

IN THE COURT OF SHAKESPEARE

BETWEEN:

JEAN DU PARCQ

Applicant

-and-

GABRIEL PEDERSON

Respondent

FACTUM OF THE RESPONDENT

Christine Stecura
Counsel for the Respondent

Amanda Cockburn
Counsel for the Respondent

INDEX

Part I: Facts	2
Part II: Issues	3
Part III: Arguments	4
1. Shakespeare's characters are a nexus of social roles and an inward and reflexive consciousness; actions and the omissions must be judged in accordance with these distinct categories	4
1.1 Identity is a nexus of social roles and individuality	4
1.2 An individual must be held responsible to a) act in accordance with one's social role; b) represent oneself truly within a social role by performing the actions that define it.	4
(a) An individual must be held responsible to act in accordance with their social role.	4
b) An individual is responsible for representing oneself truly within a social role by performing the actions that define it.	5
1.3 Interiority is a place of reflection and intent. It is separate and distinct from social roles. Only actions can be judged as right or wrong, not intentions.	6
2. Taxonomy is a tool to understand the law of Shakespeare, which emphasizes the significance of responsibility within society. Actors are culpable for their actions, however culpability for omissions depends on specific social obligations delineated through duties.	8
2.1. In the law of Shakespeare, responsibility is integral to the functioning of society.	8
2.2 For the social order to be restored, the law of Shakespeare holds individuals who threaten societal integrity responsible for their actions.	9
2.3 The law of Shakespeare imposes a positive duty to act on individuals within familial and employment relationships. Individuals are not responsible for omissions where there is no distinct duty to act.	9
(a) A positive duty exists where there is distinct duty owing to a social role.	9
(i) Familial obligations	10
(b) There is no positive employment obligations without a distinct duty owing to a specific obligation.	11
2.4 The law of Shakespeare stresses the significance of one villain who assumes responsibility for his or her actions	11
3. Shakespeare most highly values human qualities that cannot be regulated by the law over those that are forced by law.	13
3.1 Shakespeare characterizes the force of law as tyrannical	13
3.2. People need to internalize a sense of law in governing themselves rationally.	14
3.3 Shakespeare values the qualities of faith and mercy; these are qualities that ultimately stabilize society.	14
Part IV: Orders Sought	17
Part V: Authorities	18

Part I – Facts

1. Three friends, Gabriel Pedersen, Jean du Parq and Chris Vidaloa went on holiday together to Bleak Island, a secluded maritime reserve.
2. After a period of leisurely drinking, Jean accompanied Gabriel, an experienced sailor, on a small sailboat. Chris remained onshore.
3. Gabriel continued to drink heavily on board the ship causing Jean to grow increasingly alarmed. Jean attempted to take control of the ship to return to shore, during which she and Gabriel began to argue. Gabriel struck Jean pushing her overboard and causing her to fall to the bottom of the ship.
4. From shore, Chris could see Jean struggling in the water but her fear of sharks prevented her from rescuing Jean. However a passing boat was able to rescue her from drowning.
5. While in the water, Jean was deprived of oxygen causing her irreparable brain damage. As a result of her injuries, Jean requires constant institutional care.
6. During criminal proceedings, the court held Gabriel was not guilty of assault owing to his intoxication.
7. In parallel civil proceedings, Gabriel was found solely responsible for negligence and ordered to pay damages to Jean. The court held that Chris was not under a duty to rescue and therefore could not be joined to the proceedings.

Part II – Issues

8. The Respondent, Jean du Parcq, respectfully submits that on the charge of civil negligence, the trial judge's finding that Gabriel Pedersen is solely responsible be affirmed by the Court of Shakespeare.
9. Specifically, the Respondent respectfully submits that:

I Through an understanding of identity as a composite of interiority and social roles, Shakespeare demonstrates the significance of representing oneself truly in a social role, and properly performing that role's duties. This is necessary for the stability of a community and for the self-actualization of the individual, which the Court hitherto values. Furthermore, intentions cannot be judged as actions.

II. By means of taxonomy, Shakespeare emphasizes that responsibility is integral to the functioning of society. Shakespeare holds individuals responsible for threatening social integrity however, individuals cannot be held culpable for omissions unless they are under a distinct duty to act.

III. Shakespeare stresses that the force of law is tyrannical. Qualities such as empathy and compassion are not within the jurisdiction of law but are integral to society and human relationships. While Shakespeare certainly acknowledges that there is a risk in not regulating these qualities, he has a greater faith than skepticism in the inherent goodness of humanity

1. Shakespeare's characters are a nexus of social roles and an inward and reflexive consciousness; actions and the omissions must be judged in accordance with these distinct categories.

1.1 Identity is a nexus of social roles and individuality.

10. Duties and responsibilities are tied to an individual's identity. In *Heinrich*, the principle of identity was viewed as central to the law of Shakespeare and the court's interpretive methodology thereof. The judgment of Manderson J. expressed, in *Pears, Britten et al.*, the requirement for an "enduring sense of identity" that is always in a state of becoming, yet is the constant source of agency and responsibility. In both of these cases, the court prized the freedom to fulfill and reinvent individual identity.

Re Attorney General for Canada; ex parte Heinrich [2003] 1 C. of Sh.1

Manderson, Desmond. "In the Tout Court of Shakespeare: Interdisciplinary Pedagogy in Law" in *Journal of Legal Education*, 54:2, June 2004, p. 289.

Re Attorney General for Canada of Canada v Pete Pears, Ben Britten & Ors [2004] 2 C. of Sh.1

Manderson, J. "Balancing Values," Shakespeare Moot Court web site, p. 3

11. Identity is a dynamic interaction between recognized social roles, which are characterized by certain behaviour, responsibilities, and duties, and a reflexive consciousness, most particularly represented by Shakespeare in his characters' soliloquies. Self-actualization is achieved when harmony between these two elements is reached. For most of the play, Hamlet is deeply estranged from the role of avenger as he contemplates the actions and emotions it prescribes. This dissonance is poignantly exposed in Hamlet's "Oh what a rogue and peasant slave am I" speech in which the prince attacks his own cowardice and inaction. Hamlet eventually realizes that his "godlike reason" is meant to be used in action, with all its attendant possibilities of death, rather than to "fust...unused." With this understanding, Hamlet is finally able to act the role imposed upon him by his father's ghost, while still remaining true to his inner sense of self. Conversely, Antigonus is eaten by a bear after he performs as dutiful servant to the King against his inner conscience: his selfhood is alienated from his social role. In the law of Shakespeare one must actualize their individuality through their social role in order to act responsibly.

Hamlet 2.2.543; 4.4.38-39

Winter's Tale

1.2 An individual must be held responsible to a) act in accordance with one's social role; b) represent oneself truly within a social role by performing the actions that define it.

(a) An individual must be held responsible to act in accordance with their social role

12. An individual must act in accordance to their social role. The judgment of Bristol, J., in *Pears, Britten et al.*, suggests that the transgression of roles and order is only necessary as an opportunity to reconstitute an ethically superior order. Camillo in *The Winter's Tale* disobeys Leontes command to do something he considers immoral. In another instance, the Duke in *Measure for Measure* steps outside his role as governor to

allow a short reign of tyranny; this is a Machiavellian maneuver to restore order in Vienna.

Re Attorney General for Canada of Canada v Pete Pears, Ben Britten & Ors
[2004] 2 C. of Sh.1 at 36.
The Winter's Tale
Measure for Measure

13. Shakespeare affirms that social roles and the responsibilities that define these roles are necessary to societal order. When King Lear meets Poor Tom in the cave, he suggests that “proper” familial relations are not determined by nature, but are mere convention and fashion that are subject to change. Clothing epitomizes these artificial roles in contrast to the natural “poor, bare, forked animal” that is “unaccommodated man.” In this moment, clothing stands for everything that is false in human life, including the constructed role of ‘daughter,’ and Lear wishes to divest of all artifice by stripping bare. Yet Edgar and the Fool are the truth-speakers in this scene: Lear is ironically inspired to cast off artifice by Edgar’s own purposeful disguise; as Lear speaks, Edgar repeats “Poor Tom’s a-cold” to suggest that man in fact requires some artifice (social roles) to survive. This is further emphasized when the Fool interrupts Lear by announcing the arrival of fire, the very symbol of man’s art.

King Lear 3.4.57, 81, 144, 170; 3.4.109-11; 3.4.150.

14. Social roles determine an individual’s responsibilities within their society. In the role of ‘Duke,’ it is Vincentio’s responsibility to know the art of governance, which includes knowing the nature of his people, his city’s institutions, and common justice. As councilor to Lear, it is Kent’s responsibility to give honest council. Identity is realized through social roles, which in turn delineate responsibility in the law of Shakespeare.

Measure for Measure 1,1,1-12.
Hamlet
King Lear 1.1.146-156.

15. When an individual forfeits agency to the authority of a social role, they do so in good faith that the actor will perform that role responsibly. Lear forfeits his power to his daughters, as Regan and Goneril lead him to think they shall “obey,” “love,” and “honour” him. Ophelia forfeits her involvement with Hamlet, which she thinks is pure and true, because her father, in a role of patriarchal authority, affirms that Hamlet does not really love her. The Provost in *Measure for Measure* freely forfeits his agency to the authority of Vincentio disguised as a holy man: “I am your free dependent,” he says. When characters don’t act responsibly, the dependent suffers the consequences.

King Lear 1.1.100
Hamlet 1.3
Measure for Measure 4.3.88

b) An individual is responsible for representing oneself truly within a social role by performing the actions that define it.

16. Representing oneself honestly within a social role by performing the actions that define it is integral to social stability and individual fulfillment. Honest characters represent themselves truthfully even when in disguise. The Duke’s role in directing and

controlling the action of the play and the destiny of other characters to ultimately deliver justice suggests an “extra-worldly” authority. His disguise as a friar is in keeping with this transcendent quality, while simultaneously revealing the Duke’s own self-confessed flaw: he is a recluse, and prefers the private life to the public. This preference is unfitting for the role of a statesman and it accounts for the lawlessness in Vienna. The disguise of the friar allows him to right this flaw, to walk around Vienna in a more public way, and to finally become a more public and effective ruler: his involvement in the final gathering scene and his desire to participate in the institution of marriage represents this change. Similarly, Kent claims to be “a very honest-hearted fellow” who can “deliver a plain message bluntly” even in disguise, which he only adopts so that he can better serve Lear.

Measure for Measure
King Lear 1.4.20, 34-35.

17. Reading a person’s social role reveals their duties and obligations, much like the interpretation of a letter uncovers meaning. Therefore, there must be a connection between sign and signified. The Duke tells Angelo: “There is a kind of character in thy life / That to the observer doth thy history fully unfold,” character meaning here “an external sign indicating what is within.” Edmund’s deceit of a “credulous father and a brother noble” is instigated with a false letter; Gloucester’s fidelity to Lear and his plans to avenge the wrongs done to him are written in a letter; Hamlet counterfeits a letter condemning Rosencratz and Guildenstern to death after finding a letter from Claudius that orders the death of Hamlet. Similarly, Angelo’s true nature is revealed in a letter that orders the death of Claudius despite the deal he made with Isabella. Though their words are unwritten, Goneril and Regan perform empty rhetoric in the love test scene, and Lear later desires to anatomize Regan’s heart to examine who she truly is. When form and content agree in the letter, there is clarity. When letters are false, the consequences are destabilizing.

Measure for Measure 1.1.28; fnt 28.
King Lear 1.1.137-138; 3.3.10; 3.6.75-76

18. *In holding himself out as an expert sailor Gabriel has responsibilities to fulfill as a weathered sailor which he neglected to discharge. Based on his representations, Jean accompanied Gabriel onto the boat, out to sea. She suffered damages as a result of Gabriel not fulfilling the responsibilities accorded to his social role.. Therefore, the trial court’s findings must be reaffirmed and Gabriel must be held culpable for his negligence. Jean represented herself as fearful of sharks and stayed on the beach; therefore, she did not transgress any social roles and had no duty to rescue.*

1.3 Interiority is a place of reflection and intent. It is separate and distinct from social roles and their inherent duties. Only actions can be judged as right or wrong, not intentions.

19. Shakespeare values an individual’s interiority and suggests that it is private and not easily discerned. Harold Bloom suggests that Shakespeare invented modern identity as we know it, and that the “royal road to individuation” is “self-overhearing.” Hamlet elucidates this private self to Rosencratz and Guildenstern as they probe to understand his behaviour: he insists that Guildenstern play upon a recorder, Guildenstern declines

because he hasn't the skill, and Hamlet points out "how unworthy a thing / you make of me. You would play upon me, you would seem / to know my stops, you would pluck out the heart of my / mystery (...) Call me what instrument you will, though you can / fret me, you cannot play upon me."

Bloom, Harold. *Shakespeare: The Invention of the Human*. (New York: Riverhead, 1998) Introduction xvii-xviii.

Hamlet 3.2.327-354.

20. Shakespeare shows a mind at conflict with itself when he uses the form of soliloquy. Separate from the actions required in performing a social role, interiority is in a state of unsettled conflict and transformation that may reveal the nature and intentions of a character, but cannot receive a final judgment since these characters are shown to jump from one thought and intention to the next. This is exemplified in Claudius' soliloquy, when Claudius is caught between his "strong intent" to pray and his "stronger guilt" of murder. He decides he cannot pray for his sin is too great. He "look[s] up" in prayer because heaven is merciful, then considers: "may one be pardoned and retain the offence?" in fear that prayer is ineffectual, since he has yet to repent for murdering his brother. Exasperated, he stops his futile prayers: his "words fly up" and "thoughts remain below." This illustrates that the intent to act and action are separate things: there is no meaning in intention if it is not followed by action. This is accentuated by Hamlet's aborted revenge on the praying Claudius.

Hamlet 3.3.36-98.

21. Unknowable intentions and feelings are "merely thoughts," as Isabella says and cannot be judged as actions. *The Winter's Tale* establishes the danger of this. Hermione is tried based on unknowable accusations and the insubstantial suspicions of Leontes. "Your actions are my dreams" he tells his innocent wife. Judging beyond actions to include intention is approached with great caution in the law of Shakespeare.

Measure for Measure 5.1.452-55.

Winter's Tale 3.2.80.

22. *Intentions cannot be judged as actions, therefore Chris is not culpable.*

2.0 Taxonomy is a tool to understand the law of Shakespeare, which emphasizes the significance of responsibility within society. Actors are culpable for their actions, however culpability for omissions depends on specific social obligations delineated through duties.

2.1. In the law of Shakespeare, responsibility is integral to the functioning of society.

23. In *Heinrich*, the court stressed the significance of an agreement between form and content. As the court in *Pete Pears et al.* established, taxonomy, which incorporates elements of both substance and procedure, provides a methodological approach to the law of Shakespeare similar to the categorization of legal regimes in other jurisdictions. The structure and patterns intrinsic to each genre provide the court with an initial approach with which to frame its legal issues: Tragedies are focused upon the struggle of a great individual in crisis; Comedies are based around social interaction and posit problems, the resolution of which promotes social regeneration. At issue in the present case is the extent to which individuals owe responsibilities to one another, in terms of both actions and omissions.

In Re Attorney General for Canada, ex parte Heinrich [2003] at 299.

Attorney General of Canada v. Pete Pears, Ben Britten & Others, [2004] 2 C. of Sh. 1 at 16.

24. By employing both tragedy and comedy as the law in the case, the court can integrate the needs of both the individual and the community in its decision. The tragedy portrays the exceptional suffering experienced by the hero during a crisis and ends with the restoration of the social order, as was demonstrated in both Hamlet's Denmark and Lear's England. Characters in tragedy are responsible to the hero because his destiny represents the destiny for the whole community. The struggle faced by the contemplative Hamlet, who is out of his element in a world that required action, symbolized a crisis faced by the entire society.

Bradley, A.C. *Shakespearean Tragedy*, (Hong Kong: Macmillan Educational Ltd: 1985) at 3.

25. Comedies provide a framework for effective community governance by illustrating the moral responsibilities owed by each individual to their community. The subject matter of comedies resonate with the audience's social experience and posits questions for them to explore in their viewing: Amongst other themes, *Measure for Measure* explored power and sexuality, while *The Winter's Tale* considered tyranny and jealousy. Victoria Hayne argues that through its "capacity to evaluate, to discriminate, to judge," the audience performs a community standards test to evaluate the issue at hand. The play is resolved by the emergence of more appropriate social norms informed by the community and not a tyrannical authority. The Duke's return to Vienna and his final speech in *Measure for Measure* was enlightened by his disguised reconnaissance into the public, and symbolized the restoration a just and fit legal system.

Danielle, D. "Shakespeare and the Traditions of Comedy" in Stanley Wells ed., *The Cambridge Companion to Shakespeare Studies* (New York: Cambridge University Press, 1986) at 102.

Hayne, V. "Performing Social Practice: The Example of *Measure for Measure*," (Spring 1993) 44 *Shakespeare Quarterly* 1 at 28.

Measure for Measure, V, ii, 527-543

26. In both genres, the play ends with the imposition of a new social order that ameliorates the problems at issue in the play: In *Hamlet* and *King Lear*, a new individual is chosen to lead the Kingdom; In *Measure for Measure* and *The Winter's Tale*, previous legal systems proven to be unreasonable are replaced with more suitable regimes. The law of Shakespeare emphasizes that in order for society to flourish, individuals must fulfill their duties and responsibilities to one another. By using a methodological approach based on taxonomy, the court can delineate duties and obligations owed to individuals that are intrinsic to the proper functioning of society.

2.2 For the social order to be restored, the law of Shakespeare holds individuals who threaten societal integrity responsible for their actions.

27. For social renewal to occur, those characters responsible for threatening the social order are punished during the resolution of the play. Comedies have happy endings, typically indicated by weddings, reunions and the restoration of justice, that resolve the problems explored in the play. As contended by Milton Crane, this leaves the audience with the feeling that “this should be.” In *Measure for Measure*, the Duke proclaims “An Angelo for Claudio, death for death;” however, once it is revealed that Claudio is not actually dead, Angelo’s punishment for his attempted rape of Isabella is reduced to marrying Mariana, the woman he dishonored. Similarly, in *The Winter's Tale*, Leontes is finally absolved for his jealous actions, that resulted in Hermione’s exile and the expulsion of his newborn child, upon Perdita’s return to Sicilia.

Crane, M “Shakespeare’s Comedies and the Critics” (Spring 1964) 15 *Shakespeare Quarterly* 2 at 72.

Measure for Measure, 5.1, 413.

Measure for Measure, 5.1, 380.

28. It is integral to tragedies that the antagonist opposing the tragic hero, who causes or contributes to the action that leads to the downfall of the social order, is held culpable for his or her actions, in order for society to regenerate. In *Hamlet*, Claudius’ act of murder incited Hamlet’s struggle to avenge his father’s death. This act instigated the destruction of the kingdom and Claudius’ own death. In *King Lear*, Edmund’s deception of his brother and father and his attempted overthrow of Lear’s kingdom lead to his demise.

Hamlet

King Lear

29. *Therefore, since Gabriel is culpable for his actions against the Applicant, the Court of Shakespeare must reaffirm the lower court’s finding of damages for civil negligence against the Applicant.*

2.3 The law of Shakespeare imposes a positive duty to act on individuals within familial and employment relationships. Individuals are not responsible for omissions where there is no distinct duty to act.

(a) A positive duty exists where there is distinct duty owing to a social role.

30. In considering whether an individual is legally responsible for the commission of an omission, the law of Shakespeare makes a distinction between classes of individuals

who have a duty to act and individuals without a duty to act. A positive duty exists where there is a distinct duty owing to a social role which can be identified through genre. In tragedy distinct duties are assigned according to socially proscribed roles that are based upon relationships between individuals and the tragic hero, whose destiny symbolizes the fate of the entire society. For example, when Lear steps outside of custom in the unprecedented love-test, customary behaviour in the play as a whole is shaken. Distinct duties in comedy derive from the relationships integral to the functioning of society. In both tragedy and comedy, Shakespeare delineates distinct duties for two types of obligations: familial and employment.

(i) Familial obligations

31. The law of Shakespeare demonstrates that family members owe a positive duty to one another. Tragedy reveals that the relatives of the tragic hero play a significant role to the tragic hero's downfall and demise, and their omissions are severely critiqued in the play. Through this, the law of Shakespeare demonstrates that individuals owe a positive duty to those within their close bloodlines. In *King Lear*, the law of Shakespeare holds Regan and Goneril liable for their willful neglect of their father Lear after they refused him shelter during a terrible storm, banishing him to the elements. After they die, Albany notes, "The judgment of the heavens, that makes us tremble/Touches us not with pity." Shakespeare underscores Regan and Goneril's culpability by comparing them to Cordelia. Upon her return, Lear tells Cordelia "I know you do not love me; for your sisters/Have, as I do remember, done me wrong. You have some cause, they have not." Despite her father's maltreatment, out of loyalty, Cordelia returns to England from France in attempt to rescue her father.

King Lear, 5.3, 234-235.

King Lear, 4.7, 72-74.

32. In comedy, the familial duties shared between individuals have consequences for the entire community. In *The Winter's Tale*, Isabella had a duty to rescue her brother Claudio, which she undertook. Although she did not fully comply with Angelo's demands, Isabella sought an alternative arrangement, with the aid of the disguised Duke, to save her brother. Rescuing her brother was essential to her family, but even more so to the entire community, as it symbolized overcoming the tyrannical rule that threatened Vienna.

Measure for Measure, 3.2, 264-266

(ii) Employment obligations

33. In the law of Shakespeare, individuals derive positive duties from their employment obligations. In tragedy these obligations are depicted in relation to the tragic hero, who epitomizes society. Although he is dismissed by the King, Kent continues to protect Lear throughout the play, "So may it come, the master whom thou lov'st/Shall find thee full of labors;" as the nature of his position includes preserving the honour of a king challenged by illness and age. Similarly, comedy portrays that employment obligations have societal ramifications in the law of Shakespeare. Declaring that he "must/Forsake the court," Camillo preserved the honour of Leontes by disobeying his orders to kill Polixenes, which would have led to greater turmoil in Sicilia and a possible war with Bohemia. His duty extends from beyond Leontes to the society at large and he

never abandons this obligation, returning to Sicilia at the end of the play to fulfill his role to the community.

King Lear, 1.4 6-7.

The Winter's Tale, 1.2, 362-363.

(b) There is no positive duty on individuals without a distinct duty owing to a specific obligation.

34. Tragedies are centered upon the demise of the tragic hero and the breakdown and subsequent regeneration of society. The downfall is never pre-empted by the intervention of another character. In *Hamlet*, the action and downfall of the tragic hero could have been halted had Horatio acted more boldly in stopping Hamlet from approaching the Ghost. Furthermore, despite his status as Hamlet's best friend, Shakespeare craftily neglects to give Horatio a larger role in counseling Hamlet. Nonetheless, at the end of the play Horatio has the significant task of transmitting the tragic story of Elsinore and its fallen prince Hamlet to the world, as well as ceding Denmark to Fortinbras. Similarly, in *King Lear*, Albany is privy to information that may have prevented the complete downfall of the tragic hero and the morally corrupt society, telling Cordelia "Where I could not be honest/I never yet was valiant." Like Horatio, it is Albany who presents Edgar with the kingdom following Lear's death. Shakespeare constructs Albany as the ultimate bystander to illustrate that meeting the burden of imposing a positive duty to act on an individual is exceptionally onerous and even the son-in-law to the king does not qualify for this obligation.

Hamlet, 5.2, 349.

King Lear, 5.1, 23-24.

35. *Since Chris does not have a distinct duty which obligates her to rescue Jean, she cannot be held culpable for any damages suffered by the Applicant.*

2.4 The law of Shakespeare stresses the significance of one villain who assumes responsibility for his or her actions.

36. In both the tragedies and the comedies, Shakespeare's plays emphasize a singular villain who is characterized as the mastermind of the malevolence that, directly or indirectly, undermines social stability. Even if there are other wicked characters, these characters employ the same manifestation of evil as the antagonist. In *King Lear*, it is clear to the audience that Edmund is responsible for Cordelia's death despite the fact that the actual hanging was performed by the Captain who claimed he was simply performing his job: "It be man's work, I'll do't." This illustrates that in the law of Shakespeare interveners do not diminish the responsibility of the original actor who initiates the action that leads to the occurrence of the fault. Only one actor can fully assume the responsibility for this fault.

King Lear, 4.2, 40

37. Furthermore the other actors who omit to stop the fault cannot be held accountable. Albany remains ignorant of Goneril and Regan's scheming and abides by Goneril's advice to "[n]ever afflict yourself to know the cause" of the social turmoil

unfolding around him. Even once he becomes aware of his wives actions he never intervenes to stop the downfall of the kingdom.

King Lear, 1.4, 280-281, 298; 4.2, 39

38. *Therefore, Gabriel is solely culpable for the fault of negligence committed against the Applicant and Chris bears no responsibility.*

3.0 Shakespeare most highly values human qualities that cannot be regulated by the law over those that are forced by law.

3.1 Shakespeare characterizes the force of law as tyrannical

39. Law that is merely force and not informed by society is unreasonable and unjust. Shakespeare illustrates this through his treatment of oaths and contracts and arbitrary rule.

40. The law of Shakespeare holds that there are obligations that cannot be regulated by contract. This is reflected in the exchange shared between Isabella and Angelo: Angelo offers Isabella for “the treasures of [her] body” the bargain to “fetch [her] brother from the manacles/Of the all abiding law.” Simultaneously, they both breach their contractual terms. Unknown to him, Isabella is not the woman who shares his bed; and Angelo orders the execution of Claudio despite their deal.

Measure for Measure, II, iv, 96, 93-94.

41. Furthermore, Shakespeare illustrates the limits of state intervention through dramatization. In *The Winter’s Tale*, the trial of Hermione illustrates the dangers of arbitrary law, wrongly condemning a woman against the weight of evidence in her favor (the oracle and testimonies of those who know her) on the basis of her husband’s blind jealousy: “if I shall be condemned/Upon surmises, all proofs sleeping else/But what your jealousies awake, I tell you/’Tis rigor, and not law.” When law ceases to be reasonable, and authority is only constructed legal fiction, it cannot facilitate the functioning of society and instead becomes a tool of oppression and tyranny. This is conveyed in the gloomy mood of guilt and repentance in Sicilia in contrast to the lightheartedness of the pastoral order of Bohemia.

The Winter’s Tale, 3.2, 109-112.

42. Shakespeare’s use of capital punishment for the ‘crime’ of fornication creates a visceral reaction in his audience. Blind adherence to the law and condemning a person for having sexual relations with someone they are betrothed to goes against the instincts of what the audience perceives to be rational and fair. This is revealed in Isabella’s intuitive reaction that Claudio should simply marry Juliet. Though pre-marital sex is an activity that many in Vienna engage in, Claudio is sentenced to death in “close rigor of the statute, to make him an example” and to deter others from traversing the boundaries of law. Like an old set of armor, the law is outdated, without purpose, and therefore not connected to the needs of the society.

Measure for Measure, 1.4.48; 67-68

Measure 1.3, 170

43. Similarly, Kent’s punishment in the stocks for loyalty to Lear shocks the regime for its injustice. Lear expresses his disbelief at Regan and Cornwall’s actions: “They could not, would not do’t. / ‘Tis worse than / murder / To do upon respect such violent outrage.” Where punishment exceeds the crime, law is not rational.

King Lear 2.4.23-25.

3.2. People need to internalize a sense of law in governing themselves rationally.

44. Arbitrary law is displaced when individuals embody a sense of higher justice and act according to this justice and inner conscience. Ideally, this sense of higher justice and the law should harmonize. Paulina is a self-governed individual who follows her conscience and the higher order of the Delphic oracle; her husband Antigonus, on the other hand, does not follow his better sense but instead “sighs” at the groans Leontes tyranny and does nothing, only to “nourish” tyranny as a result.

Winter's Tale 2.3.33-36.

45. In Shakespeare's law, reason is the highest faculty that governs a man's actions and thoughts; this rational faculty is what distinguishes the superiority of man to the animal order. When characters in Shakespeare debase themselves by allowing their lower, animal instincts to overcome their sense of reason, man behaves like a beast. Shakespeare condemns this: Leontes becomes a tyrant when his jealousy overthrows his judgment: his sexual doubt turns his hitherto legitimate kingship into a tyranny. He declares that his strong impulses, his “natural goodness” is enough to rule justly. Perdita, on the other hand, is the mistress of self-control in her romance with Florizel. In *Measure for Measure*, the Viennese are licentious and in need of self-restraint. The Duke calls Pompey a beast and affirms that eating, living, and drinking is “no life at all.” Hamlet condemns the drunken revelry of Elsinore, while his father's Ghost calls Claudius a beast for his corrupt use of reason and wit in seducing his wife.

Measure for Measure 3.2.20-32

Hamlet 1.2.175; 3.2.285; 1.5.42.

Winter's Tale 2.1.161-70; 4.4

46. To realize justice, individuals require some liberty from the law to act ethically and in accordance with a higher order of justice. Paulina transgresses a myriad of points of law and order: she is the first to speak audaciously of the King's “tyrannous passion.” Paulina also swears a false oath that Hermione is dead. It is Paulina's ethically motivated transgression and her commitment to the decree of the oracle that serves “as medicine” to both the King and Sicilia. Camillo also suffers the conflict of a man who is torn between tyrannical law and his better reasoning. He disobeys Leontes, leaves Sicilia, and returns unwittingly with the heir to the throne and the remedy to the country's malady. Fittingly, he and Paulina are united in marriage at the end of the play.

Winter's Tale 2.3.28; 2.3.201-203; 2.3.37

3.3 Shakespeare values the qualities of faith and mercy; these are qualities that ultimately stabilize society.

41. “Faith is the rock that saves us, when the law becomes force, and when reason runs out.” As Manderson J.'s precedent emphasizes, the principle of faith brings communities together in the first place so that people might develop a code of law. While law and custom may change over time, faith is a permanent principle of the human experience. The Chorus of Time in *The Winter's Tale* gloats that it can “o'erthrow law,” and “o'erwhelm” custom in “one self-born hour.” While laws may shift over time, the requisite faith that underlies law is an enduring principle. Allan Bloom notes that the

spirit of the play is not to be overwhelmed by the cycle of becoming and decay of laws and customs, but to seek the permanent standards outside the ephemeral systems of belief.

The Winter's Tale 4.1.7-10.

Bloom, Allan. *Love and Friendship*. (New York: Simon and Schuster, 1993) 380.

Manderson, J., *Pears, Britten et al* p. 30.

42. Faith plays a central role in the crisis and resolution in *The Winter's Tale*. Leontes' jealous suspicions and subsequent loss of faith in Hermione's fidelity, along with his tyrannical rule, provokes upheaval in Sicilia. Following this, it is the 'awakening' of faith in Hermione's innocence and the oracle's decree leads to the rehabilitation in the community, which is represented by the various marriages at the end of play.

The Winter's Tale 5.3.95

43. The pastoral setting of Bohemia in which Perdita was raised as a shepherd's daughter acknowledges the importance of 'lawlessness' compared to the overburdening laws of the Courts. It is her return to Sicilia that allows recuperation for her family and community.

The Winter's Tale

44. As Manderson J. noted in his the judgment, Autolycus' role as trickster in this same setting represents the danger of a society built on trust: there is a risk in putting one's faith in other people. But Shakespeare shows that this risk is worthwhile, for the rewards of faith, like marriage and love, can outweigh any possible harm.

Manderson, J., *Pears, Britten et al.* at 11-12.

45. In Shakespeare's law, representations of compassion, devotion, self-sacrifice, and mercy show that they are freely given qualities that cannot be regulated. In witnessing the cruel treatment of Gloucester, Cornwall's servant considers his employment obligation to his master onerous; in fact, he would rather kill Cornwall and face his own death. This is a momentous mark of compassion and self-sacrifice in the play, and Shakespeare meant it as such, for servants do not typically disobey their masters in Shakespeare. This beautiful gift of self-sacrifice is matched in the play by the needless and sorrowful sacrifice of Cordelia, who easily forgives Lear his mistreatment of her, though Lear acknowledges that she has cause to do him wrong. In *Measure for Measure*, Isabella acts mercifully in forgiving Angelo; she goes beyond merely lending a knee and forgiving the rogue, as Marianne asks of her. Isabella uses her powerful rhetoric to persuade a pardon from the Duke.

King Lear 3.7.71-83; 4.7.73-74

Measure for Measure 5.1.443-455.

45. Shakespeare crafts his plays to evoke feelings of sympathy and compassion from his spectators. The sorrow at Cordelia's death and compassion for Lear as he mourns that she will "come no more, / never, never, never, never, never" arouses feelings of sympathy for the doddering King and a heartache that mimics his own. These feelings are the groundwork for the moral spectatorship of which Martha Nussbaum insists is requisite for sympathetic judgments.

King Lear 5.3.309-310;

Nussbaum, Martha. *Poetic Justice*. (Boston: Beacon Press Books, 1995).

46. *These qualities that Shakespeare values as the best of humanity cannot be regulated or structured in the law. While Shakespeare certainly acknowledges a risk in trusting the compassion, sympathy, self-sacrifice, and mercy of other people, he has a greater faith than skepticism in the inherent goodness of humanity. Chris can therefore not be held legally culpable for failing to rescue to Jean.*

PART IV --ORDER SOUGHT

The Respondent therefore respectfully requests the affirmation of the trial Judge's determination of civil liability and a declaration from the Court of Shakespeare holding Gabriel Pederson solely responsible for the assault on Jean du Parcq.

Christine Stecura
Attorney for the Respondent

Amanda Cockburn
Attorney for the Respondent

Montréal, March 10, 2005

Part IV – List of Authorities

Case Law:

Attorney General of Canada v. Pete Pears, Ben Britten & Others, [2004] 2 C. of Sh. 1
In Re Attorney General for Canada, ex parte Heinrich [2003] C. of Sh. (unreported)

Codex, Institutes, Digest:

Hamlet
King Lear
Measure for Measure
The Winter's Tale

Secondary Sources:

Bloom, A. *Shakespeare on Love and Friendship* (Chicago: University Press, 1993)

Bloom, H. *Shakespeare: The Invention of the Human*. (New York: Riverhead, 1998)
Bradley, A.C., *Shakespearean Tragedy*, (Hong Kong: Macmillan Educational Ltd: 1985)
Crane, M. "Shakespeare's Comedies and the Critics" (Spring 1964) 15 *Shakespeare Quarterly* 2.

Cover, R. "Nomos and Narrative" (1983) 97 *Harvard Law Review* 4.
Danielle, D. "Shakespeare and the Traditions of Comedy" in S. Wells ed., *The Cambridge Companion to Shakespeare Studies* (New York: Cambridge University Press, 1986).

Denvir, J. "William Shakespeare and the Jurisprudence of Comedy" (1987) 39 *Stanford Law Review* 825.

Gless, D.J. *Measure for Measure, the Law, and the Convent* (Princeton: Princeton University Press, 1979)

Hayne, V. "Performing Social Practice: The Example of *Measure for Measure*," (Spring 1993) 44 *Shakespeare Quarterly* 1.

Hart, H.L.A *The Concept of Law* (Oxford: Clarendon Press, 1961)
Hart, H.L.A. "Positivism and the Separation of Law and Morals" (1958) 71 *Harvard Law Review* 593.
Hawkes, Terence. *Shakespeare and the Reason*. (London: Routledge, 1979)
Tony Honoré, "Are Omissions Less Culpable?" Peter Cane and Jane Stapleton, eds., *Essays for Patrick Atiyah* (Oxford, 1991).

McEachern, C. *The Cambridge Companion to Shakespearean Tragedy* (Cambridge: Cambridge University Press, 2002).

Nussbaum, M. *Poetic Justice*. (Boston: Beacon Press, 1995).