IN THE COURT OF SHAKESPEARE

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rosecutor espondent

S

efendant pplicant

FACTUM OF THE RESPONDENT

s aura oth ounsel for the espondent

s Sidney Thompson ounsel for the espondent

There's matter in these sighs, these profound heaves; You must translate. 'Tis fit we understand them. amlet ct V Scene

Part I - Facts

Three individuals s ean du arcq r abriel edersen and s hris Vidaloca went on a camping holiday together at the maritime reserve leak sland Upon arriving at the camp site the three drank a couple of beers after which s du arcq agreed to accompany r edersen an experienced sailor on his boat the 'ard de la er' for a sail on the ocean s Vidaloca stayed ashore due to a debilitating fear of sharks

With s du arcq aboard r edersen steered the vessel out to sea ver the course of the next two hours far from shore and much to s du arcq's chagrin r edersen chose to continue to drink heavily and became increasingly intoxicated s du

Part II – Issues

ounsel for the prosecutor respondent s ean du arcq respectfully submit the following

That intoxication is an invalid defense in the ourt of Shakespeare and as such that r ederson is liable for his assault on s du arcq and

That in the ourt of Shakespeare r edersen as an experienced sailor owes a duty to ensure s du arcq's safety aboard his boat that he violated this duty by drinking recklessly and is therefore liable for s du arcq's injuries and

That in the ourt of Shakespeare there is no legal obligation to intervene and as such s Vidaloca is not jointly liable for s du arcq's injuries

Part III - Arguments

1. Mr. Pedersen is responsible for his assault on Ms. du Parcq

- 1.1 The fact of Mr. Pedersen's intoxication at the time of the assault does not absolve him of liability.
 - 1.1.1 Madness in Shakespeare provides a relevant interpretive parallel to intoxication.

s the factual details of the assault committed by r edersen against s du arcq and the causal connection to her injuries are not in dispute the fundamental issue to be determined is whether r edersen is somehow absolved of responsibility for the assault as a result of his intoxication. Turning to the canon for guidance on this issue it is fruitful to explore the ideas of agency and responsibility that are engaged by Shakespeare's treatment of madness. The relevant interpretive parallel is the examination of states in which the individual's ability to effectively control his or her thoughts and actions is warped or overwhelmed

1.1.2 Agency is the critical element in absolving responsibility in states of madness.

We have thus a general principle enunciated in the canon that madness deprives the individual of control over one's thoughts and actions coupled with inconclusive evidence suggesting a degree of responsibility for one's actions despite such lack of control. Specifically aertes accepts that it is amlet's madness that is responsible for the death of his father and that amlet had no agency in the matter owever aertes also suggests that despite this lack of agency amlet should remain liable for the stain to his honour resulting from the fact of olonius's death. The only coherent principle that can arise is that in all cases it is the absence of agency which is the critical element which would allow the absolution of an individual's responsibility for his or her actions

1.1.3 Drunkenness entails a deliberate deference of agency.

runkenness is qualitatively different than madness. While the effect of both is analogous as described *supra* the conditions vary importantly with regards to the decisive element of agency adness is pure helplessness. The affliction is brought upon by factors beyond the individual's control – disease trauma and suffering ear proclaims his fear and helplessness at the state

let me not be mad not mad sweet heaven eep me in temper would not be mad

t is precisely this helplessness and lack of choice which provides the justification for not holding a mad individual accountable for his or her actions onversely in drunkenness the critical moment of examination is that in which a lucid person *chooses* to drink with the full knowledge of the effects that choice may have ntoxication entails the wilful and deliberate suspension of agency to a mind altering substance therefore cannot be said that an individual who chooses intoxication lacks agency as with one who is mad. There can thus be no absolution of responsibility for one's actions on account of intoxication.

1.1.4 The deliberate suspension of agency without good reason does not absolve the individual of responsibility for his or her actions.

n Heinrich anderson states "The question for this legal system as for any is at what point there ceases to be a *good reason* to place our selfhood in escrow..." [emphasis added] s recognised in that judgement accountability to one's selfhood or

Thus insofar as absolution from responsibility flows from lack of agency and insofar as drunkenness by its nature involves the wilful and deliberate exercise of choice one who causes injury while in a state of intoxication must be held liable for his or her actions. This conclusion is supported by the findings of this court in *Heinrich* as detailed

While the sun provides illumination the sea lies beyond the reach of our enlightenment anderson in his decision in *Attorney General of Canada v. Pears, Britton & Ors,*

humility

anderson recognizes that Shakespeare's works "depict the muddied messy contingent and contradictory world in ways that categorically resist simplification and moralizing" [emphasis added] ere the court aligns itself with ussbaum's poet judge who attends to the "historical and human complexities of the case"

2.1.4 Application of contingency in this case: distinguishing obligation.

n order to serve justice through Shakespeare we must attend to the particularity of this case its individual context and its individual actors—s such the equal application of a broad duty held jointly by—r—edersen and—s—Vidaloca to—s—du arcq is too blunt an instrument—ather the separate and distinct obligations of—r—edersen and—s—Vidaloca to—s—du arcq must be determined. We may first individuate—r—edersen and—s—Vidaloca by the fact of—r—edersen s assumed position of captain—which entails care for his passenger—in contrast—s—Vidaloca assumed a position of leisure—free from the cares of the sailing enterprise

- 2.2 As an experienced seaman, Mr. Pedersen is obliged to ensure the safety of Ms. du Parcq.
 - 2.2.1 Shakespeare asks us to evaluate the pragmatics of knowledge.
- 29. The structure of *Hamlet* demands that the audience constantly evaluate the hero's performance in relation to his knowledge—ut simply—we judge—amlet on the basis of what he does with his knowledge from moment to moment—enturies of criticism have taken up this task—ever revising our judgment of—amlet and demonstrating the captivating power of this question of responsibility for one's knowledge—ur imperative to interpret—amlet's actions in relation to his knowledge is rooted in the form of the play ur imperative to bring such a practice into the courtroom is further rooted in *Hamlet*'s

2.3.2 Shakespeare values intervention, but above all, values adherence to one's own judgement.

umans are interconnected social creatures—s such we rely on each other for guidance and aid. Throughout the canon there are multiple examples of individuals who intervene in risky situations on behalf of others—erhaps the most fruitful of the plays in its exploration of this idea is *King Lear*. In that play we see—ent suffer exile for acting upon his loyalty to the best interests of the—ing in his attempt to council—ear against disowning—ordelia—Yet—ent is vindicated throughout the play as—ear recognises his error and relies on—ent's protection—loucester defies—ornwall and—egan to bring aid to—ear in the storm—loucester pays dearly for this intervention when—ornwall gauges out his eyes—Yet—the reader discerns that—ornwall is monstrous and commends—loucester for aiding the—ing despite such danger of retribution—Similarly—the reader horrified by the evil that is about to befall—loucester commends—ornwall's servant who holds fast to his own judgement and bids—ornwall

old your hand my lord have served you ever since was a child ut better service have never done you Than now to bid you hold

n *The Winter's Tale* aulina stands out as a figure who risks the wrath of the ing in order to intervene on behalf of ermoines and erdita ontrasted with her husband ntigonus who is swayed by the ing to abandon erdita the message of the play cannot be more clear aulina is ultimately the author of the play's happy resolution whilst ntigonus perishes in a horrible death in a foreign and remote land

bove all and in each of these instances. Shakespeare places enormous value on adherence to one's own judgement—epeatedly—the reader witnesses characters who defy authority in order to act in accordance their own assessment of loyalty or morality. We must look for example to the quality of ent's loyalty to ear nadvising ear to reconsider ordelia's position—ent's loyalty is not blind and unthinking rather it is accordance with his own evaluation of the event

ndeed Hamlet can be argued to be fundamentally about judgement and deliberation amlet spends the bulk of the play trying to come to grips with the correct course of action in avenging his father's murder ather than a fault this hesitation in amlet is a virtue t is his goodness that gives him pause. Specifically it is amlet's penchant for deliberation which saves him from sending a murder's soul to heaven. When amlet does act rashly in departure from his considered uncertainty, he finds himself the author of a heinous crime namely, the murder of the innocent olonius

2.3.3 Shakespeare cautions against punishing inaction.

King Lear Ibid Ibid

s Vidaloca chooses to do *nothing* Ithough there may be some cases where inaction is demonstrably malicious in this case there is no intention to harm. To read intent and therefore fault into s Vidaloca's inaction would hence be reading *something* into *nothing*. Shakespeare cautions most strongly against doing this. Two of the canon's most devastating acts of injustice the sentencing of ermione and the disinheritance of ordelia proceed precisely from reading "something" into "nothing"

Thus while it is clear that Shakespeare values intervention there is a distinction to be made between blind unthinking action on the one hand and the deliberate exercise of judgement on the other n application to the case at hand the ourt should not interpret s Vidaloca's lack of intervention as indicative of lack of thought n essence the ourt must not deny an individual the possibility of choosing not to intervene should

Part V – Authorities

alconer Shakespeare and the Sea ondon onstable

ussbaum artha *Poetic Justice: TheLliterary Imagination and Public Life* oston eacon ress

Shakespeare William Hamlet d ibbard Toronto xford