Regarding the first issue, I say that natural law does not stipulate individual property ownership, as is clear from the canon, dist. 8 and 22, qu. 1, [ch.] “To the most beloved,” because in the state of innocence there was no such division of property ownership over temporal things, but all had everything in common. Nor is individual property ownership stipulated by divine law, because according to Augustine, dist. 8, ch. 8 and following, the time of innocence knew no divisions of property ownership due to divine law—and even less so due to natural law—and consequently at that time humans lived according to the laws of nature and God: no one assumed individual ownership [over things] but people commonly owned everything. At that time there was no written law or positive law that would definitively assign individual ownership [of things] to specific persons, but all things were owned in common. This was done for two reasons: in order to maintain a peaceful way of life and in order to supply each person with the necessities of life. For in the time of innocence [the preservation of] a peaceful way of life required that each person take according to his or her need what was useful to him or her in order to sustain his or her life, neither more nor less. Nor did anybody assume ownership over anything at that time, because someone else could have been in greater need of that thing than the first person, and consequently if the first person unjustly usurped ownership over that thing, he would have failed to supply the other person with the necessities of life, and consequently would have failed to coexist with her peacefully.

However, after the fall individual property ownership is introduced, so that this property might be called mine and that property yours. This (i.e., that not everything be held in common [among people]) became necessary after the fall for the same two reasons. First, in order to maintain a peaceful way of life among people. Indeed, humans in their sinful state usurp things for themselves not only out of necessity and in order to sustain their lives, but also in order to satisfy their greed. Thus, gathering
abundant riches they oppress others using their power (as was the case with Nimrod, who was a mighty hunter before the Lord and a plunderer of others). As a result, [if individual property ownership were not introduced,] poor people, not being able to resist the [rich and powerful] due to their lack of power, would lack basic sustenance. This [was also done] for the second reason, namely, in order to supply the necessary things of life for everybody. Because things held in common are not well cared for or guarded, but only individual property, therefore it was advantageous to assign individual property rights and give everybody their individual shares by the power of written laws.

53 For this reason Aristotle’s opinion, when he gives individual [property ownership] to states and families in Bk. 2 of the Politics, is superior to that of Socrates who wanted all things to be held in common, because it is more useful to have separate property ownership in the present state of affairs, which the Philosopher determined exists in the world, than to have property ownership wholly common.

54 But on what ground can positive laws about individual property ownership be just after the fall? I say that on the basis of the authority of the legislator. Indeed, not every practical truth about how to conduct one’s affairs is a just law, but a just law is a practical truth that has been promulgated by someone who has authority (hence it is called a ‘law’ [lex], because it ‘binds’ [ligat] those to whom it is addressed). Therefore, in order for a law to be just and justly promulgated, two things are required in the legislator: (1) wisdom or prudence and (2) authority.

55 Now it is clear that [even] after the fall humans could be wise and prudent and could create wise and just laws. However, what is the source of their authority? I reply by saying that every authority [stems from two sources]. The first source is the rule of the father over his children who live together under his authority, both in body and spirit. This type of authority has always been implicit in natural law, from the time of our forefather Abraham up to Moses. This type of authority extended to all the successive generations of children who issued forth from Abraham, wherever

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1 In Latin, the noun lex (‘law’) is a cognate of ligare (‘to bind’).
they might have lived, and up to Moses and the time of the written law, because sons received this type of authority from their fathers. This type of authority stemming from paternal rule was not destroyed by the author of the written law, or of the Mosaic law, but rather strongly confirmed. And that type of law applied to [children] living under one father, both in body and spirit. Hence Abraham, the forefather of nations, decreed that if any foreigner wished to be circumcised, he was to be allowed to worship God, and his sons, and sons of his sons, adhered to that law in this manner up to the time of Moses. And that law was just, right, and natural, and it extended to foreigners only if they freely wished to submit to the precepts of the law. However, due to the abundance of evil in humans [that law] did not last long for bad children, whose thoughts were totally focused on evil.

The other type of authority is not that of the father over his children, but that of an unrelated and diverse people gathered together on some common land or in a city. This type of authority is gained through an election conducted by these unrelated people, and it can be called the authority of a ruler over his subjects. Indeed, at first the people that gathered together in that city or land in large numbers were unrelated and diverse, and no single group was obligated to obey another, because none had any authority over another. At that point, based on a mutual agreement between all of them and for the purpose of establishing a peaceful way of life among them, they could appoint one of them a ruler through an election. Now they could either agree to obey this ruler as his subjects only for as long as he lived, or they could agree to be subject to him and his legitimate successors on certain conditions that they wished to stipulate. This is how various [rulers] rule at present: some only rule for as long as they live, and some [pass on their rule] through succession. Thus the two types of authority that stand behind creating just laws become clear: the father’s authority over his children and the ruler’s authority over his subjects (or in the third way, if [authority comes] from the entire community, and then there are three [types of authority] upholding justice). Hence the ruler who is prudent, or who has prudent advisers, can create just laws in order to maintain public peace, and for this reason every political
system or custom is just if it is instituted in this way, or in a similar way. On this, see the canon, dist. 8, ch. “By which right.”

57 Based on what has been said, it is clear how individual property ownership was justly established after the fall. Now let us assume that the proposition ‘that which does not belong to anybody by right, is ceded to the first occupant’ is based on natural law (which I do not believe, because [I believe that it is based] on positive law), taking ‘natural law’ in a strict sense, insofar as based on this [law] anyone on his own authority could occupy as much territory of a certain kind as he wished. It is clear how [in this situation] both occupation on the ‘first come, first served’ basis and [subsequent] property ownership can be just.

[We can also consider another situation:] suppose this proposition is based on positive law and is promulgated based on the authority of paternal rule, just as Adam first distributed land among his sons when he said: ‘there is land in front of you: each of you go and occupy whatever you like most.’ Or it is [based on positive law and promulgated] based on the authority of an amicable and common agreement between all children that stipulates that one takes one territory and another takes another, just as Abraham and Lot came to an accord after the flood. It is clear that individual ownership can be assigned justly, for ownership can be assigned justly based on two kinds of law: natural law and positive law. [If it is assigned] based on positive law, this law can be created in two ways: based on the authority of paternal rule and based on the authority of the ruler, because just laws can assign property ownership based on either source of authority.

Article 2

58 Regarding the second issue, namely, how ownership can be justly transferred from one person to another, I say that broadly speaking [it can be transferred] in two ways: either by the power of a local ruler or by the power of a higher ruler who justly rules over the local ruler. It is clear that a higher ruler could justly transfer ownership. For if a higher ruler, for example a prince, can create a just law about distributing individual property ownership for the purpose of ensuring a peaceful way of
life, since he retains as much authority after the initial distribution of ownership as he had before, he can justly transfer individual ownership for the same purpose of ensuring a peaceful way of life for his subjects. For if ownership could never be transferred after someone died, another person would have the grounds to file a legal claim for that person’s goods, and then another one, and another one, and everybody; thus there would never be any peace, but continuous litigation, deadly battles and wars, which would ultimately lead to the destruction of peace in a state. Therefore, a law about temporary transfers of ownership for the purpose of maintaining public peace is not unjust.

59 It is this sort of law that regulates prescription and usucaption; the first of these two concerns transfer of the ownership of immovable goods, and the second concerns transfer of the ownership of movable goods. Hence the person who takes possession of a piece of property by virtue of such a law, while all required conditions obtain, becomes a valid and rightful owner of this property, and his children who succeed him as well. As for the required conditions [for this], they are that he be able to give assurance\(^2\) and that he take said possession on the basis of a just claim, as is stated in the Decretal ‘On Prescription and Usucaption,’ and if these conditions obtain, peace will be maintained and the certainty of ownership will be assured; otherwise they will not.

60 Also, not only is this always reasonable on account of that worthy goal, but it is also reasonable from the point of view of the legislator. For he who has maintained silence for so long in ascertaining his right [over a piece of property], to the extent that he had it, has given an occasion for conflict and litigation in his community, so that anybody could claim rights over this property, [and] can be justly punished by the legislator for his negligence, which could lead to damages for the community. And just as [the legislator] can justly fine this person and give the money to the injured community, in the same way he can take the property that this person has neglected and give it over to the community,

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\(^2\) Swear an oath.
or transfer it to someone who enforces law in these matters, and in that way the transfer of ownership can be just.

61 The second type of just transfer can be done by the power of a local ruler who is directly involved (in governing). There are two sorts of this type of transfer: either purely free (i.e., unconditional), or not free (i.e., conditional). A transfer is called free and unconditional when a simple transfer of ownership to someone else takes place without an expectation of anything in return for it. Two conditions must be met at the same time for this free and unconditional transfer or donation to be considered just. The first condition concerns the wishes and consent of a higher ruler, who must not be openly opposed to this donation and it must not go against his wishes—otherwise, this donation will not only be unjust but even null and void, as is clear from the Decretal ‘On Rents, Payments, and Levies,’ [ch.] “Roman,” etc., where one of the Popes decrees that clerics from the bishop’s entourage during visitations should not accept any gifts from the persons they visit, but should give everything back in full. And His Lordship Boniface [VIII] presently in Bk. 6 [of the Decretals], Decretal ‘On Those who Conduct Visitations,’ the same subtitle, orders [them], within a month, ‘to give back double what they have taken,’ under the penalty of being canonically disqualified and suspended for one month, and adds that ‘no indulgence will be valid for them.’ And if the giver wished to remit [that debt] to the taker totally and freely, he could not.

62 This pertains to the case at hand. Therefore, in that and similar cases no member of a lower or subordinate clergy can transfer anything to someone else in a purely free and unconditional way if this transfer goes against the wishes of his superior, either a bishop or the Pope. Nor can a subject of any principality [transfer anything] without the consent and against the wishes of her prince. Nor can a child transfer anything from familial possessions if the head of the family is opposed to it.

63 The second condition for a purely free transfer or donation of property is the willingness on the part of the person to whom this donation is being made (and to whom the ownership of some property is being transferred) to accept this [property]. Indeed, the only way someone becomes the owner of some
property is when this person is willing [to become such], because every ownership is freely chosen. For if the intended owner does not wish to accept this [property], nor does the other person who gives it [wish to keep it], this property is [considered] abandoned, because neither one wants it, and consequently it is ceded to the first person who takes possession of it. Thus, provided that a higher ruler does not object, if the [intended] recipient is willing to accept the property that is being freely donated, a more local ruler can justly transfer the ownership of some property to someone else. And the recipient can justly accept and possess [this property] by the same right by which the giver gives [it], and this type of transfer is called free donation.

64 I say the same thing about unconditional transfers of the use of property while its ownership remains with the [original] owner, which can be called free and unconditional loaning, because the ownership of property remains with the lender. Nor is this sort of transfer of use without [the transfer of] ownership inappropriate or useless (this is clear from the Decretal 'The Sower Came Out'), but meritorious and holy. On this elsewhere.

65 The other type of property ownership transfer is neither free nor unconditional, but one in which [the owner] expects something in return, because it is not simply an alienation of property from the one who transfers ownership. This type is called a bilateral contract because it mutually draws together the wills of two parties. Indeed, in this type each party gives in order to receive, because neither simply gives up his property freely, but in order to receive something else for it. Now bilateral contracts and property exchanges come in many shades. Those contracts are subdivided into buying, selling, and barter. Calling these types of contracts just or unjust depends on the type of contract. This is how one distinguishes between just or unjust transfers of use in all those types of contracts.

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3 This type of transfer was behind the Franciscan concept of *usus pauper* debated at the time.

4 The Latin word for ‘contract’ (*contractus*) is a cognate of *contrahere* (‘draw together’).

5 The second part of this paragraph lacks content and is repetitious in the original Latin.