Objection 1. It would seem that we ought not always to judge according to the written law. For we ought always to avoid judging unjustly. But written laws sometimes contain injustice, according to Is. 10:1, "Woe to them that make wicked laws, and when they write, write injustice." Therefore we ought not always to judge according to the written law.

Objection 2. Further, judgment has to be formed about individual happenings. But no written law can cover each and every individual happening, as the Philosopher declares (Ethic. v, 10). Therefore it seems that we are not always bound to judge according to the written law.

Objection 3. Further, a law is written in order that the lawgiver's intention may be made clear. But it happens sometimes that even if the lawgiver himself were present he would judge otherwise. Therefore we ought not always to judge according to the written law.

On the contrary, Augustine says (De Vera Relig. xxxi): "In these earthly laws, though men judge about them when they are making them, when once they are established and passed, the judges may judge no longer of them, but according to them."

I answer that, As stated above (a. 1), judgment is nothing else but a decision or determination of what is just. Now a thing becomes just in two ways: first by the very nature of the case, and this is called "natural right," secondly by some agreement between men, and this is called "positive right," as stated above (q. 57, a. 2). Now laws are written for the purpose of manifesting both these rights, but in different ways. For the written law does indeed contain natural right, but it does not establish it, for the latter derives its force, not from the law but from nature: whereas the written law both contains positive right, and establishes it by giving it force of authority.

Hence it is necessary to judge according to the written law, else judgment would fall short either of the natural or of the positive right.

Reply to Objection 1. Just as the written law does not give force to the natural right, so neither can it diminish or annul its force, because neither can man's will change nature. Hence if the written law contains anything contrary to the natural right, it is unjust and has no binding force. For positive right has no place except where "it matters not," according to the natural right, "whether a thing be done in one way or in another"; as stated above (q. 57, a. 2, ad 2). Wherefore such documents are to be called, not laws, but rather corruptions of law, as stated above (Ia IIae, q. 95, a. 2): and consequently judgment should not be delivered according to them.

Reply to Objection 2. Even as unjust laws by their very nature are, either always or for the most part, contrary to the natural right, so too laws that are rightly established, fail in some cases, when if they were observed they would be contrary to the natural right. Wherefore in such cases judgment should be delivered, not according to the letter of the law, but according to equity which the lawgiver has in view. Hence the jurist says*: "By no reason of law, or favor of equity, is it allowable for us to interpret harshly, and render burdensome, those useful measures which have been enacted for the welfare of man." In such cases even the lawgiver himself would decide otherwise; and if he had foreseen the case, he might have provided for it by law.

This suffices for the Reply to the Third Objection.

* Digest. i, 3; De leg. senatusque consult. 25