That famous Philosopher Xenophon, extolling the Peri-an Lawes, testified that their Citizens from their infancie, were educated and taught not to attempt, or almo?t to imagine any thing but hone?t and iu?t. Which was the cau?e, as Gellius reporteth, that Draco a Citizen of Athens made their lawes so strict and euere, that it was said They were written with Blood, and not with Inke: whereas on the other side the Law made by Solon was compared to a spider's web, which taketh the le?er flies and suffers the greater to ecape and to breake the same. So that (euerie extreame being vicious) Rea?on requireth a Law not too cruell in her Frownes, nor too partiall in her Fauors. Neither of the?e defects are incident to the Law-Merchant, becau?e the same doth properly con?i?t of the Cu?tome of Merchants in the cour?e of Trafficke, and is approoued by all Nations, according to the definition of Cicero, Vera Lex e?t recta Ratio, Natura congruens, diffu?a in Omnes, Con?tans, Sempiterna: True Law, is a right rea?on of nature agreeing therewith in all points, diffu?ed and spread in all Nations con?i?ting perpetually, whereby Meum and Tuum is di?tingui?hed and distributed by Number, Weight and Mea?ure, which shall bee made apparant. For the maintenance of Trafficke and Commerce is so plea?ant, amiable and acceptable vnto all Princes and Potentates, that Kings haue beene and at this day are, of the Societie of Merchants: And many times (notwith?tanding their particular differences and quarrells) they doe neuerthele??e agree in this cour?e of Trade, becau?e riches is the bright Starre, who?e hight Trafficke takes to direct it selfe by, whereby Kingdomes and Commonweales doe flouri?h, Merchants being the meanes and in?truments to performe the same, to the Glorie, Illustration, and Benefit of their Monarchies and States. Que?tionle??e, therefore, the State of a Merchant is of great dignitie and to bee cheri?hed; for by them Countryes are di?couered, Familiaritie betweene Nations is procured, and politike Experience is attained. Whereupon I have been moued (by long ob?eration) to put the worthines of the Cu?tomarie Law of Merchants, in plaine and compendious writing, by undoubted principles, familiar examples, and demon?tratiue rea?ons, without affectation of curious words, more than the grauitie of the Theame (in some places) did require.
I have intituled the Booke, according to the ancient name of Lex Mercatoria, and not Jus Mercatorum; because it is a Customary Law approved by the authoritie of all Kingdomes and Commonweales, and not a Law establihed by the Soueraignty of any Prince, either in the first foundation or by continuance of time. And beginning with Time, Number, Weight and Measure, I doe de?end to the three E?ntiall Parts of Trafficke, diuided into three parts accordingly, by comparing them to the Bodie, Soule, and Spirit of Commerce, namely, Commodities, Money, and Exchange for money by Bills of Exchanges. The first, as the Bodie, vpheld the World by Commutation and Bartring of Commodities, vntill money was deu?ed to bee coyned. The ?econd, as the Soule in the Bodie, did infu?e life to Traffike, by the meanses of Equalitie and Equitie preuenting advantage betweene Buyers and Sellers. The third, as the Spirit and Facultie of the Soule, (being ?eated euerie where) corroborateth the Vitall Spirit of Traffike, directing and controlling (by just proportions) the prices and values of Commodities and Moneys. For euem as Merchants are the Instrumentall Cau?e of Trade; euem is the Exchange for Moneys, the Efficient Cau?e with vs in the cour?e of Traffike, and become Predominant or ouerruling the price of Commodities and Moneys, as afore?aid. This is manife?ted by three Paradoxes alluding to the three E?ntiall Parts of Commerce, which (for a Corrollarie) I haue added in the latter end of this Booke, with ?uch other worthy ob?eruations as in the fir?t Chapter are declared. And euem as the roundne??e of the Globe of the World is compo?ed of the Earth and Waters: So is the Bodie of Lex Mercatoria, made and framed of the Merchants Cu?tomes, and the Sea-Lawes, which are involved together as the Seas and Earth. In the de?cription whereof, I haue v?ed to make repetition of the Materiall points, according as occa?ion did mini?ter vnmo for to make application thereof, for the better vnder?standing of the Iudicious Reader, which is the maine Scope that all Writers are to regard and care for. The meanses whereby the differences and controver?ies happening betweenee Merchants in the cour?e of Trade are ended, is al?o declared, which mo?t of all require Breuitie and Expedition, and had need of a peremptorie proceeding, as was inuented for the Common Law of the Realme of England, the due commendation whereof is added beereunto; shewing al?o how of the ?ame there might bee made an Art or Science, and what ob?eruation of other Lawes are concurring with ours, both in the ?trictne??e of Law, and the leniety of Equitie, most con?onant with the Law-Merchant, the knowledge whereof is of ?o great con?equence, that without it all Temporall Lawes are not compleat, but imperfect. The Scope of all therefore is, That the Rule of Equalitie and Equitie may take place betweenee Vs and other Nations, which Velut Ariadnæ caeca regens filo ve?igia, non modo nos errare non sinit, ?ed etiam efficit, vt aberrantes in rectam viam deducamur, as hath beene mentioned in our la?t Treatise of the maintenance of free trade, lately publi?hed. Concluding (gentle Reader) vpon all the premi?es handled (as I hope) ?ub?tantially, I commend and ?ubmit the ?ame to the louing entertainement of the profound and di?cerning iudgement of the di?creet, wi?e, and experienced; wi?thing that (like matter ?et downe by the Penne of Apollo) they may ?ound ?weetly in your apprehention, and glue to your conceit mo?t harmonious Mu?icke; Plea?ure and Delight. London the 25 of Nouember 1622.

Thine to v?e alwaies readie,

GERARD MALYNES.

[...]

AN INDVCTION TO LEX MERCATORIA, OR THE LAW MERCHANT, AND THE ANTIQVITIE THEREOF.

CHAP. I

When Almighty God had created man, good and a ?ociable creature, who could not ?o well liue alone, as other creatures ?ufficiently prouided (by nature) for their ?u?tenance, and had rea?on a??igned and giuen vnmo him, aboue all the ?aid creatures: yet all the meanes and faculties of his bodie and ?oule, were not ?ufficient to make him happie while?t he was alone. But nece??itie did require a concour?e of men helping one another to ?upplie (with a common ?trength) the ?aid weakene??e; for the burden of the ?aid nece??itie was ?o weightie and great, that one man alone was not able to manage the ?ame. Then it came to pa??e, that by mutuall contribution of offices, euerie man did afford means according to his abilitie for the common good, ?o that tho?e which were of a ?trong bodie did emploie their labour to get liuing and maintenance for them?elues and others: And tho?e which were endued with the be?? part of the ?oule, as Vnder?standing
and Rea?on, did vndertake the mo?t important matters, teaching men how to liue well, and informing them of their feliciti
(which they judged chiefly to con?i?e in virtuous actions) endeavouring in the ?oule of man, of
certaine good lawes for the ob?eruation thereof, with a reference of them to the fir?t law engraffed in the ?oule of man, as
a part of that diuine light, which was in?u?ed in him to know (in ?ome mea?ure of perfection) the good and euill, and
accordingly to receiue reward of puni?gment.

As for the other and better part of informing and guiding the thoughts and affections of men to a ?upermaturall end, that,
as ?urpa??ing the compa??e of that lower ?pheare wherein I now moue, mu?t be left untouche by me, who here take for
my object not the ?piritual but the ciuill life of man and the meanes thereto conducing.

Touching therefore the externall part. The mutuall contribution of offices among?t men hath from the beginning continued
both in labouring and manuring the naturall riches of the lands in come and pa?turage, as in the immediate children of our
fir?t father Adam, and in planting Vines, and making an extract of the iuyc of the fruit of them, as Noah. Which riches in
matter and foundation naturall, and partly al?o in alteration and managing artificially, euery po??e??or not long after the
beginning of the world ?euerally inioyed in propertie: and hence did proceed a commerce, fir?t, in reall enterchange and
communication of things of the ?ame or other kinds, but all naturall commodities, as ?heep for ?heep, ?heep for come, 
wine for yle, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after, to
avoid confu?ion, by a commune pignus currant mutuall, which we call money, both by way of merchandizing, the mo?t
ancient evidence hereof is Abrahams purcha?ing for money a field for buriall. The ob?eruation and cu?tomes whereof, was
the beginning of the Law-Merchant, and that e?pecially when mankind was propagated into an infinite number, and the
dome?tiques or neere hand commodities were not ?ufficient for their ?u?tenance in ?ome countries, and in other
countries were ouver aboundant: Then of nece??itie followed the v?e of tru?ting, exchanging, and trading; fir?t, on the
Land in the maine Continent, and then exten?uially vpon the Seas, both for fi?hing and negotiation. Then did merchants
travell from countrey to countrey: So in the daies of the Patriarke Iacob, did the merchants Medianits in their journey
meete with the children of Iacob, and then lo?eph was carried ther with all his family. And then it was and proued to be
from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by Neuertheles, many Emperours and Kings haue alwaies referred the ending of
Which riches in

This Law of Merchants, or Lex Mercatoria, in the fundamentals of it, is nothing el?e but (as Cicero dinfeth true
and iu?it Law) Recta Ratio, natura congruens, diffu?a in omnes, Con?trans ?empiterna: True Law is right Rea?on,
agreeable to Nature in all the points, diffu?ed and ?pread in all Nations, con?i?ing perpetually without abrogation:
howbeit ?ome doe attribute this definition vnto ius gentium, or the Law of Nations, which con?i?ing to
Cu?tomes, Manners, and pre?creptions of all Nations, being of like conditions to all people, and ob?ered by
them as a law: But the matter being truely examined, we ?hall find it more naturally and properly belongeth to the
Law-merchant.

Every man knwoeth, that for Manners and Pre?creptions, there is great diuer?itie among?t all Nations: but for the
Cu?tomes ob?ered in the cour?e of traffickie and commerce, there is that ?ympathy, concordance, and agreement, which
may bee ?aid to bee of like condition to all people, diu?ed and ?pread by right rea?on, and in?fint of nature con?i?ing
perpetually. And the?e Cu?tomes are properly tho?e ob?eruations which Merchants maintaine betweene them?eluens, and
in the?e bee ?eparated from the Law of Nations, the remainder of the ?aid Law will con?i?e but of few points.

Princes and Potentates by their prerogatius (re?pecting the law of Nations) doe permit among?t them?eluens a free
travelling by land through their ?euerall Kingdomes, Territories, and Dominions, vnle??e they bee open enemies: They
hold likewise a communite of the ?eas for Navigation, as al?o a di?inct dominion of the ?eas adjoyning to the territories
and iu?i?ections of their countries, they take Cu?tome, Sub?dies, and all manner of impo?itions vpon the commodities
imported and exported out of their Habours, Hauens, and Ports, as al?o duties for the fi?hing in their Seas, Streames, and
Dominions; of all which the Merchant is to take e?peciell notice, to avoid danger in the traffickie and trade with their
?ubjects, for non-payment of the ?ame, which they clai?e iure gentium.

Are not the Sea Lawes e?tabl?hed to decide the controer?ies and differences happening betweene Merchants and

Recta Ratio, natura congruens, diffu?a in omnes, Con?trans ?empiterna
Vt quod v?piam na?citur boni, id apud omnes affluat.
Marriners? And is it not convenient for Merchants to know them? Considering that Merchants maintaine the Fishermen, and (by way of Trade) cause the Sea and Land Commodities to bee dispersed everywhere. So that the said prerogatives do alfo appertaine to the Law-merchant as properly inherent vnto commerce, and the observation of Merchants being of like condition to all people and nations.

Concerning manners and pre?criptions, wherein the differences is to be noted from the Law-Merchant; the same consist in the erecting of Offices, creating of Officers, and making of Lawes, which of theelues make a separation betweene Cu?tomes: Alfo the giving or bestowing of honours and dignities, the granting of priuileges, and the doing of any thing which concerneth the Honor, Body, and goods [...]