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Legal Interpretation of Shylock's Bond

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Abstract: *Current study refers to the bond and its meaning as an element of civil law in Shakespeare's play "The Merchant of Venice", which will be interpreted legally. The bond will be discussed as a unique legal element in the text and beyond it, since it can be considered as another means of historic resource for the type of a bond of the time. Additionally, another purpose is to discuss the bond taking into consideration geographical aspect, trying to find similar evidences that existed both in English and in Venetian laws.*

In order to gain credible results for the proposed aspects the tools of methodology are the following; critical discourse analysis, comparative analysis and the system of written text (systeme de l'ecrit)- will be used.

Within the results, it can be mentioned that the objective is to find out Shakespeare's legal, social and economic knowledge on Venice through interpreting the bond legally, that is to analyze the bond within the components, as a result it'll be very resourceful for the stakeholders to have knowledge on bond taking into consideration two aspects-time and geography.

Keywords: *bond, pound of flash, assumpsit, forfeit, civil law.*

1. INTRODUCTION

The aim of this article is to interpret Shylock's bond from contemporary viewpoint, to find out the historical roots of the bond and its legal meaning. This can somehow be strange, but the objectivity of the discussion is satisfied from the point that it'll interest the stakeholders to use literature source for legal studies.

Taking into consideration the suggested topic, several biographers opinions must be taken into granted concerning to Shakespeare's knowledge on legal system in general and specifically on Venetian law and economic situation, for while reading the play and having lived in Venice from my experience I state that one must have been in Venice in order to have adequate knowledge both the social, economic and legal situation that was in the period of the play and one must have visited the Ghetto in order to give the environmental situation. From my own experience and those scholars (Bassi, 2016, p. 141) that have personally been or lived in this magnificent city I have the idea that Shakespeare had the experience personally to be in Venice. Of course, it'll be unfair to state that legal elements in the play are only Venetian, as we have to consider them thoroughly in the end of which it'll be stated that he mixed the legal, social and economical elements in order to create this controversial play.

According to the bond Shylock and Antonio make a contract in which Antonio will lose a pound of his flesh if he does not pay back money borrowed for Bassanio. The two men verbally solidify the bond and Shylock takes Antonio to the notary. The bond between Shylock and Antonio becomes problematic at the play's end, when interpreting it in multiple ways; contract law overall lacked consistency, and religion was a strong argument while defending it in court. The issue here is that there exists difference between justice and righteousness which is another issue for discussion.

2. LITERATURE REVIEW

A decent amount of studies has been done on Shakespeare and his knowledge on legal aspects, but as far as this article's aim is only the interpretation of the bond, I have considered only those ones that are concerned with Shakespeare's biography and his connection to legal aspects. And accordingly, having the objective to find out these things, I have considered the most prominent ones in order to justify the suggested objectives.

Thus, in the chapter "Shakespeare as a Lawyer" of the book "The Shakespeare problem restated" written by a noted barrister and Member of Parliament, Greenwood claimed that Shakespeare's plays and poems "supply ample evidence that their author . . . had a very extensive and accurate knowledge of law". He quotes Lord Campbell: "While novelists and dramatists are constantly making mistakes as to the laws of marriage, of wills and inheritance, to Shakespeare's law, lavishly as he expounds it, there can neither be demurrer, nor bill of exceptions, nor writ of error". Edmond Malone states; "His knowledge of legal terms is not merely such as might be acquired by casual observation of even his all-comprehending mind". And Richard Grant White mentions: "No dramatist of the time . . . used legal phrases with Shakespeare's readiness and exactness . . . legal phrases flow from his pen as part of his vocabulary, and parcel of his thought" (Greenwood, 1908, p.371-373). Another author notices Shakespeare, as well as his audience, had negotiated and litigated contracts, including commercial agreements and marriage settlements (Schoenbaum, 1975, p. 187).

Holderness states that there is no compelling evidence to indicate that Shakespeare ever travelled abroad, so he probably did not have direct access to such places as Padua and Rome and Venice. …Then spatial location is merely a convenient environment for the unfolding of the universal human drama, for stories of love and hatred, revenge and forgiveness, trust and betrayal, marriage and murder that happen in all places and at all times. Venice, Rome, Verona … 'Jerusalem, Athens, Alexandria/Vienna, London' … as in T.S. Eliot's homogenized modernist Europe, the essential Shakespeare might consist in archetypes of human experience relatively independent of time and of place.

A standard historicist approach, wedded to chronology as the organizing principle of historical development, would insist that the relevant and significant Venetian content and character of these plays must have been restricted to such knowledge as the dramatist could, at the time, have been capable of acquiring (Holderness, 2010, pp.2-3).

It has in the past, and again more recently (Bassi, 2016, p. 141, Mahood, 2003, pp. 12-13) been suggested that Shakespeare must have visited Venice, since his knowledge of 'local colour' was so accurate and detailed. But then dismissals of the improbability of this claim are usually accompanied by observations to the effect that much Venetian detail in Shakespeare is in fact inaccurate or incomplete.

In Renaissance England (Harmon, 2012, pp.4-5) the understanding of the law's philosophical underpinnings was basically that of Thomas Aquinas; law as an ordinance of reason for the common good, promulgated by him who has care of a community. In addition, four types of law of Thomas Aquinas were behind what Elizabethan men and women actually meant when they used the terms eternal law (law of God), natural law (the part of external law discoverable to man), human law (derived from operation of human reason), divine law (revealed to man by the Church and Scripture).

The nuances of a failed contract in "The Merchant of Venice" would have been quite understandable to this audience. The age of Shakespeare was also the age of Sir Edward Coke, the great common law jurist of the early modern period. Coke's modern biographer Allan Boyer states; "What Shakespeare has been to those who write in English, Sir Edward Coke has been to the lawyers of the English speaking world" (Boyer, 2003, p.267).

While Shakespeare was writing "The Merchant of Venice" 1596-1598 (Garber, 2005, 83), Coke was litigating Slad's case, 1597-1602. Slad's case, involving a contractual dispute for the sale of a wheat any rye field, is the seminal precedent for modern contract law, implying the promise to perform the terms of the bargain- an assumpsit in every executor contract. Slad's case underscores the absolute requisite of consideration-a quid pro quo- to form a valid contract. After acceptance consideration must be; these are the elements for the formation of a binding contract (Richard, 2009, 321).

"Shakespeare playfully shuffles the legal requirements for an effective contract, a sleight of hand also evident in his plays written for and performed at the Inns of Court" (Cook, 1981p. 17).

The correct process of the way in which legal contracts were made, is thus being shown. The distinction is also made between a single bond and a regular bond which adds credibility to this important process. E. J. White, a legal historian, defines this difference: "... the distinction between a singular bond and a regular bond with principal and surety, in common form, is recognized by the Poet in Shylock's request for a "single bond", but in demanding the sealing of such a bond, the English legal requisite to a valid specialty contract is likewise recognized (White, 1911, p.113).

N. L. Jones, an economist and legal scholar, emphasizes that during the sixteenth century, bonds were constructed in such a way which guaranteed the lender at the very least, his or her principal, "the merchant has succeeded in having the repayment of the principal guaranteed" (Jones, 1989, p. 135).

According to Christopher W. Brooks the conditional bond was 'the most significant single legal ligament in early modern society' and suits over bonds in Common Pleas and Queen's Bench appear to have increased by over 500 per cent between 1560 and 1606 (and by almost 800 per cent between 1560 and 1640) (Baker, 2005, p. 112).

In Shakespeare's time Bonds were not new, but Elizabethans witnessed an explosion in their use in the 1580s and 1590s that bordered on an epidemic. In a rapidly expanding but volatile economy, where chains of credit were becoming ever more complex and defaults common, more and more individuals chose to rely on these written devices. Bonds brought certainty to oral agreements, by recording their details in a durable form, authenticated with signatures and seals, and provided an incentive for their observance through stiff penalties, commonly 100 per cent or more of the value of a debt (Simpson, 1975, p. 83).

As Stretton states, one of the ironies of the drama in "The Merchant of Venice" is that, in England, merchants largely avoided relying on conditional bonds because of their inflexibility (as did solicitors and barristers). Nevertheless, hundreds of thousands of other English men and women did put their faith in these precursors to modern contracts. When bonds worked as intended they did not become the objects of lawsuits. However, when they became the subject of disagreements they could produce verdicts at common law that could be characterized as perfectly just or unusually harsh depending on the view of the beholder. Londoners steeped in these contests, some cynical about a common law that condoned double payments for a single debt, others wary of equity courts that ignored signed and sealed legal agreements, made the perfect audience for this 'comedy' about human trust, risk and legal promises, as well as religious faith and love (Stretton, 2010, p. 125).

In regarding to the validity of the bond, several authors' discussions have been considered. Any suggestion that the penalty was never seriously proffered is rendered moot when Antonio agrees to its enforceability in open court. Indeed, both Shylock and Antonio ask the court for the enforcement of the penalty. Without any dispute between the litigants as to the enforceability of the bond, there is little for equity (or the court) to do: there appears to be no conflict between the law or the litigants for the court to resolve and therefore no room for equity to operate (Bilello, 2006, p. 113).

Consider the feasibility of the bond, here it's appropriate to mention Niemeyer's approach, who states that the contract according to which Shylock was entitled to a pound of his debtor's flesh is actually valid and enforceable according to the laws of Venice at the time of the action of the play. But the whole world thinks the validity of this agreement should not be taken seriously; Shylock alone has complete faith in the inflexibility of the law, and because of this almost stubborn confidence he puts the Doge and the Senate in a most painful situation (Niemeyer, 1915, pp. 20-21).

The legal basis of the flesh-bond is to be found in the Laws of Twelve Tables of the ancient Rome. "The cruelty and harshness of the early law of debt, among the Romans, were exceedingly great" wrote Obenchain in 1928. Roman law knew not only measures directed against the property of the debtor, but those against his person. Once the Roman citizen-soldier had to give all that he had as security, the only means left for him was the pledging of his own body to his creditors as security for the repayment of the loan. The contract of that pledging was called "nexum". The Laws of the Twelve Tables promulgated in 450 BC included the rights of the creditor to the physical possession of the debtor's body and the taking of his life. We find a predecessor of the flesh bond story appearing in The Merchant in Rule 6. on Table III: "After the third market day the creditors may cut their several portions of his body; and any one that cuts more or less than his just share shall be held guiltless" (Obenchain, 1928, pp. 169-200).

What refers to the validity of the contract in terms of the forfeiture of a pound of flesh, it's worth mentioning that such agreements existed not only in the early middle ages but in the 13th, 14th, and 15th centuries in Germany, Scandinavia and Italy and have been recognized as legally valid, as in the following examples (Karpov; Alvaro; Assini; Balletto; Basso, 2018, pp.53-56).

Another solid opinion was taken into consideration- Hadfield's statement, that Venetian law represented for the first time on the English stage, presented a challenging prospect (Tosi, Bassi, 2011, p.77).

3. METHODS

The tools of methodology are strict and accordingly considering as a special approach to current article critical discourse analysis will be as a main working tool which focuses on the discursive conditions, components and consequences of power. And this inter-disciplinary discussion is conducted within a continuum of greater or lesser degrees of synthesis with other disciplines, the approach of the observations and perceptions of law by Shakespeare in the literary canon to provide cultural comparisons and points of reference in the discussion of legal aspect, as a result comparative analysis are designed to be done in order to relieve its essence fully and to show that such kind of bond is valid in terms of its existence and this bond is a fruit of Venetian Civil law. Another important method- the concept of the system of written text (systeme de l'ecrit)- will be used, as it includes aspects of both methodology and interpretation with reference to agents of production (authors, editors, publishers).

4. FINDINGS

On the basis of discussion the findings are as follows; Shakespeare had clear knowledge of Venice as a social and economical state for writing "The Merchant of Venice"; he was aware of geographical segregation of the Jews and even described everything so impressively that one has the feeling that Shakespeare might have visited Venice. The other important fact is that he had decent knowledge of the Venetian legal system on behalf of the accessibility to many books and stories about very famous city.

5. DISCUSSION

Having the aim to find out that Shakespeare had clear knowledge of social, economical and legal system in Venice, the current discussion will be dwelled to the resources that the writer used and upon which he managed to describe a pure legal bond type. Another aim of this article is to discuss the bond as a legal element from contemporary viewpoint.

Written in late sixteenth century England, "The Merchant of Venice" is a seminal work of Elizabethan literature. The core of the play is the bond between a Jewish moneylender, Shylock, and a Christian merchant, Antonio, on behalf of the third part, upon whose credit his friend Bassanio acquires the loan. As a result for the enforcement of the bond Shylock would take a pound of the merchant's flesh if Antonio defaults. Being unable to provide the assumpsit, Shylock demands his bond from Antonio. In order to solve the issue, a trial is held where judges are unable to free Antonio from the assumpsit by codified law, yet this is another issue for discussion.

Many of Shakespeare's contemporaries, such as Ben Jonson, John Webster, and many others wrote plays and other works of literature set in Italy without being known to have visited it. Of Venice, E.H. Sugden, in his invaluable "Topographical Dictionary to the Works of Shakespeare and his Fellow Dramatists (1925)", remarks that 'none of our dramatists show any personal knowledge of' the city-state, and that 'the local references to it are of the most general character. Ben Jonson, in Volpone, mentions more details than any other of them, but even they are meager and derived from hearsay'(Sugden, 1925, p. 543).

There are several key points that as a resource for "The Merchant of Venice" Shakespeare used "Il Pecorone" written by Giovanni Fiorentino which recounts the trials of Ansaldo – a wealthy merchant who gives his godson a ship laden with goods to trade with abroad. Attempting to win the hand of a lady, the godson twice loses all his possessions. Ansaldo repeatedly provides for him by borrowing money from a Jewish man, who refuses to be bought off when the debt is due. A court case ensues with the Godson's new wife disguised as a lawyer. Ansaldo prevails and the bond is ripped up. Another thought prevails that Shakespeare used "Gesta Romanorum" which is a medieval collection of stories that was translated around the time "The Merchant of Venice" was written. And the last version is that Shakespeare was influenced by Christopher Marlowe's "The Jew of Malta".

Accordingly, I state that Shakespeare might have used the above mentioned three works while writing the play, but at the same time I don't exclude the fact that he might have visited Venice. Of course, a good writer can reinterpret on the basis of a resource material, but one thing is clear that Shakespeare might have visited Venice, as the Venetian colours are live. I am inclined on Bassi's opinion that when there is no evidence for a fact (in this case that Shakespeare came to Venice) and there is a

simpler explanation for the alternative hypothesis (he had easy access to many books and stories on a very famous city), there is no reason to change once mind. … There is no evidence that he did, but no doubt he visited it with his mind over and over again seems to me to go in that direction (Bassi, 2016, pp. 141-142).

Another thing concerning to the findings is the discussion of a bond as an element of civil law in the play, upon which I'll consider it as a legal illustration of the time. In Shakespeare's time, economic contracts were more like social promises than written law, although still made formally and purposefully to seal an agreement.

Some scholars, among whose is Granville Barker (Barker, 1958, p.335), state that "The Merchant of Venice" is a fairy tale. There is no more reality in Shylock's bond, but on the contrary with all the archival evidences it is stated the type of bond was familiar in this period, upon which the controversial play was written.

According to Black's Law Dictionary (Black, Nolan, Nolan-Haley 1996, p. 1248), Latin term "a quid pro quo" translates as "something for something". The mutual consideration that passes between two parties to acontractual agreement, thereby rendering the agreement valid and binding. Fundamentally, no contract is formed without consideration. This rule of formation was the foundation of contract law well before Shakespeare's time and continues today. For being enforceable, these elements must be definite, and accordingly consideration must be present when the contract is signed. In "The Merchant of Venice" Shakespeare plays with these legal principles, lead us to believe, that in case of the suggested contract offer and acceptance are clear and thus a pound of Antonio's flesh as a consideration can be regarded valid. Additionally I'll interpret not only these two elements, but also the other ones that exist in contemporary civil law.

Venice, according to the play and history review, is a city based on commerce with its law of contract enforced. Even if a pound of flesh was demanded, it could be considered the object of the bond. Otherwise the law would lose its legitimacy and all trade and justice wouldn't exist. As Antonio observes about his bond of flesh with Shylock, who had demanded its fulfillment:

> The Duke cannot deny the course of laws;
> For the commodity that strangers have
> With us in Venice, if it be denied,
> Will much impeach the justice of the state,
> Since that the trade and profit of the city
> Consisteth of all nations (Shakespeare, 2006, p.132).

Thus coming back to the issue of the bond and its validity, it must be mentioned that such kind of bonds were possible and, according to the law of that time, valid, as mentioned in the archival materials. In this regard, one important issue is that a creditor has taken the advantage of his right to the mutilation or the death of his debtor never and nowhere. Such bonds, in terms of the forfeiture of a pound of flesh, existed not only in the early middle ages but in the 13th, 14th, and 15th centuries in Germany, Scandinavia and Italy and have been recognized as legally valid. In Genoa's city archives a document from the year 1279 is found recording a matter which came before the notary Pietro Bargone. Here is recorded an agreement between a Sicilian girl Cerasia and a certain Jacobus, by which the former was bound to serve her master in all his commands and the latter to give her lodging and food in addition to certain money payments, and it was made upon this condition: that if she failed to do any of the services of Jacobus or disregarded any of his commands then Jacobus had the right to cut off her nose, or a hand or a foot, and it was agreed that having thus penalized his servant he should not be made amenable before a court of law. Another example is that in a Cologne record of a case arising in 1263 before a court and jury a debtor promised that if he failed to carry out his part of the contract he should allow himself to be beheaded. And in a Silesian document of 1250 a Konrad Blind subjected himself before the magistrates to the penalty of death if he committed certain acts against the church. The magistrates were then empowered to demand the forfeiture of his life. But nothing speaks more convincingly for the earnestness and the frequency of such contracts than the fact that in a great number of legal authorities of the Middle Ages it is forbidden to game away one's eye, nose, ear, hand or foot, a custom which Tacitus reported to be common among the Germans (Karpov; Alvaro; Assini; Balletto; Basso, 2018, pp.53-56).

According to Encyclopaedia Britannica "bond" is a formal written agreement by which a person undertakes to perform a certain act (e.g., appearing in court or fulfilling the obligations of a contract). Failure to perform the act obligates the person to pay a sum of money or to forfeit money on deposit. A bond is an incentive to fulfill an obligation; it also provides reassurance that compensation is available if the duty is not fulfilled. A surety usually is involved, and the bond makes the surety responsible for the consequences of the obligated person's behavior.

In Shakespeare's time contracts bore little relation to law, as the key elements of offer and acceptance and valuable consideration had not yet fully developed. As Simpson has explained, 'modern contract law evolved from the action of assumpsit [the failure to fulfill promises], and we therefore find the evolution of assumpsit peculiarly interesting', but equating contract with assumpsit can produce 'a distorted view of the contractual scenery' (Simpson, 1966, p. 394).

As seen from definition the bond is a legal agreement in which five elements generally exist- (1) competent parties, (2) agreement, (3) consideration, (4) lawful object, and (5) prescribed form.

A surety bond serves as a written agreement that guarantees the performance of an obligation. It usually provides financial compensation to be paid if a Principal fails to perform as specified in the bond contract. A surety bond is not insurance, but a risk transfer mechanism. It shifts the risk of conducting business with the **Principal** from the **Obligee** to the **Surety**. The surety bond contract is initiated into action when two or more parties create legally enforceable duties that did were non-existent before.

In order to consider the validity of the bond current discussion will be done taking into consideration the archival materials of Genoa and existing definition, elements of a bond.

First competent is **the parties** which refers to persons that enter into binding agreements and have the legal capacity to perform. For those who enter contracts that have restricted legal capacities may include, minors, elderly, intoxicated persons, and mentally-disabled persons. In the subject matter there are two parties which make a bond on behalf of the third party; Shylock on the one hand, and Antonio, on the other, make a contract in which Antonio will lose a pound of his flesh if he does not pay back money borrowed for Bassanio;

> Antonio; Shylock, albeit I neither lend nor borrow
> By taking nor by giving of excess,
> Yet to supply the ripe wants of my friend
> I'll break a custom. (to Bassanio) Is he yet possessed
> How much ye would?
> Shylock; Ay, three thousand ducats.
> Antonio; And for three months.
> Shylock; I had forgot, three months. (to Bassanio) You told me so. (to Antonio) Well then, your bond. And let me see – but hear you,
> Methoughts you said you neither lend nor borrow
> Upon advantage.
> Antonio; I do never use it (Shakespeare, 2006, p.26).

Second element is **agreement or acceptance** which means "a manifestation of mutual assent between two or more parties." Acceptance occurs when there is an act of agreement by both parties. Until this takes place, the offered bond can be recalled or revoked. Similarly, a signed agreement of indemnity becomes binding only when the Surety performs some action based upon it. This "act" is the issuing of a subsequent bond. In addition to the above part, which is the proof of Antonio's acceptance, another important point is during the trial scene- Portia's question to Antonio;

> Portia; Do you confess the bond?
>
> Antonio; I do. " (Shakespeare, 2006, p.120)

According to legal materials and dictionaries, a vital element in the law of contracts, **consideration** is a benefit which must be bargained for between the parties, and is the essential reason for a party entering into a contract. Consideration must be of value (at least to the parties), and is exchanged for

the performance or promise of performance by the other party (such performance itself is consideration). In a contract, one consideration (thing given) is exchanged for another consideration. Contracts may become unenforceable or rescindable (undone by rescission) for "failure of consideration" when the intended consideration is found to be worth less than expected, is damaged or destroyed, or performance is not made properly.

Again in the above mentioned part between Shylock and Antonio, the consideration exists in terms of three thousand ducats and the continuation for consideration in terms of forbearance is as Shylock suggests;

> If you repay me not on such a day,
>
> In such a place, such sum or sums as are
>
> Express'd 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. (Shakespeare, 2006, p.120)

A contract must have **a legitimate object** to be legally enforceable. That is why a Surety exhaustively reviews the bond form, its terms, and conditions, to prevent entering into an illegal agreement, where the rights and obligations of the parties involved become confused. A lot of discussion, as mentioned before, have been done considering "pound of flesh" illegitimate, but I am inclined that Shakespeare used a legitimate object for the bond, and this viewpoint can be supported on behalf of the archival material found in Genova and the trial scene, the court (Bilello, 2006, pp. 113) neither enjoins the enforcement of the penalty nor mitigates its recovery. Instead, the court expressly finds the bond and its penalty enforceable. "You must prepare your bosom for his knife" (Shakespeare, 2006, 182), Portia directs Antonio,

> For the intent and purpose of the law
>
> Hath full relation to the penalty,
>
> Which here appeareth due upon the bond.

Considering the legitimate object, it's worth mentioning either that a lot of evidences has been provided above in order to prove that during this period such type of bonds existed' accordingly in the 13th, 14th, and 15th centuries in Germany, Scandinavia and Italy such bonds on the core of which the legitimate object it should be stated that the creditors may cut their several portions of the body, which must be interpreted verbally; that is no more or less, unless stated amount in the bond. Thus, this element is also feasible for the bond type of the time.

Prescribed form which can mean any piece of paper that has on it the signature by persons authorized to sign bonds under Powers of Attorney. In this case it's worth mentioning that Shylock kept the prescribed form of the bond and suggested Antonio;

> Go with me to a notary, seal me there
>
> Your single bond; and, in a merry sport. (Shakespeare, 2006, 31)

These were the main elements of an elementary bond according to which I tried to discuss on Shylock's bond in order to interpret it from legal aspect purely, in order to have the inclination this bond can serve as a resource for bond types of the time in Venice.

6. CONCLUSION

Thus, according to the literature review and methods, upon which this article was composed, I want to state that Shakespeare, in addition to using other literature resource, had adequate knowledge of Venice and its social, economical and legal system on behalf of the thought that he might have visited Venice and seen both the Ghetto and minorities relationship with the natives, as stated from the archival material, the legal "prop", in this case Shylock's bond is so live and feasible that it's very hard to consider it as non-valid and "The Merchant of Venice" as a fairy tale, in general.

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