

Clerics and Religious in Business

Introduction

The Catholic Church, fully cognizant of her clergy's lofty state, does everything to keep them faithful to their divine ministry, loyal to their commitment to have "God Himself as their lot." Her legislations in the course of centuries will attest to this. It is precisely to keep her clergy away from secular business activities — which are not only unbecoming of their state but equally alienating them from their pledged obligation of "keeping God the center of their life and love and God's work the constant object of their striving endeavor," that she imposes the discipline of prohibiting her clerics, and religious from engaging in certain kinds of business and trading.

Her prohibition to her clerics and religious from engaging in commercial pursuits is tempered by the fact that the clergy and religious live in a temporal or material world and as such they have the task of meeting the demands of corporal existence, and the equally weighty obligation of administering efficiently the ecclesiastical temporal goods meant for the promotion of divine worship, the advancement of the works of charity, apostolate, piety and for the adequate support of those "who are serving the altar of God." Thus inspite of her constant and consistent prohibitive posture on the matter, we see at times the Catholic Church, allow-

ing her clergy, on selective basis and always with serious reason of lack of or due to inadequate beneficial endowment and for other equally just cause to engage in some business activities but always with due precaution and prudence not to degrade their ecclesiastical dignity nor to cause scandal to the faithful. If for purposes of intelligent and efficient administration of ecclesiastical temporalities, clerics and religious have to do some business transactions or commercial operations, the Church's Laws understandably show certain flexibility on the matter: they may do so as long as it is part of management technique and investment strategy. And in accordance with the spirit of the most recently promulgated Code of 1983, if indeed for a just cause they have to practice certain business pursuits and/or commercial trading — though in themselves are legitimate — but materially and/or formally forbidden by the same Code, when the permission of the competent ecclesiastical authority is secured, *the activities become perfectly licit.*

The Church, from the early apostolic times to the most recently promulgated Code of 1983, is consistent in her legislation on the matter relative to her clergy and religious: prohibiting them from undertaking certain business or trading activities lest they be taken up by secular affairs with the consequent danger of spiritual or financial disaster; and lest they be consumed by the pernicious spirit of cupidity, avarice, greed and the disordinate cravings for the material goods of this world. This wise ecclesiastical legislation — besides keeping the clerics and religious from an undue pursuit of this world's goods, — equally prevents harm to befall to the Church herself: such as litigations, court suits, abject poverty, etc., if the business dealings or trading activities of clerics and religious go awry.

THE IMPORTANCE OF THE SUBJECT MATTER

The significance of this treatise can be derived from the fact that clerics and religious will be provided a clear understanding of what business dealings and commercial tradings are forbidden to them by the Code of Canon Law and this will serve as a well-defined canonico-doctrinal guidelines for their actuations relative to the matter. Competent Ecclesiastical Authorities — when

their permission is being sought by their subordinate clerics and/or religious who, for a just cause have to engage themselves in business pursuits and activities — will be provided an enlightened norm either for the concession or denial of the permission that is being asked. This will temper their being too legalistic on one hand and their being too lax or too excusing on the other hand. Ecclesiastical Administrators, if clerics or religious, will know what forms of business dealings or commercial activities are forbidden and what are not relative to the prudent management of ecclesiastical goods. Last but not least, this treatise can serve as an educational instrument which raises the consciousness of the People of God in the Church concerning the role of Canon Law in Pastoral Ministry.

THE EARLY CHURCH'S LEGISLATIONS ON BUSINESS PURSUITS OF CLERICS

In the early period of the Church, the clerics and religious supported themselves by manual labor, applying themselves to trade of various kinds or had to work for a living in the fields or farms (Cf. C. AUGUSTINE, *A commentary on the New Code of Canon Law*, Vol. II, B. Herder Book Co., London, W.C.; 1936; p. 95). Some of the clergy, specially those who were not accorded adequate ecclesiastical support, took recourse to gainful trading. The produce and yields of the lands were bartered with other commodities. Priests and even bishops were engaged in agricultural and mercantile activities to cope with their needs and other basic necessities of life. (F. FUNK, *Manual of History*, Washington, D.C., 1913, p. 51). But such activities began to take its toll. They absorbed so much of the clergy's time, energy and attention that they gradually neglected their sacerdotal ministry and obligations. Thus the Church guided by this admonition of St. Paul: "No man being a soldier of God entangles himself in secular business," (II Tim. II, 4) enacted certain norms regulating the business and mercantile pursuits of the clergy. The Council of Elvira (311-322) issued a decree prohibiting priests and bishops to engage in business and trading pursuits. (F. FUNK, p. 52). The Second Council of Carthage of Africa equally forbade the clergy in participating or having a hand in agricultural trades and business

of purely commercial character. (II Concilium Carthaginense, cc. 3, 4, D. XCI). In the fourth century competent authorities of local Churches generally forbade their clergy to engage in "negotiatione," "mercatura," "permutationibus," "conductione," and in "commercio."

From the Fourth Century to the Pre-1917 Code Period

The legal prohibition for clerics to engage in business and trading took a wider scope during the fourth century when Papal Documents, Conciliar Decrees, were issued to this effect. POPE MELCHIADES I (310-314) prohibited the members of the clergy from engaging themselves to any form of business or trading. (Cf. c. I, D. LXXXVIII, "A quocumque negotio prohibentur clerici..." c. I, D. LXXXVIII). The Council of Nicea held in 325 decreed the expulsion from the clerical state of clerics who engaged themselves into profit-seeking ventures. (Cf. c. 8, C. XIV, q. 4 "*Sacrosanctum Concilium a clericalibus officiis emovere clericos sese immiscere in negotio commercioque decrevit.*") The III Council of Carthage prohibited Bishops, priests, deacons to engage personally or through agents in "ullo turpi vel inhonesto negotio," (Anno 397, c. 3, C XXI, q. 3, "*Sese immiscere ab ullo turpi vel inhonesto negotio vetantur clerici.*") The Council of Chalcedon of 451, reiterated the same prohibitions to clerics and monks, exempting those, who with the permission of their bishops, had the task of administering the Church's properties and had the care of orphans and widows, (c. 26, D. LXXXVI; c. I, XXI, q. 3).

In the Decretals of POPE GREGORY IX, legitimate business and trading were not prohibited, provided they were necessary for the sustenance and support of the clergy and religious. What was prohibited were all kinds of commercial and mercantile activities entered into by clerics for profit-seeking and lucrative purposes. The violation of the later prohibition was under pain of excommunication, (c. 6, X, 50) and other penalties at the discretion of the Bishop including censures for the contemptuous ones (c. 15, X, 1, 6). The IV Lateran Council renewed with fresh vigor the prohibition to clerics to engage in such mundane, secular commercial pursuit (c. 15, X, *De Vita et Honestate Clericorum*, III, 1). The Council of Trent in its XXII Session, Chapter I, *De refor-*

matione, renewed with great emphasis the prohibition to clerics to engage in any form of business activities, leaving to the discretion and prudence of the Ordinaries the imposition of corresponding punishments to defying and violating clerics.

The abuses being perpetuated by Portuguese and Spanish Missionaries, who, to finance and sustain their missionary endeavors, resorted to gainful and lucrative trading of commodities, were stopped by the norms issued by POPE URBAN VIII in his Apostolic Letter entitled "Ex Debito" of February 22, 1633. He forbade European Missionaries sent to Oriental Nations to engage in any business or trading, either personally or through others or in the name of their communities, directly or indirectly and for whatever reason under the pain of excommunication "latae sententiae," privation of active and passive voice, title, dignity, and the forfeiture of the commodities and gains in favor of the Mission. He also imposed upon Ecclesiastical Superiors, under pain of the same punishments, the obligation of vigilance and the task of undertaking the due process or procedure for disciplinary actions against subject-offenders (Fontes C.I.C. I, No. 211; Cf. VROMANT, G. "*De Negotiatione Clericis et Religiosis Interdicta*," *Jus Pontificium*, Vol. VIII (1928), p. 203).

A few years later, POPE CLEMENT IX, in his Apostolic Constitution, "Sollicitudo" of June 17, 1669, nos. 3 and 4 renewed the prohibition and extended it to the whole of the Far East and of the Americas under the same censures, including in its provisions all seculars and religious. Considered as offenders of this prohibition were even those who committed the act of "even once." Offenders could not be absolved from excommunication, except in danger of death and unless they had done first the necessary restitution of gains. Subject to the same censures too were those Ecclesiastical Superiors who were negligent in punishing their subordinate-offenders (Fontes C.I.C. I, No. 243).

In 1741, POPE BENEDICT XIV in his Apostolic Constitution entitled "Apostolicae Servitutis," dated February 25, reiterated the provisions of the canons and constitutions of his predecessors. However, he added that in case a cleric inherited a business enterprise or trade, he was duty bound to hand it over to others; or in case it could not be done expeditiously without in-

curing great loss or damage, the permission of the competent ecclesiastical authority had to be secured; the Congregation for the interpretation of the Council of Trent, if the cleric was from Italy; or that of the Ordinary of the place, if he was from another place (Cf. Fontes C.I.C. I, No. 306).

POPE CLEMENT XIII in his Encyclical Letter, "Cum Primum," of September 17, 1759, reaffirmed the previous legislations with all the censures attached there to. He gave, however, no exemption nor privilege nor indulgence. He even called the attention of those Prelates and superiors on the alibis and excuses being resorted to by the clerics and religious to circumvent the laws. In his document, he expressly stated that "active trading by its nature is truly and properly a form of business" (Fontes C.I.C. II, No. 452).

In treating the historical aspect of the Church's legislation on the prohibition of clerics and religious from engaging themselves in business pursuits and trading activities, it is relevant that we cite here certain answers and rescripts given by the Holy See to queries on the matter. Please take note that the cases presented to the Holy See were concrete ones under definite, specific circumstances, and mostly in conformity with the customs, practices, demands and exigencies of the time and place. However, the mind of the Church on the matter will emerge with clarity.

In 1615, the Sacred Congregation of Bishops and Regulars answered and ordered the Archbishop of Amsterdam that the clergy of his Archdiocese should refrain completely from active buying and selling of land products for profits, unless they had to do it on account of grave economic necessity (Cf. S.C. Ep. et Reg. *Ad Archiepiscopum Amsterdamsis*, Nov. 1615, Fontes C.I.C. IV, No. 1668).

In 1665, the Sacred Congregation for the Propagation of the Faith responded to a query that clerics in China who were lawfully ordained without the corresponding ecclesiastical benefice might be permitted to pursue certain business and commercial activities through the instrumentality of laymen due to economic necessity, i.e. for their adequate support, and provided however,

that those transactions were lawful (S.C. de Prop. Fide, 23 Nov. 1665; Fontes C.I.C. VII, 473). An identical response was given by the Sacred Congregation of the Holy Office to the Metropolitan of Constantinople several years later (S.C.S. Officii, *Ad Constantinopolitanum*, 18 Martii, 1782; Fontes C.I.C., IV, No. 845).

Corporations organized by Religious for purposes of business and commercial operations with an ultimate view for profit were forbidden. Religious congregations, orders were permitted to buy cattles, hogs and other animals not for profit-seeking purposes but to make use of the greeneries or grassy lands they already owned, though later on the same animals would be sold at a higher price (S.C. Ep. et Reg., *Cisterciensium Montis Soracti*, 17 Augusti, 1792; Fontes C.I.C. IV, No. 1886).

In 1846, the Sacred Congregation of the Holy Office affirmed that it was perfectly legitimate for a priest to print, and sell books authored by himself. It was not legitimate or lawful to print, and sell books written or authored by others (S.C.S. Officii, *Mariopolitanensem*, 8 Julii 1846; Fontes C.I.C. IV, 898).

In the second part of the nineteenth century, the State-authorities of Tibet allowed the entry and stay of foreigners to their country if they were businessmen or mercantile traders. Due to this State-policy, the Vicar Apostolic of Lehasse, Tibet, asked the Sacred Congregation for the Propagation of the Faith if missionaries could be in business and trade for purposes of entry and missionary works to the Country of Tibet. The answer given was: "It is not lawful for missicnaries under any pretext to engage themselves in any business or commerce" (S.C. de Prop. Fide, *Littera Ad Vicarium Apostolicum Lehasse*, 4 Februarii 1860; Fontes C.I.C. VII, No. 848).

In April 15, 1885, The Sacred Congregation of the Holy Office declared: "Considering the peculiar circumstances of our times, we have not to disturb those ecclesiastical persons who have bought and acquired shares of stocks . . . provided they have done it in conformity with the norms, mandate and prescriptions of the Holy See and have not done it for purposes of speculations . . . The following however, was appended: "Priests are not allowed to take part in the administration of business corporations or to act

as members of the Administrative Board" (S.C.S. Officii, 15 Aprilis 1885; Fontes C.I.C. IV, No. 1091; Etiam S.C. De Prop. Fide, Littera ad Episcoporum Ruraemundenensem, 7 Julii 1893).

The 1917 Canonical Provisions

The ecclesiastical discipline on business activities of clerics and religious is embodied in Canon 142 of the 1917 Codex, complemented by Canons 592 and 679, par. I. The sanctions for the violations of the aforesaid prohibition are contained in Canon 2380.

Thus:

Canon 142 CIC:

"Clerics are forbidden to conduct business or trade, either personally or through agents, either for their own benefit or that of other persons."

Canon 592 CIC:

"All religious are bound by the obligations common to clerics as set forth in canons 124-142, unless it appears otherwise from the context of the law or from the nature of the case."

Canon 679, par. I CIC:

"The members of quasi-religious societies are bound also by the obligations common to clerics, unless it appears otherwise from the nature of the case or the context of the law."

Canon 2380 CIC:

"Clerics or religious who, personally or through others, engage in commerce or trading in violations of the provisions of Canon 142 shall be punished by the Ordinary with appropriate penalties in proportion to the gravity of their guilt."

A more careful scrutiny of the afore-mentioned Canons will inevitably show that a close link exists between the ancient, pre-Code discipline and that of the *1917 Codex*.

THE 1950 DECREE OF THE SACRED CONGREGATION OF THE COUNCIL

On March 22, 1950 the Sacred Congregation of the Council issued the Decree "*Pluribus Ex Documentis*" that took effect on August 1, 1950, regulating business and trading by clerics, religious and members of Societies of Common Life and of Secular Institutes and providing new penalties for the violation of Canon 142 of the 1917 Code.

It is a Pontifical Decree though promulgated by the Sacred Congregation of the Council. A number of Canonists see in this 1950 Decree a *truly new law* since it carries the marks or the universal and permanent nature or character of a law and it prescribes greater penalties (Cf. SMIDDY, T.: "Negotiatio," *The Jurist*, Vol. XI, (1951), pp. 515-516).

With this Decree new penalties are introduced which raised prohibited business and trading into major crimes for the clergy and religious; and also stringent penalties are meant for their superiors who have not prevented the commission of such crimes. Violation of the provision is punishable with "*latae sententiae*" excommunication. This is a bit unusual because the Church has generally in the past merely threatened violators with "*ferendae sententiae*." And again because canonists and commentators on c. 2380 (of the 1917 Code) usually were not recommending that the Ordinary immediately use a penalty as severe as excommunication. However, it is an admitted fact that severity of penalties is a very efficacious means for assuring the observance of the law and undoubtedly the Sacred Congregation of the Council had this idea in mind when it promulgated the Decree.

THE BUSINESS PURSUITS OF CLERICS AND RELIGIOUS AS PER THE PRESENT CODE

That the Clergy and Religious must attend to their spiritual work and ministerial commitment and not involve themselves in secular business and trading activities, has been the law of the Church for many centuries. The 1917 Code repeats the ancient law. The Decree "*Pluribus Ex Documentis*" issued on March 22, 1950 by the Sacred Congregation of the Council reiterates and ex-

tends the scope of prohibition even to members of societies of common life and of Secular Institutes, and attaches greater penalties for its violations.

The New Code still retains the same prohibition to clerics and religious; banning them from business trading, which they cannot conduct either personally or through others, either for their own profit or that of others. However, they may lawfully engage themselves in commercial business or mercantile trading provided there is a just cause and they secure first permission of the legitimate competent ecclesiastical authority. The Code of Canon Law itself exempts from this prohibition the *permanent deacons* (who are clerics of course) unless particular laws provide otherwise. By virtue of c. 739, members of Societies of Apostolic Life and by provisions of c. 711, Nos. 1, 2, those of the Secular Institutes are still within the scope of this prohibition. Violators of this canonical provisions are threatened with a "*ferendae sententiae*" penalty in proportion to the gravity of the delict. The exceptionally severe "ipso facto" penalties are abrogated by provisions of c. 6, No. 1, 3°.

The relevant CANONS are hereby cited:

CANON 286 CIC:

"Clerics are forbidden to practice commerce or trade, either personally or through others, for their own or another's profit, except with the permission of the lawful ecclesiastical authority."

CANON 572 CIC:

"Religious are bound by the provisions of Canons 277, 285, 286 and 289..."

CANON 739 CIC:

"Apart from the obligations which derive from their constitutions, members of (i.e. clerical members of Societies of Apostolic Life) are bound by the common obligations of clerics, unless the nature of things or the context indicates otherwise." (N.B. — Additions within parenthesis are ours.)

CANON 711 CIC:

“Without prejudice to the provisions of the law concerning institutes of consecrated life, consecration as a member of a Secular Institute does not change the member’s canonical status among the people of God, be it lay or clerical.”

CANON 715, 1, CIC:

“Clerical members (of Secular Institutes) incardinated in a diocese are subject to the diocesan bishop, except for whatever concerns the consecrated life of their own institutes.”

CANON 1392 CIC:

“Clerics or religious who engage in trading or business contrary to the provisions of the canons, are to be punished according to the gravity of the offence.”

CANON 288 CIC:

“Permanent deacons are not bound by the provisions of canons 284, 285, 3 & 4, 286, 2, unless particular law states otherwise.”

It is clear from the provisions of the above-mentioned canons that clerics and religious act *lawfully* if they engage themselves in prohibited business or trading with due permission from Church’s competent authority and of course with a justifying cause; otherwise they act unlawfully and will be subjecting themselves to a proportionate punishment.

Thus:

SUBJECTS OF PROHIBITION: Clerics (except the permanent deacons), Religious and Members of Societies of Apostolic Life and of Secular Institutes. Since they are so pledged to the service of God and His people and intend or seek nothing else, their commitment leaves no room for profit-making business activities or lucrative tradings.

...*ARE FORBIDDEN TO CONDUCT...* “Prohibitur exercere...”):

The purpose of the legislation in prohibiting the above-mentioned persons from *conducting* business or trading is twofold. *First*, to prevent them from being distracted from their rightful task; and *second*, in order not to sharpen their craving or desire for the material goods of this world with consequent danger of spiritual or financial ruin. *Single, isolated, occasional act of business or trading activity will neither distract them from their dedicated service to God and men nor will deepen their desire for the temporal goods of this life.* What is prohibited therefore, is *habitual transaction ("exercere") or plurality of acts, united morally through the perpetrator's intention or through their close proximity to one another* (Cf. VERMEERSCH, *Theologia Moralis Principia, Responsa*, 2nd edition, Romae, Universitas Gregoriana, (1927), n. 24.).

How about a single transaction but nevertheless involving a very substantial amount or big sum? Will it be considered as violative of the provisions of the Code? A great number of Canonists agree that it is not: "A single act, even though the amount of money or value involved be very considerable, has only a slight influence in developing that mercenary spirit: the "*mens mercatoria*" to curb which is the main object of the present legislation" (KINANE, P. "*Clerics and Negotiatio*," Irish Ecclesiastical Record, XVII, (1921), pp. 88-89).

Object of Prohibition: *BUSINESS OR TRADE*

"*NEGOTIATIO*", "*MERCATURA*" are the words used in the Code to describe those activities or transactions which are explicitly prohibited from clerics and religious. "*NEGOTIATIO*" or *BUSINESS* in general is any transaction or dealing made for the sake of gain or profit. "*MERCATURA*" or *MERCANTILE TRADING* on the other hand, is a more concrete form of business and it consists in buying or selling merchandise or any tradeable object. Under this consideration "*MERCATURA*" or *MERCANTILE TRADING* is just a mere species of "*NEGOTIATIO*" or *BUSINESS*. It must be noted also that even though gains or profits are the principal motives of business pursuits or trading operations, sometimes however, they are resorted to for certain advantage or positional benefit, v.gr. as investment strategy or a mere prudent management technique.

The following kind of *businesses* are distinguished. This distinction is not borrowed from Civil Law or Economics but from the common usages of ecclesiastical writers:

1. *MERCHANDISING* ("Negotiatio quaestuosa," seu "negotiatio proprie dicta," vel "negotiatio lucrativa," seu "mercatura"). It consists in buying goods or commodities with the intention of selling them later at a higher price or at a profit without having effected any change in them. A closer and careful scrutiny will bring out the *four* elements in *MERCHANDISING*:

1) The good or commodity must be *bought and sold*. "Permutatio" or barter, according to some authors, is to be included under the phrase "bought and sold." The good or commodity is bought not for personal use or that of somebody else, nor to be given as a gift or donation.

2) The good or commodity is sold *unchanged*. The term "unchanged" is to be understood in its moral sense and not in its absolute sense. The good or commodity remains unchanged in its external trimmings.

3) The good or commodity is sold at a *profit*. Profit here is understood in its proper sense. It means the excess over the amount paid for in the purchase of the good or commodity and it was principally intended when the article was bought and later on sold. It is the "finis operantis."

4) The good or commodity is bought with the *intention* of selling it at a profit. The *intention* spoken of must be present at the time of the purchase of the good or commodity, and in fact must be the *cause* of it. This is the pervading "intentio mercatoria" of the "negotiator."

This form of business, *MERCHANDISING* is contrary to c. 286, and primarily the object of this canon's prohibition. Since this canon curtails the free exercise of one's rights, it must therefore be interpreted strictly as per c. 18 of the Code.

2. *MANUFACTURING* ("Negotiatio industrialis," seu "negotiatio minus proprie dicta," vel "negotiatio artificialis"). It consists in buying materials or goods with the intention of selling them later at a profit after they have been transformed and im-

proved by one's own personal, domestic or hired labor (Cf. ABBO, J. & HANNAN, J., *The Sacred Canons*, Vol. I, Herder Book C.o, St. Louis, Mo. p. 204). It is divided into:

1) *Manufacturing in the strict sense or strictly industrial business*, when the change or improvement is done by hired labor, paid employees or "compensated outside help," v. g. to buy strawberries, make jam out of them through hired labor and sell the jam. This is against c. 286.

2) *Manufacturing or industrial business in the broad sense*: when the change or improvement is done by one's own domestic labor, v. gr. the members of a certain religious community who buy raw cottons and they themselves convert them into mop heads and sell them later. Such business is not prohibited by c. 286.

It is relevant that the four elements comprising *industrial business in the strict sense* be spelled out:

- 1) The *purchase* of the materials or goods;
- 2) Changing them into finished products with the assistance of *hired or paid employees, laborers or workers*;
- 3) *Selling* the finished product at a profit;
- 4) Purchase with the *intention* of later sale at a profit after the hired or paid employees, laborers or workers have transformed the materials.

The difference between MERCHANDISING and MANUFACTURING or INDUSTRIAL BUSINESS IN THE STRICT SENSE lies in the fact that in the latter *a change is made in the materials, goods or articles purchased*. Thus the intention of the buyer is more expanded from the beginning. And the employees, laborers or workers are paid or hired or "compensated outside helpers," (*operarii alieni*).

3. *DOMESTIC BUSINESS* ("Negotiatio Economica"). It consists in buying some goods with the intention of using them for oneself or for one's community, but later they are resold at a higher price either because they have become superfluous or on account of some other reasons or motives. In this kind of busi-

ness the initial intention of selling the goods for gain at the time they were purchased was not present. Profit-seeking was not the principal intent.

4. **FACTORING** ("Negotiatio politica") Retail business in a limited sense. It is the act of purchasing wholesale supplies necessary for some community, parish, school, studentry or professional groups etc. and selling them at retail with profit or at cost plus expenses. To sell merely *for the sake of profit* makes the pursuit "negotiatio quaestuosa" or "lucrativa" and hence forbidden by c. 286. To sell at cost plus expenses, or to sell because the public good or welfare renders it desirable that these goods be made available — even though some profit is realized or the profit realized from such activity is periodically turned back for the further benefit of those beneficiaries is not forbidden by the same canon.

5. **FOREIGN EXCHANGE OR CURRENCY DEALERSHIP** ("Negotiatio Argentaria"). It consists in exchanging the currency of one nation or Country with the currency of another when the rates of exchange fluctuate thus realizing a profit in the transaction. The currency is purchased in the hope that it will change in value and the purchaser will then be able to make a profit upon re-sale. The change in value is essential if there is to be profit in this operation. Thus speculation is also involved here.

Under this category are all forms of speculative operations: **ARBITRAGE**, **STOCK MARKET SPECULATIONS**, **MARGIN** and **PYRAMID TRADINGS** and **COMMODITY FUTURES TRADING**. These are all forbidden by canon 286 and the reasons are very obvious.

EITHER PERSONALLY OR THROUGH OTHERS . . .

Canon 286 forbids clerics etc. . . to engage in business or trading "per alios." This refers to the practice of employing agents, "mandatarii," and to *manage a business really as such is when it is being operated in the name of the cleric or religious and at his own risk.*

It must be noted that occasional acceptance of a commission from sales organizations given in return for the cleric's or reli-

gious' recommendation or endorsements of their products would not put him into business "per alios."

*EITHER FOR THEIR OWN BENEFIT OR
THAT OF OTHERS...*

This clause was added... upon the initiative of POPE URBAN VIII and emphasized by POPE CLEMENT IX in the seventeenth century when missionaries were engaged in gainful trading not for their own benefit but for the support of their own missions (Cf. URBAN VIII, "*Ex Debito*" 22 Februarii, 1663, Fontes C.I.C. I, No. 211; CLEMENT IX, "*Solicitudo*," 17 Junii, 1669; Fontes C.I.C. I, No. 243). So even when he intends to turn over his profits to pious and charitable undertakings, a cleric or religious is still forbidden to engage himself in business or trading.

COMPETENT CHURCH'S AUTHORITY...

The competent Church's Authority whose permission must be sought, is the lawful superior who has jurisdiction over the clerics or religious. The Diocesan Bishop over clerics as per c. 381, and those who in law are considered equal to him as per c. 368, to wit, the territorial Prelates and Abbots (formerly called Prelates and Abbots Nullius); the Apostolic Vicars and the Apostolic Prefects; and the one who assumes the government of the Diocese "sede Impedita," and/or the Diocesan Administrator "sede vacante;" and the Religious Superiors over religious-subjects.

In cases of violations the proportionate penalties "ferendae sententiae" must equally be imposed by them over their subject-violators or subordinate-offenders. The penalty or punishment is obligatory but indeterminate in nature.

JUST REASONS FOR TRADING OR BUSINESS ACTIVITIES

It must never be forgotten that reasons to be considered as just and weighty are premised on the assumptions that the business pursuits themselves are lawful "per se," and that no serious scandal is involved and no dereliction of duties and the like of

clerics or religious is present. The Divine Law is operative even when the cleric or religious is not directly violating the Canon.

The following may be considered as some of the just reasons legitimate ecclesiastical superiors may take into consideration in conceding or granting permission to clerics or religious to conduct commercial business or mercantile trading:

1. *The Economic Necessity of the Clergy or Religious*

A cleric or religious has a right to a support sufficient enough to enable him to live with a fitting dignity in keeping with his status and calling and in conformity with the economic exigencies of his designation as well as the size of the obligations he has to meet. (Cf. 1917 CIC: cc. 1472; 1496; 2373, 3. 1983 CIC: c. 281 1, 2.; POPE PAUL VI, "*Presbyterorum Ordinis*," December 7, 1965, par. 5 of no. 17 and also nos. 20-21: "The obligation is imposed upon the Diocesan Bishop that clerics ought to receive a remuneration befitting their condition by virtue of the office and according to the situations of the time and place. This remuneration must be adequate to provide for the necessities of life and for the equitable recompense for the services they need."). If the beneficial system is inadequate to provide him a "*congrua sustentatio*," and to take recourse to business and trading activities is the only alternative to supplement or augment his income and to secure his old age, the competent ecclesiastical superior, unless he will come personally or through other viable means to the rescue of the inadequately endowed cleric or religious, will act properly by granting him permission as required by the Code of Canon Law.

2. *Business and Commercial Pursuits: Necessary for Efficient and Wise Administration of Church's Temporalities.*

The Catholic Church as a visible divino-human society has the innate right to acquire, retain and administer temporal goods in pursuit of finalities proper to her nature for the exercise of liturgy and divine worship, for the support of her clerical, religious and lay ministers, and for the promotion of apostolic and charitable works (c. 1254). The exercise of this right of acquisition, retention and administration of temporal goods for the realization of the Church's goals in the light of the Gospel

imperative, is placed upon the shoulders of clerics, religious, priests and even bishops, or their delegates (cc. 1276-1279). Entering into trading contracts, buying and selling certain articles, commodities or the purchase of income-yielding properties to get regular income therefrom, or being a member of the Board of Directors of certain corporations, making placements at money-market or financing companies with minimal risk, buying foreign currencies, which with all indications will necessarily appreciate in values, may just be a part of wise management or strategy of efficient administration of Church's temporal goods. Since such mercantile activities are indispensable facets of efficient and productive management of Church's temporalities, the ecclesiastical superior will be acting reasonably and soundly if permission will be granted to said clerics or religious in conformity with the spirit and provision of the Code.

3. *A cleric or Religious: Heir to an On-going Business*

If a cleric or religious suddenly finds himself the heir to a big establishment or an on-going business which cannot be laid aside without loss, or without affecting adversely or unfavorably the lives of many workers and their dependents or the economy of the Country, then permission of the competent ecclesiastical authority/superior should be obtained to continue it. (Cf. reply on a related matter given by the Code Commission (1917 Codex) on June 3, 1918; AAS X (1918), 344.) Or if the cleric or religious would not assume the helm or rein of management of a very flourishing business conglomerate, such network of business establishments will be plagued with a notable number of false pretenders and claimants; it will be burdened with a multitude of courts suits and ultimately it will be led to wasteful dissipation of precious resources. He is morally bound to assume the responsibility of management of such business conglomerate and the ecclesiastical superior should be accomodating and understanding enough to grant him the necessary canonical permission for such pursuit.

Many more reasons can be adduced to justify clerics, religious and even Institutions engaging themselves into commercial and trading pursuits, but all these reasons will depend upon individual and circumstances, social conditions, civil policies, political

situations, exigencies and demands of the moments or of the times. Each case and reason must be studied individually and much will depend upon the prudence both of clerics, religious and Institutions as well as of the conceding Church's competent authority. "Salus Animarum" is and must always be the supreme law in the Church and in the life of the People of God.

CONCLUSION

The Church knows that her clergy and religious even though "they are men taken from among men," are not immune from the pitfalls of common human weaknesses and thus their life must be safeguarded by certain norms that will prevent them from being derailed from their clerical, religious and ministerial works. The Scriptural warning that "No man being a soldier of God entangles himself in secular business," (II Tim. II, 4) becomes the watchword of the Church during her twenty centuries of legislation regarding the mercantile pursuits of clerics and religious. In her long history, her legislation remains substantially the same, that is, out of maternal solicitude she wants that those dedicated to spiritual works and divine ministry must be wedded wholeheartedly to the cause of God and His People and must not be allowed to engage themselves in wordly pursuits lest they be taken up by such secular affairs and lest they be eaten up by the dangerous spirit of cupidity, avarice and greed. Thus she prohibits the following forms of business and trading:

1. PROFIT-SEEKING BUSINESS or LUCRATIVE MERCHANDISING;
2. STRICTLY INDUSTRIAL BUSINESS or MANUFACTURING IN THE STRICT SENSE;
3. ACTIVE FOREIGN CURRENCY or FOREIGN EXCHANGE DEALERSHIP;

4. PURELY SPECULATIVE TRADING IN STOCKS, BONDS, SECURITIES, COMMODITIES AND THE LIKE.

She knows that the habitual carrying on of the aforementioned forms of businesses will ultimately bring about financial as well as spiritual ruin to her chosen crop of clerics, religious, Institutes and ultimately to herself.

Other forms of businesses like INDUSTRIAL BUSINESS IN THE BROAD SENSE, DOMESTIC OR ECONOMIC BUSINESS, and FACTORING or "NEGOTIATIO POLITICA" are not within the ambit of her canonical prohibitions for such are not directly meant to foment the mercenary spirit or "mens mercatoria" to her clerics, religious; and besides such activities are imbued with laudable purposes inherent to the nature of such mercantile and commercial pursuits.

It is only in selective cases that she occasionally relaxes her law on the matter of forbidden businesses or trading, that is, when more compelling reasons of economic necessity and administrative or management imperatives and in order to forestall certain adverse effects that will most likely affect both clerics, religious as well as the community at large, that she allows her clerics, religious to practice mercantile and commercial activities but always with the caution that they do it with prudence and discretion and avoid anything that will denigrate the clerical or religious state, and that the provisions of other laws be faithfully observed.

Like a good mother, at times the Church merely threatens her clergy or religious-violators with proportionate "ferendae sententiae" penalties; but when they continue to be adamant or when they try to show defiance to her maternal authority, then she makes use of her stiffer whip: "latae sententiae" excommunication "speciali modo" reserved to the Holy See and not excluding their negligent Superiors with the severest punishment of degradation and removal from office "ferendae sententiae." Now in the

vigent Code, with pastoral tone, the Church merely threatens her clerics or religious-offenders with mere appropriate "ferendae sententiae" penalty.

We hope that the maternal concern of the Church manifested through her laws will result in a renewed effort by all clerics and religious to live in thorough compliance with the sublime ideal given by St. Charles Borromeo, when he exhorted the clergy to be: "Non saeculi mercatores, non mammonae ministri, sed Christi mercatores, et animarum negotiatores." (IV Concilium Mediolanense, III, 7: *Sacrosancta Concilia ad Regiam Editionem Exacta*, Vol. XVII, Lutetiae Parisiorum, 1971-1972 column 529)

WILFREDO S. IPAPO, S.C.L.
University of Santo Tomas
Manila