That famous Philosopher Xenophon, extolling the Persian Lawes, testified that their Citizens from their infancy, were educated and taught not to attempt, or almost to imagine anything but honest and useful. Which was the cause, as Gellius reporteth, that Draco a Citizen of Athens made their laws so strict and sure, that it was said They were written with Blood, and not with Ink: whereas on the other side the Law made by Solon was compared to a spiders web, which taketh the lesser flies and suffereth the greater to escape and to break the same. So that (euerie extreme being vicious) Reason requireth a Law not too cruel in her Frownes, nor too partial in her Favors. Neither of these defects are incident to the Law-Merchant, because the same doth properly consist of the Custom of Merchants in the course of Trafficke, and is approved by all Nations, according to the definition of Cicero, Vera Lex est recta Ratio, Natura congruens, diffusa in Omnes, Contans, Semperama: True Law, is a right reason of nature agreeing therewith in all points, diffused and spread in all Nations consisting perpetually, whereby Meum and Tuum is distinguished and distributed by Number, Weight and Measure, which shall be made apparant. For the maintenance of Trafficke and Commerce is so pleasant, 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 (notwithstanding their particular differences and quarrells) they doe neuertheless agree in this course of Trade, because riches is the bright Starre, who through Trafficke takes to direct it selfe by, whereby Kingdomes and Commonweales doe flouri?h, Merchants being the meanes and instruments to performe the same, to the Glorie, and Benefit of their Monarchies and States. Que?tionable?e, therefore, the State of a Merchant is of great dignitie and to bee cheri?hed; for by them Countrieys are di?couvered, Familiaritie betweene Nations is procured, and politike Experience is attained. Whereupon I have been moved (by long obervation) to put the worthines of the Customarie Law of Merchants, in plaine and compendious writing, by undoubted principles, familiar examples, and demon?trative reasons, 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 Ius Mercatorum; becau?e it is a Customary Law approyed by the authoritie of all Kingdomes and Commonweales, and not a Law e?tabli?hed by the Soueraigntie of any Prince, either in the first foundation or by continuance of time. And beginning with Time, Number, Weight and Mea?ure, I doe de?cend to the three E??entiall Parts of Traffike, diuided into three parts accordingly, by comparing them to the Bodie, Soule, and Spirit of Commerce, namely, Commodities, Money, and Exchange for money by Billes of Exchanges. The first, as the Bodie, vpheld the World by Commutation and Bartring of Commodities, vntill money was deui?ed to bee coyned. The ?econd, as the Soule in the Bodie, did infu?e life to Traffike, by the meanes of Equalitie and Equitie preuentuing advanta?ege 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 iust proportions) the prices and values of Commodities and Moneys. For euen as Merchants are the In?trumentall Cau?e of Trade; euen ?o 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?a?ed. This is manife?ted by three Paradoxes alluding to the ?aid three E??entiall 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 euen 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 involued 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 vn?o me for to make applica?ion thereof, for the better vn?der?anding of the Iudicious Reader, which is the maine Scope that all Writers are to regard and care for. The meanes whereby the differences and contro?u?ies happening betwenee 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 lenitie 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 therefor? is, That the Rule of Equalitie and Equitie may take place betwenee Vs and other Nations, which Velut Ariadnæ cæca 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 Treati?e of the maintenance of free trade, lately publi?hed. Concluding (gentle Reader) vnpon all the premi??es handled (as I hope) ub?tantly, I commend and ?ubmit the ?ame to the louing entertainment of the profound and di?cerning judgement of the di?creet, wi?e, and experienced; wi?hing that (like matter ?et downe by the Penne of Apollo) they may ?ound ?weetly in your apprehention, and give 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 vn?o 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?t 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
t (which they judged chiefly to con?i?t in virtuous actions) endeavou?ring in the ?oule of man, of
certaine good lawes for the ob?e?ration thereof, with a reference of them to the fir?ti law engraffed in the ?oule of man, as
a part of that diuine light, which was infu?ed in him to know (in ?ome mea?ure of perfection) the good and euil, and
accordingly to receiue reward of puni?hment.

As for the other and better part of informing and guiding the thoughts and affections of men to a ?upernaturall end, that,
as ?urpa?ing the compa?e of that lower ?pheare wherein I now moue, mu?t be left untouched by me, who here take for
my object not the ?piritual but the ciuill life of man and the meaneis 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?turate, as in the immediate children of our
fir?t father Adam, and in planting Vines, and making an extract of the iuyce of the fruit of them, as Noah. Which riches in
matter and foundation naturall, and partly al?o in alteration and managing artificially, euey 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 ?heepe for ?heepe, ?heepe for come,
wine for yole, &c. between man and man, or nations and nations, according to number, weight, and mea?ure, and after,
to auoid 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?e?ration 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?i?ques or neere hand commodities were not ?ufficient for their ?u?tenance in ?ome countries, and in other
countries were ouver aboundant: Then of nece?ity followed the v?e of tru?ting, exchanging, and trading; fir?t, on the
Land in the maine Continent, and then exten?u?y vpon the Seas, both for fi?hing and negotiation. Then did merchants
trauell from countrey to countrey: So in the da?es of the Patriarke Iacob, did the merchants Mediantis 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
true, (which experience hath confirmed) that Vita civilis in ?ocietate po?ita e?t, ?ocietias autem in imperio & commercio:
So that in plainly appeareth, that the Law Merchant, may well be as ancient as any humane Law, and more ancient than
any written Law. The very morall Law it ?efle, as which hath ?o continued and beene daily augmented ?ucce??iuely vpon
new occa?ions, and was not altogether made in the fir?ti foundation, as the Lawes whereby the Common-eweales of I?rael
(who?e Lawes were vniformely made by Mo?es from God:) or tho?e of Crete, Cybaris, Sparta, & Carthage, by Minos,
Charondas, Lycurgus, and Phalcas. Neuetherel?e??e, many Emporours and Kings haue alwaies referred the ending of
differences, which happen betweene Merchants, to be done & decided according to the Law-Merchant, That is to ?ay,
according to the Cu?tome of Merchants, who by their travauels found the diuer?tie of weights and mea?ures, and the
goodne??e and v?e of commodities plea?ing to all nations, whereby the ?uperfluities of them were vented among?t them.
Vt quod v?piam na?citur boni, id apud omnes afflatu.

This Law of Merchants, or Lex Mercatoria, in the fundamentals of it, is nothing el?e but (as Cicero d?ifteth true
and iu?t Law) Recta Ratio, natura congruens, diffu?a in omnes, Con?tans ?empiterna: True Law is right Rea?on, and
agreeable to Nature in all the points, diffu?ed and ?pread in all Nations, con?i?ted perpetually without abrogation:
howbeit ?ome doe attribute this definition vnto ius gentium, or the Lawes of Nations, which con?i?teth of
Cu?tomes, Manners, and pre?creptions of all Nations, being of like conditions to all people, and ob?erued 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 diu?er?tie among?t all Nations: but for the
Cu?tomes ob?erued in the cour?e of trafficke and commerce, there is that ?ympathy, concordance, and agreement, which
may be?e aid to be of like condition to all people, diffu?ed and ?pread by right rea?on, and in ?tinct of nature con?i?ting
perpetually. And the?e Cu?tomes are properly tho?e ob?e?ation which Merchants maintaine betweene them?e?les, and if
the?e be?e ?eparated from the Law of Nations, the remainder of the ?aid Law will con?i?t but of few points.

Princes and Potentates by their prerogatiues (re?pecting the law of Nations) doe permit among?t them?e?les a free
trauelling by land through their ?euerall Kingdomes, Territories, and Dominions, vnle??e they be open enemies: They
hold likewi?e a communitie of the ?eas for Nauigation, as al?o a di?inct dominion of the ?eas adioyning to the territories
and iur?iction of their countries, they take Cu?tome, Sub?i?es, and all manner of impo?tions 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?peciiall notice, to auoid danger in the trafficke and trade with their
?ubiects, for non-payment of the ?ame, which they claime iure gentium.

Are not the Sea Lawes e?tabl?hed to decide the controuer?ies and differences happening betweene Merchants and
Marriners? And is it not convenient for Merchants to know them? Considering that Merchants maintain the Fishermen, and (by way of Trade) cause the Sea and Land Commodities to be dispersed everywhere. So that the said prerogatives do also appertain to the Law-merchant as properly inherent unto commerce, and the observation of Merchants being of like condition to all people and nations.

Concerning manners and prescriptions, 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 Laws, which of themselves make a separation between Customs: Also the giving or bestowing of honours and dignities, the granting of privileges, and the doing of any thing which concerneth the Honor, Body, and goods [...]