurers remain in them, shall from then on lie under ecclesiastical interdict. Further, if they are laymen, let them be restrained from such excess by their ordinaries by ecclesiastical censure, all privilege ceasing." This is plain in c. 1 *De usuris* in the Sext, where it is also commanded that the constitution of the Lateran Council issued against usurers be inviolably observed under threat of the divine curse. And according to the gloss, the aforesaid constitution is contained in c. *Quia in omnibus, Extra, De usuris*, and we have said above what is contained there. And note that although the aforesaid first chapter speaks of foreigners and is not extended to natives, yet if natives commit the crime of usuries they must be punished with the other penalties established against usurers;

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and secondly, as the gloss says, granted that these foreigners were citizens or residents, the constitution of the aforesaid c. 1 *De usuris* in the Sext applies. And the gloss says there: "Perhaps the repetition of the words 'and others not native' meant that we should call them foreigners even if they are citizens or residents, and also others who are not citizens or residents." One is said to be native (*oriundus*) of a city who was born there or in a village of that city (Dig. *Ad municipalem*, l. *Si ex vico*); and so also if his father drew his origin from there (C., same title, l. *Assumptio*, § *Titius*; C. *De municipibus et originariis*, l. *Filios*, book 10). For *indigena* properly, according to the etymology of the word, is said as it were "begotten thence", and *alienigena* as it were "begotten elsewhere", as we say of *accola* and *incola*: "The *accola* tills not his own land, but the *incola* tills his own."

Moreover the same Gregory X, in the same Council of Lyons, decreed "that although manifest usurers have ordered in their last will that satisfaction be made for the usuries they received, whether with the amount expressed or indistinctly, ecclesiastical burial is nonetheless to be denied them until full satisfaction has been made for those usuries, as far as their means allow, or until fitting security has been given for making the restitution — to those to whom restitution is to be made, if they or others who can acquire for them are at hand or present; or, if they are absent, to the ordinary of the place, or his vicar, or the rector of the parish in which the testator lives, in the presence of some trustworthy persons of that parish; which ordinary, vicar and rector may by authority of the present constitution receive such security in their name in the aforesaid way, so that an action is acquired for them just as if security had been fittingly given to a public servant, by mandate of that

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ordinary, for making restitution. Further, if the amount of the usuries received is manifest, we will that it always be expressed in the aforesaid security; otherwise the amount is to be determined at the discretion of the one receiving the security; yet he shall not knowingly set it lower than is likely believed, and if he does otherwise he shall be bound to restore the remainder. All religious and others who dare to admit manifest usurers to ecclesiastical burial contrary to the form of the present sanction we decree to be subject to the penalty promulgated in the Lateran Council against usurers. Let no one be present at the wills of manifest usurers, or admit them to confession, or absolve them, unless they have made satisfaction for usuries or given fitting security, according to their means, for making satisfaction, as aforesaid. Wills of manifest usurers made otherwise shall not be valid but shall be void by the law itself." These are found word for word in c. *Quamquam*, *De usuris*, in the Sext.

Here know that those are called manifest usurers about whom it is notorious: first, because they have confessed or been condemned; or, in fact, those who have evidence of the deed which can be concealed by no evasion, as because one keeps his table [the text reads *altare*, "altar", i.e. a money-lender's counter] ready; or in a third way, because they have been judicially convicted; or in a fourth way, because they publicly confess themselves usurers before a priest. With this agrees master Angelus in the disputation which begins *Astensis miles*, near the beginning; and for the first he cites Dig. *De actione empti et venditi*, l. *Emptorem*; for the second, Dig. *De ritu nuptiarum*, l. *Palam*, at the beginning, and § *Quae in adulterio*;

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for the third there is also the gloss on c. *Cum in dioecesi*, *Extra*, *De usuris*, and on c. *Cum tu* under the same title. And from what the gloss of Johannes Andreae says on the said c. 1 *De usuris* in the Sext, that the bishop may publish [it], master Angelus infers that, since the priest and the notary are of equal power as to receiving confession or security from usurers, the one confessing is not made a manifest usurer except after publication made by the bishop. Therefore the same master Angelus says that if the confession had been made before an incompetent judge, although it is as it were extrajudicial, it still produces many effects: namely, it is sufficient for torture, as in l. *Ictus fustium*, Dig. *De infamibus*, with its gloss; also for thrusting the one who confessed into prison, as in l. *Capite quinto*, Dig. *De adulteriis*; also for compelling the one confessing to confess the same thing before a competent judge, according to Innocent on c. *Per inquisitionem*, *Extra*, *De electione*; also for deposing a cleric who confesses from a benefice already obtained and for barring him from obtaining one, according to Innocent and Johannes Andreae on the said c. *Per inquisitionem*, at the word *ecclesiasticis*. When public repute concurs, then, he can be said to be convicted by arguments. Hence he can then be published, and from then on he will be a manifest usurer — and even before publication, if he has ordered the usuries restored and handed over to the notary the state of his accounts. Bartolus added a fifth way, namely when in his chamber he lends at usury indiscriminately to anyone who asks, even though he has set up no table for lending, as in the said l. *Palam* and in l. 3, Dig.

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De furtis. Hence proof of this kind suffices, without other publication to be made by the bishop, which pleases well enough, says master Angelus. The bishop may publish if they have been convicted or have confessed before him, or if proof is made against them by witnesses, or if there are certain arguments, as the gloss says on the said c. 1 *De usuris* in the Sext, for which it cites c. *Cum tu* and c. *Cum in dioecesi, Extra, De usuris*. And the gloss on the said c. *Quamquam* says that one could well enough be called manifest if before a priest and witnesses he publicly confesses himself a usurer and orders the usuries restored, perhaps handing over his account books, according to Guilielmus.

In the Clementines, Clement V, in the Council of Vienne, adds to the greater detestation of usuries, saying: "It has come to us by grave report that some communities of places, to the offence of God and neighbour and against divine and human law alike, approving in a manner the depravity of usury, by statutes sometimes

confirmed by oath not only allow usuries to be exacted and paid, but knowingly compel debtors to pay them; and, according to the content of those statutes, imposing grave burdens on those reclaiming usuries, and using various pretexts and studied frauds in this matter, they hinder their recovery. We therefore, wishing to oppose these pernicious attempts, with the approval of the sacred council decree that whatever powers, captains, rectors, consuls, judges, counsellors or any other officials of those communities presume henceforth to make, write or dictate such statutes, or knowingly to judge that usuries be paid, or that when paid and reclaimed they be not fully and freely

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restored, incur the sentence of excommunication. They shall incur the same sentence unless within three months they delete such statutes hitherto issued from the books of those communities, if they have power over this; or if they presume in any way to observe those statutes or customs having their effect. Further, since lenders mostly enter into usurious contracts secretly and deceitfully, so that they can scarcely be convicted of the depravity of usury, we decree that they be compelled by ecclesiastical censure to produce the books of their accounts when proceedings are taken regarding usuries. Indeed, if anyone falls into that error of presuming pertinaciously to affirm that to practise usuries is not a sin, we decree that he is to be punished as a heretic, strictly enjoining nonetheless on the ordinaries of places and the inquisitors of heretical depravity that they not omit to proceed against those whom they find defamed or suspected of such error, as against those defamed or suspected of heresy." All of which are found in c. *Ex gravi*, *De usuris*, in the Clementines.

That it is against political law is plain. For although the civil laws permit moderate usuries, as is plain in Dig. and C. *De usuris* throughout, yet by the law of the *Authentica*, in the fifth constitution of the fourth collation, in the *Authentica Ut nullus creditor agricolae*, whence the *Authentica Ad haec*, C. *De usuris*, is taken, where it follows: "To these [we add that] he who lends dry fruits or money to farmers, [and] each year receives for a measure an eighth part of a measure, for a solidus one siliqua, under the name of usuries, [shall lose] the land

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or anything else received as a pledge must restore it entirely. If anything is done beyond this, he shall in every way fall from his action." Here usuries seem in some way forbidden as regards farmers. Yet in the same place Accursius of Florence, the ordinary glossator, in the gloss on the word *cadat* ("shall fall"), says: "But by the new law, according to Azo, and [it is] my [opinion], usuries or accessions are taken away not only for country people and to be reduced, but entirely, as in the *Authentica De ecclesiasticis titulis*, § 1, where it says: The rules of the holy four councils are to be kept. For usuries were forbidden in the Council of Nicaea (Dist. 47 c. *Quoniam*). Again, if no law said so, they would still not be valid, since they are against the law of God, and an inferior cannot take away the law of a superior (Dig. *Ad Trebellianum*, l. *Ille a quo*, § *Intempestivum*; Dig. *De arbitris*, l. *Nam et magistratus*). Again, Christ said to Paul: It is hard for you to kick against the goad (Acts 9). Again, it is against nature that a servant should take away the law of his lord, as above, *De pactis*, l. *Servus*. To this also Dig. *De pactis*, l. *Si debitor*; Dig. *De regulis iuris*, l. *Melior*; Dig. *De acquirendo rerum dominio*, l. *Etiam invitis*; Dig. *De verborum obligationibus*, l. *Servus vetante*; Dig. *Depositi*, l. *Servus tuus*; Dig. *De legatis* I, l. *Si servus legatus*, § 1; Dig. *De iureiurando*, l. *Si servus*, and l. *Quanto magis*, with similar texts. Therefore neither a stipulation, nor a pledge, nor an oath to pay these holds, as above, *De legibus et constitutionibus*, l. *Non dubium*. For this understanding it also helps that the said *Authentica* is called and entitled *De ecclesiasticis titulis* and is among his last [laws]. Hence now

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he seems as it were to have repented of what he had permitted. For later laws derogate from earlier ones (Dig. *De iure codicillorum*, l. *Divus*, § *Licet*; Dig. *De legatis* I, l. *Si mihi et tibi*, last §). Nor does the *Authentica De usura nautica*, which comes after that *De ecclesiasticis titulis* and permits usuries, stand

against this opinion, because it is special in maritime matters, in which even by the old law many things are special, because of the danger to which the creditor is subject, and because they are owed without agreement and without stipulation (Dig. *De nautico fenore*, l. *Periculi*, and below, same title, l. *Eos*, § 1)." All this in order is from the gloss of Accursius.

Here the most famous doctor, master Baldus of Perugia, in the first question on that *Authentica Ad haec*, C. *De usuris*, says: "I ask whether usuries, which today are forbidden by divine law, are forbidden absolutely, or whether according to the tenor of this *Authentica* they are permitted in moderation. Say that this *Authentica* is corrected by divine law; indeed, more truly, the provision of this *Authentica* never had force, because of divine law. For since divine law is a greater law, it cannot be taken away by human law, because whatever is against a divine ordinance is sin. Again, because the emperor is the servant of God, and a servant cannot take away the law of his lord. And even if the emperor wished to permit it, still he cannot. Hence the evangelical law without doubt takes away the law of Caesar, because laws must imitate the sacred rules, as in the *Authentica Ut clerici apud proprios episcopos*, etc., at the end of the sixth collation, where it says: Our laws do not disdain to follow the divine and sacred rules.

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Hence divine authorities are cited in cases as written laws in the body of law, as is noted in the *Authentica Ut iudices sine quoquo suffragio*, § *Cogitatio*, at the words *sacrorum eloquiorum*. And Innocent holds this on c. *Quia plerique*, at the end, *Extra*, *De immunitate ecclesiarum*." The aforesaid master Baldus also argues against and condemns the opinion of Nicholas de Matarellis, who said that divine law could be qualified by human law, and so meant that usuries were in some way to be allowed by the said *Authentica*. "This opinion is false," says master Baldus, "and rejected by all the canonists, because what is forbidden by divine institution and divine judgement cannot be permitted by human reason. And the cause is that such reason is not reason but abuse, since it does not conform itself to the divine will; and therefore we ought not to seek another reason, since it so pleased God. Wherefore even in the least point the laws or statutes that permit usuries are not lawful, as in c. *Ex gravi*, *De usuris*, in the Clementines. Indeed, such statutes are to be deleted from the books of the communities, and those who judge according to them are excommunicated, as is plain there. And to hold the contrary savours of heresy.

But what if a statute is made that no one receive as usury more than two pennies per pound a month — are those who decree it excommunicated? It seems so, since by denying the greater they seem to grant the two pennies. The contrary is true, because in this case an argument is not taken from the contrary sense, since it would be against the law, as

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Innocent says. This supports Dig. *De condicionibus institutionum*, l. *Cum pater*. Hence a negative statute does not include the contrary sense in a penal act; which is plain, because interpretation must be consonant with the law, as is noted in Dig. *De regulis iuris*, l. *Quotiens idem sermo*, and Dig. *De condicionibus et demonstrationibus*, l. *In his*. In these things this is true of lucrative usuries.

But what of punitive usury, which arises from delay? Peter and Nicholas de Matarellis say that it is permitted even by divine law that delay be punished. The gloss says that they come as interest (*interesse*), as above. For interest is lawful, by whatever name it is called, both in loss and in gain, as is noted here by Cinus in the … question, and above, *De summa Trinitate*, l. 1, and say as I said there; and above, same title, l. 2 and l. *Cum allegas*. Say that if in an instrument payment is promised by a certain time, and if it is not made, a hundred are promised under the name of agreed interest — and it does not say in the instrument 'under the name of penalty' — then if interest is not otherwise proved, the hundred cannot be claimed; because we ought not to make a difference in the name (Dig. *De servis exportandis*, l. *Servus ea*). For it does not matter how it is called, but how the truth stands. To this the gloss on the said l. *Cum allegas* applies, and Dig. *De verborum*

obligationibus, l. *Cum stipulati sumus*; and because it is not in the power of contracting parties to get round a legal provision by changing the name, especially since this statute was made in favour of public utility, namely that no penalty can be claimed unless interest is proved; and so it cannot be renounced. For

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it was made so that the commonwealth may have subjects, which is expedient for the commonwealth, as in the *Authentica Ut iudices sine quoquo suffragio*, § 1; otherwise fraud would easily be committed by a mere word, which is absurd (by argument from Dig. *De probationibus*, l. *Qui testamentum*). And so Odofredus advised in the city of Lucca, as Cinus reports on the said l. *Servus*, in the additions." On the said l. 2 the same master Baldus says: "In the first objection it is objected: usuries are forbidden by divine law; therefore they cannot be claimed in any court, because divine law has its force in every court, as I said above on the rubric, and by argument from Dig. *De sepulchro violato*, l. 3, § *Divinus*, in its reasoning.

Solution. Some usuries are punitive, some compensatory, some lucrative. The first are permitted by divine law, such as those which come from contumacy, with the interest of the claimant joined to them; because as to the claimant they are not usuries but principal, as in *Extra*, *De fideiussoribus*, c. 2 [the text reads "l."]. And Innocent notes there that if you are bound to pay me on a certain day, and because you did not pay I borrowed from another at usury for some advantage of mine or need of my household, you are bound to restore these usuries to me — which is notable. And this is true if you are bound to me from a contract of good faith; otherwise if of strict law, as in l. 1, above, *De condictione indebiti*. The second usuries are likewise permitted up to a fitting and honest measure, as the custom of the region demands, because they are received rather by way of a certain compensation than in place of a penalty, as in *Extra*, same title, c. *Salubriter*, and here, and below, *De actionibus

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empti*, l. *Curator*. For usuries of this kind are onerous, not gratuitous, and are founded in natural equity, which is that no one be enriched at another's loss (Dig. *De institoria actione*, l. *Si quis mancipiis*, § *Prodesse*, and l. *Nam hoc natura*, Dig. *De condictione indebiti*). But the third usuries are forbidden by divine law and cannot be granted by human law, because from whom power is removed, from him the ordinance is removed." Thus Baldus. He also says, on the rubric C. *De usuris*, that although usuries are in a certain way allowed by Roman law (Dig. and C. *De usuris* throughout), yet divine law prevails in both courts, "because the first cause is more powerful than every second cause, and especially because the first cause is of infinite power, as is God himself, as is noted below on the same *Authentica Ad haec*", and he adds, as below:

"But it is asked here: Why does divine law forbid usuries? For it seems that such a divine law is unjust, because when a creditor lends money freely, the debtor is bound to him for a return favour (Dig. *De petitione hereditatis*, l. *Sed et si*, § *Consuluit*; *Extra*, *De testamentis*, c. *Cum in officiis*). Why, then, can the creditor not bring this natural obligation into an express agreement? For I see that even in spiritual things an agreement can be added (*Extra*, *De praebendis*, c. *Significatum*; *Extra*, *De electione*, c. *Significasti*). Again, it is lawful to remunerate [the text reads *renunciare*; one manuscript *renumerare*] (Dig. *De donationibus*, l. *Aquilius Regulus* and l. *Si pater*). To this Innocent answers that usuries are forbidden lest men, devoted to avarice, abandon virtuous and industrious acts, and lest the cultivation of fields also be abandoned (*Extra*, same title, c. 1, according to Innocent).

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But elsewhere he says that they are forbidden because time is sold, which is not the seller's but common to all living things, as he himself notes in *Extra*, same title, c. *In civitate*. But this does not answer why remuneration is not permitted. It must be said, therefore, that the obligation of usuries is forbidden because either we say that it is contracted by the thing [*re*] — and that is false (Dig. *Si certum petatur*, l. *Rogasti*, § *Si*

tibi) — or we say that it is contracted by words and consent, and that is unjust, because every relative obligation requires an equivalent counterpart, or nearly so. But the obligation of usuries has no equivalent counterpart, which I prove thus. The debtor who promises usuries has the ownership of the use, because usury exists only in things lendable, in which the use of the thing is not distinguished from the ownership of the thing lent; therefore he pays usury to one who has no right in the ownership of the thing, and so unduly. And if it were said that he does not pay it for himself but for the favour, it is answered that the remuneration of this favour is not fixed by natural law nor by any reason of the intellect; wherefore to bring will and necessity and an unformed obligation into a formal obligation is not according to the measure of natural justice, nor is it from a debt of justice, although it is from a debt of friendship, from which necessity is not induced but spontaneous will, according to Saint Thomas. To this also *Extra*, same title, c. *Consuluit* applies, where the text says that all usury and excess is forbidden. Hence it is not only against charity, which is a

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theological virtue, but also against temperance, which is a moral virtue. And therefore also in Aristotle usuries are said to be a gain naturally forbidden." Thus Baldus speaks in the aforesaid places.

But going beyond the aforesaid doctors and extending the treatment further, it can be concluded that usury as usury can be tolerated by no law. For, as we said above, it is against nature, against use, against the contract, against ownership, against time, against labour and against risk. For against natural law no law is valid, nor ordinance or statute, nor custom, nor prescription (Dist. 8 c. *Quae contra mores*; C. 32 q. 7 c. *Flagitia*; Dist. 6 § *His ita respondetur*). And so from the foregoing seven arguments can be formed. Hence also by civil law the emperor says: "It is of undoubted law that agreements which are against the laws and constitutions or against good morals have no force" (C. *De pactis*, l. *Pacta quae contra bonos mores*).

Moreover, beyond the foregoing it can be argued in many ways that civil laws permitting usuries as usuries are not to be tolerated. First thus: a human law against the law of God is not to be tolerated, because an equal has no authority over an equal (Dig. *De arbitris*, l. *Nam et magistratus*; *Extra, De electione*, c. *Innotuit*, with similar texts); much less the lesser over the greater, by the argument *a fortiori* from the second book of the *Topics*. But the emperor is incomparably less than God; therefore he never could or can make a law against God or

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against the law of God. And it is plain enough from the foregoing that usuries are forbidden by the law of God; therefore, etc.

The second argument is from the submission of the emperor to the pope. Thus the most Christian emperor Justinian submits himself to the apostolic see, as is plain in the letter *Inter claras*, C. *De summa Trinitate*, in which is incorporated the letter of Pope John together with the letter of Justinian which begins *Victor*, in which Justinian says: "Rendering honour to the apostolic see and to your holiness, which always was and is our wish, honouring your beatitude as is fitting for a father, we hasten to bring to the knowledge of your holiness all things that pertain to the state of the churches, since it was always our great concern to guard the unity of your apostolic see and the state of the holy churches of God." And below: "For in all things, as has been said, we are preparing that the honour and authority of your see may increase." These are written in C. *De summa Trinitate*, the last chapter. Therefore imperial laws, as regards the things that pertain necessarily to salvation, must be subject to the laws of the supreme pontiffs, as is also plain in the *Authentica Ut clerici apud proprios episcopos*, collation 6. And Pope Lucius III says (*Extra, De iudiciis*, c. *Clerici*): "since the emperor says that the laws do not disdain to imitate the sacred canons." It is also plain from *De iuramento calumniae*, c. 1, and *De novi operis nuntiatione*, c. *Intelleximus*, with similar texts. But by the laws of the supreme pontiffs, agreeing with divine law, usuries are forbidden in general, as we said above; therefore, etc.

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Third, it is proved by the acceptance of the four holy councils made by the emperor. And the proof is: the emperor Justinian, in the aforesaid letter *Victor*, § *Suscipimus*, says: "We accept the four holy councils: of the three hundred and eighteen holy fathers who gathered at Nicaea; and of the hundred and fifty holy fathers who assembled in this royal city", namely Constantinople; "and of the holy fathers who first gathered at Ephesus; and of the holy fathers who assembled at Chalcedon, as your apostolic see teaches and preaches." Since, then, the emperor is bound to embrace the aforesaid four councils, and in the Council of Nicaea usuries were forbidden, as is plain in Dist. 47 c. *Quoniam*, therefore, etc. For we must venerate the aforesaid four councils like the four Gospels, as in c. *Post translationem*, *Extra*, *De renuntiatione*. Moved by this cause, the same Justinian decreed that whoever do not believe or hold what was decreed in the aforesaid four councils be punished as heretics, as in l. *Quicumque*, C. *De haereticis*.

Fourth, it is proved because usury falls under robbery, which is altogether forbidden. And the proof is: usury falls under robbery (C. 14 q. 4): "If anyone receives usury, he commits robbery; he shall not live." But robbery is condemned by the imperial laws, as is plain in Dig. and C. *De furtis* throughout, Dig. *De poenis*, l. *Capitalium*, § *Famosos* and § *Grassatores*, and Dig. and C. *Vi bonorum raptorum* throughout. Therefore likewise usuries as usuries must be

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condemned. And it is plain from the definition, because usury is the same as a use seized or rapacious; therefore, etc.

Fifth, it is proved from the fact that the imperial laws are called most sacred. And the proof is: the emperor says that his laws are most sacred (C. *De legibus*, l. *Sacratissimae*). But laws contrary to the law of God and of the Church cannot be most sacred, but sacrilegious; and laws permitting usuries are in fact contrary to the law of God and of the Church; therefore they are to be rejected as sacrilegious. Here it must be observed, according to Johannes de Lignano on the last chapter, *Extra*, *De usuris*, that sometimes a thing is permitted in that one who acts against it is not punished, as in Dist. 4 c. *Denique*. Sometimes it is permitted in that an impediment is removed, as when Jews live together with Christians, as in c. *Etsi Iudaeos*, *Extra*, *De Iudaeis*. Sometimes it is permitted positively, as when the law permits lawful contracts. Of this threefold permission it is found in Dist. 3, at the beginning. And therefore some say that civil law permits usuries in the first way, namely without punishment, since it does not punish those who act against it, but does not permit them positively and dispositively. But this opinion is not true. For by the ancient law a form and action are given for usuries (Dig. and C. *De usuris* throughout), but canon law forbids them entirely; therefore, etc. "But what disagreement could there be in these? Say that civil law weighs the state of happiness and of human society. For seeing that some need money and are helped by usuries, it was therefore permitted for greater convenience. Canon law also weighs the same, but

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tending to supernal happiness, it forbids, because the usurer sins against the charity of God and against the law of God. But is there a radical disagreement between these laws? Say not, because the same equity remains, though tending to different ends. Yet it is safer to hold that civil law forbids usuries entirely, and that the *Authentica* is understood generally; and by holding thus, a greater perfection of that law is argued. Otherwise I do not conceive that it directs perfectly to the way to which it tends; for it is impossible for someone to have one moral virtue perfectly unless he has all. For through avarice the act of fortitude will be diminished, and so of each one. The usurer, then, sins against commutative justice; wherefore he will not be directed perfectly nor directly to the intended end. Again, the usurious contract is repugnant to charity, which is incompatible with mortal sin; and so happiness cannot coexist with mortal sin. It is safer, therefore, to hold that it forbids entirely; otherwise I do not conceive that legal science, by permitting a mortal vice, can direct

to the state of true practical human happiness, to which it tends." Thus Johannes de Lignano.

Sixth, it is proved by the emperor's promise of obedience to the pope. And the proof is: the emperor promises and swears to obey the pope (Dist. 63 c. *Tibi domino*), where the form of the oath to be taken by the emperor to the supreme pontiff is described. But the pope detests usuries and forbids them in general, as is plain from the aforesaid laws. Therefore, as the emperor is subject to the pope, so also imperial law must be subject to pontifical law.

Seventh, it is proved

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by the subjection of the whole world to Peter and his successors. And the proof is: in his own affair everyone is governor and arbiter, as in l. *In re mandata*, C. *Mandati*, and in c. *Abolendae, Extra, De sepulturis*, in the first gloss. But all things that are in the world and everywhere are almighty God's (Psalm 23): *The earth is the Lord's and the fullness thereof; the world and all who dwell therein*; and Psalm 88: *Yours are the heavens, and yours is the earth; the world and the fullness thereof you have founded; the sea* [the text reads "water and sea"], etc. And Christ is God, because the Father and the Son and the Holy Spirit are one God (Deuteronomy 6): *Hear, O Israel, the Lord our God is one God.* Ephesians 4: *One God and Father of all.* Therefore all things are Christ's, as true God, through whom all things were made (John 1). And Christ, in his own possession, that is, in the whole world, made Peter prince, and consequently, in his name, all his successors who enter canonically; and to Peter and his successors he subjected all kings and princes. This master Johannes Andreae follows out quite solemnly on *Extra, Qui filii sint legitimi*, c. *Per venerabilem*, § *Cum enim Petrus*, verse *Paulus etiam, ut plenitudinem potestatis exponeret*, saying: "From these it is plain enough by the force of the expression that the pope is above and presides over all; therefore also over the emperor and kings and princes and any others whatever." And master Johannes Andreae follows there, saying: "Hostiensis, although he admits that in this he is helping the sun with torches, because fullness needs no addition (C. 6 q. 1 c. *Si omnia*), proves this superiority and fullness by nine reasons." Beyond these, however, we have added many

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in the treatise *On the Power of the Pope*, where by twenty very strong arguments I proved that the pope is above the emperor and any kings whatever. [Capistrano's own treatise on papal authority.] Therefore in all things pertaining to the necessity of salvation imperial and royal law must be subject to the law of the Church. That Christ had subjected all things to Peter and his successors is plain from what he said to Peter: *Whatsoever you shall bind upon earth shall be bound also in heaven; and whatsoever you shall loose upon earth shall be loosed also in heaven* (Matthew 16). This he afterwards confirmed to him after his resurrection, saying: *Feed my sheep* (John 21 [the text reads 20]). This is also hinted in the two swords, when the apostles said: *Behold, here are two swords*; and he said: *It is enough* (Luke 22). From these words it is argued that the rights of both empires were committed to Peter (Dist. 22 c. 1, where: "Who committed to blessed Peter, keybearer of eternal life, the rights of the earthly and the heavenly empire at once"); therefore, etc. To this also what is found in C. 15 q. 6 c. *Alius*, c. *Nos sanctorum* and c. *Iuratos*, and C. 1 q. 4 c. *Quia praesulatus*, where it follows: "because the office of our presidency, as you well know, ought to be solicitous not only for the interests of priests but also of seculars"; therefore, etc.

Eighth, it is proved by the fullness of power conferred on Peter and his successors. And the proof is: the pope is the highest among all, having the fullness of power; others, a share of the solicitude (C. 2 q. 6 c. *Decreto nostro*, about the middle, where: "… was commanded by the authority of the same church, which so imparted its functions to other

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churches that they were called into a share of the solicitude, not into the fullness of power"). And similar words are set in the following chapter, which begins *Qui se scit*, etc. For to Peter alone was it said, *Launch out into the deep* (Luke 5), to designate the height of power; and to him alone the Lord said that he should fish with a hook (Matthew 17), by which pre-eminent jurisdiction is designated (C. 24 q. 1 c. *Non turbatur* and c. *Est aliud genus piscandi apostolicum*). To which also Dist. 21 c. *Quamvis*, where: "The holy Roman Church obtained the primacy by the evangelical voice of our Lord and Saviour." And below: "In all these, the higher the rank, the greater the authority found; in the greater there is the power of ruling and commanding, in the lesser the necessity of obeying." But it is most expressly plain that the pope is greater than the emperor; therefore the law of the pope too, as above, must take precedence over imperial law. For the spiritual bond is worthier than the carnal, as in c. *Inter corporalia*, *Extra*, *De translatione praelatorum*. Since, then, the law of the pope treats more safely of the spiritual bond for the salvation of the soul, forbidding usuries in conformity with divine law, therefore imperial law too, regarding the foregoing, must be subject to apostolic law.

Ninth, it is proved by the anointing and crowning of the emperor conferred on him by the pope. And the proof is: the emperor receives approval, confirmation, consecration and coronation from the pope, as in the single chapter *De iureiurando* in the Clementines, where it is described thus: "The Roman

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princes, professors of the orthodox faith, venerating with fervour of faith and readiness of clear devotion the holy Roman Church, whose head is Christ our Redeemer, and the Roman pontiff, vicar of the same Redeemer, have not thought it unworthy to bow their heads to the same Roman pontiff, from whom they receive the approval of the person to be raised to the summit of imperial eminence, as well as the anointing, consecration and the crown of the empire, and to bind themselves by the bond of an oath to him and to the same Church, which transferred the empire from the Greeks to the Germans." The whole is from the text. Therefore likewise imperial law too, as we said above, must be subject to the law of the Church. Azo also holds this at length on the said *Authentica Ad haec*, C. *De usuris*. For it would be against nature for a servant to abolish his lord's law; to which Dig. *Ad Trebellianum*, l. *Ille a quo*, § *Tempestivum*, applies; and it was said to Paul by the Lord: *It is hard for you to kick against the goad* (Acts 9).

Tenth, it is proved because the pope can revoke the emperor's sentence. And the proof is: the pope can revoke the sentence of the emperor, but not conversely, as in the aforesaid c. 1 *De iureiurando* in the Clementines, last §, where Clement V declares that the oath of fealty is to be taken by emperors to the supreme pontiff, notwithstanding any contradiction or law of preceding emperors. Indeed, what is more, the pope can depose the emperor even for any mortal sin, if he is incorrigible, as the singular gloss says on Dist. 40 c. *Si papa*, on the word *a fide devius*, which begins "Which Huguccio understands", at

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the end of the gloss. It is plain expressly by the example of Innocent [IV], who with the approval of the holy council condemned and deposed the emperor Frederick [II] — whom Gregory IX also deposed — and Boniface VIII, as is fully found in c. *Ad apostolicae*, § *Nos itaque*, *De sententia et re iudicata*, in the Sext. Much more, then, must imperial law, in matters pertaining to salvation, as we said, be subject to the law of the Church. And the law of the supreme pontiffs forbids usuries, as was fully plain above; therefore imperial law too ought not to allow usuries in the time of Christians. The gloss of Johannes Andreae also holds this on c. *Ex gravi*, *De usuris*, in the Clementines, on the words "against divine and human law alike", and it cites C. *De usuris*, *Authentica Ad haec*, and the *Authentica De ecclesiasticis titulis*, at the beginning, collation 9. Paulus de Liazariis also holds the same on the said c. *Ex gravi*, and commonly all the doctors of both laws hold the same, because natural law entirely forbids the exaction of usuries, and because an inferior cannot impose a law on a superior nor take away the law of a superior (Dist. 21 c. *Inferior*); but the emperor is

inferior to the pope; therefore, etc. To this the chapter *Cum contingat* and c. *Debitores*, *Extra*, *De iureiurando*, apply, and it is noted on the rule *Peccatum*, *De regulis iuris*, in the Sext, to which Johannes de Lignano refers. And this opinion, as the safer, is to be approved by all; it is confirmed also by all the reasons adduced why usuries are forbidden: first, because many would be impoverished; second, because famines would be brought on; third, because idolatries would be brought on; fourth,

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because charity to neighbour would be destroyed; fifth, because the loan becomes his to whom it is lent, since ownership is transferred to him; sixth, because money does not breed money. Guilielmus gives verses in which the said reasons are comprised: "Poverty, famine, idolatry, love of brethren; also, the thing made another's forbids usury; of the thing or the use", etc. And Gesselinus [one manuscript: *Geselinus*] agrees; and we have said enough of the foregoing above. And so let this be the end of the first part of this treatise on usuries. To which also what is set out immediately below, at the beginning of the second principal part of this work, contributes much to the explanation, etc. [One manuscript here adds the table of contents of the first part: "Here begin the chapters", etc.; cf. p. 32.]

The second treatise begins

As to the second principal part of this treatise, three things are to be seen: first, the declaration of cases; second, the distinction of kinds; and third, the illustration of similar things.

Is usury lawful in any case? As to the first, it is asked whether usury is lawful in any case. To which it is briefly answered that usury as usury can in no way be lawful, since it is evil in itself and against natural equity and against the law of God and against good morals. Hence no dispensation can fall upon it while it remains under the character of evil and unlawful, as is proved in *Extra*, *De usuris*, c. *Super eo*. Yet some circumstance can take away the character of vice from the excess growing to the principal unlawfully,

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whence, the vice ceasing, it will also cease in the very character and nature of the usurious argument, as will be plain in the cases written below, in these verses: "Fiefs, surety, for a dowry, the stipends of a clergy, a sale of fruits, one you may lawfully harm, one selling under doubt, one paying the price after a time, a penalty, and — not in fraud — the forfeiture clause, freely, a partner, a show: more than the principal is given in these ways." Hostiensis gathered these verses on c. *In civitate*, *Extra*, *De usuris*, and in the *Summa*, title *De usuris*, § *An aliquo casu*, where he asks whether in any case anything may lawfully be exacted beyond the principal, and answers, saying: "You have heard Azo just now hinting that it may not; and it is true in general, because the page of both Testaments detests usury. Hence it cannot be practised even to ransom the soul of a captive (*Extra*, *De usuris*, c. *Quia in omnibus*, c. *Quoniam* and c. *Super eo*). Nor is impiety to be committed under pretext of piety (C. 1 q. 1 c. *Non est putanda*; *Extra*, *De conversione infidelium*; and below, C. 33 q. 5 c. *Si dicat*; C. 14 q. 5 c. 2 and c. *Neque*). And this also holds according to the laws. For when sins are in question, the force of civil law, agreement, custom and oath is silent."

Of custom it is plain, because where the danger of the soul is in question every custom ceases; therefore, etc. (*Extra*, *De consuetudine*, the last chapter), where it is said: "Sins are the graver the longer they hold the unhappy soul bound"; which is also found in c. *Non debet*, *Extra*, *De consanguinitate et affinitate*. That an ordinance [one manuscript: "custom"] likewise ceases is plain in *Extra*, *De praescriptionibus*, c. *Quoniam omne*. That an oath ceases is plain in c. *Quanto*, *De iureiurando*;

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C. 22 q. 4 c. *Inter cetera*; *Extra*, *De ecclesiis aedificandis*, the last chapter. That in such things appeal also ceases is plain in c. *Ad nostram*, c. *Consuluit* and c. *Cum speciali*, § *Porro*, *De appellationibus*. That in such

things every privilege also ceases is plain in C. *Ubi senatores vel clarissimi*, l. 1, at the end; C. *De episcopis et clericis*, l. *Raptores*, about the middle; and C. *De raptu virginum*, the single law. To which also the law *Si quis non dicam rapere*, C. *De episcopis et clericis*, applies. And as to the foregoing — namely where the danger of the soul is in question — it must especially be understood that the laws do not disdain to imitate the sacred canons (*Authentica Ut clerici apud proprios episcopos*, § *Si vero ecclesiasticum*, collation 9; the *Authentica De monachis*, at the end, collation 1; c. *Clerici*, *De iudiciis*; and the last chapter *De secundis nuptiis*). And the emperor says that in all things he wishes to follow the sacred rules, and that the sacred rules must have the force of laws, and that whatever the Catholic and apostolic Church has decreed must be observed as law (*Authentica Quomodo oportet episcopos*, § 1, collation 1). But he who says "all" excludes nothing; indeed, he includes anything whatever (Dig. *De heredibus instituendis*, l. *Hoc articulo*, § *Quisquam*; *Extra*, *De maioritate et obedientia*, c. *Solitae*, § *Nos autem*).

By natural reason these things are easily plain. For creation is threefold, namely spiritual, corporeal and mixed. The spiritual is the angelic nature; the corporeal

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is whatever is bodily; the mixed is human nature, which is common, made up of spirit and body, and so is composed of the first two (*Extra*, *De summa Trinitate et fide catholica*, c. 1, first answer). And this composite is worthier than the others, because the incarnate Word dignified it so much more than the angels as God himself is worthier than the angels. Hence the Apostle says in Hebrews 1 of Christ Jesus: *Who being the brightness of his glory and the figure of his substance, and upholding all things by the word of his power, making purgation of sins, sits on the right hand of the majesty on high; being made so much better than the angels, as he has inherited a more excellent name than they. For to which of the angels has he said at any time: You are my Son, today have I begotten you?* For the law of the Church is over souls, and the soul is more excellent than the body and all goods, as the Philosopher says (*Politics* 5), and it is found in l. *Sancimus*, C. *De sacrosanctis ecclesiis*, at the end; C. 12 q. 1 c. *Praecipuus*; C. 24 q. 3 c. *Si habes*; and *Extra*, *De poenitentiis et remissionibus*, c. *Cum infirmitas*. And spiritual law must be over carnal and corporeal law. Hence the Apostle says (1 Corinthians 2): *But the spiritual man judges all things, and he himself is judged of no man*; which he infers even more expressly of the angels (1 Corinthians 6): *Dare any of you, having a matter against another, go to be judged before the unjust, and not before the saints? Know you not that the saints shall judge this world? And if the world shall be judged by you, are you unworthy

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to judge the smallest matters? Know you not that we shall judge angels? How much more things of this world?* This is also quoted in c. *Per venerabilem*, § 3, *Extra*, *Qui filii sint legitimi*. And to judge belongs to the superior, as in c. *Cum inferior*, *De maioritate et obedientia*; therefore [etc.].

Moreover, when John the Evangelist had seen what had been shown and revealed to him by the angel, he adds: *And after I had heard and seen, I fell down to adore before the feet of the angel who showed me these things. And he said to me: See you do it not; for I am your fellow servant, and of your brethren the prophets, and of those who keep the words of the prophecy of this book. Adore God* (Apocalypse, last chapter). From this blessed Gregory wonders why in the Old Testament angels allowed themselves to be adored, as is plain in Genesis 18, where Abraham adored the angels; and Genesis 19, of Lot going out of Sodom under the guidance of angels; and Genesis 25 [32], of Jacob wrestling with the angel; while in the New Testament the angel did not allow himself to be adored by John, as above. Gregory says this is because the angels saw human nature, assumed by the Word, exalted above the angels, since the Son of God so honoured it with dignity as to unite it to the divinity. For he was and is at once true God and true man. The angels therefore were awestruck at seeing this, and for this reason do not allow themselves to be adored. To which *De haereticis*, c. *Cum Christus*, applies. Since, then, civil law is about bodily things, and canon law is more

about spiritual things, it must prevail in spiritual things. To which c. 1 and c. *Ne imiteris, Extra, De constitutionibus,* and c. 1 *De summa Trinitate* in the Clementines, apply. And this is to be held most firmly,

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for laymen as well as for clerics, since the canons forbid [usury] generally in both, as in c. 1 and 2, c. *Praeterea,* and almost throughout *Extra, De usuris*; *De iureiurando,* c. *Ad nostram*; and *De pignoribus,* c. *Cum contra* and c. *Significante*. And we said enough above when we dealt with the canonical detestation. There are, however, some cases in which it is lawful to exact or receive beyond the principal, which, as we said above, are contained in the aforesaid verses.

The first case: a fief. The first case in which it is lawful to receive something beyond the principal is the case of a fief of the Church received in pledge from its vassal. For then the Church is not bound to reckon the fruits into the principal. The same would also hold if some tyrant had despoiled the Church of its fief and afterwards pledged that fief to the Church itself, as is found in c. 1 *De feudis*. Meanwhile, while the Church receives the fruits, the vassal must be free from rendering service to the Church for the aforesaid fief, as there at the end; and it is gathered from c. *Conquestus, Extra, De usuris*. And although some understand this as special to an ecclesiastical fief, the same is also to be held in a lay one. Hostiensis proves it thus, saying: "Either this is lawful or unlawful. If lawful, then also for a layman, because the reason is the same, therefore also the same law (*De constitutionibus,* c. *Translato*; C. *De liberis praeteritis,* l. 1; *Extra, De consanguinitate et affinitate,* c. *Tua nos*). If unlawful, it ought much less to be granted to a cleric than to a layman; because although usury is to be execrated with regard to laymen,

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with regard to clerics it is more execrable, as in c. 1 and 2 *Extra, De usuris*. For many things are lawful for laymen which are unlawful for clerics (Dist. 88 c. *Fornicari*; *Extra, De testamentis,* c. *Filius*; and c. 1 and throughout *Ne clerici vel monachi saecularibus negotiis se immisceant*; and *De vita et honestate clericorum,* the last chapter). Much more strongly, then, I say this has place in a secular fief (by argument from c. *Per tuas, Extra, De donationibus*), because churchmen ought not to be exactors (*Extra, De censibus,* c. *Ex parte,* towards the end). For if venality is blamed with regard to laymen, much more strongly with regard to clerics (C. 1 q. 1 c. *Nullus itaque*). And in both that natural reason can be assigned: that the vassal is not the owner, although he has the useful action; or, according to others, he is not greater than the lord, at least directly, but only usefully. Hence the vassal is presumed to wish to give the fruits, because he is naturally obliged to a return favour (by argument from *Extra, De testamentis,* c. *Cum in officiis,* and Dig. *De petitione hereditatis,* l. *Sed et si,* § *Consuluit*). And there is an excellent argument in the *Authentica De non eligendo secundo nubentes,* § 1, not only at the end, collation 1, where: 'But here something foreign is present', etc. And because a thing easily returns to that which law and nature granted it from the beginning (Dig. *De pactis,* l. *Si unus,* § *Pacta,* and the following §; *Extra, De officio delegati,* c. *Super quaestionum,* § *Porro*; and *De censibus,* c. *Cum venerabilis,* where 'nor is it understood', etc.). Nor does it stand in the way if you say that a fief is not always transferred into a vassal; indeed very often he who possesses and acknowledges

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no one receives it from another by his own will, or in order to be defended from tyrannies, where the said reason seems to fail. I say, however, that such an objection does not stand in the way, because although it is often done so, yet for the greater part it has been customary to be done in the first way. And what is commonly done is not to be judged by the rare case (Dig. *De legibus,* l. *Nam ad ea*). Again, even if it is done in the second way, since it takes on the nature of a fief, therefore it is to be judged as a fief (by argument from *De statu monachorum,* c. *Recolentes,* last §; *De voto,* c. *Magnae,* § *Cum igitur*; Dig. *Si quis cautionibus,* l. *Si eum,* § *Qui iniuriarum*). Moreover, from the tenor of the decretal c. 1 *De feudis* it appears that it is not a privilege, but an answer is given according to law to a consultation made. Again, either it is usury or not. If it

is, how will it privilege someone against the commandment of the Lord? Some say that this is usurious because forbidden; which does not please, because whatever name you give it, whatever accrues to the principal is usury (C. 14 q. 3 c. *Plerique* and c. *Usura*). For every usury and excess is forbidden in the law, as we said above and is plain in c. *Consuluit, Extra, De usuris*; and so there is no force in a change of name (*Extra, De simonia*, c. *Ea quae* and c. *In tantum*)."

And Hostiensis asks: what of the emphyteuta [a perpetual leaseholder]? And he says: "Perhaps the same, because the reason is the same." And he adds: "Or say that it is unlike, because he did not receive so gratuitously as the vassal, since for entry he gave a certain amount of money; or say that the pope must be consulted on this." Johannes Andreae also rests in this on c. 1 *De feudis*.

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Hostiensis further asks: what of the usufructuary who pledges [the thing] to the owner? And he says that if he has a free title from the owner, the same seems to hold; otherwise, the contrary. Raymond, however, notes that some wish to extend this privilege to farm tenancies (*coloniae*), and wrongly, because in tenancies this privilege is not found expressly, as he notes in the *Summa de casibus*, under the title *De decimis*, § *Quid si miles detinet iniuste*, and the following §, as if to say that the privilege excuses from usury; which I do not think true, because the pope cannot give a privilege against the commandments of the Lord, as is plain in c. *Proposuit, Extra, De concessione praebendae*. And Johannes Andreae holds the same on c. 1 *De feudis*.

The second case: a surety. The second is in the case of a surety. Suppose a surety bound himself to pay the principal and usuries in the name of the debtor — perhaps, according to Goffredus, because he swore to the creditor to pay — and he paid: can he reclaim the said usuries from the debtor for whom he paid? It is answered that he can, as is plain in c. *Pervenit* and c. *Constitutus*, *Extra*, *De fideiussoribus*. To which also c. 1 and c. *Debitores*, *De iureiurando*, apply. For the surety reclaims from the principal debtor both the principal and the accessions, since he bound himself for the whole and paid; he also reclaims the expenses, if he incurred any thereby. And he does not reclaim the said accessions as usuries, since he did not receive usuries, but paid for the debtor and on his mandate. Hence he reclaims them as interest, so that he may be kept unharmed (by argument from Dig. *Mandati*, l. *Si mandatu*, § *Si fideiussor*, and Dig. *De administratione rerum ad civitates pertinentium*, l. 2,

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last §). For in this case help must be given to him who wished to spare his own shame (by argument from Dig. *Mandati*, l. *Si quis sub usuris*, which otherwise begins *Quintus Mucius*). Nor does it stand in the way if it is said that he can reclaim after payment, as in the said c. *Debitores*, *De iureiurando*, and c. *Tuas dudum*, *De usuris*; because perhaps he abhors a lawsuit, so that he would rather go without the thing than litigate (Dig. *De alienatione iudicii mutandi causa facta*, l. *Item si res*, § *Potest*); indeed, he will not be compelled to sue over another's act without occasion. For it is expedient for him not to be vexed with labours and expenses (Dig. *De minoribus*, l. *Minoribus viginti quinque annis subvenitur*); nor ought his office to be harmful to anyone (Dig. *Ex quibus causis maiores in integrum restituuntur*, l. *Verum*; Dig. *De furtis*, l. *Si servus communis*, § *Quod verum*). Nor ought he to suffer a penalty; hence he ought to receive merit, as in c. *Sane*, *De renuntiatione*, and c. *Pervenit, De fideiussoribus*. For since, on the mandate of the debtor, he stood surety in every case simply for every amount which the debtor confessed himself bound to the creditor, no one doubts that he is obliged for all that for which he stood surety (Dig. *De fideiussoribus*, l. *Si quis pro eo*, § *Si nummos*; l. *Amissi*, § *Fideiussor*; l. *Si ut probationis*; l. *Si ita stipulatus*; Dig. *Ut legatorum nomine caveatur*, l. 1, § *Bellissime*; Dig. *Locati et conducti*, l. *Quaero*) [the manuscripts differ in these citations; text unclear]. Therefore at least, according to Goffredus, he can implore the office of the judge, so that the oath be remitted, which in a way leads to

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dishonesty. But surely, since there are many who will in no way go against their oath, one must act according to good faith and not dispute about the fine points of law (Dig. *Mandati*, l. *Si fideiussor*, § *Quaedam*).

Moreover, if the surety did not pay, as a lawless and faithless executor of his promise, he would not find creditors who would trust him thereafter and rely on him, which would turn to his penalty. Hence, since the benefit of his lawfulness and trustworthiness ought not to be taken from him because of his good work, therefore, since he came to the aid, he should have the right of reclaiming for his indemnity, as in the said c. *Pervenit* and c. *Conquestus*. Moreover, if he had promised for himself, he would have kept faith; and so the debtor ought not to blame him. For it ought to suffice him that he loves him as himself and does for him as for himself; because although one is bound to love his neighbour as himself (Luke 10 and Matthew 22), yet he is not bound to love another more than himself, for this is to be referred to God alone. Yet he is bound to cede to the debtor every action which the surety himself could have against the creditor, if this benefits the debtor, and let him sue by himself if he thinks fit to sue (Dig. *De peculio legato*, l. *Quod debet*; Dig. *Mandati*, l. *Si procurator*, § *Si quis mandaverit*). Hostiensis also holds this in the *Summa*, title *De fideiussoribus*, § *Ad quid teneatur fideiussor*, where at the end he rebukes notaries who insert in instruments a renunciation of the letter of the deified Hadrian, by whose authority the action is divided among the sureties, although each stood surety for the whole. Of this renunciation Hostiensis says:

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"The notaries of our time make a great gullet [the text reads *gulam*; sense uncertain]," etc. The aforesaid letter is contained in C. *De constituta pecunia*, l. *Divi Hadriani epistolam*, and *Institutes*, *De fideiussoribus*, § *Si plures* and the following §. To which also Dig. *De fideiussoribus*, l. *Si fideiussor* and the following law apply. On which see also C. *De fideiussoribus*, l. *Liberum* and l. *Reos*. Understand this rightly, however: that if he has been informed of the benefit of the said letter and wishes to renounce it, he can well do so, for anyone can renounce his own right once informed of it by some wise man (by argument from the *Authentica Quomodo oportet episcopos*, § *Igitur ordinandum episcopum*; Dist. 32 [one manuscript 28] c. *Placuit*; and *Extra*, *De renuntiatione*, throughout). For if the person had not been informed of the effect of his benefit or privilege, it would be unjust to be ruined by an agreement about which he had never thought (Dig. *Ad Velleianum*, the last law; Dig. *De transactionibus*, l. *Qui cum tutor*, last §; Dig. *De pactis*, l. *Tres fratres*; Dig. *De institoria actione*, l. *Sed et si pupillus*, § *De quo palam*). But once he has been informed, let him blame himself if he renounces, by the aforesaid laws and c. *Damnum*, *De regulis iuris*, in the Sext. For "the loss which anyone suffers or feels by his own fault he ought to impute to himself and not to another", as there.

The third case: a dowry. The third is in the case of a dowry, where several questions also are to be declared. The first of these is whether it is lawful for a husband to receive a dowry from the father of his wife who is

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a usurer. It is answered, according to Guilielmus on the chapter *Salubriter*, *Extra*, *De usuris*: if the father is not sufficient to pay what he has from usuries, and the husband, knowing the truth or having gross ignorance, contracted with the daughter of such a usurer, he ought not to receive the dowry from such a father, because by the payment of such a dowry the usurer, having nothing other than usuries, is made unable to pay. For every usurer is compelled to restore usuries, whether Christian or Jew, cleric or layman, as in c. 1 and 2, c. *Post miserabilem* and c. *Quanto*, *Extra*, *De usuris*; and it must be returned to him from whom it was extorted, or to his heir; and if such is not found, it must be given out to the poor, as in c. *Cum tu*, § *Super his*, *Extra*, *De usuris*, and by argument from *Extra*, *De homicidio*, c. *Sicut dignum*, § *Eos*. For the sin is not forgiven unless what was taken is restored (C. 14 q. 6 c. *Si res aliena*; the said c. *Cum tu*; and c. *Peccatum*, *De regulis iuris*, in the Sext). For let the son-in-law blame himself who knowingly, or with gross ignorance as was said, received a dowry from such a usurer. But if he had not thought his father-in-law to be a usurer, or [thought him] otherwise able to pay, though he was not, he can receive the dowry in payment, even though he

afterwards learns the truth, according to Guilielmus. Yet it is safer that one who knows the truth not receive the dowry, or, if he has received it, that on learning the truth he restore it to those to whom the father was bound. The fruits of the intervening time, while he was a possessor in good faith — because he did not know the thing was so — he makes his own if consumed; but those still existing he is bound to restore, so that the creditors may sue for the consumed fruits against the

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usurer (by argument from l. *Doce ancillam*, C. *De rei vindicatione*). For every possessor in bad faith is bound to restore the thing with all the fruits received and those which the owner would have received if he had possessed it (*Extra*, *De restitutione spoliatorum*, c. *Gravis*; Dig. *De condictione furtiva*, l. *In re furtiva*; Dig. *De rei vindicatione*, l. *Si navis*, § *Generaliter*). And understand the fruits that remain after deducting the expenses incurred for acquiring, gathering and preserving the fruits, which are deducted both by a possessor in bad faith and by one in good faith (Dig. *De petitione hereditatis*, l. *Si a patre* [?], last §). Yet a possessor in good faith is not bound for the fruits he received while he was a possessor in good faith, if they are already consumed; but for the fruits still existing he is indeed bound (C. *De rei vindicatione*, l. *Certum*). To which also C. 12 q. 2 c. *Si quis de clericis* applies. Raymond also says that a usurer is bound for all the losses which anyone suffered through the payment of usury: for instance, if because of it he sold his house more cheaply, or rented another, or for this reason sought [money] from another at usury. He also says that he who paid usuries can reclaim a thing bought with usurious money, such as a horse or a farm, from him to whom the usurer gave it, if the usurer afterwards became unable to pay (by argument from the said c. *Cum tu*, *Extra*, *De usuris*). For this thing succeeds in place of the price, just as conversely the price in place of the thing (Dig. *De petitione hereditatis*, l. *Si rem*). And this is true, according to Guilielmus, when he had such a thing from a lucrative cause and in good faith. To which Goffredus adds that if that thing

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later comes to another from a similar lucrative cause, and this one further … [text unclear], he who could reclaim the usuries is barred, and he to whom the thing was given is freed, so that action cannot be brought against him (Dig. *De actionibus et obligationibus*, l. *Omnes debitores*, with similar texts). But if the aforesaid usurer and father-in-law is in truth sufficient to make satisfaction for the usuries and has more in his goods, the son-in-law can without doubt receive the dowry from those goods.

The second question about the dowry is this. A father gave his daughter in marriage with a promise of dowry; the son-in-law marries her and bears the burdens of marriage without having received the dowry. It is asked whether he should have maintenance from his father-in-law for his wife. It is answered by master Johannes Andreae on the said c. *Salubriter*, on the word *possessionem*: if the son-in-law receives not a pledge but security for the dowry to be paid on a certain day, and meanwhile receives by agreement a certain number of pennies per pound, some say this is done lawfully — let them show the text! We have no other in the matter, and this one, namely of the said c. *Salubriter*, does not serve, because it speaks of fruit subject to the judgement of God; therefore, etc. Nor does the reason which follows stand in the way, namely when the text says, "since frequently the fruits of the dowry do not suffice to support the burdens of marriage"; to which the decretal *Per vestras*, at the end, *De donationibus inter virum et uxorem*, answers. Paulus de Liazariis, on the said c. *Salubriter*, holds the contrary, namely that the son-in-law can lawfully receive [interest on] the dowry at so much per hundred, or eight, according to the custom of regions; and he said the case is in the said c. *Salubriter*, together with c. *Quia frustra*; also because the same reason underlies it, since fruits are reckoned into the principal

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just as money is, as in c. *Illo vos*, *Extra*, *De pignoribus*. But in the terms of the heading set by Johannes Andreae, who says that the father-in-law by agreement promised ten per hundred yearly until he paid the

dowry — in truth there is no case for this being lawful, neither in c. *Salubriter* nor in c. *Quia frustra*. Hence in the case put, the opinion of Johannes Andreae is the safer, and it is better to defend it as the truer and safer. For the reason is not the same, because pledged possessions are by nature fit to produce fruit naturally, and these pledges take the place of the dowry; which is not so with money, which does not naturally produce fruit. What is lawful in one case, then, is not lawful in the other, etc.

Moreover, the dowry ought to remain safe; yet in this case it could happen that the whole was paid off little by little in the meantime, if ten were received yearly and reckoned into the principal. Hence, the dowry consumed, the woman would remain undowered, which ought not to be (Dig. *Soluto matrimonio*, l. 1). Hence, as Johannes de Lignano says on the said c. *Salubriter*, it is not a case in which usury is permitted, but a case in which the son-in-law is not bound to reckon into the principal the fruits of the thing pledged for the dowry. But surely the heading of our question is not like the heading of Johannes Andreae. For, supposing as true what Johannes Andreae said, we nevertheless ask whether the woman should be maintained by her father until the dowry is paid. And it must be answered that she should. And for this the reason of the said c. *Salubriter* serves well, because the husband

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bears the burdens of marriage, for which burdens he makes the fruits his own (C. *De iure dotium*, l. *Pro oneribus*).

Moreover, just as it is said that the fruits of a thing bound for a dowry take the place of the fruits coming from the dowry, which the husband makes his own because they are his as owner (as in l. *Doce ancillam*, C. *De iure dotium*), so also in place of the dotal fruits succeeds the maintenance to be furnished by the one giving the dowry, until the dowry is paid to the husband who bears the burdens of marriage. Hence Innocent too, on the said c. *Salubriter*, on the words *matrimonii onera*, says that the husband has this privilege, namely that he does not reckon the fruits into the principal as long as he bears the burdens of marriage and is bound to support his wife; but when the cause ceases, the effect of the privilege will cease, as in c. *Cum infirmitas*, *Extra*, *De poenitentiis et remissionibus*. Moreover, Johannes Andreae says on that chapter that such a privilege is granted to the husband so that the dowry may remain safe, which otherwise would happen to be consumed. Hence, since it is in the interest of the commonwealth that women be dowered (Dig. *Soluto matrimonio*, l. 1), it is therefore most equitable that the husband who bears the burdens of marriage should receive maintenance for the dowry until the dowry has been paid and counted out. For the son-in-law does not seek, nor will he seek, from his father-in-law the fruit of the money of the dowry to be paid, but seeks maintenance for his wife, for whom he bears the burdens of marriage. Hence he [the father-in-law] will nourish her with corn, wine, clothing and shoes and other things necessary for food and clothing until he pays the dowry; or let arbiters and good men be appointed for each party to assess fitting maintenance, and let the father-in-law pay the maintenance

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or pay the dowry. And in such a case the vice of usuries is entirely abolished, because the aforesaid maintenance comes as interest, so that the son-in-law may be kept unharmed from the burdens of marriage and the dowry may remain safe, according to the reasons set out above. And so what is found in l. *Insulam*, § *Usuras*, Dig. *Soluto matrimonio*, can be rightly understood, where the case is literally that the husband can claim usury on an unpaid dowry since he bears the burdens of marriage. There Jacobus de Arena also holds this expressly, on the word *exhibuit*; he is followed by Raynerius [the text reads "Raymundus"] de Forlivio and Bartolus of Sassoferrato, who says there that even by canon law, for a husband who suffers delay in the payment of the promised dowry, usuries come as his proper interest, because they are not properly usuries but the interest of maintenance, since he bears the burdens of marriage, as in the said c. *Salubriter*, by its reasoning at the end. And rightly. For the action concerning the dowry is one of good faith and is privileged,

as the gloss says on the said § *Usuras*. Hence, since the husband on his side has fulfilled the contract, because he has supported his wife, therefore the one who promised the dowry and did not fulfil it must pay interest; as in a similar contract of good faith, if the seller has handed over the thing sold and the buyer has not paid the agreed price and receives the fruits, the seller can surely lawfully claim interest, which the laws call usuries, which however are not properly usuries but permitted interest (Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Ex vendito*; C., same title, l. *Curabit*). And in both places the doctors [say the same] also in the converse case, if the buyer had paid the price and the seller had not

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handed over the thing sold and was receiving the fruits. To which also what is found in Dig. *Pro socio*, l. *Socium qui*, and l. *Tutor qui repertorium*, penultimate §, Dig. *De administratione tutorum*, applies well; where Bartolus also confirms the same; for which also the gloss on C. 14 q. 4 c. *Quoniam multi*, where the gloss says that usury is forbidden in seeking gain, not in avoiding loss.

The third question about the dowry is this. A father marries off his daughter, promises a dowry; the husband marries her and bears the burdens of marriage. The father assigns possessions under pledge until he pays the dowry. It is asked whether the son-in-law is bound to reckon into the principal the fruits he received from the said possessions. It seems he is, because fruits received from a pledged thing must be reckoned into the principal, as in c. *Illo vos*, *Extra*, *De pignoribus*. On the contrary is the truth, from the privileges of the dotal thing and because of the burdens of marriage. The case is in the chapter *Salubriter*, *Extra*, *De usuris*, where the text says thus: "Indeed, we do not believe that the son-in-law is to be compelled to reckon into the principal the fruits of the possessions pledged to him by his father-in-law for the dowry counted out, since frequently the fruits of the dowry do not suffice him to support the burdens of marriage." And note that where it says "for the dowry counted out", it is understood "for the dowry to be counted out", as master Johannes Andreae says there; where also on the word *compellendum* he notes that even regarding the precepts of divine law the papal power can do much — this supports what is noted on *De decimis*, c. *A nobis* — which must be understood in that it can declare when the precepts of the law are to be

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understood, as here it declares that in this case there is no usury, and in similar cases. And note, according to the gloss on the said c. *Salubriter*, that for the husband to gain the fruits of the dotal thing it is required that he bear the burdens of marriage, which is plain from Dig. *De doli exceptione*, l. *Pater*, at the beginning. Likewise it is necessary that the possession of the dotal thing has been handed over to the husband (Dig. *Soluto matrimonio*, l. *De divisione*).

The fourth question about the dowry. Suppose the husband received the fruits of the dotal thing before he bore the burdens of marriage: do they fall to the husband's gain? It is answered briefly that they do not, but must accrue to the dowry or to the one giving the dowry (Dig. *De usuris*, l. *Videamus*, § *Ante*); and the gloss on the said c. *Salubriter* says that they must be restored to the woman. The reason of the said c. *Salubriter* satisfies, because the fruits fall to him because of the burdens of marriage; hence, since he does not bear the burdens of marriage, neither will he have the fruits. And it is to be noted that the young of flocks and other animals fall to the husband's gain while the husband bears the burdens of marriage (Dig. *De iure dotium*, l. *Plerumque*), just as also the fruits of a land with an iron mine or silver mine (Dig. *Soluto matrimonio*, l. *Divortio*, § *Si vir in fundo*). It is otherwise with the offspring of dotal slave women, which does not fall to the husband's gain but to the woman's (Dig. *De iure dotium*, l. *Plerumque*, § *Servi*). It is otherwise also with a stone quarry where the stone does not grow again, and with trees not to be felled (Dig. *Soluto matrimonio*, l. *Divortio*, § *Si fundus*, and the following §), as the gloss says on the said c. *Salubriter*; where Johannes Andreae, on what is said of the offspring of slave women, says: "And so the reason ceases which

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is found in Dig. *De usuris*, l. *In pecudum*, at the end, where it is said that it seems absurd for a man to be counted among fruits, since nature provided all the fruits of things for the sake of men." Hence Tully says (*On Duties* 1): "But since, as Plato has nobly written, we are not born for ourselves alone, but our country claims a share of our being, and our friends a share; and since, as the Stoics hold, all that the earth produces is created for the use of men, and men are born for the sake of men, that they may be able to help one another; in this we ought to follow nature and contribute to the common good."

The fifth question about the dowry. Suppose a son-in-law who received possessions under pledge for the dowry, thinking it would be more useful for him to have money than to receive the fruits of the possessions, sub-pledges the said possessions to some third party: is that third party bound to reckon the fruits into the principal? It is answered that if he sub-pledges them simply, then the fruits must be reckoned into the principal, as in the said c. *Illo vos*. But if with every right belonging [to him], then perhaps [the text reads *sorte*] he is not bound to reckon them into the principal, according to Johannes de Lignano and the Collectarius on the said c. *Salubriter*. Which, however, with reverence, is not sound counsel, nor could it be tolerated with a right conscience — except, as Guilielmus says, if the son-in-law with intent to give transferred the whole right he had in the thing pledged for the dowry, and did not do this for the money he received from him, but because he is related to him or a friend, and so intends to give for friendship's sake; and that friend lends not for the sake of gaining the fruits but

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for charity and the grace of friendship. Then without danger of usury he can make the fruits his gain. Otherwise not; but he is bound to reckon the fruits into the principal, as in the said c. *Illo vos*, *De pignoribus*.

The sixth question about the dowry. Suppose the husband's heirs have the privilege that they are not bound to restore the dowry within a year (C. *De rei uxoriae actione*, the single law); they receive the fruits for a year and maintain the wife of the deceased to whom they succeeded. Do they enjoy this benefit, that the fruits are not reckoned into the principal by force of c. *Salubriter*? It is answered that they do not, because they can free themselves at once, as Hostiensis and Johannes Andreae say on the said c. *Salubriter*. Moreover, when the marriage is dissolved it ceases to be a dowry, and the burdens of marriage are no longer borne. Therefore Innocent says there that the privilege does not last except while the burdens of marriage last. Hence, where the reason is the same, let the law be the same, as in c. *Translato*, *De constitutionibus*. But in the aforesaid case the reason is different, for the heirs can at once return the pledged thing to the wife of the said deceased, which the husband, on whom the burden of supporting the marriage lay, could not; therefore, etc. To which the argument found in c. *Ad nostram* and c. *Tua nos*, *Extra*, *De iureiurando*, applies well.

The seventh question about the dowry. Suppose a statute says that when the marriage is dissolved, as long as the husband's heir delays paying the dowry, he is bound to give something fixed to the widow so that she can support herself from it. Is this statute valid, so that the woman can

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lawfully receive it with a good conscience? It has very often been doubted. Johannes de Lignano, on c. *Ex gravi*, *De usuris*, in the Clementines, disputes this heading at length, and at last concludes that the statute is not valid, because when the marriage is dissolved the cause of bearing the burdens of marriage ceases. The woman must therefore sue for the dowry to be paid to her. Johannes de Imola holds the same on the said c. *Ex gravi*. Raymond in the *Summa*, and Innocent on the said c. *Salubriter*, say that when the burdens of marriage cease, the privilege ceases, by the reasoning of the said c. *Salubriter*. To which what Bartolus notes on l. *Insula*, § *Usuras*, Dig. *Soluto matrimonio*, applies. Indeed, Matthaeus de Mathesilanis of Bologna says more on the said Clementine *Ex gravi*. Master Panormitanus [Nicholas de Tudeschis], when he lectured at Siena, said otherwise on the said c. *Salubriter*: either we are in a case where the wife must be maintained by her husband's heir, and then the statute is valid, because then the statute could fix a sum in place of

maintenance, since it is more honourable to receive a sum than maintenance bit by bit; or we are in a case in which the widow ought not to be maintained by the husband's heir, and then it would be otherwise, because then the statute would not be valid. But for the declaration of what has been said another question must be formed, and so it will be the eighth.

The eighth question about the dowry is whether the husband's heir is bound to maintain the widow until he pays her the dowry. And although there are opinions for and against, yet the same Panormitanus says: "That opinion pleases me, that if the wife has no other goods she must be maintained by the husband's heir, and within the year given to the heir for paying the dowry

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[she must be maintained]. And the gloss and Bartolus held this opinion on l. *Unica*, § *Exactio*, C. *De rei uxoriae actione*; and the Speculator, title *Qui filii sint legitimi*, § 1, verse *Sed numquid uxor*. The wife is to be maintained according to the size of the dowry, as in l. *Si cum dotem*, § *Si autem*, Dig. *Soluto matrimonio*, and in c. *Per vestras*, *De dote post divortium restituenda*." It must be observed, however, that the Speculator holds, as above, that within the year the wife can claim maintenance from her husband's heir if she has nothing else from which she can live. But the gloss on the said l. *Unica*, § *Exactio*, on the word *restituendis*, says that if the woman has nothing else besides the dowry: if indeed the heirs of the father are common sons, let them support their mother (C. *De bonis liberorum*, the last law, § *Ipsum autem*). But what if they are strangers, or the marriage was dissolved by divorce? It says in the gloss on the said § *Exactio* that the husband or his heirs are bound to support her (by argument from Dig. *De ventre in possessionem mittendo*, l. 1, § *Mulier*, and l. *Curator*; and by argument from Dig. *Ad Trebellianum*, l. *Imperator*, and Dig. *Ut in possessionem legatorum*, the penultimate law). Moreover, the fruit is given to the woman, and you will give her maintenance; therefore today too let him support her, since he has [the dowry] with him (by argument from the *Authentica Quibus modis naturales efficiuntur sui*, penultimate §, and Dig. *De liberis agnoscendis*, l. *Si quis a liberis*, § *Sive parens*). And at the end the gloss concludes, saying: "Solution: they distinguish here whether she has other means to support herself or not; in the first case she is not supported, in the second she is." Yet it is safer to hold that the widow should sue for her dowry, so as not to put herself in peril of conscience. Hence the canonists commonly hold that when the marriage is dissolved it is not lawful

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for the widow to receive anything from a dowry not restored. From which a new question is formed, namely the ninth.

The ninth question about the dowry. Suppose the heirs gave possessions in pledge for the dowry to be restored: does the woman gain the fruits of such possessions, or is she bound to reckon them into the principal? Innocent on c. *Salubriter* says that the fruits are reckoned into the principal. Hostiensis says the same in the *Summa*, same title, § *An aliquo casu*, verse *Quid in converso casu*, and he cites the laws Dig. *De solutionibus*, l. *Titia*, and by argument from Dig. *Ex quibus causis in possessionem eatur*, l. *Fulcinius*, first answer; Dig. *De ventre in possessionem mittendo*, l. 1, last §; Dig. *Ut in possessionem legatorum*, l. *Is cui*, last §; and Dig. *De legatis* I, l. *Filius*, § *Apud Marcellum*. Johannes Andreae and Johannes de Lignano hold the same on the said c. *Salubriter*, and give a caution, which may serve for the tenth question, namely:

The tenth question about the dowry: what is the remedy of such a woman? The said doctors answer, and rightly, that the woman should be discreet and careful not to receive a thing bound under pledge, but to have it sold, or receive it in payment for a just price (Dig. *De re iudicata*, l. *A divo Pio*). Otherwise the fruits of the thing received in pledge will diminish the dowry and will be reckoned into the principal, as in the said c. *Illo vos*, *De pignoribus*, and in c. *Conquestus*, *De usuris*. [The editor notes a displacement in one manuscript here; cf. p. 41.]

The fourth case: the stipend of a cleric. The fourth case is in the case of a cleric's stipend. For example, a thing of the Church is assigned to a cleric for his benefice; he has possession of that thing; a layman has usurped its possession and holds it wrongfully; or also a fief which

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the Church has, he receives bound in the name of the Church. The cleric redeems from the aforesaid layman the temporal possession under the name of a pledge. It is asked whether the fruits received by the cleric from that possession of a thing owed to him must be reckoned into the principal. It is answered briefly that they need not, because he receives fruits of a thing owed to him, as it were of his own. The case is in c. 1 *Extra, De usuris*, at the end, where: "unless perhaps it was a benefice of the Church which it seems must be redeemed by him in this way from the hand of a layman." A similar case is in c. *Conquestus* under the same title. For in such a case usury cannot occur, because this is not done for the sake of gain but so that the thing of the Church may be redeemed from the hand of a layman. It is similar also in tithes, as in the last chapter *Extra, De decimis*. For if a knight unjustly holds tithes, and the Church cannot recover them otherwise than under the name of a pledge, such a cleric is not bound to reckon the fruits into the principal, because he receives fruits of a thing lawfully belonging to him; for legal and judicial authority excuses in such things (*Extra, De rerum permutatione*, c. *Quaesitum*). Similarly any other possessions and things which are held violently, unduly and unjustly by anyone can be received in pledge; nor is such a one bound to reckon the fruits into the principal, as one receiving fruits of his own thing (by argument from the last chapter *Extra, De decimis*, where it is forbidden that a cleric ever presume to receive in pledge from laymen tithes held by laymen and belonging to other churches). From which it is gathered by the contrary sense that tithes belonging to one's own church can well be thus

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redeemed and received in pledge, as the gloss and the doctors say there. Raymond understands the same of all possessions bought [or perhaps "taken away"; text unclear] and of those fruits unjustly received: namely, that such possessions could be received in pledge without the fruits being reckoned into the principal, by the aforesaid laws. And so it is plain that this case is different from the case of the chapter *Illo vos, Extra, De pignoribus*, and from the case of c. *Querela, Extra, De simonia*. And so let the first verse be finished.

The fifth case: the sale of fruits and rents. The first case of the second verse, and the fifth, in which the buying of rents or fruits of a castle and the like is treated. And see also below whether it is lawful to buy hereditary rents from land. The first is when fruits are sold for a time, where, although the buyer receives quite a lot more of the fruits than the price was, yet he is not bound to restore anything to the seller, by reason of the uncertainty (C. *De usuris*, l. *Si ea*; Dig. *De hereditate vel actione vendita*, l. *Cum hereditatem* and the following law; and c. *In civitate*, *Extra*, *De usuris*). There Johannes Andreae forms a question arising from the text, which says: "unless it is doubtful whether those wares will be worth more or less at the time of payment." And above it says: "although such a contract cannot, from its form, be reckoned under the name of usuries." On this word Johannes Andreae says: "From this it seems that if someone buys the rents of some castle, to be held for his life and that of his heirs, or for a certain time, then if the rents by common estimation do not exceed yearly the rent which he could have had from land bought with so much money,

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the contract is lawful. This is also to be understood if the rent of a fief or other possession is bought. To which c. *Consuluit*, *Extra*, *De usuris*, applies." Innocent also forms the aforesaid question on the same chapter, at least in part, and reporting the opinion speaks as above. Johannes de Lignano, also reporting it, besides the foregoing says: "Some say that if the rent is constituted at the time of the contract, it is not valid; if not so, [it is valid]. Others distinguish whether you sell for a time, and then it is valid, or in perpetuity, and then not. Others, that it is valid without distinction, and this whether the rent is constituted in a thing or in a

person, such as a slave or a free man. Likewise whether it is certain or uncertain — for example because he sold a part of the fruits received from some house. Likewise whether the contract is perpetual — for example because it extends to the heirs of both contracting parties — or for a man's life, or for a certain time. For in all the aforesaid cases they consider the contracts lawful, because there is there a contract of pure sale. For there is a price there, namely a certain amount of money. Likewise there is there a ware, namely the rent sold, or a cause, or annona [grain levy] (C. *De sacrosanctis ecclesiis*, l. *Iubemus*; C. *De hereditate vel actione vendita* throughout). The contrary seems to be so, because it is certain that the buyer receives more than the price is; therefore the contract seems unlawful, by the argument of the said c. *In civitate*." But Innocent and Johannes Andreae resolve it: "Although it is certain, the contract is not therefore vitiated, because the same is in the contract of sale; but here," namely in c. *In civitate*,

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"it is condemned only because more is sold on account of the time of delay, or because it is given for a lower price because the money is received at once. Some understand the same if a rent is newly constituted, and once constituted is sold. For it could happen that the buyer receives nothing of the fruits." Yet Innocent advised that the contracting parties beware and weigh their mind, lest they deceive themselves, because the text of the said c. *In civitate* says at the end: "And therefore your citizens would take good counsel for their salvation if they ceased from such a contract"; which is to be understood if the intention does not proceed in a straight line. Hence it is added there: "since the thoughts of men cannot be hidden from almighty God"; where the gloss says that the Lord is the knower of secrets (Dist. 32 c. *Erubescant*; C. 2 q. 5 c. *Consuluisti*), because neither the quality of the sin nor the disposition of the sinner is hidden (C. 24 q. 3 c. *Deus qui*). Others, however, say that when such a census or rent is bought in perpetuity the contract is always lawful, because it is lawful for contracting parties to deceive each other in the price (Dig. *De minoribus*, l. *In causae*, penultimate §). Hostiensis, however, not discussing further, said this is to be held: that such contracts, in perpetuity or for a time, for a certain census, are as a rule lawful and allowed, provided neither party is deceived beyond half [the just price] and nothing is done in fraud of usuries; otherwise not, by what is found in c. *Ad nostram*, *Extra*, *De emptione et venditione*; Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Item Papinianus*; C. *De usuris*, l. *Eos qui*; and *Extra*, *De usuris*, c. *Per tuas*. To which also

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C. *De pactis inter emptorem et venditorem*, l. 2, and l. *Emphyteuticum* [?] apply. To which also what is found in the *Authentica De rebus ecclesiae non alienandis*, § *Ab Anastasio*, applies. For the reason of the prohibition in the said c. *In civitate* is that it is reprehended when someone sells a ware more dearly because of the long term he gives the buyer to pay the money, or because he buys a ware for less because the money is paid at once and he waits a longer time for the ware — which are altogether unlawful, because then only time is sold for that money which comes and exceeds the just price. This appears from the fact that if both were made equal, namely the price and the ware, the sale would be made for less. But in the case of the question put, all things are equal, because neither is time sold, nor are the rents or action sold worth less, nor are they believed to be worth less in subsequent times than they are worth at present, or at least it is doubtful; and this suffices for the contract to be lawful, as in the said c. *In civitate*.

Some understand the same even if a rent or claim is newly constituted for this purpose on things or persons other than the contracting parties: for example, because the buyer says, "You will constitute such rents on such a possession or slave, or you will see to it that such a one confesses that he owes you a thousand within a year; and I will give you fifty [the text reads *quinquaquinta*] for those thousand, or more for the action belonging to you for those thousand." For they say all those contracts are lawful, because there is no loan here, but a purchase. Likewise many cases can occur in which this buyer would lose in this case, for example if

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the seller became destitute. But surely all the faithful are to be well counselled to abstain from such a contract, and not to buy a rent or action newly constituted for this purpose. But this seems altogether unlawful: that the very one who is called the seller should constitute on himself a rent or action by which he binds himself to give more than he received in money or in hope, according to Innocent and Johannes Andreae on the said chapter *In civitate*. Johannes de Lignano goes further, saying: "If you wish me to touch the matter of these two chapters, namely *In civitate* and c. *Consuluit*, whose matter is the same, attend. Put the case: someone constitutes a census of one mark on a house; he sold the census for ten marks, yet that census was worth twenty. If he sold it truly, at a true price or by free agreement, is the contract unlawful and usurious? And it seems so, because money is sold, which ought not to be sold (Dig. *De fideiussoribus*, l. *Si ita*; and l. 1, Dig. *De contrahenda emptione*), because of all things there is an estimation. Again, the use of a thing inseparable from the thing is sold. Again, by reason of the agreement, because at least for less; therefore in the judgement of the soul the buyer sins. Again, something accrues to money; therefore an unlawful presumption arises concluding usury (*Extra*, *De emptione et venditione*, c. *Ad nostram*; *De pignoribus*, c. *Illo vos*). On the contrary, it serves that here there is no loan, to which usury attaches (C. 14 q. 3 c. 1). Again, it is lawful for contracting parties to deceive each other, provided not beyond half (*De emptione et venditione*, c. *Cum dilecti*). Again, a purchase is not vitiated if the buyer receives more than the price. Again,

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a saleable right is sold, because rights are sold (Dig. *De hereditate vel actione vendita* throughout; Dig. *De contrahenda emptione*, l. *Cum tabernas*); therefore the contract is lawful.

In this question attend, for I will explain to you first the undoubted cases. Hence if a census is constituted and is not referred to a thing — as because I bind myself to you for one mark because you give me ten, and I sell you this right of receiving, not referred to a thing — then I believe this sale to be unlawful, because no right is sold; indeed, a money-lending contract now newly arises; therefore, etc. (C. 14 q. 3 c. *Plerique* and c. *Quicquid*). But sometimes a census is constituted on a thing and is sold; and then either it was constituted before the sale and this right is sold, and this contract is valid and lawful by law, because here there is a saleable right and here also there is a price. That is true unless deceit intervenes or deception beyond half (Dig. *De minoribus*, l. *In causae*; *Extra*, *De emptione et venditione*, c. *Cum dilecti* and c. *Cum causa*). But sometimes this census is constituted at the time of the sale and sold afterwards; and then sometimes the census could not otherwise be had from the thing, sometimes it could. In the first case — as because I constitute a census of ten on a house, though it could be rented only for five — then I believe this contract fraudulent, since that census could not otherwise be had from the thing, because then a personal obligation arises (*De pignoribus*, c. *Illo vos*; *De emptione et venditione*, c. *Ad nostram*). But if the census can be had from the thing, then I believe the contract lawful. This is true and holds when no agreement of resale has been added;

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but if an agreement of resale has been added, then if it must be resold for a lower price, then, because it is implied that the census received is reckoned into the principal, I believe the contract usurious (*De pignoribus*, c. *Illo vos*; *De emptione et venditione*, c. *Ad nostram*). But if for a higher price, still the same. But if for the same price, then I believe the contract lawful, according to what is noted by Innocent in the first objection. But sometimes it is likely doubtful whether the thing is worth less or more; and then I believe it lawful, as in the said c. *In civitate* and in the last chapter of the same title. But if the thing is such that there is no doubt about it, then in the contentious court usury cannot arise from the words of the contract; but the contracting party should go back to his mind, and recourse should be had to the conditions of the persons and

to conjectures — as because the buyer is accustomed to give at usuries. But in the court of the soul I believe the same, because usury cannot be concluded. It is left, then, to the conscience of the one so contracting." Of this question and the following we shall also speak below.

But suppose someone lends wheat so that the same amount of wheat be returned to him; at the time of the contract it is very cheap, but at the time of payment very dear. Is it usury? Say it is not, because it consists in hope, and nothing is returned beyond the principal, because it was not lent at a valuation. For if it was valued, so be it; for this the law serves which says that it must be returned of the same goodness in quality, namely intrinsic (l. *Cum quid*, Dig. *Si certum petatur*); but it is not necessary that it be of the same valuation; indeed, if it was agreed at what time it is to be returned, account will be taken of that time as regards

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valuation; otherwise account will be taken of the time at which it was claimed, as in l. *Vinum* under the same title. If, then, the creditor would be bound to receive a cheaper thing if that thing had become cheaper as to valuation, he will therefore not sin by receiving a dearer one. And what is concluded here Huguccio also holds on C. 14 q. 4 c. *Si quis*; yet he says that the intention of the lender could be wicked, and then he would sin because of this. So that all cases may be comprised, some distinguish: either it is likely that the thing lent will not be dearer at the time of payment, or this is doubted with probability — and then there is no vice (by argument from *Extra*, *De usuris*, the last chapter). Or it is likely that it will be dearer; and then either the creditor would not have kept it, in which case it will be usury; or he would have kept it, and then either the creditor takes away from the debtor the freedom of paying [earlier], and then it is usury; or he does not take away such freedom, and then it is not usury — indeed he could earn merit if with a good intention he asked the debtor to pay before the term. But if he has a corrupt intention and tells him that he can keep it until the term, then, supposing it is not usury, he sins. And this distinction rests on great equity, especially in the penitential court.

But what if wheat is now very dear, and I lend it to you at a valuation, so that you restore to me as much wheat as is worth what the wheat I hand over is worth now? Say that it is not usury, because the money or wheat is handed over freely, and therefore the contract of loan is

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gratuitous, and it is reckoned a contract of purchase. And these things are noted at C. 14 q. 3 c. *Plerique*.

But suppose I hand over old wheat now so that you restore to me new: is it usury? Some, like Goffredus and Raymond, say the contract is unlawful. Others [say] otherwise, and I believe this truer, provided the mental circumstances cease — as if it were rotten and worth nothing. At least one so contracting would be subject to restitution.

But suppose someone sells the use of money and receives something: is the contract usurious? For example, because he gives money to a merchant to trade, for more than half of the profit, with the capital safe: is it usury? Some say not, because it is a partnership, not a loan (Azo and Accursius on the last law, Dig. *Pro socio*). On the contrary, because a partnership is after the likeness of brotherhood, but here there is no true brotherhood, because one receives the benefit and the other the risk; therefore, etc. Otherwise it could be defended if it were examined more clearly, etc.

But what if a student receives money at usury and lends it himself to a companion, adding that he should pay the usuries which he himself pays? Is he a usurer? Some say not, because he cannot stipulate that usuries be paid to another; but if he stipulates that they be paid to himself, then it is usury. But it can be defended that he is not a usurer, because he stipulates for himself not under the name of usuries but of interest, because nothing accrues to him; and this is lawful, as is noted on c. *Conquestus*, with its gloss, *Extra*, *De usuris*, and *De arbitris*, c. *Dilecti*.

But one who lends to a city on condition that while the debt is pending he is not bound to the levies — is he a usurer? Some

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say he is (C. 14 q. 3 c. *Plerique*), for something accrues to the principal. Others the contrary. The Speculator, in this title, at the beginning, says that if the levies are ordinary, then he obtains a gain, because he was obliged, and he obtains the right of exemption, and it is usury; but if they are extraordinary, then not.

[One manuscript prefixes: "On this see below, the 22nd kind of disguised usury."] But must one who lends with the intention of receiving something restore? Some say he is not bound in the court of conscience. But others hold the contrary, by the text of the said c. *In civitate*. What is the law? Attend: if he has the hope principally, or if the loan is founded on that hope, then it is usury, as is the text in c. *Consuluit*, of which something will be said below. But if the hope is secondary — as because I hope you will reward me — then it is not usury, as in c. *Cum in officiis*, *Extra*, *De testamentis*, and l. *Sed et si*, § *Consuluit*, Dig. *De petitione hereditatis*. Understand it in the way contained in the said laws: because such hope of reward is only in natural terms, for a return favour, with goodwill, friendship and charity, etc. But can this contract, in the court of the soul, where there was hope of receiving more, be brought into the contentious court? Say that it can, if his mind becomes known, as through confession; and one can proceed against him as against a quasi-usurer, not as a true usurer, as the text proves in c. *Consuluit*. But why in both chapters, namely this chapter *In civitate* and the chapter *Consuluit*, is this contract condemned? Say: because he sells time, but not because the thing is sold for more than it is worth, for it can be sold for more; of which we shall also speak below.

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The sixth case: one whom it is lawful to harm. The second case of the second verse is when usuries are exacted from one whom it is lawful to harm, as Ambrose says, and it is found in the Decretum, C. 14 q. 4 c. *Ab illo*, where the text is this: "From him exact usury whom you rightly desire to harm, against whom arms are lawfully borne. From him usuries are lawfully taken whom you cannot conquer in war; from him exact usury whom it would not be a crime to kill. He who demands usuries fights without the sword; he avenges himself on the enemy without the sword who has been a usurious exactor from the foe. Therefore where there is the right of war, there is the right of usury." Here the gloss says that it is lawful to ask usuries from enemies. For we can lawfully take away all their goods too (C. 23 q. 5 c. 1 and 2), and we can harm them by any snares (C. 23 q. 2 c. *Dominus*). C. 23 q. 5 c. *Dicat aliquis* supports this.

But it is asked who such enemies are. Hostiensis answers in the *Summa*, title *De usuris*, § *An aliquo casu*, verse 8: it seems that such enemies are understood as enemies of the Roman Empire, as in C. *De commerciis et mercatoribus* throughout. And he adds: "Hence they can give money at usury to an infidel. For it is said in Deuteronomy 23: You shall not lend to your brother money at usury, nor corn, nor any other thing, but to the stranger. Hence the Jews say that they lawfully receive usuries from Christians; and wrongly." And Hostiensis cites Deuteronomy 28, where it is said: *You shall lend to many nations, and shall borrow of none*; and in the same chapter: *The stranger shall lend to you, and you shall not lend to him.* But I wonder greatly at all who cite that text for this purpose, since it cannot rightly be brought to bear on the foregoing. For there

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a promise of divine blessing is made to those who do well; and therefore it is said to such, as to the people of God: *You shall lend to many nations, and shall borrow of none.* Here it must be known that we have *fenero, -as* and *feneror, -aris*; hence *fenus* and *fenerator*, which, according to Papias, is taken for the one who lends and for the one who borrows. There, then, a promise is made of an abundance of temporal goods, so that such may, from the aforesaid abundance, lend to others at interest, and themselves not need to receive from others

at usury. And so conversely a curse from God is brought upon those who do ill, with a change to poverty and barrenness, oppression and persecution and divine affliction. From which it is inferred: *The stranger who lives with you in the land shall rise up over you and shall be higher; and you shall go down and be lower.* And at once it is added: *He shall lend to you, and you shall not lend to him. He shall be the head, and you shall be the tail. And all these curses shall come upon you, and shall pursue and overtake you, till you perish, because you heard not the voice of the Lord your God.* It is plain, then, that it does not speak by way of prohibition when it says, *and you shall not lend to him*, but by way of threat; as if to say that such wicked men, on whom the divine curse will descend, will be weighed down with such gravity and pressed down by just judgement that they will find what they need only at usury. As David also said against such (Psalm 108): *Let his children be carried about vagabonds, and beg, and let them be cast out of their dwellings. May the usurer search all his substance, and let strangers plunder

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his labours.* There are, then, other reasons for the prohibition of usuries, and elsewhere there are authorities in sacred Scripture bringing in a general prohibition. Hostiensis also adds in the same place: "Hence others expound that chapter *Ab illo* negatively, that is, as you ought to harm no one, so you should ask usury from no one"; which the gloss also argues at the beginning, yet does not rest in this, etc.

For it can be said that in such a case the vice of usury is abolished because God alone is the true Lord of all things, and goods are given to men for worshipping the one God. Where, then, there is no worship of God — as with the enemies of God and of the faith — usuries can lawfully be exacted, because this is not done in hope of gain but out of zeal for the faith and charity, that the enemies of God and the faith may be weakened; and also because the goods are not theirs, since they attack the faith and divine worship, but by right are owed to those who keep the faith and rightly hold the divine worship. Hence blessed Thomas, consulted by the Duchess of Lorraine [rather of Brabant] whether it was lawful for lords of lands to levy exactions on the Jews, answered: "Although, as the laws say, the Jews by the merit of their guilt are consigned to servitude, and so lords can take their things as their own, because whatever a slave acquires he acquires for his master — yet so that the necessities of life are not taken from them. But since we must walk honestly even towards those who are outside, lest the name of God be blasphemed, this seems to be observed: that they not be burdened at all with exactions which they have not been accustomed to pay; but they can be compelled to the customary ones," according to Thomas. Others say that a Christian can receive usuries from Jews and Saracens

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as from the other enemies of the Christian faith, by the said c. *Ab illo*. Others understand that chapter not of all infidels, but only of enemies of the commonwealth, whom it is lawful to harm even openly and by snares; but from others, who are ready to serve, it is not lawful to receive. Hence in C. 23 q. 8 c. *Dispar* it is said: "Different indeed is the case of the Jews and the Saracens; for against the latter, who persecute Christians and drive them from cities and their own homes, war is justly waged; but the former are everywhere ready to serve." The Archdeacon, on the said c. *Ab illo*, considers the origin where Ambrose says this, namely on that text, *You shall not lend to your brother, but to the stranger*, and this is said of the Jewish people. Therefore Ambrose says that it is understood of enemies. Hence the Archdeacon adds: "And so according to this the understanding of Laurentius is touched, who says that Ambrose in this chapter does not say that it is lawful for a Christian, but commands it to the Jew only, according to the old law. Hence understand it only of the Jew. And there was a comparative promise [one manuscript: "permission"], because the Jews were prone to lending at usury, like the giving of the bill of divorce, according to Laurentius and Huguccio" — which Huguccio glosses the words "exact usury", namely "out of zeal of charity". And the Archdeacon adds: "Say, then, 'from him', namely an enemy, whether he be a pagan, or a heretic, or a bad Christian. According to this, then, Christians lawfully exact usuries from the Saracens, who are enemies of Christians, but not from the

Jews, because war is not justly waged against them (C. 23 q. 8 c. *Dispar*) — according to Huguccio, who says that in no case is usury lawful, nor is it lawful for anyone to exact it, even from enemies, since it is

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forbidden generally." The Archdeacon adds: "Add further, so that every objection may cease, it can be said that Ambrose here calls usury a pressing and immoderate exaction which we can impose on enemies so that they may be afflicted and oppressed. And this is what the letter means where it says, 'who has been a usurious exactor from the foe', as it were bringing in and imposing an exaction beyond what ought to be imposed; which is true if he were not an enemy against whom we have the right of war" — according to Peter of Salicetum.

"But who is he whom I rightly desire to harm?" says the Archdeacon. "I answer: an enemy of the Roman Empire (C. *De commerciis et mercatoribus*, l. *Non solum*). And so it seems that I can lend money at usury to an infidel." And he adds: "'usury', that is, a great payment; and this by C. 23 q. 6 c. *Iam vero*." Raymond, in the *Summa*, title *De usuris*, says in this case that the more common opinion is the one that Johannes [Teutonicus] in the gloss permits, namely that the said c. *Ab illo* is understood negatively, namely that since I ought to desire to harm no one, I can exact usuries from no one. Unfailingly this is the safer and sounder opinion.

Here it must also be observed, according to the subtle doctor John Scotus, that the order of charity must always be kept in all things: namely, that God be loved above all things; and after God one's own soul; and after one's soul the soul of one's neighbour be loved as one's own; and after the soul of oneself and one's neighbour, one's own life for salvation; and after one's own life the life of one's neighbour as one's own, for virtue and grace; and after life, a praiseworthy reputation

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for the following of virtues be loved; and with one's own reputation the reputation of one's neighbour also be loved; and after reputation temporal goods be loved as supports for sustaining the present life. The gloss also holds this on that text of the Song of Songs 2: *He set in order charity in me*; where the gloss says: "Many pervert the order of charity, because what is first they make last, and what is last they make first." It must be said, therefore, that it is in no way lawful to exact usury as usury, because it is opposed to the charity of God and neighbour, and to life and reputation, as well as to temporal goods. If, however, it could happen that someone could in some lawful way recover his loss from an enemy without prejudice to the foregoing, he could lawfully keep it, not as usury but as just compensation for his losses, like the things acquired in a just war. Hence the same Archdeacon, on the said c. *Ab illo*, near the end, on the word *auferre*, says: "Add: this reason does not press, since neither theft nor robbery ought to be done to them," namely enemies, "without the authority of the prince, and he who does otherwise sins; but in such a case usury is not found to be commanded or permitted by the prince, but that, namely robbery (C. 23 q. 2 c. *Dominus*)," according to Guilielmus [one manuscript: Huguccio]. For if from the goods of the one causing the loss something comes into the hands of the one who suffered the loss without fault — for example because he found it, or another gave it to him, and the like — the one who suffered the loss can lawfully keep it and receive it without sin up to the value of the loss (Dig. *De condictione

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indebiti*, l. *Si non sortem*), unless perhaps the thing that came to him had been lent to him by the robber (C. *De commodato*, l. *Praetextu*) or also deposited (C. *Depositi*, l. *Si quis*); for in these cases he cannot keep it. These things are undoubtedly true in the judicial court. But according to some, although such a one sins and is bound to do penance, yet in the penitential court he is not bound to restitution. Hence blessed Thomas (II-II q. 66 [the text reads 65]) says that "he who secretly takes his own thing deposited with another burdens

the depositary, because he is bound to restore it or to show himself innocent. Hence it is manifest that he sins, and that he is bound to relieve the burden of the depositary. But he who takes his own thing unjustly held by another sins indeed, not because he burdens him who holds it — nor is he bound to restore anything — but he sins against common justice, while he usurps to himself the judgement of his own case, passing over the order of law; and therefore he is bound to make satisfaction to God, and to take care that the scandal of his neighbours, if any has arisen from it, be calmed." Likewise Scotus, on the fourth book of the *Sentences*, dist. 15, asks whether one who has suffered loss from someone can satisfy himself from the goods of the one who caused the loss. And he answers that in two cases he could satisfy himself: namely first, when the one who suffered the loss had been made the steward of the goods of the one who caused it, and could not provide for himself according to the form of law — for example because he has no witnesses or proofs, or because

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it is a powerful person against whom justice would not be done for him. For then he could provide for himself by secretly keeping back things of the one who caused the loss which he himself has to administer or dispense — if, after the death of the one who caused the loss, he had perhaps been appointed steward of his goods as a trustee, etc.; see there. Second, when he found some of that man's goods, or something had been given to him. For in these cases he could keep the thing up to the value of the loss.

And that it may be understood more clearly, know that one who wishes to satisfy himself on his own authority from the goods of his debtor sins mortally in seven cases, namely:

The first is when he can provide for himself by way of law and nevertheless does himself justice against the law (*Si quis in tantam*, C. *Unde vi*). The second is when he is a public judge and wishes to judge in his own case himself, which is forbidden (C. *Ne quis in sua causa iudicet*, the single law), where it is said: "For in one's own affair it is altogether unjust to grant anyone licence," etc. There the gloss cites as concordances Dig. *De iudiciis*, l. *Iulianus*, another beginning *Si alter*; Dig. *De iurisdictione omnium iudicum*, l. *Qui iurisdictioni*; Dig. *De arbitris*, the penultimate law, "But an arbitrator thus", says the gloss; and Dig. *De operis libertorum* — as if to say that in his own case no one can be judge or arbiter or arbitrator; to which C. *De contrahenda emptione*, l. *In vendentis*, applies. The third is when the debt is not clear but doubtful, whether he ought to receive or not. For the burden of proof lies on the plaintiff, and

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"when the rights of the parties are obscure, the defendant is to be favoured rather than the plaintiff", as in c. *Cum sunt*, *De regulis iuris*, in the Sext. The fourth is when there is danger of causing scandal against another — as because someone is blamed for your theft or wrongdoing and so would be defamed undeservedly. And scandal brought against justice against a neighbour obliges under mortal sin (Matthew 18): *But he who shall scandalize one of these little ones who believe in me, it were better for him that a millstone should be hanged about his neck, and that he should be drowned in the depth of the sea.* Blessed Thomas treats the matter of scandal sufficiently (II-II q. 43). The fifth is when there would be danger to his own reputation — as because he would be reputed a thief or a usurer or the like. And everyone ought to take care for the preservation of his reputation (Ecclesiasticus 41): *Take care of a good name; for this shall continue with you more than a thousand treasures, precious and great.* And Augustine says: "For our life is necessary to us, our reputation to others" (C. 11 q. 3 c. *Inter verba* and c. *Non sunt*, at the end). Hence the same Augustine also says: "He who neglects his reputation is cruel" (C. 12 q. 1 c. *Nolo*), where the same Augustine says: "Conscience is necessary to us, but our reputation to our neighbour." And below: "He who, trusting his conscience, neglects his reputation is cruel"; therefore, etc. The sixth is when there could be personal danger to himself — as because he could be hanged as a thief for such an act, and the like; for he ought to love life more than temporal goods; therefore, etc. The seventh is when by satisfying himself

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he would sin mortally by putting the salvation of his soul after the recovery of a temporal thing. *For what does it profit a man if he gain the whole world and suffer the loss of his own soul?* (Matthew 16). The worthier things, then, must always be preferred; therefore, etc.

The seventh case: one who sells under doubt. There follows the third verse, which begins "one selling under doubt", etc. Here also there are principally two cases. The first is this: someone has a thing not for sale at present, but intends to keep it until a time, knowing that at that time it will be worth more. A buyer seeks to buy such a thing. He says he does not have it for sale, because it is not then the time for selling; but for the future time the buyer says he wishes to buy it for as much as it will be worth at that time, but does not wish to pay until that time; and it is priced. It is asked whether it is lawful. It is answered that by reason of the doubt such a contract is excused, as in c. *Naviganti*, *Extra, De usuris*, where the case is that he who gives ten solidi so that at another time as many measures of grain, wine and oil be returned to him — which, though they are then worth more, it is likely doubtful whether they will be worth more or less at the time of payment — ought not to be reckoned a usurer on this account. And it is added: "By reason of such doubt he too is excused who sells cloths, grain, wine, oil or other wares in order to receive for them at a certain term more than they are then worth, if, however, he would not have sold them at the time of the contract." With this agree c. *Consuluit*, § *Et an negotiator*,

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and c. *In civitate* under the same title. Yet according to Hostiensis this is not lawful for clerics, for whom "to buy more cheaply and sell more dearly is shameful gain", as is said in C. 14 q. 3 c. *Quicumque* and *Extra, Ne clerici vel monachi saecularibus negotiis se immisceant*, c. 2, according to the ordinance; and we have said enough on the matter on the last chapter *Extra, De vita et honestate clericorum*. And Hostiensis also says: "I also advise lay usurers to note the mind of the words, namely 'when they would not have sold at the time of the contract'; for God questions the heart, not the hand (C. 14 q. 5 c. *Si quid invenisti*, at the end; C. 15 q. 6 c. *Si sacerdotibus*, at the end; C. 22 q. 5 c. *Qui periurare*). What, then, if usurers hereafter propose this in order to commit fraud upon the law? Again, what if they give ten solidi at harvest-time for ten measures of corn to be paid at Easter? Can it be doubted with probability that corn is worth less at Easter than at harvest? Therefore they will do better and more safely if they abstain from such contracts, as in the said c. *In civitate*. It can indeed be doubted whether it will be worth more or less, because of future contingents there is no determinate truth, according to Aristotle. But it cannot be doubted with probability — namely according to the usual course of the region, which must be considered, as the mind of the letter hints when the text says in the said c. *Naviganti*, 'it is likely doubtful whether they will be worth more or less at the time of payment' (and by argument from *Extra, De sponsalibus*, c. *Ex litteris*; Dig. *De fundo instructo*, l. *Cum de lanionis*, § *Asinam*; Dig. *De fluminibus*, l. 1)."

What if someone sells for the price that is current at the moment, but if it is worth more by Easter he wants that

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more to be given to him, but if it is worth less he does not want the price lowered? Hostiensis says: "Without doubt I judge him a usurer, since I see him limping in his agreements" (by argument from C. *De solutionibus*, the penultimate law; Dig. *De damno infecto*, l. *Quid bona*, § *Si quis*; Dig. *Pro socio*, l. *Si non fuerint*, § *Aristo*). For although one is excused by reason of doubt, yet in such a case one does not stand in doubt, since he wants certainty and an addition. For the aforesaid doubt, by its nature, makes the equity of justice, even though more is received than is owed, because the reason of this doubt places the valuation of worth in things from the very nature of the things, which in such a kind can be worth more or less. Hence something more is received not because of time but because of the very nature of the thing, which is worth more at one time than at another, and sometimes less; [so it] is excused. The reason of risk also seems to excuse, which can

compensate for the excess. For a thing existing outside of risk is worth more than a thing of the same kind existing in risk. And so this compensation is brought back to the nature of the thing, which because of the risk is valued as worth more or less. And so risk and doubt take away the vice of usury. But where risk does not of its nature take away this vice, usury is not excused, as is plain in the risk which is in loans, of which in c. *Naviganti* at the beginning, where it is said: "One lending a certain amount of money to one sailing or going to the fairs, so as to receive something beyond the principal because he takes the risk on himself, is to be reckoned a usurer." Similarly also if someone lent a hundred pounds to another for ten years, so that if within

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ten years either of them died, the one who received the debt would be freed from the loan and debt; but if both survived, the one who received the loan would give two hundred pounds to the one who gave it — such a risk does not excuse, because it does not bring the contract back to the equality of justice. For such an excess is brought back to the equality of justice neither by labour, nor by the use of one's own thing, nor by compensation of another thing. Risk also does not excuse where something more is received because of time; but where the excess is received not because of time, then the reason of doubt or of risk can excuse, namely when the doubt arises from the nature of the thing. This doubt excuses in the two cases above, of which the first is by anticipation of time, the second by delay of time, of which in the said c. *Naviganti*, first and second §.

The eighth case: delay. The second case of the third verse is by reason of delay; hence it is said, "one paying the price after a time". Here such a question is formed. A debtor is bound for a hundred at a certain term; I demand the debt; the debtor does not pay; whereby I must take a hundred at usury. I ask my debtor to free me from the obligation of the usuries or to pay the usuries. It is asked whether I ask lawfully. It is answered that I do, as is proved by c. *Pervenit* and c. *Constitutus*, *Extra*, *De fideiussoribus*, where: "[let them restore] the money which he paid for them, and keep him unharmed", and where: "compel the aforesaid debtor by ecclesiastical discretion to release him from the aforesaid intercession entirely without delay." Raymond also holds this in the *Summa*, chapter *De usuris*.

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For then usuries are not paid to such a creditor; but whatever is paid to him is paid as interest, and not for the sake of gain but for the sake of avoiding loss; and so in such a case usury does not occur. To the same applies what is found in C. 14 q. 4 c. *Quoniam* and C. 12 q. 2 c. *Si quis de clericis*, with what the Archdeacon notes there. Hostiensis also holds this in the *Summa*, title *De usuris*, § *An aliquo casu*, where the same can be understood; to which also Dig. *De eo quod certo loco*, l. 2, and Dig. *Pro socio*, l. *Socium qui non*; and blessed Thomas also treats the foregoing (II-II q. 78 [the text reads 58]).

If it is asked how delay (*mora*) is understood, it is answered according to Hostiensis in the *Summa*, title *De usuris*, § *Ex quibus*, verse *Ex mora*, where it follows thus: "Usuries also come from delay, or quasi-delay. Delay arises by common law and by special law; but because of the variety of cases it cannot be fully defined when it is committed, as the law says (Dig., same title, l. *Mora*). Yet according to Azo, delay arises by common law when an adult promises to a minor [the text so; sense uncertain] (Dig. *De verborum obligationibus*, l. *Si pupillus*), when he has been called upon, or by the lapse of the day set (Dig. *De verborum obligationibus*, l. *Si fundum*; C. *De contrahenda stipulatione*, l. *Magnam*; *Extra*, *De locato*, the last chapter, at the end), or by the joinder of issue (Dig. *De verborum obligationibus*, l. *Nemo*, at the end), or by demand made by the man himself to whom it is owed, at a fitting place and time (Dig. *De usuris*, l. *Mora*; Dig. *De verborum obligationibus*, l. *Si ex legati*), when he understands that he owes, or

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ought to understand it (Dig. *De rebus creditis*, l. *Quod te*); or when, the claimant having omitted to press for the thing, he has without cause put off the payment or delivery of the thing (Dig. *De usuris*, l. *Mora* and l. *Sciendum*). The effect of delay is the same in contracts of good faith and in legacies and trusts, which, though they are of strict law, are in this put on a level with contracts of good faith (C. *In quibus causis in integrum restitutio non est necessaria*, l. *In minorum*), so that it produces usury; otherwise in contracts of strict law (Dig. *De usuris*, l. *Mora*, § 1; Dig. *De legatis* II, l. *Si quis servo*, and l. *Qui solidum*, first answer; C. *De condictione indebiti*, l. …). This delay also causes the thing or interest to be valued by the office of the judge at as much as it was worth at the time of the delay, or whatever it was worth afterwards before the sentence, unless the delay had been purged (Dig. *De edendo*, l. *Ubi*, § 1; Dig. *De tritico vino et oleo legato*, the penultimate and last laws; Dig. *De actionibus empti et venditi*, l. *Ratio*, § *Si per venditorem*; Dig. *De re iudicata*, l. *Si convenerit*; *De condictione furtiva*, l. *In re furtiva*; Dig. *De verborum obligationibus*, l. *Quotiens in diem*). It also brings in the claim of fruits through the office of the judge in any contract, if I claim what at some time became mine or his from whom I have my title. Otherwise, joinder of issue is required only in a contract of strict law (Dig. *De usuris*, l. *Videamus*, § *Si actionem*, first answer, § 1, § *Ex causa*, § *Si possessionem*, and l. 2). And sometimes it punishes with a third part of the debt (Dig. *De inofficioso testamento*, l. *Si quis suo*). It also makes the risk of the thing belong to the defendant without distinction, even if the thing would have perished with the plaintiff,

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because it suffices that it could have not perished (Dig. *De legatis*, l. *Cum res*, last §). Nor does Dig. *Depositi*, l. *Si plures*, last §, stand in the way, because although he had been sued there, yet he was not in delay, because he had a probable cause for resisting, for example because of expenses. And this is most expressly proved in the *Authentica De deposito et denuntiationibus inquilinorum*, collation 6. For since it says there that he is bound for a fortuitous accident who forbids the depositary to restore to me, much more is the depositary bound if he holds back without cause; and the foregoing supports this. Yet regarding a real action this is specially to be noted: that if he was a possessor in good faith from the beginning, and so became a possessor in bad faith afterwards, or is in delay, distinguish whether the thing would have perished in the same way with the plaintiff, and then he is not bound (Dig. *De rei vindicatione*, l. *Item si verberatum*, last §); otherwise he is bound. Therefore it avails in good faith as elsewhere, as in the same title, l. *Si in aliena*. But if he had a just cause for litigating, without distinction he is not bound, as in the same title, l. *Utique*. And know this too, that sometimes someone is called in bad faith in whatever way he knows that the inheritance belongs to another, as to fruits and similar things (Dig. *De petitione hereditatis*, l. *Item veniunt*, § *Petita* and § *A quo*, and l. *Sed et si*, § *Si autem*). Likewise in vindication he becomes a possessor in bad faith once issue is joined, as to the fruits (C. *De rei vindicatione*, l. *Certum*). Yet he remains a possessor in good faith as to completing the usucapion of three years, and so as to make the fruits his own if he wins; otherwise he restores them, as also the thing usucapted after joinder of issue (Dig. *Pro

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emptore*, l. 2, at the end, and same title, l. *Qui scit*, last §; and *De rei vindicatione*, l. *Si post*). Likewise as to the fatal [limitation] (Dig. *De petitione hereditatis*, l. *Illud*). But as to prescription he seems in no way a possessor, because it is interrupted by the joinder of issue, as is noted above, *De litis contestatione*, § *Quis sit effectus*, and C. *De rei vindicatione*, l. *Certum*.

By special law delay arises in favour of liberty regarding a liberty left in trust, by the very fact that it is not granted; and this brings it about that [something] is given to the mother for maintenance (Dig. *De fideicommissariis libertatibus*, l. *Cum vero*, § *Apparet*). Likewise in favour of the course of two years, and this likewise produces usuries (C. *De iure dotium*, the last law). It also arises specially out of odium, as with a thief or a robber (Dig. *De vi et vi armata*, l. 1, § *Rectissime*, and the penultimate law, § *Item si*), and in one who uses fear; but in that case a distinction will be made, as in Dig. *Quod metus causa*, l. *Item si cum*

exceptione, § *Quid si homo*. By special law also delay arises in the person of a minor by the very fact that someone does not pay him what he owes unconditionally (C. *In quibus causis in integrum restitutio non est necessaria*, l. *In minorum*). For if he owes on a day or under condition, it cannot be imputed to him if he does not pay in the meantime, since he is not even bound to pay. Likewise if he owes unconditionally to a ward who has no guardian, because he could not pay such a one; what, then, could be imputed? Nor does it stand in the way that minors are to be helped in gain; usuries are inflicted not for the sake of gain but because of the delay of those not paying (Dig., same title, l. *Cum quidam*, § *Si pupillo*). This is purged

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if the minor has become an adult, which is remarkable (Dig. *De legatis* II, l. *Titia Seio*, § *Usuras*), and so it is purged by the thing itself, by the course of time. Delay also arises by the thing itself in favour of the treasury (*fiscus*), namely if what is owed to it from its contract is not paid to it (Dig. *De usuris*, l. *Cum quidam*, § *Fiscus*). Common delay is purged by a stipulation made with the intention of novation, or not of novation if the thing was nevertheless present (Dig. *De condictione furtiva*, l. *Parvi*; *De solutionibus*, l. *Qui decem*, § 1). It is also purged by deposit and sealing up [of the money] (C. *De usuris*, l. *Acceptam*); but the deposit must last, otherwise it does not seem deposited (Dig., same title, l. *Debitor*, and l. *Acceptam*, at the end). Further, where usury has not yet arisen — for example a higher one was promised if a lower was not paid — once the lower is offered, the higher does not run by the law itself (C., same title, l. *Si per te non stat*). Likewise if the creditor persists in claiming the lower when he could claim the higher (C., same title, l. *Adversus* and l. *Quamvis*).

From quasi-delay usuries come, for example: a buyer to whom the thing has been delivered does not pay the price (C., same title, l. 2, and *De actionibus empti et venditi*, l. *Curabit*). Likewise where a creditor turns to his own use money obtained from selling a pledge beyond what was owed to him (Dig. *De pigneraticia actione*, l. *Quamvis*, last §, and l. *Si autem*). And the same in a proctor and a curator who turns his principal's money to his own use (Dig. *Mandati*, l. *Idemque*, § *Si procurator*, and *De negotiis gestis*, l. *Scire*). But if he lent it at interest, some said that he is bound as from

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delay. But Azo said that he is sued as for the principal. Likewise, if he incurred delay he is sued not for usury but for interest, as with a partner who incurred delay in returning what he had gained from the partnership (Dig. *Pro socio*, l. *Socius qui*, and *De administratione tutorum*, l. *Tutor qui*, § *Si usuras*)." [End of the quotation from Hostiensis; uncertain where exactly it ends.]

The ninth case: a penalty. There follows the fourth verse, which begins "nor a penalty in fraud", where there are three principal cases. The first is in the attaching of a penalty, which admits a threefold distinction: the first is of a legal penalty, the second of a judicial penalty, the third of a conventional penalty.

Of the first, the legal penalty, an example is given when the law imposes it on debtors, that they are bound to pay on such a day, and if they do not pay they incur the penalty. And understand it of a legal penalty even if it were so prescribed by municipal law; for then one who incurs the penalty in such a case is bound to pay, with the qualification set out below. This is plain also in l. *Quod a quoquam*, Dig. *De regulis iuris*; and the notes on l. *Si poenam*, Dig. *De verborum obligationibus*, on l. *Diem proferre*, § *Stari*, Dig. *De arbitris*, and Dig. *De procuratoribus*, l. *Qui proprio*, § *Poenam*, support this.

Of the second, the judicial penalty: for example, when the debt has been liquidated, the judge orders the debtor to pay the creditor within a certain term under a penalty of so much. For if he incurs the penalty, being unwilling to pay when he can, let him blame himself (by argument from Dist. 23 c. *Quamquam*, and in the said l. *Quod a quoquam*, by the name of penalty;

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and the notes on l. *Traiecticiae*, § *De illo*, Dig. *De actionibus et obligationibus*; l. *Si cum dies*, last §, with the following law, Dig. *De arbitris*; and l. *Ita si quis*, § *Seia*, Dig. *De verborum obligationibus* support this).

Of the third, the conventional penalty: for example, when by consent of the parties a penalty is placed in the contract so that just promises may stand more firmly, and so the debtor, at least from fear of the penalty, may take care more diligently to pay the debt at the term assigned beforehand, as in the said laws and *Extra*, *De arbitris*, c. *Dilecti*. Such a penalty is called canonical because it is also permitted by the canon to be exacted (C. 12 q. 2 c. *In legibus*). Yet such a penalty could be attached in fraud of usury: for example, because the creditor attaches the penalty not with a right intention, but because he believes or hopes that the penalty will be incurred, since in giving the loan he discerns that his debtor is unable to repay the loan at the term. For then, since he lends for the sake of gain, hoping to gain the penalty — which hope extinguishes the freedom of charity and the gravity [i.e. good faith; uncertain] of the contract — it therefore passes into the species of usury. If this cannot be proved otherwise, one must have recourse to presumptions, which will be principally two. The first, if the one attaching the penalty has been accustomed to be a usurer or to attach similar penalties in fraud of usury (by argument from Dig. *De actionibus empti et venditi*, l. *Iulianus*, and Dig. *De pigneraticia actione*, l. *Universorum*). The second, if the penalty is said to be incurred by single months or years (C. *De usuris*, the *Authentica Ad haec*). It must be attended to,

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however, that if the debtor has done what he could to fulfil what he promised, or to observe the command of the law or the judge, and, being oppressed by poverty and inability, cannot accomplish what he wished, although by the rigour of law he is bound to the penalty, yet by canonical kindness and natural equity it is not fitting to exact more than the interest (by argument from C. 1 q. 7 c. *Quotiens*; C. 12 q. 2 c. *Episcopus*; *Extra*, *De poenis*, c. *Suam*). For the apostle James says in his canonical epistle, chapter 2: *Judgement without mercy to him that has not done mercy; and mercy exalts itself above judgement.* For in penalties the kinder interpretation is always to be made (*De regulis iuris*, c. *In poenis*, in the Sext). For where there is no fault, a penalty also is not fitting. Innocent and Hostiensis and all commonly hold this, and blessed Thomas, I-II q. 96.

Say regarding the foregoing that human laws, if they are just, have the power of binding in the court of conscience from the eternal law from which they are derived, according to Proverbs 8: *By me kings reign, and lawgivers decree just things.* Laws are called just in three ways: first from their end, when they are ordered to the common good; second from their authority, namely when the law does not exceed the power of the one making it; third from their form, namely when burdens are imposed on subjects according to an equality of proportion for the common good. And according to this, laws imposing such burdens are just and bind in the court of conscience (Dist. 9 c. *Quicumque*). But unjust laws do not bind, since they are contrary to the terms above. Yet they are to be tolerated

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in part, to avoid scandal. But it must be noted that whenever human laws directly contradict divine laws — as are the laws of tyrants leading to idolatry or to anything else against the divine law — such laws are in no way to be kept, as blessed Thomas says, I-II q. 96, as we said above when we treated whether imperial laws permitting usuries are to be kept.

Lord Johannes de Lignano, on c. *Super eo*, *Extra*, *De usuris*, asks whether one who exacts a penalty attached in a contract is reckoned a usurer. And he answers [with] the gloss: the civilians say that if it is added to a quantity — as because I say that I will pay ten at the term, otherwise ten as a penalty — then it is usury; but if it is attached to an act, it is not usury, as the gloss notes on l. *Iulianus*, § *Idem Papinianus*, Dig. *De actionibus empti*, and l. *Cum allegas*, C. *De usuris*. "But note," he says, "by canon law it is clear that [it is lawful] if for punishment of contempt or for interest, otherwise not; otherwise the way to fraud would never be closed."

And he adds:

But suppose that it is provided by municipal law that every debtor under such or such a contract should pay within ten days, otherwise pay double: is the one receiving it a usurer? Say that if this law came forth in fraud of usury, then there is no doubt that he is a usurer. But if the statute came forth from another just reason — as because this was ordained so that the debtor might pay more quickly and better — then I believe that, with the law authorising it, double can be received, because the municipal law punishes contempt.

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For a clearer judgement, say that it is necessary to consider the kind of contract in which the penalty to be exacted is inserted. For if it is a contract of simple loan, it seems inserted in place of usuries, which holds even by civil law, as is the case in l. *Cum allegas*, C. *De usuris*. And in this way is to be understood what is said above, "if it is added to a quantity". But if it were not a contract of loan, and so the penalty were added not to a quantity but to an act — for example: I promise to lend you a hundred under a penalty of ten or a hundred by such a day — then, if I do not lend, I incur the penalty; in such a case by civil law the penalty could lawfully be exacted (Dig. *De actionibus et obligationibus*, l. *Traiecticiae*, at the beginning; and Dig. *De verborum obligationibus*, l. *Si poenam*). For in the said l. *Traiecticiae* the penalty was attached by reason of late payment, for which reason it can be claimed as interest even by canon law, as we said above; and in l. *Si poenam* it is said that "if I stipulated a penalty from someone if he did not lend me money, the stipulation is certain and valid."

In a similar way a penalty can also be claimed if it was attached in a contract of compromise settlement [*transactio*] (C. *De transactionibus*, l. *Promissis*). Similarly also if it was attached in a contract of arbitration, if the arbitrators' award is not abided by; and understand "not abide by" as "resist", as it is taken in Dig. *De arbitris*, l. *Diem proferre*, § *Stari*. For it concerns the arbiter that his award not be spurned; hence with respect to the arbiter a giving in the person of another is an act

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(Dig. *De verborum obligationibus*, l. *Liber homo*, last §). And therefore the penalty is incurred. But if we speak of when a penalty is attached lest the contract and the award be challenged, then without doubt by challenging the penalty is incurred, because it is inserted for an act. And the reason why it is incurred is not neglect of omission, but because [something] is done against what ought to be done (by argument from Dig. *Locati*, l. *Si in lege*, § *Colonus*, and what is noted on l. 1, C. *De sententiis quae pro eo quod interest*).

It is to be noted, according to Baldus on the said l. *Cum allegas*, regarding a statute prescribing that penalties attached to payments [*dationes*] cannot be claimed: Baldus asks, what if a settlement is made about a loan and a penalty is attached to the settlement — is the attaching of the penalty valid? And he answers that it is (by argument from C. *De plus petitionibus*, l. 1, at the end). For settlements even about a usurious contract are valid, just as a sentence is, unless release is proved, as Innocent notes, *Extra*, *De deposito*, c. *Gravis*. "Say that fraud is presumed from the quality of the person, for example if he was accustomed to lend at usury; otherwise lawsuits could be feigned and settled (Dig. *De transactionibus*, l. *Cum hi*, § *Sicut lis*). Likewise as to a sentence, I say that if the debtor allowed himself to be defeated without raising the exception of usury, the sentence given ought to be rescinded; the text is unique in its reasoning, Dig. *De donationibus inter virum et uxorem*, l. *Si sponsus*, § *Si uxor*, and Bartolus there.

Know also that to prove a usurious contract it suffices to prove that it was so pre-arranged by the parties, even though the notary and the witnesses of the instrument

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know nothing of it, but it is proved by other witnesses, as Innocent elegantly puts it on the said c. *Gravis*." Which I understand, says Baldus, when it was pre-arranged by settling it firmly; otherwise if it was done only

by discussing [it], because many things are said which are not done (Dig. *De aedilicio edicto*, l. *Sciendum*, § *Edictum*). And in these matters the judgement of the judge has great place. For that someone is a usurer is a kind of infamy, over which the judgement of the judge can do much, as is noted by Innocent, *Extra*, *De accusationibus*, c. *Oportet*.

Others say that a penalty attached in a contract of settlement is not by right attached to a payment of a quantity, because a settlement is a contract of "I do so that you give" (*facio ut des*), when the plaintiff remits the action and the defendant promises a quantity; hence what is promised to the plaintiff is promised because he does [something] and does not give; and so it is upon an innominate contract. And the same when a penalty was added to the award of an arbitrator, because it is reduced to the likeness of a settlement, as is noted in the *Authentica Ut differentes iudices*, at the beginning. And Jacobus Butrigarius holds this on the said l. *Promissis* in his lecture.

And the same Baldus says on the said l. *Cum allegas*: "Now I ask about a certain fraud which usurers commit, who receive a promise of the true principal, and then, having barren things or worthless claims on debtors — that is, not paying — sell them to the receiver of the loan for a certain price, which price they afterwards claim back, when in truth this contract would not otherwise have been made except because of the loan. I answer: this fraud is rescinded. The text is notable, Dig. *De iure dotium*, l. *Cum vir*, and Bartolus there." And to conclude, say

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that when it speaks of a judicial penalty, which is incurred because of a writing through the jurisdiction of a magistrate, this is permitted by praetorian and civil law, provided it is incurred or inflicted after the case has been heard (Dig. *Si quis cautionibus*, l. *Sed et si quis*, at the end), and Innocent notes it on the said c. *Suam*, *Extra*, *De poenis*. Yet the judge's threat does not suffice, because one must not begin with penal orders (C. *De comminationibus epistolis*, l. *Interlocutio*).

There is a certain arbitral penalty, and this can arise from the tenor of the compromise, not from the mere authority of the arbiter (Dig. *De arbitris*, l. *Arbiter inter certum*). There is a certain conventional penalty, and then either it is attached in a contract of loan, and it is not lawful, as in the said l. *Cum allegas*, because it is presumed in place of usuries; or in another contract, and then it is inserted either to a quantity or to an act or to a kind. In the first case either it contains manifest iniquity and intolerable excess, and fraud is presumed, as in the said l. *Iulianus*, § *Ibidem*, at the end, Dig. *De actionibus empti et venditi*; or not, and then either the creditor is accustomed to lend at usury, and fraud is presumed except as far as the interest goes; or he is not accustomed to lend at usury, and then the promise is valid, nor is he therefore reckoned a usurer. For it is unjust to interpret this in a doubtful case, and every interpretation desires equity (Dig. *De condicionibus et demonstrationibus*, l. *In his*, where the text is notable). But if it is inserted to a kind or to the principal act, I do not say the obtaining of a payment, then it is valid, as in the said l. *Promissis* and l. *Lucius*, Dig. *De actionibus empti et venditi*. Or we speak of a testamentary penalty:

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if without a counting of times, as in l. 1, Dig. *De peculio legato*; otherwise with a counting [of times], as in l. 3 at the end, Dig. *De annuis legatis*, and in l. *Cum stipulati sumus*, Dig. *De verborum obligationibus*. Or we speak of a legal or statutory penalty which is imposed on those not paying; and I say the same as for the testamentary penalty, that without a counting of time it is valid; otherwise if it is yearly or monthly, because then it at once permits usuries by its form, which is impossible, as is noted in the *Authentica Ad haec*, C. *De usuris*. And Baldus notes this solemnly on the said l. *Cum allegas*. And he also says there that a penalty as a pure penalty cannot be claimed in a contract of loan, or in another [contract] in which it is customarily done in fraud of usury, as in a contract of deposit — for example, because someone acknowledges that he received in deposit as great a quantity of money as is the quantity of the usuries (by argument from Dig. *Depositi*, l.

Dies sponsaliorum and l. *Lucius*). And the gloss and Baldus on the said l. *Cum allegas*, and Bartolus on l. *Si poenam*, Dig. *De verborum obligationibus*, say that in any contract a penalty attached by judgement can be claimed as interest so far as the interest goes, which is notable.

The tenth case: the forfeiture clause. The second principal case of the fourth verse is in the pact of the forfeiture clause [*lex commissoria*], which is made in this way: I sell you a farm for a hundred, which you promise to pay two years from now on such a day, [on condition] that if the price is not

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paid by you on such a day, the said farm shall be forfeit [the text reads *ineptum*; read *inemptum*, "unbought"]. For in such a case ownership returns to the seller by the law itself (C. *De pactis inter emptorem et venditorem*, l. *Commissoriae*, and Dig. *De lege commissoria*, l. … [the editor notes that no such law exists]). For in such a case the buyer takes the fruits and does not pay for the farm within the set time, and so the seller suffers loss and the buyer is enriched by another's loss, which ought not to be, as the gloss says on c. *Conquestus*, *Extra*, *De usuris*, and C. *De usuris*, l. 2; because such usuries are claimed not as usuries but as interest (by argument from C. 14 q. 1 c. *Quoniam multi*, at "for gain", and c. *Si quis oblitus*, at "some increments"; and Dig. *Pro socio*, l. *Socium qui*). But losses and interest can be claimed according to the canons (C. 12 q. 2 c. *Si quis cum clericis*; *Extra*, *De foro competenti*, c. *Cum dilecti*; *De fideiussoribus*, c. *Pervenit* and c. *Constitutus*; and by argument from Dig. *De eo quod certo loco*, l. 2, last §), and most of all in contracts of good faith, where usuries come from delay (Dig. *De usuris*, l. *Mora*, § *Bonae fidei*; Dig. *De periculo et commodo rei venditae*, the last law; and C. *De actionibus empti et venditi*, l. *Fructus*) — all of which the gloss cites on the said c. *Conquestus*. And the other case, namely of one selling a farm with a pact of selling it back, which the gloss puts there, we omit here, because we shall speak of it more at length below: that if he had paid the first part, the seller ought not to receive anything for that same part, lest he too be enriched by another's loss.

The eleventh case: a free gift. The third principal case of the fourth verse is when something is given freely by the one who received the loan. For

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what is given freely can be received freely (Dist. 18 c. *De eulogiis*; C. 1 q. 2 c. *Sicut*; and by argument from Dist. 77 c. *In singulis*, Dist. 59 c. *Si officia*, and Dist. 61 c. *Quid proderit*). Yet let the one receiving beware of a corrupt intention. For if he would not otherwise have lent except that he intended to receive something beyond the principal, although he had not indicated this to the debtor, yet the creditor himself with such a corrupt intention does not receive freely; rather in his mind he receives usury, since whatever accrues to the principal, with a pact preceding or accompanying, is usury (C. 14 q. 3 c. *Si feneraveris*, and c. *Plerique*, verse *Item esca*), where the text says: "and whatever accrues to the principal is usury; and whatever name you put on it, it is usury."

Hence, similarly, a distinction must be made as in simony, when it is doubted whether what is given by the debtor to the creditor was given freely or with a corrupt intention. Three things above all must be attended to: first, the quality of the persons; second, the size of the gift; third, the time of the giving. The quality of the persons is attended to with respect to giver and receiver, as whether it is given by a poor man to a rich one or the reverse. If it was given by a rich man to a wealthy one, the valuation of the gift [is considered], whether the thing given is of great or lesser price. The time of the giving is attended to, whether it is conferred when need is pressing or at another time. And so by the quality of the persons, the size of the gift and the pressure of the time, the truth will be able to appear, whether it was given or received liberally, spontaneously and freely. This

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distinction is proved in c. *Etsi quaestiones* and in c. *Dilectus filius nuntius tuus, Extra, De simonia*.

The twelfth case: display. There follows the fifth and last verse, which begins "a companion, display" [*Sodalis pompa*], where there are two other cases. The first is when money assigned in a bag and sealed is not lent [as a *mutuum*], because ownership is not transferred, nor properly loaned for use, because not freely; but more truly it is hired out for display, and therefore in such a hiring — as if silver or gold vessels were hired out — usury does not occur. For the same money in number must be returned by the hirer to the one hiring it out, as is plain from Dig. *Commodati*, l. 3, penultimate §, and the following law; which the gloss also holds on the said c. *Conquestus, Extra, De usuris,* and commonly the doctors of canon law there, and Hostiensis in the *Summa, De usuris*, § *An aliquo casu*, verse 10: "When money is lent for display." Blessed Thomas also holds this, II-II q. 78 a. 1, at the penultimate argument, where in reply he says that the principal use of silver vessels is not their consumption, and therefore their use can lawfully be sold while ownership of the thing is kept; but the principal use of silver money is the spending of the money in exchanges. Hence it is not lawful to sell its use while someone also wants the restitution of what he gave on loan. But it must be known that a secondary use of silver vessels could be exchange, and it would not be lawful to sell such a use of them; and similarly there could be some other secondary use of silver money — for example,

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if someone granted coined money for display or to be put in place of a pledge; and a man can lawfully sell such a use of money, since ownership is not transferred, nor is it of the nature of hiring that the contract must be gratuitous; therefore there cannot be usury there.

The thirteenth case: labour. The second principal case of the last verse is where, beyond the principal lent, the creditor by reason of the loan undertakes labour, in compensation for which labour he makes his own the fruits taken from the thing bound to him (*Extra, De rebus ecclesiae non alienandis*, the penultimate chapter, which begins *Ad nostram*, and c. *Ad audientiam*); and Hostiensis in the *Summa*, as above, *De usuris*, § *An aliquo casu*, verse 13, *Si is qui mutuavit*, etc.

And so in the foregoing verses we have thirteen principal cases in which, not usury as usury, but interest and indemnity are justly permitted by the canons. Hostiensis had also set out these verses and expounded them in his lecture on c. *Cum contra, Extra, De pignoribus*, and on c. *Salubriter, Extra, De usuris*; but earlier he had set them out in the *Summa*, as above. And let the foregoing suffice for the first part of the second principal part of this work, which was the declaration of the cases.

The kinds of usury

As to the second thing to be investigated, namely the distinction or division of the kinds of usury: here it is asked principally how many kinds of usury there are. To which it is answered briefly that usury can be distinguished in four ways: the first is real usury, the second mental, the third manifest usury, and the fourth disguised [*palliata*] usury. Real usury is when there is an

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express pact to receive something beyond the principal; and enough has been said of this above in the first part, where the definition of usury is treated, and in the fourth [point of] evidence. The second, mental usury, is when one lends without a pact but with a corrupt intention; and of this kind too we have said enough in the places written above. The third, manifest usury, is when someone lends counted, weighed or measured money on such a pact that something beyond the principal be given to him. And note the word "lends", as distinguished from the hiring out of sealed money for display. Of this manifest usury we have said enough above in the first part, namely on the definition; and who are called manifest usurers we have said enough above in the third member of the first part, in the sixth detestation, § *Praeterea*, "Idem Gregorius", at the end.

And add to the foregoing what Lord Baldus notes on l. *Cum allegas*, C. *De usuris*, in the last column, where it is asked how it is proved that someone is a usurer; and he answers: from custom; likewise from the open iniquity of the contract, as in the text and gloss of the said l. *Cum allegas*; Dig. *De pigneraticia actione*, l. *Universorum*, supports this; Dig. *De usuris*, l. *Qui sanxisset*, last §; Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Ibidem*; Dig. *De petitione hereditatis*, l. *Verum*, last §; *De re militari*, l. *Non omnes*, § *A barbaris*; and Dig. *De usuris*, l. *Poenam* and l. *Pecuniae*, where it is gathered that fraud is presumed from the size of the penalty and from the quality of the lender or the one binding [himself]; and so from pre-arrangement it is plain; and by other conjectures

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it will be proved that someone is a manifest usurer, after proof, conviction, confession or condemnation, as we said above and shall say below — besides the collection of Baldus's notes on l. *Emptione*, which is the third law of C. *Plus valere quod agitur*, etc.

Disguised usury

Of the fourth kind, namely disguised usury, one must proceed more cautiously, because of the wary and subtle cunning of usurers, who today seek out so many quibbles in disguised usuries that they can scarcely be convicted of usurious wickedness. Briefly, this kind of disguised usury is found to be committed for the most part principally in three ways: first under the name of sale; second under the name of pledging; third under the name of partnership.

Under the name of sale. Of the first, namely under the name of sale, it can happen that disguised usury is committed when the intention is to lend with the taking of gain, when the creditor intends to lend not freely but for hire, and, to disguise his iniquity, says to the borrower, namely the one asking the loan: "I will hand you the money you ask, but not under the name of a loan, nor under the name of a pledge, but under the name of a purchase. So let us enter a contract of sale of your thing for this price, and I will restore your thing to you — for example a farm or a vineyard — when you restore to me the quantity of money; but for the time during which you hold my money, you will have the fruit of my money handed to you, and I will have the fruit of your possession or farm." And so with such a mind and intention they contract together. For here there is

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fraud, and a simulated and fictitious contract entered into in fraud of usury. For although it is under the name of sale, yet the substance of the truth is of pledging. Hence what is done in truth must be attended to more than what is conceived in pretence (C. *Plus valere quod agitur*, etc., in the rubric and in the text, and above all in l. 3 and throughout). Therefore the fruits taken from the pledged thing ought to be counted towards the principal (*Extra*, *De pignoribus*, c. *Illo vos*). Otherwise such a contract will be judged quasi-usurious, because it is disguised usury. This is expressly plain in c. *Ad nostram*, *De emptione et venditione*, where Lord Johannes Andreae gathers as a summary: "A fictitious buyer, who is a true creditor, is compelled to restore a thing truly pledged but fictitiously sold, if he has been satisfied of the principal, counting the fruits."

And because he explains the matter most clearly there, let us insert here his whole lecture on that chapter, where after the summary he follows, saying [the gloss is quoted in its lemmata]: "The first [part] narrates the fact; the second gives the judgement, beginning at 'quia ergo'. 'Pervenisse': it does not say through whom; similar is *De iureiurando*, c. *Ad nostram*, second [§]. 'From M.': a usurer, according to Egidius. 'A loan': because fraud is presumed here by the very fact that I ask a loan, offering a mortgage of my goods, and the creditor says, 'I will not lend, but I am ready to buy and to sell it back for the same price up to a certain time'; he is presumed a usurer, especially if a small price is involved, as here; to the same Dig. *Ad Velleianum*, l. *Quamvis*, § *Si*

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cum essem, according to Hostiensis, who also says here that he reckons fraudulent every penalty promised to a usurer if it is not paid at the term (by argument from Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Idem Papinianus*), and holds every oath suspect (*De renuntiatione*, c. *Super hoc*, referring to *De iureiurando*, c. *Debitores*); and he says that it is easily to be presumed against usurers, because they are the worst kind of men, and because it is expedient for their souls that it be so presumed (by argument from *De sponsalibus*, c. *Iuvenis*; *De usuris*, c. *In civitate*; Dig. *De re militari*, l. *Non omnes*, § *A barbaris*; C. *De usuris*, l. *Cum allegas*; and *De rescindenda venditione*, l. *Ratas*).

For they make many barratries [*baratarias*], now buying, now re-buying, now partly selling, which are true barratries, namely leading them to the abyss [*baratrum*]. He also treated here of four ways of defrauding the law, which is noted in *De privilegiis*, c. *Quanto*: experience the teacher, because usurers, abandoning contracts of loan, began to make contracts of conditional purchase, namely with a pact of giving the thing back afterwards; [then,] lest the form of the purchase contract by force of that pact should judge him a usurer, they began to make two instruments, one of pure purchase, the second of the promise to resell. But today the debtor in need of money must trust the usurer as [one trusts] a sacristan, making him a pure instrument of sale; nor do they wish to make a pact of resale in the same instrument or in another, lest by that the judgement convict [it of being] a loan. Likewise they want the true or nearly true amount of the price of the thing itself expressed,

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although less was lent, so that this decretal may not stand in their way. Usurers today have begun something else new: when the principal and the usury have been paid to them, they do not make an instrument of release or a counter-deed unless the debtor makes them an acknowledgment that the usuries have been restored to them. About this provision ought to be made by a constitution providing that restitutions, remissions, gifts and agreements concerning usuries be understood as fictitious and simulated, by the very fact that afterwards it still appears that the usurers lent at usury; and the oaths sworn on these matters should be made void. Likewise provision should be made against the cessions which usurers procure to be made, by those who paid usuries, to some friends, of every quantity they had paid to the usurer, so that the one ceding is prevented from reclaiming. But the assignee is their friend, and they trust him well.

There are also most various frauds in the manner of contracting. For there are those who, when they truly lend, make a contract of sale of florins or Tours pennies or other money. There are others who say they are putting a price into a trade and gain by a craft or some shop, and agree on a share of the gain, also receiving a share of the loss of the wares, when in truth there are no wares or ways [of trade]. There are other usurers who sell a ware, for example a piece of cloth, and an instrument is drawn up about it; and afterwards, since the debtor does not seek the ware but the price, they buy that ware back from him. Likewise, in what is presumed against them from their person, they provide for themselves by having instruments of loan, or made in fraud of a loan under

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another name of contract, drawn up in the person of another who is not a usurer, or of a cleric. And in short, their frauds are so many that no adequate provision applies. What more? We see them lording it in the courts of prelates and princes, and what is written is verified: *All things obey money*, as I shall say below, *De simonia*, c. *Sicut*, second. From these things is plain what the Clementine *De usuris*, c. *Ex gravi*, § *Ceterum*, says: namely that usurers for the most part enter usurious contracts so secretly and deceitfully that they cannot be convicted of usurious wickedness.

'Olive groves', that is, trees, [says] Peter; hence it is well said in the common tongue of many, 'The field is well olived', that is, planted with trees; or properly they were olive trees. 'For nine years', that is, after seven years and within nine; and in this the modern usurers agree, according to Hostiensis, who daily contract thus, buying possessions on the terms that they can recover them after seven years and within nine. For they want to gain seven years' fruits. 'Carenorum': a kind of money; similar is *De privilegiis*, c. *Cum olim*, second, with the concordances I shall give there. 'Half': why, then, was there no action to rescind the contract and to pay the just price by making it up, below, the next chapter? I answer that it was not a true contract but a simulated one, as the Abbot says here; but you say that it was not expedient for the debtor to proceed so; and the Abbot understood that the just price had not been given to the seller either. 'To protect': above, *De rescriptis*, c. *Sedes*, with its concordances; rather it ought to harm, not profit, below, *De eo qui duxit in matrimonium*

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c. 1, 'an enemy' [*hostis*; sense uncertain]." Lord Johannes Andreae also adds, on the said c. *Ad nostram*, in the penultimate gloss, at "§ modus": "From the size of the price the good faith of a settlement about maintenance will be judged, considering the age and health of the one settling" — which is to be noted for what we said above about the maintenance of dowries. The gloss also notes there at the word "fraud" [*dolus*], where it is said: "The buyer's fraud is judged by the quality of the act, not the size of the price." But here, namely in the said c. *Ad nostram*, there was a quality of the act, because he was bound to restore within a certain time. Hence Innocent says that the size of the price without what is said about restitution would not suffice. According to the Abbot, the letter [i.e. the words "he wished to contract a loan"] does much, and he refers to what he says on c. *Illo vos*, *De pignoribus*, at the end of the text and on the end of the last gloss. Note the case.

And that we may have the substance of his authority, let us insert also what he says on the said c. *Illo vos*, where he gathers as the case: "If a usurer buys a thing on the pact that after a time he will restore it to the seller, receiving something beyond the principal, yet with the fruits counted, the contract will be judged one of pledge." And he adds at the word "conditional", saying: "A conditional sale is: I sell to you if so-and-so wishes, or if a ship comes from Asia; here a condition is attached to the sale. Sometimes it is attached to the payment, and then it is not a conditional sale, as here. Or, more to the purpose, according to Hostiensis it is, for example, when he says: 'Let the thing be bought by you for ten; yet if someone offers a better condition within a month, let it be unbought'; and so

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it is dissolved when this condition is fulfilled. It is conditional when he says: 'Let the thing be bought for the price of ten, if within a month another does not bring a better condition.' And the laws he brings in are cited in the gloss."

And the aforesaid Lord Johannes Andreae, intending to declare more clearly how such a contract, formed as above, is presumed to be entered into in fraud, and so is judged disguised usury, says there at the words "from two things": "You have the third at the end" — meaning to say that three reasons are assigned there in the text when the contract could be presumed [made] in fraud. For the text says there: "Yet from two things which had been expressed in the pact — namely that the fruits taken ought to be counted in paying the money, and that beyond the sum received forty solidi ought to be paid — it is strongly presumed against the buyer himself, since he has been accustomed to practise usury." And so the quality of the act is considered as to the pact of counting the fruits towards the principal, or of paying something beyond the principal, or if the buyer has been accustomed to practise usury or fraudulent contracts to disguise usury. Hostiensis adds two other things: that he wished to prove the things, and that he made the contract limp. And it is to be noted, according to Innocent, that judgement is made from presumptions, as in the said c. *Illo vos* and in c. *Ad nostram*, *De emptione et venditione*. And the same Johannes Andreae says that Jacobus de Arena, as Cinus

reports on C. *Plus valere quod agitur*, l. 3, held that, given that it is established of these three [things] that the usurious buyer did not give the just price and made a pact of reselling, a pledge is not presumed through this. To the aforesaid decretal *Illo vos* he answered that

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judgement is made there from two other things, namely because he counted the fruits towards the principal, which is not of the nature of a pledge, as is seen in the gloss, and because he received beyond the principal. But the answer he makes to the decretal *Ad nostram* does not fit and means nothing; and there was an error in it, according to Johannes Andreae, who also says in the last gloss, at the end, on the said c. *Illo vos*: "It is also presumed against a usurer if he demands an oath, according to Hostiensis, above, *De renuntiatione*, c. *Super hoc*. For debtors are in need and creditors abound; and therefore debtors easily promise whatever creditors wish and ask, so that they may have the money they need in whatever way they can. Therefore it is easily to be presumed against usurers, especially since this is not even against them but is expedient for their souls (*De sponsalibus*, c. *Iuvenis*; C. *De rescindenda venditione*, l. *Ratas*)," according to Hostiensis, who refers to what he notes on the said c. *Ad nostram*.

Moreover, on the aforesaid case there is a case to the letter even in civil law, in l. 3, C. *Plus valere quod agitur*, where the text says: "When a purchase is made for the sake of a pledge, not what is written but what is done is looked at." There the gloss holds that even if such a pledger under the name of sale had sworn — namely that it was a lawful sale — if in truth it had been a pledging, it would not be valid. It cites C. *De legibus*, l. *Non dubium*, at the end; and C. *De contrahenda emptione*, l. *Si ancillam*, supports it. Lord Baldus says, as the reason of the gloss, that this oath has no foundation of consent (C. *De non numerata pecunia*, the last law). Which is true, he says, if the contract was simulated; otherwise if it was true, though in fraud of usury, as

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in Odofredus's example; for then the oath would have to be stood by until it was relaxed by the bishop, as in *Extra*, *De iureiurando*, c. 1. Yet if the one swearing were dead, his heir does not need relaxation, because the spiritual bond of the oath is laid to rest by death, as *Extra*, *De iureiurando*, c. *Veritatis*, by Innocent, and in the last chapter *De foro competenti* in the Sext, in the *Novella*. I say "spiritual bond" because it is otherwise in a temporal one and in an obligation regarding temporal things, as is noted on c. *Quamvis*, *De pactis*, in the Sext, in the ordinary gloss.

And attend to his words, "as in Odofredus's example". For Odofredus on the said l. *Emptione* figures the case thus: "You wished me to lend you a hundred. I said: I am ready, but I want you really to sell me your farm for these hundred, and I will resell it to you after ten years for the same price. Once it is established that the original cause was the cause of a loan, this instrument is judged usurious and of interest," according to Odofredus; which example, as Baldus says, is worthy of note. And he adds: "But if the original loan were not established, then such a pact would not on that account be judged usurious, even if made with a usurer, because even usurers often enter true contracts." And so is understood what is noted here, namely on the said l. *Emptione*, by Jacobus de Arena and by Cinus, and *Extra*, *De emptione et venditione*, c. *Ad nostram*, and *Extra*, *De pignoribus*, c. *Illo vos*. You, for the sounder and safer judgement, hold what we said above according to Johannes Andreae.

Lastly, the same Lord Baldus asks whether possession passes by a simulated contract. And he answers by

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a distinction, saying: either you speak of civil transfer, for example by a precarium, and it is not transferred, because since the one simulating remains owner of his thing as before, the precarium does not hold (Dig. *De regulis iuris*, l. *Nec pignus*); or you speak of natural delivery, and then Bartolus distinguishes: either the

intention of transferring possession is proved, and it is transferred even by a useless contract (Dig. *De acquirenda possessione*, l. 1, § *Si vir uxori*); but in doubt the intention of transferring possession is not presumed, since the contract is simulated; and so the delivery too is presumed simulated, according to Bartolus, who so notes on Dig. *De aqua pluvia arcenda*, l. *Emptor*. "I believe," says Baldus, "that if he withdrew from possession and let another into possession, this is a mode of transferring possession (by argument from Dig. *De dolo*, l. *Cum quis*, and l. *Fistulas*, § 1, Dig. *De contrahenda emptione*). Otherwise if in the sale of the thing he did not withdraw from possession"; and Dig. *De alienatione iudicii mutandi causa facta*, l. *Item si res*, last §, with the following law, supports this.

Note, however, for convicting the aforesaid usurers, according to Baldus on the said l. *Emptione*, where he asks: what if in the instrument these words were placed, namely "he sold and delivered truly and not in fraud of usury"? And Baldus says: "I answer that from these words the instrument is more suspect, not less," according to a notable gloss in a similar case, Dig. *De condicionibus institutionum*, l. *Si quis sub condicione*.

It is also to be noted from the sayings of Lord Baldus on the said l. *Emptione*, where he asks how simulation is proved, and

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he answers, saying: "It seems that it cannot be proved (Dig. *De usu et usu fructu legato*, l. *Si alii*). But there it speaks of impossibility in fact, because he had no witnesses to prove it. I say, then, that simulation can be proved; but the question stands in the manner of proving. Here say that either simulation is alleged by a third party who is harmed, or by the one with whom the contract is made. In the first case simulation is proved by conjectures — for example by continued possession as before, as in l. *Sicut*, § *Supervacuum*, Dig. *Quibus modis pignus vel hypotheca solvitur*. And therefore those who possess after a sale, if by such a sale prejudice were done to another — for example a creditor or the treasury — are presumed to have made a simulated contract, even if there is the establishment of a precarium, as is noted by Bartolus, Dig. *De donationibus*, l. *Post contractum*, and in the *Speculum*, *De donationibus*, § 1, verse *Item pone aliquis intendens*, and in the *Speculum*, *De actione seu petitione*, § *In anterioribus*, verse *Quod si forte*. But if it is alleged by the one with whom the contract is made, simulation is not presumed even though possession is retained. For against a seller in possession one can proceed for up to thirty years by the action on purchase; therefore by possession in the intermediate time simulation is not presumed, as above, *De constituta pecunia*, l. 2."

Say more clearly about the matter of this kind of proof: since it is useful for the salvation of the souls of the usurers themselves, or of those acting in fraud of usury, to be convicted of usury or of fraud and simulation, as said above, so it is lawful to proceed against those so simulating from arguments, as one also acts and

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proceeds from arguments and conjectures against usurers, as in c. *Cum in dioecesi*, *Extra*, *De usuris*, where the text says that although no accuser appears, "yet if by other arguments it is established that they are manifest usurers, you may freely exercise against them the penalty issued against usurers in the Lateran council." Innocent III writes to the bishop of Auxerre. For suitable arguments prove (*Extra*, *De clericis peregrinis*, c. 2).

But it is asked what are those arguments from which someone could be convicted as a usurer or a fraudulent simulator. It is answered that such arguments can be those written below:

because someone is commonly of ill repute for usurious contracts; and so reputation with other supports will argue against such a one, so that he is presumed a fraudulent simulator, that is, to have simulated a purchase in fraud of usury under [cover of] a pledge (by argument from *Extra*, *De testibus*, c. *Praeterea*, and in the said c. *Ad nostram* and *Illo vos*, and in l. *Si falsum*, and throughout C. *Plus valere quod agitur*);

likewise it is presumed against such a one if he is accustomed to sell on term for more than at present (by argument from *Extra*, *De usuris*, c. *In civitate* and c. *Consuluit*);

likewise if he makes purchases on the condition that he is bound to restore the things bought at an increased price, or with the fruits retained for himself, as in the said c. *Ad nostram* and *Illo vos*;

likewise because instruments of usury appear against him (by argument from c. *Ex gravi*, at the end, *De usuris*, in the Clementines), where he is constrained to produce his account books so that it may appear whether he lent at usury;

likewise because he

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keeps a counter ready for practising usury, as we said in the detestation of usury of the canons, and the ordinary gloss on c. 1 and 2, *De usuris*, in the Sext;

likewise it is presumed against such a one if he had it put in the instrument that the debtor renounces the reclaiming of the usuries (by argument from c. *Quam perniciosum* and c. *Tuas dudum*, *Extra*, *De usuris*), where [it is said that] notwithstanding an oath sworn that those who paid usuries will not reclaim them and will raise no question about those they paid, yet usurers must be compelled before the payment of the usuries to desist from exacting them, or to restore them after they have been paid, lest it happen that they carry off advantage from fraud and deceit.

Nor does it stand in the way that in criminal matters the proofs must be clearer than light (C. *De probationibus*, the last law, and C. 5 q. 6 c. *Epiphanium*); because in the case of usury and usurious fraud, in favour of souls, it is best to convict usurers and those so fraudulent by indications, arguments and other conjectures, so that they may come out of the hands of demons and from the chains of sins.

And it is to be noted briefly that some are called manifest usurers, of whom in c. 1 and 2, *De usuris*, in the Sext. Some are called notorious by a permanent act, as because they keep a ready counter. Some are called notorious by notoriety of law, as because they are convicted or have confessed; and of these provision is made in the aforesaid c. 1 and 2, *De usuris*, in the Sext, and in c. *Quia in omnibus*, *Extra*, *De usuris*. And we treated the matter of the manifest and notorious at sufficient length on c. *Vestra*, *De

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cohabitatione clericorum et mulierum*, when we lectured on the aforesaid title, and reduced it to writing; and also on c. *Tua nos* and c. *Quaesitum* under the same title.

But suppose that a secret usurer confesses to a priest that he is a usurer: can the priest forbid him the sacraments, or reveal it to the bishop? Say that he cannot, since he is secret, as in c. *Omnis utriusque sexus*, *Extra*, *De poenitentiis et remissionibus*. Yet he ought to induce him to restore the usuries or to confess to the bishop, and warn him that he cannot absolve him otherwise, nor will he be able to be saved; of which we also treated fully in the repetition of the said c. *Omnis utriusque sexus*.

But suppose I relate that someone lent, and that he is a manifest usurer, yet I do not prove that he extorted from me: is he convicted by this? Say that he is not. For it is required that he extorted, especially if one proceeds on the condition of the chapter *Quamquam*, *De usuris*, in the Sext, namely to the nullity of the will or to the denial of burial. For it is possible that a usurer dies from the beginning [i.e. before collecting] before receiving the usuries; and so he is not bound to the penalty of the said chapter, although he sinned mortally by the act of such a loan and ought to repent, according to Johannes de Lignano on the last chapter, *Extra*, *De usuris*, near the end.

Say that if the debtor's obligation to usury appears in writing, the usurer is bound to absolve the debtor, destroy the instrument of obligation and free the debtor lest he be harassed by the heirs, according to the notes on the chapter *Tuas dudum* and on c. *Cum in dioecesi*, *Extra*, *De usuris*, and on the said c. *Quamquam*, *De usuris*, in the Sext,

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and *Ex gravi*, *De usuris*, in the Clementines. But if he has not freed one so bound, and the usurer has died thus, if this is already made manifest, I doubt [i.e. I think] that the penalties of the said chapters *Quia in omnibus* and *Quamquam* apply, because of the words described there near the end of the said c. *Quamquam*, namely: "Let no one be present at the wills of manifest usurers, or admit them to confession or absolve them, unless they have made satisfaction for the usuries, or give suitable security, as said before, for making satisfaction according to the strength of their means." But it is expressly plain that if a manifest usurer, as above, has died when he had not freed the debtor of the usuries nor cancelled the instrument of debt, he has not made satisfaction nor given security as is commanded; therefore he has incurred the penalties of the aforesaid canon. But if the usurer had died still secret, such a priest to whom, as above, he had confessed ought to labour that such a debtor be wholly absolved by the heirs of the aforesaid usurer in every better way possible, with preservation of the reputation and memory of the aforesaid dead secret usurer, as we said in similar cases also in the aforesaid repetition of the said c. *Omnis utriusque sexus*.

On this, Lord Angelus of Asti, knight [*miles*], asks in the aforesaid disputation: what if he confessed in his will that he was a usurer? And he answers: "A confession made in a will is extrajudicial, and has no more effect than when it comes forth among the living, as in l. *Aureolus*, last §, Dig. *De liberatione legata*; Dig. *De legatis* III, l. *Lucius*, § *Sempronio*; and Dig. *De condicionibus et demonstrationibus*, l. *Cum tale*

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§ *Falsam*. But when it comes forth among the living it does not make him a manifest usurer, unless it comes forth before a priest and witnesses or a notary, with an order that the usuries be restored and with the production of the books. Therefore neither will that which came forth in a last will make him manifest, if no publication was made. Yet the bishop could decree and publish that he was a manifest usurer, with public report concurring. But I do not think," says Lord Angelus, "that such a publication works towards the penalties of the said c. *Quamquam*, since at the time of the will he was not a manifest usurer; therefore one could be present as a witness at his will at the time of the will and of the burial, because a quality joined to a verb signifies according to the time of the verb, as in l. *In delictis*, § *Si extraneus*, Dig. *De noxalibus*. And the words of the decretal say: 'Let no one be present at the wills of manifest usurers', and ecclesiastical burial is denied them. But the said declaration will be of use as to presuming the contracts of loan to be usurious."

"But I ask: what if the testator in his will solemnly expressed that he had extorted three hundred from A, B and C and from others not named, which he ordered restored, and makes the bishop executor, and it cannot be shown that those three paid anything? I answer: Lord Marsilius, doctor, held in disputation, following Lord Johannes Andreae, that notwithstanding that the legacy is uncertain, in favour of the last will it is to be executed in this way: [the bishop] will inquire individually from those three how much each paid; afterwards he will summon by edict

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those who had paid him usuries, that they may give evidence of them; and to those who come he will give as much as he shows he paid; and those three will have the remainder if they swear that they paid, and to the amount they swear; but the remainder will be given to the poor (above, the same, c. *Cum tu*). But if those who come have had the whole, the heirs will pay those three the amount sworn (*De sepulturis*, the last chapter; *De raptoribus*, c. *In litteris*). But if no one comes, he said that each of those three will have a fourth

part (by argument from the law *Si quis Titio*, Dig. *De usufructu accrescendo*), and he will give the other fourth to the poor."

"I ask whether it suffices for the plaintiff to prove that the lender was a manifest usurer before the contract, at the time of the contract and after, and that he was accustomed to exact instruments for double the true principal. The Archdeacon adduced for the debtor: on the chapter *Cum in dioecesi*; *De pignoribus*, *Illo vos*; *De clericis peregrinis*, c. 2; *De haereticis*, c. *Excommunicamus*, last §; *De praesumptionibus*, *Afferte*; and l. *Iudicia*, C. *De rei vindicatione*. But for the creditor he adduced that in doubtful matters one must judge against the plaintiff (*De fide instrumentorum*, c. *Inter dilectos*); nor does it follow, if he made other usurious contracts, that therefore he made this one too; rather it ought to be presumed for the instrument (*De praesumptionibus*, c. *Illud*), and the form and tenor of the instrument weighed (*De privilegiis*); further, uncertain or ambiguous things are not to be judged (C. 30 q. 5 c. *Incerta*; Dist. 33 …); and the Archdeacon held this side on c. 2, same title, in the Sext. But there Johannes Andreae says that this is not approved in the schools and is rejected in the courts. Take note, because I do not see how

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it ought to be rejected by the rigour of law, unless having regard to [the practice of] the courts" — according to Johannes de Lignano on the said last chapter, *Extra*, *De usuris*.

Lawful contracts

But when the aforesaid presumptions of fraud are absent, no one doubts that a contract of purchase with an equal price is judged lawful, keeping its nature according to justice and natural equity, as also other lawful contracts, such as those written below:

sale (Dig. and C. *De contrahenda emptione*, throughout, and *Extra*, *De emptione et venditione*, throughout);

letting and hiring (Dig. and C. *Locati*, and *Extra*, *De locato et conducto*);

loan for use (Dig. and C. *De commodato*, and *Extra*, the same title);

loan for consumption (Dig. and C. *Si certum petatur*);

enfeoffment (in the volume *De usu feudorum*, and *Extra*, *De feudis*);

deposit (Dig. and C. *Depositi*, and *Extra*, *De deposito*);

pledge (Dig. and C. *De pignoribus*, and *Extra*, the same title);

livellus or emphyteusis (C. *De iure emphyteutico*, throughout);

partnership (Dig., C. and Inst. *Pro socio*);

exchange (*Extra*, *De rerum permutatione*, and C. and Dig., the same title);

settlement (Dig., C. and *Extra*, *De transactionibus*);

gift, and similar contracts lawfully permitted by law.

Therefore, if between the contracting parties there is a pure intention of selling and buying, keeping the justice of the said contract, and the buyer wishes to do the seller the favour of reselling for the same price, all fraud and simulation being absent, but it is done in a pure mind and intention, such a contract will be lawful, as is the case to the letter in l. 2, C. *De pactis inter emptorem et venditorem*. That you may look at it clearly, we insert here the text of the said law, which says: "If your parents sold a farm on

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the terms that, whenever they or their heirs had offered the buyer the price, or within certain times, it should be restored, and you are ready to satisfy the said condition, if the buyer's heir does not comply, then so that the good faith of the contract may be kept, the action *praescriptis verbis* or on the sale will be given you, account being taken of those things which, after the amount was offered according to the pact, came from that farm to your adversary."

On this Hostiensis says in the *Summa*, title *De emptione et venditione*, § *Qualiter rescindatur*, verse *Illud autem*: "Note that if anything is done in fraud of the law, what follows from it or because of it is not valid (C. *De legibus*, l. *Non dubium*). And he acts against the law who does what the law forbids, offending against the words and the meaning of the law, as is plain in a judge who buys from his subjects (Dig. *De contrahenda emptione*, l. *Non licet*); and is plain in one who buys a minor's thing which by keeping can be kept, without a decree of the judge (Dig. *De rebus eorum*, throughout; C. *De administratione tutorum*, l. *Lex quae tutores*); and is plain in a steward or prelate who sells a thing of the church without keeping the order contained in the *Authentica Hoc ius porrectum*, C. *De sacrosanctis ecclesiis*."

And if it is asked when fraud is done to the law, and in how many ways, it is answered first that the law is defrauded whenever, while the words are kept, the meaning is circumvented (Dig. *De legibus*, l. *Contra legem* and the following law). To the second it is answered that fraud is done to the law principally in four ways.

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In the first way, when one passes from one contract to another contract: as when a spouse, who cannot give a gift (*Extra, De donationibus inter virum et uxorem*, last chapter), sells, not intending to exact the price. Therefore the contract is not valid (Dig. *De donationibus inter virum et uxorem*, l. *Sponsus*, § *Circa*). It is judged in the same way when one approaching a usurer, wishing to receive a loan, finds the usurer does not consent because he fears he may be charged with usury, but he says he will buy if [the other] is willing to sell. If witnesses are found and it can be proved that these words passed, and the sale is made whether far from [the text reads *longum circa*; a variant reads *citra*, "below"] the just price or near the just price, but it is established that the buyer is a usurer and that the seller, if he could have done otherwise, would in no way have sold the thing, though he would have pledged it, the contract is not valid, as in the said c. *Ad nostram*, *Extra, De emptione et venditione*. The same if a pact is made that the fruits be counted towards the principal, or that something be given beyond the principal, when the sale is made, as in the said c. *Illo vos*, *De pignoribus*.

And it is to be noted singularly what the same Hostiensis adds, saying that the custom of the usurer and of the land is above all to be attended to in this — namely when there are many usurers in the land and all have been accustomed to contract thus, as is the case in many places. "And to this," says Hostiensis, "add what I noted above, *De consuetudine*, § *Et de virtute*, verse *Sed specialis* and verse *Specialissima*." In the aforesaid verse *Sed specialis* he says: "But special custom is when in one city or other place [it is observed] specially (Dig. *Communia praediorum*, l. *Venditor*; C. *De aedificiis

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privatis*, l. 3; *Extra*, *De iureiurando*, c. *Venientes*)." And he adds that such a custom prevails if such custom was introduced after the law; otherwise it is overcome by a law that comes later, as in c. *Cum olim*, *De consuetudine*, and in c. *De his*, at the end, and in c. *Certificari*, *Extra*, *De sepulturis*, and *Institutes*, *De iure naturali*, § *Ex non scripto*; this is because custom supplies where the law fails.

And it must be attended to that the custom be reasonable and not against the law of God or against the law of nature, against which laws neither custom nor statute is valid (Dist. 8 c. *Quae contra mores*; C. 32 q. 7 c. *Flagitia*). Rather, the longer such a custom lasts, the graver will be the sins (*Extra, De consuetudine*, the last

chapter, and c. *Non debet, De consanguinitate et affinitate*, with similar texts). And that such a custom is overcome by a later law is also proved in the prologue of the *Institutes*, § *Igitur*, and in the *Authentica De heredibus et Falcidia*, § 1, collation 1, and in c. *Constitutus, Extra, De fideiussoribus*.

Hostiensis also says in the verse which he cites in the *Summa, De consuetudine*, § *Et in virtute*, verse *Item et specialissima*: "according to which judgement is given in doubtful matters, and it brings in this presumption, which is stood by unless perhaps the contrary is proved. This is the custom of the head of a household (Dig. *De pigneraticia actione*, l. *Universorum*; Dig. *De usuris*, l. *Qui semisses*; Dig. *De legatis* I, l. *Si servus plurium*, § *Si numerus*; *Extra, De praesumptionibus*, c. *Ex studiis*, c. *Mandata*, and c. *Cum in iuventute*; and *Extra, De testibus*, c. *Testimonium*; and *De pignoribus*, *Illo vos*, at the end)." Returning, then, after

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the foregoing, to what he adds in the said title *De emptione et venditione*, after citing the said verse *Item specialissima*, he says that "this needs an example", as in Dig. *De poenis*, l. *Aut facta*, penultimate and last §; C. *Ad legem Iuliam repetundarum*, l. 1; *Extra*, *De vita et honestate clericorum*, c. *Ut clericorum mores*; and *De cohabitatione clericorum et mulierum*, c. *Clericus*.

Second, as he says, fraud is done to the law when one passes from person to person: as if a spouse interposes another person to whom he gives, so that it may be given to his wife (Dig. *De donationibus inter virum et uxorem*, l. 3, § *Non tamen*). Likewise if I give power to your friend to confer on you a church or prebend that first falls vacant, or on whom he will, but I know well that he will give it to you (*Extra*, *De concessione praebendae*, c. *Constitutus* and the last chapter). But this power can well be given in general, that is universally, tacitly or expressly (*Extra, De institutionibus*, c. *Ex frequentibus*). He means to say: if fraud does not intervene. Likewise note an example when a person forbidden to contract by himself contracts through another, as is plain in a judge who contracts through another with his subjects when he cannot by himself (C. *Quod metus causa*, the penultimate law; C. *De contractibus iudicum*, l. 1; Dig. *De contrahenda emptione*, l. *Non licet*). Likewise an example is in the steward of a church who buys a thing of the church through an interposed person when he cannot by himself, because it is not valid (C. *De sacrosanctis ecclesiis*, *Authentica Quibuscumque modis*). Likewise an example is *De proximis sacrorum scriniorum*, the last law, and C. *De principibus agentibus in rebus*, l. 1.

Third, he says that fraud is done to the law from thing to thing: as when to a son in his father's power, to whom money cannot be handed over as a loan

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without fear of the Macedonian [senatus consultum], the father not knowing and not ratifying it (C. *Ad Macedonianum*, l. 1 and the last law), a commodity is handed over at a certain price so that he may sell it and receive the price (Dig. *Ad Macedonianum*, l. *Item si filius*, § *Mutui*). Likewise, since nothing beyond food and drink ought to be given to a governor (Dig. *De officio praesidis*, l. *Plebiscito*), yet so much is given him as reaches the quality of gifts in *xenia* [presents] (Dig. *De officio proconsulis*, l. *Solent*, § *Non autem*); just as a prelate who cannot bind his church used to hand over his seal (*Extra*, *De solutionibus*, c. *In quorundam*). And he adds: "This fraud today is greatly usurped by usurers. For they do not lend, but hand over a commodity valued at a certain price, and sometimes they mix with the owners, taking up everything together, which they call *baratrae* [barters]." Say truly: [barters] of their souls, which they barter or lead to the abyss [*baratrum*], unless they make satisfaction before death. For in a valuation made dearer than the thing could be sold for, usury is well contained; therefore such barterers barter themselves, and what they do is worth nothing, as the argument is expressly in C. *Mandati*, l. *Ab Anastasio*; Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Idem Papinianus*; and C. *De usuris*, l. *Cum allegas* and l. *Constitutionibus*.

Fourth, from a contract to the same contract, but in another way: as when I hand you a loan, you wish to give a woman as surety; I, knowing her to be protected by the Velleian [senatus consultum], want her to be made principal debtor and you to stand surety for her (Dig. *Ad Velleianum,* l. *Quamvis*, § *Si cum essem*), etc. And

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so you have from the sayings of Hostiensis how, from such a bad custom, fraud is presumed to be done to the law; which is notable for such contracts made in fraud of usury.

For this reason ordinaries or diocesans, who ought to be shepherds and curators of souls, would do well to forbid and prohibit such contracts having their origin from a loan, because the guarding of their sheep belongs to their office, and they are bound to render account, as in c. *Irrefragabili*, *Extra*, *De officio ordinarii*, where it is said "lest their blood", namely of the subjects, "be required of him", namely of the prelate, "at his hands". Hence he ought to correct the straying sheep and bring them back to his bosom or fold, out of which they go who give their money at usury, as the Psalmist says (Psalm 14): *Lord, who shall dwell in your tabernacle?* and below: *He that has not put out his money to usury.* And so the prohibition and interdiction would be just, even by penalty of excommunication, imposed or to be imposed, on lay people entering such contracts, and on clerics of suspension from office and benefice, as in c. 1 and c. *Praeterea*, *Extra, De usuris*, and in c. *Ad nostram, De iureiurando*.

For contracts entered into against the prohibition of a law or decree are of no value or weight, as in l. *Ubi lex*, Dig. *De usuris*; l. *Cum lex*, Dig. *De fideiussoribus*; l. *Non dubium*, C. *De legibus*; and l. *Is cui bonis*, Dig. *De verborum obligationibus*. For although a sale made with a pact of reselling is valid, as

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in l. *Fundi partem*, Dig. *De contrahenda emptione*, because such pacts are judged as part of the price, as in the said laws, yet because many exquisite frauds are committed against the canons issued against usurers, as we said above, therefore from several conjectures the laws, above all the canon laws, presume that other contracts permitted in their form have been and are made in fraud of usury and to disguise usury, since they would not lend freely. And so this manner of contracting under the name of sale has grown strong in the city, brought into custom, whose origin was a loan. And the foregoing are beyond doubt, above all in those accustomed and wont to contract under such a form with the intention of lending at usury, though with an exquisite colour they name it a purchase. Hence, since a pledge is presumed, such a form and colour of contracting achieves nothing, nor ought it to be attended to (as in the said l. 3, C. *Plus valere quod agitur*) more than what is [truly done; rather than] what is conceived in pretence; and in the said c. *Ad nostram*, *De emptione et venditione*; c. *Illo vos*, *De pignoribus*; and c. *In civitate*, c. *Consuluit* and c. *Naviganti*, *De usuris*. Therefore such a contract, so frequented to the danger of souls in fraud of usury, introduced by the general custom of the men of the said city (as l. *Qui semisses*, Dig. *De usuris*), rightly ought to be judged unlawful and usurious and to be altogether forbidden, notwithstanding the aforesaid custom, which is rather to be judged a corruption; because sins are the graver the longer they hold the unhappy soul bound,

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as in the said last chapter *De consuetudine*. And so this year the distinguished doctors of both laws, the excellent Lord Gratias of Spain and Lord Johannes de Anania, of Bologna and Ferrara, gave counsel.

The purchase of hereditary rents

But now it is asked whether it is lawful to buy rents from land hereditarily [i.e. in perpetuity]. It is answered briefly that it is not, by that law which is set down in Leviticus 25, where it is said: *In the year of jubilee all shall return to their possessions. When you sell anything to your neighbour, or buy of him, do not grieve your brother; but according to the number of years of the jubilee you shall buy of him, and according to the*

reckoning of the fruits he shall sell to you. The more years remain after the jubilee, the more shall the price also increase; and the less time you count, so much the less shall the purchase cost. And below: *The land also shall not be sold for ever, because it is mine, and you are strangers and sojourners with me. Therefore all the country of your possession shall be sold under the condition of redemption. If your brother, being impoverished, sell his little possession, and his kinsman will, he may redeem what he had sold. But if he has no kinsman, and he himself can find the price to redeem it, the fruits shall be counted from the time when he sold it, and he shall restore the rest to the buyer, and so shall receive his possession again. But if his hands find not the means to repay the price, the buyer shall have what he bought until the year of jubilee. For in it every sale shall return to the owner and to the former possessor. He that sells a house within the walls of a city*

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shall have liberty to redeem it until one year be expired. If he redeem it not, and the circle of a year be fully out, the buyer shall possess it, and his posterity for ever, and it cannot be redeemed, not even in the jubilee. But if the house be in a village that has no walls, it shall be sold according to the law of the fields; if it be not redeemed before, in the jubilee it shall return to the owner, and the rest that is contained there. There the gloss says that this command is spoken according to the letter, yet morally it instructs us that in contracts we should have compassion, that no one should trade too oppressively on the necessities of the poor, nor strive to acquire their possessions, but lend to the poor and take back what was lent little by little from their fruits.

From this authority and gloss, then, it is held that when someone buys his neighbour's possession for life, once the principal has been taken from the returns of the fruits it is not lawful for the buyer to receive anything more. And this reason applies much more to things bought hereditarily, because there there is always a notable excess [of return] over the price of the thing bought, since it is clear that the buyer himself or his heirs notably retain beyond the principal. Yet notwithstanding this argument, such a contract can lawfully be made, provided the equity of natural law is kept; which indeed happens when so much equality is kept in the contract that it does not clearly appear which of the contracting parties obtains the better part.

But if it clearly appears that the price was too small in respect of the thing bought, then there would be a corruption of equity

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on the buyer's side, and the buyer would be bound to make up the just price; and if the price were so small that it was less than half the just price, the seller could withdraw from the contract in the judicial court, as in l. 2, C. *De rescindenda venditione*.

But if the land that is sold is of such small value and the price so great that it notably exceeds the thing sold, then equality is corrupted on the seller's side, and the seller is bound in the court of conscience to restore what he received beyond the just price; and if the excess were beyond half the just price, the buyer could withdraw from the contract, as in the said l. 2. On this blessed Thomas says (II-II q. 77): "To sell a thing dearer or buy it cheaper than it is worth is unjust and unlawful, unless the thing that is sold turns to the detriment of the seller, who greatly needs that thing. For in such a case the just price will be such that regard is had not only to the thing that is sold but to the loss which the seller incurs from the sale; and so something can lawfully be sold for more than it is worth in itself, although it is not sold for more than it is worth to the one who has it. But if someone is greatly helped by another's thing which he has received, while the one who sold it is not harmed by lacking that thing, he ought not to sell it for more, because the advantage that accrues to the other is not from the sale but from the condition of the buyer. And no one ought to sell to another what is not his, though he could sell him the loss he suffers. Yet he who is greatly helped by another's thing that he has received can of his own accord

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pay the seller something over, which belongs to his honesty. For as the Philosopher says (*Ethics* IX), in friendship of utility the recompense ought to be made according to the advantage gained by the one who received the benefit; which indeed sometimes exceeds the value of the thing given, as happens when someone greatly needs some thing, either to avoid danger or to gain some advantage"; therefore, etc.

"But that human law does not wholly forbid inequality of price is because human law leaves many things unpunished, having regard to the common concord of men; and therefore it punishes only deception beyond half the just price. But divine law leaves nothing unpunished" (Job 24: *The souls of the slain shall cry out, and God does not suffer it to pass unrevenged*). Hence according to divine law it is reckoned unlawful in buying and selling if the equality of justice is not kept, and the one who has more is bound to recompense the one who was harmed, if the loss is notable. "I say this because the just price of things is sometimes not precisely determined, but rather consists in a certain estimation, so that a slight addition or reduction does not seem to take away the equality of justice. Yet a sale can be rendered unjust by fraud employed, when someone deceives his neighbour to his loss. Hence Tully too says in the book *De officiis* that every lie must be removed from contracts: the seller should not bring in a sham bidder, nor the buyer one who bids against himself."

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"But if fraud is absent," as Thomas says in the same place, "then we can speak of buying and selling in two ways. In one way, in itself; and in this respect buying and selling seems to have been introduced for the common advantage of both, namely while one needs the other's thing and the reverse, as the Philosopher says in *Politics* I. But what was introduced for the common advantage ought not to be more to the burden of one than of the other; and therefore the contract between them ought to be instituted according to the equality of the thing. Now the quantity of a thing that comes into human use is measured by the price given, for which coin was invented, as the Philosopher says in *Ethics* V. And therefore if the price exceeds the amount of the thing's value, or conversely the thing exceeds the price, the equality of justice will be taken away. And therefore to sell a thing dearer or buy it cheaper than it is worth in itself is unjust and unlawful." Whence it is said in c. *Hoc ius*, C. 10 q. 2, that if in a sale more is offered than the thing is worth, the church ought not to receive it but only the just price — although the law says that contracting parties may deceive each other (Dig. *De minoribus*, l. *In causae*, § *Idem Pomponius*, with similar texts). For the church ought not to commit fraud in its contracts (*Extra*, *De donationibus*, c. *Per tuas*). Hence in all things and through all things we understand that fraud and deceit ought not to protect anyone (Dig. *De dolo*, l. *Ne ex dolo*; C. 15 q. 6 c. 1; C. 20 q. 3 c. *Constituit*; C. 30 q. 1 c. *Dictum*; and *Extra*, *De rescriptis*, c. *Ex tenore*). Returning, then, to blessed Thomas, as above, he says: "In another way we can speak

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of buying and selling according as it accidentally turns to the advantage of one and the detriment of the other, for example when someone greatly needs to have some thing," etc., as we said above.

Also, as regards our subject, a fault could occur in rents bought hereditarily: for example, if someone, deceiving himself, believed that hereditary rents could be had for as small a price as when they are bought for life. For if, when rents are bought for life, the contract is unlawful because of the smallness of the price, much more when they are bought hereditarily; because "if what seems less to be present is not present," etc. (*Topics* II).

To the argument from the law of Leviticus 25, it must be said that something there was literal and something moral. What is literal does not bind, just as the jubilee does not; for although the moral precepts of the law bind, yet the judicial and ceremonial do not. But as to what was spiritual in such a law, it appears from the

gloss that the avarice of the rich is forbidden more than the form of the contract. Hence the gloss says that the necessities of neighbours must be relieved, and one must not trade on the necessities of the poor. Rather the rich ought to relieve the needy by lending and take back what was lent little by little from their fruits. Here it is plain that the sale made by the poor man was made because of want, and the purchase takes the place of a loan; and therefore it is less just because of the necessity of the seller and the malice of the buyer; and therefore what is received over

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has no just title of possession. Here it must be noted that when someone buys a possession for a time, or simply, for the sake of gain which is expected only from the nature of time and not from the nature of the thing possessed, there is a fault in the contract; and such gain is called shameful in law. But if such a possession is bought for the sake of gain, and such a purchase was less just because of the necessity of the seller, whom he ought to have relieved out of charity, in such a contract there is the vice of usury, not of itself but by equivalence, because such gain as comes from such a contract militates against charity. But if he buys a possession not for the sake of gain first and of itself, but for the necessity and use of life, provided equity is kept in the purchase, if more accrues in the course of time than is given, it becomes the buyer's, because he received it as his own by the nature of the contract and not by reason of time, except very accidentally.

As to what was said, that if rents are bought hereditarily there must necessarily be a notable excess over the principal because of hereditary succession, it must be said that neither natural law nor positive law prescribes that one who buys a thing hereditarily is bound to give as much for it as it is probable that he himself, his son, grandsons, great-grandsons and all his posterity ought to receive; because by this reckoning a thing bought hereditarily could not fall under a just valuation. But when such a

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just price is set, it suffices that regard be had to the one who buys and to his posterity up to the third degree — for example perhaps up to the son or grandsons — but there is no need that regard be had to all who can succeed to all time, because so the thing that is sold could not be valued. To which the notes on the said c. *Consuluit* and the said c. *Naviganti* apply.

Paying in advance for future returns

But can rents to be received, or the right to receive rents, be sold for a smaller price, because the buyer pays at once, than would be the price if payment were deferred year by year? For example, whether it is lawful to buy the rents of mills for up to ten years, giving a smaller price because it is paid at once, than he would give if payment were awaited year by year. It has seemed to some that it is not, because whoever for a thing to be given in the future pays at once a smaller price than it is probably believed it will be worth in the future commits usury.

Moreover, if someone, for ten *minae* of grain to be given on the Kalends of October, buys on the Kalends of July [the text reads "ten pounds"; sense uncertain], giving ten solidi for a *mina*, that is a measure, and it is probably believed that then a *mina* will be worth fifteen solidi or more, it is usury; and it will be similar with a hundred *minae*; and similar also with a whole sown field, because it is not lawful to give less when it is newly sown than when the time of harvest is at hand. By likeness, then, it is not lawful to give less for rents that are expected in the future than would be given for fruits already gathered.

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Others say, and better, that the case is lawful. For first they suppose that future fruits can be bought, or the right of receiving fruits, like the rights of tolls or of mills. Second they suppose that the just price ought to be proportioned to the thing sold. And the justice of the price ought to be attended to from the time of the

contract, so that as much is given as the thing is worth at the time of the contract, but not as much as it will be worth over the whole following time; because a thing ought to be valued only according to what it is worth at the time of the contract, so that so much is given. Hence Hostiensis, Book V, title *De usuris*, when he treats of the cases which seem usurious and are not, says in the twelfth case: "When I sell fruits for a time, the buyer is not bound to return [anything] to me if he receives more from the fruits than the principal, and this by reason of uncertainty." According to him, then, the price ought to be set having regard to the value of the thing at the time of the contract. Third, from this it can be concluded that the case is lawful, because although the buyer receives more in the following time than he gave, yet what he receives is of the principal, because of the true sale made of the right of receiving fruits; and the justice of the price is attended to at the time of the contract, at which time it is not worth more than it is sold for. For there is fault and usury when a smaller price is given than the thing is worth at the time of the contract, from which time the just price is to be judged; but it is not a fault if a smaller price is given than would be given in the future.

It will be said against

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this: as the buyer stands to the seller, so conversely the seller stands to the buyer; namely, the seller, if he receives more by reason of prolonged payment, is to be judged a usurer. But so it is in the case at hand, because less is given because the price is anticipated. It must be said that the argument does not compel. First, because although the greater price in the seller because of delay and the smaller price in the buyer because of anticipation make a usurer, yet it is not so in the case at hand, because you ought not to judge a smaller price which is proportioned and just in respect of the thing that is sold, though perhaps it is smaller in respect of the future. Second, because that [rule] about anticipation of time applies when the thing that is sold is not delivered at once, but the price is given at once and the thing is awaited. But in the case at hand the thing that is sold is delivered at once, though its use is awaited.

For in buying and selling there can be a twofold waiting. First, that the thing sold is awaited, and because it is awaited, less is given; as if someone gives ten for a *mina* of wheat which is worth twenty, to receive the *mina* at another time. Such waiting, if it is by pact, is usury. The other is the waiting not for the thing but for its use; for example, because the thing is of such a nature that the buyer cannot use that thing at once. Because of the waiting for use he does not sin, because the thing is delivered at once and is sold for as much as it is worth at the time of the contract, though a smaller price is given for it because of its successive use, as in the rents of mills, where the receiving

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of the rents is successive, or the use of it is awaited; as if someone, for a fur of vair which is delivered at once, gives [less] around Pentecost than around the feast of St Michael, because its use is awaited around Pentecost and not at the feast of St Michael. [The editor explains: the price is lower at Pentecost because the item can only be put to use at Michaelmas.] For although the thing is delivered at either time, yet it is lawful to give a smaller price at one time than at another, not because of waiting but because of use.

And note that although these two cases, of which one is on the buyer's side and the other on the seller's, seem to differ by anticipation and delay of time — because the buyer gives a smaller price since he anticipates payment, and the seller receives a greater price than the thing is worth at present since he awaits payment — yet each case can be reduced to delay. For as in the first case the buyer gives the price at once and awaits the thing that is to be given for the price, so also in the second case the seller delivers the thing at once and awaits the price. In both there is something awaited, though in one case the thing and in the other the price; and so in the sale the seller gives less to receive more at another time, though what is given is the thing in one and the price in the other; and in both there is a fault: in one because a smaller price is given because of the anticipated delivery of the price and the waiting for the thing sold [the text has the terms crossed; uncertain],

in the other because of the anticipated payment of the price and the waiting for the thing. And as in a purchase, when the price is awaited, it stands at the risk of the buyer [so the text; uncertain], so also in the second, the thing that is to be delivered and

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is not yet delivered stands at the risk of the seller. It is not so in the case at hand, because what is sold is delivered at once, namely the right of receiving fruits or rents, though the successive use of that right is awaited, because namely it is received only yearly.

To the arguments it is answered. To the first, where it is said that when a smaller price is given than the thing that is awaited is believed to be worth, etc., it is plain that it is not similar, because the thing is not delivered at once but is awaited. But in the present case a present thing is bought at once, namely a right and action, which at once becomes the buyer's and stands at his risk and advantage; and therefore the contract is lawful.

But suppose the converse case: for example, someone sells the right of receiving rents which at the time of the contract are worth a hundred, and because he awaits payment to be made at certain times he wants to have a hundred and twenty. Is the case lawful? It seems it must be said that it is not; because since the thing that is sold is delivered at once and stands at the buyer's risk, and he can sell it to another at once, and because you await payment you wish to have more because of the delay of time, usury seems to be committed indirectly, as though someone indirectly lent the just price of the thing sold, namely a hundred pounds, so as to have from them twenty pounds beyond the principal. And this usury seems to be committed indirectly, and to be present in every thing sold on time. For if a thing is worth ten at present and someone sells it for twelve because of waiting for payment, he seems indirectly to lend ten in order to receive two beyond

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the principal. Yet the decretal *Extra*, *De usuris*, *In civitate tua*, says that this case is not usurious in its form; "nevertheless the sellers incur sin, unless it is doubtful whether those wares will be worth more or less at the time of payment." Perhaps it said "not a usurious case in its form" because it is indirect usury; for as was said above, direct usury occurs in the contract of loan.

To the second argument, about the ten *minae* of grain, it is plain that it is not similar, because there the thing that is sold is not given at once; and that it is not given at once comes not from the nature of the thing but from the pact. But here the right is delivered at once, though by the nature of the thing its use is awaited. Likewise those ten *minae* are certain and at the seller's risk; it was also probably believed that they would be worth more at the time of delivery, and the buyer himself would not want to receive the thing he bought at the time when he gives the price. And therefore, although it seems a purchase, yet it is a loan; for a loan is made under the cloak of a purchase, because less is lent so that more may be received.

Selling on credit

But is it lawful in any case to sell on credit? It must be said that selling on credit can happen in three ways. In the first way, credit for paying the price in the future can occur in a contract through the favour and liberality of the seller, namely when the thing is sold according to the just valuation for the time of the purchase and exchange of the thing itself, and the seller himself

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awaits payment liberally because of the favour he has towards the buyer; and such credit has no vice of usury, because there is no increase because of the credit, since the thing is sold for as much as it is worth according to the just valuation, which valuation is made for the time of the contract. In the second way, an increase can occur in a contract not because of the seller's favour but from the nature of the contract, because

the thing is valued not according to the value it has when it is delivered, but what it will be worth or is hoped to be worth at the time of payment. For example, if some thing is sold at a time in which it does not have as much usefulness and necessity for human life as it will have in a future time, and the seller would not have sold it at the time when it is worth less, but at another time when it is hoped to be worth more: in such a case selling on credit is lawful by the nature of the contract, as is proved in the said c. *Naviganti, Extra, De usuris*. In the third way, credit can occur in a contract accidentally, namely from the nature of time, namely when someone sells for more than the thing is worth at the time of the sale, or than it will probably be worth at the time of payment, though he would otherwise sell it [for less]; and in this way the contract is faulty.

Yet some say that although the contract is faulty in itself, yet it can be excused on the side of the sale. For if the seller does not intend to sell his thing dearer because of the time, but because of the loss that he foresees from the delay in receiving payment, or to buy off the vexation

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which he probably fears will come to him in reclaiming his debt, or because of the malice of his creditor [read: debtor] and the inability of his debtor, then the contract is excused from fault, because the equity of valuation is kept in such a contract for the recompense of the loss which is probably feared. And the rightness of this intention appears when the seller would rather not sell to such people than sell on credit, and when he would more gladly give to others for a smaller price than to these on credit for a greater price. So, then, according to some, the contract is excused. And if the excuse were true, it would be excused because of interest, since it is done principally not for gain but to avoid loss. Yet it is safer [to note] what is added at the tail of the said c. *In civitate*: "unless it is doubtful whether those wares will be worth more or less at the time of payment. And therefore your citizens would take good counsel for their salvation if they ceased from such a contract, since the thoughts of men cannot be hidden from almighty God." For in one way one so selling cannot be excused: namely when, because of the credit, the seller sells for more than the thing is worth simply, or than it will probably be worth at the time of payment; or also if it will probably be worth at the time of payment as much as it is sold for, yet the seller would not sell his things otherwise except because of the credit, and by waiting would receive more. And so is understood the said c. *Consuluit, De usuris*, cited above.

The purchase of money rents

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But is it lawful to buy money rents hereditarily or for life? Some say not. Their reason is that money was invented for this, to be a medium between buyer and seller, as in *Ethics* V, and not to be bought or sold; on account of which one who buys or sells money uses it for an end for which it is not [meant], and consequently sins. And most of all because such a contract seems unable to be reduced to anything except the contract of loan. For since money cannot be bought or sold, because it is not an extreme of buying and selling but the medium, this contract cannot be reduced to buying or selling. And it is certain that it is not hiring or loan for use; therefore it is reduced to the contract of loan, in which it is not lawful to hope for gain, as has often been said. Moreover, here money seems to be given so that money may increase itself, and this is not lawful, as is plain from the Philosopher, *Politics* I. Moreover, the accrual of gain to the principal, whether successive or made all at once, does not vary the contract, because in both cases whatever accrues to the principal is usury, as we have often said. But if the accrual is made at once — for example, if someone gives ten pounds to receive twenty in one year — it is usury and a faulty contract; therefore in the same way, if someone gives ten to receive twenty in two or three years, it is usury. So, then, it seems to be when money rents are bought, because in certain years the gain not only equals but exceeds the principal. And although this accrual is made by successive receiving of the rents, yet this does not set the contract right,

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because it makes no difference whether such an increase is received successively or at once. Although this is the opinion of great men, yet it can be defended that the contract is lawful.

For the evidence and declaration of which it must be known that a contract can be vitiated principally in four ways. First, on the side of the thing which is bought or sold, because the thing is not saleable, like a free man, who cannot be sold (Dig. *De statu hominum*, l. *Liber homo*). Spiritual things also cannot be sold, nor can another's thing be sold. And in this way, according to the first opinion, this contract is vitiated, because money is not saleable; and it is vitiated so far that it departs from the contract of purchase and enters the contract of loan, from which it is not lawful to hope for gain. But yet it can be answered to this: in our things we have three goods, namely movables and immovables and a right in each. And as movable and immovable and the right in each are distinguished, so the right itself can be sold. For the money itself is not sold, but the right of receiving money rents. And although money cannot be sold, yet it passes with the right sold. For we see that some thing cannot be sold or bought separately, and yet it passes with the sale of a manor or farm, which can lawfully be sold; so that in the case at hand a right is sold, and when it is sold the money passes. For the right of receiving such an amount of money on the goods sold each year, whether hereditarily or for the buyer's life, is not money,

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but the one is distinguished from the other. It is true, then, that for some reason money cannot be sold as money, because it is the medium in a sale, as above; just as the right of patronage cannot be sold, because it is annexed to a spiritual thing, and yet it passes with an inheritance (*Extra, De iure patronatus*, c. *Ex litteris* and c. *Cum* second). Second, there can be a fault in the contract on the side of the price; and such a fault is excluded from this contract when the price is proportioned to the right that is sold. For it is a rule that a contract of buying and selling is unlawful when the equity of natural law is not kept in it; but when such equity is kept, so that there is no notable excess of the price over the thing sold nor the reverse, the contract is lawful. It is not denied, then, that such a contract can be vitiated on the side of the price; but as it can be vitiated, so it can be set right. Third, a fault can occur in the contract on the side of the pact attached: that is, when the attaching of a pact is repugnant to the thing about which the transaction is made, so that the thing itself does not allow a pact to be attached; and in this way there is fault in simony. In another way fault occurs on the side of the pact when the pact is repugnant to the contract; this is when the contract is gratuitous, like the contract of loan, and such a fault makes usury. For usury exists from this, that something is exacted by pact or preceding intention by reason of the thing lent. But such a fault is not in the aforesaid contract, since there is a true sale there and not a loan;

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therefore the contract is lawful. Fourth, a fault can occur in the contract on the side of the contracting party, namely when someone pretends to buy what he receives as a pledge; and then he is not excused from the vice of usury unless he counts the fruits towards the principal (*Extra, De pignoribus, Illo vos*, and the said c. *Ad nostram, De emptione et venditione*). And in this way someone could say that there is a fault here, because to contract thus is just the same as to lend a hundred for ten each year, so that one so contracting lends indirectly and, feigning a purchase, makes a loan. But to this it can be answered that the argument does not compel, because in such a contract there is no loan, direct or indirect. For where there is a loan, the borrower is bound [to repay] in the amount lent; but in such a contract the price passes over, and the right of receiving rents stands at the buyer's risk and gain. Yet a fault could occur because of the cupidity and avarice of the buyer.

In another way some prove this contract lawful: because someone could lawfully buy a farm for a hundred pounds, and the farm bought could be given hereditarily to someone for himself and his heirs on this pact,

that the one receiving the farm would be bound for himself and his heirs to give each year a hundred solidi to the one giving him the farm, for himself and his heirs. And so, by means of the buying and selling of the farm, such a one for a hundred pounds has a hundred solidi each year. And it makes no difference in the contract whether he has this mediately or immediately.

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Such a contract, then, is lawful, though not as honourable and seemly as the contract by which rents from land are bought, as Master Alexander of Hales says in his treatise *De usuris*. To the first argument the answer is plain from the foregoing, because money is not bought, but a saleable right. To the second it is answered that here there is no excess of gain over the principal, because in a sale, as was said above, the whole is of the principal. And consequently the answer is plain to the other, when it is said that it is a loan: for this is expressly denied; rather it is a purchase of the right of receiving fruits; therefore, etc. And let these things suffice about usury disguised under the name of sale.

Under the name of pledging. Of the second disguised usury, then, which is committed under the name of pledging, it must be known that this kind of usury has five species. The first species of such usury disguised under the name of pledging is when someone receives as a pledge a possession or farm whose fruits, when taken, he does not count towards the principal; for then such taking of the fruits passes into the species of disguised usury, as in c. *Illo vos*, *Extra*, *De pignoribus*. Here it must be known that a pledge is an obligation of a thing lawfully entered into for a debt, which is made for the greater security of the creditor, because it is safer to rely on a pledge than to proceed against the person (*Institutes*, *De obligationibus quae ex delicto nascuntur*, § *Furti*), and it is safer not to pay than to reclaim what has been paid (Dig. *De compensationibus*, l. *Ideo compensatio*). And great is the advantage of the one in possession (*Extra*, *De probationibus*, *Ex litteris*; Dig. *De rei vindicatione*, l. *Destinaverit*). And Papias

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says: "A pledge [*pignus*] is given for a thing lent, of which the creditor obtains possession only for a time, but ownership remains with the debtor." And he set out the difference in the variation of the genitive case, because *pignus* can be varied and declined *pignoris* and *pigneris*; hence the verse: "Pledges of children are called *pignora*, of things *pignera*." Yet *pignere* is said improperly for *pignore*. Hostiensis, however, in the *Summa*, title *De pignoribus*, says that *pignus* is so called from *pugnus* [the fist], as he had it from Dig. *De verborum significatione*, l. *Plebs*, § *Pignus*, where it is said that properly a pledge is called a movable thing handed from fist to fist.

As to our purpose, it is asked first whether it is lawful to attach this pact to a pledge: that if the money has not been paid by a certain day, then the creditor shall possess the pledged thing by right of purchase at a just price to be valued at that time. And it is answered that it is (Dig. *De pignoribus*, l. *Si fundus*, last §); and so the price seems able to be referred to an uncertain person in this case, which is special. But it is otherwise in letting (Dig. *Locati*, l. *Si merces*, first answer). It would also be otherwise if the debtor said that the creditor should have the thing as bought for the price lent if the price were not restored by the day. For this pact is called the forfeiture clause [*lex commissoria*], which is rejected in pledges (C. *De pactis pignorum*, etc., and Dig. *De lege commissoria*, l. 1 and 3). Similarly it is rejected if the debtor promised to give it in payment (Dig. *De solutionibus*, l. *Calipodius*); or if it is agreed that it is not lawful to redeem [*luere*, that is, buy back] the pledge, either in perpetuity or before a day fixed for him

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(by argument from Dig. *De precario*, l. *Cum precario*; *Extra*, *De precariis*, c. *Precarium*). Similarly a pact does not hold that the creditor may not sell the pledge (Dig. *De distractione pignorum*, the last law, and *Extra*, *De pignoribus*, c. *Significante*). Yet this pact between the debtor and the creditor and a surety is lawful

(Dig. *De contrahenda emptione et venditione*, the last law, first answer), unless it were done in fraud of the law, from person to person (by argument from Dig. *De donationibus inter virum et uxorem*, l. 3, § *Non tantum*; *Extra*, *De concessione praebendae*, c. *Constitutus* and the last chapter; and *De privilegiis*, c. *Quanto*); and similarly it is noted on *De sponsalibus*, c. *Gemma*. And so it was done at Padua, as Johannes Andreae says on the said c. *Significante*.

What if a pact is made that unless it is paid by a certain day the creditor shall have the thing in fief? I answer: it is not valid, because fraud would be done to the law (by argument from *Extra*, *De rebus ecclesiae non alienandis*, c. *Ad nostram*); and it is expressed in the constitutions of fiefs, *De feudo dato in vicem legis commissoriae*, c. 1. What if the debtor promises never to reclaim the pledge? I answer: it is not valid, as in the said c. *Significante*, and by argument from Dig. *De iureiurando*, l. *Si duo patroni*, § *Idem Iulianus*, as in the laws cited in the question immediately above. What if he said that he cannot recover it for two years? Hostiensis says it is not valid, as in the laws cited above about the precarium. But in the same §, verse *Quid si dixit*, he says it is valid, though there is an argument against it in Dig. *Communi dividundo*, l. *In hoc iudicio*, last §. Hold the first. For such a

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pact seems to have been made in fraud, so that within the aforesaid two years he may gain the fruits of the pledge, which ought not to be, as in the said c. *Illo vos*, with similar texts.

What if the debtor renounces the benefit of this law? I answer: the renunciation is not valid, because such a law was introduced for the public good (by argument from *Extra*, *De foro competenti*, c. *Si diligenti*; C. *De iureiurando propter calumniam*, l. 2, § *Sed quia veremur*; Dig. *De postulando*, l. *Quod praetor*). Likewise because it was introduced in odium of creditors, lest they act in fraud of the law. On this Hostiensis refers to his notes in the *Summa*, title *De renuntiatione*, § *Quae possunt renuntiari*, where he treats fully what is called public law. And he says that in a broad way public law is any law reduced to writing, introduced by public persons, for example by princes, holy fathers or councils; from which any municipal or episcopal constitution can be called public law (by argument from *Institutes*, *De iure naturali, gentium et civili*, §§ 3 and 4; *Extra*, *De maioritate et obedientia*, c. *Quod super his*; and *Institutes*, *De his qui sui iuris sunt*, § *Dominorum*). And Hostiensis treats it fully in the *Summa*, title *De constitutionibus*, § *Quis possit*. For it concerns the commonwealth that public law be observed, because it would be useless to grant laws unless there were someone to have them observed (Dig. *De origine iuris*, l. 2, § *Post originem*). Specially and properly, however, public law is called that which consists in sacred things and priests (Dig. *De iustitia et iure*, l. 1, and Dist. 1, c. *Ius publicum*), which is specially divine (*Extra*, *De iureiurando*, c. *Nimis*).

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Hence the same Hostiensis says in the said title *De renuntiatione*: "If you wish to know what law can be renounced, distinguish public law: one is divine, another human. Divine public law is subdivided, for one is real or temporal, another spiritual, another collegiate, another personal, another regarding the public state. Of divine public real law, one part is granted to churches, that their things not be alienated except in a permitted case and in the due manner; and this cannot be renounced even by oath (*Extra*, *De iureiurando*, c. *Sicut nostris*; C. 35 q. 9 c. *Quis commisit*). Another consists in this, that the immunity of the church be kept; and this cannot be renounced even by the bishop (*De immunitate ecclesiarum*, c. *Non minus* and c. *Adversus*; C. 27 q. 4, almost throughout). Another consists in this, that the due general state of the church not be changed; and this cannot be renounced either (C. 25 q. 2 c. 1, 2 and 3, and almost throughout). But divine spiritual public law either consists in divine worship — for example in feast days introduced out of reverence for God, and this cannot be renounced (Dig. *De arbitris*, l. *Si feriatis*, and *Extra*, *De feriis*, the last chapter); so also when it is introduced that something be deducted from bequests to pious causes (*Extra*, *De testamentis*, the last chapter); or it consists in divine precepts, and against this custom does not avail either (*Extra*, *De*

consuetudine, the last chapter, and *De praesumptionibus*, the last chapter)" — and Hostiensis refers to his notes in the *Summa*, *De consuetudine*, § *Et de virtute*, verse *Per hanc*, and *De usuris*, § *An aliquo casu* and the preceding §. "Or it consists in

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general and provincial councils, or precepts or prohibitions touching the danger of souls, and this is renounced [i.e. not renounced; uncertain] (C. 25 q. 1 c. *Sunt quidam*; Dist. 18 c. *Sicut*; *De transactionibus*, the last chapter; *De in integrum restitutione*, c. *Causa*, last §; *De sententia et re iudicata*, c. *Lator*, c. *Tenor* and c. *Consanguinei*; and *Extra*, *De exceptionibus*, c. *Exceptionem*). But collegiate divine public law: one is common, namely granted to the whole clerical college of the general church; and this cannot be renounced even by oath, expressly, as in the said c. *Si diligenti* and *De sententia excommunicationis*, c. *Contingit*. [This holds] first, although by a contrary act a cleric sometimes deprives himself of clerical fellowship and consequently [of the privilege] (*Extra*, *De privilegiis*, c. *Accedens*, and c. *Ex parte*; *De sententia excommunicationis*, c. *Perpendimus*, c. *In audientia* and c. *Contingit*). And although a bishop can ratify, to the prejudice of a person, what was done against the college, and to the prejudice of the college what the college did, so that it may be punished in that in which it offended (*Extra*, *De renuntiatione*, [c.] *Quod in dubiis*); and so I understand the councils in C. 2 q. 1 c. *Placuit* and c. *Inolita*, whose tenor is set out in the said c. *Si diligenti*, *De foro competenti*. Another is singular, as granted to a single church or college; and this is renounced sometimes by a contrary act, sometimes in the space of ten years, sometimes of thirty, as Hostiensis notes in the *Summa*, *De constitutionibus*, § *Quandoque constitutio*, in the distinction which begins *Cum privilegium*. But divine public personal law: one is for the honour or advantage of a dignity, which can be renounced by the person holding the dignity so far as it touches the person. But the superior, either at

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the complaint of those whom it otherwise concerns, or by office, restores it (*Extra*, *De institutionibus*, c. *Cum venissent*, and *De arbitris*, c. *Cum tempore*). Another is for the sake of singular persons, and this is renounced without distinction (*De rescriptis*, c. *Nonnulli*; *Extra*, *De foro competenti*, *Dilecti*; *De regularibus*, c. *Ad nostram* and c. *Statuimus*; *De crimine falsi*, the last chapter; *De electione*, c. *Quod sicut*, § *Sin autem*, and c. *Ne pro defectu*, last §). Another is for a singular person to whom it is personally granted, and this can much more strongly be renounced, because it does not go beyond the person (*Extra*, *De concessione praebendae*, c. *Constitutus*; C. 7 q. 1 § *Petisti*; *Institutes*, *De iure naturali*, *gentium et civili*, § *Sed et quod principi*, verse *Plane*). But divine public law regarding the public state is that a suitable person be elected, and that the form be kept, and that wills themselves be executed, and the like; which cannot be renounced, as is plain in *Extra*, *De electione*, c. *Cum in cunctis*, c. *Ne pro defectu*, first answer, and c. *Quia propter*, and *Extra*, *De testamentis*, c. *Tua*.

But human public law: one is public in authority and advantage, as fiscal law, and this is not renounced (Dig. *De pactis*, l. *Ius publicum* and l. *Inter debitorem*; and *De iure immunitatis*, l. *Semper*, § *Conductores*). The same in all those matters in which the judge proceeds by his own office and motion, of which I spoke at *Extra*, *De officio iudicis*, § *Et utrum desideret*, that crimes not remain unpunished (Dig. *Ad legem Aquiliam*, l. *Ita vulneratus*; *Extra*, *De sententia excommunicationis*, c. *Ut famae*), and there are other concordances there; with this reserved, that so far as it touches private advantage it can be renounced (Dig. *De pactis*,

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l. *Iuris gentium*, § *Si paciscar*). Therefore I can agree not to sue for a theft already committed, but not for a future theft (Dig. *De pactis*, l. *Item si unus*, § *Pacta*; *Extra*, *De iureiurando*, c. *Quemadmodum*, § *Illud autem*). Likewise that the order of the trial be observed, such as that a libel be offered, issue be joined, sentence be given in writing and justice be rendered, and that laws regarding the public state be kept, that is, not omitted (*Extra*, *De testamentis*, *Requisisti* and c. *Tua*); and what I said at *Lite non contestata*, § *Quae sit*

ratio and § *Quis sit effectus*. Another is public in authority and private in advantage; and this is either introduced for the common advantage, and this cannot be renounced expressly, though it can tacitly (C. *De iureiurando propter calumniam*, l. 2, § *Sed quia veremur*). But this § seems to want that it cannot be remitted even tacitly; say as I noted at *Extra*, *De iureiurando calumniae*, c. *Pertractandis*; and in this law too a renunciation holds if it is confirmed by oath (*Extra*, *De iureiurando*, c. *Cum contingat*, and C. *Si adversus venditionem*, *Authentica Sacramenta*). Or [it is introduced] for private advantage, and then, if it is favourable and proper, it can be renounced (C. *Quando mulier tutelae officio fungi potest*, *Authentica Matri et aviae*; C. *De pactis*, l. *Si quis in conscribendo*). For at the time of that law that privilege was of such a nature, though today it is otherwise by the imperial constitution which begins *Sed hodie sanxit nova constitutio*. If it is favourable, so far as it touches the one renouncing it holds; so far as it touches another it does not hold (Dig. *De servitutibus rusticorum praediorum*, l. *Per fundum*)." And there Hostiensis treats this matter diffusely, which for brevity I omit.

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But returning to the purpose, about the nature of a pledge, it is asked: what if the debtor swore that he would not come against such a renunciation? I answer: the *sacramentum*, that is the oath, is not valid, since it was made in fraud of the law (by argument from C. *De legibus*, l. *Non dubium*), because whenever a pact is removed from the common law it is not to be kept (Dig. *De pactis*, l. *Iuris gentium*, § *Sed et si quis paciscatur*, and l. *Si unus*, § *Pacta*; and the said c. *Significante*, *De pignoribus*). Yet the same Hostiensis says, as above: "I believe, however, that it is valid, if the one who makes it can be absolved by the church; on which say as I noted above, *De iureiurando*, § *Quomodo censetur*, verse *Si quis ergo* and verse *Et hoc notandum*." Lord Johannes Andreae also holds this on the said c. *Significante*, *De pignoribus*, in the second gloss, at the word *improbatur*, where he asks about the foregoing; and when he asks about the oath he says: "Say that it holds, as is sufficiently hinted here"; and Innocent and Bartholomew of Saliceto agree with this. And he says: "See what I said in the *Speculum*, *De renuntiatione*, verse *Et quia*", here in the *Additions*, namely of the aforesaid Johannes Andreae.

What if the debtor promised a penalty if he came against it in law or in fact? I answer: it is not valid, since this is presumed done in fraud of the law (by argument from *De sponsalibus*, c. *Gemma*; *De precariis*, c. 2; C. *De usuris*, l. *Cum allegas*; Dig. *De actionibus empti et venditi*, l. *Iulianus*, § *Idem Papinianus*; Dig. *Si quis cautionibus*, l. 2, first answer; Dig. *De condictione indebiti*, l. *Eleganter*, penultimate §). But if a pact is made that the buyer should have some farm of the seller's bound [to him] in place of the one he bought, then when a question has been raised against him about the purchase

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and sentence has been given for the buyer, he is compelled to restore the substituted farm to the seller who had transferred it to the buyer (C. *De pactis pignorum et de lege commissoria*, l. 2). But this pact, namely of the forfeiture clause, is lawful in buyings and sellings — which I believe true, says Hostiensis, unless it were done in fraud of the law, as I said above (C. *De pactis inter emptorem et venditorem*, l. *Commissoriae*; Dig. *De lege commissoria*, throughout). That pact also is valid, that the debtor be freed by the loss of the pledge: for example, if the creditor lost the pledge, the debtor would be freed from paying the debt (C. *De pigneraticia actione*, l. *Quae fortuitis*); otherwise it does not harm [the creditor]. For even though he received a less suitable pledge, he nevertheless sues to recover the debt (Dig. *Si certum petatur*, l. *Creditor*). But sometimes the principal obligation does not hold, and yet the giving of the pledge will be valid: as if the guardian of a ward sells a thing and establishes a pledge, the pledge too is valid so far, because even the contract, perhaps to his prejudice, will hold (by argument from C. *De praediis minorum*, l. *Etsi is*), according to Hostiensis.

Johannes Andreae asks on the said c. *Significante*: what if I say, "I sell the farm for ten, so that I can recover it for up to twenty years"? He answers that it is valid (Dig. *De praescriptis verbis*, l. *Si vir uxori*), unless it is done in fraud, as in the said c. *Illo vos*.

He also asks about the reason for the difference: why this pact is permitted in a sale and not in pledges. And he says: "I answer, according to Peter and the Abbot: commonly a thing is sold for as much as it is worth, and therefore if the condition takes effect the seller is not much defrauded. Nor

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does it stand in the way if you say that sometimes it is sold for less, because regard is to be had to what commonly happens (Dig. *De legibus*, l. *Nam ad ea*). But commonly a pledge is worth more than the money lent; if, then, this pact had place there, the debtor would be defrauded of that by which it is worth more," according to them. "But add a reason," he says: "because creditors would not lend otherwise if this pact were lawful, and debtors — either hoping to be able to redeem at the agreed term, or needing money — would easily consent to this pact. Likewise here something would accrue to the principal, and it would be in fraud of usury"; of which enough is found in the said c. *Ad nostram*, *De emptione et venditione*, and in the said c. *Illo vos*, *De pignoribus*, and in c. *Cum contra*, where the case is to the letter that if the creditor, or one who has title from him, has received so many fruits from the pledge that the principal has been satisfied, the pledge ought to be restored to the debtor. Therefore, if the fruits of the pledge are not counted towards the principal, they fall into the place of usuries, which ought not to be, as we said sufficiently above. And let the foregoing suffice about the first species.

The second species of usury disguised under the name of a pledge consists in the use of pledges, which is forbidden even by divine law (Exodus 22): *If you lend money … you shall not be hard upon him as an extortioner, nor oppress him with usuries. If you take of your neighbour a garment in pledge, you shall give it him again before sunset*; and below: *If he cry to me, I will hear him.* And Deuteronomy 24: *When you shall demand of your neighbour anything that he owes you,*

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you shall not go into his house to take away a pledge; but you shall stand without, and he shall bring out to you what he has. But if he be poor, the pledge shall not lodge with you that night; but you shall restore it to him presently before the going down of the sun, that he may sleep in his own raiment and bless you, and you may have justice before the Lord your God. And in the same chapter above, where it is said: *You shall not take the nether nor the upper millstone in pledge, for he has pledged his life to you* — which is said for this reason, lest he take fruit from such a pledged thing to the loss of the one pledging. Hence also they are reproved as wicked who took away the widow's ox for a pledge (Job 24). And Amos 2 reproaches those who use pledges, saying on God's behalf: *Thus says the Lord: For three crimes of Israel, and for four, I will not convert him; because he has sold the just man for silver, and the poor man for a pair of shoes* — and so the crime of avarice is reproved, which is the first. There follows: *They bruise the heads of the poor upon the dust of the earth, and turn aside the way of the humble* — and so the crime of pride is reproved, which is the second. There follows: *And the son and his father have gone in to the same young woman, to profane my holy name* — and so the crime of lust is reproved, which is the third. There follows: *And they lay down upon garments taken to pledge by every altar, and drank the wine of the condemned in the house of their God* — and so the fourth crime is reproved, which is that of wicked gluttony. From which, on the words "garments taken to pledge", it is also plain that the use of a garment in pledge is forbidden unless the fruits are

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counted towards the principal. On this blessed Thomas (II-II q. 78 a. 2), when he asks whether it is lawful to receive anything in recompense for a loan, though in other words, says in the sixth argument: "Moreover, for

money lent a man can take a pledge whose use could be sold for some price." And replying he says: "To the sixth it must be said that if someone, for money lent to him, binds some thing whose use can be valued at a price, the one who lent ought to count the use of that pledged thing towards the restitution of what he lent. Otherwise, if he wishes the use of that thing to be added to him as it were gratis, it is the same as if he took money for the loan, which is usurious — unless perhaps it were such a thing whose use is customarily granted without price among friends, as is plain of a lent book."

Understand this soundly: namely that it is usury if he uses the pledge with the debtor consenting. But if he used it against his will he would fall into the vice of theft and be bound to the penalty of theft (Dig. *De furtis*, l. *Si pignore*). Similarly one falls into the penalty of theft if someone used a thing lent to him for a certain use for another use: for example, I lent you a horse as far as a certain place and you go further; or I lent you a horse to take to the country house and you took it to war; or I lent you a thing which you lent to another. For in all the foregoing theft is committed, unless the borrower believed with just cause that the owner would permit it (Dig. *De furtis*, l. *Qui re*). Similarly also a depositary using a thing deposited with him falls into the vice of theft (Dig. *De condictione furtiva*, l. *Qui

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furtum*). Understand this, however, when it is expressly forbidden that he use it; otherwise, if with just cause he thought the owner would permit it, he would not commit theft, as in the said l. *Qui re*, Dig. *De furtis*. It is also limited by understanding that the depositary commits theft by using the deposited thing unless what is deposited is something that consists in weight, number or measure and is not sealed; for then the bounds of a deposit are exceeded and ownership is transferred, and so he can use it. But if it is sealed and closed up, then [the owner] seems to have forbidden the depositary to use it, unless the contrary was said expressly (Dig. *Depositi*, l. *Licet*, § *Rei*; l. *Die*, § *Qui pecuniam*; and l. *Quintus Mucius*). And this suffices for the second species.

The third species of this disguised usury is committed regarding expenses made on a pledged thing, immovable or movable, as on possessions or horses and the like. On this it must be known that the creditor can exact or set off the expenses he has made on the pledged thing, whether for gathering the fruits, or for cultivating the fields, or for the pasture and keeping of pledged beasts, unless they were immoderate expenses (Dig. *De pigneraticia actione*, l. *Si servos*). Yet he is bound to count towards the principal the fruits which he took or ought to have taken (C. *De pigneraticia actione*, l. 2, and the said c. *Cum contra*, *Extra*, *De pignoribus*). But immoderate expenses, which he sets against the fruits, he exacts from the debtor on the pledged thing in place of usuries (by argument from the said c. *Illo vos* and

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the said c. *Ad nostram*, *De emptione et venditione*, and c. *Ad nostram*, *Extra*, *De iureiurando*). For fruits are understood after deducting necessary expenses, as in C. *De fructibus et litium expensis*, l. 1. And therefore even a possessor in bad faith deducts the expenses which he made for the sake of seeking, gathering and preserving the fruits (Dig. *De petitione hereditatis*, l. *Si a domino*, last §). And certainly the debtor improperly exacts [returns] coming from a skill acquired at the creditor's expense (Dig. *De rei vindicatione*, l. *Ceterum*; Dig. *De pigneraticia actione*, l. *Quamvis convenerit*). Likewise no one is bound for fruits that ought to have been taken, except a possessor in bad faith, as is noted on C. *De rei vindicatione*, l. *Certum*; *Extra*, *De restitutione spoliatorum*, c. *Gravis*; Dig. *De rei vindicatione*, l. *Navis* and l. *Fructus*; Dig. *De petitione hereditatis*, l. *Item veniunt*, § *Si possessor* and last §, and the following law, and l. *Sed et si lege*, § *Si ante litem*. It will be imputed to the creditor, then, so that he is bound even for fruits that ought to have been taken, if in fraud he did not let the farm or the house (by argument from the said c. *Significante*). And he is presumed not to have let it in fraud when he cultivated his own less fertile possessions and did not cultivate the more fertile pledged ones, nor have them cultivated. Hence, since he could have let it and would not, he

was at fault, which is to be imputed to him (by argument from the said l. 2, C. *De pigneraticia actione*; l. 2, C. *De partu pignorum*; and l. 3, C. *De

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distractione pignorum*). The same must be said of any thing which a head of household was accustomed to let, whether movable or immovable or self-moving (by argument from Dig. *De usufructu*, l. *Sed et si quid*, § *Et si vestimentorum*; Dig. *De pigneraticia actione*, l. *Universorum*; and the said c. *Illo vos*, *De pignoribus*). But if he had not been accustomed to let it, and someone wished to hire it, giving security, and the creditor preferred his own things in letting when another asked for those bound [as pledges], the same seems to be said. Otherwise it will not be imputed to him in the case of a movable or self-moving thing, since it would be at his risk (Dig. *De rei vindicatione*, l. *Si navis*); and to this Dig. *De bonis auctoritate iudicis possidendis*, l. *In venditione*, § 1, and l. *Praetor ait*, § *Is* and § *Praeterea*, are very apt; because the creditor too seems to commit theft if otherwise he used the pledge in bad faith, as we said above, and it is found in the *Institutes*, *De obligationibus quae ex delicto nascuntur*, § *Furtum*. And note what we said above against those who [keep] pledged horses with immoderate expenses so that the owners of the horses cannot redeem them.

The fourth species of this disguised usury is committed regarding hostages, whose skill, industry or labour is used by the one who holds such hostages as pledged slaves; whose work the creditor is bound to count towards the principal — not only what he received but also what he could have received (C. *De partu pignorum*, l. 2; and Lord Johannes Andreae on c. *Cum contra*, *Extra*, *De pignoribus*). The same

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also holds of the work of pledged maidservants, as in the said l. 1, C. *De fructibus et litium expensis*. Such fruits are also put on a level with the rents of houses and the like, according to Johannes Andreae on the said c. *Cum contra*, in the third gloss. To which is added also what is found in C. *De pigneraticia actione*, l. 1 and 2; and Johannes Andreae refers to his notes on c. *Gravis*, on the third gloss, *De restitutione spoliatorum*. There he also says that a possessor in good faith deducts expenses even if the things on which he made the expenses no longer exist; a possessor in bad faith deducts them only if the thing was made better. From which he finds that the expenses made on pledged hostages or slaves ought to be deducted, but what remains over from their skill and industry ought to be counted (by argument from Dig. *De rei vindicatione*, l. *Ceterum*, and Dig. *De pigneraticia actione*, l. *Quamvis convenerit*, etc.).

But can free men be given as hostages? It seems not (C. *Quae res pignori obligari possunt*, l. *Qui filios*; C. *De actionibus et obligationibus*, l. *Ob aes alienum*; the *Authentica Ut nulli iudicum*, § *Quia vero*, collation 9; and c. 2, *Extra*, *De pignoribus*). In these laws it is said that creditors who receive the sons of debtors in pledge lose their credit, are bound to pay the debtor another equal amount, and are subjected to blows. But a canon contradicts, that hostages are to be given (C. 23 q. 8 c. *Ut pridem*, § *Suppliciter*; Dig. *Qui testamentum facere possunt*, l. *Obsides*; and Dig. *De iure fisci*, l. *Divus*). It must be resolved, then. I answer

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that an obligation does not hold in a free man so that a right is established in him as in a pledge; nor does alienation hold, except in the case of famine, for which reason it is lawful for a father to sell his son (C. *De patribus qui filios distraxerunt*, l. 2). [But] in the aforesaid case, much more strongly is it lawful to bind as a pledge. Yet a free man can be held in whatever way, so that what was agreed may be done; of which the gloss treats, and Innocent and Johannes Andreae on c. *Ex rescripto*, *De iureiurando*, and on c. *Exposita*, *Extra*, *De arbitris*, and the Archdeacon on C. 23 q. 8 c. *Ut pridem*, otherwise beginning *Suppliciter*.

The fifth species of this disguised usury is committed when the creditor will not otherwise grant the debtor a delay unless something beyond the principal is paid to him, notwithstanding the obligation of the pledge. Certainly whatever is received beyond the principal is usury, as we said above. And the case is in c.

Consuluit, *Extra*, *De usuris*, at the end, where the text says: "Such men, for the intention of gain which they have — since all usury and superabundance is forbidden in the law — are to be judged to act wrongly, and are to be effectively induced in the judgement of souls to restore what was so received." There the gloss says: "They are not to be compelled to restore what was so received, nor are they to be punished as usurers; but in truth, as regards God, they seem usurers, because they are bound to restore what was so received. And so you have here manifestly that intention makes a man a usurer" — understand: with effect; so too expectation (C. 14 q. 3 c. 1, and C. 14 q. 4 c. *Si quis clericus*). These are the words of the gloss on the said c. *Consuluit*, where Johannes Andreae, at the word *inducendi*, says that it would not

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be done unless it were usury — Tancred and Vincent. And Johannes Andreae adds: "Innocent said: it is asked whether one can sue by a condiction on this canon; and he did not resolve it. But gather the solution from the last gloss and from what I shall say on it." And in the aforesaid last gloss he says, at the words "as to the judgement of the church": "What if the one against whom action is brought in this contentious court confesses his wicked intention? Hostiensis says that if he was sued as a true usurer, the defendant will be absolved because of the unjust claim, unless because of the danger to the soul something special is said here (to which *De iudiciis*, [c.] *Dilecti*, and *De cognatione spirituali*, c. *Tua*). But if he was sued for what was received as quasi-usury, unjustly and against the salvation of the soul, [there is] condemnation," according to him. Johannes de Lignano also confirms this on c. *In civitate*, *Extra*, *De usuris*, where he asks whether one lending with the intention of receiving something is bound to restore; and he concludes that if he has the hope principally, or if the loan is founded on that hope, then it is usury, as is the text in the said c. *Consuluit*; but if the hope is secondary — as because I hope he will reward me — then it is not usury (*De testamentis*, c. *Cum in officiis*); of which we spoke sufficiently above. Johannes de Lignano adds: "But can this contract in the court of the soul, where there was hope of receiving more, be brought into the contentious court? Say that it can, if his mind becomes known, as by confession; and one can proceed as against a quasi-usurer, not as against a true usurer, as the text proves in the said c. *Consuluit*"; which are to be noted for the form of the libel or claim, etc. And let these suffice for the second [kind of] disguised usury.

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Under the name of partnership. Of the third and last mode of disguised usury, which is committed under the name of partnership, it must first be known for clearness, according to Baldus on the rubric of C. *Pro socio*, and set out beforehand, that partnership [*societas*] is twofold. One is collegiate partnership, as when several kings [the text reads *reges*; read perhaps *regentes* or *homines*; uncertain] or superiors gather to make a substantial college (Dig. *Quod cuiuscumque universitatis nomine*, l. 1; Dig. *De collegiis et corporibus illicitis*, l. *Sodales*). And this partnership is described thus: "A collegial partnership is the gathering of several bodies distinct from one another under one name assigned to them," as Innocent notes, *Extra*, *De excessibus praelatorum*, c. *Cum dilecta*. He says "of several bodies" because of one alone there is no partnership; for this is an aggregative noun which does not belong to one alone (Dig. *De usucapionibus*, l. *Rerum mixtura*). And it is of the being of this partnership that there be at least three (Dig. *De verborum significatione*, l. *Neratius*). And the reason is that in two a majority is not found; hence what ought to be settled by the corporation could not be settled by two who disagree — the text gives this reason in a like case, Dig. *De arbitris*, l. *Item si unus*, § *Item si in duos*. Yet it is not of the substance that there be a rector or provost there, as Innocent notes on the said c. *Cum dilecta* and *Extra*, *De praebendis*, c. *Cum non ignores*. And therefore if a rector has been appointed and has died, and if the rectorship is vacant, the partnership is not vacant. And under the name of the partnership it can sue and be sued, and the one who is worthier is held in the place of provost for gathering the others, as Innocent notes on c. 1, *De maioritate et

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obedientia*. And he says other things about the matter of collegial partnership, which for brevity I omit.

Another is the partnership from which arises the action *pro socio*, which is our present purpose. And this is the partnership of individuals which is ordered to acquired or useful good. For merchants do not trade in the honourable and the delightful, because the good and honourable and delightful are not in commerce. In this partnership you will note that an heir does not succeed in it, except in a partnership of tax-farming, in which case the heir succeeds, unless the final cause of the partnership was the industry of the person; where, if the heir is not fit for such a partnership, he does not succeed in it (Dig. *Pro socio*, l. *Adeo*). The account of these partners ought to be reviewed from year to year amicably — I do not say by a judgement pronounced, because then the partnership would be dissolved (Dig. *Pro socio*, l. *Actione*), according to Bartolus, who so notes on Dig. *Pro socio*, l. *Mucius* — unless otherwise is provided in their pacts. But Baldus says that the account ought to be reviewed whenever it is asked for without malice, as is noted on C. *Pro socio*, l. *Tamdiu*. In this partnership, then, certain gains come to be shared, namely real gains which proceed from common money or money to be put in common; but a gain by way of reward which was conferred on one partner does not come to be shared in a trading partnership, as in l. *Socium*, last §, Dig. *Pro socio*. Likewise in this partnership one of the partners can alienate the common things in full if they are things for sale and movable — for example the cloths of a common shop — because in this one seems tacitly to have the consent of the other. Otherwise in other things,

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Dig. *Pro socio*, l. *Nemo*. But if it were a collegiate partnership, no single one could sell the things of the college, as in l. *In tantum*, § *Universitatis*, Dig. *De rerum divisione*, and l. *Sed si hac lege*, § *Qui manumittitur*, Dig. *De in ius vocando*. Likewise in this partnership of individuals one cannot have another imprisoned for want (Dig. *Pro socio*, l. *Verum*). Likewise in this partnership of individuals slight fault comes in, which is considered by noting that he is not as diligent in the things of the partnership as he was diligent in his own things at the time the partnership was entered (Dig. *Pro socio*, l. *Socius socio*). And therefore be careful in setting out the articles [of a suit].

It must also be known that a partnership is valid in which one contributes money and the other work (l. 1, C. *Pro socio*). Nor does it stand in the way if it is said that one puts in money and the other does not, because one who puts in work is deemed to put in something equivalent to the money itself (Dig. *Pro socio*, l. *Cum duobus*, § *Si in coeunda*). For such works receive a price and valuation which is substituted in place of money; as the text says there, the price of the work or craft is a veiling — as if to say, the veiled or intellectual price by which the work is valued is what is understood to be equalled to the placing of the thing or quantity placed on the other side. No wonder, then, that the partnership is valid, since often the return of work is not less than the return of money (Dig. *Pro socio*, l. *Societas*, § *Societas*, and *Institutes*, *De societate*, § 2). And it is to be noted that it is of the nature of partnership that the partners share both in gain and in loss in equal parts, unless otherwise agreed. For partnership has the likeness of brotherhood; hence as among brothers

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equality ought to be kept, so among partners (Dig. *Pro socio*, l. *Si non fuerint*).

From these preceding things, then, we shall examine some questions, from which we understand how disguised usury is often committed under the name of partnership.

And first I ask, according to Baldus on l. 1, *Pro socio*: in the division of a partnership which is made — let us suppose after a long time and after many labours and sweats — where nothing is found except only the capital intact, ought the one who put it in to have the whole capital, or ought it to be divided equally? And the gloss says that it ought to be divided equally, unless otherwise agreed, and it is moved by this reason: for

such capital seems shared from the beginning, as we say in a partnership of all goods, where each seems to have shared his own, and so his own passes into the common (Dig. *Pro socio*, l. 2). Moreover, the one who put in work is understood to have put in the price of the work, which price the law likened and equalled to the money put in on the other side. Hence it is just as if one puts in ten and the other work, as if each put in work; but then it is certain that if at the time of division only ten were found, each would take five; therefore so in the case at hand (by argument from the said law *Si non fuerint*). Moreover, if the one who puts in work loses the work, therefore the one who put in money should also lose the money in part; otherwise an absurdity would follow, namely that one would lose everything and the other nothing, and so there would be

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inequality against the said law *Si non fuerint*. Moreover, the case seems to be in the said l. 1, C. *Pro socio*, where the law says that a partnership can be contracted with one contributing money and the other work; and so neither will obtain more. For to contribute [*conferre*] properly is the same as to share (C. *De collationibus*, l. *Illam* and l. *Illud*). And the gloss holds this side by common law on the said l. 1, C. *Pro socio*. And it says that by custom the capital ought to be safe; and where it is so customary, this is understood to have been agreed even tacitly, because custom seems to be brought into a tacit pact (C. *Locati*, l. *Licet*).

But certainly this custom today is worth nothing, nor is the pact; because by such a pact or custom the contract would be drawn to the nature of a loan at interest, and so would enter into disguised usury. For as in a usurious contract the risk is the debtor's and nevertheless the creditor receives usuries, so here the risk would be the receiver's of the money — the risk, I say, of losing his work; and nevertheless, if the work had borne any fruit, the gain would be common.

Yet Baldus on the said l. 1 tries to maintain that such a contract is not drawn to the nature of a loan at interest, as is noted on Dig. *Pro socio*, l. *Cum duobus*, § *Item ex facto*. And he says, according to Jacobus de Arena, that not only by custom but also by law the capital is safe. "For why should my partner have what is mine?" And if it is answered that he puts in work, he says that the price of the work is understood to correspond to the interest [*interusurium*] of the money, not to the principal itself. Hence if one puts in the benefit of work and the other puts in the benefit of money, but not

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the ownership — for suppose that one put a thousand thousand into the partnership, the other only work: here there can be no proportion except of the benefits of the work to the benefit of the money, not to the whole principal itself. Moreover, he says that this is expressed when in a partnership a specific thing is put in on one side, for example cattle, and on the other the work of a herdsman: that only the benefits and losses in the proceeds are common, but not the cattle themselves, as in the said § *Si in coeunda*. "Hence I shall say that in doubt the use of the thing is rather understood to be put into the partnership than the thing itself." And this, he says, applies to the question of the *socida* [livestock partnership] of sheep: that the young, wool, milk and the like are common, and not the sheep given in *socida*. "Yet it is true that although the principal head have died, yet there is a partnership in the young," as is noted on Dig. *Pro socio*, l. *Si id quod*. "And as to what I say, that the sheep given in *socida* are not common," says Baldus, "understand it in this way: namely that my capital is not common, but its improvement and deterioration is common. For example, I gave lambs in *socida*; then I shall first of all deduct as my capital what the lambs were worth. But what accrues — for example because the lambs are fatter, or piglets become pigs in the course of time — will be divided as between partners. And if I gave a mare in *socida* and in the course of time by chance she was deteriorated, a valuation being made between us, the risk of half the deterioration belongs to me. For this is the nature of partnership, which nature is present as something intrinsic in all contracts; because nature is nothing other than a certain

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disposition which law or custom has established over the contract (Dig. *De pactis*, l. *Si unus*, § *Pactus*, verse *Quod et in specie dotis*)."

Lord Johannes de Lignano, treating this matter on the last chapter, *Extra*, *De usuris*, says: "Now to other particular questions. And suppose someone lets out money: can he receive anything?" And he adds: "This question and the three following seem to tend to the same thing, if they are weighed, though in different terms: namely whether money can be let out or sold. Answering, the Archdeacon, C. 14 q. 3, in the summary, says that it cannot, because money is not lettable but lendable, because of itself it brings no use. For if it is let out to be spent, and when it has been consumed the same is not returned, so it departs from the nature of letting; for another of the same kind is returned (Dig. *Si certum petatur*, l. *Cum quid*). For money is not deposited except for buying (Dist. 88 c. *Eiciens*); and the Archdeacon notes it on C. 14 q. 3 c. *Si quis clericus* and on C. 4 q. 4. But suppose someone sells the use, etc."

But the question was formed on c. *In civitate*; on the same the same Johannes de Lignano says: "Whether one giving money to a merchant for trading, with the addition that the capital be safe, so that he has part of the gain or half, acts lawfully, or whether it is a usurious contract. And Johannes says: most hold that it is an unlawful contract, because whatever accrues to the principal is usury, unless the owner undertakes part of the risk, and then it is lawful, because one puts in money and the other work (Dig. *Pro socio*, l. 1). But Hostiensis in the *Summa*, *De usuris*, § *An aliquo*, says that it is not a usurious contract. He is moved because partners can agree so that the risk is the other's (*Institutes*, *De societate*,

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§ *De illa* and the following §), just as in other contracts a pact can be attached beyond the nature of the contracts. Yet he says that if the money perished by chance, he would advise the giver in the court of conscience, for the salvation of his soul, to remit to the debtor the money he had given. Accursius, following Azo, on l. *Si non fuerint*, Dig. *Pro socio*, holds against Hostiensis, because it is not true brotherhood that one should have gain and lose nothing. Hence such a pact is against the nature of the contract; and the Archdeacon seems to feel this in the preceding question, if it is subtly attended to. Yet some theologians say that when money is given for a third of the gain and one stands at the risk of a third part of the loss, or it is given for half the gain and the risk of half the loss is borne, and the expenses are made in common for the share falling [to each], and the labour and work which the one receiving the money puts in in trading and dealing are counted, then it is not usury; but if this were not done, it would be usury. And so the contrary opinions are understood; and this seems sufficiently to agree with the opinions of both, and with the sense [?] of their words. Yet some say that by rigour of law the opinion of Hostiensis could be defended, because usury is concerned with a loan, which is not here; rather it is a partnership. And although partnership is brought to the likeness of brotherhood, yet not in every way. For in a partnership a pact can come in that one should take more of the gain and the other less, as in the said § *De illa* and *Institutes*, *Locati*, § *Cum adeo*. Yet the opinion of Azo and

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Accursius is safer. And what is said in the civil laws, as in the *Institutes*, *Pro socio* [read: *De societate*], almost throughout, and in similar places — that it can be agreed between partners that one should bear the gain and not be bound for the loss — is understood namely that it can so be agreed about the trading, that is, about all that has been gained from the capital by trading, not about the capital," according to Goffredus. Otherwise there would not be a true partnership; which is against the opinion of Baldus, who wants the capital to be altogether safe.

"Hence if I give a hundred to a money-changer so that he gives me ten per hundred a year, for the contract to be lawful it is necessary that I who give the hundred be bound for the whole loss of the principal or capital, namely of the hundred. But then I am not bound to give anything of the gain to the money-changer even if he

gains only ten; because this [pact] about the trading, that is the gain, is well valid — namely that someone not be bound for the loss but the gain be his up to such an amount, for example ten per hundred. Yet in this last point Accursius seems to say that some part of the gain ought to be given to the one working; otherwise it would be a leonine partnership if one took up the whole gain and the other lost his whole labour; which he notes on the *Institutes*, *De societate*, § *Nam et ita*, and cites the said law *Si non fuerint*, because so there would not be true brotherhood." And note, as to the first member about the capital, that Johannes de Lignano does not understand here that the giver's pact could be valid for a part of the loss only, still less for the whole; because Innocent wants

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him to bear the loss of the whole, as he feels in a similar contract of letting, about a partnership of oxen, when he says:

"But suppose I gave oxen to someone who gives me twenty baskets of wheat a year: is this lawful? I answer that if the oxen's work is let, then it can well be done, because the oxen deteriorate. But if I wish to recover the oxen for the price at which I have them valued when I hand them over, and do not want the risk of deterioration, although I am willing to undergo the divine risk — as if they die a natural death — then in this second case I believe the contract unlawful; in the first I believe it lawful (C. 14 q. 3 c. *Plerique*, with many chapters of the same question)." The notes on the said c. *In civitate* support this.

To the purpose, then: if in the aforesaid way the one receiving the money gains nothing, or if the gain does not rise to the ten that were agreed, but perhaps he gained five or eight, then it seems usury if the giver of the money wants beyond the true gain, even up to the ten that were agreed; because this savours rather of the nature of a loan, in that he receives beyond the true gain, than of the nature of partnership, of whose nature it is that true gain comes, not feigned (*Institutes*, *De societate*, throughout). Nor do we care about the name of the contract under the name of partnership, but rather attend to the mind of the contracting parties, as in the said l. 3, C. *Plus valere quod agitur*, and throughout, and in the said c. *Ad nostram*, *De emptione et venditione*, and the said c. *Illo vos*, *De pignoribus*. For where the salvation of the soul is concerned, we ought to hold what is safer,

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as we said above. Moreover, in this case what is given beyond the true gain accrues to the principal without any other extrinsic gain coming in; therefore it is usury, as in the said c. *Consuluit*, *Extra*, *De usuris*. And the Archdeacon feels this on C. 14 q. 3, in the summary, where he holds that money cannot be let out, that is, it is not lawful to receive anything from it under the name of letting, unless the money was given not as a quantity but as a specific thing, or as another thing; for then there would be an innominate contract, namely *do ut des* or *do ut facias* (Dig. *Depositi*, l. 1, § *Si quis*, and Dig. *De praescriptis verbis*, l. *Naturalis*). Let those who give such money, then, beware lest they make a gross conscience for themselves out of the gain. For often the receivers say falsely that they have gained from it, and yet they have gained nothing, but they say this only so that the money may not be withdrawn from their hands. Hence if the giver probably knows that the receiver is lying, let him receive nothing of such false alleged gain. Otherwise, if he probably does not know it, if he asks for it he is safe. These things are very well proved in the said c. *Naviganti*, *De usuris*, where probability is weighed.

And you can also gather the solution of the aforesaid question in the notes of Johannes Andreae on the said c. *Naviganti*, *De usuris*, where he forms this question almost in these terms, when he says at the word *mutuans* ["lending"]: "It does not speak, then, of those contracting a partnership, of whom one puts in work and the other the price, of which C. 14 q. 3 c. *Plerique*; for then, as Goffredus says, advantages and disadvantages are lawfully shared." And there he adds at the word *periculum* ["risk"]: "If someone receives money

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to carry overseas, a certain price being fixed for him, whether he takes the risk on himself or not, since it is not a loan but a letting of the work of carrying or of keeping, it is not usury, according to Innocent; for which Hostiensis cites Dig. *Nautae caupones stabularii*, l. *Et ita*, throughout; Dig. *Locati*, l. *In navem*, l. *Qui operas*, l. *Quia mercedem* and the following law. But where it is given as a loan, it is always usury, because money has no use if it is kept in a chest, nor does it deteriorate by use, as in the aforecited c. *Eiciens*."

Johannes Andreae also asks on the said c. *Naviganti*: "What if one having money wished to go to the fairs and buy wares, or carry them elsewhere, or keep them for a certain time for gain, and I, needing money, receive it, offering to restore it with the hoped-for gain at the term and place? And he answers: so Innocent says here, that although some hold the contrary, he thinks this contract usurious and does not know how to excuse it. Yet Hostiensis on the said c. *Salubriter* says that I am bound to such a merchant for the interest of that gain which he would probably have made from that money, provided nothing is done in fraud of usury and the said merchant has not been accustomed to hand over money at usury in the said way. Yet the saying of Innocent seems truer," according to Johannes Andreae, "and what is said about interest applies after the debtor's delay; and from the contrary an open way would be prepared to lending at interest. For the usurer would stand ready in the market with hat and spurs and the rest, in the manner of travellers [the text reads *iuliensium*; uncertain], saying that he wished to go to the fairs, if he were allowed to stipulate thus under the colour of hoped-for gain beyond

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the principal." But certainly this limitation of Johannes Andreae falls back into the same limitation of Hostiensis, when he says "provided nothing is done in fraud of usury". For it is plain that such a merchant, pretending that he wished to go to the fairs, would act in fraud of usury; therefore, etc. In favour of Hostiensis's opinion also is what blessed Thomas says (II-II q. 62): namely that one who withholds another's money seems to harm him by preventing him from obtaining what he was on the way to having; and such a loss need not be recompensed in equal measure. Yet he is bound to make some recompense according to the condition of the persons and the business. Raymond also says in the *Summa, De usuris*, that in such a case there is no usury, but the aforesaid gain is received as interest. And similarly according to William: "If I wished to buy land worth ten pounds a year, and at your request I refrained and lent to you on these terms, that you pay me so much or so much as that possession would yield, after deducting expenses, labour and risk if there were any, this is lawful, because it is received not as usury but as interest." Blessed Thomas also says (II-II q. 78 a. 2) that "one who commits his money to a merchant or craftsman lawfully receives gain from that money, because such money committed by way of partnership does not pass into the ownership of the one to whom it is committed, but remains in the ownership of the one who committed it, so that the merchant trades, or the craftsman works,

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at the risk of the one committing it; and therefore he can claim part of the gain arising from it as from his own thing." This saying seems to me rather obscure, nor can I clearly perceive how ownership of money spent can be kept. Therefore he does not receive gain simply from his own thing, except in that way which we said above about the sharing of work and money; and so gain and loss also ought to be common, as we said above. And this is the safer and more secure judgement for the salvation of the soul: that in a true partnership all gains and losses be made common, for that part which was agreed between brothers; otherwise it would be a leonine partnership, as was said above.

Third, the same Baldus asks on the said l. 1, C. *Pro socio*, saying: "Suppose the capital itself is lost or diminished by adverse fortune: is the one who puts in work bound to contribute anything to the one who puts in money? Example: I put twenty into the partnership, you only work; of these twenty, ten are lost; whether

you ought to make good five to me. And it seems so, because the loss ought to be common, as in the said law *Si non fuerint*; hence if the whole loss were mine, it would be against the nature of partnership. The gloss on the said l. 1, C. *Pro socio*, determines the contrary," according to Baldus, "because the one who puts in only work is never understood to have bound himself to loss of the principal. For the loss of his work suffices for him; and this because the nature of correlatives is the same. Hence as one who puts in

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work gains nothing from the capital, so he is harmed in nothing from the capital. But if he gained, then he ought also to be harmed, because the same rules are given for contraries (C. *De furtis*, l. *Manifestissimi*, § *Sed cum in secundam*); where there is risk, there will be gain. But Peter says that either the money is lost at once, and then the loss is common; or after the work has been put in, and then the loss of the work suffices. And Cinus says this opinion is the truer. Jacobus de Arena says that the loss ought to be common without distinction (Dig. *Pro socio*, l. *Cum duobus*, § *Quidam sagariam*, and l. *Si id quod*, § *Idem Celsus*)." Baldus says: "Say that so far as gain is common, so far loss is common, and not otherwise, as I said before; and therefore hold the first opinion." By Baldus's own words, then, it is also safer to hold this: that gain and loss are common in all respects, as much as to the capital as to the rest.

Fourth, Baldus asks: "Suppose that in a partnership each puts in both money and work together, but one puts in more money than the other: will the shares of the gain be equal?" Nicolaus de Matarellis says that they will be equal by equality of proportion, that is of quality, not equality of quantity — for example, one puts in two parts of the money and the other a third. For in gain and loss each ought to have a share corresponding to what he put into the partnership, if nothing else is expressed about this, as though this is understood to have been tacitly agreed between them, so that he who bears more expense [?] and risk may hope for more

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profit, as in the said § *Sed cum in secundam* and Dig. *De regulis iuris*, l. *Secundum naturam*. And so the said law *Si non fuerint*, at the beginning, is understood, according to him; which is notable. And limit this as true unless the work and industry of one greatly exceeded the work and industry of the other — for example if he alone sails, if he alone travels for the merchandise, if he alone undergoes dangers to his person, if he alone stays fixed at the shop, and the like, as in the said law *Si non fuerint*, § 1. Hence recourse must be had to the judgement of the judge, as if this had been expressly agreed (Dig., same title, l. *Si societatem mecum*).

Fifth, Baldus asks for examples of losses and answers: "One kind is intrinsic loss, as because wares put into the partnership have perished, or money has been taken by robbers; and what was said above is understood of these losses. Others are extrinsic losses, as because the partners contracted many debts, so much that they could not be paid from the body of the partnership's things; and then I say without distinction that the loss of such outlays and debts is common, and if one paid the whole, he recovers from the other pro rata. And if one is in prison and makes expenses there, they ought to be paid from the common [fund], as in the said § *Quidam sagariam*."

Sixth, he asks: "You and I contracted a partnership to last five years on the terms that I put in a thousand and you work, or that I put in wares worth a thousand and you work. Then by fortuitous chance before the five years they perished. Shall I be compelled to put in again?" And the gloss says not, because the partnership is ended. Likewise

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because it seems agreed only to put in once and not several times (Dig., same title, l. *Si socius pro filia*, verse *Nec si prior*).

Seventh, he asks whether the one who is to put in work — for example by sailing or trading round about — ought to put in that work at his own expense and cost, or at the expense of the partnership. And it seems at

his own, as we say of a tenant farmer, that once and for all he is bound to put in from his own (*Extra*, *De decimis*, c. *Tua*); and yet a share-cropping tenant is a partner (Dig. *Locati*, l. *Si merces*, § *Vis maior*), although in the text there is the word "as it were" [*quasi*], whence he is no less a partner. Solution: when he sets out for the sake of the partnership he ought to have the expenses from the body of the partnership; which understand except for the expenses which he would have made at home (by argument from Dig. *De petitione hereditatis*, l. *Sed et si lege*, § *Quod autem*). Likewise because it is not called gain except after deducting expenses (C. *De collationibus*, l. *Illud* and l. *Illam*; Dig. *Commodati*, l. *Mucius*). And so hold Jacobus de Arena and Cinus after him, speaking simply as a mere reporter, nothing added or taken away of his own.

Eighth, he asks: "I gave my she-ass in *socida* for five years, and it is the custom that at the end of five years the asses and the fruits, or the cattle and the fruits of the cattle, are divided. In the meantime the ass perished naturally. Will the peasant be bound to me for anything?" Say that he will not, because she would have perished in the same way with me, even if she had been handed over valued; because in contracts not ordered to ownership a valuation does not make a purchase (Dig., same law *Cum

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duobus*, § *Damna fatalia*; Dig. *Locati*, l. 3), and this by the rule given in Dig. *De contrahenda emptione*, l. *Cum manu sata*, § *Nemo*. "But what if she perished by fortuitous chance which could not be resisted? The text says in the aforesaid § *Damna* that the risk is common. Hence if the ass was valued at ten, the peasant is bound to make good five to me. For if he made good nothing, the whole loss would be mine, which is against that text, which says that the loss is common. And so the fortuitous case is judged one way, the natural case another. But if fault of the peasant intervened, he is bound to make good the whole amount, because before the time of dividing the partnership the whole ass is mine, though she was handed over valued, as I said before; and C. *De pactis*, l. *Si pascenda pecora*, supports this. But if fault of the peasant intervened after the ass was due to be divided equally, then he is bound to me only to half the price, because he did not harm me in more."

Ninth, he asks: "What of those who lend money for trading on the terms that the capital be safe, and if any gain arises, they divide it?" And Baldus answers that "such a contract savours of usurious wickedness, and therefore whatever he receives of the gain diminishes the principal. For it is not a partnership either by the form of the contract or by its nature: not by the form, because it is a contract of loan; not by nature, because it is against the nature of partnership that one should have his head safe and the other his head broken (Dig. *Commodati*, l. *Mucius*). And therefore what is read and noted at *Extra*, *De donationibus inter virum et uxorem*, c. *Per vestras*, ought to be understood of when money is given

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for a share of gain and loss, because then the contract is lawful." See, then, that Baldus himself, by this new question, seems to feel against the arguments he made above in the first question about money given to a merchant, etc. And what is said here is most true; nor ought the sound of words to be so much considered when the substance of the truth ought rather to be regarded, as in c. *Propterea*, *Extra*, *De verborum significatione*, because "often, while the propriety of words is attended to, the sense of the truth is lost", as the text says there. Those, then, are not excused who under the name of partnership disguise the usury of a loan, in truth for gain, since they ought also to share in the loss, as in the laws written above.

Tenth, Baldus asks: "Suppose I deposited money with a money-changer without any pact, and the money-changer gained much with the said money; whence, wishing to recompense me somewhat, he paid me the money with, let us suppose, ten per hundred. Now it is asked whether this is usury. Some say that either I deposited it in hope of this remuneration, and it is usury; otherwise if simply; and in this my word is to be stood by, because it is a question of conscience." And although we touched on this passage above, yet, that we may also have the words of Lord Baldus, let us insert what he adds, saying: "Say that either I

deposited in hope, and then, because he unlawfully used the deposited money, he ought to restore to me all gain coming from it, because he has been made richer from my thing (by argument from Dig. *De negotiis gestis*, l. *Qui sine usuris*). Or he used it lawfully, because I had deposited

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for the transfer of ownership; and then, if with a liberal mind, knowing that he was not bound, he paid, I shall be able to keep this with a good conscience, because it is a mere gift. Or he paid believing himself bound by a certain equity which often moves merchants to remunerate; and the same holds. Or he believed himself bound by necessity of law when he was not bound; and then I still say that I receive it lawfully if I did not have from the beginning the intention of lending at interest; otherwise not. For an antidoral obligation [i.e. an obligation of gratitude for a benefit] gives rise to just retention of what was paid by error (Dig. *De fideiussoribus*, l. *Si testamento*, § 1), unless the error were of fact — as because he thought it had been promised by his proctor when it had not. For then he could keep it neither by judicial law nor by the law of conscience."

But this judgement of Baldus is not safe to me when it is presupposed that the merchant thought himself bound to remunerate either by the law of equity or by the law of necessity, since an antidoral obligation binds only to the equivalent, and to goodwill and love, as in c. *Cum in officiis*, *De testamentis*, and l. *Sed et si lege*, § *Consuluit*, Dig. *De petitione hereditatis*; and we said enough above in the definition of usury and elsewhere, and in the seventh detestation, verse *Sed hic quaeritur*, and fully there. It is to be held, then, that whether a corrupt intention of the lender preceded, or the debtor thought himself obliged to pay beyond the principal, it is not lawfully received; but if it is given freely and spontaneously it can be received freely and lawfully, as we said above in the declaration of the cases.

Eleventh, Baldus asks: "Suppose two brothers, on their father's death, have a certain farm in common, who also took

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certain farms to work, and one of them had two sons who likewise worked. Now from the fruits of the common thing as well as of the work they acquired much. It is asked how the division ought to be made between them when afterwards they come to divide." And he answers that just as those buying something in common seem by that very fact to contract a tacit partnership (C. *Pro socio*, l. *Cum proponas*), so also those hiring. "And therefore it must be considered that either we speak of the fruits of the common thing or of the fruits of the hired thing. In the first case, either we speak with respect to the half of the fruits which are owed in respect of ownership of the farm, and that is divided only between the two brothers who are owners of that thing; or of the other half, which is received by right of working, for cultivation and care, and that is divided among all four, because partnership is of such a nature that the gain of work is divided by heads and not by stocks. In the second case I say the same, namely that it is divided by heads. Yet here it must be noted that if the work was done with oxen common to the two brothers, Bartolus advised that half the gain be attributed to the oxen, and so it belongs to the brothers alone, and the other half be attributed to the work, and so it belongs to all for their natural portion (by argument from the said l. 1, C. *Pro socio*, and C. *De collationibus*, l. *Illud*); for if the work of oxen were hired out, they would bear no less fruit than the work of a person, as is such work in which the work of oxen is engaged continuously or almost continuously, as is that of a person. Yet Baldus says that if they are partners in all things that

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are acquired with personal labour, the work of the oxen seems an accessory to the personal work (by argument from *Institutes*, *De rerum divisione*, § *Si quis a non domino*, where it says that one gains the fruits for cultivation and care); and the said l. 1, C. *Pro socio*, supports this, because if one puts in a thing and

work, the other only work, the gloss feels there that in doubt an equal distribution is made [the text reads *duplo*, "double", in one manuscript; uncertain], yet so that consideration of equity is not lacking, as in l. 2 and 3, *Pro socio*."

Twelfth, Baldus asks: "Suppose it was agreed between two that one put in a thousand, the other work; of this thousand little remains by fortuitous chance; whence the worker does not wish to put his work, which is great, into a thing which is small. It is asked what is the law. I answer: he favours equity (by argument from Dig. *De administratione tutorum*, l. *Ita autem*, at the beginning)."

Thirteenth, Baldus asks: "Two are partners in the cloth trade in unequal parts; they hired a warehouse [*fundicum*] together. It is asked what share they have in it. And he answers: either we speak with respect to the letting, and they have equal shares (Dig. *Locati*, l. *Cum apparebit*; Dig. *De duobus reis*, l. *Reos*, § *Cum tabulis*); or we speak with respect to themselves, and then the accessory ought to follow the principal (by argument from C. *De agricolis et censitis*, l. *Quemadmodum*, Book 11). And I say the same of the household goods and furnishings of the partnership (by argument from Dig. *Locati*, l. *Sed addes*, § *Si quis mulierem*)."

Fourteenth, he asks: "Two are partners in all goods — for example an illegitimate son and a legitimate one. Now the father appoints the legitimate son his heir. It is asked whether anything will be acquired for the illegitimate one. And he answers that it will: not by force of the bequest but by force

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of the partnership. The text is notable in Dig. *De liberationibus*, l. *Si is qui duos*. And this method is to be kept in mind: that the father should make them partners with each other if he wishes goods to come to the illegitimate son."

Fifteenth, he asks: "There are several partners in all goods; one of them acquired much by usurious wickedness and shared it with his partner or brother. Can the bishop compel that brother, who is also the partner, to the restitution of the usuries? Say that he can (Dig. *Pro socio*, l. *Quid enim*, etc.)."

Sixteenth and last, it is asked about what is done in the city of Florence, where co-partners [*consortes*] promise to be bound for all goods: is this promise valid? And he answers that it is not (Dig. *Pro socio*, l. *Nec praetermittendum*), according to Dinus, etc.

Besides the foregoing he asks: one of the brothers, or a nephew living with his paternal uncle, buys a farm and pays the price. It is asked whether the price is understood to have been paid from the common money. And it is answered that it is not; nor is the purchase presumed simulated, nor contributed [to the common] only to the payer; nor is ownership acquired for the payer alone, even if afterwards he alone bears the burdens of the customary dues or levies [*collectae*], and he recovers half of what he paid from his co-partner. And let the payer be careful to say that he paid from his own money; and conversely let the other be careful to have an instrument made saying that he paid from common money. For in doubt the money is presumed to be the payer's, as in l. *Si ventri*, last §, Dig. *De privilegiis creditorum*. Hence if

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the buyer did not have the thing handed over to him put in his register [*catastrum*], and therefore the seller, whose name is found in the instrument, paid the levy, he recovers the said levy from the buyer; which is notable.

Further I ask: a certain partnership was made between merchants dealing in the revenues of the public salt-works; then they united themselves with another partnership. Then the greater part of them renounced this union. Does it prejudice the lesser part? And it seems so (Dig. *Ad municipalem*, l. *Quod maior*). The contrary is true, because a corporate body cannot take away from the right of individuals except so far as it has it in commission, according to what is noted on Dig. *De pactis*, l. *Item magistri*. For the consent of those

is required in dissolving which was required in uniting (C. *De auctoritate praestanda*, last law); and what Innocent notes on *Extra, De constitutionibus*, c. *Cum omnes*, supports this, and what is noted on l. 2, C. *Quae sit longa consuetudo*, and Dig. *De pollicitationibus*, l. *Totiens*; and Baldus notes it on l. *Sancimus*, C. *Pro socio*.

Lastly I ask: when the greater part remains in the partnership and the lesser withdraws, can that greater part use the accustomed mark of the partnership which merchants put both on letters and on bales? And it seems so, because that mark belongs to all and to the whole body of the partnership, which remains and is founded in the greater number. To the contrary it seems that one cannot assume a name by which he represents himself as other than he is, nor a seal or signet either. For just as it is not lawful to assume one's own name in fraud of another, because

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names, though lawful, ought not to be assumed in unlawful matters, so neither marks. For it would not be lawful to steal another's name even if it is not done with deceit, provided loss or injury to another follows from it, because it is not lawful to exceed the bounds of justice and equity; for he who moves another's insignia from its place moves boundaries, which is not lawful. For supposing it is not done from intent to rival another, yet it is so in fact; and although the disposition to fraud is lacking, yet the effect of loss or injury is not absent, from which one must abstain (by argument from the penultimate law, Dig. *De termino moto*, and C. *Finium regundorum*, l. *Si constiterit*). Solution: unless it proceeds with the consent of all, the whole mark or seal of the partnership ought not to remain with a partnership not whole, lest a false representation be made (Dig. *De furtis*, l. *Eos*); just as one cannot seal with another's ring unless it is entrusted to him (Dig. *De testamentis*, l. *Ad testamentum*). For since a renewal of the partnership has been made in its pacts and in its substance, let it be made also in the accidents and things following the substance (by argument from Dig. *Locati*, l. *Cum in plures*, § *Lege vel dicta*). And this is true in those things which can be drawn to the deceiving of another. But in those which harm no one — for example in the arms of nobles — such arms remain with the principal lord, because in him as in the head stands the splendour of the lineage (by argument from Dig. *De religiosis et sumptibus funerum*, l. *Cum in diversis* and l. *Cum sumus*; C. *De agricolis et censitis*, l. 2); and Baldus notes it on the said l. *Sancimus*, C. *Pro socio*.

Lastly I ask about the contract which among common people is called "oxen without horns". For those needing money

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go to someone and say: "Will you lend me a hundred pounds, and I will give you a hundred baskets of wheat a year?" He answers yes, and makes an instrument for him that the peasant received a pair of oxen from so-and-so, and that the peasant is bound to give so many baskets of wheat a year for such oxen. Is this contract usurious? Certainly, since this seems to be done in fraud of usury, and no oxen in truth of fact were given or bought, and so the lender neither takes on himself their risk nor could take it, since they were not in truth given; rather only money was given. In which case it would not suffice even to take the risk on himself (*Extra*, *De usuris*, last chapter). It follows therefore that it is usury, as Johannes de Lignano notes on the said last chapter, *Extra*, *De usuris*.

But keeping the same theme, if the lender of the aforesaid hundred pounds takes on himself the fortuitous case of those oxen without horns — as because the lender says, "Take the money and buy yourself the oxen you want, and if by fortuitous chance they die, charge it to me, otherwise to you" — is it usury? It seems so, because taking on oneself the fortuitous case does not excuse one from usury in a loan, as in the said last chapter, *De usuris*; therefore neither in the aforesaid case, where there truly seems to be a loan, although regard is had to the thing. But the contrary seems true, because, as practice teaches, this contract was not introduced in fraud of usury, but rather to avoid the malice of peasants, who, if they see that the oxen they

have are another's, do not care for them, but rather make them fail through labour profitable to themselves; and so, since

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the peasant's malice in neglecting the oxen can be proved only with difficulty, their buyer is harmed; and it is not right that he lacks, but proof. Unless, then, the one contracting is accustomed to lend at interest otherwise, such a contract does not seem usurious of its nature if the creditor takes the case [of chance] on himself. Yet notwithstanding these things, I believe the first [answer] truer, because in the aforesaid terms it appears expressly that it is a loan and not a letting; therefore, etc.

But what is to be said of the customary contract — for example someone lets out oxen at rent for ten baskets of wheat, or so much money, to be paid yearly, with this pact added: that at the end of the year the tenant makes the lessor his share of the said oxen, so that it is at the lessor's option either to take the oxen or the sixty pounds at which they were valued from the beginning; with the pact also added that he is willing to stand to half the loss and gain; yet the lessor takes on himself a death inflicted by God [the text reads *diuinibus illatam*] happening without the tenant's negligence — is it usury? I answer: in this question two doubts appear. The first, whether the pact is lawful that at the end of the year it be at the lessor's option to take either the oxen or the valuation. The second is whether the pact is lawful that, except for death happening by divine judgement, he is willing to stand only to half the loss. About gain I do not care how it is agreed, because over it every pact is lawful, whether made for a quarter or for a half.

As to the first pact, I believe it unlawful, because he keeps it at his option so that he may choose what is more profitable to him, even if such deterioration in the oxen

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happens from a divine scourge outside the case of death; because at the end of the year the oxen are valued and worth less, since then there is a murrain among oxen and therefore their purchase has become cheap. For the contract, then, to be lawful, he ought to stand to the whole deterioration happening by divine judgement, even outside the case of death, as is clearly gathered from the sayings of the aforesaid Johannes de Lignano on the said last chapter, *Extra, De usuris*. C. 14 q. 3 c. *Plerique*, with the following [chapters], sufficiently supports this; and Bartholomew of Brescia proves it by reason, because otherwise the lessor shifts the divine judgement onto the shoulders of the poor man without his fault, which is wicked — namely that someone should be punished without his fault and cause (*Extra, De constitutionibus*, c. 2; *De privilegiis*, c. *Antiqua*, with what is noted there). And by this the solution to the second pact is plain, namely that it is not lawful, because these pacts stand to each other as exceeding and exceeded. For the first is graver than the second, because he wishes to feel no loss but reserves everything at his option, so as to choose what he sees more useful to himself, with no account taken or deduction made of the loss proceeding from nature; but in the second he at least deducts half of the loss brought by nature. Hence both are unlawful, but the first more. And if both pacts are inserted together in the same contract, wickedness is mixed with wickedness, at least in half the loss.

But what of another contract which is made thus? Suppose a pair of oxen is given at rent to one who sells [*read*: buys?; uncertain] it, and a certain number of baskets of wheat is given in place of rent;

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but because the buyer himself cannot pay the price of the said oxen at present, he asks for a delay of a year, and for this delay the seller asks that something certain be given to him at the end of the year for that money. Is it usury? I answer: as to the first, it is plain that it is not, because it is a true contract of letting. But as to the second, it is certain that it is usury (by argument from c. *In civitate* and c. *Consuluit*, *Extra*, *De usuris*). For to remit is to give (*Extra*, *De testibus*, c. *Veniens*, the first). Therefore to remit the aforesaid money as a loan for

a time, for example for a year, is the same as if he had lent it by hand, so as to receive what was promised, for example something certain at the end of the year; in which case there is no doubt that it is usury.

But what if I give cattle to someone on condition that he gives me the fruits of the cattle until I recover the capital, and from then on the cattle are common — for example I hand over sheep so that for each beast you give me two shillings? It must be said that in that case where I wish to receive the whole capital by receiving all the fruits, and afterwards all the beasts are common, the contract is not lawful, because I wish to place that certain capital and afterwards the gain, which is against the nature of the contract. But it would well be lawful with a pact that I receive half the fruit, as in c. *Propter sterilitatem*, with what is noted there, *Extra*, *De locato*.

But whether it is lawful to let out animals for a certain quantity of wheat or another yearly thing: it is certain that of its nature

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the contract is lawful, provided the hirer is not burdened by an immoderate rent (by argument from *Extra*, *De locato*, c. 1, and Dig. and C. *Locati*, throughout).

But what if one has twenty head of sheep, another ten, and they share with each other with the pact that risk, loss, gain and expenses are common pro rata: is it lawful? It is answered that it is, even if they agreed that dead head be recovered from the young, or that head be bought from the fleeces and skins to increase the flock. For in none of the foregoing is anything done against the nature of true partnership, in which equality ought to be kept, as in l. *Si convenerit*, Dig. *Pro socio*.

But suppose someone hands over sheep to a monastery on this pact: that from each sheep he receives two shillings a year, while their fruits are worth far more; and he adds that even if all die he still wants the fruit; and if they multiply greatly, all belong to the monastery, and after the death of the one handing them over all remain to the monastery. Is it lawful? Hostiensis answers in the *Summa*, *De usuris*, § *An aliquo*, verse *Quid de his*, that the contract is lawful. For contracts receive their law from the agreement of the parties (Dig. *Depositi*, l. 1, § *Si convenit*; Dig. *De regulis iuris*, l. *Contractus quidam*; Dig. *De pactis*, l. *In emptionibus*, l. *In traditionibus*; Dig. *Ad legem Aquiliam*, l. *Si servus servum*, § *Si calicem*). Nor can the church seek restitution,

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since it was not injured in the handing over, although a chance of murrain follows. For neither does a minor seem to be circumvented who used the common law (C. *De in integrum restitutione minorum*, last law; Dig. *De negotiis gestis*, l. *Sed an ultro*). Which understand as true unless the sheep were infected and ready for death, and the monastery did not know this nor foresee that a murrain could come (by argument from Dig. *De minoribus*, l. *Verum*, § *Si locupletior*). Yet the one handing them over is to be advised that in such a case, namely when a murrain follows, he should feel part of the loss, lest he be enriched by another's loss (*De regulis iuris*, c. *Locupletari*, in the *Sext*). And let the one handing over take care that, unless the convent of the monastery consents, the monastery is not bound for sheep or other things of this kind given with the said pact (*Extra*, *De deposito*, c. 1; and c. 1 and throughout, *Extra*, *De his quae fiunt a praelato sine consensu capituli*, where Hostiensis treats in what matters the consent of the chapter is required).

Those who share in the crime of usury

Beyond the foregoing, it remains to look at those who share in the crime of usury. And first it is asked what of notaries who knowingly draw up instruments about usuries, or usurious contracts, or contracts entered in fraud of usury. It is answered, according to Hostiensis in the place above, that it must be said that they are perjurers, because when they are created they swear that they will not do this; and a perjurer becomes

infamous; therefore consequently they cannot thereafter testify nor draw up instruments (*Extra*, *De testibus*, c. *Licet ex quadam*, § 1, towards the end). For every infamous person,

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both by law and by fact, ought to be repelled from promotion, whether it be a dignity or an order, because the gates of dignity ought not to be open to the infamous (Dist. 51 c. *Qui in aliquo*; *Extra*, *De regulis iuris*, c. *Infamibus*, in the *Sext*). Therefore those made infamous cannot be proctors or judges of causes (*Extra*, *De iudiciis*, c. *Cum deputati*); they are also repelled from accusing (Dig. *De accusationibus*, l. *Qui accusare*); similarly they are repelled from pleading (Dig. *De postulando*, l. 1). And it must be known that one infamous in fact is he about whom the opinion among good and grave men is burdened over some crime. But one infamous in law is he whom the law sets down as infamous, as because he has been convicted of theft, or because he fights in the arena for gain, and the like, of which enough is had in C. 3 q. 7 § *Porro*, in the text and gloss, and C. 6 q. 1 c. *Infames*, c. *Omnes* and c. *Illi*, and Dig. and C. *De his qui notantur infamia* or *Ex quibus causis infamia irrogatur*, throughout. The Archdeacon also approves the aforesaid judgement about the aforesaid notaries, on Dist. 46, last chapter, in the gloss at the word *alieno nomine*; for which he cites *Extra*, *De testibus*, c. *Ex parte* and the last chapter. What is noted on c. *Licet*, *Extra*, *Ne clerici vel monachi*, supports this.

But it is asked whether the aforesaid notaries are bound to those injured to any restitution, either of what they received for the writing or of the usuries paid. I answer that of the things they received as the wage of their work or labour, though unlawful, they are bound to restore nothing, just as we say of what is given to a harlot; because although

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she acts basely, yet she does not receive basely. For although that on account of which it is received is unlawful — namely the usurious or fraudulent act — yet the acquisition itself, namely the notary's earnings or wage, is not unlawful. Hence in such things ownership is transferred and there is no claim for recovery; about which enough on the authority of Augustine, C. 14 q. 5 c. *Non sane*, at the end; Dig. *De condictione ob turpem causam*, l. 1 and 2, and almost throughout; and blessed Thomas, II-II q. 32 and q. 62.

But about the usuries a distinction must be made. Either the notary was an effective participant in the usurious contract — as because he induced the parties to such a contract who otherwise would not have contracted at interest — and then such a notary, as a broker, is bound to act as far as he can so that the one who received the usuries restores them; and if he cannot obtain this, he is bound from his own. Likewise also if the one who received usuries at the inducement of such a notary afterwards became insolvent. For since the notary gave the efficient cause to such an unlawful contract, he is bound in the way said above to make it good from his own, because he who gives the cause of loss is deemed to have given the loss, as in c. *Si culpa*, *Extra*, *De iniuriis et damno dato*, and Dig. *De damno infecto*, l. *Item Mela*, § *Si alius* and § *Item cum eo*, and [Dig.] *De iniuriis*, l. *Non solum*, at the beginning, and § *Cum mandato*. Or the notary did not give the efficient cause, as because the parties would otherwise have lent at interest and were not induced to it by the notary; but the notary, asked about such a contract, knowingly drew up such a

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contract. And then, although he is a perjurer as above, and consequently also sins mortally, because one sharing in a condemned crime incurs the same sentence (as in c. *Si concubinae*, *Extra*, *De sententia excommunicationis*), yet he is not bound to restitution of the usuries unless something of the usuries came to him (by argument from Dig. *De eo per quem factum erit*, l. *Ex hoc edicto*). Yet he is bound, for satisfaction and true penance for his fault, to labour with the usurer as far as he can, according to the convenience of place and time, exhorting him not to put off restoring the usuries he received, pointing out to him that sins are

not forgiven unless what was taken is restored (C. 14 q. 6 c. *Si res aliena*, and c. *Peccatum*, *De regulis iuris*, in the *Sext*). In such a way ought what Odofredus says to be understood: that one who supplies the efficient cause to the exaction of usuries, etc. Or because notaries knowingly make charters or draw up instruments for debts of usuries as if it were a lawful debt and without usury — as charters for double or triple, etc. — then indeed, [he says,] they are bound to return the usuries received if the usurers themselves do not restore. The reason, he says, is because their instrument is efficaciously cooperative to such a usurer's being paid usury. But if in the note or instrument, he says, express mention of usury is not made, then indeed he is not bound, because such an instrument does not operate efficaciously — unless there were a custom of compelling debtors in court by such instruments to pay

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usuries, because then such notaries would also be obliged in the aforesaid way. This saying of his therefore does not compel, since it is neither proved by law nor supported by sufficient reason, except in the way we said above, namely when the notary gives the efficient cause by inducing someone to lend at interest. For in saying that the instrument operates efficaciously, it compels nothing except that he sins mortally if he does it knowingly. The notary is not, then, bound to restitution merely on account of the instrument drawn up, as though it were said, "If you had not made this instrument, he would not have been a usurer" — since we see daily many usurers exacting usuries without instruments and witnesses, from their own writings, as a memorandum, not as the efficient cause of the said usuries. Indeed William holds without distinction, saying: "I believe, without prejudice, that in neither case are those so inducing bound, except so far as it came to them." Yet it is safer to hold the distinction which we made above about the efficient cause.

For those can give the efficient cause who advise someone to lend at interest who was not otherwise going to; or who lend freely even to a usurer so that he may lend at interest; or who contract a partnership with some to practise usury and so share in the usuries received. The same also of those who lend to usurers so that the lenders themselves may share part of the usurious gain: if such usurers were not otherwise going to lend at interest, those inducing them to lend at interest are bound in the way we said above;

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but of what came to them from the usuries there is no doubt that they are bound to restore (*Extra*, *De usuris*, c. *Quoniam non solum*, c. *Tua*, and c. *Michael*, with similar ones).

Whether one who borrows at usury sins

But does one who receives [a loan] at usury sin? It seems so, by argument from c. *Super eo*, *Extra*, *De usuris*, where it is said that "over the crime of usuries dispensation cannot be made, even for the redemption of captives", because evils are not to be done that goods may come of them (Romans 3; C. 1 q. 1 *Non est putanda*; C. 33 q. 5 *Si dicat*; C. 14 q. 5 c. 1, 2 and 3; and c. *Non magnopere*, *Extra*, *Ne clerici vel monachi saecularibus negotiis se immisceant*). Johannes de Lignano on the said c. *Super eo*, following Innocent, Hostiensis and Johannes Andreae, says that one receiving at usury shares in the sin and gives occasion of sinning; therefore he sins (as in c. *Si concubinae*, *Extra*, *De sententia excommunicationis*, and the last chapter, *Extra*, *De iniuriis et damno dato*); and at the end of the said c. *Super eo* the text says, "Not even to redeem the life of a captive should he be entangled in the crime of usuries", where Johannes Andreae says: namely together with the usurer who gives the money. For if there were no one to receive, there would be no one to give, as in c. *Non satis*, *Extra*, *De simonia*, in the gloss which begins *Si non esset*. Hostiensis, however, says that this opinion is too rigid, and if it were true without distinction, an oath in this matter would not bind, which nevertheless binds (*Extra*, *De iureiurando*, c. 1 and c. *Debitores*, etc.). Others, however, say — and Innocent reports it — that it is lawful for anyone [to borrow at usury] for a virtuous and meritorious work, as if he wished to make alms from it, to build

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a church, or another pious work; but for luxury and wantonness it is not lawful to receive at usury. Damasus, however, in the first question *De iureiurando*, says it is not a sin (by c. *Dilectus*, *Extra*, *De simonia*), as being a kind of redemption from vexation. Others say that those receiving at usury are not always excused even for a meritorious or virtuous work — as for feeding paupers who need little or nothing — although that is a work of mercy, piety and liberality; and therefore those receiving at usury are excused from sin only when they receive for a meritorious work out of great necessity. And so time and place and similar circumstances must be considered, and the good which follows from omitting the loan compared. For if a great good follows from the virtuous work — as because paupers dying of hunger are fed, or captives are redeemed from the hands of infidels or from the hands of enemies in whose hands they are in danger of death, a church is built, vestments are bought to be perpetually assigned to the divine ministry, and the like — and if from omitting to take the loan little good follows — as because the creditor is already a usurer in will and ready to lend at usury, and others are ready to receive [loans] paying usury — in such a case it is lawful not only to accept money offered at usury but even to ask him to lend. And it is lawful to say to the usurer that although in every case it is a sin, yet it is less a sin when the loan is made for a good work.

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But conversely, when he sees him ready to repent, or at least willing to abstain thereafter, or not finding another who would wish to receive at usury, then it is a greater good to abstain from the loan than to do a virtuous work from the loan. But you will say: is evil to be done for the sake of good? But it is a sin to give occasion for someone to lend at interest; therefore you ought never to receive at usury. Innocent solves this: that it is never lawful for the usurer to lend at usury, and this I do not urge; but it is better for him to prefer a good, though not meritorious, rather than an evil. Further, in the aforesaid case — namely when he is ready to give at usury and another is ready to receive at usury — it seems to me lawful to receive not only for a virtuous work but even for an indifferent one. But for an unlawful cause he sins by receiving so and by persuading the usurer. Further, it seems that if from the omission of the feeding of paupers or another pious work great dangers to bodies or souls are feared, then if he finds someone having money, grain or something else necessary for that work, and, being asked, he will not give or lend, he can be persuaded to lend that kind at usury, because he will sin less in this than he would by hiding it in such necessity — by the argument that between two evils one should urge that the greater be avoided — according to Innocent, Johannes Andreae and Johannes de Lignano. And so you see that these hold conclusively that the receiver sins by giving occasion, otherwise not. For example, if I induce someone unwilling to lend to lend at usury, I sin; but if I receive from one keeping a table ready [i.e. a professional lender], I do not sin, unless I received for an unlawful

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cause, as I said above. Nor does what is said in the said c. *Super eo* stand in the way, because there it speaks of one lending at usury, for whom it is never lawful; we speak of one receiving at usury for a good cause when he cannot otherwise receive money. Nor does the chapter *Non satis*, *De simonia*, stand in the way, where it is said that both he who gives and he who receives or consents should not doubt that he will have his part with Simon Magus. For one paying simony is compelled by no necessity, and he is the principal corrupter, because he also acts against the Holy Spirit and covets what is forbidden. Hence Peter said to Simon Magus, "Your money perish with you, because you thought the gift of God could be possessed by money" (Acts 8). For the Apostle says, "The root of all evils is cupidity", from which, as we said above, many evils come; for which *Extra*, *De constitutionibus*, c. *Nam concupiscentiam*. But in the case of which we speak, namely of one who receives a loan at usury, when he binds himself he demands what is owed from his neighbour, because he ought to lend to him freely (Luke 6: "Lend, hoping for nothing thereby"; for which c. 1 and c. *Consuluit*, *De usuris*). In what fault, then, is he, if the usurer will not render what is owed [i.e. a free

loan] unless it is sold? It is sufficiently established that the debtor does not bind himself to usuries voluntarily, but necessity drives him, which excuses even from theft (as in c. 2, *Extra, De furtis*). Yet it must be confessed and diligently noted that if someone is moved principally by

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cupidity to receive a loan at usury, so as to trade and heap up riches, he is not excused from mortal sin, since cupidity in itself and by reason of itself is of itself a mortal sin. Thomas also says (II-II q. 78) that to take a loan at usury from a manifest usurer for the sake of some good, such as the relief of one's own or another's necessity, is lawful; just as it is also lawful for one who falls among robbers to reveal the goods he has so that he may not be killed, although the robbers sin in seizing them. And Ulrich understands this not only of absolute necessity but also of the necessity of utility which someone pursues in carrying on his business, namely for the support of his household according to his degree and state.

Agents, mandataries and guardians

But suppose a merchant commands his partner to lend at usury: is the mandatary bound, as a usurer, to the penalties contained in c. *Quia in omnibus* and c. *Cum tu*, *Extra*, *De usuris*, and in c. 1 and 2 of the same title in the *Sext*, with similar ones? Some say that if the mandatary had a special mandate to lend to a special person, he is not bound as a usurer. But otherwise, if he had had a general mandate, not specifying to whom he should lend nor at how much usury, then, since the industry of the person seems to have been chosen, such a mandatary is bound (by argument from c. *Si episcopus*, *De praebendis*, in the *Sext*). But say that in both cases he is bound if the one commanding becomes insolvent; for which is what is had in c. *Sicut non suo*, Dist. 46, where Pope Leo says: "Just as not in his own,

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so neither in another's name, let any of the clergy attempt to practise usury. For it is unbecoming to spend one's crime on another's advantage." For it is a rule of law that what one cannot do in his own name he also cannot do in another's (Dig. *De administratione rerum ad civitates pertinentium*, l. 2, at the beginning; Dig. *Quae res pignori obligari possunt*, l. *Aristo*; Dist. 88 *Episcopus*; C. 5 q. 3, last chapter; and C. 23 q. 8 c. *His a quibus*).

But can one who receives usuries in another's name be repelled from suing? Innocent, on c. *Michael*, *Extra*, *De usuris*, answered and holds that he can, by the said c. *Sicut non suo*. The gloss, however, on the said c. *Michael*, forming this question and arguing first that he can, afterwards adds that it does not seem so, because nothing was turned to his advantage, nor would one sue against him to recover the usuries, but against the one who had that advantage. Johannes Andreae, after Innocent, cites the penultimate chapter, *Extra*, *De peculio clericorum*; and Hostiensis there cites Dig. *De vi et vi armata*, l. 1, § *Cum procurator*, and *Extra*, *De sententia excommunicationis*, c. *Mulieres*. Goffredus, however, in the *Summa*, *De usuris*, § *Quid si quis*, says that one who receives usuries in another's name is not bound except in default, namely when the one for whom it was extorted is not solvent.

Hostiensis asks in the *Summa*, *De usuris*, last §, last verse: "What if some guardian, curator or proctor receives usuries not in his own name but another's: is he repelled if he seeks back usuries from one who extorted

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usuries from him, unless he too restores those which he received in another's name?" And he answers: "It seems so (by argument from Dist. 46 c. *Sicut non suo*, with the concordant texts mentioned above, and C. 3 q. 4 *Consanguineorum*)." And he adds: "But some [argue] to the contrary, because, as the aforesaid say, they cannot be sought back from him, since nothing was turned to his advantage. But certainly they speak badly,

because in offences one does not look to whether something was turned [to advantage], but to the deed itself and the will and purpose of the offender (C. 22 q. 5 c. *Qui periurare*; *Extra*, *De sententia excommunicationis*, c. *Cum voluntate*). For if my proctor ejects you from your farm, I am bound to you by the interdict *Unde vi*, and nonetheless he who obeyed me in this is bound, though nothing came to him (Dig. *De vi et vi armata*, l. 3, § *Cum procurator*). Nor is a proctor bound to lend at interest, since neither is a guardian bound to lend the ward's money at interest, provided he does not lend his own money at interest (Dig. *De administratione tutorum*, l. *Tutor qui repertorium*, § *Pecuniae*, and l. *Cum plures*, § *Cautelam*, last §, and the following law, § *Non est audiendus*). Yet I confess," says Hostiensis, "that he to whose advantage it was turned is bound first and principally, and the other in default (Dig. *De eo per quem factum erit*, l. *Ex hoc edicto*; Dig. *De dolo*, l. *Eleganter*, penultimate §)." And these things are undoubtedly true of a guardian, curator and proctor, in that they lend their authority to such things. For doers and consenters are punished with equal penalty (C. 2 q. 1 *Notum*, at the end; C. 11 q. 3 *Qui consentit*). And the Apostle says (Romans 1): "Worthy of death are not only those who do these things, but those who consent to those who do them."

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But what of prelates who sign and seal usurious schedules or charters? I answer, according to Hostiensis in the *Summa*, *De usuris*, § *An aliquo*, last verse: if the prelate did not read the tenor of the writing, or read it but the usury was veiled — because perhaps a greater amount was set down than was in truth lent — and the prelate did not diligently enquire or search out the truth, and therefore did not understand, he acted foolishly, although in truth he did not consent (C. *Plus valere quod agitur*, last law; Dig. *De pigneraticia actione*, l. *Gaius*). But if he read and found the truth, he is a participant in the crime of usuries, though not in the profit. For a signature in many articles of law implies consent and approval (*De re iudicata*, c. *Cum inter vos*; C. *Si certum petatur*, l. *Mutuae*; C. *De administratione tutorum*, l. *Si non subscripsisti*; C. *De donationibus*, l. *Nec ignorans*; C. *De fideiussoribus*, l. *Si pater*; C. *De rebus alienis non alienandis*, l. 2).

Moreover, since the seals of prelates make instruments authentic (*Extra*, *De fide instrumentorum*, c. *Scripta*), laymen, believing on this account that contracts of this kind are approved by the Church, sin more securely. And therefore of prelates of this kind it can be said: "You are all a snare to the young" (C. 2 q. 7 *Paulus*). "Although also as regards laymen, receiving usuries is worthy of the punishment of divine judgement, yet they incur a greater dread, in that they find the tinder of their error in prelates, since they drive into the byways of death those who ought to have been called back to the way of life by their preaching," as is said elsewhere in a similar case, *Extra*, *De decimis*, [c.] *Quamvis*.

Cities and corporations

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But what of cities or colleges giving money at usury: are the individuals usurers and bound to restitution? And it is to be answered according to Hostiensis in the *Summa*, *De poenitentiis et remissionibus*, § *Quibus et qualiter*, verse *Quid de civitatibus*: it seems that the individuals are not bound, because the corporate body is not the individuals (C. 12 q. 2 c. *Qui manumittitur*). But you may say the contrary. For as to offences, the parts concern those who consent, and they are punished and obliged individually — not as a corporate body, which has no soul, nor as all together, but as individuals (by argument from *Extra*, *De usuris*, c. *Conquestus*; C. 7 q. 1 *Sicut vir*; C. 24 q. 3 *Si habes*; Dig. *Quod metus causa*, l. *Metum*, § *Animadvertendum*). Which understand of those to whom this is pleasing in their mind, and who hold it ratified and consent, or who, when they could forbid, do not forbid (*Extra*, *De sententia excommunicationis*, c. *Quantae*). The same would also be so if a city or community received some pledge and did not reckon its fruits toward the principal (*Extra*, *De usuris*, c. *Conquestus*, with similar ones). And although all, as has been said, commit usury, yet, according to William, they are not bound to restitution except so far as it came to them, or so far as they were relieved of expenses which they would have made from their own. Yet the more principal ones, who

furnished or received the authority, so that otherwise the citizens would not have done it, are bound for the whole, because he who gives the cause of loss is deemed to have given the loss, as in the said last chapter, *De iniuriis et damno dato*. Of rulers and others able to forbid,

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there is no doubt that they commit the crime of usuries and are bound to restitution; which is also well proved by argument from l. *Municipibus*, Dig. *De condicionibus et demonstrationibus*. But others not principal governors, or others ignorant or unable to forbid, are not subjected [to this], by argument from what is noted on *Extra*, *De raptoribus*, c. *Super eo* and c. *Excommunicationi*, unless they shared a private and purse advantage, because then they seem expressly to consent, and so would be bound as was said above.

Forced loans to cities

But suppose forced loans [*praestantiae*] are imposed by the presidents of cities or communities, for which loans a pledge is bound or a certain gain is promised. Do those receiving the fruit or gain commit usury? I answer: either such lenders put themselves forward of their own accord, and they commit usury; or they are compelled to lend, and from this incur much inconvenience, so that they would gladly abstain from it, and the community, wishing to relieve its citizens, gives from the city's revenues something certain per hundred; and then, according to some, it is not usury. For they say that it is of the nature and reason of a usurious contract that the loan be voluntary, but here it is forced; therefore, etc. Moreover, they say that the community can relieve its citizens whom it compels to lend; therefore, etc. Moreover, they say that the community, being naturally obligated, is bound to recompense; therefore, etc. Moreover, they say that

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by such loans the city is governed and obtains great utility; therefore, etc. Moreover, they say that the lenders receive a greater advantage from their own goods, because from the common revenues and excises in which every citizen pays for his share; but usury is committed in what the lender receives from another's thing, etc.

Yet notwithstanding these things, the contrary seems to be true, because, as was sufficiently proved above, it is in no way lawful to accept an increase by reason of a loan, by the word of Jesus, "Lend, [hoping for nothing]," etc. And usury is whatever is added to the principal; therefore, etc. The arguments do not compel necessarily. For the first argument does not compel, because although from the beginning the loan is not voluntary absolutely, yet it is voluntary mixed, as we say that a compelled will is a will [the editor notes that all three manuscripts evidently omit "not": "a compelled will is an unwill"]; therefore, etc. What is noted on c. *Veniens*, *Extra*, *De sponsalibus*, and on c. *Perlatum* and c. *Ad audientiam*, *Extra*, *De his quae vi metusve causa fiunt*, with similar ones, supports this. Moreover, although from the beginning such a loan was not voluntary, yet after the fact it becomes voluntary in hope of gain; therefore, etc. Moreover, although citizens are compelled to lend, yet they are not compelled to accept gain. But the vice of usury is not from someone's lending but from his accepting something beyond the principal; therefore, etc. To the second it is answered that a city can relieve its citizens in one

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of two ways: in one way by way of grace, and this is lawful; in another way by way of obligation, and this is not lawful. The community could, then, give freely; but the lender cannot, by reason of a preceding obligation which the community makes to him for the loan, accept anything beyond the principal. Nor does it stand in the way if it is said that he receives it as interest, because such interest would be from the outcome; for just as the city could have gained from such a loan, so it could have lost. For in such a case the consideration of doubt which is had in sales, as in c. *In civitate*, *Extra*, *De usuris*, with similar ones, has no place. To the third it must be said: [only] if a natural obligation could be turned into a civil one by which

usury could be excused — which is false, about which we said enough above. To the fourth it is answered that although the city is governed by such a loan and takes great utility, yet on this account it cannot be lawful to accept usury, since it is not lawful even to redeem the life of a captive, as in c. *Super eo, Extra, De usuris*. For evils are not to be done that goods may come, as we said above. To the fifth it must be said that although excises and revenues arise from what the citizens pay, yet they do not become the individuals' but all together's; because just as individual good is distinguished from universal good, so it is necessary to distinguish in the aforesaid case. Therefore it does not stand in the way, unless it were given freely, etc.

Servants, beneficiaries and household of usurers

But what of the household of usurers who lend at usury? And I answer: if they share in a quota of the gain,

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there is no doubt that they are bound, as in c. *Michael, Extra, De usuris*. But if they hire out their work, then, although they sin, they are not bound to restitution except so far as something of the usuries comes to them, nor are they subject to the penalties of usurers, according to what was noted above about the mandatary; which Johannes de Lignano also holds on c. *Super eo, Extra, De usuris*.

What of those who share something from usurious gain by way of gift or alms: do they receive it lawfully? It is answered with a distinction, namely: either the usurers have other goods than those acquired by usuries, or not. If so, it is received lawfully. But if the contrary, it is not lawful to receive, since the usurer is subject to restitution. Hence in such a case one who had received would be bound to restore to those from whom the usury was taken, according to Ulrich.

But what of the servants of usurers who have nothing besides usuries: do they lawfully receive the wage of their labours? It is answered: if they serve in lawful and honest things for the necessity or utility of the usurers, they can also lawfully receive the wage, since on account of their service and the wage received [the usurer] is not made more insolvent, because the wage is offset by the work, as we said above of partnership. But if they served in unlawful and dishonest things, they could not receive a wage from usurious gain, according to William; which Johannes de Lignano also touches on c. *Super eo, Extra*, *De

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usuris*, and the modern doctors note on c. *Michael*, same title.

Judges, advocates, proctors and witnesses

But what of the judge before whom a case of usury is brought: is one judging in a usurious case bound to anything? I answer: here a twofold enquiry arises: first, before which judge a case of usuries ought to be brought; second, whether one judging for the payment of usuries is bound to anything.

As to the first enquiry, it is answered that either judge can and ought to proceed in a usurious case against usurers so that they restore the usuries, according to William and the Archdeacon, who so note on c. *Quid dicam*, C. 14 q. 4. What is had in c. *Ad nostram*, the second, *De iureiurando*, well supports this. Laurentius also noted the same on the said c. *Quid dicam*, and Goffredus approves this judgement, all others being rejected. And this is to be held as most true: that in the crime of usuries, although this crime principally concerns the ecclesiastical judge (*Extra, De usuris*, c. *Cum tu* and c. *Quia in omnibus*), yet laymen may be summoned before the secular judge and clerics before the ecclesiastical judge. Goffredus also noted this on c. *Cum sit, Extra, De foro competenti*, where Vincent and Bernard noted the same in the last gloss. And the Archdeacon refers to what he noted on C. 16 q. 1 c. *In canonibus*, verse *Generaliter*, at the end, where he says that Goffredus understands that in c. *Si clericus, Extra, De foro competenti*, the lay defendant was drawn to the ecclesiastical court because there was a custom that a layman

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be summoned in the court of the Church on account of an ecclesiastical matter, as there and in the said c. *Cum sit*. The same Archdeacon also notes, at the end of the said c. *In canonibus*, that secular princes are bound to give aid to the Church, so as to punish with the material sword those whom the Church cannot restrain with the spiritual sword; to the same effect C. 23 [read: 23?] q. 1 c. *Si homo esses*; C. 23 q. 3 *Maximianus*; Dist. 63 *Tibi domino*; *Extra*, *De officio ordinarii*, c. 1 and c. *Quoniam*, at the end, where on this; Dist. 17 *Nec licuit*. Lord Johannes de Lignano on the last chapter, *Extra*, *De usuris*, says: "But to whom does cognizance of usuries belong? Some say that the secular and ecclesiastical judge can take cognizance; others that it belongs to the ecclesiastical alone. Johannes Monachus holds this on *De usuris*, in the *Sext*, above the rubric. He is moved because it is a contract against the principles of things, and of such a vice against the principles of things the ecclesiastical judge takes cognizance. This reason concludes that of the sodomitic vice the Church alone takes cognizance, and so it was once observed. Those holding the contrary are moved because here nothing is ecclesiastical. Paulus de Liazariis on the first Clementine, *De usuris*, says that if the case is brought about usury as something paid that was not owed, then the secular [judge] can take cognizance; but if as about a crime, then it ought to be brought before the ecclesiastical. But note: supposing that civil law permits usury, how will the claim for what was not owed be brought before the secular judge, since it can be said to him that by civil law the usury is owed? It could not, then, be brought before the secular but before the ecclesiastical judge, because

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canon law wholly condemns usuries. Hence if the case is brought for a penalty, the secular judge could not interdict the sacraments, as in c. *Quia in omnibus*, *De usuris*; nor could he break the usurer's will, of which in c. 2, *De usuris*, in the *Sext*, § *Non praestita cautione*, as there." But when the case is brought about the restitution of usuries, then, if usury at one per cent a month [*centesima*] or another usury prohibited by civil law had been extorted, in such a case such cognizance could belong to the secular judge. But presupposing that the law of the *Authenticae* wholly prohibits usuries, as it is safer to understand, as we noted above, then it can well be said that the secular judge can well take cognizance where the case is brought only for restitution of usuries; but where the case concerns the formal character of sin, none but the ecclesiastical judge can take cognizance (*Extra*, *De iudiciis*, c. *Novit*). And so it is to be held.

As to the second enquiry, it is answered that one who judges for the payment of usuries first and principally sins mortally, even if he is a secular judge, presupposing what was noted in the preceding question, namely that usury is prohibited also by the law of the *Authenticae*. Indeed, more: those judging according to statutes permitting usuries incur the sentence of excommunication, according to what is noted in c. *Ex gravi*, *De usuris*, in the *Clementines*, where podestàs, captains, rectors, consuls, judges, councillors and other officials who presumed to observe, or have observed, statutes or customs of cities of this kind incur the sentence of excommunication. They are nonetheless bound to restitution of the loss

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suffered, by what is noted on the last law, C. *De poena iudicis qui male iudicavit*, unless they could induce the one for whom the sentence was given to make full restitution. And c. *Quattuor modis* and c. *Quicumque*, C. 11 q. 3, support this; of which we shall also speak below when the perversion of judgement is treated; and it is sufficiently noted on c. *Cum aeterni*, *De sententia et re iudicata*, in the *Sext*.

But what of the advocates of usurers? It is answered: if they knowingly defend them in usurers' cases, they sin mortally; and if by their pleadings they induce judges to judge for usurers, they fall into the same penalties into which the judges fall; and so, like the judges themselves, they are bound to restitution in the way said above, because one sharing in a criminal crime incurs the same sentence, as in c. *Si concubinae*, *Extra*, *De sententia excommunicationis*. The same is to be said of the proctors of usurers. But what of

witnesses brought to usurers' contracts? I answer: if they perceive that it is a usurious contract, or a contract entered in fraud of usury, they sin mortally, as favouring such a contract, by the aforesaid c. *Si concubinae* and by what is noted on c. *Sicut dignum*, § 1, and c. *Ad audientiam*, *Extra*, *De homicidio*. And if they are brought into court, they ought as far as they can to avoid testifying in favour of usurers. But if, corrupted by money, they testified for usurers, false testimony

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by deposing it, so that the sentence was given for the usurers, the said witnesses are bound to the one who suffered the loss in the way we said above, if they cannot induce the usurers to restore (by argument from C. 17 q. 4 *Si quis in atrio*; Dig. *De calumniatoribus*, l. *Generaliter*, § *Illud*; C. 1 q. 1 *Iubemus*). For venal testimonies, like venal judgements, are condemned; and Hostiensis notes it in the *Summa*, *De testibus*, § *Quis possit esse testis*, verse *Quis repellitur*.

The wife and household of a usurer

But what of the wife and household sharing in food and clothing from the money and fruits of the usurer? I answer, according to Raymond: if the usurer has no other goods except those acquired by usuries, the wife ought not to take from such fruits, and of what she took she is bound to restitution if she took knowingly — except so far as the wife and household diligently urged the father of the family to restore the usuries. For then, as if they were usefully managing another's affairs without the knowledge and in the absence of the one whose affairs they manage, they lawfully receive their expenses, whether utility followed or not (Dig. *De negotiis gestis*, l. 2, l. *Pomponius* and l. *Sed an ultro*). Which is to be understood of the time during which they laboured over the correction of such men: not that the wife and household may live a whole year from things seized or usurious for one admonition or two, but so long as they continually press at fitting places and times. And if among the usurer's goods there are some things

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lawful, they can take from those; otherwise let them seek their food elsewhere, if need be even by alms, or denounce him to the bishop so that he may compel him to feed the household from just gain (C. 2 q. 1 *Si peccaverit*; C. 22 q. 5 *Hoc videtur*; *Extra*, *De iureiurando*, *Quemadmodum*; *Extra*, *De pignoribus*, c. *Ex litteris*; and *Extra*, *De donationibus inter virum et uxorem*, c. *Per vestras*). Yet if they were in strait necessity, they could also take from those unlawful things in moderation so as not to perish of hunger (by argument from *De consecratione*, Dist. 1 c. *Sicut*, and *De consecratione*, Dist. 5 c. *Discipulos*, with similar ones).

Money-changers

Beyond the foregoing I ask what is to be said of money-changers. Suppose a money-changer, in exchanging, receives one penny per florin; or suppose that at a distance he has money counted out, and I give or repay here with some addition: is it usury? It seems so, because fruit is sought from money, which nevertheless does not breed, as we said above. To the contrary is the truth, because here there is not a loan but an exchange, after the likeness of a sale. Moreover, the money-changer takes the risk on himself and applies labours; therefore he can justly receive what is his interest. Moreover, the course of money is variable, as in c. *Quanto*, *Extra*, *De iureiurando*, and c. *Non est in potestate*, *Extra*, *De decimis*, and c. *Olim*, *De censibus*, with similar ones. What Innocent notes on c. *Naviganti*, at the beginning, *Extra*, *De usuris*, supports this, where he says that if someone receives money to be carried

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overseas, a certain price being fixed for him, whether he takes the risk on himself or not, it is not usury but a letting of the work of carrying or keeping. Hostiensis holds the same, who cites Dig. *Nautae caupones*

stabularii, l. *Et ita*, and throughout. For the reason for the prohibition of usuries is that in a loan there intervenes a momentary and fruitless use, because mine becomes yours, as in l. 2, § *Appellata*, Dig. *Si certum petatur*, as we said above; for which Dist. 88 c. *Eiciens*. But this exchange of money does not otherwise have a fruitless use; for no one would exchange if he knew it to be fruitless to him — for why would he wish to give more than he receives? Nor in exchange is the use momentary. For no one takes money in exchange to have from it the fruit of a momentary use, but rather to have a lasting fruit. For in taking gold for silver it seems more convenient to him to carry gold; or perhaps in the place to which he is going he could not have spent the money which he gave, therefore he wants to carry other money, or to receive it by letters of exchange in other distant places, by which he is relieved of the dangers of the road, which can turn to his great utility.

Moreover, it is plain that the Church condemns and pursues usurers, yet tolerates money-changers, as appears expressly wherever the Roman Church resides. Hence a threefold money must be distinguished according to the Philosopher (*Politics* 1), of which the first is called natural, which arises from natural things being exchanged for money.

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For it is caused by natural things — as if someone abounding in wheat and oil sells them and receives money from them. The second species of money is properly usurious money, because against nature, as if by generation, increase is sought, just as animals grow by birth; and such money is condemned, as was sufficiently said above. The third species of money is called the money-changer's, which according to the Philosopher was first found by chance and accident and fortune, and at length, through experience, was made an art, as the Philosopher says (*Politics* 1). For any coin is worth more, speaking of itself, in its own region. It happened, then, by chance that some had certain coins which were not much valued in their region because they were not proper to that region. When, then, they came by chance to those regions to which those coins were proper, and carried those coins, it happened that they received for those coins more than they were worth in their own regions; and so by chance they used the money-changer's art. But from this chance the money-changer's art took its origin, so that men afterwards considered by art which coins are spent in various parts, so that afterwards by using the money-changer's art they might gain. Therefore such an art is lawfully granted out of necessity, on account of the diversity of coins, for the utility of travellers and the exchange of things pertaining to the necessity of life. For necessary things cannot be so conveniently carried everywhere. For such

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an exchange does not have the name of a loan, because gain is not hoped for on account of delay; nor in the money-changer's art is the principal returned the same in species or number, because he gives money of one kind and receives of another. Nor is it properly called a purchase or sale, which consists in things that can be priced; but this kind takes place in the mere exchange of coins of different kinds.

And therefore it is likewise an exchange [*permutatio*], which is said in many ways. In one way exchange is said generally, when something is given in place of another; and so it comprehends every exchange. Second, it is called exchange when a thing determined for the utility of life is given for another determined thing — as when a prebend is exchanged with another prebend, or something similar. Third, exchange is said more determinately, as the exchange of coins; and this is properly the money-changer's art, which for the reasons given above is said to be lawful. Nor does it stand in the way if it is said that money was invented in order to have the necessities of life, because by a similar reason such an exchange is granted out of necessity. Moreover, in the money-changer's art coins are not properly exchanged for coins of the same species but of different ones, according to the different use of coins in each kind, the value of each being considered. Nor does it stand in the way if it is said that such gain has no compensation of justice — not by reason of a loan,

because a loan ought to be free; nor by reason of a free gift, because where there is grace, gain is not hoped for; nor from the thing given or exchanged, because it is money, which

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does not breed; nor by reason of labour, because he labours no otherwise than a usurer. For none of the foregoing stands in his way, if it is well considered. For to what is said about recompense it is answered that in our case recompense intervenes from the fact that a greater utility comes to the one transferring the money from what is received than from what is given.

Moreover, coins have a twofold valuation: one from the nature of the thing, either from weight or material; and another from the determination of positive law. From this it happens that frequently some kind of coin in some place is not worth as much as the value the disposition of law gave it. And therefore when the money-changer takes some kind of coin not according to the determination and disposition of law but according to the estimate of weight and nature, and gives another kind according to the estimate of positive law, so recompense and equality are made between what is given and what is received, by comparing the value of the coin given, which is worth according to the estimate of law, with the value of the coin received, which is worth according to the nature of the thing, regard being had to weight and nature. Hence a justice is kept there similar to that which is in purchases and sales; which recompense is made here by the greater and fuller utility of what is given, with the one receiving from the money-changer, than of what is received from him. And therefore this exchange and a loan are not alike, because the act of such an exchange

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need not be done freely as the act of a loan must; on account of which here gain can be hoped for from labour and not there; and such gain can pass into the ownership of the exchanger, which cannot lawfully pass into the ownership of the lender.

Nor does it stand in the way if it is said that the Lord cast out of the temple those selling and buying and poured out the money of the changers (John 2 and Matthew 21), because it is answered that the Lord did this out of reverence for the temple and in detestation of avarice. About which it must be known that trade or business is rendered unlawful in many ways. First by reason of the person, as when a cleric trades, for whom it is not lawful to trade (Dist. 88 c. *Negotiatorem clericum*), where Jerome says: "Flee as a kind of plague a cleric who is a trader, and from poor become rich, and from obscure become famous." Augustine also treats sufficiently of this in the book of *Questions on the Old and New Testament*, and Dist. 88 c. *Consequens* and c. *Fornicari*, with similar ones. The same is also decreed of soldiers, for whom it is not lawful to trade in person (C. *De commerciis et mercatoribus*, l. *Milites*). Second, by reason of place, as when trade is carried on in a place assigned or dedicated to divine worship, as in c. *Decet domum Domini*, *De immunitate ecclesiarum*, in the *Sext*, and in the said c. *Consequens* and c. *Eiciens*, Dist. 88. Third, by reason of time, as if markets or business are held on solemn days against the precept of God and the sanctification of the sabbath (Exodus 20, Deuteronomy 5), where it is said,

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"You shall do no work in it"; of this enough is treated in c. *Omnes dies*, *Extra*, *De feriis*; *De consecratione*, Dist. 3 c. *Rogationes*; C. 15 q. 4 c. 2 and 3; and C. *De feriis*, last law. Fourth, by reason of manner, as when trade is carried on with lies and perjuries, in which merchants abound today; hence Chrysostom on Matthew 21, where the casting out of the temple is treated, says: "A merchant cannot be without lying and perjury" — that is, can hardly be; of which enough is had in C. 22 q. 2 *Homines*, C. 22 q. 4 c. *Tribus modis*, and *Extra*, *De iureiurando*, c. *Etsi Christus*. Fifth, by reason of the partner [*consortii*], as when a thing is sold dearer to those passing through than to residents, which is against the law (Deuteronomy 24): "You shall not pervert the judgement of the stranger and the orphan, nor take away the widow's garment in place of a pledge"; and

Exodus 12: "The same law shall be for the native and for the settler who sojourns among you."

Beyond the foregoing, then, trade can be lawful if it is done in a lawful way, although it can be vitiated in very many ways, as we said above when we treated usury disguised under the name of purchase, etc. So too money-changers could sin by exceeding the just measure in the gain or fee for the exchange; so too in any other contract, or also by deceiving their neighbour in the quality or value of coins, and the like. Against which the Apostle says (1 Thessalonians 4): "And that no one overreach or circumvent his brother in business, because the Lord is the avenger of

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all these things"; and Leviticus 25: "When you sell anything to your fellow citizen or buy from him, do not grieve your brother."

Coinage: its approval, debasement, and the punishment of debasers

But fraud can occur in the use of coins in many ways. About which it must first be known that in such matter three things are principally to be attended to: namely the first is the approval of the coinage; the second its debasement; the third the punishment of debasers. For which it fits well to set forth what is written in Exodus 22, where it reads: "If someone has entrusted money or a vessel to a friend for safekeeping, and it has been stolen from him who received it, if the thief is found, he shall restore double." Where in the first part the approval can well be [signified], up to "for safekeeping"; in the second the debasement, at "it has been stolen"; in the third the punishment, at "he shall restore double".

About the first it must be known that the approval of moneys or coins ought to be made by one having authority, as by the pope, the emperor, a king, or a corporate body that recognizes no superior. About which approval four things are principally to be considered: first is the material; second the form; third the weight; fourth the value. Of which it is had in Genesis 23, where the first mention of the origin of money or coinage and of purchase is had, for the burial of Sarah, the wife of Abraham, from the double cave. Abraham, namely, when he had risen from the office of the funeral, spoke to the sons of Heth, saying: "I am a stranger and sojourner among you; give me the right of a burial place with you, that

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I may bury my dead." And below: "Intercede for me with Ephron the son of Zohar, that he may give me the double cave which he has at the far end of his field; for its worth in money let him hand it over to me before you as a possession for a tomb." And below: "And Ephron answered: My lord, hear: the land which you ask is worth four hundred shekels of silver; that is the price between me and you; but how much is this? Bury your dead. When Abraham had heard this, he weighed out the money which Ephron had asked, in the hearing of the sons of Heth, four hundred shekels of silver of approved public coinage." Where the material is plain, because silver; the form, because a shekel; the weight, because he weighed out; and the value, because four hundred shekels are described. For the shekel in Greek is called a stater, which has twenty obols or ten scruples. "The shekel, therefore, is two and a half shillings," says Papias; who also says: "The stater is a coin which is called a shekel, because it stands at three shillings, weighing two gold pieces; and so the stater is a coin weighing one half-ounce, that is three gold pieces [*sic*; uncertain]; this doubled makes an ounce." About this also the Lord Jesus, asked by the disciples of the Pharisees whether it was lawful to give tribute to Caesar or not: "Why do you tempt me, hypocrites? Show me the coin of the tribute. And they brought him a denarius. And Jesus said to them: Whose is this image and inscription? They say to him: Caesar's. Then he said to them: Render therefore to Caesar the things that are Caesar's, and to God the things that are God's" (Matthew 22). And so it is plain in both places that the material, form, weight and value ought to be authentic, by one having authority; which four ought to be observed entirely. And if

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there is error in one of them, just money is defrauded; and when they are kept, fraud does not fall upon money. And it is to be noted that money or coinage was invented as a certain intermediary for obtaining the use of things, after the division of things among the nations was introduced, of which Genesis 13. From which Aristotle says (*Politics* 1) that some riches are natural, others artificial. Natural are possessions of lands; artificial are possessions of money, which were invented for the concord of men, etc.

About the second, the debasement or defrauding of coinage, three things are principally asked: first, namely, when coinage is said to be falsified or defrauded; second, whether a prince without the consent of the people can diminish it, or order diminished coinage to be weighed out as lawful; third, whether when coinage is changed the risk falls on the debtor or the creditor.

To the first it must be said that coinage is defrauded when a certain weight is diminished from each coin from the beginning by order of the king, who commands it to be spent as lawful, as in c. *Quanto*, *Extra*, *De iureiurando*. Likewise when coinage is struck of lesser value, considering the expenses of those striking it, which the prince is not bound to make from his own but from the costs of the commonwealth; and this is observed by custom, although Bartolus said otherwise on l. *Paulus*, Dig. *De solutionibus*. Likewise coinage is falsified when money-changers melt down heavy coins and let others pass, according to Hostiensis on the said c. *Quanto*; it is proved in l. *Lex Cornelia*, at "or melted down", Dig. *De falsis*. Likewise it is defrauded when lords of lands

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order coins of lesser weight to be spent for the same price as those of greater; likewise when they reject good coinage and let other pass, so as to have a good market in it, according to Hostiensis in the place above.

To the second it must be said, according to what Innocent seems to say on c. *Quanto*: either the king wishes to gain a little from this, and then he can do it with a good conscience even without the consent of the people, from the fact that the king himself furnishes the authority of the coinage; or he wishes to gain much, and then he cannot do this without the consent of the people, but the consent is required at least of the greater part of those who represent the kingdom, as in the said c. *Quanto* by contrary sense. The reason supports this, because anyone can renounce his right (Dig. *Ad municipalem*, l. *Quod maior*; C. 7 q. 1 *Quam periculosum*). Yet such consent does not operate so that outside the territory it could be spent for the same, as in the last law, Dig. *De iurisdictione omnium iudicum*. And from this Hostiensis says that you cannot settle about damages without the consent of the people, and refers to the *Summa*, *De poenitentiis*, last §, verse *Item quod guerra*. About which see what Hostiensis and Johannes Andreae note on *De decimis*, c. *Non est in potestate*.

To the third it must be said that either the creditor provides for himself by a pact, and the pact is stood by; or not, and then the change of coinage can happen in two ways: in one way in form and material, or in form only; in another way in the quality of value only, the same form remaining. In the first case, either the old coinage was rejected not on account of its defect but because it so pleased the prince; then if the debtor was in delay, it is charged to him; but if he was not

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in delay, then he can pay in the old; but if the old is not found, or cannot be spent without penalty, then its valuation ought to be paid (*De censibus*, c. *Olim* and the penultimate chapter). Or the old was rejected for a defect of the money itself; and then either the defect was present at the time of contracting the debt, and the same as above, because its valuation can be paid; or the defect came afterwards, and then it is the debtor's risk, because he ought to return the old if it can be had; but if it cannot be had or could not be spent, then he ought to return the valuation, because he cannot return worse (as in l. *Cum quid* and what is noted there, Dig. *Si certum petatur*, and in the said c. *Olim*). But in doubt it is presumed to be at the debtor's risk, because it is

presumed done at the time of the prohibition. In the second case, namely when a change happens in the value of money: then either the debtor was not in delay, and [a diminution] is charged to the creditor; but if it is increased, it is the debtor's risk (l. *Cum quid* and l. 6 [?], Dig. *Si certum petatur*). Or the debtor was in delay; and then either we speak of large coin which is valued by small, and it is charged to the one in delay, because he is bound to the interest of its highest value, as in the said l. 6; or we speak of small coin and it was never so small [?], and then it is charged to the creditor. Nor can he say that he could have had more at the time of the contract than now, and no account is taken of such interest (as in l. *Si sterilis,* § *Si per venditorem,* Dig. *De actione empti*,

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and according to Bartolus on l. *Paulus*, Dig. *De solutionibus*, and by Lord Antonius de Butrio on c. *Quanto*). [This passage is compressed and partly unclear in the source; uncertain.]

About the third, the punishment of those defrauding or debasing coinage, it must be known that the punishment is fourfold: namely the first real [i.e. on property], the second moral, the third personal, the fourth integral. Of the first, according to divine law, it is had in Leviticus 6: "The soul that has sinned, and in contempt of the Lord has denied to his neighbour a deposit which had been entrusted to his faith, or has extorted something by force, or has committed calumny, or has found a lost thing and, denying it, has moreover sworn falsely, and has done any other of the many things in which men are wont to sin: being convicted of the offence, he shall restore entire all that he sought to obtain by fraud, and a fifth part besides to the owner to whom he had done the damage." But by civil law the penalty is confiscation of all goods, as in l. 2, C. *De falsa moneta*, where it is said: "If anyone has shaped coins by false casting, we command that all his property be added to our treasury. For we wish the work of striking money to be practised only in our mints; those liable for it commit the crime of majesty." Proverbs 12: "The fraudulent shall not find gain." Of the second, because such falsifiers become infamous (Dig. *De falsariis*, l. *Cornelia*); and by canon law all are infamous who are evidently included under the bond of mortal sins (C. 6 q. 1 c. *Omnes vero infames* and c. *Illi qui*; C. 32 q. 5 *Praeceptum,* at the end; and C. 6 q. 1 *Infames*).

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For which Proverbs 2: "Who leave the right road and walk by dark ways, who rejoice when they have done evil and exult in most wicked things, whose ways are perverse and their steps infamous." Ecclesiasticus 34: "He who sheds blood and he who defrauds a hireling are brothers." Isaiah 32: "The instruments of the fraudulent are most evil." Of the third, namely personal punishment, it is plain from C. *De falsa moneta*, l. 1, where falsifiers of coinage are ordered to be punished with the ultimate penalty: "And if any soldier lets such a suspected person out of custody, let him be punished capitally. But the house or farm in which these things were perpetrated, if the owner was nearby, is to be punished for his carelessness or negligence; and if he did not know, let it be claimed by the treasury, unless the owner, previously ignorant, betrayed the crime as soon as he found it perpetrated. For then his possession or house will not be subject to the injury of proscription. But if he was very far from the house or possession, let him suffer no detriment, the agent of the farm, or slaves, or tenants, or lodgers who furnished their service for this being punished with capital penalty together with the one who did it." Yet widows and wards, who do not know what they see [*sic*], are excused from confiscation of goods. And in l. 2 the penalty of fire is imposed. Hence it is written there: "Whoever can be found to be an adulterator of solidi, or is denounced by anyone, let him at once, all delay removed, be handed over to burning by flames." For which also Dig. *De falsis*, l. *Quicumque*, l. *Lex Cornelia* and l. *Qui falsam*; and the example also supports it of the false judges and witnesses

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against Susanna (Daniel 13). Solomon also says (Proverbs 26): "As he is guilty who sends lances and arrows to death, so is the man who fraudulently harms his friend."

Of the fourth, namely integral punishment — namely of soul and body and all goods — it is written in Proverbs 1: "They also lie in wait against their own blood, and plot frauds against their own souls. So all the paths of the avaricious seize the souls of the possessors." The Lord also reproaches such men (Isaiah 47), saying: "Your traders from their youth have strayed, each in his own way"; and John the Evangelist threatens such (Apocalypse 18), saying: "The merchants of the earth shall weep and mourn over her, because no one will buy their merchandise any more." And Job 13: "Does God need your lie?" and below: "Or will he be deceived like a man by your frauds? He will rebuke you." And Wisdom 5: the damned lament, saying: "What did pride profit us, or what has the boasting of riches brought us?" and below: "But we were consumed in our wickedness. Such things those who sinned said in hell, for the hope of the wicked is like down which is carried away by the wind," etc. And let the foregoing suffice.

The figures of the usurer

The figures of the usurer

There remains the third [part] of the second, which is called figuration. Where it must be known that the usurer embraces in himself seven most base and horrible figures: namely he is figured, first, by hell; second, by death; third, by the sea; fourth, by a river; fifth, by a dog; sixth, by a mole; seventh, by a spider.

First, I say, the usurer is figured by hell, in that just as hell is never sated, so neither is the usurer, according to Ecclesiastes 5: "The avaricious man shall not be filled

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with money, and he who loves riches shall reap no fruit from them; and this, then, is vanity. Where there are many riches, there are many also who eat them. And what does it profit the possessor, except that he sees the riches with his eyes?" For the usurer says in his heart, as those wicked, greedy, rapacious men said, of whom Solomon forewarns in Proverbs 1, saying: "My son, if sinners entice you" — that is, if they try to seduce you with blandishments and flatteries — "do not consent to them. If they say: Come with us, let us lie in wait for blood, let us hide snares against the innocent without cause; let us swallow him up alive like hell, and whole like one going down into the pit; we shall seize all precious substance, we shall fill our houses with spoils"; and below: "They also lie in wait against their own blood and plot frauds against their own souls. So all the paths of the avaricious seize the souls of the possessors." You see how clearly the Holy Spirit depicts the likeness of the avaricious man and usurer to hell. Deservedly, then, after death they are swallowed by hell, just as they themselves, like hell, desire to swallow the substance of the innocent. Hence the Lord says (Luke 16): "But the rich man died and was buried in hell"; and in Job 21 it is written: "Why then do the wicked live, are raised up and strengthened in riches?" And below: "They spend their days in good things, and in a moment they go down to hell."

Second, he is figured by death, in that death spares no one but slays and cuts down all alike (2 Kings [2 Samuel] 14): "We all die, and like waters

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we slide down upon the earth" (elsewhere "into the earth"). Hence the verse: "To die is common; death spares no honour; weak and strong come to the threshold of death." So, then, does the greedy usurer, who spares no one — not father nor mother nor brothers nor other relatives, friends or enemies. For he harms his near kin or friends in that they share in his usurious and ill-gotten gains, according to Hosea 9: "Ephraim shall lead out his sons to the slayers." Ephraim is interpreted "increasing"; and greedy usurers seek to increase and multiply riches, in which sons and other relatives succeed. But what follows for the most part is what is commonly attested, namely: "Of ill-gotten goods the third heir will not rejoice." Indeed, for the most part, neither the first, according to the Psalmist: "Let his sons be carried about vagabonds and beg, and let them be cast out of their dwellings. Let the usurer search all his substance, and let strangers plunder his labours. Let there be no one to help him, nor anyone to pity his orphans. Let his children be for destruction; in one generation let his name be blotted out." For so it commonly is, that riches gathered by usurious voracity quickly perish and slip away, according to Ecclesiastes 5: "There is also another most grievous sickness which I saw under the sun: riches kept to the hurt of their owner. For they perish in most grievous affliction; he has begotten a son who will be in utmost need. As he came forth naked from his mother's womb, so shall he return, and shall take nothing with him

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of his labour." And the Psalm says: "They have slept their sleep, and all the men of riches have found nothing in their hands." Of such a figure it is written in Habakkuk 2: "He has enlarged his soul like hell, and he

himself is like death and is not filled"; and below: "Woe to him who multiplies what is not his"; and below: "Woe to him who gathers an evil avarice for his house, that his nest may be on high, and thinks to be delivered from the hand of evil. You have devised confusion for your house."

Third, he is figured by the sea, in that just as all waters run to the sea and the sea does not overflow (Ecclesiastes 1): "All rivers enter the sea, and the sea does not overflow; to the place from which the rivers come forth they return, to flow again" — as if to say, as they come out of the sea, so they return to the sea. So, then, it is with riches, which are received on earth and are also left on earth. Hence the Apostle says (1 Timothy, last chapter): "For we brought nothing into this world, and doubtless we can carry nothing out." Hence also Job 1 said: "Naked I came forth from my mother's womb" — naked, namely, from the womb of the earth — "and naked shall I return there." From this, that great and most excellent count Saladin, coming to death, ordered a torn shroud [*farcetum*; uncertain] to be taken from the stable of his horses and carried on a long spear through the city, with trumpeters going before with heralds, saying: "The great count Saladin, of all his glory, riches and triumph, carries only this with him from this

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world." "For what does it profit a man," says the Lord, "if he gain the whole world and suffer the loss of his own soul? Or what exchange shall a man give for his soul?" (Matthew 16). So also we can say: What does it profit the sea if it continually takes in waters and nonetheless continually sends them back from itself? And so it does not profit the avaricious usurer to catch usurious gains and yet in the end to leave everything and hand over his soul to be devoured by fires. For it is a kind of laughing-stock and mockery of demons in the course of the present life, likened to the sea, in which fishes, dragons, serpents and various kinds of beasts devour and mock one another. Hence the Psalmist says: "This great and wide sea; there are creeping things without number" — under the type of the sea understanding the whole world. He adds: "Small animals with great; there the ships shall pass. This dragon" — namely Lucifer — "which you formed to mock it" — namely this world and worldly persons living sensually and carnally, of whom, unless they truly repent, Lucifer will make a laughing-stock and triumph, according to Habakkuk 1: "And he shall gather" — namely Lucifer, by divine disposition — "captivity as the sand" — namely into the infernal prison. It follows: "And he shall triumph over kings" — namely over any wicked men ruling themselves and others badly and unjustly. It follows: "And tyrants shall be his laughing-stock, and he shall laugh at every stronghold and shall heap up a mound and take it" — as if he said: the strongholds of the wicked, frauds and deceits,

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their sophistries, prowess and vigour, or tournaments, or false riches will profit nothing on the day of judgement, according to what the Psalm says: "The king is not saved by much strength" — namely bodily — "and the giant shall not be saved by the abundance of his strength", taking strength namely for vigour or for bodily prowess. From which he goes on to a comparison of the strength of man and of brutes, saying: "The horse is a deceitful thing for safety, and in the abundance of its strength it shall not be saved." And of riches Solomon says (Proverbs 10): "Treasures of wickedness shall profit nothing, but justice shall deliver from death." Of the deceitful and fraudulent Solomon also says (Proverbs 12): "The fraudulent shall not find gain"; and Proverbs 26: "As he is guilty who sends arrows and lances to death, so is the man who fraudulently harms his friend, and when he is caught says, I did it in jest." And below: "He who covers hatred fraudulently, his malice shall be revealed in the assembly. He who digs a pit shall fall into it, and he who rolls a stone, it shall return upon him. A lying tongue does not love truth, and a slippery mouth works ruin." As many frauds and deceits, then, as usurers use to seek out usuries from innocent paupers, so many they use for their own damnation; of whom it is written in Proverbs 1: "They also lie in wait against their own blood," etc.

Fourth, he is figured by a river, in that just as a river always flows and runs on until it reaches the sea, so also the life of the wretched usurer always flows and runs on until it reaches the bitterness of death and of eternal

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damnation, so as to be tormented perpetually in a fiery river, as is written in Daniel 7: "I beheld until thrones were set, and the Ancient of days sat" — namely Jesus Christ, prepared for judgement — of whom it is written: "His garment was white as snow, and the hair of his head like clean wool; his throne flames of fire, his wheels a burning fire; a swift fiery river issued forth from before him" — namely to roll sinners into the furnace of hell, just as they flowed toward the blood of the innocent. According to which it is written in Wisdom 11: "For by the things by which their enemies suffered punishment, through the failing of their drink, while the children of Israel rejoiced in them when they abounded, by these, when they were lacking, it went well with them. For instead of the fountain of an ever-flowing river you gave human blood to the unjust" — as if to say: as he thirsted for blood in opposition to innocent paupers, so he assigned him blood to drink in place of waters, namely when he turned the rivers of the waters of Egypt into blood to scourge Egypt for the hardness of Pharaoh (Exodus 7). The Lord also says to Moses: "Say to Aaron: Take the rod and stretch out your hand over the waters of Egypt, and over their rivers and streams and marshes and all the pools of waters, that they may be turned into blood; and let there be blood in all the land of Egypt, both in vessels of wood and of stone." And below: "And there was blood in all the land of Egypt," etc.

Fifth, the avaricious man is figured by a dog, in that just as a dog, receiving bits of bread or bones of meat thrown by its master, with open mouth quickly

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devours whatever it receives, and always opens its mouth gaping in hope of a future bit, so it happens to the wretched greedy and avaricious and the insatiable usurers: as they wait, whatever fortune throws they snatch without any delay, and, aspiring to the plunder of others, they submit themselves to insatiable desire. And if they spend anything for their necessities or conveniences, they hope it will return again to their hands, always heaping up sins and repeating graver crimes. According to which Solomon says (Proverbs 26): "As a dog that returns to its vomit, so is the fool who repeats his folly." And Peter says (2 Peter 2): "The dog has returned to its vomit, and the sow that was washed to her wallowing in the mire." Which words, though they can be understood of any sins, apply no less to the sins of avarice. There will also happen in such men what is written in Job 20: "His bread in his belly shall be turned into the gall of asps within. The riches which he swallowed he shall vomit up, and God shall draw them out of his belly. He shall suck the head of asps, and the viper's tongue shall kill him." And below: "Because he broke and stripped the poor, he seized a house and did not build it; nor was his belly filled; and when he has what he coveted, he shall not be able to possess it. Nothing was left of his food, and therefore nothing shall remain of his goods. When he has been filled, he shall be in straits, and every sorrow shall rush upon him"; and below: "fire shall devour him." See, then, what fruit the wicked shall have from riches ill received or unlawfully acquired, to whom shall happen

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Aesop's fable of the dog which had snatched meat at the butcher's and, as it fled and was crossing a bridge, seeing the shadow of the meat — because it saw a bigger piece of meat appear in the shadow — gaping for more, with open mouth let go the certain for the uncertain; and when the meat fell into the water, the foolish dog lacked both, quite deservedly. So, then, it happens to wretched, avaricious and greedy usurers, who for the false, shadowy, vain and uncertain transitory riches of this wicked world abandon certain goods, the eternal joys of the blessed prepared for all the faithful. For usurers say that they do charity [*caritatem*] to the poor to whom they lend at usury; but they would more fittingly say "dogginess" [*canitatem*], since they seek to drink the blood of innocent paupers and, like dogs, to devour their flesh more greedily, according to what the Psalm says: "Shall not all those know who work iniquity, who devour my people as they eat bread?" Of

such men also can be understood what the Apostle writes (Philippians 2) of false apostles, as of false Christians, saying: "For all seek the things that are their own, not the things of Jesus Christ." And below (Philippians 3) he says: "Beware of dogs, beware of evil workers." And in the last chapter of the Apocalypse John writes: "Outside are dogs, sorcerers, the unchaste, murderers, idolaters, and everyone who loves and makes a lie" — as usurers commonly, like idolaters, feed themselves on lies and assail one another with deceits and frauds; therefore,

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like unclean dogs, sorcerers and murderers, they shall be cast out from the fellowship of those to be saved. For, as Solomon says (Proverbs 17 [?]): "He who takes something away from a pauper is a sharer in murder." And Ambrose in the book *De officiis* says: "Feed one dying of hunger; for as many men as you could save by feeding, if you have not fed them, you have killed"; and it is had in the Decretum, Dist. 86 *Pasce*. Therefore wretched usurers incur the penalty of murder before God as often as they oppress paupers with their usuries and paupers perish of hunger by occasion of usurers.

Sixth, the avaricious man is figured by a mole, in that just as the mole is black by nature, so the soul of the usurer is black by wickedness (Lamentations 4): "Their face is made blacker than coals." And just as the mole labours under perpetual blindness and is darkened by shadows while it lives — but, as Aristotle says in *On the Nature of Animals*, it has eyes hidden under its skin, which skin, when it begins to die, breaks from anguish, and then it begins to see when it dies — so wretched usurers are blind while they live in the cupidity of mammon. Zephaniah 1: "They walk like the blind, because they have sinned against the Lord." And of the avaricious scribes and Pharisees the Lord said (Matthew 15): "Let them alone; they are blind, and leaders of the blind." Yet coming to the end of death, they open their eyes to see and endure the eternal punishments prepared for them. Likewise, just as the mole makes heaps, often digging in the earth, so also the greedy usurer

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hastens to gather heaps of money and possessions and temporal goods. Against whom it is written in Isaiah 5: "Woe to you who join house to house and lay field to field, even to the end of the place. Shall you alone dwell in the midst of the earth? These things are in my ears, says the Lord of hosts," etc. And in the Old Testament the mole is designated among the unclean animals (Leviticus 11). And in Isaiah 2 the avaricious are rebuked under the name of the worshipped moles and bats, when it is written there: "In that day a man shall cast away the idols of his silver and the images of his gold, which he had made for himself to worship, moles and bats." For the mole and the bat agree somewhat in that, fleeing and hating light, they love and follow darkness. Hence the gloss on Isaiah 2 in the place above says that bats are blind like moles. So also greedy usurers. Yet in the end, the eyes which fault had closed, punishment opens.

Seventh, he is figured by a spider, in that the spider makes its web from its own entrails to catch a fly; so also the usurer, from the inmost recesses of his soul, weaves a net to catch the flies of money, which, as it were unjustly, fly and are scattered from hand to hand, from purse to purse. According to which likeness it is written in Isaiah 59: "They trust in nothing and speak vanities; they have conceived labour and brought forth iniquity. They have broken the eggs of asps and woven the webs of the spider." And below: "Their webs shall not be for clothing, nor shall they be covered

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with their works. Their works are useless works, and the work of iniquity is in their hands. Their feet run to evil and hasten to shed innocent blood." Of the spider Aristotle says in *On the Nature of Animals* that there is a certain species of spiders which hunts a small lizard, for it begins to weave over it until it binds its mouth with a strong binding, and then it leaps upon it and stings it until it dies. So, then, the devil does with the

usurer: for when he has induced usurers to lend at usury and exact usuries, he binds and closes his mouth strongly, so that he may never confess, and at the point of death leaps upon him and stings and kills him and carries him off to the torments of Tartarus; nor do the spider's webs profit him which he had woven from his own entrails to catch the flies of money, as above. Of whom can be understood that of Job 8: "His folly shall not please him, and his trust shall be like the spider's web." Aristotle and Pliny also say that the spider's web, produced from their entrails, is woven as if by art with a most subtle composition, and this lest it be seen by the flies and other little creatures for which it is spread on account of its thickness; it is put together with a certain labour, but in a wonderful way it is easily destroyed: it does not bear fire, it fears wind, by whose force it is broken and suddenly laid bare. So also the wretched usurer, as it were from the

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entrails of his soul, while he empties it of the grace of God and heavenly gifts, arranges frauds by subtle contrivance, so that his iniquity may not be recognized by the needy. But although he is enriched with difficulty, yet his wealth is easily destroyed, when at the hour of death he must leave everything, which ought to be restored to those who paid him usuries, and his wretched soul, tormented by fire and whirlwind, will be tortured for ever. Hence the Psalmist says (Psalm 38): "He heaps up treasure and knows not for whom he shall gather it." And below: "And you have made his soul waste away like a spider." For to waste away is the same as to languish, because the wretched usurer will always languish in soul and will be tormented in body irremediably, passing from this life without fruit. So the spider, with the industry of its web, often suffers loss of its work, because at a little breath of wind or a drop of rain its web is broken, and by various other obstacles its labour is rendered fruitless. Like it is the life of the usurer; from which also, in the person of such a one and of any sinner, the Psalm says: "You have set our iniquities in your sight"; and below: "Our years shall be considered as a spider" (Psalm 89). Wherefore what is written in Hosea 8: "Their silver and their gold they have made into idols for themselves, that they might perish." And below: "For the calf of Samaria shall be [as] spiders' webs, because they shall sow wind and reap the whirlwind" — as if to say: those who end life without the fruit of good works, sowing vanity, shall reap — that is, shall suffer — the penalty of whirlwinds. And so will be the end

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of this third part of the second principal part. Blessed be God for ever and ever. Amen.

Here ends the third part of the second part, On Cupidity, according to Brother John of Capistrano.

[The editor's note records a scribal colophon in one manuscript naming Georg Lange under Abbot Simon, and in another the closing line "Explicit etc." Details uncertain.]