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- Professor Peter Saccio, Dartmouth College, *William Shakespeare: Comedies, Histories, and Tragedies*, "Lecture 7: The Merchant of Venice – Courting the Heiress," *in* TRANSCRIPT BOOK 81-91 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2013); and Lecture 8, "The Merchant of Venice – Shylock," *in* TRANSCRIPT BOOK, 92-103 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2013). [Hereinafter, respectively, Saccio, Lecture 7 and Saccio, Lecture 8).

ABSTRACT:

Shakespeare's The Merchant of Venice is a play with multiple merchants engaged in multiple transactions with multiple motives. The key characters – Shylock, Antonio, Bassanio, Portia, Jessica, Lorenzo, Nerissa, Graziano, and the Duke – are involved in one sort of business dealing or another. Indeed, there are 10 specific transactions: one finance transaction; one international trade transaction; one gastronomic transaction; two inheritance transactions; three marriage transactions; and two legal entrepreneurship transactions. In these deals, commerce and love are almost indistinguishable, and justice and mercy clash. Thus, lawyers can analyze the drama from a transactional perspective, and spot issues they encounter, directly or by analogy, in everyday practice.

- Professor Susan Sage Heinzelman, University of Texas at Austin, *Representing Justice: Stories of Law and Literature*, "Lecture One: Literature as Law, Literature of Law" *in* COURSE GUIDEBOOK 4-8 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2006); "Lecture Two: The Old Testament as Law and Literature" *in* COURSE GUIDEBOOK 9-15 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2006); and "Lecture Eight: Shakespeare's *Merchant of Venice* (1596-97)" *in* COURSE GUIDEBOOK 49-55 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2006). [Hereinafter, respectively, Heinzelman, Lecture One, Heinzelman, Lecture Two, and Heinzelman, Lecture Eight.]
- Professor Marc C. Conner, Washington and Lee University, *How to Read and Understand Shakespeare*, "Lecture 18: Shakespeare's *The Merchant of Venice* – Comedy or Tragedy?" *in* TRANSCRIPT BOOK, 365-385 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2013), and "Lecture 19: "The Arc of Character in *The Merchant of Venice*" *in* TRANSCRIPT BOOK, 386-406 (Chantilly, Virginia: The Great Courses / The Teaching Company, 2013). [Hereinafter, respectively, Conner, Lecture 18 and Conner, Lecture 19.]

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The conventional wisdom that (1) Shakespeare's *The Merchant of Venice* is primarily a tragedy about anti-Semitism,* and (2) the "merchant" in the play is Antonio,[1] is correct. But, perhaps lulled by the title of the play, it is incomplete. The fact is that many characters in the play are engaged in buying or selling.[2] This drama is even richer than its portrayal of religious intolerance. It certainly is far richer than the characterization of *Merchant* as

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As Professor Bloom puts it:

> We need always to keep reminding ourselves that he is a comic villain…. In some sense, that should place Shylock in the Machiavellian company of two villains of tragedy, Edmund [from *King Lear*] and Iago [from *Othello*], yet none of us wishes to see Shylock there. Edmund and Iago are apocalyptic humorists; self-purged pathos, they fright us because continually they invent themselves while manipulating others. *Shylock's pathos is weirdly heroic*…. The play is both a superb romantic comedy and a marvelously adequate version of a *perfectly Christian, altogether murderous anti-Semitism*….

1-8 Harold Bloom, *Introduction*, *in* WILLIAM SHAKESPEARE'S THE MERCHANT OF VENICE (Harold Bloom, ed., New York, New York: Bloom's Literary Criticism / Infobase Publ'gc, 2010). (Emphasis added). [hereinafter, Bloom, *Introduction.*]

See also ANDREW DICKSON, THE GLOBE GUIDE TO SHAKESPEARE (N.Y., N.Y.: Pegasus, 2016) (discussing *Merchant* at 280-294, and stating at 280, "Viewed one way, *The Merchant of Venice* looks like anti-Semitic propaganda: a Christian merchant [Antonio] becomes indebted to a rapacious Jewish moneylender, Shylock, who seizes on the merchant's bankruptcy to demand repayment in the grisly form of a pound of the debtor's flesh.") [hereinafter, THE GLOBE GUIDE].

In addition to *The Globe Guide*, multiple sources provide excellent Act-by-Act, Scene-by-Scene, summaries of *Merchant* and Shakespeare's 37 other plays. *See, e.g.*, CHARLES BOYCE, SHAKESPEARE A TO Z (N.Y., N.Y.: Roundtable Press, 1990) (treating *Merchant* at 415-421) [hereinafter, SHAKESPEARE A TO Z]; MICHAEL DOBSON & STANLEY WELLS EDS., THE OXFORD COMPANION TO SHAKESPEARE (Oxford, England: Oxford Univ. Press, 2nd edition, 2015) (summarizing *Merchant* at 297-301). [hereinafter, OXFORD COMPANION.]

1. *See* Conner *supra* * at 390, 402.

2. *See* David Hawkes, Shakespeare and Economic Theory, 34, 144, 158-159 (London: Bloomsbury Publishing Plc, 2015) [hereinafter Shakespeare and Economic Theory] (Only a handful of scholars have examined deeply the economic dimensions of Shakespeare's plays. For instance, Professor David Hawkes of the Univ. of Ariz. outlines the history of Capitalist and Marxist theory, and then applies certain economic doctrines to selected Shakespeare plays, including *Merchant*). *See also* Frederick Turner, Shakespeare's Twenty-First Century Econ. – The Morality of Love and Money (N.Y., N.Y.: Oxford Univ. Press, 1999) [hereinafter, Shakespeare's Twenty-First Century Econ].

a "comedy of religious conflict,"[3] or a "fairy tale."[4] Rather, *Merchant* "is a richly complicated work in which several themes are presented…."[5]

There is, then, an unconventional approach to the play, one evident by looking at the play as a business lawyer would – namely, a transactional perspective.[6] True: the play can be viewed as oppositional (in an almost post-Structuralist sense), about Judaism versus Christianity, men versus women, fathers versus daughters, rich versus opportunity, and invitation versus rejection.[7] And, also true: underlying these oppositions, and perhaps the central one, justice versus mercy, is money. That should come as no surprise. The Bard of Avon, who lived from 1564-1616,[8] wrote this drama in 1595 or 1596.[9] Thus it is considered one of his "middle plays," the first set of which

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3. OXFORD COMPANION, *supra* note *, at 297.

4. Saccio, Lecture 7, *supra* note *, at 81-82 (This rendition is espoused by Professor Saccio).

5. Shakespeare A to Z, *supra* note *, at 417.

6. William Shakespeare – Complete Works (Jonathan Bate & Eric Rasmussen eds., 2nd ed. 2022) [hereinafter, RSC Shakespeare] (Throughout this article, unless otherwise noted, all quotations from *Merchant* are taken from Royal Shakespeare Company. Following an excellent *Introduction* at pages 406-409, *Merchant* is grouped with Shakespeare's comedies and published at pages 410-463. Thus, references to Acts and Scenes are standard in most other sources (including *The New Oxford Shakespeare*, published by Oxford Univ. Press in 2016), but variations based on editorial judgments may exist with respect to the Lines. In the quotations from *Merchant* herein, where necessary to facilitate understanding of early Modern English words and phrases, the modern equivalents have been inserted in square parentheses, *i.e.,* []. These insertions are drawn from the footnotes to the quotes and are on the same pages cited in the RSC Shakespeare).

7. *See* Heinzelman, *supra* note *, Lecture Two, at 10-14 (So, for example, Professor Heinzelman rightly recalls the Old Testament, specifically, the distinction between two types of promises: (1) a covenant, a sacred relationship between God and people, and (2) its secular counterpart, the contract (which is between people). She posits as the main plot of *Merchant* the case of *Shylock v. Antonio*, implying the marriage plot involving Bassanio and Portia is the second, perhaps secondary, one), Heinzelman, *supra* note 1, Lecture Eight, at 50-54 (This article argues transactions are the main "plot," as it were. Everything is up for negotiation, sale and purchase, and performance – that is what unifies all the sub-plots in *Merchant*. Transactions in the play link together ponderous issues of legal and religious doctrine as they are applied in everyday life).

8. Jonathan Bate, The Genius of Shakespeare vii (N.Y., N.Y.: Oxford Univ. Press, 10th Anniversary ed, 2008).

9. *See* G.B. Harrison, "The Merchant of Venice – Introduction," *in* Shakespeare – Major Plays and the Sonnets 299 (G.B. Harrison, ed., N.Y., N.Y.: Harcourt, Brace and Co., 1948) (stating, "*The Merchant of Venice* was probably written in 1595 or 1596, but there is no definitive evidence of date. … The earliest recorded performance

he composed during the Elizabethan era of 1596-1603 (*i.e.*, the last part of the last House of Tudor monarch, Queen Elizabeth I who reigned from 1558-1603) and the second set in 1603-1607, the Jacobean period (during the reign of King James I).[10]

In this era, the British were at the start of their empire, world leadership (albeit colonialist) in the international political economy.[11] Not too long after Shakespeare's lifespan (1564-1616), Britain would become an empire that would "encompass[] a quarter of the human race and over a fifth of the world's land surface."[12] So, the business of Britain increasingly was business. Money mattered. Shakespeare's works themselves would be part of the business, as

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was in 1605, when the play was acted at Court before King James I, on Shrove Sunday [the last Sunday before Lent in the Christian calendar], Feb. 10. It pleased the King so much that he ordered a second performance on the twelfth."); *See also* Harold Bloom, Shakespeare: The Invention of the Human xiii-xv (N.Y., N.Y.: Riverhead Books, 1998) (containing a Chronology of all of Shakespeare's plays, but wisely observing that "[a]rranging Shakespeare's plays in the order of their composition remains a disputable enterprise," and while his ordering "partly follows what is generally taken to be scholarly authority," he is sometimes "skeptical of authority" – as he should be) [hereinafter, Shakespeare: The Invention of the Human].

10. Kenneth McLeish & Stephen Unwin, The Faber Pocket Guide to Shakespeare's Plays xiii (Approximate Chronology of the Plays) (London, England: Faber and Faber, 1998) [hereinafter, Faber Pocket Guide].

11. *See The British Empire: An Overview*, BBC (2024), https://www.bbc.co.uk/bitesize/articles/zpjv3j6#zv9j7yc (stating: "The British Empire began in the late 1500s under Queen Elizabeth I"); *See also* Niall Ferguson, Empire – The Rise and Demise of the British World Order and the Lessons for Glob. Power (New York, New York: Basic Books, 2002) (describing (1) how Elizabeth I "took the eminently sensible decision to license" privatized naval warfare, thus making "[r]obbing the Spanish … a matter of strategy," (2) quoting from Andrew Fletcher of Saltoun, who said at the end of the 17th century, 'The sea is the only empire which can naturally belong to us,' and (3) concluding that "[t]he key to the rise of the British Empire is the fact that, in the space of around a century after the [Spanish] Armada [*i.e.*, after 1588], this maritime empire went from aspiration to reality"); *See also* Denis Judd, Empire: The British Imperial Experience from 1765 to the Present 1-2 (N.Y., N.Y.: Basic Books, 1996) (opining: "far from the sum of the Empire being greater than its parts, generally the opposite was true," and that "… the late eighteenth century … was when the British Empire became recognizably the greatest and most dynamic of European imperial structures, and when Britain, if not yet 'the workshop of the world,' was well on the way to becoming the globe's greatest international trader and the chief carrier of commerce of other nations.") [hereinafter Judd, Empire].

12. Judd & Empire, *supra* note 11, at 2.

his plays would be disseminated across the British colonies, helping to unify – or, dare it be said, in the minds of the colonizers, civilize – the colonized.[13]

Simply put, ***the thesis of this article is the unifying structural theme of Merchant is deal-making: there are multiple transactions among multiple merchants who have multiple motives***.

Advancing this thesis requires a bit of lexicography. Per the *Oxford English Dictionary* ("OED") definitions of "transaction" and "merchant," the play is insightfully viewed as a series of characters, all of whom are "merchants" to one degree or another, engaged in one or more "transactions." The OED identifies as a "merchant:"

- 1.a. A person whose occupation is the purchase and sale of goods or commodities for profit. … **c. 1225-**
- 1.b. In extended use: a person who purveys or supplies something which is not usually regarded as an object of trade. … **a. 1400-**
- 3.b. Originally *Theatre slang*. A person regarded as an exponent of a particular skill, or as having (and promulgating) a special interest in a particular activity, subject, etc. Usually as the second element in compounds [*e.g.*, "speed merchant."] … **1886-**[14]

All these definitions are applicable to key characters in the play. The first two of these definitions (1.a and 1.b) were, and continue to be, operable during Shakespeare's lifetime (1564-1616).

Obviously, following 1.a. and 3.b, Antonio – the character conventionally ascribed to be the "merchant" in the title of the play – is a profit-seeking international trader, importing and exporting merchandise to and from Venice. Antonio is a "merchant" in the traditional sense, trading commodities across nations (or city-states), thus enlarging his net worth through arbitrage (buying them at lower prices and selling them for higher prices). Shylock finances such trade; by extension, he sells funds (though, admittedly, money is not a "good"). He has the "particular skill" of usury as

13. LEAH S. MARCUS, *How Shakespeare Became Colonial – Editorial Tradition and the British Empire* 1-4 (London, England: Routledge, 2017) (stating that amidst the "colonial ideologies that dominated British culture during the long period from the eighteenth to the early twentieth centuries … [,]" "Shakespeare was repeatedly enlisted as a spokesman for the British Empire….").

14. *Merchant*, OXFORD ENG. DICTIONARY (OED) (revised 2001), https://www.oed.com/dictionary/merchant_n?tab=meaning_and_use#37293537 [hereinafter, OED].

a "financial merchant." Shylock buys and sells bonds, loans, and debts, leveraging his liquidity to enlarge his mini-banking empire.

Less obviously, Portia, Jessica, Nerissa, and their eventual spouses, Bassanio, Lorenzo, and Graziano, respectively, are trafficking in love and fidelity. Thus, they fit within 1.a and 3.b, as a merchant of marriage. Per these same definitions, Portia and Nerissa pedal legal arguments.

Black's Law Dictionary also defines "merchant:"

> One whose business is buying and selling goods for profit; esp., a person or entity that holds itself out as having expertise peculiar to the goods in which it deals and is therefore held by the law to a higher standard than that of a non-merchant. Because the term relates solely to goods, a supplier of services is not considered a merchant.[15]

Per the explanation contained in this entry, this definition tracks that of the Uniform Commercial Code ("U.C.C.") Section 2-104(1).[16] Admittedly, then, its restriction to goods renders its application to several characters in *Merchant* (especially those other than Antonio and Shylock) loose, *i.e.*, by analogy. That said, the commodification of inheritance and marriage transactions, and legal entrepreneurship and argumentation, suggest its application by analogy is reasonable.

As for "transaction," the OED delineates it as follows:

- 1. *Roman Law and Civil Law*. The adjustment of a dispute between parties by mutual concession; compromise; hence *gen.* an arrangement, an agreement, a covenant. Now Historical except as in 3c [the theological use of the term]. **c. 1460-**
- 2.The action of transacting or fact of being transacted; the carrying on or completion of an action or course of action…. **1655-**
- 3.a.That which is or has been transacted; an affair in course of settlement or already settled; a piece of business; in plural doings, proceedings, dealings. Also *figurative*. **a. 1656-**
- 3.b.… A physical operation, action, or process. **1663-1794**

15. *Merchant*, BLACK'S LAW DICTIONARY (11th ed. 2019).
16. *Id.*

- 4.… The action of passing or making over a thing from one person, thing, or state to another; transference. *Obsolete*. **a. 1608-91**[17]

Similarly, *Black's Law Dictionary* defines "transaction" as:

> **1.** The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. **2.** Something performed or carried out; a business agreement or exchange. **3.** Any activity involving two or more persons. **4.** *Civil law*. An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions. …[18]

Here, too, these definitions are apt for the action of the play. From the OED, two of four (1 and 4), and from *Black's Law Dictionary*, one of the four (4) were understood when Shakespeare wrote it.

Shylock, Antonio, Portia, Nerissa, Jessica, Bassiano, Lorenzo, and Graziano, applying OED 1, make "arrangements," "agreements," or "covenants" of one kind or another. Likewise, under *Black's Law Dictionary* 1 and 2, they are "conducting business or other dealings," including certain "contracts," "business agreements," or "exchanges." Under 3, which is the broadest of the three definitions in *Black's*, they are engaged in "activities" with others. Applying the OED, through their "pieces[s] of business" and "proceedings" (3.a.), and their "operation[s], action[s], or process[es] (3.b.), they are seeking "mutual concessions" and "compromises" (1). Interestingly, the fourth understanding of the term (4) seems not to be "obsolete" with respect to the play. That is because for these characters, as for all of Shakespeare's principal players, a tool of critical analysis is to ask, "What is their arc of character – rising, falling, or flat?" In the OED's terms, are any of the characters "transferred" from one type of person to another?

To be sure, endemic in these transactions, evidenced by the behavior of the merchants, is discrimination – not only against Jews, but also against women. Anti-Semitism and misogyny are uncomfortable narratives in the play. But, is this a play about discrimination set in the context of the first plot, a finance deal, linked to the second plot, a marriage? Discrimination in the economy? Or, is it a play about the commercialization of everyday life in which discrimination, regrettably, exists? The economy tolerating discrimination?

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17. *Transaction,* OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/transaction_n?tab=meaning_and_use#17922645.

18. BLACK'S LAW DICTIONARY, *supra* note 15, at 1802. (Emphasis original).

Neither is entirely the full or exclusive truth. As with many of Shakespeare's works, close reading of them teaches the reader that different angles are valid. What Professor Rene E. Fortin of Providence College says of *Julius Caesar* (1599) is true of *Merchant*, too: there are a variety of interpretations that, though they may "lack the flair and gusto of earlier criticism, they have gained … in accuracy."[19] Moreover, the advantage of the novel framing offered here is its reminder, indeed admonition, to today's transactional lawyers, to "issue spot" their deals for nefarious motives and/or consequences. As the Prince of Morocco learns when he flunks the Casket Test of Act II, and thus does not win Portia's hand in marriage, "all that glistens is not gold."[20]

II. ACT TWO: ONE FINANCE TRANSACTION

A. Intertwined Transactions

This transaction is the one that has received the most attention throughout history. That is for good reason: the loan is proposed, negotiated, and agreed upon early in the play (Act I),[21] and it is a transactional focal point until its default is resolved through legal proceedings (Act IV).[22] The loan, of course, is by Shylock to Bassanio, with a guarantee (or, better put, as explained below, surety) from Antonio. This financing structure is secured by Antonio's import-export merchandise on the high seas. That collateral, when (ostensibly) lost at sea, is secured by back-up collateral, namely, the pound of flesh of the debtor. Shylock is nothing if not over-secured. (But, given the anti-Semitism he has endured, should he not be wary of trusting Christians to extend their goodwill to him?)

The terms of the loan are 3,000 *ducats*, with a tenor of three months.[23] Its purpose is to bankroll a marriage desire (Bassanio for Portia). Hence, in what appears to be a standard banking law arrangement is interwoven with international trade law and family law. That is, the financing is linked to an

19. Rene E. Fortin, *Julius Caesar: An Experience in Point of View*, 19 SHAKESPEARE QUARTERLY, Autumn 1968, at 341.

20. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 2, sc. 7, l. 6.

21. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, Scene 3.

22. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, Scene 1.

23. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, Scene 3, Lines 2-3, 7. A "*ducat*" is a "gold coin." *See id.*, footnote 1 at page 416.

international trade transaction (discussed in Part III, *infra*), which itself is linked to one of the three marriage transactions (discussed in Part VI, *infra*). Consequently, the loan blurs the line between business and love.

That this line never is clearly delineated is essential to the thesis herein that *Merchant* is about multiple merchants engaged in multiple transactions with multiple motives. And, this thesis is the only way to answer plausibly the question, how could Antonio, a wealthy Christian nobleman in a Christo-centric society possibly find himself at the mercy of Shylock, a Jew in that anti-Semitic society?

The infusion of commerce into all aspects of life – the lack of demarcation – is obvious from the outset. Antonio does not turn to Shylock for a loan because he fails at international trade. Rather, the personal investment Antonio has in Bassanio is the motive: Bassanio needs funds to support his courting of Portia, and Bassanio is his close friend (and possibly lover). Public commercial relations and personal, intimate relations are commingled. Or, as Professor Turner puts it, "[f]or Shakespeare, economic exchange is the embodiment of human moral relations."[24]

Moreover, the finance transaction is based not only on mutual self-interest, but also on mutual suspicion, indeed, hatred. The reciprocal loathing is evident from a desire to demarcate firm transactional lines on religious grounds, and thus – in modern parlance (from the Sino-American Trade War[25]) – to decouple as much as possible from one another. It is the transaction that adduces the religious themes of the play, namely anti-Semitism, and invokes another transaction – gastronomy (discussed in Part IV, *infra*). And, the loan default (Antonio's failure to make good on his bond) is what leads to the legal transactions and entrepreneurship (discussed in Part VII, *infra*). Simply put, if *Merchant* is viewed first through the lens of Shylock's loan to Bassanio backed by the credit of Antonio, then all the linked transactions become evident.

B. Three Questions about the Merchants

Of all the principal merchants, three general questions may be asked: (1) What are their defining characteristics? (2) What is their relationship to economic, political, social, and religious structures, to power hierarchies and

24. SHAKESPEARE'S TWENTY-FIRST CENTURY ECON., *supra* note 2, at 13.

25. *See* Raj Bhala *Decoupling Defined: Four Theories and Four Illustrations from the Sino-American Trade War*, 33 UNIV. OF WASH. INT'L L. J. number 1 (Symposium on "A Critical Examination of Decoupling," Spring 2024), https://digitalcommons.law.uw.edu/wilj; RAJ BHALA, TRADE WAR: CAUSES, CONDUCT, AND CONSEQUENCES OF SINO-AMERICAN CONFRONTATION (Durham, N.C.: Carolina Academic Press, 2024).

asymmetries within these structures? (3) Overall, what is their trajectory – do they develop or not, and if so, how and in what directions? These same questions are worthy of consideration by contemporary business lawyers. In their deals, they can, do, and indeed, should, ask analogous questions of all their clients, and the parties with which they negotiate on behalf of their clients.

In *Merchant*, as to Shylock, what can be said of Shylock as a transactor?[26] There are three possibilities.

First, does the trajectory of Shylock have an upward trend, like Prince Hal as he moves from Part One to Part Two of *Henry IV* and onto *Henry V*, proving he can transcend the bawdy tavern world and buffoonery of Falstaff, defeat an assassination plot, ascend to the throne, and lead England to improbable yet strategic victories against France? Professor Harold Bloom suggests a negative answer, that Shylock's trajectory is not downward, but flat, with a sudden collapse. In his *Introduction* to an excellent collection of nine critical essays on *Merchant*, Bloom confesses puzzlement about the rapid break down of Shylock, and criticizes Shakespeare for it:

> Of Shakespeare's displaced spirits, those enigmatic figures who sometimes seem to have wandered into the wrong play, Shylock clearly remains the most problematical. …
>
> … Of all the enigmas presented by *The Merchant of Venice*, to me the most baffling is Shylock's broken acceptance of forced conversion [from Judaism to Christianity, per the punitive settlement imposed by Antonio in *Shylock v. Antonio*, discussed below]. Is it persuasive? Surely not, since Shakespeare's Shylock, proud and fierce Jew, scarcely would have preferred Christianity to death. … Why did Shakespeare inflict the cruelty of the false conversion, knowing he could not allow Shylock the tragic dignity of dying for his people's faith.
>
> … No other Shakespearean character who has anything like Shylock's representational force is handled so strangely by Shakespeare and ultimately so inadequately. …
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> …
>
> … It is Antonio, the pious Jew baiter, who adds to the Duke's [*i.e.*, the Duke of Venice's] pardon the requirement that Shylock immediately become a Christian, after which Shakespeare seems a touch anxious to get Shylock offstage as quietly and quickly as possible. …

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26. *See* STEPHEN GREENBLATT, WILL IN THE WORLD: HOW SHAKESPEARE BECAME SHAKESPEARE 257-258, 271-272, 279-287 (N.Y., N.Y.: W.W. Norton & Company, 2004) (Focusing on Shylock is, of course, common and understandable, even in books not exclusively dedicated to the play. For instance, in his biography of Shakespeare, Professor Stephen Greenblatt devotes significant attention to him in Chapters 9 ("Laugher at the Scaffold") and 10 ("Speaking with the Dead")).

And in a moment, Shylock walks out of the play…. In our post-Holocaust universe, how can we accommodate Shylock's "I am content," too broken for irony, too strong for any play whatsoever?[27]

Yet, after what Shylock has been through, surely his pitiful last words and exit are understandable?

The point, in rebuttal to Bloom, is Shylock does not utterly disintegrate. Rather, he leaves the Court Room as best he possibly can under the circumstances of the conform-or-die choice he faced (which are analyzed in detail in Parts VII-VIII, *infra*). Further, through Shylock's exit, Shakespeare shows the difficulty of maintaining one's dignity as a Jew amidst Christian colonialist majoritarianism. Is this challenge not also encountered by modern-day merchants and their lawyers, whose identity is in the minority but do deals in a get-along, go-along atmosphere of a negotiating room? Obvious contexts range from tasteless jokes about minorities to political discussions about boycott and divestment campaigns.

Second, is the character arc of Shylock, like that of Falstaff in those two plays, Macbeth in *Macbeth*, and Marc Antony in *Antony and Cleopatra* – downward? Here the point is Shylock descends from an accomplished (albeit usurious) financier to whom Jessica at least appears to be a respectful daughter to a defeated plaintiff whose daughter has run away and eloped with a Gentile.

Third, is the trend line of Shylock flat? Is the Shylock of Act I the Shylock of Act IV, a small man who, constrained by Christian abuse, (1) professionally, maximizes his financial opportunities, and (2) personally, loves his daughter, Jessica, and mourns his dead wife in the only ways he knows how? To be sure, Shylock's transactional and legal power rises and falls during the play. Shylock moves upwardly, from creditor-in-command over Antonio and the Venetian Court, downwardly, to defeated plaintiff at the hands of Portia-in-disguise, and then to legally compelled convert from Judaism to Christianity owing to a tariff levied by Antonio. Here the point is a struggle to decide if Shylock has grown across the play, or whether his net displacement, as it were, is zero.

All three inferences are plausible. Whichever among them is correct is not as crucial as the lesson for business lawyers, namely, to posit plausible answers. Size up those with whom to do business. What reliably defines the opposite contracting party – high or low trust? If the counter-party is clean and courteous, then much can be done on a handshake. If the would-be deal-maker is uncertain and unpredictable, then put all terms in writing with clear events of default, a liquidated damages clause, and choice of law and choice of forum clauses. In the anticipated transaction, is the counter-party better, worse, or the same at the start versus end of the deal? Put differently, given

27. Bloom, *Introduction*, *supra* note *, at 1-3.

the personality involved, is there reason to hope for more profitable deals, or is this one a one-off event? If the former, then consider new contractual, even partnership, ventures.

But how best to forge an answer, *i.e.*, what evidence should legal counsel consider in projecting the arc of character of key transactors in a proposed business arrangement?

C. Appearance versus Reality

The negotiation, performance, and execution of transactions can – and often do – involve projection of the appearance of strength to conceal the reality of weakness. Bassanio puts the point well, with a moralistic overtone:

There is no vice so simple but assumes
Some mark of virtue on its outward parts.[28]

How, then, to ferret out the difference between who a transactor purports to be, and who they really are?

As with many characters across Shakespeare's dramatic corpus, the first words said matter a lot. What does Shylock first utter? "Three thousand *ducats*, well."[29] By these words, "the counting of money,"[30] Shylock signifies he values money. Shylock's utterance is redolent of the first words of Antony in *Antony and Cleopatra*: "There's beggary in the love that can be reckoned,"[31] meaning "if love can be calculated, it's worthless,"[32] and thus intimating an irony about his love for Cleopatra. In contrast, the first words of Hamlet in *Hamlet* are a pun: "A little more than kin and less than kind," suggesting the existential dilemma the Danish Prince faces;[33] and those of Macbeth in *Macbeth* concern the interplay of what is "fair" and "foul" ("So

28. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 3, sc. 2, l. 86-87.

29. *See* RSC SHAKESPEARE, *supra* note 6 ,THE MERCHANT OF VENICE act 1, sc. 3, l. 1.

30. Conner, Lecture 19, *supra* note *, at 387, 398.

31. RSC SHAKESPEARE, *supra* note 6, THE TRAGEDY OF ANTONY AND CLEOPATRA, act 1, sc. 1, l. 15.

32. RSC SHAKESPEARE, *supra* note 6, THE TRAGEDY OF ANTONY AND CLEOPATRA, act 1, sc. 1, l. 15, footnote 15. *See also* Conner, Lecture 19, *supra* note *, at 387, 398 (interpreting these words to mean that if love can be measured, then it is not love.).

33. *See* RSC SHAKESPEARE, *supra* note 6, THE TRAGEDY OF HAMLET, PRINCE OF DENMARK, act 1, sc. 2, l. 64; Conner, Lecture 19, *supra* note *, at 387, 398.

foul and fair a day I have not seen," telegraphing the moral confusion Macbeth embodies).[34]

The context, of course, of Shylock's first words are his conversation with Bassanio in Act I.[35] Using the solid creditworthiness of Antonio, Bassanio seeks a "loan" for funds to woo Portia. The subject of the transaction is ludicrous, in that no arms-length commercial creditor would lend a debtor money for the debtor to attract a wife. Such a transaction would be more accurately undertaken as a gift from a generous person to the suitor.

This context, the finance transaction, illustrates another point pertinent for business lawyers: beware of the distinction between appearances versus reality. In *Merchant*, there is an obvious appearance-reality incongruity in the financing transaction. Bassanio does not present himself to Portia as who he really is, financially or sexually. Financially, Bassanio is not wealthy (his funds are borrowed) nor of sartorial splendor; he is, in truth, a profligate loser (albeit from the upper class). Sexually, though Bassanio seeks Portia's hand in a marriage transaction (discussed below), he may well be more than merely Platonic friends with Antonio. Theirs may be a homosexual bond.

And yet, Bassanio is acutely aware of the appearance-reality difference. As he is about to choose (correctly) in the Casket Test, he says:

> So may the outward shows be least themselves,
>
> The world is still deceived with ornament.
>
> In law, what plea so tainted and corrupt,
>
> But, being seasoned with a gracious voice,
>
> Obscures the show of evil? In religion,
>
> What damnèd error, but some sober brow
>
> Will bless it and approve it with a text,
>
> Hiding the grossness with fair ornament?[36]

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34. *See* RSC SHAKESPEARE, *supra* note 6, THE TRAGEDY OF MACBETH, act 1, sc, 3, l. 39; Conner, Lecture 19, *supra* note *, at 387, 398.

35. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc, 3, l. 1-2.

36. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 3, sc. 2, l. 75-82.

In love, law, and religion, Bassanio is insightful about how appearances deceive. Hence, he chooses correctly the obviously less attractive lead casket over the seductively beautiful gold and silver caskets.

In contrast to debtor-borrower Bassanio, creditor-lender Shylock is who he appears to be: a Jewish moneylender who, like any lender, wants to be sure he is repaid. So, Shylock repeats the amount, tenor of, and collateral to secure, the loan – 3,000 *ducats*, three-month duration, and "Antonio shall be bound" by his (Antonio's) bond.[37]

In discussions of *Merchant*, this language, "Antonio shall be bound," typically is characterized as a "guarantee." The arrangement is one of suretyship: Antonio is a "surety," which is technically different (though not always distinguished from) a "guarantor." As *Black's Law Dictionary* teaches, "suretyship" is a:

legal relation that arises when one party assumes liability for a debt, default, or other failing of a second party. • *The liability of both parties begins simultaneously*. In other words, under a contract of suretyship, a surety becomes a party to the *principal* obligation.[38]

In the play, Antonio, like Bassanio, is primarily liable on the 3,000-*ducat* loan – hence, the "suretyship" characterization. Shylock can turn to either of them for repayment, whereas in a "guarantee" arrangement, Shylock could turn to the guarantor only if the debtor (Bassanio) defaulted on the loan. Per *Black's Law Dictionary*, a "guarantor" is:

Someone who makes a guaranty or gives a security for a debt. • *While a surety's liability begins with that of the principal a guarantor's liability does not begin until the principal debtor is in default*. – Also termed a *guarantor surety*….[39]

Essentially, Antonio co-signs the loan with Bassanio (though the deal is unwritten).

There is, of course, another – and arguably simpler – way to characterize the transaction: the debtor is Antonio, not Bassanio. The creditor, Shylock, lends the 3,000 *ducats* to Antonio, but Antonio directs Shylock to disburse the

37. Shakespeare RSC, *supra* note 6, The Merchant of Venice, act 1, sc. 3, l. 4; *The Merchant of Venice: Shylock and Antonio's Bond, Act 1 Scene 3, Key Scene*, ROYAL SHAKESPEARE COMPANY, https://www.rsc.org.uk/shakespeare-learning-zone/the-merchant-of-venice/language/shylock-and-antonios-bond#:~:text=Shylock%20deliberates%20over%20whether%20he,thousand%20ducats%20within%20three%20months (Oct. 19, 2024).

38. *Suretyship*, BLACK'S LAW DICTIONARY (11th ed. 2019).

39. *Guarantor*, BLACK'S LAW DICTIONARY (11th ed. 2019). Additionally, the transaction might qualify technically as a "suretyship," because Bassanio does not pay Antonio for the financial backing, whereas guarantors typically get a fee for providing their guarantee.

funds directly to Bassanio. This reframing of the financial transaction renders Bassanio a third-party beneficiary of the loan. (A "third-party beneficiary" is "[s]omeone who, though not a party to a contract, stands to benefit from the contract's performance."[40]) The collateral remains Antonio's flesh, but now, Antonio guarantees the loan to himself with his own flesh.

Regardless of who precisely the debtor is, once Shylock states Antonio is "bound" to repay the loan, Shylock then dubs Antonio "a good man."[41] Why? "Good" is a Shakespearean *double entendre*. As an adjective, "good" can mean morally upright, as in "the character of Antonio is high-quality."[42] As a noun, it can signify creditworthiness, as in "Antonio is competent to make good on repaying his debt," and by extension, "not to default on a debt is to do good, and advances the common good of the financial system."[43] Bassanio adopts the adjectival interpretation, because he quickly replies to Shylock, "Have you heard any imputation to the contrary?" Bassanio is worried Shylock's remark impugns the integrity of his dear friend, Antonio. How annoyed versus outraged Bassanio is by this is left to the actor playing Bassanio to interpret – but upset he is that this usurious Jewish money-lender could question the moral virtuousness of Antonio.

But, Shylock means "good" in the noun sense, *i.e.*, that Antonio is creditworthy and thus will "do good" by performing his transactional obligations. Shylock's fixation on money is evident. He is not offering a compliment about the virtues of Antonio, rather only an affirmation about the business stature of Antonio. After all, soon Shylock unloads his thoughts about Antonio and Christianity, which are anything but positive. Shylock makes his interpretation of "good" clear:

My meaning in saying he [Antonio] is a good man is to have you [Bassanio] understand me that he is sufficient.[44]

"Sufficient" means, to Shylock, able to repay a debt, here, the loan by him to Bassanio with the backing of Antonio – "good for the money."

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40. *Third Party Beneficiary*, BLACK'S LAW DICTIONARY (11th ed. 2019).

41. Shakespeare RSC, *supra* note 6, The Merchant of Venice, act 1, sc. 3, l. 7 & 9.

42. *Definition of Good Adjective from the Oxford Advanced Learner's Dictionary*, OXFORD LEARNER'S DICTIONARIES, https://www.oxfordlearnersdictionaries.com/us/definition/english/good_1 (Oct. 19, 2024), (providing examples such as "good book" and "good quality").

43. *See* OXFORD LEARNER'S DICTIONARIES (entry for "good," noun), https://www.oxfordlearnersdictionaries.com/us/definition/english/good_2 (providing examples such as "force for good," and "the struggle between good and evil").

44. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 11-12.

Are these two definitions mutually exclusive? Is "good" a veritable *double entendre*? Arguably, not from the perspective of Shylock: the noun and adjective conflate, in that to be sufficient to repay a loan is to be morally good. In Shylock's calculus, financial creditworthiness is moral creditworthiness, whereas a deadbeat debtor is morally bankrupt. Put simply, professional business correlates with a virtuous character: the wealthier, the better.

This calculus is not unique to Shylock. He has weighty testimonials in his favor. For instance, from pre-Christian times, recall the last words of Socrates in Plato's *Phaedo*, spoken to his devoted friend, "[a]s he felt the poison creeping up to his heart:"[45]

> Crito, we ought to offer a cock [rooster] to Asclepius. See to it and don't forget.[46]

Sacred scripture also favors Shylock, which counsels for repayment of debts, large or small. In the Old Testament, for instance, the *Second Book of Kings* recounts the story of "The Widow's Oil," in which the Prophet Elisha advises a widow whose husband died indebted, "Go sell the oil to pay off your creditor…." [47]

Of course, the New Testament advises forgiveness of debts, most famously in the Lord's Prayer in *Matthew*: "…forgive us our debts, as we forgive our debtors….").[48] Similarly, in the parable of "The Pardon of the Sinful Woman," recounted in *Luke*, Christ teaches that of two debtors beholden in unequal amounts to a creditor who forgives both debts, the larger debtor will love the creditor even more than the smaller debtor.[49] Such pay-

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45. Plato, *Phaedo*, *in* PLATO THE COLLECTED DIALOGUES INCLUDING THE LETTERS 40, 40 (Edith Hamilton & Huntington Cairns eds., 1989). [Hereinafter, *Phaedo*].

46. *Id.* at 98. To be sure, Socrates' concern reflected a different kind of indebtedness from that in *Merchant*, namely:

> It was the Greek custom after recovery from an illness to make an offering to the divine healer, Asclepius. To himself Socrates was recovering, not dying. He was entering not into death, but into life, "life more abundantly."

Id. at 40.

47. 2 *Kings 4:7* (Catholic Study Bible).

48. *Matthew* 6:12-13 (Catholic Study Bible).

49. *Luke* 7:41-43 (Catholic Study Bible) ("[41]Two people were in debt to a certain creditor; one owed five hundred days' wages and the other owed fifty. [42]Since they were unable to repay the debt, he forgave it for both. Which of them will love him more?" [43]Simon said in reply, "The one, I suppose, whose larger debt was forgiven." He [Jesus] said to him, "You have judged rightly.") How the parable might apply to Antonio loving Shylock were Shylock to forgive the debt is curious: on the one hand, the size of his debt (3,000 *ducats*) may be small in relation to his overall net worth,

versus-forgive indebtedness scriptural passages reflect competing views of debt that come to full display in the Court Room scene (discussed in Part VII, *infra*) and the characterization of the case of *Shylock v. Antonio* as about justice versus mercy (discussed in Part VIII, *infra*).

D. Christo-Transactional Hatred

To be sure, Shylock's motives are mixed. He is bitter toward Antonio, and the depth of his rancor is clear from the outset of the play. In Act I, Shylock turns away from the approach of Antonio, saying:

> How like a falling publican [tax collector, more generally, a heathen, a person cut off from the Church, excommunicated] he [Antonio] looks!
>
> I hate him [Antonio] for he is a Christian,
>
> But more, for that in low simplicity [humbleness]
>
> He lends out money *gratis* [free, *i.e.*, at zero interest rate] and brings down
>
> The rate of usance [usury] here with us in Venice.
>
> If I can catch him once upon the hip [at a disadvantage],
>
> I will feed fat the ancient grudge I bear him.
>
> He hates our sacred nation [the Jewish people, Israel], and he rails –
>
> Even there where merchants most do congregate [on the Rialto] –
>
> On me, my bargains and my well-won thrift [profit],
>
> Which he calls interest. Cursèd be my tribe [one of the 12 tribes of Israel to which Jews trace their lineage],

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but, on the other hand, the value of the collateral he has pledged (a pound of his flesh) is priceless.

If I forgive him![50]

Here are two reasons for hating Antonio: religious, and financial. Each reason is worthy of exploration. Collectively, they might be called a "Christo-transactional" antipathy.

First, Antonio is a Gentile, and Gentiles have (as soon discussed) persecuted Jews for centuries. The past and present sins of an affiliation (Christianity) are ascribed, without differentiation or nuance, to an affiliate (Shylock). That is for good reason: per Shylock's account (quoted below), Antonio hates Jews, and actively speaks out against them where they do business. Simply because Antonio is a Christian, Shylock hates him.

The extent of Antonio's hatred toward Jews – and this hatred is anti-Semitism – is evident in the description of Shylock of the behavior of Antonio towards him (Shylock). Shylock says:

Seignior Antonio, many a time, and oft,

In the Rialto you [Antonio] have rated [berated, verbally assaulted] me

About my monies and my usances.

Still have I borne it with a patient shrug,

For sufferance I the badge of all our tribe.

You call me misbeliever, cut-throat dog,

And spit upon my Jewish gabardine [loose coat],

And all for use of that which is mine own.

Well then, it now appears you need my help.

Go to, then. You come to me and you say,

"Shylock, we would have monies" – you say so,

You that did void [empty] your rheum [spit] upon my beard,

50. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 27-28.

> And foot me as you spurn a stranger [unknown] cur [unfriendly, aggressive dog]
>
> Over your threshold. Moneys is your suit [request].
>
> What should I [Shylock] say to you [Antonio]? Should I not say,
>
> "Hath a dog money? Is it possible
>
> A cur can lend 3,000 *ducats*?"[51]

Second, because Antonio lends out money at zero-interest, interest rates are suppressed or depressed. The systemic economic consequences (on interest rates) of a type of financial transaction (interest-free lending) are ascribed to a transactor (Antonio). Shylock cannot charge a prospective debtor an interest rate as steep as he might like, because the debtor potentially could obtain funds from Antonio at zero financing costs. Though either reason could suffice to explain Shylock's hatred, the two reasons reinforce each other: Shylock's business interests are undermined by a Christian.

These two reasons prompt two questions: how "moral" is Antonio, and how "stereotypical" is Shylock? Both inquiries essentially drive at a single point: how representative are these two merchants of their respective religions?

Consider, first, Antonio. Antonio's condemnation of usury, and the practice of one of the few businesses that Jews were legally permitted to engage in, is problematic on two different theoretical grounds: atheistic Marxism and Christian-Capitalism. As to the first, Professor Hawkes astutely observes:

> *Usury was understood* [in early modern English literature] *to replace actual life with an objectified representation of life*. This is why Shakespeare deemed it appropriate for Shylock to seek a literal pound of flesh: he has already sought to possess human life in symbolic form, simply by means of money-lending. Marx surely had Shylock in mind when he wrote [in 1844 in Economic Manuscripts: Comments on James Mill[52]]:

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51. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 96-112.

52. *See* Karl Marx, Comments on James Mill, *Éléments D'économie Politique* (1844), https://www.marxists.org/archive/marx/works/1844/james-mill/#:~:text= Credit%20is%20the%20economic%20judgment,existence%20of%20capital%20and%20interest (providing a slightly different translation into English than that quoted by Hawkes above).

In the credit system, man replaces metal or paper as the mediator of exchange. However, he does this not as man, but as the existence … of capital and interest. The substance, the body, clothing, the spirit of money, is not money, paper, but instead it is my personal existence…, my flesh and blood, my social worth and status. *Credit no longer actualizes money-values in actual money, but in human flesh and hearts*.[53]

On this ground, Antonio simply fails to appreciate the role a usurious loan plays in turning a banking claim (by Shylock on him) into a tangible reality.

Antonio is ignorant of what is happening, namely, a kind of financial transubstantiation – but in reverse from the Catholic Christian sense. Rather than bread and wine being turned into the body and blood of Christ, yet remaining under the appearance of bread and wine, in the Eucharist per Catholic belief,[54] the 3,000-*ducat* principal is turned into the flesh of Antonio, and would be a bloody, lethal mess. Relatedly, among a stimulating collection of 18 essays from contributors in America, Australia, England, India, New Zealand, and Scotland, Professor Karoline Szatek of the University of Massachusetts (Dartmouth) offers a unique observation: Shakespeare "warns against Early Modern Capitalism and its persistent undermining of proper business tactics, family unity, *and spiritual and moral values*," and he "suggests lifting the veil that covers England's contemporary and future modes of Capitalist commerce and commodification."[55]

On the second ground, Antonio's perspective is self-righteous and hypocritical. At a macro level, England in Shakespeare's time – under the *Act of Parliament of 1571* – condemned usury as a mortal sin.[56] That meant its

53. Hawkes, *supra* note 2, at 144.

54. *See* CATECHISM OF THE CATHOLIC CHURCH ¶¶ 1373-1381 at 383-386 and *Glossary*, 902 (defining "transubstantiation") (Vatican City: Libreria Editrice Vaticana, 2nd ed., 1997). [hereinafter, CATECHISM].

55. Karoline Szatek, *The Merchant of Venice and the Politics of Commerce*, *in* THE MERCHANT OF VENICE – NEW CRITICAL ESSAYS 325, 349 (John W. Mahon & Ellen Macleod Mahon eds., Routledge, 2002) (Emphasis added).

56. *See* 1571, THE HISTORY OF PARLIAMENT: BRITISH POLITICAL, SOCIAL & LOCAL HISTORY, https://www.historyofparliamentonline.org/volume/1558-1603/parliament/1571#:~:text=Several%20important%20pieces%20of%20social,the%20Pope's%20bull%20of%20excommunication (Oct. 19, 2024); Henry Swabey, *Usury and the Church of England*, (Peterborough, England, n.d.), https://library.uniteddiversity.coop/Money_and_Economics/Usury_and_the_Church_of_England.pdf; Anita Travers, *The Practice of Usury in Mid-Sixteenth Century England* (1975), https://era.ed.ac.uk/bitstream/handle/1842/17692/TraversAP_1976redux.pdf?sequence=1&isAllowed=y; Saccio, Lecture 8, *supra* note 1 at 92-93.

commission cut the sinning creditor off from the sanctifying grace of God, possibly leading to internal damnation of that creditor's soul.[57] But, the *Act* allowed lending at a rate of 10 percent or below – giving that soul a safe harbor.[58] Thus, Shakespeare's contemporary, Francis Bacon (1561-1626) wrote in his essay, *Of Usury*:

> Many have made witty invectives against usury. They say it is a pity the devil should have God's part, which is the tithe. That the usurer is the greatest sabbath-breaker [*i.e.*, per the footnote, "Church laws forbade work on Sundays, but interest accumulated daily"], because his plough goeth every Sunday. … That usurers should have orange-tawny bonnets [*i.e.*, per the footnote, "[t]he Jews in the Venetian Ghetto were compelled to wear a distinguishing dress, red and yellow (dark orange) turbans], because they do judaize [*i.e.*, per the footnote, "[f]ollow Jewish customs"]. That it is against nature for money to beget money…. I say this only, that usury is a "*concessum propter duritiem cordis* [*i.e.*, per the footnote, "because of the hardness of heart"]: for since there must be borrowing and lending, and men are so hard of heart as they will not lend freely, usury must be permitted. … [T]o speak of abolishing usury is idle. All states have ever had it, in one kind or rate or other.[59]

Bacon reasoned correctly that (1) the extension of credit advances the economy, "for it is certain that the greatest part of trade is driven by young merchants, upon borrowing at interest," and (2) absent credit, "men's necessities would draw upon them a sudden undoing, in that they would be forced to sell their means (be it land or goods)" at below-market prices to survive.[60] Simply put, notwithstanding moral compunctions, Capitalist

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57. *See* CATECHISM, *Glossary*, 889 (defining "mortal sin").

58. *See* John H. Munro, *Usury, Calvinism, and Credit in Protestant England: from the Sixteenth Century to the Industrial Revolution*, University of Toronto, Department of Economics, Working Papers tecipa-439 (2011) (abstract) https://ideas.repec.org/p/tor/tecipa/tecipa-439.html (The maximum rate of interest under King Henry VIII and Queen Elizabeth I was 10 percent, in particular: "Henry VIII's Parliament of 1545 enacted a statute permitting interest payments up to 10% (on all loans); any higher rates constituted usury," "[b]ut, in 1552, a hostile Parliament, with radical Protestants, revoked that statute, and revived it only under Elizabeth, in 1571," who reigned until 1603); Saccio, Lecture 8, *supra* note 1, 92-93.

59. FRANCIS BACON, *Of Usury*, *in* Francis Bacon, Essay 41: *Of Usury*, *in* FRANCIS BACON, THE MAJOR WORKS, 421, and Notes, 763 (Brian Vickers, ed., New York, New York: Oxford, 2008).

60. Bacon, *supra* note 59 at 422, and Notes at 763.

economic development generally, and the expansion of Elizabethan England, required interest-bearing loans to channel savings into investments.[61]

At a micro level, Antonio himself comes to take advantage of the practice of usury. After all, without any preliminary greeting, Antonio announces:

> Shylock, albeit I [Antonio] neither lend nor borrow
> By taking nor by giving of excess [*i.e.*, usury],
> Yet to supply the ripe wants of my friend [Bassanio],
> I'll break a custom.[62]

Friendship, namely, that between two Christians, Antonio and Bassanio, justifies this breaking of the custom.

What does this derogation say about the moral position of Antonio? Are his religious principles tradeable, the subject of his contractual engagements, like his merchandise? After all, what value is the Christian faith to Antonio if he easily jettisons his conviction about the immorality of usury to satisfy the material needs of his friend, Bassanio?

Turning to Shylock, through his construction of Shylock, does Shakespeare play into "stereotypes of Jewishness," presenting a "shallow rendering of Jewish character"?[63] The answer is troubling: yes, the anti-Semitic tropes are on display in Shylock's words and deeds. But there is no basis to believe Shakespeare believed in them. To the contrary, there are reasons why Shylock is who he is. As Shylock and Antonio argue, Shylock justifies his Christo-transactional hatred. In Act I, Shylock chronicles the cruelty he has suffered at the hands of Antonio in his "Hath a dog money?" retort (quoted above).

Shylock is saying he and his religion are the victims, and Antonio and his religion are the persecutors. Shylock is aggressively positive; Antonio deceptively negative. Therein lies an uncomfortable irony: one of the causes

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61. *See* Travers Dissertation, *supra* note 56 at 2. (observing: "While a grievance to the poor, however, usury was a necessity to the businessman who developed a whole range of subterfuges to disguise it"); W.W. ROSTOW, THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO Chapter 2 (The Five Stages of Growth – A Summary) 4-16, Chapter 3 (The Pre-Conditions for Take-off) 17-35, and Chapter 4 (The Take-off) 36-58 (Cambridge, England: Cambridge University Press, 3rd ed., 1990) (identifying five stages of growth in economic output – (1) traditional society, (2) preconditions for take-off, (3) take-off, (4) drive to maturity, and (5) age of high mass consumption – and the role of credit, *i.e.*, the supply of loanable funds via "banking institutions … and central, formally organized, capital market" in each stage, and discussing Britain, including "Elizabethan nationalism.").

62. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 48-51.

63. Conner, Lecture 19, *supra* note * at 388, 399.

of anti-Semitism is the (utterly wrongheaded) notion that Jews were responsible for the Crucifixion.[64] To the contrary, as the *Catechism of the Catholic Church* states clearly, "Jews are *not* collectively responsible for Jesus' death."[65] Paragraph 597 says:

The historical complexity of Jesus' trial is apparent in the Gospel accounts. The personal sin of the participants (Judas, the Sanhedrin, Pilate) is known to God alone. Hence *we cannot lay responsibility for the trial on the Jews in Jerusalem as a whole*, despite the outcry of a manipulated crowd and the global reproaches contained in the apostles' calls to conversion after Pentecost. Jesus himself, in forgiving them on the cross, and Peter in following suit, both accept "the ignorance" of the Jews of Jerusalem and even of their leaders. *Still less can we extend responsibility to other Jews of different times and places*, based merely on the crowd's cry: "His blood be on us and on our children!" a formula for ratifying a judicial sentence. As the Church declared at the Second Vatican Council [October 1962-December 1965]:

…[N]either all Jews indiscriminately at that time, nor Jews today, can be charged with the crimes committed during his Passion…. [T]he Jews should not be spoken of as rejected or accursed as if this followed from holy Scripture.[66]

Of course, as Shakespeare's audiences long pre-dated Vatican II, they would have been expecting, some even demanding, a negative depiction of Jews.

As Professor Ornstein writes:

> To some, *The Merchant* is a reminder that Shakespeare was necessarily a man of his age, one who accepted its fundamental biases

64. *See* Joseph Ratzinger, Pope Benedict XVI, Jesus of Nazareth, Part Two – Holy Week: From the Entrance Into Jerusalem to the Resurrection Chapter 7, "The Trial of Jesus," 184-201, Chapter 8, "Crucifixion and Burial of Jesus," 202-226 (San Francisco, California: Ignatius Press, 2011); Michael Martin, Pope: *Jews Are Not Responsible For Killing Jesus*, NPR, (Mar. 4 2022), https://www.npr.org/2011/03/04/134264425/Pope-Jews-Are-Not-Responsible-For-Killing-Jesus (reporting: "Pope Benedict XVI has declared that there's no basis in scripture for the belief that the Jewish people were responsible for the death of Jesus. That, according to excerpts from his forthcoming book, *Jesus of Nazareth, Part II*. The Catholic Church officially disavowed that belief in 1965, but it has remained a source of tension in relations between the church and Christians more broadly and the Jewish community.").

65. CATECHISM, *supra* note 57, ¶ 597 at 153. (Emphasis added).

66. CATECHISM, *supra* note 57, ¶ 597 at 153-154. (Emphasis added) (footnotes omitted).

> because it would never have occurred to him to question them. E.E. Stoll [*i.e.*, the renowned American Professor of English and literary critic, Elmer Edgar Stoll (1874-1959)] has no doubt that Shakespeare conceived of Shylock as a buffoon and comic villain because Jews were condemned and anathematized by Church doctrine, accused through the centuries of inhuman crimes, portrayed as bloodthirsty in legend and folktale, and despised throughout Christian society. As an alien minority they were barely tolerated in the best of times and made the targets of official extortions, recurrent pogroms, and occasional wholesale massacres.[67]

Stoll wrote about Shakespeare partly in reaction to "A.C. Bradley [*i.e.*, the English literary scholar, Andrew Cecil Bradley (1851-1935)], and insisted that the study of Shakespeare's plays should be based on the dramatic conventions of the time in which they were written."[68] But, Ornstein disagrees, stating:

The sorry history of Jew hatred does not … support Stoll's claim that Shylock is to be equated with conventional stereotypes of Jewish villainy.[69]

Rather, Ornstein rightly concludes:

> … Shylock is not one of many similar anti-Semitic dramatic portraits that can be explained by reference to Elizabethan prejudice against Jews. … Shall we believe that the dramatist [Shakespeare] who portrayed the black Othello as a noble heroic figure could not imagine a Jew as possessed of human feeling or deserving of understanding and

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67. Robert Ornstein, *The Merchant of Venice*, *in* WILLIAM SHAKESPEARE'S THE MERCHANT OF VENICE 65-95, at 66 (Harold Bloom, ed., New York, New York: Bloom's Literary Criticism / Infobase Publishing, 2010). (Footnote omitted) [Hereinafter, Ornstein, *The Merchant*].

68. *Elmer Edgar Stoll (1874-1959)*, OXFORD REFERENCE (2024), https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100534356.

For a clear summary and analysis of what might be termed the "Bradley-Stoll debate," that is, a (1) Bradley's placement of Shakespeare's works in historical perspective and his willingness to apply contemporary norms and morality (in Bradley's case, those of the 19th century) to Shakespeare's time versus (2) Stoll's focus on the craft of playwrighting and the form and technique of drama, see D.J. Palmer, *E.E. Stoll and the "Realist" Criticism of Shakespeare*, 3 CRITICAL SURVEY no. 1, 7-12 (1966),

69. Ornstein, *The Merchant*, *supra* note 67, at 66.

> sympathy? If this is so, we have mistook him all this while – his was not the most universal of minds.[70]

Simply put, Shakespeare deftly subverts the audience expectations of his time by humanizing Shylock (particularly in the "If You Prick Us" speech quoted in Part III, *infra*). That is a nearly divine move. In truth, all Christians, in Shakespeare's time and across all time, are called to introspect about their fidelity to Christ in the most difficult of circumstances.

III. ACT THREE: ONE INTERNATIONAL TRADE TRANSACTION

A. From Sadness to Negligence

The international trade transaction is related to, and in some sense the flip side of the finance transaction. The most obvious of the multiple merchants in *The Merchant of Venice* – indeed, the one conventionally identified as "the" merchant of the title – is in the import-export business: Antonio. His ships are at sea.

Act I immediately introduces Antonio as a melancholy merchant.[71] Antonio complains he is "sad," although (as he admits) he does not know why. His gloom is met by a guess by his companion, Salerio, that he is "sad" because his "mind is tossing on the ocean," along with his large trading ships.[72] Antonio denies such a cause for sadness.[73] Salerio, along with a second companion, Solanio, propose that Antonio must be "sad" because he is in love.[74] Again, Antonio replies in the negative.[75]

Nowhere in the play is the source of Antonio's dolefulness nailed down. He is a complex merchant; hence the causes may be several. Both Salerio and Solanio may be correct. Antonio is "sad" as his mind sways like the waves tossing the ships carrying his cargo. He is worried, as merchants tend to be, until a deal is closed. And, Antonio's relationship with Bassanio makes him

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70. Ornstein, *The Merchant*, *supra* note 67, at 66-67.

71. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 1.

72. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 48-51.

73. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 42-46.

74. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 47, 49.

75. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 48.

sad. It is, possibly a romantic one, and will end once Bassanio weds Portia. Simply put, Antonio may be worried about the speculative nature, the gamble, shared by trade and romance transactions.

These two hypotheses illustrate the advantages of a transactional view of the play: commerce and romance always and everywhere are inseparable. This merchant, Antonio, is upset on both accounts. Further, surely Antonio appreciates he is the cause of his own inquiet mental state (*état mental inquiet*). He is financing one romantic venture (for Bassanio) that will end another (his with Bassanio) on his credit standing built from international trade.

In Act I, Scene 1, two forms of contractual agreement become linked. Bassanio comes to Antonio to ask Antonio for the resources that he (Bassanio) will need to woo Portia. Bassanio immediately links his personal affection to Antonio to his financial indebtedness, when he (Bassanio) explains how his "chief care" is to:

> come fairly off from the great *debts*,
>
> Wherein my time something too prodigal
>
> Hath left me [Bassanio] gaged [pledged, entangled, highly indebted].
> To you, Antonio,
>
> I owe the most in *money* and in *love*,
>
> And from your *love*, I have a *warranty*
>
> To unburden [reveal, be transparent about] all my plots and purposes
>
> How to get clear of all the *debts* I owe.[76]
>
> The commingling of commerce and affection, per the italicized words, could not be more obvious.

Antonio answers immediately, expressing his willingness to enter a financial transaction in which he will be at risk. The loan from Shylock is based only on the credit standing of Antonio, not on an equal exchange of goods. Antonio knows Bassanio is bankrupt, for his friend freely confesses bankruptcy:

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76. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 129-135. (Emphasis added).

I [Bassanio] owe you [Antonio] much and, like a wilful youth,

That which I owe is lost.[77]

Nevertheless, Antonio takes the risk owing to his love for Bassanio. Antonio says:

Thou [Bassanio] knowest that all my fortunes are at sea,

Neither have I [Antonio] money, nor commodity

To raise a present sum: therefore, go forth [you, Bassanio, proceed].

Try what my credit can in Venice do,

That shall be racked [stretched], even to the uttermost,

To furnish thee [Bassanio] to Belmont, to fair Portia.

Go presently inquire, and so will I,

Where money is, and I no question make

To have it of my trust [on my credit] for my [friendship's] sake.[78]

Herein is a clear admission that personal affection motivates a dubious loan: fully cognizant he has no cash on hand, Antonio is willing to leverage his credit for his friend, Bassanio. So, in this brief opening scene, two of the contracts that govern these men's lives – one financial, the other amorous – are introduced, and as the play unfolds, the two bargains become so linked that they seem interchangeable,[79] or put differently, one is the flip side of the other.

Perhaps because Antonio is romantically "sad" he becomes commercially negligent. Antonio can send Argosies (*i.e.*, a merchant vessel of the largest size and burden, especially from Venice) to trade with a rational expectation that they will return his investment. But, were he to think rationally, Antonio never can be completely sure. Luck, or fate, can change

77. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 147-148.

78. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 178-186.

79. *See* Heinzelman, Lecture Eight, *supra* note *, at 50-51.

with one major storm at sea, hence wisdom – specifically – caution is needed. Stunningly, Antonio is careless about risk: he fails to consider the risk of loss when he agrees to be surety (or guarantor?) for the loan of Shylock to Bassanio. Discounting, even wilfully blind to, a catastrophic outcome, albeit one with a low probability, he backs the loan.

That worst-case scenario for Antonio materializes when message is received that his ships – "which are due back from Tripoli and the Indies"[80] – are lost at sea. Thus, he does not obtain the anticipated export revenues to reimburse Shylock for the loan. In truth, the ships are not wrecked at the Goodwin Sands in the English Channel – a fact corrected after the Court Room drama, when it is learned that three of the ships return safely back to Venice and Antonio's wealth is restored:[81]

Portia:

…

Here is a letter….

It comes from Padua, from [Dr.] Bellario.

There you shall find that Portia was the doctor [in Court],

Neriss … her clerk. …

…

… Antonio, …

… I have better news in store for you

Than you expect. Unseal this letter soon.

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80. Emma Smith, *The 28 Greatest Shakespeare Mysteries*, FINANCIAL TIMES (May 30, 2024), https://www.ft.com/content/4683a04b-c705-4149-8420-2c1600ccc c54 ("*How much was 3,000 ducats?*") (emphasis in original) [hereinafter *28 Greatest*].

81. *See* RSC SHAKESPEARE, *supra* note 6, *Merchant*, Act I, Scene 1, Lines 129-135, at 413; *The Merchant of Venice – Plot – Number 10*, ROYAL SHAKESPEARE COMPANY (Last visited on Oct. 13, 2024), https://www.rsc.org.uk/shakespeare-learning-zone/the-merchant-of-venice/story/plot#:~:text=Antonio%20receives%20the%20positive%20news,it%20safely%20back%20to%20Venice.

There you shall find three of your argosies [large merchant ship]

Are richly come to harbor suddenly…

…

Antonio:

Sweet lady, you have given me life and living;

For here I read for certain that my ships

Are safely come to road.[82]

Interestingly, in the litany of greatest Shakespearean mysteries,[83] surely this shift should be one of them: how was such a material mistake about the status of the ocean freight initially made, thus imperilling Antonio's life, and why did Shakespeare think it necessary to change from ships lost to ships found? The injection of comedy, if it be that, certainly cannot be a sufficient answer, because so much of the rest of play is tragic.

News that the ships are lost triggers the bond on which Shylock insists – the pound of Antonio's flesh. For a sophisticated trader, which is what Antonio ostensibly is, that this ultimately proves to be fake news does not matter. The unexpected *post hoc* reversal of fortune for the best does not obviate the *a priori* need to plan for the worst. The Jew, Shylock, does. The Christian, Antonio, does not. Until the surprise end of the *Shylock v. Antonio* trial, Antonio's sloppiness proves potentially lethal to himself. And yet (as discussed later) it is Shylock who suffers for his careful evaluation of risk,

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82. RSC SHAKESPEARE, *supra* note 6, MERCHANT OF VENICE act 5, sc. 1, l. 281-291, 302-303.

83. Regrettably, the *Financial Times* does not list this mystery among them. *See 28 Greatest*, *supra* note 80. Instead, the only question it asks about *Merchant* is, "How much was 3,000 *ducats*?," with Professor Emma Smith responding:

> The Venetian *ducat* was a coin typically containing 3.5 g[rams] of gold. Gold currently sells for about £ 61 a gram, so 3,000 *ducats* are worth about £ 640,000 in today's money. Shylock's financial network contributes well over half a million pounds to oil the comic plot, against highly discounted collateral – the pound of flesh. The money will enable Antonio's twink Bassanio to make a good impression on his wealthy love interest, Portia. It works. Portia's gentlewoman notes approvingly that this latest suitor comes bearing "gifts of rich value."

Id.

whereas it is Antonio who – per the bond to which he agreed – assumed the risk of cargo loss.

To be specific, Antonio fails to compute accurately the expected value of calamity. Antonio under-estimates the:

- risk of loss of his cargo at sea (he is certain his ocean freight vessels will return with merchandise export revenues worth "thrice three times the value of this bond," i.e., literally, nine times the value of the bond, or 27,000 ducats);

- catastrophic nature of the forfeiture84 (bleeding to death in the event of default); and,

- resoluteness of Shylock to insist on strict adherence to the bargain (granting no mercy).

The first two miscalculations relate to the inherent risks of the trade transaction.

But, the third blunder, which is about character judgment, is perhaps the worst, because the best merchants can accurately anticipate how counter-parties in a transaction will behave. So, Antonio miscalculates a low-expected value to the amputation of a pound of flesh, thinking it so improbable as not to be a bother, and compounds the error by not anticipating that amputation could cause him to bleed out.

That was negligent, given two pieces of evidence available about the seriousness of Shylock to insist on specific performance of the bond in the event Antonio's ships are lost at sea rendering Antonio incapable of repaying the loan to Shylock. First (as quoted earlier from Act I, Scene 3), Shylock, the purported loan shark, expresses his hope to catch Antonio, the unlikely deadbeat, "once upon the hip."

Second, and crucially, Shylock delivers one of the most famous monologues in all of Shakespeare's works, the "If You [Christians] Prick Us [Jews], Do We Not Bleed?" speech. This tense mixture of revenge and pity, of hatred and forbearance, occurs in Act III:

> Shylock:
>
> There I have another bad match: a bankrupt, a prodigal [*i.e.*, Antonio], who dare scarce show his head on the Rialto, a beggar that was used

84. *See* Bacon, *supra* note 59, at 422; Bacon, Notes, supra note 60, at 763. ("Forfeiture" refers to the "[y]ielding up of property as a penalty for not paying the interest due," as Francis Bacon discussed, which is comparable to Shylock's loss).

> to come so smug upon the mart. Let him look to his bond. He was wont to call me usurer. Let him look to his bond. He was wont to lend money for a Christian courtesy. Let him look to his bond.
>
> Salerio:
>
> Why, I am sure, if he [Antonio], forfeit thou wilt not take his flesh. What's that [a pound of flesh] good for?
>
> Shylock:
>
> To bait fish withal. If it will feed nothing else, *it will feed my revenge*. He [Antonio] hath disgraced me, and hindered me half a million, laughed at my losses, mocked at my gains, scorned my nation [the Jewish people], thwarted my bargains, cooled my friends, heated mine enemies, and what's the reason? *I am a Jew*. *Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions?* Fed with the same food, hurt with the same weapons, subject to the same diseases, healed by the same means, warmed and cooled by the same winter and summer as a Christian is? *If you prick us, do we not bleed?* If you tickle us, do we not laugh? If you poison us, do we not die? And if you wrong us, shall we not revenge? If we are like you [Christians] in the rest, we will resemble you in that. *If a Jew wrong a Christian, what is his humility? Revenge. If a Christian wrong a Jew, what should his sufferance be by Christian example? Why, revenge. The villainy you teach me I will execute*, and it shall go hard but I will better the instruction.[85]

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85. RSC SHAKESPEARE, *supra* note 6, at THE MERCHANT OF VENICE act 3 sc. 1, l. 27-42, at 433-34. (Emphasis added). To be clear, the crux of this fraught interchange, in modern parlance, would be:

> Salarino:
> But you won't take his flesh if he can't pay. What's that good for?
>
> Shylock:
> I'll use it for fish bait. You can't eat human flesh, but if it feeds nothing else, it'll feed my revenge. He's insulted me and cost me half a million ducats. He's laughed at my losses, made fun of my earnings, humiliated my race, thwarted my deals, turned my friends against me, riled up my enemies – and why? Because I'm a Jew. Doesn't a Jew have eyes? Doesn't a Jew have hands, bodily organs, a human shape, five senses, feelings, and passions? Doesn't a Jew eat the same food, get hurt with the same weapons, get sick with the same diseases, get healed by the same medicine, and warm up in summer and cool

This speech is also evidence of why Shylock is a merchant who transcends the play into which Shakespeare wrote him. Shylock insists that to be Jewish is to feel as Christians do. Herein lies the common humanity of adherents to the two Abrahamic faiths. But he also declaims his demand for revenge is learned from Christians – the ones whose Messiah teaches mercy, to turn the other cheek per the Gospels of Matthew and Luke.[86] Herein lies the ironic thought that revenge is neither a Jewish nor Christian sentiment, but one common to humanity.

Thus, Shylock is the smarter of the merchants (and remains so, until he goes to Court, as discussed below). Shylock's trust is in hard assets, cash in hand, backed by valuable collateral (flesh) via agreed legal terms (the bond). Shylock's offer concerns an express condition about damages in the event of default. Per the alternative characterization presented earlier, insofar as it is triggered by non-payment by Antonio, it suggests the loan is directly to him, not Bassanio, and Antonio is primarily liable on the contract as the debtor.

B. Appearance versus Reality, Again

Just as there was an obvious incongruity between appearance and reality in the financing transaction (discussed above), there are two of them in the international trade transaction.

First, Antonio appears to be a low credit-risk. Surely, he is a wealthy international trader, given his presumed decades of experience engaging multiple ocean freight vessels to transport his goods. But Antonio is cash poor. He lacks sufficient funds to fund a wardrobe for Bassanio that would impress Portia. The wealth of Antonio is in the merchandise on his trading ships,

> off in winter just like a Christian? If you prick us with a pin, don't we bleed? If you tickle us, don't we laugh? If you poison us, don't we die? And if you treat us badly, won't we try to get revenge? If we're like you in everything else, we'll resemble you in that respect. If a Jew offends a Christian, what's the Christian's kind and gentle reaction? Revenge. If a Christian offends a Jew, what punishment will he come up with if he follows the Christian example? Of course, the same thing – revenge! I'll treat you as badly as you Christians taught me to – and you'll be lucky if I don't outdo my teachers.

William Andrews, *Shakespeare – Module 5: The Merchant of Venice – 9 of 20 – Shylock's speech (Act 3)*, CABOT LEARNING FEDERATION ONLINE LEARNING, (Jun.1, 2020) https://learn.clf.uk/lesson/english/shakespeare-module-5-the-merchant-of-venice-9-of-20-shylocks-speech-act-3/

86. *Matthew* 5:39, (Catholic Study Bible,) ("But I say to you, offer no resistance to one who is evil. When someone strikes you on [your] right check, turn the other one to him as well."); *The Gospel Luke* 6:29, in CATHOLIC STUDY BIBLE, *supra*, ("To the person who strikes you on one cheek, offer the other one as well….").

which are made up of the goods he exports for sale overseas to generate revenues.

The distinction between asset rich and cash poor (or more broadly, between net worth and income) has contemporary parallels. Many businesspersons (not the least of which is President Donald J. Trump) have their wealth tied up in illiquid assets (such as real estate). Many of them are (like Shakespeare's characters) engaged in transactions that mix commerce and pleasure (including prostitution), and thus are incentivized to non-transparent, even fraudulent, practices.

The deception, then, centers on liquidity. Antonio appears more financially sound than he is. The reality of his financial status is illiquid: only if, and when, his merchandise is liquified (*i.e.*, sold abroad) is his ability to repay debts with cash – not his own flesh – manifest.

Second, in reality, the cargo ships may not be those of Antonio. In a typical international trade transaction, neither the producer-exporter (*e.g.*, Antonio) or importer (unnamed, but implicitly presumed, in *Merchant*) is the owner of the ship carrying the merchandise that is the subject of their deal.[87] The shipowner is a distinct party. Yet another party, the charter party, rents (charters) the ship from the owner. Then, the importer-exporter, like Antonio, buys space from the charter party, paying a freight charge. The vessel, its freight, including the goods of the importer-exporter, are insured by still another entity, the insurer.

So, absent an event of default (*e.g.*, by the producer-exporter), or an applicable instance for invoking a *force majeure* clause (such as war), if cargo is lost at sea, the transactors, including merchants like Antonio, will claim on their insurance policy. The point is that a true international trade transaction would not be as risky as the one in *Merchant*. Rather, risks are mitigated at every step in what is known as a documentary sale transaction.[88] Antonio never would be in peril of losing a pound of his own flesh.

87. *See generally* RAJ BHALA, INTERNATIONAL TRADE LAW: A COMPREHENSIVE E-TEXTBOOK, vol. 1, *Interdisciplinary Foundations*, ch. 7, *Documentary Sale*, and ch. 8, *Trade Finance* (6th ed., 2024, 2025) (explaining each step in an import-export transaction). [Hereinafter, BHALA, INTERNATIONAL TRADE LAW E-TEXTBOOK].

88. *See* BHALA, INTERNATIONAL TRADE LAW E-TEXTBOOK, *supra* note 87, at Ch 7, *Documentary Sale*.

IV. ACT FOUR: ONE GASTRONOMIC TRANSACTION

A. To Eat or Not To Eat (Together)?

Eating is not necessarily an innocent pleasure, nor is it necessarily an inclusive behavior. Eating can be an exclusive statement about religious identity and social standing. Shylock draws a link between eating to live, and living to eat – *i.e.*, between a proposed celebratory meal and the inter-faith companions at that celebration – when he rejects Bassanio's invitation to share a dining experience.

This rejection arises in the context of the finance transaction. Before Bassanio can try his luck and skill at the "lottery" of the marriage,[89] he (Bassanio) must appear before Portia as a proper suitor, that is, as one who has the appearance of wealth and status, though he has only the latter. It is Shylock who provides the necessary money to create this illusion by loaning Bassanio 3,000 *ducats*, with the word of Antonio as bond.

The Scene among Antonio, Bassanio, and Shylock, in which the bond is negotiated, is central as to the interpretation of the nature of Shylock. Is he an abused and maligned man, who is crushed by the elopement of his daughter, Jessica, and theft by his daughter of his fortune? Or, is he a resolute man determined from the outset to have his revenge on Antonio, and on all Christians, if he can arrange it? Either characterization suggests Shylock is unlikely to be a cheerful dinner companion.

Bassanio negotiates the bond with Shylock eagerly, and in so doing appears to welcome him (Shylock) into the company of Christians.[90] Bassanio's invitation to Shylock to dine with him (Bassanio) that same evening certainly seems to be friendly: "If it please you to dine with us."[91] But, the invitation lacks empathy. Bassanio's offer to dine ignores, either deliberately or forgetfully, Shylock's vantage point. For him, eating marks the difference between the Christian and the Jew.

Thus, Shylock's reply is sharp. To eat with Christians is:

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89. Nerissa describes Portia's father's scheme for choosing Portia's husband for her as a "lottery." RSC SHAKESPEARE, *supra* note 8, at THE MERCHANT OF VENICE act 1, sc. 2, l. 18 at 414.

The term "lottery" is redolent of a commercial transaction – gambling – that implies deciding upon a spouse is never wholly rational.

90. *See* Heinzelman, Lecture Eight, *supra* note *, 51-52.

91. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 21.

> …to smell pork, to eat of the habitation [a pig's body] which your prophet the Nazarite [Christ] conjured the devil into. I [Shylock] will buy with you [Bassanio, and by extension, all Christians], sell with you, talk with you, walk with you, and so following, *but I will not eat with you, drink with you, nor pray with you*.[92]

However rude Shylock's refusal may be, from his perspective, what Bassanio has proposed is a perilous gastronomic transaction. To eat with Bassanio would be to enter the mainstream of Christians, and Christianize private pleasures (*e.g.*, celebratory dinners) that accompany public dealings (*e.g.*, a finance transaction). What Bassanio may regard as an innocent invitation is what Shylock sees as repressive insistence.

B. Forgiveness through Dining (Together)?

Breaking bread together is a common way to celebrate the consummation of a business transaction. It also is an opportunity for empathy, to understand better dealmakers and their deal. In turn, through a shared meal, a reservoir of goodwill can develop that may be a source for forgiveness of what otherwise might be events of contractual default. Knowing each other better, the transactors may appreciate that a problem in performance need not become a crisis. There is no guarantee of a happy ending; a food fight could erupt. But, the prospective gain often seems worth the risk.[93]

That shared meal never happens in *Merchant*. The fact that it does not occur makes the question even more pressing: Does all this cruelty that Shylock memorably recounts justify the hatred? Asked differently, what room in a financial transaction does, and should, forgiveness play amidst a litany of affronts?

As to what role forgiveness does play, the answer is nearly none. Shylock's justification, and his theory of punishment (in respect of the pound of flesh damage clause in the bond), is revenge. Shylock's complete rejection of Portia's argument for mercy (in Act IV, discussed in Part VII, infra) is even plainer in the Court Room.

Arguably, there is a sliver of forgiveness in the loan negotiations. Shylock suggests he will forgive all the afflictions he has suffered, if Antonio

92. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 21. (Emphasis added).

93. Thus, in international law and diplomacy, heads of state (HOSs), heads of government (HOGs), foreign ministers (FMs), and their teams sit down for formal dinners and informal chats. *See* Betty C. Monkman, *The White House State Dinner*, THE WHITE HOUSE HIST. ASS'N (Oct. 17, 2024), https://www.whitehousehistory.org/the-white-house-state-dinner.

will agree to "a merry sport." The reference cannot be to a game, such as a tennis match. Inter-faith competitions might have been unlikely, even banned, in 16th and 17th century Venice. The "merry sport" is Shylock's offer to trade for collateral against the risk that Antonio does not repay the loan on time. Shylock says:

> Go [Antonio] with me to a notary, seal me there
>
> Your single bond, and in a *merry sport*
>
> If you repay me not on such a day,
>
> In such a place, such sum or sums as are
>
> Expressed in the condition, *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*.[94]

Bassanio objects, as he knows the collateral is hardly "merry." Were Bassanio a lawyer, he might have advised Antonio that this sport shocks the conscience, per the doctrine of unconscionability: "extreme unfairness" manifest in an objective sense that that "terms … are unreasonably favorable to one party while precluding meaningful choice for the other party."[95] In particular, the bond is "substantively unconscionable,"[96] in that it is "unduly harsh, commercially unreasonable, and grossly unfair given the existing circumstances [*e.g.*, Antonio's temporary illiquidity]."

Antonio immediately casts aside his friend's objection, readily agrees to the bond, and even (ostensibly, at least) praises Shylock:

> … I'll seal to such a bond
>
> And say *there is much kindness in the Jew*.[97]

He invites Shylock into this bond with him, even in the face of the account by Shylock (quoted above) of his (Antonio's) hypocrisy. That

94. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 3, l. 137-142. (Emphasis added).

95. *Unconscionability*, BLACK'S LAW DICTIONARY (11th ed. 2019) .

96. *Substantive Unconscionability*, BLACK'S LAW DICTIONARY (11th ed. 2019)

97. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act, act 1, sc. 3, l. 143-144. (Emphasis added).

Antonio agrees to the deal attests that he is, frankly, a foolish international trader (as discussed in Part III, *supra*). It also suggests Antonio is hardly scrupulous about applying his Christian faith to his deals. *Proverbs* says, "Do not be one of those who give their hand in pledge, those who become surety for debts."[98]

Perhaps Shylock is light-hearted enough to think the "sport" of flesh-cutting would be "merry" in theory, but that it never would occur in practice – a pleasant vengeful thought, but surely Antonio will perform his bond. Moreover, perhaps Shylock seeks to soften the hatred of Antonio for him (Shylock), especially if that means Antonio's public denunciations (of Shylock and Jews) might cease. As an alien, an outsider, in Venetian society, it would not hurt to have the goodwill of a man as important as Antonio.

Yet, that approach seems speculative. More plausibly, the corporal punishment for which Shylock negotiates is an angry one, implying he may harbor hopes to put his knife to Antonio's flesh.[99] Perhaps Shylock takes

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98. *Proverbs*, 22:26, (Catholic Study Bible).

99. Where does revenge lead, but to an endless cycle of attacks and counter-attacks? Professor Govier thus argues revenge is objectionable for both moral and practical reasons. *See* TRUDY GOVIER, FORGIVENESS AND REVENGE (London, England: Routledge, 2002). This query leads to the role forgiveness "should" play in hard-headed financial transactions, such as indebtedness of developing and least developed countries. In his May 2024 Papal Bull, Pope Francis states:

Another heartfelt appeal that I would make in light of the coming Jubilee is directed to the more affluent nations. I ask that they acknowledge the gravity of so many of their past decisions and determine to *forgive the debts* of countries that will never be able to repay them. More than a question of generosity, this is a matter of justice. … If we really wish to prepare a path to peace in our world, let us commit ourselves to remedying the remote causes of injustice, settling unjust and unpayable debts, and feeding the hungry.

Spes non Confundit (Hope Does Not Disappoint), Bull of Indiction of the Ordinary Jubilee of the Year 2025, Francis, Bishop of Rome, ¶ 16 https://www.vatican.va/content/francesco/en/bulls/documents/20240509_spes-non-confundit_bolla-giubileo2025.html (emphasis added). *See also* Cindy Wooden, *Debt Relief: Biblical Jubilee Concern is Focus of Holy Year 2025, Too*, United States Conference of Catholic Bishops, 6 June 2024, https://www.usccb.org/news/2024/debt-relief-biblical-jubilee-concern-focus-holy-year-2025-too#:~:text=%22If%20we%20really%20wish%20to,bull%20proclaiming%20the%20Holy%20Year (highlighting that in this Bull, Pope Francis declared the focus of the Jubilee Year of 2025 to be debt relief.

Simply put, per the title of Archbishop Desmond Tutu's celebrated book, *No Future Without Forgiveness* (New York, New York, Doubleday, 1999), there is no prospect

pleasure in imagining the outcome, if Antonio's vengeance should fail, if Antonio's risk-taking should finally appear to be more barren than his (Shylock's) money lending. After all, the financial and related trade transactions are forged through mutual hatred, not love. They are the very opposite of the bond Antonio has forged with Bassanio, and of the bond that Bassanio hopes to forge with Portia. Those loving bonds, contracts founded in love and friendship, between Antonio and Bassanio, and Bassanio and Portia, are sealed with Shylock's money – and Shylock knows it.

But these opposite meanings, that is, the distinct types of "bond" in the public and private spheres, are commingled in the play. As Professor Douglas M. Lanier of the University of New Hampshire writes:

One meaning of "bond" is quite obvious and specific. It refers to a particular kind of financial and legal document essential to the operation of the Venetian state. Renaissance Venice's political might was built upon international trade, and so, as Antonio, the Duke, Shylock, and Portia all remark at various moments, the state's power depends upon the legal reliability of its commercial contracts. A bond guarantees payment of funds on loan, with a substantial penalty for a debtor who defaults. …

…

Yet the word "bond" refers to much more than just the legal contract Shylock insists upon. Those additional meanings and their broader implications resonate throughout the play. … "[B]ond" can refer to a connection, link or union, a coming together of two (or more) characters. In common parlance, a "bond" typically signifies something deeper, tighter, or more profound than our rather bloodless modern term "relationship." A "bond" involves an emotional or historical connection, even in the case of business dealings.[100]

Alas, does the "merry sport" that Shylock proposes – a loan secured by a pound of flesh – reflect a hope of this creditor-lender to be friends with the debtor-borrower and surety-guarantor? Or, is the deal the work of the devil riven with hatred and the desire for revenge? Shakespeare leaves the matter unanswered.

But the Bard points his quill in one direction. As could be predicted from his repeated rejections of mercy-based arguments put to him by the Duke and Portia (discussed below), Shylock is unforgiving. Shylock demands the loan be repaid according to the bond to which Antonio had agreed – he will have

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of enhanced relations between Shylock and Antonio, nor the Jews and Christians of Venice. Their relations are as adversarial at the end of the play as at its beginning.

100. DOUGLAS M. LANIER, THE MERCHANT OF VENICE – LANGUAGE & WRITING 80-81 (London, England: Bloomsbury Publishing Plc / The Arden Shakespeare, 2019). [Hereinafter, LANIER, MERCHANT – LANGUAGE & WRITING].

his pound of flesh. There are at least three reasons why the sliver of hope for a modicum of forgiveness proves false. Shylock stands for justice as defined by vengeance. This human metaphor is theoretical, practical, and personal.

First, nothing in the play indicates Shylock understands, much less accepts, alternative theories of punishment, namely, deterrence (specific or general), rehabilitation, or restoration. Rather, his one-dimensional view of what "justice" means is more than unimaginative; it is "nearly a pathology."[101] Justice is done when an aggrieved plaintiff receives what he deserves from the culpable defendant – a naked assertion of right to wrong an unfulfilled duty.

Second, in a practical sense, Shylock believes Antonio deserves extraction of a pound of flesh. To Shylock, it is Antonio who lacks any commitment to justice, because Antonio – indeed, all Venetian Christendom – have offended justice, because they have made fun of him, humiliated him, and discriminated against him. So, it is Shylock who is the rule of law candidate, as it were: he will teach them what justice means.

Third, Shylock has been betrayed by his daughter, Jessica, and the Christian, Lorenzo, who took her from him, eloped with her, and snatched some of his wealth (cash and jewels), to boot. In a piteous outcry that Solanio mockingly recounts, Shylock conflates losing his daughter and his wealth:

> I [Solanio] never heard a passion so confused,
>
> So strange, outrageous, and so variable,
>
> As the dog Jew did utter in the streets:
>
> "My daughter! O my *ducats*! O my daughter!
>
> Fled with a Christian! O my Christian *ducats*!
>
> Justice, the law, my *ducats*, and my daughter!
>
> A sealèd bag, two sealèd bags of *ducats*,
>
> Of double *ducats*, stol'n [stolen] from me by my daughter!
>
> And jewels, two stones, two rich and precious stones,
>
> Stol'n by my daughter! Justice! Find the girl,

101. Conner, Lecture 19, *supra* note *, 162, 164.

She hath the stones upon her, and the *ducats*."[102]

The equivalence of money and kin feed into the false stereotype about purported Jewish values, namely, miserliness. Worse, perhaps, is an inference of non-equivalence, that material wealth is valued over family bonds. In the final two above-quoted lines, Shylock essentially labels his daughter, Jessica, a thief, cries for the police to apprehend her, and – having disowned and been disowned by her – would press charges.

Yet, arguably, there is another interpretation to Shylock's declamation of misery: simply, he is screaming that he has lost everything at the hands of Christians. This double-pain, then, must be matched by pain inflicted on Antonio. Query what Antonio had to do with orchestrating this betrayal? Lorenzo is the friend of Bassanio, so there is the link among the transactions – the financial deal with Bassanio and the marriage deal with Jessica. Moreover, perhaps this betrayal was part of Christian culture and the way "they" exert themselves over "our" women? No matter: Shylock's attempted transference of his pain onto whomever he can reach is emotive, and reinforces the consequentialist point about vengeance Gandhi encapsulated with his aphorism that eye-for-an-eye justice renders the world blind.[103] Indeed, Shylock already is blind: he is incapable of introspection, of asking what he, as a father, might have done to avoid the betrayal.

These points suggest there is more to Shylock than the conventional wisdom that likely would have pervaded about him in Elizabethan times, namely, that he is a "comic villain."[104] True, a Jewish widower, he is a solitary figure, and the block to the love of his daughter, Jessica, to Lorenzo, the friend of his debtor.

But, in Act III, Scene 1 (which, as is a structural feature of Shakespeare's plays, a pivot point among five Acts), Shylock exceeds this stock characterization, and transcends the entire play with remarks that challenge relations among the Abrahamic faiths across time and space. After news his daughter, Jessica, has left his household and the commercial ships of his debtor, Antonio, are in peril, Shylock encounters in a Venetian Street two friends of Antonio, Solanio and Salerio.

These Christian friends (shamelessly, but veritably, shamefully) deride the Jew. Shylock avows his debtor must fulfil his bond – an early indication

102. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 2, sc. 8, l. 13-22.

103. *See Mahatma Gandhi*, BBC: LEARNING ENGLISH – MOVING WORDS (2009), https://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/gandhi.shtml ("An eye for an eye only ends up making the whole world blind.").

104. Conner, Lecture 19, *supra* note *, 162-64.

of the theory of justice Shylock will operationalize. These high-end friends of Antonio (as quoted in Part III, *supra*) cast doubt on whether enforcing the bond would be in the interest of Shylock – what would Shylock get from a dead pound of flesh? – but he puts paid any doubt with his reply. Bloom is thus both right and wrong about Shylock.

Bloom, who regards *Merchant* as "a profoundly anti-Semitic work,"[105] is right in that "Shylock is one of those Shakespearean figures who seem to break clean away from their play's confines."[106] And, Bloom is correct in avowing, "[t]here is an extraordinary energy in Shylock's prose and poetry, a force both cognitive and passional, which palpably is in excess of the play's comic requirements."[107] There is more to Shylock than his agony; this character "[s]omehow … grew out of its stereotypes."[108] Small wonder why Ben Jonson (1572-1637), the English Renaissance theorist and writer, says of Shakespeare, "He was not for an age but for all time!"[109] His greatest characters, like Shylock, are memorable for all time.

But it is in the agony of Shylock where Bloom is wrong. To empathize, maybe even sympathize, with Shylock, is a complex task. Yet perhaps the

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105. SHAKESPEARE: THE INVENTION OF THE HUMAN, *supra* note 9, at 171.

106. *Id*; *see also* Conner, *supra* note *, at 401.

107. SHAKESPEARE: THE INVENTION OF THE HUMAN, *supra* note 9, at 171 (also *quoted in* Conner, Lecture 19, *supra* note *, at 401).

108. Conner, Lecture 19, *supra* note *, at 390, 401.

109. Ben Jonson, *To the Memory of My Beloved the Author, Mr. William Shakespeare*, The Poetry Foundation, https://www.poetryfoundation.org/poems/44466/to-the-memory-of-my-beloved-the-author-mr-william-shakespeare (also *quoted in* Conner, Lecture 19, 401). This poem was "one of several dedicatory poems prefacing the great 1623 Folio of Comedies, Histories & Tragedies, the first collected volume of Shakespeare's works." Gail Kern Paster, *Shakespeare's Genius*, BRITANNICA (Dec. 21 2010), https://www.britannica.com/biography/Shakespeares-Genius-1733556.

On the relationship between Jonson and Shakespeare, see SIR GEORGE GREENWOOD, BEN JONSON AND SHAKESPEARE ix (York, England: Ben Johnson & Co. Ltd, 1921), https://sourcetext.com/wp-content/uploads/2018/01/greenwood_ben-jonson.pdf (observing: "But what a thousand pities it is that – so far as we know, and as we are fully justified in concluding William Shakespe[a]re never addressed a letter or a poem to Jonson never received a letter or a poem from Jonson; never received one of those gift-books which Jonson was so fond of presenting to his friends with his well-known and excellently-written autograph on the front page! What a thousand pities that Ben's "love," almost amounting to "idolatry" – and what is "idolatry" but the worship of a graven image? – never appears to have found utterance or expression till many years after William Shak[e]spere's death!").

words of King Lear, from that play, are applicable to Shylock – that Shylock is "a man more sinned against than sinning"?[110]

Bloom's near condemnation of Shylock for an inexplicable surrender buries the reality that Shylock is sufficiently nuanced so as to transcend the entire play. It also seems to elide the reality that this man, thanks to Christian Venetian society and its judiciary, has been stripped of his money and his religion, compelled to acquiesce to the burglary of his assets by his daughter (Jessica) and son-in-law (Lorenzo). Who, cognizant of the Holocaust, cannot see that oppression has broken this man? Among all these indignities, is not his forced conversion from Judaism to Christianity the worst? "Forced," because his alternative was death, the "worst," because is not freedom of conscience not merely the freedom upon which all other human rights rest, but also the one that defines what it is to be "human" and makes life not merely bearable, but exciting?

It cannot be argued persuasively that Shylock is a true (*i.e.*, pure) villain, as is Iago (the ensign of Othello) in *Othello* (1604), Edmund (the illegitimate son of the Duke of Gloucester in *King Lear* (1605-1606), or Richard III (the murderous King) in *Richard III* (1592-1594).[111] That is because Shylock is not, in the brilliant phrase of the Romantic Poet, Samuel Taylor Coleridge (1772-1834) for Iago, a study in "motiveless malignity."[112] The American lawyer and novelist, Louis Auchincloss (1917-2010) derived the title of his 1969 book, in which he comments insightfully on Shakespeare's plays, from Coleridge's phrase: "The motive hunting of motiveless malignity." Auchincloss finds in many characters a lack of motivation, a kind of perversity and irrationality in human nature, whereby pinpointing a reason for an act or omission is difficult, perhaps impossible.[113]

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110. *See* RSC SHAKESPEARE, *supra* note 6, THE TRAGEDY OF KING LEAR, act 3, sc. 2, l. 55-56.

111. *See Timeline of Shakespeare's Plays*, Royal Shakespeare Company (RSC) (2024), https://www.rsc.org.uk/shakespeares-plays/histories-timeline/timeline (concerning the year(s) in which Shakespeare wrote these plays); BRITTANICA, SHAKESPEARE – THE ESSENTIAL GUIDE TO THE LIFE AND WORKS OF THE BARD 133-135, 207-208, 217-218, (Hoboken, New Jersey: John Wiley & Sons, 2007) (reviewing, respectively, *King Lear*, *Othello*, and *Richard III*); Conner, Lecture 19, *supra* note *, at 388-389, 400 (comparing villains in these plays).

112. *See* Lee Siegel, *How Iago Explains The World*, THE NEW YORK TIMES, (Oct. 10, 2009), https://www.nytimes.com/2009/10/11/weekinreview/11siegel.html#:~:text=He%20is%20driven%20by%20"motiveless,and%20critic%20Samuel%20Taylor%20Coleridge (explaining: "He [Iago] is driven by 'motiveless malignity,' in the phrase coined for him by the 19th century poet and critic Samuel Taylor Coleridge").

113. Louis Auchincloss, *Motiveless Malignity* x (Victor Gollancz Ltd. 1969).

But is Shylock so cold and calculating as Iago? Is Shylock such a masterful manipulator of others? Is Shylock hell-bent on increasing his power? Is Shylock fixed on destroying (indeed, taking) the life of Antonio?

The answer to these questions is "no."

Once again, Shylock's view of justice is based on transparency and textualism: he clearly articulates rights and duties; and he interprets loan contracts and bonds within their four-corners, with no parol evidence (that is, extrinsic evidence of prior negotiations, or of earlier or contemporaneous agreements),[114] much less policy gloss. His theory of the law, as it were, is not a stratagem to integrate with Venetian Christian society; he is paradoxical, as he chafes at how its hateful history and culture marginalizes Jews, yet he champions staying separate from that society, perhaps oddly thankful that exclusion will preserve his own.

If there is doubt as to this answer, then it is as to whether Shylock seeks Antonio's death. If so, then the entire case might shift from manslaughter (bleeding to death as an unintended consequence of removing a pound of flesh) to pre-meditated (intentional) murder. There is no such shift. Shylock knows – in fact, admits – the death of Antonio would be of no financial benefit to his usurious endeavours. Arguably, it would, because Shylock earlier, in Act II (discussed in Part I, *supra*), argues that by lending freely, Antonio drives down interest rates. So, the removal of a competitor would be beneficial *ceteris paribus* (all other things being equal, especially that Antonio is not replaced by another zero-interest Christian creditor).

V. ACT FIVE: TWO INHERITANCE TRANSACTIONS

A. Portia as Pass-Through Beneficiary

Through two inheritance transactions, *Merchant* presents characters who play the role of what may be called "inheritance merchant." They are engaged as benefactors or beneficiaries, seeking to maximize the wealth in which they deal, and their control over its disposition. Portia's unnamed dead father, and Shylock, father of Jessica, are the benefactors. From beyond the grave, Portia's father sets the terms of who will inherit his empire, and how the asset process transfer will work. From his segregated Jewish quarters, Shylock seeks to steer his daughter into marriage with a Jew and keep his assets within his community. Both fathers are anything but feminists, and neither is wholly successful in their efforts.

114. *See* BLACK'S LAW DICTIONARY, *supra* note 15, at 1345 (entry for "parol-evidence rule").

The first inheritance transaction takes place in Acts II (especially Scene 7) and III (especially Scene 2). This deal involves Portia, her three male suitors, and the transparent game, or lottery, of the three caskets. The winner wins Portia's hand in marriage and inherits all her wealth. Two of the merchants involved in this transaction ensure the deal is not based on love alone: Portia's dead father, and her successful suitor, Bassanio.

Patriarchal dominance expressed in the will of Portia's father transcends his death. Through his will, the decedent – Portia's father – orchestrates how his estate will pass to Portia's husband, and the process by which that husband will be selected. Portia is in temporary position of the estate until she weds; then, all goes to her husband.

Portia, a pass-through vehicle, knows she never will have true ownership in fee simple, because when Bassanio passes the Casket Test, Portia says:

> Happiest of all is that her gentle spirit
>
> Commits itself to yours to be directed,
>
> As from her lord, her governor, her king.
>
> Myself, and what is mine, to you and yours
>
> Is now converted. But now I was the lord
>
> Of this fair mansion, master of my servants,
>
> Queen o'er [over] myself, and even now. but now
>
> This house, these servants and this same myself
>
> Are yours [Bassanio's], my Lord. …[115]

Further, the two worlds of Venice and Belmont are mixed, although the language of romance veils their mixture. As happens in some modern-day transactions, the origins of the wealth of transactors may be obscure: no one knows the source of Portia's wealth, other than it is from her father. Perhaps she is the daughter of a wealthy merchant like Antonio, and her marriage has been arranged and conceived by her father as an extension of her father's successful commercial practices. In other words, the risk-taking that is

115. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 3, sc. 2, l. 166-174.

endemic in choosing a spouse has been controlled by his (Portia's father's) insistence on the Lottery of the Three Caskets.

Without an actual market valuation, Shakespeare shows us that the estate is considerable. It consists of real property, all of Belmont, a country palace, and personal property, including exquisite Venetian furniture and art, plus cash or cash equivalents. The estate also comes with a staff, including Nerissa, the "gentlewoman-in-waiting"[116] who proves a clever counsellor and canny confident to Portia. In picking correctly the lead casket, Bassanio has gone from rags to riches.

The transition was unnerving to Portia. Could she have disregarded her father's will? That is, could she have opted not to have the Casket Test determine her husband? Arguably, yes. But, as in the legal transaction (discussed below), Portia is faithful to the rule of law. Had she chosen Bassanio by love, and not let the Test identify Bassanio, eloping with him as Jessica does with Lorenzo (also discussed below), then she might have found herself penniless. Poverty was not a status in which Bassanio wished to continue. She also might have found herself a defendant in a trusts and estate case brought by the relevant Venetian authorities (perhaps the Duke) to enforce her father's will.

As for Bassanio, that other male inheritance merchant, he is hardly the heroic lover. His first characterization of Portia is:

In Belmont is a lady richly left [with a sizeable inheritance from her father],

And she is fair and, fairer than that word

Of wonderous virtues. …[117]

Put colloquially, Bassanio finds Portia appealing for her wealth, beauty, and character – in that order. To be sure, to call Bassanio a fortune hunter seems harsh. He does find her sexy and virtuous. Yet, her material assets top his list, and whether he would enter the financial transaction with Shylock and Antonio (discussed earlier) for, say Nerissa, who is not rich, is dubious. Surely Bassanio knows the man who wins Portia's hand will control her wealth as well as her body – Portia says so herself (as quoted above):

The brief joy of the courtship in Belmont between Portia and Bassanio that follows ends abruptly with news from Venice: Antonio is arrested for forfeiting his bond, and Shylock refuses all entreaties to release him from this default. Thus again commerce, a loan, is inseparable from love that follows from an inheritance.

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116. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE (list of characters).

117. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 162-164.

B. Shylock as Doubly Disappointed Benefactor

There is a second inheritance transaction, and it, too, is forced, *i.e.*, it is not consensual by all involved. Following the Court Room drama of Act IV, Scene 1 (discussed in Parts VII-VIII, *infra*), Shylock must agree – per the punishment scripted for him by Antonio – that upon his death, his wealth goes to Jessica and Lorenzo. Earlier, in Act II, Scene 6 (discussed in Part VI, *supra*), in eloping with Lorenzo, Jessica robbed her father, Shylock, of some of his wealth. And, she has left her Jewish faith to marry a Christian. Thus the pathos of Shylock in his "daughter-*ducats*" monologue (quoted *supra*) as he decries his double-failure: to pass on his wealth securely, and his faith at all, to his daughter.

While Portia follows her father's will openly but somewhat submissively, Jessica ferociously but stealthily flouts the law of her father. Jessica takes Shylock's ducats from her fathers' house while disguised as a boy. If Portia plays the obedient pass-through beneficiary, Jessica is the burglar beneficiary. If Portia hesitates before following her father's will, Jessica is delighted to gild herself in her father's wealth.[118]

Gratiano, a Venetian aristocrat, friend of Antonio who weds Portia's waiting woman, Nerissa, and accomplice of Jessica's husband, Lorenzo, comments: "a gentle [*i.e.*, dear person, and a Gentile] and no Jew."[119] His remark (against which Lorenzo protests with his affirmation, "but I love her heartily"[120]), is borne of his nasty sense of humor and highlights an irony in this second inheritance transaction. Gratiano suggests that contrary to the anti-Semitic stereotype, it is the erstwhile Jew, Jessica, who does what Christians do. Her focus is on money. Indeed, this theft takes place while Shylock meets with Antonio and Bassanio to seal the bond, which confirms for Shylock the insidious hypocrisy and deceit of Christians.

Gratiano's suggestion is pertinent in another respect. The loss of Bassanio to Antonio causes as much grief to his (Antonio's) heart as does Shylock's loss of his daughter. But, the pity is asymmetric: Antonio's sentiments are worthy of pity, whereas Shylock's feelings trigger cruel mockery. The evidence is the mockery of Shylock (quoted above).

Note the *double entendre*, "stones." Literal jewels and figurative male crown jewels (the former of which is a symbol of British regal and imperial power, and on a micro level refers to testicles), confirms the link between

118. *See* Heinzelman, Lecture Eight, *supra* note *, at 52.

119. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 2, sc. 6, l. 53.

120. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 2, sc. 6, l. 54.

Antonio and Shylock, both of whom now are without heirs, both of whom are barren.

It is this triple insult to Shylock's authority – that his daughter, Jessica, has fled, stolen his jewels, and denied her heritage in marrying a Christian – that turns the "merry bond" into the grim demand for Antonio's flesh.

VI. ACT SIX: THREE MARRIAGE TRANSACTIONS

A. Portia and Bassanio

Merchant portrays three marriage transactions: between Portia and Bassanio, Jessica and Lorenzo, and Gratiano and Nerissa. In all three marriages, Shakespeare poses the question: are love and commerce inseparable? That is, does every romance entail money, too, and the two become inextricably intertwined?

Theoretically, marriage is a contract ideally based upon love and mutual self-giving, requiring specific performance.[121] Contracts for the sale of goods and services are based on consideration and mutual self-interest, with specific performance as a remedy for breach.[122] In practice, both require legal documentation. Both are social arrangements to bind individuals to one another. Marriage and commerce also are human reflections of the covenant between God and humankind, and at a lesser level between a Monarch (or Head of State) and the citizen subject.[123]

But as *Merchant* progresses, distinguishing personal from commercial unions, wives and husbands from business partners, becomes ever harder. Likewise, the secular and sacred become intertwined through the word "bond:"

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121. Karol Wojtyla, *Love and Responsibility* (Ignatius Press, rev. ed., 1993) (1960) (arguing against a utilitarian view of marriage and sexuality as objectifying each partner, and in favor of a personalistic approach whereby each partner emphasizes the well-being and self-realization of the other over their own).

122. *See* "Contract," Legal Info. Inst. (LII), Cornell L. Sch. (July 2022), https://www.law.cornell.edu/wex/contract (summarizing "contract," its essential elements, and remedies for breach as: "A contract is an agreement between parties, creating *mutual obligations* that are enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: *mutual assent*, expressed by a valid offer and acceptance; adequate *consideration*; capacity; and legality. … Possible remedies for breach of contract include general damages, consequential damages, reliance damages, and *specific performance*.") (Emphasis added).

123. *See* Heinzelman, Lecture Two, *supra* note *, 9-14; Heinzelman, Lecture Eight, *supra* note 1, 56.

The word "bond" is also linked to the central place of covenant in Jewish theology. Covenant in its religious sense refers to the contract between God and his chosen people, the Jews, a bond sealed with an oath and involving stipulations and mandates on human conduct, the ritual practices and moral tenets of Judaism. Jews understood the covenant between God and man, the foundation of their faith, as the model for covenants between human beings. It's notable, then, that when urged to break the bond in the trial scene, Shylock proclaims [in Act IV, Scene 1, Lines 224-226],

An oath, and oath. I have an oath in heaven!

Shall I lay perjury on my soul?

No, not for Venice.

Here Shylock explicitly ties his bond with Antonio to his covenant with God. To walk away from the bond would be more than merely violating his personal pledge; it would be tantamount to violating a key principle of his faith.[124]

So, exchanges occur contemporaneously through affection and contract, in venues that in theory are, but in practice never are, distinct: the private space of Belmont and public marketplace of Venice.

The first of these marriages is the most high-profile one. As discussed earlier, Bassanio seeks Portia as his wife and for her wealth. The search is a test, namely, the memorable Casket Test in Act II (Scenes 1 and 9) and Act III (Scene 2). This selection mechanism makes a mockery of marriage as a relationship founded on love.

The Casket Test is a lottery, a gamble, a hazard. A suitor (like Bassanio) who seeks Portia as his wife must rely on some luck, some reading of the signs that the Three Caskets offer. Those unlucky suitors – the Princes of Morocco and Aragon – who failed to interpret the relationship between (1) the language on the Caskets and (2) their appearance, whether gold, silver, or lead – doomed themselves to a double failure. First, they could not wed Portia. Second, they were forbidden from wooing any other woman in marriage; to fail the Test is to be confined to lifelong bachelorhood. This fact itself makes the Test an almost insanely risky venture.

The contrast with the love between Romeo Montague and Juliet Capulet could not be starker – with two exceptions. First, the two lovers in in Shakespeare's *Romeo and Juliet* (1595-1596) attempt to exercise free will, yet their pursuit of one another is violently constrained by feuding families that turn the play into a veritable series of crime scenes.[125]

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124. LANIER, MERCHANT: LANGUAGE & WRITING, *supra* note 100, at 82.

125. *See* The Honorable Judge Stanley Wallach, Division 12, 21st Judicial Circuit, Saint Louis County, Missouri, *Crime and Punishment in Romeo and Juliet – A Discussion of Legal Issues in the Play Under Elizabethan Law and the Law of Today*,

In *Merchant*, Portia is not capable of independent agency, or (as discussed above) opts not to attempt to behave autonomously from the will of her unnamed dead father that boxes in her will. Second, in both plays, the limitations are patriarchal – they are imposed by older men.

Thus, in the conversation between Portia and Nerissa, which follows immediately the Antonio-Bassanio double romance-banking deal (discussed above), the terms of the will of Portia's father are explained. Just as Antonio has declared that he is sad, Portia announces her "little body is aweary of this great world."[126] Unlike Antonio, however, who cannot or will not identify a single reason for his sadness, Portia argues she is wearied following her father's commands for her marriage. Portia says:

O me, the word "choose!" I may neither choose whom I would, nor refuse whom I dislike, so is the will of a living daughter curbed by the will of a dead father. Is it not hard, Nerissa, that I cannot choose one nor refuse none?[127]

The will that binds Portia is a transaction from beyond the grave, between a dead father and a living daughter. It is memorialized in a will that is representative of a Christian patriarchal economy. To be sure, Bassanio suggests is a pastoral place of peace and beauty to which suitors come from around the world to woo Portia, akin to Colchis, the mythological Greek shore where Jason found the Golden Fleece.[128] But, Portia's reality is that Belmont, like Venice, is a man's world.

B. Jessica and Lorenzo

Both Portia and Jessica long to choose their husbands free of paternal influence. However, for them to propose their capacity to contract for themselves in marriage, and thereby assert their sexual independence, poses a threat to the Christian and Jewish communities of Venice. Both women are tightly managed by patriarchal traditions in these two different Abrahamic societies.

University of Missouri – Kansas City (UMKC) Continuing Legal Education (CLE) Lecture (April 2024) (brilliantly spotting Criminal Law issues in *Romeo and Juliet*) (PowerPoint presentation, slides on file with author); GLOBE GUIDE, *supra* note 2, at 387-398 (providing an interpretation and detailed synopsis of *Romeo and Juliet*).

126. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 2, l. 1; Heinzelman, Lecture Eight, *supra* note *, at 56.

127. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 2, l. 13-16.

128. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 1, sc. 1, l. 162-173, and footnotes 171-172.

Jessica goes forth, eloping with (Lorenzo in Act II, Scene 6). Following the Court Room drama (of Act IV, Scene 1, they lawfully obtain Shylock's wealth. That result, however, is forced, even perverse. It happens because they are designated as beneficiaries by the punishment imposed on Shylock by Antonio. Jessica inherits the wealth of her father, Shylock, not because she follows the will of her father, as Portia does, but because she chooses (for a husband) a Christian (Lorenzo) over a Jew. Jessica's doing so, and converting to Christianity, spells the end of Shylock's Jewish line, because under traditional Jewish law, the faith is passed through the mother.[129]

Does this linked inheritance-marriage transaction confirm the superiority of Christian over Jewish law? In other words, is their good fortune evidence that their marriage contract is accepted, at least tacitly, by the Christian and Jewish communities? Not necessarily.[130] Their behavior nearly cost Antonio his life, saved only by the wily litigation skills of Portia (discussed below).

In the Jessica-Lorenzo marriage transaction, the Bard also suggests a corollary question: are marriage transactions based in part on non-disclosure? That is, is non-transparency – which is not uncommon in business deals (wherein one party does not disclose all it knows, or should know, during negotiations or of performance for a contract) – and an essential element of some marriage transactions?

The answer is yes. Jessica must deceive her father, Shylock, to marry her love, a Christian, and abscond with a sizeable chunk of Shylock's fortune. She must do so at night, disguised as a man. To be transparent would risk being called out by Venetian authorities as an unfaithful Jewess, a thief, and evoke yet more anti-Semitism.

C. Nerissa and Gratiano

What about the third marriage, between Gratiano and Nerissa? This deal is not based on any obvious foundation. Is Nerissa following her boss, Portia, in seeking a husband, especially one she can at least partially dominate? Is Gratiano that companion, who knows it because he thus far has been unsuccessful in love?

Shakespeare leaves the matter for speculation.

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129. *See* Rabbi Navah L. Levine, *I've Heard That Judaism Is Passed Down Through the Mother. Is It True? Does It Matter?*, JEWISH BOSTON (2024), https://www.jewishboston.com/read/ive-heard-that-judaism-is-passed-down-through-the-mother-is-it-true-does-it-matter.

130. *But see* Heinzelman, Lecture Eight, *supra* note *, at 52-53 (who intimates an affirmative answer to the first question).

D. The Ring Plot

Transactions often are memorialized with a tangible item. Initial public offerings (IPOs) of stocks or bonds yield small, decorative cubes proclaiming the issuer, date, and other key aspects of the securities floated. These cubes recall the promises the issuer made to investors, with the blessing of the Securities and Exchange Commission (SEC). Marriages entail wedding rings. These bands memorialize the promises spouses made to each other with the blessing of God personified in a clergyperson.

But, at the end of Act IV and beginning of Act V of *Merchant*, the wedding rings have been surrendered, suggesting infidelity in the marriage transaction.[131] It is a twist that is worrisome because of uncertainty as to whether the drama itself will end sadly (a tragedy) or happily (a comedy).

What happens, of course, at Belmont is that Portia and Nerissa interrogate their husbands, Bassanio and Lorenzo, respectively, as to why they do not have the wedding rings that their wives had given them. The ring is a symbol of trust in the marriage transaction, and the two husbands breached that trust. Of course, led by Portia, the wives exert their power, as their husbands flounder to provide an explanation for why they yielded that symbol to the learned Dr. Balthazar and his Clerk. The play concludes with the wives revealing they were those men, in disguise by showing their husbands their rings. They made their point, and end with comedic forgiveness.

VII. ACT SEVEN: TWO LEGAL ENTREPRENEURSHIP TRANSACTIONS

A. Cross-Dressing for a Court Appearance

Lawyers are at their best when they are more than merely clever, but also creative. Creativity is the hallmark of entrepreneurs. *Merchant* boasts two transactions of legal entrepreneurship: cross-dressing and sequential argumentation. They may be dubbed "transactions" because they involve selling – selling oneself (*i.e.*, Portia) as an advocate, and selling ideas (mercy and justice). Both transactions occur in Act IV, Scene 1.

The first innovative transaction involves style, literally, how an advocate appears in the Court Room. Portia must dress up as a male, the renowned jurist, the learned Dr. Balthasar. He is unable to journey to the Court Room in Venice. Similarly, Portia's attendant, Nerissa, is incognito. Nerissa must dress up as a man to appear in Court as the law clerk to "Dr. Balthasar."

131. Coppélia Kahn, *The Cuckoo's Note: Male Friendship and Cuckoldry in the Merchant of Venice, in William Shakespeare's The Merchant of Venice* 19, 19-28 (Harold Bloom ed., Bloom's Literacy Criticism 2010).

The Court Room, indeed, the entire Venetian legal system, is dominated by men. In theory and practice, Venetian law – backed, of course, by the authority of the state as embodied in the Duke of Venice – is not empathetic to feminism. Shylock represents himself *pro se*. Though he is a Jew in a Christian paradigm, he is a man. His gender guarantees him a voice in Court. He need only show up – and not in disguise but wearing stereotypical Jewish vestments. In this masculine venue, Portia has one immediate asset that is rarely commented upon – her under cover name. Christian tradition holds that "Balthasar" was one of the three Magi, the King of Arabia who brought myrrh to the infant Jesus.[132] So, this woman bearing the name of a Catholic saint (all three Magi are canonized) addresses the Court. What is her role?

Portia does not come to defend Antonio. Yes, she must figure out a legal strategy to save a pound of Antonio's flesh, and thereby his life. But, she cannot intimate her conflict of interest: saving that life means quieting the anxiety of her husband, Bassanio, about the fate of his dear friend, Antonio. Nor does she litigate to accuse Shylock, especially given this creditor is in the strong position of having a remedy to mitigate Antonio's default.

Portia is neither defense counsel nor prosecutor. Her legal role is an amalgam of expert witness and adjudicator. Portia seeks to settle the question of how to interpret the financial contract, *i.e.*, the loan between Shylock and Bassanio, with Antonio as surety/guarantor for Bassanio. Simply put, Portia fashions her own role in the Court Room, while the men watch.

The fact that none of the brightest legal minds in Venice can interpret the loan documentation in front of them in a way to resolve *Shylock v. Antonio* in a non-violent manner is ironic in two senses. First, they are all men. They all would have had formal legal training, and boast years of experience. Yet it is a woman masquerading as a man, with no formal legal education or prior familiarity with adjudicatory processes and settings who resolves the case. She, not them, somehow comes to understand legal interpretative techniques and apply them.

Second, Portia has flipped the script from the Casket Test. There, it was men – her three suitors – who had to read the Caskets to win her hand. Who authentically loves her, as opposed to who wants a trophy wife? Now, Portia

132. *See* Jonathan Jones, *Myrrh Mystery: How did Balthasar, One of the Three Kings, Become Black?*, THE GUARDIAN (Dec. 2020), https://www.theguardian.com/artanddesign/2020/dec/21/christmas-cards-star-baby-jesus-myrrh-mystery-balthasar-three-kings-black-art (explaining: "Although the Gospel of Matthew does not give individual names to this regal trio, we know them as Balthasar, Caspar, and Melchior, thanks to a Greek manuscript from A.D. 500. … In Albrecht Dürer's *Adoration of the Magi*, painted in the artist's home city of Nuremberg in 1504, a young black man with short hair and red leggings stands elegantly, holding a spherical gold goblet full of myrrh, a natural aromatic.").

is tested: she must read a legal document, while in disguise, and thus surely concerned she may be outed. After all, her husband, Bassanio is in the Court Room.

B. Portia's First Argument and Shylock's Textualist Rebuttal

One character in Merchant on whom to focus is the lead woman, Portia. Another typical focus is on Shylock.[133] Both she and Shylock are oppressed: Portia by patriarchy, and Shylock by the Christian majority. With Portia, at issue is whether she is as thoroughly virtuous as she appears. With Shylock, at issue is whether he is as entirely unsympathetic as he appears. Portia evokes the problem of justice in family and inheritance law. Shylock evokes the problem of justice in banking and financial law. Accordingly, rather than an either-or approach to character focus, a both-and approach is best. Looking at both characters and how they engage with one another reveals much about the legal entrepreneurship – the buying and selling of legal arguments.

So, the second innovative transaction involves substance, literally, how an advocate argues in the Court Room. Act IV of *Merchant* is nothing short of a trial transcript, and thus a veritable feast for legal analysis.

Portia makes two arguments *in seriatim* (in series), and the sequencing is calculated: mercy, then justice. They are mutually exclusive: either Shylock can forgive Antonio, or he can punish him. At any point, Shylock can – though he never does – revise his thinking about which argument he finds persuasive.

Portia is not the first to urge Shylock to act with mercy. The Duke – the Chief Judge of the Venetian Court, as it were – presumes Shylock not only

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133. *See* Conner, Lecture 19, *supra* note *, at 386, 396. Death was the punishment for return. Their expulsion followed their exploitation by the Royal Chancellor of the Exchequer for Jews, which levied special taxes on them. *See* Saccio, Lecture 8, *supra* note 1, at 92-93.

By Shakespeare's lifetime (1564-1616), in Elizabethan England, there was little in the way of Judaism: no persons openly practiced Judaism, hence "Jews were basically the stuff of ancient history or of legend." Conner, Lecture 19, 386, 396. That legend was an amalgam of anti-Semitic tropes: "Jews were conceived of as child-killers, as poisoners of wells, as desecraters of Christian sacraments, as covetous money-lenders who would eagerly ruin Christian merchants." Conner, Lecture 19, *supra*, 386, 395-396.

Jews were not readmitted to England until 1656, 40 years after Shakespeare's death, under the Lord Protector, Oliver Cromwell (1599-1658). *See Jews in England 1290*, The National Archives https://www.nationalarchives.gov.uk/education/resources/jews-in-england-1290/#:~:text=It%20was%20not%20until%201656,while%20keeping%20their%20religion%20secret; Saccio, Lecture 8, *supra* note *, at 92-93.

will cancel the bond, and thus not seek to extract the pound-of-flesh collateral, but also write down up to half of the outstanding principal balance,[134] as even "stubborn Turks and Tartars," who were "never trained in tender courtesy," would do.[135] Indeed, the Duke speaks for the entire Court Room when he intones almost accusingly:

We all expect a gentle answer, Jew.[136]

That is not the answer the plaintiff gives the Judge – he will not drop the case. Even if he were offered 6,000 ducats or more, he would reject them in favor of the bond.[137]

In his retort to the Duke, Shylock's offers three arguments. The first argument is clever. Shylock points out that to forgive the debt would not be in the interest of Venice, which the Duke is duty-bound to promote, as it would ruin the international credit rating of Venice and thus undermine its status as an international trade center ("…let the danger light" on "your charter and your city's freedom"[138]). The second argument is arbitrary. Shylock says he is free to exercise his passion, hence need not give a reason to explain why he demands a pound of Antonio's flesh ("Some [men] are made if they behold a cat…"[139]). The third argument is historical. Shylock simply dislikes Christians and Antonio ("a lodged hate and a certain loathing I bear Antonio"[140]). Possibly, the first two arguments suggest the character arc of Shylock is rising, in terms of confidence in legal argumentation before a hostile Court. The third argument, however, suggests he is flat, because it is summary of his previously-expressed anger (in Act I, discussed in Part Two, *supra*).

Exasperated, the Duke interrogates Shylock with a poignant question:

How shalt thou [Shylock] hope for mercy rend'ring none."[141]

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134. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 17-27.

135. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 33-34.

136. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 35.

137. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 86-88.

138. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 39-40.

139. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 49

140. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 61-62.

141. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 89.

That is, of course, a kind of Golden Rule, but it also is – in utilitarian terms – a rule of reciprocity. Still, Shylock is unwavering: he does not believe he has erred, and thus is not, and maybe never will be, in need of forgiveness:

What judgment shall I dread, doing no wrong?[142]

Portia's first argument in the case is about equity, in particular, mercy. To counter Shylock's adamantine demand for "justice," Portia gives what possibly is one of the most elegant speeches about this virtue in all of world literature. But her first words to the Court are bizarre:

Which is the merchant here, and which the Jew?[143]

Because Jews were required to dress differently from Christians, she and the entire Court Room could identify on sight each merchant-litigant.[144]

So, does Portia ask the question to convey she is objective, that "[i]n Shakespearean terms, she will judge not on the basis of appearance, but on the basis of internal reality"?[145] Is Portia saying she believes in equal justice under law, that she does not distinguish plaintiffs and defendants based on their religious faith? Put in religious terms, in the language of Saint Paul's *Letter to the Galatians* (Chapter 3, Verse 28):

[28]There is neither Jew nor Greek, there is neither slave nor free person, there is not male and female; for you are all one in Christ Jesus.[146]

Notwithstanding the fact that not everyone in the Court Room is "one in Christ Jesus" (Shylock is a Jew), plus the fact that some (Christians) do not act as such (*i.e.*, they behave hypocritically), perhaps Portia is attempting to strike a theme of unity. She may be conveying that no merchant-litigant is to be discriminated against, because all are made in the image and likeness of the monotheistic God of Abraham.

But a different inference is possible. Portia intends to discriminate against the Jew if he proves recalcitrant. Perhaps her question is designed specifically for the ears of Shylock, to remind him of his place.

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142. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 90.

143. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 170.

144. *See* CAROL CHILLINGTON RUTTER, SHAKESPEARE'S *THE MERCHANT OF VENICE* IN AND BEYOND THE GHETTO 79-89 (Peter Holland ed., Cambridge University Press, 2017) (discussing the Venetian Jewish ghetto and the staging of Merchant); Heinzelman, Lecture Eight, *supra* note 1(2), at 32 (stating "[Shylock is] marked by his red cap and the Jewishness it signifies").

145. Conner, Lecture 19, *supra* note *, 390, 403.

146. *Galatians* 3:28, (Catholic Study Bible).

Portia's first step is to address Shylock's textualist argument.[147] She examines the financial contract, and says it is forfeit. Technically, she appears to mean Antonio has failed to perform the bond, hence the bond is voided. But her judgment here is quick, almost too quick. Portia does not explain her reasoning, much less point to any provision within the bond. Indeed, other than the "pound of flesh" clause, never in the play are the terms of the bond revealed in their full detail.

Portia then pivots – or, it might be said, leaps – from agreeing with Shylock, that he wins in respect of the language of the bond, to her argument about mercy. She asserts:

Then the Jew must be merciful."[148]

Shylock retorts with adherence to his lawyer-like textualism:

On what compulsion must I? Tell me that.[149]

The response of Portia is anything but to find a provision in the bond with which to address Shylock's question. Portia does not try the obvious path, to counter one written provision in a transactional document with another one. Nor does she leap to her second argument, that is, to rebut Shylock's thirst for vengeance under his financial contract with the law of Venice mandating he does not spill Christian blood. That legal thrust and parry comes later.

Put differently, in examining Portia's advocacy skills, ask a big picture question about the field of Law and Literature: what insights does literature provide to the practice of law, including the framing of a legal narrative?

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147. Charles Spinosa, *Shylock and Debt and Contract in "The Merchant of Venice,"* 5(1) LAW & LITERATURE, 65–85 (1993), https://doi.org/10.1080/1535685X.1993.11015728 ("[Shylock is said to be] "gravitating toward common-law literalism (rightly or wrongly) and Portia toward equitable conscience (rightly or wrongly), … [and, in turn,] sees Shylock as standing for a hard-working, vengeful, literalist, computational mechanism and the Venetians along with Portia as representing a festive, graceful, generous, loving, interpretive vitality.") is deficient, *see* Charles Spinosa, *Shylock and Debt and Contract in "The Merchant of Venice,"* 5(1) LAW & LITERATURE, 65–85 (1993), https://doi.org/10.1080/153568 5X.1993.11015728 [hereinafter, *Shylock and Debt*]; i. *d.* at 65–66 ("[Spinosa argues such a view wrongly] "focuses almost exclusively on the play's technical legal representations—the terms of the bond, the trial scene, the alien statute, the use—and fails to concern itself with how legal change is motivated by, and only comprehensible in terms of, broader changes in social practices."); i*d.* at 66 ("[*Id.* at 65–66. Thus he] "examine[s] *Merchant* in terms of the monumental changes in the understanding of the law of obligation that culminated in *Slade's Case* (1597-1602).

148. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 181.

149. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 182.

Portia offers one answer: literature shows that breaking a strictly legal narrative sometimes can be effective, or at least is worth trying. Portia first shows how literature can be an imaginative and ethical alternative to law. Here, then, is mimesis: Shakespeare holds up to a mirror actual legal systems the Venetian regime, asking what role does, and should, divinely inspired forgiveness play in the adjudication of technical commercial disputes?

So, in Act IV, Scene 1, Portia commences with a plea for mercy as against justice – a plea based on theology:

> The quality of mercy is not strained,
>
> It droppeth as the gentle rain from heaven
>
> Upon the place beneath. It is twice blest [blessed];
>
> It blesseth him that gives and him that takes.
>
> 'Tis mightiest in the mightiest, it becomes
>
> The thronèd monarch better than his crown.
>
> His sceptre shows the force of temporal power,
>
> The attribute to awe and majesty,
>
> Wherein doth sit the dread and fear of kings.
>
> But mercy is above this sceptred sway,
>
> It is enthronèd in the hearts of kings,
>
> It is an attribute to God himself;
>
> And earthly power doth then show likest God's
>
> When mercy seasons justice: Therefore, Jew,
>
> Though justice be thy plea, consider this,
>
> That, *in the course of justice, none of us*
>
> *Should see salvation*: We do pray for mercy,

And that same prayer doth teach us all to render

The deeds of mercy.[150]

Given the substantive power and stylistic evidence of Portia's plea, small wonder why Professor Berger urges:

If Shylock practices usury, Portia is the master mistress of negative usury. Usury … amounts to getting more than you give. Negative usury is giving more than you get.[151]

There is, moreover, a striking feature of Portia's oral advocacy that makes it more than a response to the demand of Shylock for justice.

Portia contends that salvation is impossible through justice. At risk for Shylock is not so much the 3,000 *ducats* owed to him, but rather his afterlife. Any well-functioning legal system may resolve a dispute, but no legal system will save any soul. Indeed, justice may lead to damnation, whereas mercy yields the beatific vision – it allows those who are merciful to receive mercy and, ultimately, see the face of God.[152]

Portia's argument is summarized in the rhetorical question posed by the Holy Father, Pope Francis (1936-, Pope, 2013-), to the 2024 Annual Meeting for Friendship Among Peoples (*i.e.*, the Rimini Meeting) in which entrepreneurs, religious figures, politicians, intellectuals, artists, and athletes participate: If we are not after the essential, what are we after?[153]

But in standing for "justice," Shylock finds money to be "the essential," and no one in the Court Room can dissuade him. Here, then, is an opportunity to ponder another big think Law and Literature question. How does literature portray legal institutions and processes?

That is the question of mimesis – the portrayal of reality in literature. Over one-half century ago, Erich Auerbach published his seminal work,

150. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 183-201. (Emphasis added).

151. Harry Berger Jr., *Marriage and Mercifixion in The Merchant of Venice: The Casket Scene Revisited*, WILLIAM SHAKESPEARE'S THE MERCHANT OF VENICE 9, 17 (Harold Bloom, ed., Bloom's Literary Criticism 2010).

152. *See, e.g.*, *Matthew* 5:3-12 (The Beatitudes in the Sermon on the Mount, especially Verse 7, "Blessed are the merciful, for they will be shown mercy") and *Luke* 6:20-26 (The Beatitudes in the Sermon on the Plain, especially Verse 24, "But woe to you who are rich, for you have received your consolation), (Catholic Study Bible), *supra.* (Footnotes omitted).

153. *Pope to Rimini Meeting: Faith in Jesus is What is Essential in Life*, VATICAN NEWS (Aug. 19, 2024, https://www.vaticannews.va/en/pope/news/2024-08/pope-francis-faith-in-jesus-is-what-is-essential-in-life.html.

Mimesis: The Representation of Reality in Western Literature.[154] Written in Istanbul, to which Auerbach had fled the Holocaust, between 1942-1946, this book of literary criticism and history lays out in 20 chronologically arranged chapters how classic western writers represent real-world life in their works. Chapter 13, "The Weary Prince," covers Shakespeare's Henry IV, Parts One and Two.[155] Auerbach's thesis is that over time writers tend to represent reality more vividly, *i.e.*, with greater realism, indeed, naturalism.

In *Merchant*, Portia's mercy monologue suggests that legal institutions and processes are at best an imperfect mirror of a sacred reality. The law is secular, it is man's law, not God's law. Venice does not incorporate mercy in any formal way into its legal regime. Hence, Shylock may, but is not obliged to, forgive Antonio.

Shylock, like several if not most of the characters in *Merchant* have one or more of the following vices: vengefulness, hatred, paranoia. Professor Conner says, "the entire society" in the play "has a kind of sickness to it."[156] However Christianized Venetian society may be, its legal system does little to remedy this malady. With her words, Portia challenges Shylock – and all listeners – to rise above a transactional, tit-for-tat, zero-sum game approach to everyday life and the law. Her speech calls them to think theologically, to think about what happens to them in the next life if they realize their demand for justice in this life. Her first argument could be summarized thusly: embedded in every business transaction is a spiritual one, too.

Here, then, is an example of how literature responds to legal structures, themes, and analytical techniques, and creates a coherent narrative structure that runs counter to the conventional narrative about justice. That Portia gives this example right inside the Court Room, and is forced to disguise herself as

154. Erich Auerbach & Edward W. Said, *Mimesis: The Representation of Reality in Western Literature*, PRINCETON UNIV. PRESS, 1 (2003) (originally published in 1946).

155. *See* Raj Bhala, *Shakespeare And The Law of War: Spotting Issues In The Second Henriad*, 16(2) U. ST. THOMAS J.L. & PUB. POL'Y, 750, 750–827 (2024), https://researchonline.stthomas.edu/esploro/outputs/journalArticle/Shakespeare-and-the-Law-of-War/99101518149850369 1?institution=01CLIC_STTHOMAS (showing how Shakespeare explores in the Second Henriad issues of the causes of conflict and conduct during conflict, respectively, *jus ad bellum* (right to war) and *jus in bello* (right in war)). *See also* a summary and review of this article in Charles J. Reid Jr., *War*, 16(2) U. ST. THOMAS J.L. & PUB. POL'Y, 537, 537–93, (especially Section VIII, pages 580–93), https://researchonline.stthomas.edu/esploro/outputs/journalArticle/War/9910152010012036 91/filesAndLinks?institution=01CLIC_STTHOMAS&index=0.

156. Conner, Lecture 19, *supra* note *, at 392, 405.

a man, makes the example all the more remarkable. To extrapolate from her plea for mercy, she is saying (put colloquially), "here is who we are and what our legal system is, but there is what we are called to be and what our legal system should be."

And how does Shylock respond? In the most textualist of ways: the financial contract does not require him to behave mercifully. It is as if Shylock had *Black's Law Dictionary* in hand, citing to its entry on "textualism:"

> The doctrine that the words of a governing text are of paramount concern and that what they fairly convey in their context is what the text means. – Also termed *verbal meaning theory*; *textual interpretation*. …[157]

Likewise, Shylock could cite with equal accuracy its entry on "strict constructionist:"

> A decision-maker who derives a text's meaning narrowly and applies the text according to that meaning. …[158]

Thus, Shylock rejects Portia's proposition that to demand justice is to demand damnation. Having said five times in Act III, Scene 3 that he "will have his bond,"[159] Shylock reaffirms his position in Act IV, Scene 1:

> I stand for judgment.[160]

Shortly thereafter, he reinforces his point again, saying:

> My deeds upon my head! I crave the law,
> The penalty and forfeit of my bond.[161]

What inference may be drawn from Shylock's *ad nauseum* insistence?

On the one hand, transparency. Shylock is nothing if not clear about what he wants done and how he defines "justice." On the other hand, cluelessness. His intransigence suggests he is unimaginative about, or arrogantly indifferent to, the proverbial scales of justice.[162]

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157. BLACK'S LAW DICTIONARY, *supra* note 15, at 1.

158. BLACK'S LAW DICTIONARY, *supra* note 15, at 1.

159. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 89.

160. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 104.

161. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 205-206.

162. It thus should be no surprise that conventionally, Shylock is portrayed as pathologically fixated on justice in the form of revenge against Christian oppression. So many times, Shylock demands adherence to the letter of the law (as it is written in his financial contract with Antonio), to get what the text says is his due. That is why Shylock rejects any argument to disregard the text (most notably, the argument for mercy from the Duke and Portia). No matter how self-interested the argument for mercy is put to him, Shylock rejects it.

Portia does not pause to pick an inference, nor does she need to. Rather, she articulates the consequences of Shylock's position. She points out that Shylock will need to have a surgeon nearby if he persists on cutting a pound of flesh from Antonio, and Antonio thereby bleeds to death.[163]

Portia's remark is clever advocacy, as it fulfills two functions. First, it serves as a penultimate opportunity for Shylock to back down and pursue mercy. Portia makes Shylock realize that following the bond could kill Antonio. Second, it sets up what will be Portia's winning argument: that dropping Christian blood is illegal under Venetian law, and it is Shylock who then will be punished – the plaintiff will become the defendant.

But, Shylock does not appreciate the point. His textualist-strict constructionist response, of course, is:

Is it [having a surgeon on call] so nominated in the bond?[164]

Portia concedes the debt instrument has no such provision. She tells him to move beyond the four corners of that document and think selflessly affords Shylock a final opportunity to behave mercifully,:

It is not so expressed, but what of that?

'Twere good you do so much for charity.[165]

Her invocation of the word "charity" moves her argument to its highest level, because "charity" is love. Portia is not using the term in the sense of almsgiving. Rather, she is thinking of the three Catholic theological virtues – faith, hope, and charity, the greatest of which (as Saint Paul teaches) is love.[166]

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163. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 260-261.

164. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 262.

165. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 263-264.

166. 2 Corinthians 1:13 1618 (Catholic Study Bible) ("So faith, hope, love remain, these three; but the greatest of these is love") (footnotes omitted); 1 Corinthians 13:13 (King James Version) (distinct from the 1982 New King James Version) "And now abideth faith, hope, charity, these three; but the greatest of these is charity."); Timothy Berg, Love's Labor Lost: Charity Banished by Tyndale (Mar 19, 2020); see Gordon Campbell, Bible: The Story of the King James Version 47-64 (Oxford, England: Oxford Univ. Press, 2011) (Bishop Lancelot Andrewes (1555-1626), a contemporary of Shakespeare, and his Committee, which translated the King James Version, were not working from the oldest Greek manuscripts: they had Saint Jerome's Vulgate (a late 4th century translation of the Bible) which. Saint Jerome employed the Latin "caritas" (or "charitas," depending on which monk had copied it);. sSee Deborah R. Taggart, Learning to Give: Charity, Learning to Give, https://www.learningtogive.org/resources/charity#:~:text=Today%20the%20most%20common%20translation,well%20as%20a%20secular%20meaning (6 Sept. 2024) (The Latin caritas could be rendered in English as either love or charity (because in

Shylock is utterly unmoved. He is "so scarred and warped he has no such emotion [love],"[167] hence he states:

I cannot find it, 'tis not in the bond.[168]

Portia has thus lost round one in her legal transaction – argumentation – with Shylock.

C. Portia Pivots to Textualism

Now, in Act IV, Scene 1, Portia realizes she must pivot. Portia abandons her initial argument (mercy), and turns to her alternative one (justice). She matches, and outwits, Shylock (and all the other men in the Court Room) with her own textualism and strict constructionism, and her knowledge of the law.

Portia says:

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.[169]

That shocks Shylock, who says:

Is that the law?[170]

Perhaps the rest of the Court, and the audience, is stunned, too. Surely Shylock should have been sufficiently prepared in bringing his claim against Antonio to know the weakness of his case. Not so. Shylock is not a lawyer, but he is single-mindedly emotional about achieving vengeful justice. As when Jessica eloped with the Christian, Lorenzo, and took his *ducats*, Shylock – standing in the Court Room – does not know what to do. His case has collapsed.

Portia's winning argument relies on a narrow reading of Venetian law to combat Shylock's narrow reading of the financial loan documentation.

Modern English "charity" derives from the Latin caritas, sharing a root with "cardiovascular," because the word implies that giving comes from the heart).). Justin Neuman, Fiction Beyond Secularism 81(Evanston, Illinois: Northwestern University Press, 2014). (Bishop Andrewes chose charity, an error fixed in the Revised King James Version, New International Version (originally released in 1978, with revisions in 1984 and 2011), and English Standard Version (2001)).

167. Conner, Lecture 19, *supra* note *, 405.

168. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 265.

169. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 262. (Emphasis added).

170. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 317.

Shylock can enforce the bond owed to him. But, he must suffer the legal consequences of doing so. Portia presses her winning argument:

> For as thou [Shylock] urgest justice, be assured
> Thou shalt have justice, more than thou desirest.[171]

That is exactly the outcome of which Portia warned Shylock: in urging mercy, she knew her trump card was the legal fact that Shylock would bankrupt himself if he were to slice flesh from Antonio.

It is difficult to imagine Portia did not know this legal point, that she merely happened upon it while thinking quickly on her feet. No, she was prepared, and the sequence of her arguments was shrewd. It also, perhaps, was compassionate. She gave Shylock multiple opportunities to change tack, knowing his fixation on justice would lead to his damnation in a legal (and, as indicated earlier, possibly also a spiritual) sense.

This legal fact is anti-Semitic, or at least patronizing. Portia, the Christian, is evangelizing to Shylock, the Jew. She is telling him his soul is in danger for all eternity, that he needs to be saved, and that the means for salvation is to adopt the Christian virtues of mercy and charity and apply them to another Christian, Antonio. For Portia, that Shylock may have a different understanding of these virtues and how to operationalize them is never at issue.

Thus, as Professor Conner states, two questions follow. First, how does law affect us beyond our immediate transactional interests? He says, mercy and charity "are the directions of life and love, and … of comedy," but "justice and law, these are the directions ultimately of death, and of tragedy."[172] These questions are, perhaps, especially poignant for lawyers. What is the enterprise in which lawyers are engaged, and to what end?

D. Judgment for the Defendant

The Court Room scene in Act IV ends with Shylock broken, and Antonio victorious. But, for two reasons, this "judgment for the defendant" ending is not so simple as it appears. Those reasons center on Shylock.

First, there is a three-fold cluster of questions:

- Who cannot feel empathy for the misery of Shylock and his bankruptcy- forced conversion?[173]

171. RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 319-320.

172. Conner, Lecture 19, *supra* note 6, at 392, 406.

173. After all:

- Who cannot feel relief for Antonio and the saving of his fortune and life?

- Who cannot feel haunted that both plaintiff and defendant, after their tumultuous transaction, are alone?

The Jew and the Christian have lost the person to whom they were closest: Jessica has left Shylock for Lorenzo, and Bassanio has left Antonio for Portia. All three questions (especially the first) are treated elegantly by Professor Saccio, who traces the different ways actors have portrayed Shylock since the time of Shakespeare's Globe Theater.[174] That legacy is worthy of a separate article. Suffice it to say the evolution has gone from hideously stereotypical to (especially after the Holocaust) so sympathetic that the play could be seen a tragedy about Shylock.

Second, there is a huge and haunting question: are Christians hypocritical? The virtues they propound are the ones that some of them fail to practice. Recall the Casket Test in Act II, Scene 2 – Portia's racism toward the Prince of Morocco. Consider the denigration and castigation of Shylock throughout the play. Think of what comes next, in Act IV, Scene 1, when

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> Antonio is at Belmont, surrounded by three pairs of lovers, while his enemy Shylock is in Venice, doubtless receiving instructions in Catholicism. Christian comedy triumphs, Jewish villainy is thwarted, and everything is for the best, if only Shylock's voice and presence would stop reverberating, which they never have and never will, four centuries after Shakespeare composed, and in the centuries to come.

HAROLD BLOOM, SHAKESPEARE: THE INVENTION OF THE HUMAN, (1998) Chapter 12 (The Merchant of Venice) 178 (also *quoted in* Conner, Lecture 19, 406).

174. *See* Saccio, Lecture 8, *supra* note *, at 92 (discussing how different great British actors interpreted Shylock: apparently negatively, based on later accounts of the 1596 portrayal in the original Globe Theater by Shakespeare's contemporary, Richard Burbage (1567-1619); as a "comic villain" in the late 17th century; as a "serious villain" in the 18th century by the Irish actor, Charles Macklin (1699-1797); as an "honest villain" in the Romantic Period (1798-1837); as an "heroic patriarch, marked by dignity and pride" in the Victorian period (i.e., during the reign of Queen Victoria, from 1837-1901) by Sir Henry Irving (1838-1905), who the first actor to be knighted for his services to the theater; and as "a banker-aristocrat of the industrial age" by Sir Laurence Olivier, Baron Olivier, Order of Merit (OM) (1907-1989), who was granted a life peerage and thus was the first actor to be admitted to the House of Lords); *see* THE GLOBE GUIDE 280 (stating, "… the play's most tragic character is Shylock himself: a man abused by the Christians of Venice, robbed and deserted by his own daughter, and finally humiliated by being forced to abandon his own religion and convert to Christianity.").

Shylock is forced to convert to Christianity[175] – they hardly permit him to lovingly embrace Christ through his own free will. This freedom of conscience happens thanks to three Christians.

First, Portia tells Shylock that under Venetian law, if an "alien" – a term encompassing any non-citizen, including Jews – attempts to take the life of a citizen (and thus a Christian), then (1) one-half of all of the assets of the offender are seized by the government, and (2) the life of the offender may be spared only by the mercy of the Duke.[176] Second, the Duke spares Shylock's life, but says he must forfeit the other half of his wealth to Antonio – a fine.[177] Third, Antonio says he will waive this fine (half of Shylock's wealth, which Shylock thus can keep), if Shylock (1) lets him (Antonio) use the other half of his (Shylock's) wealth (presumably to finance for his international trade transactions), (2) agrees he (Antonio) can give this other half of the wealth to Lorenzo (upon Shylock's death), (3) convert immediately to Christianity, and (4) bequest upon his (Shylock's) death all of his remaining estate to Lorenzo and Jessica.[178] The first term appears merciful; the second, third, and fourth terms lay bare the harsh reality that Shylock will die a Christian with no estate to direct as he would wish.

Shylock thus has imposed on him that which Portia forecast: revenge. Shylock becomes a victim of his own theory of punishment. That theory is not deterrence (be it general or specific), and certainly not rehabilitation (Christendom is irredeemably anti-Semitic); rather, it is vengeance based on hatred. But this foreseeable reversal of fortune seems hardly Christian.

Manifestly, there is a huge gap between Shylock's rejection of forgiveness and how Christians (and Buddhists) are – if they are true to their faith – called to act:

The Cardinal [Ayuso, the Prefect of the Dicastery for Interreligious Dialogue] reflected … on how both traditions offer profound insights into the nature of hatred and forgiveness.

While Buddha teaches that "hatred is never appeased by hatred in this world. It is appeased only by loving-kindness," Ayuso noted that Saint Paul

175. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 393, 400, 402-404, (whereby Antonio requires that Shylock "presently become a Christian," and Shylock concedes, "I am content," and agrees he will sign the necessary legal documents to settle his estate and the case).

176. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 353-362.

177. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 375-377.

178. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1, l. 386-396.

exhorts Christians "to embrace the ministry of reconciliation initiated by God in Christ."

As Buddhists commemorate *Vesak* [*i.e.*, Buddha Jayanti, commemorating the birth, enlightenment and passing of the Buddha] Cardinal Ayuso suggested we invoke the wisdom of Venerable Maha Ghosanda – a witness to the horrors of the Cambodian genocide [under the 1975-1979 Khmer Rouge regime] and inspiration for the Dhamma Yatra Peace Pilgrimage – and Pope Francis, who "likewise assures us that "reparation and reconciliation will give us new life and set us all free from fear" (*Fratelli Tutti*, 78 [All Brothers – On Fraternity and Social Friendship, October 2020]).[179]

For Shylock, forgiveness is not a "shared value" among medieval Christians and Jews.

Yet, by the end of the gripping Court Room drama, in Act IV, Scene 1, Shylock has been "so thoroughly humiliated and punished" that he evokes sympathy.[180] As an individual, is it not "in the character of Shylock … that Shakespeare goes far beyond any easy Jewish stereotypes"?[181] Like any flawed person, trapped partly by their culture and environment, does he not deserve redemption?

Collectively, based on his treatment (or mistreatment), can Christians and Jews ever transact on equal, mutually advantageous, reciprocal terms, or do they doom their professional interactions to be zero-sum games?

Interestingly, one nuance Shakespeare does not explore is Christian disunity. In reality, in his time, Christians in Venice were not monolithic. There were endless power politics machinations, transactions pitting the Papacy in Rome against the Duke and aristocrats of Venice.

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179. Linda Bordoni, *Christians and Buddhists Must Walk Together "For the Sake of Peace,"* VATICAN NEWS (May 6, 2024) www.vaticannews.va/en/vatican-city/news/2024-05/vesak-cardinal-ayuso-buddhists-christians-message-peace.html.

180. Conner, Lecture 19, *supra* note *, at 162; *Conner*, Lecture 19, *supra* note 1, 386, 396 (Anti-Semitic stereotypes were reflected in *The Jew of Malta* (1589), a play written by Shakespeare's contemporary and rival, Christopher Marlowe (1564-1593));-*See* Conner, Lecture 19, *supra*, 386, 396 (But whereas in that play, Marlowe depicts Barabas as irredeemably wicked, Shakespeare creates in Shylock a less one-dimensional figure; That Shakespeare did so – *i.e.*, was willing to entertain a sympathetic side to Shylock – was all the more courageous given the 1594 Lopez incident: The Portuguese born Roderigo Lopez, physician to the Queen, Elizabeth I (1533-1603), was publicly executed for attempted regicide (a charge possibly based more on Royal Court intrigue than facts)); -Lecture 19, *supra*, 396 (Though Dr. Lopez had converted from Judaism to Christianity, in his closing argument at trial, the prosecutor called the defendant a "Jewish doctor, worse than Judas himself…,," and Shakespeare might have witnessed the execution.).

181. Conner, Lecture 19, *supra* note *, at 387, 397.

… Venice over the centuries has had a long, complicated, love-hate relationship with the Papacy, despite its central importance to Christianity.

The relics of St. Mark – the top aide to St. Peter, the first Pope – are held … in the Basilica, which is one of the most important and spectacular in all of Christendom. Several Popes have hailed from Venice – in the past century alone three Pontiffs were elected after being Venice Patriarchs. And Venice hosted the last conclave held outside the Vatican: the 1799-1800 vote that elected Pope Paul VII.

But for centuries before that, relations between the independent Venetian Republic and the Papal States were anything but cordial, as the two sides dueled over control of the Church. Popes in Rome issued interdicts against Venice that essentially excommunicated the entire territory. Venice flexed its muscles back by expelling entire religious orders, including [Pope] Francis' own Jesuits.

"It's a history of contrasts because they were two competitors for so many centuries," said Giovanni Maria Vian, a Church historian and retired editor of the Vatican newspaper *L'Osservatore Romano*…. "The Papacy wanted to control everything, and Venice jealously guarded its independence."[182]

Perhaps this adversarial dynamic is why *Merchant* has no good-natured clergyman, such as a Friar, to act as a bridge between contesting parties. On the one hand, Christians were like-minded in their discrimination against Jews. On the other hand, any such character would – or should, based on historical accuracy – be a rival of the Duke of Venice and his supporters.

When Portia turns from imploring Shylock to extend mercy to Antonio, the argument from equity, to employing the letter of the law to enforce Shylock's demands – *i.e.*, to force him (Shylock) to do what he says he wants to do, which is to cut off (literally) a pound of flesh from Antonio's body nearest to his (Antonio's) heart – she demonstrates another point related to Christian hypocrisy in Court Room transactions. Despite his position and his authority, the Duke of Venice is powerless. It is not within the power of the Duke of Venice to grant mercy, because to do so, as Portia points out, would cast doubt on the integrity and enforceability of the laws of Venice.[183]

Such a dispensation of mercy lies only with Shylock, for equity is the claim of the individual conscience.

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182. Nicole Winfield & Paolo Santalucia, *Pope Visits Venice to Speak to the Artists and Inmates Behind the Biennale's Must-See Prison Show*, ASSOCIATED PRESS (Apr. 28, 2024), https://apnews.com/article/pope-francis-venice-biennale-885ddbcd4171c3ba08e1e8ee6039ddc2.

183. *See* RSC SHAKESPEARE, *supra* note 6, THE MERCHANT OF VENICE act 4, sc. 1 (Portia's argumentation starting at Line 207, after her speech on mercy).

The Christian community is, for a moment, subject to Shylock. It is his (Shylock's) failure to realize, until it is too late, just how powerful he might be under the laws of Venice that makes his defeat so much more powerful. Shylock stands in the Court with a claim that he argues is more powerful than the laws of Venice. Shylock stands, he says, "for the Law." Indeed, it is the Old Testament Law that Shylock invokes, and he has sworn an oath in his synagogue to have his revenge on Antonio.

Putting aside the question of how appropriate oaths of revenge are in a place of worship, for a Jew navigating a Christian society, there is no recourse to the laws. The punishment for shedding the blood of a Christian, that is, death, proves the laws are made by and for the Christian community. This legal fact is transactionally – namely, anti-Semitically – asymmetrical. There seems to be no Venetian law that would apply to a Christian as against a Jew. With impunity, Antonio (were he the creditor and Shylock liable as a surety or guarantor) could take Shylock's flesh, who thereby could bleed to death.

It is no surprise, then, that as a substitute for the death of Shylock, the mercy – if it be called that – the Duke of Venice extends to him should comprise the loss of his wealth and his religion. The equitable judgment rendered by the Christians on the Jew is, in the end, far less merciful than that which the Duke of Venice would have had Shylock extend to Antonio.

VIII. ACT EIGHT (CONCLUSION): IS SHYLOCK V. ANTONIO A CASE OF JUSTICE V. MERCY?

Critics suggest the Court Room argumentation is between the demands of justice (*i.e.*, Shylock deserves his bond) and equity (*i.e.*, justice must be tempered with mercy).[184] This suggestion is not wrong. Indeed, at one point,

184. *See, e.g.*, Heinzelman, Lecture Eight, *supra* note *, 50, 53-54, Conner, Lecture 18, *supra* note *, 392-393, Lecture 19, *supra* note *, 403-405.

> The vast majority of scholarly commentary – an eight-to-one ratio – agrees with Portia's ruling. For such scholars, the ruling of the court is a victory of the liberating spirit over the deadly letter of the law, of mercy over legalism, and of reasonable discretion over Shylock's demand for literal-minded justice. According to these majority commentators, Shylock gets just what he deserves – severe punishment for his miserly vengefulness. The consensus view is that the play dramatizes the struggle in Shakespeare's England for supremacy between the common law courts and the equitable Court of Chancery. The minority view disagrees with Portia's judgment. Those dissenters see Shylock as a victim of injustice, as the hero of the play, as shown no mercy by Portia, and as trapped by secret legalities. Rather than a fiend, Shylock strikes the minority as a tragic victim of religious and ethnic prejudice. Portia's judgment, to these contrarians, is a triumph of vengeance in the guise of justice. The more

Portia acknowledges that only Shylock's mercy can save Antonio. But, underlying the *Justice v. Mercy* characterization of the legal narrative is an oft-missed jurisprudential point: both Shylock and Portia are within the Natural Law Theory tradition.[185]

Recall the Old Testament passage – to which both Christians and Jews in Venice presumably would have been exposed – in which God offers a new covenant, through the Prophet Jeremiah:

> See, days are coming – oracle of the LORD [*i.e.*, says the Lord]– when I will make a new *covenant* with the house of Israel and the house of Judah. It will not be like the *covenant* I made with their ancestors the day I took them by the hand to lead them out of the land of Egypt. They broke my *covenant*, though I was their master…. But this is the *covenant* I will make with the house of Israel after those days…. *I will place my law within them, and write it upon their hearts; I will be their God, and they shall be my people*. They will no longer teach their friends and relatives, "Know the LORD!" Everyone, from least to greatest, shall know me … *for I will forgive their iniquity and no longer remember their sin*.[186]

For all their disagreements, Shylock and Portia would agree the source of law is God. Per the italicized sentence, God writes law into the hearts of people.

Shylock and Portia also would agree that God has intervened in human history to make reciprocal promises – covenants – with people. Jeremiah references two covenants. One brought the Jews out of Egypt, liberating them from being slaves of the Pharoah. The second gave the Jews the Ten

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> I think about *The Merchant of Venice*, the more I find myself in the minority camp.

Daniel J. Kornstein, *Fie Upon Your Law!*, 5 CARDOZO STUDIES IN L. & LITERATURE, issue 1, 35-56, at 35 (1993), https://doi.org/10.1080/1535685X.1993.11015726.

185. Among the excellent books on this tradition are CHARLES RICE, 50 QUESTIONS ON THE NATURAL LAW – WHAT IT IS & WHY WE NEED IT (San Francisco, California: Ignatius Press, revised edition, 1999) and HEINRICH A. ROMMEN, THE NATURAL LAW – A STUDY IN LEGAL AND SOCIAL HISTORY AND PHILOSOPHY (Indianapolis, Indiana: Liberty Fund, 1998, originally published in 1947) (Thomas R. Hanley, translator). For a book focusing on this tradition in relation to economic transactions, see ALBERTO M. PIEDRA, NATURAL LAW – THE FOUNDATION OF AN ORDERLY ECONOMIC SYSTEM (Lanham, Maryland: Lexington Books, 2004).

186. *Jeremiah* 31:31-34, (Catholic Study Bible) (1112-1113) (Emphasis in italics added) (footnotes omitted).

Commandments through Moses. They might also agree with Professor Turner on the near-equivalence of human-created and natural value:

> Shakespeare's core insight is that human-created value is not essentially different from natural value. The market is a garden. The value that is added by manufacture and the reflection of that value in profit and interest are but a continuation of nature's own process of growth and development. … [T]he creative processes that produce a wildflower, a domesticated animal like a dog or horse, a yeasty loaf of bread, a violin, a house, a clock, and a poem are not in Shakespeare's opinion fundamentally different. They are all nature naturing, giving birth to new and more valuable forms of existence by recombining old ones. And if it is natural for value to increase, then it is also natural for the symbolic store of that value, money, to increase by compound interest. Shakespeare proposes a kind of gardening economics, a technique of *growing* value rather than extracting and exploiting existing stores of it embodied in raw materials such as top-soil, ores, and fossil fuels, or in the youthful strength of the laborer.[187]

Put simply, both characters are Capitalists in the Natural Law tradition.

But hereafter, the two characters would part ways. They would disagree on the methodology for interpreting a covenant: one seeks every term to be spelled out, otherwise there is no obligation; the other finds implied terms in a covenant, bolstered by the context in which the covenant is made. So, Portia sees mercy as a duty of one person to another, because God (per the last sentence quoted above) is forgiving. For Shylock, if the bargain with God is to be merciful toward Antonio, then God should have made it an express term, in God's covenant with the Jewish people conveyed through Jeremiah, to be merciful to one's debtors.

But God did not do so. Though the Old Testament (as quoted earlier, in Part II, *supra*), counsels for release of debt, the striking passage, which may explain why Shylock presses his claim, comes from *Deuteronomy*:

> [1]At the end of every seven-year period you shall have a remission of debts, [2]and this is the manner of the remission. *Creditors shall remit all claims on loans made to a neighbor, not pressing the neighbor, one who is kin*, because the LORD'S remission has been proclaimed. [3]*You may press a foreigner*, but you shall remit the claim on what your kin owes you. … [6]Since the LORD, your God, will bless you as he

187. SHAKESPEARE'S TWENTY-FIRST CENTURY ECONOMICS, *supra* note 2, 13.

> promised, you will lend to many nations, and borrow from none, you will rule over many nations, and none will rule over you.[188]

To Shylock, Portia's argument for mercy is for his "neighbors," his "kin" – fellow Jews. Antonio is a "foreigner." Here, then, is a theological tension that goes to the theory of law and its practical application to business.

There is more. There also is another tension at work in the Court Room, one between the demands of the community and the demands of the individual.

This tension heralds the modern age. For better and worse, so much of contemporary American legal life insists on the rights of the individual, and resists submersion of individual identity into the state. This individual-versus-state tension is evident from the inability of the Duke of Venice (the ruler of Venice, who presides over the Court Room scene) to adjudicate so as to deal appropriately with an obvious problem: a death penalty for Antonio, owing to his default on backing a 3,000-*ducat* loan, is a disproportionate remedy, even if it is one to which Antonio consented.

Ironically, the Duke undermines the rule of law by invoking it. To negate Shylock's right of specific performance under the bond, and thus disallow the cutting of a pound of flesh, would ruin the credit that Venice has as a society under the rule of law. Venice is a trading empire renowned precisely because merchants across the known world know their transactions will be enforced in Venetian Courts. In modern parlance, their choice of law clause is "Venice," and their choice of forum clause is "Venetian Court," because of the certainty and predictability of enforcement such clauses bring. To grant judgment against Shylock is to jeopardize that business-friendly reputation.

So, it is the demand for consistent, reliable legal judgments, a demand that arises from the needs of a mercantile economy, which trumps the call for equity, even if mercy is one of those attributes of God that manifests itself in the hearts of political and juridical officials. (as Portia says, quoted in Part VII, *supra*). In the case of *Shylock versus Antonio*, the Duke of Venice is powerless to act in an equitable fashion to settle cases in a manner he might prefer, because he would empty the law of its power to ensure Venetian stability and prosperity.[189]

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188. *Deuteronomy* 15:1-3, 6 (CATHOLIC STUDY BIBLE)(Footnotes omitted) (emphasis added).

189. Professor Heinzelman points out the debate between law and equity was one being fought out in both the Law Courts and the Royal Courts of England over the authority of the Common Law, and the authority of the Court of Chancery. *See* Heinzelman, Lecture 8, *supra* *, 53-54.

The Court of Chancery was described as a "court of conscience." *Id*. The Chancellor – the Chief Judge of the Court of Chancery – was a Royal appointment. Therefore, the

To return to the outset: doubtless, *Merchant* raises troubling questions about Judaism and early modern England, as Professor James Shapiro of Columbia University chronicles in his 1996 book, *Shakespeare and the Jews*.[190] But Shapiro's comment, that "[p]lays, unlike sermons, are not reducible to one lesson or another, nor do they gain their resonance from being about a recognizable central theme,"[191] is debateable. As argued herein, *Merchant* can be read as organized around a leitmotif, transactions. Yet, this subject is deep; as Shapiro would say, it "tap[s] into the roots of social contradictions on a stunningly regular basis…."[192]

"Regular" in today's legal world, too. Business lawyers can learn much from engaging (or re-engaging) with themes in the Shakespearean canon. Further, the stylistic elegance can inspire their oral and written advocacy. So, it should come as no surprise that in August 2024, *Forbes Magazine* ranked Shakespeare's 11 greatest plays (of his 38 total). *Merchant* placed eleventh, with *Romeo and Juliet* (1597) and *Hamlet* (1603) at first and second, respectively.[193] This ranking, in one of the world's most renowned business publications, is a reminder that modern transactional life is reflected in Shakespearean drama.

Chancellor was inclined to support the authority of the Monarch. The Common Law, however, was increasingly resistant to the pressure exerted by the Crown. Under Sir Edward Coke, the Common Law was becoming increasingly independent of Royal influence. The struggle between these two Courts – the Law Courts and Court of Chancery – reflected a struggle between (1) the growing power of the merchant class, aligned with the Court of Common Pleas and its exclusive authority over cases involving property and land, and (2) the power of the Throne, as demonstrated in the authority of the Court of Chancery to interfere in Common Law cases. *See id*. In turn, the distinction between the merchant class and the supporters of Royal prerogative was the distinction between those who saw law as a way of protecting and advancing individual rights, specifically the individual rights of the propertied class, and those who saw the law as part of the fabric that bound society together under the Sovereign. *See id.*

To be sure, these two goals were not automatically opposed. Moreover, some scholars – most notably, Spinosa in *Shylock and Debt*, discussed earlier – criticize this law-versus-equity approach to *Merchant* as excessively legalistic.

190. *See* JAMES SHAPIRO, SHAKESPEARE AND THE JEWS (New York, New York: Columbia University Press, 1996).

191. *Id.* at 121.

192. *Id.*

193. Sughnen Yongo, *11 Of The Greatest Shakespeare Plays Ever*, FORBES (Aug. 10, 2024), https://www.forbes.com/sites/entertainment/article/shakespeare-plays.