

LEGAL HISTORY

The inviolability and enforcement of Shylock's bond: a look into sixteenth-century Venetian contract law through Shakespeare's eyes

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Introduction

"I'll have my bond. Speak not against my bond.

I have sworn an oath that I will have my bond."¹

The law is a complication in society that may be confronted constantly.² The above verses relate to the legalistic debate over the pound of flesh within *The Merchant of Venice* by William Shakespeare. Through the character of Shylock, Shakespeare confronts the reader with the theme of the inviolability of the contract between Shylock and Antonio. In the Law and Literature movement, Shakespeare's works have been looked at with great interest due to the importance of legal themes in his plays,³ and one of the works most famously analysed within this movement is the theatrical comedy *The Merchant of Venice*. In this play, Shakespeare deals with different themes and plots that confuse and intrigue the reader at the same time. Generally, three main plots have been identified. The first main plot is "the flesh bond", between Shylock and Antonio;⁴ the second is the "casket plot" concerning Portia and her suitors; lastly, is the "Lorenzo and Jessica plot", which regards the love story between a Christian and a Jew.⁵ All the three plots are inextricably linked and fused together by the overarching element of the bond.⁶ The bond is represented by the contract between Shylock and Antonio, but also by the relationship of friendship, love, and family throughout the play.⁷

The "flesh bond plot" is the most explored theme in the Law and Literature movement. This theme is often chosen as a setting for the discussion between equity and justice.⁸ Several scholars have conducted research by applying an historical background to Shakespeare's work. In the academic world there has been almost literary consensus for the use of Elizabethan jurisdiction of equity⁹ as a background to the comedy, to represent the struggle between common law and equity.¹⁰ Despite the fact that Shakespeare himself was well acquainted with the law, he appeared to struggle with the concept of justice as it was a recurrent theme in his plays.¹¹ Shakespeare's concept of justice within the law in Elizabethan England has been exhausted by academics throughout the centuries, as well as the role of Portia, who is often depicted as the incarnation of equity balancing the strict common law.¹² Nonetheless, alternatives to the common law versus

¹ William Shakespeare, *The Merchant of Venice* (Jay L. Halio ed, Oxford University Press 1993) act III.III vv 4-5.

² Tullio Ascarelli, 'Antigone e Portia' (1955) 1 Italian Law Journal 167, 167.

³ Richard A Posner, 'Remarks on Law and Literature' (1992) 23 Loyola University Chicago Law Journal 181, 181.

⁴ Shakespeare (n 1) act I.III vv 1- 178, act II.VIII, act III.I, act III.II vv. 218 - act III.IV, and act IV.I.

⁵ Michael Jay Wilson, 'View of Justice in Shakespeare's the Merchant of Venice and Measure for Measure' (1995) 70 Notre Dame Law Review 695, 695.

⁶ Jay L Halio, 'General Introduction' in William Shakespeare, *The Merchant of Venice* (Jay L Halio ed, Oxford University Press 1993) 17 and 29.

⁷ *ibid* 29.

⁸ B J Sokol & Mary Sokol, 'Shakespeare and the English Equity Jurisdiction: the Merchant of Venice and the Two Texts of the King Lear' (1999) 50 The Review of English Studies 417, 417.

⁹ Further readings on the rise of English court of equity and its relationship with common law can be found, see S F C Milson, *Historical Foundation of Common Law* (Butterworths 1969) 74-90.

¹⁰ Sokol & Sokol (n 8) 417. Charles Spinoza, 'Shylock and the Debt and Contract in the Merchant of Venice' (1993) 5 Cardozo Studies in Law and Literature 65, 65.

¹¹ Jay L Halio, 'General Introduction' (n 6) 23. Wilson (n 5) 695.

¹² For further readings on the role of Portia as equity, see Sokol & Sokol (n 8). Marl Edwin Andrews, *Law Versus Equity in the Merchant of Venice; A Legalization of Act IV, Scene I* (University of Colorado Press 1965).

equity analysis of the comedy have been provided.¹³ An interesting alternative is the possibility that Shakespeare may have also wanted to reflect on the actual setting of the comedy: Venice and its law.

This article aims to renew the possibility of legal-literary analysis of Shakespeare's *The Merchant of Venice* by applying it to the real Venetian context. The essay accomplishes this objective by answering the following research question:

To what extent do the inviolability of Shylock's bond and its enforcement stem from popular culture and legal historical reality of Venetian law in the sixteenth century?

In order to tackle this research question, the article recognises the following premise: the penal clause, namely the pound of flesh requested by the contract between Shylock and Antonio, would have been enforceable in Venice in the sixteenth century. The enforceability of the *stipulatio poena* is thus accepted. Stefania Gialdroni and Thomas Niemeyer have already shown that a penalty of a contract requiring part of the creditor's body was possible and enforceable in Venice and in Europe during the sixteenth century.¹⁴

The main body of this article is divided into three main sections. The first section presents the theatrical comedy in order to permit the reader to have an overview of Shakespeare's work and its influences. It also informs the reader of the popular culture around Venice in the sixteenth century. Hence, it includes the depiction of the city through the myth of Venice, and how the popular vision of the city influenced Shakespeare's work. Furthermore, the second section explores what would have been the applicable contract law of Venice in the sixteenth century. In particular, it provides an answer to the question: how would Shylock's bond be interpreted in Venetian law, and in which court would it have been enforced? It follows a brief overview of Venetian sources of law and legal tradition, in order to allow the reader to understand the process of discovery of a probably applicable legal provision. Once that provision has been identified, the article then refers exclusively - and in a novel way - to Liber I Chapter XXXIII of the *Statutum Novum*, establishing the rule: "promises must be kept" within the framework of contracts. Lastly, in this section, the court before which Shylock should have sought enforcement in the reality of Venetian law is established. Hereinafter, the third section compares Shakespeare's depiction of the bond and its enforcement before the Duke of Venice to the reality of Venetian contract law discovered in the previous section. The article deals with the development of the "flesh bond" plot throughout the comedy juxtaposed with the reality of Venetian contract law of the sixteenth century, and the conclusion evaluates to what extent Shakespeare's bond and its enforcement before the court stem from popular culture and legal historical reality of Venetian law.

As a limitation to this article, it is important to note that the existence of the Alien Statute is not considered. The Alien Statute is a possibly fictional Venetian statute requiring Shylock's life and properties to be at the mercy of the Duke of Venice, because the foreigner attempted to the life of a citizen, Antonio.¹⁵ This limitation allows us to set the focus on the sole bond and its enforcement between fiction and reality.

Predominantly, this article analyses *The Merchant of Venice* from the application of legal historical sources. The research has been conducted mainly through an historical method. However, the historical legal documents on this specific topic are not yet explored by many legal

¹³ For other examples on the role of Portia as an opportunistic figure, see Ascarelli (n 2). Portia interpreted as the goddess of Fortune, see Ellen M Caldwell, 'Opportunistic Portia as Fortuna in Shakespeare's the Merchant of Venice' (2014) 54 Studies in English literature 349. For further readings on another analysis of the trial of act IV.I of *The Merchant of Venice* considering the English Law Merchant and the Law Merchant Tribunal, see B J Sokol, 'The Merchant of Venice and The Law Merchant' (1992) 6 Renaissance Studies 60.

¹⁴ For further readings on the penal clause (*stipulatio poena*), see Stefania Gialdroni, 'La Clausola Penale tra Finzione e Realtà. Il Caso Limite di Shylock alla prova del diritto Veneziano, del Diritto Comune e del Common law' in S Cherti (ed), *La Pena Convenzionale nel Diritto Europeo* (Jovene 2013) 25-26 and 32. Thomas Niemeyer, 'Judgment against Shylock in the Merchant of Venice' (1915-1916) 14 Michigan Law Review 20, 30.

¹⁵ Shakespeare (n 1) act IV.I vv 344-359.

scholars, thus further research is necessary.¹⁶ The article firstly considers the general legal framework of the Republic of Venice. Venice represented a *unicum* in its legal tradition as influenced by different sources but never united with the *ius commune* as the rest of the Italian peninsula.¹⁷ Secondly, it aims to explore the specific statutory contract law in force. Hence, from the historical flow of events the article traces back to the *Statutum Novum* and its glosses referenced in the State Archives of the city of Venice.¹⁸ For this purpose, secondary legal sources have been studied to interpret the primary law of the time. Additionally, in order to analyse the theatrical comedy, secondary literal academic sources have also been employed in order to better understand the work of Shakespeare.

***The Merchant of Venice* and its influences**

Before examining the historical legal setting of *The Merchant of Venice*, the article provides an overview of the “flesh bond” plot of the comedy and considers its literary sources. The function of this section is to acquaint the reader with the details of the comedy and its background, as well as the popular perception of Venice, in order to fathom subsequent analysis of the legal reality and to evaluate Shakespeare’s influences from popular culture. The first section of the section presents a brief summary of *The Merchant of Venice*’s “flesh bond” plot and its literary sources. Subsequently, the second section examines the special importance of Venice to the Shakespearean comedy, diving into the popular culture of the city during the sixteenth century.

A brief overview of the Shakespearean comedy

Scholars generally agree that *The Merchant of Venice* was written between 1594 and 1598.¹⁹ Although the comedy was not printed and published until 1600, it was entered in the Stationers’ Register in 1598.²⁰ Shakespearean comedies are often characterised by numerous stories and characters that blend together.²¹ Those stories have as a primary aim the description of the social fabric within a particular time and place.²² In *The Merchant of Venice*, there are three main plots intertwined among themselves: “the flesh bond plot”, the “casket plot”, and the “Lorenzo and Jessica plot”. The “flesh bond” plot is the central theme of this article.

Antonio, a Venetian merchant, borrowed three thousand ducats from Shylock, a Jew money-lender.²³ He turned to Shylock in order to help his dear friend Bassanio to win the hand of the lady of Belmonte, Portia, in marriage.²⁴ The Jewish money-lender provided the money to Antonio, who had to return the amount within three months.²⁵ Shylock inserted a penal clause in the contract in case of default of the debt: Antonio would be liable for a pound of flesh to be taken from his own body.²⁶ Antonio agreed to the condition.²⁷ Unfortunately, at the end of the three-month period, Antonio had lost his ships at sea and was not able to repay his debt to

¹⁶ For examples of articles on Venetian law, the *ius commune* and commercial law, see Silvia Gasparini, ‘I Giuristi Veneziani e il loro Ruolo tra Istituzioni e Potere nell’Età del Diritto Comune’ in Karin Nehlsen-von Stryk & Dieter Norr (eds), *Diritto Comune Diritto Commerciale Diritto Veneziano* (Centro Tedesco di Studi Veneziani 1985). Giovambattista Gasparini, ‘Diritto Veneziano e Diritto Comune (riassunto)’ in Karin Nehlsen-von Stryk & Dieter Norr (eds), *Diritto Comune Diritto Commerciale Diritto Veneziano* (Centro Tedesco di Studi Veneziani 1985).

¹⁷ S Gasparini (n 16) 70-71.

¹⁸ Jacopo Tiepolo, ‘Statutum Novum [New Statute]’ as commented by Roberto Cessi in Roberto Cessi (eds), *Gli Statuti Veneziani di Jacopo Tiepolo e le loro glosse* (Venezia 1938).

¹⁹ Wilson (n 5) 707.

²⁰ The first performance known of the play was at the court of James I in 1605, see Jay L Halio, ‘General Introduction’ (n 6) 27.

²¹ Wilson (n 5) 703-704.

²² *ibid.*

²³ Shakespeare (n 1) act I.III.

²⁴ *ibid* act I.I vv 161-176 (Bassanio’s request) vv. 177-185 (Antonio’s reply).

²⁵ *ibid* act I.III vv 1440-148.

²⁶ *ibid* act I.III vv 1440-148.

²⁷ *ibid* act I.III vv 149-150.

Shylock.²⁸ Thus, Shylock decided to enforce his bond in front of the Duke of Venice.²⁹ Towards the end of the comedy, in act IV.I, the trial began. There, Portia, taking on the appearance of a lawyer, saved Antonio from certain death. Portia claimed that the contract only awarded Shylock a pound of flesh but no blood could be spilled.³⁰ To her judgment,³¹ Portia attached the consideration on the Alien Statute that provided for Shylock to be at the mercy of the Duke as he attempted at the life of a citizen, namely Antonio.³² At the end of Act IV.I, the “flesh bond” plot is concluded: Antonio is safe while Shylock has lost half of his property, and now, by virtue of a decision of the Duke of Venice, he has to convert to Christianity due to the application of the Alien Statute.³³

As far as Shakespeare’s literary historical sources are concerned, several scholars ascribed the different stories behind the plots in *The Merchant of Venice* to previous popular works.³⁴ Shakespeare took inspiration from pre-existing folkloristic stories for this play.³⁵ Considering the character of Shylock in general, several scholars cited Marlow’s *The Jew of Malta* as a model.³⁶ Another important reference to *The Merchant of Venice*’s background sources is *Il Pecorone* (‘The Dunces’).³⁷ This short story was most likely a tale in Giovanni Fiorentino’s collection of tales and it closely resembled the Shakespearean play.³⁸ The main character of *Il Pecorone*, Gianetto, asked his friend Ansaldo to lend him money.³⁹ Ansaldo agreed but he had to borrow money from a Jew money-lender.⁴⁰ As Ansaldo eventually forfeited the loan, a pound of flesh was asked of him as provided in a contract they subscribed.⁴¹ Fortunately, the lady of Belmonte, namely Gianetto’s lover, as a lawyer in disguise, tricked the Jew and saved Ansaldo.⁴² Notwithstanding that Shakespeare took inspiration from this story, he also modified the play adding conflicting plots based on other popular works. For example, the “casket’s plot” was probably based on Boccaccio’s *Decameron* or on the *Gesta Romanorum*, while the Jessica and Lorenzo subplot built on Marlow’s *Jew of Malta* or Masuccio’s *Il Novellino*.⁴³

Popular culture of Venice in the sixteenth century

As far as is known, Shakespeare never travelled to Venice.⁴⁴ He most probably gained his knowledge from conversations with friends, acquaintances who travelled to the city, and various readings he had access to.⁴⁵ In the sixteenth century, Venice had a reputation for great wealth and

²⁸ *ibid* act III.III vv 2-7.

²⁹ *ibid* act III.III vv 4-11.

³⁰ Shakespeare (n 1) act IV.I vv 302-309.

³¹ It is referred to “her judgment” as from act IV.I vv 296-297 Portia is taking the role of the judge, notwithstanding she was technically Antonio’s lawyer. It is Portia who is giving the judgment and not the Duke of Venice. See *ibid* act IV.I vv 296-297.

³² *ibid* act IV.I vv 343-359.

³³ *ibid* act IV.I vv 376-386.

³⁴ Wilson (n 5) 707.

³⁵ Jay L Halio, ‘General Introduction’ (n 6) 13-23.

³⁶ Wilson (n 5) 708. Joan Ozark Holmer, ‘The Education of the Merchant of Venice’ (1985) 25 *Studies in English Literature 1500-1900 Elizabethan and Jacobian Drama* 307, 322.

³⁷ Halio, ‘General Introduction’ (n) 14-15. Jay L. Halio (ed), *Understanding the Merchant of Venice: a student casebook to issues, sources and historical documents* (Greenwood press 2000) 2.

³⁸ Daria Perocco, ‘Venice, Shakespeare and the Italian Novella’ in Laura Tosi & Shaul Bassi (eds), *Visions of Venice in Shakespeare* (Ashgate 2011) 38.

³⁹ Jay L Halio, ‘General Introduction’ (n 6) 14-15.

⁴⁰ Perocco (n 38) 39.

⁴¹ Jay L Halio, ‘General Introduction’ (n 6) 14-15.

⁴² *ibid*.

⁴³ Wilson (n 5) 708. Halio, *Understanding the Merchant of Venice: a student casebook to issues, sources and historical documents* (n 37) 2. Perocco (n 38) 40-41. Other scholars have identified additional possible sources such as: *The Ballad of Gernutus*, Antony Muday’s *Zelauto*, and Alexander Silvayn’s *The Orator*, see Holmer (n 36) 308.

⁴⁴ Virginia Mason Vaughan, ‘Super subtle Venetians: Richard Knolles and the Geopolitics of Shakespeare’s *Othello*’ in Laura Tosi & Shaul Bassi (eds), *Visions of Venice in Shakespeare* (Ashgate 2011) 19.

⁴⁵ *ibid*.

cosmopolitanism.⁴⁶ The city appealed to Shakespeare's contemporaries who would see it as an ancient republic that had earned prestige for political astuteness, wealth, and legal justice.⁴⁷

In the popular imaginary of the Republic of Venice, the so-called "myth of Venice" dominated the scene.⁴⁸ According to David McPherson, there were four components that characterized the city of Venice in popular culture: Venice the "città galante" (the "pleasure city"), Venice "the rich", Venice "the wise", and Venice "the just".⁴⁹ First, taking into account the epithet "città galante", the city had earned standing as the pleasure capital of Europe.⁵⁰ Second, Venice was also referred to by the epithet "the rich" due to its great maritime and economic power.⁵¹ Venice was an attraction for foreign trade, even though in the sixteenth century its wealth and power were in decline.⁵² Third, the city was also named "the wise". The Venetian state was regarded as such due to the fact that its government was composed of three different parts: monarchy, represented by the Duke of Venice; aristocracy, embodied in the Senate; and democracy, personified by the *Maggior Consiglio* (the "Great Council").⁵³ Academics and scholars considered the city balanced and wise due to its mixed form of government.⁵⁴ The closing epithet for Venice was "the just".⁵⁵ The city was referred as such because of the rigidity of its laws and the fairness of its justice.⁵⁶

For the purpose of this article, Venice "the just" is the most important aspect of the myth of Venice. According to the myth, the city had a great reputation for impartiality and severity of its laws.⁵⁷ Travellers of the sixteenth century reported their astonishment by the inviolableness of Venetian law.⁵⁸ For example, Venice's severity would normally provide for the loss of tongues or eyes as a result of swearing.⁵⁹ Fynes Morysons, a traveller who visited Venice in 1590, assisted and reported the mutilation and execution of two sons of senators for blasphemous songs and other misdemeanours.⁶⁰

The myth of Venice and the highly favourable image of Venetian justice had probably reached England through Lewkenor's translation of Contarini's *De Magistribus et Republica Venetorum* of 1543.⁶¹ First and foremost, Contarini's book portrayed Venice as a mixed form of government.⁶² According to David McPherson, Lewkenor had translated Contarini's book on the commonwealth and governance of Venice in 1599.⁶³ Shakespeare was probably fascinated by the city as well as his contemporaries, nonetheless it is unclear if he read Lewkenor's translation of Contarini for his play *The Merchant of Venice*.⁶⁴ David McPherson claimed that the book had some influence as far as Act IV is concerned, as Shakespeare may have had time to access the

⁴⁶ Andrew Hadfield, 'Shakespeare and Republican Venice' in Laura Tosi & Shaul Bassi (eds), *Visions of Venice in Shakespeare* (Ashgate 2011) 67.

⁴⁷ Jay L Halio, 'General Introduction' (n 6) 24-26.

⁴⁸ For further readings not addressed in this chapter in regard to the shortcomings of the myth and when the myth lost power, see James S. Grubb, 'When the Myth Loses Power: Four Decades of Venetian Historiography' (1986) 58 *The Journal of Modern History* 43.

⁴⁹ David McPherson, *Shakespeare, Jonson and the Myth of Venice* (University of Delaware Press 1990) 27.

⁵⁰ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 37.

⁵¹ *ibid* 29-30. Jay L Halio, 'General Introduction' (n 6) 24-26.

⁵² McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 30.

⁵³ *ibid* 32. David McPherson, 'Lewkenors' Venice and its Sources' (1988) 41 *Renaissance Quarterly* 459, 462.

⁵⁴ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 32. For further readings on the "Myth of Venice" see, Franco Gaeta, 'Alcune considerazioni sul mito di Venezia' (1961) 1 *Bibliothèque D'Humanisme and Renaissance* 58.

⁵⁵ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 37.

⁵⁶ *ibid*.

⁵⁷ *ibid*. Halio, 'General Introduction' (n 6) 24-26.

⁵⁸ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 39.

⁵⁹ *ibid* 38.

⁶⁰ *ibid* 37.

⁶¹ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 37-38.

⁶² McPherson, 'Lewkenors' Venice and its Sources' (n 53) 459.

⁶³ *ibid*.

⁶⁴ *Satutum Novum* (n 18) and accompanying text.

manuscript before the publication of the play in 1600.⁶⁵ He argued that Shakespeare successfully employed a number of contradictory qualities of the myth. For example, the figure of Portia represented impartiality and justice, while wealth and richness were part of Shylock's character.⁶⁶ However, even if Shakespeare had no time to read Lewkenor, other scholars claimed that his information about Italian culture and the Republic of Venice probably built on the manuscript *History of Italy* by William Thomas.⁶⁷ An indication to that end is the fact that Thomas' book was of central influence in the English vision of Venice before Lewkenor.⁶⁸

Consequently, having considered Shakespeare's influences and historical sources, it is possible to assume that *The Merchant of Venice* was mainly inspired by Giovanni Fiorentino's *Il Pecorone* which indeed had the same setting and a similar plot. Moreover, building on the importance of Venice in the popular imaginary, Shakespeare employed the city's characteristics well within his play. Indeed, Venice was regarded as the 'purest city' in terms of its system of justice. Hence, Shakespeare could have decided to exploit the different aspects of the city known to his contemporaries to develop the theme of the "flesh bond" and its inviolability.

The inviolability of Shylock's bond and its enforcement in Venetian law

This section presents a legal historical overview of Venetian contract law in the sixteenth century. Notably, it considers the inviolability and the enforcement of Shylock's bond according to the law of the time and it provides an answer to the question: how would Shylock's bond be interpreted in Venetian law, and in which court would it have been enforced? The first section of the section provides a brief overview of the Venetian legal tradition, while the second is dedicated to Venetian statutory development in order to identify the applicable set of legal provisions within the framework of Venetian contract law. The article focuses on one particular legal provision that in a novel way sustains the inviolability of the Shakespearean bond. As the final part of this section, the third section provides an overview of the Venetian civil court system. In particular, the court of law before which Shylock should have sought enforcement is presented.

Venetian legal tradition⁶⁹ and the rejection of the *ius commune*

Legal historians refer to the *ius commune* as the secure point of reference shared among the different legal systems in Italy.⁷⁰ In its historical meaning, the *ius commune* was the combination of Roman law and Canon law, with elements of customary law and feudal law.⁷¹ As a result of the rediscovery of the *Digest* in the eleventh century, the study of Roman law took off and expanded in the peninsula, as well as in the whole of Europe.⁷² Even though the *ius commune* was a secure point of reference for the legal tradition that prevailed in Italy, the peninsula was a patchwork of different cities, and each of them also had its own laws.⁷³ Among those cities and

⁶⁵ McPherson, 'Lewkenors' Venice and its Sources' (n 53) 466.

⁶⁶ McPherson, *Shakespeare, Jonson and the Myth of Venice* (n 49) 51.

⁶⁷ Hadfield (n 46) 68.

⁶⁸ Thomas' book was published in 1549, see *ibid*.

⁶⁹ In this essay 'legal tradition' is understood as: "A set of deeply rooted, historically conditioned attitudes about the nature of the law, about the role of the law in the society and the polity, about the proper organization and operation of the legal system, and about the way law is or should be made, applied, studied, perfected and taught." See, John Henry Merryman, *The Civil Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford University Press 1969) 2.

⁷⁰ Reinhard Zimmermann, 'Statuta sunt stricta interpretanda? Statutes and the Common Law: A Continental Prospective' (1997) 56 *The Cambridge Law Journal* 315, 316.

⁷¹ Giovanna Spadolini, 'La Storia dei Comuni Italiani' no. 7 October 2006 (Retrieved from the Official Website of the Italian Senate of the Republic) Available at: https://www.senato.it/3182?newsletter_item=1107&newsletter_numero=104# Last Accessed 28th June 2020. Paul J du Plessis, 'Towards the Medieval Law of Hypothec' in John W Cairns & Paul J du Plessis (eds) *The Creation of the Ius Commune* (Edinburgh University Press 2010) 165.

⁷² Harry Dondorp & Eltjo H J Schrage, 'The Source of Medieval Learned Law' in John W Cairns & Paul J du Plessis (eds) *The Creation of the Ius Commune* (Edinburgh University Press 2010) 13-15.

⁷³ Manlio Bellomo, *The Common Legal Past of Europe 1000-1800* (Lydia G Cochrane tr, The Catholic University of American Press 1995) 83-96.

territories, the most important ones were: the Papal State, the Kingdom of Naples, the Duchy of Milan, and the Republics of Venice and Florence.⁷⁴ All of those entities formed different jurisdictions with their own courts and legal systems.⁷⁵ The different variations of local law throughout the territory were named *ius proprium*.⁷⁶ Therefore, even though Roman law was seen as the source of inspiration of the different legal systems, it was mostly not applicable within courts.⁷⁷ The prevailing legal doctrine established that the legal systems of the Italian peninsula were built around the rule that the *ius proprium* had precedence over the *ius commune*, while the latter was used as a binding supplementary source.⁷⁸ Accordingly, the political autonomy of the cities had to be respected and this required compliance with their statutes.⁷⁹

The city of Venice was very peculiar due to the fact that it rejected the *ius commune*, as opposed to the tradition of the rest of the Italian peninsula.⁸⁰ The Republic of Venice had extensive territories that were divided into *Dogado*, *Terraferma* and *Stato da Mar*.⁸¹ The city of Venice was to be found in the *Dogado*, while the *Terraferma* was formed by Italian territories, and the *Stato da Mar* was composed by the Venetian colonies in the Balkans.⁸² The focus of this article lays on the city of Venice only, as the setting of *The Merchant of Venice*. Venice was the sole city that had a different legal tradition than the rest of the Venetian territories. Outside of Venice, each Italian territory accepted the *ius commune*.⁸³ Venice's separation from the prevailing legal tradition was established around 1300, following a gradual process.⁸⁴ Venice alone did not consider the rediscovery of Roman law as binding, but only as a potential source of interpretation.⁸⁵ The decision of the city not to apply the *ius commune* stemmed from a determination of non-recognition of a superior authority and the accommodation of Venetian self-sufficiency.⁸⁶

One of the first references to the topic of Venetian rejection of the *ius commune* may have been from Odofredo Denari who observed how Venetians “do not follow the law but only live to their own customs”.⁸⁷ Later, Bartolo da Sassoferrato declared that Venetians live without a clear set

⁷⁴ Randall Lesaffer, *European Legal History: a cultural and political prospective* (Arriens J tr, Cambridge University Press 2009) 326.

⁷⁵ Bellomo (n 73) 78.

⁷⁶ Zimmermann (n 70) 316.

⁷⁷ Bellomo (n 73) 80.

⁷⁸ *ibid.* Aldo Mazzacane, ‘Law and Jurists in the formation of the Modern State in Italy’ in Julio Krushner (ed) *The origins of the State of Italy* (Chicago University Press 1995) 68. Zimmermann (n 70) 317. Mario Ascheri, *The Laws of Late Medieval Italy* (100-1500) (Brill 2013) 271.

⁷⁹ Zimmermann (n 70) 317.

⁸⁰ G Gasparini (n 16) 65. Mazzacane (n 78) 69.

⁸¹ For further readings on the rise of Venice and its territories, see Gaetano Cozzi, ‘La politica del diritto nella Repubblica Veneziana’ in Gaetano Cozzi (ed), *Stato società e giustizia della Repubblica veneta (sec. XV- XVIII)* (Jouvence 1980). Luciano Pezzolo & Isabella Cecchini, ‘Merchant and Institutions during the Early Modern Age’ (2012) 41 *Journal of European Economic History* 89.

⁸² The definition of *Dogado* is to be found in the encyclopedia Treccani, see Arrigo Lorenzi, ‘Dogado’ (Retrieved from Treccani website) Available at: http://www.treccani.it/enciclopedia/dogado_%28Enciclopedia-Italiana%29/ Last Accessed 28th June 2020. For further readings and definitions on the *Stato da Mar* and the Venetian *Terraferma*, see Sergio Zampetti, ‘Venezia e il Dominio da Terra e da Mar’ (Retrieved from Treccani website: *Storia di Venezia* 1994) Available at: http://www.treccani.it/enciclopedia/dal-rinascimento-al-barocco-veneziana-e-il-dominio-da-terra-e-da-mar-immagini-di-veneziana-in-terraferma-nel-500-e-primo-60_%28Storia-di-Venezia%29/ Last Accessed 28th June 2020.

⁸³ S Gasparini (n 16) 70-71.

⁸⁴ Ascheri (n 78) 276.

⁸⁵ Silvia Gasparini et al., ‘The Glosse: Civilians vs Venetians and the Exegesis of the *Statutum Novum*’ (Retrieved from PAX TIBI MARCE) Available at: <http://www.arielcaliban.org/paxtibimarce.htm> and at http://www.arielcaliban.org/PX_glosse.pdf Last Accessed 28th June 2020.

⁸⁶ Mazzacane (n 78) 67. Gasparini et al., ‘The Glosse: Civilians vs Venetians and the Exegesis of the *Statutum Novum*’ (n 85).

⁸⁷ Gasparini et al., ‘The Glosse: Civilians vs Venetians and the Exegesis of the *Statutum Novum*’ (n 85). Odofredo Denari was a Bolognese glossator from 1265, this comment can also be found in his *Lectura* on the second part of the *Digestum Vetus* D. 12. 1. 28.: *non servant legem sed solummodo vivunt secundum eorum consuetudine*. Gialdroni (n 14) 35.

of laws.⁸⁸ Moreover, other commentators such as Baldo degli Ubaldi explained that: “Venice since its beginning enjoyed its independence”, and further “according to international law, cities built on sea belong to those who built them”.⁸⁹ Baldo underlined Venetian independence in respect to the Emperor and the Pope’s influence.⁹⁰ Likewise, towards the end of the fifteenth century, Giason del Maino reflected on the Venetian’s claim of liberty, citing Baldo and proposing an image of Venice as an independent state.⁹¹

Accordingly, it is valid to ask which laws were in force in Venice and where the Venetian legal tradition stemmed from? In order to revendicate its independence from the influences of the Pope and of the Empire, the only binding laws in Venice were the ones promulgated by the Venetian legislator.⁹² Nonetheless, Venetian law was to some extent influenced by Roman law, as well as Byzantine law and Venetian *ius proprium*.⁹³ In fact, Venice’s rejection of the *ius commune* did not necessarily mean that its laws were materially different from Roman law.⁹⁴ Furthermore, it is possible to reconstruct the hierarchy of Venetian sources of law based on their presentation before courts.⁹⁵ This hierarchy remained valid until the 1700.⁹⁶ The sources were: *pactum*, *statutum*, *usum* and *arbitrium*.⁹⁷ The *pacta* were international treaties between states, mainly aimed at the reciprocal protection of the merchants’ rights and contractual obligations.⁹⁸ An example was the ancient accord between Venice and Byzantium.⁹⁹ Second, the *statuta* were the second most important source of law in Venice.¹⁰⁰ The most significant statute that remained in force until the end of the Republic in 1797 was the *Statutum Novum* by Jacopo Tiepolo.¹⁰¹ Third, customary law, or *usum*, was also regarded as a source of law.¹⁰² Lastly, the judges’ *arbitrium* filled the gaps of Venetian law.¹⁰³ The judges’ *arbitrium* had the capacity to resolve a dispute when there was no law, and no analogies could be drawn from the existing law.¹⁰⁴

Ultimately, the Venetian legal tradition was quite peculiar, as Venice was the only Italian entity rejecting the *ius commune*. However, the exclusion of Roman law from the Venetian binding legal sources was more likely to have a theoretical and normative value than a practical one. Indeed, Roman law had some influence in Venetian law as far as it was seen as customary law, or it was used in the application of *arbitrium* by the judges to resolve disputes.¹⁰⁵ Thus, it can be said that Venice used the *ius commune* without being dominated by it.¹⁰⁶

⁸⁸ Bartolo da Sassoferrato was a famous glossator who lived between 1313 and 1357. He claimed that Venetians lived *sine lege certa*, see Gasparini et al., ‘The Glosse: Civilians vs Venetians and the Exegesis of the *Statutum Novum*’ (n 85).

⁸⁹ Baldo degli Ubaldi was the pupil of Bartolo da Sassoferrato and lived between 1327 and 1400, see Gasparini et al., ‘The Glosse: Civilians vs Venetians and the Exegesis of the *Statutum Novum*’ (n 85).

⁹⁰ *ibid.*

⁹¹ Mazzacane (n 78) 72.

⁹² S Gasparini (n 16) 70-71.

⁹³ *ibid.* Gialdroni (n 14) 32.

⁹⁴ Ascheri (n 78) 329.

⁹⁵ Gerhard Rosch, ‘L’età del comune - Gli ordinamenti: le Strutture Commerciali’ (Retrieved from Treccani website: Storia di Venezia 1995) Available at: http://www.treccani.it/enciclopedia/l-eta-del-comune-gli-ordinamenti-le-strutture-commerciali_%28Storia-di-Venezia%29/ Last Accessed 28th June 2020.

⁹⁶ Gialdroni (n 14) 46.

⁹⁷ Rosch (n 95).

⁹⁸ *ibid.*

⁹⁹ Ascheri (n 78) 136.

¹⁰⁰ Rosch (n 95).

¹⁰¹ *ibid.*

¹⁰² Rosch (n 95).

¹⁰³ *ibid.* Karin Nehlsen-von Stryk, ‘Ius Comune, Consuetudo, e Arbitrium Iudicis nella Prassi Giudiziaria Veneziana del Quattrocento’ in Karin Nehlsen-von Stryk & Dieter Norr, (eds), *Diritto Comune Diritto Commerciale Diritto Veneziano* (Centro Tedesco di Studi Veneziani 1985) 110. Andrea Padovani, ‘La Politica del Diritto’ in Andrea Padovani (ed), *Storia di Venezia vol. II* (1992) 318.

¹⁰⁴ *Statutum Novum* (n 18) 6 Prologus I: *sicut iustum et equum eorum providentie apparebit, habentes Deum ante oculos sue mentis*. Giorgio Zordan, *L’ordinamento Giuridico Veneziano. Lezioni di Storia del Diritto Veneziano* (CLEUP 1984) 171.

¹⁰⁵ Nehlsen-von Stryk (n 103) 135.

¹⁰⁶ Ascheri (n 78) 330.

The *Statutum Novum* of Jacopo Tiepolo

The following section identifies one particular legal provision of Venetian contract law of the sixteenth century that supports the inviolability of Shylock's bond. In order to do so, the article focuses on the *statuta* as a source of law. The *statuta* were established as the second source in hierarchy after *pacta*, although the latter are not applicable to the case study of *The Merchant of Venice* since they refer to international treaties.¹⁰⁷ The first subsection includes an overview of the statutory development of civil law in Venice from the thirteenth century to the sixteenth century. Hence, having selected the applicable statute, the second subsection points out one legal provision that may help interpret Shylock's bond.

The statutory development in Venice from the thirteenth to the sixteenth century

The statutory experience in Venice started with a tumultuous growth of legal provisions during the early thirteenth century.¹⁰⁸ Between 1148 and 1156, a first collection of legal provisions was organized together by the Duke Morosini, which later were recognized under the name of *Usus Venetorum* ("Venetians Customs") in 1195.¹⁰⁹ The first text to survive was the *Statutum Parvum* ("Short Statute"), dated 1195, and containing seventy-four legal provisions.¹¹⁰ Consequently, the text *Novae Constitutiones seu Leges* ("New Constitutions or Laws") was promulgated and together with the statutory experience of the Duke Pietro Ziani, between 1205-1229, was absorbed into the *Statutum Novum* ("New Statute") by the Duke Jacopo Tiepolo in 1242.¹¹¹ The main function of the *Statutum Novum* was to solve "the great confusion in the legislation", as it is explained in the first prologue of the collection.¹¹² The *Statutum Novum* was of great importance. Indeed, the compilation was never repealed or modified as long as it remained in force. Actually, it was regarded as the fundamental core of Venetian civil law.¹¹³ It remained in force until the decline of the Republic in 1797.¹¹⁴ Under the Dukes of Venice who succeeded Jacopo Tiepolo, some contributions added value to his collection.¹¹⁵ In particular, the most important addition was promulgated by the Duke Andrea Dandolo in 1346, who collected the *glossae* attached to the *Statutum Novum* of his predecessors.¹¹⁶ His collection was placed as an extension to Tiepolo's *Statutum Novum* under the name of *Liber VI*.¹¹⁷ Its name and addition at the end of the five books composing the *Statutum Novum* suggested that it was intended as a complement to it.¹¹⁸ Moreover, in the fifteenth century, another collection of legal provisions with the name *Consulta ex Authenticis* was added to the framework of Venetian civil law.¹¹⁹ Up until the sixteenth century, promulgations by the following Dukes of Venice, and resolutions by the *Minor* and

¹⁰⁷ Rosch (n 95).

¹⁰⁸ Silvia Gasparini et al., 'From Jacopo Tiepolo's Statutes to Andrea Dandolo Liber Sextus' (Retrieved from PAX TIBI MARCE) Available at: <http://www.arielcaliban.org/paxtibimarce.htm> and http://www.arielcaliban.org/PX_statutes_tiepolo.pdf Last Accessed 28th June 2020.

¹⁰⁹ Morosini was the Duke of Venice between 1148 and 1156, see Mazzacane (n 78) 143.

¹¹⁰ Ascheri (n 78) 143. Enrico Besta has attributed this work to the Duke Enrico Dandolo between 1194 and 1195, see Enrico Besta, *Il Diritto e le Leggi Civili di Venezia fino al Dogado di Enrico Dandolo* (Federico Visentini 1900) 19-20.

¹¹¹ Ascheri (n 78) 143. The *Novae Constitutiones seu leges* is thought to date 1204 and it is attributed to the Duke Ranieri Dandolo. For further readings on the sources prior the *Statutum Novum* and other legislations, see Enrico Besta and Riccardo Predelli, *Gli Statuti Civili di Venezia Anteriori al 1242* (Federico Visentini 1901).

¹¹² A translation of the first prologue can be found at Ivone Cacciavillani, *Il Diritto di Venezia: Genesi e Principi* (Il Poligrafo 2015) 46-54.

¹¹³ Daniele Manin, 'Della Veneta Giurisprudenza: civile, mercantile e criminale', in *Venezia e le sue Lagune Vol. 1* (Figli Eredi 1848) 9.

¹¹⁴ *ibid.*

¹¹⁵ *ibid* 7.

¹¹⁶ *ibid.*

¹¹⁷ In *Liber VI* is possible to find corrections to Jacopo Tiepolo's *Statutum Novum*, in regard to: Liber I Chapter 20, Liber II Chapter 4, Liber III Chapter 19, Liber IV and V Chapters 14, see Manin (n 113) 9.

¹¹⁸ *ibid* 8.

¹¹⁹ *ibid.*

Maggior Consiglio (“Minor” and “Great Council”), continued the statutory experience.¹²⁰ In the latest editions, Venetian civil laws were composed by the *Statutum Novum* of Jacopo Tiepolo, the *Liber VI* of Andrea Dandolo, and other additions assembled until then.¹²¹

By the sixteenth century, there was a proliferation of legal provisions, and incoherence and confusion on which laws were in force.¹²² Within this framework there was a plethora of potential incongruities.¹²³ Therefore, the statutory development in Venice should be subject of further examination. Nevertheless, it is not conceptually relevant for the purpose of this article. Due to the diversity of the historical sources that have been inherited, the article assumes the applicability of the *Statutum Novum* of Jacopo Tiepolo to Shakespeare’s contract. The choice stems from the fact that the *Statutum Novum* was deemed to be the foundational core of Venetian civil law and it remained in force until the end of the Republic in 1797.¹²⁴

The *Statutum Novum* was drafted by a committee appointed by the Duke Jacopo Tiepolo. The draft was prepared in 1242 and approved by deliberation of the two Councils: *Maggior Consiglio* and *Minor Consiglio*, and by the *placitum*.¹²⁵ The *Statutum* was composed by three prologues and five books.¹²⁶ The first prologue described the history of the compilation, the second explained the criteria to be followed by the judges, and the third reported detailed instances of the effects of the various kinds of presumption.¹²⁷ The text mainly regarded substantive law, with some elements of procedural law.¹²⁸ The laws were written in Latin and Venetian dialect.¹²⁹ Moreover, the first four books were systematically divided, while the last one contained miscellaneous legislation.¹³⁰ The first book presented formalities in alienating estates and laid down procedural rules in civil trials, the second book regarded the protection of minors and incapacitated, the third book considered contracts, and the fourth book dealt with succession.¹³¹

Despite the fact that the third book of the *Statutum Novum* dealt particularly with contracts, scholars have studied Liber I Chapter XXXIII as emblematic for the contractual experience in Venice.¹³² For this reason, the essay relies upon this Chapter in Liber I for the purpose of the comparison of Shylock’s bond between Shakespeare’s comedy and Venetian reality.

¹²⁰ *ibid* 8-9. Silvia Gasparini et al., ‘The Beginning of the Republic’ (Retrieved from PAX TIBI MARCE) 11 Available at: <http://www.arielcaliban.org/paxtibimarce.htm> and http://www.arielcaliban.org/PX_04_Republic.pdf Last Accessed 28th June 2020. For further readings on the additions by the Dukes of Venice, see Manin (n 113) 8-11. Some of the additions were: *La Legge Pisana delle Appellazioni, Consulta ex Authenticis* (resolutions promulgated by the *Maggior Consiglio* and *Minor Consiglio* between 1274-1475), *La Pratica del Palazzo Veneto* (procedural law before certain Venetian courts) and other additions by the Dukes Barbarigo, Loredan, Grimani e Gritti, see Marco Bellabarba, ‘Dal Rinascimento al Barocco: diritto e istituzioni’ (Retrieved from Treccani website: Storia di Venezia 1994) Available at: http://www.treccani.it/enciclopedia/dal-rinascimento-al-barocco-diritto-e-istituzioni-le-pratiche-del-diritto-civile-gli-avvocati-le_%28Storia-di-Venezia%29/ Last Accessed 28th June 2020.

¹²¹ *ibid*.

¹²² Bellabarba (n 120) 10-14.

¹²³ *ibid*.

¹²⁴ Manin (n 113) 9.

¹²⁵ *Placitum* is the deliberation of popular assembly, see Treccani encyclopaedia online (Retrieved from Treccani website) Available at: <http://www.treccani.it/enciclopedia/placitum/> Last Accessed 28th June 2020. For further readings on the system of government and its organs in Venice, see Andrea Da Mosto, *L’Archivio di Stato di Venezia: Archivi dell’Amministrazione Centrale della Repubblica Veneta e Archivi Notarli* (Tomo I, Biblioteca d’Arte Editrice 1937), 21 *Minor Consiglio*: its main function was to mitigate the power of the Duke of Venice, 29 *Maggior Consiglio*: it had legislative and executive power, 15-19 Duke of Venice (*Doge*): greatest power in Venice, legislative power, executive power, and power of representation. Gasparini et al., ‘From Jacopo Tiepolo’s Statutes to Andrea Dandolo Liber Sextus’ (n 108).

¹²⁶ *Satutum Novum* (n 18).

¹²⁷ Gasparini et al., ‘From Jacopo Tiepolo’s Statutes to Andrea Dandolo Liber Sextus’ (n 108).

¹²⁸ Manin (n 113) 11.

¹²⁹ *ibid*.

¹³⁰ Besta (n 110) 92.

¹³¹ *ibid*.

¹³² Victor Crescenzi, ‘La Formazione dello Stato Patrizio: Il Diritto Civile’ (Retrieved from Treccani Website: La Storia di Venezia 1997), 122 Available at: http://www.treccani.it/enciclopedia/la-formazione-dello-stato-patrizio-diritto-finanze-economia-il-diritto-civile_%28Storia-di-Venezia%29/ Last Accessed 28th June 2020.

Liber I Chapter XXXIII of the Statutum Novum:

Liber I Chapter XXXIII of the *Statutum Novum* by Jacopo Tiepolo constitutes a precious reading key for the interpretation of the contractual experience in Venice in the sixteenth century.¹³³ The legal provision reads as follow:

He who makes a promise, must always observe the text of that promise. XXXIII.

*When one makes a promise to another, he will always have to observe the text of that promise. However, in making a promise in regard to what has been bought, he will have to defend what he has promised, except towards relatives and next of kin who own rights.*¹³⁴

Chapter XXXIII addressed the importance to keep promises in contractual obligations.¹³⁵ In particular, this legal provision referred to the selling of a property, as it can be seen in the commentary of the legal provision by the scholar Victor Crescenzi, and from the fact that Liber I regarded the alienation of estates.¹³⁶ The vendor must maintain his commitment to the buyer and protect it from third parties who may also have a claim, except in the situation of a relative of the vendor owning a right on the property.¹³⁷ As already stated above, Chapter XXXIII is significant for the general contractual experience in Venice, even though it points to the specific case of selling of property.¹³⁸

Analysing the wording of the text in Latin, “promises must be kept” is expressed by the locution *observabit textum promissionis*.¹³⁹ The wording *textum* was interpreted by Victor Crescenzi as referring to a written promise.¹⁴⁰ Nonetheless, a Venetian contract did not necessarily have to be written to be enforced. Simply in case of a written document, the wording of it would have been followed closely. As a matter of fact, the Venetian contractual experience was based on very little formalities as opposed to Roman law.¹⁴¹ This did not mean that a *pactum nudum* could have been valid, but simply that more lenient formalities were required.¹⁴² Hence, the solemnity of the ancient Roman *stipulatio* was not required, but the contract would have to follow certain characteristics to be recognizable as valid.¹⁴³ In this regard, Victor Crescenzi has reported certain documents of the protocols of the priest Domenico of Saint Maurizio, where at the end of the notarial act, it was noted that the contract could have been validly concluded without written form, but in order to elude future controversies, the parties decided to resort to the drafting of it.¹⁴⁴

Considering the interpretation problem of possible incoherence between the intention of the contracting parties and the wording of the contract *per se*, the issue was addressed by the *glossa* attached to Chapter XXXIII. In particular, the relevant *glossa* that is attached to the word

¹³³ Crescenzi (n 132) 122.

¹³⁴ The present translation is provided by the author of the essay. The author is grateful for the help of the professor in classical literature Mauro Messi, at Paolo Sarpi, Bergamo, Italy. The Latin text reads: *Qui facit promissionem, semper textum promissionis servare debet. XXXIII. Cum aliquis facit promissionem alteri, observabit textum promissionis. In promissione vero descendens super possessionem emptam, defendet quod promisit preter a propinquo et lateraneo ratione propinquitatis et lateranitatatis.* See *Satutum Novum* (n 18) Liber I Chapter XXXIII 65.

¹³⁵ Crescenzi (n 132) 122.

¹³⁶ *ibid.* Besta (110) 92.

¹³⁷ Crescenzi (n 132) 122.

¹³⁸ *ibid.* 124.

¹³⁹ *ibid.* 123.

¹⁴⁰ Crescenzi (n 132) 123.

¹⁴¹ *ibid.* 121-122.

¹⁴² *Pacta nudum* was the case of an agreement without any formalities and expressed scope, see *ibid.* 118-123.

¹⁴³ *ibid.* 121.

¹⁴⁴ Protocollo di Domenico prete di S. Maurizio, nr. 188, p. 144, 1312, 9 maggio: *Certa et uera securitas atque promissio quamvis solis posset subsistere uerbis, tamen ne post decurrencia tempora per ea que rode statuuntur aliqua rode oriatur occasio siue replicatio, necessarium est ut scripture uinculo confirmetur* see also Crescenzi (n 132) 127-128.

observabit seemed to resemble Roman law.¹⁴⁵ Indeed, in the text of the *glossa* n. 189, the glossator explained that: “in contracts, testaments, and laws, it is not possible to change the given word, if it is not clear that there was a different intention from the parties to the contract, the witness or lawyer”.¹⁴⁶ Hence, if there was a meeting of the mind at the time of the contract, promises must be kept. Thereafter, once a promise was given and the parties entered a contract, the contract must be performed in all its obligations, except if a derogation was provided by law.¹⁴⁷ Nevertheless, it is not clear to what extent judges in Venice mainly focused on the *voluntas* of the parties of the contract or they had to pay more attention to the *verba*.¹⁴⁸ It is assumed by scholars that towards the latest years of the Republic more attention was paid to the *voluntas*.¹⁴⁹ Nonetheless, since it is not possible to say whether one interpretation prevailed over the other, the only certainty is that for a contract to be enforced in Venice before a judge, there would have been an assessment of both the *verba* and the *voluntas* of the contracting parties.¹⁵⁰

The enforcement of a debt before a court of law in Venice

In *The Merchant of Venice*, Shylock sought to enforce his contract with Antonio before a court of law. The purpose of this section is to identify a possible court of law, within the framework of Venetian civil courts, where a dispute over the enforcement of a contract could have been settled in the sixteenth century. In Venice, the first degree of jurisdiction was held before magistrates in the *Curie di Palazzo*.¹⁵¹ Those were formed by six different courts: *Curia del Forestier*, *Curia del Procurator*, *Curia dell'Esaminador*, *Curia di Petizion*, *Curia del Mobile* and *Curia del Proprio*.¹⁵² The *Curia del Forestier* was a court that had the competence for international disputes over navigation and commerce.¹⁵³ Instead, the *Curia del Procurator* presided over disputes on the administration of patrimonies,¹⁵⁴ and the *Curia dell'Esaminador* aimed at the certification of deeds and legal documents.¹⁵⁵ Moreover, the *Curia di Petizion* was competent over controversies between creditor and debtor for defaults of payments of a value of at least fifty ducats.¹⁵⁶ Conversely, the *Curia del Mobile* was qualified for disputes over valuables for less than fifty ducats.¹⁵⁷ Lastly, the *Curia del Proprio* had its powers reduced throughout the centuries until it only resolved disagreements over dowry and inheritance.¹⁵⁸

Drawing from the overview of civil courts of first instance in the above paragraph, the *Curia di Petizion* may have been a possible *forum* of enforcement of Shylock's contract. The *Curia di Petizion* was created in 1244 by the Duke Jacopo Tiepolo.¹⁵⁹ From the sources gathered in the

¹⁴⁵ *Idem est iure romano*, see *Satutum Novum* (n 18) glossa n 189 65.

¹⁴⁶ *Idem est iure romano, nam in contractibus et testamentis et legibus non est recedendum a verbis, nisi appareat aliam mentem contrahentium et testatoris vel proferentis esse*, see *Satutum Novum* (n 18) glossa n 189 65. The present translation is provided by the author of the essay. The author is grateful for the help of the professor in classical literature Mauro Messi, at Paolo Sarpi, Bergamo, Italy.

¹⁴⁷ Crescenzi (n 132) 125.

¹⁴⁸ Crescenzi (n 132) 129.

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid* 130-132.

¹⁵¹ Silvia Gasparini et al., 'The Promissio Maleficiorum of Jacopo Tiepolo and its additions' (Retrieved from PAX TIBI MARCE) 1 Available at: <http://www.arielcaliban.org/paxtibimarce.htm> and http://www.arielcaliban.org/PX_maleficiorum_tiepolo.pdf Last Accessed 28th June 2020. For further researches on the Curie di Palazzo, see Da Mosto (n 125) 89.

¹⁵² Gialdroni (n 14) 41. These six courts were called *Curie Ordinatae* as they could only function if both parties were assisted in front of the judge by advocates, see Silvia Gasparini et al., 'Curiae Palatii: Courts of Justice' (Retrieved from PAX TIBI MARCE) 2 Available at: <http://www.arielcaliban.org/paxtibimarce.htm> and http://www.arielcaliban.org/PX_curie.pdf Last Accessed 28th June 2020.

¹⁵³ Lamberto Pansolli, *La Gerarchia delle Fonti di Diritto nella Legislazione Medievale Veneziana* (Giuffrè 1970) 83. Da Mosto (n 125) 91.

¹⁵⁴ Gasparini et al., 'Curiae Palatii: Courts of Justice' (n 152) p 2. Da Mosto (n 125) 93.

¹⁵⁵ Da Mosto (n 125) 92.

¹⁵⁶ *ibid.*

¹⁵⁷ *ibid* 94.

¹⁵⁸ *ibid* 90.

¹⁵⁹ *ibid* 92.

State Archives of Venice, it remained in place until the end of the Republic in 1797.¹⁶⁰ Its competences stemmed from other courts' competences such as from the *Curia del Proprio* and the *Curia del Forestier*.¹⁶¹ The parties to the dispute ought to be Venetians or at least the defendant ought to be a citizen of the city.¹⁶² Hence, a dispute between a foreigner and a Venetian was possible before this court. Furthermore, the *Curia di Petizion* was a first-degree court, while in case of a request for an appeal, the parties would have most probably had to go before the *Quarantia*, where the Duke of Venice and *Minor Consiglio* presided.¹⁶³

Karin Nehlsen von Stryk, a scholar of Venetian law, has investigated two hundred eighty-five trials before the *Curia di Petizion* in the fifteenth century, in order to identify certain schemes. It has been noted that most of the time, the parties referred to the contract standing between them. Within the trials, the parties frequently used the norm of the Liber I Chapter XXXIII of the *Statutum Novum* to express the relevance for the judges to take into account the letter of the contract.¹⁶⁴ This testimony is of extreme importance for the purpose of this article that identifies the inviolability of Shylock's bond as supported in Liber I Chapter XXXIII of the *Statutum Novum*, and its enforcement before the *Curia di Petizion*.

In addition, the judges presiding this court were allowed to provide extra-legal solutions as opposed to judges of other courts.¹⁶⁵ The *Capitolari* of the other courts laid down the impossibility and prohibition for judges to solve a dispute except on the basis of a law, a custom or their analogical interpretation.¹⁶⁶ Under other conditions, the prologue of the *Capitolare* of the *Curia di Petizion* provided for the possibility of extra-legal decisions to its judges. This court was free to act beyond rules to ensure fairness in cases where strict enforcement of the law would have not achieved a fair solution.¹⁶⁷ In Chapter XII of the *Capitolare* of the *Curia di Petizion*, it was provided that the judges were able to decide "according to whatever shall appear equitable and opportune to my [their] discretion and to that of my colleagues or of the majority of them, according to the principles of the statute approved by the assembly of the Venetian people".¹⁶⁸

In summary, the section has firstly identified the Venetian legal tradition as peculiar; it was the only Italian city rejecting the binding character of the *ius commune*, in order to claim its self-sufficiency. Subsequently, the section has identified four different sources of Venetian law: *pactum*, *statutum*, *usum* and *arbitrium*. Building upon the hierarchy of sources, the section has singled out the *statuta* to pursue the identification of an applicable article supporting the inviolability of the contract between Shylock and Antonio. Accordingly, the section has focused on the *Statutum Novum* by Jacopo Tiepolo, a fundamental collection in the statutory experience of Venetian civil law. Furthermore, one legal provision was considered to support the inviolability of the contract, namely Liber I Chapter XXXIII providing that "promises must be kept". The article, read in conjunction with its *glossa*, constitutes a precious reading key of the

¹⁶⁰ *ibid.* For an example, see Comandamenti Petizion (1451-1797), 24.

¹⁶¹ *ibid.*

¹⁶² *ibid.* 92.

¹⁶³ Gialdroni (n 14) 41. The *Quarantia* was a court of appeal for civil disputes or a court of first instance for penal disputes. For further researches, see Da Mosto (n 125) 63-64. Gasparini et al., 'The Promissio Maleficiorum of Jacopo Tiepolo and its additions' (n 151) 1.

¹⁶⁴ Nehlsen-von Stryk (n 103) 114-115. For example, the author cites Thomasio de Alberti in 1436: *examinar et observar ad literam come parla/perché el nistro statuto dizie, qui faxcit promixionem altri se per testum promissionis debet observari, siche, dove e scrittura, la raxion vuol, quella sia observada ad literam*, see Archivio di Stato di Venezia Gdp 73, 26r-27r (17 Novembre 1436).

¹⁶⁵ Each court had its *Capitolare*. It is a document divided in chapters that explained and laid down the duties of the judges of that court, see Gasparini et al., 'Curiae Palatii: Courts of Justice' (n 152) 4.

¹⁶⁶ *ibid.*

¹⁶⁷ *ibid.* 4-5.

¹⁶⁸ Archivio di Stato, Miscellaneo codici, 133, Capitolare della Curia di Petizion: "*Curam autem et studium habebomnes et singulas petitiones et querimonias Venetorum et forinsecorum que deposite fuerint contra Venetum vel forinsecum coram nobis diligenter audire et diffinire quam citius potero, bona fide sine fraude, secundum quod mee discretioni et sociorum meorum vel maioris partis eorum iustum videbitur, atque decens, secundum continentiam statut in concione populi Venetiarum conlaudati.*" Translation provided by Gasparini et al., 'Curiae Palatii: Courts of Justice' (n 152) 25.

contractual reality of Venice, as indicative of little formalities required in Venetian contracts and of the struggle between *verba* and *voluntas* of the parties. Lastly, the section has analysed the possible enforcement of a contract between a foreign creditor and a Venetian debtor. The probable applicable court of law was found to be the *Curia di Petizion*, as court of first instance for civil matters of a debt of more than fifty ducats. In that court, a dispute between a foreigner and a Venetian was possible. Additionally, a special power of the judges of the *Curia di Petizion* was discovered in the *Capitolare* of the court: the possibility to include extra-legal considerations in the court's judgments in order to ensure fairness where the law would not have provided it.

The Shakespearean narrative of Shylock's bond juxtaposed with Venetian reality

Having depicted the reality of Venetian contract law in the sixteenth century, the following section compares it to Shakespeare's depiction of the bond and its enforcement before the Duke of Venice. Indeed, the Venetian provision of Liber I Chapter XXXIII of the *Statutum Novum* and the characteristics of the *Curia di Petizion* are analysed in relation to the development of the "flesh bond" plot throughout the comedy. First, a part is dedicated to the Shakespearean representation of the contract between Antonio and Shylock in light of Liber I Chapter XXXIII of the *Statutum Novum*. Second, the court of law where the trial in the comedy takes place is examined in light of the characteristics of the *Curia di Petizion*. The examination allows the article to move to its final part and provide an answer to the research question, providing an evaluation considering the question to what extent the inviolability of Shakespeare's bond and enforcement before the court stem from legal historical reality of Venice.

Interpretation of Shylock's bond throughout the comedy

In *The Merchant of Venice*, the interpretation of the contract between Shylock and Antonio requiring the penalty of a pound of flesh is seen and described by Shakespeare in two very different ways. On the one hand, before the end of the trial taking place in act IV.I of the play, Shakespeare underlined the inviolability of the bond and the importance of upholding its validity within the Venetian commercial society. On the other hand, at the conclusion of the trial, the contract's interpretation took a different turn: permitting Antonio not to perform its obligations. The present section considers each situation represented in the Shakespearean comedy, in light of Liber I Chapter XXXIII of the *Statutum Novum*.

The first depiction of the bond can be found in the play from its beginning until act IV.I verse 302 of *The Merchant of Venice*. Through the use of the characters' voices, Shakespeare built an image of the bond as inviolable.¹⁶⁹ The reason for its inviolability was strictly connected to Venetian commercial society. The non-enforcement of a commercial contract would risk loss of certainty in Venetian impartiality and fairness, well-known to Shakespeare's contemporaries due to the existence of the myth of Venice.¹⁷⁰ As Thomas Bilello spelled out, every character in the play "recognizes that the law must respect and enforce such private commercial agreements or risk losing the confidence of its merchants for want of certainty and predictability".¹⁷¹ This can be seen for example in Shylock's threat of the enforcement of the bond.¹⁷² He was aware of the profound allegiance of the Venetian society to contract law, and he skilfully suggested that if the bond would be negated, there would be no justice in Venice:¹⁷³

"If you deny it, let the danger light,

¹⁶⁹ Thomas C. Bilello, 'Accomplished with What She Lacks: Law, Equity and Portia's Con' (2004) 16 Law and Literature 11, 27.

¹⁷⁰ *ibid.*

¹⁷¹ *ibid* 28.

¹⁷² Walter Cohen, 'The Merchant of Venice and the Possibilities of Historical Criticism' (1982) 49 ELH 765, 775.

¹⁷³ Posner (n 3) 184.

Upon your charter and city's freedom.”¹⁷⁴

Likewise, Antonio was aware of the inviolability of the bond, and that not even the Duke of Venice could deny the course of law. As a matter of fact, Venice was dependent on the trade with aliens, and the enforcement of contracts between aliens and Venetians was of extraordinary importance.¹⁷⁵

“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
Consistenth of all nations. ...”¹⁷⁶

In the like manner, Portia replied to Bassanio, who prayed the Duke of Venice to “wrest once the law to your authority” in order to save Antonio.¹⁷⁷ She stressed the supremacy of the rule of law and further explained:¹⁷⁸

“It must not be, there is no power in Venice,
Can alter a decree established.
‘Twill be recorded for a precedent,
And many an error by the same example
Will rush into the state. It cannot be.”¹⁷⁹

Taking into account Liber I Chapter XXXIII of the *Statutum Novum*, Shakespeare can be said to have been faithful to the Venetian reality. In fact, Chapter XXXIII provided that “promises must be kept” even in case of issues with little formalities surrounding the contract.¹⁸⁰ Thus, an agreement between the parties should have been inviolable. In *The Merchant of Venice*, the bond between Shylock and Antonio was indeed depicted as legally binding. The parties agreed on the terms of the contract, namely a loan of three thousand ducats with the penalty of a pound of flesh in case of default of payment.¹⁸¹ Moreover, even though according to the norm the contract did not necessarily have to be in writing, Shylock and Antonio went to the notary to seal their bond.¹⁸² Consequently, having considered the display of characters in the play interpreting the contract as inviolable, it can be said that the Venetian norm of “promises must be kept” was upheld by Shakespeare’s first depiction of the bond. Therefore, Liber I Chapter XXXIII was respected, and Antonio should have fulfilled his contractual obligations.

¹⁷⁴ Shakespeare (n 1) act IV.I vv 37-38.

¹⁷⁵ Bilello (n 169) 27-29.

¹⁷⁶ Shakespeare (n 1) act III.III vv 26-31.

¹⁷⁷ *ibid* act IV.I vv 211-212.

¹⁷⁸ Bilello (n 169) 24.

¹⁷⁹ Shakespeare (n 1) act IV.I vv 215-219.

¹⁸⁰ *Statutum Novum* (n 18) glossa n. 189 65. Crescenzi (n 132) 122.

¹⁸¹ Shakespeare (n 1) act I.III vv 1-5 vv 140-148.

¹⁸² *ibid* act I.III v 141. Crescenzi (n 132) 122.

Nonetheless, it is interesting to note that the contract's interpretation took a different turn from act IV.I verse 302 onwards. First of all, Portia taking the role of the judge in the trial,¹⁸³ awarded the penalty to Shylock:

“A pound of that same merchant's flesh is thine.”¹⁸⁴

Second, after confirming the validity of the agreement, Portia blocked Shylock by using a different interpretation of the contract. She claimed, due to the literal interpretation of the terms, that Shylock was not allowed to spill a drop of blood, as not prescribed for in the contract.¹⁸⁵ The contract only provided for a pound of flesh without any notice to spilling blood. Portia seems to have used the law itself to save Antonio from certain death, converting the law to be an instrument of her will.¹⁸⁶ She demanded:

“Tarry a little; there is something else.

This bond doth give thee here no jot of blood;

The words expressly are ‘a pound of flesh’.

Take then thy bond. Take thou thy pound of flesh.

But in the cutting it, if thou dost shed

One drop of Christian blood, thy lands and goods

Are by the laws of Venice confiscate

Unto the state of Venice.”¹⁸⁷

The new interpretation did not make the contract invalid.¹⁸⁸ In fact, Portia did not label it as unjust, but her reading of the terms of the contract permitted Antonio to not perform its obligations.¹⁸⁹ Her interpretation made the bond practically impossible to be performed.¹⁹⁰ In reality, it was absurd for Shylock to claim his pound of flesh without spilling Antonio's blood. Considering that the norm “promises must be kept” in Liber I Chapter XXXIII of the *Statutum Novum*, Portia's quibble of the law was not in line with the reality of Venetian law in the sixteenth century. According to the *glossa* n. 189 attached to the Venetian norm, it was not possible to change the given word in a contract, except when it could be proven that there was a different intention by the parties.¹⁹¹ Therefore, in a contract both the *verba* and the *voluntas* of the parties should have been considered closely.¹⁹² In *The Merchant of Venice*, Portia's literal interpretation did not take into account the *voluntas* of the parties. She suggested that only the *verba* of the contract are worth consideration, while in reality, the intention of the parties was equally important. Clearly, Antonio was fully conscious that will he default, his blood will be spilled. Antonio's awareness can be seen in the play in act I.III since verse 153, Antonio did not fear this possibility as he believed he would not forfeit the debt. Moreover, when asked if he confessed

¹⁸³ Shakespeare (n 1) act IV.I v 297: “The court awards it, and the law doth give it.”. It can be also noticed that even Shylock refers to Portia as the judge, even though she should only be Antonio's lawyer, see *ibid* act IV.I v. 298: “Most rightful judge!”.

¹⁸⁴ *ibid* act IV. I v 296.

¹⁸⁵ Alice N. Benson, ‘Portia, the Law and the Tripartite Structure of the Merchant of Venice’ (1979) 30 *Shakespeare Quarterly* 367, 377.

¹⁸⁶ *ibid* 379. Bilello (n 169) 28. Monica J. Hamill, ‘Poetry, Law and the Pursuit of Perfection: Portia's Role in the Merchant of Venice’ (1978) 18 *Studies in English Literature, 1500-1900* 229, 230.

¹⁸⁷ Shakespeare (n 1) act IV. I vv 302-309.

¹⁸⁸ Ascarelli (n 2) 174.

¹⁸⁹ *ibid*.

¹⁹⁰ *ibid*.

¹⁹¹ *Satutum Novum* (n 18) *glossa* n 189 65.

¹⁹² *ibid*.

the bond by Portia during the trial, he replied “I do”.¹⁹³ Therefore, the parties reached the meeting of the minds when contracting the bond. As a result, Portia’s interpretation was not in line with Liber I Chapter XXXIII of the *Statutum Novum*, due to the fact that she did not consider the *voluntas* of the parties, who agreed to the danger. Shylock should have been allowed to spill Antonio’s blood.

In this section, the interpretation of Shylock’s bond throughout the comedy was analysed. The article has identified two different interpretations of the contract: first, as inviolable, secondly as practically impossible to perform. The first depiction of the bond is deemed to be in line with the norm highlighted as fundamental to contract law in Venice. Hence, Liber I Chapter XXXIII of the *Statutum Novum* was upheld by Shakespeare’s vision. Nonetheless, the second interpretation of the bond by Portia at the end of the trial scene is deemed to be contrary to the Venetian norm, as she claimed that blood could not be spilled. Portia did not consider the fact that in the interpretation of a contract, both *verba* and *voluntas* should be taken into account, as provided in the *glossa* n. 189 of Chapter XXXIII. Therefore, Shylock should have been able to spill blood.

Shakespeare’s mistake in the choice of court

The following section analyses the choice of court in act IV.I of the play. The Shakespearean court is evaluated in light of the *Curia di Petizion*’s characteristics. In particular, this section considers the competences and the powers of the judge. In *The Merchant of Venice*, before act IV.I, Shakespeare alerted the reader that the trial will take place in front of the Duke of Venice. This can be seen when Shylock invoked his right for justice:

“The Duke shall grant me justice.”¹⁹⁴

At the beginning of the trial, the figure of the Duke of Venice was presented: he was presiding the court and had the power of dismissal.¹⁹⁵ The Duke was an arbiter in the court, who however, could not force Shylock’s hand to spare Antonio’s life.¹⁹⁶ Nonetheless, towards the end of the trial, Portia, first acting as Antonio’s lawyer, became the judge and awarded the judgement to Shylock, while the Duke of Venice stayed on the side-lines.¹⁹⁷

According to the reality of Venetian law in the sixteenth century, the *Curia di Petizion* was the most appropriate court of law where Shylock should have sought enforcement for Antonio’s debt. The court was competent over disputes between creditor and debtor for default of payments of a value of at least fifty ducats, even between a Venetian and a foreigner.¹⁹⁸ This was exactly the case of the dispute in *The Merchant of Venice*: the loan was of three thousand ducats, Shylock was a foreigner, while Antonio was a Venetian. Moreover, the *Curia di Petizion* was a court of first instance and a normal magistrate would have presided.¹⁹⁹ Therefore, the judge should not have been either the Duke of Venice or Portia. The Duke would have only been present in an appellate court, namely the *Quarantia*,²⁰⁰ while Portia should have been simply Antonio’s lawyer. As a result of that, Shakespeare’s choice of court was erroneous.

Additionally, in the *Curia di Petizion*, the judges were able to act and give judgment beyond rules to ensure fairness and equitable results.²⁰¹ Nonetheless, Shakespeare accounted for the impossibility for the Duke of Venice, in his capacity as a judge, to do so:

¹⁹³ Shakespeare (n 1) act IV.I vv 177-178.

¹⁹⁴ Shakespeare (n 1) act III.III v 8.

¹⁹⁵ *ibid* act IV.I vv 1-33. The Duke has the power to dismiss the court as it can be seen in act IV.I v 103.

¹⁹⁶ *ibid* act IV.I v 87, vv. 100-102, vv 103-105.

¹⁹⁷ *ibid* act IV.I vv 296-297.

¹⁹⁸ Da Mosto (n 125) 92.

¹⁹⁹ *ibid* 63-64. Gialdroni (n 14) 41. Gasparini et al., ‘The Promissio Maleficiorum of Jacopo Tiepolo and its additions’ (n 151) 1.

²⁰⁰ *ibid*.

²⁰¹ Capitolare della Curia di Petizion (n 168). Gasparini et al., ‘*Curiae Palatii*: Courts of Justice’ (n 152) 25.

“There is no power in Venice

Can alter a decree established.”²⁰²

As a result, Shakespeare’s reference to the power of the judge in the court was also mistaken. A judge in the *Curia di Petizion* had the power to take extra-legal decisions.²⁰³ Thus, in regard to the choice of court and the power of the judge, *The Merchant of Venice* did not stem from legal historical reality of Venetian law.

In this section, the inviolability of Shylock’s bond and its enforcement in the Shakespearean comedy was compared to the reality of Venetian contract law. Shakespeare was found to be truthful to Venetian law in regard to the first depiction of the bond, up until act IV.I verse 302. He provided an image of the bond as inviolable, which is in accordance with the norm “promises must be kept” in Liber I Chapter XXXIII of the *Statutum Novum*. Nonetheless, Portia’s quibble of the law and Shakespeare’s choice of court did not stem from the legal historical reality of Venetian law. On the one hand, Portia interpreted the contract in a way that contradicted *glossa* n. 189 of Liber I Chapter XXXIII of the *Statutum Novum*, as she did not consider the intention of the parties to spill blood. On the other hand, in act IV.I the trial took place before the Duke of Venice, meaning that the court would have been an appellate court; while in reality Shylock should have initially sought enforcement before a first instance court dealing with debts between a foreigner and a Venetian: the *Curia di Petizion*. Additionally, Shakespeare did not consider the power of extra-legal decisions of the judges of the *Curia di Petizion*.

Conclusion

The article analysed *The Merchant of Venice*’s representation of the contract bond between fiction and reality. It aimed at renewing the possibility of legal-literary analysis of Shakespeare’s comedy by applying to it the reality of its Venetian context, instead of the largely used Elizabethan context. In particular, the focus laid on the inviolability and enforcement of the contract between Shylock and Antonio. The intention of the article was to evaluate to what extent the inviolability and enforcement of Shylock’s bond stemmed from popular culture and legal historical reality of Venetian law in the sixteenth century.

First, in order to answer the research question, the article informed the reader on the “flesh bond” plot of the comedy and identified that Shakespeare’s play is the result of diverse folkloristic stories and clever adaptation. Moreover, the research has analysed the popular culture of Venice in the sixteenth century, in relation to its influences on *The Merchant of Venice*. Shakespeare never travelled to Venice, but the city’s reputation had long reached him, probably through Lewkenor’s translation of Contarini’s *De Magistribus et Republica Venetorum*. Thanks to the myth of Venice, the city was seen as the personification of justice by Shakespeare’s contemporaries, for its rigidity of laws and fairness. Thus, the city’s reputation deeply influenced the play writer’s descriptions of the setting. Secondly, the article considered the legal historical reality of the contract, questioning the interpretation of Shylock’s bond in Venice and the possible Venetian court for its enforcement. The article established that Venice was the sole city in Italy rejecting the *ius commune*, as the only binding laws in Venice were the ones promulgated by the Venetian legislator. In particular, the *Statutum Novum* of Jacopo Tiepolo dating 1242 was one of the most fundamental collections of Venetian civil law that remained in force until the end of the Republic in 1797. Within the collection, Liber I Chapter XXXIII providing that “promises must be kept” was emblematic to understand the contractual experience in Venice. The norm provided that Shylock’s bond would have been inviolable in Venetian reality and according to the *glossa* n. 189 both *verba* and *voluntas* of the contracting parties were instrumental to the interpretation of the contract. Moreover, considering the court of law where Shylock should have sought enforcement of his contract in Venice, the research identified the *Curia di Petizion*. The court in

²⁰² Shakespeare (n 1) act IV.I vv 215-216.

²⁰³ Capitolare della Curia di Petizion (n 168).

question had competences over disputes of default of payments of a least fifty ducats between Venetians and a foreigner. Furthermore, the essay underlined how the judges of this court were able to award extra-legal judgements to ensure fairness, as provided by Chapter XII of the *Capitolare* of the court. Third, the article compared the Shakespearean narrative of Shylock's bond in the play to the reality pointed out in the second part of the article. For the purpose of evaluating to what extent Shakespeare stemmed from legal historical reality, the article found that the first depiction of the bond by the characters of the play was in line with Liber I Chapter XXXIII, as the bond was seen as inviolable. Nonetheless, the second interpretation of the bond, namely Portia's literal interpretation, and Shakespeare's choice of court were not in accordance with the legal historical reality of its Venetian setting. On the one hand, Portia's literal interpretation did not consider the *voluntas* of the contracting parties as it was provided in the *glossa* n. 189 of the Venetian norm. On the other hand, the court in the play seemed to be a court of appeal, the *Quarantia*, as the characters were pleading in front of the Duke of Venice. Shylock should have first sought enforcement before a court of first instance, namely the *Curia di Petizion*. Additionally, Shakespeare was probably not aware of the peculiar power of the judges of this particular court, as the Duke was represented as powerless before the law, while the judges had the competence to give extra-legal judgments to ensure fairness.

Finally, concerning the evaluation of the "flesh bond" plot between reality and fiction, the article found that Shakespeare drew from the imaginary of the myth of Venice to build his setting, and he was truthful to Venetian contract law as far as the first interpretation of the bond is considered. On the other hand, in regard to the second interpretation of the Shylock's bond and the choice of court, Shakespeare either was not aware of the legal historical reality or voluntarily chose to deviate from it. Nonetheless, considering the limits of this research question, the article could have also investigated other Shakespearean legal elements from *The Merchant of Venice* and their relationship with the legal historical reality of Venice. For example, it would be interesting for future research papers to explore the role of lawyers during the sixteenth century in Venice. In this regard, the figure of Portia could be further analyzed as far as her role of Antonio's lawyer stems from legal historical reality.²⁰⁴ Without reservations, Shakespeare is a continuous source of inspiration for academics, as he touched upon several social-legal issues in his plays. All of those issues are worth exploring for the purpose of better understanding the role of law in literature.

²⁰⁴ For readings on the profession of lawyers in Venice, see S Gasparini (n 16).