

## Maurer School of Law: Indiana University Digital Repository @ Maurer Law

---

Articles by Maurer Faculty

Faculty Scholarship

---

1979

# Tancred's "Summala de Criminibus": A New Text and a Key to the Ordo Iudiciarius

Richard M. Fraher

*Indiana University School of Law*

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>

 Part of the [Medieval History Commons](#), and the [Religion Law Commons](#)

---

### Recommended Citation

Fraher, Richard M., "Tancred's "Summala de Criminibus": A New Text and a Key to the Ordo Iudiciarius" (1979). *Articles by Maurer Faculty*. Paper 1874.

<http://www.repository.law.indiana.edu/facpub/1874>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact [wattn@indiana.edu](mailto:wattn@indiana.edu).

## Tancred's 'Summula de criminibus': A new text and a key to the Ordo iudiciarius\*

Scholars have known for the past thirty years of the existence in Rome, Casanatense MS 1910 of a procedural treatise 'with an admixture of the form of *summa quaestionum*' deriving from the school of Tancred and beginning, 'Nota quod quicumque agit in iudicio . . .'<sup>1</sup> Subsequent research has established that the Casanatense codex contains not one fragment but seven *summulae* and a short set of *quaestiones*.<sup>2</sup> Four of these brief pieces can be shown to be Tancred's own work. I believe that they provide an essential key to dating the composition of the *Ordo iudiciarius* and that they illustrate Tancred's method in piecing together and revising the *Ordo*. Finally, one of the *summulae*, entitled *de criminibus et qualiter agatur contra criminosos*, together with the *quaestiones* which deal with the same subject, have an independent value for scholars who wish to measure the impact of the Fourth Lateran Council upon canonical procedure.

The eight texts in the Casanatense manuscript may be distinguished as follows:

1. fol. 73ra: Tancred, *de exceptionibus*. 'Nota quod quicumque agit in iudicio. . . . Iste replicationes post fundatam intentionem sunt probande, arg. eiusdem legis et C. de probationibus l.i. et l. Exceptionem (Cod. 4.19.1 et 16). T.'

This *summula*, without Tancred's *siglum*, appears in Avranches MS 149, fol. 135rb-va, and Montecassino MS 136, p. 234.<sup>3</sup>

2. fol. 73ra-rb: Tancred, *de dolo et contumacia punienda*. 'Quoniam tam in contractibus quam in iudiciis. . . . Et hec de contumacibus dicta sufficiant'.

This treatise also appears in the Avranches and Montecassino MSS. The argument for Tancred's authorship appears below.

3. fol. 73rb: Vincentius, *de interdicto uti possidetis*. 'De interdicto uti possidetis tractaturus . . . donec cognoscat iudex de proprietate. Vinc.'

Other than the obvious suggestion that this may be a work of Vincentius Hispanus, no more will be said here about this text, no other copy of which is known.

---

\* Mr. N. Ker of Oxford University kindly provided the Institute of Medieval Canon Law with a copy of the Durham manuscript discussed below. I would like to thank Professor Stephan Kuttner for his kind assistance in the research for this paper.

<sup>1</sup> S. Kuttner and E. Rathbone, 'Anglo-Norman canonists of the twelfth century', *Traditio* 7 (1949-51) 316

<sup>2</sup> Kuttner, 'Notes on manuscripts', *Bulletin [of medieval canon law]* in *Traditio* 17 (1961) 541; idem, 'Analecta iuridica Vaticana (Vat. lat. 2343)', *Collectanea Vaticana in honorem Anselmi M. Card. Albareda* (Studi e Testi 219-220; 1962) I 423; P. Legendre, 'Nouveaux manuscrits de droit savant', *RHD* 35 (1957) 412.

<sup>3</sup> Kuttner, 'Notes on manuscripts' 541.

4. fol. 73va: Tancred, *de criminibus et qualiter agatur contra criminosos*. Edited and discussed below.
5. fol. 73vb: Tancred, *quaestiones*. Edited and discussed below.
6. fol. 74ra: Anon., *de instrumentis falsis uel suspectis in iudicio reprobandis*. 'Quoniam nonnulli in iudiciis sepe falsis sepe suspectis . . . quibus modis cognoscatur falsitas in litteris domini pape habes plenissime notatum xviii. di. In memoria (c. 3) et extra. de falsar. Licet (3 Comp. 5.11.2) et extra. iii. e.t. Improba pestis' (2 Comp. 5.1.9).

This *summula* embodies a canonist's reworking of a civilian treatise *de reprobatione instrumentorum*, which appears in a number of manuscripts. Vat. lat. MS 2343, fol. 83vb-84ra, ascribes the *de reprobationibus* to Bagarotus, but Professor Kuttner identifies the author as Pontius de Ilerda.<sup>4</sup> One cannot absolutely rule out the possibility that Tancred himself might have been the decretalist who revised Pontius's text. The evidence for Tancred's hand at work is slender and circumstantial: his acknowledged dependence upon civilians and canonists in writing the *Ordo iudiciarius*,<sup>5</sup> the appearance of the *de instrumentis* among other pieces known to be Tancred's work, and the fact that this piece, like Tancred's short works in the Casanatense MS, refers to decretals in *Compilatio secunda* and *tertia*. On the other side of the argument, the chronology might prove impossible, and this *summula* does not bear any apparent relationship to Tancred's known work on *instrumenta*, part 3 title 13 of the *Ordo*, entitled *de exhibitione instrumentorum et fide ipsorum*.<sup>6</sup>

7. fol. 74rb: Anon., *distinctio de absentia*. 'Cum aliquis est absens . . . ii. q.vi. § Biduum ver. Si aduersus' (c. 29).

Professor Kuttner, following up a suggestion by Legendre, established that this is another canonist's expansion of a Romanist's work, Hugolinus's *distinctio* 'Cum aliquis abest'.<sup>7</sup>

8. fol. 74rb: Anon., *de questione incidenti et emergenti*. 'Nota quod Pla. dicit. . . . Decretiste tamen indistincte super qualibet incidenti pronuntiant, ut notatur extra. i. de appell. Super eo' (1 Comp. 2.20.24).

This, like the preceding items, is a decretalist's reworking of a civilian text.<sup>8</sup> The *summula de questione incidenti* almost certainly is not a piece of Tancred's

<sup>4</sup> Kuttner, 'Analecta' 421ff.

<sup>5</sup> Tancred, preface to the *Ordo*: 'Desideriis itaque vestris satisfacere cupiens, rem mihi arduam sed vobis et posteris fructuosam aggreditur, quam primo Richardus Anglicus . . . postmodum Pillius Medicinensis legum doctor egregius . . . ad modum summae scribendi perfecit, quem pro sui sapientia et doctrina in pluribus imitari dispono.' References to Pillius and Azo appear throughout the *Ordo*, ed. F. C. Bergmann, *Pillius, Tancredus, Gratia, Libri de iudiciorum ordine* (Göttingen 1842; repr. Aalen 1965) 87-316.

<sup>6</sup> Tancred, *Ordo* 248ff. For Pontius's dates, see G. Rossi, *La Summa arboris actionum di Pontio da Ilerda* (Milan 1951).

<sup>7</sup> Legendre, 'Nouveaux manuscrits' 412; Kuttner, 'Analecta' 423 n. 1.

<sup>8</sup> *Ibid.*

work, for it differs in substance from Tancred's *Ordo*, part 2 title 20, *de ordine iudiciorum et incidentibus questionibus*.<sup>9</sup>

Aside from Professor Kuttner's few notes, only the barest mention of the Casanatense texts has appeared in print. P. Legendre noticed that the *quaestiones*, item 5, included the *siglum t.* and a reference to Laurentius,<sup>10</sup> but to my knowledge nobody has previously analysed the four pieces I have listed as Tancred's works: the *summulae de exceptionibus*, *de dolo et contumacia*, and *de criminibus*, and the *quaestiones*. Each of these texts except the *de dolo et contumacia* ends with the *siglum t.* All four pieces follow a discernible pattern of decretal citations which establishes the date of their composition between 1210 and 1215. They all cite *allegationes* from *Compilatio secunda* and *tertia*, but there are no references to the constitutions of the Fourth Lateran Council or to any decretal of Innocent III dating from later than 1209. This pattern suggests that these *summulae* and *quaestiones* appeared before the *Ordo iudiciarius*, which includes references to the council and to decretals of Innocent III dating from after the publication of the second and third compilations. The shorter pieces must have been composed before the *Ordo* was put together around 1214-1216.<sup>11</sup>

Tancred's authorship of the texts in the Casanatense manuscript can best be established by collating the *summulae* with corresponding sections of Bergmann's edition of the *Ordo iudiciarius*. The *summula de exceptionibus* is closely related to the *Ordo*, part 2 title 5, *de exceptionibus et replicationibus*.<sup>12</sup> The clearest demonstration of textual dependence is the nearly verbatim copying of the *explicit* from the *summula* in the *Ordo*:

Iste replicationes post fundatam intentionem sunt probande, arg. eiu dem legis [= Cod. de except. Aduersus fratrem] (Cod. 8.36.3) et C. de probationibus l.i. et l. Exceptionem (Cod. 4.19.1 et 16). T.

This passage reappears in the *Ordo* with only one change; the reference to Cod. 8.36.3 reads 'arg. Cod. e.t. l. Aduersus fratrem'.<sup>13</sup> This reading is identical with the *explicit* of the *summula* in the Avranches MS.

The dependence of the *Ordo iudiciarius* upon the *summula de dolo et contumacia punienda* is more graphically evident and appears to be more extensive. Although I could find no passage in the *Ordo* which corresponds to the first half of the *summula*, dealing with *dolus*, the second half of the treatise forms the basis of

<sup>9</sup> Tancred, *Ordo* 189ff.

<sup>10</sup> Legendre, 'Nouveaux manuscrits' 412.

<sup>11</sup> Regarding the composition of the *Ordo*, see L. Chevailler, 'Tancred', DDC 7.1146ff; A. M. Stickler, 'Ordines iudicarii', DDC 6.1132ff; Bergmann, *Libri de iudiciorum ordine*, iii-vi.; Schulte, *Quellen und Literatur* I 203f.

<sup>12</sup> Tancred, *Ordo* 139ff.

<sup>13</sup> Tancred, *Ordo* 146.

the *Ordo*, part 2 title 5, *de contumacibus et non uenientibus ad iudicium*.<sup>14</sup> The *Ordo* copied large chunks of the *summula*, including the following paragraph of the earlier text:

Penacon tumacie diuersa est, secundum causarum diuersitatem et contumacie modum, quoniam causarum alia est criminalis, alia ciuillis, alia spiritualis, alia mixta, ut xvi. q.i. Frater noster (c.52) et extra. iii. de procura. Tue fraternitatis (3 Comp. 1.22.2). Si uero aliquis de crimine accusetur et lis non est contestata, si uocatus ad iudicium non uult uenire uel si uenit et non uult parere, secundum legem omnia bona sua annotantur et conscribuntur, et si intra annum ueniet et pareat iuri, recuperat sua et auditur de crimine. Post annum uero omnia confiscantur, et quamuis postea ueniat auditur de crimine set non recuperat sua, et expresse legitur ff. de requir. reis l. ult. (Dig. 48.17.5), C. de requir. reis Quicumque (Cod. 9.40.2). Secundum canones contumax excommunicatur, ut iii. q.v. Quisquis (c.1) et v. q.ii. Presenti (c.2), et si intra annum ueniat absoluitur et auditur de crimine. Post annum nequaquam audietur de crimine set condempnabitur pro contumacia sicut conuictus esset de crimine, set tamen absoluetur, ut xi. q.iii. Rursus (c.36) et Quicumque (c.37). Si uero lis est contestata, possunt recipi testes contra accusatum et sententia diffinitiuia proferri, ut iii. q.viii. Decreui-mus (c.10).

A comparison between the *summula de dolo et contumacia* and the *Ordo iudiciarius* reveals that the two texts are substantially identical, except that the phrasing of the *Ordo* is more compressed. All of the legal references are the same, except that the *Ordo* adds a citation to a letter of Paschal II which appears in *Causa* fourteen of the *Decretum Gratiani*. The accumulation of such *allegationes*, even from older sources, is a common occurrence in the revision of canonical texts.

The lengthiest of the three *summulae*, and the one which might prove to be the most interesting to historians of legal procedure, is the *summula de criminibus et qualiter agatur contra criminosos*. The set of *quaestiones* that follow immediately in the Casanatense manuscript seem to constitute an organic — though not an inseparable — part of the treatise *de criminibus*, for the *quaestiones* begin, 'Circa materiam istam multe consueuerunt fieri questiones'. A second, less complete copy of the *de criminibus* and *quaestiones* occurs under the title *de accusationibus et quomodo agatur contra criminosos* in Durham Cathedral MS C.III.25, fol. 9r. This copy might represent an earlier version of the text, since there are many textual variants of a sort which seem more likely to reflect revision of the text than scribal willfulness, and since the Casanatense manuscript contains references to decretals not cited in the Durham version.<sup>15</sup> The *quaestiones* in the

<sup>14</sup> Tancred, *Ordo* 136.

<sup>15</sup> See below, *app. crit.* to the *summula*. C refers to Huguccio, 'Hug. dicit', where D offers simply 'Quidam dicunt'. C omits D's reference to Alanus, while D leaves out a handful of legal citations, the most significant of which is discussed below at n. 18.

Durham copy are somewhat abbreviated; only the first four of the six questions from the Casanatense MS turn up in the Durham codex, despite the fact that there was blank space left at the bottom of fol. 9rb. The scribe instead began here a new *distinctio* on advocates' salaries. Tancred's *siglum* does not appear anywhere in the Durham manuscript, while in the Casanatense codex the *siglum* T. appears at the end of the *summula* as well as after the sixth *quaestio*.

Even a cursory comparison of the *Ordo iudiciarius* with the *summula* indicates a close dependence between those two texts, while the *quaestiones* seem entirely unrelated to the *Ordo*. The relationship between the treatises becomes clearest when one collates the third paragraph of the *summula*, beginning 'Si quis uero contra quem in modum inquisitionis . . .' to the *Ordo*, part 2 title 7 § 2, beginning, 'Si uero agitur in modum inquisitionis . . .'<sup>16</sup> The *Ordo* here incorporates the text of the *summula*, not quite verbatim, within a somewhat longer discussion of the *inquisitio*. The crucial point of comparison concerns the *allegationes* to the decretals. The *summula* cited the *capitula* 'Cum oporteat' (5.1.6), 'Qualiter et quando' (5.1.5), and 'Licet Heli' (5.3.2) from *Compilatio tertia*, and in addition a decretal ascribed to Innocent III, 'Veritatis', which did not appear among the first three compilationes, although it dated from before 1200.<sup>17</sup> The *Ordo* employed all the same citations, added still another reference to *Compilatio tertia*, 'de sententia et re iudicata. Cum I. et A.' (2.18.12), and then went on to cite 'in concilio Lateranensi Innocentii tertii c. Qualiter et quando (c.8) et extra. Inquisitionis' (X 5.1.21).<sup>18</sup> These *allegationes* prove that Tancred must have written the *summula* before the *Ordo* and then incorporated the earlier work into the later one, for this section cannot have been written in finished form prior to the promulgation of the conciliar decrees on 30 November 1215.<sup>19</sup>

<sup>16</sup> Tancred, *Ordo* 153f.

<sup>17</sup> Only the Casanatense MS contains this reference, which may be an interpolation. I conclude that a scribe erred in citing 'Veritatis' from 'extra. iiiii.', because the entire reading 'extra. iiiii. de iureiur. Veritas' appears to be scrambled. The only likely reading for 'Veritas' seems to be 'Veritatis', but this capitulum appears in 4 Comp. and in the Coll. Gilberti — Tancred's more likely source — under the title 'de dolo et contumacia' (Gilb. 2.8.2; 4 Comp. 2.4.1; X 2.14.8). Although 'Veritatis est verbum' is actually a decretal of Celestine III dated 1194, the decretalists consistently ascribed it to Innocent III, as did modern scholars until 1949. See W. Holtzmann, 'Das Ende des Bischofs Heinrich II. von Chur', *Zeitschrift für Schweizerische Geschichte* 29 (1949) 190ff. A subsequent reference to 'extra. iii. [lacuna] Veritatis' appears in both MSS without a title (and is followed by another obscure citation). Evidently, this *allegatio* confused the scribes, and it seems more reasonable to assume scribal error than to believe that Tancred was using — or misusing — *Compilatio quarta*.

<sup>18</sup> Tancred, *Ordo* 154.

<sup>19</sup> Bergmann, *Libri de iudiciorum ordine*, iv-v, assumed that Tancred could not have produced the *Ordo* between November of 1215 and the end of 1216, Bergmann's *terminus ad quem* for the completion of the text. The editor therefore seized upon the notion that Tancred had access to the decrees before their promulgation. Schulte, *Quellen und Literatur* I 203, deflated this conception.

These conclusions are relatively straightforward. Between 1210 and 1215, in addition to producing the *Summa de matrimonio*, Tancred composed at least three *summulae* and the *quaestiones* which appear in the Casanatense manuscript. There is a possibility that he also wrote the *summula de instrumentis falsis*. Like many aspiring young scholars, Tancred published 'articles' while he pieced together a major book, and ultimately he based parts of the *Ordo iudiciarius* upon his earlier treatises. The genesis of Tancred's *Ordo* was therefore more complex than anyone has suspected. Bergmann encountered difficulty in trying to fix the date for its composition because he never questioned the assumption that Tancred simply wrote a single version of the text between 1214 and 1216.<sup>20</sup> Schulte more shrewdly deduced that sometime after Pope Innocent's death Tancred might have updated a text which he had completed before 1214.<sup>21</sup> To the best of my knowledge, no copy of such an earlier version of the entire *Ordo* exists, but the *summulae* in the Casanatense and Durham manuscripts certainly represent an earlier stage in the composition of the *Ordo*. Further research may turn up additional products of Tancred's early work on procedure.

This speculation leads me to a final and perhaps less self-evident observation. There is an entire class of legal manuscripts dating from the thirteenth century, in which major and minor works of Roman and canon law were assembled by Italian scribes.<sup>22</sup> Many of these manuscripts have been studied individually, but nobody has studied these codices systematically as a group. The potential usefulness of these manuscripts extends beyond narrow inquiries into textual developments, for the short *summulae* clearly received more attention from thirteenth-century lawyers than they have received from historians, who have preferred major texts and important ideas. The history of canon law in practice, particularly in the area of procedure, cannot be written until we have made greater strides in sorting out the minor texts full of everyday ideas.

Harvard University.

RICHARD M. FRAHER

---

<sup>20</sup> The *terminus a quo* in Bergmann's argument, November 1214, was fixed by a dated *libellus accusationis* which Tancred included in the *Ordo*, p. 162. The *terminus ad quem* was somewhat less definite, but certainly after Innocent's death on 16 July, 1216, because Tancred referred to Innocent's 'felix recordatio', p. 279.

<sup>21</sup> Schulte, *Quellen und Literatur* I 203: 'Da wir wissen, dass Tancred die Apparate zur Comp. I. et II. nach Innocenz' Tode ergänzt hat, so könnte man annehmen, er habe in gleicher Weise eine Ergänzung des 1214 vollendeten Werkes vorgenommen.'

<sup>22</sup> Described by Kuttner, 'Analecta' 415. One group of twenty-four canonistic codices whose miscellaneous contents turned out to be patterned rather than random, is described in Kuttner, *Repertorium* 431ff.

## &lt;MAGISTRI TANCREDI DE CRIMINIBVS SVMMVLA ET QVESTIONES&gt;

*De criminibus et qualiter agatur contra criminosos.*

Quoniam rei publice interest ut crimina non remaneant impunita, et iudicis non est sine accusatore dampnare, ut xxiii. q.iii. Si quis potestatem,<sup>1</sup> licet quandoque nulla precedente accusatione penitentia delinquentibus a canonibus imponatur, idcirco uideamus quot modis contra criminosos pro criminibus procedatur, qualiter et qua pena plectantur. Ad quod nota quod quattuor modis agitur de crimine, ita quod de notorio taceatur, in modum denunciationis, inquisitionis, exceptionis, et accusationis, sicut expresse legitur extra. de accusat. Super hiis,<sup>2</sup> et extra. de simonia, Licet Heli.<sup>3</sup> De notoriis ideo dixi tacendum quoniam in eis nec accusatione nec testibus indigemus, ut ii. q.i. Manifesta,<sup>4</sup> extra. de accus. Euidencia,<sup>5</sup> extra. iii. de cohab. cler. et muli. Tua nos,<sup>6</sup> quia sicut ibi dicitur nulla potest tergiuersatione celari. Verumtamen in eisdem notoriis quidam ordo iuris est seruandus, ut extra. iii. de iureiur. Ad nostra,<sup>7</sup> quia debet citari et interrogari et eo presente uel per contumaciam absente sententia est ferenda, ut ii. q.i. De manifesta, de illo Corinthio quem dampnauit Apostolus.<sup>8</sup>

Cum uero agitur in modum denunciationis, non est necessaria inscriptio uel libellus accusationis set debet precedere admonitio caritatiua iuxta formam ewangelicam: 'Si peccauerit in te frater tuus', etc.<sup>9</sup> et nisi admonitio precedat repellitur ab agendo, sicut probatur extra. iii. de accus. Licet Eli,<sup>10</sup> extra. i. eodem tit. c. Si quis episcopus,<sup>11</sup> ii. q. vii. Accusatio,<sup>12</sup> Si quis erga.<sup>13</sup> Consequenter uideamus utrum omnes qui sciunt crimen alicuius teneantur denunciare. Hug. dicit quod omnes tenentur, arg. ii. q.i. Si peccauerit, et q.vii. Quapropter,<sup>15</sup> et xxiii. q.iii. Tam sacerdos.<sup>16</sup>

*Rubr. De accusationibus et quomodo agatur contra criminosos D*

1 rei om. C	2 iudicium D	Si quis] c. <i>præm.</i> D	4 imponatur a canonibus <i>tr.</i> D
que D	5 criminibus] terminibus D	proceditur D	Ad quod] Ad que D
accusatur D	6 quod <sup>2</sup> ] ut D	notoriis D	7 modis D
nec] accusandum ut D	8 sicut expresse legitur] ut D	extra. om. C	9 accusatione
post celari <i>tr.</i> D	10 indigentibus D	11 extra. iii.] extra. D	potest
quidam om. D	12 uerumtamen] notorum D	eisdem] his autem D	
ord. cog. D (= 3 Comp. 2.4.1)	13 obseruandus D	extra. iii. de iureiur. Ad nostra] extra. de	
ferenda est sententia <i>tr.</i> D	15 de illo — Apostolus om. D	17 debet procedure admonitio caritatiua] preambula debet esse caritatis admonitio D	18 nisi] ubi
D	19 precedat admonitio <i>tr.</i> D	sicut probatur om. D	20 Accusatio]
et c. <i>add.</i> D	21 erga] ergo et D	omnes] dicemus D	22 Hug. dicit]
quidam dicunt D	23 Si om. D		

<sup>1</sup> C.23 q.4 c.31      <sup>2</sup> 3 Comp. 5.1.3 (X 5.1.16)      <sup>3</sup> 3 Comp. 5.2.3 (X 5.3.31)  
<sup>4</sup> C.2 q.1 c.15      <sup>5</sup> 1 Comp. 5.1.11 (X 5.1.9)      <sup>6</sup> 3 Comp. 3.2.1 (X 3.2.8)  
<sup>7</sup> 3 Comp. 2.15.7 (X 2.24.21)      <sup>8</sup> C.2 q.1 c.17      <sup>9</sup> Matt. 18.15      <sup>10</sup> refert ad 3  
Comp. 5.2.3, set eius tit. est de simonia (X 5.3.31)      <sup>11</sup> 1 Comp. 5.1.8. (X 5.1.2)      <sup>12</sup> C.2.  
q.7 c.15      <sup>13</sup> C.2 q.7 c.16      <sup>14</sup> C.2 q.1 c.19      <sup>15</sup> C.2 q.7 c.47      <sup>16</sup> C.24 q.3 c.14



Alii melius dicunt, cum quibus ego consentio, quod hii tamen crimina alio-  
 25 rum denunciare tenentur qui prelationem habent aliquorum siue spiritua-  
 lem siue temporalem, ut xxiii. q.iii. Ita pla.<sup>17</sup> Ceteri uero non tenentur  
 denunciare nisi uelint, et quidam dicunt quod ab ista denunciatione nullus  
 repellitur, nec criminosus nec infamis, cum ad correctionem tantum agatur.  
 Set tu dicas quod criminosi et infames repelluntur, cum eis possit obici  
 30 'Ypocrita eice primo trabem', etc. ut iii. q.vii. Qui sine peccato,<sup>18</sup> arg.  
 xxxv. q.vi. Episcopus in synodo,<sup>19</sup> extra. iii. de accus. Cum oporteat,<sup>20</sup>  
 et in c. Cum dilecti.<sup>21</sup> Secundum Alanum pena eius mitis est quia debet  
 penitere de crimine, et credo eum non esse remouendum a dignitate uel  
 ordine, licet hoc modo fuerit crimen alicui probatum, nisi enormitas delicti  
 35 cogeret iudicem contra istum procedere uel infamatio siue scandalum oriretur  
 in populo. Tunc enim dicerem ab officio et beneficio et administratione  
 esse remouendum.

Si uero agitur contra quem in modum inquisitionis, similiter hic non est  
 necessaria inscriptio et sine actore aliquo prosequente ad inquisitionem et  
 40 etiam cum eo iudex inquirere et procedere potest. Set loco actoris procedere  
 debet infamatio contra eum, non semel set sepe, non leuis set grauis, ita  
 quod uix tolerari possit et apud bonos et graues debet esse infamatus.  
 Tunc iudex contra eum procedere debet, sicut legitur extra. iii. de accus.  
 Cum oporteat,<sup>22</sup> Qualiter et quando,<sup>23</sup> extra. iii. de simo. Licet Heli.<sup>24</sup> Debet  
 45 autem citare infamatum et eius accusationem audire, ut in predicta decretali  
 Licet Heli, arg. extra. Inn. Veritatis.<sup>25</sup> Et nota quod in casu isto lite non  
 contestata testes recipi possunt, ut extra. iii. ut lite non contest. Quoniam  
 frequenter.<sup>26</sup> Pena talis est. Si fuerit in modum inquisitionis probatum pre-  
 lato, remouetur a dignitate uel honore, ut extra. iii. de accus. Quali. et  
 50 quand.<sup>27</sup> Si autem in modum exceptionis obiciatur crimen alicui, similiter  
 hic non inscribitur, set distinguitur utrum obiciatur testi uel accusatori  
 ut a testimonio uel ab agendo repellatur, aut promouendo ne confirmetur  
 uel ordinetur. Si obicitur testi uel accusatori et probetur aliquid crimen  
 contra eum, siue causa sit ciuilis siue criminalis, repellitur a testimonio uel

---

24 consentio] senzo D	hii] initium D	25 tenetur D	aliquorum habent
tr. D	29 Set tu dicas quod] si D	30 Qui] Quia D	31 xxxv.] xxv. D
in synodo om. D	et in c. Cum dilecti om. D	32 secundum Alanum om. C	
34 fuerit post alicui tr. D	delicti om. D	35 contra om. D	uel infamatio
siue om. D	oriatur D	37 esse om. C	38 uero om. D
39 procedente D	et <sup>2</sup> om. D	40 procedere et inquirere tr. D	set repetit C
precedere male D	43 sicut legitur om. D	44 et quando om. D	44-46 Debet —
Veritatis om. D	46 extra. Inn. Veritatis emendavi: extra. iiii. de iureiur. Veritas C		
isto om. D	lite non contestata om. C	49-50 remouetur — quando om. D	
51 set] si obiciatur D	52 ut] uel D	repelletur D	aut] a add. D
ciatur D	actori D		53 obi-

---

<sup>17</sup> C.23 q.4 c.6      <sup>18</sup> C.3 q.7 c.3      <sup>19</sup> C.35 q.6 c.7      <sup>20</sup> 3 Comp. 5.1.6 (X 5.1.19)  
<sup>21</sup> 3 Comp. 5.1.5 (X 5.1.18)      <sup>22</sup> 3 Comp. 5.1.6 (X 5.1.19)      <sup>23</sup> 3 Comp. 5.1.4 (X 5.1.17)  
<sup>24</sup> 3 Comp. 5.3.2 (X 5.3.31)      <sup>25</sup> cf. 4 Comp. 2.4.1 (Coll. Gilb. 2.8.2; X 2.14.8) sed vide quae  
 scripsi supra in adnot. 17, pag. 00.      <sup>26</sup> 3 Comp. 2.3.5 (X 2.6.5)      <sup>27</sup> 3 Comp. 5.1.4  
 (X 5.1.17)

55 ab accusando, set non punitur aliqua ordinaria pena, nec infamis efficitur, sicut expresse legitur extra. i. de testibus Super eo,<sup>28</sup> extra. iii. de ord. cog. c.i. in fine,<sup>29</sup> et extra. ii. de excep. c. Denique.<sup>30</sup> Ceterum si obicitur promouendo, et hic similiter subdistinguitur aut ante confirmationem opponitur aut post confirmationem. Si ante confirmationem opponitur crimen et  
60 probatur, inedit promouendum set non deicit iam promotum. Si uero post confirmationem opponitur promouendo, licet etiam ille qui obicit non teneatur inscribere sicut nec in casu premissio, tamen secundum arbitrium iudicis ad aliquam extraordinariam penam se alligare debet, quam reportet si non probauerit quod obiecit. Et hoc modo crimine probato perdit quod  
65 per electionem et confirmationem adquisierat, set beneficia prius habita non amittit, sicut hoc totum traditur extra. iii. de accusat. Super hiis de quibus.<sup>31</sup> Et nota quod laici et mulieres et quilibet bone fame in hoc casu admittuntur ad testificandum, extra. iii. de testi. Tam litteris.<sup>32</sup>

Cum autem in modum accusationis obicitur crimen alicui, hic est inscriptio  
70 necessaria, et debet se accusator ad penam talionis obligare, ut probatur in dicta decretali Licet Heli,<sup>33</sup> et ii. q.viii. c.i. iii. et iii.<sup>34</sup> et causa ii. q.iii. per totum,<sup>35</sup> extra. ii. de procur. Si matrimonii causa,<sup>36</sup> et C. qui accus. non poss. l. Qui crimen.<sup>37</sup> Set est quidem regulariter et generaliter uerum quod nullus criminosus nullus infamis nullus laicus nullus clericus irregularis  
75 in hoc casu auditur contra aliquem clericum nisi in criminibus exceptis, ut causa ii. q.vii. c.i. et ii. et iii. iii. etc.,<sup>38</sup> extra. i. de accus. De cetero.<sup>39</sup> Qualiter autem libellus accusationis sit formandus colligitur ex lege quam habemus ii. q. ult. Libellorum<sup>40</sup> et ex istis uersibus:

Consule mense die coram pretore professus

80 Te deferre reum crimen loca pone sodalem.

Et licet hora dies, non mensis pretereatur. Quod autem dixi libellum inscriptionis fore necessarium generaliter uerum est, nisi in quibusdam casibus ubi potest quis † iterari sine omni crimine. Primus est in crimine abigeatus. C. de crim. abig. l. unica.<sup>41</sup> Secundus est in leuibis criminibus, ut ff. de  
85 accus. l. Leuia.<sup>42</sup> Tertius est in crimine apostasie, C. de apostatis Aposta-

56 sicut expresse legitur *om. D*      57 in fine *om. D*      extra. — Denique *om. C.*  
Ceterum] Similiter *D*      58 et hic *om. D*      59 confirmationem *om. D*      crimen  
*om. C*      60 deicit] dicit *D*      uero] non *D*      61-62 non teneatur inscribere] ad  
inscriptionem non teneatur *D*      62 secundum arbitrium] arbitrio *D*      64 si non  
probauerit *iterat D*      Et hoc modo crimine probato] Si autem crimen probetur *D*  
perdat *D*      65 adquisiuit *D*      66 admittit *C*      iii. de accusat. *lac. D*  
67 casu *om. D*      68 iii. de testi. *om. D*      Tam] Cum *D*      70 talionis obligare]  
talem alligare *D*      71 per totum] c.ii. *D*      72-73 extra. ii. — Qui crimen *om. C*  
73 Set est — et]      Et est *D*      74 clericus *om. D*      75 aliquem *om. D*  
76 causa *om. D*      etc. — De cetero *om. D*      77 autem *om. D*      78 istis] his *D*  
79 profectus *D*      82 generaliter *om. D*      83 ubi — crimine *C male: om. D, (leg. ...*  
intentari sine inscriptione?)      84 in] de *D*

<sup>28</sup> 1 Comp. 2.14.4 (X 2.21.3)      <sup>29</sup> 3 Comp. 2.4.1 (X 2.10.2)      <sup>30</sup> 2 Comp. 2.11.1 (X 2.25.1)      <sup>31</sup> 3 Comp. 5.1.3 (X 2.21.8)      <sup>32</sup> 3 Comp. 2.12.6 (X 2.20.33)      <sup>33</sup> 3 Comp. 5.2.3 (X 5.3.31)      <sup>34</sup> C.2 q.8 cc.1, 3, et 4      <sup>35</sup> C.2 q.3 passim      <sup>36</sup> 2 Comp. 1.18.2 (X —)      <sup>37</sup> Cod. 9.1.3      <sup>38</sup> C.2 q.7 cc. 1-4      <sup>39</sup> 1 Comp. 5.1.10 (X 2.20.14)      <sup>40</sup> C.2 q.8 dict. Gr. post c.5 ¶ 2      <sup>41</sup> Cod. 9.37.1      <sup>42</sup> Dig. 48.2.6

torum.<sup>48</sup> Quidam tamen casum istum non recipiunt, sic nec quosdam ex aliis. Quartus est si accusatur Iudeus contraxisse cum Christiana uel Christianus cum Iudea, C. de Iudeis l. Ne quis.<sup>44</sup> Quintus est cum mulier ad accusandum admittitur, que non inscribit, ut xv. q.iii. c. De crimine.<sup>45</sup> Sex-  
 90 tus est si maritus iure mariti intra xl. dies utiles uxorem de adulterio uelit accusare, ut iiii. q. iiii. § Aliquando,<sup>46</sup> et ff. de minor. l. Auxilium.<sup>47</sup> Ibi dicitur quod infra lx. dies debet accusare. Tamen secundum canones cum agitur ad separationem thori inscribere debet, licet non debeat se ad talionem obligare, ut extra. iii. de procur. Tue fraternitatis.<sup>48</sup> Quidam ponunt alium  
 95 casum ubi dicunt inscriptionem non esse necessariam, scilicet in his que officiales deferunt iudici, ut C. de accus. Ea que.<sup>49</sup> Et nota quod in omnibus supradictis casibus cum obicitur crimen alicui, si is qui obicit non potest probare quod intendit, absoluitur reus etiam si nihil prestiterit, nisi mala fama sit respersus. Tunc enim iudex eorum ad purgationem eos cogere debet,  
 100 in quo si defecerit potest et debet eum priuare officio et beneficio, sicut probatur extra. i. de accus. Cum P. Manco,<sup>50</sup> extra. i. de simon. Dilectus,<sup>51</sup> extra. i. de purga. can. Quotiens<sup>52</sup> et extra. iii. de cohab. clerico Tua nos,<sup>53</sup> que hoc expresse dicit, et extra. iii. de purg. can. c.i. et ult. in fine.<sup>54</sup> T.

QUESTIO PRIMA. Circa materiam istam multe consueuerunt fieri ques-  
 105 tiones et primo sic. Ecce commissa est alicui inquisitio contra aliquem prelatum. Queritur an aliquis contra eum agere possit. Et uidetur primo quod non, quia fama gerit uicem accusatoris et ipsa fama accusat, ut extra. iii. de simonia Licet Heli<sup>55</sup> et de accu. Qualiter et quando.<sup>56</sup> Et tantum unus debet esse qui accusat, ff. de accus. Si plures.<sup>57</sup> Ergo si tantum unus, ex  
 110 quo fama accusat, ille accusare non debet. Item inquisitio tam in ueteri testamento quam in nouo legitur facta ante omnes canonicas constitutiones, ut illud de Sodomitis quod tangitur extra. iii. de accus. Qualiter,<sup>58</sup> et ii. q.i. Deus omnipotens,<sup>59</sup> et in ewangelio quesuit dominus rationem uillica-

---

86 istum casum tr. D	recipiunt] admittunt D	86-87 sic — aliis om. D
89 que . . . inscribit] quia . . . inscribitur D	90 de adulterio D: adulterium C	
91 § Aliquando C: Cum aliquando D	91-92 et ff. — accusare om. C	92 lx. emendavi: xl. D
Tamen] uel D	93 agit D	thori separationem tr. D
95 scilicet — que] set D	97 casibus] causis D	99 sit om. C
eos om. D	101 Cum P. Manco.] Tum peius in accusatione illa D	eorum] eos D
dilectus D	103 et extra. — in fine. T. om. D	Dilectus] Cum
scilicet super eodem capitulo add. D	105 et om. D	106 possit]
accusat] accusatur D	ut] hic habetur et D	107 non] possit add. D
post esse tr. D	108 et] extra. add. D	108-109 unus
add. D	109 de accus.] et inscrip. add. D	si ergo tr. D
quod] hic add. D	extra. — et om. D	112 illud] et
		113-114 uillicationis sue in om. C

---

<sup>43</sup> Cod. 1.7.4      <sup>44</sup> Cod. 1.9.6      <sup>45</sup> C.15 q.3 c.1      <sup>46</sup> C.4 q.4 p.c. 2 § 1-2  
<sup>47</sup> Dig. 4.4.37.1      <sup>48</sup> 3 Comp. 1.22.2      <sup>49</sup> Cod. 9.2.7      <sup>50</sup> 1 Comp. 5.1.12 (X 5.34.7)  
<sup>51</sup> 3 Comp. 5.2.2 (X 5.3.30)      <sup>52</sup> 1 Comp. 5.29.4 (X 5.34.5)      <sup>53</sup> 3 Comp. 3.2.1 (X 3.2.8)  
<sup>54</sup> 3 Comp. 5.17.1 et 6 (X 5.34.10 et 15)      <sup>55</sup> 3 Comp. 5.2.3 (X 5.3.31)      <sup>56</sup> 3 Comp. 5.1.4 (X 5.1.17)      <sup>57</sup> Dig. 48.2.16      <sup>58</sup> 3 Comp. 5.1.4 (X 5.1.17)      <sup>59</sup> C.2 q.1 c.20

tionis sue in uillico nullo accusante,<sup>60</sup> sic et de suspecto tutore nullo agente,  
115 ut ff. de suspect. tut. l.iii. § i.,<sup>61</sup> arg. xi. q.iii. Precipue, in fine.<sup>62</sup>

Contra sic probo. Contra istum agitur ad dampnationem, et iudicis  
non est sine accusatore dampnare, ut xxiii. q.iii. Si quis potestatem.<sup>63</sup>  
Item sicut hic dicitur sententia secundum formam iudicii est ferenda, ut  
extra. iii. de simon. Licet Heli,<sup>64</sup> set forma iudicii est quod quattuor persone  
120 in quolibet iudicio requirantur, ut iiii. q.iii. Nullus,<sup>65</sup> extra. i. de uerb.  
signif. In his que ambig.,<sup>66</sup> uel ad minus iii. persone, scilicet iudicis, ac-  
cusatoris, et rei.

Solutio. Dico quod aliquis debet esse actor qui prosequatur inquisitionem  
inducendo testes tam super fama quam etiam super crimine. Super fama  
125 ideo dixi quia non est agendum contra aliquem in modum inquisitionis nisi  
sit mala fama respersus, ut extra. iii. de accus. Qual. et quando.<sup>67</sup> Et  
quod aliquis debeat esse ad prosequendam inquisitionem probatur expresse  
extra. iii. de accus. c. Cum oporteat, in fine<sup>68</sup> et c. Licet Heli.<sup>69</sup> Si uero  
defuerit actor, tunc iudex ex officio suo inquirere potest, ut probatur in omni-  
130 bus decretalibus iam dictis et per exempla iam dicta.

QUESTIO SECUNDA. Item queritur secundo loco an talis actor ualeat per  
exceptionem criminis ab agendo repelli. Et uidetur quod sic, quia quod in  
alio insequitur primo in se ulcisci debet. Prius enim trabem de oculo suo eiciat  
etc. ut iii. q.vii. Qui sine peccato<sup>70</sup> et c. Postulatus.<sup>71</sup> Preterea iste crimen  
135 intendit, licet non agatur directe in modum accusationis. Vnde primo querend-  
um est si ipse non sit criminosus, quod si sit non debeat audiri, ut vi.  
q.i. Qui crimen,<sup>72</sup> et ii. q.vii. Si qui sunt uituperatores<sup>73</sup> et c. Querendum.<sup>74</sup>

Set contra, iste non intelligitur agere, quoniam si ageret reconueniri posset,  
quod Lau. negat et ego cum eo. Ergo si non intelligitur agere, contra eum  
140 nihil obici potest quia tantum contra agentes exceptio locum habet. Item  
alia ratione, quia licet repelleretur per exceptionem, nihilominus ex officio suo  
iudex procedere possit ut supradictum est. Frustra ergo contra eum exci-  
peretur ubi labor esset inutilis.

Solutio: Cum hic sit ius expressum, non sunt mendicata querenda suf-  
145 fragia. Dicimus quod contra eum exceptio locum habet, set ea probata

114 sic et] et inquiretur D 115 § i. — q.iii. om. D 116 istum] ipsum D  
dampnationem D 116-117 iudicis non est] iudex non potest D 118 sicut] se-  
cundum quod D iudicii om. D ferenda] respondenda D ut] idem dicitur D  
120 iiii.] iii. D 120-121 extra. — ambig. om. D 121 uel] sunt D 124 etiam  
om. D 126 ut extra. — quando om. D 129 probatur] patet D 130 decreta-  
libus post dictis tr. D 133 primo post se tr. D ulcisci debet] ulciscatur D  
Prius enim] et primo D 134 etc. ut om. D et c. om. D 136 non<sup>1</sup> om. D  
debet D 137 et ii. — Querendum om. D ii.q.vii. ... et c. emendavi: vii.q.i. ... et  
q. C 138 quoniam] quia D 140 agentem D 141-142 iudex ante ex tr. D  
144-145 Solutio — suffragia om. D 145 Dicimus] tamen add. D

<sup>60</sup> cf. Luc. 16.2<sup>61</sup> Dig. 26.10.3<sup>62</sup> C.11 q.3 c.3<sup>63</sup> C.23 q.4 c. 31<sup>64</sup> 3 Comp. 5.2.3 (X 5.3.31)<sup>65</sup> C.4 q. 4 c.1<sup>66</sup> 2 Comp. 5.23.1 (X 5.40.15)<sup>67</sup> 3 Comp. 5.1.4 (X 5.1.17)<sup>68</sup> 3 Comp. 5.1.6 (X 5.1.19)<sup>69</sup> 3 Comp. 5.2.3 (X 5.1.31)<sup>70</sup> C.3 q.7 c.3<sup>71</sup> C.3 q.7 c.6<sup>72</sup> C.6 q.1 c.6<sup>73</sup> C.2 q.7 c.17<sup>74</sup> C.2 q.7 c.18

nihilominus iudex procedat in inquisitione, ut extra. iii. de accus. Cum oporteat.<sup>75</sup>

QUESTIO TERTIA. Tertio loco queritur si habeat locum reinquisitio contra eum qui litteras impetrauit, si reus petat de facto actoris inquiri. Ad hoc  
150 respondeo in hunc modum: si iudex delegatus est, non potest inquirere de facto actoris nisi in litteris commissionis contineatur expresse, quia non potest iurisdictionem suam ad alias personas extendere. Nec habet locum reconuentio quia non uere agitur in forma iudicii, quoniam testes lite non contestata recipi possunt et procedi in causa ipsa, ut extra. ut lite non contes.  
155 c. Quoniam frequenter.<sup>76</sup> Si uero iudex est ordinarius, ex officio suo ita poterit procedere iudex contra actorem sicut contra reum, simul si uoluerit, uel primo de uno et postea de alio, secundum quod uiderit expedire, ita tamen quod de illius crimine primo cognoscat qui maiori respersus est infamia, arg. iii. q.xi. Prius est<sup>77</sup> et C. de ord. cog. Per totum.<sup>78</sup>

160 QUESTIO QVARTA. Quarto queritur si citari debet ille contra quem agitur. Quidam dicunt quod non, arg. extra. iii. ut lite non contes. Quoniam frequenter,<sup>79</sup> set ueritas est quod citari debet, sicut dicitur extra. iii. de simo. Licet Heli,<sup>80</sup> quia licet dominus papa inquireret, tamen illum abbatem uocauit, arg. extra. iii. [lac.] Veritatis,<sup>81</sup> Ad audientiam,<sup>82</sup> et est arg. quod Dominus misit angelos ad Sodomitas ut eos presentes condemnaret. Item  
165 in ewangelio dominus uocauit uillicum sic dicens, 'Redde rationem uillicationis tue.' A simili et in hoc casu dicemus quod uocari debet quoniam merita cause partium assertionem panduntur, ut extra. iii. de sententia et re iudi. Cum illius circa finem.<sup>83</sup> C. Si per uim uel alio modo absens quis fuerit  
170 l. ult.<sup>84</sup>

QUESTIO QVINTA. Item queritur si iudex datus ad inquisitionem faciendam possit uices suas alii delegare. Et uidetur quod sic si est a principe delegatus, sicut probatur C. de iudic. A iudice<sup>85</sup> et extra. iii. de of. iud. deleg. Super questionum, circa prin.,<sup>86</sup> extra. i. eodem tit. Cum tibi sit<sup>87</sup> et c.  
175 Quamuis simus.<sup>88</sup>

---

148 queritur loco *tr.* D locum reinquisitio] reus inquisitionem D 150 respondeo  
— modum] respondendum est D est *om.* D 152 extendere *ante ad tr.* D 153-  
154 quoniam — ipsa D: *om.* C 156 potest D iudex *om.* D 157 et *om.* D  
160 debet ille] debeat D 164 *post lac.* Veritatis. Ad audientiam C *male*: Veritatis  
audientiam D (*leg.* Veritatis. Ad euidientiam est et arg. *rell.?*) 167 et *om.* D  
168 causarum D 168-169 partium — finem] et cet. D 169 absens quis fuerit  
*om.* D 170 l.ult.: *hic desinit* D, *ubi seqr. initium cuiusdam dist.* Salarium aduocati  
quattuor modis petitur conditione certi si certum est |||

---

<sup>75</sup> 3 Comp. 5.1.6 (X 5.1.19)      <sup>76</sup> 3 Comp. 2.3.5 (X 2.6.5)      <sup>77</sup> C.3 q.11 c.4  
<sup>78</sup> Cod. 7.19      <sup>79</sup> 3 Comp. 2.3.5 (X 2.6.5)      <sup>80</sup> 3 Comp. 5.2.3 (X 5.3.31)  
<sup>81</sup> cf. 4 Comp. 2.4.1 (ut supra n. 25)      <sup>82</sup> locus incertus (v. app. crit.)      <sup>83</sup> 3 Comp.  
2.18.1 (X—)      <sup>84</sup> Cod. 8.5.2      <sup>85</sup> Cod. 3.1.5      <sup>86</sup> 3 Comp. 1.18.6 (X 1.29.27)  
<sup>87</sup> 1 Comp. 1.21.1 (X—)      <sup>88</sup> 1 Comp. 1.21.7 (X 1.29.6)

Set contra, quod non possit delegare uidetur quoniam omnia que cognitionem desiderant per libellum a delegatore expediri non possunt, ut ff. de officio proconsulis et legati Nec quicquam § i.<sup>89</sup> Preterea ista commissio potius pertinet ad imperium quam ad iurisdictionem, unde demandari non potest, ff. de of. eius cui man. est iur. Mandatam.<sup>90</sup>

Solutio: Credimus quod delegare alteri uices suas potest, quia hoc non est de mero imperio set de mixto, sicut probatur ff. de iur. omnium iudicium Imperium.<sup>91</sup> Preterea cognitio de suspectis tutoribus similis est huic cognitioni, et illam potest proconsul delegare, ut ff. de off. eius cui man. est iur. Cognitio.<sup>92</sup> A simili legatus summi pontificis potest eam delegare, quod cotidie de approbata consuetudine uidemus.

QUESTIO SEXTA. Ultimo queritur qua pena puniendus est ille qui conuincitur de aliquo delicto in tali iudicio, scilicet inquisitionis. Et uidetur quod debeat deponi, ut extra. iii. de confessis Cum super electione,<sup>93</sup> quia undecumque claruerint crimina urenda sunt et punienda, ut xxiii. q.iii. Ecce autem crimina.<sup>94</sup>

Set contra probatur, cum non agatur ad hoc directe in modum accusationis, arg. extra. iii. de symo. Licet Ely<sup>95</sup> et extra. ii. de excep. Denique.<sup>96</sup>

Solutio: Nota quod magister Laur. dicit quod prelati sunt remouendi ab administratione, minores uero clerici deponendi ab ordine. Arg. sunt pro eo extra. iii. de accusat. Qualiter et quando,<sup>97</sup> extra. iii. de confessis Cum super electione,<sup>98</sup> quia ubi pena inuenitur statuta, illa tantum imponi debet ut extra. i. de of. iudic. del. De causis.<sup>99</sup> Michi autem uidetur quod prelati sicut dictum est sunt deponendi ab administratione, set minores clerici non sunt degradandi set tantum ab officio et beneficio deponendi, ut bene probatur extra. iii. de simonia Dilectus filius<sup>100</sup> et in decretali Per tuas<sup>101</sup> et extra. iii. de elect. Per inquisitionem.<sup>102</sup> Ad decretalem illam extra. iii. de confessis Cum super electione<sup>103</sup> respondeo: ibi confessus fuit in iure se symoniam commisisse quia forte directe contra eum agebatur. Vel illud speciale est in domino papa, unde non est trahendum ad consequentiam, cum ipse solus possit citra ius, contra ius, et supra ius, secundum quod dicit decretalis extra. iii. de preben. Cum iam dudum.<sup>104</sup> T.

---

180 Mandatum C

190 hurenda C

---

<sup>89</sup> Dig. 1.16.9.1      <sup>90</sup> Dig. 1.21.5      <sup>91</sup> Dig. 2.1.3      <sup>92</sup> Dig. 1.21.4      <sup>83</sup> 3 Comp.  
 2.10.1 (X 2.18.2)      <sup>94</sup> C.24 q.3 c.18      <sup>95</sup> 3 Comp. 5.2.3 (X 5.3.31)      <sup>96</sup> 2 Comp.  
 2.11.1 (X 2.25.1)      <sup>97</sup> 3 Comp. 5.1.4 (X. 5.1.17)      <sup>98</sup> 3 Comp. 2.10.1 (X. 2.18.2)  
<sup>99</sup> 1 Comp. 1.21.5 (X 1.29.4)      <sup>100</sup> 3 Comp. 5.2.2 (X 5.3.30)      <sup>101</sup> 3 Comp. 5.2.4  
 (X 5.3.32)      <sup>102</sup> 3 Comp. 1.6.11 (X 1.6.26)      <sup>103</sup> 3 Comp. 2.10.1 (X 2.18.2)  
<sup>104</sup> 3 Comp.3.5.5 (X 3.5.18).

*Postscript.* I have erred in transcribing lines 79-81 as a couplet, followed by a prose sentence. The ditty continues in line 81 and concludes 'non mensis pretereatur'. It also occurs in Tancred's *Apparatus* to 3 Comp. 1.22.2 s.v. *lege ciuili* and in the *Glossa ordinaria* to X 1.38.5 s.h.v.

