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THE LEGAL ISSUES
IN
SHAKESPEARE'S THE MERCHANT OF VENICE
AND
JONSON'S VOLPONE

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Submission Date: 15/12/98

Declaration

I certify that this thesis does not, to the best of my knowledge and belief:

- (i) incorporate without acknowledgement any material previously submitted for a degree or diploma in any institution of higher education;
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Abstract

The aim of this thesis is to explore the legal issues within William Shakespeare's *The Merchant of Venice*, and Ben Jonson's *Volpone*. I will attempt to discover the extent to which both plays can be seen as indicative of English jurisprudence applicable to Early Modern England.

I shall commence by investigating *The Merchant of Venice* through outlining the process of signing and sealing a contract, defining the roles of The Court of Chancery and The Court of Common Law and relating the judgements made by Portia and the Court to statutes, precedents and procedures applicable to the sixteenth and seventeenth centuries.

Volpone will then be discussed, where topics such as legacy-hunting, criminal offences and the role of the Avocatori as an impartial and fair group, will be explored. The relationship between the law and comic law in relation to the character of Volpone will also be investigated.

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Introduction

This thesis is an exploration of the legal issues within William Shakespeare's *The Merchant of Venice*, and Ben Jonson's, *Volpone*. Both plays include a vast amount of law and are in many ways, indicative of legal procedures, statutes and precedents applicable to Early Modern England. The legal issues which will be explored are substantially associated with the criminal law, such as conspiracy or confederacy, larceny and attempted murder. However, various civil laws including contract law and the roles of executors and administrators of wills and legacies will also be examined.

One of the central facets of this study involves the fact that both plays are set in Venice, yet I will be relating the context of the plays to English not Venetian law. Whilst this may seem questionable, it is necessary to clarify that both authors wrote for their contemporary English audiences, and both Shakespeare and Jonson included in their plays legal issues which were present in the English societies of their respective times. Shakespeare includes in *The Merchant of Venice*, issues such as English contract law and trading laws, which were under much scrutiny, particularly in the decade of 1590-1600. Jonson satirises the notion of legacy-hunting, which was for some, an occupation particularly in the early 1600s. This thesis will endeavour to show that whilst both plays are set in Italy and include court scenes, it is English law which is represented in the plays, as the audience would naturally relate the plays to their own legal system. Through relating the plays to various secondary sources which include English legal historical texts as well as statutes and precedents of the sixteenth and seventeenth centuries, I aim to establish that both plays are commentaries on the legal issues which were relevant to Early Modern England.

It is also necessary to distinguish that the plays should not be taken too seriously. Whilst one can identify laws which are indeed serious, and present within the plays, the fact that Shakespeare includes the contract for one pound of flesh, is purely for dramatic effect. The issue is not really whether or not a contract should be recognised which involves a pound of flesh, but what it represents for contract law as a whole within this period. So, too in Jonson's *Volpone*, in that, although there are many comical elements regarding the law within the play, we should not be taking these seriously, but rather viewing what these events represent. For instance, Jonson creates a judicial court which does not have any direct link to the courts which were present at the time in England, but on a deeper level, he is able to use his structure to show flaws in current English courts, such as the controversial laws relating to the lack of rights for the defendant in court. What is important is that, through incorporating true legal statutes and procedures into their plays, both playwrights enable a sense of credibility to enter into their texts, through including aspects with which their audiences would be familiar. Thus whilst the fantasy elements contribute to the dramatic effect within the play, the legal context evokes a credible atmosphere to enhance the reception of the plays.

THE MERCHANT OF VENICE

Is the Bond Enforceable

Shylock states, "I'll have my bond", (3.3.4). The question is, whether or not Shylock is legally entitled to claim the forfeiture of this bond, one pound of Antonio's flesh, or if it is unenforceable because of the content, that is, the forfeiture, being against public policy. The Duke, conveys that Shylock is entitled to seek the forfeiture of his bond:

And where thou now exacts the penalty,
Which is a pound of this poor merchant's flesh

(4.1.21-22),

and Portia colludes with this belief, stating that,

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

(4.1.227-30).

However, it should be acknowledged that the Duke does not appear to be certain of whether or not the bond is enforceable, as he is prepared to dismiss the court and wait until a second opinion comes from the Amicus Curiae, Bellario,

Upon my power I may dismiss this court,
Unless Bellario, a learned doctor
Whom I have sent for to determine this,
Come here today

(4.1.103-06).

It is necessary to examine the procedures which Shylock and Antonio included in their transaction, whilst making the bond in order to determine

whether or not Portia and the Duke are correct in upholding the bond. The transaction between Antonio and Shylock commences when Antonio arranges to borrow three thousand ducats from Shylock on behalf of his friend, Bassanio. When Shylock suggests the pound of flesh, he links it to a "merry sport" (1.3.142), which implies he is jesting and placing a penalty in the contract for formality's sake. It is here that we witness the conditions of the bond and the process of making a legal contract,

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

(1.3.140-48).

Legally, the conditions of Shylock's and Antonio's bond are corrupt because it would be against public policy to exact the penalty should Antonio forfeit the agreement. There was a case in the sixteenth century cited by Sir William Holdsworth, which expresses the principle that, "if the whole consideration for a contract is illegal, the contract is void, for the illegality of the consideration violates the whole".¹ Therefore, because this bond involves a person being killed, should it be forfeited, it is therefore illegal, as the consideration in it is an illegal act. Therefore, this bond is unenforceable and should have been dismissed immediately, on these grounds.

Contracts were often made void in the sixteenth century because they were held to be against public policy because of the illegality of their object. This was because,

they aim at effecting certain results which it is the policy of the law to prevent..., and amounts to no more than that a contract or condition is illegal which is against the principles of the established law. ²

Nevertheless, Antonio states, "Content, in faith. I'll seal to such a bond" (1.3.149). Shylock gives instructions to meet at the notary to draw up the contract and again implies that it is all a jest by stating 'merry bond' for the second time:

Then meet me forthwith at the notary's;
Give him direction for this merry bond,
And I will go and purse my ducats straight

(1.3.169-71).

The way in which Shylock's contract with Antonio is made, follows the necessary format of making a legally acknowledged bond. It is only in the area of the illegal object of the contract, that the bond is not recognised. In the case of concerning Whitton and Marine in the sixteenth century, it was reported that the defendant,

pleaded that he ordered one to write the bond, and he sealed and delivered it to the scrivener to deliver it to the plaintiff upon certain conditions. ³

The correct process of the way in which legal contracts were made, is thus being shown. The distinction is also made between a single bond and a regular bond which adds credibility to this important process. E. J. White, a legal historian, defines this difference:

...the distinction between a singular bond and a regular bond with principal and surety, in common form, is recognised by the Poet in Shylock's request for a "single bond", but in demanding the sealing of such a bond, the English legal requisite to a valid specialty contract is likewise recognised. ⁴

The process of sealing the bond, that is by placing one's seal on a contract to make it legally binding, is also a focal point in this scene. Mark Edwin Andrews, a lawyer, confirms that this was indeed a legal process:

it was settled in the reign of Edward I that certain instruments must be under seal before they could be used as the basis of a cause of action at law ⁵

Thus, Shakespeare endeavours to include the correct legal terminology and procedures where possible in this important transaction. Although the actual issue of the pound of flesh is a fantasy element in the play, the bond remains unenforceable because of its illegal consideration. The fact that Portia later states that the bond is void, is legally incorrect, as she should have dismissed this case on these grounds immediately. Because, she deceived Shylock into believing that he had a legal right to claim his bond, and then later exposed that the bond was unenforceable, it will be shown that Portia is guilty of entrapment.

The Court of Chancery and The Court of Common Law

The judicial system in *The Merchant of Venice* resembles two of the central courts that were present at the time that the play was written; Shakespeare provides the audience with legal technicalities and terminology symbolic of England's Court of Common Law, and at other instances, the Court of Chancery. The way in which many of the occurrences within the play symbolise events which were predominant during the years of its composition and original performance, is of particular interest. Through the examination of the legal events which occur in the play, that is, the sealing and arranging of the bond between Shylock and Antonio, the role of Portia in

the famous trial scene, the judgements that Portia delivers, and Shylock's defeat; it is possible to draw upon parallels between the central courts of the time and their influence on the way in which Shakespeare made use of them in these areas within his play.

One of the initial references to the two courts and the principals which bind them occurs when Portia metaphorically compares them by categorising them into two contrasting houses which diverge in their areas of focus. Portia implies that the Chancery Court is needed in order to provide the human factor into law, that is, the common law court is so strict that it cannot be universal in its application of the law as it does not take into account individual elements, such as circumstance and emotions:

The brain may devise laws for the blood,
but a hot temper
leaps o'er a cold decree

(1.2.17-19).

"The Earl of Oxford's Case" in 1615, portrays the differences between the Common Law Court and the Court of Chancery through the notes of the Lord Chancellor. Andrews cites this case and presents the case as one which emphasises that if an individual lost a judgement in the Court of Common Law, he could then proceed to the Court of Chancery,

if the law were with him, he might begin a new Suit at
Law, and spare to proceed in Equity; and if the law
were against him, that he might proceed in Chancery. ⁶

The way in which a bond could be made void, should payment be made, is shown when Portia confirms that Bassanio can pay Shylock double or triple the bond in order to cancel it:

Pay him six thousand, and deface the bond.
Double six thousand, and then treble that,
Before a friend of this description

Shall lose a hair through Bassanio's fault

(3.2.297-300).

However, whilst Portia represents the extension of the Court of Chancery, Shylock only views his situation from a strict legal perspective. He is not taking mercy into account and will not relinquish his position as one who seeks the civil right to the penalty of a bond which the debtor has forfeited.

I'll have my bond. Speak not against my bond.
I have sworn an oath that I will have my bond....
The Duke shall grant me justice

(3.3.4-8).

Antonio is aware of the implications the Duke's judgement can have for the justice of the state. Free trade existed between countries and to rule that a contract was invalid between two members of the merchant trade would jeopardise the open market that the English economy embraced.

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,

(3.3.26-29).

Andrews cites a famous case known as "The Case of the Market - Overt" which was tried in the year of 1596. Andrews finds it significant to the play because:

for centuries, London had been one of the chartered cities where free trade was allowed. These centres of trade and commerce were called free cities or Markets-overt, that is, this strict rule of common law was not applied to transactions occurring in the markets of London. ⁷

In this case, Sir Edward Coke, the most famous Common Law Judge of the sixteenth century, emphasised the importance of the commercial market trade

being kept separate from the laws of the common law court.⁸ Shylock endorses this view as he believes that because his bond with Antonio was made according to a business transaction, he should not be subjected to issues of common law, as that would be interfering with the free market policies applicable to their trade:

If you deny it, let the danger light
Upon your charter and your city's freedom

(4.1.37-38).

The Duke and Antonio concede in turn that no lawful means can aid Antonio. They are dependant upon mercy from Shylock:

Duke: I am sorry for thee. Thou art come to answer
A stony adversary, an inhuman wretch
Uncapable of pity, void and empty
From any dram of mercy

(4.1.2-5).

Antonio: And that no lawful means can carry me
Out of his envy's reach, I do oppose
My patience to his fury, and am armed
To suffer with a quietness of spirit
The very tyranny and rage of his

(4.1.8-12).

However, at this point the Duke should have dismissed the case on grounds of it being against public policy. The court appears to be operating under a Chancery rule as the Duke informs Shylock that they all expect a 'gentle answer', that is, one of mercy (4.1.33).

Clearly, this court is not treating the matter objectively. Shylock is treated as an outsider, which involves being referred to as "the Jew": "Which is the merchant here, and which the Jew?" (4.1.171). The audience has already witnessed the Duke expressing his sorrow for Antonio, as mentioned earlier,

"I am sorry for thee" (4.1.2), and now views Shylock being identified by names other than his own.

The character of the Duke is an interesting figure. He is supposedly in control of the court proceedings, yet his silence during the judgements and questioning is apparent. For instance, there is an unusual line of questioning after the Duke asks Shylock to give a gentle answer where Bassanio interrupts and continues the interrogation:

This is no answer, thou unfeeling man,
To excuse the current of thy cruelty

(4.1.62-63),

and Shylock replies, "Do all men kill the things they do not love?" (4.1.65). This is an unusual way to conduct a trial, as the manner in which the questioning and ruling occur, are completely informal and are not representative of a true legal procedure.

Antonio, being aware of the differences between the outcome of a decree and a judgement, shows that he is willing to accept the consequences of his forfeiture of the bond, or indeed, Shylock's right to demand the forfeiture of the bond:

Make no more offers, use no further means,
But with all brief and plain conveniency
Let me have judgement and the Jew his will

(4.1.80-82).

Shylock states during the hearing, "I stand here for law" (4.1.142). He desires a judgement based purely on the law and believes that he is legally correct as he states, "What judgement shall I dread having done no wrong?" (4.1.88). But the Duke says, "How shalt thou hope for mercy, rend'ring

none?" (4.1.87). The Lord Chancellor argues in the previously mentioned Earl of Oxford's Case, in a way which is similar to the approach that the Duke takes with Shylock in his line of questioning,

And Equity speaks as the Law of God speaks. But you would silence Equity. Firstly, because you have a judgement at Law and secondly, because that judgement is upon a Statute-Law To which I answer. As a Right in Law cannot die, no more in Equity can Chancery die...for Conscience and Equity is always ready to render everyone their Due. ⁹

Just as the Duke hopes to show Shylock the benefits as well as the moral importance of being merciful, it can be seen that this was indeed a central concern in Early Modern England. Although, Shylock does believe that mercy is as powerful as the consequence of a judgement at law:

The pound of flesh which I demand of him
Is dearly bought: 'tis 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 judgement. Answer: shall I have it

(4.1.98-102).

Contrary to Shylock's exclamation, The Court of Chancery was regarded as an institution that had equal if not more power than the Court of Common Law:

The Chancellor sits in Chancery according to an absolute and uncontrollable Power, and is to judge according to that which is alleged and proved; but the Judges of the Common Law are to judge according to a strict and ordinary (or limited) Power. ¹⁰

Hence, the play alludes to a unique judicial system which resembles one with which many in the audience would be familiar.

Portia's Entry as Amicus Curiae

A central factor to the play is the question of what is Portia's during the hearing? Hood, a legal scholar, states that, "her position is prejudicial as she is the principal debtor's wife and she is housing Jessica and the stolen jewels",¹¹ therefore, it is important to discover whether or not Portia's participation is legally accepted. It is known that in English law there is a role known as the "Amicus curiae" or, friend of the court. Andrews cites Coke as defining the role of the Amicus curiae as,

this custom cannot be traced to its origin but it is immemorial in the English Law. It is recognised in the Year Books, and it is enacted in 4 Hen. IV (1403) that any stranger as "Amicus Curiae" might move the court, etc. The custom included instructing, warning, and moving the court. The information so communicated may extend to any matter of which the court takes judicial cognisance. ¹²

However, Portia extends her role from advising the court or at the most, directing the court; to making judgements, "the law allows it and the court awards it" (4.1.296). In the hearing, Portia, who is impersonating an expert in law, is introduced as a learned Doctor of Law, named Balthasar:

This letter from Bellario doth commend
A young and learned doctor to our court

(4.1.142-43).

It is clear that Portia does not have a right to be present as a friend of the court, as she is impersonating an individual who is a learned doctor of law. However, this prompts the question of, whether or not Bellario, or the true Balthasar, if present in the court, would have the right to be there and to adopt the role of the amicus curiae.

It is affirmed that such a role existed in the court, however, I believe that according to Coke's definition of the role, as mentioned above, a friend of the court would not be able to control the court procedures and hand down judgements to the extent that Portia does. Portia abides by the definition in that she instructs, warns and moves the court, however, this definition does not allow for the *Amicus Curiae* to make the judgements. It is more likely that the role is most utilised in an area, where the presiding judge is not completely confident in an area of law, such as the Duke in this hearing. If we apply Coke's definition, the Duke awards too much power to the *Amicus Curiae*.

Although Portia is merely an adviser, or "friend of the court", she is referred to by Shylock and Graziano as a judge. Shylock, who is elated at the prospect of receiving a judgement and not a decree, states, "Most learned judge! A sentence!" (4.1.301), whilst Graziano states, "O Jew! An upright judge, a learned judge!" (4.1.318). It appears that "Bellario" is constructed to adopt the traditional role of the "*amicus curiae*" in many ways and it is true that the role in this scene certainly contributes much to the suspense and intrigue of the hearing. This scene is made more credible through including this role which was one of importance in the English legal system. We must accept, however, that the role is legally accepted, and "Portia's" participation is therefore acknowledged.

Portia's Judgements

Portia makes a series of judgements in this scene. As shown above, she commences by stating that the bond is enforceable:

Of a strange nature is the suit you follow,
 Yet in such a rule that the Venetian law
 Cannot impugn you as you do proceed

(4.1 174-76),

which is legally incorrect due to the forfeit violating public policy through its content being illegal, that is, the forfeit of a pound of flesh. Portia is therefore violating her position as an informed person on this matter, as the Amicus Curiae, by stating this fallacy. Whether Portia is deliberately lying or not, the effect is one which entraps Shylock. Portia can prevent Shylock from proceeding with his suit, yet she does not. Her actions allow Shylock to display his joy at the possibility of receiving a judgement in his favour, and to then to reveal a legal precedent which would unravel his plans and consequently leave him bankrupt and alone.

White states that this is

at variance with the latter conclusion of the court itself, who adjudges that the very object of the suit was counter to the law of Venice and of such criminal nature as to make forfeit the life of Shylock and his estate confiscate unto the crown.¹³

Thus Portia is stating that the court cannot challenge or oppose Shylock, which is false, as it is considered to be an illegal suit. Hood endorses this point of view in noting that,

the bond was void as being contrary to good morals, and the judge should have refused to enforce it on this ground from the first...Portia tricked Shylock, if the end ever justifies the means, why was the denial of right not revealed until after the sentence? In defeating Shylock's claim Portia abused the law of Venice.¹⁴

Portia states, "Then the Jew must be merciful" (4.1.179). This is unacceptable, for if she accepts that the bond is legal, then Shylock does not have to be merciful for he has a legitimate case:

I have spoke thus much
 To mitigate the justice of thy plea,
 Which if thou follow, this strict court of Venice
 Must needs give sentence 'gainst the merchant there

(4.1.199-202).

We have established that Shylock's bond, whilst valid because it was properly constructed and sealed, is flawed in the technicality that it involved a murderous act. However, this does not explain Portia's persistence in making several judgements, namely; that no flesh is to be taken because of the blood, that Shylock will not receive the principal of his loan, that all of his goods are to be forfeited and that he must also forfeit his religion. Each of these judgements will be examined in turn.

Portia states

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. Be merciful

(4.1.227-30).

This is incorrect by law as the plaintiff would be able to get court officials to do this service. Strangely, Portia, awards the flesh, whilst the Duke, who is the presiding judge remains silent and has done so since 4.1.172:

A pound of that same merchant's flesh is thine.
 The court awards it, and the law doth give it

(4.1.296-97).

Portia then declares that Shylock must,

... cut this flesh from off his breast.
The law allows it, and the court awards it

(4.1.299-300).

Portia is incorrect however, in stating that Shylock cannot take any blood:

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 of 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

(4.1.302-09),

because the law allows for the fact that if one is entitled to something, then one is entitled to whatever comes with that item. In response to this legal error of Portia's, White argues,

Since there could be no flesh without blood, in recognising the right to take flesh, the Jew legally would have had all incidental powers necessary to the full enjoyment of the affirmative legal right and could draw the blood, as a necessary incident of the right to take the flesh, for without it, his right could not be exercised. It was axiomatic, at common law, that where one had a legal right, he had all the remedies necessary to a full enjoyment of that right, for otherwise the right itself would be without avail.¹⁵

Shylock asks, "Is that the law?" (4.1.311). He is not answered with statute or precedent. Portia is definitely guilty of entrapment at this point in stating that Shylock can not take any blood, as she is deceiving him through making it seem as though Shylock does not have any rights. He is merely told,

Thyself shalt see the act;
For as thou urgest justice, be assured
Thou shalt have justice, more than thou desir'st

(4.1.311-13).

Portia continues to rule that if Shylock,

... tak'st more
Or less than a pound, be it but so much

As makes it light or heavy in the substance
 Or the division of the twentieth part
 Of one poor scruple - nay, if the scale do turn
 But in the estimation of a hair,
 Thou diest, and all thy goods are confiscate

(4.1.322-28).

This is yet another legal error for "a creditor is allowed to take less than that to which he is entitled".¹⁶

When, Shylock realises that he is not going to receive the forfeiture of his bond, he asks for his principal to which he is entitled. However, Portia unjustly denies it:

He hath refused it in the open court.
 He shall have merely justice and his bond

(4.1.334-35).

In the early stages of this scene, before Portia arrives, the Duke distinctly implies that Shylock is entitled to his principal, because he then proceeds to ask Shylock if he will let Antonio pay a fraction of the principal, due to his recent misfortune, which has left him penniless,

Thou wilt not only loose the forfeiture,
 But, touched with human gentleness and love,
 Forgive a moiety of the principal,
 Glancing an eye of pity on his losses

(4.1.23-26).

Jones, an economist and legal scholar, emphasises that during the sixteenth century, bonds were constructed in such a way which guaranteed the lender at the very least, his or her principal, "the merchant has succeeded in having the repayment of the principal guaranteed".¹⁷ When Portia states that Shylock cannot have his principal because he denied it earlier in the scene when she asked, "Is he not able to discharge the money?" (4.1.205), it is

legally inaccurate to imply that this initial refusal is the sole reason why Shylock is no longer entitled to his principal. As White states:

the Court's decision as to the effect of this tender, however, in the course of the decision, as depriving Shylock of his principal, was not according to the law of England, as the only result attached to a rejected tender was to put a stop to accruing damages and interest on the debt tendered on the debt and refused. ¹⁸

Her final ruling is that Shylock, as an alien, has sought the life of a citizen and that the law dictates:

The party 'gainst the which he doth contrive
Shall seize one half of his goods

(4.1.345-50).

Intent

A central point concerning the legal position of this judgement, is Portia's distinction between Shylock making an indirect or direct attempt on Antonio's life. As Shylock's intention is what she seizes upon, it is necessary to examine this intention at the time that he made the bond with Antonio. In her judgements, Portia states that Shylock:

Indirectly, and directly too,
Thou hast contrived against the very life
Of the defendant

(4.1.355-57).

Portia is accusing Shylock of devising a plan, or constructing very skilfully, a scheme to have his enemy killed. Holdsworth notes that according to sixteenth century law:

in the requirement of a mens rea, a mere intention to commit a crime, unaccompanied by any overt act; entailed no criminal liability. In the case of *Hales v. Petit* in 1563, it was said that, " the imagination of the mind to do wrong without an act done, is not punishable in our law, neither is the

resolution to do that wrong which he does not, punishable, but the doing of the act is the only point which the law regards; for until the act is done it cannot be an offence to the world, and when the act is done, it is punishable".¹⁹

This implies that Shylock's intention at the time that he signed the bond is irrelevant, if it was unaccompanied by an overt act. This raises the question of whether or not Shylock's act of establishing the contract which involved the illegal object of an illegal penalty, is considered to be an overt act which would therefore mean he could be punished. I do not believe that this contract can be considered as an overt act to commit a crime, as it was a contract signed by both parties voluntarily, which implies that they both understood what the consequences of such a bond would be. It appears that Shylock has intentions of kindness when he offers to lend money to Antonio free of interest:

Forget the shames that you have stained me with,
Supply your present wants, and take no doit
Of usance for my moneys; and you'll not hear me.
This is kind I offer

(1.3.135-38).

However, there were crimes in the sixteenth century, where intent did matter, in fact it was often the only element that was of any concern. Ironically, the laws regarding usury conveyed that an individual's intent was imperative in establishing a case involving it. Whilst usury is an issue which is relevant to *The Merchant of Venice*, this example is being used merely to illustrate a law which did rely upon intent when determining one's guilt:

For usury to occur, then, the borrower and lender had to agree on terms for a loan that were corrupt, meaning outside of the tolerance of the statute. The bargain had to be one in which the lender took no risk, and it had to be the lender's intention to take excessive interest. If the bargain and intention could be proven, the lender was guilty of usury, even if the money was never received.²⁰

Therefore, from a strict legal point of view, Shylock's intention is irrelevant, in what is now a criminal case, unless it was in accordance with an act which displayed it. Portia is aiming to condemn Shylock, solely on his intent, which although, is irrelevant, is of interest when aiming to understand her rationale. Even if she did try to construct evidence of Shylock's intent, it is impossible that she would know what his intention was at the time that the contract was made.

There is no question that Shylock's attitude altered to one of malicious intent when he received the news that his daughter had stolen his property as well as his sentimental items which were irreplaceable:

Out upon her! 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

(3.1.111-16).

As his first action after speaking with Tubal is to insist upon filing a law suit against Antonio, which he is sure he will win because it is a civil matter concerning the lack of payment of a loan:

Go, Tubal fee me an officer. Bespeak him a fortnight
before. I will have the heart of him if he forfeit, for
were he out of Venice I can make what merchandise I
will

(3.1.118-21).

However, this exchange occurs after the sealing of the bond and is the only indication that Shylock sought the life of Antonio. The only other time where his intention is referred to is when Jessica states:

When I was with him I have heard him swear
To Tubal and to Chus, his countrymen,
That he would rather have Antonio's flesh
Than twenty times the value of the sum

That he did owe him; and I know, my lord,
 If law, authority, and power deny not,
 It will go hard with poor Antonio

(3.2.282-88).

This prompts the question of, is Jessica a reliable witness? This is doubtful as her lack of morals in stealing her father's prized possession is clear and implies that anything which she says is quite dubious.

Therefore, it is impossible to prove Shylock's intent at the time of his signing the bond, and whilst his feelings may change during the play, I believe that he does not meet this criteria with an overt act, which was essential in proving that someone was guilty of attempting to commit a crime. It is clear that Shylock received judgements that he did not deserve, especially as it could not be proved that he conspired to kill Antonio.

The scene concludes with the Duke acknowledging and accepting all of Portia's judgements, although he chooses to be merciful:

That thou shalt see the difference of our spirit,
 I pardon thee thy life before thou ask it.
 For half thy wealth, it is Antonio's.
 The other half comes to the general state,
 Which humbleness may drive unto a fine

(4.1.364-68).

There is a confusing section in this scene, which commences when Antonio starts to make his own list of judgements as directed by Portia. He believes that he is being merciful in declaring that Shylock must forsake his religion and become a Christian, and declares that Shylock must also concede to call Lorenzo who stole his daughter and aided her in robbing him, his son, and must also leave Lorenzo and Jessica his possessions upon his death (4.1.376-86).

There are two terms which are used by Antonio, which are quite ambiguous and in need of discussion. When Antonio states that he would like to "quit the fine for one half of his goods" (4.1.377), the term "quit", is of interest. Halio states that this is in relation to "Antonio referring to the state's entire half of Shylock's wealth, not just the fine to which it might be reduced",²¹ whereas, Mahood states, "it refers to the meanings clear and absolve".²² Based on what these editors have suggested, I believe that Antonio is saying that instead of the state receiving half of Shylock's wealth, it will receive a fine, but the remainder of Antonio's share, is to be put in a trust for Jessica and Lorenzo. The other term of interest here is, "use", where Antonio states, "The other half in use" (4.1.379). Halio states that this is in reference to, "a trust, though not for purposes of usury",²³ whilst Mahood argues that this alludes to the notion that, "provided the state extracts nothing from Shylock, Antonio would like to use his half to set up a trust for Jessica and Lorenzo, which is to be given to them upon Shylock's death".²⁴ Halio's argument is credible, although what is strange about this proposition of Antonio's is that he is allowed to take less than what was originally awarded. That is, he is permitted to decline the state of their share and reduce it to a fine, which is in effect taking less than one's due. This is the exact premise that Portia judged Shylock on when she declared that he could not take less than a pound of flesh.

In response to these judgements made by Antonio, the acquitted defendant, suffice it to say that it is an unlikely occurrence within a court room, to have the defendant proceed to make his or her own judgements and to have them endorsed by the presiding Judge. Through constructing these events and rulings, Shakespeare has created a dramatic outcome, one which would be pleasing to many members of the audience, and to others, perhaps

displeasing. However, Shakespeare has also created a lingering doubt in regard to the judicial system which he created. He was careful to draw upon enough parallels between his system and the systems with which he and his audience were familiar in order to raise questions about the English judicial system. An individual, Shylock, who had a legitimate contract, which was actually unacceptable, was led to believe that he had a case, and instead was entrapped by a woman impersonating a Doctor of Law, and received harsh judgements against him by three individuals, The Duke, Portia and Antonio. Shylock is left bereft of any possessions, as well as his religion because he was found to be guilty of intending to murder a citizen of the state.

VOLPONE

Ben Jonson's *Volpone* contains a distinct legal commentary which in many areas is indicative of the legal system in the sixteenth and seventeenth centuries. It is necessary to examine the many events which take place in this play in order to establish how each of the characters involve themselves in a legal web comprising many crimes namely, conspiracy, perjury, cruelty, defamation and larceny. From this point it is then possible to compare these crimes with the charges laid by the Avocatori in the play and to then examine whether or not the punishments and rewards delegated to the characters are fair and impartial or perhaps, severe and illegal.

The concept of legacy-hunting is at the core of this play. Voltore, Corbaccio, Corvino, and even Mosca, long to be the recipient of Volpone's fortune, and because Volpone is aware of their desires, he is enticed to fool them. It is an issue which was predominant in Early Modern England, and it can therefore be assumed that the audience to this play's first performance may have likened this notion of legacy hunting to many prevalent situations which were occurring at the time, and hence condone Volpone's cunning attitude.

During the reign of Elizabeth, there was a specific growth in Modern Law, especially in regard to wills, estates, legacies and succession to chattels. When one made a will, it was necessary to name an executor, who would then be responsible for performing the wishes of the deceased, as well as looking after the children of the deceased, should his widow die. Hence, Volpone, a rich childless old man, as depicted in the argument of the play, would be the ideal individual to be an executor for. Holdsworth states that, "The Magna Carta of 1215, establishes the rights that a wife and children had

to a man's property, of which he could not deprive them by his will".¹ These specifications did not change until the eighteenth century where,

If he left a wife alone she took half; if a wife and children they took, the wife a third, and the children who had not received an advancement from their father in his lifetime a third. It was only the half or third which remained over that a man was free to dispose of as he pleased.²

However, if there were any debts to pay, owed by the deceased, then these would be accounted for before the distribution of the estate to the wife and children of the man. Between 1530 and 1601 the role of the executor was an appealing role to many individuals. Holdsworth cites Perkins, on an issue in 1503 concerning the fraudulent behaviour of executors. It was common practice for executors to,

use such deceite that the legacies shall never be assigned, delivered or paid, notwithstanding that they have goods in their hands of the testator's of the value of one thousand pounds over and above the debts and legacies of the devisor.³

According to Perkins, the way in which the executor managed to defraud the legatees, was through hiring people to pretend that they were creditors of the deceased and to declare that the deceased owed them money. Because it was necessary for the estate to pay any debts still owing, before the wife and children received their share of the remaining legacy, this allowed the executor to then declare that there were debts to pay and the subsequently, often the family lost their legacies, due to this scheming.⁴ This common practice ensured that much of the trust in the ability of administrators to oversee the work of the executors, was lost. The astonishing fact that it was known that executors were able to complete this fraud, proposes the question,

if such tricks were played by executors bound by the will to

pay legacies of specific amounts, it is fairly clear that administrators bound to distribute the uncertain amount left after the payment of debts had still better opportunities.⁵

Hence, there is the notion that this wave of corruption extended to the superiors of executors, the administrators. Thus, a new enactment was completed in 1601 which could charge executors as executors "de son tort", which would be applied to, "a person who meddled with the goods of a deceased person without any title either as executor or as administrator".⁶ After this charge was completed, the individual was responsible for all of the liabilities of the deceased, but unable to receive any privileges of an executor.

Jonson scholars often refer to a prominent case concerning the estate of a wealthy moneylender named Thomas Sutton. He was a very powerful man in England, who resembles Volpone in many ways. It was well known that he had accumulated an enormous sum of wealth, mostly through gaining properties and valuables of individuals who could not pay back their debts. Robert C. Evans, states that, "when Jonson's play was written - rumours were rife, and schemes and proposals abounded because everyone wondered what would become of the old man's incredible fortune".⁷ Evans establishes that Sutton was constantly altering his will and was suspicious of all of his family members. Hence, Sutton had concerns that, "his foundation would be dissolved by powerful interests at his death and in general he kept very quiet his intentions".⁸ It would seem that Sutton was a keen business man who was likely to be well aware of the deceptive nature of both executors and administrators of legacies. However, unlike Volpone, Sutton did not initially desire to capitalise on the interest of the many legacy-hunting individuals who plagued him, although eventually his attitude changed. When Sutton was approached with an offer of a similar context to Mosca's suggestion that

Corbaccio should make Volpone his heir and vice-versa, he was enraged and it was then well known that he, "tricked people who tried to manipulate him into making them his heirs".⁹ Sutton eventually decided to declare in his will that a charitable hospital should be built using his fortune upon his death. This facet was challenged in court in 1612, but it was upheld and there was, "An Act to confirm and enable the erection and establishment of an hospital and free grammar school, done and intended to be done by Thomas Sutton Esq".¹⁰

Thus, it is apparent that there was much interest in the role of the executor in a will and that it was well known as a role which was easily exploited, especially in the sense that the executor was often involved in this battle with a widow and her children, who did not have the same level of reverence in this patriarchal legal system. Although many believe that Volpone is modelled upon Thomas Sutton, this is irrelevant to the legal issues of the play. What is of interest, however, is that Thomas Sutton was a well known individual in England, and it is therefore probable that many of the audience members would have been familiar with his interesting situation.

The Crimes that are Committed

Jonson presents us with our first glimpse of Volpone, in such a way that he is portrayed as an individual with an unusual love for gold and money:

Good morning to the day; and, next, my gold!
Open the shrine, that I may see my saint.
Hail the world's soul and mine

(1.1.1-3).

He offers a sermon to his treasures (1.1.10-13), which suggests his obsession with wealth and fineries and also foreshadows his eventual

downfall, being the result of his inability to control his desires for fortune and mischief making. Volpone's character is constructed to embody selfish principles, which also happen to be the source of the play's humour. He is shown to be an individual who would pay any price to gain wealth,

The price of souls; even hell, with thee to boot,
Is made worth in heaven! Thou art virtue, fame,
Honour and all things else! Who can get thee,
He shall be noble, valient, honest, wise

(1.1.24-27).

Volpone states,

... I glory
More in the cunning purchase of my wealth,
Than in the glad possession; since I gain
No common way

(1.1.30-32).

Whilst, this does not necessarily mean that Volpone obtains his wealth illegally, if we apply the laws of the sixteenth and seventeenth centuries in relation to larceny, Volpone can be seen to be breaking these laws. Holdsworth cites Bracton as defining larceny in the sixteenth century as, "the fraudulent dealing with another man's property with the intent of stealing it against the will of its owner".¹¹ Thus it is fraudulent to take another's property with the intention of converting it to one's own property. This law originated during the reign of Edward IV where:

larceny became a felony to be prosecuted by indictment,
and when the mental element in felony came to be regarded
as its distinguishing characteristic, felonious taking was
distinguished from other unlawful taking by reference to the
intention of the taker.¹²

Therefore, we would need to be sure of Volpone's intent, that is, his "mental element" in relation to his acceptance of the gifts of the legacy-

hunters. If we compare this law with the admission that Volpone makes (1.1.30-32), there are many parallels. Hence the question, is Volpone guilty of larceny? Volpone does take personal goods belonging to Corbaccio, Voltore and Corvino, and although they may be considered to be gifts, the owners are giving them because they all believe that the goods will be returned, since each is under the presumption that he is Volpone's heir. However, Volpone does intend to convert these goods to his own property through misleading each of the three men, which is illegal as, "it was settled during this period that the intent must be to deprive the person out of whose possession the things are taken of the benefit of that possession".¹³

Whilst this is a strict, legal way of regarding the situation, Volpone presents to the audience the particulars of his situation which may or may not affect our perception of which character is committing the more harmful crime. Volpone rationalises his mischievous nature by stating that there are more conniving natures than his, as he turns,

...no moneys, in the public bank;
Nor usure private

(1.1.39-40).

Mosca contributes to the bolstering of Volpone's "integrity" by contributing that Volpone also fails to prey upon poor people as he only swindles the wealthy (1.1.48-51). It is interesting to note that whilst Jonson commenced his play by portraying Volpone as an individual who craves wealth as well as mischief, he now indulges the audience with a sympathetic view of Volpone through presenting him as a good employer who enjoys living lavishly and in turn looks after his servants:

You know the uses of riches, and dare give, now,
From that bright heap, to me, your poor observer,
Or to your dwarf, or your hennaphrodite,

Your eunuch, or what other household trifle
Your pleasure allows maintenance

(1.1.62-66).

Jonson also allows us to view how Volpone is plagued by these insincere legacy-hunters and is merely having some fun at their expense. Indeed, Volpone looks upon this burden as a challenge which allows him to, "cock up my genius", (1.1.71) and it is made apparent that he is indeed harassed by these individuals daily and is therefore:

content to coin 'em into profit,
And look upon their kindness, and take more

(1.1.86-87).

The first time that we witness Volpone taking a gift from Voltore he goes to great lengths to feign his well being. It is not illegal to pretend that you are unwell, yet it is legally questionable when feigning sickness is done to aid in the swindling of people. Volpone is aided in his disguise by his servant, Mosca, which can be seen as conspiring to commit a crime. However, Volpone is careful to state that he regards the bribe or incentive from Voltore as a present (1.2.117-18). Volpone reveals that he has been conducting this charade for three years and much like he recites a prayer for gold, he recites a prayer to the powers of disease:

Help, with your forced functions, this my posture,
Wherein, this three year, I have milked their hopes

(1.2.127-28).

Hence, this act of pretending to be sick in order to gain personal goods from individuals has been occurring for three years. It is questionable as to whether or not this is just a game for Volpone, as it is likely to be his sole occupation and income. This fact makes his acts appear to be more serious

than just an occasional trick and it is likely that there could be some legal repercussions for Volpone.

Whilst Volpone is accountable for receiving gifts under false pretences, it is Mosca and not Volpone who states that Voltore is the sole heir to the estate of Volpone:

Without a partner, sir, confirmed this morning;
The wax is warm yet, and the ink scarce dry
Upon the parchment

(1.3.45-47).

This confirms that Mosca is a principal, and not an accessory, to Volpone's offences. During the reign of Edward II the law altered in that,

A distinction was drawn between those who were present aiding, or prepared to aid, in the commission of a felony, and those who were merely bystanders and simply remained passive. The first were principals in the second degree; the second, though they were fineable for not raising the hue and cry, were not guilty of felony as principals or accessories... these laws did not change until 1826... when it was enacted that accessories before the fact should be able to be indicted of a substantive felony independently of the principal. ¹⁴

Thus, we can conclude that as Mosca was present in aiding Volpone in his deceptions and also in instigating many of the ploys himself, he was as responsible for the offences as Volpone, his master.

Of equal interest is the law regarding the liability of a servant when committing a fraudulent instance with his or her employer. Holdsworth cites an interesting case which occurred in the year 1610 entitled, *Barton v. Sadock*, which set the precedent for the laws in relation to a master's liability in regard to his servant's actions. The case involved:

Barton, the plaintiff, a merchant, who brought an action of account against the defendant, his factor, for certain jewels delivered by the plaintiff to the defendant to trade with beyond the sea. The defendant had sold the jewels to Mulleshake, the king of Barbary, for forty five pounds, but had not yet received the money.¹⁵

However, although, the master had ordered his servant, Sadock, to conduct this sale, because Sadock had not received the money, it was determined that Sadock, "was liable to the plaintiff",¹⁶ as he had not completed the task correctly, in that he did not collect the money for the sale. Consequently, from this case, this law was enforced:

A master was only liable for the acts of his agent if he had actually ordered him to act, or if he had, by words or conduct, subsequently ratified his acts.¹⁷

Another case which contributed to this precedent was one concerning Southern v. How in the year of 1618 which involved:

the defendant, How, an owner of counterfeit jewels, who sent them to his factor in Barbary to be sold. The factor, through the plaintiff, sold them to the king of Barbary for eight hundred pounds, telling him that they were good jewels; and the eight hundred pounds was paid. When the king discovered that the jewels were counterfeit, he imprisoned the plaintiff until he had paid him the money, hence the defendant filed suit against the plaintiff, his master.¹⁸

It was found that the master, How, was not liable, because, "he did not command the factor to conceal the fact that the jewels were counterfeit".¹⁹ Hence, these two cases protect the masters, in that, in the first case, the task was not properly completed, therefore, the servant was liable for the money owed to his master; and in the second case, the master did not "ratify" the servant's action of informing the king that the jewels were pure. If we apply this law to the case of Volpone and Mosca it follows that Volpone does not

order Mosca to do particular deeds. Often, Mosca performs these deeds of his own invention whilst Volpone is feigning his sickness, and is therefore unable to interject. For instance, Mosca decided to inform Voltore that Volpone made him his heir that very morning:

Without a partner, sir, confirmed this morning;
The wax is warm yet, and the ink scarce dry
Upon the parchment

(1.3.45-47).

Mosca decided to state this of his own free will, and not with the permission of Volpone, much like the case mentioned above, where the servant said that the jewels were authentic without being told to. Mosca may have told Voltore that he was the heir, in order to aid Volpone in his plight to swindle the legacy-hunters, yet, he was not explicitly told to do it in this particular way.

Volpone does however, "ratify" Mosca's acts, which can be seen by his laughter and pleasure, "Excellent, Mosca!" (1.3.78), as well as his desire that Mosca continue in his charade. Thus, whilst Mosca is legally at fault in that he is a principal to the offences, Volpone is legally accountable to a greater degree, according to the law mentioned above, because as Mosca's employer, he is responsible for his actions, through his conduct which displays his approval of the way in which Mosca works on his behalf. It is important to realise that whilst the law at this point seems to charge Volpone and Mosca with conspiracy, and in turn, place the legacy-hunters in the status of victims, the crimes, that Corbaccio, Corvino and Voltore commit, exceed the crimes of Volpone and Mosca in severity.

Corbaccio, the raven in the flock of the individuals of prey, is an elderly man who delights in the thought of living longer than Volpone, and is

especially pleased with the thought of receiving Volpone's fortune. He is obvious in his apparent greed, through hoping for Volpone's death and showing elation at the prospect of Volpone's deterioration, "That's well. Where is he?" (1.4.8). Corbaccio commits his first crime when he presents Volpone with some medicine, which is likely to be poisoned:

Why? I myself
 Stood by, while 't was made; saw all th' ingredients;
 And know, it cannot but most gently work.
 My life for his, 'tis but to make him sleep

(1.4.14-17).

This proud statement by Corbaccio implies that he has conspired with another in order to get this poison and commit murder, and that he is conspiring with Mosca through involving Mosca in his plan. The offence of conspiracy was treated severely in the sixteenth and seventeenth centuries, where the offence was:

rather the malicious attempt to ruin another by a false charge than the conspiracy. Conspiracy should come to be regarded as a form of attempt to commit a wrong, and it was ruled in the Poulterers' Case in 1611 in the Star Chamber that the mere conspiracy, though nothing was executed, was an offence.²⁰

Thus Corbaccio would be guilty as the mere mention of his plan is an offence in itself. However, Mosca does not perform this act for Corbaccio (1.4.77), who again asks at a later time, "Couldst thou not gi' him a dram?" (3.9.14).

Corbaccio continues to express his pleasure at Volpone's feigned deterioration when Mosca informs him that Volpone's pulse is slowing down, "Good symptoms, still" (1.4.45). Mosca then suggests to Corbaccio the plot to disinherit his son, Bonario, and to instead make Volpone his heir, in the effort that this will entice Volpone to return the favour. However, this in itself

is not illegal. Once again, Corbaccio insists that he had already thought of this idea:

This plot
Did I think on before...
...Mine own project

(1.4.109-11).

Volpone heartily enjoys manipulating and misleading the legacy-hunters. However, Mosca is the true conductor of these events, and his success is due to his ability to make others believe that they are in control and are thinking of all of these antics themselves. This includes Volpone, who naively enjoys Mosca's performance as though he were watching a play:

O I shall burst;
Let out my sides, let out my sides

(1.4.132-33).

Mosca cunningly replies:

Alas, sir, I but do, as I am taught;
Follow your grave instructions; give 'em words;
Pour oil into their ears; and send them hence

(1.4.139-41).

Corvino is a dubious character. He is the crow, who not only seeks Volpone's fortune, but the life and freedom of his wife, Ceilia. He voluntarily brings Volpone a pearl and a diamond (1.5.6), (1.5.17), but is easily manipulated by Mosca, as he willingly believes Mosca when he states:

Here has been Voltore, here were others too,
I cannot number 'em, they were so many,
All gaping here for legacies

(1.5.26-28).

When Mosca suggests to Corvino that it might be in his interests to murder Volpone, Corvino avoids it, but implies that he gives Mosca permission to conduct the act himself. Hence, they both conspire to commit a crime,

Mosca: Faith, I could stifle him, rarely, with a pillow,
As well as any woman that should keep him.

Corvino: Do as you will, but I'll be gone....
I pray you, use no violence

Mosca: No, sir? why?
Why should you be thus scrupulous, pray you, sir?

Corvino: Nay, at your discretion

(1.5.68-74).

As there are two individuals speaking of murdering another individual, Corvino and Mosca are guilty of conspiracy, and even more seriously, guilty of conspiring to murder. Corvino and Mosca do not have to complete the act of the murder to be found guilty of conspiracy. they merely have to discuss it, (see above page 39), which is what they do.

Corvino plots to keep Celia's dowry by prostituting her and then accusing her of committing the voluntary act of adultery,

Make one: I'll but protest myself a cuckold,
And save your dowry

(2.5.22-23).

He exceeds these threats by committing crimes which are more grave than those of Volpone and Mosca. Corvino treats his wife, Celia, in a disgusting, derogatory manner. He exudes an enormous amount of cruelty towards her through imprisoning her, torturing her emotionally and mentally and through treating her as his possession and not as his wife. He shows that he dominates her in a way which is symbolic of imprisonment,

And thy restraint, before, was liberty
To what I now decree: and therefore mark me

(2.5.48-49).

and insists that he will make her wear a chastity belt as well as making her walk backwards wherever she goes (2.5.57-60). He then concludes by threatening her life:

Not look toward the window: if thou dost -
Nay, stay, hear this; let me not prosper, whore,
But I will make thee an anatomy,
Dissect thee mine own self, and read a lecture
Upon thee, to the city, and in public

(2.5.68-72).

Corvino believes that he can command Celia as if she were a servant of his. The way in which he rationalises his disposition towards her, shows his lack of regard for the laws concerning cruelty toward one's wife:

Wherefore should not I
As well as command my blood, and my affections,
As this dull doctor? In the point of honour,
The cases are all one, of wife, and daughter

(2.6.70-73).

His most outstanding act of cruelty towards his wife in this play, is when he volunteers Celia to prostitute with Volpone:

The party, you wot of,
Shall be mine own wife, Mosca

(2.6.80-81).

Corvino then prepares Celia,

Go, and make thee ready straight
 In all thy best attire, thy choicest jewels,
 Put 'em all on, and with 'em, thy best looks

(2.7.13-15).

Hence, we are shown the extent to which Corvino will go in order to encounter more wealth. The way in which he treats his wife is illegal, in that, being cruel to one's wife was seen as one of the few acceptable reasons that could be given in order to obtain a divorce. J.H. Baker, discusses the introduction of a law entitled, "Divorce a Mensa Et Thoro", divorce from board and hearth. It was introduced in order, "to satisfy the feeling that spouses should be released from conjugal duties where an intolerable matrimonial wrong had been committed".²¹ This was not a divorce as we know it today, but it allowed both people to live apart, though not to remarry.²² What is of interest, is the only other acceptable reasons for this kind of divorce, included, "misconducts such as adultery, cruelty, sodomy, and heresy, or for fear of future injury".²³ Thus, being cruel to one's wife was regarded as a serious offence, and not treated lightly by the ecclesiastical court. Baker acknowledges that in 1542, "an innocent wife was awarded alimony for her support after a separation which was the leading case of its kind in England concerning, *Bowdo v. Bowdo*".²⁴ Baker also states that, "this jurisdiction of the ecclesiastical courts was acknowledged in *Hyat's Case* in 1615".²⁵ We can conclude that Corvino's actions towards his wife have been shown to be predominant in cruelty, and that it is therefore understandable that such a marriage would be decreed as a judicial separation.

To make his position even more detestable and to confirm his apparent cruelty towards Celia, Corvino then threatens Celia:

Be damned!
 Heart, I will drag thee hence, home, by the hair;
 Cry thee a strumpet, through the streets; rip up

Thy mouth, unto thine ears; and slit thy nose,
Like a raw rotchet - Do not tempt me, come

(3.7.95-99).

Thus, it is apparent that all of the characters commit at least one criminal offence and we can now relate these findings to the decisions which are made by the Avicatori.

The Judgements

The central questions regarding judgements made by the court are whether or not the judges give just rewards and punishments to the characters, and are fair and impartial, as judges should be. The element in this section which is of most interest is that the crimes which I believe the characters did commit, are not all acknowledged by the judges in the play. The court scenes commence with Voltore, Corbaccio, Corvino and Mosca conspiring to uphold the same lie in court under the guidance of Voltore:

Voltore: Well, now you know the carriage of the business
Your constancy is all, that is required
Unto the safety of it.

Mosca: Is the lie
Safely conveyed amongst us? Is that sure?
Knows every man his burden

(4.4.1-5).

It is at this point that they are all guilty of perjury. They all take oaths that they are telling the truth, "Has he had an oath?" (4.5.104), and they all lie to the Avicatori. It should be acknowledged that Voltore is not asked if he has taken an oath, however, it is understood that he is expected to tell the truth, as he would have sworn to when admitted to the bar. Although, Mosca states

that Voltore does not know the truth, "By no means. I devised a formal tale" (4.4.7), Voltore still encourages the others to lie, and indeed portrays that he is willing to alter his version of the truth according to what he wishes, as seen above (4.4.1-5). It is Voltore's offence in relation to the crime of perjury which is more severe than Corvino's or Corbaccio's, as he is a lawyer, a representative of the law, who is also leading the others in the effort to manipulate the court procedures. In an Act in 1562, the repercussions for suborning a witness are illustrated:

every suche pson and psons which at any tyme after the tenth daye of April next coming, shall unlauffully and corruptly procure any wytnes or wytnesses, by letters, rewardes, promises, or by any other synister and unlauffull labour or meanes whatsoever, to comitte any wilfull and corrupte perjurye... every such offendour or offendoures shall for his, hers, or their said offence, being therof lauffully convicted or attaynted, lose and forfait the some of fourtye powndes... suffer imprysonement by the space of one half yere... and to stand upon the pilorye...²⁶

We can see that Voltore's crime is very serious, as is Mosca's, who also aims to convince Corvino and Corbaccio to lie under oath.

The First Avvocato states the unusual grounds of the case, "the like of this the Senate never heard of" (4.5.1). The Third and Fourth Avvocatori also admit that Celia and Bonario have impeccable reputations whilst the First and Second Avvocatori state that Corbaccio's actions appear to be odd whilst Corvino's are terrible (4.5.3-7). The judges follow the correct legal procedures through insisting that all must be present in the court; much like in *The Merchant of Venice*, when the Duke asked if Antonio and Shylock were present. This is why the Avvocato is perplexed when he is informed that Volpone is absent (4.5.10-12). It is at this point that Voltore is introduced as Volpone's advocate, "Here is his advocate. Himself's, so weak" (4.5.13),

which binds him legally to Volpone as his defence lawyer. He continues to swear in court that Volpone is unwell, although this cannot be considered a lie, as to the best of his knowledge, Volpone is unwell:

Upon my faith, and credit, with your virtues,
He is not able to endure the air

(4.5.19-20).

The Avocatori are legally justified in demanding that Volpone be brought to the court room regardless, which is to their credit as it implies that they are determined to explore all avenues in pursuit of the truth. However, their eventual collapse as a just and impartial group is emphasised as for the rest of the scene they are easily led by Voltore:

2nd Avocatore: Bring him, however.

3rd Avocatore: We will see him.

4th Avocatore: Fetch him

(4.5.21).

The way in which Voltore addresses the judges is quite distinct: "most honoured fathers" (4.5.29), "your fatherhoods" (4.5.49), "my honoured sires" (4.5.63), and "grave fathers" (4.5.98), and whilst this shows reverence for the Avocatori, Voltore does not extend this courtesy to the law. He continues to violate his position by fabricating a situation and masking the truth through protecting Corvino when he swears that Corvino is completely innocent (4.5.42-43), and that Celia,

Hath long been known a close adulteress,
To that lascivious youth there

(4.5.37-38).

It is ironic that Voltore asks the judges to be observant of the way in which evil people conduct their crimes when he is completely abusing the law that he represents:

To observe the malice, yea, the rage of creatures
 Discovered in their evils; and what heart
 Such take, even from their crimes

(4.5.50-52).

Up until this section of the trial, the justices have been fair in their conduct in these events. However, they are too easily swayed by Voltore's easy lies, and fail to see the truth behind the malice of the plaintiffs. Corvino and Corbaccio who are aware of the truth, are therefore guilty of conspiracy as they promised to uphold the deceit. Voltore continues his fabrication through accusing Bonario of being present at Volpone's home because he possessed the intention of murdering his father, Corbaccio (4.5.72-76). The Justices ask for proof of Voltore's conclusions (4.5.93), which are, as he states, remarkable (4.5.88). However, they ignore and even rebuke Bonario's comment, "You do forget yourself" (4.5.98), that Voltore is mercenary in his motivations:

I humbly crave, that there be no credit given
 To this man's mercenary tongue...
 His soul moves in his fee

(4.5.94-96).

Voltore, when asked again to present the proof of his accusations, proceeds to produce his plaintiffs as witnesses, who are all corrupt. Corvino lies and states,

This woman, please your fatherhoods, is a whore,
 Of most hot exercise, more than a partridge

(4.5.117-18),

which is considered by the law to be an act of defamation. Holdsworth states that the common law defines defamation as:

a civil wrong causing damage to the person defamed. Damage was the gist of the action. However insulting the words, no action lay unless the court could see that damage must ensue as a natural and probable result of the words spoken. ²⁷

It can be seen that Celia's good reputation would be tainted by such an allegation as this notion would make it impossible for her to continue her life as being known an upstanding citizen. The courts in the sixteenth century were largely concerned with slanderous comments having an effect on a multitude of people as:

Libels against private persons, was punished on the ground that they tended to provoke breaches of the peace, because it incites family, kindred or society to revenge and quarrels and breaches the peace, and may be the cause of shedding of blood. This was resolved in the case of Edwards v. Wootton in the Star Chamber in 1607. ²⁸

In the case of Jeames v. Rutlech in 1599 concerning a man who said that the plaintiff had small pox, it was resolved that:

in every action on the case for slanderous words, two things are requisite: firstly that the person who is scandalised is certain and secondly that the scandal is apparent from the words themselves. That is, if the defendant named the individual that he was defaming, and he was clear in what he was stating, there was a cause for action. ²⁹

Hence, when Corvino declares Celia to be a whore in court, he is both naming her and distinctly defaming her.

The environment for this trial does not appear to be conducive to the truth or even to the discovering of it, if it be there. Bonario and Celia are

correct in stating that innocence and conscience are not represented in the court,

Not in your courts,
Where multitude, and clamour, overcomes

(4.6.18-19).

It is true that Celia and Bonario are poorly represented in this trial. This is also indicative of the judicial system present at the time in England, where the defendant had few rights. Holdsworth documents that:

Statutes in 1589... and in 1607... refuse to allow the accused to call witnesses which was beginning to shock public opinion. The expedient was therefore resorted to of allowing the accused to call witnesses, but of refusing to allow them to be sworn. But this was a wholly illogical compromise.³⁰

Hence, even if the accused could call witnesses, their testimony is virtually worthless in that there is no evidence that they are telling the truth, therefore their testimony can be disregarded. The law goes further to state that:

In the sixteenth and seventeenth centuries, the prisoner, or the accused, was prevented from calling witnesses and preparing his defence; he was deprived of the help of counsel, and repeatedly questioned both before and during his trial. It is true that torture was administered in some cases to make him disclose what he knew; and that the court did not start with any presumption in favour of his innocence.³¹

However, the trials were public and the prisoner was allowed to make what statements he liked because the English system at the time favoured an oral trial than a written trial as were used on the continent.³²

Strangely, the Avocatori, who demanded that Volpone be brought to the court, dismiss him without even hearing him speak. They do not make any attempt to have him examined to see if there is any merit in the pleas of

Bonario and Celia, therefore they are not without bias in their interpretation of the events:

Let the old gentleman be returned, with care:
I'm sorry, our credulity wronged him

(4.6.56-57).

The Judges use the word "decree" in what is clearly a common law hearing, that is, one in need of a judgement. While, they do not make a mercy decision, they do intend to make a judgement:

You've done a worthy service to the state, sir,
In their discovery.
You shall hear, ere night,
What punishment the court decrees upon 'em

(4.6.60-62).

Mosca confronts each of the legacy-hunters with their crimes, which allows for an interesting comparison between his findings, and those of the Avvocatori. Mosca says to Corbaccio that he,

...would have hired
Me to the poisoning of my patron? Sir?
Are you not he, that have, today, in court,
Professed the disinheriting of your son?
Perjured yourself

(5.3.70-74).

Mosca continues to present Voltore as being the necessary accessory to a successful crime:

You have a gift, sir, thank your education,
Will never let you want, while there are men,
And malice, to breed causes

(5.3.89-91).

and then admits to one of his own crimes which in comparison to the others is quite small,

To cozen him of all, were but a cheat
Well placed; no man would construe it a sin

(5.5.16-17).

When Voltore learns of Volpone's plot, he changes his attitude in the court, much like a chameleon adapts to his environment, and instead asks the Justices to grant a mercy decree instead of a judgement:

O, my most honoured fathers, let your mercy
Once win upon your justice, to forgive

(5.10.3-4).

He then confesses that he had evil motivations when he framed Bonario and Celia (5.10.6-9), and admits to lying before the court:

But only conscience, conscience, my good sires,
That makes me, now, tell truth

(5.10.17-18).

Whilst reading Voltore's notes, the First Avocatore states,

...that the gentlewoman was brought thither,
Forced by her husband: and there left

(5.12.3-4).

This news does not alter the Fourth Avocatore's opinion. He continues to display his corrupt nature in relation to Mosca's implied status,

A proper man! and were Volpone dead,
A fit match for my daughter

(5.12.50-51).

However, when it is made apparent that Volpone is alive, the Avocatori decide to make their judgements and will not take into account Corvino's and Voltore's plea for a pardon (5.12.105), and the First Avocatore firmly declares "You hurt your innocence, suing for the guilty" (5.12.106).

The decisions that the First Avocatore outlines commence with the sentencing of Mosca:

Stand forth; and first, the parasite. You appear
T'have been the chiefest minister, if not plotter,
In all these lewd impostures; and now, lastly,
Have, with your impudence, abused the court,
And habit of a gentleman of Venice,
Being a fellow of no birth, or blood:
For, which, our sentence is, first thou be whipped;
Then live perpetual prisoner in our gallies

(5.12.107-14).

Thus, he is harshly sentenced for violating three laws, firstly for being the chief plotter, secondly for abusing the court and thirdly for impersonating a gentleman. However, as I have discussed, Mosca is also guilty of conspiring with his master to defraud others as well as violating the laws perhaps to a lesser degree, of larceny, as well as intending to suborn perjury. It could be perceived by the court that he was the chief plotter, as he did convince the other legacy-hunters to lie under oath, and he easily led Volpone into schemes because he knew that Volpone had a weakness for mischief and wealth. However, it would be difficult to prove that Mosca's chief plan was to defraud Volpone, although,

in 1529 it was recognised that a servant can commit larceny of his master's goods entrusted to his custody, not only if he is on his master's premises or accompanying him, but also if the goods have been delivered to him by his master to keep, or even to use, or to carry to a third person, in the course of his employment as a servant... Although, the exception did not

apply if the master transferred the property to the servant for a special purpose.³³

This would imply that perhaps Mosca is not guilty, as Volpone transferred the will into Mosca's name for the special purpose of fraud.

Mosca did violate the court through impersonating Volpone, but what is strange is that the Avocatori appear to be more concerned that he pretended to be a person of rank. It is my belief that the judges did not list the crimes in the correct manner, nor did they declare the statute that had been broken. His punishment of being whipped and then being sent to prison for life is too harsh, as the punishment for suborning a witness was only six months imprisonment, although it did include public humiliation and a fine.

Voltore's punishment is:

Thou, Voltore, to take away the scandal
Thou hast given all worthy men, of thy profession,
Art banished from their fellowship, and our state

(5.12.126-28).

However, the only charge laid against him is for abusing his position as a representative of the law. Many would consider Voltore's crimes to be more serious than Volpone's or Mosca's, yet, he is not sent to prison, nor does he receive any method of physical punishment. Although, it must be said that, being exiled as well as disbarred, is a very severe punishment and more likely to affect Voltore, as it involves him losing his profession and his home forever. I have found that Voltore is specifically guilty of perjury and conspiracy as well as defending individuals who are lying under the legal advice of their lawyer, which are not specified by the Avocatori, but are implied in their sentence.

Unlike the other characters, Corbaccio is not informed of what the crime is that he is being punished for:

Corbaccio! - bring him near. We here possess
Thy son, of all thy state; and confine thee
To the monastery of San Spirito:
Where, since thou knew'st not how to live well here,
Thou shalt be learn'd to die well

(5.12.129-33).

However, he is told that he must give his son his entire estate and must then move to live in a monastery in the effort that he might procure some honour. I have argued that Corbaccio is actually guilty of conspiring to commit murder through attempts to administer poison to Volpone, and perjury. Corbaccio is so moved by a desire for wealth that he disinherits his own son in the effort to gain more money, and he is then willing to prosecute his son because he chooses to believe the other hunters over Bonario's pleas of innocence. Bonario therefore deserves to inherit his father's estate, since it was shown that he was indeed innocent. Coke is cited as stating in regard to those who conspire,

in these cases, before the unlawful act executed, the law punishes the coadunation, confederacy or false alliance, to the end to prevent the unlawful act...And in these cases the common law is a law of mercy, for it prevents the malignant from doing mischief, and the innocent from suffering it. ³⁴

The judges make both a moral and a legal judgement in regard to Corvino. He is charged with being cruel to his wife, and whilst this is only partly what he is guilty of, the punishments allocated to him are reasonable:

Thou, Corvino, shalt
Be straight embarked from thine own house, and rowed
Round about Venice, through the Grand Canal,
Wearing a cap, with fair, long ass's ears,
Instead of horns: and, so to mount, a paper
Pinned on thy breast, to the berlino ...

And to expiate
 Thy wrongs done to thy wife, thou art to send her
 Home, to her father, with her dowry trebled

(5.12.134-44).

Hence, Corvino will be publicly shamed at the pillory, which was shown to occur for committing the crime of perjury in the reign of Elizabeth I. However, I have argued that Corvino along with being guilty for being cruel to his wife, is also guilty of conspiring to murder Volpone with Mosca, perjury, through lying under oath in court and defamation, through calling his wife a whore without due reason. Thus, it is fair that Celia is to be sent to her family with three times her dowry, as she endured an enormous amount of harassment from her cruel husband.

I have left Volpone to the last, as his sentence is closely linked to the epilogue which follows the decisions made by the Avocatori. Volpone is sentenced to live in the hospital of the incurables where he will certainly catch an incurable disease, and is to be cramped with irons during this time. The only charges that the court grants Volpone are for, imposture and feigning to be sick,

Thou, Volpone,
 By blood, and rank a gentleman, canst not fall
 Under like censure; but our judgement on thee
 Is, that thy substance all be straight confiscate
 To the hospital, of the Incurabili:
 And, since the most was gotten by imposture,
 By feigning lame, gout, palsy, and such diseases,
 Thou art to lie in prison, cramped with irons,
 Till thou be'st sick, and lame indeed. Remove him

(5.12.116-24).

These charges are quite ambivalent in that they do not specify that Volpone is guilty of feigning to be sick in order to defraud people, although Volpone is

likely to be guilty of having the intention to defraud individuals according to English law, because it was through performing this act for three years that he successfully acquired valuables from others.

The argument against this judgement is a moral argument. That is, that the legacy-hunters, were simply greedy and devious individuals who gave Volpone gifts in order to be placed in his will. Corbaccio and Corvino also admitted that they would agree to having Mosca murder Volpone, or even do it themselves. Nevertheless, Volpone did defraud these individuals. If he had not pretended to be dying, and the individuals still gave him the valuables, Volpone would not be guilty of this crime and the Avocatori conclude by declaring that they have given judgements and not decrees, which implies that they are insisting that actual laws were broken by the individuals to warrant these decisions, "And these are all your judgements" (5.12.145).

The issue of the epilogue being considered as part of the play, or as a section which occurs after the play, is of particular interest to the legal issues in *Volpone*. It is necessary to look at the Folio text, in order to determine how the epilogue is positioned. Many editions of *Volpone*, including the Brockbank edition, state that the characters all leave the stage before Volpone speaks the epilogue. In the Folio, however, there is no indication that this occurs. The play simply continues, as though Volpone has the next line after the first Avocatori. This changes the entire way that the play may be perceived. Since the other characters are still present on the stage when Volpone comes forth and makes a plea to the audience, it appears to me that this is a personal plea from Volpone to the audience, similar to a mercy plea in the Court of Chancery, which occurs after an individual wishes to challenge a judgement. Thus, Jonson positions the audience in the role of the Court of Chancery, and it is for us to decide whether or not to overrule the Avocatori

and set Volpone free. We make our decision through applauding Volpone, as he states:

For any fact, which he hath done 'gainst you;
If there be, censure him: here he, doubtful, stands.
If not, fare jovially, and clap your hands

(5.12.155-57).

In the Epistle, Jonson states that he follows, "the strict rigour of comic law", (109) and that his role as a comic-Poet is to, "imitate justice", (120). It is true Volpone has broken criminal laws, however he has not broken the laws of comedy that he clearly governs himself by. Volpone is asking the audience to judge him according to comic law and to apply our own sense of justice, that is, to imitate justice.

It seems that when we compare the true crimes that Voltore, Corbaccio and Corvino committed, such as conspiracy to murder, defamation, cruelty and perjury, with the crimes that Volpone committed, defrauding legacy-hunters through larceny, the former crimes are of a more serious and felonious nature. However, as mentioned, that is asking the audience to integrate a moral decision with a legal decision, or simply to apply the laws of comedy to Volpone, that is, laws that say if he makes us laugh and if we sympathise with his desire to dupe the hunters, then he is a hero, not a criminal. If we choose to include the epilogue within the play, it is reasonable to assume that the audience would have to find Volpone innocent, as he has abided by all the laws of comedy, that is, he entertained us and made us laugh.

Conclusion

I have endeavoured to show that both Shakespeare and Jonson incorporate a substantial amount of law in their respective plays. Shakespeare includes much information relating to contract law, especially in regard to the formalities of creating and sealing bonds and court procedures, such as the role of the "Amicus Curiae" and the differences between the Court of Common Law and the Court of Chancery. Through relating "The Merchant of Venice", to legal issues which were prevalent in Early Modern England, we are able to view the play on a different level which includes the many contrasting and controversial laws relating to trade, citizenship, rights and civil and criminal procedures. Jonson presents a satirical reading of an age where legacy-hunting was predominant and where many unfair laws existed. He successfully intertwines laws relating to the English Courts with his own comical laws and produces an interesting commentary on what can be seen as indicative of his period. This thesis has attempted to establish the ways in which both "The Merchant of Venice", and "Volpone" can be viewed from a distinct legal point of view and thus show their respective relations to central legal issues of the sixteenth and seventeenth centuries.

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- 1: Holdsworth, W: A History of English Law Vol 8 p 53 *Bridge v. Cage*
- 2: Holdsworth, vol 8 p.54-55.
- 3: Whitton *Qui Tam Marine* in the Michaelmas Term, 1 Queen Mary English Reports Vol 73, p.208.
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- 5: Andrews, M.E: Law versus Equity in The Merchant of Venice, p.46
- 6: Earl of Oxford's Case in Chancery. The English Reports, Volume 21 Chancery Book, Book 1, p.485
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- 17: N. Jones, God and the Moneylenders, p.135.
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- 20: Jones, p.120
- 21: Halio, The Merchant of Venice, Oxford Edition, p.206-07.
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- 30: Holdsworth, Vol.5, p.193
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