Here begins Lex mercatoria:


Mercantile law is thought to come from the market, and thus we first need to know where markets are held from which such laws derive. So it should be observed that such markets take place in only five [types of] place, specifically in cities, fairs, seaports, market-towns, and boroughs, and this by reason of the market. From this it should further be seen that just as markets are held in five [types] of place, so mercantile law or the law of the market always follows, namely: In [i] cities and [ii] fairs (whether nundine or ferie, for they are the same thing), where purchases and sales of merchandise, specifically of clothes, foodstuffs, and almost every type of movable good, are continually made, the law follows after itself continuously in these two like the market. And so attachments or adjournments of mercantile law here are from hour to hour, as from before noon to after noon, or from one day to the next, as from Monday to Tuesday and from Tuesday to Wednesday, unless the parties agree on a longer or shorter time.

In [iii] ports, attachments or adjournments follow in the order that things for sale come into and leave the port, specifically from one day's high tide to the next (but nocturnal high tides are not to be included).

In [iv] market-towns and [v] boroughs, attachments and adjournments should be made from one market to the next.

To these laws naturally pertain all pleas excepting only those of land. But if the lords and pleading parties would rather withdraw and prosecute pleas of appeals begun before them in the aforesaid places in other courts at common law, and refuse mercantile law, they certainly can, and they do so more often than not throughout the whole kingdom.
2. In What Way Mercantile Law Differs from the Common Law.

The law of the market differs from the common law of the kingdom in three general ways. First, it generally delivers itself [of a judgment] more quickly.

Second, whoever pledges someone to answer for a trespass, covenant, debt, or detinue of chattels pledges the whole debt, damages, and costs of the plaintiff, if the one pledged is convicted and does not have enough [to pay the judgment] within the bounds of the market. And if the one pledged happens to be first attached by gage or by chattels and afterwards he takes the gage away, when the market-reeve lets him take it outside the bounds of the market on account of such a pledging, the pledge should answer the court or the plaintiff for a gage of this sort or its value.

And [the law of the market] differs in a third way because it does not admit anyone to [wager of] law on the negative side, but in this law it always belongs to the plaintiff to prove, for example, by suit or by deed or both, and not to the defendant.

And with respect to other matters, such as prosecutions, defenses, essoins, defaults, delays, judgments, and executions of judgments, the same process should be used in both laws.

And it should be known that whoever buys or exchanges anything with a merchant, whether or not the buyer or exchanger is a merchant, so long as the thing is of his [the merchant's] merchandise or belongs to his merchandise.

1. The Latin is awkward. The first clause of the first sentence may have an etymological import, but the thought turns rapidly to what a modern reader would regard as substance. Two, possibly three, senses of mercatum are involved: (1) the legal institution, or the franchise; (2) concrete instances of the institution in the five types of place (translated above in the plural), and (3) the buying and selling associated with the institution. See Niermeyer, Lexicon, s.v., mercatus. PB suggests that we should assume at the end "by reason of the market [activity that takes place there]," i.e., that the third meaning is dominant. It is also possible that the first meaning is here intended. See the introduction, sec. 1D at note 25. Something may be missing. The text may originally have read something like: Et hoc est videndum quod lex mercatoria de hiis quinque locis provenit racione mercati. Unde ulterius est videndum, etc. "And by this it should be seen that mercantile law comes from these five places by reason of the market. From this it should further be seen," etc.

2. horam nonam - the alternative meaning, "the ninth hour," i.e., mid-afternoon, is possible but less likely.

3. ordinatim - unusual but classical; see OLD, s.v. Alternatively, emend to ordinata and translate "are likewise arranged just as," etc.

4. Translation assumes that in mercato is redundant.

5. Subsequent chapters, e.g., 5, 9, 17, and 18, indicate that the dominus referred to here is the dominus curie, 'lord of the court', who also appears to be the dominus mercati (see chs. 13 and 15).

6. Probably to be understood in its common-law sense of criminal appeal. See the introduction, sec. 1D, text and notes 5-6.

7. At a minimum this refers to the central royal courts, the itinerant justices, and the county courts. The possibility mentioned below (ch. 9) that the lord of the court of the market might have a court at common law suggests that various kinds of franchisal courts were also conceived of as being 'at common law'.

8. These are probably not two different processes, but alternative ways of referring to the same goods taken in attachment.

9. Reading ubi, because only one situation seems to be contemplated, in place of vel, "or." See the introduction, sec. 2(2).

10. Literally, "releases [the gage] outside the bounds of the market."

Referring Principles:
- XII.1 - Distribution of burden of proof