

QUESTION 77

Fraud in Buying and Selling

Next we have to consider sins that have to do with voluntary exchanges (*de peccatis quae sunt circa voluntarias commutationes*): first, fraud that is committed in buying and selling (*fraudulentia quae committitur in emptionibus et venditionibus*) (question 77); and, second, usury, which occurs in the case of loans (*usura, quae fit in mutuis*) (question 78). As regards other kinds of voluntary exchanges, there is no species of sin that is distinct from robbery or theft.

On the first topic there are four questions: (1) Concerning unjust selling on the part of the price (*ex parte pretii*), is it licit to sell something for more than it is worth? (2) What about unjust selling on the part of the thing sold (*ex parte rei venditae*)? (3) Is the seller obligated to reveal the defects of an item being sold? (4) Is it licit to sell something through trading for more than it was bought for?

Article 1

Can someone licitly sell an item for more than it is worth?

It seems that someone can licitly sell an item for more than it is worth:

Objection 1: What is just in the exchanges of human life is determined by civil laws. But according to those laws it is licit for the buyer and the seller to deceive one another, and this occurs to the extent that (a) the seller sells an item for more than it is worth and (b) the buyer buys an item for less than it is worth. Therefore, it is licit for someone to sell an item for more than it is worth.

Objection 2: What is common to everyone seems to be natural and not to be a sin. But as Augustine relates in *De Trinitate* 13, the dictum of a certain comedian was accepted by everyone, viz., “You want to buy low and sell high (*vili vultis emere et care vendere*).” This is likewise consonant with what is said in Proverbs 20:14, “‘It’s bad, it’s bad!’, says every buyer; and when he has gone his way, then he boasts.” Therefore, it is licit to sell something for more than it is worth and to buy something for less than it is worth.

Objection 3: It does not seem illicit if something that ought to be done as a demand of moral uprightness (*ex debito honestatis*) is done by mutual agreement (*ex conventionione*) instead. But according to the Philosopher in *Ethics* 8, in a friendship of utility compensation ought to be made in accord with the utility gained by the one who receives the benefit, and this advantage sometimes exceeds the value of the thing handed over—as happens when someone is in great need of a certain thing in order to avoid a danger or in order to take advantage of an opportunity. Therefore, in contracts of buying and selling it is licit to hand something over for a higher price than it is worth.

But contrary to this: Matthew 7:12 says, “Do unto men whatever you want them to do unto you.” But no one wants to be sold a thing for a higher price than it is worth. Therefore, no one should sell a thing to another for a higher price than it is worth (*nullus debet alteri vendere rem carius quam valeat*).

I respond: To resort to fraud in order to sell something for more than a just price is altogether a sin, insofar as one deceives his neighbor to the neighbor’s loss. Hence, in *De Officio* Tully says, “Contracts should be entirely free from mendacity; the seller should not hire a bidder, nor should the buyer hire anyone to bid against him.”

However, if there is no fraud involved, then there are two ways in which we can talk about buying and selling:

(a) We can talk about them *in their own right (secundum se)*. On this score buying and selling seem to have been introduced for the common advantage of both the buyer and the seller, provided that, as is clear from the Philosopher in *Politics* 1, the buyer needs an item that belongs to the seller, and vice versa. Now what has been introduced for their common advantage should not be more of a burden for the one than for the other. And so the contract between them should be set up according to an equality or balance

in the items involved. But the quantity of the items used by men is measured by a given price, and, according to *Ethics 5*, this is why currency (*numisma*) was invented. And so if either (a) the price exceeds the quantity of the item's worth or, conversely, (b) the item exceeds the price, then the balance of justice is destroyed. And so to sell an item for more than it is worth or to buy it for less than it is worth is in its own right (*secundum se*) unjust and illicit.

(b) In a second way, we can talk about buying and selling insofar as they fall incidentally (*per accidens*) to the advantage of the one individual and to the detriment of the other, e.g., when one of them very much needs to have a certain item and the other suffers if he is deprived of it. And in such a case the just price will have to do not only with the item that is being sold, but also with the loss that the seller incurs by selling it. And so the item will be able to be sold licitly for more than it is worth in its own right (*plus quam valeat secundum se*), even though it is not being sold for more than it is worth to the one who now has it. However, if someone is helped a lot by the item that he receives from another, whereas the individual who is selling it does not suffer a loss by being deprived of that item, then he should not sell it for more than it is worth (*non debet eam supervendere*). For in that case the advantage that accrues to the other individual comes not from the seller but from the buyer's own situation instead, and no one should sell to another what does not belong to him, even if he can licitly sell to him a loss that he himself suffers. Still, someone who is helped a lot by the item that he receives from the other can of his own free will give something extra to the seller, and this is a matter of his own moral uprightness (*honestas*).

Reply to objection 1: As was explained above (*ST 1-2*, q. 96, a. 2), human law is given to a people many of whom many are deficient in virtue, and it is not given only to the virtuous. And so human law was unable to prohibit everything that is contrary to virtue. Instead, it is enough for it to prohibit those things that destroy the common life of men, while there are other things that it establishes as licit, not in the sense that it approves of them, but in the sense that it does not punish them.

So, then, the law establishes it as something licit and not incurring a punishment if, without fraud, a seller sells his item for more than it is worth or if a buyer buys an item for less than it is worth—unless the excess is too great, since in such a case even human law forces one to make restitution, e.g., if someone were deceived about the amount of a just price by more than fifty percent (*si aliquis sit deceptus ultra dimidiam iusti pretii quantitatem*).

However, as far as divine law is concerned, nothing contrary to virtue remains unpunished. Hence, according to divine law it is considered illicit if the balance of justice is not observed in buying and selling. And the one who has more [than he should] is obligated to compensate the one who has suffered a loss—if the loss is significant. I add this last point, because the just price of items is sometimes not fixed with precision, but instead involves an estimate, so that a small addition or subtraction does not seem to undermine the balance of justice.

Reply to objection 2: As Augustine says in the same place, “That comedian, either because he saw himself wanting to buy low and sell high, or because he experienced others wanting to buy low and sell high, believed that this was common to everyone. But since it is in reality a vice, each individual is able to acquire the sort of justice by which he resists and conquers it.” And he gives the example of someone who paid a just price for a certain book to someone who, because of his ignorance, was asking for a lower price. Hence, it is clear that the ‘common desire’ in question proceeds from vice rather than from nature. And so this desire is common to the many individuals who are walking along the broad path of vice.

Reply to objection 3: What is mainly considered in commutative justice is the equality or balance of things. By contrast, in a friendship of utility what is mainly considered is the equality of utility, and so compensation should be made according to perceived utility. However, in the case of buying compensation should be made according to the balance or equality of the things.

Article 2

Is a sale rendered unjust and illicit by a defect in the item sold?

It seems that a sale is not rendered unjust and illicit by a defect in the item sold:

Objection 1: Other aspects of an item should be counted as less important than the its substantial species. But the sale of an item does not seem to be rendered illicit because of a defect in the substantial species, e.g., if instead of genuine silver or gold someone sells alchemistic silver or gold, which is suitable for all the human uses for which silver and gold are needed, e.g., for vessels and other things of this sort. Therefore, *a fortiori*, a sale will not be illicit if there are defects in other aspects of an item.

Objection 2: A defect that belongs to an item and that has to do with quantity seems especially contrary to justice, which consists in an equality or balance. But quantity is known by means of a measure, and as is clear from the Philosopher in *Ethics 5*, the measures of the items that come into human use are not fixed determinately, but are greater in some places and less in others. Therefore, it is impossible to avoid defects on the part of an item being sold. And so it seems that a sale is not thereby rendered illicit.

Objection 3: It counts as a defect in an item if it lacks some appropriate quality. But extensive scientific knowledge is required in order to have cognition of an item's quality, and most sellers lack such knowledge. Therefore, a sale is not rendered illicit because of a defect in the item sold.

But contrary to this: In *De Officio* Ambrose says, "It is an obvious rule of justice that a good man should not depart from the truth, or inflict an unjust loss on anyone, or have any of his possessions connected with fraud."

I respond: There are three sorts of defects that can be considered in an item that is sold:

The first sort of defect has to do with the *species* of the item that is sold. And if a seller knows of this defect in an item that he sells, then he is committing fraud, and so the sale is rendered illicit. And it is this that Isaiah 1:22 addresses against certain individuals: "Your silver is turned into dross; your wine is diluted with water." For what has become a mixture (*quod permixtum est*) suffers a defect with respect to its species.

The second sort of defect has to do with *quantity*, which is known through a measuring instrument (*mensura*). And so if in a sale someone knowingly uses a defective instrument of measure, then he commits fraud and the sale is illicit. Hence, Deuteronomy 25:13-14 says, "You shall not have diverse weights in your bag, a greater and a lesser. Neither shall there be in you house a bigger bushel and a smaller." And later (25:16) it adds, "For the Lord abhors whoever does these things, and He loathes every injustice."

The third sort of defect has to do with *quality*, e.g., if one sells a diseased animal as if it were healthy. If someone does this knowingly, then he is committing fraud in the sale, and so the sale is illicit.

And in all such cases, not only does one sin by making an unjust sale, but he is also obligated to make restitution.

However, if, outside his knowledge, one of the aforementioned defects exists in the item sold, then the seller does not sin, since, as is clear from what was said above (q. 59, a. 2), he does something that is unjust *materially*, but his *action* is nonetheless not unjust. Still, once he becomes aware of the defect, he is obligated to compensate the buyer for his loss.

And what has been said about the seller should also be understood to apply on the side of the buyer. For it sometimes happens that the seller believes his own item to be less valuable with respect to its species. For instance, if someone is [unknowingly] selling gold in the place of copper, then if the buyer realizes this, he is buying it unjustly and is obligated to make restitution. And the same line of reasoning holds for defects with respect to quality and quantity.

Reply to objection 1: Gold and silver are valuable not only because of their usefulness for the

vessels that are fashioned from them or because of other things of this sort, but also because of the dignity and purity of their substance. And so if the gold or silver made by alchemists does not have the genuine species of gold and silver, then the sale is fraudulent and unjust. This is so especially because genuine gold and silver have by their natural operation other uses that do not belong to the specious gold produced through alchemy. For instance, gold has the property of giving joy and is medicinally helpful against certain diseases. Again, it can be put into operation more frequently, and genuine gold preserves its purity for a longer time than does specious gold.

However, if the gold made through alchemy were genuine gold, then it would not be illicit to sell it in place of real gold, since, as Augustine points out in *De Trinitate* 3 about things done through the art of the demons, nothing prevents an art from using natural causes to produce effects that are natural and genuine.

Reply to objection 2: The measures assigned to items for sale are bound to be diverse in diverse places because of the differences in the abundance and scarcity of the items. For in places where the items are more abundant, the measures are normally greater. However, in each place it belongs to the leaders of the city to determine what the just measures are for items put up for sale, taking into account the situation with respect to the places and the items. And so one is not permitted to disregard the measures that have been instituted by public authority or by custom.

Reply to objection 3: As Augustine explains in *De Civitate Dei* 11, the value of items for sale is thought of not as relative to the level of their nature—since sometimes a horse is sold for more than a servant—but relative to how men are going to use the item. And so the seller or buyer do not have to know the hidden qualities of the item sold; rather, they have to know only about those qualities by which the item is rendered fit for the uses men put it to, e.g., that a horse is strong and runs well, and similarly for the rest. But a seller or buyer can easily ascertain qualities of this sort.

Article 3

Is a seller obligated to reveal the defects of an item he sells?

It seems that a seller is not obligated to reveal the defects of an item he sells (*venditor non teneatur dicere vitium rei venditae*):

Objection 1: Since the seller is not forcing the buyer to buy, it seems that the buyer takes on the item that he buys by his own judgment. But judgment concerning a thing and knowledge of it belong to the same individual. Therefore, it seems that it should not be imputed to the seller if the buyer is mistaken in his judgment and makes a purchase precipitately, without a diligent examination of the item's condition.

Objection 2: It seems stupid for someone to do something by which his own action is impeded. But if a seller reveals the defects of an item to be sold, then he is impeding his own selling; for in *De Officio* Tully introduces someone who says, "What could be more ridiculous than if, by order of the owner, a public advertiser were to cry out, 'I am offering my infested house for sale!'" Therefore, a seller is not obligated to reveal the defects of an item he sells.

Objection 3: It is more necessary for a man to know the way of virtue than to know the defects of items that are being sold. But a man is not obligated to give advice to everyone and to proclaim to everyone the truth about the things that pertain to virtue, even though he ought not to proclaim falsehoods [about them] to anyone. Therefore, *a fortiori*, a seller is not obligated to reveal the defects of an item being sold, as if he were in effect giving advice to the buyer.

Objection 4: If one were obligated to reveal defects in an item being sold, this would be only in order to lower the price. But sometimes the price would be lowered for some other reason, even without

any defect in the item sold. For instance, if a seller is bringing wheat to market in a place where there is a shortage of grain (*caestia frumenti*), he knows that many sellers might come bringing wheat; and if this were known by the buyers, then they would pay a lower price. However, it seems unnecessary for the seller to reveal this. Therefore, by parity of reasoning, neither is it necessary for him to reveal defects in the item being sold.

But contrary to this: In *De Officiis* Ambrose says, “In the case of contracts, the defects of the items that go up for sale must be stated; and if the seller does not reveal these defects, the contracts are voided because of fraudulent action, even if the items have already passed into the legal possession of the buyer.”

I respond: It is always illicit to expose someone to an occasion for danger or an occasion for suffering a loss, even though it is not necessary that a man always give another individual help or advice that pertains to some sort of well-being on his part. Instead, this is necessary only in determinate cases, e.g., when the other individual is under his care, or when that individual cannot be helped by anyone else.

Now a seller, in proposing an item to be sold, exposes the buyer to an occasion for suffering a loss or an occasion for danger by the very fact that he offers him a defective item, given that the buyer can suffer a loss or some sort of danger because of the item’s defect—(a) a *loss*, that is, if, because of its defectiveness, the item put up for sale has less value, whereas the seller does nothing at all to reduce the price because of the defect; (b) a *danger*, if, say, because of the defect the use of the item is rendered difficult or dangerous, e.g., if one sells someone a lame horse as a fast horse, or a ruined house as a sound house, or rotten or poisonous food as good food. Hence, if defects of this sort are hidden and the seller does not reveal them, then the sale will be illicit and fraudulent, and the seller is obligated to compensate for the loss.

On the other hand, if (a) the defects are manifest—e.g., when a horse is one-eyed—or when others can make use of the item even if the seller is not competent to use it (*cum usus rei, etsi non competat venditori, potest tamen esse conveniens aliis*), and if (b) because of a defect of this sort the seller lowers the price as much as is necessary, then he is not obligated to make a public display of the item’s defects. For in light of such a defect, the buyer might want to lower the price more than it should be lowered. Hence, the seller can licitly take his own indemnity into account by remaining silent about the defects of the item.

Reply to objection 1: A judgment can be made only about what is manifest, since, as *Ethics* 1 says, “Each individual judges what he knows.” Hence, if the defects of an item put up for sale are hidden, then if they are not made manifest by the seller, judgment is not adequately remitted to the buyer.

However, things would be otherwise if the defects were made manifest.

Reply to objection 2: No one has to announce the defects of an item up for sale through a public advertiser ahead of time, since if he were to reveal the defects ahead of time, the buyers might be scared off from buying the item even while they were still ignorant of other characteristics that make it good and useful.

However, the defects should be revealed to each individual, one by one, who comes forward to buy it and who can at the same time compare all the characteristics, good and bad, to one another. For nothing prevents an item from being defective in some aspects and useful in many others.

Reply to objection 3: Even though a man is not obligated, absolutely speaking, to proclaim to every man the truth about what pertains to the virtues, he would nonetheless be obligated to proclaim the truth in a case where, if he did not proclaim the truth, his action would, to the detriment of virtue, pose a danger to another. And so it is in the case under discussion.

Reply to objection 4: An item’s defects make the item less valuable *in the present* than it seems to be, whereas in the example described in the objection the item is expected to be of less value *in the future* because of an impending arrival of merchants that the buyers know nothing about. Hence, a seller who sells his item at the price that he finds does not seem to be acting contrary to justice if he does not

expound upon the future.

However, if he were to expound upon the future or to lower the price, then he would be a man of more abundant virtue—even though he does not seem to be obligated to do this by a demand of justice.

Article 4

Is one permitted, by trading, to sell something for more than he bought it for?

It seems that one is not permitted, by trading (*negotando*), to sell something for more than he bought it for (*non liceat negotando aliquid carius vendere quam emere*):

Objection 1: In *Super Matthaeum* 21:12 Chrysostom says, “He who buys a thing in order that he might sell it whole and unchanged at a profit is the trader who is cast out of God's temple.” And Cassiodorus, commenting on Psalm 70:15 (“Because I have not known learning”—or “trading,” according to another translation), says the same thing: “What is trading except buying low and wanting to sell high?” And he adds, “The Lord casts such traders out of His temple.” But no one is cast out of the temple except because of some sin. Therefore, trading of this sort is a sin.

Objection 2: As seems apparent from what has been said (a. 1), it is contrary to justice for someone to sell an item for more than it is worth or to buy it for less than it is worth. But someone who, in trading, sells an item for more than he bought it for must either buy it for less than it is worth or sell it for more than it is worth. Therefore, this cannot be done without sin.

Objection 3: Jerome says, “As for the clerical trader who has become rich from having been poor and famous from having been unknown, avoid him like a plague.” But trading does not seem to have been forbidden for clerics except because it is a sin. Therefore, it is a sin to buy something low and to sell it high by trading.

But contrary to this: In commenting on Psalm 70:15 (“Because I have not known learning”) Augustine says, “The trader who is greedy to make acquisitions blasphemes over his losses, and he lies and swears falsely about the prices of things. But these are vices of the man and not the art, which can be practiced without these vices.” Therefore, trading is not illicit in its own right.

I respond: It pertains to traders to engage in exchanges of things. Now as the Philosopher points out in *Politics* 1, there are two sorts of exchanges of things:

The first sort of exchange is, as it were, *natural* and *necessary*. More specifically, it is an exchange through which a thing is exchanged for a thing or a thing is exchanged for money—and this for the necessities of life (*propter necessitatem vitae*). This sort of exchange does not properly speaking have to do with traders (*negotatores*) but instead involves economists and politicians, who have to provide the home or the city with the necessities of life.

The second species of exchange is either money for money or any other sort of thing for money, not for the sake of the necessities of life, but instead for the sake of looking for profit (*lucrum*) And it is this sort of exchange that seems to belong properly to traders.

According to the Philosopher, the first sort of exchange is praiseworthy, since it is at the service of natural necessity. By contrast, the second sort of exchange is justly criticized, since, taken in its own right (*quantum est de se*), it is at the service of an excessive desire for profit (*deservit cupiditati lucri*), which knows no bounds and tends toward the infinite. And so trading, considered in itself, has a certain unseemliness (*turpitudinis*), insofar as it does not in its own right imply by its nature an upright and necessary end.

However, even if profit, which is the end of trading, does not by its own nature imply anything upright or necessary, it nonetheless does not imply by its own nature anything vicious or contrary to virtue, either. Hence, nothing prevents profit from being ordered toward some necessary or even upright

end. And if this occurs, then the trading will be rendered licit—for instance, when someone orders moderate profit, which he seeks through trading, toward sustaining his own household or even toward assisting the poor, or, again, when someone (a) undertakes his trading for the sake of the public welfare, so that necessary things will not be lacking in the life of his native land, and (b) seeks the profit not as an end but as the payment for his labor.

Reply to objection 1: Chrysostom's words should be understood to apply to trading insofar as it places its ultimate end in profit, and this seems to happen mainly when someone sells an unaltered item for more. For if he sells for more an item that has been changed for the better, then he seems to be taking payment for his labor—even though profit itself can be licitly intended not as an ultimate end, but, as has been explained, for the sake of some other necessary or upright end.

Reply to objection 2: Not everyone who sells something for more than he bought it for counts as a trader, but only the one who buys the item in order to sell it for more. By contrast, if someone buys an item not in order to sell it, but in order to hold on to it, and if afterwards he wishes to sell it for some reason, then this is not trading, even if he sells it for more. For he can do this licitly, either because (a) he has improved the item in some way, or (b) because its price has changed, given the diversity of place or time, or (c) because of the risk he exposes himself to by transporting the item from one place to another or by arranging for it to be transported. And on this score, neither the buying nor the selling is unjust.

Reply to objection 3: Clerics should abstain not only from what is bad in its own right, but also from what has the appearance of evil. The latter happens in trading, both (a) because clerics should have contempt for what is ordered toward earthly profit, and (b) because of the frequent vices of traders, since, as Ecclesiasticus 26:28 puts it, “It is hard for a trader to be free from sins of the lips.”

There is also another reason, given that trading occupies the mind excessively with worldly cares and consequently draws it away from spiritual cares. Hence, in 2 Timothy 2:4 the Apostle says, “No man who is fighting for God entangles himself in worldly affairs.”

However, clerics are permitted to use exchanges of the first species, which are ordered toward the necessities of life, either by buying or by selling.