

RENEGOTIATING WITH SHYLOCK IN THE MERCHANT OF VENICE

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Abstract: This work discusses from Shakespeare's prodigious work *The Merchant of Venice* a passage in which its protagonists negotiate a contract, also bringing enlightening and curious details about the work. Through an analysis of this specific space of the work, the article presents concepts and rules applicable to the Negotiation dispute resolution technique, to then rethink how the negotiation could have developed if the characters had used these techniques.

Summary: 1. Introduction. 2. The Negotiation Process in *The Merchant of Venice* 3. Negotiation Principles and Techniques. 4. Applying The Principles and Techniques to *The Merchant Of Venice* and what we may have suggested to both Parties. 5. Conclusion.

1. INTRODUCTION

Shakespeare¹ is famous for his stories full of richness of characters and life lessons. Through his own way to see the world, The Bard of Avon was capable to touch so many people throughout the world and time. In his play “*The Merchant of Venice*”, which will be the target of our analysis in this study, he developed the action based on two separate but intertwined stories: firstly, a loan between Bassanio and Shylock having Antonio as guarantor (Antonio is the Merchant of Venice); secondly, the dispute among the suitors of Portia’s hand. We will mainly focus our attention at the former topic.

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¹ William Shakespeare was born in 1564, in Stratford-upon-Avon, England and is considered the most influential writer in all of English literature. In Spark Notes, “*A Midsummer Night’s Dream*”, page I, 2014 edition, by Spark Publishing. He was also known as The Bard, or The Bard of Avon.

Discussions about the abuse of one's rights and the illegality of contract's object are some of the juridical questions that usually pop up from this fascinating story. Indeed, the lines of the play gave us Shylock with his mischievous and famous "flesh-contract"² offer, surrounded by an absorbing discussion over the boundaries of Law's application and permissibility. These are probably the most common points discussed all over the years in law ambiances.

However, there is another detail in the plot that intriguingly could have avoided many of the problems that lately arose in the story and we are specifically talking about the *negotiation process* that winded up in the flesh-contract. For the readers' delight, Shakespeare didn't care too much in protecting the parties or guaranteeing a fair set of negotiation, but he did give a relatively detailed negotiation sufficient for us to analyze and theoretically renegotiate it under the most recent principles and techniques regarding this method of dispute resolution.

Again, we expect here to analyze the negotiation process that led to the infamous agreement made in the outset of the tale, by identifying in this process applicable principles and techniques currently used by parties involved in a similar negotiation. For that task, we need first to narrate and pinpoint the main excerpts of the play's negotiation process for later comparison. It is what we begin to do now.

2. THE NEGOTIATION PROCESS IN THE MERCHANT OF VENICE

The Merchant of Venice narrates the negotiation among three of its main characters: Bassanio, Antonio and Shylock. There is also Portia, the beautiful and clever lady that at the end plays the fundamental role in Shylock's trial, but she does not participate in the negotiation.³

Bassanio wants to marry Portia, "a lady richly left", fair and of "wondrous virtues"⁴. For that, Bassanio asks for Antonio's help, because he will need money to present himself to Portia and "hold a rival place" against the other suitors. Although Antonio does not have the money at hand, he offered himself to serve as guarantor of any debt that Bassanio might undertake, suggesting him to go see who would lend him money. Thus, Antonio authorizes Bassanio to get a loan and charge him on credit, promising the use of all lines of credit he can get in Venice to help his friend.⁵

Later at the scene 3 of act 1 Shylock comes to live. He enters the stage talking with Bassanio about the required value for the loan: three thousand ducats. The negotiation process has finally begun.

² It is well known that Shylock accepted to finance Bassanio, whilst taking a chunk of Antonio's flesh as guarantee. The aspects of the negotiation that engendered this pact will be unfolded following this Introduction.

³ Portia is probably the cleverest character in the play. With her wisdom she manages to save Antonio from the certain death.

⁴ The Merchant of Venice, Act I, scene 1, "No Fear Shakespeare", Spark Publishing, 2003, page 14.

⁵ Id. Act 1, scene 1, pp. 14-15: "Therefore go forth, [t]ry what my credit can in Venice do...Where money is, and I no question make [t]o have it of my trust or for my sake."

For Bassanio the loan is apparently a simple matter of asking for three thousands ducats for three months while Antonio will guarantee the loan:

Shylock: Three thousand ducats, well.⁶

Bassanio: Ay, sir, for three months.

Shylock: For three months, well.

Bassanio: For the which, as I told you, Antonio shall be bound.

Shylock, though, had other plans. After Bassanio demanded his answer for the offer (“Your answer to that?”) Shylock responds that Antonio is a good man, promptly arising an interpellation from Bassanio: “Have you heard any imputation to the contrary?”

Shylock immediately disentangle the misunderstanding by saying what he meant was that Antonio is a good man because he has enough money to guarantee the loan.⁷

Conversely, Shylock begins to challenge Antonio’s capacity of honoring the debt, by remembering that his investments are uncertain and Antonio has one ship in Tripoli and another heading for India.⁸

Moreover, Shylock informs Bassanio that people at the Rialto⁹ tell him that Antonio has a third ship in Mexico, and a fourth in England, as well as other ventures around the globe.¹⁰

He also adds that ships are fragile, sailors are just men, and lists dangers these ships may encounter, like thieves, pirates and storms.¹¹ Yet again Shylock mysteriously asserts at the end that “The man is notwithstanding sufficient”, and “I think I may take his bond”.¹² Bassanio rejoined that he could be sure that Antonio would guarantee the loan for what Shylock enigmatically retorted that he would be assured of that whereas thinking in a way to be sure, and finally asked to talk with Antonio.

⁶ Isaac Asimov explains that Shylock “says it musingly (for it is a large sum)”. “Asimov’s Guide to Shakespeare”, Wing Books, 1970 ed., page 510.

⁷ This is obviously what Bassanio understood, but Shylock seemingly started to give traces that the agreement wouldn’t play out as Bassanio has imagined, when he gloomily said that Antonio “is sufficient”.

⁸ Id. Act 1, scene 3, pages 26-7: “Yet his means are in supposition”.

⁹ The Rialto is the business district of Venice, where the merchants meet. Id. Footnote at p. 27.

¹⁰ Id. Act 1, scene 3, pages 26-7.

¹¹ We could add diseases.

¹² That is, I think I can let him guarantee your loan.

The conversation solely between Bassanio and Shylock ends up with Shylock's denial to Bassanio's invitation to dine with them. Shylock points out that he, a Jew, would do business with them but nothing else.

When Antonio eventually joined the negotiation, Shylock chatted in an aside with himself, and revealed all his hate towards Antonio, although partly not unjustified. He hates Antonio because he is a Christian, lends money without interests¹³ and hates Jews¹⁴. At this point, Shylock introduces a difficulty (he can't raise the money), but immediately brings a solution (raising money with his friend Tubal).

Shortly after, Shylock turned to Antonio and narrated a story of Jacob from Genesis to defend his practice of charging interest.¹⁵ Now is time for Antonio in an aside who turns to Bassanio and releases his hate on the "devil" and "evil soul" Shylock.

Following this conversation, Shylock ultimately exposes his grievance rooted in Antonio's insults over his business practices, though recognizing that "it now appears you (Antonio) need my help". Shylock mourns ("I would be friends with you"; "Forget the shames"), but Antonio does not care¹⁶ and adds that he would insult Shylock again.¹⁷ Surprisingly after that Shylock offered a loan without interests. Bassanio acknowledged the offer's virtue, but then Shylock came up with his condition: adding a clause in the contract through which they don't repay him, the penalty will be a pound of Antonio's flesh¹⁸ to be cut off and taken out of whatever part Shylock chooses. Shylock attempts to diminish the worries by saying it is just a joke ("merry sport"), but it is clear that he is "playing a long shot"¹⁹.

¹³ Lowering, as a result, the interests in Venice, hence impairing Shylock's business.

¹⁴ Shylock mentions that Antonio complains ("and he rails") about his way to negotiate and the Jew's overall practice of lending money with interests.

¹⁵ Asimov narrates that "Jews in Christian countries found themselves locked out of one type of employment after another, until very little was left them but the profession of moneylending, which was (in theory) forbidden to Christians", and concluded: "Thus was set up the sort of vicious cycle that is constantly used to plague minorities of any kind. Jews were forced into becoming usurers and then the fact that they were usurers was used to prove how villainous and hateful they were". In op. cit., p. 515.

¹⁶ Asimov rivetingly alerts that the answer is "out of character for Antonio, who throughout the play is shown to be the soul of courtesy, gentleness, and love, and in the end has mercy even on Shylock. But Shakespeare needs a motive for Shylock's behavior in this play, and Antonio's harshness now, when Shylock all but begs for some sort of Christian remorse for the cruelty shown him, turns his persecuted heart to stone".

¹⁷ Asimov remarkably comments, "If Antonio had, at this point, been diplomatic, the loan might have been made in ordinary fashion and that would have been that. Instead, however, Antonio answers cruelly: 'I am as like to call thee so [dog] again, [t]o spit on thee again, to spurn thee too'. In op. cit., 519.

¹⁸ The Apple English dictionary defines a "one's pound of flesh" as "something that one is strictly or legally entitled to, but that it is ruthless or inhuman to demand. [ORIGIN: with allusion to Shakespeare's Merchant of Venice.]". In the same way, see the Macmillan Dictionary, "pound of flesh: something that someone owes you that you take even though it will cause them to suffer".

(<http://www.macmillandictionary.com/dictionary/american/your-pound-of-flesh>). Asimov, op. cit., p. 519, explains that "from this passage and from those following in the play that the phrase 'pound of flesh' has entered the language as meaning the wringing out of the last bit of a bargain, however harsh and brutal the consequences.

¹⁹ Asimov op. cit. p. 519.

Bassanio wants to back down and give up of the loan but Antonio goes forward; he is secure that he'll profit off of his investments.

Seeing both men arguing, Shylock speculates that a pound of flesh is worth nothing and that he's just offering a favor to a friend. As follows, he threats to withdraw the offer: "If he will take it, so. If not, adieu."

Antonio didn't wait no more and accept the deal's terms, despite Bassanio's worries. The negotiation is closed.

3. NEGOTIATION PRINCIPLES AND TECHNIQUES

Before analyzing some features of negotiation is it worth to define this institute.

Negotiation is a common type of alternative dispute resolution, where the participation is voluntary and it does not rely on a third party to facilitate or impose a resolution, though a third party may be present. It is the cheapest means of solving a dispute.²⁰ People probably negotiate all the time without realizing it, e.g., when they go shopping and negotiate with the seller, or when discussing with their spouses over who is going to the market and in many other day-to day situations.

The fact that negotiation is a cheap method to settle a dispute should not deceive a party and induce her to show up in a negotiation setting without preparation. However, it is not difficult to find lawyers without any formation or theory knowledge about negotiation, since their previous law studies are usually tailored for litigation scenarios. An unprepared party may soon have a bitter discovery during a negotiation that preparation is necessary, especially if facing someone that did his homework. But what does it mean to be prepared?

A prepared party is the one that goes to a negotiation knowing her limits. More than that, a prepared party is the one that knows her goals, interests, and Batna²¹, and thought about the other parties' goals, interests and probable Batna.

Additionally, a cautious party should evaluate its own risks, and the other parties' risks, imagining if someone might be concealing important information. The point is that a negotiator must be aware that a party's motivation may be different than what it ostensibly appears to be, as it would be, for instance, in a negotiation where the buyer presents himself as a prospective buyer of the house,

²⁰ Kuney, George W., "The Elements of Contract Drafting with Questions and Clauses for Consideration"; Fourth edition; West Academic Publishing; 2014, p. 153. Kuney adds that because of the voluntary participation of the parties, "drafting a negotiation provision as an exclusive or formal means of alternative dispute resolution is uncommon and is unlikely to yield a result. Naturally, parties will often attempt to negotiate as a first step before escalating to another means of dispute resolution". We could add that differently of a negotiation provision, parties will often want to bring in terms the negotiation's conclusion, as it happens here, where Shylock and Antonio went to the notary to reduce their agreement in terms.

²¹ Best alternative for a negotiation agreement, a concept that we will soon explore.

but his truly intention is to disturb its competitor business by preventing the sale of the property for a certain period of time etc.

Someone may think that negotiation could be compared with a chess game, where each party should be aware of its own limitation and strategy while at the same time thinking or even trying to predict what the other party may do next. Or maybe comparing with a war setting, in which every army may try to discover the adversary moves and ways to overcome your enemy. Sun Tzu in his famous *Art of War* said that If you know your enemies and know yourself, you will not be imperiled in a hundred battles; if you do not know your enemies but do know yourself, you will win one but lose another; if you do not know your enemies nor yourself, you will be imperiled in every single battle.

A negotiation is not a war but parties must be prepared for one. It was actually the way people looked to negotiation a while ago as it is explained in “Getting to Yes: Negotiating Agreement without giving in”: “[a] generation ago, the term negotiation also had an adversarial connotation. In contemplating a negotiation, the common question in people’s mind was ‘Who is going to win, and who is going to lose’.”²²

Still in the above quoted “Getting to Yes”, the authors defined the negotiator based on his ways to negotiate: soft (who avoids personal conflict and readily makes concessions to reach agreement; often is exploited and feels bitter about the result) and the hard (who wants to win, and often produces an equally harm response and harms the relationship). They explain that in a soft style, among other characteristics, participants may be friendly, make concessions to cultivate the relationship, be soft on the people and the problem, trust others, make offers, disclose your bottom line, and yield to pressure. While in a hard style participants are adversaries, demand concessions as a condition for the relationship, distrust each other, may be hard on the problem and people, make threats, mislead the bottom line and apply pressure. Whereas in the former the party’s goal is agreement, in the later is victory. The hard game overcomes a soft one²³.

Therefore, the authors suggest a pathway per the method of principled negotiation, by deciding issues on their merits, rather than through a haggling process.²⁴

By means of principled negotiation, a party must first separate people from the problem (e.g., discussing the problem, not attacking themselves). Human beings are not computers, hence handling with extreme emotions that often arise different perceptions and difficulties to communicate clearly.²⁵ The point of the authors is that negotiators are beforehand persons filled with emotions (people get angry, depressed, resentful, offended), who see the world from their own vantage point.

²² Roger Fisher; William Ury; Bruce Patton, in “Getting to Yes: Negotiating Agreement without giving in”; Penguin Books, Preface to the Third edition, *The Negotiation Revolution*; p. XII.

²³ Id. Chapter I. pp. 8 a 10.

²⁴ Id. Chapter I. Introduction. p. XXVIII.

²⁵ Id. Chapter I. pp. 11 a 12.

Consequently, a skilled negotiator should ask himself if he is aware of people's problem.²⁶

One useful tactic negotiators adopt is to look the problem from the eyes of the other parties. A tenant and a landlady may have totally different opinions and arguments about the same rental details, like when a tenant thinks the rent is already too high and with the costs soaring she could not afford to pay more housing, while the landlady could believe the payment has not increased for a long time and due to the same increasing costs, she would need more rental income. An artful negotiator will tend to visualize both sides to imagine how to address the problem during the talks. "The ability to see the situation as the other side sees it, as difficult as it may be, is one of the most important skills a negotiator can possess."²⁷

In a negotiation feelings may be more important than talk. In the Israeli and Palestinian conflict, powerful emotions permeated each issue, like distribution of water in the West Bank, turning every matter almost impossible to discuss and solve.²⁸ An often-effective method to deal with that is letting people release their negative emotions. "If you come home wanting to tell your husband about everything that went wrong at the office, you will become even more frustrated if he says, 'Don't bother telling me; I'm sure you had a hard day. Let's skip it.' The same is true for negotiators. Letting off steam may make it easier to talk rationally later."²⁹

Nonetheless, releasing emotions may be risky and culminate with parties just offending themselves directly without any other concern with the negotiation itself.³⁰ Some small and non-costly acts may produce enormous advantage during discussions for their emotional impact, like a note of sympathy or eating together. Moreover, an apology may be one of the least costly and most rewarding investments a negotiator can make³¹.

Listening actively³² to comprehend what are the other party needs is apparently an obvious requirement; however, parties frequently pay attention only for their constituency's needs³³ and miss the chance to pinpoint the other party's needs. It is also better to speak about yourself in a negotiation than about the other party, since a statement on how you feel is more difficult to challenge than an assertion over the other party, who will deem it as untrue and likely ignore you or lose its temper.³⁴

²⁶ Id. Chapter II. P. 21.

²⁷ Id. Chapter II. Subtitle: Put yourself in their shoes; p. 25.

²⁸ Id. Chapter II. Subtitle: 'First recognize and understand emotions, theirs and yours; pp. 31/32.

²⁹ Id. Chapter II. 'Allow the Other side to let off steam'; p. 33.

³⁰ Id. Chapter II. 'Don't react to emotional outbursts'; p. 35.

³¹ Id. Chapter II. 'Use symbolic gestures'; pp. 34/5. See also: Folberg and Golann "Lawyer Negotiation, Theory, Practice and Law", 2nd ed., Wolters Kluwer, 2011, p. 143.

³² See id. Chapter II. 'Listen actively and acknowledge what is being said'; pp. 36/7.

³³ Id. Chapter II. Communication; pp. 35 a 39.

³⁴ Id. Chapter II. 'Speak about yourself, not about them'; p. 38.

A principled negotiator will focus on interests, not positions; invent multiple options on looking for mutual gains before deciding what to do, and insist that the result be based on some objective standard. Under these circumstances, he will be opened to reasoned persuasion on the merits, never yielding to pressure, only to principle.³⁵

A negotiator will try to negotiate until a certain limit. Knowing this limit is crucial for a savvy decision of leaving or keeping at the table. Hence, a negotiator will previously establish his bottom line, that is, the worst acceptable outcome. For instance, a buyer's bottom line is the highest price to pay, whilst a seller's is the lowest to accept.³⁶ A bottom line helps parties to resist pressure.

A negotiator must identify alternatives for reaching the agreement and choose which one is most desirable, the so-called BATNA.³⁷ Moreover, he will need to evaluate his constituency's bottom line, walkway or reservation point or price - RP.³⁸ Internal preparation refers to research that will help the negotiator set and adjust his RP³⁹, or walkway point. If the BATNA is the same as the subject of negotiation (example: a house for 190 thousand), then the RP will be the same as the BATNA. If the house is of better quality in comparison with the BATNA's house-pick, the buyer-party may have a RP of 200 thousand because she may want to pay more for this quality; but if the BATNA's house is of better quality, she may want to pay less for the house subject of the agreement; after all, why the buyer would pay 190 thousand for a house of less quality, if she can go for her BATNA and pay the same amount for a house of better quality?

Thus, knowing one's BATNA and RP is of critical importance for a party, because will signal to her when she would have been better off walking away from the table with no agreement.⁴⁰ If a BATNA is fine and negotiation doesn't give any hope of good results, there is likely no reason to invest more time on it.⁴¹

A party may use tactics to prevent or create difficulties for the agreement.

One example is a threat or ultimatum. When someone issues a threat or an ultimatum, take a step back and diagnose the problem.⁴²

Nibbling is another hard-tactic used in negotiation that arises when a counterpart makes a modest request just before the other party is ready to ink the

³⁵ Id. Chapter II. 'Insist on using objective criteria'; pp. 13/4.

³⁶ Id. Chapter III. 'The costs of using a bottom line'; p 100.

³⁷ Robert Korobkin, "A Positive Theory of Legal Negotiation", in Folberg and Golann "Lawyer Negotiation, Theory, Practice and Law", 2nd ed., Wolters Kluwer, 2011, p. 78.

³⁸ "Most negotiating books and experts emphasize the importance of having a "bottom line," "walkway," or "reservation price" for negotiation. Indeed the bottom line is a fundamental bargaining concept on which much of modern negotiation theory is built. It is the *minimum acceptable level* you require to say "yes" in a negotiation." Id. P. 81.

³⁹ Id. p. 78.

⁴⁰ Id. p. 79.

⁴¹ Id. Chapter V. Question 5. 'When does it make sense not to negotiate?'.; pp. 166-168.

⁴² Negotiation Skills: Threat Response at the Bargaining Table. Program on Negotiation. Harvard Law School. PON Staff. <http://www.pon.harvard.edu/daily/negotiation-skills-daily/negotiation-skills-threat-response-at-the-bargaining-table>

deal. The “nibbler” acts “[b]y preying on your desire to wrap up a hard-won negotiation quickly” and he “may succeed in gobbling up several more percentage points of value”⁴³. A party should shun the request unless the nibbler agrees to a matching concession.

Concession means what a party is willing to give up to reach an agreement. Among some rules about concession, a party should ask something in return for any concession given, stimulating the process of give and take toward agreement.

4. APPLYING THE PRINCIPLES AND TECHNIQUES TO THE MERCHANT OF VENICE AND WHAT WE MAY HAVE SUGGESTED TO BOTH PARTIES

Here, we are certainly in front of a Negotiation process. The participation of the parties was voluntary and they did not rely on a third party to facilitate or impose their agreement. It was a cheap means to solve the dispute, though a mean way to do so.

Shylock in the beginning indicated that he was not misinformed and that he presented himself prepared for the negotiation. He certainly did his preparation for the negotiation, since he gathered information about Antonio’s businesses situation at the Rialto. Shylock had information about Antonio, his ships and his tremendous risks. He seemed to have much better evaluated Antonio’s risks, and Antonio appears to have lazily disregarded them.

Accordingly, Shylock was ready when the chess game began and we likely can assume that he knew what he wanted since the outset of the conversation. Based on Sun Tzu, Shylock would probably always “win” any negotiation with Bassanio and Antonio.

Antonio and Bassanio did not prepare themselves to the negotiation and underestimated the hate Shylock has been nurturing against Antonio.

Bassanio naively thought the negotiation with Shylock was over, when it was merely warming up. He did not realize that the risk was too high (Antonio’s business was uncertain and he had ships spread all over the world with no guarantee of return, as Shylock remarked: “ships are fragile, sailors are just men, and lists dangers these ships may encounter”) and that Shylock might be concealing important information. Bassanio should have probed into Shylock’s motivation, thus examining if it was different than what appeared to be. Ergo, Bassanio was not aware of Shylock’s truly intention.

⁴³ “Dealing with Difficult People: Lies, Lies, and More Lies. How to deal with liars at the bargaining table according to Wharton School professor Richard Shell.” Program on Negotiation. Harvard Law School. PON Staff.
<http://www.pon.harvard.edu/daily/dealing-with-difficult-people-daily/dealing-with-difficult-people-lies-lies-and-more-lies/>.
Access in Oct. 16th, 2016.

Bassanio and Shylock mostly played soft and hard negotiation-styles respectively, while Bassanio slightly played hard too when he did not disclose to Shylock what he intended to make with his money. Further, Bassanio avoided personal conflict and tried even to soften Shylock by inviting to eat together, immediately denied because of the parties too many cultural differences. Shylock played hard most part of the time, by e.g. misleading his bottom line and applying pressure at the end by giving an *ultimatum*.

Bassanio probably missed a great opportunity to start a principled negotiation with Shylock when he did not disclose what he intended with the money. Shylock would have probably ignored that, or he may have been seduced for the fact that Bassanio could suddenly transform himself in a wealthy and powerful man. While we should not assume that Bassanio would bargain with his probable wife's wealth, we could have suggested Bassanio to disclose his intent and mention to Shylock that if he succeeds he would never forget Shylock's help when he most needed it. With the help of flattering, Bassanio could have attempted to soothe Shylock's heart of stone and give him a motivation to not see Bassanio as an enemy, or at least start thinking on that. By virtue of such attitude, Bassanio could have attempted to separate people from the problem and avoided the attacks against each other that we would witness later on.

A negotiator is a person filled with emotions and Shylock doesn't contradict that when he refuses Bassanio's invitation to eat with him. The emotions skyrocketed when he explains, now to Antonio, his grievance because of Antonio's insults at the Rialto. So, Shylock shows his emotions: he is angry, resentful, offended. If Antonio were a skilled negotiator, he would have carefully perceived the complaint and tried to see the world through Shylock's eyes.

Nonetheless, what did Antonio do? He increases Shylock's resentment by replying with anger that he would do everything again, that is, offend and spit on Shylock if he has the chance, since for Antonio "charging interests" is not acceptable. So, Antonio missed the chance to see Shylock's point of view by putting himself in his shoes: as a Jew, he did not have so many opportunities opened to a Christian; besides, for "his people", charging interests was not a sin⁴⁴. It could have also made Antonio hold his tongue against Shylock's outburst.

Indeed, after Shylock released his anger, Antonio may have missed the best chance to settle a pleasant agreement. He could have been diplomatic, as Asimov pointed out (see footnote 17 above), just letting Shylock release his negative emotions.

As releasing emotions are a risky bet, Antonio and Shylock winded up offending themselves directly without any other concern with the negotiation itself. We saw that Bassanio offered to eat with Shylock before this last change of insults, but it proved useless. Here, though, Antonio could have offered an apology to Shylock, showing respect and acknowledging his offense. Even if not totally

⁴⁴ Charging interests of Jews was forbidden. Asimov, op. cit., p. 515.

sincere, the apology may have helped the parties to reach an agreement without insulting offers.

Antonio failed to listen actively to Shylock and it is the Jew himself that remembers us of that trouble after complaining directly with Antonio that the Christian haven't listened to him: "Why, look you how you storm! I would be friends with you and have your love, [f]orget the shames that you have stained me with, [s]upply your present wants and take no doit [o]f usance for my moneys-and you'll not hear me!".

If it's true that Antonio failed to ease Shylock's emotions, it is fair to notice that Shylock may have avoided Antonio's rampage if he had focused his comments on how he felt instead of accusing Antonio of all the grievances he inherited from the insults at the Rialto.⁴⁵ Furthermore, Antonio would have difficulties to challenge Shylock's statements, since an assertion over himself would be tougher to refute in comparison with direct accusations toward Antonio.

Before the end, Shylock confirmed his hard style when he speculates that a pound of flesh is worth nothing and that he's just offering a favor to a friend. Thus, he pressures with his "take it or leave it" argument: "If not, adieu.". Shylock made an ultimatum to the two friends, and when someone issues a threat or an ultimatum, one should take a step back and diagnose the problem. But what did Antonio? He wrongly moved forward! If Antonio were a principled negotiator, he would have asked Shylock about the importance of the "joke" for their contract goal and insisted on some objective standard, trying to evade the trap. He would never yield to pressure either, only to principle.

Antonio failed to set up a BATNA, what led him to accept the strange contract. In addition to that, he carelessly believed his ships would obviously return.⁴⁶

Through research, Bassanio and Antonio could have set up a BATNA and a RP while searching for more options at the Rialto or elsewhere to borrow money, so they may have had alternatives for Shylock's offer. They may have identified worst

⁴⁵ "Signor Antonio, many a time and oft [i]n the Rialto you have rated me [a]bout my moneys and my usances... You call me misbeliever, cutthroat dog [a]nd spet about my Jewish gabardine" (Act 1, scene 3, lines 102-4, 107-8). Asimov clarifies the reason for the Jewish gabardine and its consequences: "[t]he Jewish gaberline was a long, coarse cloak of the kind pilgrims wore in humility, to show that they were approaching some shrines as sinners hoping to be forgiven. In many places, Jews were forced to wear some distinctive garb of humiliating nature that had the double duty of indicating to the world what sinners they were and at the same time warning Christians from afar, so that they need not be sullied by showing Jews any kindness or courtesy". Asimov then explains the creation of the ghettos before concluding: "[a]gain, a vicious cycle was established. The Jews were forced to dress differently and live separately and were then hated for being different and exclusive". ("Asimov's Guide"; p. 518).

⁴⁶ As it is well-known, the ships never returned and Shylock demanded the penalty before the Duke.

interest rates, but a higher rate would have been likely more appealing than a chunk of Antonio's body.

Antonio was blind and did not listen to Bassanio's warning, that his love⁴⁷ was not worth of his piece of flesh. He should have listened to his friend, and he probably would have done so if he at least had a BATNA.

While Shylock's attitude to request the penalty at the end seems to be a condition to the loan, it resembles a common hard tactic in negotiation called nibbling. Even if one would not consider the penalty request as nibbling, Antonio could have acted as one being under attack of a nibbler and tried to shy away from the request. Or he could have simply demanded the concession that the penalty was actually a "merry sport" and agreeing to write at the contract that it could never be claimed. A party should ask something in return for any concession given, stimulating the process of give and take toward agreement. Shylock conceded that he wouldn't charge interests, but he asked Antonio's flesh in return! For that reason, Antonio could have asked something in return, like pointing out in the contract that the condition was not serious as Shylock stated it was a "joke"!

At the end, Antonio conceded for the flesh-contract clause and almost lost his life. He should not have accepted the abusive offer and even if he decides to accept, it would have to contain some protection against the clause. If a concession means what a party is willing to give up to reach an agreement, it is clear that Antonio would not be willing to give his life for the loan.

But more familiar to the concession theory and still searching for options, what Shylock demanded from Antonio went far beyond from what "the Jew" conceded, giving another opportunity to Antonio back out from this commitment by saying that flesh was unrelated to interests or, maybe better, to offer Shylock a piece of his future profits putting Shylock in an uncomfortable situation (since the merchant did not want to "appear" as an evil businessman or show his anger). Thus, Antonio could have forced Shylock to think on another payment for his concession (not charge interests), inviting him to give up the odd requirement and generating new options for both parties.

5. CONCLUSION

The Merchant of Venice is an amazing story and triggers juridical debates until today.

Discussions about the negotiation process are less common, although, as we try to demonstrate here, the process was central to the play's theme.

⁴⁷ For a brief analysis of Antonio's behavior, the reader is referred to Shakespeare's Cambridge Guide, Emma Smith, LPM, pp. 144/5; Portuguese version.

Shakespeare actually had to turn Antonio into a furious man so the “villain”⁴⁸ Shylock could finally seek his revenge. Interestingly the author (probably unwittingly) addressed negotiation methods, commonly used in a negotiation process.

Of course, Shakespeare had no intention of conducting a negotiation based on principles in the sense brought by the Harvard School led by Professors Roger Fisher and William Ury. On the contrary, the author commonly puts our own principles in check in the duels starring his characters.

The search for objective criteria, the understanding of the other party's intention through active listening, the preparation for negotiation, the analysis of the risks involved and the possibilities of each party, the creation of joint solutions to obtain a better agreement for both, the limits of each party and their exit points from the negotiation are all aspects of a negotiation based on principles, not only competitive or merely collaborative. Many of these aspects are actually prerequisites for any negotiation that is intended to be minimally effective.

No one in their right mind should consent to the removal of a chunk of their own flesh. This would undoubtedly be a walkaway point for saying goodbye and looking for other alternatives. Of course, if the other party were to be adamant.

⁴⁸A curiosity about the villain of the story. Shylock's perception as a villain and Portia as a heroine has been the subject of intense reflection and is a captivating discussion, since the idea of an inverse view of these roles challenges the first impressions of the viewer. Although it is obvious and not questioned the hatred present in Shylock's attitude by demanding a pound of flesh from Antonio, his stance becomes less odious to the reader/spectator when he also sees him as a victim of the time in which he lived. Likewise, if there is a clear acknowledgment of Portia's wit and persuasive ability and persuasiveness in the play, nowadays the abuses her character has committed are also recognized, such as the cheating in the enigma of the jewelry holder, as well as her disguise before the court as a lawyer. For a critical view of these characters, see Kenji Yoshino in “Mil Vezes Mais Justo, o que as peças de Shakespeare nos ensinam sobre a justiça” (portuguese version of his “A Thousand Times More Fair”) Martins Fontes, SP, 2014, pp. 33-64, where the author points out that “...the play also contains a disturbing message about the rule of law and the role of lawyers. Nowadays, the reenactments of the play have become increasingly sympathetic to Shylock...” (p. 35, free translation). Yoshino shows us that Shylock's feeling is, of course, monstrous, but that “Shylock's thirst for revenge must be understood in the light of how the Jews were treated in the Renaissance” (43, free translation). Yoshino also highlights Portia's unequaled rhetoric and that “the fear and distrust we have of lawyers are, in the end, the fear and mistrust of skilled orators ... Portia represents a lawyer with such verbal ability that no law can subdue her”. (page 34, free translation).

Emma Smith in “Guia Cambridge de Shakespeare” (portuguese version of her “The Cambridge Shakespeare Guide”), L & PM editors, Porto Alegre, 2014, p. 144, asserts that “neither Shylock as a representative of the Jews nor the Christians leave the court immaculate, and the Victorian ideation of the wisdom of Portia was replaced by an uncomfortable conscience of the racist superiority with which she repudiated her darker-skinned suitors” (free translation). Jose Roberto de Castro Neves agrees with that view in “Medida por Medida: O Direito em Shakespeare” (Measure for Measure: The Right in Shakespeare), “Edições de Janeiro, RJ, 2016, pp. 129-166, for whom “Portia is even extremely prejudiced” (p.136, free translation). He adds that from the legal point of view Portia “is the great villain of the plot” (p.165, free translation).

And even in situations like this, a turnaround is possible, with appropriate serenity and technique, as discussed in the text.

It is also clear from the situation narrated in the play that tempers were exalted and resentments were embedded, which made reaching an agreement more difficult, however not impossible. As it was verified in this narrative, there were possibilities to overcome the emotional obstacles during the negotiation. But the emotional charge was necessary for the Shakespearean narrative, as well as the characters' dose of anti-Semitism. Note that the play takes place not on English soil, but in Venice, since the Jews had been expelled from England in 1290 and only reinstated in the 17th century. The play was launched in the previous century, when there was no authorization for Jews to enter England. Probably the majority of Englishmen of the time who attended it had never seen a Jew.

At last, if on the one hand it is fascinating to conclude that through these negotiation methods and techniques Shakespeare could have devised a different ending, on the other, and for our pleasure, it is good to know that the Baron of Avon was not faithful to the principles of negotiation when weaving this fascinating plot.