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Commentary  
on the Resolution  
of Money

*Martín de Azpilcueta*  
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## Introduction

### **Martín de Azpilcueta: Biographical and Scientific Profile**

Martín de Azpilcueta y Jaureguizar (1492–1586),<sup>1</sup> known as Doctor Navarrus, earned a bachelor in theology degree at Alcalá University. Later, he completed his training in Toulouse, the most renowned center for juridical studies in France, where he received the degree of doctor in canon law (1518) and gained his first teaching experiences.

As of 1524, he had served in several Canon law chairs at the University of Salamanca, and, together with Francisco de Vitoria, he renovated the juridical

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<sup>1</sup> The classical biographers are M. Arigita y Lasa, *El Doctor Navarrus Don Martín de Azpilcueta y sus obras: Estudio histórico-crítico* (Pamplona: J. Ezquerro, 1895); H. De Olóriz, *Nueva biografía del Doctor Navarrus D. Martín de Azpilcueta y enumeración de sus obras* (Pamplona: N. Aramburu, 1916). E. Tejero gathers information of biographical writings on Azpilcueta: “Los escritos sobre el Doctor Navarrus,” in *Estudios sobre el Doctor Navarrus: En el IV centenario de la muerte de Martín de Azpilcueta*, ed. Gobierno de Navarra (Pamplona: Universidad de Navarra, 1988), 22–34.

and theological thought of the day.<sup>2</sup> Some years later, in 1538, he was invited by the kings of Portugal and Spain to transfer to Coimbra University for a brief period, which extended until 1556 when he returned to Spain to devote himself entirely to his writings.

In June 1561, Martín was appointed defense counsel in the criminal proceedings brought against the Toledo archbishop Bartolomé de Carranza, a case that took him to Rome in August 1567, where, together with his work as defense counsel, he was appointed advisor in the Supreme Penitentiary Tribunal then Major Penitentiary, on the initiative of Pius V and Carlos Borromeo. He died there at the age of ninety-three.

Although he worked in numerous disciplines, his most important doctrinal contribution was in the field of canon law and morality. Among his numerous written works the most important is the *Manual de confesores y penitentes*<sup>3</sup> because of its significance and influence with a complex writing process that originated in a chance happening (1549) and developed in consecutive stages until it achieved its final form (Salamanca, 1556). It was an immense publishing success: In the second half of the sixteenth century and first quarter of the seventeenth, it ran to eighty-one editions, with ninety-two more in revisions, versions, and abridgments. First written in Portuguese, then in Spanish, and finally in Latin, it was translated several times into Italian and French.<sup>4</sup>

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<sup>2</sup> In a work that contains many autobiographical notes, Azpilcueta himself says: “Nobody denies that I brought from Tolosa, in France, to the University of Salamanca ... the solid and useful science of Canon Law. The same as, a year later, Francisco de Vitoria, as wise as he is pious, introduced an elaborate theology, studied at the University of Paris.” “Apologetic Letter from Martín de Azpilcueta to don Gabriel de la Cueva, Duque de Albuquerque,” in *Comentario Resolutorio de Cambios*, introduction and critical text by A. Ullastres, L. Pereña, and J. Pérez Prendes, “Corpus Hispanorum de Pace,” 4 (Madrid: Consejo Superior de Investigaciones Científicas, 1965), 43–44.

<sup>3</sup> Tr. note: *Handbook for Confessors and Penitents*.

<sup>4</sup> An almost exhaustive catalogue of the editions appears in E. Dunoyer, *L'Enchiridion confessoriorum del Navarrus: Dissertatio ad lauream in facultate S. Theologiae apud Pontificium Institutum “Angelicum” de Urbe* (Pamplona: Gurrea, 1957).

As its title suggests, the *Manual* is a work directed to the pastoral aspect of penance. It deals with issues considered necessary for the administration of the sacrament. However, the most important work by Doctor Navarrus extends beyond the genre of the *Sumas de penitencia*, which originated at the end of the thirteenth century and was based on the precedent of the *libri poenitentiales* of the Late Middle Ages with few doctrinal developments and was organized alphabetically according to terms, much like a dictionary. Because of its systematic structure and doctrinal vigor, Azpilcueta's *Manual de confesores* is considered a milestone in the emergence of moral theology as an autonomous discipline<sup>5</sup> at the beginning of the seventeenth century.

The *Commentary on the Resolution of Money* (CRM) is one of four appendices to this *Manual* and as such belongs to Navarrus's group of moral writings. In them, the author recommends guiding criteria for pastors and penitents and indirectly offers acute observations and an analysis of the economic reality of his time, which has recently attracted the attention of economic historians.

## The Scholastics and the Historiography of Economic Thought

The historiography of economic thought has become increasingly interested in the moral literature of the second Scholastic period, which looks into the economic practices of sixteenth-century commercial capitalism. Although such interest regards the whole of scholasticism, it especially considers the authors

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<sup>5</sup> Cf. R. Muñoz, *Moral y economía en la obra de Martín de Azpilcueta* (Pamplona: Ediciones Universidad de Navarra, 1998), 111–22; J. Theiner, *Die Entwicklung der Moralthologie zur eigenständigen Disziplin* (Regensburg: F. Pustet, 1970).

of the late Scholastic or second Scholastic period, which peaked during the Spanish *Siglo de Oro*<sup>6</sup> with the so-called School of Salamanca.<sup>7</sup>

During the sixteenth century, there was a theological renaissance driven by the changes that gave way to a new social and cultural life that put an end to the medieval model. Together with specifically theological matters—the need for renovation and the later Protestant reforms that were the immediate antecedents to the Council of Trent—other factors were the new idea of man and society; the demographic expansion in Europe; the surge of modern national states; and the discovery of the New World, with a massive affluence of precious metals and new markets in the Indies. Both circumstances soon had an effect on Spanish prices.

These phenomena, together with the development of banking activities and new forms of payment, gave way to an increasing capital flow and to the growth of credit and speculative activity, all of which became a formidable challenge for moral theology.

The new theological genres included the works of the penitential pastoral and *de iustitia et iure* treatises, along with more specific ones such as Azpilcueta's CRM. In them, we find observations on monopolies, just pricing, taxes, banking or credit practices, currency markets, and so forth. The publishing of new essays and J. Schumpeter's *History of Economic Analysis* (1954), devoted largely to the Scholastic doctors, have made some historiographers defend the Scholastic literature as an important precedent for the

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<sup>6</sup> Tr. note: *Siglo de Oro*: A period of great prosperity, happiness, and achievement in Spain (1555).

<sup>7</sup> Among the recent bibliography, O. Langholm may be consulted, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money, and Usury According to the Paris Theological Tradition 1200–1350* (Leiden: E. J. Brill, 1992); M. N. Rothbard, *Economic Thought before Adam Smith: An Austrian Perspective in the History of Economic Thought*, vol. 1 (Hants, U.K.: Edward Elgar Publishing, 1995); A. del Vigo Gutiérrez, *Cambistas mercaderes y banqueros en el Siglo de Oro español* (Madrid: BAC, 1997); F. Gomez Camacho, *Economía y filosofía moral: la formación del pensamiento económico europeo en la Escolástica Española* (Madrid: Síntesis, 1998).

specifically scientific analysis of the economy and have even led them to think of its authors as founders of modern economics.<sup>8</sup>

In this context, Azpilcueta's work plays a singular role. Perhaps the greatest originality of Doctor Navarrus and the issue that has most attracted economists is precisely the quality of his analysis regarding the value of money, as is reflected in the CRM.

The development of monetary doctrines had been driven by the expansion of commerce in the last centuries of the Middle Ages, the evolution of currency and alternative means of payment, the commercial fairs of Castile, and the consecutive consolidation and improvement of banking and financial activities.<sup>9</sup> In Navarrus's case in particular, the price revolution in Castile precipitated his writing.

In fact, one of the first consequences for the Castilian economy of the sixteenth century caused by the supply of precious metals from America was steady price increases. E. J. Hamilton tried to quantify this flux and to examine its effects on prices, salaries, and economic welfare.<sup>10</sup> He concluded that the importation of metal was the cause for prices to triple between 1501 and 1600. Other authors have toned down Hamilton's statements (correcting calculations and adding other factors with inflationary effects and complementary

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<sup>8</sup> A study of the main views in the debate may be seen in R. Muñoz, *Moral y Economía en la obra de Martín de Azpilcueta*, 22–69. For an English summary, see R. Muñoz, "Scholastic Morality and the Birth of Economics: The Thought of Martín de Azpilcueta," *Journal of Markets & Morality* 4, no. 1 (2001): 14–42.

<sup>9</sup> For monetary aspects, banking activity, and commercial fairs, see H. Lapeyre, *Une famille de marchands: les Ruiz* (Paris: Colin, 1955), 241–71 and 475–501; R. Carande, *Carlos V y sus banqueros: La vida económica en Castilla (1516–1556)* (Madrid: Sociedad de Estudios y Publicaciones, 1965), 223–53 and 295–349; F. Ruiz Martín, "La banca en España hasta 1782," in *El Banco de España: Una historia económica*, ed. A. Moreno Redondo (Madrid: Banco de España, 1970), 1–196; and P. Spufford, *Money and Its Use in Medieval Europe* (Cambridge: Cambridge University Press, 1989).

<sup>10</sup> Cf. E. J. Hamilton, "Spanish Mercantilism before 1700," in *Facts and Factors in Economic History: Articles by Former Students*, ed. E. F. Gay (Cambridge: Harvard University Press, 1932), 214–39; Idem, *American Treasure and the Price Revolution in Spain, 1501–1650* (Cambridge: Harvard University Press, 1934).

information), but the critics have not offered other alternatives to the quantitative theory he espoused. Although there is not a univocal correspondence between the arrival of massive amounts of precious metals and the price increases, it is impossible to deny a causal relationship between these two elements.<sup>11</sup> In attempting to devise contemporary explanations for this phenomenon, Hamilton underestimated Scholastic reflection:

Few Spaniards had sufficient education to compose a mercantilist tract and the clergy had little inclination for economic speculation. The vast majority of outstanding Spanish mercantilists before 1700 were ecclesiastics, little acquainted with either the economic literature or life of financially advanced nations. Their profession afforded them scant opportunity to acquire the intricate economic knowledge requisite to fathom foreign exchange.<sup>12</sup>

However, other studies following Hamilton's showed the merits of the School of Salamanca's analysis (Azpilcueta among them) on the phenomenon of Castilian inflation. First, Dempsey, Ullastres, and Larraz, and some years later M. Grice-Hutchinson, defended Navarrus's role as precursor and encouraged a closer examination of his formulation of the quantitative theory of money.<sup>13</sup>

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<sup>11</sup> Cf. J. Nadal Oller, "La revolución de los precios españoles en el XVI: Estado actual de la cuestión," *Hispania* 19 (1959): 503–29.

<sup>12</sup> E. J. Hamilton, "Spanish Mercantilism Before 1700," in *Facts and Factors in Economic History*, 230.

<sup>13</sup> B. W. Dempsey, "The Historical Emergence of Quantity Theory," *Quarterly Journal of Economics* 50 (November 1935): 174–84; A. Ullastres, "Martín de Azpilcueta y su comentario resolutorio de cambios: Las ideas económicas de un moralista español del siglo XVI," *Anales de Economía* 3–4 (1941): 375–409; and 5 (1942): 51–95; J. Larraz López, *La época del mercantilismo en Castilla, 1500–1700* (Madrid: Atlas, 1943); Marjorie Grice-Hutchinson, *The School of Salamanca: Readings in Spanish Monetary Theory 1544–1605* (Oxford: Clarendon Press, 1952). This work by Ullastres, which was published in two parts in *Anales de Economía*, is reproduced as an introduction to the critical edition of the CRM, already cited (Madrid: Consejo Superior de Investigaciones Científicas, 1965), 42–117.

With some precedents in Aristotle and the medieval tradition, Jean Bodin (1568) was considered the first to demonstrate the principal cause of inflation. Larraz, however, pointed out how little space Bodin assigned to this issue and defended Salamanca's primacy, proving two things: first, that Bodin was preceded by the Spanish natural lawyers and moralists; and, second, that the Spanish school was broader than the French because the latter only linked monetary mass to price level, while the Spanish considered, too, a third interdependent factor, namely, foreign exchange.<sup>14</sup>

The issue here is not merely concerned with establishing precedence in the formulation of the quantitative theory of money. Grice-Hutchinson has said from a more general perspective that it was J. Schumpeter who realized that the origins of economic analysis lay in moral philosophy more than in mercantilism, as the majority of economic historians before had thought. Regarding the School of Salamanca, Grice-Hutchinson notes its consistent originality in a triple contribution to monetary theory: its formulation, in the first place, of a psychological theory of value that may be applied both to goods as well as to money; in the second place, of a quantitative theory; and, finally, its formulation of a theory of foreign exchanges similar to the modern theory of the parity of buying power that we do not usually associate with the sixteenth century.<sup>15</sup>

## ***The Commentary on the Resolution of Money***

We have already alluded to the historical context of the CRM by referencing the economic evolution of the sixteenth century. From an intellectual point of view, therefore, it is important to refer now to the problem of usury.

### **Doctrinal Context**

The theory of usury is in many respects autonomous and of great significance for the Scholastics' commercial ethics. The reason is that doctrinal developments—perhaps here more than in any other aspect of economic ethics—have a multiseular tradition: The biblical writings and Roman law

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<sup>14</sup> J. Larraz, *La época del mercantilismo en Castilla* (Madrid: Aguilar, 1963), 86.

<sup>15</sup> Marjore Grice-Hutchinson, *The School of Salamanca*, 47ff.

texts were developed for the first time in the writings of the church fathers and shaped into the canonical legislation on usury, which extends for more than a thousand years. Often they are judged too hastily, and the medieval approach to the problem of usury is ruled out without paying too much attention to the economic reality of each period and to the arguments for why usury practices were considered unjust. As it is not possible to go into them in detail here, only a summary of their conceptual framework will be provided.<sup>16</sup>

Usury is applied to the loan of things whose use is their consumption (*mutuum*), such as wheat, wine, money, and so forth. Usurious was any retribution that was demanded for the use of a consumable good. The reason was that in such cases, because the use of the thing was inseparable to its consumption, the contract transferred the property, and the one who received it agreed on not giving back the same thing—which was impossible—but an equivalent quantity and genre of what had been received. For this reason, demanding anything more than the loaned capital (*ultra sortem*) was considered usury. Some of the arguments used were that it was illicit to sell time; that money, unlike other things, did not deteriorate with use; and that there was an absence of risk for the lender, who turned the interest into a profit that did not compensate for the work or risk and was therefore unjustified. Renting a house or a field was different because they were not consumed by use and had to be restituted themselves together with their fruits, that is, they allowed for the payment of a rent. The profit gained from the use of consumable goods

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<sup>16</sup> I have written on the evolution of usury in the Scholastics with some degree of thoroughness, focusing especially on Azpilcueta, in *Moral y economia en la obra de Martín de Azpilcueta*, 203–337. For a synthesis of the biblical perspectives, see A. Bernard, “Usure. I. La formation de la doctrine ecclésiastique sur l’usure,” *Dictionnaire de Théologie Catholique* 15, no. 2 (1950), 2317; H. Lesetre, “Pret,” *Dictionnaire de la Bible* 5 (1912): 617; Idem, “Usure,” *ibid.*, 2365–367. For a general perspective, G. Le Bras, “Usure. II. La doctrine ecclésiastique de l’usure a l’époque classique (XII–XV siècle),” *Dictionnaire de Théologie Catholique* 15, no. 2 (1950): 2336–372; the study by T. P. McLaughlin is magnificent, “The Teaching of the Canonist on Usury (XII, XIII, and XIV Centuries),” *Mediaeval Studies* 1 (1939): 81–147; and 2 (1940): 1–22. Even if guided by a debatable pre-supposition, J. T. Noonan’s work is a classic, *The Scholastic Analysis of Usury* (Cambridge: Harvard University Press, 1957).

was a fruit not of the goods but of the work applied to them; a retribution for what was deemed “mere lapse of time” (*inter esse*) was not allowed. Saint Thomas Aquinas’s example is instructive: He opposed giving money as a loan to giving money to a merchant or artisan in order to constitute a society. In the first case, there is a transference of ownership and risk for the loss of the thing, and, because of this, the lender should not ask for more. But the one who gives money to a merchant retains the property and risk, and may thus ask, as a fruit of the thing that belongs to him, a part of the profit gained.<sup>17</sup>

In addition to this consideration, which was the essence of the Scholastic doctrine on usury, there was a doctrine on *external titles*, that is, cases where payment was justified for extrinsic reasons to the *mutuum* contract. It was generally licit to pay a sum not as interest but for damage or loss to the lender (*damnum emergens*), as for example, a delay in fulfilling the contract. *Lucrum cessans* posed a more complex problem, and there were different opinions. In some authors, it is difficult to establish a clear distinction between the limits of a damage and the end of a profit or benefice. The development of this argument in the sixteenth century is interesting, finally justifying the payment of an interest only when the money is lent by a merchant, that is, by the one who gives money a productive use and undergoes an economic loss when lending. This is, for example, Azpilcueta’s case: “More is owed to the merchant for the money he deals with than to another who does not deal with anything. The consequence of which is that money pays better in the hands of merchants and money chargers who invest it ‘actively’ than in other hands in which it may end up being hoarded.”<sup>18</sup>

Finally, among the extrinsic titles is risk (*periculum sortis*), considered not as the possibility of the borrower’s insolvency so much as the risk of the possessions’ loss. In many cases, the risk was related to the danger of a long voyage: pirates, theft, shipwreck, and so forth. In any case, *periculum sortis* was unanimously rejected as a title to compensation.

Following Aristotle, the early Scholastics had already reflected on money, but the morality of exchange operations became important with Saint Antonino

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<sup>17</sup> Cf. *Summa Theologiae*, II-II, q. 78, a.2 ad 5.

<sup>18</sup> M. de Azpilcueta, *Comentario resolutorio de usuras* (Salamanca: Andrea de Portonariis, 1556), 25, n. 52.

de Florencia's work and was officially approved in the sixteenth century with the publishing of Cajetan's (1498) *De cambiis* ("On Money"). Later, the subject matter of *de cambiis* became independent from the study of usury. Azpilcueta himself wrote a treatise about each one of those issues, and published them as appendices to the *Manual: The Comentario resolutorio de usuras* and the *Comentario resolutorio de cambios* (Salamanca, 1556). Such differences have more to do with juridical criteria than with doctrinal criteria, as money exchange operations were considered as long as they had a financing element and, thus by extension, were given the same moral treatment as usury.

As strange as the handling of this issue seems today, this is the formal structure behind the Scholastic reflection when considering compensation for credit and other types of monetary exchange that are similar to it. We should remember the distance between the economic reality of those days—deficiencies in the monetary system, the lack of a productive destiny for capital, credit, and so forth—and today's economic realities.

## The Economic Ideas of the CRM<sup>19</sup>

### *The Concept of Exchange*

The word *exchange* had two meanings for Navarrus. A general one, which the Romans called *permuta*, referred to the exchange of one thing for another or of money for money. In a restricted sense, it applied to the exchange of money for money or to other contracts that did not fit into the Roman law classification: some types of acquisition, rentals, and so forth. Thus, *exchange* meant "any contract of money for money that was not gratuitous," be it acquisition, deposit, or any other (CRM, par. 10).

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<sup>19</sup> A thorough analysis of the CRM may be found in Ullastres (cf. note 13) and in R. Muñoz, *Moral y economía en la obra de Martín de Azpilcueta*, 281–337. See also Bernard and Michele Gazier, *Or et monnaie chez Martin de Azpilcueta* (Paris: Economica, 1978).

### *The Different Uses of Money*

Azpilcueta had no doubt about the need for money, which was based on eight uses (cf. CRM, pars. 11–12):

1. as a means of payment,
2. as a measure of the value of things,
3. as an employment in exchanges between coins of different metal, different value, or different places,
4. to display one's riches to others,
5. as an ornamental element in dress,
6. "to enliven with its presence,"
7. "to cure with its broth some illnesses" (the broth of gold was thought to have therapeutic properties), and
8. as pawn for a debt.

Obviously, some of these uses did not have an economic content. Regarding its use in exchanges (cf. par. 3), the author confronted Aristotle's negative opinion on the *crematistic* (the lucrative commerce with no limits, different from the exchanges made to satisfy domestic needs), which was, according to the philosopher, unnatural. The profit-based economy was for Aristotle a consequence of the invention of money. He illustrated it with an example: It was possible to give a double use to shoes: a natural one, as footwear, and an improper one as an object of exchange. Navarrus softened Aristotle's harsh opinion: As well as using shoes to trade with, using money in exchanges is not unnatural, even if it is a secondary use compared to the principal one. With this observation, the author put money on the same level as any other merchandise, and, consequently, established that the morality of exchanges did not depend on money as their object but on an equitable exchange (cf. CRM, par. 13).

### *Types of Exchange*

Taking into account the earlier classifications (Silvestre, Cajetan), Azpilcueta offered seven types of exchange, some of which were in these precedents.

### Exchanging as a Professional

More than a type of exchange, the author analyzed the licitness of the exchanger's occupation and his remuneration. He tended to accept it for the following reasons: (1) There is no usury if the payment rewards the work of the exchanger instead of the loan; (2) such profession is a service to the republic (common good), and the employees may receive a salary; and (3) if the money exchanger carries out a public function, it is just that he receive a retribution for it, and he may also receive payment by practicing the profession in private, although in this case, there is a possibility of fraud.

### Exchanging for Small Coinage

In regard to the exchange of large denomination coins for small denomination ones, or the opposite, the author considered it licit to charge something for the service, even if such activity might be prohibited to private exchangers for reasons of monetary policy.

### Exchanging for Bills of Exchange

The increase of commerce together with the coin scarcity forced the creation of alternative means of payment and the use of paper. The commercial fairs of Castile played an important role in this process.<sup>20</sup> Azpilcueta referred to it as the "virtual transference of money" to another place by means of a bill of exchange. The author thought that this form of exchange could be licitly rewarded, under the condition that the nominal price was equivalent to the sum rendered, as such payment compensated for the service rendered (the physical transportation of the money or the work involved to keep the money in a distant place) and not for the credit, in which case it would be an usurious practice (cf. CRM, par. 23). The exchanges made for reasons of place (*ratione loci*) were admitted unanimously. This was not the case with those made for reasons of time lapse (*ratione temporis*) because they were considered usurious.

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<sup>20</sup> Cf. R. Carande, *Carlos V y sus banqueros*, 338; B. Aguilera Barchet, *Historia de la letra de cambio en España, seis siglos de práctica trayecticia* (Madrid: Tecnos, 1988).

### Exchanging by True Transference

This expression referred to the physical transference of money, as opposed to its *virtual transfer*. The author referred to the acquisition of money in a certain place where it could be devalued for a certain reason, to take it where it would be exchanged for a higher price in order to obtain a profit in the two successive exchanges. This may be a primary form of what we know today as currency swapping. He believed that this type of exchange was licit, as long as it was carried out for a just price and more or less money was not given for advancing or postponing the payment.

### Exchanging for Interest

The previously mentioned doctrine about extrinsic titles may apply here. The exchanger who by lending was harmed because of profit, loss, or damage could ask for compensation for the benefits that he renounced or for the damages suffered. The author adds: Merchants may charge more if the debt is due to the second fairs than if it is due to the first ones because the *lucrum cessans* is greater: “The exchanger who is prevented from exchanging for two fairs with his money, more is prevented from earning than if he is prevented from exchanging for one” (CRM, par. 34). However, he goes on to condemn the person who removed his money from the deal and transferred it from fair to fair for an interest that was equivalent to the amount he was used to gaining through commerce (CRM, par. 35). The reason for condemning it was the previous abandonment of commerce, which eliminated the possibility of *lucrum cessans*.

Azpilcueta considered time lapse relevant as long as it affected the amount of the damage or profit-loss and, with it, the compensation owed to the lender. However, setting aside the issues pertaining to interest, the term for the credit could not be taken into consideration to establish a retribution for the capital, as this was a reprehensible moral activity.

### Exchanging for Safekeeping

This form of exchange consisted of the actual visible bank deposit, whereby the bank committed to making payments on behalf of the depositor. He believed it was a useful enterprise for the republic by which the exchanger could licitly be paid a salary because he “works in receiving, keeping, and

preparing the money of so many merchants, and in writing, giving, and keeping accounts with everyone” (CRM, par. 36). The author cleverly condemned those who deposited with the exchanger and “do not want to pay anything saying that what they earn with their money ... is enough for a salary ... and if the exchangers ask them for something, they leave them and go deal with others, and so that they are not left, they let them keep the salary owed to them, and take it from someone who does not owe it to them.”

### Exchanging by Buying, Bartering, or Innominate Contract

It is described as if someone gave one hundred in Medina to receive one hundred ten in Flanders or the other way around. Then, with a great deal of realism, he sets himself apart from the juridical-formal structure of contracts, stating that there were actually two things that could make an exchange unjust: “the inequality of what is given and of what is to be taken,” and “taking for oneself more or less for advancing or postponing [the payment], or for giving a longer or shorter deadline for returning the money” (CRM, par. 41). Once rid of the formal juridical requirements (pars. 42–43), he tackled the main issue: “The difficulty is in declaring how a profit may be made justly by commutation of money.”

### *The Value of Money: The Quantitative Element*

Navarrus thought that it was possible to establish the value of money by deciding when and how a currency, which was apparently equal to another, was worth more or less for a certain reason. He described eight factors that affected the value of money. It is worth noting that the author had an unstructured idea of money, tied to the monetary unit, whether in its nominal aspect or in the materiality of the metal, even if he went beyond the rigid notion of giving an immutable value to it. However, when evaluating his position, one should take into account the deficiencies of the monetary system in sixteenth-century Europe.

The eight factors that affected the value of money were

1. the inexistence of coins of the same metal;
2. metals of a different value;
3. the different shape and weight;
4. the diversity of the land in which they circulated;

5. decisions made by the authority relative to the context where the coin circulated or changes in the relationship between the legal value and the intrinsic value;
6. the diversity of time;
7. the lack and need of money; and
8. the presence or absence of different coins.

The first five factors of price variation address money's fluctuation between its purely metallic dimension and the nominal one. As for the time factor, the author admitted that it was a purely accidental consideration, but one that had a relationship with other factors that affected money's value.

The quantitative aspect is more interesting. Azpilcueta noted that money changed its value in relationship with its quantity. If goods got costlier because of the great need for them and their scarcity, that is, because of supply and demand, money was not an exception to this rule. Navarrus's words are sufficiently explicit:

The rest being the same, in the countries where there is a great lack of money, less money is given for marketable goods and even for the hands and work of men than where there is an abundance of it; as we can see from experience in France, where there is less money than in Spain bread, wine, wool, hands, and work cost less; and even in Spain, when there was less money, much less was given for marketable goods, the hands and work of men than later when the discoveries of the Indies covered it in silver and gold. The cause of which is that money is worth more where and when there is lack of it, than where and when there is an abundance, and what some say, that the lack of money reduces the price of everything, is born of the fact that their more than sufficient rise makes everything appear much lower, just as a small man next to a very tall man appears smaller than if he were next to his equal (CRM, par. 51).

Azpilcueta transcended a notion of money based on the nominal and metallic aspects and established its value based on its relationship with goods. In other words, money derived its value from its buying power. Also, given a certain moment in time and without the influence of other factors, there was a proportional quantitative relationship between the total amount of money available and the volume of merchandise—including the “work of men”—that

could be bought with that amount of money. The author's ideas may be summed up in three conclusions.

The first is that the abundance or scarcity of money affected the relationships that diverse sectors of the monetary system had among them, as well as the system itself considered in its totality—that is, the goods that could be acquired with these monetary units or with units of another system.

The second is that the value of money could rise or fall, not only because it was metal but also because it was a price for other things (CRM, par. 57). Money was considered something fixed when taken as a unit for counting, but its value was variable when considering the utility it brought to its possessor (CRM, par. 58).

The third is that Azpilcueta's clarity and his notion of money related to its buying power set him apart from the medieval theory that considered money as an invariable mass. After observing the phenomenon of Castilian inflation, Navarrus could no longer remain in that position. His observations were published twelve years before Jean Bodin's.

### The Critical Text

The CRM's text, whose English version follows, appeared as an appendix to the cited principal edition of the *Manual de confesores* and was dedicated to the prince Don Carlos, son of Felipe II.<sup>21</sup> The treatise—which followed another one on usury—extends from page 48 to page 104. The paragraphs are numbered, and each chapter is preceded by a summary of subjects. The Castilian text presents a difficult orthography, with marginal notes in Latin and abundant abbreviations. The version used by the Spanish editors corresponds to the one existing at the Madrid National Library (R/18063), signed by Miguel de Azpilcueta, which suggests that the exemplar may have belonged to the author.

The maturity of Azpilcueta's ideas should be situated around 1530, when he was professor at Salamanca and engaged in commentary on the *Decreto* and the *Decretales* (on usuries and exchanges). Indeed, the CRM appeared,

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<sup>21</sup> Cf. L. Pereña, "El comentario de cambios," in *Comentario resolutorio de cambios*, introducción y texto crítico de A. Ullastres, L. Pereña, and J. Pérez Prendes (Madrid: Consejo Superior de Investigaciones Científicas, 1965), 15–27.

according to its title and continuing with the genre developed in the field of canon law, as a commentary on the first part of the well-known Decretal *Naviganti*. However, the CRM was actually a genuine treatise on exchanges that widely exceeded its function of gloss on the Decretal. After dealing successfully in its first pages with the problems raised in the Decretal on the contract of maritime insurance, the author offered a detailed analysis of the main points regarding the matter *de cambiis*.

The CRM extended quickly. The last edition in Spanish, the tenth, is the one from Valladolid, 1569. Already there were translations into Portuguese (1560), Italian (1568), Latin by an unknown author (1569), and into French (1601). In the Latin edition of the *Manual de confesores* (Rome, 1573), the author disavowed that particular translation because it contained “many things contrary to my thoughts.” He did not, however, introduce a translation of the CRM into the Latin edition but rather provided a synthesis with some references to the Spanish edition (chap. 17 in the *Manual*), which he authorized as an interpretation of the 1556 original. The Spanish text was not edited again, while the Latin edition was reproduced many times in the editorial centers of Europe. The response of the author to five inquiries on the subject, published in another volume in 1583, are also of value, as they examine the application of these principles to tangible situations.

—Rodrigo Muñoz

## Preface

### **On the Beginning of the Final Chapter of *de usuris***

In order to understand what we intend to say about exchanges in our time, we state the beginning of the last chapter of *de usuris*, whose words are the following:

Gregorius IX, in the final chapter of *de usuris*:

*Naviganti, vel eunti ad nundinas certam mutuans pecuniae  
quantitatem, eo quod suscepit in se periculum, recepturus  
aliquid ultra sortem, usurarius est censendus.*

One lending a certain quantity of money to someone sailing or going to a fair, in order to receive something beyond the capital for this that he takes upon himself the peril, is to be thought a usurer.

# 1 Text Interpretation

## Summary

If the person who takes upon himself the peril lends money to someone about to sail or transfers the money somewhere else is a usurer, and when he is such ... **1, 2**

And what will happen if he lends something that is not money ... **6**

This chapter has two interpretations, and which is the best one ... **1, 2**

The example does not restrict the rule ... **2**

If there is an affirmation about something, no denial is made of similar or contrary issues ... **2**

Gregory IX proves to be methodical, beneficial,<sup>1</sup> and concise<sup>2</sup> ... **2**

He often embarks upon uncertain issues ... **3**

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<sup>1</sup> Tr. note: In the original: “zumoso,” meaning juicy.

<sup>2</sup> Tr. note: In the original: “breviloquio,” meaning concise.

This means it is the truth and should be considered ... **3**

What nautical usury is ... **3**

Nautical usury is prohibited today ... **4**

[Nautical usury is prohibited] in the following way ... **6**

Who is licitly allowed to insure taking what is just for it and who is not ... **5**

The person who lends when he lends and because he lends is in a worse-off condition than the one who does not lend ... **5**

The tutor, guardian, or judge does not buy goods from the vassal, ward, and minor ... **5**

A penitent who confesses to having lent and insured: what he is ordered to do ... **6**

*Pecunia* in Latin, which means all temporal goods ... **6**

What *presumptio iuri*, and *de iure*<sup>3</sup> is, as we see in this chapter ... **6**

Usurer is even the person who lends to the rich with a profit ... **7**

A lender on credit may take something for lending on credit, except in certain circumstances ... **7**

As they are stated here ... **8**

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<sup>3</sup> Tr. note: A legal presumption that does not admit contrary proof.

1. The first thing we say regarding this principle is that it has two interpretations. One belongs to the ancient doctors,<sup>4</sup> according to whom the words *Eo quod periculum in se suscepit: because he took on the danger*, should be joined to the participle *recepturus: hoping to receive*. Thus, the wording should be arranged as follows: *Mutuans certam pecuniae quantitatem naviganti, vel eunti ad mundinas recepturus aliquid ultra sortem, eo quod suscepit in se periculum, usurarius est censendus*. Meaning what Panormitanus's<sup>5</sup> summary says; that is, that the person who receives more than what he lent is a usurer even if he assumes the risk.

The other interpretation belongs to some newer authors, which we, too, followed when we read them at this most distinguished University of Salamanca in the year 1530, according to whom the words: *eo quod periculum in se suscepit: because he took on the danger* should go next to the participle *Mutuans: the person who lends*. The result of which is: *Mutuans certam pecuniae quantitatem, eo quod periculum in se suscepit, naviganti, vel eunti ad mundinas recepturus aliquid ultra sortem, usurarius est censendus*. Meaning that the person who lends money to whomever is about to head to dangerous places, under the condition that he insures it with the lender and gives him something more than the amount lent for the insurance, is a usurer.

Such is the way Joan Maior<sup>6</sup> understands it, saying the gloss here is inaccurate. Such is the way Sylvestro<sup>7</sup> also understands it, saying the Supplement did not analyze this text.

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<sup>4</sup> Glossa Hostiensis, Ioannis Andreae, Panormitani, et communis.

<sup>5</sup> Tr. note: In the original: Panormitanus: Sicilian prelate known as the Panormitanus, born in Catania and died in Palermo (1386–1450). Professor of Canon Law in Siena, Parma, and Bologna. Eminent canonist. He wrote a large number of works, among which are several commentaries on the Decretales and Clementinas.

<sup>6</sup> In 4 [*librum sententiarum*], dist. 15, quaest. 31, sub fine.

<sup>7</sup> Verbo *usura*, 3, quaest. 35.

Such is the way it seems that Caietano,<sup>8</sup> Medina,<sup>9</sup> and Soto<sup>10</sup> understand it.

This way of considering things makes it seem from the ancient doctors' interpretation that whoever insures a piece of merchandise that is to go through dangerous places is a usurer if he takes something for it, a practice that goes against all Christian custom, against a law that allows setting a price on insurance,<sup>11</sup> and against the general opinion.<sup>12</sup>

2. In the second place, we state that even if in the past we held this [second] interpretation because of this argument, now, however, that God allows us to judge the texts more maturely, we think the first interpretation that the gloss received given by everyone to it, is better, according to which the result is somewhat more judicious than that of the others,<sup>13</sup> and is as follows: The person who lends money to take it elsewhere (even if he takes the danger upon himself), should be judged a usurer if he takes for himself more than what he lent.

This is [supposed to be] a general summary, because even if the text only refers to the person who lends to the merchant or to the one who goes to the fairs the summary [refers to] him and to whomever lends to anyone who will take it elsewhere. The text does not refer to the person who lends to the merchant or to the one who goes to the fairs to indicate that this does not occur with other lenders but as a mere example or to say that it occurs with them for

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<sup>8</sup> In *Summa*, verbo *usura exterior*.

<sup>9</sup> In *Codice de Restitutione*, tit. De usura restituenda, in principio [fol. 144] et postea in versic. *Inde*, fol. 145.

<sup>10</sup> Lib. 6, quaest. 7, art. I, *De iustitia et iure* [579–80].

<sup>11</sup> *Lex Periculi pretium*, ff. De náutico foenore [Digesto 22, 2, 5].

<sup>12</sup> Laurentius de Rodulphis, in can. *Consuluit* [Decretales 5, 19, 10] 3 parte, quaest. I, no. 8 et Antoninus, 2 parte, tit. I, cap. 7, s. 21, et Annanias hic [*De usuries Rubrica*: Decretales 5, 19, 19], n. 37.

<sup>13</sup> Panormitamus, Ioannes ab Annania, Petrus Ravena, nam Ioannem Andream ob brevitatem non sumam.

more important reasons.<sup>14</sup> If someone who lends to a person who is to undergo a sea voyage (where there are generally more dangers) is not excused of usury even if he assumes the dangers, there is less excusing the person who assumes the dangers and lends to someone who will undergo fewer perils.

If the lender of the person who goes to the fairs, often a merchant who borrows in order to make a bigger profit when he goes to the fairs by buying merchandise, is not excused, then he is even less excused if he lends to someone who is in more unfortunate circumstances.

Third, this summary and this interpretation confirm the following:

- This is the way it has been interpreted by all those who have explained it here.
- The structured text of this principle is very clear on this and cannot say what others would like to interpret without constructing it in a way that is obviously forcing the argument, as would probably happen if a person reconstructs it according to the two interpretations in an impartial way.
- This text is structured by Gregory IX, and, as such, is methodical, beneficial, concise, and well analyzed, without inaccuracies or strange constructions, and out of one hundred learned men in Latin composition who read this text—without taking into consideration whether the insurance granted by the merchants is licit or not—it would be difficult to find three who said that this text does not refer to the person who takes for himself more than what he lent for lending and insuring.

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<sup>14</sup> Argumentum ab illo loco: Si quid minus videtur inesse, inest, et id quod magis, et cetera. c. *cum in cunctis*, De electione: Authentico *multo magis*, c. De sacrosanctis [Codex I, 2, 14]. Et qui de uno dicit causa exempli, non negat de alio iuxta leg. *Damni infesti stipulatio*, ff. De damno infecto [Digesto 39, 2, 18], et glossam putatam singularem, cap. I, *Ne clerici vel monachi* [Decretales 3, 24, 127]. Et qui de uno dicit, non negat de alio simili, neque e contrario, ut tradit Dominicus in causa *Qualis*, 25 dist. [Decretales I, 25, 4].

- If Gregory IX had wanted to say what is meant by those who hold the second interpretation, he would not have said: *Eo quod suscepit in se periculum: because he took on the danger*, but he said *ut susciperet in se periculum: so that he would take on the danger*. Those who hold the second interpretation say he refers to the one who lends with the agreement that the borrower will take an insurance from the lender.
- According to the construction and order that the others [the ones who hold the second interpretation] give to it, the text refers to the one who insures before lending, because it says *Mutuans eo quod suscepit in se periculum: the person who lends because he took on the danger*, and the same people who thus order the text say it refers to the one who lends under agreement that what is lent is insured with him, and consequently they presuppose what he is talking about when the loan precedes the insurance, thus contradicting themselves without realizing it. If anyone said that in some newer books not *suscepit* in the past but *suscipit* in the present appears, let him look into the old and most of the new books where *suscepit* appears, and it matters little here, as the same meaning will be found after close scrutiny.

3. Gregory IX seldom analyzes issues that are not uncertain, and there is no doubt at all that there is usury in lending to someone under an agreement that forces him to pay not only what he receives but to do something that is convenient to the lender.<sup>15</sup> There is no doubt that this is carried out when the borrower is forced to insure with the lender. One other thing that few notice is that Gregory IX did not say that he was referring to the usurer but to the one presumed to be a usurer, as he does not say *usurarius est*:<sup>16</sup> *He is a usurer*, but

<sup>15</sup> Argumentum, c. I, 14, q. 3 [Decreto II, 14, 3, I] et eorum quae ibi latius commentis supra commentario proximo *Comentario resolutorio de usuris* sobre el capítulo primero, 14, q. 3, [5–47].

<sup>16</sup> Quod veritatem sonat, sicut et verbum *censendus* fictionem, aut praesumptionem, iuxta notata per Bartolum et Iosonem in lege *Si is* qui pro emptore, ff. De usucapionibus [Digesto 41, 3, 15].

*usurarius est censendus*: He should be presumed to be a usurer, meaning that it may be possible that before God the person he is talking about may sometimes not be a usurer, but the Church should consider him such, and according to the other interpretation [the second one] it would have meant that he is a true usurer before God and the people.

According to this interpretation [the true one], there may be good reasons to disbelieve and arrive at a conclusion that, once heard, everyone will say is the truth. Because the reason for disbelieving (according to everyone's and our opinion) was that no canon text forbade usury, known as nautical or traiectica,<sup>17</sup> as is practiced when one lends and insures, assuming the dangers of the trip and of getting lost at sea, which is permitted by civil law for much greater reasons than the others because of the danger that the lender takes on.<sup>18</sup> So, it seemed this would also be licit, according to the canons.

The reason why Gregory IX decided the opposite (even though there was disbelief) was not the reason put forth by the gloss (by Panormitanus and the others) but by the need to put an end to veiled or covert usuries carried out as insurances because many, in seeing that canon law forbade usuries in general but did not prohibit nautical ones (and this one seemed licit because of the danger that the lender took on), took to lending by assuming the risk whether there was danger or not and whether what was lent went through sea or land.

Many borrowed saying they did so to carry it for themselves or for others across the sea, or across such and such mountains, or beyond the kingdom, and so forth, in order to find someone who would lend them money interested in what they would gain for the feigned insurance. Even others, who really wanted to borrow to go through those places and did not want to insure it, were forced to insure because the lenders did not want to lend without a profit. Because they could not obtain a profit for lending, they wanted to cover it up and conceal it as insurance. This is the reason why Gregory IX ordered that whoever lent money and obtained more for it (even if he insured it) was to be judged a usurer, even if he said that the money he gave and took was on

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<sup>17</sup> Tr. note: *Trajecticius contractus*: The insurance taken from the insurer for the money that is to be taken across the sea.

<sup>18</sup> Quod est quid aestimabile, leg. *Periculi praetium*, ff. De náutico foenore [Digesto 22, 2, 5].

account of the insurance. This was certainly a very prudent ruling because if the nautical usury were allowed to someone who lent with an insurance, then everyone would give and borrow with an insurance—some saying truthfully and some falsely—that they were borrowing to carry it by sea or through dangerous lands.

4. By the same ruling, it has been ordered not long ago in these kingdoms and in those of Portugal that there shall be no exchange from one city in the kingdom to another because it is presumed that there are veiled usuries, as we will explain later.<sup>19</sup> By this same ruling, it is determined that when someone buys something for a price inferior to what it is worth, under agreement that he will give it back for the same price whenever he feels like it, it be considered a loan and pawn and not a sale in the external jurisdiction.<sup>20</sup>

Also, not only are the other usuries forbidden today by canon law, but even those known as nautical<sup>21</sup> (as the ones mentioned above such as Hostiense<sup>22</sup> stated), which here nobody contradicts, with which Salyceto<sup>23</sup> agrees, and which saying Ioan de Ananias<sup>24</sup> declares he shares, concluded that this text corrects a chapter of civil law.<sup>25</sup>

Yet, if we took into account the other interpretation [the second one], we should then declare that they [nautical usuries] are [more] licit than illicit because this text would not prove them to be illicit, and there is not another in

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<sup>19</sup> Infra eodem capite, n. 30 [72].

<sup>20</sup> Iuxta glossam singularem, c. *Conquestus*, De usuries [Decretales 5, 19, 8] quam communiter receptam dixit Antonius Burgensis in capite *Ad nostram* [Decretales 5, 17, 3] col. 15, De emptione et venditione, et esse in usu ait Cassiodorus in decisione I, De usuris.

<sup>21</sup> Ff. et C. de nautico foenore [Digesto 22, 2, 5 et Cod. 4, 33].

<sup>22</sup> Super hoc ipso capite [Decretales 5, 19, 19], per eius textum [De usuris Rubrica, cap. 19].

<sup>23</sup> In Authentico, *Ad hoc*, C. de usuries, col. 3.

<sup>24</sup> In praesenti [De usuris Rubrica, c. *Naviganti*], n. 3 citans Petrum ab Ancharano in lege *si*, C. De náutico foenore [Codees 4, 33, I] reprobantem Iacobum Butrigam, qui contrarium tenuit in lege 1 Codicis de náutico foenore.

<sup>25</sup> F. tit. De náutico foenore [Digesto 22, 2].

the world that proves them to be so—at least outwardly. Finally, it is compelling to hold that the principle of this most solemn chapter would not insist in attaining an uncertain resolution, which would be useless and superfluous, as there is no student with three years of canon study who doubts that it is usury to lend money to another under the obligation of insuring it with him. Saying this of Gregory IX's text is irreverent and insolent temerity.

5. Fourth, we say that it does not contradict at all the argument that we noted earlier and one day seemed to us impossible to work out, as it seemed to the aforementioned, who moved away from this common interpretation, that is, that from our common understanding follows that whoever insures merchandise that will pass through dangerous places is a usurer if he takes something for it. This practice goes against all of Christianity's customs, against a law<sup>26</sup> that sets a price for insuring, and against the general opinion.<sup>27</sup>

We say that it does not contradict this [argument] because we deny that this reasoning derives from this interpretation. The only reasoning that originated [from the first interpretation] is that whoever lends money and takes more than what he lent (even if he insures it) must be considered a usurer. Our interpretation differs from what the argument implies in three aspects:

- The first: It does not include the person who insures without lending, and the other does.
- The second: It does not include the person who lends something that is not money, and the other does.
- The third: Stating this [that the usurer is the one who lends money and takes more than what he lends, even if he insures] is not stating that that person is a usurer but that he should be presumed a usurer, and holding the other view is saying that he is a usurer.

If you should reply with what Saint Anthony stated—that someone who helps others by lending should not be judged as a more inferior human being than someone who does not lend, and, thus, there is no reason why he should not insure and receive something for insuring such as another—we answer,

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<sup>26</sup> *Lex Periculi pretium*, ff. De náutico foenore [Digesto 22, 2, 5].

<sup>27</sup> *Relatorum supra eo* n. 2 [50].

conceding that before God and in one's own conscience (where only truth is seen and the penitent is believed), that it is licit for the lender and insurer to take an amount of money as much as another who does not lend but insures for the insurance. However, in the external jurisdiction, he is worse off, presuming that the insurance is carried out to cover and conceal the usury and to screen under goodness what in truth means that he is taking more for lending than for insuring. Because of this, Gregory did not say here that he is a usurer but that he should be presumed a usurer. This was also Adrian VI's<sup>28</sup> opinion (if I am not mistaken).

All this means that if the merchant who sells a piece of cloth on credit for the fair highest price to someone who later sells it for less to the same merchant who pays less money for it by giving a fair lower price does not commit usury nor sin before God, he would easily be presumed a usurer before men for what we explained in the *Manual*.<sup>29</sup> This would be so even if in selling it on credit for a fair price he helped out more than another who did not sell it. Accordingly, if someone else who did not sell it to him nor did him any good, bought it from him, even for a lower price than what the merchant bought it from him, he would not be, nor presumed to be, a usurer.

The tutor and guardian cannot buy<sup>30</sup> such things from their subordinates, just as the other people nor the temporal judges can buy those things belonging to their subjects.<sup>31</sup> This would be so even if they do more good than the others, and are legally in a worse off condition than the rest, in order to avoid frauds, at least in the external jurisdiction.

6. The fifth thing we state is that from all this we conclude that if the penitent confesses that he lent money to someone who wanted to insure it to carry it across the sea or through other dangerous places, and with no other agreement or force he insured it for what others would insure it, the penitent should

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<sup>28</sup> In 4 [*librum sententiarum*], De restitutione, in quaestione quae incipit occurunt.

<sup>29</sup> Cap. 17, n. 242 [284].

<sup>30</sup> Lex *cum ipse*, c. De contrahenda emptione, et lex *si in emptione, si*. Ff. Eodem [Cod. 4, 38, 5 et Digesto 18, I, 34, 6].

<sup>31</sup> Lex I, C. de Contractibus iudicum, et legibus Principalibus, c. *si certum petatur* [Cod. I, 53, I; 4, 4].

not be forced to retribute anything. However, if he were to confess that he took a larger amount for having lent the money or an amount for having lent the money with the insurance, he should retribute the part he took for the loan. This would also be so if he did not want to lend unless the money was insured with another with whom he shared the profit, as this same chapter proves according to the second interpretation, which, as far as these issues are concerned, is judged to be true.

Another conclusion is that this text does not refer to the person who lends and insures other merchandise. One reason is because it only refers to the person lending money, as the pope used the Latin word *pecunia*, which, even if in its general sense means money and any other goods,<sup>32</sup> according to the particular sense, it means only money.<sup>33</sup> In order to indicate that he was using the special meaning in this chapter, the pope did not leave it alone but added some words to it, saying, *certam pecuniae quantitatem*, meaning that he only wanted to apply this rule to those lending an amount of money and not to those lending other goods.

Also, this text—which is far-reaching and deviates from the right road inasmuch as it proposes a new interpretation (they call it *iuris et de iure*) whose opposite cannot be proved<sup>34</sup> (that the person who lends and insures and takes more than what he lent is presumed to take it for lending and thus should be considered a usurer)—should be narrowed<sup>35</sup> and not broadened.

It should also be narrowed because the same reason cannot be found for the one who lends money as for the one who lends other things. This is generally because these other things are appraised, sold, and not lent. This is partly because it is difficult to do as much fraud with goods as with money because there are few to whom they can be given and few who can take them and do fraud without shameful defamation. Only the dealers (and not all of them but

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<sup>32</sup> C. *Totum*, I, quaest. 3, Lex *Quisquis*, de legatis fideicommissis 3 [Decreto II, 3, 6; Digesto 32, 3, 5].

<sup>33</sup> C. I, 2 et 3, 14 quaest. 3 [Decreto II, 14, 3, I-3].

<sup>34</sup> Iuxta late notata in capite *Is qui fidem*, de sponsalibus [Decretales 4, I, 30].

<sup>35</sup> C. *Quae a iure communi*, de regulis iuris lib. 6; lex *Quod contra ratione*, ff. eodem [Digesto 50, 17, 141].

only those who deal at sea or in different kingdoms) can take hold of them without it seeming to be fraud. Yet money can be taken by the big, the small, and the medium sized, pretending they will send it to Flanders or out of the kingdom for relatives, friends, business, or their own or someone else's fortune. There is no reason why fraud should be done with these other things because if an unfair profit is wanted, they can increase their price.

7. The sixth issue is that which we said earlier should be interpreted: Nautical usuries are forbidden today by the canon law in this distinct text. It should be understood that they are completely forbidden in the external jurisdiction, if they are carried out for a loan of money, and also in one's own conscience, if and as long as they are carried out for lending money or any other thing. This does not hold true as long as they are carried out only for insuring, providing one charges what another charges only for insuring, which is a new and extraordinary resolution.

Against Caloro Molineo,<sup>36</sup> this most extraordinary text, which we again praise, declares that it is not only a sin to lend with usury to the needy who take it to sustain themselves but also to lend to the rich and merchants who use it to make a bigger profit, because it is evident that those who borrow to take it across the sea or to fairs are not usually poor people who borrow to support themselves. Concerning this, Gregory IX says that not even with these can those who lend money carry out usury, even if they insure it.

It follows, too, that the guarantor<sup>37</sup> may collect something for guaranting, because he does not lend money and does what the insurer does, although the insurer collects from the person who is insured [the lender], and the guarantor collects what is owed to him from the person against whom the insurance is taken [the person representing the risk or borrower].

Even if Laurencio<sup>38</sup> is not too sure of this, there is nothing to worry about—except when there is fraud. This would be the case if I did not want to lend you any money and if you did not give me *N* for guarantor with whom I have agreed that he take from you a certain amount that we will divide by two or that he transfer the amount to me; thus releasing himself from the guaranty.

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<sup>36</sup> In libro de commerciis, a num. 7 ad 11, et a num. 70.

<sup>37</sup> Tr. note: In the original, “fiador.”

<sup>38</sup> In cap. *Consuluit* [Decretales 5, 19, 10], 3 parte, quaest. 31, De usuris tractatus.

Or, this would be the case if I did not want to lend to you without a profit, and then I send my brother or someone else to whom I have sent money so that he lends it to you under agreement that you take me for guarantor, but then I do not want to give a guarantee if you do not pay me an amount.

**8.** It is true what Ioan de Annania<sup>39</sup> says that exchanges are illicit because to give in Rome one hundred hard-and-fast *ducats* that are picked up here is a manner of insurance. All exchanges should not be considered illicit because of some that are illicit. Therefore, it is very difficult to set apart these from the others<sup>40</sup> [the licit ones] about which we have not said anything either in the *Manual* or anywhere else. We will now work with the required<sup>41</sup> assistance in the beginning of the other *Commentary*, trying to be as resolute and brief as in the others, adding: (1) what exchanging is, (2) how it is divided, and (3) what types are licit.

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<sup>39</sup> In praesenti [De usuris Rubrica: Decretales 5, 19, 19], n. 46, et sensit glossa unde id hauriunt Baldus et Salicetus in libro 3 Codicis, de exercitoria [actione Rubrica].

<sup>40</sup> Quod testatur Caietanus in tractatu de Cambiis, cap. I; Medina in *Codice de rerum restitutione*, fol. 145; Sotus lib. 7 quaest. I, *De iustitia et iure* [lib. 6, quaest. 8, p. 581 s], et alii alibi.

<sup>41</sup> Cap. I, XIII, quaest. 3 [Decreto II, 14, 3, I] supra cum hoc commentario excuso.

## 2 Concept and Types of Exchanges

### Summary

What does it mean to exchange? What is not selling or buying?  
What happens with all saleable goods, even with money?  
... **9**

What exchanges are licit ... **9**

The common people in Spain refer to exchanging both in a  
stricter sense and in a wider sense than what the law does  
... **10**

Exchanging may be divided into the exchanging of money and  
the exchanging of other goods ... **9**

What is the exchanging of money in dry exchange and real  
exchange; in fair, unfair, and doubtful exchange; and in  
pure and impure exchange, according to some? ... **10**

Exchanging can be divided better into seven categories: to  
exchange for small coinage, for bills of exchange, by  
transference, by buying, by bartering, for an interest,  
and by safekeeping ... **10**

9. The eighth thing we add, then, is that to exchange, also called *Cambium* in Latin, is to change one thing for another, which the juriconsults commonly call barter.<sup>1</sup>

The first point is that, strictly speaking, exchanging is not buying<sup>2</sup> or selling or depositing or lending—*Mutuum* in Latin. Nor is it what is called *Commodatum*, or renting or leasing. It is more of an innominate contract, which in many things differs from the above mentioned.<sup>3</sup>

Second, strictly speaking, exchanging is generally divided into the exchanging of money and the exchanging of other goods. Even if it seems more natural to exchange one natural thing for another natural thing—as when a coin is exchanged for another coin or something else and not as price or money but as a piece of gold, silver, or metal—exchanging can also be considered when one changes coins for coins as long as one is not given for the price of the other but in exchange of it. All things that can be sold can also be exchanged,<sup>4</sup> and money can be sold as we will see later.<sup>5</sup> This happens every day with coins of different value or metal, as everyone confesses, and even (according to those who study this) with coins of the same metal and value when one is in one land and the other elsewhere. This happens even when they are both in the same place, but one is near and the other is not. It also happens when one seems better because it is beautiful, because it is antique, or because of some other reason that motivates the person who wants to obtain it

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<sup>1</sup> Tr. note: In the original: “permutación.”

<sup>2</sup> Ut late declarat dicta lex I, ff. de contrahenda emptione [Digesto 18, I, I] et lex I, ff. de rerum permutatione [Digesto 19, 3, I].

<sup>3</sup> Per leges praedictas, et lex *ex placito*. C. De rerum permutatione [Cod. 4, 64, 3].

<sup>4</sup> Lex I, tit. 6, partite 5. Hostiensis in Summa, de rerum permutatione, versiculo *Quid antem potest permutari*.

<sup>5</sup> Infra eodem capite, n. 20 [66] et 32 [73].

by barter, as every day it is evident that a *real*,<sup>6</sup> a *ducat*,<sup>7</sup> a *doubloon*,<sup>8</sup> and an *angelot*<sup>9</sup> seem lovelier than another of these.

**10.** The third issue is that the vernacular language from Spain and the vernacular Latin of some Scholastics today do not use the word *exchange* in as wide a sense as its original meaning. Instead, they use another more frequently. According to the original meaning, every barter is exchange and every exchange is barter. However, the vernacular does not call every barter exchange but only the barter of money for money. It also uses the word *exchange* to refer to many contracts, which are not specifically exchanges but are, rather, buying, renting, and other innominate contracts. So, to exchange (as the vernacular understands it) is every kind of contract of money for money, which is not gratuitous, be it a barter, a purchase, a deposit, or anything else. It is also important to differentiate between the Spanish vernacular and the Code of Law,<sup>10</sup> which considers all and only barter and permutation an exchange.<sup>11</sup>

Thus, exchanging, as the vernacular understands it, can be divided, according to Saint Antonino<sup>12</sup> (whom the theologians who have later written about the subject have followed), into real exchange and dry exchange. According to

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<sup>6</sup> Castilian silver coin that was the basis of the Spanish monetary system until the nineteenth century.

<sup>7</sup> Gold coin, originated in Venice in the thirteenth century with a weight of 3.60 grams, from where it was imitated for different European states. Unit for counting in Castile during the sixteenth and seventeenth centuries: It was equivalent to three hundred seventy-five *maravedís* or eleven Castilian *reales*.

<sup>8</sup> Generic name given to the Spanish pieces of two gold *escudos*.

<sup>9</sup> Spanish version of the French *angelot* (a coin with the image of Saint Michael fighting the dragon with a spear in his two hands on the obverse and a ship on the reverse).

<sup>10</sup> Tr. note: In the original: “leyes de las partidas,” a medieval code especially written down under Alfonso el Sabio to unify the legislation.

<sup>11</sup> Titulo 6, 5 partita.

<sup>12</sup> 2 parte [Summae Theologicae], tit. I, cap. 7, s. 49, quem [Summa] Angelica, [Summa] Rosella et [Summa] Sylvestrina sequuntur.

them, dry exchange is an imaginary kind of exchange, which in fact is no exchange at all. Laurentius who has also addressed<sup>13</sup> this issue is more accurate when he says that dry exchange is when the exchanger gives before receiving, and because he does not receive but gives it is called dry. According to Caietano,<sup>14</sup> it can also be divided into clearly fair exchange and clearly unfair and dubious exchange. According to others, it can be divided into pure and impure exchange. Some, such as Medina,<sup>15</sup> call those [exchanges] that do not have elements of other contracts, pure exchange. Soto,<sup>16</sup> however, calls them pure when there is no mixture of unfairness and impure when there is. Yet all these categories are not very useful and are very confusing. That is why it seems more useful to say that there are seven categories, species, or methods of exchange:

1. by profession or work to be offered<sup>17</sup>
2. for small coinage<sup>18</sup>
3. by bills of exchange<sup>19</sup>
4. by true transference<sup>20</sup>
5. with an interest<sup>21</sup>
6. by safekeeping<sup>22</sup>
7. by buying,<sup>23</sup> bartering, or any other innominate contract

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<sup>13</sup> In quaest. I, partis 3, c. *consuluit* [Decretales 5, 19, 10], De usuris tractatus.

<sup>14</sup> In tractatu de Cambiis, cap. I [163].

<sup>15</sup> Ubi supra [*Codex de rerum restitutione*, fol. 154].

<sup>16</sup> Ubi supra [*De iustitia et iure*, lib. 6, quaest. 8, art. 2, 584].

<sup>17</sup> De quo infra num. 21 [67].

<sup>18</sup> Ibid., 19 [65].

<sup>19</sup> Ibid., 21 [67].

<sup>20</sup> Ibid., 31 [72–73].

<sup>21</sup> Ibid., 34 [74].

<sup>22</sup> Ibid., 36 [75].

<sup>23</sup> Ibid., 41 [79].

These categories are easier to understand, and they make the subject broader. This is what the real and dry, the clearly fair and clearly unfair and dubious, and the pure and impure come down to. We will explain each one so that by their motives and rules everyone's questions may be answered.

### 3 The Origin and Functions of Money

#### Summary

Exchanging is prior to buying and selling ... **11**

What was money created for? What is its main purpose and use? ... **11**

What is the art of exchanging? When and why is it licit? ... **11**

Money is useful for many contracts, and it has eight purposes and uses ... **12**

A simulated contract is judged by what it is, and not for what is feigned ... **12**

**11.** Regarding [paragraph] nine, we state that the exchange or barter of goods that are not money (as was said most correctly by Paul,<sup>1</sup> the juriconsult) is a much earlier operation than buying and selling, which began after money was introduced. Before money came into existence, if someone owned a good and was in need of another, he looked for someone who had it and wanted to exchange it for his possession. This was the case, for example, when

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<sup>1</sup> In lege I, ff. de rerum permutacione [Digesto 19, 3, I].

someone had wine and wool, but not wheat nor shoes, and looked for someone with wheat and shoes who wanted to exchange them for his wine and wool. This is the case even today with some barbarian people [foreigners] with whom the Spanish and others deal.

After a time, money was discovered, which was certainly a very necessary discovery on the one hand. On the other, I am not sure if today it destroys souls because of greed; bodies because of wars, travels, and terrifying pilgrimages; and even itself and the fleets where it travels because of horrifying storms and shipwrecks. The main use and purpose in creating money was as a means of payment in order to buy and sell with it the necessary things for human life,<sup>2</sup> so that it would become a public measure [common standard] of goods to be sold.<sup>3</sup> After this, coins of a metal or value started being bartered for coins of another metal or another value, such as the thick one for the thin one and the thin one for the thick one. Later, because the currency of a land was worth less there than somewhere else (as today almost all the gold and silver currency from Spain is worth less there than in Flanders and France), the art of exchanging started, which is the art of dealing with currency. By giving and taking one for another, money started getting transferred from where it was worth least to where it was worth most. As happens in our times, many people have increased their fortune, taking to Flanders and France *ducats* in groups of two, four, and ten, some in small barrels, pretending they are olives, some in wine barrels, making a big profit with each one. In turn, they brought from those places merchandise that was worth little over there but had great value over here, thus helping with one but hurting us much with the other.

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<sup>2</sup> Ut praedictus Paulus ait ubi supra [Digesto 19, 3 I], et ante ipsum Aristóteles I politicorum, cap. 6 [*Política* I, 3, 8 = Didot I 489].

<sup>3</sup> Saint Thomas, lib. 2, *De regimine principum*, cap. 13 et omnes recentiores de hac re loquentes, praesertim Ioannes Calderinus hic [Decretales 5, 19, 19, de usuris cap. 11], et Laurentius in c. *Consuluit* [Decretales 5, 19, 10], pars 2, quaest. 26, aptus ad hoc textus in lege *si ita*, ff. de fideiussoribus [Digesto 46, I, 42].

Aristotle<sup>4</sup> thought it was wrong to exchange and trade with money because he did not think this third use of money was natural nor brought any benefit to the republic nor had any other purpose but that of profit, which is an end without an end. Saint Thomas<sup>5</sup> said that any art of exchange whose main purpose was only to obtain profit was illicit. Saint Thomas<sup>6</sup> himself, however, declares that the art of exchange is licit if its purpose is a moderate profit to support oneself and one's home and if the art of exchange brings about some benefit to the republic. We say that if it is exercised as it should be and the purpose of the profit is directed to honestly and moderately support oneself and one's home, then it is licit. It is not true that using money to obtain a profit by exchanging it goes against its very nature because, even if it is a different use than the first and main one for which it was created, it is still apt for a less principal and secondary use. This happens, for example, when shoes are used to make a profit, which, although is a different use than the primary one for which they were created (which was to wear on feet), does not go against their very nature.

**12.** Money has eight different purposes. The first three are the ones already mentioned.<sup>7</sup> The fourth is to display one's riches,<sup>8</sup> showing it to everyone or putting it in the marketplace where it is dealt with or exchanged. The fifth is to use it as medals and clothing decorations. The sixth use is to cheer with its presence.<sup>9</sup> The seventh use is to cure some illnesses with its broth as, they say,<sup>10</sup> is one of the properties of gold powder. The eighth use is as security for a debt. For these last five purposes, it is possible not only to lend and exchange money but even to rent it out. Thus, money may be given by way of many

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<sup>4</sup> I Político, c. 6 et 7 [Política I, 3, 8 ss. = Didot I 489-492].

<sup>5</sup> *Secunda secundae* [Summae], quaest. 77, art. I, 3, communiter receptus

<sup>6</sup> In dicto articulo I [2.2, 77, 4, 3].

<sup>7</sup> De quibus Thomas lib. 2, *De regimine principum* cap. 14.

<sup>8</sup> Lex s. Finalis [*non potest*], ff. commodat [Digesto 13, 6, 3, 6].

<sup>9</sup> Quod de auro affirmat Thomas, *Secunda secundae* [Summae], quaest. 77 art. I, ad I, 3.

<sup>10</sup> Thomas, ubi supra [2.2, 77, 2, 3].

contracts: by way of price for a purchased good; by way of merchandise sold for another money; by way of innominate contract of barter or other, exchanging it for something else or for money; by way of lending called *Mutuum*, when something else is given back and not the same thing; by way of lending called *Commodatum*, in order to get back the same thing given; by way of security for what is owed; and by way of rental of a sum so that the same amount that was given is returned, after the person who borrows it takes advantage of its use, by showing his riches, or enjoying its presence, or using its broth, or giving it as security, and so forth.

It can be taken<sup>11</sup> by as many ways as it can be given. Because the nature of the above-mentioned contracts, by which it is possible to give and take money, is diverse, so there are diverse law regulations that determine if and when they are licit or not. If money is given by way of buying and selling, it cannot be given but for what something else is worth.<sup>12</sup> The same goes for when it is given by way of exchange or barter.<sup>13</sup>

If it is given by way of loan or if it is given as security for one's own loan (whether the same or another is given back), neither a small nor a big sum can be charged.<sup>14</sup> If rented out to enliven or honor with its presence or to cure with its broth or to use as security for someone else's debt, an honest rent may be taken<sup>15</sup> because the nature of this contract is not to transfer the ownership but only the appraised use of money according to the amount of time for which it

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<sup>11</sup> Quippe correlativorum eadem est disciplina, lex I, C. *de cupressis*, libro 11 [Cod. 11, 77, I], quod late explicat Felinus in prooemium, Gregorius [episcopus], a col. I.

<sup>12</sup> Cap. *Cum causa ibi iusto pretio*, de emptione [Decreto II, 14, 4, 5].

<sup>13</sup> Nam quoad hoc ipse cambiens emptioris loco habetur: *lex sciendum*, s. Emptorem, ff. de aedilitio edicto [Digesto 21, I, 19, 5].

<sup>14</sup> Per cap. I et quaeque ubi n. I [p. 6] annotavimus 14, quaest. 3 [Decreto II, 14, 3, I].

<sup>15</sup> Toto titulo ff. Et C. Locati et de locato [Digesto 19, 2, et Cod. 4, 65].

was taken. It is important to understand what truly happens than what is feigned to happen.<sup>16</sup> Every time one of these contracts is carried out truthfully and another is feigned, one should judge not by the rules of the feigned one but by the [rules of the] true one. Thus, if the exchanger truly lends his money, he cannot take anything for this operation, even if he feigns he is exchanging it or renting it out.

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<sup>16</sup> Cap. Plus valere quod agitur, quam quod simulate concipitur, c. *Illo vos*, de pignoribus [Decretales 3, 21, 4]; c. *Ad nostram*, de emptione et venditione [Decretales 3, 17, 5].

## 4 Just and Licit Exchange

### Summary

Exchanging, bartering money, or other things of dissimilar value is illicit ... **13**

The exchanger as exchanger may not take more than what he gives but only what is regulated ... **13**

The exchanger or barterer, for just being [exchanger or barterer], cannot take more than what he should because of his profession, et cetera. However, he can certainly barter what he does not have yet for something the other person has ... **14**

The contract where more or less is given or taken for advancing or selling on credit is usurious ... **14**

13. We go on to add that in order to make buying and selling just activities, it is necessary that what is bought is worth an equal price to what is being paid for it, and, conversely, that the price paid for it is equal to the goods' worth.<sup>1</sup> For any rental to be just, it is necessary that the use of the item that is rented out is worth the price given for it, and, conversely, that the price paid for it corresponds to what it is worth. So, too,<sup>2</sup> in order for the exchange or barter to be just and licit, it is necessary that what one party gives to the other has the same value as what is being received.

From this it follows that if the purchase of a mule worth one hundred *ducats* for eighty or one hundred twenty is unfair, as is the renting of a house, the use of which is worth fifty *ducats* a year, for forty or sixty, so the barter of a beast that is not worth six *ducats* for another worth ten is not just. Nor is the exchange or barter of ten *ducats* in *reales* for twelve *tarjas*<sup>3</sup> licit.

The logical outcome of this is that every time that the exchangers carry out a true exchange and barter of money for money, they cannot take more than what the [money] they give is worth for the barter and exchange, and some little thing that is usually offered for bartering one currency for another after it is counted. It may happen though that on some occasion, for other factors that interfere in making it a less pure type of exchange, something may be taken, as we will explain later. If the inequality of bartered things makes illicit the exchange and barter of natural things—amongst which the barter is more legitimate or at least more natural<sup>4</sup>—more so will [the inequality of the bartered

<sup>1</sup> C. I [Decretales 3, 17, 1] et c. *Ad nostram* [Decretales 3, 17, 5], et c. *Cum causa, ibi iusto pretio*, de emptione [Decretales 3, 17, 6].

<sup>2</sup> Quia in omnibus commerciis, et contractibus iustitia commutative est servanda: 5 Ethicorum [Ethica 5, 2, 12s = Didot II 55], et tradit Augustinus, cap. 3 in libro 13 *De Trinitate* [PL 42, 1017] sentit Saint Thomas: *Secunda secundae* [Summae], quaest. 58, art. 6 et quaest. 59, art. 2, Exprimit Scotus in 4 [librum sententiarum], dist. 15, quaest. 2, art. 2. Et quia in hoc permutans aut cambians pro emptore vel venditore est, lex sciendum, s. *emptorem*, ff. de aedilitio edicto [Digesto 21, I, 19, 5] facit; c. ad quaestiones cum glossa 3, de rerum permutatione [Cod. 4, 64, 3].

<sup>3</sup> Vellum currency worth two units, belonging to the duke of Brittany in the fifteenth century, so called for the shield on its reverse.

<sup>4</sup> Per dicta supra eodem n. 11 [57–58].

things] make illicit the barter of money, which being money is something artificial, not created in the first place to exchange one [piece of money] for another, but as price<sup>5</sup> [unit of measure of the value of things] that, wherever one went, might be taken in order to buy whatever was needed.

14. No money exchanger may take for himself more than what he otherwise could for giving his money before the other person gives him his and waiting to be paid a month or two, or more, or until the next fair.<sup>6</sup> Nor can the opposite happen. Another can licitly give the exchanger some money under agreement that in a year, or in three months, or when the next fair takes place, he gets back that money and an added amount, or he gets something done [by him] that by its very nature is worth money. Whenever more than the principal is given or taken for reason of the time elapsed, or for waiting, or for advancing the payment, it becomes a veiled loan and contains a veiled usury, as we have already said elsewhere.<sup>7</sup> Just as the person who gives a mule today so that another that is worth much more is given to him in three, four, or six months, is a usurer, so also the person who gives some money today so that in three, four, or six months a larger sum is bestowed on him, is a usurer.

It is not necessary to do what some people<sup>8</sup> require, which is that the goods that one will barter or exchange with someone else's be produced now and belong now to the person who wants to barter them. First, there are no documents or motives that prove this to be necessary. Second, just as it is possible

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<sup>5</sup> Lex I, ff. de rerum permutatione [Digesto 19, 3, I] et supra eodem commentario, n. 11 [57 s.].

<sup>6</sup> Quod Hostiensis ait esse pessimum genus usurarum in *Summa*, de usuries [Rubrica], s. *an aliquo*, sub finem: versiculo *Quid si quis pecuniam*.

<sup>7</sup> In Commentario c. I, 14, quaest. 3 [Decreto II, 14, 3, I]n. 26 [15 s.], et probatur in c. *ad nostram*, de emptione [Decretales 3, 17, 5] et in c. *Illo vos*, de pignoribus [Decretales 3, 21, 4] cum eis annotata.

<sup>8</sup> Soto lib. 7 quaest. 5, art. 2 [lib. 6 quaest. 12. 2, p. 597], *De iustitia et iure*; et ante illum Silvester; verb. *usura* 4, quaest. 9, quem ipse non citat.

to buy,<sup>9</sup> pawn,<sup>10</sup> promise,<sup>11</sup> and send<sup>12</sup> what is yet to be born, so it is possible to barter in this way, at least the general barter, which in this is the same as the special one.

Sylvestro<sup>13</sup> himself confesses that if I want to licitly barter and exchange ten *ducats* in Lisbon with ten *ducats* paid here, it is not necessary that when you give me the ten *ducats* here that I have them in Lisbon. It is sufficient that I can borrow them over there with an interest, or in some other way, when the time comes to give them to you over there.

Also, if I barter with you one hundred pounds of oil that I have here for the same amount or more of oil that you give me in Lisbon, it is not necessary that I give them to you at the same time as you have them there. It is enough that you have them when it is time to give them to me. There is no truth in saying that in order for a barter to take place, it is necessary to barter a specific thing for another specific thing. In the first place, even if this is required for the special barter, it is not for the general one. Second, if this were necessary, almost no merchant who took money in Medina to send to Flanders, or the other way around in Flanders to send to Medina, would do a true exchange,<sup>14</sup> as neither one (even if he had a lot of money where he is supposed to give it) hands those *ducats*, *reales*, or *tostones*<sup>15</sup> over.

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<sup>9</sup> *Lex Nec emptio*, ff. de contrahenda emptione [Digesto 18, I, 8].

<sup>10</sup> *Lex Et quae nondum*, ff. de pignoribus [Digesto 20, I, 15].

<sup>11</sup> *Lex Interdum*, ff. de verborum obligationibus [Digesto 45, I, 73].

<sup>12</sup> S. Ea [*quoque res*] *quae*, Institutionum, de legatis [Instit 2, 20, 7].

<sup>13</sup> Verb. *usura* 4, quaest. 9, vers. septima.

<sup>14</sup> Quod absurdum dictum est ad dicendum: *lex Nam quod absurdum*, ff. de operas libertorum [Digesto 38, I, *Nam absurdum*], et cap. *Dudum*, de praebendis lib. 6 [In Sexto 3, 4, 14].

<sup>15</sup> Originally, from the mid-fifteenth century, it was the currency of Milán called the *testoné*. It was the Castilian currency called *real de a ocho* in the seventeenth century.

Although it is true that in order for the barter to be completed on both sides, and neither side to be sorry for having carried it out, it is not only necessary to give the other party what they want but also that both parties have rendered the delivery, as bartering is an innominate contract. It is not necessary for both parties to have rendered the delivery in order for the bartering contract to be valid, as the other contracts that are not innominate are valid before the delivery is made either on both parts or on one side.<sup>16</sup>

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<sup>16</sup> Per late notata in lege *Si pecuniam*, ff. de conditione causa data [Digesto 12, 4, 5], et lex *Ex placito*, C. de rerum permutatione [Cod. 4, 64, 3].

## 5 Exchanging as a Profession

### Summary

- Can the person who devotes himself to exchanging as a profession and lending as a job take something for himself?  
There are seven arguments defending this action ... **15**
- And others against it ... **16**
- Conclusion with other arguments in defense, under certain circumstances, and so forth ... **17, 18**
- The business of lending gratuitously may be established by the republic ... **15**
- The judge, priest, and witness may not receive for the following, but for these other reasons, and so forth ... **15**
- The priest for going to say mass elsewhere or being there to say it today may take something ... **15, 16**
- The business of lending moderate usuries is illicit ... **16**

When Mounts of Piety<sup>1</sup> and the business of lending turn out to be different ... **16**

An argument that is based on what it wants to conclude is not sound ... **15**

The one who is forced to lend to the republic deserves a salary, and what this implies ... **17**

There are licit businesses that may not be practiced privately but may be done so publicly ... **18**

**15.** There is great doubt as to whether it is licit to practice the first type of exchange as a profession and to work as a lender. Caietano<sup>2</sup> says he had a few cases where the exchanger, as long as he was a lender who offered to lend to those who needed money, could receive an amount of money for a certain amount lent for a certain period of time (according to the virtuous man's free will) for the work and diligence put into looking for, keeping, and taking care of a large amount of money, which are necessary for carrying all this out and then for keeping account, taking guaranties, and assuming dangers and anxiety. This is what Durando<sup>3</sup> and Medina<sup>4</sup> agree on too. They believe in the first place that the so-called lender does not get anything for lending but for the work he offers to do, which is undeniably great, and it is true that there is no usury when a greater amount than what was lent is taken for another just and

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<sup>1</sup> Tr. note: The *Mons Pietatis* was a public pawnshop, regularly financed by charitable donations and run as not for profit but for the service of the poor. It charged a small fee for its care of the pawns and for the expenses of administration, including the salaries of its employees, so that the capital would not eventually be exhausted by the costs of the business (Cajetan, *De monte pietatis*, in *Scripta philosophica*, c.1 [41–42]).

<sup>2</sup> In tractatu *De cambiis*, cap. 2 [163 s.].

<sup>3</sup> In 3 [*librum sententiarum*], dist. 27, quaest. 2, licet non asseveret.

<sup>4</sup> In *Codice de rebus restituendis*, a folio 147 [De cambiis et lucro per eadem acquisitione, fol. 155].

different reason from lending.<sup>5</sup> In the second place, [they believe that] the person who is in charge of exchanging one currency for another that will be paid at a later date, may be given something for that business and work,<sup>6</sup> and the same reason seems to apply in this case.

In the third place, according to Scoto,<sup>7</sup> the republic may determine the existence of a money lender who lends for a certain amount and for a certain period of time. This is licit if it is ordered by the republic. If it is licit, and not forbidden, anyone can borrow and take advantage of him, paying a fair amount for it, according to Scoto<sup>8</sup> himself.

The fourth issue is that the judge, priest, and witness who may not receive anything for their rulings,<sup>9</sup> sacraments, and testimony may receive something for their sustenance and the work they carry out. Fifth, when the exchanger lends to someone, he is prevented from dealing, and thus, he may take for himself an interest for profit as we state in another commentary<sup>10</sup> and down below.<sup>11</sup> Sixth, the clergyman may take more for going to say mass some miles<sup>12</sup> away, or for going today, than if he said it here or by chance.<sup>13</sup> Seventh, as we have seen in another commentary<sup>14</sup> that the Mounts of Piety are licit,

<sup>5</sup> Quod ex deffinitione usurae in Commentario c. I, 14, quaest. 2 [Decreto II, 14, 3], n. 5 posita colligas [8].

<sup>6</sup> *Quia est dignus mercenaries mercede sua*: Lc. 10 [7], c. I, 13, q. 2 [Decreto II, 13, 2, I].

<sup>7</sup> In 4 [*librum sententiarum*], dist. 15, quaest. 2 [fol. 93].

<sup>8</sup> Ubi supra [in 4, dist. 15, quaest. 2, fol. 94].

<sup>9</sup> C. *Non sane*, 14, quaest. 5 [Decreto II, 14, 5, 15], ubi de iudice et teste: c. *Sicut pro certo* [Decretales 5, 3, 39], et c. *nemo*, de simonia [Decretales 5, 3, 14], ubi de aliis.

<sup>10</sup> C. I, 14, quaest. 3 [Decreto II, 14, 3, I], num. 45 [p. 22].

<sup>11</sup> Infra eodem [commentario], num. 34 et 35.

<sup>12</sup> Tr. note: In the original “dos leguas”: a legua is a unit of distance from about 2.4 to 4.6 statute miles.

<sup>13</sup> Innocentius receptus in c. *Quoniam*, de simonia [Decretales 5, 3, 40].

<sup>14</sup> C. I, 14, quaest. 3 [Decreto II, 14, 3, I] a num. 64 usque ad 70 [33–36].

and in them the poor people who borrow money are allowed to give a certain amount according to the amount borrowed so that every month there is money to pay for the salary of those carrying the burden of caring for the money, keeping accounts, and standing ready to loan.

16. Others<sup>15</sup> hold the opposite view because it seems that it is the same to say this as to say that it may be ordered and even without ordinance carry out the art and business of lending under moderate usuries, which seems to go against the Gospel's spirit, as well as the natural and canon law, and against all the interpreters and doctors of them. For this consideration alone, they say all reasons said against this can be settled. If the profession is not licit, neither will it be licit to take a salary for it, or for the work needed to carry it out, or for preparing everything that is needed.

Nor can anything be deduced from the profession of judge, witness, ecclesiastic, and chaplain for this, because those are licit, but this is not. That is why it does not follow that if for the responsibility, work, and maintenance of these something must be given, so, too, should something be given for lenders. Additionally, because they hold that the Mounts of Piety are not licit, they do not have to reply to the seventh argument, which seems one of the strongest. Even if we consider that they are licit, there is still a big difference between [lending] and the Mounts of Piety, because in lending there is a profit that is looked for and wanted, whereas it is not there where only compensation for the one in charge of it [is sought for] so that he does not have to offer gratuitously from his house his valued work, care, and industriousness. In a loan, the money belongs to the lender, and to him belongs its safekeeping; in the Mounts of Piety the money belongs to the poor or to someone else who gives it to the poor, and they are the safe keepers. What they give or pay is very small, and is brought together with a donation or just contribution and according to the profit obtained by the one who takes [money]. Because of this and other reasons, one may not infer this [i.e., that it is licit to carry out the art and business of lending under moderate usuries] from that [i.e., the Mounts of Piety].

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<sup>15</sup> Caietanus in tractatu preadicto *De cambiis*, cap. 2 [163 s. ], quem sequitur Sotus nec illo, neque ullo alio relato, libro 7, quaest. 3, art. 11, *De iustitia et iure* [lib. 6, quaest. 10, art. 2, 589].

The other opinion [i.e., it is licit to take moderate usuries for the profession of lending] does not sound to us as insubstantial as they suggest. First, their opinion is based on assuming as certain what is precisely in doubt. What is in doubt (at least implicitly) is if that profession is licit or not. The opposing viewpoint holds it is licit, but they hold it is not.<sup>16</sup> Also, they do not respond to the first argument: that there is no usury when more is not taken than what is given for lending, although something more can be taken for a good and just reason. Soto himself confesses somewhere else<sup>17</sup> that one can licitly take a salary when one is forced to lend to the republic every time it is in need.

17. From Soto's opinion<sup>18</sup> what cannot be denied (to our way of thinking) is that the republic might give a certain salary to someone required to collect money and have a certain amount ready to lend to those in need of it once a year and to collect it from someone else to lend it in turn to others. Thus, a person who was forced to do all this would take that salary every year, not essentially for lending, but for being required to own the amount of money to lend and to suffer the above mentioned troubles and worries.

Additionally, it should be established that it is licit and useful that the republic have someone forced to gratuitously lend a certain amount every year, and it cannot be denied that the republic may give a just salary to the person in charge of that business, as Doctor Scoto's excellent words<sup>19</sup> advocate.

Also, if the business of gratuitously lending to the poor is licit, and if for the licit business the republic may make a salary mandatory, it may order a salary for this business and thus charge a sum from those who take advantage of that business and position. Consequently, it may order that they pay the republic a salary in proportion to their loan or a wage that is part (according to the extent to which they profited) of that salary. Consequently, in order not to waste any time or have extra expenses, those who took advantage of this would

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<sup>16</sup> Et ita est petitio principii, aut ratio eadem cum dicto, contra lex I, adiuncta glossa et Paulo, ff. De exceptione [rei venditae], [Digesto 22, 2, I].

<sup>17</sup> Lib 6, quaest. I, art. 2, ad 6 [4 argumentum], *De iustitia et iure*.

<sup>18</sup> Ibid.

<sup>19</sup> In 4 [*librum sententiarum*], dist. 15, quaest. 2, art. 2, s. sequitur [fol. 95].

pay that amount to the person in that position, depending on the amount they took, and on the length of time for which they borrowed.

Also, the reasons and authority of the Holy See—because of which in another commentary<sup>20</sup> we concluded that the Mounts of Piety were licit, holy, and worthy of praise—conclude this, too, to be licit.

Therefore, if there may be licitly someone appointed to be in charge of the exchange for small coinage because it is licit and useful (according to what will be said later) and he may licitly take a salary from the republic or from those who profit from the position according to the profit they gain, as is carried out, [then] for the same reason will the above mentioned be licit.

**18.** For these reasons (except the due correction) we bring into agreement both opinions in the following manner: The first determines that the republic set up with its authority the mentioned profession, and we even dare to hope kings and princes provide their republics with such lenders that are made to do what we said above and be forbidden under heavy penalties to take more than what is determined by your Highnesses. However, the habit of wrongly earning too much money will make it difficult to find someone who wants to earn a just salary.

The second should be applied to the person who assumes the profession of lending without having permission to carry it out by private authority. It does not follow that because the profession is in itself licit, each one may take hold of it with no other authority and take for his sustenance whatever would be reasonable for the republic or for its prince, according to Scoto's<sup>21</sup> excellent presumptions. Consequently, in everything, Durando's<sup>22</sup> and Medina's<sup>23</sup> opinions are correct. So we say that it should not follow. First, because Durando and Medina refer also to the one who has not been allowed [to carry out the profession] [and] who has other motives than the one who has permission to do so. This is the main argument behind our belief that this profession is licit

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<sup>20</sup> C. I, 14, quaest. 3 [Decreto II, 14, 3, I], n. 66 [34].

<sup>21</sup> Ubi supra [*In 4 librum sententiarum*, dist. 15, art. 2, fol. 95].

<sup>22</sup> In 3 [*librum sententiarum*], dist. 37, quaest. 2.

<sup>23</sup> *De rebus restituendis*, ad fol. 147 [*De cambiis et lucro per eadem acquisitio*, fol. 154].

and a salary may be taken for it. Also, if these reasons ever proved that it would be licit before God and in one's own conscience to practice this profession with a holy purpose (even without the permission) and to take advantage of it, taking less money than the person forced to practice it, before men and in the external jurisdiction, he should be judged a usurer to avoid greater frauds, which would be committed under cover of piety according to what we have said above<sup>24</sup> about the lender and insurer.

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<sup>24</sup> In principio huius commentarii, n. 3 et 4 [52, 53].

## 6 Exchange for Small Coinage<sup>1</sup>

### Summary

Exchanging for small coinage is licit and is useful for the republic. A public officer may be appointed for it, with a salary ... **19**

The difference between his position and the exchanger's ... **19**

Someone may be in charge of exchanging, and not be a public officer ... **19**

Money may be exchanged according to its intrinsic value, even if it is not worth that amount by law ... **20**

Money that is appreciated by law is worth more for its exceptional utility ... **20**

Exchanging for small coinage is illicit in certain circumstances ... **20**

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<sup>1</sup> Tr. note: In the original: "Cambio por menudo." The small coinage for exchanging is created to substitute the large money for amassing.

19. According to everyone,<sup>2</sup> it is licit to exchange for small coinage, which is exchanging large for small currency and small for large, such as one *ducat* for eleven *reales* or three hundred seventy-five *maravedís*, or the other way around, exchanging eleven *reales* or three hundred seventy-five *maravedís* for a *ducat*. Because the republic would benefit greatly from having a public officer in this position, it may order a just salary to that person.<sup>3</sup> The republic would take his payment from the public income or order that those who make use of the service of exchanging or bartering hand over a percentage to him. As it is ordered in these kingdoms,<sup>4</sup> for the exchange of one *Castilian*,<sup>5</sup> four *maravedís* may be taken; and for the *ducat* and *dobla*,<sup>6</sup> three; and for the *florin*,<sup>7</sup> two.

According to the law of these regions,<sup>8</sup> this position may go to any exchanger as by its name, too, it is suggested. The law though, establishes a difference between the public officer and the exchanger. The exchanger's job

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<sup>2</sup> Laurentius de Rodulphis in C. *Consuluit*, de usuris [Decretales 5, 19, 10]; Antoninus, 2 parte, tit. I, cap. 7 s. 47. Quibus etiam Caietanus, Methina et Sotus accedunt.

<sup>3</sup> Iuxta singularem theoriam Scoti *In 4 [librum sententiarum]*, dist. 15, quaest. 2 [fol. 95].

<sup>4</sup> Pragmática, 129.

<sup>5</sup> Gold coin from Castile coined by Henry IV since 1471 with a castle in its obverse. In 1483, it was the equivalent to four hundred eighty-five *maravedís*. In the sixteenth century, the gold *Castilian* belonging to the Catholic Sovereigns was in use. It was carved in Seville in 1475 and weighed 4.60 grams. On the obverse the busts of the Catholic Sovereigns faced each other and on the reverse were the arms of Castile and León.

<sup>6</sup> Name given by the Christians to the *almohade* piece of gold, which doubled the weight of the *dinar* of 2.35 grams. The system lasted until the fall of the Granadine kingdom. In general it doubles any gold coin.

<sup>7</sup> Originally, a gold coin from Florence. Imitated principally in Aragón. In Castile in 1454 it was the equivalent to fifty *maravedís*.

<sup>8</sup> Preadicta pragmática, 129.

is to weigh<sup>9</sup> all currency in gold and silver, to say what each is worth, and to settle the amount between the parties who are taking and giving the money. In Seville, this person may not be an exchanger, nor have any money to barter, nor take any remuneration for weighing it. Instead, he should own a house, scales, and receive a salary from the republic.<sup>10</sup> There was a person who was employed in both positions (I do not know what his fee was) in this very renowned Salamanca in those very rich days of gold, and, when I was university professor in Canon Law. He [the exchanger], for the trade of a twenty-four carat gold *doubloon* took two *maravedis* that remained from the twenty-two *reales*, and for twenty-two *reales* and four *maravedis* he gave a *doubloon* from those same ones.

Caetano says<sup>11</sup> that no other person who is not in that public position may take this excess licitly. We disagree, as do Medina and Soto disagree for their own reasons because of the trouble and work that go into [this type of barter]—going to the chamber, opening the safe box, counting once and again, and putting the money away, all of which are activities that may be assessed in monetary terms.<sup>12</sup>

However, some say<sup>13</sup> that it is forbidden in these kingdoms for any private individual to take anything more for exchanging small coinage, although we do not think so. In the first place, these people do not claim any law that bans this. Second, the laws that refer to these matters only forbid<sup>14</sup> anyone from taking on the position of exchanger to publicly exercise the business of exchanger without public authorization. Nor can he be a foreigner, even if this

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<sup>9</sup> Pragmática 126 et 127 in libro pragmaticarum.

<sup>10</sup> Pragmática, 125.

<sup>11</sup> Ubi supra [*De cambiis* cap. I et cap. 6].

<sup>12</sup> Quidquid aliqui praedictorum dicant. Non enim officium fuit causa recipiendi illud plus, sed potuisset plus aliquid recipi propter operam, et impedimenta fuit causa instituendi officium, et quamvis uterque laboret [in] numerando, gratia tamen eius qui cambium petit, uterque labor principaliter sumitur.

<sup>13</sup> Sotus, ubi supra [*De iustitia et iure*, lib. 6, quaest. 12, art. I, 591].

<sup>14</sup> Pragmática, 123.

person owns the citizenship.<sup>15</sup> Third, the Pragmática<sup>16</sup> clearly states three times that the exchanger and any other person may take an extra amount for making the exchange.

**20.** However, it might be possible to prohibit—if it were convenient—that the price of money not be altered so much and that the large currency not be taken out of the country. In order for someone to barter his large pieces of money for small ones with a profit, we have seen foreigners in Portugal give to the natives in private much more than what the gold coins were worth in order to take them to another kingdom; thus bringing about great damage to the first one.

We also believe that the person who has some very fine gold coins may sell them or exchange them as coins and pieces of gold. He may take for himself something more of what they are worth (according to what the law establishes) from the person who wants them to gild something, or use it for medicines and other things, as long as they are really worth more because of what they are made of, or, if by giving them, he loses the advantages he was enjoying that are worth the same or more than what is being paid in excess.<sup>17</sup>

This was a frequent practice in Toulouse, France, in our time, whereby those who had the gold coins sold them for gilding to the knife owners, who bought the *cruzados*<sup>18</sup> in Portugal (no longer found there) at an even higher price than the *ducats* with two faces from these kingdoms, which no longer appear on them. Medina<sup>19</sup> does not agree with this and goes against the norm without a good solid reason for doing it. This opinion (also held by Soto)<sup>20</sup> is based on the fact that even if the republic has increased the value of that coin

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<sup>15</sup> Tr. note: In the original “carta de naturaleza.”

<sup>16</sup> Pragmática, 129.

<sup>17</sup> Argumentum eorum qui in comentario c. I, 14, quaest. 3 [Decreto II 14, 3, I], no. 45 [22] diximus post Thomam, *Secunda secundae [summae]*, quaest. 77, art. I.

<sup>18</sup> Portuguese coin called *cruzado de ouro*. The Portuguese *cruzado* was worth three hundred seventy-five *maravedis* in Castile.

<sup>19</sup> Ubi supra [De pecunia an vendi possit, fol. 157].

<sup>20</sup> Ubi supra [De iustitia et iure, lib. 6 quaest. 12, art. I, p. 591].

in a certain amount for its principal use (that of being a price for things), and if no one can sell wheat (justly appreciated) for more than that fixed price, and if nobody can be forced to give the money for more than what it is appraised, there are other uses for it for other particular reasons, which the law calls exceptional utility.<sup>21</sup> The one who owns the coins may take from the one to whom he gives them an extra amount.<sup>22</sup>

However, this exchange, which in itself is the most natural of all, may turn illicit if the exchanger takes more for himself than what for just law or custom is owed to him; if he gives false money, a mistaken percentage, or is delayed in giving his part to the person who is requiring the exchange; if he is deceiving as far as the value of the gold piece is concerned when the one who barter ignores what the Pragmática in these kingdoms<sup>23</sup> has determined; and finally, if the person who receives the exchange does not pay the exchanger what is owed to him.<sup>24</sup>

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<sup>21</sup> Glossa Bartholi, Baldi, Decii, et aliorum in lege I, C. de sententiis quae pro eo quod interest proferuntur [Cod. 7, 47, I].

<sup>22</sup> Argumentum lex *Si in emptionem*, ff. de non numerata pecunia [Digesto 22, 77, I] et eius quod ait Thomas, *Secunda secundae [summae]*, quaest. 77, art. I.

<sup>23</sup> Pragmática 126 et 127, et melius 129, et quia in altero plus iusto recipit, in altero dat minus.

<sup>24</sup> Quamuis aequalitas est servanda: 5, *Ethica* [Didot II, 56], et supra n. 13 [60].

## 7 Exchanging for Bills of Exchange

### Summary

Exchanging for bills of exchange is licit. How to do it and the reason for its name ... **21**

It is a contract but without a name ... **22**

It is an innominate contract: Sometimes I give to you so that you give me something back; other times I give to you so that you do something for me ... **22**

Contracts with a name and that are to receive a name are all similar in that they require equality ... **23**

Exchanging for bills of exchange is illicit when more than the fair salary is taken or less than the fair salary is given for lending on credit or advancing, and restitution is required ... **24**

Worse is the contract that is feigned for a later date and is really for today ... **25**

Contracts where there is no equality, or more is given or taken for lending on credit or advancing, are unjust ... **24**

Exchanging for bills of exchange from one city in the kingdom to another is licit by human natural and common law ... **28**

They say that [this kind of contract] is real in these kingdoms, but, to the author's mind, they are not very useful ... **30**

Exchanging for bills of exchange has been well instituted in these kingdoms if these rules are followed ... **30**

**21.** It is also licit, according to everyone, to practice the third type of exchange, which is to exchange for bills of exchange. This is a virtual transference of money by which if someone wants an amount of money in another land, he gives it in this one or does something that is worth that amount, or partly does and partly gives to the exchanger or to anyone else who has money or credit in the other place. He then receives bills of exchange for which an amount of money is given to him over there that is equal to the amount he gave or what he did over here. He will also give a sum as profit for arranging that the money be given over there in exchange for the bills of exchange.

This is called "exchange for bills of exchange" because it is usually carried out with these certificates, although it is also practiced through a messenger or the person himself who goes to that other place and gives the amount.

This contract is just and much praised by Baldo,<sup>1</sup> although he does not give a special name to it, nor do we believe it has one, as it greatly conforms to Calderino's,<sup>2</sup> and to that of the wisest jurists' opinions. However, if we had to come up with a name for this type of exchange, it would be that of a purchase or sale agreement; exchange or barter; loan or rent of work, labor, industry; and credit to or from another in order to hand over the money where it is needed. However, it is none of these properly and purely. First, none of the substantial things of any of these is completely or by itself included in this type of exchange [we are referring to]. Second, out of one hundred people who exchange in this way, there are not four who think they are buying or selling, lending or borrowing money, bartering, or renting work and labor

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<sup>1</sup> In cap. *de plus petitionibus* [Decretales 3, 3] num. 9 dicens eum esse iustum et iuris gentium.

<sup>2</sup> In consilium 11, de usuris [Rubrica].

from the exchanger in order to receive it someplace else. Contracts, after all, depend on the contracting parties' intention.<sup>3</sup>

22. If it were any of the above-mentioned [kinds of contracts], it would be that of [a contract] renting the work and industry of transferring something from one place to another from another [person]. This, however, is not so. In this case, the ownership of the thing to be transferred<sup>4</sup> is not passed on to the person who is to transfer it, and in this one [the new type of exchange we are referring to] it is—the ownership of the money that is to be transferred and is given to the exchanger is bestowed on him. However, it is the kind of contract that does not have a special name, which the juriconsults call<sup>5</sup> innominate. It can consist of (1) giving so that you give to me, (2) giving so that you do something for me, and (3) giving so that you give and do<sup>6</sup> [for me]. In other cases, (1) I do so that you give or do, or (2) I do and give so that you give and do, and so forth. I give you the money here so that you give me bills of exchange or do something so that they give them to me, or you yourself give me the same amount [of money] in that other place, for which I pay you a just salary on account of your work,<sup>7</sup> industry, and credit, which you have already offered and now will offer again and make others offer so that I receive in that other place.

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<sup>3</sup> Quia actus agentium non operantur ultra fines eorum: lex *Non omnis*, ff. de rebus creditis [Digesto 12, I, 19] et. *Cum super*, de officio delegati [Decretales I, 19, 23].

<sup>4</sup> Argumentum lex 2, s. *finalis*, ff. locato et conducto [Digesto 19, I, 2]; Institut. De locato, per totum [Instit. 4, 65, I-35].

<sup>5</sup> Lex *Naturalis*, ff. de praescriptis [Digesto 19, 5, 5] adiuncta *lex si*, [Digesto 19, 5, 7] cum glossa et ei annotatis, ff. De conditione causa data [Digesto 12, 4].

<sup>6</sup> Iuxta doctrinam Bartholi in dicta lege *Naturalis*, s. *sed si facio* [Digesto 19, 5, 5, 4] sub finem [n. 6].

<sup>7</sup> Argumentum: lex *Periculi*, ff. de nautico foenore [Digesto 22, 2, 5], et lex *Traiectitiae*, ff. De actionibus et obligationibus [Digesto 44, 7, 23] lex *Qui Romae*, s. I, ff. De verborum obligationibus [Digesto 45, I, 122, I].

23. When contracts with a special name differ in other things from contracts without a specific name,<sup>8</sup> they do agree with them in that in order [for both types of contract] to be just, they also require that what is given or done by one of the parties is worth as much as what is given or done by the other party. According to Scoto's solemn rule:<sup>9</sup> In every contract that is properly such where one party gives to another and there is not an intention to do it for free, there must be equality between what one party gives or does and what the other gives or does. Consequently, in order for this contract to be licit, it is necessary that what is given to the exchanger for conferring a document that makes someone else give money to its holder in another place is a just salary, and he not take more than what is due.<sup>10</sup> In order to know which salary is just and which one is unjust for being too great or too small, one must appeal to the law, and if there is none and then to custom if there is one. If both are lacking, then to the good and prudent man's free will.<sup>11</sup>

24. Consequently, in the first place, unjust exchanges that are mortally evil are those where the exchanger takes more than his fair salary, even if he sells on credit to the person who does not have any money and will give it back at a later date. The more he takes for having to wait for longer periods of repayment, the worse [these exchanges] are. Also [unjust and evil] are those [exchanges] where the exchanger takes more than his fair salary if he orders that the money be given right away in that other place for where it is required, even if he is satisfied with him for having the money returned three or four months later.

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<sup>8</sup> Iuxta notata in lege *Si pecuniam*, cum glossa verbi *Poenitere*, ff. De conditione causa data [Digesto 13, 4, 5], et lex *Ex placito*, C. De rerum permutacione [Cod. 4, 64, 3].

<sup>9</sup> In 4 [*librum sententiarum*], dist. 15 quaest. 2, art. 2 [fol. 95] quod probatur 5 *Ethica* [4, 10 ss.: Didot II, 57], et per scripta Thomae *Secunda secundae* [*summae*], quaest. 58, art. 6 et quaest. 59, art. 2.

<sup>10</sup> Salicetus, *In authentico*, *Ad haec*, quaest. II, *De usuris* [*Rubrica*].

<sup>11</sup> Argumentum: c. I, de constitutionibus [Decreto I, I, I], et c. *consuetudo* [Decreto Ij, I, 5] et dicta lex I, ff. de iure deliberandi [Digesto 28, 8, I], et c. *De causis*, de officio [et potestate iudicis] delegati [Decretales I, 29, 4].

[Unjust and mortally evil are] also those exchanges where, on the contrary, those who give the money a year or half a year before [do it] under agreement that the exchanger will not take a fair salary later for giving it to them over there. We see many religious and wise men making mistakes on this issue, and there is proof of such contracts. In all these cases, either the just salary is not paid, or too much is paid, or for giving or taking the money sooner or later more or less is taken from the just price. The reason they are wrong is because of the already<sup>12</sup> stated rule: All contracts that are unequal are unjust. This is also true because of another stated<sup>13</sup> rule in this commentary as well as in another:<sup>14</sup> All contracts where more than the highest fair price is taken in ready money, or less than the lowest fair price is taken in ready money are formally or visually usurious.

**25.** In the second place, there is another evil type of exchange according to everyone and especially unjust, according to Caietano.<sup>15</sup> It is those exchanges that we see every day carried out with kings, noblemen, dealers, and others who take money from the exchangers and give them documents so that they are paid in Rome, Lisbon, León, Flanders, Venice, or other places in a certain amount of time or at a certain fair. Both parties know that the person who is taking it does not have, in that other place, the money, credit, agent, nor intention to pay over there but rather here, where they take it for the price that it is worth in that other fair for which they supposedly took it. The exchanges are worse if the person who takes the money here promises to pay for the exchange in the other place, and then for a new exchange back here if the documents are not valid over there, whereupon the exchanger sends his documents over there, and they return back here notified to whom they are sent with their response that they ignore who is sending the documents, or that they do not want to

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<sup>12</sup> In commentario c. I, 14 quaest. 3 [Decreto II, 14, 3, I], num. 26 [p. 15-16], et supra eodem, num. 14 [II].

<sup>13</sup> Supra eodem, n. 14 [60–61].

<sup>14</sup> C. I, 14, quaest. 3 [Decreto II, 14, 3, I], num. 4 [7] cum hoc retro excuso, et tent Thomas, *Secunda secundae [summae]*, quaest. 78, art. 2.

<sup>15</sup> In tractatu *De cambiis*, cap. I [163]. Quod omnium soptime resolvit Sylvester, verbo *usura* 4, quaest. 9, et *cambium siccum* secundum omnes.

fulfill their obligations. In the first type of these two exchanges a usury is paid; in the second, two usuries are paid.

**26.** Also [illicit] are the exchanges where someone gives money to another party who promises to pay when the fairs of Flanders or of someplace else take place at the rate of what the money is worth there. Carrying out these types of exchanges, looking for ways to deceive God, and showing unfaithfulness is forgetting or not remembering that the divine wisdom sees all our acts with our good and bad thoughts much more clearly than we ourselves. Only in one of these types of the three exchanges can the person be saved from mortal sin and the obligation to retribute. That is when the exchanger finds someone who wants to take his money for a true exchange, and, because he wants to help someone else, he does not give the money to the first person, thus depriving himself from gaining for the just exchange as much as he gains for reasons of the feigned<sup>16</sup> exchange. The reason being is that it is not for his own personal gain.<sup>17</sup>

**27.** It is worth noting that even if there is a statute where the documents of exchange are naturally enforceable, the documents of feigned exchanges are not, as Anania<sup>18</sup> said it was stated in Bononia. If instead, the exchange contained in the document were partly true and partly feigned, only the part that is real could be enforced, and the adversary would have to confess what was true regarding the document.<sup>19</sup>

In the third place, it is also illicit if I give you one thousand *ducats* right now under agreement that you will have them given to me in Rome in a year's time, unchanged in their amount, for the advantage you took of them in the time you had them. It is usury on my part if for giving the payment in advance I earn the salary that I should have given you if you had had them given to me immediately.<sup>20</sup>

<sup>16</sup> Caietanus in tractatu *De cambiis*, cap. I [163].

<sup>17</sup> Quod licere, infra eodem dicemus num. 34 [74–75].

<sup>18</sup> In praesenti [Decretales 5, 19, 10], no. 46, *De usuris* [Rubrica].

<sup>19</sup> Quod late deducit Laurentius in dicto capite Consuluit [Decretales 5, 19, 10], 2 parte, quaest., 135.

<sup>20</sup> Per dicta supra num. 14 et 24 [60s. et 69].

28. In the fourth place, even if Doctor Soto<sup>21</sup> determined in some place that nothing could be taken for this type of exchange when the bills of exchange were given in one city of the kingdom for another in the same kingdom, such as from Medina to Toledo or Seville, in another place<sup>22</sup> he approved and said it was allowed. Soto had two reasons. First, because of the reasons we talked about earlier that justify this contract from here to Rome, also justify the contract from here to León, and from here to Pamplona, Burgos, Seville, and Toledo—as long as the exchange is carried out sincerely and without fraud and as long as one takes less when there is a shorter distance and fewer dangers, work, and coastlines involved through which to pass, take, keep, and safeguard the money than when farther places are involved. Second, because the motives that determine that documents for another kingdom that are feigned usuries are illicit conclude, on the contrary, that documents that are destined to another city in this kingdom are licit if they are genuinely, without fraud or deception, given for an honest salary.<sup>23</sup>

Some say, however, that exchanges from one part of the kingdom to another are banned by new prohibitions both here as well as in Portugal because these were generally carried out to cover usuries. However, we consider that they should be limited and not [be banned] if the exchanger receives before giving or having someone else give. The first reason is because it is difficult to feign usury when the exchanger receives before giving, as it is commonly done with this type of exchange. Usuries are feigned when it is the other way around and the exchanger gives first and receives later, a type of exchange that the Bononienses call dry, as was said earlier,<sup>24</sup> invoking Laurencio.<sup>25</sup>

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<sup>21</sup> Lib. 7, quaest. 3, art. 2, sub finem, *De iustitia et iure* [lib. 6, quaest. 10 art. 2, 589].

<sup>22</sup> In eodem libro 7, quaest. 6, art. I [lib. 6 quaest. 3, art. I, 60].

<sup>23</sup> *Add. R.*: Argumentum c. *tua* [Decretales 4, I, 26] et c. *is qui* [Decretales 4, I, 30].

<sup>24</sup> *Supra* eodem n. 10 [56 s].

<sup>25</sup> In c. *consuluit* [Decretales 5, 19, 10], 3 parte, quaest. I.

The second reason is because this type of exchange has a law unto itself and respects the divine, canon, and civil law; and laws should not be changed unless the usefulness and goodness sought after are evident.<sup>26</sup> This does not seem to be the case with this prohibition. Moreover, if it were banned, students, pilgrims, and many other dealers would be bereft of a good way to transfer (almost without expenses and danger) the supplies and money from Seville and other similar cities to Salamanca, Burgos, and other parts; and from Burgos and other such cities to Seville and other far away places between which there are dangerous roads.

**29.** However, there is great cause to forbid the exchange within the kingdom when the exchanger gives before in order to receive more now or some other time because it is probable that many usuries would be covered with this [type of exchange]. To my weak understanding, however, there is little usefulness in this, because it does not remove from the usurers who want to go ahead with veiled exchanges the instruments to veil their profit. In fact, it gives them the opportunity to do what they did before with fear and shame and less profit for one of the kingdom's cities, now without fear and much more profit for another city outside the kingdom. It would be a much better solution to have honest judges examine the past and present exchanges and, if they were to find from the people's situations that they are veiled, punish those who did them for wherever it was, carrying out the old laws that have not been revoked by this new ban,<sup>27</sup> which is not contrary to them.

Another reason [why there is little usefulness in forbidding this type of exchange] is because it conceals and almost forgives past actions, which is an unjust mercy,<sup>28</sup> because, when past actions are concealed and future actions are banned, there is opportunity of doing what is banned, in hopes that the actions are once again concealed, and going against clement justice, which by means of punishing past actions stops evil people from [committing] future

<sup>26</sup> Lex 2, ff. de constitutionibus principum [Digesto I, 4, 2], Thomas, *Prima secundae [summae]*, quaest. 97, art. I.

<sup>27</sup> Argumentum: *Lex Praecipimus*, C. de appellationibus [Cod. 7, 72, 32], et c. I, de constitutionibus lib. 6.

<sup>28</sup> Canon: *Est iniusta misericordia*, in principio; et in fine ibi: *facilitas enim veniae, incentivum tribuit delinqueni* [Decreto II, 23, 4, 33].

ones.<sup>29</sup> However, it makes it easier to learn about the feigned exchanges because it is easier to see that this Spanish person who takes money to pay it in Flanders does not have money there, as it was possible to see that he does not have it in Seville. Although we have already seen frauds against this in Lisbon, where a gentleman who needed money did not take it himself for Medina but asked a dealer to take it for himself, promising to pay them there with the exchange. So true is what the Italian said: *Fata la lege trobata la fraude*.<sup>30</sup>

**30.** In the fifth place, His Majesty's past intention to prevent the disorder caused by taking an exorbitant profit for this type of exchange was a holy one, and he ordered that for the exchange from these kingdoms to Rome no more than four hundred *maravedis* per Chamber *ducat*<sup>31</sup> could be taken, nor from Rome to here more than four hundred twenty. Nor from these kingdoms to Naples could be taken per long *ducat* more than four hundred, nor for Besancon for the *mark*'s<sup>32</sup> *escudo*<sup>33</sup> more than three hundred seventy-five. Nor could be taken from Besancon to here for *escudo* more than three hundred ninety, nor from here to Flanders for an *escudo* of six salaries<sup>34</sup> of sixty *maravedis*, more than three hundred seventy, nor from Flanders to here for *escudo*, less than seventy great ones. Nor could be taken from here to Valencia for a

<sup>29</sup> *C. Factae*, 4 dist. Facit [Decreto I, 4, I]; c. *Non putes*, cum multis sequentibus, 23, quaest. 5 [Decreto 2, 23, 5, 36 ss.].

<sup>30</sup> *Contra legem Non dubium*, C. de legibus [Cod. I, 14, 5], et c. *Certum*, de regulis iuris lib. 6.

<sup>31</sup> Ducado de Camara: The papal *ducat*, gold coin that weighed and was worth what the venetian *ducat* minted by the Apostolic Chamber, from whence its name.

<sup>32</sup> Weighing measure for coins. In Castille it weighed 230, 0465 grams for silver. It was divided into eight ounces; for gold into fifty *Castilians*. The *mark* from the Casa de Moneda was used to weigh officially minted coins.

<sup>33</sup> Generic name given in the Middle and Modern Ages to diverse gold and silver coins, with a shield on one of its faces. Also *Castilian* gold coin introduced in 1535 as a consequence of the casting of coins for the Tunes army. It was equivalent to 10.68 gold *pesetas*.

<sup>34</sup> Created by Charlemagne as a counting unit. The salary for the people from Burgos consisted of twelve vellum money notes carved in Burgos.

gold *Castilian*, more than three hundred eighty, nor from Valencia to here, more than five hundred ten for *Castilian*. Nor could be taken from here to Zaragoza for an *escudo*, more than another *ducat* over there, nor from Zaragoza to here more than four hundred. Nor could be taken from here to Barcelona but what has been given up to here, nor from here to Portugal for *ducat* more than three hundred seventy, which are worth over there four hundred *reales*, nor from Portugal to here for *ducat* more than three hundred eighty-five.<sup>35</sup>

After this moderating provision, His Royal Majesty forbade exchanges in all Spain. That is, it was forbidden from the kingdoms of Castile to those of Aragón, Cataluña, and Valencia, and even to those of Castile,<sup>36</sup> with some small limitations that would make the exchanges possible, and those are that the exchanger receive the money before giving it for the reasons already mentioned.<sup>37</sup>

Let us hope everything is carried out with as much watchfulness, integrity, and perseverance as the good intentions that have been displayed. Although I fear this will not be so, at least as far as exchanges are concerned, I hope this will be so from the kingdoms where money is worth more and there is more merchandise to these here. Those who have money there will not want to give their money before, so that they are paid less here than what it is worth in those other parts, as we have noted down below in the exchange from Flanders and Portugal to here.

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<sup>35</sup> *Add. R.*: Addo nunc quarto esse necessariumj, ut locus in quo est solvenda pecunias longe distet a loco in quo dentur litterae. Alioqui enim esset cambium de tempore ad tempus, quod non licet, et non de loco ad locum, quod licet, ut ex eodem commentario num. 67 colligitur, et satis probatur praedicta extravagante.

<sup>36</sup> *Add. R.*: Lex bona memoria Caroli V qui praescripsit pretium moderatum quo campsores suorum Regnorum cambirent.

<sup>37</sup> Supra eodem commentario, no. 18 [64 s.].

## 8 Exchanging by Transference

### Summary

What exchanging by true transference is. Used for buying  
and selling or pure barter ... **31**

It is just to retain equality ... **31**

And not otherwise, as long as the just laws are adhered to  
... **32**

Money may be sold under many forms, except as price ... **32**

**31.** Everyone agrees that it is licit to practice the fourth type of exchange, by true transference, carried out by buying, bartering, or using another innominate contract to give currency that is worth less in one land than in another because it is not used there; because its metal is not worth as much there as in the other place; or because it is broken, disfigured, dented, worn out, or weightless and take it to the other land where it is worth more because it is not weighed there or because it is more used there. It can then be exchanged for another currency that is worth more where the other was worth less as long as due equality is maintained, as all this is buying, selling, bartering, or another

innominate contract where I give so that you give, as we will see below.<sup>1</sup> All of these are licit if they are equal.<sup>2</sup>

This does not mean that something less was given for one thing in one land, then something more is taken for that same thing in another land. The reason why less is given in one land is because it is worth less there; and the reason why more is taken for it in another land is because it is worth more there. So, what was bought for less in this land may be sold for more in another one; and what was bartered in this land for something of less value, may be bartered somewhere else for something of more value. This applies to all merchandise, as long as much less in one place is not given, nor much more is taken in another that the just price is not honored to the prudent man's own free will.

**32.** Consequently, money may be bought and sold, even if Soto holds the contrary opinion,<sup>3</sup> which is a very true thing when it is not considered as money but as a piece of metal, and as gold, silver, or broken copper. Even when it is considered as money, under any one of the eight aspects, which we will describe below, it can be worth more or less than the price that the law establishes as long as it is offered as merchandise and not as price of other merchandise,<sup>4</sup> if this were to be thoroughly analyzed.<sup>5</sup> Every time that it is considered according to one of these aspects, and not [according to the fact] that it is the price of other things, it is merchandise that may increase in value

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<sup>1</sup> Infra eodem n. 41 [79].

<sup>2</sup> Toto titulo: de contrahenda emptione [Digesto 18, I], et de rerum permutatione [Digesto 19, 4], et lex I, cum quatuor sequentibus, ff. De praescriptis verbis [Digesto 19, 5, 1–5].

<sup>3</sup> Lib. 7, quaest. 5, art. 3, *De iustitia et iure* [lib. 6, quaest. 12, art. 3, 599].

<sup>4</sup> Argumentum: lex I, ff. de rerum permutatione [Digesto 19, 4, I], lex I, ff. de contrahenda emptione [Digesto 18, I, I], lex 3, s. Si, ff. commodati [Digesto 13, 6, 3, I]; et eorum quae scripsit Caietanus in tractatu *De cambiis*, cap. 6, et Methina in Codice de rebus restituendis, ad fol. 148 [De pecunia an vendi possit, fol. 157]. Quamquam quoad aliqua quae parvi ponderis sunt, dissentire videri possunt.

<sup>5</sup> Tr. note: In the original: “si ello de rayz se pesare.”

more or less and consequently be bought.<sup>6</sup> The Arcediano<sup>7</sup> does not hold the contrary opinion, which some try to influence on him.<sup>8</sup> Although he ponders it, he does not say that money cannot be sold, but rather that its use cannot be sold inasmuch as it is money without selling [money] itself. The law<sup>9</sup> determines that everything that may be exchanged may be sold and everything that may be sold may be exchanged, excepting spiritual things, which may be exchanged but not sold. Everyone confesses that money may be exchanged.

**33.** It follows, too, that this type of exchange would be unjust if for example what is worth less is a piece of land, and the exchanger buys it or exchanges it for even less than what it is worth and that which is worth more he buys or exchanges for even more than what it is worth, especially when this is done for advancing the price or selling on credit. This principle may be easily proven by the two rules mentioned above.<sup>10</sup> It would also be unjust if money that is forbidden is transferred in such a way that to the others it is unjust to transfer it.<sup>11</sup>

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<sup>6</sup> Argumentum: lex 2, ff. Locati [Digesto 19, 2, 2] et s. *Item pretium*, institut. De emptione [Instit. 3, 24, I, 2].

<sup>7</sup> In c. I, 14, quaest. 3 [Decreto II, 14, 3, I]. Arcediano: In early days, the first or principal of deacons; ordinary judge who practiced a jurisdiction delegated from the episcopal in a particular territory.

<sup>8</sup> Ut Laurentius in c. Consuluit [Decretales 5, 19, 10], parte 2, quaest. 6.

<sup>9</sup> Tr. note: In the original: “ley de la partida.” Lex 2, tit. 6, partida 5. Hostiensis in *Summa*, de rerum permutatione, v. S. *Quid autem*.

<sup>10</sup> *Supra eodem*, num. 24 [69].

<sup>11</sup> *Eadem ratione lex illud*, ff. ad legem aquilam [Digesto 9, 2, 32].

## 9 Exchanging for an Interest

### Summary

Exchanging for an interest is licit, and something may be taken for the interest ... **34**

If for exchanging a person gets out of a deal in which he was engaged, he should be stopped, which should not happen if he has not ... **35**

Defense of Doctors Antonio and Luys Coronel ... **34**

**34.** The fifth type of exchange, exchanging for an interest, is also licit. This means that if the exchanger deals with merchandise and for lending to whom it is convenient he stops dealing, he may take an interest both for the profit as well as [for] the loss. As we have proved extensively elsewhere,<sup>1</sup> any merchant may take an interest under certain conditions. We add again that even if he does not deal with other merchandise apart from his exchanges, but if for lending he stops dealing with them (if they are licit), he may take an interest

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<sup>1</sup> In commentario c. I, 14, quaest. 3 [Decreto II, 14, 3, I], n. 46 et sequenti [23 s.], una cum hoc excuso.

for the profit that for lending he is deprived of earning in his occupation of just exchanger.<sup>2</sup> Caietano's<sup>3</sup> above-mentioned<sup>4</sup> decision may be applied here, which is the one referring to the person who stops dealing in true exchanges for helping someone else with a feigned exchange. He may earn what he would earn with the true one. Woe to the one who for this reason does not stop dealing or doing so many true exchanges as before and takes feigned interest without there being a real or probable one,<sup>5</sup> as if God did not exist (who not only sees our acts but even our hearts).

This type of exchange can correct the doctors of Paris—among whom were those two renowned brothers Antonio Coronel and Luys Coronel (whose works and advice we benefited from for some time) and whom Saint Doctor Soto<sup>6</sup> admonishes. Merchants may take more if they have to wait for their payment until the second fairs than if they wait until the first ones. They can take even more if they wait until the third ones than if they wait until the second ones. Because the exchange of the interest is larger the longer the period, in all probability the person is not earning. It is certain that the dealer who stops dealing and the exchanger who stops exchanging with his money for two fairs is prevented from earning more than if he stopped for one fair, as is the case with the person who does not deal in two more than the person in one [fair]. It is hard to believe that such renowned doctors belonging to such a great university analyzed this other type of exchange regarding buying or bartering. Even students with few years of study know that buying or bartering for a higher price when there is a longer term is usury. This subject, though, is not talked about in schools, according to what Saint Doctor Soto<sup>7</sup> says. It was

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<sup>2</sup> Quia eadem omnino ratio, idem omnino ius suadet lex *illud*, ff. Ad legem aquilam [Digesto 9, 2, 32] et c. *Translato*, de constitutionibus [Decretales I, 2, 3].

<sup>3</sup> In tractatu *De cambiis*, cap. I [163].

<sup>4</sup> Supra eodem n. 26 [70].

<sup>5</sup> Quasi non esset Deus, vel non scrutaretur corda, et renes, contra psalmum 75 [25, 2]; c. *Novit*, de indiciis [Decretales 2, I, 13] et c. *Deus Omnipotens*, 2 quaest. I [Decreto 2, 2, I, 120].

<sup>6</sup> Lib. 7 quaest. 5, art. 5, *De iustitia et iure* [lib. 6, quaest. 12, art. 5, 603].

<sup>7</sup> Ubi supra [lib. 6, quaest. 12, art. 5, 603].

never discussed until him, although we believe that Gaspar Calderino,<sup>8</sup> Laurencio Rodulpho,<sup>9</sup> Saint Antonino,<sup>10</sup> Ioan de Anania,<sup>11</sup> Sylvestro,<sup>12</sup> Caietano,<sup>13</sup> Medina,<sup>14</sup> and others studied this subject extensively, even if they did not explain its concepts as much as we did.

**35.** As far as this exchange is concerned, the exchanger who stops being a merchant to become an exchanger once he has gotten his money out of the deal and devotes all his money to exchange from fair to fair for a certain or uncertain interest, is mortally sinning and must pay restitution. That means [that he exchanges] under agreement that those who take his money pay him as much as what those who deal in what he used to deal earn, or a certain amount of probable interest [that is equal to what] he would earn if he were dealing. Because he has already removed his money from the deal and does not want to deal, there is no true nor probable interest, as was said in the *Manual*<sup>15</sup> and in another commentary.<sup>16</sup> Also sins the exchanger who in order to exchange his money does not stop dealing with the money he has destined for that purpose. He should pay restitution on what he has earned for the same reason. Therefore, there are many penitents who have enriched themselves in these ways, and many confessors who listen and have listened to them in confession, absolving them without ordering them to stop doing it or to pay restitution on what they have earned or ordering thus and not being obeyed, which condemns both one side as well as the other.<sup>17</sup>

<sup>8</sup> In consilium 11 [*De usuris Rubrica*].

<sup>9</sup> In repetitione c. consuluit [Decretales 5, 19, 10], quaest. I secundae partis.

<sup>10</sup> 2 parte, tit. I, quaest. 7, s. 49.

<sup>11</sup> In praesenti [*De usuris Rubrica c. Naviganti* = Decretales 5, 19, 10].

<sup>12</sup> Verb. *usura*, 4 per totum.

<sup>13</sup> In tractatu *De cambiis* [cap. I, 163].

<sup>14</sup> In Codice de rebus restituendis a fol. 145 [*De cambiis*, fol. 155].

<sup>15</sup> C. 17, n. 212 [271].

<sup>16</sup> In c. I, 14, quaest. 3 [Decreto II, 14, 3, I], n. 49 [82 s.].

<sup>17</sup> *Add. R.*: Quibus addo nunc Pium V per extravagantem infra transcriptam statuisset, ne a principio certum interesse praefigi possit in cambiis.

## 10 Exchanging by Safekeeping

### Summary

To exchange by safekeeping is licit ... **36**

When something may be taken for it ... **37**

The exchanger receives and pays in cash and with treasury notes.<sup>1</sup> Can he receive something more for paying in cash? ... **37**

Paying five per thousand for cash is illicit, except in three cases ... **37, 38**

It is better to earn a small amount justly than to earn a big amount and to commit a sin ... **39**

The person who does not pay the exchanger or [the person] who takes him cash and leaves [this cash] with him, sins [as well as the exchanger] ... **40**

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<sup>1</sup> Tr. note: In the original, “libranzas.”

**36.** The sixth type of exchange, by safekeeping, is also just because there is a law,<sup>2</sup> custom, or statute that makes the exchanger a safekeeper, depositary, and guarantor of the money that is given to him or exchanged for something needed by those who give it or send it. This makes him [i.e., the exchanger] pay the merchants or the people that the depositors choose in a particular way, and, because of this, it is licit that they take a just salary from the republic or from the depositing parties. Because this profession and work is useful to the republic and does not possess any iniquity whatsoever, it is just that someone who works earn his wage.<sup>3</sup>

This exchanger's occupation is to receive the money from the merchants; to deposit it; to have it ready; and also to write, keep the books, give an account of the money to everyone with great difficulty, and to run the risk of making a mistake with the accounts and other things. The same thing could be carried out with a contract<sup>4</sup> by which one of the parties commits himself to some people to receive and keep money under deposit, giving, paying, and keeping the books with the people according to the way they tell him to because this is the kind of contract where the activity and work of one is rented out to someone else. Such a contract is specifically provided for by the law and is just and holy.<sup>5</sup>

What the salary should be for this type of work has not been resolved by law. It is worth noting that the exchanger has two ways of taking money: in cash by actually taking the money, and in treasury notes by accepting documents of other exchanges or from other people with which they promise or deposit in his bank the payment of what they remit to him so that he forwards

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<sup>2</sup> *Lex Argentarius*, s. I [Digesto 2, 13, 10, 10, I] and *Lex Quaedam*, s. *Nummularios*, ff. de edendo [Digesto 2, 13, 9, 2].

<sup>3</sup> *Dignus enim est operarius mercede sua*, Lc. 10, 7, et c. I, 13, quaest. 3 [Decreto 2, 13, I, 11].

<sup>4</sup> *Quia per pactum fieri potest id quod per legem fit: lex Non impossibile*, ff. de pactis [Digesto 2, 14, 50], C. *Contractus*, cum glossa, de regulis iuris lib. 6 [Digesto 50, 17, 23].

<sup>5</sup> *Est enim contractus locationis ex parte camporis, et conductionis ex parte aliorum, certa mercede constituta, lex I et 2*, ff. Locati, s. r. Instit. de locatione [Digesto 19, 2, I, et 2; Institut. 3, 15, I].

it to his account. There are also two ways in which the exchanger pays: by actually giving the money, or in treasury notes by forwarding the payment to other exchanges.

**37.** Some<sup>6</sup> believe that it is ordered and established in this kingdom that when the exchanger pays someone in cash, he should receive five per every thousand, and when [he pays] with a document, remitting to another exchange, he should receive nothing. We have found quite the opposite in the laws<sup>7</sup> of these kingdoms. In one<sup>8</sup> of them, it says that the Catholic Sovereigns ordered, in Seville in the year 1491, that the exchanger could pay those who had treasury notes and others with coins that are defective, broken, and crushed, paying for the defective ones. If someone were to fancy his payment in sound, healthy, and chosen coins, [the exchanger] would be able to take five per every thousand for paying it thus, and not any more, even if the other party wanted to give more.

In another [law],<sup>9</sup> it says that the Catholic Sovereigns themselves found out that the exchangers took advantage of such a law to not only take for themselves those five per every thousand in those situations but also in all those cases where cash was paid in any coin, whether it was chosen or not. They reviewed that law in 1513, invalidating what pertained to this [issue] and establishing that the exchangers not pay in broken or crushed money nor take anything for themselves from those to whom something was deposited in their accounts or who owed them money, under great penalties. This provision was very holy and necessary.

**38.** It is against all natural, divine, and human reason<sup>10</sup> that you take from me and others one, five, or ten per thousand of what our debtors or others have deposited for us in your bank or exchange, without doing anything else

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<sup>6</sup> Sotus: *De iustitia et iure*, lib. 7, quaest. 4, art. I [lib. 6, quaest. II, art. I, 590].

<sup>7</sup> Tr. note: In the original: “pragmáticas.”

<sup>8</sup> Pragmática, 127.

<sup>9</sup> Pragmática, 129.

<sup>10</sup> Regula: *Non debet aliquis alterius odio, praegravari*, *De regulis iuris*, li. 6; I quaest. 4 per totam causam [Decreto 2, I, 4]; c. *Si habes*, 24 quaest. 3 [Decreto 2, 24, 3, I].

for us than paying what was deposited in [your bank]. It is not just<sup>11</sup> that we pay for the work you put into taking care of the money from our debtors or from those who deposited with you in our favor or in keeping their accounts. Even if some say there is great effort that deserves the said five per thousand, I do not believe so because it would be unjust unless it is one of the three cases that we will discuss later.

Consequently, not only are the said five per thousand (when cash is paid) not his salary, but they become his theft and unjust extortion, which drive him to hell or restitution and a complete contrition to deliver himself<sup>12</sup> from [these sins], except in three cases. The first is when the payment goes to the same people who deposited and gave their money in cash for the exchange, and they pay thus to get a discount on the work and care that the exchanger has in receiving and taking care of their money and do it for the above-mentioned [persons]. The second is when the depositors sold their merchandise for a higher price that depended on the higher amount they had to pay for receiving the exchange in cash for the discount and discharge of what the depositors owe the exchanger. The third is when, by their own free will, those who receive the payment give it to exchange it [for cash] so that they do not have to wait for the payment eight or ten days until [the payments are due] in order to transfer the payment to the exchanger so that they do not have to leave anything for cashing in, as it has happened to us. Those [who receive the payment and give it to exchange] are very few because [the payment is not theirs yet] even if [the depositors] have left it [in deposit]. Their will to do this is as unnatural as the will of the one who pays usuries to the usurer, which does not excuse from sin or restitution.<sup>13</sup>

**39.** Others say that their salary is 2, 3, or 4 percent, according to whether the money belonging to the lenders is more or less expensive or whether they give in cash to some and to others until the next fair. All of this is usury and

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<sup>11</sup> Argumentum: *C. ne filius pro patre* [Cod. 4, 13], *Ne uxor pro marito* [Cod. 4, 12], per totum.

<sup>12</sup> *C. Peccatum*, de regulis iuris, lib. 6, cum his quae diximus in manuali, c. 17, n. 63 et 64 [p. 207 et 203].

<sup>13</sup> *C. Quia in omnibus*, de usuris [Decretales 5, 19, 3], c. I. Eodem titulo li. 6.

mortal sin, with the obligation of restitution, and cannot be denied in any way.<sup>14</sup>

That is why we say that the salary is what each dealer gives or should give according to each virtuous man's<sup>15</sup> free will in each fair, once the accounting has been finished according to what is given for it until such conclusion, which is something that is not determined. They tell us that some give them one or one and a half per thousand apart from what they get for exchanging coins.

If you say that today (when there are no gold pieces to barter) the second is little or nothing and the first is little to make so many rich, so quickly, and in such a big measure, we will answer that (according to what they say) they have been a great part of the cause. There are no gold pieces in the kingdom, nor are they bartered, because of their having taken the money out by means of much skill and dexterity, although I believe that there has been a greater cause. We also say that the exchanges were not invented to enrich the exchanger but to make deals more useful and easier so that there is more merchandise and it is cheaper, which would be the case if they carried out their job honestly and would content themselves with a just salary. This just salary would be the result of receiving it from those who owe it to them, whose money they hold and whose accounts they keep and not from those who do not owe it to them, remembering what that great King and prophet said:<sup>16</sup> "It is better to gain little with justice, than many riches with sin." Also remembering what the author of the prophets said:<sup>17</sup> "What is the use of gaining the whole world, and losing the soul for it?" and not wanting [against the Psalm's<sup>18</sup> precept] to imitate the evil ones who gained their riches illicitly.

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<sup>14</sup> Per canon I, 14, quaest. 3 [Decreto II, 14, 3, I], et definitionem usuarum ac aliarum quae ibidem posuimus [N. 3, p. 6]; immo est pessimum genus usurarum [ut dicit] Hostiensis in *Summa*, de usuris, s. *An aliquo*, sub finem.

<sup>15</sup> Quoniam eius arbitrio sunt determinanda, quae iure reliquuntur confusa lex I, ff. De iure deliberandi [Digesto 28, 8, I].

<sup>16</sup> Psalmo 36 [16]: *Melius est modicum iusto super divitias peccatorum multas.*

<sup>17</sup> Mathaeus 16 [26]: *Quid prodest homini, si universum mundum lucretur, animae vero suae detrimentum patiatur?*

<sup>18</sup> Psalmo 36 [I], *Noli aemulari in malignantibus*, et cetera.

**40.** Regarding this type of exchange, not only do the exchangers sin and have to pay restitution but also those who give them money to keep and do what we saw earlier and then do not want to pay anything, saying that what [the exchangers] earn with their money and receive from those who pay in cash is enough as salary. Then if the exchangers ask for something, they leave them and go deal with someone else, and so, in order to avoid this, they [the exchangers] decide not to take a salary owed to them but take it from someone who does not owe it to them.

Those who sin, too, are the ones who give the exchangers some money in cash and then if they take it in treasury notes for themselves or for others and not in cash when the accounts are done with, they make [the exchangers] offer the payment for having given to them in cash, which is at least at 2 percent. This profit they cannot take for anything in the world as something owed to them, but for the advantage the exchanger takes or will take from that money that he was paid in cash. Thus it is clear usury because the exchanger who takes money works in order to receive it, store it, keep accounts, and have it ready for when it is needed or deposited, and the one who gave it or gives it does none of these things.

The exchangers commit another kind of usury regarding this matter when they receive money in cash in their hands, bank, or operating table from a merchant and immediately deposit an additional sum of money in another bank for whatever he wants for as long as they keep his money and for as long as [the merchant] leaves with [the exchangers] the revenue that they would have had to pay because of the cash payment. All this, at least in its intentions, is evident usury because the dealer leaves the revenue to the exchangers that he thinks he has earned for the cash payment, so that the exchangers lend him by way of deposit another amount, or a sum until the next fairs, and the exchangers lend it so that they do not [have to] pay that which they owe the depositor. All this is great misfortune and should be grieved for.

## 11 Exchange by Buying, Bartering, or Innominate Contract

### Summary

To exchange by buying, and by bartering or another innominate contract do not differ as far as this purpose is concerned ... **41**

Thus the name is of no importance. It requires two things to be just ... **41**

Differences between the contract specifically provided for by the law<sup>1</sup> and an innominate contract, and similarities as far as this purpose is concerned ... **41**

Substituting this word to include all contracts ... **41**

Dealing with money results in a profit, as when dealing with other things ... **43**

Money is worth more or less for these eight different motives ... **43**

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<sup>1</sup> Tr. note: In the original: “Contrato nominado.”

Fourth of which ... **44**

The fifth ... **45**

The sixth ... **46**

The seventh ... **51**

The eighth ... **62**

How money's value rises and falls with time ... **46**

Not for lending on credit for a longer period of time ... **47**

How and when the same money and price that were lent should  
be returned and subsequent ... **48**

The *ducat* that rises is still the same coin as before, although  
the *hanega*<sup>2</sup> does [change] if they increase it ... **48**

Because price is an extrinsic thing to it, such as to wheat ... **49**

Someone lends if he is to receive another thing in exchange  
with the same intrinsic value ... **50**

**41.** We declare that the same set of scales and measurements should be used to weigh and measure the justice of the exchange by buying as the exchange by bartering, which is another innominate contract. Buying, on the one hand, and bartering—which is an innominate contract<sup>3</sup>—and the other innominate contracts on the other, are different because buying is a contract specifically provided for by the law,<sup>4</sup> while the others are not. Consequently, in everything, contracts that are specifically provided for by the law for having a specific name<sup>5</sup> differ under the law from those that are not and because of

<sup>2</sup> Tr. note: *Hanega* = *Fanega*: Capacity measurement for dry fruits, variable according to Spanish regions.

<sup>3</sup> *Lex Iuris gentium*, cum glossa, ff. de pactis [Digesto 2, 14, 7]; *lex Ex placito*, C. De rerum permutatione cum glossa [Cod. 4, 64, 3].

<sup>4</sup> *Dicta lex Iuris gentium*, in principio [Digesto 2, 14, 7]; *lex Naturalis*, s. *Et siquidem*, ff. De praescriptis verbis [Digesto 19, 5, 5, I].

<sup>5</sup> *Lex I et tribus sequentibus*, ff. de praescriptis verbis [Digesto 19, 5, I-4].

such are called innominate.<sup>6</sup> There is no difference as far as our purpose is concerned, which is to see how it is possible to make a profit in a just way by buying, selling, or bartering money. Regarding this, it is the same to say it is a purchase as to say it is a barter or to say it is a contract where I give so that you give me, or I give or do so that you do, or so that you make someone else give me, or you do.

The contract by which one person gives to another in Medina one hundred for one hundred ten that the other person gives or has someone give him in Flanders; or gives him in Flanders one hundred for having one hundred twenty given to him in Medina, becomes illicit for one or two reasons:

1. the inequality of what is given and what is to be received, and
2. taking more or less for advancing or postponing, or for giving a long or short term [to pay it back].

It is certain that these two things and each one of them make the bartering contract and any other contract specifically provided for by the law, such as the buying one, illicit, and also the opposite to the buying one, as with these others, for what was said above.<sup>7</sup>

**42.** The first conclusion is that there is no need to spend any time nor think any more about which opinion is truer: if the one that says that the next contract [we talk about] is a buying one, which is Caietano's<sup>8</sup> opinion, and also Calderino<sup>9</sup> and Laurencio's,<sup>10</sup> or a bartering one, as Soto<sup>11</sup> says, and before him Calderino and Laurencio,<sup>12</sup> or if it is an innominate contract: I give so

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<sup>6</sup> Quae sunt multa iuxta notata per Bartholum in dicta lege *Naturalis*, s. *sed si facio* [Digesto 19, 5, 5, 4], n. 6, et per omnes in principio dictae legis *Iuris gentium* [Digesto I, I, 1-5], et glossam et alios in dicta lege *Ex placito* [Cod. 4, 64, 3].

<sup>7</sup> *Supra eodem*, nu. 14 et 24 [60 s. et 69].

<sup>8</sup> In tractatu *De cambiis*, cap. 6 et 7 [165 ss.].

<sup>9</sup> Consilium 11, *de usuris* [Rubrica].

<sup>10</sup> 3 parte, quaest. I, c. *Consuluit* [Decretales, 5, 19, 10], de usuris.

<sup>11</sup> Lib. 7, quaest. 5, art. E. [lib. 6, quaest. 12, art. 2, 594], *De iustitia et iure*.

<sup>12</sup> Ubi *supra* [3 parte, quaest. I, c. *Consuluit* = Decretales, 5, 19, 10].

that you give me, et cetera, which could perhaps be considered for what we said earlier<sup>13</sup> about exchange involving bills of exchange, and for other reasons that we could add.

The second conclusion is that in order to satisfy all opinions, we must use the word *commuting*,<sup>14</sup> which is common to all of the above operations and any other contract where one thing passes from one person to another.

The third conclusion is that said exchange (whatever it is called) is licit if it is carried out justly, and not if it is not. It is just when two things happen: One, that for the money commuted, the just value is given; and two, that its value is not lowered for repaying it at a later date, as Caietano<sup>15</sup> noted and, before him and best of all, Sylvestro.<sup>16</sup> These reasons, even if they or others had not noted them down, are proved by the two rules established above.<sup>17</sup>

**43.** The fourth conclusion is that the difficulty is in declaring how a profit can be made by commuting money by giving the just value for it. To which we respond that it may be done as with other merchandise, collecting it through exchange of its just value where or when it is worth less to exchange it where and when it is worth more. Saint Thomas<sup>18</sup> believes, and we have already said above,<sup>19</sup> that money (even insofar as it is money) may be commuted for money in order to gain a profit with it.

The fifth conclusion is that the solution of the aforementioned difficulty depends on knowing how and when a unit of money, which is equal to another according to the common price set by the law or custom at the time of coining it, is worth more or less for whatever reason than another [unit of money].

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<sup>13</sup> Supra eodem, n. 21 et 22, [67 et 68].

<sup>14</sup> Tr. note: In the original: “comutar,” which is commuting in the sense of trading.

<sup>15</sup> In tractatu *De cambiis*, cp. 7 [166 s.].

<sup>16</sup> Verb. *usura* 4, quaest. 9.

<sup>17</sup> Supra eodem, no. 14, et 24 [60 s. et 69].

<sup>18</sup> Lib. 2, *De regimine principum*, cap. 14, quem Antoninus, Caietanus et omnes fere Theologi sequuntur; idem tenet Calderinus, *Consilium* II, de usuris [Rubrica], et Laurentius, in c. *consuluit* [Decretales 5, 19, 10], quaest. I, parte 3, de usuris.

<sup>19</sup> Supra eodem no. 12 et 32 [59 et 73].

There is no way of knowing if the exchange of a certain amount of money for another is just without knowing the value of both, because, as we explained earlier, in order for the exchange to be just, [money] should be bought for what it is worth.

This uncertainty [regarding how and when a unit of money is worth more or less than another] has eight causes:

1. for being of different metals
2. for being of a different carat
3. for being of a different weight and shape
4. for the diversity of the land in which they [circulate]
5. for the disapproval or doubt of disapproval regarding the increase or decrease of one of them
6. for the diversity of time
7. for the lack or need of it
8. for the absence of one and presence of the other

44. Regarding the first cause, which is the difference in metal, sometimes a gold *ducat* is worth more to the one who has it than a silver or metal one because he can keep it better or take it far away; and the other way around, sometimes it is worth more to have a silver or another metal *ducat* than a gold one for the lack of small coinage to spend.<sup>20</sup>

Regarding the second cause, which is when the two coins are not the same carat metal, it happens that out of two *ducats*, which by law are appraised at the same value as the *ducats* from Castile, Portugal, Ungria, and Florence, one may be worth more than another, even if they are both in the same land.

Regarding the third, when they are a different weight and shape, sometimes a *ducat* with the same impression as another is worth more if it has an extra gram and a good shape, while the other lacks another gram or is broken, chipped, or disfigured.

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<sup>20</sup> Quod docet experientia rerum magistra: c. *Quam sit*, de electione, [In Sexto 6, 6].

Regarding the fourth, when they are in different lands, the same coin is worth more in one land than in another, according to Calderino's<sup>21</sup> words. This is because the metal in one land is worth more than in the other, such as gold is worth more in Spain than in the Indies, and more in France than in Spain because the king or one land's custom sets it at a higher price than the king or the custom in the other. This was the case when I studied in Toulouse, France. The king in that land manifestly raised the prices of his sun *ducats*<sup>22</sup> and those of the Spanish *ducats*, and they say he has gone on to raise them even more, with which most everyone agrees.<sup>23</sup>

45. Regarding the fifth cause, when there is disapproval regarding the value's increase, decrease, or doubt of disapproval, we have seen in past years that the *tarjas* worth ten had a lower value for some time than the one they had had before. In other lands, where there are many who mint coins, many times some of them order that the coins of their fellow towns do not circulate in their town. Others lower their price, and just as when after they order that it does not circulate any more it is commuted for much less than before, so when they try to disapprove or lower the value and there is doubt regarding this, if it is done, it is commuted for something less. Just as after it rises, it is worth more, so when it is dealt with and there is doubt, it starts being commuted for something more. As certainly as the price rises for raising the value, and as certainly as it falls because of lowering the value, so when there is doubt regarding one or the other, there is an uncertain<sup>24</sup> increase and decrease. Because commuting money that is worth more or less according to these five

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<sup>21</sup> In consilium II, de usuris [Rubrica], quem sequitur Ioannes ab Annania in praesenti [*De usuris Rubrica*: Decretales 5, 19, 19], n. 46 et sequentibus

<sup>22</sup> French *ducat*.

<sup>23</sup> Conveniunt enim Antoninus, Sylvester, Caietanus, Methina et Sotus, ubi supra lib. 6, quaest. 12, art. 2, 594, et Laurentius de Rodulphis, quaest. I, 3 partis c. *Consuluit* [Decretales 5, 19, 10] de usuris [Rubrica], et Ioannes ab Annania hic [*De usuris Rubrica*: Decretales 5, 19, 19], n. 52.

<sup>24</sup> Argumentum: lex *si iactum retis*, ff. De actionibus empti [Digesto 19, I, 12], et capite praesenti cum ei annotatis.

reasons is exchanging by true transference (which we discussed earlier),<sup>25</sup> I refer to the above.

46. The eighth cause is the diversity of time because of which the value of money may rise or fall. Sometimes one hundred gold *ducats* are worth more and sometimes less. The same is true for one hundred silver *ducats* or one hundred metal *ducats* or one hundred [*units*] in absolute terms than what they would be worth in one year's time. They would be worth more (for what was said earlier),<sup>26</sup> for any of the many reasons that there may be for this; for example, if for taking it from the ground to buy food, go to war, or help friends who go to war there were now a lack of some or all of them and then in a year there were abundance for having sold the fruits and other merchandise from the ground or because the king has sufficiently paid his soldiers and servants, or for other similar causes. They would be worth less if there were now an abundance and, in one year's time, there were scarcity, just as a measure of wheat is not worth as much in August when there is great abundance of it, as in May, when there is scarcity of wheat, or less<sup>27</sup> amount of it.

47. But money is never said to be worth more or less for giving it before or after, or for a longer or shorter period of time, if any of the other eight reasons that make it increase or decrease is not attached to the time factor, according to almost everyone's common opinion.<sup>28</sup>

The conclusion is that in the first place all the exchangers, merchants, and any other who believe it is licit for them to take more than what they lent for having others keep their money for a longer period of time, without making use of it, and taking advantage of it, are wrong. Thus, the exchangers make a mistake when they measure and count the time there is until the next fair, or until the payment day, when they are to be paid, in order to take more or less for the exchange.

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<sup>25</sup> Supra, eodem comentario, no. 31, [72 s].

<sup>26</sup> Supra, eodem no. 43, [80].

<sup>27</sup> C. *In civitate*, supra eodem [Decretales 5, 19, 6] et in hoc capite [Decretales 5, 19, 19].

<sup>28</sup> Saint Thomas, *Secunda secundae* [*Summae*], quaest. 78, art. I, 2, ad 7, et probatur in c. *Ad nostram*, de emptione [Decretales 3, 17, 5].

48. In the second place, the person who lends one hundred pieces of gold to another and then the price of the pieces increases, may licitly ask for the greater value [they have] when he collects than when he lends them. He does not take a profit for the time lapse but for the increase of value—set by the king or by custom as time goes by—of what was owed to him. This is a conclusion that in many parts is taken from Bartolo,<sup>29</sup> who is widely accepted.<sup>30</sup> There is no doubt regarding this, if he intended to keep the money until then, as this chapter proves it,<sup>31</sup> as do Ioan Calderino and, in other parts, Gaspar Calderino<sup>32</sup> and Laurencio Rodulpho<sup>33</sup> and Sylvestro,<sup>34</sup> whom Soto<sup>35</sup> reprimands, without quoting anyone for it, although Francisco Curcio Senior<sup>36</sup> and others make reference to have held this opinion before him. Sylvestro, however, does not deserve a reprimand because he refers to the person who lends the *ducats* that he was going to keep and because Soto's comparison (to our way of thinking) does not resolve [the issue]. Just as the person who lends a measure of wheat of twelve *celemines*<sup>37</sup> should not be repaid later a whole measure of thirteen<sup>38</sup> (even if it is ordered that the measure hold that amount),

<sup>29</sup> In lege *Cum quid*, ff. de rebus creditis [Digesto 12, I, 3], n. 7, et lege *cum aurum*, ff. de auro et argento [Digesto 34, 2, 19], et lege *Paulus*, ss. De solutionibus [Digesto 46, 4, 101], no. 6 et 10.

<sup>30</sup> Per Baldum, Alexandrum, et Iasonem, et fere omnes alios in dicta lege *Cum quid* [Digesto 12, I, 3].

<sup>31</sup> S. *ultimum*, de usuris [Decretales, 5, 19, 19].

<sup>32</sup> In consilium II, *De usuris Rubrica*.

<sup>33</sup> In c. *Censuluit*, eodem titulo, 3 parte, quaest. I [Decretales 5, 19, 10].

<sup>34</sup> Verb. *usura* I, quaest. 14.

<sup>35</sup> Ubi supra lib. 6, quaest. I, art. I, p. 514 et lib. 7, quaest. 5, art. I [lib. 6, quaest. 12 art. I, 592].

<sup>36</sup> In dicta lege *Cum quid* [Digesto 12, I, 4] in tractatu monetae col. 3 fol. 168.

<sup>37</sup> Tr. note: *Celemin*: Measure for dry goods which is equivalent in Castile to 4.625 liters approximately.

<sup>38</sup> C. *Cum canonicus*, ubi glossa [Decretales 3, 39, 6], et notatur in c. *Olim*. [Decretales 3, 39, 30], et in c. *Ex parte*, de censibus [Decretales 3, 39, 18].

so the person who lends a *ducat* worth eleven *reales* should not receive a *ducat* worth twelve if it is ordered that it is worth this amount before.

49. We believe this comparison is not irrefutable, because when the measure of wheat of twelve *celemines* is increased to thirteen, it changes its form and substance and stops being the same measure that it was before. Instead, when the *ducat* increases from eleven *reales* to twelve by order of the prince, it does not change its substance or form nor stops being the same *ducat* it was at the beginning. What changes in it is something extrinsic and accidental, and does not belong to its essence, as Bartolo<sup>39</sup> holds, who is widely accepted.<sup>40</sup>

Because wheat does not stop being the same wheat as it was before, even if its appraisal grows or decreases, the person who borrows a measure of wheat has to give back another measure as good in its essence, even if it is worth more or less as far as price goes, which is something extrinsic to it. The metaphysical argument saying that price corresponds to the essence of the *ducat*, as *ducat* and coin, can be responded to with Bartolo's words, widely accepted: Even as coin, its essence is based more on its natural being than on its artificial one, as we have already stated.

We also say that such a lender may take that additional amount even if he had not intended on keeping the money, if he arranged that he would get back as many pieces and as various as the ones he had lent, whether they were worth more, less, or the same—at least if he did not have a greater certainty that its price would increase than that it would decrease, according to this chapter. This was like an adventure, a wager on what could happen, as everything is possible.<sup>41</sup>

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<sup>39</sup> In lege *Quod te*, n. 7, ff. de rebus creditis [Digesto 12, I, 5].

<sup>40</sup> Ait etiam Molinaeus id servatum his tribus saeculis, in libro *De Commerciis*, n. 696.

<sup>41</sup> Argumentum: lex *Si iactum retis*, ff. De actionibus empti [Digesto 19, I, 12], et huius c [Cod. 4, 33], et lex *Periculi*, ff. De nautico foenore [Digesto 22, 2, 5]. Et quae tradit Molinaeus in libro *De commerciis*, n. 718 et sequentibus.

**50.** We go on to say that according to Bartolo's<sup>42</sup> common and widely accepted opinion,<sup>43</sup> the person who lends one hundred gold *ducats* must receive them in the same quality of gold, without discounting anything from the price even if the value increases and he had not intended on keeping them, nor he expressly plans that they should be given back in such and so many pieces as he has given, whether they increase or decrease. The person who lends something should receive something of equal substance as what was lent, as good as it is (as far as the intrinsic goodness of it).<sup>44</sup> The intrinsic goodness of money does not issue from the price the republic sets on it but from the quality and goodness of the substance it is made of, according to Bartolo's<sup>45</sup> true and accepted opinion.

Even if this accepted opinion could easily be held in all cases, we think it should be applied only in three of them:

- The first, when the person who lent them was going to put them away until the price went up.
- The second, when he expressly ordered such and so many pieces be returned as the ones he gave, whether they increased or decreased the value, assuming the danger of losing, as well as the hope of winning.
- The third, when the money's value increased so quickly, that even the person who borrowed it had not spent them, and was able to spend them and take advantage of them at the increased price.

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<sup>42</sup> In lege *Cum quid*, ff. de rebus creditis, n. 7 [Digesto 12, I, 5], et lege I et Lege *Cum Aurum*, ff. de auro et argento [Digesto 34, 2, 19], et lege *Paulus*, ff. de solutionibus, n. 6 et 10 [Digesto 46, 4, 101].

<sup>43</sup> Per Baldum, Alexandrum, Iasonem et fere omnes alios in dicta lege *Cum quid* [Digesto 12, I, 3], Ioannem Calderinum in c. *Si*, de usuris [Cod. 4, 32, 1], et Laurentium Rodolphum in c. *Consuluit* [Decretales 5, 19, 10] 3 parte, quaest. I, et Panormitanum cum communi in c. *Quanto*, de iure iurando [Decretales 2, 24, 18].

<sup>44</sup> In dicta lege *Cum quid* [Digesto 12, I, 3], et lege *Virum*, ff. de rebus creditis [Digesto 12, I, 22].

<sup>45</sup> In lege *Quod te*, n. 7, ff. de rebus creditis [Digesto 12, I, 5], quod Molinaeus ait servatum his tribus saeculis in libro *De commerciis*, no. 696.

Apart from these three cases, it is sufficient to pay the lender in the same pieces or other similar ones, or in the same metal as the ones he borrowed, and as many as there were at the time of the loan, giving the value they have at the time of the repayment. We hold these truths partly because of what Bartolo and the common<sup>46</sup> opinion holds, partly because of what Carolo Molineo says, and partly because of the great justice that<sup>47</sup> Baldo<sup>48</sup> wrote about, who declares it rightly.<sup>49</sup> We are not allowed any more (not even as much as we have said) because of the brevity that we desire.

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<sup>46</sup> In dicta lege *Cum quid* [Digesto 12, I, 3].

<sup>47</sup> Ubi supra *De commerciis*, quaest. 90, 92a no. 694.

<sup>48</sup> In authentico, *Ad haec*, quaest. 17, De usuris.

<sup>49</sup> No. 707.

## 12 The Value of Money

### Summary

How money increases or decreases its value for the abundance or the lack of it ... **51**

Merchandise increases or decreases its value for abundance or lack thereof ... **51**

Money is merchandise ... **51**

Its increase drags the rest down. The value of each metal rises when there is a shortage of metal in general ... **52, 54, 56**

What [money's] main purpose is, what the others [are] ... **55**

The *ducats* belonging to merchants and to people seem diverse ... **53**

But they are not ... **54, 56**

Money is the price of the rest of things. Something else may be its price ... **55**

How it rises ... **57**

Its value ... **58**

Usury is giving merchant's *ducats* to be paid in other [places]  
... **56**

When it is licit to sell to others for more than what the thing is  
worth ... **58**

The money from the fair does not increase its value for veiled  
or manipulated exchanges ... **59**

*Ducats* and *reales* [are different] in Portugal and in Castile ...  
**60**

*Maravedís* and *cornados* from Castile<sup>1</sup> are equal to *reales* and  
*cetis*<sup>2</sup> from Portugal ... **60**

*Ducats* and wheat that are lent where they are worth more, if  
they are paid are worth less ... **61**

**51.** The twentieth thing that we say regards the seventh motive of why money increases or decreases its value. That happens when there is great lack or need (or an abundance of it). It is worth more where and when there is a great lack of it than where there is a great abundance, as declare Calderino,<sup>3</sup> Laurencio Rodolpho,<sup>4</sup> and Sylvestro,<sup>5</sup> with whom Caietano<sup>6</sup> and Soto<sup>7</sup> agree.

From them follow several opinions:

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<sup>1</sup> Syncopated form of *coronado*. Castilian *vellum* coin, thus called for showing the head of the crowned king. It was equivalent to six *cornados*, one *maravedí* in the fifteenth century.

<sup>2</sup> Copper coin minted by Alfonso V from Portugal (1438–1481), as Lord of Ceuta [Ceita or Capta]. Copper coin belonging to Juan II of Portugal (1419–1490), equivalent to one-sixth of a *real*. It continued until D. Sebastián (1557–1578).

<sup>3</sup> Consilium II, *De usuris* [Rubrica].

<sup>4</sup> In. C. *Consuluit* [Decretales 5, 19, 10], quaest. I, 3 partis.

<sup>5</sup> Verb. *usura* 4, quaest. 5 et 6, vers. *pro notitia*.

<sup>6</sup> In tractatu *De cambiis*, cap. 6 s. *De temporis*, 166.

<sup>7</sup> Lib. 7, quaest. 5, art. 2 et 3, *De iustitia et iure*, [lib. 6, quaest. 12, art. 2 et s, 593 ss.].

In the first place, this is what most of the good and evil men of Christianity think, and thus it seems to be the voice of God and nature.<sup>8</sup>

Second, and very obviously, all merchandise becomes more expensive when there is a great need and small quantity of it.<sup>9</sup> Money, inasmuch as it is a thing that may be sold, bartered, or commuted by means of another contract, is merchandise for what we said above<sup>10</sup> and may also become more expensive when there is great need of it and not very much to satisfy this need.

Third, the rest being the same, in those countries where there is a great lack of money, less money is given for marketable goods, and even for the hands and work of men than where there is an abundance of it. This we can see from experience in France where there is less money than in Spain. Bread, wine, wool, hands, and work cost less. Even in Spain, when there was less money, much less was given for saleable goods, and the hands and work of men, than later when the discoveries of the Indies covered it in silver and gold. The cause for this is that money is worth more where and when there is a lack of it than where and when there is an abundance. That which some say, that the lack of money reduces the price of everything, is born of the fact<sup>11</sup> that its more than sufficient increase makes everything appear much lower, just as a small man next to a very tall man appears smaller than if he were next to his equal.

**52.** Fourth, the lack of gold coins may surely increase their value, so that more silver coins, or coins of another metal, have to be offered for the [gold coins],<sup>12</sup> as we see now that because of the lack of gold coins, some give twenty-two and even twenty-three and twenty-five *reales* for a *doubloon*, which by the kingdom's price and law is not worth more than twenty-two.

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<sup>8</sup> Iuxta illud: vox populi, vox naturae, quae Deus est; iuxta glossam legis I, ff. de iustitia et iure, verb. *natura* [Digesto I, I, I].

<sup>9</sup> C. Legimus, 93 dist. Ibi: *omne rarum pretiorum facit*, cap. *Praesens* [Decreto I, 93, 24, 2]: *omne quod rarum est, plus appetitur. Pulegium apud Indos pipera pretiosius est*, cum ei annotatis.

<sup>10</sup> Supra eodem, num. 12 et 20 [59 et 66 s].

<sup>11</sup> *L*: Et quod aliqui dicunt pecuniae inopiam alia inminuere nascitur.

<sup>12</sup> Laurentius, quaest. I, 3 parte [Decretales 5, 19, 10]. Annanias, hic [Decretales 5, 19, 19], no. 52.

We have even seen in Portugal eleven-and-a-half silver *ducats*, and even twelve offered for one of ten. The shortage of silver coins may increase their value so that more gold coins or metal coins have to be given than before for the silver ones. Even the shortage of small copper coins or other cheap metals may have their value increase so that more gold or silver has to be given than before for them. This we have seen in Portugal where, when there was an abundance of *cetis*, one hundred six *maravedis* in *cetis* were given for one *teston*,<sup>13</sup> which is not worth more than one hundred. Then, when there was a shortage of *cetis*, we gave one *teston* for ninety-four in *cetis*. So, it seems that when money in general is scarce, the price of [the different coins] in general increases.<sup>14</sup>

In the fifth place, there is a law<sup>15</sup> that establishes this because, after saying that the reason why there is arbitrary action<sup>16</sup> in asking in one place for something that must be paid somewhere else is because something is worth more in

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<sup>13</sup> In Portuguese, *tostao*. Silver coins minted since the time of D. Manuel (1495–1521), which weighed 9.96 grams.

<sup>14</sup> Quia regulariter, quod valet species in specie, id valet genus in genere, c. *Quando*, 24 dist. [Decreto I, 24, 5], ut habet glossa, et Imolensis in c. sic sacerdos, de officio iudicis ordinarii [Decretales I, 31, 2].

<sup>15</sup> Lex 4, ff. *de eo, quod certo loco dari oportet*, a nemine in hoc citata [Digesto 13, 4, 3].

<sup>16</sup> R: Cur actio arbitraria alicui detur. Actio arbitraria quae sit non satis iurisconsulti conveniunt. Alii enim sic eam definiunt. Actio arbitraria est, in sua iudicis officium exercetur mercenarium actioni inserviens, propter aliquod extrinsecum praeter naturam actionis, ut cum iudex arbiter procedit contra reum contumacem. Alii sic. Arbitriam actionem Iustinianus disputat, quia ex arbitrio et potestate iudicantis pendet, ut si semel iudex aestimaverit suo arbitrio rem restituendam, aut alio modo satisfaciendum actori, obtemperetque reus, absolvatur, sin contra minime pareat, damnetur. Alii sic. Arbitrariae actiones sunt quaelibet habent, ex eo quod legitimum est, electionem, quae et refertur ad arbitrium iudicis. Haec Petrus Cregor. Lib. 47, cap. 39, n. 3. Qui proprius tamen accedere videtur ad D. Navarrum in lib. 49, cap. N. scribens si tamen constiterit in contractu de loco ubi fides solvenda est, primum ubi reus facienda est conveniri debet, deinde si ibi non inveniatur, ubicumque reperietur arbitraria actione.

one place than in another (mainly if it is bread, wine, or oil), it goes on to say about money the following words: *Pecuniarum quoque, licet videatur una et eadem potestas ubique esse, tamen allis locis facilius, et levioribus usuries invenitur, aliis, difficilius, et gravioribus usuries.*

53. There are many arguments against this opinion, and, because of which, one day we decided it was unreasonable. The first, that no matter how much or how scarce money is, never a *ducat* is worth more or less than eleven *reales* and one *maravedí* here or in Rome, Flanders, or León, as what the pope, the king, or custom has appraised it for. Nor will it be taken for a higher value from the person who sells you something.<sup>17</sup> Also, that in holding this opinion, we must say what some people<sup>18</sup> believe that there are two types of *ducats* and *escudos*: The first is the one used by merchants for their exchanges, which rises or falls according to the abundance or shortage of money. Consequently, many or few want to give or to take in exchange. The other [type] are those *ducats* and *escudos* intended to be spent by the population and even by the merchants themselves in their expenses that are not exchanges, which always have a fixed price. This seems a tenuous belief because the Roman, ecclesiastical, or secular jurisdiction never considered it.<sup>19</sup> Because merchants do not have the power to increase or decrease public money,<sup>20</sup> it sounds like something fleeting—a trap, a veil, and cover of usuries to feign *ducats* or *escudos*—to give them an imagined value so that no one who sells bread, wine, meat, fish, cloth, or any other thing will take them but by way of exchange to pay them back in another fair or place. There does not seem to be a solid reason why, except for lack of money in general, that a greater quantity of

<sup>17</sup> L. neque is a quo aliquid emeris, maioris pretio, sed a lege constituto acciperet.

<sup>18</sup> Silvestre, verb. *usura* 4, quaest. 6, cui concordat Caietanus et Sotus ubi supra *De cambiis*, cap. 5, 165; *De iustitia et iure*, lib. 6 quaest. 12, art. 2, 594 s.

<sup>19</sup> Cuius modi novitates parum probantur, c. *Cum consuetudinis*, de consuetudine [Decretales I, 4, 9], et c. *Quis nesciat*, dist. II [Decreto I, 12, II].

<sup>20</sup> Iuxta mentem Innocentii, et communem in c. *Quanto*, de iureiurando [Decretales 2, 24, 16], et Thomas, lib. 2, de regimine principum, c. 13; tradit Gabriel in *4 librum sententiarum*, dist. 15, quaest. 9, Carolus Molinaeus; *De commerciis*, no. 193.

*ducats* and *escudos* are imagined only for exchanging them without there being another use for spending them. Thus, in exchanging them, a cloud is formed covering the loan that with usury is carried out under it. Also against [the earlier] opinion is the fact that money considered as money seems to be the price of all other merchandise<sup>21</sup> but is not merchandise, and its price is not appraised<sup>22</sup> in each kingdom, and thus, may not increase more than wheat when it is appraised by the republic.

54. Regardless of this and Doctor Medina's<sup>23</sup> contrary opinion (which, at one time, we thought was better), we hold the first opinion because of the new reasons and considerations in favor of it. To the first argument, which seems insoluble, we may respond that even if or when there is a shortage of money in general, a *ducat* should not be worth more *reales* than when there is an abundance of [money], nor the *real* more *quartos*, nor the *quartos*<sup>24</sup> more *maravedis*. All money is worth more because more saleable goods may be found for a fraction of what they were worth before, all else being the same.<sup>25</sup> This is not to say that [the increase in the price of money] is due to the decrease in the other thing's [prices] because [it is] this [decrease] that follows the increase in the [price] of money, as we have considered in the third argument.

To the second argument, which seems insoluble, we may respond by denying that it is necessary in order to defend this [first opinion] to introduce imagined and chimerical *ducats* and *escudos*, which as Plato's ideas, find themselves in specie and genre, and not individually, as the arguments rightly conclude. It is confirmed effectively with the consideration that whoever says

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<sup>21</sup> Lex *si tibi*, ff. De iusoribus [Digesto 46, I, 42]: I. *si ita*, Aristoteles I politicorum, 6 [*Politica* I, 3, o Didot I, 489] Saint Thomas, *De regimine principum*, lib. 2, cap. 13 et 14, et Laurentius, in c. *consuluit* [Decretales 5, 19, 10] 2 parte, quaest. 26.

<sup>22</sup> Iuxta mentem textus Innocentii, et aliorum in c. *Quanto*, de iureiurando [Decretales 2, 24, 18].

<sup>23</sup> In Codice de rebus restituendis, fol. 150 [*An pecunia vendi possit*, fol. 157].

<sup>24</sup> Copper coin, primitively made of vellum, from Castile, worth four *maravedis*, coined from the fifteenth to the nineteenth centuries.

<sup>25</sup> L: quia plures res certo pretio tunc per pecuniam quam ante inveniuntur, si caetera sunt paria.

this must confess that almost as many imaginary *ducats* must be fabricated as places money is given and taken for in the fair. There is almost a different price for each place: one for Flanders, another for Rome, another for León, another for Lisbon, another for Valencia, another for Zaragoza, and so forth. A comical thing, adding to this consideration is that it seems it has not been said enough that the *ducat* or *escudo* are not worth as much in the fair if they are not worth as much for such and such a place. Even those who say this mean that the *ducat* is given for such and such a place for the barter or price that is given for it in one place.

**55.** To the third argument, we answer by denying that money considered as money should always be considered as the price of things, because, even considered as money, it may be commuted by buying, bartering, or with a contract specifically provided for by the law or an innominate contract, as was said above.<sup>26</sup> Although it is true that its main and principal use and end for which it was created was as price and measure of saleable goods,<sup>27</sup> its secondary and less principal use and end, which is that of making a profit with it by dealing money for money, is not to be price but merchandise, just as the principal use and end of shoes is to put them on and wear them, but the secondary one is to make a profit by dealing with them through buying and selling them. As far as the value is concerned, we will respond to it below.<sup>28</sup>

**56.** The following conclusions are derived from the above:

First, that the gold coin, because of the specific shortage of it, may be worth more than it would be worth if there were an abundance of it; and the silver coin, because of the specific shortage of it, as well as the metal one, for its shortage, and all coins in general for their general shortage.

Second, there is no need to feign merchants' imaginary *ducats* or *escudos* that are different from those the population uses. Without them, it is still possible to clearly set a price for a *ducat* or *escudo* for one party and for the other. Moreover, it is more advisable not to feign them so that those who lend and

<sup>26</sup> *Supra eodem*, no. II, 12 et 32 [57, 58 s. et 73].

<sup>27</sup> *Lex Si tibi*, ff. De fideiussoribus [Digesto 46, I, 42: I. *si ita*], et *supra eodem* no. II [57] est dictum et habetur 1 politicorum [*Politica* I, 3, 135 Didot I, 490], et Thomas, lib. 2 *de regimine principum*, cap. 13 et 14.

<sup>28</sup> *Infra eodem*, n. 57 et 58 [88 et 89].

give money unjustly do not have the chance to be repaid at the value they decide to fix, as Saint Doctor Soto<sup>29</sup> tacitly expressed.

Third, the exchange that many carry out is usury, who [according to them] give to some people *ducats* or *escudos* from one fair to the next to be paid at the price that they are worth when they are given, or [at the price that the merchants' ones are worth in the market] when they are to be paid, because there are no such *ducats* nor *escudos* in the world, and because, if they existed, they would be of such diverse values as the cities for where they are exchanged. For some cities, they are exchanged for an equal value, such as many times happens from Medina to Lisbon. For others, at ten or twenty *maravedís*; for others at thirty; and for others at forty and fifty. They even give them sometimes at the price they get for exchanging them in the city where they are worth the most. Moreover, the reason that justifies the commutation of a sum of money that has to be given in a far away city does not justify the commutation of a similar amount that has to be given in the same city, for the reason we will say below.<sup>30</sup> Although it should be confessed that whoever finds someone who takes his money for a true exchange and does not gain a profit with him because of giving it to his neighbor or another close person who much needs it, may in such manner earn with it what he is prevented from earning with the other person, for the reason we said above.<sup>31</sup>

57. Fourth, the value of money may not only increase or decrease inasmuch as it is a piece of metal, but even inasmuch as it is money and price of the rest of things:<sup>32</sup> The majority of the eight motives because of which money increases or decreases are motives that pertain to money as money and price of saleable goods and conclude that inasmuch as it is money and price, it is worth more in one land than in another, and even in one land more at one time than in another.

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<sup>29</sup> Lib. 5 quaest. 5 art. Sub finem [*De iustitia et iure*, lib. 6, quaest. 12, art. I, 595].

<sup>30</sup> *Infra eodem*, n. 65 [95].

<sup>31</sup> *Supra eodem*, n. 26 [70].

<sup>32</sup> L. Sed quatenus pecunia et pretium aliorum est.

Fifth, there is a need to explain that compelling argument that against this is based on the price, whose solution above we reinstate down here. [The argument] is that money is appraised, and things appraised, as wheat is usually, do not increase for a lack of it. Some of the aforementioned<sup>33</sup> respond that even it is appraised inasmuch as it is price. It is not [appraised] inasmuch as it is merchandise. This is not satisfactory; however, for the reasons stated before, it is evident that even inasmuch as it is money and price, it [may] increase or decrease. Sylvestro<sup>34</sup> declares that [money] is appraised inasmuch as it is price of other saleable goods but not inasmuch as it is price of money itself. He does not explain why there is such difference. Others<sup>35</sup> believe that money should never be sold, and thus some would say that there is not a higher price in its commutation. On the one hand, this goes against the common practice,<sup>36</sup> which refers to buying and selling money. On the other hand, it is not convenient to them at all. If they confess that there is barter and that you cannot barter but for what something is worth, that its value increases for its [greater] worth due to its great lack, and that more should be given the more it is worth,<sup>37</sup> they have to forcefully confess that its value increases regardless of its price, and thus have the same need of explaining the argument based on [its price] as have those who say you can buy it.

**58.** Thus, we answer again, conceding that money is appraised for one end and not for another. It is appraised in order to compel the person who sells something or to whom something is owed to take the money for said price so that he cannot be compelled to take it for more. It is not appraised in order that the person who has it cannot take less for it if he so wants to, nor in order that

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<sup>33</sup> E quibus est Caietanus in tractatu *De cambiis*, cap. 6 [165].

<sup>34</sup> Verb. *usura* 4, quaest. 3.

<sup>35</sup> Sotus, lib. 7, quaest. 5, art. 2, *De iustitia et iure* [Lib. 6, quaest. 12 art. 2, pl. 594].

<sup>36</sup> Bartholus, in lege *Paulus* I, ff. de solutionibus [Digesto 46, 3, 101], no. 7 et 10, et Panormitanus in c. *Quanto*, de iureiurando [Decretales 2, 24, 18], num. 13; Thomas, Secunda secundae [Summae], quaest. 78, art. 2 ad 4; Calderinus, in consilium II, de usuris [Rubrica].

<sup>37</sup> Quae omnia praedictus Sotus fatetur in dicto articulo 2 lib. 6, quaest. 12 [594].

he cannot take more if he gains an advantage with this. This solution cannot reassure the consciences of those who commute it for a higher price for the shortage of it without there being an advantage in keeping it, even if the person with whom one is commuting it obtains [an advantage] in getting paid. The seller cannot sell the thing more expensively for the personal gain that this may bring to the buyer, although [he may sell it more expensively] for the benefit he loses in selling it, according to what Saint Thomas<sup>38</sup> and Scoto<sup>39</sup> said. We see every day the dealers whom few times do not obtain a benefit<sup>40</sup> from saving their money when there is great lack of it (even if it means only buying some things at a cheaper price). We see even those who are not dealers commute at present the *doubloons* for twenty-four and twenty-five *reales* when they are actually appraised at twenty-two, for the great lack of them that there is. Though it might be said that they [the *doubloons*] are worth more for the intrinsic value of their gold, which is much higher than that of the *coronas*,<sup>41</sup> we would not be able to say the same of the rest of the other coins, though they increase or decrease every day as Bartolo<sup>42</sup> and Panormitano<sup>43</sup> say, whom no one contradicts. Therefore, it seems safer to respond that money is appraised so that, all else being the same, it is not worth more in one place but not so that when it changes so much that there is great lack and need of that appraised money it cannot be worth more,<sup>44</sup> which seems so to wise and good men, at least in order to commute it for other money, as Sylvestro says.

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<sup>38</sup> *Secunda secundae* [*Summae*], quaest. 77, art. 1, 3.

<sup>39</sup> In 4 [*librum sententiarum*], dist. 15, quaest. 2, 95.

<sup>40</sup> Tr. note: In the original, “comodidad.”

<sup>41</sup> Gold *escudo* piece carved by Carlos I, in 1535, at a ratio of 68 for *marco* and a value of three hundred fifty *maravedís* and a weight of twenty-two carats.

<sup>42</sup> In lege *Paulus*, ff. de solutionibus [Digesto 46, 4, 101].

<sup>43</sup> In c. *Quanto*, num. 13, de iureiurando [Decretales 2, 24, 18].

<sup>44</sup> Argumentum: c. *Ne quis*, 22, quaest. 2 [Decreto 2, 22, 2, 14], et lex *Cum quis*, ff. De solutionibus [Digesto 46, 3, 38], et C. *Quemadmodum*, de iureiurando, cum glossis [Decretales 2, 24, 25].

59. Sixth, it is not unusual that money (even inasmuch as it is money) is worth more in one fair than in another and more in one part of the same fair than in another part. It may be that in one part it is worth less because few people want to take it for true exchange, and many want to give it; and in another part, because of there being many who want to take it for true exchange and few who want to give it, it may be worth more. The price of money increases for great need or lack of it.<sup>45</sup> We say “true exchange” because we believe that the price of money should not be increased when there are a great many people who want to take it for feigned and illicit exchanges, as deception and fraud should not bring profit to the one who commits them.<sup>46</sup> No merchandise becomes more expensive when there are many who want to steal it or illicitly usurp it, although it does [become more expensive] when there are many who want to justly buy it or barter it.<sup>47</sup> As Saint Doctor Soto<sup>48</sup> stated wisely, money should not be more expensive at the fair for a lack of it or for an absence of people who want to give it when this lack is born of the illicit conspiracy of those who have to give it and of the exchangers who openly or covertly decide not to give it until it is more expensive.<sup>49</sup> Money should not be more expensive for their having taken some of them at the beginning of the fair most of [the money] at a cheaper [price] for other places, and then, as they are in possession of most of it, do not want to give it but as they please. In this case, those who are not guilty may give it in good conscience according to its lack, but not those who are guilty<sup>50</sup>—something that happens more often than it should.

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<sup>45</sup> Caietanus in tractatu *De cambiis*, cap. 7, 166, et Sotus, lib. 7, quaest. 5, art. 3, *De iustitia et iure*, [lib. 6, quaest. 12, art. 3, 599].

<sup>46</sup> *C. Ex tenore*, de rescriptis [Decretales I, 3, 16, ] c. *Adversus*, de immunitate ecclesiarum [Decretales 3, 49, 7].

<sup>47</sup> Late Caietanus, secunda secundae summae, quaest. 77, art. I.

<sup>48</sup> Ubi supra [*De iustitia et iure*, lib. 6, quaest. 12, art. 3, 599].

<sup>49</sup> Argumentum: Lex I, *C. de monopolis* [Cod. 4, 59, I].

<sup>50</sup> Quia fraus et dolus nemini prodesse debent, c. *Ex tenore*, de rescriptis [Decretales I, 3, 16]; lex *itaque fullo*, ff. de furtis [Digesto 47, 2, 12].

60. Seventh, it would be [even] less surprising if the *ducat* were worth more in Portugal than in Castile, although there is doubt if it is. First, because the person who in Portugal owes four hundred *reales* may pay them with a *ducat* worth eleven *reales*, and the person who owes and to whom is owed four hundred *maravedís* here cannot pay them here or there with one *ducat*. This means that the *maravedís* from here are worth more than the *reales* from over there, but the *ducat* is worth the same here as there and there as here. In His Majesty's provision to moderate exchanges, whose content we referred to earlier,<sup>51</sup> it is established that three hundred seventy *maravedís* from here are worth four hundred *reales* over there.

We think the opposite is truer, that is, that the *ducat* from here and from there is worth more there than here; also that the *real* from here is worth more there than here because the *ducat* is worth four hundred *reales* from there and the *real* thirty-six, and here the *ducat* is not worth but three hundred seventy-five *maravedís* and the *real* thirty-four. That the *reales* from there and *maravedís* from here are equal is inferred from the fact that as a *real* is worth in Portugal six *cetis*, so the *maravedí* (now in use) is worth six *cornados*, which apparently are equal to the *cetis*, as seems to prove efficiently the Saint Archbishop Don Diego de Leyva y Covarrubias.<sup>52</sup> Today, in the kingdom of Galicia (where there are *cetis* as in Portugal) six [*cetis*] are worth one *maravedí*. In Portugal, too, they are worth one *real*. Also, what the contrary part alleges is not pertinent.<sup>53</sup> We deny that the person who owes in Portugal four

<sup>46</sup> C. *Ex tenore*, de rescriptis [Decretales I, 3, 16, ] c. *Adversus*, de immunitate ecclesiarum [Decretales 3, 49, 7].

<sup>47</sup> Late Caietanus, *secunda secundae summae*, quaest. 77, art. I.

<sup>48</sup> Ubi supra [*De iustitia et iure*, lib. 6, quaest. 12, art. 3, 599].

<sup>49</sup> Argumentum: Lex I, C. *de monopolis* [Cod. 4, 59, I].

<sup>50</sup> Quia fraus et dolus nemini prodesse debent, c. *Ex tenore*, de rescriptis [Decretales I, 3, 16]; lex *itaque fullo*, ff. de furtis [Digesto 47, 2, 12].

<sup>51</sup> Supra eodem, no. 30 [72].

<sup>52</sup> *Lib. Variarum Resolutionum*, cap. 11, n. 4.

<sup>53</sup> Per dictum supra eodem, n. 72.

hundred *reales* does just payment here with one *ducat* if he is not satisfied with it, nor even [that there is just payment] when the one to whom you owe there eleven *reales* receives another eleven that you pay him here. We also deny that the person who owes here four hundred *maravedis* [does just payment] there with four hundred *reales*.

Also, it is possible to respond to the provision to moderate exchanges that such words were included there by accident.<sup>54</sup> If you reply that its determination<sup>55</sup> is based on it, we will say that it is based on someone else's acts and that the opposite<sup>56</sup> may be proved. We believe that even if this is accepted in these kingdoms for their benefit, it will be not be [accepted] in the foreign ones, even if [those kingdoms] belong to Your Majesty, because it will harm them.

**61.** Eighth, it is extremely important that whoever lends in Portugal one hundred *ducats* is able to take for them in Medina more than one hundred for the only reason that they are worth more there than here.<sup>57</sup>

Ninth, whoever lends one hundred *ducats* in Medina should not receive one hundred in Lisbon because they are worth more there than here,<sup>58</sup> and whoever lends may not take more than what he lent.<sup>59</sup>

Tenth, what has been said about Medina and Lisbon in these two last conclusions should also be said of any other two cities where the same currency is worth more in one of them than in the other. Thus, the person who lends one hundred *ducats* in Flanders, Rome, or León (where the *ducats* are worth more than in Castile) should be paid more than one hundred there [i.e., in Castile]. So also the other way around: The person who lends one hundred in Castile should not get paid one hundred in Rome, as Saint Doctor Soto presumes in a

<sup>54</sup> Et ita non probant c. *Si Papa*, de privilegiis lib. 6 [In sexto 5, 7, 10].

<sup>55</sup> Et ita probant clementinae I, de probationibus.

<sup>56</sup> Iuxta glossam dictae clementinae I.

<sup>57</sup> Argumentum bonum in lege 3, s. *Nunc de officio*, ff. de eo, quod certo loco [Digesto 13, 4, 2, 8], et melius in lege 4 eiusdem tituli.

<sup>58</sup> Argumentarum praedictarum legum [Digesto 12, 4, 2 et 4].

<sup>59</sup> C. I, 14, quaest. 2 [Decreto II, 14, 3, I] cum his quae ibi late dicebamus, n. 7, 85.

notable way.<sup>60</sup> Just as it would be usury to lend you a load<sup>61</sup> of wheat in Salamanca (where it is worth two *ducats*) so that you pay it to me in Galizia where it is worth four; so it would be [usury] to lend you here a *ducat* worth three hundred seventy-five *maravedis* so that you pay it back to me somewhere else where it is worth four hundred. Just as [it is injustice] (although it is not usury, but injustice) that for a load of wheat that I lent to you in Galizia where it was worth four *ducats* you pay me with another one here in Salamanca where it is not worth more than two; so it is injustice that for one hundred *ducats* that you lent me in Rome or Lisbon where they are worth four hundred I give you but one hundred in Medina where they are not worth more than three hundred seventy-five.

Eleventh, he who lends a certain quantity of wheat, wine, and oil where it is worth more should get back a greater amount if he is paid where they are worth less, [depending on] how much more it is worth where he lends than where he is being paid.<sup>62</sup> He who lends where something is worth less, should receive a smaller quantity if he is paid where it is worth more, depending on how much more it is worth where he is getting paid than where he lends. Thus, he who lends *ducats* where they are worth more, should receive so much more if he is paid where they are worth less as the greater value of those *ducats* amounts to. So, too, the other way around: He who lends *ducats* where they are worth less, should receive so much less if he is paid where they are worth more as that greater value amounts to.

Twelfth, because of this, it may seem to some that there is no doubt in Saint Doctor Soto's conclusion<sup>63</sup> that he who gives for exchange in Spain a *ducat*, which is not worth but eleven *reales*, so that he gets paid back in Rome another worth twelve or thirteen *carlines*<sup>64</sup>—which are equal to our *reales*, or are worth more than eleven, commits usury because he wants to take more than

<sup>60</sup> Lib. 6, quaest. 5, art. I, *De iustitia et iure* [lib. 6, quaest. 10, art. I, 592].

<sup>61</sup> Tr. note: In the original “carga”: A certain quantity of grain, which in some places has the capacity of four *fanegas* and in others, of three.

<sup>62</sup> Lex 3, s. *Nunc de officio*, ff. De eo quod certo loco [Digesto 13, 4, 2, 8].

<sup>63</sup> Lib. 7, quaest. 3, art. I, *De iustitia et iure*, [lib. 6, quaest. 10, art. I, 587].

<sup>64</sup> A certain silver coin, minted at the time of the Emperor Charles V.

what he gives and gain an extra amount. This conclusion, however, nor the ones that follow from it, cannot be inferred from our deductions. Nor do we believe they are indisputable. They do not infer [from the above] because the said three deductions refer to the one who lends money and to the loan that in Latin is called *Mutuum*, whose very nature is gratuitous. By virtue of it, nothing more than what was loaned should be taken, as we said in another commentary.<sup>65</sup> His conclusion talks about the one who gives in exchange, whose nature is not gratuitous, and that is why it cannot be inferred from them; they both refer to different things.<sup>66</sup> This is not a true doctrine because everyday the opposite is done from Medina to Lisbon and Flanders and from there to Medina, the practice of which is licit whether by way of real purchase or by way of barter or other innominate contracts, as we go on to prove below.<sup>67</sup>

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<sup>65</sup> C. I, 14 quaest. 3 [Decreto II, 14, 3, I, ] num. 3 per illum textum, 7, et c. *Consuluit*, eodem titulo [Decretales 5, 19, 10] et alia multa.

<sup>66</sup> Nam a separatis non fit illatio: lex *Papinianus*, ff. de minoribus [Digesto 4, 4, 20], c. *Sententia*, de sentential excommunicationis, lib. 6 [Sexto 5, II, 16].

<sup>67</sup> Infra eodem comentario, n. 74, 99 s.

## 13 Money That Is Present and Money That Is Absent

### Summary

Why money that is absent is worth less than money that is present ... **62**

The rest being the same ... **63**

The money that is more absent is worth less ... **64**

When the payment will not happen in the same place ... **67**

Jobs have a price even if some do them for free ... **62**

The money from Alexandria is worth less in Genoa for the person in this city, and the [money] from Seville [is worth less] for the person who is in Burgos than the [money] in Burgos ... **64**

Why the money from Flanders that is absent is generally worth more than the [money from Medina] that is present ... **65**

Why to exchange is cheaper from here to Flanders, than from there to here ... **65**

Why it is cheaper from Medina to Lisbon than from there to Medina ... **66**

62. As for the eighth motive explaining why the value of money increases or decreases, which is that of its absence, Sylvestro<sup>1</sup> believes more absolutely than anyone else that only its [absence] lowers its price in the place where it is absent from. Even if some may believe something else, Caietano<sup>2</sup> agrees with us, and before all of them Calderino<sup>3</sup> and Laurencio Rodulpho,<sup>4</sup> and we think it juridical.

On the one hand, all merchandise that is absent and is purchased [to bring to the place] where one is, considered in its entirety, requires by its very nature expenses and work, estimated in monetary terms,<sup>5</sup> to retrieve and bring [it]. Despite the possibility that the merchant may have relatives, friends, or agents to retrieve it in the absent place, without any expense or work on his part, all [these] end up getting paid in one way or another, and for this [the merchant] is indebted to do the same for them, at least under the obligation to make compensation.<sup>6</sup> A job does not stop having a price even if someone does it gratuitously.<sup>7</sup> By justice one cannot take away what has been promised to someone for going from here to Rome by saying that on the way he found someone to pay for his expenses and even to give him money to accompany him.

On the other hand, no one will say that a mule that is in Seville is not worth less for the person who is here than another [mule] that is present of the same quality and price, even if by some accidental case or because of his skill he

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<sup>1</sup> Verb. *usura* 4, quaest. 4.

<sup>2</sup> In tractatu *De cambiis*, cap. 7 [166 s. ].

<sup>3</sup> Consilium II, *De usuris* [Rubrica].

<sup>4</sup> In c. *Consuluit* [Decretales 5, 19, 10], quaest. I partis 3.

<sup>5</sup> Argumentum: c. *Statutum*, s. proferendo, de rescriptis lib. 6 [Sexto I, 3, II] et notata per Baldum, Panormitarum et Felinum in c. I, de testibus.

<sup>6</sup> Tr. note: In the original: “obligación que llaman antidoral.” Lex *Sed etsi*, s. *consuluit*, ff. de petitione haereditatis [Digesto 5, 3, 25, II] et c. *cum in officiis*, de testamentis [Decretales 3, 26, 7].

<sup>7</sup> Non enim ea quae praeter intentionem accidunt, sed natura rei est, in his inspiciendo, argumentum: lex *Si quis nec causam*, ff. de rebus creditis [Digesto 12, I, 4], cum late ibi a Iasone traditis.

may bring it here without expenses or it may cost more over there than here. It is true that if no skill, custom, or provision of merchants were involved in this, much less would money from Flanders be worth here than what it is worth, and it is unfair that their [i.e., the merchants'] activity hurt anyone.<sup>8</sup>

63. Also, Doctor Medina's words<sup>9</sup> saying that the money's absence from the place is not enough on its own to make it worth less are not an impediment. The absence together with the dangers that occur and the expenses incurred to recover the absent money are sufficient cause to make it worth less than the [money] that is present. Because our words follow his, the expenses and work involved are as joined to its absence as we state and prove, even if some [of these expenses and work] accidentally detach themselves from [the absence].

Also, it is not an impediment either that Saint Doctor Soto<sup>10</sup> holds that neither the absence on its own (as Medina says) makes it worth less, nor the dangers and expenses, as they are not present today among merchants. From the logic of his saying, we arrive at our conclusion. He confesses *a contrario sensu* that if they existed, [money] would be worth more, and with the first reasoning we prove they exist, given the nature of the business, and even considering the expenses of the agents and representatives whom the merchant has over there for where they take it.

There is no impediment in his argument stating that if this were true, the money from Flanders in Medina would be worth less than the [money] from Medina itself, which is false, because according to what he says, a *ducat* from Flanders is worth more in Medina for which more than four hundred *maravedís* are given [in Medina], than a *ducat* from Medina itself obtained for three hundred seventy-five. We say, thus, that it is no impediment because we deny what is inferred. We do not mean to say that all absent money is always worth less than the present one, but that it is worth less when all else is the

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<sup>8</sup> Lex *ea*, C. de alluvionibus [Cod. 7, 41, 3]; Panormitanus in cap. *Propter*, sub finem de locato [Decretales 3, 18, 3].

<sup>9</sup> [In] *Codice de rebus restituendis*, tit. De causis in quas solent camposores lucrum augere, fol. 150 [fol. 158].

<sup>10</sup> Lib. 7, quaest. 6, art. 2, *De iustitia et iure* [lib. 6, quaest. 13, art. 2, 607 s.].

same; that is when the [money] that is present is worth the same where it happens to be as the [money] that is absent where it happens to be and not any other way.

A load of wheat in Toro is worth less to the one who is here than another that is present if all else is equal. This is true if both are the same quality, and the one over there is equal in worth to the one that is here, but it is not true if the [load of wheat] in Toro is worth four *ducats* over there and here no more than two and if he could have it brought securely for one. Then it would be worth more, but a little less than the four *ducats*, for being absent. Thus, if the *ducat* from Flanders were not worth more in Flanders than the one from Medina in Medina, [the *ducat*] from Flanders would be worth less in Medina than another [*ducat*] from [this city]. It is worth so much more in Flanders than in Medina that even if for its absence its price might be diminished, it will not be so [diminished] that it still is not worth more than the one from Medina.

**64.** From which follows:

First, Calderino<sup>11</sup> did well in advising that a good purchase was that of one who bought from another in Genoa for one hundred *ducats* one hundred six [*ducats*] from Alexandria in Egypt, because the one hundred present [*ducats*] from Genoa were worth more for the person who was here than one hundred that were absent, in Alexandria.

Second, if the exchanges from one part of the kingdom to another in the same [kingdom] were not, as they say they are, forbidden, one would be able to buy from a Sevillian in Burgos, Medina, or here with one hundred *ducats* more than one hundred [*ducats*] that had to be given in Seville. The *ducat* is worth as much here as there, and no more, and the absence lowers the price of money that is over there.

Third, the farther away the money, the lower its price, and the more dangers and expenses to recover it and pay for its transportation. Thus, more will cost in Salamanca the money that is in Medina than the one in Burgos; and more the [money] in Burgos than the one in Seville, and more the one in Seville than the one in Alexandria, Rome, Flanders, or León. So much more difficult is it to collect and greater the cost of transporting [its nature], the far-

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<sup>11</sup> In consilium II, *de usuris* [Rubrica].

ther it is, and so much easier and lesser the closer it is. We said [its nature] because it may happen accidentally that something that is farther away may be easier to collect, it is important to take notice more of the nature<sup>12</sup> than of the accident of the business.

**65.** Fourth, the absence of money that is in Flanders makes it worth less in Medina to the one who is there and buys it there than it would be worth in Flanders to the person who is there and buys it there. It is frequently not worth so much less that it is not worth more in Medina than the *ducat* from Medina. Even if its absence (all else being the same) makes that which is absent worth less than that which is present, it should not be so much given that the *ducat* is worth more there than in Medina.

Fifth, the reason why the *ducats* from Flanders are frequently worth more in Medina than those same in Medina is that the *ducats* are worth so much more there than here. Even if the absence takes something away from its price, it does not take away so much that it is not always worth much more.

Sixth, the reason why the exchange is cheaper from here to Flanders than from Flanders to here is that one hundred *ducats* from Medina cost less in Flanders than one hundred from Flanders in Medina. The reason for this is that the price of one hundred *ducats* from Medina proposed to be sold in Flanders diminishes for two reasons: one, because of their absence, and two, because the *ducat* is worth less in Medina than in Flanders, and the price of the *ducats* from Flanders proposed to be sold in Medina do not diminish except for one reason: their absence, which even if it makes them worth somewhat less is not so much given that they are worth more over there than here.

**66.** Seventh is the reason why from Medina to Lisbon many times there is a par exchange, that is, as many *ducats* [are exchanged] for as many others: one hundred in Medina for another one hundred given in Lisbon and no more or less. The reason for this is that the price of money from Lisbon proposed to be sold in Medina is lower than in Lisbon for being absent and outside of the kingdom. The reason why never, or very few times, the exchange to Flanders is equal (even if it is absent and outside of the kingdom) is that it is worth more in Flanders than in Lisbon, and even if the absence and being outside of

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<sup>12</sup> C. *De occidendis*, 23, quaest. 5 [Decreto II, 23, 5, 8]; c. *Sacerdos* 50 dist. [Decreto I, 50, 50].

the kingdom are sufficient to equal the money from Lisbon with that of Medina in Medina, not even the absence nor being outside of the kingdom are sufficient to equal the price of the [money] from Medina with that of Flanders.

67. Eighth, the above said does not apply to the exchange carried out in such a way that in one same place the money is given from one person to another and from the other to the first, whether the place where the agreement is to occur is determined for this or another that is farther away or nearer to it. So it only applies when it is agreed in such a way that the money belonging to one is given in one place to another, and in another place [the money] belonging to another [is given] to the other, as Caietano<sup>13</sup> clearly wrote down. This had already been noted down abundantly with no additional help because the reason for expenses, work, and dangers on which the diminishment of the value of absent money is based cannot be applied when in one same place the delivery of both parts is carried out, but in order to pay (when there are many places involved) so much for the money as is paid in the exchange for small coinage, to which we referred above.<sup>14</sup>

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<sup>13</sup> In tractatu *De cambiis*, cap. 7 [166 s.].

<sup>14</sup> *Supra eodem*, n. 31 [72 s.].

## 14 International Credit and Exchange

### Summary

If the exchanges carried out now from Medina to Lisbon are  
licit ... **68**

Only on four conditions ... **76**

Unequal exchanges, purchases, and bartering are illicit  
... **69, 70**

They are carried out with future things ... **75**

Usurious is every commutation in which for reasons of time  
more or less is taken ... **71**

To reprove commonly used exchanges is to condemn many  
good people ... **72**

How they are saved by way of buying ... **73**

By way of barter, not as they say to some people. When the  
thing that is bartered is required ... **74**

If it is licit for the second fair ... **76**

The time from fair to fair is considered as one day ... **75**

- It is regarded with a good and a bad eye ... **75, 76**
- Money that is present is worth more than the absent one, and more where there is lack thereof ... **72**
- Examples ... **73**
- The person who gives money in one place so that it is given back somewhere else ... **77**
- May give it in five ways ... **78**
- What if it is given in Rome for Spain or France ... **79**
- Gregorio Lopez from the Council of Indies is praised ... **79**
- The exchange where the person who does not pay in the first fair is given a term for the next fair is usury ... **80**
- Confessors of exchangers should dissuade these from falsehoods that put them in danger ... **80**

**68.** The twenty-second and last thing we say is that there is doubt among the learned men whether the dealings that are now carried out from Medina to Lisbon, Flanders, León, and other similar cities, and from these to Seville, Medina, and other such [cities], which many survive on (whom I know) without any another [activity], are licit. These [dealings] work in the following way (as I have learned at my expense): One who has money gives it at the end of the May fair in Medina del Campo (which ends at the end of July) for Lisbon, to be paid within a month, sometimes for an equal sum—that is, so many *ducats* for an equal sum, sometimes at 1 percent. Then in Lisbon, he gives it again for the fair of Medina in the month of October for 5 percent, 7 percent, or more for the fair of October. At the end of this [fair] (which is at the end of December), he gives it again for Lisbon and the twentieth of January, sometimes for an equal sum, sometimes at 1 percent or more. Then, at the end of January, he gives it again for the fair of Villalon or of Medina de Rio Seco at 5 or 7 percent. Almost the same thing is done in other fairs of other cities and kingdoms for the [kingdoms] from here or others. Others give (according to Saint Doctor Soto)<sup>1</sup> their money in Medina for Flanders, handing

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<sup>1</sup> Lib. 7, quaest. 5, art. 2, *De iustitia et iure* [lib. 6, quaest. 12, art. 2, 594 ].

over four hundred ten *maravedis* per *ducat* here to receive [over there] three hundred sixty [per *ducat*], and there they give them again for Medina, giving there a *ducat* worth three hundred *maravedis*, to receive here one of three hundred seventy-five.

**69.** Against this deal:

First, it seems impossible to defend by way of buying or selling money because all purchase of something of a higher price for a lower one is illicit, according to Saint Thomas<sup>2</sup> and Scoto,<sup>3</sup> well-known by everyone as we said above.<sup>4</sup> In this deal, one hundred *ducats* from Medina are bought in Lisbon for less than ninety-five and in Flanders for less than ninety.

Second, it seems that inevitably it must be confessed that the purchase you do in Medina for Flanders or Lisbon, or in Lisbon and Flanders for Medina is a [purchase] of things of a greater price for a lower one. If it is a just price [that you pay me] one hundred *ducats* in Medina for one hundred or one hundred one that I should give you in Lisbon in one month, it shall be an unjust price if I give you one hundred seven for the fair of October for only one hundred that you give me in Lisbon. It seems that the one hundred one that I gave in Lisbon were not worth but one hundred of yours in Medina, so your one hundred from Lisbon cannot now be worth one hundred seven of mine in Medina. If you have justly sold to me in past years in Lisbon four hundred *maravedis* from Rome for four hundred seventy-five, unjustly you have bought four hundred [*maravedis*] from Lisbon for four hundred that you give me in Rome. If for four hundred ten that I give you in Medina, you justly sell me three hundred sixty that you have in Flanders, unjustly you sell me in Flanders three hundred that you have there for three hundred seventy-five that I will give you here.

**70.** Third, it cannot be admitted for what Saint Doctor Soto<sup>5</sup> wants to admit for it: by way of pure exchange and barter, considering that a lower sum of money in the land where there is great lack of it is worth more than another

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<sup>2</sup> *Secunda secundae [summae]*, quaest. 77, art. I, receptum ab omnibus.

<sup>3</sup> In 4 [*librum sententiarum*], dist. 15, quaest. 2 [94].

<sup>4</sup> *Supra eodem*, no. 14, 24 et 41 [60s., 69 et 91].

<sup>5</sup> Lib. 7, quaest. 5. art. 2, *De iustitia et iure* [lib. 6, quaest. 12, art.2, 599].

larger sum from a land where there is greater abundance. I say, then, that it cannot be admitted by this way. The mentioned Doctor Soto expressly affirms that one cannot exchange licitly except what something is worth in one land for what something with the same value is worth in another land, and no more. The money that is given in Spain has to be worth as much and no more at the time when it is given as the money that for it will be given in Flanders is worth at that same time—whether it is given in eight days, or in a month, or in four, or in a year. Also, Soto himself says that there is no argument [to explain the fact that] you may licitly take in Spain, by sole way of exchange and barter, four hundred ten *maravedis* for three hundred sixty that you will give me in Flanders, and then over there you give me three hundred for three hundred seventy-five that I will give you here, because the exchange or barter from here to there, or from there to here, is unequal.

71. The fourth argument (against this kind of deal), a well-studied conclusion of Saint Thomas,<sup>6</sup> Scoto,<sup>7</sup> and all of them is that any deal where more is taken for reason of a longer period of waiting and delay is usury. It seems that in this deal more is taken for reasons of time and delay. The person who gives his *ducats* in Medina for Lisbon for a period of one month, gives them on equal terms, or at 1 percent. If he gives them for two months, he takes more; and for three, more. If he gives them in Lisbon for Medina when there are four months left for the fair, he takes more than if there were only three; if there were three, more than if there were not more than two; and if there were two, more than if there were no more than one. The person who gives money in Spain so that he gets paid back in Rome, gets [the money] cheaper if it is meant to be given back in three months than later. For these reasons, we once thought that this deal was not possible.

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<sup>6</sup> *Secunda secundae (summae)*, quaest. 78, art. 2 ad. 7.

<sup>7</sup> In 4 (*librum sententiarum*), dist. 15, quaest. 2, art. 2 (p. 94) dictumque fuit supra eodem, no. 14 et 24 (60 s. et 69), et in commentario c. I, 14, quaest. 3 (Decreto II, 16, 3, I), no. 26 (15 s.), et probatur in c. *Ad nostram*, de emptione (Decretales 5, 17, 3), et in c. *In civitate*, supra eodem (Decretales 3, 17, 5).

**72.** In spite of all of these, we believe that it is licit:

First, because, as Calderino says,<sup>8</sup> it seems absurd to condemn so many good merchants who carry this out, and by [condemning them] to hurt everyone.

Second, without this kind of deal, the deals with foreign kingdoms would disappear, and one's own kingdom would impoverish itself.

Third, the whole basis for this deal is that money that is absent is not worth as much as money that is present, as proved above,<sup>9</sup> nor is it worth as much when there is abundance and a great quantity of it than when there is lack and need of it, as was also proved above.<sup>10</sup> It is possible for the person who has money in Medina to buy or try getting by way of barter and exchange other money that is in Flanders for less than what it is worth over there, and then obtain it there, and buy or try getting by barter and other innominate contracts with it other money that is in Medina for less than what it is worth there and in this way increase his assets. Also, someone who has money or credit in Flanders may buy or try to acquire by barter money in Medina outside of the fair, or at the beginning of [the fair] (if there is an abundance of it) for a cheaper price. Then [he may] buy or exchange it for a higher price at the fair, or at the end of it (if there is a greater lack) as long as he gives the just price for the absent money in present money and for the present [money] in absent money.

**73.** The fourth point is that for this third reason [we may] settle the first two arguments of the opposing part, as from this follows that admitting that there is no just purchase when there is no equality between the price and the merchandise, we should and must deny that, all else being the same, one hundred that are present are not worth more than one hundred that are absent. [And] we must deny that one hundred that are absent cannot be bought for less than one hundred that are present when the money from one place is worth the same as the money in the other place.

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<sup>8</sup> In consilium II, *de usuris* [Rubrica].

<sup>9</sup> *Supra eodem*, no. 62 et sequentibus [92 ss.].

<sup>10</sup> *Supra eodem*, no. 51 [84 s.].

[We must] deny, too, the reason on which the arguments are based: that the just price for one hundred *ducats* from Seville that are absent in Medina are ninety-nine [that are] present, also one hundred *ducats* [that are] present in Seville shall be in Seville the just price of ninety-nine that are absent from Medina because rather ninety-nine that are present in Seville shall be in Seville the just price for one hundred that are absent from Medina.

We said, all else being the same, one amount in its place [of origin] is worth as much as the other in its [place of origin] as is worth the [money] from Seville in Seville and the one from Medina in Medina. If one amount is worth more where it is than the others where they are, it may happen what happens every day: The absent amount is worth more than the present [one], as have commonly been worth in our days more the absent ones from Flanders in Medina than the present ones from Medina in [this city], and many times, the absent ones from Lisbon in Medina than the present ones from Medina in [this city]. This is the reason why we deny that if the price of one hundred *ducats* that are absent from Lisbon are in Medina one hundred present ones, then one hundred present ones in Lisbon shall be there the just price of one hundred absent ones from Medina. This is because the *ducats* from Lisbon are worth more in Lisbon than the [*ducats*] from Medina in Medina, as we said above.<sup>11</sup> That is why the *ducat* from Lisbon that is present is worth more in Lisbon than the absent [*ducat*] from Medina for two reasons: for being present, and for being worth more over there by its very nature. So it is possible that the one hundred that are present in Lisbon are worth much more than the one hundred that are absent in Medina, although the very absence of the ones from Lisbon does not make them worth less in Medina than those of Medina for the compensation of the greatest value that the *ducats* have in Lisbon, as we have stated above.<sup>12</sup>

**74.** The fifth argument justifying this [kind] of deal is that for the said third reason the third argument of the contrary part is also resolved. From it follows that this deal may be admitted also by way of barter and by way of another innominate contract, as in I give so that you give me because from this follows that less money present is just barter, exchange, and equivalent to more

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<sup>11</sup> Supra edoem, no. 60 et sequentibus [90 ss.].

<sup>12</sup> Supra eodem, no. 63 [93].

money [that is] absent,<sup>13</sup> deducing everything much as the [issue] about buying has been worked out. We declare, however, that Saint Doctor Soto's manner of arguing cannot justify the deal that involves [sending] from one part to another, and from the other to another, as every day [people] deal for what we argued in the said fourth argument against his manner of justifying. It assumes three things from which its total destruction is concluded.

First, the barter or exchange of money may not be carried out justly but between the money that already truly belongs to the two [people] who will carry out the exchange. Second, the absent money is not worth less than the present one. Third, from these two follows that the present money may not be bartered nor exchanged for the absent money but giving an amount for the present [one] that is worth where it is as much as the absent [one] is worth where it is.

From these three things follows necessarily a fourth one. If one hundred *ducats* are just barter and exchange in Medina for ninety from Flanders, no more, no less, then, too, ninety from Flanders, no more, no less, shall be just price for one hundred from Medina. From this follows a fifth, that is, that for this kind of deal, nobody may increase his money nor even keep it, except with great danger, expense, and care, which nobody cares about without some kind of profit. Consequently this deal would die off. Those who until now have practiced it would be forced to retribute what they have gained [by carrying it out]. Because we concluded earlier<sup>14</sup> that none of these three said things may be proved by the law—rather, the opposite of them is in accordance with [the law]—we say that this deal, no more, no less, may be admitted by way of exchange, barter, or other innominate contract, as we have said earlier that it could be admitted by way of buying and selling.

**75.** The sixth argument that justifies this deal is that the fourth argument of the contrary party may be retorted by denying that in this deal (when it is carried out as it should be) something is taken for waiting or for a delay. First, between just merchants, the time that there is between payment and payment

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<sup>13</sup> Tr. note: In the original, “presente,” which might be a mistake.

<sup>14</sup> *Supra eodem*, no. 14 [60s.] ubi prima refellitur et aliae duae confutantur a num. 62 [92 ss.].

is considered as if it were one day and the present time in order to send the documents, get the payments ready, and carry them out, as Saint Doctor Soto declared favorably,<sup>15</sup> although he did not give the reason for this, which seems to be the following. By law, some time must be given to carry out these things, and since it is not determined by [law], it had to be determined by the good man's free will or law,<sup>16</sup> and custom has determined it, which becomes law where [law] is absent,<sup>17</sup> and has been induced by will of prudent merchants that it be as we just said, although sometimes less is enough and sometimes more is needed. The same argument [the fourth one] may also be retorted, considering that a different thing is buying or selling something for its just price, even if benign, that must be delivered from today in three months, which is licit. It is licit to sell on credit,<sup>18</sup> and to sell what has to be born yet,<sup>19</sup> and even to barter<sup>20</sup> as has been said above, which is what is done in this kind of deal. A different one is buying it for less than the just price (even if benign) for reason of advancing the money, or selling it for more than the severe just price for giving it on credit, which are illicit, as the argument proves and we declare.

Just as one can justly buy or collect by barter before Christmas the yarn and herbs of the year later for their just price, so one may buy or collect by barter at the fair of Medina the money from Flanders for its just price so that it is paid in the first, and even second, and even third fair, as long as one does not take more than the rigorous just price for getting it back at a later date than what one would take for getting it in the first fairs. We concede, however, that every time that something significant is taken that is more than what is just, for the waiting and delay, the person sins and has the obligation to restitution.

<sup>15</sup> Lib. 7, quaest. 5, art. 2, *De iustitia et iure* [lib. 6, quaest. 12, art. 2, 594].

<sup>16</sup> Argumentum, lex I, ff. de iure deliberandi [Digesto, 28, 8, I], et c. *De causis*, de officio [et potestate iudicis] delegati [Decretales I, 29, 4].

<sup>17</sup> C. *Consuetudo*, I, dist. I [Decreto I, I, 5], lex *De quibus*, ff. de legibus [Digesto I, 3, 32].

<sup>18</sup> *S. venditae*, Institutionum, De rerum divisione [Instit. 2, I, I, 41].

<sup>19</sup> Lex *Nec emptio*, ff. de contrahenda emptione, cum glossa [Digesto 18, I, 8].

<sup>20</sup> *Supra eodem*, no. 14 [60 s.].

**76.** We conclude, thus, that said deal is licit, as long as these provisions are kept:

First, that the exchange not be feigned. That is, that the one who gives the money is willing and has the intention<sup>21</sup> of collecting it there for where it is taken, and he believes with reason that the one who takes it has or will have the money, extending a certificate or warrant to give it back there from where he takes it and [promising] that he will give it there.

Second, that for the absent money as much present money is given as is supposed to be just, and the price is not lowered too much for its absence. All of this should be estimated by the good man's own free will.<sup>22</sup>

Third, no more [money] be taken for reason of a longer period of time until the moment in which the delivery or payments must be handed over than if it were to be delivered immediately where the payment is due.

The fourth derives from this one: that he not sell, barter, or give for more [money] when selling, bartering, or giving it for the second or third fair, than if he gave it for the first. We said [more] because if he decided to give it for the second and even for the third fair for what he would justly take until the payments of the first, then he can rightly do it, and it shall be a deed of charity and friendship; he would not be able to take more because [even if] what is given by way of true exchange or true interest may be given more expensively for two fairs than for one, and more expensively for three than for two, as was said above,<sup>23</sup> [this is not so] with the exchange by buying, bartering, or other innominate contract, which we refer to here.

**77.** From this we understand:

First, there are reasons to be uncertain regarding a case that they asked us about in Lisbon, in which a Castilian who wanted to give there a certain [quantity] of *ducats* to a Portuguese merchant so that they were paid back to him with a certain profit in the first fair of Medina del Campo, which was to be

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<sup>21</sup> Alioquin enim non esset emptio nec permutatio, argumentum: lex *Non omnis*, ff. de rebus creditis [Digesto 3, 12, 19], C. *cum super*, de officio [et potestate indicis] delegati [Decretales I, 19, 23].

<sup>22</sup> Argumentum: Lex I, ff. de iure deliberandi [Digesto 28, 8, I], c. *De causis*, de officio [et potestate indicis] delegati [Decretales I, 29, 4].

<sup>23</sup> *Supra eodem*, no. 34 [74 s.].

held from that day in three or four months, saw great advantage in having the money brought back to him in Castile. On the one hand, it seemed it [was not possible] because there did not seem to be any reason for which he would be able to take [the profit].<sup>24</sup> Rather, it seemed that he had to give it to the merchant, as it suited the Castilian to bring his money from there to here, and the merchant was putting the skill and work of giving it to him here, according to what we said about the justice of exchange by bills of exchange.

On the other hand, there seems to be inequality and injustice in the merchant's giving as much here as he takes over there and, on top of that, giving of his skill and work and giving a profit<sup>25</sup> [to the Castilian]. The merchant did not want to give a profit if he had to give [the money] back soon after in Medina, but rather only if he had to give it from that time to three or four months, enjoying it in that time in between, and consequently was paying [the profit] for the delay in time, which is usury for what was said above<sup>26</sup> and elsewhere,<sup>27</sup> and Caietano<sup>28</sup> seems to agree with this part.

**78.** Some however will be convinced by Saint Doctor Soto to hold the opposite view, saying that if the merchant found it convenient to bring his money from Medina to Lisbon, as the other found it convenient to bring his to Medina, he could well take the profit that is taken for the exchange of bills of exchange. In this case Caietano<sup>29</sup> also holds this, even if he does not argue it. We, however, believe there are five different ways by which the said Castilian may give the said *ducats*, which are four without deliberations regarding a longer or shorter period of time until the next fair, at least as a principal issue, and one with this deliberation.

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<sup>24</sup> Usurpatio autem sine titulo iusto illicita est, c. *Poenale*, 14, quaest. 5 [Decreto II 14, 5, 13].

<sup>25</sup> At omnis contractus, in quo no servatur aequalitas, est illicitus, ut ait Scotus in 4 [*librum sententiarum*], dist. 15, quaest. 2, art. 2 [fol. 94], et Paulo ante no. 23 et 24 est dictum.

<sup>26</sup> Supra eodem comentario, no. 23 [68].

<sup>27</sup> In comentario, C. I, 14, quaest. 3, no. 26 [15 s.].

<sup>28</sup> In tractatu *De cambiis*, cap. Finales [cap. 8, 167 s.].

<sup>29</sup> Ubi supra [*De cambiis*, cap. 8, 167].

The first, without said consideration, is [by way] of loan. The second, by exchange of bills of exchange with which the merchant may transfer his *ducats* over here. The third, by way of his passing to the merchant his [*ducats*] from Medina over there. The fourth, [by way] of buying, bartering, or any other innominate commutation of the merchant's absent *ducats* in Medina for his present ones in Lisbon. The fifth is with principal consideration of the time and deadline until the fair, by any of the said ways, taking from him more or less according to the greater or lesser time that there was until them.

In the first case—wanting to give them by way of loan and with a pact or principal intention of having them paid in Medina—he was a usurer because, by loaning, he wanted to gain a benefit, that is, the obligation of making him pay in Medina with a profit, having lent them in Lisbon—which is a benefit estimated in money.<sup>30</sup> If, instead, he wanted to lend them to him without such pact and intention of making him pay unavoidably in Medina, but there in Lisbon, so much for so much, or in Medina with that profit as a reward for what the money was worth in excess over there than in Medina, he could then licitly take that extra amount if the *ducats* were worth so much more over there than here, for what we said above.<sup>31</sup>

In the second case, if he wanted to give them by way of exchange of bills of exchange so that the merchant transferred his money to Medina, the Castilian was forced to give the other a reward for this, for what we said earlier. This is true even if in the contract it were possible to agree that for his salary he take the excess of what the money was worth over there in relation to here or a part of it, whatever was just, for what we said above.<sup>32</sup>

In the third case, if he wanted to give them by way of transferring the money from here to there, the merchant could take the salary corresponding to what the banker would take justly for transferring them for him.

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<sup>30</sup> Ac per consequentionem, *usura*, c. I, 2 et 3, 14, quaest. 3 [Decreto II, 14, 1-3], ut latius diximus in commentario dicto c. I, no. 5 [8].

<sup>31</sup> Supra eodem, no. 61 [90 s.].

<sup>32</sup> Supra eodem comentario, no. 21 [67].

In the fourth case, if he wanted to give them by way of buying, bartering, or other innominate contract of “I give so you give me,” he would be able to take more for two reasons: because the merchant’s money was absent and thus was worth less, and because the money was worth over there more than the money over here, as we have said above.<sup>33</sup>

In the fifth case, if he wanted to give [the *ducats*] by any one of the ways described above, with principal consideration of the time that remained until the payment, wanting to take more or less according to the longer or shorter period of time there was, we say undoubtedly that this was illicit for him. We have concluded above<sup>34</sup> that not only the contract for lending but all other [contracts] in which more or less is taken for a longer or shorter period until the payment, are formal or virtual usury.

79. The second thing follows that proportionately this distinction should be set apart when someone else wants to give money in Medina, where it is worth less, for Lisbon, or for Flanders, where it is worth more; or in Seville for Medina, where it is worth the same, which to avoid extending ourselves, we shall not explain.

The third thing follows and is what should be said about Saint Antonino’s<sup>35</sup> principle. The usurer is the exchanger or banker who gives someone in Rome one hundred or one thousand *ducats* for his commercial dealings, to be paid from today in six months in Paris with a pact that he pay him there 5 or 8 percent more. This is understood, too, by Sylvestro<sup>36</sup> and both are approved by the most learned academic Gregorio Lopez,<sup>37</sup> who is satisfied with this name, [in spite of] belonging to the Council of the Indies,<sup>38</sup> and deserving, too, that of doctor as is manifest in the great work and erudition with which he has composed the very apt, discreet, and beneficial glosses on all the Seven

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<sup>33</sup> Supra eodem, no. 61 [90 s].

<sup>34</sup> Supra eodem, no. 47 [82].

<sup>35</sup> 2 parte, tit. I, c. 7 s. 50.

<sup>36</sup> Verb. *usura* 4, quaest. 13.

<sup>37</sup> Lex 31, quinta Partita, tit. II [271].

<sup>38</sup> Tr. note: In the original: “Consejo de Indias.”

Certifications<sup>39</sup> that he published and printed last year with great benefit to the republic while he was in this same cell as we are, although not as invisible as us.

And this is what should be said about this [principle]:

First, that it is true because in that contract, according to what it stipulates, 5 or 8 percent is taken for the delay and consideration of the time that there is between the loan and the payment, which is obvious usury.

Second, that such a contract could not be carried out licitly by way of loan to Paris—even if the time and delay were not taken into account—but could [be carried out] to Spain because, as nothing is to be desired for a loan and money is worth more in France than in Rome, it is illicit for two reasons: More is taken due to the place where [the money] is to be paid, and an extra 5 or 8 [percent] are taken. For Spain, it would be possible by not taking those extra 5 or 8 percent, inasmuch as money from here is worth less than money from there to be paid promptly here.

Third, that such a contract may be carried out licitly by way of buying, bartering, or another innominate contract by giving there, considering the time factor, those one hundred present *ducats* for another similar amount and some more absent ones, as long as the said<sup>40</sup> four conditions are kept. He would be able to take more if he gave them for Spain than if he gave them for France because Spain is farther away from Rome than France and, for this reason, less are worth the absent ones from Spain in Rome than the absent ones from France, for what was said above,<sup>41</sup> and also because money is worth less in Spain than in Rome and in France more than in Rome and Spain. This was, according to our way of thinking, what Sylvestro<sup>42</sup> meant when he said that said contract, as it was carried out, was usurious but that it was possible to carry it out properly.

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<sup>39</sup> Tr. note: In the original: “Siete Partidas.”

<sup>40</sup> *Supra eodem comentario*, no. 64 [94].

<sup>41</sup> *Supra eodem*, no. 64 [99].

<sup>42</sup> Verb. *usura* 4, quaest. 13.

**80.** Now follows the last issue: It is not exchange but usury under the name of exchange when those who, once the fair has started and the time of payment has arrived, give the debtors (who do not pay) a delay and more time until the next fair, as long as they pay an amount for the new exchange,<sup>43</sup> as Caietano<sup>44</sup> notes well. It cannot be denied that by way of exchanging for an interest they could take from them [the amount that] for reason of them not paying [when they should] they stop from gaining with true exchanges that they would carry out if they had that money, for what was said above.<sup>45</sup>

This is what, with due correction, we have considered about exchanges with all honesty and without evil deception before God. This is the limit to where they can extend their profit. We have extended it as much as possible in order to justly defend the souls, honor, and fortune of so many important and honorable people. We hope that those who are not included in this deal do not feel any envy toward those who make a living from it, even if [they are] noble. We advise the confessors of those who live from [these kind of deals] to solemnly advise them against feigned exchanges and interests and persuade them that the temptations [that arise from them] make them walk toward Paradise through high and rocky grades from where the tumbles [that come] from the great love and attraction of great profits may easily hurl them down deep ravines of sins and such thick bramble patches of restitutions that late or never will they pick themselves up and get rid of them.

May the one who was crowned with a crown of brambles and thorns raise and rid those who have already fallen in them and those who as many times have fallen in others, and raise us all to the most boundless heights of the heavens for love of his very glorious mother queen of them all, the eighth day of whose most joyful visitation the Catholic Church today celebrates. Amen. *Salmanticae VIII Idus Iulias, Anno a partu eiusdem virginis matris 1556.*

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<sup>43</sup> Tr. note: In the original: “recambio.”

<sup>44</sup> In tractatu *De cambiis*, cap. 7 [166].

<sup>45</sup> *Supra eodem comentario*, no. 34 [74].