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2. MERCHANT OF VENICE AND ITS LEGAL DIMENSIONS 2) O MERCADOR DE VENEZA E SUAS DIMENSÕES LEGAIS

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Resumo: O trabalho do renomado poeta britânico e escritor Shakespeare deve ser examinado no discurso da literatura relevante, porém, também deve ser examinado legalmente para desenvolvimento da lógica jurídica. Nesse sentido é adequado parafrasear a peça, antes de mergulhar no aspecto legal do Mercador de Veneza.

Palavras-chave: Mercador de Veneza, legalidade, contratos

Abstract: Renowned British poet and writer Shakespeare's work should be perused in the relevant literature discourse, but it should also be examined legally to develop the legal mind and logic. Before dipping into the legal aspect of Merchant of Venice, it would be appropriate to paraphrase the play.

Keywords: Merchant of Venice, legality, contracts.

Renowned British poet and writer Shakespeare's work should be perused in the relevant literature discourse, but I believe it should also be examined legally to develop the legal mind and logic. Before dipping into the legal aspect of Merchant of Venice, it would be appropriate to paraphrase the play. Aside from a couple of exceptions, Latin comedies revolve around a young boy's troubles in love affairs.

In Latin comedies, the young lover has a companion, apart from the trusted crafty slave, who helps him in romance or any straits he experiences. In Merchant of Venice, Antonio almost faces death to help his dear friend Bassanio.

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All of his vessels playing the high seas and short of cash, Antonio uses his reputation in Venice to borrow three thousand ducats from the Jewish moneylender Shylock, whom he used to post insults, in the hope of sending his friend Bassanio to his lover Portia. Shylock adds a clause to the contract stating that in case Antonio cannot pay the debt, he would cut a pound of meat (about 450 gr.) from Antonio's body (any part of his body Shylock wants). In time, news of Antonio's sunken vessels arrive the shore.

The noble trader cannot pay his debt, and Shylock, inflicting his hatred for Christians and the loss of his daughter, gets back at Antonio. He starts to cry out 'I want my right, I want what says on the contract' and blusters in the streets of Venice. During the trial, Antonio evades punishment thanks to the wits of his defense lawyer.

In fact, the lawyer is Bassanio's lover and the receiver of a heritage, Portia, who attends the court in disguise. She defends that the contract says only meat and not blood. Therefore, Shylock is supposed to retrieve the meat he has right to without spilling any blood. The law states that if blood is shed, Shylock's property will be confiscated due to bleeding a Christian. As a result, Shylock gives up his right on the contract. However, Shylock's property is confiscated anyway based on the fact that he attempted a Christian's life. He is left to the mercy of Antonio. Antonio forgives Shylock if he converts to Christianity.

Throughout the play, concepts such as money, power, position, love, commerce, justice are questioned within the fun and tense relations of Christian and Jewish business world. According to most critics, Shylock loses his case in an unfair manner, as a result of word play. Thus, aside from his daughter and money, he goes through a third loss. According to the verdict, not only Shylock loses the money he lent to Antonio, but also a part of his property is taken over by the government as a fine.

Unless contrary to the Laws of Venice, a contract can be done in any subject; but is there really a legitimate contractual agreement here? Is there a debtor-creditor relationship based on a legitimate agreement between Antonio and Shylock? We can answer these questions within the limits and freedom of making contracts. 'The Liberty of Contract' is an important principle in the acts of Law of Obligations. According to this principle, the people who want to make a contract can freely (with their free will) decide whether to make/not make a contract, can determine the subject, type, adverse parties, the amount of the contract, and can

end or change a contract. The contracting parties, in the world of law, can create contract types and contents which are not specified in the law.

The ample scope The Liberty of Contracts provides is somewhat contracted by the limitations of the law. Articles 26 and 27 of the Turkish Law of Obligations' restrictions are as follows:

1 -) Illegality

Contracts cannot be contrary to the statutory clauses that are specified as a mandate or prohibition in the law. In other words, people cannot make contracts on matters that are contrary the statutory clauses. Consequently, the contracting parties cannot enable a contract that is contrary to the imperatives and prohibitions of the law.

2 -) Breach of public order

Based on this principal cause, the contracting parties must pay attention to not to include any clauses that are contrary to public order and peace in the contracts. Otherwise, such a contract will not be valid.

3 -) Violation of the Personal Rights

In case there are clauses contrary to personal rights in contracts, the Liberty of Contract's limitations are breached. Accordingly, even with the consent of one's abdication (waiving) of personal rights, one cannot be a party to such a contract which holds clauses contrary to personal rights. In the same way, no one can make a contract that harms the integrity of the body or restricts the capacity to act. Also, on the economical integrity of a person, rights that are tightly linked to the personality (such as business secrets, the freedom to work) are considered as personal rights and therefore, are contrary to the Liberty of Contract.

4 -) Violation of Public Morality and Decency

Contracts whose contents or aims are contrary to the morality of the public are not considered legally valid. Paying a fee for extramarital affair or leasing an estate to anyone who wants to engage in prostitution is legally invalid due to the violation of morality.

5-) The Impossibility of the Performance

The impossibility of the performance decided by the contracting parties means it is not possible for anyone to act upon the performance. Therefore, it is objectively impossible.

According to Roman Law which also resources the Continental Europe Law, there are some performances in obligations which should be “obligatio.” For the performance to be considered legal, there exist some order clauses. These include,

1 -) "In order for the obligation to be valid, the performance should not be impossible. According to the Romans, the debt does not occur on the impossible subject. "Res extra Commercium (sacred objects) do not constitute obligation in a contract. Because it is impossible.

2 -) "Performance cannot be contrary to law or morality. Obligations do not occur in cases of bribery and murder." In this context, the contract between Antonio and Shylock is invalid with absolute nullity because of the clause in case of default in payment. In the execution of the clause, Antonia dies. It can be thought that even though Shylock appears to be securing his money, his real intention is to kill the other party.

Shylock has been repeatedly and openly humiliated by Antonio because he is a Jew. Times change and Antonio needs Shylock's help. Shylock's concern is not an assurance of his money; Shylock is an angry man who has waited for his time to avenge Antonio. Thus, even though there is a liberty of obligation in Venice Law to make a contract on any matter, it can be interpreted that Shylock's main goal was not to guarantee his money but to intervene to Antonio's right to live. This situation brings up the right to live and right to personal immunity of the protected person.

The most fundamental right is the right to live. The right to live is a human's right and right to personal immunity represent the nonintervention to the physical and mental integrity, and not to torture anyone. Within these rights, it is indisputable to say that the clause on the payment default is illegal and malevolent. Even though Antonio consents to these terms, based on the 'no one can do a legal action which destroys bodily integrity or restricts the capacity to act' mandate, Antonio's actions should be considered invalid.

Finally, I would like to mention the concept of justice according to our current positivist conception of law. Positive law is a set of particular legal rules regulating the relations in a society (especially in a state) in a particular time, but

positive law investigations should consider the historical structures as well as comparisons of other country laws and whether the needs of the society are complemented by the current regulations.

Merchant of Venice probes the justice system, the philosophical aspects of law and its acts through a humorous perspective. Shylock's quotations of 'The pound of flesh, which I demand of him, Is dearly bought; 'its mine and I will have it. If you deny me, fie upon your law! There is no force in the decrees of Venice. I stand for judgment: answer; shall I have it?' make the law enforcement people desperate.

How much law does Portia's defense constitute even though she is no lawyer and presents herself one? Yet, in the essence of it, it is not possible to retrieve the meat without spilling blood. Therefore, Portia's defense is not valid; it is not a real defense within the law frame.

Law does not only consist the wording of the law, but the aim of the article also matters. When there exists questions about the wording of law, meaning where there are gaps, it can be interpreted. There might be more than one interpretation method such as literal, free and historical interpretations. Within historical context and that period's medicine, no part can be cut off the body without the result of death. Therefore, it is impossible to act upon this clause. Portia's defense is more than an intelligent judgment.

According to Aristotle, it is not enough for justice to treat everybody equally. A justice system is fair when it can protect the weak. Thus, even though Shylock seems like the weak one by claiming his debt, Antonio is the real weak since he dies when the debt is collected. As a result, not performing the clause on the contract is more just; however it is clearly meddlesome and devoid of justice when Shylock does not collect his debt and becomes a debtor due to religious differences. The play both develops on property rights and debtor-creditor relationship and focuses on religious discrimination.

By undertaking all these concepts via humane values, the play deepens with humor, criticism and philosophical layers. Justice is precise in recognizing everyone's right. In this context, not retrieving a piece of meat from Antonio's body and not treating Shylock in this manner (by discriminating him because he is Jewish, and confiscating his property because he attempted against a Christian) would be a correcting regulation that is more just.



Let's not forget that the best and just positive justice system embodies humane values. Law protects people, justice and ethical values. Like in all of his plays, Shakespeare develops our thinking, forensic and philosophical perspectives while pushing us to be more careful in creating legal principles that define human relationships.

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