

Law and Justice in William Shakespeare's *The Merchant of Venice*

James Otis RODNER SMITH*

Felicity Ann RODNER**

Ana Valentina LAMEDA***

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Introduction

William Shakespeare's *The Merchant of Venice*, a play in five Acts written in 1598 for presentation in England's popular Elizabethan theatre, is strikingly modern. The setting is 16th century Venice, a prosperous, cut-throat merchant society wherein, as today, money and commerce rule, highly dependent on the unpredictable logistics of contemporary international trade and transport. A precursor of today's banking system, moneylenders offered their investors' funds to support merchants who essentially gambled on the successful importation of material goods they had sourced abroad; interest, acceptable or exorbitant, charged by moneylenders on these loans, was a point at issue privately or in the courts of law.

Arranged marriage was the norm in wealthy Venetian noble and merchant families. The beautiful, intelligent and resourceful Portia, however, resorts to tactics often featured in today's popular TV game shows, requiring her assorted suitors to «pick the right box» in order to qualify as her future husband,

* Licenciatura en Derecho (Law), MSc Economy (UCAB, Caracas), JD, MBA (Harvard University Law School, Harvard University Business School), Individuo de Número Academy of Political Sciences, Caracas.

** MA, MLitt (Oxon.), MA, PhD (Harvard University GSAS), LLB (University of London, external).

*** LLB (Aberdeen University), PDPLP (University of Edinburgh).

a prize ultimately won by her personal favourite, Bassanio, despite the fact that his fortune and social status made him a poor starter in the competition.

Racial discrimination, so much in the news today, is not confined to our times. Exclusion, vilification and persecution, horrifically exemplified historically by the Spanish Inquisition, targeted Jews in Shakespeare's Venice and especially the Jewish moneylenders. Shylock's Jewishness is key to why his debtors dismiss him as revolting and to his own passionate resentment of his Christian borrowers.

Gender fluidity and cross-dressing are all over the internet today, but Shakespeare foresaw the trend. Who are the «civil doctor» and the law clerk who argue Antonio's way out of his contract before the Duke of Venice who is his judge? Are they Venetian scholarly gentlemen, as one might expect? Not at all. They are the lady Portia and her handmaid, Nerissa, so cleverly disguised that all are taken in by the impersonation, even the lady's future husband, Bassanio.

But legal issues –as crucial now as they were 400 years ago– are what concern us in our present study of *The Merchant of Venice*. Bassanio needs cash to fund his candidacy to become Portia's husband. Antonio offers his substantial credit standing to support Bassanio, who approaches Shylock for a loan. Antonio personally agrees to the amount and conditions of the loan, including the grisly default penalty of allowing a pound of flesh to be cut from his body as specified by Shylock. Default occurs when Antonio's ships are delayed beyond the date set for repayment in the terms of the contract; reports that the ships are wrecked make repayment seemingly impossible. The climax of the drama hinges on interpretation of the contract terms by the borrower, the lender and the court: is a strict application of the written terms the only possibility following the Venetian commercial principle of *pacta sunt servanda*¹? Or, given that Antonio is finally able to repay his debt several

¹ «L'accordo tra le parti (...) volto a regolare i rapporti commerciali tra i due *partners* (...) vincolava i contraenti a rispettarne il dettato e a osservarne i contenuti», ORLANDO, E. *Venezia, il diritto pattizio...*, p. 4.

times over, albeit with late payment, is an equitable, more humane and merciful solution admissible under the principle of *rebus sic stantibus*²? It was not for nothing that medieval and Renaissance Venice was commercial queen of the Adriatic, Mediterranean and far beyond: Venetian law and usage rationally made provision too for the unforeseeable³: even a written agreement, expressly agreed and duly formalised, might be modified by the Venetian court to redress an unpredicted inequitable disbalance between the parties. All conclusions are possible, and depend on the merits of the parties, the astuteness of the legal arguments and the disposition of the Court.

The parties

The borrower, Antonio

Venice was and is a complex network of canals and waterways connecting the *palazzi* of the rich and royal, access to which is often directly by boat from the water. Shakespeare's characters, however, spend a lot of time conversing in the street or in front of their grand palaces. This is theatrically more practical than discussing love and business between one gondola and another, at any rate impossible for the Elizabethan stage, but unfortunately adds no local colour to the action. Shakespeare's characters, additionally, seem more English, reasonable and urbane, than Venetian; they lack the passion that we tend to associate with Italians. Perhaps the intention is to emphasise by contrast the intensely emotional engagement of Shylock, the alien, the Jew, with his business.

Thus, a street scene (Act I scene 1, hereinafter I,1) introduces us to Antonio in conversation with two friends about his fleet and then to Bassanio, in love with Portia and lacking the funds necessary to compete with her wealthier

² «*Rebus sic stantibus: i patti tra validità, durata, rinnovi e sospensioni*», *op. cit.*, p. 28.

³ “Nonostante il patto contenesse sempre una clausola di durata, l'estinzione dell'accordo era spesso determinata ... da circostanze sopravvenute ... Quando fatti nuovi, straordinari (...) modificavano gli equilibri raggiunti a svantaggio di uno dei due contraenti”, *op. cit.*, p. 28.

other suitors. Antonio generously, or rashly, offers his credit to support the younger man:

Antonio:

Thou know'st that all my fortunes are at sea;
Neither have I money nor commodity
To raise a present sum: therefore go forth;
Try what my credit can in Venice do ...

Fired by love, Bassanio wastes no time in approaching Shylock «in a public place» (I,3) for a loan of three thousand ducats to be repaid at the end of three months, for which Antonio, not Bassanio himself, will stand as guarantor: «Three thousand ducats for three months and Antonio bound.» Antonio habitually risks his own investments in unpredictable trade voyages and even lends money, when he has it, without charging interest, but Shylock recognises that Antonio's name is good for the loan under discussion. Hatred and resentment, however, impel Shylock to add a gruesome penalty clause; should Antonio default «... let the forfeit/ Be nominated for an equal pound/ Of your fair flesh, to be cut off and taken/ In what part of your body pleaseth me.» Antonio, rash and over-confident, as befits his wealth and social standing, and unwilling to lose face in front of his friend Bassanio, agrees to notarise the terms of the loan, including the unusual penalty clause.

Later, faced with the apparent collapse of his fortune and a penalty that is tantamount to execution, Antonio, respectful of his legal obligation, resigns himself to accepting Shylock's penalty (III,3), until a reversal of fortune brings his fleet safely home, enabling Antonio to pay in full and more, although too late to comply with the written stipulations of the contract. The first scenes of Shakespeare's Act IV sharply contrast Antonio's inherent decency with Shylock's vicious desire for revenge until clever Portia extricates Antonio from danger by interpreting the contract's express penalty term against the party who had insisted on its inclusion, Shylock himself.

The lender, Shylock

Bassanio searches Venice for someone to lend him money under Antonio's guarantee, and Shylock is his man. Although funds were lent and borrowed by Christians and Jews alike in 16th century Venice, the Jewish community, exempt as «aliens» from the usury restrictions imposed on citizens, was particularly adept at the practice, placing money from within the Tribe in business ventures of all kinds and incorporating guarantees and penalties into their notarised contracts. Shylock's money is not his own: for Antonio, Shylock will borrow from Tubal, «... a wealthy Hebrew of my tribe ...» (I,3). Hence, the interest charged on any loan must be considerable in order to generate profit for the original lender, in this case Tubal, and for the middleman, Shylock.

Shylock will not only profit financially, however. He personally detests Antonio on two counts: firstly, because he is a Christian and reputed to hate Jews; and, secondly, because Antonio too is in the money-lending business, charges no interest and thus makes Jewish moneylenders look bad by comparison:

Shylock:

... I hate him for he is a Christian, ...
He lends out money gratis and brings down
The rate of usance here with us in Venice ...
He hates our sacred nation ... (I,3).

Shylock's emotional engagement with the money loan pushes him to add the «pound of flesh» penalty clause, hoping that Antonio will indeed default and will effectively die paying the penalty. There is little room for good faith in this transaction. When payment day comes and goes without Antonio's fleet returning to bring him funds, it is time for the lender to exact his revenge. Shylock by now hates Antonio even more intensely:

Shylock:

... He hath disgraced me, and
Hindered me half a million; laughed at my losses,
Mocked at my gains, scorned my nation, thwarted my
Bargains, cooled my friends, heated mine
Enemies; and what's his reason? I am a Jew ... (III,1).

Worse still, Shylock's beloved daughter, Jessica, has stolen from her father, run off with a Venetian, joined the Christian community and hopes to convert to Christianity by marriage (II,10). This is not Antonio's doing but anyway adds fuel to Shylock's fire.

Consumed with rage, there is no reasoning with Shylock: «... Thou hast called me a dog before thou hadst a cause; / But, since I am a dog, beware my fangs ...» (III,3).

Money, hope and disappointment, deception, humiliation, anguish, rage, despair: these scalding ingredients ensure a lively confrontation in Shakespeare's Venetian court of law!

The hearing

Shakespeare's England was a Common Law country. Venice, a wealthy merchant dukedom dominating throughout the Mediterranean and Adriatic areas and further into Africa and the Orient, had, by the 1400s, developed its own commercial practices, together with legal codes, courts and systems based on Roman principles, akin possibly to modern Italy's Civil Law but quite separate from legalities that Shakespeare's public would have been familiar with. Shakespeare's immediate source for his *Merchant of Venice* is generally recognised to be *Il Pecorone* (1558)⁴, a collection of short stories within a story by Giovanni Fiorentino, which would have familiarised the playwright with enough Venetian law to enable the loan, the contract, default, the hearing and judgment to furnish key elements of the *Merchant*. That what Shakespeare

⁴ Specifically, *Il Pecorone ...*, Giornata Quarta, Novella I, pp. 78-111.

considered to be «Civil» law pertains in the *Merchant* is clear from details such as notarisation of the loan agreement (I,3), elements of Venetian law in the text (see below) and Bassanio's claim that the lawyer who unexpectedly appears in Antonio's defence is a «civil doctor» (V,1), that is, a Doctor of Civil Law.

The Court of Justice appointed to settle the dispute between Antonio and Shylock is presided over by the Head of State, the Duke of Venice, who, far from impartial, as nowadays we would expect a judge to be, is overtly sympathetic to the Borrower, Antonio, and hostile to the Lender, Shylock:

Duke:

I am sorry for thee [Antonio]; thou art come to answer
 A stony adversary, an inhuman wretch,
 Uncapable of pity, void and empty
 From any dram of mercy (IV,1).

The point at issue is not whether or not Antonio can or will repay the three thousand ducats owed to Shylock, for, now that his ships have come home safely, he offers to pay two or even three times the sum he owes. The point is that Shylock, full of malice and hatred, insists on the “bond” agreed for a default or delay in payment, that is, a pound of Antonio's flesh cut from his body. The Duke cannot dismiss the written contract, but asks the Plaintiff to be reasonable and merciful and give up the forfeit of flesh. Although one might expect that Renaissance courts of law in Venice might be sticklers for the written contractual terms, in fact a tendency towards more lenient interpretations was the norm even for criminal offences: «... Moderation and restraint typified the approach of this merchant-banker elite to the punishment of most crime. Excessively severe penalties were judged to be counter-productive (...) There were very few penalties involving corporal or capital punishment»⁵. The lady Portia, convincingly disguised as a young Roman Doctor of Law, Balthazar, takes the stage in Antonio's defence and extends

⁵ RUGGIERO, G. «Law and Punishment in Early Renaissance Venice». *Journal of Law and Criminology*, pp. 247, 249.

the call for mercy to this contractual dispute: her speech, «The quality of mercy is not strain'd ...» (see *infra*, Conclusion) is one of the most famous passages in Shakespearean literature.

Shylock insists on a strict reading of the contract, whereby his taking Antonio's flesh cannot be set aside or substituted. Ironically, however, strict interpretation is what destroys his case, for how can he cut exactly one pound of flesh, no more, no less, off his adversary's body, and that without shedding a drop of Antonio's blood, which was forbidden by laws protecting Venetians from alien attack? Clearly impossible. What is more, should Shylock try and fail, *he* then would forfeit all his assets to the State of Venice and possibly face banishment or execution, again under State laws protecting Venetians against assault inflicted by «aliens», a category that included Jews.

In conclusion, Antonio, the kind and reasonable man, proposes an equitable settlement whereby Shylock compensates various people he has damaged, including his own daughter, and himself converts to Christianity.

It is hardly surprising that Shylock exits the Court and the play feeling a bit sick: «... I am unwell ...!» (IV,1).

Law and equity; justice and punishment

Principles of the Interpretation of Contracts in Venetian Law and in the Common Law of England

The plot of Shakespeare's *Merchant of Venice* revolves around two entirely distinct and unrelated legal systems: that of 16th century England, familiar to his audience, and that of his contemporaneous prosperous and powerful Duchy of Venice, the setting for his action.⁶ This duality sets up a challenging

⁶ 16th century Venice was, ironically, already entering a period of decline due to the fall of Constantinople in 1492 and the subsequent incursion of the Ottomans: ZANATTA, Angelica: *L'attività di un notaio veneziano del XVII secolo*, www.despaca.unive.it, accessed 05/10/2021.

counterbalance in comparative law which the playwright must negotiate delicately to allow his public to be able to follow his plot while at the same time ensuring enough authenticity to make his Venetian setting, characters and plot believable. The *Merchant* is neither history nor fantasy: enough realism is required for us to believe in the characters and follow the action with interest; enough exoticism is required to transport the audience to a place that is not their every-day London.

16th century English law was in a process of change, especially where contract law was concerned. Complications arise over the different forms of action available if a contractual debt remained unpaid. Action for repayment required a claim attached to a formal contract, signed and sealed⁷, which allowed the creditor to enforce action against the debtor through the courts. This formal document was known as an «obligation» or «bond».⁸

Notaries and Formal Contracts

Venetian law was less formal than English law. Venetian law applied the principle of *pacta sunt servanda*, which did not require rigid formalities for a contract to be binding: contracts did not have to be notarised and did not require any kind of seal. The principle of *pacta sunt servanda* is based on Roman Law and developed through the Middle Ages under the influence of Canon Law.⁹ The rules developed through commercial and banking dealings between merchants, the *lex mercatoria*, was also of prime importance in this Adriatic city state driven by trade on land and sea throughout Europe, North Africa and the Middle East and controlled by rich and powerful merchant celebrities.

⁷ PLUCKNETT, Theodore F.T. *A Concise History of The Common Law*, p. 633.

⁸ SIMPSON, A.W.B. *A History of The Common Law of Contract, the Case of the Action in Assumpsit*, pp. 87-88.

⁹ FALCHI DELITALIA, Claudia. *Fra diritto dei contratti e nascita di una nova scienze*, p. 84. The principle of *pacta sunt servanda* rests on four foundations: on law derived from Roman Law, on the Catholic Church derived from the Gospels and the teachings of St. Augustine, on a moral system derived from medieval codes of chivalry and on the feudal system.

The *Merchant of Venice* evidences a mingling of 16th century English law, continental law and Venetian law. Shylock requires that Antonio, upon receipt of the 3000 ducat loan, signs a binding contract upon which the lender can enforce repayment. The *pacta sunt servanda* principle in Venetian law would not impose any formal requirements to support the lender's position. In the play, however, Shylock does require that the agreement be signed formally before a notary. Why? Because Shakespeare's contemporary audience, if they had any inkling of legal matters, would only consider a loan agreement binding if it had been formalised according to Common Law principles, so Shylock must insist on this step in order to impress a minimum of realism on the spectator and intensify the strength of his, Shylock's, hold over Antonio, that is, of the villainous character over the likeable, semi-heroic title figure.

All that Shylock requires in the way of formalities, however, is that the agreement be signed before a notary. He does not ask for it to be signed and sealed, as would have been required under English law. The notary is a creation of continental law and, in Venice, facilitated international trade contracts.¹⁰ In common law jurisdictions such as the United Kingdom and the U.S.A., the continental practice of notarising a document which will then be held by the notary in some form of archive or registry is not the norm: lawyers in common law jurisdictions may notarise the signature(s) on a document but will not maintain a copy of the document in their files as a matter of course.¹¹ So, Shylock bids Antonio go with him to the notary to finalise the agreement, to which he adds «in a merry sport» or, as he implies, jokingly, the penalty clause for non-payment or late payment:

Shylock:

... let the forfeit
Be nominated for an equal pound
Of your fair flesh, to be cut off and taken
In what part of your body pleaseth me (I,3).

¹⁰ ZANATTA, Angelica: *op. cit.*, p. 6.

¹¹ ZWEIGERT, K. and KOTZ, H. *Comparative Law*, p. 368.

The penalty is thus notarised and hence, following a literal interpretation of the contract terms, is legally binding to the extent that it cannot be ignored or altered in any way by either party or the court should default occur.

Interpretation of Contracts in England and Venice

For the reader or spectator of Shakespeare's *Merchant*, who loves all things legal above all else, the Hearing embodied in Act IV, scene 1, is of primordial interest. Here, a debtor in default faces a creditor hell bent on destroying him before a less than impartial judge, interrupted as the hearing proceeds by the youthful, unknown legal counsel who springs to the debtor's defence wielding an acute mind and imaginative but convincing interpretation of the law to be applied.

Options in interpretation of the situation are possible. Modern Common Law, as well as continental Civil Law, allow a contract to be interpreted subjectively or objectively. Under the objective approach, the words of the agreement, generally written, prevail; alternatively, the true intention of the parties at the moment the contract was agreed upon may be sought out subjectively; the distinction is between reliance on what is written or express (*verba*), or what is accepted to be the intention of the parties (*voluntas*).¹²

Roman Law not only relied upon a literal interpretation of a contract but also required an understanding of the parties' true intentions as of the moment when the agreement was concluded: *in conventionibus contrahentium voluntatem potius quam verba spectaris placuit*.¹³ A 3rd century Code compiled under the Emperors Valerianus and Gallienus requires: «In contracts, the truth of the matter should rather be considered than what is stated in writing.»¹⁴ A wealth of principles govern the question of the intention of the parties to a contract in modern jurisprudence in an effort to help contract

¹² YILDIRIM, Ahmet Cemil. *Interpretation of contracts in comparative and uniform law*, p. 7.

¹³ *Op. cit.*, p. 11.

¹⁴ *Op. cit.*, p. 18.

interpretation go beyond the words of the agreement, extending from Roman law, through continental law and into Germanic law.¹⁵

Most Civil Law jurisdictions nowadays include norms enabling contract interpretation according to the common intention of the parties, indicating a preference for a subjective contract interpretation. In Venezuela, the Code of Civil Procedure (C. P. C.) requires courts to interpret contracts and other legal documents according to the aims or intentions of the parties or issuers of the documents (subjective interpretation).¹⁶ By application of Article 4 of the Civil Code (C. C. Ven.) on interpretation of the law, the obvious meaning of the words shall be attributed to the terms of a contract in order to express the aim or intention of the parties.¹⁷ The Italian Civil Code requires that interpretation of a contract shall establish the common intention of the parties and not limit itself solely to the wording of the contract (C. C. italiano) Art. 1,362). The new French Civil Code similarly requires inquiry into the common intention of the parties over and above literal interpretation of the contract (Fr. C. C. Art. 1,188); the aim is to discover the parties' true intentions at the moment of agreement.¹⁸ The Unidroit Principles of International Commercial Contracts (2016), in line with the European subjective approach, also stress the importance of the contractual parties' intentions (Art. 4.1(1)).

English law in Shakespearean times, however, laid emphasis on the objective wording of the contractual agreement.¹⁹ The Parol Evidence Rule,²⁰ barring the admission of oral or written evidence from outside the four corners of the document, was rigorously adhered to in Elizabethan England to prevent

¹⁵ Ibid.

¹⁶ MÉLICH-ORSINI, José. *Doctrina General del Contrato*, 4th Edition revised and extended, Caracas 2006, ACPS serie Estudios N.º 61, sección 301. See also DOMÍNGUEZ GUILLEN, María Candelaria. *Curso de Derecho Civil Obligaciones*, Caracas 2017, sección 13.1 p. 587. The judge must ascertain the intention of the parties, op. cit. sec. 13.2, p. 588.

¹⁷ MÉLICH-ORSINI, op. cit., sec. 303 p. 407.

¹⁸ MALAURIE, P., AYNES L. and STOFFEL-MUNCK, P. *Droit des Obligations*, p. 418.

¹⁹ YILDIRIM, Ahmed Celim, op. cit., p. 99.

²⁰ Black's Law Dictionary: *Parol Evidence Rule*.

altering the terms of the written agreement. A formal instrument, promise to pay or bond, duly signed and sealed, could not be altered by external evidence. External evidence adduced against a formal contract would be rejected in England at that time, although admissible in continental Europe.²¹ Objective interpretation prevails in Common Law jurisdictions to this day; the true intention of the parties will be ascertained by interpretation of the written text of the document.²²

In the Hearing that takes place before the Duke of Venice, Portia, disguised as the young civil lawyer «Balthazar», challenges Shylock on his strict interpretation of the terms of the debt contracted by Antonio on Bassanio's behalf, at which point, Shylock retorts, «... I crave the law,/The penalty and forfeit of my bond.» (IV,1). Fortunately for Antonio, but less so for Shylock, Portia/Balthazar responds to Shylock's insistence on sticking to the letter of the law by asking to read for herself the notarised loan agreement, including the contentious penalty clause. In a moment of extreme dramatic tension, Antonio must lay bare his chest and Shylock must wield his knife to cut his pound of flesh from close to Antonio's detested Christian heart. Even medical attendance is rejected, for that is not written into the contract, and, for Shylock, it is the word of the contract that must be obeyed. But Portia has read the contract well and knows all about strict, literal interpretation of the written word; she is also well versed in Venetian laws protecting its citizens from «foreign» assault:

Portia:

... there is something else.
This bond doth give thee here no jot of blood;
The words expressly are 'a pound of flesh'.
Take then thy bond, take thou thy pound of flesh;
But, in the cutting it, if thou dost shed
One drop of Christian blood, thy lands and goods
Are, by the laws of Venice, confiscate
Unto the state of Venice (IV,1).

²¹ SIMPSON, A. *History of The Common Law of Contract*, p. 96.

²² CATTERWELL, Ryan. *A Unified Approach to Contract Interpretation*, p. 28. Catterwell cites the decision in the case of *Marley v. Rawling* (2014) UKSC 2.

Worse still for Shylock, Portia adheres further to the letter of the contract:

Portia:

- ... Prepare thee to cut off the flesh ...
- ... But just a pound of flesh; if thou tak'st more
- Or less than just a pound ...
- ... Thou diest, and all thy goods are confiscate (IV,1).

Worse yet for the lender, who had thought to triumph by insisting on a literal interpretation of the agreement, he is now bound by the noose of his own malice by not being able to enforce repayment and at the same time ignore the penalty clause. A literal interpretation of the agreement is all inclusive; it does not permit including selected items and ignoring others. Shylock's penalty clause clearly set a trap for Antonio in which Shylock himself was ensnared. He exits the stage impoverished and humiliated. The dramatic effect is, for the audience, ambivalent: should we feel sorry for the moneylender, victim of his own writing, or should we rejoice that the «villain» exits hoist by his own petard?²³.

Were contract interpretation in this case more «continental» in flavour, the underlying intention of two contractual parties clearly at loggerheads with each other might have been taken into account to consider Shylock's initial suggestion that the forfeit of the pound of flesh was just a joke (I,3). Humorous intent was not, however, written into the agreement; English audiences relied on the Parol Evidence rule to exclude extraneous considerations, as do Portia and the «Anglo-Venetian» court by which Antonio and Shylock stand judged²⁴.

²³ See the argument in Rudolph VON IHERING, *Der Kampf um's Recht*, pp. X-XVI.

²⁴ English law continues to discuss the importance of the written word vs the true intention of the parties: CATTERWELL, Ryan: *A Unified Approach to Contract Interpretation*, pp. 6, 9. In Venezuela, see ESCOBAR LEÓN, Ramón: *La Interpretación de los Contratos y la Casación Venezolana*, p. 105.

Usury and antisemitism in the 16th century

The fact that Shylock the moneylender is Jewish is essential to the *Merchant* plot and its historical setting. Laws forbidding charging interest on money loans, that is, usury, were more rigorous in Venice than under the English system. Roman Catholics at that time were forbidden from lending money with interest to other Catholics; usury was considered a sin, pardonable only upon restitution of the profit generated by the sin.²⁵ The prohibition only affected Catholics: Jews, unbaptised and not subject to the rules of the Roman Catholic church, were permitted to lend money to Catholics and charge interest on the loan, although there existed some restrictions on Jews lending to each other.²⁶ Christian commentators generally regarded usury as the history of Jews taking advantage of Christians,²⁷ a stance that fomented antisemitism and the notion that Jewish moneylending practices were particularly heinous.²⁸

This antisemitic attitude is embodied in the *Merchant of Venice* by the characterisation of Shylock as malicious, miserly, bloodthirsty and generally disliked by the more elegant and noble Venetians. Shakespeare, however, does not in fact limit himself to one-dimensional, stereotypical characterisation in this case: as his plot unfolds, he presents his Jewish moneylender as a complex character, at once resentful, vile, oppressed, hopeful, disillusioned, proud, ingratiating and pathetic – all thanks to the dramatist's ability to intertwine the legal systems of Venice and England within his parallel plot combining finance with romance, the English with the exotic.

Equity and the Court of Chancery in England

No comparison of legal systems in Venice and 16th century England can omit mention of a parallel system of English justice that has co-existed alongside

²⁵ HOFFMAN, Michael. *Usury in Christendom, the Mortal Sin that Was and Now is Not*, pp. 116-117.

²⁶ *Op. cit.*, p. 311.

²⁷ *Op. cit.*, p. 308.

²⁸ *Op. cit.*, p. 310.

the Royal Courts since before Shakespeare's time and up to the present day: the Court of Chancery. From the 13th century onwards, a Party dissatisfied with proceedings or a decision laid down by the King's Court enjoyed and still enjoys the possibility of applying to a parallel court, the Court of Chancery, presided over by the lord Chancellor, chief administrator of justice in England and Wales, to seek a resolution that would be perhaps more flexible, fairer and (obviously) more favourable to that particular Party.²⁹ This parallel option of legal dualism –Law and Equity– did not exist in the Venice of Shakespeare's *Merchant*.

A key advantage offered by Equity was seen to be its greater flexibility in many aspects. For example, contested contract terms might be interpreted according to the inherent intentions of the parties not expressed in the written document: «Equity might declare a contract not binding even though it was binding at Common Law.»³⁰ This level of flexibility, which can almost be characterised in modern terminology as «intuitive», is enabled by the intention to solve legal problems in a fair or humane manner, respecting the norms of justice but not held prisoner by them. Thanks to its fluid and versatile character, Equity was and is an inclusive, useful concept, difficult to define, even by the very eminent Dame Sarah Worthington: «Equity can really only be described as the body of rules, principles and remedies which evolved from those that were initially developed and administered in the English High Court before 1873».³¹

Shakespeare's Elizabethan public would have been well aware of the existence and significance of Equity within the English legal system. The Lady Portia's unexpected appearance as Balthazar the lawyer and her famous plea for Shylock to be merciful in applying his bloodthirsty penalty clause (IV,1) is not rooted in Venetian law or even in English Common law but rather in justice as meted out by English Equity. Does this offend logic, history or our understanding of justice as such? Not really. Let poetic licence play, and all will be well that ends well!

²⁹ WORTHINGTON, Sarah. *Equity*, pp. 8-9.

³⁰ *Op. cit.*, p. 13.

³¹ *Op. cit.*, p. 20.

Conclusion

«William Shakespeare's *The Merchant of Venice*, a play in five Acts written in 1598 for presentation in England's popular Elizabethan theatre, is strikingly modern» (see Introduction, *supra*). «That Civil law pertains in the *Merchant* is clear from details such as notarisation of the loan agreement (I,3), elements of [Renaissance] Venetian law in the text (see below) and Bassanio's claim that the lawyer who unexpectedly appears in Antonio's defence is a «civil doctor» (V,1), that is, a Doctor of Civil Law» (see The Hearing, *supra*). Is this not contradictory? How can Shakespeare's *Merchant of Venice* be convincingly rooted in 16th century Venice and at the same time have something to say to 21st century audiences?

Two answers to this question spring to mind. The first concerns the blatant antisemitism displayed by many characters in the play, mirrored by Shylock's personal resentment of Christians generally and Antonio in particular. Notice, however, that Jessica, Shylock's daughter, and as Jewish is he is, feels no such resentment and plans to marry a Christian and convert. Jessica, though not a major figure, is as attractive a character as Shylock is distasteful. What is Shakespeare trying to tell his audience, contemporary or modern? Could it be that every Jewish person is an individual worthy of consideration apart from his or her race? Try to experience Shylock's plea without being moved by sympathy for the man:

Shylock:

... Hath
Not a Jew eyes? Hath not a Jew organs,
Dimensions, senses, affections, passions ...
If you prick us, do we not bleed?
If you tickle us, do we not laugh? If you poison
Us, do we not die? ... (III,1).

Dismiss the externalities of race, colour, gender, faith, status, wealth and beauty – we are all just human beings, worthy of kindness, acceptance,

justice and equality. Transpose Shakespeare's argument to today's Black Lives Matter controversy and Shylock speaks for all those who feel that they are undeservedly oppressed or rejected. A message for now in the costume of yesterday: the *Merchant* lives.

The second answer concerns the law. Is the letter of the law, be it statute, precedent, writ, contract, agreement or other, to be applied and executed strictly, without interpretation? Or does justice take into account human error, circumstances unforeseen and uncontrollable, to reach a fair conclusion? Does justice admit the concept of mercy? Again, Shakespeare promotes humanity. His most admirable Portia, in the guise of the «civil doctor», tries to persuade Shylock to show Antonio mercy in words immortalised through the centuries to our time:

Portia:

The quality of mercy is not strain'd;
It droppeth as the gentle rain from Heaven
Upon the place beneath. It is twice blest:
It blesseth him that gives and him that takes ... (IV,1).

Shylock rejects Portia's message and suffers the consequences of his own lawsuit when it is strictly interpreted against him. But even he is dismissed mercifully from the scene, avoiding what could have been very severe sanctions for this hapless plaintiff.

For Shakespeare, justice goes beyond the letter of the law to vindicate the good and punish the bad, but humanely because, without humanity, are human beings human at all?

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A brief synopsis of Shakespeare's *The Merchant of Venice*³²

A young Venetian, Bassanio, needs a loan of three thousand ducats so that he can woo Portia, a wealthy Venetian heiress. He approaches his friend Antonio, a merchant. Antonio is short of money because all his wealth is invested in his fleet, which is currently at sea. He goes to a Jewish moneylender, Shylock, who hates Antonio because of Antonio's antisemitic behaviour towards him. Shylock nevertheless agrees to make the short-term loan, but ... he makes a condition – the loan must be repaid in three months or Shylock will exact a pound of flesh from Antonio. Antonio agrees, confident that his ships will return in time. Because of the terms of Portia's father's will, all suitors must choose from among three caskets, one of which contains a portrait of her. If he chooses that he may marry Portia, but if doesn't he must vow never to marry or court another woman. The Princes of Morocco and Aragón fail the test and are rejected. As Bassanio prepares to travel to Belmont for the test, his friend Lorenzo elopes with Shylock's daughter, Jessica.

³² www.nosweatshakespeare.com, accessed 29/08/2021.

Bassanio chooses the lead casket, which contains her picture, and Portia happily agrees to marry him immediately.

Meanwhile, two of Antonio's ships have been wrecked and Antonio's creditors are pressuring him for repayment. Word comes to Bassanio about Antonio's predicament, and he hurries back to Venice, leaving Portia behind. Portia follows him, accompanied by her maid, Nerissa. They are disguised as a male lawyer and his clerk. When Bassanio arrives the date for the repayment to Shylock has passed and Shylock is demanding his pound of flesh. Even when Bassanio offers much more than the amount in repayment, Shylock, now infuriated by the loss of his daughter, is intent on seeking revenge on the Christians. The Duke refuses to intervene.

Portia arrives in her disguise to defend Antonio. Given the authority of judgment by the Duke, Portia decides that Shylock can have the pound of flesh as long as he doesn't draw blood, as it is against the law to shed a Christian's blood. Since it is obvious that to draw a pound of flesh would kill Antonio, Shylock is denied his suit. Moreover, for conspiring to murder a Venetian citizen, Portia orders that he should forfeit all his wealth. Half is to go to Venice, and half to Antonio.

Antonio gives his half back to Shylock on the condition that Shylock bequeaths it to his disinherited daughter, Jessica. Shylock must also convert to Christianity. A broken Shylock accepts. News arrives that Antonio's remaining ships have returned safely. With the exception of Shylock, all celebrate a happy ending to the affair.

* * *

Resumen: Los autores toman la popular obra *El mercader de Venecia* de SHAKESPEARE, para reflexionar sobre algunos aspectos jurídicos que subyace en la trama, como lo es la interpretación de los términos del contrato y sus principios. **Palabras clave:** Derecho y literatura, interpretación, contrato. Recibido: 16-02-22. Aprobado: 24-03-22.