Further, in order to facilitate exchanges of one thing for another in property ownership transfers, a certain means has been invented, i.e., coins, for without it, transfers of property ownership—for example, of a house, or a field, or some other immovable good—could not be conveniently carried out. A transaction that takes place by means of coins is properly called an ‘economic transfer,' because this means was invented by him, as the Philosopher says in Bk. 2 of Politics, and it is not called ‘barter’ or ‘commercial transfer,’ because barter in the proper sense is an exchange of one property for another, for example, of fabric for wool, of a house for a field, and so forth.

As for the type of transfer that involves coins, on the part of the person who relinquishes her ownership of coins this transaction is properly called ‘buying'; on the part of the person who receives coins and relinquishes his ownership of property it is called ‘selling.' However, when coins are exchanged for coins—something that money-changers and lenders do—this is called currency exchange or lending, which involves lending [money] and returning or repaying loans.

In order that all these types of contractual transactions might be justly carried out, one must ensure that they are carried out without fraud as far as the substance, quality, and quantity [of property] are concerned. As far as the substance [of property] and the fair price for which it is sold are concerned, one must ensure that ‘fool’s gold' is not presented and sold as, or in any way exchanged for, gold, or water for wine. The value equivalence [of exchanged goods] must always be maintained by using fair-
ness, insofar as it is possible to accomplish this without fraud. Also, [one must ensure] that there is no fraud as far as the quality and usefulness of property are concerned. For example, no sour or diluted wine should be sold as [good and] pure, no counterfeit fabric as authentic, and so forth. Also, [one must ensure] that there is no fraud as regards the quantity [of property], but that the measure and weight [of property] are correct, lest an ounce be sold as a pound, or a pint as a gallon.

Now in carrying out all or any of these types of transactions, someone who deceives another is liable to make restitution, because he has unjustly taken someone else’s property, as is explained in the Decretal ‘On Causing Injuries and Damages,’ [ch.] “He who has caused an injury to another,” etc.; see there.

In these types of contracts it is necessary to keep track of the true comparative value of [different] properties on the basis of fairness. For example, a certain thing must be exactly as valuable for the needs and uses of a particular person as the thing that is exchanged for it, and vice versa, each within its own range. However, at all times value equivalence ought to be determined not only naturally, on the basis of the thing itself, but on the basis of sound and fair judgment. [For example,] wine is more noble and better than every non-vinous [liquid] by nature, but not in terms of what is necessary to sustain human life.

This equivalence, or its basis, is determined sometimes by positive law and sometimes by the wishes of those who are parties to the contract, who are entrusted by the law or their ruler to establish this sort of basis for true equivalence using fairness. And this basis [that is established using fairness] does not [determine equivalence] with pinpoint accuracy, as one doctor says (because [according to him] there is a kind of justice that operates merely on the basis of the thing itself, as is shown in Book Three), but instead determines a wide range [of equivalence]: for example, one could use ‘moderation’ as the basis, which is a certain equilibrium between too little and too much. Thus every contract, such as buying, selling, or barter, must be regulated according to the justice that is based on reasoning that dictates—using fairness and [taking into consideration] appropriate circumstances, such as laws, customs, time, and the like—a just price that fits
within the range established on the basis of fairness for this contract between the seller and the buyer. And this basis can be known or learned from laws and customs that are different in different regions.

72 However, in a contract of sale the vendor can justly and legitimately take into consideration the damages that he would incur due to the loss of the property that is going to be sold to another person who needs it. Thus the vendor can justly and legitimately sell this property for more money than [he would] under other circumstances, when the transfer of this property would not be detrimental to him, because in this way he can legitimately get compensation for his damages. For if someone, following the buyer’s excessive persistence and dire need, sells her an ox or a horse, which at that point he direly needs for himself (or certainly will soon need), and whose absence is a great loss to him (although not as great as to the buyer), using fairness, he can legitimately take into consideration not only the value of this property in itself, but also the value that it would have for him if he does not sell it. And in order to avoid any damages, he can add this value to the sale price.3

73 However, if the seller takes into consideration only the needs of the buyer, as well as the benefits that the buyer gains from this property that is sold to her, and for this reason sells her this property for more, he behaves unjustly and defrauds the buyer, because he sells what is not his.4 Indeed, the seller sustains no more damages if he sells something to a person who is in dire need of this thing than if he sells [this thing] to someone who

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3 At this point BL add: “This consideration can excuse usury: because if someone has money or some other property, which he direly needs to use for commerce, and whose lack would be extremely damaging to him for it would impede just profit, and if someone else who needs this money even more asks the first person to loan it to her, the first person, using the concept of fair value, can indemnify himself and receive in return more [than the original value of this money]. Similarly, a creditor who makes a temporary loan of something, for example of fish or meat, to someone else and does not receive back anything immediately for the things that he sold, and of which nevertheless he would have great need in order to conduct and continue his commerce, and their lack would be very damaging [to him], can legitimately sell this property to the other person for more money and thus indemnify himself.”

4 I.e., the profit and efforts of the buyer.
doesn’t need it that much. For the fact that I need this thing makes this thing more valuable neither in itself nor to you who sell it, and for this reason this practice constitutes ultimate fraud. This is clear in the case of usurers, who sell not [their] damages but the other person’s need, as well as time, neither of which belongs to them; and for this reason in such cases one must make due restitution.

74 And the same points that we made about transfers of property ownership—[namely,] what are just and unjust ways of doing this—we must make about transfers of the mere use of property while its ownership stays [with the original owner]. Indeed, the seller of his own property, if he is to sell it for more than it is worth, needs to take into consideration his own potential losses and not the value of this property to the buyer, which he does not own. In the same way, the person who leases or rents out her house, or a horse, or a book to someone else always needs to safeguard herself against damages in surrendering the required use [of her property] to that person, and thus she can accept more [for her property]. However, she absolutely must not take into consideration the profit or benefit that the buyer gains [from this property]. And no contract of this type should go beyond the range established on the basis of fairness as prescribed by the law or custom, [while taking into consideration] all due circumstances that are required to make this contract just.

75 However, contracts and transfers of coins for coins—something that is called borrowing (to which corresponds lending)—must be [based on the procedure that determines equivalence] with pinpoint accuracy on the basis of the thing itself, so that you might return exactly as much as, and not more than you have received. This is discussed in Book Three in the section on usury. As for why in this type of contract [value equivalence must be determined] with pinpoint accuracy, one doctor suggests the following reason for that: the use of money amounts to expending it; therefore the only way to borrow money or conduct monetary transactions is always to return as much as [one borrows] or an equal amount, for [here] the use cannot be leased without [transferring] the ownership, because [in this case] they are inseparable. However, this argument is based on false grounds. For it is
said in the Decretal ‘On the Signification of Words,’ [ch.] “The sower came out to sow his seeds” (which is presently contained in Book Six [of the Decretals]) that the use of property is separable from its ownership, because the use of property is consumed\(^5\) while its ownership remains.

76 For this reason I propose another argument. Money, as far as its natural use is concerned\(^6\) (which is to provide something beautiful to look at and to touch, as well as to decorate something), can be leased, and not lent (because the object of leasing or renting, such as a house or a horse, is not the same as the object of lending). In this case, the ownership of money\(^7\) remains [with the lessor] (just as the ownership of a [leased] house or horse remains [with the lessor]) but its use is temporarily transferred through leasing. However, the difference between the contracts of leasing and lending is that the lender (based on the nature of lending, which is apparent from listening to how the word ‘loan’ \([\text{mutuum}]\) sounds) transfers the ownership of the thing to another person together with its use and makes something mine yours \([\text{meum tuum}]\),\(^8\) or makes his property belong to someone else. Nor is the debtor obligated, according to this type of contract, to return the same individual thing to her creditor—because the creditor has transferred the ownership of that thing to the debtor—but she is only responsible for returning to her creditor the same amount or an equivalent, using fairness as determined by law or by custom. At the same time, someone who leases money\(^9\) to another person to be used in ways that naturally suggest themselves (namely, in order to carry it around to project an image of a rich person, or in order to decorate [something], or for a similar purpose) does not unconditionally give up and transfer its ownership, but merely transfers its use (because this is what ‘leasing’ means), just as neither does a lessor of a house or a horse give up and transfer the ownership [of these pro-

\(^5\) Instead of “consumed,” RV have “given up.”
\(^6\) Money as coins, or as physical objects with certain characteristics.
\(^7\) As coins.
\(^8\) Scotus’s pun based on a false etymology \([\text{mutuum}, \text{a cognate of } \text{mutatio} \text{[lending]}, \text{supposedly derived from } \text{meum tuum}]) \text{cannot be adequately translated into English.}
\(^9\) As coins or physical objects.
Therefore, [in such cases] because the just ownership of a leased thing remains with the [lessor], once the time of the lease is over, the same individual thing must be returned [to the lessor]; thus the same coins—in substance, amount, and quality—must be paid back.

However, in contracts where coins are exchanged for coins it is even more important to determine [value equivalence] with pinpoint accuracy than in other types of contracts, for the following reason. Fields, vineyards and similar properties naturally by themselves bear fruit, and so the lessor [of these properties] is entitled to a share in the profits. Unlike those types of properties, money of itself does not naturally produce fruit—it takes an effort on the part of the person who uses it to accomplish this. Therefore, when a money lender wants something more than the original amount of money from the recipient of the loan, he wants a share of the recipient’s profit, and therefore wants to pocket someone else’s efforts—which do not belong to him, even if the initial agreement specifies this extra amount by making the lending contract usurious. However, [the recipient of the loan], as the nature of lending suggests, is obligated to repay an equal sum of money (although not the same individual coins, because then this would be a lease and not lending), where ‘equal’ means equal in substance, amount, quality, weight, and measure. Furthermore, [the recipient of the loan] is obligated to indemnify the lender, although, as has been said, every agreement aside, the lender cannot justly ask [the recipient of the loan] (and the latter is not obligated) to pay more. Although some exceptions can be made. For example, the creditor could say: ‘unless you repay me by such and such a date or time, when I will need my money to conduct my business, you will repay me so much more, for example, a double, or some smaller or greater percentage.’ [In such a case] it is likely that the lender could have profited by that amount from his money if he had it in hand, and everybody has a right to protect themselves from damages.

I say that in such cases the debtor is obligated to pay back his creditor more based on their agreement, as long as this does not involve the fraud of usury. For no fraud or usury is involved when the creditor by agreement wants to have his money back by
the time that he thinks he will need it most and will be able to make the most profit from it in conducting commerce. (The debtor is also obligated to indemnify the creditor before the tribunal of his conscience, although by law the creditor can ask for something more only if he claims that he has sustained damages.) Nor does the creditor commit the fraud of usury this way. What makes a contract usurious is when the creditor, who stands to profit from such a contract, is more interested in the debtor missing her repayment deadline in order to profit than in receiving his loan back on the agreed date. However, the most evident case of usury is when a lender sells something that is not his, such as someone else’s efforts or a certain duration of time, with the scope of profiting from this and getting back more than he has given out.

Article 3

79 Regarding the third issue—that every other contract or transfer apart from the aforesaid types is unjust at present—I say that in drawing up any contract both parties to the contract want to indemnify themselves as much as possible. Therefore, if one party defrauds the other and fails to preserve due justice, he or she cannot do penance truly or meritoriously. The proof of this is that no one can do penance justly or truly as long as one continues actually to commit mortal sin; however, to persevere in wishing to hold on to something that doesn’t belong to you, as well as [to wish] to possess something that doesn’t belong to you, is a mortal sin; therefore, one cannot do penance for as long as one has this thing in his possession, or for as long as one actually continues to hold on to someone else’s property instead of making satisfaction.

80 This makes it clear when one is obligated to make restitution: always and in all cases. Indeed, the precept about not having anything in your possession that doesn’t belong to you is a negative precept, and consequently restitution is an act that follows a negative precept (and not a positive one, as some say).

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10 L adds here: “except if he or she compensates the other party for his or her damages through restitution.”
Therefore, just as someone is always and in all cases obligated not to have in his possession something that doesn’t belong to him, in the same way one is obligated always and in all cases to give back what is not hers, if she has it in her possession and is capable of doing so. Hence I would never absolve anybody who has someone else’s property in his possession unless he first makes restitution (just as I would never absolve someone who wishes actually to hold on to and plunder someone else’s property), because such a person is committing an act of mortal sin as he thus wishes to receive something that is not his own. Indeed, in virtue of always wishing to receive something that is not his own, this person continually sins against God’s precept against ever unjustly possessing what belongs to someone else; therefore, for as long as someone holds on to someone else’s property—provided he has an opportunity to return it—and fails to make restitution, he commits an act of mortal sin, and consequently cannot do penance meritoriously before he makes restitution. Those who absolve in such cases must be on their guard, because in these circumstances neither the Church nor anybody lower than God can grant a dispensation.

81 However, this restitution is not the same as that satisfaction that is a component of penance as a sacrament, which is proved as follows: satisfaction is the last component of penance that is imposed by a priest after a confession, and it is not always necessary, as has became clear previously, nor is it to be necessarily imposed if other components [of penance], and especially the first one, are present in an intense manner. However, it is always necessary to make restitution: this is not a precept of a priest but of God almighty. Also, one must make restitution, if it is possible, before one goes to confession, because just as the person who goes to confession in a state of mortal sin and actually wishes to remain in this sin is not considered attrite or contrite, but insincere, in the same way the person who goes to confession and wishes to possess and hold on to someone else’s property, instead of making satisfaction, is insincere because he actually remains in a state of mortal sin.

82 However, at times, in certain cases and under certain circumstances one is allowed to defer restitution. Such circumstan-
ces include [inconvenient] time, [potentially] excessive losses to
the person who makes restitution, or [potential] damages to the
person to whom this restitution is to be made. Indeed, if a sword
was unjustly taken from a person prone to madness, and if some-
one returned this sword to this person during the period of his
madness, this would not be satisfaction, because the mad person’s
safety would not be taken into consideration. Similarly, if some-
one secretly pinched someone else’s property, he is not obligated
to return it publicly or in person, because he is not obligated to
destroy his own reputation. [In this case] the thief must return
the stolen property only through a middleman, a reliable and
trustworthy person (e.g., his confessor or some other confidant), of
whom the thief could be assured that this middleman would
return the property to its rightful owner; after that, the thief
would be released [from his obligation]. Therefore, one must al-
ways make restitution: if it is possible [to make one, one must
make] a factual restitution. [One is allowed to make restitution]
in the form of an intention [to make one] only if it can never be
made—because if it cannot be made now but can be made at some
other time, one is not excused from making one on account of her
prior inability.

83 Similarly, if the person who has taken and is holding on
to someone else’s property would sustain massive damages if he
were to make restitution of this property immediately, by a cer-
tain deadline, or at a short notice (for example, if that property,
together with his other goods, were involved in his commercial
operations, and he would stand to lose much of his goods if he
were to return it [immediately]); and if the other person, to whom
this restitution is to be made, would sustain no damages if that
restitution were deferred for a certain time—the debtor can legi-
timately hold on to this property for a certain amount of time.
Indeed, by natural law, everybody would want herself to be able
to do this in a similar situation, and for this reason the person to
whom a restitution is to be made is also presumed to want that—
although not actually, but habitually—because one’s natural in-
clination is to want this for oneself in such a case. However, as
has been said, one must always make restitution, factually or in
the form of an intention, as expeditiously as possible.