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THESIS

Pethő Nóra
Angol szak
Anglisztika

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DIPLOMAMUNKA

THESIS

*A velencei kalmár jogi megközelítésben –
A jog mint fikció A velencei kalmárban*

*The Merchant of Venice from a Legal Point of View –
Law as Fiction in The Merchant of Venice*

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Abstract

One of the main themes of William Shakespeare's problem play from 1596, *The Merchant of Venice*, is law. Inspired by the different aspects of the law present in the play, the paper will discuss

(a) the legal background of the drama, and more specifically, the law in Elizabethan England;

(b) the bond as a legal instrument;

(c) the trial scene (Act IV Scene i), including the judgement of Portia;

and finally,

(d) the rule of law in the City State of Venice as represented in the play.

Investigating those main topics, it will be demonstrated that there is a lack of clarity as to the applicable law, and that such aspects of the law as contractual consent, the binding nature of agreements, fair trial, justice, or the rule of law are only pretences.

By suggesting a legal reading to the three main plots of the drama – the flesh-bond plot, the casket plot, and the ring plot – I argue that the idea of law, as a pure system of norms governing behaviour and aiming to guarantee truth and justice, is a mere fiction.

Instead, *The Merchant of Venice* highlights law's flexible and unpredictable nature and presents law rather as a tool to achieve different private or public goals. Therefore, law in the play is used or abused as a means in the struggle for happiness.

In addition to drawing on relevant literary criticism, the dissertation will examine legal history, theories of legal philosophy, and some general principles of law. In the course of my discussions, the subject of legal language, meaning and judicial interpretation will also be investigated.

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Note on the Text

Quotations and the names of the persons of the play from *The Merchant of Venice*, unless indicated otherwise, are cited from the text as edited in *The New Oxford Shakespeare Edition* (Oxford University Press, 2008. Edited by Jay L. Halio), and line numbers also refer to that edition.

INTRODUCTION

“English Renaissance literary studies cannot plead ignorance of the law because at various turns, legal discourses, mechanisms, and practices facilitate, enable, constrain, impede, and mediate the production of literature.”

(Grant Williams, ‘Law and the Production of Literature: An Introductory Perspective’)¹

The Merchant of Venice can be seen as a play of fake appearances². An example for misleading appearance can be the casket puzzle in the play: not the golden nor the silver, but the least attractive lead casket holds the portrait of Portia, and is, therefore, the right choice for the winning suitor. Or, for example, Jessica seems to be a humble Jewess, but she runs away from her father’s house and steals her father’s money and jewels to become a Christian wife. In the trial scene (Act IV Scene i) Portia plays the role of Balthasar, the learned Doctor of Laws, while Nerissa, her maid appears as his clerk, both disguised. Portia, acting as judge, praises mercy in her soliloquy and then mercilessly destroys Shylock; her verdict holds that Shylock the predator is turned into victim; and the list could be continued.

However, *The Merchant* is also a play about law. We find an exuberance of legal themes and issues in the play, such as the status of Jews, the interpretation of law and contracts, or judicial independence. More precisely, the play raises questions such as: *Is it just to treat certain citizens differently than others, and if yes, on what basis? What is an agreement under the applicable law? How should an agreement be interpreted in case of dissent? In case of divergences of views on the interpretation of a contract or of a legal norm, what methods of*

¹In: Beecher et al. 14.

² See for example, Hamilton 126, Levin 36, Stretton 85.

interpretation should be applied and, preferably, to what results should it lead? What values should the law aim to protect, if any? What is 'good law'? What is the relationship between law and morals? What is the role of judicial interpretation? What is justice? Should law always be just? And, as a general question, What is the nature of law as such? Legal philosophy has aimed to answer such questions since antiquity and has kept not only legal philosophers but also laymen busy looking into these issues ever since.

It is no wonder, therefore, that hardly any other play of Shakespeare seems to have intrigued more lawyers than *The Merchant of Venice*. The play has been an inspiration for lawyers for centuries for the presentation and the analysis of the legal issues of the play. The story of Shylock the Jew and Antonio the merchant seems to have been a general favourite of such respectable lawyers as Rudolf von Jhering or the teachers of the Cardozo School of Law³.

The present thesis paper does not only aim to be yet another writing on *The Merchant of Venice* from a legal point of view: my intention is to investigate the concept of law as fiction in the play, a topic not widely considered so far in either the literary or legal discussions of the drama.⁴

For the purposes of the present paper, it is necessary to define the two key terms in the title: "law" and "fiction". For my thesis I use the term "law" in its abstract sense of a system of norms that regulates the establishment and operation of political entities, including the state, and the rights and obligations of persons. However, the term "law" may also appear in the present paper in the sense of a written source of law, or "code", as necessary. As regards "fiction" I will use it in the sense of "a product of the imagination", "falsehood", "appearance", or "not real".⁵

³The law journal of the Cardozo Law School, the *Cardozo Studies in Law and Literature* (nowadays called *Law and Literature Journal*) dedicated a whole number to the discussion of *The Merchant of Venice*. (Spring 1993, vol. 5 no. 1.)

⁴My law degree and my current job as lawyer-linguist provide a personal incentive to try to further expand on the issue of law as fiction in *The Merchant of Venice*.

⁵The subject matter of the present thesis paper is different from that of the branch of literary theory which investigates the relationship between literary and legal fiction on the basis that both involve the creation of an

On the one hand, law *is* fiction in the play, since--stating the obvious--*The Merchant of Venice* is a story invented by its author, and also because the play's fictitious legal plot refers to legal institutions and legal arguments that did not exist exactly in the form presented on stage. However, the legal plot should rather be perceived as a fine but artificial mixture of the legal realities of Elizabethan England. Therefore, this paper will also examine law and society in the late 16th and early 17th century England to an extent useful for the understanding of the play.

I will also argue that *The Merchant of Venice* sheds light on the nature of law in general. In my reading the play suggests that *law as an autonomous phenomenon is a fiction*, because law cannot exist independently from other, e.g. ethical or religious norms. In addition, law is not always capable of guaranteeing predictability, stability, order and justice.

My discussion of *The Merchant of Venice* is confined to the discussion of (a) the legal setting; (b) the bond, (c) the trials and the final judgement, and (d) some characteristics of the State of Venice as represented in the drama. Legal language, meaning, and interpretation will be discussed in subsequent subchapters. I will argue that (a) the applicable law, (b) the contract, (c) fair trial and justice; and (d) the rule of law are all fictitious in the play, and law is not presented in the play as a system of norms to ensure justice but as plain means to achieve covertly particular aims, such as happy marriage, gaining of property, taking revenge, or to satisfy masochistic, self-sacrificing sentiments.

As for the methods of investigation of the subject of the present paper, I will rely on legal history, legal philosophy, and some general principles of law, in addition to relevant literary criticism. Although several of Shakespeare's plays contain legal questions either as central or

imaginative story with the aim of persuasion and the adoption of a judgement. In that context "fiction" means "story", "narration", "imaginative writing", "story-telling". In that field of literary theory see for example Kathy Eden's book entitled *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton University Press, 1986) in which Eden claims that the literary theory enshrined in Sir Philip Sidney's *An Apology for Poetry* (c. 1580) is basically Aristotelian.

just as atmospheric side elements, the *Merchant* is an outstanding example. Beyond the main plot of the play, it also shows some elements of legal accuracy. For example, the main plot focusses on a 'conditioned bond', a legal tool widely and frequently used in Elizabethan England and the climax of the drama is certainly Act IV with its trial scene involving allusions to the legal and political public debates and ending with a judicial argumentation and sentence that could have been typical in Shakespeare's time. There are several authors who assume that Shakespeare was a lawyer or had legal education⁶. However, it is more probable, as Underhill suggested, that "despite Shakespeare's frequent use of legal phrases and allusions his knowledge of law was neither profound nor accurate" (381).

It is important to emphasise already at this point that the *Shylock v. Antonio* case is a fictitious case, and that it is impossible to clearly establish all the facts of the case due to the inconsistency and incoherence of the text of the bond and the relatively high number of unknown elements in the play. Bearing this in mind, it can be stated that the unknown or incoherently presented elements were presumably not considered essential by the author for the purposes of the play, therefore only those elements will be focussed on that are important for the discussion of law as fiction. The most important for such investigation is the flesh-bond plot: Antonio the merchant, in order to help his friend Bassanio to be able to woo Portia, borrows three thousand ducats from Shylock the money-lender and, and Antonio issues a bond in which, for the case of non-payment, he undertakes to let Shylock have a pound of flesh from his body. Antonio fails to pay and Shylock seeks enforcement in court where Portia disguised as a "doctor of laws" passes a judgment dismissing Shylock's claims, basing the judgement on legalistic arguments

⁶See for example Alexander, Mark. "Shakespeare's Bad Law". Ever Reader No.10, Winter/Spring 2000. Everreader.com/BadLaw.htm. Accessed: 12 March 2006. Despite the academic consensus that Shakespeare wrote the works bearing his name, the proponents of the Baconian theory of Shakespeare authorship claimed to have found legal allusions in the plays publicly attributed to Shakespeare. This paper does not intend to discuss authorship issues, though.

and sticking to the letter or the law, and by that verdict she saves Antonio's life and the dignity of the State of Venice.

Accordingly, I will focus on the scenes and parts of the text that are most relevant for an analysis from a legal point of view: entering into the agreement between Shylock and Antonio, i.e. the creation of the bond (Act I Scene iii) and the trial scene (Act IV Scene i) in which the audience can witness a legal assessment of the bond by a 'judge'. However, the casket plot, according to which suitors are to choose from among three caskets to win the hand and wealth of Portia, can be seen as a prelude to and reflection of the trial scene in Act IV.⁷ In addition, I will claim that the third plot of the drama, the ring plot, in which Bassanio and Gratiano give away the rings received from Portia and Nerissa respectively, also contains a contract, a breach of contract and a trial ending with a judgment. Accordingly, all three plots—the flesh-bond plot, the casket plot, and the ring plot—can be read as legal plots.

⁷Cf. Yoshino 201. In order to highlight the equal importance of these two plots, Yoshino refers to John Gross's *Shylock: Four Hundred Years in the Life of a Legend* (1992), quoting the title page from the 1600 folio edition of *The Merchant of Venice*, which described the play as "*the most excellent Historie of the Merchant of Venice. With the extreame crueltie of Shylocke the Jewe towards the sayd Merchant, in cutting just pound of his flesh: and the obtayning of Portia by a choyse of three chests.*"

LAW AS FICTION IN *THE MERCHANT OF VENICE*

Shylock. *Is that the law?*
(MV. IV.i.310)

I. THE LEGAL BACKGROUND--THE APPLICABLE LAW AS FICTION

In the case of a legal assessment—whether it is part of a legal opinion or a court judgment—it must be determined which rules apply to a particular case on the basis of their territorial, temporal, personal scope and objective. Similarly, to start a discussion of *The Merchant of Venice* from a legal point of view, in principle, it should at least be more or less clear under what legal rules and principles that discussion should take place. So, the first and preliminary question one should ask is: under which law or laws should the play be analysed? In short and in legal terms: what is the applicable law? Or in other words, which written legal norms or case-law one should take into account in order to answer the legal questions of the play? Should it be the laws of the late 16th century Venice, as suggested by the setting of the play? Or should Elizabethan law be primarily relied on, as suggested by the place and time of the birth of the play, and also the law common to the author and the original audience of the play? Or should it always be the contemporary and applicable law of the given reader?

In my view, the answer is: all of these laws and none of these laws are applicable in the context of the play. Clearly, there is a lack of unambiguous instructions in the text on what the applicable law should be.

True, the characters of the play refer to the laws of Venice, for example in the form of “decrees of Venice” (IV.i.101), “Venetian law” (IV.i.175), “this strict court of Venice” (IV.i.201), and the “laws of Venice” (IV.i.308 and 344). However, the provisions of Venetian law are only indirectly referred to by certain characters of the play, and we may suppose that Shakespeare, the man from Stratford, could not have had a thorough knowledge of 16th century Venetian law. The absence of the Venetian legal framework should be clear from the trial scene’s court procedure. Contrary to the procedure displayed in Act IV, in which a civil procedure suddenly turns into a criminal one, 16th century Venice, as Bárándy specifies, had a series of specialised courts to deal with particular matters (176-177). For criminal cases, there was the *Domini de nocte (Signori di notte)*. The *Curia Petitionum*, for adjudicating loan agreements and other cases of civil nature between Venetians and aliens was established already in the 13th century. The *Iudices et advocatores per omne scurias* was an additional court, whose function was to delegate experts to any court in case of absence of any judge or other participant to the court procedure, which could have acted in Shylock and Antonio’s case in the absence of Bellario.

Being unable to clearly identify the rules of applicable law, it is important to note that the legal situation must be considered as fictitious. Most probably the setting of a clear, coherent and historically correct legal background was not important for Shakespeare and he is using the evergreen theme of law, as he did in a great number of other plays of his⁸. After all the most likely aim of *The Merchant* was to entertain and not to set a precisely and perfectly realistic case study on stage.

Also, the play concerns questions on the nature of law in general, which is independent from any legal rules actually applicable at a given place or time. For example, the relationship of law

⁸ For an incomprehensive list, see for example: *Henry VI*, *Measure for Measure*, and *A Winter’s Tale*. In general, a legal technical vocabulary is extensively used in Shakespeare’s plays and sonnets.

and mercy is a very general and eternal question of legal philosophy. In such cases, the applicable law is irrelevant. This reading seems to be corroborated by the opinion of Niemeyer, who writes:

Shakespeare kept the whole action so far removed, both locally and nationally, from his theatre public that only two standards by which the legal problem may be judged enter into the question: either the special law of Venice or those general conceptions of justice which make up the law of nature. In this alternative it is not difficult to judge, for the whole foundation of the piece is purely Venetian. Thus the standard of the law of nature must be withdrawn or at least modified until it plays only the role which is universally assigned to it, that is, as *the expression of legislative criticism*. (emphasis added, 29-30)

While I agree with Niemeyer that the applicable law is, at the end of the day, irrelevant, as the play can be read as one raising general questions about law (and also the related concepts of justice, mercy, proportionality, fair trial, just to mention a few), I do not share Niemeyer's view concerning the distance between the applicable law and Shakespeare's audience. "Local and national" distance, as Niemeyer calls it, cannot be taken seriously by any audience. It would be blindness to assume that the audience would strictly interpret the setting and would look for no link with the legal realities of the time and place of the presentation of *The Merchant* in 1596, i.e. Elizabethan England.

In fact, Shakespeare's age in England was a legal age in general. From the second half of the 16th century until the Civil War law gained previously unseen importance as a decisive social factor, which was becoming manifest in several ways. The common law experienced a phenomenal growth, both in the number of practitioners and jurisdictional power (Geng 97).

Also, there was a sharp increase in civil litigation and courts were flourishing.⁹ Stretton points out that “[in] the 1580s and 1590s disputes over ... obligations drove the most dramatic litigation boom in English history” with “one million civil suits a year by 1588” in England and Wales (74). In the late 16th century nearly every adult in England was engaged in a lawsuit or was preparing for one (MacKay 371). Consequently, the number of legal officers tasked with the administration of the law grew steadily, as did the rate of matriculation at the Inns of Court (Knafla 237 qtd. in Geng 97). The Inns of Court were not only inhabited by practising barristers, but they formed a lively community (Underhill 381). The four Inns of Court – the Middle Temple, the Inner Temple, Lincoln’s Inn and Gray’s Inn were at the height of their glory in Elizabeth’s reign (Underhill 408-409). Most importantly, as Underhill mentions “the Inns of Court men delighted in “masques and revels” and dramatic performances”(381). Also, it was a learning method for lawyers to act out legal procedures in the form of moot courts, i.e. mock judicial proceedings set up to examine a hypothetical case as an academic exercise.

Lawyers, therefore, played an important role in the creation of Elizabethan theatre also in the literal sense of the word, as barristers performed plays in the halls of the Inns of Court at festive seasons. It was the Hall of the Inner Temple on Twelfth Night 1562, that the first English tragedy, *Gorboduc*, written by two members of the Inn, was first performed (Underhill 410). Shakespeare wrote *Twelfth Night* for a Christmas revel at the Middle Temple, and *The Comedy of Errors* was played in Gray’s Inn Hall in 1594 (Underhill 410-411).¹⁰ It naturally follows that

⁹Underhill 383-389, S. A. Cohen 36, and Geng 97. See also J. A. Sharpe commenting that “practically every court, whether civil or criminal, experienced an increase in business between the mid-sixteenth and mid-seventeenth centuries” (“Such Disagreement Betwyx Neighbours’: Litigation and Human Relations in Early Modern England,” in *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy [Cambridge: Cambridge University Press, 1983], 168), quoted in Geng 98.

¹⁰ For further discussion of the integration of literature and art at the Inns of Court, see Jessica Winston, *Lawyers at Play: Literature, Law and Politics at the Early Modern Inns of Court, 1558–1581* (Oxford: Oxford University Press, 2016); Jane Elisabeth Archer, Elizabeth Goldring, and Sarah Knight, eds., *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: Manchester University Press, 2011); Michelle O’Callaghan, *The English Wits: Literature and Sociability in Early Modern England* (Cambridge: Cambridge University Press, 2007).

there must have been a probably large number of law students or lawyers in Shakespeare's audience as well, which could have inspired him in the choice of subject matter in his plays.

However, "being legal" seems to have been a general way of living in Elizabethan England, and, indeed, it was a source of inspiration for artistic themes. Underhill emphasises that many authors others than Shakespeare were generous using legal phrases and allusions in their works¹¹.

Beyond a purely legal assessment of the fictitious *Shylock vs. Antonio* case (which otherwise would be a thrilling exercise in itself, and has been done by many outstanding legal experts in the past),¹² it is also useful to investigate how Shakespeare's contemporary audience could have perceived the legal issues presented in the play.

Accordingly, concerning the relationship of law and fiction, some of the main characteristics of the legal landscape in Elizabethan England need to be explored in order to be able to contribute to the better understanding of *The Merchant*. The sketching of this historical background will suggest at points that the legal elements, such as certain conditions of the bond, the tone of the legal procedure or Portia's legal reasoning, fictitious as they might seem to today's audience were, indeed, very familiar in Shakespeare's time from everyday life. Therefore, there is a difference in the perception of fiction and non-fiction by the audience, depending on the historic time period.

Underhill sheds light on some important characteristics of the legal procedure in Elizabethan England, which can be useful for an analysis of the trial scene (Act IV Scene i) of *The Merchant of Venice*. According to Underhill, "The respect paid to *forms and fictions*, and the *verbal quibbles* solemnly discussed *without regard to the obvious reality of things*, suggest to a modern

¹¹ Underhill mentions the writings of Ben Jonson, Spenser, Webster, Beaumont and Fletcher. Cf. Underhill 381-382, 385, 387.

¹² It is practically impossible to list all authors who investigated the topic, but examples are: Rudolf von Jhering, William Hazlitt, Thomas Niemeyer, Allen Axelrod, Daniel Kornstein, and Kenji Yoshino.

mind that the whole administration of justice was regarded as an *elaborate intellectual game* in the course of which *justice itself was entirely lost sight of*" (emphasis added, 389).

Bearing the above description in mind, Act IV Scene i is a perfect example of the Elizabethan court procedure and one might assume that the general tone of contemporary courts could have been a source of inspiration for the trial scene in *The Merchant*. Underhill furthermore points out that in Shakespeare's time, the most puerile distinctions were made by the judges in cases where "no sane person could have had the least doubt of the truth". For example it was adjudged by an Elizabethan court that to say of an Attorney that "he hath *as much* law as a monkey" is not slanderous, because "he hath as much law *and more also*" (Underhill 392).

A perfect example of a similar "puerile distinction" is the one made by Portia concerning the "pound of flesh" that it should not include "blood", since it is not so nominated in the bond. The example was so perfect that the 19th century German legal scholar, and without doubt, one of the most influential and most referred to, Rudolf von Jhering chose Portia's judgment to feature in his milestone work of legal philosophy, *The Struggle for Law* (Der Kampf um's Recht):

Is there any flesh without blood? The judge who accorded Shylock the right to cut a pound of flesh out of Antonio's body accorded him, at the same time, the right to Antonio's blood, without which flesh cannot be. Both are refused to the Jew. He must take the flesh without the blood, and cut out only an exact pound of flesh, no more and no less. Do I say too much when I assert that here the Jew is cheated out of his legal right? (Author's preface,iii)

It is probably not too bold for an assertion that von Jhering's view not only expresses the general sentiment of a 19th century reader, but the feelings and assessment of a modern reader as well. In 1964 Maxine MacKay still asserts that "Portia's pleading in *The Merchant of Venice* is considered a ludicrous legal process", which is a "traditional and rarely challenged view"

(371-375). MacKay still finds Richard G. Moulton's statement from 1888 pertinent in this respect:

It is manifest that the agreement as to the pound of flesh, if it is to be recognized by a court of justice at all, cannot without the grossest perversion of justice be cancelled on the ground of its omitting to mention blood. Legal evasion can go to great lengths ... [but] it is a clear impossibility to cut human flesh without shedding blood. Nothing of course would be easier than to upset the bond on rational grounds.

(Moulton 65-66 qtd. in MacKay 371)

However, the "flesh without blood" and "exact pound of flesh" (i.e. no more, no less) approach may be shocking for us in a real court, but it was probably not so in Shakespeare's time. To establish that the statement 'he hath *as much* law as a monkey' is not slanderous, because it does not include "more law than a monkey" is no better than to say that "a pound of flesh" should not include "less than a pound of flesh". Sources of legal history, therefore, suggest that the likes of Portia's pedantic and legalistic judgement were not unknown to the audience in Shakespeare's time, so despite the fictitious nature of the case of Shylock, the method and the tone of the legal argumentation of Portia as judge were not unheard of.

In short, the legal setting of *The Merchant* sheds light on the nature of law in general and is most probably a fictitious mixture of legal rules from various sources. However, a more thorough research of materials from Shakespeare's time also reveals that that legal setting contains a significant number of references and allusions to the existing Elizabethan legal landscape.

II. THE BOND -- THE CONTRACT AS FICTION

Shylock. "*This kindness will I show.
Go 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.*"
(MV. I.iii.140-148)

2.1. The flesh-bond story – the substance of the contract as fiction

The play describes a fictitious situation between characters born in the author's mind. Therefore, this analysis does not (and cannot) focus on a real legal dispute that has emerged between real parties on the basis of real and legally relevant facts. The core of the whole legal plot of the play, the agreement between Shylock and Antonio, in other words the bond, is also fictitious.

First, the contract is fictitious because it is unreal, and only forms part of an invented story. Paul Raffield refers to Harley Granville Barker's scepticism about the reality of Antonio's bond and that Granville Barker described *The Merchant of Venice* as 'a fairy tale' (Granville-Barker 335 qtd. in Raffield 70). A credit agreement secured by a pound of human flesh is a thrillingly entertaining story, and Shakespeare had several possible literary sources of the "flesh bond". The "story of the bond for human flesh is of ancient origin", and was retold many times, for example in the *Cursor Mundi*, and later in the *Gesta Romanorum*, and Ser Giovanni's *Il*

pecorone, a collection of tales dating the end of the 14th century, and printed in Milan in 1558 (Brown, xxvii-xxviii)¹³.

Second, the contract should be perceived as fictitious by the reader or the viewer, because in 2018 there is no legally organised court having a jurisdiction recognised in the legal systems of independent states to adjudicate a pound of living human flesh as assurance or penalty. Similarly, the contract must have been a fictitious one in Elizabethan England too. However, no matter how wild and fantastic it may seem, there were actual laws that allowed or even obliged one to offer a body part as penalty for non-payment. Concerning the “bond” as contract type, it was widely known and used in Shakespeare’s England. I will investigate these legal sources in the following sections.

2.1.1. Legal historical sources: bankruptcy and human body parts

The legal basis of the flesh-bond is to be found in the Laws of Twelve Tables of the ancient Rome (Brown, xxvii). “The cruelty and harshness of the early law of debt, among the Romans, were exceedingly great” wrote Obenchain in 1928 (169). Roman law knew not only measures directed against the property of the debtor, but those against his person (Obenchain 169). 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 (Obenchain 170). The contract of that pledging was called “nexum” (Obenchain 169, Földi-Hamza 479).

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 (Obenchain 173,

Niemeyer 31). 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 173).

According to Niemeyer, such agreements are not only to be found 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 (30).

It was in 1915 when Niemeyer wrote:

Judged according to the German law of today the matter is very simple. The penalty of a pound of flesh would be invalid as *contra bonos mores*. But if one would regard the contract itself as valid it must be replied that the carrying out of the rights of Shylock would be out of the question on account of the so-called *chicane* paragraph which forbids the exercise of a right whose only purpose is the injury of another.
(27)¹⁴

But how did the audience assess the ‘bond’ in Shakespeare’s time, whether a layman or a lawyer? Niemeyer notes that “it was not until the 18th century that, under Queen Anne, a law was passed whereby it was allowed a debtor to escape the payment of a conventional penalty by paying in the stead thereof the interest and costs” (28). Before that law a like release was only possible by the judgment of an equity court (Niemeyer 28). A bond, therefore, used to be an efficient tool to secure payments.

¹⁴ Niemeyer 27. Similarly, the contract would be null and void under the applicable rules of Hungarian civil law in 2018. See Act V. of 2013 on the Civil Code, “6:96. § [Contracts *contra bonos mores*] A contract that is clearly contrary to good morals shall be null and void.”

2.1.2. The contemporary legal source: conditioned bonds in Elizabethan England

Stretton refers to a “dramatic rise in the use of bonds or ‘bands’, as well as ‘bills obligatory’, deeds, indentures, and other written instruments under seal” in early modern England (73). We also hear Shylock referring to a “single bond”. (“seal me there / Your single bond” I.iii.141-142). Sir William Blackstone explains a “single bond” as “[a]n obligation, or bond, is a deed whereby an obligor obliges himself ... to pay a certain sum of money to another at a day appointed. If these be all, the bond is called a single one, *simplex obligatio*”; but there is generally a condition added. ... In case this condition is not performed, the bond becomes forfeited”(339). Simpson explains the nature of the bond as follows: “[a] bond could be *single* or *simple*, both terms meaning unconditional; alternatively, it could be made subject to a condition (114). Simpson also explains how the common money bond worked; for the sake of an allusion, the names in Simpson’s examples have been changed¹⁵:

Simon lends Anthony £100, so Anthony will execute a bond in favour of Simon for a larger sum, usually twice the money lent, thus binding himself to pay £200 to Simon on a fixed day. The bond will be made subject to a condition of defeasance, which provides that if he pays £100 before the day the bond is to be void. The same technique could be employed in the case of any agreement where some performance or granting of some forbearance was desired. Simon is to sell a piece of land to Anthony, Simon will bind himself to pay a sum of money, the bond being subject to a condition of defeasance if he conveys the property before the day fixed. Reciprocally, Anthony can execute a money bond for twice the price on the agreed day or before. Once the two bonds are executed and delivered, both parties are

¹⁵Except for the modification of names, the whole passage on this page and on the next one with the examples, and the explanation of bonds is based on Simpson’s work, cf. Simpson 115.

bound to pay what are in effect penal sums, but each will have a defence if he performs his part of the underlying agreement of sale. (cf. Simpson 115)

In the standard conditioned bond, the condition was distinct from the deed which imposed the obligation. It was written on the same piece of paper or indorsed on the back. Since Edward III, it was not itself either sealed or witnessed or signed. It must, however, be written (Simpson 115).

“If an action was bought upon a standard conditioned bond the obligee need do not more than base his declaration upon the bond (which he must produce) and say nothing about the condition” (Simpson 115). We find a similar case in *The Merchant*: the non-performance of the repayment is not a prerequisite for the enforceability of the bond, and the assessment of the case is simple, perhaps surprisingly simple and quick:

| | |
|-----------------|---------------------------------|
| <i>Portia:</i> | Do you confess the bond? |
| <i>Antonio:</i> | I do. |
| <i>Portia:</i> | Then must the Jew be merciful.” |

(IV.i.178-179)

Relying on Simpson’s explanation of the enforceability of the bond, it was not necessary for Antonio to “confess” the bond. It was necessary, but sufficient for Shylock to hold the bond to base his action on it. The “confession” of Antonio is not legally necessary, but most probably a fictional element to further emphasise his self-sacrificing, even masochistic character and unconditional love towards Bassanio.¹⁶

¹⁶Concerning Antonio’s sacrifice and the traits of his character see for example Géher 301-302, and Yoshino 200.

2.2. *The language of the contract -- consent as fiction*

I pray thee understand a plain man in his plain meaning...

(MV. III.v. 52-53)

Even if we stay within the framework of the play, the bond remains fictitious for the characters of the play too, in the sense that its text is inaccessible, unclear and thus gives rise to speculations. Although there are references in the play to the wording of the bond concluded between Shylock and Antonio, neither the characters of the play nor the audience can be sure about the exact provisions of the contract, for both are informed of the terms and conditions of the bond only in an indirect way, by means of quotations and subject to interpretation by the different characters.

In Act I the suggestion of Shylock is the following:

“This kindness will I show.

Go 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.” (I.iii.140-148)

When MacKay writes that “the playwright precisely enumerates the conditions of the bond” (373), we need to dissent with that opinion. First, because the conditions are not specified: “such a date” is not a precise date, “such a place” is not concrete either. Neither is “such sum or sums”

precise; even Shylock himself gives two options when using “sum” or “sums” alternatively. In case of a credit contract the sum lent out and the due date of repayment are such essential elements of the contract that in the lack of these we cannot talk about neither contract, or pre-contract (a preliminary agreement), or even a legally relevant proposal. The only condition specified by him is the penalty of the pound of “fair flesh”, the very essence of the bond for him. This is interesting from a legal point of view, too, as the principal obligation would be the repayment of the money lent. The “flesh penalty”, as penalty clauses under civil law typically are, would be a secondary obligation that would come into operation in the case of failure of repayment. Although a common law bond worked slightly differently, as I explained in Section 2.1.2., the condition of the bond needed to be precise enough in any case. The play, however, is full of contradictions concerning the conditions of the bond.

In Act I, Shylock proposes to Antonio the following:

“...let the forfeit

Be nominated for an equal pound

Of your fair flesh to be cut off and taken

In what part of your body pleaseth me.” (I.iii.145-148)

In Act III, Shylock tells Tubal about Antonio, “I will have the *heart* of him, if he forfeit, for, were he out of Venice, I can make what merchandise I will” (III.i.119-121).

Then, in the trial scene, Portia establishes the facts as follows:

“Why, this bond is forfeit.

And lawfully by this the Jew may claim

A pound of flesh, to be by him *cut off*

Nearest the merchant's heart.” (IV.i.227-230)

and Shylock confirms:

“Ay, *his breast*.

So says the bond; doth it not, noble judge?

'Nearest his heart:'-- those are the very words.” (IV.i.249-251)

As we can see, there are no two quotes from the bond that would have the exact same reading. First, Shylock aims to reserve the right to choose and cut off or out any body part he wishes to. Then he confesses to his fellow Jewish friend, Tubal that he wants to have the heart of Antonio. At this point we may assume that Shylock intended to keep the condition broad enough, for example, to hide his real intentions. He uses the word “pleaseth” which is, most probably, just the perfect example to describe his state of mind, as it is indeed a pleasure for him to be the dominant party and to rule and to have physical control over the body and life of Antonio. Olson draws on the thought of Nietzsche for that purpose when she says:

...when an injury occurs, an equivalence is provided by the creditor receiving a kind of pleasure--the pleasure of being allowed to vent his power (even when limited by the rule of *lex talionis*) upon the “one who is powerless”, as he is now held in the law's grip. The creditor is given his due pleasure only in making the debtor suffer—
“de faire le mal pour le plaisir de le faire”. (Nitzsche 65-66 qtd. in Olson 314)

It is at the trial when we realise that in the meantime neither the choice of any body part nor heart” but “nearest his heart” had been included in the bond. However, the verb used by Portia is not “cut out”, but “cut off”, which suggests that not a heart is at stake, for the verb “cut *off*” suggests a protruding body part¹⁷. However, again in a contradictory manner, Shylock demands Antonio’s “breast”.

¹⁷ It was James Shapiro who demonstrated in great details the links and the allusions, and, eventually an interchangeability between “flesh”, “heart” and “penis” in his essay entitled “Circumcision and the ‘Pound of Flesh’ ”.

John Russel Brown, editor of *The Arden Shakespeare* shows an effort to reconcile the existing contradictions in the wording of the bond and says the following: “When the bond was proposed, Shylock said it was to be taken ‘In what part of your body pleaseth me’; presumably he made the further stipulation when the bond was prepared” (113).¹⁸ This is not very likely, though. The credit agreement is a bilateral one, and Shylock’s proposal also suggests that both parties should normally be present for the execution of the bond: Shylock’s words suggest that too: “Go with me to a notary ...” (I.iii.141) and then later again, “Then meet me forthwith at the notary’s” (I.iii.168). The explanation in *The Arden Shakespeare* is logical but is not supported by any evidence in the text. The content of the bond is constantly changing as the plot evolves and a more probable explanation for the contradiction lies elsewhere.

As a preliminary remark to the discussion of the possible reasons for the ambiguity of the bond’s terms, I would like to point out that the necessary emphasis and sufficient clarity could have been given to the formalities and the contents of the contract, had it been deemed necessary for dramatic purposes. However, it does not seem to be the case. The audience do not see Shylock and Antonio agreeing on the final version of the bond and entering into the contract according to the required formalities. In comparison, the terms of another famous contract of the Elizabethan stage, the contract between Marlowe’s Faustus and Mephostophilis, can be discussed in detail. As opposed to the terms of the bond between Shylock and Antonio, the terms and conditions of the contract in Marlowe’s play are set out clearly and in a way directly accessible to the audience (see Marlowe’s Faustus II.i.197-117, quoted in Yeager 606-7)¹⁹.

¹⁸ See Brown (*The Arden Shakespeare*), footnote to MV.IV.i.229.

¹⁹ Christopher Marlowe, *Doctor Faustus* (Sylvan Barnet, ed, Signet, 1969), a hybrid of the 1604 or "A" text, and the 1616 or "B" text (II.i.197-117) quoted in Yeager 606-7:

“First, that Faustus may be a spirit in form and / substance. Secondly, that Mephostophilis shall be his servant / and be by him commanded. Thirdly, that Mephostophilis shall do for him / and bring him whatsoever. Fourthly, that he shall be in his chamber or house / invisible. Lastly, that he shall appear to the said John Faustus / at all times in what form or shape soever he / please: I, John Faustus of Wittenberg, Doctor, by these / presents, do give both body and soul to Lucifer, / prince of the east, and his minister Mepho- / stophilis, and furthermore grant unto them that, / four and twenty years being expired,

“After both parties swear to perform their parts, the agreement is read aloud by Faustus, then delivered to and accepted by Mephostophilis” (Yeager 607). No such clarity is present in *The Merchant*.

The incoherence concerning the bond’s terms may be explained by assuming that it was intended to draw attention to the inadequacy of language as means of expression and the pitfalls of communication which play a crucial role in our life. They play an even more important role when legal language and legal interpretation are at stake. We have nothing but the limited means of language to set the framework of rules or to state or declare rights and obligations. The textual incoherence suggests that legal texts, and the rights and obligations enshrined therein are always subject to different interpretations and, therefore, the understanding of a legal text will always be different for each and every person in each and every case. For example, a notarial document is like a skeleton, but it is up to the parties to dress up the skeleton and to fill the notarial text with detailed content, i.e. meaning, by, for example, the way the parties think about whether “blood” is to be understood as part of flesh or not. In case of two contracting parties, there are at least two parallel ideas of the “contract”. In lack of a clear and single reading we can speak about only readings and meanings in plural, which are necessarily different from each other. As an implication, there is no law, but there are laws, and logically, as many “laws” as persons.

The textual contradictions of the bond have several implications, out of which I will name only a few. First, the question arises, if the parties to a contract have different understanding of the very same text, can we speak about consent at all, or is it just an illusion while the parties to the contract exist in parallel realities? In this respect it must be noted that in lack of consent, however, there is no contract. According to the Roman legal maxim: “...*nullum esse contractum, nullam obligationem, quae non habeat in se conventionem, contractus enim legem*

and these / articles above written being inviolate, full power / to fetch or carry the said John Faustus, body and / soul, flesh, blood, or goods, into their habitation / wheresoever. By me John Faustus.”

ex conventione accipiunt”, meaning “the contract and the obligation that do not contain consensus shall be null and void, for contracts are binding *due to consensus*” (emphasis added). In this respect it might be interesting to note the history of the English word ‘consent’: it originates from Middle English and was taken over from Old French ‘consente’ (noun) and ‘consentir’ (verb), and eventually from Latin ‘consentire’, from con- ‘together’ + sentire ‘feel’ (emphasis added)²⁰. Accordingly, the Latin source of the word suggests a common ‘feeling’ between the parties, rather than a mutually identical understanding based on mental perception.

The second implication, closely linked to the question of consent, is that the lack of clarity of meaning endangers the efficiency of the binding nature of the contract. The text of the contract too is—in the most generic sense of the term—a legal rule which was adopted not by the legislator but the contracting parties and to which the parties submit themselves. Submission involves the acceptance of obligations and the acknowledgement of rights stipulated therein. However, even if a contract has come to existence due to the consent between the parties, if an obligation therein is not defined precisely enough, it is easy to evade it. *The Merchant’s* plot can be read as a series of broken promises and unfulfilled contracts, which will be discussed in Section 2.3.

Third, the problem, once again suggests law’s flexible and, therefore, unpredictable nature. Legal assessment can never be straightforward, since it depends on what meaning is attributed to a text, and on prioritising and organising facts and arguments. Law has several general principles, such as the principle of good faith or the principle of *pacta sunt servanda* (“*agreements must be kept*”), which can be used to circumvent such pitfalls of misunderstandings and to fill in interpretational gaps. According to Kornstein, “[every] lawyer who ever drew a contract knows the importance of good faith: an honest person acting in good

²⁰<https://www.etymonline.com/word/consent>, Accessed: 8 March 2018

faith will abide by the sense of a contract however expressed; a villain will look for a way out of a contract no matter how tightly drawn” (51) and he quotes Antonio saying “I like not fair terms and a villain's mind.” (I.iii.176). Another way of expressing the same idea by Antonio is: “The devil can cite Scripture for his purpose.” (I.iii.95)

Fourth, a possible uncertainty of meaning inherent to legal texts highlights the importance of the procedure of judicial interpretation and methods thereof. Judicial interpretation aims, *inter alia*, at establishing the meaning of a legal text and the reconstruction of the intent of the parties. In *The Merchant's* story, the murky drafting of the bond foreshadows Portia's legalistic quibble used for the interpretation of the bond and the resolution of the dispute, which will be elaborated in Section 3.3.

2.3. Broken vows – binding nature as fiction and Shylock's adherence to the letter of the Law

A further reflection on the relationship between law, social order and appearances concerns Shylock. Shylock is an alien, an outsider, the odd-one out, the Other²¹ in Venice in several respects. One of the reasons why he is an outcast is his firm attachment to the bond, and to bonds in general. As opposed to Shylock, the other characters of the play do violate rules and laws. Moreover, they do it covertly, as much as possible.

Grudin remarks that “[in] *The Merchant of Venice* society asserts its order and control through a pattern of obligations” (62), and that “[the] number of bonds and obligations woven through the plot are remarkable” (61), while Blanchard considers the play as a series of oaths (209). Stretton also notes that “[p]romises pervade *The Merchant of Venice*, sometimes to the

²¹ Concerning ‘the Other’ voice in Shakespeare's plays see for example Leslie A. Fiedler *The Stranger in Shakespeare*. Paladin, 1974

point of comic absurdity” (71). Many of those promises and vows are unfulfilled or broken in *The Merchant*. In Grudin’s view, “[on] the level of individual action, characters in Belmont as well as Venice are repeatedly unable ... to adhere to choices once made” (69).

An example could be Launcelot who is unfaithful to his former master Shylock, and leaves him for Bassanio. Another, more important example could be Bassanio and Gratiano giving away Portia’s and Nerissa’s ring. Due to bad fortune, Antonio is also prevented from paying back his debt.

In addition to the actual breaches of obligations, a general negative sentiment felt by the characters towards obligations can also be traced. Other characters of the play seem to suffer from the ties of obligations, paternal will, loyalty in marriage, inherited Jewishness, or financial obligations. For example, Jessica and Portia, who are both trying to escape from paternal tyranny or at least a burdensome paternal legacy, are suffering from the constraints imposed. According to Jessica: “Our house is hell” (II. iii.2). Or in Portia’s words: “If to do were as easy as to know what were good to do, chapels had been churches, and poor men’s cottages princes’ palaces ... I can easier teach twenty what were good to be done, then be one of the twenty to follow mine own teaching” (I.ii.12-17).

In Venice, promises are not kept, rules are evaded, thus stability, loyalty and predictability are hard to find. In Grudin’s words, the play “can be read as a satire on human pretensions to stability” (69). Therefore, in lack of respect, the series of bonds and promises in the play remain to be pure forms and empty words, and their binding force mere fiction. What is more, it is nearly a hobby to first make a pledge and then to find the way to be set free from it. Stretton demonstrates that that pattern had its real-life counterpart, as long as a general “reluctance of keeping promises” was one of the characteristic traits of Elizabethan society” (72-73). Accordingly, Shakespeare’s audience must have discovered an allusion to, and even a criticism

of that general pattern in the endless chain of promises made and unkept by the Venetian characters of the play.

Shylock, however, is different: he is consequent, aggressively honest and sticks to the wording of the law expecting others to do the same. His strict adherence to the letter of the law can be labelled as lack of mercy, but it can also be seen as an unconditional respect of rules, be it the Scripture, the Old Law or the imperatives of family, marriage and tradition. The contrast between Judaism and Christianity has been one of the main issues of the literary criticism on *The Merchant of Venice* for centuries: Shylock is the representative of the Old Law, against the New Law (Cf. Lewalski 174-178). Shylock's very heart, his core identity is the unconditional respect of obligations required by his religion, the memory of her deceased wife, and most prominently, his bond with Antonio.

Shylock's loyalty and his respect for family, marriage and tradition can be traced when he learns from Tubal how easily Jessica sold his ring that he had received from her wife Leah. Shylock says: "Thou torturest me, Tubal. It was my turquoise. I had it of Leah when I was a bachelor. I would not have given it for a wilderness of monkeys" (III.i.115-116). Shylock, who is otherwise strictly focussed on money, values that ring more than anything: the *pretio affectionalis* of the ring is unmeasurable to him.

Also, while other characters tend to avoid or evade the fulfilment of different types of expectations and obligations, such a thing would be impossible to do for Shylock: "An oath, an oath, I have an oath in heaven,--/ Shall I lay perjury upon my soul?" (IV.i.225-226) he says at the trial to explain why he cannot let the bond go, even if he wanted to.

Shylock takes his clinging to principles to an extreme, and what is more, he is honest about it. His overt aggressiveness and blood thirst are frightening, but he deserves respect at the same time. Shylock assumes responsibility for the eventual consequences of his firmness. He does not seem to have second thoughts about his future esteem in Venice. To be honest, he has got

nothing to lose anymore. Paradoxically, as he is already an outcast of Venetian society, he does not have and therefore, does not need to respect and nurture any ties with that society. As he already made it very clear in the first scene he appears on stage: “I will buy with you, 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” (I.iii.33-35).

As it is suggested in Section 3.3. of the present paper, Shylock holding the scales—an everyday tool used by the money-lender to measure coins—in his hand at the trial can be understood as a distorted image of Justice. However, Shylock’s scales may also allude to the Ancient Roman *negotia per aes et libram* or *negotia sollemnia* which were solemn civil law contracts based on the archaic *ius strictum*, and concluded under strict formal procedures, among the utterance of exact strings of words and the usage of certain symbolic objects, typically “copper and scales” (*aes et libra*) (Földi-Hamza 379). A possible reference to Roman law is also supported by Watt, who identifies the scales in Shylock’s hands as an allusion to Roman slavery, and the ceremony of *mancipatio* for the transfer of ownership of slaves (245). Such archaic contracting ceremonies defined to every little detail were the early manifestation of legal formalism. The principle of legal formalism, which is still present to a greater or a smaller extent in different civil laws, a contract is only validly made if certain formalities are met (Cabrillac 80). In the light of this, Shylock’s scales may also remind us of his formalism and strict adherence to the letter of the law.

Girard holds that “The Venetians ... do not live by the law of charity, but this law is enough of a presence in their language to drive the law of revenge underground, to make this revenge almost invisible. As a result, this revenge becomes more subtle, skillful, and feline than the revenge of Shylock” (qtd. in Kahn 25).

In Shylock’s final scene, when Portia passes judgment on him his question is “Is that the law?” (IV.i.311). That question, which expresses surprise and even shock in one, is also a

question aiming at a reassurance: if that *is* the law, Shylock has no other choice but to abide by it. For Shylock, the written Law is an untouchable sanctity and for Shylock an answer in the positive is the ultimate justification. By clarifying what The Law says, Shylock passes judgment on himself. At the same time, it must be noted that he is not concerned with substance but simply with form, so his question is not “Is that human?” “Is that merciful?” “Is that effective?” “Is that profitable for me?”, but merely “Is that the law?”. As William Hazlitt summed up the difference between Shylock and the rest of the other characters: “He is honest in his vices; they are hypocrites in their virtues” (Hazlitt 3 qtd. in Miller 71).

III. THE TRIALS – FAIR HEARING AS FICTION

Act IV Scene i of *The Merchant of Venice*, is called both in popular language and in literary criticism “the trial scene”. It is not my intention to change this well-established and logical practice. After all, there is no doubt that a trial procedure unfolds in front of our eyes. However, in strict legal terms we cannot speak here about a real trial. Due to the grave procedural errors, i.e. the serious breach of the essential procedural requirements of an independent court and that of an impartial judge, the trial could at best be called a “mock trial”. Or, from another point of view, Act III Scene ii, the “casket scene” with Bassanio opening the leaden casket, and the scene within Act V Scene i, the resolution of the ring exchange (lines 127-307) may be considered at least as much of a trial scene as the one taking place in the court room with Shylock and Antonio.

Probably it is the total injustice of the trial scene and the lack of a fair trial which are some of the most disturbing elements of the play. Portia’s judgement, which leads to a total elimination of Shylock the predator of the Rialto, is so unjust that it fills one with anxiety. The total crush of Shylock is the reason why at the end many²² see that he is rather a victim than a righteously punished villain. Among other things, it is Shylock’s tragic end that makes the *Merchant* one of Shakespeare’s problem plays, i.e. one that raises more problems than it solves.

3.1. Portia -- judicial independence as fiction

The lack of coherence of her so-called legal arguments and the devastating results of the legal procedure for Shylock, especially following her hypocritical speech on mercy, have made

²²For example, Niemeyer, Géher etc.

the judgement of Portia in the eyes of many both illegal and unjust²³. William Hazlitt's opinion is rather a broad and general one concerning the character: "Portia is not a very great favourite with us [,because she has] a certain degree of affectation and pedantry about her" (137). A further explanation, however, provided by Fiedler can be called for in here. He claims that "she [Portia] is almost always lying (her most triumphant scene a sustained web of prevarication), when she is not performing character assassination, talking courtly smut, or indulging in empty platitudes. Such platitudes are, indeed, themselves a form of lying..." (Fiedler 109). Fiedler then concludes, that "[T]he famous speech on mercy, for instance, delivered in the midst of a scene whose end is vengeance and whose means deceit, is a case in point" (Fiedler, 109).

Seeing Portia in the gown of a "doctor of laws", one may wonder if not any judge is necessarily a Portia in disguise who favours one of the parties since a judgement, typically, can favour only one party. Portia's famous entry, "Which is the merchant here? and which the Jew?" (IV.i.171) could be rephrased in several ways to illustrate the dynamics of trial scene. For example, "Which is the lawyer and which is the Jew?" in which respect we might claim that Shylock is more aware of his rights than Portia without actual legal education, and we might equally claim that Portia adheres to the letter of the law even more strictly than Shylock. Or, it could be asked: "Which is the claimant and which is the defendant?", since first Antonio, then Shylock is the defendant. "Is the judge a judge or the advocate of the plaintiff... or, later on, an advocate of the defendant?", or "Is this a civil proceedings or a criminal one?", and even the question "Who is a man and who is a woman?". It is not so very clear at all. And if one would be just about to decide, roles quickly change and what seems to be true at first sight may prove to be wrong later on. The roles at the trial, just like roles in general, and just like so many other things in Venice--money, bodyparts, rings, vows, garbs, clothes, marital status, financial

²³von Jhering, Weisberg, Yoshino, etc.

situation, family status, religion--are dynamically changing, are exchangeable, or interchangeable.

Portia's trying to persuade Shylock to be merciful is a legal non-sense: Shylock should get what he is entitled to under the relevant laws, no more, no less. A judge begging him to pass a unilateral declaration on the unconditional waiver of his rights is something unheard of from a professional point of view.

Therefore, I maintain that Portia is a "bad judge" both from a legal-professional and a moral point of view. Antonio could and should have been saved in a different fashion. Although probably any reader or viewer would have a suggestion how to solve the dispute between Shylock and Antonio, it is not necessary to engage in such speculations, as the play itself offers one: Shylock is offered twice the sum of the loan, which type of resolution would have been fully in line with contemporary judgements of equity courts in Shakespeare's time:

Portia *"Is he not bale to discharge the money?"*

Bassanio. *Yes, here I tender it for him in the court,*

Yea, twice the sum." (IV.i.205-207)

As explained by Halio: "[by] Shakespeare's time an appeal in equity against an 'intolerable forfeiture' was usually set aside and an equitable 'penalty' ... would be substituted for the forfeit" (198). Also, Portia's suggested compromise ("Take thrice thy money. Bid me tear the bond." IV.i.231) would be a solution typical of the equity courts of the day (Cf. Keeton 137 qtd. in S.A. Cohen 44).

By Shakespeare's contemporary audience, however, Portia could have been perceived as a 'good judge' despite her partiality (and her illegal decision later on). Penelope Geng points out that in early modern England there was a gap between the professional and popular view on what makes a good judge. While legal writing by lawyers avoided emotional arguments and placed the emphasis on reason, authors of assize sermons and character books defined the

character of a “good magistrate” as a “loving” father, who should respond to petitioners with immediate attention, sympathy, and understanding (97 & 101). Geng notes, “popular writers complained of the law’s inability to distribute fair and equitable justice because of an overly complex and mediated legal system”, while for laymen at least the “preservation of mercy and truth” should have been the primary mission of the administration of justice (100 & 107). Accordingly, even if the legal procedure and the arguments supporting the judgment against Shylock were manifestly erroneous, in the light of the popular expectations of the Elizabethan age, due to her act of mercy towards Antonio, her sympathy, and her direct and plain explanations in English²⁴, Portia’s character could have been perceived as the incarnation of the ‘good magistrate’.

Geng also explains that preachers and moral writers referred to David, Solomon and other judges of the Old Testament as biblical examples of good judges who had direct contact with the disputing parties (104). Therefore, the similarity between the character of Portia as “doctor of laws” and the character of the archetype of the “good judge” is also suggested by the use of the biblical example of Daniel by Shylock and Gratiano to describe her wisdom and righteousness:

Shylock. “A Daniel come to judgement, yea, a Daniel!

O wise young judge, how I honour thee!” (IV.i.220-221)

Gratiano. “A second Daniel, a Daniel, Jew!

Now, infidel, I have you on the hip.²⁵” (IV.i.329-330)

Gratiano. “A Daniel still say I, a second Daniel!

²⁴ According to Underhill the language of the legal profession of Elizabethan times was “a mysterious jargon compounded of Latin, French, and English”. See Underhill 389.

²⁵ Meaning: “at a disadvantage”. A proverbial phrase derived from wrestling, which contains an allusion to Jacob’s fight with the angel from the Old Testament, cf. *Genesis xxxii*. See Brown 24.

Shylock also uses the same simile in the play:

“If I can catch him once upon the hip,
I will feed fat the ancient grudge I bear him.” (I.iii. 43-44)

I thank thee Jew for teaching me that word.” (IV.i. 336-337)

Portia’s speech on mercy (IV.i.181-202) is also full of Biblical allusions. As Lewalski points it out, Portia’s language echoes certain Old Testament texts on the “inadequacies of the Law and testimonies of the need for Christ” (182). Furthermore, Lewalski explains that Portia’s role is similar to that of the Virgin Mary of the mediaeval drama, the *Processus Belilal*, in which the Devil claims by justice the souls of mankind due him under the law, and the Virgin Mary intercedes for man by appealing to the Mercy of God (183).

Certainly, the trial scene is the climax of *The Merchant of Venice*²⁶, and Portia’s speech on mercy is the climax of the trial scene. The speech is given in a cliff-hanger moment, and is a powerful exposition of the tensions of the play; no wonder many critics tend to assess Portia mostly on the basis of her speech on mercy. It also has a horns and halo effect: the evaluation of Portia either as a positive or negative character of the play usually depends on the interpretation of this speech. As to the genre, the speech has been read differently by various critics, such as a plea for the mercy of God (Lewalski 183) or legal arguments in the spirit of equity (cf. MacKay)²⁷. Whatever the genre, the result is great deception. Her arguments are not precisely legal; they rather appeal to one’s emotion and generosity of spirit; and clearly, Portia’s devotion to mercy is also just a fiction as her judgment will prove that later on.

²⁶Cf. Lewalski 181., Kornstein 36., Willson 10.

²⁷ MacKay considered the common law/equity law binary to be the main binary of the trial scene. This view was criticised by Sokol & Sokol.

3.2. *Flesh without blood -- legal language and interpretation*

“*Summum ius summa iniuria*” (Cicero. *De officiis* libri III, 1,10,33)

“A perfectly decisive emphasis on word and sentence in the play concerns its climatic, mortal point turning on an interpretation of words.... Or, it is rather more accurate to say that it turns not on interpreting the words but on literalizing or stressing them past the possibility of reference and verification” (Cavell 253). While fully agreeing with this statement of his, it is hard not to note that Cavell himself considered it necessary to explain the same “meaning” twice, in two different ways, which can remind us of Shylock saying: “*Ho, no, no, no, no. My meaning in saying he is a good man is to have you understand me that he is sufficient.*” (I.iii.15-17). Cavell could not emphasise his “meaning” better.

From the legal point of view, Portia’s “literalizing” of words is completely erroneous. As von Jhering put it: there is no judge that would insist on separating blood from a pound of flesh (Jhering, iii). One tends to agree with that opinion, provided that the assessment is a legal one and it is based on the legal principles of the 19th 20th and 21st century, therefore, still applicable nowadays.²⁸

By contrast, MacKay—a literary critic—argues that Shakespeare based Act IV on “sound legal principles” and that the legal principle Portia uses for the elimination of blood from flesh is that of *Expressio unius est exclusio alterius*: one expressed thing excludes another (374). In

²⁸ Guidance on legal interpretation may be found in concrete legal provisions. In international public law, see for example Article 31 of the Vienna Convention on the Law of Treaties 1969 according to which „a treaty shall be interpreted *in good faith*, in accordance with the *ordinary meaning* of the terms of the treaty in their context and in the light of its *object and purpose*”.

In domestic law, Article 1156 the French *Code civile* provides that “(In interpreting agreements), one ought to seek the common intention of the contracting parties, instead of adhering to the literal meaning of the words.” (Friedler 1096)

Another example may be Article 207 of the Hungarian Civil Code (1959, repealed) which provided that words in a contract are to be “construed as the other party would understand them, given the generally accepted meaning of the words used, and taking account of the probable purpose of the person using them and the circumstances of the case”. (Hartkamp et al. 271.).

MacKay's view, "[the] defense is not accidental. The first use of the word, 'express', was in the description of the bond. There are now Portia's reiterations: 'It is not so expressed' and 'The words expressly are 'a pound of flesh'" (374) (IV.i.257, 304). It seems to be appropriate to draw a similar conclusion in connection with the applicable law: Shakespeare, indeed, made use of certain legal principles and practices, but freely mixed them so as to get a fully fictitious, yet credible case and trial, relying on the common experience of contemporary audience in highly litigious early modern England.

Whether one shares von Jhering's or MacKay's view on the legal appropriateness of Portia's argument, the example of the "flesh and blood" sheds light on some important questions about legal language, interpretation and about language in general. In Terry Eagleton's words:

It is a paradoxical fact about all language that it is at once entirely general and irreducibly particular. Any language has to be a system of relative regularities. The rules of language—syntax, semantics, and so on—can be treated as purely formal conventions independent from any concrete content (35).

According to Eagleton "general" and "particular" are in constant battle against each other, and language must always "go beyond", i.e. transgress itself (Eagleton 35). He also mentions in this respect that "[s]tructural linguistics differentiates between *parole*, the particular concrete utterance, which transgresses the very *langue* (the general linguistic structure) which produces it" (36). Finally he concludes that "if this is true of language, it is also true of law" and that „[the] gap between the general character of law and these unique individual contexts is bridged by the law's application. ... Such application involves a creative interpretation" (Eagleton 36). While fully agreeing with Eagleton's conclusions, it must be emphasised that legal rules and law in general are embodied in texts, be it written or oral. In other words, law's material is language. While a sculptor is working with stone, law manifests itself by means of language, the latter creating an autonomous system of its own: in this respect law is very similar to

literature. It seems therefore appropriate to supplement Eagleton's view by recalling that legal language is no different from language, and it shares the characteristics of language in general (Cf. Wróblewski 1984, 1972, Ziembinski qtd. in Varga 110), namely "fuzziness", "transformability" (Peczenik and Wróblewski, 1985 qtd. in Varga 111) and "open texture" (Waismann qtd. in Varga 115).

In this respect it must be noted that it is not only the narrowly technical and pedantic interpretation of Portia that should be the focus of investigations of legal language in *The Merchant*. True, the final meaning of the text of the bond is to be unveiled by means of judicial interpretation, and that is the reason why Portia's judgement – as the result of that interpretation --becomes the cliffhanger moment of the whole play. However, the dangers of misinterpretation and ambiguity, and, therefore the potential of abuse were inherent to the text of the bond already at the moment of its notarial execution.

3.3. The judgement – justice as fiction

The legal procedure in the case between Shylock and Antonio lacks so many minimum requirements of a fair trial that each one of these amounts to a severe and essential breach of procedural fairness, which should normally lead to the annulment of the judgement, the repetition of the trial, and may have even consequences on the judge, and could give rise to a just satisfaction of the injured party, that is Shylock. But let us be a little result oriented, as Bassanio suggests: "Wrest once the law to your authority. /To do a great right, do a little wrong" (IV.i.212-213). Despite the procedural errors, we have to admit that Antonio's life is saved, Portia and Bassanio may live happily ever after, Lorenzo and Jessica are also taken care of, and Shylock is punished. All this is probably more or less in line with the taste, and even with the sense of justice of the reader and the audience. Having said this, we may ask, once again, what

justice is.²⁹ Is it the process, the series of events, decisions that should be assessed or is it the result that should have primacy over the means? On the other hand, though, would have just means led to just results?

However, the judgment of Portia (and the Duke) is just another pretence of justice. First of all, because Shylock is practically bereft of his existence by means of the judgement. If we consider the fact that Antonio sums up the implications of Portia's judgement concerning his person by telling her "Sweet lady, you have given me life and living;" (V.i.286), the exact opposite could be said about Shylock: due to Portia's judgment he is deprived of his bond, his wealth, his religion, his whole identity and self, his whole "life and living". Although Shylock simply asks for the rights in his bond, according to Miller "the Jew [gets] more law than he can bear" (83). The "mercy" he is offered is a mere label, hardly anything more than an illusion of mercy. As Caldwell points it out, the mercy offered to Shylock has a series of provisos attached to it (354). The judgment leads to Shylock's total elimination, his defeat and extermination: he is deprived of his bond, his property, his daughter, his religion, and, eventually, his own self (cf. Géher 304). As Lowenstein put it: Shylock's punishment "[leaves] modern audiences, at least, uncertain just how much mercy has dropped from heaven upon Shylock (1157)."

Second, Portia's judgment lacks any foundation of law or rational arguments. So, to make things worse, the devastating judgement comes as a surprise not only to Shylock but probably to all other characters as well. At the beginning of the procedure there was no sign of punishment or terror. In Shylock's words, "What judgment shall I dread, doing no wrong?" (IV.i.88). Kornstein argued that "Portia could have adjudicated Shylock the principal and

²⁹In Grudin's view, we find the examples of both commutative and distributive justice in the play: "*The Merchant of Venice* illuminates both aspects of the Aristotelian theory of justice. The bond story is the 'intermeddling' between the individuals Shylock and Antonio, while the love plot concerns the workings of distributive justice, as Portia's father's will stipulates that Portia's hand should be won by a suitor who possesses a virtue not shared by other men. (Grudin 54-55).

interest as remedy” or “could have argued that the bond is an unenforceable gambling contract”, or that there is “mutual mistake” of the parties, as Antonio's ships were not in fact lost (41). However, Portia does not resort to any of these solutions, since her judgment is not born as the result of well-contemplated facts, the knowledge of the law, a long deliberation on contradicting rules or striking the right balance between conflicting rights. One must agree with Grudin, who notes that “[i]t is not Portia’s genuine legal reasoning, but her fallacious exploitation of the law that is given emphasis” (60). In Miller’s view, “Portia ... will make the law out to be an ass, confirming every layman’s view that lawyers can generate any outcome they want by nitpicking and making counterintuitive interpretive moves; law as putty” (80).

Third, the judgment serves the purposes of the judge her/himself: Caldwell, for example, points out that far from being impartial in her judgement, Portia rewards and punishes according to her desire (355 & 360). And what are her desires? Saving her fiancé’s best friend? To punish a merciless moneylender? Professor Géher offers a surprising but plausible solution: Portia saves Antonio’s life to prevent his sentimental self-sacrifice for Bassanio, and thereby to save her own marriage with the latter (303-304). Whatever Portia’s motives are, Yoshino seems to be perfectly right asserting that “the trial scene reveals that “there may be no such thing as law that is not inflicted by equity, and that equity bears an uncanny resemblance to Portia’s will” (202).

In fact, Portia is not likely to adopt any values, norms or ideas, such as mercy. On the contrary, her sudden change of opinion is (just another) manifestation of her fickle, incoherent approach to values and norms in the broadest sense, be it laws, contractual obligations, unilateral declarations, as the will of her father, oaths, or bonds. Her changes of approach powerfully demonstrate that she adheres rather to her own personal interests than any ethical values. Already as the judge of the *Shylock v. Antonio* case she has an inconsistent approach in her judicial interpretation: first, she points out that contractual obligations and also the letter of

the law must be observed unconditionally, then she appears as an angel of mercy or a “good judge”, begging Shylock to be merciful to Antonio, and finally, with a second U-turn, she turns the literary interpretation approach against Shylock in order to punish him in a merciless way, although not long ago she has called on Shylock to be merciful. Following her active involvement in the case as judge, she refers the case to the Doge of Venice and calls upon Shylock to “beg mercy of the Duke” (IV.i.359).

Concerning the matter of justice and commensuration in *The Merchant*, Spencer considers law similar to money and language. Spencer recalls the Aristotelian analysis of money, according to which “the symbolic mediation money performs is at once indispensable and inaccurate” (143). “The release promised by equitable interpretation opens one to the injustice of a power that wishes to circumvent its own laws”, therefore law, just like money, cannot “achieve true commensuration” and becomes a source of injustice (Spencer 153&154). However, as Eagleton comments, “for the benefit of the vulnerable, we require consensual fictions like the law (and we might add language and money) despite our knowledge that such fictions rest on nothing more than *difference* and a prayer, and despite our responsibility to limit through practical action the injustices of these fictions” (Eagleton qtd. in Spencer 154).

The props and some other scenes in the play also suggest that we are facing a lack of justice. Due to the lack of firm legal grounds, in the presence of hidden personal motives, the judgement is certainly similar to an unattended and arbitrary verdict handed-down by a capricious goddess. Although it would be quite straightforward to compare Portia passing a judgment to the Roman goddess of Iustitia, Caldwell argues that “renaissance emblematic iconography suggests Portia’s similarity not to Justice or Mercy but to Fortuna or Occasio, figures who are virtually interchangeable in the Renaissance and are both admirably suited to a play about risk-taking

(527).³⁰ Caldwell further argues that Portia is a witty character and has a willingness to seize an opportunity to manage her own fate; her actions in Act IV, however, undercut the practice of conventional justice (349). If Portia is the Fortuna/Occasio of Venice, Caldwell notes, then the play is a study not of justice or mercy but of how opportunistic entrepreneurs operate in marriage and the market place (350), which is also a reason why the latter two can be seen as one.³¹

There are hints in the play to suggest that “All that glisters is not gold”, so that neither the procedure nor the judgment are legal or just. As Grudin notes, “throughout the play characters are judged, or judge themselves, by the extent to which they live up to legal or otherwise conventional obligations” (53). He notes further that Launcelot’s words are the comic setting

³⁰ The word ‘hazard’ itself is repeated eleven times in the play, accentuating the omnipresent idea of risk taking in the play. See, for example, the activity of the Venetian merchants, the casket riddles, Jessica and Lorenzo’s elopement, the change of masters by Gobbo, or the bond plot.

³¹ In this respect the vocabulary of the play is also telling. See for example:

Graziano. “My lord Bassanio and my gentle lady,
I wish you all the joy that you can wish;
For I am sure you can wish none from me.
And when your honours mean to solemnize
The *bargain* of your faith, I do beseech you
Even at that time I may be married too.” (III.ii.189-194)

Portia. “*Since you are dear bought, I will love you dear.*
But let me hear the letter of your friend.” (III.ii. 311-312)

Cf. Shylock. “The pound of flesh, which I demand of him,
Is *dearly bought*; 'tis mine, and I will have it.” (IV.i.98-99)

Portia. “How little is the cost I have bestowed
In *purchasing* the semblance of my soul.” (III.iv. 19-20)

Salarino. “I saw Bassanio and Antonio part:
Bassanio told him he would make some speed
Of his return: he answer'd, 'Do not so;
Slubber not *business* for my sake, Bassanio
But stay the very riping of the time;” (II.viii.36-40)

For a more detailed discussion of the commodification of love see for example:

Natasha Korda. “Dame Usury: Gender, Credit, and (Ac)counting in the Sonnets and *The Merchant of Venice*”
Shakespeare Quarterly, vol. 60, no. 2 (Summer, 2009), pp. 129-153. Folger Shakespeare Library in association
with George Washington University. Stable URL: <http://www.jstor.org/stable/40468402>. Accessed: 17 July 2017.
and

Karen Newman. “Portia's Ring: Unruly Women and Structures of Exchange in *The Merchant of Venice*”.
Shakespeare Quarterly, vol. 38, no. 1 (Spring, 1987), pp. 19-33. Folger Shakespeare Library in association with
George Washington University. Stable URL: <http://www.jstor.org/stable/2870399>. Accessed: 12 July 2017.

forth of that general situation of striking a balance and making a judgement (Grudin 53). We see him sitting on the fence, not contemplating less than Portia will deliberate in court:

Certainly, my conscience will serve me to run from this Jew my master: the fiend is at mine elbow, and tempts me, saying to me, ‘Gobbo, Launcelot Gobbo, good Launcelot’ or ‘good Gobbo’ or ‘good Launcelot Gobbo, use your legs, take the start, run away’. My conscience says ‘No, take heed honest Launcelot, take heed honest Gobbo’, or as aforesaid’ honest Launcelot Gobbo, do not run, scorn running with thy heels. etc. (II.ii.1-9)

Similarly, Shylock appearing on the stage in the trial scene with the scales and a dagger in his hands, preparing for cutting out a pound of Antonio’s flesh can be understood both as a caricature of the idea and the figure of Justice with the scales and sword in her hands:³²

Portia. “Are there balance here to weigh the flesh?

Shylock. I have them ready.” (IV.i.252-253)

Caldwell also notes that “if Shylock offers a parody of law, Venetian law as practiced by Portia offers an equally parodic image of justice with its deception and partiality” (352). Shylock with the scales and dagger foretells what one is to expect from this travesty of legal procedure.

3.4. Caskets and rings: the other trials

The tripartite structure of *The Merchant*, and the identification of the three sub-plots, namely, casket plot, bond plot, and the ring plot have been identified previously.³³ Also, the casket scene has often been understood as a forerunner of the trial scene; Trisha Olson, for one, claimed that

³² Caldwell, pp. 351-352 also referring to John Doeblér, *Shakespeare’s Speaking Pictures: Studies in Iconic Imagery* (Albuquerque: Univ. of New Mexico Press, 1974), pp. 57-89, p.57.

³³In most details probably by Benston, but Kállay also offers a reading about three distinct hermeneutical methods based on the three items of the casket, the ring and the bond. The number three is a recurring one in the play: for example, there are three couples (Portia-Bassanio, Nerissa-Gratiano, Jessica-Lorenzo), there are three rings (Portia’s, Nerissa’s and Leah’s), and there are three suitors actually trying their luck (Morocco, Aragon and Bassanio) with the three caskets.

Portia's questioning Bassanio after the loss of the ring amounts to a court trial (303). The present thesis might be the first to claim, however, that there is a legal reading for all three plots, with an obligation and a trial involved in each.

According to the Oxford dictionary, the definition of the noun 'trial' is: "1. A formal examination of evidence by a judge, typically before a jury, in order to decide guilt in a case of criminal or civil proceedings. 2. A test of the performance, qualities, or suitability of someone or something."³⁴ The twofold meaning of 'trial' already sheds light on to what extent a court procedure could be seen as a test, and how much resemblance there is between a judge and someone who is testing our strengths and weaknesses. In addition, the word 'trial' suggests a strong link between the three plots in each of which someone is questioned or put to the test.³⁵ As for the casket plot, the 'obligations' are referred to only indirectly, and they are to be found in the will of Portia's father. It is in the will where the rules of the game are established: its strict conditions apply to the choice of the appropriate husband, and which are obligatory both for Portia and the suitors. The appropriate husband gains access to Portia and her wealth, therefore the will—an obligation passed on from parent to child—governs the 'transaction' of marriage, and the transfer of assets. In Robert F. Darcy's view:

What *appears* a liberality in that mechanism, however, which offers Portia *blindly* to any and all comers, is more *secretly* a closed arrangement, an *incestuous* hoarding and withholding of the daughter until such time as a paternal surrogate and *endogamous* match can arrive in Bassanio's person". (193, emphasis added)

³⁴<https://en.oxforddictionaries.com/definition/trial>. Accessed: 13 March 2018.

³⁵ For the etymology of 'trial' see also <https://www.etymonline.com/word/trial>. Accessed: 6 April 2018. Trial' (noun): mid-15c., "act or process of testing, a putting to proof by examination, experiment, etc.," from Anglo-French *trial*, noun formed from *triet* "to try" (see *try* (v.)). Sense of "examining and deciding of the issues between parties in a court of law" is first recorded 1570s; extended to any ordeal by 1590s.

The will and the bond are closely linked on the basis that they are similar in several ways. Both the will and the bond *seem* to be *only* a legal instrument that is *neutral* in the sense that their purpose is to embody a transaction in money or in goods, depending, in the case of the will, on the blind luck of the suitors, and, in case of the bond, the good or bad fortune of Antonio's ships. In that respect, both the will and the bond as such are fictions. In fact, in both cases there are secret intentions involved, and both the will and the bond symbolise a matter of life and death. In the case of the will the former Lord and the present Lady of Belmont favour *locals*, i.e. the interest of the closed group of the Venetian gentiles and try to "[determine] Belmont's *bloodline*" (Darcy 190). In case of the bond, the obligation becomes a tool to wage war between the separate groups of Jews and Christians, in which *blood*, Antonio's *blood*, is spilt if necessary. In Darcy's view, the casket and bond plots are furthermore related by means of the possible consequences: "The risk of the casket trial, like the one Shylock addresses to the Venetian court, is that any partiality of its mechanism may be exposed at its outcome when the losing parties who submitted their suits to its judgment, having believed in its fairness, would have cause to retaliate." (190)

However, as it has been argued earlier, Portia suffers from that obligation and manages to discreetly circumvent the strict rules of the will. As it has been shown by numerous critics³⁶ concerning the casket scene (Act III Scene ii), Portia is helping Bassanio to choose the right casket, while maintaining the appearance of a passive, uneducated woman. The link is evident with the trial scene (Act IV Scene i) in which she is hiding her own identity and partiality, being dressed up as Balthasar and giving a legal evaluation of the bond, and, finally, passing a judgement. Portia is cheating in both cases and she is in control of the choices made and the judgments passed.

³⁶Cf. Kállay 181, Kornstein 46, Yoshino 201 quoting Danson.

In Finin's view 'Portia's complex relationship to law and language is [already] established in the first act with her multivalent use of the word "will." In addition to the formal document which details the disposal of a person's property after his or her death, this word denotes "desire, wish, longing", particularly "carnal desire or appetite"; along with "intention, intent, purpose, [and] determination" (*Oxford English Dictionary*). ... Portia laments the way in which "the will of a living daughter [is] curbed by the will of a dead father'." (28) (Cf. I.ii.23-24.)

Portia gets around the will of her father by helping Bassanio through her intelligent and sophisticated means. In Kállay's words, she creates a situation, a special context, in which everything points towards the "right solution" (181). One of these means attributable to her is the song that plays while Bassanio is to choose between the caskets, because the rhymes of the first stanza also rhyme with "lead".³⁷

Tell me where is fancy bred,

Or in the heart or in the head?

How begot, how nourished?

Reply, reply. (III.ii.63-66)

According to the stage instructions, the song plays "whilst Bassanio comments on the caskets to himself"; therefore it is to give a secret, hardly noticeable hint to Bassanio and, we may say, to serve as a subconscious guidance. In this respect Finin notes that „[the] very indeterminacy of this linguistic hint is precisely what renders it such a brilliant ploy: no one can "prove" Portia's disloyalty because no one can prove her *intent* from the information in the text" (30).

³⁷For more recent examples see Yoshino 206, quoting Fiedler: "Not only the spell of the music, which, as everywhere in Shakespeare, resolves discord and dispels terror, but the words, too, do the trick: the reiterated end rhymes in "ed" of the first stanza, echoed in the word "fed" in the very midst of the second, and reinforced by the allusion to death on which the whole closes. They move Bassanio to make-on the rim of consciousness where the "magical" occurs-associations with the unspoken words "dead" and "lead" and thus to realize that the casket in which his golden girl is "locked" is a coffin, where she lies, as if wrapped in lead, until he revives her", and Kállay, 187 mentioning Brown who „refers to J. Weiss as (probably) the first one who pointed out the hint by the rhymes in 1876."

Portia also compares herself to the Greek heroine Hesione by saying, “I stand for sacrifice” thus invoking a myth in which both Hesione and Hercules “give and hazard” all they have.³⁸ In Yoshino’s words she is “formally obeying her father’s will but getting her own way as well” (202). Another way of seeing this is that Portia creates the fiction of the obedient daughter, and a fiction of ‘fair play’, while she is disobeying, and is being unfair to the suitors other than Bassanio. Concerning unfairness, Portia’s partiality is present both in the casket plot and the trial scene. Her bias against her suitors with the exception of Bassanio, that is foreigners, and, among them the emblematic black-skinned Prince of Morocco is similar to her prejudice against Shylock the Jew. According to a number of critics, her bias amounts to racial and ethnic prejudice, but she certainly favours Bassanio, as Robert F. Darcy put it, the “local boy”(190)³⁹. Later on, in the trial scene, Portia’s question: “Which is the merchant here, and which the Jew?” (IV.i.171), can be interpreted as prejudice, as if a Jew could not be a merchant; or the question can also be seen as pretended impartiality. According to Halio, “[this is] an ingenuous question, [since] their costumes easily distinguish the two” as Jewish persons used to wear the “Jewish gaberdine” (cf. I.iii.109), but the “ingenuousness may [also] be part of Portia’s initial gambit” (196).

In both the casket and trial scenes Portia is playing a role whereby she is most probably misleading her environment. In the former, she is supposed to be a passive woman unable to control her fate. As for the suitors, Portia “cannot choose one nor refuse none.”(I.ii.25-26) due to her father’s will. Therefore, both her love life and her wealth are subject to the rules set by her father and depend on the luck of the suitors. However, when Bassanio is to choose a casket, we see a cunning woman who will not stop giving hints to the suitor favoured by her. Although she does it in an intelligently implicit way, she gives so many hints to Bassanio that her presence

³⁸Lewalski 181 and Jane M.Cohen 694-95 quoted in Yoshino 207.

³⁹ Cf. also Géher 303.

and her speech could be a decisive factor why Bassanio succeeds in winning her hand. Portia is therefore only playing a role, inasmuch as she manages to maintain the appearance that she is indeed an objectified, passive and weak maiden, incapable of controlling her choice in love and her economic life (once again, we see how love and money are inseparable). Furthermore, she pretends to be “an unlesson’d, girl, unschool’d, unpractised” (III. ii.159). In reality, she demonstrates great ability to use her persuasive powers to influence Bassanio and what is more, she does that undercover, unnoticed.

Similarly, Portia is playing a role in the trial scene as well. This time she is hiding behind the mask of an experienced and wise doctor in law. Apart from the fact that the judgement adopted by a public magistrate of the judicature invested with statutory powers must be duly executed, the binding nature of the judgment is accepted due to the fact that it is passed by a respectable and independent expert. (Cf. Shylock. “Most learned judge! IV.i.301; and Gratiano. “O learned judge!” IV.i.310). We know that in reality Portia is neither qualified or licensed to act as judge, but even if she would, the judge embodied by her is far from meeting the minimum standard of impartiality since the judgement affects significantly the life of Portia. Therefore, in both the casket and the trial scenes Portia creates and maintains a certain fiction, a fake appearance⁴⁰, which in itself is unfair. In addition, the lack of her impartiality amounts to the breach of judicial independence, which is an essential element of fair judicial procedure.

While Yoshino claims that Portia in the trial scene re-enacts and distributes the injustice the way she learnt it from her father through the example of the caskets (202), Caldwell asserts that the casket riddle is a game of chance, just like the trial scene (361). Whether we accept the first (‘injustice’) or the second (‘game of chance’) suggestion, any similarity with the trial along

⁴⁰Numerous critics have argued that *The Merchant* is a play about fake appearances. See for example: Hamilton 126, Levin 36, Stretton 85 (examples already referred to on page 3 of the present paper).

those lines confirms the assertion that the idea of a proper legal procedure managed by an impartial judge is mere fiction.

Grudin insightfully points out that: “[l]ike the motto of the leaden casket, Portia’s brief suggests an unstable, if not lawless, world of hazard, where known standards are radically limited and nothing is assured, where the prize falls to the enterprising contestant” (61). It is, therefore, the “unstable” and the “lawless” that are represented by Portia, because “she has rejected the false security of law” (Grudin 69). Since the bond story and the love story are concluded according to the taste of Portia, the play can be seen as tribute to the spirit of risk taking, which eventually prevails over predictability. This is also suggested by the inscription of the leaden casket: “Who chooseth me must give and hazard all he hath” (II.ix.20). That should not come as surprise, since the setting of the play is Renaissance Venice, where risk-taking, together with mercantile, entrepreneurial attitude were dearly cherished by society. These led to the strengthening of commercial activities which made the Venetian State one of the world’s greatest economic and political powers at the time.

We can find some risk involved in the ring plot too: the risk of trusting one to remain loyal in marriage. This time the obligation is begot not between parent and child, but between wife and husband: Portia gives her ring to Bassanio, while Nerissa gives hers to Gratiano.

When Bassanio is asked to offer his ring to Balthasar, in Grudin’s words, he is “trapped between conflicting obligations”, and “is in essentially the same kind of moral wilderness that has existed for characters throughout the play” (65). Bassanio is, once again, forced to choose, to decide and he must have a good situational judgement, or else, he will be judged. Bassanio is pushed to choose between keeping his promise never to part from the ring of Portia, and, symbolically, to be loyal to his wife, and the expectations to be grateful and to please Balthasar the lawyer, and, eventually, to pay back the moral debt to Antonio, his best friend.

However, in *The Merchant*, obligations are bound to be broken, and once again, one must bear the consequences. Or more precisely, it looks as if one must bear the consequences.

In a legal reading, the ring plot's trial scene is in Act V Scene i, starting with the quarrel between Nerissa and Gratiano as a farcical version of the 'ring trial'. The 'trial' between Portia and Bassanio is likewise short and comical. Bassanio, again, is clearly in breach of his obligation. As for Portia, she is once again expected to pass a judgement just like in the previous casket and trial scenes. Since Portia is the judge and the offended party in one, there is again a lack of "procedural fairness" in the ring plot due to the conflict of interest concerning her person. We hear the pleadings:

Bassanio: Sweet Portia,
 If you did know to whom I gave the ring,
 If you did know for whom I gave the ring,
 And would conceive for what I gave the ring,
 And how unwillingly I left the ring,
 When nought would be accepted but the ring,
 You would abate the strength of your displeasure.

Portia: If you had known the virtue of the ring,
 Or half her worthiness that gave the ring,
 Or your own honour to contain the ring,
 You would not then have parted with the ring." (V.i. 192-202)

Bassanio declares under oath: "No by my honour, by my soul/No woman had it but a civil doctor" (V.i.209-210), and Portia's judgment comes quickly and unexpectedly, just like the one against Shylock, and she seems to find pleasure to be the source of *deus ex machina*: "—you are all amaz'd" (V.i.266). Antonio urges again to offer himself as surety, this time not his body, but his soul: "I dare be bound again / My soul upon the forfeit, that your lord / Will never more

break faith advisedly” (V.i.251-253). The way out from the punishment due to a breach of contract is the re-entering into yet another obligation, i.e. the promise to keep the ring, and remaining loyal, this time with Bassanio’s and Antonio’s soul “upon the forfeit”. Even if the stakes are higher, already having been acquainted with the pattern of breaking vows, promises, obligations in the play, one should not expect any strong engagement nor any respecting of the new obligations. Therefore, there is a total inflation of promises, and the conclusion can only be that the only purpose of obligations in Venice is to be violated.

As the meaning of ‘trial’ also suggests, Bassanio and the other suitors are tried, i.e. tested by the casket riddle. Shylock and Antonio’s behaviour is tested in the court procedure, and, finally, the “merry wives” test their husbands’ fidelity: Bassanio and Gratiano are tried in the ring plot when reporting the loss of the rings to their women.

In all the three plots, the men are tried by women, or by a woman: Portia. Men are silly, harmful to themselves and others, and adhere too strictly to the letter of the law (Géher 303-304). Portia is the dubious key figure as the source of inexplicable judgment, the surprising effect of which leaves the amazed men speechless and dizzy: “Madam, you have bereft me of all words” says Bassanio in the casket scene (III.ii.175), while the defeated Shylock at the end of the trial scene, in a hardly credible way, says “I am content” (IV.i.390)⁴¹, but one is more inclined to believe him when he says: “I am not well” (IV.i.392), and finally, at the same time with the resolution of the ring affair, Antonio confesses: “I am dumb” (V.i. 279), once Portia gets rid of him by sending him away with the good news of his argosies returning to port.⁴²

Finally, even if the results of the bond story and the love story are satisfactory, the road leading to these results, or in other words, the means are unfair. In the first case, the rules set

⁴¹ Halio mentions though that Shylock’s uttering “I am content”, and thereby agreeing to Antonio’s terms “is sometimes taken as further evidence that Shylock was interested in money above everything” (207).

⁴²Géher explains that Antonio, in love with Bassanio, must be saved by Portia so as to avoid his self-sacrifice and thus Bassanio being bound to him. Cf. Géher 301-304.

by Portia's father, in the second case the principle of fair trial⁴³ are violated. The third mini-trial is the farcical reflection of the first two, alluding to their being just a travesty of trials, and, at the same time, relativising their significance, their stakes, their seriousness, and eventually, suggesting the pointlessness of any (type of) trial. Portia is mastering the business and marriage plots, transgresses and manages to circumvent the rules and obligations (both in a general and in a legal sense) in order to conclude the casket, the bond and the ring plots to her own satisfaction.

⁴³Although the expression 'fair trial' itself appeared after Shakespeare's time, the concept of a judiciary subject to laws has already been present since Ancient times. For example, already Hammurabi's Laws (1754 BC) regulated the judiciary in details (Horváth et al. 45). Ancient Rome also knew the requirement of judicial impartiality and trial according to the evidence (Földi-Hamza, 163, 183). The adjective that Sir Edward Coke, Shakespeare's contemporary, used to describe a *trial* is *indifferent* (Langford).

IV. THE STATE OF VENICE –THE RULE OF LAW AS FICTION

“... power acts by concealing itself, and that one of its historically persistent masks is the law...”

(Michel Foucault referred to in Cunningham 23)

In addition to law's implications on private persons, *The Merchant* sheds light on a further aspect of law: its relationship with political power and the state. The principle of the 'rule of law' implies that the institutions of the state and the persons are subject to and accountable to law that is fairly applied and enforced (Dictionary.com). Respect for the rule of law warrants predictability, and thereby favours business relations, which is essential in a state like Venice, where “international trade is the republic's main interest” (Willson 709). Although the principle of the rule of law was first expounded by the UK law Professor A. V. Dicey in his 1885 book 'Introduction to the Study of Law of the Constitution' (Businessdictionary.com), and so the expression did not exist in Shakespeare's time, the corresponding concept and the related problems had been discussed in legal philosophy⁴⁴ and are much present in Act IV. It is law's mission to maintain its primacy and thus to guarantee an atmosphere of stability for, among other things, doing business, even by means of protecting persons from an unfair application of law by state organs. On the other hand, the notion of the rule of law necessarily implies an unquestionable authority of law. The two goals are not always easy to reconcile.

Willson points out that “[s]table laws enabled Venetian businessmen to carry on their trade, but they did not ensure harmony on the Rialto”, because hatred against Shylock made him

⁴⁴For example, the 13th century Bracton, a judge in the reign of Henry III in a way introduced the concept of Rule of Law without naming it as Rule of Law. He wrote: “The king himself ought to be subject to God and the law, because law makes him king.” Edward Coke is said to be the originator of concept of Rule of Law when he said that the king must be under God and law and thus vindicated the supremacy of law over the pretensions of the executives. (Lawteacher.net)

intolerant against those who oppose him (Willson 709). With the bond conflict emerging, Shylock confronts Venice. Shylock provocatively challenges the strength of the Venetian State by trying whether the law gives him what is due to him. He is an example how aliens are treated and whether Venice business relations can be relied on. The ‘bond case’ is also a trial of the Venetian legal system: if it fails to acknowledge Shylock’s rights, it proves the lack of Venetian power. As Shylock says:

“If you deny it, let the danger light
 Upon your charter and your city’s freedom.” (IV.i.37-38)
 and
 “If you deny me, fie upon your law!
 There is no force in the decrees of Venice.” (IV.i.100-101)

Halio quotes Kittredge, according to whom “Venice can no longer be called a free city if it denies foreigners the rights that its laws secure to them” (Halio, 190). “Antonio [also] knows that Venice depends upon international trade, which in turn depends upon the city’s reputation for justice under law” (Halio 180). This is evident from Antonio’s utterance that:

“The Duke cannot deny the course of law,
 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.” (III.iii.26-31)

In Eagleton’s view, Shylock’s claim testing the legal system can be seen as the problem of the antagonistic opposites of ‘general’ and ‘particular’: “[t]o catch the Christians out in a *particular* juridical shuffle is of course to discredit the law in general ...” (38). Therefore, the judge *must* award Shylock his due to reinforce trust in the Venetian legal system, but the judge

cannot award Shylock his due, for it would jeopardise the spirit of the system and the protection of Venetian citizens. In Eagleton's words: "To protect itself, law is forced into a hermeneutical errancy, the final consequence of which might be political anarchy" (Eagleton 38). While the tension is one between Venetians and aliens in the particular case, it also highlights the necessity of law to transgress itself.⁴⁵

In principle Shylock could decide to abstain from the enforcement of the judgement, but it would be fully up to him to do so. Of course, that would contradict the priority accorded to the protection of rights and the enforcement of contractual obligations, and thus the commercial and legal predictability and stability guaranteed by the formerly praised Venetian law.

Portia seems to understand the dilemma perfectly:

"It must not be. There is no power in Venice
Can alter a decree established.
'Twill be recorded as precedent,
And many an error by the same example
Will rush into the state. It cannot be." (IV.i.215-219)

Thus, she pretends to award Shylock his claim to maintain the formal authority of law. In Levin's view, "When Shylock confronts the court with the issue of Venetian slavery, the duke attempts no rebuttal. Instead, he makes a startling announcement" (Levin 47-48).

„Upon my power I may dismiss this court,
Unless Bellario, a learned doctor,
Whom I have sent for to determine this,
Come here to-day." (IV.i.103–106)

⁴⁵ Cf. Eagleton 35-36. and Section 2.2 of the present paper.

In Levin's view, it is clear that "[the Duke] has every hope of circumventing what he takes to be the law", and Bellario is called in only support the desired verdict (48). "Thus it is not love of justice for her own sake, but mere self-interest that keeps Venice within the law" (Levin 48).

'Rule of law', however, presupposes that law should be applied fairly, but interestingly, nobody seems to question that, not even Shylock himself. Once he knows what the "law is", "he is content" (Cf. "Is that the law?", IV.i.311 "I am content." IV.i.390). 'Rule of law' becomes just an outward show; what really happens is that Portia lures Shylock into his own trap, and law is used for political purposes and for Portia's personal ambitions.

V. LAW AS MEANS

“The materiality of ducats, diamonds, and legal decrees is like the floating wreckage of a sunken argosy...”

(Gilman Sherman 284)

As it has been demonstrated several different ideas or abstract values related with law, such as consent, impartiality, binding force, fair trial, fair application of law, or the rule of law are not real in *The Merchant*, but are either missing or violated, or are present only superficially. In this sense, law in its pure form is only a fiction. ‘Law’ as presented in *The Merchant* is not an independent system of higher norms, but rather the product of the individual’s subjective ideas. Due to its self-surpassing, self-destructive and self-reconstructing nature, law is flexible, and its flexible nature makes it a perfect means for the fulfilment of different ambitions.

As for the social-historical background of the play, “[e]merging legal histories of early modern England” emphasise that law was a “multiple use-right available to most Englishmen” and that “law provided a resource to which many sorts of people might turn to bolster their own claims of legitimacy for their own ends” (Walker 2 qtd. in Finin 32).

In this context, it is not surprising that, similarly to their real life counterparts, the characters of *The Merchant* also do use law extensively to attain their goals. Concepts or values, such as justice or rule of law and the rest do not actually come into operation. The drama displays in great variety how law can be used for those public or private purposes: love, marriage, wealth, existence, self-sacrifice, revenge, independence, and political power. Concerning *The Merchant*, Posner notes that “[u]nlike Antonio and the rest of the characters in the play, Shylock and Portia understand that the law is something to be used” (152). In fact, the play seems to suggest slightly otherwise, and it is claimed that Antonio, the Duke, and even Nerissa, too, do understand that law can be used for different purposes.

In the private sphere law is used as just another tool for the pursuit of money and love. For example, for Antonio law is a means to demonstrate his unconditional love for Bassanio by means of entering into the bond which thus becomes a symbol of self-sacrifice. “It is Antonio, after all, who insists that in paying the debt he will ... [and] he desires extinction ... and in him risk is obscene, narcissistic, and perversely self-destructive” (Wilson 31 & 33). Géher suggests a convincing explanation of the personal motives of Antonio: he tries, by losing his life, to gain at least the sympathy of Bassanio; to bind to him the heart that otherwise he cannot get. The worse his case becomes, the better he feels (301-302).

The bond “appears to be, and is presented to Antonio as, a simple arrangement for funds”, and “it is secured—jokingly--by a pound of flesh; or so it seems. In reality, the commercial bond has a much more deadly purpose, which Shylock intends to realize” (Harmon 16). The bond for Shylock is in fact a means to “feed fat the ancient grudge” (I.iii.44). Probably, the only difference between Shylock and the other characters with respect to their uses and abuses of law is that he relies on the strict letter of the law and not its flexibility. Shylock refers to law in its pure form, that is independent from other, “extra-legal” values, such as humanity, mercy, justice, equality, even the general principles of law, like good faith or good morals. In Harmon’s view, Shylock’s use of the bond for his purposes “amounts to the intentional frustration of the contract, or worse still, its perversion. Rather than serving as a means by which a civilized community exchanges needed things”, the legal instrument is “redirected to a private use, serving to satisfy only personal aims”, such as “greed, or revenge” (Harmon 17-18).

For Shylock, the monomaniac adherence to the law is a means of revenge, but also a means to forget. Gilman Sherman gives a Cavellian analysis of Shylock’s tragic fall and determines “Jessica's departure” as the event leading to his “fanatical faith in the law” (278):

Shylock's single-minded pursuit of the bond, like an onslaught of tunnel vision, makes sense if construed as a symptom of a strategy of large-scale avoidance of the knowledge

that with Jessica gone, his whole world has fallen away. ... His fixation on the redemption of Antonio's bond not only allows him to disown any knowledge of whatever personal and paternal failures he may have glimpsed, but it also represents a claim on the presence of the unconditioned (Gilman Sherman 278 and 284).

Gilman Sherman notes that the skeptical trajectory followed by Shylock ends by him becoming “a fundamentalist with respect to the law” (284). In this respect, Gilman Sherman quotes Cavell who explained fundamentalism as “skepticism under a reverse sign” in the sense that “fanaticism of unconditioned or hyperbolic love [is] a contrary face of the skepticism of unconditioned or hyperbolic doubt” (Cavell 18, Gilman Sherman 284).

Kenneth Gross too shares a similar view concerning the matter when he notes that “[the] bond has become [Shylock’s] one secure possession, all that is left him in lieu of daughter and ducats—indeed, the means to recompense their loss” (62).

The reason why Shylock’s punishment is likely to evoke empathy and even sympathy in the audience is twofold. The first reason is quite straightforward: it is hard not to see that he shrinks and is, finally, reduced to zero, having lost his daughter, his wealth, his religion, and “everything” (cf. Géher 304). Therefore, it is a reason inherent in Shylock’s “person”, and probably we all, who have “daughters”, “wealth”, and “religion”, consciously or unconsciously, share his sufferings. Shylock’s end sheds new light on his “Hath not a Jew eyes?” speech (III.i.55-69), highlighting our common humanity.

The other reason why we may easily identify with Shylock is inherent in his cause: a battle fought on the function and functioning of law. Portia, by judging against Shylock bereaves him of the substitute for “daughters”, “ducats” and Jewishness: his bond. With the bond lost, however, we lose our faith in the proper functioning of law. This is not a matter of saving or not saving Antonio’s life (although the former is clearly our preference): it is a matter of the possibility to win legal battles by enumerating disinterested legal arguments against

disinterested legal arguments, without the massive intrusion of extralegal, private or political considerations.

If, in Eagleton's view, Shylock's aim was to "discredit the law in general" (38), he does manage to cause disillusionment, even if he fails. The power of the "decrees of Venice" stands the test, law falls. Even if Shylock becomes a fundamentalist of the law, he believes in what we want to believe: in law's security, predictability, and the rule of law, but all our expectations and beliefs are annihilated together with Shylock. Do we not, instead of Shylock, become skeptical about law?

As for Portia, she manages to marry freely, and to drive away the shadows that menace the enjoyment of her marriage with the help of legal arguments and passing a judgement against Shylock. However, the judgement of Portia has a double end: in addition to her ambitions in her private life, the judgment serves a "public" purpose too, as it is also a means to reinforce the superiority of Venetian laws and the authority of the State.

Such fights for political influence in law's disguise were not unknown by Shakespeare's audience. Stephen A. Cohen advocates an interpretation of the play according to the socio-historical realities of Shakespeare's time. He claims that the main binary of the play is the confrontation of the emerging and the ruling class of 16th century Elizabethan England (35). That confrontation, S. A. Cohen claims, was manifested, *inter alia*, through their relationship to law and theories of justice, which, eventually, served the purposes of gaining or maintaining political and economic power. Portia's attitude of law is the representation of the attempt of the Crown "to further its social and economic agenda in the face of the legal challenge presented by the common law" (38). On the other hand, a predictable interpretation of law is an essential prerequisite of a sound operation of the market, therefore the legal theory favouring stricter adherence to the law was associated with the emerging classes of early capitalism. In Max Weber's words:

The modern capitalist concern ... requires for its survival a system of justice and an administration whose workings can be rationally calculated, at least in principle, according to fixed general laws... It is as little able to tolerate the dispensing of justice according to the judge's sense of fair play in individual cases or any other irrational means of principles of administering the law...as it is able to endure a patriarchal administration that obeys the dictates of its own caprice, or sense of mercy (qtd. in S.A.Cohen 38).

The motives being private or public, the uses, or rather abuses of law in *The Merchant* take place in hidden or implicit ways. Legal arguments and law's technical language--not to speak of legalistic and strict interpretation--are apt to hide real intentions, just like the lawyer's gown hides Portia's real self, as the boy's garment hides Jessica's elopement, and the caskets hide meaning.

The meaning to be retrieved from the caskets, is a matter of interpretation, or more importantly, a matter of the *right*, or we may even say, a local, or Venetian, and thereby biased interpretation, exactly as in the case of the laws of Venice: Portia bends the law according to her needs, and the needs of the City State of Venice. Portia's line of interpretation of the law and its forerunning reflection in the casket plot--the interpretation of the casket riddles--suggest that a winner should dare to face risk ("to hazard all he hath" II.vii.9) and, guided by a venturing and creative, i.e. Venetian spirit, should have the ability to interpret encrypted messages so as to use the retrieved *meaning* as a *means* to success.

It was Kállay who identified and explained the tight connection between *means* and *meaning* in *The Merchant of Venice* (cf. Kállay, esp. 177). In Kállay's words: "*Means* means "meaning" and *meaning* means "means" in the play: the question is where a character imagines *means* to be in order to gain *meaning*, and *vice versa*" (178). In this logic, characters seem to find *means* in law, or more precisely the interpretation of law.

The phenomenon of law and the special hermeneutical process of legal interpretation is another manifestation of the interrelatedness of *means* and *meaning*, and it fits perfectly the interpretational framework defined by Kállay.

In Finin's view, the "play which is so famous for its trial scenes becomes a kind of trial of justice and, more profoundly, its textual counterpart, law" (27). In *The Merchant*, "law's privileged status as a disinterested pursuit of justice" is investigated, but instead, "law's profound partiality" is exposed (Finin 27). "Portia emphasizes the dense opacity of signs which finally "prevents language from ever fulfilling itself in the determination of one, true, final meaning" (Nouvet 129 qtd. in Finin 39).

Accepting that the drama is a play about fake appearances and if in Venice everything is exchangeable—even women, body or soul--, it is easy to see that law is no exception: it is an illusion to think of it as a higher standard of values: legal arguments actually stand for economic, emotional, political or other arguments, while economic, emotional and political interests are converted into legal concepts, i.e. translated into the language of law.⁴⁶ Legal meaning is just a matter of the right choice, i.e. the choice of the "best possible" interpretation that serves the purposes of a given character in a given situation. In general, in *The Merchant* law is an important means in the pursuit of happiness.⁴⁷

⁴⁶The conversion of legal norms into politics and *vice versa* in international public law was presented and set out in details by Martti Koskenniemi. See for example, Martti Koskenniemi, *The Politics of International Law*. Hart Publishing 2011.

⁴⁷Probably the most important example for seeing law as means is Rudolph von Jhering's *Law As a Means to an End*, 2 vol. (1877–83; originally in German). While admitting that the present paper can by no means be compared to von Jhering's complex philosophical work, which is a cornerstone in the founding of social utilitarianism, it seems necessary to make some distinctions. According to the Encyclopedia Britannica "Von Jhering maintained that the purpose of law was the protection of individual and societal interests by coordinating them and thus minimizing occasions for conflict. Where conflict was unavoidable, he assigned greater weight to societal interests, thereby inviting the criticism that he subordinated the individual to society". (Source: <https://www.britannica.com/biography/Rudolf-von-Jhering#ref94188>, Accessed: 17 March 2018). On the contrary, the idea of "law as means" in the present paper is a simple notion that offers a certain reading to *The Merchant of Venice*. Also, I use the term "means" in an individualistic and pejorative sense in this context.

CONCLUSION

In the present paper it has been demonstrated that the legal situations in Shakespeare's *The Merchant of Venice* is the author's invention, which is at the same time partially based on real legal institutions and legally related questions of Shakespeare's time. Accordingly, some of the characteristics of the socio-historical background of the drama have been outlined, with special attention to questions in connections with lawyers and law in general, which could have served as sources of the play. The other, and more important purpose of the present paper was to shed light on a new layer of interpretation through a detailed and thorough survey of the legally connected questions of the drama. A legal reading to all three main plots, namely, the casket, the bond and the ring plots have been suggested.

In a more detailed discussion of language, legal language and interpretation it has been suggested that the unclear factual and legal setting to the play may be deliberate. Such a lack of clarity as to the facts and the applicable legal rules of the *Shylock vs. Antonio case* may illustrate the difficulties of legal relativism, the existence of contradicting or even concurring interests, the importance of legal interpretation, and of communication in general. The margin of appreciation by the judiciary, the possible application of mercy and equity in general brings about the danger to render law subjective, flexible, and unpredictable.

By demonstrating why binding force, consent, justice, judicial independence and fair hearing in general, and the rule of law are only a fiction in the play the conclusion was drawn that law as presented in *The Merchant of Venice* is rather just a means to attain certain goals, which is enabled by law's flexible nature. Law is not purely law, it is a means to struggle for happiness or political power.

Portia's role is central not only from a dramaturgical point of view, but her character has become a symbol for lawyers. In Kenji Yoshino's words: "We focus on Portia because she

represents our deepest anxieties about the persuasive power of rhetoric. ...Ultimately, it may be that we as lawyers focus on Portia as part of an obsession of self-conception. What we say about her is what we say about ourselves, what we fear about her is what we fear about the profession (185)".

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