

St. Thomas Aquinas, Summa Theologica

THIRD ARTICLE [II-II, Q. 77, Art. 3]

Whether the Seller Is Bound to State the Defects of the Thing Sold?

Objection 1: It would seem that the seller is not bound to state the defects of the thing sold. Since the seller does not bind the buyer to buy, he would seem to leave it to him to judge of the goods offered for sale. Now judgment about a thing and knowledge of that thing belong to the same person. Therefore it does not seem imputable to the seller if the buyer be deceived in his judgment, and be hurried into buying a thing without carefully inquiring into its condition.

Obj. 2: Further, it seems foolish for anyone to do what prevents him carrying out his work. But if a man states the defects of the goods he has for sale, he prevents their sale: wherefore Tully (De Offic. iii, 13) pictures a man as saying: "Could anything be more absurd than for a public crier, instructed by the owner, to cry: 'I offer this unhealthy horse for sale?'" Therefore the seller is not bound to state the defects of the thing sold.

Obj. 3: Further, man needs more to know the road of virtue than to know the faults of things offered for sale. Now one is not bound to offer advice to all or to tell them the truth about matters pertaining to virtue, though one should not tell anyone what is false. Much less therefore is a seller bound to tell the faults of what he offers for sale, as though he were counseling the buyer.

Obj. 4: Further, if one were bound to tell the faults of what one offers for sale, this would only be in order to lower the price. Now sometimes the price would be lowered for some other reason, without any defect in the thing sold: for instance, if the seller carry wheat to a place where wheat fetches a high price, knowing that many will come after him carrying wheat; because if the buyers knew this they would give a lower price. But apparently the seller need not give the buyer this information. Therefore, in like manner, neither need he tell him the faults of the goods he is selling.

On the contrary, Ambrose says (De Offic. iii, 10): "In all contracts the defects of the salable commodity must be stated; and unless the seller make them known, although the buyer has already acquired a right to them, the contract is voided on account of the fraudulent action."

I answer that, It is always unlawful to give anyone an occasion of danger or loss, although a man need not always give another the help or counsel which would be for his advantage in any way; but only in certain fixed cases, for instance when someone is subject to him, or when he is the only one who can assist him. Now the seller who offers goods for sale, gives the buyer an occasion of loss or danger, by the very fact that he offers him defective goods, if such defect may occasion loss or danger to the buyer—loss, if, by reason of this defect, the goods are of less value, and he takes nothing off the price on that account—danger, if this defect either hinder the use of the goods or render it hurtful, for instance, if a man sells a lame for a fleet horse, a tottering house for a safe one, rotten or poisonous food for wholesome. Wherefore if such like defects be hidden, and the seller does not make them known, the sale will be illicit and fraudulent, and the seller will be bound to compensation for the loss incurred.

On the other hand, if the defect be manifest, for instance if a horse have but one eye, or if the goods though useless to the buyer, be useful to someone else, provided the seller take as much as he ought from the price, he is not bound to state the defect of the goods, since perhaps on account of that defect the buyer might want him to allow a greater rebate than he need. Wherefore the seller may look to his own indemnity, by withholding the defect of the goods.

Reply Obj. 1: Judgment cannot be pronounced save on what is manifest: for "a man judges of what he knows" (Ethic. i, 3). Hence if the defects of the goods offered for sale be hidden, judgment of them is not sufficiently left with the buyer unless such defects be made known to him. The case would be different if the defects were manifest.

Reply Obj. 2: There is no need to publish beforehand by the public crier the defects of the goods one is offering for sale, because if he were to begin by announcing its defects, the bidders would be frightened to buy, through ignorance of other qualities that might render the thing good and serviceable. Such defect ought to be stated to each individual that offers to buy: and then he will be able to compare the various points one with the other, the good with the bad: for nothing prevents that which is defective in one respect being useful in many others.

Reply Obj. 3: Although a man is not bound strictly speaking to tell everyone the truth about matters pertaining to virtue, yet he is so bound in a case when, unless he tells the truth, his conduct would endanger another man in detriment to virtue: and so it is in this case.

Reply Obj. 4: The defect in a thing makes it of less value now than it seems to be: but in the case cited, the goods are expected to be of less value at a future time, on account of the arrival of other merchants, which was not foreseen by the buyers. Wherefore the

seller, since he sells his goods at the price actually offered him, does not seem to act contrary to justice through not stating what is going to happen. If however he were to do so, or if he lowered his price, it would be exceedingly virtuous on his part: although he does not seem to be bound to do this as a debt of justice.