Luis de Molina
De iusticia et iure

Disp. 262. A promise differs from an intention [*propositum*], and the two kinds of promise, and, at the same time, of the virtues of truth and fidelity.

Summary

1. Intention [*propositum*] different in effect from promise.
2. On ambiguity, whether [something] is to be considered an intention or a promise.
3. Two kinds [*genera*] of promises, of which one induces an obligation of fulfillment out of moral probity [*honestate*], the other also out of justice.
4. Faith of statements and agreements, constancy and truth, and the foundation of justice.
5. One who does not keep faith in pacts and agreements commits two vices, one injustice, the other infidelity.
6. Faith is a distinct virtue from the virtue of truth.
7. How one sins who, when promising, has in mind not to fulfill.
8. If one does not keep what is promised out of moral probity [alone], one sins only venially, nor can the one who promised be constrained on the part of the public to fulfill, and even much less an intention which was signified by a future verb. Also [the same subject continued] no. 9 and 10.

11 A promise out of moral probity alone, which is strengthened neither by an oath nor by *stipulatio*, nor is in recompense for any thing, [may nevertheless] oblige out of justice.

Next we are to speak about contracts in particular, and they will be ordered [starting] from gift, which is a beneficial [*lucrativus*] contract. But because gift usually begins with promise, and before delivery [of the goods] [*transmissione*] is neither considered perfect, nor classified as a "nominate contract,"

as was explained in disp. 252 and the two following, it will be right to begin from gratuitous promise, including under this that which arises from gratitude. Although, however, the order of origination demands that, before external promise, we consider whether an obligation arises from a internal promise alone, because, nevertheless, it will be more convenient if we first examine, how much force an external promise has towards obligation, before it is accepted, we will discharge the former [*illus praestabimus*] after the former has been examined.

1. This is to be observed first of all, that it is very different to have intended [*habere propositum*], with a firm and deliberate will, to do something somehow to the benefit of someone, and to express this with a verb of future tense, saying "I will do this" or "I will give you this or that," and to bind [*astringere*] oneself, by one's own will, out of one's liberality, to do something somehow, and to express this with a verb of future tense, saying, "I promise that I will do" or "will give you this" or "that I will give you this on such a day" or "that I will do this or that to your benefit." For the first is not a promise properly speaking, nor does it induce any obligation to fulfill it, as is manifest of itself, and is established from the *Decretals* of Gregory IX, title 34, ch. 3, and Doctor Thomas [Aquinas] *ST* 2–2.88.1 — distinguishing an intention [*propositum*] from a vow, that is, from a promise made to God, which is, as it were, somehow prerequisite to a vow —, Navarrus [Martín de Azpilcueta] in *Manual de confesores y penitentes* ch. 12, no. 26, and others generally affirm it. However, the gloss there in [the *Decretals*] wrongly exposits that text, as if the talk there were of a bare pact [*pacto nudo*], whereas the talk is only of a intended entry into a religious [order], which of itself is defined as having induced no obligation, because it does not attain to [the status of] a promise. But the second is a promise, and, if it is accepted, and the remaining circumstances necessary to it, about which we will speak below, are present, it always induces an obligation. 2. When, therefore, words are ambiguous, as to whether they signify an intention [*propositum*] only, or rather a promise, we are to recur to the mind of the pronouncer, [to determine] which they intended to signify. Especially since in this gratuitous [obligation], they are no more obliged than they intended to oblige themselves.

3. This next is to be observed, that among promises there are some which only induce an obligation to fulfill what is promised out of a certain moral probity [*honestas*], not, however, out of justice; some, however, which simultaneously induce an obligation out of justice. That, however, you may

better understand, observe. Just as eating moderately is an exterior act of the moral virtue of temperance, so to pronounce statements [*dicta*] consonant to one's mind is an external act of a moral virtue, whose opposite vice is lying. For right reason prescribes that statements consonant to the mind are to be pronounced, and that the will be bound to command those statements that are not dissonant to the mind. Furthermore, this kind of moral virtue, which resides in the will, is called "truth" by Aristotle, *EN* 2 lect. 7, and by Doctor Thomas, [*ST* 2–2].109, the name of the virtue of the will being taken from the truth of the act commanded by it. From which it happens, that the word "truth" becomes equivocal, being explicated both as a moral virtue and as the truth which is in the act commanded by it, or which must be believed to be in it by the pronouncer, to be the external act of their moral [virtue of] truth. Doctor Thomas, loc. cit., says that the virtue can also be called "veracity." But, just as to pronounce statements consonant to the mind is the act of a moral virtue, so, too, to adequate deeds [*facta*] to the [things] that have been promised, or have been agreed upon [*constitutis*] with someone, is the act of a moral virtue, because right reason, similarly, demands it. 4. The virtue, however, which in this way commands the act of fulfilling pacts and promises, is, by the authority of Cicero, *De officiis* 1, named "faith" [*fides*], and, as he says, it is so called from *fio* and *dico*, as if [to say] that by it that is done [*fiat*] which has been said [*dictum*]. And this seems to be the primary usage of this word among the many which we have explained at the beginning of 2.2 of this work.[1] Tully [i.e., Cicero] there defines it to be "constancy and truth of statements and agreements [*dictorum conventorumque*]." For, indeed, statements and agreements are constant, and are rendered true, when that is done, which has been said and agreed. Tully adds that this faith is the foundation of justice. In which place, observe, he has not said that [faith] is justice itself, but rather that it is the basis and foundation of justice. 5. For the obligation from faith is plainly broader than the obligation from justice. And when justice is overthrown from this, that faith is not kept, and [also] pacts and agreements are not fulfilled, two vices are committed. One, injustice, of its own nature [*ex suo genere*] mortal, insofar as that is not rendered to their neighbor which, supposing a pact or convention, is owed to them out of justice. The other, however, infidelity, of venial kind, as we will say, insofar as, by an improper act [*indecore . . . opere*], a statement and agreement are not fulfilled, but rather made false. To be rejected, therefore,

[1] [I can't find the passage referred to there; I may be misunderstanding the citation.]

is the opinion brought by Cajetan, [in his commentary] under *ST* 2–2.113.1, that when someone who has contracted is bound by justice to that which has been promised and agreed, justice is itself the virtue of faith, by which statements and agreements are stood by, but that the formal *ratio* of the virtue of faith only exists when someone is bound only by moral probity, in the way explained. About the [virtue of] infidelity I have explained is to be understood that of Ecclesiastes (5:3), "If you have vowed something to God, do not delay in rendering, for an unfaithful" (that is, that is not fulfilled with the deed [*opere*]) "and foolish promise is displeasing to God."[2]

6. Cajetan [again] under *ST* 2–2.113.1 is in doubt, whether the virtue of faith that we have explained is a distinct species from the moral virtue of truth, or veracity, which we have also explained. And he esteems that it is of the same species: because, he says, it seems that is is by the same character trait [*eiusdem moris*] that a human being speaks the truth, and [by which they] make what is said or promised or agreed true by fulfilling it with the deed. I think, however, that they are virtues distinct in species. For one thing [*tum*], because it is of one *ratio* to speak the truth, to which one is bound in all assertions, promises, and conventions, when they are pronounced, and of another [*ratio*] to fulfill with the deed what has been promised and agreed with one's neighbor: but moral virtues are distinguished in species by their objects. For another thing [*tum etiam*], because the obligations from these two virtues that we have explained are different kinds [*alterius*], and of different *ratio*'s [*alterius rationis*]. For the obligation from the virtue of faith to fulfill a promise, and to render true a statement or convention, is with reference [*per comparationem*] to them, to whom something is promised, or with whom a convention is made, because of which, if that one remits it, the promisor is not bound to render true the promise or convention; but the obligation to speak the truth, that is, to pronounce according to that which is in the mind, as much in assertions as in promises and conventions, cannot be removed by them with whom we speak. 7. For if, when someone promises, they have in mind not to fulfill, they sin doubly. First, because they lie, saying the contrary, and have [the contrary] in mind, which is common as much to false assertions as to false promises. Then [also], however, because they have the intention [*propositum*] of not fulfilling, in the future, as they are bound to from the virtue of faith as such, the promise itself, which they had in mind to promise, notwithstanding their concurrent intention [*proposito conjuncto*]

[2] [Following the Vulgate text.]

not to fulfill it. Our opinion [*sententia*] is confirmed because one who, only intending to give Peter one hundred, asserts that he will give them to him, is indeed bound to speak the truth, that is, to have then in mind to give them, though they are not bound afterwards to make their statement true, fulfilling the intention: because from an intention alone there does not arise [*non nascitur*] that distinct, and of different *ratio*, obligation with reference to another, which results from a promise.

8. When someone only promises and intends [*intendit*] to oblige themselves out of moral and political probity [*honestate*], in the way explained, which is what happens for the most part, infidelity, or violation of a promise without any rational cause, is not of its own nature a mortal, but a venial fault, as Cajetan well affirms [again] under *ST* 2–2.113.1. Nor may the promisor be compelled by public power to implement what they have promised, as the same Cajetan rightly adds (ibid.). Much less, however, is one bound to fulfill who only signified any intention to fulfill, which they do by a future verb, in the way explained above. And for this reason, Cajetan with merit asserts, on *ST* 2–2.88.1, that the simple promises of people [*hominum*] are not esteemed enough today, according to this [quote from Ovid], "Anyone can be rich in promises" [*Ars amatoria*, 1.444].

9. Observe, though, that if someone were to confirm with an oath a promise which, of itself, obliges only through moral probity [*honestate*], then the one to whom it is made obtains a true right that it be fulfilled to them, and is granted due to that promise a civil action, not only by canon law, but even by civil law, according to what is said in disp. 150, and what will be said at the end of the following disputation.

10. It has been said that a promise out of moral probity [*honestate*] alone does not oblige, from its own nature, under mortal fault: because such a lie, of its own nature, is only a venial fault; and, however, if it be pernicious to one's neighbor, it is a mortal fault, when the loss it inflicts is not light: thus even the infidelity of which we are speaking, if it is notably pernicious to the one to whom something is promised, will be mortal fault, though the one who promised did not intend to obligate themselves out of justice. For just as one who would promise that they were bringing relief to another in war, and because of that [that other] would not take care of their affairs in some other way, [the promise maker] would sin mortally, if, when promising, they lied, not intending to help that one, and that because that lie would be pernicious, so, too, if, after having made the same promise having in mind to fulfill it, by their fault they did not hold to the promise, they would sin

mortally, in that, similarly, that infidelity would be very pernicious to the one to whom such a promise had been made. And again, say, if a physician or a lawyer were to promise their work to someone whose life or goods would be in peril if [the physician or lawyer] did not aid them, and [in the case] of one to whom some secret of great moment were to be committed, having accepted the trust [*fide*] not to reveal it: all of which examples are Cajetan's, q. 113, loc. cit.

Lastly, observe this about a promise, by which someone intends [*intendit*] to oblige themselves only out of political and moral probity [*honestate*], that since the obligation resulting from it both is [an obligation] to another, and yet is not out of justice, but only out of moral probity [*honestate*], it follows that the virtue of faith, by which someone is bound due to this promise, both is a virtue connected [*annexa*] to justice, insofar as it is [an obligation] to another, and yet, nevertheless, fails [*deficiat*] of the perfect *ratio* of justice, insofar as what is owed due to it is owed only out of moral probity [*honestate*].

11. Cajetan on q. 88 a. 1 and a. 3 ad 1 and on q. 113 a. 1, in which he speaks of simple promises, that is, [promises] which are strengthened neither by by an oath nor by *stipulatio*, nor are in recompense for some other thing, appears to teach that there is no simple promise that obliges out of justice: whence he says absolutely that [such a promise] obliges solely out of moral probity [*honestate*] and under venial fault out of its own nature. But [Domingo de] Soto, against this, *De iustitia et iure* 7 q. 2 a. 1 ad 1, asserts against Cajetan without distinction that a simple promise obliges out of justice, and that, for that reason, it is, out of its own nature, a mortal fault not to fulfill it. We, however, advance by a middle way. For we think it is false that all simple promises oblige out of justice, and we thus think it is to be conceded to Cajetan [that there is] a promise which obliges only out of moral and political probity, and that it is more frequent between human beings than one that obliges out of justice. And nevertheless we esteem that there is a simple promise that obliges out of justice and equally [*adeo*, maybe should say *ideo*?] out of its own nature under mortal fault: nay, [a promise] whose transgression induces an obligation to restitute, not only other damages subsequent to it, but even the thing itself that was promised: so much so that, because what was promised is, of itself, owed out of justice, an action is granted out of an accepted promise of this kind in the external forum. The first part of our opinion, in which we agree with Cajetan and dissent from Soto, is clear from what has already been said. The latter, however, in which we agree with Soto, is proved either from [the fact] that, as is shown

in disp. 255, such a promise, having been accepted, is that bare pact [*pactum nudum*] to which is granted the legal privilege that a civil obligation arises from it, and an action is given both to the donee and to their heirs against the one who gratuitously promises and against their heirs (*Code* 8.53.35.5e, and other sections of 8.53.35; *Institutes* 2.7.2; *Ordinations*,[3] 4.4.4, 4.55 beginning). Both parts of our opinion are confirmed because, when a gratuitous promise sets out from the liberality [*liberalitate*] of the promisor alone, it is, of course, in his power [either] to oblige himself to it only out of moral probity, or, entirely of his own free will [*omnino sua sponte*], to constitute himself the debtor of the thing promised. For just as the free [*liberalis*] delivery [*traditio*] of a thing to someone is title sufficient to transfer dominion of it, so, too, the free [*liberalis*] promise of a thing to someone can be sufficient title that [the promised thing] be owed out of justice, if the promisor intends to oblige themselves to that extent [*eo usque*]: for pacts and contracts are free [*libera*] when they come to be, but after they are made they oblige out of justice, either from the nature of the thing itself, or from the intention of the promisor, if the contract be wholly gratuitous and lucrative. When, therefore, someone intends to constitute themselves the debtor of a person [*homini*] through a gratuitous promise, just as one who vows chastity, poverty, obedience, or something else to God intends to constitute themselves a debtor to God, they are considered to have intended to oblige themselves to a human being out of justice; when, however, they do not intend to bring [*inducere*] such an onus on themselves, then they are esteemed [*existimandus*] to have intended only to oblige themselves to them out of moral probity. Furthermore, standing in the forum of conscience, in gratuitous [promises] of this kind, the intention of the one who promises is that upon which, solely through their own will, depends how far they have wanted to constitute themselves a debtor. In the external forum, however, this is to be judged by conjecture, all concurrent circumstances being attended to. Such that if someone were to say in a public document or bond, signed by themselves: I promise that I will give this or that, or I bind [*astringero*] myself to pay it, they are esteemed to have intended to oblige themselves out of justice, and not out of moral probity alone.

[3][I.e., the *Ordenações Manuelinas*, also known as the *Código Manuelino* or *Ordenações e leis do reino de Portugal*. Molina refers to them by (an abbreviation of) the Latin title, *Ordinationes regnii Lusitanorum*. Not to be confused with the later *Ordenações Fillipinas*.]

Disp. 266. Whether an interior promise made to a human being has force to oblige.

Summary

1. By an interior act alone dominion is not transferred, nor is a gift made internally to another valid, nor does dominion in the thing given pass over in it.

2, 3 This is proved by two arguments.

4 Delivery is normally [*regulariter*] necessary for the transfer of dominion.

5.6 The two arguments are refuted.

7 Is it proper [*fas*] to revoke merely internal promises and gifts?

8 Whether, excluding disputations [but maybe should say "dispositions"?] of civil law, a merely internal donation obliges the donor or promisor, in the forum of conscience, so to manifest the gifts to the donee, such that they acquire a right to that thing, such [a right] as someone might acquire to the goods of a deceased.

9–14 The affirmative case is supported [*suadetur*] by six arguments.

15 The negative case is proposed, and Doctor Thomas explained.

16 A merely internal promise or gift does not have the force to oblige in the forum of conscience, in natural law alone, unless, as it were, a condition sine qua non is added, [namely] its exterior manifestation.

17 Merely internal promises and gifts oblige in the forum of conscience, standing in the forum of natural law.

18–21 The six prior argument are refuted, because both opinions are probable enough.

1. That we may free ourselves from that which contains no difficulty: Almainus [Jacques Almain, 1480–1515], [*A decimaquarta distinctione quaestiones Scoti profitentis, perutilis admodum lectura*], dist. 15, q. 2, section beginning *Circa istum modum* and Thomas Argentinas [Thomas de Argentina,

or Thomas of Strasbourg (or Strasburg), 1275–1357[4]], *De materia matrimoniae*, q. 1,[[5]] indeed rightly affirm that by an interior act alone dominion is not transferred, and, being just as rightly of the opinion that, if someone were to say internally, "I give this thing of mine to Peter," dominion of it does not pass to Peter, they nevertheless rest on weak foundations.

2. For they argue: First, that internal consent of both of the [prospective] spouses is not sufficient to contract a marriage, and thus for the spouses to gain mutual power over [one another's] bodies; therefore, neither is the internal giving of any other thing enough for the transfer of dominion.

3. Second, gifts and contracts depend on civil laws in order to be valid. But the civil laws have to do with [*respiciunt*] external works alone. Therefore, a merely internal gift is insufficient for the transfer of dominion.

4. But the legitimate reason, why dominion is not transferred by an internal act alone, is that, as was proved in disp. 2 and 3, and is confirmed from *Code* 2.3.20 and 3.32.15[.2], and from other laws, delivery is normally [*regulariter*] necessary for the passing over of dominion, and thence it follows that not only by an internal gift or contract, but even by an external one, dominion is not normally [*regulariter*] transferred, unless delivery also occurs.

5. The first argument of Almain and Argentinas is invalid [*consequentia primi argumenti . . . nulla est*], because marriage is a relative contract, and for that reason the consent of each has the tacit condition, "if the other, in turn, also consents," and for that reason it is not considered an absolute contract until after the mutual expression of consents and of their mutual acceptance, but it is open to either of the contracting [parties], before the mutual expression and acceptance of consents, to depart from the contract: which is common to all relative contracts. So that if someone could, by a purely internal act, bind himself to another, to take her as a wife, such that he would freely will to bring upon himself the obligation to marry her, if he did not stand by it, then the question would have place under the title of this disputation proposed by us, because it would not be a relative contract, but a bare promise, emanating from liberality alone.

6. But their second argument surely has no force. For gifts and contracts

[4][The ancient name of Strasbourg was Argentoratum; it is often called Argentina in medieval Latin. (Obviously this has nothing to do with the modern day Argentina in South America.)]

[5][I think (not at all sure) this means *Commentaria in quatuor libros sententiarum*, book 4, dist. 29/30, q. 1, but it's a long piece of text and I don't know where it might be in there.]

depend on civil laws in this sense, that civil laws can, for just cause, render invalid contracts and gifts which, standing in natural law alone, would be valid; but not as if no contract or gift could be valid unless some civil law first decreed [*statuat*] about them or rendered them valid. For, excluding every civil law, and standing in natural law alone, there are valid promises, sales and purchases, trades, and other contracts, as is most evident of itself, as as the common opinion of the doctors holds.

7. But that we may proceed to that which is proposed in the title. This question, of course, has little utility for practice. For since there is [*facta sit*], by civil law, in [all] good states in common, a power of revoking promises and gifts before they are accepted, even if they are made by speech or by writing, and so even if they are externally manifested, as is established by what has been said in disp. 263ff., much more, certainly, after that disposition of the civil law, it will be permissible [*fas*] to revoke merely internal promises and gifts, whatever may be, whether, excluding that disposition of the civil law, and standing in natural law alone, they have of themselves force to oblige. And, indeed, since the faculty of revoking gifts before they are accepted is universal, the exceptions that are found to be made by civil law, namely when the promise or gift is made to the city, and thus [also] to [certain] other [parties], are to be understood [as applying] when such promises or gifts are made externally: otherwise, if they were merely internal, they would still be considered as comprehended under that universal concession. The same is [true] of those most ample exceptions that are made in the Kingdom of Castille,[6] book 3, title 8, law 3, which is book 5, title 16, law 2 of the new collection.[7] to whose words we have referred in disp. 254, as is established both from the whole of that law and especially from these words of it, "Pareciendo que alguno se quiso obligar a otro por promission."[8] And, indeed, it cannot become known, unless an exterior promise has been made. From which it happens that, in that kingdom, a merely internal promise still has force by the disposition of the common civil law. If, therefore, the proposed controversy has a place in some event today in practice, it is only when the merely internal promise was to some pious cause, and was not a vow, but was only made by the mind to oblige oneself to some private persons, and that according to the opinion which we embraced in disp. 263,

[6] [The so-called *Ordenamiento de Montalvo*.]
[7] [The *Nueva recopilación*.]
[8] [However, this doesn't seem to be an exact quote.]

namely that, in promises and gifts to pious causes, the disposition of the civil law which concedes that promises and gifts, before they are accepted, can be revoked, does not take place.

8. What, therefore, in this place, we most of all intend to dispute is whether, excluding the disposition of the civil law and standing within the limits of natural law alone, a merely internal gift, by which someone says to themselves, "I give this thing of mine to Peter," or "I promise Peter that I will give him this thing," obliges such a donor or promisor, in the forum of conscience, to manifest to Peter the gift or promise made in that way, and to deliver to him that thing, if he wants to accept it, having accepted the gift or promise, such that Peter, by the force of such a gift or promise made internally to him, acquires a right to that thing not dissimilar to that which an heir, whether by a testament or from an intestate, acquires to the goods of the deceased, by this itself, that that one has departed from life. For although it remains open to the heir to go to, that is, to accept, or to repudiate that inheritance, in the meanwhile, however, while they do not repudiate it, they have acquired a right to it, and it is manifest to them, and offered, as they see whether they wish to go to it or to repudiate it.

Many who have not attended to the disposition of the civil law related above, or have been ignorant of it, have controverted absolutely, whether a merely internal gift or promise obliges in the forum of conscience, and of their number are Soto and Ledesma, loc. cit. For the rest, however, this matter is to be called into controversy only in the sense which we have explained.

9. The affirmative side can be supported: First, because vocal sounds [*voces*] and writings are signs of concepts, nor do they have the force to oblige unless from an interior act which they express, and from the intention of the will to oblige itself and to promise, for which reason is found in *Institutes* 2.1.40 and elsewhere, "nothing is so much in accord with natural equity as that the will of an owner wishing to transfer their thing to another should be considered valid [*ratum habere*]"; and, plainly, if you take away from an external promise or gift the internal voluntary intention to oblige oneself, you remove its obligation in the forum of conscience. Therefore a merely internal gift or promise (insofar as it is from itself) has the force to oblige in the forum of conscience, not only if it is made to God, but even if it is made to a human being.

10. Second, standing in natural law alone, acceptance is not necessary that a promise or gift be valid and irrevocable, but it is well introduced by positive law in common that [acceptance] be normally [*regulariter*] a con-

dition requisite to this. For neither does a positive law give, to those gifts which are valid without acceptance, this [property] above their own nature, nor could it possibly, as these [things] all are widely proved in disp. 263: but rather, if external signs are necessary that a promise or gift oblige, that is only because otherwise it cannot be accepted by the one to whom it was made, unless that is God, who observes [*intuetur*] the heart. A merely internal promise or gift, therefore, standing in natural law alone, is valid not only if it was made to God, but even to a human being. The deduction [*consequentia*] is clear: since acceptance is not necessary, standing in natural law alone, that an internal or promise oblige, and external signs are not necessary except for acceptance, and hence each is a condition introduced by human law, in order that an internal gift oblige.

11. Third, if yesterday, by a merely internal act, you promised or gave something to someone, and today, no new promise or gift having been made, nor the past one having been confirmed, you were to signify by these words, "Yesterday I promised this to you" or "gave [this to you], see if you would like it," do you have a valid [*ratam*] promise? Certainly, that one having accepted, you stand obliged. Therefore, an internal promise, of its nature, standing in natural law alone, obliged you. The deduction is clear: since the signification made with those words was not a promise or a gift, thus neither did it oblige, but it was only an instrument by which the internal promise or gift was manifested, which was necessary that it might be accepted by the donee. But acceptance is only a condition introduced by the civil law, that a gift may oblige, without which, standing in natural law alone, a gift obliges, as has been said and proven.

12. Fourth, posession is lost by the will not to possess alone, as is clear from *Digest* 41.2.1.4, 41.2.3.6, and 41.2.17.2, and as been said by us on the matter of possession. And indeed, dominion, too, is lost by the will to transfer it alone, when possession is relinquished at the same time, although not when possession is retained, as is found in *Digest* 4.2.17.2, together with the gloss there. For that reason, as soon as something is is considered as abandoned by its own owner by an internal intention [*animo*], dominion of it is lost, and it goes to the first [new] occupant. Indeed, [even] without an internal act of transfer, dominion is lost, by a sort of habitual intention [*per animum quasi habitualem*] to transfer it, because, namely, [someone] is in such a state [*affectione*] that, if they were asked, they would respond, that they freely relinquish the occupancy of that thing: for which reason wood of little value which flooding rivers carry off with them through a very

long stretch, thus such that it is to be presumed that the owners would not seek for it, even if they knew who had it [*apud quos essent*], is, we say, considered as abandoned, and goes to the first occupant; and anchors left by their own owners in ports, because they withdraw, unwilling to make the expense or apply the industry to extract them or to seek for them, we say, are considered as abandoned. Therefore, by parity of reason, a merely internal gift or promise will be enough, standing in natural law alone, for the donee to acquire a right, explained by us above, to the thing thus given or promised to them.

13. Fifth, although in an internal promise, whatever some may say, a lie cannot be found, because a lie is posited in this, that something else is externally signified, than what is found [*habetur*] in the mind, nevertheless, with respect to [such an internal promise], there infidelity takes place [*infidelitas datur*], the deed which was promised not being fulfilled, as is clear in a vow, or internal promise made to God, according to that of Ecclesiastes 5, "If you vow to God, do not dely to repay it, for infidelity and a foolish promise displease him." Since, therefore, infidelity is an evil in itself, unless a legitimate cause be present, which would excuse [the promissor] from fulfilling the word which was promised, the consequence of course is, that from an internal promise, standing in natural law alone, an obligation arises to fulfill that which has been thus promised.

14. Lastly, an internal promise of a thing that is not illicit, made to a human breing, if it be confirmed by an oath, still merely internal, obliges under mortal guilt to the fulfillment of that which was promised, and that not only with respect to [*comparatione*] God, lest he be made into a witness for a false or faithless promise, but even with respect to [*comparatione*] the human being to whom such a promise was made, and they acquire a true right to that thing and it is truly owed to them, and that right transfers to their heirs. And, indeed, [the promisee] can even remit the whole obligation, and for that reason completely free from the burden of such a promise confirmed by an oath the one who thus bound themselves, as all these [things] are proved at large in disp. 149 and 150. Therefore, by a merely internal act, a human being can oblige themselves to another human being, standing in natural law alone and in the forum of conscience. And thus is overthrown the whole foundation on which one rests who affirms that a merely internal promise cannot oblige, even standing in natural law alone and in the forum of conscience.

15. Doctor Thomas, towards the end of [*ST* 2–2] q. 88, a. 1, seems to

incline to the opposite opinion. For he says that a promise of one human being to another human cannot occur except by words, or by some other external sign, but to God it can occcur through an internal thought alone, because, as is found in 1 Samuel 16[:7] "Human beings see [*vident*] what appears, but God observes [*intuetur*] the heart"; and in [his *Sentences* commentary], book 4, d. 38, q. 1, a. 1, qc. 1 c., he says that no one can be obliged by their will [alone], except only to him who is the knower [*agnitor*] of the will, of which kind is God alone. And this is the more common opinion.

Ledesmus, however, explains Doctor Thomas as understanding that a promise cannot be made to a human being by a merely internal act, such that one who promises can be compelled to fulfill the promise, since for that knowledge [*cognitio*] of the promise [on the part of the promisee] would be necessary. It might also be said that Doctor Thomas speaks supposing a disposition of positive law which removes the force to oblige from [such a merely internal promise]. By which means many of those who are of the same opinion seem to understand [him].

16. Among those who undertake to dispute this matter more accurately, Soto, *De iusticia et iure* bk. 4, q. 5, a. 1 ad 1f. and bk. 7, q. 2, a. 1 ad 1, having proposed some of the arguments which we have just now compiled, although not with so much force as we have applied to them, asserts this question to be dubious, and that it can be defended on both sides. Or rather, he is inclined [to think] that a purely internal promise or gift has no force to oblige in the forum of conscience and standing in natural law alone, unless, as a conditio sine qua non, there is added its external manifestation. And [Francesco de] Victoria [1485–1546], in his lectures on *ST* 2–2, seems to be of the same opinion. However, he brings no other reason, than that, since it is natural to a human being to signify their concept to others by words or external signs, no obligation can arise from an internal promise before it is externally manifested.

17. More acceptable to Ledesmus, *ST* 2–2 q. 18, a. 1, dub. 13, is that merely internal promises and gifts oblige in the forum of conscience, standing in natural law alone. And that opinion seems to me to vehemently persuade, by those six arguments which we have compiled in confirmation of it. According to [these arguments], however, it is to be said that not only merely internal vows, that is, promises of a better good made to God, oblige (which all concede), but even merely internal promises toward pious causes, made, not to God, but to human beings, as if someone promised with thesmelves ten aurei in alms to some poor person, or promised to some orphan in partic-

ular a hundred aurei in dowry because of her poverty. But this would be to be inferred thus of merely internal promises for pious causes, if the opinion is true which we have derived in disp. 263, namely that gifts, even external ones, made to pious causes, cannot be revoked, though they be not yet accepted. For if, as others affirm, they can be revoked, then with much more reason could those that were merely internal be revoked before acceptance.

18. One to whom the contrary opinion is more acceptable, due to the authority of Doctor Thomas, and due to the argument that a promise or gift, as it obliges relative to [*comparatione*] someone, must by its very nature be able to be known by the one to whom it is made, which does not hold [*non convenit*] of a merely internal gift relative to [*comparatione*] another human being, would say to the first three arguments: although, in an external promise, the force of obligation arises from an internal promise, nevertheless there is lacking to a merely internal promise a condition without which no obligation arises from it, namely its external manifestation, in the absence of which condition it does not oblige.

19. To the fourth they will say: although an internal act is in itself sufficient for one who carries it out to lose [possession of] something, it is not, however, [sufficient] for them to transfer it to another, unless there is added a condition sine qua non, that is, the external manifestation of that act.

20. To the fifth they will say: infidelity, with respect to [*comparatione*] an internal promise, supposes an obligation to fulfill that which was promised, and because such an obligation is found with respect to an internal vow, because God observes [*intueatur*] it, not, however, with respect to an internal promises made to a human being, because of the absence of the condition without which it does not oblige, that is, exterior manifestation, thence it arises that no infidelity is discerned in not fulfilling such promises.

21. To the sixth I do not see anything they can say, other than that that obligation with respect to [*in ordine ad*] a human being, the promise to whom was made confirmed by an oath, takes place [*ortum habere*] from the oath itself, which obliges with respect to [*comparatione*] God, and for that reason, as if as a certain accessory to the oath and concomitant to it, it results from the merely internal act with respect to [*comparatione*] another human being.